

WEAAD 2014
S.C. CONFERENCE
S.C. LIEUTENANT GOVERNOR'S OFFICE ON AGING
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THE COURT'S RESPONSE TO ELDER ABUSE

Jacqueline D. Belton

Associate Judge of Probate

Richland County Probate Court

WHAT IS ELDER ABUSE?

- ▣ Definition in use by the World Health Organization:
 - ▣ “Elder Abuse is a single or repeated act, or lack of appropriate action, occurring within any relationship where there is an expectation of trust which causes harm or distress to an older person.”

WHAT ARE THE TYPES OF ELDER ABUSE?

- ▣ ELDER ABUSE CAN BE GROUPED INTO FIVE GENERAL CATEGORIES:
 - Neglect and Abandonment
 - Psychological or Emotional Abuse, Stalking, and Harassment
 - Financial Exploitation
 - Physical Abuse
 - Sexual Abuse

Center for Elders and the Courts

<http://www.eldersandcourts.org>

- ❑ The Center for Elders and the Courts is part of the National Center for State Courts
- ❑ The Center for Elders and the Courts offers resources and information for courts nationwide regarding Guardianship, Aging, Elder Abuse, Training, as well as Other Resources.
- ❑ The Center also offers a state-by-state breakdown of issues related to Elder Abuse
- ❑ The link for S.C. is:
- ❑ <http://www.eldersandcourts.org/states/South-Carolina.aspx>

S.C. SUPREME COURT TASK FORCE ON STATE COURTS & THE ELDERLY

- ▣ In 2010, S.C. Supreme Court Chief Justice Jean H. Toal created a state task force on State Courts and the Elderly.
- ▣ The Task Force was chaired by the Honorable Debora Faulkner, Judge of Probate for Greenville County, South Carolina

SOUTH CAROLINA

- ▣ Elder Abuse
- ▣ Title 16, Chapter 3: Crimes and Offenses-Offenses Against the Person
 - Section 16-3-1050: Failure to report, perpetrating or interfering with an investigation of abuse, neglect or exploitation of an vulnerable adult; penalties

Title 43, Chapter 35: Social Services-Adult Protection

S.C. Omnibus Adult Protection Act,
S.C. Code Ann. §43-35-5, 1976, as amended

SOUTH CAROLINA DEFINITIONS

▣ DEFINITIONS FOUND IN THE OMNIBUS ADULT PROTECTION ACT

Definitions of various terms used in the Act are found in Section 43-35-10:

“Abuse” is defined in 43-35-10(a),

“Exploitation” is defined in 43-35-10(3)(a)-(c),

“Neglect” is defined in 43-35-10(6),

“Physical abuse” is defined in 43-35-10(8),

“Psychological abuse” is defined in 43-35-10(9), &

“Vulnerable adult” is defined in 43-35-10(11)

SOUTH CAROLINA

- ▣ Probate Issues
 - Title 62, South Carolina Probate Code
 - Article 5: Protection of Persons under Disability and their Property
 - ▣ General Provisions
 - ▣ Guardianship of Incapacitated Persons
 - ▣ Protection of Property of Persons with Disability and Minors
 - ▣ Powers of Attorney

HOW CAN THE COURT SYSTEM RESPOND TO ELDER ABUSE?

- ▣ Elder Protection Courts
 - An Elder Protection Court is a specialty court that is specifically designed to address the needs of older persons who have been victimized, neglected, or exploited. The concept derives from the Hon. Julie Conger (Ret.), Superior Court of California, Alameda County. The Alameda County court no longer operates, but the model created by Judge Conger and her team has been replicated in other Superior courts in the State of California. The idea is to provide one place in which all issues involving an elder who has been victimized can be addressed.

HOW CAN THE COURT SYSTEM RESPOND TO ELDER ABUSE?

- ▣ (Continued)
- ▣ The Superior Court of California, County of Contra Costa Elder Court
 - A single judge hears all case types involving senior citizens: elder abuse, restraining orders, felonies and misdemeanors, landlord tenant disputes, probate matters, small claims, and others.
 - The court has a dedicated prosecutor, it accommodates the physical needs of elders, there are volunteer senior peer counselors, and the court coordinates other services, including free legal advice for indigent seniors, transportation assistance, etc.

HOW CAN THE COURT SYSTEM RESPOND TO ELDER ABUSE?

- ▣ Elder Justice Centers
 - Florida established the first Elder Justice Centers (EJC) in Hillsborough and Palm Beach Counties.
 - The 13th Judicial Circuit Elder Justice Center, Tampa, Florida (Hillsborough County)
 - ▣ This court program is designed to assist persons aged sixty or older who are involved in the court system through guardianship, criminal, family or other civil matters.

HOW CAN THE COURT SYSTEM RESPOND TO ELDER ABUSE?

The 13th Judicial Circuit Elder Justice Center (continued)

- The goals of the EJC include:
 - Providing a designated elder-friendly facility for seniors over the age of 60
 - Coordinating access to existing agencies
 - Providing assistance to senior victims of abuse and/or exploitation
 - Providing public education to the public
 - Providing short term case management services

The EJC was created as the result of a task force seeking to increase access to the court system and to social and legal services for older adults. For more information about various types of court-involved programs for elders go to:

<http://www.eldersandcourts.org/Elder-Abuse/Programs-and-Guidelines.aspx>

IS THERE A ROLE FOR S.C. PROBATE COURTS IN RESPONDING TO THESE ISSUES?

- ▣ YES!!
- ▣ Because the Probate Courts in South Carolina have exclusive jurisdiction to deal with Guardianship and Conservatorship, and concurrent jurisdiction with the Circuit Courts to deal with Powers of Attorney, that is the “trifecta” in terms of situations in which issues of Elder Abuse often arise.
- ▣ The general categories of the typical perpetrators of Elder Abuse are:
 - Intimate Partners, family members, caregivers, and fiduciaries.
 - These are the very individuals we see in the Probate Courts, with regard to the above matters.

IN WHAT WAYS CAN THE PROBATE COURTS ADDRESS THE ISSUE OF ELDER ABUSE?

- ▣ **WHEN CONSIDERING A PETITIONER FOR APPOINTMENT**
 - Criminal background checks
 - Copies of credit reports
 - Proper state- or government-issued identification
 - Marriage licenses and birth certificates, when appropriate
 - Ask other questions of the applicant at the hearing, such as questions about diagnoses and/or treatment for addictions (e.g., gambling and chemical dependency).

HOW CAN PROBATE COURTS ADDRESS THESE ISSUES? (cont'd)

- ▣ APPOINTING A REALLY GOOD, WELL-TRAINED GUARDIAN *AD LITEM* IS CRITICAL
 - The Guardian *ad Litem's* role is to speak to the Court as to what is in the best interest of the Alleged Incapacitated Adult (AIP).
 - He or she should have knowledge of elder abuse issues, as well as a command of the law regarding guardianship and conservatorship.
 - The GAL should not be easily intimidated by the parties involved, including the other attorneys in the case.
 - The Probate Judge should communicate clearly what the expectations of the GAL are, and that should be communicated to all other parties involved in the case, so the GAL receives the cooperation necessary to do his/her job.

HOW CAN PROBATE COURTS ADDRESS THESE ISSUES? (cont'd)

- ▣ The third most substantiated type of Elder Abuse is Financial Exploitation.
- ▣ Financial Exploitation is the type of Elder Abuse that the Probate court is most likely to see, and one that it has the jurisdiction to effectively deal with.
- ▣ The issue is brought before the court in guardianship and conservatorship matters, as well as in disputes concerning Powers of Attorney. Once the issue is before it, the Probate Court does not have to wait until there is a criminal charge to respond, though that may ultimately happen.

IT ALL BEGAN WITH A CONTESTED GC MATTER . . .

- ▣ Every judge has a case that he or she can refer to during their time on the bench that will forever be referred to by the judge as “that case.” It’s the one in which a convergence of the perfect storm of events takes place, and while it can be intellectually stimulating, and a test of patience and judicial temperament, as well a test of physical stamina, it is definitely not an experience to be repeated.
- ▣ This is my case, and it is tale of elder abuse and the response of our court to it. It all began when a woman who had no power of attorney for health care or a power of attorney for her business affairs needed someone to make decisions for her. If only it had been that simple . . .

THE PETITION, THE PSYCHIC, AND THE PROBATE JUDGE

In Conclusion . . .

WHAT CAN WE DO TO PREVENT ELDER ABUSE IN OUR COMMUNITY?

- ▣ BE VIGILANT
- ▣ BE INVOLVED
- ▣ EDUCATE OURSELVES AND OUR COLLEAGUES
- ▣ DON'T BE AFRAID TO SPEAK OUT IF AN ELDER NEEDS OUR HELP
- ▣ VALUE OUR ELDERS AND CREATE COMMUNITY SUPPORTS FOR THEM
- ▣ ONE DAY WE WILL BE THE "ELDERS" IN OUR COMMUNITIES AND WE WOULD WANT SOMEONE TO DO THESE THINGS FOR US.