

**Health and Human Service Committee**  
**Legislative Hearing: Elder Abuse and Exploitation**  
**July 3, 2013**

*Outline of testimony from Darryl W. Millet:* An Albuquerque attorney who serves as Conservator and/or Trustee for elderly persons with dementia, and Conservator/Trustee for persons with diminished capacity due to medical conditions: The following are actual case histories of elder abuse of Albuquerque seniors from my Conservator files. No names will be revealed. The Maine statute, if made into law in New Mexico, would be a useful tool for those of us who deal with cases of elder exploitation.

(1) Case involving elderly woman with dementia whose caregiver forged dozens of checks over a three year period, leading to a loss in excess of \$125,000:

- Initially live-in caregiver wrote pay checks for woman to sign on weekly basis
- Caregiver began telling elderly woman she had not been paid, and had woman pay her twice each week for same hours. Elderly woman signed checks without question.
- After a while, caregiver began asking for “reimbursement” checks for money caregiver claimed was owed to third parties. Elderly woman was told caregiver would pay the “expenses”. It was later learned that the “expenses” were invented by the caregiver.
- Eventually, caregiver started signing checks for the elderly woman by forging her signature.
- Caregiver added a “1” to the front of a particular check amount, thus giving herself an extra \$1000.00 she was not entitled to.
- Caregiver forged a \$6800.00 check to herself and signed it. When caught, caregiver “repaid” the funds, then forged new checks to gradually get \$6800.00 back for herself. Family failed to fire caregiver, due to internal bickering and desire to avoid responsibility for elderly woman’s care if caregiver fired. Caregiver fired by Conservator on first day of Conservator appointment.
- DA was sent letter outlining case. DA referred to APD for investigation. GAL and Conservator of elderly woman met with detective several times.
- Conservator supplied police with copies of front and back of all checks, plus table showing illicit payments.
- Detective stated he needed time to investigate, but after several months without action taken, Conservator began calling to get updates. The detective eventually stopped returning Conservator’s calls, and the case was never prosecuted. Calls to DA also unanswered.
- The elderly woman is now deceased, and no recovery of the funds was ever obtained.
- The DA’s office and the police receive many complaints of elder exploitation, and have very limited resources. They tend to prosecute “pattern” cases, where there are multiple victims and a single perpetrator.

(2) Case involving second elderly woman whose daughter attempted to obtain a deed to the mother’s house in exchange for moving in and taking care of the mother:

- Mother and daughter come to my office regarding getting a deed executed.
- Daughter leads mother by pulling on mother's arm.
- Mother never says a word during meeting.
- Daughter says she wants \$200,000 + house (free and clear of mortgages) deeded to her and her husband, who intend to move in with elderly mother to take care of her.
- When asked if they have considered the possibility that the deed could disqualify the mother from Medicaid, the daughter says she isn't worried, as they can take care of the mother's needs.
- When asked if she understood how expensive a non-Medicaid nursing facility would be if needed, the daughter became agitated, and responded that I should not worry about that.
- When I told the daughter that I needed to talk to the mother alone to determine her ability to understand the proposed transaction and determine if it was to be done with mother's informed consent and without duress, daughter became very agitated. Daughter grabbed mother by arm and pulled her out of the office.
- Thirty minutes later a police officer arrived and said the daughter wanted the original sign-in sheet the daughter filled out, which contained mother and daughter's names, addresses, and phone numbers.
- I made a photocopy of the sign-in sheet, and gave the original to the officer. I then called Adult Protective Services and made a referral regarding possible financial exploitation of an elderly person.
- I do not know if the daughter ever took title to the house or if APS took any action regarding my referral.

(3) Case involving elderly man with dementia whose adult children took over \$3 million from his assets using POAs over a several year span.

- Kids gave father a few promissory notes (unsecured), but simply liquidated retirement and investment accounts and split the funds in most instances.
- Kids claimed their father, suffering from dementia, wanted to have "gifting program".
- Longtime CPA says father only loaned money, never gifts.
- Most of the funds have been spent, and the kids have few assets (or jobs).
- As father was incompetent, and had no legal advisor involved in the "gifting program" a presumption of fraud and duress would be appropriate, as set out in the Maine statute.

(4) Elderly woman with dementia frequently withdrew large amounts of cash from her bank.

- Bank teller noticed she was still in the car in the bank parking lot an hour after making a withdrawal. When the teller checked on the woman, the elderly woman stated she did not remember where she lived. The elderly woman's home was one block from bank.
- The woman had no relatives in New Mexico.
- Thousands of dollars she withdrew could never be accounted for.
- Repair person was billing unreasonable amounts for "repairs" to house.