

**New Mexico Legislature
Health and Human Service Committee
Elder Abuse and Exploitation
July 3, 2013**

**Testimony of Marsha E. Shasteen,
Attorney at Senior Citizens' Law Office**

Good afternoon, and thank you for calling this hearing and inviting us to speak with you today, on this important issue. My name is Marsha Shasteen, I have been practicing law since 1989, and for the past six years have been specifically engaged in the field of Elder Law, at Senior Citizens' Law Office (SCLO). We are a private non-profit law firm practicing in the four Counties of Central New Mexico, Bernalillo, Sandoval, Valencia, and Torrance. All of our clients are age 60 or over. Besides providing free civil legal representation on a variety of matters, including recovery of assets after exploitation, we seek to educate the community on issues affecting our elderly population. This includes one-on one legal consultation and law clinics, offered throughout the community. We perform either brief services or full litigation for more than two-thousand Seniors a year, with seven very diligent attorneys. Our office receives funding from the City of Albuquerque as a grantee to the National Area Agency on Aging, the New Mexico Commission on Civil Legal Services, (CLS), administered through the Access to Justice Commission, as well as other private charitable grants. The aging population is just beginning to explode with the entry of Baby Boomers, and with the current economic woes faced by everyone, the nest eggs held by Seniors are becoming ever more popular targets for predators of all kinds. All of us at SCLO consider it a privilege to be in a position to help Seniors maintain their security and quality of life as they age, and it is our aim to also make a difference systemically on that front.

I am here today on this panel with two private attorneys, who have strong reputations within the private Bar for their work on behalf of vulnerable adults and Senior Citizens. I have also become acquainted with them and their specific policy concerns through participation in the New Mexico Guardianship Association (NMGA). NMGA is a statewide professional organization, with national affiliations, and their membership is drawn from a multidisciplinary field. Membership includes attorneys, social workers, as well as family and professional guardians and conservators. NMGA aims to improve standards for service delivery within their field while upholding the dignity of those they serve; vulnerable adults in need of on-going assistance for making healthcare decisions and conducting financial transactions. Due to the high number of elders having guardians and conservators appointed after being victims of financial exploitation SCLO, asked NMGA to collaborate with us to develop a legislative proposal to help us better address current legal

obstacles faced by New Mexico attorneys representing victims of financial exploitation who are trying to get their property back.

We have begun contact with other stakeholder groups as well, and intend to broaden our reach to bring in as much input as possible to this critical conversation. We do have a proposal in mind, and will have it ready for drafting into a bill soon, and anticipate it being ready for introduction in the next couple of months. Our proposal is a hybrid modeled after statutes in Maine and Arizona. Before I get into the details of our current proposal, let me give you just a little bit of background on the problems we seek to address. My colleagues here at the table will also have more background information to describe the types of problems faced by attorneys who represent elders and vulnerable. Sadly, these stories are all too common.

At SCLO, we frequently receive calls from a panic-stricken elder who has just realized that they were tricked into signing away the deed to their house. Maybe, the loan they made to a relative or friend who was in a desperate situation, has not been repaid and the borrower has decided they do not need to return the money. Perpetrator of this type of abuse rationalize their behavior a "taking care of the elder", perhaps they think if they don't keep this advance on what they view as their rightful inheritance, then Grandma might be broke by the time she dies, and they will get nothing. In some cases, the perpetrator really is a caretaker, in other cases they are freeloaders who moved in with the elder so they would not have to pay any bills, and then begin scheming about how to insure their financial security after the death of the elder. In some cases, the perpetrator is just a plain old professional con artist, who may or may not have had a pre-existing social relationship with their chosen victim.

A few years ago we began labeling these cases as Financial Exploitation Recovery cases. We see recurrent themes to these stories, and continue to be faced with the same litigation obstacles. We have cases where the victim was always perfectly in control until the devastating loss of a spouse. Then, a previously distant neighbor cozied up to them and starts "helping" them with their finances. Maybe they are faced with a health crisis, and a caretaker oversteps their bounds and bilks the elder out of their life savings. Or an adult child, motivated by a sense of entitlement persuades the elder to "make them a loan" which they never intend to pay back. Working through each of these types of case, we encounter the same obstacles. The elder may make a poor witness, due to the sheer pressure of suing someone they previously trusted and may still love. Disabling events, such as stroke, can impair articulation and memory and make it easy for them to be victimized and harder for them to advocate for themselves.

Our biggest hurdle is to show that the transfer was never intended as a gift, or an early inheritance. Yet, there is almost never a written record of the stated intentions of the parties. An obvious question always emerges, "Why would a Senior on a fixed income, in need of resources for continued in-home care, or simple household bills, give away a large share of their personal wealth?" It can be truly amazing to hear the righteous sounding,

and purely callous responses given by perpetrators to this question. What is needed is statutory protection for Seniors and other vulnerable adults, to safeguard them from being tricked into these fraudulent transactions. Several states have addressed this problem with specific civil and criminal statutes. Our proposal focuses on the protections offered by two civil statutes, one in Maine, and one in Arizona.

The State of Maine has a statute called, "The Improvident Transfer of Title Act" 33 M.R.S.A Sect. 1021-1025. The law is directed at protection of persons over the age of 60 who make transfers that comprise more than 10% of their total wealth, fair consideration is not shown to have been exchanged, no counsel represents the Senior, the recipient is in a confidential or fiduciary relationship with the Senior, and the transfer is not testamentary in nature. In those cases, undue influence is presumed to have predicated the transfer, and unless the recipient can prove otherwise, the transfer will be rescinded, and the Senior financially restored.

In Arizona, the statute is AZ ST § 46-451, and targets not only elders, but vulnerable adults. The Arizona statute provides for attorneys fees in cases where willful coercion can be shown to have motivated the transfer. The Arizona statute distills damages available to the victim, including allowing the judge discretion to double the damages awarded.

We know that these cases are not often criminally prosecuted, for many of the same reasons that lawyers find them difficult to bring as civil actions. However, we believe that when New Mexico enacts legislation to encompass some of the elements of laws enacted in Maine and Arizona, not only will those who would prey upon vulnerable adults and Seniors think twice before acting, in cases where they move ahead to exploit anyway, they will be much more likely to hear from a lawyer, and be compelled to return the wrongly taken assets, either with or without litigation. Ultimately we believe that once the civil recovery is made smoother and more cost effective, this problem will gain more attention from prosecutors. We believe they will be more likely to implement better tracking systems within their offices for keeping statistics on these complaints, and feel bolstered by a civil judgment as they make the decision to move forward with a criminal action.

I thank you for your time and attention, and hope that you will be interested in hearing what my colleagues here at the table have to say about their experiences working as private practitioners, to try and make a difference for this vulnerable population, one case at a time.

