

STATEMENT TO HHS COMMITTEE BY GREGORY W. MACKENZIE, ESQ.

1. SPEAKER INTRODUCTION

2. TYPES OF FINANCIAL ABUSE EXPERIENCED

- TRANSFERS TO FAMILY MEMBER (REAL OR PERSONAL PROPERTY, CASH, INCOME)
- TRANSFERS TO THIRD PARTIES (REAL OR PERSONAL PROPERTY, CASH, INCOME)
- ABUSES BY FIDUCIARIES (POA, TRUSTEE) USUALLY INVOLVING SELF-DEALING AND FAILURE TO ACCOUNT
- MANIPULATION OF ESTATE PLANNING DOCUMENTS (WILLS, TRUSTS, POA, ETC.)

3. CIVIL ACTION BY ELDER AS ONE AVENUE OF REDRESS

- NOT TYPICAL
- ELDER OFTEN RELUCTANT OR UNABLE TO ACT
 - MAY BE DOMINATED BY PERPETRATOR
 - MAY IDENTIFY WITH PERPETRATOR
 - MAY BE DEPENDENT ON PERPETRATOR FOR CARE NEEDS
 - PERPETRATOR MAY HAVE INTELLECTUAL SUPERIORITY
 - MAY BE MULTIPLE PERPETRATORS
 - MAY BE IMPOVERISHED AS A RESULT OF TRANSFERS
 - AFRAID OF PERPETRATOR AND/OR CONFLICT
 - ISOLATED FROM FAMILY DUE TO ACTIONS BY PERPETRATOR
 - MAY BE GEOGRAPHICALLY ISOLATED
 - MAY BE ISOLATED FROM INDEPENDENT ADVICE DUE TO MEDICAL CONDITION
 - MAY BE ISOLATED DUE TO LACK OF ABILITY TO COMMUNICATE
 - MAY BE ISOLATED DUE TO DEMENTIA
- LITIGATION IS TIME CONSUMING, EXPENSIVE AND COLLECTABILITY IS OFTEN AN ISSUE
- LIMITATIONS ON GOVERNMENTAL RESOURCES

4. CIVIL ACTION BY FAMILY

- MORE COMMON
- COMMON IMPEDIMENTS
 - FAMILY OFTEN ALIENATED DUE TO ACTIONS BY PERPETRATOR
 - FAMILY MAY NOT LIVE LOCALLY AND IS IN A POOR POWER POSITION VIS-A-VIZ PERPETRATOR
 - FAMILY MAY NOT HAVE RESOURCES
 - OFTEN SURROGATE DECISION-MAKING NOT IN PLACE OR NOT EFFECTIVE
 - FEAR OF FAMILY DIVISION
 - FEAR OF PERPETRATOR

- FAMILY USUALLY MUST HAVE SURROGATE DECISION MAKING POWER TO ACHIEVE RELIEF
 - AGENT OR TRUSTEE MAY PURSUE RELIEF
- CONSERVATORSHIP PROCEEDINGS OFTEN USED TO OBTAIN RELIEF WHILE VICTIM ALIVE
 - CAN BE EXTREMELY EXPENSIVE AND INTRUSIVE DUE TO ARCHITECTURE OF PROCEEDINGS
 - WILL NOT WORK IN ALL CASES DUE TO IMPAIRMENT LEVELS
 - UNDUE INFLUENCE IS DIFFICULT TO PROVE, ESPECIALLY IF VICTIM HAS IDENTIFIED WITH PERPETRATOR
 - DURESS (“OVERT UNDUE INFLUENCE”) IS EASIER TO PROVE, BUT NOT AS COMMON
 - SWEETHEART SCAMS OR MISUSE OF A POSITION OF TRUST/AUTHORITY (“COVERT UNDUE INFLUENCE”) IS MORE COMMON, BUT HARDER TO PROVE
 - PERPETRATORS MAY PERFORM OCCASIONAL ACTS OF KINDNESS AS PART OF THEIR UNDUE INFLUENCE PLAN, MAKING IT MORE DIFFICULT TO LATER PROVE IN COURT.
 - PROCEEDINGS NOT NECESSARILY DESIGNED TO BE SENSITIVE TO UNDUE INFLUENCE
 - UNDUE INFLUENCE IS FACT DRIVEN (HIGH LITIGATION COSTS) AND OFTEN REQUIRES EXPERTS
 - LOW DOLLAR ESTATES TYPICALLY CANNOT AFFORD RELIEF
 - LOW DOLLAR TRANSACTIONS OFTEN GO UNADDRESSED
 - NOT ALL COURTS ARE RECEPTIVE TO UNDUE INFLUENCE CLAIMS
 - ESPECIALLY SWEETHEART SCAMS AND OTHER FORMS OF COVERT UNDUE INFLUENCE
- FAMILY MAY DECIDE TO WAIT UNTIL VICTIM’S DEATH TO INITIATE ACTION
 - HEIGHTENED BURDEN OF PROOF
 - OFTEN VERY EXPENSIVE TO PURSUE
 - VICTIM DOES NOT BENEFIT FROM POST-MORTEM LITIGATION

5. STORY OF JOSE M. (VERY COMMON FACT PATTERN)

- ELDERLY KOREAN WAR VET.
- MET FRIENDS AT CASINO; BEGAN TO GIVE THEM MONEY AND THINGS
- PERPETRATOR TOLD JOSE’S SISTER: YOU ARE TOO OLD TO DO ANYTHING ABOUT IT, AND HIS DAUGHTER LIVES IN DENVER!
- REQUIRED EXPENSIVE PROTECTIVE PROCEEDING AND LITIGATION TO RECOVER VEHICLE
- STATE SHOULD SEND A STRONG MESSAGE