

The Role of APS in Elder Abuse Cases: Leveraging Strengths Across Disciplines

April 22, 2020

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Housekeeping

- All on mute. Use Questions function for substantive questions and for technical concerns.
- Problems getting on the webinar? Send an e-mail to NCLER@acl.hhs.gov.
- Written materials and a recording will be available at NCLER.acl.gov. See also the chat box for this web address.

About NCLER

The National Center on Law and Elder Rights (NCLER) provides the legal services and aging and disability communities with the tools and resources they need to serve older adults with the greatest economic and social needs. A centralized, one-stop shop for legal assistance, NCLER provides Legal Training, Case Consultations, and Technical Assistance on Legal Systems Development. Justice in Aging administers the NCLER through a contract with the Administration for Community Living's Administration on Aging.

About ABA COLA

The ABA Commission on Law and Aging is a collaborative and interdisciplinary leader of the American Bar Association's work to strengthen and secure the legal rights, dignity, autonomy, quality of life, and quality of care of aging persons.

The Commission accomplishes its work through research, policy development, advocacy, education, training, and through assistance to lawyers, bar associations, and other groups working on issues of aging.

About APS TARC

In coordination with the Administration for Community Living's Office of Elder Justice and Adult Protective Services, the APS TARC works with state APS programs to improve reporting of data through the National Adult Maltreatment Reporting System (NAMRS), conduct evaluation and identify promising practices, support communities of practice among ACL grantees, and provide technical assistance to state and local APS programs.

About Justice in Aging

Justice in Aging is a national organization that uses the power of law to fight senior poverty by securing access to affordable health care, economic security, and the courts for older adults with limited resources.

Since 1972 we've focused our efforts primarily on populations that have traditionally lacked legal protection such as women, people of color, LGBT individuals, and people with limited English proficiency.

Key Lessons

- **Collaborations with APS, legal services, and other aging services** leverage all community resources to address issues of abuse, neglect, and exploitation.
- **Essential to collaboration is developing an understanding** of who APS can help, what issues they can help with, and the programs and services APS is able to provide.
- **Collaborating with APS leverages** the resources, programs, and services that can be accessed through local APS programs.
- **Collaborating with APS will broaden the array of programs and services available** to help persons who experience abuse, neglect, or exploitation.
- **It is important to develop community resources to help persons who APS is unable to help.**

Adult Protective Services (APS)

- Mandated at the state level and operated at either the state or local level
- Mission of helping adults who “need assistance because of abuse, neglect, or exploitation” = Elder Maltreatment
- State law creates guidelines on
 - Who APS can help
 - What issues they can help with
 - What help they can provide
 - What resources APS has available

Local Variations

- Within the state there may be meaningful differences in
 - Demand
 - Staff
 - Resources
 - Community collaboration and support for APS

Who is Eligible for APS

- Adults as defined by state law
 - Vulnerable adults
 - Older adults
 - Adults with a disability
- Experiencing elder maltreatment as defined in state law
- Either able to consent to help, or unable to consent
- Careful ethical balancing of self-determination and protection

Who Can APS Help

- APS programs serve older adults and adults with disabilities who have experienced abuse, neglect, or exploitation
- APS can also help adults who are being harmed through self-neglect

What Does APS Do

- First and foremost, investigate reports of maltreatment
- Assists victims with access to programs and services to help persons live as safely and as independently as possible

What Tools Does APS Have

- Close collaboration with law enforcement
- Trained in standardized assessments
- In many states, able to seek court orders for:
 - Assessments
 - Restraining orders
 - Emergency services
 - Asset freezes

APS Innovations

- Predictive analytics
- Leaders Institute
- Motivational interviewing
- Partnerships with nurses
- Special hoarding intervention

Impact of COVID -19

- APS is an essential public safety service
- Will be receiving and responding to reports
 - In-Person visits in many states are restricted to emergencies or certain kinds of abuse
- Local changes in process
- Local impacts on available resources and personnel
- Protecting the safety of public servants

Maltreatment Concerns COVID - 19

- Persons experiencing maltreatment may be isolated with abusers
- Impact of isolation on neglect and self-neglect
- Strained public and private resources
- Other guidance from APS?

Attorneys and APS

- Get to know APS in your community
- Develop relationships before you need them
 - Or as follow up to help
- Offer to cross train staff
- Be supportive at local and state level of APS programming

Adult Abuse Laws

- Explore your state's laws
- Who can APS help
- What issues can they help on
- What programs and services can APS provide
- Reporting process
- Mandatory and permissive reporting

Professional Ethics and APS

- Consider the ethical guidelines of your profession in reporting
- Must you or can you report if your client asks you not to report? (This may be very profession and state specific)
- Help your clients understand the burdens and benefits of reporting and of consenting to services

Understand Trauma Informed Services

- Persons who have experienced maltreatment may be especially vulnerable
- Meet the client where they are emotionally
- Be supportive
- Be adaptive
- While offering suggestions, let the client lead on how to proceed
- Get training, work with other professionals who have training (beyond the scope of this program)
- NCLER issue brief on [Trauma Informed Lawyering](#) available at on the [NCLER website](#).

Discussion Case

LeRoy is 78. Based on advice from his attorney, he signed a Power of Attorney, naming his daughter Lisa as his agent, created a revocable trust, and transferred most of his savings and his home into the trust and named Lisa as trustee. The stated purpose of the trust was to assure that his needs were met during his lifetime and to transfer assets to Lisa after his death.

Within weeks, Lisa emptied the trust account and mortgaged his home, putting the loan proceeds into an account in her name. When LeRoy learned what Lisa had done, he called APS and the police. APS interviewed LeRoy and told him it was a civil matter between him and his daughter, and in the closing notes, APS checked the boxes that LeRoy had no unmet care needs or signs in physical needs or signs of diminished capacity. The police responded that mismanagement of the trust was a civil matter.

For Discussion

- Why is APS action limited in many states?
- What else can be done?
- What referral would be helpful?
- Might the breach of fiduciary duty be a crime?

Services Attorneys Can Provide

- Appointment or revocation of agents
- Powers of Attorney
- Advance Health Care Directives
- Replacing Trustees
- Changing ownership of joint accounts
- COVID-19 signing challenges
- Access to facilities
- Safety of clients, witnesses, and attorneys needs to be balanced
- Some states are modifying witness or notary requirements or procedures

Litigation and Administrative Representation

- Representation in Court
 - Restraining orders
 - Family or domestic violence orders
 - Housing issues
 - Seeking access to assets
 - Seeking return of assets
 - Family law
 - Income security issues
- Administrative Representation
 - Applications for benefits
 - Appeals on entitlements and benefits
 - Admission and discharge issues
 - Coverage of service issues (Medicare/Medicaid)

Legal Services in the Time of COVID-19

- Let people know how you are providing services
- Let them know that while the courts may be limiting services, emergency services including EPO, DVO, and temporary emergency orders are still being done
 - The process may have changed
 - Video or remote testimony may make it easier for some clients
- Take reasonable steps to protect staff and clients

APS and Social Services

- Nutrition support, often needed, provide a direct line
- Housekeeping support, sometimes needed—are there screened and trained community volunteers?
- Personal Care Services, often needed
- Companion services
- Check in services—Impact of social isolation amplifies the normal isolation that some vulnerable adults experience

APS and Social/Community Services

- Transportation, always needed
 - COVID 19, in areas with public transit, many are reducing services
- Shopping services
 - Many persons who are vulnerable to maltreatment are also at increased risk of infection
- Lawn care/snow removal

Emergency Shelter

- In some communities, emergency shelter is available
- Appropriate for adults who have care needs or are vulnerable
- Often temporary placement in health care facilities or assisted living
 - With COVID-19, many of these placements are on lockdown
 - Some hotels are closed
 - If you have other safe alternatives, please share with APS in your community

Multi-disciplinary Teams (MDTs)

- Seek cross disciplinary responses and solutions
 - Look for systemic and or service gaps
 - May include civil legal aid
- Financial Abuse Specialist Team (FAST)
- Elder death review teams
- Elder Abuse Forensic Centers

Self-Determination & Boundaries

- Adults have a right to make choices
 - Even if those choices place them at risk
- If APS believes that a person lacks capacity to understand the choices they are making, they will conduct or request an evaluation of capacity
- When needed, and all other options are exhausted, APS will work toward the appointment of a guardian/conservator

Helping Persons APS Can't Help

- Some clients are outside of the scope of the authority of APS
- Some issues are outside of the scope that APS can help with
- Sometimes it is “A Civil Matter”
- Open the door for referrals, both to and from APS
- Together we are greater than the sum of our parts

Questions?



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<https://ncler.acl.gov/ElderJustice-Toolkit/About-Elder-Justice-Toolkit.aspx>

Case Consultations

Case consultation assistance is available for attorneys and professionals seeking more information to help older adults. Contact NCLER at ConsultNCLER@acl.hhs.gov.