

**Ohio Elder Abuse Commission**  
**June 28, 2010 Meeting**  
**Public Comment**

These comments are prompted by the accompanying June 18, 2010 Cleveland Jewish News article titled "Growing specter of financial abuse of the elderly", They are intended to supplement the comments which I addressed to this Commission on February 22, 2010, as reported by the materials from that meeting which have been posted on the Commission's website.

I encourage this Commission to investigate and answer a number of questions raised by the video described in this article. For example, who is the lawyer that was approached by the "new heirs"? Did this attorney have an obligation to report the evidence of abuse? Did the attorney report the abuse? Were the "new heirs" charged with a crime?

Questions of this kind are important and relate directly to the subject of the University of Akron Law Review article "Should Attorneys Have a Duty to Report Financial Abuse of the Elderly?" published in 2005 by University of Akron law professor Carolyn Dessin.

I also ask the Commission to contemplate what might have happened if the "first take" had been erased from this video?

Finally, I ask the Commission to recognize that this is the second instance of the misuse of videos which I have presented it. The first instance consisted of the videos broadcast last year by the ABC program 20/20 and mentioned in the comments posted along with the minutes of this Commission's February 22, 2010 meeting.

The perversion of evidence, including videos, should leave no doubt about the need to mandate safeguards like those which I have recommended to this Commission and others.

Sincerely,

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<http://www.clevelandjewishnews.com/articles/2010/06/22/news/business/doc4c1a738702749523628962.txt>

Growing specter of financial abuse of the elderly

personal finance

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During a will dispute, a video – featuring the elderly, emaciated decedent in a hospital gown – was provided by the “new” heirs to their lawyer. The video was meant to support their claim that the decedent had willingly and knowingly redone her will in their favor. However, they’d forgotten to erase their first take: it showed a confused and disoriented old woman who didn’t understand what she was being asked to do.

Not surprisingly, the “new” heirs’ lawyer advised them to drop their suit. If they hadn’t, it would have been transferred to the branch of civil law called Inheritance Controversy Litigation. Once the video’s inauthenticity had been revealed to the court, the scammers would have found themselves being prosecuted for using undue influence to perpetrate financial exploitation/abuse and (as they say in legalese) intentional interference with the true heirs’ expectation of inheritance.

This case was one of many discussed at the recent Consortium Against Adult Abuse Conference, “Undue Influence and Financial Exploitation,” at Tri-C’s Corporate College East.

“We (lawyers) wish all financial abuse cases were as easy to resolve as this one,” said estate-trust lawyer Adam Fried, a partner at Reminger Company LPA and one of the conference’s speakers.

### **The coming boom in abuse**

**Americans ages 70-90** are currently the wealthiest people in the U.S. When members of this generation die, they’ll be passing their assets – increasingly through joint survivor deeds and accounts and trusts that avoid probate – to their boomer kids and Gen X grandkids. Due to societal changes, the increased lifespan of the elderly, and technological advances that make financial abuse easier (such as ATMs, downloadable powers of attorney, etc.), a growing number of those on the receiving end of this asset transfer – or those who think they should be – aren’t waiting.

**According to a 2009 MetLife report titled “Broken Trust: Elders, Family and Finances,”** financial abuse bilks older adults of \$2.6 billion a year. The major targets of financial exploitation are women who live alone, have chronic medical conditions and cognitive problems, and are dependent on others for help and support. “Not all are wealthy,” stressed the conference’s keynote speaker Page Ulrey, senior deputy prosecuting attorney for the King County Washington Prosecutor’s Office. “They simply have assets – a mortgage-free home, a steady income from Social Security or a pension – that make them a target.”

**Financial exploiters specifically target those with diminished mental competency and capacity** because “their ability to pay attention, process information, analyze situations, or figure out what the long-term consequences will be for a given action is significantly impaired,” said psychologist Dr. Lori Stevic-Rust. “Even when they know the day and year and can perform simple activities of daily living, they aren’t able to make important decisions or judgments or carry out complicated activities – such as balancing a checkbook – that involve many steps.”

## **OMM: The exploiters' mantra**

**Fifty-five percent of exploiters and abusers are family members – most often sons – or paid or unpaid caregivers.** After that, it's "sweethearts" (practiced schemers) preying on lonely elders. Then it's unscrupulous professionals, perhaps accountants, bankers, financial planners, lawyers or doctors.

Experts say three things make financial exploitation and abuse possible. They are known as OMM:

**Opportunity:** These crimes mostly occur when opportunity presents itself, Ulrey said.

**Means:** "Exploiters and abusers gain the elder's trust, confidence and, often, affection," explained Willoughby-based elder law specialist Patricia Schraff. "They build a 'special' relationship with their victim."

**Motive:** "Most of the time, it is about the money," said Fried. "But sometimes it's just greed. Or it's a sibling rivalry thing. They want to show that they have 'the power,' that they are the favorite child."

## **Red flags**

According to David Woodburn, head of the trust and estates practice group at Buckingham Doolittle & Burroughs, there are red flags that may indicate your loved one is a victim of elder financial abuse.

"If they have a new 'best friend,' or if they have changed the activities they used to do, that is something to look into," he said. "That kind of fall-off in their sociability can mean someone is directing things for them.

"If they used to talk about financial things, but now they don't, that could indicate that someone is telling them not to discuss their finances. Lawyers are seeing a lot of that today," he added.

## **Prevention is the best remedy**

It's all but impossible to remove motive (elders' assets) from the financial exploitation equation, and it's difficult to prosecute "alleged" exploiters: often the victim is dead or demented, or despite everything that has happened, they "love" their exploiter. That means to protect a vulnerable relative or loved one, you have to go into prevention mode. The earlier deterrents are set in place, the better.

## **Good deterrents:**

\$ Stay connected. "Financial abuse and exploitation occurs in the shadows, where people are isolated from those who could spot the signs that something isn't right," said Ulrey.

\$ Become hyper-vigilant with regard to the person's physical and cognitive state. "Declines in both can make them vulnerable to manipulation and exploitation," explained Stevic-Rust.

\$ Help the elderly get information and become educated about their finances and the exploitative situations, schemes and scams they could encounter.

\$ Help the person consult with legal and/or financial professionals who can draw up documents (trusts, powers of attorney, conservatorships) that can deter financial exploiters.

\$ Report suspected cases of financial abuse to local authorities. “APS (Adult Protective Services) will act on anonymous tips,” says Buckingham Doolittle & Burroughs lawyer Ronald Wayne.

\$ When all else fails, obtain the competency evaluation required for guardianship. “This,” added Wayne, “is an often overlooked option.”