

Santa Clara County's Financial Abuse Specialist Team **Protection Through Collaboration**

NICOLAS P. STATHAKOS

EXECUTIVE SUMMARY

Financial abuse against elders is a rapidly growing problem that often depletes formerly well-off individuals of sufficient funds to meet even their most basic needs. Quick action is needed to protect elders from financial abuse and to help them recover lost funds and property, particularly because of the deeply personal connections between many elders and their abusers, and the rampant growth of scamming techniques by computer or by persons who pretend to act in an elder's best interests.

Agencies such as San Francisco County Adult Protective Services (SF APS), are charged with protecting elders against such abuse, but there are too few tools and too few financial resources available to protect everyone who needs help. How, then, can SF APS and similar agencies best perform their mandate?

This study seeks to gain insights into potential solutions through observation of best practices of the Santa Clara County Financial Abuse Specialist Team (FAST), one of the first agencies to create a multi-disciplinary approach to the problem. This report includes:

- A statement of the problem;
- An overview of FAST as presented by its guide and other literature;
- A report on observations at FAST and interviews with members of Santa Clara County Public Guardian's Office (SCCPG);
- A comparison of the FAST approach to that of San Francisco Elder Abuse Forensic Center (SFEAFC); and
- Recommendations to improve SFEAFC.

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Statement of the Problem

Exactly how many elders suffer from financial abuse is unknown, though some suggest that at least one in five elders have been victimized. Between April and June 2008 alone, media “reported a total dollar value of elder financial abuse of approximately \$396,654,700, with the largest percentage of cases involving close associates of the victim—families, friends, caregivers, and neighbors—as the perpetrator of the abuse, accounting collectively for almost 40% of reported cases. The largest single category included a variety of financial professionals, attorneys, and fiduciary agents.”¹

It is well-known that elder fraud, both by people who are known to the elder and by “sweetheart” pretenders (scammers and others who prey on elders), is steadily increasing. The older generation was trained that “your word is your contract.” This may have worked long ago for elders in smaller towns with closely connected families, but this attitude makes elders ripe for fraud in a fast-moving culture where parents, children and other friends are increasingly disconnected from the daily needs of their elders, and where attitudes about fraud are much looser. The crime tends to be vastly under-reported because many victims (if they are even aware they are victimized) are too embarrassed to seek retribution or they don't know where to turn for help.² If the elder knows the perpetrator, close ties may inhibit action.

Since California's Financial Abuse Reporting Act (SB 1018) took effect on January 1, 2007, em-

ployees of banks and credit unions are required to report suspected financial elder abuse to Adult Protective Services (APS) or to law enforcement agencies. “Health care professionals, social workers, nursing home workers and members of the clergy” were already required to report such suspected abuse.³

Overview of FAST

The Financial Abuse Specialist Team (FAST), formed in 1999, provides a multi-disciplinary rapid response and immediate intervention to preserve, protect and recover assets of victims of elder financial abuse in Santa Clara County. FAST is also charged with “speaking out against financial abuse, educating the public, and supporting legislative changes designed to deter financial exploitation of elders and dependent adults.”⁴

Two indicators of the impact of FAST include: the recovery or prevention of loss of almost \$195 million in assets by 2009 of Public Guardian conservatees alone; and, winning the 2009 Silicon Valley Crime Stoppers Award for their impact on crime prevention and intervention and for helping to keep elders and dependent adults safe.⁵

About one-third of the 2,700 or more reports that come to Santa Clara County's APS each year relate to the financial abuse of elders and dependent adults. “FAST cases are often complex and require cooperation between APS, County Counsel, the DA, PAG/C and law enforcement. They may include

¹ “Broken Trust, Elders, Family and Finances,” a Met Life Study, March 2009, <http://www.metlife.com/assets/cao/mmi/publications/studies/mmi-study-broken-trust-elders-family-finances.pdf>, page 12.

² In most cases, litigation to recover funds is not an option. Many elders refuse to consider this path, and it may not bring any relief in time for the elder to enjoy it.

³ “California Law Enacted to Help Combat Elder Abuse” by Brayton Purcell, LLP, www.elder-abuse-information.com/news/news/090205_financial_law_ptr.htm.

⁴ “Financial Abuse Specialist Team Practice Guide” by Santa Clara County, December, 2010, version 1.0, page 3.

⁵ County website

significant assets at risk or already taken, multiple pieces of real estate, and/or undue influence. . . .”⁶

FAST is comprised of:

- Santa Clara County’s Adult Protective Services (APS), which receives all reports of elder and dependent adult abuse in the county. They play a central role in screening and initiating FAST cases.
- The Public Administrator/Guardian/Conservator (PG), which receives referrals from APS and works to find the least restrictive way to safeguard the lives and property of those who cannot care for themselves.
- County Counsel (CC) serves as the legal advisor to the county. The CC provides prompt legal advice to the FAST team and represents the PG in Probate Court. If necessary, they prosecute civil actions to recover losses.

The District Attorney’s (DA) Office prosecutes criminal cases and works to gain restitution. They work with FAST members to gather information and evidence. The Deputy DA and investigators attend FAST meetings and provide a “sounding board” to ensure interventions and resolutions will be compatible with the needs of a criminal investigation and prosecution.

Before a case is discussed with the FAST team, members of APS and PG have already assessed the client and the case. Immediate interventions can include contacting a medical provider, calling for law enforcement assistance, and making referrals for legal assistance (e.g. a private attorney, community legal services, the DA, or county counsel). Other interventions include: referrals to appropriate services, advocacy, family support, APS case management, PG investigation, and if necessary, conservatorship.

Observation of FAST and Interview with Members of Santa Clara County PG

Santa Clara County Public Guardian (PG) Don Moody⁷ is committed to keeping clients in their own homes as long as possible and to finding viable op-

tions, (which he calls “Plan B”), to conservatorship. “Conservatorship is a sledge hammer, not a scalpel,” says PG Supervisor Victoria Fedor-Thurmon because it strips away a client’s rights. As a result, it should be used as a last resort. When a case is presented for conservatorship, PG Moody often says, “Tell me what I can do for this client that a private probate attorney or fiduciary can’t do.”

The PG receives referrals primarily from APS: in 2009, it made 139 of the 182 referrals. Other referrals come “from everywhere,” including hospitals, skilled nursing facilities, the probate court, and jail. All cases are heavily screened and are taken on a case-by-case basis.

The PG works routinely with private probate attorneys and conservators if it is deemed to be in the best interest of the client. There is no issue if, for example, the SCCPG conserves the client’s person and then refers the client for private conservatorship of the estate.

The relationship between SCC PG and private attorneys and fiduciaries is “filtered”. The probate court retains lists of private probate attorneys and conservators. When it is needed, the PG will ask a court investigator for a referral so there is no conflict of interest or appearance of any favoritism.

The service provision approach is always multi-disciplinary and can include the following interventions:

- The County’s Office of Public Relations offers mediation for “family feuds” as an alternative to conservatorship.
- SCC PG estate administrators support function PG through interventions such as arranging for repair of a client’s home, securing insurance, evaluating and selling property when necessary, and the regular functions of dealing with a decedent’s estate or property.
- PG maintains a large warehouse to store conservatees’ property, rather than trying to sell everything after a client has been conserved.
- SCC PG contracts out services, such as an auction house, appraisal services, home repair, and real estate agents. They used to contract out tax

⁶ FAST practice Guide, page 4.

⁷ Interview by the author, dated March 15, 2011. All quotes in this section come from the interview.

preparation until they hired agents to work for SCC PG.

If a case is received from FAST/APS, SCC PG time-studies on APS reimbursement codes. Once a case is referred to FAST, the PG, PA, and APS go out together to evaluate the client. PG will not discuss a case in FAST unless they have already met the client.

Comparison of FAST and San Francisco County's Elder Abuse Forensic Center

SCC APS is smaller than SF APS (27 workers compared to 40 workers), but the SCC PG office is larger than office of SF PG (27 workers versus 12 workers). This may account for why APS workers in SF County do the complete financial abuse investigation (e.g. assessing clients, gathering evidence, notifying police, gathering financial docs) opposed to SCC's PG where workers complete most financial abuse investigation upon referral.

SF PG employs its own attorneys and does not rely on county counsel in the way SCC PG does. This provides a more expedient and unified decision to be made regarding whether a client will be conserved or not; however, if SF PG needs to file a lawsuit to recover client assets, they would be represented by the City Attorney. Although SF has a Forensic Center comprised of the DA, police, APS, PG, a private attorney, a geriatrician, and a gero-psychologist, the SF City Attorney has been reluctant to be a participant or member of the center.

SCC FAST appears to work more efficiently than the SF Forensic Center. Part of the reason for this is that SCC PG goes out to see and evaluate each client with APS before a case is discussed in FAST. In SF, cases are presented by an APS Social Worker and forensic center participants try to problem-solve based on the social worker's assessment, rather than having seen the client directly.

Currently, SF PG is co-located with SF APS. This has led to improved and strengthened formal and informal relationships between the programs. By contrast, SCC PG and APS are located in two different locations.

Recommendations for SF County EAFC Program

- While I do not believe it is the best use of resources to have the PG's office go out on every financial abuse case, especially in a year where it is projected that SF County will have a \$380 million deficit, I do feel it would be wise to:
 - establish guidelines for cases that the SF County PG will respond to with exigency, and
 - do a joint visit with APS before a case is presented to the Forensic Center.
- More money might be generated if the PG were to time study on APS time-study codes for cases that are referred by APS.
- The City Attorney should be encouraged to attend Forensic Center meetings regularly and to be part of the Forensic Center. This would allow for a more complete and efficient evaluation of cases, especially if civil action is warranted, and it would help abused clients to retain or regain their assets.
- SF PG can explore the idea of working more closely with private attorneys or fiduciaries and develop a list of such professionals that would be managed by the probate court; then, a referral could be from this list if PG was unable to take on a case.
- Financial abuse cases can be handled more efficiently if SF PG evaluates each case/client upon referral, rather than waiting for Forensic Center meetings.

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