

# ELDER ABUSE

By Stephen B. Rosales

**“A**re you reelin’ in the years? Stowin’ away the time?” sang Steely Dan in their hit 1972 song. Yes, we are all reelin’ in those years. Much as we may wish or want, time does not stop and, if we are blessed enough, we will live long enough to enjoy our senior years to the best of our ability and with the highest quality of life possible.

The U.S. Census Bureau estimated in 2013 that more than 44 million of our citizens were aged 65 and older, the largest segment of our society. This number is expected to increase in the coming years as more Baby Boomers age and will soon comprise more than 20 percent of our entire population. This increase in our senior population has been accompanied by a growing shadow: the increasingly common occurrence of elder abuse.

## MANY FORMS, MANY VICTIMS

Elder abuse may be physical, psychological, emotional, or financial. It may occur as abandonment or neglect. Victims of elder abuse are everywhere, in urban and rural settings and everywhere in between. Victims are not limited to gender, ethnicity, culture, or socioeconomic status. Any elder can be a victim—your grandparent or elderly relative, a neighbor on the street where you live, an elder member of your church, or the elder you see all the time in the supermarket or around town. As Sly Stone sang, they can be “everyday people.” Celebrities, despite their status, are not immune. Mickey Rooney, Zsa Zsa Gabor, Brooke Astor, and innumerable other well-known individuals have

Stephen B. Rosales is Chair of the ABA Solo, Small Firm and General Practice Division. He is a member of Rosales & Rosales LLC in Belmont, Massachusetts, and may be reached at [s.rosales@rosalesandrosales.com](mailto:s.rosales@rosalesandrosales.com).



Stephen B. Rosales

been victims or alleged victims of abuse.

Abusers can be institutional, such as nursing homes or long-term care facilities or, more often, they can be caregivers: family members, nurses, home health aides, guardians, or attorneys-in-fact. As attorneys, and more importantly, as people—neighbors, friends, relatives, or acquaintances—we have an obligation to protect those who cannot protect themselves.

Some estimate that financial exploitation of our elders, despite being vastly underreported, exceeds \$2.6 billion annually. A staggering amount, indeed.

## TWO RECENT EXAMPLES

Why should we, as attorneys, no matter our firm size or practice setting, care about this epidemic? Consider this:

A middle-aged man came into my office a few years ago. He told me that he was worried about his 92-year-old uncle, who lived near my office. He explained that, although he resided several hours away, he had acted as the primary confidant and contact person for his uncle

for many years, assisting with many of his uncle’s activities. He showed me an original power of attorney his uncle had prepared and executed many years ago naming him as his attorney-in-fact, as well as other related documents naming him in various fiduciary positions. He explained that his uncle never married and had no children. His parents and only sibling were long deceased. The uncle lived alone in the house where he had resided his entire life, but his health and ability to care for himself had declined with his advancing age, although he still could manage to live independently and happily with the assistance of a long-term trusted caregiver who visited the house several times a week.

My client told me that a few months before, a distant cousin suddenly appeared at his uncle’s house with a suitcase in hand and a few belongings. She claimed she had been evicted from her apartment and asked if she could stay for a few weeks until she found a new one. The uncle invited her in, unaware of what was to come. Once allowed in, she fired the caregiver, changed all the house locks, and disconnected the only telephone number the uncle ever had, changing it to an unlisted number only she knew. She refused to let him go out. She refused to let him use the phone. She refused him visitors. She insulated him from any and all contact, making him a virtual prisoner in his own home.

When my client called the police to explain his concern, the police visited the home on several occasions to conduct a “well-being check” only to be met at the door by the cousin, who told them that the uncle was sleeping and assured the officers that all was well. She used him to obtain prescription medications under the guise that he needed them—only to use them herself. She emptied his bank accounts and sold most everything of value. She

fraudulently obtained a mortgage on the uncle's home and stole those funds, too.

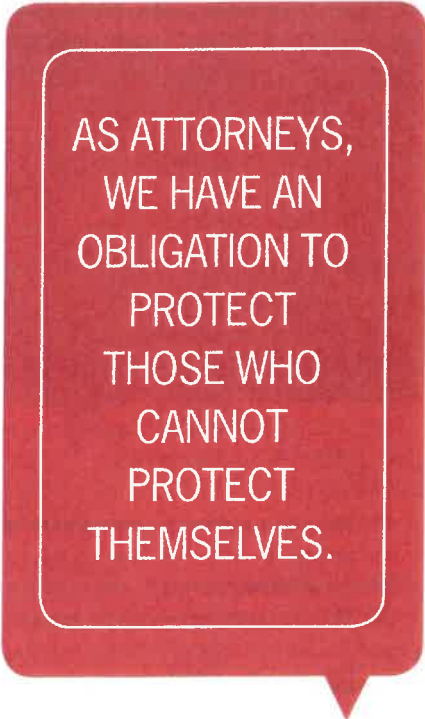
When protective services were finally able to enter the home and evaluate the uncle, he was found in dire health and taken to a hospital for treatment and rehabilitation. Incredibly, the cousin remained in the home, where she continued to spend his monthly pension and Social Security payments on herself and drain whatever assets he had left.

After a long, difficult process, the courts were finally brought into play, a restraining order was issued against the cousin, and she was evicted and forcibly removed from the uncle's home by law enforcement officials. No one knows where she is now. Sadly, the uncle never returned home; he was transferred into a nursing home, where he passed soon afterward in an institutional setting and with but scant assets.

Or consider the case of a 30-something-year-old man who came to my office with concerns about his elderly mother being abused by his aunt, his mother's sister who lived nearby. He came into the office extremely well dressed, in a crisp, starched shirt, suit, silk tie, and expensive shoes. He eloquently told me a story of how his dad had passed years ago, leaving his mother a widow who lived alone, albeit with significant assets, and that he was their only child. He claimed to have been working and living out of state and just recently returned to live with and care for his elderly mother.

He explained that prior to his return to live with his mother, she had been increasingly involved with his aunt and that he suspected his aunt had been abusing his mother, leading to her rapid decline in health and appearance and recent erratic handling of her financial affairs. He showed me recent bank records showing numerous large withdrawals of

funds for which he claimed no knowledge. His mother's decline in health led to her admission to a local nursing home for rehabilitation. He suspected that his aunt, his mother's only living sibling, was behind it all. When he confronted her, his aunt secretly sought relief in the court and obtained an ex parte temporary restraining order against the son restraining *him* from contact with *her* and *his own mother*. Quite odd, indeed, I thought.



AS ATTORNEYS,  
WE HAVE AN  
OBLIGATION TO  
PROTECT  
THOSE WHO  
CANNOT  
PROTECT  
THEMSELVES.

He was accompanied to my office by an elegant older woman who claimed she was an elder of the church his mother had attended faithfully for decades. The woman vouched for much of the son's story, saying that her fellow parishioners had great concern for the the mother's well-being. That she used to come to church regularly, well dressed and in good health. That she recently lost 25 pounds, was disheveled, and dressed

shabbily. That she was lucky to have such a caring son to assist her. The woman even took time during our meeting to call the church pastor on her cell phone to report what was going on.

I further learned that there was a court hearing on the status of the restraining order scheduled for later that day, and they wanted me to represent the son and mother (who was still in the nursing home) at the hearing. The son gave me a copy of the restraining order to review, and I recognized the name of the police officer involved in the order. I excused myself from the client meeting and called that police officer from another room as part of my due diligence on this matter. To my great surprise, the officer warned that I should not believe the son's story; he had an extensive record for fraud and being a con man in other states, and he had moved home just recently and was terrorizing his mother. The officer explained that it was *he* who was the abuser and, among other things, that he had his mother sign over her home to him and gave him access to all her financial assets and affairs through a power of attorney. According to the officer, he had obtained a reverse mortgage on his mother's home and drained all the equity out of it. He had converted all her bank accounts, stocks, bonds, pension, and investments to his own use and accounts and was spending his mother's monthly income.

Upon learning this, I turned down the case and sent him and the church elder on their way. Several weeks later I ran into that officer and asked what had happened with the case. The son appeared with another attorney at the court hearing, and the court continued the restraining order against the son. The aunt, in what turned out to be a lapse in judgment, allowed the son to visit his mother in the nursing home, where she continued to rehabilitate. During that visit, the son

forcibly removed his mother's engagement and wedding rings from her finger; he later hocked them. The officer learned of this and was able to retrieve the rings and return them to the mother. The son has fled the jurisdiction and is currently in parts unknown, leaving his elderly mother alone, in a nursing home, and virtually penniless.

**WHAT WE CAN DO**

The lesson to be learned here is that things are not always as they appear to be. The one seemingly most concerned about suspected abuse can be the actual abuser. I am not an "elder abuse attorney" by trade, just an attorney practicing in my suburban hometown. I do not purposely seek these types of cases, yet they find me nonetheless. I expect they will find you, too. You need to be prepared. You need to do proper due diligence when faced with these types of situations. You need to act . . . to do *something* . . . to recognize and address possible abuse when it exists.

To quote from a 2009 study by the MetLife Mature Market Institute and others titled *Broken Trust: Elders, Family, and Finances* ([tinyurl.com/ncpu9sa](http://tinyurl.com/ncpu9sa)), the leading signs of elder financial abuse shown by elders are:

- Unusual degree of fear or submissiveness to caregiver
- Isolation from family, friends, community, and other stable relationships
- Signs of intimidation and threat by another
- Withdrawn behavior or disheveled appearance
- Missed appointments, uncharacteristic nonpayment for services
- Anxiety about personal finances
- Lack of knowledge about financial status
- New "best friends"
- Missing belongings or property



- Significant changes in spending patterns
- Sudden changes regarding financial management

The study also finds,

In addition to the behaviors of the elders, there are also notable signs exhibited by family members or others who befriend older adults and engage in elder financial abuse. For example, they frequently:

- Develop a close bond and exert influence over the older person's decisions
- Make false promises or withhold information from the older person
- Show excessive interest in the older person's assets
- Demonstrate excessive control of the older person
- Suddenly acquire expensive possessions
- Control phone use and prevent others from accessing the older person
- Exhibit defensiveness or hostility during appointments or on the phone
- Are reluctant to leave the side of the older person during appointments.


Recognizing these warning signs can be a very effective tool in early intervention and prevention of further financial abuse.

It is no coincidence that many of these warning signs, exhibited by both the abused and the abuser, appear in the two cases highlighted above. Attorneys need to remain vigilant for these signs and take appropriate action to help stem this growing crisis.

As Mick Jagger sang, "Time waits for no one, and it won't wait for me." Everyone grows older. If you are not there already, you will be soon enough. Everyone has the right to grow older with dignity and adequate care. The abused need to be protected . . . the abusers need to be prosecuted. ■

The Solo, Small Firm and General Practice Division acknowledges its appreciation to the advertisers that support this publication. Our advertisers play an integral part in the success of *GPSolo*.

We are pleased to have the support of the following company:



**THOMSON REUTERS**