

# Step up to the plate

**Private counsel should take financial fraud cases for elderly, as well-intentioned law enforcement is starved for resources, says expert**

## Emerging Trends

Jules B. Olisman says that because law enforcement doesn't have the resources to prosecute each and every financial crime against the elderly, it's up to private counsel to pursue such cases civilly.

"We've forgotten that tort law is the anvil upon which you forge a safer society," said Olisman, a Berkeley personal injury attorney specializing in elder abuse. "And financial wrongdoings against the elderly are a societal wrong that can be helped with civil litigation."

Though there's a variety of scams aimed at taking the elderly for all they've got, Olisman listed a few he's most concerned with, committed by crooked financial institutions, annuity companies, financial planning associations, loan officers and nursing homes:

- Reverse mortgages — Loans are pushed on seniors, providing them with funds from the equity in their homes. The loan is due when the senior dies, moves or sells, in which the final payment is calculated to not exceed the home's selling price.
- Annuity sales — An elderly person's investments are liquidated when he purchases a life insurance product that pays out over a period of time, for example, 20 years. (That time period is too long if the purchaser only has a few more years to live.)

• Binding arbitration agreements — In long-term care contracts, there are inconspicuous clauses that give up a person's right to trial by jury and civil remedy, instead agreeing to a remedy of binding arbitration in the case of injury or death at the fault of the nursing home.

## Law enforcement needs help

"Of course, resources are an issue," said Derek W. Meinecke, an Oakland County assistant prosecutor in the domestic violence unit, which also handles elder abuse. "We'd like to have more prosecutors to help, especially with the financial abuse

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cases, because they are very time-consuming and paper driven. You're going through stacks upon stacks of bank records, accounts and credit card bills."

Furthermore, Meinecke said, such cases can be difficult to prove due to some senior witnesses who are either reluctant to admit they've been taken, cannot remember specific facts, or are afraid they will be punished by a caretaker or relative if they tell.

Like Olisman, Meinecke — who is a member of the Oakland County SAVE (Serving Adults who are Vulnerable and/or Elderly) Task Force, which offers training with an emphasis on fraud in-

vestigation for prosecutors and police throughout southeastern Michigan — says it's up to driven individuals who, despite the difficulties of handling such cases, are compelled to go after the bad guys. Genesee County Sheriff Robert J. Pickell agrees.

Under Pickell's reign, the sheriff's office formed the Elder Abuse and Exploitation Prevention Team. Among many protections for the elderly, the team hunts people who fleece money from the elderly, especially their guardians.

Still, Pickell says, "Jules is right." "We don't have enough people on the law enforcement side because seniors are getting ripped off at a disproportionate rate and police budgets are dwindling. So lawyers are the ones that should be filling

lectible defendant and the ability to demonstrate clear proof of wrongdoing," he said.

"The defense is that [the elderly] are competent people. And if they select an investment device that I don't like, that doesn't make it illegal," Olisman said. "But the problem comes with the sales pitch. The line of demarcation is taking advantage of somebody and applying undue and unreasonable pressure by visiting with them on multiple occasions and instilling fear in them ..."

Douglas G. Chalagian, an East Lansing probate attorney who does elder law litigation, says he has received several calls from other probate lawyers looking for help with these cases.

"There is a lot of financial exploitation of older folks, and it comes in a variety of different flavors," Chalagian said.

"The nature of these things doesn't always fit into a package," he said.

So Chalagian encourages attorneys who want to litigate for scammed seniors to seriously think about what type of exploitation they want to handle, and what they're qualified to do.

"I agree that there aren't enough police and prosecutors available to go after all of these cases and that private attorneys should be on the lookout," added Andrew W. Mayoras, a Troy attorney specializing in probate litigation for the elderly. "But lawyers that don't know what they're doing can make the problem worse, because these can be pretty sophisticated scams."

To avoid a catastrophe, Mayoras said, "Don't dabble in it."

"If it's a case that you have experience with or that you feel comfortable taking, then go ahead," he said. "But if not, refer it or get somebody involved to help who is specialized. Or commit to learning the specialty yourself."

— NAWALIE LOMBARDO

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