

# Closing the Justice Gap for Older Adults Part Three: Partnering with Adult Protective Services: Leveraging Strengths across Disciplines

- Introduction:
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June 13, 2023

# 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](mailto:NCLER@acl.hhs.gov).
- Written materials and a recording will be available at [NCLER.acl.gov](http://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 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), conducts evaluation, identifies promising practices, supports communities of practice among ACL grantees, and provides technical assistance to state and local APS programs.

# About Indiana Legal Services

Indiana Legal Services, Inc. (ILS) is a not-for-profit law firm and the largest provider of free civil legal assistance to eligible low-income people throughout the state of Indiana. ILS helps clients who are faced with legal problems that harm their ability to have such basics as food, shelter, income, medical care, or personal safety. Most of the cases ILS handles are cases such as family law where there is domestic violence, housing, consumer law, access to health care, and access to government benefits.

# About APS (Indiana, Unit 2)

Adult Protective Services (APS) investigates allegations of abuse, neglect and exploitation of endangered adults. Endangered adults are individuals over 18 years old who are incapable of managing self-care due to a physical or mental incapacity. APS works to find the least intrusive resolution to address issues facing these individuals.

The Adult Protective Services is administered by the St. Joseph County Prosecutor's office, and is one of 18 APS Units in Indiana. APS Unit 2 serves St. Joseph, Elkhart, Marshall and Kosciusko counties.

# 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.

# Introductions

Francis Nugent, Legal Services Corporation

Tovah Kasdin, OEJAPS, Administration for Community Living



# Agenda

- Civil Legal Aid Responses to Elder Abuse
- Role of Adult Protective Services
- Ethics & Person-Centered Services
- Partnership Spotlight: Indiana Legal Services & APS
- Tips for Partnership Building
- Q&A

# Civil Legal Responses to Elder Abuse

# The Basics

- Estimated that 1 in 10 older adults have experienced maltreatment
- Most often committed by family members or friends
- Financial abuse is a common type seen by legal aid (other types of elder abuse often accompany it)
- All older adults are at risk—not just wealthy individuals or people with diminished decisional capability

# Cases Often Involve:

- Family dynamics
- Fear of loss of caregiver
- Fear of pressure to move to a more restrictive residential setting
- Isolation (Social or Physical)
- Difficulty accessing legal help & the courts
- Range of decisional capability
- Time sensitivity

# Impacts of Abuse

- Financial

- Loss of savings
- Behind on bills
- Disqualification from benefits
- Reduced benefits
- Loss of Housing

- Non-Financial

- Loss of trust and or confidence
- Depression
- Increased risk of hospitalization
- Breakdown of relationships

# Access to Civil Legal Help

- When legal services are available they can be life saving
- Too many older adults do not receive the legal help they need
  - Do not realize their problem has a civil legal solution
  - Unaware that they may be eligible for help or help is unavailable
  - Shame or embarrassment
  - Hesitant to reach out to service providers—fear of consequences for themselves and potentially the person who committed the harm

# Civil Legal Remedies & Actions

- Safety
  - Protective orders
  - Guardianship Termination
  - Revocation of POA
  - Ejectment/Eviction
- Recovery of Funds
  - Undue Influence
  - Breach of Fiduciary Duty
  - Conversion
  - Fraud
  - Request for an Accounting

# Non-Litigation Tools

- Protecting Funds
  - Changing bank account information
  - Changing Rep Payees/VA Benefit Fiduciaries
  - Disputing unauthorized charges
- Supportive Services
- Connection to Shelter Networks
- Access to Crime Victim Compensation
- Restorative Justice



# State Statutes

- The statutory areas to review include:
  - adult protective services laws
  - criminal codes
  - probate and trusts and estates codes
  - family law
  - general civil remedies (contracts, torts)
- Some states have criminal or civil statutes that directly address elder abuse
  - DOJ Elder Justice Initiative: [State Statutes Related to Elder Abuse](#)

# Associated Legal Issues

- Additional legal issues emerge during and after elder abuse and financial exploitation:
  - Medicaid
  - Consumer
  - Income Maintenance
  - Benefits
  - Housing

# Issue Spotting

- Cases may present to your office in a variety of ways. Some examples:
  - Housing: facing foreclosure or eviction for non-payment, even though payments should be affordable
  - Consumer: being sued for credit card debt but does not recognize the card or debt
  - Healthcare: Medicaid denial or penalty period due to perceived “gifts” or missing paperwork

# Service Providers & Systems

- Adult Protective Services (APS)
- Area Agencies on Aging (AAA)
- Victim Specialists and Advocates
- District Attorneys/Prosecutors
- Long-Term Care Ombudsman
- *Learn More:* [Service Providers & Systems Working to Address Elder Abuse](#)

# Collaborative Approaches

- Cases can be complex and may benefit from cross-discipline approaches, such as:
  - Enhanced Multidisciplinary Teams
  - Court-based Task Forces
  - Elder Abuse Prevention Coalitions
- APS may have services and supports that can benefit your client

# Role of Adult Protective Services

# Adult Protective Services (APS)

- Mandated at the state level and operated at either the state or local level
- State law creates the program framework and outlines
  - Who APS can help
  - What issues they can help with
  - What help they can provide
- Within a state there may be meaningful variations in:
  - Demand
  - Resources (staffing, funding, and service array)
  - Community collaboration and support for APS

# Eligibility for APS

- Adults as defined by state law
  - Adults with a disability/vulnerable adults
  - Older adults (60+ or 65+)
- Adults experiencing or at risk of maltreatment as defined by state law (e.g., abuse, neglect, or exploitation)
- Adults who are
  - Either able to consent to help or unable to consent
  - Residing in the community or residing in a facility



# What APS Does

- Primary responsibility is to investigate reports of maltreatment and assess the adult's safety
- Assist adults with access to programs and services to help them live as safely and as independently as possible
- APS may also help adults who are experiencing harm due to their inability to provide for their own safety or essential needs (self-neglect)
- *Careful ethical balancing of self-determination and protection*

# Self-Determination & Boundaries

- Adults have a right to make choices for themselves, *even when those choices place them at risk*
- If APS believes that a person lacks decisional capability to understand the choices they are making, they will conduct or request an evaluation
- When needed, and all other options have been exhausted, APS may work toward the appointment of a guardian/conservator

# How APS May Help

- Collaborate with the client's service providers, law enforcement, contracted consultant services
- Standardized assessments
- Court intervention/court orders
- Case consultations through Multidisciplinary Teams (MDTs)
  - Share information
  - Pool agency resources
  - Brainstorming

# Multi-Disciplinary Teams (MDTs)

- Opportunities for cross disciplinary responses and solutions
  - Systemic challenges and service gaps
  - Client consultations
- Financial Abuse Specialist Team (FAST)
- Elder death review teams
- Elder Abuse Forensic Centers

# Ethics & Person-Centered Practices

# Ethical Considerations

- Confidentiality in MDTs and case consultations
- Mandatory Reporting
  - What to do when the client does not want a report made
  - Help clients understand the burden and benefits of reporting and consenting to services
- Cultural responsiveness

# Burdens and Benefits

- Unwanted investigation
- Possible criminal involvement or prosecution
- Possible removal of caregivers or family
- Address the whole needs of the person
- Access to APS programs and services
  - Emergency food, shelter, clothing, medical care
  - Social supports and counseling

# Thinking Through the APS-Lawyer Relationship

- Above all, attorneys have an ethical obligation to their clients. In working with APS, consider the following:
  - Are you a mandated reporter under the law?
  - If you aren't a mandated reporter, have you discussed all benefits and risks of reporting to APS with your client?
    - Clients should understand the risk of police involvement, APS ethical standards etc.
  - Do you know what services are offered by APS in your community?
  - Are there other agencies or organizations that may be more appropriate?



# Mandatory Reporting (1 of 2)

- Most states have mandatory reporting laws
- The laws vary widely
- Know the law in your state

# Mandatory Reporting (2 of 2)

Some steps for consideration:

1. Is the client covered by the state reporting statute?
2. Are you a mandated reporter under state law?
3. If the client is covered under the statute and eligible for services under the statute and you are a mandatory reporter, what does the client want to do?
4. Is reporting in the best interest of the client when weighing the burden of reporting against the benefits? Will reporting leave the client in a better place than not reporting?
5. Are there ethical restraints on you reporting?

Learn more: [Mandatory and Permissive Reporting For Lawyers](#)

# APS: Requirement to Investigate

- APS workers may be subject to laws requiring the investigation of certain allegations of abuse or neglect. Local laws may require in person visits to the older adult to investigate.

# Possible Overlap with Law Enforcement

- APS workers may also be required by local laws to report certain allegations to law enforcement
- This may present difficulties for clients who are reluctant to have law enforcement involved in their case

# Cultural Factors

- Individuals with a personal, family, or cultural history of mistreatment may be resistant to reporting to APS or law enforcement or may turn away offers of help
- Experiences of racism and discrimination in public services, health care, & law enforcement may contribute to resistance of reporting or accepting help

# Trauma-Informed Work

- Honoring Individual Experiences
  - Acknowledge your client's experiences with other traumas such as racism, poverty, disability, homophobia.
  - These traumas inform the way our clients interact with us and the world. Acknowledge their existence and affirm your client's experiences.
- Cultural humility and competency go hand-in-hand with trauma-informed practice
- Learn More:
  - [NCEA Population-Specific Research Briefs](#)
  - [Trauma-Informed Lawyering](#)

# Practice Tips

- Ask the person who can help
  - Who are they are comfortable with?
  - Who do they trust?
- Avoid trying to rationalize or defend programs or services the person is uncomfortable with
  - Work to support people and organizations that the person trusts
- Learn more: [Introduction to Trauma-Informed Lawyering](#)

# Working with APS & Partners on Multidisciplinary Teams

- Working within MDTs can raise issues related to confidentiality and professional responsibility
  - Some state statutes address this
  - Client consent after weighing pros & cons
  - Non-identifying information
  - Memoranda of Understanding and Confidentiality Agreements – examples may be found in the [Department of Justice MDT Guide and Toolkit](#)
- Learn more & get support: [National Elder Abuse MDT Training and Technical Assistance Center](#)
- *Important to discuss these issues upfront*



# APS: Ethical Standards

- APS workers, like attorneys, have ethical standards for their work. Their guiding values include a duty to protect while preserving the right to self determination.
- State and Federal privacy laws may apply to APS workers and prevent the disclosure of case information to outside parties, including a client's attorney.

# Partnership Spotlight: Indiana

# Tips & Takeaways

# Working Together

- Create personal connections
- Be clear about limitations, expectations, and points of collaboration
- Check-in periodically
- Approach the relationship from a place of mutual support
- You are offering a tremendous practical resource.
- Consider collaborative trainings
- Manage boundaries

# Engaging with APS

- Get to know APS in your community
- Develop relationships before you need them or as follow-up to assistance already provided
- Offer to cross train APS staff and attend training with an APS focus
- Be supportive at local and state level of APS programming
- Open the door to referrals both to and from APS

# Questions

# Elder Justice Toolkit

NATIONAL  
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ELDER  
RIGHTS**

## Elder Justice Toolkit

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Practice-oriented, national online resource with information on pursuing civil legal remedies in elder abuse cases, practice tips, and sample documents for attorneys.

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Contribute to the Toolkit! Customize a state-specific financial exploitation guide, or share your documents, letters, and pleadings at [ConsultNCLER@acl.hhs.gov](mailto:ConsultNCLER@acl.hhs.gov).

[ncler.acl.gov](https://ncler.acl.gov)



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

# Additional Resources

- [APS-Technical Assistance Resource Center](#)
- [National Center on Elder Abuse](#)
- [National Elder Abuse MDT Training and Technical Assistance Center](#)
- [DOJ Elder Justice Initiative](#)



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# 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](mailto:ConsultNCLER@acl.hhs.gov).