NCEA NATIONAL CENTER ON ELDER ABUSE

What Law Students Need to Know About Elder Abuse

What is Elder Abuse?

Elder abuse is defined by state statute but generally refers to an intentional act or failure to act that causes or creates a risk of harm to an older adult. It includes physical, emotional, sexual, and financial abuse, neglect, and self-neglect. Multiple forms of mistreatment can occur at once.

Did You Know?



1 in 10 community-dwelling older adults experiences abuse every year.



1 in 3 older adults with cognitive impairment experiences abuse.



Only **1 in 24** cases of elder abuse is reported.



Elder abuse has significant **medical, mental health, financial, and social impacts**.



Elder abuse occurs across all **cultures, contexts, and communities**.



Older adults who are abused have a **3x higher risk of death** compared to those who have not been mistreated.

Why Should Elder Abuse Matter to Law Students?

Lawyers have an ethical duty to advance the legal rights and interests of their clients. Elder abuse can be both a civil wrong and a criminal offense. As trusted advisors in regular contact with clients, lawyers are well-positioned to identify and intervene with older clients at risk of, or experiencing, abuse, neglect, and exploitation. They have a fundamental role in facilitating justice for older clients.

What are the Signs of Abuse?

There are many indicators of abuse. Several common signs are listed below.

Physical

- Malnutrition, dehydration, or unexplained weight loss
- Sudden mental status changes unrelate to advancing dementia
- Uncontrolled pain despite pharmacological treatment
- Uncontrolled conditions such as hypertension, heart failure, asthma, or diabetes
- Inadequately explained bruises, lacerations, abrasions, fractures, or pressure ulcers

Social

- Client discomfort in the presence of family member/caregiver
- Family/caregiver insistence on being present during attorney/client meetings
- Caregiver preventing or inhibiting attorney client communications

Financial

- Unpaid bills
- Fraudulent signatures on financial documents
- Unusual or sudden changes in wills, trusts, deeds, or beneficiary designations

Psychological

- Unusual changes in behavior or sleep
- Increased fear or anxiety Isolation from friends or family or withdrawal from normal activities

Environmental

- Evidence of neglect or self-neglect, including poor diet, poor hygiene, and unattended medical needs
- Unsanitary living conditions or unsafe home environment

Risk Factors

Older adult

- Medical or mental health conditions and/or cogni-tive impairments
- Frailty and/or functional limitations
- Social isolation
- Stress and poor coping mechanisms
- Poor insight and diminished ability to identify and report abuse

Trusted other

- Economic and/or emotional dependency
- Substance abuse
- Stress and poor coping mechanisms
- Criminal history
- Untreated psychiatric disorder

Context

- Lack of social support, connectedness, or access to community resources
- Cultural norms
- Quality of relationship
- Recent divorce, loss of loved one, retirement, or illness

Approaches to Working with Older Adults

- Provide environmental and communication accommodations to enable clients to access services
- Foster a safe environment and build rapport and trust
- Meet clients where they are
- Use active listening to elicit and affirm each client's concerns, preferences, values, needs, and goals
- Use a strengths-based approach to support clients' self-efficacy
- Seek to understand each client in the context of their unique biopsychosocial environment
- Educate yourself about ageism and continually work to identify and eliminate your own biases
- Provide tailored responses



Legal and Ethical Competencies in Elder Law

Law students must understand the four C's as they relate to representing older clients: Client identification, conflicts of interest, confidentiality, and capacity. Issues relating to these core concepts may arise in several practice areas, including estate planning, contracts, public benefits, housing, elder abuse, financial elder abuse, undue influence, isolation, adult guardianship, and litigation involving older adults. Ethical guidelines are set forth in the ABA Model Rules for Professional Conduct and related state guidelines.

Client identification: a lawyer represents and owes duties of competence, diligence, loyalty, and confidentiality to their client alone, not family members who may accompany clients to appointments.

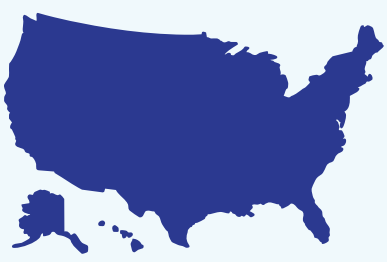
Conflicts of interest: consider all actual or potential conflicts that may impact your client and the representation, including those that may arise during estate or advance planning discussions.

Confidentiality: Lawyers have an obligation to keep clients fully informed, while maintaining the confidentiality of all communications, unless informed consent is provided or special circumstances arise.

Capacity: Issues relating to client decision-making capacity may arise with an older client, necessitating screening and, if permitted, referral for capacity assessment.

Mandated Reporting & Attorney-Client Privilege

Some states require attorneys to report suspected abuse, while others exempt lawyers due to confidentiality and privilege. Imminent danger may require reporting to adult protective services or law enforcement, subject to client confidentiality and ethical duties. All states, except California, have adopted Model Rule 1.14, which addresses the attorney's role regarding clients with diminished capacity.



The Attorney's Role in Elder Justice

Lawyers may facilitate elder justice in numerous capacities, as prosecutors, civil attorneys, Legal Aid attorneys, trusts and estates counsel, and policy advocates. In daily practice, they may recognize the presence of abuse, risk of harm, or predictors of recurrence. Depending upon confidentiality rules, they may also facilitate access to remedies and relief.

For example, prosecutors may charge criminal offenders. Civil attorneys may secure public benefits and protective orders, help preserve housing, recover stolen assets, draft powers of attorney, and prepare advance planning documents on behalf of older clients. Trust and probate attorneys may recommend less restrictive alternatives, supported decision-making agreements, or support caregivers seeking guardianship for older adults who are cognitively impaired and need decisional supports.

All Lawyers May:

- Prevent abuse, mitigate harm, and reduce the risk of recurrence
- Recommend community-based resources and supports to clients
- Within the bounds of their ethical duties, consult medical, psychological, and forensic experts to support their clients
- Collaborate with healthcare, social service, law enforcement, and financial services professionals on elder abuse multidisciplinary teams

What Can Law Students Do to Support Older Adults and Promote Elder Justice?

- Volunteer with legal aid or organizations dedicated to advancing the rights of older adults
- Take an elder law class to understand the legal rights and remedies of older adults
- Volunteer in law clinics
- Advocate for stronger protections and anti-ageism initiatives
- Lead campus initiatives to commemorate World Elder Abuse Awareness Day on June 15th

Justice has no age limit. You can make a difference.

Keck School of Medicine of USC

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