



Results from a Needs Assessment Survey: Court and Judicial Needs in the Area of Elder Abuse

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In March 2006, the National Center for State Courts, in collaboration with members of the Elder Abuse and the Courts Working Group, conducted an informal needs assessment on the topic of court and judicial needs in the area of elder abuse. Participation in the needs assessment survey was solicited through members of the Working Group and announcements to two listservs (National Center on Elder Abuse listserv and the Court2Court listserv). In total, 100 respondents from 31 states provided input. The survey instrument can be found at the end of this report.

Respondents

Respondents represented a variety of professions, as shown in Exhibit 1. Only six respondents worked in the courts (judge, judicial officer, court administrator, court clerk), and 13 respondents worked as prosecutors or law enforcement officers. Of the options given, adult protective services staff made up the largest type of respondents (26 of 100). Almost one-third of respondents identified themselves as ‘Other,’ and this included a wide variety of professions, such as public fiduciary, ombudsman, social worker, and physician.

Exhibit 1: Professional Backgrounds of Survey Respondents

Judge/judicial officer	4	Prosecutor	6
Court administrator	2	Law enforcement officer	7
Court clerk/staff	0	Victim advocate	8
Elder law attorney	7	Elder abuse specialist	5
Adult protective services	26	Other	31
Private attorney	3	No response	1

Respondents came from 31 different states. Five states had five or more individuals respond to the survey: California (23), Florida (13), Kentucky (9), Georgia (7), and Arizona (5).

Court Identification of Cases

Respondents were asked to rate the court's overall identification of elder abuse, provide information on which divisions of the court (e.g., probate, family, civil, criminal) are better able to identify cases of elder abuse and neglect, and offer practices that may improve the identification of cases. Of 99 individuals who responded to this item, 75 rated the court's overall identification of elder abuse as 'poor' or 'fair.'

Exhibit 2: Ratings of the Court's Overall Identification of Elder Abuse

Rating	Number of Respondents
Poor	30
Fair	45
Good	24
Excellent	0

Item: In general, how would you rate the court's overall identification of elder abuse as it appears in probate, family, civil, and criminal courts?

Respondents were asked to identify divisions of the court that are better able to identify cases of elder abuse and neglect. A number of respondents indicated that none of the divisions are very good at identifying cases of abuse and neglect, or that the identification of cases varied considerably, depending on particular judges and court staff.

Every county attorney, judge etc. handles cases differently. There does not appear to be a set decision on how to go about working with the elderly.

It depends. Some criminal judges are perceptive about what constitutes elder abuse. Others seem constrained by assumptions that should not apply.

There does not seem to be much continuity between agencies and the elderly are falling between the cracks.

Of those respondents who named a particular division of court, there was no clear consensus on which division can best identify elder abuse cases. A number of respondents noted the criminal courts, but they also noted that the criminal courts primarily addressed obvious cases of elder abuses.

My experience is mainly with criminal court. The issue must be blatantly obvious and provable to come before a criminal court. They are then easily identified by the court as elder abuse because that is the charge and the evidence supports it.

Others noted that probate or family courts were in the best position to identify elder abuse and neglect cases because of the types of cases they handled, especially guardianships and conservatorships. Furthermore these courts were seen as more elder-friendly than the criminal courts. For instance, one respondent noted that the family courts were more likely to ask if hearing devices or wheelchairs were needed.

Respondents were asked to provide specific practices that courts could use to improve the identification of cases that may involve elder abuse and neglect. Respondents typically provided general statements that fell into five different areas: (1) training, (2) case management, (3) assessment, (4) monitoring of guardianships and conservatorships, and (5) criminalizing elder abuse.

A number of respondents felt that identification of elder abuse could be improved if judges and court staff were trained on the issue and if experts were brought in to review individual cases with the judge. At least one respondent noted that identification of cases could be improved if case managers were assigned to identify cases involving elders and if the age of all parties were noted on the cover sheets. Some responses, often from Adult Protective Services staff and organizations that advocate on behalf of elders, noted the ease at which the courts assign guardians, often with very little assessment of the elderly ward and with little

investigation of the guardian/conservator. They noted that an assessment of the elderly and a closer review of these types of cases could improve court identification of elder abuse and neglect. Similarly, monitoring of guardianship/conservatorship cases for signs of elder abuse was sorely lacking, according to some respondents. One respondent offered the following observation.

When it comes to identifying abuses of the elderly in court appointed guardianships/conservatorships, start with the development of monitoring programs to rein in the power guardians and conservators have over their wards.

The subject of criminalizing elder abuse was frequently mentioned by respondents. For the most part, respondents criticized the lack of prosecution of elder abuse cases. As one respondent stated: “Most cases involving elder abuse and neglect never make it to court; the information is turned over to the county or commonwealth attorney, but they do not prosecute the perpetrator.” Another respondent felt that cases could be better identified and addressed in the courts if the District Attorneys office had “more investigators with knowledge and expertise in abuse, neglect, and exploitation of disabled adults.” At least one individual noted that it was challenging to prosecute cases as the elderly victim may not pass the prosecution screening process because they are not considered “reliable” witnesses.

Court Responses to Elder Abuse and Neglect

Respondents were asked to rate the court’s overall response to suspected cases of elder abuse and neglect. Of 99 individuals who responded to this item, 83 rated the court’s response as ‘poor’ or ‘fair.’ Two respondents identified the court’s response as ‘excellent.’ Both ‘excellent’ ratings were provided by judges/judicial officials in Florida and noted the work of the state’s Elder Justice Centers and specific divisions of the court.

Exhibit 3: Ratings of the Court’s Overall Response to Suspected Cases of Elder Abuse

Rating	Number of Respondents
Poor	37
Fair	46
Good	14
Excellent	2

Item: In general, how would you rate the court’s overall response to suspected cases of elder abuse and neglect?

Respondents were asked to cite the division of the court (e.g., probate, family, civil, criminal) better able to respond to cases of elder abuse and neglect and to describe any processes used to respond to elder abuse cases. Similar to the previous item on the identification of cases of elder abuse and neglect, a number of respondents were unable to identify specific divisions

The courts have little to do with actual abuse or neglect of the elderly. Almost all cases brought to court involve guardianship or involuntary hospitalization and the actual allegations of abuse and neglect are not a part of the hearing. It is a hearing on whether an individual is competent or not.

Criminal courts were considered by some to be best at responding to elder abuse, but only in the most obvious cases. A few respondents noted that probate courts are in an ideal position to respond to abuse because of their oversight of guardianships and conservatorships.

In terms of practices that could be implemented to improve court response to cases involving elder abuse and neglect, responses tended to fall into the following themes.

1. Treat elder abuse as a crime.
2. Speed up the process.
3. Use multidisciplinary teams and elder advocates.
4. Provide referrals and coordinated services.
5. Develop protocols.

A number of respondents noted their frustration with the criminal justice system and the lack of penalties for abusers. One individual wrote: “If there is no penalty for the horrific

treatment of our elderly, then what do criminals have to fear?” Another respondent wrote that a practice that would improve court responses would be to:

bring charges against perpetrators of abuse, exploitation and neglect. While a victim may be removed from an abusive situation, the perpetrators receive nothing, not even a slap on the hand or a record...

A more specific suggestion was to “prosecute more cases, to implement joint investigations with agencies responsible for the investigation such as police and social services.”

The age of the victim should be relevant to the speed in which the justice system responds. A few respondents noted that it would help if the justice agencies, and the courts, sped up the process. Specifically, an individual suggested that “courts conduct prelims as soon as possible as victims of elder abuse may die prior to first court hearing.”

The use of multidisciplinary teams and advocates was considered another way to improve court response. One respondent would like to see multidisciplinary teams that can investigate, interview those involved, and utilize the legal system to prevent and/or prosecute abuses.” Another individual noted the need for elder advocates in all court aspects, similar to the role of victim advocates in criminal courts.

A number of respondents noted the importance of referrals and coordinated services. For instance, the courts could “formalize and implement a referral process” that would result in formal assessments and community services. Another respondent, suggested that courts “develop a stronger relationship with community organizations to support education, outreach, services, and referrals.”

Finally, the need for protocols was cited by a number of individuals. One respondent noted that court responses could be improved through:

A protocol that would define the issues and the court’s process in order to create a clear expectation for those agencies trying to protect elders and their

assets. Currently, there seems to be no rhyme or reason to how cases are adjudicated.

According to another respondent, the protocol would also “... assist in identifying the abuse, neglect, and exploitation in the community.”

While respondents tended to cite a specific item that could improve court responses, one respondent eloquently described the various components that would contribute to an improved response. These components would be:

- Screening and marking of files as elder abuse when cases are filed or are first brought to court;
- Educate domestic violence court judges to handle elder abuse cases;
- Expedited hearings where an elder is a litigant;
- Procedures in the courtroom to make the setting less intimidating when needed (such as more frequent recesses, scheduling when elders are most likely to be alert, use of support persons);
- Willingness to use and increased availability of procedures to memorialize testimony with cross examination (such as depositions and conditional examinations);
- Use of court investigators to investigate appointment of a guardian/conservator;
- Increased court oversight once a surrogate decision maker is appointed; and
- Expedited processes to deal with allegations of guardian or conservator abuse or neglect.

Court Challenges

Respondents were asked, “in your personal assessment, what are the court’s greatest challenges in addressing the problem of elder abuse and neglect?” Responses tended to fall into two general themes: time and training. A number of respondents noted the time crunch in which there are “too many cases and persons going through the court system.” The high volume of cases and the speed at which case were heard were cited by another respondent who felt that a major challenge was for the courts to slow down “long enough to asses, evaluate their process in

light of the needs of an elderly and disabled person, and then provide assistance.” The lack of time, in conjunction with scarce resources, was noted by another respondent:

[The] court simply cannot process all of the instances of elder abuse and neglect. There are insufficient resources to raise awareness on the matter and to ensure vigorous responses from the court in cases of elder abuse and neglect.

The lack of training was the other major challenge most frequently cited by respondents. The lack of training impacted every aspect of elder abuse, from the lack of recognition of cases to failures in pressing criminal charges. One respondent noted that courts “don’t address it [elder abuse] at all,” instead focusing on competency issues. Another noted that the “lack of education and specialized training for the staff and attorneys on this subject matter” meant that few cases were actually prosecuted. A number of respondents noted that judges and court staff have little training in elder abuse in general, and in domestic violence in later life specifically.

Finally, respondents were asked how to address those challenges. Responses tended to fall into the following themes:

1. Train judges and court staff.
2. Increase access to the courts.
3. Develop coordinated responses.
4. Improve case management.

The need for judicial training was a popular theme throughout this survey. But a number of respondents noted that all levels of the justice system needed to be trained, especially prosecution. For instance, one respondent noted that “there are trainings that teach law enforcement and county attorneys how to prepare and present a case without help from the victim,” and went on to cite Los Angeles as an example. Another respondent noted that elder abuse is “a relatively new area of law” for judges and training should be required to acquaint judges to the problem. Another suggestion involved the creation of multidisciplinary training programs.

Possibly develop a statewide or uniform multidisciplinary training for basic, intermediate, and advanced skills in elder abuse response. It seems that too many agencies lack the time to develop their own training.

Several respondents mentioned issues related to access to the courts as a way to address challenges. Access was considered in both physical and emotional terms. As one respondent wrote, “there are barriers related to getting information about the process, getting to court, the numbers of hearings, health barriers for the person who may need breaks, assistance hearing, etc.” that could be addressed by providing accommodations to elderly persons. Additionally, a number of respondents cited the importance of advocates.

We use court level advocates who walk our victims through the court system; the entire process can be overwhelming to our victims. Our advocates serve as a support system to our victims, which helps ease what the victim may be going through as well as do follow up.

I believe the courts need to be able to rely on effective advocates for those who are subject to abuse and neglect.

The creation of coordinated responses was mentioned as another way to overcome some of the challenges in addressing elder abuse and neglect. Coordinated responses would include an array of agencies and service organizations, such as courts, law enforcement, prosecution, adult protective services, social services, and community-based service providers. An example of a coordinated response is in Jefferson County, Kentucky, which “has a wonderful multidisciplinary team in place that meets on a regular basis to discuss the issues of elder abuse.”

The improvement of case management systems could help courts overcome challenges. Case management includes information systems, case managers, and specialized dockets. According to one respondent, “courts need an information system that captures data on elders involved in the courts and that can produce summary data on the legal, health, and other service needs of elders.” Case managers and specialized dockets were also cited as ways in which the court can be more responsive to the needs of the elderly.

While most respondents focused on a single strategy to address court challenges, one respondent offered the following multi-faceted suggestions to meet court challenges:

- Provide training, by volunteer or otherwise free sources, to courts and their staff;
- Train guardians ad litem and attorneys to assist the courts.
- Increase judicial training and education, including court staff;
- Allocate specific judges to handle elder cases so fewer judges and staff need to be trained;
- Research effective practices; and
- Appoint court investigators to provide the court with competent and neutral information.

Training and Education

Of 99 individuals who described the training needs of judges on the subject matter of elder abuse and neglect, all but three respondents felt there was a need for training. Nearly three of every four respondents indicated there was a “great need” for judicial training.

Training Needs	Number of Respondents
There is no need for training for judges.	3
There is some need for training for judges.	24
There is great need for training for judges.	72

Item: Generally, how would you describe the training needs of judges on the subject of elder abuse and neglect?

Respondents were asked to identify areas or topics that should be included in a training program for judges and other court-related personnel. Topics fell into eight broad areas:

1. Physiological and Social Aspects of Aging
2. Mental Capacity
3. Undue Influence and Consent
4. Guardianships and Conservatorships
5. Laws and Agency Authority
6. Types of Abuse and Neglect
7. Domestic and Family Violence Dynamics in Later Life
8. Community Resources

The physiological and social aspects of aging were considered important factors to include in a training program. Training on this subject may include information on the demographics of aging in America, myths about aging, ageism in today's society, the physiological, psychological, and social dynamics of aging and aging processes (including clinical and medical issues), and types of disabilities (and accommodations) associated with aging. Training material might also cover vulnerability issues and include discussions of depression, grief, emotional dependence, and fear/anxiety.

Mental capacity is an extremely complex issue. One respondent noted that judges should "at least be familiar with dementia, mental illnesses, community resources or lack thereof." In addition, a number of individuals noted the importance of training judges on mental capacity issues specifically related to Alzheimer's disease. Other respondents noted that it was important to provide training on the nuances of vulnerability, such as impaired judgment versus incompetence, and differences between dementia, depression, and delirium. Judges might also be educated about how mental capacity is clinically assessed.

Undue influence and consent were mentioned as training subjects by a number of respondents. One respondent noted the dire need for judicial training in this area.

Judges often don't understand the taking of assets through trickery or deceit using undue influence over a vulnerable adult, instead seeing this abuse as the "choice of the elder.

Training on undue influence was considered by some respondents to be absolutely essential to understanding the subtle forms that abuse, especially financial abuse, can take.

A number of respondents noted major problems with court assignment and oversight of guardians and conservators. Many of the issues related to mental capacity and undue influence are particularly critical to elderly who have been placed under a guardianship or conservatorship. Training would include a review of laws but also emphasize a variety of issues, such as the

appropriateness and nature (emergency, temporary, permanent) of the guardianship, the qualifications of the appointed guardian or conservator, and how to adequately monitor the guardians and conservators.

Judges should have training in laws related to elder abuse and neglect. Additionally, some respondents noted that judges also need training on laws that impact the authority of local agencies, such as Adult Protective Services. One respondent suggested that judges be trained on “social work policy,” and another individual recommended training on “APS Standards of Practice.” According to one respondent, “judges need to be aware of the practices of other agencies in the community which have been mandated to protect the elderly.”

Elder abuse and neglect can take on multiple variations and forms. Judges and court staff should be trained on recognizing and responding to various forms of abuse and neglect, including self neglect. Several respondents noted the need for training on financial abuse in particular. For instance, respondents wanted judges to be training on:

- Sophisticated financial schemes regarding real estate and land,
- Investment thefts,
- Annuity and trust mills, and
- The transfer of property and assets to a caregiver.

Financial abuse was considered particularly relevant for judges who have oversight of conservatorships. One respondent suggested that such judges be required to take a “basic fraud identification course.” Another respondent suggested that information on “forensic accounting” be included in a training program.

A high percentage of abuse occurs in the context of domestic and family relationships. Consequently, a number of respondents suggested training on “the cycle of violence, dynamics of abuse/neglect/exploitation, [and] family dynamics.” One respondent noted that the onset of late life domestic violence and the dynamics of adult children as batterers be included in the

curriculum. Yet another respondent suggested the inclusion of “battered person syndrome” in any court training program.

Finally, a number of respondents recommended that judges be trained on community resources. The training program should include information on “available community resources,” according to one respondent. Another individual offered the following advice.

Even more important, judges and court staff must know what services are available to address these problems, and they should be aware of an established procedure to access these services.

The topics listed above are applicable to a broad spectrum of professionals in the justice agency. In addition to these topics, a few respondents offered a list of training components particularly relevant to judges. This list includes the following items.

- Judicial fact finding with elderly victims;
- Alternative means to obtain testimony;
- Effective practices;
- Identification of courts in which elder abuse may appear;
- Sentencing elder abusers (whether old or young);
- Bail issues in elder abuse cases;
- Assessing capacity in various contexts (give testimony; make gift or will; enter contracts; marry)
- Power of guardianship/conservatorship (fiduciary);
- How to support and develop a monitoring program within their courts that will monitor those living under legal guardianship/conservatorship.

Promising Practices

Survey respondents were asked to share promising practices and to list the names of specific courts engaged in those practices. Most respondents were unaware of any promising practices and individual courts. The following list represents all of the court-based programs identified by the respondents.

California

- The Elder Abuse and the Protection Court in Oakland, California
- The new Forensic Centers in Orange and Los Angeles counties.
- In Orange County, we have an expert on domestic violence in later life that works with the court on restraining orders. We have a specialist in restraining orders in the family law court to help the elderly with restraining orders. We have an elder abuse forensic center to help the police understand what the district attorney needs from them to get the case to court (felonies only).
- The San Diego County District Attorney has an elder-friendly room in the Hall of Justice, where victims can relax prior to testifying. Also noted was the San Diego Family Justice Center and the “POETS” calendar
- The San Francisco Probate Court has developed training and materials for persons asking to be appointed as conservators.

Florida

- Elder Justice Centers in Florida. Particular mention was made of the 6th Judicial Circuit (St. Pete/Clearwater), the 13th Judicial Circuit (Tampa), the 15th Judicial Circuit (West Palm Beach), and the 17th Judicial Circuit (Fort Lauderdale)

Idaho

- Idaho has a pilot program to have its Department of Financial Institutions review guardian reports.

Kentucky

- ElderServe, Inc., Jefferson County Circuit Clerk Courts Office and Adult Protective Services (APS) have collaborated to better serve medically fragile homebound seniors who are victims of domestic violence/elder abuse. We are able to go to the home, hospital or nursing home of the fragile senior and take the information for an Emergency Protective Order (EPO). This process is done in the home, and once the EPO is issued a date is set for a hearing over the telephone regarding the Domestic Violence Order (DVO).

New Jersey

- Safe Outreach for Seniors – the program trains law enforcement to identify the above at risk individuals. This is done via phone calls and actual visits to the homes for multiple calls due to delusions and/or hallucinations.

Oklahoma

- Tulsa County District Court has a specific docket for APS cases.

Canada

- Restorative Justice Approaches to Elder Abuse Project in Ontario

Discussion

A needs assessment survey, completed by 100 respondents from a wide variety of professions, suggested significant shortcomings in court responses to elder abuse and neglect. Courts were given a rating of either ‘poor’ or ‘fair’ in their ability to identify and respond to elder abuse. Five practices were identified as ways to improve court responses to cases involving elder abuse and neglect.

1. Treat elder abuse as a crime.
2. Speed up the process.
3. Use multidisciplinary teams and elder advocates.
4. Provide referrals and coordinated services.
5. Develop protocols.

The primary challenges to the court were time and training. Respondents suggested that challenges could be addressed by training judges and court staff, increasing access to the courts, developing coordinated responses, and improving case management.

Training was a central theme throughout the survey. Nearly three of every four respondents indicated there was a “great need” for training. Topical training areas fell into the following categories: (1) physiological and social aspects of aging, (2) mental capacity, (3) undue influence and consent, (4) guardianships and conservatorships, (5) laws and agency authority, (6) types of abuse and neglect, (7) domestic and family violence dynamics in later life, and (8) community resources.



Needs Assessment

Court and Judicial Needs in the Area of Elder Abuse

Thank you for agreeing to answer our questions on court and judicial needs in the area of elder abuse. The survey consists of 8-items—most questions are open-ended. **When you are finished, please send the introductory email with the link to this survey to at least 3 of your colleagues.** Your responses will help us craft a plan of action at the first national meeting of the Elder Abuse and the Courts Working Group, which will be held in Williamsburg, Virginia in April.

Note: For purposes of this survey, elder abuse refers to physical, sexual, or psychological abuse, exploitation, or neglect of older persons.

1. What is your profession? (please select one)

- | | | |
|--|---|---|
| <input type="radio"/> Judge/judicial officer | <input type="radio"/> Court administrator | <input type="radio"/> Court clerk/staff |
| <input type="radio"/> Prosecutor | <input type="radio"/> Law enforcement officer | <input type="radio"/> Victim advocate |
| <input type="radio"/> Elder law attorney | <input type="radio"/> Adult protective services | <input type="radio"/> Private attorney |
| <input type="radio"/> Elder abuse specialist | <input type="radio"/> Other _____ | |

2. In what state do you work? (insert drop-down list)

3. IDENTIFICATION OF ELDER ABUSE AND NEGLECT CASES

Elder abuse and neglect cases may appear in a variety of guises, and enter the courts as probate, family, civil, or criminal matters. Please tell us how well you feel courts are able to identify cases that may have an underlying abuse or neglect issue by answering the following:

3a. In general, how would you rate the court’s overall identification of elder abuse as it appears in probate, family, civil, and criminal courts?

<input type="radio"/> Poor	<input type="radio"/> Fair	<input type="radio"/> Good	<input type="radio"/> Excellent
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3b. Based on your observations, which divisions of the court (e.g., probate, family, civil, criminal) are better able to identify cases of elder abuse and neglect? Please describe any processes used to identify elder abuse cases.

3c. What practices would you suggest courts use to improve the identification of cases that may involve elder abuse and neglect?

4. RESPONSES TO ELDER ABUSE AND NEGLECT CASES

Many courts do not have a protocol to guide responses to suspected cases of elder abuse and neglect. Please give us your thoughts on how well you think courts currently respond and practices that can be implemented to improve responses by answering the following:

4a. In general, how would you rate the court’s overall response to suspected cases of elder abuse and neglect?

<input type="radio"/> Poor	<input type="radio"/> Fair	<input type="radio"/> Good	<input type="radio"/> Excellent
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4b. In your personal assessment, which divisions of the court (e.g., probate, family, civil, criminal) are better able to respond to cases of elder abuse and neglect? Please describe any processes used to respond to elder abuse cases.

4c. What practices would you suggest courts use to improve their response to cases involving elder abuse or neglect?

5. COURT CHALLENGES

The problem of elder abuse and neglect is complex with many challenges. Please provide your views below on challenges facing the courts and how those challenges can be addressed:

5a. In your personal assessment, what are the court’s greatest challenges in addressing the problem of elder abuse and neglect?

5b. How can those challenges be addressed?

6. TRAINING AND EDUCATION

Please give us your perspective on judicial training needs for judges and court-related personnel on the following:

6a. Generally, how would you describe the training needs of judges on the subject of elder abuse and neglect? (**please select one**)

- There is no need for training for judges.
- There is some need for training for judges.
- There is great need for training for judges.

6b. What areas or topics do you believe should be included in a training program for judges and other court-related personnel?

7. PROMISING PRACTICES

A number of courts have developed innovative responses to the problem of elder abuse and neglect. For example, these responses might include, but are not limited to, the use of multidisciplinary teams, specialized dockets, elder abuse centers, and elder-friendly courthouses. Please share any promising practices that you have not previously mentioned. Please include the names of specific courts that are engaged in these practices.

8. Please provide any additional comments or suggestions that you may have here:

Thank you for participating in this needs assessment survey. We will be glad to provide you the results of the needs assessment. We may also wish to follow up with a few more specific questions based on your responses.

If you would like to receive the survey results and/or are willing to respond to a few more specific follow-up questions, please check the appropriate box(es) and provide your contact information below. Also let us know if you would like to be informed about the activities of the Elder Abuse and the Courts Working Group.

<input type="radio"/> YES, I would like to receive the results of the survey.
<input type="radio"/> YES, I would be willing to answer more specific follow-up questions to this survey.
<input type="radio"/> YES, I would to receive more information on the Elder Abuse and the Courts Working Group.

NAME: _____
PHONE: () _____
EMAIL: _____