

Combatting Financial Exploitation: A New Tool

November 5 and 6, 2014

Contents

Panelists	2
Consent and Authorization for Access to Financial Records (G.S. 53B)	4
Flowchart	5
Webinar slides	6

Online resources

[Social Services Law Bulletin #43: "Financial Exploitation of Disabled and Older Adults: An Overview of North Carolina Law"](#), by Aimee Wall, Associate Professor of Public Law and Government, is now available online. This bulletin describes the legal framework for investigating and addressing financial exploitation of older adults and disabled adults. It includes a discussion of the recent changes in the law that allow departments of social services and law enforcement officials to request and obtain an investigatory subpoena for records from financial institutions. The appendix includes updated versions of the relevant statutes. Date: October 2014; No. of pages: 24

The United States Department of Justice Elder Justice Website is a resource for victims of elder abuse and financial exploitation and their families; practitioners who serve them; law enforcement agencies and prosecutors; and researchers seeking to understand and address this silent epidemic plaguing our nation's elders.
www.justice.gov/elderjustice/financial

NOTE: The Petition and Order for Issuance of Subpoena Directing Release of Financial Records (AOC-SPC-630, New 10/14) is in DRAFT form. Until the NCAOC forms committee officially approves a final version of this form, this form is just a draft. There may be substantial changes to the form prior to final publication on the [NCAOC forms website](#). Use the Search feature to find the current version.

Panelists

LeShana Baldwin

Adult Services Coordinator

NC DHHS Division of Aging and
Adult Services

919 855-3456

leshana.baldwin@dhhs.nc.gov

LeShana is the Adult Protective Services and Guardianship Coordinator with the North Carolina Division of Aging and Adult Services. Her background includes experience in both Adult and Child services. She has several years of experience working in the public and private social services field in North Carolina.

Matthew Cordell

Attorney

Ward and Smith, P.A.

919 277-9196

mac@wardandsmith.com

Matt's law practice encompasses a broad spectrum of business and regulatory matters, with a particular emphasis on financial institutions and financial services, and includes privacy and information security issues. He is an active leader in the legal profession, serving in various statewide leadership roles. In addition to his passion for helping his clients meet their goals, Matt devotes significant time to providing free legal services for the benefit of those in his communities. Matt earned his bachelor's degree in Trust and Investment Management, as well as his M.B.A., from Campbell University, and his Juris Doctor from the University of North Carolina School of Law in Chapel Hill. Matt is a frequent speaker and guest writer for a number of publications and organizations, and he blogs about legal issues at BizLawNC.com.

Jan Dillon

Director of the NC Center for
Financial Literacy

NC Bankers Association

919 781-7979

jdillon@ncbankers.org

Jan is an attorney and director of the North Carolina Center for Financial Literacy at the North Carolina Bankers Association. In her role at the NCBA, she advocates for improved financial education and increased financial capability for North Carolina citizens of all ages. In addition, she tracks rulemakings affecting the banking industry and offers regulatory and compliance assistance.

Amy Funderburk

Assistant Legal Counsel

North Carolina Administrative
Office of the Courts

919 890-1302

Amy.L.Funderburk@nccourts.org

Amy advises Judicial Officials in Estates, Special Proceedings, and Civil Matters as Assistant Counsel with the NCAOC. Prior to joining NCAOC, she represented the Department of Health and Human Services as an Assistant Attorney General.



Panelists

Renae Minor

APS Consultant

NC DHHS Division of Aging and Adult Services

919 855-3464

Renae.minor@dhhs.nc.gov

Renae is the Adult Protective Services Consultant with the North Carolina Division of Aging and Adult Services. Her background includes experience in both Adult and Child services. She has several years of experience working in the education, public and private human services fields.

Rajeev Premakumar

Assistant Attorney General

Health and Public Assistance Section

N.C. Department of Justice

919 716-6841

RPremakumar@ncdoj.gov

Raj represents clients from the North Carolina Department of Health and Human Services including the Division of Medical Assistance and the Division of Aging and Adult Services. Prior to this, he worked in the Human Services and Medical Facilities Section of DOJ where he represented UNC Hospitals and UNC Healthcare. Raj earned his Bachelors of Science in Public Health degree with a concentration in Health Policy and Management from UNC-Chapel Hill. He earned a joint degree in law and public health (JD/MPH) from Emory University in Atlanta, Georgia.

Aimee Wall

Associate Professor

School of Government

919 843-4957

wall@sog.unc.edu

Aimee teaches, conducts research, and advises state and local government officials on social services law. She focuses on adult services, public assistance programs, and the organization and governance of local social services agencies. She also coordinates educational programs for new legislators and serves as a faculty liaison with legislators and other state level policymakers. Prior to joining the School of Government in 2001, she practiced health care law in Washington, DC, and served as a health policy analyst in the Office of the Secretary in the US Department of Health and Human Services. Aimee earned a BA in English from the Ohio State University and a JD/MPH from the University of North Carolina at Chapel Hill.

Nancy Warren

Adult Services Program Administrator

NC DHHS Division of Aging and Adult Services

919 855-3463

Nancy is the Adult Services Program Administrator with the North Carolina Department of Health and Human Services, Division of Aging and Adult Services (DAAS). Nancy and her staff are responsible for supervising the administration of North Carolina's Adult Protective Services (APS) and Guardianship programs delivered by county departments of social services and corporations who contract with the division for guardianship. Nancy has over 40 years of experience in public social services in NY and NC working with and advocating for vulnerable adults.





Consent and Authorization for Access to Financial Records (NCGS 53B)
Form developed by DHHS and financial institutions.

[Side 1 of 1]

**CONSENT AND AUTHORIZATION FOR ACCESS TO FINANCIAL RECORDS
 (NCGS 53B)**

I, _____, residing at _____ hereby authorize
 (client) (address)

_____ to disclose the applicable records as described herein concerning me to the
 (financial institution)

_____ County (NC) Department of Social Services (DSS) for the purpose of determining
 (county)

the need for Adult Protective Services. The financial institution may provide any and all information regarding my accounts as well as copies of any and all financial records and supporting documents as indicated below:

- Current balance(s)
- Statements- Time Period: _____
- Copies of checks and transactions- Time Period: _____
- Existence and Location of Safe Deposit Box
- Other: _____

STATEMENT OF CONSUMER RIGHTS UNDER THE NORTH CAROLINA FINANCIAL PRIVACY ACT

None of my financial records may be disclosed by the financial institution except in accordance with the terms of this consent or a duly issued judicial order or subpoena; and I understand that if the financial institution discloses any of the financial records or the government authority obtains any information about my financial records in violation of the North Carolina Financial Privacy Act (Chapter 53B of the North Carolina General Statutes), I may sue for damages as provided in the Act. I further understand that:

- I have the right not to give this consent,
- This consent may not be revoked without 5 days' notice or if action has been taken in reliance on it,
- This consent will be valid for 6 months,
- Giving this consent cannot be made a condition of doing business with any financial institution,
- I have the right to access the financial institutions' record of disclosures pertaining to my accounts.

I certify that I have read this consent or that it has been read to me, that I understand its terms and the nature of the information requested, and that I voluntarily signed it on the date appearing beneath my signature.

Please deliver information to:
 _____ County DSS
 Attn: _____

Mailing Address:

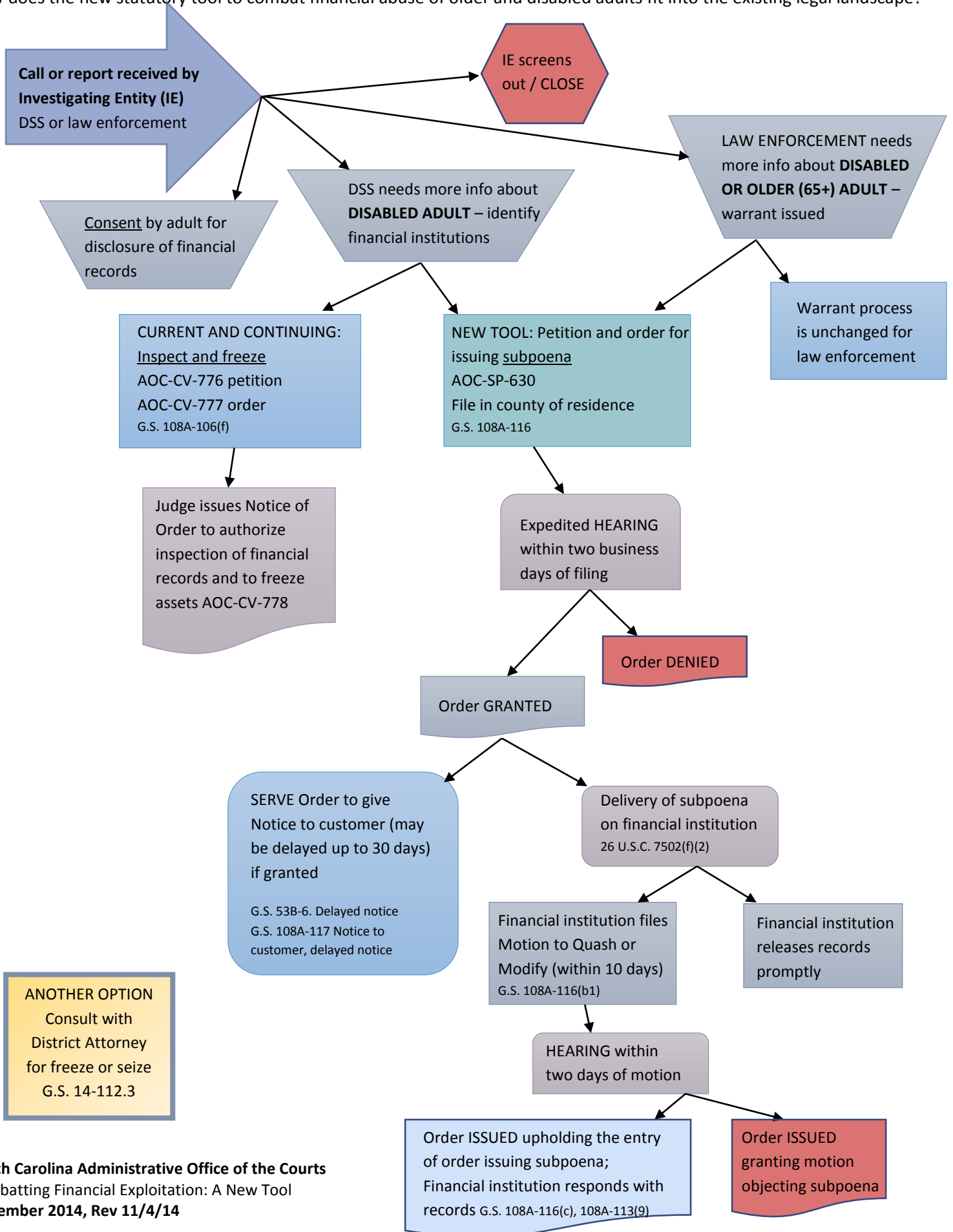
 Signature of Client

 Date Signed

Name and Phone # of APS Worker: _____

Financial Exploitation Investigation Steps

How does the new statutory tool to combat financial abuse of older and disabled adults fit into the existing legal landscape?





NORTH CAROLINA
ADMINISTRATIVE OFFICE
of the COURTS

Combatting Financial Exploitation A New Tool

November 2014



Webinar



- Panelists
- Materials
- Scenarios
- Questions



NORTH CAROLINA
ADMINISTRATIVE OFFICE
of the COURTS

Combatting Financial Exploitation: A New Tool
November 2014 Slide 2

Panelists

- N.C. DHHS Division of Aging and Adult Services
 - Nancy Warren, Renae Minor, and LeShana Baldwin
- N.C. Bankers Association
 - Jan Dillon; Matthew Cordell (Ward & Smith)
- N.C. Department of Justice
 - Rajeev Premakumar
- N.C. Administrative Office of the Courts
 - Amy Funderburk
- UNC School of Government
 - Aimee Wall



Combating Financial Exploitation: A New Tool
November 2014 Slide 3

Materials and Resources

- Overview of NC Law: Social Services Law Bulletin
- Process Flowchart
- Sample Consent Form
- Draft Form: AOC-SPC-630 (not final; do not use)
- U.S. Department of Justice Elder Justice Website



Combating Financial Exploitation: A New Tool
November 2014 Slide 4

Overview of Recent Changes

Existing Law	Recent Changes
<ul style="list-style-type: none">• Requires reporting of suspected financial exploitation of older adults and disabled adults• Allows LE to obtain search warrants for records from financial institutions• Allows DSS to request a “freeze and inspect” order for records from financial institutions	<ul style="list-style-type: none">• Allows financial institutions to collect a list of “trusted persons” from customers• Allows LE and DSS to request a subpoena for financial records• Allows LE and DSS to request a delay in notice to the customer in some circumstances• Allows DA to request that assets be frozen or seized

Scenario 1: Fran

Fran is 75 years old and has been diagnosed with paranoid schizophrenia. She receives Social Security and a small pension from her deceased husband. Fran lives with her daughter, Beth, who serves as her representative payee.

Fran is known to wander the streets of her neighborhood at all hours of the day and night. She is frequently found barefoot, in threadbare clothing in subfreezing temperatures. When asked about this behavior, she states that she wants to be barefoot because it helps keep the demons out of her feet. She appears to be underweight.

Beth has been unemployed for several years and does not contribute monetarily to household expenses. She recently bought a sports car.



Scenario 1: Key points

	Freeze and Inspect	Subpoena
Requirements	<p>Court finds reasonable cause to believe:</p> <ul style="list-style-type: none"> • Fran lacks the capacity to consent. • Fran needs protective services and no other person is able or willing to arrange for those services. • Fran is being financially exploited by her daughter. • Fran's daughter is her caretaker. <p>G.S. 108A-106(f)</p>	<p>Court finds:</p> <ul style="list-style-type: none"> • There is a credible report that Fran is being or has been financially exploited. • Fran's financial records are needed to substantiate or evaluate the report. • Time is of the essence in order to prevent further exploitation <p>G.S. 108A-116</p>

Scenario 1: Key points

	Freeze and Inspect	Subpoena
Advantages	<ul style="list-style-type: none"> • Ability to prevent assets from being withdrawn, spent, or transferred 	<ul style="list-style-type: none"> • Notice to customer only • May delay notice • Time (2 days from filing)
Disadvantages	<ul style="list-style-type: none"> • Can only be used for "disabled" adults • Notice requirement may alert exploiter • Time (10 days from service) 	<ul style="list-style-type: none"> • Inability to freeze assets, but delayed notice mitigates the need to freeze

Scenario 2: Connie



DSS received a call from an employee of Local Bank. The employee expressed concern about a 74 year-old client named Connie.

Connie's nephew has been taking care of her and her finances for several years because she has Parkinson's disease and can no longer hold her hand still to sign her name.

The bank employee noticed that her nephew had made several large, unusual withdrawals from Connie's account in recent weeks.

Scenario 2: Key points

- Financial institutions are required to report if reasonable cause to believe that a person is being financially exploited
 - Disabled adults → DSS and law enforcement officials
 - Older adults who are not disabled → Law enforcement officials
- Financial institutions must also notify “trusted persons” who are identified in advance by the adult, unless the institution suspects that the person is responsible for the exploitation.
- Everyone is required to report suspected abuse, neglect, or exploitation of a disabled adult to DSS.
- Reporters, including financial institutions and their employees and officers, acting in good faith have immunity for claims related to reports.

Scenario 2: Connie (cont.)

A DSS staff member meets with Connie. Connie explains that she used to check on everything, but that she had not been able to do so for the last six months. She expressed concern that her finances might be misused, though she wasn't sure which of her accounts were being used.

DSS would like to obtain copies of Connie's financial records to investigate the situation further.



Scenario 2: Key points

- If Connie has capacity to consent, that would be the best approach.
- Consent form must satisfy state and federal privacy laws governing financial institutions.
- If disabled adult has capacity, DSS will not be able to ask the judge for “freeze and inspect.”
- For older adults who are not disabled, law enforcement officials may request a subpoena or a search warrant.

Scenario 3: Sam



Sam is an 85 year-old widower. He receives Social Security Income payments (SSI) each month. His health is failing and his memory and judgment appear to be impaired. He has a son, but they do not have a strong relationship. It is apparent from the deplorable condition of his apartment that Sam needs supervision and care.

The landlord has served Sam with an eviction notice because he stopped paying rent three months ago. His neighbors are complaining about the smells emanating from the apartment.

Sam states he doesn't need to move because he received a letter stating that he won the Canadian lottery and now he will be rich. He explains that he sent a \$500 check to "the lottery people" in order to release his prize. The landlord contacts DSS.

Scenario 3: Key points

- "Freeze and inspect" not an option because requires that the exploitation be done by *caretaker*.
- Subpoena is likely the best option.
- Protective services, beyond those related to financial exploitation, may be necessary in many cases.

Scenario 3: Sam (cont.)

DSS petitions the district court for a subpoena to obtain copies of all of Sam's financial records from Neighborhood Credit Union for the last five years. The court agrees and the subpoena is served on the financial institution.



Scenario 3: Key points

- Form petition will be available from AOC.
- Petition and court's record of the proceeding are confidential (not public record) and must be kept separate from other records.
- Delayed notice likely not necessary.

Scenario 3: Sam (cont.)

The attorney for the Neighborhood Credit Union understands the concern but wonders if the agency *really* needs five years of records to conduct its investigation.



Scenario 3: Key points

- After receiving subpoena, financial institution must either
 - Promptly produce records or
 - File motion to quash or modify within 10 days.
- If there is a question, it may be more efficient to contact the DSS attorney and discuss the scope of the request to see if it can be modified. Timelines are compressed so cooperation and communication are essential.
- Financial institutions have the authority to charge fees for records produced in response to a subpoena.

Questions?

- Financial institutions
 - N.C. Bankers Association
 - Carolinas Credit Union League
 - Your attorney
 - UNC School of Government
- Judges and Clerks
 - N.C. Administrative Office of the Courts, Legal Division
 - UNC School of Government
- APS social workers, DSS directors, DSS Attorneys
 - N.C. DHHS Division of Aging and Adult Services
 - N.C. Department of Justice
 - UNC School of Government



NORTH CAROLINA
ADMINISTRATIVE OFFICE
of the COURTS

Combating Financial Exploitation: A New Tool
November 2014 Slide 19



NORTH CAROLINA
ADMINISTRATIVE OFFICE
of the COURTS

Prepared by:
Lori Cole
Instructional Designer

Organizational Development Division

T 919 890-1276

Lori.C.Cole@nccourts.org
www.nccourts.org

Photos courtesy of UNC School of Government

