

ELDER JUSTICE COORDINATING COUNCIL  
WHITE PAPER

BRIDGING THE ACCESS GAP FOR OLDER LITIGANTS:  
AN ELDER COURT MODEL

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OBJECTIVES

To describe the process by which the Circuit Court of Cook County developed a model to facilitate legal redress for elder abuse, neglect and financial exploitation of Cook County's elderly population through the formation of multidisciplinary partnerships, education and training, dedicated court dockets and a Cook County Elder Justice Center; to describe challenges inherent in such an undertaking; and, to make recommendations on how the federal government can facilitate the sustainability and replication of this model.

INTRODUCTION

The number of persons 65 and older will double between 2010 and 2030, a phenomenon attributable to the aging of baby boomers.<sup>i</sup> Those aged 65 and over are expected to reach 19.3% of the population by 2030.<sup>ii</sup> Illinois represents one of eleven states that account for 56% of the elder population.<sup>iii</sup> Illinois witnessed the largest growth in population amongst the very elderly (those 85 and older), a fact that speaks to the increase in life expectancy of the elderly. Chicago, Cook County, Illinois, a large metropolitan area, is heavily populated by the elderly.<sup>iv</sup> This meteoric increase in the aging population has generated new and greater demands on our legal system. Foremost among the many legal needs of the elderly are those relating to elder abuse, neglect and financial exploitation.<sup>v</sup> The Circuit Court of Cook County, one of the largest unified court systems in the world, is directly impacted by this population growth. More than 400 judges working within the court's 16 divisions and districts serve the 5.1 million residents of Cook County. The types of cases heard in each division and district depend on the nature of the controversy.

Timothy C. Evans, Chief Judge of the Circuit Court of Cook County, made the bold decision on December 10, 2010 to name a new division of the Circuit Court. He resolved that this new division would adopt a holistic approach to the legal issues of Cook County's elderly population--most notably, those issues involving elder abuse, neglect and financial exploitation.

The inclusion of elder abuse, neglect and financial exploitation in the general caseload of all divisions and districts hinders the ability to capture critical data, to coordinate legal and social services, to develop partnerships having the objectives of detecting, impeding and preventing elder abuse, neglect and financial exploitation, and to broaden the elderly's access to justice. Going forth, the court will be

able to more easily track and consolidate cases involving the elderly, develop a body of precedent-setting elder law, capture data that will substantiate need for additional resources as well as demonstrate to legislators, court funding bodies and policymakers the magnitude of the problem. The Court and its partners, will be in a better position to craft programs to educate the elderly, the bar and the general public as to available rights and remedies for elder abuse, neglect and financial exploitation. Moreover, unconfirmed hypotheses can be tested: e.g., trained elder law judges with expanded resources will bring about fairer, consistent and more lasting solutions; a specially designated forum for elder abuse and other elder issues will increase the likelihood that more cases will be deemed meritorious enough to be prepared by law enforcement, filed and prosecuted, irrespective of monetary value and nature of abuse. A coordinated judicial response to elder issues in our massive court system allows for a holistic approach to the identification and resolution of underlying issues often present in cases involving the elderly.

Chief Judge Evans committed substantial resources to the development of the Elder Law and Miscellaneous Remedies Division (ELMR). This included a full-time veteran judge and support staff to develop the ELMR Division and a Cook County Elder Justice Center to provide support services to elderly litigants. The implementation of the ELMR Division began with the formation of a small Workgroup who enthusiastically embraced the concept of an ELMR Division. From the onset, this supportive and multi-talented Workgroup committed time and energy to help develop the Division and to inform the judicial system, professional community and general public about the ELMR Division concept. Moreover, the collective expertise and resources of the Workgroup members as well as their individual networks provided assurance that the final structure and operation would make sense to all affected parties. Members of the Workgroup included the city and county Area Agency on Aging; the Offices of the Public Defender, the State's Attorney, the Public Guardian, and Attorney General; city and county law enforcement; elder law practitioners; and local law schools with elder law programs.

Subcommittees of this Workgroup were charged with the completion of specified tasks, including research of national and state laws and authoritative writings pertaining to the elderly; limitations, if any, on the jurisdiction of the new Division based on the Illinois constitution and laws; research of models already in existence throughout the country and the feasibility of implementation in Cook County; review of our Circuit Court's structure; surveying the types of cases appropriate for handling by the ELMR Division; logistics of transfer within the Circuit Court; and preliminary drafting of a venue statement. Other subcommittees were given the task of researching the threshold age of litigants eligible to have their matters heard in the ELMR Division; identifying barriers to elderly access to the court; and developing marketing, education, training, and elder mediation programs.

Concurrent with the Workgroup's research and survey, the Presiding Judge of the ELMR Division interviewed in excess of one hundred local stakeholders. The Presiding Judge reached outside of Illinois to consult with prosecutors, law professors, jurists, the National Center for State Courts, and the American Bar Association's Commission on Law and Aging. In addition, the Presiding Judge conducted site visits to Florida's Elder Justice Center and California's Elder Protection Courts.<sup>vi</sup> The ELMR Division's presiding judge had multiple meetings with the presiding judges of divisions of the Circuit Court of Cook County who were most likely to be impacted by the ELMR Division. With whom the ELMR Division presiding judge explored, explained and presented proposed modifications in the Circuit Court's approach to cases involving the elderly. The Clerk of the Circuit Court, a key player and stakeholder, was kept informed and regularly consulted concerning the programming and technical issues such as capturing pertinent data, e.g. age, identifying multiple cases, and tracking of transfers. The Offices of the Public Defender and the State's Attorney, as well as private defense attorneys, were consulted on the merits of designated trial judges to exclusively preside over elder abuse, neglect and

financial exploitation cases. Insights gained from these consultations were shared with the Workgroup and further shaped and informed the process of creating the ELMR Division model.

## THE MODEL

Civil and criminal dockets of the ELMR Division have been created to hear cases involving the elderly. The assigned judges have undergone training to deal with issues of elder abuse, neglect and financial exploitation. In the Criminal Division of the Circuit Court of Cook County, three dedicated judges, dually-assigned to the ELMR and Criminal divisions, receive assignments of all elder abuse, neglect and financial exploitation cases in which the victim is an elderly person, defined as aged 60 and over.<sup>vii</sup> Victim advocates will assist and provide victims with links and referrals to social and legal services. Understandings have been reached between ELMR and other divisions; dually assigned judges with special expertise will preside over cases such as involuntary commitments, tax deeds adoption cases and domestic violence matters involving litigants, age 60 and over. With respect to other civil cases, judges assigned exclusively to the ELMR Division will hear cases arising under the Elder Abuse and Neglect Act, the Illinois Power of Attorney Act, and cases based on the financial exploitation of an elderly person in which the elderly person is not a ward.<sup>viii</sup> ELMR Division judges will preside over cases involving persons age 60 and over who face cognitive impairments and vulnerabilities. The source of many of these cases will be discretionary transfers from judges throughout the Circuit Court and elderly persons who petition to have their cases heard in the ELMR Division based on their age and vulnerabilities. Included in this category are housing code violations, evictions, traffic offenses, contract disputes and debt collections. The Clerk of the Circuit Court and the Cook County Sheriff are training their personnel to accommodate the elderly and adhere to ELMR Division's developed protocol.

The Cook County Elder Justice Center (CCEJC) will deliver support to litigants aged 60 and over. The CCEJC is designed to provide numerous services to seniors, family members and caretakers, including but not limited to training and education; legal and social counseling; assessments; mediation; victim advocacy; hotline; informational brochures; availability of senior peer counselors; access to enhanced communication devices for the visually and hearing impaired; courthouse orientations and tours; direct links to social services; and referrals to existing agencies that provide services to seniors. When fully operational, it will be staffed by a multidisciplinary team, including a court coordinator, victim advocate(s), case manager(s), law enforcement representatives, senior peer counselors, and volunteers, including law school and social work externs and community members.

A Task Force was convened to provide support and assistance to the ELMR Division and to guarantee the sustainability of the CCEJC and the ELMR Division. Its purpose is one of outreach, legal support, education and training. The Task Force included members of the faith-based community, judges, law enforcement, seniors, educators, accountants, realtors, bankers, legal aid organizations, mediators, attorneys including elder law practitioners, medical professionals, social workers, and investment brokers.

Early in the planning process, steps were taken to educate the judiciary. A training module was developed, judicial faculty was identified, and judges throughout the state were introduced to elder law and the concept of a court designated to hear civil, criminal and domestic violence matters involving elderly litigants. Judicial training was followed by a major training initiative within the legal community. The ELMR Division co-sponsored an elder law seminar with the Illinois Department on Aging, 28 area bar associations and eight Chicago area law schools.<sup>ix</sup>

The ELMR Division developed a training template entitled, "Senior Power: Keeping Control of Your Future." It is designed to educate and raise senior awareness about elder abuse, neglect and

financial exploitation and how to prevent victimization. This training module for senior community groups of varying sizes has met with great success.

## CHALLENGES

The mission of the Circuit Court is to better serve an elderly population faced with many challenges. Fulfilling the mission requires varying degrees of creativity.

- The first challenge is that of a budget. Budget concerns are always a consideration when a new project requires considerable investment of people, materials, space and resources from already stretched resources.

New funding sources must be found to ensure that services remain viable, and to ensure that the Elder Justice Center becomes fully operational within a reasonable period of time. Existing court partners, i.e., Clerk of Circuit Court, Office of Public Defender, Office of State's Attorney, Office of Sheriff may allocate a portion of their existing budget to service the elder client who falls within the scope of the ELMR Division cases that the partners handle.

- In using the holistic approach to elder services, we have to think, plan and craft solutions outside existing parameters. The second challenge, directed to our judges, is to think outside the box and look beyond the form in which the case presents itself to arrive at recommended solutions that address the major issues facing the elder.
- A third challenge in tackling the myriad forms of financial abuse was the necessity of involving all third parties who may witness the abuse, but not report the abuse or who may not take steps to protect the elder.
- The fourth challenge is that of collecting and storing data that would impact on follow up strategies and future planning, on the administrative and legislative level.
- The fifth challenge is the development and implementation of continuing training and education of the public on aging issues.
- The sixth challenge is making the Court accessible, friendly, accommodating of physical impairments, and doing the necessary infrastructure planning to implement the plan

## RECOMMENDATIONS:

The federal government can facilitate the sustainability and replication of models, such as that of Cook County, as follows:

1. Intervene and assist courts to devise a process for the collection of research and administrative data. This would include development of performance and evaluation standards. There is a critical need to assess the effectiveness of interventions and treatment.
2. Funding to provide comprehensive training of judges, court personnel, forensic accountants and geriatric experts. There should also be funding for training material(s), trainers, training programs geared specifically toward lay and professional fiduciaries and elder mediation programs.
3. Funding to staff and maintain elder justice and forensic centers would enhance the prevention of elderly exploitation.
4. Funding for audio/visual equipment in the courtrooms and other courtroom modifications to better accommodate the elderly.
5. Funding for transportation to facilitate court appearances and/or hearings in nursing facilities, homes or via teleconference.
6. Promote legislation providing for the expansion of mandatory reporting requirements, as well as stronger penalties for non-reporting of elder abuse, neglect, and financial exploitation.

## CONCLUSION

Elder courts and centers are essential to the present and future well-being of the elderly when interacting with our legal system. A combination of dedicated and knowledgeable elder law judges and a supportive elder justice center offer the promise of swift and more lasting resolutions to elder abuse, neglect and financial exploitation. The growth of the elderly population, with increasing wealth and issues of diminished mental capacity, along with the economic downturn, have brought about new causes of action and greater use of our legal system.<sup>x</sup> These expanded demands require solutions beyond the traditional.

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<sup>i</sup> Vincent, Grayson K. and Velkoff, Victoria A., The Next Four Decades, the Older Population in the United States: 2010 to 2050, Current Population Reports, P25-1138, U.S. Census Bureau, Washington, D.C. (2010).

<sup>ii</sup> Fowles, Donald G. and Greenberg, Saadia, A Profile of Older Americans: 2011, Administration on Aging (AoA), U.S. Department of Health and Human Services, 2011.

<sup>iii</sup> *Id.*

<sup>iv</sup> Cook County, Illinois United States Census Bureau Statistics, available at <http://quickfacts.census.gov/qfd/states/17/17031.html>, last accessed October 24, 2012.

<sup>v</sup> Financial Crimes Against the Elderly, Office of Community Oriented Policing Services, U.S. Department of Justice, available at <http://www.cops.usdoj.gov/default.asp?Item=1047>, last accessed October 29, 2012.

<sup>vi</sup> Stiegel, J.D., Lori, A Multi-Site Assessment of Five Court-Focused Elder Abuse Initiatives, American Bar Association's Commission on Law and Aging (2011).

<sup>vii</sup> Aprile II, J. Vincent, Criminal Justice Matters: Defending the Elderly, *Criminal Justice*, spring 2012 (27:1).

<sup>viii</sup> Illinois Elder Abuse and Neglect Act, 320 ILCS 20/; Illinois Power of Attorney Act, 755 ILCS 45/.

<sup>ix</sup> Elder Law seminar, March 22-23, 2012, was formatted to provide guardianship, criminal, consumer, and special-topic tracks with a strong emphasis on ethics. In attendance were the chief judge of the Illinois Supreme Court, other state, county, and local officials as well as over 450 attendees.

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<sup>x</sup> Broken Trust: Elders, Family, and Finances, MetLife Mature Market Institute (March 2009).

**DISCLAIMER:**

This White Paper reflects the opinions and thoughts of the author as submitted to the Elder Justice Coordinating Council. It does not represent the interests or positions of the Elder Justice Coordinating Council nor any of the federal agencies that are members of the Council. The Council has reviewed this White Paper and has taken its contents under advisement, but does not endorse nor adopt it wholly or in part as representing the policies or positions of the federal government.