

Elder Investment Fraud and Financial Exploitation: Checklist for Lawyers



Screen all older clients about whether they are experiencing investment fraud and financial exploitation because:

- Victims often will not disclose their situation voluntarily but they will do so if asked;
- Establishing the practice of asking all clients reduces the stigma felt by the victim and helps you feel more comfortable about asking sensitive questions; and
- Questions that demonstrate an awareness of the issue indicate to clients that they can seek help from you in the future if they are not ready or able to do so now.

Before asking older clients about investment fraud and financial exploitation as part of their initial interview:

- Determine who your client is, if it is not obvious;
- Interview your client alone;
- Explain that you ask clients these questions because you need to know about all issues affecting their case to provide competent representation; and
- Explain your ethical and legal responsibilities and their potential implications if you practice in a state that mandates lawyers to report suspected financial exploitation to adult protective services.

Be aware of red flags in client history:

- Social isolation
- Bereavement
- Client's dependence on possible exploiter (for care, financial support, housing, companionship)
- Possible exploiter's dependence on client (for care, financial support, housing, companionship)
- Alcohol or drug abuse
- Depression or mental illness

Resources for additional information:

- Investor Protection Trust, www.investorprotection.org
- American Bar Association Commission on Law and Aging, www.americanbar.org/aging
- Maine Office of Securities, www.investors.maine.gov
- Maine Adult Protective Services, www.maine.gov/dhhs/oads/aps-guardianship
- Maine Association of Area Agencies on Aging (to find local aging and disability services), <http://maine4a.org>

Client Background:

Client Name:

See Possible Indicators on Next Page and Make Notes Here:

Attorney(s)/Interviewer(s)
Name(s):

Date, Time, and
Place of Interview:

If Another Person is Present During Interview, Describe
Who, Relationship to Client, and Why:

Possible Indicators

	Reported by Client	Reported by Other	Observed by Lawyer
Accompaniment by a stranger, family member or other person especially if they seem to prevent self-expression or decision-making, or to coerce decisions or transactions			
Accusations that caregivers, family members, or others are taking or mismanaging assets			
Banking activity that is erratic, uncharacteristic, or inconsistent with ability			
Carrying financial documents around in bags all the time			
Changes in appearance, grooming, hygiene, mood, patterns of eye contact			
Changes in property titles, will, or other documents, particularly if the person is confused and/or the documents favor new acquaintances			
Concern or confusion about missing funds or property			
Confusion about executing or having executed a power of attorney			
Expressions of fear, such as cringing or withdrawing			
Fearful of eviction, institutionalization, or abandonment if money or other assets are not given to caregiver or others			
Frequently forgetting or claiming to have forgotten ATM card, checkbook, deposit slips, or other items needed for financial transactions			
Hesitance to enter into or engage in conversation			
Implausible explanations about what is being done with money or property			
Lack of awareness or understanding of recently completed financial transactions			
Excessive contacts by telemarketers			
Facing eviction or discontinuation of utility services			
Failure to receive services for which payment has been made			
Forged or suspicious signature on documents			
Isolation by others			
Lack of care for the individual or residence when arrangements have been made for providing personal care or home maintenance services			
Lack of seemingly affordable necessities or amenities			
Missing documents related to accounts, pensions, stock, government payments, etc.			
New acquaintances, particularly those who have moved in to residence			
Signs of excessive or unauthorized trading of investment funds			
Suddenly stopped receiving mail, particularly bills			
Suspicious activity on credit card or other financial accounts			
Unsuitable investments due to level of risk or age of client			

Screening Questions should be direct, but not conclusive. Asking clients if they have been exploited or defrauded is not useful if clients do not understand or relate their experiences to those terms. Start with general questions and then turn some of the possible indicators into questions. Delve deeper if appropriate.

- Who makes decisions about your money and property? How is that going?
- How do you get cash when you need it? Any problems with that?
- Does anyone have access to your bank account? How is that going?
- Have you noticed any suspicious or unusual items on your bills?
- Have you noticed money missing from your bank accounts or checks missing from your checkbook?
- Are any of your belongings missing from your home?
- Have you signed documents that you did not understand or want to sign because someone encouraged, forced, or deceived you?
- If you have a power of attorney, does your agent do things that you do not want your agent to do?
- Does your paid caregiver make you pay extra for things that the caregiver is supposed to do or get for you anyway?
- Did you want that person to come with you to this appointment? Did that person insist that you come see me? Did that person take you to see other lawyers before me?
- Do you live with anyone? When did that person move in? Why? Whose name is on the title (lease)? Does that person pay a share of your mortgage (rent) and household expenses?