



THE ROLE OF CIVIL ATTORNEYS ON ELDER ABUSE MULTIDISCIPLINARY TEAMS

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Letter to the Elder Justice Community

Elder mistreatment is increasingly common nationwide, with 1 in 10 older adults victimized in their own homes each year. The cases are heartbreaking and complex, requiring collaborative solutions.

In response, the NYC Elder Abuse Center (NYCEAC), housed within Weill Cornell Medicine's Division of Geriatrics and Palliative Medicine, has focused on developing and implementing multidisciplinary teams (MDTs). MDTs represent a highly collaborative endeavor, regularly bringing together professionals from diverse fields and systems to respond to cases of elder mistreatment.

In 2010, NYCEAC launched an MDT in Brooklyn, and then in Manhattan in 2013. Now, with funding from the NYC Department for the Aging, the NYS Office for the Aging (NYSOFA), the NYS Office of Victim Services (OVS) and the NYS Legislature, these teams will be sustained and new teams will be launched and sustained in the Bronx, Queens and Staten Island. (Other MDTs are also supported in NYS with funding from OVS, NYOFA, and the NYS Legislature.)

To plan for the NYC expansion, NYCEAC sought to understand more about the role of key core members. The integral role of the civil attorney on MDTs has not yet been defined. This has resulted in variation across teams regarding the degree and nature of civil attorney involvement. Thus, it seemed important at this juncture to more fully explore the role of the civil attorney on elder abuse MDTs.

NYCEAC asked Candace Heisler, JD to write this document. Formerly a prosecutor in San Francisco, she is a highly regarded elder justice educator and esteemed thought leader. This project required her to review literature, have many focused conversations, and then skillfully transform what she heard into this succinct, compelling, informed document. (See Methods section – Appendix 1.) We are grateful to her for this impressive and important work.

Critical to the success of this undertaking is that this document be informed by civil attorneys and other professionals involved with elder abuse work and teams. We are thankful to those participating for their significant contributions. (See Acknowledgments section – Appendix 2.) This document could not have been accomplished without the generous support of the NYC Department for the Aging.

NYCEAC looks forward to continuing to work with the many dedicated professionals participating on MDTs and welcomes those who will soon be joining the new teams. Together we will continue to reduce the suffering of elder abuse victims, increase their safety and well-being, and in so doing, not only improve lives, but save them.

Sincerely,

Risa Breckman
Executive Director
NYC Elder Abuse Center
July 2018



Introduction & Background

A collaborative multidisciplinary response,¹ including the creation and operation of multidisciplinary teams, has long been considered a tenet of elder abuse intervention.² Effectively addressing elder abuse cases requires multifaceted and time-consuming approaches especially when response systems are often fragmented and underfunded.³ Multidisciplinary responses can increase awareness of the problem of elder abuse; offer holistic case assessment; result in more creative and comprehensive case plans and community action; avoid the dumping of cases on a single agency or system; increase member understanding of the roles and limitations of disciplines and systems; avoid inappropriate or duplicative responses; reduce case recidivism and turf disputes between agencies; improve access to information and service options; and enhance relations and communications among individuals from diverse disciplines and systems.⁴

There is an increasing body of literature about the role and benefits of elder abuse multidisciplinary teams (MDTs). There is a spectrum of activities with which MDTs engage. Some educate members and suggest steps a member may wish to take in a case.⁵ Other MDTs engage in case review, client assessment, enhancing documentation, court testimony, and consultation/training. Those teams with more resources are able to draw on an array of forensic assets including participation of geriatricians, neuropsychologists or geropsychiatrists, licensed mental health providers, detectives, forensic accountants, victim advocates and others. Team members may coordinate joint home visits where physical assessments and documentation, such as capacity assessments, and/or restraining orders can be concurrently completed.⁶

Participants on MDTs typically include representatives from government and nonprofit organizations providing services and assistance to older adults, and on some teams, representatives from financial institutions participate. Membership varies across teams, but members can include prosecutors, civil attorneys, adult protective services, law enforcement, medical (e.g., geriatricians and emergency department physicians), mental health practitioners (e.g., psychiatrists, geropsychiatrists and

¹ In NYC, the term *Enhanced MDT* or *E-MDT* refers to teams that have been “enhanced” with the participation of geropsychiatrists and forensic accountants. Enhancements could, however, include other things, like the use of additional specialists or the use of technology, like telehealth. “MDT” is the general term most commonly used for various teams that serve as a forum for people from different disciplines to address elder abuse together. Thus, “MDT” will be used in this document for various MDT models including NYCs E-MDTs.

² Wolf, R.S. & Pillemer, K. (1994) “What’s New in Elder Abuse Programming? Four Bright Ideas”, *The Gerontologist*, 34(1), 126-129.

³ Navarro, A.E., Wilber, K.H., Yonashiro, J.Y., & Homeier, D.C. (2010) Do We Really Need Another Meeting? Lessons from the Los Angeles Elder Abuse Forensic Center, *The Gerontologist*, 50(5), Practice Concepts, 702-711.

⁴ Anetzberger, G.J. (2011) “The Evolution of a Multidisciplinary Response to Elder Abuse, *Marquette Elder’s Advisor*, 13(1), 107-128, at p. 126.

⁵ Navarro, A.E., Wilber, K.H., Yonashiro, J.Y., & Homeier, D.C. (2010) Do We Really Need Another Meeting? Lessons from the Los Angeles Elder Abuse Forensic Center, *The Gerontologist*, 50(5), Practice Concepts, 702-711.

⁶ Navarro, A.E., Wysong, J., DeLiema, M., Schwartz, E.L., Nichol, M.B., Wilber, K.H. (Aug, 2016) “Inside the Black Box: The Case Review Process of an Elder Abuse Forensic Center”, *The Gerontologist*, 56(4), 772-781.



geropsychologists), civil legal services, domestic violence and victim assistance programs, forensic accountants and others. Some teams also include representation from the Long Term Care Ombudsman Program.

As MDTs are developed there is interest in understanding the roles of various professionals. Weill Cornell Medicine's New York City Elder Abuse Center (NYCEAC), along with its partners the New York State Office for the Aging and Lifespan of Greater Rochester, has written documents describing the roles of geriatric psychiatrists and forensic accountants. Recently, NYCEAC has produced a document focusing on the role of local prosecutors on MDTs.

This document adds to the body of information about specialists on MDTs by focusing on the role of civil attorneys and how their participation can advance the work and goals of MDTs and meet the complex needs of older adults whose matters are discussed at team meetings. The document addresses four main topics – and throughout, quotes from interviewees appear in italics:

- 1. The Importance of the Civil Attorney on MDTs**
- 2. Roles and Responsibilities of the Civil Attorney on an MDT**
- 3. Background and Expertise Needed to Fulfill These Roles and Responsibilities**
- 4. Utilizing One or More Civil Attorneys to Perform These Roles and Responsibilities on an MDT**

MDTs are a promising and evolving intervention. To date, the role of the civil legal attorney on MDTs has not been explored anywhere in the country. MDTs operate in different ways in such areas as the types of civil attorneys on their teams, their civil law expertise, number of civil attorneys, if funding is provided for civil attorney participants, and expectations of civil attorney participants. To fill this gap, NYCEAC sought to provide guidance to MDTs across New York City seeking to recruit and engage with civil attorneys. It is hoped that the information herein will also assist teams across New York State and the United States grappling with these same questions.

1. The Importance of the Civil Attorney on MDTs

Civil attorneys are not always represented on MDTs. A 2003 survey of MDTs found nearly half lacked participation by critical disciplines, including civil attorneys.⁷ This finding is unfortunate as there are important reasons to include civil attorneys on MDTs, including:

- “Civil attorneys are in a unique position to help and to minimize the toll (of elder abuse, neglect, and financial exploitation) by serving as members of multidisciplinary teams.... In addition to serving clients individually, attorneys can leverage their outreach through joining multidisciplinary teams”.⁸
- Civil attorneys “may provide free legal services under the auspices of legal aid agencies or other programs to people who are over age 60 or who have low incomes, work in private law firms and charge for their services, work in the private sector, or work for Federal, State, or local governmental agencies.”⁹
- In addition, interview comments on the importance of including civil attorneys on MDTs included:
 - *“Attorneys are “heard” when non-lawyers are not.*
 - *Attorneys can challenge other attorneys to act when appropriate and can recognize cases where no legal action is possible.*
 - *Civil attorneys challenge prosecutors in ways that other team members cannot, at the attorney-to-attorney level, sometimes leading to a previously unknown and beneficial outcome for the older victim.*

A. MEETING THE COMPLEX CIVIL LEGAL NEEDS OF OLDER VICTIMS AT MDTs

MDTs focus on cases involving older victims with multiple, layered, and diverse needs, including legal assistance. “The strength of the M-Team—essentially its ability to assess and intervene effectively in individual elder abuse situations—comes from the expertise and resources of its members. This means having the right representation of disciplines and service systems on the team, members who have the knowledge, experience and position within their organization to participate meaningfully in case reviews and provide or secure needed services for case recommendation implementation.”¹⁰

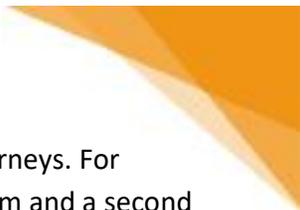
- *The MDT is the most useful meeting I attend for getting things done – the focus is on action.*

⁷ Teaster, P.B., Nerenberg, L., & Stansbury, K.L. (2003) A National Look at Elder Abuse Multidisciplinary Teams, *Journal of Elder Abuse & Neglect*, 15 (3/4), 91-107.

⁸ Morris, J.R. (2010) “The Bet Tzedek Legal Services Model: How a Legal Services Model Addresses Elder Abuse and Neglect, *Journal of Elder Abuse and Neglect*, 22(3/4), 275-280, at p. 276.

⁹ Stiegel LA. “Elder Abuse Victims’ Access to Justice: Roles of the Civil, Criminal, and Judicial Systems in Preventing, Detecting, and Remediating Elder Abuse”, in (X. Dong, Ed.) *Elder Abuse: Research, Practice and Policy*, Springer International Publishing, 2017, 343-362, at p. 34.

¹⁰ Anetzberger, G.J. (2017) “Elder Abuse Multidisciplinary Teams” (Ch. 19) in X. Dong (ed.) *Elder Abuse: Research, Practice and Policy*, Springer International Publishing, 417-432, at p. 423.



Left siloed, it is unlikely that programs will refer elder abuse cases to civil attorneys. For example, a survey of APS programs and administrators across the US and Guam and a second survey just of California APS found that APS programs were unlikely to refer cases to civil attorneys and especially to specific attorneys.¹¹ Reasons cited include possible conflicts of interest, a fear of showing a preference, potential liability if a “poor referral” is made, client confidentiality, and lack of attorneys with specific expertise.¹²

Involving civil attorneys in MDT discussions can help overcome such reluctance by clarifying the specific legal action that is needed, identifying potential no-cost legal services, pro bono or private attorneys with demonstrated expertise, and by marshalling the MDT process and member knowledge to develop case action steps APS and other members commit to follow.

- *MDTs help coordinate between civil and criminal justice systems and help social workers sort client needs and desires.*
- *APS and others do not understand trusts, title, etc., nor should they. By being on the team, they can bring in a document – the attorney can identify the legal issues and who should be contacted. Having a fundamental knowledge of how the local court operates, local practice, variations between counties, and attending court trainings, civil attorneys can use that knowledge to guide the team (e.g., the court in this county denies this kind of temporary order; this court wants this specific information before it will grant that relief.)*

The decision to refer to a civil attorney becomes a group decision rather than one made by an individual worker. And because a natural outcome of MDTs is trust of partner disciplines and development of strong relationships, there is an increased willingness to follow through on recommended action steps.

By themselves legal services are not enough to meet all of a client’s needs. The MDT provides access to other professionals. All members have direct contact with other team members so a civil attorney can call a police detective.

In addition, some legal service programs in New York City and elsewhere have added social workers and other providers to their staff creating an “interdisciplinary team within a law firm.”¹³ The benefit to the MDT is the ability to provide older victims of abuse “wrap around” rather than fragmented services.

¹¹ Health Benefits ABCs (March 2015) [2015 APS and Civil Litigation Survey—National](#), Prepared for California Advocates for Nursing Home Reform (CANHR) and in collaboration with National Adult Protective Services Association (NAPSA); Health Benefits ABCs (March 2015) [2015 APS and Civil Litigation Survey—California](#), Prepared for California Advocates for Nursing Home Reform (CANHR) and in collaboration with National Adult Protective Services Association (NAPSA).

¹² Health Benefits ABCs (March 2015) [2015 APS and Civil Litigation Survey—California](#), Prepared for California Advocates for Nursing Home Reform (CANHR) and in collaboration with National Adult Protective Services Association (NAPSA), at p. 6.

¹³ Morris, J.R. (2010) “The Bet Tzedek Legal Services Model: How a Legal Services Model Addresses Elder Abuse and Neglect, *Journal of Elder Abuse and Neglect*, 22(3/4), 275-280, at p. 279-280.



B. TYPES OF CIVIL ATTORNEYS PARTICIPATING ON MDTs

Some MDTs are primarily focused on building criminal cases and addressing a few civil issues, most often the victim’s need for a guardianship/conservatorship. Other teams, like those in New York City, handle “complex cases” which may include criminal cases but even more often raise multiple civil legal questions. The interviews conducted for this document revealed the types of civil attorneys utilized on MDTs and the variety of approaches to involving them.

- **Civil Attorneys from Governmental Agencies**

Some teams only include civil attorneys who work in a governmental agency; others include attorneys from governmental agencies and non-profit legal services, while a third group has added private civil attorneys to participating civil attorneys. “Some teams deny membership to certain groups. To avoid potential conflicts of interest, for example, some do not permit professionals in private practice or proprietary organizations to join. Others require these entities to sign statements promising that they will not solicit for paid services clients whose cases are discussed, or, in any way, use their participation for financial gain. A few only allow public agencies to join.¹⁴

Teams that only included governmental attorneys on their MDT membership had strong reasons for their choice including avoiding any appearance of favoritism when including attorneys who represent individual clients, negative history with civil attorneys in private practice in their community, and experiences with private attorneys who have used their role on the team to tell governmental officials how to discharge their duties accompanied by direct or more subtle threats or actions to expose the agencies if they did not conform. Proponents also believe that if all members are part of the same governmental entity there is legal governmental immunity for actions and greater ability to share otherwise confidential information.

Some of those interviewed had very different opinions and expressed concerns that governmental attorneys, as representatives of their employing agencies, are expected to protect the agency and avoid potential situations that could result in increased staff workload or liability. Some opined that governmental attorneys often are not expert in the wide array of possible civil causes of action and laws that can assist a victim of elder abuse, that they will naturally focus on remedies they can effect such as guardianship even when less restrictive options might be otherwise available, and may decline to review cases beyond their expertise or suggest civil options which turn out to be inappropriate or ineffective for a victim.

¹⁴ Nerenberg, L. (September 2003) “Multidisciplinary Elder Abuse Prevention Teams: A New Generation”, National Committee for the Prevention of Elder Abuse, at p. 6, available at http://www.vdh.virginia.gov/content/uploads/sites/18/2016/04/EldAbs_complete.pdf



- **Civil Attorneys from Nonprofit Legal Services**

Considerations when civil attorneys are from a non-profit legal services program include recognition that their sources of funding may dictate and limit what the agency can do, the kinds of cases they can take, and who they are authorized to serve, most often low income elders. Many of their eligibility criteria are found in the Older Americans Act, Title IIIB, Supportive Services Program. They typically cannot represent older persons who have more financial resources than their eligibility threshold even if the person cannot afford to hire his or her private attorney and those with resources to hire their own counsel as well as older adults who do not have decision-making capacity to enter into an attorney-client relationship.

Services available through legal services programs across the US are highly variable as well. Some offices handle a wide array of case types with specialized teams each with particular expertise and offer both legal and supportive social services to clients. More commonly, legal services civil attorneys are generalists who handle certain kinds of matters. Some have developed referral panels of “vetted” attorneys for older adults who do not qualify for services or need legal assistance on matters not handled by the legal services program while others refer older adults to their local Bar Association.

- **Civil Attorneys in Private Practice**

There were differing opinions about inclusion of civil attorneys in private practice on MDTs. Those interviewed highlighted the variability across teams on the availability of civil attorneys able to handle a range of common issues and had found that certain kinds of cases were beyond the expertise of governmental attorneys or nonprofit legal services programs. One such area is guardianship since New York State does not have a public guardianship system. In some communities guardianship cases on behalf of low-income older adults are handled by a non-profit legal services provider while in others there are no legal services providers available to bring guardianship proceedings. But including attorneys in private practice on MDTs may be controversial. Many of those interviewed were concerned with possible private practice attorney expectations that participation on the MDT will lead to client referrals for older adults who are able to pay attorney fees generating “high dollar value” cases, the appearance that the MDT was or MDT members were favoring a particular attorney over others, or that the agency could be sued if the client was dissatisfied with the private attorney’s representation.

Notwithstanding their differences, many MDTs have some civil legal representation. Even teams focused on enhancing prosecution include members able to provide some limited civil legal expertise. There were many comments about the critical need to include civil attorneys on MDTs. “As stated during the Elder Justice Coordinating Council meeting and at other times,



‘we can’t prosecute our way out of this.’ Efforts to support prosecution need to be complemented by efforts to support involvement of the civil justice system.”¹⁵

Many of those interviewed highlighted the need to involve civil attorneys. Comments included:

- *Historically, teams focused on criminal cases, but most cases were not criminal or even if they were, the victim did not want the case in the criminal justice system or even if the victim did, the criminal justice system could not help the victim regain their life. And, elder abuse agencies like Adult Protective Services or Area Agencies on Aging and health care knew very little about legal rights and remedies, so they were encountering civil legal situations and not recognizing them.*
- *Initially our team was very hesitant to include civil attorneys out of concern they would participate for financial gain for themselves or their firms. For the first few meetings civil attorneys were not invited. It quickly became evident that cases referred to the MDT were not criminal cases, and some did not need conservatorships but the elder needed a civil attorney. A significant percentage of cases have civil aspects. (The team has since invited a comprehensive civil legal services program to join the MDT.)*

Team members, including criminal justice agency professionals, know little about legal rights and remedies, so many civil legal situations go unrecognized. A significant percentage of cases have civil aspects and without civil attorney involvement, critical civil remedies are not explored.

- *If there are no civil attorneys on team, the team loses valuable expertise: it cannot handle/analyze certain kinds of cases; the team over focuses on those remedies team members can provide with an over reliance on guardianship/conservatorship; members speak beyond their expertise; and members do not bring cases beyond team’s knowledge.*

Many remedies available through civil law are not available through a criminal prosecution. Teams need civil expertise to fully identify and utilize effective remedies.

- *Many things civil elder law attorneys do as bread and butter can be life changing for victimized elders.*

The differing perspectives identified through the interviews for this document highlight the careful planning that should be undertaken when deciding how to include civil attorneys in MDTs. The solution will vary across communities and regions so what works in a well-resourced urban area may not make sense in a rural upstate area. A community must explore what local civil legal services exist, specific expertise of those attorneys in their practice area and about elder abuse, who they can serve, their willingness and availability to participate in an MDT, and the kinds of civil legal matters that commonly arise in complex elder abuse situations. If there are gaps, a community should consider what other sources of critical civil legal expertise may be helpful.

¹⁵ Stiegel LA. White paper on the judicial system for the elder justice coordinating council, [at p. 3](#). Prepared for the Elder Justice Coordinating Council meeting, Washington DC, 11 Oct 2012, available at http://www.americanbar.org/groups/law_aging/resources/elder_abuse.html



2. Roles and Responsibilities of the Civil Attorney on an MDT

The roles of the civil attorney fall into two categories: 1) at MDT meetings; and 2) case referrals.

- 1. MDT Meetings:** At the MDT meeting the attorney participates in case consultations by discussing if there are potential civil actions and remedies, reviewing documents, identifying additional information that may be needed to decide how to proceed, answering questions about the law and legal processes, helping develop action steps for the case, and suggesting the legal expertise or type of counsel needed to handle the case. The civil attorney may or may not have an expectation of receiving a case referral, depending on MDT practices. In this function the attorney is part of the MDT and typically does not have a client. In some situations the civil attorney may already represent the older adult or a family member in which case the attorney can bring a case to the MDT for evaluation but must have client permission to discuss the case.
- 2. Case Referrals:** The second function is handling case referrals in order to effectuate recommended civil legal action steps from the MDT. In this function the civil attorney has a client, usually the older adult who has been victimized, but in some cases the attorney may represent the agency applying for guardianship/conservatorship or the guardian, successor trustee, or non-offending family member seeking legal representation. In order for an attorney to represent a client, the attorney must assure that the potential client has sufficient capacity to enter into a legal representation agreement and direct counsel. If a legal services provider, the attorney must also assess if the client meets eligibility criteria such as age, income, and type of legal claim.

It is important that the MDT determine and effectively communicate their expectations about the role and involvement of civil attorneys who are invited to participate on the MDT. Currently this question is largely unexplored. Every MDT is advised to independently define the role of civil attorneys. Are civil attorneys limited to providing general legal advice and educating team members on the law or do they involve themselves in actual cases and offer legal representation? Or is it both?

In addition, the team should decide in advance how it will handle case referrals. Important questions to consider include:

- Once an action plan is developed that includes a recommended civil legal response, what happens?
- How is the legal provider identified?
- Who contacts the older adult—the legal services provider or the agency that brought the case to the MDT?
- Who is the client—is it the MDT or the older victim of abuse?

- 
- Does the referring agency “recommend” one attorney to the older adult or have the older client choose from a small list of “vetted” attorneys?
 - *If the latter, how are attorneys “vetted”?*
 - Are practices different if client has the financial resources to hire his or her own attorney or can pay a reduced fee?
 - When are pro bono private attorneys recommended?
 - *What is the source and expertise of pro bono lawyers?*

Those interviewed expressed concern that a direct referral from the MDT to a particular attorney could give rise to civil liability if the elder is dissatisfied with the representation or if the civil defendant prevails. Most preferred having the MDT member agency that presented the case contact the client to see if the person is willing to accept legal services. If consent is given, some felt the older adult should initiate contact with the legal services provider and arrange to meet with the attorney. Others were willing to have the attorney contact the consenting older client to determine if an attorney-client relationship could and would be developed. In a few instances the MDT Coordinator has contacted the older victim and arranged for a designated civil legal provider to contact the client.

Some legal services providers have developed vetted lists of attorneys with specific expertise. In situations in which a conflict of interest has arisen, when the legal services provider cannot meet the older client’s legal needs, or the older adult is not eligible for legal services program services, the older adult is offered a referral list or a list of at least three attorneys with expertise to handle the legal issues. None of those interviewed referred the older person to just one attorney. Some of those interviewed did not refer individuals to specific attorneys or legal services providers but only to the local bar association lawyer referral panels.

3. Background and Expertise Needed to Fulfill These Roles and Responsibilities

A. CRITICAL CIVIL ATTORNEY EXPERTISE FOR MDTs

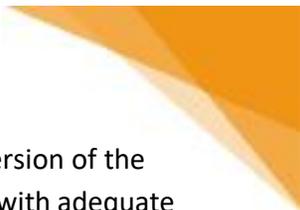
There was considerable agreement on the types of civil legal expertise most commonly needed in MDT cases. Even teams that are focused on developing criminal cases include civil attorneys who can handle guardianship/conservatorship¹⁶ matters. The teams that focused on criminal case building used member governmental agency attorneys for such cases.

Those interviewed frequently mentioned the need to have a civil attorney on the team who understands estate planning, capacity, and the courts, and who can help people locate counsel (e.g., successor trustee or non-offending child).

There was consensus that a wide array of civil case matters consistently arise at the MDT. Most involve lower-income older adults who can be served by legal services programs. Such matters include:

- Guardianships/conservatorships
- Housing issues, including landlord-tenant rights, evictions, avoiding homelessness, foreclosures
- Family law, including orders of protection and remotely accessing orders of protection, divorce, and annulment, spousal support
- State and federal benefits
- Health law including health care proxies, SSA appointment of representatives, advance directives, Medicaid asset protection, powers of attorney for health care, and “look back” periods
- Paid homecare issues including receiving adequate hours paid for by Medicaid, dealing with abusive, neglectful, or exploitative caregivers, and dealing with long term care vendors
- Property issues, including quieting title, recovery of property, deeds, property claims
- Consumer Protection, including restoration/repair of credit, work by unlicensed contractors, failure to deliver promised services, submitting regulatory reports
- Contracts, including failure to perform, unconscionable terms, return of payments, and contracts for long term care services
- Wills, including changing, voiding, or replacing following exploitation or abuse
- Patient’s rights, including right to refuse treatment, involuntary mental health interventions, and nursing home residents’ rights
- Court procedures and practices, emergency or bridging actions to protect a client while longer and slower proceedings are underway
- Capacity
- Immigration matters

¹⁶ Different states use the terms guardianship and conservatorship to mean the same thing—court appointment of a surrogate to manage certain aspects of an older or vulnerable adult’s life such as financial matters, health care decisions, etc. This document will use these terms interchangeably to refer to any such court authorization.



Less frequently mentioned were civil lawsuits for elder abuse, theft and conversion of the elder's assets, though such matters do arise and often involve elderly victims with adequate assets to hire their own counsel.

The interviews disclosed that in addition to subject matter expertise, civil attorneys advise on how to protect a case, including sources, evidence and information, the meaning of legal terminology, changes in law and procedure, and the practices and procedures of individual courts. They educate team members about their misconceptions about the law and available remedies. Civil attorneys help the MDT members understand legal procedures, rules, and due process requirements. They assess whether a proposed civil legal action is appropriate for the elder's needs and if better alternatives exist to protect the elder. They commonly review civil documents including powers of attorney, property documents, and guardianships and advise on the legal duties of fiduciaries and penalties for breaches of duty.



4. Utilizing One or More Civil Attorneys to Perform These Roles and Responsibilities on an MDT

“The need to be familiar with elder abuse laws may appear obvious, but some projects found that the attorneys brought on to help their clients were only experienced in one or two areas of the law (e.g., lending abuse or domestic violence) and knew little about other areas of elder abuse law.”¹⁷ Prosecutors, private attorneys and nonprofit attorneys all play unique and valuable roles in the legal systems. Collaboration and coordination lead to fewer missteps.

The breadth of civil legal issues is daunting making it is unlikely that any one attorney can know everything. Many legal issues recur while others arise less frequently. Meeting civil legal requires of older adults requires the consistent involvement of civil attorneys and because of the varied economic resources of those older adults, no single approach to providing access to legal services can be adequate. In some communities non-profit legal services programs may be small or not have funds to volunteer time to meet the needs of the team at all or without compensation. In short, some MDTs are adequately served by non-profit legal service programs while others will require the involvement of private pro bono or retained attorneys.

Interview comments mirrored these points. Many stated that it was unlikely that a single person would be expert in all of the legal issues raised at MDT meetings. Some pointed out the benefits of engaging with multiple civil attorneys with varied expertise. Some highlighted the benefits of having both legal services and private attorneys participate since each serves a different segment of the older population and bring different expertise.

- *It is helpful to have more than one civil attorney on the MDT with different expertise and it is valuable to get both legal services and a private attorney perspective. Having participation of both may change options and offer broader expertise.*

Legal service programs assist lower income older adults and are expert at issues their clients often experience while private attorneys more often deal with estate planning and issues related to personal wealth. The value of having both on an MDT is a broader perspective and expertise and identification of different civil options. It was also highlighted that because New York does not have a public guardian system, and because low income guardianship services are not available throughout the state,¹⁸ it often falls to private attorneys to apply for guardianship protections. Some teams may only be able to obtain help with guardianship issues and laws by engaging with private attorneys.

Having MDTs with attorney members from a blend of non-profit, governmental agencies, and appropriate private attorneys offers flexibility in meeting the needs of older victims whose matters are brought to the MDT. In some communities, non-profits may be small or not have

¹⁷ Reeves, S. & Wysong, J. (2010) “Strategies to Address Financial Abuse”, *Journal of Elder Abuse and Neglect*, 22 (3/4), 328-334, at p. 331.

¹⁸ In New York City if no one else is available to serve as guardian, Adult Protective Services will petition for guardianship and a government attorney from the Human Resource Administration’s Office of Legal Affairs will approve or deny the APS petition and if they approve will handle the court proceedings. Both APS and the Office of Legal Affairs participate in the Manhattan and Brooklyn MDT meetings.



funds to volunteer time to meet all of team’s needs without compensation. Non-profits may be able to fund additional work on behalf of older clients through grants, fellowships in which attorneys are funded and placed in non-profit organizations to support additional legal services, and recruitment of pro bono attorneys to accept cases in return for continuing legal education (CLE) credits.

Those interviewed agreed that there is no single way to ensure that critical civil legal expertise is available to every team. The process will include surveying local sources of civil counsel including non-profit legal services, governmental agency and pro-bono attorneys and firms, and local bar and elder law associations to identify what already exists. Local law schools may have or be willing to create legal clinics assist attorneys working with MDTs in interviewing clients and witnesses, locating documents, and preparing cases. Some communities have sought grants and explored innovative programs like the Equal Justice Works/AmeriCorp Elder Justice fellowships to help fund MDT work.¹⁹ Some teams may recruit civil attorneys to participate in every MDT or occasionally when cases with special or unique legal issues are reviewed. It may also be worth considering having teams consult with existing teams that have civil attorney involvement if local attorneys cannot be located to serve on the MDT. Such an option may be especially helpful in rural communities or in areas that are developing their MDTs.

Conclusion

Cases presented to MDTs are complex and multifaceted, often involving clients with differing levels of capacity with intersecting criminal, civil, and social services issues. Teams work to craft effective action plans which promote the safety, protection, and wellbeing of older adults who have been victimized. To work effectively, MDTs share a need to engage with civil attorneys to assess and consult on a wide array of legal matters, educate members on legal remedies, court practices and legal updates, and handle or refer cases to appropriate legal services providers who may be based in governmental agencies, non-profit legal services programs, and private law firms. As one interviewee stated, “Legal services programs have a unique opportunity to prevent and remedy elder abuse.” That is equally true of civil attorneys from all types of practice settings who participate on MDTs.

¹⁹ See <http://www.equaljusticeworks.org/node/90280>.

Appendices





Appendix 1

METHODS

NYCEAC contracted with Candace Heisler, JD, an elder justice educator and thought leader, to conduct research for and write this document. The research involved reviewing literature and conducting interviews as described below.

NYCEAC's Executive Director, Risa Breckman, provided information on the organization's MDTs, including the history of its existing teams, differences across boroughs, possible difficulties in obtaining consistent participation of civil attorneys across teams, methods used to recruit civil attorney members, procedures to protect confidentiality and anticipate and prepare for attorney conflicts of interest, and the goal of providing guidance to new teams as they are formed.

Then, key topics the document would address were formulated:

1. Importance of the Civil Attorney on MDTs
2. Roles and Responsibilities of the Civil Attorney on an MDT
3. Background and Expertise Needed to Fulfill These Roles and Responsibilities
4. Utilizing One or More Civil Attorneys to Perform These Roles and Responsibilities on an MDT

Interviews were conducted with current and former members of the MDTs in Manhattan, Brooklyn, and Westchester, and Finger Lakes region, as well as members of MDTs operating within Forensic Centers in California and Texas. Interviews were also conducted with NYCEAC and Lifespan staff. And finally, interviews were conducted with national leaders who had worked with, studied, or had expertise with MDTs with a range of resources. (A list of those interviewed is in the Acknowledgements – Appendix 2.) Everyone who was interviewed was told that their names would be listed in this document but that their specific comments would not be attributed to them.

Three sets of questions were developed for these interviews: one for New York City Elder Abuse Center and key Lifespan staff and one for those attorneys and experts who were interviewed for this project. These interviews mostly were conducted by telephone with a few conducted in-person. Interviews typically lasted 45 to 60 minutes. Another set of questions were asked of NYCEAC's Manhattan and Brooklyn team members. Each lasted 30 minutes and were conducted at the end of a regularly scheduled MDT meeting.

- A. The following were the questions asked of NYCEAC's Brooklyn and Manhattan team members. Because of the number of participants and time constraints, only three questions were asked:
 1. What are the benefits and strengths of having civil attorneys on the E-MDT?
 2. What are the weaknesses?
 3. There are many civil legal issues that intersect with elder abuse. One attorney likely won't have knowledge in all areas. What are the areas of law that a civil legal attorney serving on a team needs to know to be most helpful to MDT discussions? How does a team obtain information on other topics?

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- B.** The following were the questions asked of NYCEAC and key Lifespan staff:
1. What is the role of civil legal attorneys on the team? What should it be?
 2. What are the current strengths of the civil legal representative on the team?
Weaknesses?
 3. Should more than one civil legal attorney serve on a team with the role of providing civil legal expertise? If so, under what circumstances should there be more than one of these attorneys?
 4. How should civil legal attorneys be recruited? What kind of a commitment is needed? What if any agencies or organizations should be consulted in selecting a civil legal representative?
 5. What should be done if the civil legal attorney cannot attend a meeting? Are there any procedures now in place for such an eventuality? What recommendations do you have?
 6. What specific expertise is needed from the civil legal attorney representative?
 7. Can you envision a situation in which the civil attorney could have a real or perceived conflict of interest in serving on the team? What would that look like? How could that problem be anticipated? Resolved?
 8. Does the civil legal attorney have a client when serving on the team?
 9. Are there benefits to paying the civil legal attorney for participating on the team? What does the payment cover? (What are you paying the civil legal person to do?)
 10. Would the civil legal person ever represent the subject of the team meeting (i.e., elder or vulnerable adult)? In what situations? Recommendations?
 11. Could that representation result in a real or perceived conflict of interest? Could the Team incur any liability if the representation resulted in a lawsuit for malpractice or negligent handling of a case?
- C.** The following were the questions asked of the attorneys and experts:
1. What is the role of civil legal attorneys on the team? What should it be?
 2. How should civil legal attorneys be recruited? What kind of a commitment is needed? What if any agencies or organizations should be consulted in selecting a civil legal representative?
 3. What specific expertise is needed from the civil legal attorney representative?
 4. Can you envision a situation in which the civil attorney could have a real or perceived conflict of interest in serving on the team? What would that look like? How could that problem be anticipated? Resolved?
 5. Does the civil legal attorney have a client when serving on the team?
 6. Should the civil attorney or his/her agency be paid for participating on the team? What does the payment cover?



7. Would the civil legal person ever represent the subject of the team meeting (i.e., elder or dependent adult)? In what situations?
8. Could that representation result in a real or perceived conflict of interest? Could the Team incur any liability if the representation resulted in a lawsuit for malpractice or negligent handling of a case?
9. Any recommendations to address question 8?
10. Any other ideas or thoughts?



Appendix 2

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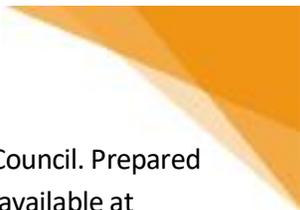
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Appendix 3

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Appendix 4

SELECTED WEBSITES

- American Bar Association Commission on Law and Aging
https://www.americanbar.org/groups/law_aging.html
- Center of Excellence in Elder Abuse and Neglect, University of California at Irvine
<http://www.centeronelderabuse.org/EAFC.asp>
- National Academy of Elder Law Attorneys (NAELA)
www.naela.org
- National Center on Elder Abuse (NCEA)
<https://ncea.ad.gov/>
- National Center on Law and Elder Rights (NCLER)
<https://ncler.ad.gov/>
- National Clearinghouse on Abuse in Later Life (NCALL) — See “collaborative effort”
www.ncall.us
- NYC Elder Abuse Center
<https://nyceac.org/clinical-services/mdts/>
- Secure Old Age (at University of Southern California), Keck School of Medicine (Research and publications on Health, Economic, and Social Services for Older Adults)
<http://secureoldage.usc.edu/>
- US Department of Justice Elder Justice Initiative
www.justice.gov/elderjustice/
- US Department of Health and Human Services, Administration for Community Living (Older Americans Act, Title IIIB)
<https://www.ad.gov/search/node?keys=OAA%2C+Title+IIIB>

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