

The Role of Attorneys on Multidisciplinary Teams

Multidisciplinary Teams

Elder mistreatment is a complex and nuanced phenomenon, crossing medical, legal, social, financial, and familial domains. Case response and redress often necessitate the expertise of inter-sectorial professionals. Elder abuse multidisciplinary teams (MDTs) are an effective, evidence-based intervention designed to facilitate case discussion, coordination, and resolution among professionals who might otherwise operate in silos. Through regular meetings and shared insights, participating MDT members collaboratively present the options for relief and identify best practice responses to optimize outcomes for elders who experience mistreatment. Team constituents vary based upon local community needs and available resources, but often include adult protective services, long-term care ombudsman, victim advocates, law enforcement agencies, geriatricians, psychologists, and attorneys.¹




Attorneys and Elder Mistreatment

Attorneys play pivotal and unique roles in the field of elder abuse. In their capacity as prosecutors, civil attorneys, or agency counsel, they can promote elder rights and safety for older people who have experienced abuse, neglect, or exploitation.



Prosecutors

 Prosecutors represent the public interest and have a duty to pursue justice on behalf of victims and the community at large. That means, promoting victim safety, protecting the public from harm, investigating allegations of abuse, holding offenders accountable, and attempting to make victims whole. In practice, prosecutors have discretion to evaluate whether a crime has been committed, whether

sufficient evidence exists to prosecute the offender and, if the facts and circumstances support prosecution, the appropriate charges to file or remedies to seek.² Prosecutors build and manage cases and work with victims through the judicial process, often in collaboration with interdisciplinary colleagues, as addressed below.



In cases of elder abuse, prosecutors may take a range of actions and interventions. Though each state's criminal codes, jurisdictional requirements, and regulatory structure may differ, city and/or county prosecutors may file various charges against alleged offenders. These include physical, sexual, financial, psychological abuse and/or criminal neglect, any related charges, and criminal enhancements. At the state level, attorneys general may initiate the investigation and prosecution of systemic abuse and neglect in long-term care facilities through their facility enforcement units. Depending upon the specifics of each case, prosecutors may request that a court issue a protective order to prevent an alleged offender's contact with the victim. They may move to freeze accounts holding allegedly stolen assets. Prosecutors may also seek court-ordered relief such as diversion, restitution, or rehabilitation, or extra-judicial remedies including restorative justice and other harm reduction alternatives.



While seeking to prevent mistreatment and ensure accountability, elder abuse prosecutors often have specialized knowledge in prosecuting crimes perpetrated against older people. This includes knowledge of older adults, the aging process, and geriatric conditions. It also embraces understanding of neurocognitive conditions and decision-making capacity, and their association with or impact on the elements of the charged offenses. Prosecutors must also be familiar with the forensic markers of abuse, for example, fractures, abrasions, and lacerations associated with intentional harms. They must also be versed in procedural mechanisms to support older victims, including depositions and conditional examinations to preserve testimony, courtroom accommodations, and motions to expedite hearings and trials.³



Cases of elder abuse are complex, frequently involving family harmers and complicated dynamics. Traditional prosecutorial options may not always meet older victims' wishes or needs. An older adult may not want to subject a trusted other to civil liability or criminal indictment. For example, if a trusted family caregiver upon whom the elder is dependent for care is prosecuted for financial abuse, found guilty, and incarcerated, the victim may be left homeless without needed care. A victim may prefer a less onerous remedy that both promotes their safety and mitigates exposure to future harm. While prosecutors retain charging discretion, recent literature suggests that prosecutors consider the facts and circumstances of each case, the causal factors that gave rise to the abuse, the preferences and values of the victim, and options for resolution that satisfy the imperatives of justice and the safety of the victim and community.⁴



Civil Legal Aid Attorneys

Civil attorneys, in particular, Legal Aid attorneys who provide free, legal services to eligible older adults, offer critical representation and guidance to help prevent abuse and ameliorate harms in their aftermath. As prevention, attorneys can assist older people with estate planning. This may include creating powers of attorney, in other words, appointing an agent to make financial decisions on their behalf if they are subsequently unable to do so. Or, attorneys can assist with preparing health care directives, tools that enable individuals to name a health care agent and document their health care preferences and medical decisions.⁵

Following abuse, Legal Aid attorneys can help older victims seek protection from perpetrators through various means, including court orders of protection to prevent offender contact, eviction processes to remove a harmer from the home, and litigation to recover stolen assets or property. Civil justice remedies may also embrace advocating on behalf of nursing home residents, defending residents against wrongful evictions, or representing them in guardianship proceedings.⁶

Counsel can also help older victims pursue justice by advising them on collateral issues that may surface in the wake of abuse.

Legal Aid attorneys may recognize hidden legal needs of low-income, limited English proficient elders who may be unable or less able to advocate for themselves. According to a justice gap study, most low-income older adults do not receive legal help for the majority of their civil legal needs.⁷ Civil attorneys may address pressing housing issues, consumer protection and contractual matters, public benefits, and referrals for mental health issues.⁸



Agency Counsel

In-house counsel for agencies that work with older adults, such Adult Protective Services (APS) and the public guardian, advise their client agencies on legal matters. APS counsel provide guidance on the investigation of, and intervention in, cases of elder and vulnerable adult abuse and neglect. They may assist with obtaining court orders of protection, advise on the propriety of emergency placements, and help ensure the rights of older victims.⁹ Counsel for the public guardian may review cases to assess whether the evidence presented supports a petition for guardianship or referral for less restrictive alternatives to better meet the older person's needs.

Attorney Collaboration with Multidisciplinary Partners

During MDT case review, attorneys can offer valuable insights to interdisciplinary colleagues on the legal rights and remedies available to older victims. These collaborations often facilitate efficient and effective investigations, with the goal of improving outcomes for older victims. Prosecutors can explain the relevant statutory provisions, elements of crimes, and indicators of abuse and neglect to MDT partners. They routinely work with law enforcement to interview the victim and witnesses, and offer guidance on the collection and preservation of material evidence.¹⁰ Legal Aid attorneys may address applicable civil legal protections and interventions, reviewing dispositive legal documents such as powers of attorney, wills, and trusts, while also suggesting options for safety and harm prevention. At meetings, agency counsel typically advise their organizational clients.

Examples of MDT collaborations

- Collaborate with APS caseworkers on investigations, interventions, and community resources
- Solicit assistance from long-term care ombudsmen in working with older residents
- Engage forensic accountants to analyze financial records, trace the flow of misappropriated funds, identify irregularities, and report findings
- Coordinate with victim advocates and community liaisons to facilitate trust and rapport with older adults and enhance what can be fraught legal exposure for older victims
- Enlist geriatricians to conduct medical record review and assess a victim's medical condition or abuse-inflicted injuries
- Consult gero-psychologists to assess a victim's decisional capacity, competency to testify, and navigate crossover medico-legal issues such as undue influence



Conclusion

The intersectoral case review process can offer all participant agencies a broader, holistic lens and opportunity to better serve older people living with abuse. Team-based case recommendations informed by the preferences of the older victim, the severity of harms, the underlying causal factors, the nature and quality of the victim-perpetrator relationship, and the situational safety needs may yield more meaningful and durable resolutions.

Attorneys coordinating with fellow MDT members may be able to design or suggest resonant person-centered interventions to redress harms and promote safety. For example, case planning, financial management, caregiver resources, diversion, and/or restorative justice may, depending upon the contextual factors presented, be reasonable alternatives to prosecution. Similarly, less restrictive civil measures may both help prevent abuse in later life and potentially avert the need for more onerous remedies like guardianships. Examples of civil intervention include powers of attorney, health care directives, and supported decision-making agreements. Civil relief may also, under appropriate circumstances, better align with an older person's preferences. MDTs provide a common forum to align attorneys and affiliated agencies in case consultation and coordinated remedies to advance elder justice and better outcomes for older people experiencing abuse.

Endnotes

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