

Accessing Records in Financial Exploitation Cases

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A Simple Plan



Overview of
Legal Framework

Panel Q&A

Legal Framework

Article 14: Criminal Law

- Knowingly, by deception or intimidation, to obtain or use older or disabled adult's funds, assets, or property with the intent to deprive the adult or benefit someone else
- Allows district attorney to freeze assets in some circumstances
- G.S. 14-112.2; 112.3



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Legal Framework



Article 6: Freeze and Inspect Order

- Reasonable cause to believe
 - Disabled adult lacks the capacity to consent, is in need of protective services and is being financially exploited by his caretaker; and
 - No other person is able or willing to arrange for protective services.
- Notice to caretaker and financial institution
- Expires after 10 days, unless extended by court
- G.S. 108A-106(f)

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Legal Framework

NEW Article 6A: Subpoena

- District court shall issue subpoena if
 - Investigating a credible report of financial exploitation
 - The financial records are needed in order to substantiate or evaluate the report
 - Time is of the essence in order to prevent further exploitation
- Allows the financial institution to challenge the subpoena
- Notice to customer required, but may be delayed

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Discussion

- ❖ How does DSS become involved?
- ❖ How did DSS access financial records before?
- ❖ Why would DSS use the subpoena?
- ❖ What happens after the court issues a subpoena?

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Resources

Online AOC training

<http://www.nccourts.org/Training/Default.asp>

US DOJ Elder Justice

<http://www.justice.gov/elderjustice/>

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Questions?

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