

STATEMENT OF
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First I want to thank Don Blandin and the Investor Protection Trust and Investor Protection Institute for their support and determination in addressing this problem. By way of background, our Commission on Law and Aging has been working within and beyond the American Bar Association on the law-related issues of aging for 35 years, long before the term elder law was even conceived. Our mission is to strengthen and secure the legal rights, dignity, autonomy, and quality of life of elders. We carry out this mission through research, policy development, technical assistance, advocacy, education, and training. Our Commission is comprised of 15 appointed experts in aging from multiple disciplines, including law, medicine, the social sciences, and academia. And our legal staff have decades of experience in this field.

The problem of elder investment fraud and financial exploitation is not new. What is new is the size and complexity of the problem, resulting in part from the aging of America and the greater number of elders facing varying levels of impaired capacity. It is further fueled by the increasingly varied forms of investment and property ownership, transfer mechanisms, and financial circumstances. The results of the survey released today suggest that elder exploitation, once considered an insular problem dealt with by specialists in law and social services is now a reality that permeates a broad spectrum of legal practices. The question is, are lawyers prepared sufficiently to deal with it?

Our work on elder financial exploitation originally focused on tracking and refining state laws that focused on abuse and exploitation of elders and on issues of legal capacity. Along with that, we targeted specialists in the field for training – elder law attorneys and social services and health professionals who served older persons. These target groups needed to understand legal tools to prevent or remedy financial exploitation. But over time, it has become clear that this is a critical issue for everyone, not just specialists. It does not matter whether a lawyer practices family law, trust and estate law, real estate law, business law, tax

law, tort law, or has a general practice, he or she is more likely than ever before to encounter elders who are at risk of or are already victims of financial exploitation and investment fraud. Unfortunately, most lawyers are not trained to spot it or respond to it, so they may be blind to it happening under their noses and may even be unwittingly complicit in enabling exploitation. Fortunately, we have a way to reach those lawyers, because all these types of lawyers are part of the nearly 400,000 members of the American Bar Association. So we are well-suited to implement the EIFFE Prevention Program targeting the legal profession.

From the perspective of our Commission, there is a fundamental ethical imperative for lawyers to seek training. The Model Rules of Professional Conduct for lawyers demand competency in representation (1.1); awareness of when protective action may be appropriate (1.14); and where the lawyer is representing a fiduciary (such as an agent under a power of attorney, or a trustee, or guardian), the ethical rules acknowledge that the lawyer may be charged with special obligations in ensuring the interests of beneficiaries (1.2 Comment).

So, the world has changed and our strategy has evolved too. No one can address this problem alone. Partnerships are key, and that is why we are very excited about this partnership between the ABA Commission and the Investor Protection Trust and Investor Protection Institute. But I will stop here because Lori Stiegel will tell you about the details of that partnership. Thank you.