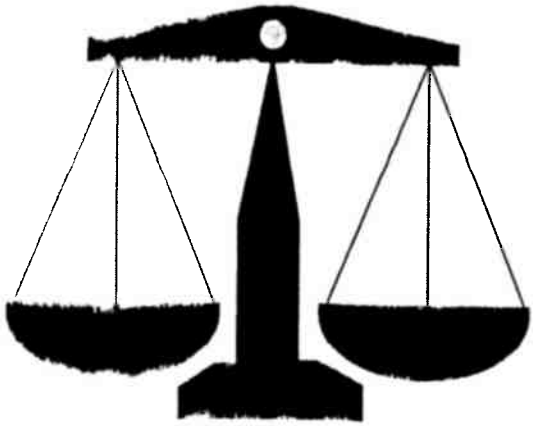
ELDER FRAUD AND FINANCIAL EXPLOITATION

Adult Protective Services
Adult Guardianship and Conservatorship
Office of Elder Fraud & Assistance



Presented by
Susan Spriggs, APS
Robin Fowler, AGO
Scott Sterling, EFA

ADULT PROTECTIVE SERVICES

- In 1983, the state enacted statutes providing for the protection of the elderly.
- In 1988, the legislature enacted statutes providing for the protection of disabled individuals.
- In 1994, the statutes were combined, and the protection of elderly and disabled persons are now defined as "vulnerable adults."

- APS helps prevent or stop harm from occurring to vulnerable adults.
- Vulnerable adults have a physical or mental impairment or condition that prevents them from protecting themselves or from seeking help from someone else.
- Alaska law defines vulnerable adults to include adults 18 years of age or older, not just the elderly.

INVESTIGATIONS

- Abandonment
- Abuse (physical, mental or sexual)
- Exploitation (financial)
- Neglect
- Self-neglect

FINANCIAL EXPLOITATION

- 75% of the nation's consumer wealth is held by people aged 50 or older.
- According to a survey done by the Investor Protection Trust, a nonprofit education organization, one in five Americans, over the age of 65 (approx. 7.3 seniors) has been victimized by a financial swindle.
- Estimated 2.6 billion dollars was stolen from seniors in 2009.
- For every case of elder fraud reported, an estimated four or more go unreported.

SIGNS OF FINANCIAL ABUSE

- Lifestyle not consistent with income/assets
- Unexplained or sudden inability to pay bills/food
- Fear or anxiety when discussing finances
- Unprecedented or unusual transfer of assets from the adult to another person
- Extraordinary/unusual interest by family members' in the adult's assets
- Abrupt changes in a will or other financial document (POAs, mortgages, bank accounts)
- Unexplained disappearance of funds or possessions

- Discovery of the elder's signature being forged for financial transactions, titles or other possessions
- An elder having no concept of what is going on because they have recently turned their finances to someone else to "help them."

PRESENT COMMON SCAMS

- Charity (local, national, international)
- Counterfeit cashier's check
- Foreign lotteries
- Ponzi scheme investments
- Lottery scheme
- Mortgages
- Romance
- Telemarketing
- Work from home scheme

RED FLAGS

- Mail piled up, unpaid bills
- Excitement about winning the lottery or big prize
- New companion, advisor, or POA
- Fearful, distressed or depressed
- Elder was asked to sign blank paperwork
- Missing checks from the checking account or wrote unusual checks
- Elder complains they cannot get a hold of the person handling their investments or money
- Elder has lost money in other scams in the past

APS REPORT OF HARM

- Central Intake: 800-478-9996
- Determine the priority and arrange meeting with alleged vulnerable adult.
- Gather background information (family, friends, doctors)
- Substantiate or unsubstantiated the allegations
- Refer report of harm to Attorney General's Office for a guardianship and/or conservatorship petition.
- Refer case to Office of Elder Fraud & Assistance
- Refer case to FBI ($500,000 minimum)

ADULT GUARDIANSHIP

- **Legal relationship that authorizes one person to become a surrogate decision-maker for another.**

GUARDIANSHIP

- Housing
- Medical
- Legal
- Services (e.g. entitlements & benefits)
- Other important personal decisions for an incapacitated person
- Financial (conservatorship)

TYPES OF GUARDIANSHIP

- **AS 13.26.005**
- Full Guardian: Same powers and duties respecting the ward that a parent has respecting a minor child except that the guardian is not liable for the care and maintenance of the ward and is not liable solely by reason of the guardianship, to a person who is harmed by the acts of a ward.
- Partial Guardian: possesses fewer than all of the legal duties and powers of full guardian; only those specifically enumerated by court order.

REASONS FOR GUARDIANSHIP

Due to mental incapacity:

- Incapacitated person: ability to receive and evaluate information or to communicate decisions is impaired for reasons other than minority; lacks ability to provide the essential requirements for person's physical health or safety without court-ordered assistance. *AS 13.26.005(5)*.
- A legal not a medical decision, based upon a demonstration of management insufficiencies over time in the area of person or estate.

- Essential requirements for physical health or safety: the health care, food, shelter, clothing, personal hygiene, and protection without which serious physical injury or illness is more likely than not to occur.

  AS 13.26.005(2).

- The "protection" may include exploitation, abuse or neglect.

CAUSES OF INCAPACITY

May be . . .

- Developmental disability
- Mental retardation
- Mental illness
- Head injury
- Dementia
- Substance abuse or alcoholism*
- Acute medical condition

CONSERVATORSHIP

Obtaining financial benefits

- Financial exploitation
- Obtaining financial benefits
- Collecting and receiving income
- Paying bills
- Inventorying assets
- Taxes

NOTE: Full guardianship includes conservatorship.

REASONS FOR CONSERVATORSHIP

2 Prongs: *AS 13.26.165*

- (A) the person is unable to manage the person's property and affairs effectively for reasons . . . <u>and</u>
- (B) the person has property which will be wasted or dissipated unless proper management is provided, or that funds are needed for support/care/welfare and person is unable to secure necessary benefits.

May include but not limited to:

- Financial exploitation
- Mental illness
- Mental deficiency
- Physical illness or disability
- Advanced age*
- Chronic use of drugs
- Chronic intoxication
- Confinement

ALTERNATIVES

The court must consider appropriate <u>less restrictive alternatives</u>. These may include:

- Representative Payee
- Power of Attorney
- Bill paying services
- Advance Directives

EMERGENCY GUARDIANSHIP

- Must be a true emergency - guardianship is immediately necessary to protect the respondent from serious injury, illness, disease or protection.
- Petitioner must file an emergency petition in addition to the standard petition.
- Court hearing must be held within 72 hours of the filing of the petitions.

FAMILY GUARDIAN PROGRAM

www.state.ak.us/guardianship

or

269-3525

(message line)

OFFICE OF ELDER FRAUD & ASSISTANCE

- The mission of the office is the investigate claims regarding the financial exploitation of Alaskans 60 and older, and seek civil remedies on behalf of elders unable to bring a complaint without assistance.
- AS 44.21.415

GOAL

- To ensure that every elder victim of financial exploitation who wants assistance (1) receives it from existing sources, and (2) where other assistance is unavailable, to provide individual civil representation.

WHO ARE THE PERPETRATORS?

- 60.4% of the perpetrators are the adult children of the victim
- Approximately 45% of the perpetrators were 40 or younger, 39.5% were between 41 and 59

INVESTIGATIONS

- Elder Fraud and Assistance Procedures
- Step 1: Intake. Determine probable cause for financial exploitation claims and eligibilty of elder for services.
- Step 2: Investigation. Subpoena financial records, interview witnesses and obtain evidence.
- Step 3: Disposition. Negotiate or litigate for final resolution of claims.

EXAMPLES

1. *Mr. Henry*

   This case involves financial exploitation from an international lottery/investment scheme

2. *Mr. Brown (State v. Smith, et al.)*

   This case involves financial exploitation from a family member.

REPORT of HARM for the PROTECTION of VULNERABLE ADULTS

In Compliance with Alaska Statute 47.24.010

Central Intake – Reporting
Toll Free: 1-800-478-9996 • Anchorage: (907) 269-3666 • Fax: (907) 269-3648

Complete as Much Information as Possible

Date of Report: 2/21/2009

Vulnerable Adult Information
Last Name: Smith First Name: Michael Middle Initial: L.
Date of Birth: 9/5/1929 Age: 78 years Gender (check one): Male: ☒ Female:
Street Address: McKinley Center; 1510 19th Avenue Apartment:
City: Anchorage Zip Code: 99701
Phone Number: 452-5100
Vulnerable Adult Resides with: Resident of a long term care facility – Denali Center

DESCRIBE LOCATION, IF NECESSARY, OF VULNERABLE ADULT: Adult was admitted to Denali Center for long term, skilled nursing following strokes.

Reporter Information
Your Name: John Q. Public Your Phone Number: 458-5100
Your Agency Name: McKinley Center
Your Address: 1510 19th Avenue, Anchorage, Alaska 99701
Your Occupation: Case Manager/Social Worker
Has a Report Been Made to the Police? YES: ☐ NO: ☒
If yes, to what Agency?
Your Relationship to the Vulnerable Adult: Case Manager/Social Worker

OTHER PERSONS HAVING INFORMATION:

Name and Phone Number of Person: Jennifer Smith (POA)
Name and Phone Number of Person:

Name and Phone Number of Person: XXX-XXXX
Name and Phone Number of Person:

DESCRIBE VULNERABLE ADULT'S PHYSICAL AND MENTAL CONDITION / IMPAIRMENTS, IF ANY: Cardio-Vascular accident with ride side weakness with expressive aphasia which limits ability to communicate

DESCRIBE PROBLEM SITUATION (USE ADDITIONAL PAPER IF NECESSARY): Despite conversation with the business office and previous case manager, John Q. Public, the adult's Power of Attorney has not managed the adult's financial obligations for his care at Denali Center. The adult is currently in arrears for his cost of care in the amount of $18,183.00. The adult is required to pay a pro rata share of his disposable income each month as his co-pay from his benefits which are directly deposited to his bank account each month from social security benefits. This has not been done. The adult is at risk of losing his placement at Denali Center for lack of payment. The adult's monthly obligation to Denali Center is $1,328.00.

Adult Protective Services is authorized by law to designate other agencies and providers to deliver supportive and protective services to vulnerable adults. A.S. 47/24.011

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

IN THE MATTER OF THE PROTECTIVE PROCEEDING OF: MICHAEL L. SMITH, DOB: 9/5/1929 Respondent.	)

Case No. 3AN-10- 00228PR

EMERGENCY PETITION FOR APPOINTMENT OF TEMPORARY GUARDIAN WITH CONSERVATORSHIP POWERS (AS 13.26.140)

[This form may be filed only if the PG-100 Petition is also filed.]

1. Petitioner: Susan Spriggs
Senior and Disabilities Services
Office of Adult Protective Services
751 Old Richardson Hwy., Suite 100 A
Fairbanks, Alaska 99701-7802
Phone: (907) 374-3749
Fax: (907) 451-5046

Relationship to Respondent: Adult Protective Services

2. A Petition for Appointment of a Guardian for the above-named respondent has been filed, but a guardian has not yet been appointed.

3. Respondent is now located at: McKinley Center, 1510 19th Avenue, Anchorage, Alaska 99701.
Phone: (907) 452-5151
Residence Address: McKinley Center, 1510 19th Avenue, Anchorage, Alaska 99701.
Day time Phone: (907) 452-5151
Social Security No.: xxx-xx-xxx

4. I believe the respondent needs the following emergency services to protect him against serious injury, illness or disease: Respondent is a 78 year old male with a history of strokes which resulted in significant right side weakness and expressive

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FAIRBANKS, ALASKA 99701
PHONE: (907) 451-2811
FAX: (907) 451-2846

aphasia which limits his ability to communicate. He has been a resident of McKinley Center since October. 2007. Jennifer Smith, the granddaughter of Respondent holds his power of attorney and makes his decisions. However, there has recently been an investigation for mortgage fraud of which Jennifer was the alleged perpetrator, having taken mortgages in Respondent's name. she has also collected his assets and failed to pay for his cost of care at McKinley Center. There is currently an outstanding balance due of $19,050.32. Respondent has a monthly income of approximately $1,325.00. Of that he is required to pay $206.25 for insurance premiums, and $948.75 for his cost of care. Respondent also has real estate that is being mishandled. The financial aspects of this matter have been turned over to Elder Fraud and Assistance for investigation and/or prosecution. The power of attorney issued to Jennifer Smith needs to be voided and Respondent's cost of care paid from her monthly income.

5. Respondent is not capable of procuring the necessary services because: Respondent has no means or mental ability to obtain housing, benefits and other medical services without assistance and guidance. Further, arrangements need to be made immediately to secure respondent's housing and payment options.

6. Therefore, I request that the court appoint a temporary guardian to authorize the necessary services. I understand that the temporary guardian's appointment will expire when a regular (full or partial) guardian is appointed or when the petition for appointment of a guardian is dismissed.

7. I recommend that the following person(s) be appointed Temporary Guardian with conservator powers:

Office of Public Advocacy

This person's relationship to respondent is: Public Guardian.

Date

Signature of Petitioner or Petitioner's Attorney
Robin S. Fowler
ASB# 0711067
Assistant Attorney General

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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

IN THE MATTER OF THE PROTECTIVE PROCEEDING OF:	)
	)
MICHAEL L. SMITH, DOB: 9/5/1929	) Petition for Appointment of A) X Guardian X Conservator) (AS 13.26.105) (AS 13.26.180)
Respondent.	) For an Adult
Case No. 3AN-10- 00228PR	)

PETITION FOR APPOINTMENT OF GUARDIAN WITH CONSERVATORSHIP POWERS OF AN ADULT RESPONDENT

1. Petitioner asks the court to appoint the following for the above-named respondent:

X a guardian because the respondent is incapacitated as defined in Alaska Statute 13.26.005(4). [Respondent's ability to receive and evaluate information or to communicate decisions is impaired to the extent that he lacks the ability to provide the essential requirements for his physical health or safety without court-ordered assistance.]

X with conservatorship powers because the respondent is:
(1) unable to manage his property and affairs effectively and
(2) has property that will be wasted or dissipated unless proper management is provided (or needs the management of an entity with conservatorship powers in order to receive proper financial support).

2. Petitioner: Susan Spriggs
Senior and Disabilities Services
Office of Adult Protective Services
751 Old Richardson Hwy., Suite 100 A
Fairbanks, Alaska 99701-7802
Phone: (907) 374-3749
Fax: (907) 451-5046

Relationship to Respondent: Adult Protective Services

3. Respondent is now located at: McKinley Center, 1510 19th Avenue, Anchorage, Alaska 99701.

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PHONE: (907) 451-2811
FAX: (907) 451-2846

Phone: (907) 452-5151
Residence Address: Center, 1510 19th Avenue, Anchorage, Alaska 99701
Day time Phone: (907) 452-5151
Social Security No.: xxx-xx-xxx

4. a. Respondent lives: In a skilled nursing home

b. Who takes care of the respondent? Respondent lives at McKinley Center, a skilled nursing facility.

c. Does respondent currently have a guardian? No

d. Does respondent currently have a conservator? No

e. Has respondent given a power of attorney to anyone? Yes – Jennifer Smith

f. Does respondent have a "representative payee" for social security or other benefits? Yes – Jennifer Smith

g. Are there any other restrictions on the legal capacity of the respondent to act in respondent's own behalf? No

h. Does respondent have a living will or a durable power of attorney for health care or any other document directing how health care decisions should be made if respondent is unable to make them? Unknown

i. Is a no-code (Do not Resuscitate) provision in place for the respondent? Unknown

5. List the names, addresses and telephone numbers of the following relatives of the respondent:

a. Spouse: None

b. Children: Unknown

c. Parents: Deceased

d. Siblings: Unknown

6. List names, addresses, and telephone numbers of close friends of respondent who may have current information about respondent: None

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7. Respondent's Financial Information --

a. Monthly Benefits / Other Assets: Social Security benefits Of approximately $1,200.00 per month and Senior Care of approximately $125.00 per month

b. Monthly Expenses / Debts: Unknown.

c. Is respondent a veteran entitled to the payment of money from the U.S. Department of Veteran's Affairs? Unknown

8. Describe the nature and degree of respondent's incapacity (the limitations on his ability to understand or communicate that endanger his physical health or safety: I believe the respondent needs the following emergency services to protect him against serious injury, illness or disease: Respondent is a 78 year old male with a history of strokes which resulted in significant right side weakness and expressive aphasia which limits his ability to communicate. He has been a resident of McKinley Center since October, 2007. Jennifer Smith, the granddaughter of Respondent holds his power of attorney and makes his decisions. However, there has recently been an investigation for mortgage fraud of which Jennifer was the alleged perpetrator, having taken mortgages in Respondent's name, she has also collected his assets and failed to pay for his cost of care at McKinley Center. There is currently an outstanding balance due of $19,050.32. Respondent has a monthly income of approximately $1,325.00. Of that he is required to pay $206.25 for insurance premiums, and $948.75 for his cost of care. Respondent also has real estate that is being mishandled. The financial aspects of this matter have been turned over to Elder Fraud and Assistance for investigation and/or prosecution. The power of attorney issued to Jennifer Smith needs to be voided and Respondent's cost of care paid from her monthly income.

9. List the facts that support your allegations of incapacity and the need for appointment of a guardian (examples that show how the respondent's limitations have or may, lead to physical injury or illness): See above.

10. Type of appointment sought:

X Full guardianship with all the powers described in AS 13.26.150(c), including the powers of a conservator to manage and control respondent's financial affairs (almost all the powers and duties a parent has with respect to a minor child).

11. How long will this appointment need to last indefinitely.

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12. List people you know who have knowledge that might help the court determine the capacity and needs of the respondent.

a. Doctors:

b. Counselors and Social workers: Lisa Russell, McKinley Center
Jennifer Campbell, McKinley Center

c. Case Managers and Care Coordinators:

d. Others (Teachers, Clergy, etc.): Ellen Thomas, McKinley Center; Pauline Jacobs, McKinley Center; Scott Sterling, Attorney, Elder Fraud & Assistance; and Frances Hayes, Sterling Investigative Agency

13. Who do you think should be appointed guardian?

Office of Public Advocacy

a. This person's relationship to respondent is: None

b. This person's priority for appointment under AS 13.265.145 is: (7).

c. Names and addresses of persons with higher priority are:

Conservatorship Powers

(If you are requesting appointment of a Conservator, fill out paragraphs 14-17 below)

14. State petitioner's interest in this matter: Adult Protective Services

15. Explain why a conservator should be appointed: Respondent has no means or mental ability to obtain housing, benefits and other medical services without assistance and guidance. Further, arrangements need to be made immediately to secure respondent's housing and payment options.

16. Who do you think should be appointed conservator?

Office of Public Advocacy.

a. This person's relationship to respondent is: Public Guardian.

b. This person's priority for appointment under AS 13.265.210 is: (7).

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c. Names and addresses of persons with higher priority are:

17. List people you know who have knowledge that might help the court determine the respondent's ability to manage his property and affairs: See #12and #5 Above.

_____ Date

_____
Signature of Petitioner or Petitioner's Attorney
Susan Spriggs, APS
Robin S. Fowler
ASB # 0711067
Assistant Attorney General

Verification

I state on oath or affirm that I have read this petition and that all statements made in it are true to the best of my knowledge and belief.

_____ Date

_____
Petitioner's Signature

Subscribe and sworn to or affirmed before me at Anchorage, Alaska on _____.

(SEAL)

_____
Clerk of Court, Notary Public, or other person authorized to administer oaths.
My commission expires: _____

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REPORT of HARM for the PROTECTION of VULNERABLE ADULTS

In Compliance with Alaska Statute 47.24.010

Central Intake – Reporting

Toll Free: 1-800-478-9996 • Anchorage: (907) 269-3666 • Fax: (907) 269-3648

Complete as Much Information as Possible

Date of Report:

VULNERABLE ADULT INFORMATION

Last Name: Henry First Name: Sam Middle Initial: O.

Date of Birth: 1/3/1928 Age: 82 years Gender (check one): Male: ☒ Female: ☐

Race: Caucasian Marital Status: Widowed Language: English

Assisted Living Home (?) Name:

Street Address: 1550 Mountain Lane Apartment:

City: Anchorage Zip Code: 99704

Phone Number: XXX-XXXX

Vulnerable Adult Resides with: Alone

DESCRIBE LOCATION, IF NECESSARY, OF VULNERABLE ADULT:

REPORTER INFORMATION

Your Name: Jeremy Brown Your Phone Number: XXX-XXXX

Your Agency Name: UPS Your Occupation: Driver

Agency Address: 1234 Spenard Way

City: Anchorage Zip Code: 99705

Has a Report Been Made to Law Enforcement YES: ☒ NO: ☐

If yes, to what Agency? FBI Case # I don't know what the case number is.

Your Relationship to the Vulnerable Adult: None

OTHER PERSON HAVING INFORMATION

Name and Phone Number of Person:

Name and Phone Number of Person:

Name and Phone Number of Person:

Name and Phone Number of Person:

DESCRIBE VULNERABLE ADULT'S PHYSICAL AND MENTAL CONDITION / IMPAIRMENTS, IF ANY: ADULT SEEMS CONFUSED.

DESCRIBE PROBLEM SITUATION (USE ADDITIONAL PAPER IF NECESSARY): My company has been called and many occassions to go to Sam Henry's house to pick up large amounts of cash to send through UPS to foreign countries. Mr. Henry tells us that he has won a lottery and that as soon as they get the money that he will get him three million dollar lottery winnings. This has happened several times. We have tried to talk him out of it, but he continues to call us. If we won't pick up the money he said he would go to Western Union and wire it. On one occasion he came into our offices with a large amount of cash ($6,000) in an envelope and wanted to send the cash to a Canadian address. The last time he called the money was going to Costa Rica. When I was at the house I noticed there were piles of bulk mailings for solicitations for

cash on his kitchen table. He seemed very confused and upset when I told him that he shouldn't send the money because it was a scam. He said it was not a scam because he had talked to the people on the phone and they assured him it was not a scam.

Adult Protective Services is authorized by law to designate other agencies and providers to deliver supportive and protective services to vulnerable adults. A.S. 47/24.011

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

IN THE MATTER OF THE PROTECTIVE PROCEEDING OF:

SAMUEL HENRY
DOB: 01/3/1928

Respondent

Case No. 3AN-08-00047 PR

EMERGENCY PETITION FOR APPOINTMENT OF TEMPORARY GUARDIAN WITH CONSERVATORSHIP POWERS (AS 13.26.140)

[This form may be filed only if the PG-100 Petition is also filed.]

1. Petitioner: Susan Spriggs
Senior and Disabilities Services
Office of Adult Protective Services
751 Old Richardson Highway, Suite 100A
Fairbanks, Alaska 99701
Phone: (907) 374-3749
Fax: (907) 451-5046

Relationship to Respondent: Adult Protective Services

2. A Petition for Appointment of a Guardian for the above-named respondent has been filed, but a guardian has not yet been appointed.

3. Respondent is now located at: 1550 Mountain Lane
Address: Anchorage, Alaska 99704
Phone: (907) 453-2241
Residence Address:
Day time Phone: (907) 453-3341
Social Security No.: xxx-xx-xxxx

4. I believe the respondent needs the following emergency services to protect her against serious injury, illness or disease: Respondent is an 82 year old male who resides by himself in a home he owns outright. I have visited the respondent in his

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home on five separate occasions from April 15, 2008 to present. Anchorage Police were called on August 12, 2008 and informed APS that the respondent was in the Safeway parking lot and hit two vehicles while he was attempting to park. Respondent also had a money order on his person for $650.00 that he was sending to San Jose, Costa Rica with the hope of winning a large sum of money. Upon receiving this call from Anchorage Police, I immediately drove to Safeway where the police officer had the respondent detained. I explained who I was and reminded the respondent of our previous visits; he had no recollection. Anchorage Police released the respondent to APS and had his car towed to his residence. While at respondent's residence, I was showed three additional money order receipts that he had mailed to various locations in hope of also winning a large sum of money.

5. Respondent is not capable of procuring the necessary services because: The respondent appears to be showing signs of dementia and is being exploited by telemarketers. I feel that the respondent should be assessed immediately in order to get her proper care for his condition.

6. Therefore, I request that the court appoint a temporary guardian to authorize the necessary services. I understand that the temporary guardian's appointment will expire when a regular (full or partial) guardian is appointed or when the petition for appointment of a guardian is dismissed.

7. I recommend that the following person be appointed Temporary Guardian:

Office of the Public Guardian
100 Cushman Street, Suite 502
Fairbanks, Alaska 99701
(907) 451-5933

This person's relationship to respondent is: Public Guardian.

Date

Signature of Petitioner or Petitioner's Attorney
Susan Spriggs, APS
Robin S. Fowler
ASB# 0711067
Assistant Attorney General

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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

IN THE MATTER OF THE PROTECTIVE PROCEEDING OF: SAMUEL HENRY DOB: 01/3/1928 Respondent	)
Case No. 3AN-08-00047 PR	

ORDER

A hearing on this matter was held on August 10, 2010, before Judge Funny. Present were the following parties: Michael Wood, attorney for respondent; Samuel Henry, respondent; Jack Sprout, court visitor; Robin Fowler, Assistant Attorney General, representing Adult Protective Services; and Susan Spriggs, Adult Protective Services, the petitioner.

This court, having been presented with a stipulation by counsel for the respondent, and the petitioner, makes the following findings and rulings:

1. All parties entitled to notice under AS 13.26.185 have been served with notice of this proceeding.

2. Venue for granting the powers of a conservator is proper because the respondent's permanent residence is here.

3. A basis exists for the appointment of a conservator under AS 13.26.165(2)(A) and (B).

4. Alternatives to conservatorship have been considered and are not feasible.

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IT IS HEREBY ORDERED:

1. The Office of Public Advocacy is appointed as full conservator for Samuel Henry.

2. The conservator's duties and powers shall be those enumerated in AS 13.26.165 through .320.

3. The Office of Public Advocacy will distribute an allowance of $1,000.00 per month from his account. The respondent and the Office of Public Advocacy can mutually agree to alter the monthly allowance without court intervention.

4. The Office of Public Advocacy will file all IRS taxes, and any other taxable income on a yearly basis.

5. Any previous appointment of a representative payee on behalf of the respondent should be voided.

6. The Court Visitor will review this case and issue a report one year from the date of the Conservator's appointment, the court will schedule and notify parties of the hearing date in 2011.

7. Adult Protective Services will remain interested parties throughout the entirety of this case.

Approved by: Approved via email correspondence, dated 8/20/10
Michael Wood, attorney for respondent

DATED: _____

_____
JOHN FUNNY
SUPERIOR COURT JUDGE

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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

STATE OF ALASKA, OFFICE OF PUBLIC ADVOCACY, OFFICE OF ELDER FRAUD & ASSISTANCE,	)
Plaintiff,	)
vs.	)
JENNIFER SMITH; MARY JONES and JOHN JONES	)
Defendants.	)
	) Case No. 3AN-10-00045 Civil

COMPLAINT

Plaintiff State of Alaska, Office of Public Advocacy, Office of Elder Fraud and Assistance ("EFA") complains as follows:

A. Allegations Common To All Counts And Defendants

1. Plaintiff EFA is authorized to bring the present action on behalf of real-party-in interest Michael Smith, a protected person, by and through the authority of Mr. Smith's conservator, Frank Brown, Public Guardian, all under and pursuant to Alaska Statute 44.21.415.

2. At all relevant times real-party-in-interest Michael Smith was a resident of the Third Judicial District, State of Alaska at Anchorage, Alaska.

3. At all relevant times defendants Jennifer Smith, Mary Jones and John Jones were residents of the Third Judicial District, State of Alaska at Anchorage, Alaska.

4. The events, transactions and occurrences forming the factual nexus and subject matter of plaintiff's complaint against defendants Jennifer Smith, Mary Jones and John Jones took place at or within the Third Judicial District, State of Alaska.

5. This court has personal jurisdiction over defendants Jennifer Smith, Mary Jones and John Jones and each of them.

6. This court has subject matter jurisdiction over the subject matter of the present action.

7. From approximately September 8, 2007 through May 13, 2010 defendant Jennifer Smith served as fiduciary and attorney-in-fact for Michael Smith.

8. From approximately September 8, 2007 through May 13, 2010 defendants Mary Jones and John Jones were friends with defendant Jennifer Smith.

9. From approximately September 8, 2007 through May 13, 2010 defendants Jennifer Smith, Mary Jones and John Jones knew Michael Smith.

10. From approximately September 8, 2007 through May 13, 2010 defendants Jennifer Smith, Mary Jones and John Jones knew that Michael Smith was at least 60 years of age and not able to effectively manage his own affairs.

11. From approximately September 8, 2007 through May 13, 2010 defendants Jennifer Smith, Mary Jones and John Jones entered into one or more

legal and financial transactions affecting the legal and financial interests of Michael Smith.

12. On or about October 7, 2006 at or near Anchorage. Alaska Michael Smith, as buyer, purchased a residential dwelling and lot located at 1503 East 27th Avenue, Anchorage, Alaska, more particularly described as:

> **Lot Four (4), Block One Hundred Two (102), ANCHORAGE TOWNSITE, according to survey of said Townsite known as the R.E. Robe Map of 1915, reproduced by George Black, U.S. Surveyor-General in 1913; Records of the Anchorage Recording District, Third Judicial District, State of Alaska.**

(hereinafter referred to for ease of reference as "the 102 Property") from Wendy Thompson and Sam Thompson, as sellers.

13. On or about October 15, 2007 at or near Anchorage, Alaska defendants Jennifer Smith, Mary Jones and John Jones, with Smith at all times acting and serving as Michael Smith's fiduciary and attorney-in-fact, jointly co-borrowed approximately $211,000.00 (principal amount) plus interest, from National Home Loans, in the name of Michael Smith.

14. Defendant Jennifer Smith, while at all times acting and serving as fiduciary and attorney-in-fact for Michael Smith, pledged the 102 Property as security for repayment of that loan and co-signed a deed of trust and promissory note rendering Michael Smith personally liable for repayment of that loan.

15. On or about January 5, 2007 at or near Anchorage, Alaska defendant Jennifer Smith, while at all times acting and serving as Michael Smith's fiduciary and attorney-in-fact, executed on his behalf a quit claim deed conveying

his right, title and interest in the 102 Property to Michael Smith, defendant Mary Jones and defendant John Jones.

16. Upon information and belief, on or about January 5, 2007 at or near Anchorage, Alaska defendant Jennifer Smith did not require or demand to be tendered and defendants Mary Jones and John Jones did not tender any lawful and valid consideration to Michael Smith in exchange for Michael Smith conveying, to defendants Mary Jones and John Jones, each, an interest in the 102 Property.

17. On or about March 8, 2010 at or near Anchorage, Alaska defendant Jennifer Smith, while at all times acting and serving as fiduciary and attorney-in-fact for Michael Smith, in collusion and concert with defendants Mary Jones and John Jones, conveyed or caused to be conveyed by quit claim deed the right, title and interests of Michael Smith, defendant Mary Jones and defendant John Jones in the 102 Property from those persons to Michael Smith, essentially reversing the transaction of January 5, 2007.

18. From on or about September 8, 2007 through May 13, 2010 defendant Jennifer Smith, while at all times acting and serving as fiduciary and attorney-in-fact for Michael Smith, failed to account for the dispersal, distribution and uses of the $211,000.00 principal amount she borrowed in Michael Smith's name from National Home Loans.

19. From on or about September 8, 2007 through May 13, 2010 defendant Jennifer Smith, while at all times serving and acting as fiduciary and attorney-in-fact for Michael Smith, wrongfully converted, lost, wasted or

dissipated some or all of the $2112,000.00 loan proceeds from National Home Loans to her own uses and benefit or to the uses and benefits of persons other than Michael Smith. From on or about September 8, 2007 through May 13, 2010 defendant Jennifer Smith, while at all times serving and acting as fiduciary and attorney-in-fact for Michael Smith, wrongfully converted, lost, wasted or dissipated approximately $27,500.00 in cash or other monetary instruments belonging to Michael Smith to her own uses and benefit or to the uses and benefits of persons other than Michael Smith.

20. From on or about September 8, 2007 through May 13, 2010 defendants Mary Jones and John Jones, acting in collusion and concert with defendant Jennifer Smith, did wrongfully convert, lose, waste or dissipate some or all of the $211,000.00 loan proceeds from National Home Loans, rightfully belonging to Michael Smith, to the detriment of the interests of Michael Smith.

21. From on or about September 8, 2007 through May 13, 2010 defendants Jennifer Smith, Mary Jones and John Jones, jointly and severally, wrongfully acted to convert personal property of Michael Smith, including but not limited to money and other tangible items of value, to their own uses and purposes, all to the harm and detriment of Michael Smith.

22. From on or about September 8, 2007 through May 13, 2010 defendants Jennifer Smith, Mary Jones and John Jones, jointly and severally, wrongfully acted to obtain and utilize real property and real property interests of

Michael Smith to their own uses and purposes, all to the harm and detriment of Michael Smith.

23. From on or about September 8, 2007 through May 13, 2010, defendant Jennifer Smith negligently breached her fiduciary duty to Michael Smith. Such breach was the actual and proximate cause of harm to Michael Smith for and as to which defendant Smith is liable in damages, in an amount not less than $100,000, the exact amount to be proven at trial.

24. From on or about September 8, 2007 through May 13, 2010 defendant Jennifer Smith recklessly breached her fiduciary duty to Michael Smith. Such breach was the actual and proximate cause of harm to Michael Smith for and as to which defendant Smith is liable in damages, in an amount not less than $100,000, the exact amount to be proven at trial.

25. From on or about September 8, 2007 through May 13, 2010 defendant Jennifer Smith intentionally breached her fiduciary duty to Michael Smith. Such breach was the actual and proximate cause of harm to Michael Smith for and as to which defendant Smith is liable in damages, in an amount not less than $100,000, the exact amount to be proven at trial.

26. From on or about September 8, 2007 through May 13, 2010 defendants Jennifer Smith, Mary Jones and John Jones, jointly and severally, unjustly enriched themselves by wrongfully converting, taking, utilizing or managing the property and financial interests of Michael Smith. Such acts and omissions leading to defendants' unjust enrichment were the actual and proximate

cause of harm to Michael Smith for and as to which defendants and each of them are liable in damages, in an amount not less than $100,000, the exact amount to be proven at trial.

27. From on or about September 8, 2007 through May 13, 2010, defendants Jennifer Smith, Mary Jones and John Jones, jointly and severally, were jointly and severally in contractual relationships with Michael Smith and under a duty to deal in good faith and fairly with Michael Smith. Defendants and each of them, jointly and severally, breached that duty by wrongfully converting, taking, utilizing or managing the property and financial interests of Michael Smith. Such acts and omissions leading to defendants' breach of their joint and several duty of good faith and fair dealing toward Michael Smith were the actual and proximate cause of harm to Michael Smith for and as to which defendants and each of them are liable in damages, in an amount not less than $100,000, the exact amount to be proven at trial.

28. From on or about September 8, 2007 through May 13, 2010 defendants Jennifer Smith, Mary Jones and John Jones, jointly and severally, unjustly enriched themselves by wrongfully converting, taking, utilizing or managing the property and financial interests of Michael Smith. Such acts and omissions leading to defendants' unjust enrichment were the actual and proximate cause of harm to Michael Smith for and as to which defendants and each of them are liable in damages, in an amount not less than $100,000, the exact amount to be proven at trial.

COUNT I: NEGLIGENT BREACH OF FIDUCUARY DUTY DEFENDANT SMITH

29. Plaintiff re-alleges the allegations set forth in Paragraphs 1-27 above and incorporates same herein by reference.

30. At all relevant times defendant Jennifer Smith owed Michael Smith a fiduciary duty. Defendant Smith negligently breached that duty on more than one occasion. Those breaches were the actual and proximate cause of harm to Michael Smith for which defendant Smith is liable in damages to Michael Smith in excess of $100,000.00, the exact amount to be proven at trial.

COUNT II: RECKLESS BREACH OF FIDUCUARY DUTY DEFENDANT SMITH

31. Plaintiff re-alleges the allegations set forth in Paragraphs 1-29 above and incorporates same herein by reference.

32. At all relevant times defendant Jennifer Smith owed Michael Smith a fiduciary duty. Defendant Smith recklessly breached that duty on more than one occasion. Those breaches were the actual and proximate cause of harm to Michael Smith for which defendant Smith is liable in damages to Michael Smith in excess of $100,000.00, the exact amount to be proven at trial.

COUNT III: INTENTIONAL BREACH OF FIDUCUARY DUTY DEFENDANT SMITH

33. Plaintiff re-alleges the allegations set forth in Paragraphs 1-31 above and incorporates same herein by reference.

34. At all relevant times defendant Jennifer Smith owed Michael Smith a fiduciary duty. Defendant Smith intentionally breached that duty on more than one occasion. Those breaches were the actual and proximate cause of harm to Michael Smith for which defendant Smith is liable in damages to Michael Smith in excess of $100,000.00, the exact amount to be proven at trial.

COUNT IV: UNJUST ENRICHMENT – ALL DEFENDANTS

35. Plaintiff re-alleges the allegations set forth in Paragraphs 1-33 above and incorporates same herein by reference.

36. At all relevant times defendants Jennifer Smith, Mary Jones and John Jones owed a legal duty to Michael Smith to not unfairly or unduly take advantage of him or commit wrongful acts in order to unjustly enrich themselves at Michael Smith's expense or at the expense of his property and financial interests.

37. Defendants and each of them, jointly and severally, breached that duty on more than one occasion and in doing so unjustly enriched themselves at Michael Smith's expense. Those breaches were the actual and proximate cause of harm to Michael Smith for which defendants, jointly and severally and each of them, are liable in damages to Michael Smith in excess of $100,000.00, the exact amount to be proven at trial.

COUNT V: CONVERSION – ALL DEFENDANTS

38. Plaintiff re-alleges the allegations set forth in Paragraphs 1-36 above and incorporates same herein by reference.

39. At all relevant times defendants Jennifer Smith, Mary Jones and John Jones owed Michael Smith the duty to not convert Michael Smith's personal and real property to their own uses and benefit. Defendants and each of them, jointly and severally, breached that duty on more than one occasion.

40. Those breaches were the actual and proximate cause of harm to Michael Smith for and as to which defendants and each of them, jointly and severally, are liable in damages to Michael Smith in excess of $100,000.00, the exact amount to be proven at trial.

COUNT VI: BREACH OF CONTRACT AND COVEANT OF GOOD FAITH AND FAIR DEALING – ALL DEFENDANTS

41. Plaintiff re-alleges the allegations set forth in Paragraphs 1-39 above and incorporates same herein by reference.

42. At all relevant times defendants and each of them, jointly and severally, were in a contractual relationship with Michael Smith and owed Michael Smith a duty of good faith and fair dealing. Defendants and each of them, jointly and severally, breached those contracts and that duty on more than one occasion.

43. Those breaches were the actual and proximate cause of harm to Michael Smith for and as to which defendants and each of them, jointly and severally, are liable to Michael Smith in damages in excess of $100,000.00, the exact amount to be proven a trial.

COUNT VII: QUIET TITLE – ALL DEFENDANTS

44. Plaintiff re-alleges the allegations set forth in Paragraphs 1-42 above and incorporates same herein by reference.

45. At all relevant times defendants and each of them, jointly and severally, wrongfully acted to place a cloud on and otherwise wrongfully encumber the right, title and interests of Michael Smith in the 102 Property.

46. Title in and to and possession of the 102 Property should be quieted in Michael Smith, superior to all others, including but not limited to defendants and each of them.

47. Defendants and each of them are liable, jointly and severally, to any third-party claimant, lienor, lender or other person or entity claiming any right, title or interest, including any secured interest, in the 102 Property, acquired or asserted on or against the 102 Property from on or about September 8, 2007 through May 13, 2010.

COUNT VIII: PUNITIVE DAMAGES – ALL DEFENDANTS

48. Plaintiff re-alleges the allegations set forth in Paragraphs 1-46 above and incorporates same herein by reference.

49. At all relevant times defendants and each of them, jointly and severally, owed Michael Smith the duty to act with due care and regard for his rights, safety and interests, including his property and financial interests, particularly in light of the fact that Michael Smith is an elderly person unable to effectively manage his own affairs.

50. Defendants and each of them, jointly and severally, breached that duty on more than one occasion. Those breaches constituted outrageous conduct and reckless disregard of the rights, safety and interests, including the property and financial interests, of Michael Smith.

51. Defendants and each of them are liable, jointly and severally, in punitive damages, to Michael Smith, in an amount not less than $100,000.00, the exact amount to be determined by the trier of fact at trial.

PRAYER FOR RELIEF

WHEREFORE plaintiff prays for the following relief:

1. Judgment in favor of plaintiff and against defendants and each of them, jointly and severally, on Counts I-V of plaintiff's complaint and award of compensatory damages of not less than $100,00.00 for and in favor of real-party-in-interest Michael Smith.

2. Judgment in favor of Michael Smith quieting title in him and superior to all others in the 102 Property and award to Michael Smith from defendants and each of them, jointly and severally, of monetary damages sufficient to satisfy and release any valid claim of lien, mortgage or other encumbrance on the 102 Property, placed thereon as an actual and proximate result of the acts and omission of defendants.

3. Judgment in favor of Michael Smith and against defendants and each of them, jointly and severally, on Count VIII (Punitive Damages) of plaintiff's

complaint and award of punitive damages of not less than $100,00.00 for and in favor of real-party-in-interest Michael Smith.

4. Award of pre-judgment interest, attorney fees, costs and post-judgment interest in favor of Michael Smith and against defendants and each of them, jointly and severally.

5. Such further and other legal and equitable relief as the court may deem just and necessary under the circumstances.

DATED this ___ day of _____, 2010 at Anchorage, Alaska.

By:_____
Scott A. Sterling
Assistant Public Advocate
Bar No. 8706053
Counsel for Plaintiff