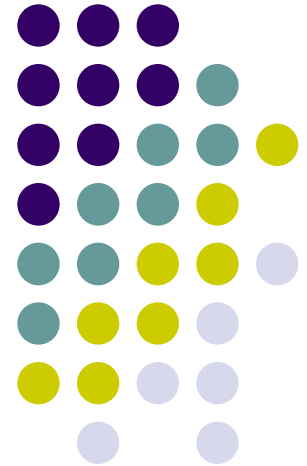


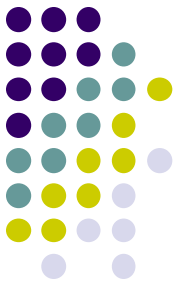


PISGAH  
LEGAL SERVICES

# **Pisgah Legal Services**

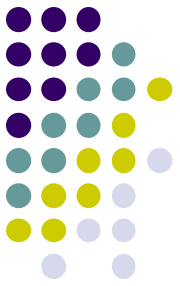
*Pursuing Justice, Improving Lives*



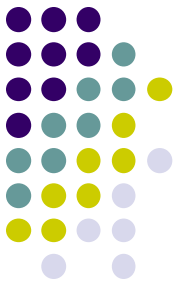


- **What is Elder Abuse?**
- **What are some of the risk factors?**
- **What legal protections are available?**
- **How to access services**

# Elder Abuse



- Mistreatment by caretakers including:
  - Physical abuse
  - Emotional abuse
  - Withholding necessary care
  - Financial Exploitation



# Elder Abuse and Domestic Violence

- Physical and emotional abuse of older people is a form of domestic violence.
- The majority of elder abuse is perpetrated by family members
  - Spouses
  - Children or other relatives

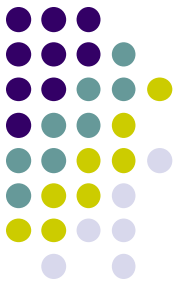


# Domestic Violence

- ❑ Is about power and control
- ❑ Is aimed at coercion
- ❑ Is rarely an isolated incident
- ❑ Increases & worsens with time

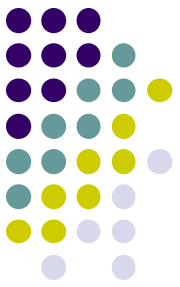


# Financial Abuse



- Seniors can be taken advantage of financially by
  - Caretakers
  - Family members
  - Friends
  - “Sweetheart” scams

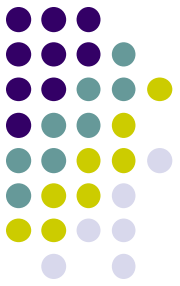
# Types of Financial Abuse by Family, Friends, & Caretakers



- Transfer of real property and other assets
  - Coercion
  - Use of a Power of Attorney
- Abuse of access to bank account or assets
- Generally taking advantage of loneliness and vulnerability

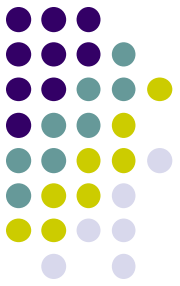


# Risk Factors for Physical Violence



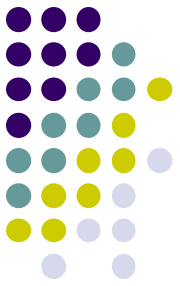
- Dementia and Cognitive Impairment
- Previous Domestic Violence / Control
- Personal Problems of Abusers
- Living with Others
- Social Isolation

# Risk Factors for Financial Abuse



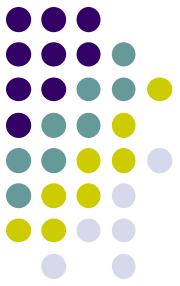
- Competency Issues
  - Elders who are suffering early stage/undiagnosed dementia or Alzheimer's
    - Impacts decision making ability
    - May appoint POA who later abuses the power
- Steady Stream of Income
  - Social Security, Retirement, Home ownership
- Loneliness and isolation

# **Legal Remedies for Domestic Violence/Elder Abuse**



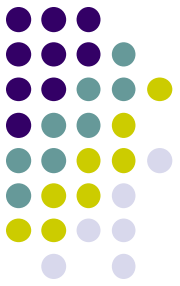
- **Criminal Actions**
  
- **Civil Actions**

# Criminal Remedies



- Both physical and financial abuse can be reported to law enforcement for potential prosecution.
- This is an action filed by the State of North Carolina against the Defendant for breaking the law.
- The victim is considered the “victim witness” and is not a party to the action.
- The victim does not need an attorney to represent them in this action.
- The victim may be subpoenaed and required to testify.
- The Defendant may have a court appointed attorney.
- The victim may not dismiss the action on their own, only the judge or the DA can dismiss.

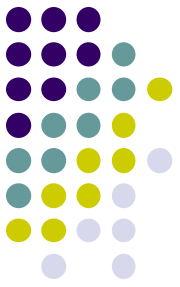
# Civil Remedies



- **Civil Actions**

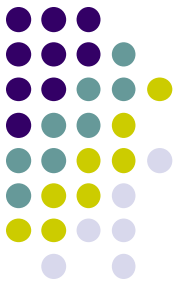
- **Domestic Violence Protective Orders (50Bs) and Civil No Contact Orders (50Cs)** are Civil Actions meaning that one party (the Plaintiff) files the action against the other party (the Defendant).
- These orders do not show up on Defendant's criminal record.
- Civil Actions specifically tell the perpetrator to stay away from the victim.
- The victim can represent themselves or hire an attorney.
- The victim may choose to dismiss this action.

# Legal Definition of Domestic Violence



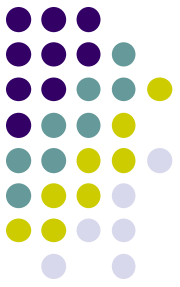
- Attempting to cause bodily injury, or
- Intentionally causing bodily injury, or
- Placing you or a member of your family in fear of imminent serious bodily injury, or
- Committing an act of sexual abuse, or
- Continued harassment rising to a level that it inflicts substantial emotional distress

# Personal Relationship



- Current or former spouses,
- Current or former household members,
  - This includes caretakers who live in the home
- Persons related as parents and children, or grandparents and grandchildren,
- Persons with a child in common, or
- Persons of opposite sex who are or who have been in a dating relationship

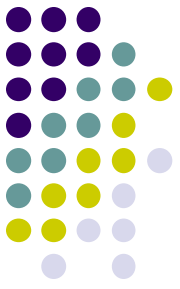
# **Domestic Violence Protective Order**



**A DVPO (also known as 50B or a restraining order), is a COURT ORDER, signed by a JUDGE, telling the abuser to STOP THE ABUSE or face SERIOUS LEGAL CONSEQUENCES. The court can also order temporary child custody, economic support, temporary possession of property, and other remedies.**

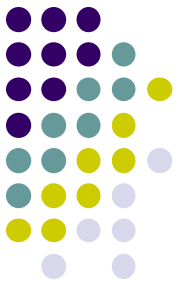


# **Domestic Violence Protective Order**



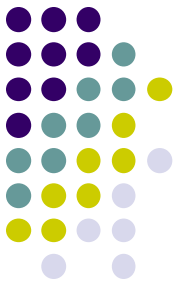
- Order abuser to stop abuse, not to contact the victim
- Grant temporary possession of household. Award temporary custody of children and safe visitation plan, including supervised visits
- Award victim possession of a car
- Order abuser to make temporary child or spousal support payments
- Order abuser to stay away from certain places, such as victim's work, children's school, victim's church, etc.
- Order abuser to not possess firearm
- Order abuser to attend abuser treatment

# Civil No Contact Order



A Civil No Contact Order (also known as 50C or a restraining order), is a COURT ORDER, signed by a JUDGE, telling a stalker or sexual perpetrator STOP THE STALKING and NOT TO CONTACT the victim.

# Civil No Contact Order



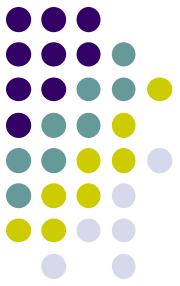
In NC you can get a Civil No Contact Order when you have been a victim of the following “unlawful conduct”

- Nonconsensual Sexual Conduct
  - Includes any “intentional or knowing touching, fondling, or sexual penetration by a person ... for the purpose of sexual gratification or arousal.”

OR

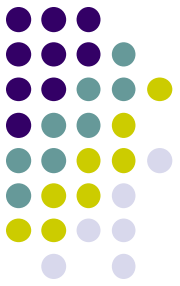
- Stalking.
  - Following or harassing on more than one occasion or otherwise harassing another with the intent to do
    - Place the person in reasonable fear either for the person's safety or the safety of the person's immediate family
    - Cause that person to suffer substantial emotional distress by placing that person in fear of death, bodily injury, or continued harassment.

# Civil No Contact Order

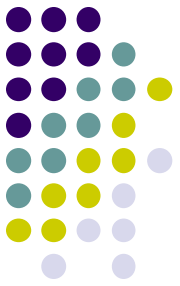


- There is no relationship requirement to get a 50C order entered.
  - Statute was designed to protect victims of sexual assault and stalking when not covered by 50B.
- Sometimes used to protect victims in a same sex dating relationship where the parties have not lived together.

# Process to Obtain a Restraining Order



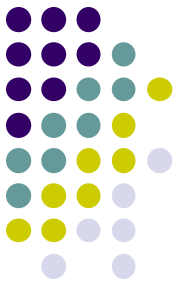
1. Fill Out and File Complaint
2. Seek Emergency Ex Parte Order
3. Service on Defendant
4. Prepare for Trial
5. Attend Hearing
6. Enforce Order



# At the Courthouse

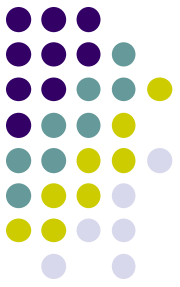
- **Filing the complaint**
  - Clerk of court provides the forms
  - Forms are available in English and Spanish
  - No fee to file
  - Helpmate Court Advocates will assist with 50Bs
- **Ex Parte Relief**
  - Judge or Magistrate

# Enforcing the Order



- DVPOs
  - A violation of a DVPO is a criminal act and law enforcement “shall” arrest someone if they have probable cause to believe they are violating the order
  - Can also be enforced by contempt powers of the court after a “motion to show cause” is filed.
- Civil No Contact
  - Violations of 50Cs are only punishable by civil contempt powers of the court.

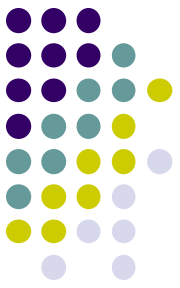
# Civil Remedies for Financial Exploitation



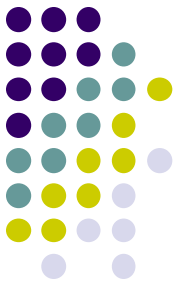
- Lawsuit to recover assets/funds
  - Breach of Fiduciary Duty
    - If the abuser was in a position where they were required to act in the victim's best interest
      - Example: POA
  - Fraud
- Revocation of POA's where necessary
- Possibly injunctive relief to prevent ongoing harm
  - Also changing bank accounts, stopping inappropriate automatic withdrawals, etc.



# Hurdles in Elder Financial Abuse Cases

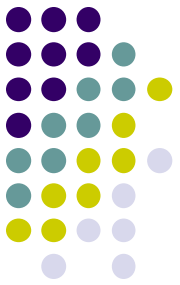


- Hesitancy to sue a family member, friend, or caretaker
- Victim may not feel they are being abused
- Abuser may have no financial ability to repay the victim
- Lawsuits are emotionally and, for some seniors, physically taxing
- For competency issues, the law presumes competency, so the cases can be very hard to prove



# Accessing Services

- 211
  - Free 24hour access to referrals to local services providers. Excellent resource if you have problem but are not sure who to contact.
- Council on Aging
  - Provides direct services and referrals.
- Adult Protective Services
  - Can assist in cases of extreme need where a senior is unable to care for themselves.



*Pursuing Justice. Improving Lives.*

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