

ATTORNEY ASSESSMENT WORKSHEET

This worksheet is from *Assessment of Older Adults with Diminished Capacities: A Handbook for Lawyers (2020)*

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Please read and review the Handbook prior to using the worksheet.

Client: _____ **Date of Interview:** _____

Attorney: _____ **Place of Interview:** _____

A. OBSERVATIONAL SIGNS

▶ Cognitive Functioning	Examples
Short-term Memory Problems	<ul style="list-style-type: none"> ▪ Repeats questions frequently ▪ Forgets what is discussed within 15-30 min. ▪ Cannot remember events of past few days
Language/Communication Problems	<ul style="list-style-type: none"> ▪ Difficulty finding words frequently ▪ Vague language, Disorganized ▪ Trouble staying on topic ▪ Bizarre statements or reasoning ▪ Difficulty using phone, email and/or other forms of communication
Comprehension Problems	<ul style="list-style-type: none"> ▪ Difficulty repeating simple concepts ▪ Repeated questioning
Lack of Mental Flexibility	<ul style="list-style-type: none"> ▪ Difficulty comparing alternatives ▪ Difficulty adjusting to changes
Disorientation	<ul style="list-style-type: none"> ▪ Trouble navigating office ▪ Gets lost coming to office ▪ Confused about day/time/year/season
Financial Management Abilities:	
<ul style="list-style-type: none"> ▪ Problems with Everyday Arithmetic 	<ul style="list-style-type: none"> ▪ More difficulty calculating: Sum of loose change Feet to inches conversion Tip in a restaurant
<ul style="list-style-type: none"> ▪ Decreased Understanding of Financial Concepts 	<ul style="list-style-type: none"> ▪ More difficulty understanding: Health care concepts like medical deductible Terms like interest rate, lien, and joint liability
<ul style="list-style-type: none"> ▪ Decreased Comprehension of Ordinary Financial Documents 	<ul style="list-style-type: none"> ▪ More difficulty: Identifying a bill that is overdue and needs prompt attention Finding details in a bank statement Completing sections of a check register

<ul style="list-style-type: none"> ▪ Diminished Awareness of Financial Risks 	<ul style="list-style-type: none"> ▪ Trouble identifying key risk in investment proposal ▪ Overly focused on benefits/return, not risk
► Emotional Functioning	
Emotional Distress	<ul style="list-style-type: none"> ▪ Anxious ▪ Tearful/distressed ▪ Excited/pressured/manic
Emotional Lability	<ul style="list-style-type: none"> ▪ Moves quickly between laughter and tears ▪ Feelings inconsistent with topic
► Behavioral Functioning	
Delusions	<ul style="list-style-type: none"> ▪ Feels others out “to get” him/her, spying or organized against him/her ▪ Fearful, feels unsafe
Hallucinations	<ul style="list-style-type: none"> ▪ Appears to hear or talk to things not there ▪ Appears to see things not there ▪ Misperceives things
Poor Grooming/Hygiene	<ul style="list-style-type: none"> ▪ Unusually unclean/unkempt in appearance ▪ Inappropriately dressed
Markedly Inappropriate Social Behavior	<ul style="list-style-type: none"> ▪ Loss of empathy and interpersonal skills ▪ Lack of judgment; Loss of inhibition ▪ Lack of interest (apathy), which can be mistaken for depression
Other Observations + Notes from 3rd parties	
<input type="checkbox"/> Potential Undue Influence – Use Undue Influence Screen	

Mitigating/Qualifying Factors Affecting Observations	Ways to Address/Accommodate
Stress, grief, depression, recent events affecting stability of client	<ul style="list-style-type: none"> ▪ Ask about recent events, losses ▪ Allow some time ▪ Refer to a mental health professional ▪ Help find support persons or groups ▪
Medical Factors	<ul style="list-style-type: none"> ▪ Ask about nutrition, medications, hydration ▪ Refer to a physician
Time of Day Variability	<ul style="list-style-type: none"> ▪ Ask if certain times of the day are best ▪ Try mid-morning appointment
Hearing and Vision Loss	<ul style="list-style-type: none"> ▪ Assess ability to read or repeat simple information ▪ Adjust seating, lighting ▪ Use visual and hearing aids

Social/Environmental Factors	<ul style="list-style-type: none"> ▪ High anxiety level in unfamiliar environment ▪ Presence of others causing stress ▪ Help find personal/social supports
Educational/Cultural/Ethnic Barriers	<ul style="list-style-type: none"> ▪ Be aware of race, ethnicity, education, long-held values and traditions, and your own implicit biases ▪ Help find peer supporters
What other decision supports does the client need to maximize decision-making abilities?	

B. RELEVANT LEGAL ELEMENTS - The legal elements of capacity vary somewhat among states and should be modified as needed for your particular state.

What are the Legal Task(s) at Issue?	
<p>What are the Capacity Elements of the Task(s)? This requires your state-specific research. (See Chapter V.)</p>	<p>Notes on Client’s Understanding/ Appreciation/Functioning Under Elements</p>

C. TASK SPECIFIC FACTORS IN PRELIMINARY EVALUATION OF CAPACITY

The more serious the concerns about the following factors...	➔	The higher the function needed in the following abilities...
Is decision consistent with client’s known long-term values or commitments?		Can client articulate reasoning leading to this decision?
Is the decision objectively fair? Will anyone be hurt by the decision?		Is client’s decision consistent over time? Are primary values client articulates consistent over time?
Is the decision irreversible?		Can client appreciate consequences of his/her decision?

D. PRELIMINARY CONCLUSIONS ABOUT CLIENT CAPACITY

After evaluating A, B, and C above:

<input type="checkbox"/> No or minimal evidence of diminished capacity.	<i>Action:</i> Proceed with representation and transaction
<input type="checkbox"/> Mild concerns – Some evidence of diminished capacity, but less than substantial.	<i>Action Options:</i> <ol style="list-style-type: none"> (1) Proceed with representation/transaction. An associated note to the file may be helpful to document your conclusion. (2) Explore decision support strategies to reinforce capacity. (3) Consider medical referral if medical oversight lacking. (4) Consider consultation with mental health professional. (5) Consider referral for formal clinical assessment to substantiate conclusion, with client consent.
<input type="checkbox"/> More than mild concerns about capacity even with decision supports, or decision-support is not available.	<i>Action Options:</i> <ol style="list-style-type: none"> (1) Explore decision support strategies further to reinforce capacity. Clear documentation of concerns and actions contemplated or taken will be important here. (2) Medical referral if medical oversight lacking. (3) Consultation with mental health professional. (4) Refer for formal clinical assessment, with client consent.
<input type="checkbox"/> Severe concerns – Client clearly lacks capacity to proceed with representation and transaction	<i>Action Options:</i> <ol style="list-style-type: none"> (1) The representation cannot proceed, and alternative legal approaches must be taken (for example, working with family members). (2) Referral to mental health professional to confirm conclusion. (3) Do not proceed with case; or withdraw, after careful consideration of how to protect client’s interests. (4) If an existing client, consider protective action consistent with MRPC 1.14(b).

Case Notes: Summarize key observations, application of relevant legal criteria, conclusions, and actions to be taken: