

Decision Making Capacity Assessment Professional Training Program

Class 4 – June 17, 2026



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Agenda

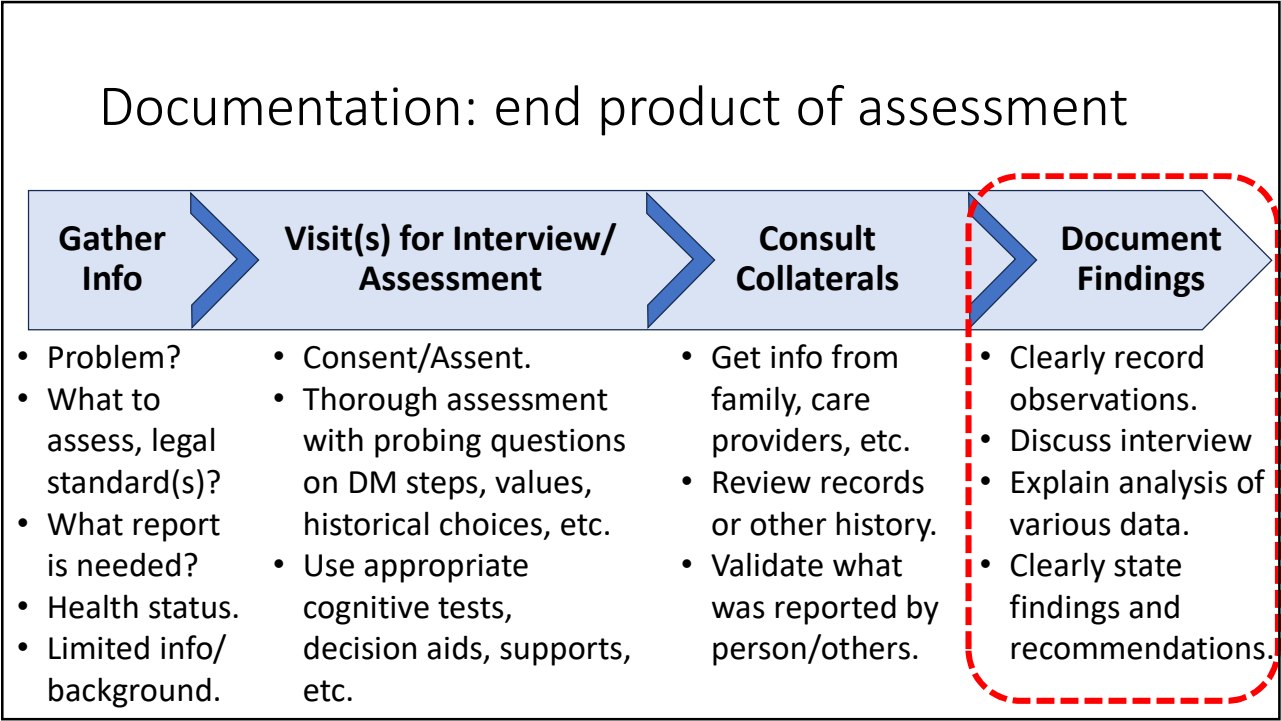
- 15 min breaks
- 1 hr lunch
- From documentation to court/testifying
- Case Studies
- Moving forward into doing this work

Time	Topic
830a	Agenda, discussion from prior classes
845a	Documentation/reports and use/impact
	Affidavits, declarations, subpoenas and testifying
920a	Case Studies: court cases
940a	BREAK
955a	Case Study A in breakout rooms
1025a	Groups report back/discussion
1050a	BREAK
1105a	Case Study B in breakout rooms
1135a	Groups report back/discussion
12noon	BREAK FOR LUNCH
100p	Questions/thoughts from morning
110p	Case Study C in breakout rooms
140p	Groups report back/discussion
205p	BREAK
	Doing this work: finding others
220p	Shadowing/ collaborating
	Marketing your services
310p	BREAK
325p	Discussion
425p	Recap, resources provided, events

Class	1 (May 6)	2 (May 20)	3 (June 3)	4 (June 17)
Capacity specific topics	- History and background - Legal/clinical views of capacity - Types of decisions and capacities	- Impact on DM of cognition, dementia, and mental health - Other factors impacting DM	- Cognitive tests, other tools for assessment - Interviewing frameworks - Collateral tools	- Case studies from class participants - Review, Q&A, additional resources
Work process topics	- Scholarship, approaches to assessing DMC - Process overview - Referrals and collaboration - Formats/models for assessment	- Consent/assent - Visit supports - Assessment Qs, values, risk - Less restrictive alternatives e.g. Supported DM models	- Approaches to testing - Explaining testing findings - Documentation - Usage/impacts	- Court/testifying - Mentors, shadowing - Collaborating - Marketing your services

Heads-up: CEU Questions

- These will be multiple-choice and true/false questions.
1. Appropriate documentation of an assessment visit is...
 2. Examples of formal approaches to documenting capacity assessment are...
 3. Ethical and systemic factors to document include all EXCEPT
 4. Social and cultural factors to document include...
 5. After completing these classes, you are a certified capacity assessor.



Documentation

- Most capacity assessments won't be captured on a form, but rather as clinical documents, reports, summaries, or memos/letters.
- Unless your agency/org has existing formats, you'll have to make your own – feel free to use these as a starting point (handouts on webpage)

Briefer summary of findings:	Sample Redacted ACCS Summary for Testamentary DMC
Longer detailed report of a comprehensive eval:	Sample Redacted ACCS Report for DMC in EA (elder abuse case)

Documentation: more resources on webpage

Newest:	Documentation Guidance Sample Reports (redacted)
From Class 3:	Explaining Tests and Data Discussion and Findings
From Class 1:	State court forms listed in slides ABA/APA worksheets Reference Materials and Online Resources List

What if you don't have a solid opinion?

- There's not enough information to firmly support an opinion on someone's capacity.
- There are medical or other issues that may be impacting capacity, and these would need to be addressed before you can do a more valid/thorough assessment.
- Communication isn't clear enough to assess DMC.
- The person cuts short the visit or fully refuses.



... then what?

“Provisional” opinion

- It’s still possible to offer a “provisional” opinion based on the information you have available at the time of the visit.
- Like a provisional diagnosis 

For clinicians, the DSM-5 defines “provisional” as when the clinician thinks a particular disorder is present, but realizes more information is required to be confident of a specific diagnosis.

“Provisional” opinion – sample language

- Based on the limited observations / information available at the time of this visit, it appears there are concerns about Mr A’s abilities to manage [specific decision type]; however, more information [specify] would be helpful to form a more definitive opinion of his capacity in this area.
- There are clear concerns about Ms B’s ability to manage her finances and make healthcare decisions; however, before making any more definitive opinion of her capacity, she needs a thorough medical evaluation to ensure that her infection has completely cleared and her diabetes is reasonably managed. Once cleared, her decision making abilities should be reassessed.
- Impairments in Mr C’s comprehension and communication presented challenges in assessing his ability to understand [what specific details]... / opinion about [issue]... / wishes for [specific area]...

Limited opinion

- The loss of capacity is partial...
- The loss of capacity is temporary...
- Their capacity fluctuates over time....

Explain specifically the circumstances or areas where they have retained abilities and where they need support, and how DM can best be supported.

Remember the overarching goal is to protect the older adult AND their autonomy and independence as much as possible.

Report uses

- Can direct clinical action.
- May inform or support a plan of care.
- Could be used in a “guardianship plan” developed by a guardian.
- Cases can evolve and reports may be subject to additional uses:

A report originally meant to be informational may ultimately end up as evidence in a judicial setting.



Reports – consider audience/use

- Remember, your audience likely knows less about capacity assessment than you do.
- Define clinical terms and explain clinical concepts in plain language.
- Explain diagnostic criteria and its significance, e.g. dementia.
- Walk them through the steps of the decision making process and how the assessment data relates to each step, leading to your findings.

Examples of report use

By courts	For the client’s protection	• Guardianship/conservatorship • Protective arrangements
	For criminal cases (trials and sentencing)	Showing the client did not have capacity when victimized and/or was a victim of undue influence
By law enforcement	For information about the victim in criminal investigations	
By APS	• To support guardianship or other protections • For investigations and enforcement actions	

Examples of report use

By attorneys	Can be “informational and advisory” for an attorney to have better understanding of their client’s abilities or their decline.
	Can justify legal action related to trusts, POA status, supportive decision-making arrangements, or protective measures.

See ABA/APA Psychologists Handbook – Section VIII Working with Lawyers and Courts

Potential uses of clinical opinion regarding client capacity:

- Expert testimony in a subsequent deposition or courtroom hearing.
- Clarification of the areas of diminished capacity and of retained strengths.
- Affirmation of the client’s capacity.
- Justification of the attorney’s capacity concerns to disbelieving clients and family members.
- Expert advice on strategies to compensate for identified mental deficits.
- Indication of the need for protective action.
- Recommendation for follow-up testing (anticipated restoration of capacity).

Report use by attorneys (ABA/APA)

- **Support legal arguments:** “Clinical opinions by themselves do not dictate legal decisions about capacity... but they help lawyers better formulate their own arguments and conclusions for and against legal capacity using legal frameworks based on precedent.”
- **Retrospective estimates of legal capacity:** “Clinical professionals are essential... Attorneys and courts are usually ill-equipped at forming retrospective judgments on their own.”

Requests from attorneys

Have clear communication on what they are requesting and your role.

CONSULTATION	REFERRAL
If client is not identified, client consent is not necessary	Client is identified, consent is needed
Lawyer pays fee for your opinion ↓	Client or lawyer may pay fees
• Clinical impression or interpretation • Informal estimation of capacity • Suggestions to support capacity • Additional questions for client	• Evaluation may or may not result in written report • Report for lawyer’s internal use, OR • Report intended for evidence in court/legal process

Report use – in court proceedings

- Report itself can be admitted into evidence
- Alternatively, court may ask you to submit your information in a specific format



- Affidavit
- Declaration
- Capacity specific forms in some states



Affidavits/declarations

- **Affidavit:** Written legal document made under oath. Writer (called the affiant) swears that the facts in the document are accurate to the best of their knowledge. May need to be notarized or witnessed.
 - **Sworn Declaration:** Document that serves a similar function to an affidavit. May be accepted in place of affidavit.
 - **Sworn Statement:** Broad term for any written statement made under oath or affirmation, including affidavits and sworn declarations.
- Purpose is to provide a sworn, written statement of facts that can be used as legal evidence.
 - Allows a person to present verified information under oath without having to appear in court.
 - Can sometimes carry the same legal weight as live testimony.

Affidavits/declarations

- Affidavits are usually legally binding and used in court.
- Declarations may be legally binding for administrative or official purposes – not typically legally binding unless adopted under oath in court.
- It's important that all the facts can be verified.
- False statements can result in perjury charges.
- False declarations may result in fines or penalties.



Tips for writing affidavits/declarations

- Don't make it too long!
- At the start, provide your credentials and why you are competent or have standing to do this kind of assessment.
- Explain how long you have been treating the person, behaviors you have witnessed, any testing/assessments conducted, your findings and recommendations.
- Put most important points first.
- Avoid speculation about the person or others or their motives or feelings.
- Type or print neatly in black or dark blue ink. A few courts require all documents be typed.
- If the document is hard to read, the judge may not try.

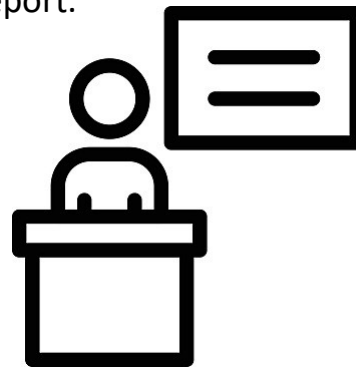
(Washington Law Help / NW Justice Project)

Court forms re: guardianship/conservatorship	
CA	GC335 Confidential Capacity Assessment And Declaration (specifies physician or psychologist) https://courts.ca.gov/sites/default/files/courts/default/2024-11/gc335.pdf GC335A Everyday Activities Attachment to Form GC-335 (specifies physician, psychologist, nurse practitioner, registered nurse, clinical social worker, occupational therapist, other licensed professional) https://courts.ca.gov/sites/default/files/courts/default/2024-12/gc335a.pdf
MD	Physician's Certificate (specifies physician) https://www.courts.state.md.us/sites/default/files/court-forms/family/forms/ccgn019.pdf/ccgn019.pdf
MN	GAC115 Physician's Statement in Support of Guardianship/Conservatorship (says physician) https://mncourts.gov/media/migration/courtforms/guardianshipconservatorship/GAC115.pdf

Court forms re: guardianship/conservatorship	
NC	No court forms, but look to Guardianship Manual – Appendix G of this PDF has guidelines for info/format of evaluation documentation: https://policies.ncdhhs.gov/wp-content/uploads/Guardianship-Manual_September-2025-1.pdf
OH	Statement of Expert Evaluation: https://www.supremecourt.ohio.gov/docs/LegalResources/Rules/superintendence/probate_forms/guardianship/17_1.pdf Court Investigator's Report: https://www.supremecourt.ohio.gov/docs/LegalResources/Rules/superintendence/probate_forms/guardianship/17_8.pdf
WA	No court forms... yet...

About court/testifying

- You likely will never have to testify about your report, BUT...
- If you do, you'll be testifying (largely) TO your report.
- It's crucial that your assessment report or documentation explains your path of reasoning that led to your findings.
- You'll be asked not only about the data in your report, but how you analyzed it and came to the conclusions you did.

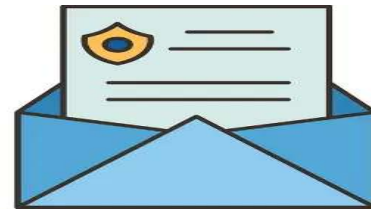


About court/testifying

- If you remember something to say in court that's not in your report, that can be called into question – why didn't you document that at the time of your visit/report?
- This could potentially undermine your credibility as a witness and even get your report and/or testimony thrown out!

Subpoena and process

- If you are asked to testify in any case, you should receive an official subpoena (this covers you privacy-wise).
- The attorney that calls you to testify should prepare and support you throughout the process.
- You have the right to have the attorney that calls you and/or your own counsel with you for any meeting with other attorneys.



You have the right to bill for your time (and you should).

When you receive a subpoena, ask about how and when you should bill.

Subpoena and process

If you are testifying for the prosecutor, defense attorneys may want to meet with you ahead of time for:

- a deposition: you may get questions ahead of time, you will be sworn in to speak under oath, or
- a defense interview: you won't get questions ahead, you won't be sworn in, but it may be recorded.

You have the right to bill for your time (and you should).

Ask the prosecutor if you bill their office or bill the defense attorneys.

Ask for transcript and/or recordings so you can review before testifying.

Retainer if appropriate

- If a client's attorney calls you as a witness, send them your fee schedule and discuss getting a **retainer** before testifying.
- Your retainer should more than cover the anticipated time of testifying as well as any coordination, communication, scheduling, travel, expenses, etc.
- When case is complete, you do your invoice, apply the retainer, and refund the credit balance.

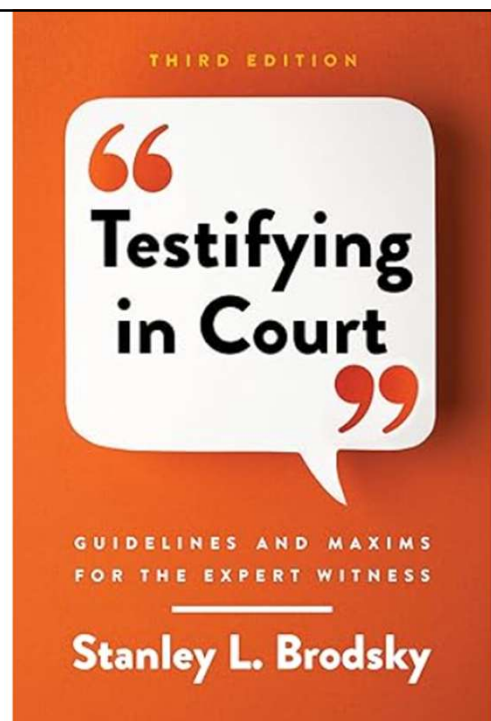
Having a retainer avoids question of your testimony being influenced by whether they'll pay you.

Your professional association and malpractice insurance carrier may be able to answer questions or offer support.

Testifying: be prepared

Brodsky: great tips on how to prepare both personally and professionally for testifying.

- Observe a trial or professional/expert testimony if you can (not TV).
- Know your report.
- Work with the attorney prior to court.
- Get there early to become familiar with the courtroom.
- Don't be defensive, stay calm – it's ok to say you don't know.



Case studies in breakout rooms: 30 minutes

- Case study PDFs pasted in the chat.
- Person whose case study it is will read it out loud (quickly/briefly)
- Someone else take notes to report back to whole group.
- Discuss:
 - What type of capacity is in question?
 - What tests/tools would you consider using?
 - If there’s time... any other considerations or questions?

Time	Topic
955a	Case Study A
1025a	Report back/discuss
1050a	BREAK
1105a	Case Study B
1135a	Report back/discuss
12noon	BREAK FOR LUNCH
100p	Questions from AM
110p	Case Study C
140p	Report back/discuss
205p	BREAK

Doing this work

After this class: Practical Learning Process

Build your network of contacts

Find someone to Shadow or to be a Coach/Mentor

Consultation / Collaboration

Marketing

CLINICAL
CORE
COMPETENCIES

+

CAPACITY
SPECIFIC
KNOWLEDGE

+

PRACTICAL
LEARNING
PROCESS

- **“Shadow”** – observe an experienced assessor throughout a case, then have them observe your case and give guidance and feedback.
- **“Coach/mentor”** – work with an experienced assessor to plan approach and tools before visit, discuss observations and data after visit, and review report and documentation.
- **“Consult”** – participate in regular supervision, or consultation group to:
 - Review cases,
 - Discuss methodology, approach, and problem-solving, and
 - Exchange feedback for continuous improvement.

Build your “rolodex”

- List people and organizations who are working with issues around decision making.
- Think of who you might need at different stages of doing this work.
- Some contacts may fit in more than one stage

REFERRAL SOURCES:
people who need
assessments

PROFESSIONALS
who are doing this work

RECIPIENT/AUDIENCE:
target recipients,
other audiences who
may use report

Prepare to introduce yourself

Draft some key language/info that you can personalize by audience:

- About you, that you've taken this class, what you're hoping to do.
- Inquiry – what you are asking from them:
 - If they do capacity assessments, are they willing to schedule a call with you?
 - Can they introduce you to others?

Consider different formats:

-  Email template
-  Elevator speech or call script
-  1-page handout/flyer/webpage

Finding people – tap into your network

- Ask colleagues for suggestions and introductions.
- Update previous coworkers about what you're doing now and see if they have ideas.
- Reach out to your LinkedIn or other network contacts.
- Consider posting on LinkedIn or social media that you are looking for collaboration partners and opportunities in DMCA work.

Follow up:

- We all get busy and forget to reply. Ping them again after a week.
- Even if someone can't help or declines, ask if they can connect you to anyone else who might help.
- Thank them for their attention and time!

Finding people in your area

- Find local professionals who are doing capacity assessments or working with issues around decision making.

Places to look:

- Local agencies and government entities (city, county, state) →

- Adult Protective Services
- Aging/disability services
- Guardianship/probate court
- Prosecutors, court staff
- Specialized law enforcement or multi-disciplinary teams
- Ombudsman services
- Departments with regulatory oversight of LTC/health providers
- Veterans services and area VA

Finding people – medical/health related

- Hospital/inpatient departments
- Outpatient clinics
- Specialized clinical practices (e.g. memory care clinics, VA service, housecall or concierge)
- U/Medical school departments

- Geriatrics/gerontology
- Neurology
- Neuropsychology
- Psychiatry
- Mental health
- Social work
- Care management
- Discharge / placement
- Home health / hospice
- Occupational therapy
- Speech language pathologists

- Long-term care
- Skilled nursing/rehab
- Assisted living communities

Finding people – who work with seniors

- State/local clinical or professional associations →
 - Senior centers, nonprofits serving seniors
 - Networking/alliance organizations for professionals working with seniors
 - Alzheimer's Association and other specialized organizations
 - Guardianship/disability advocates
- American Society on Aging
 - CM: ALCA, ACMA, CMSA
 - Counselors: ACA, AMHCA, NBCC
 - Gerontology: GSA, NAGP
 - Geriatrics: AGS
 - Neuropsych: NAN
 - OT: AOTA
 - SLP: ASHA
 - SW: NASW, clinical societies

Finding people – attorneys

- National Academy of Elder Law Attorneys (www.naela.org)
 - and state chapters
- State Bar Associations
- City/Regional Bar Associations
- Local legal aid programs
- Legal aid clinics at area law schools

May have sections or programs on aging, disability, probate, and/or mental health.

Shadowing – finding a partner

- If/when you find someone in your area who is doing these assessments...
- Outreach to connect:
 - Anyone who can introduce you?
 - Email or send letter of inquiry?
- Have a call or meet to discuss:
 - Share your background/program info.
 - Explain what you're looking for →

SHADOW:

Observe their whole process of visit(s) and assessment for one or more cases.

BE SHADOWED:

Conduct visit(s) and complete case(s) documentation under their supervision and mentorship.

Shadowing process

- Consider written agreement that spells out your working relationship:
 - Similar to supervision contracts/fees?
 - Address privacy, liability insurance, etc.
- See them go through their work process as much as possible:
 - From the referral and how they respond to it,
 - How they prepare for and plan the visit,
 - Accompanying them on the visit(s) and debriefing after,
 - As they do their documentation, and
 - Any follow-up action.



Shadowing – financial side



- It may not be ethical or appropriate for you to charge for services while you are shadowing someone else to learn (like your school preceptorship/internship).
- But you’re providing advantages...

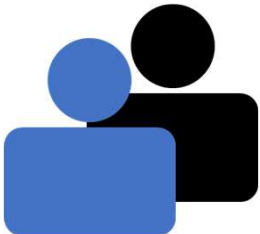
To the client:

- two clinicians for the price of one
- more expertise, experience, and insight.

To your mentor:

- richer observations/data
- increased rigor and depth of assessment process

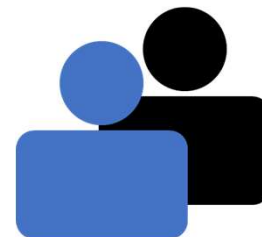
Being shadowed



- When you feel ready, you “drive the bus”
- You do the work, they shadow you:

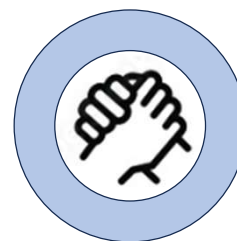
Before visit:	At visit:	After visit:
• Discuss referral info. • Plan your approach. • Consider which tests or tools to use (ones to prioritize, ones to take just in case).	• Do a joint visit with them observing you (if possible). • Debrief afterward to review and get their feedback.	• Discuss your observations and analysis of testing data, other info. • Review draft report for feedback.

Being shadowed – financial side



- It is fair for you to charge for your work, even while you're being shadowed (like associate level or pre-licensure work).
- You and your mentor will have to figure out what's fair in terms of billing/compensation for them (e.g. may have to adjust your initial agreement if circumstances changed and they did more).

Coach/Mentor



- Alternative when you can't find someone to shadow
- May be most helpful to have someone from your same profession/credential, but not essential.
- Consider a written agreement that spells out your relationship:
 - Something similar to supervision contracts/fees?
 - Address privacy, liability insurance, etc.

Coach/Mentor



Before you start:	When you get a case:	After a visit:
• Hear their approach and what they’ve seen. • Get tips on what to do ahead of time (fees/pricing options, disclosure/privacy statements, etc.).	• Discuss referral info. • Plan your approach. • Consider which tests or tools to use (ones to prioritize, ones to take just in case).	• Discuss your observations. • Talk through your analysis of testing data, other info. • Review draft report for feedback.

Consultation/supervision and collaboration

Important for anyone doing this work (or any clinical work) to:

- Engage in regular supervision and/or consultation.
- Participate in a consultation group with other professionals.

Supports you to:

- Review cases,
- Discuss methodology, approach, and problem-solving, and
- Exchange feedback for continuous improvement.

Potential referral partners!

Consultation/supervision and collaboration

Join our DMCA Consult Group:

- If you're already doing DMCA work and want to collaborate with this program's classmates and other professionals,
- If you're definitely wanting to dive into doing DMCA work, or
- If you're not sure how much you can do, but want to stay in the loop.

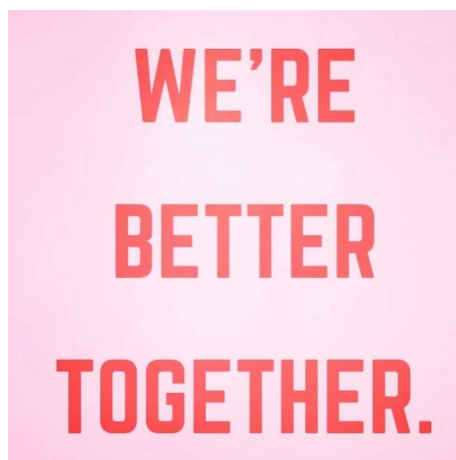
First hour or so:

case discussions
and clinical issues.

Rest of time:

"business side" or
practice development,
the nuts and bolts of
offering these services

Collaboration brings opportunities



- Put competition out of your mind – there is already a need for these assessments and it's continuing to grow as people age.
- Find out if there is a local team or group you can join, or start one!

Marketing your services

According to your licensure: **&** **Within your area of expertise:**

- State-specific laws, regulations
- Ethics (profession specific)
- Any requirements/limitations
- Specific focus areas
- Types of clients or settings
- Types of capacity questions

Marketing – practice preparations

- Disclosure statement
- Fee schedule
- Privacy policy
- Consent form
- Financial agreement
- Insurance / Medicare notice, “No Surprises Act” notice
- Release of information form
- Webpage
- Flyer/handout to give to referral sources
- Description of capacity assessment process
- Estimate/range of costs
- Forms of tests/tools to use
- Template for report

Marketing – introduce yourself

Like before, draft email or one-page handout that you can personalize to the audience:

- About you, that you've taken this class, what DMC is.
- Announcement(s) – what kind of services you provide:
 - a general summary
 - more details describing your services, e.g.: location (home visits? office? virtual?), coverage area, range of fees, insurance usage.
- Offer – volunteer to present a short talk on capacity assessment.

Marketing your services

Target all those agencies and organizations you reached out to before, plus

- Employee Assistance Programs that offer eldercare supports (often through insurance companies or large companies)
- Senior centers and community centers, virtual villages/networks
- Chamber of commerce, Rotary, other community/business groups

***Offer to do a
staff training or
an informational
presentation:***

***teach others, and
promote yourself!***

Marketing your services – attorneys

- Legal ethics rules:

- point lawyers to find an “appropriate diagnostician”
- ...but don’t specify what is appropriate or how to find such a person.

Tailor your email or handout to attorneys:

- Explain how you can help in what types of situations and specific capacity questions, with a brief summary of your credentials, experience, and training (including this course).

Offer to do a talk on capacity assessment for your local or state bar association:

teach others, and promote yourself!

Parting thought...

“I feel a sense of responsibility to make this happen because so much has been given to me. And if I don't pass it on, I'm not paying my rent to walk the face of the earth.”

Chuck Dickerson, founder of the Black Orchestra of Los Angeles

See “The Orchestra Chuck Built” – a New Yorker documentary:
<https://www.newyorker.com/video/watch/the-new-yorker-documentary-the-orchestra-chuck-built> (December 2024, 22 min)

Additional trainings and resources

- Elder Justice Coordinating Council webinars: <https://ejcc.acl.gov/events#gsc.tab=0>
- Personality Disorders resource: <https://outofthefog.website/>

Wrapping up

- Resources provided
- CEU process
- Evaluations

***Please provide your
honest feedback and
suggestions to help us
improve this program.***