

THE CONUNDRUM OF CAPACITY

PART ONE

I Think My Client Has Diminished Capacity.

What Should I Do?

May 21, 2024

1 Substantive Credit

I. INTRODUCTION

- A. MYTHBUSTERS
- B. PENNSYLVANIA RULE OF PROFESSIONAL CONDUCT 1.14
- C. BASIC CONCEPTS

II. DOES MY CLIENT HAVE CAPACITY?

- A. TO DO WHAT?
- B. WHAT ARE THE LEGAL STANDARDS FOR DIMINISHED CAPACITY?
 - 1. State statutory and case law.
 - 2. State Guardianship law.
 - 3. Ethical guidelines (Rule 1.14)
- C. CAPACITY FOR SPECIFIC LEGAL TRANSACTIONS
 - 1. Testamentary
 - 2. Powers of attorney
 - 3. Decisional capacity in healthcare
 - 4. Contractual, donative, and the capacity to convey real property.
- D. SHOULD A LAWYER USE FORMAL CLINICAL ASSESSMENT INSTRUMENTS?
- E. WHAT SIGNS OF DIMINISHED CAPACITY SHOULD A LAWYER LOOK FOR?
- F. WHAT MITIGATING FACTORS SHOULD A LAWYER TAKE INTO ACCOUNT?
- G. HOW TO CATEGORIZE JUDGMENTS ABOUT A CLIENT'S CAPACITY
- H. WHAT TECHNIQUES CAN LAWYERS USE TO ENHANCE CLIENT CAPACITY?
- I. ADULT GUARDIANSHIP IN PENNSYLVANIA - ANOTHER SUBJECT ENTIRELY
- J. AGEISM AND ABLEISM