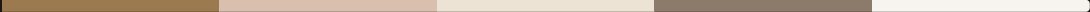


Capacity Evaluation *Checklist.*

*What to consider before requesting a capacity evaluation —
and what a defensible report should cover.*



WHAT'S INSIDE

- When capacity is worth evaluating
- What to put in the referral request
- What a thorough report addresses
- The decision-specific standard, explained

Requesting an Evaluation That Actually Holds Up

A vague capacity referral produces a vague report — and a vague report is easy to challenge. This checklist helps you frame the request so the resulting evaluation is precise, defensible, and useful.

WHEN TO CONSIDER A REFERRAL

- ☐ Client's decisions seem inconsistent with previously stated goals or values
- ☐ Family, caregivers, or opposing counsel have raised capacity as an issue
- ☐ Client struggles to explain a decision in their own words, even when the decision itself seems reasonable
- ☐ There's a known or suspected neurological event, diagnosis, or cognitive decline in the history
- ☐ The matter involves high-stakes consent: contracts, estate planning, medical decisions, or settlement

A KEY DISTINCTION

Capacity is decision- and time-specific. A client can have capacity for one decision and not another, or capacity that fluctuates by time of day or fatigue level. A thorough evaluation accounts for this — a one-line "capacity confirmed" note usually doesn't.

WHAT TO INCLUDE IN THE REFERRAL REQUEST

- ☐ The specific decision(s) at issue, stated precisely
- ☐ Relevant medical, cognitive, and psychiatric history, including collateral reports
- ☐ Any prior evaluations, along with reasons a new one is being requested
- ☐ The legal standard that applies to this specific decision or jurisdiction
- ☐ Practical constraints: deadlines, the client's communication needs, interpreter needs

WHAT A THOROUGH REPORT SHOULD ADDRESS

- ☐ Whether the client understands the relevant facts, in their own words
- ☐ Whether the client can reason about the decision and its consequences
- ☐ Whether the client can communicate a consistent choice
- ☐ Whether cognitive-communication factors (not just cognition alone) affect the above
- ☐ Clear, jargon-free language a judge or jury can follow without a clinical dictionary

DO

Ask the evaluator to address the specific decision at issue, not "capacity" in the abstract.

DON'T

Treat a general cognitive screen as a substitute for a decision-specific capacity evaluation.

Let's talk

EJT

Building a capacity referral for an *upcoming* matter?

I conduct decision-specific capacity and cognitive-communication evaluations, and consult with counsel on framing referrals that produce reports which hold up under scrutiny.

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