



Working with Older Adults: A Practical Workshop

January 20, 2022



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Goals of presentation

- Ethical issues
 - (1) Capacity & decision-making supports
 - (2) Unconscious bias
 - (3) Third-parties
- Best Practices in Communication
 - (1) In-person meetings
 - (2) Written word
 - (3) Telephone/Video conference

ETHICS

Capacity, unconscious bias,
and third parties

Capacity Determinations

- Capacity is presumed
- Assessing capacity is something advocates do every time they speak with a client
- Client may have capacity for one type of legal issue, but not another
 - Capacity Worksheet for Lawyers (ABA handbook)

Capacity Determinations

- (1) Does the client have the capacity to contract my services?
- (2) Does the client have the capacity to understand and complete the legal transaction?
- (3) Are there supports and services that would address concerns about capacity and allow my client to contract for my services and/or complete the legal transaction?
 - Advocates can enhance capacity through using effective communication and decision supports

ABA: Assessment of Older Adults with Diminished Capacity, Handbook for Lawyers, 2nd edition, 2021

Decision Supports

- What supports would make it possible for an individual to make his or her own decisions?
 - **Technology**
 - Apps or interactive software
 - **Environmental aids**
 - Modifications to environment to enhance seeing or hearing
 - **Emotional supports**
 - Ensuring decisions are made in less stressful places or without time pressures
 - **People supports**

Model Rule 1.14 - Client with Diminished Capacity

Model Rule 1.14

(a) When a client's capacity to make adequately considered decisions in connection with a representation is diminished, whether because of minority, mental impairment or for some other reason, **the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client.**

(b) When the lawyer reasonably believes that the client has diminished capacity, is at risk of substantial physical, financial or other harm unless action is taken and cannot adequately act in the client's own interest, the lawyer may take reasonably necessary protective action, including consulting with individuals or entities that have the ability to take action to protect the client and, in appropriate cases, seeking the appointment of a guardian ad litem, conservator or guardian.

(c) Information relating to the representation of a client with diminished capacity is protected by Rule 1.6. [confidentiality] When taking protective action pursuant to paragraph (b), the lawyer is impliedly authorized under Rule 1.6(a) to reveal information about the client, but only to the extent reasonably necessary to protect the client's interests.

Model Rule 1.14, in short

(a) Endeavor to maintain a normal client-lawyer relationship to the extent possible

(b) If you reasonably believe the client is at risk of substantial physical or financial harm unless action is taken and they cannot act in their own interest, consult with others who can take protective action

(c) Confidentiality rules still apply when representing your client with diminished capacity. You may reveal limited information if you are taking action under 1.14(b).

Unconscious bias

- Be conscious of stereotypes
 - frail, lonely, senile
- Avoid speech that may be patronizing
 - "honey," "sweetie," "cute old lady"
- Empower your older adult clients and be their partner in reaching their goals
 - Really listen. What is important to you?
 - Someone making a different decision than you may not reflect lack of capacity – it's a part of agency



Third Parties

- Family or friends who help with daily needs

- Best practices:

- Speak with the client alone first
- Obtain third-party authorization
- Always remember who is the client



- Example: Your older adult client is seeking new housing after being scammed. Her unemployed son lives with her. It is easier to speak to the son, because he has a cell phone and his memory is more intact.
- Resist the temptation to pass along messages through the son. He is not the client, and his interests and goals may be different than his mother's.

IN-PERSON COMMUNICATION

Scheduling the meeting (Part 1)

- Time of day
 - Schedule appointments for times of the day when the client is at peak performance.
- Location
 - Whenever possible, conduct business in the client's residence. This often makes the client more relaxed, optimizes decision-making, and provides the attorney with clues about "real-world" functioning.
- Meet alone first
 - Be cognizant out undue influence or abusive relationships

Scheduling- part 2

- Breaks
 - Provide pre-set time for rest and bathroom breaks.
- Multiple, short appointments
 - Less overwhelming, can break up subject matter
 - Re-assess for comprehension
- Translator?
 - Preference for translator to be present vs over phone

Introduction & Pacing

- Introduction
 - Build a friendly rapport.
 - Comment on a picture or personal item. Accept hospitality. If you are in their home, you are a guest!
 - Building trust – who else have you been working with? May know people/agencies in common.
- Conduct business at a slower pace
 - Be aware that feeling rushed can make people feel unheard
 - Allow extra time for responses to questions, “word-finding” can decline with age.
 - ONE issue at a time

Client Interview

- Open-ended questions
 - Rather than “do you consent to a guardian,”
 - “How do you feel about someone deciding where you will live or medical treatment you receive?”
- Ask simple questions
 - Which require brief responses to assess client understanding and optimal pace.
 - What are essential elements you need for understanding?
 - For a will: what person’s family members are, round numbers of their assets
- Repeat often
 - Summarize at the end of each subject: the issue, options, advice, client’s choice
- Check periodically for accuracy of comprehension.

Demonstrate Empathy

- ❖ Does not take long with immense benefits
 - ❖ "That sounds difficult"
 - ❖ "I am so sorry you are facing this problem"
 - ❖ "I think we can solve this together"
- ❖ Helps clients feel understood
- ❖ More likely to follow up and stay engaged
- ❖ Increases client satisfaction

Conclusion

- Leave your card or contact information
- Provide informational brochures/flyers
 - Additional community resources
- Provide summary notes/ letter
 - Include key points
 - Information needed
 - Decisions to be made
 - Documents to bring to next meeting

WRITTEN COMMUNICATION

Some things that affect literacy
tend to change in later life

- Older readers tend to experience changes in vision that can affect ease of reading.
- Older readers tend to process information more slowly than they did when they were younger.
- Older readers tend to have less "working memory," which makes it harder for them to do several things at the same time.
- Older readers find it harder to focus their attention and deal with distractions.
- Older readers tend to have more difficulty reading between the lines and coming to a conclusion.
- Older readers tend to be less flexible in their thought processes.

Other things that affect literacy
don't change much in later life

- Older readers have an extensive base of knowledge and life experience that helps them interpret information, make decisions, and solve problems.
- Older readers tend to have the same ability to process spoken language as they did when they were younger.
- Older readers tend to keep the same ability to recognize and interpret pictures and other images as they age.

Best practices

Black type on white, non-glossy paper

Size 16 to 18 font size

Reduce cognitive demand needed for the material

- Left-justify, increase space between lines, have plenty of white space
- If multiple pages, use same organization throughout
- Repetition is good. Do not send reader to another page for the phone number, insert it right there
- Use devices like lists, instructions, and captions for pictures

Summarizing conversations

Summarize conversations in written form

- (1) Meeting details (date, location, etc.)
- (2) Issue
- (3) Facts
- (4) Legal options presented + advice
- (5) Client's choice
- (6) What you agreed to do

Example Closing Letter

- Dear Ms. Smith,
- My name is Caitlin Tepe and I am an attorney at MVLS. We met at your house on November 18th at 10:00 AM in your living room. You had contacted our office seeking help because your landlord sent you a breach of lease notice.
- We discussed the facts of your case. You stated that the Landlord was correct that you smoke in your house, against the lease rules. Additionally,
- I advised you of several legal options: (1) contact landlord to try and mediate a resolution outside of court where you can stay in your apartment, (2) fight it in court or (3) negotiate more time and move out.
- You decided that you want to move and would like to negotiate with the landlord more time to find another home.
- I agreed that I would discuss this with your landlord and try to obtain an extension of your lease for 60 days while you searched for alternative housing. I agreed to call you after I spoke with your landlord to follow up.”
- Note if you have disagreed with the legal avenue the client has chosen

Useful documents

- Provide written to-do lists
 - You were going to look for the lease
- Arrangement for next meeting
 - We agreed to meet on January 11, 2021 at 12:00 at your house. I will call you the day prior to remind you
- Provide copies of signed documents.
 - Please find attached the retainer you signed
 - Include pre-stamped and prefilled envelopes for ease of return mail

TELEPHONE & VIDEOCONFERENCING

Virtual > Phone

Comprehension is lower over the phone

Zoom/video-conferencing is preferable for comprehension

- Allows you to assess nonverbal communication
- Allows you to assess living conditions, physical condition, clothing
- May need third party to set up call

But if you must use the phone...

- Speak with a clear voice in a normal tone. Yelling can distort speech.
- Assess understanding frequently.
 - "Does that make sense?" - they will likely say yes. Consider other ways to assess.
- Be patient!
- Use signals when you are turning the conversation to another topic.
- Don't finish the older adult's sentence. Wait until they finish speaking.
- Ask at the end if they have any more questions
- Follow up with a letter

Hypo

83-year-old Mrs. E calls your office because she just received a letter from her landlord accusing her of breaching her lease and seeking to terminate her lease. Mrs. E has lived in her apartment for 12 years and has never had a problem with the landlord before, but her 19-year-old granddaughter recently came to live with her. She mentions that the landlord has complained about parties and noise but is reluctant to get into the facts. The granddaughter is not on the lease. When you talk on the phone with her, she asks you to repeat yourself several times. Mrs. E doesn't have a car and has difficulty leaving the apartment.

Quiz 1: How should you interview Mrs. E?

- a) Ask Mrs. E to turn up her hearing aids and call her back at a mutually convenient time
- b) Have Mrs. E's granddaughter set up a Zoom call on her smartphone
- c) Travel to Mrs. E's house for a face-to-face visit

Hypo & Quiz 2

You travel to Mrs. E's apartment. Her granddaughter lets you in and sits down in the living room where Mrs. E is waiting. How should you proceed?

- a) The legal issue involves the granddaughter too, so start talking to them both together.
- b) Ask the granddaughter if she wouldn't mind stepping into another room or leave the house so that you can first talk to her grandmother alone.
- c) Hand the granddaughter a third-party authorization form and have her sign it before beginning the conversation.

Hypo & Quiz 3

You speak with Mrs. E for an hour. You notice that she is having difficulty remembering the possible options to this matter. How should you follow up?

- a) Schedule another meeting to discuss the issue again
- b) Send a letter summarizing your discussion
- c) Review existing supports to determine ability to enhance capacity
- d) Determine any factors that may be impeding her decision making abilities
- e) All of the above

Questions?



Need legal help?

MVLS is a nonprofit organization that provides quality pro bono civil legal assistance to Marylanders with limited or no income at low or no cost. If we can't provide legal representation, we will point you in the right direction to find legal help.

Sample of cases MVLS can assist with:

Family

- Divorce & Custody
- Adoption
- Guardianship (Adult and Child)
- Name Changes/Birth Certificate Corrections

Housing

- Landlord/Tenant Disputes
- Foreclosure & Tax Sale
- Deed Changes
- Ground Rent

Consumer

- Bankruptcy (Chapter 7)
- Collections
- Contract Disputes

Other

- Expungement/Shielding /Vacatur
- Income Tax Disputes
- Estate Planning and Administration
- Uninsured Motorist Tort
- Non-Profit Organizations



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www.mvlslaw.org

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410-547-6537-6537 · 800-510-0050

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