



ELDER JUSTICE  
DECISION-MAKING CAPACITY  
SYMPOSIUM

## Resource Guide

Over the past 20 years, tremendous strides have been achieved in understanding the brain generally, and in particular the aging brain, with implications for decisional capacity. The law presumes that adults have decisional capacity, although this presumption can be rebutted. At times, individuals, organizations, or government entities challenge the validity of an individual's actions based on an allegation that the person lacked the decision-making capacity to take the action in question (e.g., making a will). Determining whether someone has decisional capacity is informed by a capacity assessment. Capacity assessments are assessments of the ability to perform certain tasks or to make certain decisions that may arise either in the criminal or civil context. Assessment of capacity is an evolving field that combines the disciplines of law, medicine and ethics. Discussions of when capacity should even be questioned, the impact of evaluating capacity on the individuals involved, and enhancing decision supports have become more prominent and nuanced in recent years.

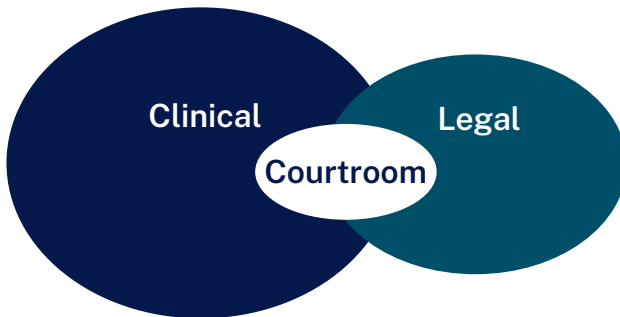


# Purpose

Capacity assessments have different purposes, including relevance for clinical, legal, and court settings. As depicted in the Figure, relatively few cases reach the courts. However, an individual's decision-making capacity can have a critical impact on the outcome in a court case and therefore is the focus of the Department of Justice's Symposium and the Resource Guide.

This Resource Guide is a compilation of relevant materials from numerous sources. It is not intended to be comprehensive, but to provide a broad spectrum of information of interest to elder justice professionals and clinicians.

A legend for all acronyms and abbreviations is in the Appendix.



Source of Figure: Moye, J. A., & Wood, E. (2017). Assessment of Capacity in Older Adults – Module 1: Foundations of Capacity and ABA-APA Model and Legal Concepts and Guardianship. Webinar offered by the APA Office of Continuing Education in Psychology.

# Table of Contents

RESOURCES BY PROFESSION ..... 1

RESOURCES FOR ALL ELDER JUSTICE  
PROFESSIONALS ..... 6

RESOURCES TO SHARE WITH THE GENERAL  
PUBLIC ..... 9

STATUTORY REVIEWS ..... 12

APPENDIX: ACRONYMS AND  
ABBREVIATIONS..... 14



PDF



Podcast



Sign Up/Request



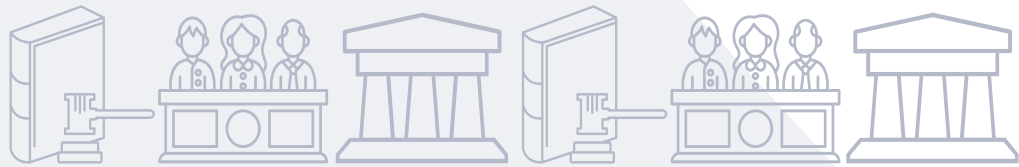
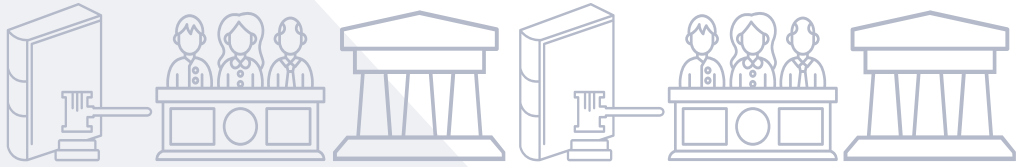
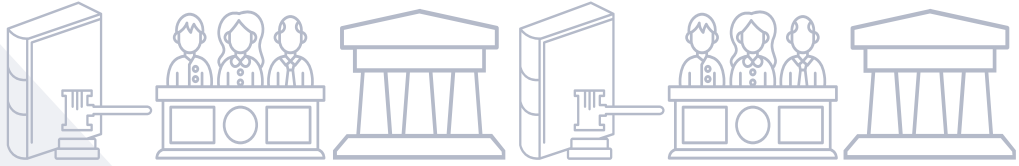
Video



Webinar



Website



# Resources by Profession

## RESOURCES FOR JUDGES



[Judge's Guide: Abuse in Later Life](#) (Judicial Council of California, 2015)



[Handbook for Judges: Judicial Determination of Capacity of Older Adults in Guardianship Proceedings](#) (ABA COLA/APA, 2007)



National Probate Court Standards (Standard 3.3.9 Determination of Incapacity, pp. 56-58, is available on the [NCSC website](#)) (NCSC, 2013)



[Elder Abuse Pocket Reference: A Medical/Legal Resource for California Judicial Officers](#) (Judicial Council of California, 2012)




[Elder Abuse Desk Guide for Judges and Court Staff](#) (Elder Justice Navigator Project, 2018)




[Guardianship Evaluation Worksheet Toolkit](#)


## RESOURCES FOR CIVIL LAWYERS

 [Understanding Legal Capacity and Ethics](#) (NCLER Practice Guide, July 2018)


 [Assessment of Older Adults with Diminished Capacity: Handbook for Lawyers](#) (2nd ed.) (ABA COLA/APA) (hard copy is available for purchase through the [ABA Shop](#))

 [Rule 1.14: Client with Diminished Capacity](#) and [Comment](#) (ABA)

 [The Fourth National Guardianship Summit: Maximizing Autonomy and Ensuring Accountability](#) (and [Recommendations](#)) (2021)

 [Working with People with Dementia and Assessing Client Capacity](#) (Wood & Tilly, 2017)

### Remedies for Elder Financial Exploitation

 [Civil Recovery in Elder Financial Exploitation Cases](#) (ABA COLA)

 [The Model Civil Provisions on Elder Financial Exploitation](#) (NCVC, 2017)

## RESOURCES FOR CRIMINAL LAWYERS



[The Prosecutor's Resource: Elder Abuse](#) (Aequitas, 2017)



[Prosecuting Elder Abuse Cases: Basic Tools and Strategies](#) (NCSC, 2012)



Relevant EJI Prosecutor Training Videos (15 min or less):

[Dementia and Other Mild Cognitive Impairment](#)

[Cognitive Capacity and Consent](#)

[Cognitive Capacity Evaluation and Screening Tools](#)

[Consent and Other Common Defenses](#)

[Overcoming Defenses](#)

[Undue Influence](#)

[Cognitive Capacity Evaluators and How to Find Them](#)

[Working with Older Victims: When the Victim has Dementia](#)

## RESOURCES FOR LAW ENFORCEMENT



[Responding to Elder Abuse Victims with Alzheimer's Disease or Other Dementias](#) (EJI, July 19, 2018)



[Approaching Alzheimer's: First Responder Training Program](#) (Alzheimer's Association)



[Law Enforcement: Building Stronger Cases with Elder Abuse Multidisciplinary Teams](#) (EJI, 2020)



[Working Together: How Community Organizations and First Responders Can Better Serve People Living with Dementia](#) (ACL, NADRC, RTI International)

## RESOURCES FOR ADULT PROTECTIVE SERVICES



[Capacity Screening in Adult Protective Services: Guidance and Resources](#) (APS TARC)



[What Data Reveals About Administering Capacity Assessments](#) (EJI, October, 2020)



[Neuropsychological Correlates of Performance Based Functional Status in Elder Adult Protective Services Referrals for Capacity Assessments](#) (NCEA & NCPEA)





[Dementia-Specific Training for APS and Community Workers](#) (Alzheimer's Association)



[States in Which APS can Petition for Guardianship and/or Serve as a Guardian](#) (APS TARC)

## RESOURCES FOR CLINICIANS WORKING WITHIN A LEGAL CONTEXT



[Decision-Making Capacity Assessment Guidelines/ Toolkits](#)

[Assessment of Older Adults with Diminished Capacity: A Handbook for Psychologists](#) (APA/ABA COLA, 2008)

[The Assessment of Capacity for Everyday Decision-Making \(ACED\)](#) (NAPSA Research to Practice Brief)



Online Courses (available for a fee)

[Assessing Decisional Capacity](#) (Rush Online Training)

[Assessment of Capacity in Older Adults – Module 1: Foundations of Capacity and ABA-APA Model and Legal Concepts and Guardianship](#) (APA)

[Assessment of Capacity in Older Adults](#) (APA)

[Continuing Education Resources](#) (APA)

# Resources for All Elder Justice Professionals

## EJI DECISION-MAKING CAPACITY WEBINARS FOR PROFESSIONALS



[Digging Deeper: When Consent is Not Consent](#)

(September 6, 2018)



[What Data Reveals About Administering Capacity Assessments](#) (October 8, 2020)



[The Neuroscience Behind Financial Scams](#) (July 14, 2020)



[Increasing Access to Capacity Assessments via New Technologies](#) (October 26, 2018)



[Forensic Interviewing With Older Adults](#) (December 8, 2017)



[Assessing Cognitive Capacity In Elder Abuse Cases](#) (August 21, 2017)

## OTHER DECISION-MAKING CAPACITY RESOURCES



[The Rise of Predatory Scams – and How to Prevent Them](#) (Ted Talk by Jane Walsh, 2021)



[Assessing Legal Capacity: Strategies for an Elder Rights-Centered Approach](#) (NCLER, 2021)



[Issues in Capacity: Balancing Empowerment and Protection](#) (NCLER, 2020)



[Understanding Decisional Capacities of Older Adults](#) (APS TARC, 2021)



[Our Aging Brains: Decision-making, Fraud, and Undue Influence](#) (Center for Law, Brain & Behavior at Massachusetts General Hospital and Petrie-Flom Center for Health Law Policy, Biotechnology, and Bioethics at Harvard Law School) (April 2018)



[Rethinking Alzheimer's Care](#) (USC Podcast Series, 2021)



[Guardianship: Remedy vs. Enabler of Elder Abuse](#) (NCEA, 2021)



[Ten Ways to Reduce Guardianship Abuse through Enactment of the Uniform Guardianship, Conservatorship, and Other Protective Arrangements Act](#) (UGCOPAA) (NCEA, 2021)



[Financial Capacity and Financial Exploitation](#) (SIFMA, 2018)

## NATIONAL ORGANIZATIONS AND WEBSITES



[Capacity Assessment \(ABA COLA\)](#)



[NIA Encourages New Research on Decision Making \(NIA 2017\)](#)



[Research on Tools to Detect Cognitive Changes \(NIA\)](#)



[National Plans to Address Alzheimer's Disease \(ASPE\)](#)



[Alzheimer's Association](#)



[National Guardianship Association](#)



[National Resource Center for Supported Decision Making](#)



[Center for Public Representation](#)



[National Disability Rights Network](#)

# Resources to Share with the General Public

## RESOURCES FOR PLANNING AHEAD



[Legal and Financial Planning for People Living with Dementia \(NIA\)](#)



[Considering a Financial Caregiver? Know Your Options \(CFPB\)](#)



[Planning for Diminished Capacity and Illness \(CFPB\)](#)



[Planning for Peace of Mind: Social Security Advance Designation \(CFPB\)](#)



[Thinking Ahead Roadmap \(University of Minnesota and AARP\)](#)



[Choosing a Trusted Contact Person Can Help You Protect Your Money \(CFPB\)](#)



[Establishing a Trusted Contact \(FINRA\)](#)

## RESOURCES FOR PLANNING AHEAD



[Legal and Financial Planning for People Living with Dementia \(NIA\)](#)



[Considering a Financial Caregiver? Know Your Options \(CFPB\)](#)



[Planning for Diminished Capacity and Illness \(CFPB\)](#)



[Planning for Peace of Mind: Social Security Advance Designation \(CFPB\)](#)



[Thinking Ahead Roadmap \(University of Minnesota and AARP\)](#)



[Choosing a Trusted Contact Person Can Help You Protect Your Money \(CFPB\)](#)



[Establishing a Trusted Contact \(FINRA\)](#)

## INCREASING KNOWLEDGE



[Managing Someone Else's Money \(CFPB\)](#)



[How at Risk for Abuse Are People with Dementia? \(UC Irvine\)](#)



[Finding the Right Fit: Decision-Making Supports and Guardianship \(NCSC Online Training\)](#)



[10 Warning Signs of Alzheimer's](#) (Alzheimer's Association)



[10 Warning Signs of Alzheimer's](#) (Alzheimer's Association)



[Understanding Alzheimer's and Dementia](#) (Alzheimer's Association)



[Understanding Alzheimer's and Dementia](#) (Alzheimer's Association)



[Aging and Financial Decision Making](#) (FINRA Investor Education Foundation)



[What if Your Guardian is Not Doing What They Should?](#) (NCEA)

# Statutory Reviews

## State Guardianship Statutes



[Capacity Definition & Initiation of Guardianship Proceedings](#) (ABA COLA, 2020)



[Role of Clinical Evaluation Professionals in Adult Guardianship Proceedings: Survey of State Statutes](#) (ABA COLA, 2016)



[Conduct and Findings of Guardianship Proceedings](#) (standard of proof and what judges are statutorily required to consider; ABA COLA, 2020)



[Least Restrictive Alternative References in State Guardianship Statutes](#) (ABA COLA, 2018)



[What Statutes Require of Clinicians](#) (EJI, 2022)

## State Criminal Elder Abuse Statutes



[State Criminal Elder Abuse Statutes](#) (also available on the [EAGLE](#)) (EJI)



## Adult Protective Services Statutes



[Types of Abuse Defined in Adult Protective Services Statutes](#) (ABA COLA, 2021)



[Adult Protective Services Reporting Chart](#) (ABA COLA, 2019)

# Appendix

Acronym	Full Phrase
ACL	Administration for Community Living
AARP	American Association of Retired Persons
APA	American Psychological Association
APA/ABA	American Psychological Association/ American Bar Association
ABA	American Bar Association
ABA COLA	American Bar Association Commission on Law & Aging
APS TARC	Adult Protective Services Technical Assistance Resource Center
ASPE	Assistant Secretary for Planning and Evaluation
CFPB	Consumer Financial Protection Bureau
EAGLE	Elder Abuse Guide for Law Enforcement
EJI	Elder Justice Initiative of the Department of Justice
FINRA	Financial Industry Regulatory Authority
NAPSA	National Adult Protective Services Association
NADRC	National Alzheimer's and Dementia Resource Center
NCEA	National Center on Elder Abuse
NCLER	National Center on Law and Elder Rights
NCSC	National Center for State Courts
NCVC	National Center for Victims of Crime
NCPEA	National Committee for the Prevention of Elder Abuse
NIA	National Institute on Aging
SIFMA	Securities Industry and Financial Markets Association
UC Irvine	University of California – Irvine
USC	University of Southern California

*Disclaimer: The resources contained in this Resource Guide do not constitute an endorsement of any of those resources nor do they constitute legal advice. The opinions represented herein do not necessarily represent the official position of the US Department of Justice.*



DEPARTMENT OF JUSTICE  
**ElderJustice**  
INITIATIVE