Look Before You Leap! Planning At The Cliff of The Client's Capacity

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Imagine this. Jessica and Jimmy Doe became your clients five years ago. Jimmy died last year and you handled the administration of Jimmy's estate. Although Jessica was Jimmy's Personal Representative and successor Trustee, Jessica's daughter, Janie, did much of the heavy lifting and developed a rapport with you. Now that Jimmy's estate is settled, Janie would like you to meet with her and Jessica to discuss updating Jessica's estate plan. Jessica, now 80, has recently been diagnosed with dementia, but does not appear to you to be significantly affected. Although she sometimes repeats herself, Jessica is still very conversant and easily recounts discussions you had with her in the last year. Jessica and Jimmy had a typical standard credit shelter / marital trust plan and, at Jessica's death, their assets would be divided equally among lifetime trusts for their children for which National Bank & Trust Company would serve as Trustee. Janie has told you that Jessica now wants to disinherit Janie's estranged twin brother, Jonathan. Although Jonathan did come to Jimmy's funeral, his relationship with the family became severely strained after he married. Janie also says that Jessica wants to appoint Janie as Trustee of the lifetime trust for Janie's free-spirited sister, Jasmine. As for Janie's share, Janie reports that Jessica wants Janie to get her money outright. Janie says that Jessica will verify this at your upcoming appointment but is giving you a "heads up" in the meantime. When this happens, what do you do?

Whether we want to or not, we all age and as we age we become dependent on others. Sometimes we become dependent by choice. Some of us may want to unburden ourselves of the hard decisions and willingly give up control of finances or health care to others. Most of us though will become dependent out of necessity. Our bodies or our minds will succumb to effects of time or illness. When we become dependent on others, we lose the certainty of knowing that the things done in our names are true reflections of our intent. Sometimes the choices made for us are those that others consider to be in our best interest or in the best interest of our family. Sometimes the choices made are those that are in the best interest of others. What can you, as estate planning attorney, do to ensure that the plans and actions you facilitate on behalf of a dependent client are the product of your client's wishes?

A. Understand your client's level of capacity

When working with a client who is seemingly dependent upon others, it is important to understand the client's level of capacity. Ethically, you are required to maintain a normal client-lawyer relationship with a client, as far as reasonably possible, even when the client is under a disability.[1] A person who lacks the legal capacity to make binding decisions may still have the ability to understand and consider matters concerning his or her own well-being. The Comments to Rule 4-1.14(e) of the Florida Bar's Rules of Professional Conduct recognize that persons of advanced age can be capable of handling routine matters while needing special legal protection for major transactions. Your clients' estate planning decisions can have serious impact upon them and their families. As an estate planning attorney, you should know and understand your clients and their abilities so that you will know when it is appropriate to implement safeguards for their protection.

1. Understand the test for testamentary capacity

In Florida, a testator or grantor is assumed to be capable of entering into an estate plan, unless he or she has already been adjudicated incapacitated.[2] In an action to contest a will or trust, the contestant has the burden to prove that the testator or grantor lacked the capacity to make a valid will or trust.[3] However, the contestant is required to prove this only by a preponderance of the evidence.[4] Evidence of illness, old age, weak memory and drug use are not, *on their own*, sufficient.[5] However, a combination of these and factors may be. Proof of a serious medical condition that significantly affects a client's mental status might be sufficient to override the presumption of capacity. If your client is diagnosed with dementia, Alzheimer's disease or another condition that affects mental acuity, evidence might exist that could erode the presumption of his or her capacity.

Florida Statutes require that a testator or grantor making a will or trust be of "sound mind".[6] Accordingly, when preparing an estate plan for a client of questionable capacity, it is important to understand what it means to have a "sound mind". Long ago, the Florida Supreme Court set forth the test for determining whether someone is of sound mind necessary to enter into

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[1] Rule 4-1.14(a), Florida Bar's Rules of Professional Conduct.

[2] *Raimi v. Furlong*, 702 So. 2d 1273, 1286 (Fla. 3rd DCA 1997) .

[3] 17 Fla. Jur 2d, Decedents' Property § 121. See also Fla. Stat. § 733.107(1) (2009).

[4] *Id.*

[5] Trawick, Henry, Jr., *Trawick's Redfearn Wills and Administration in Florida*, § 10:2, (2008-09 ed.).

[6] Fla. Stat. § 732.501 (2009). See also Fla. Stat. §736.0601.

an estate plan. A client will be presumed to have the required "testamentary capacity" if he or she possesses (i) the ability to the understand the nature and extent of his or her property; (ii) knowledge of the natural beneficiaries of his or her estate; and (iii) a general understanding of the practical effect of his or her will or trust.[7] A person who does not possess all three elements is not capable of executing a valid estate plan in this state.

Thus, when dealing with a client whose capacity might be called into question by others, a prudent estate planner should consider whether the client meets this threshold test for testamentary capacity. Your meetings with the client should include discussion of each of the three elements. You should review and discuss your client's family and property with the client. Consider inquiring about family members and reviewing account statements and other asset information. Discuss the function and consequences of your client's proposed will and trust and the reasons why family members are treated differently, if appropriate. Review your client's proposed plan in comparison to his or her existing plan, whether under previously executed testamentary documents or under statutory law. When in doubt, ask your client about their health and their dependency upon others.

What do you do if your client's capacity changes from day to day or throughout the day? Clients with vacillating capacity are still capable of entering into valid estate plans. It is not necessary for your client to have continuous testamentary capacity in order to establish a valid will or trust. Even an incompetent client can execute a valid will or trust so long as he or she is lucid at the time he or she executes the document and demonstrates understanding of the three criteria.[8] While evidence of your client's mental capacity in the days before or after signing his or her will or trust can infer his or her level of capacity at the time of signing,[9] greater weight will be given to evidence from the actual day of signing.[10] Bear this in mind when scheduling and structuring meetings with your client and plan to meet at times that will most facilitate your client's understanding, especially on the day that documents will be signed. Consider doing the following:

- Schedule meetings with your client at times of the day when your client is most likely to be fully alert.

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[7] *Newman v. Smith*, 82 So. 236, 241 (Fla. 1919)

[8] Trawick § 10:2. *See also Raimi* at 1286 (citing to *In re Weihe's Estate*, 268 So. 2d 446, 448 Fla. 4th DCA 1972) that "[A] testator may still have testamentary capacity to execute a valid will even though he may frequently be intoxicated, use narcotics, have an enfeebled mind, failing memory [or] vacillating judgment.").

[9] Wilsey, George F. *Litigation under Florida Probate Code*, Chapter 3 "Will and Trust Contests" (The Florida Bar 2003, FL-CLE 3-1).

[10] *Hendershaw v. Hendershaw*, 763 So. 2d 482, 483 (Fla. 4th DCA 2000).

- Avoid long meetings that might exhaust your client physically or mentally
- Converse with your client casually to put your client at ease.
- Simply complex information as much as possible to avoid confusing or agitating your client.
- Use analogies that your client can relate to when explaining technical concepts
- Utilize flowcharts, executive summaries or other straight-forward means of summarizing the client's proposed estate plan throughout the planning process

Can you prepare an estate planning documents for a client if you are not convinced that the client has testamentary capacity? This issue is subject to some debate. The American College of Trust and Estate Counsel (ACTEC) has published commentaries to the Model Rules of Professional Conduct addressing issues specific to estate planning lawyers. The ACTEC Commentary to MRPC 1.14 contains a detailed discussion of this tricky issue:

> *"Testamentary Capacity.* If the testamentary capacity of a client is uncertain, the lawyer should exercise particular caution in assisting the client to modify his or her estate plan. ***The lawyer generally should not prepare a will, trust agreement, or other dispositive instrument for a client who the lawyer reasonably believes lacks the requisite capacity. On the other hand, because of the importance of testamentary freedom, the lawyer may properly assist clients whose testamentary capacity appears to be borderline.*** In any such case the lawyer should take steps to preserve evidence regarding the client's testamentary capacity.
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> In cases involving clients of doubtful testamentary capacity, the lawyer should consider, if available, procedures for obtaining court supervision of the proposed estate plan, including substituted judgment proceedings."[11]

In San Diego County Ethics Opinion 1990-3 (1990), the local bar advised that "a lawyer must be satisfied that the client is competent to make a will and is not acting as a result of fraud or undue influence." The opinion continues, suggesting that once an issue of capacity is raised in the attorney's mind it must be resolved. "The attorney should schedule an extended interview with the client without any interested parties present and keep a detailed and complete record of the interview. If the lawyer is not satisfied that the client has sufficient capacity and is free of undue influence and fraud, no will should be prepared. The attorney may simply decline to act

[11] ACTEC Commentary on MRPC 1.14 (4th ed. 2006).

and permit the client to seek other counsel or may recommend the immediate initiation of a conservatorship."

The Florida Supreme Court has weighed in on this issue under two pretty disparate sets of facts. In *Florida Bar v. Betts*, 530 So. 2d 928 (Fla. 1988), an attorney was publicly reprimanded for preparing two codicils for a client "during a time when [the client] was in a rapidly deteriorating physical and mental state." In the first codicil, the client testator removed his daughter and son-in-law as beneficiaries. The lawyer spoke with his client several times in an effort to persuade him to reinstate his daughter as a beneficiary. Subsequently, the lawyer prepared a second codicil to reach this result. However, when the codicil was presented to the testator, "he was in a comatose state." The lawyer did not read the second codicil to the testator, the testator made no verbal response when the lawyer presented the codicil to him, and the lawyer had the codicil executed by an X that the lawyer marked on the document with a pen he had placed and guided in the testator's hand. The court observed:

> "***Improperly coercing an apparently incompetent client into executing a codicil raises serious questions both of ethical and legal impropriety, and could potentially result in damage to the client or third-parties. It is undisputed that [Lawyer] did not benefit by his action and was merely acting out of his belief that the client's family should not be disinherited. Nevertheless, a lawyer's responsibility is to execute his client's wishes, not his own***."[12]

The *Betts* case should be compared and contrasted with the earlier decision of *Vignes v. Weiskopf*, 42 So. 2d 84 (Fla. 1949). In *Vignes*, a codicil prepared by a lawyer and executed 16 days before the death of testator was declared invalid after the testator was found to have lacked testamentary capacity. The facts of *Vignes* as recited by the Court are fascinating:

> The testator's secretary, who had been in his service for twenty years, was called by his nurse who told her that Mr. Weiskopf wished to see her. She went to his bedside, where she found him apparently sleeping. He made no response when first she spoke to him, but after an interval, said, "`I want a codicil.' * * * `$100,000 to Mrs. Vignes; you to get $30,000 — ten, ten and ten.'" She continued: "* * * then he stopped. He seemed to be trying to break through * * *." After another pause he said: "`I want to leave $100,000 to somebody, but I can't think who. Isn't that awful?'" Then he kept repeating the question, "`What else?'" She endeavored to assist him by reviewing the contents of his original will with which, because of her position, she was familiar. At the end of this conference she called his attorney, as she had been directed, and "gave him some sketchy notes and remarks." Because of the incomplete nature of the instructions to him, the attorney questioned her "very carefully," and evidently urged her to communicate

[12] *Betts*, 530 So. 2d at 929.

to him more definite information. She continued: "I went back in the room and tried to get Mr. Weiskopf to be more specific, and more in detail, but he did not say anything further. That is how the codicil got to be written.

The following day the attorney, accompanied by his wife, appeared at the testator's home, bringing with him the codicil which he had undertaken to prepare from the meager information given him by the secretary. The testator did not read it nor was it read to him. At the time, according to one of the witnesses to the codicil, his nurse, it was questionable whether he knew what he was signing. The wife testified that when her husband asked the testator if he desired the instrument read to him he declined and said he would read it later. The lawyer signed it; then at his request his wife and the nurse signed it also. It was immediately sealed and delivered to the secretary, who kept it until after the testator's death; so it is a fair deduction that he never did know exactly what it contained.

It is obvious that the testator was desperately, incurably ill and was in such pain that a great deal of medicine to relieve him of his suffering was being administered, such as phenobarbital, novatrine, demerol, cobra venom, and so forth."[13]

After determining that the codicil was invalid, the Florida Supreme Court addressed the conduct of the lawyer and ultimately praised him for doing his best under very difficult circumstances. The court stated that:

"Much has been said in the arguments and written in the briefs about the conduct of the attorney who drafted the codicil and who appears now as counsel for the [will proponents]. The inference is left with us that he was guilty of some duplicity because he prepared the codicil for Daniel Weiskopf and now represents those who would have it declared invalid. We have seen what his activities were with reference to preparing the codicil, bringing it to the sickbed of the testator, and having it acknowledged and witnessed. When it was presented to the county judge for probate he joined the other two witnesses in an oath that they were present when the testator subscribed his name to the instrument; that the testator did not read it; that its contents were not read to him nor made known to him, although the attorney "asked him to read it or have its contents made known to him but the testator replied, `I will read it later'"; that the codicil was immediately sealed; that the seal was not thereafter broken until its deposit with the court; that the attorney received no reply from the testator when he asked him if he wished three subscribing witnesses to attest his execution; that the witnesses thereupon signed the paper at the request of the attorney; "that they verily [believed] that the testator did not know the contents of what he was signing nor did he at the time of the signing thereof have testamentary capacity.

[13] *Vignes*, 42 So. 2d at 85.

> Patently the purpose of this affidavit was to apprise the court at the first opportunity precisely what happened in the sickroom when the codicil was executed.
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> When the attorney was interrogated about his securing the execution and attestation of the codicil, which he was later to state in the oath had been witnessed without a direct request of the testator, by one who at the time lacked testamentary capacity he gave an answer which seems to us to have been quite sensible. He said simply, "I did the best I knew how."
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> It occurs to us that he would have been unfaithful to an old client had he not done his best to comply with the request to prepare the codicil and bring it to him. It is true that the information was incomplete, but there is evidence that he tried diligently at the time to have it clarified. ***When he reached his client's bedside there was good reason to believe, from the atmosphere there, that the client had not long to live and that he was probably not mentally alert, but these circumstances did not make it necessary that the attorney constitute himself a court to pass on the medical and legal question whether he was in fact capable of executing a valid codicil. That the question is debatable is demonstrated by the procedure which has taken its course in the county judge's court, the circuit court, and this court.***
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> ***We are convinced that the lawyer should have complied as nearly as he could with the testator's request, should have exposed the true situation to the court, which he did, and should have then left the matter to that tribunal to decide whether in view of all facts surrounding the execution of the codicil it should be admitted to probate.***
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> Had the attorney arrogated to himself the power and responsibility of determining the capacity of the testator, decided he was incapacitated, and departed, he would indeed have been subjected to severe criticism when, after the testator's death, it was discovered that because of his presumptuousness the last-minute effort of a dying man to change his will had been thwarted."[14]

Is there a lesson to be learned from these decisions? Perhaps the best lesson is that a lawyer has leeway if they are unsure whether a client has testamentary capacity. Above all, it is important to be honest and to provide the Court with the facts and a clear record so that a decision can be made. As a planning lawyer, your job is to make sure that your competent client's wishes are fulfilled. Your job is not to adjudicate capacity. Can you prepare a will for a clearly incompetent client? Probably not. Can you prepare a will for a dying client under circumstances where you are uncertain as to whether the client has testamentary capacity?

[14] *Id*. at 86.

Maybe. The authorities seem to differ on this issue. In Florida, the *Vignes* case certainly provides support for the defense that you "did the best you knew how" under the circumstances.

2. Confirming the client's intentions

With these general concepts in mind, what can you do to keep a good record? When appropriate, encourage your client to provide you with written directions that you can maintain in your file. Follow important client meetings with correspondence to your client that summarizes your meeting and the directions you received from your client. If a client's desired plan deviates significantly from prior plans, have frank discussions with your client to try to understand the impetus for changes and document those reasons in your file. When presenting draft documents for your client's review, consider the complexity of your documents and simplify *where possible* to aid your client's understanding. After a plan is executed, reconfirm the plan with the client to ensure that the plan as written matches the client's understanding. Consider the use of flowcharts or executive summaries when presenting a proposed plan or reconfirming an executed plan.

3. Documenting your client's capacity

In addition to confirming and memorializing your client's intentions, if your client's capacity is potentially diminished, you should proactively make a record of your discussions with the client and the circumstances surrounding the execution of the document. If the integrity of your client's plan is challenged in the future, your file will likely be the primary source of evidence concerning your client's testamentary capacity. You should consider taking and retaining notes of discussions had in your client meetings and prepare memoranda documenting important decisions made by your client in those meetings. When preparing your notes and memoranda, you may want to keep the criteria for testamentary capacity in mind and address each element, including discussions about family members, the client's property, and the consequences of your client's desired estate plan and the means to facilitate that plan. The notes and memoranda of your document execution meeting should also confirm the discussions at the execution meeting and the documents he or she signed.

In addition to notes and memoranda, your file can contain other evidence to support your client's testamentary capacity. Audio or video recordings of your client meetings can serve to memorialize the content of your client meetings. However, recordings should be used with caution. Client behavior and appearance cannot be controlled and recordings may unwittingly capture details that a contesting party might use to refute your client's capacity. Annotating your file with your client's medical records or physician's opinions should also be done cautiously for similar reasons. If you prefer to have confirmation of your client's mental status, obtain an independent medical exam of your client instead of relying on past medical reports. Don't rely

on standard neuropsychological testing; those results may determine capacity by medical standards but may not be helpful in showing that your client has testamentary capacity.

If you decide to have the client examined by a health care professional to obtain an opinion on capacity, it is important to educate the examiner about the test for testamentary capacity and ask that the examiner evaluate your client on those criteria. You may want to send a letter to the examiner, which:

- Sets forth the family of the testator as well as key beneficiaries in the estate plan (so that the examiner can determine whether the testator understands the "natural objects of his or her bounty")
- Generally lists the assets of the testator (so that the examiner can determine whether the testator understands the "nature and extent of his her assets")
- Generally explains the proposed estate plan (so that the examiner can determine whether the testator understands the practical effect of the plan).

Witnesses can be brought into client meetings to attest to a client's capacity, particularly in those meetings in which you confirm and execute your client's estate plan. Again, for reasons similar to those already mentioned, care should be selected when choosing witnesses. When possible, choose witnesses who are familiar with your client and whose presence can put your client at ease. Consider enlisting associates or paralegals to serve as witness. Witnesses who are aware of the criteria for capacity are more likely to be attuned to clues of your client's capacity such as conduct, appearance, condition, and mannerisms[15] and will be credible witnesses when testifying about your client's testamentary capacity. Staff or associates who communicate with your client or participate in client meetings may also prepare their own memoranda or review and countersign your memoranda.

B. Recognizing and dealing with the potential for undue influence

Client capacity is not the only concern when dealing with aging and dependent clients. Often, clients who are very dependent on others are also vulnerable to the influences of their caregivers. Some of those influences can be for the client's well-being. Other influences, however, may be for the betterment of the client's caregiver. In such cases, clients might be pressed by others to make significant estate planning decisions. When the influence exerted upon a testator or grantor rises to the level of overpersuasion, duress, force or coercion and destroys the free agency and will power of the testator or grantor, undue influence exists.[16]

[15] Trawick § 10:2.

[16] *In re Estate of Carpenter*, 289 So. 2d 410, 411 (Fla. 4th DCA 1974); See also *Newman* at 237.

2. Understand the test for the presumption of undue influence

In our practice, it is not uncommon for spouses, children or other family members to approach us with concerns about our clients. It is not uncommon for clients to involve their loved ones in client meetings and communications. From time to time, we receive messages from our clients that are delivered by third parties. While it may be commonplace to deal with those acting on behalf of a client, in the estate planning context it is important to confirm that any plan you are devising for your client is one that is truly of your client's design. To do this, you need to be able to spot and counteract the signs of undue influence. In what situations might we want to be cautious about undue influence? Consider how you handle the following situations:

- When appointments are made by persons other than the client
- When third parties call to discuss estate plans on behalf of the client
- When third parties participate in meetings with your client

Under Florida law, a will or trust is presumed to be the product of undue influence if the alleged undue influencer (i) is a **substantial beneficiary** under the Will; (ii) occupied a **confidential relationship** to the decedent; and was (iii) was "active in procuring" the will or trust. [17] Thus, when your client introduces a third party into your estate planning relationship, you should ask yourself:

- Will this person benefit substantially from the plan my client is proposing?
- Does this person have a special relationship with my client that may make my client vulnerable to this person's suggestions? Does my client rely heavily upon this person and trust them implicitly?
- Is this person taking an active role in procuring this change to my client's estate plan?

If all of these questions can be answered affirmatively, your client's plan may be vulnerable to claims of undue influence. But the fact that these questions are answered affirmatively does not necessarily mean that undue influence actually exists. So, how can you protect a client's plan from being undone by a claim of undue influence? While your client may be adamant about naming a care giver or special friend as a significant beneficiary, you can take proactive steps to ensure that it is your client, and not the third party, who is taking the active role in establishing your client's estate plan.

[17] *Carpenter* at 701-702.

In *Estate of Carpenter*, 253 So.2d 697, 701 (Fla. 1971), the Florida Supreme Court provided us a list of "warning signs" to help us discern when a person proposed to be a beneficiary may be taking an active role in procuring a client's will or trust. The signs include:

- the presence of a beneficiary at the execution of the client's will or trust;
- the presence of a beneficiary on those occasions when the client expressed a desire to make his or her will or trust;
- the referral of the client by the beneficiary to an attorney for the purpose of having a will or trust made;
- the beneficiary's knowledge of the contents of the will or trust prior to the client's execution of the document;
- the giving of instructions on preparation of the will or trust by the beneficiary to the attorney drawing the Will;
- the securing of witnesses to the will or trust by the beneficiary; and
- the safekeeping of the will or trust by the beneficiary subsequent to execution.[18]

While no one criterion is determinative, not all criterion need to be present.[19] Further, this list is not exclusive.[20] Active procurement may occur in other ways. Nevertheless, you should consider this list when working with a client and be wary of requests to include potential beneficiaries in your client relationship. How might you do this?

- By scheduling and confirming meetings directly with the client.
- By discouraging the participation of potential beneficiaries in client meetings and communicating directly with the client.
- By explaining that private discussions with the client will help to protect your client's plan.
- By documenting the identity of any third parties who do participate in client meetings and their roles.

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[18] *Id*. at 702.

[19] *Id.*

[20] *Id.*

- By reaffirming the rule of confidentiality and assuring your client that all information that your client shares with you will be kept confidential and not provided to anyone without your client's consent.

- By reaffirming that your client is free to make his or her own estate planning decisions and should not feel obligated to follow others suggestions if he or she is not completely comfortable doing so.

- By minimizing or avoiding conversations about your client's estate plan with any third parties who might be viewed as influencers.

- By taking all directions from your client or independently confirming directions with your client.

- By continually reviewing and reaffirming the estate plan with the client from time to time.

- When prudent, by sharing with your client any concerns you have about undue influence.

- By letting your client know that they can call upon you for help if they feel they are being pressured by others to take steps that they find uncomfortable.

- By documenting all meetings and conversations.

By minimizing others' roles in procuring your client's estate plan, you can reduce or eliminate risk that your client's plan is the product of undue influence. This being said, claims of undue influence are very often coupled with claims of lack of capacity. Thus, when you take steps to avoid the possibility of undue influence, you should also be taking the steps necessary to confirm your client's capacity.

2. Confirming and documenting your client's intentions

Thus, just as you would when your client's capacity is in question, where undue influence is a potential concern it is important to regularly confirm and reaffirm your client's intentions directly with your client. While a client may be dependent upon family members or third parties to share information with you, ultimately you should confirm all directives with your client.[21] Again, when appropriate, ask your client to provide any estate planning directions written in their own hand. Follow each client meeting with a letter that summarizes your meeting and the directions you received from your client. Find ways to ensure that your communications are

[21] The Comments to Rule 4.1-1.4 direct us to maintain communications a client as much as possible, even when that client has a legal representative.

delivered directly to your client. If possible, speak or meet directly with your client each time. If a client's desired plan deviates significantly from prior plans, have frank discussions with your client to glean the impetus for changes and document those reasons in your file. Document your files with memos and notes that confirm the steps you took to ensure that your client's plan was independently conceived. After a plan is executed, reconfirm the plan directly with your client, preferable when the client is not in the presence of any potential influencer.

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It is inevitable that one day each of us will have to deal with a highly dependent client or one with questionable capacity, if we have not already. The clients we have today and will hope to retain for years to come will continue to need our guidance as they age. While they are able, they are entitled to direct their estate plans. As their lawyers, we will be better able to provide them good counsel by being well prepared to deal with questions of capacity, dependence and influence.

The American Bar Association and the American Psychological Association have teamed up to create a lengthy handbook to assist lawyer's in assessing a client's capacity entitled "Assessment of Older Adults with Diminished Capacity: A Handbook for Lawyers" (2008). The handbook contains a detailed discussion of steps that lawyers can take to assess capacity and help ensure that a client with diminished capacity understands their legal documents. It also contains proposed letters to health care professionals to assist the professional in assessing capacity. The handbook can be downloaded from the American Pyschological Associate's website at http://www.apa.org/pi/aging/programs/assessment/capacity-psychologist-handbook.pdf.