

Competency Evaluations

Competence as I am using the term refers to a person's having the requisite ability to make reasonable decisions in his or her best interest. Decisions can include those pertaining to the management of one's finances, medical care, and activities of daily living. Decisions can also include those that need to be made in the context of a legal action such as a divorce, or the preparation of a legal document, such as a will.

A competency evaluation is focused on a specific issue which, in turn, means that each evaluation will require the collection of different data depending on what the issue is.

Even so, a competency evaluation generally consists of face-to-face interviews with the person being evaluated, interviews with other people who can provide objective information regarding the person being evaluated, a review of records (psychiatric, medical, financial, police, and employment records, for example), and sometimes the administration of psychological testing.

Once the evaluation process has been completed, the evaluator prepares a report summarizing the data collected, and his or her opinions regarding competency, treatment(s) required to restore competence, and the need for a guardian or conservator.

In the context of probate law, a competency evaluation may be used to determine whether or not an individual has testamentary capacity (defined as a person's ability to properly execute a will). At issue in these cases is whether or not the person understands the purpose of a will, knows what he or she owns, knows the potential recipients of his or her bounty, is capable of making logical decisions regarding how the assets are to be distributed, and whether or not a person has made the decision free of undue influence.

In yet other areas of the law, a competency evaluation may be needed to determine a person's ability to participate in the process of a divorce or a criminal action. At issue might be concerns regarding an individual's inability to cooperate with his or her attorney, understand the legal issues associated with the case, conduct him or herself appropriately at legal proceedings, and make reasonable decisions that are in his or her interest.

Another type of competency evaluation arises when there is question regarding an individual's ability to have made competent decisions in the past. A competency evaluation of this type is a retrospective look at a person's functioning rather than a look at how that person functions in the present or is likely to function in the future. For example, there may be question regarding a person's prior ability to sign off on a contract or prepare a will.

Finally, questions may arise regarding an individual's ability to work. A competency evaluation of this sort focuses on whether or not a person suffers from psychological and/or medical conditions that impair his or her ability to work. For example, a party to a divorce may claim that he or she is incapable of working and should receive lifetime maintenance. At issue is not only the individual's ability to work, but also how long such a disability would be likely to last and what sort of treatment is needed to restore the person to the workplace.