Determination of Capacity

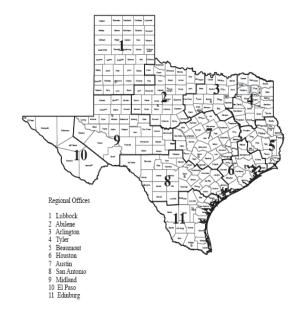UT Law: Elder Law Conference
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Key Points

- Guardianships are either rare or common depending on your perspective.

- A client must be functionally impaired to be incapacitated.

- Executive Function is the strongest cognitive predictor of decisional capacity and self-care abilities.

- Neuropsychological testing *informs* the capacity assessment; it does not replace it.

Scope of the Problem

Regional Offices

1 Lubbock
2 Abilene
3 Arlington
4 Tyler
5 Beaumont
6 Houston
7 Austin
8 San Antonio
9 Midland
10 El Paso
11 Edinburg

Scope of the Problem

- How many elders >65yrs in Texas?

- How many 18-64yrs with disability in Texas?

- How many completed in-home APS investigations in FY 2013?

- How many validated in-home APS investigations?

- How many guardianships are there in Texas?

Scope of the problem

- How many elders >65yrs in Texas?
  - 2,954,972

- How many 18-64yrs with disability in Texas?
  - 1,710,430 (elders + disabled = 4,665,402)

- How many completed in-home investigations in FY 2013?
  - 69,383 (=1.5% of elders + disabled)

- How many validated in-home investigations?
  - 48,392

- How many guardianships are there in Texas?
  - 52,000 (= 1.1% of elders + disabled)

Questions to Answer for APS

- Does the APS client have a psychiatric diagnosis?

- Does the client have decision making capacity?

- What level of care do they need?

- Do they need to be emergently removed from their home?

Title search: Determination of Capacity

Also available as part of the eCourse
[Determination of Capacity; Creating a Guardianship; plus Top 10 Mistakes](#)

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16th Annual Estate Planning, Guardianship and Elder Law Conference session
"Determination of Capacity"