

# REPRESENTING MISS DAISY

ETHICAL CONSIDERATIONS WHEN A CLIENT HAS DIMINISHED CAPACITY, AND ESTATE PLANNING FOR INCAPACITATED INDIVIDUALS WITH PLENTY OF ACTUAL MARBLES (AND OTHER ASSETS TOO!)

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## INTRODUCTION



- *Boolie Werthan*: What I need is for somebody to drive my mother around.
- *Hoke Colburn*: Well, if you don' mind my askin', sir—how come she's not hirin' for herself?
- *Boolie Werthan*: See, it's kind of a delicate situation.
- *Hoke Colburn*: Oh, yessir, yessir...done gone around the bend a little bit. Well, now, that'll happen as they get old...
- *Boolie Werthan*: Oh, no, she's all there. Too-much-there is the problem.

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## SIGNS OF DIMINISHING CAPACITY IN A CLIENT



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## INTRODUCTION TO DEMENTIA

- Although not a specific disease, dementia is the general term for an impaired ability to remember, think, or make decisions that interferes with every day activities.
- According to the CDC, an estimated 5.0 million adults with dementia in 2014 and projected to be nearly 14 million by 2060.
- Generally individual patients' dementia continue to progressively decline in functioning with time and the symptoms of dementia may become severe enough to interfere with daily functioning.
- A very basic understanding of dementia and its relationship to legal capacity can assist us to better communicate with clients and serve their interests, as well as provide advice and family and agents of the ailing clients.
- A substantial portion of the information contained in Section II is incorporated with the express permission of Mr. Fleming, from *Representing Clients With Diminished Capacity*, Robert B. Fleming, 25<sup>th</sup> Annual Advanced Estate Strategies Course, State Bar of Texas, April 2019.

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## CAUSES OF COGNITIVE DECLINE OR DIMINISHED CAPACITY

### Common Causes of Dementia

- Alzheimer's Disease
- Vascular Dementia
- Lewy Body Dementia
- Frontotemporal Dementia
- Mixed Dementia
- Other Causes

### Conditions Causing Dementia Symptoms

- Depression
- Diet and related Vitamin Deficiencies
- Chronic Drug Use
- Changes in Medication
- Infection Diseases

## PROGRESSION OF DEMENTIA

- Mild Cognitive Impairment
  - Individuals may experience mild memory problems without effective daily independent living.
  - This may lead to a diagnosis or may be normal age-related cognitive decline.
- Mild Dementia
  - The patient is likely to exhibit weakened memory and diminished cognitive skills and may no longer be able to live completely independently and may require assistance.
  - During these early stages of dementia the patient may:
    - Appear more apathetic, including losing interests in hobbies or activities;
    - Be slower to grasp complex ideas and take longer with routine jobs;
    - Become more self-centered and less concerned with others; or,
    - Be more irritable or upset if they fail at something.
- Moderate Dementia
  - Patients experience severe memory impairment and difficulty communicating.
  - No longer able to reside alone, the patient needs assistance with even basic daily activity
  - Among the practical effects of moderate dementia the patient may:
    - Be forgetful of recent events;
    - Long term memory may be better; details may be forgotten or confused;
    - Be confused regarding time and place;
    - Become lost in unfamiliar surroundings;
    - Forget names or confusion with family or friends;
    - Be neglectful of hygiene and basic necessities; or,
    - Become angry, upset or distressed through frustration.

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"Representing Miss Daisy: Ethical Considerations When A Client Has Diminished Capacity, and Estate Planning for Incapacitated Individuals With Plenty of Actual Marbles (And Other Assets Too!)"