

Pia Quimson-Guevarra, DO

Licensed Physician #DO179697
Portland Metropolitan Area
Beaverton, OR

Board-Certified
Forensic Psychiatrist, ABPN
Psychiatrist, ABPN

(503) 832-9293
qg@psychexpertwitness.com
psychexpertwitness.com

Will Contest and Estate Planning Competency: the Role of a Forensic Psychiatrist

By Dr. Pia Quimson-Guevarra, DO

Will Contest

During a Will contest, a forensic psychiatrist can provide valuable expertise by assessing testamentary capacity, or the testator's ability to make his/her Will. If the testator lacked testamentary capacity, the Will could be invalidated.

A Will is separate from other vehicles that individuals may use to distribute their estate on death, such as a Revocable Trust.

Is Capacity to Sign a Will the Same as Signing a Trust?

Estate plans vary in the vehicles used to transfer property on death. Revocable Trusts and other instruments might have been signed in addition to a Will. The law and legal precedence vary depending on the act of the person.

Evaluating testamentary capacity to sign a Will may not be the same as competency to enter into a contract, which is how capacity to sign a Trust is conceptualized.

Is a Forensic Psychiatrist Qualified to Evaluate Competency to Sign a Trust? Is it the Same as a Will?

I am qualified, as a forensic psychiatrist, to evaluate mental state, diagnose (or rule out) psychiatric illnesses, and consider medical or mental vulnerability to undue influence or other factors that could impact testamentary capacity.

A Trust is a contract which is not the same as a Will. In some states the bar for capacity is different between a Trust versus a Will. Some states set a higher bar for capacity to sign a Trust compared to capacity to sign a Will.

How do you Assess Capacity?

To complete an assessment, a forensic psychiatrist would

- interview the testator, if alive

- conduct collateral interviews, e.g., family members, medical providers, staff at a care facility if applicable. The goal would be to interview anyone who can speak to the testator’s mental clarity or state of mind. ***If the testator is no longer living, collateral interviews may produce valuable information.*** A Forensic Psychiatrist is trained in techniques used to detect malingering—intentional lying for secondary gain, especially important when the collateral interview is with a person impacted by the Will.
- review relevant records:
 - > medical
 - > financial
 - > legal
 - > other relevant records indicated. A psychiatrist may find, during a review of records, or an evaluation (IME), that additional information could be assistive in rendering an opinion.

A forensic psychiatrist considers if the ^[1]

- Testator knew he/she was making a Will
- Knew the extent of his/her property and assets
- Knew who would inherit his/her property and assets, sometimes called the “natural objects of his/her bounty.”
- Testator knew what manner his/her property and assets would be distributed.

Dementia

We tend to think of the elderly person, perhaps impaired by Dementia or Alzheimer’s Disease, as the usual focus of a testamentary capacity legal controversy. That is not always the case. For example, symptoms of these medical conditions may co-exist with other factors that impair judgment—temporarily or over an extended period.

Mental Illness, Addiction and other Factors

I am sometimes asked if a mental illness or an addiction can be a factor. It is important to note that having a mental illness or substance use disorder does **not** by itself mean a testator lacks testamentary capacity. As a physician, I assess symptoms, diagnoses and treatment for any potentially impairing condition.

Cognitive Deficits

An example of symptoms to evaluate are cognitive deficits, which include difficulties in memory, decision-making, problem solving, and attention. If deficits in these functions were present at the time of making a Will, this can impact the testator’s capacity. It is important to mention that a decline in cognitive functions can occur in those with Dementia.

Undue Influence

Another factor a forensic psychiatrist assesses for is undue influence. This can happen if an individual manipulates or deceives a testator such that the testator's ability to freely decide how his/her property is distributed is impacted. Forensic psychiatrists have an important role in will contests by evaluating if there were any factors impeding a testator's ability to make his/her will.

Conclusion

As long as the testator's symptoms do not impact his/her ability to understand the extent of his/her property, natural objects of their bounty, manner of distribution or other feature in making a will, he/she would have testamentary capacity.

It is the job of the forensic psychiatrist to evaluate if the testator did, or did not, have symptoms or behaviors that impacted his/her ability when making a will.

[1] "To have mental capacity, the testator must have the ability to know: (1) the nature/extent of property; (2) the natural objects of her property; (3) the [disposition](#) that her will is making; and (4) the ability to connect all of these elements together to form a coherent plan."

https://www.law.cornell.edu/wex/testamentary_capacity (1) the nature/extent of property; (2) the natural objects of her property; (3) the [disposition](#) that her will is making; and (4) the ability to connect all of these elements together to form a coherent plan." Cornell Law Institute, https://www.law.cornell.edu/wex/testamentary_capacity

Dr. Quimson-Guevarra is a Psychiatrist and Forensic psychiatrist in the Portland, Oregon area. She is Board-Certified in Forensic Psychiatry and (general) Psychiatry by the American Board of Psychiatry and Neurology. She consults to attorneys and is available to testify as an Expert Witness.

Disclaimer:

Dr. Quimson-Guevarra is not an attorney. The focus of this article is to discuss the role of a Forensic Psychiatrist. and considerations in evaluating competency by a person to enter into documents which impact estate planning. Comments about the law should not be construed as legal advice and such matters are not universally applied in every State. Legal advice or interpretation should be directed to an attorney.