

AN OUNCE OF PREVENTION: Protecting Estate Plans with Contemporaneous Testamentary Capacity and Undue Influence Assessments



Contested wills, trusts, and estate plans are extremely expensive to litigate and can significantly erode the corpus of the estate while undermining the wishes of the testator. This is particularly true when late changes are made to an existing plan. Planning for the possibility of a will contest is both prudent and cost-effective.

A careful and well-documented assessment of the testator's capacity prepared at the time that a will is executed or any significant changes are made can document and preserve evidence of the testator's competency and freedom from undue influence. This simple step can prevent years of litigation and unnecessary delays in executing the client's desires. Our evaluations include both psychiatric examination and neurocognitive testing. Evaluations are generally conducted as close in time as possible to the date that a will or trust will be signed and can usually be completed in one day. The process includes a careful review of the medico-legal record; objective psychodiagnostic and neuropsychological testing; a meticulous forensic psychiatric examination of the testator(s); and interviews of significant others as needed.

A customized neuropsychological test battery is administered, tailored specifically to those cognitive functions most relevant to testamentary capacity, including attention, concentration, memory, and executive functioning. Psychodiagnostic testing is used to evaluate psychiatric symptoms. The forensic psychiatric examination includes taking a complete history, mental status examination, careful documentation of the testator's competency, and assessment of the factors that increase susceptibility to, or protect against, undue influence. The evaluation can be digitally recorded if desired. A comprehensive report is then prepared to be filed with the estate plan.

Two specialists lead our team of nationally-recognized experts for this project:



Bennett Blum, M.D., is a board-certified physician specializing in Forensic and Geriatric Psychiatry. A sought-after expert and litigation consultant, Dr. Blum has worked with attorneys, law enforcement, and government agencies on hundreds of cases involving financial exploitation, elder abuse, and undue influence claims. His work regarding testamentary capacity and undue influence claims has been recognized by the US State Department; US Senate Subcommittee on Commerce, Science and Transportation; World Psychiatric Association; National College of Probate Judges; National Guardianship Association; American Bar Association - Commission on Law and Aging; Association of Judicial Disciplinary Counsel; National College of District Attorneys; National District Attorneys Association; University of Chicago School of Law and other law schools; British Columbia Law Institute; and the United Nations.



Daniel Martell, Ph.D., is a board-certified forensic psychologist and a Fellow of the National Academy of Neuropsychology. He serves on the clinical faculty at the Semel Institute for Neuroscience and Human Behavior at the David Geffen School of Medicine at U.C.L.A. Dr. Martell has consulted on hundreds of forensic cases across the country over the past 25 years, including testamentary capacity and undue influence issues.