

Working with Clients with Cognitive Disabilities: Practical Strategies for Client Engagement



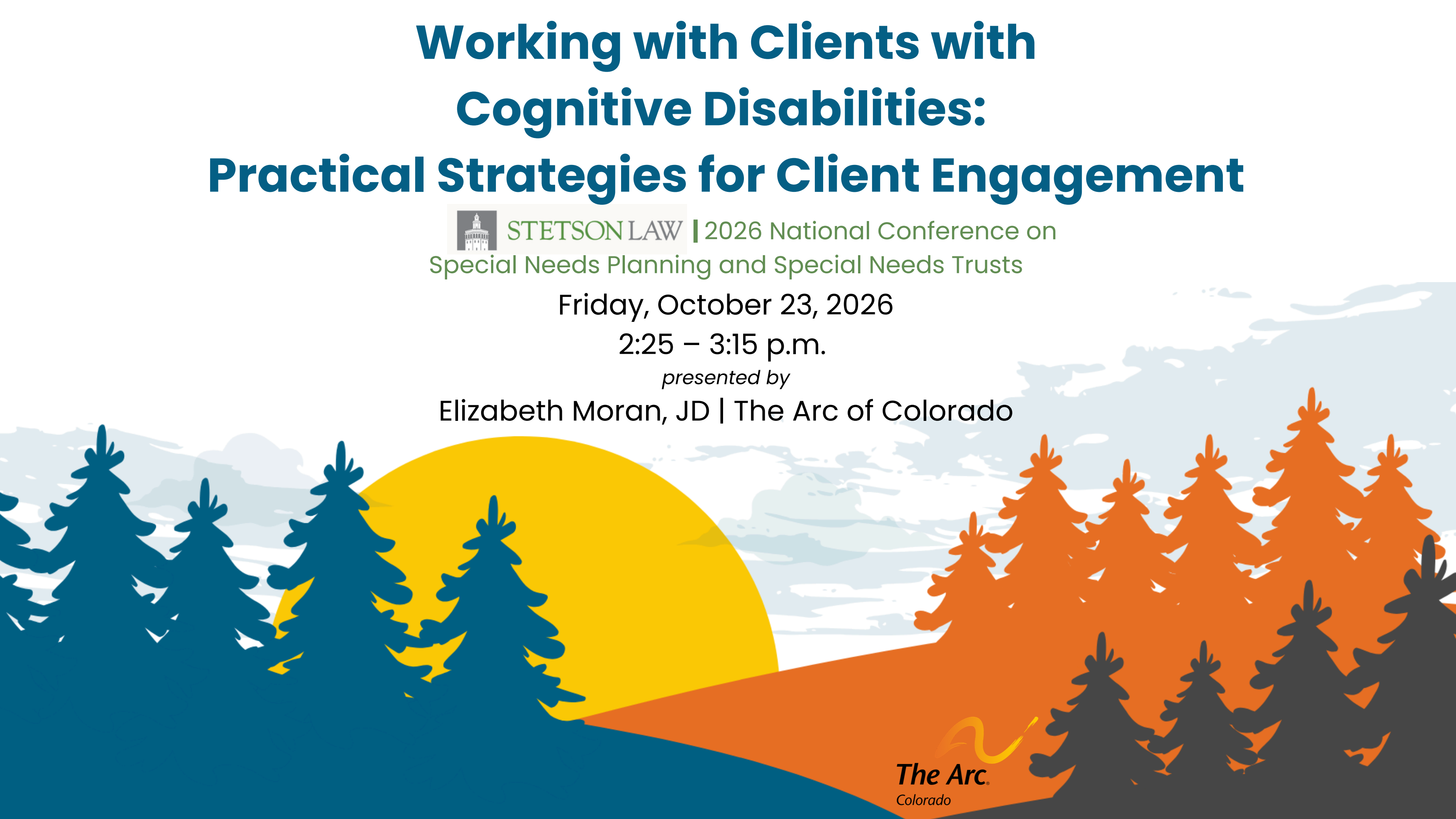
STETSON LAW | 2026 National Conference on
Special Needs Planning and Special Needs Trusts

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2:25 – 3:15 p.m.

presented by

Elizabeth Moran, JD | The Arc of Colorado



The Arc
Colorado

The background of the slide features a stylized landscape with a large yellow sun, blue and orange hills, and silhouettes of evergreen trees. The Arc of Colorado logo is located in the bottom right corner.

Our Pledge...

“...with **liberty** and
justice for all.”



Communication Access & Assumptions

Assumption	Better inquiry
Physical access resolves court access	What communication, information, and procedural barriers remain?
A cognitive diagnosis establishes a need for guardianship	What is the actual legal standard and what support would help?
A helper or communication device makes the response less credible	How did the person communicate the response, and what shows authorship?
Benefits eligibility establishes inability to decide	What does the evidence show about this particular decision?

Misconeptions Result in: Segregation, Institutionalization, Isolation, Higher risk of being subject to overbroad and unnecessary guardianship, Lack of access to medical care and support, Ongoing bias, stereotypes, and low expectations.

Diagnosis, Function & Legal Capacity

Inquiry	Relevant information
Diagnosis	A condition identified through appropriate clinical evaluation
Functional ability	What the person can do in the task and setting, with available support
Legal capacity	Ability to satisfy the governing standard for a particular act or proceeding

An Individual with Cognitive Disabilities May...



take longer
to absorb
information



have difficulty
understanding
questions,
abstract
concepts or
instructions



have
difficulty
with
reading
and writing
and money
skills



have a
short
attention
span and
might be
easily
distracted



find it
difficult to
maintain
eye contact



find it
difficult to
adapt to
new
situations
or to plan
ahead or
solve
problems



find
communica
tion over
the phone
difficult



have
difficulty
expressing
their needs

Disabilities Impacting Communication Can Vary...

- Stress, grief, depression, and traumatic events
- Temporary medical conditions and medications
- Not having access to needed accommodations or assistive technology
- Time of day
- Recent institutionalization



ONGOING REALITIES

- Some courtrooms remain **physically inaccessible**.
- Courts can **lack clear policies** about how to request and receive an accommodation or to file a complaint if they are denied an accommodation.
- Some court **technology platforms are inaccessible**.
- People with disabilities are **often denied their right to effective communication**.
- Litigants with disabilities **face bias and stereotypes about their credibility** and capacity.
- People with disabilities often **experience challenges accessing critical information** they need to reach the legal system.
- People with disabilities are **less likely to have access to computers and internet** than people without disabilities.
- People with disabilities more often **lack access to representation** and disproportionately must represent themselves pro se.
- Courts often **fail to provide information about how to request accommodations**.
- **People who have communication access needs are commonly presumed to need guardianship**, when often they may simply need appropriate supports and accommodations.

ABA Revisions to MRPC 1.14

(Supporting Decisions, Preserving Autonomy)

- **Updated language:** ABA replaces “diminished capacity” with “decision-making limitations.”
- **Supports before conclusions:** Assess decision-making ability with appropriate supports and accommodations—including supported decision-making, accessible communication, *and* environmental adjustments.
- **Function over diagnosis:** Consider the particular decision, circumstances, and abilities; limitations may vary across issues and over time.
- **Keep the client’s voice central:** Preserve direct communication and client direction; clarify the authority of family members, agents, and guardians.
- **Protect without unnecessary restriction:** Use protective action only when the rule’s criteria are met; emphasize minimal intrusion and advocacy for the client’s expressed position in guardianship proceedings.

Client identity and decision authority

(do this first)

- **Who is the client?**
- **Who arranged** the meeting and **who pays?**
- **Who has authority** for this decision?
- **What does the person want** the lawyer to do?
- **Who may receive information or attend?**

ASK:

1. How do **you** prefer to receive and share information?
2. **What makes a meeting easier** or harder for you?
3. What **time, place, and meeting length** work best?
4. What helps you **compare choices or remember** next steps?
5. Who, if anyone, would **you** like to help?
6. **How should we contact you** afterward?

Communication Profile

Accommodations

(Standard accommodations are just the starting point. Checking boxes...or opening doors?)

- Qualified interpreters (including ASL and certified Deaf interpreters)
- Notetakers
- Screen readers
- Computer-aided real-time transcription (CART)
- Augmentative and alternative communication devices
- Communication boards
- Closed caption decoders
- Video interpreting services
- Video/text displays
- Visual descriptions
- Physical changes to the courtroom space
- Proceedings at certain times of day
- Extra time or breaks or delays
- Description of visually presented materials
- Qualified readers
- Assistance filling out forms
- Audio recordings
- Plain language or easy read materials
- Braille materials
- Large print materials
- Materials in electronic format
- Supported decision-making



Standard Accommodations Active Participation

(Real Adjustments = Meaningful Engagement)

Potential barrier	Adjustment to explore
Noise or sensory overload	Quiet space and fewer distractions
Fatigue or slower processing	Shorter meetings, pauses, and agreed breaks
Unfamiliar setting	Advance explanation, familiar location, or orientation
Information overload	Agenda, fewer topics, and one document at a time
Remote technology	Practice connection, accessible materials, and backup method

Strategies for Supporting Effective Communication

- **Focus on the person**, not on the disability.
- Ask the individual about themselves and **match their language**.
- **Use plain language**, concrete terms & ideas.
- Extend the person the same **dignity, consideration & respect** you would expect for yourself.
- Always assume (because it is nearly always true) that **every person has a way of communicating**.
- A diagnosis, IQ, manner of communication, assistive technology or aid, or level of support **does not determine whether a person has diminished capacity**.
- **Public benefits systems** like Medicaid Waivers, Supplemental Security Income (SSI), **are deficit based**. Remember that.
- Recognize that the presence of **accommodations may disrupt** how you typically run your meeting/courtroom. Normalize this.
- Be careful **not to provide nonverbal cues**.
- **Take short breaks**.
- **Repeat information** to improve retention.
- **Work with your court's ADA coordinator**.
- To the extent possible, try to draft your documents, orders, and opinions in **plain language**.

Plain Language for Legal Documents

Legal wording	Plain-language explanation
Execute the instrument	Sign the document
Designate an agent	Choose someone to act for you
Release claims	Give up the claims covered by this
Irrevocable	You may not be able to change or undo it



Neutral Questions & Time to Respond

Less useful question	More useful question
You agree this is best, right?	What do you like or dislike about this option?
You understand everything?	How would this option affect you?
Your sister should decide, correct?	What help would you like from your sister?
Why can't you manage this?	Which part is difficult, and what helps?

Consider...

- Speech or writing or non-traditional communication
- Pictures or a communication board
- Gestures or signs
- A communication device
- A combination of methods

Words to Avoid...

- Non-verbal
- Severe or profound
- Disorders, impairments, and deficits
- Complex communication needs
- Non-communicative

Words to Use...

- Use person-first language unless a person with a disability specifically asks you not to.
- Describe the supports and accommodations a person needs
- Refer to conditions and disabilities

Communication Methods & Respectful Language

Beyond “Do You Understand?”

(Checking clarity and inviting understanding)

- Explain a small amount.
- Invite the person to show or describe the meaning.
- Clarify the part that did not come through.
- Check again using the person’s preferred method.
- “I want to check whether I explained this clearly.”

Supported Decision-Making & Supporter Roles

- The person makes the decision with chosen assistance.
- Agree who helps with information, options, or communication.
- Clarify information sharing and the limits of the role.
- Preserve the person's own response and access to private communication.
- Check authority separately from the support arrangement.
- Revisit the arrangement when needs or participants change.



Capacity in Context

(Making a decision-specific inquiry)

1. Identify the act and the governing legal standard.
2. Explain relevant information in accessible form.
3. Explore the person's understanding and choice with support.
4. Examine remaining concerns in context.
5. Identify the evidence and next step needed.

The ADA in Your Office & Courtroom

(Making participation and meaningful engagement possible)

- State & local courts operate under **ADA Title II**. Covered private law offices under **ADA Title III**.
- **Reasonable modifications** can address policy and procedure barriers.
- Auxiliary aids and services can **address communication barriers**.
- Applicable standards and exceptions require an **individualized inquiry**.

Barrier to explore	Examples to discuss
Hearing or speech access	Qualified interpreter, CART captioning, assistive listening, familiar AAC
Vision or print access	Qualified reader, screen-reader-compatible file, large print, Braille, audio
Processing and concentration	Plain language, easy-read materials, advance agenda, one question at a time
Time and setting	Pauses, shorter sessions, orientation, seating or room changes
Completing and following steps	Accessible forms, permitted assistance, clear dates, accessible recap

Meaningful Participation: Before, During, & After Court

(Confirm arrangements before the proceeding = ensuring accessible proceedings)

Your request should identify:

- The task or proceeding
- The functional access barrier(s)
- The requested adjustment(s)
- Why it would help participation
- Timing, contact, and follow-up



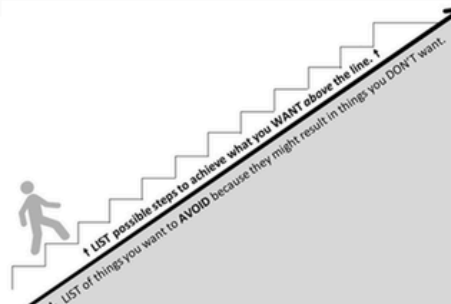
Your Best Practice Tool Kit

- Pre meeting **accommodation checklist**
- Client **communication profile**
- **Decision and support** documentation
- Communication **phrases** to use
- Court **access checklist**
- **Accommodation request** template

 Name: _____
Today's date: _____

What I WANT

What I DON'T Want



This tool was originally developed by the USARC Institute for Human Development, USARC (Stromer et al., 2018), and modified by The Arc of Colorado (Stromer et al., 2019).

IDENTIFYING DECISION-MAKING SUPPORTS

This tool is designed to assist with identifying an individual under the age of 18 years old's ability to make decisions and manage key areas of life. It is intended to assist with exploring options for integrated decision-making services & supports.

Name of individual: _____
Relationship to individual (circle one): Self Family Friend Guardian Other: _____
How long have you known the individual? _____

Step 1: If yes, put a checkmark in the GREEN column - this means the individual is good to go. If NO, put a mark in the yellow column.

Step 2: When you have completed all the questions, explore integrated services & supports options for supported decision-making for all questions marked in the yellow column.

Step 3: ONLY if NO integrated services or supports can be identified should substitute decision-making be considered for those specific areas of need.

			
DAILY LIVING at HOME			
Can the individual make and communicate choices in regard to getting dressed in the morning (what to wear, appropriate attire for weather/season, etc.)?			
Can the individual make and communicate choices in regard to bedtime and/or morning routines (i.e. what time to go to bed, when to get up, bathroom, etc.)?			
Is the individual able to decide and direct what kinds of support they need or want and select who provides those supports?			
HEALTHY LIVING			
Does the individual make decisions about where, when, & what to eat?			
Can the individual follow a prescribed diet and/or take medicines as directed?			
Does the individual understand the need to maintain individual hygiene and dental care?			
Does the individual understand health consequences associated with high-risk behaviors (substance abuse, swimming, high-risk sexual activities, etc.)?			

Modified by The Arc of Colorado (05/02/2021) from USARC Institute for Human Development, USARC (03/05/2018).



Thank You!

Questions?

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