COMPETENCY: A CLIENT'S CAPACITY TO UNDERSTAND THE NATURE OF COURT PROCEEDINGS OR TO ASSIST IN THEIR OWN DEFENSE

KEEP IN MIND:

OPEN-ENDED QUESTIONS ARE BEST, DO NOT LEAD YOUR CLIENT, APPROACH SOFTLY NOT ABRUPTLY, DEVELOP A RAPPORT, LISTEN

COMPETENCY IS DETERMINED AT THE TIME OF THE PARTICULAR PROCEEDING AND CAN ARISE AT ANY TIME DURING THE PROCEEDINGS (ARRAIGNMENT, PRETRIAL, AT TRIAL, SENTENCING, PROBATION)

IT IS YOUR ETHICAL OBLIGATION TO ORDER A COMPETENCY EVALUATION IF YOU AS THE ATTORNEY FEEL YOUR CLIENT CANNOT ASSIST IN HIS OR HER OWN DEFENSE OR UNDERSTAND COURTROOM PROCEEDINGS

FOLLOW-UP FURTHER ON CONCERNING CLIENT STATEMENTS

TO BE COMPETENT A CLIENT MUST HAVE A RATIONAL AND NON-DELUSIONAL DEFENSE TO THE CHARGE

COULD RELEVENTLY CLIENT TESTIFY IN COURT, ASSIST YOU AT TRIAL WITH DETAILS OF THE INCIDENT & THEIR DEFENSE, PHYSICALLY SIT THROUGH A TRIAL MAINTAINING APPROPRIATE BEHAVIOR, MAINTAIN ATTENTION AT TRIAL, ABLE TO GIVE FEEDBACK ABOUT PROSECUTION WITNESS TESTIMONY (TEST IS WHETHER COMPETENT FOR A TRIAL, NOT WHETHER THEY ARE COMPETENT TO ENTER A PLEA)

SAMPLE COMPETENCY QUESTIONS:

1. Ability to Assist:

- I am going to ask a few questions before we see the judge…
- Could you tell me where you are now?
- Why are you here?
- Ever been in court before?
- Do you remember being arrested for committing a crime?
- What crime was that?
- What are you charged with? (If they don't know tell them the charge but let them elaborate further with your questions)
- What were you doing when arrested?
- Why do you think the police arrested you?
- How do you feel about how you handled the situation?
- Why were you doing that?
- Do you know that when you do that you can be arrested?
- Were you drinking or using anything at time?
- When is the last time drank or used drugs?

(Explore Procedure Questions Before asking the Questions Below)

- How do you feel about your ability to help out with your legal defense?
- What is your defense to this charge? What would you tell the jury on why you should be found innocent? (if defense is delusional then client cannot assist and competency is an issue!!)

- What do you think will likely happen to your case?
- Do you think the judge will be fair to you? Is the judge for you or against you?
- Do you think the jury will be fair to you?
- Not to put you on the spot but why do you think the police would do this?
- If client version of events vastly differs from police report: Why do you think the witness would tell this to police?
- What would you do if you were in a jury trial and a witness told a lie about you on the witness stand? (They should answer they would tell their lawyer first. Some clients are too disorganized to understand this and therefore unable to assist in their defense)
- When you get out…what are your plans?
- If sounding grandiose about any abilities they have you might ask: Do you have any special powers? Would these powers effect how the judge or jury will treat you? Effect how they make their decisions? Can you control their decisions? Can you send them messages without speaking to them?
- Do you hear any voices? Only ask after develop rapport!

2.Understanding Court Procedure:

- When you go in front of the judge today he or she will ask you "How do you plead?"
- What are the two basic ways that you can plead?
- What does it mean to plead guilty?
- What happens to your case when you plead guilty?
- Who decides what your sentence is?
- What happens when you plead not guilty? Trial.
- What happens at a trial?
- What is evidence? What is the evidence in your case?
- What does the prosecutor do?
- What is my job?
- What is the jury's job?
- Who runs or is in charge of the courtroom?
- What is a plea bargain? Which way do you plead to get a plea bargain?

3. General Questions:

- Do you have any questions for me?
- Talking to Doctor doesn't mean staying in jail.
- Where are you staying now?
- Will ask for your release.
- Thank them and tell them good job
- What else is going on in your life right now?

4. Developmental Disability:

- Once you have asked procedure questions, if they get answers wrong, educate them, then near the end of your interview quiz them on if they retain the information you gave them (Do they remember NG=Trial?)
- Give them 3 words to remember, ask them to first repeat the words right after you tell them, then about five minutes later quiz them on the words.
- Do you know what the present date is?
- Who is the current president of U.S.?
- Name some current events in the world.