DIMINISHED CAPACITY DECISION FRAMEWORK
(based on Colo. RPC 1.14)

COLORADO OFFICE OF THE CHILD'S REPRESENTATIVE

STOP!

Presume capacity

Maximize capacity through developmentally appropriate communication

*Does the youth **lack sufficient capacity to communicate or make considered decisions** adequately in connection with the legal representation?*

Focus on decision-making process, not the decision. Consider:

- ✓ Ability to articulate reasoning
- ✓ Variability of state of mind
- ✓ Ability to appreciate consequences of decision.
- ✓ Consistency of decision with known commitments and values of client

Age or developmental maturity must not be the sole basis for determination.

No

Yes

Do I have a reasonable belief that the youth at risk of ***substantial physical, financial, or other harm unless action is taken and the youth cannot adequately act in their own interest?***

No

Yes

Do I have a reasonable belief that my youth client cannot adequately act in their own interest? Have I, **as far as reasonably possible**, maintained a **normal client-lawyer relationship** to support them in acting in their own interest?

No

Continue representation of youth. Do not consider protective action. Continue efforts to maintain a normal attorney-client relationship (developmentally appropriate communication, case consultants, etc.).

Yes

Consider **whether** to take protective action:

- ✓ **Permitted** but **not required**
- ✓ Must be **reasonably necessary**
- ✓ May include:
  - Consulting with individuals/entities/ family members (*consider using a CC*!)
  - Reconsideration period
  - Appointment of GAL
- ✓ Consider:
  - Wishes and values of client
  - Best interests of client
  - Least amount of intrusion into client's autonomy
  - Maximizing capacities
  - Respecting family and social connections
- ✓ Remember:
  - Can only reveal confidential information to the extent reasonably necessary to take protective action.