

**NORTHEAST LAWYERS CLUB**

**USING VOCATIONAL EXPERTS IN LITIGATION**

**KENNETH MANGES, PH.D.**

July 8, 2016

---

---

---

---

---

---

---

---

**12 REASONS TO USE A VOCATIONAL EXPERT**

---

---

---

---

---

---

---

---

**12 REASONS TO USE A VOCATIONAL EXPERT**

1. To evaluate the current and future earning capacity and employability of an injured party.
2. Estimate a realistic length of time for an injured party to find work in the current labor market.
3. Assess efforts of an injured party to seek employment, build a business or explore career options.

---

---

---

---

---

---

---

---

**12 REASONS TO USE A VOCATIONAL EXPERT**

4. Assess the influence of an injured party's education, work related skills, transferability to new or alternative work.
5. Determine the costs and duration of education and/or training for self identified/ realistic education and training for future career options.
6. Ascertain the effect of age, physical or emotional health along with work life expectancy.

---

---

---

---

---

---

---

---

**12 REASONS TO USE A VOCATIONAL EXPERT**

7. Compare actual earnings with earning capacity of an injured party.
8. Establish an injured party's earning capacity and ability to earn a living compared to pre-injury levels.
9. Consider changes in circumstances of an injured party's wage earning capacity and employability.

---

---

---

---

---

---

---

---

**12 REASONS TO USE A VOCATIONAL EXPERT**

10. The job seeking of an injured party's willingness and ability to interview for employment
11. The job seeking of an injured party's attempts at finding work to be legitimate and realistic
12. The personality issues prohibiting realistic employment and or need for supportive/therapeutic care along with the expected time for re-entering the work force due to emotional difficulty.

---

---

---

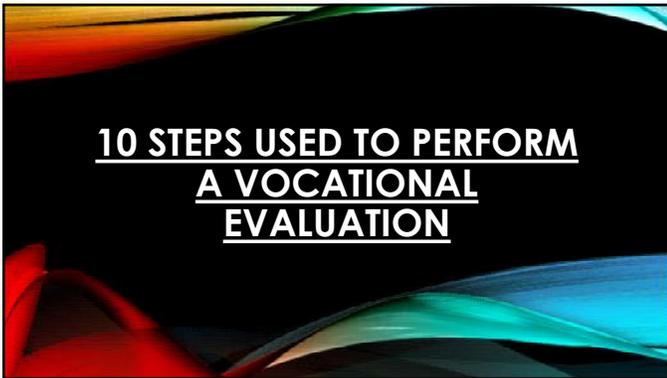
---

---

---

---

---



**10 STEPS USED TO PERFORM  
A VOCATIONAL  
EVALUATION**

---

---

---

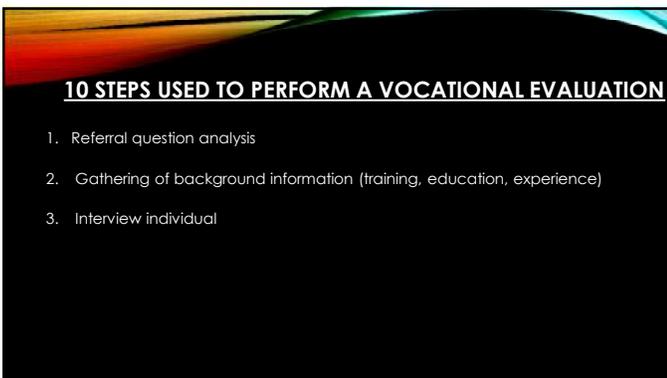
---

---

---

---

---

- 
- 10 STEPS USED TO PERFORM A VOCATIONAL EVALUATION**
1. Referral question analysis
  2. Gathering of background information (training, education, experience)
  3. Interview individual

---

---

---

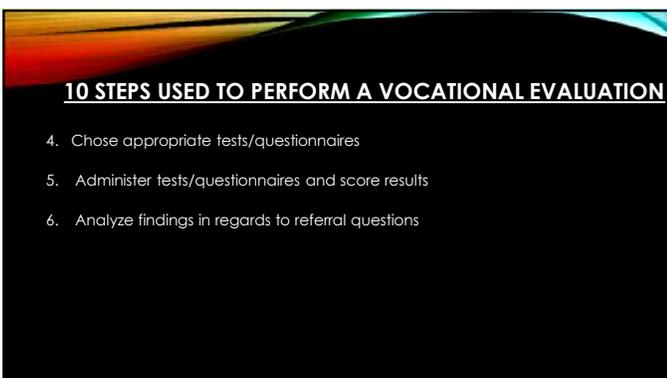
---

---

---

---

---

- 
- 10 STEPS USED TO PERFORM A VOCATIONAL EVALUATION**
4. Chose appropriate tests/questionnaires
  5. Administer tests/questionnaires and score results
  6. Analyze findings in regards to referral questions

---

---

---

---

---

---

---

---

**10 STEPS USED TO PERFORM A VOCATIONAL EVALUATION**

7. Conduct a VDARE process
8. Review data bases regarding transferability for jobs/career
9. Review data bases regarding employability and earning capacity
10. Communicate findings (verbal/written/both)

---

---

---

---

---

---

---

---

**EARNING CAPACITY**

---

---

---

---

---

---

---

---

**EARNING CAPACITY**

- **Earning capacity is not simple math.** Earning capacity is sometimes confused with actual earnings, expected earnings or earnings potential.
- **Earning capacity** is defined as what a person can be expected to earn when they maximize their actual earnings.
- **Actual earnings** is defined as gross wages.
- **Expected earnings** is what a person can be expected to earn, based on an averaging of their prior actual earnings.
- **Earnings potential** is what a person can be expected to earn when they have chosen a career path dependent on personal choice or self-imposed limitations, not what they can otherwise earn in the marketplace based on their training and expertise.
- A person's **earning capacity, actual earnings, expected earnings and earnings potential** will be affected by what a person is **physically/mentally able to do, the market demand and supply, what they are willing to accept as a wage for their work and/or how much they want to work.**

---

---

---

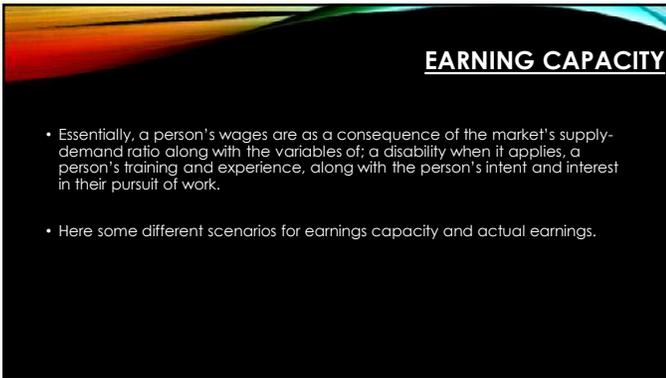
---

---

---

---

---



**EARNING CAPACITY**

- Essentially, a person's wages are as a consequence of the market's supply-demand ratio along with the variables of; a disability when it applies, a person's training and experience, along with the person's intent and interest in their pursuit of work.
- Here some different scenarios for earnings capacity and actual earnings.

---

---

---

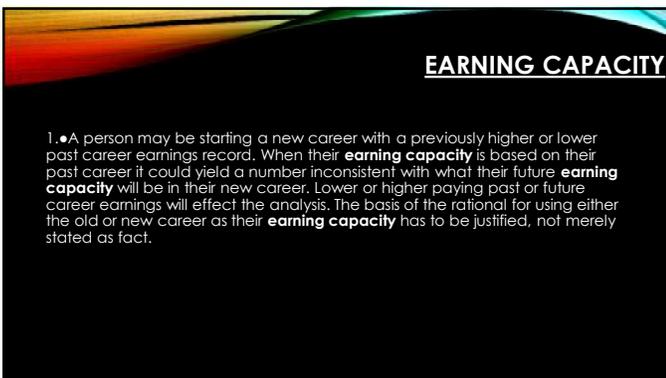
---

---

---

---

---



**EARNING CAPACITY**

1. • A person may be starting a new career with a previously higher or lower past career earnings record. When their **earning capacity** is based on their past career it could yield a number inconsistent with what their future **earning capacity** will be in their new career. Lower or higher paying past or future career earnings will effect the analysis. The basis of the rational for using either the old or new career as their **earning capacity** has to be justified, not merely stated as fact.

---

---

---

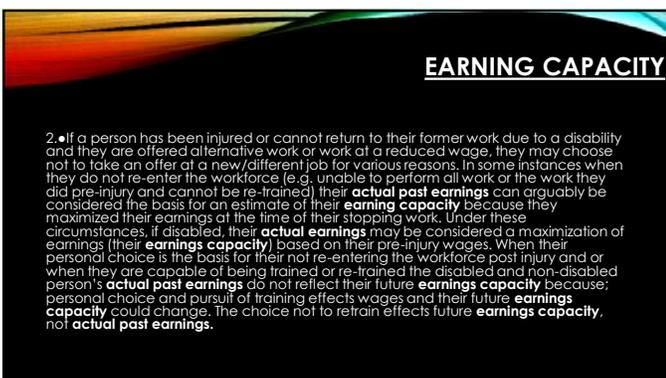
---

---

---

---

---



**EARNING CAPACITY**

2. • If a person has been injured or cannot return to their former work due to a disability and they are offered alternative work or work at a reduced wage, they may choose not to take an offer at a new/different job for various reasons. In some instances when they do not re-enter the workforce (e.g. unable to perform all work or the work they did pre-injury and cannot be re-trained) their **actual past earnings** can arguably be considered the basis for an estimate of their **earning capacity** because they maximized their earnings at the time of their stopping work. Under these circumstances, if disabled, their **actual earnings** may be considered a maximization of earnings (their **earnings capacity**) based on their pre-injury wages. When their personal choice is the basis for their not re-entering the workforce post injury and or when they are capable of being trained or re-trained the disabled and non-disabled person's **actual past earnings** do not reflect their future **earnings capacity** because; personal choice and pursuit of training effects wages and their future **earnings capacity** could change. The choice not to retrain effects future **earnings capacity**, not **actual past earnings**.

---

---

---

---

---

---

---

---

**EARNING CAPACITY**

3. • A person who had an earnings stream in the past and chooses to stay at home, work at a lower wage or work part time may not realize their past **earning capacity**. Their past **earning capacity** could be considered a basis for future **earning capacity** even though they might not go back to work at their prior job. Their past earnings would be their **maximized earning capacity** when based on their personal choice of not seeking alternative employment. Choosing not to work or not to find alternative employment does not mean their **earning capacity** has been reduced, it means their willingness to work has effected their **earnings potential**.

---

---

---

---

---

---

---

---

**EARNING CAPACITY**

4. • A person who was a worker then became a homemaker and is now divorced and re-entering the workforce may now have an overestimated **earning capacity** when based on their employment before their exit from the workforce. A person who only worked part time during the marriage or at a job unrelated to their past training and experience would be in a similar circumstance, i.e. not realizing their **earning capacity**. When **earning capacity** is based on past work, their **earning capacity** is not a good predictor of their future **earning capacity** when their participation in the workforce was part time, not in their field of expertise or completely interrupted due to family obligations. Part time work, work outside of their expertise or a complete interruption of work for an extended period of time results in reduced actual earnings or when completely interrupted an obsolescence of work skills. Their **actual earnings** would represent their past **earning capacity**, which would have to be discounted based on the year in which the income was earned. However, their future **earning capacity** could change should they acquire additional training and an upgrade of their skills.

---

---

---

---

---

---

---

---

**EARNING CAPACITY**

5. • A person who was maximally realizing their **earning capacity** but chooses to step down from a high paying occupation will earn less. But even if they choose not to pursue the level of their past **actual earnings** their **earning capacity** has not changed. What has changed is their **actual earnings**. Even if they choose not to work at their former level their **earning capacity** has not changed. They are still capable of a higher level of **earning capacity** but because they have chosen not to work at the same income level or alternately at the same career their **actual earnings** change, not their **earning capacity**. They will earn less money due to choice not because of an inability to earn.

---

---

---

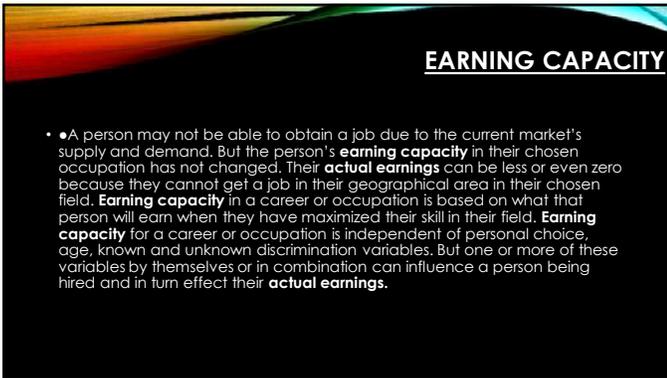
---

---

---

---

---



**EARNING CAPACITY**

- A person may not be able to obtain a job due to the current market's supply and demand. But the person's **earning capacity** in their chosen occupation has not changed. Their **actual earnings** can be less or even zero because they cannot get a job in their geographical area in their chosen field. **Earning capacity** in a career or occupation is based on what that person will earn when they have maximized their skill in their field. **Earning capacity** for a career or occupation is independent of personal choice, age, known and unknown discrimination variables. But one or more of these variables by themselves or in combination can influence a person being hired and in turn effect their **actual earnings**.

---

---

---

---

---

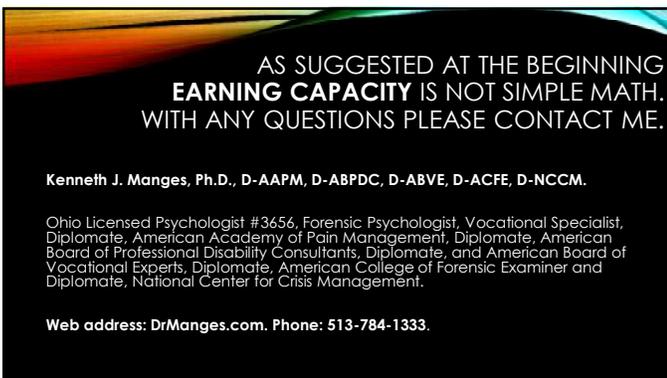
---

---

---

---

---



**AS SUGGESTED AT THE BEGINNING  
EARNING CAPACITY IS NOT SIMPLE MATH.  
WITH ANY QUESTIONS PLEASE CONTACT ME.**

**Kenneth J. Manges, Ph.D., D-AAPM, D-ABPDC, D-ABVE, D-ACFE, D-NCCM.**

Ohio Licensed Psychologist #3656, Forensic Psychologist, Vocational Specialist, Diplomate, American Academy of Pain Management, Diplomate, American Board of Professional Disability Consultants, Diplomate, and American Board of Vocational Experts, Diplomate, American College of Forensic Examiner and Diplomate, National Center for Crisis Management.

**Web address: [DrManges.com](http://DrManges.com). Phone: 513-784-1333.**

---

---

---

---

---

---

---

---

---

---



**THANK YOU!**

Northeast Lawyers Club – July 8, 2016

---

---

---

---

---

---

---

---

---

---