



Center for Professional
Responsibility

MEMORANDUM

**To: ABA Entities, Courts, Bar Associations (state, local, specialty, and international),
Individuals, and Entities**
From: Working Group on Model Rule of Professional Conduct 1.14
Date: July 21, 2025
**Re: Seeking Comment on Second Discussion Draft of Possible Amendments to ABA
Model Rule of Professional Conduct 1.14**

I. INTRODUCTION

ABA Model Rule of Professional Conduct 1.14 (MRPC 1.14) provides guidance to lawyers working with people who have cognitive limitations that affect their ability to make decisions, including decisions related to a representation. It has not been revised in more than two decades.

Experience with MRPC 1.14, and changes in the law and understanding of the rights and abilities of people with cognitive and intellectual limitations over the past two decades, have revealed a need for amendments to the Rule. Ambiguities in MRPC 1.14, as well as seemingly inconsistent guidance, have created inadvertent confusion for lawyers. In addition, it appears language in MRPC 1.14 has unintentionally encouraged and normalized the use of guardianship and conservatorship when less restrictive protective actions could meet client needs.

Inspired in part by changes made by the Maryland Supreme Court, a working group of eight ABA entities¹ recommended that the Center for Professional Responsibility consider revisions to MRPC 1.14. Since then, representatives from a number of ABA entities have worked together to study MRPC 1.14 and whether and how it might be best amended.² In April 2025, the group released Discussion Draft 1 of possible amendments to Rule 1.14, representing the joint work of members of the Standing Committee on Ethics and Professional Responsibility, the Standing Committee on Professional Regulation, and representatives of the ABA entities that originally came together to recommend revision.

¹ ABA Section of Civil Rights and Social Justice; Commission on Disability Rights; Commission on Law and Aging; Judicial Division; National Conference of State Trial Judges; Real Property, Trust and Estate Law; Senior Lawyers Division; Section of Family Law.

² Entities that have had representatives engaged in this work include the Civil Rights and Social Justice (led by Section's Elder Affairs Committee); Commission on Disability Rights; Commission on Aging; Judicial Division; National Conference of State Trial Judges; Real Property, Trust and Estate Law Section; Senior Law Division; the Section of Family Law; Solo, Small Firm and general Practice Division; Standing Committee on Ethics and Professional Responsibility; and Standing Committee on Professional Regulation.

Today, the group releases for review and comment Discussion Draft 2. This new draft includes change based on comments received concerning Discussion Draft 1. We are grateful for the comments received regarding Discussion Draft 1. Changes have been made to Comments 3, 6, 10, and 16. New Comment 11 was taken from Comment 10 and revised. And new Comment 14 was added. No amendments were made to the black letter presented in Discussion Draft 1.

This Memorandum summarizes the key suggested changes, the rationale behind them, and seeks comment. Appendix A is a redline of the changes made between Discussion Draft 1 and Discussion Draft 2. Appendix B provides a redline of Discussion Draft 2 to current Model Rule of Professional Conduct 1.14.

II. THE NEED FOR AMENDMENT

A detailed explanation of the need for updating MRPC 1.14 and possible amendments to the black letter and Comments to MRPC 1.14 are provided in the memo accompanying the first discussion draft, located at this [link](#). This memorandum explains possible, further amendments to the official Comments as discussed below.

III. CHANGES NEW TO DISCUSSION DRAFT 2

A. **Comment 3.** *Comment 3* addresses the ordinary client-lawyer relationship and provides guidance on how decision-making limitations may, or may not, impact it. For example, it explains that decision-making limitations may affect some aspects of decision-making but not others. It also recognizes that individuals with substantial decision-making limitations may nevertheless provide guidance with respect to values and preferences relevant to reaching a decision. It incorporates and modifies much of what exists in current Comment 1. In the Discussion Draft 2, the word “some” was changed to “legal” in the next to last sentence to avoid suggesting that all people with disabilities can only make “some” legal decisions.

B. **Comments 10 and 11.** *Comments 10 and 11* incorporate core guidance from current Comment 6 on factors to consider in determining the extent of a client’s decision-making limitations and substantially expands that guidance. It cautions against over-reliance on diagnosis, emphasizes the importance of accommodations and supports, and recognizes the responsibility of the lawyer to make a decision based on the lawyer’s reasonable belief. The Comments also recognizes, as does current Comment 6, that a lawyer may seek guidance from a healthcare professional (not simply a “diagnostician”). The Comment guides lawyers to look for healthcare professionals with knowledge and experience in the kind of limitations specific to the client’s situation. It also explains that unless such consultation is permitted as a reasonably necessary protective action, it will require the client’s informed consent if the lawyer will reveal confidential information about the client. Thus, consultations that can be accomplished without such revelation may be done without client consent even if grounds for taking protective action are not satisfied.

The change to Comment 10 proposed in Discussion Draft 2 was added to provide clarity on an issue that commenters flagged as a source of confusion for some lawyers: what significance lawyers should attach to a medical evaluation of capacity. In response to comments received,

language was also added to encourage lawyers to consider whether supports or accommodations could alleviate factors contributing to decision-making limitations.

The Comment was also broken into two parts, resulting in new Comment 11, in the interest of readability. Minor changes in wording were made for the same reason.

C. **Comment 14:** *Comment 14* is new to Discussion Draft 2. It addresses an issue that commenters flagged as a source of confusion: whether taking protective action requires a lawyer to withdraw from further representation of the client. The new Comment explains that the mere fact that a lawyer takes protective action does not mean that the lawyer must terminate the representation, but that in some cases withdrawal may be needed (e.g., because the protective action creates a conflict of interest). It explains that the lawyer who takes protective action must inform the client of the protective action.

D. **Comment 16:** *Comment 16* addresses emergency legal assistance. Discussion Draft 2 removes a clause that one commenter flagged as potentially encouraging lawyers to action on behalf of a person with whom they had no prior relationship. As such encouragement was not intended, and the clause was not necessary, it was excised.

IV. OPPORTUNITY FOR FURTHER INPUT

Please send any comments to Discussion Draft 2 to modelruleamend@americanbar.org by August 30, 2025. Please note that comments may be posted on the ABA's website.

RULE 1.14: CLIENT WITH DECISION-MAKING LIMITATIONS

(a) A lawyer shall, as far as reasonably possible, maintain an ordinary client-lawyer relationship with a client with decision-making limitations, including when the client's decision-making limitations impact the client's ability to provide direction to the lawyer or make reasoned, informed choices.

(b) A person has decision-making limitations if the person has substantial difficulty receiving and understanding information, evaluating information, or making or communicating decisions even with appropriate supports or accommodations.

(c) When the lawyer reasonably believes that the client: (1) has decision-making limitations, (2) is at risk of substantial physical, financial or other harm unless action is taken, and (3) cannot adequately act in the client's own interest to address the risk, the lawyer may take reasonably necessary protective action to address the risk.

(d) Information relating to the representation of a client with decision-making limitations is protected by Rule 1.6. However, when taking protective action pursuant to paragraph (c), the lawyer may reveal information related to the representation, to the extent the lawyer reasonably believes necessary to protect the client's interests.

Comment

Client Abilities and Limitations

[1] A client's decision-making limitations do not diminish the lawyer's obligations under the Rules and the importance of treating the client with attention and respect. Except as provided in this Rule, a client with decision-making limitations is owed all the protections under the Rules ordinarily afforded by the client-lawyer relationship.

[2] A client may have decision-making limitations with regard to certain issues and not others. Lawyers are required to maintain, as far as reasonably possible, an ordinary client-lawyer relationship with clients with decision-making limitations. Decision-making limitations can be situational in nature and vary in degree. A client's decision-making limitations may be affected by multiple factors.

Sometimes decision-making limitations can be alleviated or eliminated by using supports or making accommodations to enhance the client's decision-making abilities, and such use can assist the lawyer in maintaining an ordinary client-lawyer relationship. Examples of supports and accommodations include communication devices or services, assistance of appropriate third parties or supported decision-making, environmental changes (e.g., conducting client meetings in a familiar setting), and using plain language or otherwise modifying the lawyer's communication and counseling techniques for the client.

Ordinary Client-Lawyer Relationship

[3] An ordinary client-lawyer relationship is based, in part, on the assumption that the client, when properly advised and assisted, can make and communicate reasoned, informed decisions about important matters. When the client has decision-making limitations, however, maintaining an ordinary client-lawyer relationship may not be possible in all respects. In particular,

47 a client with decision-making limitations may have limited ability to make or communicate legally
48 binding decisions. Nevertheless, a client with decision-making limitations often can understand,
49 deliberate upon and reach conclusions about matters affecting the client's own well-being. For
50 example, some adults with substantial decision-making limitations, including those due to
51 intellectual, developmental or cognitive disabilities, mental health conditions or substance abuse
52 disorder, can make ~~some~~legal decisions. In addition, even if not able to make decisions, persons
53 with decision-making limitations, including minors, may have preferences and values that can
54 guide the lawyer's representation.

55 [4] The client may wish to have family members or other persons participate in
56 discussions with the lawyer. When necessary to assist in the representation, the presence of such
57 persons may not affect the applicability of the attorney-client evidentiary privilege. Nevertheless,
58 the lawyer must keep the client's interests foremost and, except for protective action authorized
59 under paragraph (c), must look to the client, and not family members or other persons, to make
60 decisions on the client's behalf. Whenever possible, the lawyer should afford the client the
61 opportunity to communicate privately with the lawyer without the presence or influence of others.

62 [5] When the client has granted an agent authority to make decisions, including an
63 agent acting under a power of attorney, the lawyer nevertheless should take direction from the
64 client and maintain communication with the client to the extent feasible unless the client has
65 otherwise directed or is unable to provide direction. In addition, a lawyer may consult with and
66 represent a person who seeks to challenge the actions of an agent or terminate or modify the agent's
67 appointment. When representing a client in such situations, the lawyer must take direction from
68 the client and advocate for the client's objectives.

69 When a court has appointed a guardian, conservator or other appointee to act on behalf of
70 a client or prospective client, a lawyer should ordinarily look to the court appointee for those
71 decisions on behalf of the client or prospective client over which the appointee has authority.
72 However, a lawyer may consult with and represent a person subject to guardianship or
73 conservatorship who seeks representation to challenge or modify the terms of that arrangement, or
74 who seeks representation with regard to any other matter over which the person retains decision-
75 making authority. When representing a client in such situations, the lawyer must take direction
76 from the client and advocate for the client's objectives.

77 In matters involving a minor, whether the lawyer should look to the parents as natural
78 guardians may depend on the type of proceeding or matter in which the lawyer is representing the
79 minor.

80 If the lawyer represents the guardian, conservator, or agent of a person with decision-
81 making limitations, and is aware that the guardian, conservator or agent is acting adversely to the
82 person's interest, the lawyer may have an obligation to prevent or rectify the misconduct.

83 [6] When a client in a criminal matter appears to have decision-making limitations, the
84 lawyer's ethical duty to render competent representation and to ~~protection of~~ the client's
85 constitutional rights may require the lawyer to seek a competency evaluation or other mental health
86 evaluation to determine whether the client is capable of deciding whether to testify or to plead
87 guilty or to determine whether the client can meaningfully participate in preparation for trial,
88 sentencing or another adjudicatory process. Because a client's liberty may be at stake, these
89 questions are uniquely difficult. Judicial decisions vary regarding whether, without the client's
90 informed consent, a lawyer for the accused may or must raise doubts with the court about the
91 competency of the accused. In such situations, lawyers should inform themselves of relevant
92 judicial decisions and other authority in the jurisdiction and are encouraged to seek guidance from

other organizations and resources, such as the ABA Defense Function Standard on Establishing and Maintaining an Effective Client Relationship and the ABA Criminal Justice Standards on Mental Health.

[7] A lawyer representing a minor should be mindful that the minor may have decision-making limitations due to age and stage of development. As with adult clients with decision-making limitations, the lawyer for a minor with decision-making limitations should, as far as reasonable, maintain an ordinary client-lawyer relationship. A lawyer for a minor capable of providing direction should advocate for the minor's objectives of the representation. See Rule 1.2(a).

[8] A lawyer acting as guardian ad litem for a person is typically tasked with advocating for the best interest of that person. Because a person's best interest may diverge from the person's objectives, lawyers who simultaneously act as a guardian ad litem for a person and provide direct legal representation of that person may find themselves in an ethically untenable position.

Taking Protective Action

[9] If a lawyer reasonably believes that a client is at risk of substantial physical, financial or other harm unless action is taken, and that an ordinary client-lawyer relationship cannot be maintained as provided in paragraph (a), paragraph (c) permits the lawyer to take protective measures the lawyer deems necessary. Such measures could include: consulting with family members, using a reconsideration period to permit clarification or improvement of circumstances, using voluntary surrogate decision-making tools such as durable powers of attorney or consulting with support groups, healthcare professionals or other professional services, adult-protective agencies or other persons or entities that have the ability to protect the client. In taking any protective action, the lawyer should be guided by such factors as the wishes and values of the client to the extent known, the client's best interests, and the goals of intruding into the client's decision-making autonomy to the least extent feasible, maximizing client capacities and respecting the client's family and social connections. In litigation involving the capacity of the client, such as a guardianship or conservatorship proceeding, the lawyer should advocate for the client's expressed position regarding what, if any, protective action should be taken.

[10] In determining the extent of the client's decision-making limitations, the lawyer should consider and balance such factors as: the client's ability to articulate reasoning leading to a decision; variability of state of mind and ability to understand consequences of a decision; the substantive fairness of a decision, ~~and~~ the consistency of a decision with the known long-term commitments and values of the client, and whether -supports or accommodations could alleviate factors contributing to decision-making limitations. A lawyer's reasonable belief that the client cannot make and communicate reasoned, informed decisions may be based on the lawyer's own observations. In forming a reasonable belief, a lawyer should ordinarily not rely exclusively on a medical diagnosis, but rather should consider the client's functional abilities and whether the limitations in the client's abilities could be alleviated by the use of accommodations or supports. In forming a reasonable belief, a lawyer who is aware that a healthcare professional's evaluation of the client's current abilities and limitations should take such evaluation into consideration. However, the lawyer should recognize that the evaluation may have been done for a different purpose and under different circumstances, and that the evaluator may have evaluated the client based on standards that differ from the relevant legal standard.

[11] A determination of decisional incapacity need not have been made by a healthcare professional or court for a lawyer to form a reasonable belief that a client cannot make and

communicate decisions. Nevertheless, in appropriate circumstances, the lawyer may seek guidance from a healthcare professional with relevant expertise or with knowledge of the client's abilities or limitations. If obtaining such guidance requires revealing confidential information about the client and is not done with the client's-client does not or cannot give informed consent, it falls outside the ordinary client-lawyer relationship and is permissible only if it is a reasonably necessary protective action under Rule 1.14(c).

[121] If a lawyer reasonably believes that the client meets the criteria set forth in subsection (b) of this Rule, the lawyer may consider whether appointment of a guardian ad litem, conservator or guardian is necessary to protect the client's interests. For example, if the client has substantial property that should be sold for the client's benefit, effective completion of the transaction may require appointment of a guardian or conservator, which may be temporary or limited in nature, or a court order in lieu of such an appointment. In addition, rules of procedure in litigation sometimes provide that minors or persons with decision-making limitations must be represented by a guardian or next friend if they do not have a general guardian. In many circumstances, however, appointment of such a legal representative may be more intrusive, expensive or traumatic for the client than circumstances in fact require. Evaluation of such circumstances is a matter entrusted to the professional judgment of the lawyer. In considering alternatives, however, the lawyer should generally advocate the least restrictive action on behalf of the client, and be aware of any law that so requires. The lawyer should also communicate with the client regarding such protective action to the extent feasible unless doing so is not necessary for the client to make informed choices about the representation and would be detrimental to the client or the lawyer's ability to protect the client's interests. See Rule 1.4.

[132] If another person has petitioned a court for an appointment of a conservator or a guardian or another restriction on the client's legal capacity, the lawyer may not advocate for such an appointment or restriction if the client opposes it. If the lawyer represents a client who is a respondent in a proceeding for guardianship or conservatorship, the lawyer must advocate for the client's objectives if known or ascertainable.

[14] Taking protective action under subsection (c) of this Rule does not, without more, require the lawyer to terminate the representation. However, the lawyer must inform the client of the protective action and should consider whether withdrawing from the representation has become necessary under Rule 1.16(a). For example, the lawyer may have a conflict of interest necessitating withdrawal in light of the particular protective action, the subject of the representation, the nature of the client-lawyer relationship, and other relevant considerations. See, e.g., Rule 1.7.

Disclosure of Information When Taking Protective Action

[153] Disclosure of the client's decision-making limitations could adversely affect the client's interests, including constitutional or other legal rights. For example, raising the question of decision-making limitations could, in some circumstances, lead to proceedings for involuntary civil commitment. Information relating to the representation is protected by Rule 1.6. Therefore, unless authorized to do so, the lawyer may not disclose such information. When taking protective action pursuant to paragraph (c), the lawyer may reveal information about the representation, but only to the extent reasonably necessary to protect the client's interests. Nevertheless, given the risks of disclosure, paragraph (d) limits what the lawyer may disclose in consulting with other persons or entities or seeking the appointment of a legal representative. At the very least, the lawyer

should determine whether it is likely that the person or entity consulted with will act adversely to the client's interests before discussing matters related to the client.

Emergency Legal Assistance

[164] In an emergency where the health, safety or a financial interest of a person with decision-making limitations is threatened with imminent and irreparable harm, a lawyer may take legal action on behalf of such a person even though the person is unable to establish a client-lawyer relationship or to make or communicate reasoned, informed judgments about the matter such as when the person ~~or another acting in good faith on that person's behalf~~ has consulted with the lawyer. Even in such an emergency, however, the lawyer should not act unless the lawyer reasonably believes that the person with decision-making limitations has no other lawyer, agent or other representative available. The lawyer should take legal action on behalf of the person with decision-making limitations only to the extent reasonably necessary to maintain the status quo or otherwise avoid imminent and irreparable harm. A lawyer who undertakes to represent a person with decision-making limitations in such an exigent situation has the same duties under these Rules as the lawyer would with respect to a client.

[175] A lawyer who in an emergency acts on behalf of a person with decision-making limitations who is unable to establish a client-lawyer relationship should keep the confidences of the person with decision-making limitations as if dealing with a client, disclosing them only to the extent necessary to accomplish the intended protective action. The lawyer should disclose to any tribunal involved and to any other counsel involved the nature of the lawyer's relationship with the person with decision-making limitations. The lawyer should take steps to regularize the relationship or implement other protective solutions as soon as possible. Ordinarily, a lawyer would not seek compensation for such emergency actions taken.

**RULE 1.14: CLIENT WITH DECISION-MAKING LIMITATIONS~~DIMINISHED~~
CAPACITY**

(a) ~~When a client's capacity to make adequately considered decisions in connection with a representation is diminished, whether because of minority, mental impairment or for some other reason, the~~ A lawyer shall, as far as reasonably possible, maintain an ordinary~~normal~~ client-lawyer relationship with a~~the~~ client with decision-making limitations, including when the client's decision-making limitations impact the client's ability to provide direction to the lawyer or make reasoned, informed choices.

(b) A person has decision-making limitations if the person has substantial difficulty receiving and understanding information, evaluating information, or making or communicating decisions even with appropriate supports or accommodations.

(~~cb~~) When the lawyer reasonably believes that the client (1) has decision-making limitations~~diminished capacity~~, (2) is at risk of substantial physical, financial or other harm unless action is taken, and (3) cannot adequately act in the client's own interest to address the risk, the lawyer may take reasonably necessary protective action to address the risk, including consulting with individuals or entities that have the ability to take action to protect the client and, in appropriate cases, seeking the appointment of a guardian ad litem, conservator or guardian.

(~~de~~) Information relating to the representation of a client with decision-making limitations~~diminished capacity~~ is protected by Rule 1.6. However, w~~When~~ taking protective action pursuant to paragraph (~~cb~~), the lawyer is impliedly authorized under Rule 1.6(a) to may reveal information related to the representation about the client, but only to the extent the lawyer reasonably believes necessary to protect the client's interests.

Comment

Client Abilities and Limitations

~~[1] The normal client-lawyer relationship is based on the assumption that the client, when properly advised and assisted, is capable of making decisions about important matters. When the client is a minor or suffers from a diminished mental capacity, however, maintaining the ordinary client-lawyer relationship may not be possible in all respects. In particular, a severely incapacitated person may have no power to make legally binding decisions. Nevertheless, a client with diminished capacity often has the ability to understand, deliberate upon, and reach conclusions about matters affecting the client's own well-being. For example, children as young as five or six years of age, and certainly those of ten or twelve, are regarded as having opinions that are entitled to weight in legal proceedings concerning their custody. So also, it is recognized that some persons of advanced age can be quite capable of handling routine financial matters while needing special legal protection concerning major transactions.~~

~~[12] The fact that a~~ A client's decision-making limitations ~~suffers a disability~~ does not diminish the lawyer's obligations s under the Rules and the importance of ~~to~~ treating the client with

attention and respect. Except as provided in this Rule, a client with decision-making limitations is owed all the protections under the Rules ordinarily afforded by the client-lawyer relationship. Even if the person has a legal representative, the lawyer should as far as possible accord the represented person the status of client, particularly in maintaining communication.

[2] A client may have decision-making limitations with regard to certain issues and not others. Lawyers are required to maintain, as far as reasonably possible, an ordinary client-lawyer relationship with clients with decision-making limitations. Decision-making limitations can be situational in nature and vary in degree. A client's decision-making limitations may be affected by multiple factors. Sometimes decision-making limitations can be alleviated or eliminated by using supports or making accommodations to enhance the client's decision-making abilities, and such use can assist the lawyer in maintaining an ordinary client-lawyer relationship. Examples of supports and accommodations include communication devices or services, assistance of appropriate third parties or supported decision-making, environmental changes (e.g., conducting client meetings in a familiar setting), and using plain language or otherwise modifying the lawyer's communication and counseling techniques for the client.

Ordinary Client-Lawyer Relationship

[31] An ordinary client-lawyer relationship is based, in part, on the assumption that the client, when properly advised and assisted, is capable of making can make and communicate reasoned, informed decisions about important matters. When the client has decision-making limitations is a minor or suffers from a diminished mental capacity, however, maintaining an the ordinary client-lawyer relationship may not be possible in all respects. In particular, a client with decision-making limitations severely incapacitated person may have limited ability no power to make or communicate legally binding decisions. Nevertheless, a client with decision-making limitations diminished capacity often has the ability to can understand, deliberate upon, and reach conclusions about matters affecting the client's own well-being. For example, some adults with substantial decision-making limitations including those due to intellectual, developmental or cognitive disabilities, mental health conditions, or substance abuse disorder can make some decisions. In addition, even if not able to make legal decisions, persons with decision-making limitations, including minors, may have preferences and values that can guide the lawyer's representation.

children as young as five or six years of age, and certainly those of ten or twelve, are regarded as having opinions that are entitled to weight in legal proceedings concerning their custody. So also, it is recognized that some persons of advanced age can be quite capable of handling routine financial matters while needing special legal protection concerning major transactions.

[43] The client may wish to have family members or other persons participate in discussions with the lawyer. When necessary to assist in the representation, the presence of such persons ~~generally does~~ may not affect the applicability of the attorney-client evidentiary privilege. Nevertheless, the lawyer must keep the client's interests foremost and, except for protective action authorized under paragraph (b), must look to the client, and not family members or other persons, to make decisions on the client's behalf. Whenever possible, the lawyer should afford the client the opportunity to communicate privately with the lawyer without the presence or influence of others.

[54]

When the client has granted an agent authority to make decisions, including an agent acting under a power of attorney, the lawyer nevertheless should take direction from the client and maintain communication with the client to the extent feasible unless the client has otherwise directed or is unable to provide direction. In addition, a lawyer may consult with and represent a person who seeks to challenge the actions of an agent or terminate or modify the agent's appointment. When representing a client in such situations, the lawyer must take direction from the client and advocate for the client's objectives.

When a court has appointed a guardian, conservator, or other appointee to act on behalf of a client or prospective client, a lawyer should ordinarily look to the court appointee for those decisions on behalf of the client or prospective client over which the appointee has authority. However, a lawyer may consult with and represent a person subject to guardianship or conservatorship who seeks representation to challenge or modify the terms of that arrangement, or who seeks representation with regard to any other matter over which the person retains decision-making authority. When representing a client in such situations, the lawyer must take direction from the client and advocate for the client's objectives.

~~_____ If a legal representative has already been appointed for the client, the lawyer should ordinarily look to the representative for decisions on behalf of the client.~~ In matters involving a minor, whether the lawyer should look to the parents as natural guardians may depend on the type of proceeding or matter in which the lawyer is representing the minor.

~~_____ If the lawyer represents the guardian, conservator, or agent of a person with decision-making limitations as distinct from the ward, and is aware that the guardian, conservator, or agent is acting adversely to the person's ward's interest, the lawyer may have an obligation to prevent or rectify the guardian's misconduct. See Rule 1.2(d).~~

[6] When a client in a criminal matter appears to have decision-making limitations, the lawyer's ethical duty to render competent representation and to protect the client's constitutional rights may require the lawyer to seek a competency evaluation or other mental health evaluation to determine whether the client is capable of deciding whether to testify or to plead guilty or to determine whether the client can meaningfully participate in preparation for trial, sentencing or another adjudicatory process. Because a client's liberty may be at stake, these questions are uniquely difficult. Judicial decisions vary regarding whether, without the client's informed consent, a lawyer for the accused may or must raise doubts with the court about the competency of the accused. In such situations, lawyers should inform themselves of relevant judicial decisions and other authority in the jurisdiction and are encouraged to seek guidance from other organizations and resources, such as the ABA Defense Function Standard on Establishing and Maintaining an Effective Client Relationship and the ABA Criminal Justice Standards on Mental Health.

[7] A lawyer representing a minor should be mindful that the minor may have decision-making limitations due to age and stage of development. As with adult clients with decision-making limitations, the lawyer for a minor with decision-making limitations should, as far as reasonable, maintain an ordinary client-lawyer relationship. A lawyer for a minor capable of providing direction should advocate for the minor's objectives. See Rule 1.2(a)

[8] A lawyer acting as guardian ad litem for a person is typically tasked with advocating for the best interest of that person. Because a person's best interest may diverge from the person's

objectives, lawyers who simultaneously act as a guardian ad litem for a person and provide direct legal representation of that person may find themselves in an ethically untenable position.

Taking Protective Action

[95] If a lawyer reasonably believes that a client is at risk of substantial physical, financial or other harm unless action is taken, and that a ~~normal~~ ordinary client-lawyer relationship cannot be maintained as provided in paragraph (a) ~~because the client lacks sufficient capacity to communicate or to make adequately considered decisions in connection with the representation, then~~ paragraph (c) permits the lawyer to take protective measures the lawyer ~~deem~~sees necessary. Such measures could include: consulting with family members, using a reconsideration period to permit clarification or improvement of circumstances, using voluntary surrogate decision-making tools such as durable powers of attorney or consulting with support groups, healthcare professionals or other professional services, adult-protective agencies or other ~~individuals-persons~~ or entities that have the ability to protect the client. In taking any protective action, the lawyer should be guided by such factors as the wishes and values of the client to the extent known, the client's best interests and the goals of intruding into the client's decision-making autonomy to the least extent feasible, maximizing client capacities and respecting the client's family and social connections. In litigation involving the capacity of the client, such as a guardianship or conservatorship proceeding, the lawyer should advocate for the client's expressed position regarding what, if any, protective action should be taken.

[106] In determining the extent of the client's ~~diminished capacity~~ decision-making limitations, the lawyer should consider and balance such factors as: the client's ability to articulate reasoning leading to a decision; variability of state of mind and ability to ~~appreciate-understand~~ consequences of a decision; the substantive fairness of a decision; ~~and~~ and the consistency of a decision with the known long-term commitments and values of the client; and whether supports or accommodations could alleviate factors contributing to decision-making limitations. A lawyer's reasonable belief that the client cannot make and communicate reasoned, informed decisions may be based on the lawyer's own observations. In forming a reasonable belief, a lawyer should ordinarily not rely exclusively on a medical diagnosis, but rather should consider the client's functional abilities and whether the limitations in the client's abilities could be alleviated by the use of accommodations or supports. In forming a reasonable belief, a lawyer who is aware that a healthcare professional's evaluation of the client's current abilities and limitations should take such evaluation into consideration. However, the lawyer should recognize that the evaluation may have been done for a different purpose and under different circumstances, and that the evaluator may have evaluated the client based on standards that differ from the relevant legal standard.

[11] A determination of decisional incapacity need not have been made by a healthcare professional or court for a lawyer to form a reasonable belief that a client cannot make and communicate decisions. Nevertheless, in appropriate circumstances, the lawyer may seek guidance from a healthcare professional with relevant expertise or with knowledge of the client's abilities or limitations. If obtaining such guidance requires revealing confidential information about the client and the client does not or cannot give informed consent, it is permissible only if it is a reasonably necessary protective action under Rule 1.14(c) an appropriate diagnostician.

[12] ~~[117]~~ If a lawyer reasonably believes that the client meets the criteria set forth in subsection (b) of this Rule, the lawyer may consider a legal representative has not been appointed,

184 ~~the lawyer should consider~~ whether appointment of a guardian ad litem, conservator or guardian
185 is necessary to protect the client's interests. ~~For example~~ Thus, if ~~thea~~ client ~~with diminished~~
186 ~~capacity~~ has substantial property that should be sold for the client's benefit, effective completion
187 of the transaction may require appointment of a guardian or conservator, which may be temporary
188 or limited in nature, or a court order in lieu of such an appointment ~~legal representative~~. In addition,
189 rules of procedure in litigation sometimes provide that minors or persons with decision-making
190 limitations ~~diminished capacity~~ must be represented by a guardian or next friend if they do not have
191 a general guardian. In many circumstances, however, appointment of such a legal representative
192 may be more intrusive, expensive or traumatic for the client than circumstances in fact require.
193 Evaluation of such circumstances is a matter entrusted to the professional judgment of the lawyer.
194 In considering alternatives, however, the lawyer should generally be aware of any law that requires
195 the lawyer to advocate the least restrictive action on behalf of the client, and be aware of any law
196 that so requires. The lawyer should also communicate with the client regarding such protective
197 action to the extent feasible unless doing so is not necessary for the client to make informed choices
198 about the representation and would be detrimental to the client or the lawyer's ability to protect
199 the client's interests. See Rule 1.4.

200 [13] ~~[12]~~ If another person has petitioned a court for an appointment of a conservator
201 or a guardian, or another restriction on the client's legal capacity, the lawyer may not advocate for
202 such an appointment or restriction if the client opposes it. If the lawyer represents a client who is
203 a respondent in a proceeding for guardianship or conservatorship, the lawyer must advocate for
204 the client's objectives if known or ascertainable.

206 [14] Taking protective action under subsection (c) of this Rule does not, without more,
207 require the lawyer to terminate the representation. However, the lawyer must inform the client of
208 the protective action and should consider whether withdrawing from the representation has become
209 necessary under Rule 1.16(a). For example, the lawyer may have a conflict of interest necessitating
210 withdrawal in light of the particular protective action, the subject of the representation, the nature
211 of the client-lawyer relationship, and other relevant considerations. See, e.g., Rule 1.7.

213 Disclosure of Information When Taking Protective Action ~~the Client's Condition~~

215 [15] ~~[13]~~ Disclosure of the client's ~~diminished capacity~~ decision-making limitations
216 could adversely affect the client's interests, including constitutional or other legal rights. For
217 example, raising the question of decision-making limitations ~~diminished capacity~~ could, in some
218 circumstances, lead to proceedings for involuntary civil commitment. Information relating to the
219 representation is protected by Rule 1.6. Therefore, unless authorized to do so, the lawyer may not
220 disclose such information. When taking protective action pursuant to paragraph (c), the lawyer
221 may reveal information about the representation ~~is impliedly authorized to make the necessary~~
222 disclosures, but only to the extent reasonably necessary to protect the client's interests even when
223 the client directs the lawyer to the contrary. Nevertheless, given the risks of disclosure, paragraph
224 (d) limits what the lawyer may disclose in consulting with other individuals ~~persons~~ or entities or
225 seeking the appointment of a legal representative. At the very least, the lawyer should determine
226 whether it is likely that the person or entity consulted with will act adversely to the client's interests
227 before discussing matters related to the client. ~~The lawyer's position in such cases is an~~
228 unavoidably difficult one.

Emergency Legal Assistance

[16] [149] In an emergency where the health, safety or a financial interest of a person with ~~seriously diminished capacity~~decision-making limitations is threatened with imminent and irreparable harm, a lawyer may take legal action on behalf of such a person even though the person is unable to establish a client-lawyer relationship or to make or ~~communicate reasoned, informed express-considered~~ judgments about the matter, ~~such as~~ when the person ~~or another acting in good faith on that person's behalf~~ has consulted with the lawyer. Even in such an emergency, however, the lawyer should not act unless the lawyer reasonably believes that the person with decision-making limitations has no other lawyer, agent or other representative available. The lawyer should take legal action on behalf of the person with decision-making limitations only to the extent reasonably necessary to maintain the status quo or otherwise avoid imminent and irreparable harm. A lawyer who undertakes to represent a person with decision-making limitations in such an exigent situation has the same duties under these Rules as the lawyer would with respect to a client.

[17] [15+0] A lawyer who in an emergency acts on behalf of a person with decision-making limitations who is unable to establish a client-lawyer relationship~~seriously diminished capacity in an emergency~~ should keep the confidences of the person with decision-making limitations as if dealing with a client, disclosing them only to the extent necessary to accomplish the intended protective action. The lawyer should disclose to any tribunal involved and to any other counsel involved the nature of ~~his or her~~the lawyer's relationship with the person with decision-making limitations. The lawyer should take steps to regularize the relationship or implement other protective solutions as soon as possible. ~~Ordinarily~~Normally, a lawyer would not seek compensation for such emergency actions taken.

Current Rule October 2025

Rule 1.14: Client with Diminished Capacity

Client-Lawyer Relationship

(a) When a client's capacity to make adequately considered decisions in connection with a representation is diminished, whether because of minority, mental impairment or for some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client.

(b) When the lawyer reasonably believes that the client has diminished capacity, is at risk of substantial physical, financial or other harm unless action is taken and cannot adequately act in the client's own interest, the lawyer may take reasonably necessary protective action, including consulting with individuals or entities that have the ability to take action to protect the client and, in appropriate cases, seeking the appointment of a guardian ad litem, conservator or guardian.

(c) Information relating to the representation of a client with diminished capacity is protected by Rule 1.6. When taking protective action pursuant to paragraph (b), the lawyer is impliedly authorized under Rule 1.6(a) to reveal information about the client, but only to the extent reasonably necessary to protect the client's interests.

COMMENTS

Client-Lawyer Relationship

[1] The normal client-lawyer relationship is based on the assumption that the client, when properly advised and assisted, is capable of making decisions about important matters. When the client is a minor or suffers from a diminished mental capacity, however, maintaining the ordinary client-lawyer relationship may not be possible in all respects. In particular, a severely incapacitated person may have no power to make legally binding decisions. Nevertheless, a client with diminished capacity often has the ability to understand, deliberate upon, and reach conclusions about matters affecting the client's own well-being. For example, children as young as five or six years of age, and certainly those of ten or twelve, are regarded as having opinions that are entitled to weight in legal proceedings concerning their custody. So also, it is recognized that some persons of advanced age can be quite capable of handling routine financial matters while needing special legal protection concerning major transactions.

[2] The fact that a client suffers a disability does not diminish the lawyer's obligation to treat the client with attention and respect. Even if the person has a legal representative, the lawyer

should as far as possible accord the represented person the status of client, particularly in maintaining communication.

[3] The client may wish to have family members or other persons participate in discussions with the lawyer. When necessary to assist in the representation, the presence of such persons generally does not affect the applicability of the attorney-client evidentiary privilege. Nevertheless, the lawyer must keep the client's interests foremost and, except for protective action authorized under paragraph (b), must look to the client, and not family members, to make decisions on the client's behalf.

[4] If a legal representative has already been appointed for the client, the lawyer should ordinarily look to the representative for decisions on behalf of the client. In matters involving a minor, whether the lawyer should look to the parents as natural guardians may depend on the type of proceeding or matter in which the lawyer is representing the minor. If the lawyer represents the guardian as distinct from the ward, and is aware that the guardian is acting adversely to the ward's interest, the lawyer may have an obligation to prevent or rectify the guardian's misconduct. See Rule 1.2(d).

Taking Protective Action

[5] If a lawyer reasonably believes that a client is at risk of substantial physical, financial or other harm unless action is taken, and that a normal client-lawyer relationship cannot be maintained as provided in paragraph (a) because the client lacks sufficient capacity to communicate or to make adequately considered decisions in connection with the representation, then paragraph (b) permits the lawyer to take protective measures deemed necessary. Such measures could include: consulting with family members, using a reconsideration period to permit clarification or improvement of circumstances, using voluntary surrogate decisionmaking tools such as durable powers of attorney or consulting with support groups, professional services, adult-protective agencies or other individuals or entities that have the ability to protect the client. In taking any protective action, the lawyer should be guided by such factors as the wishes and values of the client to the extent known, the client's best interests and the goals of intruding into the client's decisionmaking autonomy to the least extent feasible, maximizing client capacities and respecting the client's family and social connections.

[6] In determining the extent of the client's diminished capacity, the lawyer should consider and balance such factors as: the client's ability to articulate reasoning leading to a decision, variability of state of mind and ability to appreciate consequences of a decision; the substantive fairness of a decision; and the consistency of a decision with the known long-term commitments and values of the client. In appropriate circumstances, the lawyer may seek guidance from an appropriate diagnostician.

[7] If a legal representative has not been appointed, the lawyer should consider whether appointment of a guardian ad litem, conservator or guardian is necessary to protect the client's interests. Thus, if a client with diminished capacity has substantial property that should be sold for the client's benefit, effective completion of the transaction may require

appointment of a legal representative. In addition, rules of procedure in litigation sometimes provide that minors or persons with diminished capacity must be represented by a guardian or next friend if they do not have a general guardian. In many circumstances, however, appointment of a legal representative may be more expensive or traumatic for the client than circumstances in fact require. Evaluation of such circumstances is a matter entrusted to the professional judgment of the lawyer. In considering alternatives, however, the lawyer should be aware of any law that requires the lawyer to advocate the least restrictive action on behalf of the client.

Disclosure of the Client's Condition

[8] Disclosure of the client's diminished capacity could adversely affect the client's interests. For example, raising the question of diminished capacity could, in some circumstances, lead to proceedings for involuntary commitment. Information relating to the representation is protected by Rule 1.6. Therefore, unless authorized to do so, the lawyer may not disclose such information. When taking protective action pursuant to paragraph (b), the lawyer is impliedly authorized to make the necessary disclosures, even when the client directs the lawyer to the contrary. Nevertheless, given the risks of disclosure, paragraph (c) limits what the lawyer may disclose in consulting with other individuals or entities or seeking the appointment of a legal representative. At the very least, the lawyer should determine whether it is likely that the person or entity consulted with will act adversely to the client's interests before discussing matters related to the client. The lawyer's position in such cases is an unavoidably difficult one.

Emergency Legal Assistance

[9] In an emergency where the health, safety or a financial interest of a person with seriously diminished capacity is threatened with imminent and irreparable harm, a lawyer may take legal action on behalf of such a person even though the person is unable to establish a client-lawyer relationship or to make or express considered judgments about the matter, when the person or another acting in good faith on that person's behalf has consulted with the lawyer. Even in such an emergency, however, the lawyer should not act unless the lawyer reasonably believes that the person has no other lawyer, agent or other representative available. The lawyer should take legal action on behalf of the person only to the extent reasonably necessary to maintain the status quo or otherwise avoid imminent and irreparable harm. A lawyer who undertakes to represent a person in such an exigent situation has the same duties under these Rules as the lawyer would with respect to a client.

[10] A lawyer who acts on behalf of a person with seriously diminished capacity in an emergency should keep the confidences of the person as if dealing with a client, disclosing them only to the extent necessary to accomplish the intended protective action. The lawyer should disclose to any tribunal involved and to any other counsel involved the nature of his or her relationship with the person. The lawyer should take steps to regularize the relationship or implement other protective solutions as soon as possible. Normally, a lawyer would not seek compensation for such emergency actions taken.