MEMORANDUM

Date: September 4, 2026

To: Potential Stakeholders

From: WSBA Committee on Professional Ethics

Re: Seeking comments on ABA Rule 1.14 amendments

The Washington State Bar Association's Committee on Professional Ethics (CPE) issues advisory opinions addressing recurring or emerging ethics issues facing WSBA members. Occasionally, the CPE will solicit feedback on potential changes being considered to the Rules of Professional Conduct.

This request for feedback focuses on ABA recommendations for Rule 1.14. For your consideration, please see the attached background materials:

1. ABA press release on the amendments to RPC 1.14
2. ABA document entitled "Possible Amendments"
3. ABA Formal Opinion 525
4. A copy of revised ABA RPC 1.14

The CPE is seeking comments on the amendments from lawyers, WSBA sections, and other potentially interested parties. Please send comments to the following subcommittee members appointed by the CPE to collect and review stakeholder comments at the following email address: **peterjarvis@comcast.net**.

Please provide your feedback to our subcommittee prior to **Friday, October 16th , 2026**.

Thank you for your interest in this matter.

On behalf of the CPE,

Sara Ayoubi, Peter Jarvis & Abe Ritter

AMERICAN BAR ASSOCIATION
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 entities[1] 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,

a client with decision-making limitations may have limited ability to make or communicate legally binding decisions. Nevertheless, a client with decision-making limitations often 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~~legal decisions. In addition, even if not able to make decisions, persons with decision-making limitations, including minors, may have preferences and values that can guide the lawyer's representation.

[4] 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 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 (c), 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.

[5] 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.

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, and is aware that the guardian, conservator or agent is acting adversely to the person's interest, the lawyer may have an obligation to prevent or rectify the misconduct.

[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~~ion of~~ 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 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 reveal~~s~~ing 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).

[12~~1~~] 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.

[13~~2~~] 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

[15~~3~~] 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

[16~~4~~] 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.

[17~~5~~] 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.

(c~~b~~) 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~~.

(d~~c~~) Information relating to the representation of a client with decision-making limitations~~diminished capacity~~ is protected by Rule 1.6. However, w~~W~~hen taking protective action pursuant to paragraph (c~~b~~), 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.~~

[1~~2~~] ~~The fact that a~~A client's decision-making limitations ~~suffers a disability~~ do~~es~~ not diminish the lawyer's obligations 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

[3~~1~~] An ordinary~~The normal~~ 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.~~

[4~~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~~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~~c), 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.

[5~~4~~]

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

[9~~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~~n 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~~b~~) permits the lawyer to take protective measures the lawyer deems~~ed~~ 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.

[10~~6~~] 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~~ 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, i~~I~~n 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,~~

~~the lawyer should consider~~ whether appointment of a guardian ad litem, conservator or guardian is necessary to protect the client's interests. For example~~Thus~~, if the~~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 guardian or conservator, which may be temporary or limited in nature, or a court order in lieu of such an appointment~~legal representative~~. In addition, rules of procedure in litigation sometimes provide that minors or persons with decision-making limitations~~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 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 ~~be aware of any law that requires the lawyer to~~ 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.

[13] ~~[12]~~ 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~~the Client's Condition~~

[15] [~~13~~8] Disclosure of the client's ~~diminished capacity~~ 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~~diminished capacity~~ 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~~b~~), the lawyer may reveal information about the representation~~is impliedly authorized to make the necessary disclosures~~, but only to the extent reasonably necessary to protect the client's interests~~ even when the client directs the lawyer to the contrary~~. Nevertheless, given the risks of disclosure, paragraph (d~~e~~) limits what the lawyer may disclose in consulting with other ~~individuals~~ 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.~~ The lawyer's position in such cases is an unavoidably difficult one.~~

Emergency Legal Assistance

[16] [14~~9~~] 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~~10~~] 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.

AMERICAN BAR ASSOCIATION

STANDING COMMITTEE ON ETHICS AND PROFESSIONAL RESPONSIBILITY

Formal Opinion 525 **September 2, 2026**

Client With Decision-Making Limitations

A lawyer who determines that his client has decision-making limitations is obligated under Rule 1.14 to maintain an ordinary client-lawyer relationship insofar as possible, and lawyers owe clients with decision-making limitations the same obligations as any other client, including abiding by the client's decisions regarding the objectives of the representation. In certain situations, lawyers may take protective action to prevent substantial injury to clients with decision-making limitations. In taking protective action, a lawyer may disclose protected information, but only to the extent reasonably necessary to prevent substantial injury to the client. While the recommendation of a guardianship may be an appropriate protective action in certain limited circumstances, the appointment of a guardian is a serious deprivation of the client's rights and should not be pursued if other, less drastic, solutions are available. Although a lawyer may recommend or support the appointment of someone the lawyer reasonably believes would be a fit guardian, a lawyer whose client has decision-making limitations may not represent a third-party petitioning for a guardianship over the lawyer's client. A lawyer representing a client with decision-making limitations may withdraw in accordance with Model Rule 1.16.

In February 2026, the ABA adopted a substantially revised version of ABA Model Rule 1.14.[1] The revisions replace the term "client with diminished capacity," with the more modern and accurate term "clients with decision-making limitations;" define a process called "supported decision-making" as an enhancement of a client's decision-making ability; recognize that clients with cognitive disabilities, including intellectual and mental health issues can, and should, be allowed to make decisions whenever possible; and recognize that decision-making limitations are situational in nature and can vary over time. Given the amendments to Model Rule 1.14 this opinion is a substantial revision and updating of ABA Formal Opinion 96-404, which was based on the prior version of Model Rule 1.14.[2] This opinion addresses questions such as: How does the

---

[1] MODEL RULES OF PROF'L CONDUCT R. 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. 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.
> (b) 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.
> (c) 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 (b), the lawyer may reveal information related to the representation to the extent the lawyer reasonably believes necessary to protect the client's interests.

[2] Prior Rule 1.14 – Client with Diminished Capacity

lawyer go about determining the extent of the client's decision-making limitations? May the lawyer consult with family members or others? May the lawyer petition the court to appoint a guardian for the client? Is the lawyer ever obligated to do so? May the lawyer represent a third-party petitioning for guardianship? May the lawyer support the appointment of a particular guardian? When may the lawyer withdraw from representing the client?

Assessing the Client's Capacity

Model Rule 1.14(a) defines "decision-making limitations" as follows: "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." The Rule uses "decision-making limitations" not as a medical diagnosis or a legal standard, but rather to assist the lawyer in determining whether the client has substantial difficulty in making and expressing informed decisions about the representation. While a medical diagnosis may be taken into account with the lawyer's judgment, the lawyer may not defer to a medical diagnosis and must make the lawyer's own evaluation of the client, which may be assisted in certain circumstances by family members or medical personnel. In some cases, a client may have serious physical or other impairments but may be perfectly capable of comprehending information about the matter and expressing the client's wishes to the lawyer. On the other hand, a client with no medical diagnosis may clearly have decision-making limitations.

The lawyer is assisted in the task of forming a judgment about the client's decision-making limitations by Comment [2]: decision-making limitations can be situational and can vary; a client with decision-making limitations often can deal with issues concerning the client's own well-being; and the client with decision-making limitations may have preferences and values that can guide the lawyer's representation.[3] In addition, Model Rule 1.14 Comment [13] offers significant guidance for the lawyer in assessing the client's decision-making limitations, advising lawyers to consider and balance such factors as: the client's ability to articulate the reasoning for and to

---

> (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.

The Report submitted to the ABA House of Delegates in support of adopting revised Rule 1.14 stated these reasons for revising the rule:

> "(1) it unintentionally has the effect of encouraging many lawyers to pursue guardianship or conservatorship over clients; (2) it has been read to offer conflicting guidance to lawyers representing people with surrogate decision-makers; (3) its terminology is inconsistent with changes in the law and the modern understanding of the rights and abilities of people with disabilities; and (4) it does not provide sufficient guidance to lawyers in several major areas implicated by the Rule."

This Opinion supersedes Formal Opinion 96-404, which provided guidance under the previous version of the Rule.

[3] MODEL RULES OF PROF'L CONDUCT R. cmt. [2].

understand the consequences of a decision; the client's ability to appreciate the fairness of the decision; and the consistency of a decision with the client's commitments and values.[4]

While the lawyer may be presented with a healthcare professional's evaluation, which should be considered, the lawyer should independently consider the client's decision-making limitations and the possible use of accommodations or supports.[5] In considering a healthcare professional's evaluation of the client's current abilities and limitations, the lawyer should recognize that the evaluation may have been done for a different purpose, may be based on standards that differ from the relevant legal standard, and may have been done at a time when client's abilities differed from the present.[6] A discussion of a client's condition with a healthcare professional does not violate Model Rule 1.6 (Confidentiality of Information) insofar as is reasonably necessary when taking protective action pursuant to Model Rule 1.14(b).[7]

Representing the Client with Decision-making Limitations

Representation of a client who has decision-making limitations often presents special challenges for the lawyer. Model Rule 1.14(a) states the lawyer's primary obligation: "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." An ordinary client-lawyer relationship presumes that there can be effective communication between client and lawyer,[8] and that the client, after consultation with the lawyer, can make considered decisions about the objectives of the representation and the means of achieving those objectives.[9]

When the client has decision-making limitations and the client's ability to communicate, to comprehend and assess information, and to make reasoned decisions is affected, maintaining the ordinary relationship in all respects may be difficult. Nonetheless, the rule requires lawyers to make efforts to accommodate the client's decision-making limitations in order to maintain an ordinary client-lawyer relationship. Comment [3] assists the lawyer by providing that decision-making limitations may be alleviated or eliminated by using supports or making accommodations such as "communication devices or services, assistance of appropriate third parties or supported

---

[4] MODEL RULES OF PROF'L CONDUCT R. cmt. [13].
[5] *Id.*
[6] *Id.*
[7] If a discussion with a health care professional would require disclosing information that relates to the representation of the client, the lawyer must ensure that the lawyer has first obtained the client's informed consent as required by Model Rule 1.6(a) or the lawyer is appropriately taking protective action pursuant to Model Rule 1.14(b). A lawyer seeking information about a client's condition may seek general information from a health care professional without disclosing information relating to the representation of the client.
[8] MODEL RULES OF PROF'L CONDUCT R. 1.4(a): "A lawyer shall: . . . (2) reasonably consult with the client about the means by which the client's objectives are to be accomplished; [and] (3) keep the client reasonably informed about the status of the matter; . . ."
[9] MODEL RULES OF PROF'L CONDUCT R. 1.2(a): ". . . [A] lawyer shall abide by a client's decisions concerning the objectives of representation and . . . shall consult with the client as to the means by which they are to be pursued . . ." Rule 1.14 Comment [4] provides, in part: "An ordinary client-lawyer relationship requires, among other things, abiding by a client's decisions concerning the objectives of the representation; keeping a client informed about the status of the matter and explaining matters to the extent reasonably necessary for a client to make informed decisions regarding the representation; and rendering candid advice to a client."

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."[10] The lawyer may also need to do further research regarding the client's condition in order to make necessary accommodations.[11]

In considering appropriate accommodations, the lawyer must always bear in mind that the client with decision-making limitations is entitled to all the protections of the client-lawyer relationship, including abiding by the client's objectives regarding the representation as required by Rule 1.2(a). The lawyer should continue to treat the client with attention and respect, attempt to communicate and discuss relevant matters, and continue as far as reasonably possible to act consistent with the client's directions and decisions.[12]

The client may have given an agent authority to make decisions through an instrument such as a power of attorney. The lawyer should however take direction from and maintain communications with the client to the extent feasible unless the client has directed otherwise or is unable to give direction.[13] The lawyer may also represent a client for whom the court has appointed a guardian and in such situations the lawyer should ordinarily look to the guardian for decisions that the guardian has legal authority to make,[14] nonetheless keeping in mind that the lawyer should also continue to respect the client's reasonable objectives in carrying out the representation.[15] The lawyer may also consult directly and represent a client who wishes to challenge the conditions of a guardianship or revoke a decisions making instrument and in such situations the lawyer should look directly to the client for direction.

Maintaining Confidentiality

Paragraph (c) of the rule states that when a lawyer represents a client with decision-making limitations, all information relating to the representation is protected by Model Rule 1.6, just as with any client. A lawyer should therefore not presume extra latitude in such representations. Nonetheless the Rule does recognize that sometimes a client with decision-making limitations may request the presence or assistance of family members or others when interacting with the lawyer. When the client requests that family members or other people participate in meetings with the

---

[10] MODEL RULES OF PROF'L CONDUCT R. 1.14 cmt. [3].

[11] MODEL RULES OF PROF'L CONDUCT R. 1.14 cmt. [11]: "To identify and learn such techniques, lawyers can seek guidance from resources developed by professional associations and others with expertise in working with individuals with decision-making limitations."

[12] MODEL RULES OF PROF'L CONDUCT R. 1.14 cmt. [1] states that "[a] client's decision-making limitations do not diminish the lawyer's obligations under the Rules or 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." To the same effect was EC 7-12 of the predecessor Model Code of Professional Responsibility: "If a client is capable of understanding the matter in question or of contributing to the advancement of his interests, regardless of whether he is legally disqualified from performing certain acts, the lawyer should obtain from him all possible aid."

[13] *See* MODEL RULES OF PROF'L CONDUCT R. 1.14 cmt. [7].

[14] *Id.*

[15] MODEL RULES OF PROF'L CONDUCT R. 1.14 cmt. [2]: "In addition, even if unable to make some or all decisions, persons with decision-making limitations . . . may have preferences and values that can guide the lawyer's representation."

lawyer, the lawyer should seek the client's informed consent.[16] The lawyer should document the role of family members or others in the representation, and the lawyer must keep the client's interests foremost.[17] Whenever possible, the lawyer should afford the client the opportunity to communicate privately with the lawyer without the presence or influence of others. Likewise, a family member or other third party may seek representation on behalf of a person with decision-making limitations.[18] In such situations the lawyer must first clarify the identity of the client and, if it is the person with decision-making limitations, make it clear to the family member or other third party that the lawyer does not represent them.[19]

Similarly, and with the caveat that the requirements of Model Rule 1.14(b) must be met, there may also be circumstances where the lawyer will wish to consult with the client's family or other interested persons who are in a position to aid in the lawyer's assessment of the client's decision-making limitations as well as in the decision by the lawyer of how to proceed. Limited disclosure of the lawyer's observations and conclusions about the client's behavior may be permitted if the client "is at risk of substantial physical, financial or other harm unless action is taken."[20] The lawyer must be careful, however, to limit disclosures to those pertinent to the assessment of the client's capacity and discussion of the appropriate protective action. This narrow exception does not permit the lawyer to generally disclose information relating to the representation without the client's informed consent.[21]

Protective Action: Taking the Least Restrictive Measures Under the Circumstances

The lawyer's primary obligation when representing a client with decision-making limitations is to maintain as much as reasonably possible under the circumstances an ordinary client-lawyer relationship. The Rule, however, recognizes there are situations in which it may be necessary to step outside that role to protect the client. Paragraph (b) of the Rule permits, but does not require, a lawyer to take protective action on behalf of a client when three conditions exist: 1) the client has decision-making limitations 2) the client is at risk of substantial physical, financial or other harm unless action is taken, and 3) the client cannot adequately act in the client's own interest to address the risk. Note that the sole purpose of this exception is to prevent substantial injury to the client – it is not for the convenience of the lawyer or others. In considering whether or not this exception applies, the lawyer should be able to articulate the harm to the client the lawyer seeks to prevent, why the protective action is necessary to prevent such harm and why the protective action is the least restrictive option under the circumstances.

If the lawyer believes the three conditions exist and chooses to take protective action, the lawyer must continue to be mindful of other obligations owed to the client. The lawyer taking protective action may believe that the client may oppose the protective action, but even so, to the extent

---

[16] MODEL RULES OF PROF'L CONDUCT R. 1.14 cmt. [5]. *See* MODEL RULES OF PROF'L CONDUCT R. 1.6(a).
[17] MODEL RULES OF PROF'L CONDUCT R. 1.14 cmt. [5].
[18] If a family member or other third party has sought the lawyer's representation on behalf of another, the lawyer must not disclose information relating to the presentation to the nonclient unless permitted by Model Rule 1.6.
[19] Model Rule 5.4(c) prohibits the lawyer from taking direction from someone who recommends or employs the lawyers on behalf of the client. Similarly Model Rule 1.8(f) prohibits the lawyer from permitting a third-party payor to direct or control the relationship. *See also* MODEL RULES OF PROF'L CONDUCT R. 4.3.
[20] MODEL RULES OF PROF'L CONDUCT R. 1.14 (b).
[21] MODEL RULES OF PROF'L CONDUCT R. 1.14 cmt. [18].

feasible, the lawyer must communicate with the client and explain the protective action being taken and the reasons.[22] The exception set forth in Model Rule 1.14(b) envisions that often the client will be incapable of communicating with the lawyer, but if the client is capable of communication and the lawyer intends to take protective action, Model Rule 1.4 requires the lawyer to communicate that decision to the client. It may be the case that sometimes the client will agree to the protective actions and such agreement should be sought if possible.

Model Rule 1.14(b) does not authorize the lawyer to take protective action merely because the client is not acting in what the lawyer believes to be the client's best interest, but only when the client "is at risk of substantial physical, financial or other harm unless action is taken . . ." Model Rule 2.1 permits the lawyer to offer his candid assessment of the client's conduct and its possible consequences, and to suggest alternative courses,[23] but the lawyer must defer to the client's decisions concerning the objectives of the representation. Substituting the lawyer's own judgment of what is in the client's best interest robs the client of autonomy and is inconsistent with the principles of the "ordinary" relationship.

Equally important, Model Rule 1.14(b) cannot be construed to grant broad license for even the most well-intentioned lawyer to take control over every aspect of the life of a client with decision-making limitations, or to arrange to have such control vested in someone other than the client. Rather, the authority granted under Model Rule 1.14(b) to seek protective action should be exercised with caution in a limited manner consistent with the nature of the particular client-lawyer relationship, the client's needs, and, to the extent possible, carrying out the client's objectives for the representation.

Model Rule 1.14(b) permits the client-lawyer relationship to continue even in the face of the client's decision-making limitations, and thus the lawyer need not withdraw simply because the lawyer takes protective action.[24] Model Rule 1.14(b) also permits a lawyer to take protective action whether or not immediately necessary to the lawyer's effective representation of the client, if, in the matter at hand, the client "is at risk of substantial physical, financial or other harm unless action is taken . . ." Thus, a lawyer who has a longstanding existing relationship with a client, but no specific present work, is not, for lack of such assignment, barred from taking appropriate action to protect a client where Model Rule 1.14(b) applies.

Although not expressly directed by the Model Rules, the principle of respecting the client's autonomy dictates that protective action taken by a lawyer who believes a client has decision-making limitations and is at risk of substantial harm should be the action that is reasonably viewed as the least restrictive action under the circumstances. Model Rule 1.14 Comment [12] offers helpful guidance as to what constitutes "protective action," while cautioning that it should be undertaken to minimize eroding client autonomy and maximize accomplishing the client's goals,

---

[22] In certain situations, the lawyer may delay communicating information if the lawyer believes the client is likely to react imprudently. *See* MODEL RULES OF PROF'L CONDUCT R. 1.4 cmt. [4].

[23] "Matters that go beyond strictly legal questions may also be in the domain of another profession. Family matters can involve problems within the professional competence of psychiatry, clinical psychology, or social work; business matters can involve problems within the competence of the accounting profession or of financial specialists." MODEL RULES OF PROF'L CONDUCT R. 2.1 cmt. [4].

[24] In some situations, taking protective action may give rise to circumstances that require the lawyer's withdrawal pursuant to Model Rule 1.16(a), such as when the client discharges the lawyer as a result of the protective action.

values, and interests: consulting with family members; using a reconsideration period; using voluntary surrogate decision-making tools; or consulting with persons or entities that could protect the client. Other options may include use of durable powers of attorney or revocable trusts where a client with decision-making limitations has the capacity to execute such documents.

At times, the lawyer may believe that a client's situation is so serious that the least restrictive option to protect the client is a guardianship. The appointment of a guardian is a serious deprivation of the client's rights and should not be pursued if less restrictive measures are available. Even where the appointment of a guardian is the only appropriate alternative, that course, too, has degrees of restriction. For instance, if the client-lawyer relationship is limited to a single litigation matter, the least restrictive course for the lawyer might be to seek the appointment only of a guardian ad litem, so that the lawyer will be able to continue the litigation for the client. On the other hand, a lawyer may discern that the client is at risk outside the representation and reasonably believe that a guardianship is necessary.

While there may be circumstances in which the appointment of a general guardian to assume control over every aspect of the client's life is the only reasonable course, in some, if not many, circumstances it may be sufficient for the client's protection to arrange for a guardian to manage the client's financial affairs, allowing the client to continue managing his personal affairs. Model Rule 1.14 Comment [15] notes the situation where the client with decision-making limitations has property that should be sold for the client's benefit, but completion of the transaction requires the appointment of a legal representative who can act on the client's behalf.

The Lawyer May Seek a Guardian for the Client but May Not Represent Another in Doing So

When, after consideration of less restrictive means, a lawyer has concluded that a guardian should be appointed for his client, the lawyer may file the petition for guardianship. By its terms, Model Rule 1.14(b) authorizes a lawyer to file a petition for guardianship seeking that another be appointed guardian when the lawyer has made the requisite finding that the client "is at risk of substantial physical, financial or other harm unless action is taken . . ." Conscious of the lawyer's general duty of loyalty, and the lawyer's specific obligation under Model Rule 1.14(a) to "as far as reasonably possible, maintain an ordinary client-lawyer relationship," a lawyer may feel discomfort at being the petitioner. The lawyer may also be discomfited by being in the position of taking action, regardless of how necessary and appropriate, that will take away the client's fundamental right of independence. Nevertheless, in the extraordinary circumstances in which it applies, Model Rule 1.14(b) clearly permits the lawyer to do so. In all aspects of the proceedings, the lawyer's duty of candor to the court requires disclosure of pertinent facts, including the client's wishes.

A lawyer who finds himself in this awkward position may prefer that someone else file the petition. In practice, too, it is not uncommon for the lawyer to be approached by a family member or other third party with a request that the lawyer represent family member or other third party in pursuing the petition. As discussed above, Model Rule 1.14(b) permits the lawyer to file a petition for guardianship upon concluding that the client "is at risk of substantial physical, financial or other harm unless action is taken . . .” A lawyer with a client with decision-making limitations may not, however, represent a third party in petitioning for a guardianship over the lawyer’s client.

In permitting a lawyer to seek appointment of a guardian over the client’s objection in these limited circumstances, Model Rule 1.14(b) creates a narrow exception to the lawyer’s ordinary responsibility to defer to the client’s lawful objectives. However, Model Rule 1.14 does not otherwise derogate the lawyer’s responsibilities to the client and certainly does not abrogate the client-lawyer relationship. In particular, it does not authorize a lawyer to represent a third party in seeking to have a court appoint a guardian for the lawyer’s client. Such a representation is necessarily “adverse” to the client and prohibited by Rule 1.7(a), even if the lawyer sincerely and reasonably believes that such representation would be in the client’s best interests. In short, if the lawyer decides to file a guardianship petition, it must be on the lawyer’s own authority under Model Rule 1.14 and not on behalf of a third party, however well-intentioned.

This does not mean the lawyer cannot consider requests of family members and other third parties and be responsive to them, provided the lawyer has made the requisite determination that the client with decision-making limitations “is at risk of substantial physical, financial or other harm unless action is taken . . .” and a guardianship is necessary and is the least restrictive alternative. The lawyer must also have made a good faith determination that the third party with whom the lawyer is dealing is also acting in the best interests of the client. In such circumstances, the lawyer may disclose information relating to the representation to the limited extent necessary to assist the third party in filing the petition and may provide other appropriate assistance short of representation.

Seeking the appointment of a guardian for a client is to be distinguished from seeking to be the guardian. A lawyer who files a guardianship petition under Model Rule 1.14(b) should not act as or seek to have the lawyer appointed guardian except in the most exigent of circumstances, that is, where immediate and irreparable harm will result from the slightest delay.[25] Even in the latter situations, a lawyer may have to act before the appointment has been actually made by the court. A lawyer whose client with decision-making limitations is about to be evicted, for instance, should be permitted to take action on behalf of the client to forestall or prevent the eviction, for example, by filing an answer to the eviction complaint. In such a case the lawyer should take appropriate steps for the appointment of a formal guardian or other legal representative, other than the lawyer, as soon as possible.[26]

Representing a Guardian

In Formal Opinion 96-404, the Committee indicated that after the court appoints a guardian for a lawyer’s client, the lawyer may represent the guardian. We caution that to do so, however, would raise heightened conflict-of-interest concerns.[27] A lawyer seeking to represent both the guardian and the ward could face a serious conflict under Model Rule 1.7(a), and the lawyer may not be able to appropriately obtain informed consent to the conflict from a client subject to a

[25] MODEL RULES OF PROF’L CONDUCT R. 1.14 cmt. [19].
[26] MODEL RULES OF PROF’L CONDUCT R. 1.14 cmt. [20].
[27] The Committee does agree, however, with the observation in Formal Opinion 96-404 that “any expectation the lawyer may have of future employment by the person he is recommending for appointment as guardian must be brought to the attention of the appointing court.”

guardianship.[28] Withdrawing from the representation of the ward, even if permissible under Model Rule 1.16, could present a former client conflict under Model Rule 1.9(a), and again, the lawyer may not be able to obtain the informed consent of the former client.[29]

Withdrawal from Representation of the Client with Decision-Making Limitations

A lawyer who represents a client with decision-making limitations may believe that, because of the client's decision-making limitations, the lawyer is unable to fulfill his or her professional obligations to the client. For example, the client may be unable to articulate the client's objectives concerning the representation or consult with the lawyer. If the lawyer reasonably believes this may result in substantial injury to the client, Model Rule 1.14(b) may permit the lawyer to address the situation through protective action.

While Model Rule 1.14(b) permits a lawyer to take protective action in certain circumstances, it does not compel the lawyer to do so, and many lawyers are uncomfortable with the prospect of having to so act. In that situation, the lawyer may believe the lawyer is obligated to withdraw by Model Rule 1.16(a)(3), which requires the lawyer to withdraw from the representation when the lawyer is discharged. Or it may be the case that the lawyer believes the lawyer has permissive grounds for withdrawal under Model Rule 1.16(b). Nothing prohibits a lawyer from seeking to withdraw from the presentation of a client with decision-making limitations in accordance with Model Rule 1.16.

While withdrawal in these circumstances solves the lawyer's dilemma, it may leave the client with decision-making limitations without help at a time when the client needs it most.[30] For instance, the client's decision-making limitations may increase in the middle of a pending matter and substitute counsel may not be able to represent the client as effectively due to the inability to discuss the matter with the client. Thus, while it cannot be stated that a lawyer representing a client with decision-making limitations may never withdraw, the better course of action, and the one most likely to be consistent with Rule 1.16(b), will often be for the lawyer to stay with the representation and seek appropriate protective action on behalf of the client.

Conclusion

A lawyer should strive to maintain an ordinary client-lawyer relationship when a client has decision-making limitations. The lawyer should employ the many resources available both to evaluate the effect of the client's decision-making limitations on the relationship and as to what measures can be taken to limit that effect. The lawyer may take reasonably necessary protective action if the client "is at risk of substantial physical, financial or other harm unless action is taken . . ." The action taken should be the least restrictive of the client's autonomy that will yet adequately protect the client.

---

[28] *See, e.g.*, *In re* Guardianship of Lillian P., 238 Wis. 2d 449, 617 N.W.2d 849 (Wis. App. 2000).
[29] A lawyer who has formerly represented the ward must be mindful of the obligation under Model Rule 1.9(c) not to disclose or use adversely any information relating to the representation of the ward without the informed consent of the ward in considering whether representation of the guardian is permissible.
[30] As pointed out in C.W. WOLFRAM, MODERN LEGAL ETHICS 162 (1986), even if withdrawal is technically permissible, it "only solves the lawyer's problem and may belittle the client's interest."

The reasonably necessary protective action could include seeking the appointment of a guardian if less restrictive actions are, or have reasonably been determined to be, ineffective. The lawyer may recommend or support the appointment of a particular person or other entity as guardian, provided the lawyer has made reasonable inquiry as to the suggested guardian's fitness. In all aspects of the proceedings, the lawyer's duty of candor to the court requires disclosure of pertinent facts, including the client's wishes. Finally, withdrawal from representation of a client with decision-making limitations is disfavored, even if ethically permissible under the circumstances.

AMERICAN BAR ASSOCIATION STANDING COMMITTEE ON ETHICS AND PROFESSIONAL RESPONSIBILITY

321 N. Clark Street, Chicago, Illinois 60654-4714 Telephone (312) 988-5328

AMERICAN BAR ASSOCIATION

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: **April 1, 2025**
Re: **Seeking Comment on 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. The Rule underwent significant changes at the recommendation of the ABA's Ethics 2000 Commission but has remained essentially unchanged since 2002.

Experience with MRPC 1.14, and changes in the law and understanding of the rights and abilities of people with cognitive and intellectual disabilities 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 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.

In recognition of these concerns, in 2023, the Supreme Court of Maryland adopted revisions to Maryland RPC 1.14 after a three-year process. Inspired in part by those changes, which became effective in July 2023, a working group of eight ABA entities[1] 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] The culmination of that work to date is a Discussion Draft of possible amendments representing the joint work of members of the Standing Committee

[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.

on Ethics and Professional Responsibility, the Standing Committee on Professional Regulation, and representatives of the ABA entities that originally came together to recommend revision.

This Memorandum summarizes the key suggested changes set forth in the attached Discussion Draft (see Appendix A), the rationale behind them, and seeks comment. We also provide a redline of the proposal and current Rule 1.14. (See Appendix B).

II. The Need for Amendment

There exist important reasons for the ABA to update MRPC 1.14. These include: (1) it unintentionally has the effect of encouraging lawyers to pursue guardianship or conservatorship over clients; (2) it has been read to offer conflicting guidance to lawyers representing people with surrogate decision-makers; (3) its terminology is inconsistent with changes in the law and the modern understanding of the rights and abilities of people with disabilities; and (4) it does not provide sufficient guidance to lawyers in several major areas implicated by the Rule.

A. MRPC 1.14 has the unintentional effect of encouraging lawyers to pursue guardianship or conservatorship of their clients.

MRPC 1.14 suggests to lawyers that guardianship or conservatorship[3] should be a standard response—perhaps even a default response—when a client has decision-making limitations, rather than the last resort that experts widely agree either should be. Specifically, paragraph (b) indicates that lawyers have enormous discretion when taking "reasonably necessary protective action," and then identifies "seeking the appointment of a guardian ad litem, conservator or guardian" as one of three permissible protective actions if the criteria for protective action set forth in 1.14(b) are met. The other protective action identified is "consulting with individuals or entities that have the ability to take action to protect the client."

Those who most frequently deal with the Rule believe the express inclusion of guardianship or conservatorship as a protective action in the black letter of MRPC 1.14 suggests that these actions have priority and legitimacy over other possible, less intrusive, actions suggested in current Comment 5. This implicit prioritization based on the current construction of the Rule is problematic not only because guardianship and conservatorship are extraordinarily high-impact interventions into a person's life, but because this response poses the most direct conflict of interest for lawyers, compared to any other protective action. That is because a guardianship or conservatorship proceeding is, at heart, adversarial litigation. Today, the ABA[4] and advocates for older adults and people with disabilities urge lawyers to prioritize a broad array of alternatives to guardianship and conservatorship, such as supported decision-making.[5] MRPC 1.14 should be amended to align with these efforts.[6]

---

[3] Hereafter, this memo will use the term "guardianship" to refer to both "guardianship" and "conservatorship," although states vary in their terminology.
[4] *See, e.g.,* ABA Policy 23M602 (adopted Feb. 2022).
[5] *See, e.g.*, Nina Kohn & David English, P*rotective Orders and Limited Guardianships: Legal Tools for Sidelining Plenary Guardianship*, 72 SYRACUSE L. REV. 225, 236-238 (2022); Alison Hirschel & Lori Smetanka, *The Use and Misuse of Guardianship by Hospitals and Nursing Homes*, 72 SYRACUSE L. REV. 255 (2022).
[6] The Discussion Draft avoids such apparent prioritization by amending the Blackletter as discussed in Section III(C), and providing additional guidance to lawyers in Discussion Draft Comments 9 and 11.

B. MPRC 1.14 offers conflicting guidance to lawyers representing people with surrogate decision-makers.

MRPC 1.14 has been read over time as providing internally inconsistent guidance to lawyers who represent a person who either has appointed an agent (e.g., through a power of attorney) or for whom a guardian, conservator, or other agent (such as a representative payee) has been appointed. Clarification of the Rule would address this confusion.

Currently, Comment 4 provides: "If a legal representative has already been appointed for a client, the lawyer should ordinarily look to the representative for decisions on behalf of the client." In so doing, Comment 4 seems at odds with the black letter of MRPC 1.14. As explained in a 2016 law review article:

> By advising attorneys to "ordinarily" look to the appointed representative to make decisions, Comment 4 undermines the main text of Rule 1.14. The primary guidance provided by the rule itself is that attorneys should default to a normal model of representation when working with individuals with diminished capacity and only veer from that model if the person with diminished capacity faces significant risk otherwise and such deviation is reasonably necessary. By stating that the ordinary approach should be to accord the representative with decision-making authority, Comment 4 reverses this default. This reversal is particularly strange given that most persons with appointed representatives have never been adjudicated incapacitated; rather, they appointed the representative through a document such as a power of attorney, the validity of which depended on the individual having at least some decision-making capacity when executing it. [7]

Comment 4 is also at odds with the unequivocal statement in current Comment 2 that a lawyer should "as far as possible" accord a person with a legal representative "the status of a client."

Comment 4 reverses what many have interpreted as the default approach set forth in Comment 2, making deviation from the normal client-lawyer relationship the ordinary approach. This lack of clarity has also resulted in inconsistent state ethics opinions.[8]

In addition, the current Comments fail to recognize the tremendous difference between a situation in which the client cannot directly make a legal decision (e.g., because a court stripped the client of that right when appointing a guardian) and a situation in which the client retains the right to make a legal decision (e.g., the client has executed an immediately effective power of attorney for finances and continues to have financial capacity).

The possible amendments in the Discussion Draft resolve these issues by providing needed and consistent guidance as to how to proceed in the very common situation in which an agent or

---

[7] Nina A. Kohn & Cathryn R. Koss, *Lawyers for Legal Ghosts: The Legality and Ethics of Representing Persons Subject to Guardianship*, 91 WASH. L. REV. 581, 616 (2016) (footnote omitted).
[8] *Id.* at 635.

guardian seeks the lawyer's assistance, at least purportedly, on behalf of the client.[9] It also provides guidance about representing individuals who have a guardian or agent.

C. MRPC 1.14's terminology is inconsistent with the current understanding of decision-making abilities and impairments.

MRPC 1.14 uses the term "client with diminished capacity." There are many problems with this term. First, it is undefined in the Model Rules. The absence of definition or adequate guidance results in disparate and often inconsistent ethical responses to clients with decision-making limitations. Second, it is inherently confusing as it suggests that there is always some baseline from which to compare a client's current level of functioning. Many people with decision-making limitations did not previously have greater capacity. Third, the term suggests that capacity is static and does not vary based on type of decision, neither of which are accurate. This is one reason why the use of the term is increasingly rejected in other contexts, such as the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act. Finally, MRPC 1.14 reads to some as if it only applies to decisions made within the scope of representation of an existing client (where the lawyer may have some base line) and thus may provide insufficient guidance regarding new or prospective clients. As discussed in Section III(B) of this Memorandum, the Discussion Draft addresses this issue by using the term "person with decision-making limitations."

D. MRPC 1.14 offers insufficient guidance on a variety of ethical challenges lawyers face when working with clients with decision-making limitations.

1. *Insufficient guidance for lawyers for respondents in guardianship or conservatorship proceedings or lawyers for people subject to guardianship or conservatorship.*

Individuals for whom a guardianship is being sought, or who seek to challenge the terms and conditions of their guardianship, have a due process right to counsel to advocate for their objectives. Unfortunately, some lawyers—and even some judges—fail to appreciate this right. Individuals in these adversarial proceedings may find that their lawyer is urging actions that are inconsistent with their wishes. The current Rule contributes to this confusion when it states, in Comment [4], that: "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."[10]

2. *Insufficient guidance on the presence of third parties.*

Comment 3 to MRPC 1.14 recognizes that clients may wish to involve family members or others in discussions with a lawyer. The Comment reminds lawyers that, except for authorized protective actions, the lawyer "must look to the client, and not family members, to make decisions on the client's behalf." However, the Comment lacks helpful guidance on what the lawyer should do to accomplish this goal.

As the ABA Commission on Law and Aging has long urged, and the National Academy of Elder Law Attorneys has recognized in its aspirational standards, lawyers should provide clients

[9] *See* Discussion Draft Comment 5.
[10] The Discussion Draft addresses these issues in Comments 5 and 9.

with the opportunity to communicate privately with the lawyer. This approach is important to help avoid undue influence over, or even outright coercion of, the client by a third party who is present alongside the client.[11]

3. Insufficient guidance for lawyers working with defendants in criminal proceedings.

MRPC 1.14 does not provide any specific guidance for lawyers representing defendants in criminal proceedings even though issues of cognitive incapacity often arise in such proceedings.[12]

4. Insufficient guidance for lawyers representing minors.

MRPC 1.14 provides only very minimal guidance for lawyers representing minors. For example, there is no guidance in how to determine whether a minor has decision-making limitations. Similarly, there is no specific guidance as to whether a lawyer may simultaneously serve as a person's guardian ad litem and personal attorney, [13] an issue that frequently arises in cases involving minors.[14]

III. POSSIBLE AMENDMENTS TO BLACKLETTER MRPC 1.14

This section outlines possible changes to MRPC 1.14 set forth in the attached Discussion Draft for comment.

A. Replaces the term "diminished capacity" with "client with decision-making limitations" and adds a definition of the new term by adding a subsection (b).

The Discussion Draft outlining possible changes to MRPC 1.14 reduces the confusion discussed in Section II(A) by clearly explaining the type of individuals contemplated by the Rule. It is intended to do so in a way that helps focus lawyers' attention on their clients' functional abilities and limitations, rather than on categorizing their clients.

B. Replaces the term "normal client-lawyer relationship" with "ordinary client-lawyer" relationship.

As the Maryland Supreme Court recognized, MRPC 1.14's reference to "a normal client-lawyer relationship" implies representing people with cognitive disabilities creates an "abnormal" relationship, which may be unnecessarily stigmatizing of people with disabilities and older adults when used in this context. The suggested amendments change the modifier "normal" to "ordinary." Notably, "ordinary" is already used in the Comments to describe the relationship.

---

[11] The Discussion Draft addresses this issue in Comment 4.
[12] The Discussion Draft addresses this issue in Comment 6.
[13] The Discussion Draft provides such expanded guidance in Comment 7.
[14] *See* Bruce Boyer, *Representing Child-Clients with "Diminished Capacity": Navigating an Ethical Minefiel*d, 24 THE PROFESSIONAL LAWYER 1 (2016).

C. Enumerates the requirements that must be met for a lawyer to take protective action and eliminates language singling out certain types of protective action (e.g., guardianship).

The possible amendment eliminates problematic language that has inadvertently encouraged lawyers to pursue guardianship or conservatorship over clients when less restrictive protective action would be reasonable instead. The proposed change would also make the Rule easier to read by adding enumeration.

D. Rewords the final subsection to provide clarity as to when disclosures are permitted.

This possible amendment would resolve ambiguity by clearly stating that it is the lawyer's reasonable belief that determines whether revealing information relating to the representation is permissible to the extent necessary to protect the client's interests. Currently, the Rule states that information may be revealed where "reasonably necessary" but does not specify how this is to be determined. The proposed change also eliminates the suggestion—and legal fiction—that the reason a lawyer may reveal information when taking protective action is because such disclosure is "impliedly authorized" under Model Rule 1.6.

IV. POSSIBLE AMENDMENTS TO COMMENTS

A. Overview

As a general matter, there are three types of possible amendments to the Comments to MRPC 1.14 set forth in the Discussion Draft. First are changes designed to align the Comments with the suggested amendments to the blackletter and to otherwise increase clarity. Second are changes to provide more substantial and useful guidance for lawyers on what decision-making limitations are and the steps that lawyers can take to assess and support a client's decision-making abilities. Third are changes to provide guidance to lawyers in specific situations that lawyers often find difficult and that have led to conflicting advice. These include situations in which the lawyer represents a person: (1) with a surrogate decision-maker (e.g., an agent under a power-of-attorney or a guardian); (2) who is a respondent in a guardianship proceeding; (3) who is involved in a criminal matter where the person's competency or mental health may be an issue; and (4) who is a minor.

B. Possible New Comments

This section describes the possible amendments to the Comments shown in the Discussion Draft, with a focus on how they vary from the current Comments to MRPC 1.14.

1. Discussion Draft Comment 1 restates the principle from current Comment 2 of always treating the client with attention and respect and adds (for clarity) that a client with decision-making limitations is owed all the protections under the Rules ordinarily afforded by the client-lawyer relationship.

2. Discussion Draft Comment 2 reiterates the principle that as far as reasonably possible, the lawyer should maintain an ordinary (changed from "normal") client-lawyer relationship when a client has decision-making limitations. The Comment goes on to recognize the complexity of assessing decision-making limitations and the fact that a variety of supports or accommodations may be used to enhance the client's decision-making abilities, thereby assisting the lawyer in maintaining an ordinary client-lawyer relationship.

3. Discussion Draft Comment 3 also 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.

4. Discussion Draft Comment 4 revises current Comment 3 on representing clients who wish to have third parties participate in lawyer-client discussions. The Discussion Draft changes explain that, among other things, whenever possible, the lawyer should afford the client the opportunity to communicate privately with the lawyer without the presence or influence of others.

5. Discussion Draft Comment 5 expands significantly the guidance in current Comment 4 which addresses clients with surrogate decision-makers. When a client has a surrogate decision-maker, two key questions arise: from whom should the lawyer take direction and with whom should the lawyer communicate? These possible amendments provide guidance on these issues, recognizing that the answer depends on the type of surrogate at issue.

When a court appoints an agent (e.g., a guardian or conservator), the court is removing certain authority from the principal. Accordingly, the suggested Comment provides that in such situations the lawyer should ordinarily look to the court appointee to make decisions over which the appointee has authority. The suggested Comment explains, however, that a lawyer may consult with and represent a person subject to guardianship who seeks representation to challenge or modify the terms of that arrangement or seeks representation about any other matter over which the person retains decision-making authority. It further explains that when representing a client in such situations, the lawyer must take direction from the client and advocate for the client's objectives. In this way the Comment clears the confusion among the bar and judiciary over the role of a lawyer for a person subject to guardianship.

By contrast, when a principal authorizes an agent to act, the principal typically retains the authority to do so. Moreover, in many cases, clients execute a power of attorney giving an agent authority to act but do not expect the agent to act unless the client cannot or the client asks for help. Thus, the Discussion Draft Comment advises that a lawyer for a client who has appointed an agent 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.

6. Discussion Draft Comment 6 is a new Comment providing guidance for lawyers representing respondents in criminal proceedings. The Comment addresses a gap in the current Rule, which provides no guidance specific to lawyers representing criminal defendants. The suggested Comment states that a lawyer representing a client with decision-making limitations who is a criminal defendant may be required to seek a mental examination of the client or to take other protective measures that aid in the client's defense, and that such conduct is permissible under MRPC 1.14.

7. Discussion Draft Comment 7 is a new Comment directed to lawyers representing minors**.** It fills a gap in the current Comments, which briefly mention minors in Comments 1, 4, and 7. This new Comment provides specific guidance for lawyers representing minors on how to determine whether a minor has decision-making limitations.

8. Discussion Draft Comment 8 addresses the role confusion that arises when a lawyer attempts to simultaneously serve as guardian ad litem for a person and that same person's personal lawyer. The Comment warns that the duties of a lawyer who is acting as guardian ad litem may be incompatible with the duties of a lawyer engaged in an ordinary client-lawyer relationship.[15]

9. Discussion Draft Comment 9 regarding taking protective action is largely identical to current Comment 5 in providing examples of protective actions but adds guidance for when there is litigation involving the decision-making ability of the client, such as a guardianship proceeding. In such situations, lawyers sometimes fail to advocate for the client's expressed position regarding what, if any, action should be taken. The Comment makes clear that protective actions that may be proper outside of a dispute or proceeding at which the client's decision-making ability is in question do not apply in such litigation.

10. Discussion Draft Comment 10 incorporates core guidance from current Comment 6 on factors to consider in determining the extent of a client's decision-making limitations, but it 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 Comment 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.

11. Discussion Draft Comment 11 restates the guidance in current Comment 7 regarding when to consider appointment of a substitute decision-maker for a client but clarifies that the conditions of subparagraph (c) of MRPC 1.14 must be met. The Comment also affirms the principle that the lawyer should generally advocate the least restrictive action on behalf of the

---

[15] *See* Colorado Bar Association, Opinion 131: "Representing Clients with Diminished Capacity Where the Subject of the Representation is the Client's Diminished capacity (Sept. 13, 2017), *available at* https://www.cobar.org/Portals/COBAR/Repository/ethicsOpinions/FormalEthicsOpinion_131.pdf (explaining the conflict between the two roles).

client, and not merely be aware of any law that so requires. Finally, the Comment highlights the importance of communication with the client about any such protective action to the extent feasible unless certain exceptions apply, cross-referencing Model Rule 1.4.

12. Discussion Draft Comment 12 substantially rewrites current Comment 4 addressing the nature of the lawyer's advocacy role when another person has petitioned a court for an appointment of a conservator of a guardian, or for another restriction on the client's legal capacity. The suggested Comment clarifies that, in such case, the lawyer may not advocate for the appointment or restriction if the client opposes it. This applies even if the lawyer believes the appointment or restriction is justifiable as a protective action, because the lawyer's advocacy role in that situation is to be the voice of the client. If the lawyer is representing a client who is a respondent in a proceeding for guardianship in that proceeding, the lawyer must advocate for the client's objectives if known or ascertainable.

13. Discussion Draft Comment 13 rephrases the header to current Comment 8 to refer to "Disclosure of Information When Taking Protective Action" rather than "Disclosure of the Client's Condition," because confidential information about the client may encompass more than the client's condition. The content of the Comment remains substantially similar but reflects the revised language in subparagraph (c) that explains that the lawyer may reveal information relating to the representation when taking protective action, but only to the extent reasonably necessary to protect the client's interests.

14. Discussion Draft Comments 14 and 15 are unchanged from current Comments except for the change in terminology from "diminished capacity" to "decision-making limitations."

V. REQUEST FOR COMMENTS

We seek comment both on current MRPC 1.14 and the possible changes set forth in the Discussion Draft. Questions on which it would be especially valuable to receive input include:

- What are the key ethical and practical challenges experienced when representing clients with decision-making limitations? To what extent has MRPC 1.14 provided the guidance needed to comfortably navigate these challenges?
- What aspects of MRPC 1.14 and its Comments would most benefit from revision? Why?
- Are the possible changes to MRPC 1.14 and its Comments set forth in the Discussion Draft helpful? How might they be improved?
- Are there additional issues on which it would be helpful for MRPC 1.14 to provide guidance that are not addressed in the Discussion Draft?

All comments can be sent to modelruleamend@americanbar.org by May 12, 2025. Please note that comments may be posted on the ABA's website.

APPENDIX A: DISCUSSION DRAFT

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, a client with decision-making limitations may have limited ability to make or communicate legally binding decisions. Nevertheless, a client with decision-making limitations often 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 decisions, persons with decision-making limitations, including minors, may have preferences and values that can guide the lawyer's representation.

[4] 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 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 (c), 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.

[5] 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.

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, and is aware that the guardian, conservator or agent is acting adversely to the person's interest, the lawyer may have an obligation to prevent or rectify the misconduct.

[6] When a client in a criminal matter appears to have decision-making limitations, the lawyer's ethical duty to render competent representation and protection of 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 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. 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. 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 such guidance reveals confidential information about the client and is not done with the client's 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).

[11] 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.

[12] 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.

Disclosure of Information When Taking Protective Action

[13] 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

[14] 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.

[15] 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.

APPENDIX B: Below is a redline showing the differences between the March 2025 Discussion Draft and current ABA Model Rule of Professional Conduct 1.14.

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.

(c~~b~~) 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~~.

(d~~c~~) Information relating to the representation of a client with decision-making limitations~~diminished capacity~~ is protected by Rule 1.6. However, w~~W~~hen taking protective action pursuant to paragraph (c~~b~~), 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.~~

[1~~2~~] ~~The fact that a~~A client's decision-making limitations~~ suffers a disability~~ do~~es~~ not diminish the lawyer's obligations 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

[3~~1~~] An ordinary~~The normal~~ 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 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.~~

[4~~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~~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~~c), 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.

[5~~4~~]

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 protection of 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

[9~~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~~n 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~~b~~) permits the lawyer to take protective measures the lawyer deems~~ed~~ 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.

[10~~6~~] 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 the consistency of a decision with the known long-term commitments and values of the client. 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. 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, i~~I~~n 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 such guidance reveals confidential information about the client and is not done with the client's 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)~~an appropriate diagnostician~~.

[11~~7~~] 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, the lawyer should consider~~ whether appointment of a guardian ad litem, conservator or guardian is necessary to protect the client's interests. For example~~Thus~~, if the~~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 guardian or conservator, which may be temporary or limited in nature, or a court order in lieu of such an appointment~~legal representative~~. In addition, rules of procedure in litigation sometimes provide that minors or persons with decision-making limitations~~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 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 ~~be aware of any law that requires the lawyer to~~ 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.

[12] 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.

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

[13~~8~~] Disclosure of the client's ~~diminished capacity~~ 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~~diminished capacity~~ 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~~b~~), the lawyer may reveal information about the representation~~is impliedly authorized to make the necessary disclosures~~, but only to the extent reasonably necessary to protect the client's interests~~even when the client directs the lawyer to the contrary~~. Nevertheless, given the risks of disclosure, paragraph (d~~c~~) limits what the lawyer may disclose in consulting with other ~~individuals~~ 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.~~The lawyer's position in such cases is an unavoidably difficult one.~~

Emergency Legal Assistance

[14~~9~~] 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.

[15~~10~~] 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.

Rule 1.14: Client with Decision-Making Limitations

Client-Lawyer Relationship

(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. 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.

(b) 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.

(c) 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 (b), the lawyer may reveal information related to the representation to the extent the lawyer reasonably believes necessary to protect the client's interests.

Comment | Table of Contents | Next Rule

February 17, 2026

Rule 1.14: Client with Decision-Making Limitations - Comment

Share:

Client Abilities and Limitations

[1] A client's decision-making limitations do not diminish the lawyer's obligations under the Rules or 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] Decision-making limitations can be situational in nature and can vary in degree and over time. A client may have decision-making limitations with regard to certain issues and not others. A client with decision-making limitations often 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 legal decisions. In addition, even if unable to make some or all decisions, persons with decision-making limitations, including even very young minors, may have preferences and values that can guide the lawyer's representation.

[3] 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

[4] Lawyers are required to maintain, as far as reasonably possible, an ordinary client-lawyer relationship with clients with decision-making limitations. An ordinary client-lawyer relationship requires, among other things, abiding by a client's decisions concerning the objectives of the representation; keeping a client informed about the status of the matter and explaining matters to the extent reasonably necessary for a client to make informed decisions regarding the representation; and rendering candid advice to a client. See Rules 1.2, 1.4, and 2.1. 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, a client with decision-making limitations may have limited ability to make or communicate legally binding decisions.

[5] The client may wish to have family members or other persons participate in discussions with the lawyer. The lawyer should seek the client's informed consent to the presence of such persons. See Rule 1.6(a). If the presence of such persons assists in the representation, the lawyer should document that role when such documentation could help avoid a waiver 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.

[6] When a family member or another seeks a lawyer's services on behalf of an individual who may have decision-making limitations, the lawyer should identify who the client is and seek to establish an ordinary lawyer-client relationship with that client. When a family member or another seeks the lawyer's assistance in drafting a legal document to be executed by an individual who may have decision-making limitations, the lawyer should be alert to the possibility of undue influence or fraud.

[7] 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 who is not a guardian ad litem to act on behalf of a lawyer's 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 lawyer represents the guardian, conservator, or agent of a person with decision-making limitations, and is aware that the guardian, conservator or agent is acting adversely to the person's interest, the lawyer may have an obligation to prevent or rectify the misconduct.

[8] 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.

[9] 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 reasonably possible maintain an ordinary client-lawyer relationship. Accordingly, a lawyer for a minor capable of providing direction ordinarily should advocate for the minor's objectives of the representation. See Rule 1.2(a). In assessing the minor's decision-making limitations, including with regard to providing direction on a legal matter, a lawyer should consider a variety of factors such as the minor's developmental stage, cognitive ability, emotional development, ability to communicate, ability to understand consequences, and consistency of decisions, the informed opinions of professionals and others with knowledge of the child's abilities and limitations, and the factors identified in Comment [13].

[10] A lawyer acting as guardian ad litem for a person is often tasked with advocating for the best interest of that person. Because the lawyer's assessment of what is in the best interest of that person may diverge from that 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 and should consider the need to withdraw as counsel or request to be relieved of the guardian ad litem appointment.

[11] A lawyer representing a client with decision-making limitations can employ a variety of techniques to ensure that the lawyer's representation is competent. For example, the lawyer can use developmentally appropriate interviewing and counseling skills when representing a minor, employ or invite the client to use supports and accommodations that make it easier for the client to understand and communicate information, or meet with the client at a place and time where the client is likely to have less difficulty providing direction. To identify and learn such techniques, lawyers can seek guidance from resources developed by professional associations and others with expertise in working with individuals with decision-making limitations.

Taking Protective Action

[12] 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 (b) 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, 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 minimizing intrusion into the client's decision-making autonomy, 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.

[13] 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; appreciation of the substantive fairness of a decision; 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 of 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 that the evaluator may have evaluated the client based on standards that differ from the relevant legal standard and at a time when client's abilities differed from the present.

[14] A determination that a client has decision-making limitations need not have been made by a healthcare professional or court for a lawyer to form a reasonable belief that a client has such limitations. 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 paragraph (b).

[15] If a lawyer reasonably believes that the client meets the criteria set forth in paragraph (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 have their interests represented by a guardian ad litem 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.

[16] 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.

[17] Taking protective action under paragraph (b) 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

[18] 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. When taking protective action pursuant to paragraph (b), the lawyer may reveal information about the representation without the client's informed consent, but only to the extent reasonably necessary to protect the client's interests. Nevertheless, given the risks of disclosure, paragraph (c) 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

[19] In an emergency where a substantial health, safety or 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 action may be taken when the person has consulted with the lawyer or when 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 to act. 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.

[20] 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.

Back to Rule | Table of Contents | Next Comment