



NEW YORK STATE
BAR ASSOCIATION

Report and Recommendations of the **New York State Bar Association Committee on Standards of Attorney Conduct**

June 2026

REQUEST FOR PUBLIC COMMENT

To: Members of the Bench and Bar
From: NYSBA Committee on Standards of Attorney Conduct (“COSAC”)
Re: Proposed Amendments to NY Rule 1.14 (“Client with Diminished Capacity”)
Date: March 30, 2026

The New York State Bar Association Committee on Standards of Attorney Conduct (“COSAC”) seeks public comments on proposed amendments to Rule 1.14 (“Client with Diminished Capacity”) in the New York Rules of Professional Conduct. The deadline for comments is Noon on Monday, June 1, 2026. Please address all comments to Roy Simon, Co-Chair of COSAC, at roy.d.simon@gmail.com. Write “Rule 1.14” in the subject line.

Introduction

On February 9, 2026, the American Bar Association (“ABA”) adopted a revised version of Rule 1.14 of the ABA Model Rules of Professional Conduct (and amended the Comment to ABA Model Rule 1.14), formerly entitled “Client with Diminished Capacity,” and now entitled “Client with Decision-Making Limitations.” Representatives from the NYSBA, as well as from the New York City Bar Association and New York County Lawyers Association, all voted to support the ABA’s adoption of the new ABA Model Rule 1.14.

New York’s current version of Rule 1.14 is identical to the prior version of ABA Model Rule 1.14. For the reasons summarized below, COSAC recommends to the NYSBA Executive Committee and House of Delegates that New York adopt the amended version of ABA Model Rule 1.14 and its Comment, with two minor revisions for New York (explained below). A full version of COSAC’s proposed amendments to New York Rule 1.14 and its Comment is included at the end of this Memorandum.

For additional reference and background, the following documents are attached to this Memorandum: (1) Redline of COSAC’s proposed amendments vs. current version of New York Rule 1.14 and Comment; (2) Redline of ABA Model Rule 1.14 as amended in February 2026 vs. former version of ABA Rule 1.14 and Comment and (3) ABA Report and Resolution Regarding Revised ABA Rule 1.14 and Comment (Resolution 100).

I. Rationales for Revising New York Rule 1.14

COSAC believes that the new ABA Model Rule 1.14 makes significantly clearer that protective action by lawyers on behalf of clients with decision-making limitations should be used in very limited circumstances, and also is more useful generally for lawyers who must determine their ethical obligations when working with clients who have decision-making limitations. Below we summarize the key portions of the previous version of ABA Model Rule 1.14 and its Comment that have been changed, how they have been changed, and why COSAC believes the same changes should be made to New York’s Rule 1.14 and Comment as well.

a. New terminology

The terminology in the previous version of ABA Model Rule 1.14 and its Comment was inconsistent with contemporary understanding of decision-making impairments and used unnecessarily stigmatizing terms. The revised version of ABA Model Rule 1.14 and its Comment use the term “client with decision-making limitations,” rather than “client with diminished capacity,” to focus the rule on the area of capacity – decision-making – that relates directly to legal representation, rather than on every area of physical, mental or emotional capacity. The term “client with decision-making limitations” is now defined in the Rule itself. The amended version of ABA Model Rule 1.14 also removes terms such as “normal client-lawyer relationship” that imply an image of “abnormality” for clients with decision-making limitations.

b. Clarification of role of lawyers representing clients who have surrogate decision-makers

The previous version of ABA Model Rule 1.14 and its Comment offered conflicting guidance to lawyers representing people with surrogate decision-makers, stating both that lawyers should defer to surrogate decision-makers in case-related decisions, and that lawyers should maintain a “normal” lawyer-client relationship with their clients consistent with Rule 1.2. The revised ABA Model Rule 1.14(b) and ABA Comment 7 provide detailed and nuanced guidance on navigating the questions of (1) from whom the lawyer should take direction, and (2) with whom the lawyer should communicate, where there is a surrogate-decision maker. In contrast to the previous version of Comment 7 to ABA Model Rule 1.14, the revised version of ABA Comment 7 recognizes the answer to this question will depend in large part on the type of surrogate, and who has appointed the surrogate.

c. Emphasis on seeking less invasive interventions when protective action is necessary

The previous version of ABA Model Rule 1.14 and its Comment unintentionally encouraged lawyers to pursue guardianship or conservatorship of their clients as a preferred option. Specifically, the blackletter text of the previous version of ABA Model Rule 1.14 explicitly identified only one type of protective action – seeking appointment of Guardian Ad Litem, conservator, or guardian – though other options were identified in the ABA Comment. This unintentionally encouraged the highly invasive appointments as a preferred course of action. The revised version of ABA Model Rule 1.14 relegates the appointment option to the Comment, where it appears in the context of a broader range of less restrictive protective actions that a lawyer might consider.

d. Emphasis and clarification of confidentiality protections

The previous version of ABA Model Rule 1.14 and its Comment offered insufficient guidance on the presence of third parties in discussions between lawyers and clients with decision-making limitations. The revised version of ABA Comment 5 clarifies the steps that should be taken, including obtaining informed consent whenever feasible, prior to allowing the presence of third parties during client-lawyer discussions. In addition, the previous version of ABA Model Rule 1.14 permitted lawyers to reveal information about a client covered by the rule when “reasonably necessary,” but did not explain how lawyers can determine when disclosure is reasonably necessary. The revised version of ABA Model Rule 1.14 adds language stating that such disclosure

is permissible when the lawyer reasonably believes that (1) the criteria for taking protective action are met, and (2) disclosure is necessary to protect the client's interest.

e. Guidance for lawyers representing defendant in criminal cases

The previous version of ABA Model Rule 1.14 and its Comment offered minimal guidance for lawyers working with clients with decision-making limitations who are defendants in criminal proceedings. The revised version of ABA Comment 8 provides guidance for lawyers representing criminal defendants who have decision-making limitations, including issues around seeking a mental examination of a client.

f. Guidance for lawyers representing minors

The previous version of ABA Model Rule 1.14 and its Comment offered insufficient guidance for lawyers representing minors. The new version of ABA Comment 9 provides more detailed and nuanced guidance regarding the representation of minors, who constitute a large category of clients with decision-making limitations.

II. Rationales for minor revisions to Comments 9 and 10 to New York Rule 1.14

COSAC believes that the two additional revisions below should be made to the Comment to New York's proposed new version of Rule 1.14.

a. Comment 9: Representation of minors

The revised ABA Model Rule 1.14 Comment 9 reads as follows:

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].

To assist lawyers representing minors in family court and matrimonial matters, COSAC believes that New York's version of Comment 9 should reference New York's existing regulation on point, as well as the excellent long-standing guidance from the NYSBA. One of the primary co-authors of the ABA Model Rule 1.14 agreed that reference to state-specific guidance of this kind would be beneficial. The suggested New York Comment 9 would read as follows (with additional language underscored and in bold):

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]. Lawyers representing minors in family court and matrimonial proceedings should refer as well to N.Y. Comp. Codes R. & Regs. tit. 22, § 7.2 (Function of the attorney for the child), and are encouraged to seek guidance from the New York State Bar Association Standards for Attorneys Representing Children.

b. Comment 10

The revised ABA Model Rule 1.14 Comment 10 reads as follows:

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.

COSAC believes that it is not ethical for a lawyer to serve as a guardian ad litem for a person and simultaneously to provide direct legal representation to that person. One of the primary co-authors of the ABA Model Rule 1.14 agreed, and endorsed the use by states of stronger prohibitory language than the ABA Model Rule uses. The suggested New York Comment 10 would read as follows (with additional language underscored and deleted language ~~stricken through~~):

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 are 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.

III. References to Rule 1.14 in Other New York Rules

The following references to Rule 1.14 in other portions of the New York Rules of Professional Conduct would require minor adjustments if COSAC's proposed amendments are approved:

- *Rule 1.2 Comment 4:* The phrase "In a case in which the client appears to be suffering diminished capacity" would need to be changed to "In a case in which the client appears to have decision-making limitations..."

- *Rule 1.4 Comment 6*: The phrase “for example, where the client is a child or suffers from diminished capacity” would need to be changed to “for example, where a client is a child or has decision-making limitations...”
- *Rule 1.6 Comment 1*: The phrase “for information relating to representation of a client with diminished capacity” would need to be changed to “for information relating to representation of a client with decision-making limitations...”
- *Rule 1.6 Comment 5*: The sentence “Lawyers are also impliedly authorized to reveal information about a client with diminished capacity when necessary to take protective action to safeguard the client’s interests” would need to be changed to “Lawyers also may reveal information about a client with decision-making limitations, but only to the extent the lawyer reasonably believes necessary to protect the client’s interests when taking protective action pursuant to Rule 1.14(b).”
- *Rule 1.16 Comment 6*: The phrase “If the client has severely diminished capacity...” would need to be changed to “If the client has severe decision-making limitations...”
- *Index*: The reference to “Diminished capacity of client” would need to be changed to “Decision-making limitations of client; and the reference to “Clients, diminished capacity of” would need to be changed to “Clients, decision-making limitations of.”

IV. Proposed New York Rule 1.14 and Comment

Below is a full clean version of COSAC's proposed amended version of New York Rule 1.14 and its Comment. (For a redline version, see attachments.)

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. 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

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 and are encouraged to seek guidance from other organizations and resources.

[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]. Lawyers representing minors in family court and matrimonial proceedings should refer as well to N.Y. Comp. Codes R. & Regs. tit. 22, § 7.2 (Function of the attorney for the child), and are encouraged to seek guidance from the New York State Bar Association Standards for Attorneys Representing Children.

[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 are in an ethically untenable position and should 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.

III. Redline of Changes to Proposed New York Rule 1.14 and Comment

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. A person has decision-making limitations if the person has substantial difficulty, even with appropriate supports or accommodations, understanding information, evaluating information, or making decisions.

(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 reasonable 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

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, including abiding by a client's decisions concerning the objectives of the representation (Rule 1.2); keeping a client informed about the status of the matter (Rule 1.4); explaining matters to the extent reasonably necessary for a client to make informed decisions regarding the representation (Rule 1.4); and rendering candid advice to a client (Rule 2.1).

[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

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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 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 legally binding decisions.

[5] 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 affect the applicability of the attorney-client evidentiary privilege. Nevertheless, the lawyer must keep the client's interests foremost and, except for protective action authorized under paragraph (b), must look to the client, and not family members or other persons, to make decisions on the client's behalf. Whenever possible, the lawyer should afford the client the opportunity to communicate privately with the lawyer without the presence or influence of others.

[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 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 look to the court appointee for those decisions on behalf of the client or prospective client over which the appointee has authority only when explicitly authorized by the lawyer's appointment or retainer agreement, or by a relevant applicable law. However, a lawyer may consult with and represent a person subject to guardianship or conservatorship that has deprived that person the right to make decisions about the matter or matters about which the lawyer has been consulted 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

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Deleted: Any condition that renders a client incapable of communicating or making a considered judgment on the client's own behalf casts additional responsibilities upon the lawyer. When the client is a minor or suffers from a diminished mental capacity, maintaining the conventional

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situations, the lawyer must take direction from the client and advocate for the client's objectives. 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 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, consistent with substantive and procedural law of the applicable jurisdiction. 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 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 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.

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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. When determining whether to take any protective action or which protective action to take, 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, preserving to the extent possible the client's trust in the lawyer and the legal system, 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; 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 and ethical standards.

[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 reasonable protective action under paragraph (b).

[15] 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

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[7] If a legal representative has not been appointed, the lawyer should

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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 to address the risk of substantial physical, financial or other harm to the client. 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 a proposed protective action before taking such action, unless such communication is not feasible or 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

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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. A lawyer would not ordinarily seek compensation for such emergency actions taken, subject to the substantive and procedural law of the applicable jurisdiction.

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

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

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

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

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

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

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

88 [6] When a client in a criminal matter appears to have decision-making limitations, the
89 lawyer's ethical duty to render competent representation and to protect the client's constitutional
90 rights may require the lawyer to seek a competency evaluation or other mental health evaluation
91 to determine whether the client is capable of deciding whether to testify or to plead guilty or to
92 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] If a lawyer reasonably believes that a client is at risk of substantial physical, financial or other harm unless action is taken, and that an ordinary client-lawyer relationship cannot be maintained as provided in paragraph (a), paragraph (c) permits the lawyer to take protective measures the lawyer deems necessary. Such measures could include: consulting with family members, using a reconsideration period to permit clarification or improvement of circumstances, using voluntary surrogate decision-making tools such as durable powers of attorney or consulting with support groups, healthcare professionals or other professional services, adult-protective agencies or other persons or entities that have the ability to protect the client. In taking any protective action, the lawyer should be guided by such factors as the wishes and values of the client to the extent known, the client's best interests and the goals of intruding into the client's decision-making autonomy to the least extent feasible, maximizing client capacities and respecting the client's family and social connections. In litigation involving the capacity of the client, such as a guardianship or conservatorship proceeding, the lawyer should advocate for the client's expressed position regarding what, if any, protective action should be taken.

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

However, the lawyer should recognize that the evaluation may have been done for a different purpose and under different circumstances, and that the evaluator may have evaluated the client based on standards that differ from the relevant legal standard.

[11] A determination of decisional incapacity need not have been made by a healthcare professional or court for a lawyer to form a reasonable belief that a client cannot make and communicate decisions. Nevertheless, in appropriate circumstances, the lawyer may seek guidance from a healthcare professional with relevant expertise or with knowledge of the client's abilities or limitations. If obtaining such guidance requires revealing confidential information about the client and 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).

[12] ~~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.

[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

[15] ~~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

[16] [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.

[17] [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.

**AMERICAN BAR ASSOCIATION
STANDING COMMITTEE ON ETHICS AND PROFESSIONAL RESPONSIBILITY
STANDING COMMITTEE ON PROFESSIONAL REGULATION
REPORT TO THE HOUSE OF DELEGATES**

RESOLUTION

RESOLVED, That the American Bar Association adopts American Bar Association Model Rule of Professional Conduct 1.14, dated February 2026, to supplant all earlier versions of that Model Rule.

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. 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

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.



NEW YORK STATE BAR ASSOCIATION
**COMMITTEE ON STANDARDS OF
ATTORNEY CONDUCT**

One Elk Street
Albany, NY 12207