

**PROPOSED AMENDMENTS TO MICHIGAN RULE OF PROFESSIONAL CONDUCT
1.14 AND ITS COMMENTS**

Issue

Should the Representative Assembly submit to the Michigan Supreme Court proposed amendments to Michigan Model Rule of Professional Conduct 1.14 and its comments.

Proponent

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Synopsis

This proposal requests amendments to Michigan Rule of Professional Conduct 1.14 (Client with Diminished Capacity) and its comments by adopting the language of ABA Model Rule of Professional Conduct 1.14. (Client with Decision-Making Limitations). This follows adoption of this language by the American Bar Association (“ABA”) House of Delegates on February 9, 2026.

This proposal comes as a result of the sponsor’s work with the Michigan Elder Justice Initiative (“MEJI”). MEJI is a program of Michigan Statewide Advocacy Services (“MSAS”), a nonprofit legal services organization. MSAS and the Michigan Advocacy Program (“MAP”) share common legal services roots in Legal Services of South-Central Michigan and now operate as separate but affiliated nonprofit legal services organizations that continue to collaborate and share certain administrative services. The accompanying Report was prepared by Nicole Shannon (P73771), Systemic Advocacy Attorney at MEJI.

While Michigan’s current Model Rule 1.14 has provided valuable guidance since it was adopted, practical experience has revealed a need for improvement. In 2023, the Supreme Court of Maryland adopted revisions to Maryland Attorneys’ Rule of Professional Conduct 1.14 after a three-year process. Inspired in part by Maryland’s changes, which became effective in July 2023, a working group of eight ABA entities recommended that the Center for Professional Responsibility consider revisions to Model Rule 1.14. Subsequently, representatives from the Standing Committee on Professional Regulation, the Standing Committee on Ethics and Professional Responsibility, and several other ABA entities worked together as a drafting committee to study Model Rule 1.14 and whether and how it might best be amended.

The ABA drafting committee circulated an initial discussion draft with explanatory memo on April 1, 2025. In June, the drafting committee reviewed the comments received and prepared a Proposed discussion draft which was distributed on July 21, 2025. The drafting committee reviewed the comments from the second round in September 2025, and along with the two Standing Committees, agreed upon final revisions. On February 9, 2026, the ABA House of Delegates adopted proposed changes to Model Rule of Professional Conduct 1.14 and its comments.

There are important reasons for Michigan to replace current Model Rule 1.14, including: (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 proposal is supported by the State Planning Body, Uniting Three Fires Against Violence, and the Michigan Elder Justice Initiative.

Background

The Need for Amendment

A. Unintended Encouragement of Guardianship or Conservatorship

Michigan Rule of Professional Conduct 1.14 has had the unintended effect of encouraging lawyers to pursue guardianship or conservatorship as protective measures. Because these actions are expressly listed in the Rule, some attorneys interpret them as preferred or prioritized responses over less restrictive alternatives. By highlighting these remedies as opposed to less restrictive options, the current Rule risks steering lawyers toward unnecessarily extreme measures.

B. Conflicting Guidance Regarding Surrogate Decision-Makers

Rule 1.14 has created confusion for lawyers representing clients who have surrogate decision-makers. The Rule does not adequately distinguish between materially different types of surrogates—such as agents appointed through powers of attorney and court-appointed guardians or conservators.

Additionally, the existing Comment stating that “the lawyer should ordinarily look to the representative for decisions” can be misapplied particularly in guardianship proceedings. The Proposed Rule and Comments clarify how lawyers should proceed when working with agents, guardians, and clients subject to guardianship, resolving longstanding confusion.

C. Outdated and Confusing Terminology

1. “Diminished Capacity”

The term “diminished capacity” is undefined in the Michigan Rules and inconsistent with contemporary understanding of decision-making ability. It suggests a static baseline from which functioning declines, when in reality capacity is decision-specific and may fluctuate over time. The term also risks implying global impairment rather than focusing on functional abilities relevant to specific decisions.

2. “Normal Client-Lawyer Relationship”

The phrase “normal client-lawyer relationship” suggests that clients who require accommodations have an “abnormal” relationship with counsel. Replacing “normal” with “ordinary” eliminates this negative implication while preserving the intended meaning.

D. Insufficient Guidance on Common Ethical Challenges

1. Respondents in Guardianship or Conservatorship Proceedings

Individuals facing guardianship or conservatorship, or seeking modification of such arrangements, have a due process right to counsel to advocate on their behalf. Some lawyers and judges emphasize protection over advocacy, leading to instances where lawyers override client wishes or disclose confidential information as purported protective action. The Proposed Comments clarify that lawyers representing clients in such proceedings must advocate for the client's expressed objectives.

2. Presence of Third Parties

Clients often want to involve family members or others in discussions with counsel. The current Comments provide little guidance on this common scenario. The proposed language 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." 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 with the opportunity to communicate privately with the lawyer.¹ 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.

3. Criminal Proceedings

The current Rule does not provide any specific guidance for lawyers representing defendants in criminal proceedings, even though issues of decision-making limitations often arise in such proceedings. The Proposed Rule addresses this in Comment 8.

4. Representation of Minors

Existing guidance regarding minors is minimal. The Proposed Comments recognize that minors' decision-making abilities are influenced by developmental stage and require tailored support. Lawyers should maintain an ordinary client-lawyer relationship to the extent that is reasonably possible and advocate for the minor's objectives when the minor can provide direction.

Proposed Amendments to the Blackletter Rule

A. Replacing "Diminished Capacity"

The Proposed Rule replaces "diminished capacity" with "client with decision-making limitations" and defines the term as a person who "has substantial difficulty receiving and understanding information, evaluating information, or making or communicating decisions even with appropriate support or accommodations." This language focuses on functional decision-making rather than diagnostic labels and emphasizes variability, task specificity, and the role of supports.

¹ See NATIONAL ACADEMY OF ELDER LAW ATTORNEYS, ASPIRATIONAL STANDARDS FOR THE PRACTICE OF ELDER LAW AND SPECIAL NEEDS LAW WITH COMMENTARIES (Second Edition, April 24, 2017). The third standard under Part B. Client Identification states that the Elder Law Attorney "Meets with the prospective client in private at the earliest practicable time to help the attorney identify the client and assess the prospective client's capacity and wishes as well as the presence of any undue influence." See also ABA Commission on Law and Aging, *Why Am I Left in the Waiting Room? Understanding the Four Cs of Elder Law Ethics* (2020) https://www.americanbar.org/content/dam/aba/administrative/law_aging/2020-elderlaw-ethicsbrochure.pdf.

B. Replacing “Normal” with “Ordinary”

The amendment substitutes “ordinary client-lawyer relationship” for “normal client-lawyer relationship” to avoid stigmatizing language while preserving meaning.

C. Clarifying Protective Action

The Proposed Rule, in paragraph (b), eliminates language that has inadvertently encouraged lawyers to pursue guardianship or conservatorship over clients when less restrictive protective action would be reasonable instead by eliminating reference to specific examples of protective action.² The revision to paragraph (b) would also make the Rule easier to read by adding enumeration.

D. Clarifying Disclosure Standards

This Proposed Rule 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.

Proposed Amendments to the Comments

A. Overview

The Comment revisions serve three primary purposes:

- Aligning comments with the rule and improving clarity;
- Providing practical guidance on assessing and supporting decision-making ability;
- Addressing recurring ethical dilemmas that have generated confusion.

Terminology changes (“decision-making limitations” and “ordinary”) are applied throughout.

B. Comment-by-Comment Summary

Client Abilities and Limitations (Comments 1–3)

Comment 1 reiterates that clients with decision-making limitations are entitled to all protections of the client-lawyer relationship.

Comment 2 explains variability, task specificity, and the continuing relevance of client values and preferences.

Comment 3 (new) emphasizes support and accommodations and provides examples of measures lawyers may use to enhance client decision-making.

Ordinary Client-Lawyer Relationship (Comments 4–11)

Comment 4 reinforces the duty to maintain an ordinary client-lawyer relationship and references related Rules.

Comment 5 addresses third-party participation, requiring informed consent, preserving privilege, and encouraging private consultation.

Comment 6 (new) addresses situations where a third party seeks representation on behalf of an

² The range of protective actions is discussed in Comment 12. In addition, revised Comments 3, 11, and 13 recommend the use of decision supports and accommodations.

individual intending to provide clarity regarding to client identity, and vigilance to avoid undue influence.

Comment 7 distinguishes between privately appointed agents and court-appointed surrogates. Lawyers ordinarily take direction from the client when an agent is appointed through a power of attorney. When a court appoints a guardian or conservator, the lawyer looks to the appointee for decisions within their authority—but may represent the individual to challenge or modify the arrangement, and must advocate for that client’s objectives.

The Comment also addresses lawyers representing court-appointed agents and potential duties when misconduct arises.

Comment 8 (new) addresses criminal representation and the complex decisions involved.

Comment 9 (new) addresses representation of minors, recognizing developmental challenges while emphasizing maintenance of the ordinary relationship where feasible.

Comment 10 (new) cautions against simultaneously serving as guardian ad litem and personal counsel due to role conflicts.

Comment 11 (new) offers several suggestions of techniques a lawyer can employ to ensure competent representation of clients with decision-making limitations. It further urges lawyers to seek guidance from resources developed by professional associations with expertise in working with individuals with decision-making limitations.

Taking Protective Action (Comments 12–17)

Comment 12 provides guidance for when there is litigation involving the decision-making ability of the client, such as a guardianship proceeding. In such situations, lawyers for clients with decision-making limitations 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.

Comment 13 provides factors for assessing decision-making limitations, emphasizing accommodations and cautioning against over-reliance on diagnosis.

Comment 14 clarifies when consultation with healthcare professionals is appropriate and addresses confidentiality and consent.

Comment 15 clarifies that substitute decision-makers should be considered only when paragraph (b)’s criteria are met and emphasizes least restrictive alternatives and client communication.

Comment 16 makes clear that a lawyer may not advocate for appointment of a guardian or conservator over a client’s objection in such proceedings; the lawyer must advocate for the client’s objectives.

Comment 17 addresses withdrawal and limits disclosure to what is reasonably necessary.

Disclosure and Emergency Assistance (Comments 18–20)

Comment 18 reframes the disclosure header to emphasize that confidential information may include more than the client’s condition.

Comment 19 (new) authorizes emergency representation to preserve the status quo or prevent imminent harm when a client cannot form an ordinary relationship.

Comment 20 (new) clarifies duties in providing emergency legal assistance.

This revised Rule and Comments modernize terminology, eliminate stigmatizing language, clarify surrogate relationships, reduce unintended encouragement of guardianship, and provide practical guidance to lawyers facing complex ethical situations involving clients with decision-making limitations.

Opposition

None known. The Model Rule of Professional Conduct 1.14 passed the American Bar Association’s House of Delegates with a unanimous vote.

Prior Action by Representative Assembly

None known.

Fiscal and Staffing Impact on State Bar of Michigan

None known.

**STATE BAR OF MICHIGAN POSITION
By vote of the Representative Assembly on April 25, 2026**

Should the Representative Assembly adopt the above resolution to submit to the Michigan Supreme Court proposed amendments to Michigan Rule of Professional Conduct 1.14 and its comments, the full text of which is attached as Appendix 1?

(a) Yes

Or

(b) No

Date of Submission: March 12, 2026

With Gratitude,

Katie Stanley

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APPENDIX 1

Rule 1.14. Client ~~Under a Disability~~with Decision-Making Limitations.-

Client-Lawyer Relationship

- a) ~~When a client's ability to make adequately considered decisions in connection with the representation is impaired, whether because of minority or mental disability or for some other reason, the~~A lawyer shall, as far as reasonably possible, maintain an ordinary normal client-lawyer relationship with ~~the~~ 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 support or accommodations.
- b) ~~A lawyer may seek the appointment of a guardian or take other protective action with respect to a client only w~~When the lawyer reasonably believes that the client: ~~cannot adequately act in the client's own interest.~~ (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: 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 mental disorder or disability, however, maintaining the ordinary client-lawyer relationship may not be possible in all respects. In particular, an incapacitated person may have no power to make legally binding decisions. Nevertheless, a client lacking legal competence often has the ability to understand, deliberate upon, and reach conclusions about matters affecting the client's own well being. Furthermore, to an increasing extent the law recognizes intermediate degrees of competence. 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] A client's decision-making limitations~~The fact that a client suffers a disability does 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. If the person has no guardian or legal representative, the lawyer often must act de facto as guardian. Even if the person does have a legal representative, the lawyer should as far as possible accord the represented person the status of client, particularly in maintaining communication.

[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 support 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 support 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.

If a legal representative~~When a court has already been appointed a guardian, conservator, or other appointee who is not a guardian ad litem to act on behalf of for the a lawyer's client or prospective client,~~ the lawyer should ordinarily look to the ~~representative court appointee~~ for those decisions on behalf of the client or prospective client over which the appointee has authority. If a legal representative has not been appointed, the lawyer should see to such an appointment where it would serve the client's best interests. Thus, if a disabled client has substantial property that should be sold for the client's benefit, effective completion of the transaction ordinarily requires appointment of a legal representative. In many circumstances, however, appointment of a legal representative may be expensive or traumatic for the client. Evaluation of these considerations is a matter of professional judgment on the lawyer's part.

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 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 ~~ward person's~~ interest, the lawyer may have an obligation to prevent or rectify the guardian's misconduct. See Rule 1.2(e).

[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. If the lawyer seeks the appointment of a legal representative for the client, the filing of the request itself, together with the facts upon which it is predicated, may constitute the disclosure of confidential information which could be used against the client. 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. If the court to whom the matter is submitted thereafter determines that a legal representative is not necessary, the harm befalling the client as the result of the disclosure may be irreparable. 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. Consequently, consideration should be given to initially filing the petition seeking the appointment of a legal representative ex parte so that the court can decide how best to proceed to minimize the potential adverse consequences to the client by, for example, issuing a protective order limiting the disclosure of the confidential information upon which the request is predicated.

[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~~the Client's Condition.~~

~~[18] Rules of procedure in litigation generally provide that minors or persons suffering mental disability shall be represented by a guardian or next friend if they do not have a general guardian. However, d~~Disclosure of the client's disability decision-making limitations could~~an~~ adversely affect the client's interests, including constitutional or other legal rights. For example, raising the question of disability decision-making limitations could, in some circumstances, lead to proceedings for involuntary 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.

~~The lawyer's position in such cases is an unavoidably difficult one. The lawyer may seek guidance from an appropriate diagnostician.~~

Emergency Legal Assistance

[19] 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.

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.