The Delicate Ethical Requirements of Representing a Person With Diminished Capacity

Del O'Roark, Loss Prevention Consultant, Lawyers Mutual Insurance Company of Kentucky

Introduction

The rapidly aging US population raises many social issues for our society. None is more significant for lawyers than the fact that they will encounter in increasing numbers persons with what Kentucky's 2009 Rules of Professional Conduct (hereinafter Rules or Rule) describe as "diminished capacity." These are people who in various degrees cannot work with lawyers in a traditional lawyer-client relationship – the primary concept that underpins virtually all the Rules that govern ethical behavior for Kentucky lawyers.

Kentucky's 1990 Rules included Rule 1.14, Client under a disability, that provided lawyers limited guidance for situations when a person was unable to function as a fully competent client. This Rule, however, left too many unanswered questions concerning:

- How is the lawyer-client relationship altered when a client is disabled?
- How are lawyers to determine that a person was disabled?
- When may a lawyer take protective action on behalf of such person?
- What protective actions may lawyers ethically take?
- When may a lawyer disclose a disabled client's condition?

The 2009 revised Rule 1.14[1] is a major advancement in answering these questions. The purpose of this article is to provide an overview of these revisions and then offer a structure for applying the Rule by highlighting its standards and covering the key considerations in its application. The article concludes with suggestions for risk management of representation of clients with diminished capacity.

An Overview of the 2009 Revised Rule – It is Important What You Call Things

The first significant revision is in the caption of Rule 1.14. "Client under a disability" is now "Client with diminished capacity," which phrase is then used throughout the Rule and its Comments. The purpose of this change in terminology is to stress the new focus of the Rule on a continuum or degrees of a client's diminished capacity as opposed to the more restrictive term "disability."[2] Now when a lawyer becomes concerned whether a client is fully competent, the term diminished capacity brings into consideration a range of incapacity from mild to extreme. Where the client is on that spectrum will be the benchmark from which ethical representation is measured.

Other important additions to the Rule and its Comments that are covered below are:

- Guidance on determining the extent of a client's diminished capacity.
- Guidance on the participation of family members or other persons in the lawyer's representation of a client with diminished capacity.
- A standard for authorization to take protective action on behalf of a client with diminished capacity.
- Protective measures that a lawyer may take short of requesting the appointment of a guardian.
- Guidance on whether a lawyer may seek appointment of a guardian.
- Guidance on Rule 1.6 confidentiality limitations on disclosure of a client's diminished capacity.
- Guidance on rendering emergency legal assistance to a person with seriously diminished capacity.

The Lawyer-Client with Diminished Capacity Relationship

A good way to analyze a lawyer's relationship with a client with diminished capacity is to start with a review of how the Rules require lawyers to work with competent clients. A succinct description of the normal interaction between lawyer and client is:

> A normal client-lawyer relationship presumes that there can be effective communications between client and lawyer, and that the client after consultation with the lawyer, can make considered decisions about the objectives of the representation and the means of achieving them.[3]

However:

> When the client's ability to communicate, to comprehend and assess information, and to

make reasoned decisions is partially or completely diminished, maintaining the ordinary relationship in all respects may be difficult or impossible.[4]

This breakdown in the normal relationship invokes Rule 1.14 that establishes the overarching requirement that a lawyer's primary duty is to, as far as reasonably possible, maintain a normal lawyer-client relationship with a client with diminished capacity.[5] The Comments to the Rule embellish this requirement as follows:

> Comment (1): The normal client-lawyer relationship is based on the assumption that the client, when properly advised and assisted, is capable of making decisions about important matters. When the client is a minor or suffers from a diminished mental capacity, however, maintaining the ordinary client-lawyer relationship may not be possible in all respects. In particular, a severely incapacitated person may have no power to make legally binding decisions. Nevertheless, a client with diminished capacity often has the ability to understand, deliberate upon, and reach conclusions about matters affecting the client's own well-being. For example, children as young as five or six years of age, and certainly those of ten or twelve, are regarded as having opinions that are entitled to weight in legal proceedings concerning their custody. So also, it is recognized that some persons of advanced age can be quite capable of handling routine financial matters while needing special legal protection concerning major transactions.
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> Comment (2): The fact that a client suffers a disability does not diminish the lawyer's obligation to treat the client with attention and respect. Even if the person has a legal representative, the lawyer should as far as possible accord the represented person the status of client, particularly in maintaining communication.

Examples of lawyers found not to have maintained a normal relationship as far as reasonably possible are:

- Lawyer failed to abide by client's estate planning objectives after being informed of client's medical and mental disability.
- Lawyer conducted only one telephone discussion with incapacitated client before filing voluntary conservatorship proceedings, provided inadequate representation during the call, and thereafter had no direct communication with the client.
- Order appointing guardian reversed because lawyer failed to develop a strategy in collaboration with the incapacitated client for solving the legal problems of the client.
- Lawyer failed to adequately represent client in guardianship proceedings when, in name of client's best interests, and contrary to client's wishes, lawyer waived client's statutory right to be present at trial, made recommendations to the court that contravened client's wishes, sought to prevent hearing on the issue of disability, and objected to all testimony on the issue.[6]

What reasonably normal relations should be with a client with diminished capacity will always turn on the unique facts of the client's condition. There is no substitute for good judgment in deciding what that is. What is clear is that to comply with Rule 1.14 an effort must be made to communicate with the client and ascertain the client's views of the matter. To this end ABA Formal Opinion 96-404 (8/2/1996) advises that "the lawyer should continue to treat the client with attention and respect, attempt to communicate and discuss relevant matters, and continue as far as reasonably possible to take action consistent with the client's decisions and directions." The opinion stresses that the fact that a lawyer believes a client's judgment is in error or is ill considered does not per se mean the client is unable to adequately act in his own interest. The lawyer should not substitute his judgment for "what is in the client's best interest [because this] robs the client of autonomy and is inconsistent with the principles of the 'normal' relationship."

What Constitutes a Reasonable Belief that a Client has Diminished Capacity?

As accomplished as we lawyers see ourselves, there are few of us with the qualifications to unilaterally determine when a person has diminished capacity except when representing minors, when a client has a legal representative or guardian at the inception of a representation, and the more extreme cases of obvious mental or physical problems. Eccentricity, odd behavior, contrariness, decisions against interest, and other traits that a lawyer may find questionable in a client are not the same thing as diminished capacity. Reasonable belief is the lawyers standard for determining when a client's condition moves from difficult to the level of diminished capacity. As an aid in applying this standard the following is offered:

> Rule 1.0, Terminology, provides these definitions for belief and reasonable belief:
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> > "Belief" or "believes" denotes that the person involved actually supposed the fact in question to be true. A person's belief may be inferred from circumstances.
> >
> > "Reasonable belief" or "reasonably believes" when used in reference to a lawyer denotes that the lawyer believes the matter in question and that the circumstances are such that the belief is reasonable.

The Restatement of the Law — The Law Governing Lawyers (hereinafter *Restatement*) helpfully elaborates on a reasonable belief of diminished capacity as follows:

> A lawyer should act only on a reasonable belief, based on appropriate investigation, that the client is unable to make an adequately considered decision rather than simply being confused or misguided. Because a disability may vary from time to time, the lawyer must reasonably believe that the client is unable to make an adequately considered decision without prejudicial delay.
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> A lawyer's reasonable belief depends on the circumstances known to the lawyer and discoverable by reasonable investigation. Where practicable and reasonably available professional evaluation of the client's capacity may be sought.
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> ....
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> Careful consideration is required of the client's circumstances, problems, needs, character, and values, including interests of the client beyond the matter in which the lawyer represents the client.[7]

Comment (6) to Rule 1.14 advises that in assessing a client for diminished capacity, a lawyer in appropriate circumstances may seek guidance from an appropriate diagnostician and should consider:

- The client's ability to articulate reasoning leading to a decision.
- The variability of the client's state of mind and ability to appreciate consequences of a decision.
- The substantive fairness of a decision.
- The consistency of a decision with the known long-term commitments and values of the client.

In investigating whether a client has diminished capacity, a lawyer may obtain relevant information from sources such as family and friends, concerned parties, health care providers, social services, and court-appointed professionals.[8] The one thing to be sure not to do is to jump to conclusions or fail to thoroughly investigate. A Washington lawyer received an 18-month suspension from practice for filing a petition for appointment of a guardian for a client he asserted was incompetent based on his personal judgment without conducting any formal investigation into the client's medical or psychological state. There was no evidence the lawyer consulted the client's healthcare providers or talked with people in her community. The last date that the lawyer personally talked to the client was nearly two months before filing the petition. A dissenting justice wanted to disbar the lawyer.[9]

What Should a Lawyer Do When the Reasonably Normal Lawyer-Client Relationship Breaks Down?

The best situation for a lawyer representing a client with diminished capacity is that by sensitive and careful communication a reasonably normal lawyer-client relationship is maintained throughout the representation. When this relationship breaks down, the issue becomes may the lawyer now make necessary decisions for the incapacitated client or must decisions be reached by following the Rule 1.14 guidance for taking protective action.

The *Restatement* would allow a lawyer representing an incapacitated client without a guardian or legal representation to "pursue the lawyer's reasonable view of the client's objectives or interest as the client would define them if able to make adequately considered decisions on the matter, even if the client expresses no wishes or gives contrary instructions."[10]

The 1990 Rule 1.14 Comments included language that also suggested that if the client had no guardian or legal representative, a lawyer had some undefined authority to make decisions for the client. This language, however, was deleted from the 2009 Rule 1.14 Comments with the explanation that it is unclear when it is appropriate for a lawyer to act for an incapacitated client and what the limits on any such action would be.[11] Therefore, notwithstanding the *Restatement* position, Kentucky lawyers are best advised not to be aggressive in encroaching on decisions reserved for clients by Rule 1.2, Scope of representation and allocation of authority between client and lawyer, and follow the guidance in Rule 1.14 for taking protective action on behalf of a client with diminished capacity.

Taking Protective Action

Major improvements in the 2009 Rule 1.14 are the added provisions on when and how lawyers should proceed in taking action to protect the interests of a client with diminished capacity. The Rule now contains a standard or trigger for when protective action may be taken and three new Comments with guidance on assessing a client's capacity and selecting the most appropriate protective action. It divides protective action into two categories – those protective actions short of seeking appointment of a guardian and the more drastic step of seeking the appointment of guardian ad litem, conservator, or general guardian.

When may protective action be taken?

Rule 1.14 answers this question specifically:

> (b) When the lawyer reasonably believes that the client has diminished capacity, is at risk of substantial physical, financial or other harm

> unless action is taken and cannot adequately act in the client's own interest, the lawyer may take reasonably necessary protective action, including consulting with individuals or entities that have the ability to take action to protect the client and, in appropriate cases, seeking the appointment of a guardian ad litem, conservator or guardian.

Protective actions short of seeking the appointment of guardian ad litem, conservator, or general guardian.

The first step in determining what protective action to take is to assess the degree of the client's diminished capacity. See the analysis above on reasonable belief for determining whether a client has diminished capacity and in what degree. Once the conclusion is reached that protective action is necessary, a lawyer should follow the basic rule that the least restrictive action under the circumstances that will serve the client's needs should be selected.[12] Rule 1.14, Comment (5) incorporates this principle as follows:

> 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.

Comment (5) includes this list of protective actions short of seeking the appointment of a guardian:

- Consulting with family members.
- Using a reconsideration period to permit clarification or improvement of the client's circumstances.
- Using voluntary surrogate decision-making tools such as durable powers of attorney.
- Consulting with support groups, professional services, and adult-protective agencies.
- Other individuals or entities that have the ability to protect the client.

Seeking the appointment of guardian ad litem, conservator, or general guardian.

Comment (7) provides this guidance when considering whether to seek a guardian for the diminished capacity client:

> If a legal representative has not been appointed, the lawyer should consider whether appointment of a guardian ad litem, conservator or guardian is necessary to protect the client's interests. Thus, if a client with diminished capacity has substantial property that should be sold for the client's benefit, effective completion of the transaction may require appointment of a legal representative. In addition, rules of procedure in litigation sometimes provide that minors or persons with diminished capacity must be represented by a guardian or next friend if they do not have a general guardian. In many circumstances, however, appointment of a legal representative may be more expensive or traumatic for the client than circumstances in fact require. Evaluation of such circumstances is a matter entrusted to the professional judgment of the lawyer. In considering alternatives, however, the lawyer should be aware of any law that requires the lawyer to advocate the least restrictive action on behalf of the client.

When seeking the appointment of a guardian, it is still required that the least drastic protective action be selected. For example, if the representation concerns litigation, a guardian ad litem is the appropriate protective action – not a general guardian to take overall control of the client's affairs.[13]

There are a number of ethical considerations involved in seeking the appointment of a guardian that are beyond the scope of this article. The ABA/BNA Lawyers' Manual on Professional Conduct provides a good analysis of these issues in its Lawyer-Client Relationship chapter, Client With Diminished Capacity, at 31:601, 609. This is the place to begin research.

Disclosing Diminished Capacity

Disclosing a client's diminished capacity is one of the most difficult decisions that lawyers can face. Ill-considered disclosure can be unnecessarily embarrassing for the client, worsen his condition, create complications for maintaining a reasonably normal relationship with the client, and even lead to undesired efforts by others to appoint a guardian for or institutionalize the client when the client's condition does not require such drastic action. Rule 1.14 now includes helpful new guidance for applying Rule 1.6's confidentiality requirements in diminished capacity client representations. Paragraph (c) of Rule 1.14 provides:

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

Comment (8) to the Rule amplifies this guidance as follows:

> Disclosure of the client's diminished capacity could adversely affect the client's interests. For example, raising the question of diminished capacity could, in some circumstances, lead to proceedings for involuntary commitment.

Information relating to the representation is protected by Rule 1.6. Therefore, unless authorized to do so, the lawyer may not disclose such information. When taking protective action pursuant to paragraph (b), the lawyer is impliedly authorized to make the necessary disclosures, even when the client directs the lawyer to the contrary. Nevertheless, given the risks of disclosure, paragraph (c) limits what the lawyer may disclose in consulting with other individuals or entities or seeking the appointment of a legal representative. At the very least, the lawyer should determine whether it is likely that the person or entity consulted with will act adversely to the client's interests before discussing matters related to the client. The lawyer's position in such cases is an unavoidably difficult one.[14]

Emergency Legal Assistance for a Nonclient with Seriously Diminished Capacity

Lawyers from time to time are consulted by a person with obvious seriously diminished capacity who desperately needs legal assistance. Recognizing the incapacity, a lawyer may reasonably decide not to consult further with that person. The moral, if not ethical, problem for the lawyer is the person is then left exposed to potentially irreparable harm. Is there some limited scope of representation the lawyer can assume to help the person get the legal assistance needed? Rule 1.14 now answers this question in its Comments:

> (9) In an emergency where the health, safety or a financial interest of a person with seriously diminished capacity is threatened with imminent and irreparable harm, a lawyer may take legal action on behalf of such a person even though the person is unable to establish a client-lawyer relationship or to make or express considered judgments about the matter, when the person or another acting in good faith on that person's behalf has consulted with the lawyer. Even in such an emergency, however, the lawyer should not act unless the lawyer reasonably believes that the person has no other lawyer, agent or other representative available. The lawyer should take legal action on behalf of the person only to the extent reasonably necessary to maintain the status quo or otherwise avoid imminent and irreparable harm. A lawyer who undertakes to represent a person in such an exigent situation has the same duties under these Rules as the lawyer would with respect to a client.
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> (10) A lawyer who acts on behalf of a person with seriously diminished capacity in an emergency should keep the confidences of the person as if dealing with a client, disclosing them only to the extent necessary to accomplish the intended protective action. The lawyer should disclose to any tribunal involved and to any other counsel involved the nature of his or her relationship with the person. The lawyer should take steps to regularize the relationship or implement other protective solutions as soon as possible. Normally, a lawyer would not seek compensation for such emergency actions taken.

Apparently the Comments presume that the diminished capacity of the person is so severe that it is patently obvious and no investigation is necessary – reasonable belief is a given. I found no authority on this point or on applying the emergency legal assistance Rule 1.14 Comments to a case. Whether this means that there have been few problems with them, or that lawyers are not using them is a matter of conjecture. Note that if emergency action is taken, the lawyer has the fiduciary duties of a lawyer-client relationship for the limited scope of representing the person in acquiring emergency legal assistance. If the person with diminished capacity consulting the lawyer is a prospective client and no emergency action is taken, Rule 1.18, Duties to prospective client, applies to the consultation.

Special Considerations

Involvement of family members: Family members may become involved in the representation of a client with diminished capacity in three ways. First, the client may ask for family members to participate in the matter. Second, a lawyer may consult family members in taking protective action. Rule 1.14 Comment (3) provides this guidance:

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

The third way in which family members can become involved in a representation is by paying the lawyer's fees. This is permissible per Rule 5.4(c) that provides:

> A lawyer shall not permit a person who recommends, employs, or pays the lawyer to render legal services for another to direct or regulate the lawyer's professional judgment in rendering such legal services.[15]

Withdrawal: A lawyer's fiduciary duty of loyalty when representing a client with diminished capacity requires that the lawyer not consider withdrawing except under the most extreme cases of a breakdown in the relationship. ABA Formal Opinion 96-404 offers this helpful analysis of the issue:

> [W]hile withdrawal in these circumstances solves the lawyer's dilemma, it may leave the impaired client without help at a time when the client needs it most. The particular circumstances may also be such that the lawyer cannot withdraw without prejudice to the client. For instance, the client's incompetence may develop in the middle of a pending matter and substitute counsel

> may not able to represent the client effectively due to the inability to discuss the matter with the client. Thus, without concluding that a lawyer with an incompetent client may never withdraw, the Committee believes the better course of action, and the one most likely to be consistent with Rule 1.16(b) [Declining or terminating representation], will often be for the lawyer to stay with the representation and seek appropriate protective action on behalf of the client. (*footnotes omitted*)

Discharge: Clients with diminished capacity may discharge their lawyer. The main ethics consideration for a discharged lawyer is covered in Comment (6) to Rule 1.16, Declining or terminating representation:

> If the client has severely diminished capacity, the client may lack the legal capacity to discharge the lawyer, and in any event the discharge may be seriously adverse to the client's interests. The lawyer should make special effort to help the client consider the consequences and may take reasonably necessary protective action as provided in Rule 1.14.[16]

Discharge by a client with diminished capacity has been considered in one KBA ethics opinion. KBA E-314 (1986) gave a qualified yes to the inquiry of a discharged lawyer on whether he could initiate conservatorship proceedings for his now former client because he believed the former client was under undue influence by successor counsel.

Substantive law: It is important to consider that substantive law requirements may apply to a representation of a client with diminished capacity. This can be the case in representing minors or other incapacitated or vulnerable persons. Substantive law overrides ethics rules. Thus, in situations when Rule 1.14 would not permit disclosure of a client's diminished capacity or other confidential information, substantive law may require a lawyer to report this information to the proper authorities.[17]

Criminal defense counsel: In addition to the considerations in representing clients with diminished capacity covered in this article, criminal defense counsel must consider the impaired client's constitutional rights in determining appropriate protective action. The ABA/BNA Lawyers' Manual on Professional Conduct covers constitutional considerations for defense counsel in its chapter on Lawyer-Client Relations, Client With Diminished Capacity, 31:601 at 31:620.

Managing the Risk

The risk of misunderstandings in diminished capacity client representations is large and requires heightened risk management practices. What follows are some ideas on how to manage this increased risk.

- ***Letter of engagement (LOE)***: Always use a letter of engagement in diminished capacity client representations that clearly identifies who the client is, the scope of the engagement, the fee agreement, and any special instructions. In the scope paragraphs cover specifically what will be done and what will not be done for the client. An example of a special instruction is client consent to reveal confidential information. It will usually be necessary to modify the language of a standard LOE to an easy to read/easy to understand format tailored to the ability of the client to comprehend.

- ***Fee Agreement***: Do all that can be done in the LOE to avoid fee issues. Ask for a substantial "evergreen" retainer at the inception of the representation. Charge a fixed fee collected in advance, if that is feasible. Keep in mind that withdrawing from representing a diminished capacity client is problematic. Withdrawing and suing the client for fees carries a great risk of both a malpractice claim and a bar complaint – a losing proposition for a lawyer when the adversary is a client with diminished capacity that the lawyer has dropped.

- ***Document the file***: Meticulously document the file. It is always prudent to follow up with a letter every tough issue consultation with a client that includes what was discussed, advice given, and the client's decision or instructions. With diminished capacity clients consider going one step further and sending a letter after every consultation tailored to the client's ability to understand. At a minimum document the file after every consultation with the client.

- ***Conflicts of interest***: Be alert for conflicts of interest. These can be intergenerational conflicts of interest centering on preservation of assets of the client that arise when family members participate in discussions with the lawyer; spousal conflicts in estate planning and divorce matters; and fiduciary conflicts when a lawyer represents a fiduciary or is a fiduciary.

- ***Make a comprehensive review of the matter just before filing suit***: It is always difficult to withdraw from representation of a diminished capacity client, but even more so once a suit is filed. Just prior to filing suit carefully review the situation to resolve any issues such as whether the client's condition has progressed to the point that a guardian ad litem should be appointed, whether the relationship has deteriorated to the point that the lawyer cannot adequately represent the client, and any shortfall in the payment of agreed fees.

- ***Do not forget to check for substantive law requirements and changes in the law applicable to representations of diminished capacity clients.*** A recent example of the importance of keeping up with the law on representing clients with diminished capacity is the Kentucky Supreme Court decision in *Branham v. Stewart* (No. 2007-SC-000250-DG,

3/18/10). In *Branham* the Court held that a minor may make a claim for legal malpractice or breach of fiduciary duty against a lawyer retained by a person acting as the minor's next friend or statutory guardian. While clarifying the professional relationship of lawyers with minors, the decision also raises ethical questions regarding representing minors. Read *Branham* and "The Child Client in Domestic Violence Proceedings: The Ethical Dilemma of Child Advocacy in Guardian Ad Litem Appointments" by Crabtree and DiLoreto in the January 2010 issue of the KBA *Bench & Bar* (Vol. 74 No. 1). Be sure to avoid conflicts of interest when representing more than one party in matters involving minors. You are likely to be sued either for malpractice or fiduciary duty breach if you fail to do so.

- ***Use the KBA Ethics Hotline***: Many of the decisions necessary to adequately represent a diminished capacity client involve close ethical questions. The KBA Ethics Hotline is a readily available source of sound advice for Kentucky lawyers and especially suitable for ethics questions concerning clients with diminished capacity.

Conclusion

Thanks to the 2009 revised Rule 1.14, Kentucky lawyers now have substantially improved guidance for representing those highly vulnerable clients with diminished capacity whose best hope is a lawyer that will protect their interests.

ENDNOTES

1. SCR 3.130(1.14) Client with diminished capacity
   (a) When a client's capacity to make adequately considered decisions in connection with a representation is diminished, whether because of minority, age, mental impairment or for some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client.
   (b) When the lawyer reasonably believes that the client has diminished capacity, is at risk of substantial physical, financial or other harm unless action is taken and cannot adequately act in the client's own interest, the lawyer may take reasonably necessary protective action, including consulting with individuals or entities that have the ability to take action to protect the client and, in appropriate cases, seeking the appointment of a guardian ad litem, conservator or guardian.
   (c) Information relating to the representation of a client with diminished capacity is protected by Rule 1.6. When taking protective action pursuant to paragraph (b), the lawyer is impliedly authorized under Rule 1.6(a) to reveal information about the client, but only to the extent reasonably necessary to protect the client's interests.
2. ABA Ethics 2000 Commission Reporter's Explanation of Changes – Model Rule 1.14.
3. ABA Formal Opinion 96-404 (8/2/1996). Citing Rules 1.2 and 1.4.
4. *Ibid*.
5. Paragraph (a): When a client's capacity to make adequately considered decisions in connection with a representation is diminished, whether because of minority, age, mental impairment or for some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client.
6. *See*, ABA Annotated Model Rules of Professional Conduct (6th Ed., 2007), page 216, and ABA/BNA Lawyers' Manual on Professional Conduct, Client With Diminished Capacity 31:601 at 31:603 for citations and additional analysis.
7. *See*, §24, A Client with Diminished Capacity, Comment *d*, of the Restatement of the Law, The Law Governing Lawyers (2000).
8. *See*, ABA Annotated Model Rules of Professional Conduct (6th Ed., 2007), page 218, and ABA/BNA Lawyers' Manual on Professional Conduct, Client With Diminished Capacity 31:601 at 31:606, 607.
9. *In Re Eugster*, Wash. No.200, 568-3, 6/11/2009.
10. §24, A Client with Diminished Capacity, (2) and Comment *d*, of the Restatement of the Law, The Law Governing Lawyers (2000).
11. ABA Ethics 2000 Commission Reporter's Explanation of Changes – Model Rule 1.14.
12. ABA Formal Opinion 96-404 (8/2/1996).
13. *Ibid*.
14. For a summary of ethics opinions on disclosure *see*, ABA Annotated Model Rules of Professional Conduct (6th Ed., 2007), page 221, and ABA/BNA Lawyers' Manual on Professional Conduct, Client With Diminished Capacity 31:601 at 31:617.
15. *See also*, Rule 1.8(f).
16. *See generally*, ABA/BNA Lawyers' Manual on Professional Conduct, Client With Diminished Capacity 31:601 at 31:617.
17. Rule 1.6 (b)(4).