

Rule 1.14 Client with Diminished Capacity
(Commission's Proposed Rule Adopted on January 22 – 23, 2016 – Clean Version)

- (a) Duties Owed Client with Diminished Capacity. When a client's capacity to make adequately considered decisions in connection with a representation is diminished, whether because of minority, mental impairment or for some other reason, the lawyer shall, as far as reasonably* possible, maintain a normal lawyer-client relationship with the client.
- (b) Taking Protective Action on Behalf of a Client With Significantly Diminished Capacity.
- (1) Except where the lawyer represents a minor, a client in a criminal matter, or a client who is the subject of a conservatorship proceeding or who has a guardian ad litem or other person* legally entitled to act for the client, the lawyer may, but is not required to take protective action, provided the lawyer has obtained the client's consent as provided in paragraph (c) or (d), and the lawyer reasonably believes* that:
- (i) there is a significant risk that the client will suffer substantial* physical, psychological, or financial harm unless protective action is taken,
- (ii) the client has significantly diminished capacity such that the client is unable to understand and make adequately considered decisions regarding the potential harm, and
- (iii) the client cannot adequately act in the client's own interest.
- (2) Information relating to the client's diminished capacity is protected by Business and Professions Code § 6068(e)(1) and Rule 1.6. In taking protective action as authorized by this paragraph, the lawyer must:
- (i) act in the client's best interest, and
- (ii) disclose no more information than is reasonably* necessary to protect the client from substantial* physical, psychological, or financial harm, given the information known* to the lawyer at the time of disclosure.
- (c) Obtaining Consent To Take Protective Action.
- (1) Before taking protective action as authorized by paragraph (b), a lawyer must take all steps reasonably* necessary to preserve client confidentiality and decision-making authority, which includes:
- (i) explaining to the client the need to take protective action, and

- (ii) obtaining the client's consent to take the protective action.
- (2) In seeking the consent of a client to take protective action under paragraph (b), the lawyer may obtain the assistance of an appropriate person* to assist the lawyer in communicating with the client. In obtaining such assistance, the lawyer must:
 - (i) act in the client's best interest;
 - (ii) disclose no more information than is reasonably* necessary to protect the client from substantial* physical, psychological, or financial harm, given the information known* to the lawyer at the time of disclosure; and
 - (iii) take all reasonable* steps to ensure that the information disclosed remains confidential.
- (d) Obtaining Advance Informed Written Consent to Take Protective Action. A lawyer may obtain a client's advance informed written consent* to take protective action in the event the circumstances set forth in paragraphs (b)(1)(i) – (iii) should later occur. The advance consent must include the following written* disclosures:
 - (1) the authorization to take protective action is valid only when the lawyer reasonably believes* that the circumstances set forth in (b)(1)(i) – (iii) are present; and
 - (2) the client retains the right to revoke or modify the advance consent at any time.
- (e) Restrictions on Lawyer's Actions. This Rule does not authorize the lawyer to take:
 - (1) any action that is adverse to the client, including the filing of a conservatorship petition or other similar action;
 - (2) any action on behalf of a person* other than the client that the lawyer would not be permitted to take under Rule 1.7 or 1.9; or
 - (3) any action that would violate the client's right to due process of law under the United States or California Constitutions, or the California Probate Code.
- (f) Definitions. For purposes of this Rule:
 - (1) "Protective action" means to take action to protect the client's interests by:

- (i) notifying an individual or organization that has the ability to take action to protect the client, or
 - (ii) seeking to have a guardian ad litem appointed.
- (g) Discipline. Neither a lawyer who takes protective action as authorized by this Rule, nor a lawyer who chooses not to take such action, is subject to discipline.

Comment

[1] The purpose of this Rule is to allow a lawyer to act competently on behalf of a client with significantly diminished capacity, to further the client's goals in the representation, and to protect the client's interests.

[2] A client with significantly diminished capacity, such that the client cannot make adequately considered decisions regarding potential harm, often has the ability to understand, deliberate upon, express preferences concerning, and reach conclusions about matters affecting the client's own well-being, including the ability to provide consent. (See Probate Code §§ 810 – 813.)

[3] In determining whether a client has significantly diminished capacity such that the client is unable to make adequately considered decisions, a lawyer may seek information or guidance from an appropriate diagnostician or other qualified medical service provider. In doing so, the lawyer may not reveal client confidential information without the client's authorization or except as otherwise permitted by these Rules. See Rule 1.6(b) and Business and Professions Code § 6068(e)(2).

[4] Where it is reasonably* foreseeable that a client may suffer from significantly diminished capacity in the future such that the client will likely be unable to make adequately considered decisions, the lawyer may have an obligation to explain to the client the need to take measures to protect the client's interests, including using voluntary surrogate decision-making tools such as durable powers of attorney and seeking assistance from family members, support groups and professional services with the client's informed written consent.* See Rule 1.4.

[5] In obtaining the assistance another person* such as a trained professional to assist in communicating with and furthering the interests of the client pursuant to paragraph (c), the lawyer must look to the client, and not the other person,* for authorization to take protective measures on the client's behalf. See Evidence Code § 952. The lawyer must advise the person* who assists the lawyer that the person* is not authorized to disclose information protected by Business and Professions Code § 6068(e)(1) to any third person.*

[6] This Rule does not apply in the case of a client who is (i) a minor, (ii) involved in a criminal matter, (iii) is the subject of a conservatorship; or (iv) has a guardian or other person* legally entitled to act for the client. The rights of such persons* are regulated under other statutory schemes. See Family Code § 3150; Welfare and Institutions Code § 1368 et seq.; Lanterman-Petris-Short Act, Welfare and Institutions Code

Division 5, Part 1, § 5000-5579; Probate Code, Division 4, Parts 1-8, § 1400-3803; and Code of Civil Procedure §§ 372-376.

PROPOSED RULE OF PROFESSIONAL CONDUCT 1.14
(No Current Rule)
Client With Diminished Capacity

EXECUTIVE SUMMARY

The Commission for the Revision of the Rules of Professional Conduct (“Commission”) has proposed the adoption of Rule 1.14, a new rule that has no counterpart in the current Rules of Professional Conduct. In developing the proposed rule, the Commission reviewed and evaluated American Bar Association (“ABA”) Model Rule 1.14 (Client With Diminished Capacity), the Restatement of the Law of Lawyering, section 24 (A Client With Diminished Capacity), current California statutory and rule sections, including Business & Professions Code § 6068(e)(1) and Probate Code §§ 810-813, and California case law relating to issues addressed by the proposed rule. The evaluation was made with an understanding that the Rules of Professional Conduct are intended as a disciplinary standard and that rule comments should be included only when necessary to explain a rule and not for providing aspirational guidance. Nevertheless, the Commission was also guided by a deep appreciation, assisted in part by contributions to its deliberations by representatives from the Trusts and Estates Section of the State Bar, that developing a rule addressing the issue of a significantly diminished capacity client is a matter of critical importance in assuring protection for some of the most vulnerable individuals who come within the justice system. Notwithstanding that consideration, however, the Commission also recognized that California’s strict duty of confidentiality, as reflected in Business & Professions Code § 6068(e)(1) and current rule 3-100, does not permit a rule as broadly sweeping as Model Rule 1.14, which authorizes the unconsented disclosure of client confidential information to take action to protect the client interests, or even to take action adverse to the client’s interests, such as seeking the appointment of a conservator. The result of the evaluation is proposed rule 1.14 (Client With Diminished Capacity). This proposed rule has been adopted by the Commission for submission to the Board of Trustees for public comment authorization. A final recommended rule will follow the public comment process.

The starting point for considering proposed Rule 1.14 is Business & Professions Code § 6068(e)(1), which is the statement of a lawyer’s duty of confidentiality in California. It provides it is the duty of an attorney:

- (e)(1) To maintain inviolate the confidence, and at every peril to himself or herself to preserve the secrets, of his or her client.

The only express exception to § 6068(e)(1) is in § 6068(e)(2), which permits – but does not require – a lawyer to disclose confidential client information to prevent a life-threatening criminal act. Current rule 3-100(A) also recognizes that a client can provide informed consent to disclosure of confidential information. However, unlike the Model Rule on confidentiality, neither section 6068(e) nor current rule 3-100 recognizes that a lawyer might be impliedly authorized to take actions to advance the client’s interests. Given the foregoing *statutory* and rule constraints, a rule as broadly sweeping and permissive as Model Rule 1.14 is not possible absent conforming changes to existing California law. In recognition of that limitation, and with the understanding that a client can consent to disclosures, the Commission determined that any rule addressing the diminished capacity client must hew to two fundamental principles: First, client autonomy must be acknowledged and vindicated by maintaining to the extent possible a normal lawyer-client relationship. Second, any protective action a lawyer might take under the rule requires the client’s consent. In addition

to these two basic principles, the Commission decided that, unlike the Model Rule, any action that the lawyer might take under the Rule to protect the client's interests must be expressly limited to a specific course of conduct.

Paragraph (a) sets forth the principle underlying the Rule: Notwithstanding that a client might suffer from diminished capacity, a lawyer shall to the extent reasonably possible maintain a normal lawyer-client relationship with the client. At its heart, this requires that the lawyer to recognize client autonomy and obtain the client's consent to take any action that will affect the client's substantial rights. See *Blanton v. Womancare, Inc.* (1985) 38 Cal.3d 396, 404 [212 Cal.Rptr. 151, 156].

Paragraph (b) establishes the parameters for a lawyer taking protective action on behalf of the client. Subparagraph (b)(1) identifies three threshold conditions that must be satisfied before a lawyer can even embark on a course of conduct to seek a client's consent to take protective action: (i) a significant risk that the client will suffer substantial physical, psychological or financial harm if no protective action is taken, (ii) the client has significantly diminished capacity; and (iii) the client cannot adequately act in the client's own interest. Subparagraph (b)(2) emphasizes that regardless of what action the lawyer may take with the client's consent, such action must be in the client's best interest *and* in taking such action, the lawyer may reveal no more confidential information than is necessary to protect the client.

Unlike paragraph (a), which imposes a disciplinable duty on the lawyer, paragraph (b) is emphatically permissive, i.e., the lawyer "may, but is not required to" take steps to obtain the client's consent to take protective action.

Paragraph (c) provides a roadmap for a lawyer who determines it is in the client's best interest to seek the client's consent to take protective action. Subparagraph (1) identifies the minimal steps the lawyer must take in obtaining the client's consent. Subparagraph (2) notes that the lawyer may obtain assistance from an appropriate person, e.g., a trained professional, to communicate with the client and take the minimal steps, but cautions that the lawyer must take precautions to maintain the confidentiality of any communications.

Because the lawyer may seek the client's consent only in circumstances where the client has significantly diminished capacity, it might appear that such a client could never provide that consent. However, the Commission has been assured by experts in the disability rights field that such consent can be obtained. See also Probate Code §§ 810-813 and refer to discussion of Comment [2], below.

Paragraph (d) is also permissive and permits a lawyer to obtain a client's advance consent to the lawyer taking protective action in the future should the circumstances identified in (b)(i) to (iii) later arise. Subparagraph (d)(1) includes the important caveat that this consent is revocable at any time by the client. This is a potentially controversial provision. "Advance consents" in the arena of conflicts of interest have created substantial and pointed disagreement among lawyers and judges. The concern generally is whether the lawyer's original disclosure to the client was sufficient to support the breadth of the conflicts situations to which the client has allegedly consented. Some advance consents are very narrow and even identify the specific conflict to which the client is being asked to consent. Others are very broad and can be read to permit the lawyer or more often, the law firm, to represent a future client with interests adverse to the consenting client in situations that the consenting client might never have contemplated. The advance consent in paragraph (d), on

the other hand, is drafted in such a way to permit an advanced consent limited to future protective action in the same narrowly constrained circumstances under which a lawyer might act under paragraph (b).

Paragraph (e) places further limitations on a lawyer's ability to proceed under paragraphs (c) and (d) of the rule, prohibiting a lawyer from taking actions adverse to the client (e.g., seeking a conservatorship), actions that would create a conflict under the conflicts rules, or any actions that would violate the client's Constitutional right to due process.

Paragraph (f) defines the term "protective action," a term used throughout the Rule, as being limited to notifying an individual or organization that has the ability to take action to protect the client or seeking to have a guardian ad litem appointed.

Paragraph (g). Neither paragraph (c) nor (d) mandates that a lawyer do anything. As noted, they are emphatically permissive. Paragraph (g) is a safe harbor for lawyers, whether they take protective action as authorized by the Rule, or choose not to take such action. A similar provision is found in current rule 3-100(E), which provides a discipline safe harbor concerning inaction under rule 3-100's provision permitting disclosure of confidential information to prevent life-threatening bodily injury.

Finally, non-substantive aspects of the proposed rule include rule numbering to track the Commission's general proposal to use the model rule numbering system and the substitution of the term "lawyer" for "member."

There are six comments to the Rule, all of which provide interpretative guidance or clarify how the rule should be applied. Comment [1] states the policy underlying the rule and its intent, and so explains how the rule should be applied to a contemplated course of conduct, an approved objective of a comment. Comment [2] addresses the conundrum, discussed in relation to paragraph (c), regarding how a client with significantly diminished capacity could provide consent. Importantly, it provides a reference to the Probate Code sections that emphasize the importance of respecting a client's autonomy and recognize the ability of severely compromised individuals to understand, deliberate and express preferences when provided with alternative courses of conduct. Comment [3] provides guidance on how to determine whether the client has significantly diminished capacity, including seeking the assistance of a diagnostician, and Comment [4] provides guidance on how to proceed when it is reasonably foreseeable that the client might suffer from significantly diminished capacity in the future. Comment [5] provides critical clarification of the lawyer's duty to protect confidentiality when the lawyer employs the assistance of an appropriate person, e.g., trained professional or family member, to communicate with the client. Finally, Comment [6] provides cross-references to the statutes that regulate those situations that are excepted from the rule's application, i.e., where the lawyer represents a minor, a client in a criminal matter, a client subject to a conservatorship proceeding, or a client who has a guardian ad litem.

National Background – Adoption of Model Rule 1.14

As California does not presently have a direct counterpart to Model Rule 1.14, this section reports on the adoption of the Model Rule in United States' jurisdictions. The ABA State Adoption Chart reports that twenty-seven jurisdictions have adopted Model Rule 1.14 verbatim. Nineteen jurisdictions have adopted a variation of Model Rule 1.14, and five jurisdictions have no rule at all or an entirely different rule from the Model Rule.

**Rule 1.14 Client with Diminished Capacity
(Redline Comparison of the Proposed Rule to ABA Model Rule)**

- (a) ~~When a client's~~ Duties Owed Client with Diminished Capacity. When a client's capacity to make adequately considered decisions in connection with a representation is diminished, whether because of minority, mental impairment or for some other reason, the lawyer shall, as far as reasonably* possible, maintain a normal lawyer-client relationship with the client.
- (b) Taking Protective Action on Behalf of a Client With Significantly Diminished Capacity.
- (1) Except where the lawyer represents a minor, a client in a criminal matter, or a client who is the subject of a conservatorship proceeding or who has a guardian ad litem or other person* legally entitled to act for the client, the lawyer may, but is not required to take protective action, provided the lawyer has obtained the client's consent as provided in paragraph (c) or (d), and the lawyer reasonably believes that:
- (i) there is a significant risk that the client will suffer substantial* physical, psychological, or financial harm unless protective action is taken,
 - (ii) the client has significantly diminished capacity such that the client is unable to understand and make adequately considered decisions regarding the potential harm, and
 - (iii) the client cannot adequately act in the client's own interest.
- (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.~~
- (e2) Information relating to the ~~representation of a client with~~ client's diminished capacity is protected by Business and Professions Code § 6068(e)(1) and Rule 1.6. ~~When~~ In 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.~~ as authorized by this paragraph, the lawyer must:
- (i) act in the client's best interest, and
 - (ii) disclose no more information than is reasonably* necessary to protect the client from substantial* physical, psychological, or

financial harm, given the information known* to the lawyer at the time of disclosure.

(c) Obtaining Consent To Take Protective Action.

(1) Before taking protective action as authorized by paragraph (b), a lawyer must take all steps reasonably* necessary to preserve client confidentiality and decision-making authority, which includes:

(i) explaining to the client the need to take protective action, and

(ii) obtaining the client's consent to take the protective action.

(2) In seeking the consent of a client to take protective action under paragraph (b), the lawyer may obtain the assistance of an appropriate person* to assist the lawyer in communicating with the client. In obtaining such assistance, the lawyer must:

(i) act in the client's best interest;

(ii) disclose no more information than is reasonably* necessary to protect the client from substantial* physical, psychological, or financial harm, given the information known* to the lawyer at the time of disclosure; and

(iii) take all reasonable* steps to ensure that the information disclosed remains confidential.

(d) Obtaining Advance Informed Written Consent to Take Protective Action. A lawyer may obtain a client's advance informed written consent* to take protective action in the event the circumstances set forth in paragraphs (b)(1)(i) – (iii) should later occur. The advance consent must include the following written* disclosures:

(1) the authorization to take protective action is valid only when the lawyer reasonably believes* that the circumstances set forth in (b)(1)(i) – (iii) are present; and

(2) the client retains the right to revoke or modify the advance consent at any time.

(e) Restrictions on Lawyer's Actions. This Rule does not authorize the lawyer to take:

(1) any action that is adverse to the client, including the filing of a conservatorship petition or other similar action;

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- (2) any action on behalf of a person* other than the client that the lawyer would not be permitted to take under Rule 1.7 or 1.9; or
 - (3) any action that would violate the client's right to due process of law under the United States or California Constitutions, or the California Probate Code.
- (f) Definitions. For purposes of this Rule:
- (1) “Protective action” means to take action to protect the client’s interests by:
 - (i) notifying an individual or organization that has the ability to take action to protect the client, or
 - (ii) seeking to have a guardian ad litem appointed.
- (g) Discipline. Neither a lawyer who takes protective action as authorized by this Rule, nor a lawyer who chooses not to take such action, is subject to discipline.

Comment

[1] The purpose of this Rule is to allow a lawyer to act competently on behalf of a client with significantly diminished capacity, to further the client's goals in the representation, and to protect the client's interests.

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

[2] A client with significantly diminished capacity, such that the client cannot make adequately considered decisions regarding potential harm, often has the ability to understand, deliberate upon, express preferences concerning, and reach conclusions about matters affecting the client's own well-being, including the ability to provide consent. (See Probate Code §§ 810 – 813.)

~~[2] The fact that a client suffers a disability does not diminish the lawyer’s obligation to treat the client with attention and respect. Even if the person has a legal representative, the lawyer should as far as possible accord the represented person the status of client, particularly in maintaining communication.~~

[3] ~~The client may wish to have family members or other persons participate in discussions with the lawyer. When necessary to assist in the representation, the presence of such persons generally does not affect the applicability of the attorney-client evidentiary privilege. Nevertheless, the lawyer must keep the client's interests foremost and, except for protective action authorized under paragraph (b), must to look to the client, and not family members, to make decisions on the client's behalf.~~In determining whether a client has significantly diminished capacity such that the client is unable to make adequately considered decisions, a lawyer may seek information or guidance from an appropriate diagnostician or other qualified medical service provider. In doing so, the lawyer may not reveal client confidential information without the client's authorization or except as otherwise permitted by these Rules. See Rule 1.6(b) and Business and Professions Code § 6068(e)(2).

[4] ~~If a legal representative has already been appointed for the client, the lawyer should ordinarily look to the representative for decisions on behalf of the client. In matters involving a minor, whether the lawyer should look to the parents as natural guardians may depend on the type of proceeding or matter in which the lawyer is representing the minor. If the lawyer represents the guardian as distinct from the ward, and is aware that the guardian is acting adversely to the ward's interest~~Where it is reasonably* foreseeable that a client may suffer from significantly diminished capacity in the future such that the client will likely be unable to make adequately considered decisions, the lawyer may have an obligation to prevent or rectify the guardian's misconductexplain to the client the need to take measures to protect the client's interests, including using voluntary surrogate decision-making tools such as durable powers of attorney and seeking assistance from family members, support groups and professional services with the client's informed written consent.* See Rule 1.2(d)1.4.

[5] In obtaining the assistance another person* such as a trained professional to assist in communicating with and furthering the interests of the client pursuant to paragraph (c), the lawyer must look to the client, and not the other person,* for authorization to take protective measures on the client's behalf. See Evidence Code § 952. The lawyer must advise the person* who assists the lawyer that the person* is not authorized to disclose information protected by Business and Professions Code § 6068(e)(1) to any third person.*

[6] This Rule does not apply in the case of a client who is (i) a minor, (ii) involved in a criminal matter, (iii) is the subject of a conservatorship; or (iv) has a guardian or other person* legally entitled to act for the client. The rights of such persons* are regulated under other statutory schemes. See Family Code § 3150; Welfare and Institutions Code § 1368 et seq.; Lanterman-Petris-Short Act, Welfare and Institutions Code Division 5, Part 1, § 5000-5579; Probate Code, Division 4, Parts 1-8, § 1400-3803; and Code of Civil Procedure §§ 372-376].

Taking Protective Action

[5] ~~If a lawyer reasonably believes that a client is at risk of substantial physical, financial or other harm unless action is taken, and that a normal client-lawyer~~

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

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

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

Disclosure of the Client's Condition

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

Emergency Legal Assistance

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

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