

Rule 1.14. Client with Diminished Capacity.

1 (a) When a client’s capacity to make adequately considered decisions in connection with a
2 representation is diminished, whether because of minority, mental impairment or for some other
3 reason, the licensed paralegal practitioner shall, as far as reasonably possible, maintain a normal
4 licensed paralegal practitioner-client relationship with the client.

5 (b) When the licensed paralegal practitioner reasonably believes that the client has
6 diminished capacity, is at risk of substantial physical, financial or other harm unless action is
7 taken and cannot adequately act in the client’s own interest, the licensed paralegal practitioner
8 may take reasonably necessary protective action, including consulting with individuals or entities
9 that have the ability to take action to protect the client.

10 (c) Information relating to the representation of a client with diminished capacity is protected
11 by Rule 1.6. When taking protective action pursuant to paragraph (b), the licensed paralegal
12 practitioner is impliedly authorized under Rule 1.6(a) to reveal information about the client, but
13 only to the extent reasonably necessary to protect the client’s interests.

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15 Comment

16 [1] The normal licensed paralegal practitioner-client relationship is based on the assumption
17 that the client, when properly advised and assisted, is capable of making decisions about
18 important matters. When the client is a minor or suffers from a diminished mental capacity,
19 however, maintaining the ordinary licensed paralegal practitioner-client relationship may not be
20 possible in all respects. In particular, a severely incapacitated person may have no power to make
21 legally binding decisions. Nevertheless, a client with diminished capacity often has the ability to
22 understand, deliberate upon and reach conclusions about matters affecting the client's own well-
23 being. For example, children as young as five or six years of age, and certainly those of ten or
24 twelve, are regarded as having opinions that are entitled to weight in legal proceedings
25 concerning their custody. So also, it is recognized that some persons of advanced age can be
26 quite capable of handling routine financial matters while needing special legal protection
27 concerning major transactions.

28 [2] The fact that a client suffers a disability does not diminish the licensed paralegal
29 practitioner's obligation to treat the client with attention and respect. Even if the person has a

30 legal representative, the licensed paralegal practitioner should as far as possible accord the
31 represented person the status of client, particularly in maintaining communication.

32 [3] The client may wish to have family members or other persons participate in discussions
33 with the licensed paralegal practitioner. When necessary to assist in the representation, the
34 presence of such persons generally does not affect the applicability of the attorney-client
35 evidentiary privilege. Nevertheless, the licensed paralegal practitioner must keep the client's
36 interests foremost and, except for protective action authorized under paragraph (b), must look to
37 the client, and not family members, to make decisions on the client's behalf.

38 [4] If a legal representative has already been appointed for the client, the licensed paralegal
39 practitioner should ordinarily look to the representative for decisions on behalf of the client. In
40 matters involving a minor, whether the licensed paralegal practitioner should look to the parents
41 as natural guardians may depend on the type of proceeding or matter in which the licensed
42 paralegal practitioner is representing the minor. If the licensed paralegal practitioner represents
43 the guardian as distinct from the ward, and is aware that the guardian is acting adversely to the
44 ward's interest, the licensed paralegal practitioner may have an obligation to prevent or rectify
45 the guardian's misconduct. See Rule 1.2(d).

46 Taking Protective Action

47 [5] If a licensed paralegal practitioner reasonably believes that a client is at risk of substantial
48 physical, financial or other harm unless action is taken, and that a normal licensed paralegal
49 practitioner-client relationship cannot be maintained as provided in paragraph (a) because the
50 client lacks sufficient capacity to communicate or to make adequately considered decisions in
51 connection with the representation, then paragraph (b) permits the licensed paralegal practitioner
52 to take protective measures deemed necessary. Such measures could include: consulting with
53 family members, using a reconsideration period to permit clarification or improvement of
54 circumstances, using voluntary surrogate decision-making tools such as durable powers of
55 attorney or consulting with support groups, professional services, adult-protective agencies or
56 other individuals or entities that have the ability to protect the client. In taking any protective
57 action, the licensed paralegal practitioner should be guided by such factors as the wishes and
58 values of the client to the extent known, the client's best interests and the goals of intruding into
59 the client's decision-making autonomy to the least extent feasible, maximizing client capacities
60 and respecting the client's family and social connections.

61 [6] In determining the extent of the client’s diminished capacity, the licensed paralegal
62 practitioner should consider and balance such factors as: the client’s ability to articulate
63 reasoning leading to a decision, variability of state of mind and ability to appreciate
64 consequences of a decision; the substantive fairness of a decision; and the consistency of a
65 decision with the known long-term commitments and values of the client. In appropriate
66 circumstances, the licensed paralegal practitioner may seek guidance from an appropriate
67 diagnostician.

68 [7] If a legal representative has not been appointed, the licensed paralegal practitioner should
69 consider whether appointment of a guardian ad litem, conservator or guardian is necessary to
70 protect the client’s interests. Thus, if a client with diminished capacity has substantial property
71 that should be sold for the client’s benefit, effective completion of the transaction may require
72 appointment of a legal representative. In addition, rules of procedure in litigation sometimes
73 provide that minors or persons with diminished capacity must be represented by a guardian or
74 next friend if they do not have a general guardian. In many circumstances, however, appointment
75 of a legal representative may be more expensive or traumatic for the client than circumstances in
76 fact require. Evaluation of such circumstances is a matter entrusted to the professional judgment
77 of the licensed paralegal practitioner. In considering alternatives, however, the licensed paralegal
78 practitioner should be aware of any law that requires the licensed paralegal practitioner to
79 advocate the least restrictive action on behalf of the client.

80 Disclosure of the Client’s Condition

81 [8] Disclosure of the client’s diminished capacity could adversely affect the client’s interests.
82 For example, raising the question of diminished capacity could, in some circumstances, lead to
83 proceedings for involuntary commitment. Information relating to the representation is protected
84 by Rule 1.6. Therefore, unless authorized to do so, the licensed paralegal practitioner may not
85 disclose such information. When taking protective action pursuant to paragraph (b), the licensed
86 paralegal practitioner is impliedly authorized to make the necessary disclosures, even when the
87 client directs the licensed paralegal practitioner to the contrary. Nevertheless, given the risks of
88 disclosure, paragraph (c) limits what the licensed paralegal practitioner may disclose in
89 consulting with other individuals or entities or seeking the appointment of a legal representative.
90 At the very least, the licensed paralegal practitioner should determine whether it is likely that the
91 person or entity consulted with will act adversely to the client’s interests before discussing

92 matters related to the client. The licensed paralegal practitioner's position in such cases is an
93 unavoidably difficult one.

94 [9] Reserved.

95 [10] Reserved.

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