



Dear Ethics Lawyer™

The Legal Ethics Project. Supporting professionalism with information.

Q: Dear Ethics Lawyer,

I have represented an individual entrepreneur in various business matters for the past 20 years. She has always been capable, with clear ability to receive and apply my advice and quickly make what I have believed to be logical and rational decisions. Lately, however, I have noticed a change. Her ability to process our conversations seems slower and more labored. I often have to repeat things I've already said, and sometimes she doesn't seem to remember details of prior conversations. She is less confident in her decision-making, asking me what I would do in certain situations that in the past she would have quickly reasoned through herself. I try to deflect making decisions for her, and for now just talk her through the situations until she reaches what seems like a rational and appropriate decision. But, I'm not a health care professional and lack the ability to assess what's going on with her or how serious it is. What are my duties here?

A: You are in a difficult situation. Model Rule 1.14 provides your duties and some guidance, although that guidance requires the application of judgment and discretion. The latest version of Rule 1.14, "Client with Decision-Making Limitations," was adopted February 17, 2026, amending the terminology of the prior version which referred to "Clients with Diminished Capacity." The current version states that a client has decision-making limitations "if the person has substantial difficulty receiving and understanding information, evaluating information, or making or communicating decisions even with appropriate supports or accommodations." This replaces the prior version's use of the term "diminished capacity", defined as "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." Because of the recency of the 2026 amendment, the first step for you is to understand which version of Rule 1.14 is in effect in your jurisdiction.

Each version of Rule 1.14 has a similar central directive if triggered by the client's condition: the "lawyer shall, as far as reasonably possible, maintain an ordinary client-lawyer relationship" [the prior version used the term "normal client-lawyer relationship"]. This appears to be exactly what you are doing. Although it may take more effort, explanation and perhaps patience in walking your client through the decision-making process than it has in the past, your description of the relationship suggests that the client is ultimately able to reasonably process and apply your advice. For now, that meets your duty under either version of Rule 1.14.

What happens if the client's capacity decreases further and, in your judgment, she becomes unable to make reasonable decisions, or is making decisions that put her or her family or business in jeopardy? Then look again to Rule 1.14 for guidance. You may suggest to the client that she seek assistance (from professionals, family or others), but Rule 1.14 makes clear that your obligation of confidentiality to the client remains in place in almost all circumstances, requiring the client's consent to disclose protected information. Both versions of the rule provide also defined circumstances when the client is at risk of substantial physical, financial or other harm in which the lawyer may take necessary protective action, including seeking the appointment of a guardian or conservator.

The Ethics Lawyer

About Dear Ethics Lawyer

The twice-monthly "Dear Ethics Lawyer" column is part of a training regimen of the Legal Ethics Project, authored by [Mark Hinderks](#), former managing partner and counsel to an AmLaw 134 firm; Fellow, American College of Trial Lawyers; and speaker/author on professional responsibility for more than 25 years. Mark leads Stinson LLP's [Legal Ethics & Professional Responsibility](#) practice, offering advice and "second opinions" to lawyers and law firms, consulting and testifying expert service, training, mediation/arbitration and representation in malpractice litigation. The submission of questions for future columns is welcome: please send to mark.hinderks@stinson.com.

Discussion presented here is based on the ABA Model Rules of Professional Conduct, but the Model Rules are adopted in different and amended versions, and interpreted in different ways in various places. Always check the rules and authorities applicable in your relevant jurisdiction – the result may be completely different.