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Autonomy, Accommodation, and Avoidable Liability: Inside the Update to Rule 1.14 Client with Decision-Making Limitations

Introduction: An Ethics Rule Long Due for Modernization

In February 2026, the American Bar Association ("ABA") adopted significant amendments to Model Rule of Professional Conduct 1.14, the Rule governing representation of clients with diminished capacity. The Rule is now retitled "Clients with Decision Making Limitations." This marked the first substantive revision to Rule 1.14 in more than two decades, following nearly a year of study, public comment, and revision by a broad ABA working group comprised of ethics, disability rights, elder law, and judicial representatives.[1]

From a risk management perspective, the update is far more than a mere terminology change. The revised rule and its substantially expanded comments respond to: evolving understandings of disability and cognitive impairment; growing concern that lawyers routinely overreact to perceived capacity issues; the increasing use and misuse of guardianship and conservatorship; and legal malpractice claims driven by well intentioned but ethically flawed "protective" actions.

For lawyers and law firms, the revised Rule 1.14 reframes professional responsibility focusing on client autonomy, lawyer-client communication, protective actions that are proportional, and the need for documentation. Revised Rule 1.14 also provides clearer guidance aimed at reducing ethical missteps and liability exposure.

Why the ABA Determined Rule 1.14 Needed Updating

The Rule Had Not Kept Pace with Law or Practice

As the ABA Working Group openly acknowledged, Rule 1.14 had not been revised in more than twenty years, despite major shifts in law and professional norms affecting clients with cognitive or intellectual limitations.

Since the early 2000s:

- Courts increasingly recognize supported decision making as an alternative to guardianship.
- Disability rights statutes and jurisprudence emphasize legal capacity and autonomy.
- Elder law and mental health law have moved away from categorical assumptions about incapacity.
- Lawyers face greater scrutiny, both ethically and civilly, when substituting their judgment for a client's judgment.

Yet the structure and tone of the old rule and comment often left lawyers unsure how to balance client protection with respect for client autonomy, leading to inconsistent and often times harmful practices.

1 See ABA Model Rule of Professional Conduct 1.14 as amended in February 2026.

The Old Rule Unintentionally Encouraged Over Protective Action

One of the clearest motivations for the amendments was concern that Rule 1.14, as previously written, normalized or encouraged overuse of guardianship and conservatorship, even when less intrusive alternatives were available. Lawyers who prematurely pursue guardianship can face allegations that they failed to follow client instructions; interfered with fundamental rights; improperly disclosed confidential information; acted without authority; or caused reputational, financial, or legal harm. The absence of explicit guidance favoring less restrictive approaches created fertile ground for legal malpractice claims asserting that lawyers acted "for the client's own good" rather than in accordance with ethical duties.

Language Matters in Risk Sensitive Contexts

The ABA also concluded that the phrase "client with diminished capacity" carried unintended bias and imprecision. The amended rule replaces it with "clients with decision making limitations," recognizing that capacity is context specific, situational, and variable over time. This change is not merely semantic. From a risk perspective:

- It discourages lawyers from making broad, stigmatizing judgments about clients;
- It refocuses analysis on specific legal decisions, not global capacity labels; and
- It reduces the likelihood that a lawyer's notes, emails, or testimony will reflect unsupported conclusions about a client's competence.

What Is Different in the Amended Rule Text

Rule 1.14(a): Re Centering the Ordinary Client Lawyer Relationship

The core principle of Rule 1.14 remains intact: when representing a client with decision-making limitations, a lawyer should maintain a normal client lawyer relationship as far as reasonably possible. However, the amended language makes clear that this obligation persists even when decision making limitations affect the client's ability to direct the representation or make informed choices.

From a risk management standpoint, this reinforces that lawyers are not free to downgrade a client's role merely because communication is difficult; frustration, delay, or unconventional decision making does not justify replacing the client's judgment. Therefore, documentation should focus on communication challenges and not perceived "unreasonableness."

Rule 1.14(b): Protective Action as a Last Resort

The revised Rule 1.14(b) places sharper limits on when a lawyer may take protective action. It provides that a lawyer may take reasonable protective action for the client when the lawyer reasonably believes that the client: (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 rule now explicitly directs lawyers to explore less restrictive alternatives first.

This rebalancing is critical for malpractice prevention. Lawyers are now clearly on notice that protective action must be proportional and necessary; guardianship is not the default ethical solution; and failure to consider alternatives may itself be ethically problematic.

The Comments to Rule 1.14: Where the Most Meaningful Changes Appear

While the black letter rule changed modestly, the Comments underwent substantial revision and expansion, transforming them into a detailed roadmap for ethical and defensible lawyering.

Supported Decision Making Is Explicitly Recognized

For the first time, the Comments expressly recognize supported decision making as an ethical accommodation that can enhance a client's ability to make legal decisions. Examining these changes through a risk control lens, reveals several things:

- The changes encourage lawyers to adapt communication methods instead of substituting judgment.
- The changes provide the ethical basis for investing additional time and resources in client interaction.
- The changes create a defensible record that demonstrates respect for autonomy and informed consent.

Importantly, supported decision making is framed as an accommodation, not an abdication of professional responsibility.

Emphasis on Communication and Accommodation

The revised Comments emphasize that lawyers must take reasonable steps to ensure effective communication, including using accommodations suited to the client's needs. This is a quiet but significant risk management development. Why?

Communication failures are a leading driver of legal malpractice claims[2] and lawyers who do not adapt their communication when representing a person with decision-making limitations risk allegations of neglect or disregard. The rule now supports tailoring communication without forfeiting professional judgment.

2 See American Bar Association *Profile of Legal Malpractice Claims – 2020-2023.*

Guardianship Is Framed as Intrusive and Not Routine

Perhaps the most risk relevant shift in the Comments is the clear statement that guardianship or conservatorship may be more intrusive than circumstances require and should not be reflexively pursued. From a claims perspective, this aligns with cases where lawyers have been sued for initiating guardianship without adequate justification; conflicting loyalties in guardianship proceedings; or failing to advocate for the least restrictive alternative. The Comments now provide explicit cautionary language lawyers can and should cite internally when pushing back against pressure to "do something" quickly.

Representing Clients Who Have Guardians

The amended Comments also clarify that lawyers may ethically represent clients who already have guardians or legal representatives, including in challenging the scope of that authority. This clarification reduces uncertainty and risk when a guardian disagrees with the client's wishes, a lawyer fears accusations of disloyalty, or the client seeks to regain legal autonomy.

Risk Management Takeaways for Lawyers and Law Firms

- Autonomy is the default and not the exception. Assuming incapacity too early creates ethical and liability risk.
- Document process, not conclusions. Lawyers should document communication efforts, accommodations tried, and alternatives considered, rather than conclusory statements about competence.
- Less restrictive is more defensible. Courts, regulators, and juries are increasingly skeptical of heavy handed protective action.
- Lawyers must be familiar with the Comments and not just the black letter Rule. The Comments carry practical guidance and should be part of firm training.

Conclusion: A Modern Rule for Modern Risk

For lawyers and firms, the ABA's amendments to Model Rule 1.14 offers both a warning and a shield. Those who ignore its guidance may face heightened exposure. Those who follow it thoughtfully and deliberately and document the file will be better positioned to serve clients ethically while managing professional liability risk.

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