



# ISBA Professional Conduct Advisory Opinion

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**Opinion No. 12-10**  
**March 2012**

**Subject:** Withdrawal from Representation; Impaired Client; Confidentiality

**Digest:** It would be professionally proper for a lawyer to request permission of the Court to withdraw if the client's actions or conduct is rendering the lawyer's fulfillment of employment difficult or is demanding action which in the lawyer's judgment is contrary to the law. Under the facts presented, it would be professionally proper for a lawyer to seek the establishment of guardianship for a client when the information upon which the lawyer acts was learned by the lawyer through the confidential relationship

**References:** Illinois Rules of Professional Conduct 1.16, 1.14, 1.6

Kelly R. Peck, Ethical Issues in Representing Elderly Clients with Diminished Capacity, 99 Ill. Bar J. 572 (2011)

ABA Annotated Model Rules of Professional Conduct, 7<sup>th</sup> Edition (2011)

## **FACTS**

The inquiring lawyer represents a client in a divorce proceeding. He has obtained what he feels to be a favorable settlement. The client has a history of psychiatric problems and is irrational in discussions with the lawyer. The client has consented to the proposed Judgment and Agreement and now refuses to sign. The lawyer does not believe the client is capable of making decisions in her own best interest.

The client has also begun to demand nearly impossible tasks of the lawyer. For example, though the client has no funds to pay for future litigation, the client wants full custody of the 17-year old child who moved in with the spouse and who refuses to live with the client. (The Committee presumes that issues of custody are addressed in the proposed Judgment and Decree.)

The lawyer inquires whether he is able to withdraw from representation in the divorce proceedings. He also inquires whether he is able to suggest that the Court determine whether a guardian need be appointed without breaching the confidentiality between the lawyer and a client.

### OPINION

Rule 1.16(b) (4) allows withdrawal of a lawyer if the client “insists on taking action that the lawyer considers repugnant or which with the lawyer has a fundamental disagreement.” Rule 1.16(b) (6) allows withdrawal by a lawyer if “the representation... has been rendered unreasonably difficult by the client.” If a lawyer believes withdrawal is advisable, the lawyer must seek the permission of the tribunal or comply with applicable law pursuant to 1.16(c). Additionally, upon termination of the representation, the lawyer must take steps to protect the interests of the client, including giving reasonable notice, time to employ other counsel, returning papers and property to which the client is entitled, and returning unearned fees to the client pursuant to 1.16(d).

Lastly, the question arises as to whether or not the lawyer may request the Court, when he asks permission to withdraw, to determine if guardianship is proper. Rule 1.6 provides that a lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out representation, or the disclosure is permitted under the Rule. However, Rule 1.14 provides specific guidance with respect to a client with diminished capacity. Specifically Rule 1.14(b) provides “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.” Although information relating to the representation of the client is protect by Rule 1.6, Pursuant to Rule 1.14(c), 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 interest.

Comments to Rule 1.14 state the obvious: “The lawyer’s position in such cases is an unavoidably difficult one.” Any lawyer encountering this type of a factual situation should carefully review the factors set forth in the comments to Rule 1.14. However, under the facts presented, it would be professionally proper for a lawyer to seek the establishment of a guardianship for a client even when the information upon which the lawyer acts was learned by the lawyer through the confidential relationship.

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