Proposal 23-05

Offered by the Supreme Court Commission on Elder Law

**Illinois Rules Of Professional Conduct of 2010 (IRPC) Rule 8.3A Reporting Professional Misconduct**

(a) A lawyer who knows that another lawyer has committed a violation of Rule 8.4(b) or Rule 8.4(c) shall inform the appropriate professional authority.

(b) A lawyer who knows that a judge has committed a violation of applicable rules of judicial conduct that raises a substantial question as to the judge's fitness for office shall inform the appropriate authority.

(c) This Rule does not require disclosure of information otherwise protected by the attorney-client privilege or by law or information gained by a lawyer or judge while participating in an approved lawyers' assistance program or an intermediary program approved by a circuit court in which nondisciplinary complaints against judges or lawyers can be referred.

(d) A lawyer who has been disciplined as a result of a lawyer disciplinary action brought before any body other than the Illinois Attorney Registration and Disciplinary Commission shall report that fact to the Commission.

Comment

[1] Self-regulation of the legal profession requires that members of the profession initiate disciplinary investigation when they know of a violation of ~~the~~ certain Rules of Professional Conduct. See In re Himmel, 125 Ill. 2d 531 (1988). Essentially, Rule 8.3A obliges a lawyer to report breaches of the ethics rules that raise a substantial question about another lawyer's honesty and truthfulness. Lawyers have a similar obligation with respect to judicial misconduct. An apparently isolated violation may indicate a pattern of misconduct that only a disciplinary investigation can uncover. Reporting a violation is especially important where the victim is unlikely to discover the offense.

[2] A report about misconduct is not required where it would involve disclosure of information protected by the attorney-client privilege or by law. However, a lawyer should encourage a client to consent to disclosure where prosecution would not substantially prejudice the client's interests.

[3] The reporting requirement applies when a lawyer knows or has knowledge of a fact in question. See Rule 1.0(f). Knowledge may be inferred from circumstances. Knowledge is assessed on an objective standard. It includes more than a suspicion of misconduct, and mere suspicion does not necessarily impose a duty of inquiry. Knowledge exists in an instance in which a reasonable lawyer in the circumstances would have a firm opinion that the conduct in question more likely than not occurred.

~~[3]~~[4] If a lawyer were obliged to report every violation of the Rules, the failure to report any violation would itself be a professional offense. Such a requirement existed in many jurisdictions but proved to be unenforceable. This Rule limits the reporting obligation to those offenses that a self-regulating profession must vigorously endeavor to prevent. A measure of judgment is, therefore, required in complying with the provisions of this Rule.

[5] A lawyer misconduct report should be made to the Illinois Attorney Registration and Disciplinary Commission unless some other agency is more appropriate in the circumstances. See Skolnick v. Altheimer & Gray, 191 Ill. 2d 214 (2000). Similar considerations apply to the reporting of judicial misconduct where the Illinois Judicial Inquiry Board should typically be notified. Rule 8.3A must be read in conjunction with Rule 2.15 of the Illinois Code of Judicial Conduct.

[6] The reporting requirements of this Rule do not apply when a lawyer believes that a lawyer or judge may be impaired solely due to alcohol or substance use, or for mental, cognitive, emotional, or psychological reasons. In such scenarios, a lawyer should consult with Rule 8.3B. The reporting requirement is required where (1) The information is required by law to be reported; or (2) the other lawyer has made a threat of engaging in a future criminal act or a violation of the Rules of Professional Conduct. Any such information, threat, or conduct shall be reported to the Attorney Registration and Disciplinary Commission even if the impairment is also brought to the attention of the Illinois Lawyers' Assistance Program (LAP) in accord with Rule 8.3B.

~~[4]~~[7] The duty to report professional misconduct does not apply to a lawyer retained to represent a lawyer whose professional conduct is in question or to a lawyer consulted in a professional capacity by another lawyer on whether the inquiring lawyer has a duty to report a third party lawyer's professional misconduct. Such a situation is governed by the Rules applicable to the client-lawyer relationship.

~~[5]~~[8] Information about a lawyer's or judge's misconduct or fitness may be received by a lawyer in the course of that lawyer's participation in an approved lawyers' or judges' assistance program or an approved intermediary program. In these circumstances, providing for an exception to the reporting requirements of paragraphs (a) and (b) of this Rule encourages lawyers and judges to seek treatment or assistance through such programs. Conversely, without such an exception, lawyers and judges may hesitate to seek assistance from these programs, which may then result in additional harm to their professional careers and additional injury to the welfare of clients and the public. See also Comment [19] to Rule 1.6.

~~[6]~~[9] Rule 8.3A(d) requires a lawyer to bring to the attention of the Illinois Attorney Registration and Disciplinary Commission any disciplinary sanction imposed by any other body against that lawyer. The Rule must be read in conjunction with Illinois Supreme Court Rule 763.

**IRPC Rule 8.3B Responding to Disability and Impairment**

A lawyer having unprivileged knowledge that the performance of another lawyer or a judge may be impaired by drugs or alcohol or by mental, cognitive, emotional, or psychological reasons, shall take appropriate action, which may include a confidential referral to a lawyer or judicial assistance program.

Comment

[1] A lawyer or judge who may be impaired due to alcohol or substance use, or who may be experiencing mental, cognitive, emotional, or psychological problems, can pose a threat to the courts, clients, and the profession. As a result, where a lawyer believes that another lawyer or judge may be experiencing diminished capacity due to the conditions noted above, the lawyer shall take appropriate action. See also, See Rule 1.1, Comment 9.

[2] Appropriate action means action intended and reasonably likely to help the judge or lawyer in question address the problem and prevent harm to the justice system. Depending upon the circumstances, appropriate action may include, but is not limited to, speaking directly to the person who may be impaired, notifying an individual with supervisory responsibility over the person who may be impaired, or making a referral to an appropriate assistance program.

[3] In Illinois, the appropriate assistance program is the Illinois Lawyers' Assistance Program (LAP), an organization able to provide mental health and substance use evaluations, referrals, and supportive services.

[4] In the event that a lawyer has unprivileged knowledge that another attorney has engaged in conduct that raises a substantial question as to another lawyer's honesty, trustworthiness, or fitness as a lawyer in other respect, the lawyer shall comply with the reporting requirements of Rule 8.3A.

[5] Rule 8.3B must be read in conjunction with Rule 2.14 of the Illinois Code of Judicial Conduct. In addition, in a law firm setting, a lawyer must consult with Rule 5.1, dealing with the responsibilities of partners, managers, and supervisory lawyers.

**IRPC Rule 5.1 Responsibilities of Partners, Managers, and Supervisory Lawyers**

(a) A partner in a law firm, and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm, shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that all lawyers in the firm conform to the Rules of Professional Conduct.

(b) A lawyer having direct supervisory authority over another lawyer shall make reasonable efforts to ensure that the other lawyer conforms to the Rules of Professional Conduct.

(c) A lawyer shall be responsible for another lawyer's violation of the Rules of Professional Conduct if:

> (1) the lawyer orders or, with knowledge of the specific conduct, ratifies the conduct involved; or

(2) the lawyer is a partner or has comparable managerial authority in the law firm in which the other lawyer practices, or has direct supervisory authority over the other lawyer, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

(d) Where a law firm partner or a lawyer with comparable managerial authority at a firm comes to know that another firm lawyer may be impaired due to alcohol or substance use, or for mental, cognitive, emotional, or psychological reasons, that partner, manager, or supervisor shall take appropriate action to address the concern.

Comment

[1] Paragraph (a) applies to lawyers who have managerial authority over the professional work of a firm. See Rule 1.0(c). This includes members of a partnership, the shareholders in a law firm organized as a professional corporation, and members of other associations authorized to practice law; lawyers having comparable managerial authority in a legal services organization or a law department of an enterprise or government agency; and lawyers who have intermediate managerial responsibilities in a firm. Paragraph (b) applies to lawyers who have supervisory authority over the work of other lawyers in a firm.

[2] Paragraph (a) requires lawyers with managerial authority within a firm to make reasonable efforts to establish internal policies and procedures designed to provide reasonable assurance that all lawyers in the firm will conform to the Rules of Professional Conduct. Such policies and procedures include those designed to detect and resolve conflicts of interest, identify dates by which actions must be taken in pending matters, account for client funds and property and ensure that inexperienced lawyers are properly supervised.

[3] Other measures that may be required to fulfill the responsibility prescribed in paragraph (a) can depend on the firm's structure and the nature of its practice. In a small firm of experienced lawyers, informal supervision and periodic review of compliance with the required systems ordinarily will suffice. In a large firm, or in practice situations in which difficult ethical problems frequently arise, more elaborate measures may be necessary. Some firms, for example, have a procedure whereby junior lawyers can make confidential referral of ethical problems directly to a designated senior partner or special committee. See Rule 5.2. Firms, whether large or small, may also rely on continuing legal education in professional ethics. In any event, the ethical atmosphere of a firm can influence the conduct of all its members and the partners may not assume that all lawyers associated with the firm will inevitably conform to the Rules.

[4] When a firm partner or a supervising lawyer is confronted with a firm lawyer's mental disability or impairment, the Rule provides that action must be taken to deal with that impairment. Appropriate action within the context of a firm means action intended and reasonably likely to help the lawyer in question address the problem and prevent harm to clients and others. A first step may be to confront the lawyer and insist upon steps that will assure that the impairment does not prejudice the interests of any client. These steps may include insisting that the lawyer accept assistance, restricting the lawyer from handling certain matters, or preventing the lawyer from dealing directly with clients. Depending upon the severity of the impairment, some impairments

may be accommodated. Accommodations may include reassigning the lawyer to a less pressured environment or changing the type of legal work. Where the impairment is so severe as to preclude accommodation by the firm and the lawyer's ability to represent clients is materially impaired, the firm is obligated to institute measures to prevent the lawyer from rendering legal services to firm clients.

~~[4]~~[5] Paragraph (c) expresses a general principle of personal responsibility for acts of another. See also Rule 8.4(a).

~~[5]~~[6] Paragraph (c)(2) defines the duty of a partner or other lawyer having comparable managerial authority in a law firm, as well as a lawyer who has direct supervisory authority over performance of specific legal work by another lawyer. Whether a lawyer has supervisory authority in particular circumstances is a question of fact. Partners and lawyers with comparable authority have at least indirect responsibility for all work being done by the firm, while a partner or manager in charge of a particular matter ordinarily also has supervisory responsibility for the work of other firm lawyers engaged in the matter. Appropriate remedial action by a partner or managing lawyer would depend on the immediacy of that lawyer's involvement and the seriousness of the misconduct. A supervisor is required to intervene to prevent avoidable consequences of misconduct if the supervisor knows that the misconduct occurred. Thus, if a supervising lawyer knows that a subordinate misrepresented a matter to an opposing party in negotiation, the supervisor as well as the subordinate has a duty to correct the resulting misapprehension.

~~[6]~~[7] Professional misconduct by a lawyer under supervision could reveal a violation of paragraph (b) on the part of the supervisory lawyer even though it does not entail a violation of paragraph (c) because there was no direction, ratification or knowledge of the violation.

~~[7]~~[8] Apart from this Rule and Rule 8.4(a), a lawyer does not have disciplinary liability for the conduct of a partner, associate or subordinate. Whether a lawyer may be liable civilly or criminally for another lawyer's conduct is a question of law beyond the scope of these Rules.

[9] When confronted with a firm lawyer's mental disability or impairment, if reasonable efforts have been made to institute procedures designed to assure compliance with the Rules, neither the partners in the firm nor the lawyer with direct supervisory authority are responsible for the impaired lawyer's violation of the Rules unless they knew of the conduct at a time when its consequences could have been avoided or mitigated and failed to take reasonable remedial action.

~~[8]~~[10] The duties imposed by this Rule on managing and supervising lawyers do not alter the personal duty of each lawyer in a firm to abide by the Rules of Professional Conduct. See Rule 5.2(a).

**IRPC Rule 1.1 Competence**

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

Comment

Legal Knowledge and Skill

[1] In determining whether a lawyer employs the requisite knowledge and skill in a particular matter, relevant factors include the relative complexity and specialized nature of the matter, the lawyer's general experience, the lawyer's training and experience in the field in question, the preparation and study the lawyer is able to give the matter and whether it is feasible to refer the matter to, or associate or consult with, a lawyer of established competence in the field in question. In many instances, the required proficiency is that of a general practitioner. Expertise in a particular field of law may be required in some circumstances.

[2] A lawyer need not necessarily have special training or prior experience to handle legal problems of a type with which the lawyer is unfamiliar. A newly admitted lawyer can be as competent as a practitioner with long experience. Some important legal skills, such as the analysis of precedent, the evaluation of evidence and legal drafting, are required in all legal problems. Perhaps the most fundamental legal skill consists of determining what kind of legal problems a situation may involve, a skill that necessarily transcends any particular specialized knowledge. A lawyer can provide adequate representation in a wholly novel field through necessary study. Competent representation can also be provided through the association of a lawyer of established competence in the field in question.

[3] In an emergency a lawyer may give advice or assistance in a matter in which the lawyer does not have the skill ordinarily required where referral to or consultation or association with another lawyer would be impractical. Even in an emergency, however, assistance should be limited to that reasonably necessary in the circumstances, for ill-considered action under emergency conditions can jeopardize the client's interest.

[4] A lawyer may accept representation where the requisite level of competence can be achieved by reasonable preparation. This applies as well to a lawyer who is appointed as counsel for an unrepresented person. See also Rule 6.2. Thoroughness and Preparation

[5] Competent handling of a particular matter includes inquiry into and analysis of the factual and legal elements of the problem, and use of methods and procedures meeting the standards of competent practitioners. It also includes adequate preparation. The required attention and preparation are determined in part by what is at stake; major litigation and complex transactions ordinarily require more extensive treatment than matters of lesser complexity and consequence. An agreement between the lawyer and the client regarding the scope of the representation may limit the matters for which the lawyer is responsible. See Rule 1.2(c). Retaining Or Contracting With Other Lawyers

[6] Before a lawyer retains or contracts with other lawyers outside the lawyer's own firm to provide or assist in the provision of legal services to a client, the lawyer should ordinarily obtain informed consent from the client and must reasonably believe that the other lawyers' services will contribute to the competent and ethical representation of the client. See also Rules 1.2(e) and Comment [15], 1.4, 1.5(f), 1.6, and 5.5(a). The reasonableness of the decision to retain or contract with other lawyers outside the lawyer's own firm will depend upon the circumstances, including

the education, experience, and reputation of the nonfirm lawyers; the nature of the services assigned to the nonfirm lawyers; and the legal protections, professional conduct rules, and ethical environments of the jurisdictions in which the services will be performed, particularly relating to confidential information.

[7] When lawyers from more than one law firm are providing legal services to the client on a particular matter, the lawyers ordinarily should consult with each other and the client about the scope of their respective representations and the allocation of responsibility among them. See Rule 1.2. When making allocations of responsibility in a matter pending before a tribunal, lawyers and parties may have additional obligations that are a matter of law beyond the scope of these Rules. Maintaining Competence

[8] To maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, including the benefits and risks associated with relevant technology, engage in continuing study and education and comply with all continuing legal education requirements to which the lawyer is subject.

[9] Lawyers should be aware that changes in brain health that cause neurologic and psychiatric disorders may impact their ability to represent clients and, as such, can be an important aspect of maintaining competence to practice law. In addition to substance use disorders, several neurological and psychiatric conditions can have an impact on cognition, memory, judgment, emotions, psychological well-being and social-interpersonal behaviors. With aging, cognition and behavior are especially vulnerable to diseases such as Alzheimer's, frontotemporal lobar degeneration and stroke. These diseases may not produce any visible ("physical") evidence of illness yet nonetheless alter a person's ability to practice competently. Resources supporting lawyer well-being are available through the Illinois Lawyers' Assistance Program (LAP). Other Rules may be relevant when considering well-being issues including those addressing declining or terminating representation, supervisory duties and reporting obligations. See Rules 1.16(a)(2), 5.1-5.3, 8.3A and 8.3B.

**IRPC Rule 1.14: Client with Diminished Capacity**

(a) 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 client-lawyer relationship with the client.

(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~~ shall 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.

(c) Information relating to the representation of a client with diminished capacity is protected by Rule 1.6. When 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.

Comment

[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~~ has 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] The fact that a client ~~suffers~~ has 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 issue of client identification is foundational and unique to the ethical representation of a client with diminished capacity. As a general rule, a client is a person whose personal and property interests are the subject of a representation. Thus, in preparing a will or other testamentary document for a client pursuant to the terms of this Rule, the client is the testator. In preparing a trust, the client is the grantor/settlor. In preparing a deed for real property, the client is the property owner or the person having authority to convey said property. When preparing a power of attorney, the client is the principal.

~~[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, the lawyer may have an obligation to prevent or rectify the guardian's misconduct. See Rule 1.2(d).~~

[4] A lawyer should be reasonably alert to indications that a client may have declining capacity or be the subject of undue influence. A formal medical or court determination that a client has diminished capacity is not necessarily dispositive for a lawyer to believe that a client has diminished capacity. A lawyer should not prepare a document for a client when the lawyer reasonably believes that the client lacks the requisite capacity or is being unduly influenced to execute that document.

~~[3]~~[5] 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 look to the client, and not family members, to make decisions on the client's behalf.

[6] A lawyer retained by a person seeking appointment as a fiduciary or retained by a fiduciary for a person with diminished capacity, including a guardian or conservator, stands in a lawyer-client relationship with respect to the prospective or appointed fiduciary. A lawyer who is retained by a fiduciary for a person with diminished capacity, but who did not previously represent the person with diminished capacity, represents only the fiduciary. Nevertheless, in such a case the lawyer for the fiduciary owes duties to the person with diminished capacity. If the lawyer representing the fiduciary, as distinct from the person with diminished capacity, becomes aware that the fiduciary is acting adversely to the person's interests, the lawyer may have an affirmative obligation to disclose, prevent and/or rectify the fiduciary's misconduct. See Rule 1.2(d). A conflict of interest may arise if the lawyer for the fiduciary is asked by the fiduciary to take action that is contrary either to the previously expressed wishes of the person with diminished capacity or to the best interests of such person, as the lawyer believes those interests to be. The lawyer should consider the current or previously expressed wishes of a person with diminished capacity.

[7] When the client is a person with diminished capacity, or where the client is the fiduciary of a person with diminished capacity, an attorney must follow all applicable rules, including local court rules, regarding the distribution of any proceeds from an award, settlement or judgment obtained in a personal injury or wrongful death claim that would benefit the person with diminished capacity.

Taking Protective Action

~~[5]~~[8] 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~~ mandates that 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 decision making autonomy to the least extent feasible, maximizing client capacities and respecting the client's family and social connections.

~~[6]~~[9] Most lawyers are not trained health care professionals capable of diagnosing an individual's diminished capacity. In determining the extent of the client's diminished capacity, however, 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. The lawyer also should review existing support and services that enhance a client's decision making, what factors impede such decision-making, and whether additional support or accommodation are available or could be made available. In appropriate circumstances, the lawyer may seek guidance from an appropriate diagnostician with expertise in assessing the relative cognitive and functional of the client. A lawyer does not violate Rule 1.6 by seeking as assessment, provided that the engagement protects client confidentiality.

~~[7]~~[10] 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]~~[11] 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]~~[12] 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, except when that representative's actions or inaction threaten immediate and irreparable harm to the person. 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]~~[13] 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.