



July 10, 2024

Submitted via email at [RulesCommittee@illinoiscourts.gov](mailto:RulesCommittee@illinoiscourts.gov)

Committee Secretary  
Supreme Court Rules Committee  
222 N. LaSalle Street, 13<sup>th</sup> Floor  
Chicago, IL 60601

Re: Proposal 23-05 (P.R. 000318) Amendments to Illinois Rules of Professional Conduct (IRPC) 1.14 (Client with Diminished Capacity)

To Whom It May Concern:

Thank you for the opportunity to provide feedback on the Illinois Supreme Court Rules Committee proposal to amend Illinois Rules of Professional Conduct Rule 1.14 regarding Client with Diminished Capacity. The following comments are submitted on behalf of Land of Lincoln Legal Aid.

Land of Lincoln Legal Aid (Land of Lincoln) is an Illinois not-for-profit corporation that provides a full range of civil legal services for low-income persons and senior citizens in 65 counties in central and southern Illinois, through five regional offices, four satellite offices, and a centralized intake and referral center. Our mission is to provide our clients with high quality civil legal services in order to obtain and maintain their basic human needs. Through advice, representation, advocacy, education, and collaboration we seek to achieve justice for those whose voices might otherwise not be heard; to empower individuals to advocate for themselves; and to make positive changes in the communities we serve. For more than 50 years, Land of Lincoln has represented thousands of senior citizens in a variety of civil matters.

We write to express concern about the proposed amendment to IRPC 1.14(b) which would require lawyers to take protective action if:

- 1) the lawyer reasonably believes
- 2) a client has diminished capacity
- 3) there is a risk of harm to the client unless some action is taken
- 4) the client cannot adequately act in their own interest and
- 5) the lawyer's protective action must be reasonable.

CENTRAL REGIONAL OFFICE

Dorothy O. Cook  
Community Law Center  
8787 State Street  
Suite 101  
East St. Louis, IL 62203

(618) 398-0958 PHONE  
(618) 398-4813 FAX  
ssimone@lincolnlegal.org  
efileCRO@lincolnlegal.org

ADMINISTRATIVE OFFICE

Dorothy O. Cook  
Community Law Center  
8787 State Street  
Suite 201  
East St. Louis, IL 62203

(618) 398-0574 PHONE  
(618) 398-0681 FAX  
admin@lincolnlegal.org

OFFICES

Alton  
Carbondale  
Champaign  
Charleston  
Decatur  
East St. Louis  
Mt. Vernon  
Springfield

LEGAL ADVICE &  
REFERRAL CENTER

(877) 342-7891 TOLL FREE

LINCOLNLEGAL.ORG



While we understand the sentiment of protecting vulnerable clients, and we agree with the other proposed amendments to IRPC 1.14, we do not think that lawyers should be made mandatory reporters and actors. Such a huge responsibility on lawyers has great potential to harm the client-lawyer relationship.

Clients with diminished capacity have the same rights as any other individual who chooses to be represented by a lawyer. IRPC 1.14(a) requires lawyers to maintain a normal client-lawyer relationship with clients who may have diminished capacity. If a client has sufficient capacity to form a client-lawyer relationship, then 1.14(a) should be the norm. This includes letting clients make the decisions that impact their life, regardless of whether we think that is the right decision.

Making lawyers mandatory reporters when diminished capacity is suspected may unnecessarily impinge on a client's right to their own decision-making. This can hinder a lawyer's work for the client. It may also lead to some lawyers not wanting to help elderly or disabled clients for fear of liability issues or being sued by family members or representatives of the client.

Diminished capacity is a spectrum, as indicated by comment [1]. And as comment [9] points out, most lawyers are not trained health care professionals capable of diagnosing whether a person has diminished capacity or to what extent. The extent to which a lawyer should seek outside assessment should be a decision made with the client. Any such outside assessment must necessarily involve some release of information that could be prejudicial to the client. A client cannot be expected to trust a lawyer that releases information about them without their permission, especially such very personal information.

If a lawyer suspects that a client has diminished capacity, then it should be the obligation of the lawyer to recommend that client seek medical treatment. A medical professional is better equipped to make such determinations. There could be several factors that can affect a person's mental state that do not relate to permanent diminished capacity, such as urinary tract infections, strokes and car accidents. For example, we had a client who was unaware he had a traumatic brain injury that affected his day-to-day activities. After finally receiving medical treatment, he was able to resume his life activities. If the attorney had immediately referred the client to an organization like Adult Protective Services, he could have ended up with a guardianship rather than with needed medical attention.

As a further example, a client came to us after being the victim of a scam which resulted in significant loss of his savings. Client had a diagnosis that indicated diminished capacity but he was still able to make his own decisions, drive, and care for himself and his wife. And that is his right. We did not try to take control of the situation but rather guided him to a more secure path, by reporting the scammers and by doing other things such as stopping third parties from having access to the bank accounts. The client maintained his autonomy without the concern of having his rights taken away. Furthermore, the attorney was able to assist while maintaining client confidentiality.

Clients with diminished capacity can experience confusion and may have a harder time understanding. However, the client's lawyer should gather the factual information and assist the client to the best of their ability without undermining the client's right to make their own decisions.

To be sure, we have had to make the decision to contact Adult Protective Services for clients in the past. However, we did so after consulting with and obtaining consent from the client. Further, we have declined to enter into attorney-client relationships with applicants that we determined did not have capacity.

We suggest a higher standard along the lines of IRPC Rule 1.6(b) and (c). Requiring a reasonable belief of fraud or substantial injury to take protective action, and only mandating action in severe situations, is more likely to protect the client-lawyer relationship and honor the rights of clients with diminished capacity.

Again, thank you for the opportunity to submit these comments. If you have any questions or would like additional information, please let us know.

Very truly yours,

*Susan M. Simone*

Susan M. Simone  
Director of Litigation and Advocacy

Leasha Bennett  
Caseworker