

## **Ethics Inquiry Question of the Month: December 2025 – Disclosing Confidential Information relating to Client’s Mental Health**

**Summary:** This month’s question asks whether lawyers are authorized to disclose confidential information when a client confides to their lawyer that they have thoughts of self-harm. Rule 1.6(c) requires that a lawyer reveal information relating to the representation of a client when the lawyer reasonably believes necessary to prevent imminent death or serious bodily harm. Comment [6] of Rule 1.6 states that “harm is considered reasonably certain if it is imminent, or if there exists a present and substantial threat that such harm will occur in the future unless the lawyer takes action to eliminate the threat.” In those circumstances, the lawyer is authorized to disclose confidential information to the extent reasonably necessary to protect the client, such as contacting the appropriate authority to request a wellness check of the client. Rule 1.14(c) also permits disclosure when protective action is required for a client with diminished capacity. If a client lacks sufficient ability to make adequately considered decisions regarding the representation, paragraph (b) of Rule 1.14 permits the lawyer to take protective measures deemed necessary. Accordingly, Rule 1.14(c) allows the lawyer to disclose information relating to the client’s mental health to the extent reasonably necessary to safeguard the client—for example, by consulting with family members or other trusted individuals.

**Question:** A lawyer represented a client in a civil matter. During a meeting to prepare for the client’s deposition, the client informed the lawyer that he had daily thoughts of harming himself. Is the lawyer authorized to disclose the client’s statements concerning his mental health under the Rules of Professional Conduct, and if so, to whom should the lawyer disclose that information?

### **Duty of Confidentiality:**

One of the fundamental principles of the attorney-client relationship is the lawyer’s duty of confidentiality. The duty of confidentiality is broad and applies not only to matters communicated in confidence by the client with the expectation that it will be kept secret, but to all information relating to the representation, whatever its source. *See* Rule 1.6(a). Naturally, this duty puts a lawyer in a difficult position when they learn that a client has thoughts of self harm. The lawyer must then determine what if any actions are necessary to protect the client.

#### **RULE 1.6: CONFIDENTIALITY OF INFORMATION**

(c) A lawyer shall reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary to prevent reasonably certain death or substantial bodily harm.

The lawyer must determine if they are mandated to disclose information related to the client, pursuant to the circumstances described in Rule 1.6(c). Comment [6] of Rule 1.6 states that death or substantial bodily harm is reasonably certain to occur “if it will be suffered imminently or if there is a present and substantial threat that a person will suffer such harm at a later date if the lawyer fails to take action necessary to eliminate the threat.”

The Restatement (Third) of the Law Governing Lawyers § 66 (2000) has recognized the following factors to consider in deciding whether the disclosure of confidential information is necessary to prevent reasonably certain death or substantial bodily harm:

1. The degree to which it appears likely that the threatened death or serious bodily harm will actually result in the absence of disclosure;
2. The irreversibility of the consequences once the act has taken place;
3. The lawyer's prior course of dealing with the client; and
4. The extent of adverse effect on the client that might result from disclosure contemplated by the lawyer.

Depending on the specificity of the client's statements and intended conduct regarding their mental health, the lawyer may be required to disclose information about the client to the relevant authorities to the extent reasonably necessary to request a wellness check of the client in order to prevent the client from harming themselves, pursuant to Rule 1.6(c). The lawyer should consider the full context of the client's statements regarding their mental health, including:

- Whether the client has indicated that they are thinking about harming themselves or stated their intention to do so;
- Whether the client has described a specific plan to harm themselves;
- Whether the client has access to the means by which they plan to harm themselves;
- Whether the client's plan to harm themselves is lethal or just self-injurious; and
- The client's history of a mental health condition or past suicidal ideation, if known to the lawyer.

See Suzanne Lever, *A Client Threatens Suicide—What Can You Do?*, 24 N.C. STATE BAR J. 24 (2019)

Even if the client's harm is not imminent enough to rise to the level of a mandated report under Rule 1.6(c), the lawyer may be permitted to disclose information related to the client in order to take protective measures, pursuant to Rule 1.14.

#### **Rule 1.14: Clients with Diminished Capacity:**

##### **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 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.

A client's capacity may be diminished by a mental health condition, such as major depressive disorder, and the lawyer should seek to maintain a normal client-lawyer relationship with the client to the extent possible. If the lawyer believes that the client is at risk of causing themselves substantial physical harm, then the lawyer is authorized by Rule 1.14(c) to reveal confidential information about the client to the extent reasonably necessary to take protective action under Rule 1.14(b).

A lawyer may consult a mental health professional to evaluate any threats of harm made by the client and determine what, if any, protective action is necessary. 988 Lifeline is a free resource that provides guidance on how to help someone you know who is struggling with their mental health. 988 operates a 24/7 call center to help you find resources available in your client's area.

For a discussion of the American Bar Association's proposed changes to Model Rule 1.14, please review the answer to October's Ethics Inquiry Question of the Month.

If you determine protective action is necessary, such action may include counseling your client against harming themselves, sharing resources for them to obtain mental health support, and consulting the client's family or other support system regarding the client's current mental state and need for mental health treatment.

### **Practice Tip**

One never knows when a client crisis is going to arise. Understanding a lawyer's duties under the Rules of Professional Conduct and having resources readily available in the event of a mental health emergency will prepare the lawyer to take prompt action to support their client. Lawyers should familiarize themselves with their obligations under Rule 1.6 and 1.14, and have mental health resources easily accessible to them to consult in the event of an emergency. Such resources may include fact sheets, articles, and contact information for the National Suicide Prevention Hotline (988), the Illinois Department of Public Health, the Illinois Department of Human Services, the National Institute of Mental Health, the Illinois Lawyer's Assistance Program, and other community resources.

### **Resources**

- IRPC 1.6
- IRPC 1.14
- Ethics Inquiry Question of the Month: October 2025 – Determining a Client's Decision Making Capacity: [https://iadc.org/Files/EthicsOct\\_2025.pdf](https://iadc.org/Files/EthicsOct_2025.pdf)
- National Suicide Prevention Hotline: <https://988lifeline.org/help-someone-else/>
- IDHS re. Suicide and Crisis Hotline: <https://www.dhs.state.il.us/page.aspx?item=145089>
- IDPH re. Suicide Prevention: <https://dph.illinois.gov/topics-services/prevention-wellness/suicide-prevention.html>
- NIMH re. suicide prevention: <https://www.nimh.nih.gov/health/topics/suicide-prevention#hts-findhelp>
- Illinois Lawyer's Assistance Program: <https://illinoislap.org/>