

Ethics and Mentally Challenged Clients

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Ethics and Mentally Challenged Clients

Applicable Rules of Professional Responsibility

Problems and Solutions in cases since last seminar

Role Play: 1st Meeting, Discovery/Plea Discussions,
Allocution Preparation

Applicable Rules of Professional Conduct

Rule 1.2(a)(1)

Rule 1.2(a)(3)

Rule 1.14

98 FEO 16

Applicable Rules of Professional Conduct

Rule 1.2(a)(1)

. . . In a criminal case, the lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial, and whether the client will testify.

Applicable Rules of Professional Conduct

Rule 1.2(a)(3)

Comment [4]: In a case where the client appears to be suffering from diminished capacity, the lawyer's duty to abide by the client's decisions is to be guided by reference to Rule 1.14.

Applicable Rules of Professional Conduct

Rule 1.2(a)(3)

In the representation of a client, a lawyer may exercise his or her professional judgment to waive or fail to assert a right or position of the client.

Example: Comment [1]: Attorney may consent to opponent's request for an extension of time.

Applicable Rules of Professional Conduct

Rule 1.14: Client with Diminished Capacity

(a) When a client's capacity to make adequately considered decisions in connection with 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.

Applicable Rules of Professional Conduct

Rule 1.14: Client with Diminished Capacity

(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 or guardian.

Applicable Rules of Professional Conduct

Rule 1.14: Client with Diminished Capacity

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

Applicable Rules of Professional Conduct

98 Formal Ethics Opinion (FEO) 16

Opinion rules that a lawyer may represent a person who is resisting an incompetency petition although the person may suffer from mental disability, provided the lawyer determines that resisting the incompetency petition is not frivolous

Other issues included conflict of interest, standing to appeal to superior court and DSS role vis-à-vis attorney for incompetent client

Case Studies

Role Play

Initial Meeting

Discussing Discovery, Motions & Plea Offers

Preparing for Hearings & Allocution

Questions ???