

# Disability Rights Rhode Island

- federally funded non-profit law office since 1977
- represents individuals with all kinds of physical, cognitive and mental disabilities
- The mission: to assist Rhode Islanders with differing abilities in their efforts to achieve full inclusion in society and to exercise their civil and human rights through the provision of legal advocacy.
- individuals with disabilities should be entitled to personal control of their destiny with the natural supports that come from human interdependence

# Rhode Island 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 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.

# Rule 1.14 (cont.)

- (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.

# Rule 1.14 (cont.)

- (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.

# Some Aspects of a Normal Client-lawyer Relationship Found in the RI Rules of Professional Conduct (1)

- Rule 1.1 Competence: A lawyer shall provide competent representation.
- Rule 1.2 Scope of Representation and Allocation of Authority Between Client and Lawyer: Subject to limited exceptions, a lawyer shall abide by a client's decisions concerning the objectives of representation...and shall consult with the client as to the means by which they are pursued.
- Rule 1.3 Diligence: A lawyer shall act with reasonable diligence and promptness in representing the client.

# Some Aspects of a Normal Client-lawyer Relationship Found in the RI Rules of Professional Conduct (2)

- Rule 1.4 Communication: A lawyer shall inform the client of matters which require informed consent; consult with the client regarding the means by which the client's objectives are to be accomplished; keep the client reasonably informed of the status of the matter; promptly comply with reasonable requests for information; consult with the client about any relevant limitation on the lawyers conduct when the lawyer knows that the client expects assistance not permitted by these rules or other law; explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation; take reasonable steps to inform the client of the nature of the attorney client relationship before representation is undertaken.

# A method for representing such clients:

- Remember the presumption of capacity
- If capacity is in question focus on "capacity to do what?" (capacity is issue specific and we do not usually deal with clients who are "globally incompetent")
- Self-reflection: Honor the client's standards, not standards and not values held by you or others.
- Transparent reasoning
- Try to explore all aspects of the case
- Seek consultation as well as guidance from professional organizations
- Balance conflicting duties

# Decision-making capacity

- Expert opinion regarding decision-making capacity may be necessary.
- The expert should evaluate an individual's capacity to: take in information, process information, and express a decision.
- An individual who has decision-making capacity retains the autonomy to make poor decisions. The assessment should be about the decision making process rather than the decision itself.

# Promoting decision-making autonomy

- Decision-making is a skill and can be taught.
- Decision-making capacity can change over time.
- Decision-making capacity is decision specific.

# Questions & Answers