Center for Public Representation

May 12, 2025

American Bar Association
Center for Professional Responsibility
c/o Standing Committee on Ethics and
Professional Responsibility
321 North Clark Street
Chicago, IL 60654

Via email to
modelruleamend@americanbar.org

Dear Committee Members:

The Center for Public Representation (CPR) is pleased to submit comments in support of the proposed amendments[1] to the American Bar Association's (ABA)'s Model Rule of Professional Conduct 1.14. The proposed amendments are pivotal to ensuring that people with disabilities can enjoy the full exercise of their legal rights to access legal counsel and, in turn, preserve their fundamental rights as legal actors.

Background

CPR is a nationally recognized legal advocacy center committed to protecting and advancing the rights of people with disabilities. CPR uses legal strategies, systemic reform initiatives, and policy advocacy to enforce civil rights, expand opportunities for inclusion and full community participation, and empower people with disabilities to exercise choice in all aspects of their lives. In its role in the constellation of organizations that advocate for and alongside people with disabilities, CPR is recognized as a leader in various issue areas, including advancing and restoring the legal capacity of people with disabilities and Supported Decision-Making (SDM). Across our work, CPR has represented and worked alongside tens of thousands of people with disabilities, with varying diagnoses, support needs, and communication styles, in both individual and systemic cases. As a result of this work, their stories, and our experience, we strongly believe that the time to reform Rule 1.14 is long overdue.

CPR Staff Attorney Megan Rusciano served alongside members from various ABA Sections and Commissions and representatives from the Maryland Judiciary on an informal ABA Working Group on Model Rule 1.14. The Center for Professional Responsibility convened the Working Group to evaluate potential rule reforms

[1] A.B.A. CTR. FOR PRO. RESP., *Memorandum to A.B.A. Entities, Cts, Bar Assoc., Individuals, and Entities re Seeking Comment on Possible Amendments to A.B.A. Model R. of Pro. Conduct 1.14*, https://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/possible-amendments-to-aba-mrpc-1-14.pdf (hereinafter "ABA Memorandum & Discussion Draft").

inspired by a similar effort in Maryland,[2] in which Attorney Rusciano also served as a subject matter expert. The Working Group ultimately submitted proposed amendments for consideration by the Center in May 2024.

As a result of our work on this issue and broader expertise, CPR is aware of the challenges the current Rule 1.14 has created for attorneys and people with disabilities and asks this Committee to issue a favorable report on the proposed amendments before it. We support the reasoning offered for the proposed amendments in the ABA's Memorandum and Discussion Draft and expound upon four critical issue areas that necessitate this reform. CPR believes that the proposed amendments are vital to ensuring people with disabilities have access to effective representation and can meaningfully exercise their legal rights. We have several other suggested revisions that we believe are compelling and necessary given our experience in representing people with disabilities as our exclusive area of practice. While we make some suggestions for further improvements, we strongly support the proposed amendments overall and urge the Committee to act swiftly in adopting them.

(1) Replacing the Term "Client with Diminished Capacity" with the Newly Defined Term "Client with Decision-Making Limitations" Will Improve Access to Legal Representation for People with Disabilities.

People with disabilities face profound prejudice and bias in exercising their legal capacity. In a 2018 report, the National Council on Disability found that "people with disabilities are widely (and erroneously) seen as less capable of making autonomous decisions than other adults regardless of the actual impact of their disability on their cognitive or decision-making abilities."[3] Prejudice towards people with disabilities "provokes stereotypes of incompetence and dependency."[4] The U.S. Department of Justice notes that access to the courts is compounded for people with disabilities by "the stigma that [they] face as they interact with justice system actors who question their credibility, their ability to make decisions in their legal matters, and whether they deserve redress for harms they have experienced." [5] Together, this prejudice and bias impacts the ability of people with disabilities to access legal counsel and influences how attorneys view and interact with them. The proposed amendments provide clearer direction to attorneys about how to support clients with disabilities and encourage them to make decisions about representation based on the client's abilities and limitations, instead of bias, stereotypes, and assumptions.

Addressing this bias begins with the words used to describe clients with disabilities. As the ABA Memorandum and Discussion Draft indicates,[6] the term client with "diminished capacity" is outdated. It implies that there is something inherently and immutably "lesser" about the client and their capacity, when, in reality, capacity can

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[2] *See* MD. ATT'Y RULES FOR PRO CONDUCT, R. 19-301.14 (2023). *See also* Nisa Subasinghe, *Md. Rule 19-401.14 (Client with Diminished Capacity) Amendments and Rationale*, https://www.guardianship.org/wp-content/uploads/B6-3_AssessingandMaximizing_MDRule19-301.14.pdf (last visited May 6, 2025) (hereinafter "MD Rule 1.14 Amendments and Rationale").

[3] NAT'L COUNCIL ON DISABILITY, *Beyond Guardianship: Toward Alternatives That Promote Greater Self-Determination*, at 19 (2018), https://www.ncd.gov/assets/uploads/docs/ncd-guardianship-report-accessible.pdf.

[4] MICHELLE R. NARIO-REDMOND, ABLEISM: THE CAUSES & CONSEQUENCES OF DISABILITY PREJUDICE, 3 (2020).

[5] DEPARTMENT OF JUSTICE: *Advancing Equal Access to Justice for Americans with Disabilities: Moving Towards Closing the Justice Gap on the 33rd Anniversary of the ADA* (2023), https://www.justice.gov/archives/atj/blog/advancing-equal-access-justice-americans-disabilities-moving-towards-closing-justice-gap (last visited May 9, 2025). *See generally*, A.B.A. COMM'N ON DISABILITY RTS, *Implicit Biases & People with Disabilities,* https://www.americanbar.org/groups/diversity/disabilityrights/resources/implicit_bias/ (last visited May 9, 2025) (finding pervasive bias exists against people with disabilities).

[6] ABA Memorandum and Discussion Draft, *supra* note 1 at 4-5.

be situational and vary based on a myriad of factors, including access to supports and accommodations.[7] The terminology also fails to support the spirit of the social model of disability.[8] It emphasizes the client as a problem, instead of recognizing the role that their environment, access to supports, and broader societal structures play in impacting the manifestation of their disability. Put simply, words matter, and the term "diminished capacity" must be replaced. The term "client with decision-making limitations" is a marked improvement, and its subsequent definition brings Rule 1.14 in line with common parlance now used within the disability community and the Uniform Law Commission, as indicated in the language of the Uniform Guardianship, Conservatorship, and Other Protective Arrangements Act (UGCOPAA).[9]

Second, as the ABA Memorandum and Discussion Draft[10] and Maryland's rationale for reform[11] highlights, the current Rule 1.14 fails to define "diminished capacity" and creates the conditions for attorneys to default to reliance on their bias, stereotypes, or diagnosis alone to determine to whom the Rule applies. The lack of a clear definition can have grave consequences, given the attorney's authority to take protective actions for any client who meets this definition, potentially against the client's wishes.[12] Indeed, people with disabilities, especially cognitive disabilities, are regularly excluded from decision-making merely because of their diagnoses, even when they have decisional capacity.[13] The proposed definition of "decision-making limitations" helps to address this concern. The definition is narrow[14] in its scope, indicating that a client only has decision-making limitations if that they meet two conditions: (1) they have "substantial difficulty receiving and understanding information, evaluating information, or making or communicating decisions" and (2) they

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[7] For a discussion of the role supports and accommodations play in alleviating or eliminating alleged decision-making limitations, see *infra* Section 2.

[8] YEE, ET. AL, COMPOUNDED DISPARITIES: HEALTH EQUITY AT THE INTERSECTION OF DISABILITY, RACE, AND ETHNICITY at 4-5 (2018), https://www.dredf.org/wp-content/uploads/2018/01/Compounded-Disparities-Intersection-of-Disabilities-Race-and-Ethnicity.pdf (defining the medical model of disability to view "disability as a problem of the person, directly caused by disease, trauma, or other health condition" whereas the social model of disability views disability as mainly a "socially created problem…Disability is not an attribute of an individual but rather a complex collection of conditions, many of which are created by the social environment").

[9] *See, e.g.*, NAT'L CONF OF COMM'RS ON UNIF. STATE, UNIFORM GUARDIANSHIP, CONSERVATORSHIP, AND OTHER PROTECTIVE ARRANGEMENTS ACT (2017), http://tinyurl.com/azfnxrsj (last visited May 5, 2025) (hereafter "UGCOPAA") (Section 301(b) states that, in appointing a guardian, the court shall only grant those "powers necessitated by the demonstrated needs and limitations of the respondent," and Section 306(b) states that, if the court orders an evaluation to determine the respondents needs and abilities, then the evaluation shall include "(1) a description of the nature, type, and extent of the respondent's cognitive and functional abilities and limitations") (emphasis added).

[10] ABA Memorandum and Discussion Draft, *supra* note 1 at 4-5.

[11] MD Rule 1.14 Amendments and Rationale, *supra* note 2.

[12] For a discussion of our existing concerns about the protective action provision, see *infra* Section 3.

[13] *See* Megan S. Wright, *Dementia, Autonomy, and Supported Healthcare Decision-Making*, 79 MD. L. REV. 257 at 273 (2020), https://digitalcommons.law.umaryland.edu/mlr/vol79/iss2/1/ (finding that "research has shown that persons with dementia—even in the moderate to severe stages of dementia—can 'reliably report on their care values and preferences, well-being, and quality of life.' However, research on [Alzheimer's dementia], the most common type of dementia, has found that the capabilities of persons with dementia are not always recognized or accommodated"). *See also* NAT'L COUNCIL ON DISABILITY, *Turning Rights Into Reality: How Guardianship and Alternatives Impact the Autonomy of People with Intellectual and Developmental Disabilities*, at 25 (2019), https://tinyurl.com/jk574sd4 (finding that "[g]uardianship is often implemented because service providers, family, judges, and others assume people with ID/DD cannot make decisions for themselves, despite research to the contrary") (citations omitted).

[14] CPR supports a narrow definition of the term, which would, in turn, narrow when protective action can be undertaken. See *infra* Section 3.

encounter this substantial difficulty even "with appropriate supports or accommodations."[15] The definition provides an attorney at least two cues to look beyond a diagnosis or initial impression to determine whether the client actually is unable to provide sufficient direction. The definition also recognizes the modern understanding that capacity can be situational in nature and is not all or nothing.[16] Together, these elements help an attorney understand the need to look beyond diagnosis to the client's functional abilities and supports available to them when determining the nature and scope of the client's limitations.

To further underscore this point, we propose that the drafting team consider a small change to the proposed Comment 3. As drafted, the second to last sentence of Comment 3 reads: "For example, some adults with substantial decision-making limitations including those due to intellectual, developmental or cognitive disabilities, mental health conditions, or substance abuse disorder can make some decisions." While it is our understanding that the sentence only refers to people with those disabilities who meet the narrow definition of having "substantial decision-making limitations," we are concerned that some attorneys may read that sentence to imply that any person with these kinds of disabilities is only capable of making "some" decisions for themselves, which is untrue. CPR has represented and supported people with intellectual disabilities, mental health conditions, and other conditions, who are able to make all their own decisions with support.[17] As such, we would propose the drafting committee either delete the second use of the word "some" or replace it with the word "legal."

Regardless of whether this recommended change is made, CPR strongly supports the proposed amendments to use and define the term "client with decision-making limitations," which will have a significant impact on addressing the bias people with disabilities face in accessing legal counsel and exercising their legal capacity.

(2) Instructing Attorneys to Recognize Their Obligation to Offer Clients with Disabilities Supports and Accommodations, including Supported Decision-Making, Will Make Legal Representation More Accessible to People with Disabilities.

While the Americans with Disabilities (ADA) applies to law offices as places of public accommodation,[18] many attorneys still fail to recognize their obligations to make reasonable accommodations to their services and policies and to ensure effective communication to people with disabilities.[19] The failure to provide effective

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[15] ABA Memorandum and Discussion Draft, *supra* note 1 at Appendix A at 1.

[16] A.B.A COMM'N ON LAW & AGING, *Defense Against Guardianship: A Lawyer's Guide to Representing Individuals in Guardianship Cases*, ed. Trisha Y. Bullock, at 10 (2023). *See also* Charlie Sabatino & Erica Wood, *The Ten Commandments of Mental "Capacity" and the Law*, 40 BIFOCAL 1 (2018), https://www.americanbar.org/groups/law_aging/publications/bifocal/vol-40/issue-1-september-october-2018/10-commandments/ (noting that capacity is "task specific and must be examined with a focus on the action or function being questioned" and that "each human being presents a unique and changing constellation of abilities and limitations, operating within cultural, social, biological, and environmental influences. Assessing capacity requires grasping the interaction of a much larger set of factors than is common appreciated.").

[17] CENTER FOR PUBLIC REPRESENTATION, *Supported Decision-Making Pilots*, https://supporteddecisions.org/supported-decision-making-pilots/initial-supported-decision-making-pilot-cpr-and-nonotuck/ (last visited May 5, 2025) (describing CPR's launching of multiple Supported Decision-Making pilots in Massachusetts and Georgia).

[18] 42 U.S.C. § 12181(7)(f) ("The following private entities are considered public accommodations for purposes of this subchapters, if the operations of such entities affect commerce…office of a lawyer). *See also* 28 C.F.R. § 36.104.

[19] *See generally*, U.S. Dep't of Just Civ. Rights Division, *Settlement Agreement Under the Americans with Disabilities Act Between the United States of American and Julie B. Griffiths Law Office* (2022), https://www.justice.gov/crt/case-document/file/1579626/dl?inline=.

communication or to make reasonable accommodations can result in attorneys incorrectly concluding that a client with disabilities has decision-making limitations, when in fact the client merely needs to be appropriately accommodated. Most critically, this failure to provide needed supports deprives the person from exercising informed consent about their own life.

Consider a person with cerebral palsy who relies on augmentative and alternative communication (AAC), like speech-to-text generating technology on their iPad, to communicate. An attorney who fails to allow this person access to their iPad during their representation may conclude that the person has "decision-making limitations." Yet, if the person had been accommodated to access their iPad, they could have clearly communicated and directed representation just as effectively as a person without a disability. Absent clear guidance to attorneys that requires them to evaluate whether there are accommodations that could ameliorate or eliminate alleged decision-making limitations, attorneys may well fail to do so. In accordance with federal law, the provision of supports and accommodations is critical to ensuring that people with disabilities can access counsel and exercise their legal rights. It is also consistent with national standards like those set in UGCOPAA.[20]

Critically, the proposed amendments also expressly name Supported Decision-Making (SDM) as a support and accommodation that can alleviate or eliminate alleged decision-making limitations. SDM is generally defined as "assistance from one or more persons of an individual's choosing in understanding the nature and consequences of potential personal and financial decisions, which enables the individual to make the decisions, and in communicating a decision once made if consistent with the individuals wishes."[21] At least 39 states and Washington, D.C., have passed legislation acknowledging SDM in various ways.[22] Even in States without SDM statutes, SDM has been recognized as an option for older adults and people with disabilities[23] and a reasonable accommodation or modification under federal law. [24] Across the country, SDM has been used as a mechanism to restore a person's legal capacity.[25] SDM principles are also a tool that can assist with the informed choice process and enable people with disabilities, including those who are older adults, to make

[20] UGCOPAA at § 301 (stating that a court may appoint a guardian for an adult if the "respondent lacks the ability to meet essential requirements for physical health, safety, or self-care because the respondent is unable to receive and evaluate information or make or communicate decisions, even with appropriate supportive services, technological assistance, or supported decision making").
[21] *Id*. at §102.
[22] CENTER FOR PUBLIC REPRESENTATION, "U.S. Supported Decision- Making Laws," https://supporteddecisions.org/resources-on-sdm/state-supported-decision-making-laws-and-court-decisions/ (last visited May 5, 2025).
[23] *See* Morgan K. Whitlatch & Rebekah Diller, *Supported Decision-Making: Potential and Challenges for Older Persons*, 72 SYRACUSE L. REV. 165, 174-175, n. 33-35 (2022), https://lawreview.syr.edu/wp-content/uploads/2022/09/165-223-Whitlatch-2.pdf (stating that, as of 2022, courts in at least 13 States and D.C. have terminated, or refused to impose, a guardianship because of SDM, and many without a change first being made to state law); *see also* 45 C.F.R. §1324.303(a)(5)(i) (recognizing SDM as a means of preserving an older person's rights and autonomy in lieu of guardianship).
[24] *See* U.S. Department of Health & Human Services (HHS), *Final Rule: Discrimination on the Basis of Disability in Health and Human Service Programs or Activities*, 89 Fed. Reg. 40,066, at 40,082, 40,089-090, 40,097, 40,098-099, and 40, 0110 (effective July 8, 2024), https://www.federalregister.gov/documents/2024/05/09/2024-09237/nondiscrimination-on-the-basis-of-disability-in-programs-or-activities-receiving-federal-financial.
[25] *See* Whitlatch & Diller, *supra* note 23. *See also In re Guardianship of Dameris L.*, 38 Misc 3d. 570 (N.Y.S. 2d. 2012); *Ross et. al. v. Hatch*, No. CWF120000426P-03, slip op (Va. Cir. 2013).

decisions on critical issues like deinstitutionalization.[26] In all, SDM is a proven mechanism to eliminate alleged or perceived decision-making limitations. As such, it is a critical support and accommodation that attorneys must consider while serving their clients and prior to taking any protective action.

The proposed Rule 1.14 amendments go on to encourage attorneys to grapple with important, but often overlooked, accommodations, like "conducting client meetings in a familiar setting, and using plain language or otherwise modifying the lawyer's communication and counseling techniques for the client."[27] Too often, discussion of accommodations centers on physical accessibility, access to basic assistive technology, or access to sign language interpreters. While these accommodations are critical, many of them will not be sufficient to afford people with cognitive disabilities access to effective communication. By highlighting essential, yet less frequently used, supports and accommodations, the proposed Rule 1.14 amendments will improve the ability of people with cognitive disabilities to access representation and exercise their legal rights.

(3) Directing Attorneys Away from Taking Restrictive Protective Actions, Like Pursing Guardianship, and Towards Less Restrictive Options Helps Preserve the Rights of People with Disabilities.

CPR has ongoing concerns about Rule 1.14's protective action provision,[28] but the proposed amendments provide critical reforms to the Rule that limit and reorient an attorney to less restrictive interventions.

In determining whether protective action could be appropriate, the proposed amendments clarify that such a determination should not be made exclusively on a medical diagnosis and, as such, eliminates reference to the attorney's reliance on a diagnostician to make such a determination.[29] This change goes far to address CPR's concerns, highlighted in Sections 1 and 2 of these comments, that attorneys turn too quickly to a diagnosis to determine whether a client has decision-making limitations and whether the attorney ethically can or should take protective action. The proposed amendments encourage the attorney, when appropriate, to seek guidance

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[26] Steven J. Schwartz, Robert D. Fleischner, Alexander Z. Schwartz, & Emily M. Stephens, *Realizing the Promise of Olmstead: Ensuring the Informed Choice of Institutionalized Individuals with Disabilities to Receive Services in the Most Integrated Setting* 40 J. LEGAL MED. 1 63 (2020), https://www.centerforpublicrep.org/wp-content/uploads/Realizing-the-Promise-of-Olmstead.pdf (noting that SDM can be used "in institutions to assist the person with a disability in deciding whether to intentionally and knowingly forego the right to live in the community"). *See also* U.S. DEP'T OF JUST. CIV. RTS. DIV., *Investigation of Missouri's Use of Nursing Facilities and Guardianship for Adults with Mental Health Disabilities*, at 33 (2024) https://www.justice.gov/d9/2024-06/2024_missouri_ada_findings_report.pdf (finding that SDM could serve as an alternative to guardianship for many adults with mental health disabilities in Missouri and that SDM is a mechanism to making decisions about housing, employment, and other matters that are critical to deinstitutionalization).

[27] ABA Memorandum and Discussion Draft, *supra* note 1 at Appendix A at 1.

[28] Even under the proposed amendments, Rule 1.14's protective action provision permits attorneys to disclose confidential information against the client's wishes if the client with decision-making limitations is merely at "risk" of "substantial physical, financial or other harm." MODEL RULES OF PROF'L CONDUCT R. 1.14(c) (2020). Rule 1.6, on the other hand, places more stringent restrictions on when an attorney ethically can disclose confidential information for the typical client. Rule 1.6 only permits disclosure to "prevent reasonably certain death or substantial bodily harm," as well as to prevent a client from committing a crime or fraud and in other limited circumstances. MODEL RULES OF PROF'L CONDUCT R. 1.6 (2020). By broadening situations when these disclosures can occur for a client with perceived decision-making limitations, Rule 1.14 departs from the standard Rule 1.6 requirements and creates a paternalistic double standard that allows attorneys to make otherwise impermissible disclosures based of their perceptions and potential bias against people with disabilities.

[29] ABA Memorandum and Discussion Draft, *supra* note 1 Appendix B at 4.

from a healthcare professional with relevant individualized expertise or knowledge of the client's abilities or limitations.[30]

The amendments also encourage the attorney to consider what the client's abilities and limitations are and whether any limitations could be alleviated using accommodations and supports.[31] The drafting team should consider adopting the sentence utilized in Maryland's reform efforts on this issue to further underscore this point. Namely, we recommend adding a sentence to the beginning of Comment 10 that reads as follows: "In determining the extent of the client's decision-making limitations, the lawyer should review what existing supports and services will enhance a client's decision-making, what factors impede such decision-making, and whether additional supports or accommodations are available or could be made available."[32] The comment can then proceed as currently written.

This change to Comment 10 would underscore the attorney's obligation to first look at what supports and accommodations may alleviate and eliminate the alleged decision-making limitations, which is a logical first step in reasonably analyzing if, and when, protective action is needed. As Maryland's justification provided, "[t]he assessment of capacities should also include a screening for and the affording of appropriate supports or accommodations. As the [American Bar Association's and American Psychological Association's Assessment of Older Adults with Diminished Capacity: A Handbook for Lawyers][33] aptly notes: "Too often, [attorneys] focus on what [they] perceive as the individual's weaknesses rather than focusing on how to support him or her enough to maintain independence. Client participation will engender client confidence in the lawyer/client relationship and the legal process."[34] Given CPR's concerns regarding attorneys' failures to offer reasonable accommodations to render their services accessible to people with disabilities (see Section 2 of our comments), we believe this change is critical to ensure that attorneys do not inappropriately determine that protective action is needed. Instead of addressing this point later in the Comment, it should be made clear at the onset.

CPR agrees with the reasoning provided in the ABA's Memorandum and Discussion Draft[35] for amending Comment 12 of Rule 1.14 to emphasize that, when an attorney represents a client who is the subject of a guardianship proceeding, they should advocate for their client's wishes and not use the protective action provision as a mechanism to advocate for the imposition of guardianship against the client's direction. We endorse the proposed amendments, which make clear that "lawyer may not advocate for such an appointment or restriction if the client opposes it" and, as such, ensure that an attorney does not run afoul of a client's fundamental due process and civil rights.[36]

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[30] *Id*.
[31] *Id*.
[32] MD Rule 1.14 Amendments and Rationale, *supra* note 2.
[33] A.B.A. COMM'N ON LAW & AGING & AM. PSYCH ASS'N, *Assessment of Older Adults with Diminished Capacity: A Handbook for Lawyers 2nd Edition*, at 14 (2021).
[34] MD Rule 1.14 Amendments and Rationale, *supra* note 2.
[35] ABA Memorandum and Discussion Draft, *supra* note 1 at 2.
[36] *Id.* at Appendix A at 4.

(4) Clarifying That Attorneys Can Ethically Represent a Client Who has an Appointed Legal Representative Protects Fundamental Access to Due Process and the Legal Personhood of People with Disabilities.

For the reasons identified in the ABA Memorandum and Discussion Draft,[37] CPR applauds the proposed amendments to Rule 1.14 that would clarify that, even if a client has an appointed legal representative, the attorney can still represent that client and advocate for their wishes in proceedings where the client retains the right to undertake a legal action, such as to challenge their own guardianship. As described in the ABA Memorandum and Discussion Draft,[38] the existing rule created confusion for many attorneys, by on the one hand stating that "[e]ven if the [client] has a legal representative, the lawyer should as far as possible accord the represented person the status of client" (see Rule 1.14, Comment 2), but then stating that "[i]f a legal representative has already been appointed for the client, the lawyer should ordinarily look to the representative" (see Rule 1.14, Comment 3).[39]

CPR has witnessed this issue arise in a myriad of scenarios, including in cases involving the efforts of a person subject to guardianship to restore their rights or modify the terms of their guardianship, as well as in cases where an agent acting under a power of attorney for a person with a disability has advocated for an action that is against that person's wishes. CPR provides technical assistance to Protection and Advocacy Agencies (P&As) through the National Disability Rights Network and regularly fields queries from P&A attorneys who want to represent the person with a disability in these proceedings, but who struggle with the lack of clarity provided in the existing rule.[40] Legal researchers have identified that attorneys fear sanctions and liability if they undertake these cases and that the current Rule's lack of clarity chills attorneys from providing people with disabilities the critical representation they seek.[41] Depriving a client with a disability access to legal representation to challenge the authority of an appointed legal representative strips that person of their fundamental due process rights and deprives them of their legal personhood. Given the drastic curtailment of liberty that can occur at the hands of an appointed legal representative, access to zealous counsel is fundamental and critical. The proposed reform is not only in step with fundamental due process, but also national norms and standards on this issue.[42] CPR commends the proposed amendment's clarification of the Rule.

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[37] *Id.* at 3-4.
[38] *Id.*
[39] MODEL RULES OF PROF'L CONDUCT R. 1.14 (2020).
[40] *See* Center for Public Representation et. al., Amici Curiae Brief, *In the Matter of Jennifer Kinard v Summit*, No. WD 86831 (Mo. Ct. App. 2024) (filed May 10, 2024), https://supported decisions.org/resources/amici-brief-defending-the-right-to-zealous-counsel-for-people-subject-to-guardianship/ (arguing that the Missouri's Protection & Advocacy agency could be selected by a client subject to guardianship to represent her in a case to modify her guardianship, given her federal due process rights and, agency and contract law).
[41] Erica Wood, Pamela Teaster, & Jenica Cassidy, A.B.A COMM'N ON LAW & AGING AND VA. TECH. CTR. FOR GERONTOLOGY, *Restoration of Rights in Adult Guardianship: Research & Recommendations*, 12-14 (2017), https://supporteddecisions.org/resources/restoration-of-rights-in-adult-guardianship-research-recommendations/. *See also* Jenica Cassidy, *Restoration of Rights in the Termination of Adult Guardianship*, 23 ELDER L.J. 83, 101-102 (2015), https://publish.illinois.edu/elderlawjournal/files/2015/08/Cassidy.pdf.
[42] See UGCOPAA at § 319(Ag) (stating that "an adult subject to guardianship who seeks to terminate or modify the terms of the guardianship has the right to choose an attorney to represent the adult in this matter. [If the adult is not represented by an attorney, the court shall appoint an attorney under the same conditions as in Section 305.]). *See also* SUMMIT DELEGATES, *Fourth National Guardianship Summit: Maximizing Autonomy and Ensuring Accountability - Recommendations Adopted by Summit Delegates*, 72 SYRACUSE L. REV. 29, 31-32 (2022), https://lawreview.syr.edu/wp-content/uploads/2022/09/29-40-Preface-2 (recommending that "[i]n all guardianship proceedings, including termination

Conclusion

CPR supports the proposed amendments and urges a favorable report by this Committee. We believe these proposed amendments go far to ensure that people with disabilities can access legal representation and to curtail the bias and prejudice that people with disabilities commonly face when they try to access legal representation. These changes are crucial to ensuring that people with disabilities can meaningfully exercise their legal rights.

If you have any questions regarding these comments, please do not hesitate to contact Megan Rusciano at the email address provided below. Thank you for your consideration.

Sincerely,

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or modification, state law should require the appointment of a qualified and compensated lawyer to represent the adult's expressed wishes, paid a reasonable fee through the use of public funds if the adult is unable to pay, and appointed by the court should the adult not have a lawyer of their own choosing").