

Inner Temple Presentation Script

(Revised as of 1/12/13)

SCENE 1

Narrator: [Joy Bartmon] Inexperienced wills, trusts, and estate planning attorney, Attorney Chris Greenhorn, gets a once in a lifetime opportunity, the chance to draft a will for billionaire J. Howard MaxiMultiMillion IV. Attorney Greenhorn meets with Mr. MaxiMultiMillion and his son. The son wants to be the sole beneficiary of Mr. MaxiMultiMillion's estate and wants to exclude MaxiMultiMillion's wife, Anna Nicole Jones, from the will. While watching this scene consider the following: Who is the attorney's client?

Attorney Greenhorn: [Christopher Keller] *(Chris Greenhorn is asleep with pillow, blanket, and feet up on his desk, when the phone rings. Mr. Greenhorn is startled by the call and scrambles to answer the phone in a high pitched voice mimicking that of a female.)*

Greenhorn Law Emporium -- Home of the "whether or not there's a will, there's probably a way guarantee" How may I assist you?

MaxiMultiMillion Junior: [Ed Ricci] *(From Stage Right on phone)*

Yes, ma'am. This is J. Howard MaxiMultiMillion IV and I need to speak with the senior attorney chop - chop.

Attorney Greenhorn: [Christopher Keller] *(in high pitched voice)* Let me see whether Mr. Greenhorn is available, one moment please. *(With hand over phone receiver in normal voice speaking to the audience)* My first call!!!! I can't believe this is finally happening to me!!!! *(Take hand off receiver and speaking in an exaggerated professional tone.)* Attorney Christopher Greenhorn, how may I help you?

MaxiMultiMillion Junior: [Ed Ricci] Mr. Greenhorn, thank you for taking my call. My name is J. Howard MaxiMultiMillion IV and I have a situation that requires your attention. I saw your advertisement and am interested in the "whether or not there's a will, there's probably a way guarantee."

Attorney Greenhorn: [Christopher Keller] Yes, of course.

MaxiMultiMillion Junior: [Ed Ricci] Well, I have finally convinced my father J. Howard MaxiMultiMillion IV to leave his vast empire of wealth to me instead of flushing it down the toilet and leaving it all to his gold digging trophy wife, Anna Nicole Jones.

Attorney Greenhorn: [Christopher Keller] Ok. Well, how can I assist you?

MaxiMultiMillion Junior: [Ed Ricci] We need to get in to see you right away, and put pen to paper before he, or more importantly she, changes his mind.

Attorney Greenhorn: [Christopher Keller] Alright, well let me check my availability; give me just a few moments. (*Cleaning up pillow, blanket, scrambling around to prepare office for guests.*) You're in luck Mr. MaxiMultiMillion, as it turns out I had a cancellation this afternoon at 3:00 so come on over to my office and we'll get started.

MaxiMultiMillion Senior: [Ed Ricci] Splendid! We'll see you at 3:00.

Attorney Greenhorn: [Christopher Keller] (*speaking to audience*) For a client like this, some people wait a lifetime, for a client like this some people search forever. Oh, I can't believe it's happening to me, some people wait a lifetime for a client like this. (*Looking at watch*) I better use this next hour to brush up on how to draft my first will.

QUESTION 1

Should young Attorney Greenhorn decline to represent MaxiMultiMillion Senior based on his inexperience in the area of wills?

- A. Yes
- B. No
- C. Maybe

Answer: C

Reasoning: Rule 4-1.1 requires that "a lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation." The comments to the rule further state "In determining whether a lawyer employs the requisite knowledge and skill in a particular matter, relevant factors include the relative complexity and specialized nature of the matter, the lawyer's general experience, the lawyer's training and experience in the field in question, the preparation and study the lawyer is able to give the matter, and whether it is feasible to refer the matter to, or associate or consult with, a lawyer of established competence in the field in question. In many instances the required proficiency is that of a general practitioner. Expertise in a particular field of law may be required in some circumstances."

In this scenario, Attorney Greenhorn should consider whether or not he has the required level of expertise to competently draft a complex will and whether or not Attorney Greenhorn will have the ability to consult with more experienced counsel.

(Attorney Greenhorn is escorting MaxiMultiMillion Senior and Junior into his office.)

Attorney Greenhorn: [Christopher Keller] Gentlemen welcome to Greenhorn's Law Emporium. Please make yourselves comfortable. Mr. MaxiMultiMillion it is truly an honor, sir. And let me begin by saying sir, you look phenomenal.

MaxiMultiMillion Senior: [Theodore Deckert] Yeah, not too shabby for 92. But just between us, my wife Anna Nicole Jones put me on to a great plastic surgeon who managed to take a few years off.

Attorney Greenhorn: [Christopher Keller] Let me guess. She sent you to Dr. Rak right?

MaxiMultiMillion Senior: [Theodore Deckert] How did you ever guess? You have obviously been in to see him too because Greenhorn, you look pretty wet behind the ears.

Attorney Greenhorn: [Christopher Keller] Hey, your son might be able to benefit from an appointment with Dr. Rak.

MaxiMultiMillion Junior: [Ed Ricci] Hey, speaking of me benefiting. Why don't we quit the chit-chat and get down to business?

MaxiMultiMillion Senior: [Theodore Deckert] We've already been discussing some sensitive topics. This conversation is protected by the attorney client privilege right?

QUESTION 2

Who is the client?

- A. J. Howard MaxiMultiMillion Senior
- B. J. Howard MaxiMultiMillion Junior
- C. Both Senior and Junior

Answer: A

Reasoning: The attorney-client relationship is between Christopher Greenhorn and J. Howard MaxiMultiMillion Senior. First, the attorney should address competence, given MaxiMultiMillion's age (92 years old). Rule 4-1.14(a) Maintenance of Normal Relationship - When a client's ability to make adequately considered decisions in connection with the representation is impaired, whether because of minority, mental disability, or for some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client. Under the comments sections, the normal client-lawyer relationship is based on the assumption that the client, when properly advised and assisted, is capable of making decisions about important matters. When the client is a minor or suffers from a mental disorder or disability, however, maintaining the ordinary client-lawyer relationship may not be possible in all respects. In particular, an incapacitated person may have no power to make legally binding decisions.

The attorney should also address concerns of undue influence based on MaxiMultiMillion's son contacting the attorney. Then, the attorney must be

careful to address conflicts of interest and confidentiality concerns among the different individuals within larger family groups. Some situations will present conflicts of interest and require the clients' informed consent. A lawyer is ethically obligated to maintain in confidence all information relating to the representation of a client. Rule 4-1.6. A lawyer, however, also has a duty to communicate to a client information that is relevant to the representation. Rule 4-1.4. These duties of communication and confidentiality harmoniously coexist in most situations. The lawyer-client relationship is one of trust and confidence. *Gerlach v. Donnelly*, 98 So.2d 493 (Fla. 1957). Rule 4-1.6 recognizes a very broad duty of confidentiality on the part of a lawyer. Save for a few narrow exceptions set forth in the rule, a lawyer is prohibited from voluntarily revealing any "information relating to the representation" of a client without the client's consent. Rule 4-1.6. The duty of confidentiality "applies not merely to matters communicated in confidence by the client but also to all information relating to the representation, whatever its source" and "continues after the client-lawyer relationship has terminated." Comment, Rule 4-1.6.

(Attorney Greenhorn is taking copious notes and is immersed in his legal pad. He does not notice that MaxiMultiMillion Junior is holding his hands over his father's ear when he delivers the next lines.)

MaxiMultiMillion Junior: [Ed Ricci] Look Greenhorn, here's the bottom line. I didn't take care of my dad for all of these years, while this strumpet was waltzing – no stumbling all around town, so that she can suck the millions out of the MaxiMultiMillion estate.

Attorney Greenhorn: [Christopher Keller] (*Taking copious notes*) I see.

MaxiMultiMillion Junior: [Ed Ricci] Right dad? Tell Mr. Greenhorn how good a son I've been.

MaxiMultiMillion Senior: [Theodore Deckert] With the exception of those 25 years in the federal penitentiary for that felony conviction, he's all a father could wish for.

Attorney Greenhorn: [Christopher Keller] Ok, well let me fill in the blanks of this will template and Little MaxiMultiMillion will be set for life – there you go, that should do it. Let's get to a notary to execute this and you'll be all set.

MaxiMultiMillion Junior: [Ed Ricci] Thank you, Mr. Greenhorn. You're a real pro.

Narrator: [Holly Galinskie] Six months later, Anna Nicole Jones and J. Howard MaxiMultiMillion IV are lounging around their modest Texas mansion. Since we've last seen MaxiMultiMillion Senior, his health and his mental capacity have deteriorated

significantly. It is clear that he doesn't have much time left, but he does have lots of money, so there is no shortage would be beneficiaries.

(Scene changes to Anna and MaxiMultiMillion Senior at mansion)

MaxiMultiMillion Senior: [Theodore Deckert] Anna, my dear, can you please get me my... *(Voice fades)*

Anna: [Ashley Ortegus Wilson] What do you need honey bunny?

MaxiMultiMillion Senior: [Theodore Deckert]My... *(Voice fades and MaxiMultiMillion Senior passes out in a chair)*

Anna: [Ashley Ortegus Wilson] Howard, boo boo, wake up. *(Anna shakes MaxiMultiMillion Senior lightly - he is not moving)* Oh my-- looks like my sugar daddy needs help. I know who to call. *(Anna picks up cell phone and begins to dial)* 9-1-..... *(She pauses)* Oh no silly me. My sweet husband would want me to call his lawyer friend, Attorney Greenhorn, and see how he can help. *(Anna dials Attorney Greenhorn)* Attorney Greenhorn, my Howard is requesting an immediate appointment.

(Scene flashes over to lawyers office sitting at opposite table)

Attorney Greenhorn: [Christopher Keller] Why don't you guys come in right away.

Anna: [Ashley Ortegus Wilson] See you soon.

(Anna pushes MaxiMultiMillion Senior's chair into law office - located at the other table)

Attorney Greenhorn: [Christopher Keller] So what brings you in today? And so soon after I last saw you – Although, I will say Mr. MaxiMultiMillion, you look like you have aged a little.

Anna: [Ashley Ortegus Wilson] Well, when I was making my usual breakfast, ya know, eggs, Vicodin, and vodka and jamming to my man Kanye and that little song he sings Gold digger, little Howard came running up to me saying how he ain't never loved anyone as much as me and when that sad day comes when he has to leave his princess, he wants me to have every dime he has.

Attorney Greenhorn: [Christopher Keller] Interesting... Well, I would like to talk to Mr. MaxiMultiMillion alone before I make any adjustments to his prior executed will.

Anna: [Ashley Ortegus Wilson] Oh no Attorney Greenhorn man, that is not a good idea. Me and my MaxiMultiMillion man - we is just like how my hair is with bleach - inseparable.

Attorney Greenhorn: [Christopher Keller] Okay. Well, let me at least ask Mr. MaxiMultiMillion some questions about his change of heart. *(MaxiMultiMillion Dad*

begins to wake up a bit and becomes slightly more responsive) Mr. MaxiMultiMillion - how are you feeling today sir?

MaxiMultiMillion Senior: [Theodore Deckert] Well, I am feeling a little beat up from the fall.

Attorney Greenhorn: [Christopher Keller] You had a fall?

Anna: [Ashley Ortegas Wilson] A fall from grace into his lover's arms, right money boo boo? I mean honey boo boo. (*Anna pats MaxiMultiMillion Senior's head*)

MaxiMultiMillion Senior: [Theodore Deckert] Right.

Attorney Greenhorn: [Christopher Keller] So, let me understand this- you want to change your will to give everything to Anna?

(Anna smiles at MaxiMultiMillion Senior in the background)

MaxiMultiMillion Senior: [Theodore Deckert]*(He looks at Anna)* Oh yes, that's right.

Attorney Greenhorn: [Christopher Keller] Okay, Mr. MaxiMultiMillion, well then I just need you to sign here.

QUESTION 3

Should Attorney Greenhorn allow MaxiMultiMillion Senior to change his will and what actions should Attorney Greenhorn take?

- A. Refuse to make the change to the will and advise Anna and MaxiMultiMillion Senior to seek a competency evaluation;
- B. Refuse to make the change and send MaxiMultiMillion Senior out the door without taking further action;
- C. Make the change to the will;
- D. None of the Above

Answer: A

Reasoning: A lawyer cannot make a determination of competency. The comments under Rule 4-2.1 state: "Matters that go beyond strictly legal questions may also be in the domain of another profession. Family matters can involve problems within the professional competence of psychiatry, clinical psychology, or social work; business matters can involve problems within the competence of the accounting profession or of financial specialists. Where consultation with a professional in another field is itself something a competent lawyer would recommend, the lawyer should make such a recommendation. At the same time, a lawyer's advice at its best often consists of recommending a course of action in the face of conflicting

recommendations of experts. See also Ethics Opinion 73-25 (April 18, 1974) & Ethics Opinion 85-4 (October 1, 1985)

However, a lawyer may seek appointment of a guardian or take other protective action when the lawyer reasonable believes that the client cannot act in his or her best interest, Ethics Opinion 85-4 cites Rule 4-1.14 (b). The opinion then says the lawyer in that case should protect the client's interests & seek judicial determination of competency. The distinction here may be that the lawyer should not act solely on his impressions from this one event, especially given the reference to "since the fall." The lawyer might press Anna about the fall and recommend that her husband be seen by a doctor. Since Ana would most likely object and simply go try to find another lawyer, it would seem the lawyer needs to take some sort of affirmative action before simply refusing to draft the will.

SCENE 2

(Scene set in a probate courtroom.)

Narrator: [Joy Bartmon] J. Howard MaxiMultiMillion IV dies and a will contest ensues. The scene is set in a courtroom and there is a fight over a Request for Production of the drafting attorney's notes regarding client meetings, the file etc. The judge poses questions to the probate attorney and the probate attorney's counsel that place them in an ethical dilemma. The beneficiaries' attorneys also pose questions to the probate attorney and the probate attorneys' counsel which create the following ethical issues. While watching this scene consider the following:

1. What information can a probate attorney reveal to the a judge at a will contest hearing?
2. What are the considerations with respect to serving the interests of the testator compared to protecting attorney-client privileged communications?
3. Can the attorney reveal information provided to him by beneficiaries who were present at the client meeting?

Judge: [Judge Karen Miller] Call the case. Jones v. MaxiMultiMillion Estate. We're here on a will contest. Today's hearing is on a motion to compel the late Mr. MaxiMultiMillion's probate attorney to turn over documents and testimony from his meetings with Mr. MaxiMultiMillion and various family members during the process of drafting of the will. Please make your appearances.

(Each lawyer makes appearance)

Judge: [Judge Karen Miller] Miss Mixon, can you please tell us why we're here today?

Attorney for Anna: [Chrichet Mixon] Your Honor, we're here because my client has lost her beloved husband and all we've seen is a will that leaves everything to him (*point to*

MaxiMultiMillion's son). My client knows there was another will that included her... because she has a copy! (*Show copy of Anna's will sealed with a kiss*) We need to get to the bottom of this. I call the probate attorney to the witness stand!

Lawyer for Probate Attorney: [Heather Stern] Objection!

Judge: [Judge Karen Miller] What is the basis of your objection?

Lawyer for Probate Attorney: [Heather Stern] My client is a lawyer... he can't be forced to divulge privileged or confidential information of a client... even if that client is deceased!

QUESTION #4

Does the attorney's duty to preserve client confidences survive the death of the client?

(Probate attorney takes the stand)

Judge: [Judge Karen Miller] Raise your right hand...*(administer oath)*.

Attorney for Anna: [Chrichet Mixon] (*Hands Anna's will to the witness and asks*) Mr. Probate Attorney, do you recognize this will?

Attorney for Personal Representative: [Jennifer Miller-Morse] Objection!

Judge: [Judge Karen Miller] What is the basis of your objection?

Attorney for Personal Representative: [Jennifer Miller-Morse] This is not Mr. MaxiMultiMillion's will! This is a fraud on the court!

QUESTION 5

If a lawyer's client is deceased, who is the client? Who can legally represent the deceased client's interests?

Judge: [Judge Karen Miller] Ok. I'll sustain the Personal Representative's objection to Ms. Jones' will for now. Does anyone have the actual will that went to probate?

(All the lawyers looks at each other... no one has the official will)

Personal Representative: [Judge Spencer Levine] I have the ACTUAL will! (*Turns to his lawyer w/incredulous look and says...*) You never gave this to the court?! What am I paying

you for??? THIS is Mr. MaxiMultiMillion's will! (*Show copy of official will and hand it to Anna's Attorney*).

Attorney for Anna: [Chrichet Mixon] I object to the characterization of this will by counsel. Why don't we ask the witness what this document is?

Judge: [Judge Karen Miller] Objection sustained. Please proceed... we don't have all day!

Attorney for Anna: [Chrichet Mixon] (*Hands official will to witness*) This is the document that Mr. Personal Representative just produced... do you recognize it?

Probate Attorney: Yes.

Attorney for Anna: [Chrichet Mixon] What is it?

Probate Attorney: It is the Last Will and Testament of J. Howard MaxiMultiMillion IV.

Attorney for Anna: [Chrichet Mixon] How do you know that?

Probate Attorney: I wrote it.

Lawyer for Probate Attorney: [Heather Stern] Objection!

Judge: [Judge Karen Miller] What now?

Lawyer for Probate Attorney: [Heather Stern] Ms. Jones' counsel is getting into privileged and confidential information! This witness is bound by the rules of professional conduct to keep his client's secrets!

Attorney for Anna: [Chrichet Mixon] I was only going to ask about the formalities of execution...

Judge: [Judge Karen Miller] Objection overruled. You may proceed to question the witness on the execution...

QUESTION 6

Can the drafting attorney testify on the formalities of execution of a will without waiving privilege or violating his duty to maintain his client's confidential information?

Attorney for Anna: [Chrichet Mixon] Now I'd like you to tell the court whether my client Ms. Jones was ever present at any of your estate planning meetings with Mr. MaxiMultiMillion?

Attorney for Personal Representative: [Jennifer Miller-Morse] Objection! Those meetings were confidential estate planning meetings.

Judge: [Judge Karen Miller] Objection overruled.

QUESTION 7

Should the drafting attorney be permitted to testify about his meetings with Mr. MaxiMultiMillion and Anna?

Attorney for Anna: [Chrichet Mixon] Were there other wills that you drafted for Mr. MaxiMultiMillion?

Lawyer for Probate Attorney: [Heather Stern] Objection!

Judge: [Judge Karen Miller] What is the concern now?

Lawyer for Probate Attorney: [Heather Stern] Those drafts are confidential and privileged. My client is bound by his ethical obligations as a lawyer to keep them secret.

Judge: [Judge Karen Miller] Do you agree Mr. Personal Representative?

Attorney for Personal Representative: [Jennifer Miller-Morse] (*Turns to the Personal Representative and says*) What do you think? Those drafts could be helpful to us. The wife was never included in any of those drafts.

Personal Representative: [Judge Spencer Levine] Hmmm... I see. That she could really make some trouble for us. Those drafts could really take the air out of her tires. The sooner we get her off our backs... the sooner I can get paid... let's hand them over.

Attorney for Personal Representative: [Jennifer Miller-Morse] We don't agree with Mr. Probate Attorney. We feel those drafts will show that Ms. Jones was never intended to be a beneficiary. We would like them to be produced.

QUESTION 8

Should the drafting attorney be ordered to disclose the other drafts of the will?

SCENE 3

Narrator: [Holly Galinskie] Anna Nicole goes off the deep end following resolution of the will contest. She has lost her sparkle, and now appears sloppy and haggard. Her behavior is different too. She has been acting very strangely and engaging socially inappropriate behavior. She retains a law firm to represent her regarding her own estate planning needs. In the next scene, a junior associate at the firm notices her diminished capacity and odd behavior. He consults with a senior partner about his concerns. While watching this scene, consider the following ethical issues:

1. Who can ethically serve as a guardian for a client?
2. What conflicts are posed when a client's capacity is in question?

Jr. Associate: Well, Ms. Jones, it looks like we lost your case, but on the bright side you helped lower unemployment by hiring us. We had 10 paralegals at 14 dollars per hour working 40 plus hours per week, and you only were charged 180 per hour, plus of course 600 per hour for me to supervise them. Unfortunately, two years of litigation and hundreds of thousands of dollars in legal fees and costs, the judge found that you unduly influenced your poor husband and, as a result, you're not entitled to take anything from his estate.

Anna: [Ashley Ortegus Wilson] Oh well. I guess you win some, and you lose some. I don't really care. I never really cared about this case. I am after all a guess jeans girl; or was it Jordache. I really don't remember.

Jr. Associate: *(To himself / audience)* I don't think my client really knows what's going on. I don't think she's mentally capable of handling her legal affairs! I need to talk to my senior partner about this!

(Jr. Associate crosses stage where Senior Partner is berating Associate William in Senior Partner's office.)

Senior Partner: [Nicholas DeFilippo] So there is no more confusion when I say bill I mean billing and when I say William that is your name understand?

Associate William: Yes sir bill is billing and William is me.

Jr. Associate: Excuse me, Senior Partner, I'm having a problem with my client, Anna Nicole. Can I talk with you for a moment?

Senior Partner: [Nicholas DeFilippo] Sure. Anna Nicole is one of our best clients. We made a lot of money litigating her will contest and she has more money than she knows what to do with. I don't think she really knows what's going on. Between you and me, I don't think she's mentally capable of handling her legal affairs. What do you need from me? I

mean marrying a man 50 years older and telling us that it is for love and not for the money; I ask you how many old poor guys are hooking up with super models?

Jr. Associate: Well, that's just it. She's really fallen off the deep end this time. I don't think she can make decisions for herself. What should I do?

Senior Partner: [Nicholas DeFilippo] Look, I don't want to lose this cash cow of a client, so here's what we're going to do; You're going to file a petition to determine her capacity, get a guardianship established and appoint Bill, I mean William here, as her guardian. That way we can keep billing and billing. Do it for you and your wife and your kids. Do it for me and my wife and kids and my three ex wives and do it for the economy. I am sure our paralegals have kids!!

Jr. Associate: Hey, wait a minute! I don't want any more crazy clients! Maybe you should send her to a doctor or some kind of shrink to see if she's really crazy?

Senior Partner: [Nicholas DeFilippo] No way! Anna Nicole is such a high profile client that every newspaper in town is going to know if we send her to a psychiatrist. We can keep the guardianship proceeding closed to the public and seal the file, and no one will know what we are doing. Besides, Jr. Associate, you don't want to breach your duty of confidentiality to the client by suggesting to some local quack that she's crazy!

QUESTION 9

What are Attorney's options with regard to dealing with his client?

- A) He must withdraw if he believes that his client cannot make her own legal decisions.
- B) He should try to maintain a normal relationship with the client if possible. If that becomes impossible, he may seek the appointment of a professional guardian for the client.
- C) He can ignore whatever potential incapacity he may have observed because he's not a psychiatrist, and all clients are crazy anyway.
- D) He must institute a guardianship and have the court determine the client's capacity. This should be done as soon and as often as possible, and certainly in any case where the client questions the attorney's bill.

Answer: B

Rule 4-1.14 Client under a Disability and see The ABA Committee on Ethics and Professional Responsibility Opinion 96-404 on August 2, 1996. The opinion addressed the ethical issues that arise when a lawyer believes that the lawyer's client is no longer mentally capable of handling his or her legal affairs. That representation is recognized in Rule 1.14(a) of the Model Rules of Professional Conduct (1983, as amended). The rule directs that a lawyer in that situation should try to maintain a normal relationship with the incompetent client. Rule 1.14(b) permits a lawyer to seek the appointment of a guardian or take other protective action with respect to a client when the lawyer believes that the client cannot adequately protect his or her own interests. The typical attorney-

client relationship presumes that there can be effective communication between the client and the lawyer and that the client, after consulting with the lawyer, will be able to make the decisions necessary to obtain the objectives of the representation. When this ability is diminished, maintaining an ordinary relationship may be difficult or impossible. If the client becomes incompetent, Rule 1.14(b) applies only when the client cannot act in his or her own best interests, but not necessarily when the lawyer considers the client's decisions to be in error. Rule 1.14(b) must be exercised with caution and in a very limited manner.

QUESTION 10

May the firm seek the guidance of a physician without violating client confidences?

- A) No. You have an ethical duty to your client not to call them crazy, or let anyone else know they are crazy.
- B) No. Your ethical duty to keep potentially disparaging information regarding your client's medical or mental condition confidential means that you cannot disclose this information to anyone.
- C) Yes. The Attorney may seek guidance from an appropriate diagnostician.

Answer: C

In assessing the client's condition, Comment 6 to Rule 1.14 suggests that it is appropriate for a lawyer to seek guidance from an appropriate diagnostician. ABA Informal Opinion 89-1350 states that a discussion of the client's condition with a diagnostician does not violate Rule 4-1.6 regarding confidentiality of information. Limited disclosure of the lawyer's conclusions about the client's behavior to the client's family or other interested persons who are in a position to aid in the lawyer's assessment may also be made within the meaning of disclosures necessary to carry out representation authorized by Rule 1.6. This narrow exception does not permit the lawyer to discuss general information relating to the representation. Additionally, although Rule 1.14 permits a lawyer to take protective actions in these situations, it does not compel a lawyer to do so. Withdrawal is ethically permissible as long as it can be accomplished without a material adverse affect on the interests of the client under Rule 1.15(b).

QUESTION 11

May Associate William be appointed as the guardian of the client?

- A) Yes. He was directed to do so by Senior Partner, therefore it cannot be unethical if Senior Partner signs off on it.
- B) Yes, so long as it is disclosed to the court and all interested parties consent to the appointment.
- C) No. There is a conflict of interest that cannot be overcome by a waiver or consent.

- D) No. A lawyer who files a guardianship petition under Rule 1.14(b) should not act as or seek to be appointed guardian except in the most exigent of circumstances, when irreparable harm will result from the slightest delay.

Answer D

Reasoning: If the lawyer chooses not to withdraw, the Committee concludes that a lawyer with a disabled client should not attempt to represent the third party petitioning for guardianship of a lawyer's client. That representation would have to be regarded as "adverse" to the client and prohibited by Rule 1.7(a). The Committee cautions that a lawyer who files a guardianship petition under Rule 1.14(b) should not act as or seek to be appointed guardian except in the most exigent of circumstances, when irreparable harm will result from the slightest delay. Before the person has been adjudicated incompetent and a guardian has been appointed, any expectation that the lawyer may have of future employment by the person the lawyer is recommending for appointment as guardian must be brought to the attention of the appointing court. This is because the lawyer has a duty of candor to the tribunal and special responsibilities to the disabled client. See Rules 1.7(b), 3.3. The lawyer should also disclose any knowledge he or she may have concerning the client's preference for a different guardian. For a discussion of the duties owed to an incapacitated ward by the guardian's attorney, see Hurme, *Attorneys for Guardians Have Duties Toward Incapacitated Persons*, 9 Elder L. F. 11 (May/June 1997) (excerpted from 7 Elder L. Att'y 15 (New York State Bar Ass'n) (Spring 1997)).

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