Recognizing and Responding to Suicidal Persons: What Lawyers Need to Know

November 19, 2013

Sponsored by the BBA’s Criminal Law Section
# TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>Biographies</th>
<th>PAGE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Directory of Massachusetts Psychiatric Emergency Services Programs by City / Town</td>
<td>1</td>
</tr>
<tr>
<td>Directory of Massachusetts Psychiatric Emergency Services Programs by Program Name</td>
<td>8</td>
</tr>
<tr>
<td>Introductions &amp; Slide Presentations</td>
<td>13</td>
</tr>
<tr>
<td>Annotated Model Rules of Professional Conduct Rule 1.14 – Client with Diminished Capacity</td>
<td>67</td>
</tr>
<tr>
<td>Annotated Model Rules of Professional Conduct Rule 1.6 – Confidentiality of Information</td>
<td>79</td>
</tr>
<tr>
<td>Massachusetts Bar Association : Ethics Opinion No. 01-2</td>
<td>105</td>
</tr>
<tr>
<td>Connecticut Bar Association – Committee on Professional Ethics CONFIDENTIALITY AND THE SUICIDAL CLIENT Formal Opinion Number 49</td>
<td>107</td>
</tr>
<tr>
<td>Utah State Bar - Ethics Advisory Opinion Committee Opinion Number 95</td>
<td>112</td>
</tr>
</tbody>
</table>
Stephen G. Huggard, Esq.
Program Chair
Partner, Edwards Wildman

Steve is Chair of the White Collar & Government Enforcement Practice Group at . He represents businesses and individuals in criminal and complex civil litigation, with a focus on white collar criminal defense and is experienced at conducting complex internal investigations, both in the United States and overseas. He regularly represents clients before the Securities and Exchange Commission and the Department of Justice. He also advises several publicly-traded companies on FCPA matters and has conducted training for those clients domestically and internationally. The Financial Times has commended Steve for his innovative legal work in defense of a client.

After 17 years as a prosecutor with the Department of Justice, Steve applies his considerable experience to assisting corporations and executives with any government inquiries or internal investigations. Before joining the firm, Steve served for four years as Chief of the Public Corruption & Special Prosecutions Unit at the U.S. Attorney's Office, District of Massachusetts, overseeing some of the most complex investigations in the office. He was one of the few Assistant United States Attorneys in Boston selected to work around the clock investigating the attacks of September 11. He also headed the federal inquiry into the Catholic Church sex abuse scandal. Prior to becoming Chief, he was part of the Economic Crimes Unit, where he prosecuted complex tax, health care fraud and investment fraud cases.

Steve has been a frequent lecturer at programs sponsored by the Boston Bar Association, the World Law Group and the Association of Corporate Counsel (ACC). While in the government, he lectured at the Department of Justice, IRS, and privately sponsored training seminars on the subjects of excise tax fraud, health care fraud, and financial prosecutions generally. He also has been a guest lecturer for the American Bar Association, Suffolk University Law School, Harvard Law School, the New England Institute of Law Enforcement, and the National Advocacy Center. Steve has been included in the New England Super Lawyers listing, a Thomson Reuters publication, since 2008. He has also been recognized in the Best Lawyers in America publication for his work in White Collar Criminal Defense since 2006.

David Rosmarin, Ph.D.
Senior Forensic Psychiatrist, McLean Hospital
Instructor, Department of Psychiatry, Harvard Medical School

David Rosmarin, M.D. is Senior Forensic Psychiatrist at McLean Hospital and on faculty at Harvard Medical School. He is board certified in Psychiatry and Forensic Psychiatry, having co-authored the Forensic Psychiatry boards for a number of years. His primary activities at McLean are assessing suicide risk and dangerousness to others as a consultant to colleagues. In private practice, Dr. Rosmarin has evaluated north of 150 murderers and
consults to industry and municipalities on disability, fitness for duty, and risk management. He consults on civil matters as diverse as behavioral problems involving senior management, testamentary capacity, and claims of emotional damages. Dr. Rosmarin spent 10 years at CIA assessing the psychiatric proclivities of world leaders and retains a Top Secret/SCI security clearance. He can be reached at rosmarin.david@gmail.com or (617) 699-8113.

Marian T. Ryan, Esq.
Middlesex District Attorney

Marian T. Ryan has more than three decades of experience as an assistant district attorney, prosecuting the state’s most violent felons, fighting for victims, and creating innovative crime prevention initiatives. Ryan is responsible for the prosecution of approximately 35,000 cases a year in the diverse 54 cities and towns of Middlesex County.

Prior to being named District Attorney, Ryan served as the MDAO's General Counsel, where she created the county-wide Workplace Safety and Violence Prevention Program, and as Chief of the MDAO's Elder and Disabled Unit, where she prosecuted a myriad of crimes involving physical and financial abuse of the most vulnerable victims. Ryan headed the MDAO's Hinton Lab Crisis Response team, created in the wake of former forensic chemist Annie Dookhan’s criminal conduct that called into question over 9,000 Middlesex County drug samples. Ryan coordinated an office-wide plan to ensure that defendants had not been unfairly convicted on the basis of tainted evidence. Ryan worked with defense attorneys, police chiefs, judges and magistrates to establish priorities and protocol and to address serious public safety concerns.

A frequent contributor to the work of the non-profit group Middlesex Partnerships for Youth, Marian has been a leader in crime prevention and pretrial diversion programs directed at young people, to ensure that the District Attorney’s Office not only prosecutes the most serious offenders, but also that it acts to prevent crime before it happens. Ryan lectures and leads workshops on the dangers of prescription drug abuse, teen dating violence, anti-bullying, and distracted driving. District Attorney Ryan has created Safe Babies, Safe Kids, an initiative focused on keeping children safe, healthy and well from birth to high school. Working with the county’s 26 college and universities, Ryan developed a bi-annual college consortium for educators, administrators and campus police, focused on campus safety and security, and Title IX compliance.

Ryan has significant courtroom experience and has prosecuted many of Middlesex County’s most complex, challenging and violent cases. She is a skilled and practiced litigator, having successfully brought hundreds of felony cases to trial, including dozens of first-degree murders. Ryan is also a talented appellate attorney, having briefed and argued more than 40 cases in the Massachusetts Appeals Court and Supreme Judicial Court. She is currently on the faculty of Lasell College in Newton, where she teaches courses in Constitutional Law and the American Legal System.
Rachelle Steinberg, Esq.
Assistant Deputy Superintendent
Suffolk County House of Correction

Rachelle Steinberg graduated Springfield College in 1997 with a Bachelor’s Degree in Political Science. She received her Juris Doctor degree from Suffolk University Law School in 2000 and completed two Master’s Degrees in Mental Health Counseling and Criminal Justice from Suffolk University Graduate School in 2003.

Deputy Steinberg began her career at the Suffolk County Sheriff’s Department as an intern in 2002 with the Boston Reentry Initiative (BRI) and in 2003, was hired by the Sheriff’s Department to oversee the BRI. In 2005, she was promoted as the Assistant Director of Classification and Custody Assessment. In this role, she managed the Special Management Units, Disciplinary, and the Classification and movement of inmates and detainees throughout the House of Correction.

In July 2010, she was promoted to the position of Assistant Deputy Superintendent. She currently oversees the facilities programming, education, religious services, contractor and volunteer services, as well as administering a $25 million dollar medical and mental health contract and multiple Federal and State grants. Also, as a member of the Command Staff, Deputy Steinberg assists in managing the day-to-day operations of the House of Correction.

Tali K. Walters, Ph.D.
Forensic Psychologist/Consultant

Tali K. Walters is a Forensic Psychologist, an Expert Witness, and a Mental Health Consultant. She consults to criminal defense and prosecution attorneys, and to the Massachusetts Department of Mental Health in her private practice. She also conducts psychological evaluations that address multiple psycholegal question such as mental status at the time of the offense, competence to stand trial, and aid in sentencing. Dr. Walters mentors psychologists and psychiatrists as a Forensic Mental Health Supervisor for the Forensic Division of the Department of Mental Health in the Commonwealth of Massachusetts. She served on the faculties of the Harvard Medical School and Tufts Medical School and on the DFP Training and Certification Committee. Dr. Walters has been a member of the Governing Board of the Society for Terrorism Research, since 2006, currently serving as President. She is also an Associate Editor to the society’s journal Behavioral Sciences of Terrorism and Political Aggression and co-editor of the recently published book Radicalization, Terrorism, and Conflict.
Ian Gold, Esq.
Assistant Federal Public Defender

Ian Gold is an assistant Federal Public Defender in the Massachusetts Federal Defender Office. Mr. Gold earned his J.D. at New York University School of Law.

James D. Herbert, Esq.
Assistant United States Attorney
Chief, Criminal Division

James D. Herbert is Assistant United States Attorney, Chief of the Criminal Division. Assistant U.S. Attorney James D. Herbert, Chief of Ortiz’s Organized Crime and Gang Unit. Mr. Hebert attended Princeton University and earned his J.D. at University of Virginia. He was previously Chief of the Organized Crime and Gang Unit. He was in private practice prior to joining the USAO in 1990.
Massachusetts Psychiatric Emergency Services Programs provide behavioral health crisis assessment, intervention and stabilization services via the following service components: Mobile Crisis Services for Children and Adolescent, Mobil Crisis Services for Adults and Geriatric population, ESP Community Based locations, and Community Crisis Stabilization Services for ages 18 and over. ESP's have 24 hour telephonic and site access unless otherwise noted. Call the ESP toll free number associated with the town for assistance accessing the most appropriate services. The ESP can provide updates on other psychiatric emergency programs. Go to the Massachusetts Emergency Services Program Directory website for locations of ESP's. [https://www.ubhonline.com/html/pdf/massachusettsEmergencyServiceProgramUBHOnLineDirectory12_09_2.pdf](https://www.ubhonline.com/html/pdf/massachusettsEmergencyServiceProgramUBHOnLineDirectory12_09_2.pdf)

<table>
<thead>
<tr>
<th>City/Town</th>
<th>Agency</th>
<th>Psychiatric Emergency Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>Acton</td>
<td>Advocates</td>
<td>800-640-5432</td>
</tr>
<tr>
<td>Acushnet</td>
<td>Child and Family Services</td>
<td>877-996-3154 (New Bedford) 800-469-9888 (Plymouth)</td>
</tr>
<tr>
<td>Adams</td>
<td>The Brien Center</td>
<td>800-252-0227</td>
</tr>
<tr>
<td>Agawam</td>
<td>Behavioral Health Network</td>
<td>800-437-5922</td>
</tr>
<tr>
<td>Alford</td>
<td>The Brien Center</td>
<td>800-252-0227</td>
</tr>
<tr>
<td>Amesbury</td>
<td>Health and Education Services</td>
<td>866-523-1216</td>
</tr>
<tr>
<td>Andover</td>
<td>Health and Education Services</td>
<td>877-255-1261 (8 am - 8 pm M-F) 866-523-1216 (After hours)</td>
</tr>
<tr>
<td>Arlington</td>
<td>Advocates</td>
<td>800-640-5432</td>
</tr>
<tr>
<td>Ashburnham</td>
<td>Community Health Link</td>
<td>800-977-5555</td>
</tr>
<tr>
<td>Ashby</td>
<td>Community Health Link</td>
<td>800-977-5555</td>
</tr>
<tr>
<td>Ashland</td>
<td>Advocates</td>
<td>800-640-5432</td>
</tr>
<tr>
<td>Auburn</td>
<td>Community Health Link</td>
<td>866-549-2142</td>
</tr>
<tr>
<td>Ayer</td>
<td>Community Health Link</td>
<td>800-977-5555</td>
</tr>
<tr>
<td>Back Bay</td>
<td>Boston Emergency Services Team (BEST)</td>
<td>800-981-4357</td>
</tr>
<tr>
<td>Barre</td>
<td>Community Health Link</td>
<td>800-977-5555</td>
</tr>
<tr>
<td>Beacon Hil</td>
<td>Boston Emergency Services Team (BEST)</td>
<td>800-981-4357</td>
</tr>
<tr>
<td>Becket</td>
<td>The Brien Center</td>
<td>800-252-0227</td>
</tr>
<tr>
<td>Bedford</td>
<td>Advocates</td>
<td>800-640-5432</td>
</tr>
<tr>
<td>Bellingham</td>
<td>Riverside Community Care</td>
<td>800-294-4665</td>
</tr>
<tr>
<td>Belmont</td>
<td>Advocates</td>
<td>800-640-5432</td>
</tr>
<tr>
<td>Berlin</td>
<td>Community Health Link</td>
<td>800-977-5555</td>
</tr>
<tr>
<td>Beverly</td>
<td>Health and Education Services</td>
<td>866-523-1216</td>
</tr>
<tr>
<td>Billerica</td>
<td>Health and Education Services</td>
<td>800-830-5177</td>
</tr>
<tr>
<td>Blackstone</td>
<td>Riverside Community Care</td>
<td>800-294-4665</td>
</tr>
<tr>
<td>Blandford</td>
<td>Behavioral Health Network</td>
<td>800-437-5922</td>
</tr>
<tr>
<td>Blechertown</td>
<td>Behavioral Health Network</td>
<td>800-437-5922</td>
</tr>
<tr>
<td>Bolton</td>
<td>Community Health Link</td>
<td>800-977-5555</td>
</tr>
<tr>
<td>Bondsville</td>
<td>Behavioral Health Network</td>
<td>800-437-5922</td>
</tr>
<tr>
<td>Town</td>
<td>Agency</td>
<td>Phone Number</td>
</tr>
<tr>
<td>--------------</td>
<td>---------------------------------------------</td>
<td>--------------</td>
</tr>
<tr>
<td>Boston</td>
<td>Boston Emergency Services Team (BEST)</td>
<td>800-981-4357</td>
</tr>
<tr>
<td>Boxborough</td>
<td>Advocates</td>
<td>800-640-5432</td>
</tr>
<tr>
<td>Boxford</td>
<td>Health and Education Services</td>
<td>866-523-1216</td>
</tr>
<tr>
<td>Boylston</td>
<td>Community Health Link</td>
<td>866-549-2142</td>
</tr>
<tr>
<td>Braintree</td>
<td>South Shore Mental Health</td>
<td>800-528-4890</td>
</tr>
<tr>
<td>Brighton</td>
<td>Boston Emergency Services Team (BEST)</td>
<td>800-981-4357</td>
</tr>
<tr>
<td>Brimfield</td>
<td>Riverside Community Care</td>
<td>800-294-4665</td>
</tr>
<tr>
<td>Brookfield</td>
<td>Riverside Community Care</td>
<td>800-294-4665</td>
</tr>
<tr>
<td>Brookline</td>
<td>Boston Emergency Services Team (BEST)</td>
<td>800-981-4357</td>
</tr>
<tr>
<td>Burlington</td>
<td>Advocates</td>
<td>800-640-5432</td>
</tr>
<tr>
<td>Cambridge</td>
<td>Cambridge/Somerville Emergency Services (CSEST)</td>
<td>800-981-4357</td>
</tr>
<tr>
<td>Canton</td>
<td>Riverside Community Care</td>
<td>800-529-5077</td>
</tr>
<tr>
<td>Carlisle</td>
<td>Advocates</td>
<td>800-640-5432</td>
</tr>
<tr>
<td>Carver</td>
<td>Child and Family Services</td>
<td>877-996-3154</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(New Bedford)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>800-469-9888</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(Plymouth)</td>
</tr>
<tr>
<td>Charlestown</td>
<td>Boston Emergency Services Team (BEST)</td>
<td>800-981-4357</td>
</tr>
<tr>
<td>Charlton</td>
<td>Riverside Community Care</td>
<td>800-294-4665</td>
</tr>
<tr>
<td>Chelmsford</td>
<td>Health and Education Services</td>
<td>800-830-5177</td>
</tr>
<tr>
<td>Chelsea</td>
<td>Boston Emergency Services Team (BEST)</td>
<td>800-981-4357</td>
</tr>
<tr>
<td>Cheshire</td>
<td>The Brien Center</td>
<td>800-252-0227</td>
</tr>
<tr>
<td>Chester</td>
<td>Behavioral Health Network</td>
<td>800-437-5922</td>
</tr>
<tr>
<td>Chicopee</td>
<td>Behavioral Health Network</td>
<td>800-437-5922</td>
</tr>
<tr>
<td>Clarksburg</td>
<td>The Brien Center</td>
<td>800-252-0227</td>
</tr>
<tr>
<td>Clinton</td>
<td>Community Health Link</td>
<td>800-977-5555</td>
</tr>
<tr>
<td>Cohasset</td>
<td>South Shore Mental Health</td>
<td>800-528-4890</td>
</tr>
<tr>
<td>Concord</td>
<td>Advocates</td>
<td>800-640-5432</td>
</tr>
<tr>
<td>Dalton</td>
<td>The Brien Center</td>
<td>800-252-0227</td>
</tr>
<tr>
<td>Danvers</td>
<td>Health and Education Services</td>
<td>866-523-1216</td>
</tr>
<tr>
<td>Dartmouth</td>
<td>Child and Family Services</td>
<td>877-996-3154</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(New Bedford)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>800-469-9888</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(Plymouth)</td>
</tr>
<tr>
<td>Dedham</td>
<td>Riverside Community Care</td>
<td>800-529-5077</td>
</tr>
<tr>
<td>Dorchester</td>
<td>Boston Emergency Services Team (BEST)</td>
<td>800-981-4357</td>
</tr>
<tr>
<td>Douglas</td>
<td>Riverside Community Care</td>
<td>800-294-4665</td>
</tr>
<tr>
<td>Dover</td>
<td>Riverside Community Care</td>
<td>800-529-5077</td>
</tr>
<tr>
<td>Dracut</td>
<td>Health and Education Services</td>
<td>800-830-5177</td>
</tr>
<tr>
<td>Dudley</td>
<td>Riverside Community Care</td>
<td>800-294-4665</td>
</tr>
<tr>
<td>Dunstable</td>
<td>Health and Education Services</td>
<td>800-830-5177</td>
</tr>
<tr>
<td>Duxbury</td>
<td>Child and Family Services</td>
<td>877-996-3154</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(New Bedford)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>800-469-9888</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(Plymouth)</td>
</tr>
<tr>
<td>East Boston</td>
<td>Boston Emergency Services Team (BEST)</td>
<td>800-981-4357</td>
</tr>
<tr>
<td>Town</td>
<td>Provider</td>
<td>Phone Numbers</td>
</tr>
<tr>
<td>---------------------</td>
<td>---------------------------------</td>
<td>---------------------------------------------------</td>
</tr>
<tr>
<td>East Brookfield</td>
<td>Riverside Community Care</td>
<td>800-294-4665</td>
</tr>
<tr>
<td>East Longmeadow</td>
<td>Behavioral Health Network</td>
<td>800-437-5922</td>
</tr>
<tr>
<td>Egremont</td>
<td>The Brien Center</td>
<td>800-252-0227</td>
</tr>
<tr>
<td>Essex</td>
<td>Health and Education Services</td>
<td>866-523-1216</td>
</tr>
<tr>
<td>Everett</td>
<td>Eliot Community Services</td>
<td>800-988-1111</td>
</tr>
<tr>
<td>Fairhaven</td>
<td>Child and Family Services</td>
<td>877-996-3154 (New Bedford) 800-469-9888 (Plymouth)</td>
</tr>
<tr>
<td>Fitchburg</td>
<td>Community Health Link</td>
<td>800-977-5555</td>
</tr>
<tr>
<td>Florida</td>
<td>The Brien Center</td>
<td>800-252-0227</td>
</tr>
<tr>
<td>Foxboro</td>
<td>Riverside Community Care</td>
<td>800-529-5077</td>
</tr>
<tr>
<td>Framingham</td>
<td>Advocates</td>
<td>800-640-5432</td>
</tr>
<tr>
<td>Franklin</td>
<td>Riverside Community Care</td>
<td>800-294-4665</td>
</tr>
<tr>
<td>Gardner</td>
<td>Community Health Link</td>
<td>800-977-5555</td>
</tr>
<tr>
<td>Georgetown</td>
<td>Health and Education Services</td>
<td>866-523-1216</td>
</tr>
<tr>
<td>Glocester</td>
<td>Health and Education Services</td>
<td>866-523-1216</td>
</tr>
<tr>
<td>Grafton</td>
<td>Community Health Link</td>
<td>866-549-2142</td>
</tr>
<tr>
<td>Granby</td>
<td>Behavioral Health Network</td>
<td>800-437-5922</td>
</tr>
<tr>
<td>Granville</td>
<td>Behavioral Health Network</td>
<td>800-437-5922</td>
</tr>
<tr>
<td>Great Barrington</td>
<td>The Brien Center</td>
<td>800-252-0227</td>
</tr>
<tr>
<td>Groton</td>
<td>Community Health Link</td>
<td>800-977-5555</td>
</tr>
<tr>
<td>Groveland</td>
<td>Health and Education Services</td>
<td>866-523-1216</td>
</tr>
<tr>
<td>Halifax</td>
<td>Child and Family Services</td>
<td>877-996-3154 (New Bedford) 800-469-9888 (Plymouth)</td>
</tr>
<tr>
<td>Hamilton</td>
<td>Health and Education Services</td>
<td>866-523-1216</td>
</tr>
<tr>
<td>Hampden</td>
<td>Behavioral Health Network</td>
<td>800-437-5922</td>
</tr>
<tr>
<td>Hancock</td>
<td>The Brien Center</td>
<td>800-252-0227</td>
</tr>
<tr>
<td>Hanover</td>
<td>Child and Family Services</td>
<td>877-996-3154 (New Bedford) 800-469-9888 (Plymouth)</td>
</tr>
<tr>
<td>Hanson</td>
<td>Child and Family Services</td>
<td>877-996-3154 (New Bedford) 800-469-9888 (Plymouth)</td>
</tr>
<tr>
<td>Harvard</td>
<td>Community Health Link</td>
<td>800-977-5555</td>
</tr>
<tr>
<td>Haverhill</td>
<td>Health and Education Services</td>
<td>866-523-1216</td>
</tr>
<tr>
<td>Hingham</td>
<td>South Shore Mental Health</td>
<td>800-528-4890</td>
</tr>
<tr>
<td>Hinsdale</td>
<td>The Brien Center</td>
<td>800-252-0227</td>
</tr>
<tr>
<td>Holden</td>
<td>Community Health Link</td>
<td>866-549-2142</td>
</tr>
<tr>
<td>Holland</td>
<td>Riverside Community Care</td>
<td>800-294-4665</td>
</tr>
<tr>
<td>Holliston</td>
<td>Advocates</td>
<td>800-640-5432</td>
</tr>
<tr>
<td>Holyoke</td>
<td>Behavioral Health Network</td>
<td>800-437-5922</td>
</tr>
<tr>
<td>Hopedale</td>
<td>Riverside Community Care</td>
<td>800-294-4665</td>
</tr>
<tr>
<td>Hopkinton</td>
<td>Advocates</td>
<td>800-640-5432</td>
</tr>
<tr>
<td>Hubbardston</td>
<td>Community Health Link</td>
<td>800-977-5555</td>
</tr>
<tr>
<td>Hudson</td>
<td>Advocates</td>
<td>800-640-5432</td>
</tr>
<tr>
<td>Hull</td>
<td>South Shore Mental Health</td>
<td>800-528-4890</td>
</tr>
<tr>
<td>Huntington</td>
<td>Behavioral Health Network</td>
<td>800-437-5922</td>
</tr>
<tr>
<td>Hyde Park</td>
<td>Boston Emergency Services Team</td>
<td>800-981-4357</td>
</tr>
<tr>
<td>Indian Orchard</td>
<td>Behavioral Health Network</td>
<td>800-437-5922</td>
</tr>
<tr>
<td>Ipswich</td>
<td>Health and Education Services</td>
<td>866-523-1216</td>
</tr>
<tr>
<td>Location</td>
<td>Service Provider</td>
<td>Phone Numbers</td>
</tr>
<tr>
<td>--------------------------</td>
<td>-------------------------------------------------------</td>
<td>----------------------------------------------------</td>
</tr>
<tr>
<td>Jamaica Plain</td>
<td>Boston Emergency Services Team (BEST)</td>
<td>800-981-4357</td>
</tr>
<tr>
<td>Kingston</td>
<td>Child and Family Services</td>
<td>877-996-3154 (New Bedford)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>800-469-9888 (Plymouth)</td>
</tr>
<tr>
<td>Lancaster</td>
<td>Community Health Link</td>
<td>800-977-5555</td>
</tr>
<tr>
<td>Lanesboro</td>
<td>The Brien Center</td>
<td>800-252-0227</td>
</tr>
<tr>
<td>Lawrence</td>
<td>Health and Education Services</td>
<td>877-255-1261 (8 am - 8 pm M-F)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>866-523-1216 (After hours)</td>
</tr>
<tr>
<td>Lee</td>
<td>The Brien Center</td>
<td>800-252-0227</td>
</tr>
<tr>
<td>Leicester</td>
<td>Community Health Link</td>
<td>866-549-2142</td>
</tr>
<tr>
<td>Lenox</td>
<td>The Brien Center</td>
<td>800-252-0227</td>
</tr>
<tr>
<td>Leominster</td>
<td>Community Health Link</td>
<td>800-977-5555</td>
</tr>
<tr>
<td>Lexington</td>
<td>Advocates</td>
<td>800-640-5432</td>
</tr>
<tr>
<td>Lincoln</td>
<td>Advocates</td>
<td>800-640-5432</td>
</tr>
<tr>
<td>Littleton</td>
<td>Advocates</td>
<td>800-640-5432</td>
</tr>
<tr>
<td>Longmeadow</td>
<td>Behavioral Health Network</td>
<td>800-437-5922</td>
</tr>
<tr>
<td>Lowell</td>
<td>Health and Education Services</td>
<td>800-830-5177</td>
</tr>
<tr>
<td>Ludlow</td>
<td>Behavioral Health Network</td>
<td>800-437-5922</td>
</tr>
<tr>
<td>Lunenburg</td>
<td>Community Health Link</td>
<td>800-977-5555</td>
</tr>
<tr>
<td>Lynfield</td>
<td>Eliot Community Services</td>
<td>800-988-1111</td>
</tr>
<tr>
<td>Lynn</td>
<td>Eliot Community Services</td>
<td>800-988-1111</td>
</tr>
<tr>
<td>Malden</td>
<td>Eliot Community Services</td>
<td>800-988-1111</td>
</tr>
<tr>
<td>Manchester by the Sea</td>
<td>Health and Education Services</td>
<td>866-523-1216</td>
</tr>
<tr>
<td>Marblehead</td>
<td>Health and Education Services</td>
<td>866-523-1216</td>
</tr>
<tr>
<td>Marion</td>
<td>Child and Family Services</td>
<td>877-996-3154 (New Bedford)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>800-469-9888 (Plymouth)</td>
</tr>
<tr>
<td>Marlboro</td>
<td>Advocates</td>
<td>800-640-5432</td>
</tr>
<tr>
<td>Marshfield</td>
<td>Child and Family Services</td>
<td>877-996-3154 (New Bedford)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>800-469-9888 (Plymouth)</td>
</tr>
<tr>
<td>Mattapan</td>
<td>Boston Emergency Services Team (BEST)</td>
<td>800-981-4357</td>
</tr>
<tr>
<td>Mattapoisett</td>
<td>Child and Family Services</td>
<td>877-996-3154 (New Bedford)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>800-469-9888 (Plymouth)</td>
</tr>
<tr>
<td>Maynard</td>
<td>Advocates</td>
<td>800-640-5432</td>
</tr>
<tr>
<td>Medfield</td>
<td>Riverside Community Care</td>
<td>800-529-5077</td>
</tr>
<tr>
<td>Medford</td>
<td>Eliot Community Services</td>
<td>800-988-1111</td>
</tr>
<tr>
<td>Medway</td>
<td>Riverside Community Care</td>
<td>800-294-4665</td>
</tr>
<tr>
<td>Melrose</td>
<td>Eliot Community Services</td>
<td>800-988-1111</td>
</tr>
<tr>
<td>Mendon</td>
<td>Riverside Community Care</td>
<td>800-294-4665</td>
</tr>
<tr>
<td>Merrimac</td>
<td>Health and Education Services</td>
<td>866-523-1216</td>
</tr>
<tr>
<td>Methuen</td>
<td>Health and Education Services</td>
<td>877-255-1261 (8 am - 8 pm M-F)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>866-523-1216 (After hours)</td>
</tr>
<tr>
<td>Middleton</td>
<td>Health and Education Services</td>
<td>866-523-1216</td>
</tr>
<tr>
<td>Milbury</td>
<td>Community Health Link</td>
<td>866-549-2142</td>
</tr>
<tr>
<td>Milford</td>
<td>Riverside Community Care</td>
<td>800-294-4665</td>
</tr>
<tr>
<td>Millis</td>
<td>Riverside Community Care</td>
<td>800-529-5077</td>
</tr>
</tbody>
</table>
## Massachusetts Psychiatric Emergency Services Programs

<table>
<thead>
<tr>
<th>Town</th>
<th>Service Provider</th>
<th>Phone Numbers</th>
</tr>
</thead>
<tbody>
<tr>
<td>Millville</td>
<td>Riverside Community Care</td>
<td>800-294-4665</td>
</tr>
<tr>
<td>Milton</td>
<td>South Shore Mental Health</td>
<td>800-528-4890</td>
</tr>
<tr>
<td>Mission Hill</td>
<td>Boston Emergency Services Team (BEST)</td>
<td>800-981-4357</td>
</tr>
<tr>
<td>Monroe</td>
<td>The Brien Center</td>
<td>800-252-0227</td>
</tr>
<tr>
<td>Monson</td>
<td>Behavioral Health Network</td>
<td>800-437-5922</td>
</tr>
<tr>
<td>Monterey</td>
<td>The Brien Center</td>
<td>800-252-0227</td>
</tr>
<tr>
<td>Montgomery</td>
<td>Behavioral Health Network</td>
<td>800-437-5922</td>
</tr>
<tr>
<td>Mount Washington</td>
<td>The Brien Center</td>
<td>800-252-0227</td>
</tr>
<tr>
<td>Nahant</td>
<td>Eliot Community Services</td>
<td>800-988-1111</td>
</tr>
<tr>
<td>Natick</td>
<td>Advocates</td>
<td>800-640-5432</td>
</tr>
<tr>
<td>Needham</td>
<td>Riverside Community Care</td>
<td>800-529-5077</td>
</tr>
<tr>
<td>New Ashford</td>
<td>The Brien Center</td>
<td>800-252-0227</td>
</tr>
<tr>
<td>New Bedford</td>
<td>Child and Family Services</td>
<td>877-996-3154 (New Bedford)</td>
</tr>
<tr>
<td>New Bedford</td>
<td></td>
<td>800-469-9888 (Plymouth)</td>
</tr>
<tr>
<td>New Braintree</td>
<td>Community Health Link</td>
<td>800-977-5555</td>
</tr>
<tr>
<td>New Marlboro</td>
<td>The Brien Center</td>
<td>800-252-0227</td>
</tr>
<tr>
<td>Newbury</td>
<td>Health and Education Services</td>
<td>866-523-1216</td>
</tr>
<tr>
<td>Newburyport</td>
<td>Health and Education Services</td>
<td>866-523-1216</td>
</tr>
<tr>
<td>Newton</td>
<td>Riverside Community Care</td>
<td>800-529-5077</td>
</tr>
<tr>
<td>Norfolk</td>
<td>Riverside Community Care</td>
<td>800-529-5077</td>
</tr>
<tr>
<td>North Adams</td>
<td>The Brien Center</td>
<td>800-252-0227</td>
</tr>
<tr>
<td>North Andover</td>
<td>Health and Education Services</td>
<td>877-255-1261 (8 am - 8 pm M-F)</td>
</tr>
<tr>
<td>North Andover</td>
<td></td>
<td>866-523-1216 (After hours)</td>
</tr>
<tr>
<td>North Brookfield</td>
<td>Riverside Community Care</td>
<td>800-294-4665</td>
</tr>
<tr>
<td>North End</td>
<td>Boston Emergency Services Team (BEST)</td>
<td>800-981-4357</td>
</tr>
<tr>
<td>North Reading</td>
<td>Eliot Community Services</td>
<td>800-988-1111</td>
</tr>
<tr>
<td>Northborough</td>
<td>Advocates</td>
<td>800-640-5432</td>
</tr>
<tr>
<td>Northbridge</td>
<td>Riverside Community Care</td>
<td>800-294-4665</td>
</tr>
<tr>
<td>Norwell</td>
<td>South Shore Mental Health</td>
<td>800-528-4890</td>
</tr>
<tr>
<td>Norwood</td>
<td>Riverside Community Care</td>
<td>800-529-5077</td>
</tr>
<tr>
<td>Oakham</td>
<td>Community Health Link</td>
<td>800-977-5555</td>
</tr>
<tr>
<td>Otis</td>
<td>The Brien Center</td>
<td>800-252-0227</td>
</tr>
<tr>
<td>Oxford</td>
<td>Riverside Community Care</td>
<td>800-294-4665</td>
</tr>
<tr>
<td>Palmer</td>
<td>Behavioral Health Network</td>
<td>800-437-5922</td>
</tr>
<tr>
<td>Paxton</td>
<td>Community Health Link</td>
<td>866-549-2142</td>
</tr>
<tr>
<td>Peabody</td>
<td>Health and Education Services</td>
<td>866-523-1216</td>
</tr>
<tr>
<td>Pembroke</td>
<td>Child and Family Services</td>
<td>877-996-3154 (New Bedford)</td>
</tr>
<tr>
<td>Pembroke</td>
<td></td>
<td>800-469-9888 (Plymouth)</td>
</tr>
<tr>
<td>Pepperell</td>
<td>Community Health Link</td>
<td>800-977-5555</td>
</tr>
<tr>
<td>Peru</td>
<td>The Brien Center</td>
<td>800-252-0227</td>
</tr>
<tr>
<td>Pittsfield</td>
<td>The Brien Center</td>
<td>800-252-0227</td>
</tr>
<tr>
<td>Plainville</td>
<td>Riverside Community Care</td>
<td>800-529-5077</td>
</tr>
<tr>
<td>Plymouth</td>
<td>Child and Family Services</td>
<td>877-996-3154 (New Bedford)</td>
</tr>
<tr>
<td>Plymouth</td>
<td></td>
<td>800-469-9888 (Plymouth)</td>
</tr>
<tr>
<td>Town</td>
<td>Service Provider</td>
<td>Phone Numbers</td>
</tr>
<tr>
<td>-------------------</td>
<td>-------------------------------------------------------</td>
<td>-------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Plympton</td>
<td>Child and Family Services</td>
<td>877-996-3154 (New Bedford) 800-469-9888 (Plymouth)</td>
</tr>
<tr>
<td>Princeton</td>
<td>Community Health Link</td>
<td>800-977-5555</td>
</tr>
<tr>
<td>Quincy</td>
<td>South Shore Mental Health</td>
<td>800-528-4890</td>
</tr>
<tr>
<td>Randolph</td>
<td>South Shore Mental Health</td>
<td>800-528-4890</td>
</tr>
<tr>
<td>Reading</td>
<td>Eliot Community Services</td>
<td>800-988-1111</td>
</tr>
<tr>
<td>Revere</td>
<td>Boston Emergency Services Team (BEST)</td>
<td>800-981-4357</td>
</tr>
<tr>
<td>Richmond</td>
<td>The Brien Center</td>
<td>800-252-0227</td>
</tr>
<tr>
<td>Rochester</td>
<td>Child and Family Services</td>
<td>877-996-3154 (New Bedford) 800-469-9888 (Plymouth)</td>
</tr>
<tr>
<td>Rockport</td>
<td>Health and Education Services</td>
<td>866-523-1216</td>
</tr>
<tr>
<td>Roslindale</td>
<td>Boston Emergency Services Team (BEST)</td>
<td>800-981-4357</td>
</tr>
<tr>
<td>Rowley</td>
<td>Health and Education Services</td>
<td>866-523-1216</td>
</tr>
<tr>
<td>Roxbury</td>
<td>Boston Emergency Services Team (BEST)</td>
<td>800-981-4357</td>
</tr>
<tr>
<td>Russell</td>
<td>Behavioral Health Network</td>
<td>800-437-5922</td>
</tr>
<tr>
<td>Rutland</td>
<td>Community Health Link</td>
<td>800-977-5555</td>
</tr>
<tr>
<td>Salem</td>
<td>Health and Education Services</td>
<td>866-523-1216</td>
</tr>
<tr>
<td>Salisbury</td>
<td>Health and Education Services</td>
<td>866-523-1216</td>
</tr>
<tr>
<td>Sandifield</td>
<td>The Brien Center</td>
<td>800-252-0227</td>
</tr>
<tr>
<td>Saugus</td>
<td>Eliot Community Services</td>
<td>800-988-1111</td>
</tr>
<tr>
<td>Savoy</td>
<td>The Brien Center</td>
<td>800-252-0227</td>
</tr>
<tr>
<td>Scituate</td>
<td>South Shore Mental Health</td>
<td>800-528-4890</td>
</tr>
<tr>
<td>Sharon</td>
<td>Riverside Community Care</td>
<td>800-529-5077</td>
</tr>
<tr>
<td>Sheffield</td>
<td>The Brien Center</td>
<td>800-252-0227</td>
</tr>
<tr>
<td>Sherborn</td>
<td>Advocates</td>
<td>800-640-5432</td>
</tr>
<tr>
<td>Shirley</td>
<td>Community Health Link</td>
<td>800-977-5555</td>
</tr>
<tr>
<td>Shrewsbury</td>
<td>Community Health Link</td>
<td>866-549-2142</td>
</tr>
<tr>
<td>Somerville</td>
<td>Cambridge/Somerville Emergency Services (Ccest)</td>
<td>800-981-4357</td>
</tr>
<tr>
<td>South Boston</td>
<td>Boston Emergency Services Team (BEST)</td>
<td>800-981-4357</td>
</tr>
<tr>
<td>South Hadley</td>
<td>Behavioral Health Network</td>
<td>800-437-5922</td>
</tr>
<tr>
<td>Southampton</td>
<td>Behavioral Health Network</td>
<td>800-437-5922</td>
</tr>
<tr>
<td>Southborough</td>
<td>Advocates</td>
<td>800-640-5432</td>
</tr>
<tr>
<td>Southbridge</td>
<td>Riverside Community Care</td>
<td>800-294-4665</td>
</tr>
<tr>
<td>Southwick</td>
<td>Behavioral Health Network</td>
<td>800-437-5922</td>
</tr>
<tr>
<td>Spencer</td>
<td>Community Health Link</td>
<td>866-549-2142</td>
</tr>
<tr>
<td>Springfield</td>
<td>Behavioral Health Network</td>
<td>800-437-5922</td>
</tr>
<tr>
<td>Stockbridge</td>
<td>The Brien Center</td>
<td>800-252-0227</td>
</tr>
<tr>
<td>Stoneham</td>
<td>Eliot Community Services</td>
<td>800-988-1111</td>
</tr>
<tr>
<td>Stow</td>
<td>Advocates</td>
<td>800-640-5432</td>
</tr>
<tr>
<td>Sturbridge</td>
<td>Riverside Community Care</td>
<td>800-294-4665</td>
</tr>
<tr>
<td>Sudbury</td>
<td>Advocates</td>
<td>800-640-5432</td>
</tr>
<tr>
<td>Sutton</td>
<td>Riverside Community Care</td>
<td>800-294-4665</td>
</tr>
<tr>
<td>Swampscott</td>
<td>Eliot Community Services</td>
<td>800-988-1111</td>
</tr>
<tr>
<td>Town</td>
<td>Provider</td>
<td>Phone Number</td>
</tr>
<tr>
<td>--------------</td>
<td>-----------------------------------------------</td>
<td>--------------</td>
</tr>
<tr>
<td>Templeton</td>
<td>Community Health Link</td>
<td>800-977-5555</td>
</tr>
<tr>
<td>Tewksbury</td>
<td>Health and Education Services</td>
<td>800-830-5177</td>
</tr>
<tr>
<td>Thorndike</td>
<td>Behavioral Health Network</td>
<td>800-437-5922</td>
</tr>
<tr>
<td>Three Rivers</td>
<td>Behavioral Health Network</td>
<td>800-437-5922</td>
</tr>
<tr>
<td>Tolland</td>
<td>Behavioral Health Network</td>
<td>800-437-5922</td>
</tr>
<tr>
<td>Topsfield</td>
<td>Health and Education Services</td>
<td>866-523-1216</td>
</tr>
<tr>
<td>Townsend</td>
<td>Community Health Link</td>
<td>800-977-5555</td>
</tr>
<tr>
<td>Tyngsboro</td>
<td>Health and Education Services</td>
<td>800-830-5177</td>
</tr>
<tr>
<td>Upton</td>
<td>Riverside Community Care</td>
<td>800-294-4665</td>
</tr>
<tr>
<td>Uxbridge</td>
<td>Riverside Community Care</td>
<td>800-294-4665</td>
</tr>
<tr>
<td>Wakefield</td>
<td>Eliot Community Services</td>
<td>800-988-1111</td>
</tr>
<tr>
<td>Wales</td>
<td>Riverside Community Care</td>
<td>800-294-4665</td>
</tr>
<tr>
<td>Walpole</td>
<td>Riverside Community Care</td>
<td>800-529-5077</td>
</tr>
<tr>
<td>Waltham</td>
<td>Advocates</td>
<td>800-640-5432</td>
</tr>
<tr>
<td>Ware</td>
<td>Behavioral Health Network</td>
<td>800-437-5922</td>
</tr>
<tr>
<td>Wareham</td>
<td>Child and Family Services</td>
<td>877-996-3154 (New Bedford)</td>
</tr>
<tr>
<td>Warren</td>
<td>Riverside Community Care</td>
<td>800-294-4665</td>
</tr>
<tr>
<td>Watertown</td>
<td>Advocates</td>
<td>800-640-5432</td>
</tr>
<tr>
<td>Wayland</td>
<td>Advocates</td>
<td>800-640-5432</td>
</tr>
<tr>
<td>Webster</td>
<td>Riverside Community Care</td>
<td>800-294-4665</td>
</tr>
<tr>
<td>Wellesley</td>
<td>Riverside Community Care</td>
<td>800-529-5077</td>
</tr>
<tr>
<td>Wenham</td>
<td>Health and Education Services</td>
<td>866-523-1216</td>
</tr>
<tr>
<td>West Boylston</td>
<td>Community Health Link</td>
<td>866-549-2142</td>
</tr>
<tr>
<td>West Brookfield</td>
<td>Riverside Community Care</td>
<td>800-294-4665</td>
</tr>
<tr>
<td>West Newbury</td>
<td>Health and Education Services</td>
<td>866-523-1216</td>
</tr>
<tr>
<td>West Roxbury</td>
<td>Boston Emergency Services Team (BEST)</td>
<td>800-981-4357</td>
</tr>
<tr>
<td>West Springfield</td>
<td>Behavioral Health Network</td>
<td>800-437-5922</td>
</tr>
<tr>
<td>Westborough</td>
<td>Advocates</td>
<td>800-640-5432</td>
</tr>
<tr>
<td>Westfield</td>
<td>Behavioral Health Network</td>
<td>800-437-5922</td>
</tr>
<tr>
<td>Westford</td>
<td>Health and Education Services</td>
<td>800-830-5177</td>
</tr>
<tr>
<td>Westminster</td>
<td>Community Health Link</td>
<td>800-977-5555</td>
</tr>
<tr>
<td>Weston</td>
<td>Riverside Community Care</td>
<td>800-529-5077</td>
</tr>
<tr>
<td>Westwood</td>
<td>Riverside Community Care</td>
<td>800-529-5077</td>
</tr>
<tr>
<td>Weymouth</td>
<td>South Shore Mental Health</td>
<td>800-528-4890</td>
</tr>
<tr>
<td>Wilbraham</td>
<td>Behavioral Health Network</td>
<td>800-437-5922</td>
</tr>
<tr>
<td>Williamstown</td>
<td>The Brien Center</td>
<td>800-252-0227</td>
</tr>
<tr>
<td>Wilmington</td>
<td>Advocates</td>
<td>800-640-5432</td>
</tr>
<tr>
<td>Winchendon</td>
<td>Community Health Link</td>
<td>800-977-5555</td>
</tr>
<tr>
<td>Winchester</td>
<td>Advocates</td>
<td>800-640-5432</td>
</tr>
<tr>
<td>Windsor</td>
<td>The Brien Center</td>
<td>800-252-0227</td>
</tr>
<tr>
<td>Winthrop</td>
<td>Boston Emergency Services Team (BEST)</td>
<td>800-981-4357</td>
</tr>
<tr>
<td>Woburn</td>
<td>Advocates</td>
<td>800-640-5432</td>
</tr>
<tr>
<td>Worcester</td>
<td>Community Health Link</td>
<td>866-549-2142</td>
</tr>
<tr>
<td>Wrentham</td>
<td>Riverside Community Care</td>
<td>800-529-5077</td>
</tr>
</tbody>
</table>
MA Emergency Service Programs (ESPs) provide behavioral health crisis assessment, intervention and stabilization services via the following service components: Mobile Crisis Services for Children and Adolescents, Mobile Crisis Services for Adults and Geriatric population, ESP Community Based locations, and Community Crisis Stabilization Services for ages 18 and over.

MA Emergency Service Programs (ESPs) are assigned to specific cities and towns and have 24 hour telephonic and on site access. It is recommended that Outpatient Providers, Individuals and Families call the ESP toll free number in their area first so the ESP can help them access the most appropriate services. The listing below includes UBH contracted ESP Mobile Crisis Teams with the primary 24/7 location only. The ESP can provide updates on other ESP Community Based locations.

<table>
<thead>
<tr>
<th>Service Locations</th>
<th>Operating Hours</th>
<th>Cities/Towns</th>
</tr>
</thead>
<tbody>
<tr>
<td>BEST/Boston Medical Center 818 Harrison Avenue</td>
<td>24/7</td>
<td>Boston (Dorchester, South Boston, Roxbury, West Roxbury, Jamaica Plain, Mattapan, Roslindale, Hyde Park), Brighton, Brookline, Charlestown, Chelsea, East Boston, Revere, Winthrop</td>
</tr>
<tr>
<td>Boston, MA 02118 (800) 981-4357</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Service Locations</th>
<th>Operating Hours</th>
<th>Cities/Towns</th>
</tr>
</thead>
<tbody>
<tr>
<td>CSEST/Cambridge Hospital 1493 Cambridge Hospital</td>
<td>24/7</td>
<td>Cambridge, Somerville</td>
</tr>
<tr>
<td>Cambridge, MA 02139 (800) 981-4357</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Service Locations</th>
<th>Operating Hours</th>
<th>Cities/Towns</th>
</tr>
</thead>
<tbody>
<tr>
<td>Riverside Community Care 15 Beacon Avenue</td>
<td>24/7</td>
<td>Canton, Dedham, Dover, Foxboro, Medfield, Millis, Needham, Newton, Norfolk, Norwood, Plainville, Sharon, Walpole, Wellesley, Weston, Westwood, Wrentham</td>
</tr>
<tr>
<td>Norwood, MA 02062 (800) 529-5077</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Service Locations</td>
<td>Operating Hours</td>
<td>Cities/Towns</td>
</tr>
<tr>
<td>--------------------------------</td>
<td>-----------------</td>
<td>--------------------------------------------------</td>
</tr>
<tr>
<td>South Shore Mental Health</td>
<td>24/7</td>
<td>Braintree, Cohasset, Hingham, Hull, Milton, Norwell, Quincy, Randolph, Scituate, Weymouth</td>
</tr>
<tr>
<td>460 Quincy Avenue</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Quincy, MA 02169</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(800) 528-4890</td>
<td></td>
<td></td>
</tr>
<tr>
<td>SOUTHEASTERN MA</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Child and Family Services</td>
<td>24/7</td>
<td>Acushnet, Carver, Dartmouth, Duxbury, Fairhaven, Halifax, Hanover, Hanson, Kingston, Marion, Marshfield, Mattapoisett, New Bedford, Pembroke, Plymouth, Plympton, Rochester, Wareham</td>
</tr>
<tr>
<td>543 North Street</td>
<td></td>
<td></td>
</tr>
<tr>
<td>New Bedford, MA 02740</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(877) 996-3154</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Child and Family Services</td>
<td></td>
<td></td>
</tr>
<tr>
<td>118 Long Pond Road Suite 102</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Plymouth, MA 02367</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(800) 469-9888</td>
<td></td>
<td></td>
</tr>
<tr>
<td>CENTRAL MA – METRO WEST</td>
<td></td>
<td></td>
</tr>
<tr>
<td>354 Waverly Street</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Framingham, MA 01702</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(800) 640-5432</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Advocates</td>
<td></td>
<td></td>
</tr>
<tr>
<td>28 Mill Street</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Marlboro, MA 01752</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(800) 640-5432</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
### CENTRAL MA – NORTH COUNTY

#### Community Health Link

<table>
<thead>
<tr>
<th>Service Locations</th>
<th>Operating Hours</th>
<th>Cities/Towns</th>
</tr>
</thead>
</table>

#### CENTRAL MA – SOUTH COUNTY

#### Riverside Community Care

<table>
<thead>
<tr>
<th>Service Locations</th>
<th>Operating Hours</th>
<th>Cities/Towns</th>
</tr>
</thead>
<tbody>
<tr>
<td>Riverside Community Care</td>
<td>24/7</td>
<td>Bellingham, Blackstone, Brimfield, Brookfield, Charlton, Douglas, Dudley, East Brookfield, Franklin, Holland, Hopedale, Medway, Mendon, Milford, Millville, Northbridge, North Brookfield, Oxford, Southbridge, Sturbridge, Sutton, Upton, Uxbridge, Wales, Warren, Webster, West Brookfield</td>
</tr>
</tbody>
</table>

#### CENTRAL MA – WORCESTER

#### Community Health Link

<table>
<thead>
<tr>
<th>Service Locations</th>
<th>Operating Hours</th>
<th>Cities/Towns</th>
</tr>
</thead>
<tbody>
<tr>
<td>Community Health Link</td>
<td>24/7</td>
<td>Auburn, Boylston, Grafton, Holden, Leicester, Millbury, Paxton, Shrewsbury, Spencer, West Boylston, Worcester</td>
</tr>
</tbody>
</table>

UMass Memorial Medical Center

<table>
<thead>
<tr>
<th>Service Locations</th>
<th>Operating Hours</th>
<th>Cities/Towns</th>
</tr>
</thead>
<tbody>
<tr>
<td>UMass Memorial Medical Center</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
### NORTHEASTERN MA – NORTH ESSEX

<table>
<thead>
<tr>
<th>Service Locations</th>
<th>Operating Hours</th>
<th>Cities/Towns</th>
</tr>
</thead>
</table>
| Health and Education Services  
41 Mason Street, Unit# 4  
Salem, MA  01970  
(866) 523-1216 | 24/7 | Amesbury, Beverly, Boxford, Danvers, Essex, Georgetown, Gloucester, Groveland, Hamilton, Haverhill, Ipswich, Manchester by the Sea, Marblehead, Merrimac, Middleton, Newbury, Newburyport, Peabody, Rockport, Rowley, Salem, Salisbury, Topsfield, Wenham, West Newbury |
| Health and Education Services  
No Shore Medical Center  
81 Highland Street  
Salem, MA  01970  
(866) 523-1216 | | |

### NORTHEASTERN MA - LAWRENCE

<table>
<thead>
<tr>
<th>Service Locations</th>
<th>Operating Hours</th>
<th>Cities/Towns</th>
</tr>
</thead>
</table>
| Health and Education Services  
15 Union Street  
Lawrence, MA  01841  
(877) 255-1261 | 8:00 AM – 8:00 PM  
7 days per week  
Please contact 24/7 Health & Education Services locations after hours | Andover, Lawrence, Methuen, North Andover |

### NORTHEASTERN MA - LOWELL

<table>
<thead>
<tr>
<th>Service Locations</th>
<th>Operating Hours</th>
<th>Cities/Towns</th>
</tr>
</thead>
</table>
| Health and Education Services  
391 Varnum Avenue  
Lowell, MA  01854  
(800) 830-5177 | 24/7 | Billerica, Chelmsford, Dracut, Dunstable, Lowell, Tewksbury, Tyngsboro, Westford |

### NORTHEASTERN MA – TRI CITY

<table>
<thead>
<tr>
<th>Service Locations</th>
<th>Operating Hours</th>
<th>Cities/Towns</th>
</tr>
</thead>
</table>
| Eliot Community Services  
95 Pleasant Street  
Lynn, MA  01901  
(800) 988-1111 | 24/7 | Everett, Lynn, Lynnfield, Malden, Medford, Melrose, Nahant, North Reading, Reading, Saugus, Stoneham, Swampscott, Wakefield |
### WESTERN MA
**The Brien Center for Mental Health and Substance Abuse (The Berkshires)**

<table>
<thead>
<tr>
<th>Service Locations</th>
<th>Operating Hours</th>
<th>Cities/Towns</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Service Locations</th>
<th>Operating Hours</th>
<th>Cities/Towns</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Service Locations</th>
<th>Operating Hours</th>
<th>Cities/Towns</th>
</tr>
</thead>
</table>
Recognizing and Responding to Suicidal Persons: What Lawyers Need to Know

Stephen G. Huggard
Ian Gold ° Tali K. Walters, PhD
David Rosmarin, MD
Hillary Dudley ° James Herbert
Jeff Smith ° Lee Paul, LICSW
Rachel Steinberg
Marian Ryan ° Kevin Neal
Paul Anderson ° Rebecca Brendel, MD
Wade C. Myers, MD
Recognizing and Responding to Suicidal Persons: What Lawyers Need to Know

- We hope to start – or further – a conversation designed to minimize the suicides connected to the legal system.

- We thank the mental health professionals who have contributed their time.

- Your materials contain emergency contact numbers for each city and town in Massachusetts.

- Many of these matters are very nuanced and present ethical issues. We have included ethics materials.

- We believe that there is reason to hope.
Recognizing and Responding to Suicidal Persons: What Lawyers Need to Know

- David Rosmarin, M.D.
  McLean Hospital
  rosmarin.david@gmail.com
  (617) 699-8113

- James D. Herbert
  Deputy Chief, Criminal Division
  U.S. Attorney's Office Boston
  james.herbert@usdoj.gov
  (617) 748-3100

- Ian Gold
  Assistant Federal Defender
  ian_gold@fd.org
  (617) 223-8061

* Presenters do not have conflicts concerning this presentation.

Clinical awareness, but not clinical role.

- Knowledge of risk factors
- Assessment of suicidal thoughts
- Clinical symptoms
- Protective Factors

- Suicide as a relief from intolerable internal state.
  
  “Never worry alone.”
Young Man First Arrest Lock-up

- As a defense attorney, you are called by a friend of a friend, whose son has just been arrested for car theft (alternatively: selling stimulants/sexual assault on an intoxicated girl/hit and run). You see the college freshman in the local lockup at 5 PM. He is anxious, naïve, self-castigating, pacing, handwringing, and seemingly taking in little of what you say. He denies any history of mental illness. He admits to drinking several drinks near-daily to cope with the stress of college. You ask him whether he is feeling at all suicidal, and he tells you that thought is one of many things swirling around in his mind, and he can’t really seemed to calm down and concentrate.

Young Man First Arrest Lock-up

Suddenly and unexpectedly you are responsible for more than legal counsel.

- You have the good sense to inquire but are now faced with life/death ambiguities.

- Assessment of risk, not “prediction.”

- STATIC actuarial risk factors/mitigators vs. DYNAMIC mutable risk factors.

- He’s in a lock-up—a frequent first stop—with no mental health or medical staff. (12,000+ in US)

- He’s naïve to the legal system—a risk factor.
Young Man First Arrest Lock-up

- Most frequent time for suicide is first 24 hours of incarceration, usually hanging.

  48% of all incarceration suicides first week in custody.

- Bimodal jail incidence: less than 18 highest, 18-24 lowest, older than 55, incidence rises. No bimodal in prisons.

- In jails, violent offenders (especially kidnappers) nearly triple the suicide rate of non-violent offenders. In prisons violent offenders twice the suicide rate of non-violent. Most prison suicides after first year.

- 1993-2001 NY data of pre-suicide stressors: inmate/inmate conflict; post-disciplinary; fear; illness; adverse info (loss of good-time, loss of family/friend relationship). 41% saw mental health within 3 days of suicide.

- Small jails 6x suicide rate of large jails.

Young Man First Arrest Lock-up

- He has at two mental illnesses: anxiety disorder, which he self-medicates for with alcohol abuse. So the risk factor of more diagnoses increasing suicide risk is increased.

- Alcohol abuse alone is a risk factor—lowers threshold for action—violence to self and others.

- Also: his alcohol abuse is a clue he has trouble tolerating dysphoric internal states.

- Is his hand-wringing/pacing alcohol withdrawal?

- Is he not admitting to other drug use and withdrawal?

Suggested actions:

- 1. Slow down and reassure him about process and that he will likely make bail and have no trial, etc. for months to come.

- 2. Make sure he can repeat that information to you.

- 3. Cancel your dinner plans
Young Man First Arrest Lock-up

4. Get a sense of his internal state and “therapeutic alliance” with you.

5. See if he viscerally calms down. (I had a recent case of rape panic.)

6. Ask why he thinks suicide might be an option, asking about guilt and shame or other cognitive distortions if he doesn’t explain.

(What would you do if you inquire about self-harm and he tells you he will respond only if you hew to absolute lawyer-client privilege?)

6. NEVER TAKE HIS MERE WORDS—ALWAYS GO BY THE TOTAL CLINICAL PICTURE

7. Do not force or rely on a “no suicide contract” (repeatedly shown to be useless and giving false reassurance.) Total Clinical Picture!

8. If still concerned, demand desk sergeant keep him on 1:1 or brought to a MH screening unit, even if he objects.

9. Alert father (with or without his permission?)

10. If overriding son’s objections, explain your ethical requirement of life-preservation over privilege
Divorcing woman with Borderline PD

- You are a marital attorney. You meet with your client in your office. You know from the case so far that she is diagnosed with Borderline Personality Disorder and her relationship with her soon-to-be ex-husband has been marked by violent mood swings, histrionics, and reckless behavior—leading the judge to have an independent psychiatric evaluation for custody purposes. On the basis of that evaluation, you now share with her your assessment that she's going to lose physical custody of her small children. She bolts from your office.

Divorcing woman with Borderline PD

- STATIC AND DYNAMIC RISK FACTORS

- Static: Borderline Personality Disorder marked by fears of abandonment, idealization/devaluation extremes, impulsivity, anger/violence, and recurrent suicidal threats gestures, self-mutilation.
  - Semi-dynamic: loss of children and husband.
- Dynamic: her relationship with you—likely at nadir.
  - Dynamic: psychiatric management of mood swings
- Dynamic: potential to reframe cognitive distortions
Divorcing woman with Borderline PD

- Suicide risk here is ambiguous but certainly heightened and concerning.

- Potential actions: call her; call her treater; call her husband.

- What if you judge that calling her husband or treater would be further evidence of her instability and unsuitability for children?

Divorcing woman with Borderline PD, who intimates harm and bolts office

- Same as above. You counsel she is going to lose physical custody of her children, who currently reside with her part-time. She breaks down inconsolably and tells you that she cannot live without her children and “no way are they ever going to live with that bastard.” Then she bolts.
Divorcing woman with Borderline PD, who intimates harm and bolts office

- What is she intimating?
  - She is expressing an intolerable internal state.
  - She is expressing that suicide occurs to her as solace.
  - Or maybe suicide as anger expression.
  - Or maybe make you feel helpless like she feels (projective identification).
- Is she considering absconding with children?
- Killing her husband?

Suicide/filicide

- Altruistic type—most common (“protect children from father and cruel world without me”)
- Spouse revenge type—least common (“If I can’t have them neither will you.”)

Euripedes’ Medea kills her and Jason’s children when he abandons her for princess Glauce.

16 to 29 percent of mothers and 40 to 60 percent of fathers who commit filicide also commit suicide
Divorcing woman with Borderline PD, who intimates harm and bolts office

- What additional steps beyond prior example—if any?
- Call police in her home town for a well person check?
- Call police in her home town to request a 12a to MH screening?
- Wait—how long?

Schizophrenia: Prior SI/II now in remission

- You are a prosecutor. Four years ago, a man with schizophrenia assaulted a neighbor with an ice pick whom he thought was sexually assaulting him in his sleep (homosexual incubus delusion). At Bridgewater, during competency to stand trial restoration, he tried to electrocute himself 3 months after admission by urinating on the floor, standing barefoot, and placing paperclips in an electrical socket. At trial 2 years ago, he was found not criminally responsible. For the past 3 years he has been psychiatrically stable. You originally argued that he required the strict security of Bridgewater at a commitment hearing 40 days after trial. The judge, however, sent him to Taunton State Hospital. There, he has been non-psychotic, but both your expert and the hospital psychiatrist believe he is becoming demoralized and clinically depressed by his hospitalization. The hospital wants to discharge him to a group home. You have to decide whether to petition for recommitment.
Schizophrenia: Prior SI/HI now in remission

- Psychotic disorder and unipolar and bipolar depression are risk factors for suicide.
- History of suicide attempt is a risk factor.
- Suicide attempt showed preservation of goal-directed thinking when psychotic.
- Psychotic risk factor mitigated by current long-term remission.

Schizophrenia: Prior SI/HI now in remission

- Here, the patient is becoming clinically depressed because of hospitalization, which is grading into preventive detention.
- Risk aversion and political issues relevant.
- Will he have ready access to guns?
- 50% of US suicides involve firearms.
You are a public defender. Your client is in MCI Framingham awaiting trial. She is in general population. You explain the bad news that the plea bargain offer is 12 years. She had been bargaining with you “and God” for 6 years. She tells you she does not want to go to trial and risk a 16-year sentence. She is disconsolate. You query her carefully about thoughts of suicide. She admits these have been passing but states he would never act on them. You revisit her the next week to prepare her for her plea. Her affect is now flat and she seems to relate less with you. She goes through the motions of preparation, no longer asking questions, just parroting what you ask of her. Again, you ask her how she is doing and if you should be concerned about her suicide risk. She tells you not to be concerned, but that doesn't appear credible to you.

Disappointing legal outcome: affect change

Change in life stressor yielding change in affect and in rapport with you.

She had prior thoughts of suicide and is now flat.

Does she feel hopeless (risk factor) and abandoned by God?

- Has she made a deal with God to forgive her for suicide?

- Has she repudiated God and no longer feels restrained?
Disappointing legal outcome: affect change

- Your intuition suspects her suicide denial isn’t credible.
- Does her depressed affect and minimal participation mean she is accepting death as fate or sentence as fate?
- How would you draw her out?
- Any way to reframe things for her? “I’ve had young clients like you who made failed suicide attempts and emerged from lengthy sentences focusing on the rest of their lives.” “What will be the effect on your loved ones?”
- Would her emphatic suicide denials stay your hand from alerting prison MH?

Child porn charges for gun-owning teacher

- You are a prosecutor. You have unsuccessfully argued against bail for a middle-aged, white male prep school school teacher, with family overseas, who has been arrested at the airport for possession and distribution of child pornography. You have not yet advised defense counsel that you are investigating several reports of child molestation that have emerged since the case became public. You are aware the defendant has a gun license.
Child porn charges for gun-owning teacher

- Risk factors: white, middle-aged, guns, shame, facing lengthy incarceration.

- Do you advise defense counsel regarding the gun concerns framed as a suicide risk?

Child porn charges for gun-owning teacher and ensuing media frenzy

- You are a defense attorney in pornography case. At the bail hearing, there was a media frenzy. Your client looked shell-shocked. You meet with him in a side room at the courthouse afterwards. He is terse to the point of monosyllabic. You ask him how he is doing, and he responds that he’s just fine but he has shamed his family. He remarks that he is newly estranged from his adult son and that his arthritis-disabled wife “will be eating cat food because of me.”
Child porn charges for gun-owning teacher and ensuing media frenzy

- Risk factors: affective change, decline in rapport, abandonment by son, guilt.

- Federal courts have no in-house MH. State courts do. (Worth the resources?)

- You MUST inquire and assess risk.
- You MUST ask about guns and assure removal.
- You should not worry alone.

Child porn charges for gun-owning teacher and ensuing media frenzy

- Involve wife and family if appropriate.

- If you judge client at high risk and he non-credibly denies SI, what level of intervention will you take?

- Insist on driving client to MH screen?

- Involve probation on emergency basis?
High risk inmate forbids lawyer divulge SI

- You are a public defender. You visit your client at Nashua Street. He is a chronically depressed man with a long psychiatric history. Over the years he’s been hospitalized several times after suicide attempts, including a near-successful hanging. He has been in and out of segregation twice. He bitterly complains of being isolated in a paper Johnny and being mocked by corrections officers. Bridgewater had him on an 18a and returned him to the prison 3 weeks ago after a brief hospitalization—with the opinion that he is personality disordered and manipulative. He admits to you that he is intermittently intensely suicidal but this varies day by day. He states he has visualized hanging himself using his bed-sheet when his cellmate is asleep. You ask him about informing the corrections officers about your concern. He adamantly forbids it, telling you segregation is intolerable, and he is merely kept there until he recants any suicidal ideation—irrespective of how he is actually feeling.

High risk inmate forbids lawyer divulge SI

- Quite common issue and complaint: chronically suicidally and variably intently suicidal client encounters blunt, binary status: seg or no seg.

- He is unquestionably high risk: prior lethal attempts, no meaningful treatment at BSH, major depression which is chronic and poorly responsive to medication treatment, lack of access to psychotherapy in prison

- Risk of acceding to not informing prison MH vs. legal ethics vs. likely short resegregation until he says the magic words “not suicidal,” vs. abrogating your relationship vs. vain hope he will be sent back to BSH or elsewhere and get truly risk-reducing treatment.
PTSD, alcohol, violence in a recent veteran

A recently discharged veteran with PTSD gets arrested late on a Friday for shoving his girlfriend while he was intoxicated. There is some history of substance abuse and some history of violence. The girlfriend refuses to post bail and has filed for a restraining order.

Four risk factors: recent veteran with service-related PTSD, substance abuse, violence resulting in abandonment and isolation.

Does violence relate to TBI, SA, and/or irritability associated with PTSD?

What is the risk of stalking and further violence?

Access to guns likely. Familiarity with guns certain.

Of course you inquire and assess client.

To assess suicide risk do you call GF? (legal obstacles), Family? Over his objection?
Corporate fraud hypothetical part 1

Mr. CFO is the focus of a significant corporate fraud investigation that was initiated eighteen months ago by a whistleblower. The SEC referred the case to the U.S. Attorney’s Office, and Mr. CFO is now represented by a criminal defense attorney Darrow. The AUSA calls attorney Darrow to let her know that Mr. CFO is likely to be indicted and has significant exposure but may be able to help his cause if he is interested in cooperating with the ongoing investigation. Attorney Darrow responds that Mr. CFO is not interested in cooperating if he is going to be charged, because Mr. CFO does not believe he has committed a crime, and neither does attorney Darrow.

Corporate fraud hypothetical part 2

Attorney Darrow adds that if the AUSA is thinking of charging Mr. CFO, the AUSA should consider that Mr. CFO has lost his job and his house; his spouse has left him; his kids are acting out; he has a history of clinical depression; and he seems to be “on the thin edge.” Attorney Darrow expresses concern about what Mr. CFO might do if charged and requests that, at a minimum, Mr. CFO be permitted to surrender rather than be arrested if charges are brought. The AUSA is aware that emails obtained during the investigation indicate that Mr. CFO is troubled and may not be emotionally stable.
Corporate fraud hypothetical questions

- How might the AUSA and Attorney Darrow handle this situation?

- How might Pretrial Services and the Marshals handle the situation?

- What are the custodial options if Mr. CFO is arrested?

- What if Mr. CFO agrees to cooperate but the cooperation entails covert investigative steps such as making consensual recordings against former colleagues and friends?

Corporate fraud hypothetical questions

- What if it turns out that Mr. CFO is receiving outpatient mental health treatment and is having suicidal thoughts?

- What if the case proceeds to sentencing and the court imposes a higher sentence than anyone expected and gives the defendant six weeks to self-report to the designated prison?

- What if this were a state case?
Recognizing & Responding to Suicidal Persons

What Lawyers Need to Know

INTRODUCTION
Suicide is a major public health problem.

28,000 people die by suicide in the US each year.

22 US Vets a day commit suicide.

Incarcerated Population*

- Suicide is a leading cause of death in jails across the country
- 38 of every 100,000 county jail inmates commit suicide (compared to 11/100,000 of general population commit suicide)
- i.e., 696 jail suicides in 2005 and 2006 (jails, detention facilities, and holding facilities)

Incarcerated Population (cont.)

- 67% were white.
- 93% were male.
- The average age was 35.
- 42% were single.
- 43% were held on a personal and/or violent charge.
- 47% had a history of substance abuse.
- 28% had a history of medical problems.
- 38% had a history of mental illness.
- 20% had a history of taking psychotropic medication.
- 34% had a history of suicidal behavior.

WHO

Incarcerated Population (cont.)

38 of every 100,000 county jail inmates commit suicide

DOWN from 107 per 100,000 in 1986

INMATE SUICIDES ARE PREVENTABLE!

WHO
Dozens attempt suicide

• Males are 4x more likely to complete a suicide than females, but females are 3x more likely to attempt.

• White Americans are more likely to die of suicide than Americans of other racial backgrounds.

• Suicide is the 3rd leading cause of death in Americans between the age of 25 and 34.

• Suicide rates increase with age and elderly people who commit suicide are often divorced, widowed and/or physically ill.

Depression and Substance Abuse

90% of Americans who die of suicide suffer from

   clinical depression or
   a substance abuse problem

   treatable medical conditions
Introduction to QPR

Based on QPR Training (Quinnett, P.G.)

Question, Persuade, Refer

Just as with CPR, you do not need to be a psychiatrist, psychologist or clinical social worker to use this suicide intervention method.

QPR = Question, Persuade and Refer
Our plan today is to teach:

- Basic information about suicide
- Some warning signs of suicide
- Examples of how people communicate their suicidal thoughts and feelings
- Information on how to
  - Question a suicidal person
  - Persuade a suicidal person to seek help
  - Refer a suicidal person for help

QPR techniques are a way to talk with and intervene with someone who may be suicidal.
Suicide Intervention Training using QPR techniques

- Is NOT intended to be a form of counseling or treatment.
- IS intended to offer hope through positive action.

**Question – Persuade – Refer**

---

Assumption

No one can stop suicide, it is inevitable.

Fact

If people in a crisis get the help they need, they will probably never be suicidal again

**Assumptions – Are they true?**
Assumption

Confronting a person about suicide will only make them angry and increase risk of suicide

Fact

Asking someone about suicide intent lowers anxiety, opens up communication and lowers the risk of an impulsive act.

Assumptions – Are they true?

Assumption

Only experts can prevent suicide

Fact

Anyone can help prevent the tragedy of suicide

Assumptions – Are they true?
Assumption

Suicidal people keep their plans to themselves

Fact

Most suicidal people communicate their intent sometime during the week preceding their attempt

Assumptions – Are they true?

Assumption

Those who talk about suicide don’t do it

Fact

People who talk about suicide may try, or even complete, an act of self destruction

Assumptions – Are they true?
Assumption

Once a person decides to complete suicide, there is nothing anyone can do to stop them.

Fact

Suicide is the most preventable kind of death, and almost any positive action may save a life.

Assumptions – Are they true?

We are all trying to decrease the incidence of suicide by our presence and efforts to learn more today.

Let's begin by exploring the clues that suicidal people leave us.

How can I help?
Warning Signs and Clues
Direct Verbal Clues

“I’ve decided to kill myself.”
“I wish I were dead.”
“I’d like to go to sleep and never wake up”
“I’m going to commit suicide.”
“I’m going to end it all.”
“If (such and such) doesn’t happen, I’ll kill myself.”
“If I don’t pass this course.”
“If she leaves me.”
“If they fire me from my job.”
“If they send me to jail”

Warning Signs and Clues
Indirect Verbal Clues

“I won’t be around much longer.”
“I’m tired of living. I just can’t go on.”
“My family would be better off without me.”
“Who cares if I’m dead anyway.”
“I just want out.”
“Pretty soon you won’t have to worry about me.”
Warning Signs and Clues

Behavioral Clues

- Any previous suicide attempt
- Acquiring a gun or stockpiling pills
- Co-occurring depression, moodiness, hopelessness (irritability and anger in younger people)
- Putting personal affairs in order

Warning Signs and Clues

Behavioral Clues (cont.)

- Giving away prized possessions
- Sudden interest or disinterest in religion
- Drug and alcohol abuse, or relapse after a period of recovery
- Unexplained anger, aggression and irritability
Warning Signs and Clues
Situational Clues

- Being fired or being expelled from school
- A recent unwanted move
- Loss of any major relationship
- Death of a spouse, child, or best friend, especially if by suicide
- Diagnosis of a serious or terminal illness

Warning Signs and Clues
Situational Clues (cont.)

- Family member/classmate committed suicide
- Sudden unexpected loss of freedom/fear of punishment
- Anticipated loss of financial security
- Loss of a cherished therapist, counselor or teacher
- Fear of becoming a burden to others
So what do we do if we suspect suicidal thoughts or intention?

Ask questions

This is the first part of QPR

How you ask the question is less important than THAT you ask it
**Tips for asking the “Suicide” question:**

- If in doubt, don’t wait, ask the question
- If the person is reluctant, be persistent
- Talk to the person alone in a private setting
- Allow the person to talk freely – don’t interrupt
- Give yourself plenty of time for the conversation
- Have your resources handy

**QUESTION**

**Less Direct Approach:**

- Have you been unhappy lately?
- Have you been very unhappy lately?
- Have you been so very unhappy lately that you’ve been thinking about ending your life?
- Do you ever wish you could go to sleep and never wake up?
Direct Approach:

- “You know, when people are as upset as you seem to be, they sometimes wish they were dead. I’m wondering if you’re feeling that way, too.”

- “You look pretty miserable, I wonder if you’re thinking about suicide?”

- “Are you thinking about killing yourself?” (This works best with men).

IF YOU CANNOT ASK THE QUESTION FIND SOMEONE WHO CAN.
How NOT to ask the suicide question:

- “You’re not thinking of killing yourself, are you?”

Don’t tell the person you don’t want to know.

Always make the question one that allows them to answer in a positive fashion

What do you do if you believe the person does wish to kill or harm themselves?
How do we PERSUADE someone to get help?

- Listen to the problem and give them your full attention
- Remember suicide is not the problem, only the solution to a perceived insoluble problem
- It’s important to not rush to judgment when you hear someone talk about their plans of suicide
- Offer hope in any form
ASK – Will you go with me to get help? If they say yes, take them to the resources.

ASK – Will you let me get you help?

Sometimes people feel helpless. They need your initiative and action.

ASK – Will you promise me not to kill yourself until we’ve found help?

**PERSUADE**

Your willingness to listen, and to help, can rekindle hope.

**PERSUADE**
Then you need to follow through with referrals to help.

In some cases, you may need to take control to assure the person is in a safe place.

How do we REFER someone for help?
Referrals in the Massachusetts Correctional System

696 inmates

in jails, detention facilities, and holding facilities across the United States

committed suicide in 2005 and 2006
Suicide Characteristics in the Correctional System

- Deaths were evenly distributed throughout the year; certain seasons and/or holidays did not account for more suicides.
- 32% occurred between 3:00pm and 9:00pm.
- 24% occurred within the first 24 hours, 27% between 2 and 14 days, and 20% between 1 and 4 months.
- 20% of the victims were intoxicated at the time of death.
- 93% of the victims used hanging as the method.
- 66% of the victims used bedding as the instrument.

Correctional System Suicide Characteristics (Cont.)

- 30% of the victims used a bed or bunk as the anchoring device.
- 31% of the victims were found dead more than 1 hour after the last observation.
- 38% of the victims were held in isolation.
- 8% of the victims were on suicide watch at the time of death.
- No-harm contracts were used in 13% of cases.
- 35% of deaths occurred close to the date of a court hearing, with 69% occurring in less than 2 days.
- 22% occurred close to the date of a telephone call or visit, with 67% occurring in less than 1 day.
Upon Booking

- All inmates/detainees are screened
  - Medical and Mental Health Screen
  - Mental Health
    - Review of drug and alcohol use
    - Are you in fear of harming yourself?
    - Have you harmed yourself in the past?
    - Complete mental health history, identify medications, history of treatment, and current mental status

**Correctional System Referrals**

First-time inmates considered at higher risk of suicide

All inmates asked:
- Do you feel depressed at this time?
- Do you have anything to look forward to in the future?
- Are you thinking about hurting or killing yourself?
- Have you considered suicide in recent months?
- Have you ever attempted suicide?
- Is there a family history of mental illness?
- Do you have a history of physical or sexual abuse?

**Correctional System Referrals (Cont.)**
Referral for mental health service if
  ▪ + Mental health history
  ▪ + psychiatric medications

Comprehensive mental health evaluation

Decisions made regarding
  ▪ Diagnosis
  ▪ Referral for medications
  ▪ Population vs. medical housing

**Correctional System Referrals (Cont.)**

- Almost 24/7 Mental Health staff (present until 9:30pm M-F)
- MH Staff welcomes calls of concern from attorneys and Court clinicians
- Mental Health Director - Close collaboration with Court clinicians, mental hospitals, and Department of Mental Health (DMH)
  
  DMH case manager onsite 2-3 times a week

**Correctional System Referrals**

**Suffolk County HOC**
Response to Suicidal Inmate

- Mental Health notified for evaluation

- If high risk, moved to medical housing and mental health watch (MHW). 3 Levels
  - Light MHW
  - 15 Minute MHW
  - Eyeball or 1:1 MHW

Highest level of Risk – Section 18(a) to Forensic Psychiatric Hospital
- Men to Bridgewater State Hospital
- Women to
  - Solomon Carter Fuller Mental Health Center
  - Worcester Recovery Center and Hospital

Correctional System Referrals
Suffolk County HOC

Use resources provided in the training

Know where to call in your area for emergency services

National suicide hotlines – for information and intervention

REFER
National Resources

1-800-SUICIDE (free, confidential)
1-800-273-TALK (free, confidential)
Samaritans 1-877-870-467 (free, confidential)

Massachusetts Resources

Massachusetts Psychiatric Emergency Services Programs (handout)

Massachusetts Emergency Service Program (ESP) Directory (handout)

Samaritans
24 hour helpline 617-247-0220
http://samaritanshope.org
Veterans Resources

Veterans Crisis Line 1-800-273-8255
Text 838255
Online Chat www.MilitaryCrisisLine.net
http://veteranscrisisline.net

Additional Resources - Publications

*After an Attempt: The Emotional Impact of a Suicide Attempt on Families* (Feeling Blue Suicide Prevention Council)
http://www.co.oswego.ny.us/mental/suicide/after an attempt families.pdf

*Suicide: The Forever Decision* (Paul G. Quinnett)
http://www.qprinstitute.com/pdfs/Forever_Decision.pdf
BEST type of referral - taking them directly to a professional or an agency that can offer help immediately.

NEXT BEST type of referral – Get a commitment from them to accept help, then making the arrangement to get that help.

THIRD BEST type of referral – Give referral information and get a good faith commitment to follow through and not complete or attempt suicide.

REFER

REMEMBER

Since almost all efforts to persuade someone to live instead of attempt suicide will be met with agreement and relief, don’t hesitate to get involved or take the lead.

REFER
For effective intervention say:

- I want you to live
- I’m on your side
- We’ll get through this

REFER

- Program
- Family
- Friends
- Brothers, Sisters, Pastors, Priests, Rabbi, Bishop, Imam, Physician
- Probation/Parole Officer
- Program Staff Person
- DMH Case Manager
- Mental Health Supports

REFER

Get others involved
Action Steps

✓ Join a team
✓ Follow up with a visit, phone call, or card
✓ Let them know you care

When you apply these QPR intervention methods you plant the seeds of hope, and hope helps prevent suicide

REMEMBER
• You may be the only person in a position to recognize the warning signs that someone you know is suicidal.

• Research shows that when suicide warning signs are evident, we feel anxious, fearful, and immobilized.

• Don’t be afraid of using the word “suicide.” Ask the QUESTION.

• For QPR to be effective, you must overcome this fear and ACT quickly!

Things to Remember

• Clinical depression is a major risk factor for suicide. Any sudden “cheerfulness” in someone who has been seriously depressed may mean they have decided to die by suicide.

• If in doubt, if concerned, apply your suicide intervention training!

• Alcohol and other drug use impairs thinking and judgment, and increases impulsivity and suicide risk.

• Immediately remove alcohol to lower risk.

Things to Remember
• Remember, for the suicidal person, there is no safety without sobriety!

• Instill hope with active listening.

• Make suicide difficult by removing the means to suicide.

• If the person refuses help, seek consultation from the professionals available to you, or call a hotline
  o 1-800-SUICIDE
  o 1-800-273-TALK
  o Samaritans 1-877-870-4673
  o Samaritans Massachusetts 617-247-0220
  o Veterans Crisis Line 1-800-273-8255/Text 838255

Things to Remember

Stephen G. Huggard
Ian Gold ° Tali K. Walters, PhD
David Rosmarin, MD
Hillary Dudley ° James Herbert
Jeff Smith ° Lee Paul, LICSW
Rachel Steinberg
Marian Ryan ° Kevin Neal
Paul Anderson ° Rebecca Brendel, MD
Wade C. Myers, MD

Suicide Prevention for Lawyers
Task Force Participants
Recognizing & Responding to Suicidal Persons

What Lawyers Need to Know
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.

COMMENT

[1] 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 diminished mental capacity, however, maintaining the ordinary client-lawyer relationship may not be possible in all respects. In particular, a severely incapacitated person may have no power to make legally binding decisions. Nevertheless, a client with diminished capacity often has the ability to understand, deliberate upon, and reach conclusions about matters affecting the client’s own well-being. For example, children as young as five or six years of age, and certainly those of ten or twelve, are regarded as having opinions that are entitled to weight in legal proceedings concerning their custody. So also, it is recognized that some persons of advanced age can be quite capable of handling routine financial matters while needing special legal protection concerning major transactions.

[2] The fact that a client suffers a disability does not diminish the lawyer’s obligation to treat the client with attention and respect. Even if the person has a legal representative, the lawyer should as far as possible accord the represented person the status of client, particularly in maintaining communication.
[3] The client may wish to have family members or other persons participate in discussions with the lawyer. When necessary to assist in the representation, the presence of such persons generally does not affect the applicability of the attorney-client evidentiary privilege. Nevertheless, the lawyer must keep the client’s interests foremost and, except for protective action authorized under paragraph (b), must to look to the client, and not family members, to make decisions on the client’s behalf.

[4] If a legal representative has already been appointed for the client, the lawyer should ordinarily look to the representative for decisions on behalf of the client. In matters involving a minor, whether the lawyer should look to the parents as natural guardians may depend on the type of proceeding or matter in which the lawyer is representing the minor. If the lawyer represents the guardian as distinct from the ward, and is aware that the guardian is acting adversely to the ward’s interest, the lawyer may have an obligation to prevent or rectify the guardian’s misconduct. See Rule 1.2(d).

**Taking Protective Action**

[5] If a lawyer reasonably believes that a client is at risk of substantial physical, financial or other harm unless action is taken, and that a normal client-lawyer relationship cannot be maintained as provided in paragraph (a) because the client lacks sufficient capacity to communicate or to make adequately considered decisions in connection with the representation, then paragraph (b) permits the lawyer to take protective measures deemed necessary. Such measures could include: consulting with family members, using a reconsideration period to permit clarification or improvement of circumstances, using voluntary surrogate decisionmaking tools such as durable powers of attorney or consulting with support groups, professional services, adult-protective agencies or other individuals or entities that have the ability to protect the client. In taking any protective action, the lawyer should be guided by such factors as the wishes and values of the client to the extent known, the client’s best interests and the goals of intruding into the client’s decisionmaking autonomy to the least extent feasible, maximizing client capacities and respecting the client’s family and social connections.

[6] In determining the extent of the client’s diminished capacity, the lawyer should consider and balance such factors as: the client’s ability to articulate reasoning leading to a decision, variability of state of mind and ability to appreciate consequences of a decision; the substantive fairness of a decision; and the consistency of a decision with the known long-term commitments and values of the client. In appropriate circumstances, the lawyer may seek guidance from an appropriate diagnostician.

[7] If a legal representative has not been appointed, the lawyer should consider whether appointment of a guardian ad litem, conservator or guardian is necessary to protect the client’s interests. Thus, if a client with diminished capacity has substantial property that should be sold for the client’s benefit, effective completion of the transaction may require appointment of a legal representative. In addition, rules of procedure in litigation sometimes provide that minors or persons with diminished capacity must be represented by a guardian or next friend if they do not have a general guardian. In many circumstances, however, appointment of a legal representative may
be more expensive or traumatic for the client than circumstances in fact require. Evaluation of such circumstances is a matter entrusted to the professional judgment of the lawyer. In considering alternatives, however, the lawyer should be aware of any law that requires the lawyer to advocate the least restrictive action on behalf of the client.

**Disclosure of the Client’s Condition**

[8] Disclosure of the client’s diminished capacity could adversely affect the client’s interests. For example, raising the question of diminished capacity could, in some circumstances, lead to proceedings for involuntary commitment. Information relating to the representation is protected by Rule 1.6. Therefore, unless authorized to do so, the lawyer may not disclose such information. When taking protective action pursuant to paragraph (b), the lawyer is impliedly authorized to make the necessary disclosures, even when the client directs the lawyer to the contrary. Nevertheless, given the risks of disclosure, paragraph (c) limits what the lawyer may disclose in consulting with other individuals or entities or seeking the appointment of a legal representative. At the very least, the lawyer should determine whether it is likely that the person or entity consulted with will act adversely to the client’s interests before discussing matters related to the client. The lawyer’s position in such cases is an unavoidably difficult one.

**Emergency Legal Assistance**

[9] In an emergency where the health, safety or a financial interest of a person with seriously diminished capacity is threatened with imminent and irreparable harm, a lawyer may take legal action on behalf of such a person even though the person is unable to establish a client-lawyer relationship or to make or express considered judgments about the matter, when the person or another acting in good faith on that person’s behalf has consulted with the lawyer. Even in such an emergency, however, the lawyer should not act unless the lawyer reasonably believes that the person has no other lawyer, agent or other representative available. The lawyer should take legal action on behalf of the person only to the extent reasonably necessary to maintain the status quo or otherwise avoid imminent and irreparable harm. A lawyer who undertakes to represent a person in such an exigent situation has the same duties under these Rules as the lawyer would with respect to a client.

[10] A lawyer who acts on behalf of a person with seriously diminished capacity in an emergency should keep the confidences of the person as if dealing with a client, disclosing them only to the extent necessary to accomplish the intended protective action. The lawyer should disclose to any tribunal involved and to any other counsel involved the nature of his or her relationship with the person. The lawyer should take steps to regularize the relationship or implement other protective solutions as soon as possible. Normally, a lawyer would not seek compensation for such emergency actions taken.
ANNEXATION
OVERVIEW

Model Rule 1.14 addresses a lawyer’s ethical obligations when a client’s capacity to make adequately considered decisions in connection with a representation is diminished. Subsection (a) directs the lawyer to maintain a “normal” client-lawyer relationship to the extent possible. If the lawyer believes the client is at risk of harm and cannot act in his or her own interest, subsection (b) permits the lawyer to take “reasonably necessary protective action” under specified conditions. Subsection (c) explicitly provides that disclosure of client information for the purpose of taking protective action under subsection (b) is “impliedly authorized” by Rule 1.6 (Confidentiality of Information), “but only to the extent reasonably necessary to protect the client’s interests.”

• 2002 Amendments

As originally promulgated in 1983, Model Rule 1.14 referred to the representation of a client “under a disability.” In 2002 the wording was broadened to refer to a client “with diminished capacity” to express more accurately the continuum of a client’s capacity. Subsection (b) was expanded to include examples of protection that may be taken short of seeking the appointment of a guardian, and to require a risk of substantial harm unless action is taken. In addition, subsection (c) was added to clarify the lawyer’s confidentiality obligations under Rule 1.6. The comment was expanded to give guidance in evaluating a client’s diminished capacity and in determining whether protective action should be taken. See American Bar Association, A Legislative History: The Development of the ABA Model Rules of Professional Conduct, 1982–2005, at 326–31 (2006).

Subsection (a): Duty to Maintain Normal Client-Lawyer Relationship

Rule 1.14(a) requires a lawyer to maintain, as far as reasonably possible, a “normal” client-lawyer relationship with a client with diminished capacity. Accord Restatement (Third) of the Law Governing Lawyers § 24(1) (2000). “This obligation implies that the lawyer should continue to treat the client with attention and respect, attempt to communicate and discuss relevant matters, and continue as far as reasonably possible to take action consistent with the client’s directions and decisions.” ABA Formal Ethics Op. 96-404 (1996).

As Comment [1] explains, a “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.” The rule recognizes that although a severely incapacitated client “may have no power to make legally binding decisions,” in many cases, a client with diminished capacity will have “the ability to understand, deliberate upon, and reach conclusions about matters affecting the client’s own well-being.” Model Rule 1.14, cmt. [1]. Accordingly, a lawyer representing a client with diminished capacity is required, to the extent “reasonably possible,” to communicate with that client, work with him, and comply with his objectives concerning the representation. See In re Flack, 33 P.3d 1281 (Kan. 2001) (lawyer’s failure to abide by client’s estate plan-
ning objectives, as far as reasonably possible, after being informed of client’s medical and mental disability violated Rule 1.14); In re Lee, 754 A.2d 426 (Md. Ct. Spec. App. 2000) (duty under Rule 1.14 to maintain normal client-lawyer relationship precludes lawyer from acting solely as arm of court, in nature of special master, and using assessment of client’s best interests to justify waiving client’s rights without consultation, divulging client’s confidences, disregarding client’s wishes, and presenting evidence against client in guardianship proceeding); In re Guardianship of Henderson, 838 A.2d 1277 (N.H. 2003) (reversing order appointing guardian when court-appointed lawyer acted contrary to client’s wishes); Or. Ethics Op. 2005-159 (2005) (except in extreme cases, lawyer can usually explain decisions client faces in simple terms and elicit response sufficient to allow lawyer to proceed with representation); see also In re Laprath, 670 N.W.2d 41 (S.D. 2003) (lawyer prepared documents and had them signed by client lawyer considered incompetent, acted against client’s wishes, and filed petition seeking to be appointed client’s guardian when client complained). See generally David A. Green, “I’m OK—You’re OK”: Educating Lawyers to “Maintain a Normal Client-Lawyer Relationship” with a Client with a Mental Disability, 28 J. Legal Prof. 65 (2003–2004) (arguing that ethics rules should provide lawyers with more guidance and urging mandatory training on subject).

**Representation of Minor**

Rule 1.14 explicitly applies to the representation of those whose decision-making ability is diminished “because of minority.” Although children may not have the power to make legally binding decisions, their opinions are generally entitled to some weight in legal proceedings. See Model Rule 1.14, cmt. [1]; see also N.Y. City Ethics Op. 1997-2 (1997) (listing factors to be considered in assessing child’s capacity).

A lawyer is not necessarily required to follow the instructions of a minor client if the lawyer believes that doing so would not be in the client’s best interests. However, the lawyer’s precise obligations in such circumstances will depend upon a variety of factors, including the client’s level of maturity, the nature of the legal matter, the specific facts, and the particular jurisdiction involved. See, e.g., In re Kristen B., 78 Cal. Rptr. 3d 495 (Ct. App. 2008) (lawyer for child in dependency case must advocate for minor’s best interests, even if different from minor’s wishes); In re Marriage of Hartley, 886 P.2d 665 (Colo. 1995) (en banc) (lawyer appointed to represent child in custody matter acts as both guardian and advocate and need not represent child’s views without question); In re Christina W., 639 S.E.2d 770 (W. Va. 2006) (“while the child’s opinions are to be given consideration where the child has demonstrated an adequate level of competency, there is no requirement that the child’s wishes govern”); Conn. Informal Ethics Op. 94-29 (1994) (if lawyer thinks minor client’s position is not in client’s best interests, lawyer should seek appointment of guardian to protect client’s interests and then represent client’s position before court; if lawyer finds this repugnant, he may seek to withdraw, but may not express opinion on merits or use client’s confidences to advocate for position not favored by client); L.A. County Ethics Op. 504 (2000) (if lawyer believes minor client is capable of making informed decision, lawyer must follow client’s instructions not to disclose that client has been sexually assaulted; if lawyer believes client not capable of making informed decision, lawyer should take
protective action, including seeking appointment of guardian ad litem, but may not disclose information unless such appointment made); Mass. Ethics Op. 93-6 (1993) (lawyer must comply with thirteen-year-old client’s instructions even if lawyer believes doing so is not in client’s best interests, unless lawyer determines client incapable of making reasoned decisions in matter; otherwise, lawyer may seek to withdraw); N.Y. City Ethics Op. 1997-2 (1997) (lawyer for minor lacking decision-making capacity may make decisions, including decisions to disclose confidential information, that client cannot make in reasoned way); S.D. Ethics Op. 2004-5 (2004) (lawyer need not comply with request of minor client in abuse and neglect case to advocate for placement that lawyer believes is not in client’s best interests, but may take protective action, such as by advocating for different placement or seeking appointment of guardian ad litem).

The substantive law of the jurisdiction will also govern the obligations of a lawyer representing a minor. These obligations may vary depending upon whether the matter involves child custody, juvenile delinquency, abuse and neglect proceedings, or some other type of proceeding. In some jurisdictions, a lawyer may be required to serve as both counsel and guardian ad litem for a single client. For a discussion of the ethical issues arising when a lawyer serves both as a client’s lawyer and guardian ad litem, see ABA/BNA Lawyers’ Manual on Professional Conduct, “Lawyer-Client Relationship: Client with Diminished Capacity,” pp. 31:601 et seq. See generally Conference, Ethical Issues in the Legal Representation of Children, 64 Fordham L. Rev. 1281 (Mar. 1996); Jan C. Costello, Representing Children in Mental Disability Proceedings, 1 J. Center for Child. & Cts. 101 (1999); Bruce A. Green, Lawyers As Nonlawyers in Child Custody and Visitation Cases: Questions from the “Legal Ethics” Perspective, 73 Ind. L.J. 665 (Spring 1998); David R. Katner, Coming to Praise, Not to Bury, the New ABA Standards of Practice for Lawyers Who Represent Children in Abuse and Neglect Cases, 14 Geo. J. Legal Ethics 103 (Fall 2000); Ellen Marrus, Please Keep My Secret: Child Abuse Reporting Statutes, Confidentiality, and Juvenile Delinquency, 11 Geo. J. Legal Ethics 509 (Spring 1998); Martha Matthews, Ten Thousand Tiny Clients: The Ethical Duty of Representation in Children’s Class-Action Cases, 64 Fordham L. Rev. 1435 (Mar. 1996).

WHEN CLIENT ALREADY HAS LEGAL REPRESENTATIVE

As noted in Comment [4], when a legal representative has already been appointed for the client, the lawyer should ordinarily look to the representative to make decisions on the client’s behalf. See In re Guardianship of Hocker, 791 N.E.2d 302 (Mass. 2003) (“permanent guardian stands in the place of the ward in making decisions about the ward’s well-being, and the guardian is held to high standards of fidelity in exercising this authority for the ward’s benefit”). Nevertheless, the lawyer retains a duty to assess the client’s interests independently and act in accordance with them—even if contrary to the representative’s instructions. See Schult v. Schult, 699 A.2d 134 (Conn. 1997) (lawyer for minor child in custody dispute may advocate position contrary to position of child’s guardian ad litem); D.C. Ethics Op. 353 (2010) (lawyer hired by durable power of attorney agent to represent incapacitated client in litigation must follow agent’s directives unless doing so warrants protective action); N.C. Ethics Op. 98-18 (1999) (lawyer may withhold information from minor client’s guardian if lawyer...
believes guardian acting adversely to client’s interests); Or. Ethics Op. 2005-159 (2005) (although lawyer normally takes direction from client’s guardian ad litem, lawyer must still independently assess client’s interests and guardian’s assertion of them); see also N.C. Ethics Op. 98-16 (1999) (even though client declared incompetent by state and guardian appointed, lawyer representing client in appeal of determination of incompetence not required to treat client as incompetent or defer to decisions of guardian relating to lawyer’s representation of client).

**Subsection (b): Protective Action**

Model Rule 1.14(b) permits a lawyer to take “reasonably necessary protective action” if 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.”

**Assessing Client’s Capacity**

To determine what, if any, protective action is appropriate, the lawyer must first assess the client’s capacity. Comment [6] suggests that a lawyer consider and balance the following factors: “the client’s ability to articulate reasoning leading to a decision, variability of state of mind and ability to appreciate consequences of a decision; the substantive fairness of a decision; and the consistency of a decision with the known long-term commitments and values of the client.” See *In re Brantley*, 920 P.2d 433 (Kan. 1996) (lawyer disciplined for filing involuntary conservatorship proceedings without meeting personally with client to determine client’s state of mind or client’s understanding of financial affairs); see also Ind. Ethics Op. 2-2001 (2001) (failure to ascertain client’s physical and mental condition and evaluate client’s capacity violates Rule 1.14); Or. Ethics Op. 2005-159 (2005) (lawyer should “examine whether the client can give direction on the decisions that the lawyer must ethically defer to the client”).

If necessary, the lawyer may seek the aid of others to assess the client’s capacity. See, e.g., ABA Formal Ethics Op. 96-404 (1996) (suggesting that, in addition to appropriate diagnostician, lawyer consult with client’s family or other interested persons who can help assess client’s capacity); Mo. Informal Ethics Op. 990095 (1999) (lawyer who believes elderly client shows signs of Alzheimer’s disease may seek assistance from social service agency to determine if guardian needed); N.Y. City Ethics Op. 1997-2 (1997) (in forming conclusions about client’s capacity, lawyer must take into account not only information and impressions derived from lawyer’s communications with client, but also other relevant information that may reasonably be obtained from other sources, and lawyer may also seek guidance from other professionals and concerned parties); N.D. Ethics Op. 00-06 (2000) (lawyer who believes divorce client will accept offer contrary to her best interests to avoid disclosing substance abuse problem must determine if client able to consider her decision adequately; lawyer may consult with professional to determine nature and extent of client’s disability); Pa. Ethics Op. 87-214 (1988) (lawyer who reasonably believes client cannot handle her financial affairs and day-to-day health care needs may seek court appointment of physician to report to court on threshold issue of client’s competence). See generally ABA Comm’n on Law and Aging & Am. Psychological Ass’n, *Assessment of Older Adults with Diminished*

• Client with Poor Judgment

A client’s poor judgment does not suffice to warrant “protective action” under Rule 1.14(b). ABA Formal Ethics Op. 96-404 (1996) (“Rule 1.14(b) does not authorize the lawyer to take protective action because the client is not acting in what the lawyer believes to be the client’s best interest”); Conn. Informal Ethics Op. 05-12 (2005) (lawyer who believes that elderly client is competent to make financial decisions may not take “protective action” by disclosing to third parties lawyer’s concern that client’s arrangements with personal care provider are ill-considered and will cause client to run out of funds); Restatement (Third) of the Law Governing Lawyers § 24 cmt. [c] (2000) (lawyer should not construe as proof of disability a client’s insistence upon view of client’s welfare that lawyer considers unwise or at variance with lawyer’s views); see also Me. Ethics Op. 84 (1988) (“It goes without saying that the attorney must have far stronger grounds for acting to seek the appointment of a guardian or to suggest that family members do so than mere disagreement with the client.”).

SPECTRUM OF PROTECTIVE MEASURES

Rule 1.14(b) envisions a spectrum of protective action, from consulting with individuals who have the ability to take protective action to seeking appointment of a legal representative or guardian. Comment [5] suggests several protective measures that a lawyer can consider, including consulting family members, using a reconsideration period to permit clarification or improvement of the circumstances surrounding the client’s incapacity, using voluntary surrogate decision-making tools such as durable powers of attorney, or consulting support groups, professional services, adult-protective agencies, or other entities having the ability to protect the client.

“Reasonably necessary” protective action is generally the “least restrictive action under the circumstances.” ABA Formal Ethics Op. 96-404 (1996); Vt. Ethics Op. 2006-1 (2006); see also Conn. Informal Ethics Op. 04-10 (2004) (lawyer may not ask law enforcement authorities to take suicidal client into custody under outstanding warrant as “protective measure,” but may take less drastic measures, such as counseling against suicide, contacting client’s family or medical professionals, or, as last resort, initiating steps for involuntary commitment).

• Seeking Appointment of Guardian

Rule 1.14(b) permits the lawyer for a client with diminished capacity to seek appointment of a guardian to protect the client’s interests if there is no less drastic alternative. ABA Formal Ethics Op. 96-404 (1996) (appointment of guardian is “serious deprivation of the client’s rights and ought not be undertaken if other, less drastic, solutions are available”); accord Conn. Informal Ethics Op. 97-19 (1997); see also In re S.H., 987 P.2d 735 (Alaska 1999) (“If the requirements of Rule 1.14 are met, a lawyer may seek a guardian to protect the client’s interests despite the client’s disapproval.”); Or. Ethics Op. 2005-159 (2005) (lawyers should seek appointment of guardians only when
client “consistently demonstrates lack of capacity to act in his or her own interests and . . . is unlikely . . . to assist in the proceedings”).

However, a lawyer should not seek to be appointed as the client’s guardian, “except in the most exigent of circumstances, that is, where immediate and irreparable harm will result from the slightest delay,” and, even then, only on a temporary basis. ABA Formal Ethics Op. 96-404 (1996); accord In re Laprath, 670 N.W.2d 41 (S.D. 2003).

Similarly, a lawyer normally should not represent a third party petitioning for guardianship over the lawyer’s client. ABA Formal Ethics Op. 96-404 (1996); accord In re Wyatt, 982 A.2d 396 (N.H. 2009); see Mass. Ethics Op. 05-5 (2005) (lawyer may not represent longtime client’s son seeking appointment as client’s guardian); Va. Ethics Op. 1769 (2003) (legal aid lawyer may not represent daughter seeking appointment of guardian for elderly mother represented by same office in unrelated matter but may seek appointment of guardian if warranted under Rule 1.14); see also S.C. Ethics Op. 06-06 (2006) (law firm may petition court for appointment of conservator and/or guardian for impaired client, but may not represent client’s daughter in proceeding to have herself named as such unless she is already acting as client’s legal representative).

But see R.I. Ethics Op. 2004-1 (2004) (lawyer may represent party seeking appointment as guardian over elderly client if lawyer “reasonably believes that a guardianship is in the elderly client’s best interest”).

Withdrawal from Representation

A lawyer who concludes that representing a client with diminished capacity has become unreasonably difficult may seek to withdraw, if this can be done without prejudice, but withdrawal is not generally favored. See, e.g., ABA Formal Ethics Op. 96-404 (1996) (withdrawal may leave disabled client vulnerable at very time client in greatest need of assistance; better course of action is for lawyer to stay with representation and seek appropriate protective action on behalf of client); Me. Ethics Op. 84 (1988) (withdrawal leaves client without advice when it seems most needed); Mich. Informal Ethics Op. CI-882 (1983) (probability that client would have “same difficulties with any other lawyer retained . . . does not bind the attorney to remain in a relationship which the client may have rendered unreasonably difficult for the attorney to continue”); N.Y. State Ethics Op. 746 (2001) (“seeking to withdraw is generally seen as the least satisfactory response because doing so leaves the client without assistance when it is most needed”); see also D.C. Ethics Op. 353 (2010) (if client’s surrogate decision maker “were to engage in the conduct described in Rule 1.16(b) that would ordinarily cause a lawyer to withdraw, that is a circumstance under which the lawyer should take protective action,” such as seeking substitute surrogate decision maker).

Subsection (c): Disclosure of Information about Client with Diminished Capacity

Lawyer’s Implied Authorization to Reveal Information

Subsection (c) of Rule 1.14, added in 2002, makes clear that a lawyer must protect the confidences of a client with diminished decision-making capacity, but that when taking protective action pursuant to subsection (b), the lawyer is “impliedly author-
ized” under Rule 1.6(a) to disclose information about the client—“but only to the extent reasonably necessary to protect the client’s interests.” This provision is in accord with earlier interpretations of lawyers’ confidentiality obligations. See, e.g., ABA Formal Ethics Op. 96-404 (1996) (limited disclosure appropriate “to aid in the lawyer’s assessment of the client’s capacity as well as in the decision of how to proceed”); ABA Informal Ethics Op. 89-1530 (1989) (lawyer may consult client’s physician concerning medical condition that interferes with client’s ability to communicate or make decisions concerning representation, even though client has not consented and currently incapable of doing so); III. Ethics Op. 00-02 (2000) (lawyer representing mentally disabled adult client in disability benefit proceeding may not give psychiatric report to client’s father, unless lawyer believes client disabled and guardian should be appointed); Me. Ethics Op. 84 (1988) (lawyer who believes elderly client incapable of making rational financial decisions may so inform client’s son, as long as son has no adverse interest in client’s affairs); Neb. Ethics Op. 91-4 (1991) (lawyer may disclose confidential communications to extent necessary to protect client’s best interests if lawyer believes client incompetent); N.Y. City Ethics Op. 1987-7 (1987) (lawyer with alcoholic client may seek conservator and may disclose confidential information to court if necessary to safeguard client’s interests; lawyer should seek judicial permission to make disclosures in camera and should request that file be kept under seal); see also In re Christina W., 639 S.E.2d 770 (W. Va. 2006) (child’s lawyer who also serves as guardian ad litem must disclose child’s confidences to court against child’s wishes if “honoring the duty of confidentiality would result in the [child’s] exposure to a high risk of probable harm”); cf. In re Mullins, 649 N.E.2d 1024 (Ind. 1995) (lawyer sought emergency guardianship over client in chronic vegetative state when client’s parents authorized withdrawal of hydration and nutrition; lawyer received public reprimand after faxing client’s medical information to local news media without client consent in apparent effort to gain support for her position and oppose client’s parents).

• Suicidal Client

As to whether a lawyer may disclose a client’s intent to commit suicide, compare Conn. Informal Ethics Op. 00-5 (2000) (lawyer may reveal client’s intent to commit suicide only if lawyer reasonably believes client cannot adequately act in own interest; intent to commit suicide may, but does not always, evidence an inability to act in one’s own interest), and Mass. Ethics Op. 01-2 (2001) (Rule 1.14 permits lawyer to disclose client’s threat to commit suicide if lawyer has reasonable belief that threat is “the result of a mental disorder or disability that makes the client incapable of making a rational decision about the important matter of deciding to continue living”), with Alaska Ethics Op. 2005-1 (2005) (Rule 1.14 permits lawyer to tell “proper authorities,” such as court mental health professionals or appropriate detention facility personnel, that client charged with felony plans to commit suicide rather than go to jail; any other interpretation “would defeat the purpose of Rule 1.14(b)—namely protecting the health and safety of a client who the lawyer reasonably believes is unable to act in his or her own interest”), and S.C. Ethics Op. 99-12 (lawyer may reveal client’s threat to take own life: “‘overriding social concern’ for the preservation of human life dictates that a lawyer may, and even should, take reasonable steps to preserve the life and well-
being of his client and others”). See also Model Rule 1.6(b)(1) (permitting disclosure “to prevent reasonably certain death or substantial bodily harm”).

**Criminal Proceedings**

The criminal prosecution of a defendant who is not competent to stand trial is barred by the Due Process Clause of the Fourteenth Amendment. *Medina v. California*, 505 U.S. 437 (1992); see *Drope v. Missouri*, 420 U.S. 162 (1975); *Pate v. Robinson*, 383 U.S. 375 (1966); see also *Holmes v. Levenhagen*, 600 F.3d 756 (7th Cir. 2010) (suspending indefinitely habeas corpus proceeding of seriously impaired death row inmate until mental illness has abated or symptoms controlled). Accordingly, a lawyer with a good-faith doubt about the competency of a criminal defense client must raise the issue of the client’s competency with the court. See, e.g., *United States v. Boige grain*, 155 F.3d 1181 (10th Cir. 1998) (defense counsel “is not only allowed to raise the competency issue, but, because of the importance of the prohibition on trying those who cannot understand proceedings against them, she has a professional duty to do so when appropriate”; not ineffective assistance of counsel to raise issue of competency against client’s wishes), cert. denied, 525 U.S. 1083 (1999); *Red Dog v. State*, 625 A.2d 245 (Del. 1993) (if criminal defense lawyer for capital murder defendant has reasonable and objective basis to doubt client’s competency to decide to forego further appeals, lawyer must so inform court in timely fashion and ask for judicial determination of client’s competency); ABA Standards for Criminal Justice, Standard 7-4.2(c) (2d ed. 1986) (defense counsel should move for competency evaluation whenever counsel has good-faith doubt about client’s competency, even over client’s objection); see also *Commonwealth v. Simpson*, 704 N.E.2d 1131 (Mass. 1999) (pursuant to Rule 1.14, defense counsel with good-faith doubt about defendant’s competency may raise competency question to protect client; doing so in general terms does not violate ethics rules); Pa. Ethics Op. 00-79 (2000) (lawyer appointed as standby counsel for defendant representing himself in criminal case must advise client, attempt to protect client’s rights, and seek protective action if lawyer believes client incapable of making rational decisions or adequately representing himself). See generally Josephine Ross, *Autonomy versus Client’s Best Interests: The Defense Lawyer’s Dilemma When Mentally Ill Clients Seek to Control Their Defense*, 35 Am. Crim. L. Rev. 1343 (Summer 1998); Norma Schrock, *Defense Counsel’s Role in Determining Competency to Stand Trial*, 9 Geo. J. Legal Ethics 639 (Winter 1996); Christopher Slobogin & Amy Mashburn, *The Criminal Defense Lawyer’s Fiduciary Duty to Clients with Mental Disability*, 68 Fordham L. Rev. 1581 (Apr. 2000).

**Client’s Refusal to Contest Death Penalty**

Whether a criminal defense lawyer may take “protective action” on behalf of a client who does not wish to contest a death penalty depends upon whether the lawyer reasonably believes the client is competent to make the decision. See, e.g., *Red Dog v. State*, 625 A.2d 245 (Del. 1993) (lawyer seeking competency determination for client wanting to forego appeal of death sentence must, at minimum, demonstrate “objective and reasonable basis for believing that the client cannot act in his own interest”); see also Va. Ethics Op. 1816 (2005) (criminal defense lawyer whose suicidal client wants to be executed and directs lawyer not to present evidence in defense may take protec-
tive action if lawyer believes client unable to make rational, informed decision; protective action may include—depending upon degree of impairment—seeking mental evaluation, appointing guardian, and/or going forward with defense anyway). See generally J.C. Oleson, Swilling Hemlock: The Legal Ethics of Defending a Client Who Wishes to Volunteer for Execution, 63 Wash. & Lee L. Rev. 147 (Winter 2006) (arguing that lawyers should not go along with death row client’s decision to forego further appeals and volunteer for execution “because it is impossible to distinguish the will of the client from the situational effects of death row syndrome”).

**EMERGENCY LEGAL ASSISTANCE**

Comments [9] and [10] were adopted in 1997 to clarify the lawyer’s role when an individual with seriously diminished capacity needs immediate legal assistance but is not able to initiate a client-lawyer relationship. Comment [9] explains that a lawyer may take emergency protective legal action when the individual’s health, safety, or financial interests are threatened with imminent and irreparable harm, if the individual—or another acting in good faith—has consulted with the lawyer and the lawyer reasonably believes that the individual “has no other lawyer, agent or other representative available.” In such emergency situations, the lawyer should act on behalf of the individual only to the extent reasonably necessary to maintain the status quo or otherwise avoid imminent and irreparable harm. Comment [10] advises the lawyer to “keep the confidences of the person as if dealing with a client,” and to “take steps to regularize the relationship or implement other protective solutions as soon as possible.”
Rule 1.6

Confidentiality of Information

(a) A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation or the disclosure is permitted by paragraph (b).

(b) A lawyer may reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary:
   (1) to prevent reasonably certain death or substantial bodily harm;
   (2) to prevent the client from committing a crime or fraud that is reasonably certain to result in substantial injury to the financial interests or property of another and in furtherance of which the client has used or is using the lawyer’s services;
   (3) to prevent, mitigate or rectify substantial injury to the financial interests or property of another that is reasonably certain to result or has resulted from the client’s commission of a crime or fraud in furtherance of which the client has used the lawyer’s services;
   (4) to secure legal advice about the lawyer’s compliance with these Rules;
   (5) to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the lawyer’s representation of the client; or
   (6) to comply with other law or a court order.

COMMENT

[1] This Rule governs the disclosure by a lawyer of information relating to the representation of a client during the lawyer’s representation of the client. See Rule 1.18 for the lawyer’s duties with respect to information provided to the lawyer by a prospective client, Rule 1.9(c)(2) for the lawyer’s duty not to reveal information relating to the lawyer’s prior representation of a former client and Rules 1.8(b) and 1.9(c)(1) for the lawyer’s duties with respect to the use of such information to the disadvantage of clients and former clients.

[2] A fundamental principle in the client-lawyer relationship is that, in the absence
of the client’s informed consent, the lawyer must not reveal information relating to the representation. See Rule 1.0(e) for the definition of informed consent. This contributes to the trust that is the hallmark of the client-lawyer relationship. The client is thereby encouraged to seek legal assistance and to communicate fully and frankly with the lawyer even as to embarrassing or legally damaging subject matter. The lawyer needs this information to represent the client effectively and, if necessary, to advise the client to refrain from wrongful conduct. Almost without exception, clients come to lawyers in order to determine their rights and what is, in the complex of laws and regulations, deemed to be legal and correct. Based upon experience, lawyers know that almost all clients follow the advice given, and the law is upheld.

[3] The principle of client-lawyer confidentiality is given effect by related bodies of law: the attorney-client privilege, the work product doctrine and the rule of confidentiality established in professional ethics. The attorney-client privilege and work product doctrine apply in judicial and other proceedings in which a lawyer may be called as a witness or otherwise required to produce evidence concerning a client. The rule of client-lawyer confidentiality applies in situations other than those where evidence is sought from the lawyer through compulsion of law. The confidentiality rule, for example, applies not only to matters communicated in confidence by the client but also to all information relating to the representation, whatever its source. A lawyer may not disclose such information except as authorized or required by the Rules of Professional Conduct or other law. See also Scope.

[4] Paragraph (a) prohibits a lawyer from revealing information relating to the representation of a client. This prohibition also applies to disclosures by a lawyer that do not in themselves reveal protected information but could reasonably lead to the discovery of such information by a third person. A lawyer’s use of a hypothetical to discuss issues relating to the representation is permissible so long as there is no reasonable likelihood that the listener will be able to ascertain the identity of the client or the situation involved.

**Authorized Disclosure**

[5] Except to the extent that the client’s instructions or special circumstances limit that authority, a lawyer is impliedly authorized to make disclosures about a client when appropriate in carrying out the representation. In some situations, for example, a lawyer may be impliedly authorized to admit a fact that cannot properly be disputed or to make a disclosure that facilitates a satisfactory conclusion to a matter. Lawyers in a firm may, in the course of the firm’s practice, disclose to each other information relating to a client of the firm, unless the client has instructed that particular information be confined to specified lawyers.

**Disclosure Adverse to Client**

[6] Although the public interest is usually best served by a strict rule requiring lawyers to preserve the confidentiality of information relating to the representation of their clients, the confidentiality rule is subject to limited exceptions. Paragraph (b)(1) recognizes the overriding value of life and physical integrity and permits disclosure reasonably necessary to prevent reasonably certain death or substantial bodily harm.
Such 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. Thus, a lawyer who knows that a client has accidentally discharged toxic waste into a town’s water supply may reveal this information to the authorities if there is a present and substantial risk that a person who drinks the water will contract a life-threatening or debilitating disease and the lawyer’s disclosure is necessary to eliminate the threat or reduce the number of victims.

Paragraph (b)(2) is a limited exception to the rule of confidentiality that permits the lawyer to reveal information to the extent necessary to enable affected persons or appropriate authorities to prevent the client from committing a crime or fraud, as defined in Rule 1.0(d), that is reasonably certain to result in substantial injury to the financial or property interests of another and in furtherance of which the client has used or is using the lawyer’s services. Such a serious abuse of the client-lawyer relationship by the client forfeits the protection of this Rule. The client can, of course, prevent such disclosure by refraining from the wrongful conduct. Although paragraph (b)(2) does not require the lawyer to reveal the client’s misconduct, the lawyer may not counsel or assist the client in conduct the lawyer knows is criminal or fraudulent. See Rule 1.2(d). See also Rule 1.16 with respect to the lawyer’s obligation or right to withdraw from the representation of the client in such circumstances, and Rule 1.13(c), which permits the lawyer, where the client is an organization, to reveal information relating to the representation in limited circumstances.

Paragraph (b)(3) addresses the situation in which the lawyer does not learn of the client’s crime or fraud until after it has been consummated. Although the client no longer has the option of preventing disclosure by refraining from the wrongful conduct, there will be situations in which the loss suffered by the affected person can be prevented, rectified or mitigated. In such situations, the lawyer may disclose information relating to the representation to the extent necessary to enable the affected persons to prevent or mitigate reasonably certain losses or to attempt to recoup their losses. Paragraph (b)(3) does not apply when a person who has committed a crime or fraud thereafter employs a lawyer for representation concerning that offense.

A lawyer’s confidentiality obligations do not preclude a lawyer from securing confidential legal advice about the lawyer’s personal responsibility to comply with these Rules. In most situations, disclosing information to secure such advice will be impliedly authorized for the lawyer to carry out the representation. Even when the disclosure is not impliedly authorized, paragraph (b)(4) permits such disclosure because of the importance of a lawyer’s compliance with the Rules of Professional Conduct.

Where a legal claim or disciplinary charge alleges complicity of the lawyer in a client’s conduct or other misconduct of the lawyer involving representation of the client, the lawyer may respond to the extent the lawyer reasonably believes necessary to establish a defense. The same is true with respect to a claim involving the conduct or representation of a former client. Such a charge can arise in a civil, criminal, disciplinary or other proceeding and can be based on a wrong allegedly committed by the lawyer against the client or on a wrong alleged by a third person, for example, a person claiming to have been defrauded by the lawyer and client acting together. The
lawyer’s right to respond arises when an assertion of such complicity has been made. Paragraph (b)(5) does not require the lawyer to await the commencement of an action or proceeding that charges such complicity, so that the defense may be established by responding directly to a third party who has made such an assertion. The right to defend also applies, of course, where a proceeding has been commenced.

[11] A lawyer entitled to a fee is permitted by paragraph (b)(5) to prove the services rendered in an action to collect it. This aspect of the rule expresses the principle that the beneficiary of a fiduciary relationship may not exploit it to the detriment of the fiduciary.

[12] Other law may require that a lawyer disclose information about a client. Whether such a law supersedes Rule 1.6 is a question of law beyond the scope of these Rules. When disclosure of information relating to the representation appears to be required by other law, the lawyer must discuss the matter with the client to the extent required by Rule 1.4. If, however, the other law supersedes this Rule and requires disclosure, paragraph (b)(6) permits the lawyer to make such disclosures as are necessary to comply with the law.

[13] A lawyer may be ordered to reveal information relating to the representation of a client by a court or by another tribunal or governmental entity claiming authority pursuant to other law to compel the disclosure. Absent informed consent of the client to do otherwise, the lawyer should assert on behalf of the client all nonfrivolous claims that the order is not authorized by other law or that the information sought is protected against disclosure by the attorney-client privilege or other applicable law. In the event of an adverse ruling, the lawyer must consult with the client about the possibility of appeal to the extent required by Rule 1.4. Unless review is sought, however, paragraph (b)(6) permits the lawyer to comply with the court’s order.

[14] Paragraph (b) permits disclosure only to the extent the lawyer reasonably believes the disclosure is necessary to accomplish one of the purposes specified. Where practicable, the lawyer should first seek to persuade the client to take suitable action to obviate the need for disclosure. In any case, a disclosure adverse to the client’s interest should be no greater than the lawyer reasonably believes necessary to accomplish the purpose. If the disclosure will be made in connection with a judicial proceeding, the disclosure should be made in a manner that limits access to the information to the tribunal or other persons having a need to know it and appropriate protective orders or other arrangements should be sought by the lawyer to the fullest extent practicable.

[15] Paragraph (b) permits but does not require the disclosure of information relating to a client’s representation to accomplish the purposes specified in paragraphs (b)(1) through (b)(6). In exercising the discretion conferred by this Rule, the lawyer may consider such factors as the nature of the lawyer’s relationship with the client and with those who might be injured by the client, the lawyer’s own involvement in the transaction and factors that may extenuate the conduct in question. A lawyer’s decision not to disclose as permitted by paragraph (b) does not violate this Rule. Disclosure may be required, however, by other Rules. Some Rules require disclosure only if such disclosure would be permitted by paragraph (b). See Rules 1.2(d), 4.1(b), 8.1 and 8.3. Rule 3.3, on the other hand, requires disclosure in some circumstances regardless of whether such disclosure is permitted by this Rule. See Rule 3.3(c).
Acting Competently to Preserve Confidentiality

[16] A lawyer must act competently to safeguard information relating to the representation of a client against inadvertent or unauthorized disclosure by the lawyer or other persons who are participating in the representation of the client or who are subject to the lawyer’s supervision. See Rules 1.1, 5.1 and 5.3.

[17] When transmitting a communication that includes information relating to the representation of a client, the lawyer must take reasonable precautions to prevent the information from coming into the hands of unintended recipients. This duty, however, does not require that the lawyer use special security measures if the method of communication affords a reasonable expectation of privacy. Special circumstances, however, may warrant special precautions. Factors to be considered in determining the reasonableness of the lawyer’s expectation of confidentiality include the sensitivity of the information and the extent to which the privacy of the communication is protected by law or by a confidentiality agreement. A client may require the lawyer to implement special security measures not required by this Rule or may give informed consent to the use of a means of communication that would otherwise be prohibited by this Rule.

Former Client

[18] The duty of confidentiality continues after the client-lawyer relationship has terminated. See Rule 1.9(c)(2). See Rule 1.9(c)(1) for the prohibition against using such information to the disadvantage of the former client.

Annotation

Nature and Origin of Duty of Confidentiality

Model Rule 1.6 sets out the lawyer’s professional duty to protect the confidentiality of client information. This ethical duty derives from both the law of agency and the law of evidence. See Restatement (Third) of the Law of Agency § 8.05 (2006) (agent may not disclose or use “confidential information” of principal for agent’s own purposes or those of third party); Restatement (Third) of the Law Governing Lawyers §§ 59–67, 68–86 (2000) (confidentiality rules derived from agency law and professional regulations; evidentiary attorney privilege protects confidential client-lawyer communications from coerced disclosure in course of legal proceedings).

Compliance with the duty of confidentiality under this rule requires not only that lawyers avoid improperly disclosing protected information, but also that they act competently to preserve confidentiality. See Model Rule 1.6, cmts. [16], [17]. In addition, under Rule 1.8(b), lawyers may not use protected information to the client’s disadvantage without the client’s consent. See also Model Rule 1.9(c) (Duties to Former Clients); Model Rule 1.13 (Organization as Client); Model Rule 1.18(b) (Duties to Prospective Client); Model Rule 3.3 (Candor toward the Tribunal); Model Rule 4.1(b) (Truthfulness in Statements to Others).
• Relationship of Rule 1.6 to Attorney-Client Privilege

The attorney-client evidentiary privilege is so closely related to the ethical duty of confidentiality that the terms “privileged” and “confidential” are often used interchangeably. But the two are entirely separate concepts, applicable under different sets of circumstances and using different standards. The ethical duty is extremely broad: it protects from disclosure all “information relating to the representation,” and applies at all times. The attorney-client privilege, however, is more limited: it protects from compelled disclosure the substance of a lawyer-client communication made for the purpose of obtaining or imparting legal advice or assistance, and applies only in the context of a legal proceeding governed by the rules of evidence. See Model Rule 1.6, cmt. [3]; Restatement (Third) of the Law Governing Lawyers §§ 68–86 (2000).

Accordingly, a court’s determination that particular information is not privileged is not the same as a determination that the lawyer has no ethical obligation to protect the information from disclosure in other contexts. See, e.g., Newman v. State, 863 A.2d 321 (Md. 2004) (confidentiality rule “not limited to matters communicated in confidence by the client but also to all information relating to the representation . . . whereas the attorney-client privilege only protects communications between the client and the attorney”); Spratley v. State Farm Mut. Ins. Co., 78 P.3d 603, 608 n.2 (Utah 2003) (ethical duty of confidentiality not coextensive with attorney-client privilege: “privilege might be waived allowing compelled disclosure by an attorney while the duty of confidentiality is still in full force”). Conversely, a lawyer’s voluntary and permissible disclosure under one of the confidentiality exceptions does not itself waive or otherwise disrupt the privileged nature of a communication for purposes of a subsequent attempt to compel disclosure. See In re Grand Jury Investigation, 902 N.E.2d 929 (Mass. 2009) (although lawyer’s disclosure of client’s threat to harm judge permitted by Rule 1.6, communication remained privileged and lawyer could not be compelled to testify about it at subsequent criminal proceeding). See generally Mitchell M. Simon, Discreet Disclosures: Should Lawyers Who Disclose Confidential Information to Protect Third Parties Be Compelled to Testify against Their Clients? 49 S. Tex. L. Rev. 307 (Winter 2007).

Although a determination of whether a lawyer must reveal client information in an adversarial proceeding will turn on rules of evidence rather than rules of ethics, the lawyer’s ethical duty of confidentiality governs important aspects of the lawyer’s response to a demand for information. When a demand is first made upon a lawyer, through legal process, to disclose client information, Rule 1.6 requires the lawyer to assert “all nonfrivolous claims” that the information is protected from disclosure by the attorney-client privilege or other applicable law. Model Rule 1.6, cmt. [13]; see, e.g., R.I. Ethics Op. 2000-8 (2000) (lawyer questioned at deposition about matters related to representation of deceased client is required by Rule 1.6 to invoke lawyer-client privilege and ethical duty of confidentiality and, if applicable, work-product doctrine; lawyer must comply with final order of court seeking disclosure).

Subsection (a): Protected Information
Lawyer May Not Disclose Information Relating to Representation of Client

Rule 1.6(a) prohibits a lawyer from disclosing any “information relating to the representation of a client,” in the absence of implied or express consent or an applicable exception specified in the rule. See, e.g., People v. Hohertz, 102 P.3d 1019 (Colo. O.P.D.J. 2004) (lawyer phoned client when she was not at home and discussed matter with client’s roommate without permission). The range of protected information is extremely broad, covering information received from the client or any other source, even public sources, and even information that is not itself protected but may lead to the discovery of protected information by a third party. Model Rule 1.6, cmt. [4]; see, e.g., In re Goebel, 703 N.E.2d 1045 (Ind. 1998) (in effort to convince criminal client who threatened to murder guardianship client that lawyer did not know latter’s whereabouts, lawyer showed criminal client returned envelope containing incorrect address for her; however, criminal client able to guess mistake in address, go to her home, and murder her husband). A lawyer may use hypotheticals to discuss issues relating to the representation as long as “there is no reasonable likelihood that the listener will be able to ascertain the identity of the client or the situation involved.” Model Rule 1.6, cmt. [4]; see, e.g., ABA Formal Ethics Op. 98-411 (1998) (in lawyer-to-lawyer consultations, use of hypotheticals that reveal identity of client may, under some circumstances, violate Rule 1.6).

Previously Disclosed or Publicly Available Information

In contrast to both the attorney-client privilege (applicable only to communications made “in confidence” and waived upon disclosure) and Model Rule 1.9(c)(1) (permitting lawyers to “use” information relating to the representation of a former client to the disadvantage of that client when the “information has become generally known”), Rule 1.6 contains no exception permitting disclosure of information previously disclosed or publicly available. See, e.g., In re Anonymous, 654 N.E.2d 1128 (Ind. 1995) (lawyer violated Rule 1.6 by disclosing information relating to representation of client, even though information “was readily available from public sources and not confidential in nature”); In re Bryan, 61 P.3d 641 (Kan. 2003) (lawyer violated Rule 1.6 by disclosing, in court documents, existence of defamation suit against former client); State ex rel. Okla. Bar Ass’n v. Chappell, 93 P.3d 25 (Okla. 2004) (lawyer in fee dispute with former employer violated Rule 1.6 by filing motion referring to criminal charges that had been filed and later dismissed against former client); Lawyer Disciplinary Bd. v. McGraw, 461 S.E.2d 850 (W. Va. 1995) (“[t]he ethical duty of confidentiality is not nullified by the fact that the information is part of a public record or by the fact that someone else is privy to it”); In re Harman, 628 N.W.2d 351 (Wis. 2001) (lawyer violated Rule 1.6(a) by disclosing to prosecutor former client’s medical records that he obtained during prior representation; irrelevant whether those records “lost their ‘confidentiality’” by being made part of former client’s medical malpractice action); Ariz. Ethics Op. 2000-11 (2000) (lawyer must “maintain the confidentiality of information relating to representation even if the information is a matter of public record”); Nev. Ethics Op.
41 (2009) (contrasting broad language of Rule 1.6 with narrower language of Restatement (Third) of the Law Governing Lawyers); Pa. Ethics Op. 2009-10 (2009) (absent client consent, lawyer may not report opponent’s misconduct to disciplinary board even though it is recited in court’s opinion). But see In re Sellers, 669 So. 2d 1204 (La. 1996) (lawyer violated Rule 4.1 by failing to disclose existence of collateral mortgage to third party; because “mortgage was filed in the public record, disclosure of its existence could not be a confidential communication, and was not prohibited by Rule 1.6”); In re Lim, 210 S.W.3d 199 (Mo. 2007) (no violation of duty of confidentiality when lawyer reported client’s debt to INS on ground that debt was matter of public record).

• Disclosure of Client Identity

Model Rule 1.6 prohibits the disclosure of a client’s identity unless the client consents or the disclosure is impliedly authorized. See, e.g., Ill. Ethics Op. 97-1 (1997) (lawyer may provide bank with names of clients as potential bank customers only with clients’ consent); Iowa Ethics Op. 97-4 (1997) (law firm brochures and newsletters may contain names of clients if clients give written permission; decided under Model Code).

In the context of litigation, however, the general rule is that a client’s identity is not protected by the attorney-client privilege unless “the net effect of the disclosure would be to reveal the nature of a client communication.” 1 Kenneth S. Broun et al., McCormick on Evidence § 90 (6th ed. 2006); see, e.g., United States v. BDO Seidman, 337 F.3d 802 (7th Cir. 2003) (requiring disclosure of information regarding identity of accounting firm’s clients who consulted with firm regarding their participation in potentially abusive tax shelters); In re Subpoena to Testify before Grand Jury (Alexiou v. United States), 39 F.3d 973 (9th Cir. 1994) (lawyer must testify about identity of client who paid with counterfeit $100 bill; client’s name not considered confidential unless “intertwined” with confidential information or last link tying client to crime); Brett v. Berkowitz, 706 A.2d 509 (Del. 1998) (client identity privileged in exceptional cases when disclosure would provide “last link” in chain of evidence implicating client in crime and would reveal confidential communication between lawyer and client); State v. Gonzalez, 234 P.3d 1 (Kan. 2010) (public defender could not be compelled to disclose identity of client when defender already disclosed nature of client’s statement). See generally Steven Goode, Identity, Fees and the Attorney-Client Privilege, 59 Geo. Wash. L. Rev. 307 (Jan. 1991).

• Billing Information

The rule also prohibits a lawyer from revealing a client’s financial or billing information without the client’s consent. R.I. Ethics Op. 2002-02 (2002) (lawyer for municipal council may not comply with individual council member’s request for unredacted itemized billing statement unless council consents). The issue arises often in the context of insurance representation, when a lawyer hired by an insurance company to represent an insured is asked to submit information supporting the lawyer’s bills to the insurer or a third-party auditor hired by the insurer. Ethics committees commonly find that a lawyer is impliedly authorized to give billing information to an insurer if it will not adversely affect the interests of the insured, but not to submit this infor-

On the other hand, billing information and fee agreements are generally not protected by the evidentiary attorney-client privilege unless disclosure would reveal the substance of confidential communications between a lawyer and a client. See, e.g., DiBella v. Hopkins, 403 F.3d 102 (2d Cir. 2005) (time records and billing statements not privileged when they do not contain detailed accounts of legal services rendered); United States v. Naegle, 468 F. Supp. 2d 165 (D.D.C. 2007) (billing statements that were general and did not reveal any litigation strategy or other specifics of representation not protected by attorney-client privilege); Hewes v. Langston, 853 So. 2d 1237 (Miss. 2003) (simple invoice normally not protected by attorney-client privilege, but “itemized legal bills necessarily reveal confidential information and thus fall within the privilege”).

**DISCLOSURES EXPRESSLY OR IMPLIEDLY AUTHORIZED**

Lawyers must obviously disclose a great deal of “information relating to the representation of a client” simply to do their jobs. These disclosures are permissible when the client has expressly or impliedly authorized them.

- **Implied Authorization**

  Like Rule 1.2(a), which allows a lawyer to “take such action on behalf of the client as is impliedly authorized to carry out the representation,” Rule 1.6(a) specifically permits disclosure of client information when “impliedly authorized . . . to carry out the representation.” The exception is generally limited to disclosures that are clearly necessary to advance the representation of a client, such as facts “that cannot properly be disputed” or “a disclosure that facilitates a satisfactory conclusion to a matter.” Model Rule 1.6, cmt.[5]; see ABA Formal Ethics Op. 08-450 (2008) (without informed consent of client, lawyer may not reveal information to another, jointly represented client when disclosure would be harmful to first client, such as denial of insurance protection; “[i]mplied authority applies only when the lawyer reasonably perceives that disclosure is necessary to the representation of the client whose information is protected by Rule 1.6 . . . and no client may be presumed impliedly to have authorized such [harmful] disclosures”).

  In general, what is “impliedly authorized” will depend upon the particular circumstances of the representation. See, e.g., ABA Formal Ethics Op. 01-421 (2001) (lawyer hired by insurance company to defend insured normally has implied authorization to share with insurer information that will advance insured’s interests); ABA Informal Ethics Op. 86-1518 (1986) (lawyer may disclose to opposing counsel, without client consultation, inadvertent omission of contract provision); Ark. Ethics Op. 96-1
(1996) (in real estate transaction, many disclosures are impliedly authorized; many documents become public records, and other parties to transaction receive information such as purchase price, amount of offer, amount accepted, and condition of property; disclosures to obtain title insurance are also impliedly authorized); Haw. Ethics Op. 38 (1999) (lawyer may disclose information relating to representation of deceased client if doing so would effectuate client’s estate plan); Kan. Ethics Op. 01-01 (2001) (lawyer whose client inherited property from former client is impliedly authorized to disclose information from deceased client’s file to effectuate inheritance); see also Lawyer Disciplinary Bd. v. McGraw, 461 S.E.2d 850 (W. Va. 1995) (state attorney general not impliedly authorized to disclose to third party that state agency was changing its position on environmental issue, notwithstanding that lawyer had been directed to file public pleading in future); Mont. Ethics Op. 050621 (2005) (criminal defense lawyer may not, without client’s prior consent, tell judge or prosecutor whether client contacted him, even though client’s bond conditioned upon regularly phoning defense counsel); cf. ABA Formal Ethics Op. 93-370 (1993) (unless client consents, lawyer should not reveal to judge—and judge should not require lawyer to disclose—client’s instructions on settlement authority limits or lawyer’s advice about settlement).

Disclosures within Firm

The comment to Rule 1.6 states that lawyers in a firm are impliedly authorized to discuss with each other information regarding a firm client “unless the client has instructed that the particular information be confined to specified lawyers.” Model Rule 1.6, cmt. [5]. This is because clients who choose to be represented by law firms typically do so because of the expertise within law firms “and such a client expects that the firm will utilize all its available resources for the client’s benefit.” ABA Formal Ethics Op. 08-453 (2008) (impliedly authorized exception includes consulting “ethics counsel” within law firm regarding ethics implications of consulting lawyer’s conduct).

Disclosures When Working with Outside Lawyers and Nonlawyers

Lawyers and law firms are increasingly outsourcing legal and nonlegal support services, which necessarily involves the disclosure of client information outside the firm. Limited disclosures to a lawyer outside a law firm have been found to be impliedly authorized “when the consulting lawyer reasonably believes the disclosure will further the representation by obtaining the consulted lawyer’s experience or expertise for the benefit of the consulting lawyer’s client.” ABA Formal Ethics Op. 98-411 (1998) (consulting lawyer may not disclose information protected by attorney-client privilege or information that would harm client; “[h]ypothetical or anonymous consultations thus are favored where possible”); see also Me. Ethics Op. 171 (1999) (client consent not required when consultation is for client’s benefit, consulted lawyer does not have conflicting interests, and no privileged information disclosed). But see In re Mandelman, 514 N.W.2d 11 (Wis. 1994) (lawyer violated Rule 1.6 when he asked other lawyers for help on several client matters and transferred client files without seeking clients’ consent).

Similarly, limited disclosure to a nonlawyer independent contractor may be impliedly authorized when necessary to carry out the representation. See, e.g., Vt.
Ethics Op. 2003-03 (n.d.) (permissible to use outside computer consultant to manage case files when necessary to carry out representation); see also ABA Formal Ethics Op. 95-398 (1995) (lawyer who gives computer maintenance company access to client files must make reasonable efforts to ensure use of adequate procedures to protect confidential client information).

In determining whether a particular disclosure would be impliedly authorized, the relationship between the law firm and the outside service provider must also be considered. If the relationship involves a high degree of supervision and control, such that the provider is “tantamount to an employee,” client consent is not typically required. ABA Formal Ethics Op. 08-451 (2008) (acknowledging that other rules, such as Rule 1.2(a) or Rule 1.4, might require lawyers to consult with clients before engaging temporary legal or nonlegal services). However, if the relationship between the firm and the provider is “attenuated, as in a typical outsourcing relationship,” the firm may not disclose client information without the client’s consent. Id.; see Colo. Ethics Op. 121 (2008) (disclosure of confidential information to outsourced workers usually requires client’s informed consent; factors to consider include degree to which lawyer and outsourced worker’s relationship is attenuated); Fla. Ethics Op. 07-2 (2008) (in determining whether client should be informed of participation of overseas providers, lawyer should consider “whether a client would reasonably expect the lawyer or law firm to personally handle the matter and whether the non-lawyers will have more than a limited role in the provision of the services”; disclosure of information should be limited to “information necessary to complete the work for the particular client”); N.Y. City Ethics Op. 2006-3 (2006) (under language tracking former Model Code, informed advance consent required to disclose client “confidences” and “secrets”); N.C. Ethics Op. 12 (2007) (disclosure of confidential information to overseas outsourced workers required written informed consent from client); Ohio Ethics Op. 09-006 (2009) (disclosure of confidential information to outsourced workers requires informed consent of client).

In any event, lawyers who outsource legal and nonlegal work must take precautions to “minimize the risk that any outside service provider may inadvertently—or perhaps even advertently—reveal client confidential information.” ABA Formal Ethics Op. 08-451 (2008). This is particularly important when considering outsourcing to foreign jurisdictions whose confidentiality rules may be different from those at home. See, e.g., Colo. Ethics Op. 121 (2008). See generally Mary C. Daly & Carole Silver, Flattening the World of Legal Services? The Ethical and Liability Minefields of Offshore Legal and Law-Related Services, 38 Geo. J. Int’l L. 401 (Spring 2007); Mark L. Tuft, Supervising Offshore Outsourcing of Legal Services in a Global Environment: Re-Examining Current Ethical Standards, 43 Akron L. Rev. 825 (2010).

**Disclosing Conflicts Information When Lawyers Move between Law Firms**

The ABA Standing Committee on Ethics and Professional Responsibility has concluded that conflicts-checking disclosures by lawyers seeking to change firms are not typically impliedly authorized because a job change is ordinarily for the sake of the lawyer rather than for the benefit of the client. The committee also acknowledged that
there is no clear textual support for such disclosures, but nevertheless concluded that “lawyers should be permitted to disclose the persons and issues involved in a matter, the basic information needed for conflicts analysis.” ABA Formal Ethics Op. 09-455 (2009) (Model Rules are “‘rules of reason’ to be interpreted with reference to the purposes of legal representation and of the law itself”). But see Boston Ethics Op. 04-01 (2005) (limited disclosures for conflicts checking permissible under implied-authorization exception because “any other reading leaves a lawyer in this state unable to comply with Rule 1.7’s insistence that she develop ‘reasonable procedures’ to check for conflicts”). Regardless of the reasons cited, ethics committees that have addressed the issue agree that lawyers should be permitted to disclose conflicts information pursuant to a proposed move to another law firm. See D.C. Ethics Op. 312 (2002) (finding, under rule protecting only “confidences” and “secrets,” that client’s identity and basic information regarding nature of representation are not generally protected); Kan. Ethics Op. 07-01 (2007) (suggesting lawyer’s current firm limit access to “‘middle counsel’” such as retired partner or paralegal employed in separate conflicts-checking unit of new firm); Pa. & Phila. Joint Ethics Op. 300 (2007) (departing lawyer needs to disclose at least some limited information regarding clients’ identity and nature of work done for them). See generally Paul R. Tremblay, Migrating Lawyers and the Ethics of Conflict Checking, 19 Geo. J. Legal Ethics 489 (Winter 2006); Eli Wald, Lawyer Mobility and Legal Ethics: Resolving the Tension Between Confidentiality Requirements and Contemporary Lawyers’ Career Paths, 31 J. Legal Prof. 199 (2007).

Representing Clients with Diminished Capacity

A lawyer who takes action under Model Rule 1.14 to protect the interests of a client with diminished capacity is, according to Rule 1.14(c), “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.” For discussion of a lawyer’s obligations when representing a client with diminished capacity, see the Annotation to Model Rule 1.14.

• Informed Consent

When disclosure of particular information is not “impliedly authorized” or otherwise covered by the rule’s exceptions, client consent is required. Previously, the Model Rules required client consent “after consultation.” The 2002 amendment to the rule changed the language throughout the Model Rules to require “informed consent.” This was not intended as a substantive change. See American Bar Association, A Legislative History: The Development of the ABA Model Rules of Professional Conduct, 1982–2005, at 124 (2006). The consent need not be confirmed in writing.

Informed consent requires an understanding of the risks and benefits attendant upon disclosure. See Model Rule 1.0(e) (defining “informed consent” throughout rules to denote “the agreement by a person to a proposed course of conduct after the lawyer has communicated adequate information and explanation about the material risks of and reasonably available alternatives to the proposed course of conduct”); see also Model Rule 1.0, cmts. [6], [7] (providing additional explanation of what informed consent generally requires). It usually requires an affirmative response by the client; the lawyer may not assume consent from a client’s silence. Model Rule 1.0, cmt. [7]; see
ABA Formal Ethics Op. 01-421 (2001) (“disclosure to the client . . . in order to obtain informed consent within the meaning of Rule 1.6 must adequately and fairly identify the effects of disclosure and non-disclosure on the client’s interests,” including risk that information may then be disclosed to others, that lawyer-client privilege may be waived, and that information could be used to client’s disadvantage); see also McClure v. Thompson, 323 F.3d 1233 (9th Cir. 2003) (even if criminal defense lawyer had client’s consent to disclose to authorities locations of two murder victims’ bodies, consent not “informed” as lawyer had not advised client about potential harmful consequences of disclosure); Banner v. City of Flint, 136 F. Supp. 2d 678 (E.D. Mich. 2000) (lawyer who obtained confidences from initial consultation with prospective client violated rule when he deposed her in another matter without explaining availability of attorney-client privilege), aff’d in part, rev’d in part, 99 F. App’x 29 (6th Cir. 2004) (affirming district court’s finding of Rule 1.6 violation, court held rule requires lawyer to advise client “about the advantages and disadvantages of revelation in language the client can understand”), cert. denied, 543 U.S. 926 (2004); Commonwealth v. Downey, 842 N.E.2d 955 (Mass. App. Ct. 2006) (murder defendants did not give informed consent for lawyers to wear body microphones during trial at request of television production company; neither lawyer had explained arrangement’s potential pitfalls).

Unlike a conflicts waiver, informed consent to the disclosure of confidential information under Rule 1.6 need not be confirmed in writing.

**Duty of Confidentiality toward Prospective Clients**

A lawyer’s duty of confidentiality extends to a prospective client who consults a lawyer in good faith for the purpose of obtaining legal representation or advice, even though the lawyer performs no legal services for the would-be client and declines the representation. See ABA Formal Ethics Op. 80-358 (1990); see also Restatement (Third) of the Law Governing Lawyers § 15 (2000).

In 2002, a new Rule 1.18 (Duties to Prospective Client) was added to the Model Rules. Under Rule 1.18(b), “a lawyer who has had discussions with a prospective client shall not use or reveal information learned in the consultation, except as Rule 1.9 would permit with respect to information of a former client.” For discussion, see the Annotation to Model Rule 1.18.

**Duty of Confidentiality toward Former Clients**

The lawyer’s duty to preserve client confidences continues after the lawyer-client relationship has concluded (Comment [18]), and even after the client dies. See Restatement (Third) of the Law Governing Lawyers § 60 cmt. e (2000). This duty is specifically addressed in Rule 1.9(c)(2) (lawyer may not “reveal information relating to the representation except as these Rules would permit or require with respect to a client”). See the Annotation to Model Rule 1.9 for discussion.

**Organization as Client**

For a discussion of the duty of confidentiality in the corporate context, see the Annotation to Model Rule 1.13 (Organization as Client).
Subsection (b): Exceptions to Duty of Confidentiality—Permissive Disclosure

Rule 1.6 sets out six circumstances in which a lawyer is permitted—but not required—to disclose information relating to a client’s representation. Although nondisclosure in these circumstances would not violate this rule, it could violate other rules or law. Model Rule 1.6, cmts. [12], [15]; see Utah Ethics Op. 97-12 (1998) (lawyer who suspects client of committing child abuse not ethically—as opposed to legally—mandated to report suspected behavior, despite state statute mandating reporting). As discussed below, any disclosures made pursuant to one of these exceptions must be narrowly tailored to avoid any unnecessary disclosure.

Subsection (b)(1): Disclosure to “Prevent Reasonably Certain Death or Substantial Bodily Harm”

In 2002, Rule 1.6(b)(1) was amended to permit disclosure “to prevent reasonably certain death or substantial bodily harm.” (Former Rule 1.6(b)(1) permitted disclosure “to prevent the client from committing a criminal act that the lawyer believes is likely to result in imminent death or substantial bodily harm” (emphases added).) The exception now authorizes disclosure to prevent accidental, but serious, physical harm that is reasonably certain to occur, either because “it will be suffered imminently or . . . 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,” such as sometimes happens in the case of toxic torts. Model Rule 1.6, cmt. [6]; see Restatement (Third) of the Law Governing Lawyers § 66 (2000) (disclosure permitted if necessary to prevent reasonably certain death or serious bodily harm).

Most jurisdictions have adopted some form of this exception to Rule 1.6, and permit disclosure to prevent death or serious bodily harm. See, e.g., In re Grand Jury Investigation, 902 N.E.2d 929 (Mass. 2009) (lawyer properly disclosed client’s threat to harm judge); State v. Hansen, 862 P.2d 117 (Wash. 1993) (no violation of confidentiality by telling judge that individual who called lawyer to retain him threatened to kill judge and two lawyers in case); R.I. Ethics Op. 98-12 (1998) (lawyer threatened by client in prison may report action to parole board or attorney general, or apply for restraining order); see also McClure v. Thompson, 323 F.3d 1233 (9th Cir. 2003) (criminal defense lawyer who disclosed to authorities locations of bodies of two murder victims did not violate duty of confidentiality, as lawyer reasonably believed victims still alive and disclosure necessary to prevent their imminent death or substantial bodily harm). Some jurisdictions require such disclosure. See, e.g., Conn. Ethics Op. 08-06 (n.d.) (lawyer who reasonably believes client intends to kill others associated with case when he gets out of prison must make necessary disclosure to prevent harm).

It has been argued that the rule authorizes disclosure of information to prevent wrongful incarceration of an innocent person on the ground that, given the extremely violent nature of prison life in many prisons, any person who is incarcerated is likely to be threatened with or suffer substantial bodily harm. See Colin Miller, Ordeal by Innocence: Why There Should Be a Wrongful Incarceration/Execution Exception to Attorney-Client Confidentiality, 102 Nw. U. L. Rev. Colloquy 391 (July 14, 2008). But see Inbal Has-
When the Law Preserves Injustice: Issues Raised by a Wrongful Incarceration Exception to Attorney-Client Confidentiality, 100 J. Crim. L. & Criminology 277 (Winter 2010) (existing rule has been interpreted to exclude wrongful incarceration as basis for disclosure).

**Subsections (b)(2) and (b)(3): Economic Crimes and Frauds**

*2003 Amendments*

In 2003, the ABA adopted subsections (b)(2) and (b)(3) of Model Rule 1.6. See ABA/BNA Lawyers’ Manual on Professional Conduct, 19 Current Reports 467 (Aug. 13, 2003). This marked the first time the Model Rules permitted disclosure of client information when the client uses or has used the lawyer’s services to commit a crime or fraud resulting in substantial injury to the property or financial interests of another. (The predecessor Model Code did, however, have a limited exception permitting a lawyer to reveal the “intention of [a] client to commit a crime and the information necessary to prevent the crime.” DR 4-101(A).) See generally American Bar Association, A Legislative History: The Development of the ABA Model Rules of Professional Conduct, 1982–2005, at 133–37 (2006).

Even before these amendments were adopted by the ABA in 2003, most state rules already contained provisions permitting limited disclosure to prevent or rectify the consequences of a client’s fraudulent or criminal behavior.

*Subsection (b)(2): Disclosure to Prevent Client from Committing Crime or Fraud Resulting in Financial Injury or Property Damage*

Model Rule 1.6(b)(2) permits a lawyer to disclose information relating to the representation of a client “to prevent the client from committing a crime or fraud that is reasonably certain to result in substantial injury to the financial interests or property of another and in furtherance of which the client has used or is using the lawyer’s services.” Only a few jurisdictions have adopted the ABA version of Rule 1.6(b)(2) verbatim. Some jurisdictions permit disclosure to prevent a crime or a fraud regardless of the type of consequences likely to result, some permit disclosure whether or not the lawyer’s services are involved, some permit disclosure to prevent a criminal but not a fraudulent act, some permit disclosure to prevent anyone from committing a crime or fraud, and some require disclosure. See, e.g., In re Lane’s Case, 889 A.2d 3 (N.H. 2005) (lawyer properly disclosed former client’s confidences in effort to prevent former client from stealing money from mother or deceased father’s estate); Alaska Ethics Op. 2003-2 (2003) (lawyer for personal representative of estate may, but is not required to, reveal personal representative’s criminal or fraudulent conduct to court or beneficiaries); Nassau County (N.Y.) Ethics Op. 01-07 (2001) (law firm that withdrew from representing distributees of decedent’s estate because they planned to conceal existence of additional distributee may, but is not required to, reveal information about additional distributee); Neb. Ethics Op. 90-2 (1990) (lawyer has discretion to disclose whereabouts of former client if client intends to commit crime).

Absent authority to disclose a client’s past crimes or frauds under Rule 1.6(b)(3)...
or an analogous provision, a lawyer may not disclose a client’s wrongful past actions
to prevent their continuing consequences and may not disclose even a client’s continuing
crime or fraud if to do so would also reveal past wrongdoing. See, e.g., Ariz. Ethics
of false name in trial court); Conn. Informal Ethics Op. 01-13 (2001) (lawyer may not
(lawyer consulted for advice concerning client’s theft of car may not disclose client’s
continuing crime of possessing stolen property).

- **Subsection (b)(3): Disclosure to Prevent, Mitigate,
or Rectify Injury to Financial Interests or Damage
to Property Resulting from Client’s Crime or Fraud**

  Model Rule 1.6(b)(3) permits a lawyer to disclose information relating to the rep-

erentation of a client “to prevent, mitigate or rectify substantial injury to the financial

interests or property of another that is reasonably certain to result or has resulted from
the client’s commission of a crime or fraud in furtherance of which the client has used
the lawyer’s services.” Many jurisdictions have similar provisions. See, e.g., A. v. B., 726
A.2d 924 (N.J. 1999) (law firm drafting wills for husband and wife may reveal existence
of husband’s illegitimate child to wife upon learning of child’s existence from anot-
her client; husband’s deliberate failure to inform wife of child’s existence constituted
in still-pending immigration case are misrepresenting crucial facts to immigration
authorities may reveal information necessary to rectify consequences of fraud); Md.
evidence that client misappropriated estate’s funds may not disclose this unless
lawyer’s services used to further misappropriation); Nev. Ethics Op. 25 (2001) (lawyer
who was consulted but not retained by person who used lawyer’s advice to perpetrate
fraud on bankruptcy court may reveal information to court); see also In re Lackey, 37 P.3d
172 (Or. 2002) (National Guard judge-advocate suspended for disclosing client confi-
dences and secrets; disclosures intended to embarrass or injure officers with whom he
had work-related conflicts, not to remedy government fraud); cf. In re Disciplinary Pro-
ceeding against Schafer, 66 P.3d 1036 (Wash. 2003) (six-month suspension for lawyer
who disclosed client confidences and secrets to IRS, FBI, and press in course of exposing
misconduct by judge).

- **Disclosure Required by Crime-Fraud
Exception to Attorney-Client Privilege**

  Under a generally recognized crime-fraud exception to the attorney-client privi-

lege, a lawyer is not barred from disclosing otherwise privileged information about a
client who consults the lawyer to further the commission of a crime or a fraud. See, e.g.,
Restatement (Third) of the Law Governing Lawyers § 82 (2000) (privilege does not apply
when client “(a) consults a lawyer for the purpose, later accomplished, of obtaining
assistance to engage in a crime or fraud or aiding a third person to do so, or (b) regard-
less of the client’s purpose at the time of consultation uses the lawyer’s advice or other
services to engage in or assist a crime or fraud”).

©2011 American Bar Association. All Rights Reserved.
Because of the differences between the ethical duty of confidentiality and the attorney-client privilege and their respective exceptions, a determination that disclosure of client information is permitted by the crime-fraud exception to the ethics rule does not necessarily lead to the same result under the crime-fraud exception to the attorney-client privilege. See, e.g., Newman v. State, 863 A.2d 321 (Md. 2004) (although lawyer had, pursuant to Rule 1.6, properly informed court presiding over custody matter of client’s threat to murder her husband and child, lawyer’s testimony about those statements at subsequent criminal proceeding was barred by attorney-client privilege); In re Grand Jury Investigation, 902 N.E.2d 929 (Mass. 2009) (ethical permissibility of lawyer informing judge of client’s threat to kill her not inconsistent with finding that client’s statements were protected from compelled disclosure by attorney-client privilege).

• Disclosure Required by Rule 3.3
When a matter is before a tribunal, a lawyer may be required by Rule 3.3 to reveal to the court information otherwise protected under Rule 1.6 to avoid assisting a client in perpetrating a crime or fraud. For discussion of a lawyer’s duty of candor to a tribunal, see the Annotation to Model Rule 3.3.

• Disclosure of Unlawful Conduct by Corporate Constituents
For discussion of a lawyer’s ability to disclose unlawful conduct by someone “associated” with a corporate (or other organizational) client, see the Annotation to Model Rule 1.13.

SUBSECTION (b)(4): Disclosure to Secure Legal Ethics Advice
In 2002, a new exception—Rule 1.6(b)(4)—was added, permitting disclosure “to secure legal advice about the lawyer’s compliance with these Rules.” (This provision was originally numbered 1.6(b)(2), but renumbered when other subsections of Rule 1.6 were added in 2003.)

Although disclosure to secure ethics advice will “[i]n most situations” be impliedly authorized, Rule 1.6(b)(4) permits disclosure even without implicit authorization “because of the importance of a lawyer’s compliance with the Rules of Professional Conduct.” Model Rule 1.6, cmt. [9]; see ABA Formal Ethics Op. 08-453 (2008) (disclosure to in-house law firm ethics counsel is typically impliedly authorized and is also expressly authorized by Rule 1.6(b)(4)).

SUBSECTION (b)(5): Disclosure to Support Claim or Defense against Client
Rule 1.6(b)(5) permits disclosure (1) “to establish a claim or defense . . . in a controversy between the lawyer and the client,” (2) “to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved,” and (3) “to respond to allegations in any proceeding concerning the lawyer’s representation of the client.” (Rule 1.6(b)(5) was originally enacted as Rule 1.6(b)(2), renumbered in 2002 as 1.6(b)(3), and renumbered in 2003 as 1.6(b)(5).)
• **Disclosure to Collect Fee**

A lawyer “entitled” to a fee is permitted by subsection (b)(5) to disclose information relating to the representation, including proof of the services rendered, when reasonably necessary to collect the lawyer’s fee. This accords with the principle that the beneficiary of a fiduciary relationship may not exploit it to the detriment of the fiduciary. Model Rule 1.6, cmt. [11]. The disclosure must be necessary to establish or collect the fee, whether through litigation, obtaining an attorney’s lien, attaching client property, or other means. See, e.g., Pedersen & Houpt v. Summit Real Estate Group, 877 N.E.2d 4 (Ill. App. Ct. 2007) (exception extended beyond lawyer’s assertion of breach-of-contract claim to include claim for fraudulent misrepresentation when necessary to recover total outstanding fee); D.C. Ethics Op. 236 (1993) (when client has filed bankruptcy petition to discharge debt owed to lawyer’s firm, lawyer may reveal limited information about client’s assets if lawyer has good-faith expectation of recovering more than minimal amount); N.C. Ethics Op. 2004-6 (2004) (lawyer in fee dispute with former corporate client permitted to reveal information necessary to pierce corporate veil if lawyer has good-faith belief claim warranted); Or. Ethics Op. 2005-104 (2005) (lawyer may disclose information relating to representation of client who justified non-payment of bill by claiming lawyer committed malpractice); see also Ariz. Ethics Op. 93-11 (1993) (lawyer may not initiate criminal proceedings against client who paid with check drawn on insufficient funds; criminal complaints rarely necessary to collect fee). See generally Restatement (Third) of the Law Governing Lawyers § 65 (2000) (disclosure of client confidences permitted in self-defense and in compensation disputes when reasonably necessary); ABA/BNA Lawyers’ Manual on Professional Conduct, “Confidentiality: Disclosure: Attorneys’ Claims and Defenses,” pp. 55:701 et seq.

• **Disclosure to Collection Agencies and Credit Bureaus**

Although lawyers generally may refer delinquent client accounts to collection agencies if disclosure of client information is minimized, reporting clients to credit bureaus that maintain records and provide reports is disfavored. See, e.g., Alaska Ethics Op. 2000-3 (2000) (lawyer may not report delinquent client’s status to credit bureau); Mont. Ethics Op. 001027 (2000) (lawyer may use collection agency to collect legal fees if lawyer exhausted all other reasonable methods of collection and lawyer minimizes disclosure, but referral to credit bureau is not necessary for debt collection, is punitive, and risks unauthorized disclosures of client information); N.Y. State Ethics Op. 684 (1996) (lawyer may not report to credit bureau that client failed to pay past-due fee); Ohio Sup. Ct. Ethics Op. 91-16 (1991) (firm may use collection agency but should reveal confidences only to degree necessary to collect fee); Phila. Ethics Op. 90-23 (1991) (firm may disclose names of client to collection agency; confidentiality must be otherwise preserved); S.C. Ethics Op. 94-11 (1994) (lawyer may use collection agency, but not credit bureau); see also Tex. Ethics Op. 556 (2005) (law firm may not circumvent prohibition against using collection agency to collect unpaid fee by making agency employees “borrowed” law firm employees). But see Fla. Ethics Op. 90-2 (1991) (firm may subscribe to credit-reporting service and provide information regarding undisputed debts owed only by former—not current—clients); Kan. Ethics Op.
94-5 (1994) (lawyer may refer client account to credit bureau but may not reveal information unrelated to collecting debt).

• Suits by Former In-House Counsel against Former Employer

Whether, and to what extent, former in-house counsel may sue their former employers for employment-related matters varies among jurisdictions, and has changed over time.


Model Rule 1.6(b)(5), however, expanded the claim or defense exception that Model Code DR 4-101(C)(4) had previously limited to fee disputes and defending accusations of wrongful conduct. See ABA Formal Ethics Op. 01-424 (2001) (rules permit in-house lawyer to bring wrongful discharge suit against former employer and disclose information necessary to establish claim). Thus, in recent years, an increasing number of jurisdictions have concluded that a lawyer suing a former employer for wrongful discharge may reveal client confidences to the extent necessary to establish the claim. See, e.g., Heckman v. Zurich Holding Co. of Am., 242 F.R.D. 606 (D. Kan. 2007) (plaintiff entitled to maintain retaliatory discharge action under Kansas law and to reveal confidential information necessary to establish claim); Alexander v. Tandem Staffing Solutions, 881 So. 2d 607 (Fla. Dist. Ct. App. 2004) (whistleblower claim by former in-house counsel against employer constituted controversy between lawyer and client within meaning of Florida’s version of Rule 1.6(b)(5)); accord Burkhart v. Semitool, Inc., 5 P.3d 1031 (Mont. 2000) (former in-house counsel may reveal client confidences to extent reasonably necessary to prove wrongful discharge claim); Crews v. Buckman Labs Int’l, 78 S.W.3d 852 (Tenn. 2002) (same holding); Spratley v. State Farm Mut. Auto. Ins. Co., 78 P.3d 603 (Utah 2003) (former in-house counsel suing insurance company for wrongful discharge may disclose company’s confidences “as reasonably necessary” to establish claim). But see Balla v. Gambro, Inc., 584 N.E.2d 104 (Ill. 1991) (refusing to extend tort of retaliatory discharge to in-house counsel). See generally Brenda Marshall, Note, In Search of Clarity: When Should In-House Counsel Have the Right to Sue for Retaliatory Discharge?, 14 Geo. J. Legal Ethics 871 (Spring 2001); ABA/BNA Lawyers’ Manual on Professional Conduct, “Confidentiality: Disclosure: Attorneys’ Claims and Defenses,” pp. 55:701 et seq.

• Disclosure to Defend Claims Brought by Clients and Third Parties against Lawyer

Rule 1.6(b)(5) permits disclosure to defend claims or charges brought against the lawyer by third parties as well as clients. As noted in Comment [10], such charges may arise in civil, criminal, disciplinary, or other proceedings, and may be based upon wrongs allegedly committed by the lawyer against the client, or by the lawyer and client against a third person. See, e.g., Qualcomm Inc. v. Broadcom Corp., No. 05CV1958-RMB (BLM), 2008 WL 638108 (S.D. Cal. Mar. 5, 2008) (client’s criticism and blaming of its own lawyers for discovery violations constituted sufficient “accusatory adversity” justifying disclosure of confidential information in connection with motion for sanctions); Hamilton v. Rubin, LC No. 04-40221-CZ, 2006 WL 1751901 (Mich. Ct. App. June 27, 2006) (lawyer’s disclosure permissible under self-defense exception in action by former client’s associate accusing lawyer of fraud, conspiracy, and malpractice relating to sale of business interest in which former client involved); Helie v. McDermott, Will & Emery, 56 A.D.3d 398 (N.Y. App. Div. 2008) (self-defense exception may be invoked against allegations of malpractice by nonclient); Or. Ethics Op. 2005-104 (2005) (lawyer may disclose information relating to representation of former client to defend against disciplinary complaint filed by opposing party in matter). It is not necessary that the lawyer be named as a party to a proceeding in which the client or third party makes claims of wrongdoing on the part of the lawyer. See, e.g., Hartman v. Cunningham, 217 S.W.3d 408 (Tenn. Ct. App. 2006) (self-defense exception applied to lawyer’s affidavit submitted to refute claim in former client’s malpractice case against successor counsel for failing to advise him of potential claim against affiant-lawyer).

• Formal Complaint Not Necessary

A lawyer accused of wrongful conduct in connection with the representation of a client, or with complicity in a client’s wrongful conduct, need not wait until formal charges are filed. “The lawyer’s right to respond arises when an assertion of such complicity has been made. . . . [T]he defense may be established by responding directly to a third party who has made such an assertion.” Model Rule 1.6, cmt. [10]; see, e.g., In re Bryan, 61 P.3d 641 (Kan. 2003) (formal proceedings not required before disclosure in self-defense could be made under Rule 1.6(b)); Pa. Ethics Op. 96-48 (1996) (lawyer whose former clients defended against SEC fraud complaint by alleging lawyer’s lack of due diligence may discuss matter with SEC even though lawyer not named in complaint); S.C. Ethics Op. 94-23 (1994) (lawyer under investigation by Social Security Administration regarding handling of client’s disability claim may disclose client information to defend himself even though no formal grievance proceeding pending). Mere criticism of the lawyer, however, may be insufficient to warrant disclosures in self-defense, even when the criticisms appear in the press. See, e.g., Louima v. City of N.Y., No. 98 CV 5083(SJ), 2004 WL 2359943 (E.D.N.Y. Oct. 5, 2004) (“mere press reports” about lawyer’s conduct do not justify disclosure of client information even if reports false and accusations unfounded); N.Y. County Ethics Op. 711 (1997) (client’s criticism of lawyer to neighbor was mere gossip and did not trigger exception to confidentiality rule); Utah Ethics Op. 05-01 (2005) (criminal defense lawyer may not voluntarily disclose client confidences to prosecutor or to court in response to claim that lawyer’s
prior advice was confusing; no “controversy” between lawyer and client). But see Ariz. Ethics Op. 93-02 (1993) (interpreting “controversy” to include disagreement in public media).

• **Threatening to Disclose Confidential Information**
  A lawyer is not permitted to threaten disclosure to intimidate or retaliate against a client. See, e.g., *Fla. Bar v. Carricarte*, 733 So. 2d 975 (Fla. 1999) (former corporate counsel whose employment was terminated threatened to reveal client’s trade secrets unless company gave him “severance pay”); *State ex rel. Counsel for Discipline v. Wilson*, 634 N.W.2d 467 (Neb. 2001) (lawyer threatened to disclose client information to INS and to court unless client paid for services lawyer previously provided at no charge). But see *In re Lim*, 210 S.W.3d 199 (Mo. 2007) (no violation when lawyer threatened to report client to collection agency and then to report client’s debt to INS if bill not paid).

**Subsection (b)(6): Disclosure to Comply with Law or Court Order**
An exception added to Rule 1.6 in 2002 permits disclosure “to comply with other law or a court order.” Previously the comment addressed this issue; the amendment specifically allowing disclosure was not intended as a substantive change. American Bar Association, *A Legislative History: The Development of the ABA Model Rules of Professional Conduct, 1982–2005*, at 126 (2006). Typically, a lawyer is requested to provide information as a result of a discovery request or subpoena; the lawyer must make all nonfrivolous arguments that the information is protected from disclosure and, unless the client has otherwise directed, must resist disclosure until a court or other tribunal orders it. Model Rule 1.6, cmt. [13]; see, e.g., ABA Formal Ethics Op. 94-385 (1994) (lawyer receiving court order or subpoena—whether from governmental agency or anyone else—for records relating to representation of current or former client must seek to limit order or subpoena on any legitimate grounds available to protect confidentiality); D.C. Ethics Op. 288 (1999) (lawyer subpoenaed by congressional subcommittee to produce client files must seek to quash or limit subpoena on all available grounds; if subcommittee overrides objections and threatens lawyer with contempt, then lawyer may—but is not required to—produce documents; threat of fines and imprisonment under federal law meets “required by law” exception); Pa. Formal Ethics Op. 2002-106 (2003) (lawyer may comply with arbitration panel’s order to disclose client information after raising issue of confidentiality).

The required-by-law exception may be triggered by statutes and administrative agency regulations. See, e.g., *United States v. Legal Servs.*, 249 F.3d 1077 (D.C. Cir. 2001) (appropriations act requiring federally funded legal aid organizations to give client names to auditors triggered required-by-law exception to state’s confidentiality rule); N.C. Ethics Op. 2005-9 (2006) (lawyer for public company may reveal confidential information about corporate misconduct to SEC under permissive-disclosure regulations authorized by Sarbanes-Oxley Act, even if disclosure would be prohibited by state’s ethics rules). However, the exception is not triggered by contracts or other agreements between private parties. See Va. Ethics Op. 1811 (2005) (contractual obligation to reveal information did not trigger exception).
A much-litigated example of a law requiring disclosure of client information is the Internal Revenue Code, 26 U.S.C. § 6050, which compels lawyers to disclose, through IRS Form 8300, the identities of clients and the amounts and payment dates of all cash fees in excess of $10,000. This provision has consistently been upheld against attacks based upon confidentiality and privilege. See, e.g., United States v. Goldberger & Dubin, P.C., 935 F.2d 501 (2d Cir. 1991) (rejecting challenges to disclosures based upon Fourth, Fifth, and Sixth Amendments and holding that lawyer-client privilege must bow to federal statute that “implicitly precludes its application”). See generally ABA/BNA Lawyers’ Manual on Professional Conduct, “Confidentiality: Required by Law or Court Order,” pp. 55:1201 et seq. Similar issues also arise in connection with the IRS’s “John Doe” summonses of law firms in connection with investigations of abusive tax shelters. See, e.g., In re Tax Liabs. of John Does, No. 03C4190, 2003 WL 21791551 (N.D. Ill. June 19, 2003) (approving first such summons and ordering firm to reveal names of clients investing in tax shelter transactions organized or sold by law firm). Additional reporting requirements are found in the USA Patriot Act, including a requirement that anyone who must file a Form 8300 must also file a suspicious activity report (SAR) with the Treasury Department’s Financial Crimes Enforcement Network. But see N.Y. City Formal Ethics Op. 2004-02 (2004) (unclear whether required-by-law exception would permit lawyer representing both corporation and corporate employee to file SAR without advance consent of employee). See generally Kevin Shepherd, USA Patriot Act and the Gatekeeper Initiative: Surprising Implications for Transactional Lawyers, 16 Prob. & Prop. 26 (Sept./Oct. 2002).


**DISCLOSURE UNDER OTHER ETHICS RULES**

Rule 1.6 permits, but does not require, disclosure under certain circumstances. Other ethics rules, however, affirmatively require disclosure. Most do so only when the disclosure would not violate Rule 1.6 (for example, see Rules 4.1, 8.1, and 8.3), but some, such as Rule 3.3 (Candor toward the Tribunal), require disclosure of information even if it is otherwise protected by Rule 1.6. Finally, other rules, such as Rule 1.13 (Organization as Client), may permit the disclosure of information whether or not Rule 1.6 would permit it.

**DISCLOSURE STRICTLY LIMITED TO ESSENTIAL INFORMATION**

Any disclosure permitted under Rule 1.6 must be strictly limited to that which “the lawyer reasonably believes . . . is necessary to accomplish one of the purposes specified” in subsection (b). Model Rule 1.6, cmt. [14]; see, e.g., In re Bryan, 61 P.3d 641 (Kan. 2003) (lawyer’s many disclosures of adverse information about former client, includ-
ing informing store manager where client worked that client had history of making false claims, were not reasonably necessary to defend against client’s accusations that lawyer was stalking her); *Lawyer Disciplinary Bd. v. Farber*, 488 S.E.2d 460 (W. Va. 1997) (lawyer moving to withdraw from representation violated Rule 1.6 by adding affidavit reporting on his plea discussions with defendant); Or. Ethics Op. 2005-136 (2005) (disclosures made by former in-house counsel to support wrongful termination action against former employer must be made in least public manner possible); see also *In re Boyce*, 613 S.E.2d 538 (S.C. 2005) (lawyer sent letter to client and client’s employer threatening to sue both in effort to collect fee); N.Y. City Ethics Op. 1986-8 (1986) (suggesting that lawyer disclosing confidential information to collect fee should do so only to court in camera, with request that information be kept under seal); cf. ABA Formal Ethics Op. 10-456 (2010) (lawyer’s concern to protect reputation in response to claims of ineffective assistance almost always can be addressed by disclosures in setting subject to judicial supervision).

**ACTING COMPETENTLY TO PRESERVE CONFIDENTIALITY**

In addition to refraining from the deliberate disclosure of client information except when permitted, Rule 1.6 requires lawyers to act reasonably to avoid inadvertent or unauthorized disclosures, either by the lawyer or by other persons involved in the representation. Model Rule 1.6, cmt. [16] (“A lawyer must act competently to safeguard information relating to the representation of a client against inadvertent or unauthorized disclosure by the lawyer or other persons who are participating in the representation of the client or who are subject to the lawyer’s supervision. See Rules 1.1, 5.1 and 5.3.”); see, e.g., *Statewide Grievance Comm. v. Paige*, No. CV030198335S, 2004 WL 1833462 (Conn. Super. Ct. July 14, 2004) (lawyer’s custom of reusing paper containing client information as scrap impermissibly gave others access to protected information); N.J. Ethics Op. 692 (2002) (lawyer must act reasonably to protect client information when destroying client files); see also *State ex rel. Okla. Bar Ass’n v. McGee*, 48 P.3d 787 (Okla. 2002) (despite lawyer’s claim that he was unaware of secretary’s preparation of letter impermissibly disclosing confidential information, lawyer “stands ultimately responsible for work done by all nonlawyer staff”). See generally ABA/BNA Lawyers’ Manual on Professional Conduct, “Confidentiality: Overview,” pp. 55:101 et seq. (discussing duty to protect client information when storing or disposing of client files and working with nonlawyers). For a discussion of the lawyer’s responsibilities regarding support staff, see the Annotation to Model Rule 5.3 (Responsibilities regarding Nonlawyer Assistants).

**ELECTRONIC COMMUNICATIONS**

Electronic communications—such as those made by phone (landline or cell phone), by fax, or over the Internet—pose unique problems related to maintaining client confidences because of the ease with which they may be intercepted by unauthorized and unknown persons. Faxes, for example, may be received in common areas of a business or home and thus may be read by unauthorized persons. Electronic documents pose the problem of “metadata”—information “hidden” in a document that may reveal details about the document’s preparation, prior drafts, and authorship.
The lawyer’s duty of confidentiality as applied to electronic communication may require protective measures such as obtaining a client’s informed consent to use a particular means of communication, using encrypted e-mail, “scrubbing” a document of its metadata, or using a more secure means of communication. See Model Rule 1.6, cmt. [17]; Cal. Ethics Op. 2010-179 (2010) (because of “evolving nature of technology” and differences in security features, lawyer must “ensure the steps are sufficient for each form of technology being used and must continue to monitor the efficacy of such steps”); Fla. Ethics Op. 10-2 (2010) (providing guidance on measures to protect confidentiality in using or disposing of devices containing “storage media,” such as printers, copiers, facsimile machines, and scanners). See generally ABA/BNA Lawyers’ Manual on Professional Conduct, “Confidentiality: Electronic Communications,” pp. 55:401 et seq.; David Hricik, The Speed of Normal: Conflicts, Competency, and Confidentiality in the Digital Age, 10 Computer L. Rev. & Tech. J. 73 (Fall 2005) (including extensive discussion of risks involved in digital storage of client information).

• Cell Phones


The more modern view appears to be that communications by cell phone pose no special problem unless there is a genuine risk of interception. See e.g., Ariz. Ethics Op. 95-11 (1995) (lawyer may use cellular phone to contact client but should exercise caution if genuine risk of interception); Del. Ethics Op. 2001-2 (2001) (absent extraordinary circumstances suggesting communication may be intercepted, communication of client information via cell phone does not violate Rule 1.6).

• E-mail

Ethics Op. 97-5 (1997); see also Ariz. Ethics Op. 97-04 (1997) (lawyers should use e-mail cautiously and should consider encryption); S.C. Ethics Op. 97-08 (1997) (lawyers may communicate with clients via e-mail but should discuss encryption options); cf. Iowa Ethics Op. 97-1 (1997) (client must give written consent to transmission of information by e-mail or Internet, after disclosure of potential for loss of confidentiality). See generally David Hricik, *Lawyers Worry Too Much about Transmitting Client Confidences by Internet E-mail*, 11 Geo. J. Legal Ethics 459 (Spring 1998).

If the client is communicating with the lawyer using an employer’s computer, the lawyer should advise the client that the employer’s right to monitor employee e-mail may result in the employer obtaining confidential information, and may also jeopardize the attorney-client privilege. See, e.g., *Sims v. Lakeside Sch.*, No. C06-1412RSM, 2007 WL 2745367 (W.D. Wash. Sept. 20, 2007) (e-mails privileged based upon public policy despite employer’s no-privacy policy); *Curto v. Med World Comm’ns Inc.*, No. 03CV6327 (DRH) (MLD), 2006 WL 1318387 (E.D.N.Y. May 15, 2006) (e-mails privileged given that employer used computer in home office and communicated outside employer’s network); *In re Asia Global Crossing*, 322 B.R. 247 (Bankr. S.D.N.Y. 2005) (e-mails privileged; insufficient evidence that corporation actually enforced policy permitting it to monitor employee e-mail); *Scott v. Beth Israel Hosp.*, 847 N.Y.S.2d 436 (Sup. Ct. 2007) (employer’s “no personal use” policy, along with its monitoring policy, resulted in determination that e-mails not privileged). See generally Adam C. Losey, *Clicking Away Confidentiality: Workplace Waiver of Attorney-Client Privilege*, 60 Fla. L. Rev. 1179 (Dec. 2008).

With respect to information received from nonclients through unsolicited e-mails or other electronic communications, authorities generally conclude that the lawyer has no duty to protect the confidentiality of unsolicited information if the lawyer had no opportunity to avoid its receipt or warn that it would not be kept confidential. See Ariz. Ethics Op. 2002-04 (2002); Nev. Ethics Op. 32 (2005); Va. Ethics Op. 1842 (2008); Wash. Informal Ethics Op. 2080 (2006). For an in-depth discussion of this issue, see *ABA/BNA Lawyers’ Manual on Professional Conduct*, “Confidentiality: Electronic Communications,” pp. 55:401 et seq. Also see the Annotation to Model Rule 1.18 (Duties to Prospective Client).

**Metadata**


**Social Networking Websites, Blogs, and Similar Communication Modes**

New modes of communication—including through social networking sites, lawyer blogs, bulletin boards, chat rooms, or listservs—pose new dangers to client confidentiality. Communicating directly with clients through postings to websites poses obvious risks, as does providing lists of contacts on networking sites or providing links to other websites. Because users may be unaware of the extent to which others may have access to their information, commentators have suggested that lawyers and law firms develop policies and procedures for the use of social networking. See generally Steven C. Bennett, *Ethics of Lawyer Social Networking*, 73 Alb. L. Rev. 113 (2009); Leslie C. Levin, *Lawyers in Cyberspace: The Impact of Legal Listservs on the Professional Development and Ethical Decisionmaking of Lawyers*, 37 Ariz. St. L.J. 589 (Summer 2005).

**Duties of Recipient of Unintended Disclosures**

Model Rule 4.4(b) was amended in 2002 to address the ethical obligations of a lawyer who is the unintended recipient of documents that appear to be confidential; the lawyer in this position is directed only to “promptly notify the sender.” For discussion of this issue, see the Annotation to Model Rule 4.4.
Ethics Opinions

Opinion No. 01-2

Summary: A lawyer may notify family members, adult protective agencies, the police, or the client's doctors to prevent the threatened suicide of a client if the lawyer reasonably believes that the suicide threat is real and that the client is suffering from some mental disorder or disability that prevents him from making a rational decision about whether to continue living.

Facts: In the course of a discussion about his affairs, a client informs a lawyer that he has decided to commit suicide. So far as the lawyer knows, the decision is not precipitated by terminal illness or any particular disease. The client seems overwhelmed by his life's problems. The lawyer is reasonably certain that the client is serious about his suicide threat. The lawyer inquires whether she may reveal that information to others in a position to prevent the client from carrying out the threat.

Discussion: The Massachusetts Rules of Professional Conduct state the general rules and exceptions relating to the principles of confidentiality in Rule 1.6 as follows:

(a) A lawyer shall not reveal confidential information relating to representation of a client unless the client consents after consultation, except for disclosures that are implicitly authorized in order to carry out the representation, and except as stated in paragraph (b).
(b) A lawyer may reveal, and to the extent required by Rule 3.3, Rule 4.1(b), or Rule 8.3 must reveal, such information:
   (1) to prevent the commission of a criminal or fraudulent act that the lawyer reasonably believes is likely to result in death or substantial bodily harm, or in substantial injury to the financial interests or property of another, or to prevent the wrongful execution or incarceration of another;
   (2) to the extent the lawyer reasonably believes necessary to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the lawyer's representation of the client;
   (3) to the extent the lawyer reasonably believes necessary to rectify client fraud in which the lawyer's services have been used, subject to Rule 3.3 (e);
   (4) when permitted under these rules or required by law or court order.

Comment 5 to Rule 1.6 states that “The confidentiality rule applies not merely to matters communicated in confidence by the client but also to virtually all information relating to the representation, whatever its source.” On the facts given to the Committee, the information communicated to the lawyer by the client is covered by the general confidentiality rule set forth in Rule 1.6. Since suicide and attempted suicide are not crimes, the specific exceptions contained in Rule 1.6(b)(1), (2), and (3) do not cover the factual situation presented. Rule 1.6(b)(4), as quoted above, does permit or require revelation “when permitted under these rules or required by law or court order.”

In our view, the lawyer in this present inquiry needs to address the problem of the mental capacity of the client who is threatening to commit suicide. Rule 1.14 of the Rules of Professional Conduct provides:

(a) 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.
(b) If a lawyer reasonably believes that a client has become incompetent or that a normal client-lawyer relationship cannot be maintained as provided in paragraph (a) because the client lacks sufficient capacity to communicate or to make adequately considered decisions in connection with the representation, and if the lawyer reasonably believes that the client is at risk of substantial harm, physical, mental, financial, or otherwise, the lawyer may take the following action. The lawyer may consult family members, adult protective agencies, or other individuals or entities that have authority to protect the client, and, if it reasonably appears necessary, the lawyer may seek the appointment of a guardian ad litem, conservator, or a guardian, as the case may be. The
lawyer may consult only those individuals or entities reasonably necessary to protect the client's interests and may not consult any individual or entity that the lawyer believes, after reasonable inquiry, will act in a fashion adverse to the interests of the client. In taking any of these actions the lawyer may disclose confidential information of the client only to the extent necessary to protect the client's interests.

Under Rule 1.14(b) the critical question is whether the lawyer “reasonably believes” that her client “has become incompetent” to make the contemplated decision and whether she “reasonably believes that the client is at risk of substantial harm.” As Comment 2 to Rule 1.14 states, “If the person has no guardian or legal representative, the lawyer must often act as de facto guardian.” And the last sentence of Rule 1.14(b) specifically authorizes disclosure of confidential information to protect the client's interests.

The threat of suicide certainly puts the client “at risk of substantial harm” and any such threat made by an individual very often raises questions about the client's competence. While there may be instances where adequately considered decisions to commit suicide may be made, such as decisions by terminally ill clients under certain circumstances, such a situation is not present on the facts presented in this inquiry. While the lawyer is not required to make a medical decision about capacity, Rule 1.14 allows the lawyer to take steps to preserve the status quo if she has a reasonable belief that the suicide threat is the result of a mental disorder or disability that makes the client incapable of making a rational decision about the important matter of deciding to continue living. See Comment 1 to Rule 1.14. We therefore advise that on the facts as presented to us, the inquiring lawyer may take such action as notifying family members, adult protective agencies, the police, or the client's doctors in order to prevent the threatened suicide if she concludes that she has a rational basis to believe that the suicide threat is real and that the client appears to be suffering from some mental disorder or disability that prevents him from making a rational decision about whether to continue living. The decision about the appropriate person to notify should be based on a decision about the help likely to be obtained in preventing the threatened suicide.

This advice is that of a committee without official governmental status.

In our earlier Opinion 79-6, we advised that an attorney was permitted to reveal to medical or civil authorities information calculated to prevent an individual from harming himself when the attorney reasonably believed an individual was contemplating imminent suicide. We gave that advice based on substantive law that while “neither suicide nor attempted suicide is itself punishable under the criminal law of Massachusetts," “both have in other respects been deemed to be malum in se and treated as unlawful and criminal. See, e.g., Hughes v. New England Publishing Co., 312 Mass. 178 (1942); Commonwealth v. Mink, 123 Mass. 422 (1877).” In the present Opinion we have preferred to base our approach on Rule 1.14, which seems more in point with respect to the inquiry put to us.

©2013 Massachusetts Bar Association
In the context of the facts we have been asked to assume and subject to the qualifications set forth below, it is our opinion that a lawyer, without the client's consent, may disclose the client's intent to commit suicide in order to prevent it. The basis for this Opinion is Rule 1.14, Client Under A Disability.

We were asked to assume these facts: A client meets with his lawyer seeking estate planning advice and requests that the lawyer prepare the necessary documents on a rush basis. The client's reason for requesting urgent preparation of documents is that he intends to take his own life in about two weeks. He is unemployed and can not pay his mortgage or his child's tuition. Despite trying hard to find a job, the client believes there is no current prospect of finding one. But he does have a life insurance policy and in it the client sees a way to provide for his family. The client seeks the lawyer's assistance in carrying out the estate-planning component of this plan. The lawyer in turn asked us to respond [FN1] to two questions about his or her obligations under the Rules of Professional Conduct (the “Rules”). The first question is as follows:

Does Rule 1.6 or any other Rule of Professional Conduct prohibit my disclosure of my client's intent to commit suicide and related facts to law enforcement authorities, state health care authorities, his family, any judicial or administrative tribunal, or any other persons or entities I feel may provide help?

Rule 1.6 permits a lawyer to reveal information relating to representation if a client consents after consultation. The question assumes that the client has not given consent. We think it is important that, if circumstances permit, the lawyer consult with the client and ask for the client's consent. In the process, the lawyer may wish to recommend that the client consult with a mental health professional. [FN2]

Assuming, however, that after consultation the client does not consent to disclosure, or that under the circumstances it is either impossible or not advisable to consult with the client about disclosure, then the question we were asked raises these three issues: Do the Rules permit disclosure without client consent? If so, what information may the lawyer disclose and to whom?
Under normal circumstances a lawyer may not reveal information relating to representation of a client without the client's explicit or implicit consent. Rule 1.6(a). There are exceptions for criminal or fraudulent conduct and claims against lawyers [FN3] but none of them apply to these facts. Assisting a person to commit suicide is a crime, [FN4] and there are numerous statutes dealing with the prevention of suicide, especially among children and young adults. [FN5] There is even a statute that authorizes the use of reasonable force to prevent suicide. [FN6] Those statutes demonstrate a clear public policy against suicide, which is part of a longstanding tradition in this country. [FN7] If suicide were a crime, Rule 1.6(b) would require the lawyer to reveal his or her client's intent because it would be likely to result in death or substantial bodily harm. But suicide is not a crime in Connecticut.

*2 If the client intended to commit suicide in order to trigger payment of a life insurance policy that did not cover suicide and intended to make it appear that his or her death was not a suicide, the client's plan would involve fraud and possibly a crime in which case Rule 1.6(c)(1) might permit the lawyer to disclose the plan. But some life insurance policies cover suicide. [FN8] Whether a policy covers suicide or whether, assuming it does, the suicide was to take place during a waiting period are important issues that can only be resolved by the lawyer reading the policy because without knowing the policy provisions the lawyer cannot appropriately counsel the client about whether the plan would constitute a breach of contract or a fraud or crime. If the lawyer knew that the client's plan involved fraudulent or criminal conduct, although the lawyer should counsel the client about the law, Rule 1.2(d) [FN9] would prohibit the lawyer from giving advice and assistance (such as preparing estate planning documents) in furtherance of the plan. But for the purposes of this Opinion we assume that no crime or fraud is involved. Therefore, in the context of the facts of this case Rule 1.6 prohibits disclosure of the client's suicidal intent. However, in our opinion, Rule 1.14(b) permits disclosure and takes precedence over Rule 1.6.

Rule 1.14(b) applies only when “the lawyer reasonably believes that the client cannot adequately act in the client's own interest.” In such a situation, “[a] lawyer may seek the appointment of a guardian or take other protective action with respect to a client….” Rule 1.14(b). The phrase “take other protective action” is broad and in our judgment, notwithstanding Rule 1.6, must be interpreted to include disclosing the client's suicidal intent to someone who can help prevent the suicide. Interpreting “other protective action” to exclude disclosure would defeat the purpose of Rule 1.14(b). Protecting the health and safety of a client who is unable to act in his or her own interest is more important than maintaining complete confidentiality of all information about the client.

While taking action to protect a client is a worthy goal, trying to reach it carries certain risks. Disclosing client information could result in the client being institutionalized or stigmatized or becoming embroiled in an adversary proceeding to maintain his or her independence and dignity or suffering some other loss of autonomy or privacy. So it is of special importance to act under Rule 1.14(b) only in appropriate circumstances and then in a way that, to the extent circumstances permit, is tailored to serve the client's interest.

When counseling a suicidal client, under the Rules the most important judgment a lawyer is called upon to make is whether or not the client can adequately act in his or her own interest.
A lawyer is permitted to act under Rule 1.14(b) “only when the lawyer reasonably believes that the client cannot adequately act in the client's own interest.” Rule 1.14(b). The concept of not being able to act in one's own interest is broad. It is not limited to physical or mental disability or illness but may encompass any situation in which the client lacks the capacity to act in his or her own interest or in which the client's decision is not voluntary.

*3 In our judgment, under many circumstances a client's expression of intent to commit suicide will be a reasonable basis for believing that the client is not able to act in his or her own interest. [FN10] “Study after study in Europe, the United States, Australia, and Asia has shown the unequivocal presence of severe psychopathology in those who die by their own hand; indeed in all of the major investigations to date, ninety to ninety-five percent of people who committed suicide had a diagnosis of psychiatric illness. High rates of psychopathology have also been found in those who make serious suicide attempts.” [FN11]

In addition to the likelihood of psychiatric illness, other factors may be present that would create a reasonable belief that a client who expresses an intent to take his or her own life cannot act in his or her own interest. For example, among persons who are dying, a decision to commit suicide may be involuntary because of intense, untreated pain or because of undue financial pressures, and they are often subject to judgment impairing confusion and judgment impairing depression. [FN12] Among suicidal people generally, “…the need to intervene becomes clearer still when one learns that for many suicidal individuals, the wish to die is counterbalanced by a wish to live; the desire for death may be temporary; the suicide attempt may not be designed to end life but rather to communicate with someone in this life; and finally, the attempt is often a cry for help.” [FN13] “…[A]mbivalence saturates the suicidal act.” [FN14]

However, as the debate about assisted suicide demonstrates, it is not impossible to imagine circumstances in which the client's decision to directly cause his own death might not be evidence of an inability to act in his or her own interest but rather be a voluntary, rational decision. Unless the lawyer reasonably believes that the client can not adequately act in the client's own interest, Rule 1.14(b) would not permit disclosure.

The decision to end one's life involves complex issues and in some cases competing values. Many people believe such a decision involves moral absolutes. In counseling and acting on behalf of a suicidal client we think the lawyer should focus on and be respectful of the client and substitute his or her judgment for that of the client “only when the lawyer reasonably believes that the client lacks the capacity to act in his or her own interest.” Rule 1.14(b). As we have noted, however, in general there are many reasons, beginning with the expression of intent to commit suicide, that could lead one to reasonably believe that a suicidal client lacks the capacity to act in his or her own interest. In such a situation, in our judgment the Rules permit the lawyer to disclose. [FN15]

The Rules do not provide specific examples of what information may be disclosed or to whom but they do contain two provisions relating to what may be disclosed and to whom disclosure may be permissible. Rule 1.14(a) provides that “[W]hen 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.*” And Rule 1.14(b) refers to taking **protective** action. To the extent reasonably possible under the circumstances, the decisions about what if anything to disclose other than the client's suicidal intent and to whom should be consistent with those provisions.

*4 The second question, which raises two issues, is:

Do I have an affirmative ethical duty to report this client's state of mind to any of the entities mentioned in question #1, or take any other action on behalf of this client?

In our opinion, the answer is “no.” Rule 1.14(b) uses the word “may.” It permits but does not require disclosure. Whether or not to disclose is a matter of judgment under the circumstances. [FN16]

The most specific and relevant affirmative obligation the lawyer has in the context of these facts is this: “the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client.”Rule 1.14(a). Therefore, when counseling a suicidal client the lawyer, “as far as reasonably possible,” is subject to each of the other affirmative obligations set forth in the Rules.

**FN1.** The committee has rules and a procedure for responding to requests on an emergency basis before issuing an Opinion and did so in this case.

**FN2.** This Opinion does not address the issue of what kind of non-legal advice a lawyer might give to a suicidal client. The facts we were given do not raise that issue and, in any event, just as it is beyond the scope of a lawyer's training and experience to counsel suicidal clients, so too is it beyond the scope of this committee's expertise to suggest the “right way” to respond to a person who is suicidal. However, as the commentary to Rule 2.1 suggests, recommending that the client seek the services of a mental health professional is one obvious possibility that a lawyer should consider; but there could be others, among which might be recommending that the client call his or her own doctor, or a local mental health clinic, or a crisis hotline, or recommending that he or she call a friend or relative who could help in arranging for appropriate intervention or care. Another option is for the lawyer to ask for professional guidance as to what he or she should do under the circumstances. In any event, exactly what to do under any particular set of circumstances is a question - or more accurately a range of questions - that the Rules do not and can not answer.

**FN3.** See Rule 1.6(b), (c) and (d).


**FN5.** See for example, Conn. Gen. Stat. § 7-294g, 10-16b, 10-19m, 10-145a, 10-22a, 10-221, 17a-3, 17a-52, and 17a-53.


FN8. See *O'Connell v. Savings Bank Life Insurance*, Memorandum of Decision, Silbert, J., CT-UNPUB - 1997 WL 30037 (Conn. Super. 1997), a case in which the issue was whether a suicide occurred within a waiting period during which the policy did not cover suicide but did cover suicide after the waiting period.

FN9. Rule 1.2(d) provides as follows:

A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent, but a lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good faith effort to determine the scope, validity, meaning or application of the law.


FN15. The other Ethics Opinions that we have found, whether under the Code of Professional Responsibility or under the Rules, have held that disclosure of a client's suicidal intent is permissible. See ABA Informal Opinion 83-1500, Disclosure of Client's Intent to Commit Suicide, Alabama Ethics Opinion RO-90-06, Utah, Ethics Advisory Opinion No. 95, Committee on Professional Ethics of the New York Bar Association, Opinion 486 (1978), Committee on Professional Ethics of the Massachusetts Bar Association Opinion 79-61 (1979). Also, the *Restatement of the Law Governing Lawyers*, Proposed Final Draft No. 1, section 117A provides:

117A. Using or Disclosing Information to Prevent Death [or] Serious Bodily Injury…

(1) A lawyer may use or disclose confidential client information when and to the extent the lawyer reasonably believes necessary to prevent:

(a) death or serious bodily injury to a person…

FN16. See also Section 117A of the *Restatement of the Law Governing Lawyers*, supra.
Utah Eth. Op. 95, 1989 WL 509363 (Utah St.Bar.)

Utah State Bar
Ethics Advisory Opinion Committee

Opinion Number 95

Approved October 27, 1989

Issue:
May a lawyer disclose a client's threats to commit suicide to another who might help prevent it, even though the client's communication is privileged and confidential and otherwise falls within the scope of the attorney-client relationship?

Opinion:
If it is in the best interests of a client, an attorney who reasonably believes the client is contemplating imminent suicide may disclose a suicide threat to another who may help prevent it.

The Ethics Advisory Opinion Committee wishes to avoid any suggestion that a lawyer is obligated in any way to make such a disclosure. The lawyer should disclose the information only when to do so would help the client get help, such as medical assistance.

Analysis:
The factors that favor allowing a lawyer under exigent circumstances to disclose otherwise confidential information of a client's threat or expression of serious intent to commit suicide are compelling. In 1987 suicide was the eighth leading cause of death in the United States, third among adolescents, and second among university and college students. [FN1]

Certain inherent characteristics of the suicidal individual also seem to indicate a need to encourage disclosure. Often the suicidal individual is experiencing a feeling of intense ambivalence, i.e., a very strong wish to die counterbalanced by an equally strong wish to live. The literature seems to indicate that most suicidal persons are undecided about living or dying and they "gamble with death," leaving it to other to save them. [FN2]

In addition to the ambivalence suggested by the literature, the desire for death seems to be often, although not uniformly, temporary and reversible. Lastly, attempted suicide, or the expression of the desire to commit suicide e.g., "I want to die" may actually be a cry for help and the neurotic expression of the need for help or feelings of desperation. [FN3]

Although it has expressed it in quite different ways historically, society has always manifested a strong interest in preventing suicide. The association between suicide and criminality began as early as the Seventh Century in England. In 1562, an English Court held suicide a punishable felony because it offended nature, God, and the King. [FN4] Ironcally those who failed in their attempt to take their own lives were subject to being hanged by the state, although the
frequency of such occurrence is unknown. [FN5]

In America until recently suicide was a criminal offense in most jurisdictions, often characterized as a crime of moral turpitude. Recently, however, almost all states, Utah among them, have decriminalized suicide and attempted suicide. The apparent rationale behind the movement to decriminalize is based upon the apparent lack of deterrent effect, along with prosecuting authorities' and coroner's juries' reluctance to pronounce a suicide or attempted suicide sane and, therefore, punishable. The literature indicates that the third and probably most plausible explanation of decriminalization rests in the belief that most suicides are caused by mental illness. [FN6]

*2 The expression of society's concerns over protecting against suicide as embodied by state and governmental exercise of its powers has been clearly enunciated by the courts. The first and most sweeping aspect of state interest in preserving life is in the interest of preservation of the value of societal life. In the suicide context, courts have emphasized that “the preservation of life has a high social value in our culture and suicide is deemed a grave public wrong.” [FN7]

In addition to the protection of societal life, the state's interest in life preservation also extends to the protection of each individual from harm, even self-inflicted harm, by virtue of the parens patriae doctrine. This power is employed by the state in the suicide context in order to protect the individual suffering from mental illness from self-induced harm on the theory that the individual is, at that time, incapable of protecting him or herself. Mentally ill suicidal individuals are perceived as having lost their capacity for rational decision, and the state assumes, therefore, the power of such decision, which it exercises in favor of life. [FN8]

There is very little that can be said in favor of not encouraging a lawyer from suspending the strict requirements of confidentiality in order to serve the interests of preserving life. The high degree of value that society seems to have placed historically, and at present, on the value of preserving life demands that as lawyers, servants within the system of justice and government, and as human beings, the Rules of Professional Conduct and Ethical Considerations allow that expressions of genuine suicidal intent be subject to disclosure. The Committee does not believe that such an exception to the requirements of confidentiality would have a deleterious effect upon the attorney-client relationship or deter open and free communications between attorney and client.

Some of the reported ethics opinions are founded upon the ABA Model Rule 1.14 relating to a client under a disability. This rule allows a lawyer to “take protective action with respect to a client, (only) when the lawyer believes that the client cannot adequately act in the client's own interest.” This rule has unfortunately not been adopted in Utah and thus may not be relied upon at the present time.

Others of the ethics opinions are based upon Rule 1.6 of the Rules of Professional Conduct, adopted by the Utah State Bar, the relevant portions of which are set forth as follows:

(a) A lawyer shall not reveal information relating to representation of a client except as stated in paragraph (b), unless the client consents after disclosure.
(b) A lawyer may reveal such information to the extent the lawyer believes necessary:
   (1) to prevent the client from committing a criminal or fraudulent act that the lawyer
       believes is likely to result in death or substantial bodily harm, or substantial injury to
       the financial interest or property of another; . . .

*3 As previously pointed out, Utah has decriminalized suicide, and neither suicide nor attempted
suicide are punishable under the criminal law. However, opinions of other bar associations that have dealt
with the situation have uniformly held that, although suicide or attempted suicide are not criminal, they have
in other respects always been deemed to be malum in se and treated as unlawful and criminal and, therefore,
subject to disclosure. An opinion of the ABA states as follows:

   Ethics committees in two states have dealt with this problem. In Opinion 486 (1978), the
   Committee on Professional Ethics of the New York State Bar Association concluded that
   while suicide had been decriminalized in New York and DR 4-101(C)(3) [similar to the
   Utah Rule of Professional Conduct 1.6(b)(1) ] did not literally apply, the overriding social
   concern for the preservation of human life permitted the lawyer to disclose the information.
   The New York committee pointed out that the decriminalization of suicide in the
   state was not intended to effect any basic change in underlying common law and statutory
   provisions reflecting deep concern for the preservation of human life and the prevention of
   suicide. Accordingly, the committee analyzed an announced intention to commit suicide in
   the same manner as proposed criminal conduct under DR 4-101(C)(3). Addressing the
   same issue in Opinion 79-61 (1979), the Committee on Professional Ethics of the Massa-
   chusetts Bar Association determined that although neither suicide nor attempted suicide
   was in itself punishable under the criminal law of Massachusetts, both have in other re-
   spects been deemed to be malum in se and treated as unlawful and criminal. That commit-
   tee cited the New York State Bar Association Opinion 486 and reached the same conclu-
   sion.

   We believe that in light of the following language of EC7-12 relating to proper conduct in
dealing with the client with a disability, these Committees reached the proper conclusion:

   “Any mental or physical condition of a client that renders him incapable of making a con-
   sidered judgment on his own behalf, casts additional responsibilities on his lawyer . . . . If
   the disability of a client and the lack of a legal representative compel the lawyer to make
   decisions for his client, the lawyer should consider all circumstances then prevailing and
   act with care to safeguard and advance the interests of his client . . . .”

   This concept is also recognized in the ABA proposed Model Rules of Professional Conduct:
   “A lawyer may seek the appointment of a guardian or take other protective action with respect
   to a client, only when the lawyer reasonably believes that the client cannot adequately act in
   the client's own interest.”

   The inquirer may justifiably conclude that his client is unable to make a considered judgment
on this ultimate life or death question and should be permitted to disclose the information as a
last resort when the lawyer's efforts to counsel the client have apparently failed. This interpre-
tation is limited to the circumstance of this particular opinion request and should not be re-
lied upon to permit the disclosure of any other information in any other situation. [FN9]

*4 In view of the compelling interest in disclosing a suicide threat to authorities, it is believed
that the better course of action is to free the attorney from the strict requirement of the Rule 1.6(B)(1), with the caveat that circumstances should be such as to cause a reasonably prudent attorney to deem the situation to be exigent in nature and of sufficient gravity to require the attorney in the exercise of his professional judgment to make such a disclosure, and that the preferable recipient of such disclosure should be a Court or other authorities who might help prevent it as opposed to family members or other third parties.

With respect to the question of an attorney's potential tort liability if he fails or refuses to disclose information of the nature set forth, such is a question of law and beyond the scope of the Committee. The Committee wishes to avoid any suggestion that a lawyer is obligated in any way to make such a disclosure. The lawyer should disclose the information only when to do so would help the client get help, such as medical assistance.


FN2 The issue is somewhat complicated by the fact that there are a certain number of false positives reported. False positives are created by people who would not, in fact, attempt suicide, but indicate that they would. This points up the fact that there are two different populations with quite different characteristics among those who attempt suicide. The goal of the suicidal patient is to die. On the other hand, suicide attempters do not necessarily plan to commit suicide, although they might well do so in error. Their goal is to survive and to impact others with whom they have personal relationships in order to modify those relationships. The fact that they often succeed beyond their actual desire, however, merely substantiates whatever preventative rationale exists. Legal Liability for a Patient's Suicide, 14 J. Psychiatry & L. 409 (1986).


FN5 39 Stanford L. Rev. at 931.

FN6 Id. at 932.


FN8 39 Stanford L. Rev. at 936.


FN10 Inasmuch as a lawyer is not schooled to detect the warning signals of a client who may seriously intend to commit suicide, the issue presented requires considerable caution. A doctor, psychiatrist or other health worker is presumably trained to detect and be sensitive to outward symptoms which would be consistent with suicidal ideation. Doctors, psychiatrists and other such mental health professionals may very well have duties and obligations, the failure to which might be deemed the proximate cause of a patient's suicide, thus leading to potential liability. Consequently, such mental health professionals are more likely to maintain contem-
poraneous notes relating to impressions of the mental and emotional condition of a patient than a lawyer would of a client.

FN11 It seems fairly clear from the reported cases that in most usual circumstances it would be very unusual to find any nexus between a lawyer's breach of duty and the client's suicide. Certainly there is no affirmative duty imposed by law on any bystander, let alone a lawyer receiving information in a confidential privileged setting, to report the expression of intent to commit suicide. Unless the lawyer commits an affirmative act that might subject any person, not just a lawyer, to liability for the commission of suicide by another, it is very unlikely that a meritorious cause of action could be maintained. An attorney's alleged negligence in representing a client in a criminal prosecution, and the suicide of that client following his alleged wrongful conviction and incarceration, has been held to be too attenuated (lack of proximate cause) to impose legal liability on an attorney. McLaughlin v. Sullivan, 461 A.2d 123, (N.H. 1983); see also 41 A.L.R.4th 343.

UT Eth. Op. 95, 1989 WL 509363 (Utah St.Bar.)

END OF DOCUMENT