

attorney's fees. When that third party pays the attorney's fees directly, there are special rules an attorney must follow to avoid any conflicts of interest.¹⁰ Although the family member may want to be involved in helping his or her loved one, it is important the attorney explain that he or she only represents the client.¹¹ Furthermore, the person paying the attorney's fee must understand that the client sets the objectives of representation, and information from the client must be kept confidential by the attorney outside of certain extreme circumstances.¹² It is also important to assure the client that he or she sets the objectives of the representation and information from the client will be kept confidential.¹³ After explaining this to the person paying and the client, the attorney must obtain informed consent from the client in writing.¹⁴ These mandatory precautions ensure the attorney's independence in judgment and protection of the client and his or her wishes.

Clients with Diminished Capacity

"As individuals age, they face an increased likelihood of diminished capacity, which can pose significant challenges in establishing and engaging in attorney-client relationships."¹⁵ In fact, in 2010 approximately 4.7 million people ages sixty-five and older were living with Alzheimer's disease in the United States, with that number estimated to increase over the years.¹⁶ Capacity may also be diminished because of minority, mind altering substances, disability, or some other mental or physical illness.¹⁷ Although diminished capacity is not certain, it is likely the elder law attorney will have a question about advising a client with diminished capacity at some point during his or her career.

In determining the capacity of a client, the comments to rule 1.14 of the Rules of Professional Conduct give a list of factors for the attorney to consider: "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."¹⁸ It may also be helpful for the attorney to obtain information or verify information a client has given the attorney by speaking to third parties. Although an attorney may not disclose information from the client¹⁹,

¹⁰ See Okla. Stat. tit. 5, Ch. 1, App. 3-A, R. 1.8(f) (2008).

¹¹ Okla. Stat. tit. 5, Ch. 1, App. 3-A, R. 1.8(f)(2) (2008).

¹² Okla. Stat. tit. 5, Ch. 1, App. 3-A, R. 1.2, .4, .8 (2008).

¹³ Okla. Stat. tit. 5, Ch. 1, App. 3-A, R. 1.2, .4, .8 (2008).

¹⁴ Okla. Stat. tit. 5, Ch. 1, App. 3-A, R. 1.8 (2008).

¹⁵ Thomas Stasi, *Reform that Understands our Seniors: How Interdisciplinary Services can Help Solve the Capacity Riddle in Elder Law*, 45 U. Mich. J.L. Reform 695, 695 (2012).

¹⁶ Liesi Hebert, Jennifer Weuve, Paul Scherr, & Denis Evans, *Alzheimer Disease in the United States (2010–2050) estimated using the 2010 census*, 80 Neurology 1778, 1778 (2013).

¹⁷ Okla. Stat. tit. 5, Ch. 1, App. 3-A, R. 1.14(a) (2008).

¹⁸ Okla. Stat. tit. 5, Ch. 1, App. 3-A, R. 1.14 cmt. 6 (2008).

¹⁹ Okla. Stat. tit. 5, Ch. 1, App. 3-A, R. 1.14(c) (2008).