




Privacy Considerations

Chapter 5 Assessment Tool



Consent

Questions to Ask: Who May Consent to Legal Services?

- Have you reviewed your state laws to determine the definition of a minor and the rights and limitations to the rights of minors?
- Have you reviewed your state laws to determine the circumstances in which minors are not treated as minors?
- How do your state laws define diminished capacity?
- What do your state laws say regarding serving or contracting with clients of diminished capacity?
- What do your ethical rules say regarding serving clients with diminished capacity?
- Does the organization for which you work have a formal process to assess a client's capacity?
- Does your state have a mature minor doctrine?
- See **Minor Consent and Confidentiality Tool** and **VRLC Privacy Cards**. 

Questions to Ask: What Do Your Professional Ethical Guidelines Say?

- If working with non-legal staff, what do their professional ethical guidelines say about providing services to clients with diminished capacity?

Confidentiality

Questions to Ask: VAWA and Survivor Confidentiality

- In order to keep a client's personally identifying information private, have you considered:
 - The size of your geographic region?
 - The survivor's cultural community?
 - Any identifying characteristics of the person in the context of where you live which, if shared, would de facto identify the survivor (e.g., if you share that the survivor is a Mormon Latina in her 80's and there are very few women who are both Mormon and Latina in their 80's in your rural community, would it be simple for someone to identify this survivor even if you do not share the survivor's name?)





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Questions to Ask: (A)(1) Statutory Mandate

- Has your organization briefed staff on common statutory mandates that require disclosure?
- Has your organization designated a staff member who will review all potential mandates to ensure:
 - Per the statute, disclosure is mandated, not merely permitted;
 - The mandate applies to your organization and the staff member holding the information;
 - The mandate applies to the survivor whose information is to be released;
 - The mandate applies to the situation that prompted the review;
 - There aren't any exemptions or exceptions that would make the mandate inapplicable?
- Have you reviewed the statute to ensure that you are only releasing information that is required, and nothing beyond what is required?
- Have you reviewed the statute to ensure that you are only releasing information to the individuals/entities to whom you are required to release it?
- Have you made every effort to notify the client before releasing the information?

Questions to Ask: (A)(2) Court Mandate

- Have you reviewed the order carefully?
 - What exactly is ordered to be produced?
 - Are your records responsive?
 - Where or to whom is the information ordered to be produced?
- Have you confirmed that a court has issued the order, rather than a third party?
- Is the order compelling a response (rather than putting you on notice of a future action)?
 - If so, how? (i.e., written, in person, etc.)
- Has your organization designated a staff member who will be responsible for ensuring that the above questions are answered?
- If you are required to appear in person or give testimony, has your organization designated a staff member to make that appearance?




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- Have you secured legal representation for your organization/staff member?
- Are there any ways that you can offer additional protections for the information that you are required to release? For example, can you assert any privilege, request that information be released under seal, request that irrelevant information be redacted, etc.?

Questions to Ask: (B) Written Consent

- Have you secured *informed* consent?
- Does the survivor understand:
 - Who wants the information;
 - Why they want it; and
 - What they will be using it for?
- Have you discussed with the client the risks and benefits of releasing the information?
- Have you discussed with the client whether the release constitutes a whole or partial waiver of privilege or confidentiality?
- Is the release specific as to what information will be released?
- Is the release time limited?
- See **Sample Release of Information Form.** 

Questions to Ask: VAWA: If Required to Disclose By Statute or Court Order

- Have you considered opposing the disclosure?
 - E.g., Motion to Quash
- Have you disclosed only the information that is required and only to whom it is required?

Mandatory Reporting


Questions to Ask: Other Considerations

- Have you taken steps to reduce risk of over-reporting?
 - Have you reviewed staff/organization obligations?
 - Have you reviewed the statute/court order carefully?




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- Has your organization instituted a protocol to review requests/mandated reports to ensure that your response is in fact compelled?
- Has staff been trained on your policies/protocol surrounding release of information?
- Have you considered any reporting obligations of individuals to whom you refer clients?
 - Have you notified clients of these obligations and discussed the risks and benefits of accessing services from the providers to whom they are being referred?
- See **Mandatory Reporting Tools.** 

Questions to Ask: Additional Privacy Issues to Consider

- Has your organization created policies to ensure the security of files that are removed from the office?
- Has your organization secured its electronic communications among staff and with clients? See **VRLC Personal and Remote Devices Tip Sheet.** 
- Has your organization secured your digital file and information storage?
 - Database
 - Server
 - Remote access
 - Access from mobile devices
- Does law enforcement in your jurisdiction use body-worn cameras?
- Does your state have an open data initiative?

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