



# The State Bar of California

## **Rule 1.2 Scope of Representation and Allocation of Authority (Rule Approved by the Supreme Court, Effective November 1, 2018)**

- (a) Subject to rule 1.2.1, a lawyer shall abide by a client's decisions concerning the objectives of representation and, as required by rule 1.4, shall reasonably\* consult with the client as to the means by which they are to be pursued. Subject to Business and Professions Code section 6068, subdivision (e)(1) and rule 1.6, a lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation. A lawyer shall abide by a client's decision whether to settle a matter. Except as otherwise provided by law in a criminal case, the lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify.
- (b) A lawyer may limit the scope of the representation if the limitation is reasonable\* under the circumstances, is not otherwise prohibited by law, and the client gives informed consent.\*

### **Comment**

#### *Allocation of Authority between Client and Lawyer*

[1] Paragraph (a) confers upon the client the ultimate authority to determine the purposes to be served by legal representation, within the limits imposed by law and the lawyer's professional obligations. (See, e.g., Cal. Const., art. I, § 16; Pen. Code, § 1018.) A lawyer retained to represent a client is authorized to act on behalf of the client, such as in procedural matters and in making certain tactical decisions. A lawyer is not authorized merely by virtue of the lawyer's retention to impair the client's substantive rights or the client's claim itself. (*Blanton v. Womancare, Inc.* (1985) 38 Cal.3d 396, 404 [212 Cal.Rptr. 151, 156].)

[2] At the outset of, or during a representation, the client may authorize the lawyer to take specific action on the client's behalf without further consultation. Absent a material change in circumstances and subject to rule 1.4, a lawyer may rely on such an advance authorization. The client may revoke such authority at any time.

#### *Independence from Client's Views or Activities*

[3] A lawyer's representation of a client, including representation by appointment, does not constitute an endorsement of the client's political, economic, social or moral views or activities.

#### *Agreements Limiting Scope of Representation*

[4] All agreements concerning a lawyer's representation of a client must accord with the Rules of Professional Conduct and other law. (See, e.g., rules 1.1, 1.8.1, 5.6; see also Cal. Rules of Court, rules 3.35-3.37 [limited scope rules applicable in civil matters generally], 5.425 [limited scope rule applicable in family law matters].)

**NEW RULE OF PROFESSIONAL CONDUCT 1.2  
(No Former Rule)  
Scope of Representation and Allocation of Authority**

**EXECUTIVE SUMMARY**

The Commission for the Revision of the Rules of Professional Conduct (“Commission”) evaluated current rule 3-210 (Advising the Violation of Law) in accordance with the Commission Charter, including the national standard of the ABA rule that contains rule 3-210’s counterpart, Model Rule 1.2 (Scope Of Representation and Allocation Of Authority Between Client and Lawyer). The Commission also reviewed relevant California statutes, rules, and case law relating to the issues addressed by the proposed rules. Although this proposed rule has no direct counterpart in the current California Rules of Professional Conduct, the concept of limiting the scope of representation is addressed in California Rules of Court 3.35-3.37 & 5.425. The concept of allocation of authority is derived from the California Constitution, the California Penal Code, and California Supreme Court precedent. The result of this evaluation is proposed rule 1.2 (Scope of Representation and Allocation of Authority) and proposed rule 1.2.1 (Advising or Assisting the Violation of Law).

**Rule As Issued For 90-day Public Comment**

The concepts addressed in current rule 3-210 (and its counterpart, Model Rule 1.2(d)) are carried forward with modification in proposed rule 1.2.1. An executive summary for proposed rule 1.2.1 is provided separately.

Proposed rule 1.2 addresses the concepts in Model Rule 1.2(a) – (c): allocation of authority within the lawyer-client relationship and the ability of a lawyer to undertake representation on a limited scope basis.

The primary objectives of proposed rule 1.2 were to clarify the relationship between lawyer and client, to contribute to access to justice, and to eliminate an unnecessary difference between California and other jurisdictions, all of which have adopted some form of ABA Model Rule 1.2. In furthering its objectives, the Commission considered whether the concepts addressed in the proposed rule were necessary in the disciplinary rules in light of the fact that they were already present in statutes or case law.

Paragraph (a) is derived from ABA Model Rule 1.2(a) relating to the allocation of authority within the lawyer-client relationship. Under the proposed rule, the client retains authority to make decisions concerning the objectives of the representation, including whether to settle, which plea to enter, whether to waive a jury trial, and whether to testify, while the lawyer is impliedly authorized to take such action on behalf of the client as long as the lawyer can do so without disclosing confidential communications.

Paragraph (b) relates to a lawyer’s ability to limit the scope of representation. Allowing lawyers and clients to engage in limited scope agreements is consistent with California case law and rules of court, and contributes to access to justice by making the availability of legal services more affordable.

Comment [1] identifies the specific statutory authority for the express exception in paragraph (a) regarding the client’s right to enter a plea in a criminal matter. The comment likewise identifies

the seminal California Supreme Court case regarding the allocation of authority between lawyer and client.

Comment [2] clarifies that while a client possesses the authority to settle, a lawyer may settle a matter on the client's behalf with client's advance authorization.

Comment [3], derived in part from Model Rule 1.2(b), addresses the concept that a lawyer's decision to undertake a client's matter does not constitute an endorsement of the client's views or activities. Including this concept as part of the rules was criticized as being aspirational and was stricken from the black letter of an earlier draft version of the rule.

Comment [4] provides interpretive guidance regarding the application of paragraph (c) as well as providing cross-references to the California Rules of Court expressly permitting limited scope representation under certain conditions.

### **Post-Public Comment Revisions**

After consideration of comments received in response to the initial 90-day public comment period, the Commission made a few non-substantive grammatical or stylistic edits and voted to recommend that the Board adopt the proposed rule.

The Board adopted proposed rule 1.2 at its November 17, 2016 meeting.

### **Supreme Court Action (May 10, 2018)**

The Supreme Court approved the rule as modified by the Court to be effective November 1, 2018. Comment [4] was revised to conform to the California Style Manual.

**Rule 1.2 Scope of Representation and Allocation of Authority ~~Between Client and Lawyer~~**  
**(Redline Comparison to the ABA Model Rule)**

- (a) Subject to ~~paragraphs (c) and (d)~~rule 1.2.1, a lawyer shall abide by a client's decisions concerning the objectives of representation and, as required by ~~Rule~~rule 1.4, shall reasonably\* consult with the client as to the means by which they are to be pursued. ~~A Subject to Business and Professions Code section 6068, subdivision (e)(1) and rule 1.6, a~~ lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation. A lawyer shall abide by a client's decision whether to settle a matter. ~~In~~ Except as otherwise provided by law in a criminal case, the lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify.
- ~~(b) A lawyer's representation of a client, including representation by appointment, does not constitute an endorsement of the client's political, economic, social or moral views or activities.~~
- ~~(c)~~ (eb) A lawyer may limit the scope of the representation if the limitation is reasonable\* under the circumstances, is not otherwise prohibited by law, and the client gives informed consent.\*
- ~~(d) 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 validity, scope, meaning or application of the law.~~

**Comment**

*Allocation of Authority between Client and Lawyer*

[1] Paragraph (a) confers upon the client the ultimate authority to determine the purposes to be served by legal representation, within the limits imposed by law and the lawyer's professional obligations. ~~The decisions specified in paragraph (a), such as whether to settle a civil matter, must also be made by the client. See Rule 1.4(a)(1) for the lawyer's duty to communicate with the client about such decisions. With respect to the means by which the client's objectives are to be pursued, the lawyer shall consult with the client as required by Rule 1.4(a)(2) and may take such action as is impliedly authorized to carry out the representation. (See, e.g., Cal. Const., art. I, § 16; Pen. Code, § 1018.)~~ A lawyer retained to represent a client is authorized to act on behalf of the client, such as in procedural matters and in making certain tactical decisions. A lawyer is not authorized merely by virtue of the lawyer's retention to impair the client's substantive rights or the client's claim itself. (*Blanton v. Womancare, Inc.* (1985) 38 Cal.3d 396, 404 [212 Cal.Rptr. 151, 156].)

~~[2] On occasion, however, a lawyer and a client may disagree about the means to be used to accomplish the client's objectives. Clients normally defer to the special knowledge and skill of their lawyer with respect to the means to be used to accomplish their objectives, particularly with respect to technical, legal and tactical matters. Conversely, lawyers usually defer to the client regarding such questions as the expense to be incurred and concern for third persons who might be adversely affected. Because of the varied nature of the matters about which a lawyer and client might disagree and because the actions in question may implicate the interests of a tribunal or other persons, this Rule does not prescribe how such disagreements are to be resolved. Other law, however, may be applicable and should be consulted by the lawyer. The lawyer should also consult with the client and seek a mutually acceptable resolution of the disagreement. If such efforts are unavailing and the lawyer has a fundamental disagreement with the client, the lawyer may withdraw from the representation. See Rule 1.16(b)(4). Conversely, the client may resolve the disagreement by discharging the lawyer. See Rule 1.16(a)(3).~~

[32] At the outset of, or during a representation, the client may authorize the lawyer to take specific action on the client's behalf without further consultation. Absent a material change in circumstances and subject to Rule 1.4, a lawyer may rely on such an advance authorization. The client may, however, revoke such authority at any time.

~~[4] In a case in which the client appears to be suffering diminished capacity, the lawyer's duty to abide by the client's decisions is to be guided by reference to Rule 1.14.~~

#### *Independence from Client's Views or Activities*

[53] Legal A lawyer's representation ~~should not be denied to people who are unable to afford legal services, or whose cause is controversial or the subject of popular disapproval. By the same token, representing a client~~ of a client, including representation by appointment, does not constitute ~~approval~~ an endorsement of the client's political, economic, social or moral views or activities.

#### *Agreements Limiting Scope of Representation*

~~[6] The scope of services to be provided by a lawyer may be limited by agreement with the client or by the terms under which the lawyer's services are made available to the client. When a lawyer has been retained by an insurer to represent an insured, for example, the representation may be limited to matters related to the insurance coverage. A limited representation may be appropriate because the client has limited objectives for the representation. In addition, the terms upon which representation is undertaken may exclude specific means that might otherwise be used to accomplish the client's objectives. Such limitations may exclude actions that the client thinks are too costly or that the lawyer regards as repugnant or imprudent.~~

~~[7] Although this Rule affords the lawyer and client substantial latitude to limit the representation, the limitation must be reasonable under the circumstances. If, for example, a client's objective is limited to securing general information about the law the~~

~~client needs in order to handle a common and typically uncomplicated legal problem, the lawyer and client may agree that the lawyer's services will be limited to a brief telephone consultation. Such a limitation, however, would not be reasonable if the time allotted was not sufficient to yield advice upon which the client could rely. Although an agreement for a limited representation does not exempt a lawyer from the duty to provide competent representation, the limitation is a factor to be considered when determining the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation. See Rule 1.1.~~

[84] All agreements concerning a lawyer's representation of a client must accord with the Rules of Professional Conduct and other law. (See, e.g., [Rulesrules 1.1, 1.8 and 5.6-1.8.1, 5.6](#); see also [Cal. Rules of Court, rules 3.35-3.37 \[limited scope rules applicable in civil matters generally\], 5.425 \[limited scope rule applicable in family law matters\].](#))

### *Criminal, Fraudulent and Prohibited Transactions*

~~[9] Paragraph (d) prohibits a lawyer from knowingly counseling or assisting a client to commit a crime or fraud. This prohibition, however, does not preclude the lawyer from giving an honest opinion about the actual consequences that appear likely to result from a client's conduct. Nor does the fact that a client uses advice in a course of action that is criminal or fraudulent of itself make a lawyer a party to the course of action. There is a critical distinction between presenting an analysis of legal aspects of questionable conduct and recommending the means by which a crime or fraud might be committed with impunity.~~

~~[10] When the client's course of action has already begun and is continuing, the lawyer's responsibility is especially delicate. The lawyer is required to avoid assisting the client, for example, by drafting or delivering documents that the lawyer knows are fraudulent or by suggesting how the wrongdoing might be concealed. A lawyer may not continue assisting a client in conduct that the lawyer originally supposed was legally proper but then discovers is criminal or fraudulent. The lawyer must, therefore, withdraw from the representation of the client in the matter. See Rule 1.16(a). In some cases, withdrawal alone might be insufficient. It may be necessary for the lawyer to give notice of the fact of withdrawal and to disaffirm any opinion, document, affirmation or the like. See Rule 4.1.~~

~~[11] Where the client is a fiduciary, the lawyer may be charged with special obligations in dealings with a beneficiary.~~

~~[12] Paragraph (d) applies whether or not the defrauded party is a party to the transaction. Hence, a lawyer must not participate in a transaction to effectuate criminal or fraudulent avoidance of tax liability. Paragraph (d) does not preclude undertaking a criminal defense incident to a general retainer for legal services to a lawful enterprise. The last clause of paragraph (d) recognizes that determining the validity or interpretation of a statute or regulation may require a course of action involving~~

~~disobedience of the statute or regulation or of the interpretation placed upon it by governmental authorities.~~

~~[13] If a lawyer comes to know or reasonably should know that a client expects assistance not permitted by the Rules of Professional Conduct or other law or if the lawyer intends to act contrary to the client's instructions, the lawyer must consult with the client regarding the limitations on the lawyer's conduct. See Rule 1.4(a)(5).~~