

**RULE 4-1.2 OBJECTIVES AND SCOPE OF REPRESENTATION**

**(a) Lawyer to Abide by Client's Decisions.** A lawyer shall abide by a client's decisions concerning the objectives of representation, subject to subdivisions (c), (d), and (e), and shall consult with the client as to the means by which they are to be pursued. A lawyer shall abide by a client's decision whether to make or accept an offer of settlement of a matter. 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) No Endorsement of Client's Views or Activities.** 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) Limitation of Objectives and Scope of Representation.** If not prohibited by law or rule, a lawyer and client may agree to limit the objectives or scope of the representation if the limitation is reasonable under the circumstances and the client consents in writing after consultation. If the attorney and client agree to limit the scope of the representation, the lawyer shall advise the client regarding

Clarifies that rule applies to the objectives of representation as well as the scope of representation. Both terms are used in the body of the rule. Change in title more accurately reflects newly proposed rule.

Clarifies that an attorney may ethically limit the scope as well as the objectives of the representation as long as the limitation is reasonable and the client consents in writing. The amendment also requires the attorney to advise the client regarding the rules on communication with a represented person so that the client is aware of the limitations in this area.

applicability of the rule prohibiting communication with a represented person.

**(d) Criminal or Fraudulent Conduct.** A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows or reasonably should know is criminal or fraudulent. However, 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.

**(e) Limitation on Lawyer's Conduct.** When a lawyer knows or reasonably should know that a client expects assistance not permitted by the Rules of Professional Conduct or by law, the lawyer shall consult with the client regarding the relevant limitations on the lawyer's conduct.

### **Comment**

#### **Scope Objectives of representation**

Both lawyer and client have authority and responsibility in the objectives and means of representation. The client has ultimate authority to determine the purposes to be served by legal representation, within the limits imposed by law and the lawyer's professional obligations. Within those limits, a client also has a

Change in subtitle to more accurately reflect newly proposed language in paragraph.

right to consult with the lawyer about the means to be used in pursuing those objectives. At the same time, a lawyer is not required to pursue objectives or employ means simply because a client may wish that the lawyer do so. A clear distinction between objectives and means sometimes cannot be drawn, and in many cases the client-lawyer relationship partakes of a joint undertaking. In questions of means, the lawyer should assume responsibility for technical and legal tactical issues but should defer to the client regarding such questions as the expense to be incurred and concern for third persons who might be adversely affected. Law defining the lawyer's scope of authority in litigation varies among jurisdictions.

In a case in which the client appears to be suffering mental disability, the lawyer's duty to abide by the client's decisions is to be guided by reference to rule 4-1.14.

### **Independence from client's views or activities**

Legal 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 does not constitute approval of the client's views or activities.

### **Services limited in objectives, scope or means**

The objectives or scope of services 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. For example, a retainer may be for a specifically defined purpose. Representation provided through a legal aid agency may be subject to limitations on the types of cases the agency handles. When a lawyer has been retained by an insurer to represent an insured, the representation may be limited to matters related to the insurance coverage. The terms upon which representation is undertaken may exclude specific objectives or means. Such limitations may exclude objectives or means that the lawyer regards as repugnant or imprudent, or which the client regards as financially impractical.

Although this rule affords the lawyer and client substantial latitude to limit the representation if not prohibited by law or rule, 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 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. In addition, a lawyer and client may agree that the representation will be limited to providing

Change in subtitle to more accurately reflect newly proposed language in paragraph.

Adds financial impracticality as possible objection on part of client.

Specifies that any limitation in the scope of representation must be reasonable under the circumstance and gives examples. Incorporates language from Professional Ethics Opinion 79-7 and specifies that if a lawyer assisted in the preparation of a document, the lawyer must indicate "Prepared with the assistance of counsel" so as not to mislead the court.

assistance out of court, including providing advice on the operation of the court system and drafting pleadings and responses. If the lawyer assists a pro se litigant by drafting any document to be submitted to a court, the lawyer is not obligated to sign the document. However, the lawyer must indicate “Prepared with the assistance of counsel” on the document to avoid misleading the court that otherwise might be under the impression that the person, who appears to be proceeding pro se, has received no assistance from a lawyer. If not prohibited by law or rule, a lawyer and client may agree that any representation in court be limited. For example, a lawyer and client may agree that the lawyer will represent the client at a hearing regarding child support and not at the final hearing or in any other hearings.

Regardless of the circumstances, a lawyer providing limited representation forms an attorney-client relationship with the litigant, and owes the client all attendant ethical obligations and duties imposed by the Rules Regulating The Florida Bar, including, but not limited to, duties of competence, communication, confidentiality and avoidance of conflicts of interest. Although an agreement for 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.

Specifies that an attorney-client relationship is formed even if the lawyer is providing limited representation and that all of the obligations and duties imposed by the Rules Regulating The Florida Bar apply.

An agreement concerning the scope of representation must accord with the Rules of Professional Conduct and law. Thus, the client may not be asked to agree to representation so limited in scope as to violate rule 4-1.1 or to surrender the right to terminate the lawyer's services or the right to settle litigation that the lawyer might wish to continue.

### **Criminal, fraudulent, and prohibited transactions**

A lawyer is required to give an honest opinion about the actual consequences that appear likely to result from a client's conduct. The fact that a client uses advice in a course of action that is criminal or fraudulent does not, of itself, make a lawyer a party to the course of action. However, a lawyer may not assist a client in conduct that the lawyer knows or reasonably should know to be criminal or fraudulent. 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.

When the client's course of action has already begun and is continuing, the lawyer's responsibility is especially delicate. The lawyer is not permitted to reveal the client's wrongdoing, except where permitted or required by rule 4-1.6. However, the lawyer is required to avoid furthering the purpose, for example, by suggesting how it might be concealed. A lawyer may not continue

assisting a client in conduct that the lawyer originally supposes is legally proper but then discovers is criminal or fraudulent. Withdrawal from the representation, therefore, may be required.

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

Subdivision (d) applies whether or not the defrauded party is a party to the transaction. Hence, a lawyer should not participate in a sham transaction; for example, a transaction to effectuate criminal or fraudulent escape of tax liability. Subdivision (d) does not preclude undertaking a criminal defense incident to a general retainer for legal services to a lawful enterprise. The last sentence of subdivision (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.

**RULE 4-4.2 COMMUNICATION WITH PERSON  
REPRESENTED BY COUNSEL**

**(a)** In representing a client, a lawyer shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer. Notwithstanding the foregoing, an attorney may, without such prior consent, communicate with another's client in order to meet the requirements of any court rule, statute or contract requiring notice or service of process directly on an adverse party, in which event the communication shall be strictly restricted to that required by the court rule, statute or contract, and a copy shall be provided to the adverse party's attorney.

**(b)** An otherwise unrepresented person to whom limited representation is being provided or has been provided in accordance with the rule on objectives and scope of representation is considered to be unrepresented for purposes of this rule unless the opposing lawyer knows of, or has been provided with, a written notice of appearance under which, or a written notice of time period during which, the opposing lawyer is to communicate

Technical change.

Specifies that a court rule may allow communication with another's client.

Specifies when a person is considered to be unrepresented in the context of limited representation and clarifies when the opposing lawyer may and may not communicate with the person directly.

with the limited representation lawyer as to the subject matter within the limited scope of the representation.

### **Comment**

This rule does not prohibit communication with a party, or an employee or agent of a party, concerning matters outside the representation. For example, the existence of a controversy between a government agency and a private party, or between 2 organizations, does not prohibit a lawyer for either from communicating with nonlawyer representatives of the other regarding a separate matter. Also, parties to a matter may communicate directly with each other and a lawyer having independent justification for communicating with the other party is permitted to do so. Communications authorized by law include, for example, the right of a party to a controversy with a government agency to speak with government officials about the matter.

In the case of an organization, this rule prohibits communications by a lawyer for 1 party concerning the matter in representation with persons having a managerial responsibility on behalf of the organization and with any other person whose act or omission in connection with that matter may be imputed to the organization for purposes of civil or criminal liability or whose

statement may constitute an admission on the part of the organization. If an agent or employee of the organization is represented in the matter by the agent's or employee's own counsel, the consent by that counsel to a communication will be sufficient for purposes of this rule. Compare rule 4-3.4(f). This rule also covers any person, whether or not a party to a formal proceeding, who is represented by counsel concerning the matter in question.

## **RULE 4-4.3 DEALING WITH UNREPRESENTED PERSONS**

**(a)** In dealing on behalf of a client with a person who is not represented by counsel, a lawyer shall not state or imply that the lawyer is disinterested. When the lawyer knows or reasonably should know that the unrepresented person misunderstands the lawyer's role in the matter, the lawyer shall make reasonable efforts to correct the misunderstanding.

**(b)** An otherwise unrepresented person to whom limited representation is being provided or has been provided in accordance with the rule on objectives and scope of representation is considered to be unrepresented for purposes of this rule unless the opposing lawyer knows of, or has been provided with, a written notice of appearance under which, or a written notice of time period during which, the opposing lawyer is to communicate with the limited representation lawyer as to the subject matter within the limited scope of the representation.

### **Comment**

An unrepresented person, particularly one not experienced in dealing with legal matters, might assume that a lawyer is disinterested in loyalties or is a disinterested authority on the law

Technical change.

Specifies when a person is considered to be unrepresented in the context of limited representation and clarifies when the opposing lawyer may and may not communicate with the person directly.

even when the lawyer represents a client. During the course of a lawyer's representation of a client, the lawyer should not give advice to an unrepresented person other than the advice to obtain counsel.

## **12.040. ATTORNEYS**

(a) **Limited Appearance.** An attorney of record for a party, in a family law matter governed by these rules, shall be the attorney of record throughout the same family law matter, unless at the time of appearance the attorney files a notice, signed by the party, specifically limiting the attorney's appearance only to the particular proceeding or matter in which the attorney appears.

(b) **Withdrawal or Limiting Appearance.**

(1) Prior to the completion of a family law matter or prior to the completion of a limited appearance, an attorney of record, with approval of the court, may withdraw or partially withdraw, thereby limiting the scope of the attorney's original appearance to a particular proceeding or matter. A motion setting forth the reasons must be filed with the court and served upon the client and interested persons.

(2) The attorney shall remain attorney of record until such time as the court enters an order, except as set forth in paragraph (c) below.

(c) **Scope of Representation.** If an attorney appears "of record" for a particular limited proceeding or matter, as provided by this rule, that attorney shall be deemed "of record" for

Specifies that rule applies to attorneys.

Allows an attorney to be attorney of record for only part of the proceeding thereby permitting limited in-court representation in family law matters.

Requires the court's permission to withdraw where 1) the attorney originally signed up for the entire case and wishes to cease representation before the case is over; 2) the attorney originally signed up for the entire case and wishes to withdraw from part of the case before the case is over thereby limiting the appearance to part of the case only; and 3) the attorney is already appearing on a limited basis and wishes to withdraw from the case before the limited representation is over.

Specifies that the attorney who appears of record in a limited proceeding or matter does not need the permission of the court to end the representation when the representation is over. However,

only that particular proceeding or matter. At the conclusion of such proceeding or matter, the attorney's role terminates without the necessity of leave of court, upon the attorney filing notice of completion of limited appearance. The notice, which shall be titled "Termination of Limited Appearance," shall include the names and last known addresses of the person(s) represented by the withdrawing attorney.

**(d) Preparation of Pleadings or Other Documents.**

A party who files a pleading or other document of record pro se with the assistance of an attorney shall certify that the party has received assistance from an attorney in the preparation of the pleading or other document. The name, address and phone number of the party shall appear on all pleadings or other documents filed with the court.

**(e) Notice of Limited Appearance.** Any pleading or other document filed by a limited appearance attorney shall state in bold type on the signature page of that pleading or other document: "Attorney for [Petitioner][Respondent] [address of Petitioner or Respondent] for the limited purpose of [matter or proceeding]."

**(f) Service.** During the attorney's limited appearance, service of pleadings or other documents related to that matter shall be served upon both the attorney and the party.

attorney must file a notice of completion titled "Termination of Limited Appearance."

Comports with the requirements of Professional Ethics Opinion 79-7 and specifies that if the attorney assists a pro se litigant in the preparation of pleadings or other documents only, the pro se litigant must certify on the pleading or document that an attorney assisted. The name of the attorney need not be given but the party's name must appear on the pleading or document.

Requires the limited appearance attorney to note in bold type on the signature page of the pleading or other document "Attorney for [Petitioner] [Respondent] [address of Petitioner or Respondent] for the limited purpose of [matter or proceeding]" in order to clarify the scope of the appearance for the court and the parties.

Requires that during the time the attorney is making a limited appearance pleadings or other documents must be served on both the attorney and the party. Once, the attorney's limited appearance is over, service on the attorney is no longer required.

