

**Rule 1.2 [3-210] Scope of Representation and Allocation of Authority
(Draft Revised 10/11/16 - Comparison to the Commission's
Public Comment Version)**

- (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 § 6068(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 written 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. Constitution Article I, § 16; Penal 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 and 5.6. See also California Rules of Court 3.35-3.37 (limited scope rules applicable in civil matters generally), and 5.425 (limited scope rule applicable in family law matters).

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Comment

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¹ Concept considered but not recommended: In a 9/24/16 email, Bob Kehr suggested the following rewrite of paragraph (b): “A lawyer may limit the scope of a representation if the limitation permits the lawyer to provide competent representation under the circumstances, and is not otherwise prohibited by law, and the client gives informed consent.” There was no support on the drafting team to make this change. The drafting team observed that the duty of competence is already mentioned in Comment [4]. The drafting team also was concerned that limited scope representation is an access to justice issue and that “reasonable under the circumstances” is the standard used in jurisdictions that adopt Model Rule 1.2.

² Drafting team consensus to revise the rule to require that a client’s informed consent be in writing. This responds to a public comment from OCTC (X-2016-104d OCTC (Dresser) [1.2]) recommending that paragraph (b) be revised to require *written* consent. The drafting team believes that this change will: (1) improve the function of the rules as a disciplinary standard by reducing potential disputes concerning compliance with the consent requirement; and (2) afford good client protection by heightening the formality and importance of the client consent for both client and lawyer.

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.

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**Proposed Rule 1.2 [3-210] Scope of Representation and Allocation of Authority
Synopsis of Public Comments**

TOTAL = 2	A = 0
	D = 0
	M = 2
	NI = 0

No.	Commenter/Signatory	Comment on Behalf of Group?	A/D/M/NI ¹	Rule Section or Cmt.	Comment	RRC Response
X-2016-43e	Committee on Professional Responsibility and Conduct (Baldwin) (8-12-16)	Y	M	1.2	The language "Subject to Business and Professions Code § 6068(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" is ambiguous or confusing.	The Commission made no change to this language. Including the restrictive reference to the duty of confidentiality is necessary because unlike Model Rule 1.6, neither § 6068(e) nor proposed rule 1.6 [3-100] includes the concept of implied authorization.
X-2016-104d	State Bar of California, Office of Chief Trial Counsel (OCTC) (Dressler) (9-27-16)	Y	M	(b), cmt. 3, cmt. 4	<p>Subsection (b) should require that limitation be fully explained to client and that client's consent be in writing.</p> <p>Comment 3 is aspirational and should be deleted.</p> <p>Comment 4 is unnecessary and likewise fails to explain lawyer's duty to alert client to legal issues according to case law.</p>	<p>The Commission agrees and has revised paragraph (b) to require that a client's consent be in writing. Thus, the rule will use the phrase "informed written consent" which is defined in proposed rule 1.0.1(e-1) and encompasses an explanation of relevant circumstances and material risks.</p> <p>The Commission did not make the requested change because this comment incorporates Model Rule 1.2(b) but as a comment rather than black letter text.</p> <p>The Commission did not make the requested change because this comment promotes client protection by assuring that a</p>

¹ A = AGREE with proposed Rule

D = DISAGREE with proposed Rule

M = AGREE ONLY IF MODIFIED

NI = NOT INDICATED

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						lawyer who renders limited scope services is on notice that there might be other applicable law outside of the Rules of Professional Conduct, in particular Rules of Court for certain types of cases.