

**RESOLVED**, that the Board of Trustees authorizes staff to make available for public comment, for a period of 60 days, proposed amended rules 1.2 and 8.4 and new rule 8.4.2 of the California Rules of Professional Conduct, as amended by the Board, and set forth in amended Attachment F, as modified by the Board of Trustees; and it is

**FURTHER RESOLVED**, that this authorization for release of public comment is not, and shall not be construed as, a statement or recommendation of approval of the proposed amended Rules of Professional Conduct.

**Rule 1.2 Scope of Representation and Allocation of Authority**

(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. Notwithstanding a client's direction, a lawyer retains the authority to agree to reasonable requests of opposing counsel that do not prejudice the rights of the client, be punctual in fulfilling all professional commitments, avoid offensive tactics, and treat all persons involved in the legal process with dignity, courtesy, and integrity. However, 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].)

**CHAPTER 8.**  
**MAINTAINING THE INTEGRITY OF THE PROFESSION**

**Rule 8.4 Misconduct**

It is professional misconduct for a lawyer to:

- (a) violate these rules or the State Bar Act, knowingly\* assist, solicit, or induce another to do so, or do so through the acts of another;
- (b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects;
- (c) engage in conduct involving dishonesty, fraud,\* deceit, or reckless or intentional misrepresentation;
- (d) engage in conduct that is prejudicial to the administration of justice;
- (e) state or imply an ability to influence improperly a government agency or official, or to achieve results by means that violate these rules, the State Bar Act, or other law; or
- (f) knowingly\* assist, solicit, or induce a judge or judicial officer in conduct that is a violation of an applicable code of judicial ethics or code of judicial conduct, or other law. For purposes of this rule, "judge" and "judicial officer" have the same meaning as in rule 3.5(c).

**Comment**

[1] A violation of this rule can occur when a lawyer is acting in propria persona or when a lawyer is not practicing law or acting in a professional capacity.

[2] Paragraph (a) does not prohibit a lawyer from advising a client concerning action the client is legally entitled to take.

[3] A lawyer may be disciplined for criminal acts as set forth in Business and Professions Code sections 6101 et seq., or if the criminal act constitutes "other misconduct warranting discipline" as defined by California Supreme Court case law. (See *In re Kelley* (1990) 52 Cal.3d 487 [276 Cal.Rptr. 375].)

[4] A lawyer may be disciplined under Business and Professions Code section 6106 for acts involving moral turpitude, dishonesty, or corruption, whether intentional, reckless, or grossly negligent. Regarding significantly unprofessional conduct that is abusive or harassing, see rule 8.4.2.

[5] Paragraph (c) does not apply where a lawyer advises clients or others about, or supervises, lawful covert activity in the investigation of violations of civil or criminal law or constitutional rights, provided the lawyer's conduct is otherwise in compliance with these rules and the State Bar Act.

[6] A lawyer's violation of paragraph (d) includes engaging in significantly unprofessional conduct that is abusive or harassing in the practice of law or related professional activities. A lawyer does not violate paragraph (d) by standing firm in the position of the client, protecting the record for subsequent review, or preserving professional integrity.

For further guidance, a lawyer should consult the current California Attorney Guidelines of Civility and Professionalism and other applicable civility authorities.

[7] This rule does not prohibit those activities of a particular lawyer that are protected by the First Amendment to the United States Constitution or by Article I, section 2 of the California Constitution.

#### **Rule 8.4.2 Prohibited Incivility**

(a) In representing a client, a lawyer shall not engage in incivility in the practice of law or related professional activities.

(b) For purposes of this rule, “incivility” means significantly unprofessional conduct that is abusive or harassing and shall be determined on the basis of all the facts and circumstances surrounding the conduct.

#### *Comment*

[1] For guidance on conduct that may be significantly unprofessional, a lawyer should consult the current California Attorney Guidelines of Civility and Professionalism and other applicable civility authorities.

[2] A lawyer does not violate this rule by standing firm in the position of the client, protecting the record for subsequent review, or preserving professional integrity.

[3] A lawyer’s violation of this rule may also constitute a violation of rule 8.4(d).

[5] “Incivility” as used in this rule does not apply to conduct protected by the First Amendment to the United States Constitution or by Article I, section 2 of the California Constitution.

“Incivility” as used in this rule includes conduct that violates an attorney’s duties under Business and Professions Code section 6068, subdivisions (b) and (f). (See California Code of Judicial Ethics, Canon 3B, advisory commentary: Canon 3B(2) regarding/for a judge’s responsibility to require lawyers under the judge’s direction and control to be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others.)

[5] A disciplinary investigation or proceeding for conduct coming within this rule may also be initiated and maintained if such conduct warrants discipline under California Business and Professions Code sections 6106 and 6068, the California Supreme Court’s inherent authority to impose discipline, or other disciplinary standard.