

1 **Rule 1.2. Scope of representation and allocation of authority between client and**
2 **lawyer. Licensed paralegal practitioner notice to be displayed.**

3 (a) Subject to paragraphs (c) and (d), a lawyer shall abide by a client's decisions
4 concerning the objectives of representation and, as required by Rule 1.4, shall consult
5 with the client as to the means by which they are to be pursued. A lawyer may take
6 such action on behalf of the client as is impliedly authorized to carry out the
7 representation. A lawyer shall abide by a client's decision whether to settle a matter. In
8 a criminal case, the lawyer shall abide by the client's decision, after consultation with
9 the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client
10 will testify.

11 (b) A lawyer's representation of a client, including representation by appointment, does
12 not constitute an endorsement of the client's political, economic, social or moral views
13 or activities.

14 (c) A lawyer may limit the scope of the representation if the limitation is reasonable
15 under the circumstances and the client gives informed consent.

16 (d) Except as provided in subparagraphs (d)(1) and (d)(2), a lawyer shall not counsel a
17 client to engage, or assist a client, in conduct that the lawyer knows is criminal or
18 fraudulent.

19 (d)(1) A lawyer may discuss the legal consequences of any proposed course of
20 conduct with a client and may counsel or assist a client to make a good faith effort to
21 determine the validity, scope, meaning, or application of the law.

22 (d)(2) A lawyer may counsel a client regarding the validity, scope, and meaning of
23 Utah's cannabis statutes and may assist a client in conduct that the lawyer
24 reasonably believes is permitted by those statutes and related rules, regulations,
25 orders, and ordinances. In these circumstances, the lawyer must also advise the
26 client regarding the potential consequences of the client's conduct under related
27 federal law and policy.

28 (e) A licensed paralegal practitioner shall conspicuously display in the licensed
29 paralegal practitioner's office a notice that shall be at least 12 by 20 inches with boldface
30 type or print with each character at least one inch in height and width that contains a
31 statement that the licensed paralegal practitioner is not a lawyer licensed to provide
32 legal services without limitation.

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34 **Comment**

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

36 [1] Paragraph (a) confers upon the client the ultimate authority to determine the
37 purposes to be served by legal representation, within the limits imposed by law and the
38 lawyer's professional obligations. The decisions specified in paragraph (a), such as
39 whether to settle a civil matter, must also be made by the client. See Rule 1.4(a)(1) for
40 the lawyer's duty to communicate with the client about such decisions. With respect to
41 the means by which the client's objectives are to be pursued, the lawyer shall consult
42 with the client as required by Rule 1.4(a)(2) and may take such action as is impliedly
43 authorized to carry out the representation.

44 [2] On occasion, however, a lawyer and a client may disagree about the means to be
45 used to accomplish the client's objectives. Clients normally defer to the special
46 knowledge and skill of their lawyer with respect to the means to be used to accomplish
47 their objectives, particularly with respect to technical, legal and tactical matters.
48 Conversely, lawyers usually defer to the client regarding such questions as the expense
49 to be incurred and concern for third persons who might be adversely affected. Because
50 of the varied nature of the matters about which a lawyer and client might disagree and
51 because the actions in question may implicate the interests of a tribunal or other
52 persons, this Rule does not prescribe how such disagreements are to be resolved. Other
53 law, however, may be applicable and should be consulted by the lawyer. The lawyer
54 should also consult with the client and seek a mutually acceptable resolution of the
55 disagreement. If such efforts are unavailing and the lawyer has a fundamental

56 disagreement with the client, the lawyer may withdraw from the representation.
57 See Rule 1.16(b)(4). Conversely, the client may resolve the disagreement by discharging
58 the lawyer. See Rule 1.16(a)(3).

59 [3] At the outset of a representation, the client may authorize the lawyer to take specific
60 action on the client's behalf without further consultation. Absent a material change in
61 circumstances and subject to Rule 1.4, a lawyer may rely on such an advance
62 authorization. The client may, however, revoke such authority at any time.

63 [4] In a case in which the client appears to be suffering diminished capacity, the
64 lawyer's duty to abide by the client's decisions is to be guided by reference to Rule 1.14.

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

66 [5] Legal representation should not be denied to people who are unable to afford legal
67 services or whose cause is controversial or the subject of popular disapproval. By the
68 same token, representing a client does not constitute approval of the client's views or
69 activities.

70 **Agreements Limiting Scope of Representation**

71 [6] The scope of services to be provided by a lawyer may be limited by agreement with
72 the client or by the terms under which the lawyer's services are made available to the
73 client. When a lawyer has been retained by an insurer to represent an insured, for
74 example, the representation may be limited to matters related to the insurance coverage.
75 A limited representation may be appropriate because the client has limited objectives
76 for the representation. In addition, the terms upon which representation is undertaken
77 may exclude specific means that might otherwise be used to accomplish the client's
78 objectives. Such limitations may exclude actions that the client thinks are too costly or
79 that the lawyer regards as repugnant or imprudent.

80 [7] Although this Rule affords the lawyer and client substantial latitude to limit the
81 representation, the limitation must be reasonable under the circumstances. If, for
82 example, a client's objective is limited to securing general information about the law the
83 client needs in order to handle a common and typically uncomplicated legal problem,

84 the lawyer and client may agree that the lawyer's services will be limited to a brief
85 telephone consultation. Such a limitation, however, would not be reasonable if the time
86 allotted were not sufficient to yield advice upon which the client could rely. Although
87 an agreement for a limited representation does not exempt a lawyer from the duty to
88 provide competent representation, the limitation is a factor to be considered when
89 determining the legal knowledge, skill, thoroughness and preparation reasonably
90 necessary for the representation. See Rule 1.1.

91 [8] All agreements concerning a lawyer's representation of a client must accord with the
92 Rules of Professional Conduct and other law. See, e.g., Rules 1.1, 1.8 and 5.6.

93 **Criminal, Fraudulent and Prohibited Transactions**

94 [9] Paragraph (d) prohibits a lawyer from knowingly counseling or assisting a client to
95 commit a crime or fraud. This prohibition, however, does not preclude the lawyer from
96 giving an honest opinion about the actual consequences that appear likely to result from
97 a client's conduct. Nor does the fact that a client uses advice in a course of action that is
98 criminal or fraudulent of itself make a lawyer a party to the course of action. There is a
99 critical distinction between presenting an analysis of legal aspects of questionable
100 conduct and recommending the means by which a crime or fraud might be committed
101 with impunity.

102 [10] When the client's course of action has already begun and is continuing, the lawyer's
103 responsibility is especially delicate. The lawyer is required to avoid assisting the client,
104 for example, by drafting or delivering documents that the lawyer knows are fraudulent
105 or by suggesting how the wrongdoing might be concealed. A lawyer may not continue
106 assisting a client in conduct that the lawyer originally supposed was legally proper but
107 then discovers is criminal or fraudulent. The lawyer must, therefore, withdraw from the
108 representation of the client in the matter. See Rule 1.16(a). In some cases, withdrawal
109 alone might be insufficient. It may be necessary for the lawyer to give notice of the fact
110 of withdrawal and to disaffirm any opinion, document, affirmation or the like. See Rule
111 4.1.

112 [11] Where the client is a fiduciary, the lawyer may be charged with special obligations
113 in dealings with a beneficiary.

114 [12] Paragraph (d) applies whether or not the defrauded party is a party to the
115 transaction. Hence, a lawyer must not participate in a transaction to effectuate criminal
116 or fraudulent avoidance of tax liability. Paragraph (d) does not preclude undertaking a
117 criminal defense incident to a general retainer for legal services to a lawful enterprise.
118 The last clause of paragraph (d) recognizes that determining the validity or
119 interpretation of a statute or regulation may require a course of action involving
120 disobedience of the statute or regulation or of the interpretation placed upon it by
121 governmental authorities.

122 [12a] Subparagraph (d)(2) addresses the dilemma facing a lawyer whose client wishes to
123 engage in conduct that is permitted by Utah's cannabis statutes and related rules,
124 regulations, orders, and ordinances but is prohibited by federal cannabis laws. At the
125 time of this comment's drafting, the federal government's policy is not to enforce
126 federal cannabis laws in states with conflicting state laws. If that policy changes, the
127 Supreme Court may revisit this rule.

128 [13] If a lawyer comes to know or reasonably should know that a client expects
129 assistance not permitted by the Rules of Professional Conduct or other law or if the
130 lawyer intends to act contrary to the client's instructions, the lawyer must consult with
131 the client regarding the limitations on the lawyer's conduct. See Rule 1.4(a)(5).

132 [14] Lawyers are encouraged to advise their clients that their representations are guided
133 by the Utah Standards of Professionalism and Civility and to provide a copy to their
134 clients.

135 [14a] This rule differs from the ABA Model Rule.
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