

**District of Columbia
Court of Appeals**



No. M-260-18

BEFORE: Blackburne-Rigsby, Chief Judge; Glickman, Fisher, Thompson,
Beckwith, Easterly, and McLeese, Associate Judges.

ORDER

(FILED – November 1, 2018)

On consideration of the proposed amendments to D.C. R. Prof. Conduct 1.2, published for notice and comment on May 31, 2018, and the comments received concerning those proposed amendments, it is

ORDERED that the proposed amendments reflected below are hereby adopted, effective January 1, 2019. Clean and track-changes versions of D.C. R. Prof. Conduct 1.2 as amended are attached to this order.

PER CURIAM

Rule 1.2. Scope of Representation.

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

COMMENT

[6] Rule 1.5 (b) requires a lawyer to communicate in writing the scope of the lawyer's representation when the lawyer has not regularly represented a client. In all matters involving limited scope representation, it is generally prudent for a lawyer to state in writing any limitation on representation, provide the client with a written summary of considerations discussed, and to receive a written informed consent from the client to the lawyer's limited representation. The term "informed consent" is defined in Rule 1.0 (e) and is discussed in Comment 28 to Rule 1.7. Lawyers also should recognize that information and discussion sufficient for informed consent by more sophisticated business clients may not be sufficient to permit less sophisticated clients to provide informed consent. *See* Comment 28 to Rule 1.7.

Criminal, Fraudulent, and Prohibited Transactions

[7] 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 knowingly assist a client in criminal or fraudulent conduct. 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.

[8] 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.

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

[10] Paragraph (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 a criminal or fraudulent escape 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.

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