

Synopsis of KY SCR & Limited Scope Representation

Rules of the Supreme Court (SCR) Rule 3.130, Rules of Prof. Conduct Rule 3.130(1.2)
SCR 3.130(1.2) Scope of representation and allocation of authority between client and lawyer

(a) Subject to paragraphs (c) and (d), a lawyer shall abide by a client's decisions concerning the objectives of representation and, as required by Rule 1.4, shall consult with the client as to the means by which they are to be pursued. 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. 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'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) A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent. [See below.]

(d) A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent, but 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.

SUPREME COURT COMMENTARY

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. The decisions specified in paragraph (a), such as whether to settle a civil matter, must also be made by the client. See Rule 1.4(a)(1) for the lawyer's duty to communicate with the client about such decisions. With respect to the means by which the client's objectives are to be pursued, the lawyer shall consult with the client as required by Rule 1.4(a)(2) and may take such action as is impliedly authorized to carry out the representation.

(2) On occasion, however, a lawyer and a client may disagree about the means to be used to accomplish the client's objectives. Clients normally defer to the special knowledge and skill of their lawyer with respect to the means to be used to accomplish their objectives, particularly with respect to technical, legal and tactical matters. Conversely, lawyers usually defer to the client regarding such questions as the expense to be incurred and

concern for third persons who might be adversely affected. Because of the varied nature of the matters about which a lawyer and client might disagree and because the actions in question may implicate the interests of a tribunal or other persons, this Rule does not prescribe how such disagreements are to be resolved. Other law, however, may be applicable and should be consulted by the lawyer. The lawyer should also consult with the client and seek a mutually acceptable resolution of the disagreement. If such efforts are unavailing and the lawyer has a fundamental disagreement with the client, the lawyer may withdraw from the representation. See Rule 1.16(b)(4). Conversely, the client may resolve the disagreement by discharging the lawyer. See Rule 1.16(a)(3).

(3) At the outset of 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, however, revoke such authority at any time.

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

Independence from Client's Views or Activities

(5) 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.

Agreements Limiting Scope of Representation

(6) The scope of services to be 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. When a lawyer has been retained by an insurer to represent an insured, for example, the representation may be limited to matters related to the insurance coverage. A limited representation may be appropriate because the client has limited objectives for the representation. In addition, the terms upon which representation is undertaken may exclude specific means that might otherwise be used to accomplish the client's objectives. Such limitations may exclude actions that the client thinks are too costly or that the lawyer regards as repugnant or imprudent.

(7) Although this Rule affords the lawyer and client substantial latitude to limit the representation, 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 telephone 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. Although an agreement for a 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. See Rule 1.1.

(8) 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 and 5.6.

Cases

Scope of representation

In addition to being reasonable under the circumstances, all agreements which limit representation must be in writing, require the informed consent of the client(s), and must comport with the Supreme Court's rules, including the rules of professional conduct.

[Persels & Associates, LLC v. Capital One Bank, \(USA\), N.A. \(Ky. 2016\) 481 S.W.3d 501.](#)

Family law practitioners may provide comprehensive representation during property division proceedings but not provide representation in any form during child custody proceedings, or vice versa. [Persels & Associates, LLC v. Capital One Bank, \(USA\), N.A. \(Ky. 2016\) 481 S.W.3d 501.](#)

Agreements that limit representation to distinct stages of litigation may be reasonable under the circumstances. [Persels & Associates, LLC v. Capital One Bank, \(USA\), N.A. \(Ky. 2016\) 481 S.W.3d 501.](#)

Agreements are authorized that limit the scope of legal assistance or that limit representation to discrete legal tasks, so long as they are reasonable under the circumstances and the client gives informed consent; this includes limitations on services provided in furtherance of traditional litigation as well as alternative dispute resolution methods. [Persels & Associates, LLC v. Capital One Bank, \(USA\), N.A. \(Ky. 2016\) 481 S.W.3d 501.](#)

Limitation on scope of initial representation effected by “dual contract” arrangement whereby attorneys used pre- and postpetition contracts to “bifurcate” services provided to Chapter 7 debtor was reasonable, as required by Kentucky Rules of Professional Conduct, where debtor approached attorneys for bankruptcy representation, attorneys concluded based on information obtained from her at lengthy initial meeting that Chapter 7 case would be appropriate, attorneys explained their two alternative fee arrangements for such cases, offering debtor initial contract for limited prepetition services was a reasonable action that afforded debtor access to bankruptcy and the benefit of the automatic stay, and attorneys explained that case would require additional postpetition work, that she should retain counsel for that work, and that they could perform that work under a second fee agreement, after which they had another meeting and executed a contract for such services. [In re Carr \(Bkrtcy.E.D.Ky. 2020\) 613 B.R. 427.](#)

A lawyer may limit his representation of an indigent pro se defendant to the preparation of initial pleadings, but such active assistance should be disclosed to the court and the adversary, preferably by placing the attorney's name somewhere on the pleading; counsel providing such limited representation may not deceptively engage in a more complete role, nor may the adversary require counsel to enter an appearance for all purposes, and counsel may be required to adequately investigate the facts so that the pleading can be filed in good faith. KBA E-343 (Jan 1991).

Informed consent

SCR 3.130(1.0) Terminology

(b) “Confirmed in writing,” when used in reference to the informed consent of a person, denotes informed consent that is given in writing by the person or a writing that a lawyer promptly transmits to the person confirming an oral informed consent. See paragraph (e) for the definition of an informed consent. If it is not feasible to obtain or transmit the writing at the time the person gives informed consent, then the lawyer must obtain or transmit it within a reasonable time thereafter.

(e) “Informed consent” denotes the agreement by a person to a proposed course of conduct after the lawyer has communicated adequate information and explanation about the material risks of and reasonably available alternatives to the proposed course of conduct.

“where reasonable under the circumstances.” Attorneys must analyze each case or transition to ensure it is appropriate for limited scope representation. There may be circumstances where the case is of a level, or other circumstances are present, such that the attorney should contact that providing unbundled services is not reasonable. In those instances, the attorney, at the very least, must advise the client of that conclusion, and potentially, decline to represent the client on a limited scope basis.