

**October 2023 *Multnomah Lawyer Ethics Focus***

**RPC 1.2(b):  
Limited Scope Representations**

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It has long been prudent practice to define the scope of a representation in an engagement agreement with a client. The Oregon Supreme Court, for example, discussed the scope of a representation in an engagement agreement at the heart of a fee dispute in *Jones v. Kubalek*, 215 Or. 320, 334 P.2d 490 (1959). More recently, RPC 1.2(b), which became effective in 2005, specifically permits a lawyer to limit the scope of a representation.

RPC 1.2(b), which is patterned ABA Model Rule 1.2(c), is a rule of general application. The ABA Model Rule, however, was developed with a specific goal of encouraging lawyers to take on limited assignments for people of modest means who might not otherwise be able to afford “full service” legal representation.

In this column, we’ll first briefly survey the history of the rule for context and then discuss the contours of the rule as applied when assisting clients who cannot afford to have a lawyer handle all aspects of a matter.

***History***

The ABA Model Rules adopted in 1983 included a version of Model Rule 1.2(c) that allowed a lawyer to “limit the objectives of the representation if the client consents after consultation.” When the ABA comprehensively reviewed the

Model Rules in the early 2000s, its “Ethics 2000” Commission recommended a reformulation of ABA Model Rule 1.2(c) to put the accent on limiting the scope of the representation. The Ethics 2000 Commission explained:

Although lawyers enter into such agreements in a variety of practice settings, this proposal in part is intended to provide a framework within which lawyers may expand access to legal services by providing limited but nonetheless valuable legal service to low- or moderate-income persons who otherwise would be unable to obtain counsel.

When Oregon reviewed the ABA Ethics 2000 amendments through a special Oregon State Bar committee, it concluded that the rule “is a helpful clarification of the lawyer’s right to limit the scope of a representation.” The Supreme Court later adopted the rule as RPC 1.2(b) as part of the replacement of the former Disciplinary Rules with the Rules of Professional Conduct effective January 1, 2005. The numbering difference between the Oregon rule and its ABA counterpart arose from the fact that Oregon did not adopt ABA Model Rule 1.2(b) and, therefore, ABA Model Rule 1.2(c) became Oregon RPC 1.2(b). The text of the ABA and Oregon versions of the rule is identical. Although Oregon’s adoption of RPC 1.2(b) was not framed exclusively as part of an effort to foster greater access to legal services, a later Oregon State Bar ethics opinion—Formal Opinion 2011-183 (rev. 2022) noted that it emerged from a national movement to permit the “unbundling” of legal services.

**Contours**

Oregon RPC 1.2(b) reads:

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

Formal Opinion 2011-183, which is available on the OSB web site, addresses both the reasonableness of the limitation and informed consent.

On the former, Formal Opinion 2011-183 quotes (at 2) Comment 7 to ABA Model Rule 1.2:

“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.”

On the latter, Formal Opinion 2011-183 counsels (at 3):

Obtaining the client’s informed consent requires the lawyer to explain the risks of a limited-scope representation. Depending on the circumstances, those risks may include that the matter is complex and that the client may have difficulty identifying, appreciating, or addressing critical issues when proceeding without legal counsel. One “reasonably available alternative” is to have a lawyer involved in each material aspect of the legal matter. The explanation should also state as fully as reasonably possible what the lawyer will not do, so as to prevent the

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lawyer and client from developing different expectations regarding the nature and extent of the limited-scope representation.

In addition to its use for sophisticated parties with discrete issues, Formal Opinion 2011-183 uses an illustration of a *pro se* litigant of modest means needing assistance in completing forms. RPC 1.2(b) allows a lawyer to assist an otherwise unrepresented person without necessarily taking on the entire matter involved.

Although RPC 1.2(b) does not require that the client's informed consent be confirmed in writing, prudent practice suggests memorializing both the scope and the consent in writing. In fact, the ABA issued an ethics opinion in 2015—Formal Opinion 472—recommending written confirmation so that there is a readily accessible record for the benefit of both the lawyer and the client.

Finally, both Comment 8 to ABA Model Rule 1.2 and OSB Formal Opinion 2011-183 emphasize that while the scope of a representation may be limited, our other duties under the RPCs apply fully.

## ABOUT THE AUTHOR

Mark J. Fucile of Fucile & Reising LLP advises lawyers, law firms, and corporate and governmental legal departments throughout the Northwest on professional ethics and risk management. Mark has chaired both the WSBA Committee on Professional Ethics and its predecessor, the WSBA Rules of Professional Conduct Committee. Mark has served on the Oregon State Bar Legal Ethics Committee and is a member of the Idaho State Bar Section on Professionalism & Ethics. Mark writes the Ethics Focus column for the Multnomah (Portland) Bar's *Multnomah Lawyer*, the Ethics & the Law column for the WSBA *Bar News* and is a regular contributor on legal ethics to the WSBA *NWSidebar* blog. Mark is the editor-in-chief and a contributing author for the WSBA *Legal Ethics Deskbook* and a principal editor and contributing author for the OSB *Ethical Oregon Lawyer* and the WSBA *Law of Lawyering in Washington*. Before co-founding Fucile & Reising LLP in 2005, Mark was a partner and in-house ethics counsel for a large Northwest regional firm. He also teaches legal ethics as an adjunct for the University of Oregon School of Law at its Portland campus. Mark is admitted in Oregon, Washington, Idaho, Alaska and the District of Columbia. He is a graduate of the UCLA School of Law. Mark's telephone and email are 503.224.4895 and Mark@frllp.com.