BREAK-OUT GROUP 5

ETHICAL & PRACTICAL CONSIDERATIONS OF UNBUNDLED LEGAL SERVICES
(A/K/A “LIMITED SCOPE REPRESENTATION”)

TALKING POINTS

- Defined: lawyer provides specific, discrete task representation in civil matters without assuming full obligations of representation

- Reasons why it has become so important to indigent legal service providers and to private practitioners who represent middle income populations (unwilling or unable to pay customary hourly fees);

- Reservations held by some judges and lawyers; what are effective & practical responses to those concerns? Successful revisions in other jurisdictions in southwest and nationally

- Efforts of OBA Access to Justice (2003-present)

  Update on Neighboring State Unbundling Activities (Oct. 27, 2010)(Colo., Kan., Mo., N.M., Tex.)

  “Proposed Best Practices” (Aug. 3, 2007 memo), including possible revisions to Okla. Rules of Prof’l Conduct 1.2 (scope of representation), 4.2, 4.3 (represented and unrepresented persons), 3.3 (candor to tribunal), 8.4 (misconduct) and Committee Proposed Amendments to Rules of Professional Conduct and Oklahoma Rules of Civil Procedure, Rule 11 and 12 O.S. § 200.5.2 Entry of Appearance (Dec. 2008)

  Amendment to 5 O.S. 2001 § 5 (2006)(repeal perceived barrier)

- What revisions to ethics and procedural rules are currently feasible in Oklahoma? How to avoid potential difficulties?
Group #5 – Ethical and Practical Issues on Unbundled Legal Services (a/k/a discrete task representation)

Moderator: Judge John Fischer, Student Scrivener: Anna Hodges

October 29, 2010

- **Action Items**
  - Substantive Rules – Additional Suggestions?
    - Prepare/revise the draft of changes to rules (RPC & Civ Pro) that are necessary to implement unbundling rules.
    - Suggestion to cross-reference to rules on advertising in unbundling rules.
    - Need to develop NOW so that the software developers for the e-filing system will have direction in its formation.
  - Commentary to the Rules
    - i.e. *"If you do this, you’re going to be on the hook here, but not here."*
  - Forms
    - “Notice & Consent to Ltd. Representation”
    - Pro Se filing form w/ Rule 11 Warning
    - Must be *very* “user friendly”
    - To be developed along w/ e-filing system
  - Work with the Supreme Court to educate the Bench and Bar concerning pro bono and unbundling issues. Identify rule and ethical changes necessary to implement expanded access to the courts for those Legal Aid cannot serve, for middle-income Oklahomans who would not qualify for Legal Aid, as well as those who chose not to employ a lawyer.
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  - Judicial Conference next Nov. – Make Education on Unbundling part of the General Session
    - Speak w/ Chairman of the Education Committee for the Judicial Conference – she sets the agenda for the conference
    - Need a judge from another state to do a presentation

- **Summary of Group Discussion**
  - Importance of making changes & educating the bar/judges that the bar CAN do this.
  - NO Ghostwriting
    - Judges want to know that an attorney is involved and who it is.
    - This does not constitute lawyer making a general appearance.
      - See Missouri rule that lawyer may make a limited appearance. (pg. 7-Claunch/Maute Memo)
      - TX has similar rule
  - Contract Laying Out Scope of Representation
    - See Missouri’s “Notice & Consent to Ltd. Representation”
      - (pg. 20-Claunch/Maute Memo)
○ What Control Would the Court Have Over Lying Clients?

ISSUE: How could the pro se form put obligations on the pro se litigant not to lie?

- Rule 11 applies to pro se litigants, but may need to go further & include a Rule 11 Warning on the forms.
- Potential rule change – Develop a set of procedural rules that expressly apply to pro se litigants.
- CO’s Approach to Handling Outlandish Fact Representations Made by Client
  - “In helping to draft the pleading or paper filed by the pro se party, the attorney certifies that, to the best of the attorney’s knowledge, information and belief, this pleading or paper is (1) well-grounded in fact based upon a reasonable inquiry of the pro se party by the attorney, (2) is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and (3) is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation...”
    - See pg. 14-Claunch/Maute Memo
- If lawyer discovers a misrepresentation has been made, he/she must report it.

○ CO’s Rule Changes
- Promulgated in ’99 along w/ changes to the attorney code
- A civil program
- Provisions Justice Hobbs Highlighted as Key Changes
  - “...but a lawyer’s advice may be based on the pro se party’s representation of the facts...”
  - “The scope or objectives, or both, of the lawyer’s representation of the client may be limited if the client consents after consultation with the lawyer.” (See pg. 16, 17-Claunch/Maute Memo)
- CO lawyers involved in ltd. scope representation/pro bono are protected under malpractice insurance policy.
  - Also, filing fees & costs are waived.
MEMORANDUM

To: Oklahoma Bar Association Access to Justice Committee
Key Stakeholders, Pro Bono Summit

From: Kenzie L. Claunch, (J.D. expected 2011, University of Oklahoma
College of Law) and Professor Judith L. Maute

Subject: Update on Neighboring State Unbundling Activities

Date: October 28, 2010

UNBUNDLING LEGAL SERVICES IN OKLAHOMA:

I. Introduction

The Oklahoma Bar Association Access to Justice Committee (the “Committee”) seeks to
increase access to legal representation for persons unable to afford customary fees and those who
need limited legal assistance. Limited scope representation, also known as “unbundled legal
services” is the practice of offering specific and discrete portions of a lawyer’s expertise for a
reduced fee, instead of handling an entire case from start to finish.

Several reasons support the offering of unbundled legal services. For prospective clients,
the inability or unwillingness to pay for a lawyer’s full services may prompt a request for only
those tasks that the client feels unable to handle independently. Low and moderate income
people seldom can choose between full and partial representation; it is often between partial
representation or going pro se. Legal aid providers depend on the willingness of private attorneys
to accept limited scope representations. State courts have a substantial interest in allowing
unbundled legal services to help expedite legal proceedings involving pro se litigants, who often
require time-consuming explanations of the legal process, relevant issues, and sometimes make
egregious errors as a result of their legal inexperience. The ability to offer unbundled legal
services would also benefit lawyers who may want to help a client but cannot devote the time
needed to handle a matter from beginning to end. Finally, improved standards to facilitate
unbundling would benefit the legal system and delivery of pro bono legal services by making
legal services more accessible to those in need. Lawyers will be more willing to undertake pro
bono matters if they are confident the work will only consume limited time and effort.

The Committee aims to promote the offering of competent and ethical unbundled legal
services by Oklahoma lawyers. It has researched and addressed unbundling concerns since
2003, always cognizant of concerns raised by thoughtful lawyers and judges. Based on the work
of the ATJ Committee and with the support of the Oklahoma Bar Association, in 2006 a
statutory amendment deleted language thought to be an obstacle to unbundling. See 5 O.S. 2001
§5 (as amended 2006). Thereafter, working from May 2007 through spring of 2009, the
Committee considered and approved for further activity a memo, “Unbundling Legal Services in
“Proposed Best Practices”) and “Proposed Amendments to 12 O.S. §§ 2011, 2005.2 and
Proposed Amendments to Oklahoma Rules of Professional Conduct to Facilitate Unbundling
Legal Services” (undated, last revised Dec. 2008). The Committee considered and approved
comprehensive amendments to Oklahoma Rules of Professional Conduct, Rules 1.2 (scope of
representation), 4.2, 4.3 (dealing with represented and unrepresented persons), 3.3 (candor to
tribunal), 8.4 (misconduct) and to the Oklahoma Rules of Civil Procedure, 12 O.S. § 2011
(signing of pleadings), §2005.2 (entry of appearance)(at pp. 12-17). After extensive discussion,
the Committee agreed that any unbundling reforms must focus solely on civil matters.

For various reasons, further action on the Committee’s approved proposals were placed
on the backburner. Since then, several neighboring states have revised their unbundling
provisions and established workable mechanisms that can serve as examples for similar reforms
in Oklahoma. This memorandum summarizes those activities. Reference to these activities, may provide guidance for Oklahoma revisions, clarifying the practice for judges and lawyers, and improving access to justice in civil matters.

II. American Bar Association Model Rule 1.2(c)

ABA Model Rule 1.2(c) states that "A lawyer may limit the representation if the limitation is reasonable under the circumstances and the client gives informed consent."\(^1\) Oklahoma and most states adopted without change the Model Rule language.\(^2\) Numerous states have further addressed unbundled legal services by amending their rules governing the practice of law and rules of civil procedure.\(^3\)

This memorandum provides an overview of neighboring states' revisions to facilitate unbundled legal services. Unless stated otherwise, state rule is substantially similar to the standard language.

III. Model Rule Updates on Unbundled Legal Services in the Southwest Region

A. Colorado

Since the Colorado Supreme Court’s 1999 amendments to the Rules of Professional Conduct and the Rules of Civil Procedure, the Colorado judiciary and practicing bar have taken great strides to ensure that pro se litigants have the information needed to improve their understanding of the legal system and the steps required to defend or pursue their cases. Colorado RPC 1.2(c) includes additional language that a lawyer “may provide limited

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1 Model Rules of Prof’l Conduct 1.2(c) (See Appendix A).
2 See Oklahoma Rules of Prof’l Conduct, Rule 1.2(c) O.S. 2001, Ch. 1, App. 3-A; See In re: Application of the OBA to Amend the Rules of Professional Conduct, 2007 OK 22, available at http://www.oscn.net/applications/oscn/DeliverDocument.asp?citemid=448812; See also Table 1.
3 See generally http://www.abanet.org/legalservices/delivery/delunbunrules.html (provides links to the states showing rules enacted and ethical opinions issued regarding unbundled legal services).
representation to pro se parties as permitted by C.R.C.P. 11(b) and C.R.C.P. 311(b) (applying to District and County Courts, respectively).\(^4\) Those Limited Representation provisions require that all documents prepared by the assistance of counsel be marked as such and include the attorney’s name, address, phone number, and bar number. The lawyer must further certify that the legal arguments presented are well grounded in fact based upon a reasonable inquiry of the pro se party by the attorney, are warranted by existing law or good faith argument for a change in the law, and not interposed for an improper purpose.\(^5\) Consistent with revisions by other jurisdictions, the Colorado procedural rules state that limited representation of a pro se litigant does not constitute entry of appearance and further, does not require the service of papers upon the attorney.

Colorado has a rich history of providing unbundled legal services and making those legal services user-friendly. The Colorado Legal Services website provides step-by-step instructions for pro se litigants in small claims court. Further, the Colorado Judicial Branch website provides the public with information about the state’s court system, daily dockets, and access to court orders and opinions.\(^6\)

**B. Kansas**

Kansas Rule of Professional Conduct R. 1.2 (c) tracks the Model Rule.\(^7\) The Kansas Bar Association Ethics Committee issued Leg. Ethics Op. 90-01 (2009), finding unbundling “permitted so long as (a) that limited scope of representation and the client’s consent are clearly communicated to the client, in writing, (b) any document prepared by the attorney is marked “Prepared with the Assistance of Counsel,” and (c) the attorney complies with all other

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\(^4\) Colo. Rules of Prof’l Conduct R. 2(c) (See Appendix B for a complete set of Colorado unbundling provisions that went into effect July 1, 1999).

\(^5\) Colo. Rules of Prof’l Conduct R. 311(b).

\(^6\) Dahlke, Kathryn, Online Resources Provide Pro Se Guidance and Reveal Pro Bono Opportunities, The Colorado Lawyer, July 2009.

\(^7\) Kan. Rules of Prof’l Conduct R. 1.2(c) effective July 1, 2007 (See Appendix A for a copy of the rule).
applicable rules." The Ethics Committee focused on ensuring the client is notified of the limited
dscope of the representation and required the scope of representation be contained in a written
letter, specifying the tasks the attorney will perform and confirming the consultation which led to
the client's informed consent. The opinion requires that all documents and pleadings prepared
by counsel are marked as such, but does not require the assisting attorney be identified by
name. This contrasts with the more lenient ABA F. Op. 07-446, which required no disclosure
of the attorney's involvement in drafting pleadings.

Kansas is consistent with the position previously taken by the Oklahoma Access to
Justice Committee that an attorney who receives documents from a litigant "prepared with the
assistance of counsel" can communicate with that litigant as if the litigant was pro se unless the
attorney has reasonable notice the litigant is actually represented by counsel outside of the
limited scope of representation.

C. Missouri

Missouri is also at the forefront of providing unbundling legal services. It first considered
the negative effect of pro se litigants on the legal system in 2002, concluding that affordable and
accessible legal services could alleviate the systemic challenges presented by uninformed and

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9 Id.
unrepresented litigants. Unbundling was initially proposed in 2004 and in 2007 was formally recommended by the Special Committee on Limited Scope Representation of the Missouri Bar Association. The Special Committee recognized that some members of the Bar view limited scope representation as a radical departure from the current methods of practice. . . . [But concluded that] limited scope representation has been practiced ethically within this State and others. The Committee believes it is time to acknowledge this practice and provide additional guidance and regulation that protects both the litigant and the lawyer delivering the limited scope of representation.

The Missouri Supreme Court approved and adopted comprehensive amendments to its Rule of Professional Conduct (effective July 1, 2008) including those on limited scope representation and unbundled services. Missouri Rule 1.2(c) language differs significantly from the Model Rule in that it requires written consent. It provides:

A lawyer may limit the scope of representation if the client gives informed consent in a writing signed by the client to the essential terms of the representation and the lawyer's limited role. Use of a written notice and consent form substantially similar to that contained in the comment to this Rule 4-1.2 creates the presumptions:

(1) the representation is limited to the lawyer and the services described in the form, and
(2) the lawyer does not represent the client generally or in any matters other than those identified in the form.

The written informed consent requirement ensures the client is aware that the representation is limited to the services provided for in the agreement. The Comments include a sample appropriate written agreement with a checklist for the specific, limited duties the lawyer

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15 Mo. Rules of Prof’l Conduct R. 1.2 (See Appendix A for a copy of the rule).
agrees to perform for the client. While the general rule is that a written consent is required for limited scope representation purposes, certain exclusions apply. A lawyer need not obtain a written consent from the client for the purposes of an initial consultation, for “pro bono services provided through a nonprofit organization, a court-annexed program, a bar association, or an accredited law school,” or for services provided by a non-profit organization funded by the Legal Services Corporation.

A Missouri lawyer may file for a limited appearance in court but only by specifying the limitations of appearance—otherwise the lawyer will be considered to have a general appearance. Additionally, a limited scope attorney may withdraw from the case when the limited scope service is completed and the lawyer files a withdrawal memorandum ("Termination of Limited Appearance") confirming the attorney fulfilled those duties.

As contrasted with other states, Missouri allows opposing counsel to correspond with and serve papers to the otherwise self-represented party during the time of limited appearance as if the litigant was a pro se party unless counsel notifies opposing counsel to serve papers to the attorney.

D. New Mexico

The language of New Mexico’s unbundling rule is substantially similar to the Model Rule. Another rule further provides that when appearing before a tribunal, in all cases in which a lawyer appears for the client in a limited manner, the lawyer shall disclose to the court the

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17 Id. See Appendix C for the Missouri form.
18 Mo. Rules of Prof’l Conduct R. 1.2(d).
20 Mo. Supreme Court Rules, Rule 55.03(b)(3). (July 1, 2008. Amended May 26, 2010, eff. July 1, 2010) (The rule was amended in 2010, but this provision was unchanged from the 2008 amendment).
22 N.M. Rules of Prof’l Conduct R. 16-102(c) (See Appendix A).
scope of representation. Additionally, after completing the limited representation the lawyer need not obtain leave of court to withdrawal but shall file with the clerk and serve notice to all parties that the limited representation has concluded.

E. Texas

Texas is in the process of revising its professional conduct rules. Its current limited scope rule is similar to the Model Rule but does not expressly address the reasonableness of limited representation. Texas Disciplinary Rule of Prof’l Conduct Rule 1.02(b) states: "A lawyer may limit the scope, objectives and general methods of the representation if the client consents after consultation." On July 7, 2010, the Supreme Court of Texas issued for comment a comprehensive set of proposed revisions. The proposed rule is identical to Model Rule 1.2(c), with explanatory comments indicating that although the current rule “affords the lawyer and client substantial latitude to limit the representation[,]” an amendment is necessary because “the limitation must be reasonable under the circumstances.” The State Bar of Texas Board of Directors has until November 5, 2010 to make additional recommendations; a referendum of Texas lawyers is expected to follow by the end of the year.

In recent years Texas has made dramatic improvements in the ease of access to self-represented litigants. Travis County, which includes Austin, is the state’s leader in providing pro se assistance. It has developed a functioning self-help legal center which provides valid legal

23 Id. at 16-303(e).
24 Id. at 1-089(c).
25 Tex. Disciplinary Rule of Prof’l Conduct R. 1.02(b) (available at http://www.texasbar.com/AM/Template.cfm?Section=Grievance_Info_and_Ethics_Helpline&Template=/CM/ContentDisplay.cfm&ContentFileID=96) (See Appendix A for a copy of the rule).
27 Id.
forms, an extensive law library for public use, and also a "Pro Se Services Reference Attorney" for eligible pro se litigants. With new conduct rules and more pro se litigants, it is expected education of legal personnel will follow. Texas is implementing a state-wide initiative to guide courts in assisting pro se litigants. A joint project of the Texas Access to Justice Commission, Access to Justice Foundation, Legal Services Center and Office of Court Administration produced a manual with guidelines for clerks and court personnel who work with self-represented litigants. The manual provides information on the roles of court personnel and assistance in answering difficult questions of pro se litigants.

IV. Conclusion

The Oklahoma Rules of Professional Conduct (as amended Jan. 1, 2008) permit lawyers to provide unbundled legal services. Nevertheless, some lawyers and judges express reservations about the practice. This Committee aims to persuade relevant decision-makers to endorse amendments that would facilitate limited scope representations. By drawing upon the successful limited scope practices of other states, Oklahoma can improve access to justice while keeping intact ethical duties of the legal profession.

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Appendix A

American Bar Association: Rule 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.

(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.

Colorado Rules of Professional Conduct: Rule 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 or objectives, or both, of the representation if the limitation is reasonable under the circumstances and the client gives informed consent. A lawyer may provide limited representation to pro se parties as permitted by C.R.C.P. 11(b) and C.R.C.P. 311(b).

(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.
Kansas Rules of Professional Conduct: Rule 1.2: Client-Lawyer Relationship: Scope of Representation

(a) A lawyer shall abide by a client's decisions concerning the lawful objectives of representation, subject to paragraphs (c), (d), and (e), and shall consult with the client as to the means which the lawyer shall choose to pursue. 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.

(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.

(e) When a lawyer knows that a client expects assistance not permitted by the rules of professional conduct or other law, the lawyer shall consult with the client regarding the relevant limitations on the lawyer's conduct.

Missouri Rules of Professional Conduct: Rule 401.2: Scope of Representation

(a) A lawyer shall abide by a client's decisions concerning the objectives of representation, subject to Rule 4-1.2(c), (f) and (g), and shall consult with the client as to the means by which they are to be pursued. A lawyer shall abide by a client's decision whether to accept an offer of settlement of 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 representation if the client gives informed consent in a writing signed by the client to the essential terms of the representation and the lawyer's limited role. Use of a written notice and consent form substantially similar to that contained in the comment to this Rule 4-1.2 creates the presumptions:
   (1) the representation is limited to the lawyer and the services described in the form, and
   (2) the lawyer does not represent the client generally or in any matters other than those identified in the form.

(d) The requirement of a writing signed by the client does not apply to:
   (1) an initial consultation with any lawyer, or
   (2) pro bono services provided through a nonprofit organization, a court-annexed
program, a bar association, or an accredited law school,
(3) services provided by a not-for-profit organization funded in whole or in part by the
Legal Services Corporation established by 42 USC Sec. 2996b.

(e) An otherwise unrepresented party to whom limited representation is being provided or has
been provided is considered to be unrepresented for purposes of communication under Rule 4-
4.2 and Rule 4-4.3 except to the extent the lawyer acting within the scope of limited
representation provides other counsel with a written notice of a time period within which other
counsel shall communicate only with the lawyer of the party who is otherwise self-represented.

(f) 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.

(g) When a lawyer knows that a client expects assistance not permitted by the Rules of
Professional Conduct or other law, the lawyer shall consult with the client regarding the relevant
limitations on the lawyer's conduct.

New Mexico Rules of Professional Conduct: Rule 16-102: Scope of Representation and
Allocation of Authority between Client and Lawyer

(A) Client's decisions. Subject to Paragraphs C and D of this rule, a lawyer shall abide by a
client's decisions concerning the objectives of representation and, as required by Rule 16-104
NMRA of the Rules of Professional Conduct, 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) Representation not endorsement of client's views. 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) Limitation of representation. A lawyer may limit the scope of the representation if the
limitation is reasonable under the circumstances and the client gives informed consent.

(D) Course of conduct. A lawyer shall not counsel a client to engage, or assist a client, in
course that the lawyer knows is criminal or fraudulent or misleads the tribunal. A lawyer may,
however, 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.