Ohio Prof. Cond. Rule 1.2

Rules current through rule amendments received through October 13, 2016

Ohio Court Rules  >  Ohio Rules of Professional Conduct  >  I. Client-lawyer relationship

Rule 1.2. Scope of representation and allocation of authority between client and lawyer

(a) Subject to divisions (c), (d), and (e) of this rule, 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 action on behalf of the client as is impliedly authorized to carry out the representation. A lawyer does not violate this rule by acceding to requests of opposing counsel that do not prejudice the rights of the client, being punctual in fulfilling all professional commitments, avoiding offensive tactics, and treating with courtesy and consideration all persons involved in the legal process. 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 as to a plea to be entered, whether to waive a jury trial, and whether the client will testify.

(b) [RESERVED]

(c) A lawyer may limit the scope of a new or existing representation if the limitation is reasonable under the circumstances and communicated to the client, preferably in writing.

(d)

(1) A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is illegal or fraudulent. A lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client in making a good faith effort to determine the validity, scope, meaning, or application of the law.

(2) A lawyer may counsel or assist a client regarding conduct expressly permitted under Sub. H.B. 523 of the 131st General Assembly authorizing the use of marijuana for medical purposes and any state statutes, rules, orders, or other provisions implementing the act. In these circumstances, the lawyer shall advise the client regarding related federal law.

(e) Unless otherwise required by law, a lawyer shall not present, participate in presenting, or threaten to present criminal charges or professional misconduct allegations solely to obtain an advantage in a civil matter.

History

Amended September 20, 2016.

Annotations

Notes

Comment

Allocation of Authority between Client and Lawyer
[1] Division (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 division (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 guided by reference to Rule 1.14.

[4A] Division (a) makes it clear that regardless of the nature of the representation the lawyer does not breach a duty owed to the client by maintaining a professional and civil attitude toward all persons involved in the legal process. Specifically, punctuality, the avoidance of offensive tactics, and the treating of all persons with courtesy are viewed as essential components of professionalism and civility, and their breach may not be required by the client as part of the representation.

**Comparison to former Ohio Code of Professional Responsibility**

Rule 1.2 replaces several provisions within Canon 7 of the Code of Professional Responsibility.

The first sentence of Rule 1.2(a) generally corresponds to EC 7-7 and makes what previously was advisory into a rule. The second sentence of Rule 1.2(a) states explicitly what is implied by EC 7-7. The third sentence of Rule 1.2(a) corresponds generally to DR 7-101(A)(1) and EC 7-10. Rule 1.2(a)(1) and (2) correspond to several sentences in EC 7-7.

Rule 1.2(c) does not correspond to any Disciplinary Rule or Ethical Consideration.

The first sentence of Rule 1.2(d)(1) corresponds to DR 7-102(A)(7). The second sentence of Rule 1.2(d)(1) is similar to EC 7-4.

Rule 1.2(e) is the same as DR 7-105 except for the addition of the prohibition against threatening "professional misconduct allegations."

**Comparison to ABA Model Rules of Professional Conduct**

Rule 1.2(a) is modified slightly from the Model Rule 1.2(a) by the inclusion of the third sentence, which does not exist in the Model Rules.

Model Rule 1.2(b) has been moved to Comment [5] of Rule 1.2 because the provision is more appropriately addressed in a comment rather than a black-letter rule.
Rule 1.2(c) differs from Model Rule 1.2(c) in that it requires only that the limitation be communicated to the client, preferably in writing. The Model Rule requires that the client give informed consent to the limitation.

Rule 1.2(d)(1) is similar to Model Rule 1.2(d) but differs in two aspects. The Model Rule language "criminal" was changed to "illegal" in Rule 1.2(d)(1), and Model Rule 1.2(d) was split into two sentences in 1.2(d)(1).

Rule 1.2(d)(2) does not exist in the Model Rules.

Rule 1.2(e) does not exist in the Model Rules.

**Case Notes**

Access to legal representation

Breach of courtroom decorum

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Denial of continuance

Disbarment

Discharge for consulting attorney

Disqualification of attorney

Duty of attorney

Duty to counsel client

Illegal drugs as payment for services

Misrepresenting defendant's record

No violation found

Not guilty by reason of insanity defense

Reprimand

Suspension

Threatening client with criminal action

**Decisions Under Former Law**

**Access to legal representation**

When an employee, upon being told that her annual bonus income would be reduced by 50 percent, said she would consult an attorney and was discharged a week later for threatening another employee, it was error to grant summary judgment to her employer on a claim of wrongful discharge in violation of public policy on the theory that her threat to consult an attorney was distinct from an actual consultation and was not a protected activity giving rise to a claim of termination in violation of public policy because this was a distinction without a difference, and provisions in Ohio Const. art. I, § 16 and Ohio Code Prof. Resp. EC 1-1 and 2-1, encouraging employees to consult an attorney regarding possible claims that would affect an employer's business interests showed that the
employer's claim that the termination was valid was a factual issue which had to be submitted to the trier of fact. Newcomb v. Hostetler Catering, Inc., -- Ohio App. 3d --, 2007 Ohio 361, -- N.E. 2d --, 2007 Ohio App. LEXIS 309 (Jan. 29, 2007).

**Breach of courtroom decorum**

Respondent's zealous representation of his client pursuant to Canon 7 was no excuse for his disrespectful, discourteous behavior which resulted in a serious breach of courtroom decorum: Bar Asso. of Greater Cleveland v. Milano, 9 Ohio St. 3d 86, 459 N.E.2d 496, 1984 Ohio LEXIS 1011 (1984).

**Contract of employment**

Attorney was suspended for one year with that suspension stayed based upon the attorney's admission and several mitigators, including his severe depression, and willingness to get treatment, after the attorney filed a personal injury action for a client then dismissed it without the client's consent and did not refile within the statute of limitations period; the attorney violated Ohio Code Prof. Resp. DR 1-102(A)(5), 6-101(A)(3), 7-101(A)(2), 7-101(A)(3) and Ohio Sup. Ct. R. Gov't Bar V(4)(G). Akron Bar Ass'n v. Goodlet, 99 Ohio St. 3d 355, 2003 Ohio 3935, 792 N.E. 2d 1072, 2003 Ohio LEXIS 2104 (Aug. 6, 2003).

Attorney's license to practice law was suspended for one year, stayed for six months on conditions of his repaying his client, based on findings of misconduct, including the neglect of a client's case and failure to account for unearned fees. The attorney violated former Ohio Code Prof. Resp. 6-101(A)(3), 7-101(A)(2), and 9-102(B)(4) by abandoning his client and ignoring requests for her file and an accounting. Cuyahoga County Bar Ass'n v. Peto, -- Ohio St. 3d --, 2007 Ohio 5250, -- N.E.2d --, 2007 Ohio LEXIS 2520 (Oct. 10, 2007).

**Denial of continuance**

Where a trial court denies a continuance in a criminal trial and, as a consequence, defense counsel refuses to participate in the trial for fear that the defendant would receive ineffective assistance of counsel and that counsel would be in violation of DR 6-101(A)(2) and 7-101(A)(3), the court may commit error under the circumstances of the particular case in finding defense counsel in contempt and in imposing a fine: In re Sherlock, 37 Ohio App. 3d 204, 525 N.E.2d 512, 1987 Ohio App. LEXIS 10607 (1987).

**Disbarment**

Supreme court permanently disbarred an attorney because he removed a client's funds from his client trust account and transferred those funds to another account; the attorney acted with a dishonest or selfish motive, engaged in a pattern of misconduct over a period of years, committed multiple offenses, failed to cooperate in the disciplinary process, failed to acknowledge the wrongful nature of his misconduct, caused harm to vulnerable persons, and made no effort to make restitution. Trumbull Cnty. Bar Ass'n v. Roland, -- Ohio St. 3d --, 2016 Ohio 5579, -- N.E.2d --, 2016 Ohio LEXIS 2125 (Aug. 31, 2016).

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Attorney was disbarred for violating the Rules of Professional Conduct because he demonstrated a lack of cooperation in the disciplinary process, was convicted of theft for misappropriating funds from his employer, knowingly accepted and kept retainers that were intended to be used for pursuing claims that he knew or should have known were frivolous, and took fees from clients and failed to do any work or return any of the money.
Attorney was permanently disbarred, and ordered to pay restitution, because he accepted thousands of dollars from the two affected clients, failed to pursue their claims for postconviction relief while they sat in prison and deceived them by representing that he was working to secure the reductions of their criminal sentences. After seven years, he had filed only a seven-page application to reopen one client’s appeal and had filed nothing in the other client’s case.  


Attorney was permanently disbarred from the practice of law in Ohio because the attorney lied to the IRS, a bankruptcy trustee, the attorney's clients, the courts, and disciplinary counsel, as well as misappropriated client funds.  


Discharge for consulting attorney

When considering sources of public policy that encouraged employees to consult an attorney about possible claims that would affect an employer's business interests, the Ohio Constitution gave the Ohio Supreme Court the authority to adopt the Code of Professional Responsibility (CPR), and the CPR contained two provisions which helped to show that encouraging individuals to consult an attorney was a clear public policy in Ohio.  

Ohio Code Prof. Resp. EC 1-1 stated that every person in society should have ready access to the independent professional services of a lawyer of integrity and competence, and Ohio Code Prof. Resp. EC 2-1 stated that the need of members of the public for legal services was met only if they recognized their legal problems, appreciated the importance of seeking legal assistance, and were able to obtain the services of acceptable legal counsel. Important functions of the legal profession were to educate laymen to recognize their legal problems, to facilitate the process of intelligent selection of lawyers, and to assist in making legal services fully available, and it would be inappropriate to engraft upon the CPR the caveat "however, if a claim is against the potential client's employer, the attorney must advise the client that she might lose her livelihood simply for consulting the attorney."  


Disqualification of attorney

Trial court erred when it disqualified the attorneys. There was no evidence to aid the trial court in determining whether their testimony would have been admissible or whether their testimony would have prejudiced their client such that the presumption of continued representation in Ohio Code Prof. Resp. DR 1-502(B) should not have applied.  


Duty of attorney

Children were not denied their right to procedural due process in their action requesting a finding of neglect and dependency because the children, by and through their attorney, were given an opportunity to be heard at the hearing, and the children's wishes were known and heard by the trial court through their attorney.  


Attorney was suspended from the practice of law for one year, stayed, because there was clear and convincing evidence in support of the stipulated rule violations and in support of the aggravating and mitigating factors. The attorney was no longer a danger to clients and no actual suspension from the practice of law was necessary to protect the public from harm.  


Attorney violated Ohio R. Prof. Conduct 1.5(a) and Ohio Code Prof. Resp. DR 2-106(A) by charging excessive fees to a client that were replete with charges at her attorney rate for nonlegal services such as arranging the client's
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doctors' appointments, handling mundane tasks related to his cable-television and magazine subscriptions, researching local feline clubs, and arranging for the replacement of his watch battery. Her claim that Ohio R. Prof. Conduct 1.2, 1.4, and 5.7 authorized her conduct because the client demanded those services from her failed, as nothing in those rules permitted her to violate her ethical obligations in pursuing her clients' objectives or to charge attorney rates for nonlegal services at the behest of a client. Dayton Bar Ass'n v. Parisi, 131 Ohio St. 3d 345, 2012 Ohio 879, 965 N.E.2d 268, 2012 Ohio LEXIS 658 (Mar. 8, 2012).

Attorney's failure to file an appellate brief for a client constituted violations of Ohio R. Prof. Conduct 1.2(a), 1.3, 1.4(a)(3), and 8.4(d) and (h). Disciplinary Counsel v. Ranke, 130 Ohio St. 3d 139, 2011 Ohio 4730, 956 N.E. 2d 288, 2011 Ohio LEXIS 2357 (Sept. 22, 2011).

Attorney did not violate his professional duty as stated in Ohio Code Prof. Resp. EC 7-8 when he pursued suit against the buyers of certain property belonging to the client in the face of the client's alleged protestations to the contrary. Specific documentary evidence showed that the client assigned his interests in the property to the attorney, and this assignment provided evidence of the client's ratification of the attorney's course of conduct. Augusta v. Lemieux, -- Ohio App. 3d --, 2006 Ohio 6696, -- N.E. 2d --, 2006 Ohio App. LEXIS 6594 (Dec. 15, 2006).

Multiple attorneys who represented a minor passenger, a minor driver, and their respective parents in actions against each other, alleging claims of negligence and loss of consortium arising from a vehicle accident that each party blamed on the other, had ethical obligations to represent the clients' interest, as expressed by the client, pursuant to Ohio Code Prof. Resp. EC 7-7 and 7-8. There was no ethical violation found by the attorneys' conduct, as they each were acting in independent roles, and the client did not have the burden of electing which course of action to take, where such choice would have entitled abandoning either his defense or his pursuit of a claim. Jacobs v. McAllister, -- Ohio App. 3d --, 2006 Ohio 123, -- N.E. 2d --, 2006 Ohio App. LEXIS 94 (Jan. 13, 2006).


Duty to counsel client


Under EC 7-8, an attorney has a duty to counsel a client as to appropriate courses of action, not merely to serve as a "hired gun" executing the client's wishes: Disciplinary Council v. Hardesty, 80 Ohio St. 3d 444, 1997 Ohio 329, 687 N.E.2d 417, 1997 Ohio LEXIS 3137 (1997).

Illegal drugs as payment for services

Accepting illegal drugs as payment for legal services violates both DR 2-106(A) and 7-102(A)(7): Columbus Bar Asso. v. Cockrum, 21 Ohio St. 3d 51, 487 N.E.2d 314, 1986 Ohio LEXIS 523 (1986).

Misrepresenting defendant's record

Under DR 7-102, a criminal defense lawyer is prohibited from misrepresenting a client's prior record: Cincinnati Bar Ass'n v. Nienaber, 80 Ohio St. 3d 534, 1997 Ohio 314, 687 N.E.2d 678, 1997 Ohio LEXIS 3159 (1997).
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No violation found

Attorney did not violate Ohio R. Prof. Conduct 1.1, 1.3, 1.4(a)(3), 1.4(a)(4), 1.2, or 4.1 as the complainant's husband testified that the attorney had regularly communicated with him and that he had given the attorney authority to settle the case. Mahoning County Bar Ass'n v. Vivo, 135 Ohio St. 3d 82, 2012 Ohio 5682, -- N.E.2d --, 2012 Ohio LEXIS 3087 (Dec. 6, 2012).

Not guilty by reason of insanity defense

Counsel was not ineffective because he acceded to the inmate's directive to forego a not guilty by reason of insanity defense as counsel's professional obligation was to abide by the inmate's wishes. State v. Davis, -- Ohio App. 3d --, 2014- Ohio 90, -- N.E.2d --, 2014 Ohio App. LEXIS 82 (Jan. 14, 2014).

Reprimand

Attorney was publicly reprimanded because although the attorney engaged in a pattern of misconduct, it occurred in a single case and arose from his erroneous belief that his clients' bankruptcy filings were imminent and that the anticipated bankruptcy stay would obviate the need for him to take further action. Akron Bar Ass'n v. Shenise, -- Ohio St. 3d --, 2015-Ohio 1548, -- N.E.2d --, 2015 Ohio LEXIS 995 (Apr. 29, 2015).

Suspension

Attorney was suspended from the practice of law for six months for violations of the Rules of Professional Conduct, including failing to fully communicate scope of representation to a client, and failing to act with reasonable diligence and promptness. Dayton Bar Ass'n v. Stenson, -- Ohio St. 3d --, 2014- Ohio 2339, -- N.E.2d --, 2014 Ohio LEXIS 1360 (June 4, 2014).

Attorney was indefinitely suspended from the practice of law for engaging in multiple acts of misconduct by accepting legal fees from clients and failing to perform the work, failing to reasonably communicate with his clients during their representation, failing to maintain a client trust account, issuing solicitation letters that were misleading because they gave the impression that he worked for a firm with multiple lawyers, when in fact he was a solo practitioner, and failing to assist in a disciplinary investigation. Cleveland Metro. Bar Ass'n v. Lemieux, 139 Ohio St. 3d 320, 2014-Ohio 2127, -- N.E.2d --, 2014 Ohio LEXIS 1216 (May 27, 2014).

Attorney's mental-illness suspension was lifted but she was suspended from the practice of law for one year, with conditions, by failing to maintain complete records of the client funds in her possession, withdrawal of unearned fees from her client trust account, failure to perform contracted legal work, and failure to cooperate in the resulting disciplinary investigation. The conduct occurred before her brain injury. Cincinnati Bar Ass'n v. Lawrence, 137 Ohio St. 3d 299, 2013- Ohio 4735, 998 N.E.2d 1161, 2013 Ohio LEXIS 2464 (Oct. 31, 2013).

Threating client with criminal action

Suspension of the attorney's license to practice law in Ohio for six months was proper because he violated Ohio R. Prof. Conduct 1.2(e) and 8.4(h) and acted with a selfish motive, causing emotion harm when he threatened a client with criminal action in person and in the presence of the client's six-year-old child. Further, the attorney did not wholeheartedly admit that his conduct was wrongful, but instead claimed that it was only a technical violation of his ethical obligations. Cincinnati Bar Ass'n v. Hartke, 132 Ohio St. 3d 116, 2012 Ohio 2443, 969 N.E.2d 1189, 2012 Ohio LEXIS 1410 (June 6, 2012).

Opinion Notes

Independence from Client's Views or Activities
[5] 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. 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] [RESERVED]

[7] Although division (c) affords the lawyer and client substantial latitude in defining the scope of the representation, any limitation must be reasonable under the circumstances. If, for example, a client's objective is limited to securing general information about the law that 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 would not be reasonable if the time allotted was not sufficient to yield advice upon which the client could rely. 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. 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.

[7A] Written confirmation of a limitation of a new or existing representation is preferred and may be any writing that is presented to the client that reflects the limitation, such as a letter or electronic transmission addressed to the client or a court order. A lawyer may create a form or checklist that specifies the scope of the client-lawyer relationship and the fees to be charged. An order of a court appointing a lawyer to represent a client is sufficient to confirm the scope of that representation.


Illegal, Fraudulent and Prohibited Transactions

[9] Division (d)(1) prohibits a lawyer from knowingly counseling or assisting a client to commit an illegal act or fraud. This prohibition, however, does not preclude the lawyer from giving an honest opinion about the actual consequences that appear likely to result from a client's conduct. Nor does the fact that a client uses advice in a course of action that is illegal or fraudulent of itself make a lawyer a party to the course of action. There is a critical distinction between presenting an analysis of legal aspects of questionable conduct and recommending the means by which an illegal act or fraud might be committed with impunity.

[10] 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 permissible but then discovers is improper. See Rules 3.3(b) and 4.1(b).

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

[12] Division (d)(1) applies whether or not the defrauded party is a party to the transaction. Hence, a lawyer must not participate in a transaction to effectuate illegal or fraudulent avoidance of tax liability. Division (d)(1) does not preclude undertaking a criminal defense incident to a general retainer for legal services to a lawful enterprise. The last clause of division (d)(1) 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.
[13] If a lawyer comes to know or reasonably should know that a client expects assistance not permitted by the Ohio Rules of Professional Conduct or other law or if the lawyer intends to act contrary to the client's instructions, the lawyer must consult with the client regarding the limitations on the lawyer's conduct. See Rule 1.4(a)(5).