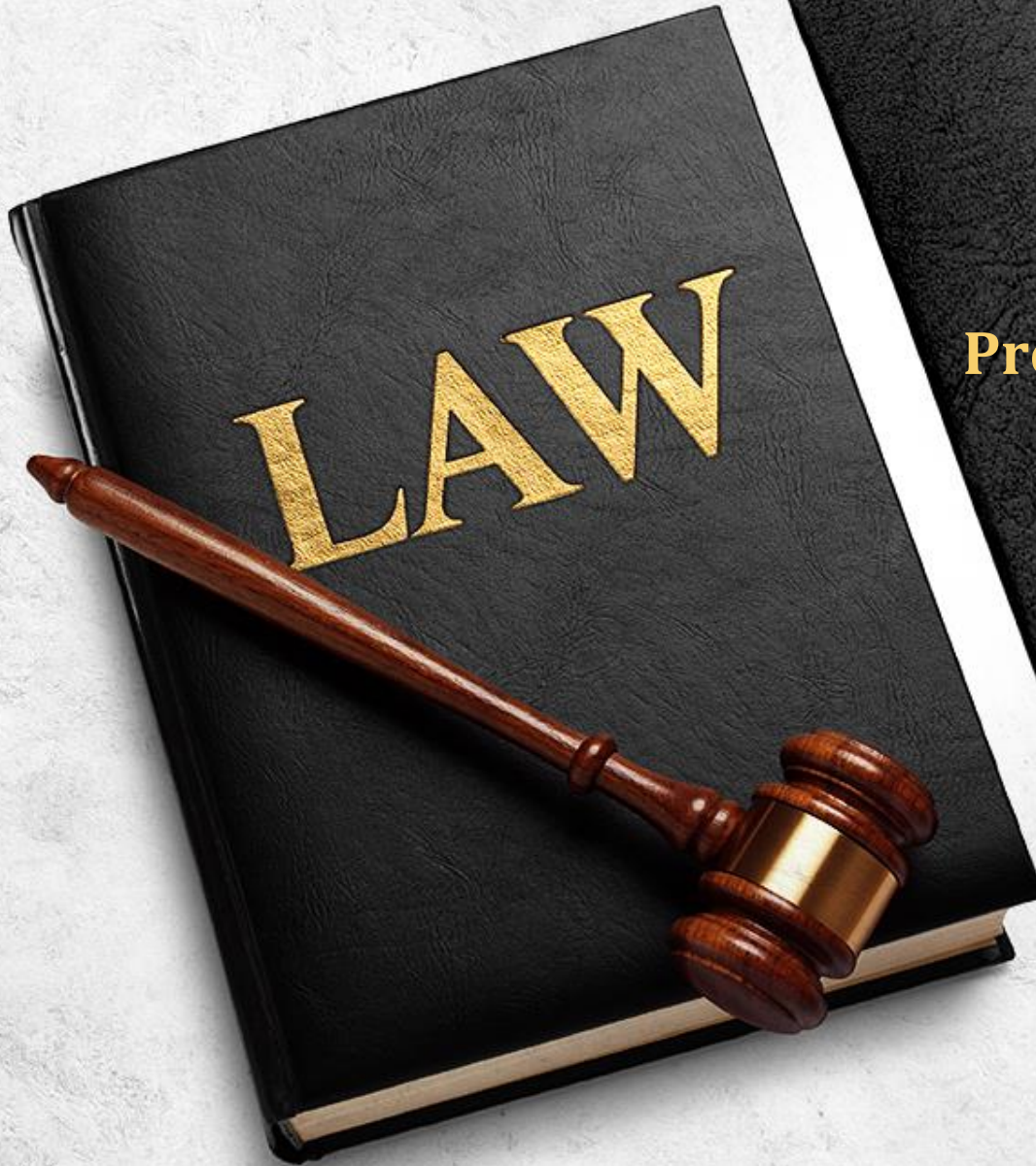


Legal Ethics

Lecture 05

Prof. Marvin Longabaugh

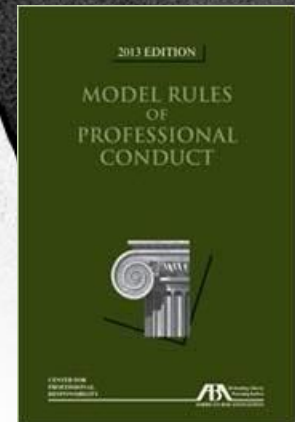
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MRPC 1.2

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.



Decision-Making Process in the Representation

- **Clients** decide issues that go to the fundamental nature of the representation, such as:
 - Whether to offer or accept a settlement proposal MRPC 1.2(a)
 - Whether to accept a criminal plea bargain MRPC 1.2(a)
 - Whether to plead guilty to a criminal charge MRPC 1.2(a)
 - Whether to file an appeal
- And **some issues that are important in the litigation itself**; such as:
 - Whether the client will testify (in criminal trials, defendant has a Constitutional right to testify)
 - Whether to incur *significant* litigation expenses (since it is the client who will ultimately have to pay for them)



Decision-Making Process in the Representation

- Attorneys decide issues that involve **litigation strategy**, such as:
 - Which motions to file (and may not file frivolous motions, even if the client insists on it) and issues to argue FRCP 11
 - Which witnesses to call, other than the client herself
 - The types of questions to ask witnesses
- ***NOTE: The attorney may allow “reputation” or “morality” factors to influence decisions, but may not allow those factors to compromise the diligence of the representation***



Decision-Making During Representation

- **May a client require you to make an argument that, although not frivolous, seems to you to be a loser that will weaken the case?**
- The outside limits on a lawyer's accepting a client's direction of this kind is that the lawyer may not assert a position that is "unwarranted" or "merely to harass" and may not bring a frivolous case.
 - Rule 3.1. A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous, which includes a good faith argument for an extension, modification or reversal of existing law.



Decision-Making During Representation

- **May a lawyer accept what the lawyer thinks is a good settlement of a civil case?**
- The client, not the lawyer, has the right to settle a matter.
 - Rule 1.2(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.
- The client may give the lawyer settlement authority, but the client may always withdraw that authority.
- The lawyer cannot prevent the client from settling.



A Civil Action (1998)

M_CivAction_07

7



Quick Quiz



Anatomy of a Murder (1959)

M_Anatomy_25

9



End Of Class Review Quiz

10

**THE
BIG
QUIZ**



The End

