THE STATE BAR OF CALIFORNIA
STANDING COMMITTEE ON
PROFESSIONAL RESPONSIBILITY AND CONDUCT
FORMAL OPINION INTERIM NO. 97-0007

ISSUE: What are the ethical obligations of an attorney representing indigent criminal defendants who believes that his or her caseload is too large, or other resources are insufficient, to permit him or her to provide competent representation?

DIGEST: Each attorney has an ethical duty to represent his or her clients competently. This duty applies to attorneys representing indigent criminal defendants, whether the attorney is a defender heading an office (i.e., a public defender in state court or a federal or community defender in federal court), a deputy defender (i.e., a deputy public defender or a deputy federal or community defender), or a private appointed attorney. (See Section I., Introduction.)

A defender heading an office and a private appointed attorney each bear ultimate responsibility for addressing ethical concerns about the client matters that he or she may assume. The defender and the private appointed attorney are each responsible for resolving a workload issue that causes an inability to carry out the representation competently. Measures to address such problems range from declining new cases, seeking continuances and, in appropriate circumstances, seeking to withdraw. (See Sections I.A., B., II.)

A deputy defender, by contrast, acts as a subordinate of the defender heading the office. If the deputy defender believes that he or she may not be able to provide competent representation, the deputy defender should bring to the defender's attention his or her belief, undertaking a balancing of his or her duties to clients and his or her subordinate role vis-à-vis the defender. If the defender agrees, the defender should then take steps to resolve the problem. If the defender disagrees, the deputy defender may generally satisfy his or her ethical duties by deferring to the defender's decision. If the deputy defender believes that he or she may not defer to the defender, if the deputy defender further believes that he or she cannot provide competent representation, and, if the deputy defender has exhausted all available remedies, the deputy defender may have to decline to proceed. (See Section I.A.)

When an attorney representing indigent criminal defendants believes that he or she has insufficient resources, other than the attorney's own time, to provide competent representation, the attorney must take appropriate steps to seek such resources. Indigent criminal defendants have a right to certain defense services at public expense as a necessary corollary to effective assistance of counsel. Beyond seeking such services, the attorney must take such steps as are appropriate depending on whether he or she is a defender heading an office, a deputy defender, or a private appointed attorney. (See Section I.B.)

When an attorney representing an indigent criminal defendant moves to withdraw because the attorney believes he or she lacks adequate time or resources to provide competent representation, the motion may be denied. In that event, when the attorney is ordered to proceed to trial, he or she is bound to do so to the best of his or her ability. The attorney's ethical duty of competent representation would include making an appropriate record of the circumstances under which the trial proceeds for subsequent review. (See Section III.)

Finally, if an attorney representing an indigent criminal defendant moves to withdraw or, after denial of such a motion, proceeds to trial with what he or she believes are inadequate resources or time to provide competent representation, the attorney must inform his or her client of such an event because each is a significant development in the matter. Likewise, if the attorney is a deputy defender who decides to resign because he or she believes that adequate resources or time to provide competent representation is lacking, the deputy defender must inform his or her client of such a decision, if the deputy defender is able to do so, but if not, the defender heading the office must furnish the information, because this event too is a significant development in the matter. (See Section IV.)

AUTHORITIES INTERPRETED: Rules 3-110, 3-500, and 3-700 of the Rules of Professional Conduct of the State Bar of California.

STATEMENT OF FACTS

Attorney X is a defender heading an office providing representation for indigent criminal defendants in California—either as a public defender in state court or as a federal or community defender in federal court.

Attorney Y is a deputy defender working for Attorney X in California—either as a deputy public defender in state court or as a deputy federal or community defender in federal court—representing indigent criminal defendants. Attorney Y believes that his caseload is too large, and that he has insufficient resources, such as investigators, to assist in trial preparation, with the result that he cannot adequately represent his clients. Attorney Y's trial schedule leaves him little time to prepare any single case for trial and he is continuously set for numerous trials. Attorney Y finds himself physically and emotionally exhausted because of his workload. Attorney Y has no authority to refer the defense of indigent criminal defendants assigned to him to private attorneys.

Attorney Z serves on a panel of private attorneys available to represent indigent criminal defendants in California—either in state court or in federal court. Attorney Z believes that he needs to hire investigators and experts on forensic issues to provide an adequate defense for many of his clients. However, Attorney Z has found it increasingly difficult to obtain appointment orders for experts and investigators. Attorney Z is about to go to trial in a felony case, after having announced that he would be ready to proceed within a specific time period, but he now feels a particular expert is needed for his client's defense. The court, however, has refused to appoint the expert and has ordered Attorney Z to proceed to trial. Attorney Z has moved to withdraw, but the court has denied his motion.

We are asked to review the ethical obligations of Attorneys X, Y, and Z in representing indigent criminal defendants. As we shall explain below, the manner in which each attorney may fulfill his or her duty to provide competent representation differs depending upon the context in which he or she practices.

DISCUSSION

I. Duty To Provide Competent Representation

In state court in California, appointment of counsel for indigent criminal defendants takes place pursuant to Penal Code section 987.2[1/] The public defender is an elected or appointed county official or a private attorney with whom the county has contracted. In most counties, absent a conflict of interest, the public defender will be appointed as attorney of record to defend indigent criminal defendants. The public defender, in turn, will usually assign a deputy public defender to represent the client. By court practice, the attorney of record is the public defender, not the assigned deputy public defender. When the public defender is unavailable, because of a conflict or otherwise, another attorney will be appointed as attorney of record—either the county conflict or alternate defender, if one exists, or otherwise a private attorney, commonly drawn from a panel of attorneys under contract with the county.

In federal court in California, appointment of counsel for indigent criminal defendants is similar. (See generally 18 U.S.C. § 3006A.) Each district court is required to establish a plan for providing representation. Under the district court's plan, attorneys are appointed from a panel approved by the district court, from a bar association or legal aid agency, or from a defender organization headed by a federal or community defender. Each district court in California has established either a federal defender organization or a community defender organization. A federal defender heads an organization of attorneys who are federal employees, and receives funds from which compensation is paid to deputy federal defenders and expenses are paid to experts. A community defender, on the other hand, heads a non-profit

[1/] This opinion is limited to the ethical duties of attorneys representing indigent criminal defendants. The Committee has not considered, and does not address, the ethical duties of attorneys representing civil litigants.

organization established and administered by any group authorized by the district court's plan, and likewise receives funds that are paid to deputy community defenders and experts. The federal or community defender, in turn, will usually assign a deputy federal or community defender to represent the client. By court practice, the attorney of record is the federal or community defender, not the assigned federal or community deputy defender. When the federal or community defender is unavailable, because of a conflict or otherwise, a private attorney will be appointed as attorney of record to represent the client.

Attorneys X, Y, and Z are each obligated to fulfill his or her ethical obligations to each indigent criminal defendant whom he or she represents. These ethical obligations include the duty to provide competent representation. Rule 3-110 of the Rules of Professional Conduct of the State Bar of California states in part: "(A) A[n] [attorney] shall not intentionally, recklessly, or repeatedly fail to perform legal services with competence. (B) For purposes of this rule 'competence' in any legal service shall mean to apply the 1) diligence, 2) learning and skill, and 3) mental, emotional, and physical ability reasonably necessary for the performance of such service.[2/] Each attorney has an obligation "faithfully to discharge the duties of an attorney at law to the best of his [or her] knowledge and ability." (Bus. & Prof. Code, § 6067.) How the ethical duty to provide competent representation is carried out differs based on the respective responsibilities of the various attorneys.

A. Duties of Defender and Deputy Defender

Attorney X, as the defender heading the office, has ultimate responsibility for taking steps to provide competent representation to the indigent criminal defendants for whom she has been appointed. If Attorney X's deputy defenders are unable to adequately prepare their cases because of excessive caseloads or lack of resources, Attorney X's ethical duty is to correct the situation. For example, Attorney X might reassign cases or redeploy deputy defenders, hire additional deputy defenders, or decline new appointments by declaring the office unavailable. Attorney X may not countenance excessive caseloads to the point that clients do not obtain competent representation. Of course, any decision by Attorney X regarding the allocation of resources within the office will generally be complex, involving as it does a consideration of numerous factors such as overall caseload, the general limitation of resources, the varying abilities, and need for supervision, of the deputy defenders available to handle the cases, and so forth. Seldom will a question of resource allocation be susceptible to a single, unambiguous resolution.[3/]

When Attorney Y, the deputy defender, comes to believe that he may be unable to provide competent representation to his indigent criminal defendant clients, he must bear in mind his role as a subordinate of Attorney X, the defender heading the office. As a result, Attorney Y should undertake a balancing of his duties to his clients and his subordinate role as a deputy defender. Attorney Y should take whatever actions he believes are necessary to protect his clients, so long, of course, as he informs Attorney X and Attorney X does not prohibit him from doing so. For example, Attorney Y could request continuances until he believes he has had time to adequately prepare, so long as such continuances do not prejudice any of his clients. (See *People v. Johnson* (1980) 26 Cal.3d 557, 572 [162 Cal.Rptr. 431].)[4/] Attorney X,

---

[2/] Unless otherwise indicated, all rule references are to the Rules of Professional Conduct of the State Bar of California.

[3/] But cf. *Miranda v. Clark County, Nevada* (9th Cir. 2003) 319 F.3d 465 (public defender's alleged policies of (1) allocating resources within the office on the basis of polygraph results and (2) assigning the least experienced attorneys to capital cases while refusing to provide any training constituted deliberate indifference to the clients' right to the assistance of counsel under U.S. Const., Amend. VI).

[4/] Attorney Y, as a deputy defender, may not seek to resolve the problem that he has identified by neglecting or abandoning the defense of one of his indigent criminal defendant clients to focus on the defense of another, even though he considers the other case more winnable or in some way more significant. Along with Attorney X, the defender heading the office, Attorney Y owes a duty of competent representation to each client. Further, along with Attorney X, Attorney Y owes each client a duty of undivided loyalty. (*Flatt v. Superior Court* (1994) 9 Cal.4th 275, 289 [36 Cal.Rptr.2d 537]; *Yorn v. Superior Court* (1979) 90 Cal.3d 669, 675 [153 Cal.Rptr. 295].) Like Attorney X, Attorney Y would violate the duty of loyalty by "sacrificing" the defense of one client to help another.

as noted, has an ethical duty to provide competent representation—and accordingly an ethical duty to assist Attorney Y in providing competent representation.

If Attorney X, the defender heading the office, agrees that Attorney Y may be unable to provide competent representation to his indigent criminal defendant clients, Attorney X has a range of options for dealing with Attorney Y's concerns. For example, Attorney X could provide more resources, lessen Attorney Y's case load and/or other responsibilities, reassign one or more cases to other deputy defenders, or direct Attorney Y to seek continuances or other relief from the court.

But if Attorney X, the defender heading the office, disagrees, we believe that Attorney Y, as a deputy defender, may satisfy his ethical duties to his indigent criminal defendant clients by following Attorney X's decision, unless that decision constitutes an unreasonable resolution of a question of ethical duty.

In the absence of California authority on point, we look for guidance to Rule 5.2 of the American Bar Association (ABA) Model Rules of Professional Conduct (Model Rule 5.2). Although Model Rule 5.2 is not binding on California attorneys, we believe that the guidance it provides does not conflict with California authority and is both helpful and appropriate for California attorneys in the present situation.

Model Rule 5.2 provides that a "subordinate lawyer" satisfies his or her ethical duties "if that lawyer acts in accordance with a supervisory lawyer's reasonable resolution of an arguable question of professional duty."

Comment 2 to Model Rule 5.2 explains:

> When lawyers in a supervisor-subordinate relationship encounter a matter involving professional judgment as to ethical duty, the supervisor may assume responsibility for making the judgment. Otherwise a consistent course of action or position could not be taken. If the question can reasonably be answered only one way, the duty of both lawyers is clear and they are equally responsible for fulfilling it. However, if the question is reasonably arguable, someone has to decide upon the course of action. That authority ordinarily reposes in the supervisor, and a subordinate may be guided accordingly.

Comment 2 to Model Rule 5.2 thus recognizes that in matters involving professional judgment as to ethical duty, it is the supervisory attorney who should assume decisionmaking responsibility, and it is the subordinate attorney who should follow the decision made—unless that decision constitutes an unreasonable resolution of a question of ethical duty.

Courts construing Model Rule 5.2 have consistently held that a subordinate attorney may not rely on a supervisory attorney's decision in an attempt to immunize him- or herself from responsibility for improper conduct when the impropriety is well settled and not reasonably open to question. (See, e.g., *People v. Casey* (Colo. 1997) 948 P.2d 1014, 1016-1018 [attorney's failure to inform the court that a client facing trespassing and drinking charges was using another person's identity violated his duty of truthfulness, even though the attorney had consulted with, and obtained advice from, a supervisor]; *Matter of Howes* (N.M. 1997) 940 P.2d 159, 164-165 [federal prosecutor violated prohibition on communicating with a represented criminal defendant, notwithstanding advice received from chief and deputy chief of felony section]; *Kelley's Case* (N.H. 1993) 627 A.2d 597, 600 [Model Rule 5.2 was of no avail in a case of joint representation when the "potential conflict in [the] case would be so clearly fundamental to a disinterested attorney that undertaking the joint representation was *per se* unreasonable"]; cf. *Roberts v. Lyons* (E.D. Pa. 1990) 131 F.R.D. 75, 84 ["No lawyer may disclaim responsibility for his/her own actions . . . . When others are involved in misconduct with counsel, degrees of culpability may vary but ultimate responsibility does not. Counsel simply cannot delegate to others their own dut[ies] . . . ."]; *Matter of Rivers* (S.C. 1984) 331 S.E.2d 332, 332-333 ["Inexperienced attorneys are held to the same standards as their more experienced colleagues. It is the duty of attorneys to discover and comply with the rules of practice and professional responsibility governing the profession."].) This construction of Model Rule 5.2 is supported by the fact that each attorney, subordinate no less than supervisory, has ethical duties. (See, e.g., Fox, *Save Us From Ourselves* (1998) 50 Rutgers L.Rev. 2189, 2191-2193.)

It follows, then, that Attorney Y, as a deputy defender, should generally rely on the decision of Attorney X, the defender heading the office, respecting his ability to provide competent representation to his indigent criminal defendant clients.

In this matter, it is Attorney X, as the supervisory attorney, who should assume decisionmaking responsibility, and it is Attorney Y, as the subordinate attorney, who should follow the decision made—unless that decision constitutes an unreasonable resolution of a question of ethical duty. This is the appropriate procedure to follow when Attorney Y's belief about his inability to provide competent representation implicates the allocation of resources within the office. As noted, seldom will a question of resource allocation be susceptible to a single, unambiguous resolution. This is also the appropriate procedure to follow when Attorney Y's belief about his inability to provide competent representation is based on his own physical or emotional condition and his feeling of exhaustion. Experience teaches that a supervisory attorney often has a better sense of a subordinate attorney's strengths and weaknesses than the subordinate attorney him- or herself.

But if Attorney Y believes that he may not rely on the decision of Attorney X respecting his ability to provide competent representation because that decision constitutes an unreasonable resolution of a question of ethical duty, Attorney Y must nevertheless remain open to the views of Attorney X and must proceed to invoke, and exhaust, all the remedies available to him in the office. Ultimately, however, in circumstances that we believe are likely to occur only rarely, Attorney Y may have no alternative other than to decline to proceed. (Cf. Rule 3-700(B)(2), (3) [if an attorney believes that his or her continued representation of a client "will result" in violation of his or her ethical duties or that his or her mental or physical condition renders it "unreasonably difficult" to carry out the employment effectively, the attorney must seek to withdraw from the case]).[5/]

We shall address below the analysis that Attorney X, the defender heading the office, should consider in deciding whether to move to withdraw from representation of an indigent criminal defendant.

B. <u>Duty of Private Attorney Appointed as Defense Counsel</u>

Attorney Z, as a private attorney appointed to represent indigent criminal defendants as attorney of record, is in a different situation from Attorneys X and Y in one important sense: Attorney Z is the only attorney responsible for his clients' representation. Hence, Attorney Z cannot consult with a supervisory attorney about how to ensure that he provides competent representation to each client or takes steps to correct any situation that impedes his ability to do so.

Attorney Z's concern about his ability to deliver competent representation to any indigent criminal defendant who is his client does not stem from his own schedule but from his inability to obtain certain court-ordered defense services (e.g., investigative services and experts) at government expense. Indigent criminal defendants have the right to such services as a corollary to the right to effective assistance of counsel. (*Corenevsky v. Superior Court (The People)* (1984) 36 Cal.3d 307, 313 [204 Cal.Rptr. 165]; *Segal v. State Bar* (1988) 44 Cal.3d 1077, 1084 [245 Cal.Rptr. 404].) Attorney Z should seek such court-ordered services when appropriate for his cases. Attorney Z, however, has already done so, but has been rebuffed. If Attorney Z's motions were timely and properly prepared, it appears that Attorney Z has fulfilled his ethical duty to competently seek court-ordered and government-funded services for his client. His duty now is to ensure that the record is adequate to preserve the issue for review. See Section III, below.[6/]

[5/] As stated, this opinion is limited to the *ethical duties* of attorneys representing indigent criminal defendants. See footnote 1, above. The Committee has not considered, and does not address, the rights or obligations or claims or defenses of supervisory or subordinate attorneys *under applicable employment law*, which implicate questions beyond its purview.

[6/] Like a deputy defender representing indigent criminal defendants, a private appointed attorney may not seek to resolve the problem of an excessively large caseload or insufficient resources by neglecting or abandoning the defense of one client to focus on the defense of another. The private appointed attorney owes a duty of competent representation and undivided loyalty to each client. The private appointed attorney would also violate the duty of loyalty by "sacrificing" the defense of one client to help another. See footnote 4, above.

II. Mandatory and Permissive Withdrawal

As we have explained above, Attorney Y, the deputy defender, does not have authority to move to withdraw from the representation of any indigent criminal defendant. Attorney X, the defender heading the office, alone bears responsibility for deciding whether, and under what circumstances, to seek to withdraw from a particular representation. Attorney Z, the private appointed attorney, also has this responsibility.

Rule 3-700 specifies certain situations in which an attorney *must* seek to withdraw and other situations in which an attorney *may* seek to withdraw. If an attorney believes that his or her continued representation of a client "will result" in violation of his or her ethical duties or that his or her mental or physical condition renders it "unreasonably difficult" to carry out the employment effectively, the attorney *must* seek to withdraw. (Rule 3-700(B)(2), (3).) The attorney *may*, but is not required to, seek to withdraw if his or her continued representation of the client is "likely to result" in violation of his or her duties, or if his or her mental or physical condition renders it "difficult" to carry out the employment effectively. (Rule 3-700(C)(2), (4).) Notwithstanding Rule 3-700's other requirements, an attorney who is attorney of record may withdraw only subject to the court's rules. (Rule 3-700(A)(1).)

In applying Rule 3-700 to our facts, Attorney X, the defender heading the office, and Attorney Z, the private appointed attorney, must conduct an identical analysis. If either attorney believes that representation of any indigent criminal defendant *will* violate the ethical duty of competent representation, then that attorney *must* seek to withdraw. If either attorney believes that representation *is likely to* violate the ethical duty of competent representation, then that attorney *may* elect to seek to withdraw. If the attorney moves to withdraw and the motion is granted, the attorney must take reasonable steps to avoid reasonably foreseeable prejudice to the rights of the client. (Rule 3-700(A)(2).) Such steps would typically include giving adequate notice to the client and seeking appropriate extensions of time or continuances from the court to permit employment of a successor attorney.

Under our facts, Attorney Z, the private appointed attorney, has already conducted this analysis and elected to seek to withdraw, but the court has denied the motion. We address how Attorney Z should proceed in Section III, below.

III. Duty of Attorney If Motion to Withdraw Denied

If the court has denied a motion for withdrawal from representation of an indigent criminal defendant brought by Attorney X, the defender heading the office, or by Attorney Z, the private appointed attorney, or if Attorney X has refused to relieve Attorney Y, the deputy defender, or to reassign the case from him, and Attorney Y has chosen to continue on, each attorney is ethically obligated to proceed with the trial and act as a vigorous advocate for the client.

As the Supreme Court pointed out in *People v. McKenzie* (1983) 34 Cal.3d 616 [194 Cal.Rptr. 462], *disapproved on other grounds, People v. Crayton* (2002) 28 Cal.4th 346, 464-465 [121 Cal.Rptr.2d 580], "[a]ny other course would be contrary to the attorney's obligation 'faithfully to discharge the duties of an attorney at law to the best of his [or her] knowledge and ability.' " (*People v. McKenzie, supra*, 34 Cal.3d at p. 631, quoting Bus. & Prof. Code, § 6067.) Faithful discharge of the duties to the client at this point would include protecting the record to preserve the issue for review. "The duty of a lawyer both to his client and to the legal system, is to represent his client zealously within the bounds of the law." (*Hawk v. Superior Court* (1974) 42 Cal.App.3d 108, 126 [116 Cal.Rptr. 713].)

An attorney may not sit silently during a trial to protest the restrictions placed on his or her defense of an indigent criminal defendant, even if he or she believes that such a protest might benefit future clients by encouraging change in the handling of the defense of such clients. In *McKenzie*, the defense attorney claimed that his participation in the trial would have violated the prohibition against representing a client without adequate preparation. He therefore remained in the courtroom but refused to actively participate in his client's trial. Although the client's conviction in that case was reversed, the *McKenzie* court stated that "the existence of . . . admittedly adverse conditions," created by the uncooperativeness of the client and counsel's disagreement with the court's ruling on a substantive motion, "[did] not

relieve counsel of the duty to act as a vigorous advocate and to provide the client with whatever defense he can muster." (*People v. McKenzie, supra*, 34 Cal.3d at p. 631.)[7/]

In *McKenzie*, the Supreme Court explained that the rule against representing a client without adequate preparation cannot be employed "to permit an attorney's abandonment of his client by unjustifiably refusing to provide him with any assistance whatsoever." (*People v. McKenzie, supra*, 34 Cal.3d at p. 631.) " 'It is the imperative duty of an attorney to respectfully yield to the ruling of the court, whether right or wrong.' " (*Id.* at p. 632, quoting *In re Grossman* (1930) 109 Cal.App. 625, 631 [293 P. 683], and citing the duty of each attorney to maintain respect for the courts under Bus. & Prof. Code, § 6068, subd. (b).) The *McKenzie* court suggested that there is no discrepancy between the attorney's duty of loyalty to his client and respect to the court, on the one hand, and his duty of competence, on the other hand. "'If the ruling is adverse, it is not counsel's right to resist it or to insult the judge—his right is only respectfully to preserve his point for appeal.' [Citations omitted.] If counsel builds a careful record and can demonstrate that he has been compelled to proceed with a case in which he was unprepared through no fault of his own, the matter can then be raised through the proper procedural channels." (*People v. McKenzie, supra*, 34 Cal.3d at p. 632.)

IV. Duty to Advise Clients of Significant Developments in Their Cases

Rule 3-500 provides: "A[n] [attorney] shall keep a client reasonably informed about significant developments relating to the employment or representation and promptly comply with requests for information." For its part, Business and Professions Code section 6068, subdivision (m), imposes upon attorneys the ethical duty to keep clients reasonably informed of "significant developments" in matters for which the attorney is providing legal services. Under these provisions, Attorney Y, the deputy defender, and Attorney Z, the private appointed attorney, are each required to advise an indigent criminal defendant who is a client if the level of resources available for the client's defense—either the attorney's own time or other services—becomes a significant development in the client's case. If Attorney Y has resigned, the duty to advise the client would then fall to Attorney X, the defender heading the office. The decision of Attorney X or Attorney Z to seek to withdraw from the client's case, or Attorney X's reassignment of the client's case from Attorney Y to another deputy defender, would each amount to a significant development of which the client must be apprised. Likewise, the decision of Attorney Y to resign would itself amount to a significant development to be communicated to the client, by Attorney Y himself if he is able to do so, but if not, by Attorney X.[8/]

This opinion is issued by the Standing Committee on Professional Responsibility and Conduct of the State Bar of California. It is advisory only. It is not binding upon the courts, the State Bar of California, its Board of Governors, any persons, or tribunals charged with regulatory responsibilities, or any member of the State Bar.

[7/] In *McKenzie*, the Supreme Court distinguished *Hughes v. Superior Court* (1980) 106 Cal.App.3d 1 [164 Cal.Rptr. 721], where the Court of Appeal had set aside a contempt order against a deputy public defender who had refused to participate in a trial because of lack of preparation. The *McKenzie* court noted that the contempt citation in *Hughes* had been vacated because, under the circumstances in that case, the deputy public defender had justification for his lack of preparation. Nonetheless, the *McKenzie* court noted that "a refusal to participate in formulating or conducting a defense is not generally among the available strategic options" (*People v. McKenzie, supra*, 34 Cal.3d at p. 631), and suggested several available procedures to the trial courts for dealing with a refusal to participate, including warning the attorney in question of possible sanctions for contempt or of possible referral to the State Bar for discipline (*id.* at p. 627, fn. 5).

[8/] Rule 1.4 of the ABA Model Rules of Professional Conduct, although not binding on California attorneys, may be considered in these circumstances. (See Rule 1-100.) Comment 2 to Model Rule 1.4 states: "The guiding principle is that the lawyer should fulfill reasonable client expectations for information consistent with the duty to act in the client's best interest, and the client's overall requirements as to the character of representation." (See also ABA Standards for Criminal Justice, Prosecution Function and Defense Function (3d ed. 1993), Defense Standard 4-3.8 [requiring criminal defense lawyer to keep client informed of developments in case].)