

Rule 1.16: Declining or Terminating Representation

(a) ~~(a)~~ A lawyer shall inquire into and assess the facts and circumstances of each representation to determine whether the lawyer may accept or continue the representation.

(b) Except as stated in paragraph ~~(e)~~(d), a lawyer shall not represent a client in a matter or, where representation has commenced, shall withdraw from the representation ~~of a client~~ if:

(1) the representation will result in violation of the rules of professional conduct or other law;

(2) the lawyer's physical or mental condition materially impairs the lawyer's ability to represent the client;

(3) the lawyer is discharged; or

(4) the lawyer knows that the client or prospective client seeks to use or persists in using the lawyer's services to commit or further a crime or fraud, despite the lawyer's discussion pursuant to Rules 1.2(d) and 1.4(a)(5) regarding the limitations on the lawyer assisting with the proposed conduct.

~~(b)~~(c) Except as stated in paragraph ~~(e)~~(d), a lawyer may withdraw from representing a client if:

(1) withdrawal can be accomplished without material adverse effect on the interests of the client;

(2) the client persists in a course of action involving the lawyer's services that the lawyer reasonably believes is criminal or fraudulent;

(3) the client has used the lawyer's services to perpetrate a crime or fraud;

(4) the client insists upon taking action that the lawyer considers repugnant or with which the lawyer has a fundamental disagreement;

(5) the client fails substantially to fulfill an obligation to the lawyer regarding the lawyer's services and has been given reasonable warning that the lawyer will withdraw unless the obligation is fulfilled;

(6) the representation will result in an unreasonable financial burden on the lawyer or has been rendered unreasonably difficult by the client; or

(7) other good cause for withdrawal exists.

~~(e)~~ ~~A lawyer must comply with applicable law requiring notice to or~~ If permission of a tribunal when terminating a for withdrawal from the representation. ~~When ordered to do so is required by the rules of~~ a tribunal, a lawyer shall ~~continue representation notwithstanding good~~

~~cause for terminating~~ not withdraw from the representation in a proceeding before that tribunal without its permission.

(~~de~~) Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for ~~employment~~ engagement of other counsel, surrendering papers and property to which the client is entitled, and refunding any advance payment of fee or expense that has not been earned or incurred. ~~The lawyer may retain papers relating to the client to the extent permitted by other law.~~

Comment

[1] ~~Paragraph (a)~~ This Rule imposes an obligation on a lawyer to inquire into and assess the facts and circumstances of the representation before accepting it. The obligation ~~imposed by Paragraph (a)~~ continues throughout the representation. The required level of a lawyer's inquiry and assessment will vary for each client or prospective client, depending on the nature of the risk posed by each situation. A change in the facts and circumstances relating to the representation may trigger a lawyer's need to make further inquiry and assessment. For example, if a client traditionally uses a lawyer to acquire local real estate through the use of domestic limited liability companies, with financing from a local bank, ~~The, a duty of inquiry may arise if the~~ same client ~~then~~ asks the lawyer to create a multi-tier corporate structure, formed in another state to acquire property in a third jurisdiction, and requests to route the transaction's funding through the lawyer's trust account. Such a request could indicate a money-laundering scheme, or a scheme to conceal assets or other illegal conduct. Another example where a lawyer may have a duty of inquiry is when, during the course of a representation, a new party is named or a new entity becomes involved, indicating among other things that an additional conflicts check may be required. A lawyer should not accept representation in a matter unless it can be performed competently, promptly, without improper conflict of interest and to completion. Ordinarily, a representation in a matter is completed when the agreed-upon assistance has been concluded. See Rules 1.1, 1.2(c) and 6.5. See also Rule 1.3, Comment ~~[4]~~.

Mandatory Withdrawal

[2] A lawyer ordinarily must decline or withdraw from representation if the client demands that the lawyer engage in conduct that is illegal or violates the Rules of Professional Conduct or other law. The lawyer is not obliged to decline or withdraw simply because the client suggests such a course of conduct; a client may make such a suggestion in the hope that a lawyer will not be constrained by a professional obligation. Under paragraph (~~ab~~) (4), the lawyer's inquiry into and assessment of the facts and circumstances will be informed by the risk that the client or prospective client seeks to use or persists in using the lawyer's services to commit or further a crime or fraud. ~~This analysis means that the required level of a lawyer's inquiry and assessment will vary for each client or prospective client, depending on the nature of the risk posed by each situation.~~ Factors to be considered in determining the level of risk may include: (i) ~~the identity of the client, such as~~ whether the client is a natural person or an entity, and, if an entity, the beneficial owners of that entity; (ii) the lawyer's experience and familiarity with the client; (iii) the nature of the requested legal services; (iv) the relevant jurisdictions involved in the representation (for example, whether a jurisdiction is considered at high risk for money

laundrying or terrorist financing);⁵ and (v) the identities of those depositing into or receiving funds from the lawyer's client trust account, or any other accounts in which client funds are held. ~~For further guidance assessing risk, see, e.g., as amended or updated, Financial Action Task Force Guidance for a Risk-Based Approach for Legal Professionals, the ABA Voluntary Good Practices Guidance for Lawyers to Detect and Combat Money Laundering and Terrorist Financing, A Lawyer's Guide to Detecting and Preventing Money Laundering (a collaborative publication of the International Bar Association, the American Bar Association and the Council of Bars and Law Societies of Europe), the Organization for Economic Cooperation and Development (OECD) Due Diligence Guidance for Responsible Business Conduct, and the U.S. Department of Treasury Specially Designated Nationals and Blocked Persons List.~~

[No change to Massachusetts Comments 3-10]