The Amendments to Rule 1.16

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Effective July 1, 2026, the Presiding Justices of the four Departments of the Appellate Division of the New York State Supreme Court adopted amendments to Rule 1.16 of the New York Rules of Professional Conduct, the rule on accepting and withdrawing from representation.[1] The amendments were prompted in part by an amendment to Rule 1.16 of the ABA Model Rules of Professional Conduct made in August, 2023, in response to criticism that lawyers were not doing enough to combat money laundering and other illegal conduct by clients.[2] The NYSBA Committee on Standards of Attorney Conduct (COSAC) then recommended that New York should adopt a similar rule. But the New York version of the Rule went farther than the ABA Model Rule.

The new rule amends old Rule 1.16 in two main ways. First, it imposes on a lawyer who is considering whether to take on or continue an engagement a duty of inquiry, in order to assess the risk that the engagement will result in a violation of the Rules of Professional Conduct or other law. Second, it merges the factors (currently listed separately in New York Rule 1.16 for undertaking and mandatorily withdrawing from a representation) that a lawyer should consider in determining whether to accept, continue, decline, modify, or terminate, an engagement. Less importantly, it replaces the terms employment and representation with the term "engagement".

What Specifically Has Changed?

The duty of inquiry regarding the propriety of an engagement. New Rule 1.16 requires the lawyer to understand, at the outset and throughout an engagement, the risk that the engagement will result in a violation of the Rules of Professional Conduct or other law. The Appellate Divisions made three changes to the Rule that was recommended by the Bar Association, which soften the impact of the new requirements. First, they added that the lawyer must make **reasonable efforts** to inquire into the facts and to understand the risks. Second, they added that the inquiry must be commensurate with the nature of the lawyer's practice, the informational resources available to the lawyer, the nature of the engagement, and the lawyer's familiarity with the particular client. Finally, they added a new paragraph 1.16(b) that provides a safety valve where the lawyer fails to discern the client's bad purpose. It provides that a lawyer will not have violated paragraph (a) of the Rule if the lawyer reasonably believed that the lawyer's inquiry into and assessment of the facts and circumstances of an engagement were sufficient under the Rule, even if the lawyer's reasonable belief is subsequently determined to have been erroneous.

As Comment [1] to the new Rule explains, Rule 1.16 includes a duty to seek to understand (i) the risk that the engagement will result in a violation of the Rules or other law, (ii) all pertinent information identifying each client or prospective client who is engaging or desires to engage the lawyer, and (iii) unexpected or unusual terms or changes relating to the legal persons, structures, and obligations of the engagement indicating that the client or prospective client may be engaged (or intends to engage) in money laundering, terrorist financing, or other unlawful or unethical conduct. In all circumstances, if a lawyer does not reasonably believe that the lawyer can perform and complete the necessary services competently and diligently, without furthering any unlawful conduct or violating these Rules, then the lawyer should not accept or continue the engagement, or should modify or limit the engagement to avoid furthering unlawful conduct or a violation of these Rules.

*When a Lawyer **Must** Decline an Engagement or Withdraw from an Existing Engagement*. The old rule had separate paragraphs covering when a lawyer must not accept representation and when the lawyer must withdraw from an existing representation. These have now been combined in a single paragraph – Rule 1.16(a). The old rule prohibited a lawyer from accepting employment if the lawyer knew or reasonably should know that the client or prospective client wished to (a) bring an action, conduct a defense or assert a position "merely" for the purpose of harassing or maliciously injuring another person, or (b) present a claim or defense "not warranted under existing law." The new rule clarifies that the engagement must have a **substantial purpose** other than harassment or malicious injury, and changes a claim or defense "unwarranted under existing law" to "frivolous under Rule 3.1(b)(1)". It also adds a prohibition where the lawyer knows or reasonably should know that the client wishes to commit, assist, or further a crime or fraud. Finally, this paragraph adds several grounds for mandatory withdrawal that previously were in the paragraph on mandatory withdrawal. These include (i) where the lawyer knows or reasonably should know that the engagement will result in a violation of the Rules of Professional Conduct or other law, (ii) where the lawyer's physical or mental condition materially impairs the lawyer's ability to carry out the engagement, and (iii) where the lawyer is discharged. In each case, if the lawyer has accepted the engagement, the new Rule requires the lawyer to terminate or withdraw from the engagement.

When Does Permissive Withdrawal Apply? The grounds for permissive withdrawal contained in Rule 1.16(c) are largely the same as those in old New York Rule 1.16(c), except that subparagraph 6 – the client insists upon presenting a claim or defense that is not warranted under existing law – was deleted because old Rule 1.16(a)(2) and new Rule

1.16(a)(1)(ii), make withdrawal mandatory in this circumstance. However, instead of being solely in the lawyer's discretion, as in the old Rule 1.16(c), the new Rule 1.16(c) requires that a reasonable lawyer would conclude that the basis exists. In its report proposing the amendments to Rule 1.16, COSAC explains that the phrase "a reasonable lawyer would conclude" provides an objective standard for assessing the grounds for withdrawal under NY Rule 1.16, and mirrors the introductory language in Rule 1.7(a), which says that a lawyer shall not represent a client "if a reasonable lawyer would conclude" that the criteria for identifying conflicts of interest in Rule 1.7(a)(1) or (a)(2) are met. At least one basis for withdrawal by its terms depends on the opinion of the lawyer --when the client insists upon taking action with which the lawyer has a fundamental disagreement. The new rule means that this opinion or belief must be objectively reasonable.

Of course, under paragraphs (d) and (e) of the Rule, if permission for withdrawal is required by the rules of a tribunal, the lawyer must obtain that permission, and, upon termination of the engagement, the lawyer must take steps to avoid foreseeable prejudice to the rights of the client.

Finally, it is worth noting that Rule 1.16(c)(13) permits the lawyer to withdraw when "the client insists that the lawyer pursue a course of conduct which is illegal or prohibited under these Rules". Under new Rule 1.16(a)(2), if the lawyer knows or reasonably should know that the engagement will result in a violation of the Rules or other law, then withdrawal is mandatory.

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[1] A marked version of the changes may be found on the website of the courts at: https://www.nycourts.gov/rules/amendments-joint-rules-departments-appellate-division . The Rules of Professional Conduct, as amended, may be found on the Bar Association's website at: https://nysba.org/wp-content/uploads/2026/08/NYSBA-NY-Rules-of-Professional-Conduct-August-10-2026.pdf

[2] The Financial Action Task Force (FATF), established in 1989 by the G7 countries to examine and develop measures to combat money laundering, found that, in the United States, there was a lack of sufficient client due diligence by lawyers to prevent money laundering and terrorism financing transactions, and a lack of enforceable obligations to conduct that due diligence. Drawing heavily on FATF's negative assessments, Senator Sheldon Whitehouse proposed legislation that would have subjected lawyers directly to the Bank Secrecy Act. Both the ABA and the NYSBA objected to that proposal, because they believed it would harm attorney-client confidentiality and the attorney-client privilege. NYSBA also asserted that the legal profession was capable of regulating itself in this area.