New York State Bar Association
Committee on Professional Ethics

Opinion 1309 (11/03/2026)

Topic: Termination of representation by governmentally funded legal services organization.

Digest: If a governmentally funded civil legal services organization loses some or all of its funding, necessitating a reduction in staff, thus increasing the workload of the remaining attorneys, and the remaining attorneys are unable to provide competent representation to existing clients, the organization or its lawyers must seek permission from the tribunal to withdraw as counsel for individual clients, subject to certain conditions.

Rules: 1.0(j), 1.1(a), 1.3(a), 1.4, 1.16(a), (c), (d) & (e)

FACTS:

1. Inquiring counsel is an attorney in a governmentally funded civil legal services organization (the "Organization"). The Organization faces a potential loss of funding which may result in staff reductions and therefore increased workloads for remaining lawyers. The inquirer is concerned that such reductions will leave the Organization's attorneys unable to provide competent representation to the Organization's clients.

2. The Organization's retainer agreements with its clients do not discuss termination for nonpayment, since the clients are not expected to pay legal fees, but the retainer agreements do contain what inquiring counsel calls a "catch-all" provision that permits the Organization to terminate representation for "good cause."

QUESTIONS:

3. The inquirer poses two questions:

A. May the Organization ethically terminate an engagement if the Organization loses funding?

B. If so, how could the Organization ethically terminate an engagement after losing funding?

OPINION:

May the Organization ethically terminate an engagement if it loses funding?

4. When a legal services organization loses some or all of its funding, the main ethical concern is that staffing will be cut and that the remaining lawyers will have to assume larger caseloads, and thus will be unable to provide the necessary time and attention to client matters. That might happen immediately or gradually over time. Excessive caseloads may, in turn, hinder the provision of competent and diligent representation.

5. Multiple rules in the New York Rules of Professional Conduct (the "Rules") are implicated in the loss-of-funding scenario before us here.

6. Rule 1.1(a) states: "A lawyer should provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation." Comment [5] to Rule 1.1 explains that "Competent handling of a particular matter includes inquiry into and analysis of the factual and legal elements of the problem, and use of methods and procedures meeting the standards of competent practitioners."

7. Rule 1.3(a) states: "A lawyer shall act with reasonable diligence and promptness in representing a client." Comment [2] to Rule 1.3 provides: "A lawyer's workload must be controlled so that each matter can be handled diligently and promptly."

8. Rule 1.16 contains the requirements for declining, modifying or terminating an engagement. Rule 1.16(a) and (c), which New York's Appellate Division substantially amended effective July 1, 2026, outline a lawyer's ethical obligations concerning withdrawal from a client representation and, depending on the facts, either mandate or permit withdrawal.

9. Rule 1.16(a) provides:

> A lawyer shall not accept an engagement or, where the engagement has commenced, shall, except as stated in paragraph (d), terminate or withdraw from the engagement, in any of the following circumstances:
>
> * * * * *
>
> (2) the lawyer knows or reasonably should know that the engagement will result in a violation of these Rules or other law . . . .

10. Rule 1.16 (c) provides:

> (c) Except as stated in paragraph (d), a lawyer may withdraw from an engagement on behalf of a client if a reasonable lawyer would conclude that:
>
> (1) withdrawal can be accomplished without material adverse effect on the interests of the client;
>
> * * * * *
>
> (10) the client provides informed consent to the lawyer's termination of the engagement;
>
> [or]
>
> * * * * *
>
> (12) the lawyer believes in good faith, in a matter pending before a tribunal, that the tribunal will find the existence of other good cause for withdrawal.

11. Rule 1.16(d) provides:

> (d) If permission for withdrawal from an engagement is required by the rules of a tribunal, a lawyer shall not withdraw from an engagement in a matter before that tribunal without its permission. When ordered to do so by a tribunal, however, a lawyer shall continue to carry out the engagement notwithstanding good cause for terminating the engagement.

12. Under Rule 1.16, neither the inquirer nor the Organization could ethically terminate representation merely because the funding that supported its work has ended or been reduced. To

seek to live up to its duties of competence and diligence under Rules 1.1 and 1.3, the Organization is ethically obligated to explore alternatives to the lost funding. For example, the Organization might be able to obtain funding from other sources. If sufficient alternative sources of funding are not available and the elimination or reduction of funding forces the Organization to reduce staff, the Organization should then consider whether the resulting increases in workload on the remaining staff could be alleviated by pro bono volunteer lawyers.

13. However, if the inquirer reasonably concludes that the excessive caseload "will" cause the quality of the representation of a client to fall below the "competent" and "diligent" standards mandated by Rules 1.1 and 1.3, and would thus result in violations of those Rules, then the lawyer must seek to withdraw under Rule 1.16(a).

14. This conclusion is supported by several ethics opinions issued by this Committee and by other bar associations.

15. In N.Y. State 751 (2002), issued under the prior Code of Professional Responsibility, the inquirer was a staff attorney for a government department of social services whose responsibilities included representing the department in proceedings in family court. His office had a large case load in relation to the number of staff attorneys – a case load that could not be reduced because the department was required by law to participate in certain proceedings. The inquirer believed that more matters were being assigned than could be handled competently by the attorneys in the department. We opined that, if it becomes apparent to a lawyer after undertaking a representation that the lawyer is unable to provide competent representation and is unable to become competent by associating another lawyer who is competent to assist, then the lawyer must seek to withdraw from the representation (*citing* ABA Opinion 399 (1996) (legal services lawyers will be required to withdraw from some matters if funding and staff reductions greatly increase the lawyers' workloads, since maintaining an unmanageable case load violates the lawyer's duty to provide competent representation). We suggested that, to avoid the need to withdraw, the inquiring staff attorney could assist the department in seeking court appointment of lawyers from the private bar to handle some of the department's cases.

16. In ABA Opinion 06-441 (2006), the ABA Standing Committee on Ethics and Professional Responsibility wrote:

> If the problem of an excessive workload cannot be resolved through the nonacceptance of new clients or by other available measures, *the lawyer should move to withdraw as counsel in existing cases to the extent necessary to bring the workload down to a manageable level*, while at all times attempting to limit the prejudice to any client from whose case the lawyer has withdrawn. [Emphasis added.]

17. In California Opinion 1981-64, the State Bar of California Standing Committee on Professional Responsibility and Conduct concluded that a lawyer must withdraw rather than neglect a client. That Committee stated that:

> Legal services attorneys and their programs may not discontinue representation of existing clients merely because funding is impaired or cut off entirely. Regardless of whether the attorneys in the legal services organizations are being paid, once having undertaken to represent a given client, they must continue to serve the client unless withdrawal is permitted by the provisions of rule 2-111 of the Rules of Professional Conduct [the then-applicable California withdrawal rule, essentially equivalent to current New York Rule 1.16].

18. Opinion 1981-64 went on to suggest that, when it becomes apparent that a decrease or

cut-off of funding will impair the ability of the program to provide competent representation for present clients, withdrawal should be permitted or mandated under the California Rules of Professional Conduct, provided that reasonable steps are taken to avoid foreseeable prejudice to the clients. Those steps might include: (1) exploring whether competent representation may be arranged by other lawyers and whether other lawyers would join in the representation of the client with the legal services attorneys; (2) contacting private attorneys and local bar associations to seek volunteer successor attorneys in both nonlitigation and litigation cases; and (3) withdrawing from representation because the program does not have adequate resources to provide competent representation.

19. We agree with these prior New York, ABA, and California opinions. The inquirer and the inquirer's supervisor(s) must first ascertain whether the Organization's attorneys can competently and diligently handle the number of cases assigned. If not, then the inquirer's supervisor(s) must take action to control the lawyers' workload so each matter can be handled competently and diligently. Refusing to accept new cases/clients is one mitigating option noted by ABA Opinion 06-441. After or concurrent with those steps, another alternative is to ascertain whether other lawyers or bar associations may provide assistance. The final alternative is to seek to withdraw from the some or all representations.

20. If the Organization believes that a loss of some or all government funding may leave the Organization's attorneys unable to provide competent and diligent representation to some clients (as the inquirer fears), then continued representation of those clients would violate the competency and diligence duties set forth in Rules 1.1 and 1.3, leaving withdrawal as the only viable alternative. At that point, Rule 1.16(a)(2) -- the mandatory withdrawal provision -- will apply. As noted above, the Organization should be ready to demonstrate why withdrawal is mandatory rather than permissive.

21. In the circumstances here, it seems likely that the Organization's withdrawal from at least some representations will be mandatory, in which case it should not be necessary to resort to permissive grounds for withdrawal under Rule 1.16(c), but we address the permissive grounds for completeness and because permissive grounds for withdrawal might apply to some representations even if withdrawal is not mandatory.

22. Notably, the new introduction to Rule 1.16(c) (as amended effective July 1, 2026) allows a lawyer to withdraw only if "a reasonable lawyer would conclude" that one of the permissive grounds exists, thus adding an objective test to the permissive withdrawal provisions. We will analyze the permissive grounds for withdrawal in light of this objective standard. We focus on the only three grounds that we think might realistically apply without client consent after a legal services organization has lost funding, and then we discuss client consent.

23. New York Rule 1.16(c)(1) provides that a lawyer may withdraw from an engagement on behalf of a client if a reasonable lawyer would conclude that withdrawal can be accomplished without material adverse effect on the interests of the client. This is unlikely to be true unless substitute counsel has been found.

24. Rule 1.16(c)(5) provides that "a lawyer may withdraw from representing a client when the client deliberately disregards an agreement or obligation to the lawyer as to expenses or fees." However, this language does not explicitly permit withdrawal when the client, as in the instant matter, is receiving free legal services and has no agreement or obligation to pay fees.

25. Rule 1.16(c)(12) provides that a lawyer may withdraw from representing a client when "the lawyer believes in good faith, in a matter pending before a tribunal, that the tribunal will find the existence of other good cause for withdrawal." Despite the "lawyer believes in good faith" language in this clause, as we mentioned above, the new introduction to Rule 1.16(c) adds an objective test to the permissive withdrawal provisions. Each lawyer who has appeared before a

tribunal in an individual litigated matter must therefore objectively assess whether the loss of funding furnishes good cause to move to withdraw from that particular matter.

26. The previous three grounds – subparagraphs (c)(1), (c)(5), and (c)(12) – permit a lawyer to seek to withdraw not only absent a client's consent but even over a client's objection. Rule 1.16(c)(10), in contrast, allows permissive withdrawal where "the client provides informed consent to the lawyer's termination of the engagement." The inquiry states that the Organization's retainer agreement provides that the representation may be terminated "for good cause." Does this provision in the retainer agreement satisfy subparagraph (c)(10)'s requirement for the client's "informed consent" to the termination of the engagement? Our opinions have long stated that an advance consent to termination must specify the grounds for withdrawal.

27. In N.Y. State 805 (2007), an opinion decided under the former Code of Professional Responsibility, we addressed the issue of advance assent to a lawyer's withdrawal from employment. We stated:

> [A]lthough [the predecessor to Rule 1.16(c)(10)] specifically permits withdrawal if the "client knowingly and freely assents to termination of the employment," it does not authorize an agreement *in advance* by which the client assents to termination upon some future occurrence that is unrelated to achieving the objectives of the representation. For assent to be made "knowingly," it must be made with knowledge and understanding of all the facts and circumstances at the time of the termination of the employment.

N.Y. State 805 cited N.Y. State 719 (1999) (emphasis in original). Similarly, in N.Y. State 856 (2011), decided under Rule 1.16, we said "Ordinarily, if a lawyer has obtained, in advance, the client's knowing and free assent to terminate the representation *upon the occurrence of certain specified events*, then the lawyer may withdraw when those events occur." (Emphasis added.) Because the retainer agreement here does not specify the circumstances in which withdrawal might occur, we do not believe the client has validly given advance consent.

28. Could the Organization seek consent to withdraw now under Rule 1.16(c)(10)? The definition of informed consent appears in Rule 1.0(j):

> (j) "Informed consent" denotes the agreement by a person to a proposed course of conduct after the lawyer has communicated information adequate for the person to make an informed decision, and after the lawyer has adequately explained to the person the material risks of the proposed course of conduct and reasonably available alternatives.

29. Until July 1, 2026, the standard for client consent under Rule 1.16(c) was "knowingly and freely assents." Under that standard, we approved withdrawal with client consent. *See* N.Y. State 1203 (2020) (an attorney may withdraw pursuant to Rule 1.16(c)(10) if the client "knowingly and freely assents to termination of the employment"). Under the new "client provides informed consent" standard, the result should be the same. Nevertheless, the lawyer cannot withdraw pursuant to subparagraph (c)(10) unless the lawyer is satisfied that the client's consent is voluntary. As this Committee has observed with respect to a client's consent for the lawyer to disclose the client's confidential information, lawyers providing services to indigent clients "should be particularly sensitive to their clients' vulnerable position; and requests for consent . . . should be made only under circumstances where" the lawyers are "satisfied that their clients could refuse to consent without any sense of guilt or embarrassment." N.Y. State 1282 ¶ 8 (2025) (*citing* N.Y. State 1059 ¶ 16 (2015) and *quoting* N.Y. State 490 (1978)).

30. Whether the lawyer seeks to withdraw from an engagement under a mandatory or permissive rationale, the lawyer will need to seek the tribunal's permission to withdraw from that

engagement because Rule 1.16(d) provides: "If permission for withdrawal from an engagement is required by the rules of a tribunal, *a lawyer shall not withdraw from an engagement in a matter before that tribunal without its permission*." (Emphasis added.)

31. In New York, the rules governing state and federal courts virtually always require permission for withdrawal. Moreover, Rule 1.16(d) adds that "[w]hen ordered to do so by a tribunal … a lawyer shall continue to carry out the engagement notwithstanding good cause for terminating the engagement."

How could the Organization ethically terminate an engagement after losing funding?

32. The inquirer's second question is how the organization may ethically withdraw from engagements if funding is reduced or lost. Assuming the tribunal has given permission to withdraw, inquiring counsel suggests that termination and withdrawal will require lawyers in the Organization to follow a five-step blueprint: (i) assess the status of each individual case (including potential harm to the client); (ii) advise clients as to next steps in their case (via translated letters and/or phone calls to the clients' last known contact); (iii) provide clients with complete copies of their case files if requested; (iv) provide clients with meaningful referrals to alternate representation; and (v) give clients time to find representation before termination and withdrawal is final.

33. The inquirer's withdrawal blueprint accords with New York Rule 1.4, which requires lawyers to communicate with clients, and Rule 1.16(e), which provides as follows:

> (e) Even when withdrawal is otherwise permitted or required, upon termination of an engagement, a lawyer shall take steps, to the extent reasonably practicable, to avoid foreseeable prejudice to the rights of the client, including giving reasonable notice to the client, allowing time for engagement of other counsel, delivering to the client all papers and property to which the client is entitled, … and complying with applicable laws and rules.

34. While we do not view the inquirer's five-step blueprint as the only ethical way to withdraw from engagements after a funding cut, we believe it reflects "steps, to the extent reasonably practicable, to avoid foreseeable prejudice to the rights of the client," in keeping with the mandate of Rule 1.16(e).

CONCLUSION:

35. If a governmentally funded civil legal services organization loses funding, necessitating a reduction in staff, thus increasing the workload of the remaining attorneys, and the remaining attorneys are unable to provide competent representation to existing clients, the organization or its lawyers must seek permission from the tribunal to withdraw as counsel for individual clients, subject to certain conditions.

(03-25)