

DISTRICT OF COLUMBIA BAR
RULES OF PROFESSIONAL CONDUCT REVIEW COMMITTEE

FINAL REPORT FOR PUBLIC COMMENT
PROPOSING CHANGES TO THE COMMENTS TO
D.C. RULE OF PROFESSIONAL CONDUCT 1.16

The views expressed herein are those of
the D.C Bar Rules of Professional Conduct Review Committee
and not those of the D.C. Bar or its Board of Governors.

March 2026

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The D.C. Bar Rules of Professional Conduct Review Committee (“Rules Review Committee” or “Committee”) proposes that the Comments to D.C. Rule 1.16 be amended to provide lawyers with additional guidance regarding accepting and terminating representation. These changes are recommended in light of changes to the ABA Model Rule 1.16 and the Comments thereto.

I. Introduction

On August 8, 2023, the ABA House of Delegates adopted changes to ABA Model Rule of Professional Conduct Rule 1.16 and its Comments to clarify a lawyer’s obligation to inquire and assess the facts and circumstances of a new matter before accepting representation and, under some circumstances, before continuing the representation.¹ The Report to the House of Delegates notes that “the impetus for these proposed amendments was lawyers’ unwitting involvement in or failure to pay appropriate attention to signs or warnings of danger (“red flags”) relating to a client’s use of a lawyer’s services to facilitate possible money laundering, and terrorist financing activities.”² The vote to adopt these amendments was not unanimous.

The amendments to Model Rule 1.16(a) appear below with new language shown in **bold-underline** and deleted language shown in ~~strikethrough~~:

(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. Except as stated in paragraph (c), a lawyer shall not represent a client 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; ~~or~~
- (3) The lawyer is discharged; **or**

(4) the client or prospective client seeks to use or persists in using the lawyer’s services to commit or further a crime or fraud.

¹ ABA STANDING COMM. ON ETHICS & PROF’L RESPONSIBILITY AND ABA STANDING COMM. ON PROF’L REGULATION, REVISED RESOLUTION 100 AND REVISED REPORT TO THE ABA HOUSE OF DELEGATES, Report at 1 (revised Aug. 2023) [hereinafter REVISED REPORT].

² *Id.* at 2.

Language was also added to Comment [1] and [2] of Model Rule 1.16. The language to Comment [1] includes guidance that the duty to inquire and assess continues throughout the duration of the representation and provides an example of what a red flag may be in a specific area of the law. The language added to Comment [2] sets forth specific factors and resources that lawyers may use for a risk-based assessment of a client and/or matter.³

In September 2023, the Rules Review Committee created a subcommittee to review and discuss the recent changes to the Model Rule 1.16 and to consider whether the Committee should recommend similar changes. On recommendation of the subcommittee, for reasons set forth below, the Committee recommends revisions to the Comments to D.C. Rule 1.16 only as necessary to accomplish the goals of the ABA amendments. At the onset of the review process no jurisdiction had adopted Model Rule 1.16; six jurisdictions have subsequently adopted similar revisions to the ABA Model Rule.⁴

II. Proposed Revisions to Clarify the Responsibility of Lawyers

The Rule Review Committee recommends that only the comments to D.C. Rule 1.16 be revised. As the amendments to Model Rule 1.16(a) do not impose new obligations on lawyers, the Committee finds adding new language to D.C. Rule 1.16(a) unnecessary and duplicative. The obligations in the amendments to the Model Rule reflect obligations that lawyers already have, and that exist in the current D.C. Rules, most directly in D.C. Rules 1.2(e) and 1.16(a)(1).⁵

D.C. Rule 1.2 (e) states:

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.

³ On August 23, 2024, the ABA issued Formal Opinion 513, which gives additional guidance to lawyers regarding the duty to inquire and assess, including hypothetical scenarios.

⁴ These jurisdictions are Wyoming, Arizona, Oregon, North Dakota, Maryland and Massachusetts. New York is currently considering amendments.

⁵ The ABA Standing Committee on Ethics and Professional Responsibility also notes this in the REVISED REPORT at 1(Revised Aug. 2023).

The obligations imposed by this rule involve a lawyer's duty to reject or to discontinue a representation that would cause the lawyer to use their services in furtherance of a crime or fraud.

Indeed, Comment [7] to Rule 1.2 clarifies:

A lawyer may not continue assisting a client in conduct that the lawyer originally supposed was legally proper but then discovers is criminal or fraudulent. The lawyer must, therefore, withdraw from the representation of the client in the matter. See Rule 1.16(a).

Thus, a lawyer who knows that the representation of a client would require assisting the client in a crime or fraud is prohibited from engaging in such a representation, and a lawyer who knows that a client is using their service in furtherance of a crime or fraud must withdraw from such a representation because of the existing mandates of Rule 1.2(e).

D.C. Rule 1.16(a) also already clearly prohibits a lawyer from "commencing a representation" and requires a lawyer to withdraw, "if the representation would cause the lawyer to violate a rule of professional conduct or other law." See D.C. Rule 1.16(a)(1) (Emphasis added).

The requirement to inquire and assess also already exists in the D.C. Rules (and the ABA Rules). The ABA Ethics Committee acknowledges the amended rule is duplicative of existing obligations, "These are not new obligations. Lawyers already perform these inquiries and assessments every day to meet their ethical requirements."⁶ Although the ABA Ethics Committee recognized the obligations to be implicit in the Model Rules, they recommended amendments to Model Rule 1.16 to make them more explicit.

The Rules Review Committee respectfully disagrees that the existing obligations are only implicit. However, the Committee agrees that additional guidance which clarifies a lawyer's ethical obligations can be beneficial. Therefore, the Committee recommends that the Comments to Rule 1.16 be amended.⁷

The Committee understands the importance of ensuring that lawyers pay attention to red flags and that there are rules in place to hold lawyers accountable for willfully or intentionally turning a blind eye. In addition to the aforementioned Rules 1.2, 1.16, and the comments thereto, the

⁷ The D.C. Rules vary substantially from the ABA Model Rules in many places. There are many instances where the Rules Review Committee, the Board of Governors and ultimately the D.C. Court of Appeals have chosen not to follow the full recommendations of the ABA and have chosen to make amendments that deviate from the ABA Model Rules. A small sample of these differences include D.C. Rules 1.6, 1.7, 1.8(d), 1.9, 1.11, 1.13(b), 3.3(d), 7.1, 5.4, and 8.5(b)(1). A specific example includes D.C. Rule 1.11 that does not allow for a waiver from a former client. However, Model Rule 1.11(a)(2) does allow a waiver and contains this provision.

Committee also considered Rules 1.1 (Competence), and Comment [5] to Rule 1.1, Rule 1.3 (Diligence and Zeal), and Comments [4] and [6] to Rule 1.3. These rules and the comments provide guidance to attorneys providing legal services to clients, including identifying and handling complicated issues that may arise during a matter.

Specifically, Comment [5] to Rule 1.1 states in part, “Competent handling of a particular matter includes inquiry into and analysis of the factual and legal elements of the problem.” Therefore, the Rules already require that a lawyer complete an inquiry, and analysis of the facts of a case to render competent representation to all clients. Attorneys who practice in certain subject matter areas or represent certain clients are already aware of the substantive laws and statutes lawyers must comply with in addition to the D.C. Rules of Professional Conduct.

Furthermore, Comment [4] to Rule 1.3 states:

Where the bounds of law are uncertain, the action of a lawyer may depend on whether the lawyer is serving as advocate or adviser. While serving as advocate, a lawyer should resolve in favor of the client doubts as to the bounds of the law...as adviser, a lawyer, in appropriate circumstances, should give a lawyer’s professional opinion as to what the ultimate decision of the courts would likely be as to the applicable law.

Comment [6] goes on to state that if, “the lawyer knows that the client expects assistance that is not in accord with the Rules of Professional Conduct or other law, the lawyer must inform the client of the pertinent limitations on the lawyer’s conduct.”

The Rules Review Committee recommends adding language to the Comments to Rule 1.16 to direct lawyers to additional resources they may use during their inquiry and assessment. For those lawyers who practice in certain subject matter areas and/or represent certain clients, this guidance will allow lawyers to implement risk-based control measures.

Specifically, the Committee recommends amendments to Comments [1] and [2] to D.C. Rule 1.16 and the addition of Comments [1A] and [2A] and [2B] as follows:⁸ The proposed amendments appear below with new language shown in **bold-underline** and deleted language shown in ~~strikethrough~~:

⁸ Going forward, the Committee recommends that all new proposed Comments be added as sub-comments, such as Comment[1][A], [1][B], [1][C], etc....Some jurisdictions, such as New York, have moved to this model. The reason is to avoid errors and misdirection in older publications such as court opinions, legal ethics opinions, and articles that cite to specific Comments. This format helps to avoid unnecessary renumbering of the original Comments.

Comment

[1] A lawyer should not accept **or continue** representation in a matter unless it can be performed competently, promptly, without improper conflict of interest, and to completion **in a manner consistent with the Rules of Professional Conduct, including, but not limited to the rules that address competency, conflicts of interest, and scope of representation.**

[1A] Paragraph (a) imposes a mandatory obligation on a lawyer either to decline a prospective representation or, where representation has commenced, to withdraw from the representation of a client. Specifically, paragraph (a)(1) requires a lawyer to decline or withdraw from a representation if “the representation will result in a violation of the Rules of Professional Conduct or other law.” See Rules 1.1, 1.2(c), 6.5, and Rule 1.3, Comment [4].

Mandatory Withdrawal

[2] **As discussed in Comment [1],** 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. **However,** 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. **The lawyer should counsel the client consistent with Rule 1.2(e), and take action consistent with these Rules, and any applicable law.**

[2A] In order to ensure that the lawyer’s services are not being used to assist in the commission of a crime or fraud it may be necessary for a lawyer to perform an inquiry. The inquiry should assess the facts, and circumstances of a representation to determine whether the lawyer may accept or continue the representation. An evaluation will not be necessary for each lawyer, or for every client or prospective client. It will depend on the facts, and circumstances of the representation, including the source of funds for payment of the legal fees. A change in the facts, and circumstances may trigger a lawyer’s need to make further inquiry, and assessment into an ongoing representation. For some practice areas, such as routine estate planning, and some clients, such as those who have been previously represented by the lawyer or the firm and present a new matter that does not raise a significant risk that the lawyer’s services will be used to further a crime or fraud, an inquiry will not be necessary. However, for some practice areas, and for some clients or prospective clients, such as, but not limited to those affiliated with a regime subject to sanction by the Department of Treasury’s Office of Foreign Asset Control, such an evaluation would be mandatory.

[2B] 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 laundering or terrorist financing), 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.

The proposed language also provides information to lawyers in general without imposing a one size fits all approach. As the ABA Ethics Committee noted “the inquiry and assessment a lawyer must make will be based on the unique facts and circumstances presented by each client or prospective client. There is no ‘one-size-fits-all’ obligation.”⁹

The recommended amendments to the D.C. Comments substantially reflect the amendments made to the ABA Model Rule Comments [1] and [2]. Because the Committee is not recommending an amendment to D.C. Rule 1.16(a) and (a)(4), the proposed D.C. Comments differ from the Model Rule Comments in that regard. These differences are reflected in proposed new D.C. Comment [1], proposed new D.C. Comment [1A], and the additional language proposed in D.C. Comment [2].

III. Conclusion

The proposed changes to D.C. Rule 1.16 will benefit lawyers and the public by providing further guidance on the scope of a lawyer’s existing obligations to inquire about and assess the facts and circumstances regarding a case. This guidance will help lawyers avoid unwittingly becoming involved in a clients’ criminal and fraudulent conduct and will help lawyers better identify and respond to “red flags” without unnecessarily duplicating obligations that already exists in the D.C. Rules.

⁹ REVISED REPORT at 1.

Appendix I

ABA Model Rule 1.16
(Redline showing 2023 Amendments)

ABA Model Rule 1.16: Declining or Terminating Representation

- (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.** Except as stated in paragraph (c), a lawyer shall not represent a client 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; ~~or~~
 - (3) the lawyer is discharged; or
 - (4) **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) Except as stated in paragraph (c), 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.

- (c) A lawyer must comply with applicable law requiring notice to or permission of a tribunal when terminating a representation. When ordered to do so by a tribunal, a lawyer shall continue representation notwithstanding good cause for terminating the representation.
- (d) 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 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) 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. 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, 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 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. Another example is when, during the course of a representation, a new party is named or a new entity becomes involved.** 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 (a)(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 laundering or terrorist financing), 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.

[3] When a lawyer has been appointed to represent a client, withdrawal ordinarily requires approval of the appointing authority. See also Rule 6.2. Similarly, court approval or notice to the court is often required by applicable law before a lawyer withdraws from pending litigation. Difficulty may be encountered if withdrawal is based on the client's demand that the lawyer engage in unprofessional conduct. The court may request an explanation for the withdrawal, while the lawyer may be bound to keep confidential the facts that would constitute such an explanation. The lawyer's statement that professional considerations require termination of the representation ordinarily should be accepted as sufficient. Lawyers should be mindful of their obligations to both clients and the court under Rules 1.6 and 3.3.

Discharge

[4] A client has a right to discharge a lawyer at any time, with or without cause, subject to liability for payment for the lawyer's services. Where future dispute about the withdrawal may be anticipated, it may be advisable to prepare a written statement reciting the circumstances.

[5] Whether a client can discharge appointed counsel may depend on applicable law. A client seeking to do so should be given a full explanation of the consequences. These consequences may include a decision by the appointing authority that appointment of successor counsel is unjustified, thus requiring self-representation by the client.

[6] If the client has severely diminished capacity, the client may lack the legal capacity to discharge the lawyer, and in any event the discharge may be seriously adverse to the client's interests. The lawyer should make special effort to help the client consider the consequences and may take reasonably necessary protective action as provided in Rule 1.14.

Optional Withdrawal

[7] A lawyer may withdraw from representation in some circumstances. The lawyer has the option to withdraw if it can be accomplished without material adverse effect on the client's interests. Withdrawal is also justified if the client persists in a course of action that the lawyer reasonably believes is criminal or fraudulent, for a lawyer is not required to be associated with such conduct even if the lawyer does not further it. Withdrawal is also permitted if the lawyer's services were misused in the past even if that would materially prejudice the client. The lawyer may also withdraw where the client insists on taking action that the lawyer considers repugnant or with which the lawyer has a fundamental disagreement.

[8] A lawyer may withdraw if the client refuses to abide by the terms of an agreement relating to the representation, such as an agreement concerning fees or court costs or an agreement limiting the objectives of the representation.

Assisting the Client upon Withdrawal

[9] Even if the lawyer has been unfairly discharged by the client, a lawyer must take all reasonable steps to mitigate the consequences to the client. The lawyer may retain papers as security for a fee only to the extent permitted by law. See Rule 1.15.

Appendix II

Proposed Amendments to D.C. Rule 1.16
(Redline Version)

Proposed Revised Comments to D.C. Rule 1.16 – Redline Version

Comment

[1] A lawyer should not accept **or continue** representation in a matter unless it can be performed ~~competently, promptly, without improper conflict of interest, and to completion~~ **in a manner consistent with the Rules of Professional Conduct, including, but not limited to the rules that address competency, conflicts of interest, and scope of representation.**

[1A] Paragraph (a) imposes a mandatory obligation on a lawyer either to decline a prospective representation or, where representation has commenced, to withdraw from the representation of a client. Specifically, paragraph (a)(1) requires a lawyer to decline or withdraw from a representation if “the representation will result in a violation of the Rules of Professional Conduct or other law.” See Rules 1.1, 1.2(c), 6.5, and Rule 1.3, Comment [4].

Mandatory Withdrawal

[2] **As discussed in Comment [1],** ~~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. **However,** ~~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. **The lawyer should counsel the client consistent with Rule 1.2(e), and take action consistent with these Rules, and any applicable law.**

[2A] In order to ensure that the lawyer’s services are not being used to assist in the commission of a crime or fraud it may be necessary for a lawyer to perform an inquiry. The inquiry should assess the facts, and circumstances of a representation to determine whether the lawyer may accept or continue the representation. An evaluation will not be necessary for each lawyer, or for every client or prospective client. It will depend on the facts, and circumstances of the representation, including the source of funds for payment of the legal fees. A change in the facts, and circumstances may trigger a lawyer’s need to make further inquiry, and assessment into an ongoing representation. For some practice areas, such as routine estate planning, and some clients, such as those who have been previously represented by the lawyer or the firm and present a new matter that does not raise a significant risk that the lawyer’s services will be used to further a crime or fraud, an inquiry will not be necessary. However, for some practice areas, and for some clients or prospective clients, such as, but not limited to those affiliated with a regime subject to sanction by the Department of Treasury’s Office of Foreign Asset Control, such an evaluation would be mandatory.

[2B] 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 laundering or terrorist financing), 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.

[3] When a lawyer has been appointed to represent a client, withdrawal ordinarily requires approval of the appointing authority. *See also* Rule 6.2. Difficulty may be encountered if withdrawal is based on the client’s demand that the lawyer engage in unprofessional conduct. The court may wish an explanation for the withdrawal, while the lawyer may be bound to keep confidential the facts that would constitute such an explanation. The lawyer’s statement that irreconcilable differences between the lawyer and client require termination of the representation ordinarily should be accepted as sufficient.

Discharge

[4] A client has a right to discharge a lawyer at any time, with or without cause, subject to liability for payment for the lawyer’s services. Where future dispute about the withdrawal may be anticipated, it may be advisable to prepare a written statement reciting the circumstances.

[5] Whether a client can discharge appointed counsel may depend on applicable law. A client seeking to do so should be given a full explanation of the consequences. These consequences may include a decision by the appointing authority that appointment of successor counsel is unjustified, thus requiring the client to proceed *pro se*.

[6] If the client has diminished capacity, the client may lack the legal capacity to discharge the lawyer, and in any event the discharge may be seriously adverse to the client’s interests. The lawyer should make a special effort to help the client consider the consequences and, in

an extreme case, may initiate proceedings for the appointment of a surrogate decision-maker or similar protection of the client. *See* Rule 1.14.

Optional Withdrawal

[7] A lawyer may withdraw from representation in some circumstances. The lawyer has the option to withdraw if the withdrawal can be accomplished without material adverse effect on the client's interests. Withdrawal is also justified if the client persists in a course of action that the lawyer reasonably believes is criminal or fraudulent, for a lawyer is not required to be associated with such conduct even if the lawyer does not further it. Withdrawal is also permitted if the lawyer's services were misused in the past even if that would materially prejudice the client.

[8] A lawyer may withdraw if the client refuses to abide by the terms of an agreement relating to the representation, such as an agreement concerning the timely payment of the lawyer's fees, court costs or other out-of-pocket expenses of the representation, or an agreement limiting the objectives of the representation.

Assisting the Client Upon Withdrawal

[9] Even if the lawyer has been unfairly discharged by the client, a lawyer must take all reasonable steps to mitigate the consequences to the client. The lawyer may retain papers as security for a fee only to the extent permitted by Rule 1.8(i).

Compliance With Requirements of a Tribunal

[10] Paragraph (c) reflects the possibility that a lawyer may, by appearing before a tribunal, become subject to the tribunal's power in some circumstances to prevent a withdrawal that would otherwise be proper. Paragraph (c) requires the lawyer who is ordered to continue a representation before a tribunal to do so. However, paragraph (c) is not intended to prevent the lawyer from challenging the tribunal's order as beyond its jurisdiction, arbitrary, or otherwise improper while, in the interim, continuing the representation.

Return of Client's Property or Money

[11] Paragraph (d) requires a lawyer to make timely return to the client of any property or money "to which the client is entitled." Where a lawyer holds property or money of a client at the termination of a representation and there is a dispute concerning the distribution of such property or money – whether such dispute is between the lawyer and a client, the lawyer and another lawyer who is owed a fee in the matter, or between either the lawyer or the client and a third party – the lawyer must segregate the disputed portion of such property

or money, hold that property or money in trust as required by Rule 1.15, and promptly distribute any undisputed amounts. *See* Rule 1.15 and Comments [4] and [5] thereto; *see In re Haar*, 667 A.2d 1350 (D.C. 1995), 698 A.2d 412 (D.C. 1997). Notwithstanding the foregoing, where a lawyer has a valid lien covering undisputed amounts of property or money, the lawyer may continue to hold such property or money to the extent permitted by the substantive law governing the lien asserted. *See generally* Rules 1.8, 1.15(b).