NEW YORK CITY BAR

September 26, 2025

Submitted via email
Roy Simon
Co-Chair
Committee on Standards of Attorney Conduct

Jim Walker
Co-Chair
Committee on Standards of Attorney Conduct

RE: New York City Bar Association Response to Request for Public Comment on a Proposal to Amend New York Rule 1.16 titled "Declining or Terminating Representation."

Dear Mr. Simon and Mr. Walker:

We submit these comments in response to the Request for Public Comment on the proposal to amend Rule 1.16 of the New York Rules of Professional Conduct ("Declining or Terminating Representation") to incorporate a risk assessment when a lawyer or law firm is determining whether to accept or continue an engagement. The New York City Bar Association's Committees on Professional Ethics, Professional Responsibility, and Professional Discipline support the proposed amendment.

We do, however, have several comments regarding the proposed text.

First, with respect to section (a)(1), the clause stating "...despite a discussion with the client regarding the limitations that these Rules or other law impose on the client in carrying out the engagement..." should not apply where a lawyer declines to accept an engagement from a prospective client. Since a lawyer is free, except on narrow grounds such as race discrimination, to refuse to represent a prospective client, we don't think there should be any suggestion that the lawyer has a duty to explain why he or she is turning down the representation nor any obligation to discuss with the prospective client the Rules of Professional Conduct or other legal limitations on what lawyers might do. That situation is different from when a lawyer is terminating a representation that is already underway.

About the Association
The mission of the New York City Bar Association, which was founded in 1870 and has more than 20,000 members, is to equip and mobilize a diverse legal profession to practice with excellence, promote reform of the law, and uphold the rule of law and access to justice in support of a fair society and the public interest in our community, our nation, and throughout the world.

Second, we are concerned that the term "engagement" may be broader than "representation" and could inadvertently encompass roles such as expert witness, mediator, or arbitrator, which do not involve providing legal advice. Clarification would be useful here.

Third, we note a typographical error: the cross-reference in paragraph (a) should be to paragraph (d), not paragraph (c).

Fourth, paragraph (a)(4) concerning the discharge of a lawyer seems unnecessary. The obligations of a discharged lawyer should remain limited to those set forth under New York law (e.g., returning client files, refunding unearned fees, and returning other client property).

Fifth, Comment 9 states: "The lawyer may retain files as security for a fee only to the extent permitted by law. *See* Rule 1.8(i)(1)." However, Rule 1.8(i)(1) refers more generally to "a lien authorized by law to secure the lawyer's fee or expenses," without specifically mentioning files. We recommend revising the comment to read: "The lawyer may retain files as security for a fee only to the extent permitted by law."

Finally, Rule 1.16(c)(11) cross-references Rule 1.13(c), which in turn cross-references Rule 1.16, creating a circular reference that should be clarified.

Thank you for considering our comments. We would be pleased to discuss them further if that would be helpful.

Respectfully submitted,

Michael E. Salzman

Michael E. Salzman, Chair
Professional Ethics

Kathryn Donnelly

Kathryn Donnelly, Chair
Professional Discipline

Rosanne Felicello

Rosanne Felicello, Chair
Professional Responsibility

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