

**Rule 1.16 [3-700] Declining Or Terminating Representation
(Commission's Proposed Rule Adopted on June 2 – 3, 2016 – Clean Version)**

- (a) 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 lawyer knows* or reasonably should know* that the client is bringing an action, conducting a defense, asserting a position in litigation, or taking an appeal, without probable cause and for the purpose of harassing or maliciously injuring any person;
 - (2) the lawyer knows* or reasonably should know* that the representation will result in violation of these Rules or of the State Bar Act;
 - (3) the lawyer's mental or physical condition renders it unreasonably difficult to carry out the representation effectively; or
 - (4) the client discharges the lawyer.
- (b) Except as stated in paragraph (c), a lawyer may withdraw from representing a client if:
 - (1) the client insists upon presenting a claim or defense in litigation, or asserting a position or making a demand in a non-litigation matter, that is not warranted under existing law and cannot be supported by good faith argument for an extension, modification, or reversal of existing law;
 - (2) the client either seeks to pursue a criminal or fraudulent* course of conduct or has used the lawyer's services to advance a course of conduct that the lawyer reasonably believes* was a crime or fraud;*
 - (3) the client insists that the lawyer pursue a course of conduct that is criminal or fraudulent;*
 - (4) the client by other conduct renders it unreasonably difficult for the lawyer to carry out the employment effectively;
 - (5) the client breaches a material term of an agreement with, or obligation, to the lawyer relating to the representation, and the lawyer has given the client a reasonable* warning after the breach that the lawyer will withdraw unless the client fulfills the agreement or performs the obligation;
 - (6) the client knowingly* and freely assents to termination of the representation;
 - (7) the inability to work with co-counsel indicates that the best interests of the client likely will be served by withdrawal;

- (8) the lawyer's mental or physical condition renders it difficult for the lawyer to carry out the representation effectively;
 - (9) a continuation of the representation is likely to result in a violation of these Rules or the State Bar Act; or
 - (10) the lawyer believes* in good faith, in a proceeding pending before a tribunal,* that the tribunal* will find the existence of other good cause for withdrawal.
- (c) If permission for termination of a representation is required by the rules of a tribunal,* a lawyer shall not terminate a representation before that tribunal* without its permission.
- (d) A lawyer shall not terminate a representation until the lawyer has taken reasonable* steps to avoid reasonably* foreseeable prejudice to the rights of the client, such as giving the client sufficient notice to permit the client to retain other counsel, and complying with paragraph (e).
- (e) Upon the termination of a representation for any reason:
- (1) subject to any applicable protective order, non-disclosure agreement or statutory limitation, the lawyer promptly shall release to the client, at the request of the client, all client materials and property. "Client materials and property" includes correspondence, pleadings, deposition transcripts, experts' reports and other writings,* exhibits, and physical evidence, whether in tangible, electronic or other form, and other items reasonably* necessary to the client's representation, whether the client has paid for them or not; and
 - (2) the lawyer promptly shall refund any part of a fee or expense paid in advance that the lawyer has not earned or incurred. This provision is not applicable to a true retainer fee paid solely for the purpose of ensuring the availability of the lawyer for the matter.

Comment

[1] This Rule applies, without limitation, to a sale of a law practice under Rule 1.17. A lawyer can be subject to discipline for improperly threatening to terminate a representation. See *In the Matter of Shalant* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 829, 837.

[2] When a lawyer withdraws from the representation of a client in a particular matter under paragraph (a) or (b), the lawyer might not be obligated to withdraw from the representation of the same client in other matters. For example, a lawyer might be obligated under paragraph (a)(1) to withdraw from representing a client because the lawyer has a conflict of interest under Rule 1.7, but that conflict might not arise in other representations of the client.

[3] Lawyers must comply with their obligations to their clients under Rule 1.6 and Business and Professions Code § 6068(e), and to the courts under Rule 3.3 when seeking permission to withdraw under paragraph (c). If a tribunal* denies a lawyer permission to withdraw, the lawyer is obligated to comply with the tribunal's order. See Business and Professions Code §§ 6068(b) and 6103. This duty applies even if the lawyer sought permission to withdraw because of a conflict of interest. Regarding withdrawal from limited scope representations that involve court appearances, compliance with applicable California Rules of Court concerning limited scope representation satisfies paragraph (c).

[4] Statutes may prohibit a lawyer from releasing information in the client materials and property under certain circumstances. See, e.g., Penal Code §§ 1054.2 and 1054.10.

[5] Paragraph (e)(1) does not prohibit a lawyer from making, at the lawyer's own expense, and retaining copies of papers released to the client, or to prohibit a claim for the recovery of the lawyer's expense in any subsequent legal proceeding.

**Proposed Rule 1.16 [3-700] Declining or Terminating Representation
Synopsis of Public Comments**

TOTAL = XX **A = X**
D = X
M = X
NI = X

No.	Commenter/Signatory	Comment on Behalf of Group?	A/D/M/NI ¹	Rule Section or Cmt.	Comment	RRC Response
X-2016-25b	McCue, Martin (08-02-16)	No	NI	1.16	<p>Bar members need an affirmative statement that a lawyer can decline to undertake representation of a client. Perhaps there should be a duty to advise the person seeking representation of that decision so that they can seek representation elsewhere. That statement may need to be conditioned so that the lawyer is not otherwise acting in violation of law, such as engaging in prohibited discrimination.</p> <p>The freedom to decline representations is at the heart of professional practice.</p>	<p>Proposed rule 1.16 does not state that a lawyer is prohibited from declining to accept a client's representation. Therefore, the revision requested by the commenter could be viewed as practice guidance and not appropriate under the Commission's Charter requiring that comments be used sparingly and only for the purpose of explicating a rule.</p> <p>Regarding the commenter's suggestion for a duty to affirmatively communicate a lawyer's decision to decline representation, that obligation is arguably subsumed within a lawyer's general duty to communicate as interpreted by the California Supreme Court. (See <i>Butler v. State Bar</i> (1986) 42 Cal.3d 323, 329 "The attorney's duty to communicate with a client includes the duty to communicate to persons who reasonably believe they are clients to the attorney's knowledge at least to the extent of advising them that they are not clients.")</p>

¹ A = AGREE with proposed Rule

D = DISAGREE with proposed Rule

M = AGREE ONLY IF MODIFIED

NI = NOT INDICATED