

AMERICAN BAR ASSOCIATION

STANDING COMMITTEE ON ETHICS AND PROFESSIONAL RESPONSIBILITY

Formal Opinion 523

May 20, 2026

Engagement Agreements Allowing a Lawyer to Withdraw When the Client Fails Substantially to Fulfill an Obligation Regarding the Lawyer's Services

Summary

Rule 1.16(b)(5) of the ABA Model Rules of Professional Conduct permits a lawyer to withdraw from a representation, or to seek the tribunal's permission to do so, when "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." This provision is ordinarily invoked when a client fails to fulfill an obligation regarding payment of legal fees and expenses. The engagement agreement may memorialize additional obligations of the client, both obligations that are otherwise implicit such as the client's truthful cooperation with the representation, and further obligations insofar as they are not forbidden by the Rules, other law (including court rules), or public policy. A client's persistent failure to fulfill obligations regarding the lawyer's services, including obligations unrelated to payment of fees and expenses, may constitute a basis for withdrawal if the procedural requirements of Rule 1.16(b)(5) are met. Further, the lawyer's engagement agreement may put the client on notice of permissible grounds for withdrawal under Rule 1.16(a) and (b), including the client's failure to fulfill obligations regarding the lawyer's services. However, the engagement agreement may not expand on the grounds for withdrawal set forth in Rule 1.16 or purport to alter or amend the grounds for withdrawal or the process for withdrawal required by the Rule.

I. Introduction

Under Rule 1.16(b)(5) of the ABA Model Rules of Professional Conduct, "a lawyer may withdraw from representing a client if . . . 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." A lawyer may withdraw from a representation under this provision even if doing so will have a material adverse effect on the client, so long as the procedural requirements of Rule 1.16(b)(5) are satisfied.¹ The discretion provided by this provision is, however, subject to Rule 1.16(c), which requires a lawyer to "comply with applicable law

¹ The permissible withdrawal options identified in Rule 1.16(b) are in the disjunctive, meaning that any pertinent option may serve as the basis for withdrawal. Regarding lawyers' discretion to withdraw from a representation under Rule 1.16(b)(1) when "withdrawal can be accomplished without material adverse effect on the interests of the client," *see* ABA Comm. on Ethics & Pro. Resp., Formal Op. 516 (2025). A material adverse effect occurs when withdrawal significantly harms the client's ability to achieve the client's legal objectives, increases the cost of the matter, or impedes the forward progress of the representation. Opinion 516 explained that withdrawal is not likely to have a material adverse effect where (a) the representation is at an early stage; (b) the client has retained successor counsel; (c) the lawyer has completed all substantive work on the matter; or (d) no imminent legal matters are pending.

requiring notice to or permission of a tribunal when terminating a representation.”² Whether to grant or deny a motion to withdraw as counsel is within the sound discretion of a trial court.³

Rule 1.16(b)(5) is most often invoked when the client fails to fulfill an obligation regarding legal fees or expenses.⁴ However, clients may assume other obligations that may be made explicit in the engagement agreement, such as the duty to cooperate with the lawyer regarding the representation or to provide and update the client’s contact information. This Opinion provides guidance regarding a lawyer’s ability to include provisions in an engagement agreement for the purpose of establishing them as obligations that would form a basis for withdrawal in the event of a client’s failure to abide by those obligations. This Opinion does not address, and is not intended to limit, a lawyer’s ability to withdraw under any other provisions under Rule 1.16(a) or (b).⁵

II. Provisions in Engagement Agreements Concerning the Client’s Obligations

The Model Rules of Professional Conduct offer limited guidance concerning the content of engagement or fee agreements, which may memorialize the objectives of the representation and include other understandings between lawyer and client. Rule 1.5(b) requires the lawyer to explain to the client, preferably in writing, “[t]he scope of the representation and the basis or rate of the fee and expenses for which the client will be responsible” if the lawyer has not regularly represented the client. Rule 1.5(c) requires that “[a] contingent fee agreement shall be in writing” and “shall state the method by which the fee is to be determined, including the percentage or percentages that shall accrue to the lawyer in the event of settlement, trial or appeal; litigation and other expenses to be deducted from the recovery; and whether such expenses are to be deducted before or after the contingent fee is calculated.”⁶

Engagement agreements may include provisions and obligations that the Model Rules do not require.⁷ An effective engagement agreement will address not only the information required by Model Rule 1.5 but also the other material terms of the client-lawyer relationship.⁸

² In ABA Formal Opinion 519 (2025), this Committee addressed whether and what a lawyer may disclose in a motion seeking to withdraw from representation, either as permitted or required by Rule 1.16.

³ *E.g.*, *Koon Chun King Kee Soy & Sauce Factory, Ltd. v. Kun Fung USA Trading Co.*, 2009 WL 605786 (E.D.N.Y. 2009) (a breakdown in communication is sufficient grounds for permissive withdrawal); *Harris v. Millington*, 2008 WL 11438291 (E.D.N.Y. Sept. 18, 2008) (granting withdrawal due to client’s failure to pay fees and because of material breakdown in attorney-client relationship).

⁴ ABA Comm. on Ethics & Pro. Resp., Formal Op. 476 (2016) discusses what a lawyer may disclose in civil litigation to the court when seeking to withdraw for nonpayment of legal fees or expenses.

⁵ For example, problems with the ability of a lawyer and client to work together can amount to the representation having been “rendered unreasonably difficult by the client.” Model Rule 1.16(b)(6). The types of representations and matters in which lawyers are engaged are so varied that it is not possible to comprehensively identify each and every circumstance that would or would not amount to “good cause for withdrawal.”

⁶ When a contingent fee matter is concluded, the lawyer must provide the client with a written statement confirming the outcome of the matter and, if there is a recovery, showing the amount to be paid to the client and the method of its determination.

⁷ Some states, such as Florida, mandate that specified language be included in contingent fee engagement agreements or impose limitations on the fees that may be charged. *See* RULES REGULATING FLA. BAR 4-1.5(f)(2).

⁸ *See* Pa. Bar Ass’n Legal Ethics & Prof’l Responsibility Comm. Op. 2025-100, The Requirements and Importance of Written Fee Agreements Under RPC 1.5, providing guidance on best practices for “clarify[ing] each party’s financial obligations, manag[ing] expectations, and help[ing] prevent conflicts or misunderstandings.”

Many law firms now include in their engagement agreements a variety of clauses addressing law firm policies for handling expenses, including e-discovery charges, as well as provisions addressing, among other things, dispute resolution, choice of law, file retention, and anticipated adjustments in lawyer hourly rates on a periodic basis. In addition to serving as a risk management tool for the lawyer and law firm, engagement agreements should provide the client with a meaningful understanding of the material terms of the relationship. This Opinion focuses specifically on provisions concerning the client's obligations.

The lawyer's engagement agreement may specify obligations of the client that are otherwise implicit in the representation, such as the obligation to cooperate with the representation, including in a litigation context the duty to produce discoverable documents within the client's custody and control. Other such implicit obligations include the client's obligation to communicate with the lawyer, to provide information truthfully, and to provide or to execute documents that are necessary for the lawyer to conduct the representation as the law requires.

Within ethical limits, the engagement agreement may also set forth obligations of the client that are not otherwise implicit.⁹ For example, a lawyer may include a provision in which the client agrees not to make an audio or a video recording of communications between the lawyer and the client,¹⁰ or not to discuss the lawyer or the representation on social media during the course of the representation.

The engagement agreement, however, may not impose obligations on the client that the Rules of Professional Conduct or other law or public policy forbid. For example, the engagement agreement may not include the client's promise not to later pursue a disciplinary complaint or bar grievance against the lawyer or law firm.¹¹

Likewise, the engagement agreement cannot be used to require the client to agree to terms that are expressly contrary to the Model Rules. For example, the engagement agreement may not obligate the client to accept a settlement recommended by the lawyer, or to reject a settlement that the lawyer disapproves. Such a provision would conflict with Model Rule 1.2(a), which provides that

⁹ See RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS § 17 (2000) ("A Client's Duties to a Lawyer") ("Subject to the other provisions of this Restatement, in matters covered by the representation a client must: . . . (3) fulfill any valid contractual obligations to the lawyer."). This provision also notes, in comment (d), that this duty is subject to limitations set by public policy, such as the power of the court to specify that a sanction imposed due to the lawyer's misconduct cannot be passed on to the client (citing §§ 29 & 30).

¹⁰ See N.Y. State Bar Ass'n Comm. on Prof'l Ethics, Op. 1270 (2024) ("A lawyer's engagement letter or retainer agreement may prohibit the client from making audio or video recordings of communications between the lawyer and client provided the engagement letter or retainer agreement: (a) does not mislead the client regarding circumstances under which the lawyer may seek to withdraw from the representation; and (b) does not serve as irrevocable advance consent by the client to withdrawal by the lawyer if the client violates the prohibition."); see also N.Y. City Bar Ass'n Comm. on Prof'l Ethics, Op. 2025-6 (2025) (attorneys may craft retainer agreements that seek to preclude clients from using their own AI tools in conversations with attorneys and provide that any recordings will be done by the attorneys' own AI tools).

¹¹ See D.C. Bar Legal Ethics Op. 260 (1995) ("under no circumstances may a lawyer seek to execute a release that would bar a lawyer's client from filing a complaint with Bar Counsel"); State of Oklahoma ex rel. Oklahoma Bar Assoc. v. Colston, 777 P.2d 920 (Okla. 1989); *In re Wallace*, 518 A.2d 740 (N.J. 1986).

“A lawyer shall abide by the client’s decision whether to settle a matter.”¹² While a client is free to accept a lawyer’s recommendation whether to settle a matter, a client’s contractual obligation to accept the lawyer’s advice would be at odds with the principle, embodied in Rule 1.2(a), that the client is the principal in the client-lawyer relationship and, therefore, has an unwaivable right to determine the objectives of the representation.

III. Withdrawal When the Client Fails Substantially to Fulfill an Obligation to the Lawyer Regarding the Lawyer’s Services

Under certain circumstances, a lawyer may withdraw, or seek to withdraw, from the representation under Rule 1.16(b)(5) based on the client’s failure to substantially fulfill an obligation to the lawyer set forth in the engagement agreement.¹³ Most obviously, as noted, the lawyer may do so based on the failure to substantially meet financial obligations after the lawyer has “given reasonable warning that the lawyer will withdraw unless the obligation is fulfilled.”¹⁴

Similarly, a lawyer may withdraw based on the client’s substantial failure to cooperate with the representation, regardless of whether that obligation is made explicit in the engagement agreement or left implicit, as long as the lawyer has given the requisite “reasonable warning.”¹⁵ For example, a lawyer may withdraw, or seek to withdraw, if, after reasonable warning, the client’s continued failure to respond or communicate with the lawyer, or continued failure to provide necessary truthful information or documents, substantially undermines the lawyer’s ability to conduct the representation or to comply with the lawyer’s professional obligations. A client’s lack of cooperation may frustrate the lawyer’s ability to conduct the representation effectively or ethically, and in adjudicative proceedings, the client’s failure to cooperate may undermine the lawyer’s ability to comply with court orders or with duties under the rules of professional conduct.¹⁶

Other legitimate client obligations set forth in an engagement agreement “regarding the lawyer’s services” may form a proper basis for the lawyer’s withdrawal. For example, although a client may ordinarily decide whether and how to communicate publicly about a legal matter, a lawyer may hold a client to an agreement not to do so without consulting the lawyer first, because the client’s public communications may frustrate effective representation or undermine the attorney-client privilege or work product protection that might attach to those communications. If the client persistently disregards an agreement to consult with the lawyer, even after being warned, the lawyer may withdraw or seek the court’s permission to do so based on Rule 1.16(b)(5).

¹² The Rule further directs that, “[i]n a criminal case, the lawyer shall abide by the client’s decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether a client will testify.”

¹³ New York, for example, has a more limited rule that allows withdrawal if “the client deliberately disregards an agreement or obligation to the lawyer as to expenses or fees,” but which does not expressly allow the lawyer to withdraw based on the client’s failure to comply with other obligations. N.Y. RULES OF PROFESSIONAL CONDUCT, R. 1.16(c)(5). Additionally, New York’s withdrawal rule permits a lawyer to withdraw if “the client fails to cooperate in the representation or otherwise renders the representation unreasonably difficult for the lawyer to carry out employment effectively.” *Id.*, R. 1.16(c)(7).

¹⁴ See ABA Comm. on Ethics & Pro. Resp., Formal Op. 476 (2016).

¹⁵ See Tex. Prof’l Ethics Comm. Op. 669 (2018) (if insured fails to communicate with a lawyer who is retained to defend the insured, then the lawyer may withdraw from the representation).

¹⁶ Such client conduct may also provide “other good cause for withdrawal” under Rule 1.16(b)(7) to withdraw in the absence of any engagement agreement language referring to the client’s expected cooperation.

A lawyer may not withdraw based on Rule 1.16(b)(5), however, if the client fails to comply with an obligation that is not one “regarding the lawyer’s services.” For example, a client’s obligation to pay a prior debt to the lawyer that is unrelated to the lawyer’s services is not an obligation “regarding the representation.” Therefore, the client’s failure to repay the prior debt would not justify the lawyer’s withdrawal under Rule 1.16(b)(5).

Further, a lawyer may not withdraw under Rule 1.16(b)(5) based on a client’s noncompliance with a trivial obligation or based on a client’s insubstantial failure to comply with an obligation set forth in the engagement agreement. For example, if the engagement agreement obligates the client to appear at scheduled office appointments on time, tardiness probably would not alone justify terminating the representation, if the client has reasonable excuses for appearing late.

IV. Provisions in the Engagement Agreement Regarding Withdrawal from the Representation

It is fundamental that clients, at least in the civil context, may terminate an attorney-client relationship at any time for any or no reason, although the client may remain responsible to pay for the lawyer’s services.¹⁷ Lawyers do not have the same unfettered discretion to terminate a representation or withdraw under Rule 1.16 or, in a litigation context, to seek the court’s permission to withdraw. Rule 1.16 addresses the circumstances in which a lawyer must, or may, withdraw from a representation or seek the tribunal’s permission to do so. Rule 1.16(a) lists circumstances where the lawyer must withdraw or seek to do so,¹⁸ while Rule 1.16(b) lists circumstances in which the lawyer is permitted to do so, including when “withdrawal can be accomplished without material adverse effect on the interests of the client” and when “other good cause for withdrawal exists.”¹⁹ These provisions in Rule 1.16(a) and (b) combine to establish the exclusive grounds for terminating the representation prior to its natural conclusion.

This means that the lawyer may not expand on the grounds for withdrawal by securing the client’s advanced permission to withdraw under circumstances not contemplated by Rule 1.16. Most obviously, the engagement agreement may not authorize the lawyer to withdraw if the client rejects a settlement offer or transactional agreement that the lawyer recommends, since the client has the

¹⁷ See MODEL RULES OF PROF’L CONDUCT R. 1.16, cmt. [4].

¹⁸ Model Rule 1.16(a) provides: “Except as stated in paragraph (c) [where ordered to continue the representation by a tribunal], 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; (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[.]”

¹⁹ Model Rule 1.16(b) provides: “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.”

fundamental right under Rule 1.2(a) to decide whether or not to settle a matter or close a transaction.

Nor may the agreement authorize the lawyer to withdraw for other additional reasons that do not constitute “good cause” and are not otherwise contemplated by Rule 1.16. For example, the engagement agreement may not authorize the lawyer to withdraw to undertake a more lucrative engagement without regard to whether the withdrawal would have a material adverse effect on the client’s interests.²⁰

Although the Model Rules do not require a lawyer to include information in the engagement agreement regarding the grounds on which the lawyer must, or may, withdraw from the representation, a lawyer may include such information in the engagement agreement as long as it is presented in a manner that is accurate and not misleading.²¹ The Model Rules appropriately forbid lawyers from misleading clients and prospective clients,²² including in an engagement agreement, regarding their respective rights and obligations.²³

It follows that the engagement agreement may not mischaracterize the circumstances or manner in which a lawyer may withdraw from a representation under Rule 1.16. For example, in a representation that will involve a proceeding where the applicable law requires the tribunal’s permission to terminate the representation, the engagement agreement may not imply that the lawyer has the right to withdraw unilaterally, without the tribunal’s permission as required by Rule 1.16(c). Nor may the engagement agreement imply that the lawyer may withdraw without “tak[ing] steps to the extent reasonably practicable to protect [the] client’s interests,” as required by Rule 1.16(d).²⁴

If the engagement agreement refers to the lawyer’s right to withdraw, or seek to withdraw, pursuant to Rule 1.16(b)(5) based on the client’s nonpayment of legal fees or the client’s failure to fulfill some other obligation to the lawyer, the engagement agreement may not state or imply that the lawyer may do so if the client’s failure to fulfill an obligation is not a substantial failure, nor may

²⁰ In Formal Opinion 516 (2025), the Committee identified the limited circumstances in which “withdrawal can be accomplished without material adverse effect on the interests of the client,” under Rule 1.16(b)(1).

²¹ See N.Y. State Bar Ass’n Comm. on Prof’l Ethics, Op. 719 (1999) (the engagement agreement must make “express reference to these requirements . . . in order to avoid misleadingly implying that a lawyer may terminate the representation without complying with them”). Opinion 719 involved several clauses in an engagement agreement mandating compliance by the client and permitting the lawyer to withdraw but preserving the client’s ability to defend against the withdrawal. The opinion, in detail, explains how the terms may be misleading to the client as to the rights of both the client and the lawyer.

²² See, e.g., MODEL RULES OF PROF’L CONDUCT R. 8.4(c) (“It is professional misconduct for a lawyer to . . . engage in conduct involving dishonesty, fraud, deceit or misrepresentation.”). See also MODEL RULES OF PROF’L CONDUCT R. 7.1(a) (“A lawyer shall not make a false or misleading communication about the lawyer’s services.”).

²³ See N.Y. State Bar Ass’n Comm. on Prof’l Ethics, Op. 719 (1999) (“the retainer agreement may not mislead the client with regard to the attorney’s obligations, including the obligation to continue as counsel in the absence of a permissible ground for withdrawing from the representation”).

²⁴ *Id.* (“the retainer agreement may not authorize the attorney to withdraw from the representation under circumstances in which withdrawal would be impermissible”); see also R.I. Ethics Comm. Op. 2003-08 (2003) (lawyer may not include a provision in a retainer agreement that permits lawyer to cease work on the client’s behalf, without withdrawing from the representation, if the client fails to make payments as agreed); Mo. Informal Op. 20000172 (2000) (lawyer may not include provision in retainer agreement that lawyer will cease work in client’s case if client does not pay as agreed).

the agreement dispense with the “reasonable warning” required by Rule 1.16(b)(5). Nor may the engagement agreement convey that the lawyer’s termination of the representation is mandatory when, under Rule 1.16(b), the lawyer’s termination of the representation is permissible, or vice versa.

The engagement agreement should not state or imply that the lawyer may withdraw from the representation in a manner not permitted by Rule 1.16. As noted, the engagement agreement may not misleadingly omit mention of the lawyer’s duty to protect the client’s interests upon withdrawal, or, where applicable, of the lawyer’s obligation to obtain the tribunal’s permission to withdraw. Likewise, the lawyer may not misleadingly imply that the lawyer’s motion to withdraw may or will disclose information relating to the representation otherwise protected by Rule 1.6, given that the Model Rules generally require the lawyer to seek the tribunal’s permission in a manner that preserves the confidentiality of such information.²⁵ The lawyer also may not require the client to sign a blanket stipulation irrevocably consenting to the lawyer’s future withdrawal, to be executed by the lawyer later in the event the lawyer wishes to withdraw for some reason not specified and agreed to by the client.

V. Conclusion

Rule 1.16(b)(5) of the ABA Model Rules of Professional Conduct permits a lawyer to withdraw from a representation, or to seek the tribunal’s permission to do so, when “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.” This provision is ordinarily invoked when a client fails to fulfill an obligation regarding payment of legal fees and expenses. The engagement agreement may memorialize additional obligations of the client, both obligations that are otherwise implicit such as the client’s truthful cooperation with the representation, and further obligations insofar as they are not forbidden by the Rules, other law (including court rules), or public policy. A client’s persistent failure to fulfill obligations regarding the lawyer’s services, including obligations unrelated to payment of fees and expenses, may constitute a basis for withdrawal if the procedural requirements of Rule 1.16(b)(5) are satisfied. Further, the lawyer’s engagement agreement may put the client on notice of permissible grounds for withdrawal under Rule 1.16(a) and (b), including the clients’ failure to fulfill obligations regarding the lawyer’s services. However, the engagement agreement may not expand on the grounds for withdrawal set forth in Rule 1.16 or mislead the client regarding the legitimate grounds for withdrawal or the process for withdrawal.

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²⁵ See ABA Comm. on Ethics & Pro. Resp., Formal Op. 519 (2025): Disclosure of Information Relating to the Representation in a Motion to Withdraw From a Representation; ABA Comm. on Ethics & Pro. Resp., Formal Op. 476 (2016): Confidentiality Issues when Moving to Withdraw for Nonpayment of Fees in Civil Litigation.

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