



### **ABA Amends Model Rules to Increase Duty of Lawyers to Review Clients**

After a contentious debate, the ABA House of Delegates approved a resolution to increase a lawyer’s duties under the Rules of Professional Conduct to investigate whether a client seeks to use the lawyer’s services to further a crime or fraud. According to the report on the resolution, the ABA Standing Committee on Ethics and Professional Responsibility and the ABA Standing Committee on Professional Regulation proposed changes to help ensure that “lawyers conduct client due diligence—appropriate to the circumstances—to detect and prevent involvement in unlawful activities,” such as money laundering or terrorism financing.

The resolution amends Model Rule 1.16: Declining or Terminating Representation. The amended rule requires a lawyer to assess the facts and the circumstances of each representation to determine whether to accept or continue the representation, and to continue to conduct such due diligence throughout the entire representation. The amended rule also states that a lawyer may have to conduct further inquiry into and assessment of a client at any time during the representation if facts or circumstances change.

You can find the [resolution and accompanying report](#) on the ABA website.

The amended rule consistent with the ABA’s ongoing efforts to “help lawyers detect and prevent becoming involved in a client’s unlawful activities and corruption.” For example, in 2020, the ABA issued Formal Ethics Opinion 491, which explains that ABA Model Rule 1.2(d) restricts a lawyer’s conduct when a lawyer “knows” a client’s action is criminal or fraudulent, may be inferred from the circumstances, including a lawyer’s willful blindness to or conscious avoidance of facts. “Where facts known to the lawyer establish a high probability that a client seeks to use the lawyer’s services for criminal or fraudulent activity, the lawyer has a duty to inquire further to avoid advising or assisting such activity,” the opinion said. “Failure to make a reasonable inquiry is willful blindness punishable under the actual knowledge standard of the rule.” [ABA Formal Opinion 491](#).

It is important to remember that ABA Model Rules are only model rules. That is, this change is not effective in any jurisdiction until the change is adopted by that jurisdiction. Nevertheless, all lawyers should exercise care in client selection and due diligence to ensure that their services are not used to commit crimes or fraud.

If you have questions about this or any other Rule of Professional Conduct or duties owed to clients or third parties, our risk management counsellors can help.

Have a risk management or ethics questions? We’re here to help. To obtain a consultation, you should log in to [Attorneys Risk Management](#), and click on the “Request a Risk Management Consultation” button.



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