

March 2025 *Multnomah Lawyer Ethics Focus*

**Choosing Wisely:
Vetting Clients on Intake**

**Mark J. Fucile
Fucile & Reising LLP**

Understanding client objectives on intake has long been prudent practice. We need to understand what a prospective client is seeking to assess whether our firm is a good fit for what the client needs. In some instances, the firm has a skill set that dovetails exactly with the client's plans. In others, the client may need something different and it may make more sense to refer the client on to another firm that has the experience the client needs. Although we usually call RPC 1.16 the "withdrawal rule," both the Oregon rule and its ABA Model Rule counterpart have always been titled "Declining or Terminating Representation." In that sense, RPC 1.16 has always spoken to vetting clients on intake and, when appropriate, declining to take them on.

Over the past two decades, lawyers and their law firms have increasingly become targets for criminals and other bad actors intent on either using law firms to further fraud and other crimes or stealing directly from law firms—often involving law firm trust accounts. This unfortunate trend has sharpened the need to carefully evaluate client objectives—especially when approached by a person or entity we have not represented before. Reflecting this practical necessity, the ABA in 2023 amended ABA Model Rule 1.16 to specifically underscore a lawyer's duty to inquire and assess a prospective client's objectives so that the

lawyer will not unwittingly be drawn into a bad actor's web. Oregon followed late last year and the Oregon amendments to RPC 1.16 became effective January 1.

In this column, we'll survey both the amendments and the backstory leading to their adoption.

The Amendments

The Oregon amendments add a predicate to RPC 1.16(a) and a new subsection to that same portion of the rule.

The additional predicate underscores vetting clients:

A lawyer shall reasonably inquire into and assess the facts and circumstances of each representation to determine whether the lawyer may accept or continue the representation.

The new subsection requires lawyers to decline a representation (or withdraw if a representation has started) if the lawyer learns that the prospective (or current) client wishes to use the lawyer's services in furthering a crime or fraud:

[A] lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if:

....

(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 Rule 1.2(c) regarding the limitations on the lawyer assisting with the proposed conduct.

The Oregon amendments track the text of the ABA Model Rule except add the word “reasonably” to the new predicate and adjust the RPC reference in the new subsection to correspond to the Oregon RPCs. The qualifier “reasonably” was added to the Oregon text because Oregon does not have comments to our RPCs and, therefore, the accompanying amended ABA Model Rule comments that make that same point were not included.

The Backstory

This past August, the ABA issued a comprehensive ethics opinion— Formal Opinion 513—outlining the history and intent of the amendments. Formal Opinion 513 is available on the ABA web site. The opinion traces both the increasing risks to lawyers from criminals attempting to use law firm trust accounts for money laundering and related misconduct and the efforts by the ABA to assist lawyers in detecting and avoiding involvement in client criminal activity. Although the ABA had issued ethics opinions in 2013 (Formal Opinion 463) and 2020 (Formal Opinion 491) in this regard, the ABA concluded that amendments to Model Rule 1.16 and its accompanying comments were warranted to memorialize what was already many lawyers’ prudent practice.

Formal Opinion 513 notes (at 5) that the scope of a lawyer's inquiry will vary depending on the circumstances:

[T]he lawyer's inquiry and assessment will be informed by the risk that the current or prospective client seeks to use or persists in using the lawyer's services to commit or further a crime or fraud. Under this approach, the required scope and depth of inquiry and assessment will vary for each current or prospective client, depending on the nature and extent of the risk. A risk-based approach also incorporates the concepts of reasonableness and proportionality. In a risk-based approach, risks are classified by degree . . . and proportionate measures are taken to prevent or mitigate them.

A new matter from a longstanding client, therefore, will not trigger the same review as a new client with an international address, an obscure corporate lineage, and proposing a novel transaction involving the firm's trust account.

Formal Opinion 513 also emphasizes that, as noted, the Model Rule amendments do not create new duties, but instead reinforce what was already a prudent practice.

The report accompanying the amendments' consideration at the OSB House of Delegates this past Fall outlined these same considerations. Oregon has certainly not been immune to clients using lawyers for what turned out to be fraudulent schemes.

Most lawyers fortunately will not encounter prospective clients who are engaged in money laundering or other sophisticated criminal enterprises. At the

same time, routine vetting of the kind contemplated by the recent amendments can also protect firms against more mundane criminal schemes targeting firm trust accounts and other sensitive client information.

ABOUT THE AUTHOR

Mark J. Fucile of Fucile & Reising LLP advises lawyers, law firms, and corporate and governmental legal departments throughout the Northwest on professional ethics and risk management. Mark has chaired both the WSBA Committee on Professional Ethics and its predecessor, the WSBA Rules of Professional Conduct Committee. Mark has served on the Oregon State Bar Legal Ethics Committee and is a member of the Idaho State Bar Section on Professionalism & Ethics. Mark writes the Ethics Focus column for the Multnomah (Portland) Bar's *Multnomah Lawyer*, the Ethics & the Law column for the WSBA *Bar News* and is a regular contributor on legal ethics to the WSBA *NWSidebar* blog. Mark is the editor-in-chief and a contributing author for the WSBA *Legal Ethics Deskbook* and a principal editor and contributing author for the OSB *Ethical Oregon Lawyer* and the WSBA *Law of Lawyering in Washington*. Before co-founding Fucile & Reising LLP in 2005, Mark was a partner and in-house ethics counsel for a large Northwest regional firm. He also teaches legal ethics as an adjunct for the University of Oregon School of Law at its Portland campus. Mark is admitted in Oregon, Washington, Idaho, Alaska and the District of Columbia. He is a graduate of the UCLA School of Law. Mark's telephone and email are 503.860.2163 and Mark@frllp.com.