

ATTORNEYS RISK MANAGEMENT



ABA Issues Formal Opinion 513: Duty to Inquire Into and Assess the Facts and Circumstances of Each Representation

Lawyers are increasingly being held to account for their clients' nefarious actions. The ABA has made an effort to address this trend, and to provide guidance to lawyers in avoiding these risks. In late August, 2024, the ABA Standing Committee on Ethics and Professional Responsibility issued [Formal Opinion 513](#), addressing a recent (2023) revision to Model Rule 1.16(a), which now provides that: "A lawyer shall inquire into and assess the facts and circumstances of each representation to determine whether the lawyer may accept or continue the representation."

Note that your jurisdiction may not yet have adopted the ABA's revision to Model Rule 1.16(a), so check your state's rules to be sure. In addition, it's important to remember that ABA ethics opinions are not binding. Rather, ABA opinions serve to guide and instruct lawyers.

Here, even if your state hasn't adopted new Model Rule 1.16(a), the ABA opinion is worth reading, and provides a guide to best practices when considering whether to accept a representation. As the opinion points out, a "duty to inquire into and assess the facts and circumstances of a representation has long been implicit in" the Rules of Professional Conduct. See, e.g., RPC 1.2, 1.3, 1.13, and 8.4.

For instance, the opinion identifies five non-exclusive factors that lawyers might consider when assessing the risk of accepting or continuing a representation:

- (i) the identity of the client, including the client's beneficial ownership if the client is an entity;
- (ii) the lawyer's experience and familiarity with the client;
- (iii) the nature of the requested legal services;
- (iv) the relevant jurisdictions involved in the representation (for example, whether a jurisdiction is considered at high risk for money laundering or terrorist financing); and
- (v) the identities of those depositing into or receiving funds from the lawyer's client trust account, or any other accounts in which client funds are held.

In addition, Opinion 513 provides a number of hypotheticals to further educate lawyers on how to fulfill their duty to inquire into the relevant facts and circumstances relating to the representation.

While this opinion is not binding, be assured that it will be used by plaintiff counsel seeking to hold lawyers responsible for wrongdoing by clients. Protect yourself by reading this opinion and considering how you can better protect yourself against related claims.

As always, if you have questions or want to talk with senior risk management counsel, don't hesitate to get in touch with us through our website, [Attorneys Risk Management](#) and click on the "Request a Risk Management Consultation" button.

**Confidential advice from experienced risk management counsel.
Visit www.attorneysriskmanagement.com or call: 844-782-RISK (7475).**

Please Note: Unless there is a current countersigned engagement letter on file with Barron & Newburger, P.C., BNPC is not your lawyer.