



New ABA Formal Opinion 514 Addresses “A Lawyer’s Obligations When Advising an Organization About Conduct that May Create Legal Risks for the Organization’s Constituents.”

When representing an individual client, lawyers communicate directly to the client. However, when representing an organization, lawyers necessarily provide advice to the client organization by delivering that advice to constituents such as employees, officers, or board members. The lawyer’s relationship with those non-client constituents can cause misunderstandings and misplaced reliance or trust by the constituents, who may not understand that the lawyer represents the entity, not the constituent personally. In some circumstances, a client organization’s decisions may have a legal impact on those constituents.

To address this specific issue, on January 8, 2025, the American Bar Association’s Standing Committee on Ethics and Professional Responsibility issued [Formal Opinion 514](#), titled “A Lawyer’s Obligations When Advising an Organization About Conduct that May Create Legal Risks for the Organization’s Constituents.”

The Committee describes the scope of the Opinion this way:

The Model Rules of Professional Conduct set forth a general standard of competent representation under Rule 1.1, necessary communication under Rule 1.4, and candid advice under Rule 2.1. Where a lawyer—in-house or outside counsel—is giving advice to an organization client about future action of the organization, these provisions may require the lawyer to advise the organization when its actions pose a legal risk to the organization’s constituents.

When an organization’s lawyer provides advice to the organization about proposed conduct that may have legal implications for individual constituents, the constituents through whom the lawyer conveys advice may misperceive the lawyer’s role and mistakenly believe that they can rely personally on the lawyer’s advice. Rules 4.1, 4.3, and 1.13(f) require an organization’s lawyer to take reasonable measures to avoid or dispel constituents’ misunderstandings about the lawyer’s role.

An organization’s lawyer may want to instruct or remind an organization’s constituents about the lawyer’s role early and often during the relationship, not only at times when constituents might rely to their detriment on a misunderstanding of the lawyers’ role. Educating an organization’s constituents who may receive the lawyer’s advice in the future will lay the groundwork for later situations where lawyers may be advising the organization on matters with legal implications for the organization’s constituents.

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For lawyers who represent organizations, this 13-page Opinion is a must-read. Note that while all states have adopted the Model Rules of Professional Conduct, many states have adopted slightly different language, and all have their own ethics opinions. While this Opinion does not govern any state's application of the state's own Rules of Professional Conduct, ABA Opinions provide helpful guidance to lawyers and bar associations. Check your own jurisdiction's rules and ethics opinions for more detail.

The Opinion con useful guidance for lawyers who represent organizations:

[T]he lawyer for an organization would be well advised to instruct constituents about the lawyer's role on other occasions when the lawyer interacts with constituents, and not only at times when constituents might rely to their detriment on a misunderstanding of the lawyer's role. Educating the organization's constituents who may receive the lawyer's advice in the future will lay the groundwork for later situations where the lawyer is advising the organization on matters with legal implications for constituents. Among other things, lawyers for the organization should avoid referring to individual constituents as their clients, and these lawyers should correct individual constituents who refer to the organization's lawyers as the constituent's own lawyers. When an organization's lawyers interact with the organization's decision makers in settings in which the lawyers are not conveying advice, the lawyers can nevertheless take the opportunity to clarify their role, such as by explaining that they represent the organization, not the individual constituents, and that the individuals cannot rely on the lawyers to look out for their individual interests, even when those interests may appear to coincide with those of the organization.

For further or more specific guidance on this topic, don't hesitate to get in touch with our senior risk management attorneys. To obtain a consultation, you should log in to [Attorneys Risk Management](https://www.attorneysriskmanagement.com), and click on the "Request a Risk Management Consultation" button.



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