

Rule 2.18, Comment 1

Misconduct

ABA Standing Committee on Legal Aid and Indigent Defendants

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The ABA Standing Committee on Legal Aid and Indigent Defendants (ABA SCLAID) suggests revision of Rule 2.18, Comment 1 to address the following issues:

- *Criminal defense lawyers who neglect indigent clients.* Because of the nation-wide shortage of funds for representation of indigent criminal and juvenile defendants, defense lawyers sometimes take on excessive number of cases, leading to competency issues under Rule 1.1 of the Model Rules of Professional Conduct. Judges rarely report obvious neglect of professional duties by such lawyers to disciplinary authorities or take any other action. Insofar as judges may not remove and replace counsel for an indigent defendant over the objection of counsel and the client, SCLAID believes its suggested revision of Rule 2.18, Comment 1 will serve the purpose of urging judges to report disciplinary violations of defense counsel.
- *Unethical prosecutors.* ABA SCLAID believes its suggested revision will urge judges to also take action against prosecutors who fail to perform their duties in an ethical manner.

To provide guidance to judges faced with these issues, ABA SCLAID suggests the following revision of Rule 2.18, Comment 1:

[1] Appropriate action may include direct communication with the lawyer who has committed the violation, and reporting the violation to the appropriate authority or other agency or body. Given the responsibility of courts to assure the proper administration of criminal and juvenile justice, it is especially important that a judge be willing to report ethical violations of prosecutors and defense lawyers. [Addition underlined.]