

## CLIENT-LAWYER RELATIONSHIP

### **Rule 1.1. COMPETENCE**

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.—Amended June 17, 2009, eff. Sept. 1, 2009.

#### **Comment**

##### *Legal Knowledge and Skill*

[1] In determining whether a lawyer employs the requisite knowledge and skill in a particular matter, relevant factors include the relative complexity and specialized nature of the matter, the lawyer's general experience, the lawyer's training and experience in the field in question, the preparation and study the lawyer is able to give the matter and whether it is feasible to refer the matter to, or associate or consult with, a lawyer of established competence in the field in question. In many instances, the required proficiency is that of a general practitioner. Expertise in a particular field of law may be required in some circumstances.

[2] A lawyer need not necessarily have special training or prior experience to handle legal problems of a type with which the lawyer is unfamiliar. A newly admitted lawyer can be as competent as a practitioner with long experience. Some important legal skills, such as the analysis of precedent, the evaluation of evidence and legal drafting, are required in all legal problems. Perhaps the most fundamental legal skill consists of determining what kind of legal problems a situation may involve, a skill that necessarily transcends any particular specialized knowledge. A lawyer can provide adequate representation in a wholly novel field through necessary study. Competent representation can also be provided through the association of a lawyer of established competence in the field in question.

[3] In an emergency a lawyer may give advice or assistance in a matter in which the lawyer does not have the skill ordinarily required where referral to or consultation or association with another lawyer would be impractical. Even in an emergency, however, assistance should be limited to that reasonably necessary in the circumstances, for ill-considered action under emergency conditions can jeopardize the client's interest.

[4] A lawyer may accept representation where the requisite level of competence can be achieved by reasonable preparation. This applies as well to a lawyer who is appointed as counsel for an unrepresented person. See also Rule 6.2.

##### *Thoroughness and Preparation*

[5] Competent handling of a particular matter includes inquiry into and analysis of the factual and legal elements of the problem, and use of methods and procedures meeting the standards of competent practitioners. It also includes adequate preparation. The required attention and preparation are determined in part by what is at stake; major litigation and complex transactions ordinarily require more extensive treatment than matters of lesser complexity and consequence. An agreement between the lawyer and the client regarding the scope of the representation may limit the matters for which the lawyer is responsible. See Rule 1.2(c).

##### *Maintaining Competence*

[6] To maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, engage in continuing study and education and comply with all continuing legal education requirements to which the lawyer is subject.

### **Reporter's Notes — 2009 Amendment**

No changes are made in the text of V.R.P.C. 1.1. The ABA Reporter's Explanation concerning changes in the Comment is as follows:

[5] The Commission recommends the addition of a sentence indicating that a Rule 1.2(c) agreement to limit the scope of a representation will limit the scope of the matters for which the lawyer is responsible. Given the increase in the number of occasions in which lawyers and clients agree to a limited representation, the Commission thought it important to call attention to the relationship between Rules 1.1 and 1.2(c). No change in substance is intended. A minor change was made to make explicit that the

duty to be prepared and thorough varies with the complexity of the matter as well as what is at stake. No change in substance is intended.

[6] The changes in the first sentence are intended to identify three distinct aspects of continuing education that are needed to maintain the knowledge and skill requisite for the competent representation of clients. The second sentence has been deleted because it is a precatory aspiration rather than a specification of conduct thought necessary for the competent representation of a client. No change in substance is intended.

### **Reporter's Notes — 1999 Amendment**

This rule goes farther than the Vermont Code's prohibitions of incompetence and neglect of a client's matter by affirmatively requiring competence of every lawyer. As stated in the reporter's note to the scope note, though the rules are not designed to be a basis for civil liability, the Court could so hold in an adversary proceeding. "Moreover," as that reporter's note points out, "under general principles of tort law, violation of a rule may be prima facie evidence of malpractice, and the rules are presumably admissible as evidence of the standard of care in a malpractice action."