

Vermont Rules of Professional Conduct

Rule 1.3 – Diligence

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Kennedy's Highlights

(NOT a substitute for full research of the rule & opinions/decisions on it)

- Rule 1.3 has not been amended since 2009.
- Comment 5 refers to succession planning as a component of the duty of diligence. For more, see my blog post [Law Firms & Disaster Planning](#)

Rule 1.3. DILIGENCE

A lawyer shall act with reasonable diligence and promptness in representing a client.

Comment

[1] A lawyer should pursue a matter on behalf of a client despite opposition, obstruction or personal inconvenience to the lawyer, and take whatever lawful and ethical measures are required to vindicate a client's cause or endeavor. A lawyer must also act with commitment and dedication to the interests of the client and with zeal in advocacy upon the client's behalf. A lawyer is not bound, however, to press for every advantage that might be realized for a client. For example, a lawyer may have authority to exercise professional discretion in determining the means by which a matter should be pursued. See Rule 1.2. The lawyer's duty to act with reasonable diligence does not require the use of offensive tactics or preclude the treating of all persons involved in the legal process with courtesy and respect.

[2] A lawyer's work load must be controlled so that each matter can be handled competently.

[3] Perhaps no professional shortcoming is more widely resented than procrastination. A client's interests often can be adversely affected by the passage of time or the change of conditions; in extreme instances, as when a lawyer overlooks a statute of limitations, the client's legal position may be destroyed. Even when the client's interests are not affected in substance, however, unreasonable delay can cause a client needless anxiety and undermine confidence in the lawyer's trustworthiness. A lawyer's duty to act with reasonable promptness, however, does not preclude the lawyer from agreeing to a reasonable request for a postponement that will not prejudice the lawyer's client.

[4] Unless the relationship is terminated as provided in Rule 1.16, a lawyer should carry through to conclusion all matters undertaken for a client. If a lawyer's employment is limited to a specific matter, the relationship terminates when the matter has been resolved. If a lawyer has served a client over a substantial period in a variety of matters, the client sometimes may assume that the lawyer will continue to serve on a continuing basis unless the lawyer gives notice of withdrawal. Doubt about whether a client-lawyer relationship still exists should be clarified by the lawyer, preferably in writing, so that the client will not mistakenly suppose the lawyer is looking after the client's affairs when the lawyer has ceased to do so. For example, if a lawyer has handled a judicial or administrative proceeding that produced a result adverse to the client and the lawyer and the client have not agreed that the lawyer will handle the matter on appeal, the lawyer must consult with the client about the possibility of appeal before relinquishing responsibility for the matter. See Rule 1.4(a)(2). Whether the lawyer is obligated to prosecute the appeal for the client depends on the scope of the representation the lawyer has agreed to provide to the client. See Rule 1.2.

[5] To prevent neglect of client matters in the event of a sole practitioner's death or disability, the duty of diligence may require that each sole practitioner prepare a plan, in conformity with applicable rules, that designates another competent lawyer to review client files, notify each client of the lawyer's death or disability, and determine whether there is a need for immediate protective action. See Rule 24, Rules Governing Professional Responsibility Program (A.O. 9) (providing for court appointment of a lawyer to inventory files and take other protective action in absence of a plan providing for another lawyer to protect the interests of the clients of a

deceased or disabled lawyer).

Reporter's Notes — 2009 Amendment

No changes are made in the text of V.R.P.C. 1.3.

The Supreme Court addressed issues under V.R.P.C. 1.3 in *In re PRB Docket No. 2006-167*, 2007 VT 50, 181 Vt. 625, 925 A.2d 1026 (mem.) (PRB could reasonably find that, in the circumstances, single instance of missed appellate deadline in criminal matter did not violate rule), and *In re Andres*, 2004 VT 71, 177 Vt. 511, 857 A.2d 803 (mem.) (PRB could reasonably find that failure to attend pretrial conference and file response to motion for summary judgment in post-conviction relief proceeding did violate rule). In *In re Sealed Documents*, 172 Vt. 152, 165 n.10, 772 A.2d 518, 529 n.10 (2001), the Court noted that allowing lawyers to participate in an in camera review subject to a requirement not to reveal information to their clients would undermine the principle expressed in the requirement of V.R.P.C. 1.3 Comment (amended paragraph [1]) that a lawyer “act with commitment and dedication to the interests of the client.”

The ABA Reporter's Explanation concerning changes in the Comment is as follows:

[1] Several changes have been made to Comment [1] to clarify the lawyer's authority and duty to take certain actions on behalf of the client. No change in substance is intended.

[1] and [3] New material has been added to comments [1] and [3] to provide some support for the bar's civility initiatives. No change in substance is intended.

[2] This new Comment contains the substance of the last sentence in [former] Comment [1], with the reference to “should” being replaced with “must” because Rule 1.1 requires that a lawyer provide competent representation. No change in substance is intended.

[4] [Former] Comment [3] has been modified to sharpen its discussion of a lawyer's responsibilities with respect to taking an appeal from an adverse decision. No change in substance is intended.

[5] This new Comment has been added to alert sole practitioners to the need to have a plan in place to prevent client matters from being neglected in the event of the sole practitioner's death or disability. It also calls attention to the recommendation of the Senior Lawyers Division approved by the [ABA] House of Delegates in 1997 that “urges state, local and territorial jurisdictions, that do not now have programs in place, to address the issue of the death or disability of lawyers and to develop and implement through court rule or other appropriate means effective procedures for the protection of clients' interests and property and the ethical closure or disposition of the practices.” It is also consistent with [ABA] Formal Ethics Opinion 92-369.

ANNOTATIONS

1. Violations. Admonishment was appropriate for an attorney who had failed to promptly and fully comply with discovery, in violation of the rules regarding diligence and expediting litigation. The attorney's conduct did not result in actual substantial harm to his client, the public, the legal system, or the profession; his violations resulted from disorganization, overreliance on his client, and lack of experience in complex litigation, not from an intent to conceal documents; and he had no prior disciplinary record and fully cooperated in the disciplinary proceedings. *In re PRB File No. 2007-003*, 2009 VT 82A, 186 Vt. 588, 987 A.2d 273 (mem.).

Where attorney filed his client's notice of appeal after the deadline, resulting in dismissal of the appeal, the hearing panel correctly held that this single isolated act of negligence without any further acts compounding the error did not breach the standard of this rule. *In re PRB Docket No. 2006-167*, 2007 VT 50, 181 Vt. 625, 925 A.2d 1026 (mem.).

Attorney violated this rule by failing to attend a pretrial hearing and to respond to a motion for summary judgment. *In re Andres*, 2004 VT 71, 177 Vt. 511, 857 A.2d 803 (mem.).

2. Sanctions. Attorney who failed to act with reasonable diligence and promptness upon being paid in full by three bankruptcy clients, but who had mitigating factors in his favor, including no prior disciplinary history and an expression of remorse, was publicly reprimanded. *In re Scholes*, 2012 VT 56, 192, VT 623, 54 A.3d 520 (mem.).

Two concurrent six-month suspensions were proper for an attorney who failed to cooperate with the disciplinary system, failed to communicate with her client and to return his papers, and practiced law where doing so violated the regulation of the legal profession. Furthermore, when respondent sought reinstatement, she would have to provide a detailed explanation for her lack of participation over the course of these proceedings. *In re Hongisto*, 2010 VT 51, 188 Vt. 553, 998 A.2d 1065 (mem.).

