

Rule 1.3: Diligence

1. Current Kentucky Rule with Official Comments:

SCR 3.130(1.3) Diligence

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

Supreme Court Commentary

[1] A lawyer should pursue a matter on behalf of a client despite opposition, obstruction or personal inconvenience to the lawyer, and may take whatever lawful and ethical measures are required to vindicate a client's cause or endeavor. A lawyer should act with commitment and dedication to the interests of the client and with zeal in advocacy upon the client's behalf. However, a lawyer is not bound to press for every advantage that might be realized for a client. A lawyer has a professional discretion in determining the means by which a matter should be pursued. See Rule 1.2. A lawyer's workload should be controlled so that each matter can be handled adequately.

[2] 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.

[3] 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 but has not been specifically instructed concerning pursuit of an appeal, the lawyer should advise the client of the possibility of appeal before relinquishing responsibility for the matter.

2. Proposed Kentucky Rule with Official Comments:

SCR 3.130(1.3) Diligence

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

~~Supreme Court Commentary~~ Comment

[1] A lawyer should pursue a matter on behalf of a client despite opposition, obstruction or personal inconvenience to the lawyer, and ~~may~~ take whatever lawful and ethical measures are required to vindicate a client's cause or endeavor. A lawyer ~~should~~ must also act with commitment and dedication to the interests of the client and with zeal in advocacy upon the client's behalf. ~~However, a~~ A lawyer is not bound, however, to press for every advantage that might be realized for a client. For example, a lawyer has may have authority to exercise professional discretion in determining the means by which a matter should be pursued. See Rule 1.2. ~~A lawyer's work load should be controlled so that each matter can be handled adequately.~~ 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.

~~[2]~~ [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.

~~[3]~~ [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 ~~but has not been specifically instructed concerning pursuit of an~~ and the lawyer and the client have not agreed that the lawyer will handle the matter on appeal, the lawyer ~~should advise~~ must consult with the client of 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 SCR 3.395 Appointment of special commissioner to protect clients' interests.

3. Discussion and Explanation of Recommendation:

a. Comparison of proposed Kentucky Rule with its counterpart ABA Model Rule.

The Commission did not recommend changes to MR 1.3, but did make modifications to the Comments to the Rule. The proposed KRPC 1.3 similarly has no change to the Rule and adopts the MR 1.3 Comment changes along with the inclusion of a reference to SCR 3.395 in Comment [5]. The ABA Reporter's Explanation of Changes to MR 1.3 Comments expresses the Committee's view. It is adopted by the Committee for purposes of explaining recommended changes and is quoted below.

- ABA Reporter's Explanation of Changes -- Model Rule 1.3

TEXT:

The Commission is not recommending any change to the text of the Rule.

COMMENT:

[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 current 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] Current 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 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 Formal Ethics Opinion 92-369.

b. Detailed discussion of reason for variance from ABA Model Rule (if any).

There is no variance in proposed KRPC 1.3 from MR 1.3 except for the inclusion of a reference to SCR 3.395 in Comment [5].