

Rule 3.2: Expediting Litigation

1. Current Kentucky Rule with Official Comments:

SCR 3.130(3.2) Expediting litigation

A lawyer shall make reasonable efforts to expedite litigation consistent with the interests of the client.

Supreme Court Commentary

Dilatory practices bring the administration of justice into disrepute. Delay should not be indulged merely for the convenience of the advocates, or for the purpose of frustrating an opposing party's attempt to obtain rightful redress or repose. It is not a justification that similar conduct is often tolerated by the bench and bar. The question is whether a competent lawyer acting in good faith would regard the course of action as having some substantial purpose other than delay. Realizing financial or other benefit from otherwise improper delay in litigation is not a legitimate interest of the client.

2. Proposed Kentucky Rule with Official Comments:

SCR 3.130(3.2) Expediting litigation

A lawyer shall make reasonable efforts to expedite litigation consistent with the interests of the client.

~~Supreme Court Commentary~~ Comment

[1] Dilatory practices bring the administration of justice into disrepute. ~~Delay should not be indulged merely for the convenience of the advocates, or~~ Although there will be occasions when a lawyer may properly seek a postponement for personal reasons, it is not proper for a lawyer to routinely fail to expedite litigation solely for the convenience of the advocates. Nor will a failure to expedite be reasonable if done for the purpose of frustrating an opposing party's attempt to obtain rightful redress or repose. It is not a justification that similar conduct is often tolerated by the bench and bar. The question is whether a competent lawyer acting in good faith would regard the course of action as having some substantial purpose other than delay. Realizing financial or other benefit from otherwise improper delay in litigation is not a legitimate interest of the client.

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 3.2 but did make modifications to the Comment to the Rule. The proposed KRPC 3.2 similarly has no change to the Rule and adopts the MR 3.2 Comment change. The ABA Reporter's Explanation of Changes to the MR 3.2 Comment 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 3.2

TEXT:

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

COMMENT:

[1] The Commission concluded that the reference in the second sentence to indulging delay "merely for the convenience of the advocates" is too restrictive and modified it to recognize that there are circumstances where it is acceptable for a lawyer to request a postponement for personal reasons.

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

There is no variance in the proposed KRPC 3.2 from MR 3.2.

Committee proposal adopted without change. Order 2009-05, eff 7-15-09.