

Rule 1.1 Competence
(Commission’s Proposed Rule – Clean Version)

- (a) A lawyer shall not intentionally, recklessly, or repeatedly fail to perform legal services with competence
- (b) For purposes of this Rule, “competence” in any legal service shall mean to apply the 1) diligence, 2) learning and skill, and 3) mental, emotional, and physical ability reasonably necessary for the performance of such service.
- (c) If a lawyer does not have sufficient learning and skill when the legal services are undertaken, the lawyer may nonetheless provide competent representation by 1) associating with or, where appropriate, professionally consulting another lawyer whom the lawyer reasonably believes to be competent, 2) acquiring sufficient learning and skill before performance is required, or 3) referring the matter to another lawyer whom the lawyer reasonably believes to be competent.

COMMENT

- [1] It is the duty of every lawyer to provide competent legal services to the client.
- [2] Competence under paragraph (b) includes the obligation to act with reasonable diligence on behalf of a client. This includes pursuing a matter on behalf of a client by taking lawful and ethical measures required to advance the client’s cause or objectives. A lawyer must also act with commitment and dedication to the interests of the client and with zeal in advocacy on 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 exercise professional discretion in

determining the means by which a matter should be pursued. See Rules [1.2] and 1.4. 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.

- [3] It is a violation of this Rule if a lawyer accepts employment or continues representation in a matter as to which the lawyer knows or reasonably should know that the lawyer does not have, or will not acquire before performance is required, sufficient time, resources, and ability to perform the legal services with competence. It is also a violation of this Rule if a lawyer repeatedly accepts employment or continues representation in a matter when the lawyer does not have, or will not acquire before performance is required, sufficient time, resources, and ability to perform the legal services with competence.
- [4] 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.
- [5] A lawyer may accept representation where the requisite level of competence can be achieved by reasonable preparation. This provision applies to lawyers generally, including a lawyer who is appointed as counsel for an unrepresented person. [See also Rule 6.2]
- [6] This Rule is not intended to apply to a single act of negligent conduct or a single mistake in a particular matter.

[7] This Rule addresses only a lawyer's responsibility for his or her own professional competence. See Rules 5.1(b) and 5.3 (b) with respect to a lawyer's disciplinary responsibility for supervising subordinate lawyers and nonlawyers.