

Rule 1.3 Diligence
(Commission's Proposed Rule Adopted on October 21–22, 2016 – Clean Version)

- (a) A lawyer shall not intentionally, repeatedly, recklessly or with gross negligence fail to act with reasonable* diligence in representing a client.
- (b) For purposes of this Rule, “reasonable diligence” shall mean that a lawyer acts with commitment and dedication to the interests of the client and does not neglect or disregard, or unduly delay a legal matter entrusted to the lawyer.

Comment

[1] This Rule addresses only a lawyer’s responsibility for his or her own professional diligence. See Rules 5.1 and 5.3 with respect to a lawyer’s disciplinary responsibility for supervising subordinate lawyers and nonlawyers.

[2] See Rule 1.1 with respect to a lawyer’s duty to perform legal services with competence.

**Proposed Rule 1.3 Diligence
Synopsis of Public Comments**

TOTAL = 3 **A = 2**
D = 1
M = 0
NI = 0

No.	Commenter/Signatory	Comment on Behalf of Group?	A/D/M/NI ¹	Rule Section or Cmt.	Comment	RRC Response
Y-2016-23d	Sall, Spencer, Callas & Krueger (Sall) (01-09-17)	Yes	A		Support the revision of proposed rule 1.3 that moved “with gross negligence” to the end of the series of intent elements in subdivision (a). However, proposed rule 1.1, as approved by the Board, does not contain this revision, such that the language of the two rules no longer parallel each other. The two rules should parallel each other if for no other reason than to ensure the “intentionally, repeatedly, recklessly or with gross negligence” standard is consistently interpreted across the rules.	No response required.
Y-2016-21c	State Bar Office of Chief Trial Counsel (OCTC) (Dresser) (1-9-17)	Yes	D		1. OCTC is concerned with separating diligence, competence and supervision into separate rules. There has been no showing that the proposed changes are necessary to address developments in the law or because the current rule is inadequate to protect the public. Under the proposed new rules, California will have to develop new [case] law to distinguish among competence, diligence, and failure to supervise. It is noted	1. Separating the duty to act with reasonable diligence in a separate rule enhances public protection by providing greater uniformity and understanding as well as consistency with the rules in other jurisdictions. The distinction between competence and diligence is reflected in former rule 6-101. The Commission disagrees that new law will have to developed because the distinction

¹ A = AGREE with proposed Rule

D = DISAGREE with proposed Rule

M = AGREE ONLY IF MODIFIED

NI = NOT INDICATED

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					<p>the first Commission did not support distinguishing between competence and diligence.</p> <p>2. A failure to perform diligently is a failure to perform competently. The is because diligence is an essential part of competence. Moreover, distinguishing between competence and diligence is not always easy. The lines between these concepts are often blurry, unclear, and overlapping. These proposals will cause OCTC to file more charges against each respondent, i.e. OCTC will have to file three [competence, diligence, supervision] charges for what used to be one charge.</p> <p>3. OCTC is concerned with Comments [1] and [2] because these Comments are unnecessary, even if those concepts are separated, because each rule explains</p>	<p>among competence, diligence and the duty of supervision is already well developed in the law governing lawyers.</p> <p>2. Highlighting the concept of diligence as an important professional responsibility rather than it being subsumed within the competence rule promotes public protection and furthers the Commission's charge in eliminating "unnecessary differences between California's rules and the rules used by a preponderance of the states." There is no reported history of charging or enforcement difficulties by having the duties of competence, diligence and supervision in separate rules. The distinction between these separate duties are well defined in the law and is not artificial.</p> <p>3. The Commission believes Comments [1] and [2] are necessary to explain the rule and are comparable to Comments [1] and [2] in Rule 1.1 which the Board</p>

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					what is covers.	of Trustees previously approved.
Y-2016-7a	State Bar Standing Committee on Professional Responsibility and Conduct (COPRAC) (Spencer) (12-20-16)	Yes	A	1.3	COPRAC supports the adoption of proposed Rule 1.3 as revised.	No response required.

