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NEW CALIFORNIA RULES OF PROFESSIONAL CONDUCT

Rule 1.3, Diligence

By Tarah Powell-Chen

On May 10, the California Supreme Court issued an order approving new Rules of Professional Conduct for California lawyers, including Rule 1.3, Diligence. The new diligence rules, which go into effect Nov. 1, mark a clear shift towards narrowing, and in some instances eliminating, the differences between the California Rules of Professional Conduct and the American Bar Association's Model Rules of Professional Conduct.

Diligence Requires Dedication and No Undue Delay of Matters

New Rule 1.3 states: "(a) A lawyer shall not intentionally, repeatedly, recklessly or with gross negligence fail to act with reasonable diligence in representing a client; and (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."

Duty of Diligence Is Now Distinct from the Duty of Competence

Prior to the Supreme Court's adoption of

this new rule, the duty of diligence was a component of current Rule 3-110, Failing to Act Competently. Rule 3-110(B) states: "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." In the past, the State Bar's Commission on the Revision of the Rules of Professional Conduct did not adopt Rule 1.3 because it determined that diligence is a professional responsibility standard subsumed within a lawyer's duty of competence, and therefore covered under Rule 3-110.

Proponents of the separate rule for diligence argued that conflating competence with diligence confused lawyers about these separate obligations, resulting in less public protection. The new separate diligence rule tracks ABA Model Rule 1.3, which reasons that although competence and diligence are often viewed together, they are distinct concepts of professional responsibility. For example, competence requires that a lawyer have sufficient learning and skill to ascertain the applicable statute of limitations; diligence requires being aware of the period of limitations, and that the lawyer not allow it to expire due to the lawyer's neglect and inattention.

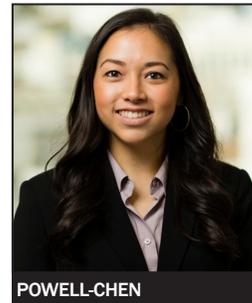
See ABA Model Rules 1.3, Comments 1-3.

Simply put, competence relates to requisite skill, while diligence relates to paying adequate attention.

Rule 1.3 Provides Additional Clarity for Attorney's Duty to Clients

Rule 1.3 provides a clear ethical requirement to act with reasonable diligence when representing a client. The new distinct, separate diligence rule serves to protect both clients and attorneys. For that reason, lawyers should be familiar with the newly adopted rule. Staying on top of deadlines and paying attention to significant developments in a case will reduce the chances of disciplinary complaints and potential legal malpractice claims.

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