

## **Alabama Rules of Professional Conduct**

### **Client-Lawyer Relationship**

#### **Rule 1.3.**

#### **Diligence.**

A lawyer shall not willfully neglect a legal matter entrusted to him.

#### **Comment**

With respect to the standard of care imposed by this rule, a lawyer is only subject to discipline for the willful neglect of a legal matter entrusted to him. This standard has been applied in the courts of this state. The mere failure of the lawyer to act with reasonable diligence and promptness is regrettable, but does not necessarily provide a basis for lawyer discipline under these rules. The failure of a lawyer to act with reasonable diligence and promptness may, however, provide a reason for a client to seek another lawyer, or, when the client is damaged, to consider a civil action against the lawyer for negligence, breach of contract, or other remedy.

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 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. Inevitably, there will be times when a lawyer, through no fault of the lawyer, is unable to complete all work for the client within an optimal time frame. In these circumstances, a lawyer has professional discretion to determine that a client's legal position will not be affected by the lawyer's pursuing for the moment the work of other clients.

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. In other instances, a client's legal position is unaffected by the passage of time. 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. However, delays may be beyond the control of the lawyer, and the timing and pace of a matter may be determined by either courts or other parties.

The client bears ultimate responsibility for entrusting a legal matter to a lawyer. The offer to a lawyer of a legal matter for handling, and the acceptance by the lawyer of the responsibility for the matter, should constitute a clear and unambiguous undertaking by the lawyer and an entrustment by the client. Absent either, the client and the lawyer may hold differing beliefs concerning the lawyer's responsibilities.

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.

### **Comparison with Former Alabama Code of Professional Responsibility**

DR 6-101(A) required that a lawyer not "willfully neglect a legal matter entrusted to him." In a footnote, DR 6-101 referred for a definition of "willful neglect" to *Nelson v. State*, 182 Ala. 449, 62 So. 189 (1913), *State v. Martin*, 180 Ala. 458, 61 So. 491 (1913), and *Haynes v. Alabama State Bar*, 447 So.2d 675 (Ala.1984). EC 6-4 stated that a lawyer should "give appropriate attention to his legal work." Canon 7 stated that "a lawyer should represent a client zealously within the bounds of the law." DR 7-101(A)(1) provided that a lawyer "shall not intentionally ... fail to seek the lawful objectives of his client through reasonably available means permitted by law and the Disciplinary Rules ...." DR 7-101(A)(3) provided that a lawyer "shall not intentionally ... [p]rejudice or damage his client during the course of the relationship ...."