

Rule 1.3. Diligence.

Colorado Court Rules Colorado Rules of Professional Conduct

Client-lawyer Relationship

As amended through Rule Change 2021(10), May 20, 2021, effective July 1, 2021

Rule 1.3. Diligence

Colo. R. Prof'l. Cond. 1.3

Rule 1.3 - Diligence

A lawyer shall act with reasonable diligence and promptness in representing a client.

RPC 1.3

Entire Appendix repealed and readopted April 12, 2007, effective January 1, 2008;
amended and adopted by the Court, En Banc, May 20, 2021, effective 7/1/2021.

COMMENT

[1] A lawyer should pursue a matter on behalf of a client despite opposition, obstruction or personal inconvenience to the lawyer, and take whatever lawful and ethical measures are required to vindicate a client's cause or endeavor. A lawyer must also act with commitment and dedication to the interests of the client and with zeal in advocacy upon 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 have authority to exercise professional discretion in determining the means by which a matter should be pursued. See Rule 1.2. 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.

[2] A lawyer's work load must be controlled so that each matter can be handled competently.

[3] 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. 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. A lawyer's duty to act with reasonable promptness, however, does not preclude the lawyer from agreeing to a reasonable request for a postponement that will not prejudice the lawyer's client.

[4] 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 and the lawyer and the client have not agreed that the lawyer will handle the matter on appeal, the lawyer must consult with the client about the possibility of appeal before relinquishing responsibility for the matter. See Rule 1.4(a)(2). Whether the lawyer is obligated to prosecute the appeal for the client depends on the scope of the representation the lawyer has agreed to provide to the client. See Rule 1.2.

[5] To prevent neglect of client matters in the event of a sole practitioner's death or disability, the duty of diligence may require that each sole practitioner prepare a plan, in conformity with applicable rules, that designates another competent lawyer to review client files, notify each client of the lawyer's death or disability, and determine whether there is a need for immediate protective action. Cf. Rule 28 of the American Bar Association Model Rules for

Lawyer Disciplinary Enforcement (providing for court appointment of a lawyer to inventory files and take other protective action in absence of a plan providing for another lawyer to protect the interests of the clients of a deceased or disabled lawyer); C.R.C.P. 244.

ANNOTATION Law reviews. For article, "The Duty of Loyalty and Preparations to Compete", see 34 Colo. Law. 67 (November 2005). For article, "The New Rules of Professional Conduct: Significant Changes for In-House Counsel", see 36 Colo. Law. 71 (November 2007). For article, "Ethics in Family Law and the New Rules of Professional Conduct", see 37 Colo. Law. 47 (October 2008). For article, "The Rules of Professional Conduct: An Equal Opportunity for Ethical Pitfalls", see 41 Colo. Law. 71 (October 2012). Annotator's note. Rule 1.3 is similar to Rule 1.3 as it existed prior to the 2007 repeal and readoption of the Colorado rules of professional conduct. Relevant cases construing that provision have been included in the annotations to this rule. Public censure appropriate where harm suffered by attorney's client was speculative, attorney retracted his misrepresentations and admitted to his client before the institution of disciplinary proceedings that he had done nothing on the client's appeal, attorney had no prior discipline, he made full and free disclosure of his misconduct to the grievance committee, and he expressed remorse for his misconduct. *People v. Nelson*, 848 P.2d 351 (Colo. 1993). Public censure appropriate where attorney failed to review district attorney's file and the transcript of the preliminary hearing before trial. *People v. Bonner*, 927 P.2d 836 (Colo. 1996). More severe sanction of public censure rather than private censure warranted where attorney continued to rely on methods of communication which had previously failed even after it became evident that the settlement agreement would be withdrawn and the client's interests would be harmed. *People v. Podoll*, 855 P.2d 1389 (Colo. 1993). Public censure instead of private censure was appropriate where attorney failed to respond to discovery requests and motions for summary judgment and the findings of the board did not support the applicability of ABA Standard 9.32(i) as a mitigating factor since there was no medical evidence that attorney was affected by chemical dependency or that alcohol contributed to or caused the misconduct. *People v. Brady*, 923 P.2d 887 (Colo. 1996). Public censure and monitoring conditions for one year, rather than private censure, were appropriate where attorney had a history of private sanctions indicating a pattern of misconduct. The attorney had also had a six-month suspension entered against him during the same time period in which the acts giving rise to censure occurred. Had the acts occurred following the suspension, public censure would be too lenient. *People v. Field*, 967 P.2d 1035 (Colo. 1998). Aggravating and mitigating factors. The following factors are considered aggravating when deciding the appropriate level of discipline: (1) Prior discipline, (2) a pattern of misconduct, and (3) bad faith obstruction of the disciplinary process through total non-cooperation with the disciplinary authorities. Failure to appear before the disciplinary board will cause one to lose the ability to present evidence of mitigating factors. *People v. Stevenson*, 980 P.2d 504 (Colo. 1999). Attorney's restitution agreement was neither an aggravating nor mitigating factor since the attorney did not propose or attempt any form of restitution until after a request for investigation had been filed with the office of disciplinary counsel. *People v. Brady*, 923 P.2d 887 (Colo. 1996). Attorney's argument that public discipline is not appropriate because it would stigmatize a recovering alcoholic was rejected since overriding concern in discipline proceedings is to protect the public through the enforcement of professional standards of conduct. *People v. Brady*, 923 P.2d 887 (Colo. 1996). Public censure appropriate where attorney allowed the statute of limitations to run before filing a complaint on the client's personal injury claim. *People v. Hockley*, 968 P.2d 109 (Colo. 1998). Public censure appropriate where neglect extended over a long period of time, respondent had no prior history of discipline, and the actual harm caused by the misconduct was slight. *People v. Berkley*, 858 P.2d 699 (Colo. 1993). Public censure appropriate for failure to submit settlement papers to client and to take any further action in the matter, in addition to other conduct violating rules. *People v. Berkley*, 858 P.2d 699 (Colo. 1993). Public censure appropriate where attorney neglected and made misrepresentations in two separate legal matters. *People v. Eagan*, 902 P.2d 841 (Colo. 1995). Public censure with additional conditions imposed on lawyer who neglected client's matter and then misinformed client of its status. *People v. Kram*, 966 P.2d 1065 (Colo. 1998). Public censure warranted where, although respondent

did not notify his clients and opposing counsel of his suspension, he did notify the court early in proceedings, did not go forward with court proceedings while on suspension and no actual harm was demonstrated to any of his clients. People v. Dover, 944 P.2d 80 (Colo. 1997). Forty-five-day suspension warranted where respondent neglected child custody matter and had a prior public censure, a prior admonishment, and prior suspensions, but where the respondent did not demonstrate a dishonest or selfish motive and exhibited a cooperative attitude and expressions of remorse. People v. Dowhan, 951 P.2d 905 (Colo. 1998). Attorney's inaction over a period of more than two years and other disciplinary violations warrant suspension for 30 days where there are mitigating factors. People v. LaSalle, 848 P.2d 348 (Colo. 1993). Neglecting to file response to motion for summary judgment and to return client files upon request was sufficient to result in one-year and one-day suspension. People v. Honaker, 847 P.2d 640 (Colo. 1993). Suspension for one year and one day appropriate when attorney neglected to file response to motion for summary judgment and to return client files upon request. People v. Honaker, 847 P.2d 640 (Colo. 1993). Suspension for one year and one day appropriate when lawyer neglects matters of multiple clients and charges unreasonable fees. People v. Reedy, 966 P.2d 1057 (Colo. 1998). Suspension for three years, the longest period available, was appropriate in case where violation of this rule and others would otherwise have justified disbarment but mitigating factors included personal and emotional problems, interim rehabilitation, and remorse. People v. McCaffrey, 925 P.2d 269 (Colo. 1996). Suspension for three years was appropriate in case involving violation of this rule and others, together with attorney's breach of his duty as client's trustee to protect his client, who was a particularly vulnerable victim that was recuperating from a serious head injury. People v. DeRose, 945 P.2d 412 (Colo. 1997). Suspension for three years, rather than disbarment, was appropriate where violation of this rule and others caused serious harm to attorney's clients, but mitigating factors were present, including no previous discipline in 14 years of practice, personal and emotional problems, and cooperation and demonstrated remorse in proceedings. People v. Henderson, 967 P.2d 1038 (Colo. 1998). Three-year suspension warranted for attorney who effectively abandoned and failed to communicate with clients. People v. Shock, 970 P.2d 966 (Colo. 1999). Conduct warranted one-year extension of attorney's suspension. People v. Silvola, 933 P.2d 1308 (Colo. 1997). Disbarment appropriate remedy for attorney who neglected client's legal matter, failed to return retainer after being requested to do so, abandoned law practice, evaded process, and failed to respond to request of grievance committee. People v. Williams, 845 P.2d 1150 (Colo. 1993). Attorney who failed to make sufficient efforts to ensure that his client received timely payments from the trust for which he was the trustee violated this rule. People v. DeRose, 945 P.2d 412 (Colo. 1997). When a lawyer accepts fees from clients and then abandons those clients while keeping their money and causing serious harm, disbarment is appropriate. People v. Steinman, 930 P.2d 596 (Colo. 1997). Attorney's failure to take prompt measures to secure client's rights to share of former spouse's retirement benefits constitutes neglect of a legal matter in violation of this rule. In re Fisher, 202 P.3d 1186 (Colo. 2009) (decided under rules in effect prior to 2007 repeal and readoption). Duty of diligence imposed by this rule violated by attorney's failure to adequately supervise and monitor non-attorney employee's actions on behalf of clients in bankruptcy proceedings. People v. Calvert, 280 P.3d 1269 (Colo. O.P.D.J. 2011). Attorney's conduct violating this rule in conjunction with other disciplinary rules is sufficient to justify six-month suspension, stayed upon completion of two-year probationary period. In re Fisher, 202 P.3d 1186 (Colo. 2009) (decided under rules in effect prior to 2007 repeal and readoption). Previously disbarred attorney who violated this rule would be forced to pay restitution to clients as a condition of readmission. People v. Vigil, 945 P.2d 1385 (Colo. 1997). Conduct violating this rule in conjunction with other disciplinary rules sufficient to justify disbarment where the attorney continued to practice law while on suspension, repeatedly neglecting his clients and failing to take reasonable steps to protect clients' interests. People v. Fager, 938 P.2d 138 (Colo. 1997). Conduct violating this rule in conjunction with other disciplinary rules is sufficient to justify public censure. People v. Titoni, 893 P.2d 1322 (Colo. 1995); People v. Doherty, 908 P.2d 1120 (Colo. 1996); People v. Woodrum, 911 P.2d 640 (Colo. 1996); People v. Murray, 912 P.2d 554 (Colo. 1996); People v. Barbieri, 935 P.2d 12 (Colo. 1997); People v. Williams, 936 P.2d 1289 (Colo. 1997); People v. Buckingham, 938 P.2d 1157 (Colo. 1997); People v. Todd, 938 P.2d 1160 (Colo. 1997); People v. Doherty, 945 P.2d

1380 (Colo. 1997); *People v. Yates*, 952 P.2d 340 (Colo. 1998); *People v. Barr*, 957 P.2d 1379 (Colo. 1998); *People v. Kolko*, 962 P.2d 979 (Colo. 1998). Conduct violating this rule sufficient to justify public censure. *People v. Smith*, 847 P.2d 1154 (Colo. 1993); *People v. Podoll*, 855 P.2d 1389 (Colo. 1993); *People v. Essling*, 893 P.2d 1308 (Colo. 1995); *People v. Belsches*, 918 P.2d 559 (Colo. 1996); *People v. Gonzalez*, 933 P.2d 1306 (Colo. 1997); *People v. Mohar*, 935 P.2d 19 (Colo. 1997); *People v. White*, 951 P.2d 483 (Colo. 1998). Conduct violating this rule in conjunction with other disciplinary rules is sufficient to justify suspension. *People v. Farrant*, 852 P.2d 452 (Colo. 1993); *People v. Barr*, 855 P.2d 1386 (Colo. 1993); *People v. Crews*, 901 P.2d 472 (Colo. 1995); *People v. Kuntz*, 908 P.2d 1110 (Colo. 1996); *People v. Fager*, 925 P.2d 280 (Colo. 1996); *People v. Hohertz*, 926 P.2d 560 (Colo. 1996); *People v. Paulson*, 930 P.2d 582 (Colo. 1997); *People v. Bates*, 930 P.2d 600 (Colo. 1997); *People v. Reynolds*, 933 P.2d 1295 (Colo. 1997); *People v. White*, 935 P.2d 20 (Colo. 1997); *People v. Scott*, 936 P.2d 573 (Colo. 1997); *People v. Harding*, 937 P.2d 393 (Colo. 1997); *People v. Primavera*, 942 P.2d 496 (Colo. 1997); *People v. Field*, 944 P.2d 1252 (Colo. 1997); *People v. Wotan*, 944 P.2d 1257 (Colo. 1997); *People v. Johnson*, 946 P.2d 469 (Colo. 1997); *People v. Wright*, 947 P.2d 941 (Colo. 1997); *People v. de Baca*, 948 P.2d 1 (Colo. 1997); *People v. Babinski*, 951 P.2d 1240 (Colo. 1998); *People v. Rishel*, 956 P.2d 542 (Colo. 1998); *In re Corbin*, 973 P.2d 1273 (Colo. 1999); *In re Bobbitt*, 980 P.2d 538 (Colo. 1999); *In re Demaray*, 8 P.3d 427 (Colo. 1999); *People v. Maynard*, 219 P.3d 430 (Colo. O.P.D.J. 2008); *People v. Staab*, 287 P.3d 122 (Colo. O.P.D.J. 2012). Conduct violating this rule in conjunction with other disciplinary rules is sufficient to justify disbarment. *People v. Walsh*, 880 P.2d 766 (Colo. 1994); *People v. Marsh*, 908 P.2d 1115 (Colo. 1996); *People v. Jenks*, 910 P.2d 688 (Colo. 1996); *People v. Jamrozek*, 921 P.2d 725 (Colo. 1996); *People v. Steinman*, 930 P.2d 596 (Colo. 1997); *People v. Townshend*, 933 P.2d 1327 (Colo. 1997); *People v. Madigan*, 938 P.2d 1162 (Colo. 1997); *People v. Swan*, 938 P.2d 1164 (Colo. 1997); *People v. Sousa*, 943 P.2d 448 (Colo. 1997); *People v. Schaefer*, 944 P.2d 78 (Colo. 1997); *People v. Clyne*, 945 P.2d 1386 (Colo. 1997); *People v. Crist*, 948 P.2d 1020 (Colo. 1997); *People v. Roybal*, 949 P.2d 993 (Colo. 1997); *People v. Holmes*, 951 P.2d 477 (Colo. 1998); *People v. Holmes*, 955 P.2d 1012 (Colo. 1998); *People v. Hindman*, 958 P.2d 463 (Colo. 1998); *People v. Valley*, 960 P.2d 141 (Colo. 1998); *People v. Skaalerud*, 963 P.2d 341 (Colo. 1998); *People v. Gonzalez*, 967 P.2d 156 (Colo. 1998); *In re Bilderback*, 971 P.2d 1061 (Colo. 1999); *In re Huguenot*, 973 P.2d 1267 (Colo. 1999); *In re Tolley*, 975 P.2d 1115 (Colo. 1999); *In re Stevenson*, 979 P.2d 1043 (Colo. 1999); *People v. Rasure*, 212 P.3d 973 (Colo. O.P.D.J. 2009); *People v. Sweetman*, 218 P.3d 1123 (Colo. O.P.D.J. 2008); *People v. Zodrow*, 276 P.3d 113 (Colo. O.P.D.J. 2011); *People v. Calvert*, 280 P.3d 1269 (Colo. O.P.D.J. 2011); *People v. Tolentino*, 285 P.3d 340 (Colo. O.P.D.J. 2012).
