

RULE 1.1 ABA MODEL RULES OF PROFESSIONAL CONDUCT

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ABA MODEL RULES OF PROFESSIONAL CONDUCT ;COMPETENCE

Core Terms

lawyer, competence, required, skill, prepare, handle, field, legal, experience, competent representation, legal problem, representation, practitioner, emergency, adequate, question, special, study, reasonably necessary, requisite knowledge, particular matter, legal knowledge, necessarily, assistance, ordinarily, prohibited, analysis, elements, complex, consult

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A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

Comment

Legal Knowledge and Skill

In determining whether a lawyer employs the requisite knowledge and skill in a particular matter, relevant factors include the relative complexity and specialized nature of the matter, the lawyer's general experience, the lawyer's training and experience in the field in question, the preparation and study the lawyer is able to give the matter and whether it is feasible to refer the matter to, or associate or consult with, a lawyer of established competence in the field in question. In many instances, the required proficiency is that of a general practitioner. Expertise in a particular field of law may be required in some circumstances.

A lawyer need not necessarily have special training or prior experience to handle legal problems of a type with which the lawyer is unfamiliar. A newly admitted lawyer can be as competent as a practitioner with long experience. Some important legal skills, such as the analysis of precedent, the evaluation of evidence and legal drafting, are required in all legal problems. Perhaps the most fundamental legal skill consists of determining what kind of legal problems a situation may involve, a skill that necessarily transcends any particular specialized knowledge. A lawyer can provide adequate representation in a wholly novel field through necessary study. Competent representation can also be provided through the association of a lawyer of established competence in the field in question.

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, for ill-considered action under emergency conditions can jeopardize the client's interest.

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A lawyer may accept representation where the requisite level of competence can be achieved by reasonable preparation. This applies as well to a lawyer who is appointed as counsel for an unrepresented person. See also Rule 6.2.

Thoroughness and Preparation

Competent handling of a particular matter includes inquiry into and analysis of the factual and legal elements of the problem, and use of methods and procedures meeting the standards of competent practitioners. It also includes adequate preparation. The required attention and preparation are determined in part by what is at stake; major litigation and complex transactions ordinarily require more elaborate treatment than matters of lesser consequence.

Maintaining Competence

To maintain the requisite knowledge and skill, a lawyer should engage in continuing study and education. If a system of peer review has been established, the lawyer should consider making use of it in appropriate circumstances.

Model Code Comparison

DR 6-101(A)(1) provided that a lawyer shall not handle a matter "which he knows or should know that he is not competent to handle, without associating himself with a lawyer who is competent to handle it." DR 6-101(A)(2) required "preparation adequate in the circumstances." Rule 1.1 more fully particularizes the elements of competence. Whereas DR 6-101(A)(3) prohibited the "[N]eglect of a legal matter," Rule 1.1 does not contain such a prohibition. Instead, Rule 1.1 affirmatively requires the lawyer to be competent.

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