

COMMONWEALTH OF MASSACHUSETTS

At the Supreme Judicial Court holden at Boston within and for said Commonwealth on the twenty sixth day of March, in the year of our Lord two thousand and fifteen:

present,

<u>HON. RALPH D. GANTS</u>	)	Chief Justice
	)	
<u>HON. FRANCIS X. SPINA</u>	)	
	)	
	)	
<u>HON. ROBERT J. CORDY</u>	)	Justices
	)	
	)	
<u>HON. MARGOT BOTSFORD</u>	)	
	)	
	)	
<u>HON. FERNANDE R.V. DUFFLY</u>	)	
	)	
	)	
<u>HON. BARBARA A. LENK</u>	)	
	)	
	)	
<u>HON. GERALDINE S. HINES</u>	)	

ORDERED: That Chapter Three of the Rules of the Supreme Judicial Court of Massachusetts is hereby amended as follows:

Rule 3:07 By striking out Mass. R. Prof. C. 1.1 - 1.4 and the comments thereto and inserting in lieu thereof the new Mass. R. Prof. C. 1.1 - 1.4 and the comments thereto as attached hereto.

- Rule 3:07 By striking out Mass. R. Prof. C. 1.5, comment [4] and inserting in lieu thereof the new comment [4] thereto as attached hereto.
- Rule 3:07 By striking out Mass. R. Prof. C. 1.6 - 1.12 and the comments thereto and inserting in lieu thereof the new Mass. R. Prof. C. 1.6 - 1.12 and the comments thereto as attached hereto.
- Rule 3:07 By striking out Mass. R. Prof. C. 1.13, comments [3], [6], and [7] and inserting in lieu thereof the new comments [3], [6], and [7] thereto as attached hereto.
- Rule 3:07 By striking out Mass. R. Prof. C. 1.14, paragraph (c) and comment [8] and inserting in lieu thereof the new paragraph (c) and the new comment [8] thereto as attached hereto.
- Rule 3:07 By striking out Mass. R. Prof. C. 1.15 - 3.7, 3.9 - 5.1, 5.3 - 6.2, 7.1 - 8.4 and the comments thereto and inserting in lieu thereof the new Mass. R. Prof. C. 1.15 - 3.7, 3.9 - 5.1, 5.3 - 6.2, and 7.1 - 8.4 and the comments thereto as attached hereto.
- Rule 3:07 By striking out Mass. R. Prof. C. 9.1 and the comments thereto and Mass R. Prof. C. 9.2 and inserting in lieu thereof the new Mass. R. Prof. C. 1.0 and the comments thereto as attached hereto.

The amendments accomplished by this order shall take effect on July 1, 2015.

ORDERED:

<u>RALPH D. GANTS</u>	)	Chief Justice
	)	
<u>FRANCIS X. SPINA</u>	)	
	)	
	)	
<u>ROBERT J. CORDY</u>	)	Justices
	)	
	)	
<u>MARGOT BOTSFORD</u>	)	
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<u>FERNANDE R.V. DUFFLY</u>	)	
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<u>BARBARA A. LENK</u>	)	
	)	
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<u>GERALDINE S. HINES</u>	)	

## CLIENT-LAWYER RELATIONSHIP

### **RULE 1.1: COMPETENCE**

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***

[1] 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. See Rule 7.4.

[2] 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.

[3] 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.

[4] 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***

[5] 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 extensive treatment than matters of lesser complexity and consequence. An agreement between the lawyer and the client regarding the scope of the representation may limit the matters for which the lawyer is responsible. See Rule 1.2(c).

### ***Retaining or Contracting With Other Lawyers***

[6] Before a lawyer retains or contracts with other lawyers outside the lawyer's own firm to provide or assist in the provision of legal services to a client, the lawyer should ordinarily obtain informed consent from the client and must reasonably believe that the other lawyers' services will contribute to the competent and ethical representation of the client. See also Rules 1.2 (allocation of authority), 1.4 (communication with client), 1.5(e) (fee sharing), 1.6 (confidentiality), and 5.5(a) (unauthorized practice of law). The reasonableness of the decision to retain or contract with other lawyers outside the lawyer's own firm will depend upon the circumstances, including the education, experience and reputation of the nonfirm lawyers; the nature of the services assigned to the nonfirm lawyers; and the legal protections, professional conduct rules, and ethical environments of the jurisdictions in which the services will be performed, particularly relating to confidential information.

[7] When lawyers from more than one law firm are providing legal services to the client on a particular matter, the lawyers ordinarily should consult with each other and the client about the scope of their respective representations and the allocation of responsibility among them. See Rule 1.2. When making allocations of responsibility in a matter pending before a tribunal, lawyers and parties may have additional obligations that are a matter of law beyond the scope of these Rules, such as in the context of discovery.

### ***Maintaining Competence***

[8] To maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, including the benefits and risks associated with relevant technology, and engage in continuing study and education.

## **RULE 1.2: SCOPE OF REPRESENTATION AND ALLOCATION OF AUTHORITY BETWEEN CLIENT AND LAWYER**

- (a) A lawyer shall seek the lawful objectives of his or her client through reasonably available means permitted by law and these Rules. A lawyer does not violate this Rule, however, by acceding to reasonable requests of opposing counsel which do not prejudice the rights of his or her client, by being punctual in fulfilling all professional commitments, by avoiding offensive tactics, or by treating with courtesy and consideration all persons involved in the legal process. A lawyer shall abide by a client's decision whether to accept an offer of settlement of a matter. In a criminal case, the lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial, and whether the client will testify.