

**STATE OF VERMONT
VERMONT SUPREME COURT
JULY TERM, 2019**

**Order Promulgating Amendments to Comment to Rule 1.1 of the
Vermont Rules of Professional Conduct**

Pursuant to the Vermont Constitution, Chapter II, Section 37, it is hereby ordered:

1. That the Comments to Rule 1.1 of the Vermont Rules of Professional Conduct be amended as follows (new matter underlined):

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

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Maintaining Competence

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[9] A lawyer's mental, emotional, and physical well-being may impact the lawyer's ability to represent clients and to make responsible choices in the practice of law. Maintaining the mental, emotional, and physical well-being necessary for the representation of a client is an important aspect of maintaining competence to practice law. See also Rule 1.16(a)(2).

Board's Notes—2019 Amendment

This amendment grew out of the work of the Vermont Commission on the Well-Being of the Legal Profession. The Commission was created in response to *The Path to Lawyer Well-Being: Practical Recommendations for Positive Change*, a report issued by the National Task Force on Lawyer Well-Being, <http://lawyerwellbeing.net>. The report cites staggering rates at which behavior health problems affect lawyers. The Professional Responsibility Board is cognizant of the impact that behavioral health issues have had on Vermont lawyers. Since 2016, as many lawyers have been transferred to disability inactive status as were from 2000 to 2016.

This amendment is intended to address behavioral health issues that adversely affect a lawyer's fitness to practice. In that sense, the amendment urges lawyers to be cognizant of the toll that the profession may take on its members if behavioral health issues are

ignored. The amendment is intended to remind lawyers that their behavioral health may impact clients and the administration of justice, and to encourage lawyers to employ preventive strategies and self-care.

Disciplinary proceedings should not follow from poor health. Enforcement should proceed only in cases of actionable misconduct. See A.O. 9, Rule 21.

2. That these comments, as amended, are prescribed and promulgated effective September 9, 2019. The Board's Notes are advisory.

Dated in Chambers at Montpelier, Vermont, this 9th day of July, 2019.



Signed by the Vermont Supreme Court

Paul L. Reiber, Chief Justice

Marilyn S. Skoglund, Associate Justice

Beth Robinson, Associate Justice

Harold E. Eaton, Jr., Associate Justice

Karen R. Carroll, Associate Justice