Ethics:
Rule 3.2 - When Is Strategic Deliberateness Dilatory Litigation?

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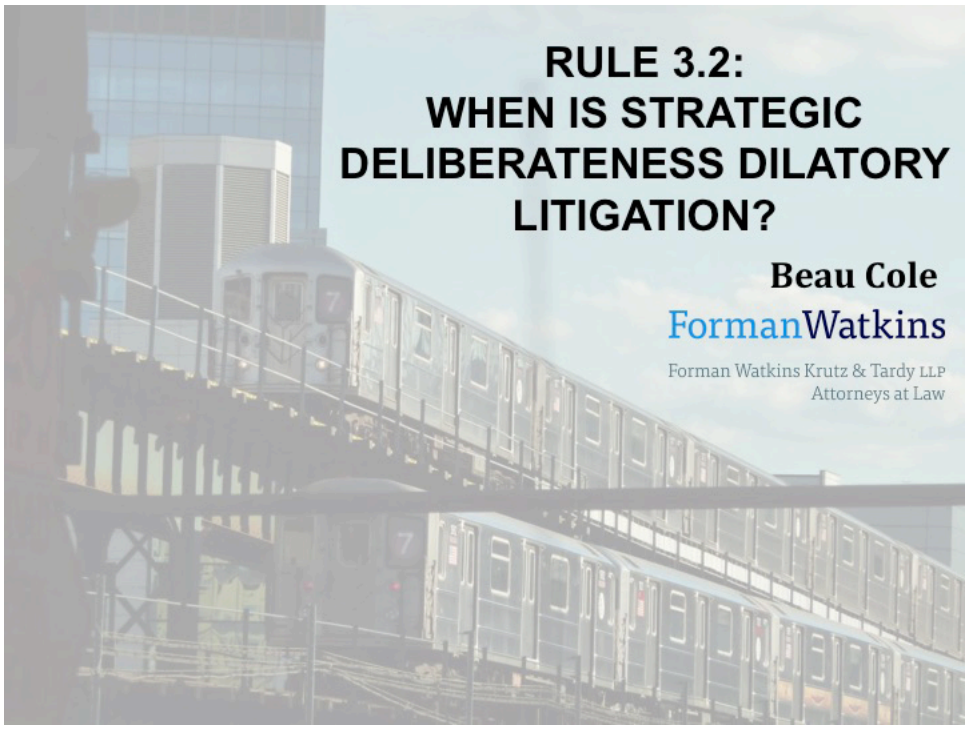
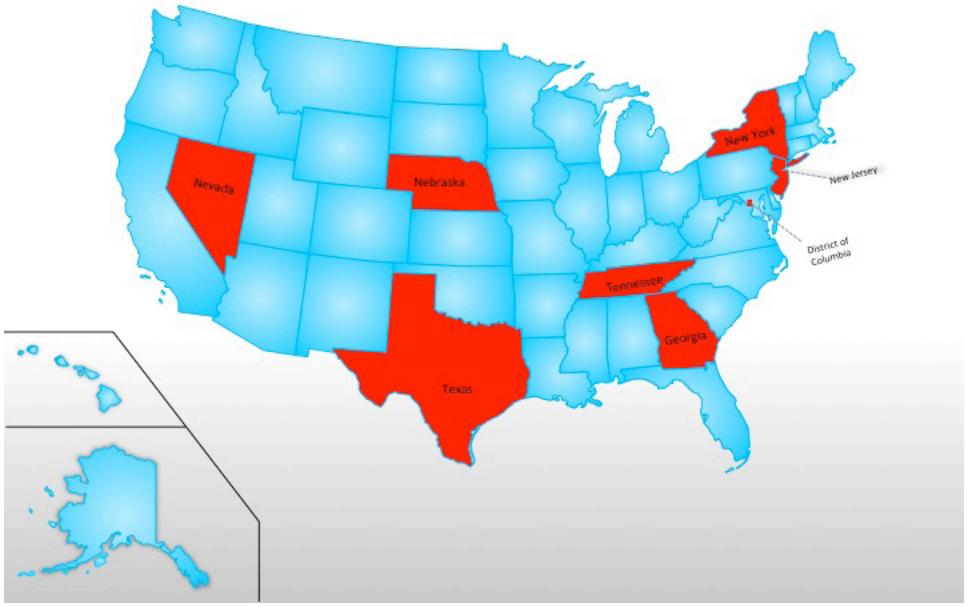


RULE 3.2: "REASONABLE EFFORTS…TO EXPEDITE"

ABA MODEL RULE 3.2. EXPEDITING LITIGATION

A LAWYER SHALL MAKE REASONABLE EFFORTS TO EXPEDITE LITIGATION CONSISTENT WITH THE INTERESTS OF THE CLIENT

VARIATIONS OF ABA RULE 3.2: STATE BY STATE



VARIATIONS OF ABA RULE 3.2: A CLOSER LOOK

DISTRICT OF COLUMBIA	GEORGIA	NEBRASKA
Adds (a): In representing a client, a lawyer shall not delay a proceeding when the lawyer knows or when it is obvious that such action would serve solely to harass or maliciously injure another. • (b): Identical.	Adds: "The maximum penalty for a violation of this Rule is a public reprimand."	In the lawyer's representation of a client, a lawyer shall not file a suit, assert a position, conduct a defense, delay litigation or take other action on behalf of the client when the lawyer knows or when it is obvious that such action would serve merely to harass or maliciously injure another.

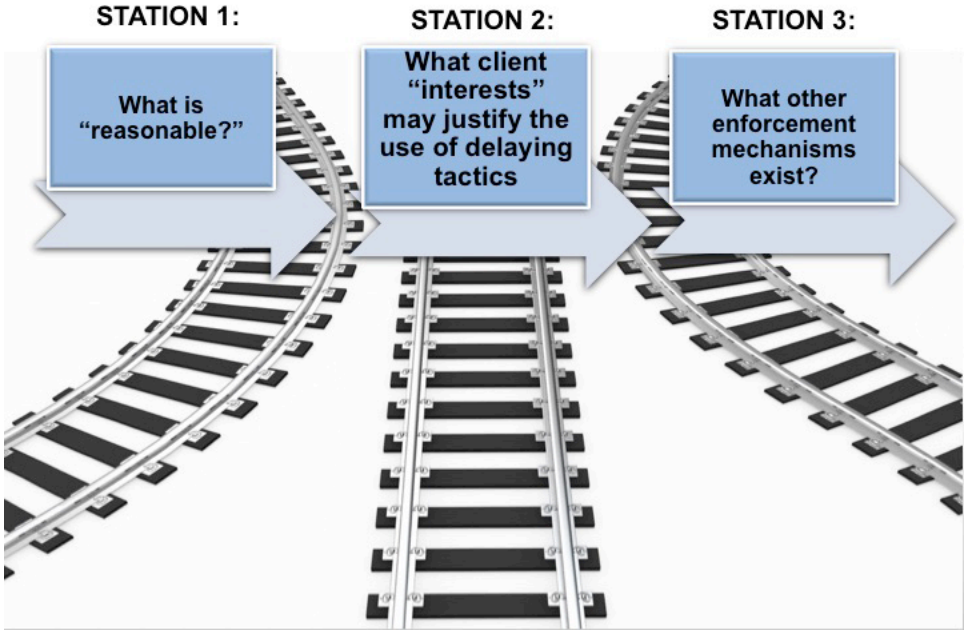
VARIATIONS OF ABA RULE 3.2: A CLOSER LOOK

NEVADA	NEW JERSEY	NEW YORK
Adds: (b) The duty … does not preclude a lawyer from granting a reasonable request from opposing counsel for an accommodation … or from disagreeing with a client's wishes on administrative and tactical matters.	Adds at the end: "..and shall treat with courtesy and consideration all persons involved in the legal process."	In representing a client, a lawyer shall not use means that have no substantial purpose other than to delay or prolong the proceeding or to cause needless expense. **No consideration for client "interests."*

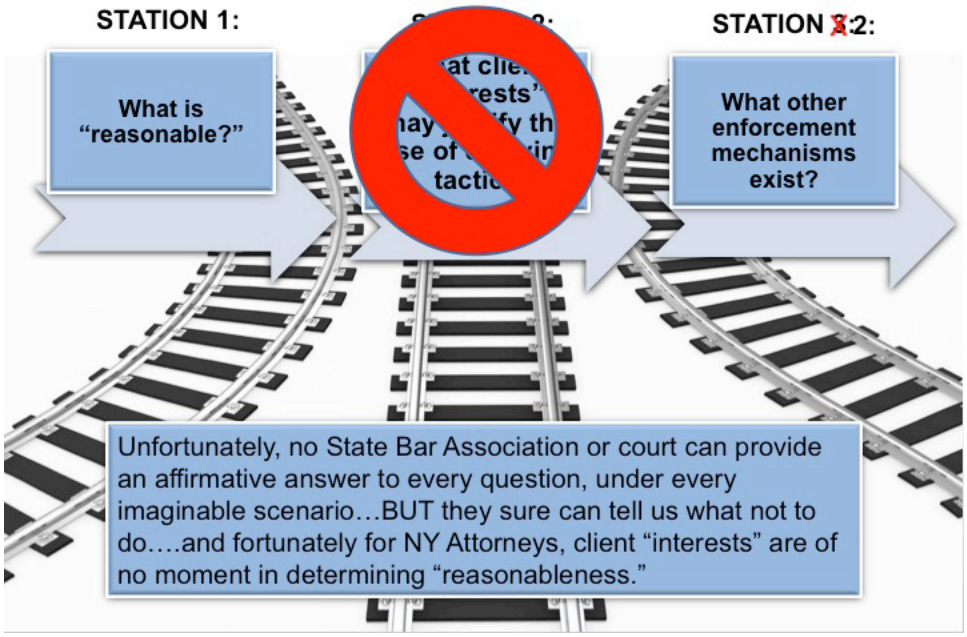
VARIATIONS OF ABA RULE 3.2: A CLOSER LOOK

TENNESSEE	TEXAS	CA / OR / VA
"A lawyer shall make reasonable efforts to expedite litigation." **No consideration for client "interests."*	In the course of litigation, a lawyer shall not take a position that unreasonably increases the costs or other burdens of the case or that unreasonably delays resolution of the matter.	**Did Not Adopt**

RULE 3.2 OBSERVATIONS…*BY THE STATION*



RULE 3.2 OBSERVATIONS…*BY THE STATION*



STATION 1: RULE 3.2 COMMENT… IS "REASONABLE" DEFINED?

MODEL RULE 3.2 COMMENT:

Dilatory practices bring the administration of justice into disrepute. Although there will be occasions when a lawyer may properly seek a postponement for personal reasons, it is not proper for a lawyer to routinely fail to expedite litigation solely for the convenience of the advocates. Nor will a failure to expedite be reasonable if done for the purpose of frustrating an opposing party's attempt to obtain rightful redress or repose. It is not a justification that similar conduct is often tolerated by the bench and bar. *The question is whether a competent lawyer acting in good faith would regard the course of action as having some substantial purpose other than delay.* Realizing financial or other benefit from otherwise improper delay in litigation is not a legitimate interest of the client.

APPLYING THE BRAKES IN NY: STRATEGIC DELAY

NY R. Prof. Conduct 3.2 (22 NYCRR 1200.0) DELAY OF LITIGATION.

> **In representing a client, a lawyer shall not use means that have no purpose other than to delay or prolong the proceeding or to cause needless expense.**

Comment:
Dilatory practices bring the administration of justice into disrepute. Tactics of delay are prohibited if their only substantial purpose is to frustrate an opposing party's attempt to obtain rightful redress or repose. It is not a justification that such tactics are often tolerated by the bench and bar. *The question is whether a competent lawyer acting in good faith would regard the course of action as having some substantial purpose other than delay or needless expense*. Seeking or realizing financial or other benefit from otherwise improper delay in litigation is not a legitimate interest of the client.

NY R. PROF. CONDUCT 3.2: MODEL RULE DEPARTURE?

NY R. Prof. Conduct 3.2 departs from Model Rules.

- No affirmative duty to expedite; Affirmative duty not to use improper means/tactics
- No explicit consideration for "client interests"
- Comment eliminates Model Rules' "personal reasons" exception
- Encompasses former Disciplinary Rule, DR 7-102(A), prohibiting action "when it is obvious that such action would serve merely to harass or maliciously injure another."

APPLYING THE BRAKES: *THE* NEW YORK HYPOTHETICAL*

Adverse Counsel requests "courtesy" copies of publicly available files to develop her response to a default judgment. Although Attorney X has the documents available, he plans to refuse for strategic reasons, knowing that his refusal will cause Adverse Counsel the time and expense of locating and copying the documents from the court.

Q: Is Attorney X behaving unethically???

A: No. Provided that there is no law or court rule compelling production, Rule 3.2 does not create an obligation to share information- especially where Attorney X's client would suffer an "implicit cost" to do so.

- NY State Bar Assn. Comm. on Prof. Ethics Op 984 [2013]("[A] lawyer shall not take affirmative steps which result in 'needless expense' but that mere refusal to cooperate, as here, does not constitute such an affirmative step…")

STATION 2: ENFORCEMENT/CONNECTION TO OTHER RULES

"Stand Alone" sanctions for Rule 3.2 violations are rare. And where they do occur, the Model Rules generally do not provide an independent basis for third-party claims- especially in NY.

Beatie v. Delong, 164 A.D.2d 104, 108 [1st Dept. 1990](Attorneys immune unless a third party sustains injury as a result of "improper exercise of authority…fraud, collusion or of a malicious or tortious act.")

Most 3.2 violations are discussed in the context of violations of statutes, court rules or orders, including:

- **F.R.C.P. 37 sanctions claims arising from discovery disputes and violations of F.R.C.P. 16**
- **28 U.S.C. §1927 and F.R.C.P. 11 sanctions claims**

Ernest F. Lidge, Client Interests and A Laywer's Duty to Expedite Litigation: Does Model Rule 3.2 Impose Any Independent Obligations?, 83 St. John's L. Rev. 307 (2009).

STATION 2: EXEMPLAR ENFORCEMENT STATUTES/RULES

28 U.S.C. §1927

"Any *attorney…who so multiplies the proceedings in any case unreasonably and vexatiously* may be required by the court to satisfy personally the excess costs, expenses, and attorney's fees reasonably incurred because of such conduct."

F.R.C.P. 11

"By presenting to the court a pleading, written motion, or other paper…[attorney certifies that it] is not being presented for any improper purpose, such as to harass, *cause unnecessary delay*, or needlessly increase the cost of litigation…"

F.R.C.P. 16

Section (a) encourages *"early disposition"* and *"discourag[es] wasteful pretrial activities*." To accomplish that end, the Magistrate "must issue a scheduling order" with sanctions available for noncompliance. *See* F.R.C.P. 16(a) and (f).

STATION 2, LINE 1: HYPOTHETICAL

Q: Attorney seeks additional time to respond to defendants' summary judgment motions, and the request is granted, but the attorney never files a response. Is that conduct ethical under RPC 3.2?

A: No.

Q: What about appearing for a status conference, but leaving before that conference takes place to tend to the client?

A: No.

Giangrasso v. Kittatinny Regional High Sch. Bd. Of Educ., 865 F.Supp. 1133, 1140 (D.C. N.J. 1994)(Attorney's failure to file opposition to defendants' summary judgment motion and "[keeping] both the court and defense counsel waiting several hours while he was inexplicably absent," exhibited "unwillingness to comply with fundamental rules of practice.")

STATION 2, LINE 2: HYPOTHETICAL

Q: In a post-judgment dispute over an interplead judgment, is it ethical for an attorney to file suit against the other claimant, then distribute copies to "newspapers, law journal and other publications, while concomitantly distributing copies to members of the legal community" for the purpose of coercing settlement?

A: No, especially when the underlying Complaint is "meritless," the offending attorney constantly added or removed parties depending on the success of his efforts to invoke settlement, and that attorney had 36 other documented instances of questionable ethical behavior.

> *Kramer v. Tribe*, 156 F.R.D. 96, 98 (D.C. N.J. 1994) (Sanctions upheld where meritless filings and "'Rambo'-style approach to litigation'" resulted in a "clear violation" of RPC 3.2., F.R.C.P. 11 and 28 U.S.C. §1927.)

STATION 2, LINE 3: HYPOTHETICAL

Q: Attorney refuses to withdraw claims after learning that the facts do not support legal claims or punitive damages claims against certain defendants. Is that conduct ethical under Rule 3.2?

A: No. After learning the facts, the Attorney "should have conformed his pleadings" or dismissed certain claims prior to motion hearings under Rule 3.2. "Same would have limited the motions practice and thus expedited the litigation."

> ***Wise v. Wash. Cnty.*, 2015 U.S. Dist. LEXIS 50926, *62 (W.D. Pa., April 17, 2015)**
>
> *The parties' "relentless bickering and rancor" made the litigation more onerous and multiplied the proceedings. Both attorneys ordered to attend "professionalism" CLEs. *Id*. at *116.

STATION 2, LINE 4: HYPOTHETICAL

Attorney admitted PHV engages in a pattern of objectionable tactics to disrupt and delay discovery including interrupting deponents' answers, initiating inappropriate arguments, accusing adversaries of evading questions, shouting and calling witnesses liars. The court struck the attorney's PHV admission citing Rule 3.2.

Q: Is a conclusive finding of a violation of Rule 3.2 sufficient to justify revocation of PHV admission?

A: No. Recognizing that the attorney saw litigation as a "form of mortal combat which [he] must win at any and all costs," the court concluded that the sanction imposed by the lower court outweighed the delay-related prejudice caused by the attorney's actions.

***Mruz v. Caring, Inc.*, 166 F. Supp. 2d 61, 69 (D.C. N.J., Sept. 26, 2001).**

STATION 2: OTHER NY NOTES

"Discipline or other relief" may be imposed if *any* attorney- violates the New York State Rules of Professional Conduct.

See Local Civil Rule 1.5(b)(5); See also, *In re Morisseau*, 763 F.Supp. 2d 648 (S.D.N.Y. Feb. 7, 2011)(Attorney sanctioned after requesting multiple extensions, failing to comply with orders granting extensions and taking multiple, baseless appeals of most resultant, unfavorable rulings).

"While a pro se party is generally entitled to direct his own litigation, standby counsel may not advance or assist in advancing…claims that are designed merely to harass another or to delay the proceeding."

NY State Bar Assn. Comm. on Prof. Ethics Op 949 [2012]

Misleading representations to secure extensions of time violate F.R.C.P. 6(b), Rule 3.2 and are sanctionable under F.R.C.P. 11. The "focus is [generally] on the purpose rather than the effect of the sanctioned attorney's activities."

***Rankin v. City of Niagara Falls*, 293 F.R.D. 375, 382 (W.D.N.Y. Apr. 11, 2013)(internal citations omitted)**

RULE 3.2 PRACTICE POINTS

1. Examine the forum state's version of Rule 3.2

2. Determine whether or not the "strategically deliberate" means is:

   a. "Reasonable" under the "competent lawyer…good faith…" guideline;
   b. has a "substantial purpose" other than to delay, prolong or cause needless expense;
   c. Clearly separated from your client's pecuniary interests; and
   d. Congruent with any existing court order or rule

3. And finally…when considering or approving "strategically deliberate" tactics, remind your counsel of the universally approved, but unwritten implementation directive…

WHEN IMPLEMENTING "STRATEGIC DELIBERATENESS…"

In house counsel and trial counsel alike are often faced with scenarios where delay for the sake of strategic advantage appears to be the best course of action. However, a number of ethical obligations must be carefully considered when making that decision. The nature of the proposed delay, the purpose of the proposed delay and the method of the proposed delay must become a part of that equation. Is it ethical to delay funding a court-approved settlement until the fiscal quarter closes? Is it proper to postpone a hearing to allow co-defendants additional time to allocate settlement shares? May we purposely submit an additional set of discovery after a dispositive motion is filed to support a prematurity argument?

All of these questions seem to fall within the ambit of the American Bar Association's (ABA) Model Rules of Professional Conduct. ABA Model Rule 3.2 (Rule 3.2) implores lawyers to make "reasonable efforts to expedite litigation." Some commentators suggest that Rule 3.2 imposes no greater obligation on counsel than other Model Rules.[1] While that position may be true, a cursory reading of the Model Rules seems to suggest that lawyers should never purposely undertake any effort which may result in delay - no matter how "strategic." But not so fast, Rule 3.2 requires counsel to make such efforts in a manner that is "consistent with the interests" of her client. So what is the astute trial lawyer to do? As with most matters of significance in the greatest profession on the earth, the answer seems to depend on who's asking the question and in what jurisdiction is the question being asked. Before we may determine whether or not our intended strategy(ies) pass muster, we must determine what may be considered dilatory.

MODEL RULE 3.2's DUTY TO EXPEDITE: HISTORY & CONTEXT

In 1983, the Board of Governors of the American Bar Association adopted its Model Rules of Professional Conduct. Of those Rules, several are of direct significance to moving cases through and out of the American judicial system.[2] Rule 3.2 appears to be the catchall "expediency" directive for the modern practitioner. It reads:

> ABA MODEL RULE 3.2. EXPEDITING LITIGATION: A LAWYER SHALL MAKE REASONABLE EFFORTS TO EXPEDITE LITIGATION CONSISTENT WITH THE INTERESTS OF THE CLIENT

Model Rules of Prof'l Conduct. R. 3.2 (1983). The question of what strategically deliberate actions are reasonable or unreasonable under Rule 3.2 varies greatly, and remains somewhat unclear.

DEFINING THE "REASONABLE" EFFORT

The question of reasonableness is often resolved on a case-by-case, state-by-state basis. While the Model Rules provide some guidance, no State Bar Association, Ethics Opinion or Court decision can resolve the overriding question of what is "reasonable" under every imaginable scenario. The Comment to Rule 3.2 provides is somewhat instructive:

> MODEL RULE 3.2 COMMENT: Dilatory practices bring the administration of justice into disrepute. Although there will be occasions when a lawyer may properly seek a postponement for personal reasons, it is not proper for a lawyer to routinely fail to expedite litigation solely for the convenience of the advocates. Nor will a failure to expedite be reasonable if done for the purpose of frustrating an opposing party's attempt to obtain rightful redress or repose. It is not a justification that similar conduct is often tolerated by the bench and bar. The question is whether a competent lawyer acting in good faith would regard the course of action as having some substantial purpose other than delay. Realizing financial or other benefit from otherwise improper delay in litigation is not a legitimate interest of the client.

Model Rules of Prof'l Conduct. R. 3.2 cmt (1983). On its face, the Comment seems to provide the answer outright, but the Model Rules clearly state that the "text of each Rule is controlling." See Model Rules of Prof'l Conduct, Scope. With that in mind, it seems somewhat clear that under the "competent lawyer" standard, a lawyer cannot seek delay for (1) "personal reasons," i.e. convenience, (2) to purposely delay redress, and (3) solely for the client's financial benefit. Again, other ethical rules are involved in that determination, but specific examples of prohibited conduct rarely appear in those rules.

Fortunately, some states adopting Rule 3.2 or some version of it, have further clarified the question. But again, a universal answer remains somewhat elusive. And for that reason, the astute practitioner must examine every applicable ethical rule in her forum, in conjunction with the comments, opinions and case law construing those rules.

1. "Reasonable" defined: The Non-Conforming States' Versions of Rule 3.2

1 Lidge, Ernest F., Client Interests and a Lawyer's Duty to Expedite Litigation: Does Mode Rule 3.2 Impose Any Independent Obligations?, 83 St. John's L. Rev. 307 (2009).

2 E.g. Model Rule of Prof'l Conduct R. 1.3(1983) ("A lawyer shall act with reasonable diligence and promptness in representing a client.") See also, Model Rules of Prof'l Conduct R. 3.1 and 3.3.

Since its adoption in 1983, 39 states have adopted Rule 3.2 with no substantive modifications.[3] Georgia, Nebraska, Nevada, New Jersey, New York, Tennessee, Texas and the District of Columbia have adopted widely varying versions of Rule 3.2.

In those states that have not adopted Rule 3.2 verbatim, some of those states' lawyers seems to have an easier task in determining "reasonableness" of the proposed strategic delay. Those states' versions of Rule 3.2 better define the prohibited conduct in the body of the rule itself. For example:

- District of Columbia. The District of Columbia's version of Rule 3.2 adds that a lawyer may not engage in delay when "the lawyer knows or when it is obvious that such action would serve solely to harass or maliciously injure another." D.C. Rules of Prof'l Conduct 3.2.
- Nebraska. The Cornhusker state's version of Rule 3.2 implicitly defines dilatory conduct as a "suit…position… defense…[or other action that] the lawyer knows or when it is obvious that such action would serve merely to harass or maliciously injury another." Neb. Ct. R. of Prof'l Cond. §3-503.2.
- New York. Although the language is very similar to that posed by Rule 3.2's Comment, the New York Board of Bar Commissioners has clearly defined what may constitute dilatory tactics. Lawyers are prohibited from employing any "means that have no substantial purpose other than to delay or prolong the proceeding or to cause needless expense." NY R. Prof'l Conduct 3.2 (22 NYCRR 1200.0).
- Texas. "Lone Star" lawyers are prohibited from "tak[ing] a position that unreasonably increases the costs or other burdens of the case or that unreasonably delays resolution of the matter. Tex. Disciplinary R. Prof'l Conduct 3.02.

It seems that these states have attempted to provide more guidance as to what is reasonable, by placing emphasis on the commonly accepted effect of the dilatory position, i.e. the harm experienced by the adverse party.[4]

The remaining non-conforming states, Georgia, Nevada, New Jersey and Tennessee, all have different directives; none of which help determine "reasonableness." One state, Georgia, requires a lawyer to make reasonable efforts much like the Model Rule. The most significant, and noteworthy, difference however lies in the Peach State's specified penalty for violations of that rule: a "public reprimand." See Ga. R. of Prof'l Conduct 3.2. With a set penalty in place, it begs the question of whether that penalty is actually sufficient to deter counsel from engaging in dilatory conduct. Stated differently, in house counsel and trial counsel alike may be tempted to conduct a "risk v. benefit" analysis before employing a strategically deliberate means of delay. Of course, other Rules should certainly influence that decision against improper delay, but depending on what's at stake, some could consider the risk and resultant penalty relatively small.

THE "CLIENT INTERESTS" CONUNDRUM

> "Realizing financial benefit from otherwise improper delay is litigation is not a legitimate interest of the client." See Model Rules of Prof'l Conduct. R. 3.2 cmt (1983).

The Model Rule requires expediency consistent with the interests of the lawyer's client. Easy enough, right? Maybe not. The Comment to that rule however limits or narrows what "client interests" do not satisfy its mandate. Specifically, the Comment instructs practitioners that "financial or other benefit from otherwise improper delay" is not a legitimate reason to delay litigation. What is not clear is what other client interests may justify a delay. While it seems that the Comment's "competent lawyer" approach might resolve the issue, the astute lawyer should probably look to the case law and opinions for guidance.

1. Client Interests? Maybe… Maybe Not!

Much like the differing definitions and approaches to a lawyer's duty to expedite litigation, the states vary widely when it comes to consideration of "client interests." Some states' versions of Rule 3.2 do not require any consideration for the client when a purposeful delay is being considered.[5] For example, and in a notable departure from the Model Rule, Nevada empowers the attorney with full control over all tactical decisions- even those which could possibly invoke the duty to expedite irrespective of the client's wishes. See Nev. Rules of Prof'l Conduct 3.2. Other states' versions of Rule 3.2 clarify that a lawyer does not violate the expediency mandate by granting extensions of time to opposing counsel- irrespective of the client's wishes.[6]

In sum, the wise practitioner must consider her state's version of Rule 3.2 in conjunction with that rule's comment and interpreting opinions.

3 California, Oregon and Virginia did not adopt The Model Rules. See American Bar Association, Alphabetical List of States Adopting Model Rules, available at http://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/alpha_list_state_adopting_model_rules.html.

4 Texas' Disciplinary Rules of Professional Conduct provides additional, clarifying directives and examples of acceptable and unacceptable conduct. For example, seeking additional time to prepare discovery responses is "both the right and the duty of a lawyer." However, "counsel[in] or assist[ing] a client in seeking a multiplication of the costs or other burdens of litigation as the primary purpose, because the client perceives himself as more readily able to bear those burdens than is the opponent… [and] to gain an advantage in resolving the matter unrelated to the merits," is impermissible. See Tex. Disciplinary R. Prof. Conduct 3.02 cmt.

5 See NY R. Prof'l Conduct 3.2 (22 NYCRR 1200.0). See also, Tenn. Sup. Ct. R. 8, RPC 3.2 ("A lawyer shall make reasonable efforts to expedite litigation.")

6 See Nev. Rules of Prof'l Conduct 3.2. See also, FN 5, supra.

ENFORCEMENT OF MODEL RULE 3.2's DUTY TO EXPEDITE

With all of the inherent lack of clarity as to what is "reasonable," and what "client interests" may justify a delay, it should come as no surprise that "stand alone" violations of Rule 3.2 are rare. Typically, Rule 3.2 violations occur when other Model Rule violations occur. In fact, Rule 3.2 is most commonly mentioned in the context of violations of court orders, the Rules of Civil Procedure or other statutes that require expediency.[7] The most commonly found parallel rules, orders, etc. are discussed below.

1. Rules of Court

There are several Rules of Court that suggest or require a lawyer to move his cases through the system with deliberate speed. Rule 3.2 complements the following Federal Rules of Civil Procedure.

a. Pretrial Procedure: Rule 16.

Fed. R. Civ. P. 16 governs the pretrial procedure of all matters pending before Federal Courts. With respect to expediency, Section (a) encourages "early disposition" and "discourag[es] wasteful pretrial activities." To accomplish that end, the Magistrate "must issue a scheduling order" with sanctions available for noncompliance. See Fed. R. Civ. P. 16(a) and (f).

b. Representations to the Court: Rule 11.

Fed. R. Civ. P. 11 requires an attorney to certify that any pleading, written motion or other paper "is not being presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation." See Fed. R. Civ. P. 11(b). Adopted in 1983, Rule 11 embodies language nearly identical to that found in the Official Comment to Model Rule 3.2. Consequently, reasonable litigators recognize a parallel track between the two rules, but also recognize the enforcement mechanism present in the Federal Rule.

Many jurisdictions' Local Uniform Civil Rules of the Unites States District Courts also contain a parallel version of Fed. R. Civ. P. 11. For example, Mississippi's local rules provide for "appropriate" sanctions, when "any delay or continuance occasioned by a party's failure to abide by these rules." See L.U. Civ. R. 11(b). Under that local rule, counsel must "immediately notify the appropriate judge if a pending motion is resolved by the parties or if the civil action is settled." Id. Courts throughout the country have referred to Rule 3.2 when addressing sanctions requests by aggrieved litigants or imposing Fed. R. Civ. P. 11 sanctions sua sponte.[8]

c. Discovery Violations & Related Orders: Rule 37.

The Federal Rules of Civil Procedure also contain an expediency enforcement mechanism for discovery, but only when those matters are brought before the court. That mechanism, Fed. R. Civ. P. 37 provides specific remedies when a discovery-related dispute is brought before the court. In the delay context, most of the cases construing Rule 37 and Model Rule 3.2 jointly involve (1) violations of specific orders, (2) refusal to provide timely responses to discovery requests, or (3) a refusal to provide complete responses to discovery requests.

d. Statutory Enforcement: 28 U.S.C. §1927.

Rule 3.2 also finds itself parallel with the "big stick" statutory sanction for dilatory conduct, 28 U.S.C. §1927 (1980). Under that statute, any attorney or "other person" found to have "unreasonably and vexatiously" multiplied the proceedings may be required by the court to satisfy personally the excess costs, expenses, and attorney's fees reasonably incurred because of such conduct." Id. With similar language and presumably similar intent, courts often find a violation of Rule 3.2 when addressing claims for sanctions under this statute.[9]

PRACTICE POINTS

Again, no "silver bullet" exists for every imaginable scenario, in every jurisdiction in which the astute practitioner finds himself faced with the decision to strategically delay a proceeding. Considering the history of Rule 3.2, states' adaptations of that rule and the common enforcement mechanisms for a lawyers' duty to reasonably expedite litigation, a few practice points come to mind.

- First, lawyers must familiarize themselves with Rule 3.2 and the forum state's version of same. To the extent that any differences exist, it makes sense to examine the Comments to that state's rule and gather any guidance offered as to what may or may not be "reasonable."
- Second, the lawyer should carefully examine the means and overall strategy of delay. If a "competent" lawyer could reasonably construe either or both as purposely delaying redress, unreasonably prolonging the litigation for personal reasons or causing needless expense, the lawyer should probably recommend a different

7 See FN 1, supra.

8 See, e.g. Comm. On the Conduct of Attys. v. Oliver, 510 F.3d 1219 (10th Cir. 2007)(disciplinary panel found concurrent violations of Rule 11 and Utah equivalent of Rule 3.2); DiSante v. Litton Industrial Automation Systems, Inc., 1991 U.S. App. LEXIS 4711 (6TH Cir. 1991)(defendant's "stonewalling" discovery effort resulted in concurrent violation of Rule 11 and Model Rule 3.2); In re MSJ Las Croabas Props., 530 B.R. 25 (Bankr. P. R. Mar. 13, 2015)(failure to respond to trustees requests after filing frivolous motion found violative of Rule 3.2 and Rule 11).

9 E.g. Wise v. Wash. Cnty., 2015 U.S. Dist. LEXIS 50926, No. 10-1677 (W.D. Pa. Apr. 17, 2015) (attorney sanctioned for failure to withdraw punitive damage claims after learning that facts and law did not support claim)

approach. Similarly, if the strategically deliberate means is incongruent with a pre-existing court order or rule, the astute lawyer should probably change her approach or advise her client accordingly. The forum jurisdiction's reported decisions and ethics opinions are very useful tools in that determination.

- Next, the lawyer should consider the extent to which the delaying strategy and means is consistent with the "client interests," where applicable. And in so doing, the lawyer should probably not consider the client's financial interest as a primary consideration for imposing any strategically deliberate delay.
- Third, the astute lawyer should probably make every effort to limit the delay for only as long as absolutely necessary. Most reported decisions suggest that trial judges, appellate courts and State Bar Associations carefully examine the record of delay in determining whether sanctions are appropriate. And where sanctions may be due, the length of the delay is considered when determining what specific sanctions will sufficiently compensate the adverse party and deter future unreasonable conduct.
- Finally, as a matter of common sense and professional courtesy, the lawyer should not purposely engage adverse counsel with threats of delay. This conduct will surely appear in the record if sanctions become an issue. For that reason, it is extremely unlikely that the facts of the underlying litigation will absolve counsel or client from the penalties of engaging in "Rambo-style" litigation.

With careful consideration of the above points, the decision to delay for the sake of strategic deliberateness may be easier for the astute practitioner.

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Areas of Practice / Main Focus

- Commercial Litigation
- Drugs and Medical Devices
- Environmental Litigation
- Financial Services
- Insurance
- Personal Injury
- Product Liability

Important Litigation Involvement

- First-chair involvement in more than 20 civil and criminal jury trials and over 50 bench trials in MS Circuit, County and Chancery Courts
- Obtained nuisance value settlement in favor of global lift manufacturer in catastrophic electrical burn in one of the country's most "plaintiff friendly" jurisdictions
- Successfully tried numerous auto negligence claims in some of Mississippi's most volatile venues
- Recent successful defense of individual defendant in HIV virus exposure claim
- Currently prosecuting and defending a wide variety of domestic claims on behalf of indigent and underprivileged Mississippians
- Current representation and defense of asbestos-related predecessor/successor liability claims against world-wide chemical supplier
- Obtained directed verdict dismissing bad-faith claims against property insurer
- Successfully defended one of the largest privately held multifamily housing corporation against ADA/FHA civil rights claims and negotiated "first of its kind" contractor indemnity contract
- Continued representation of one of the country's largest non-governmental, affordable multifamily housing developer and management company

Professional Recognition

- Mid-South Rising Stars® since 2010: General Litigation
- Mississippi Bar Association Mississippi Volunteer Lawyers' Program Curtis E. Coker Award To Justice Award
- Martindale-Hubbell® Distinguished AV™ Peer Review Rated
- Capital Area Bar Association Pro Bono Award
- Selected as PORTICO Jackson's 2013 "PORTICO 10" top attorneys
- Top 50 Under 40, Mississippi Business Journal 2015

Pro Bono

- Mississippi Volunteer Lawyers Project
- New Life For Women Foundation, Inc.

Education

- Mississippi College School of Law, J.D.
- University of Southern Mississippi, B.A. English