

Due Dates in the Real World: Extensions, Equity, and the Hidden Curriculum

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ABSTRACT

“Our job is to prepare them for the real world.” This statement is not an unusual, nor an unreasonable, justification for pedagogical decisions throughout legal education. The dual role of law school as both an intellectually challenging academic endeavor and a training ground for the profession places it at an intersection ripe for “real world” considerations. As one example, many professors argue that inflexible deadlines (and dire consequences should they fail to be met) are necessary preparation for legal practice. However, as many experienced attorneys will report, extensions are hardly uncommon in the practice of law. This Article argues that the ability to not only ask for an extension, but also to avoid procrastination, anticipate when an extension will be needed, and communicate professionally in that request, are skills that law schools must teach. The necessity of these skills, and their place in the law school curriculum, is a matter of professionalism, equity, and practicality. Bringing together educational pedagogy, the Model Rules of Professional Conduct, and actual cases of attorney discipline, this Article makes the case for extensions in law school—and in the “real world.”

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INTRODUCTION

Whether an attorney focuses on litigation or transactional work, federal or state practice, criminal defense or business law, deadlines are a uniting source of organization and anxiety.¹ Often imposed by the court and regulatory bodies, deadlines help lawyers prioritize and ensure the smooth operation of our legal system. Deadlines are part of both the operational and emotional life of legal practice: the looming presence of hearing dates and filing requirements can provide structure to workdays and workflows, while also adding to the environment of stress that has come to typify legal practice.² Late nights and last-minute filings may sometimes be a matter of zealous advocacy.³ More often, however, a desperate rush across the finish line is a sign of disorganization, an untenable workload, unrealistic supervisor expectations, or some combination of these factors.⁴ Even where

1. Because this Article addresses academic and workplace settings, the terms “due dates” and “deadlines” are used interchangeably. Generally, “due date” is more common in the academic setting and “deadline” is more common in a workplace setting.

2. Stella J. Phillips, *Putting It All Together: Law Schools’ Role in Improving Appellate Practice*, 31 U. ARK. LITTLE ROCK L. REV. 135, 153–56 (2008). (“Lawyers labor under extreme time pressure—filing deadlines and hearing dates always seem to be looming.”); Dylan Jackson, *Legal Professionals Were Already Struggling With Stress and Isolation, and the Pandemic Has Made Things Much Worse*, LAW.COM (May 3, 2021, 5:00 AM), <https://www.law.com/americanlawyer> [<https://perma.cc/6MQ4-6UNA>] (“[P]ressure from clients again came up as a frequent gripe. Lawyers have long said that unreasonable client demands and artificial deadlines, exacerbated by the internal demands of partners seeking to accommodate clients, are one root cause of their mental health strife.”).

3. *Normal Procedural Regularity*, DIVIDED ARGUMENT (May 15, 2021), <https://overcast.fm/+uZSQFuoqk/26:13> [<https://perma.cc/62XF-QKZU>].

4. Mindy Rattan, *Overworked Lawyer Admonished for Missed Discovery Deadlines*, BLOOMBERG LAW (May 10, 2018, 2:50 PM), <https://news.bloomberglaw.com/business-and-practice/overworked-lawyer-admonished-for-missed-discovery-deadlines> [<https://perma.cc/5473-5YYV>] (“The Supreme Court of New

deadlines are ultimately met, poor time management and a failure to plan can lead to poor quality filings, careless errors, and sloppy writing.

Given the importance of meeting deadlines in legal practice, it is understandable that law schools seek to introduce students to the consequences of poor planning. However, rather than focusing on strict deadlines as a means of avoiding such failures, the legal profession (beginning in law school) should tackle the lackluster time management skills, misunderstandings about procrastination, and “hidden curriculum” around extensions that are at the source of the problem. Too often, these issues and skills are left unaddressed by the law school curriculum.⁵ This Author’s suggestion is not that deadlines should cease to exist or that professors grant every extension in every case. Instead, this Author proposes that by explicitly talking to students about the role of deadlines and time management in our classrooms and our policies around extensions, professors can take an important step towards fostering both professionalism in our students and equity in our classrooms.

Talking to students about deadlines also means talking to them about extensions. Addressing extensions is not about anticipating failure, dismissing the importance of deadlines, or creating a way to avoid planning ahead. Instead, such discussion pushes students to think beyond the due date itself to explicitly examine what it will take to meet the deadline and whether they have frankly assessed both their skill and preparation. As competence and diligence require reflecting both on one’s skill level and one’s workload, so does clear-eyed planning for a deadline. The sooner students realize the steps involved in completing the task at hand, the sooner they can assess their own preparation and, if needed, request more time. Attempting to avoid the reality that a student—or attorney—needs more time and preparation only delays the inevitable reckoning. Failing to request extensions and, as a result, missing deadlines or submitting subpar work, can lead to lost cases, unhappy clients, and attorney discipline. Such failures can

Jersey May 2 admonished a lawyer who said his superiors “set him up to fail” by assigning him over 100 cases at once, leading him to miss discovery deadlines in four of the matters.”). Substance abuse (a serious issue among attorneys) may also lead to missed deadlines. See Mark A. Webster, *Understanding Discipline and Reporting Requirements for Lawyer DUIs*, 27 PRO. LAW. 1, 19 (2020), <https://www.americanbar.org> [<https://perma.cc/2WSA-UJDE>] (“Beyond the obvious mental and physical health concerns related to alcohol abuse, impaired lawyers may miss important deadlines, make other critical mistakes, and act inappropriately around clients and colleagues.”).

5. See, e.g., R. Schrier & A. Torres, *Before Midnight: Deadlines, Diligence, and the Practice of Law*, FED. LAW. 68, 69 (Dec. 2014), <https://law.fiu.edu/wp-content/uploads/sites/2/2014/12/Deadlines-Diligence-and-Practice-of-Law.pdf>. [<https://perma.cc/3P69-SHF5>]:

Your legal education prepared you to analyze cases, dissect statutes, and ponder slippery slopes. But unless you enrolled in an externship or a clinic, the only deadlines that concerned you involved final exams or writing assignments. The lack of exposure to time and practice management partially accounts for the recent surge of time-management books for lawyers. But who has time to read them?

happen for several reasons—poor calendaring systems, incorrect estimates for how long a task might take, or unanticipated challenges to health or family life.

Regardless of the reason, the stress of anticipated—and missed—deadlines is not unique to lawyers: it is also a serious barrier to success in law school. Students who fail to submit assignments on time may see their relationships with professors impacted, their stress and shame levels rise, and their transcripts marred. Despite this overlap between law school and practice, overt discussion of time management is not often a focus of law school classes. Instead, it is often assumed that students arrive at a graduate education with these skills established; unfortunately, that is not the case. Not only do many students still lack effective time management and planning skills, but they also are unclear about the possibility and process of asking for an extension.

A lack of discussion around extensions is not for lack of interest about such a process on the part of students. The prevalence of informal online discussions among students, for example, indicates that confusion around how and when to ask for extensions (and even how to email professors) is a common concern.⁶ Students are adrift because they do not know whether they can ask for extensions, how to do so, or what the consequences might be of asking.⁷ A lack of communication between professors and students often leads to student anxiety, poor work completed at the last minute, and a professor fixation on assessing a student's truthfulness in making the request. Professors' jokes about students' excuses for missing class and deadlines are all too common and, frankly, distasteful.⁸ Such "jokes" both reveal (and create) the antithesis of a learning environment and are ironic given that faculty are hardly immune from poor time management.⁹

Despite the prevalence of professors who doubt the sincerity of a student's need for an extension, the struggle with deadlines is not confined to students. The conflict between professors' insistence on inflexibility and our own struggles to

6. Alexander Ruiz, *How to Ask a Professor for a Paper Extension*, WIKIHOW (Aug. 12, 2020), <https://www.wikihow.com/Ask-a-Professor-for-a-Paper-Extension> [https://perma.cc/PL3N-NLEG]. There are also discussions of other types of extension requests including for job offers (*Requesting a Deadline Extension*, VIRGINIA TECH, https://career.vt.edu/job-search/deciding/requesting_extension.html [https://perma.cc/PQN4-XL6F] (last visited Dec. 27, 2021)), law school acceptances, and deposits (*Deposit Deadline Extension Request*, REDDIT, https://www.reddit.com/r/lawschooladmissions/comments/862p4p/deposit_deadline_extension_request/ [https://perma.cc/RC6A-PU5P] (last visited Dec. 27, 2021)). The skill of asking for extensions is one of interest beyond academia. See Kat Boogaard, *A Realistic Solution if You Just Realized There's No Way You'll Get Everything Done*, MUSE, <https://www.themuse.com> [https://perma.cc/6AGV-5DW6] (last visited Dec. 27, 2021).

7. *What Will Happen if You Missed Your Assignment Deadline at College?*, QUORA, <https://www.quora.com/What-will-happen-if-you-missed-your-assignment-deadline-at-college> [https://perma.cc/6JAR-NBTW] (last visited Dec. 27, 2021) (students seeking advice from each other on the impact of missing a deadline).

8. Maryellen Weimer, *'Prof, I Need an Extension ...'*, FAC. FOCUS (Nov. 3, 2017), <https://www.facultyfocus.com/articles/effective-classroom-management/prof-need-extension/> [https://perma.cc/9RAH-SVRV] (the cruelty and perversity of the professor who saw sending a condolence note as a "gotcha" is truly bizarre).

9. See Cameron Stracher, *Reading, Writing, and Citing: In Praise of Law Reviews*, 52 N.Y.L. SCH. L. REV. 349, 364 (2007).

meet deadlines does not go unnoticed by students. Regarding the law review process, one student wrote: “I can count on one hand the number of papers that have been submitted to our law review in a timely manner. The list of excuses by untimely authors is legion. Professors can also be rude, non-communicative, supercilious, and simply AWOL.”¹⁰ It seems that professors, students, and practicing attorneys alike are united by the common experience of being swamped by tasks, imperfect at prioritization, and either confused or aggravated by the work of anticipating deadlines and asking for extensions.¹¹

But the state of time management and professor-student miscommunication is not all gloom and doom. Discussion of deadlines and extensions is fertile ground for improving professor-student relationships, developing law students’ professionalism and self-efficacy, and creating a culture of civility both in law school and in practice. Due dates and deadlines exist in the real world, as does an obligation to meet them. But so, too, do improved approaches to time management, requests for extensions, and the possibility of a more practical, equitable, and civil legal profession.

This Article proceeds as follows: Part I provides a review of the role of deadlines in the everyday practice of law, making the case that requests for extensions are not a detour from “the real world” of practice but rather an integral part of it. Part II examines where in the *Model Rules of Professional Responsibility* (*Model Rules*) an implied discussion of extensions might be found and summarizes several disciplinary decisions that highlight the need for better practice around extensions. Part III makes an argument for a more robust discussion of extensions in law school: at its heart, an issue of equity. When rules around extensions are left vague as part of a “hidden curriculum” that students are presumed to have access to, those with preexisting privileges or skills may unintentionally benefit. Including these discussions within legal education also allows for important lessons on practicality and professionalism beyond the *Model Rules* and may positively impact student procrastination and improve self-direction. Turning focus from the student to the professor, the Article discusses extensions within a pedagogy of empathy that may not only increase student trust and learning, but also simplify professors’ own experience. The Article concludes with concrete ideas for law professors interested in revisiting—and potentially revising—their extension policies.

10. *Id.* The article goes on to say that “[u]ntil faculty are prepared to lead by example meeting deadlines, behaving cordially, responding to inquiries, governing the unruly—we are in no position to criticize students for their management style.” *Id.*

11. See, for example, attorney-targeted articles about seeking extensions (Randi-Lynn Smallheer, *Seeking Time Extensions in Litigation*, LEXISNEXIS (Apr. 7, 2020), <https://www.lexisnexis.com/lexis-practical-guidance/the-journal/b/pa/posts/seeking-time-extensions-in-litigation> [<https://perma.cc/3N3X-HLAF>]) and missing filing deadlines (Daniel R. Cooper, *Best Practices for Missing a Filing Deadline in Federal Court*, AM. BAR ASS’N (July 11 2018), <https://www.americanbar.org> [<https://perma.cc/886N-A2BR>]).

I. EXTENSIONS GRANTED AND DENIED

Adhering to deadlines and due dates is integral to being a responsible lawyer, advocate, and part of an efficient and effective justice system.¹² This is true when a lawyer's practice is bound by the Federal Rules of Civil Procedure and the almost dozen deadlines around pleadings and service of process that arise in litigation.¹³ Deadlines are also important in capital cases,¹⁴ family law,¹⁵ corporate filings,¹⁶ and mergers and acquisitions.¹⁷ Failing to meet deadlines can result in serious consequences for both attorneys and their clients. Clients may miss the opportunity to file an appeal, to have their case dismissed, or even—in a worst-case scenario—to halt their execution.¹⁸ Missed deadlines can have severe consequences—and it is often the clients who bear the impact: “in at least 80 capital cases in which attorneys have missed the deadline, it is almost always the

12. See Schrier & Torres, *supra* note 5, at 72 (“A single extension might seem innocuous in isolation, but various extension requests over a complex court docket will cause a multiplier effect that disrupts the court’s administration and efficiency. Moreover, an extension and the ensuing scheduling changes will impact the other litigants and attorneys involved in the case.”).

13. See FED. R. CIV. P. 12, 114, 15; *see also* James Mooney, *Deadlines in Civil Litigation: Towards a More Equitable Framework for Granting Extensions*, 37 YALE L. & POL’Y REV. 683, 687 (2019) (“Parties in federal court must obey time limits in federal and local rules of procedure as well as court orders. In the Federal Rules of Civil Procedure alone, there are at least eleven deadlines regarding pleadings and service of process that commonly arise in litigation.”); *Common Deadlines in Federal Litigation Chart*, Westlaw (database updated Apr. 2022).

14. See, e.g., Ken Armstrong, *Death by Deadline, Part 2*, MARSHALL PROJECT (Nov. 16, 2014), <https://www.themarshallproject.org/2014/11/16/death-by-deadline-part-two> [<https://perma.cc/H588-F66T>]; Marc D. Falkoff, *The Hidden Costs of Habeas Delay*, 83 U. COLO. L. REV. 339, 353 (2012) (providing context to filing deadlines for habeas cases; explaining the significance of avoiding delays to protect freedom).

15. See, e.g., *In re Adoption/Guardianship No. 93321055/CAD*, 687 A.2d 681, 698 (Md. 1997) (explaining the fairness of deadlines for parents filing a notice of objection to guardianship petition); MASSACHUSETTS CONTINUING LEGAL EDUCATION, INC. § 11.7.1 (1st ed. 2016, with 2020 supplement) (illustrating different rules and deadlines surrounding family law, including sanctions potentially imposed against parties for missing deadlines).

16. Routine SEC filings and state corporate filings have inflexible due dates, for example. Regarding the SEC process for filing extensions, see Rule 12b-25 (SEC Notification of Late Filing Rule, 17 C.F.R. § 240.12b-25 (2016)), providing a clear process for extension that automatically gives a company extra time to complete a filing where they timely provide the reason for their delay on the appropriate form. The extension is automatically granted. See *Form 12b-25 Q & A*, ASK SEC. LAW. 101, <https://www.securitieslawyer101.com/2019/form-12b-25-extension/> [<https://perma.cc/526G-TEF7>] (last visited Dec. 28, 2021); *see also* recent SEC releases related to delinquent filings, though the delinquency actions will rarely point to attorney misconduct (*Delinquent Filings Program*, SEC (Oct. 25, 2005), <https://www.sec.gov/divisions/enforce/delinquent.htm> [<https://perma.cc/NKL5-MNRF>]). Keeping track of such deadlines is one of the most important roles midlevel and junior attorneys play on the corporate side.

17. See, e.g., Terry Calvani and Karen Alderman, *BRIC in the International Merger Review Edifice*, 43 CORNELL INT’L L.J. 73, 99 (2010) (describing strict deadlines with business practices, including mergers, in the international sphere).

18. See, e.g., Marjorie A. Silver, *Commitment and Responsibility: Modeling and Teaching Professionalism Pervasively*, 14 WIDENER L.J. 329, 336 (2005) (explaining ethics, focusing on meeting deadlines and warning law students of the consequences that arise from missing deadlines even slightly); Att’y Disciplinary Bd. v. Baldwin, 857 N.W.2d 195, 211–15 (Iowa 2014) (pointing out that a violation of ethics occurs when attorneys miss deadlines consistently rather than missing only one deadline).

prisoner alone who suffers the consequences.”¹⁹ Put another way: “When lawyers stumble, only their clients fall.”²⁰

Courts, regulators, and opposing counsel consider requests for extensions in several ways. Sometimes extensions are granted broadly in extreme or widespread situations, for instance, in response to COVID-19.²¹ However, even in more routine practice, extensions are both commonly requested and granted. Practicing attorneys engaged in litigation may apply for extensions by court order or stipulation.²² The ease of receiving an extension will, of course, vary from court to court (and judge to judge). While an attorney should never assume an extension will be granted, where a movant has acted in good faith, provided a reason for the delay, and there is no danger of prejudice to the nonmoving party, courts generally respond favorably under the doctrine of excusable neglect.²³ While there is widespread disagreement about what exactly constitutes excusable neglect, it is understood as a weighing test of equitable factors within the

19. Ken Armstrong, *When Lawyers Stumble, Only Their Clients Fall*, WASH. POST (Nov. 16, 2014), <https://www.washingtonpost.com/sf/national/2014/11/16/when-lawyers-stumble-only-their-clients-fall/> [perma.cc/VK7S-KP5D].

20. *Id.*

21. *See, e.g., Supreme Court of Virginia Offers Extensions to Deadlines Governing Lawyers Due to COVID-19 Pandemic*, VA. ST. BAR (Apr. 14, 2020), https://www.vsb.org/site/news/item/extensions_to_deadlines_COVID [https://perma.cc/RM3H-AZXL] (announcing that the Virginia Supreme court is “extending a number of compliance deadlines that affect Virginia lawyers to ease their professional responsibilities during the COVID-19 emergency”); Thirty-First Emergency Order Regarding the Covid-19 State of Disaster, 629 S.W.3d 175, 175–77 (Tex. 2020) (extending deadlines under a previous order for the Texas Eviction Diversion Program); John J. Gilluly III & Brent L. Bernell, *SEC Provides Filing Extension for Companies Affected by COVID*, DLA PIPER (Mar. 5, 2020) <https://www.dlapiper.com/en/us/insights/publications/2020/03/sec-provides-filing-extension-for-companies-affected-by-coronavirus/> [https://perma.cc/M77H-V5AN] (noting that the SEC issued an order extending filing deadlines for companies impacted by COVID).

22. Smallheer, *supra* note 11.

23. *Excusable Neglect*, LEGAL INFO. INST., https://www.law.cornell.edu/wex/excusable_neglect [https://perma.cc/F49E-7JJQ] (“In determining whether the neglect is excusable, courts take a flexible approach and consider all relevant circumstances. [C]ourts also particularly look to (1) the danger of prejudice to the nonmoving party; (2) the length of delay and its potential impact on judicial proceedings; (3) the reason for the delay; and (4) whether the movant acted in good faith. The Supreme Court has held that indifference for the motion’s deadlines are inexcusable.”); *see also* *Arena v. Vill. of Suffern*, 519 F. App’x 61, 61–62 (2d Cir. 2013) (discussing where a court may grant an extension for an untimely motion if the parties had excusable neglect); James Mooney, *Deadlines in Civil Litigation: Toward a More Equitable Framework for Granting Extensions*, 37 YALE L. & POL’Y REV. 683, 689 (2019) (explaining how lawyers may receive more extensions to deadlines and even excusing late filings as a result of excusable neglect); Daniel R. Cooper, *Best Practices for Missing a Filing Deadline in Federal Court*, AM. BAR ASS’N (Jul. 11, 2018), <https://www.americanbar.org/groups/litigation/committees/business-torts-unfair-competition/practice/2018/best-practices-for-missing-a-filing-deadline-in-federal-court/> [https://perma.cc/9T5B-CUW3] (“[T]he Federal Rules contain a unique concept known as ‘excusable neglect’ to mitigate the harshness of being completely barred from filing your paper or document by a missed filing deadline. Excusable neglect is mentioned twice in the Federal Rules—first, excusable neglect acts to extend time to respond to court-mandated deadlines during the proceeding, and second, excusable neglect can act as a reason for relief from judgment after proceedings have, at least initially, concluded.”).

discretion of the court.²⁴ Despite the word “excusable” giving a somewhat pardon-like impression of forgiveness, “whether neglect is ‘excusable’ is the conclusion one reaches after considering the pertinent factors, not an independent element with moral content.”²⁵ A minority of courts require unique or extraordinary circumstances to find excusable neglect.²⁶ Unsurprisingly, where there is no reason given or an attorney has provided inconsistent reasons for the need, courts often deny a petition for an extension.²⁷

Lawyers may face discipline for a variety of behaviors related to poor time management; however, rather than focusing on a missed deadline, disciplinary boards instead focus on patterns of behavior.²⁸ Grounds for disciplinary action may include instances where an attorney fails to appropriately ask for extensions,²⁹ or makes false statements in either pleadings or in communicating with opposing attorneys as to the reasons for seeking extensions of time.³⁰ A review of the *Model Rules* and disciplinary decisions addressing attorney mismanagement of deadlines reveals that it is rarely lateness itself that is the reason for attorney discipline, but instead, the related lying, deception, poor organization, or repeated violations and failures that caused the missed deadlines and egregious behavior.

24. See *Pincay v. Andrews*, 389 F.3d 853, 860 (9th Cir. 2004) (citing *Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. P’ship*, 507 U.S. 380, 395 n.14 (1993):

Pioneer cautioned against ‘erecting a rigid barrier against late filings attributable in any degree to the movant’s negligence.’ There should similarly be no rigid legal rule against late filings attributable to any particular type of negligence. Instead, we leave the weighing of *Pioneer’s* equitable factors to the discretion of the district court in every case.

25. *Id.* at 860 (9th Cir. 2004) (Berzon, J., concurring).

26. See, e.g., *Graphic Comms. Int’l Union Local 12-N v. Quebecor Printing Providence, Inc.*, 270 F.3d 1, 8 (1st Cir. 2001) (holding that the district court did not abuse its discretion when it denied a motion for extension, reasoning that granting an extension absent extraordinary or unique circumstances could lead to carelessness or inattention); *Coleman v. Johnson*, 184 F.3d 398, 402 (5th Cir. 1999) (citing *Rashidi v. Am. President Lines*, 96 F.3d 124, 128 (5th Cir. 1996)) (“A ‘garden variety claim of excusable neglect’ does not support equitable tolling.”); *Birl v. Estelle*, 660 F.2d 592, 593 (5th Cir. 1981) (“The party requesting the extension must make a clear showing that the circumstances causing the delay were unique and that the neglect was excusable.”).

27. See, e.g., *Edwards v. Nutrition*, No. CV-17-02133-PHX-DWL, 2019 U.S. Dist. LEXIS 122748, at *20–21 (D. Ariz. July 23, 2019) (allowing a grant for an extension but later withdrawing the extension as a result of changed circumstances that made it frivolous for the attorney to keep the extension); *Garcia v. City of New York*, 2017 U.S. Dist. LEXIS 46623, at *17 (S.D.N.Y. Mar. 28, 2017) (explaining that if there is no good cause for granting an extension, the judge must determine whether four factors have been met that would avoid prejudice to the opposing party).

28. See, e.g., *Att’y Disciplinary Bd. v. Baldwin*, 857 N.W.2d 195, 206–07 (Iowa 2014) (acknowledging that a violation of ethics occurs when attorneys miss deadlines consistently rather than missing only one deadline).

29. See, e.g., *Att’y Disciplinary Bd. v. Said*, 869 N.W.2d 185, 190 (2015) (attorney charged with violation of professional conduct after missing appeal deadline and not self-reporting missed deadline).

30. See, e.g., *In re Vincenzo Field*, Comm’n No. 2018PR00015 1, 9–15 (Ill. Att’y Registration & Disciplinary Comm’n Hearing Bd. Sept. 3, 2020); Dan Trevas, *Cincinnati Attorney Suspended after Missing Deadline to File Client’s 25-Year Prison Sentence*, CT. NEWS OHIO (Oct. 2, 2018), <http://www.courtnewsohio.gov/cases/2018/SCO/1002/180252.asp#.YCQ-SBNKgXo> [<https://perma.cc/EZ73-L93Q>] (“The Ohio Supreme Court today suspended an attorney who misrepresented to the Court why he failed to meet the deadline to appeal his client’s 25-year prison sentence.”).

As such, our focus should be on teaching students to anticipate the need for extensions, and how and when to ask for them.

II. THE RULES OF PROFESSIONAL RESPONSIBILITY

The obligation to meet deadlines and complete duties in a timely manner is at the heart of professional responsibility.³¹ The *Model Rules* are dual facing: to the attorney—providing “clear guidance to the practitioner”—and also outwardly facing and “comprehensible to the public.”³² As such they set public expectations for attorney conduct, as well as provide guidance to attorneys on their individual decision-making. While due dates and deadlines are not the focus of any one rule—and, indeed, are rarely explicitly mentioned—discussions of the importance of time management and organization appear in Model Rule 1.1 (Competence), Rule 1.3 (Diligence), Rule 3.2 (Expediting Litigation), and are implied throughout the *Model Rules* via their use of terms like “prompt.”

Not all violations of the *Model Rules* lead to formal discipline or a cause of action,³³ and this is true with violations that include the failure to meet due dates and deadlines. In fact, discipline for a missed deadline alone seems to be rare. Discipline has been found appropriate, for example, where an attorney missed discovery deadlines in four matters,³⁴ or where there existed “a pattern of delay, missed deadlines, and failure to request extensions prior to the due date.”³⁵ Rather than being found as the result of one mistake, neglect occurs where the attorney has consistently failed “to perform those obligations that a lawyer has assumed” or consciously disregarded “the responsibilities a lawyer owes to a client.”³⁶ In addition to facing discipline for a pattern of disregard such as multiple missed deadlines, attorneys find themselves in trouble when they lie about the reasons they need extensions,³⁷ or when they knew or should have known they

31. Note that the Model Rules of Professional Conduct “[i]n contrast to the Federal Rules of Civil Procedure or the Federal Rules of Evidence are not independently binding but come into effect only when states choose to adopt [and sometimes amend] certain rules.” See *Model Rules of Professional Conduct*, LEGAL INFO. INST., https://www.law.cornell.edu/wex/model_rules_of_professional_conduct [<https://perma.cc/8HF6-TN6X>] (last updated May 2010) [hereinafter *Model Rules Definition*] (noting that “the MRPC is not the exclusive source of ethical rules in the legal profession. Rather, it co-exists with federal and state statutes, such as the Sarbanes-Oxley Act, the inherent judicial authority to discipline and regulate proceedings by the courts, the general torts, contract, evidence and constitutional law, among others.”).

32. MODEL RULES OF PROF'L CONDUCT pmb1. & scope (2016) [hereinafter MODEL RULES].

33. And, “[f]urther, an attorney’s a violation of the MRPC is not considered negligence per se or malpractice per se.” *Model Rules Definition*, *supra* note 31.

34. Rattan, *supra* note 4.

35. *In re* Disciplinary Matter Involving Brady, 387 P.3d 1 (Alaska 2016).

36. Att’y Disciplinary Bd. v. Van Ginkel, 809 N.W.2d 96, 102 (Iowa 2012).

37. *In re* Vincenzo Field, Comm’n No. 2018PR00015 1, 8–11 (Ill. Att’y Registration & Disciplinary Comm’n Hearing Bd. Sept. 3, 2020) (“Respondent is charged with making false representations, to opposing counsel and in pleadings, as to the reasons he needed additional time to complete discovery, in violation of Rules 3.3(a)(1), 8.4(c) and 8.4(d).”); Rattan, *supra* note 4 (“Rosenbloom missed discovery deadlines in four of the over 100 matters he handled for A&P simultaneously. . . His ‘caseload was so overwhelming’ that four A&P matters ‘slipped through the cracks,’ . . . Rosenbloom sent ‘misleading reports’ to A&P on the status of

would be unable to meet the deadlines and yet failed to seek assistance.³⁸ Attorneys also face discipline where they have been repeatedly disciplined for failure to meet deadlines and have stated they are going to make changes to prevent reoccurrence, yet fail to do so.³⁹

Interestingly, failure to meet a deadline can result from a combination of a lack of competence, diligence, and communication: “[T]he lawyer who is neglecting a case because he doesn’t know what to do doesn’t usually pick up the phone and start a discussion with his client about it. So, failures of communication, competence, and diligence often go together.”⁴⁰ Certainly, failing to inform a client of a missed deadline resulting in the case’s dismissal is a prime example of how neglecting a case, poor time management, and a failure to communicate can combine to result in disciplinary action.⁴¹ Failure to meet deadlines can also arise from improper or mismanaged delegation.⁴² While it is not unusual nor unethical for an attorney to task a non-attorney staff member with calendaring responsibilities, the responsibility for accuracy and compliance ultimately remains with the attorney.⁴³

these matters, the board said. Rosenbloom agreed that he violated New Jersey Rules of Professional Conduct 1.3 (diligence), 1.4 (communications with client), and 8.4(c) (dishonesty, fraud, deceit or misrepresentation).”)

38. *United States v. 5535 Myers Lake Rd.*, No. 1:91-CV-293, 1991 WL 239980, at *3 n.1 (W.D. Mich. Sept. 23, 1991) (“When Attorney . . . knew he was unable to meet the deadline because of his mental condition, he should have withdrawn from the case or associated himself with someone able to meet the deadline. Mich. Rules of Prof. Conduct R. 1.16(a)(2) and 1.1.”)

39. *In re: Michael P. Cooke*, No. 15-1243, 2016 WL 8254820, at *14 (W. Va. 2016). “Disciplinary Counsel noted Respondent had previously asserted in past disciplinary cases he was reviewing office procedures with his staff and making changes so as not to miss a deadline. Disciplinary Counsel inquired as to what changes Respondent made to his office procedures. Respondent was asked to provide a response within 20 days of receipt of the letter. Respondent failed to respond.” *Id.* at *6–7 (internal citations omitted).

40. Mark A. Armitage, *Regulating Competence*, 52 EMORY L.J. 1103, 1103–04 (2003).

41. Disciplinary Actions Taken by the Virginia State Bar, Virginia State Bar, Subcommittee Determination, https://www.vsb.org/profguides/actions_jan06-jun06.html#:~:text=On%20June%2027%2C%202006%2C%20the,be%20considered%20on%20their%20merits. [<https://perma.cc/5R3F-9NW8>];

[T]he Virginia State Bar Second District Committee, Section II, imposed a public reprimand with terms on Aleasa Dawn Leonard for defaulting on criminal appeals. Leonard repeatedly missed appeal deadlines, causing the appeals to be dismissed before they could be considered on their merits. Leonard also failed to advise her clients of the dismissals.

See also In the Matters of Aleasa Dawn Leonard, Before the Second District, Subcommittee of the Virginia State Bar, June 29, 2006, https://www.vsb.org/disciplinary_orders/LeonardDeterm_6-29-06.pdf [<https://perma.cc/5U6P-R2LF>].

42. *See generally* *Pincay v. Andrews*, 389 F.3d 853 (9th Cir. 2004).

43. *Id.* at 856 (“In the modern world of legal practice, the delegation of repetitive legal tasks to paralegals has become a necessary fixture. Such delegation has become an integral part of the struggle to keep down the costs of legal representation. Moreover, the delegation of such tasks to specialized, well-educated non-lawyers may well ensure greater accuracy in meeting deadlines than a practice of having each lawyer in a large firm calculate each filing deadline anew. The task of keeping track of necessary deadlines will involve some delegation. The responsibility for the error falls on the attorney regardless of whether the error was made by an attorney or a paralegal. *See* MODEL RULES R. 5.5 cmt. 2 (2002). We hold that delegation of the task of ascertaining the deadline was not per se inexcusable neglect.”) (internal cites omitted).

Disciplinary bodies are often willing to overlook one missed deadline and are instead particularly concerned with patterns of misconduct in attorney behavior.⁴⁴ This is consistent with the role and purpose of the *Model Rules* and attorney discipline, which is generally understood to focus less on the injury caused to one client (in fact, injury is often not an element of a violation) and instead to identify patterns of bad behavior in order to anticipate and prevent future injury.⁴⁵ The obligation of attorneys to develop time management skills, including applying for extensions when needed, is implied within one of the ideals at the heart of the *Model Rules*: competence.

A. COMPETENCE

“Our fundamental professional duty is competence—the ability to render legal services that are knowledgeable, skillful, and thorough.”⁴⁶ Focused on the attorney-client relationship, Rule 1.1 instructs the lawyer to “provide competent representation to a client.”⁴⁷ To competently represent a client, a lawyer must possess “the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.”⁴⁸ While there is no mention of timely adherence to deadlines within Rule 1.1, there is good reason to infer time-management is an integral part of providing competent representation. “Thoroughness and preparation” imply both knowledge of deadlines (“thoroughness”) and a plan for representation that considers the timeframe (“preparation”). Comment 4 of Rule 1.1 elaborates that competence is not a static quality but rather that “the requisite level of competence *can be achieved by reasonable preparation.*”⁴⁹ This focus on

44. See, e.g., Emily Couric, *The Tangled Web*, 79 AM. B. ASS'N J. 64, 68 (1993):

Under the old Code of Professional Responsibility . . . a one-time incidence of attorney negligence would probably not mandate disciplinary action, for example, if a lawyer thoroughly prepared a lawsuit but inadvertently missed the filing deadline by one day. Disciplinary boards are far more concerned with patterns of neglect rather than single mistakes or incidents of carelessness.

Att’y Disciplinary Bd. v. Bergmann, 938 N.W.2d 16 (Iowa 2020) (“[D]etails matter because not every missed deadline or delay is an ethical violation.”); Att’y Disciplinary Bd. v. Taylor, 814 N.W.2d 259, 265 (Iowa 2012) (“An attorney does not typically commit neglect by missing a single deadline. Instead, neglect involves a consistent failure to perform obligations the lawyer has assumed or a ‘conscious disregard for the responsibilities a lawyer owes to a client,’ and may arise when an attorney repeatedly fails to meet deadlines.”).

45. See, e.g., *In re Abrams*, 689 A.2d 6, 12 (D.C. 1996) (“Disciplinary sanctions are designed to maintain the integrity of the profession, to protect the public and the courts, and to deter other attorneys from engaging in similar misconduct.”); *In re Agostini*, 632 A.2d 80, 81 (Del. 1993) (“Disciplinary proceedings serve: to protect the public; to foster public confidence in the Bar; to preserve the integrity of the profession; and to deter other lawyers”); *In re Kersting*, 726 P.2d 587, 595 (Ariz. 1986) (“[T]he purpose of bar discipline is not to punish the lawyer but to deter others and protect the public.”); see generally Fred C. Zacharias, *The Purpose of Lawyer Discipline*, 45 WM. & MARY L. REV. 675 (2003).

46. RANDALL KISER, *SOFT SKILLS FOR THE EFFECTIVE LAWYER* 268 (2017).

47. MODEL RULES R. 1.1.

48. *Id.*

49. *Id.* (emphasis added).

preparation as an integral part of competence implies that competence requires a degree of foresight and of planning for the future.

Indeed, a certain amount of prediction about the future is required of lawyers, both in terms of predicting the outcome of a case, and preparing for the timely completion of work to ensure that outcome.⁵⁰ Preparation—and more specifically “reasonable preparation”—requires the attorney to consider what level of investment will be necessary to “be sufficiently thorough [or] prepared,”⁵¹ and whether the attorney has both the time and willingness to undertake such an effort. Whether a lawyer has provided competent representation “is a fact-specific inquiry,”⁵² and the standard applied is an objective one that is not dependent on the attorney’s intent.⁵³ Rather than arising as the result of one error, a finding of incompetence generally focuses on the “broader context of the representation,” including the attorney’s preparation.⁵⁴ In the rare instances where an attorney has failed to meet the standard of competence and is deemed “incompetent,” the circumstances are often extreme.⁵⁵ Perhaps due to the broadness of the concept of

50. DOUGLAS O. LINDER & NANCY LEVIT, *THE GOOD LAWYER: SEEKING QUALITY IN THE PRACTICE OF LAW*, 158-59 (2014):

While no lawyer has the ability to consistently predict the future with accuracy, good lawyers distinguish themselves by being better able than most to do so, whether the predictions relate to outcomes of cases they litigate or how another party to a contract they drafted will behave, given a particular turn of events. A lawyer who time and again overestimates his or her prospects of success in litigation, or who is often surprised by events that leave clients unhappy with the contracts he or she drafted, will soon be a lawyer with few clients. Predicting the future, of course, is not done with crystal balls or Ouija boards. It is an exercise that requires the lawyer to draw upon knowledge of case law, about the strengths and weaknesses of evidence, about the behavior of particular judges or juries in specific jurisdictions, and about her own abilities and those of opposing counsel.

51. *Att’y Grievance Comm’n v. Brady*, 30 A.3d 902, 911–12 (Md. 2011) (explaining that when considering a finding of incompetence, a disciplinary body does not require a “showing that the attorney lacked the requisite legal knowledge; rather, it can be established by evidence that the attorney was not sufficiently thorough or prepared”).

52. *In re Eadie*, 36 P.3d 468, 479-80 (Or. 2001); *see also In re Seare*, 493 B.R. 158 (Bankr. D. Nev. 2013):

[A]ttorney fulfills the duty of competence by providing the bundle of services reasonably necessary to achieve the client’s reasonably anticipated result. The inquiry is fact-specific and depends on the client’s individual circumstance. It also depends on the client’s reasonable pre-consultation goals and how they may have been shaped or refocused through consultation with the attorney.

53. *In re Bettis*, 149 P.3d 1194, 1197 (Or. 2006) (“[T]he standard for assessing competence and diligence is an objective one and, thus, is not focused on a lawyer’s mental state.”) (internal quotations omitted); *In re Magar*, 319 Or. 306, 335 (2003) (“We also emphasize that the standard for assessing competence and diligence is an objective one’ the lawyers mental state is irrelevant.”).

54. *In re Magar*, 335 Or. 306, 321 (2003); *State ex rel. Oklahoma Bar Ass’n v. Koss*, 452 P.3d 427, 432 (Nev. 2019) (noting that competent representation may include both “acting competently and diligently on a matter,” including “communicating with client at a level that is reasonably necessary to provide the client with all of the information relating to their case so they may make informed decisions”).

55. *In re Hawver*, 339 P.3d 573, 577 (Kan. 2014) (an extreme case where an attorney had never tried a capital murder case, was not qualified under the ABA standards as a capital defense lawyer, was not familiar with qualifying a jury in a capital case, did not review any of the standards or read any capital cases prior to trial, and did not reduce the size of his practice in the period leading up to the trial during which time he was also campaigning to be the Governor of the State of Kansas).

“competence,” it is rarely the sole focus of disciplinary decisions and instead of ten accompanies an inquiry into an attorney’s diligence.⁵⁶

B. DILIGENCE

Model Rule 1.3 on diligence is succinct: “[a] lawyer shall act with reasonable diligence and promptness in representing a client.”⁵⁷ As with competence, with which “diligence is often inextricably intertwined,” ideas of deadlines and time management are largely inferred through the presence of the word “prompt.” Whereas competence contemplates the “capacity” for an attorney to learn the necessary skills, diligence “might be defined as effort appropriately focused.”⁵⁸ The *Model Rules*’ commentary makes explicit the connection between time management and diligence: “[a] lawyer’s workload must be controlled so that each matter can be handled competently.”⁵⁹ Where attorneys fail to plan, they risk being found incompetent. Comment 3 to Rule 1.3 further elaborates on the connection between time management and diligence, acknowledging that “no professional shortcoming is more widely resented than procrastination.”⁶⁰ Clients resent procrastination because their “interests often can be adversely affected by the passage of time or the change in conditions; in extreme instances, as to when a lawyer overlooks a statute of limitations, the client’s legal position may be

56. Armitage, *supra* note 40, at 1103–04 (2003):

Although much of our disciplinary focus is on lying, cheating, and stealing lawyers, if you look at statistics, you will see that perhaps the biggest problem we might deal with is . . . failures of communication diligence, and competence. One factor for choosing to qualify a lawyer’s failures under diligence rather than competence may be “reticence to characterize a lawyer as ‘incompetent.’ . . . I think if we realize we do not have to do that, it would make it easier for us to address MRPC 1.1 violations.”

see also JOHN A. TERRILL, MARTIN A. HECKSCHER, L. PIERRE TEILLON, JR. & MARGARET E. W. SAGER, *INTERNATIONAL TRUST AND ESTATE PLANNING ANTI-MONEY LAUNDERING RULES AND OTHER ETHICS ISSUES* (2017) (explaining the duty of competence as a broader understanding of diligence); JOHN R. BECKER, *ETHICAL ISSUES IN REPRESENTING OWNERS OF FAMILY BUSINESS AND THEIR FAMILIES* (2019) (illustrating competence as an umbrella term that requires diligence and further explains competence within technology).

57. MODEL RULES R. 1.3; see also California’s modified adoption of Rule 1.3, which clarifies that a lawyer acts with “reasonable diligence” when they do not create any “undu[e] delay” to the client’s legal matter. A lawyer must act with commitment and dedication towards the interests of the client. See CAL. RULES OF PROF’L CONDUCT R. 1.3 (2021). For a more expansive and poetic description of diligence, see DAISY HURST FLOYD & PAUL HASKINS, *ESSENTIAL QUALITIES OF THE PROFESSIONAL LAWYER* 117 (2013):

Diligence is a virtue, an attitude, a daily resolve, a quality of conduct, an enforceable ethical duty, and a standard of care that applies in lawyers’ professional liability litigation. Diligence has many shades of meaning, depending on context, but it always means the steady application of close attention and best efforts to the task at hand.

58. MODEL RULES R. 1.3 cmt. 3; Armitage, *supra* note 40, at 1104.

59. MODEL RULES R. 3.2 cmt. 2. The comments to Rule 1.3 suggest that a lawyer’s duty of diligence in planning for the future extends as far as preparations in anticipation of serious and unforeseen circumstances such as death or disability. See *Id.* at R. 1.3 cmt. 5 (“[t]o 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”).

60. *Id.* at R. 1.3 cmt. 3.

destroyed.”⁶¹ It is worth noting that even if a client’s claim is not damaged or “destroyed,” “unreasonable delay can cause a client needless anxiety and undermine confidence in the lawyer’s trustworthiness.”⁶² Thus a failure to be diligent about planning and deadlines may result in damage to the attorney-client relationship, even where the case itself remains unscathed.⁶³

C. EXPEDITING LITIGATION

Failing to expedite litigation in a timely manner is one explicit way an attorney may demonstrate a lack of competence, diligence, and adherence to deadlines. Model Rule 3.2 instructs that “[a] lawyer shall make reasonable efforts to expedite litigation consistent with the interests of the client.”⁶⁴ The Rule contemplates not merely the expeditious handling of an individual case, but more generally the lawyer’s role in the “administration of justice.”⁶⁵ The Comments acknowledge that “[a]lthough 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.”⁶⁶ The inclusion of “routinely” mirrors disciplinary decisions that are generally more focused on a pattern of behavior and less so on one missed deadline.⁶⁷

A failure to expedite litigation will result in discipline where reasonable efforts to expedite were not made.⁶⁸ Such disciplinary decisions are often paired with an

61. *Id.*

62. *Id.*

63. Interestingly, when contemplating disciplinary action, courts have looked beyond an attorney’s diligence regarding client communications and focused on the diligence of an attorney *with respect to the disciplinary body*. Of one matter, a court wrote:

Formal charges were brought against respondent alleging a lack of diligence and failure of communication on the part of respondent, and failure to respond to the board. Ironically, respondent appears to have been more responsive to his client, and continued to represent her as of the time of his hearing before the board. The allegations that he had breached his duties of diligence and failure to communicate with his client were dismissed by the board. However, his failure to respond to the board remained an issue in this case.

In re Cozzolino, 767 A.2d 71, 73 (R.I. 2001).

64. MODEL RULES R. 3.2

65. *Id.* at R. 3.2 cmt. 1.

66. *Id.*

67. *See, e.g.*, Att’y Disciplinary Bd. v. Van Ginkel, 809 N.W.2d 96, 102 (Iowa 2012) (“[A]n ethical violation does not typically occur from one missed deadline, but arises when a lawyer ‘repeatedly fail[s] to perform required functions as attorney for the executor, repeatedly fail[s] to meet deadlines.’”) (internal citations omitted).

68. *In re Dennis*, 188 P.3d 1, 15–16 (Kan. 2008) (concluding that where an attorney repeatedly failed to “timely respond to discovery requests, court orders, and dispositive motions,” the court found “clear evidence of incompetence”). This behavior was found by the panel to be a failure to expedite litigation by way of “numerous delay strategies” in violation of the attorney’s duty to “act with reasonable diligence and promptness.” *Id.* at 16–17. *See also* Att’y Disciplinary Bd. v. Hedgecoth, 862 N.W.2d 354, 361 (Iowa 2015) (explaining the necessity of expediting litigation: slow legal practices endanger the justice system); Ernest F. Lidge III, *Client Interests and a Lawyer’s Duty to Expedite Litigation: Does Model Rule 3.2 Impose any Independent Obligations?*, 83 ST. JOHN’S L. REV. 307, 316 (2009) (showing that efforts to delay litigation for the purpose of frustrating the other party are unethical compared with delay “that has another purpose”).

analysis of an attorney's intent, whether an attorney kept clients properly informed about upcoming deadlines,⁶⁹ and consideration of both mitigating and aggravating factors.⁷⁰ Aggravating factors that may be considered include a pattern of misconduct on the part of the attorney, a "dishonest and selfish motive," and a failure to admit wrongdoing.⁷¹ For professors teaching Professional Responsibility, it is worth emphasizing to students that a duty of diligence and competence is not only about meeting deadlines, but more broadly (and importantly) about taking responsibility for deadlines, and establishing a pattern of truthfulness with clients, opposing counsel, and the court.

D. PROMPTNESS

The term and idea of "promptness" occurs throughout the *Model Rules* and provides one explicit connection between the role of deadlines and adherence to the *Rules*. It is not always clear, however, exactly what timeframe "prompt" entails, and how it differs from the standard for "reasonableness" applied to time sensitive circumstances. For example, under Model Rule 1.4 regarding communication, an attorney is instructed to inform the client "promptly"⁷² of decisions and, separately, to keep them "reasonably informed" of progress in their case.⁷³ The factors considered when determining whether an attorney has kept a client reasonably informed may include "the length of time a lawyer failed to communicate; whether the lawyer failed to respond *promptly* to reasonable requests for information from the client; and whether the lawyer knew or a reasonable lawyer would have foreseen that a delay in communication would prejudice the client."⁷⁴ Similar to the duty to

69. Att'y Grievance Comm'n v. Williams, 132 A.3d 232, 244 (Md. 2016) (Attorney failed to inform client of multiple deadlines; missing deadlines caused a delay in litigation. Attorney knowingly and intentionally lied to courts that the delay in responding to discovery was due to the client. Attorney was disbarred. "[Respondent's lack of competence, diligence, and communication] resulted in [clients'] complaint being dismissed with prejudice. . . . Considering Respondent's numerous violations, apparent indifference toward his client and the legal system, as well as the lack of any mitigating factors, we agreed with Bar Counsel's recommendation to disbar Respondent from the practice of law. The egregious nature of Respondent's actions to conceal his incompetence and lack of diligence from his client in an attempt to lead her and the courts to believe that he was acting in the best interest of the client cannot be tolerated. This is especially so, as here, where the client is harmed by the attorney's misconduct."); Att'y Disciplinary Bd. v. Conroy, 845 N.W.2d 59, 62–63 (Iowa 2014) (Attorney's lack of communication to the client constituted failure to expedite litigation. "The alleged facts were generally the same in each of the six cases. After being appointed appellate counsel, Conroy neglected the appeals. Default notices were issued to Conroy by the Iowa Supreme Court, and he failed to cure the defaults. His failure to cure the defaults subjected each appeal to dismissal . . . Neglect involves an attorney's *consistent failure* to perform his or her obligations and indifference about failing to advance the interests of his or her client." (emphasis added)).

70. *In re DeRuiz*, 99 P.3d 881 (Wash. 2004) (finding that an attorney failed to demonstrate diligence and failed to expedite).

71. *Id.* at 581–82.

72. MODEL RULES R. 1.4(a)(1) & cmt. 2.

73. *Id.* at R. 1.4(a)(3).

74. *In re Alway*, No. 19-96, slip op. at 6 (Or. Jan. 22, 2021); *In re Groom*, 249 P.3d 976, 983 (Or. 2011); see also Att'y Grievance Comm'n v. Brady, 30 A.3d 902, 912 (Md. 2011) ("Respondent's failure to inform the client of these important motions and a scheduled court matter reflects a blatant failure to communicate promptly

expedite, a close reading of Model Rule 1.4 reveals a focus on not disadvantaging a client, and a vague standard of “reasonable” foreseeability regarding delays.

In another scenario involving timely compliance, the *Model Rules* clarify that “‘confirmed in writing,’ when used in reference to the informed consent of a person,” denotes consent given either in writing, or consent given orally and “‘promptly” transmitted.⁷⁵ Where a lawyer is unable “obtain or transmit” at the moment consent is given, the lawyer must obtain or transmit “within a reasonable time thereafter.”⁷⁶ These uses of “promptly” and “reasonable time” may indicate that the drafters intended “promptly” to signify an almost immediate timeframe whereas “reasonable time” refers to something more extended, perhaps a factor test echoing that applied to Model Rule 1.4, above.

The obligation to act promptly also arises under Model Rule 1.10, one of the rule governing conflicts of interest. Model Rule 1.10 requires that written notice be provided to former clients “promptly” and that concerns expressed by such clients also be responded to “promptly.”⁷⁷ This expectation extends to conflicts with government employees where written notice should be “promptly given to the appropriate government agency.”⁷⁸ In contrast to other aspects of the *Model Rules*, acting promptly regarding client matters is a fundamental obligation of attorneys and, thus, discipline for failing to adhere does not require a finding of bad faith.⁷⁹ “What constitutes reasonable promptness will depend upon the circumstances of the case.”⁸⁰ As with diligence, the requirement of promptness applies not only to the attorney’s conduct with clients, but also regarding an attorney’s responsiveness to disciplinary investigations.⁸¹

with the client, a clear violation of Rule 1.4.”) (citing Att’y Grievance Comm’n v. Fox, 11 A.3d 762, 778 (Md. 2010)) (finding a violation of Model Rule 1.4 when an attorney did not keep clients reasonably informed and ignored clients’ requests for information about the progress of their cases).

75. MODEL RULES R. 1.0(b) (emphasis added).

76. *Id.*

77. *Id.* at R. 1.10(a)(2)(ii); *see also id.* at R. 1.18(d)(2)(ii) (prospective clients).

78. *Id.* at R. 1.11(b)(2).

79. *In re Taylor*, 60 V.I. 356, 374 (2014) (where attorney disciplined failed his duty to the client, the court did “not hesitate in holding that Taylor did not act with reasonable diligence in the other matters”); *Robinson v. Wix Filtration Corp.*, 599 F.3d 403, 413 (4th Cir. 2010) (holding that a party who fails to diligently respond to their clients will not be able to utilize excusable neglect).

80. LAWYER PROFESSIONAL STANDARDS RULES AND CASES INTERPRETING WISCONSIN SUPREME COURT RULES 27 (Wis. Court System ed., 2020) (citing *In re Pitts*, 735 N.W.2d 917 (Wis. 2007)) (failing to pursue a claim and allowing the statute of limitations to expire); *In re Reitz*, 828 N.W.2d 225 (Wis. 2013) (failing to file a claim before the statute of limitations); *In re Disciplinary Proceedings Against Boyd*, No. 2009AP774-D (Wis. 2010) (failing to file a habeas corpus petition until after the statutory deadline); *In re Woods*, 759 N.W.2d 322 (Wis. 2009) (failing to file a personal injury action until the day before the statute of limitations and thereafter failing to serve the defendants, resulting in dismissal); *In re Nunnery*, 769 N.W.2d 858 (Wis. 2009) (failing to respond to deadlines in an employment discrimination matter and failing to file a lawsuit after the adverse administrative determination prior to the statutory bar).

81. *In re Ansell*, 11 A.D.3d 56, 60 (N.Y. App. Div. 2004) (finding that state bar disciplinary rules may impose “a duty on lawyers to furnish prompt responses to any inquiry made pursuant to the rules relevant to grievances and a lawyer’s failure to cooperate fully and promptly with an investigation shall also constitute grounds for discipline”).

A failure to meet deadlines may be a result of both inadequate diligence and a lack of promptness. Where an attorney failed to respond to motions to dismiss and attend a court hearing, a disciplinary board found these actions constituted unjustifiable inattentiveness to the client's interests and were a violation of that state's rule requiring both diligence and promptness.⁸² The obligation of diligence on the part of a lawyer involves both promptness and reasonableness, where an attorney must demonstrate both "reasonable diligence and promptness in representing a client."⁸³

The duties of diligence, competence, and promptness require a high level of responsibility and time management from attorneys. However, these are not qualities innate to law students (or to anyone else!). Too often, it is students from more economically privileged backgrounds who have been taught these "soft skills" (formally or informally)—and who know when and how to ask for extensions.

III. DUE DATES IN LAW SCHOOL

A. EQUITY

Most professors are compassionate teachers, willing to grant extensions in response to students' personal emergencies if students just ask. To these professors, leaving extensions up to a more informal system of individual request may seem humane and practical. However, this individualized approach risks worrisome unintended consequences: by not explicitly addressing extension policies, professors may be privileging some students and disadvantaging others. Even when meant as an expression of compassion or generosity, granting extensions to students on an individual basis provides greater benefit to those students who know how to ask and what to ask for, while ignoring the needs of students who might not even know that requesting an extension is an option. The question of which students ask for extensions provides a window into a larger issue: who feels entitled or empowered to ask for help? The answer is often socioeconomic factors. Sociologists have found that the divide begins at a young age: as early as elementary school, students from lower socioeconomic status families are less willing and able to request help or flexibility from their teachers.⁸⁴ In contrast,

82. See *Att'y Grievance Comm'n v. Gisriel*, 974 A.2d 331, 354 (Md. 2009) (citing Maryland Rule 1.3); see also *Att'y Grievance Comm'n v. Patterson*, 28 A.3d 1196, 1213 (Md. 2011) (finding a violation of Model Rule 1.3 based on evidence that the attorney failed to pursue his client's claim by neglecting to undertake research or collect documents in support of the complaint).

83. MODEL RULES R. 1.3.

84. See Jessica McCrory Calarco, "I Need Help!" *Social Class and Children's Help-Seeking in Elementary School*, 76 AM. SOC. REV. 862, 862 (2011) (finding that children activated their cultural capital in choosing when and how to seek help in the classroom, and that doing so yielded different interactional profits):

Compared to their working-class peers, middle-class children asked for more help from teachers, and did so using different skills and strategies. Rather than wait for assistance, they called out or approached teachers directly, even interrupting to make requests. In doing so, middle-class

affluent parents are more likely to teach their children that they deserve individualized support from those in positions of authority.⁸⁵ While these studies focus particularly on children, they highlight the need to question which students—across educational programs—ask for help and which do not.

An outcome where some students who know when and how to ask for help are privileged over those who do not may be unintended but is nonetheless undesirable. Such results are often the product of the “hidden curriculum.”⁸⁶ A “hidden curriculum” “refers to an amorphous collection of implicit academic, social, and cultural messages, unwritten rules and unspoken expectations, and unofficial norms, behaviours and values of the dominant-culture context in which all teaching and learning is situated.”⁸⁷ While these messages and rules “are not formally communicated, established, or conveyed,” they often govern many domains of academic achievement.⁸⁸ It is important to consider what norms and expectations comprise the hidden curriculum of legal education.⁸⁹

Knowing how, when, and who to ask for help often becomes part of such an informal curriculum, along with other terminology and practices like understanding office hours, knowing about publication and scholarship, comprehending the importance of conferences, and choosing mentors.⁹⁰ Too often, “[t]he hidden curriculum tends to stay hidden, and that hiddenness perpetuates inequalities . . . in academia as a whole.”⁹¹ More privileged students’ understanding of the hidden

children received more help from teachers, spent less time waiting, and were better able to complete assignments.

85. Anthony Abraham Jack, *(No) Harm in Asking: Class, Acquired Cultural Capital, and Academic Engagement at an Elite University*, 89 SOC. EDUC. 1, 2 (2015) (“Compared to working-class youth, middle-class children are better primed to engage teachers and feel more comfortable doing so. Moreover, teachers respond more positively to middle-class interactional styles, often spending more time with or favoring students who adopt them.”) (internal citations omitted).

86. See David M. Moss, *Hidden Curriculum of Legal Education: Toward a Holistic Model for Reform*, 2013 J. DISP. RESOL. 19, 21 (2013). The term “hidden curriculum” was first utilized by a sociologist named Philip Jackson over four decades ago. PHILIP W. JACKSON, *LIFE IN CLASSROOMS* (1968) (discussing this widespread phenomenon not unique to legal education); see also KEVIN GANNON, *RADICAL HOPE: A TEACHING MANIFESTO* 32 (2020).

The hidden curriculum is best conceived as a sometimes complementary, sometimes contradictory counter narrative to our formal, explicit curriculum (learning objectives, assessments, assignments, and the like). A particular course or program may be structured in a way faculty believe will likely lead to certain outcomes. . . . But as students move through these learning experiences, there will also be outcomes that are unintended, unplanned for, and sometimes straight-up undesirable; these outcomes are the products of the hidden curriculum. The program is that learning doesn’t just occur as a result of our formal explicit curricula. The hidden curriculum also embraces what students are learning in our courses and institutions. Sometimes, it’s *that* learning that ends up being the most powerful and durable thing students take from our course and programs.

87. *Teaching the Hidden Curriculum: Inclusive Teaching Guides & Tips*, BOSTON UNIVERSITY, <https://www.bu.edu/teaching-writing/resources/teaching-the-hidden-curriculum/> [<https://perma.cc/7GV4-PUYV>] (last visited Feb. 6, 2022) (internal quotations and citations omitted).

88. *Id.*

89. See *id.*

90. JESSICA McCrory Calarco, *A FIELD GUIDE TO GRAD SCHOOL: UNCOVERING THE HIDDEN CURRICULUM 1* (2020) [hereinafter *FIELD GUIDE TO GRAD SCHOOL*].

91. *Id.* at 2.

curriculum is the result of “a network advantage,” meaning they likely have friends and family who have been through graduate school and can lend guidance.⁹² An ease with requesting assistance is also “an entitlement advantage” based on years of practice asking for (and getting) help from teachers, professors, and others in authority.⁹³ The reticence of less privileged students to ask for help is due not only to a lack of practice, but also concerns (express or latent) about how their request might be heard or understood by a professor:

Meanwhile, if you’re not from a privileged background, you might find it more difficult to ask professors for help. Professors —like all people—are prone to subconscious biases. Given that possibility of bias, you might worry about how your professors will judge you for needing help. You might worry that if a professor sees you as ‘difficult’ or ‘demanding,’ they won’t want to invest in you or your career.⁹⁴

This hesitance to engage with professors has serious consequences, including affecting “students’ access to institutional resources, acquisition of cultural and social capital, educational experiences,” and even the ability to seek professional opportunities after graduating.⁹⁵

From elementary school through graduate education and beyond, this divide continues to play out: the real world offers lots of flexibility, it just disproportionately goes to people with privilege. Having a clear late submission procedure and policy for the classroom helps create equity by taking away the individual decision by a student about whether to seek help and removes the potential bias by the professor in denying or granting such requests.⁹⁶

Professors from privileged backgrounds, who may have had access to a “hidden curriculum” thanks to lawyers in their families or parents who have attained graduate degrees, have a particularly important role to play in making these practices clear. Too often the burden to teach and explain the hidden curriculum to students falls on faculty of color, faculty from low-income families, faculty who were first generation college students, and female faculty.⁹⁷ As Jessica McCrory

92. *Id.*

93. *Id.* at 3; see also Calarco, *supra* note 84, at 862–82.

94. FIELD GUIDE TO GRAD SCHOOL, *supra* note 90, at 3–4.

95. Jack, *supra* note 85, at 1–2.

96. Pamela Lysaght, *Writing Across the Law School Curriculum in Practice: Considerations for Casebook Faculty*, 12 LEGAL WRITING: J. LEGAL WRITING INST. 191, 202 (2006) (“It is also helpful to have a late submission procedure and policy. This helps to avoid having to make difficult decisions by putting the burden on the students to follow a specific procedure, ensuring equality of treatment.”) (internal citations omitted).

97. FIELD GUIDE TO GRAD SCHOOL, *supra* note 90, at 4–5.

In most schools, departments, and disciplines, the people who work hardest to help grad students succeed are professors from systemically marginalized groups and especially women faculty of color. Because of their commitment to making academia a more diverse, inclusive, and equitable space, professors from systemically marginalized groups often take it upon themselves to provide the kind of hands-on guidance students need. In doing so, however, they often put their own careers – and even their own health – at risk. And those are the professors academia needs the most.

Calarco wrote, “[i]f we want to avoid overburdening professors from marginalized groups, we have to find another way to help students uncover the hidden curriculum and get the guidance they need to succeed. Arguably, the best solution would be to make the hidden curriculum part of the formal curriculum.”⁹⁸ Distributing these responsibilities across all faculty helps students and professors alike, as it ensures some faculty are not unfairly shouldering this sometimes “invisible” labor and conveys to students that access to this curriculum is important to all.

B. PROFESSIONALISM

Professionalism and professional identity are at the forefront of many contemporary discussions about both legal education and the legal profession.⁹⁹ As early as student orientation, some schools ask (or require) students to take an Oath of Professionalism.¹⁰⁰ Professionalism has been used to refer “to adherence to standards or norms of conduct beyond those required by the ethical rules,” including civility and respect for others.¹⁰¹ Discussions of professional identity development and formation, on the other hand, generally go beyond conduct to engage “students at a deeper level by asking them to internalize principles and values such that their actions flow habitually from their moral compass.”¹⁰²

Awareness of and adherence to deadlines—and requests for extensions—have a place in both discussions of professional identity and professionalism. A young attorney’s professional identity formation may require a frank assessment of their lack of organizational skills, and a commitment to remedy this weakness in order

98. *Id.* at 5.

99. See, e.g., *Teaching Ethics and Professionalism*, 4 THE PRACTICE 3 (2018), <https://thepractice.law.harvard.edu/article/teaching-ethics-and-professionalism/> [<https://perma.cc/X46Z-MA7F>]; Beth Hirschfelder Wilensky, *Assignments with Intrinsic Lessons on Professionalism (Or, Teaching Students to Act like Adults Without Sounding like a Parent)*, 65 J. LEGAL EDUC. 622, 622 (2016) (citing Am. Bar Ass’n, 2014–2015 Standards and Rules of Procedure for Approval of Law Schools, at 15 (2014) (“There is little question that law schools ought to teach their students professionalism—indeed, they are required to do so to maintain accreditation.”)).

100. See discussion of the trend in Michelle Silverstein, *The Pledge of Professionalism a part of law school orientation*, ABA FOR LAW STUDENTS (2017), <https://abaforlawstudents.com/2017/09/26/the-pledge-of-professionalism/> [<https://perma.cc/9ABK-DSQ3>], and examples of oaths at the University of Dayton School of Law, *Oath of Professionalism*, UNIV. DAYTON, https://udayton.edu/law/students/professionalism_oath.php [<https://perma.cc/A5R2-ZZNL>] (last visited Feb 6, 2022) (focusing on representing the school, and treatment of others), the University of Arkansas Little Rock, OATH OF PROFESSIONALISM, UNIV. ARK. LITTLE ROCK, <https://ualr.edu/law/files/2010/09/Oath-of-Professionalism-1.pdf> [<https://perma.cc/F8DF-J69B>] (last visited Feb 6, 2022) (including access to justice and self-care), and the University of South Carolina, STUDENT PROFESSIONALISM OATH, UNIV. S. CAROLINA, https://sc.edu/study/colleges_schools/law/internal/current_students/_documents/student_oath.pdf [<https://perma.cc/6RQT-Y8N9>] (last visited Feb 6, 2022) (addressing “being prepared” in addition to “dignity” and “integrity”).

101. Larry O. Natt Gantt II & Benjamin V. Madison III, *Teaching Knowledge, Skills, and Values of Professional Identity Formation*, in BUILDING ON BEST PRACTICES: TRANSFORMING LEGAL EDUCATION IN A CHANGING WORLD (Deborah Maranville et al. eds., 2015).

102. *Id.*

to best serve clients and maintain relationships with coworkers. Professionalism may require the same attorney to be amendable to a motion for extension or continuance made by opposing counsel, as an act of professional courtesy and respect for the courts.¹⁰³ The connection between time management and professionalism is also apparent with regard to the traits described in the Character and Fitness requirements facing graduates when they apply for admission to the State Bar. References to deadlines and the ability to comply with time constraints appear within at least five state Board of Bar Examiner's the Character and Fitness Requirements.¹⁰⁴

The scope of professionalism as a term, a practice, and an area of study extends beyond the *Model Rules*.¹⁰⁵ Discussions of professionalism are rife with opportunities to examine the expectations (explicit and implicit) of the legal profession—including some that are outdated. Professionalism is not without serious complications as a concept—the idea of behaving professionally as an unbiased or objective idea “ha[s] been used to create the narrative of white supremacy that

103. The Oath of Professionalism taken by 1Ls at Savannah Law School seems to acknowledge the coexistence of zealous advocacy with courtesy towards opposing counsel: “I acknowledge that I will be a zealous advocate, but will act with courtesy and cooperation toward others, and I will at all times, personally and professionally, conduct myself in a professional manner.” See LAW STUDENT’S OATH OF PROFESSIONALISM, SAVANNAH L. SCH., <http://www.savannahlawschool.org/wp-content/uploads/2013/07/Law-Students-Oath-of-Professionalism.pdf> [<https://perma.cc/J475-938Q>] (last visited Feb. 6, 2022).

104. MASS. BD. BAR EXAMINERS, REPORT ON CHARACTER AND FITNESS, <https://www.mass.gov/professional-conduct-rules/board-of-bar-examiners-rule-v-character-and-fitness-standards-for> [<https://perma.cc/3U3E-P7YC>] (last visited Feb 6, 2022) (“The ability to comply with deadlines and time constraints.”); VA. BD. BAR EXAMINERS, SECTION III: CHARACTER AND FITNESS REQUIREMENTS, <https://barexam.virginia.gov/cf/cfreq.html> [<https://perma.cc/5BF8-DTSN>] (last visited Feb 6, 2022) (“In evaluating whether an applicant is eligible for admission to practice law in Virginia, the Board considers whether the following essential eligibility requirements have been met . . . based upon the information supplied by the applicant character and fitness investigation The ability to comply with deadlines and time constraints[.]”); SUP. CT. ST. OR., RULES FOR ADMISSION OF ATTORNEYS, <https://www.osbar.org/rulesregs> [<https://perma.cc/HLB8-UA6P>] (last visited Feb 6, 2022) (“Essential Eligibility Requirements: The board considers demonstration of the following attributes, and the likelihood that one will utilize these attributes in the practice of law, to be essential for all applicants seeking admission to the Oregon Bar: . . . c. Ability to: . . . vii. Comply with deadlines and time constraints.”); MINN. STATE BOARD OF LAW EXAMINERS, RULES FOR ADMISSION TO THE BAR, <https://www.ble.mn.gov/rules/> [<https://perma.cc/4JVU-56TN>] (last visited Feb 6, 2022). (“Essential Eligibility Requirements. Applicants must be able to demonstrate the following essential eligibility requirements for the practice of law: . . . 10. The ability to comply with deadlines and time constraints.”); see also NAT’L CONF. BAR EXAMINERS, COMPREHENSIVE GUIDE TO CHARACTER AND FITNESS, <https://reports.ncbex.org/comp-guide/charts/chart-2/> [<https://perma.cc/JM35-EPC9>] (last visited Feb 6, 2022) (includes Supplemental Remarks addressing which entity evaluates character and fitness in each jurisdiction).

105. See, e.g., David S. Walker, *Teaching and Learning Professionalism in the First Year with Some Thoughts on the Role of the Dean*, 40 U. TOLEDO L. REV. 421, 424 (“[T]he 1986 Report of the ABA’s Commission on Professionalism emphasized the importance of competence among members of a profession, trustworthiness and accountability to the client, and devotion to the public good. Among other recommendations, it called on law schools to ‘give continuing attention to the form and content of their courses in ethics and professionalism,’ including ‘weav[ing] ethical and professionalism issues into courses in both substantive and procedural fields.’ It urged them to ‘expose students to promising new methods of dealing with legal problems,’ and it reminded deans and law faculties ‘that the law school experience provides a student’s first exposure to the profession, and that professors inevitably serve as important role models for students.’”).

underpins professionalism today.”¹⁰⁶ In legal education and practice, “professionalism comes to stand in for the unnamable, the *je ne sais quoi*. It means ‘looks like us’ or ‘acts like us.’ Professionalism implicitly relies on the stereotypes about who belongs in law and who does not.”¹⁰⁷ These stereotypes and biases play out in dress codes that prioritize white and Western standards of dress and hairstyle, and in expectations for speech and body language.¹⁰⁸ Effective discussions of professionalism in the law school classroom should address (and critique) these assumptions and give students an opportunity to explore the ethical and moral requirements of the legal profession beyond the *Model Rules*.

The classroom is a necessary site of learning about and practicing professionalism: “If law students are not exposed to these issues [of duties to clients] in the doctrinal classroom, they are less likely to act competently when addressing client problems in practice.”¹⁰⁹ But what do these broad ideas of professionalism mean within the legal profession? Broadly, “[w]hen all of the various meanings ascribed to professionalism are considered, three aspects of attorney professionalism emerge. Professional lawyers (1) fulfill duties to clients, (2) meet their obligations to the bar by complying with professional conduct rules, and (3) exhibit core personal values essential to being a good lawyer.”¹¹⁰

An attorney’s ability to fulfill each of these three aspects of professionalism is strengthened by learning about time management and how to ask for extensions. First, fulfilling duties to clients includes meeting deadlines and staying in good contact with the court and client. Meeting the obligations of professional conduct, as discussed previously, also involves good time management. And, finally, discussions of procrastination are an opportunity to explore students’ core personal values, for example, trustworthiness and clear communication.

Professionalism beyond the basic requirements of the *Model Rules* may also involve a commitment to cordiality, such as responding generously to opposing counsel’s requests for extension. It is not uncommon for attorneys to view opposition to extensions requested by opposing counsel as part of a *tête-à-tête*, a sparring, or a chance for payback.¹¹¹ Instead, students should be encouraged to not reflexively oppose other lawyers’ requests for extensions (assuming their clients will not be harmed), as a way of taking the “higher ground” and acknowledging

106. Aysa Gray, *The Bias of ‘Professionalism’ Standards*, STAN. SOC. INNOVATION REV. (2019), https://ssir.org/articles/entry/the_bias_of_professionalism_standards [<https://perma.cc/DA5Q-ENL7>].

107. *Care Not Respect: Teaching Professionalism*, KENDRA ALBERT, <https://kendraalbert.com/blog/2021/07/15/care-not-respect-teaching-professionalism.html> [<https://perma.cc/8UZX-UEXD>].

108. Gray, *supra* note 106.

109. Paula Schaefer, *A Primer on Professionalism for Doctrinal Professors*, 81 TENN. L. REV. 279, 287 (2014).

110. *Id.* at 284.

111. Jay Shepherd, *Small Firms, Big Lawyers: Don’t Be an Extension Douche*, ABOVE L. (Mar. 2, 2011), <https://abovethelaw.com/2011/03/small-firms-big-lawyers-dont-be-an-extension-douche/> [<https://perma.cc/M4H2-4ZCP>].

that a strong case should not live or die by an extension.¹¹² Such behavior may not only put an attorney on the moral high ground, but it also might prove persuasive and productive for future appearances before the courts: if you deny the request, “the judge may perceive you as wasting the court’s time on a petty dispute.”¹¹³ Further, that moment of perceived power in denying a request could quickly lead to a humbling realization: “later in the litigation you may have to request an extension from the very adversary whose extension request you refused.”¹¹⁴ Many state courts include similar recommendations about leniency in granting requests by opposing counsel in their Standards of Professional Courtesy,¹¹⁵ as do county bar associations.¹¹⁶

An attorney’s duty of diligence “does not preclude the lawyer from agreeing to a reasonable request for a postponement that will not prejudice the lawyer’s client.”¹¹⁷ Discussing how to effectively represent your client while also maintaining civility with opposing counsel is a perfect opportunity to remind students that “every issue in litigation is not in dispute and need not be contested by counsel” in order for an attorney to provide competent representation.¹¹⁸ Indeed, the reverse may be true: “[w]hen attorneys think it is their role to zealously argue every point . . . they can cost their clients time, money, and good will with the court and opposing counsel.”¹¹⁹ Rather than focusing on the adversarial nature of the proceedings and every small win, “competent lawyers should be problem-solvers skilled in the give and take necessary to provide excellent representation to their

112. *Id.*

113. Smallheer, *supra* note 11.

114. *Id.*

115. Sometimes called Guidelines of Professional Courtesy or Professional Courtesy Code. *See, e.g.*, SEVENTH JUD. CIR. FLA., STANDARDS OF PROFESSIONAL COURTESY, [https://circuit7.org/professionalism/\[https://perma.cc/K9Q2-RAUR\]](https://circuit7.org/professionalism/[https://perma.cc/K9Q2-RAUR]) (last visited Feb. 4, 2022) (“Attorneys should grant reasonable requests by opposing counsel for extensions of time to respond to pleadings, discovery and other matters when such extensions will not prejudice their client or unduly delay a proceeding.”); SUP. CT. TEX. & CT. CRIM. APP., THE TEXAS LAWYER’S CREED: A MANDATE FOR PROFESSIONALISM (Nov. 7, 1989) <https://www.law.uh.edu/libraries/ethics/lcreed/index.html> [https://perma.cc/JHT7-XL45] (“I will agree to reasonable requests for extensions of time and for waiver of procedural formalities, provided legitimate objectives of my client will not be adversely affected.”); SUPER. CT. CAL., CNTY. S.F., GUIDELINES OF PROF. CONDUCT, <https://www.sfsuperiorcourt.org/general-info/guidelines-professional-conduct> [https://perma.cc/2RAY-A9CW] (last visited Feb. 4, 2022) (“Consistent with existing law and court orders, an attorney should grant a reasonable request by opposing counsel for an extension of time within which to respond to a pleading, discovery, and other matters, when such an extension will not prejudice his or her client or unduly delay a proceeding.”).

116. MONTEREY CNTY. BAR ASS’N, GUIDELINES OF CIVILITY AND PROFESSIONALISM (2015), https://cdn.ymaws.com/www.montereycountybar.org/resource/resmgr/mcba_website_misc/guidelines_of_civility_prof.pdf [https://perma.cc/VRG5-3CEN] (“Consistent with current law, rules of court, and court scheduling orders, a lawyer should agree to reasonable requests for extensions of time when the legitimate interests of his or her client will not be adversely affected,” includes examples).

117. . MODEL RULES R. 1.3 cmt. 3.

118. Schaefer, *supra* note 109, at 286.

119. *Id.*

clients.”¹²⁰ Excessively fighting requests for extensions can be viewed as a sign of weakness or a lack of faith in one’s ability to win on the merits of the case, rather than a signal of strength or competency.¹²¹ Discussing both how to request extensions and how to respond to requests for extensions in practice allows students to develop a sense of their professional identity and take a broader view of what is required of being a member of the legal profession. Beyond research, writing, and advocacy, legal practice requires a high level of decision making, organization, and time management.

C. PROCRASTINATION

Addressing time management and requests for extensions may help students avoid one of the most serious issues plaguing students and attorneys alike: procrastination. With regard to legal ethics, “[p]rocrastination is a common challenge that can raise the risk of complaints about issues regarding communication and diligence.”¹²² The struggles of communication between attorney and client are mirrored in those between student and professor. It is unfortunately common for attorneys to attempt to hide unpleasant news from clients for fear of disappointing or frustrating them; students often do the same. The high-pressure environment of law school does little to lessen this anxiety. While many professors see procrastination as a lack of engagement with the material, it can also be a result of anxiety or fear of not meeting high standards. “[T]hose with perfectionist tendencies can be negatively impacted and impeded from reaching their goals by procrastinating tasks because trying to ‘complete it perfectly will make it hard or unpleasant.’”¹²³

Too often, procrastination is understood as a personality trait or individual failure, rather than as a broader issue of misunderstanding or underestimating what

120. *Id.* (engaging in such problem-solving approaches may require more talking to and cooperation with opposing counsel. If that is the case, it is important for the lawyer explain to their clients why they are talking to opposing counsel and/or not opposing a request for continuance, in order to avoid the client’s interpreting such behavior as proof their attorney is not on their side or “in bed” with opposing counsel); see, e.g., Matthew Clair, *Being a Disadvantaged Defendant: Mistrust and Resistance in Attorney-Client Interactions*, SOC. FORCES (2021) (“Court-appointed lawyers, who routinely interact with prosecutors to make deals and to socialize, were assumed [by their clients] to be professionally compromised.”).

121. Shepherd, *supra* note 111:

I’ve amended our firm policy. Now we always give other lawyers extensions, even if they wouldn’t give us one when we asked . . . both my partner — who went on to become the state’s top civil-rights lawyer — and I agreed that we should have taken the high road. Now, I know that some of you are thinking, ‘Why would you give the other side an advantage? What kind of wussy litigator are you?’ I’ll tell you: I’m the kind of wussy litigator who realizes that if my case sucks so bad that I need to depend on taking advantage of my opponent’s scheduling difficulties to win, then I shouldn’t be litigating this case; I should be settling it. Because denying extensions in an attempt to gain an edge is total bush-league baseball. We play all nine innings here.

122. See generally Anne Chambers, *Conquering Procrastination*, 67 ST. LOUIS B.J. 12 (2020).

123. Kaci Bishop, *Framing Failure in the Legal Classroom: Techniques for Encouraging Growth and Resilience*, 70 ARK. L. REV. 959, 969 (2018).

the task will entail. Namely, procrastination is deeply linked to planning fallacy, the “strong bias to underestimate how long it will take to complete almost any task.”¹²⁴ Research suggests that addressing procrastination is not simply a matter of discipline but instead of learned behaviors.¹²⁵ Individuals can acknowledge planning fallacy by breaking down each task into smaller tasks, considering how long each part will take, and consciously anticipating that everything will take twice as long as they think (or hope) it will take.¹²⁶

Discussions of time management and professionalism can also lead to discussions about knowing one’s limits and needs. In the thought-provoking book, *Laziness Does Not Exist*, Dr. Devon Price says that modern American culture dismisses people as “lazy” who may have simply reached their limits—of stress, work, or resources.¹²⁷ When someone is out of touch with their needs, they are unable to assess their ability to complete a task. “By forever moving the goalpost and never actually allowing a person to be vulnerable and have needs, its setting us up for failure from the start.”¹²⁸ Teaching students to be aware of deadlines and to gauge whether they will be able to meet them is part of creating lawyers who are aware of their own limits, and can tend to themselves, their studies, and their clients. Overt discussion of time management and capacity allows students the opportunity to improve their self-regulation and self-directed learning process. “Self-regulation refers to the self-directive process through which learners transform their mental abilities into task related skills.”¹²⁹

For instance, a self-regulated student would be able to translate a simple deadline into a timeline of the tasks needed to get there, an accurate assessment of how long these tasks will take, and an ongoing monitoring of this process as it continues to unfold. “To become self-directed learners, students must learn to assess the demands of the task, evaluate their own knowledge and skills, plan their approach, *monitor their progress, and adjust their strategies as needed.*”¹³⁰ Helping students plan for due dates and timely apply for extensions can encourage them to take ownership over their learning—and careers.

Finally, teaching students to be aware of time, to self-regulate their learning, and to ask for extensions when needed can also help them avoid plagiarism. In his thought-provoking book *Cheating Lessons*, Professor James Lang argues that

124. Nate Kornell & Bridgid Finn, *Self-Regulated Learning: An Overview of Theory and Data* in THE OXFORD HANDBOOK OF METAMEMORY (John Dunlosky & Sarah (Uma) K. Tauber eds., 2016).

125. *Id.*

126. *Id.*

127. See generally DEVON PRICE, LAZINESS DOES NOT EXIST (2021).

128. *Id.* at 22.

129. Barry J. Zimmerman, *Becoming a Self-Regulated Learner: An Overview*, 41 THEORY INTO PRAC. 64, 65 (2002).

130. Susan Ambrose, Michael W. Bridges, Michele DiPietro, Marsha C. Lovett, Marie K. Norman & Richard E. Mayer, *How Learning Works: Seven Research-Based Principles for Smart Teaching* 191 (2010) (emphasis added); see also Sarah J. Schendel, *What You Don’t Know (Can Hurt You): Using Exam Wrappers to Foster Self-Assessment Skills in Law Students*, 40 PACE L. REV. 154 (2020).

“the amount of cheating that takes place on our campuses may well depend on the structures of the learning environment.”¹³¹ Specifically, “poor metacognition, especially in the form of [students’] overconfidence in their ability to complete the problems within a given time period” accounts for a significant amount of plagiarism.¹³² Rather than wait until students’ panic sets in and they make choices in class or on cases they might regret, law schools can help students address their planning fallacies, take control over their studies, and begin to more accurately assess how long tasks will take.

D. A PEDAGOGY OF KINDNESS

Helping students learn how to become more self-aware and how to navigate the world of extensions can also be part of demonstrating empathy, or a pedagogy of kindness. While learning how to deal with deadlines helps students consider what sort of lawyer they want to be, how we approach teaching students about deadlines can help professors think about what sort of teachers we want to be. Embracing a pedagogy of kindness is not about being “nice” or expressing sympathy for individual students, but rather about creating structures and policies that allow for flexibility, transparency, and personal responsibility.

Much of the recent focus on “resilience” centers on individual choice; however, making systems and syllabi resilient (building in policies that allow for change and choice) goes further toward providing an equitable experience for all. In her powerful essay “Pedagogy of Kindness,” Professor Catherine Denial writes that to her, “kindness as pedagogical practice is not about sacrificing myself, or about taking on more emotional labor. It has simplified my teaching, not complicated it, and it’s not about niceness.”¹³³ A pedagogy of kindness is not about waiting until a professor feels kindly toward a student or a situation; instead, it is about creating standards and systems that incorporate kindness. When professors grant extensions only when it feels good to be kind or when they feel badly for the student, they open themselves up to perpetuating bias and privilege. When professors instead create systems for extensions that grant grace to all, we encourage equity as well as trust and compassion.¹³⁴

For those in legal education, openly discussing extensions and deadlines, regardless of whether they are always granted, is a good way to create a community of trust, respect, and empathy with students. Researchers have demonstrated the value of transparency in both the syllabus and in the classroom, finding that a practice of transparency can reduce conditions of uncertainty and student

131. See generally JAMES LANG, CHEATING LESSONS: LEARNING FROM ACADEMIC DISHONESTY 37 (Harvard University Press, 2013).

132. *Id.* at 145.

133. Catherine Denial, *Pedagogy of Kindness*, HYBRID PEDAGOGY (Aug. 15, 2019), <https://hybridpedagogy.org/pedagogy-of-kindness/> [https://perma.cc/9ZUW-9MY8].

134. See generally Sarah J. Schendel, *The Pandemic Syllabus*, 98 DENV. L. REV. F. (2020), <https://www.denverlawreview.org/dlr-online-article/pandemicsyllabus> [https://perma.cc/J35A-MCMK].

perception that they might not have the skills to meet the educational challenge before them.¹³⁵ Transparency and frank discussion about the mechanics of the classroom afford professors the opportunity to show students that we understand they are full people with lives outside of the classroom. In order for educators to “appreciate the dizzying emotional complexity and competing priorities of our students’ lives,” we must “see and value our students as fellow travelers on this educational journey and that we actually care enough to help them reach their destination.”¹³⁶ When we convey to students that we understand their requests for extensions may not be signs of laziness, but rather, an investment in taking the assignment seriously or an acknowledgement that they have failed to adequately understand the demands on their time, we also convey that their learning is at least as important as our timelines.

Even where a student fails to meet a deadline or ask for an extension, there is the possibility of providing opportunities for professional growth. Discussions about time management are a means to address something often viewed as taboo in law school and in practice: failure. The legal profession is rife with perfectionism—“the habit of setting impossibly high standards, and then admonishing yourself for not achieving them.”¹³⁷ While high standards are admirable, a professional culture where “[m]istakes are very costly, and perfectionism is rewarded both professionally and financially,”¹³⁸ can make for a hard-working lawyer and a dissatisfied person.¹³⁹ Isolated failures or struggles can then manifest themselves as shame, and deeper, more substantial doubts about an individual’s inherent worth as opposed to errors that can simply be addressed.¹⁴⁰

One way to interrupt a cycle of perfectionism and shame that can lead to anxiety and procrastination is to destigmatize conversations about failures in law school. In her article, “Normalizing Struggle,” Professor Catherine Christopher astutely recommends that professors “do what they can to separate—and help students separate—struggle from failure.”¹⁴¹ For those teaching Professional Responsibility, for example, reading disciplinary decisions can be used in ways other than as scare tactics: it is worth paying attention to the ways attorneys who have been chastised take steps to improve their office and time management. One

135. SARAH ROSE CAVANAGH, *THE SPARK OF LEARNING* 186–87 (2016).

136. JOSHUA R. EYLER, *HOW HUMANS LEARN: THE SCIENCE AND STORIES BEHIND EFFECTIVE COLLEGE TEACHING* 147 (2018) (internal quotations omitted).

137. KISER, *supra* note 46, at 72.

138. Susan Daicoff, *Lawyer, Know Thyself: A Review of Empirical Research on Attorney Attributes Bearing on Professionalism*, 46 AM. U.L. REV. 1337, 1419 (1997).

139. *See generally id.*; Terrell Ciobanu, *Out of the Darkness: Overcoming Depression Among Lawyers*, 32 GPSOLO 36 (2015); Stephen Carter, *Why Lawyers Are Miserable*, CHI. TRIB. (Sept. 7, 2015), <https://www.chicagotribune.com/opinion/commentary/ct-why-lawyers-are-miserable-20150907-story.html> [<https://perma.cc/XRC3-VVV3>].

140. Brené Brown, *Focus on Guilt Instead of Shame*, YOUTUBE (Mar. 29, 2020), <https://www.youtube.com/watch?v=RSrXxqKfYwI> [<https://perma.cc/D9RC-VA5B>]; *see generally* BRENÉ BROWN, *THE GIFTS OF IMPERFECTION* (2010).

141. Catherine Martin Christopher, *Normalizing Struggle*, 73 ARK. L. REV. 28, 32 (2019).

disciplinary body detailed the steps an attorney took to improve his organization and time management, giving practical guidance to others who might become aware of their own failures: In 2011, the attorney “conceded that . . . he did not calendar deadlines or use a tickler system.”¹⁴² However, by 2017, the attorney was able to report that he now had an assistant maintaining a digital calendar, as well as three paper calendars and a “tickler system to remind him when things need to be filed, and someone in his office looks at active upcoming cases weekly to review and verify dates or information.”¹⁴³ Paying attention not only to attorney discipline but also to the practical and detailed steps taken to address missed deadlines helps students understand these are skills (and aspects of professional identity) that can be improved with concerted effort and planning. “Thanks to error, we can revise our understanding of ourselves and amend our ideas about the world.”¹⁴⁴

While ideally these efforts will lead to fewer missed deadlines on the part of law students and attorneys, there is always the possibility that once someone has taken the responsible steps of reflecting on the task at hand and the time frame available, they may ultimately realize they simply will not be able to meet the deadline. Professor Deborah Rhode, perhaps the most important scholar in contemporary legal ethics, wrote that while “[e]ngaging in triage and deferring non-essential tasks can sometimes buy enough time to meet critical obligations,” “sometimes bailing is the only plausible choice.”¹⁴⁵

If an attorney is not able to complete the task—and do it well—they will likely need to find someone who can. In these rare instances, “what matters is when and how you do it.”¹⁴⁶ Rather than trying to avoid the inevitable and waiting in hopes of discovering a solution, a more responsible choice is to acknowledge to yourself—and others—that you need help as early as possible. Ideally, “helping to find others to replace you signals your acknowledgment of the disruption you have caused and your commitment to minimize it.”¹⁴⁷ As one professor tells students, “Everyone makes mistakes but it’s what we do after a mistake that shows our real character.”¹⁴⁸ Attorney disciplinary decisions often bear out a similar approach: rarely is an attorney punished for a single misstep but more often for

142. *In re Walwyn*, 531 S.W.3d 131, 135 (Tenn. 2017) (while the attorney in this matter was disciplined, the court positively noted these improvements, and the discipline was as a result of his continued missed deadlines even after multiple warnings over a decade).

143. *Id.*

144. KATHRYN SCHULZ, BEING WRONG: ADVENTURES IN THE MARGIN OF ERROR 171 (2010), quoted in JOSHUA EYLER, HOW HUMANS LEARN: THE SCIENCE AND STORIES BEHIND EFFECTIVE COLLEGE TEACHING (2018).

145. Deborah L. Rhode, *Managing Stress, Grief, and Mental Health Challenges in the Legal Profession; Not Your Usual Law Review Article*, 89 *FORDHAM L. REV.* 2565, 2572 (2021).

146. *Id.*

147. *Id.*

148. JESSAMYN NEUHAUS, GEEKY PEDAGOGY: A GUIDE FOR INTELLECTUALS, INTROVERTS, AND NERDS WHO WANT TO BE EFFECTIVE TEACHERS 86 (2019).

attempting to cover up, omit, or repeat the error. We should give students the opportunity to fail in ways that allow for learning and for repair.

E. THE HOW

The solution lies not in one form of extension or deadline, but in an approach to time and classroom management that takes into account both challenges common to students (like planning fallacy and procrastination), and course-specific goals and learning outcomes. Different classes require different types of deadlines, which in turn may require different policies. For instance, a single, scheduled, in person, closed-book final exam will require a different extension policy than smaller assignments throughout the semester that build on each other. Even if a professor does not change their extension policy, they may consider reviewing their existing policy with questions like these in mind: “Would an extension (or multiple extensions) fundamentally alter the course? What does the course description and syllabus indicate regarding late work or completion deadlines? Does the fundamental nature of the course rely upon timely completion of assignments as an essential method of learning?”¹⁴⁹ Such reflection can help a professor consider whether their policies are achieving the intended goals and learning outcomes. This reflection might also reveal how transparent they have been with students: “Preparation boils down to this: never, ever assume that you and your students are on the same page unless you have made absolutely sure you’re on the same page.”¹⁵⁰

Towards those ends, creative professors have come up with a number of ways to implement clear, practical, and compassionate practices around extensions and deadlines. One professor created a “Life Happens Pass,” where a student may ask for an extension without an accompanying explanation.¹⁵¹ Some professors have created Google Forms for students to fill out online to request an extension, which streamlines and standardizes the process for all involved.¹⁵² Another possible format is a learning contract, which requires the student to be involved in the process of setting detailed deadlines and thinking ahead about what might be required to

149. *Deadline Extensions*, UNIVERSITY OF NORTH CAROLINA ASHEVILLE ACCESSIBILITY SERVICES, <https://accessibility.unca.edu/for-students/accommodations/classroom-accommodations/deadline-extensions-as-reasonable-accommodation/> (last visited Feb. 5, 2001) [<https://perma.cc/UZ4W-MKVT>].

150. NEUHAUS, *supra* note 148, at 86.

151. Jaelyn Schildkraut (@jschildkraut80), TWITTER, (Dec. 30, 2020, 7:18 PM), <https://twitter.com/jschildkraut80/status/1344437748661411846?s=20> [<https://perma.cc/J5E9-4MCV>]:

Today in course prep: I made this for my liquid syllabus site. Students will be able to use up to 3 of these if needed, and if not, they can ‘turn them in’ for points at the end of the semester. An easy way to give them breathing room and reduce my emails!

152. Lindsay Masland (@LindsayMasland), TWITTER, (Feb. 12, 2021, 8:30 AM), <https://twitter.com/LindsayMasland/status/1360219695299887109?s=20> [<https://perma.cc/67YP-5V2K>].

reach them.¹⁵³ Some professors use “rolling deadlines” where assignments may have a suggested date of completion; however, the assignment can be completed at any time during the course. This results in deadlines that function not to penalize students—or create more work for professors to track—but instead solely function to help learners regulate their learning. One law school-specific idea is to have students submit a Motion for Extension (or Continuance). If it is a large class, a professor could have their Teaching Assistant serve as a “clerk” to accept or reject the motion on procedural grounds. This gives students a chance to practice motion writing (and instruction reading!).¹⁵⁴

In classes like clinics where students might be working on cases together, or in podium classes where group projects are assigned, there are additional opportunities to reframe the importance of deadlines and time management. In these cases, professors can help students understand that “deadlines aren’t just tools for individual achievement—they’re levers of collective accountability. This view of things doesn’t necessarily remove the pressure . . . but it can provide a more reliable source of motivation.”¹⁵⁵ This approach to deadlines as part of a group effort is reflective of the practice of law, where a lawyer is rarely working entirely alone; “[f]or junior lawyers in particular, your timely work often triggers a cascading chain of events toward the completion of your team’s final work product.”¹⁵⁶ Where students can be helped to “think of [their] deadline not as a looming personal threat but as a puzzle piece that someone else is hunting for at this very moment” they may be able to reframe their stress or tasks as an opportunity to “be the person who helps complete the picture.”¹⁵⁷ This “puzzle piece” approach may also be an inroad to viewing time management as an act of caring and community. “Professionalism, at its best, is as an act of love and belief towards those we work with, rather than a set of behavioral standards that we

153. *Self-Directed Learning: Learning Contracts*, UNIV. WATERLOO, <https://uwaterloo.ca/centre-for-teaching-excellence/teaching-resources/teaching-tips/tips-students/self-directed-learning/self-directed-learning-learning-contracts> [https://perma.cc/K2C7-4D5N] (last visited Jan. 3, 2021).

154. For those teaching legal writing, Professor Beth Wilensky suggests a number of topics for short motions or memos that include opportunities to discuss attorney errors during client representation. See Beth Hirschfelder Wilensky, *Assignments with Intrinsic Lessons on Professionalism (Or, Teaching Students to Act like Adults Without Sounding like a Parent)*, 65 J. LEGAL EDUC. 622, 632–34 (2016). One topic is a dispute about whether a party can show excusable neglect for a missed filing deadline, using *Pioneer Investment Services Co. v. Brunswick Associates* where the Court examined what constitutes “excusable neglect” with respect to a missed filing deadline in bankruptcy court. 507 U.S. 380, 388–91 (1993).

155. Rachel Syme, *What Deadlines Do To Lifetimes*, NEW YORKER (July 5, 2021), <https://www.newyorker.com/magazine/2021/07/05/what-deadlines-do-to-lifetimes> [https://perma.cc/C2ZA-PDZH].

156. Schrier & Torres, *supra* note 5, at 71.

For example, the junior attorney responsible for the initial draft of a dispositive motion cannot wait until the 11th hour to submit that draft to her supervising attorney. Rather, she must allocate sufficient time to research, write, self-edit, and submit the draft to the lead attorney well before the filing deadline.

157. Syme, *supra* note 155.

have to live up to.”¹⁵⁸ When viewed as an act of caring about those around us, we might reframe tasks like editing and reviewing as part of a broader commitment to producing documents that “[show] our clients that they matter to us. We send agendas and show up on time because we care about those we’re meeting with, and not wasting their time is a way to express that care.”¹⁵⁹

Overt discussion of deadlines may also help increase student trust and investment in the class. In order to be motivated, students must “hold positive *outcome expectancies*. Outcome expectancies reflect the belief that specific actions will bring about a desired outcome.”¹⁶⁰ If students know what to expect (when requesting extensions, for example), they may be more motivated to remain engaged with the class. Consistent expectations (between assignments and among students), consistent treatment by professors, as well as clear communication around the support available to students to help them succeed, help students build positive expectancies.¹⁶¹

CONCLUSION

Both professors and students will benefit from extension policies being explicit, standardized for all students, and clearly linked to professionalism and practice.¹⁶² Law school is not only preparation for “real life,” it *is* real life. Our students learn the law from us, but they also learn how to learn, how to teach, how to ask for help, how to admit mistakes, and how to respond to the mistakes of others. How we prepare them for the “real world” – including discussions about due dates and deadlines - teaches students what they can expect of judges, of opposing counsel, and of themselves.

158. *Care Not Respect*, *supra* note 107.

159. *Id.*

160. Ambrose et al., *supra* note 130, at 76 (citing CHARLES S. CARVER & MICHAEL F. SCHEIER, ON THE SELF-REGULATION OF BEHAVIOR (1998)).

161. *Id.* at 87 (“[L]et students know what support they can expect from you in pursuit of [their] goals (for example, office hours or review sessions).”) and 88 (“If students perceive that their work is being assessed differently from their peers or differently from one time to the next, their expectations for success may be compromised.”).

162. Anne Helen Peterson, *Against “Feel Free To Take Some Time If You Need It”* (Apr., 11, 2021), <https://annehelen.substack.com/p/against-feel-free-to-take-some-time> [<https://perma.cc/9ZT9-NUAR>]:

When it comes to taking time off, the more explicitly mandated the break, the better. Instead of ‘feel free to take some time if you need it,’ try ‘I’d really support you taking the day off.’ Instead of a sentence at the end of a meeting about ‘make sure you’re taking that PTO,’ an app that alerts you when an employee hasn’t taken any in a month. For managers, that means modeling the behavior yourself: taking sick days, and personal days, and extended PTO, and being transparent about it — and not sneakily working in the margins. It means having enough people on staff so that a person can actually be sick, or take parental or bereavement leave, without the guilt of pouring work onto their already overburdened colleagues. And it means getting rid of unlimited PTO policies, which are just meritocracy traps masquerading as a ‘perk.’