

COMPETENCE AND PROFESSIONALISM

What does competence mean in our profession? Is competence the legal knowledge and skill to master the law in our respective areas of practice, or is competence simply the technical skills required to serve our clients? If we look to both the Georgia Professional Rules of Conduct on competence in conjunction with the Georgia *A Lawyer's Creed and Aspirational Statement on Professionalism* ("Lawyer's Creed")¹, the *Lawyer's Creed* reminds us that competence is more than the legal acumen needed to serve clients - it is also a call to action within our respective professional networks to help educate and learn with practicing lawyers, new lawyers and future lawyers.²

COMPETENCE FOR OUR CLIENTS

Under Rule 1.1 of the Georgia Professional Rules of Conduct:

A lawyer shall provide competent representation to a client. Competent representation as used in this rule means that a lawyer shall not handle a matter which the lawyer knows or should know to be beyond the lawyer's level of competence without associating another lawyer who the original lawyer reasonably believes to be competent to handle the matter in question. Competence requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.³

Too often, lawyers mistake competence for mastery. Lawyers, new and seasoned, can be deemed "competent" to handle a matter, provided they demonstrate the following important legal skills: (i) analysis of precedent; (ii) the evaluation of evidence and legal drafting; (iii) determining what kind of legal problems a situation may involve; and (iv) adequate attention and thoroughness of preparation.⁴ The Comments of Rule 1.1 discuss "sufficiency" of representation and *not* mastery. Comment 1[B] of Rule 1.1 states that "in many instances, the required proficiency is that of a general practitioner".⁵ There are relevant factors to determine whether a lawyer employs the requisite knowledge and skills in a particular matter, such as "the complexity and specialized nature of the matter, the lawyer's general experience, the lawyer's training and experience in the field in question, and preparation of the lawyer's study".⁶ So long as the principles in the general practice of law are followed, the threshold of sufficiency is achieved. A *Lawyer's Creed* reminds us, however, that the sufficiency threshold is only the minimum required of lawyers and that we as lawyers should aspire to excellence and not settle for minimum competency.

Sufficiency is the baseline to help assuage any fears in expanding our legal skills and representation into areas of the law that involve novel legal issues or established areas of law that are new to the attorney. Take my own Name, Image and Likeness ("NIL") practice. Three years

¹ See generally Chief Justice's Commission on Professionalism, *A Lawyer's Creed and the Aspirational Statement on Professionalism*, <https://tinyurl.com/38rts45t> (Last visited March 12, 2004).

² See, e.g., *Id.* at Lines 67, 142 – 148.

³ Georgia Rules of Professional Conduct, Rule 1.1

⁴ *Id.*, Comment 2; *Id.*, Comment 5.

⁵ *Id.*, Comment 1[B].

⁶ *Id.*, Comment 1[B].

ago, there was no such NIL practice to represent college athletes in paid transactions. After the June 21, 2021, United State Supreme Court ruling in the *NCAA v. Alston*⁷ case, collegiate athletes could begin to benefit financially from the use of their NIL across the multi-billion dollar collegiate sports industry. Since then, different states and colleges promulgated their own versions of NIL regulations. Most recently, in *State of Tennessee and Commonwealth of Virginia v. National Collegiate Athletic Association*, a federal judge in the Eastern District of Tennessee granted a preliminary injunction February 23, 2024,⁸ finding that the NIL rules which prohibit student-athletes from negotiating for NIL with any third-party entity caused irreparable damage to college athletes. Who knows what can happen by the time this article is published? With such rapidly changing laws, competence in the NIL practice of law reflects more of a lawyer’s willingness to study the law, including, regular updates in cases in various jurisdictions, but also the regulations of non-governmental organizations such as the National Collegiate Athletic Association (NCAA) and various athletic sports conferences. Competence in NIL also includes other skills, like creating and maintaining professional relationships with compliance officers at each client’s college and the athletic conference in which the college athlete plays.

Thus, competence in areas of the law that involve novel legal issues or established areas of law that are new to the attorney is not at all mastery. Instead, it is a constant and consistent willingness to grow, learn, study and share ongoing results with others as a teacher, mentor, mentee and/or student. There is no “playbook” or precedent in burgeoning areas of the law, so there are no “masters”, but rather lawyers who service clients with the level of sufficiency of a general practitioner. With rapidly changing laws in so many areas, why not accept the challenge of learning a new area? Expanding your practice?

There is a reason we “practice” law. It is the same reason many of us love the law. The law expands, morphs and reflects who and where we are and what we value personally and as a community. It is incumbent upon us as lawyers to earn client trust in any area in which we “practice,” no matter how many years we have served in that area. We must remain curious to hone our skill set and seek knowledge in real time.

SHARING INFORMATION ABOUT OUR COMPETENCY WITH POTENTIAL CLIENTS OR EMPLOYERS

The opening lines of a *Lawyer’s Creed* read: “To my clients, I offer faithfulness, competence, diligence, and good judgement. I will strive to represent you as I would want to be represented and to be worthy of your trust.”⁹ As noted above, Lawyers can venture into new areas competently while aspiring towards mastery. What information – beyond the lawyer’s efforts to achieve

⁷ 594 U.S. ___, 141 S. Ct. 2141 (2021). The case is available at Supreme Court of the United States, Opinions of the Court – 2020, Docket No. 20-512, https://www.supremecourt.gov/opinions/20pdf/594us1r51_7k47.pdf (Last visited March 13, 2024).

⁸ *State of Tennessee and Commonwealth of Virginia v. National Collegiate Athletic Association*, No. 3:24-cv 33 (E.D. Tenn. Feb. 23, 2024). The Court’s *Memorandum Opinion and Order* are available at Tennessee, Attorney General and Reporter News, <https://www.tn.gov/content/dam/tn/attorneygeneral/documents/pr/2024/pr25-18.pdf> (Last visited March 13, 2024).

⁹ Chief Justice’s Commission on Professionalism, *A Lawyer’s Creed and the Aspirational Statement on Professionalism*, <https://tinyurl.com/38rts45t> at Lines 2 - 5 (Last visited March 12, 2024).

competency – that an attorney venturing into a new area of practice can share with his or her clients to be worthy of their trust? Share all updates and answer all questions in language that meets the client’s level of comprehension and knowledge. Not only will promptly sharing information and answering questions earn client trust, but also strengthen client engagement.

SHARING COMPETENCE WITH OUR COLLEAGUES AND NEW LAWYERS

One of the Aspirational Statements in the Lawyer’s Creed offers the aspiration to improve the practice of law by: (i) assisting in continuing legal education efforts; (ii) assisting in organized bar activities; and (iii) assisting law school in the education of our future lawyers.¹⁰ Comment 6 of Rule 1.1 states that “to maintain the requisite knowledge and skill, a lawyer should engage in continuing study and education”.¹¹

Law schools are both academic and professional training grounds - a reminder that the *study* of law requires continued academic discipline within our professional careers. Our knowledge of doctrine and ability to apply our skills are the cornerstone of competence.

Learning from other lawyers, including those more experienced, expands one’s competency and technical skills. The Georgia Professional Rules of Conduct implicitly addresses this tenet within the competency rule, as it states that “competent representation can also be provided through the association of a lawyer of established competence in the field in question.”¹² Interactive, interpersonal exchanges within our legal community should remain intentional with respect to our levels of competence. Consider how our mentees and colleagues can benefit from our ability to think, analyze and extemporaneously negotiate from experience. Imagine your increased knowledge of technology, for example, from working with younger counterparts who are able to gather, sift and synthesize copious amounts of data in a fraction of the time it took us to search through library stacks. The act of teaching and training others entails a sharpening of our educational discipline and application of our knowledge to build professional competence. Mutual teaching and learning from our colleagues and mentees heightens our competency levels as we expand our ways of thinking, analyzing and approaching the law.

While competence may take different forms of skill development from writing and negotiating to teaching others, studying law remains a lifelong pursuit that never ceases to engage and reward the curious and hardworking. In the spirit of the Lawyers Creed, I encourage each of us to challenge ourselves and expand “competence” in our respective practice areas. If a lawyer is ever unsure of whether they meet the standard of competence, our partners at the State Bar of Georgia remain an educational resource for legal questions and learnings, including additional insight on professionalism in the law.

¹⁰ Chief Justice’s Commission on Professionalism, *A Lawyer’s Creed and the Aspirational Statement on Professionalism*, <https://tinyurl.com/38rts45t> at Lines 145 - 148 (Last visited March 12, 2004).

¹¹ *Id.*, Comment 6.

¹² Georgia Rules of Professional Conduct, Rule 1.1, Comment 2.