

COMPETENCE MEANS NEVER HAVING TO SAY YOU'RE SORRY

Hon. Kay D. Sloan*

"I'm sorry, Your Honor, but I've just been admitted to the bar, and I didn't know about that requirement."

"This isn't my field of practice, so naturally I'm not familiar with that opinion."

"I apologize, but I don't know what the law is in this situation. I figured the court would know."

"I took this case pro bono, so I didn't think I was expected to do research."

These are all statements made by attorneys, to this Author, during hearings or nonjury trials over which the Author presided as a General Master of the court. Observations, over many years, reveal that such remarks are too commonly made to judges as well. Although most attorneys come before the court well prepared to represent their clients, many seem unaware that failure to provide competent representation is a serious breach of legal ethics.

In Florida, as in other states, the Supreme Court has established rules that set forth the responsibilities of bar members.¹ Rule 4-1.1 of the *Florida Rules of Professional Conduct* (the Rule) mandates that "[a] lawyer shall provide competent representation to a client."² Like its counterparts in other states, the Rule uses the mandatory language "shall," indicating that it is an imperative rule, the

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General Master Sloan received her B.A. *magna cum laude* from the University of South Florida in 1983 and her J.D. *magna cum laude* from the Stetson University College of Law in 1987.

1. See R. REGULATING FLA. BAR Rule 1-2 (1998).

2. *Id.* Rule 4-1.1.

breach of which may result in professional discipline.³ The Rule further provides that “[c]ompetent representation requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation.”⁴ Of the four components of competent representation, this Essay focuses on the first two, legal knowledge and skill, because no lawyer can be either thorough or prepared without them. Moreover, acquiring the reasonably necessary legal knowledge and skill to represent a client is a significant part of a lawyer's thorough preparation in any representation.

Acquiring the legal knowledge and skill to competently represent the client can present special problems for the lawyer who is newly admitted, who is undertaking a case outside of his field of expertise, or who is confronted for the first time with a particular issue of great complexity. Such lawyers are not, however, the only ones faced with the challenge. Because the law is constantly and rapidly changing, experienced lawyers must exert considerable effort if they are to remain knowledgeable and skilled. Those who rise to the challenge are diligent and disciplined. They also know where to go for help.

Never let it be said that we lawyers are an irreligious lot. The lawyer who hasn't found herself praying, “Please, God, get me through this without looking like a fool,” hasn't been practicing long. Under especially trying circumstances, she might pray, “Please let my malpractice insurance cover this!” Even the conscientious practitioner can be guilty of occasionally missing a significant new opinion or recent statutory change. It is no coincidence that those who seldom find themselves in such situations are the same lawyers who are often present at section meetings of the local bar, continuing legal education seminars, meetings of the local case law update group, or educational programs of the local Inn of Court. You can easily predict which lawyers will be present at any educational forum offered in your circuit. They are the same lawyers who were present last month, and last Monday. They know where to go for help, and they are disciplined and diligent enough to get there.

Jokes that liken lawyers to snakes and sharks may be clever. There is nothing funny, however, about the negative image of our profession that these jokes reflect. We can turn that image around,

3. *See id.* Rule 3-4.2.

4. *Id.* Rule 4-1.1.

and we should, not just to avoid professional discipline, but also for the pride of knowing we have served justice and our clients well. We should follow the example of our colleagues who attend every educational forum possible, and we should face the fact that attending merely the continuing education courses necessary to stay licensed is, alone, not enough to make us competent lawyers.

If a case involves issues outside our field of expertise, we should associate with an attorney of established competence in the field or, at least, confer and then do the necessary research and study.⁵ Attending bar section meetings in the new field can provide contact with experienced colleagues who might act as co-counsel. In addition, technology has given us the tools to make research faster and easier. If after diligent efforts we find we still cannot competently represent the client, the representation should not be undertaken and the client may be referred to an expert in the field. Both the client and the expert will benefit, as will the referring lawyer's reputation for professional ethics.

Whether we are new to the practice of law or old-timers, we can become and stay more competent by meeting with other lawyers whenever possible. This is especially important for those who are sole practitioners. As effective as independent study may be, study of the law is enhanced by group discussion. The differing perspectives and interpretations you encounter in group study may be the very approach taken by your opponent in your next case. In addition to continuing legal education courses, bar associations provide group learning experiences through section and committee participation. Videotapes available through bar association libraries can provide the focus for informal discussion in a law firm or just between two colleagues. Bar-sponsored forums and activities featuring the bench give members a chance to interact with, and gain insight from, their judges.

There are many other experiences that complement the important opportunities offered by state and local bar associations. For example, Inns of Court provide learning opportunities. Inns are organized for legal education and divided into pupillage groups that give new lawyers the chance to learn from experienced jurists. Every Inn meeting includes an educational program. The pupillage groups

5. *See id.* Rule 4-1.1 cmt.

also meet separately for legal study and to prepare programs for the entire Inn.⁶

In some legal communities, informal groups gather regularly to review and discuss the most recently published legal opinions in their shared field of practice. Such groups can easily be formed by a few interested lawyers. The group might meet over breakfast or lunch, offering valuable educational interaction without cutting into court or client time.

Although nothing teaches like experience, observing competent, experienced lawyers in action may be the next best thing. In jurisdictions in which mentor programs exist, new lawyers can learn invaluable skills by observing competent mentors. It is not necessary, however, to have a mentor to benefit from observation. Most trials and hearings are open to the public, and many judges encourage lawyers to sit in and observe. The experienced lawyer will be flattered to have an interested audience, and the judge will be grateful to have you learn the rules of his or her court. In fact, knowledge of a judge's approach to, and interpretation of, the law is an important part of a lawyer's competent representation of the client. It is important to learn about a judge by observing the court and communicating with other lawyers, as opposed to learning through a court ruling adverse to your client.

If we read and research, join and participate, observe and study, we are more likely to be competent lawyers. We are more likely to serve clients and justice well, to take justifiable pride in our work, and to avoid professional discipline. We can't do it alone. We need the help of our fellow professionals and they need our help. It may seem important that a lawyer appears, to the client and the court, to be the most knowledgeable person present, but just among ourselves, we must acknowledge our continuing need to learn from each other. The result will be fewer apologies needed and, perhaps, a public awareness that the legal profession provides significant services without which our society cannot prosper.

6. If the community in which you practice doesn't have an Inn of Court, you can contact the American Inns of Court Foundation, 127 S. Peyton St., Suite 201, Alexandria, Virginia 22314, for information about starting an Inn.