

## Lawyer Competence

Historically, the competence of attorneys was not viewed as an ethical matter at all. In fact, it was not until the adoption of the Code of Professional Responsibility in 1969 that the concept of competence was specifically included as a part of the attorney's professional obligation.

Currently, Model Rule 1.1 now addresses the question of lawyer competence. Specifically, this rule states that:

“A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.”

But, what exactly is meant by this phrase, “*competent*”?

During the 1980's, an ALI-ABA Committee on Continuing Professional Responsibility issued a report that defined legal competence in the following manner:

“Legal competence is measured by the extent to which an attorney (1) is specifically knowledgeable about the fields of law in which he or she practices, (2) performs the techniques of such practice with skill, (3) manages such practice efficiently, (4) identifies issues beyond his or her competence relevant to the matter undertaken, bringing these to the client's attention, (5) properly prepares and carries through the matter undertaken, and (6) is intellectually, emotionally, and physically capable. Legal incompetence is measured by the extent to which an attorney fails to maintain these qualities.”

The ALI-ABA Committee further identified ten specific criteria to be used in measuring “competency.” They included: “information gathering, legal analysis, strategy formation, strategy execution, following through, practice management, professional responsibility, practice evaluation, training and supervising support personnel, and continuing attorney self-education.”

However, this definition tends to equate the meaning of attorney competence (i.e., knowing what to do and how to do it) with the very different concept of performance. Just because an attorney *knows* what and how to perform a certain legal task does not always assure that the attorney will, in fact, *perform* that task competently. A lawyer's actual performance may still fall short of the appropriate standard for any number of reasons that are often completely unrelated to competence (e.g., inattention, laziness, conflicting time pressures from other work, various economic factors, or even a mistake).

In contrast to the ALI-ABA Committee's definition, a 1979 Task Force of the A.B.A. Section of Legal Education and Admission to the Bar took a somewhat different approach to the question of attorney “competence.” This approach attempted to recognize the distinction between competence and performance, by defining lawyer competence within three basic components: “(a) certain fundamental skills; (b) knowledge about law and legal institutions; and (c) ability and

motivation to apply both knowledge and skills to the task undertaken with reasonable proficiency.“

The current Model Rule 1.1 reflects certain aspects of both of these earlier definitions, however, it probably places a somewhat greater emphasis upon the lawyer’s individual qualifications to handle a given legal matter rather than the lawyer’s actual performance in handling that matter. Likewise, the Comments to Model Rule 1.1 address the concept of “competence” within three categories similar to those suggested by the A.B.A. Task Force. These include “legal knowledge and skill,” “thoroughness and preparation,” and “maintaining competence.”

Even though legal competence, and the actual performance of legal duties, are clearly distinct matters, they are also both uniquely related to any assessment as to the overall quality of legal services rendered on behalf of a client. In this Lesson, you will see just how closely both of these concepts are interrelated when attempting to determine lawyer “competence.”