The Competence Gap:
Civil Rights Literacy as a Professional Duty

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Abstract

More than one in four American adults reports a disability, and every major civil rights statute adds further protected classes, so the probability that any given client falls within a protected class is a substantial share of every practice. Yet legal education and bar licensure do not require civil rights or disability law, and the duty of competence has never been read to demand it. This Essay argues that the omission is not a gap in an individual lawyer's education but a structural competence failure of the profession, and that it falls hardest on the clients least able to absorb it. The duty of competence already reaches civil rights literacy. Model Rule 1.1 requires the preparation reasonably necessary for the representation, the profession expanded that baseline to relevant technology in 2012 through commentary alone, and the doctrine that shields a lawyer's informed strategic choices does not shield a choice never made, because ignorance of a materially stronger remedy is not a strategy. The individual failure has an upstream source in accreditation and the bar examination, which set the competence baseline and omit the body of law most relevant to the most vulnerable clients.

The contribution is a remedy located at the three points that set that baseline: the duty of competence, accreditation and bar content, and mandatory continuing education. The remedy is professional regulation, not litigation.

Keywords: legal ethics; duty of competence; Model Rule 1.1; disability civil rights; Section 504; ADA Title III; *Alexander v. Choate*; *Enyart v. National Conference of Bar Examiners*; bar licensure.

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I. Introduction

A lawyer takes a client. The client has a disability, and the harm the client suffered tracks that disability closely. The lawyer, competent and well meaning, pleads the case in product liability or negligence, resolves it on those terms, and never considers that a separate body of federal law, enacted in 1973 and again in 1990, was written for exactly this client and carries a remedy the tort counts do not.[1] The lawyer did not weigh the civil rights theory and decline it. The lawyer never saw it, because no one taught it and the bar never required that anyone learn it. This Essay argues that the omission is not a gap in one lawyer's education. It is a structural failure of the profession, and it falls hardest on the clients least able to absorb it.

Begin with a number. More than one in four adults in the United States, 28.7 percent, reports a functional disability, an estimated 70 million people, a share that rises to 43.9 percent among adults aged 65 and older.[2] Add the other classes federal civil rights law protects, and the chance that any given client sits within a protected class is not marginal. It is a substantial share of every practice. Civil rights issues are therefore not the exotic edge cases the profession's training treats them as. They are latent in the ordinary caseload of nearly every practitioner, and a profession that trains as though they were rare has miscalibrated against its own client base.

The duty of competence already implies the point. Model Rule 1.1 requires the legal knowledge and preparation reasonably necessary for the representation, and the profession has expanded that baseline before, adding a duty to understand relevant technology in 2012 by amending only the rule's commentary.[3] Competence that stops short of the client's strongest available remedy is not competence. And the defense that ordinarily shields an omission, the

1. Rehabilitation Act of 1973 § 504, 29 U.S.C. § 794; Americans with Disabilities Act of 1990, tit. III, 42 U.S.C. §§ 12181–12189.

2. CTRS. FOR DISEASE CONTROL & PREVENTION, *Disability and Health Data Now* (2024), `https://www.cdc.gov/disability-and-health/articles-documents/disability-and-health-data-now.html` (last visited July 5, 2026) (reporting 2022 Behavioral Risk Factor Surveillance System data).

3. MODEL RULES OF PRO. CONDUCT r. 1.1 cmt. 8 (Am. Bar Ass'n 2023) (a lawyer should keep abreast of "the benefits and risks associated with relevant technology").

immunity that protects a lawyer's informed strategic choices, does not reach a choice never made, because ignorance of a materially stronger remedy is not a strategy. It is the absence of one.

The individual failure has an upstream source. The bodies that set what a lawyer must know, law school accreditation and the bar examination, do not require civil rights or disability law. The bar's own modernization proves the point against itself. The new licensing examination, first administered in July 2026, rebuilds the test around issue spotting and investigation, the exact skills a lawyer needs to recognize that a protected-class client has protected-class remedies, while omitting from its eight tested subjects the body of law those skills would spot.[4]

The cost is not abstract. When a doctrine that harms disabled people goes unchallenged for years, it is often because the attorneys who would challenge it do not know the challenge exists. This Essay proceeds in four Parts and a conclusion. Part I establishes the base rate. Part II locates the duty in existing competence doctrine. Part III shows how legal education and licensure manufacture the gap. Part IV proposes the fix at the three points that set the competence baseline and explains why the remedy is professional regulation rather than litigation. A brief conclusion returns to the client with whom this Essay began.

II. The Base Rate

The empirical premise is simple and it does most of the work. Disability alone reaches more than a quarter of the adult population.[5] It is also the most broadly distributed protected characteristic, cutting across every age band, income level, race, and region, and its prevalence climbs steeply with age, so a practice serving older clients approaches a coin flip.[6] The federal civil rights statutes then layer additional protected classes on top of that base, reaching race, color, national origin, sex, religion, age, and more, each with its own body of doctrine and remedies.

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4. NAT'L CONF. OF BAR EXAM'RS, *About the NextGen Bar Exam* (2026), `https://www.ncbex.org/exams/nextgen/about-nextgen` (last visited July 5, 2026) (first administration July 2026; eight foundational subjects: business associations, civil procedure, constitutional law, contracts, criminal law, evidence, real property, and torts).

5. CTRS. FOR DISEASE CONTROL & PREVENTION, *supra* note 2.

6. *Id.* (43.9 percent prevalence among adults aged 65 and older).

The consequence for competence is direct. If more than one in four clients carries a disability, and a larger share carries some protected characteristic, then civil rights questions are not a specialty a lawyer may or may not encounter. They are a standing feature of the ordinary caseload, present whether or not the lawyer is equipped to see them. A profession that treats these questions as the province of a boutique bar has made a category error about the distribution of its own clients.

This reframing matters because it changes what counts as competence. A tool a lawyer needs once a decade can fairly be left to referral and specialization. A body of law implicated in a large fraction of a general practice cannot. The base rate is the reason the argument that follows is about the duty of competence itself, not about encouraging a worthy elective.

III. The Duty of Competence Already Reaches This

Model Rule 1.1 requires "the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation."[7] The rule is not frozen. In 2012 the profession expanded the baseline of required knowledge to include the benefits and risks of relevant technology, and it did so without touching the text of the rule, by amending Comment 8.[8] The mechanism is the point. A competency the profession comes to regard as basic can be folded into Rule 1.1 through its commentary, and the technology amendment is the recent, on-point precedent that it can be done deliberately and quickly.

Read against the base rate, the duty already reaches civil rights literacy. A lawyer representing a client who falls within a protected class, in a matter where that status supplies a stronger or additional remedy, cannot furnish the preparation reasonably necessary for the representation while remaining unaware that the remedy exists. Competence that stops at the client's second-best theory, when a first-best theory sits in a statute the lawyer never learned, is not thoroughness. It is a gap the client pays for.

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7. MODEL RULES OF PRO. CONDUCT r. 1.1 (Am. Bar Ass'n 2023).
8. *Id.* r. 1.1 cmt. 8.

The usual objection is that pleading choices are strategic and courts do not second-guess them. That objection misfires here. The doctrine that protects strategic choices, variously the attorney judgment rule or judgmental immunity, shields a lawyer's reasonable, informed judgment among known options; it does not shield a decision the lawyer never made because the lawyer never knew the option existed.[9] Ignorance of a materially stronger, governing remedy is not the exercise of judgment. It is the failure of the very knowledge Rule 1.1 requires. The strategic-choice defense, in other words, presupposes the competence this Essay says is missing.

IV. How the Pipeline Manufactures the Gap

If the duty already reaches civil rights literacy, why does the profession so reliably fail it? Because the institutions that set the competence baseline do not require it. Law school accreditation mandates instruction in professional responsibility but not in civil rights or disability law, and the bar examination has never tested it as a subject. The result is a pipeline that certifies lawyers as competent to practice while never once asking whether they can recognize a protected-class client's protected-class remedies.

The bar's own modernization sharpens the indictment rather than answering it. The redesigned licensing examination, first administered in July 2026, was built to move away from rote memorization and toward the skills of practice, and it now foregrounds issue spotting, investigation, and client counseling.[10] Those are precisely the skills a lawyer exercises when she notices that a client's disability opens a statutory door. Yet the examination's eight tested subjects do not include the law behind that door.[11] The profession rebuilt its gate around the capacity to

9. *See Clary v. Lite Machines Corp.*, 850 N.E.2d 423, 432–33 (Ind. Ct. App. 2006) (holding that an attorney's duty encompasses knowledge of the law and diligent research, and that judgmental immunity reaches only judgments on genuinely unsettled law, not a failure to research settled law); RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS § 52 (Am. Law Inst. 2000) (standard of care).

10. NAT'L CONF. OF BAR EXAM'RS, *supra* note 4.

11. *Id.* (listing business associations, civil procedure, constitutional law, contracts, criminal law, evidence, real property, and torts).

spot issues and left out the body of law most relevant to spotting them for its most vulnerable clients.

The pattern is a form of harm blindness. The people who set curricula and examination scope do not sit across the table from the disabled client whose lawyer missed the statute. That client is downstream, invisible at the moment the baseline is fixed, and the harm is slow and distributed enough that no one attributes it to a syllabus or an examination blueprint. The gap is not the product of anyone's animus. It is the product of a decision structure in which the affected population has no seat.

V. The Fix, and Why Not Litigation

The remedy tracks the diagnosis. The gap is set at three institutional points, so it is closed at three institutional points.

A. The Duty of Competence

The cleanest step is the one with a precedent. The profession should add commentary to Model Rule 1.1 recognizing that competent representation of a client within a protected class includes awareness of the civil rights remedies that status may supply, on the exact model of the 2012 technology-competence comment.[12] This is not a new duty invented from nothing. It is the articulation of a duty the base rate already implies.

B. Accreditation and Bar Content

The bodies that certify law schools and license lawyers should require civil rights and disability competence, the American Bar Association through its accreditation standards and the National Conference of Bar Examiners through the tested content of the bar examination. The mechanism is not novel. Many jurisdictions already mandate implicit bias or diversity continuing education, which shows that a competency can be required across the profession by the regulators who

12. *See* MODEL RULES OF PRO. CONDUCT r. 1.1 cmt. 8 (Am. Bar Ass'n 2023).

set its floor. The bar examination's own recent history shows the same responsiveness: family law, initially left out of the redesigned examination's core subjects, is being folded back in after criticism that its omission abandoned vulnerable clients.[13] A subject can be required because it protects vulnerable people. That is the argument, and it has just been made successfully.

C. Continuing Education

For the lawyers already licensed, the state supreme courts that set continuing legal education requirements should include civil rights and disability competence, the same instrument already used for bias and technology instruction.

D. Why Regulation, Not Litigation

One clarification forecloses a tempting misstep. The remedy is professional regulation, not litigation. A plaintiff cannot sue a curriculum. An abstract course of study is not a legal person, a client injured years later by an ill-equipped lawyer cannot trace that injury to a particular syllabus with the particularity standing requires,[14] and courts extend broad deference to a university's academic judgments about what to teach.[15] The disability civil rights statutes do reach the pipeline, but at its access points, not its content: the accommodations litigation that has forced bar examiners to make the examination itself accessible to disabled applicants is the model, and it succeeded because it targeted the gate, not the ideology of the curriculum.[16] What is litigable at the individual level is the duty of competence itself, through malpractice, and what is fixable at the systemic level is the competence baseline, through the regulators who set it. Neither is a suit against a subject.

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13. NAT'L CONF. OF BAR EXAM'RS, *supra* note 4 (family law to be added to the foundational subjects in July 2028).

14. *See Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560–61 (1992) (injury must be concrete and fairly traceable to the challenged conduct).

15. *See Regents of the Univ. of Mich. v. Ewing*, 474 U.S. 214, 225 (1985); *Bd. of Curators of the Univ. of Mo. v. Horowitz*, 435 U.S. 78, 90–92 (1978).

16. *See Enyart v. Nat'l Conf. of Bar Exam'rs, Inc.*, 630 F.3d 1153 (9th Cir. 2011) (affirming preliminary injunction requiring testing accommodations for a blind bar applicant under the ADA).

VI. Conclusion

Return to the client with whom this Essay began. The remedy her lawyer missed was not obscure. Section 504 and Title III of the Americans with Disabilities Act reach discrimination her tort counts could not, the meaningful-access construction of those statutes was settled decades ago,[17] and the integration mandate has restructured entire state systems on their authority.[18] These laws exist because, at some point, someone cared enough about disabled people to write them. The reason the client's lawyer did not use them is not that the law is unsettled. It is that the profession never required anyone to learn it.

That is the competence gap. It is manufactured upstream, in the pipeline that sets the baseline, and it is paid downstream, by the clients least able to absorb a lawyer who cannot see the law written for them. Ignorance of the law is no excuse for the defendant. It should be no excuse for the profession sworn to know it.

17. *See Alexander v. Choate*, 469 U.S. 287, 301 (1985) (meaningful-access standard); *Mark H. ex rel. Michelle H. v. Lemahieu*, 513 F.3d 922, 937–38 (9th Cir. 2008) (meaningful-access and reasonable-modification regulations enforceable as constructions of the statute).

18. *See Olmstead v. L.C.*, 527 U.S. 581 (1999).