

The Competence Gap

Civil rights literacy as a professional duty

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 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. The omission is not one lawyer's gap. It is a structural competence failure of the profession, and it falls hardest on the clients least able to absorb it.

The lawyer did not weigh the civil rights theory and decline it. The lawyer never saw it.

A lawyer takes a client. The client has a disability, and the harm tracks that disability closely. The lawyer, competent and well meaning, pleads the case in product liability or negligence, resolves it on those terms.

She 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. No one taught it, and the bar never required that anyone learn it.

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.

Manufactured upstream, in the pipeline that sets the baseline. Paid downstream, by the client.

I • BASE RATE

Civil rights questions are latent in the ordinary caseload of nearly every practitioner, not exotic edge cases.

II • THE DUTY

Rule 1.1 already reaches it, and ignorance of a stronger remedy is not a strategy the law protects.

III • THE PIPELINE

Accreditation and the bar exam set the baseline, and omit the law most relevant to vulnerable clients.

IV • THE FIX

Close the gap at the three points that set it. The remedy is professional regulation, not litigation.

The Base Rate

The empirical premise is simple, and it does most of the work

28.7%

of U.S. adults report a functional disability, the CDC's 2022 BRFSS estimate.

~70M

people, and disability is the most broadly distributed protected characteristic of all.

43.9%

among adults aged 65 and older. A practice serving older clients approaches a coin flip.

Add every other protected class on top, and civil rights questions are not a specialty a lawyer may or may not encounter. *They are a standing feature of the ordinary caseload.*

The Duty Already Reaches This

Model Rule 1.1, the 2012 technology precedent, and why the strategic-choice defense misfires

The profession has expanded this baseline before, by amending a comment alone.

MODEL RULE 1.1 • COMMENT 8 (2012)

The duty to keep abreast of "the benefits and risks associated with relevant technology" was added *without touching the text of the rule*. A basic competency, folded in through commentary, deliberately and quickly.

Read against the base rate, the duty already reaches civil rights literacy. A lawyer cannot furnish "the preparation reasonably necessary for the representation" while unaware that a stronger 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.

A choice never made is not a choice the law protects.

Judgmental immunity shields a lawyer's **reasonable, informed judgment among known options**. It does not shield a decision the lawyer never made because she never knew the option existed. As *Clary v. Lite Machines* holds, the duty encompasses knowledge of the law and diligent research; immunity reaches only genuinely unsettled law, not a failure to research settled law.

Ignorance of a materially stronger, governing remedy is not the exercise of judgment. The strategic-choice defense presupposes the competence this essay says is missing.

How the Pipeline Manufactures the Gap

Accreditation, the bar examination, and a decision structure with no seat for the affected

The profession rebuilt its gate around issue-spotting, and left out the law most relevant to spotting.

NEXTGEN BAR EXAM · FIRST ADMINISTERED JULY 2026

Rebuilt around **issue spotting, investigation, and client counseling**, the exact skills a lawyer uses to notice that a client's disability opens a statutory door.

THE EIGHT TESTED SUBJECTS

Business associations · Civil procedure · Constitutional law · Contracts · Criminal law · Evidence · Real property · Torts

The law behind that door is not among them.

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.

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 exam blueprint.

The Fix, and Why Not Litigation

Set at three institutional points, so closed at three institutional points

The remedy tracks the diagnosis.

A • THE DUTY

A new comment to Rule 1.1.

Recognizing that competent representation of a protected-class client includes awareness of the civil rights remedies that status may supply, on the exact model of the 2012 technology comment.

B • ACCREDITATION & BAR

Require it at the gate.

The ABA and NCBE already show a subject can be required to protect vulnerable people: family law, left out of the redesign, is being folded back in after exactly that criticism.

C • CONTINUING ED

For the already-licensed.

State supreme courts should include civil rights and disability competence in CLE, the same instrument already used for bias and technology instruction.

A plaintiff cannot sue a curriculum.

An abstract course of study is not a legal person. A client injured years later cannot trace that injury to a particular syllabus with the particularity standing requires (*Lujan*), and courts defer broadly to a university's academic judgments about what to teach (*Ewing*; *Horowitz*).

The statutes reach the pipeline at its **access points, not its content**. The accommodations litigation forcing examiners to make the exam accessible (*Enyart*) is the model: it targeted the gate, not the ideology of the curriculum.

What is litigable individually is the duty of competence, through malpractice. What is fixable systemically is the baseline, through the regulators who set it. Neither is a suit against a subject.

The remedy her lawyer missed was not obscure. Section 504 and Title III reach discrimination her tort counts could not; the meaningful-access construction was settled decades ago in *Alexander v. Choate*; the integration mandate has restructured entire state systems on their authority. The reason her lawyer did not use them is not that the law is unsettled. It is that the profession never required anyone to learn it.

Ignorance of the law is no excuse for the defendant. It should be no excuse for the profession sworn to know it.

Table of Authorities

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