

# COMPETENT OR NOT!

## Consequences when Counsel loses the way

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Ohio Rules of Professional Conduct 1.1 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. While the rule does not require special training or prior experience, it requires that counsel be able to determine what kind of legal problems a situation may involve or to seek assistance from a lawyer of established competence in the field.

I bring this basic rule to your attention, as it appears that more and more immigration cases are accepted by lawyers who are not competent in the area. Any time an attorney accepts a case where the attorney does not possess the necessary skill to represent the client, it has dire consequences. In the immigration field the drawback is graver, as the end result could be deportation and families being separated for years. Clients of immigration attorneys often do not speak the language; their understanding of the legal system is poor as is their understanding of immigration law. Many citizens and even a number of ethical attorneys do not have a good understanding of immigration law as it follows no rational pattern as in other areas of law. It is historical based and unique in our law and culture.

Further, immigrants do not have the understanding that they may file a grievance against an attorney or even file a malpractice claim against them. More often they do not have the opportunity because they are deported. Even if not deported, it is often not in their culture to sue anyone, much less an attorney.

When attorneys assume representation, they assure the client that they will explore the best solution for them, and follow a plan in order to achieve the desired result. When clients visit an attorney and seek legal advice or representation, they hope their goals can be accomplished and their situation is not going to be worse than it was before. This was the hope of the client who ended up being deported after a

lengthy representation. He visited counsel to change his status. The client originally came to the United States illegally. He had been in the United States for five years when he married to a US Citizen. Client wanted to become a permanent resident and, later, a US citizen based on his marriage to a citizen. Counsel assured the family that it could be accomplished. Counsel charged an exorbitant fee in the matter, and filed numerous unnecessary documents. After several years of counseling and filing documents, the case was terminated with the final result being deportation. In this matter, it is unclear whether the attorney just simply did not have the requisite knowledge to handle the matter or counsel was not able to give an honest opinion to the client. What is clear is that the attorney was not competent to handle this immigration matter in that the attorney should have known that filing for permanent residency on the basis of marriage to a US Citizen under these facts (illegal entry, five years in the US and no other facts) was never going to be successful and would only lead to deportation.

In another situation, husband and wife came to the States legally on a visitor visa, called B1/B2 visa. They were authorized to stay for six months. After the six months, husband decided to return to his home country, but wife decided to stay in the US. Wife hired counsel to file for an extension. The extension was granted and wife was able to stay an additional six months. During the extension time, wife received a job offer, which she was ready to accept but for her status in the US. Wife decided to return to counsel and now seek help with a complex legal matter. The issue was that wife came here as a visitor and in order to be employed in the US, the immigration status of the applicant would need to be changed from a visitor to a non-immigrant worker. In this particular matter, the timing was crucial as the expiration of the extension was approaching. Counsel assured the client that all filings could be accomplished within five months. Two

months later, it was obvious that counsel was unable to deliver services as promised due to the unavailability of "H-1B" work visa. Counsel never disclosed this fact to the client; instead Counsel led her to believe that she could remain lawfully in the country. She also failed to notify her that if she remained even one minute longer in the country than her extension, the government would void her B1/B2 Multiple Entry Visa. Time was passing and no legal solution was forthcoming. When the client questioned attorney why she had not received her work permit, attorney advised client that it takes longer than she expected; additionally counsel blamed the immigration office for being slow in their response. Counsel did not know what to do and as a result client's lawful status came to an end. Client remained in the country after the extension expired, which meant she was out of status and without a visa to return. This case also came to a sad end; applicant/client had to appear at a deportation hearing.

The attorney took on a case that she was not competent to handle and when she discovered the true situation, she panicked and did nothing. Unfortunately this is not a rare occurrence. The attorney should have consulted an attorney with established competence. She could have requested help through the American Immigration Lawyers Association or visited a forum through ILW.com.



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