CHAPTER 11
Duty of Competence and Diligence

In many kinds of employment, we are likely to face some basic questions in this area at one time or another. What kinds of work am I qualified to do? How much needs to be done to represent diligence? Professional ethics codes attempt to at least mark out in broad strokes what our general obligations are.

QUALIFICATIONS AS A PROFESSIONAL

Professions such as forestry, wildlife management, and fisheries biology have become highly specialized, perhaps even over-specialized. To deal with many management issues, you have to have a roomful of all the “ologists” – biologists of several kinds, hydrologists, pathologists, etc.

When you are fresh out of college, you still have a lot to learn. Your qualifications are still minimal until some practical experience and on the job training. There will be some areas of your field, where your knowledge will be minimal to nil. For example genetics and tree improvement are important in the South, but when I’m around geneticists, I don’t even know what they are talking about. As you move forward in your career, you will naturally specialize in one or a few areas and develop substantial knowledge of them. If you write and speak to professional and technical audiences regularly, you may come to be seen as an expert on certain topics.

A common issue in the conservation field is people misrepresenting their qualifications. In forestry, the fact that loggers and others present themselves in ads and flyers as “foresters” has long
been an irritation. Except in licensing and registration states, this may not be illegal. Usually they are not members of a professional association. It is not even an issue that a professional group can act on.

In consulting, you must often work on a variety of topics. It often happens that you revisit certain subjects more regularly and can then lay claim to expertise on them. When discussing potential engagements with clients, you have to be scrupulously honest on this. Sometimes someone asks you to work on a topic, and you admit you know nothing about it. The client may say, “well, far as I can see nobody else does either, so you’re hired.” In such instances your reputation for careful work may get you the job.

In public debates, it is common for conservation professionals to speak as if they are technically expert on a related field when in fact they are not.

CONTINUING EDUCATION

We all have seen people whose bookshelf contains their college textbooks, 15 years old, that are rarely opened. They do not read professional journals, complaining that “there’s nothing in there for me.” They are not members of any professional society. Not being members, they are not subject to the society’s ethics codes that mandate keeping up with their field.

Every learned profession requires its members to devote time to “keeping up.” Some maintain certification processes that require tracking of courses taken and presentations made, requiring a certain number of “points” every year from a variety of activities. State licensing boards enforce these.

Diligence

Ethics codes admonish members to only accept assignments that they are in a position to carry out to a high professional standard, and to ensure that their compensation permits this. This is not just to prevent price-cutting in competition for work, but to prevent the devaluation of the profession by sloppy work, and also to protect the client. In some occupations, traditional pricing practices (percentage of the costs, as in real estate commissions) serve both purposes.
The suitable amount of diligence is not readily specified. Especially since, as noted above, there exist few precise professional standards that lay it out in all details. All the same, for many routine matters, there may be a generally recognized degree of diligence, in terms of time spent, cost, types of data used, sample size, and other matters. It is common, for example, to expect that a forester will inspect a logging job on a weekly basis. And there is a general sense of what is appropriate for an inventory on a small woodlot.

Yet these general averages must be subject to judgment. This is where experience comes in. Applying cookie-cutter methods regardless of circumstances is not professional behavior at all.

Factors legitimately considered in deciding the degree of time, expense, and diligence that is suited to dealing with a problem might include:

- Legitimate deadlines.
- Resource values at stake . . . are we dealing with second growth aspen, or with large trees that are currently eagle habitat?
- Financial values at stake.
- Priorities – usually we have plenty on our plates, and must set priorities for where the time goes.

The ethics codes specify that clients (read employers as well) must be advised whenever a situation arises that professional judgment and recommendations are not being followed. This should also apply to situations where the level of expenditure on information or data supporting a decision is felt to be inadequate.
DILIGENCE VS. BUDGET REALITIES

In many businesses and public agencies, however, operations are under-staffed. Demands come from headquarters for some information or another and it has to be delivered by Friday, regardless. Continued demands of production in understaffed organizations over time can lead to downgrading of standards, and to slighting of important work that does not yield immediate results. Successive rounds of budget cuts lead managers to trim here, cut there, defer one more thing that isn’t needed tomorrow. The next generation of managers finds that the property lines haven’t been brushed for 15 years, the inventory is 20 years old, management plans are not up to date, and no compartment exams have been conducted as long as anyone can remember. Invasive weeds, aquatic or otherwise, are being ignored.

This is reality everywhere. It means that on an escalating list of issues “professional standards” have gone by the boards. There may be little that professionals can do about this in the short run. But they have an obligation to continue to point out to management exactly how things are falling behind and what the long-term consequences could be.

OBLIGATION TO REFER WORK

If you are an employee of an organization, you are likely to get the work assigned – with deadlines – regardless of your protests that you need specialist help or haven’t the time to do it right. You may need to clearly state limitations in your results that are caused by this, or show a list of unresolved points.

A consultant has an affirmative obligation to see to it that the client is well-served. But consultants often face situations where work is offered for which they are not fully qualified – but the client does not know this. Consultants accepting work on this basis then rush about to get up to speed on the subject. This may at times call for you to refer the entire job to another firm or individual whom you know to be the best qualified on the topic of concern. Or, it may call for you to bring in the other expert onto your team for the work. Clients usually support this.
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Referral to better qualified experts is specifically mandated in ACF Canon 15. Referring work to others is important to seeing that the client is well served, and is also a part of professional collegiality. You always hope that “what goes around comes around” and that people will refer something back to you on occasion (okay, sometimes you find yourself hoping for a long time . . .). There are giant consulting firms whose clients have plenty of money and do not seem to care if they know anything or not. Junior people at those firms call specialists and tap their brains for what they need to know. The specialist hopes the big firm will send them a piece of the work. They never do.

**REFERRAL FEES**

In some fields of business, fee-splitting or referral fees are customary. In most professions, however, referral fees are considered unethical. ACF Canon 19 bars soliciting or paying such fees.

**DILIGENCE IN CONSULTING: FURTHER REMARKS**

Many clients are tightwads who undervalue professional expertise and want to buy it for a song. Not only that, many consulting engagements, especially those connected with property transactions, come with tight time deadlines. You will get a call by someone doing “due diligence” who wants a complex task done in 25 days on a cut-rate budget. You will find that in a lot of situations, what goes by the legal term “due diligence” is not “due” at all. This helps explain why a lot of high profile business deals turn out disastrously.

An increasing volume of consulting work is bid out competitively. Price plays an important if not dominant role in who is selected. Requests for proposals are rarely written so clearly that they resolve all questions as to standards and diligence. Does the client want a Cadillac or a Jeep? You are often left to guess. You have to stand accountable for dollar estimates on costs of work that may be very difficult to predict accurately for hours and expenses. The firm with
the highest “professional standards” will usually lose. In a competitive bid situation, you will usually have no opportunity to educate clients on professional standards and why the work costs what it does.

Professional ethics codes usually specify that professionals should be retained on the basis of experience and reputation. This is a faint hope for most of us in the real world – this is controlled by the client, not by ourselves. Even if you are in the position of the organization reviewing bids by consultants for contract work, you may be able to do little about it.

The best you can do is promise the best you can do. This means being honest with yourself as to time required and time available. I have turned down work on the basis that I was simply too busy to get it done in the time available. You may know it will go to someone else who is actually in the same boat, but may be less scrupulous about quality. Turning down work you know you can do and want to do is hard.

THE EXPERT WITNESS

In litigation, specialists may be sought by one side or the other to serve as expert witnesses. An expert is a person who speaks to a contested point from knowledge, expertise, and experience. (“my ballistics tests show that the bullet was fired from this pistol”) This is in contrast to other witnesses, who saw or heard something happen (“the dog barked in the night”) and can testify from personal knowledge of an event.

A common sort of expert witness work for foresters in the past was to testify to financial damages from fires caused by sparks from steam locomotives. Due to their expertise in cruising timber and estimating its value, their testimony was important, since after a fire the evidence had disappeared or radically changed form. “Stump cruises” to estimate damages in trespass cases are still common. With the large volume of litigation on environmental issues and environmental regulations, experts in almost any natural resource field may find themselves playing roles in hotly contested litigation.

Qualification as an expert witness for courtroom testimony is a complex, formalized process. This note is a quick summary. If you are ever involved, the attorneys will fully brief you. Basically, an expert must be qualified by the court, based on adequate qualifications, which can consist of education, experience, publications, and prior expert
witness work. One party’s experts are subject to cross-examination by
the other party’s counsel. If an expert is challenged, the court decides
whether they are to be admitted or not. In complex litigation, experts
may be subject to “discovery”, which is pretrial interview by opposing
counsel. In addition, every single item, including computer files,
produced in preparation is potentially discoverable.

Before you are even retained, counsel may request detailed
information on your past activities, speaking, and writing, to ensure
that a past article or report of yours does not contain something
opposing counsel will obtain and use against the client.

Ethics challenges in expert witness work are formidable. You must
be intellectually honest and adhere to the facts. Your work and
conclusions must meet high professional standards. You will face the
discipline of withering cross examination by opposing counsel, which
is designed to enforce this. Lawyers are trained to pick apart witness
testimony. They are being well-paid to impeach your credibility. There
may also be subtle or not-so-subtle pressure from your own side’s
counsel to ensure that your statements adhere to their view of the case.

**CURRENT CV AND FILE ON ACTIVITIES/QUALIFICATIONS**

At an early age it is sensible to begin a professional curriculum vitae
(CV) and dossier. If you are at all active the list will grow at a satisfying
pace. When you apply for jobs, or at other occasions, having this
handy might save time. In many organizations, reviews for promotion
or even retention often rely on a documented record of this kind.

The CV should include all educational and training experiences.
Commonly at a meeting or training session you can get a signed sheet
indicating the credit hours eligible to professional licensing or
accreditation. (I usually lose these) Professional society officer/
committee activities and civic activities would be included.
Publications, including brief newsletter items initially, can be
included.

Keep a file of your reports, publications, presentation overheads,
and major memos. It can be embarrassing when you are unable to find
bits of your own work years later. I know – it happens to me regularly.

Maintain a file for this purpose; toss items in there as they come up.
You can periodically update your CV, and when some form comes to
fill in your training experiences for the past 2 yrs, it’s all in there. The
form usually wants names, dates, and hours. (If you can remember it all, you’re probably not doing enough). Start doing this now if you aren’t already.

Here is a depressing fact – corporate recruiters have found that about 20% of resumes of persons applying for high profile jobs contain material falsehoods. These have included claims to degrees that were never earned, or study at institutions never attended. These are often people of considerable accomplishment already. Examples appear regularly in the daily papers. Falsifications of military or employment experience are common.

Ethics is not about outright honesty – that is assumed from the start.