

# The Duty of Technology Competence

John G. Browning  
Spencer Fane, LLP

2022 Essential Technology Competence for Attorneys  
UT Law CLE  
April 13, 2022



1



## THE ABA'S NEW STANDARD:

### Model Rule 1.1 – Maintaining Competence

“To maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, *including the benefits and risks associated with relevant technology . . .*”

To date, 40 states have adopted this heightened standard of competence, including Florida, New York, Illinois, Massachusetts, Pennsylvania, Ohio, and Virginia, Louisiana, and Texas

**Texas is one of the most recent, by Supreme Court of Texas order dated February 26, 2019:**

- Amending Rule 1.01 (Competent and Diligent Representation to include a revised Note 8 that adds “including the benefits and risks associated with relevant technology” to remaining “proficient and competent in the practice of law.”

## This change had been coming for quite some time, as some court decisions demonstrated:

- *Munster v. Groce*, 829 N.E.2d 52 (Ind. App. 2005) – (the “duty to Google”)
- *Weatherly v. Optimum Asset Management, Inc.*, 98 So. 2d 118 (La. App. 2005)
- *DuBois v. Butler ex rel. Butler*, 901 So. 2d 1029 (Fla. Dist. Ct. App. 2005) – (“horse & buggy”)

- *Cannedy v. Adams*, 706 F.3d 1148 (9th Cir. 2013) – (duty to use social media evidence)
- *Johnson v. McCullough*, 306 S.W.3d 551 (Mo. 2010) – (duty to do online juror research)
- *Griffin v. Maryland*, 192 Md. App. 518 (2010) – (searching social media “a matter of professional competence”)

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](https://utcle.org/elibrary)

Title search: The Duty of Technology Competence

Also available as part of the eCourse

[Essential Technology Competence for Attorneys](#)

First appeared as part of the conference materials for the  
2022 Essential Technology Competence for Attorneys session  
"The Duty of Technology Competence"