The Duty of Technology Competence

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

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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 . . .*"

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

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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.”

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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")

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- *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")

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Title search: The Duty of Technology Competence

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