

Practicing of Law Across State Lines, Cross Border Issues and Privacy



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Agenda

- Technology Competency Obligation
- Cross Border Transfers
- Privacy Law Issues and Hot Topics
- Looking to the Future
- Incident Response
- How to Become Technologically Competent?

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Level of Comfort with Technology



Luddite Technophile

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LAWYERS' DUTY OF TECHNOLOGY COMPETENCE

ABA Model Rule 1.1 - Client-Lawyer Relationship

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

In 2012, the American Bar Association revised the Model Rules of Professional Conduct to include the "duty of technology competence" in Rule 1.1, Comment 8.

[8] 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, engage in continuing study and education and comply with all continuing legal education requirements to which the lawyer is subject.

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The Rule In Texas



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Texas Duty to Maintain Technology Competence

Rule 1.01. Competent and Diligent Representation

Comment 8. Because of the vital role of lawyers in the legal process, each lawyer should strive to become and remain proficient and competent in the practice of law, **including the benefits and risks associated with relevant technology.** To maintain the requisite knowledge and skill of a competent practitioner, a lawyer should engage in continuing study and education. If a system of peer review has been established, the lawyer should consider making use of it in appropriate circumstances. Isolated instances of faulty conduct or decision should be identified for purposes of additional study or instruction.

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Ethical Obligations Impacted by Technology

- **Duty to Keep Reasonably Informed** - TDRPC 1.01
- **Duty to Communicate** - TDRPC 1.03
- **Duty of Confidentiality** - TDRPC 1.05
- **Duty to Safekeep Client Property** - TDRPC 1.14
- **Duty of Oversight** - TDRPC 5.01; 5.03
- **Duty to Notify Client of Data Breach** - ABA Opinion 483

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