

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 (REPLAY)

First appeared as part of the conference materials for the
2023 First Friday Ethics (March 2023) session
"The Duty of Technology Competence (REPLAY)"