

Tech Competence

40 States Have Adopted the Duty of Technology Competence

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Tracking Technology and Innovation for the Legal Profession

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In 2012, something happened that I described then as a sea change in the legal profession: The American Bar Association formally approved a change to the **Model Rules of Professional Conduct** to make clear that lawyers have a duty to be competent not only in the law and its practice, but also in technology.

More specifically, the ABA's House of Delegates voted to amend Comment 8 to Model Rule 1.1, which pertains to competence, to read as follows:

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*, engage in continuing study and education and comply with all continuing legal education requirements to which the lawyer is subject. (Emphasis added.)

Of course, the Model Rules are just that — a model. They provide guidance to the states in formulating their own rules of professional conduct. Each state is free to adopt, reject, ignore or modify the Model Rules. For the duty of technology competence to apply to the lawyers in any given state, that state's high court (or rule-setting body) would first have to adopt it.

On this page, I track the states that have formally adopted the revised comment to Rule 1.1. The total so far is 40.

- Alaska, **effective Oct. 15, 2017**.
- Arizona, **effective Jan. 1, 2015**.
- Arkansas, **approved June 26, 2014**, effective immediately.
- California, approved Feb. 18, 2021, effective March 22, 2021.
- Colorado, **approved April 6, 2016**, effective immediately. (**More details.**)
- Connecticut, **approved June 14, 2013**, effective Jan. 1, 2014.
- Delaware, **approved Jan. 15, 2013**, effective March 1, 2013.
- Florida, **approved Sept. 29, 2016**, effective Jan. 1, 2017. (**More details.**)
- Hawai'i, **approved Aug. 18, 2021**, effective Jan. 1, 2022. (**More details.**)
- Idaho, **approved March 17, 2014**, effective July 1, 2014.
- Illinois, **approved Oct. 15, 2015**, effective Jan. 1, 2016. (**More details.**)
- Indiana, **approved July 31, 2017**, effective Jan. 1, 2018. (**More details.**)
- Iowa, **approved Oct. 15, 2015**, effective Oct. 15, 2015. (**More details.**)
- Kansas, **approved Jan. 29, 2014**, effective March 1, 2014.
- Kentucky, **approved Nov. 15, 2017**, effective Jan. 1, 2018. (**More details.**)

- Louisiana, approved by Louisiana Supreme Court on April 11, 2018.
- Massachusetts, **approved March 27, 2015**, effective July 1, 2015. (**More details**.)
- Michigan, **approved Sept. 18, 2019**, effective Jan. 1, 2020. (**More details**.)
- Minnesota, **approved Feb. 24, 2015**.
- Missouri, **approved Sept. 26, 2017**, effective immediately. (**More details**.)
- **Montana** (see paragraph 5 under Preamble). **Bar petition**. **Court order**.
- Nebraska, **adopted June 28, 2017**. (**More details**.)
- New Hampshire, **approved Nov. 10, 2015**, effective Jan. 1, 2016. (**More details**.)
- New Mexico, **approved Nov. 1, 2013** (**text of approved rules**), effective Dec. 31, 2013.
- New York, **adopted on March 28, 2015**, by the New York State Bar Association. (**More details**.)
- North Carolina, **approved July 25, 2014**. Note that the phrase adopted by N.C. varies slightly from the Model Rule: "... including the benefits and risks associated with the technology relevant to the lawyer's practice."
- **North Dakota**, approved Dec. 9, 2015, effective March 1, 2016. (**More details**.)
- Ohio, **approved Feb. 14, 2015**, effective April 1, 2015.
- Oklahoma, **approved Sept. 19, 2016**, effective immediately. (**More details**.)
- Pennsylvania, **approved Oct. 22, 2013** (**text of approved rules**), effective 30 days later.
- South Carolina, **approved Nov. 27, 2019**, effective immediately. (**More details**.)
- Tennessee, **adopted March 6, 2017**, effective immediately. (**More details**.)
- Texas, **adopted Feb. 26, 2019**. (**More details**.)
- Utah, **adopted March 3, 2015**, effective May 1, 2015. (**More details**.)
- Vermont, **adopted October 9, 2018**, effective December 10, 2018. (**More details**.)
- Virginia, **approved Dec. 17, 2015**, effective March 1, 2016. (**More details**.)
- Washington, **approved June 2, 2016**, effective Sept. 1, 2016. (**More details**.)
- West Virginia, **approved Sept. 29, 2014**, effective Jan. 1, 2015.
- Wisconsin, **approved July 21, 2016**, effective Jan. 1, 2017. (**More details**.)
- Wyoming, **approved Aug. 5, 2014**, effective Oct. 6, 2014.

California, while not having formally adopted the change to its rules of professional conduct, has issued an ethics opinion that expressly acknowledges a duty of lawyers to be competent in technology. State Bar of California **Formal Opinion No. 2015-193** requires attorneys who represent clients in litigation either to be competent in e-discovery or associate with others who are competent. The opinion expressly cites the ABA's Comment 8 and states:

Maintaining learning and skill consistent with an attorney's duty of competence includes "keeping abreast of changes in the law and its practice, including the benefits and risks associated with technology."

If you know of other states I have missed, please let me know.

Related Reading

- ABA LTRC Webinar: **Technology Competence: What It Means For Your Practice**. (Nov. 16, 2017)
- Above the Law: **OK, We Get Technology Competence, But How Do We Get Technologically Competent?** (Nov. 6, 2017)
- Presentation: **Ethical Dangers of Technology in the Legal Practice**. (May 30, 2017)
- LawSites: **ABA Issues Major Ruling on Ethics of Email and Electronic Communications**. (May 12, 2017)

- Above the Law: **This Week In Legal Tech: Ethics And Technology Competence.** (July 11, 2016)
- Podcast: **Talking Technology Competence and Ethics with Jim Calloway.** (March 12, 2016)
- LawSites: **A Duty To Be Competent in E-Discovery? California Says Yes.** (Aug. 7, 2015)
- Catalyst E-Discovery Blog: **California Finalizes Ethics Opinion Requiring Competence in E-Discovery.** (Aug. 6, 2015)

ABOUT LAW SITES

LawSites is a blog covering legal technology and innovation. It is written by Robert Ambrogi, a lawyer and journalist who has been writing and speaking about legal technology, legal practice and legal ethics for more than two decades.

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