

Litigation Technology Competence State Law Survey

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Maintained

This state law survey summarizes whether or not each of the 50 states and the District of Columbia have formally adopted Comment 8 to Model Rule 1.1 of the Model Rules of Professional Conduct concerning litigation technology competence and identifies the applicable rules, where appropriate. With limited exceptions, 40 states have adopted the duty of technology competence. Given the recent explosion of Artificial Intelligence (AI) tools available to litigators, understanding one's duty of technology competence and maintaining that standard in this rapidly changing landscape is even more important.

Comment 8 to Model Rule 1.1 requires the following from practicing lawyers:

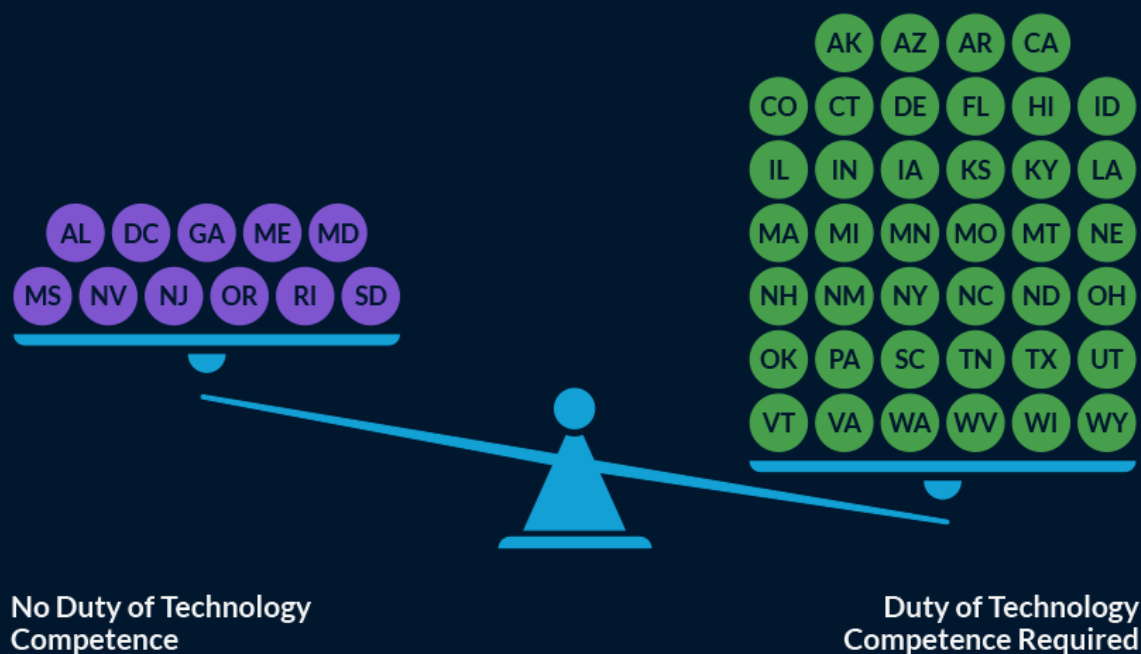
To maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, *including the benefits and risks associated with relevant technology*, engage in continuing study and education and comply with all continuing legal education requirements to which the lawyer is subject. (emphasis added)

While no state has yet implemented a rule requiring e-discovery competence, courts have construed Comment 8 to Model Rule 1.1 as encompassing technologies associated with e-discovery. See, e.g., [Hur v. Lloyd & Williams, LLC, 2023 Wash. App. LEXIS 166, at *13 n.6 \(Ct. App. Jan. 31, 2023\)](#); [James v. Nat'l Fin. LLC, 2014 Del. Ch. LEXIS 254, at *35–36 \(Del. Ch. Dec. 5, 2014\)](#).

For additional resources on e-discovery, see [E-discovery Resource Kit \(Federal\)](#). For an analysis of e-discovery strategies, see [Arkfeld: Elec. Disc. and Evid., §§ 5.3, 5.4, 5.8, 6.3](#); [Arkfeld Best Practices Guide: ESI Pretrial Disc., §§ 2.2, 3.2, 3.4, 3.7, 3.9](#).

For additional resources on AI in litigation, see [Generative Artificial Intelligence \(AI\) Resource Kit](#), [Evaluating The Legal Ethics Of A ChatGPT-Authored Motion](#) and [Litigators Should Approach AI Tools With Caution](#).

Model Rule of Professional Conduct 1.1, Comment 8 Adoption



State	Rules	Notes
Alabama	N/A	N/A
Alaska	Alaska R. Prof. Conduct 1.1 , cmt. 6	Adopted verbatim, effective October 15, 2017.
Arizona	Ariz. Rules of Prof'l Conduct R. 1.1 , cmt. 6	Adopted verbatim, effective January 1, 2015.
Arkansas	Ark. R. Prof. Conduct Rule 1.1 , cmt. 6	Adopted verbatim, effective June 26, 2014.
California	Cal. Rules of Prof'l Conduct, Rule 1.1, cmt. 1	<p>Adopted verbatim, effective March 22, 2021.</p> <p>Even before formally adopting the Model Rule language, a 2015 Formal Opinion stated that "an attorney's duty of competence includes keeping 'abreast of changes in the law and its practice, including the benefits and risks associated with relevant technology.'" Formal Opinion No. 2015-93, at 2 (quoting ABA Model Rule 1.1, Comment [8]).</p> <p>The opinion went on to state that:</p> <p>The ethical duty of competence requires an attorney to assess at the outset of each case what electronic discovery issues might arise during the litigation, including the likelihood that e-discovery will or should be sought by either side. If e-discovery will probably be sought, the duty of competence requires an</p>

Litigation Technology Competence State Law Survey

		<p>attorney to assess his or her own e-discovery skills and resources as part of the attorney's duty to provide the client with competent representation. If an attorney lacks such skills and/or resources, the attorney must try to acquire sufficient learning and skill, or associate or consult with someone with expertise to assist.</p> <p>Formal Opinion No. 2015-93, at 3.</p>
Colorado	Colo. RPC 1.1, cmt. 8	<p>Effective April 2016, slightly differs from Model Rule, stating:</p> <p>To maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, <i>and changes in communications and other relevant technologies</i>, engage in continuing study and education, and comply with all continuing legal education requirements to which the lawyer is subject. (emphasis added).</p>
Connecticut	Conn. Rules of Prof'l Conduct 1.1, cmt. "Maintaining Competence"	Adopted verbatim, effective Jan 1, 2014.
Delaware	Del. Rules of Prof'l Conduct 1.1 , cmt. 8	<p>Adopted verbatim, effective March 1, 2013.</p> <p>The Chancery Court discussed the updated rule stating:</p> <p>Professed technological incompetence is not an excuse for discovery misconduct. Effective March 1, 2013, the Delaware Supreme Court amended Comment 8 to Rule 1.1 of the Delaware Lawyers' Rules of Professional Conduct, which addresses competence, to include maintaining technological competence. The new comment states that "a lawyer should keep abreast of changes in the law and its practice, including the benefits and risks associated with relevant technology"</p> <p>* * *</p> <p>[D]eliberate ignorance of technology is inexcusable [I]f a lawyer cannot master the technology suitable for that lawyer's practice, the lawyer should either hire tech-savvy lawyers tasked with responsibility to keep current, or hire an outside technology consultant who understands the practice of law and associated ethical constraints." Judith L. Maute, Facing 21st Century Realities, 32 Miss. C. L. Rev. 345, 369 (2013).</p> <p>James v. Nat'l Fin. LLC, 2014 Del. Ch. LEXIS</p>

Litigation Technology Competence State Law Survey

		254, at *35–36 (Del. Ch. Dec. 5, 2014).
District of Columbia	N/A	N/A
Florida	Fla. Bar Reg. R. 4-1.1, cmt. "Maintaining Competence"	<p>Effective January 1, 2017, slightly differs from the Model Rule, stating:</p> <p>To maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, engage in continuing study and education, <i>including an understanding of the benefits and risks associated with the use of technology</i>, and comply with all continuing legal education requirements to which the lawyer is subject. (emphasis added).</p> <p>The Florida Supreme Court also added the following language to the comments of Rule 4-1:1:</p> <p>Competent representation may also involve the association or retention of a non-lawyer advisor of established technological competence in the field in question. Competent representation also involves safeguarding confidential information relating to the representation, including, but not limited to, electronic transmissions and communications.</p> <p>In addition, Florida requires that attorneys, as part of their CLE requirement, complete at least three hours in approved technology programs. See Fla. Bar Reg. R. 6-10.3(b).</p>
Georgia	N/A	N/A
Hawaii	Haw. Rules of Prof'l Conduct Rule 1.1 , cmt. 6	Adopted verbatim, effective January 1, 2022.
Idaho	Idaho Rules of Prof'l Conduct Rule 1.1 , cmt. 8	Adopted verbatim, effective July 1, 2014.
Illinois	Ill. Sup. Ct. R. Prof'l Conduct, R 1.1 , cmt. 8	Adopted verbatim, effective January 1, 2016.
Indiana	Ind. Rules of Prof. Conduct 1.1, cmt. 6	Adopted verbatim, effective January 1, 2018.
Iowa	Iowa R. of Prof'l Conduct 32:1.1, cmt. 8	Adopted verbatim, effective October 15, 2015.
Kansas	KRPC 1.1, cmt. 8	Adopted verbatim, effective March 1, 2014.
Kentucky	Ky. SCR Rule 1.1, cmt. 6	Adopted verbatim, effective January 1, 2018.
Louisiana	Louisiana Code of Professionalism ; see also La. Dist. Ct. R. 6.2(k)	<p>Rather than adopt the Model Rule language in the Rules of Professional Conduct, Louisiana instead modified its Attorney Code of Professionalism on April 11, 2018, to add the following two provisions:</p> <ul style="list-style-type: none"> • "I will use technology, including social media, responsibly. My words and actions, no matter how conveyed, should reflect the professionalism expected of me as a lawyer."

Litigation Technology Competence State Law Survey

		<ul style="list-style-type: none"> • "I will stay informed about changes in the law, communication, and technology which affect the practice of law."
Maine	N/A	N/A
Maryland	N/A	N/A
Massachusetts	ALM Sup. Jud. Ct. Rule 3:07, R.P.C. Client-Lawyer Relationship, Rule 1.1, cmt. 8	Adopted verbatim, effective July 1, 2015.
Michigan	MRPC 1.1 , cmt. "Maintaining Competence"	<p>Effective January 1, 2020, slightly differs from Model Rule, stating:</p> <p>To maintain the requisite knowledge and skill, a lawyer should engage in continuing study and education, <i>including the knowledge and skills regarding existing and developing technology that are reasonably necessary to provide competent representation for the client in a particular matter</i>. If a system of peer review has been established, the lawyer should consider making use of it in appropriate circumstances. (emphasis added).</p> <p>Additionally, a staff comment to the rule, issued with the modification on September 18, 2019, states:</p> <p>The amendments of the comments of MRPC 1.1 and MRPC 1.6 address a lawyer's obligation to maintain reasonable competence in relevant technology and ensure reasonable efforts to maintain confidentiality of documents.</p>
Minnesota	Minn. Rules of Prof'l Conduct 1.1 , cmt. 8	Adopted verbatim February 24, 2015.
Mississippi	N/A	N/A
Missouri	Mo. Sup. Ct. R. 4-1.1 , cmt. 6	Adopted verbatim, effective September 26, 2017.
Montana	MT Prof. Conduct R. Preamble	Adopted verbatim, effective January 1, 2017.
Nebraska	Neb. Ct. R. of Prof. Cond. § 3-501.1. cmt. 6	Adopted verbatim June 28, 2017.
Nevada	N/A	N/A
New Hampshire	N.H. Rules of Prof'l Conduct Rule 1.1 , cmt. 6	<p>Adopted verbatim, Effective January 1, 2016.</p> <p>The comments were further amended to seemingly lessen the technology competence obligation, stating:</p> <p>ABA comment [8] (formerly Comment [6]) requires that a lawyer should "keep abreast of . . . the benefits and risks associated with relevant technology." This broad requirement may be read to assume more time and resources than will typically be available to many lawyers. Realistically, a lawyer should keep reasonably abreast of readily determinable benefits and risks associated with applications of technology used by the lawyer, and benefits and risks of technology</p>

Litigation Technology Competence State Law Survey

		lawyers similarly situated are using.
New Jersey	N/A	N/A
New Mexico	16-101 NMRA, cmt. 9	Adopted verbatim, effective December 31, 2013.
New York	NY CLS Rules Prof Conduct R 1.1, cmt. 8	Adopted March 28, 2015, with slight modification from Model Rule, stating: To maintain the requisite knowledge and skill, a lawyer should (i) keep abreast of changes in substantive and procedural law relevant to the lawyer's practice, (ii) <i>keep abreast of the benefits and risks associated with technology the lawyer uses to provide services to clients or to store or transmit confidential information</i> , and (iii) engage in continuing study and education and comply with all applicable continuing legal education requirements under 22 N.Y.C.R.R. Part 1500. (emphasis added).
North Carolina	N.C. R. Prof. Cond. Rule 1.1 , cmt. 8	Adopted July 25, 2014, with slight modification from Model Rule, stating: To maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, <i>including the benefits and risks associated with the technology relevant to the lawyer's practice</i> , engage in continuing study and education, and comply with all continuing legal education requirements to which the lawyer is subject. (emphasis added). Additionally, effective in 2019 , at least one annual CLE hour must be devoted to technology training.
North Dakota	N.D.R. Prof. Conduct Rule 1.1 , cmt. 5	Adopted verbatim, effective March 1, 2016.
Ohio	Ohio Prof. Cond. Rule 1.1, cmt. 8	Adopted verbatim, effective April 1, 2015. In Disciplinary Counsel v. Valenti, 175 N.E.3d 520, 522–23 (Ohio 2021) , the court cited the rule and comment as grounds for sanctioning an attorney who was not "sufficiently technologically competent" when she filed a draft version of a brief (which was rejected) and failed to save the final version.
Oklahoma	5 Okl. St. Chap. 1, Appx. 3-A, Client-Lawyer Relationship, Rule 1.1, cmt. 6	Adopted verbatim, effective September 19, 2016.
Oregon	N/A	N/A
Pennsylvania	Pa. RPC 1.1., cmt. 8	Adopted verbatim, effective November 21, 2013.
Rhode Island	N/A	N/A
South Carolina	Rule 1.1, RPC, Rule 407, SCACR, cmt. 8	Effective November 27, 2019, with slight modification from Model Rule, stating: To maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, <i>including</i>

Litigation Technology Competence State Law Survey

		<i>a reasonable understanding of the benefits and risks associated with technology the lawyer uses to provide services to clients or to store or transmit information related to the representation of a client, engage in continuing study and education and comply with all continuing legal education requirements to which the lawyer is subject. (emphasis added).</i>
South Dakota	N/A	N/A
Tennessee	Tenn. Sup. Ct. R. 8, Rule 1.1., cmt. 8	Adopted verbatim, effective March 6, 2017.
Texas	Tex. R. Prof Conduct 1.01, cmt. 8	Adopted verbatim February 26, 2019.
Utah	Utah Rules of Prof'l Conduct Rule 1.1, cmt. 8	Adopted verbatim, effective May 1, 2015.
Vermont	Vt. Prof. Cond. Rule 1.1, cmt. 8	Adopted verbatim, effective December 10, 2018.
Virginia	Va. Sup. Ct. R. pt. 6, sec. II, 1.1, cmt. 6	<p>Effective March 1, 2016, with slight modification from Model Rule, stating:</p> <p>To maintain the requisite knowledge and skill, a lawyer should engage in continuing study and education in the areas of practice in which the lawyer is engaged. <i>Attention should be paid to the benefits and risks associated with relevant technology.</i> The Mandatory Continuing Legal Education requirements of the Rules of the Supreme Court of Virginia set the minimum standard for continuing study and education which a lawyer licensed and practicing in Virginia must satisfy. If a system of peer review has been established, the lawyer should consider making use of it in appropriate circumstances. (emphasis added).</p>
Washington	Wash. RPC 1.1, cmt. 8	<p>Adopted verbatim, effective September 1, 2016.</p> <p>The modified rule has recently been cited in a Washington case, where the court of appeals noted that:</p> <p>The Rules of Professional Conduct require competent representation, including "the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation." RPC 1.1. To the extent a lawyer uses computer technology in communications, document management, or the exchange of electronic discovery, competent representation requires an understanding of metadata.</p> <p>Hur v. Lloyd & Williams, LLC, 2023 Wash. App. LEXIS 166, at *13 n.6 (Ct. App. Jan. 31, 2023).</p> <p>Notably, Washington formally licenses nonlawyers to practice law in limited</p>

Litigation Technology Competence State Law Survey

		<p>circumstances, known as Limited License Legal Technicians (LLLTs). In 2016, the Washington Supreme Court also approved an additional comment pertaining to competence, which says in part:</p> <p>In some circumstances, a lawyer can also provide adequate representation by enlisting the assistance of an LLLT of established competence, within the scope of the LLLT's license and consistent with the provisions of the LLLT RPC.</p> <p>Wash. RPC 1.1, cmt. 10.</p> <p>Although there are no decisions on this language, this comment could be read to imply that, if an attorney in Washington lacks technology competence with regard to handling a particular matter, the duty of competence could be satisfied by enlisting the assistance of an LLLT who does have the competence.</p>
West Virginia	W. Va. Prof. Cond., Rule 1.1, cmt. 1	Approved verbatim, effective January 1, 2015.
Wisconsin	Wis. SCR 20:1.1, cmt. 8	Approved verbatim, effective January 1, 2017.
Wyoming	WY Prof. Conduct Rule 1.1, cmt. 6	Approved verbatim, effective October 6, 2014.

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