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Luddites Not Welcome in the Legal Profession

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It's been four years since the American Bar Association determined that lawyers must be technologically competent. But many in-house counsel still aren't as tech savvy as they should be, experts say.

In 2012, the ABA voted to amend a comment to the model rule on competence to say "a lawyer should keep abreast of changes in the law and its practice, including the benefits and risks associated with relevant technology." On Sept. 29, Florida became the 25th state to follow the ABA's lead and mandate technological competence. As for the states that have yet to formally adopt the change, some have acknowledged this duty in ethics opinions or sanctions rulings. A [California ethics opinion](#) from June of last year, for example, says litigation attorneys must either be competent in e-discovery or consult with someone who is competent.

It's only a matter of time before other states follow in adopting the change, so lawyers need to be thinking about this, says Robert Ambrogi, a Massachusetts lawyer who writes about legal technology and social media. "It's not a matter of lawyers having to be experts themselves on technology," he says. Rather, "you need to understand how technology is going to affect your client and how it's going to affect your practice," Ambrogi says.

For in-house attorneys, this means having some basic understanding on things like data security issues and cybersecurity issues, Ambrogi says. "They have to understand that those are issues, they have to understand that their companies need plans in place for addressing those issues, and they have to have enough capability to work with outside experts or company employees to come up with a plan," he says.

This may sound simple enough, but most lawyers aren't where they need to be yet, Ambrogi says. As an example, he says he recently had a conversation with a trial attorney who had never heard the term e-discovery. "That's a scary state of affairs," Ambrogi says.

This duty of competence doesn't just apply to hypertechnical issues like a cybersecurity breach. By knowing basic legal technology, an in-house lawyer can also ensure that the client—i.e., the company—doesn't get overbilled for legal services, says D. Casey Flaherty, principal at legal technology consultancy Procertas and director of client value at Haight Brown & Bonesteel. If a law firm bills five hours for a project that can easily be done with a software program, "the in-house

lawyer needs to have a general enough understanding of what the software is capable of to know this is a five-minute project, not a five-hour project," Flaherty says.

For the most part, lawyers probably wouldn't have this baseline knowledge, says Flaherty, who started looking at how lawyers were using tech when he was in-house at Kia Motors America. Based on tech assessments done by Procertas, the median lawyer and legal staffer can only complete 50 percent of tasks on Word like cut and paste, inserting a hyperlink and inserting a page break, Flaherty says.

Chas Rampenthal, general counsel at online legal technology company LegalZoom.com Inc., says his legal department of 16 lawyers is probably better than average when it comes to their understanding of tech. "We still have a long way to go, though," he adds.

What that looks like, however, is not quite clear yet, Rampenthal says. "Our profession has a duty to keep abreast of technology and I believe that I need to hire someone [to advise me]," he says. But a different ethical rule may get in the way of his solution of choice. "Because I can't share equity with a nonlegal professional, I have to either have my chief technology officer pass the bar or resign myself to the fact that any company with a great equity package may steal away my CTO," he says.

At the end of the day, the growing number of states that have adopted the duty of tech competence should serve as a wake-up call for attorneys, Ambrogi says. "There are a lot of lawyers out there who never felt they needed to know [about tech]. They were very happy being Luddites and felt no reason to change," he says. "This drives home the message that this is not something you can ignore or fool around with anymore."

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