# ETHICAL DUTY OF TECHNOLOGY COMPETENCE:

# WHAT LAWYERS NEED TO KNOW

*By Ivy B. Grey*

WORDRAKE®

# INTRODUCTION

## RETHINKING COMPETENCE

Lawyers must be competent in all tasks they undertake in the business and practice of law. No one would argue against including legal writing and research in this mandate. But what about our ability to effectively use the tools we rely on to write the document or present the findings of our research? Lawyers have long ignored the importance of the technology tools we use to practice law in favor of a single-minded focus on substantive skills. But in the last decade, the imaginary divide between substantive and technical skill has begun to fade.

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We now know that technology is fundamental to the proper delivery of legal services and, in 2012, our Model Rules were amended to reflect that. Though it may seem obvious to some, it bears repeating for many: Lawyers have a duty to be technologically competent. Any use or avoidance of technology that negatively affects your clients could be an ethical violation.

Perhaps, while striving to build successful law practices, we stopped recognizing that we must also have effective processes. The technology tools we use are an integral part of those processes—and competency is required. In this white paper, as we discuss the ethics rules, let's consider them in the context of one technology tool we use daily that is embedded in most of our processes: Microsoft Word.

The need for competent use of technology should be straightforward and a use case as pervasive as MS Word seems like it would make the mandate easy to accept and enforce, yet acceptance of the need for technology competence has been anything but that.

In this white paper, we:

- address confusion about and objections to technology competence
- demystify the ethical duty of technology competence
- analyze the related ethical implications of technology use
- review business and ethical consequences of incompetence
- explore the practical implications for your firm

## MURKY OUTLOOK: LACK OF COHERENCE AND CONTINUING CONFUSION

Since 2012, 38 states have amended their professional ethics rules to expressly include competent use of technology as part of a lawyer's overall duty of competence. Though the language in each state's rule varies, each version is based on the American Bar Association's 2012 revision to Model Rule 1.1, Comment 8. The revised comment reads: "To maintain the requisite knowledge and skill, a lawyer should keep abreast of 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 to show new text.)

**Three factors make [technology competence] murky, which allows the unconverted to shirk responsibility for technological skill growth and emboldens the zealots to focus on robot lawyers and blockchain.**

Three key factors are causing confusion among legal professionals:

- **First, the text of the amendment is vague.** Without revisiting the ABA 20/20 Commission's report, it's difficult to determine which technology qualifies as "relevant."
- **Next, the amendment is not yet universally adopted.** Regulatory, disciplinary, and judiciary bodies have side-stepped Model Rule 1.1, Comment 8 to instead rely on other ethics rules to support opinions and written guidance, which makes the change seem inconsequential.
- **Finally, it's unclear what level of knowledge and skill are required for technology use and understanding.** On one hand, commentators are urging lawyers to learn to code and understand complex algorithms. On the other hand, few states offer CLE credits to incentivize learning at any level.

These three factors make the matter murky, which allows the unconverted to shirk responsibility for technological skill growth and emboldens the zealots to focus on robot lawyers and blockchain.

# PART 1: EVERYDAY TECHNOLOGY COMPETENCE FOR EVERYONE

## DEFINING THE SCOPE: THE TOOLS OF THE TRADE

To know whether we are meeting our ethical duties, we must first consider: To what activities and outcomes do these rules apply?

The text of Model Rule 1.1 requires lawyers to provide competent representation—but representation is not provided in a vacuum even if it is provided for free. How we run our firms and the technology we use to do so affects how well we serve our clients. So the technology we use in the business, practice, and pursuit of law falls within the meaning of "relevant technology" in Comment 8.

No state has published a list of technology that lawyers must learn or skills that lawyers must possess. However, if such a list were to be made, it should include case management software with a calendaring system; document management software; research tools; billing software; email and other communication systems; a PDF system with redacting capabilities; and the MS Office Suite, particularly MS Word. All lawyers will use these programs, particularly MS Word, because all lawyers write. And any lawyer without basic skills in these seven types of software is risking ethical rebuke—but they also risk becoming obsolete.

**TECHNOLOGY**
***that Lawyers Should Have and Learn:***

- *case management software with a calendaring system;*
- *document management software;*
- *research tools;*
- *billing software;*
- *email and other communication systems;*
- *PDF system with redacting capabilities; and*
- *the MS Office Suite, particularly MS Word.*

## AGE IS NO EXCEPTION: COMPETENCE IS EVERY LAWYER'S RESPONSIBILITY

**A significant portion of lawyers lack essential skills in the programs we use every day.**

The familiarity of the seven types of software listed should comfort practicing lawyers, but it sometimes does the opposite. Many older lawyers feel that learning simple new technology is beneath (or beyond) them and many young lawyers consider themselves so tech savvy they don't expect to need training. Both positions are problematic and ignore that a significant portion of lawyers lack essential skills in the programs we use every day.

When law firms buy into the myth of the digital native and assume that all young lawyers can and will use technology competently by nature rather than by training, they foster incompetence and ethical violations. Many older lawyers think they can solve the problem by delegating the tasks to younger lawyers—who also don't know what they're doing. Failure to provide adequate technology training to all lawyers in the firm, including digital natives, means that the lawyers will be unable to meet their duty of technology competence. It also means diminished quality of attorney work product, reduced profits, and wasted time.

Despite our widespread exposure to technology, for most people, our understanding and use is limited to basic functionality of consumer-based apps. There's a skills gap for the level of use and range of features in the programs that lawyers use every day. And the skills we do have don't meet the level of competence required to satisfy the Model Rules.

## COMPETENCY IN OUR DAILY WORK: THE EXAMPLE OF MS WORD

No program is more ubiquitous in a law office than MS Word. It is an ideal program to start with because document preparation, drafting, and polishing consume a considerable amount of every lawyer's time. And MS Word is more sophisticated with greater capabilities for meeting our complex needs than you might realize.

For writing, MS Word is overwhelmingly the most-used tool of our trade. As Casey Flaherty described it, MS Word is a robust word-processing ecosystem with an array of functions designed to solve specific problems, particularly time-intensive, low-value tasks. MS Word documents can win or lose cases; save or cost your client money, property, their children, or their liberty; and preserve or destroy your relationships with fact-finders, witnesses, and clients.

**Technology competence is not a lofty ideal or an insurmountably difficult thing. Though ever-evolving, technology competence is achievable.**

Using MS Word as an example is important because it shows how practical the duty of technology competence is. It's not a lofty ideal or an insurmountably difficult thing. Even though it is ever-evolving, technology competence is achievable. Using MS Word also demonstrates the interconnectedness of the ethics rules. A simple MS Word document implicates five ethics rules: Model Rules 1.1, 1.5, 1.6, 5.1, and 5.3. In this white paper, we will discuss each rule.

# PART 2: TECHNOLOGY COMPETENCE: UNDERSTANDING YOUR DUTIES

The assertion that lack of technology competence creates an ethical problem for the lawyer and the firm isn't just empty pontificating, even for a ubiquitous program like MS Word. Poor use and misuse of MS Word can have real-world consequences for lawyers and their clients.

## COMMENT 8 OUTLINES YOUR DUTIES

The text of Model Rule 1.1 requires lawyers to provide competent representation. Comment 8 to Model Rule 1.1 goes further. It reads: "a lawyer should keep abreast of changes in the law and its practice, including the benefits and risks associated with relevant technology[.]" We refer this to as ***the duty of technology competence***.

Competence does not mean perfection, expertise, or paranoia. Rather, it requires a baseline understanding of, and reasonable proficiency in, the technology at hand. At the very least, it means not treating the Word program as a glorified typewriter. Regardless of how long you've practiced, it is almost certain that you don't know what you don't know, and what you don't know can subject you to discipline.

**THE DUTY OF TECHNOLOGY COMPETENCE** ***requires that every lawyer:***

- *keep abreast of changes to technology used in legal practice;*
- *develop an awareness of technology, its functionality, and available offerings;*
- *gain a grasp of the risks and benefits associated with using technology; and*
- *attain a reasonable level of skill in all chosen technology.*

## COMMENT 5 SETS YOUR METHODS AND PROCEDURES

**Under Comment 5, lawyers must use the technology methods and procedures that meet the standards of today's competent practitioners.**

When Comment 8 was revised to explicitly state that technology is part of the duty of competence, it changed how we must think of Comment 5, too. Comment 5 says "Competent handling of a particular matter includes inquiry into and analysis of the factual and legal elements of the problem, and use of methods and procedures meeting the standards of competent practitioners." When we view the text of Comment 5 in the context of updated Comment 8, it becomes clear that Comment 5 now requires us to consider how the use of technology fits within the "methods and procedures" we use to competently provide legal services. It also means we must consider how technology will help us be "adequately prepared" for the task at hand. In short: the 2012 rule amendment updated what we must think of as "tools of the trade." Therefore, under Comment 5, lawyers must use the technology methods and procedures that meet the standards of today's competent practitioners.

In its report, the ABA 20/20 Commission emphasized the forward-looking nature of the technology amendments. And though Andrew Perlman, the Chief Reporter for the commission, has called out word processing as an example of the technology we should be using, none of the updates specifically state which tools to use. It's left open because our concept of technology should be elastic and evolving.

We must interpret Model Rule 1.1 and its comments progressively, which means our "tools of the trade" are defined by our modern peers—not the laggards. So even if you could find a lawyer still using a typewriter and a Dictaphone, that lawyer would not be your standard-bearer. In modern legal practice, no competent lawyer would rely solely upon a typewriter to write a contract, brief, or memo or ask a secretary to take dictation in shorthand and type it up, complete with correction fluid. Typewriters are not part of "methods and procedures" used by competent lawyers. So it is practically impossible to use your computer as a glorified, glowing typewriter and meet the standards either.

## EXPLAINING THE MANDATE: THE TOOLS OF TODAY

Today, the tools of the trade include MS Word and efficient use of its higher-level features. There's no reason for slow turnarounds, formatting nightmares, typos, and inconsistencies. Mistakes in your documents introduce risk and can lead to litigation, sanctions, or international embarrassment.

Eight years after the technology amendments, we're still hearing stories of (or encountered) lawyers who:

- do not know how to make and delete comments, and instead include typing in the body of the document for comments that can be missed, lost, or forgotten;
- do not know how to Track Changes, accept changes, turn the feature off, or eliminate its metadata;
- do not know how to use templates or are unaware that they exist;
- fail to use headings to make a document navigable and accessible;
- fail to use dynamic cross-references in documents and must manually update all contracts when provisions change or move;
- ignore *Bluebook* rules and preferences for section and paragraph symbols because they do not know where to find them or how to insert them;
- manually create the Table of Contents and Table of Authorities, and redo it manually every time the document changes;
- manually number paragraphs or add line numbers;
- retype information because they do not know how to cut and paste text with or without the original formatting;
- struggle against formatting, consistently redoing work rather than resetting or automating formatting using Styles; and
- do not know what metadata is or how to clear document properties.

In states that have adopted Model Rule 1.1, inability to use these built-in features in MS Word would be incompetence. Lack of training to accomplish the tasks on this list negatively affects your clients with unnecessary higher fees and larger bills, potentially missed deadlines, and exposed confidential information.

For now, learning higher-level features in MS Word may be enough to be competent, but that will change. In five years, high level built-in features will no longer be aspirational and will become the new baseline. In their place, MS Word add-ins will become the future of how we practice law.

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## EVOLVING THE MANDATE: THE TOOLS OF TOMORROW

Technology competence is not static and it's not just about the tools we use today. As more tools become available and lawyers adopt them, we will be expected to use them. Just as we've moved on from electronic research being seen as a "nice supplement" to research using physical books to believing that failure to use electronic research (and do so competently) is malpractice, we will see new standards for technology use in document creation.

**Legal service providers who efficiently use MS Word and embrace the power of MS Word add-ins can market those skills as a differentiator, create better work product within more consistent timeframes, and win more business.**

While expectations for legal practice are evolving, legal professionals, law firms, and legal service providers who efficiently use MS Word and embrace the power of MS Word add-ins can market those skills as a differentiator, create better work product within more consistent timeframes, and win more business. Efficiently using MS Word and MS Word add-ins will help align the interests of legal professionals and their clients. This reduced friction and increased efficiency should improve billing and profitability for everyone.

## ENFORCING THE MANDATE: CONSEQUENCES OF INCOMPETENCE

Though the technology portion of Model Rule 1.1, Comment 8 has not yet been the basis for a disciplinary action or disbarment, technology issues have been a major source of lawyer guidance and discipline for years:

- The ABA has been issuing opinions for email communication, cloud storage, e-filing, and electronic dockets since the 1990s.
- Using their inherent power to control their courtroom and dockets, courts have been reprimanding lawyers for sloppy pleadings with inscrutable text, typos, and formatting issues intended to subvert court-mandated page and word-count limits for years.
- For decades, ethics boards have been disciplining lawyers for technology-related issues such as revealing client confidences; failing to communicate with clients; failure to supervise staff; missed filing deadlines; churning bills; and incompetent and wasteful e-discovery.

Learning to use our technology tools is as necessary for meeting our duty of competence as learning substantive law. No ethics opinions have yet found that one duty of competence is greater than the other, and lawyers have faced sanctions or discipline for their technology failings despite high-quality substance.

In the 2004 case of ***Devore v. City of Philadelphia,*** a US Magistrate Judge issued a 12-page fee opinion, saying that, because the lawyer's written work was "careless" and laden with typographical errors, the lawyer's court-awarded fees should be paid at two rates—$300 per hour for the courtroom work and $150 per hour for work on the pleadings. Despite being a good lawyer, and securing a $430,000 civil rights verdict for his client, this lawyer is remembered for his extreme failure to use spellcheck.

In the 2016 disciplinary action of ***Okla. Bar Ass'n v. Oliver***, a senior bankruptcy lawyer, who had been practicing for about thirty years, was struggling to meet the federal court's electronic pleading requirements. Before his issues with e-filing, there had been no previous complaints or disciplinary actions—and there was nothing substantively wrong with his work. But once e-filing caused the lawyer trouble, he received several temporary suspensions and finally a permanent suspension for his e-filing failures.

This shows that lawyers who are technologically incompetent may still face discipline even if there are no substantive errors in their work.

## *Recent Matters that Could be Addressed Using*

## MODEL RULE 1.1, COMMENT 8

*A sampling of recent matters that could be addressed using Model Rule 1.1, Comment 8 include:*

- *Missed deadlines in Yeschick v. Mineta, 675 F.3d 622 (6th Cir. 2012)*
- *DLA Piper's 'Churn that bill, baby!' email (2013)*
- *e-Discovery in California Formal Opinion No. 2015-193 (2015)*
- *Susman Godfrey's line spacing issues (2017)*
- *Confidentiality in ABA Formal Opinion 477 (2017)*
- *Cybersecurity in ABA Formal Opinion 483 (2018)*
- *Diligence in Louisiana Public Opinion 19-RPCC-02 (2019)*
- *Paul Manafort's redaction failure (2019)*

# PART 3: FINDING FOCUS: RELATED RULES GUIDE AND ENCOURAGE COMPLIANCE

Even after analyzing Model Rule 1.1, we still don't know where to focus our technology learning, what skills to prioritize, or what happens if we fail to become competent. Four additional ethics rules provide guidance and work together to fill in the gaps where the amendment to Model Rule 1.1, Comment 8 has not yet been adopted. Continuing with MS Word as our example, let's consider how these four related ethics rules work together to encourage compliance.

## PROVIDING COST-EFFECTIVE COUNSEL: THE ROLE OF MODEL RULE 1.5

Because we expect legal practice to be challenging and time-consuming, it's hard to tell whether a document is taking so long because it's complex or because we're inadequately equipped. When clients receive the bill for your work, they have the same question—is this bill reasonable? To answer that question, we look to Model Rule 1.5.

### Model Rule 1.5. Unreasonable Fees

Model Rule 1.5 says that "a lawyer may not collect an unreasonable fee." But the rules and comments say little about what "reasonable" means. For a deeper understanding, we can look to the *Task Force on Lawyer Business Ethics*, 51(3): 745–71 (May 1996). The Task Force explored how lawyers perceived business decisions and addressed lawyer and client expectations for billed time. The Task Force concluded that "the lawyer [has] an obligation to address the matter … in a cost-effective manner and to avoid 'churning' hours[.]" This means that if you're not working in a cost-effective manner, your fee isn't reasonable. It includes excessively working on a client's matter largely to generate more billable hours (churning), and it is an ethics violation subject to fee disgorgement.

That's because wasteful work may include technologically incompetent work. A pattern of technologically incompetent work—by accident or by design—violates Model Rule 1.5, which could lead to fee disgorgement.

### Fees from Incompetent and Wasteful Work Are Not Reasonable

A fee may not be reasonable because the lawyer was not technologically competent or because the work was not legal work—or both.

**Wasteful work may include technologically incompetent work. A pattern of technologically incompetent work—by accident or by design—violates Model Rule 1.5, which could lead to fee disgorgement.**

Imagine a lawyer treating MS Word as a glorified typewriter. This practice slows the lawyer down—enough to increase their client's fee and the lawyer's bottom line. If the lawyer is simply unskilled, Model Rule 1.1 would address the deficit. However, if the lawyer performing the work deliberately refuses to use available technology (or acquire technology skills) to perform basic tasks in MS Word, then the fee would not be reasonable under the circumstances. Foregoing technology in favor of manually performing a task, thus spending several times longer to perform the task manually is no different from padding bills or churning. And the result is identical: clients suffer.

Lawyers engaging in this type of churning should also consider whether this work is billable legal work at all. In ***Lola v. Skadden***, the court considered whether some tasks could be so routine they aren't legal work. Tasks that don't involve "independent legal judgment" are not legal work, so any repetitive task that can be automated using a built-in feature in MS Word or a simple MS Word add-in is likely not billable legal work.

## PROTECTING CONFIDENTIAL CLIENT INFORMATION: THE ROLE OF MODEL RULE 1.6

Worrying about working efficiently and billing fairly often leads to shortcuts, such as re-using old documents from similar matters. But because so much information hides in a document's history, document re-use may introduce more problems than it solves. This document information, called ***metadata***, is invisible unless you look for it and it falls within the definition of "information relating to the representation of a client" addressed by Model Rule 1.6.

### Model Rule 1.6. Duty to Protect Client Confidences

Under Model Rule 1.6(a) and (c), a lawyer must not reveal confidential client information and must take reasonable measures to prevent its disclosure. This has implications for every document drafted in MS Word. That's because hidden metadata falls within the scope of "information related to the representation." A lack of technological understanding increases the risk that metadata will be unwittingly disclosed. Though no lawyer would intentionally

disclose a client's trade secrets, many lawyers carelessly reveal information relating to the representation of a client every time they share a document with someone outside of the firm or re-use a document from a prior representation without cleaning the metadata.

So how are client confidentiality and technology competence related? Model Rule 1.1 requires lawyers to understand the information hidden in their documents and to learn of the risks associated. Model Rule 1.6 requires lawyers to protect client confidential information that is part of the metadata.

**Though no lawyer would intentionally disclose a client's trade secrets, many lawyers carelessly reveal information relating to the representation of a client every time they share a document with someone outside of the firm or re-use a document from a prior representation without cleaning the metadata.**

## Understanding the Importance of Metadata

Metadata falls within two categories addressed by confidentiality rules: electronically stored information and information related to the representation. Metadata is information describing the history, tracking, or management of an electronic document. It can reveal deal terms that had been changed or litigation theories that had been considered but deleted from a document. It can reveal who had access to or worked on certain documents, which can show state of mind or awareness. And file paths can even imply that certain documents were part of a broader plan or strategy. Even something as minor on its face as the date and time of creation and dates and times of revision can help establish who knew what when. When you realize how much metadata can reveal, then you understand that it's more than just a file name or a time stamp. And you know you should try to clear document properties in MS Word before sending your document to outside parties.

## Accidental Disclosure Violates Model Rules 1.1 and 1.6

Many lawyers misunderstand metadata, which makes its inadvertent disclosure common, though no less harmful. Metadata is invisible unless you look for it and goes far beyond the text that the lawyer typed into the document and intended to share. It can be a gold mine

**Continuing to be unaware of how [metadata] is created, transferred, or destroyed is technologically incompetent and that incompetence leads to violating Model Rules 1.1 and 1.6.**

for opposing counsel and disclosing it could be such a serious ethics violation that it costs you your law license. Continuing to be unaware of how this information is created, transferred, or destroyed is technologically incompetent and that incompetence leads to violating Model Rules 1.1 and 1.6.

## MAINTAINING ACCOUNTABILITY AND INTEGRITY: THE ROLES OF MODEL RULES 5.1 AND 5.3

Under the ethics rules, partners and supervising lawyers are not responsible only for themselves. They are also charged with bringing all other lawyers and staff within their firm into ethical compliance, too. This means that partners and supervising lawyers may not dump work on junior lawyers and allied professionals without considering how the work gets done—even if the clients are happy. Regardless of client satisfaction, everyone in the firm should care about the technological competence of the person performing the work. This obligation to care about how other people work comes from Model Rules 5.1 and 5.3.

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### Model Rules 5.1 and 5.3. Failure to Train and Supervise

According to Model Rule 5.1(a), partners, senior lawyers, and firm management must ensure that the firm has developed, and continues to enforce, policies that direct and facilitate that all lawyers in the firm conform to the ethical rules. And under Model Rule 5.1(b), they must also ensure that all lawyers in the firm actually comply with all ethics rules. A related rule is Model Rule 5.3. Under this rule, anyone you work with will need to meet your ethical obligations and standards—and it's your duty to ensure that they do.

Stripped to its essentials, Rules 5.1 and 5.3 say that no lawyer in the firm can get away with allowing their subordinates to violate the disciplinary rules. This means that it's not good enough to foist off the brief or pleading on a subordinate and hope they don't waste the client's time or make a critical error because of their not knowing what they're doing with MS Word. Instead, to meet the duty of adequate training and supervision, partners and supervising lawyers must create policies and procedures that facilitate compliance with all ethical duties. For technology competence, this means technology training programs. MS Word is a great place to start.

## Ignoring Incompetence Violates Your Ethical Duties

**Whatever the makeup of the team that provides legal services, each person must do so in a manner that is compatible with the responsible lawyer's own ethical obligations.**

Whatever the makeup of the team that provides legal services, each person must do so in a manner that is compatible with the responsible lawyer's own ethical obligations. That means that vendors (and allied professionals) must have adequate data security and confidentiality training to meet the duty of confidentiality and must have enough training in the programs they use to be technologically competent. For example, if you outsource document creation to a vendor and you provide sample documents from another matter, that vendor must take care not to inadvertently disclose confidential information contained in the metadata as discussed above.

This duty does not end when you delegate to another lawyer within your firm. It is the duty of the delegating lawyer to supervise completion of the delegated work and compliance with ethical rules. For example, if a junior lawyer is struggling to accurately, effectively, and efficiently create a legal document that meets the client's needs, then that lawyer is not technologically competent and it is your duty as the supervising lawyer to facilitate compliance.

Even when delegating work to a paralegal, such as creating a table of authorities for a brief, you must have enough knowledge and ability to give direction, ask questions, ensure ethical compliance, and determine whether the work was done properly. If you see the paralegal manually retyping each citation in your brief rather than using MS Word's built-in table of authorities feature, you should have enough training to know there is a better way to accomplish this task and direct the paralegal to use it. It is not acceptable for a delegating lawyer to have no understanding of the technology. A lawyer's complete lack of understanding would make this blind assignment—not delegation—and it would be an abdication of the lawyer's responsibility to understand technology. (Further, on late nights and weekends or in time crunches, the supervisor must be able to do this work.)

# PART 4: MAKING THE CASE FOR MS WORD MASTERY

If you generate text in your work, you must use word-processing software. While you could try using a product like Apple Pages, MS Word is the industry standard and many other word-processing programs are incompatible with it.

MS Word allows multiple authors to make and track changes in the document; create headings that turn into tables of contents and figures; label figures and tables so if they are added, subtracted, or moved, the author is not required to manually renumber; use find-and-replace to make global changes to the document; easily cut, paste and move text; add comments in text balloons instead of in the body of the text (where they can be forgotten and inadvertently disclosed!); and export the document as a PDF. It also allows you to use macros to simplify tasks even further.

**MS Word is the industry standard. Skilled use of word-processing software was rated the #1 most important technology proficiency for lawyers.**

According to National Conference of Bar Examiners' Testing Task Force Phase 2 Report: 2019 Practice Analysis

Incompetent use of MS Word can also result in higher potential for errors, including

- comments left in the body of the text
- formats out of compliance with court rules
- information from previous cases in canned documents
- missing language
- missing tables and figure numbers
- out-of-sequence heading numbers
- redaction errors
- textual ambiguity
- typos

Not only does your MS Word program contain a fertile opportunity for wasted time and unreasonable fees, it can also transmit attorney–client confidences and attorney work product or result in lost cases due to user error.

## BASELINE SKILLS TO LEARN IN MS WORD

These are some basic MS Word skills that every person at your firm should possess. Lawyers perform these tasks again and again, every day. If possible, they should be delegated to a lower-level employee. Yet, some level of competence at each task is necessary—even for partners—because partners are now typing and creating their own documents. At partner billing rates, even 30 minutes spent on any of the tasks below is extremely costly. The skills are:

**Even if you will not become an advanced user, you should know that additional functions are available in MS Word . . . Look for improvements in areas where you are wasting the most time or experiencing the most frustration.**

- apply and modify styles
- automatically number paragraphs or add line numbers
- clean document properties
- clear document metadata
- create and update a table of contents and table of authorities
- create comparison documents (i. e., a redline)
- insert and delete comments
- insert and fix footers
- insert and update cross-references
- insert hyperlinks
- insert non-breaking spaces
- insert page breaks
- insert section and paragraph symbols
- use headings to make a document navigable and accessible

It's also important to know that more is possible. Even if you will not become an advanced user, you should know that additional functions are available in MS Word, such as macros for repetitive tasks; creation of form documents; availability of a Quick Parts Gallery for reusable content; and customizable styles and templates. There are also third-party add-ins that can help save time on drafting, editing, and proofreading. The key is to know when you should look for a solution. Look for improvements in areas where you are wasting the most time or experiencing the most frustration.

Pushing beyond the minimum level of competence and enthusiastically seeking improvements within MS Word benefits you and your firm. It improves your efficiency and ensures that you are not overbilling your clients for your written work.

**Pushing beyond the minimum level of competence and enthusiastically seeking improvements within MS Word benefits you and your firm.**

## START LOOKING FORWARD: TOOLS FOR ENHANCING MS WORD

Since we spend so much time working in MS Word, it's logical to start by looking at technology tools and MS Word add-ins that will improve your experience. Because legal professionals do complex work, even our word processing is more complex than that of the average user, so we need tools designed for lawyers.

### TRY THIS SOFTWARE

*to improve your efficiency and effectiveness*

- ***WordRake*** *helps with avoiding legalese and writing clear and concise prose, which also helps stay within page limits.*
- ***PerfectIt with American Legal Style*** *helps with proofreading, particularly with consistency errors, legal-specific typos, Bluebook formatting, and enforcing the leading legal writing style guides.*

***BONUS!*** *You'll also ensure that you are not overbilling your clients for your written work.*

# CONCLUSION

The rapidly expanding nationwide codification of the duty of technology competence is changing our ethical and legal obligations. As firms adjust, the most successful ones will be those that create a culture of continuous improvement and empower individual lawyers and staff to explore, adopt, and fully learn technology.

That's because every lawyer and every legal workflow is affected by the duty of technology competence. Under this duty, lawyers must use all of their technology tools of the trade properly. That starts with the mundane tools that lawyers use every day, especially where there are ripe opportunities for learning, such as with MS Word. Ignoring this duty can lead to inefficient and poor work product, lower realization rates, lost profits, and potential ethical violations.

# ABOUT THE AUTHOR

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Ivy B. Grey is the Vice President of Strategy & Business Development for WordRake. Prior to joining the team, she practiced bankruptcy law for ten years. Ivy was recently recognized as a 2020 Influential Woman in Legal Tech by the International Legal Technology Association (ILTA). She has also been recognized as a Fastcase 50 Honoree and included in the Women of Legal Tech list by the ABA Legal Technology Resource Center. Ivy is a regular speaker on technology competence and productivity and efficiency for lawyers. Follow Ivy on Twitter @IvyBGrey or connect with her on LinkedIn.

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