



**Association of
American Law Schools**

Technology and Professional Responsibility

July 21, 2021

Section on Technology, Law & Legal Education

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Welcome

April Dawson

Associate Dean of Technology
and Innovation and Professor of
Law, North Carolina Central
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Co-Chair, Webinar Committee,
AALS Section on Technology, Law
& Legal Education



Logistics

- Format
- How to ask questions
- Webinar will be recorded and available for on-demand viewing
- Handout will be emailed
- Survey

Presenter

LeighAnne Thompson

Law Librarian and Adjunct
Professor, Seattle University
School of Law.

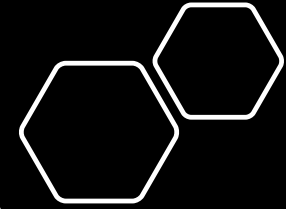
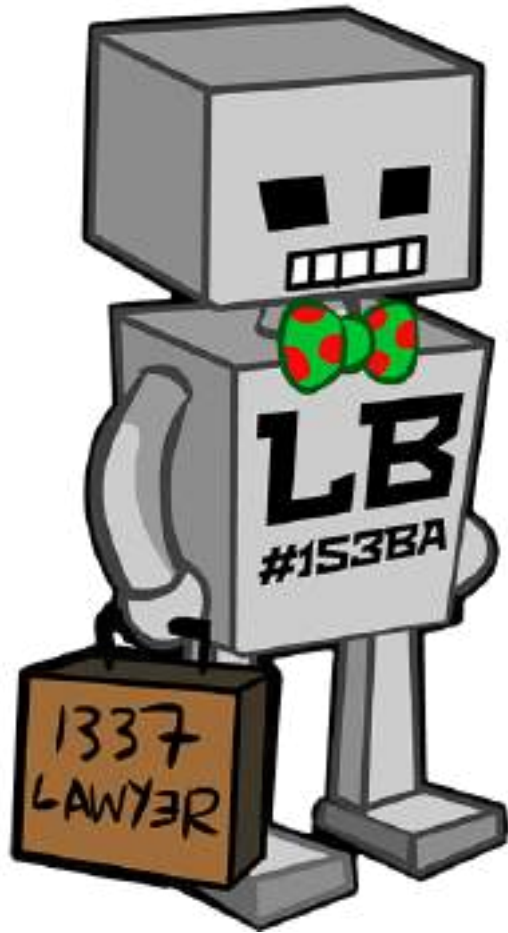
Fellow, Initiative in Ethics and
Transformative Technologies
program, Seattle University
School of Law (2020-2021)



The Intersection of Technology & Professional Responsibility

LeighAnne Thompson, J.D., M.L.I.S.,
Seattle University School of Law





How Are Lawyers Using Technology?



Model Rules of Professional Conduct

Rule 1.1: Competence

Share:



Client-Lawyer Relationship

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

Maintaining Competence

[8] 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.

History of Rule 1.1, comment 8

- Because of the sometimes bewildering pace of technological change, the Commission believes that it is important to make explicit that a lawyer's duty of competence, which requires the lawyer to stay abreast of changes in the law and its practice, includes understanding relevant technology's benefits and risks. Comment [6] of Model Rule 1.1 (Competence) implicitly encompasses that obligation, but it is important to make this duty explicit because technology is such an integral – and yet at times invisible – aspect of contemporary law practice. The phrase “including the benefits and risks associated with relevant technology” would offer greater clarity regarding this duty and emphasize the growing importance of technology to modern law practice. As noted in ethics opinions, such as those relating to cloud computing,³³ this obligation is not new. Rather, the proposed amendment emphasizes that a lawyer should remain aware of technology, including the benefits and risks associated with it, as part of a lawyer's general ethical duty to remain competent in a digital age.

ABA Commission on Ethics 20/20 Report (2012)

State Tech Competence Rules

39 States!

ABA Resolution

AMERICAN BAR ASSOCIATION

HOUSE OF DELEGATES

ADOPTED AUGUST 12-13, 2019

RESOLUTION

RESOLVED, That the American Bar Association urges courts and lawyers to address the emerging ethical and legal issues related to the usage of artificial intelligence ("AI") in the practice of law including: (1) bias, explainability, and transparency of automated decisions made by AI; (2) ethical and beneficial usage of AI; and (3) controls and oversight of AI and the vendors that provide AI.



ABA AI Report: AI Use in Law Practice

- Electronic Discovery/Predictive Coding
- Litigation & Predictive Analytics
- Contract Management
- Due Diligence Reviews
- “Wrong Doing” Detection
- Deception Detection
- Legal Research

B. Key Practical Takeaways Relating to The Ethics of AI.

There clearly are a number of ethical rules that apply to lawyers' use and non-use of AI technology, and they have real-world application. Lawyers must be informed about AI's ability to deliver efficient and accurate legal services to clients while keeping in mind the ethical requirements and limitations. Ultimately, lawyers must exercise independent judgment, communicate with clients, and supervise the work performed by AI. In many ways, the ethical issues raised by AI are simply a permutation of ethical issues that lawyers have faced before with regard to other technology. It shows that the legal ethics rules are adaptable to new technologies, and AI is no exception.

ABA Report: AI Resolution (2019)

Benefits





Big Picture Risks

Some Relevant Rules

- Rule 1.1 – Competence
- Rule 1.3 - Diligence
- Rule 1.4 – Duty to Communicate
- Rule 1.5 – Reasonableness of Fees
- Rule 1.6 – Duty of Confidentiality
- Rule 1.7 – Conflicts
- Rule 3.4 – Fairness to Opposing Party and Counsel
- Rules 5.1/5.3 – Duty to Supervise
- Rule 8.4(g) - Misconduct

ABA Requirements for Legal Education

Standard 301. OBJECTIVES OF PROGRAM OF LEGAL EDUCATION

- (a) A law school shall maintain a rigorous program of legal education that prepares its students, upon graduation, for admission to the bar and for effective, ethical, and responsible participation as members of the legal profession.
- (b) A law school shall establish and publish learning outcomes designed to achieve these objectives.

Standard 302. LEARNING OUTCOMES

A law school shall establish learning outcomes that shall, at a minimum, include competency in the following:

- (a) Knowledge and understanding of substantive and procedural law;
- (b) Legal analysis and reasoning, legal research, problem-solving, and written and oral communication in the legal context;
- (c) Exercise of proper professional and ethical responsibilities to clients and the legal system; and
- (d) Other professional skills needed for competent and ethical participation as a member of the legal profession.



Identify Core Tech Competencies

Opportunities to Integrate PR & Use of Tech

Professional Responsibility Curriculum

Clinics

Orientation

Legal Writing

Law Practice Technology Courses

Elective: Law Practice Technology & Ethics

[WEEK 1 \(June 1-5\)](#) | Introduction to Law Practice
Technology & Ethics

[WEEK 2 \(June 6-12\)](#) | Administrative Technology

[WEEK 3 \(June 13-19\)](#) | Client & Document
Management; Virtual Law Practice

[WEEK 4 \(June 20-26\)](#) | Document Automation

[WEEK 5 \(June 27-July 3\)](#) | Information
Security/Cloud Computing

[WEEK 6 \(July 4 - 10\)](#) | Litigation Technology & Social
Media

[WEEK 7 \(July 11 - 17\)](#) | Future of Law Practice
Technology I: Artificial Intelligence & Data Analytics

[**WEEK 8 \(July 18-24\)**](#) | Future of Law
Practice Technology II: Blockchain

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E-Discovery Benefits & Risks



Rule 1.1 – Competence



Rule 1.5 – Fees



Rule 1.6 – Confidentiality



Rule 3.4 – Fairness to Opposing Party



Rules 5.1/5.3 - Supervision



AI Benefits & Risks

Benefits:

- Efficiency
- Accuracy

Risks:

- Data quality/quantity
- Human bias
- Transparency

Rules

- 1.1 – Competence
- 1.4 – Communication
- 1.6 – Confidentiality
- 5.1/5.3 – Supervision
- 8.4(g) - Misconduct

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AI Resolution

Resources for Maintaining Tech Competence

- ABA
- State Bar Associations
- CLEs
- Conferences
- Ethics Opinions

Questions & Answers

Upcoming Section on Tech Summer Webinars

Using an Excel Spreadsheet as a Trial Notebook – *July 28*

Learning Games as an Inclusivity Tool – *August 4*

Wrap Up

Survey – Your Feedback is Important!

Please consider joining the Section on Technology,
Law and Legal Education

Thank you for your attendance!