

## Scientific Notations\*

### ABA Artificial Intelligence and Robotics 2022 Virtual National Institute

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## Practice, Practice, Practice: What Attorneys Need to Know About AI, Robotics, and Ethical Obligations

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The ABA's A.I. and Robotics 2022 National Institute hosted a session titled *Practice, Practice, Practice: What Attorneys Need to Know About AI, Robotics, and Ethical Obligations*. The panelists, consisting of lawyers specializing in data privacy, cybersecurity, or ethics, were presented with hypothetical situations where they had to advise clients who wanted to purchase an AI solution or develop one independently. These AI solutions were aimed at internal process improvement, product and revenue expansion, or potential opportunities related to intellectual property rights. The panelists then engaged in an issue-spotting discussion, and over the course of an hour, a common tone was carried across each recommendation.

From this law student's point of view, a warning unfolded: tread lightly.

Artificial Intelligence, at the most basic level, is a computer program written by coders and mathematicians who stack layer on layer of algorithms. These algorithms inform each other and adjust to data from the outside world over time. At first, the data acts as training information for the model. Eventually, it becomes the data the AI is designed to interact with dynamically. The car that turns, the robot that anticipates, the next-word predictor.

These programs are massively complex and the time frame to develop one from scratch ranges from six months to six years, even longer. The reason is that it takes a team of specially trained individuals coordinated to solve a problem by designing, building, and shipping a product that was not in existence before—no easy task. As the comedian Jerry Seinfeld said, anyone can “take a reservation; it is the *keeping* of the reservation” that matters. Meaning organizational success is hard. Then enter second-tier conversations such as ethics and bias, control and privacy, and security and hosting; this is when the AI dialogue gets exponentially more complex and convoluted.

The rule synthesis that emerged at the end of the panel discussion is ... if, as an attorney, you advise a client on any AI issue, anything less than a comprehensive team approach could violate the Model Rules of Professional Conduct 1.1 addressing *Competence*. 1.1 is a simple one-sentence directive at the national level, but many state rules of professional conduct have significantly expanded this section. One state Model includes “competent representation can also be provided through the association of a lawyer of established competence in the field in question.”

The panel, therefore, suggested beginning with a solid understanding of what your client is ultimately trying to do with the AI solution. Are they building a new product that sells as a service or one that sells as a widget, or is it efficiency and lower labor costs they find compelling? Maybe it’s the desire for better internal business analytics. Walking yourself and your client through this process will allow a landscape to emerge of foreseeable risks and opportunities that need addressing.

One aspect of AI and the law this panel didn’t discuss: the use of AI in practice and matter management, i.e., the robots of the legal industry. The overall conference message was evident in each session; today’s lawyer needs to become more tech-savvy. Much of the industry lags, and it has created both ethical and competency issues for attorneys. Model Rule 1.1 in many states requires that “attorneys develop and maintain competency in technology to run their practices and assist their clients.” Imagine: you are the only advocate in a case that is not using artificial intelligence for sifting data, discovery, evidence, or case law, and you lose. What implications could this bring, and where does one turn?

Again, it appears the team approach is what wins. Begin by asking the same question posed to the client; what is your end goal? You might need to learn it yourself, or maybe a third-party vendor is required. Analyzing these solutions can become a full-time role; to that end, many firms designate a person as the conduit between these worlds, a “legal technologist” of sorts. Whatever the course, there is no feasible way to digest all the information generated and stay up to speed. AI is creating a digital divide within the profession that only practice, practice, practice can begin to close.

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