



**University of Tennessee College of Law**

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**From the Selected Works of Eliza Boles**

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December 6, 2022

# Ethical Implications of Law Practice Technology

Eliza Boles



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Available at: <https://works.bepress.com/eliza-boles/9/>



# ETHICAL IMPLICATIONS OF LAW PRACTICE TECHNOLOGY

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Eliza Boles  
December 6, 2022

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MRPC 1.1, DEFINING  
TECHNOLOGICAL  
COMPETENCE

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OTHER RULES, HOT TOPICS,  
ABA OPINION ROUND-UP

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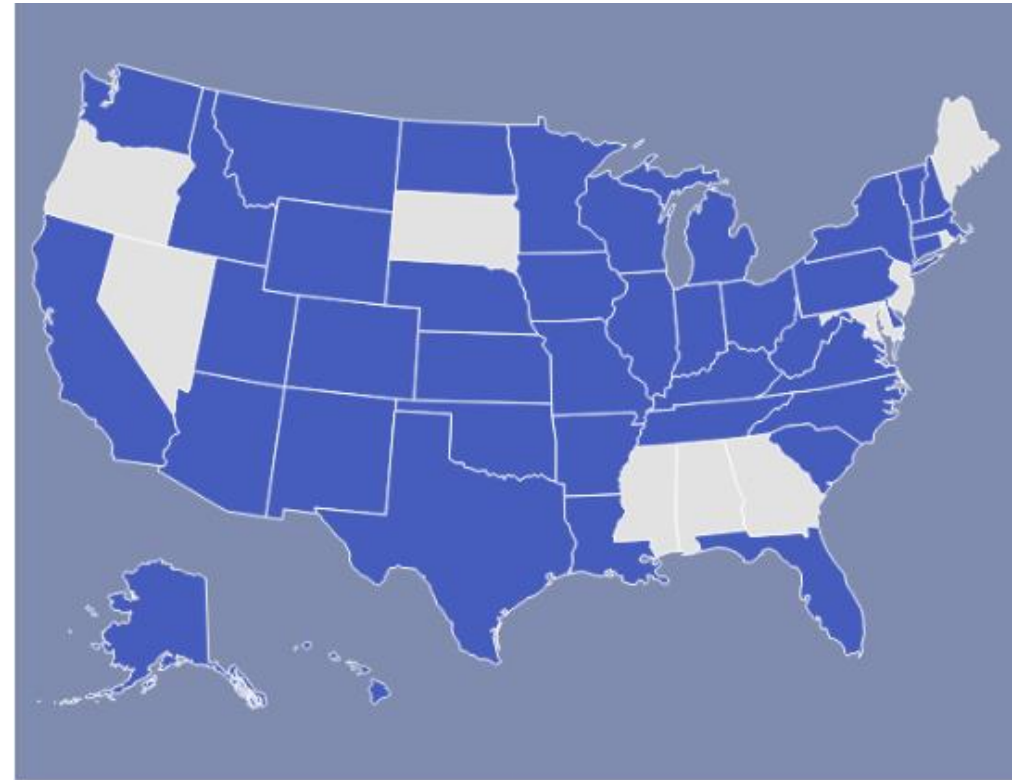
RESOURCES FOR MORE  
INFORMATION

# COMMENT 8

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# MODEL RULE 1.1 COMMENT 8

“To maintain the requisite knowledge and skill, a lawyer should engage in continuing study and education and **keep abreast of changes** in the law and its practice, including the benefits and risks associated with **relevant technology**.”

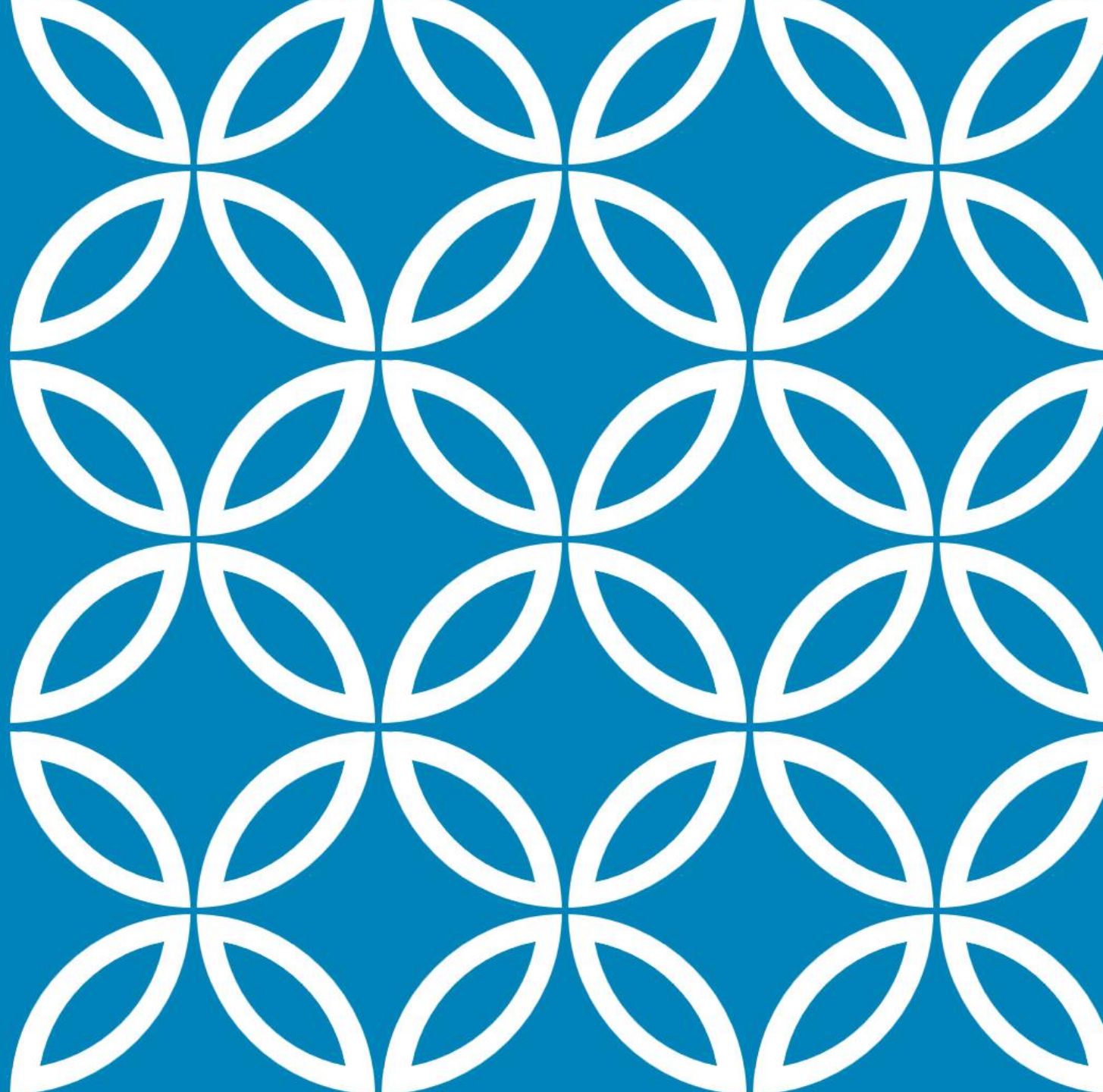


# DEFINING “TECHNOLOGICAL COMPETENCY” AND “RELEVANT TECHNOLOGIES”

- *In Re Harris* (2008)
- *Hagapion v. Just. Admin. Comm’n.* (2009), *Badasa v. Mukasey* (2009)
- *ABA Commission on Ethics 20/20* (2012)
- *Disciplinary Counsel v. Valenti* (2021)
- *Rollins v. Home Depot* (2021)

OTHER RELEVANT  
RULES OF  
PROFESSIONAL  
CONDUCT

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## 1.4 Communications

“Reasonably consult with the client about the means by which the client’s objectives are to be accomplished”



## 1.5 Fees

Unreasonable fees, Efficiency



## 1.6 Confidentiality of Information

“Make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to”





### 3.2- Expediting Litigation

“Reasonable efforts to expedite litigation”



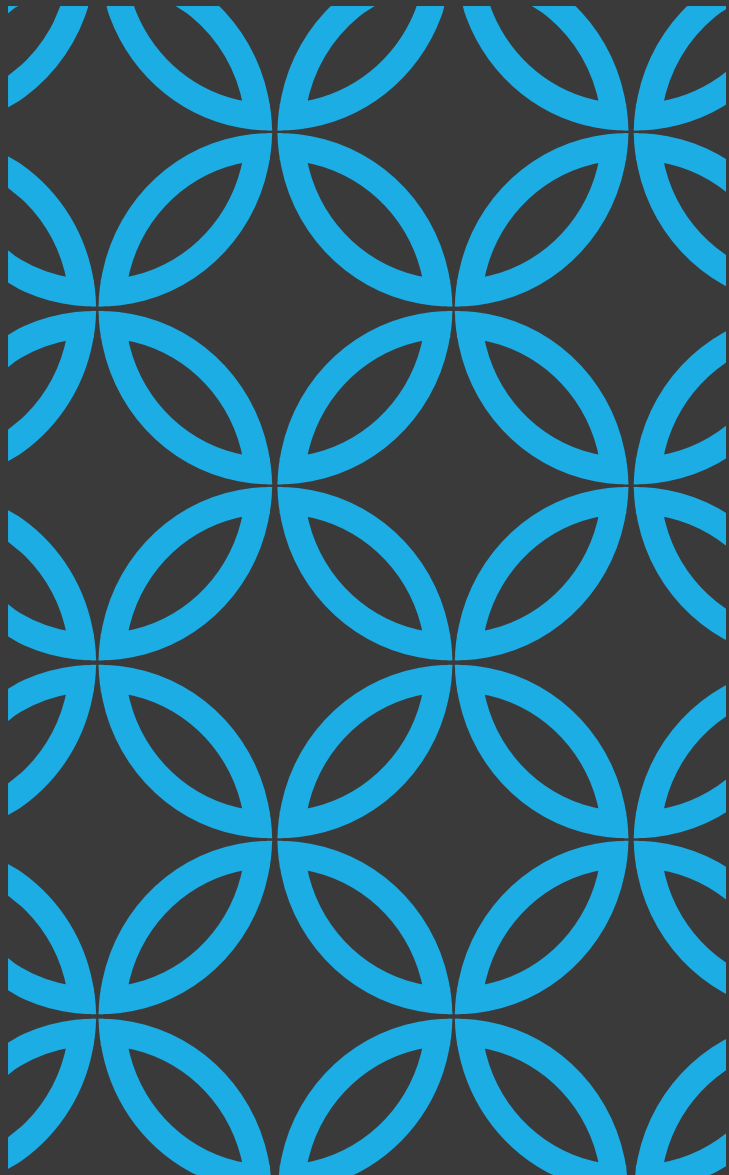
### 5.3 Supervision of Non-attorneys

“Lawyer having direct supervisory authority over nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer.”



### 7.2- Communications Concerning a Lawyer's Services

“May communicate through any media”



## HOT TOPICS

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# E-DISCOVERY

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Identifying, collecting and producing *electronically stored information* (ESI)

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Pitfalls- Data deluge (supervision of e-discovery associates, expense to client), Inadvertent disclosure

# DATA HANDLING AND STORAGE

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Communications,  
Document Libraries,  
Cloud Computing

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Pitfalls- Cybersecurity,  
Metadata, Redaction,  
Internet of Things,  
Inadvertent disclosure

# ARTIFICIAL INTELLIGENCE

- Legal Research Algorithms, Outcome Prediction, Contract Review Software, Sentencing Guideline Programs
- Pitfalls- Supervision, Bias

# ABA FORMAL ETHICS OPINIONS

- FO 503- “Reply All” E-mail (November, 2022)
- FO 483- “Obligations After... Data Breach or Cyberattack” (October 17, 2018)
- FO 480- “Confidentiality Obligations for Lawyer Blogging and Other Public Commentary” (March 6, 2018)
- FO 496- “Responding to Online Criticism” (January 13, 2021)
- FO 466- “Lawyer Reviewing Jurors’ Internet Presence” (April 24, 2014)
- FO 477R- “Securing Communication of Protected Client Information” (May 22, 2017)
- FO 495 “Lawyers Working Remotely” (December 16, 2020)

# RESOURCES FOR MORE INFORMATION

- ABA Legal Technology Resource Center
  - Law Technology Today Blog
    - TECHREPORT 2022
- Clio Legal Tech Trends Report
- ABA Techshow
- Procertas
- Technically Legal Podcast
- Law Technology Now Podcast
- “The Fate of Comment 8,” Lisa Z. Rosenof, University of Cincinnati Law Review Volume 90, Issue 4. 2022.