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Ethical Implications of Law Practice Technology

Eliza Boles

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December 6, 2022

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ETHICAL IMPLICATIONS OF LAW PRACTICE TECHNOLOGY

Eliza Boles
December 6, 2022

**MRPC 1.1, DEFINING
TECHNOLOGICAL
COMPETENCE**

**OTHER RULES, HOT TOPICS,
ABA OPINION ROUND-UP**

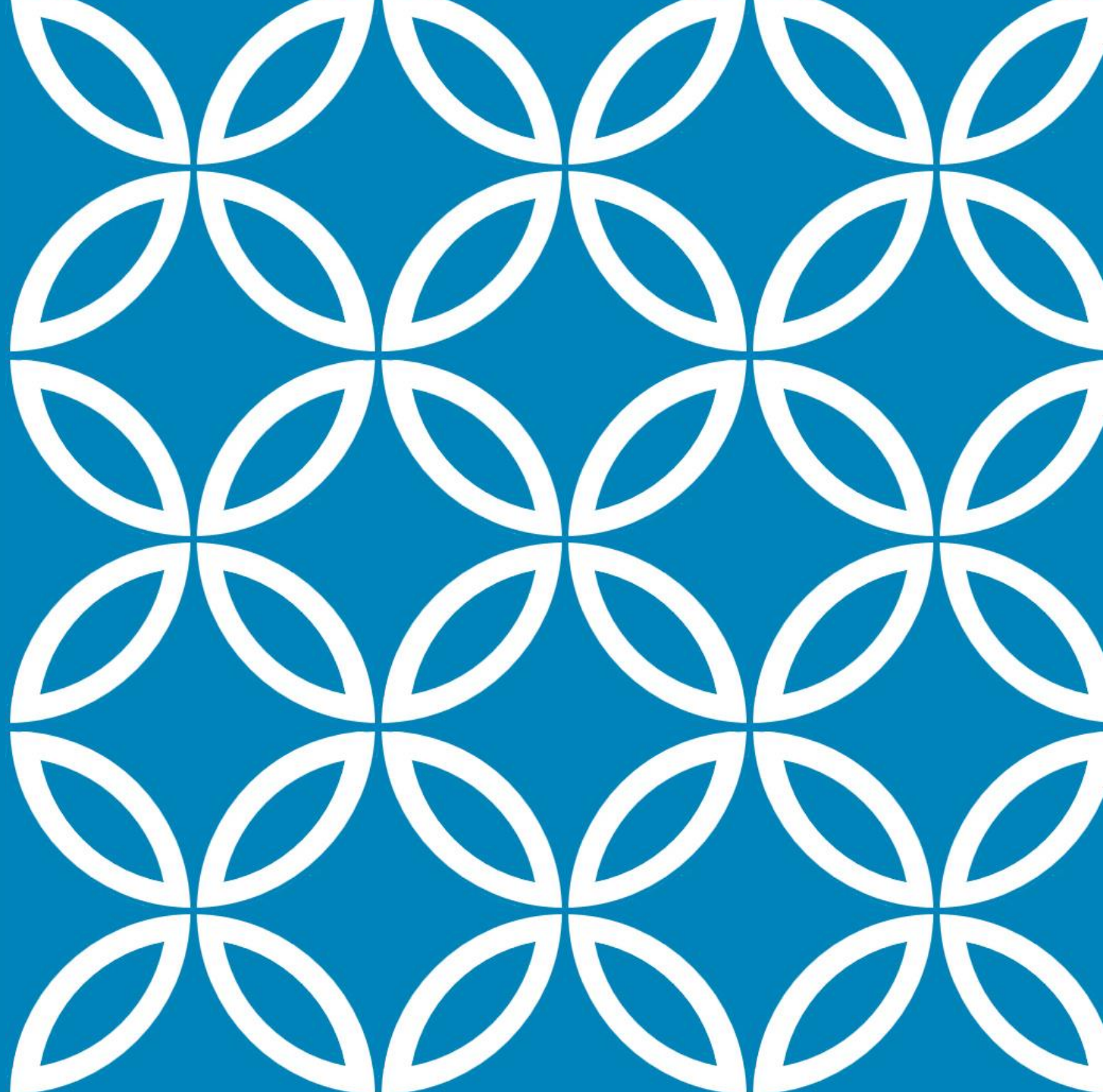
**RESOURCES FOR MORE
INFORMATION**

COMMENT 8

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





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”



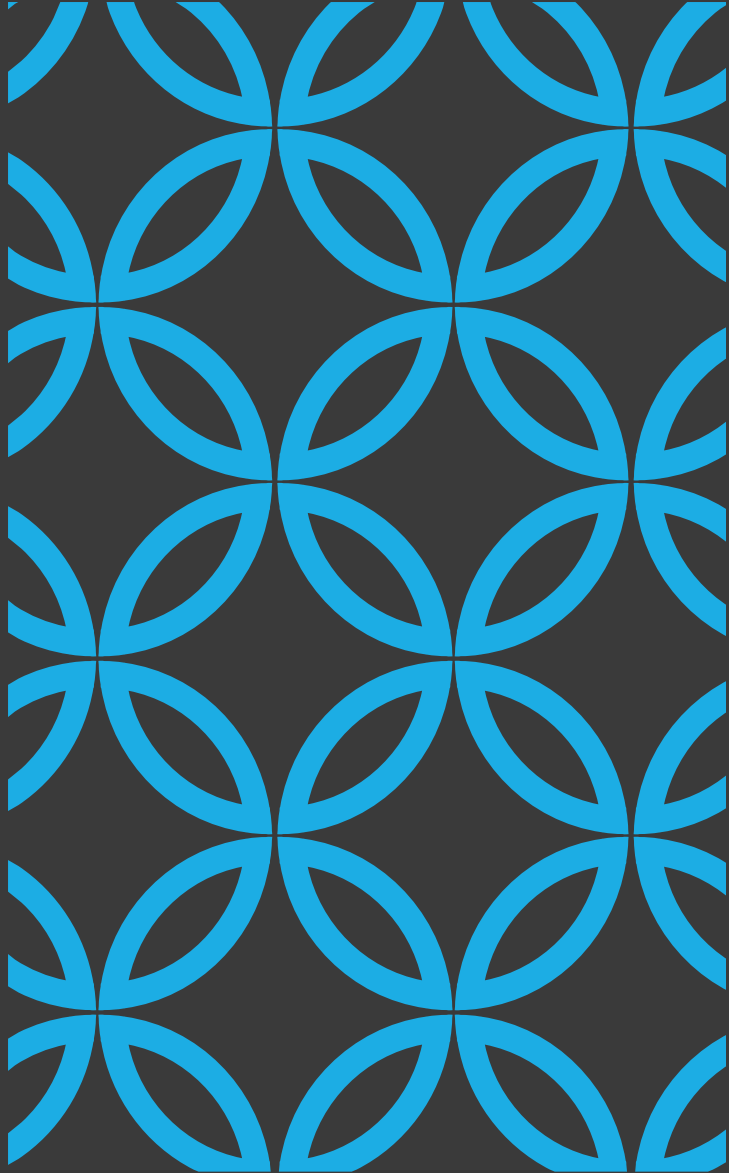
5.3 Supervision of Non-attorneys

“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

E-DISCOVERY

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

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

DATA HANDLING AND STORAGE

Communications,
Document Libraries,
Cloud Computing

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.