



ABCs of Technology: Artificial Intelligence, Blockchain, Cyber

Seminar Topic: This material will discuss some of the basics that lawyers should understand when it comes to the confluence of these technological issues in society. The session will cover what each of these is and some legal issues presented.

This material is intended to be a guide in general and is not legal advice. If you have any specific question regarding the state of the law in any particular jurisdiction, we recommend that you seek legal guidance relating to your particular fact situation.

The course materials will provide the attendee with the knowledge and tools necessary to identify the current legal trends with respect to these issues. The course materials are designed to provide the attendee with current law, impending issues and future trends that can be applied in practical situations.



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Disclaimer: The views expressed herein are not a legal opinion. Every fact situation is different and the reader is encouraged to seek legal advice for their particular situation.

The Apex Jurist, www.ApexJurist.com is
Published by ApexCLE, Inc.
www.ApexCLE.com

119 South Emerson St.,
Suite 248
Mount Prospect, Illinois 60056

Library of Congress Cataloging-in-Publication Data

ApexCLE, Inc.

1. ApexCLE, Inc. 2. Law-United States – Guide-books.
3. Legal Guide 4. Legal Education.



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Timed Agenda:

| Time | Description |
|----------|--|
| 00:00:00 | Program Start |
| 00:00:20 | Introduction |
| 00:02:03 | ABC's of Technology: Artificial Intelligence, Blockchain and Cyber |
| 00:02:27 | Introduction |
| 00:06:26 | Artificial Intelligence |
| 00:18:47 | Duty of Competence |
| 00:29:50 | Blockchain |
| 00:50:03 | Duty of Confidentiality |
| 00:59:11 | Cyber |
| 01:15:12 | Conclusion |
| 01:17:02 | Program End |

ABC'S OF TECHNOLOGY: ARTIFICIAL INTELLIGENCE, BLOCKCHAIN AND CYBER

1. Introduction

- a. For some lawyers, technology is an integral part of their practices
- b. For others, we have little to no involvement and don't know much about it
- c. Yet, the Model Rules of Professional Conduct that recently were amended require us to take proactive steps to understand the technology and be able to advise clients on the risks associated with it.
- d. This program will discuss some of the basics that lawyers should understand when it comes to the confluence of these technological issues in society and how it impacts their practices.
- e. We will cover three areas in particular today:
 - i. Artificial intelligence
 - ii. Blockchain
 - iii. Cyber
- f. For each of the three areas, we will discuss:
 - i. What is it?
 - ii. Why do we as lawyers care?
 - iii. What are some legal issues, challenges and opportunities presented by each area?

2. Artificial Intelligence

- a. Introduction
 - i. Commercials- IBM Watson
 - ii. Legal – Ross
 - 1. www.rossintelligence.com
 - a. Some big firms using it
 - iii. SeyfarthLean

1. www.seyfarth.com/seyfarthlean/
- b. What is it
 - i. Intelligence exhibited by machines
 - ii. Mimic of cognitive behaviors
 - iii. Machine learning
- c. Why do we as lawyers care
 - i. Impact on practice
 - ii. Predictions of a world in few years where much automated
 - iii. Redundancy?
 - iv. Where is our value?
- d. What are some of legal issues, challenges and opportunities presented by AI?
 - i. Duty of Competence including requirement in “selecting and using technology”
 1. How does a lawyer understand AI and its algorithms?

Duty of Competence

Rule 1.1 includes competence in selecting and using technology. It requires attorneys who lack the necessary technical competence for security (many, if not most attorneys) to consult with qualified people who have the requisite expertise.

Comment [8] MRPC: 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.

- ii. Challenges
 1. Understanding technology
 2. How do we know error free?
- iii. Opportunities
 1. Value chain
 2. Efficiencies

3. Blockchain

- a. Introduction
 - i. Bitcoins probably most familiar example
 - ii. “Internet of value”
- b. What is it
 - i. Distributed ledger or register
 - ii. Distributed across a network of computers
 - iii. Provides a real-time record verifying:
 - 1. A transaction took place
 - a. Certain time
 - b. Certain order
 - iv. Highly hack-resistant
 - v. Immutable and unchangeable
- c. Why do we as lawyers care
 - i. Clients will be using
 - ii. Ransomware
- d. What are some of legal issues, challenges and opportunities presented by Blockchain?

Duty of Confidentiality

Comments to Illinois Rule 1.6

Acting Competently to Preserve Confidentiality

[19] When transmitting a communication that includes information relating to the representation of a client, the lawyer must take reasonable precautions to prevent the information from coming into the hands of unintended recipients. This duty, however, does not require that the lawyer use special security measures if the method of communication affords a reasonable expectation of privacy. Special circumstances, however, may warrant special precautions. Factors to be considered in determining the reasonableness of the lawyer's expectation of confidentiality include the sensitivity of the information and the extent to which the privacy of the communication is protected by law or by a confidentiality agreement. A client may require the lawyer to implement special security measures not required by this Rule or may give informed consent to the use of a means of communication that would otherwise be prohibited by this Rule.

What does your client want?

Illinois Rule 1.6, Comment [19]:

“A client may require the lawyer to implement special security measures not required by this Rule or may give informed consent to forgo security measures that would otherwise be required by this Rule.”

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Duty of Confidentiality

Comment to Model Rule 1.6, now in comments to Illinois Rule, effective January 1, 2016

Acting Competently to Preserve Confidentiality

[18] Factors to be considered in determining the reasonableness of the lawyer's efforts include, but are not limited to, the sensitivity of the information, the likelihood of disclosure if additional safeguards are not employed, the cost of employing additional safeguards, the difficulty of implementing the safeguards, and the extent to which the safeguards adversely affect the lawyer's ability to represent clients (*e.g.*, by making a device or important piece of software excessively difficult to use).

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- i. Challenges
 1. Access
 2. Costs
 3. Understanding the technology
- ii. Opportunities
 1. Finance – fintech
 2. Energy
 3. Music

- 4. Real Estate
- 5. Cyber

4. Cyber

- a. Introduction
 - i. Cannot go online or read any legal journal that does not touch upon
 - ii. Tied in with the rules discussed
- b. What is it
 - i. Concerns about data privacy and security
 - 1. For your firm/organization
 - 2. For your clients
 - ii. Broad arena
 - 1. Includes cyber insurance
- c. Why do we as lawyers care
 - i. Rules of professional conduct
 - ii. Ethics opinions
 - 1. Free wi-fi
 - 2. Home internet
 - 3. Cloud
 - 4. BYOD
- d. What are some of legal issues, challenges and opportunities presented by Cyber?
 - i. RPCs require
 - ii. Breach notice laws
 - 1. 48 states and DC
 - iii. Other applicable laws
 - 1. GDPR/EU
 - 2. Gramm-Leach-Bliley
 - 3. HIPAA and HITECH
 - 4. FTC enforcement
 - 5. SEC
 - 6. Financial institutions
 - a. NY DFS regulations – effective 3/1/17
 - iv. ACC- Model Information Protection and Security Controls
 - 1. www.acc.com/advocacy/upload/...

- v. Challenges
 - 1. Keeping up with technology
 - 2. Protecting the “fortress” from attack
 - 3. Increasing target of law firms
 - a. Parade of horrors last few years
- vi. Opportunities
 - 1. Having a good program with good policies and procedures in place will allow you to differentiate and get “in the door”

5. Conclusion

- a. Increased technology creates additional legal considerations
- b. Presents challenges to us
- c. Presents opportunities
- d. Understanding the ABCs will help you tackle this new landscape