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Part I: The Ethics of Emergence of Artificial Intelligence in the Practice of Law (60 Minutes)

The topic I would like to speak with you about today, Ethical Practices in the Emergence of Artificial Intelligence ("AI"), is one that is relatively recent and still under development, affecting almost all lawyers in the profession. The Virginia State Bar cited Brad Smith, Microsoft's president and chief legal officer, who said that AI will become an integral part of our lives in 20 years, influencing every part of our society, including the practice of law.[1] But what is AI, and how exactly has it played a role in our legal practices? Let's start off by defining and identifying AI in our everyday lives.

I. Defining Artificial Intelligence

a. Dictionary Definition: artificial intelligence ("AI") is a method of technology that teaches a machine how to do a task originally thought to be carried out by humans.
    i. There are four main methods from which machines are being taught:
        1. Machine learning: the use of algorithms that iteratively learn from data, allowing machines to learn through experience, such as their interactions with humans, rather than being programmed with the specific knowledge.
        2. Visual recognition: the ability for machines to identify images.
        3. Speech recognition: ability to understand how humans communicate verbally then translates the human vocal tones into words.
        4. Natural language processing: the ability of machines to understand the relation between words and decipher the intent and meaning behind their usage by humans.

b. Examples of Artificial Intelligence
    i. Siri/ Alexa/ Amazon Echo
        1. Our smart phones and smart devices are one of the many forms of AI we use day-to-day. As helpful as they can be, they can also expose us to a number of problems. For example, a person in Germany requested from Amazon to review his data in August under a European Union data protection law.[2] Amazon sent him a download link to tracked searches on the website — and 1,700 audio recordings by Alexa that were generated by another person. He received the recordings of a stranger speaking in the privacy of his home. A man could be heard in various parts of his home, even in the shower and a female voice was also present on some of the recordings. There were alarm clock and music commands, weather questions and also comments related to work and living habits. Amazon never reached out to the user to inform him of the leak.
        2. In May, a couple in Oregon found that their Amazon Echo sent a conversation to the husband's employee and a North Carolina man said

[1] 2019 VSB Special Committee Report: The Future of Law Practice.
[2] NPR: Amazon Customer Receives 1,700 Audio Files Of A Stranger Who Used Alexa.

last year that his Echo recorded a discussion and then sent it to his insurance agent.[3]

3. Amazon, Apple, and Google all employ staff who listen to customer voice recognition from their smart speakers and voice assistant apps to improve speech recognition.[4] Amazon's voice recordings are associated with an account number, the customer's first name and the serial number of the Echo device used. According to Apple's security policy, however, voice recordings lack personally identifiable information and are linked to a random ID number, which is reset every time Siri is switched off. Similarly, Google said clips were not associated with personally identifiable information and the company also distorted the audio to disguise the customer's voice.
4. This could be an important consideration as an attorney's virtual assistant.
    a. Lawyers should consider many things when utilizing such common devices, such as: (1) whether the device should be used for both personal and professional purposes; (2) passwords and password management; (3) encryption of data at rest and encryption of data in transit; and (4) non-email messaging.
    b. Amazon's Alexa privacy settings do not let you opt out of voice recording or human review, but you can stop your recordings being used to "help develop new features." You can also listen to and delete previous voice recordings.
    c. Google lets you listen to and delete voice recordings on the My Activity page. You can also switch off "web and app history tracking" and "voice and audio activity", which Google Assistant pesters you to switch on.
    d. Apple does not let you listen back to Siri recordings. Its privacy portal, which lets you download a copy of your personal data, says it cannot provide information "that is not personally identifiable or linked to your Apple ID".[5]

ii. Facial recognition technology is also a recent development that is used into a lot of our day-to-day gadgets.
    1. Amazon has developed Rekognition, which is an online tool that works with both video and still images and allows users to match faces to pre-scanned subjects in a database containing up to 20 million people.[6]
        a. It gives a confidence score as to whether the ID is accurate. In addition, it can be used to:
            i. detect "unsafe content" such as whether there is nudity or "revealing clothes" on display
            ii. suggest whether a subject is male or female
            iii. deduce a person's mood
            iv. spot text in images and transcribe it for analysis
        b. Amazon has been selling it to law enforcement officers, and recommends that they should only use it if there is a 99% or higher confidence rating of a match and says they should be transparent about its usage.
        c. However, this technology is associated with biased algorithms (0% error rate at classifying lighter-skinned males as such

[3] Id.
[4] BBC News: Smart speaker recordings reviewed by humans.
[5] Id.
[6] BBC News: Amazon heads off facial recognition rebellion.

within a test, but a 31.4% error rate at categorizing darker-skinned females).

2. The FBI is also using licenses from DMVs, scanning through millions of drivers' photos for their facial recognition technologies without their knowledge or consent.[7] This technology, while helpful for catching criminals, can also be dangerous in application due to an inherent bias in the implementation of the technology and the breach of privacy. The software is highly dependent on a number of factors, including the lighting of a subject's face and the quality of the image, and research has shown that the technology performs less accurately on people with darker skin. Police have long had access to fingerprints, DNA and other "biometric data" taken from criminal suspects. But the DMV records contain the photos of a vast majority of a state's residents, most of whom have never been charged with a crime.
3. Legislators in San Francisco made it the first city to ban the use of facial recognition technology by local agencies, such as the city's transport authority or law enforcement.[8]
4. Apple's Face ID
    a. Apple's Face ID technology launched on the iPhone X in 2017 also creates concerns that users' biometric data could be hacked if they used the feature. [9]

iii. Cat Flap Lock

1. An Amazon employee has built a system that recognizes when a cat approaches the door with a rodent or bird in its mouth and locks the cat flap for fifteen minutes.[10] He used tools from Amazon, including DeepLens, a video camera specifically designed to be used in machine-learning experiments, and Sagemaker, a service that allows customers to either buy third-party algorithms or to build their own, then train and tune them with their own data. He then used a technique called supervised learning, where a computer is trained to recognize patterns in images or other supplied data via labels given as examples. The inventor had to create a database of thousands of images to train the software.

iv. AI for love lives and mood predictions

1. AI has also been used to better human relationships. Researchers trained an algorithm to analyze couples' speech to detect the strength of a relationship.[11] Research showed that certain features were likely to be involved in human communication, such as intonation, speech duration and how the individuals took turns to speak. The algorithm also picked up on features of speech beyond human perception – such as spectral tilt, a complex mathematical function of speech. The algorithm's job was to calculate exactly how these features were linked to relationship strength. After being trained on the couples' recordings, the algorithm became marginally better than the therapists at predicting whether or not couples would stay together. The algorithm was 79.3% accurate.
2. A computer engineer at Texas A&M University has been developing an AI program that can predict when conflict is likely to flare up in a relationship from unobtrusive sensors – like a wrist-worn fitness

[7] The Washington Post: FBI, ICE find state driver's license photos are a gold mine for facial-recognition searches.
[8] BBC News: San Francisco is the first city to ban facial recognition.
[9] BBC News: Apple AI accused of leading to man's wrongful arrest.
[10] BBC News: Cat flap uses AI to punish pet's killer instincts.
[11] BBC News: How your voice hides clues about your love life.

tracker.[12] The sensors measure sweat, heart rate and voice data including tone of voice, but also analyze the content of what the couples say – whether they use positive or negative words. The engineer hopes to use this information to develop predictive algorithms to give couples a heads-up before an argument is likely to take place by detecting the warning signs that lead up to one.

v. iPhone Health app helped catch a murderer[13]
    1. We also see how AI can also become useful in unexpected ways. For instance, the iPhone Health app recently helped police catch a husband who murdered his wife. Through the app, officers were able to detect each of their movements. The husband, who reported his wife's murder after coming home to a murder scene, claimed he last saw her alive before he went for a "long walk," paid a visit to the pharmacy and picked up a pizza. But just before he was captured on video leaving his house, his wife's Health app recorded 14 steps — the last movement it would measure. Once the husband left the home, her iPhone recorded no movement whatsoever. His Health app, meanwhile, recorded him frantically running up and down the stairs during the time his wife's app was motionless — during what prosecutors believe was when he murdered her and attempted to stage a burglary.

II. Statistics and Opinions about Artificial Intelligence in the Legal Field

a. Because AI is difficult to define and identify in the mainstream, statistics about the use of AI in the legal field are not as comprehensive. Results of a recent ABA survey indicated that only 10% of respondents used artificial intelligence-based tech tools for their legal work in 2018.[14] The larger the firm a respondent worked for, the more likely they reported using AI; 35% of respondents from firms with 500+ lawyers used AI, compared to just 4% of respondents from firms employing two to nine attorneys.
b. Larger firms have more money to invest in initiatives that enhance or extend the delivery of legal services. Additionally, larger firms have the personnel with appropriate skills to support the effective use of technologies, such as sophisticated practice technology or litigation support teams with computer-assisted review or technology-assisted review (CAR/TAR technologies).
c. While small firms can benefit from applying innovative technologies, they often do not have the resources to fund acquisition and support effective use.
d. There is a misconception about legal technology, especially machine learning and AI, intending to "replace attorneys," which is false. When done right, AI can greatly enhance the value and insight that attorneys can provide their clients. It can eliminate the time spent on mundane or administrative work so that attorneys can focus on providing informed and thoughtful advice on the issues and risks their clients face.

III. Virginia State Bar Legal Ethics: Vulnerability in the Face of Artificial Intelligence

a. **Virginia's Applicable Rules of Professional Conduct**
    i. **Rule 1.1:** Competence: *A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.*
        1. Attorneys should endeavor to acquire the knowledge and skill need to perform well in the matters handled. Because technology is constantly changing, that means keeping up with those changes. They should know the benefits and risks associated with the technology that is used.

[12] Id.
[13] The Washington Post: A man killed his wife to be with his Grindr boyfriend. But his iPhone Health app gave his plot away.
[14] Law Practice Today: How Artificial Intelligence is Changing Law Firms and the Law.

2. Comment 6: *To maintain the requisite knowledge and skill, a lawyer should engage in continuing study and education in the areas of practice in which the lawyer is engaged. Attention should be paid to the benefits and risks associated with relevant technology. The Mandatory Continuing Legal Education requirements of the Rules of the Supreme Court of Virginia set the minimum standard for continuing study and education which a lawyer licensed and practicing in Virginia must satisfy. If a system of peer review has been established, the lawyer should consider making use of it in appropriate circumstances.*

ii. **Rule 1.3:** Diligence:

(a) A lawyer shall act with reasonable diligence and promptness in representing a client.
(b) A lawyer shall not intentionally fail to carry out a contract of employment entered into with a client for professional services, but may withdraw as permitted under Rule 1.16.
(c) A lawyer shall not intentionally prejudice or damage a client during the course of the professional relationship, except as required or permitted under Rule 1.6 and Rule 3.3.

iii. **Rule 1.4:** Communication:

(a) A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.
(b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.
(c) A lawyer shall inform the client of facts pertinent to the matter and of communications from another party that may significantly affect settlement or resolution of the matter.

iv. **Rule 1.5:** Fees: *A lawyer's fee shall be reasonable….*

1. Attorneys may charge the client out-of-pocket cost (i.e. cost of license, or cost per use)
2. Attorneys may obtain consent from client to charge a reasonable mark-up. *See* ABA Ethics Op. 93-393 (1993) ("Any reasonable calculation of direct costs as well as any reasonable allocation of related overhead should pass ethical muster" but, absent the client's agreement, an attorney may not "create an additional source of profit for the law firm" by charging above cost for computer research services or other non-legal services).

v. **Rule 1.6:** Confidentiality of Information: (a) *A lawyer shall not reveal information protected by the attorney-client privilege under applicable law or other information gained in the professional relationship that the client has requested be held inviolate or the disclosure of which would be embarrassing or would be likely to be detrimental to the client unless the client consents after consultation, except for disclosures that are impliedly authorized in order to carry out the representation….* (d) *A lawyer shall make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information protected under this Rule.*

1. Comment 19 & 20: [19] *Paragraph (d) requires a lawyer to act reasonably to safeguard information protected under this Rule against unauthorized access by third parties and against inadvertent or unauthorized disclosure by the lawyer or other persons who are participating in the representation of the client or who are subject to the lawyer's supervision. See Rules 1.1, 5.1 and 5.3. The unauthorized access to, or the inadvertent or unauthorized disclosure of, confidential information does not constitute a violation of this Rule if the lawyer has made reasonable efforts to prevent the access or disclosure. 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 employment or engagement of persons competent with technology, 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).

[20] *Paragraph (d) makes clear that a lawyer is not subject to discipline under this Rule if the lawyer has made reasonable efforts to protect electronic data, even if there is a data breach, cyber-attack or other incident resulting in the loss, destruction, misdelivery or theft of confidential client information. Perfect online security and data protection is not attainable. Even large businesses and government organizations with sophisticated data security systems have suffered data breaches. Nevertheless, security and data breaches have become so prevalent that some security measures must be reasonably expected of all businesses, including lawyers and law firms. Lawyers have an ethical obligation to implement reasonable information security practices to protect the confidentiality of client data. What is "reasonable" will be determined in part by the size of the firm. See Rules 5.1(a)-(b) and 5.3(a)-(b). The sheer amount of personal, medical and financial information of clients kept by lawyers and law firms requires reasonable care in the communication and storage of such information. A lawyer or law firm complies with paragraph (d) if they have acted reasonably to safeguard client information by employing appropriate data protection measures for any devices used to communicate or store client confidential information. To comply with this Rule, a lawyer does not need to have all the required technology competencies. The lawyer can and more likely must turn to the expertise of staff or an outside technology professional. Because threats and technology both change, lawyers should periodically review both and enhance their security as needed; steps that are reasonable measures when adopted may become outdated as well.*

vi. **Rule 5.1:** Responsibilities of Partners and Supervisory Lawyers:

(a) A partner in a law firm, or a lawyer who individually or together with other lawyers possesses managerial authority, shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that all lawyers in the firm conform to the Rules of Professional Conduct.

(b) A lawyer having direct supervisory authority over another lawyer shall make reasonable efforts to ensure that the other lawyer conforms to the Rules of Professional Conduct.

(c) A lawyer shall be responsible for another lawyer's violation of the Rules of Professional Conduct if:

(1) the lawyer orders or, with knowledge of the specific conduct, ratifies the conduct involved; or

(2) the lawyer is a partner or has managerial authority in the law firm in which the other lawyer practices, or has direct supervisory authority over the other lawyer, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

vii. **Rule 5.3:** Responsibilities Regarding Nonlawyer Assistants: *With respect to a nonlawyer employed or retained by or associated with a lawyer:*

(a) a partner or a lawyer who individually or together with other lawyers possesses managerial authority in a law firm shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance

that the person's conduct is compatible with the professional obligations of the lawyer;
(b) a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer; and
(c) a lawyer shall be responsible for conduct of such a person that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if:
(1) the lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved; or
(2) the lawyer is a partner or has managerial authority in the law firm in which the person is employed, or has direct supervisory authority over the person, and knows or should have known of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

*Attorney should hire an expert to vet the AI product; learn what the AI product can and cannot do; double-check the output of the AI product.

viii. **Rule 5.4:** Professional Independence of a Lawyer:

(a) A lawyer or law firm shall not share legal fees with a nonlawyer, except that:
(1) an agreement by a lawyer with the lawyer's firm, partner, or associate may provide for the payment of money, over a reasonable period of time after the lawyer's death, to the lawyer's estate or to one or more specified persons;
(2) a lawyer who undertakes to complete unfinished legal business of a deceased, disabled, or disappeared lawyer may pay to the estate or other representative of that lawyer that portion of the total compensation that fairly represents the services rendered by the deceased, disabled or disappeared lawyer;
(3) a lawyer or law firm may include nonlawyer employees in a compensation or retirement plan, even though the plan is based in whole or in part on a profit sharing arrangement; and
(4) a lawyer may accept discounted payment of his fee from a credit card company on behalf of a client.
(b) A lawyer shall not form a partnership with a nonlawyer if any of the activities of the partnership consist of the practice of law.
(c) A lawyer shall not permit a person who recommends, employs, or pays the lawyer to render legal services for another to direct or regulate the lawyer's professional judgment in rendering such legal services.

IV. Use of Artificial Intelligence in the Legal Setting: AI has some potentially dangerous uses, like breaching privacy and perpetuating biases from inputted data. However, there are some advantages to developing and using AI, especially in field-specific areas, such as the legal field. The caveat to using AI technology is learning how to best implement legal ethics to its use.

a. Litigation lawyers use E-discovery frequently to accelerate document review during the discovery phase of litigation. But there are many companies that are getting a head start on developing tools across different practices, mainly from AI, to help make the legal field more efficient and streamlined. For example:

i. AI technology like COMPAS was made to be used in courtrooms. COMPAS is a risk-assessment algorithm employed by judges to predict risk of recidivism.[15] In 2013, police officers in Wisconsin arrested a man driving a car that had been used in a recent shooting. His crimes did not mandate prison time, but at the sentencing, the judge focused on the man's high risk of recidivism as predicted by COMPAS. The judge refused probation and handed down an 11-year sentence — six years in prison and five years of extended supervision.

[15] 2019 VSB Special Committee Report: The Future of Law Practice.

1. Cons: COMPAS is a classic "black box" — no one knows how it works and its manufacturer won't be transparent about the proprietary algorithm. All we know is the risk assessment score, which judges can consider at sentencing and may be influenced by human bias. A ProPublica study found that COMPAS projects that black men will have higher risks of recidivism than they really do, but it forecasts lower rates for white men than they really have. The programmers of COMPAS probably feed historical recidivism data into the algorithm. From that, the program comes to its own conclusions about things that might make a defendant a higher risk.
2. Pros: But in reality, judges also have inherent biases based on color, ethnicity, gender, etc. that they employ, although they are limited within the sentencing guidelines. So, it is easy to understand why states might employ technology to be part of the process, theoretically making it more neutral and consistent. New Jersey used a similar risk assessment program known as the Public Safety Assessment to reform its bail system. The statistics showed a 16 percent decrease in its pre-trial jail population. The same risk assessment program aided Lucas County, Ohio, which experienced double the number of pretrial releases without bail and cut pretrial crime in half. Unlike COMPAS, this system had a published report that explained exactly how the system worked and allowed experts to affirm that race and gender, among other constitutionally impermissible factors, were not a part of the decision process.
3. *Consider Rules 1.1 and 1.3—Are these technologies being properly vetted? Would use of this technology, with limited access to how it works, means that lawyers who employ them are not being diligent?*

ii. Lex Machina is another implementation of AI in the legal field that spots trends in judges' rulings, identifies legal strategies of opposing counsel, and notes winning arguments.[16] It uses natural language processing to evaluate millions of court decisions to find patterns or trends.

iii. Similarly, Jury Lab is a program that scans the faces of mock jurors, providing a lawyer with feedback as to how the jurors "feel"—consciously or otherwise—about a lawyer's arguments. Through analysis of the facial expressions of up to 12 mock jurors, legal teams using Jury Lab are able to test arguments, key points, opening and closing arguments, photographic and video evidence, witnesses, and more, to pre-determine how a real jury might perceive their trial strategy.

iv. Blue J Legal is also an AI system developed by a tax law professor, where a team of lawyers, legal analysts and data scientists review cases to predict how a court would rule in specific scenarios with an average of 90+% accuracy.[17] Algorithms take into account 15-30 factors within each case to make a prediction. The system can also be used to do scenario testing to best understand which factors would impact the outcome. Users can then print out reports of their different scenarios for their records to demonstrate the level of care taken when considering different positions.

v. *Consider Rule 1.1. At what point is a lawyer not acting competently because he hasn't integrated use of that technology in his practice?*

b. AI has also used heavily in litigation. Beside e-discovery, ROSS is the world's first artificial intelligence lawyer employed at 10 firms focused on bankruptcy legal research. One can ask ROSS a fully formed legal research question (e.g., specific jurisdiction questions), and it will then collect exact passages from cases that answer your

[16] Hein Online: Dialing in Legal Ethics for Artificial Intelligence, Smartphones, and Real Time Lawyers.
[17] Disruptor Daily: AI In Law Use Case #3: Blue J Legal.

questions.[18] ROSS will then ask follow-up questions for clarifications to determine whether the information collected was helpful.

i. While the general perception within the legal field is that larger firms might have more resources to invest into the use of AI, smaller firms are also well equipped with the opportunities to implement their uses. EVA was developed for smaller firms to use.[19] Completely free, EVA uses a stripped-down version of ROSS to analyze uploaded briefs and other legal documents. It checks whether cited cases remain good law and provides links to view cited cases. By using AI to streamline tasks that are ordinarily time-consuming with traditional legal databases, EVA is paving the way for AI to become a standard part of solo and small firm lawyer work flows.

ii. *Again, consider Rule 1.1. At what point is a lawyer not acting competently because he hasn't integrated use of that technology in his practice?*

c. AI has also been used for transactional work. LawGeex helps with contract analytics and identifies legal issues in documents within seconds.[20] 20 experienced lawyers were given four hours to identify and highlight 30 legal issues in five standard nondisclosure agreements (NDAs). It took the humans between 51 minutes to more than 2.5 hours to complete the review of the five NDAs. It took the AI engine 26 seconds. The AI had an accuracy score of 95 percent and humans of 85 percent.

i. And recently, intellectual property attorney and law professor David Hricik explored Al in the context of patent law.[21] Working alongside a programming company, he conducted a test run in which he submitted a patent claim and received a remarkable set of specifications and drawings almost instantaneously, which would have taken a patent lawyer between ten and fifteen hours to draft. Instead, the patent preparation required two hours of lawyer time and $2,500 (the cost of using the Al company).

ii. *Consider Rules 5.1 and 5.3—Are these technologies being supervised and vetted? Does artificial intelligence act more like a machine, in which attorneys are primarily responsible for maintaining it properly (per Rule 1.6) or is it more like an independent actor in which attorneys are responsible for supervising and monitoring its behavior (per Rule 5.3)? Is the lawyer taking reasonable steps to keep client information confidential? Rule 1.6 Comment 20: To comply with this Rule, a lawyer does not need to have all the required technology competencies. The lawyer can and more likely must turn to the expertise of staff or an outside technology professional. Because threats and technology both change, lawyers should periodically review both and enhance their security as needed.*

d. AI is also helping non-lawyers solve their own legal issues. DoNotPay was developed by Joshua Browder to initially dispute the dozens of parking tickets he was racking up when he was 18.[22] Free to use, chatbots help people fight their parking tickets and assist in filling out transactional legal forms. The bots are fully searchable in natural language — users simply state the problem they are trying to solve and DoNotPay will automatically redirect them to the relevant assistant.[23] Over time, it has increased in complexity to offer legal advice in more states (all 50 states across the US are supported), for a greater variety of issues including volatile airline prices, data breaches, late package deliveries, and unfair bank fees.[24] The app also advertises that it can be used to "sue anyone by

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[18] Hein Online: Dialing in Legal Ethics for Artificial Intelligence, Smartphones, and Real Time Lawyers.

[19] 2019 VSB Special Committee Report: The Future of Law Practice.

[20] 2019 VSB Special Committee Report: The Future of Law Practice.

[21] Hein Online: Dialing in Legal Ethics for Artificial Intelligence, Smartphones, and Real Time Lawyers.

[22] https://www.theverge.com/2018/10/10/17959874/donotpay-do-not-pay-robot-lawyer-ios-app-joshua-browder.

[23] Hein Online: Dialing in Legal Ethics for Artificial Intelligence, Smartphones, and Real Time Lawyers.

[24] https://www.theverge.com/2018/10/10/17959874/donotpay-do-not-pay-robot-lawyer-ios-app-joshua-browder.

pressing a button," with a focus on suing corporations and navigating the complex bureaucracies that stand between people and their everyday rights.

i. *For lawyers who are employed by these companies or provide any of these services, it is important to consider Rule 5.4(b): A lawyer shall not form a partnership with a nonlawyer if any of the activities of the partnership consist of the practice of law. Ask yourself, who owns the company (lawyer or non-lawyer)? Are they charging reasonable fees (per Rule 1.5)? Also, where is client information being stored (per Rule 1.6)? Are these bots classified under 5.1 or 5.3? Since they are AI tools, they have their own way of processing information and learning how to give the best advice based on that… Therefore, how are they classified, as a computer or lawyer?*

e. AI is also entering into the world of criminal sentencing. San Francisco, CA is implementing an AI system to create race-blind prosecutorial charging decisions. The AI removes all references to race from the police report that goes to the prosecutor's office. Advocates of using AI point out that everyone has an implicit bias toward something, whether toward the person charged or the arresting police officer, and that this bias disproportionately harms minorities that are arrested.

i. However, critics point out that the data that feeds the AI algorithm is laden with biases (in particular, biases in arresting and reporting), and could ultimately create another biased system. Additionally, the biases of the programmer and the data may reduce the viability of any prosecutorial AI program.[25]

V. Caveats to the Use of Artificial intelligence in the Legal Field

a. Accountability
   i. How does this AI function?
   ii. Is it foolproof?
   iii. There should be standards and accreditations that allow effective procurement and operation.
b. Security
   i. Is the information stored secured from hackers and breaches?
   ii. What level of care does the AI provider have to take with the data? How will they respond to subpoena requests? Will they indemnify the law firm or attorney for breaches? What kind of insurance do they carry to back that up? In which jurisdiction are the servers holding the data located? How to deal with the laws of that jurisdiction?
c. Costliness
   i. Weight between investment into the technology, frequency of use, and fees paid by clients.
d. Requires Technological Expertise
   i. At this point, most law firms, especially smaller firms, do not have attorneys or personnel that have the practical AI experience for wider-spread adoption.
   ii. Identifying specific AI algorithms, selecting configurations for AI services, or culling data sets can often exceed the technological expertise of most typical law firm leaders.

VI. Areas of Conversation

a. Does artificial intelligence act more like a machine, in which attorneys are primarily responsible for maintaining it properly (per Rule 1.6) or is it more like an independent actor in which attorneys are responsible for supervising and monitoring its behavior (per Rule 5.3)?
b. Will there be a profession-wide mandate for lawyers to employ AI to remain competent?
c. For further information regarding the legal impacts of AI, please refer to a new book published by the ABA: Law of Artificial Intelligence and Smart Machines:

[25] http://washingtonlawyer.dcbar.org/october2019/index.php?utm_source=Real+Magnet&utm_medium=email&utm_campaign=146090505#/20

Understanding A.I. and the Legal Impact.[26] In the book, industry experts examine how AI proliferation will affect the legal field generally, and focus on a broad range of topics ranging from healthcare to copyright law.

VII. Conclusions on Artificial Intelligence and Legal Ethics: The bottom-line to keep in mind when considering incorporating AI technology in the practice of law is whether you are acting reasonably. Thus far, the rules haven't specifically changed to account for the rapid development of technology, so when in doubt, ask yourself what a reasonable lawyer in your position would do. Would they incorporate this technology to make their practice more efficient and make them more competent? Would they take more security measures to keep client information confidential? Would they need to closely monitor how effectively the technology is processing the information, or perhaps employ someone to do it? Periodically thinking about these questions would help you keep in check while also staying informed on what new rules are adopted as this technology becomes more widespread.

Part II: Legal Ethics Concerns of Cybersecurity in the Practice of Law (20 Minutes)

Laywers also have the ethical duty to take reasonable care that their client's information is protected from any breaches, including cyber breaches. Cybersecurity goes hand-in-hand with AI technology implementation, since a lot of the information that is fed and stored into the technology can be electronically breached. These are the rules that pertain to cybersecurity risks:

I. Virginia's Applicable Rules of Professional Conduct.[27]

i. **Rule 1.1:** Competence: *A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.*

1. Comment 6: *To maintain the requisite knowledge and skill, a lawyer should engage in continuing study and education in the areas of practice in which the lawyer is engaged. Attention should be paid to the benefits and risks associated with relevant technology. The Mandatory Continuing Legal Education requirements of the Rules of the Supreme Court of Virginia set the minimum standard for continuing study and education which a lawyer licensed and practicing in Virginia must satisfy. If a system of peer review has been established, the lawyer should consider making use of it in appropriate circumstances.*

ii. **Rule 1.3:** Diligence:

(a) A lawyer shall act with reasonable diligence and promptness in representing a client.

(b) A lawyer shall not intentionally fail to carry out a contract of employment entered into with a client for professional services, but may withdraw as permitted under Rule 1.16.

(c) A lawyer shall not intentionally prejudice or damage a client during the course of the professional relationship, except as required or permitted under Rule 1.6 and Rule 3.3.

iii. **Rule 1.4:** Communication:

(a) A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.

[26] https://www.americanbar.org/products/inv/book/383401164/

[27] Virginia State Bar Professional Guidelines: https://www.vsb.org/pro-guidelines/index.php/rules/preamble/

(b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation. (c) A lawyer shall inform the client of facts pertinent to the matter and of communications from another party that may significantly affect settlement or resolution of the matter.

iv. **Rule 1.5:** Fees: *A lawyer's fee shall be reasonable….*
   1. Attorneys may charge the client out-of-pocket cost (i.e. cost of license, or cost per use)
   2. Attorneys may obtain consent from client to charge a reasonable mark-up. *See* ABA Ethics Op. 93-393 (1993) ("Any reasonable calculation of direct costs as well as any reasonable allocation of related overhead should pass ethical muster" but, absent the client's agreement, an attorney may not "create an additional source of profit for the law firm" by charging above cost for computer research services or other nonlegal services).

v. **Rule 1.6:** Confidentiality of Information: (a) *A lawyer shall not reveal information protected by the attorney-client privilege under applicable law or other information gained in the professional relationship that the client has requested be held inviolate or the disclosure of which would be embarrassing or would be likely to be detrimental to the client unless the client consents after consultation, except for disclosures that are impliedly authorized in order to carry out the representation….* (d) *A lawyer shall make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information protected under this Rule.*
   1. Comment 19 & 20: [19] *Paragraph (d) requires a lawyer to act reasonably to safeguard information protected under this Rule against unauthorized access by third parties and against inadvertent or unauthorized disclosure by the lawyer or other persons who are participating in the representation of the client or who are subject to the lawyer's supervision. See Rules 1.1, 5.1 and 5.3. The unauthorized access to, or the inadvertent or unauthorized disclosure of, confidential information does not constitute a violation of this Rule if the lawyer has made reasonable efforts to prevent the access or disclosure. 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 employment or engagement of persons competent with technology, 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).*
      [20] *Paragraph (d) makes clear that a lawyer is not subject to discipline under this Rule if the lawyer has made reasonable efforts to protect electronic data, even if there is a data breach, cyber-attack or other incident resulting in the loss, destruction, misdelivery or theft of confidential client information. Perfect online security and data protection is not attainable. Even large businesses and government organizations with sophisticated data security systems have suffered data breaches. Nevertheless, security and data breaches have become so prevalent that some security measures must be reasonably expected of all businesses, including lawyers and law firms. Lawyers have an ethical obligation to implement reasonable information security practices to protect the confidentiality of client data. What is "reasonable" will be determined in part by the size of the firm. See Rules 5.1(a)-(b) and 5.3(a)-(b). The sheer amount of personal, medical and financial information of clients kept by lawyers and law firms*

requires reasonable care in the communication and storage of such information. A lawyer or law firm complies with paragraph (d) if they have acted reasonably to safeguard client information by employing appropriate data protection measures for any devices used to communicate or store client confidential information. To comply with this Rule, a lawyer does not need to have all the required technology competencies. The lawyer can and more likely must turn to the expertise of staff or an outside technology professional. Because threats and technology both change, lawyers should periodically review both and enhance their security as needed; steps that are reasonable measures when adopted may become outdated as well.

vi. **Rule 1.15:** Safekeeping Property:

(*a)*Depositing Funds.

(1) All funds received or held by a lawyer or law firm on behalf of a client or a third party, or held by a lawyer as a fiduciary, other than reimbursement of advances for costs and expenses shall be deposited in one or more identifiable trust accounts; all other property held on behalf of a client should be placed in a safe deposit box or other place of safekeeping as soon as practicable.

(2) For lawyers or law firms located in Virginia, a lawyer trust account shall be maintained only at a financial institution approved by the Virginia State Bar, unless otherwise expressly directed in writing by the client for whom the funds are being held.

(3) No funds belonging to the lawyer or law firm shall be deposited or maintained therein except as follows:

(i) funds reasonably sufficient to pay service or other charges or fees imposed by the financial institution or to maintain a required minimum balance to avoid the imposition of service fees, provided the funds deposited are no more than necessary to do so; or

(ii) funds in which two or more persons (one of whom may be the lawyer) claim an interest shall be held in the trust account until the dispute is resolved and there is an accounting and severance of their interests. Any portion finally determined to belong to the lawyer or law firm shall be withdrawn promptly from the trust account.

vii. **Rule 5.1:** Responsibilities of Partners and Supervisory Lawyers:

(a) A partner in a law firm, or a lawyer who individually or together with other lawyers possesses managerial authority, shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that all lawyers in the firm conform to the Rules of Professional Conduct.

(b) A lawyer having direct supervisory authority over another lawyer shall make reasonable efforts to ensure that the other lawyer conforms to the Rules of Professional Conduct.

(c) A lawyer shall be responsible for another lawyer's violation of the Rules of Professional Conduct if:

(1) the lawyer orders or, with knowledge of the specific conduct, ratifies the conduct involved; or

(2) the lawyer is a partner or has managerial authority in the law firm in which the other lawyer practices, or has direct supervisory authority over the other lawyer, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

viii. **Rule 5.3:** Responsibilities Regarding Nonlawyer Assistants: *With respect to a nonlawyer employed or retained by or associated with a lawyer:*

(a) a partner or a lawyer who individually or together with other lawyers possesses managerial authority in a law firm shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the person's conduct is compatible with the professional obligations of the lawyer;

(b) a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer; and

(c) a lawyer shall be responsible for conduct of such a person that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if:

(1) the lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved; or

(2) the lawyer is a partner or has managerial authority in the law firm in which the person is employed, or has direct supervisory authority over the person, and knows or should have known of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

*Attorney should hire an expert to vet the AI product; learn what the AI product can and cannot do; double-check the output of the AI product.

ix. **Rule 8.3:** Reporting Misconduct:

(a) A lawyer having reliable information that another lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to that lawyer's honesty, trustworthiness or fitness to practice law shall inform the appropriate professional authority.

(b) A lawyer having reliable information that a judge has committed a violation of applicable rules of judicial conduct that raises a substantial question as to the judge's fitness for office shall inform the appropriate authority.

(c) If a lawyer serving as a third party neutral receives reliable information during the dispute resolution process that another lawyer has engaged in misconduct which the lawyer would otherwise be required to report but for its confidential nature, the lawyer shall attempt to obtain the parties' written agreement to waive confidentiality and permit disclosure of such information to the appropriate professional authority.

(d) This Rule does not require disclosure of information otherwise protected by Rule 1.6 or information gained by a lawyer or judge who is a member of an approved lawyer's assistance program, or who is a trained intervenor or volunteer for such a program or committee, or who is otherwise cooperating in a particular assistance effort, when such information is obtained for the purposes of fulfilling the recognized objectives of the program.

(e) A lawyer shall inform the Virginia State Bar if:

(1) the lawyer has been disciplined by a state or federal disciplinary authority, agency or court in any state, U.S. territory, or the District of Columbia, for a violation of rules of professional conduct in that jurisdiction;

(2) the lawyer has been convicted of a felony in a state, U.S. territory, District of Columbia, or federal court ;

(3) the lawyer has been convicted of either a crime involving theft, fraud, extortion, bribery or perjury, or an attempt, solicitation or conspiracy to commit any of the foregoing offenses, in a state, U.S. territory, District of Columbia, or federal court.

The reporting required by paragraph (e) of this Rule shall be made in writing to the Clerk of the Disciplinary System of the Virginia State Bar

not later than 60 days following entry of any final order or judgment of conviction or discipline.

x. **Rule 8.4:** Misconduct:

It is professional misconduct for a lawyer to:

(a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;
(b) commit a criminal or deliberately wrongful act that reflects adversely on the lawyer's honesty, trustworthiness or fitness to practice law;
(c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation which reflects adversely on the lawyer's fitness to practice law;
(d) state or imply an ability to influence improperly or upon irrelevant grounds any tribunal, legislative body, or public official; or
(e) knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law.

II. Recent Cybersecurity Breaches That Made Firms Vulnerable: Both the largest and the smallest firms are susceptible to cybersecurity breaches and should take reasonable efforts to protect sensitive information.

a. Verizon published a 2018 Data Breach Investigation Report (DBIR) based on 53,000 incidents of the top causes of cybersecurity breaches, which included:[28]
   i. Hacking (the leading category, representing 48 percent of breaches)
   ii. Errors (17 percent)
   iii. Social engineering attacks (17 percent)
   iv. Privilege misuse (12 percent)
   v. Physical actions (11 percent)

b. According to Verizon, 87 percent of examined breaches happened in just minutes or quicker, but only three percent were detected just as quickly. Sixty-eight percent of the breaches took months or longer to be discovered.[29]

c. On June 27, 2017, DLA Piper, then the #1 law firm by revenue in the world, experienced a malware attack by GoldenEye, also known as NotPetya, which was designed to destroy data. [30]

d. In 2018, A Houston lawyer filed a lawsuit against Apple over a security vulnerability that let people eavesdrop on iPhones using FaceTime. The bug allowed one person to place a FaceTime video call to another person and enabled them to listen in or see video of the recipient of the call, even if they didn't answer. [31] This bug was later fixed by Apple.[32]

III. Cybersecurity in Law Firms

a. In a recent 2017 study[33] of more than 4,000 firms, it was reported that:[34]
   i. Twenty-two percent of respondents said their firms had experienced a data breach at some point, up from 14 percent in the previous year. Respondents at firms with 500 or more attorneys took the bulk of those hits.
   ii. Over one-third of law firms with 10–99 attorneys reported being compromised in 2017.

[28] 2019 VSB Special Committee Report: The Future of Law Practice.
[29] 2019 VSB Special Committee Report: The Future of Law Practice.
[30] 2019 VSB Special Committee Report: The Future of Law Practice.
[31] https://www.cnbc.com/2019/01/30/apple-sued-for-facetime-bug-that-let-people-eavesdrop.html.
[32] BBC: Apple rushes to fix FaceTime eavesdropping bug.
[33] 2017 ABA Legal Technology Survey.
[34] 2019 VSB Special Committee Report: The Future of Law Practice.

b. Some of the key consequences from breaches were downtime, loss of billable hours, destruction or loss of files having to pay consulting fees for remediating damages from the attacks.
c. One-quarter of all firms in the 2017 survey reported had no security policies, although all firms with 500+ lawyers did have such policies. Two- thirds of BigLaw firms have an incident-response plan. Of the firms with 100–499 attorneys, 51 percent have an incident-response plan, as do 43 percent of firms with 50–99 attorneys.

IV. Recommendations to Meet Ethical Obligations: There are a plethora of ways to protect your firm from such attacks, including:
a. Using passphrases instead of passwords;
b. Utilizing password managers;
c. Being transparent with colleagues about mistakes or shortcomings that may have caused a breach;
d. Keeping clients informed;
e. Building a comprehensive security program;
f. Keeping up with developments in security technology;
g. Working to reduce exposure time;
h. Using encrypted transmissions when sending messages externally;
i. Cloud computing. Although this is highly debated, Cloud services can not only secure data within the cloud, but can leverage the transformative cloud industry to secure the endpoint users that use the service;[35]
j. Asking for help from an IT professional;
k. Performing a data risk assessment;
l. Updating IT Systems;
m. Preparing an incident response plan;
n. Conducting employee trainings;
o. Obtaining cyber insurance;
p. Reaching out to companies like CIS Controls, which may be found at www.cisecurity.org/controls/, as a cybersecurity guide for solo/small/mid-sized law firms.

Part III – 2019 LEO's, Rule Changes, & Disciplinary Examples (40 Minutes)

I. Virginia Legal Ethics Opinions
a. LEO 1750[36] (Approved): Revisions on lawyer advertising and solicitation.
i. This LEO addressed several issues related to misleading statements in advertisements, including:
1. Actors portraying lawyers or clients in commercials;
2. Use of "no recovery, no fee" or similar language;
3. Use of fictitious or trade names;
4. Statements alleging that an individual "must" consult an attorney;
5. Statements related to participation in a Lawyer Referral Service;
6. Statements detailing prior client award or settlement amounts;
7. Client testimonials; and
8. Listing attorney awards or acknowledgements;
9. Use of "expert" or "expertise".
ii. **Actors portraying lawyers or clients.** The Committee has stated that failure to disclose that an actor is not actually employed by the law firm is misleading if the language in the commercial implies that the actor is part of the law firm. A disclosure that the actor is not associated with the firm, or that the depiction is a dramatization, is necessary to prevent the advertisement from being misleading.

[35] https://www.cloudcomputing-news.net/news/2018/apr/27/why-future-cybersecurity-cloud/
[36] https://www.vsb.org/docs/LEO/1750.pdf

iii. **"No recovery, no fee".** The Committee explains that use of "no recovery, no fee" or similar language including "We guarantee to win, or you don't pay," is misleading when used without explaining that litigation expenses and court costs are payable regardless of recovery in a contingent-fee arrangement. This is also misleading because the public generally may not distinguish the differences between the terms "fee" and "costs."
    1. Similarly, use of such phrases as "we guarantee to win, or you don't pay," "we are paid only if you collect," "no charge unless we win," or other language not making explicit reference to a legal "fee." Language of this type that does not make explicit reference to a "fee" is false and misleading in violation of Rule 7.1 since the language includes the implication that the client will not be required to pay either expenses or attorney's fees if there is no recovery, but does not disclose the circumstances in which the client will be obligated to reimburse the attorney for any litigation expenses and court costs advanced, regardless of outcome.

iv. **Trade or fictitious names.** Firms are permitted to use such names as long as they are not misleading. It is misleading to use names of lawyers not associated with the firm or its predecessor or the name of a non-lawyer. Also, firms can only state or imply a partnership between lawyers through a name if such partnership actually exists.
    1. Firms are permitted to use names of lawyers associated with the firms, the firm's predecessor, or the names of deceased or retired members of the firm.
    2. It is misleading for attorneys to advertise using a certain corporate trade or fictitious name unless they actually practice under that name. Name usage can be shown through use of the name on business cards, letterheads, office signs, and other mediums.
    3. It *may* be misleading for an attorney to advertise the use of a non-exclusive office space when that space is not actually where the attorney provides legal services.

v. **Statements that a person "must" talk to an attorney.** Because there is no legal requirement that requires an individual to talk to a lawyer, use of this statement would be misleading. For example, an advertisement stating that an individual injured in a car accident "must consult an attorney before speaking to any representative of an insurance company" would be misleading because no such requirement exists, regardless of the prudence of this statement.

vi. **References to Lawyer Referral Services.** The following practices of advertising participation in lawyer referral services are misleading:
    1. Implying in advertising that a lawyer is selected for participation in a Lawyer Referral Service based on quality of services or some other process of independent endorsement when in fact no bona fide quality judgment has been objectively made;
    2. Stating or implying that the Lawyer Referral Service contains all of the lawyers or law firms eligible to participate in the Service by the objective criteria of the Service when in fact the Service is closed to some lawyers or law firms who meet the objective criteria;
    3. Stating or implying that there are a substantial number of attorneys or firms participating in the Service when in fact all calls in a geographic area will be directed to one or two attorneys or firms;
    4. Using the name of a Lawyer Referral Service or joint marketing arrangement in a way which misleads the public as to the true identity of the advertiser; or
    5. Advertising participation in a Lawyer Referral Service which is not a true, qualifying Lawyer Referral Service as defined in this opinion,

based on the American Bar Association Model Supreme Court Rules Governing Lawyer Referral Services.

vii. **Prior Client Rewards.** Statements such as "We've collected millions for thousands," or "We've collected $30 million in 1996," for the purpose of advertising can be misleading because such case outcomes depend on a variety of factors and such results are obtained as result of specific circumstances in a case that may not be duplicated in another case.
    1. Additionally, attorneys' self-laudatory claims such as "the best lawyers" "the biggest earnings" cannot be factually substantiated and therefore violate Rule 7.1.

viii. **Client Testimonials.** Use of client statements such as "this lawyer is 'the best'" or "this lawyer will get you "'quick results,'" are comparative statements that violate Rule 7.1, regardless of them coming from a third party. However, the Committee does allow testimonials of clients making "soft endorsements," such as "the lawyer always returned phone calls" or "the attorney always appeared concerned."

ix. **Acknowledgements or awards.** Attorneys are permitted to advertise that they have been listed in publications such as The Best Lawyers in America, given they actually have been listed, as long as statements in the publication do not violate Rule 7.1. Also, lawyers may advertise statements regarding their professional credentials as long as the explanation of such credentials' significance in laymen's terms is not exaggerated. Credentials that are not based upon objective criteria or a legitimate peer review process, but are available to any lawyer who is willing to pay a fee are impermissible.

x. **Use of "expert" or "expertise".** These words are misleading when claims of expertise cannot be substantiated, and are thus prohibited. However, attorneys can generally state that they are "specialists," or that they practice a "specialty," or that they "specialize in" particular fields as long as these statements are not false or misleading.
    1. Comment 4 to Rule 7.1 (formerly comment 1 to Rule 7.4) provides that a lawyer can generally state that she is a "specialist," practices a "specialty," or "specializes in" particular fields. The Committee added that the lawyer must identify the name of the organization that purportedly conferred the certification, so that a prospective client or other member of the public can verify the validity of the certification and the criteria for conferring the certification.

b. LEO 1891[37] (Proposed): Communication with represented government officials: Rule 4.2
    i. Question: Whether communications with represented government officials are "authorized by law" for purposes of Rule 4.2?
        1. Answer: Yes, as long as the communication is made for the purposes of addressing a policy issue, and the government official being addressed has the ability or authority to take or recommend government action, or otherwise effectuate government policy on the issue.
            a. A lawyer engaging in such a communication is not required to give the government official's lawyer notice of the intended communication.
            b. This analysis will apply only to a narrow subset of government officials, those within the "control group" or "alter ego" of the government entity that were otherwise subject to the no-contact rule.
            c. A lawyer's communication with a low-ranking employee of a represented organization does not violate Rule 4.2 since that employee is not "represented by counsel." Therefore, it would

[37] https://www.vsb.org/docs/1891_draft_for_public_comment.pdf; Virginia Lawyers Weekly

be unnecessary to apply the government contact exception in that situation.

ii. The primary question is whether such a communication is "authorized by law" under Rule 4.2. If the lawyer or her client has a constitutional right to petition government or a statutory right under the Freedom of Information Act or other law to communicate with a government official about matters which are the subject of the representation, the communication may be "authorized by law" regardless of whether the contacted government official is in the organization's "control group." If the government official with whom the lawyer wishes to communicate is not within the organization's control group, it is unnecessary to consider whether the communication is "authorized by law."

iii. The Committee explains that there are two requirements which must both be met for an *ex parte* communication with a represented government official to be permissible:

1. The sole purpose of the communication must be to address a policy issue.
2. The government official whom lawyer seeks to contact must have the authority to take or recommend action in the matter.

The Committee does not interpret the rule to require advance notice to the government lawyer of otherwise-permissible communications to government officials.

3. Regarding the first condition, a lawyer communicating with a represented government official must be communicating about some policy issue, even if the resolution of that policy issue directly affects or includes the settlement of the lawyer's client's matter.
    a. On the other hand, a lawyer may not communicate with a represented government official solely for the purposes of gathering evidence unless the lawyer has the consent of the government lawyer or the communication is otherwise authorized by law, such as formal discovery procedures that might allow direct contact with a represented person.
    b. The fact that a communication begins with an appropriate and authorized purpose does not authorize further communication that is not permitted by Rule 4.2. A lawyer who engages in a communication about policy issues must terminate or redirect the communication if the communication crosses the line into improper evidence gathering.
4. Regarding the second condition, to satisfy the level of authority requirement, the government official must have the authority to decide the matter or policy question addressed in the communication, or to grant the remedy being sought by the contact.
    a. In other words, the government official must have the authority to take or recommend action on the policy matter at issue, or the ability to effectuate government policy on the matter.
    b. The safest course of action, especially when the communication is not directed at an elected or other high-level official within the government agency, is to conduct the necessary due diligence to confirm the identity of the individual who possesses the requisite level of authority to decide the matter at issue.

iv. While advance notice of the communication is not required, where uncertainty exists as to whether the intended *ex parte* communication falls within the government contacts exception, providing advance notice to opposing counsel may reduce the chances of provoking a court or disciplinary action if the communication is ultimately challenged.

c. LEO 1890[38] (pending): Communications with represented persons.
    i. This LEO expands on Rule 4.2 and the committee proposes:
        1. The rule applies even if the represented person initiates or consents to an ex parte communication.
        2. The rule applies only if the communication is about the subject of the representation. The Rule applies to ex parte communications with represented persons even if the subject matter of the representation is transactional or not the subject of litigation. LEO 1390 (1989).
        3. The rule applies only if the lawyer actually knows that the person is represented by counsel. The Committee also stated that if the lawyer is without knowledge or uncertain as to whether the adverse party is represented, it would not be improper to communicate directly with that person for the sole purpose of securing information as to their current representation.
        4. The rule applies even if the communicating lawyer is self-represented. Represented persons may communicate directly with each other regarding the subject of the representation, but the lawyer may not use the client to circumvent Rule 4.2.
        5. A lawyer may not use an investigator or third party to communicate directly with a represented person.
        6. Government lawyers involved in criminal and certain civil investigations may be "authorized by law" to have ex parte investigative contacts with represented persons.
        7. Ex parte communications are permitted with employees of a represented organization unless the employee is in the "control group" or is the "alter ego" of the represented organization.
        8. The rule does not apply to communications with former employees of a represented organization.
        9. The fact that an organization has in house or general counsel does not prohibit another lawyer from communicating directly with constituents of the organization, and the fact that an organization has outside counsel in a particular matter does not prohibit another lawyer from communicating directly with in house counsel for the organization.
        10. Plaintiff's counsel generally may communicate directly with an insurance company's employee/adjuster after the insurance company has assigned the case to defense counsel. Unless the plaintiff's lawyer is aware that the defendant/insured's lawyer also represents the insurer
        11. A lawyer may communicate directly with a represented person if that person is seeking a "second opinion" or replacement counsel.
        12. The rule permits communications that are "authorized by law." As a starting point, ABA Formal Ethics Op. 95-396 (1995) explains that the "authorized by law" exception in Model Rule 4.2 is in later action without a conflict of interest). In Legal Ethics Opinion 1863, the Committee stated: Although the question of whether an attorney-client relationship exists in a specific case is a question of law and fact, the Committee believes that, based on these authorities, it is not accurate to say that the defendant/insured's lawyer should be presumed to represent the insurer as well. On the other hand, in the absence of a particular conflict, it would be permissible for a single lawyer to represent both the insured and the insurer. If the lawyer is jointly representing both the insured and the insurer, then Rule 4.2 would apply to require the lawyer's consent to any communications between the plaintiff's lawyer and the insurer. Conversely, if the lawyer is not representing the insurer, then Rule 4.2 does not apply and the plaintiff's

[38] https://www.vsb.org/docs/1890_draft_for_public_comment.pdf

lawyer is free to communicate with the insurer without the defendant/insured's lawyer's consent/involvement. Rule 4.2 requires that the plaintiff's counsel actually know that defense counsel satisfied by "constitutional provision, statute or court rule, having the force and effect of law, that expressly allows particular communication to occur in the absence of counsel." ABA Formal Op. 95-396, at 20. Statutes, administrative regulations, and court rules grounded in procedural due process requirements are also a common place to find ex parte communications that are "authorized by law."

13. The rule allows certain ex parte communications with represented government officials concerning the subject of the representation in a controversy between the lawyer's client and the government.
14. A lawyer's inability to communicate with an uncooperative opposing counsel or reasonable belief that opposing counsel has withheld or failed to communicate settlement offers is not a basis for direct communication with a represented adversary.

d. LEO 1889[39] (Adopted): Regarding Court-Appointed Lawyers and Parental Rights: Rules 1.2(a), 1.3, 1.4, and 3.1.
    i. This LEO concerns, first, whether court-appointed counsel for a parent have an ethical duty to appeal an order of Juvenile and Domestic Relations District Court terminating a parent's residual parental rights or other order pertaining to the removal or foster care in respect to a child when the parent: fails to appear after notice, fails to maintain contact with counsel, and has never advised or requested counsel to appeal an adverse ruling, and, second, whether court-appointed counsel have an ethical duty to appeal a termination in the Circuit Court if the parent has never appeared or contacted counsel.

       In response to both these concerns, the Committee has concluded that, absent direction from the client at some point in the proceeding to appeal an adverse ruling, the court-appointed counsel should not be obligated to initiate an appeal in either case.
e. LEO 1029[40], 1119[41], 1297[42], 1321[43] (Withdrawn): Four Legal Ethics Opinions withdrawn by Standing Committee on Legal Ethics related to advertising and solicitation.
f. LEO 1888[44] (Withdrawn): Prosecutor's duty to disclose evidence that tends to negate the guilt of the accused. Standing Committee on Legal Ethics voted not to send to Council.
g. LEO 1885[45] (Adopted): Ethical Considerations for a Lawyer's Participation in Online Attorney-Client Matching: Rules 1.2(b), 1.5(a), 1.15(a)(l) and (2), 1. 16(a)(l) and (d), 2.1 5.4(a), 7.3(d), and 8.4(a).
    i. The facts surrounding participation in the online attorney matching service (ACMS), which is operated for profit, are outlined below. The lawyer participating in the ACMS:
        1. "provides a client with limited scope legal services advertised to the public by the ACMS for a legal fee set by the ACMS;
        2. "allows ACMS to collect the full, prepaid legal fee from the client, and to make no payment to the lawyer until the legal service has been completed;

[39] http://www.courts.state.va.us/courts/scv/amendments/2018_1108_leo_1889.pdf
[40] https://www.vsb.org/docs/LEO/1029.pdf
[41] https://www.vsb.org/docs/LEO/1119.pdf
[42] https://www.vsb.org/docs/LEO/1297.pdf
[43] https://www.vsb.org/docs/LEO/1321.pdf
[44] https://www.vsb.org/pro-guidelines/index.php/rule_changes/item/leo_1888_prosecutors_duty_to_disclose
[45] http://www.courts.state.va.us/courts/scv/amendments/2018_1108_leo_1885.pdf

3. "authorizes the ACMS to electronically deposit the legal fee to the lawyer's operating account when she completes the legal service; and
4. "authorizes the ACMS to electronically withdraw from the lawyer's bank account a "marketing fee" which, by prior agreement between the ACMS and the lawyer, is set by the ACMS and based upon the dollar amount of the legal fee paid by the client."

A lawyer who participates in an ACMS using the model identified above violates Virginia Rules of Professional Conduct because she

a) cedes control of her client's or prospective client's advanced legal fees to a lay entity;
b) undertakes representation which will result in a violation of a Rule of
c) Professional Conduct;
d) relinquishes control of her obligation to refund any unearned fees to a client at
e) the termination of representation;
f) shares legal fees with a non-lawyer; and
g) pays another for recommending the lawyer's services.

A lawyer who participates in an ACMS does not violate Rules of Professional Conduct governing limited scope representation, reasonableness of legal fees, and the exercise of independent professional judgment, if she adheres to the Rules governing those aspects of every representation.

II. Updates to Virginia Rules

a. Adopted

i. Changes to the Special Committee on Access to Legal Services from a special to a standing committee of the Virginia State Bar.[46]

1. Part II, Article VIII of the Bylaws of the Council on Standing Committees was amended to delete Section 2 and add Section 5. Committee on Access to Legal Services: "There shall be a standing committee to be appointed by the president and to be known as the Committee on Access to Legal Services. The committee shall consist of fifteen members, each of whom shall be an active or judicial member of the bar. At least two of the committee members shall be members of the Council. Additionally, at least one of the committee members shall be a member of the Virginia Access to Justice Commission; at least one shall be a staff attorney, director or executive director of a licensed legal aid society; and at least one shall be an executive director or director of Legal Services Corporation of Virginia.

   All members shall serve for a three-year term. No member may serve more than two consecutive three-year terms. A member appointed to fill an unexpired term shall be eligible to serve two additional full three-year terms. An eligible member wishing to be reappointed shall be required to reapply in writing under procedures established by Council and administered by the executive director.

   All powers and duties of Council with respect to advancing the availability of legal services provided to the people of Virginia and assisting in improving access to the legal system for all Virginians, not otherwise delegated or reserved, shall be exercised and discharged by the Committee."

ii. Rule 1.8 (Conflict of Interest: Prohibited Transactions) was amended under Section e to state: (e) A lawyer shall not provide financial assistance to a client in connection with pending or contemplated litigation, except that (1) a lawyer

[46] https://www.vsb.org/pro-guidelines/index.php/rule_changes/item/amendment_to_bylaws

may advance court costs and expenses o f litigation, the repayment o f which may be contingent on the outcome of the matter; and (2) a lawyer representing an indigent client may pay court costs and expenses of litigation on behalf of the client. Comment 10 was added to state that: Lawyers may not subsidize lawsuits or administrative proceedings brought on behalf of their clients, including making or guaranteeing loans to their clients for living expenses, because to do so would encourage clients to pursue lawsuits that might not otherwise be brought and because such assistance gives lawyers too great a financial stake in the litigation.[47]

b. Amendments
    i. Proposed amendment to Rule 5.5, Unauthorized Practice Of Law; Multijurisdictional Practice of Law.[48]
        1. The proposed amendments to Rule 5.5 include updating Comments 4 and 21 to reflect the current numbering of the advertising rules and correcting Comment 6, which twice uses the phrase "Foreign lawyer," when "Foreign Lawyer" is a defined term under the rule and should be capitalized in every instance. The proposed amendments also revise Comment 14 to remove the phrase "(d)(4)(ii)" from the introductory sentence; that comment refers to the requirement of paragraphs (d)(4)(iii) and (d)(4)(iv) that the services provided in Virginia arise out of or be reasonably related to the Foreign Lawyer's practice elsewhere, but paragraph (d)(4)(ii) does not contain such a requirement in the body of the Rule and therefore should not be included in this comment.
    ii. Proposed amendment to Rule 1.18, Duties to Prospective Client, in Comment 6.[49]
        1. The proposed amendment to Rule 1.18 removes a phrase from Comment 6 to the Rule, "the lawyer believes that an effective screen could not be engaged to protect the client," which is inconsistent with the section of the rule the comment is interpreting. Paragraph (c) of the Rule, and the balance of Comment 6, provides that a lawyer is not disqualified by a contact with a prospective client so long as she has not received significantly harmful information from the prospective client, and there is no need for a screen to be used under the circumstances. The language that the Committee proposes to delete does not belong in that comment, because either the lawyer is not disqualified and there is no need to form a belief about the effectiveness of a screen, or the lawyer is disqualified under paragraph (c) and paragraph (d) of the Rule, and Comments 7 and 8, must be applied to the situation.
    iii. Proposed amendments to Rule 1.15 regarding terminology under Safekeeping.[50]
        1. The proposed amendments simplify and clarify the trust account recordkeeping requirements, using terminology that is more easily understood and spelling out in the body of the rule exactly what information must be included in the required records. The proposed changes to paragraph (c) remove the term "cash" and clarify that a check register can be used as the required journal, as long as it includes the necessary information. The proposal also removes the term "subsidiary ledger" to clarify that the rule only requires a separate record or ledger page for each client.

           The same terminology is carried over to paragraph (d)(3), on reconciliations, and paragraphs (d)(3)(ii) and (d)(3)(iii) are revised to

[47] http://www.courts.state.va.us/courts/scv/amendments_tracked/2018_1212_part_six_sect_ii_rule_1_8.pdf
[48] https://www.vsb.org/pro-guidelines/index.php/rule_changes/item/amendment_to_5.5
[49] https://www.vsb.org/pro-guidelines/index.php/rule_changes/item/amendment_to_1.18
[50] https://www.vsb.org/pro-guidelines/index.php/rule_changes/item/amendments_rule1.15

include an explanation of exactly what steps must be taken to complete the required reconciliations. The proposed amendments also require all reconciliations to be completed monthly instead of quarterly under the current rule, since that is consistent with the usual bank statement reporting period, and will allow lawyers to identify and correct errors more quickly and easily. The proposed amendments retain the requirement that a lawyer must approve all reconciliations and add a requirement in proposed Comment [5] that any discrepancies discovered in the reconciliation process must be explained, and that explanation must also be approved by the lawyer.

iv. Proposed amendment to Rule 1.17, Sale of Law Practice, in Comment 12.[51]
    1. The proposed amendment to Rule 1.17 corrects a word choice issue in Comment 12, replacing the word "concluded" with the word "included."

c. Trends in Professional Responsibility: Proposed Revisions
    i. Rule 4.4: A Virginia State Bar panel is considering new language to spell out what lawyers should do when opponents mistakenly hand over what's intended to be privileged information. The rule would state that a lawyer who receives privileged information that was inadvertently sent must immediately stop reviewing the material, promptly notify the sender and abide by the sender's instructions on what to do with the information. [52]
    ii. Ethics charges against attorneys: proposed rule revisions would eliminate "dismissal de minimis" and dismissal "for exceptional circumstances" as low-level sanctions in discipline cases. The change would leave "admonition" as the lowest disciplinary sanction.[53]
    iii. Virginia Supreme Court Chief Justice Donald W. Lemons asks lawyers to both engage in pro bono service and to voluntarily report their activities. Lemons reminded lawyers that Rule 6.1 of the Rules of Professional Conduct sets an aspirational goal of at least a two percent contribution to the public good. The court enacted a voluntary reporting measure last year, effective in December. [54]
    iv. The Supreme Court of Virginia is considering adding language in a comment to Rule 3.8 of the Rules of Professional Conduct that would impose an ethical requirement to highlight evidence favorable to an accused defendant in some cases ("needle in a haystack" discovery situations).[55]

III. Selected Disciplinary Cases[56]

a. A former Roanoke lawyer was sentenced to six months in prison after he admitted to lying to FBI agents about accepting sex for legal services and providing drugs to clients. He engaged in sex with clients, exchanged legal services for sex and used controlled substances. U.S. District Judge James P. Jones imposed the full term Oct. 16, 2018, saying Webber had "preyed on" women who were in need of legal representation
    i. Violation of Rule 8.4 Misconduct, Rule 8.1 Bar Admission And Disciplinary Matters, Rule 1.2 Scope of Representation, Rule 1.8 Conflict of Interest: Prohibited Transactions.

b. A Virginia Beach lawyer has been called on the carpet by a Norfolk circuit judge after allegedly concealing the status of an adoption order to prevent a timely challenge to the adoption. Virginia Code § 63.2-1216 sets up a six-month deadline for any attack on the validity of a final adoption order. She offered several comments at a February adoption hearing apparently designed to throw the natural father off track about the need to

[51] https://www.vsb.org/pro-guidelines/index.php/rule_changes/item/amendment_to_1.17
[52] Virginia Lawyers Weekly
[53] Virginia Lawyers Weekly
[54] Virginia Lawyers Weekly
[55] Virginia Lawyers Weekly
[56] Virginia Lawyers Weekly

promptly act to prevent his daughter's adoption from becoming final. Her actions led the father to vacate the adoption order after the normal deadline for finality.

    i. Violation of Rule 3.4 Fairness To Opposing Party And Counsel; Rule 8.4 Misconduct.

c. Roanoke attorney lost his law license due to his selling a client's car after the client went to jail. The client had paid $5,000 for the car the day before he was arrested. The client's later counsel said the lawyer's interest in the car impaired his ability to properly represent the client, although the client's plea relief was based on other grounds. The lawyer's counsel said police had seized the car and later released it to the lawyer. The client's relatives did not want the car, and it was deteriorating. In an affidavit submitted to the Virginia State Bar, the lawyer admitted that he "took a proprietary interest" in the client's car without complying with the bar rule that generally requires a client's written consent. The lawyer also admitted he failed to hold in trust the proceeds of the sale of the car and to properly account for the money.

    i. Violation of Rule 1.8 Conflict of Interest: Prohibited Transactions; Rule 8.4 Misconduct, Rule 1.15 Safekeeping of Property.

d. Lawyer accepts 2-year suspension because he failed to respond to a counterclaim on time, failed to pay the opponents' attorneys' fees as ordered, and failed to advise his client of adverse developments in the litigation.

    i. Violation of Rule 1.1 Competence, Rule 1.3 Diligence, and Rule 1.4 Communication, Rule 3.4 Fairness To Opposing Party And Counsel

e. An Alexandria federal judge pointedly condemned the "dishonesty" of a patent lawyer who profited from licensing a company's patent portfolio while keeping the company in the dark about his activities. The lawyer engaged in clandestine licensing of proprietary software without paying the Fitistics' share of license agreements and settlements after signing a patent rights assignment agreement with Fitistics. He licensed the Fitistics portfolio to 10 different companies and represented that he was the sole owner of the portfolio. The judge ordered the lawyer to disgorge his proceeds from the licenses totaling $654,062.50 and to pay $350,000 – the Virginia cap – in punitive damages.

    i. Violation of Rule 8.4 Misconduct, Rule 1.15 Safekeeping of Property; Rule 4.1 Truthfulness In Statements To Others; Rule 1.4 Communication; and Rule 1.8 Conflict of Interest: Prohibited Transactions.

f. A lawyer paid personal expenses from firm bank accounts and engaged in dishonesty in handling law firm money, reporting assets in bankruptcy, and reporting income to the IRS. He had been paying a variety of personal expenses from the firm's operating and trust accounts. An accountant found a trust account shortfall of $21,074.99, later repaid. The lawyer wrote a check for nearly $52,000 to buy an Acura MDX for his wife, among other irregular checks and charges using firm accounts. His partner reportedly testified that the lawyer never told him he was paying personal expenses from firm bank accounts.

    He also acknowledged at his discipline hearing that he had underreported income to the IRS and had entered a payment plan to pay additional taxes. The VSB said the lawyer worked out his issues with the IRS only after a bar investigator brought to his attention that he allegedly failed to disclose a total of $304,748 in income for 2015 and 2016. The board found by clear and convincing evidence that he violated Rule 8.4(c) – barring dishonesty, fraud, deceit and misrepresentation – by "blatantly violating the financial arrangement with his partner by his voluminous undisclosed and unauthorized withdrawals, and the gross understatement of his annual income to the IRS, notwithstanding his latter day attempts to correct the situation."

    i. Also in violation of rule 1.15 Safekeeping of Property

g. Lawyer repeatedly targeted judges with what the Virginia State Bar calls "extraordinarily disrespectful" language while incurring litigation sanctions of more than $80,000 for misconduct. In one case, the lawyer threatened to oppose Judge B. Elliott Bondurant as unfit when he came up for re- election by the General Assembly. In a Feb. 1 message to Bondurant, she blamed her medical problems on the judge's "ridiculous imposition of $45,000+ in punitive sanctions on my former client and me." She told Bondurant his

attorney-fee award against her was based on "run-up, frivolous, completely unnecessary and unreasonable and crazy legal fees [of] your buddies," according to the bar charges. "If you try to punish me, I will fight you to the end," the lawyer reportedly wrote to Bondurant. Bondurant eventually awarded $82,776.96 in sanctions against Daniel and her client in the divorce action.

In another case that involved litigation over the estate of a deceased former judge, the lawyer accused Circuit Judge John F. Daffron Jr of making a "ball-faced lie" in an earlier court session. She reportedly asked the judge "why are you raping the trust of money...."

i. Violation of Rule 3.6 Trial Publicity, Rule 3.5 Impartiality And Decorum Of The Tribunal; Rule 3.1 Meritorious Claims And Contentions, Violation of Rule 1.3 Diligence, and Rule 8.4 Misconduct.

h. A lawyer was disbarred for failing to help his clients, lying about a suspicious car crash and making false statements to his client and to a Virginia State Bar investigator. He allegedly left three clients without any legal help and failed to explain why he repeatedly dropped the ball. Compounding his troubles were reports of false statements to the clients, to a bar investigator and to the board that heard his discipline case. In particular, board members expressed disbelief about his explanations of a 2017 single-car accident that left him injured. Police reportedly seized $1,040 in cash and an Uzi machine gun from the wrecked car. The lawyer was hired by a client in 2017 to help her regain driving privileges. He charged her $500, saying $350 of that was for a filing fee. In fact, no filing fee was required. In a series of text messages, he told the client he had filed a petition and that a court date was pending. But when he sent those texts, he was lying. There was no court date, there was never a court date, and he didn't file anything.
    i. Violation of Rule 1.3 Diligence, Rule 8.4 Misconduct, and Rule 8.2 Judicial Officials.

i. Bar panel awards $39K to disappointed clients because of misappropriated payments and unearned fees violated by lawyers. Two custody-dispute clients of now-suspended attorney Robert L.I. Shearer of Springfield were reimbursed a total of $21,500 for unearned fees. Shearer was suspended for three years in June 2018. A former client of disbarred lawyer Bryan J. Waldron of Oakton was awarded $6,375 to reimburse him for a misappropriated payment. Waldron was revoked in September for dishonesty, obstruction of a bar investigation and other ethics violations, according to VSB documents. A $1,500 payment went to a client of deceased attorney Renay M. Farriss of Chesterfield County who died in November without sufficient assets in her trust account or personal accounts to reimburse the client for unearned fees, according to VSB documents.
    i. Violation of Rule 1.15 Safekeeping of Property, Rule 1.3 Diligence.

j. An attorney was allowed to continue to practice law, under threat of suspension for any other missteps, after he struggled with alcohol-related issues for more than two years after a 2015 DUI arrest. She was charged with driving with a 0.15% BAC on September 6, 2015. She pleaded to a DUI the next year without reference to the BAC level, a bar document showed. She pleaded no contest to a felony charge of possession of an opioid medication, although that charge was handled under a deferred disposition arrangement. Unsuccessful in a court treatment program, the lawyer was ordered to treatment through Lawyers Helping Lawyers in 2016. In August 2017, LHL reported she had been completely compliant with her contract. She had completed 100 hours of community service through a church. The judge dismissed the felony charge.

A week later, however, she was arrested in Henrico County for public intoxication, brandishing a firearm and reckless handling of a firearm, the bar said. She pleaded to disorderly conduct and received a suspended sentence, the bar said. The court program closed its file as of April 13 last year because she had completed all court- ordered conditions. The lawyer asserted that she received psychological treatment and attended bi-weekly counseling sessions and weekly support meetings in 2018. She told the bar in April she was attending two Alcoholics Anonymous groups weekly, participating in a recovery program and participating in Bible studies and church volunteer activities.

i. Violation of Rule 8.4 Misconduct

k. A firm accused a former associate of stealing confidential firm information and diverting clients to a new mass tort firm he helped start in Richmond. He sent letters to several hundred clients, enclosing an election form where clients could decide whether to stay with the current, go with the former associate's new office or seek other counsel. The departing lawyer, Timothy Litzenburg, claimed he played it by the book in his communication with clients after he was fired. The Firm followed Litzenburg's client overtures with its own client letter saying Litzenburg was fired for "erratic behavior" and describing him as a young, rogue attorney. He said it was the firm that violated ethical rules and defamed him in its letter to clients.
    i. Possible violation of Rule 5.8 Procedures For Notification to Clients When a Lawyer Leaves a Law Firm or When a Law Firm Dissolves and Rule 8.4 Misconduct.

l. A lawyer agreed to a three-year suspension of his law license because he failed to repay a client's pre-litigation loan as promised, among other violations. A disbursement statement listed the payoff, but the lawyer did not make the payment. Despite inquiries from the lender, the lawyer ignored the repayment demand for two and half years. He claimed that, since the lender was unlicensed in Virginia, the lender could not enforce its claim against either the client or the lawyer. According to the bar charges, he also mismanaged his trust account, commingling client money with his personal money and using his trust account for personal use. He also delayed delivery of a $12,000 check in a receivership matter, but failed to communicate his decision or his reasoning to the client.
    i. Violation of Rule 8.4 Misconduct, Rule 1.15 Safekeeping of Property, Rule 4.1 Truthfulness In Statements To Others; and Rule 1.4 Communication.

m. A Tazewell attorney was suspended and jailed for an illicit drug sale. He was sentenced to serve four months of a five-year sentence, with three months on probation in a halfway house program.
    i. Violation of Rule 8.4 Misconduct, Rule 1.2 Scope of Representation.

n. A lawyer surrendered his Virginia law license after he gave a client an order purportedly signed by Fairfax County Circuit Judge entering a default judgment in favor of the client in the amount of $150,000. The bar said its investigation showed the order was not signed by the judge and was not valid. The lawyer reportedly denied forging the judge's signature, but conceded the bar's evidence would be sufficient to prove misconduct.
    i. Violation of Rule 8.4 Misconduct; Rule 4.1 Truthfulness In Statements To Others; and Rule 1.4 Communication.

IV. Q&A and Conclusion