

COMMENT ON PROPOSED LEGAL ETHICS OPINION 1902

Submitted to the Virginia State Bar pursuant to the public-comment process

TO: Janet Van Cuyk, Acting Executive Director, Virginia State Bar

FROM: Michael J. Showalter, Showalter PLLC

DATE: June 22, 2026

RE: Comment Endorsing Proposed Legal Ethics Opinion 1902

Dear Ms. Van Cuyk:

I am a 2016 Yale Law graduate and the founder of Showalter PLLC, a solo appellate and complex-litigation practice based in Arlington, Virginia that I launched in March 2026 to pass along to clients the cost savings AI makes possible.¹ I believe that AI presents the legal profession with an opportunity to dramatically increase access to justice for meritorious litigants who previously would have been priced out of legal services. My AI usage, for instance, has enabled me to provide services to cost-sensitive clients at one tenth to one third what a traditional elite firm would have charged, with no drop-off in quality. With an AI-savvy senior lawyer at the helm, AI already today serves as an exceptional team of associates, paralegals, and librarians.

I endorse Proposed Legal Ethics Opinion 1902, which [addresses](#) a lawyer's obligations when discovering that opposing counsel has submitted a filing with serious errors. The Opinion appropriately highlights the "disturbing trend" of filings containing hallucinated citations and material misstatements. The Opinion then explains that a diligent lawyer "will read the opposing party's filings closely." Leaving an opponent's material misstatement unrebutted is, of course, poor advocacy. But "[w]hether AI was used in an opponent's filing," the Opinion emphasizes, "is largely irrelevant to this duty."

Indeed, sloppy lawyering did not suddenly enter the world in 2022. AI simply enables sloppy lawyers to shotgun their sloppiness. The Bar's response should target sloppiness, not AI. If we misidentify AI as the culprit, we could suppress tools that will enable us to crush litigation expense and aid deserving Americans—meritorious plaintiffs and meritorious defendants both—who would otherwise be forced to acquiesce to unjust outcomes for the sake of their pocketbook.

I believe there is a simple solution to hallucinations and other misstatements: remove them. And that is true wherever the error came from. The ad hominem fallacy is when a speaker avoids an argument's substance by attacking its human source; I use the term "ad machinam fallacy" for the same mistake when the source is a machine. An argument's soundness is determined by the strength of its reasoning, not where it came from. The same logic applies to errors and misstatements—what matters is not the error's source but whether the lawyer exercised the diligence to identify and eliminate it.

Treating AI-related errors and AI-free errors with parity means that the consequences for repented AI-related errors generally should end with a rebuttal from opposing counsel and an admonition from the Court. Two years before ChatGPT was released, Professor Douglas E. Abrams [catalogued](#) dozens of federal and state court opinions from the 2010s calling out specific

¹ I am a member of the District of Columbia Bar (Bar No. 1618184), and I have registered as a foreign attorney with the Virginia State Bar pursuant to Part 1A of the Rules of the Supreme Court of Virginia.

lawyers for sloppiness and poor advocacy. Courts described lawyers' written work as "slipshod," "shoddy," "sloppy," "careless," "strikingly inadequate," "worthless," "lax draftsmanship," "marred by unprofessional errors," showing "lack of effort," "glaring errors," "rampant deficiencies," and "somewhat appalling." One court reported a lawyer's failure to "read the record closely or proofread his own briefs" or to meet "minimal standards of grammar." Across the approximately 50 cases Abrams cited, as best I can tell, one lawyer was sanctioned \$200—the rest faced no court sanction or bar discipline.

I respectfully submit one recommendation: that the final Opinion make explicit the principle implicit in its analytical framework—that AI-related errors are not subject to a heightened ethical standard relative to the same errors arising from human sources. As discussed, careful AI usage dramatically lowers the cost of producing high-quality legal work, which dramatically increases access to justice, which has long been a foundational commitment of the Virginia State Bar. Lower production costs mean representation becomes available at price points that have, until now, foreclosed counsel for deserving litigants. The Bar's longstanding interest in encouraging the responsible adoption of cost-reducing technologies, which expands access to competent representation, should inform how the final Opinion is articulated.

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I am grateful for the Virginia State Bar's thoughtful work on this question. The Proposed Opinion's foundational framework is sound, and the recommendation above is offered in support of that framework. I am available to discuss any of the foregoing in greater detail and would welcome the opportunity to submit additional materials if helpful to the Bar's consideration.

Respectfully submitted,

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