

# AI: Inevitable, but limited

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## Q1

**How should parties seek and agree to ADR, and what advantages does your jurisdiction offer?**

ADR can be an excellent approach to litigation. It is generally faster and more malleable, allowing the parties more control and flexibility to participate in the process. Massachusetts is known for its mandatory ADR programs for civil actions pending in the trial court. Massachusetts appreciates the substantial advantages and benefits ADR offers, such as preserving judicial resources and reducing the number and length of case backlogs. In Massachusetts, parties may use ADR at any time period throughout the pendency of their proceedings. Massachusetts proposes several styles of ADR, including Court-Connected ADR, Housing specialists, and private ADR services.

When deciding whether to participate in ADR, the fundamental question becomes whether the jurisdiction will enforce arbitration awards and agreements reached through mediation. Massachusetts, as a general rule, enforces arbitration awards. The Massachusetts Uniform Arbitration Act, M.G.L. c. 251, is the

Commonwealth's rendition of the Federal Arbitration Act (FAA). The Massachusetts Act mirrors the FAA in making pre- and post-dispute agreements to arbitrate "valid, enforceable and irrevocable," except on the grounds of revocation or another competing and contradictory contract provisions. M.G.L.c. 251 section 1.

## Q2

**Have you seen or do you expect to see a rise in the use of AI to discover infringements and actionable matters?**

It is unclear what function AI can serve competently investigating matters, actions, or infringements that attorneys and/or professional investigators typically handle. However, I am sure that AI will eventually become a useful tool in the process of discovering infringements and actionable matters. However, it is important to note that there have been recent global initiatives enacted to combat the abuse of AI and implement stricter parameters

around its use. In September, the United Kingdom, the European Union, and several other countries signed the first legally binding international agreement to ensure that AI systems align with democratic values. The treaty focuses on protecting human rights, safeguarding democracy, and upholding the rule of law. One goal of the treaty is to encourage countries to consider the effects of AI on human health and the environment.

**Thomas H. Curran** has developed his practice over the past three decades, focusing primarily on bankruptcy and insolvency proceedings. He often represents secured and unsecured creditors, committees of creditors, trustees and equity security holders in bankruptcy and insolvency proceedings as well as financial institutions and other lenders in out-of-court loan restructurings, assignments for the benefit of creditors, foreclosures, repossessions, and the sale of distressed assets and businesses. He also has experience representing business debtors in workout, restructuring and bankruptcy matters.

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**"Don't waive client-attorney privilege by submitting information to a robot."**

**Thomas H. Curran,**  
Thomas H. Curran Associates, LLC



## MY ADVICE...

### > Client protection and maintaining the client-lawyer relationship

- Make sure there are AI measures protecting work product and client information.
- Don't waive client-attorney privilege by submitting information to a robot.
- Close loop – make sure that your work, research, questions, etc., are not going to be remembered by AI and won't become discoverable in the AI system to third parties.

### > Reliability

- Make sure that the system is calculated explicitly for legal professionals and relies on verified legal resources, don't fall for the "short-cut" trap.
- Only pull from vetted and reliable resources,

and double-check the results – this will help minimise liability.

- Use a system that is checks constantly for defects to avoid errors and falsifications.

### > Person at the helm

- AI hasn't lived with the case as you have – facts can be more nuanced, therefore what AI generates doesn't have the knowledge and familiarity that the attorneys and staff working the case have.
- AI is an excellent baseline tool for research, but it is only the start of the process, it should not be the end result.
- Nuanced issues need to be probed for further information.
- You can't replace an experienced professional who can check their law and facts and do their own due diligence.

**"When employing AI in any capacity, the question becomes whether the user or the AI system will be held accountable for the results."**

intelligence-based technologies into their practice. Further, the opinion operates as a reminder of the pillars of professionalism in the legal profession, such as client confidentiality, communication, and legal competence.

Moreover, Massachusetts Attorney General Andrea Campbell issued an advisory on April 16, 2024, acknowledging the safeguards the Commonwealth has adopted involving AI and forewarning AI users, suppliers, and developers of the Massachusetts Consumer Protection Act (Chapter 93A) and its bearing on AI. Additionally, the advisory reminds us of the Commonwealth's Anti-Discrimination Law, GL c. 151B, §4 which prohibits developers, suppliers, and users of AI systems from deploying technology that discriminates against residents based on a legally protected characteristic. The Boston Bar Association has published numerous practice tips and articles focusing on the responsibilities associated with using AI. Data privacy and security are themes of concern, as is the risk of unauthorised access or data breaches. Additionally, adhering to Rule 11 of the Federal Rules of Civil Procedures is vital when using AI. The main thrust of the rule is to ensure that attorneys do not present frivolous claims, defenses, and other legal contentions to the court in written pleadings or papers to the court.

Thomas Curran speaking with IR Global members during a professional networking event.



## Q3

**What questions does AI pose for liability – who is accountable for the actions of AI and has your jurisdiction prepared for the question?**

As previously mentioned, the rise of AI is inescapable and has gradually melded into the practice of law. Nevertheless, the rise of AI poses considerable issues, notably ethical and legal concerns. When employing AI in any capacity, the question becomes

whether the user or the AI system will be held accountable for the results. Massachusetts has already taken the initiative to combat these rising concerns.

On July 29, 2024, the American Bar Association Standing Committee on Ethics and Professional Responsibility published Formal Opinion 512 on Generative Artificial Intelligence Tools. The opinion reflects the rising concerns surrounding generative artificial intelligence in law practice, particularly emphasising the care and vigilance lawyers and law firms should employ if they decide to integrate artificial

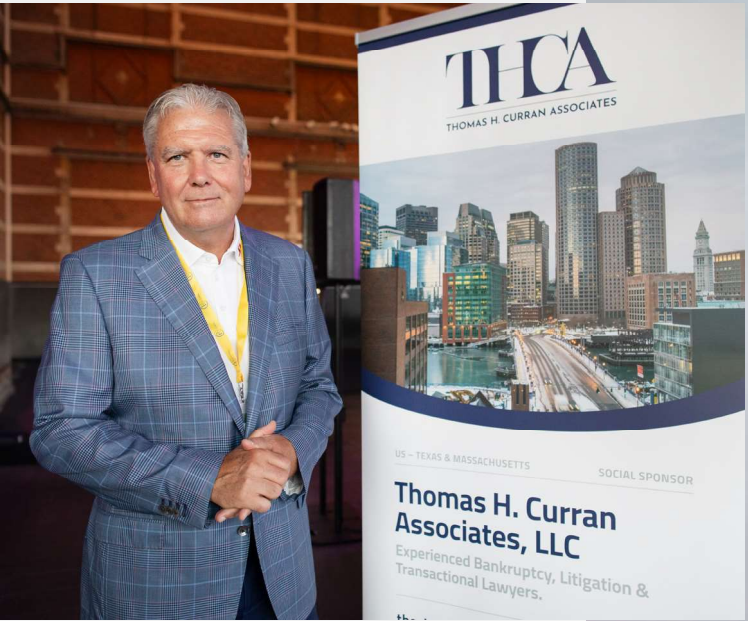
## About us...

# THCA

THOMAS H. CURRAN ASSOCIATES

With offices in Austin, Boston, New York & London, **Thomas H. Curran Associates, LLC** represents a wide variety of individuals, businesses, corporate entities, and governmental agencies in litigation and transactional matters throughout the United States and Western Europe. We have navigated a broad range of commercial litigation cases, including cross-border insolvency, institutional creditors' rights, bet the company litigation, and have earned a winning track record throughout the United States.

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