

Artificial Intelligence and Lawyer Ethics

By D. Allan Asbury

The legal profession is at a technological crossroads, facing unprecedented challenges and opportunities with the adoption and integration of artificial intelligence (AI) into law practices. As futurist Richard Susskind has aptly observed, "AI will force legal institutions and lawyers to change more radically in two decades than they have in the past two centuries." With AI products able to perform tasks traditionally assigned to junior associates and paralegals, lawyers must adopt a proactive approach to understanding AI's capabilities and limitations while maintaining their ethical obligations.



The Promise of AI in Legal Practices

AI has enormous potential for assisting lawyers in providing legal services to clients. From drafting contracts, writing motions and briefs, to predicting case outcomes and summarizing documents in discovery, AI products can significantly improve a lawyer's efficiency and productivity. The American Bar Association has offered that "AI allows lawyers to provide better, faster, and more efficient legal services to companies and organizations. The end result is that lawyers using AI are better counselors for their clients." A recent study conducted by Goldman Sachs estimates that nearly 44% of all legal tasks performed by lawyers can currently be performed by AI. In response, law schools are now equipping students with the AI skills they will need in their future legal careers. Due to the rapid development of AI, technologists predict that within the next five years most lawyers will rely on AI technology to assist them in providing legal services to clients.

Ethical Challenges and Responsibilities

While AI presents numerous benefits, its integration into legal practices requires careful consideration by lawyers of AI's ethical implications. Several rules of professional conduct should be consulted before a lawyer makes a decision to integrate AI into his or her legal practice.

Competence (Prof.Cond.R. 1.1)

AI, now widely accessible to consumers through platforms like ChatGPT, Gemini and Claude, has evolved significantly in the last five years, making it a highly relevant and powerful tool for lawyers to incorporate into their practices. While lawyers are not required to use AI, they must keep abreast of changes to the practice of law, including the benefits and risks associated with relevant technology, according to Prof.Cond.R. 1.1, cmt. [8]. More importantly, lawyers choosing to use AI must develop the necessary skills and knowledge to competently use the technology. A lawyer using AI must ensure that the work product generated by AI is accurate, reliable and does not compromise the quality of

the legal representation of the client or advocacy before a tribunal. A lawyer's misunderstanding of the capabilities and limitations of an AI product or an overreliance on its generated results can lead to negative outcomes for both the lawyer and the client.

Confidentiality (Prof.Cond.R. 1.6)

As stated in Prof.Cond. R. 1.6, lawyers must maintain the confidentiality of information related to the representation of a client. Prof.Cond. R. 1.6 requires lawyers to avoid disclosing sensitive client information to AI platforms that may share that information with other users. Some AI products do not treat as confidential the information users provide in prompts or the results generated by AI. A review of the terms of service for some AI products reveals that the information provided by the user may become the property of the AI vendor and can be used to train the AI product. On the other hand, many AI providers market to law firms an enterprise version of their AI product that implements safeguards to prevent the disclosure of client related information by prohibiting the AI product from training on individual prompts and

uploaded client information. Because lawyers have a duty to make reasonable efforts to prevent the unauthorized disclosure or access to client information, only AI products designed with robust security measures and confidentiality safeguards should be used.

Independent Professional Judgment (Prof.Cond.R. 2.1)

AI can ethically be employed to enhance or support a lawyer's delivery of legal services but should never take the place of the lawyer's independent professional judgment. Accepting AI-generated recommendations without critically assessing them can undermine the lawyer's obligation to provide straightforward advice and an honest assessment of a client's legal issues. Lawyers choosing to use AI in their practices should consider explaining to clients how they used AI to deliver legal advice or make recommendations to the client.

Reasonableness of Fees (Prof.Cond.R. 1.5)

AI has the potential to reduce the amount of time lawyers spend on

traditional legal tasks which in turn can result in fewer billable hours charged to clients. Lawyers using AI to provide legal services must ensure that client billing reflects the actual work performed by the lawyer. The use of AI by lawyers can economically benefit clients in the long run and should not be viewed as an opportunity for lawyers to artificially inflate fees to compensate for an overall reduction in their billable hours. The economic benefits of a lawyer using AI should be passed onto clients.

Candor to the Tribunal (Prof.Cond.R. 3.3)

AI products occasionally hallucinate and provide inaccurate information. This is because AI generates responses based on patterns in the datasets it was trained on. This can lead to plausible sounding but inaccurate information when AI fills in gaps with its best guess or prediction. Lawyers using some AI products for legal research may sometimes encounter fictional case citations and propositions of law. When using AI to prepare court filings, lawyers have an ethical duty under Prof.Cond.R. 3.3 (candor to a tribunal) to carefully verify the accuracy of case

authority, including quotes, holdings and legal citations generated by AI. Instances of lawyers submitting court documents with fabricated citations, as seen in cases like *Mata v. Avianca, Inc.*, 678 F. Supp. 3d 443 (S.D.N.Y. 2023), underscore the importance of lawyers critically reviewing work product generated by AI. In *Avianca*, the lawyers used AI to generate a response to a motion. The lawyers did not review the document that contained multiple fictitious case citations before filing it with the court. The court later issued Civil Rule 11 sanctions against the lawyers, ordering them to pay \$5,000 and complete additional continuing legal education (CLE) training on the proper use of legal technology.

Best Practices for Ethical AI Use

To utilize AI's benefits while mitigating ethical lapses, lawyers should consider the following best practices:

- 1. Understanding the Technology:** If purchasing or subscribing to an AI product, familiarize yourself with its functionalities and limitations. Regular training and continuing legal

education on AI technology and legal technology in general is encouraged.

2. Vet AI Vendors: Choose AI products with clear data security and confidentiality protocols. Review vendor specifications, terms of use, and privacy policies prior to implementing AI in your practice.

3. Case Citations: Use reliable online legal research tools like Lexis, Westlaw and Decisis to verify case citations generated by AI products.

4. Maintain Transparency: Inform clients through fee agreements or other means about your use of AI products including their potential risks and benefits.

5. Exercise Independent Professional Judgment: Use AI as a product to enhance, not replace, your independent professional judgment. Always critically assess AI-generated work product.

6. Know the Rules: Stay informed about local court rules and standing orders regarding AI use in court filings. For example, some courts in Ohio may require the signing of certifications by lawyers that any

filings produced with AI were reviewed for accuracy by a human.

7. Bill for Time Worked: Avoid the temptation to bill clients for the time you traditionally spend on a legal task when the use of AI significantly reduces your billable hours.

Looking Ahead

AI is bringing about significant changes across a variety of professions and industries. As the technology continues to rapidly advance, lawyers will need to navigate the challenge of incorporating AI into their practices while maintaining their ethical obligations under the Ohio Rules of Professional Conduct.



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