

EFFICIENCY AND ETHICS:

The Use of Artificial Intelligence in Legal Practice

by Prof. Rebecca I. Moreno

The practice of law has always evolved alongside technology, from the adoption of word processors to the rise of electronic discovery, but few innovations have advanced as rapidly as artificial intelligence (AI). Today's AI tools promise unparalleled efficiency: generating documents in seconds, summarizing voluminous records in a fraction of the time and even proposing litigation strategies. For the busy attorney, the appeal is obvious. As these tools become more deeply embedded in legal practice, they raise pressing questions, one being: how do we maintain our ethical obligations under the Rules of Professional Conduct (the Rules) while employing an algorithm's help?

This convergence of ethics and efficiency is causing tension in modern law practice. On one hand, lawyers are encouraged (and actually expected) to use technology to provide competent and cost-effective representation. On the other hand, that technology introduces risks that strike at the core of professional responsibility, such as competence, communication, confidentiality and candor to the tribunal. While AI can certainly enhance a lawyer's capabilities, it does not diminish our responsibilities to the client, to the court or to the profession.



AI in the legal field can mean a myriad of things. Attorneys are likely to use AI-based tools every day in their practice. Even a quick Google search utilizes AI without being prompted to do so. As used in this article, the use of AI in the legal field refers to “the theory and development of processes performed by software instead of a legal practitioner, whose outcome is the same as if a legal practitioner had done the work.”¹ Essentially, it is technology that handles work attorneys usually do themselves, such as research, drafting or document review, and produces results that one would expect from an attorney. AI technology has been used in software well before the recent rise in popularity of generative AI. For example, Westlaw has used AI technology since 2003 to understand research queries and provide targeted search results.²

The Ethical Implications

The very shortcuts that make AI attractive are often those that get lawyers into ethical trouble. Ethical AI usage requires thoughtful implementation rather than mere plug-and-play adoption. AI has been presented as a magical solution to mundane tasks or a billable hour workaround. The paradox, though, is that AI works best in the hands of the experienced attorney who knows what to look for, quickly spots errors and efficiently verifies accuracy. Less experienced attorneys do not possess the same knowledge base to verify AI-generated work efficiently. Ultimately, an attorney’s ethical obligations dictate that the attorney is responsible for all work that leaves his or her office, even if that work was assigned to someone (or something) else.³

The Duty of Competence

The duty of competence commands that attorneys must provide competent representation to their clients. The American Bar Association’s comments develop this further and provide clarification that this duty means that attorneys “should keep abreast of changes in the law and its practice, including the benefits and risks associated with relevant technology[.]”⁴ Thus, attorneys have an ethical duty to keep informed about how

to use these tools, while also understanding any associated risks and benefits, such as quicker turnaround times, more efficient work, training cutoffs and possible biases. This comment raises two interrelated points: first, attorneys should use only technology that they are competent to use, and second, attorneys cannot choose willful ignorance of emerging technology. Taken to an extreme, under the duty of competence, could an attorney who conducts judicial opinion research solely on printed reporters bill for the additional time it took when compared to conducting the same research online?

Additionally, this rule and comment suggest that if an attorney cannot competently represent a client without using AI to augment the work, the attorney should not accept the matter and should either acquire the necessary skills himself prior to engaging in the representation or otherwise associate with another competent lawyer for that type of work. Under the duty of competence, AI cannot replace the attorney’s competence, only supplement it. Practically, this means attorneys should educate themselves on emerging technologies (e.g., attending continuing education programs or workshops on legal-based AI tools) and continually monitor and evaluate the AI output to ensure accuracy and reliability. Lawyers with supervisory authority should also ensure that subordinate staff receives training on AI and its ethical implications.

The Duty of Communication

The duty of communication provides that attorneys shall reasonably consult with the clients about how the client’s objectives are to be accomplished.⁵ This broad duty requires effective communication. With respect to AI-assisted work, this carries four primary disclosure obligations to the client. First, attorneys must communicate that they are using AI platforms. This should be discussed both in your consultation and engagement letter. Call attention to the matter to make it abundantly clear. Second, attorneys must communicate how AI will be used in the representation. This does not mean a step-by-step tutorial, but it does mean that the client should be in-

formed about the tasks AI will (e.g., legal research, document drafting or discovery review) and will not (e.g., final decision-making or strategic judgment calls) be involved in completing. Third, attorneys must communicate any data security and confidentiality implications raised by using AI platforms in their practice. Clients should be informed that the use of these tools means that their confidential data will be shared with third-party vendors and about the vendor’s data retention and use policies. Finally, the attorney must communicate to the client how any AI use will impact billing practices. The attorney should provide the client with realistic expectations on billing. Incorporating AI into your practice can but does not automatically equate to major cost savings, because additional review and adjustments are necessary.

The Duty of Confidentiality

The duty of confidentiality provides that attorneys are required to keep confidential everything learned within the course of a representation unless the client gives informed consent for disclosure. The rule further provides exceptions to this duty; however, generally, everything must be kept confidential.⁶ Inputting a client’s confidential information into an AI platform constitutes a breach of that duty. This is especially compounded because most generative AI platforms use the information acquired from users for training their LLM model.⁷ When considering the risks and benefits of inputting a client’s confidential information into an AI tool, the attorney should (1) assess the nature of the information being inputted, (2) determine whether that information will be used by the service provider and (3) evaluate the risk of unauthorized access to that information. Of course, the attorney can always obtain the client’s informed consent to input any information into an AI platform.

The Duty of Candor

Under the duty of candor, attorneys cannot knowingly make false statements of law or fact or offer false evidence to a tribunal.⁸ This is an affirmative duty, not merely prohibitive. Thus, not only does the rule prohibit attorneys from making

false statements, but the attorney must also correct any prior false statements and take reasonable remedial measures. In other words, the duty persists after a false statement has been made.

With respect to AI-assisted work, courts have not barred the use of AI (and such a prohibition is unlikely to happen); however, some courts are requiring attorneys to disclose AI-assisted work in court filings. In mid-2024, the United States 5th Circuit Court of Appeals considered a rule requiring attorneys to certify the extent generative AI was used to draft documents filed with the court. While the 5th Circuit ultimately did not adopt this rule, it did remind attorneys of their duty to ensure that the truthfulness and accuracy of all filings are verified.⁹

The duty of candor also persists after the statement has been made, as Rule 3.3 requires that we correct false statements made to the tribunal. If an attorney submits a pleading or other document and later discovers that the document contains AI-generated false information, the attorney should immediately notify the court and opposing counsel of the error, explain what happened and, if necessary, withdraw the filing or submit a corrected version.

Likewise, Louisiana Code of Civil Procedure article 863 requires attorneys to make a reasonable inquiry into the law and facts prior to signing the pleadings. The Louisiana 5th Circuit recently decided a matter involving the sanctioning of an attorney who submitted pleadings that contained AI-fabricated case citations, misrepresented the holding of real cases and included false or altered quotations from cited cases.¹⁰ In reaching its ruling, the court emphasized that attorneys cannot delegate the obligation to verify the accuracy of every statement made in a filing to a computer or any other form of technology. The court further emphasized that AI use raises ethics concerns such as the duty of candor, finding that the matter “warrant[ed] further inquiry” into whether the Rules were violated. The court ultimately referred the matter to the Louisiana Attorney Disciplinary Board’s Office of Disciplinary Counsel.¹¹

Practical Framework for Ethical AI Use

A practical framework for the ethical use of AI in legal practice could be organized into three stages: (1) considerations before adoption, (2) obligations during use and (3) responsibilities after use.

Prior to the adoption of any AI programs or platforms, attorneys should evaluate the tool. First, ensure an understanding of how the platform works, and review data practices and terms of service for the platform. After gathering this information, assess the risk level. Ask questions such as: will this platform put your clients’ confidential information at risk? Are unfavorable terms, such as those affecting confidential information, negotiable? What if it mislabels discovery documents? How often will it create errors in documents it generates? Be sure to evaluate available alternatives, whether that means implementing a different platform or opting out of that type of service. Finally, always get the client’s informed consent (preferably in writing) regarding the implementation of any AI platform in the representation.

Once a platform has been adopted into your practice, attorneys should implement safeguards. One safeguard is adequate training and supervision. Require everyone who may use the platform to attend workshops or seminars on these platforms. Then, establish “clear use cases” where the platform can and cannot be used in your practice. For example, the platform can be used to summarize public court opinions, generate first drafts of routine documents or automate workflow procedures in a new file. Next, create verification protocols such as a checklist for filing and a “two-person rule.” In your checklist, include items such as verifying every citation in a reputable database, Shepardizing all cases and reading cases to confirm content. Under the two-person rule, one person would use the platform, while a different person independently verifies the output.

Perhaps the two most important safeguards that can be implemented are limiting the data input into the platform

and maintaining human judgment to ensure the accuracy and reliability of AI-generated outputs. The former mitigates risks to client confidentiality by anonymizing or redacting information provided to the platform or using hypotheticals when possible. The latter calls on the user to critically evaluate AI-generated outputs, questioning results that appear unusually precise or legal arguments that seem overly convenient, such as a judicial opinion that is perfectly on point, and reserve all strategic final decisions to the attorney, not the platform.

Finally, after using the platform, maintain accountability. This includes tracking AI use, conducting regular quality checks, staying current on platforms and their relevant updates and reviewing and updating firm usage policies. Importantly, responsibility for these tasks should be assigned to specific individual(s) within the firm. Maintaining accountability begins with clearly designating who is responsible for overseeing and ensuring that accountability. The designated individual(s) should also serve as a point of contact for attorneys and staff when they have questions or concerns regarding the use of AI. When tracking AI use and conducting quality checks, track which AI tools are used on which client matters, track the types of tasks AI assisted with, analyze errors rates and the types of errors and adjust protocols accordingly. Always stay current on updated ethical guidelines and court rules, as well as changes in the platforms and new tools. When the platforms are changed, revise the firm’s policies to comply with the changes. Ultimately, the efficacy of these platforms should constantly be reviewed, and the firm’s policies should be updated in accordance with these findings.

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