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AI: The Ethical Obligations of Lawyers

Artificial intelligence has been present in society as a whole and the legal profession for decades. Within the legal profession, the first prominent AI tools were Westlaw and Lexis. These research tools proliferated in the 1980s changing the way lawyers perform legal research. They took lawyers from the Stone Age of using digests (hardback books) to the Space Age of typing in a combination of words and phrases to find cases, statutes, and legal articles. In society, we have seen Narrow AI proliferate in recent years to include spellcheck, Siri, Alexa, and social media platforms that use algorithms to push content to their users. These applications, however, do not have the ability to “learn.” They can respond automatically to a limited set or combination of inputs, but they cannot integrate prior knowledge or input to improve their operations or to create a response.

Generative AI is the next frontier with the ability to learn, reason, solve problems, create new content, and to respond to a dataset using natural language processing and integrating prior knowledge. “Generative AI is a specific subset of AI used to create new content based on training on existing data taken from massive data sources in response to a user’s prompt, or to replicate a style used as input. The prompt and the new content may consist of text, images, audio, or video.”

Clients, competitors, opposing counsel, and even courts are all evaluating and using Gen AI.¹ It is here to stay and if you are not evaluating its application to your practice, you are already behind. For litigators, there is great excitement about its potential use, including handling everyday tasks, managing document production and review, analysis of motions, drafting legal documents and pleadings, and use at trial. For clients, they hope to increase the efficiency of legal services and cut costs without sacrificing quality, whether it be in e-discovery, drafting documents, analyzing documents, legal research, or preparing for depositions and trial. The use of GenAI is in its infancy and with that comes pitfalls. It is also not a panacea. Among the pitfalls are stories about hallucinations², deepfakes, biases created by the input, and breaches of confidentiality. A recent study from Stanford found that purpose-built GenAI legal tools “hallucinate” 17% of the time and recommends that such tools not be used without “close scrutiny.”³ It noted that general purpose AI tools like ChatGPT have an error rate as high as 82% when used for legal purposes.

¹ Judge Kevin Newsom of the Eleventh Circuit of Appeals recently used ChatGPT to write his concurrence in an insurance coverage decision decided on May 28, 2024. *Snell v. United Specialty Ins. Co.*, No. 22-12581 (11th Cir. 2024). China has had internet courts since 2017 using Narrow AI as part of the legal process and recently established a court using GenAI with AI judges. All documents and legal arguments for a case are uploaded to the database and analyzed, with rulings on any issues and a final judgment from an AI judge. The court works 24/7 and the average time from filing to case resolution is 28 days.

² The most talked about being *Mata v. Avianca, Inc.*, No. 1:2022cv01461 (S.D.N.Y. 2023).

³ See attached article, [Legal GenAI tools mislead 17% of time: Stanford study](#), LEGAL DIVE, Robert Freedman, May 24, 2024.

The use of GenAI does not relieve a lawyer from her ethical obligations. This paper addresses the ethical obligations of lawyers under the Model Rules of Professional Conduct.⁴ The Model Rules of Professional Conduct provide guidelines for attorneys to maintain ethical standards in their practice. The integration of generative AI into legal practice raises various ethical considerations for lawyers. Lawyers must ensure that their use of generative AI complies with standards of competence, confidentiality, communication, supervision, and honesty. By incorporating generative AI into their practices, attorneys can leverage technological advancements to serve their clients and themselves. The promise generative AI holds, however, cannot compromise a lawyer's ethical obligations.⁵

A. MRPC 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.

Comment:

[5] Competent handling of a particular matter includes inquiry into and analysis of the factual and legal elements of the problem, **and use of methods and procedures meeting the standards of competent practitioners.** It also includes adequate preparation. The required attention and preparation are determined in part by what is at stake; major litigation and complex transactions ordinarily require more extensive treatment than matters of lesser complexity and consequence. An agreement between the lawyer and the client regarding the scope of the representation may limit the matters for which the lawyer is responsible. See Rule 1.2(c). (bold added)

[8] To maintain the requisite knowledge and skill, **a lawyer should keep abreast of changes in the law and its practice, including the benefits and risks associated with relevant technology,** engage in continuing study and education and comply with all continuing legal education requirements to which the lawyer is subject. (bold added)

Rule 1.1 requires lawyers to provide competent representation to their clients, which includes staying abreast of the benefits and risks associated with technology relevant to their practice. As AI becomes increasingly integrated into the legal workspace, attorneys must possess the necessary knowledge and skills to implement GenAI into their practice as applicable. This

⁴ While addressing the ethical obligations under the MRPC, the Rules discussed are not exhaustive. Additional rules also have application. Furthermore, lawyers must comply with Fed. R. Civ. P. 11 and its obligations.

⁵ You should consult your state's Rules of Professional Conduct as they may differ from the MRPC. Additionally, Florida, New Jersey, California, and Michigan have issued ethics opinions on the use of GenAI. Attached is the Florida Bar Ethics Opinion issued on January 19, 2024. It is likely that other state bar associations will issue opinions.

does not mean that every attorney must integrate GenAI into all facets of her practice, but an attorney cannot stick her head in the sand and simply avoid AI. Failing to understand AI, its uses, its benefits, and its limitations could potentially violate Rule 1.1.

Lawyers need to have a competent understanding of GenAI technology relevant to their practice areas, including its capabilities, limitations, and potential risks. They should employ it if it is of benefit to the client. And if used, attorneys are expected to use AI in a competent manner. This involves selecting appropriate AI tools, understanding how to use them effectively, and ensuring that they benefit rather than compromise legal representation. Lawyers should have training to develop the necessary competence in using AI. This includes training on data privacy, security, biases within the platforms, and the potential impact on client interests. With the evolution of AI, it will have greater application over time. This means lawyers will need to continue to educate themselves on the application of AI technologies and to develop their AI skills. This may require training programs, participating in professional development activities, or collaborating with experts in AI and legal technology.

If you are using AI in your practice, you also have a continuing duty to monitor the performance of AI systems you use. This includes verifying the accuracy of AI-generated outputs, including legal arguments and case citations, identifying and addressing any errors or biases, and ensuring that AI pleadings, briefs, decisions, and other documents align with legal and ethical standards.

Using AI without adequate knowledge, however, may result in not only ineffective use of AI, but placing you and your client at risk. As such, lawyers should use caution when using AI in providing legal services, whether it is a mundane task such as document review or a service that involves critical legal analysis.

B. MRPC 2.1: Advisor

In representing a client, a lawyer shall exercise independent professional judgment and render candid advice. In rendering advice, a lawyer may refer not only to law but to other considerations such as moral, economic, social and political factors, that may be relevant to the client's situation.

Rule 2.1 outlines a lawyer's role as an advisor, emphasizing the importance of providing candid advice to clients. Lawyers have a duty to provide informed advice to clients who request the use of AI in their legal matters. This includes discussing the potential benefits and risks associated with using AI technologies, such as efficiency gains and cost reductions, but also risks related to bias, data privacy, and security. In doing so, lawyers must assess the suitability of AI solutions for their clients' specific needs and circumstances and whether using AI aligns with the client's goals. Lawyers should consider factors such as the complexity of the matter, the sensitivity of the data involved, and the potential impact on client interests. Lawyers should offer candid advice on its use, especially at this early stage of GenAI technology.

A more compelling question is whether lawyers using AI technology to complete tasks must disclose this to their clients, and with that disclosure also AI's capabilities, risks, and potential

limitations for that client and their circumstances. Is AI like any other tool lawyers use or is it novel enough and unproven enough that lawyers should inform the client? At this juncture, if use of GenAI involves the input of client information, then obtaining informed consent from the client is recommended.

The use of AI does not obviate the requirement that a lawyer must exercise independent professional judgment. This means that with tasks assigned to AI technologies, lawyers still have a duty to vet the work product. The exercise of independent judgment means the lawyer must look at the work product just like you would with a first-year associate. Lawyers simply cannot write-off independent judgment and assume GenAI work product is correct.

C. MRPC 1.5: Fees

(a) A lawyer shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses. The factors to be considered in determining the reasonableness of a fee include the following:

(1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;

(2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;

(3) the fee customarily charged in the locality for similar legal services;

(4) the amount involved and the results obtained;

(5) the time limitations imposed by the client or by the circumstances;

(6) the nature and length of the professional relationship with the client;

(7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and

(8) whether the fee is fixed or contingent.

(b) The scope of the representation and the basis or rate of the fee and expenses for which the client will be responsible shall be communicated to the client, preferably in writing, before or within a reasonable time after commencing the representation, except when the lawyer will charge a regularly represented client on the same basis or rate. Any changes in the basis or rate of the fee or expenses shall also be communicated to the client.

Comment

Reasonableness of Fee and Expenses

[1] Paragraph (a) requires that lawyers charge fees that are reasonable under the circumstances. The factors specified in (1) through (8) are not exclusive. Nor will each factor be relevant in each instance. Paragraph (a) also requires that expenses for which the client will be charged must be reasonable. A lawyer may seek reimbursement for the cost of services performed in-house, such as copying, or for other expenses incurred in-house, such as telephone charges, either by charging a reasonable amount to which the client has agreed in advance or by charging an amount that reasonably reflects the cost incurred by the lawyer.

Rule 1.5 addresses the fees and expenses charged by lawyers and emphasizes the importance of ensuring that legal fees are reasonable and justified. Lawyers using AI in their practice must ensure that any fees charged for AI-related services are disclosed to the client and are reasonable. This includes considering factors such as the complexity of the legal matter, the time and resources invested in AI implementation, and the benefits accrued to the client. These fees and expenses should be communicated in writing.

Lawyers have an ethical obligation to be transparent about fee arrangements involving AI services. This includes clearly communicating to clients how AI technologies will be utilized in their representation and how fees related to AI are calculated. Many clients may take the position that AI services are simply overhead and balk at reimbursement related to AI tools. But the question becomes when AI technology is used instead of an associate or paralegal for a task, how is that service going to be compensated. What if AI can summarize a deposition in minutes instead of using an associate who bills hours for the task? Lawyers cannot ethically inflate hours for the AI performed task. What if AI technology does not adequately summarize depositions and the client still insists on using AI – can you give it to an associate and if you do, can you charge the client or do you have to write-off the time? Knowing the capabilities of the technology and having open and transparent communications with the client are paramount as AI technology is implemented. Lawyers and their clients will have to address compensation models as AI technology is implemented. This may ultimately result in alternative fee arrangements such as fee for service or flat fee billing as opposed to hourly billing.

In cost shifting cases and cases in which attorneys' fees are recoverable, AI technology will also play a role. What if an attorney submits fees for a task that took hours when the use of AI technology would have taken minutes? Can the attorney recover those fees? If she used AI technology, can the lawyer recover a portion, or all the AI costs associated with its use in the case?

D. MRPC 1.4: Communications

(a) A lawyer shall:

- (1) promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in Rule 1.0(e), is required by these Rules;**
- (2) reasonably consult with the client about the means by which the client's objectives are to be accomplished;**

(3) keep the client reasonably informed about the status of the matter;

(4) promptly comply with reasonable requests for information; and

(5) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law.

(b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

Comment

[3] Paragraph (a)(2) requires the lawyer to reasonably consult with the client about the means to be used to accomplish the client's objectives. In some situations — depending on both the importance of the action under consideration and the feasibility of consulting with the client — this duty will require consultation prior to taking action. In other circumstances, such as during a trial when an immediate decision must be made, the exigency of the situation may require the lawyer to act without prior consultation. In such cases the lawyer must nonetheless act reasonably to inform the client of actions the lawyer has taken on the client's behalf. Additionally, paragraph (a)(3) requires that the lawyer keep the client reasonably informed about the status of the matter, such as significant developments affecting the timing or the substance of the representation.

[5] The client should have sufficient information to participate intelligently in decisions concerning the objectives of the representation and **the means by which they are to be pursued**, to the extent the client is willing and able to do so. Adequacy of communication depends in part on the kind of advice or assistance that is involved. . . . The guiding principle is that the lawyer should fulfill reasonable client expectations for information consistent with the duty to act in the client's best interests, and the client's overall requirements as to the character of representation. . . . (bold added)

Rule 1.4 requires attorneys to communicate effectively with their clients. Does this mean if AI is used to complete legal tasks that lawyers must communicate this to their clients? Is it necessary to discuss the use of GenAI with the client? Independent of other Rules of Professional Conduct, Rule 1.4 likely requires lawyers to advise clients of the use of Gen AI technologies.

Additionally, if your client has internal guidelines on the use of AI technology, then it is required. If AI is involved in case management or decision-making processes, lawyers are likely bound by the internal AI guidelines of their clients regarding disclosure of data. This means you need to find out if your client has internal guidelines and if you are required to comply with those guidelines in providing legal services. If so, it requires the lawyer to be transparent with clients about how the technologies are utilized and the potential impact on their legal matters. Clients under these circumstances have a right to understand the role of AI in their representation and to

make informed decisions in compliance with their internal guidelines. In these circumstances, failure to disclose the use of AI tools or to adequately explain their implications could constitute a violation of Rule 1.4.

Lawyers have an obligation to reasonably consult with the client about how the client's objectives are to be accomplished. If AI technologies are used to make decisions or recommendations in a client's case, lawyers may have an obligation to inform the client about the basis for these decisions. This may involve explaining how AI algorithms analyze data, generate predictions, or reach conclusions relevant to the client's legal matter. Clients have a right to understand the reasoning behind AI-driven decisions affecting their interests.

Lawyers have a duty to address any concerns or questions raised by clients regarding the use of AI in their representation. This includes providing reassurance, clarification, or additional information to alleviate client apprehensions about AI technologies. Lawyers should be accessible and responsive to client inquiries, demonstrating a commitment to client-centered communication. This includes explaining the potential risks and implications associated with the use of AI in their legal matters. This includes discussing concerns such as data privacy, security vulnerabilities, algorithmic biases, and the reliability of AI-generated outputs.

E. MRPC 1.6: Confidentiality of Information

(a) A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation or the disclosure is permitted by paragraph (b). . . .

(c) A lawyer shall make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client.

Comment

[18] Paragraph (c) requires a lawyer to act competently to safeguard information relating to the representation of a client 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, information relating to the representation of a client does not constitute a violation of paragraph (c) 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 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). A client may require the lawyer to implement special security measures not required

by this Rule or may give informed consent to forgo security measures that would otherwise be required by this Rule. Whether a lawyer may be required to take additional steps to safeguard a client's information in order to comply with other law, such as state and federal laws that govern data privacy or that impose notification requirements upon the loss of, or unauthorized access to, electronic information, is beyond the scope of these Rules. For a lawyer's duties when sharing information with nonlawyers outside the lawyer's own firm, see Rule 5.3, Comments [3]-[4].

Rule 1.6 mandates that attorneys safeguard client information. When employing AI technologies, lawyers must ensure that client data remains confidential and protected from unauthorized access or disclosure. This includes being aware of the types of data collected, how it is stored and encrypted, who has access to it, and how it is used to generate AI-driven insights or recommendations.

In considering the use of an AI platform, the place to start is whether it is an open or closed platform. All open platforms, such as ChatGPT, share data. The data that goes in is used by the platform to learn and affects future output. The input remains part of the database. Simply put, what you put into an open AI platform is not confidential. Even generic prompts are used by platforms to learn, and their use could result in the waiver of attorney/client privilege or the work-product doctrine, even if confidential information is not used.

If you are using a platform that claims it is a closed platform, you need to read the Terms of Use. The Terms of Use will identify the entities with whom the platform shares data. You may be surprised what you read in the Terms of Use regarding the sharing of data. The act of scrolling to the end and checking the box to agree to the Terms of Use cannot occur, and if you receive a privacy update to the Terms of Use you need to read it. You must know what your platform does, how it handles and stores data, how it uses the information, and what happens to the information when you are done.

This applies to all client information, not just data that is protected by federal or state law, such as HIPAA. If you input protected data, you may be sharing confidential information. As a result, lawyers using AI have a duty to take reasonable measures to protect the confidentiality of client information processed or stored by AI systems. This includes implementing safeguards to prevent unauthorized access, disclosure, or misuse of client data. Lawyers should ensure that AI platforms and technologies adhere to robust data security standards to safeguard client confidentiality. Lawyers using AI technologies have a duty to ensure compliance with confidentiality obligations under MRPC 1.6.

MRPC 1.6 also places an obligation on lawyers to obtain informed consent from clients before revealing information relating to the representation, or that the disclosure of information is impliedly authorized. With AI in its infancy, does a lawyer need to obtain informed consent to use AI and input client information, or is the authorization to disclose the information implied in the representation? At present, this is likely a case-by-case analysis dependent upon the AI platform, the legal tasks the lawyers are assigning to AI, and the specific information in the input dataset, including its level of sensitivity and confidentiality. It may be necessary, and is

recommended, to inform clients about how AI technologies will be employed, the types of data that will be processed, and any potential privacy risks if confidential information is disclosed, so they can make informed decisions about the use of AI in their legal matters.

If engaging a third-party AI vendor to provide or build a closed platform for your firm, the contract should contain a confidentiality agreement to protect client information processed by the system. The contract agreements should outline the responsibilities of the AI provider regarding data confidentiality, data security measures, and restrictions on data usage or disclosure. Lawyers should ensure that confidentiality agreements with AI providers are legally enforceable and adequately protect client interests.

Most lawyers are accessing AI technologies over the internet. As with any client information transmitted over the internet, lawyers must ensure the secure transmission of client information when sharing data with AI systems or third-party AI providers. This includes using encrypted communication channels, secure data transfer protocols, and access controls to protect client data during transmission.

Comment 18 discusses the safe harbor provided when there is inadvertent disclosure or unauthorized access to client information under Rule 1.6(c). It states that Rule 1.6(c) is not violated “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 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).” In the use of GenAI, factors would include: (1) did the lawyer read the Terms of Use; (2) did the lawyer have a discussion with the client and obtain information consent; (3) how sensitive is the information; (4) how confidential or proprietary is the information; (5) does the firm have policies and procedures on the use of AI, including security measures; (6) is the firm monitoring its AI program to ensure compliance by its lawyers; and (7) are there proper safety checks of AI technology and any third-party vendors being conducted.

F. MRPC 1.15: Safekeeping Property

(a) A lawyer shall hold property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property. Funds shall be kept in a separate account maintained in the state where the lawyer's office is situated, or elsewhere with the consent of the client or third person. Other property shall be identified as such and appropriately safeguarded. Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of [five years] after termination of the representation.

Rule 1.15 pertains to the safekeeping of client property and funds. While the safeguarding of client funds is usually the focus of Rule 1.15, in the context of GenAI, lawyers should consider the safeguarding of the client’s property. Because data, documents, and information of the client may

be confidential and proprietary in nature, lawyers may have an obligation to protect that property under MRPC 1.15 when using AI technologies.

Regarding client funds, lawyers using AI in financial transactions have a duty to implement secure systems and procedures to manage client funds, including complying with legal and regulatory requirements. Lawyers have a responsibility to be accountable for the financial management practices facilitated by AI systems that are used in their practice. They must ensure the accuracy and integrity of these transactions to avoid errors or misappropriation of client funds. Firms should regularly review AI-generated financial reports and conduct audits to ensure financial accuracy.

G. MRPC 1.9: Duties to Former Clients

(a) A lawyer who has formerly represented a client in a matter shall not thereafter represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client unless the former client gives informed consent, confirmed in writing.

(b) A lawyer shall not knowingly represent a person in the same or a substantially related matter in which a firm with which the lawyer formerly was associated had previously represented a client

(1) whose interests are materially adverse to that person; and

(2) about whom the lawyer had acquired information protected by Rules 1.6 and 1.9(c) that is material to the matter; unless the former client gives informed consent, confirmed in writing.

(c) A lawyer who has formerly represented a client in a matter or whose present or former firm has formerly represented a client in a matter shall not thereafter:

(1) use information relating to the representation to the disadvantage of the former client except as these Rules would permit or require with respect to a client, or when the information has become generally known; or

(2) reveal information relating to the representation except as these Rules would permit or require with respect to a client.

Rule 1.9 deals with the duty of confidentiality of former clients. Lawyers using AI have a duty to maintain the confidentiality of information related to former clients. This includes ensuring that AI systems do not inadvertently disclose or misuse confidential information obtained from former client representations. Lawyers should implement safeguards to protect former client data processed or stored by AI systems. What you input into a closed AI platform used by your firm remains in the database. The AI technology maintains it and uses it to learn. This creates the potential that the use of an AI platform could result in information, or documents provided by a

former client being used to the disadvantage of that former client. Firms using an AI platform must take appropriate measures to identify and address any such conflicts.

If a law firm is developing its own AI system, it must comply with obligations of MRPC 1.9. This includes ensuring that AI algorithms are designed and implemented in a manner that safeguards the confidentiality of former client information and prevents unauthorized access or disclosure.

H. MRPC 5.1: Responsibilities of Partners, Managers, and Supervisory Lawyers

(a) A partner in a law firm, and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm, 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 comparable 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.

Rule 5.1 addresses the responsibilities of law firms to ensure the firm has in place measures to ensure that all lawyers comply with the Model Rules, and that supervisory lawyers make reasonable efforts to ensure those working under them comply with the Model Rules. Firms utilizing AI have a duty to oversee the implementation and use of AI technologies within the firm. This includes ensuring that AI systems are deployed effectively, ethically, and in compliance with legal and regulatory requirements. Firms should establish internal AI policies and procedures to ensure protocols for data handling, confidentiality, security, and ethical considerations related to AI use. Firms must ensure compliance by all lawyers with these policies and procedures.

Supervisory lawyers are responsible for ensuring that lawyers and staff within the firm possess the necessary training and competence to use AI effectively and ethically. This may involve providing training programs, resources, and support to enhance understanding and proficiency in AI technologies relevant to the firm's practice areas. Supervisory lawyers have an obligation to ensure that their associates and others working under them are maintaining their ethical obligations to clients and the courts. As an example, if a court or judge has placed restrictions on the use of AI in briefing or requires disclosure of AI use, a supervisory lawyer has an ethical obligation to ensure those working under her are complying with these restrictions. Similarly, a supervisory

lawyer must ensure those working under the lawyer comply with the requests or restrictions placed by clients on the use of AI or the information and documents that are used on AI platforms.

I. MRPC 5.3: Responsibilities Regarding Nonlawyer Assistance

With respect to a nonlawyer employed or retained by or associated with a lawyer:

(a) a partner, and a lawyer who individually or together with other lawyers possesses comparable 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 comparable managerial authority in the law firm in which the person is employed, or has direct supervisory authority over the person, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

Rule 5.3 imposes obligations on attorneys regarding nonlawyer assistance. This includes not only nonlawyers within the firm but also third-party vendors, including AI vendors. Firms and supervisory lawyers must ensure compliance with the MRCP by these individuals and entities in their use of AI technologies. This includes ensuring that third-party vendors are complying with the firm's AI policies and procedures regarding the use of AI, including confidentiality, conflicts of interest, data security, and other relevant ethical considerations. Firms should consider contractual provisions with third-party vendors governing the use of AI and requiring compliance with the firm's AI policies.

An AI assistant also arguably falls under Rule 5.3 and lawyers have an obligation to monitor the performance and conduct of nonlawyer AI assistants to detect and prevent violations of ethical standards. This includes reviewing AI-generated outputs, assessing compliance with legal requirements, and addressing any concerns or issues that may arise. Lawyers must address the use of an AI assistant the same as a paralegal.

J. MRPC 5.5: Unauthorized Practice of Law; Multijurisdictional Practice of Law

(a) A lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so.

Comment

[1] A lawyer may practice law only in a jurisdiction in which the lawyer is authorized to practice. A lawyer may be admitted to practice law in a jurisdiction on a regular basis or may be authorized by court rule or order or by law to practice for a limited purpose or on a restricted basis. Paragraph (a) applies to unauthorized practice of law by a lawyer, whether through the lawyer's direct action or by the lawyer assisting another person. For example, a lawyer may not assist a person in practicing law in violation of the rules governing professional conduct in that person's jurisdiction.

[2] The definition of the practice of law is established by law and varies from one jurisdiction to another. Whatever the definition, limiting the practice of law to members of the bar protects the public against rendition of legal services by unqualified persons. This Rule does not prohibit a lawyer from employing the services of paraprofessionals and delegating functions to them, so long as the lawyer supervises the delegated work and retains responsibility for their work. See Rule 5.3.

[3] A lawyer may provide professional advice and instruction to nonlawyers whose employment requires knowledge of the law; for example, claims adjusters, employees of financial or commercial institutions, social workers, accountants and persons employed in government agencies. Lawyers also may assist independent nonlawyers, such as paraprofessionals, who are authorized by the law of a jurisdiction to provide particular law-related services. In addition, a lawyer may counsel nonlawyers who wish to proceed pro se.

Rule 5.5 addresses the unauthorized practice of law. Lawyers have a duty to ensure that the use of AI technologies in their practice does not constitute the unauthorized practice of law. This includes ensuring that AI systems are used in compliance with applicable laws and regulations governing the practice of law in their jurisdiction. Lawyers should be aware of UPL restrictions and take precautions to prevent AI from engaging in activities that could be considered unauthorized practice. A lawyer cannot delegate to AI acts involving legal judgment that could lead to the unauthorized practice of law. While AI can assist in legal research, document review, and other tasks, lawyers retain ultimate responsibility for exercising professional judgment and providing legal advice to clients. AI technologies are tools that can support the practice of law but cannot replace the tasks that must be performed by a lawyer.

K. MRPC 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;

Rule 8.4 addresses misconduct. Rule 8.4 prohibits attorneys from engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation. While AI can enhance efficiency and accuracy in legal practice, lawyers must not use these technologies to deceive or manipulate parties involved in legal proceedings. Lawyers should not mislead clients, courts, or other parties in their use of AI or about the role or effectiveness of AI in legal matters. Furthermore, Rule 1.1 requires lawyers to be competent in their use of AI technologies. This includes staying informed about developments in AI, understanding the capabilities and limitations of AI, and ensuring that AI is used effectively and ethically in legal matters. The failure to comply with Rule 1.1 and other rules may also result in violation of Rule 8.4.