

AI in the Legal World and Its Ethical Implications

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Artificial Intelligence (AI) is taking the world by storm and the legal world is not insulated from the current technological revolution. From document processing and review to due diligence and deal analyses, AI offers a plethora of uses to cut down on many of the most time intensive tasks that lawyers face. But should lawyers really be using AI? Though it could surely be a useful tool, it comes with just as many risks as it does rewards. Specifically, regarding what the ethical implications of the use of AI in the legal field are.

Rule 1.6 of the Model Rules of Professional Conduct states that “[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) [which lists extenuating circumstances permitting the disclosure of confidential information].”¹

At first glance, it might appear that, by providing sensitive client information to the AI itself, one would be in breach of their ethical responsibilities under Rule 1.6. However, fortunately, current AI models do not have the ability to retain any of the information that they receive from or give to users.² They are unable to “remember” these inputs and outputs. But there is an increasing desire to develop AI with long-term memory capabilities, where they would be able to remember this data.³ If that becomes a reality, lawyers may be forced to take on the substantial task of scrubbing files before submitting them to AI document processing and review systems, which would likely decrease the desirability of the practice.

Of the many professional guidelines that accompany a lawyer’s representation, few are more vital than competence. As stated in Rule 1.1 of the Model Rules of Professional Conduct, “[a] lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation.”⁴ With the growing use of AI, the question arises, is AI legally competent? Earlier this year, lawyers utilizing ChatGPT were sanctioned after using the model to draft a brief. In the brief, ChatGPT cited to “non-existent court opinions and fake quotes.”⁵ Lawyer’s utilizing AI may, possibly unknowingly, violate their ethical responsibilities because of their use of AI.

These models, as a tool, lose much of their appeal once lawyers are forced to comb through the AI’s product to ensure that no fictional cases have been created. This, coupled with their inability to learn from the average user, leaves much to be desired in AI’s usefulness in the legal profession. If AI cannot remember, past a relatively short term, what lawyers “tell” it, then it seems likely that it would become debilitatingly time intensive to “train” the AI model each time a lawyer wants to use it for some aspect of representation.

¹MODEL RULES OF PROF’L CONDUCT R. 1.6 (AM. BAR ASS’N 2020)

²Taryn Plumb, *AI Has a Long-Term Memory Problem (How to Make Neural Networks Less Forgetful)*, SDXCENTRAL (March 20, 2023, 4:41 PM) <https://www.sdxcentral.com/articles/analysis/ai-has-a-long-term-memory-problem-how-to-make-neural-networks-less-forgetful/2023/03/>

³ *Id.*

⁴MODEL RULES OF PROF’L CONDUCT R. 1.1 (AM. BAR ASS’N 2020)

⁵Dan Mangan, *Judge sanctions lawyers for brief written by A.I. with fake citations*, CNBC (June 22, 2023, 2:34 PM) <https://www.cnbc.com/2023/06/22/judge-sanctions-lawyers-whose-ai-written-filing-contained-fake-citations.html>