

Ethical issues with AI- US perspective

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Further disclaimer -

- I would like to thank Michael McCabe of McCabe and Ali and Professor David Hrick for their detailed and substantiative papers on the topic of AI use by lawyers
- If you would like copies of the papers, please let me know, I would be happy to email them to you, they can also be found online

- In the US, attorney admittance and regulation is a matter of state law
- Each state has its own rules, there can be significant differences
- Patent practitioners admittance and regulations are by the USPTO
- Any patent attorney is regulated by both any state they are admitted in and the USPTO
- A patent agent is only regulated by the USPTO- but could end up facing unlicensed practice of law charges from a state

- A. Competence
- B. Diligence
- C. Communications
- D. Confidentiality
- E. Supervision
- F. Candor to the Court
- G. Duty to Comply with the Law
- H. Charging for Work Produced by Generative AI and Generative AI Costs

- What is competence in use of AI tools for legal practice? “lawyers need not become GAI experts, . . . lawyers must have a reasonable understanding of the capabilities and limitations of the specific GAI technology that the lawyer might use.”
- AMERICAN BAR ASSOCIATION, ABA Formal Opinion 512, 2-3 (July 29, 2024).

- AI is well known to make things up, an attorney must make sure that all of the information is correct
- Many courts have sanctioned attorneys for filing briefs with completely made up caselaw when using AI tools to draft briefs
- AI is good at its job, it can create very realistic sounding case cites and/or create a quote in an actual case that is not there-just because you recognize the case name does not mean the quote is correct
- Tip: Ask the AI to give you links to the source, but be sure to check the link

- US attorneys and patent agents almost certainly must inform clients about AI tools they are using.
- If your client has AI use guidelines, you must follow them.

- Security Week-May 28, 2025
- **OneDrive Gives Web Apps Full Read Access to All Files**
- Security researchers warn that OneDrive's file sharing tool may grant third-party web apps access to all your files—not just the one you choose to upload.
- <https://www.securityweek.com/onedrive-gives-web-apps-full-read-access-to-all-files/>

- Model Rule 5.1: Responsibilities of Partners, Managers, and Supervisory Lawyers, states: “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.” MODEL RULES R. 5.1(a).

- Model Rule 3.1: Meritorious Claims & Contentions, “A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous, which includes a good faith argument for an extension, modification or reversal of existing law. A lawyer for the defendant in a criminal proceeding, or the respondent in a proceeding that could result in incarceration, may nevertheless so defend the proceeding as to require that every element of the case be established.”

- Multiple courts and/or judicial districts have local rules about AI use by lawyers in preparing materials filed with the court
- Some of the require disclosure of the tools used
- More and more rules are being enacted all the time
- Lawyers are still filing briefs with fake case sites-judges are getting grumpier

- Model Rule 8.4: Misconduct “[i]t is professional misconduct for a lawyer to . . . violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through acts of another.”
- Compliance would include to any applicable AI, data privacy, GDPR, or other rules controlling the use of AI and/or data as it relates to one’s practice of law.

AIPLA . Charging for Work that used AI Tools

- Model Rule 1.5: Fees “[a] lawyer shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses.”
- One of the considerations on the reasonableness of the fee include “the time and labor required.”
- Multiple jurisdiction have explicitly said you must charge time you actually spent, not what it would have taken you without AI.