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## Chat GPT, Esq. and Related Ethics Considerations

Generative AI is here to stay. The real question for lawyers is whether using generative AI can help us practice law better. That might mean practicing more efficiently, or that we increase capacity to be able to serve more clients, or it could mean that our work product improves as a result of the greater scope of information that's considered as part of our analysis. One this is for sure, though: if we use generative AI, we have to use it within the rules of professional conduct.

Therein lies part of the problem. The model rules of professional conduct were first adopted in 1983, before we had access to the internet. Unfortunately, we must use old rules to determine how we can ethically use this new technology. This isn't the first time for that, though – the legal profession has faced similar issues with multiple other technologies, including the telephone, email, ridesharing, cell phones, and cryptocurrency. In other ways, this technology has the potential to change everything. I feel safe in suggesting that the drafters of the RPCs were not considering generative AI when the writing the rules.

Here's a short list of issues to consider when deciding whether to use generative AI in your practice:

Confidentiality (RPC 1.6):
- Entering client information into AI system could be a breach of confidentiality

  o RPC 1.6: lawyers "shall not reveal information relating to the representation of a client"

- Who has access to your AI searches and inquiries?

Competence (RPC 1.1):
- Under comment to 1.1 adopted by more than 30 states, lawyers required to at least consider use and be familiar with possible benefits of technology

  o Lawyers must understand at some level the capabilities, limitations, and benefits of the proposed tool

- Lawyers are responsible for their work product, no matter who (or what) else works on it

- Reliability concerns: AI makes mistakes, and makes things up ("hallucinates")

  o Including statutes and case citations and quotations

  o What is the data set for the system? ChatGPT only goes up to 2021, so it will not have access to recent developments

- Although ChatGPT passed the bar exam, it struggles to identify issues in open-ended questions

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Oversight and supervision (RPCs 5.1, 5.3)

- Delegation of any work to any subordinate lawyer or staff must be reasonably supervised to ensure compliance with the Rules (competence, diligence, UPL, candor, etc.)

- Some tasks may be handled by AI, some may not – lawyers should recognize which is which before using AI (augment lawyers' work, not replace lawyers' judgment)

UPL (RPC 5.5):

- Can software practice law?

Intellectual property issues

- Where did the system's information come from? Reliable sources? Stolen from subscription services?

We don't know more than we know about how generative AI will be used in legal practice, let alone how ethics authorities will view how it's used. For now, exercise caution and do your research before diving too deeply into the generative AI pool.

Have a risk management or ethics questions? We're here to help. To obtain a consultation, you should log in to Attorneys Risk Management, and click on the "Request a Risk Management Consultation" button.



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