AI Ethics with Professor Tanina Rostain

AI is changing how lawyers do their work and raising questions about how lawyers can harness artificial intelligence ethically. Georgetown Law Professor Tanina Rostain answers questions about the transformative impact of AI on the legal profession and how the rules of professional conduct apply to the new ways that attorneys use AI to conduct research, draft documents, and interact with clients.

We begin with questions of competence and diligence. AI models, while powerful, are not infallible. Instances of "hallucinations," where AI generates plausible (even convincing) but incorrect information, emphasize the necessity for lawyers to double-check their work. Professor Rostain walks through examples where courts have sanctioned attorneys for submitting arguments based on AI invented cases. Even as AI systems become more powerful, the responsibility remains on attorneys to ensure the reliability and accuracy of the information they use and present. This vigilance is core to attorney ethics and the protection of clients' interests.

AI threatens to take lawyer jobs and disrupt firm structure. While those are economic issues, they also raise ethics questions under Rule 1.5 governing attorney fees. Professor Rostain explains how traditional law firm structures, particularly in big law, rely heavily on billable hours from associates to drive partner compensation. However, as AI takes over increasing amounts of associate work, Rule 1.5 requires that the savings be passed along to clients. Professor Rostain points out that firms will need to adjust their billing practices, disrupting the traditional associate-leveraged model. This shift could lead to a reevaluation of how legal services are priced and delivered, and may even play a role in democratizing access to high-quality legal advice.

AI models show increasing proficiency in providing legal answers and performing legal work, raising ethical questions under Rule 5.5, the unauthorized practice of law (UPL). Professor Rostain discusses what constitutes the "practice of law" when it comes to AI and suggests that the legal profession may eventually need to bend. According to Rostain, the benefits of AI for clients cannot be stifled by financial protectionism with superficial claims of protecting the client. She advocates for a balance where the advantages of AI in improving legal access and efficiency are harnessed without compromising the professional standards and ethical obligations of the profession.

Tanina Rostain is a professor of law at Georgetown Law Center.

The interview discusses ABA Rules of Professional Conduct including:

1. Rule 1.1: Competence

What the Rule Is:

- Rule 1.1 requires lawyers to provide competent representation to a client, which entails the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation.

Context in Which It Is Applied:

- In the context of AI and legal practice, this rule highlights the importance of lawyers being knowledgeable about AI tools they use. Lawyers must understand the capabilities and limitations of AI to use it effectively without compromising the quality of their legal services. They must ensure that AI-generated outputs are accurate and reliable.

2. Rule 1.3: Diligence

What the Rule Is:

- Rule 1.3 mandates that a lawyer must act with reasonable diligence and promptness in representing a client.

Context in Which It Is Applied:

- With the integration of AI in legal work, lawyers must remain diligent in reviewing and verifying the information generated by AI. Despite AI's efficiency, the responsibility remains on the lawyer to ensure that all work is thoroughly checked to prevent errors, especially in critical legal documents and case law references.

3. Rule 1.5: Fees

What the Rule Is:

- Rule 1.5 requires lawyers to charge reasonable fees and to communicate the basis or rate of the fee to the client.

Context in Which It Is Applied:

- AI's role in reducing the time required for legal research and document preparation could impact how fees are structured. Lawyers and firms must reconsider their fee arrangements, potentially lowering costs for clients due to increased efficiencies while ensuring that charges for AI tools remain fair and transparent.

4. Rule 5.4: Professional Independence of a Lawyer

What the Rule Is:

- Rule 5.4 prohibits lawyers from sharing legal fees with non-lawyers and maintaining their professional independence.

Context in Which It Is Applied:

- The increasing reliance on AI raises questions about fee-sharing and the influence of non-lawyer technology providers on legal practice. Lawyers must navigate these relationships carefully to maintain their professional independence and adhere to ethical standards.

5. Rule 5.5: Unauthorized Practice of Law; Multijurisdictional Practice of Law

What the Rule Is:

- Rule 5.5 addresses the prohibition against practicing law in a jurisdiction where the lawyer is not licensed and sets guidelines for temporary practice in other jurisdictions.

Context in Which It Is Applied:

- As AI tools become more proficient, they may perform tasks traditionally reserved for licensed attorneys. This raises concerns about the unauthorized practice of law (UPL). Lawyers must ensure that their use of AI does not cross into UPL territory and that they remain compliant with jurisdictional regulations.

6. Rule 7.2: Communications Concerning a Lawyer's Services

What the Rule Is:

- Rule 7.2 regulates advertising and other communications about a lawyer's services, including prohibitions on giving anything of value for recommending the lawyer's services.

Context in Which It Is Applied:

- The use of AI for marketing and client engagement must comply with this rule. Lawyers must be transparent about AI's role in their services and avoid making misleading claims about AI capabilities or outcomes.

7. Rule 1.15: Safekeeping Property

What the Rule Is:

- Rule 1.15 requires lawyers to keep client funds separate from their own and manage client funds with care.

Context in Which It Is Applied:

- As AI tools may handle financial transactions or manage client funds, lawyers must ensure these technologies are secure and compliant with ethical standards for safekeeping property.