

Spotlight on Professional Responsibility & Technology: What Every Legal Team Needs to Know (MCLE)



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The Trellis logo consists of the word "trellis" in a bold, lowercase, sans-serif font. The letter "t" is stylized with a grid pattern at its top left corner. The logo is positioned in the bottom right corner of the slide.

trellis

Disclaimer

The views expressed in this presentation do not serve as legal advice. Please contact an attorney for legal counsel on your specific matter or needs.

Your Presenter

Jon Shaw, Esq., CSM - Trellis Research, Inc.

- Civil litigation attorney at the state court level, licensed in the state of Maryland.
- Deeply committed to helping lawyers leverage technology to gain a competitive advantage and achieve a more favorable outcome for their clients

The Importance of Communication

The background features a light blue gradient. In the upper half, there are several overlapping speech bubbles in various colors: red, orange, yellow, green, blue, purple, and pink. In the lower half, there are silhouettes of a group of people in various poses, some holding papers or devices, rendered in shades of blue and black. The overall theme is communication and social interaction.

Before we get started....

“The single biggest problem in communication is the illusion that it has taken place”

-George Bernard Shaw

Agenda

- Technology Legal Ethics - ABA Rules
- ABA Formal Opinion 512 - Generative AI Tools
- Key questions and responsibilities
- Q & A



ABA Formal Opinion 512



Key Questions from 512

- *What level of competency should lawyers acquire regarding a GAI tool? (1.1)*
- *How can lawyers satisfy their duty of confidentiality when using a GAI tool that requires input of information relating to a representation?*
- *When must lawyers disclose use of a GAI tool to clients?*
- *Level of review of a GAI tool's process or output?*
- *What's a reasonable fee/expense when lawyers use a GAI tool to provide legal services to clients?*

ABA Model Rule 1.1 [8] - Duty of Competence

COMPETENCE

[8] To maintain the requisite knowledge and skills, a lawyer should keep abreast of changes in the law and its practices, 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.

Clear attorney duty of competence relating to tech added in 2012 Amendments

CRPC 1.1

ABA Model Rule 1.1 [8] - Duty of Competence

How can we accomplish compliance?

- Maintain a *reasonable* understanding of the capabilities and limitations of the GAI tech we use
- Lean on the expertise of others who can provide answers and guidance
- REMAIN vigilant about the tools we use to understand new benefits and risks
- Can accomplish this by attending CLEs, programs, and the consult of experts

ABA Model Rule 1.6 - Duty of Confidentiality

(a) A lawyer should not reveal information related to the representation of a client, unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation.....

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

*** (c) added in 2012 Amendments - 'reasonable efforts' is the attorney duty relating to preventing inadvertent or unauthorized disclosure of technology matters to preserve confidentiality***

CRPC 1.6

Model Rule 1.6 [18] - Duty of Confidentiality

ACTING COMPETENTLY TO PRESERVE CONFIDENTIALITY

[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
- inadvertent or unauthorized disclosure by the lawyer; or

Model Rule 1.6 [18] - Confidentiality CONTINUED

- inadvertent or unauthorized disclosure by 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*.

Confidentiality duty includes 3rd party helping attorney and extends to all technology related matters and communications

ABA Model Rule 1.6 - Duty of Confidentiality

Considerations:

- Lawyers must assess the (1) likelihood of disclosure and unauthorized access, (2) the sensitivity of the information, (3) the difficulty of implementing safeguards, and (4) the extent to which safeguards negatively impact the lawyer's ability to represent the client.

ABA Model Rule 1.6 - Duty of Confidentiality

Potential problems with GAI:

- Inaccurate output (limited responses, hallucinations, etc.)
- Ownership and potential infringement of IP rights and data security threats
- Assist, but not guide advice (only WE can provide professional judgment)*

Model Rule 4.1 - Duty to Communicate

COMMUNICATIONS

(a) A Lawyer shall:

1. promptly *inform the client of any decision or circumstance with respect to which the client's informed consent...*;
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

Model Rule 3.1, 3.3 and 8.4(c) - talking with Court

3.1 - cannot bring or defend a proceeding that is frivolous

3.3 - cannot knowingly make a false statement of law or fact

8.4 - lawyers shall not engage in “conduct involving dishonesty, fraud, deceit or misrepresentation”

Model Rule 5.3 - Duty to Supervise

Responsibilities Regarding Nonlawyer Assistance

(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;

****CRPC 5.1, 5.2, 5.3****

Model Rule 5.3 - Duty to Supervise - CONTINUED

(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 to the lawyer....

***Attorney supervision over non-lawyers must ensure the non-lawyer is operating in a fashion consistent with the attorney's professional obligations - and that their firm has appropriate measures there as well. ***

Model Rule 5.3 [3] - Duty to Supervise

SUPERVISION OF LAWYERS OUTSIDE THE FIRM

[3] A lawyer may use nonlawyers outside the firm to assist the lawyer in rendering legal services to the client. When using such service outside the firm, a lawyer must make reasonable efforts to ensure that the services are provided in a *manner that is compatible with the lawyer's professional obligations*. The extent of this obligation depends on the circumstances, including:

Model Rule 5.3 [3] - Duty to Supervise - CONT'D

- education, experience and reputation of the nonlawyer
- the nature of the services involved
- terms of any arrangements concerning the protection of client information, and
- the legal and ethical environments of the jurisdictions in which the services will be performed, particularly with regard to confidentiality.”

***When an attorney engages and supervises nonlawyers outside of their firm on technology-related matters, the attorney must make sure the services being provided are consistent with their professional ethics and must make special efforts to preserve*

So...what are the states doing?

- 40 states have adopted the ABA Model Rules - Duty of Tech Competence
- California...very similar
 - See Formal Opinion No. 2015-193
- But what about Florida??
 - See 4.1-1

Takeaways



The Power of Time...

Emerging tech helps provide an output that is distinctively higher quality than that of the past (faster, efficiency, etc.)

- Compare with email
- Word documents
- Legal research

What Can You Do?

To stay compliant...

- Become familiar/aware of the tools we're using
- ALWAYS consider the client's interests and objectives
- *Informed* consent to use the tool
- Fees?!? (always remember Model Rule 1.5)

Trellis Highlights

- Legal data platform that uses AI and machine learning to provide state trial court litigators with strategic legal intelligence and judicial analytics
- Featured in leading legal industry periodicals including the American Bar Association, National Law Journal and Law.com
- Customer-centric roadmap aimed at allowing firms to easily adopt technology that will allow them to be more efficient, while simultaneously achieving better outcomes for clients.

Contact and Q&A

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We hope you found this session valuable for your practice. For questions about how to maximize Trellis in your firm, please contact your Success representative at success@trellis.law today.

