Selected Ethical Issues Raised by Artificial Intelligence

By Harvey Besunder, Esq.
Hon. Elizabeth H. Emerson (Ret),
and Brody Paola
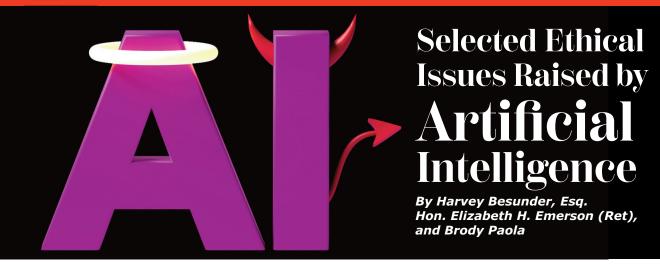
Lawyers will inevitably encounter artificial intelligence in some capacity when practicing law today. Artificial intelligence ("AI") has engrained itself in various aspects of the legal profession, including, *inter alia*, (1) judicial standing orders, (2) legal research, and (3) electronic discovery. While the proliferation of artificial intelligence technology may serve to benefit the legal profession throughout the coming decades, lawyers must be wary about the adequacy of AI-produced content and the ethical concerns related thereto. Because generative artificial intelligence services like ChatGPT answer queries based on all available data, the software can "hallucinate" cases—*i.e.* respond with cases that do not exist. While most lawyers are familiar with what occurred in *Mata v. Avianca*, there have been over one-hundred and twenty (120) *reported* instances of AI hallucinations since June of 2023. To eliminate the concerns that hallucinated cases present, lawyers must be diligent in verifying AI produced content.

When lawyers utilize artificial intelligence, they must be cognizant of their ethical obligations and ensure that their use of artificial intelligence satisfies such obligations. Several American Bar Association ("ABA") and New York State Bar Association ("NYSBA") Rules of Professional Conduct ("RPC") are implicated when lawyers use artificial intelligence in connection with their legal representation. For instance, Rule 1.1 of both the ABA and NYSBA's RPCs requires attorneys to "provide competent representation to [their] client."[1] To satisfy this requirement, Comment 8 to both rules indicates that attorneys must "keep abreast of the benefits and risks associated with relevant technology."[2] Thus, lawyers have an obligation to inform themselves about artificial intelligence that derives from their obligation to provide competent representation.

Pursuant to Rule 1.6 of both the ABA and NYSBA's RPCs, lawyers cannot knowingly reveal confidential information connected with a client's representation.[3] When lawyers utilize generative artificial services ("GAI") like ChatGPT, they put themselves at risk of breaching this duty. When users input data into a public facing GAI service like ChatGPT, the AI learns from the data and subsequently uses it to answer future queries. Thus, by inputting confidential information in the artificial intelligence system, an attorney could breach their ethical duties because there is a possibility that such information may be revealed to other users—the information is no longer confidential.

One of the most relevant connections between artificial intelligence usage and lawyers' ethical obligations is the ABA and NYSBA's Rule 3.3. Both the ABA and NYSBA's Rule 3.3 requires that lawyers must not "make a false statement of fact or law to a tribunal."[4] When lawyers use GAI services for their legal research and ultimately cite to hallucinated cases, they directly breach their ethical obligation to ensure the veracity of their work product.

Ethical duties that implicate AI usage do not only apply to an attorney who uses artificial intelligence; rather, they extend to those serving in supervisory positions as well. Rule 5.1 of both the ABA and NYSBA's Rules of Professional Conduct provides that "a lawyer with management responsibility in a law firm shall make reasonable efforts to ensure that other lawyers in the law firm conform to these Rules."[5] Lawyers with such managerial responsibilities may be held responsible when they order or ratify their subordinate's conduct. The NYSBA's rule provides a more stringent standard for supervising attorneys, as they can be held responsible where, because of their reasonable management authority, they "should have known of the conduct."[6] Thus, when an associate in a law firm misuses artificial intelligence in a manner that violates their ethical duties, their respective supervising attorney can be responsible for their unethical conduct. Such results should direct law firms to articulate clear standards for subordinate attorneys regarding AI usage.

The foregoing was authored by Harvey Besunder of Egan & Golden, LLP; Hon. Elizabeth H. Emerson (Retired), of Counsel, Ruskin Moscou Faltischek, P.C.; and Brody Paola, Candidate for Juris Doctor, Maurice A. Deane School of Law at Hofstra University (2026).

---

[1] MODEL RULES OF PRO. CONDUCT r. 1.1 (AM. BAR ASS'N 1983); N.Y. RULES OF PROFESSIONAL CONDUCT r. 1.1 (N.Y. BAR ASS'N 2025).

[2] MODEL RULES OF PRO. CONDUCT r. 1.1 cmt. 8 (AM. BAR ASS'N 1983); N.Y. RULES OF PROFESSIONAL CONDUCT r. 1.1 cmt. 8 (N.Y. BAR ASS'N 2025).

[3] MODEL RULES OF PRO. CONDUCT r. 1.6 (AM. BAR ASS'N 1983); N.Y. RULES OF PROFESSIONAL CONDUCT r. 1.6 (N.Y. BAR ASS'N 2025).

[4] MODEL RULES OF PRO. CONDUCT r. 3.3 (AM. BAR ASS'N 1983); N.Y. RULES OF PROFESSIONAL CONDUCT r. 3.3 (N.Y. BAR ASS'N 2025).

[5] MODEL RULES OF PRO. CONDUCT r. 5.1 (AM. BAR ASS'N 1983); N.Y. RULES OF PROFESSIONAL CONDUCT r. 5.1 (N.Y. BAR ASS'N 2025).

[6] N.Y. RULES OF PROFESSIONAL CONDUCT r. 5.1(d)(2)(ii) (N.Y. BAR ASS'N 2025).