

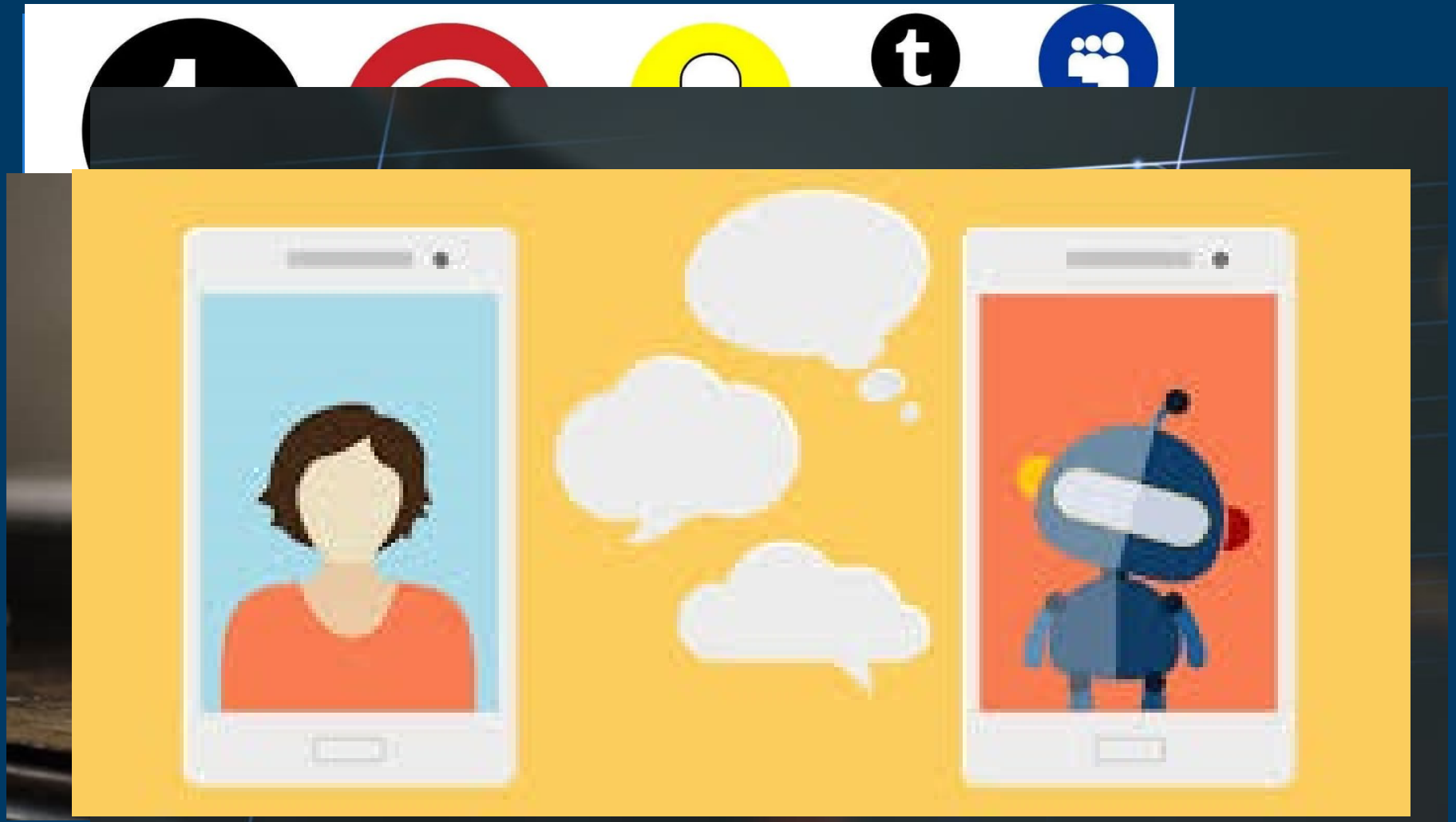
Algorithms and Advocacy: The Defense Lawyer's Ethical Dilemma

**presented by
Tony Gallagher**

Federal Criminal Defense Training
Tuesday, March 24, 2026



AI is Everywhere



AI Decides

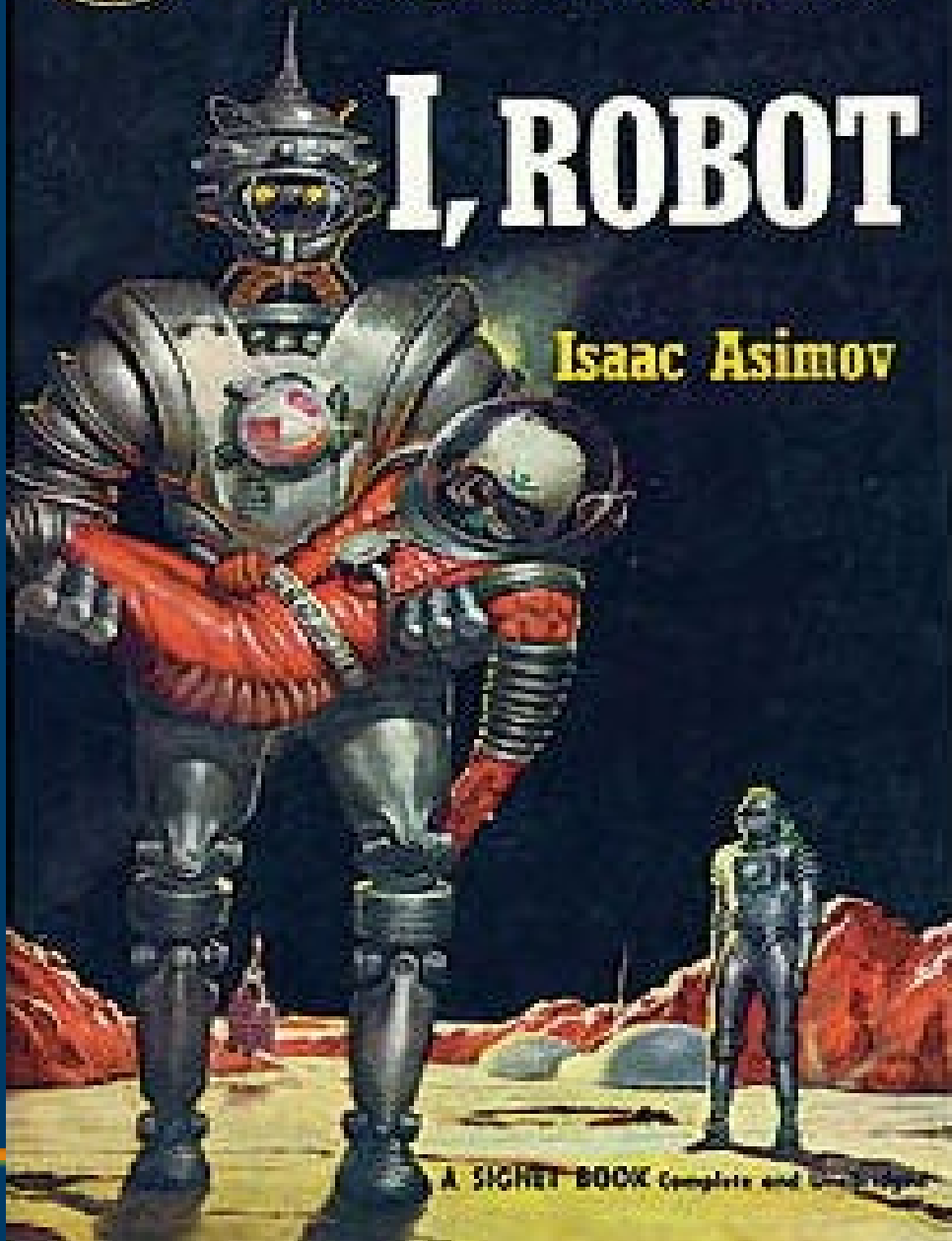
- What shows up in your feed
 - What trends
 - What disappears
 - Who grows
 - Who gets buried
-

51282
SIGNA
BOOKS
1951

MAN-LIKE MACHINES RULE THE WORLD!
Fascinating Tales of a Strange Tomorrow

I, ROBOT

Isaac Asimov



AI
is Not
Science
Fiction

AI systems can be mysterious, even to the people who create them.

They are designed around probabilities, so they are unpredictable.



Generative Artificial Intelligence

Refers to a type of AI that creates new content or outputs, such as text, images, music or voices, using learned patterns and data



Risks of Artificial Intelligence

- Automation-spurred job loss
 - Deepfakes
 - Privacy violations
 - Algorithmic bias caused by bad data
 - Socioeconomic inequality
 - Market volatility
 - Weapons automatization
 - Uncontrollable self-aware AI
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TONIGHT 9P ET

CNN PRIMETIME
EXCLUSIVE
**THE ZELENSKY
INTERVIEW**
HOSTED BY WOLF BLITZER



DEEPFAKE VOICE GENERATOR

HOW EASY IS IT TO USE AI TO FAKE SOMEONE'S VOICE?



AC360°



Implications for the legal industry

- Evidence Analysis and Prediction
 - Forensic Analysis
 - Sentiment Analysis e.g., Social Media
 - Predictive Modeling
 - Legal Research and Case Law Retrieval
 - Automated Legal Document Generation
 - Risk and Sentencing Recommendations
-

Implications for the legal industry

- Early Case Assessment and Predictive Analytics
 - Privacy Protection and Redaction
 - Witness and Jury Selection
 - Alibi Verification and Timeline Reconstruction
 - Natural Language Processing (NLP) for Case Summaries and Legal Briefs
 - Mitigation Strategies
-

Legal Profession Changed by AI

- expedited legal research, drafting contracts, reviewing documents, and providing initial legal advice
 - automating routine and time-consuming processes, allows attorney focus on higher-value tasks that require critical thinking and nuanced analysis
 - efficiency leads to cost savings, potentially increasing access to services.
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Legal Profession Changed by AI

- AI tools can help staff execute routine, repetitive tasks.
 - AI can be trained to scan and summarize dozens of cases within minutes.
 - Sort your clients and prospects on AI-driven management tools. They can have in-platform booking and messaging features.
-

As AI tools become integrated into legal practice, it brings forth ethical and regulatory challenges that demand careful consideration



Competence: Rule 1.1

Attorneys are required to provide competent representation. This may involve ensuring that they understand how AI tools work, their limitations, and how to effectively use them in a legal practice.

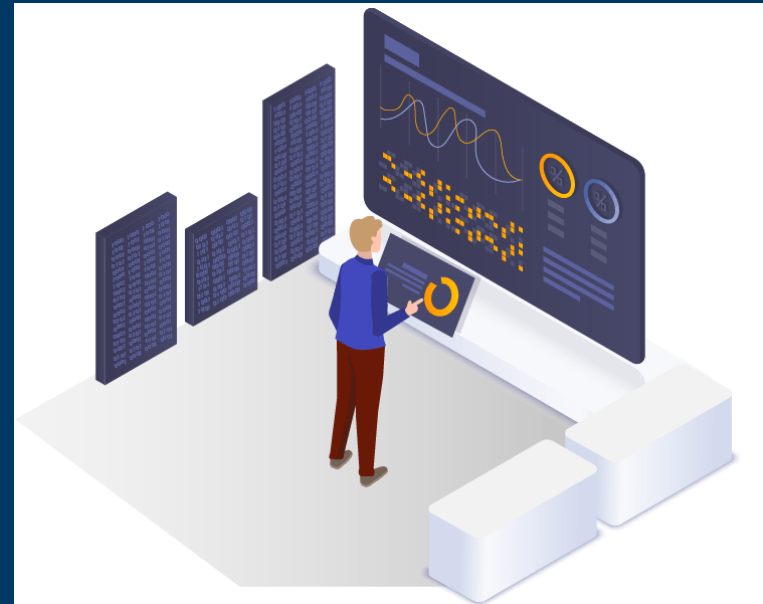


Competence: Rule 1.1

AI tools are being used to streamline legal research processes, helping lawyers sift through vast amounts of legal information quickly.

Competence: Rule 1.1

AI-driven predictive analytics are increasingly employed to assess case outcomes, litigation strategies, and even potential judicial decisions.



Competence: Rule 1.1

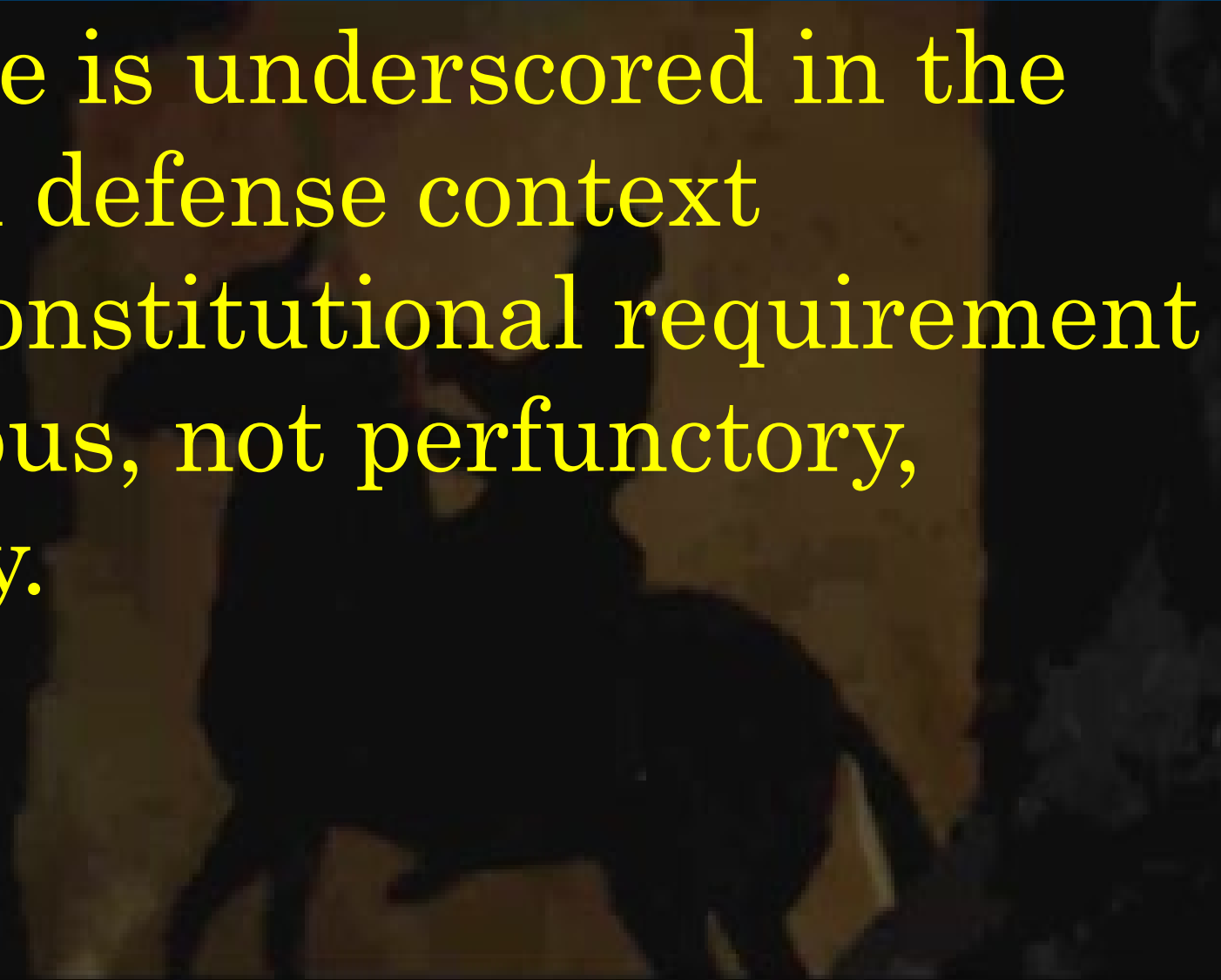
- An ethical dilemma arises when reliance on such tools leads to biases or discriminatory outcomes. Lawyers must be vigilant in addressing and mitigating any biases present in the underlying data used to train AI models.
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Diligence: Rule 1.3

- Rule 1.3 requires attorneys to diligently represent their clients within the bounds of the law.
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Diligence: Rule 1.3

Diligence is underscored in the criminal defense context by the constitutional requirement for zealous, not perfunctory, advocacy.



Diligence: Rule 1.3

- Conducting due diligence often requires review of a large number of documents. AI can expedite review.



Diligence: Rule 1.3

- An AI-based due diligence solution can pull specific documents, like documents containing a specific clause, phrase or name. AI due diligence software can also spot variations or changes in documents.
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Diligence: Rule 1.3

Blindly following AI recommendations without critical analysis or consideration of the unique circumstances of the case may constitute a failure to provide zealous representation.



Diligence: Rule 1.3

Defense Lawyer diligence requires attacking the use of AI by those with adverse interests, for instance --

- risk assessment algorithm in sentencing or detention decisions, arguing that the algorithm resulted in discriminatory outcomes
- the provenance of photographs, recordings, and video tapes

Diligence: Rule 1.3

Defense Lawyer diligence requires attacking the use of AI by those with adverse interests, for instance --

- AI tools that may disproportionately impact certain groups, raising questions about the fairness of the legal process.
- machine learning algorithms can inadvertently reinforce and perpetuate existing societal biases

Communication: Rule 1.4

Attorneys are required to communicate effectively with their clients.



Communication: Rule 1.4

- **Automated Emails:** AI generates drafts for client progress reports, emails, and follow-ups, which attorneys then review.
 - **24/7 Engagement:** AI tools handle initial inquiries, scheduling, and routine questions, providing immediate responses.
 - **Summarization:** AI analyzes depositions, calls, and meetings, creating concise summaries of key information.
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Communication: Rule 1.4

- **Drafting & Editing:** Generative AI assists in drafting legal correspondence, memoranda, and documents, improving clarity and tone.
 - **Language Translation:** AI tools can translate correspondence into a client's native language for clearer communication.
 - **Intake & Data Gathering:** AI facilitates client onboarding by automating document uploading and data collection.
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Communication: Rule 1.4

When using AI tools, attorneys should be aware of potential privacy and security issues associated with the data input into these tools.



Confidentiality: Rule 1.6

Lawyers must
take
reasonable
steps to
protect client
information.



Confidentiality: Rule 1.6

- The use of AI in legal practice involves the handling of vast amounts of sensitive client information.
 - Ethical obligations related to data security and client confidentiality require lawyers to implement robust cybersecurity measures to protect against unauthorized access or data breaches.
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The Internet Never Forgets

Conflict of Interest: Rule 1.7

Rule 1.7 prohibits attorneys from representing clients if there is a conflict of interest that could impair their ability to provide competent and diligent representation.



Conflict of Interest: Rule 1.7

- Attorneys have a duty to zealously represent the interests of their client(s).
 - With multiple clients with possibly divergent interests, these duties can conflict such that it is impossible to zealously represent both at once.
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Conflict of Interest: Rule 1.7

- AI tools, programs and software can assist in identifying possible conflicts with prior clients, families, witnesses
- When using AI tools, attorneys must be mindful of potential conflicts of interest that may arise from sharing confidential information or relying on AI platforms that have connections to adverse parties or interests. Attorneys must also consider whether the use of AI poses any conflicts of interest with existing clients or obligations.

Conflict of Interest: Rule 1.7

- If an attorney identifies a potential conflict of interest, notify the affected client(s).
 - Representation can proceed only if written, informed consent is obtained from all clients affected by the conflict.
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Duty of Candor: Rule 3.3

Rule 3.3
imposes
duties related
to candor in
court
proceedings



Duty of Candor: Rule 3.3

Lawyers must not knowingly make false statements of fact or law to a tribunal or fail to correct prior false statements.

Duty of Candor: Rule 3.3

Candor includes disclosing relevant information to the court, even if it may not be favorable to the client.

Duty of Candor: Rule 3.3

The duty is tempered:
balance the ethical
need for candor to
the tribunal against
constitutional
obligations to
advocate for the
client.



Duty of Candor: Rule 3.3

- Citing Adverse Authority: Lawyers must cite directly adverse authority when presenting a client's position, even if it weakens their case.
 - Refusing False Evidence: Lawyers must refuse to offer evidence they know to be false, regardless of the client's wishes.
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Truthfulness to Others: Rule 4.1

Rule 4.1
mandates that
attorneys must
not knowingly
make false
statements of
fact or law to
third parties.



Truthfulness to Others: Rule 4.1

- When using AI-generated content in proceedings or communications, attorneys have a duty to ensure the accuracy and reliability of the information presented.
- Misrepresenting AI-generated advice or passing off AI-generated content as the attorney's own work may violate this rule and undermine the integrity of the legal profession.



“On the Internet, no one knows you’re a dog.”

Supervision: Rule 5.1



Attorneys are responsible for the work of those they supervise.

Supervision: Rule 5.1



If AI tools are used by legal support staff, attorneys must supervise their use to ensure compliance with ethical obligations.

Nonlawyer Assistants: Rule 5.3

Rule 5.3 imposes obligations on attorneys to ensure that nonlawyer assistants, including AI technologies, adhere to ethical standards and professional responsibilities.



Nonlawyer Assistants: Rule 5.3

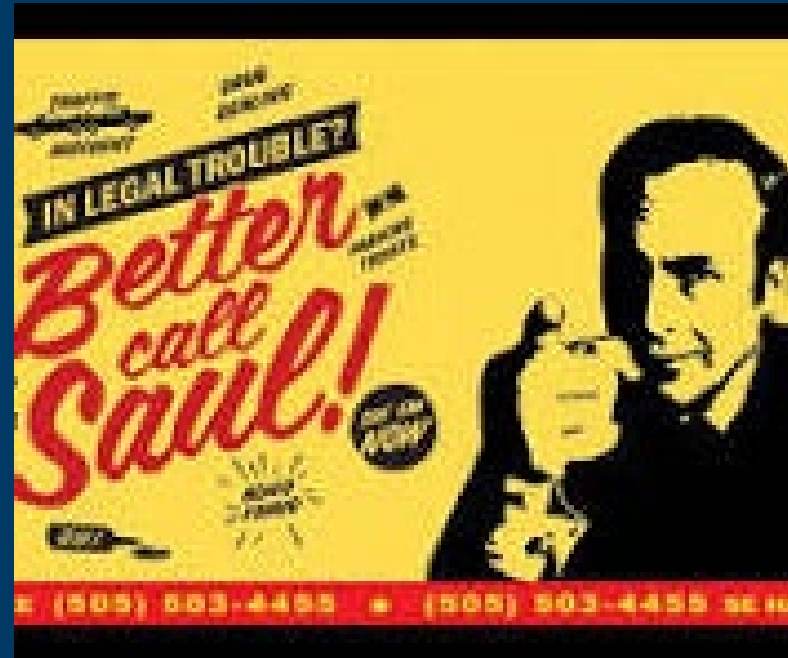
When using AI tools, attorneys must provide adequate supervision and oversight to ensure that AI-generated work product meets the same standards of competence, diligence, and confidentiality expected of human assistants.

Nonlawyer Assistants: Rule 5.3

This includes establishing policies and procedures for the use of AI tools, providing training and guidance to attorneys and support staff on the ethical implications of AI, and implementing quality control measures to monitor the accuracy and reliability of AI-generated content.

Misconduct: Rule 8.4

Rule 8.4 prohibits attorneys from engaging in conduct that is dishonest, fraudulent, deceitful, or prejudicial to the administration of justice.



Misconduct: Rule 8.4

Attorneys must uphold the highest standards of honesty, integrity, and professionalism in use of AI, ensuring that it serves the interests of justice and the public good.



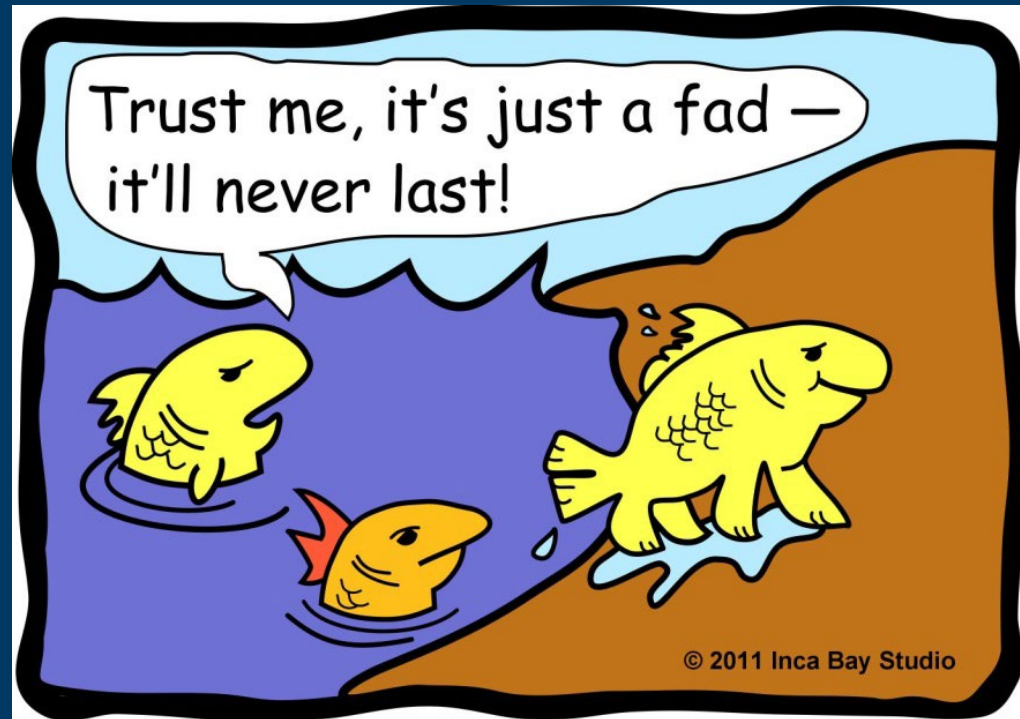
Misconduct: Rule 8.4

- When using AI, avoid conduct that could undermine the integrity of the legal profession or erode public confidence in the legal system.
- Refrain from misrepresenting AI-generated content as the attorney's own work, failing to disclose use of AI to clients or tribunals when required, or knowingly relying on AI-generated advice that is inaccurate or unreliable.



Time to get up to speed . . .

The reasonableness standard for ethical conduct requires attorneys' periodic education on computer technology as it changes and as it is challenged by and reacts to indirect factors.



... and stay up to speed

With the pervasive and changing use of evolving technology in communication and other aspects of legal practice, particular safeguards which might constitute reasonable efforts in a specific context today may be outdated in a different context tomorrow.

Looking Forward

- Failure to use AI tools could result in missed opportunities, decreased ability to provide insightful and informed advice, and reduced competitiveness
 - Using AI can help lawyers meet their professional obligations, maintain the highest standards of client service, and stay ahead in a rapidly changing legal landscape.
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Rule makers must also get up to speed

Efforts like the American Bar Association's Resolution 604 urge organizations involved in AI to adhere to specific guidelines, emphasizing human authority over AI systems and accountability for harm caused by AI products. As AI continues to evolve, legal professionals must adapt their ethical framework to address these novel challenges.

Questions?
