

Duty of Technology Competence

Ethical Considerations in the Age of Artificial Intelligence

Colorado Court Rules | Colorado Rules of Professional Conduct

Rule 1.1. Competence

Client-Lawyer Relationship

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation.

Maintaining Competence

[8] To maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, and changes in communications and other relevant technologies, engage in continuing study and education, and comply with all continuing legal education requirements to which the lawyer is subject. See Comments [18] and [19] to Rule 1.6 [regarding confidentiality]

Technology Competence and other Ethics Rules

1.4 – Duty to Communicate with Clients

Requires attorneys to reasonably consult with the client about the means by which the attorney intends to accomplish the client’s objectives.

The use of emerging technologies while providing legal services may require discussion with the client of its benefits and risks, the costs associated with using (or not using) the technology, and obtaining informed consent (e.g., if sharing client data with outside vendor).

1.6 – Duty to Maintain Confidentiality

Requires attorneys not to disclose confidential client information absent (1) informed consent; (2) implied authorization; or (3) disclosure is otherwise permitted (e.g., court order).

Attorneys must consider confidentiality concerns when determining whether and how to use AI or other technologies to store, process, or analyze client data.

5.3 – Responsibilities Regarding Nonlawyer Assistants [or Assistance...?]

Requires supervising attorneys with authority over a nonlawyer to make reasonable efforts to ensure that the nonlawyer’s conduct is in line with the attorney’s professional obligations.

The “nonlawyer” contemplated in this rule has historically been understood to be a person. But the 2012 amendments to the ABA Model Rule (but not the CO rule) changed “Assistants” to “Assistance.” The definition of nonlawyer assistance under the ABA Model Rule has thus expressly expanded to include outside service providers and technology, e.g., database and document management. [See Comment 3 to both ABA Rule 5.3 and Colorado Rule 5.3]

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