

Professional ethics in the use of modern technologies

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Lawyers are increasingly using artificial intelligence ("AI") and new forms of interaction both with colleagues and partners and with clients (virtual law firms) in their practice.

While modern technology and the use of AI offer a number of benefits, they also raise complex issues affecting the professional ethics of lawyers.

Thus, associations and Bars face a number of questions regarding the ethical rules in light of the use of AI by lawyers. Moreover, the options for answers can be very different: from the position that modern technologies do not affect professional ethics in any way to the position on the need for cardinal additions/changes to the existing rules of legal ethics.

But before you start answering this question, you should analyze how the existing rules of legal ethics relate to the use of AI by lawyers, as well as virtual law firms.

Currently, Ukraine has the Rules of Legal Ethics (hereinafter referred to as RLE), which were adopted by the Congress of Lawyers of Ukraine in 2017, after which certain changes were made to them in 2019.

RLE does not give accent to any separate rules or regulations regarding the use of modern technologies and artificial intelligence by lawyers.

But it should be assumed, a number of RLE norms still relate to the use of modern technologies and artificial intelligence by lawyers, namely: (1) competence and integrity, (2) informing the client by the lawyer (communication) (3) the lawyer's fee, (4) confidentiality.

Competence and integrity.

Article 11 of the RLE provides the following: "Given the social significance and complexity of the professional duties of a lawyer, he is required to have a high level of professional training, deep knowledge of the current legislation, the practice of its application, mastery of tactics, methods and techniques of advocacy, public speaking. A lawyer is obliged to provide professional legal assistance to the client, to carry out his defence and representation competently and in good faith, which implies knowledge of the relevant rules of law, the availability of the necessary experience in their application, thoroughness in taking into account all the circumstances concerning the client's order and the possible legal consequences of its implementation, careful preparation for the execution of the order. A lawyer must constantly improve his professional level and qualifications, possess sufficient information about changes in the current legislation. "

Although this paragraph, as well as other provisions of the RLE, does not mention modern technologies and AI, the question arises: are the knowledge of the lawyer about modern technologies and the ability to use them his duty or not.

It should be assumed that knowledge and ability to use available technologies are fully covered by the term "methods and techniques of advocacy", which are referred to in the RLE.

In light of the fact that technology and AI are a tool in the hands of lawyers and law firms, I believe that understanding and being able to use the available modern technology is not a right, but a duty of every lawyer. And this duty logically follows from the principle of competence and integrity.

Lawyers must be able to identify the technologies needed to effectively represent a client, and determine whether using such technology will improve customer service or harm.

Informing the client about the conduct of his case

Article 18 of the RLE provides for the obligation of a lawyer to inform the client about the conduct of the case assigned to him. Before signing an agreement on the provision of professional legal (legal) assistance in a case, a lawyer must find out all circumstances known to the client that may affect the determination of the existence of a legal position in the case and its content, and ask and study all relevant documents that are at the client's disposal. If, after fulfilling these requirements, the lawyer is convinced that there are factual and legal grounds for carrying out a certain assignment, he must impartially and objectively present them to the client and inform in general terms how much time and how much work will be required to carry out this assignment, and what legal consequences of achieving the result the client wants.

I believe that the duty of a lawyer to inform his client about his case includes the duty to discuss with his client the possibility of using AI and modern technologies for legal assistance by the lawyer.

Due to the known risks of leakage or loss of confidential information, a lawyer, in my opinion, should obtain approval from the client before using modern technologies.

Also, under certain circumstances, a lawyer is obliged to inform the client about the lawyer's decision to refuse to use AI or his inability to use such tools if the use of AI and such tools will benefit the client.

Thus, the use of AI by lawyers or the refusal to use modern technology requires the prior consent of the client.

Fee

A fee is a form of remuneration for a lawyer for the defence, representation and other types of professional legal assistance to a client. The amount of the fee is determined by the agreement between the lawyer and the client. The lawyer has the right to determine the amount of the fee within reasonable limits based on his own considerations (Article 28 of RLE).

Among the criteria that a lawyer should be guided by when determining the amount of the fee, one should single out the criterion of reasonableness.

It is he who connects these provisions of the RLE with the use of modern technologies and AI by lawyers.

In addition to fees, RLE allow lawyers to collect from clients the funds necessary to cover the costs associated with the execution of the order.

Taking into account the fact that modern technologies allow lawyers to significantly reduce the time required to carry out the client's order, they can reduce the amount of the fee for such an order.

It is quite obvious that the inability or refusal of a lawyer to use modern technologies, which significantly reduce the cost of providing legal services, can lead to an unreasonable or baseless determination of the amount of the fee.

When determining the size of the fee, a lawyer should always remember the words of the great lawyer of our time A.F. Koni, who said that "the legal profession is not only a means of feeding, it is a public service."

Confidentiality

Compliance with the principle of confidentiality is a necessary and essential prerequisite for a trusty relationship between an attorney and a client, without which it is impossible to properly provide professional legal assistance, defence and representation. A lawyer is obliged to create appropriate storage conditions for documents and information transferred to him by the client, lawyer files and other materials that are at his disposal and contain attorneys-client privilege (Article 10 of the RLE).

The obligation to ensure the confidentiality and protection of all data received from the client imposes on the lawyer the obligation to be very careful about the use of modern technologies. A

lawyer is obliged, before using this or that service, to study the rules for its use, the issues of the provider's responsibility for the loss or leakage of information.

Unfortunately, in Ukraine today there is a very superficial regulation of the issues of liability of providers of modern tools. There have been numerous cases of data leakage even from official electronic state registers.