



TAXPAYERS'
FEDERATION
— OF ILLINOIS —

Ethics for Tax Professionals

David Hughes

Kilpatrick Townsend & Stockton

Mary Kay Martire

McDermott Will & Schulte

September 25, 2025

TFI Fall Seminar

AGENDA

- I. WHY WE NEED TO DO THIS
- II. WHAT WE ASPIRE TO
- III. REVIEWING THE BASICS
- IV. FRAMEWORK FOR ADDRESSING ETHICAL CONCERNS
- V. ETHICS AND AI
- VI. FACT SCENARIOS



WHY WE NEED TO DO THIS

- What do honest lawyers and unicorns have in common?
 - You've heard of them, but you've never seen one
- Why did the lawyer become an ethical consultant?
 - It was the only way to make ethics profitable
- What's a lawyer's favorite type of music?
 - Anything with loopholes



WHY WE NEED TO DO THIS

- Why did the accountant cross the road?
 - To hide the ethics violation in a different ledger
- How do accountants do their moral accounting?
 - $\text{Assets} = \text{Liabilities} + \text{Justifiable Excuses}$
- What's an accountant's definition of "ethically grey"?
 - Anything under the audit threshold



WHY WE NEED TO DO THIS

- What's the difference between an accountant and a lawyer when it comes to ethics?
 - The accountant shows you how to bend the rules; the lawyer argues that you didn't.
- *Would you like some darker ones, or should we keep it light?*



WHAT WE ASPIRE TO

- “Ethics is knowing the difference between what you have a right to do and what is right to do – and the best lawyers choose the latter.”
(Paraphrasing Justice Potter Stewart)
- “A lawyer without ethics is a menace to justice; a lawyer with ethics is its guardian.”
- “True advocacy is not about winning at all costs; it is about standing firmly on the side of what is just, even when it costs you.”



WHAT WE ASPIRE TO

- “An accountant’s integrity is just as valuable as their accuracy – because numbers mean nothing without trust.”
- “Ethics is the heart of accounting. Without it, the number may add up, but the business falls apart.”
- “Ethics in accounting is like oxygen in the air – invisible, but essential. Without it, nothing survives for long.”



REVIEWING THE BASICS

- Who Determines What is “Ethical Behavior” for Tax Advisors?
 - Professional Standards
 - ABA Model Rules
 - State Bar Associations
 - AICPA
 - State Boards of Accountancy
 - Circular 230
 - Company Ethics Codes



REVIEWING THE BASICS

- ABA Model Rules of Professional Conduct
 - Preamble
 - General orientation
 - Rules
 - Authoritative
 - Comment
 - Guides to interpretation; explains meaning and purpose of the Rules
 - ABA website (americanbar.org) contains links with details and timeline regarding most recent Rule changes



REVIEWING THE BASICS

- August 2023 Amendment to Rule 1.6
 - Intended to help lawyers detect and avoid involvement in a client's criminal or fraudulent conduct.
 - Makes explicit the longstanding implicit duty of lawyer to inquire and assess facts and circumstances of a representation.
 - Particularly for new clients
 - Lawyer must conduct a reasonable risk-based inquiry
 - Not perfunctory
 - Not a dragnet style operation to uncover every fact about every client



REVIEWING THE BASICS

- State Bar Ethical Rules
 - States must adopt ABA Rules for them to take effect for practice in a State. Most do (including Illinois).
 - Illinois Rules are part of the Supreme Court Rules
 - Preamble
 - Rules
 - Comment
 - Online version available at Illinoiscourts.gov



REVIEWING THE BASICS

- The Illinois Rules cover a wide variety of topics – more than you might anticipate
 - Competence
 - Scope of Representation and allocation of authority between client and lawyer
 - Diligence
 - Communication
 - Fees
 - Confidentiality
 - Conflicts of Interest



REVIEWING THE BASICS

- Organization as client
- Client with diminished capacity
- Safekeeping of records
- Declining or terminating representation
- Sale of law practice
- Duties to prospective clients
- Fairness to opposing party and counsel
- Candor to Tribunal
- Advertising
- Bar registration
- Any many more!



REVIEWING THE BASICS

- AICPA Code of Professional Conduct
 - Principles
 - Ideal standards of ethical conduct
 - Foundation of Rules of Conduct
 - Aspirational and not legally enforceable
 - Rules of Conduct
 - Specific rules regarding minimum standards of ethical conduct
 - Enforceable applications of the Principles
 - Interpretations
 - AICPA Division of Professional Ethics rule interpretations
 - Not enforceable, but practitioner must justify a departure
 - Ethical Rulings
 - Published explanations and answers to questions about the Rules of Conduct
 - Not enforceable, but practitioner must justify a departure



REVIEWING THE BASICS

- Circular 230 Fundamentals
 - Attorneys, CPAs, enrolled agents, enrolled retirement plan agents, and tax return preparers are subject to Circular 230
 - The rules are, in part, aspirational (Sec. 10.33 (best practices))
 - Many of the rules establish standard of conduct in specific areas – competence, diligence as to accuracy, conflicts, contingent fees, discoveries of return errors, etc.
 - The rules are particularly pertinent for opinion practice (Sec. 10.37 (requirements for written advice))



REVIEWING THE BASICS

- Company Ethics Codes
 - Reflect organizational values by articulating principles and standards
 - Identify unacceptable conduct (behavior may be branded as “unethical” even if not unlawful)
 - Provide aspiration to employees and, through enforcement measures, protect integrity of the organization
 - Assist employees in identifying ethical issues and provide a framework for resolution



FRAMEWORK FOR ADDRESSING ETHICAL CONCERNS

- Personal Considerations
 - Vary across:
 - Cultural environment
 - Economic strata
 - Religious affiliations
 - Family structure
 - Community groups
 - Understanding of societal norms



FRAMEWORK FOR ADDRESSING ETHICAL CONCERNS

- When in doubt: Use the Ethics Checklist
 - When making decisions or following a directive, ask yourself:
 - Does my action comply with the spirit and letter of the law?
 - Is my behavior consistent with my organization's core values and ethical and professional standards?
 - Does my decision reflect the right thing to do?
 - Is my decision being driven by responsible professional judgment?
 - Am I confident that I could explain my decision if it were made public?



FRAMEWORK FOR ADDRESSING ETHICAL CONCERNS

- If the answer to any of these questions is “no,” or if you are not sure, then you need to get help. This includes situations where:
 - You are uncertain about the rules you are required to follow.
 - Differences of opinion make the course of action unclear.
 - Potential actions (or inaction) or decisions make you uncomfortable.



FRAMEWORK FOR ADDRESSING ETHICAL CONCERNS

- Rely on the governing rules.
 - They exist to protect you, as well as to guide your conduct.
- Take advantage of professional advice offered by your organization.



ETHICS AND AI

- ABA FORMAL OPINION 512 (July 29, 2024)
 - First formal opinion from the ABA Committee on Ethics & Professional Responsibility regarding the use of generative artificial intelligence (AI) in the practice of law.
 - Emphasizes that the use of AI triggers consideration of *existing* ABA rules, including competency, informed consent, confidentiality and fees.



ETHICS AND AI

- ABA Formal Opinion 512
 - Model Rule 1.1 (Competence)
 - Obligates lawyers to provide competent representation to clients and requires they exercise the “legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.”
 - Lawyers should understand “the benefits and risks associated” with the technologies used to deliver legal services to clients.



ETHICS AND AI

- ABA FORMAL OPINION 512
 - Model Rule 1.6 (Confidentiality)
 - Lawyers using AI must be cognizant of the duty to keep confidential all information relating to the representation of a client, regardless of its source, unless the client gives informed consent.



ETHICS AND AI

- ABA FORMAL OPINION 512
 - Model Rule 1.4 (Communication)
 - A lawyer has the duty to advise client promptly of any information that is important the client should receive.
 - Sub-rule 1.4(a)(2) is especially relevant for AI. It states that a lawyer shall “reasonably consult” with the client about the means by which the client’s objectives are to be accomplished.



ETHICS AND AI

- ABA FORMAL OPINION 512
 - Model Rule 1.5 (Fees)
 - A lawyer's fees and expenses must be reasonable.
 - If a lawyer uses an AI tool to draft a pleading and expends 15 minutes to input the relevant information into the program, the lawyer may charge for that time as well as for the time necessary to review the resulting draft for accuracy and completeness.
 - In most circumstances a lawyer may not charge a client for learning how to work an AI tool.



ETHICS AND AI – Illinois

- *Illinois Supreme Court Policy on Artificial Intelligence* (Effective Jan. 1, 2025):
- “The Illinois Courts will be vigilant against AI technologies that jeopardize due process, equal protection, or access to justice. Unsubstantiated or deliberately misleading AI generated content that perpetuates bias, prejudices litigants, or obscures truth-finding and decision-making will not be tolerated.”
- “The use of AI by litigants, attorneys, [and court personnel] may be expected, should not be discouraged, and is authorized provided it complies with legal and ethical standards. Disclosure of AI use should not be required in a pleading.”
- “The Rules of Professional Conduct and the Code of Judicial Conduct apply fully to the use of AI technologies. Attorneys, judges, and self-represented litigants are accountable for their final work product. All users must thoroughly review AI-generated content before submitting it in any court proceeding to ensure accuracy and compliance with legal and ethical obligations. Prior to employing any technology, including generative AI applications, users must understand both general AI capabilities and the specific tools being utilized.”



ETHICS AND AI – Other States

- California (*Practical Guidance for the Use of Generative Artificial Intelligence in the Practice of Law*) 11/16/23
- Florida (*Ethics Opinion 24-1*) (1/19/24), followed by amendments to Rules 4-1.1, 4-1.6, 4-5.1, and 4-5.3 on 8/29/24
- New Jersey (*Preliminary Guidelines on the Use of Artificial Intelligence by New Jersey Lawyers*) 1/24/24
- New York (*Report and Recommendations of the New York State Bar Ass'n Task Force on Artificial Intelligence*) 4/6/24



ETHICS AND AI – Other States

- District of Columbia (Ethics Opinion 388, *Attorneys' Use of Generative Artificial Intelligence in Client Matters*) April 2024
- Pennsylvania (Joint Formal Opinion 2024-200, *Ethical Issues Regarding the Uses of Artificial Intelligence*) May/June 2024
- Michigan (Ethics Opinion JI-155) 10/27/23
- Kentucky (Ethics Opinion KBA-E457) 3/15/24
- Other states have exploratory committees examining these issues



ETHICS AND AI - AICPA

- No formal binding AICPA rules yet, but the AICPA provides resources and collaborations aimed at aligning AI use with ethics and standards.
 - As with ABA, many of the existing ethical/professional standards apply, including:
 - Confidentiality
 - Integrity, Objectivity, Due Care, Competence
 - Quality of work product



ETHICS AND AI – Practical Advice

1. Track how AI is being used in your organization.
2. Identify the client data/confidential info that may flow into usage.
3. Develop a written policy for AI usage.
4. Train staff about the ethical and legal risks of AI tools.
5. Where feasible, inform or get consent from clients when AI tools will be used – especially if usage involved confidential data.
6. Maintain oversight: review AI outputs, monitor for errors/bias.
7. Keep current on new developments and amend policies as necessary.



ETHICAL SCENARIOS

- This presentation will run through a series of ethical scenarios and provide the audience an opportunity to put their ethics knowledge to the test



SCENARIO #1

- Matthew represents Chicago Corp. and verbally negotiates a settlement between Chicago Corp. and the Illinois DOR for unpaid ROT. Chicago Corp. and the Illinois DOR agree to settle for 45% of the proposed assessment, but the Illinois DOR mistyped the draft closing agreement to reflect a settlement that is 30% of the proposed assessment.
- Can Matthew encourage Chicago Corp. to sign the agreement given the advantageous drafting error?



SCENARIO #1 - ANSWER

- No. Matthew may not assist Chicago Corp. in taking advantage of the Illinois DOR's drafting error.
- MRPC 1.2(d). "A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent."



SCENARIO #2

- Mark is a CPA. He is running very behind on completing tax returns for his clients with October 15 deadlines.
- To ensure he meets the deadline, he uses AI to review his work for errors, rather than checking it himself.
- It turns out that several returns were filed incorrectly and Mark's clients are very upset. Mark reaches out to the IRS to correct them past the deadline, claiming that AI is responsible for the inaccurate returns.
- Is the IRS likely to have sympathy for Mark's mistake?



SCENARIO #2 - ANSWER

- No. Mark is ultimately responsible for the accuracy of his client's returns.
- Circular 230 § 10.35 - Competence
- A practitioner must possess the necessary competence to engage in practice before the Internal Revenue Service. Competent practice requires the appropriate level of knowledge, skill, thoroughness, and preparation necessary for the matter for which the practitioner is engaged. A practitioner may become competent for the matter for which the practitioner has been engaged through various methods, such as consulting with experts in the relevant area or studying the relevant law.



SCENARIO #3

- Kristin is a CPA at a big accounting firm. She discovers that Dogs Inc. has made a serious error or omission in a prior year tax return.
- Dogs Inc. has made it clear they aren't concerned with the accuracy of their tax filings. They just want them to be done.
- What must Kristin do?



SCENARIO #3 - ANSWER

- Kristin must advise Dogs Inc. of the fact of the error or omission and of the consequences of the error or omission. Circular 230, §10.21.
- Circular 230 does not impose an affirmative duty on tax practitioners to fix the error.



SCENARIO #4

- Carla is a lawyer practicing at a boutique law firm. Given the attention being paid to AI, Carla has decided that she wants to implement an AI tool at her law firm.
- After researching different programs, Carla decides to implement Chat KSJ, an open source AI program that is used widely across various industries, at her firm for contract review and to prepare draft letters to clients. Carla calls a Chat KSJ rep and signs up after watching a full demonstration and walkthrough.
- Was Carla's conduct proper?



SCENARIO #4 - ANSWER

- Yes.
- ABA Formal Opinion 512 (issued July 29, 2024) addresses the obligations that a practitioner must undertake when venturing into the world of AI. Specifically, Opinion 512 notes that attorneys **MUST** consider the ethical application of AI tools, but there is no mandate to utilize such tools.
- The general underpinning of using AI are the duty of competence under MRPC 1.1, which Carla has done here by vetting the program.
- A lawyer need not become an expert, but must gain reasonable understanding and knowledge, through self study, association or consultation with experts. “even in the absence of an expectation for lawyers to use GAI tools as a matter of course, lawyers should become aware of the GAI tools relevant to their work so that they can make an informed decision, as a matter of professional judgment, whether to avail themselves of these tools or to conduct their work by other means.”



SCENARIO #5

- Eric is a keen user of social media for the advancement and advertisement of his practice. Eric keeps his social media platforms up-to-date with the latest law changes and developments that are relevant to his practice.
- After a highly publicized trial and a verdict in his favor, Eric posts a description of the case, a link to a news article, and a copy of the published opinion to all his social media sites.
- Is Eric's conduct proper?



SCENARIO #5 - ANSWER

- No
- ABA Formal Opinion 511 & 511R (May 8, 2024) holds that disclosure of client confidential information, even if such information is public, is prohibited, without the client's informed consent.
- ABA Formal Opinion 480 (March 6, 2018) indicates that "Lawyers who blog or engage in other public commentary may not reveal information relating to a representation, including information contained in a public record, unless authorized by a provision of the Model Rules."
- ABA Model Rule 1.6(a) provides that, "a lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation or the disclosure is permitted by paragraph (b)." Comment [2] emphasizes "[a] fundamental principle in the client-lawyer relationship is that, in the absence of the client's informed consent, the lawyer must not reveal information relating to the representation." Comment [3] clarifies that this rule "applies not only to matters communicated in confidence by the client but also to all information relating to the representation, whatever its source."



SCENARIO #6

- Samantha, a partner at her law firm, asks Joseph, a new associate at the firm, to put together a memo concerning the tax treatment of a complicated tax issue for a client.
- Joseph does not know the area of tax at issue, or anything about tax at all.
- To save time, Joseph asks his firm's AI program to research the issue. Without doing any other research, he puts together a memo solely based on the conclusions AI gave him, which were very detailed and relied on caselaw.
- Has Joseph acted properly?



SCENARIO #6 - ANSWER

- No. Joseph should have confirmed AI's references to caselaw and verified that it provided accurate information.
- Model Rule 1.1 (Competence)
- Obligates lawyers to provide competent representation to clients and requires they exercise the "legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation."
- Lawyers should understand "the benefits and risks associated" with the technologies used to deliver legal services to clients.



SCENARIO #6 - ANSWER

- Circular 230 § 10.35 - Competence
- A practitioner must possess the necessary competence to engage in practice before the Internal Revenue Service. Competent practice requires the appropriate level of knowledge, skill, thoroughness, and preparation necessary for the matter for which the practitioner is engaged. A practitioner may become competent for the matter for which the practitioner has been engaged through various methods, such as consulting with experts in the relevant area or studying the relevant law.



SCENARIO #7

- Let's pretend Joseph did confirm AI's conclusions and drafted the memo in accordance with professional responsibility rules.
- Unfortunately, the results of Joseph's research puts the client at a big disadvantage. When Joseph presents this information to Samatha, she is very upset because she already told the client the conclusions will be in their favor.
- Must Samatha disclose these findings to the client?



SCENARIO #7 - ANSWER

- Yes
- Samatha should inform the client of the limitations of its case.
- ABA FORMAL OPINION 512
 - Model Rule 1.4 (Communication)
 - A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation..
 - Sub-rule 1.4(a)(2) is especially relevant for AI. It states that a lawyer shall “reasonably consult” with the client about the means by which the client’s objectives are to be accomplished.



SCENARIO #8

- XYZ Inc. is a current client of John, a prestigious SALT partner with experience litigating tax issues. XYZ Inc. asks John if he can advise on XYZ Inc.'s highly questionable scheme to avoid paying corporate income tax in several states, including Indiana. John does not agree to advise XYZ Inc. on such an unethical plan.
- John is good friends with Andrew, the head of the IN Department of Revenue. Can John give Andrew a heads up on XYZ Inc.'s plan?



SCENARIO #8 - ANSWER

- No. While XYZ Inc.'s plan might be disingenuous, XYZ Inc. is not acting criminally or fraudulently.
- ABA Model Rule 1.6: (a) A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent or the disclosure is impliedly authorized in order to carry out the representation.
- Amendment to Rule 1.6
- Intended to help lawyers detect and avoid involvement in a client's criminal or fraudulent conduct.
- Makes explicit the longstanding implicit duty of lawyer to inquire and assess facts and circumstances of a representation.



SCENARIO #9

- Susan, an associate at a law firm with a lot on her plate, often uses AI to create a first draft of her assignments. Susan always reviews the AI deliverable for accuracy and makes edits when necessary.
- The law firm has a very high billable hour requirement, and instead of billing the actual time Susan spent on the assignment using AI, she bills additional time to represent what it would have taken her if not for AI.
- Are Susan's billing practices ethical?



SCENARIO #9 - ANSWER

- No. Susan should only bill the time it actually took her to complete the work.
- ABA FORMAL OPINION 512
 - Model Rule 1.5 (Fees)
 - A lawyer's fees and expenses must be reasonable.
 - If a lawyer uses an AI tool to draft a pleading and expends 15 minutes to input the relevant information into the program, the lawyer may charge for that time as well as for the time necessary to review the resulting draft for accuracy and completeness.
 - Generally, a lawyer may not charge a client for learning how to work an AI tool.



SCENARIO #10

- Simone is in-house tax counsel at Scooter Co. and is asked to review the tax consequences of a transaction. Scooter Co. would like to take a position on a tax return, but there are a few court cases that have disallowed the position based on the factual details of the case.
- Simone believes that Scooter Co.'s facts are distinguishable from the unhelpful cases.
- Can Simone advise Scooter Co. to take the position and that Simone will represent them in court if challenged?



SCENARIO #10 - ANSWER

- Yes, if Simone believes that the law reasonably supports the position.
- ABA Model Rule 3.1, Meritorious Claims. A lawyer shall not bring or defend a proceeding or assert an issue therein unless there is a basis in law and fact for doing so that is not frivolous, which includes a good faith argument for a reversal of existing law.



Presenters

David Hughes
dhughes@ktslaw.com
(312) 606-3212
Kilpatrick Townsend & Stockton

Mary Kay Martire
mmartire@mwe.com
(312) 984-2096
McDermott Will & Schulte