



Ethics, A.I., & Compliance

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Lawyers have a duty to supervise human and non-human systems (like human staff?)

M.R. Prof. Conduct 5.1 & 5.2 (*as to humans*):

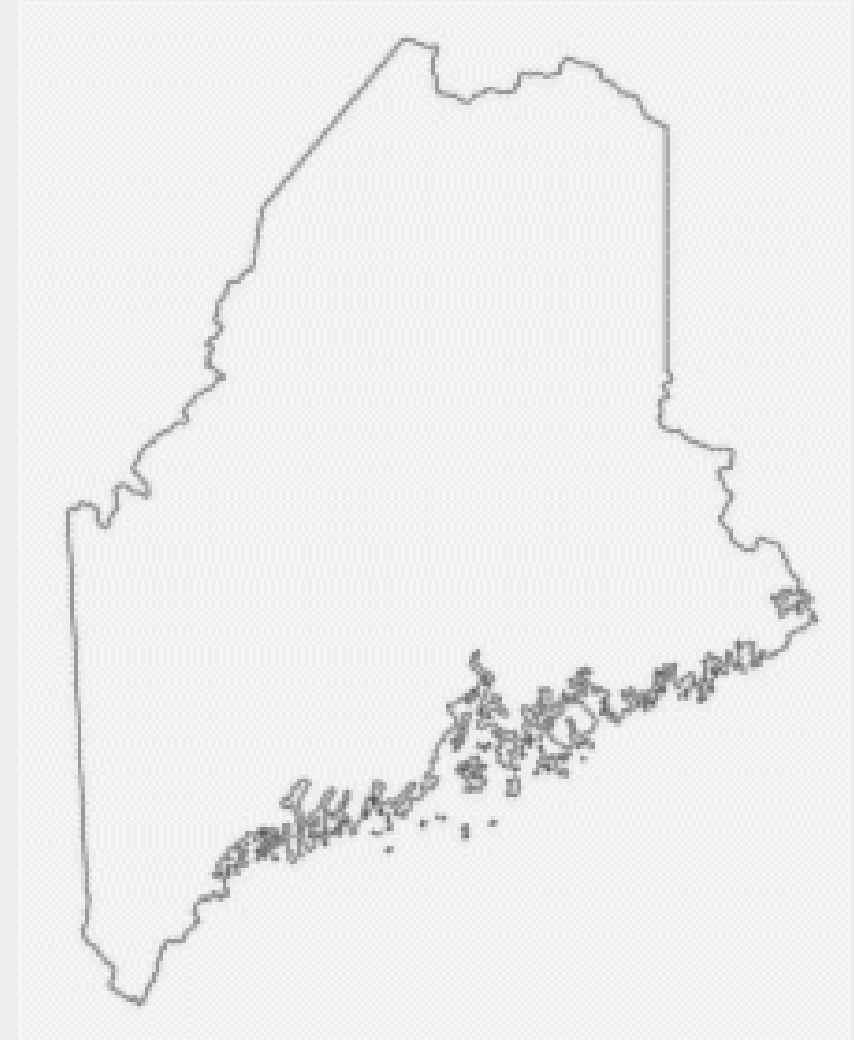
A lawyer who individually [or otherwise] possesses comparable managerial authority... SHALL make reasonable efforts to ensure that the firm has in effect measure giving reasonable assurance that all lawyers in the firm confirm the M.R. Prof. Conduct; and a lawyer is bound by the M.R. Prof. Conduct notwithstanding that the lawyer acted at the direction of another person.





Lawyers have a duty to supervise human and non-human systems (like human staff?)

Under IRS Circular 230, the human (like a lawyer or his, her, or their staff) behind a generative AI cannot hallucinate a deduction or misinterpret tax code and avoid liability.





Lawyers have a duty to supervise human and non-human systems (like human staff?)

M.R. Prof. Conduct 5.3, Responsibilities Regarding Nonlawyer Assistants (as to AI, not just staff?):

With respect to a non-lawyer employed or retained by or associated with a lawyer, ...a lawyer who individually [or otherwise] possess comparable managerial authority in a law firm shall make reasonable efforts to ensure that the firm has in effect measure giving reasonable assurance that the person's conduct is compatible with the professional obligations of the lawyer...





Question #1

She was Maine's first female Supreme Court Justice

- A. Leigh Saufley
- B. Caroline Glassman
- C. Valerie Stanfill
- D. Susan Caulkins



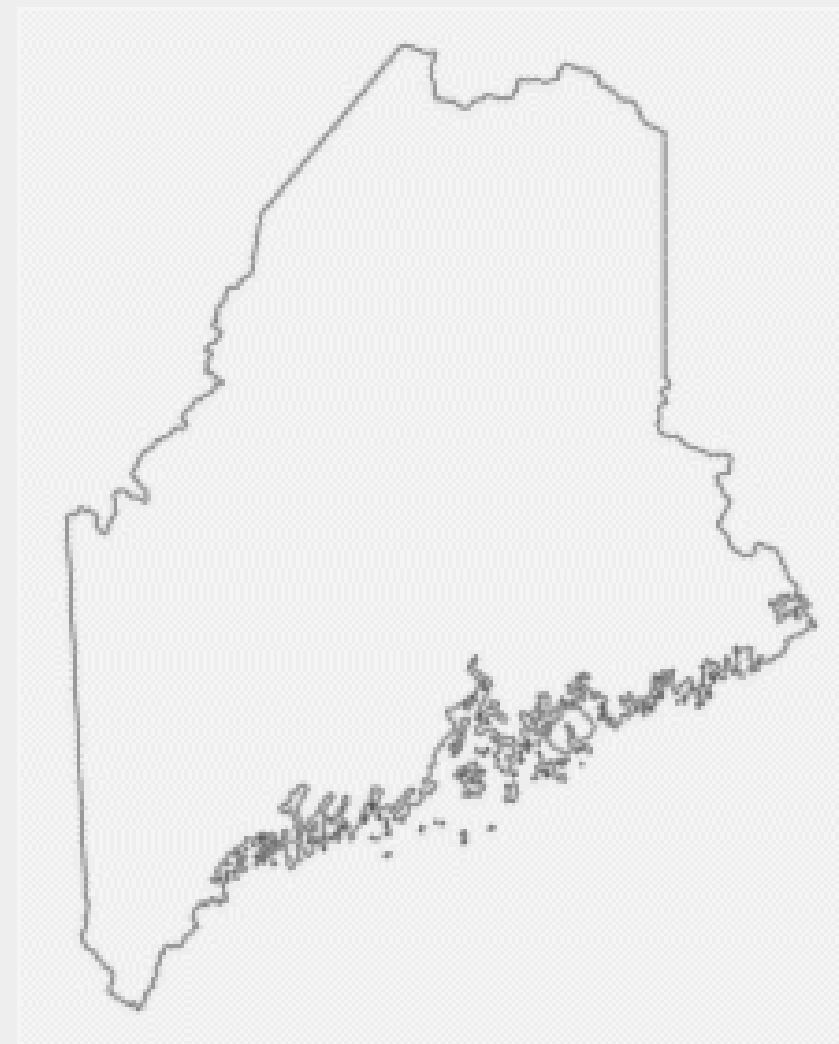


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Subpart B, Sec. 34 Document Standards and Sec. 35 Competence ...

M.R. Prof. Conduct 1.1:

A lawyer SHALL provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for [it]. See Comments {1}, {5}, and {6}.





Lawyers have a duty to supervise human and non-human systems (like human staff?)

In fact, lawyers would be wise to avoid putting confidential client data into public large language models (LLMs).

See M.R. Prof. Conduct 1.6 etc. – A lawyer SHALL not reveal confidences or secrets unless client gives informed consent, lawyer reasonably believes disclosure is authorized, or disclosure permitted [under one of seven permissible exceptions]





Lawyers have a duty to supervise human and non-human systems (like human staff?)

The IRS may scrutinize tax-exempt organizations and tax shelters, so lawyers review whether conflicts arise when advising clients, especially ones where new agency offices have opened to review them.

See also M.R. Prof. Conduct 1.2(e) - a lawyer shall NOT counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent (but may discuss legal consequences and counsel a client to make a good faith effort in determine the application of a law)

M.R. Prof. Conduct 1.7(a)(2) - a lawyer shall NOT represent a client if the representation involves a concurrent conflict of interest, which can exist if there is a significant risk that the representation of a client would be materially limited by a personal interest of the lawyer.





Lawyers have a duty to supervise human and non-human systems (like human staff?)

Further, ethical and legal penalties increase for failing to safeguard taxpayer data or inadvertently disclosing return information.

M.R. Prof. Conduct 1.6 (Confidentiality - again), and even 1.4 (Communication) - a lawyer SHALL promptly inform the client of any circumstance with respect to which the client's informed consent is required by these Rules etc.)

Also, consider federal laws on sensitive information (like HIPAA), and the escalating rise of identity theft (see below, too)...





Question #2



What are the Maine Ethics Rules called?

- A. Chicken Soup for the Ethics Soul
- B. Maine Bar Rules
- C. You Can Go Your Own Way
- D. Maine Rules of Professional Conduct





MRPC 1.13 Organization as a Client



Rule 1.13 Organization as Client

- (a) A lawyer employed or retained by an organization represents the organization acting through its duly authorized constituents.
- (b) If a lawyer for an organization knows that an officer, employee or other person associated with the organization is engaged in action, intends to act or refuses to act in a matter related to the representation that is a violation of a legal obligation to the organization, or a violation of law that reasonably might be imputed to the organization, and is likely to result in substantial injury to the organization, the lawyer shall proceed as is reasonably necessary in the best interest of the organization.





Rule 1.13 Organization as Client

(b) (continued, part 2) In determining how to proceed, the lawyer shall give due consideration to the seriousness of the violation and its consequences, the scope and nature of the lawyer's representation, the responsibility in the organization and the apparent motivation of the person involved, the policies of the organization concerning such matters, and any other relevant considerations.





Rule 1.13 Organization as Client

(b) (continued, part 3) Any measures taken shall be designed to minimize disruption of the organization and the risk of revealing confidences and secrets to persons outside the organization. Such measures may include among others: (1) asking reconsideration of the matter; (2) advising that a separate legal opinion on the matter be sought for presentation to appropriate authority in the organization; and (3) referring the matter to higher authority in the organization, including, if warranted by the seriousness of the matter, referral to the highest authority that can act in behalf of the organization as determined by applicable law.





Rule 1.13 Organization as Client

(c) Except as provided in paragraph (d), if (1) despite the lawyer's efforts in accordance with paragraph (b) the highest authority that can act on behalf of the organization insists upon action, or a refusal to act, that is clearly a violation of law, and (2) likely to result in substantial injury to the organization, the lawyer may resign in accordance with Rule 1.16 and make such disclosures as are consistent with Rule 1.6, Rule 3.3, Rule 4.1 and Rule 8.3, but only to the extent the lawyer reasonably believes necessary to prevent substantial injury to the organization.





Rule 1.13 Organization as Client

(d) Paragraph (c) shall not apply with respect to information relating to a lawyer's representation of an organization to investigate an alleged violation of law, or to defend the organization or an officer, employee or other constituent associated with the organization against a claim arising out of an alleged violation of law.

(e) In dealing with an organization's directors, officers, employees, members, shareholders or other constituents, a lawyer shall explain the identity of the client as the organization when the lawyer knows or reasonably should know that the organization's interests may be adverse to those of the constituents with whom the lawyer is dealing.





Rule 1.13 Organization as Client

(f) A lawyer representing an organization may also represent any of its directors, officers, employees, members, shareholders or other constituents, subject to the provisions of Rule 1.7. If the organization's consent to the dual representation is required by Rule 1.7, the consent shall be given by an appropriate official of the organization other than the individual who is to be represented, or by the shareholders.

(g) A lawyer who acts contrary to this Rule but in conformity with promulgated federal law shall not be subject to discipline under this Rule, regardless whether such federal law is validly promulgated.





Question #3

This is the number of CLE hours every Maine Attorney must earn per calendar year?

- A. 15
- B. 13
- C. 12
- D. 10





PEC Formal Opinion #220



Formal Opinion #220

When we choose tech to provide legal services, then the tech must serve the clients and not dis-serve them.

The above applies both before and after a third-party (vendor) uses the tech for their own gains or interests.

The professional must know what the tech does, what it does not do, and how to use it safely.

If someone defeats your informed efforts to keep info safe, then you use reasonable efforts to stop or contain the attack or breach, investigate whether another accessed the data, decide whether client representation may have been affected, and promptly tell current and former clients.

www.mebaroverseers.org





Ethics help line

207-623-1122

**Monday, Wednesday and Friday
11:00 a.m. to 3:00 p.m.**





Questions?

Thank you.



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