What Web3 Means For Lawyers' Ethical Duties

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By Heidi Froeststad Kuehl

Evolving technologies are one of the greatest issues of our time and continue to affect legal practice at a rapid rate, exponentially changing the structure of law firms and traditional practice.

Cryptocurrency laws and regulations that are emerging in the European Union and the U.S., and the implications of the metaverse as a forum for legal practice and business, are going to be burgeoning in the next three to five years.[1]

Lawyers have a duty under the American Bar Association's Model Rule of Professional Conduct 1.1, Comment 8, to "keep abreast of changes in the law and its practice, including the benefits and risks associated with relevant technology."[2] This rule was broadly written to include any future technologies that might be necessary for the innovative practice of law after its adoption.[3]

Certainly, important issues like cybersecurity, artificial intelligence, electronically stored information, e-discovery, and now the new Web3 technologies, including cryptocurrency and metaverse practice, could be encompassed by this rule. As a result, attorneys will need to know the risks and benefits associated with the use of these technologies in a variety of legal settings.

Attorneys will also need to keep abreast of cryptocurrency and other Web3-related laws and regulations in the U.S. and abroad, diligently monitoring legislative and regulatory initiatives that will affect their areas of practice.

As the Web3 landscape becomes more sophisticated with widespread use, the legal profession will have to adapt and become ready to evolve into a more tech-savvy group of professionals with the ability to proactively plan for integration into preexisting practices.

Indeed, some law firms have already opened offices in the metaverse, and other firms are creating separate departments for expanded technological practice for clients who demand Web3 services, such as cryptocurrency and bitcoin use and advice on the future of tech-savvy transactions.[4]

Law firms are beginning to invest in metaverse departments and are hiring those with Web3 skill sets and knowledge of sophisticated legal technology.[5] Law firms are also beginning to accept cryptocurrency as payment for legal fees.[6]

With the burgeoning use of these technologies, lawyers must also have knowledge of the risks, including regulatory structures, related to such technologies.[7] Web3 technologies certainly will have benefits for clients that have embraced the metaverse and cryptocurrency, but attorneys are required to appropriately advise their clients of the benefits and risks of these technologies under Rule 1.1, Comment 8.[8]

The current standards for regulating Web3 are murky, but that will likely change soon. The EU recently passed landmark rules to prevent illegal use of unregistered cryptocurrency as part of anti-money laundering regulation, and the U.S. will surely follow.[9]
In the U.S., two competing cryptocurrency bills are vying for passage in the current congressional session, including the Digital Commodities Consumer Protection Act, which would shift oversight of digital assets like cryptocurrency from the U.S. Securities and Exchange Commission to the U.S. Commodity Futures Trading Commission, and the Lummis-Gillibrand Responsible Financial Innovation Act, which would leave definitions of digital assets mainly to the courts and the SEC.[10]

Many states also have pending or recently passed regulations to guide the use of cryptocurrency in commerce and business. For example, a bill recently passed in Oklahoma defines virtual currency and regulates the use of cryptocurrency and other technologies throughout the state.[11]

The debate over cryptocurrency legislation in the U.S., especially, has been robust.[12] Current and future state laws, such as those regulating the use of cryptocurrency in legal practice, are sure to have definite impacts on our profession.[13]

The SEC is currently the main enforcement mechanism for cryptocurrency in the United States.[14] There were 19 cryptocurrency-related enforcement actions by the SEC in the first nine months of 2021 alone, and the agency has prosecuted others more recently, including Kim Kardashian, who this month was fined $1.26 million over cryptocurrency promotions.[15]

The SEC rules provide for registration of cryptocurrency in the U.S., so attorneys must take heed of the risks associated with such currencies and follow the federal and state norms.[16]

The IRS, in coordination with the Office of the Comptroller of Currency and the Financial Crimes Enforcement Network under the umbrella of the U.S. Department of the Treasury, is investigating possible tax evasion schemes and other nefarious conduct connected to the use of cryptocurrencies.[17] The IRS is also calling for stricter standards for reporting cryptocurrency use, including reporting any transfers over $10,000.[18]

Litigation involving non-fungible tokens and use of an artist's or celebrity's image in an NFT also raises new copyright and right of publicity questions for Web3.[19] Certainly, the use of cryptocurrency in the legal industry for transactions such as bill payments, client investments and payments in the metaverse raises a host of new legal and regulatory questions.[20]

Congress and agencies are sure to refine the laws applicable to Web3 transactions soon, as mentioned above, but current congressional and news commentary reveals a certain amount of risk that is akin to a legal Wild West for cryptocurrencies in the U.S. and abroad.

Metaverse lawyering is still emerging in certain jurisdictions in the United States and will also be sure to expand in the next few years.[21] Attorneys will need to grapple with the current lack of laws and regulations in the metaverse and aid the development of standards in this area of innovative practice.[22] Right now, the metaverse law firm or legal department is more obscure, like cryptocurrency or AI were five years ago in their infancy while intersecting with the law.[23]

More forward-thinking and technologically savvy law firms continue to adapt more quickly to these modern legal trends. This will affect corporate and business law firms first and then other legal departments will have expanding cryptocurrency implications based on litigation and enforcement.
The future may not be completely known in this metaverse realm, but law firms will need to evolve and will need to advance to keep up with these burgeoning areas of technology in business law and practice.

To come full circle, though, the ethical rules and technological competence obligations for lawyers under Rule 1.1, Comment 8, stay the same with broader Web3 scope: Lawyers will still have a duty to understand and stay current with new technologies to appropriately glean the risks and benefits of those technologies as they emerge in the next decade.[24]

It will certainly be more challenging, though, as the very nature of a law firm's corporate or commercial practice will be affected in novel ways by the intersection of law and Web3 technologies.

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[7] ABA Model Rules of Professional Conduct, Rule 1.1, Comment 8, https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_1_1_competence/comment_on_rule_1_1/.

[8] Id.


(2021-2022), [https://www.congress.gov/search?q=%7B%22source%22%3A%22legislation%22%2C%22search%22%3A%22cryptocurrency+%22%2C%22congress%22%3A%22%3A117%7D](https://www.congress.gov/search?q=%7B%22source%22%3A%22legislation%22%2C%22search%22%3A%22cryptocurrency+%22%2C%22congress%22%3A%22%3A117%7D).


[23] Id.
[24] ABA Model Rules of Professional Conduct, Rule 1.1, Comment 8, https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_1_1_competence/comment_on_rule_1_1/.