

Legal Representation and the Metaverse: The Ethics of Practicing in Multiple Realities

Madeline Brom
DePaul University College of Law

Follow this and additional works at: <https://via.library.depaul.edu/bclj>



Part of the Administrative Law Commons, Antitrust and Trade Regulation Commons, Banking and Finance Law Commons, Business Organizations Law Commons, Civil Law Commons, Commercial Law Commons, Comparative and Foreign Law Commons, Computer Law Commons, Conflict of Laws Commons, Constitutional Law Commons, Consumer Protection Law Commons, Contracts Commons, Dispute Resolution and Arbitration Commons, First Amendment Commons, Government Contracts Commons, Human Rights Law Commons, Intellectual Property Law Commons, International Law Commons, International Trade Law Commons, Internet Law Commons, Law and Economics Commons, Law and Politics Commons, Law and Psychology Commons, Legal Ethics and Professional Responsibility Commons, Legal Profession Commons, Organizations Law Commons, Property Law and Real Estate Commons, Secured Transactions Commons, Securities Law Commons, State and Local Government Law Commons, Supreme Court of the United States Commons, Taxation-Federal Commons, Taxation-Federal Estate and Gift Commons, Taxation-State and Local Commons, Taxation-Transnational Commons, and the Tax Law Commons

Recommended Citation

Madeline Brom, *Legal Representation and the Metaverse: The Ethics of Practicing in Multiple Realities*, 21 DePaul Bus. & Com. L.J. (2023)
Available at: <https://via.library.depaul.edu/bclj/vol21/iss2/5>

This Note is brought to you for free and open access by the College of Law at Digital Commons@DePaul. It has been accepted for inclusion in DePaul Business & Commercial Law Journal by an authorized editor of Digital Commons@DePaul. For more information, please contact digitalservices@depaul.edu.

Legal Representation and the Metaverse: The Ethics of Practicing in Multiple Realities

Madeline Brom*

I. INTRODUCTION.....	126
II. MODEL RULES OF PROFESSIONAL CONDUCT: WHICH RULES APPLY TO THE METAVERSE?	127
A. <i>Model Rules of Professional Conduct 1.1</i>	127
B. <i>Model Rules of Professional Conduct 1.3</i>	128
C. <i>Model Rules of Professional Conduct 1.4</i>	129
D. <i>Model Rules of Professional Conduct 1.6</i>	130
E. <i>Model Rules of Professional Conduct 1.7</i>	131
F. <i>Model Rules of Professional Conduct 1.14</i>	131
G. <i>Model Rules of Professional Conduct 1.15</i>	132
H. <i>Model Rules of Professional Conduct 5.1</i>	132
I. <i>Model Rules of Professional Conduct 5.3</i>	133
J. <i>Model Rules of Professional Conduct 5.5</i>	133
III. THE IMPACT OF METAVERSE TECHNOLOGY ON THE LEGAL PROFESSION	134
A. <i>How the Development of the Metaverse Could Change the Way Legal Services are Provided and Delivered</i>	134
B. <i>The Potential Benefits and Drawbacks of Using Metaverse Technology in the Practice of Law</i>	135
C. <i>How the Legal Profession May Need to Adapt to These Changes</i>	137
IV. THE EVOLVING AND GROWING METAVERSE AND ITS IMPACT ON FUTURE LEGAL PRACTICE.....	138
A. <i>Implications of Changes for the Legal Profession and Legal Ethics</i>	140
V. HOW CAN LAWYERS PREPARE FOR FUTURE LEGAL PRACTICE IN THE METAVERSE?.....	141
VI. CONCLUSION	143

* J.D. Candidate 2023, DePaul University College of Law; Publication Editor, DEPAUL BUSINESS & COMMERCIAL LAW JOURNAL.

I. INTRODUCTION

The term “metaverse” was first coined in Neal Stephenson’s 1992 novel *Snow Crash*. It refers to a fully immersive virtual world where users can interact with each other and digital objects in real-time.¹ With the accelerating popularity of virtual and augmented reality technologies, the metaverse is becoming an increasingly relevant space for businesses, social interactions, and entertainment. This, in turn, provides and will continue to provide numerous opportunities to practice law. As the metaverse expands, legal issues are arising in areas, including but not limited to, intellectual property, privacy, and contract law.² The involvement of lawyers in the metaverse raises a host of ethical considerations that must be addressed when advising clients in this digital realm. Practicing law in the metaverse requires lawyers to uphold the same ethical principles that govern legal practice in the physical world, while at the same time navigating the unique challenges posed by the metaverse.

The American Bar Association’s Model Rules of Professional Conduct (MRPC or Model Rules) provide a useful framework for lawyers practicing in the metaverse. In short, the Model Rules require lawyers to maintain confidentiality,³ avoid conflicts of interest,⁴ provide competent representation,⁵ and act in the best interests of their clients.⁶ With careful consideration and adherence to ethical principles, lawyers can provide their clients with effective and ethical legal representation in the metaverse.

The American Bar Association last updated the commentary of several of the major Model Rules to address the increased use of technology in the legal field in 2012.⁷ However, there is currently little guidance on how Model Rules would apply to the regulation of lawyers in the metaverse. Moreover, the Model Rules have not yet been directly amended to account for the new trend of lawyers and firms practicing between virtual and physical reality.⁸ This note will analyze some of the core current Model Rules as applied to legal representa-

1. Neal Stephenson, *Snow Crash* (Bantam Books 1992).

2. Sarah Blair and Mark Stapleton, *Exploring the Metaverse*, DLA Piper (February 2022), <https://www.dlapiper.com/en/insights/publications/2022/02/exploring-the-metaverse/>.

3. American Bar Association, Model Rules of Professional Conduct R. 1.6 (2021).

4. American Bar Association, Model Rules of Professional Conduct R. 1.7 (2021).

5. American Bar Association, Model Rules of Professional Conduct R. 1.1 (2021).

6. American Bar Association, Model Rules of Professional Conduct R. 1.3 (2021).

7. Mark McCreary, *The Metaverse for the Risk-Averse: Legal Ethics in the Virtual World, Part I*, Fox Rothschild LLP (May 13, 2021), <https://www.foxrothschild.com/publications/the-metaverse-for-the-risk-averse-legal-ethics-in-the-virtual-world-part-i/>.

8. *Id.*

tion trends in the metaverse while exploring opportunities for attorneys to adjust and expand their practice by these trends. Model Rules that can be construed to apply to legal representation in the metaverse will be addressed first, followed by rules that should be considered as digital representation becomes more common. Comments and suggestions on how law firms can adapt to representation in the metaverse will then be discussed.

This note explores the topic of legal representation within the metaverse. To provide a comprehensive analysis, Part II delves into the Model Rules while Part III concentrates on the potential impact of metaverse development, which may necessitate changes to the Model Rules. Part IV discusses the ethical considerations of applying the Model Rules in the metaverse and opportunities for attorneys to adapt and broaden their practice. Finally, Part V concludes by highlighting how the growth of the metaverse could revolutionize the provision and delivery of legal services, along with the ethical rules that apply to them.

II. MODEL RULES OF PROFESSIONAL CONDUCT: WHICH RULES APPLY TO THE METAVERSE?

The Model Rules are intended to be a model for state regulators of the legal profession.⁹ Accordingly, all fifty states and the District of Columbia adopt legal ethics rules based on the MRPC.¹⁰ As the potential for legal representation via the metaverse is increasingly recognized and seldom updates made to the Model Rules regarding the use of technology, these rules must be reviewed and applied to the platform to protect attorneys, clients, and maximize ethical virtual practice.

A. *Model Rules of Professional Conduct 1.1*

Model Rule of Professional Conduct 1.1 asserts that a lawyer shall provide competent representation to a client.¹¹ The standards outlined in Rule 1.1 can also be construed to apply to virtual practice.¹² To garner and maintain this competency, Comment 8 to Rule 1.1 ex-

9. Kutak Rock LLP, The Kutak Commission, Kutak Rock LLP (accessed Apr. 1, 2023), <https://www.kutakrock.com/general-content/the-kutak-commission>.

10. American Bar Association, Model Rules of Professional Conduct, Alphabetical List of States Adopting Model Rules, American Bar Association (accessed Apr. 1, 2023), https://www.americanbar.org/groups45/professional_responsibility/publications/model_rules_of_professional_conduct/alpha_list_state_adopting_model_rules/.

11. American Bar Association, Model Rules of Professional Conduct R. 1.1 (2021).

12. *Id.*

plains, “a lawyer should keep abreast of changes in the law and its practice, including the benefits and risks associated with relevant technology, engage in continuing study and education, and comply with all continuing legal education requirements to which the lawyer is subject.”¹³ Accordingly, lawyers must now be expected to become familiar with the relevant technological tools and platforms used in the metaverse and must ensure that they have the knowledge and skills necessary to provide effective representation to their clients. The metaverse poses challenges for lawyers concerning professional responsibility and competence.

As the metaverse is a new and rapidly evolving space, lawyers will face unprecedented legal issues. According to Comment 1 to Rule 1.1, lawyers should assess their requisite knowledge and skills in a particular matter by considering the specialized nature, their general experience and training, and the amount of preparation they can dedicate to the matter.¹⁴ This comment can be construed to require lawyers who hope to practice in the metaverse to stay updated on the latest developments in the metaverse and ensure that they have the necessary skills and knowledge to provide effective legal representation in virtual realities.

For the legal profession to fully realized the potential of the metaverse, it is crucial for lawyers to stay up to date with the latest developments in metaverse technology and embrace new technologies and tools as they become available. As technology advances, lawyers may need to become proficient in using virtual reality tools and other technologies to effectively represent clients in the metaverse.

B. *Model Rules of Professional Conduct 1.3*

Rule 1.3 of the Model Rules of Professional Conduct finds that a lawyer shall act with reasonable diligence and promptness in representing a client.¹⁵ Comment 1 of Rule 1.3, finds that a lawyer must take whatever lawful and ethical measures are required to vindicate a client’s cause or endeavor regardless of the opposition, obstruction, or personal inconvenience to the lawyer.¹⁶ The application of Rule 1.3 to representation in the metaverse seems beneficial. While judicial proceedings are commonly lengthy due to varying factors in and outside of attorney control the use of the metaverse presents the opportunity to speed things up. On February 15th of 2023, Colombia’s Magdalena

13. American Bar Association, Model Rules of Professional Conduct R. 1.1 cmt. 8 (2021).

14. American Bar Association, Model Rules of Professional Conduct R. 1.1 cmt. 1 (2021).

15. American Bar Association, Model Rules of Professional Conduct R. 1.3 (2021).

16. American Bar Association, Model Rules of Professional Conduct R. 1.3 cmt. 1 (2021).

Administrative Court held the first legal trial in the metaverse.¹⁷ The traffic dispute hearing spanned two hours with parties appearing as avatars in a virtual courtroom landscape and the magistrate, Maria Quiñones, dressed in typical black legal robes.¹⁸ The entire proceedings were streamed live to YouTube and while some users cited dizzying and distorted camera movements, the streaming was otherwise a success.¹⁹ The trial brought positive attention to lawyering in the metaverse, with the magistrate of the proceeding claiming that the use of information technology alleviates pending caseloads by facilitating and expediting the process of executing justice.²⁰ Issues were raised by critics citing a 70 percent disapproval rate by viewers of the trial and concerns regarding the lack of public hardware access in Colombia necessary for a trial held in the metaverse.²¹ Regardless of opposing opinions, the success of Colombia's metaverse trial has been recognized. If legal proceedings being held via the metaverse become common, lawyers will need to be prepared to act with the expedited process this new reality presents.

C. *Model Rules of Professional Conduct 1.4*

Model Rule 1.4 requires lawyers to communicate effectively with their clients, this includes promptly informing the client of any decision or circumstance with respect to which the client's informed consent, keeping the client reasonably informed, and consulting with the client about any relevant limitation on the lawyer's conduct.²² Under this rule, lawyers are required to communicate clearly and effectively with their clients and use appropriate tools and platforms when communicating. This is particularly important in the metaverse, where communication can be more complex and challenging. When a user is active in the metaverse their conversations between other avatars can

17. Jamie M. Padgett, *Moving to the Metaverse: First Trial Held in the Metaverse*, 13 *Int'l & Comp. L. Rev.* 99 (2023), <https://international-and-comparative-law-review.law.miami.edu/moving-to-the-metaverse-first-trial-held-in-the-metaverse/>.

18. Reuters, *Colombia Court Moves Metaverse Host Hearing*, Reuters (February 24, 2023), <https://www.reuters.com/world/americas/colombia-court-moves-metaverse-host-hearing-2023-02-24/>.

19. *Id.*

20. Jamie M. Padgett, *Moving to the Metaverse: First Trial Held in the Metaverse*, 13 *Int'l & Comp. L. Rev.* 99 (2023), <https://international-and-comparative-law-review.law.miami.edu/moving-to-the-metaverse-first-trial-held-in-the-metaverse/>.

21. *Id.*

22. American Bar Association, *Model Rules of Professional Conduct R. 1.4* (2021).

occur verbally or through private messaging.²³ In many virtual worlds interactions between avatars are recorded and stored.²⁴ Because communicating in the metaverse includes a layer of electronic data storing attorneys practicing virtually will need to discuss the potential risk of automatically recorded communications.²⁵ With the unknowns surrounding how laws and legal ethics apply in the metaverse a lawyer must discover and establish their communication limitations on representing clients via virtual reality.

D. *Model Rules of Professional Conduct 1.6*

One key ethical obligation for lawyers in the metaverse is maintaining confidentiality. Rule 1.6 of the Model Rules requires lawyers to protect their client's confidential information, and the same standard applies in virtual practice.²⁶ This can be particularly challenging in the metaverse, where information is easily shared and accessed. Lawyers must ensure that their virtual communications with clients are secure and that they use appropriate tools and platforms to protect client confidentiality. Another ethical challenge for lawyers in the metaverse is the risk of confidentiality breaches.²⁷ The metaverse is a highly public and transparent environment. Lawyers must take care to protect the confidentiality of their client's information. Given the digital nature of the metaverse, information can easily be shared, copied, and disseminated without a lawyer's knowledge or consent. Lawyers must take steps to ensure that they are using secure communication channels and that they are not disclosing confidential information to unauthorized individuals or entities. This becomes tricky in the metaverse as users may choose the characteristics of their own avatar, even allowing users to create multiple different avatars to choose from.²⁸ This point drew criticism from viewers of Colombia's February 2023 metaverse trial, citing concerns that the ability for users to display

23. Zach Abramowitz, *Why Should Lawyers Care About the Metaverse? Above the Law* (Dec. 12, 2022), <https://abovethelaw.com/2022/12/why-should-lawyers-care-about-the-metaverse/> (accessed Apr. 2, 2023).

24. *Id.*

25. Mark McCreary, *The Metaverse for the Risk-Averse: Legal Ethics in the Virtual World, Part I*, Fox Rothschild LLP (May 13, 2021), <https://www.foxrothschild.com/publications/the-metaverse-for-the-risk-averse-legal-ethics-in-the-virtual-world-part-i/>.

26. American Bar Association, *Model Rules of Professional Conduct R. 1.6* (2021).

27. *Id.*

28. Beebom, *Metaverse Avatars Explained: What They Are and How They Work*, Beebom (Dec. 9, 2022), <https://beebom.com/metaverse-avatars-explained/>.

themselves as animals in the virtual setting alters the seriousness of proceedings.²⁹

E. *Model Rules of Professional Conduct 1.7*

Another important ethical consideration is avoiding conflicts of interest. Rule 1.7 of the Model Rules prohibits lawyers from representing clients with conflicting interests without their client's informed consent.³⁰ In the metaverse, it may be more difficult to identify potential conflicts of interest, as electronic relationships can shift quickly and without warning. Lawyers must be vigilant in assessing potential conflicts of interest and obtaining informed consent from clients before proceeding with representation. There are unique ethical challenges when practicing law in the metaverse that requires careful consideration by lawyers. One of the most significant challenges is the potential for conflicts of interest.³¹ In the metaverse, lawyers may represent clients with competing interests, as individuals and companies can have multiple avatars or personas that may conflict with each other. Moreover, given the interconnected nature of the metaverse, conflicts of interest can arise between clients who are involved in the same virtual world or who share common interests. Lawyers must take steps to identify and address conflicts of interest to ensure that they are acting in the best interests of their clients.

F. *Model Rules of Professional Conduct 1.14*

Model Rule 1.14 insists that while an attorney should maintain an ordinary attorney-client relationship with a client facing diminished capacity, when the lawyer reasonably believes that the client is at risk of substantial physical, financial, or other harm unless action is taken the attorney may take reasonably necessary protective action.³² These measures can sometimes include communicating with family members, the client, or third-party protective agencies.³³ Upholding this standard of attorney-client ethics in the metaverse is presumedly difficult. Currently, avatars in the metaverse are personalized by the user, and virtual realities do not require user avatars to mimic an individ-

29. Jamie M. Padgett, *Moving to the Metaverse: First Trial Held in the Metaverse*, 13 *Int'l & Comp. L. Rev.* 99 (2023), <https://international-and-comparative-law-review.law.miami.edu/moving-to-the-metaverse-first-trial-held-in-the-metaverse/>.

30. American Bar Association, *Model Rules of Professional Conduct R. 1.7* (2021).

31. Mark McCreary, *The Metaverse for the Risk-Averse: Legal Ethics in the Virtual World, Part I*, Fox Rothschild LLP (May 13, 2021), <https://www.foxrothschild.com/publications/the-metaverse-for-the-risk-averse-legal-ethics-in-the-virtual-world-part-i/>.

32. American Bar Association, *Model Rules of Professional Conduct R. 1.14* (2021).

33. American Bar Association, *Model Rules of Professional Conduct R. 1.14 cmt. 5* (2021).

ual's exact qualities.³⁴ Further, users in the metaverse are only shown by their chosen avatars, their physical likeness and environment around them are unseen by other users.³⁵ Thus, since the attorney-client meetings in the metaverse are avatar to avatar, one of the only identifiers of a client's capacity is their voice. Unless the client discloses further identifying information that can be used by the attorney to determine their capacity, the attorney must otherwise be extra alert to their client's ability to engage in representation. The attorney may also correspond with the client in other technical or in-person capacities outside of the metaverse, but it is unknown whether that will be the trend of virtual representation.

G. *Model Rules of Professional Conduct 1.15*

Rule 1.15 provides guidelines for the safekeeping of client property.³⁶ It asserts that the lawyers shall hold the property of their clients in connection with the representation separate from the lawyer's own property.³⁷ It further states that funds should be kept in a separate account maintained in the state where the lawyer's office is situated. This ethical obligation becomes complicated when applied to virtual realities. A proponent of the metaverse is the inability of users to move items of value, or digital assets, within the metaverse.³⁸ Ownership over these digital assets is also unclear.³⁹ Typically they are acquired through the use of blockchain technologies but there is currently no metaverse-specific property interest created through the ownership of digital assets.⁴⁰ The lack of clarity regarding the standards of digital assets ownership in the metaverse means that a lawyer practicing via virtual reality may not be able to hold client property as prescribed to them in the Model Rules.

H. *Model Rules of Professional Conduct 5.1*

Under Model Rule 5.1 lawyers who possess managerial authority in a law firm shall make reasonable efforts to ensure that the firm has measures in place that give reasonable assurance that lawyers em-

34. Beebom, *Metaverse Avatars Explained: What They Are and How They Work*, Beebom (Dec. 9, 2022), <https://beebom.com/metaverse-avatars-explained/>.

35. *Id.*

36. American Bar Association, *Model Rules of Professional Conduct R. 1.15* (2021).

37. *Id.*

38. Clifford Chance, *The Metaverse: What are the Legal Implications?* (Clifford Chance, Feb. 2022), <https://www.cliffordchance.com/content/dam/cliffordchance/briefings/2022/02/the-metaverse-what-are-the-legal-implications.pdf>.

39. *Id.*

40. *Id.*

ployed by the firm conform to the Rules of Professional Conduct.⁴¹ It is imaginably difficult to ensure that firms practicing in virtual reality offices would be able to oversee the ethics of attorneys they do not interact with within the physical world.

I. *Model Rules of Professional Conduct 5.3*

Like Model Rule 5.1, Rule 5.3 prescribes the same standards to nonlawyers working at a firm.⁴² This obligation of supervision will be difficult to uphold for firms practicing in the metaverse. Comment 3 to Rule 5.3 extends the duty of supervision to those within and outside the law firm.⁴³ If a law firm operating in the metaverse seeks outside services, then the lawyer must ensure that the services are provided in accordance with their ethical obligations.⁴⁴

J. *Model Rules of Professional Conduct 5.5*

Rule 5.5 of the Model Rules applies to virtual practice and requires lawyers to comply with the legal and ethical rules of the jurisdictions in which they practice.⁴⁵ This can be particularly challenging in the metaverse, where clients and lawyers may be located in different countries or jurisdictions. Lawyers must be aware of the relevant rules and regulations in each jurisdiction where they have clients or practice law and ensure that their virtual practice complies with these requirements. In addition to these challenges, the metaverse raises issues related to jurisdiction and the application of traditional legal frameworks.⁴⁶ For instance, legal disputes in the metaverse may involve parties from different countries or jurisdictions. Lawyers must navigate the complex web of laws and regulations that may apply. As the metaverse is a global platform that is not bound by physical boundaries, traditional legal concepts such as property and jurisdiction may need to be rethought. Lawyers must be prepared to address these issues to provide guidance to their clients on how to navigate the legal landscape of the metaverse.

41. American Bar Association, Model Rules of Professional Conduct R. 5.1 (2021).

42. American Bar Association, Model Rules of Professional Conduct R. 5.3 (2021).

43. American Bar Association, Model Rules of Professional Conduct R. 5.3 cmt. 3 (2021).

44. *Id.*

45. American Bar Association, Model Rules of Professional Conduct R. 5.5 (2021).

46. Mark McCreary, *The Metaverse for the Risk-Averse: Law Firms and Legal Advertising*, Part 2, Fox Rothschild LLP (May 27, 2021), <https://www.foxrothschild.com/publications/the-metaverse-for-the-risk-averse-law-firms-and-legal-advertising-part-2/>.

III. THE IMPACT OF METAVERSE TECHNOLOGY ON THE LEGAL PROFESSION

A. *How the Development of the Metaverse Could Change the Way Legal Services are Provided and Delivered*

Metaverse technology is poised to profoundly revolutionize the legal profession. It has the power to transform the way legal services are provided and delivered. The metaverse has the potential to change the way people interact with each other, businesses, and other organizations. As virtual reality becomes more integrated into people's lives, it is not difficult to see that legal services will need to adapt to this new environment.

One potential impact of the metaverse on the legal profession, outside of professional ethics, is that it could lead to a shift away from traditional law firms and towards more decentralized and virtual legal services.⁴⁷ With the ability to work remotely and collaborate virtually, lawyers may be able to work for clients all over the world without ever leaving their homes or offices. This could lead to a more flexible and efficient legal system, as well as lower costs for clients.

The development of the metaverse could also have a significant impact on the way legal research is conducted.⁴⁸ With the ability to access vast amounts of information from all over the world, lawyers may be able to conduct legal research more quickly and efficiently than ever before. This may result in a more informed and effective legal system and lower costs for clients.

Another potential impact of the metaverse on the legal profession is that it could result in new forms of legal disputes and conflicts.⁴⁹ For example, disputes over virtual property and intellectual property rights are already starting to emerge, and these are likely to become more complex and widespread as the metaverse continues to develop.⁵⁰ On February 8th, 2023, a jury in the Southern District of New York found metaverse user, Mason Rothschild, liable for trademark infringement of the Hermes Birkin trademark.⁵¹ Rothschild advertised and sold a series of non-fungible tokens, or NFTs, entitled

47. Salvatore Caserta, Digitalization of the Legal Field and the Future of Large Law Firms, 9 J. Legal Tech. Risk Mgmt. 14 (2020), <https://www.mdpi.com/2075-471X/9/2/14>.

48. *Id.*

49. *Above the Law*, The Metaverse: What Is It & How Does It Affect Law Firms?, (Jan. 2, 2023), <https://abovethelaw.com/2023/01/the-metaverse-what-is-it-how-does-it-affect-law-firms/>

50. *Id.*

51. Legal Tech News, What Kinds of Issues Are Being Litigated Related to the Metaverse and NFTs?, Law.com (April 11, 2023), <https://www.law.com/legaltechnews/2023/04/11/what-kinds-of-issues-are-being-litigated-related-to-the-metaverse-and-nfts/>.

“MetaBirkins”.⁵² He was ordered to pay \$110,000 for trademark infringement and \$23,000 for cybersquatting on the MetaBirkin domain name.⁵³ This verdict is one of the more recent demonstrations of common intellectual property disputes arising out of activity by individuals in the metaverse. Another less common but increasing type of litigation is privacy disputes.⁵⁴ Including facial geometry and other biometric information being recorded without notifying the user by artificial and virtual reality experience software.⁵⁵ Though no paramount cases have been decided in direct relation to user biometric information and the metaverse, the potential for litigation is present.⁵⁶ Lawyers will need to be able to navigate these new types of disputes and conflicts in order to provide effective legal services in the metaverse.

The development of the metaverse will have a profound effect on the legal profession, potentially transforming the way legal services are provided and delivered. As the metaverse continues to evolve, lawyers will need to adapt to this new environment and navigate the unique challenges that arise when practicing law in the metaverse. By staying up to date with the latest developments in metaverse technology and maintaining their ethical obligations, lawyers can help ensure that the legal system is able to fully realize the potential of the metaverse for the benefit of clients and society as a whole.

B. *The Potential Benefits and Drawbacks of Using Metaverse Technology in the Practice of Law*

The implementation of metaverse technology in the practice of law offers potential benefits such as increased accessibility and efficiency. However, it also raises concerns about privacy, security, and potential technological bias.

Metaverse technology has the potential to provide several advantages for the practice of law, such as increased accessibility for clients.⁵⁷ By using virtual reality technology, clients can attend meetings and court hearings from remote locations, which reduces travel costs and time constraints.⁵⁸ Additionally, virtual reality can provide a more immersive and engaging experience for clients, allowing them to bet-

52. *Id.*

53. *Id.*

54. *Id.*

55. *Id.*

56. *Id.*

57. *Plain Concepts*, Metaverse: Legal and Ethical Implications (Sept. 1, 2021), <https://www.plainconcepts.com/metaverse-legal-ethical/>.

58. *Onix Systems*, Virtual Reality Meetings: How to Bring Them to Your Business (Sept. 23, 2021), <https://onix-systems.com/blog/virtual-reality-meetings>.

ter understand legal concepts and interact with their legal representation.

The use of metaverse technology can also increase the efficiency of legal services. Through artificial intelligence, document review and research can be automated, freeing up lawyers' time to focus on more complex legal issues. More, virtual assistants powered by natural language processing can improve communication between lawyers and clients, reducing the risk of miscommunication and improving the overall client experience.⁵⁹

However, the use of metaverse technology in the practice of law also raises ethical concerns outside of those ascribed to attorneys via the Model Rules. One of the key areas of concern is privacy. Virtual reality technology can capture biometric data such as eye movement and facial expressions.⁶⁰ This data can be used to infer an individual's mental state or emotional reactions, potentially compromising the confidentiality of client information and leaving it open to potential misuse.⁶¹ Given the sensitivity of legal work and the importance of maintaining client trust, it is crucial that these ethical considerations be taken into account when considering the use of metaverse technology in law practice.

Another pressing ethical concern, when it comes to virtual reality, is the issue of security. Specifically, virtual reality technology can be vulnerable to hacking, which could lead to the theft of confidential client information.⁶² Given the potentially disastrous consequences of such a breach, it is imperative that strong security measures be put in place to prevent these kinds of attacks from occurring. More, it is equally important to promote cybersecurity awareness among both lawyers and their clients in order to ensure that everyone involved is taking the appropriate steps to safeguard their data and protect themselves from potential threats. By working together to address these concerns, lawyers can help to ensure that virtual reality technology remains a valua-

59. Danny Peng, *Revolutionizing Customer Service: The Power of Natural Language Processing in Virtual Assistants*, Medium (May 15, 2020), <https://medium.com/@muchy.p/revolutionizing-customer-service-the-power-of-natural-language-processing-in-virtual-assistants-60d82a27418b>.

60. Ellyse Dick, *Balancing User Privacy and Innovation in Augmented and Virtual Reality*, Information Technology and Innovation Foundation (Mar. 4, 2021), <https://itif.org/publications/2021/03/04/balancing-user-privacy-and-innovation-augmented-and-virtual-reality/>.

61. *Id.*

62. Emily Layden, *Rutgers Researchers Discover Security Vulnerabilities in Virtual Reality Headsets*, Rutgers Today (May 1, 2018), <https://www.rutgers.edu/news/rutgers-researchers-discover-security-vulnerabilities-virtual-reality-headsets>.

ble and effective tool for legal professionals without putting sensitive information at risk.

Finally, the use of metaverse technology raises concerns about technological bias. Algorithms used in artificial intelligence systems can replicate biases in the data they are trained on, perpetuating existing inequalities and discrimination.⁶³ It is crucial to acknowledge the importance of carefully developing and deploying legal technologies while maintaining a critical eye toward potential biases and the potential impact on marginalized communities.

The use of metaverse technology in the practice of law offers potential benefits such as increased accessibility and efficiency but also raises ethical concerns regarding privacy, security, and the potential for technological bias. Lawyers must navigate these challenges while maintaining their ethical obligations under the Model Rules. By taking a thoughtful and proactive approach to using metaverse technology, lawyers can leverage its potential benefits while minimizing the risks to their clients and the legal profession.

C. How the Legal Profession May Need to Adapt to These Changes

The emergence of the metaverse presents an array of complex technological and ethical challenges for the legal profession. As such, to fully embrace the potential benefits of the metaverse, lawyers may need to adapt their technological tools and ethical considerations to effectively operate in this novel landscape.

Technologically, lawyers will need to familiarize themselves with virtual reality technology, including accessing, navigating, and utilizing virtual environments. This could require undergoing additional training and investment in new technologies to ensure that they can provide trustworthy legal representation in the metaverse. It may also be necessary for lawyers to explore incorporating artificial intelligence (AI) into their legal research and analysis, although this raises ethical concerns regarding transparency and bias. As such, it is imperative that lawyers stay informed about the latest technological advancements and consider all potential implications before implementing them into practice.

Ethically, the legal profession may need to re-examine and adapt traditional legal ethics principles to accommodate the unique challenges of the metaverse. Given the complexities and nuances that exist

63. Neil Sahota, AI and the Metaverse: Addressing the Ethical Implications, LinkedIn (July 23, 2021), <https://www.linkedin.com/pulse/ai-metaverse-addressing-ethical-implications-neil-sahota-萨冠军>.

in virtual environments, there is a risk of conflicts of interest arising due to the complex relationships and identities that exist within them. Additionally, the maintenance of confidentiality and attorney-client privilege could be more difficult to maintain in the metaverse, where virtual conversations and actions can be easily recorded and disseminated. To address these concerns, the legal profession may need to develop new ethical guidelines and best practices that specifically address the unique challenges presented by the metaverse. This includes establishing clear lines of communication with clients about the risks and limitations of virtual communication and establishing secure channels for such communication to take place.

Moreover, the evolution of the metaverse may compel the legal profession to address issues of access to justice and inclusivity. The vast potential of this virtual reality world to expand legal services to underserved communities could improve access to justice. However, it is crucial to acknowledge the concerns about the potential to perpetuate existing inequalities, such as the digital divide and biases in AI algorithms.⁶⁴ Therefore, the legal profession must ensure that the development of the metaverse is inclusive and that all individuals, irrespective of their background, have equal access to legal services. This requires a comprehensive approach, including the formulation of appropriate policies and the creation of ethical unbiased AI algorithms.

The practice of law in the metaverse is poised to undergo significant changes as a result of the dynamic interplay between both technological advancements and ethical considerations. To fully embrace the potential benefits of the metaverse, lawyers will need to acquire new skills and knowledge, all while upholding their ethical duties to clients and the legal profession. This includes familiarizing themselves with virtual reality technology, exploring the use of AI in the metaverse, and re-examining and adjusting traditional legal ethics principles. This presents a challenge that will require careful navigation to ensure that the evolving landscape of legal practice in the metaverse remains fair, just, and equitable for the provision of legal services.

IV. THE EVOLVING AND GROWING METAVERSE AND ITS IMPACT ON FUTURE LEGAL PRACTICE

The metaverse, a virtual world that is rapidly expanding and changing, has immense potential to revolutionize the legal field. One area

64. Neil Sahota, *AI and the Metaverse: Addressing the Ethical Implications*, LinkedIn (July 23, 2021), <https://www.linkedin.com/pulse/ai-metaverse-addressing-ethical-implications-neil-sahota-萨冠军>.

that is experiencing significant growth is the integration of artificial intelligence (AI) into legal practice.⁶⁵ Already, AI is being used in legal research and document analysis, but its potential applications in the metaverse are vast. For one, AI could be utilized to review documents for relevant information, conduct legal research through automated searches of case law and statutes, perform contract and document analysis, correct errors, proofread, and organize documents.⁶⁶ However, as AI becomes more sophisticated, ethical concerns arise, particularly the importance of ensuring that AI is not biased or discriminatory. It is essential to address these ethical concerns to ensure that AI is utilized in a safe, helpful, and just manner within the legal field.

Another area that is likely to continue to evolve is virtual dispute resolution. As the metaverse becomes more complex and more legal disputes arise within it, there will be a growing need for effective virtual dispute resolution mechanisms. One potential solution is the use of online arbitration services, which have already been utilized for resolving disputes related to e-commerce and domain names.⁶⁷ However, as with AI, virtual dispute resolution mechanisms raise ethical concerns, such as ensuring equal access to justice for all parties and guaranteeing a transparent and fair process.⁶⁸

Finally, to successfully navigate the current legal landscape, lawyers need to balance their legal responsibilities with their ethical obligations. For example, the use of virtual currencies in the metaverse has already raised regulatory and tax issues, and other novel legal issues will likely arise as the metaverse becomes more widespread.⁶⁹ Lawyers will need to be able to navigate these new legal issues while maintaining their ethical obligations, such as the duty of competence and the duty to communicate effectively with clients. By adhering to these ethical principles, lawyers can ensure that they are providing the best possible representation to their clients while maintaining the integrity of the legal system.

65. Salvatore Caserta, Digitalization of the Legal Field and the Future of Large Law Firms, 9 J. Legal Tech. Risk Mgmt. 14 (2020), <https://www.mdpi.com/2075-471X/9/2/14>.

66. 7 Ways Artificial Intelligence Can Benefit Your Law Firm, American Bar Association (Sept. 2017), <https://www.americanbar.org/news/abanews/publications/youraba/2017/september-2017/7-ways-artificial-intelligence-can-benefit-your-law-firm/>.

67. Organization for Economic Co-operation and Development, Consumers in the Digital World: Legal Issues and Outlook (OECD Publishing, June 2012), <https://www.oecd.org/digital/consumer/1878940.pdf>.

68. *Id.*

69. Tom Ara et al., *Exploring the Metaverse: What Laws will Apply?*, DLA Piper (February 2022), <https://www.dlapiper.com/en/insights/publications/2022/02/exploring-the-metaverse/>.

The future of legal practice in the metaverse is likely to be shaped by the interplay between technological innovation and ethical considerations. As new technologies and platforms emerge, lawyers will need to adapt and develop new skills and expertise, while also ensuring that they maintain their ethical obligations to clients and the legal profession.

A. *Implications of Changes for the Legal Profession and Legal Ethics*

In recent years, there has been an influx in the number of firms establishing their physical operations in selected virtual realities within the metaverse. The luxury fashion district of Decentraland, a virtual reality in the metaverse, was the chosen location of ArentFox Schiff.⁷⁰ The firm, which houses 650 attorneys⁷¹ across nine locations, announced it had bought a stake in the metaverse in February 2022.⁷² By October of that year, this stake would become a functioning virtual office with four floors, conference rooms, and a private meeting space.⁷³ The office makes ArentFox Schiff the first major law firm in the United States to have a presence of this caliber.⁷⁴

Opening offices in the metaverse offers several advantages to law firms. Firstly, it can increase accessibility to legal services, as clients can connect with lawyers from anywhere in the world without needing to physically travel to a specific location. Virtual offices can also reduce overhead costs associated with maintaining a physical office space, such as rent and utilities. Moreover, establishing a presence in the metaverse can help law firms stay ahead of the curve in terms of technology and innovation, allowing them to offer cutting-edge legal services that meet the needs of their clients in an increasingly digital world.

Despite these advantages, there are also challenges that law firms may face when operating in the metaverse. One significant challenge safeguarding client data in a virtual environment to ensure privacy and security. Currently, there are no federal or standardized regulations for data protection and cybersecurity in virtual reality in the

70. Arent Fox Schiff, *Aren't Fox Schiff Opens First Major Law Office in the Metaverse*, Arent Fox LLP (October 31, 2022), <https://www.afslaw.com/perspectives/press-releases/arentfox-schiff-opens-first-major-law-office-the-metaverse>.

71. Arent Fox Schiff, *History & Recognition*, Arent Fox Schiff, <https://www.afslaw.com/about/history-recognition> (2023).

72. *Id.*

73. *Id.*

74. *Id.*

United States, given the novelty of the concept.⁷⁵ Furthermore, law firms must uphold ethical standards when practicing law in the metaverse, following the same principles and rules of professional conduct as they do in the physical world.

The emerging trend of law firms establishing offices in the metaverse is still in its early stages, but it holds immense potential to transform the legal industry. The benefits of enhanced accessibility, cost savings, and cutting-edge innovation can provide law firms with a competitive advantage. However, it is also imperative to consider the challenges presented by privacy, security, and ethical concerns. As the metaverse continues to evolve, it will be interesting to observe how law firms adapt and innovate to cater to the evolving needs of their clients in this virtual world.

V. HOW CAN LAWYERS PREPARE FOR FUTURE LEGAL PRACTICE IN THE METAVERSE?

It is essential for lawyers to prepare themselves for the future of legal practice in this new realm. This includes being prepared to practice law in the metaverse, while still upholding their ethical obligations under the Model Rules. There are several key steps that lawyers can take to ensure they are fully prepared for this shift in the legal landscape. By staying up to date on the latest technological advancements and trends, attending relevant training and education programs, and investing in the necessary tools and resources, lawyers can position themselves for long-term success in the metaverse and beyond.

First, lawyers should stay informed about metaverse technology and developments. Being well-informed about recent technological advancements and developments in the metaverse is essential for those who want to be at the forefront of legal practice in this highly dynamic arena. Lawyers and their colleagues can attend conferences, read articles, and participate in online forums and discussion groups to stay informed regarding the latest legal developments and trends pertaining to the metaverse. By doing so, they can ensure that they are well-equipped to handle any legal issues that may arise in this rapidly evolving field.

Second, lawyers who develop or specialize in relevant areas of law such as the internet, data privacy, and IT law are likely to have a better understanding of the metaverse. As the internet develops into new

75. Mearian, Lucas. "Calls for Federal Data Privacy Law Grows Alongside AR/VR Use." TechTarget, August 8, 2019. <https://www.techtarget.com/searchcio/news/252508584/Calls-for-federal-data-privacy-law-grows-alongside-AR-VR-use>.

technologies like the metaverse, practicing lawyers should stay up to date on relevant areas of law and case-rooted legislation that develop alongside it to effectively navigate this space.

Although law firms in the metaverse are a fairly new development, establishing a virtual law office offers firms the opportunity to remain current and keep up with emerging trends in the metaverse. Like a physical office location, a virtual office can serve as a meeting place for clients to connect with their lawyers, receive virtual consultations, and exchange documents. It is important for lawyers who have the capabilities to provide services via the metaverse to take advantage of these opportunities sooner rather than later, given the unpredictable nature of this evolving digital landscape. By embracing this new frontier, law firms can expand their reach and offer a more streamlined, efficient approach to legal services.

To establish a virtual law practice in the metaverse, it may be helpful to begin by offering virtual legal services on commonly used platforms such as Zoom or Google Meet. Although delivering legal services via video chat services rose to popularity during the COVID-19 pandemic, some firms still limit their operations to face-to-face client interactions. Incorporating more familiar technological advancements may aid firms in preparing for the metaverse.

Third, with the advancement of technology as applied to firms and legal ethics, it is crucial to implement proper security measures to protect user data. The metaverse presents various situations where breaches can occur, and each platform has different security levels. Platforms with lesser security, such as those without specific password requirements or facial recognition access systems, can leave virtual legal clients vulnerable to breaches. Further, a virtual law firm operating without metaverse-adapted security measures could mistakenly communicate with the wrong party if some platforms do not require self-reflecting avatars. Therefore, law firms need to be aware of the potential security risks and take appropriate measures to safeguard their clients' data.

While the Model Rules are a helpful ethical tool for firms to adapt to new ethical considerations, they are not specifically tailored to the metaverse. Lawyers must prioritize the implementation of new ethical considerations within their firm and ensure that their actions in the metaverse adhere to the ethical standards set by the American Bar Association. To achieve this, firms can construct internal ethical standards by examining recent legal issues in the metaverse, analyzing their ethical outcomes, if any, and applying them to their law practice.

This will provide an extra layer of assurance when approaching the idea of operating a firm virtually.

To be fully equipped for the metaverse, lawyers need to collaborate with other professionals. This field isn't exclusive to law, so lawyers can offer clients a comprehensive range of services by partnering with other professionals in the metaverse, such as virtual architects and developers. However, it is important to consider ethical considerations such as client confidentiality and the always-present possibility of a data breach.

Lawyers face both opportunities and challenges in the metaverse. To be well prepared for the future of legal practice in this new realm, lawyers should stay informed, develop relevant expertise, establish a virtual law office, offer virtual legal services, implement appropriate security measures, adapt to new ethical considerations, and collaborate with other professionals in the metaverse.

VI. CONCLUSION

The metaverse is as difficult to describe as it is to understand. First used to define a hypothetical successor to the internet, modern definitions describe it as a network of three-dimensional virtual worlds that emphasize social and economic connections.⁷⁶ The legal system faces a daunting challenge to adapt to the ever-evolving needs and wants of these connections. Meanwhile, lawyers must balance implementing these trends into their current legal practices while upholding ethical standards. The absence of legal understanding available regarding practicing law in virtual realities raises ethical concerns that affect both the attorney and the client. Although these concerns are slightly mitigated when looked at through the application of the Model Rules, they have not been explicitly updated to account for the future of law firms in the metaverse and raises challenges in how lawyer conduct will be regulated virtually, if at all.⁷⁷ Nonetheless, lawyers must begin to adapt their legal practices to this new subset of reality while considering the Model Rules and how such ethical obligations may be altered in a virtual jurisdiction.

76. Adi Roberts and Jay Peters, What is the metaverse, and do I have to care? The Verge (October 4, 2021, 7:40 AM), <https://www.theverge.com/22701104/metaverse-explained-fortnite-roblox-facebook-horizon>.

77. Abraham C. Reich and Hala Zawil, *The Metaverse for the Risk-Averse: Legal Ethics in the Virtual World, Part I*, Fox Rothschild LLP (October 20, 2022), <https://www.foxrothschild.com/publications/the-metaverse-for-the-risk-averse-legal-ethics-in-the-virtual-world-part-i/>.

