

AI and Ethics in the Legal Profession

Nathaniel M. Glasser¹, Frances M. Green², Gretel Zumwalt³, Isabel Wolf⁴
March 11, 2025

I. Introduction

As artificial intelligence (AI) continues to evolve, an increasing number of lawyers are adopting AI-powered tools to enhance efficiency, minimize human error, and support legal decision making. As lawyers integrate these advanced tools into their practice, however, lawyers must remain vigilant to ensure their use complies with their continuing ethical and professional responsibilities. To help lawyers navigate the introduction of AI-powered tools into their practice, national, state, and local bar associations have published guidance informing lawyers how to use AI-powered tools without compromising their professional ethics and obligations.⁵ This paper seeks to guide lawyers who may integrate the use of AI-powered tools into their practice by offering insights into the current applications of AI in the legal profession and incorporating aforementioned ethical guidance.

II. Definitions

Although there is no universal definition of artificial intelligence, AI generally refers to computer systems that can perform complex tasks typically requiring human intelligence, such as reasoning, decision-making, and learning. The National Artificial Intelligence Initiative Act of 2020 defines AI as a “machine-based system that can, for a given set of human-defined objectives,

¹ **Nathaniel M. Glasser** is a Member in the Employment, Labor & Workforce Management (ELWM) department at Epstein Becker & Green, P.C., based in Washington, DC. A co-leader of the firm’s AI practice group, Nathaniel specializes in advising clients on the use of AI in the workplace, including compliance with AI-related regulations and the ethical implications of AI in employment decisions.

² **Frances M. Green** is a Member in the Employment, Labor & Workforce Management department at Epstein Becker & Green, P.C., based in New York. Fran focuses on advising clients on the implementation and governance of AI tools, ensuring compliance with applicable laws and ethical standards. Fran is a certified Artificial Intelligence Governance Professional by the International Association of Privacy Professionals and holds an advanced legal degree in Cybersecurity and Data Privacy.

³ **Gretel Zumwalt** is an Associate in the Employment, Labor & Workforce Management department at Epstein Becker & Green, P.C., based in New York. Gretel has contributed to various projects related to AI in the legal profession, including drafting white papers and conducting research on the ethical use of AI in the legal practice..

⁴ **Isabel Wolf** is an Associate in the Employment, Labor & Workforce Management department at Epstein Becker & Green, P.C., based in New York. Isabel has been involved in researching and summarizing state bar opinions on AI and has co-authored articles discussing the impact of AI on the legal industry.

⁵ The AI products and tools mentioned in this article are for information purposes only and are not intended to endorse any specific brands or products. Readers are encouraged to conduct their own research and make informed decisions based on their individual needs and preferences.

make predictions, recommendations or decisions influencing real or virtual environments. Artificial intelligence systems use machine and human-based inputs to (A) perceive real and virtual environments; (B) abstract such perceptions into models through analysis in an automated manner; and (C) use model inference to formulate options for information or action.”⁶

Generative artificial intelligence (Gen AI) is a subset of AI that focuses on creating new content by emulating the structure and characteristics of input data, thereby generating images, videos, audio, text, and other digital content. The National Institute of Standards and Technology (NIST) describes generative AI as models that generate derived synthetic content based on the input data on which they are trained.⁷

Agentic artificial intelligence (agentic AI) represents a more advanced form of AI that not only performs tasks but also acts autonomously to achieve specific goals. This third wave of AI involves systems that can make decisions and take actions independent of human intervention, often in dynamic and complex environments. Agentic AI is characterized by its ability to operate with a high degree of autonomy, with the potential to be a transformative technology in the workplace.⁸

III. AI Applications Within the Legal Profession

Legal professionals have begun using generative AI (“Gen AI”) for a variety of tasks, including analyzing contracts, drafting clauses and phrases in transactional documents, summarizing large sets of documents for litigation and transactional work, predicting court rulings, and preparing first drafts of simple motions, briefs, interrogatories, and document requests. The New Jersey State Bar Association’s Task Force on AI and the Law Report also suggests AI-powered tools can be integrated with case management and practice management software to help attorneys handle their caseloads more efficiently and streamline billing, scheduling, and general administrative tasks.⁹ Lawyers may use AI-powered tools to draft written communication to clients and opposing counsel, which can free up valuable attorney time for more time-intensive or strategic projects.¹⁰

⁶ 15 U.S.C. § 9401(3).

⁷ NIST, Computer Security Resource Center, Glossary, https://csrc.nist.gov/glossary/term/generative_artificial_intelligence (last visited Mar. 7, 2025).

⁸ See Mark Purdy, *What Is Agentic AI, and How Will It Change Work?*, Harvard Business Review (Dec. 12, 2024), <https://hbr.org/2024/12/what-is-agentic-ai-and-how-will-it-change-work> (last visited Mar. 7, 2025).

⁹ See *Task Force on Artificial Intelligence (AI) and the Law: Report, Requests, Recommendations, and Findings*, NEW JERSEY STATE BAR ASSOCIATION, (May 2024), at 12, <https://njsba.com/wp-content/uploads/2024/05/NJSBA-TASK-FORCE-ON-AI-AND-THE-LAW-REPORT-final.pdf>.

¹⁰ According to a Bloomberg Law survey, 58% of legal professions use generative AI to draft memorandums, emails, and correspondence to opposing counsel. See *AI for Legal Professionals*, BL, <https://pro.bloomberglaw.com/insights/technology/ai-in-legal-practice-explained/#how-is-ai-used-in-law> (last visited March 5, 2025)

Like all employees, lawyers now have access to publicly available Gen AI tools – such as Microsoft Copilot, ChatGPT, Google Gemini, and Grammarly – that they can leverage to enhance their practice. While some organizations have adopted enterprise versions of these Gen AI tools, even lawyers that do not work in an organization that has purchased such a tool may access them through a personal account.

In recent years, legal research platforms with which lawyers are intimately familiar – *e.g.*, Westlaw, LexisNexis, and Bloomberg – have released AI-powered search engines for users that can suggest answers to legal queries, research relevant caselaw, and even analyze the facts of a case to identify potential claims and defenses in litigation matters.¹¹ These companies also offer products that will analyze draft briefs and suggest edits and additional caselaw support. Because machine learning algorithms can likely sift through potentially relevant caselaw and legal resources more quickly than a human associate, purveyors of these AI-powered tools suggest that lawyers relying on AI-aided research can be more confident that their research sufficiently covers the relevant caselaw.¹² As indicated by Bloomberg Law, AI-powered tools rely on large language models to make connections that attorneys may not think to make, identifying caselaw support and legal theories that may impact their matter but which not have been considered absent the use of AI.¹³

Additionally, several new entrants to the legal marketplace now offer AI tools geared specifically to the legal industry. For example, Harvey, a Gen AI platform tailored for lawyers, assists with contract analysis, due diligence, and legal research.¹⁴ Lex Machina, a LexisNexis product, offers legal analytics by combining its legal database with AI functionality, including insights into case outcomes, judicial behaviors, and litigation trends.¹⁵ Ironclad leverages AI in its contract lifecycle management platform to streamline contract creation, storage, and management.¹⁶

Legal practitioners have also turned to AI to aid in drafting and reviewing complex legal documents. Spellbook, a legal technology company offering AI-powered tools, recently released Spellbook Associate, an AI-tool powered by OpenAI's GPT-4, which can analyze drafted

¹¹ See THOMAS REUTERS, <https://legal.thomsonreuters.com/en/products/westlaw-precision> (last visited March 5, 2025); LEXISNEXIS, <https://www.lexisnexis.com/en-us/products/lexis-plus-ai.page?srsId=AfmBOooBKro3sco3e7fzOtkdV6grGSq4xzt4p8WJkKKvDqYtcl-D3I5h> last visited March 5, 2025); BLOOMBERG LAW, <https://pro.bloomberglaw.com/products/ai-and-bloomberg-law/> (last visited March 5, 2025).

¹² See *Can You Use AI for Legal Research?*, BLOOMBERG LAW, (Sept. 19, 2024), <https://pro.bloomberglaw.com/insights/technology/can-you-use-ai-for-legal-research/#can-ai-do-legal-research>.

¹³ See *How is AI Changing the Legal Profession*, BLOOMBERG LAW, (May 23, 2024), <https://pro.bloomberglaw.com/insights/technology/how-is-ai-changing-the-legal-profession/#how-technology-is-changing-the-legal-field>.

¹⁴ HARVEY, <https://www.harvey.ai/> (last visited Mar. 7, 2025).

¹⁵ LEX MACHINA, <https://lexmachina.com/> (last visited Mar. 7, 2025).

¹⁶ IRONCLAD, <https://ironcladapp.com/> (last visited Mar. 7, 2025).

contracts and suggest edits across several documents.¹⁷ Another legal technology company, Genie AI, offers an agentic AI¹⁸ tool that can draft complete contracts for attorney review based on just a natural language prompt.¹⁹ Not only do these and similar tools streamline the contract drafting process by giving attorneys a starting point or an initial draft, they also are capable of understanding and recognizing contract interdependencies that often take human associates tremendous amounts of time and energy.²⁰

Although AI may augment lawyers' and paralegals' work, thereby enhancing their ability to provide comprehensive services in a more efficient manner, the incorporation of AI into the practice of law comes with risks. AI tools may issue inaccurate or biased outputs, fail to adequately protect confidential and privileged information, result in data breaches and/or violations of applicable data privacy regulations, or cause a lawyer to violate ethical standards and professional responsibility rules. Therefore, lawyers using AI tools must recognize the tools' limitations and carefully review and supervise AI-assisted work product. The remainder of this paper discusses the ethical implications of the use of AI in the legal profession.

IV. Ethical Rules

As the legal profession integrates advanced technologies such as AI into the practice of law, the American Bar Association (ABA) Model Rules of Professional Conduct ("Model Rules") remain a foundational guide for ethical practice.²¹ Recent ethical opinions and guidance

¹⁷ See SPELLBOOK, <https://www.spellbook.legal/associate> (last visited March 5, 2025); SPELLBOOK, https://www.spellbook.legal/contract-drafting-ai?campaignid=19266665185&adgroupid=144704516379&keyword=spell%20book%20ai&device=c&utm_term=sPELL%20book%20ai&utm_campaign=retargeting_brand&utm_source=adwords&utm_medium=ppc&hsa_acc=6297073186 (last visited March 5, 2025).

¹⁸ See also Frances M. Green & Isabel Wolf, *Lawyers: Meet Your New Partner*, N.Y.L.J., (Jan. 22, 2025), https://www.law.com/newyorklawjournal/2025/01/22/lawyers-meet-your-new-partner/?utm_source=twitter&utm_medium=social&utm_content=dlvrit&utm_campaign=automated_post&slreturn=2025030545601 (discussing agentic AI's transformative impact on legal practice with regard to ethics, regulation, and accountability).

¹⁹ See GENIE AI, <https://www.genieai.co/en-us> (last visited March 5, 2025).

²⁰ See generally, Audrey Zhang Yang, *AI in Contract Drafting: Transforming Legal Practice*, UNIV. OF RICH. SCH. OF L. J. OF L. & TECH. (Oct. 22, 2024), <https://jolt.richmond.edu/2024/10/22/ai-in-contract-drafting-transforming-legal-practice/>.

²¹ ABA MODEL RULES OF PROF'L. CONDUCT (2023).

from state bar associations – including those in California²², Florida²³, Illinois²⁴, Kentucky²⁵, Michigan²⁶, New Jersey²⁷, New York²⁸, North Carolina²⁹, Pennsylvania³⁰, Texas³¹, Virginia³², and Washington, DC³³ – have specifically addressed the implications of AI in the legal practice. The ABA also issued Formal Opinion 512 detailing a lawyer’s ethical duties when using Gen AI in the practice of law.³⁴ Lawyers are now required to adhere not only to established ethical rules

²² *Practical Guidance for the Use of Generative Artificial Intelligence in the Practice of Law*, CAL. STATE BAR, STANDING COMTE. ON PROF’L RESP. & CONDUCT (Nov. 16, 2023), <https://www.calbar.ca.gov/Portals/0/documents/ethics/Generative-AI-Practical-Guidance.pdf>.

²³ *Ethics Opinion 24-1*, FL. BAR ASS’N (Jan. 19, 2024), <https://www.floridabar.org/etopinions/opinion-24-1/>.

²⁴ *Report to Shawn Kasserman*, ILL. STATE BAR, AD HOC COMTE. (Sept. 27, 2023), <https://www.americanbar.org/content/dam/aba/administrative/center-for-innovation/ai-task-force/skm-c360i23100414470.pdf>; see also *Illinois Supreme Court Policy on Artificial Intelligence*, ILL. SUP. CT. (eff. Jan. 1, 2025), <https://ilcourtsaudio.blob.core.windows.net/antilles-resources/resources/e43964ab-8874-4b7a-be4e-63af019cb6f7/Illinois%20Supreme%20Court%20AI%20Policy.pdf>.

²⁵ *Ethics Opinion KBA E-457*, KY. BAR ASS’N (Mar. 15, 2024), [https://cdn.ymaws.com/www.kybar.org/resource/resmgr/ethics_opinions_\(part_2\)/kbae457artificialintelligenc.pdf](https://cdn.ymaws.com/www.kybar.org/resource/resmgr/ethics_opinions_(part_2)/kbae457artificialintelligenc.pdf).

²⁶ *Ethics Opinion JI-155*, MICH. STATE BAR (Oct. 27, 2023), https://www.michbar.org/opinions/ethics/numbered_opinions/JI-155; see also *Artificial Intelligence for Attorneys – Frequently Asked Questions*, MICH. STATE BAR, <https://www.michbar.org/opinions/ethics/AIFAQsf>.

²⁷ *Legal Practice: Preliminary Guidelines on the Use of Artificial Intelligence by New Jersey Lawyers*, N.J. STATE BAR ASS’N (Jan. 24, 2024), <https://www.njcourts.gov/sites/default/files/notices/2024/01/n240125a.pdf>; see also *Task Force on Artificial Intelligence (AI) and the Law: Report, Requests, Recommendations, and Findings*, N.J. STATE BAR ASS’N (May 2024), <https://njsba.com/wp-content/uploads/2024/05/NJSBA-TASK-FORCE-ON-AI-AND-THE-LAW-REPORT-final.pdf>.

²⁸ *Formal Opinion 2024-5: Generative AI in the Practice of Law*, N.Y.C. BAR (Aug. 7, 2024), <https://www.nycbar.org/reports/formal-opinion-2024-5-generative-ai-in-the-practice-of-law/>; see also *Report and Recommendations*, N.Y. STATE BAR ASS’N, TASK FORCE ON AI (Apr. 2024), <https://nysba.org/app/uploads/2022/03/2024-April-Report-and-Recommendations-of-the-Task-Force-on-Artificial-Intelligence.pdf>.

²⁹ *2024 Formal Ethics Opinion 1: Use of Artificial Intelligence in a Law Practice*, N.C. STATE BAR (Nov. 1, 2024), <https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/2024-formal-ethics-opinion-1/>.

³⁰ *Joint Formal Opinion 2024-200: Ethical Issues Regarding the Use of Artificial Intelligence*, PA. BAR ASS’N CMTE. ON LEGAL ETHICS & PROF’L RESP. & PHILA. BAR ASS’N PROF’L GUIDANCE CMTE. (May 22, 2024), <https://www.lawnext.com/wp-content/uploads/2024/06/Joint-Formal-Opinion-2024-200.pdf>.

³¹ *Opinion No. 705*, TEX. STATE BAR, PROF’L ETHICS CMTE. (Feb. 2025).

³² *Model Artificial Intelligence Policy for Law Firms*, v. 1.0, VA. BAR ASS’N (May 2024), https://cdn.ymaws.com/www.vba.org/resource/resmgr/home/2024/vba_model_ai_policy.pdf.

³³ *Ethics Opinion 388: Attorneys’ Use of Generative Artificial Intelligence in Client Matters*, D.C. BAR (Apr. 2024), <https://www.dcbbar.org/For-Lawyers/Legal-Ethics/Ethics-Opinions-210-Present/Ethics-Opinion-388>.

³⁴ *Formal Opinion 512*, ABA (July 29, 2024), https://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/ethics-opinions/aba-formal-opinion-512.pdf.

but also to newly issued AI-specific guidance, ensuring they maintain competency and protect client confidentiality in an evolving technological landscape.

A. Duty of Competence

Lawyers who utilize AI-powered tools in their practice must ensure their use complies with their ethical duty of competence. Rule 1.1 of the Model Rules defines a lawyer’s duty of competence as “requir[ing] the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation.”³⁵ Comment 8 to Rule 1.1 expands a lawyer’s duty of competence to include staying current on the “changes in the law and its practice, including the benefits and risks associated with relevant technologies” in order to maintain the required knowledge and skill to practice competently.³⁶

State bar associations have long interpreted this to apply to AI-powered technologies. The D.C. Bar Ethics Opinion explains:

Before using any particular form of [Gen AI], attorneys should have a reasonable and current understanding of how it works and what it does, with due regard for (a) its potential dangers, including the risk of “hallucinations” or misuse or exposure of Client Confidential Information, (b) its limitations, including whether it uses a narrow dataset that could generate incomplete, out-of-date, or inaccurate results, and (c) its cost.³⁷

The D.C. Bar expands the duty of competency beyond the typical scope of most jurisdictions. In order to be considered competent in discharging legal duties, D.C. lawyers must understand enough “about any technology the lawyer uses in legal practice to be reasonably confident that the technology *will advance the client’s interests in the representation.*”³⁸ D.C. lawyers therefore not only have an obligation to understand the potential risks and benefits of AI-powered tools, but also must use only those tools that will positively impact a client’s interest. This obligation is indeed a high bar given the everchanging abilities of AI-powered tools and the rollercoaster of litigation.

In its Formal Opinion 512, the ABA Standing Committee on Ethics and Professional Responsibility advises that lawyers do not have to become Gen AI experts to use such tools in their legal representation, but they “must have a reasonable understanding of the capabilities and

³⁵ ABA MODEL RULES OF PROF’L. CONDUCT R. 1.1 (2023).

³⁶ *Id.*, R. 1.1, cmt. 8.

³⁷ *Ethics Opinion 388: Attorneys’ Use of Generative Artificial Intelligence in Client Matters*, D.C. BAR, (Apr. 2024), <https://www.dcbar.org/For-Lawyers/Legal-Ethics/Ethics-Opinions-210-Present/Ethics-Opinion-388>.

³⁸ *Id.* (emphasis added).

limitations of the specific GAI [Gen AI] technology that the lawyer might use.”³⁹ Lawyers should familiarize themselves with the benefits and risks of using Gen AI, particularly to address any accuracy, client confidentiality, or data privacy concerns. To do this, lawyers may consult with experts, or simply read about Gen AI tools used by the legal profession and attend relevant continuing legal education programs.⁴⁰ To assist New York practitioners in discharging their duty of competence, for example, the New York State Bar Association Task Force on Artificial Intelligence provides a number of resources to aid in the understanding of Gen AI and its use cases in the legal profession, including research papers, articles, newsletters, and podcasts.⁴¹

Legal professionals who fail to develop a fundamental understanding of Gen AI tools and their capabilities have precipitated significant errors in several widely-reported cases. In *Mata v. Avianca*, for instance, the U.S. District Court for the Southern District of New York sanctioned the plaintiff’s lawyer for citing nonexistent cases that had been fabricated (i.e., “hallucinated”) by ChatGPT.⁴² The lawyer, using an early “free” version of ChatGPT, assumed the tool was “like a super search engine,” when in reality the tool had been trained on a limited dataset and did not have access to a legal research database.⁴³ The lawyer also apparently did not appreciate that Gen AI tools *generate* new content, rather than surface existing content through search. Therefore, when asked for six case citations to support the lawyer’s motion to dismiss, ChatGPT produced six case names, complete with case numbers, court names, and citations, that the Gen AI tool created specifically to address the lawyer’s prompt.

Opposing counsel questioned the fake citations when they could not locate them through traditional sources. After the court issued a show cause order, the lawyer again queried ChatGPT to ask whether the cases were real. Giving the lawyer exactly what he sought, ChatGPT “responded that it had supplied ‘real’ authorities that could be found through Westlaw, LexisNexis and the Federal Reporter.”⁴⁴ That was false. Ultimately, the court sanctioned the lawyer and his local counsel, requiring them to pay a \$5,000 fine, to notify their client of the court’s decision and the facts leading to the sanctions, and to mail a letter to each judge falsely identified as the authors of the six fake cases generated by ChatGPT.⁴⁵ If the lawyer had familiarized himself with ChatGPT and its capabilities, he likely could have avoided sanctions and the resulting publicity.

³⁹ *Formal Opinion 512: Generative Artificial Intelligence Tools*, AMER. BAR ASS’N, at 2-3 (July 29, 2024), https://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/ethics-opinions/aba-formal-opinion-512.pdf.

⁴⁰ *Id.* at 3.

⁴¹ *Report and Recommendations*, N.Y. STATE BAR ASS’N, TASK FORCE ON AI, at 77-78 (Apr. 2024), <https://nysba.org/app/uploads/2022/03/2024-April-Report-and-Recommendations-of-the-Task-Force-on-Artificial-Intelligence.pdf>.

⁴² *Mata v. Avianca, Inc.*, 678 F. Supp. 3d 443 (S.D.N.Y. 2023).

⁴³ *Id.* at 456.

⁴⁴ *Id.* at 458.

⁴⁵ *Id.* at 466.

Michael Cohen, a former lawyer for President Trump who pleaded guilty in 2018 to campaign finance violations and tax evasion, garnered media attention for a similar lack of competence and diligence related to a filing seeking to end his supervised release before November 2024. Mr. Cohen provided three nonexistent cases generated by Google Bard to his lawyers, who inserted the cases into the filing without cite-checking them. The federal judge in the matter declined to sanction Mr. Cohen but referred to the incident as “embarrassing.”⁴⁶

Despite these highly reported incidents, attorneys continue to stumble when using AI. In November 2024, a federal court sanctioned a Texas attorney for including citations to nonexistent cases and fake quotations generated by a Gen AI tool.⁴⁷ The court required the attorney to pay a \$2,000 penalty, attend a continuing legal education course on the topic of Gen AI, and provide his client with a copy of the order. In February 2025, a U.S. Magistrate Judge recommended sanctions of \$15,000 against an Indiana attorney who filed a brief with a fake case citation.⁴⁸ As these cases demonstrate, an attorney’s failure to competently assess the capability of Gen AI tools could lead to a violation of Rule 11 of the Federal Rules of Civil Procedure and resulting sanctions.

B. Duty of Confidentiality

The risk of disclosure of confidential client information or confidences presents one of the biggest concerns with using AI-powered tools in the legal profession. Developers design AI-powered tools to collect information from inquiries or prompts, store this information in the dataset, and use this information to train the tool and improve generated responses for future users.⁴⁹ Additionally, many of these tools are publicly available. Due to the protected status of attorney-client communications, allowing such information to be input into an AI-tool risks violating the privilege and breaking the confidentiality of those communications. Therefore, in urging compliance with ethical obligations, the ABA and several bar associations recommend that lawyers (i) adequately disclose AI use to clients to obtain informed consent and (ii) implement robust safeguards to prevent inadvertent exposure of confidential client information when using such tools.

Under Model Rule 1.6, lawyers “shall not reveal information relating to the representation of a client unless the client gives informed consent” with certain exceptions.⁵⁰ While in practice this rule is often understood to mean that lawyers should not share confidential information with other humans, several state bar associations and the ABA have affirmatively extended this duty to

⁴⁶ *Michael Cohen will not face sanctions after generating fake cases with AI*, REUTERS (Mar. 20, 2024), <https://www.reuters.com/legal/michael-cohen-wont-face-sanctions-after-generating-fake-cases-with-ai-2024-03-20/>.

⁴⁷ *Gauthier v. Goodyear Tire & Rubber Co.*, No. 1:23CV-281, 2024 WL 4882651 (E.D. Tex. Nov. 25, 2024).

⁴⁸ *Mid Central Operating Eng’r Health & Welfare Fund v. Hoosiervac LLC*, No. 2:24-cv-326 (Feb. 21, 2025).

⁴⁹ See *Ethics Opinion 388: Attorneys’ Use of Generative Artificial Intelligence in Client Matters*, D.C. BAR, (Apr. 2024), <https://www.dcbbar.org/For-Lawyers/Legal-Ethics/Ethics-Opinions-210-Present/Ethics-Opinion-388>;

⁵⁰ ABA MODEL RULES OF PRO. CONDUCT R. 1.6 (2023), https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_1_6_confidentiality_of_information/.

sharing client information with Gen AI-powered tools.⁵¹ Before lawyers ask for client consent, however, lawyers should confirm that use of AI-powered tools will not subject clients “to wide ranging disclosures that could waive attorney/client privilege or otherwise make their most confidential and secret information available to third parties to see and use.”⁵² Therefore, consistent with their duty of competence, lawyers must balance the potential risks and benefits of AI-powered tools before asking clients for consent to use such tools.

A lawyer’s duty of confidentiality does not cease once obtaining consent from clients to use AI-powered tools. Model Rule 1.6(c) requires lawyers to “make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of the client.”⁵³ In order to make such “reasonable efforts,” the ABA’s Formal Opinion 512 encourages lawyers to assess the likelihood of disclosure, the sensitivity of the client’s information, the difficulty of creating proper safeguards, and whether creating safeguards will negatively impact the lawyer’s representation of the client.⁵⁴ If the tool retains information provided by users, the D.C. Bar recommends lawyers locate a more advanced tool, negotiate for more stringent confidentiality protections with outside vendors, or only input non-sensitive client information.⁵⁵

A lawyer’s fundamental duty of confidentiality is paramount, regardless of technological advancements. Lawyers must be vigilant in protecting client information when using AI technologies and make “‘reasonable efforts’ to prevent the inadvertent or unauthorized disclosure of client information.”⁵⁶ Some experts recommend law firms follow established data protection

⁵¹ See *Formal Opinion 512: Generative Artificial Intelligence Tools*, ABA, at 6 (July 29, 2024), https://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/ethics-opinions/aba-formal-opinion-512.pdf; *Ethics Opinion 388: Attorneys’ Use of Generative Artificial Intelligence in Client Matters*, D.C. BAR, (Apr. 2024), <https://www.dcbar.org/For-Lawyers/Legal-Ethics/Ethics-Opinions-210-Present/Ethics-Opinion-388>; REPORT & RECOMMENDATIONS OF THE N.Y. STATE BAR ASS’N TASK FORCE ON A.I. 31 (April 2024), <https://nysba.org/app/uploads/2022/03/2024-April-Report-and-Recommendations-of-the-Task-Force-on-Artificial-Intelligence.pdf?srsltid=AfmBOoqO-3ZdYaZIO2IJ6TbXrvKxAnypf2Ee9HJNNaNaNn2tcRROKLeVX>; *Ethics Opinion 24-1*, FL. BAR ASS’N 2 (Jan. 19, 2024), <https://www.floridabar.org/etopinions/opinion-24-1/>; *Practical Guidance for the Use of Generative AI in the Practice of Law*, CAL. STATE BAR, STANDING CMTE. ON PROF’L RESP. & CONDUCT, at 4, <https://www.calbar.ca.gov/Portals/0/documents/ethics/Generative-AI-Practical-Guidance.pdf> (last visited March 5, 2025).

⁵² *Ethics Opinion 388: Attorneys’ Use of Generative Artificial Intelligence in Client Matters*, D.C. BAR, (Apr. 2024), <https://www.dcbar.org/For-Lawyers/Legal-Ethics/Ethics-Opinions-210-Present/Ethics-Opinion-388>.

⁵³ ABA MODEL RULES OF PROF’L CONDUCT R. 1.6 (2023), https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_1_6_confidentiality_of_information/.

⁵⁴ See *Formal Opinion 512: Generative Artificial Intelligence Tools*, ABA, at 6 (July 29, 2024), https://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/ethics-opinions/aba-formal-opinion-512.pdf.

⁵⁵ *Ethics Opinion 388: Attorneys’ Use of Generative Artificial Intelligence in Client Matters*, D.C. BAR, (Apr. 2024), <https://www.dcbar.org/For-Lawyers/Legal-Ethics/Ethics-Opinions-210-Present/Ethics-Opinion-388>.

⁵⁶ Daniel W. Linna Jr. & Wendy J. Muchman, *Ethical Obligations to Protect Client Data when Building AI Tools: Wigmore Meets AI*, ABA (Oct. 2, 2020),

best practices to preserve confidentiality, including inventorying all technology vendors with access to client data, practicing data minimization techniques and strategies, establishing separate data protection agreements with all external parties with access to firm data, and implementing a risk-based third-party risk management (TPRM) program, which can help identify and assess potential risks associated with using external vendors and providers of AI services.⁵⁷ At the very least, firms should conduct regular audits and monitor vendors and service providers to ensure all confidential information remains that way.⁵⁸

The California Bar Association, among many others, recommends that lawyers completely anonymize client information and avoid using details that could be used to identify clients.⁵⁹ While this approach appears to be supported by Comment 5 to Model Rule 1.6, which allows lawyers to discuss client issues as long as there is no likelihood a client's identity could be determined, the D.C. Bar raises concerns that anonymization may not be enough to protect privileged and confidential information.⁶⁰ As a lawyer continues to use an AI-powered tool during a client engagement, the tool will continue to gather data, which, even if anonymized, could provide future users or bad actors enough information to decipher a client's identity and reveal confidential information.⁶¹ Therefore, lawyers should not only use caution when inputting client information in AI-powered tools, but also ensure that such tools have proper safeguards for privacy and data security. The importance of reviewing and understanding the terms of use and the privacy policies of the particular AI tool being used is not to be understated.

C. Duty of Candor

Lawyers using AI-powered tools in their practice must still uphold their responsibility to avoid making false statements of law or fact, as well as avoid providing false evidence under Model Rule 3.3.⁶² As discussed above, several lawyers have mistaken Gen AI-powered tools for

https://www.americanbar.org/groups/professional_responsibility/publications/professional_lawyer/27/1/ethical-obligations-protect-client-data-when-building-artificial-intelligence-tools-wigmore-meets-ai/#ref45.

⁵⁷ See Ilia Kolochenko, *How to Protect Your Law Firm's Data in the Era of Gen AI*, ABA (Dec. 9, 2024), https://www.americanbar.org/groups/business_law/resources/business-law-today/2024-december/how-protect-law-firm-data-era-gen-ai/

⁵⁸ See *Enhancing client relationships with better data privacy and security practices*, THOMAS REUTERS (Aug. 3, 2024), <https://legal.thomsonreuters.com/blog/enhancing-client-relationships-with-better-data-privacy-and-security-practices/>

⁵⁹ See *Practical Guidance for the Use of Generative AI in the Practice of Law*, CAL. STATE BAR, STANDING CMTE. ON PROF'L RESP. & CONDUCT, at 2, <https://www.calbar.ca.gov/Portals/0/documents/ethics/Generative-AI-Practical-Guidance.pdf> (last visited March 5, 2025).

⁶⁰ See *Ethics Opinion 388: Attorneys' Use of Generative Artificial Intelligence in Client Matters*, D.C. BAR (Apr. 2024), <https://www.dcbbar.org/For-Lawyers/Legal-Ethics/Ethics-Opinions-210-Present/Ethics-Opinion-388>.

⁶¹ *Id.*

⁶² See ABA MODEL RULES OF PROF'L CONDUCT R. 3.3 (2023), https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_3_3_candor_toward_the_tribunal/

super-powered legal search engines capable of locating and reproducing already published and accurate or otherwise verified caselaw. Instead, Gen AI-powered tools rely on patterns often imperceptible to a human viewer and can create completely inaccurate or false outputs called “hallucinations.”⁶³ Lawyers found to have cited hallucinated cases generated by Gen AI tools risk violations of the duty of candor as well as the duty of competence.⁶⁴ In the matter involving Michael Cohen, even though the judge did not issue sanctions, the judge reprimanded Mr. Cohen’s lawyer, denouncing his conduct (failing to cite check cases given to his colleague by their client) as “certainly negligent” and “downright irrational.”⁶⁵ These cases, and those like it, affirm the importance of verifying AI generated work product and cite-checking all cases prior to submission to the court.

Further, lawyers should review applicable court rules, orders, or certification requirements that may necessitate the disclosure of generative AI to the court. For example, Judge Michael M. Baylson of the United States District Court for the Eastern District of Pennsylvania issued a standing order for all actions requiring lawyers and *pro se* parties to include a statement explaining how AI has been used to prepare the filing and certify that all cited law has been verified.⁶⁶ Other judges, such as the Honorable Michael J. Newman of the United States District Court for the Southern District of Ohio, prohibit parties from using AI in nearly all forms to help prepare a draft filing.⁶⁷ While these standing orders may seek to prevent lawyers from over-relying on AI-powered tools, they may be overly broad and sweep in tools that are not commonly thought of as AI, like spell check. Nevertheless, lawyers must consult the relevant court rules before using AI-powered tools to ensure they uphold their ethical duty of candor to the court.

D. Legal Fees

Lawyers must abide by Model Rule 1.5 when using Gen AI to assist in legal services, or when charging a client for the use of Gen AI, and therefore fees must be reasonable. As ABA Formal Opinion 512 confirms, attorneys may bill only for time spent performing a task; they

⁶³ See REPORT & RECOMMENDATIONS, N.Y. STATE BAR ASS’N, TASK FORCE ON AI, at 38 n.142 (April 2024), <https://nysba.org/app/uploads/2022/03/2024-April-Report-and-Recommendations-of-the-Task-Force-on-Artificial-Intelligence.pdf?srltid=AfmBOoqO-3ZdYaZIO2IJ6TbXrvKxAnypf2Ee9HJNNNaNn2tcRROKLeVX>; for additional research on AI legal hallucinations, see, Matthew Dahl et al., Large Legal Fictions: Profiling Legal Hallucinations in Large Language Models, 16 J. OF L. ANALYSIS 64. (Jan. 11, 2024), <https://doi.org/10.1093/jla/laae003>.

⁶⁴ See, e.g., *Mata v. Avianca*, 678 F.Supp.3d 443, 448, 467 (S.D.N.Y. June 23, 2023); *Gauthier v. Goodyear Tire & Rubber Co.*, No. 1:23CV-281, 2024 WL 4882651 (E.D. Tex. Nov. 25, 2024); *Mid Central Operating Eng’r Health & Welfare Fund v. Hoosiervac LLC*, No. 2:24-cv-326 (Feb. 21, 2025).

⁶⁵ *United States v. Cohen*, 724 F.Supp.3d 251, 258-259 (S.D.N.Y. March 20, 2024).

⁶⁶ See *Standing Order Re: Artificial Intelligence (“AI”) in Cases*, U.S.D.C., E.D. PA, (June 6, 2023), <https://www.paed.uscourts.gov/sites/paed/files/documents/procedures/Standing%20Order%20Re%20Artificial%20Intelligence%206.6.pdf>

⁶⁷ See *Standing Order Governing Civil Cases*, U.S.D.C. S.D. OHIO, (July 14, 2023), <https://www.ohsd.uscourts.gov/sites/ohsd/files/MJN%20Standing%20Civil%20Order%20eff.%2012.18.23.pdf>

cannot bill additional time to account for any efficiencies afforded by the use of Gen AI.⁶⁸ Further, although lawyers must obtain sufficient general knowledge to become competent in the use of Gen AI, as the Florida Bar Association makes clear in Ethics Opinion 24-1, lawyers may not charge for time spent developing “minimal competence in the use of generative AI.”⁶⁹ In other words, lawyers cannot charge clients for time spent learning how to adequately use Gen AI tools.

Whether attorneys may charge clients for costs associated with purchasing or using a third-party AI tool depends on the circumstances. Rule 1.5(a) requires that disbursements, out-of-pocket expenses, or additional charges be reasonable. The ABA advises lawyers to analyze the “characteristics and uses” of each Gen AI tool to determine whether the cost of the tool is appropriately categorized as a client disbursement or as firm overhead.⁷⁰ Moreover, lawyers should provide adequate notice to and receive consent from clients to bill for costs related to the use of AI.⁷¹

V. Conclusion

By developing a reasonable understanding of the risks and benefits associated with AI-powered legal tools, lawyers can leverage these innovative tools to enhance their services without compromising their ethical obligations. Legal professionals must remain vigilant about confidentiality and accuracy, ensuring that AI serves as an aid rather than a crutch. By adhering to the guidelines set forth by various bar associations and the Model Rules, lawyers can navigate the evolving landscape of technology with integrity, providing their clients with informed, competent, and secure representation. Embracing AI thoughtfully and ethically will enable the legal profession to evolve while upholding its foundational principles.

⁶⁸ *Formal Opinion 512*, ABA, STANDING CMTE. ON ETHICS & PROF’L RESP., at 12 (July 29, 2024), https://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/ethics-opinions/aba-formal-opinion-512.pdf.

⁶⁹ *Ethics Opinion 24-1*, FL. BAR ASS’N (Jan. 19, 2024), <https://www.floridabar.org/etopinions/opinion-24-1/>.

⁷⁰ *Formal Opinion 512*, ABA, STANDING CMTE. ON ETHICS & PROF’L RESP., at 13 (July 29, 2024), https://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/ethics-opinions/aba-formal-opinion-512.pdf.

⁷¹ *Id.*