

Robots, Rules, and Responsibility: Ethics for Lawyers in the AI Era

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Introduction

The [1908 CANONS OF PROFESSIONAL ETHICS](#)¹ was the first ethical code promulgated and adopted nationally in the United States. In 1969, the American Bar Association (ABA) adopted the [MODEL CODE OF PROFESSIONAL RESPONSIBILITY](#)². This CODE included both disciplinary rules (DRs) and ethical considerations (ECs.) DRs were mandatory while ECs were aspirational. In 1983, the ABA's House of Delegates updated and revised the M.C.P.R., creating the [MODEL RULES OF PROFESSIONAL CONDUCT](#)³. This was heavily revised and updated in 2000 by the [Ethics Commission](#)⁴, but it remains in use today.

The MODEL RULES govern eight areas of lawyering. These are:

- Client-Lawyer Relationship (Rule 1)⁵
- Counselor (Rule 2)⁶
- Advocate (Rule 3)⁷
- Transactions With Persons Other Than Clients (Rule 4)⁸
- Law Firms and Associations (Rule 5)⁹
- Public Services (Rule 6)¹⁰

¹ Comm. on the Code of Pro. Ethics, FINAL REPORT: CANONS OF PRO. ETHICS (American Bar Association 1908), https://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/1908_code.pdf, visited October 11, 2025.

² MODEL CODE OF PRO. RESP. (American Bar Association, 1969, 1981) https://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/model-code-of-prof-responsibility1969.pdf, visited October 11, 2025.

³ MODEL RULES OF PRO. CONDUCT (American Bar Association, 1983) https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/model_rules_of_professional_conduct_table_of_contents/?login, visited October 11, 2025.

⁴ Ethics Comm., *Report on the Model Rules of Professional Conduct*, https://www.americanbar.org/groups/professional_responsibility/policy/ethics_2000_commission/e2k_report_home/, visited October 11, 2025.

⁵ MODEL RULES OF PRO. CONDUCT r.1 (2000.)

⁶ MODEL RULES OF PRO. CONDUCT, r. 2 (2000.)

⁷ MODEL RULES OF PRO. CONDUCT, r. 3 (2000.)

⁸ MODEL RULES OF PRO. CONDUCT, r. 4(2000.)

⁹ MODEL RULES OF PRO. CONDUCT, r. 5 (2000.)

¹⁰ MODEL RULES OF PRO. CONDUCT, r. 6 (2000.)

- Information About Legal Services (Rule 7)¹¹
- Maintaining the Integrity of the Profession (Rule 8)¹²

In addition to the text of the Model Rules, other interpretative aids include:

- Comments following the Rules;¹³
- Formal and Informal Opinions by the ABA and State Bar Associations;¹⁴
- Cases, decided by Courts, which interpret the Rule;¹⁵
- A LEGISLATIVE HISTORY: THE DEVELOPMENT OF THE MODEL RULES OF PROFESSIONAL CONDUCT 1982-2013;¹⁶ and
- A secondary source, *THE RESTATEMENT OF THE LAW GOVERNING LAWYERS*.¹⁷

The ABA's MODEL RULES OF PROFESSIONAL CONDUCT are just that: model rules. As the MODEL RULES OF PROFESSIONAL CONDUCT, they cannot be used as an admission or disciplinary mechanism against attorneys who are licensed by individual state bar associations rather than the ABA.¹⁸ These rules must be adopted by state bar associations in order to apply to attorneys. The majority of states have adopted the MODEL RULES OF PROFESSIONAL CONDUCT¹⁹; sometimes these adoptions are verbatim while at other times, they are selective²⁰. New York²¹ and

¹¹ MODEL RULES OF PRO. CONDUCT , r.7 (2000.)

¹² MODEL RULES OF PRO. CONDUCT , r. 8 (2000.)

¹³ MODEL RULES OF PRO. CONDUCT, *supra* Note 3, cmts.

¹⁴ ABA/BNA LAWYER'S MANUAL ON PRO. CONDUCT, *ABA Ethics Op.* (1986 – Present) and ABA/BNA LAWYER'S MANUAL ON PRO. CONDUCT, *State Ethics Op.* (1986 – Present), Bloomberg Law @ <https://www.bloomberglaw.com/>, visited October 11, 2025.

¹⁵ *Id.*, See ABA ETHICS OP. database and STATE AND LOCAL ETHICS OP. databases.

¹⁶ Garwin, Art, ed., A LEGISLATIVE HISTORY: THE DEVELOPMENT OF THE MODEL RULES OF PRO. CONDUCT 1982-2013 (Center for Professional Responsibility, American Bar Association, Chicago, IL, 2013.)

¹⁷ RESTATEMENT OF THE LAW (THIRD) GOVERNING LAWYERS (American Law Institute, Washington, D.C. 2000 - .)

¹⁸ *Id.*, §1 *Regulation of Lawyers – In General*, Cmt. B.

¹⁹ *Id.*, cmt.d.

²⁰ *Id.*

²¹ Morgan, Thomas, MODEL RULES OF PRO. CONDUCT AND OTHER SELECTED STANDARDS, INCLUDING CALIFORNIA AND NEW YORK RULES ON PRO. RESP. (Foundation Press, 2025 ed.)

California²² are examples of two states that have drafted and enforce their own rules of professional conduct.

How do the professional rules of conduct apply to artificial intelligence which burst upon the scene in 2022?²³

Artificial Intelligence

Chat GPT, created by Open AI, was released to the public on November 30, 2022 to great fanfare²⁴. Known as Generative Artificial Intelligence (GAI), it is run on a Large Language Modeling (LLM) platform. GAI is trained on millions and millions of pages, scraped from the Internet, and works on probability. It promises its users that it will assist in handling many of their written tasks, assist with research, and provide predictive analytics.²⁵ After Open AI released Chat GPT,²⁶ competitors, including legal competitors, then developed their own models. Chat GPT has now become GPT 5 while Google has Gemni;²⁷ Microsoft has Co-Pilot,²⁸ and Meta has Llama.²⁹ Anthropic offers Claude.³⁰ There is also Perplexity AI.³¹

As LLMs and ChatGPT proliferated, AI legal vendors developed legal AI products. Why? To reduce hallucinations, legal AIs include RAG (retrieval augmented generation). What is RAG? According to Thomson Reuters:

²² *Id.*

²³ Perlman, Andrew, *The Implications of ChatGPT for Legal Services and Society*, 30 MICH. TECH. L.REV. 1, 2 (2023.)

²⁴ *Id.* at 2.

²⁵ *Id.* at 5-17.

²⁶ CHATGPT by OpenAI, <https://chatgpt.com/>, visited October 11, 2025.

²⁷ GEMNI by Alphabet, <https://gemni.google.com/>, visited October 11, 2025.

²⁸ CO-PILOT by Microsoft, <https://copilot.microsoft.com>, visited October 11, 2025.

²⁹ LLAMA by Meta, <https://www.lama.com>, visited October 11, 2025.

³⁰ CLAUDE by Anthropic, https://hix.ai/claude/claude-opus-4-1?utm_source=bing&utm_medium=cpc&language=en&campaignid=570095306&adgroupid=1176479373086196&keyword=claude&device=c&mssclkid=62b097f2dfee1069cf0fff180d573639&utm_campaign=SS_Chat_CP_EN_US&utm_term=claude&utm_content=Claude4, visited October 11, 2025.

³¹ PERPLEXITY AI by Perplexity AI, Inc., <https://www.perplexity.ai/>, visited October 11, 2025.

...RAG is the processing of raw data that truly sets a professional-grade LLM apart from others. This process is called **grounding** in which an LLM is augmented with industry-specific data that is not part of the development process for mass market LLMs.

Rather than having the LLM answer a question based on its own memory, it first retrieves relevant documents from a search engine and then uses those documents as inputs to the LLM in order to ground the answer.

For the legal field, it means gathering and preprocessing legal documents, prompt engineering, and intense human evaluation to improve specific tasks such as contract analysis or legal document summarization. This allows for a more efficient and accurate analysis of legal documents, leading to potential time and cost savings for legal professionals.³²

Selected legal AI tools include:

- [AI Lawyer](#) ³³
- [Co-Counsel](#) ³⁴
- [DoNotPay](#) ³⁵
- [Harvey AI](#) ³⁶
- [Lawchatgpt](#) ³⁷
- [Lawdroid Co-Pilot](#) ³⁸
- [LegalRobot](#) ³⁹
- [Lexis+AI](#) ⁴⁰

³² James Ju, *Retrieval-augmented Generation in Legal Tech*, THOMSON REUTERS, available @ <https://legal.thomsonreuters.com/blog/retrieval-augmented-generation-in-legal-tech/#what-is-rag> , visited October 21, 2025.

³³ AI LAWYER, <https://ailawyer.pro/> , visited October 11, 2025.

³⁴ CO-COUNSEL LEGAL by Thomson Reuters, <https://legal.thomsonreuters.com/en/products/cocounsel-legal> , visited October 11, 2025.

³⁵ DONOTPAY, <https://donotpay.com/> , visited October 11, 2025.

³⁶ HARVEY AI, <https://www.harvey.ai/> , visited October 11, 2025.

³⁷ LAWCHATGPT by Birdierun Technologies and Media GmbH <https://lawchatgpt.com/> , visited October 11, 2025.

³⁸ LAWDROID CO-PILOT by LawDroid Ltd., <https://lawdroid.com/copilot/> , visited October 11, 2025.

³⁹ LEGALROBOT, Legal Robot, Inc., <https://legalrobot.com/> , visited October 11, 2025.

⁴⁰ LEXIS+AI by LexisNexis, https://law.lexisnexis.com/4/ms-ads-drafting-pmax/free-trial?utm_source=bing&utm_medium=ppc&utm_term=law.lexisnexis.com&utm_campaign=SL-digital-drafting-bing-free-trial&mssclid=78ec3e7c48fd18e1da9e5691054990af , visited October 13, 2025.

- [PatentPal](#) ⁴¹
- [Spellbook](#) ⁴²

What Is Generative Artificial Intelligence?

Generative Artificial Intelligence (GAI) creates content while Predictive Artificial Intelligence predicts patterns. ABA Formal Opinion 24-512 defines GAI as:

...— generative AI (GAI), which can create various types of new content, including text, images, audio, video, and software code in response to a user’s prompts and questions. GAI tools that produce new text are prediction tools that generate a statistically probable output when prompted. To accomplish this, these tools analyze large amounts of digital text culled from the internet or proprietary data sources. Some GAI tools are described as “self-learning,” meaning they will learn from themselves as they cull more data.⁴³

IBM defines predictive artificial intelligence as:

Predictive [artificial intelligence](#) (AI) involves using statistical analysis and [machine learning](#) (ML) to identify patterns, anticipate behaviors and forecast upcoming events. Organizations use predictive AI to predict potential future outcomes, causation, risk exposure and more.⁴⁴

The Supreme Court of South Carolina defines AI as:

(1) Artificial Intelligence or "AI" refers to technologies or software that enable computers and machines to perform tasks that typically require human intelligence. These tasks include, but are not limited to, natural language processing, predictive analytics, and machine learning.

(2) Generative AI refers to AI tools capable of creating new content or data, such as text, images, audio, video, or code, based on user prompts. Generated or created content may be comparative to what a human creator produces and can include text consisting of entire narratives of naturally reading sentences. Examples of

⁴¹ PATENTPAL by Foothill Ventures, <https://patentpal.com/>, visited October 13, 2025.

⁴² SPELLBOOK by Khosla Ventures, <https://www.spellbook.legal/main>, visited October 13, 2025.

⁴³ ABA Comm. on Ethics and Prof. Resp., Formal Op. 512 (2024.)

⁴⁴ IBM, *What is Artificial Intelligence*, <https://www.ibm.com/think/topics/artificial-intelligence>, visited October 13, 2025.

these programs include, but are not limited to, ChatGPT, Microsoft 365 Copilot, Grok, Gemini, Meta Chat, and Westlaw's AI-Assisted Research and/or CoCounsel.⁴⁵

Artificial Intelligence & Lawyers: What's The Fuss?

What's the fuss about GAI and attorneys? It is important because of [MATA V. AVIANCA, INC.](#)⁴⁶, the first known case of attorneys being sanctioned for improperly using artificial intelligence in court documents.⁴⁷ According to the Court's [Administrative Order](#) in MATA:

Peter LoDuca, Steven A. Schwartz and the law firm of Levidow, Levidow & Oberman P.C. (the "Levidow Firm") (collectively, "Respondents") abandoned their responsibilities when they submitted non-existent judicial opinions with fake quotes and citations created by the artificial intelligence tool ChatGPT, then continued to stand by the fake opinions after judicial orders called their existence into question.⁴⁸

On June 22, 2023, the MATA judge in the Southern District of New York sanctioned attorneys, Steven Schwartz and Peter DoLuca, \$5,000.00 for submitting a legal brief that contained six fictitious cases.⁴⁹ Schwartz and DoLuca submitted a brief to the Court in a personal injury action on behalf of their client.⁵⁰ Schwartz admitted that he consulted ChatGPT for research, and he cited cases provided by ChatGPT.⁵¹ Schwartz did not independently read and verify these cases.⁵² It turns out that those cases were bogus.⁵³ Despite the Court's questioning, DoLuca submitted an affidavit to the Court in March of 2022, swearing to the

⁴⁵ The Supreme Court of South Carolina, *Interim Policy on the Use of Generative Artificial Intelligence*, Appellate Case #25-000043, <https://www.sccourts.org/media/courtOrders/PDFs/2025-03-25-01.pdf>, visited October 13, 2025.

⁴⁶ [MATA V. AVIANCA, INC.](#), F. SUPP. 3D 443 (S.D. N.Y.; Feb. 22, 2023.)

⁴⁷ Benjamin M. Redgrave and Erica B. Zolner, *Litigation, Technology, and Ethics*, in PRACTICAL LAW, (2025) Westlaw 5-575-6745.

⁴⁸ MATA, *Supra*, Note 46, at 448.

⁴⁹ *Id.* at 449, 466.

⁵⁰ *Id.* at 449.

⁵¹ *Id.* at 450-452.

⁵² *Id.* at 451.

⁵³ *Id.*

existence and veracity of the cases.⁵⁴ But later events proved this to be untrue.⁵⁵ Judge Kevin Castell found that:

Here, Respondents advocated for the fake cases and legal arguments contained in the Affirmation in Opposition after being informed by their adversary’s submission that their citations were non-existent and could not be found. (Findings of Fact ¶¶ 7, 11.) Mr. Schwartz understood that the Court had not been able to locate the fake cases.⁵⁶

Judge Castell imposed a sanction of \$5,000.00 on Peter LoDuca, Steven A. Schwartz, and their firm, Levidon, Levidon, and Oberman, P.C.⁵⁷ under FEDERAL RULES OF CIVIL PROCEDURE 11.⁵⁸

The summer of 2023 saw several courts require that attorneys, using GAI, disclose the use of AI in pleadings.⁵⁹ During this time, attorneys continued to submit briefs with what became known as “hallucinated” or fictitious cases. This led to two questions:

- Whether it is permissible for attorneys to use generative artificial intelligence in their legal practice?
- If so, what is an attorney’s ethical obligation regarding the use of generative artificial intelligence?

Before courts or bar associations could answer the above questions, attorneys were already using generative artificial intelligence in their practices. According to a recent report

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *Id.* at 464.

⁵⁷ *Id.* at 466.

⁵⁸ *Id.* See also FED. R. CIV. P. 11.

⁵⁹ See University of Chicago D’Angelo Law Library LibGuides, *Generative AI in Legal Research, Education, and Practice*, available @ [AI and Law Practice - Generative AI in Legal Research, Education, and Practice - Library Guides at Uchicago](https://www.bloomberglaw.com/product/blic/search/results/8ee1644d1fe747fb390142ba8a04f2da?utm_source=ANT&utm_medium=ANP) (updated October 3, 2024), visited September 21, 2025. See also BLOOMBERGLAW, *Tracker for Judicial Standing Orders for AI*, https://www.bloomberglaw.com/product/blic/search/results/8ee1644d1fe747fb390142ba8a04f2da?utm_source=ANT&utm_medium=ANP, visited October 13, 2025.

prepared by Bloomberg Law in August 2025, [Artificial Intelligence: Impact on Legal Industry](#),⁶⁰

there are five items of importance about attorneys and the use of AI between its release in late 2022 and the current date, 2025. These include:

- Many lawyers are now using Generative Artificial Intelligence (GAI.) Bloomberg says “...[E]xperience with AI is now the norm, not the exception.”⁶¹
- As to the second item, the report refers to “AI slop”⁶² and notes that it will continue in briefs to courts until courts receive proper training and impose painful sanctions. “Hallucinations” or citations to non-existent cases continue.⁶³
- The third item in Bloomberg’s report is named “AI washing.”⁶⁴ Are descriptions of GAI puffery, which is acceptable, or deceptive misrepresentation, which is not?

The report states:

Regulators have begun scrutinizing AI-related disclosures that are material to a company’s valuation or product capabilities, and are paying closer attention to misrepresentations about the sophistication of companies’ AI tools. The Federal Trade Commission has warned that existing consumer protection and advertising laws apply to AI-related claims and, as a result, materially misleading AI assertions constitute deceptive practices. The Securities and Exchange Commission has similarly pursued enforcement actions against publicly traded companies for material and unsubstantiated misrepresentations about AI capabilities in investor materials and public statements.⁶⁵

- In 2024, Colorado enacted the first, and to date only, comprehensive regulation of artificial intelligence known as the *Colorado Artificial Intelligence Act*, in the

⁶⁰ ARTIFICIAL INTELLIGENCE: THE IMPACT ON THE LEGAL INDUSTRY, Bloomberg Law, available @ <https://aboutblaw.com/bjbL>, visited October 13, 2025.

⁶¹ *Id.* at 4.

⁶² *Id.*

⁶³ *Id.* at 9-10.

⁶⁴ *Id.* at 4.

⁶⁵ *Id.* at 12.

United States.⁶⁶ It is available at [Colo. Rev. Stat. §§6-1-1701 to 6-1-1707](#)

(2025.)⁶⁷ The act requires “high risk” AI systems to satisfy defined requirements that include risk assessments, impact assessments, and full disclosures over AI driven decisions that impact consumers.⁶⁸

- The report stated that attorneys, in 2024, were optimistic that GAI would help provide greater efficiencies for their workloads and billing.⁶⁹ The 2025 survey noted that attorneys did not believe this optimism was warranted, i.e., they were disappointed, believing that GAI had not lived up to its initial promise.⁷⁰

Thus, Bloomberg’s AI Report concluded:

- The majority of lawyers, including older lawyers in practice for 30 or more years, are using AI;
 - Despite the above, AI slop abounds. Case citations, case quotations, and legal analysis are incorrectly used and relied upon by attorneys, often now resulting in sanctions;
 - AI puffery exists which the Federal Trade Commission is now examining;
 - Colorado enacted the first comprehensive statute to regulate AI in 2024;
- and
- Attorneys have been disappointed by the efficiencies promised by AI that have not come to fruition.⁷¹

⁶⁶ *Id.* at 4.

⁶⁷ [COLO. REV. STAT. §§6-1-1701 to 6-1-1707 \(2025.\)](#)

⁶⁸ *Id.*

⁶⁹ ARTIFICIAL INTELLIGENCE: IMPACT, *Supra*, Note 60, at 4.

⁷⁰ *Id.* at 19.

⁷¹ *Id.* at 4-20.

Since ChatGPT was introduced to the world in November of 2022, its' impact is huge. Attorneys, as case citations demonstrate, have used it to cite non-existent cases, make up quotations, and provide novel legal analysis.⁷² Many attorneys appear to have relied upon AI without independently verifying or corroborating its accuracy. This behavior has resulted in court sanctions, particularly F.R.C.P. Rule 11 sanctions in federal courts, against attorneys.⁷³ Using Westlaw, a search of the *all case content (federal and state cases)* library, using the search terms *“Rule 11” w/5 sanction! & AI*, retrieved 440 cases that involve sanctions for an attorney’s improper use of artificial intelligence since 2022.⁷⁴

Since attorneys are clearly using GAI, the question becomes: “how can attorneys ethically and effectively use a GAI tool?”

The Intersection of GAI, the Practice of Law, and Legal Ethics: Guidance

Two questions were asked in the summer of 2023 regarding GAI and attorneys. These questions were:

- Whether it is permissible for attorneys to use GAI in their legal practice?
- If so, what is an attorney’s ethical obligation regarding the use of GAI?

Instead of waiting for an answer to “whether lawyers may use GAI,” attorneys began using it before the summer of 2023. The sanctions of attorneys and court ordered disclosures regarding attorney use of GAI then began appearing. Guidance by the ABA and state bar associations followed more slowly.

⁷² *Id.* See also Note 60, *Supra*, at 4.

⁷³ FED. R. CIV. P. 11.

⁷⁴ WESTLAW, +”Rule 11” w/5 sanction! & AI, 440 Results (October 23, 2025) (on file with the author.)

On July 29, 2024, the ABA's [Standing Committee on Ethics and Professional Responsibility](#)⁷⁵ issued [Formal Opinion 24-512](#)⁷⁶ which specifically addressed attorneys' use of General Artificial Intelligence tools. The Opinion noted that attorneys were using GAI to help accomplish the following tasks:

- Legal research;
- Contract review;
- Due diligence;
- Document review;
- Regulatory compliance; and
- Drafting letters, contracts, briefs, and other legal documents.⁷⁷

According to the Committee and [Opinion](#), lawyers intending to use GAI need to be able to answer the following five questions:

- What type of competency should lawyers acquire regarding the use of a GAI tool?
- How can lawyers satisfy their duty of confidentiality to existing clients, prior clients, and prospective clients when using a GAI tool that requires the input of information relating to the representation?
- When must lawyers disclose the use of a GAI tool to clients?
- What level of review, by an attorney, is needed for a GAI tool's processes or output?

⁷⁵ ABA Standing Comm. on Ethics and Pro. Resp., https://www.americanbar.org/groups/professional_responsibility/committees_commissions/ethicsandprofessionalresponsibility/, visited October 13, 2025,

⁷⁶ Op., *Supra*, Note 43.

⁷⁷ *Supra*, Note 43, at 1.

- What constitutes a reasonable fee or expense when lawyers use a GAI tool to provide legal services to clients?⁷⁸

To answer these questions, the [Opinion](#) addresses the following nine rules in its fifteen pages:

- Competence/Rule 1.1⁷⁹
- Confidentiality/Rule 1.6⁸⁰
- Communication/Rule 1.4⁸¹
- Meritorious Claims and Candor towards the Tribunal/Rules 3.1,⁸² 3.3,⁸³ and 8.4⁸⁴
- Supervisory Responsibilities/Rules 5.1⁸⁵ and 5.3⁸⁶; and
- Fees/Rule 1.5.⁸⁷

Competence/ Rule 1.1

Rule 1 covers the attorney and client relationship, defining an attorney's responsibilities to his or her client. Opinion 512 is specifically concerned with competency, confidentiality, and communication. Rule 1.1 addresses the competency requirement of the client-attorney relationship. Rule 1.1 specifically defines an attorney's competence as:

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.⁸⁸

⁷⁸ *Supra*, Note 43, at 2.

⁷⁹ MODEL RULES OF PRO. CONDUCT r.1.1 (2000.)

⁸⁰ MODEL RULES OF PRO. CONDUCT r.1.6 (2000.)

⁸¹ MODEL RULES OF PRO. CONDUCT r.1.4 (2000.)

⁸² MODEL RULES OF PRO. CONDUCT r.3.1 (2000.)

⁸³ MODEL RULES OF PRO. CONDUCT r.3.3 (2000.)

⁸⁴ MODEL RULES OF PRO. CONDUCT r.8.4 (2000.)

⁸⁵ MODEL RULES OF PRO. CONDUCT r.5.1 (2000.)

⁸⁶ MODEL RULES OF PRO. CONDUCT r.5.3 (2000.)

⁸⁷ MODEL RULES OF PRO. CONDUCT r.1.5 (2000.)

⁸⁸ MODEL RULES OF PRO. CONDUCT r.1.1 (2000.)

Knowledge, skills, thoroughness, and preparation are the requirements of attorney competence. Eight comments then follow the rule, defining those items.⁸⁹ Comment Eight (8) is concerned with determining how an attorney maintains competence, noting that:

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.⁹⁰

This competency requirement includes the competent use of GAI. This does not mean that an attorney must become a GAI expert. Instead, the attorney must have a reasonable understanding of the capabilities and limitations of the GAI tool that she or he is using.⁹¹

How does an attorney become competent in using a GAI tool?

- Engage in self study;
- Associate with another competent lawyer; and
- Consult with individuals who have sufficient expertise in the GAI field to be able to provide answers to questions.⁹²

Lawyers must independently review a GAI's results to verify its accuracy. Lawyers must locate and read the cases provided by the GAI before relying on these cases for clients and courts.⁹³

Lawyers cannot use GAI to perform tasks that call for the exercise of professional judgment.⁹⁴

Thus, lawyers should not leave the following tasks to a GAI:

- Offering legal advice to clients;

⁸⁹ MODEL RULES OF PRO. CONDUCT r.1.1 cmts. 1-8 (2000.)

⁹⁰ *Id.* at r.1.1, cmt.8.

⁹¹ *Supra*, Note 43, at 2-3.

⁹² *Supra*, Note 43, at 3-5.

⁹³ *Supra*, Note 43, at 3-4.

⁹⁴ *Supra*, Note 43, at 4.

- Negotiating claims on behalf of clients;
- Going to court; or
- Performing other functions that require a lawyer’s personal judgment or participation.⁹⁵

Footnote 16⁹⁶ of Opinion 24-512 approvingly cites FLORIDA BAR ETHICS OPINION 24-1.⁹⁷

In its opinion, the Florida Bar acknowledges that lawyers can use a GAI tool in their practice but remind attorneys that they must:

- Protect client confidentiality;
- Provide accurate and competent services;
- Avoid improper billing practices; and
- Comply with applicable restrictions on lawyer advertising.⁹⁸

A recent Florida case, involving Tampa attorney, J. Tony Lopez, resulted in a disciplinary referral to the Florida Bar for improper AI usage, i.e. technical competency.⁹⁹ The Second District Court of Appeals (DCA) of Florida referred Lopez to Florida’s [disciplinary officials, requesting sanctions](#).¹⁰⁰ Why? According to the Court, Lopez submitted a brief that contained “...phony cases, cites and quotes” to it.¹⁰¹ Mr. Lopez, the Court noted:

- Misrepresented the holdings of opinions nine times;
- Fabricated quotes ten times; and

⁹⁵ *Supra*, Note 43.

⁹⁶ *Supra*, Note 43, footnote 16 at 4.

⁹⁷ THE FLORIDA BAR ADVISORY OP. 24-1 (January 19, 2024) <https://www.floridabar.org/etopinions/opinion-24-1/>, visited October 13, 2025.

⁹⁸ *Id.*

⁹⁹ CLERK OF THE COURT AND COMPTROLLER FOR THE 13TH JUDICIAL CIRCUIT, HILLSBOROUGH COUNTY, v. ANGIE RANGEL, et al., ___ So. 3d ___, 2025 WL 2486314 (Fl. Dist. Ct. App. 2nd, 2025.)

¹⁰⁰ *Id.* at 2486316.

¹⁰¹ *Id.* at 2486315.

- Cited to a case that did not exist.¹⁰²

Lopez admitted that there were “grave errors” with the brief.¹⁰³ Why? He failed to review the brief.¹⁰⁴ He subcontracted out the research for the brief to a third party paralegal.¹⁰⁵ Mr. Lopez failed to review the brief for accuracy and failed to supervise the work of a paralegal.¹⁰⁶ Because of this conduct, the Court concluded that Mr. Lopez had violated the RULES REGULATING THE FLORIDA BAR.¹⁰⁷ The Court stated:

As outlined previously, Mr. Lopez relied on an ‘independent contractor paralegal’ to assist with the preparation of the answer brief due to his lack of experience and apparent lack of competency to handle this appeal. It seems evident that he hired someone who was not competent to handle preparation of the brief or who did not undertake the necessary work to properly perform the task. Mr. Lopez failed to adequately supervise that person and failed to sufficiently review the brief that was provided to him before signing and filing it. Further, he failed to review the reply brief that would have alerted him to the deficiencies in the answer brief, and as a result, he failed to make any effort to correct those deficiencies until this court issued an order to show cause. His conduct has resulted in the need for amended briefing and a delay in oral argument and disposition of this appeal. Efficiency, expertise, and cost savings are some of the reasons why attorneys delegate work and use technological tools such as generative artificial intelligence in representing their clients. **But this case is another reminder that an attorney who does so remains responsible for the work product that is generated.**¹⁰⁸

As the time line indicates, Florida prepared and issued its Opinion regarding an attorney’s usage of AI in January of 2024¹⁰⁹ while the ABA did not issue its Opinion until July of that

¹⁰² *Id.*

¹⁰³ *Id.* at 2486314-2486316.

¹⁰⁴ *Id.*

¹⁰⁵ *Id.* at 2436316-2486317.

¹⁰⁶ *Id.*

¹⁰⁷ RULES REGULATING THE FLORIDA BAR, r. 4.1-1 (2025), https://www-media.floridabar.org/uploads/2025/10/2026_01-JULY-RRTFB-7-14-2025.pdf, visited October 13, 2025.

¹⁰⁸ *Supra*, Note 99, at 2436315.

¹⁰⁹ *Supra*, Note 97, at 1.

year.¹¹⁰ The ABA noted, just as did the Florida Bar, that “...the lawyer is fully responsible for the work on behalf of the client.”¹¹¹ Despite the differences in dates, both entities concluded that lawyers were responsible for the competent use of artificial intelligence; excuses for failing to read cases and review work were not accepted.

Confidentiality, Rule 1.6

Rule 1.6¹¹² is concerned with the confidentiality of existing clients. Rule 1.9¹¹³ is concerned with confidentiality to former clients while Rule 1.18¹¹⁴ is concerned with confidentiality to prospective clients. According to M.R.P.C., Rule 1.6 states:

- (a) A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation, or the disclosure is permitted by paragraph (b).
- (b) A lawyer may reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary:
 - (1) to prevent reasonably certain death or substantial bodily harm;
 - (2) to prevent the client from committing a crime or fraud that is reasonably certain to result in substantial injury to the financial interests or property of another and in furtherance of which the client has used or is using the lawyer's services;
 - (3) to prevent, mitigate or rectify substantial injury to the financial interests or property of another that is reasonably certain to result or has resulted from the client's commission of a crime or fraud in furtherance of which the client has used the lawyer's services;
 - (4) to secure legal advice about the lawyer's compliance with these Rules;
 - (5) to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client

¹¹⁰ *Supra*, Note 43, at 1.

¹¹¹ *Supra*, Note 43, at 4.

¹¹² MODEL RULES OF PRO. CONDUCT, r. 1.6 (2000.)

¹¹³ MODEL RULES OF PRO. CONDUCT, r.1.9 (2000.)

¹¹⁴ MODEL RULES OF PRO. CONDUCT, r. 1.18 (2000.)

was involved, or to respond to allegations in any proceeding concerning the lawyer's representation of the client;

(6) to comply with other law or a court order; or

(7) to detect and resolve conflicts of interest arising from the lawyer's change of employment or from changes in the composition or ownership of a firm, but only if the revealed information would not compromise the attorney-client privilege or otherwise prejudice the client.

(c) A lawyer shall make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client.¹¹⁵

As [Rule 1.6](#) states, lawyers owe their clients a duty of confidentiality regarding the representation. This means that lawyers must keep confidential all information obtained, regardless of the source, about the representation of the client unless:

- The client gives informed consent for disclosure;
- The disclosure is impliedly authorized in order to carry out the representation; or
- The matter fits within one of the Rule [1.6\(b\)](#) exceptions.¹¹⁶

This duty of confidentiality is also owed to former clients¹¹⁷ and prospective clients.¹¹⁸

The concern with any GAI is that the information an attorney inputs into it about the client representation may be either accessed by others or disclosed to others outside of the firm because of the Large Language Model (LLM.) Before inputting a client's information, a lawyer must evaluate the risks involved and obtain the client's informed consent.¹¹⁹ Opinion 512 announces that the risk analysis to be used regarding confidentiality will be fact driven.¹²⁰ It will

¹¹⁵ *Supra*, Note 112.

¹¹⁶ *Supra*, Note 112.

¹¹⁷ *Supra*, Note 113.

¹¹⁸ *Supra*, Note 114.

¹¹⁹ *Op.*, *Supra*, Note 43, at 7.

¹²⁰ *Id.*

depend upon the client, the matter, and the GAI tool. The Opinion advises an attorney to understand a GAI's:

- Terms of use;
- Privacy policy;
- Related contractual terms and policies of the particular GAI tool; and
- Understand who will be able to access the information that the lawyer inputs.¹²¹

To understand this risk analysis process, examine Microsoft Co-Pilot's *Terms of Use*, *Privacy*, *Contractual Terms*, and *Use of AI*. This process, i.e., checking and understanding *Terms of Use*, *Privacy*, *Contractual Terms*, and *Use of AI* should be repeated with every GAI product that an attorney uses in order to comply with the duty of confidentiality. An attorney must understand what data the AI tool will collect, how long it will retain this data, whether the data will be used to train the LLM, who else will have access to this data, and what security measures are in place to protect this data.¹²² The *Terms of Use*, *Privacy*, *Contractual Terms*, and *Use of AI* statements must be carefully read so that the attorney can answer these questions.

In certain circumstances, Opinion 512 asserts that an attorney must obtain a client's informed consent before using a GAI product.¹²³ What then constitutes informed consent? Opinion 512 indicates that "boiler-plate provisions in engagement letters" will not suffice.¹²⁴ Instead, informed consent requires an attorney to advise a client:

- That the client know and understand the lawyer's best judgment as to why the use of a GAI tool should be used;
- The type of risks involved regarding the exposure of the client's information;
- Other ways that the client's information could be acquired by third parties and used adversely against the client; and

¹²¹ *Id.*

¹²² Jennifer Browning Fite, *A Lawyer's Guide to Generative AI*, 61 ARIZ. ATT'Y 14, 19 (June 2025.)

¹²³ *Id.* at 8-9.

¹²⁴ *Id.*

- An explanation to the client as to why the use of the GAI would benefit the client's case.¹²⁵

Communication: Rule 1.4

Immediately following the discussion about the duty of confidentiality, Opinion 512 then discusses Rule 1.4¹²⁶ which is concerned with an attorney's obligation to communicate with his or her client. As demonstrated previously, an attorney must obtain a client's informed consent when using GAI in certain circumstances. When must an attorney disclose the use of GAI to a client? To answer this question, consider Rule 1.4's instructions regarding communication.

Rule 1.4 says a lawyer's duty to communicate with a client requires:

- (a) A lawyer shall:
 - (1) promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in Rule 1.0(e), is required by these Rules;
 - (2) reasonably consult with the client about the means by which the client's objectives are to be accomplished;
 - (3) keep the client reasonably informed about the status of the matter;
 - (4) promptly comply with reasonable requests for information; and
 - (5) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law.
- (b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.¹²⁷

Opinion 512 breaks the communication, required by attorney to his or her client, regarding the use of GAI, into 2 categories:

¹²⁵ *Id.* at 7.

¹²⁶ MODEL RULES PRO. CONDUCT, r.1.4 (2000.)

¹²⁷ *Id.*

- When an attorney must disclose the use of GAI if prompted by a client; and
- When an attorney must disclose the use of GAI even if not prompted by a client.¹²⁸

An attorney must disclose the use of GAI, if asked by a client, in the following circumstances:

- The client asks how the attorney conducted the work;
- The engagement requires such disclosure; or
- The client directly asks if GAI technologies were used.¹²⁹

There are times an attorney must disclose the use of GAI even when the client does not ask. If the attorney intends to input information about the representation into a GAI tool, the client must be informed and must provide informed consent.¹³⁰ If the use of a GAI will influence a significant outcome of the representation, i.e. predictive litigation outcomes or jury selection, the lawyer must disclose.¹³¹ But as Opinion 512 notes, every circumstance involving the required disclosure of a GAI product by an attorney to a client cannot be articulated.¹³² Instead it is a factor test, requiring attorneys to consider the following when deciding whether disclosure is required:

- Client's needs and expectations about the representation and GAI;

¹²⁸ *Op.*, *Supra*, Note 43, at 8-9.

¹²⁹ *Id.* at 8.

¹³⁰ *Id.* at 8-9. Informed client consent requires:

- That the client know and understand the lawyer's best judgment as to why the use of a GAI tool should be used;
- The type of risks involved regarding the exposure of the client's information;
- Other ways that the client's information could be acquired by third parties and used adversely against the client; and
- An explanation to the client as to why the use of the GAI would benefit the client's case.

¹³¹ *Id.*

¹³² *Id.* at 9.

- The scope of the representation;
- The sensitivity of the information involved;
- The GAI product's importance to a particular task;
- The significance of the particular task to the overall representation;
- How the GAI product will process the client's information; and
- The extent to which the lawyer's use of a GAI product will affect the client's evaluation of and confidence in the attorney's work.¹³³

Is GAI disclosure mandatory? Opinion 512 notes:

Even when Rule 1.6 does not require informed consent and Rule 1.4 does not require a disclosure regarding the use of GAI, lawyers may tell clients how they employ GAI tools to assist in the delivery of legal services. Explaining this may serve the interest of effective client communication. The engagement agreement is a logical place to make such disclosures and to identify any client instructions on the use of GAI in the representation.¹³⁴

Meritorious Claims, Candor Towards the Tribunal, & Lawyer Misconduct Rules 3.1, 3.2, and 8.4

After discussing competence, confidentiality, and communication, Opinion 512 then proceeds to discuss how Rules 3.1, 3.2, and 8.4 apply when an attorney is using a GAI product. Rule 3 is concerned with meritorious pleadings and candor towards the tribunal while Rule 8.4 addresses the results when an attorney files non-meritorious pleadings and is not candid with the court, i.e., attorney misconduct.

Rule 3.1, addressing the attorney's role as Advocate, requires:

A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a **basis in law and fact**

¹³³ *Id.*

¹³⁴ *Id.*

for doing so that is not **frivolous**, which includes a **good faith argument** for an extension, modification or reversal of existing law. A lawyer for the defendant in a criminal proceeding, or the respondent in a proceeding that could result in incarceration, may nevertheless so defend the proceeding as to require that every element of the case be established.¹³⁵

[Rule 3.1](#) prohibits an attorney from filing or defending a lawsuit that lacks a basis in either law or fact.¹³⁶ “*Frivolous*” and “*good faith*” are adjectives used in the Rule.¹³⁷ FEDERAL RULES OF CIVIL PROCEDURE, [RULE 11](#),¹³⁸ bolsters MODEL RULES OF PROFESSIONAL CONDUCT, RULE 3.1 in federal courts, as it requires that all pleadings and filings in federal court be signed by the attorney and represent the following:

- (1) it is not being presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation;
- (2) the claims, defenses, and other legal contentions are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law;
- (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and
- (4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on belief or a lack of information.¹³⁹

Several courts have imposed sanctions, using F.R.C.P. 11, on attorneys and their firms when the court has determined that their pleadings were inaccurate and/or misleading because of an attorney’s improper use of a GAI tool.¹⁴⁰

¹³⁵ MODEL RULES OF PRO. CONDUCT, r. 3.1 (2000.)

¹³⁶ *Id.*

¹³⁷ *Id.*

¹³⁸ FED. R. CIV. P. 11

¹³⁹ *Id.*

¹⁴⁰ See META, *Supra*, Note 46, at 464-465 and CLERK OF THE COURT, *Supra*, Note 99, at WL 2486314. See also results of Westlaw search, *Supra*, Note 74.

Rule 3.3 is concerned with an attorney's candor towards the court.

A lawyer's duty as an Advocate requires the following behaviors towards the court:

- (a) A lawyer shall not knowingly:
 - (1) make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer;
 - (2) fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel; or
 - (3) offer evidence that the lawyer knows to be false. If a lawyer, the lawyer's client, or a witness called by the lawyer, has offered material evidence and the lawyer comes to know of its falsity, the lawyer shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal. A lawyer may refuse to offer evidence, other than the testimony of a defendant in a criminal matter, that the lawyer reasonably believes is false.
- (b) A lawyer who represents a client in an adjudicative proceeding and who knows that a person intends to engage, is engaging or has engaged in criminal or fraudulent conduct related to the proceeding shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal.
- (c) The duties stated in paragraphs (a) and (b) continue to the conclusion of the proceeding, and apply even if compliance requires disclosure of information otherwise protected by Rule 1.6.
- (d) In an ex parte proceeding, a lawyer shall inform the tribunal of all material facts known to the lawyer that will enable the tribunal to make an informed decision, whether or not the facts are adverse.¹⁴¹

If an attorney files a pleading, citing non-existent cases or quotes and relies upon the incorrect legal analysis supplied by a GAI tool, courts are concluding that this conduct violates Rules 3.1 and 3.3. Why? Because attorneys are obviously neither verifying nor reading the cases that they are using to advocate for their client.¹⁴²

This conduct then brings into play Rule 8.4 which defines lawyer misconduct.

¹⁴¹ MODEL RULES OF PRO. CONDUCT, r. 3.3 (2000.).

¹⁴² BENJAMIN V. COSTCO WHOLESALE CORP., 779 F. SUPP. 3d 341, 343 (E.D.N.Y., 2025.)

Rule 8.4 says it is professional misconduct for a lawyer to do any of the following:

It is professional misconduct for a lawyer to:

- (a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;
- (b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;
- (c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;
- (d) engage in conduct that is prejudicial to the administration of justice;
- (e) state or imply an ability to influence improperly a government agency or official or to achieve results by means that violate the Rules of Professional Conduct or other law;
- (f) knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law; or
- (g) engage in conduct that the lawyer knows or reasonably should know is harassment or discrimination on the basis of race, sex, religion, national origin, ethnicity, disability, age, sexual orientation, gender identity, marital status or socioeconomic status in conduct related to the practice of law. This paragraph does not limit the ability of a lawyer to accept, decline or withdraw from a representation in accordance with Rule 1.16. This paragraph does not preclude legitimate advice or advocacy consistent with these Rules.¹⁴³

When a lawyer improperly uses a GAI tool, i.e. misrepresents the existence of a case, quotation, or legal argument, it would appear that 8.4(c) is violated, i.e., the attorney has engaged in “...conduct involving dishonesty, fraud, deceit, or misrepresentation.”¹⁴⁴

Law Firms & Associations: Rules 5.1 and 5.3

The provisions under M.R.P.C. 5 are named “*Law Firms and Associations*.”¹⁴⁵ These rules are concerned with how a law firm functions. How do lawyers delegate work to others?

¹⁴³ MODEL RULES OF PRO. CONDUCT, r. 8.4 (2000.)

¹⁴⁴ *Id.*

¹⁴⁵ MODEL RULES OF PRO. CONDUCT, r. 5 (2000.)

Must lawyers supervise work delegated to other attorneys, paralegals, or administrators within the firm?

Rule 5.1 plainly states that supervisory or managerial lawyers must supervise non-managerial lawyers within a law firm to ensure compliance with the MODEL RULES OF PROFESSIONAL CONDUCT. Rule 5.1 defines a supervisory attorney's responsibilities as:

- (a) A partner in a law firm, and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm, shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that all lawyers in the firm conform to the Rules of Professional Conduct.
- (b) A lawyer having direct supervisory authority over another lawyer shall make reasonable efforts to ensure that the other lawyer conforms to the Rules of Professional Conduct.
- (c) A lawyer shall be responsible for another lawyer's violation of the Rules of Professional Conduct if:
 - (1) the lawyer orders or, with knowledge of the specific conduct, ratifies the conduct involved; or
 - (2) the lawyer is a partner or has comparable managerial authority in the law firm in which the other lawyer practices, or has direct supervisory authority over the other lawyer, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.¹⁴⁶

Regarding GAI, this means managing/supervisory lawyers must see that supervised lawyers and other non-lawyers within a firm:

- Receive the basics of GAI training;
- Understand the capabilities and limitations of the GAI tool being used;
- Understand the ethical rules, issues, and implications raised by the GAI tool; and
- Learn best practices for secure data handling, privacy, and confidentiality.¹⁴⁷

¹⁴⁶ MODEL RULES, *Supra*, Note 9.

¹⁴⁷ *Op.*, *Supra*, Note 43, at 10.

Rule 5.3 addresses the responsibilities of a supervising attorney for non-lawyers employed by, retained by, or associated with the supervising attorney. Lawyers who outsource work with a GAI to a third party still have a responsibility for the work outsourced and must ensure that it is done in compliance with the MODEL RULES OF PROFESSIONAL CONDUCT.

Rule 5.3 provides:

With respect to a nonlawyer employed or retained by or associated with a lawyer:

- (a) a partner, and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the person's conduct is compatible with the professional obligations of the lawyer;
- (b) a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer; and
- (c) a lawyer shall be responsible for conduct of such a person that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if:
 - (1) the lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved; or
 - (2) the lawyer is a partner or has comparable managerial authority in the law firm in which the person is employed, or has direct supervisory authority over the person, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.¹⁴⁸

Opinion 512 suggests that lawyers delegating work to a third party regarding use of GAI might do the following:

- Check references and vendor credentials;
- Understand the vendor's security policies and protocols;
- Be familiar with the vendor's hiring practices;

¹⁴⁸ MODEL RULES OF PRO. CONDUCT, r. 5.3 (2000.)

- Use confidentiality agreements;
- Understand the vendor’s conflict check system; and
- Understand the availability and accessibility of a legal form for relief for violations of the vendor agreement.¹⁴⁹

Regarding Rules 5.1 and 5.3, [Opinion 512](#) notes that other technology opinions might be applicable and should be consulted. The Opinion, drawing from ABA and State Bar Opinions, specifically says¹⁵⁰ lawyers should:

- ensure that the [GAI tool] is configured to preserve the confidentiality and security of information, that the obligation is enforceable, and that the lawyer will be notified in the event of a breach or service of process regarding production of client information;¹⁵¹
- investigate the [GAI tool’s] reliability, security measures, and policies, including limitations on the [the tool’s] liability;¹⁵²
- determine whether the [GAI tool] retains information submitted by the lawyer before and after the discontinuation of services or asserts proprietary rights to the information;¹⁵³ and
- understand the risk that [GAI tool servers] are subject to their own failures and may be an attractive target of cyber-attacks.¹⁵⁴

¹⁴⁹ Op., *Supra*, Note 43, at 11.

¹⁵⁰ *Id.*

¹⁵¹ *Id.* See also FLA. BAR ADVISORY OP. 12-3 (2013) @ <https://www.floridabar.org/etopinions/etopinion-12-3/>, visited October 24, 2025.

¹⁵² Op., *Supra*, Note 43, at 11. See also IOWA STATE BAR ASS’N COMM. ON ETHICS & PRACTICE GUIDELINES Op. 11-01 (2011) available at Bloomberg Law @ https://www.bloomberglaw.com/product/mopc/document/X8P9T29S000000?criteria_id=b9ca9c6539a38d35f80729cbca47e57e&searchGuid=b607c125-8c4b-40e3-b85a-c44688137867, visited October 24, 2025.

¹⁵³ Op., *Supra*, Note 43, at 11. See also FLA BAR. ADVISORY OP. 24-1 (2024) and 12-3 (2013) and IOWA STATE BAR ASS’N COMM. ON ETHICS & PRACTICE GUIDELINES, Op. 11-01 (2011.)

¹⁵⁴ *Id.* See also Melissa Heikkila, *Three Ways AI Chatbots are a Security Disaster*, MIT TECH. R. (Apr. 3, 2023), @ <https://www.technologyreview.com/2023/04/03/1070893/three-ways-ai-chatbots-are-a-security-disaster/>, visited October 24, 2025.

Fees: Rule 1.5

Rule 1.5 opines that lawyers must not charge an “unreasonable fee” nor collect an “unreasonable amount” for an expense.¹⁵⁵ The question then becomes: “What is a reasonable fee?”

Rule 1.5(a) lists eight factors to be considered to determine whether a fee is reasonable.

The factors are:

- (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
- (2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
- (3) the fee customarily charged in the locality for similar legal services;
- (4) the amount involved and the results obtained;
- (5) the time limitations imposed by the client or by the circumstances;
- (6) the nature and length of the professional relationship with the client;
- (7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and
- (8) whether the fee is fixed or contingent.¹⁵⁶

What does this mean regarding fees when an attorney is using a GAI? If an attorney is charging an hourly or fixed fee, the attorney can only bill for the factual and actual time spent on the client’s matter.¹⁵⁷ If a GAI is used, this means the attorney may bill for time spent inputting the relevant information into a GAI, and time spent reviewing and evaluating the output from the GAI.¹⁵⁸ If charging a contingent fee and a GAI allows the attorney to accomplish tasks more

¹⁵⁵ MODEL RULES OF PRO. CONDUCT, r. 1.5 (2000.)

¹⁵⁶ *Id.*

¹⁵⁷ *Op.*, *Supra*, Note 43, at 12.

¹⁵⁸ *Id.*

quickly, then the same sum cannot be charged for the flat fee.¹⁵⁹ Expenses must also be reasonable, and attorneys may not bill for overhead. Is GAI an overhead, i.e., non-billable, or an expense, i.e., billable? It depends! Grammarly is a GAI tool that is generally embedded within an attorney's word processing software. Thus, it is overhead for which the attorney cannot bill.¹⁶⁰ Yet if the GAI tool is a separate tool, such as Co-Counsel or HarveyAI, it is an expense whose use can be billed.¹⁶¹ How does an attorney bill for a proprietary in-house GAI? Opinion [24-512](#) states:

The firm may agree in advance with the client about the specific rates to be charged for using a GAI tool, just as it would agree in advance on its legal fees. But not all in-house GAI tools are likely to be so special or costly to develop, and the firm may opt not to seek the client's agreement on expenses for using the technology. Absent an agreement, the firm may charge the client no more than the direct cost associated with the tool (if any) plus a reasonable allocation of expenses directly associated with providing the GAI tool, while providing appropriate disclosures to the client consistent with Formal Opinion 93-379. The lawyer must ensure that the amount charged is not duplicative of other charges to this or other clients.¹⁶²

Opinion 512 also states that attorneys may not charge a client for learning to use a GAI tool since comment 8 of Rule 1.1 requires that an attorney maintain competence in technology.¹⁶³

However, an attorney may charge a client to learn a new GAI platform:

¹⁵⁹ *Id.*

¹⁶⁰ *Id.* at 13.

¹⁶¹ *Id.*

¹⁶² *Id.* As a caveat, many of the cases involving attorneys improperly using GAI have involved ChatGPT. However, an attorney's improper use of a GAI is not limited to ChatGPT. Proprietary in-house GAIs have also hallucinated, providing non-existent case citations. Morgan & Morgan attorneys were sanctioned and fined in February of 2025 for citing non-existent cases produced by their inhouse GAI, MX2.law in WADSWORTH V. WALMART, 348 F.R.D. 489 (D. Wyoming, 2025.) Despite the nature of an in house proprietary AI, the Court still sanctioned the attorney for citing to non-existence cases, noting that attorneys must ["...make a reasonable inquiry into the law contained in a document before signing..."](#) *Id.* at 496. Failure to make such an inquiry means ["...sanctions are warranted."](#) *Id.* at 499. See also Bob Ambrogi, *Federal Judge Sanctions Morgan & Morgan Attorneys for AI-Generated Fake Cases in Court Filing*, LAW SITES, (February 25, 2025), visited October 26, 2025.

¹⁶³ *Op.*, *Supra*, Note 43, at 14.

...if a client explicitly requests that a specific GAI tool be used in furtherance of the matter and the lawyer is not knowledgeable in using that tool, it may be appropriate for the lawyer to bill the client to gain the knowledge to use the tool effectively. Before billing the client, the lawyer and the client should agree upon any new billing practices or billing terms relating to the GAI tool and, preferably, memorialize the new agreement.¹⁶⁴

Opinion 512 provides a comprehensive discussion of an attorney's ethical use of GAI as well as his or her obligations to clients, other attorneys, and the courts regarding the appropriate use of GAI.

Guidance from State Bar Associations

Bloomberg Law created a table that "...is intended to assist in researching and keeping track of legal ethics opinions and guidance related to artificial intelligence (AI) and professional responsibility."¹⁶⁵ According to this table, Alabama, Arizona, Arkansas, Colorado,¹⁶⁶ Connecticut, Delaware, Georgia, Hawaii, Idaho, Illinois,¹⁶⁷ Indiana, Iowa, Kansas, Louisiana, Maine, Maryland, Massachusetts, Montana, Nebraska, Nevada, New Hampshire, North Dakota, Ohio, Oklahoma, Rhode Island, South Carolina,¹⁶⁸ South Dakota, Tennessee, Utah, Vermont,

¹⁶⁴ *Id.*

¹⁶⁵ [Legal Profession, Comparison Table - State Legal Ethics Guidance on Artificial Intelligence \(AI\)](https://www.bloomberglaw.com/product/mopc/document/X2JK49QC000000), Bloomberg Law, available @ <https://www.bloomberglaw.com/product/mopc/document/X2JK49QC000000>, visited October 26, 2025.

¹⁶⁶ *But see* COLORADO INTELLIGENCE ACT, *Supra*, Note 67. According to Bloomberg Law's AI REPORT, *Supra*, Note 60, Colorado is the first, and to date, the only state to provide a comprehensive regulation of AI. There is a table of all 50 states' laws and regulations pertaining to AI in Bloomberg. *See State Artificial Intelligence (AI) Laws and Regulations*, Bloomberg Law, available @ <https://www.bloomberglaw.com/product/blaw/document/XD6SRR7C000000#Colorado>, visited October 26, 2025.

¹⁶⁷ The Illinois Supreme Court issued and published *The Illinois Supreme Court Policy on Artificial Intelligence*, Effective January 1, 2025, available @ <https://ilcourtsaudio.blob.core.windows.net/antilles-resources/resources/e43964ab-8874-4b7a-be4e-63af019cb6f7/Illinois%20Supreme%20Court%20AI%20Policy.pdf>, visited October 26, 2025. The policy says "[t]he use of AI by litigants, attorneys, judges, judicial clerks, research attorneys, and court staff..." should not be required in a pleading. The Court also notes that "[t]he RULES OF PROF. CONDUCT and the CODE OF JUDICIAL CONDUCT apply fully to the use of AI technologies."

¹⁶⁸ In March of 2025, South Carolina's Chief Justice, John Kittredge, issued an *Interim Policy on the Use of Generative Artificial Intelligence* as it applied to "...Judicial Officers and Employees of the South Carolina Judicial Branch. Judicial Officers and Employees includes

Washington, Wisconsin, and Wyoming¹⁶⁹ have yet to provide its attorneys with any ethical opinions or guidance regarding AI and professional responsibility. Meanwhile Alaska, California, the District of Columbia, Florida, Kentucky, Michigan, Minnesota, Mississippi, Missouri, New Jersey, New Mexico, New York, North Carolina, Oregon, Pennsylvania, Texas, Virginia, and West Virginia have all provided guidance in the form of either an ethical opinion, practical guidance, or a working report.¹⁷⁰

Justices, judges, attorneys, law clerks, administrative assistants, interns, externs, temporary employees, paralegals, and all other employees or volunteers within the Branch regardless of whether they are compensated by state or local funds, including information technology professionals.” While defining AI and its use by the Courts, Justice Kittredge did note that “this Interim Policy does not specifically address the use of Generative AI by lawyers and litigants, lawyers and litigants are reminded that they are responsible to ensure the accuracy of all work product and must use caution when relying on any output of Generative AI....Lawyers in particular must ensure that the use of Generative AI does not compromise client confidentiality or otherwise violate the South Carolina Rules of Professional Conduct, Rule 407, SCACR.” See South Carolina Supreme Court, *Interim Policy on the Use of Generative Artificial Intelligence*, available @ <https://www.sccourts.org/media/t5cb4do0/2025-03-25-01-ai.pdf>, visited October 26, 2025.

¹⁶⁹ See LEGAL PROFESSIONS COMPARISON TABLE, *Supra*, Note 154.

¹⁷⁰ *Id.* See ALASKA BAR ASS’N ETHICS OPINION 2025-1, *Generative Artificial Intelligence and The Practice of Law Issue*, available @ <https://alaskabar.org/wp-content/uploads/2025-1.pdf>, visited October 26, 2025; State Bar of California, *Practical Guidance on the Use of Generative Artificial Intelligence*, available @ <https://board.calbar.ca.gov/docs/agendaItem/Public/agendaitem1000031754.pdf>, visited October 26, 2025; District of Columbia Bar, ETHICS OPINION 388, *Attorneys’ Use of Generative Artificial Intelligence in Client Matters*, available @ <https://www.dcbar.org/For-Lawyers/Legal-Ethics/Ethics-Opinions-210-Present/Ethics-Opinion-388>, visited October 26, 2025; FLORIDA BAR ADVISORY OP. 24-1, *Supra*, Note 97; KENTUCKY ETHICS OPINION, KBA-E 457, available @ https://kybar.org/Portals/0/Admin/Ethics%20Opinions/KBA%20E-457.pdf?ver=26b8saKGwR2UOr4Xy_25LQ%3d%3d, visited October 26, 2025; State Bar of Michigan, *Report on Artificial Intelligence in the Legal Profession*, available @ <https://www.michbar.org/AI>, *Judicial Ethics Opinion* JI-155, available @ https://www.michbar.org/opinions/ethics/numbered_opinions/JI-155, *AI: FAQs for Attorneys*, available @ <https://www.michbar.org/opinions/ethics/AIFAQs>, all visited on October 26, 2025; State Bar of Minnesota, *Working Group on AI*, available @ <https://s3.amazonaws.com/membercentralcdn/sitedocuments/msba/msba/0089/2561089.pdf?AWSAccessKeyId=AKIAIHKD6NT2OL2HNPMQ&Expires=1761515705&Signature=iZ374xELXBwLtFLLoG6K2vF0HxBk%3D&response-content-disposition=inline%3B%20filename%3D%22msba%2Dai%2Dworking%2Dgroup%2Dfinal%2Dreport%2Dand%2Drecommendations%2Epdf%22%3B%20filename%2A%3DUTF%2D8%27%27msba%252Dai%252Dworking%252Dgroup%252Dfinal%252Dreport%252Dand%252Drecommendations%252Epdf&response-content-type=application%2Fpdf>, visited October 26, 2025; ETHICS OP. NO. 267 OF THE MISS. BAR, available @ <https://www.msbar.org/ethics-discipline/ethics-opinions/formal-opinions/267/>, visited October 26, 2025; Office of Legal Ethics Counsel & Advisory Committee of the Supreme Court of MO., INFORMAL OP. 2024-11, available @ <https://mo-legal-ethics.org/informal-opinion/2024-11/>, visited October 26, 2025; LEGAL PRACTICE: PRELIMINARY GUIDELINES ON THE USE OF ARTIFICIAL INTELLIGENCE BY NEW JERSEY LAWYERS, available @ <https://www.njcourts.gov/sites/default/files/notices/2024/01/n240125a.pdf>, visited October 26, 2025; New Jersey State Bar Ass’n, TASK FORCE ON ARTIFICIAL INTELLIGENCE (AI) AND THE LAW: REPORT, REQUESTS, RECOMMENDATIONS, AND FINDING, available @ <https://njsba.com/wp-content/uploads/2024/05/NJSBA-TASK-FORCE-ON-AI-AND-THE-LAW-REPORT-final.pdf>, visited October 26, 2025; State Bar of New Mexico, FORMAL ETHICS ADVISORY OP. 2024-004, available @

Other Ethical Concerns

In addition to disciplinary concerns imposed by ethical codes, GAI also results in other legal concerns. Selected topics to be briefly discussed below include bias, copyright infringement, defamation, and the unauthorized practice of law. Bias will be discussed first.

Bias

Generative Artificial Intelligence (GAI) can also create bias. What types of bias?

- Data
- Algorithmic
- Human¹⁷¹

https://www.sbnm.org/Portals/NMBAR/GenAI%20Formal%20Opinion%20-%20Sept_2024_FINAL.pdf, visited October 26, 2025; N.Y.C. BAR ASS'N FORMAL OP. 2024-5, *Use of Generative Artificial Intelligence in the Practice of Law*, available @ https://www.nycbar.org/wp-content/uploads/2024/08/20221329_GenerativeAILawPractice.pdf, visited October 26, 2025; **North Carolina** State Bar Ass'n, 2024 FORMAL ETHICS OP. 1, *Use of Artificial Intelligence in a Law Practice*, available @ <https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/2024-formal-ethics-opinion-1/>, visited October 26, 2025; **Oregon** State Bar Ass'n, FORMAL OP. 2025-205, *Artificial Intelligence Tools*, available @ <https://www.osbar.org/docs/ethics/2025-205.pdf>, visited October 26, 2025; **Pennsylvania** Bar Ass'n Comm. on Legal Ethics & Prof. Responsibility and Philadelphia Bar Ass'n Professional Guidance Comm., JOINT FORMAL OP. 2024-200, *Ethical Issues Regarding the Use of Artificial Intelligence*, available @ <https://www.pabar.org/Members/catalogs/Ethics%20Opinions/Formal/Joint%20Formal%20Opinion%202024-200.pdf>, visited October 26, 2025; Pro. Ethics Comm. for the State Bar of **Texas**, OP. 705, available @ https://tcle-web.s3.amazonaws.com/public/documents/Opinion_705.pdf, *Taskforce for Responsible AI in the Law* Interim Report to the State Bar of Texas Board of Directors, available @ https://www.texasbar.com/AM/Template.cfm?Section=Meeting_Agendas_and_Minutes&Template=/CM/ContentDisplay.cfm&ContentID=62597, visited October 26, 2025; State Bar of **Virginia**, *Guidance on Generative Artificial Intelligence*, available @ <https://vsb.org/Site/Site/lawyers/ethics.aspx?hkey=bc8a99e2-7578-4e60-900f-45991d5c432b>, visited October 26, 2025; and **West Virginia**, JUDICIAL INVESTIGATION ADVISORY OP., 2023-22, available @ https://www.courtswv.gov/sites/default/pubfiles/mnt/2023-11/JIC%20Advisory%20Opinion%202023-22_Redacted.pdf, and West Virginia Lawyer Disciplinary Board, LEGAL ETHICS OP. 24-01, *Artificial Intelligence*, available @ <https://storage.googleapis.com/msgsndr/Rgd68xOkcVdteTsBkf6O/media/667ac9c219bb7a1f7a4df4c2.pdf>, both visited October 26, 2025.

¹⁷¹ Joe Regalia, *From Briefs to Bytes: How Generative AI is Transforming Legal Writing and Practice*, 59 TULSA L.REV. 193, 218-220 (2024.) See also Simon R. Graf, *The Sins of the Father: Excising Malignant Bias from Artificial Intelligence*, 19 J. BUS. & TECH. 401, 408-431 (2024.)

AI is trained using historical data that continues to perpetuate historical bias.¹⁷² The selection of training data and other training decisions are initially controlled by a human being. To deal with this bias, the National Artificial Intelligence Act¹⁷³ requires the “...development of trustworthy artificial intelligence systems...”¹⁷⁴ that identify “...analytical methods for identifying and mitigating bias in artificial intelligence systems...”¹⁷⁵ Section 278h-a¹⁷⁶ directs the National Institute of Standards and Technology to set standards for artificial intelligence that will “establish common definitions and characterizations of...bias...”

How does this bias impact the legal system?

- Lending;¹⁷⁷
- Judicial Sentencing and Recidivism;¹⁷⁸
- Employment Decisions (hiring, firing, and promotion);¹⁷⁹ and
- Juror selection.¹⁸⁰

¹⁷² *Id.* at 218.

¹⁷³ 15 U.S.C. §9461 (2021.)

¹⁷⁴ *Id.* at §9461 (7).

¹⁷⁵ *Id.* at §9461 (7) (b).

¹⁷⁶ 15 U.S.C. §278h-1(2021.)

¹⁷⁷ See Jason Jia-Xi Wu, *Algorithmic Fairness in Consumer Credit Underwriting: Towards a Harm-Based Framework for AI Fair Lending*, 21 BERKLEY BUS. L.J. 63, 68-69 (2023.)

¹⁷⁸ See Ignacio Cofone and Warnt Khern-am-nuai, *The Overstated Cost of AI Fairness in Criminal Justice*, 100 IND. L.J. 1431, 1432-1438 (2025.)

¹⁷⁹ *MOBLEY V. WORKDAY, INC.*, 740 F. SUPP. 3d 796 (N.D. CA, 2024.) According to the plaintiff, Dereck Mobley, “Workday’s website states that it can ‘reduce time to hire by automatically dispositioning or moving candidates forward in the recruiting process.’ ” (*Id.* ¶ 94.) Workday allegedly “embeds artificial intelligence (‘AI’) and machine learning (‘ML’) into its algorithmic decision-making tools, enabling these applications to make hiring decisions.” (*Id.* ¶ 99.) In addition, Workday’s applicant screening tools allegedly integrate “pymetrics” that “use neuroscience data and AI,” in combination with existing employee referrals and recommendations. (*Id.* ¶¶ 100–01.) According to Mobley, these tools “determine whether an employer should accept or reject an application” and are designed in a manner that reflects employer biases and relies on biased training data. (*Id.* ¶¶ 28, 38–48, 102–03.) An applicant can advance in the hiring process only if they get past Workday’s screening algorithms.” *Id.* at 802. Utilizing a disparate impact theory as well as other rationales, the Court concluded that Mobley could refile an amended complaint. *Id.* at 809-813.

¹⁸⁰ Kincaid C. Brown, *Generative Artificial Intelligence: Legal Ethics Issues*, 104 MICH. BAR J. 48, 48-49 (Jan. 2025.)

In order to combat this bias, experts should routinely conduct bias audits of AI, and there should be human oversight of AI and its results in order to obtain fairness, transparency, accountability, and sustainability of AI systems.¹⁸¹

Copyright Infringement

According to [17 U.S.C. §102](#) (2012):

Copyright protection subsists, in accordance with this title, in original works of authorship fixed in any tangible medium of expression, now known or later developed, from which they can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device.¹⁸²

The question then becomes “how does copyright become involved with Generative Artificial Intelligence?” GAI is trained on Large Language Models (LLMs) which consist of a collection of huge datasets.¹⁸³ These datasets include books, articles, and websites. Data is scraped from these sources, text is converted into tokens, and the training begins.¹⁸⁴ From where are these books, articles, and websites obtained? Are LLMs copying content protected by copyright? If so, is this copyright infringement? These are questions that the courts and society are tasked with answering as copyright infringement lawsuits against Generative Artificial Intelligence (GAI) companies proliferate.¹⁸⁵

Two well known cases are currently pending in New York and California. In the Southern District of New York, the New York Times sued Open AI and Microsoft on December

¹⁸¹ Graf, *The Sins of the Father*, *Supra*, Note 170, at 434-444.

¹⁸² 17 U.S.C. §102 (2012.) This section defines works of authorship as: “(1) literary works; (2) musical works, including any accompanying words; (3) dramatic works, including any accompanying music; (4) pantomimes and choreographic works; (5) pictorial, graphic, and sculptural works; (6) motion pictures and other audiovisual works; (7) sound recordings; and (8) architectural works.”

¹⁸³ Matthew Sag & Peter K. Yu, *The Globalization of Copyright Exceptions for AI Training*, 74 EMORY L.J. 1163, 111171-1172 (2025.)

¹⁸⁴ *Id.* at 1172-1174.

¹⁸⁵ *Id.* at 1177-1182.

27, 2023,¹⁸⁶ alleging that both parties’ use of the NEW YORK TIMES data to train their Large Language Models (LLMs), without compensation, constituted copyright infringement, a violation of the Digital Millenium Copyright Act¹⁸⁷, and common law unfair competition by misappropriation.¹⁸⁸ Microsoft and Open AI requested a dismissal.¹⁸⁹ To answer these questions, the Court:

...**denies** (1) OpenAI’s motions to dismiss the direct infringement claims involving conduct occurring more than three years before the complaints were filed; (2) defendants’ motions to dismiss the contributory copyright infringement claims; and (3) defendants’ motions to dismiss the state and federal trademark dilution claims in the Daily News action. The Court **grants** defendants’ motions to dismiss the common law unfair competition by misappropriation claims and OpenAI’s motion to dismiss the “abridgment” claims in the CIR action, and dismisses each of those claims with prejudice. With respect to the DMCA claims, the Court grants (1) Microsoft’s motions to dismiss the 17 U.S.C. § 1202(b)(1) claims against it in all three actions, (2) OpenAI’s motion to dismiss the section 1202(b)(1) claim against it in the Times action, and (3) defendants’ motions to dismiss the section 1202(b)(3) claims against them in all three actions, and dismisses each claim without prejudice. The Court **denies** OpenAI’s motions to dismiss the section 1202(b)(1) claims against it in the Daily News and CIR actions.¹⁹⁰

On August 12, 2024, the New York Times refiled its amended complaint¹⁹¹, demanding a jury trial.¹⁹² Since that date, the case continues to proceed with a flurry of docket entries, the last being October 28, 2025 with an order granting the motion to admit counsel pro hac vice.¹⁹³

¹⁸⁶ NEW YORK TIMES, INC., v. MICROSOFT, CORP, OPEN AI, ET AL., 777 F. Supp. 3d 213 (S.D.N.Y. 2025.)

¹⁸⁷ 17 U.S.C. §1202 (2012.)

¹⁸⁸ NEW YORK TIMES, *Supra*, Note 186, at 301.

¹⁸⁹ *Id.*

¹⁹⁰ *Id.* at 328-329.

¹⁹¹ FIRST AMENDED COMPLAINT, No. 1:23-cv-11195-SHS (S.D.N.Y., August 12, 2024.)

¹⁹² *Id.*

¹⁹³ DOCKET SHEET, No. 1:23-cv-11195-SHS (S.D.N.Y., 2023-2025.)

Meanwhile in California, *BARTZ V. ANTHROPIC*¹⁹⁴ was unfolding. Andrea Bartz, an author, and other authors sued Anthropic, for copyright infringement on August 19, 2024.¹⁹⁵ She alleged copyright infringement, arguing that Anthropic, in training its chatbot, Claude, violated her copyright.¹⁹⁶ The Court noted that:

An artificial intelligence firm downloaded for free millions of copyrighted books in digital form from pirate sites on the internet. The firm also purchased copyrighted books (some overlapping with those acquired from the pirate sites), tore off the bindings, scanned every page, and stored them in digitized, searchable files. All the foregoing was done to amass a central library of “all the books in the world” to retain “forever.” From this central library, the AI firm selected various sets and subsets of digitized books to train various large language models under development to power its AI services. Some of these books were written by plaintiff authors, who now sue for copyright infringement.¹⁹⁷

While the authors alleged copyright infringement, Anthropic filed a Motion to Dismiss on March 27, 2025¹⁹⁸, arguing that their use of the works constituted “fair use,” an exemption permitted under the Copyright Act.¹⁹⁹ The Court concluded that the issue before it was “...the extent to which any of the uses of the works in question qualify as ‘fair uses’ under Section 107 of the Copyright Act.”²⁰⁰

While the Court concluded in its June 23, 2025 Order on Fair Use²⁰¹ that Anthropic’s use satisfied the fair use test provided the Copyright Act²⁰² for training use, it denied summary

¹⁹⁴ 787 F. SUPP. 3D 1007 (N.D. CA, 2025.)

¹⁹⁵ *Id.* at 1014-1019.

¹⁹⁶ *Id.*

¹⁹⁷ *Id.* at 1014.

¹⁹⁸ DOCKET SHEET, No. 3:24-cv-05417 (N.D. CA, Mar. 27, 2025.)

¹⁹⁹ 17 U.S.C. §107 (2012.)

²⁰⁰ *BARTZ*, *Supra*, Note 194, at 1014.

²⁰¹ *Id.*

²⁰² *Supra*, Note 198.

judgement for Anthropic regarding the use of pirated copies used for training. It stated that there would be a trial for Anthropic's use of the pirated copies to create its central library.²⁰³

On August 25, 2025, Anthropic proposed settlement.²⁰⁴ Later, their attorneys filed a motion with the Northern District of California, requesting an unopposed Motion for Preliminary Approval of Class Settlement, offering plaintiffs a \$1.5 billion pool, plus interest, to settle.²⁰⁵ This works out to approximately \$3,000.00 per book.²⁰⁶ On September 25, 2025, Judge Alsup conducted a Motion Hearing and an Order for Motion Settlement.²⁰⁷ On October 17, 2025, Judge Alsup issued a Memorandum Opinion and Preliminary Approval of Settlement Order.²⁰⁸ A Fairness Hearing is scheduled for noon on April 23, 2026.²⁰⁹

Back in New York in the fall of 2025, another high profile copyright infringement case was filed against an AI producer.²¹⁰ Sussman Godfrey filed suit on behalf of Encyclopaedia Britannica and Merriam-Webster against Perplexity AI in the Federal District Court for the Southern District of New York, alleging copyright violation. The plaintiffs alleged that:

Perplexity's conduct violates Plaintiffs' exclusive rights under the Copyright Act in at least three ways:

- First, Perplexity infringes Plaintiffs' copyrights at the curation stage when it uses a software program called "PerplexityBot" to crawl and scrape Plaintiffs' websites for Perplexity's "answer engine."
- Second, Perplexity infringes Plaintiffs' copyrights at the input stage when it copies Plaintiffs' copyrighted articles that are responsive to user searches to prompt responses from its RAG model.

²⁰³ BARTZ, *Supra*, Note 194, at 1034.

²⁰⁴ DOCKET SHEET, 3:24-cv-05417, NOTICE OF SETTLEMENT, JOINT STIPULATION FOR STAY AND PROPOSED ORDER (N.D. CA, Aug. 26, 2025.)

²⁰⁵ DOCKET SHEET, 3:24-cv-05417, MOTION FOR PRELIMINARY APPROVAL OF CLASS SETTLEMENT (N.D. CA, Sept. 7, 2025.)

²⁰⁶ *Id.*

²⁰⁷ *Id.*

²⁰⁸ *Id.*

²⁰⁹ *Id.*

²¹⁰ ENCYCLOPAEDIA BRITANNICA AND MERRIAM-WEBSTER V. PERPLEXITY AI, COMPLAINT, No. 1:25-cv-7546 (S.D.N.Y. Sept. 10, 2025.)

- Third, Perplexity infringes Plaintiffs' copyrights at the output stage when its RAG model generates outputs that are substantially similar to those inputs. These responses often contain full or partial verbatim reproductions of Plaintiffs' copyrighted articles. At other times, Perplexity's answers are reworded into text that resembles, paraphrases, or summarizes Plaintiffs' copyrighted works.²¹¹

It appears that litigation surrounding copyright infringement and artificial intelligence is proceeding as courts, companies, authors, and individuals try to come to grips with GAI and how its use will impact copyright.²¹²

Defamation

Can GAI defame someone? Eugene Volokh considers the question in his article, *Large Libel Models: Liability for AI Outputs*.²¹³ In his introduction, Volokh asks “Should, then, the AI programs' creators and operators, such as OpenAI (for ChatGPT⁶) or Google (for Bard) be liable for defamation, based on their programs' output?”²¹⁴

The question then becomes whether the immunization from liability for Internet platforms for tortious communications posted by third parties via the Communications Decency Act²¹⁵ is applicable to AI? Is AI an Internet platform or a content creator? Jake Gray and Abbey Block address this question in their article, *Beyond The Search Bar: Generative AI's Section 230 Tightrope Walk*.²¹⁶ Gray and Block state:

As a result, these tools are increasingly taking on the role of a content creator rather than a neutral platform. This shift may have

²¹¹ *Id.* at 4.

²¹² A search of federal and state cases in Westlaw's All cases databases returned 125 cases on the topic. *See* Westlaw, +”copyright infringement” & “AI” and date aft 10/28/2022, 125 results (October 28, 2025) (on file with author.)

²¹³ Eugene Volokh, *Large Libel Models: Liability for AI Outputs*, 3 J. OF FREE SPEECH 491 (2023.)

²¹⁴ *Id.* at 493-494.

²¹⁵ 47 U.S.C. §230 (2013.)

²¹⁶ Jake Gray and Abbey Block, *Beyond The Search Bar: Generative AI's Section 230 Tightrope Walk*, available @ ABA BUSINESS LAW TODAY @ <https://www.americanbar.org/groups/business-law/resources/business-law-today/2024-november/beyond-search-bar-generative-ai-section-230-tightrope-walk/>, visited September 17, 2025.

implications for the platforms' legal liability, as it poses the question: Are providers of these AI services akin to a publisher, acting as a neutral conduit for information, or are they more analogous to an author, exercising discretion, albeit algorithmically, to generate unique content?²¹⁷

To begin answering the above questions, courts are now grappling with recently filed cases.

Selected recently filed defamation cases involving AI include:

- Starbuck v. Meta;²¹⁸ and
- Wolf River Electric v. Google.²¹⁹

In Starbuck, the plaintiff, Robert Starbuck, sued for defamation, alleging that Meta was publishing damaging information about him via its AI chatbot.²²⁰ Meta AI reported that Mr. Stack was one of the Capitol rioters on January 6th, and that he had been arrested and charged with a misdemeanor for his involvement.²²¹ Mr. Starbuck alleged that he was in contact with Meta for over nine (9) months to correct and expunge this false information.²²² Nothing happened so Mr. Starbuck sued Meta, alleging defamation.²²³ Despite this, the parties filed and agreed to a Dismissal with Prejudice on August 8, 2025.²²⁴

Wolf River Electric sued Google for “assault, libel and slander”²²⁵ initially in Minnesota state court²²⁶, and the case was then removed to federal district court.²²⁷ According to the

²¹⁷ *Id.*

²¹⁸ STARBUCK V. META, COMPLAINT, Delaware Chancery Court, No. N265C-04-283 (Apr. 29, 2025.)

²¹⁹ WOLF RIVER ELECTRIC V. GOOGLE, COMPLAINT, Ramsey County, Minn., No. 62-CV-25-4594 (March 12, 2025.)

²²⁰ STARBUCK, *Supra*, Note 218, at 1-2.

²²¹ *Id.* at 2-3.

²²² *Id.*

²²³ *Id.* at 4.

²²⁴ *Id.* DOCKET SHEET.

²²⁵ WOLF RIVER, *Supra*, Note 219, COVER SHEET.

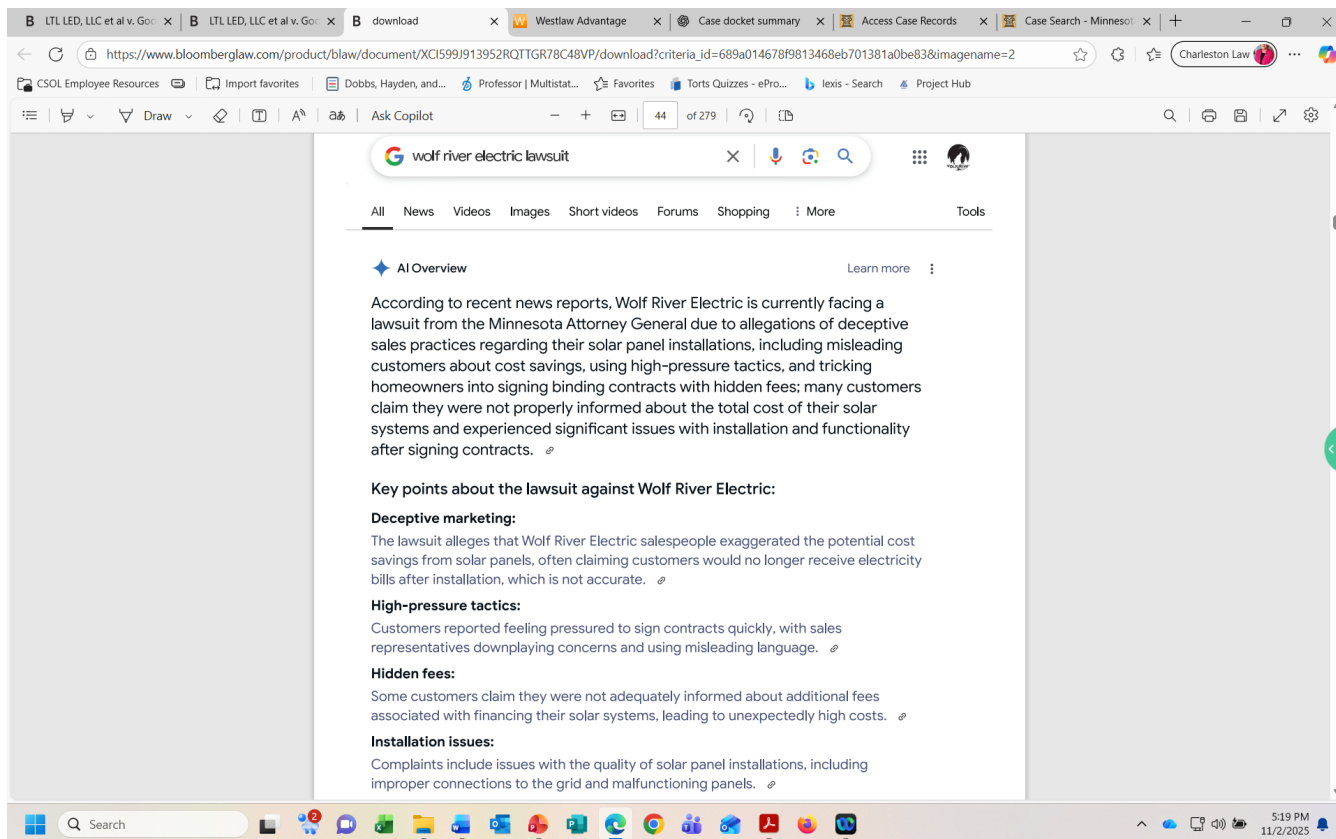
²²⁶ WOLF RIVER, *Supra*, Note 219.

²²⁷ WOLF RIVER, NOTICE OF REMOVAL, Removal from Ramsey County Court to Minnesota District Court, No 25-cv-02394 (June 9, 2025.)

complaint, Google’s AI Overview returned the following when “Wolf River Electric” was searched in the Google search bar:

According to recent news reports, Wolf River Electric is currently facing a lawsuit from the Minnesota Attorney General due to allegations of deceptive sales practices regarding their solar panel installations, including misleading customers about cost savings, using high-pressure tactics, and tricking homeowners into signing binding contracts with hidden fees; many customers claim they were not properly informed about the total cost of their solar systems and experienced significant issues with installation and functionality after signing contracts.²²⁸

As part of the initial filing in Ramsey County, Minnesota court, Wolf River attached Exhibit #1²²⁹ which was a screen shot of Google’s AI overview which showed the following:



²²⁸ WOLF RIVER, *Supra*, Note 219, COMPLAINT.

²²⁹ *Id.* at Exhibit #1.

Wolf River complained that all of this information was “false” and “defamatory,” and resulted in the demonstrable loss of business.²³⁰

Between March 12, 2025 and June 9, 2025, the case was removed from Ramsey County Court to the United States District Court for the District of Minnesota.²³¹ Google denied the allegations, arguing that:

- The complaint failed to state a claim for which relief can be granted;
- The complaint was time barred;
- The complaint was barred by the First Amendment; and
- The complaint was barred by the Communications Decency Act, 47 U.S.C. §230.²³²

The case is pending with the last filing being on July 23, 2025 when the plaintiffs filed a MEMORANDUM IN OPPOSITION TO DEFENDANT’S MOTION TO AMEND.²³³

As the above cases demonstrate, the question for Section 230 purposes is whether GAI is a content provider or an Internet platform. Future litigation and legislation will provide the answer.

Unauthorized Practice of Law

Is allowing consumers to consult generative artificial intelligence (GAI) to draft documents or acquire legal advice the [unauthorized practice of law](#)?²³⁴ One writer on the topic, Dudas, poses and answers the question as follows:

is it legally possible for AI, operating independently, to replace lawyers under the current regulatory frameworks governing the

²³⁰ *Id.*

²³¹ WOLF RIVER, *Supra*, Note 227.

²³² WOLF RIVER, *Supra*, Note 227, ANSWER TO THE COMPLAINT. *See also* The Communications Decency Act @ 47 U.S.C. §230 (2012.)

²³³ WOLF RIVER, *Supra*, Note 227, MEMORANDUM IN OPPOSITION TO DEFENDANT’S MOTION TO AMEND (July 23, 2025.)

²³⁴ Victor Dudas, *Can AI Replace Lawyers? The UPL Challenge*, THE NAT’L L.REV., April 25, 2025, @ <https://natlawreview.com/article/can-ai-replace-lawyers-upl-challenge> , visited November 2, 2025.

legal profession? As it stands, the rules surrounding the unauthorized practice of law (UPL) in most jurisdictions present a significant hurdle.²³⁵

For comparison purposes, consider the legal document preparation provider, LegalZoom.

LegalZoom advertises its product as:

From forming businesses and managing compliance to protecting intellectual property and creating estate plans, we provide the tools, technology, and trusted guidance that make legal processes more manageable and help people take control of their legal needs.²³⁶

When LegalZoom first entered the scene in 2001²³⁷, it encountered a great deal of hostility from state bar associations.²³⁸ While LegalZoom described its product as “transforming how people navigate the legal system,”²³⁹ many state bar associations disagreed, arguing that its product was engaged in the unauthorized practice of law.²⁴⁰ According to Zurek, California, Connecticut, Florida, Missouri, North Carolina, Ohio, Pennsylvania, and Washington bar associations either litigated or issued an ethical opinion, concluding that LegalZoom was engaged in the unauthorized practice of law.²⁴¹ Eventually these organizations and attorneys succumbed and LegalZoom is very much a part of the legal landscape today.²⁴² How are bar associations and courts going to handle the concept of GAI as the unauthorized practice of Law? GAI assists with drafting and also, while purporting not to offer legal advice, will do so. A recent example involved a prompt with ChatGPT that asks: “How could I draft a trust document that avoids

²³⁵ *Id.*

²³⁶ LegalZoom @ <https://www.legalzoom.com/about-us>, visited November 3, 2025.

²³⁷ *Id.*

²³⁸ Zachary C. Zurek, *The Limited Power of the Bar to Protect Its Monopoly*, 3 ST. MARY'S J. LEGAL MAL. & ETHICS 242, 269-273 (2013.)

²³⁹ LegalZoom, *Supra*, Note 236.

²⁴⁰ Zurek, *Supra*, Note 238, at 269-273.

²⁴¹ *Id.*

²⁴² Advertisement for LegalZoom, YouTube, @ <https://www.youtube.com/watch?v=e59qh0dwdjM>, visited November 3, 2025.

issues with the rule against perpetuities?”²⁴³ ChatGPT then proceeds to answer the question, providing three steps, with detail, regarding:

- 1) Understanding the Rule at Common Law;
- 2) Know Your Jurisdiction; and
- 3) Drafting Techniques to Avoid the Rule Against Perpetuities.²⁴⁴

Is this the unauthorized practice of law? In *MILLERKING, LLC v. DoNOTPAY*²⁴⁵ Illinois attorneys sued DoNotPay²⁴⁶ for the unauthorized practice of law.²⁴⁷ DoNotPay clearly advertises itself as an “artificial intelligence”²⁴⁸ agent and promises its users that it will “...fight corporations, beat bureaucracy, and find hidden money.”²⁴⁹ On January 4, 2024, Judge Nancy Rosenstengal dismissed the action without prejudice.²⁵⁰ DoNotPay has another case, involving a class action lawsuit for disgruntled DoNotPay consumers, pending in the Superior Court for the State of California, County of San Francisco.²⁵¹ How will attorneys, consumers, and state bar associations handle these new GAI products? Do they constitute the unauthorized practice of law or are they tools for pro se patrons?

Conclusion and Checklist

As this article demonstrates, generative artificial intelligence is bringing massive changes to the world of work and the practice of law. While ABA Formal Opinion 24-512 provides thorough guidance for attorneys working with GAI, most state bar associations have yet to issue guidance on the topic. In addition to how to use GAI as a tool, courts, attorneys, legislatures,

²⁴³ Prompt, CHATGPT, @ <https://chatgpt.com/c/690902e8-77a0-8326-b3dc-242d6036411e>, visited November 3, 2025, (on file with author.)

²⁴⁴ *Id.*

²⁴⁵ *MILLERKING, LLC v. DoNOTPAY*, COMPLAINT, No. 3:23-cv-00863 (March 15, 2023.)

²⁴⁶ *DoNOTPAY*, *Supra*, Note 35.

²⁴⁷ *MILLERKING*, *Supra*, Note 245, at 37-39.

²⁴⁸ *DoNOTPAY*, *Supra*, Note 35, @ <https://donotpay.com/>, visited November 3, 2025.

²⁴⁹ *Id.* @ <https://donotpay.com/learn/most-popular-features/>, visited November 3, 2025.

²⁵⁰ *MILLERKING*, *Supra*, Note 245, JUDGEMENT IN A CIVIL ACTION.

²⁵¹ *FARIDIAN v. DoNOTPAY*, COMPLAINT, No. CGC-23-604987 (March 3, 2023.)

and litigants are going to need to consider how it will impact copyright, defamation, and the unauthorized practice of law. Numerous other areas of the law will also be impacted. While waiting for these subject areas to be sorted, there are recommendations for attorneys working with a GAI tool.

A **checklist** for attorneys regarding the use of GAI includes the questions below:

- What is your firm's policy regarding the use of AI?
- What tasks will you use AI to accomplish?
- Why?
- Who will review these tasks and how will they be reviewed?
- What product will you use?
- Know the product's terms of use, privacy policy, contractual terms, and who will have access to the information inputted about the representation.

Read the ***Terms of Use*** carefully!

- What data does the AI collect?
- How long will this data be retained?
- Is the data used to train the AI tool's LLM?
- Who else will have access to the data?
- What security measures are in place to protect data?
- Plan your prompting process or structure the research query.
- How or will you communicate the use of AI to a client?
- Is your use of AI for idea generation or does it require the input of information about the representation?
- How will you obtain a client's informed consent?

- Remember: boilerplate won't suffice.
- What is your training model?
- How will you be trained?
- How do you plan for others in your office to be trained?
- What experts will you consult?
- How will you supervise and train others in your practice on the use of AI?
- Don't forget the unfortunate Mr. Lopez from Florida! Human oversight is needed at the beginning and conclusion when using a GAI tool.
- Which AI tools are approved by your firm?
- What type of information can be input into the AI tool?
- How will you handle the calculation of fees when using AI?
- Does your court require the disclosure of AI if used in documents being submitted to it?
- If so, how will the disclosure be made?²⁵²

In addition to having written policies that address the above questions, best practices for attorneys using GAI include:

- Independently review documents and other materials drafted or summarized by GAI;
- Locate and read cases suggested by GAI; and
- Use your professional judgment rather than completely relying upon GAI.

²⁵² See Rule 18.3 of THE BLUEBOOK: A UNIFORM SYSTEM OF CITATION, 22nd ed. (Cambridge, MA: Harvard L.Rev. Ass'n, 2025.)

As ABA Formal Opinion 24-512 noted: “the lawyer [not AI] is fully responsible for the work on behalf of the client.”²⁵³

²⁵³ Op. 512, *Supra*, Note 43, at 4.