

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



South Carolina Association of Counties

South Carolina Local Government Attorneys' Institute

Presented by:

Lisa Smith-Butler, Associate Professor of Law @ Charleston School of Law

November 21, 2025

Today's Agenda

- [MODEL RULES OF PROFESSIONAL CONDUCT](#) (M.R.P.C.)
- Generative Artificial Intelligence (GAI) & Legal Ethics
 - ABA Formal Opinion [24-512](#)
 - [Rule 1.1](#): The Duty of Competence
 - [Rule 1.6](#): The Duty of Confidentiality
 - [Rule 1.4](#): The Duty to Communicate with Clients
 - Rules [3.1](#), [3.2](#), & [8.4](#): Meritorious Claims and Candor Towards the Tribunal
 - Rules [5.1](#) & [5.3](#): The Duties of Managerial and Supervisory Attorneys
 - Rule [1.5](#): Fees
 - South Carolina Guidance
 - Other Ethical Concerns
 - Bias
 - Copyright Infringement
 - Defamation
 - Unauthorized Practice of Law
 - Best Practices

MODEL RULES OF PROFESSIONAL CONDUCT



Model Rules of Professional Conduct

- The [1908 CANONS OF PROFESSIONAL ETHICS](#) was the first ethical code promulgated and adopted nationally in the USA.
- In 1969, the ABA adopted the [MODEL CODE OF PROFESSIONAL RESPONSIBILITY](#). 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 MCPR, creating the [MODEL RULES OF PROFESSIONAL CONDUCT](#).
- This was heavily revised and updated in 2000 by the [Ethics Commission](#), but it remains in use today.

- The MODEL RULES govern eight areas of lawyering. These are:
 - Client-Lawyer Relationship (Rule 1)
 - Counselor (Rule 2)
 - Advocate (Rule 3)
 - Transactions With Persons Other Than Clients (Rule 4)
 - Law Firms and Associations (Rule 5)
 - Public Services (Rule 6)
 - Information About Legal Services (Rule 7)
 - Maintaining the Integrity of the Profession (Rule 8)



But...

- The ABA's MODEL RULES OF PROFESSIONAL CONDUCT are just that: model rules.
- As the M.R.P.C., they cannot be used as an admission or disciplinary mechanism against attorneys who are licensed by individual state bar associations rather than the ABA.
- These rules must be adopted by state bar associations in order to apply to attorneys.
- The majority of states have adopted the M.R.P.C.; sometimes these adoptions are verbatim while at other times, they are selective.
- New York and California are examples of two states that have drafted and enforce their own rules of professional conduct.

South Carolina Rules of Professional Conduct



South Carolina:

RULE 407:

PROFESSIONAL

RULES OF

CONDUCT

The screenshot displays the South Carolina Judicial Branch website. The header features the state seal and the text "SOUTH CAROLINA JUDICIAL BRANCH". Navigation links include "PUBLIC INDEX", "LIVESTREAM", "NEWS", "BAR ADMISSIONS", and "FEEDBACK". A secondary menu lists "ABOUT", "COURTS", "CALENDARS", "OPINIONS & ORDERS", "RESOURCES", and "QUICK LINKS". The breadcrumb trail reads: "HOME > ABOUT > LAWYER & JUDICIAL DISCIPLINE > OFFICE OF DISCIPLINARY COUNSEL > RULE 407: RULES OF PROFESSIONAL CONDUCT". The main heading is "Lawyer & Judicial Discipline". Below it, a horizontal menu lists: "Overview", "Office of Disciplinary Counsel", "Commission on Lawyer Conduct", "Commission on Judicial Conduct", and "Office of the Receiver". A sub-menu lists: "The Disciplinary Process", "How to File a Complaint", "FAQs", and "Annual Reports". The main content area is titled "Rule 407: Rules of Professional Conduct". It includes a "BACK" link, "Preamble A Lawyer's Responsibilities", "Scope", "Client-Lawyer Relationship", "RULE 1.0 Terminology", "RULE 1.1 Competence", "RULE 1.2 Scope of Representation and Allocation of Authority Between Client and Lawyer", and "RULE 1.3 Diligence". The Windows taskbar at the bottom shows the date as 8/23/2025 and the time as 4:45 PM.

SOUTH CAROLINA RULE 407:
PROFESSIONAL RULES OF
CONDUCT & the ABA
Model Rules of
Professional Conduct: A
Comparison

- **South Carolina**

- Rule 1: Client-Lawyer Relationship
- Rule 2: Counselor
- Rule 3: Advocate
- Rule 4: Transactions with Persons Other Than Clients
- Rule 5: Law Firms and Associations
- Rule 6: Public Service
- Rule 7: Lawyer Advertising
- Rule 8: Maintaining the Integrity of the Profession

- **ABA**

- Rule 1: Client-Lawyer Relationship
- Rule 2: Counselor
- Rule 3: Advocate
- Rule 4: Transactions with Persons Other Than Clients
- Rule 5: Law Firms and Associations
- Rule 6: Public Service
- Rule 7: Information about Legal Services
- Rule 8: Maintaining the Integrity of the Legal Profession

Generative Artificial Intelligence



Generative Artificial Intelligence: GAI

- [Chat GPT](#) was released on November 30, 2022 to great fanfare by Open AI. It is best described as a Generative Artificial Intelligence (GAI) platform or tool that is run on Large Language Modeling (LLM.)
- GAI is trained on millions and millions of pages of documents scraped from the Internet, and it 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.
- Competitors then developed their own models.

General GAI Platforms

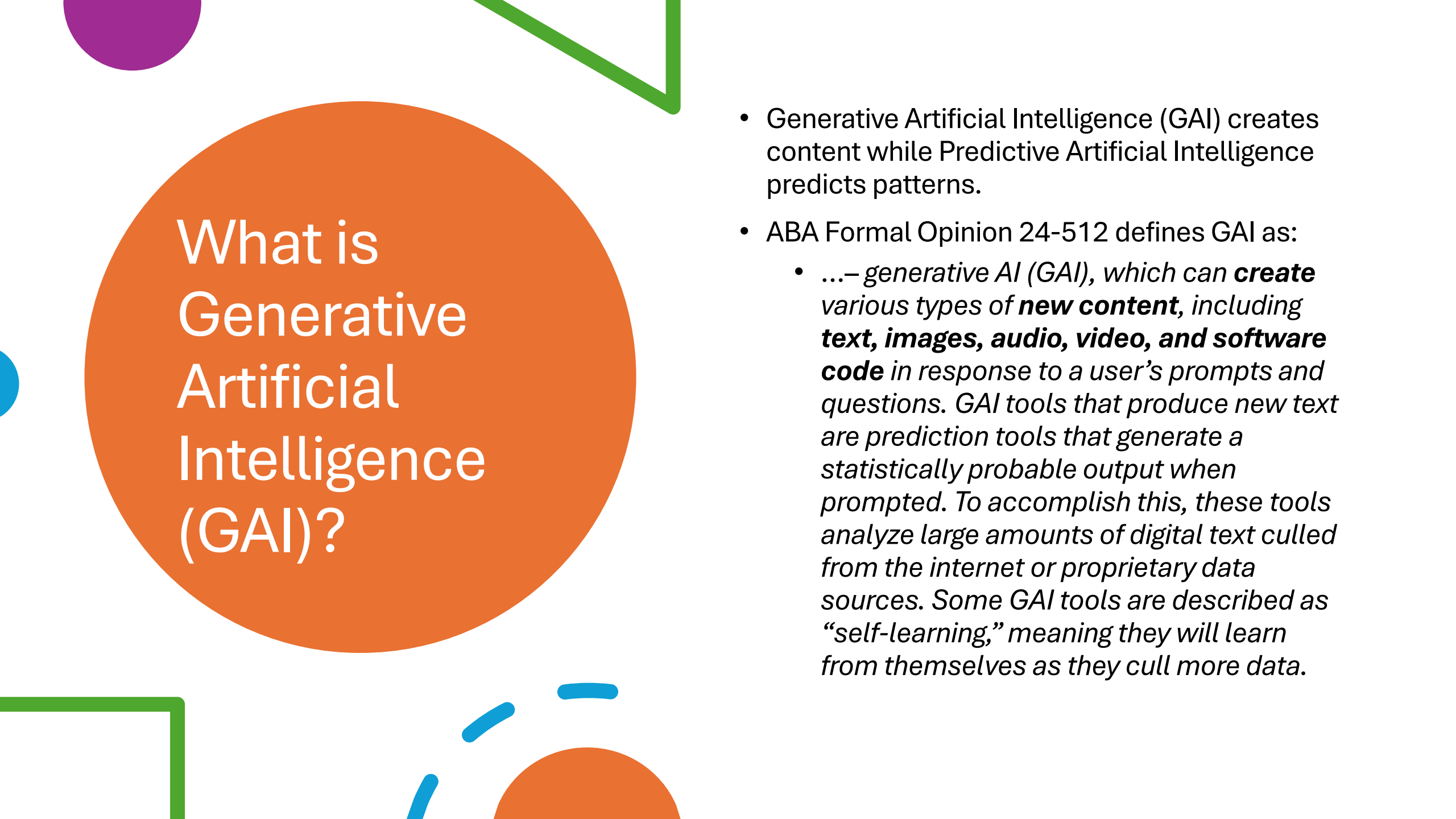
- [Chat GPT](#) has now become [GPT 5](#).
- [Google](#) has [Gemni](#).
- Microsoft created [Co-Pilot](#).
- Meta offers [Llama](#).
- Anthropic provides [Claude](#).
- There is [Perplexity AI](#) created by [Perplexity](#).

Legal AI

- As LLMs and ChatGPT proliferated, AI legal vendors developed legal AI products. Why?
- To reduce hallucinations, legal AIs include RAG (retrieval augmented generation) that combine “...generalized text grounded in source material” with the large language model.
- Selected ones include:
 - [AI Lawyer](#)
 - [Co-Counsel](#) by Thomson Reuters
 - [DoNotPay](#)
 - [Harvey AI](#)
 - [Lawchatgpt](#)
 - [Lawdroid Co-Pilot](#)
 - [LegalRobot](#)
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How is Artificial Intelligence Defined?





What is Generative Artificial Intelligence (GAI)?

- 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.*



What is Predictive Artificial Intelligence

- IBM defines it 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.*
- 



The Supreme Court of South Carolina: The Definition



- (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 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.
- 

What's the Fuss?



The Fuss Started....

- On June 22, 2023, a federal judge in the Southern District of New York sanctioned two attorneys, Steven Schwartz and Peter DoLuca, \$5,000.00 for submitting a legal brief that contained six fictitious cases. See *MATA V. AVIANCA, INC.*, 678 F. Supp. 3d 443 (S.D.N.Y, 2023.)
- Schwartz and DoLuca submitted a brief to the Court in a personal injury action on behalf of their client.
- Schwartz admitted that he consulted ChatGPT for research, and he cited cases provided by ChatGPT.
- Schwartz did not independently read and verify these cases.
- It turns out that those cases were bogus.
- 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.

Next...

- As the proliferation of hallucinated case citing continued, the summer of 2023 saw several courts require that attorneys, using GAI, disclose the use of GAI in pleadings. 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](#) (updated October 3, 2024.)
- The questions then became:
 - **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?**



- Before these questions could be answered by courts and bar associations, attorneys began to widely use GAI.
- A recent report on attorney use of GAI, prepared by Bloomberg Law, disclosed that the majority of attorneys were using GAI for a variety of tasks.

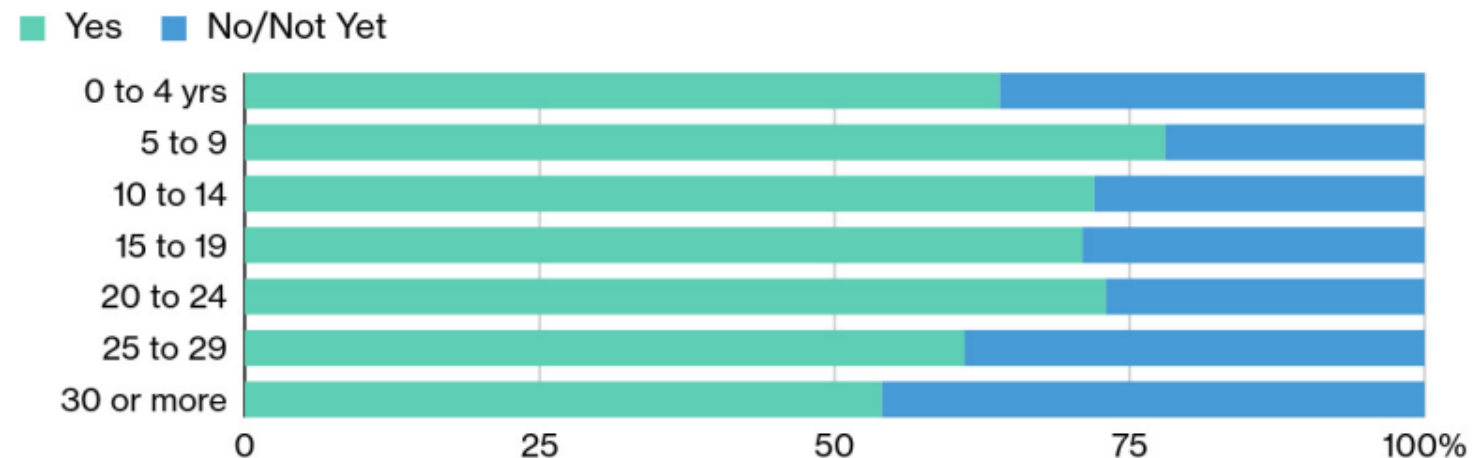
AI Today According to Bloomberg Law

- According to a recent report prepared by Bloomberg Law in August 2025, [AI: IMPACT ON LEGAL INDUSTRY](#), there are five items of importance which include:
 - Many lawyers are now using Generative Artificial Intelligence (GAI.) Bloomberg says “...[E]xperience with AI is now the norm, not the exception.”

Which Attorneys Are Using GAI?

AI Used by Majority of Lawyers at All Career Stages

Lawyers who have used generative AI for work, by years in practice



Source: Bloomberg Law's State of Practice Survey, conducted April 2025.

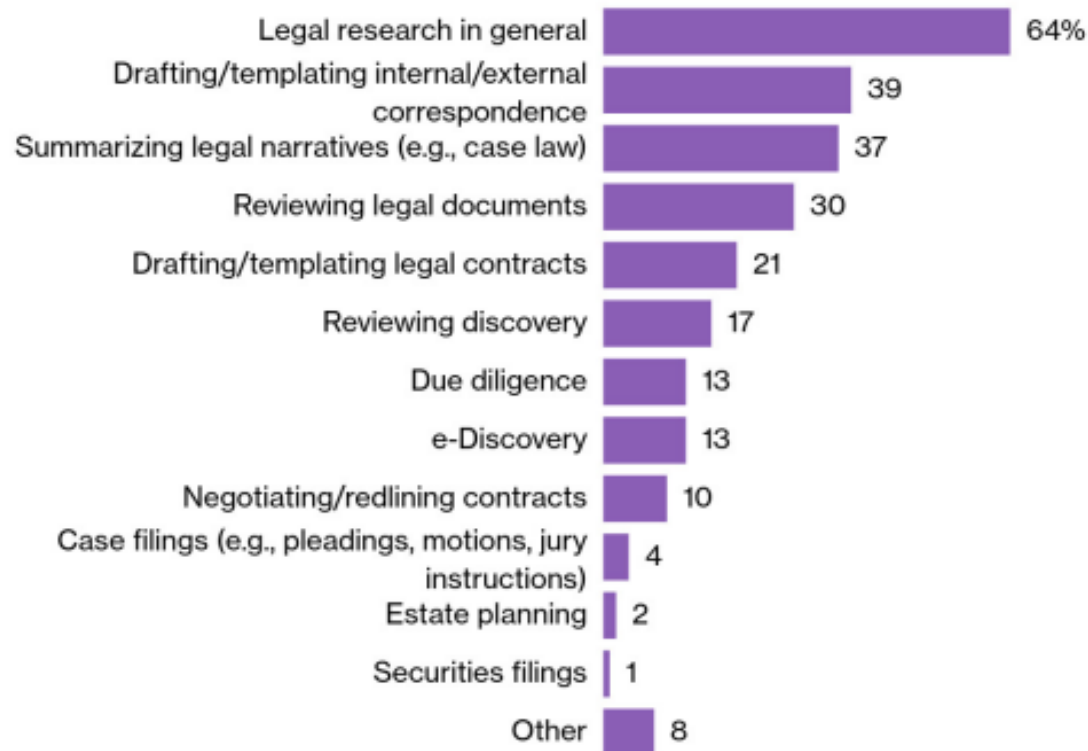
Note: Respondents include both law firm and in-house attorneys.

Bloomberg Law

How Are Lawyers Using GAI?

Most Lawyers With AI Experience Use It for Research Tasks

'Which of the following ways have you used generative AI in your practice?'



Source: Bloomberg Law's State of Practice Survey, conducted April 2025.

Note: Percentages are of lawyers who reported having used generative AI for at least one of these tasks. Respondents include both law firm and in-house attorneys. Respondents could choose more than one answer.

Bloomberg Law

AI Slop

- As to the second item, the report refers to “*AI slop*” 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.



AI Washing

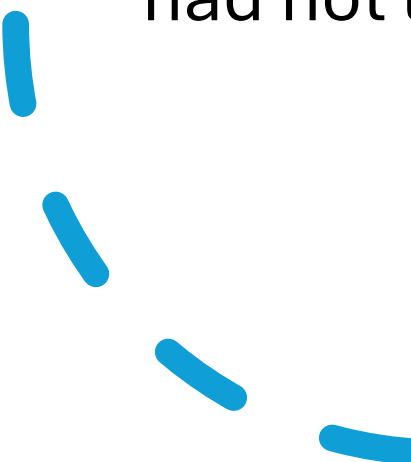
- The third item in Bloomberg's report is named "AI washing."
- Are descriptions of GAI puffery, which is acceptable, or deceptive misrepresentation, which is not?
- The report states:
 - *Regulators have begun scrutinizing AI-related disclosures that are material to a company's valuation or product 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.*

Colorado's CAIA

- In 2024, Colorado enacted the first, and to date only, comprehensive regulation of artificial intelligence known as the *Colorado Artificial Intelligence Act*, in the United States.
- It is available at [COLO. REV. STAT. §§6-1-1701 to 6-1-1707 \(2025.\)](#)
- 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.



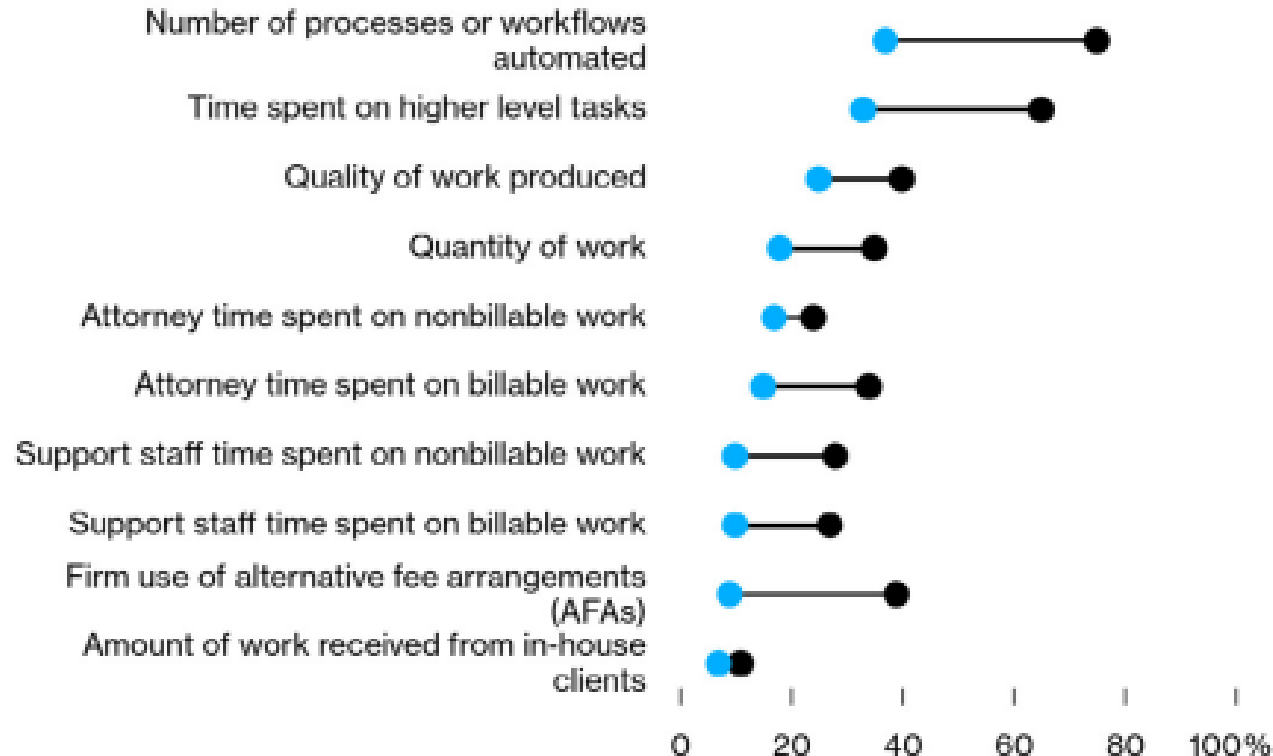
And Last...

- The report stated that attorneys, in 2024, were optimistic that GAI would help provide greater efficiencies for their workloads and billing.
 - 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.
- 

AI Impact on Legal Work Lags Behind Expectations

Law firm lawyers saying AI will increase/has increased certain functions

● Increase expected (2024 survey) ● Increase observed (2025 survey)



Source: Bloomberg Law Legal Operations and Technology survey (2024) and State of Practice 1 2025 survey (2025). Questions: "In your opinion, how will/how have the following workload and billing aspects of the legal profession be/been impacted by generative AI?"

Note: Figures shown represent the percentage of respondents who chose "significant" increases or "somewhat" increases. "Don't know"/"not sure"

Summarizing Bloomberg's AI Report: IMPACT ON LEGAL INDUSTRY

- 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.

How many cases have resulted in the imposition of sanctions against attorneys for the improper use of Generative Artificial Intelligence?

Westlaw

- A search of ***all content***, the federal and state cases database, with the following search terms, ***“Rule 11” w/5 sanction! & AI***, returned a citation list of 440 cases, decided since 2022.
- These cases involved courts sanctioning or being asked to sanction attorneys, using FEDERAL RULE OF CIVIL PROCEDURE 11, for ethical violations.

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Related documents

1. **ByoPlanet International, LLC v. Johansson**

United States District Court, S.D. Florida. • July 17, 2025 • --- F.Supp.3d ---- • 2025 WL 2091025

Show synopsis

Were frivolous submissions made in bad faith action for an improper purpose? Yes

Legal issue: Sanctions for Frivolous Claims and Appeals > Improper Purpose | More cases on this issue

Material Facts | Headnote 22

- Submissions by attorney included seven filings to district court and other courts after notice that his use of artificial intelligence (AI) tool resulted in hallucinated cases and quotations
- Attorney's continued use of AI tool to generate hallucinated results was intentional
- Attorney was not candid to district court when confronted about his use of AI tool
- Attorney stated that some documents were prepared under time constraints when he had nearly two more weeks before submission deadline

← ByoPlanet International, LLC v. Johansson

United States District Court, S.D. Florida. • July 17, 2025 • --- F.Supp.3d ---- • 2025 WL 2091025 • (Approx. 32 pages)

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BACKGROUND

I. Artificial Intelligence

II. Timeline of Events

LEGAL STANDARD

DISCUSSION

CONCLUSION

All Citations

Footnotes

I. Artificial Intelligence

During a bygone era when dinosaurs roamed the earth and the undersigned was in law school (1998), to research cases a student often had to hold a volume of a legal reporter in one's hands. To ensure that all cases cited were good law, students and attorneys employed services like Shepard's Citations. But even in that dark, pre-modern age, stars rose in the distance; online legal sources, such as Westlaw and LexisNexis, came forth to aid lawyers in performing legal research. You didn't have to be Steve Wozniak to understand that these electronic advancements would revolutionize the practice of law (and much else). Gone were the days of spending hours in libraries manually searching for a case and Shepardizing to see every case which cited it.

Now, another star rises—AI—with the potential to revolutionize the legal field (and much else) once again. From Altman to Zuckerberg, we are told that AI has the potential to perform hours of legal research on nearly any topic in seconds. Large language models like ChatGPT offer the promise to employ AI to perform legal research and even draft legal filings, such as briefs and complaints.

However, AI is not yet a match for an actual litigator. Employing the euphemism-du-jour, AI regularly “hallucinates” entire cases and “hallucinates” quotations from real cases. See Sara Merken, *AI ‘hallucinations’ in court papers spell trouble for lawyers*, Reuters, <https://www.reuters.com/technology/artificial-intelligence/ai-hallucinations-court-papers-spell-trouble-lawyers-2025-02-18/> (noting AI's “penchant for generating legal fiction in case filings[.]”). This means that when a lawyer asks AI to generate legal research, briefs, or complaints, it may lead to fake cases and/or false quotations that purport to stand for the propositions the lawyer seeks. This is the current particular risk of using AI in real-world litigation. But the lawyer who uses AI blindly also potentially harms others:

Notes

Outlines

Litigation Document Analyzer

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West Headnotes

Attorneys and Law Firms

☰ Order

➕ BACKGROUND

➕ LEGAL STANDARD

➕ DISCUSSION

CONCLUSION

All Citations

Footnotes

3. Pursuant to 📄 Rule 11, this Court's inherent authority, the Southern District of Florida's Local Rules, and 28 U.S.C. § 1927, Attorney James Martin Paul is ORDERED to pay the attorneys' fees for Defendants' counsel in these four cases for all time spent responding to any filing in which generative AI was used to develop hallucinated cases and fabricated quotations.⁸ The parties in the above-captioned cases shall promptly confer and attempt in good faith to determine and agree upon the reasonable attorneys' fees and costs that were incurred by Defendants' counsel in this regard. The parties shall then file Joint Notices no later than July 24, 2025, stating whether they have been able to agree upon the fees and costs to be paid, and if so, the specific amount agreed upon, and the payment schedule. The Court will then issue any further Order as deemed necessary. If the parties and their counsel cannot agree on a reasonable amount of fees and costs or a payment schedule, they shall file separate notices on or before July 25, 2025, stating the nature of the dispute over the fees and costs (whether it involves the time incurred, hourly rate, or other issues) and their respective positions. The Court will promptly determine the amount of the attorney's fees and costs to be paid to Defendants by Attorney James Martin Paul and issue any appropriate further orders.⁹ See 📄 Goodyear Tire & Rubber Co., 581 U.S. at 108, 137 S.Ct. 1178 (noting courts' "inherent sanctioning authority" to grant an award of attorneys' fees); 📄 Johnson, 9 F.4th at 1316.

*11

4. If Attorney James Martin Paul files any case in the Southern District of Florida within the next two years of the date of this Order, he must attach a copy of this Order to his Complaint. See 📄 Johnson, 9 F.4th at 1317 (finding no abuse of discretion where a district court ordered an attorney to include a copy of a sanctions order in any future complaint the attorney filed).

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Notes

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Litigation Document Analyzer



Generative AI

- 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.
- 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.
- 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





Questions During the Summer of 2023

As Slide 20 noted, two questions were being 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?**



Answers

- Instead of waiting for an answer to “whether lawyers may use GAI,” attorneys began using it before the summer of 2023.
- Some courts began requiring attorneys to disclose the use of a GAI tool in any documents filed with the court.
- Sanctions of attorneys and court ordered disclosures regarding attorney use of GAI began appearing.
- State bar associations, courts, and the ABA began to grapple with the ethical use of GAI, issuing guidance.

Bloomberg Law's Judicial Court Tracker

October 22, 2025

The screenshot displays the Bloomberg Law website interface for the 'Judicial Standing Orders on Artificial Intelligence Tracker'. The browser address bar shows the URL: https://www.bloomberglaw.com/product/blic/search/results/8ee1644d1fe747fb390142ba8a04f2da?utm_source=ANT&utm_medium=ANP. The page title is 'Results for Judicial Standing Orders on Artificial Intelligence Tracker'. A blue arrow points to the title. The interface includes a left sidebar with filters for Court, Judge, and Nature of Order. The main content area lists three results, each with details on Court, Judge(s), Issued Date, Nature of Order, and Summary. A blue arrow points to the second result. An 'AI Assistant' chat window is visible on the right side of the page.

Filters [Clear All Filters](#)

Court

- ☐ U.S. District Court, Middle District of Pennsylvania (5)
- ☐ U.S. District Court, Northern District of California (5)
- ☐ U.S. District Court, Central District of California (4)
- ☐ U.S. District Court, Northern District of Illinois (4)
- ☐ U.S. District Court, District of Hawaii (3)
- [Show More](#)

Judge

- ☐ Judge Leslie Kobayashi (2)
- ☐ Judge S. Kato Crews (2)
- ☐ Chief Judge Derrick Watson (1)
- ☐ Chief Judge Martin Reidinger (1)
- ☐ Chief Judge Rodney Gilstrap (1)
- [Show More](#)

Nature of Order

- ☐ Accuracy (30)
- ☐ Disclosure (21)

Results

< 1 - 50 of 50 > Sort by **Date** Details

☐ Select All | | | Create Alert | Add to

☐ 1. [Judicial Standing Orders on Artificial Intelligence - Judge Schiltz \(D. Minn.\)](#)

Court U.S. District Court, District of Minnesota
Judge(s) Judge Schiltz
Issued Date 10-01-2025
Nature of Order Accuracy, Disclosure
Summary Disclosure of AI use in filings is not currently required, but litigants should be aware of disclosure requirements in other jurisdictions. Litigants are responsible for accuracy and sufficiency of the work product and for any other impacts of generative AI use.

☐ 2. [Judicial Standing Orders on Artificial Intelligence - Magistrate Judge Leo Latella](#)

Court U.S. District Court, Middle District of Pennsylvania
Judge(s) Judge Leo Latella
Issued Date 10-01-2025
Nature of Order Accuracy, Disclosure
Summary Any party who utilizes any generative AI tool in the preparation of any document must include a certificate of use of generative AI that discloses and certifies the specific AI tool that was used, the portions of the filing prepared by the AI program, and that a person has checked the accuracy of any portion of the document generated by AI.

☐ 3. [Judicial Standing Orders on Artificial Intelligence - Judge Strickland \(D.N.M.\)](#)

Court U.S. District Court, District of New Mexico
Judge(s) Judge Strickland
Issued Date 09-15-2025
Nature of Order Disclosure, Accuracy
Summary Any party who utilizes any generative artificial intelligence tool in the preparation of any documents to be filed with the court must disclose in the document that AI was used and the specific AI tool that was used, and must certify that the person has checked the accuracy of any portion of the document drafted by generative AI.

AI Assistant

Help Desk

4:02 PM 10/22/2025

Judge Jennifer P. Wilson

Judge Julia K. Munley

Judge Karoline Mehalchick

Judge Joseph F. Saporito, Jr.

Judge Keli M. Neary

Judge Yvette Kane

Judge Robert D. Mariani

Judge Malachy E. Mannion

Chief Magistrate Judge Daryl F. Bloom

Magistrate Judge Susan E. Schwab

Magistrate Judge Phillip Caraballo

Magistrate Judge Leo A. Latella

Magistrate Judge Sean A. Camoni

Magistrate Judge Martin Carlson (Recalled)

Magistrate Judge Leo A. Latella

United States Magistrate Judge for the Middle District of Pennsylvania

[Biographical Information](#)

For additional information, please call Chambers at: (570) 831-2556

Staff Information

Courtroom Deputy: Dawn M. Wychock (570) 831-2556

Chambers: (570) 831-2556

Communication

Copies of Papers

Motions

Trial

Use of Generative AI

Increased use of Artificial Intelligence ("AI"), particularly Generative AI (including, but not limited to, OpenAI's ChatGPT or Google's Bard), in the practice of law raises a number of practical concerns for the Court, including the risk that the generative AI tool might generate legally or factually incorrect information, that it might create unsupported or nonexistent legal citations, or that it may disclose confidential information in the public sphere. Accordingly, any party, whether appearing *pro se* or through counsel, who utilizes any generative AI tool in the preparation of any document to be filed in any matter pending before Judge Latella, must include with the document a Certificate of Use of Generative AI in which the party must disclose and certify:

1. The specific AI tool that was used;
2. The portions of the filing prepared by the AI program; and
3. That a person has checked the accuracy of any portion of the document generated by AI, including all citations and legal authority.

Failure to comply with this Order may result in sanctions. Further, all parties and counsel are directed to review the conclusions on pages 15 and 16 of the [Joint Formal Opinion of the Pennsylvania Bar Association and Philadelphia Bar Association regarding the use of Artificial Intelligence](#) and be mindful of their ethical and professional obligations before this Court.



Search



4:04 PM

10/22/2025



The ABA's Standing Committee on Ethics & Professional Responsibility

- On July 29, 2024, the ABA's [Standing Committee on Ethics and Professional Responsibility](#) issued [Formal Opinion 24-512](#) 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.

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



- To answer these questions, the [Opinion](#) addresses the following nine rules in its fifteen pages:
 - Competence/Rule 1.1
 - Confidentiality/Rule 1.6
 - Communication/Rule 1.4
 - Meritorious Claims and Candor towards the Tribunal/Rules 3.1, 3.3, and 8.4
 - Supervisory Responsibilities/Rules 5.1 and 5.3; and
 - Fees/Rule 1.5





Competence Rule 1.1



- Rule 1.1 of the M.R.P.C. requires competency by the attorney in his or her dealings with a client. Comment 8 of the Rule reflects that an attorney must also maintain technological competency.
- The competency section of Opinion 512 notes that lawyers must provide competent representation to clients which 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 s/he is using.
- 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.



- 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.
- Lawyers cannot use GAI to perform tasks that call for the exercise of professional judgment.
- Thus, lawyers should not leave the following tasks to a GAI:
 - Offering legal advice to clients;
 - Negotiating claims on behalf of clients;
 - Going to court; or
 - Performing other functions that require a lawyer's personal judgment or participation.

Florida Bar Ethics Opinion 24-1

- In footnote 16 of ABA Opinion 24-512, the Opinion approvingly cites to Florida Bar Ethics Opinion 24-1.
- 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.

Lawyers, not GAI, Are Responsible for Their Work Product

- Formal Opinion 24-512 states:
 - *While GAI may be used as a springboard or foundation for legal work—for example, by generating an analysis on which a lawyer bases legal advice, or by generating a draft from which a lawyer produces a legal document—lawyers may not abdicate their responsibilities by relying solely on a GAI tool to perform tasks that call for the exercise of professional judgment. For example, lawyers may not leave it to GAI tools alone to offer legal advice to clients, negotiate clients’ claims, or perform other functions that require a lawyer’s personal judgment or participation. Competent representation presupposes that lawyers will exercise the requisite level of skill and judgment regarding all legal work. In short, regardless of the level of review the lawyer selects, **the lawyer is fully responsible for the work on behalf of the client.***



Florida—Again!

- A recent Florida case, involving Tampa attorney, J. Tony Lopez, resulted in a disciplinary referral to the Florida Bar for improper AI usage.
- The Second District Court of Appeals (DCA) of Florida referred Lopez to Florida’s disciplinary officials, requesting sanctions.
- Why?
- According to the Court, Lopez submitted a brief that contained “...phony cases, cites and quotes” to it.

What Did Mr. Lopez Do?



- According to the Court, Mr. Lopez:
 - Misrepresented the holdings of opinions nine times;
 - Fabricated quotes ten times; and
 - Cited to a case that did not exist.

Lopez's Response

Lopez admitted that there were “grave errors” with the brief.



Why?

- He failed to review the brief.
- He subcontracted out the research for the brief to a third party paralegal.
- Mr. Lopez failed to review the brief for accuracy and failed to supervise the work of a paralegal.

Did the Court Believe That Lopez Violated the Rules Regulating the Florida Bar?

- If so, why?
 - 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.

See CLERK OF COURT & COMPTROLLER FOR 13TH JUDICIAL CIRCUIT V. RANGEL, ET. AL., 2025 WL 2486314 (D.C.A. 2nd, FL, 2025.)



Confidentiality: Rule 1.6



- 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.
- This duty of confidentiality is also owed to former clients ([Rule 1.9](#)) and prospective clients ([Rule 1.18.](#))

GAs and the Duty of Confidentiality

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 learning model (LLM.)

Before inputting a client's information, a lawyer must evaluate the risks involved and obtain the client's informed consent.

Risks?

- [Opinion 24-512](#) announces that the risk analysis to be used regarding confidentiality will be fact driven.
- It will depend upon the client, the matter, and the GAI tool.
- An attorney should 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.



What Constitutes Informed Consent?

- Opinion 24-512 notes that “adding general, boiler-plate provisions to engagement letters purporting to authorize the lawyer to use GAI” will not suffice.
- 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.



Communication: Rule 1.4

Communication



Rule 1.4 of the M.R.P.C. is concerned with an attorney's communication with his or her client.



As Rule 1.2 makes clear, the client "...determines the objectives of the representation."



This requires that communication between the attorney and client.



"Inform," "Consult," and "Comply" are verbs used to describe the attorney's duties regarding communication.

When Must A Lawyer Disclose Use of a GAI if Prompted by the Client?

- Again, [Opinion 24-512](#) emphasizes that facts determine whether disclosure to a client is necessary and whether a client's informed consent to the use of a GAI is necessary.
- Disclosures, prompted by the client, are required when:
 - The client asks how the attorney conducted the work;
 - The engagement requires such disclosure; or
 - The client directly asks if GAI technologies were used.

When Must an Attorney Disclose Use of a GAI if 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.
- 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. Is the lawyer exercising independent judgment or relying upon the results of a GAI tool?

Is Disclosure Always Required?

- It depends upon the facts.
- If a lawyer is using a GAI for idea generation rather than inputting information about the representation, disclosure is not necessarily required.
- As Opinion 24-512 states:
 - *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.*

Meritorious Claims, Candor, and Misconduct: Rules 3.1, 3.3, and 8.4

A blue arrow pointing to the right, containing the text 'Meritorious Claims, Candor, and Misconduct: Rules 3.1, 3.3, and 8.4'. The arrow is a solid blue shape with a black outline, and the text is white and bold.

Rule 3.1

Rule 3.1 prohibits an attorney from filing or defending a lawsuit that lacks a basis in either law or fact.

“Frivolous” and ***“good faith”*** are adjectives used in the Rule.

MODEL RULES OF PROFESSIONAL CONDUCT, Rule 3.1, and FEDERAL RULES OF CIVIL PROCEDURE, Rule 11

- FEDERAL RULES OF CIVIL PROCEDURE, [Rule 11](#), bolsters MODEL RULES OF PROFESSIONAL CONDUCT 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.***

M.R.P.C. 3.1 and F.R.C.P. 11 Work Together

- As our earlier slides reveal, several federal courts have imposed sanctions, using F.R.C.P. 11, on attorneys and their firms when the court has determined that their documents were inaccurate and/or misleading because of an attorney's improper use of a GAI tool.



Candor Towards the Tribunal

[Rule 3.3](#)

Rule 3.3 Requires

- Rule 3.3 governs a lawyer's conduct towards the court.
- 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.

Rule 8.4 Lawyer Misconduct



Rule 8.4(c) is specific regarding a lawyer's conduct.



It prohibits a lawyer from engaging in conduct that ***“...involves dishonesty, fraud, deceit, or misrepresentation.”***



What Is a Meritorious Claim?

What is Candor Towards the Tribunal?

What is Lawyer Misconduct?

- Lawyers' use of GAI has created problems with M.R.P.C. Rules 3.1, 3.3, and 8.4 because of:
 - Citations to non-existent opinions;
 - Inaccurate analysis of authority; or
 - Use of misleading arguments.
- Lawyers do not appear to be reading the cases cited in briefs to courts; instead, attorneys are using fictitious or hallucinated citations to cases that do not exist and are obtained from a GAI tool.
- Lawyers appear to be delegating analysis and argument decisions to GAI instead of independently reviewing and evaluating these items.
- Lawyers are delegating their responsibilities to GAI which is causing ethical issues.
- Several federal courts now require lawyers to disclose, in any filing, their use of GAI.



Supervisory Responsibilities: Rules 5.1 and 5.3

Rules 5.1 and 5.3

- The provisions under M.R.P.C. 5 are named “***Law Firms and Associations.***”
- These rules are concerned with how a law firm functions.
 - How do lawyers delegate work to others?
 - Must lawyers supervise work delegated to other attorneys, paralegals, or administrators within the firm?
 - Are supervisory attorneys responsible for any ethical violations committed by their subordinates?
 - Are lawyers responsible for work outsourced to third parties?

Rule 5.1

Rule 5.1 plainly states that supervisory or managerial lawyers must supervise non-managerial lawyers and other non-lawyers within a law firm to ensure compliance with the M.R.P.C.



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.

Rule 5.3: Outsourcing

- Lawyers who outsource work with a GAI to a third party still have a responsibility for the work outsourced.
- Again, lawyers are responsible for the outsourced work and must ensure that it is done in compliance with the M.R.P.C.
- 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;
 - 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.



And...

- 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 says 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;*
 - *investigate the [GAI tool's] reliability, security measures, and policies, including limitations on the [the tool's] liability;*
 - *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; and*
 - *understand the risk that [GAI tool servers] are subject to their own failures and may be an attractive target of cyber-attacks.*

Fees: Rule 1.5





Fees

- Rule 1.5 opines that lawyers must not charge an “unreasonable fee” nor collect an “unreasonable amount” for an expense.
- 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.

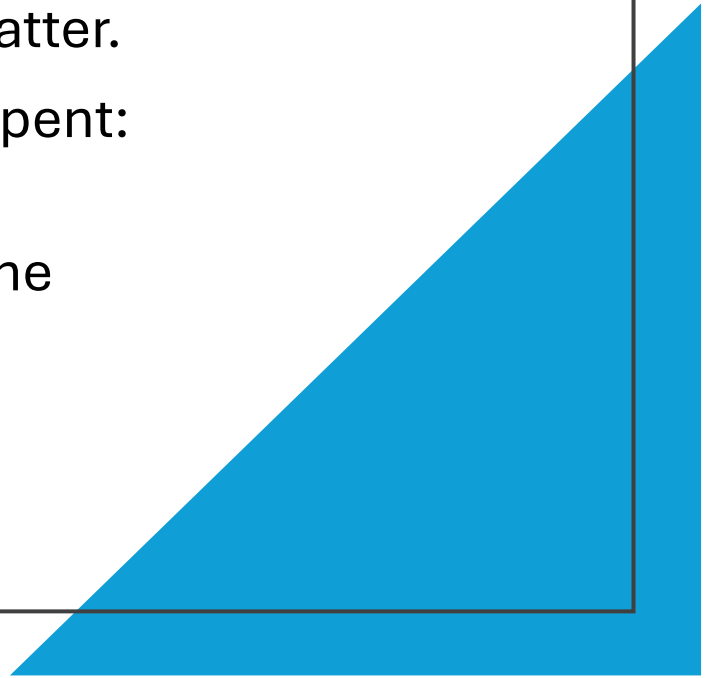


Factors to Ascertain Reasonableness Include:

- The time and labor required, which should include the consideration of the novelty and difficulty of the issues involved and the requisite legal skills needed to handle;
- The likelihood that acceptance of this particular matter by the attorney will preclude other employment by the lawyer;
- The fee customarily charged for similar work in this location;
- The amount of work involved, and the results obtained;
- The time limitations imposed either by the client or the circumstances;
- The nature and length of the lawyer's professional relationship with a client;
- The experience, reputation, and ability of the attorney; and
- Whether the fee is fixed or contingent.

What Does This Mean When Using GAI?

- If an attorney is charging an hourly or fixed fee, the attorney can only bill for the factual/actual time spent on the client's matter.
- 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.



- If charging a contingent fee and a GAI allows the attorney to accomplish tasks more quickly, then the same sum cannot be charged for the flat fee.
- 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.
- If the GAI tool is a separate tool, such as Co-Counsel or HarveyAI, it is an expense. Its use can be billed.



What About a Proprietary In House GAI?

- How does one bill for the above?
- 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.*

Caveat!

- While many of the cases cited have involved attorneys using ChatGPT, the issue of case citation hallucinations is not limited to ChatGPT, Claude, or Co-Pilot.
- As [WADSWORTH V. WALMART](#), 2025 WL 608073 (D. Wyoming 2025) illustrates, case citation hallucinations can also happen with in house proprietary created AIs.
- 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 they signed....”](#)
- Failure to make such an inquiry means [“...sanctions are warranted.”](#)

Fees & Learning

- Opinion [24-512](#) states that attorneys cannot charge clients to “**...learn about how to use a GAI tool or service...**” since Rule 1.1 requires an attorney to maintain competence in technology.
- BUT “**...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.**”

South Carolina's Guidance on the Use of AI



South Carolina: Guidance on GAI?

State Legal Ethics Guidance on AI

Hover over a jurisdiction for details on whether that state has issued legal ethics guidance on AI. This could include advisory ethics opinions, reports and recommendations, or other official guidance. Click on a jurisdiction or select one from the dropdown menu to view the relevant guidance issued.

Table - State Legal Ethics Guidance on Artificial Intelligence



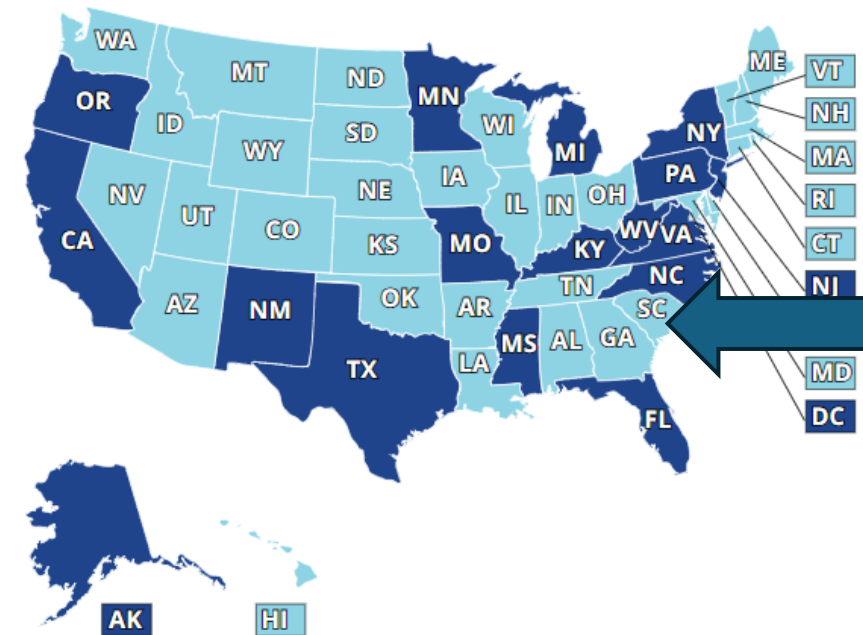
No Guidance



Guidance Issued

STATE

Q Ex: Delaware



South Carolina

- On March 25, 2025, Chief Justice Kittredge issued an [Interim Policy on the Use of Generative Artificial Intelligence](#).
- The purpose of the policy is to provide information“...*regarding the appropriate use and limitations on the use of generative artificial intelligence tools and systems by the judiciary and court personnel.*”

What Does This Mean?

- The [interim policy](#) directs “Judicial Branch Officers and employees” of the South Carolina Judicial Branch.
- It permits these individuals to:
 - use Generative Artificial Intelligence (GAI) only as approved by the South Carolina Court Judicial Administration or the Supreme Court **only** on approved devices;
 - Not use Generative Artificial Intelligence (GAI) to draft memorandums, orders, opinions or other documents without direct human oversight and approval;
 - Use Generative Artificial Intelligence (GAI) to assist with legal matters and create or modify software code; and
 - Not use Generative Artificial Intelligence (GAI) to “[process or analyze confidential court records or privileged information](#)” unless “expressly authorized” and the use complies with the Judicial Branch Acceptable Use Policy and the Information Security Governing Policy.

South Carolina Attorneys

- In Section (d) or the next to the last paragraph of the document, Justice Kittredge acknowledges that the policy is written for South Carolina Judicial employees rather than South Carolina attorneys.
- But Justice Kittredge uses the policy to remind South Carolina attorneys that the attorney, not Generative Artificial Intelligence (GAI), is responsible for the accuracy of the work produced by the attorney.
- The attorney should [“use caution”](#) when replying upon the output of a Generative Artificial Intelligence tool.
- Judge Kittredge then reminds attorneys that client confidentiality should not be comprised nor should the [South Carolina Rules of Professional Conduct](#), Rule 407, be violated.



Is There More?

United States Bankruptcy Court for the District of South Carolina

- In August of 2025, Judge Elisabetta G.M. Gasparini sanctioned the attorney for the debtors, Rodney Richard Richburg and Pamela M. Tisdale-Richburg, in the bankruptcy case of [RICHBURG V. GLYNDON SQUARE](#), 2025 WL 2470473 (Bankr. D.S.C. 2025.)
- The solo practitioner, with forty years of experience, relied upon Microsoft's AI, Co-Pilot, to draft pleadings filed with the Court that included cites to fake caselaw "hallucinated" by AI.

- “According to Counsel, he was drafting the Motion on a Saturday and was in a hurry to finish, so in his haste and desire to avoid a ‘tedious and drawn out’ research process, he prompted 6 ECF No. 5. 7 As stated in the correspondence filed with the Court:
 - ‘The AI did a good job of drafting a complaint. I did check and revise it. It is based on facts and law included in the motion which was not drafted by AI. Unfortunately, I have learned the hard way that AI “scrapes” everything. It is accurate on the complaint because the motion was in close proximity, literally in time and context. . . . I would have double-checked, but I really believed in the AI so much that I have paid a subscription and the AI confirmed well-settled case law that I know to be true. . . . 8 ECF No. 9.’
- [Counsel] prompted CoPilot to find South Carolina caselaw supporting what he acknowledged was a ‘weak position.’ He admitted that he did not verify the authenticity of the cases cited prior to filing the document on CM/ECF, as he claimed CoPilot also provided short blurbs summarizing the cases, giving them the appearance of legitimacy.
- Counsel stated that he did not know the citations were made up until he read the Court’s **Order Setting Hearing**. He was ‘shocked’ to learn that AI can generate fake sources in its results, as he expected it to operate akin to a traditional Google search—providing existing material scraped from across the internet. Counsel stated that he does not intend to use AI for legal research going forward and will subscribe to Westlaw or Lexis.”



Sanctions

- *“For the reasons stated herein, the Court finds that Counsel has violated Federal Rule of Bankruptcy Procedure 9011 and a nonmonetary directive for Counsel to complete three (3) hours of continuing legal education in addition to any annual requirements that may be imposed on Counsel by the South Carolina Bar is an appropriate sanction.”*

Other Ethical Concerns



Bias

- Generative Artificial Intelligence (GAI) can also create bias.
- What types of bias?
 - Data
 - Algorithmic
 - Human
 - Feedback loops
 - Lack of diversity in development. For more information about bias, see Simon R. Graf, *The Sins of the Father: Exercising Malignant Bias from Artificial Intelligence*, 19 J. BUS. & TECH. 401, 408-431 (2024.)

Why Does This Matter?

- AI is trained using historical data that continues to perpetuate historical bias.
- The selection of training data and other training decisions are initially controlled by a human being.
- The computer is said to then become capable of processing and evaluating data beyond its programmed algorithms through *“contextualized influence, creating a black box effect.”*



But the Problem Remains: Bias

- While judges, jurors, attorneys, and laypersons grapple with understanding what AI is, how it works, and how it can be properly used and authenticated, it is clear that bias does exist.
- How can this bias impact the legal system?
 - Lending;
 - Judicial Sentencing and Recidivism;
 - Employment Decisions (hiring, firing, and promotion); and
 - Juror selection.



How Can Lawyers Avoid Bias in AI?

- Experts should routinely conduct bias audits of AI.
- Human oversight of AI and its results.
- Developing explainable AI (XAI) models that legal professionals can understand and challenge.

Copyright Infringement



Copyright: A Subset of Intellectual Property

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. Works of authorship include the following categories:

- (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.”***

How Does Copyright Become Involved with Generative Artificial Intelligence?



Large language models (LLMs) are trained by the collection of huge datasets.



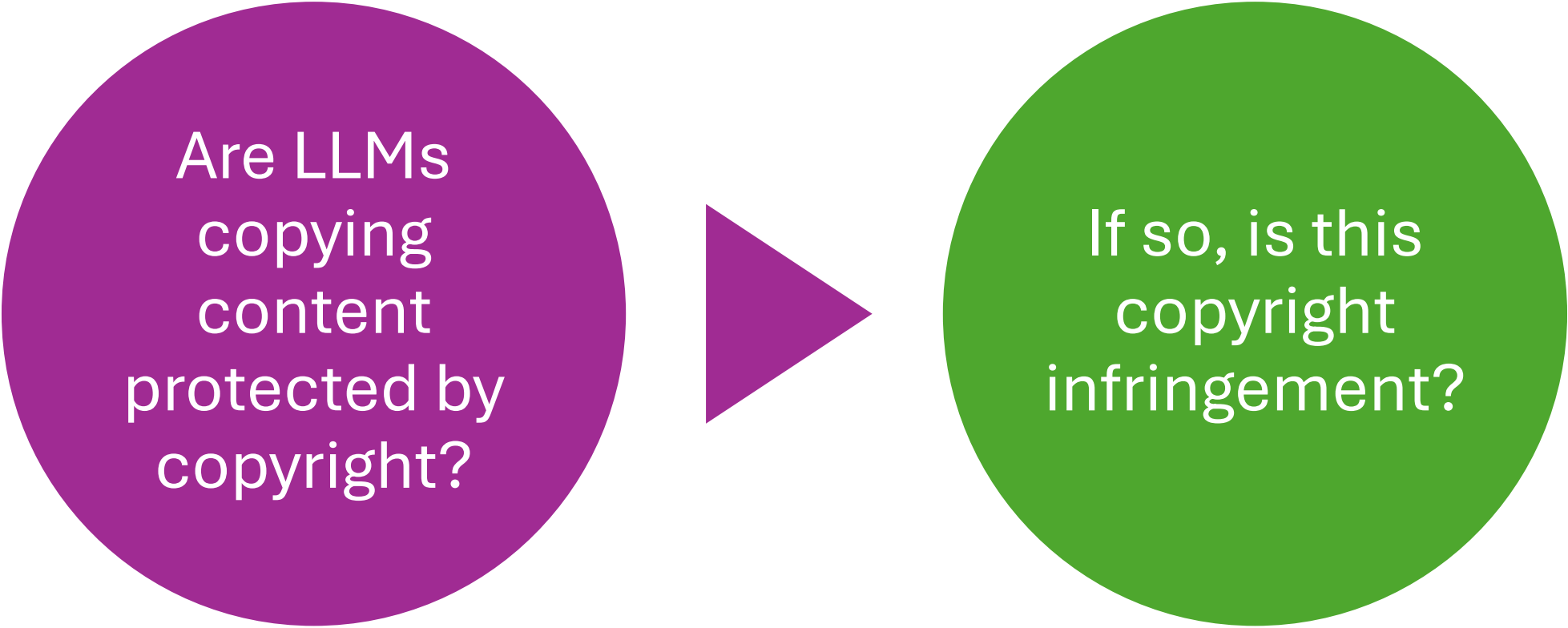
These datasets include books, articles, websites.



Data is scraped from these sources, text is converted into tokens, and the training begins.



From where are these books, articles, and websites obtained?



```
graph LR; A((Are LLMs copying content protected by copyright?)) --> B((If so, is this copyright infringement?))
```

Are LLMs
copying
content
protected by
copyright?

If so, is this
copyright
infringement?



NEW YORK TIMES, INC., v. MICROSOFT, CORP. et al., 777 F. SUPP. 3d 283 (S.D.N.Y. 2025.)

- On December 27, 2023, the New York Times sued Microsoft and Open AI, alleging that both parties use of the New York Times data to train their large language models, without compensation, constituted copyright infringement, a violation of the Digital Millenium Copyright Act, and common law unfair competition by misappropriation.
 - While an opinion dismissed some claims as Microsoft and Open AI requested, other claims were allowed.
 - Litigation thus continues to answer the question of whether corporations scraping data from the Internet to train their large language models are infringing upon other's copyright.
-

Meanwhile in California...

Thomson Reuters, aka as Westlaw, provides a citation list of 26 cases filed in federal and state courts since 2023, regarding “copyright infringement” and AI.

In addition to the New York Times case, another well known case is [BARTZ V. ANTHROPIC](#), 787 F. Supp.3d 1007 (N.D. CA 2025.)

BARTZ V. ANTHROPIC (N.D. CA, June 23, 2025)

- Andrea Bartz, an author, and other authors sued Anthropic, for copyright infringement on August 19, 2024.
- She alleged copyright infringement, arguing that Anthropic, in training its chatbot, Claude, violated her copyright.
- Anthropic disagreed, requesting a dismissal, noting that its use was “fair,” i.e., an exception to copyright violation.
- The Court stated: “*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.*”
- Thus the issue facing the Court was whether the uses of the works in question qualified as “fair use,” an exemption under the Copyright Act.

Settlement Proposal

- While the Court concluded in its June 23, 2025 Order on Fair Use that Anthropic's use satisfied the fair use test provided by 17 U.S.C. §107 (2012) for training use, it denied summary judgement for Anthropic regarding the use of pirated copies used for training.
- On August 27, 2025, Anthropic proposed settlement.
- On September 5, 2025, Anthropic's 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.
- This works out to approximately \$3,000.00 per book.

What Happened?

- On September 25, 2025, Judge Alsup conducted a Motion Hearing and an Order for Motion Settlement.
- On October 17, 2025, Judge Alsup issued a [Memorandum Opinion and Preliminary Approval of Settlement Order](#).
- A Fairness Hearing is scheduled for noon on April 23, 2026.



More: ENCYCLOPAEDIA BRITANNICA and MERRIAM-WEBSTER v. Perplexity AI, Docket # 1:25-cv-7546, U.S.D.C./S.D.N.Y. (2025)

- On September 10, 2025, 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.
 - *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."*
-

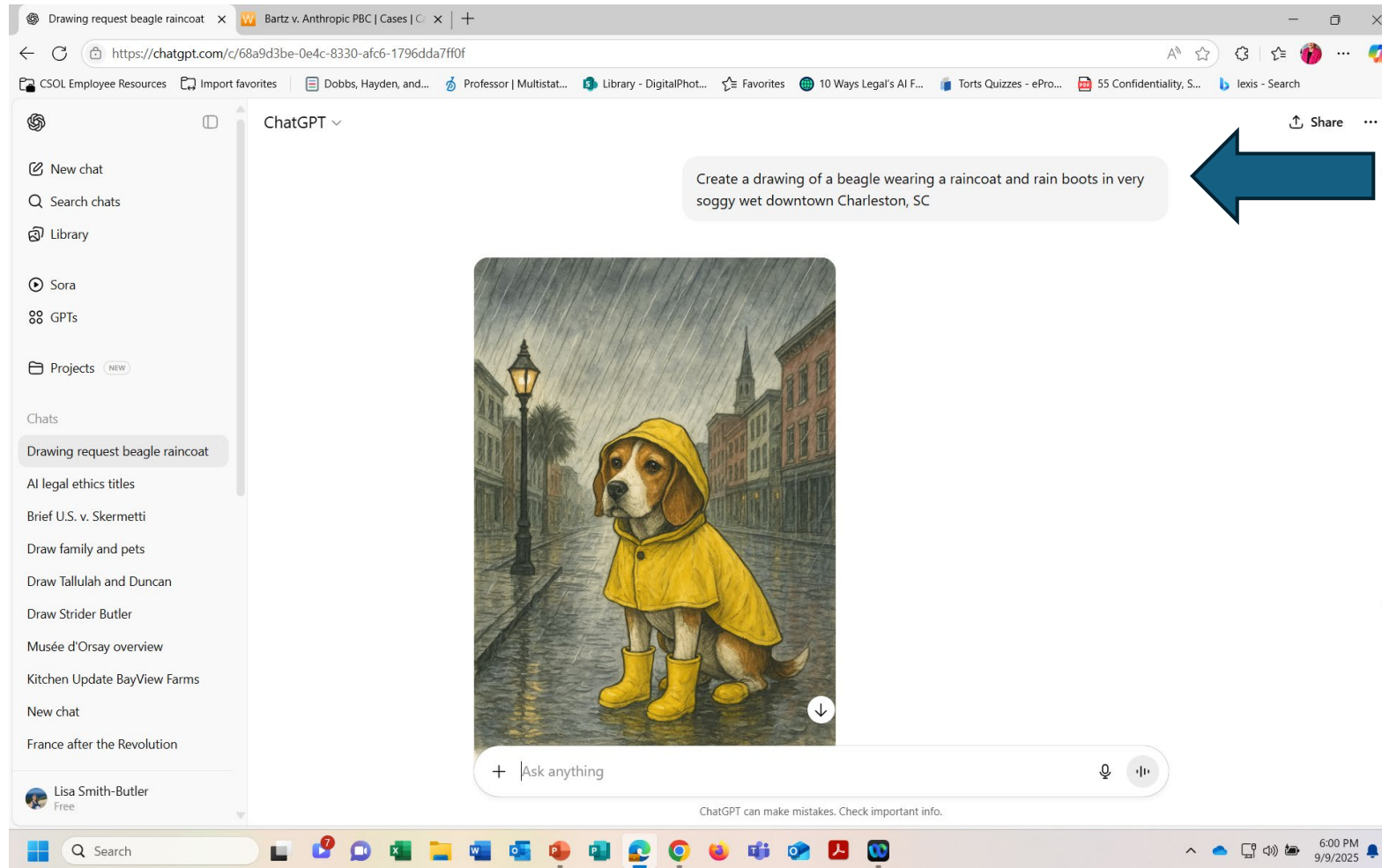
ENCYCLOPAEDIA CON'T

- *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.*
- *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.*
- *In addition to its massive copyright infringement, Perplexity also violates Plaintiffs' trademarks under the Lanham Act when its AI products generate made-up content or "hallucinations" and falsely attribute them to Plaintiffs by displaying them alongside Plaintiffs' famous trademarks. Perplexity likewise violates Plaintiffs' trademarks under the Lanham Act when its AI products misleadingly omit portions of Plaintiffs' content without disclosing those omissions and display the incomplete and inaccurate reproductions alongside Plaintiffs' famous trademarks. In addition, Perplexity's use of Plaintiffs' trademarks constitutes false designations of origin and confuses and deceives Perplexity users into believing that the hallucinations and/or undisclosed omissions are associated with, sponsored by, or approved by Plaintiffs.*



How Will This Impact
Pending and Future
Cases?

Who Owns the Copyright for Texts, Images, and Videos Created by GAI?





CHARLESTON, SC

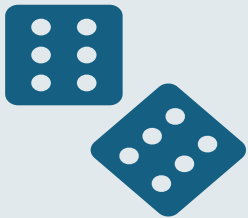


Who Owns the Image?
ChatGPT or Lisa Smith-
Butler?

Defamation



Can AI Defame Someone?



Eugene Volokh considers the question in his article, [*Large Libel Models: Liability for AI Outputs*](#), published in 3 J. of Free Speech L. 491 (2023).



In his introduction, Volokh notes:

If people were to end up viewing AI programs as merely fun toys that can't be trusted with regard to any important information—or just as generators of amusing fiction—then such false statements would cause little harm.

But, as I'll discuss in Part I.B, I expect that many users will indeed view the AI programs as reliable enough that the users might, for instance, decide not to select one of dozens of job applicants, or not to deal with some professional or service provider, because of an allegation that the program outputs. And even if users realize that AI programs are no more reliable than, say, rumor or gossip, the law generally recognizes that rumor and gossip can be quite damaging, and can therefore be actionable.

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?

The Question Becomes?

- Whether the immunization from liability for Internet platforms for tortious communications posted by third parties via the Communications Decency Act ([47 U.S.C. §230](#)) 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*, 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.
- 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 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?**”



Selected Defamation Cases Recently Filed

Starbuck v. Meta,
Delaware Superior
Court, [N25C-04-283](#)
(2025.)

Wolf River Electric v.
Google, Second Judicial
District, County of
Ramsey, MN, [25-cv-](#)
[02394](#) (2025.)

Unauthorized Practice of Law (UPL)



UPL

- With the advent of GAI, allowing consumers to consult GAI to draft documents or provide legal advice, is this the [unauthorized practice of law?](#)
- If so, how are bar associations and courts going to [handle](#) this?
- See
 - [LEGAL ZOOM V. NORTH CAROLINA STATE BAR](#), North Carolina, Wake County, Superior Court Division, [11 CVS 15111](#) (2015);
 - [ERASMUS V. LEGAL ZOOM](#), Superior Court of New Jersey, Essex County, LCV 2024 1383188 (2024); and
 - MILLERKING LLC V. DONOTPAY, United States District Court for the Southern District of Illinois, [3:23-cv-00863](#) (2023.)

Best Practices



Working with GAI

As we have seen, attorneys are using generative artificial intelligence to assist with their practice.

The goal then is for attorneys to use it effectively and ethically.



Best Practices

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

Checklist



- 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?

Checklist Con't

- 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?
 - Have written policies!
- 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?
 - [Rule 18.3](#) of THE BLUEBOOK which now provides a citation rule for citing to AI generated sources. See THE UNIVERSITY OF CINCINNATI LIBRARIES RESEARCH GUIDES, *Bluebook Citation 101—Academic Format*, available @ <https://guides.libraries.uc.edu/c.php?g=222758&p=1473415> , visited September 20, 2025.

More South Carolina Ethics Advice

Check out Nathan Crystal's *Ethics Watch* which is published in the [SOUTH CAROLINA LAWYER](#).

See also Nathan Crystal and Francesca Giannoni-Crystal's January 2025 article in the SOUTH CAROLINA LAWYER, [Using ChatGPT 4.0 While Complying with Ethics](#).



Thanks for
your time and
attention!

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