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AI and Legal Ethics

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Human in the Loop Why Lawyers Cannot Outsource Judgment to AI and Ethics Rules Requiring It

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What do you do?



State authorities are scrambling to grapple with widespread use of artificial intelligence: *Cal Matters, 9/22/25*

A California attorney must pay a \$10,000 fine for filing a state court appeal full of fake quotations generated by artificial intelligence.

The fine appears to be the largest issued over AI fabrications by a California court and came with a blistering opinion stating that 21 of 23 quotes from cases cited in the attorney's opening brief were made up. It also noted that numerous out-of-state and federal courts have confronted attorneys for citing fake legal authority.

“We therefore publish this opinion as a warning,” it continued. “Simply stated, no brief, pleading, motion, or any other paper filed in any court should contain any citations— whether provided by generative AI or any other source—that the attorney responsible for submitting the pleading has not personally read and verified.”

State authorities are scrambling to grapple with widespread use of artificial intelligence: *Cal Matters*, 9/22/25

Los Angeles-area attorney fined, told the court that he did not read text generated by the AI model before submitting the appeal in July 2023, months after OpenAI marketed ChatGPT as capable of passing the bar exam. A three-judge panel fined him for filing a frivolous appeal, violating court rules, citing fake cases, and wasting the court's time and the taxpayers' money, according to the opinion.

Mostafavi wrote the appeal and then used ChatGPT to try and improve it. He said that he didn't know it would add case citations or make things up.

He thinks it is unrealistic to expect lawyers to stop using AI.

It's become an important tool just as online databases largely replaced law libraries and, until AI systems stop hallucinating fake information, he suggests **lawyers who use AI to proceed with caution.**

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Bloomberg- AI, Pursuit of Justice & Questions Lawyers Should Ask

“To protect the rule of law and the fundamental values it is intended to serve, it is necessary to understand the risks and benefits that AI and automated systems present, not in the abstract, but in the actual context of a particular use. For lawyers, this is a matter of both professional ethics and social morality, as misuse or misrepresentation (intentional or otherwise) can undermine both the perception and the reality of a legal system's functioning fairly, transparently, and without bias.

Some harms—sentencing based on algorithms using biased data or a resume sent to the trash pile—cannot be remedied after the fact.”

Lawyers using AI keep citing fake cases in court. Judges aren't happy.

Judges aren't happy. In May, a Utah appeals court [ordered](#) an attorney to pay \$1,000 to a Utah legal aid foundation for submitting a brief with references to nonexistent cases that the attorney later attributed to AI, according to court documents. The same month, a federal court in Indiana [fined](#) an attorney \$6,000 and a California special master [ordered](#) two law firms to pay \$31,100 to opposing attorneys in an insurance dispute for submitting briefs with similar mistakes.

“Plaintiff’s use of AI affirmatively misled me,” Michael Wilner, the California special master, wrote in his order. “I read their brief, was persuaded (or at least intrigued) by the authorities that they cited, and looked up the decisions to learn more about them — only to find that they didn’t exist. That’s scary.”

Lawyers using AI keep citing fake cases in court. Judges aren't happy.

“It’s the human oversight that we just can’t do away with,” Patterson of Florida’s 14th Circuit Court said. “That’s the message that I’ve got to my judges, to my staff attorneys. ... Don’t let [AI] substitute your judgment for the tool’s judgment.”

“You can’t let that happen.”

Guardrails



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Guardrails

Guardrails on the highway are barriers that protect vehicles from veering off course and into danger. With the advent of generative AI the concept of guardrails also applies to systems designed to ensure that a company's AI tools,

AI Guardrails

Guardrails monitor AI systems' output by performing a range of tasks: for example, classification, validation, detection of personally identifiable information leaks, and identification of harmful content.

To perform these tasks, AI guardrails are made up of four interrelated components, each of which plays a crucial role:

Key elements of effective guardrails

- ❖ Clear rules on permitted and prohibited AI use
- ❖ Explicit restrictions on inputting confidential or sensitive data
- ❖ Mandatory human review and verification requirements
 - ❖ Defined supervision and approval processes
 - ❖ Approved tool lists and vendor vetting protocols
- ❖ Internal disclosure or documentation requirements where appropriate
 - ❖ Training and compliance expectations

Transforming the Legal Landscape in the Age of AI: State Bar of Michigan, 2025

The integration of generative artificial intelligence (AI) into the legal profession represents both a remarkable opportunity and a formidable challenge. As AI technology continues to evolve at a rapid pace, it is reshaping the landscape of legal practice, enhancing efficiency, expanding access to justice, and revolutionizing practice management. With these advancements come critical ethical, professional, and regulatory considerations that must be addressed to ensure AI serves the public interest while upholding the integrity of the legal system and the rule of law.

State Bar of Michigan Report: Transforming the Legal Landscape in the Age of AI: June, 2025

Humans Are in the Loop



AI 101 for Lawyers

ABA, 2026

Many lawyers have been hesitant for understandable reasons. You may have heard of attorneys being sanctioned or disciplined for submitting briefs that cited non-existent cases. Those incidents are real, and they usually stem from what is known as an AI “hallucination.” A hallucination is when a tool generates information that sounds authoritative but is not accurate.

That concern is valid. AI is not a replacement for legal judgment, research verification, or professional responsibility. But it *is* a set of tools that, when used correctly, can support your work, save time, and reduce friction in day-to-day practice.

AI 101 for Lawyers

ABA, 2026

AI should not be relied upon to independently cite or verify case law, statutes, or legal authority. Any legal references must be confirmed using traditional research tools.

It is also critical to avoid inputting confidential, privileged, or identifying client information unless: (1) the platform has been approved by your firm's management and IT security team; (2) the platform complies with applicable ethical guidance, including ABA Model Rule 1.6 (Confidentiality of Information).

AI does not understand context, ethics rules, or professional responsibility. The lawyer remains fully responsible for the work product.

AI 101 for Lawyers ABA, 2026

Understanding and complying with specific jurisdiction's ethical guidance on AI use, including state bar association opinions, court rules, and continuing legal education requirements regarding technology competence.

As of 2026, many jurisdictions have issued specific guidance on AI use, and lawyers must stay current with these requirements as part of their duty of competence under Rule 1.1 of the applicable Rules of Professional Conduct.

Will the Integration of Artificial Intelligence into the Legal Profession Ethically

AI programs designed for legal practice are also beginning to develop. Legal artificial intelligence has the capacity to greatly decrease the time needed for legal research, especially in cases where research questions can span multiple jurisdictions or practice areas.

When lawyers conduct research, they typically are conducting numerous searches to try out different search terms. Such searches produce a list of cases where each case must be individually read and analyzed to determine the rule of law and factual similarities to the client's case.

Legal artificial intelligence programs are becoming increasingly sophisticated to increase the number of cases, secondary sources, and statutory materials that are reviewed for each research prompt.

Georgetown Journal of Legal Ethics, April 2026

Will the Integration of Artificial Intelligence into the Legal Profession Ethically

Law firms are businesses at their core, driven by goals of expansion, reputation, and revenue. Law firms generate their revenue by serving their clients. Clients, however, are pushing for artificial intelligence to be used on their cases in hopes it will decrease their bills. T

This pressure will not go away if firms decide not to use artificial intelligence, but the clients still champion it. To keep clients, firms will have to use artificial intelligence which will naturally decrease their hours and therefore profits.

Artificial Intelligence, Real Practice North Carolina State Bar, 2023



The use of artificial intelligence in the legal profession raises several ethical considerations for lawyers. While AI can provide valuable support to legal practitioners, it is essential for lawyers to remain mindful of their professional obligations and ethical duties. Some of the key ethical considerations include:

Artificial Intelligence, Real Practice

North Carolina State Bar, 2023

- 1. Competence:** Lawyers have an ethical duty to provide competent representation to their clients. As AI becomes more integrated into the practice of law, lawyers should maintain a basic understanding of AI technologies to leverage them effectively and appropriately. This includes knowing the strengths and limitations of AI tools and recognizing when human intervention is necessary to ensure the quality of legal services.
- 2. Supervision:** Lawyers have a responsibility to supervise the work of nonlawyers—including AI systems—to ensure compliance with ethical obligations. This involves monitoring the AI's performance, understanding the AI's decision-making process, and validating its output to ensure accuracy and reliability.
- 3. Confidentiality:** Lawyers must protect client confidentiality and maintain attorney-client privilege when using AI tools. This includes ensuring that any AI tools or systems used in the practice have adequate security measures in place to protect sensitive client information from unauthorized access or disclosure.

Artificial Intelligence, Real Practice

North Carolina State Bar, 2023

4. Communication: Lawyers have an ethical duty to keep their clients informed about the status of their matters and to communicate with them in a manner that allows the clients to make informed decisions. When using AI tools, lawyers should be transparent with clients about the extent of AI involvement in their work and should communicate any potential risks or limitations associated with the use of AI.

5. Diligence: Lawyers have an ethical obligation to act diligently in representing their clients. Relying solely on AI without human input or oversight may lead to mistakes or oversights, potentially resulting in inadequate representation. Lawyers must exercise due care when using AI tools to ensure they are fulfilling their ethical duties.

6. Avoiding Unauthorized Practice of Law (UPL): Lawyers must ensure that the use of AI does not result in the unauthorized practice of law by nonlawyers. While AI can assist with various tasks, lawyers should be cautious not to delegate tasks that require legal judgment or expertise to AI systems, as this may constitute UPL.

Artificial Intelligence, Real Practice

North Carolina State Bar, 2023

7. **Billing:** Lawyers have a responsibility to bill clients fairly and transparently. When incorporating AI tools into their practice, lawyers should consider how the use of AI affects billing practices and ensure that clients are not overcharged for services provided by AI.

8. **Bias and fairness:** AI systems may inadvertently perpetuate or exacerbate biases present in the data used for training the algorithms. Lawyers must be vigilant in identifying and addressing potential biases in AI tools to ensure they provide fair and unbiased legal services to their clients.

9. **Responsibility and accountability:** Lawyers must remain responsible and accountable for the work they produce, even when using AI tools. This includes acknowledging errors that may arise from the use of AI and taking corrective measures as needed.

Artificial Intelligence, Real Practice

North Carolina State Bar, 2023

Lawyer must use these tools competently (Rule 1.1), ensure that confidentiality is preserved (Rule 1.6), and review/supervise the work product generated (similar to a lawyer's duty of supervision per Rule 5.3).

A lawyer needs to be particularly careful when using a public artificial intelligence tool) because any client-specific information provided to the public tool could be subsequently used or potentially revealed by the program, breaching the lawyer's duty of confidentiality.

Artificial Intelligence, Real Practice

North Carolina State Bar, 2023

Lawyer must be transparent with a client when billing for work assisted by AI. After all, AI may very well reduce a previous 60-minute task to six minutes (or less); in such a scenario, a lawyer must accurately and honestly bill based upon the time actually spent on the task, and any efficiencies created by the lawyer's use of AI must be passed on to the client. See Rules 1.5, 7.1, and 8.4(c).

CURRENT ETHICS OPINIONS AND REPORTS RELATED TO GENERATIVE ARTIFICIAL INTELLIGENCE, NY City Bar, 2025

AMERICAN BAR ASSOCIATION OPINION 512 American Bar Association (ABA) Standing Committee on Ethics and Professional Responsibility Formal Opinion 512 (July 29, 2024) (ABA Formal Op. 512)

Competence (Model Rule 1.1)

Confidentiality (Model Rule 1.6)

Communication (Model Rule 1.4)

Reasonableness of Fees (Model Rule 1.5)

Transforming the Legal Landscape in the Age of AI: State Bar of Michigan, 2025

In Michigan, several Rules of Professional Conduct apply to a lawyer's use and non-use of AI:

- **CANDOR TO THE TRIBUNAL:** Lawyers must be honest and transparent about AI's role in their legal arguments and submissions.

Lawyers using AI keep citing fake cases in court. Judges aren't happy.

Courts across the country are facing a deluge of filings from attorneys and litigants that back their arguments with nonexistent research hallucinated by generative artificial intelligence, prompting judges to fight back with fines and reprimands.

The problem reflects well-known issues with AI tools, which are prone to fabricate facts, or in these cases, citations. Soon after AI tools such as ChatGPT began to circulate, attorneys made headlines for submitting error-ridden memos after failing to check AI-assisted work.

AI – Pros and Cons

New York Times: Steven A. Schwartz of the law firm Levidow, Levidow & Oberman, filed a “10-page brief that cited more than half a dozen relevant court decisions. There was *Martinez v. Delta Air Lines*, *Zicherman v. Korean Air Lines* and, of course, *Varghese v. China Southern Airlines*, with its learned discussion of federal law and “the tolling effect of the automatic stay on a statute of limitations.””

He used ChatGPT for legal research to find previous court decisions to help his client’s case with U.S. District Judge Castel. **The problem is that many of the court decisions cited by Mr. Schwartz in his brief to persuade the U.S. District Court for the Southern District of New York did just the opposite because the cases do not exist.**

An AI Fail By An Elite Litigation Firm

Original Jurisdiction: 9/23/25

Boies Schiller Flexner, founded in 1997 is one of the most prestigious and profitable law firms in the nation.

On appeal: “Plaintiffs’ brief contains a series of troubling citation errors. The portions of the brief containing errors bear many of the hallmarks of AI-generated case citations. A table detailing the errors we identified is included as Attachment A at the end of this brief....”

[M]ultiple sections of plaintiffs’ brief are filled with erroneous citations that mischaracterize holdings and refer to cases on unrelated areas of law. Some cases are mistitled such that it is difficult to determine what cases plaintiffs are intending to cite in the first place. And one case plaintiffs cite is completely made up. **At minimum, this court should disregard these sections of plaintiffs’ brief and find the arguments plaintiffs make forfeited.”**

COURT'S STANDING ORDER ON THE USE OF GENERATIVE AI

COURT'S STANDING ORDER ON THE USE OF GENERATIVE AI

Pursuant to the Court's inherent authority and the authority of Rule 11 of the Federal Rules of Civil Procedure, no attorney for a party, or a pro se party, may use Artificial Intelligence ("AI") in the preparation of any filing submitted to the Court. Parties and their counsel who violate this AI ban may face sanctions including, inter alia, striking the pleading from the record, the imposition of economic sanctions or contempt, and dismissal of the lawsuit.

The Court does not intend this AI ban to apply to information gathered from legal search engines, such as Westlaw or LexisNexis, or Internet search engines, such as Google or Bing. All parties and their counsel have a duty to immediately inform the Court if they discover the use of AI in any document filed in their case.

IT IS SO ORDERED. /s Christopher A. Boyko, United States District Judge, N.D. Ohio

Wadsworth v. Walmart Inc. and Jetson Electric Bikes, LLC (D. Wyo, Feb. 2025)

- Big law firm retained local counsel for a case. Big law firm included fake AI-generated citations in a motion.
- Lawyer who conducted the research took responsibility in an affidavit and said local counsel “had absolutely no involvement with the preparation or review of said” motion.
- Sanctions: Attorney who included AI-generated cases had his *pro hac vice* admission revoked and was fined \$3,000.

Northern District of California, Judge Eumi K. Lee

H. Use of Generative AI Tools

Counsel is responsible for providing the Court with complete and accurate representations of the record, procedural history, and cited legal authorities. Use of ChatGPT or other such generative artificial intelligence tools is not prohibited, but counsel must personally confirm for themselves the accuracy of any research conducted by these means, and counsel alone bears ethical responsibility for all statements made in filings. Any submission containing AI-generated content must include a certification that lead trial counsel has personally verified the content's accuracy. Failure to include this certification or comply with this verification requirement will be grounds for sanctions. Counsel is responsible for maintaining records of all prompts or inquiries submitted to any generative AI tools in the event those records become relevant at any point.

Morgan v. V2X, Inc.

D. Colo, 2026

“Plaintiff can assert work product protections in connection with his AI use. It is true that AI systems like ChatGPT, Claude, Gemini, and others widely available to the public, collect user data for training and other purposes. But in this Court's estimation, that does not eliminate all expectations of privacy or automatically waive protections.

Today, nearly all electronic interaction passes through third-party systems. Google, for example, hosts millions of accounts, and by extension, has access to millions of messages, emails, documents, videos, and more.

Moreover, we now know that our phones, computers, inhome smart devices, and other electronics, collect information about us to offer more bespoke services. Does that mean that anyone with a Gmail account has forfeited all rights to confidentiality and privacy?”

United States of America v. Heppner

In a decision with significant implications for any non-lawyer who uses artificial intelligence tools to research or analyze legal matters, Judge Rakoff of the United States District Court for the Southern District of New York, in *United States of America v. Heppner*, 25-cr-00503-JSR, ruled on February 10, 2026 that **documents generated through a public AI platform were not protected by the attorney-client privilege or the work product doctrine.**

Court granted the Government's motion to access documents that defendant Bradley Heppner created using the AI tool Claude before his arrest on federal fraud charges.

American Bar Association *Mirrors Heppner*

Communications with public AI tools may not be privileged.

Communications with public AI tools may not satisfy the requirements of the attorney-client privilege because AI tools are not attorneys, do not provide legal advice, and inputs to them are not confidential. Further, later sending the AI-generated results to a lawyer will not retroactively cloak them with privilege.

Public AI tool privacy policies are important. Courts may examine whether AI tool privacy policies permit disclosure of user data to third parties and governmental authorities when evaluating confidentiality claims so such policies should be carefully reviewed prior to use of the AI tool.

Sharing privileged information with a public AI tool might waive privilege.

Taking the ruling a step further, it is reasonable to also conclude that sharing confidential attorney-client communications with a public AI tool might waive any privilege that could otherwise attach to those communications.

Addressing the Legal Challenges of AI: ABA, December 2025

GenAI tools may be trained on information gathered from the Internet generally, or proprietary databases, and are not always trained on non-copyrighted or authoritative legal sources. The terms of service for any GenAI tool used should always be reviewed for confidentiality, privacy, and security considerations.

GenAI tools may provide incorrect or misleading information (commonly referred to as “hallucinations”). Accordingly, the accuracy of any responses must always be verified by a human.

HUMANS ALWAYS IN THE LOOP

Policies and Procedures

Ad hoc decision-making creates uneven risk exposure

Lack of documentation undermines defensibility in malpractice or disciplinary contexts

Increased regulatory and judicial scrutiny of AI use

Growing expectation of institutional governance from clients and insurers

Policies and Procedures

Decision to implement AI in the workplace should be deliberate and careful one.

Risks are too great to rush into adoption of any AI-powered technology simply because competitors are using it or customers are asking about it.

AI is Part of Our World

Humans Create AI – Humans Must Oversee and Manage AI

Despite some media accounts to the contrary, AI cannot create fully interactive “human” holographic images and projections – Perhaps some day, Star Trek and Star wars WILL BE REALITY

Policies, Training, and Plans that Address AI Rules of the Road

Vet and select good technology partners

Be alert to bias infused responses and productions

Delaware Law School: 2026 Law Review AI Forum

Justices from Delaware Supreme Court, and Judges from Court of Chancery, and New Castle County Superior Court:

Familiar with judges and courts using AI to PREDICT recidivism rates for incarcerated people.

AI's Conclusion: Incarcerated Black people commit crimes again at a greater rate than other racial groups.

Judicial Investigation: Inaccurate Conclusions, caused by biases built into program

AI

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