



PROGRAM MATERIALS

Program #36123

April 29, 2026

Ethics, Confidentiality & AI – How to Develop a Strong Law Firm AI Policy Before It's Too Late

Copyright ©2026 by

- **Jeff Lantz, Esq. - Esquire Interactive LLC**
- **Desire'e Martinelli, Esq. - Esquire Interactive LLC**

**All Rights Reserved.
Licensed to Celesq®, Inc.**

Celesq® AttorneysEd Center
www.celesq.com

5301 North Federal Highway, Suite 150, Boca Raton, FL 33487
Phone 561-241-1919

ATTENDEE REFERENCE HANDOUT

Ethics, Confidentiality & AI:

How to Develop a Strong Law Firm AI Policy Before It's Too Late

Presented by Jeff Lantz, Esq. & Desire'e Martinelli, Esq. • Esquire Interactive • Celesq CLE • April 2026

DISCLAIMER: This handout is provided for educational purposes only and does not constitute legal advice. The ABA Model Rules are referenced throughout — please consult the professional responsibility rules in each jurisdiction where you practice.

Presentation Overview

1. What Is Generative AI?
2. How AI Is Being Used by Attorneys
3. Bar Association Guidance - The Rules That Apply
4. Rule 1.1 - Competence & AI
5. Rule 3.3 & 8.4(c) - Candor to the Tribunal; AI Hallucinations
6. Rule 1.5 - Fees and Reasonable Billing When AI Is Used
7. Rules 5.1 & 5.3 - Supervisory Responsibilities
8. Rules 1.6 & 1.4 - Client Disclosure & Confidentiality
9. Data Security Risks & Protecting Client Information
10. Why Your Firm Needs an AI Policy
11. Developing Your Law Firm AI Policy - 9-Step Framework
12. AI Use & Professional Liability Coverage
13. Key Resources & Citations
14. About the Presenters

1. What Is Generative AI?

“AI is not a single piece of hardware or software, but rather, a constellation of technologies that gives a computer system the ability to solve problems and to perform tasks that would otherwise require human intelligence.” - National Security Commission on AI

Generative AI is a subset of artificial intelligence that creates new content - text, images, code, audio, or video - by learning patterns and structures from massive datasets and using them to generate original outputs. Unlike traditional software that follows explicit instructions, generative AI learns from data and produces outputs that did not previously exist.

For lawyers, the most practically important distinction is between general-purpose AI platforms (like ChatGPT or Gemini) and legal-specific platforms (like Lexis+ AI, Westlaw AI, Harvey, or CoCounsel). Legal-specific platforms are generally trained on legal data and designed with attorney workflows and confidentiality in mind.

Major Generative AI Platforms in Legal Practice

Platform	Developer	Primary Legal Uses	Key Consideration
ChatGPT	OpenAI	Drafting, memos, research, summaries	Free version trains on inputs; use Enterprise/legal version only
Copilot	Microsoft	Document drafting, Office 365 integration	Integrates with Word, Outlook, Teams
Claude	Anthropic	Long-form analysis, nuanced drafting	Strong at reasoning and complex documents
Gemini	Google	Research, Google Workspace integration	Integrates with Gmail, Docs, Drive
Grok	xAI (X/Twitter)	Emerging; real-time web access	Less established for legal use
Harvey	Harvey AI	Legal-specific; drafting, research, due diligence	Built specifically for law firms; firm-trained models
CoCounsel	Thomson Reuters	Westlaw-integrated legal research and drafting	Grounded in verified Westlaw content
Lexis+ AI	LexisNexis	Lexis-integrated research, summarization	Tied to verified Lexis sources

KEY POINT

General-purpose AI platforms (like the free version of ChatGPT) may use your inputs to train their models. Always use enterprise or legal-specific versions with data security contracts in place before inputting any client-related information.

2. How AI Is Being Used by Attorneys

AI adoption across law firms has accelerated dramatically. The legal AI market is projected to grow from \$1.5 billion in 2024 to \$8.7 billion by 2030. Understanding how AI is being used - and how it might be used in your practice - is itself a competence obligation under Rule 1.1.

Legal Practice Applications

<p>Legal Research & Case Law Analysis</p> <ul style="list-style-type: none"> • AI-powered tools like Lexis+ AI and Westlaw Edge accelerate legal research by summarizing case law and statutes • Predictive analytics help attorneys assess judicial tendencies and case outcomes • AI can rapidly identify relevant precedents across massive databases that would take hours to search manually 	<p>Contract Review & Drafting</p> <ul style="list-style-type: none"> • AI streamlines contract analysis, flagging potential risks and suggesting revisions • Tools like Juro, Kira, and LegalOn identify missing clauses and ensure compliance with legal standards • AI can compare contract terms against a firm's standard forms and flag non-standard provisions
<p>Litigation Support & E-Discovery</p> <ul style="list-style-type: none"> • AI rapidly sifts through massive datasets in discovery, identifying relevant documents far faster than human reviewers • Predictive coding reduces costs and enhances accuracy in document production • Technology-assisted review (TAR) is now standard in large matters 	<p>AI-Generated Legal Summaries & Briefs</p> <ul style="list-style-type: none"> • AI can draft legal memos and summaries, cutting down research and writing time significantly • AI can produce first drafts of motions, briefs, and demand letters • Human oversight remains essential to verify accuracy and avoid hallucinations - AI output is a starting point, not a final product
<p>Chatbots & Client Intake</p> <ul style="list-style-type: none"> • Virtual assistants respond to common legal questions and qualify potential clients 24/7 • AI-driven intake forms streamline case evaluations, improving efficiency and client experience 	<p>Compliance & Risk Assessment</p> <ul style="list-style-type: none"> • AI helps firms monitor regulatory changes and ensure compliance with GDPR, HIPAA, SEC regulations, and more • Automated risk assessment tools flag potential violations before they become legal issues • Particularly valuable for firms handling regulated industries or cross-border matters
<p>Predictive Billing & Alternative Fees</p> <ul style="list-style-type: none"> • Predictive billing models help firms estimate legal fees more accurately based on historical matter data • AI creates an opportunity for firms to bill complex litigation on a flat-fee basis with greater confidence in profitability • AI can analyze past matters to identify which practice areas are most and least profitable 	<p>ADR, Mediation & Negotiation</p> <ul style="list-style-type: none"> • AI assists in mediation by analyzing past cases and suggesting settlement strategies • AI-driven negotiation platforms (e.g., DocJuris) enhance efficiency in dispute resolution • AI can model likely settlement ranges based on venue, judge, and comparable verdicts

<p>IP & Trademark Monitoring</p> <ul style="list-style-type: none"> • AI tools scan global databases for trademark and patent infringements • Automated alerts notify attorneys of potential IP conflicts before they escalate • AI can monitor competitor filings and flag new applications in relevant classes 	<p>Business Development & Marketing</p> <ul style="list-style-type: none"> • RFP responses: Tools like CoCounsel and Harvey help tailor pitches to client-specific needs and competitive structure • Content creation: AI can draft thought leadership articles, blog posts, and social media content • Analytics: AI analyzes marketing data to assess performance and guide future investment
--	---

3. Bar Association Guidance - The Opinions You Need to Know

The ABA and numerous state bars have issued ethics opinions and guidance documents addressing AI use in legal practice. Here are the key authorities:

Authority
ABA Formal Opinion 512 (2024)
Florida Bar (Op. 24-1) (2024)
PA Bar & Philadelphia Bar (2024-200)
DC Bar (Ethics Op. 388) (2024)
NYC Bar (Formal Op. 2024-5)
Mississippi Bar (Op. 267) (2024)
Michigan Bar (JI-155) (2023)
CA Bar (COPRAC Guidance) (2023/2026)
NYSBA Task Force Report (2024)
NJ Bar (Preliminary Guidelines) (2024)
NC Bar (FEO 2024-1)
Oregon (Formal Op. 2025-205)
Kentucky (KBA E-457) (2024)
Virginia LEO 1901 (2025)
Texas (Op. 705) (2025)

4. Rule 1.1 - Competence & AI

“To competently use a GAI tool in a client representation, lawyers need not become GAI experts. Rather, lawyers must have a reasonable understanding of the capabilities and limitations.” - ABA Formal Opinion 512 (2024)

Rule 1.1 requires competent representation, including the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation. Comment [8] to Rule 1.1 specifically requires lawyers to keep abreast of “changes in the law and its practice, including the benefits and risks associated with relevant technology.”

In the AI context, competence has two dimensions: (1) knowing when and how to use AI effectively, and (2) knowing when NOT to rely on it. Both are equally important.

What Competence Requires at a Minimum

- Read about generative AI tools targeted at the legal profession - bar publications, CLE courses, and legal tech publications
- Read and understand the Terms of Use, privacy policy, and data retention policies of any AI platform before using it
- Consider the impact on clients of NOT using AI - falling behind technologically may itself constitute incompetence as AI becomes standard
- Consult with others proficient in AI technology - internal AI committees, technology consultants, or colleagues at peer firms
- Understand that competence is not static - ongoing learning is required as AI tools evolve rapidly
- Know the hallucination problem: AI tools produce false information that appears legitimate, particularly fabricated case citations

Competence in Verification

All AI-generated legal citations and case summaries must be independently verified before use in any filing, correspondence, or client advice. This is not optional. Courts have held consistently that “not knowing the AI was wrong is not a defense” - the duty of competence requires verification regardless of what tool was used.

- Independently look up every case citation AI generates - confirm it exists, says what AI claims, and supports the proposition for which you are citing it
- Do not use AI tools to “check” their own output - ask the same AI whether its citation is correct and it will often confirm a hallucinated case
- Use verified legal research databases (Westlaw, Lexis) to confirm AI-generated research

5. Rule 3.3 & 8.4(c) - Candor, Hallucinations & Sanctions

Rule 3.3(a)(1) prohibits making false statements of law or fact to a tribunal. Rule 8.4(c) prohibits conduct involving dishonesty, fraud, deceit, or misrepresentation. Both rules are directly implicated when a lawyer submits AI-generated hallucinations to a court.

Key Cases & Sanctions

Case / Event	What Happened & Sanctions
Mata v. Avianca (S.D.N.Y. 2023)	NY lawyers submitted a ChatGPT-generated brief with over half a dozen fictional case citations. Sanctions: \$5,000 fine, mandatory remedial steps, public reprimand. The first major AI hallucination sanctions case.
Johnson v. Dunn 792 F.Supp.3d 1241 (N.D. Ala. 2025)	Defense attorneys in Alabama prison civil rights litigation submitted two discovery motions containing five non-existent ChatGPT-generated citations. Sanctions: public reprimand, disqualification from representing the defendant, referral to the Alabama State Bar for disciplinary proceedings.
Sullivan & Cromwell (Filed April 18, 2026)	The firm filed a court apology acknowledging AI hallucinations in a motion, stating its firm AI policies “were not followed” in connection with the preparation of the motion - a striking admission from a premier BigLaw firm.

The lesson from Johnson v. Dunn: “If fines and public embarrassment were effective deterrents, there would not be so many cases to cite.” - U.S. District Judge (N.D. Ala. 2025). Courts are moving beyond fines to disqualification and bar referrals.

6. Rule 1.5 - Fees and Reasonable Billing When AI Is Used

Rule 1.5 requires that a lawyer’s fee be reasonable. AI’s ability to dramatically reduce time spent on legal tasks raises important questions about what constitutes a “reasonable” fee. The answer varies depending on how you bill and which state’s guidance applies.

The Foundational Rule (ABA & Most States)

Billing Model	Rule 1.5 Implications
Hourly Billing	You may only charge for actual time spent using AI. You cannot charge what it would have taken without AI. If a task takes 30 minutes with AI instead of 8 hours, you bill 30 minutes.
Flat-Fee / Fixed-Fee Billing	If AI reduces the work involved to the point where the original flat fee is no longer reasonable, you may need to adjust. The analysis turns on whether the client receives commensurate value.
AI Subscription Costs	Generally cannot be billed as a pass-through to individual clients unless the use is specific to that client’s matter. Exception: Texas (with prior written agreement).
Learning / Training Time	Never billable. Time spent learning to use an AI tool is overhead, not a client expense.
Fee Transparency	Regardless of billing model, the basis for the fee - including AI use - must be explained to the client. Engagement letters should address AI use and billing.

The Trust Drafting Example

Example: An attorney who previously spent 8 hours drafting a complex trust can now complete the same work in 30 minutes using AI. The attorney always bills this work on a fixed fee/flat fee basis. Should the attorney reduce her fee to take into account the significantly reduced time now required?

General Rule (ABA / most states): While the rules are not clear, the opinions to date suggest that the attorney should at least consider a free reduction.

However, Virginia Legal Ethics Opinion 1901 goes against the trend, saying that the skill, expertise, and judgment the attorney brings to reviewing and deploying AI tools has independent value. The fee may remain the same as long as the client receives value and the fee is adequately explained.

Virginia LEO 1901 (2025) - A Landmark Departure

On November 24, 2025, the Supreme Court of Virginia approved Legal Ethics Opinion (“LEO”) 1901, making Virginia the first and only jurisdiction to expressly hold that AI-driven time savings do not automatically require fee reductions to comply with ethics rules. Key holdings:

- Rule 1.5 does not “equate reduced time with proportionately reduced fees”
- Time spent on a task “should not be read as the preeminent or determinative factor” in assessing fee reasonableness
- Value-based billing is supported even when AI dramatically reduces time, as long as clients receive value and fees are clearly explained
- A lawyer’s skill in knowing when and how to deploy AI tools, and expertise in critically evaluating AI outputs, is itself compensable professional skill
- Lawyers must engage in fee transparency - if AI reduces time significantly, clients may need explanation of why the fee remains what it is

IMPORTANT

Virginia is currently the only state to expressly take this position. Until your state bar explicitly adopts guidance, the more conservative approach is to consider whether a fee adjustment may be warranted.

7. Rules 5.1 & 5.3 - Supervisory Responsibilities

Rules 5.1 and 5.3 hold supervisory lawyers responsible for ensuring that attorneys and non-attorney staff comply with the Rules of Professional Conduct. These rules apply fully to AI use - a partner or managing attorney is responsible for how junior attorneys and staff use AI in client matters.

What Supervisory Responsibility Requires

- Lawyers in supervisory roles must ensure the firm’s use of AI adheres to ethical standards of accuracy, confidentiality, and non-bias
- Policies and training must be implemented to ensure AI tools are used appropriately across the firm
- Supervisory lawyers must oversee junior attorneys’ AI use and review AI-generated work product

-
- Rule 5.3(b) requires reasonable efforts to ensure non-lawyer staff (paralegals, legal assistants, marketing staff) also comply with ethics rules when using AI
 - A supervising partner who signs a document that a junior associate produced with AI bears professional responsibility for any errors in it - direct involvement with the AI tool is not required for liability to attach

Practical Implications

- Firm management must establish clear written policies about permissible AI use - and enforce them
- Implement review protocols requiring attorney oversight of all AI-generated work product before it leaves the firm
- Document that AI review and verification was performed, especially for court filings
- The Sullivan & Cromwell apology (April 2026) illustrates the point: even a firm with “comprehensive policies” faces consequences when those policies are not followed on a specific matter

8. Rules 1.6 & 1.4 - Client Disclosure & Confidentiality

Two rules govern the disclosure question: Rule 1.4 (communications with clients) and Rule 1.6 (confidentiality). There is no universal requirement to disclose AI use in every matter - the duty is circumstance-driven. However, the trend among state bars is toward more disclosure, and the safest practice is to address AI use in every engagement letter.

When Disclosure Is Required or Strongly Recommended (ABA Opinion 512)

- **When confidential client data will be input into an AI tool**
- **When AI output is being used to make material case strategy decisions (e.g., whether to settle)**
- **When AI costs will be billed to the client**
- **When a court rule or order requires disclosure**
- **When a client asks whether AI is being used**
- When AI is being used to perform substantive legal analysis rather than merely as a research or drafting aid

What Informed Consent Must Cover (ABA Opinion 512)

When disclosure and consent are required, a boilerplate notice is not sufficient. Informed consent under Rule 1.0(e) requires:

- The lawyer’s best judgment about why AI should be used on the matter
- The extent and specific nature of the risks associated with using AI
- What client information will be input into the AI system
- The benefits to the client of using AI
- The types of tasks AI will perform (drafting, research, document review, etc.)

State-by-State Disclosure Requirements

Jurisdiction	Disclosure Standard
ABA (Op. 512)	Fact-specific. Required when: client asks; confidential data to be input; AI affects fees; retainer agreement requires it; AI used for material case decisions.
California	Facts-and-circumstances test. Required if: confidential data used, client billed for AI, or court mandates. Lawyers must ask clients about any restrictions on AI use. Rule amendments expected in 2026.
Florida (Op. 24-1)	Required if confidential client data will be input into an AI tool. Required if AI costs will be billed to the client.
North Carolina (FEO 2024-1)	Not required for routine AI use (e.g., legal research). Required if lawyer delegates substantive tasks to AI, which is treated as equivalent to outsourcing work to a non-lawyer.
Kentucky (KBA E-457)	Generally not required unless client is being charged for AI-related costs, or a court rule requires it, or if the work is being outsourced.
Oregon (Op. 2025-205)	Must disclose in writing if charging clients for AI costs - similar to disclosing costs for research databases. Must consider whether client consent is required before inputting confidential data into open AI models.
DC Bar (Op. 388)	Discusses attorneys' general use of Generative AI in client matters. .
Texas (Op. 705)	Should consider informing clients when generative AI will be used. Cannot bill for time saved by AI.
General State Bar Trend	Disclosure required if: clients billed for AI subscription fees; confidential data input into AI; AI performing substantive legal analysis (not just research).

How Disclosure Should Be Made

- New clients: Include AI use disclosure language in the engagement/retainer letter
- Existing clients: Update existing retainer letters; consider sending a notice to active clients
- Be specific: Describe the types of AI use - drafting pleadings, case document review, legal research, client intake, etc. Generic "we may use AI" language is not sufficient
- Address fees: If billing hourly, state that only actual time spent will be billed
- Explain the value: Describe why AI is being used and the benefit to the client

9. Data Security Risks & Protecting Client Information

Rule 1.6 requires lawyers to make reasonable efforts to prevent the unauthorized disclosure of client information. AI introduces significant new confidentiality risks that require careful attention before any client data is involved.

Key Confidentiality & Data Security Risks

- AI tools may process and store data, raising risks of unauthorized access, data leaks, or breaches
- Some AI models retain inputs to train their own models - your client's confidential information may become part of the AI's future training data
- Some AI platforms may share query data with third parties or use it to respond to other users' queries
- Cloud-based AI systems without adequate security may expose privileged information to unauthorized access
- Publicly available AI tools (free ChatGPT, etc.) are particularly risky - inputs may not be private

The ABA's Four-Factor Security Assessment (Formal Opinion 512)

Before inputting any client-related information into an AI platform, assess:

- The likelihood of unauthorized disclosure and unauthorized access
- The sensitivity of the client information at issue
- The difficulty of implementing adequate safeguards
- Whether safeguards would negatively impact the lawyer's ability to represent the client

Practical Steps to Protect Confidential Information

1. Redact or anonymize all identifiable client information before inputting into any AI platform (remove names, DOB, SSN, addresses, case numbers, and other identifying details).
2. Avoid uploading entire client documents - extract only the specific information needed for the AI task.
3. Use hypotheticals or generic fact patterns rather than real client details wherever possible.
4. Disable chat history and learning settings in AI platform settings to prevent your inputs from being used to train the model.
5. Avoid using public Wi-Fi or unsecured networks when working with any sensitive material.
6. Never input client information just to 'see what the AI says' - always have a defined purpose and process.
7. Use only enterprise or legal-specific AI platforms that have contractual confidentiality protections, data retention limits, and security certifications (SOC 2, etc.).
8. Review vendor Terms of Service, privacy policy, and data-sharing agreements before selecting any AI platform.
9. Engage IT professionals or cybersecurity experts to evaluate AI platforms that will process confidential client data.
10. Have a written firmwide AI policy that addresses which platforms are approved and how confidential data may be used.

IMPORTANT CAUTION

Redacting or anonymizing client information may not be enough in all situations. In highly specific matters - where the facts are unique or publicly known - even anonymized information may be identifiable. Use hypothetical fact patterns whenever possible and consult IT experts for sensitive matters.

10. Why Your Firm Needs a Written AI Policy

Without a written AI policy, law firms operate in an ethical and liability vacuum. A written policy will increasingly be required by malpractice carriers, and also demanded by sophisticated clients.

What Happens Without a Written Policy

- Attorneys use whatever AI tools they prefer, including personal accounts on public platforms that train on your data
- No uniform approach to verifying AI output - increasing the risk of AI hallucinations reaching clients and courts
- No process for obtaining client consent when required - creating ethics exposure
- No billing consistency - individual attorneys make ad hoc decisions about what to charge, creating fee disputes and ethics violations
- Malpractice insurers may add broad AI exclusions at renewal or question coverage when AI-related claims arise
- If an AI-related error occurs, the firm has no documented evidence of governance structures to rebut intentional-act exclusion arguments arising in malpractice coverage disputes

What a Written Policy Accomplishes

- Establishes firm-wide standards protecting both clients and attorneys
- Demonstrates to courts, bar associations, and insurers that the firm takes AI oversight seriously
- Provides a documented framework that can distinguish a negligent error (covered) from willful blindness (excluded) in an insurance coverage dispute
- Gives attorneys clarity about what tools they can use, for what tasks, and with what safeguards
- Signals to clients that the firm manages AI responsibly - a competitive advantage with sophisticated clients

Firms treating AI as a productivity tool without governance structures may soon find that professional liability insurers are treating AI use as an underwriting issue - questioning whether coverage should be offered at all, or adding exclusions, for AI-related professional liability matters.

11. Developing Your Law Firm AI Policy - The 9-Step Framework

The following framework is designed for firms of all sizes. Sole practitioners can implement a simplified version; larger firms will need more formal structures. The key is to have something written, distributed, and enforced.

STEP 1: Form Your AI Policy Committee

- Responsible for: AI policy development, selection of approved platforms, implementation, compliance, and regular updates
- Composition: Include a mix of attorneys (partners and associates), IT/security personnel, and firm management
- The committee should have clear authority to approve and prohibit AI tools firm-wide
- Meet at minimum quarterly; especially as AI tools and regulations evolve rapidly
- Designate one member as the point of contact for AI ethics questions from attorneys and staff

STEP 2: Select Approved AI Platforms

- ONLY approved AI platforms may be used for any firm work - no “Bring Your Own Platform” or personal accounts
- Work with technology professionals and cybersecurity experts to evaluate security, confidentiality, and data retention practices
- Review Terms of Service, privacy policy, and data-sharing agreements for every candidate platform
- Seek platforms with contractual confidentiality protections, SOC 2 or equivalent certification, and opt-out from data retention
- Consider a tiered approach: different platforms for different risk levels (e.g., one platform approved for confidential data; others for non-sensitive tasks only)
- Document the selection process and the basis for approving each platform

STEP 3: Define Permitted Uses by Platform

- Identify which AI tools may be used for which specific tasks: legal research, drafting, e-discovery, client intake, marketing, etc.
- Some platforms may be approved only for non-confidential tasks; others may be approved for client data with appropriate safeguards
- Consider which practice areas carry heightened confidentiality risks (criminal defense, family law, healthcare, IP) and apply additional restrictions
- Prohibit all non-approved AI platforms explicitly - not just by omission
- Distribute the approved platform list to all attorneys and staff in writing through the AI Policy

STEP 4: Establish Client Information Security Processes

- Lawyers must not input confidential client data into any AI system that lacks adequate security protections
- Establish clear protocols for anonymizing or redacting client data before it is input into any AI tool
- Require IT review and sign-off for any new AI tool that will handle confidential client information
- Review AI vendors’ terms of use and data-sharing policies regularly - these can change
- Note that redacting names alone may not be sufficient in matters with unique or publicly known facts

STEP 5: Address Billing for AI Usage

- Hourly matters: Bill only actual time spent using AI. Do not bill the time it would have taken without AI
- Flat-fee matters: Assess whether the original flat fee remains “reasonable” under Rule 1.5 after AI efficiency gains; adjust if necessary
- AI subscription costs: Generally not billable to individual clients unless the use is client-specific and agreed to in advance (exception: Texas with prior written agreement)
- Learning and training time: Usually not billable to any client except in rare circumstances
- Engagement letters: Address AI billing practices specifically; clients should know what they will and will not be charged for
- If following Virginia LEO 1901 (value billing): Fixed or flat fees do not automatically need to be reduced because of significant time savings; the key is value provided

STEP 6: Establish Oversight & Accountability Processes

- Assign clear supervisory responsibilities consistent with Rules 5.1 and 5.3 - specify who is responsible for reviewing AI-generated work in each practice area
- Implement a verification protocol: all AI-generated legal citations must be independently confirmed before appearing in any filing, correspondence, or client advice
- Create a reporting mechanism for attorneys to disclose AI use in case preparation, particularly for court filings and as a back-up for caselaw confirmation
- Require attorney review and approval of all AI output before it is used with or for a client
- Document verification steps for court filings - maintain a record of what was checked
- Establish consequences for policy violations, including failure to verify AI-generated citations before filing

STEP 7: Address Client Disclosure, Consent & Engagement Letters

- Include AI use disclosure language in all new engagement letters - specify types of AI use, confidentiality protections, and billing approach
- Update existing engagement letters for current clients - a general notice or amendment may be needed
- Obtain informed consent before inputting case-specific details into AI tools when required by applicable ethics rules
- Make disclosures specific: describe the types of AI use (drafting, research, document review, intake) not just that AI “may be used”
- Address client preferences: ask clients whether they have any restrictions on AI use and honor them

STEP 8: Create an Audit Plan & Update Process

- Review the AI policy at minimum annually; review whenever significant new AI guidance or bar opinions are issued
- Stay current on ABA, state bar, and federal AI regulations
- The AI Policy Committee should meet regularly to assess emerging risks, evaluate new tools, and ensure compliance
- After any AI-related incident (hallucination in a filing, data security concern, client complaint), conduct a policy review
- Document all policy updates and communicate changes to all attorneys and staff

STEP 9: Train & Enforce Ongoing Compliance

- Require periodic AI ethics training for all attorneys and staff - at minimum annual training; more frequently as regulations evolve
- Training should cover: what tools are approved, how to use them safely, what not to do, and verification requirements
- Require all attorneys and staff to sign and acknowledge having read the AI policy
- Ensure new hires review and acknowledge the AI policy as part of onboarding
- The AI policy should be easily accessible alongside other firm policies in your policy manual or intranet
- Firm leadership must actively enforce compliance - a policy that is not enforced provides no protection

12. AI Use & Professional Liability Coverage

The legal malpractice insurance market is undergoing a structural shift driven by AI. Firms need to understand both how AI use can jeopardize coverage under existing policies and what carriers are doing to change their coverage terms.

Are Carriers Requiring Written AI Policies?

At present, no major carrier appears to have made a written AI policy a hard prerequisite for coverage. However, the practical situation is evolving rapidly:

- Firms can expect to be asked at renewal HOW they are using AI and what governance structures are in place
- Firms treating AI as merely a productivity tool without governance structures may find insurers treating AI use as an underwriting issue - affecting pricing and coverage terms
- A written AI policy is rapidly becoming the practical proof a firm needs to avoid broad exclusions at renewal

Coverage Gaps Under Existing Policies

Risk Scenario	Coverage Analysis
Blind reliance on AI output (no verification)	Insurer may argue no 'professional service' was rendered - the lawyer simply delegated judgment to a machine. No professional service = no coverage. May also trigger the intentional act exclusion if the decision not to verify was deliberate.
AI output submitted to court without review	Intentional act exclusion risk: a deliberate decision to submit without verification may be characterized as willful blindness rather than negligence. Courts have used language like "egregious misconduct" and "extreme dereliction of professional responsibility."
Feeding confidential data into a non-secure AI platform	May trigger the confidentiality breach exclusion. Most LPL policies exclude breaches of confidentiality that are not the result of negligent acts. Deliberately using a public AI tool with known data-sharing practices may not be 'negligent.'

AI used without attorney oversight (unauthorized practice of law)	If AI makes critical legal judgments without meaningful attorney review, this may constitute the unauthorized practice of law. LPL policies typically exclude UPL claims.
Court sanctions for AI hallucinations	Sanctions (fines, wasted costs awards, mandatory CLE) are typically not covered by LPL insurance regardless of how the underlying claim is characterized. Punitive damages and penalties are generally excluded.

What Carriers Are Doing Now

- Broad AI exclusions are being inserted into E&O, D&O, and professional liability policies at renewal. Companies like W.R. Berkley and Hamilton Insurance Group reportedly have introduced “absolute” AI exclusions that remove coverage for claims arising out of any use of generative AI.
- Supplemental AI disclosure questionnaires are being required at renewal - asking how firms use AI, what governance controls are in place, and what platforms are used
- Firms without documented AI governance structures risk having exclusions added at renewal, facing premium increases, or having coverage disputed when AI-related claims arise
- Munich Re has begun offering dedicated AI liability coverage, but the underwriting process requires due diligence on the AI systems used

The Intentional Act Exclusion & AI

Most LPL policies exclude claims “arising out of any criminal, dishonest, fraudulent, or intentional act or omission.” This exclusion creates a spectrum of risk depending on how the AI-related conduct is characterized:

- Inadvertent reliance - lawyer attempts to verify but misses an error: likely covered negligence
- Willful blind reliance - lawyer deliberately submits AI output without any meaningful review, knowing verification is expected: intentional act exclusion risk
- Knowing submission of false content: almost certainly excluded; courts describe this as “egregious misconduct implicating honesty, trustworthiness, and fitness to practice law”

A written AI policy with documented verification protocols is not just an ethics compliance tool - it is a coverage preservation tool. It provides evidence that AI-related errors were negligent (covered) rather than willful (excluded).

13. Key Resources & Citations

Primary Bar Ethics Opinions

Authority	Citation & URL
ABA Formal Opinion 512 (2024)	Generative Artificial Intelligence Tools - https://bit.ly/ABA-512
Virginia LEO 1901 (2025)	Reasonable Fees and Use of Generative AI - vacourts.gov (search LEO 1901)
Florida Bar Op. 24-1 (2024)	Lawyers' Use of Generative AI - floridabar.org/etopinions/opinion-24-1/
California COPRAC Guidance (2023)	Practical Guidance for Use of GAI in Law Practice - calbar.ca.gov (Ethics section) NOTE – California amendments are schedule to be finalized in 2026
NC Bar FEO 2024-1	Formal Ethics Opinion on AI Use - ncbar.gov (Ethics Opinions)
Oregon Formal Op. 2025-205	AI Tools in Legal Practice - osbar.org (Ethics section)
DC Bar Ethics Op. 388 (2024)	Attorneys' Use of GAI in Client Matters - dcbar.org
Kentucky KBA E-457 (2024)	Ethical Use of AI - kybar.org (Ethics Opinions)
Texas Ethics Op. 705 (2025)	Generative AI Use by Texas Attorneys - texasbar.com (Ethics)
NYSBA AI Task Force Report (2024)	85-page comprehensive report - nysba.org (AI section)
PA Bar / Philadelphia Bar 2024-200	Joint Formal Opinion - pabar.org (Ethics)
NYC Bar Formal Op. 2024-5	AI in Legal Practice - nycbar.org (Ethics)
NJ Bar Preliminary Guidelines (2024)	Notice to the Bar re AI Use - njsba.com (Ethics)
50-State AI Ethics Survey	Justia comprehensive survey - justia.com (AI and Attorney Ethics Rules) - https://www.justia.com/trials-litigation/ai-and-attorney-ethics-rules-50-state-survey/

Selected Key Cases and Matters

Case	Cite & Key Point
Mata v. Avianca	678 F.Supp.3d 443 (S.D.N.Y. 2023) - First major AI hallucination sanctions case; \$5,000 fine.
Johnson v. Dunn	792 F.Supp.3d 1241 (N.D. Ala. 2025) - 5 fake ChatGPT citations; disqualification and bar referral.
Sullivan & Cromwell	Court apology filed April 18, 2026 - acknowledged AI hallucinations; stated firm's AI policies "were not followed."

Legal AI Platforms Referenced

Platform	Description
Lexis+ AI	LexisNexis AI-powered legal research and drafting, grounded in verified Lexis content
Westlaw Edge / AI	Thomson Reuters AI-powered legal research integrated with Westlaw
Harvey	Legal-specific AI platform for law firms and corporate legal teams; drafting, research, due diligence
CoCounsel (Thomson Reuters)	AI legal assistant integrated with Westlaw
Kira / Juro / LegalOn	AI contract review and analysis platforms
DocJuris	AI-driven contract negotiation and ADR platform

About the Presenters



Jeff Lantz, Esq.

Attorney & CEO | Esquire Interactive

Jeff is an attorney and the CEO of Esquire Interactive LLC, an interactive digital marketing agency that has served hundreds of attorneys since 2009, and which developed the ePRESQ™ platform for custom law firm WordPress websites, FirmMetrics™, and FirmReviews™.

Jeff is passionate about helping attorneys and legal marketers develop successful integrated marketing plans. He has given dozens of presentations and written numerous published articles about law firm marketing. He is also an ABA book author - *Internet Branding for Lawyers: Building the Client-Centered Website*.

He previously founded and sold three social media companies, practiced law as a corporate/securities attorney at Snell & Wilmer, and served as a senior attorney for BHP Billiton and as the General Counsel for Westar Aerospace & Defense Group. He graduated from Indiana University with an MBA in Finance, and with a J.D. (cum laude), where he was a member of Law Review.



Desire'e Martinelli, Esq.

Attorney & Director of Marketing & Analytics | Esquire Interactive

Desire'e Martinelli is the Director of Marketing & Analytics at Esquire Interactive, specializing in website development, branding, and internet marketing strategies for law firms.

With a background in business and law, she has served as a law firm marketing director, business and IP attorney, and entrepreneur. Desire'e holds a Juris Doctor degree, summa cum laude, from the University of Mississippi School of Law, with a concentration in business law.

She has assisted clients with business formation, corporate matters, employment issues, and IP matters. Beyond her role at Esquire Interactive, she actively participates in the legal community, frequently presenting at Bar Association events and CLE seminars. Desire'e's unique blend of legal expertise and marketing acumen helps law firms navigate the complexities of digital marketing.

Jeff Lantz, Esq.

CEO | Esquire Interactive
jeff@esquireinteractive.com
(520) 395-6525

Desire'e Martinelli, Esq.

Director of Marketing & Analytics | Esquire
Interactive
desiree@esquireinteractive.com
(214) 240-0237