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# Legal Ethics Concerns When Using Generative Artificial Intelligence in Client Matters

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# Panelists

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# Today's Topics

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- Dangers inherent in generative AI, including limited data sets and “hallucinations.”
- The lawyer’s duty of competence concerning generative AI platforms.
- The risks of revealing confidential client information through generative AI.
- Consulting with clients about the lawyer’s use of generative AI.
- Avoiding potential breaches of duties to courts and third parties due to inaccurate information supplied by generative AI.
- Law firm management’s duties of supervision regarding generative AI.

**Background**

# The Briefest of Primers on Generative AI

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- Generative AI is technology that can generate high-quality text, images, and other content based on the data they were trained on
- Not a search engine; designed to ***create content*** from a dataset
- Information available to generative AI is the dataset on which it was trained

# How Generative AI Differs

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## Traditional AI/ML:

- Typically relies on deterministic algorithms and mathematical models to produce outputs based on a given input. For example, a chess AI considers possible moves using a deterministic evaluation function.
- Some traditional ML models like neural networks have elements of probability built in during training, but at inference time they still behave in a deterministic manner to produce an output given an input.

## Generative AI:

- Focused on generating novel content like images, text, audio etc.
- Makes extensive use of probabilistic models to produce varied, creative outputs that are not always predictable or deterministic even given the same input.

## Agentic AI (*coming soon?*)

- Focused on building AI agents that can take actions in an environment.
- Combines elements of determinism and probability. The core logic is deterministic but the agents incorporate probability when making decisions about which actions to take to maximize rewards from the environment.

# Potential Uses of GAI by Lawyers

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- Legal research
- Drafting
  - Memoranda
  - Filings
  - Deposition or interview outlines/questions
- Document review (e.g., generated summaries of why certain documents may be relevant; summaries of tagged documents/themes)
- Proactive compliance monitoring (in-house)
- Meeting notes/summaries (cautious adoption...)
- Automating routine processes using new AI agents?

# Dangers—Even as it Holds Promise

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- *Mata v. Avianca, Inc.*, 678 F. Supp. 3d 443 (S.D.N.Y. June 22, 2023)—lawyers filed brief that included non-existent judicial opinions with fake quotations and fake citations created by GAI tool.
- *Gates v. Chavez*, No. 2022CV31345 (El Paso Cnty. Dist. Ct. May 2023)—young attorney who had been practicing for three months used ChatGPT for research for a motion to set aside a default judgment; court entered an order to show cause and referred him to the Office of Regulation Counsel.
- *Lacy v. State Farm*, No. 24-cv-5205 (C.D. Cal. May 6, 2025)—attorneys at two firms (including national firm) filed brief replete with fake citations, and failed to catch many of them even after being alerted by court; noting “strong deterrence” need to avoid “this easy shortcut.”



# The Dangers Are Not Just in Sanctions Orders

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- Reporting about firms sanctioned for improperly using GAI tools
  - “The ChatGPT Lawyer Explains Himself” (N.Y. Times June 8, 2023)
  - “A Utah lawyer was punished for filing a brief with ‘fake precedent’ made up by artificial intelligence” (Salt Lake Tribune May 29, 2025)
- It’s not just law firms
  - “White House Health Report Included Fake Citations” (N.Y. Times May 29, 2025)
    - Children’s health report “included fictitious studies”—characteristic of generative AI.
  - Chicago Sun-Times Summer Reading List (May 2025)
    - Books did not exist

# AI Avatar Surprises Appellate Court



# Hypothetical

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- Kim is Deputy GC of Bunker, Inc. Roger, a partner at a large law firm, is Bunker's outside counsel.
- Kim and Roger conduct an internal investigation of allegations by an employee in the accounting department.
- Review of significant documents, multiple interviews of employees. Roger drafts a memo summarizing each interview.
- Kim informs her boss, Titus, Bunker's GC, that the investigation suggests potential wrongdoing by the CFO and others in accounting.

# Hypothetical Part 2

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- Titus asks for a comprehensive memo describing the situation so that he can discuss it with the CEO and potentially the Board and outside auditors
- Bunker is facing a budget crunch so Titus does not want Roger's firm to draft the memo.
- Titus asks Kim to use a GAI tool called SingularityGPT, which he has heard positive things about from other executives at Bunker. It has the benefit of being free.
- Bunker's IT department is in the process of developing its own GAI tool but it is not ready for use.
- Kim has never used a GAI tool before, but she has read that they sometimes are not completely accurate. What should she do?

# Not All AI Tools are the Same

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- Public Generative AI tools are not secure – rarely appropriate for client work
- Privately licensed tools are more secure, but not all have the same protections and capabilities
- Vendors are developing and marketing GAI products designed for lawyers
- Lexis and Westlaw have GAI products
- Some law firms are themselves participating in developing and marketing GAI products
- GAI sponsors advertise their products are better suited to legal professionals. For example, Thomson Reuters says: “AI-Assisted Research employs Retrieval Augmented Generation (RAG) to prevent the large language models (LLMs) from making up things like case names and citations by focusing the LLMs on the actual language of Westlaw content

**Ethical Duties Implicated by GAI:  
Whether, When and How Lawyers May  
Use It—or *Must* Use It**

# Duty of Competence

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- Under ABA Model Rule 1.1, “[a] lawyer shall provide competent representation to a client.” “To maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, including the benefits or risks associated with relevant technology, engage in continuing study and education and comply with all continuing legal education requirements to which the lawyer is subject.” Rule 1.1 cmt. [8].
- Under Virginia Rule 1.1, “[a] lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.”
  - Comment [6]: “Attention should be paid to the benefits and risks associated with relevant technology.”

# Duty of Competence

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- What is the scope of a lawyer's duty to understand new technologies?
- Does a lawyer need to be an expert on GAI to use it?
- Does a lawyer need to be an expert on GAI to decide whether to use it?
- DC Ethics Committee opinion, April 2024:
  - “Most lawyers are not computer programmers or engineers and are not expected to have those specialized skills. As technology that can be used in legal practice evolves, however, lawyers who rely on the technology should have a reasonable and current understanding of how to use the technology with due regard for its potential dangers and limitations.”



# Duty of Confidentiality

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- Under Model Rule 1.6(a), “[a] lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation or the disclosure is permitted by paragraph (b).”
  - This rule does not just relate to information covered by privilege or work-product doctrine; it includes all information relating to the representation. Model Rule 1.6, comment [3].
- Under Virginia Rule 1.6(a). “[a] lawyer shall not reveal information protected by the attorney-client privilege under applicable law or other information gained in the professional relationship that the client has requested be held inviolate or the disclosure of which would be embarrassing or would be likely to be detrimental to the client unless the client consents.”

# Duty of Confidentiality

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- Use of GAI implicates at least two related confidentiality issues:
  - will data provided to the GAI tool as part of the query render that data visible to third parties?
  - will the queries be used in future responses to other users of the tool?

# Duty of Confidentiality

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- Virginia Legal Ethics Opinion 1872 (March 29, 2013)
  - Lawyers are not required to guarantee that a breach of confidentiality will not occur when storing data or otherwise utilizing a third-party service provider, but lawyers must also act with reasonable care in the selection of the vendor and have a reasonable expectation that the vendor will keep data confidential.
  - To meet this requirement, lawyers must review the service provider's terms of service as they relate to confidentiality. If a lawyer is not able to assess the terms of service on their own, they must consult with someone who is qualified to do so.

# Duty of Consultation

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- Under Model Rule 1.4(a)(2), “[a] lawyer shall reasonably consult with the client about the means by which the client’s objectives are to be accomplished.”
- Virginia does not have this language in its affirmative rules, but the comments to Rule 1.4 exhort attorneys to ensure “the client ... ha[s] sufficient information to participate intelligently in decisions concerning the objectives of the representation and the means by which they are to be pursued.” Virginia Rule 1.4, Cmt. [5].
- Must a lawyer inform the client that GAI will be used? Will not be used?

# Truthfulness in Statements to Others

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- “In the course of representing a client, a lawyer shall not knowingly ... make a false statement of material fact or law to a third person.” Model Rule 4.1(a).
- Virginia Rule 4.1(a): “In the course of representing a client a lawyer shall not knowingly make a false statement of fact or law.”
- Remember *Mata* case.
- Definition of “knowingly.” See Model Rule 1.0(f); ABA Formal Opinion 491: *Obligations Under Rule 1.2(d) to Avoid Counseling or Assisting in a Crime or Fraud in Non-Litigation Settings* (2020) (discussing “knowingly” standard, as well as concept of “willful blindness”).

# Duties of Supervision

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- Model Rule 5.1(a) requires partners and lawyers with managerial authority to “make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that all lawyers in the firm or agency conform to the Rules of Professional Conduct.”
- Model Rule 5.1(b) requires lawyers with “direct supervisory authority over another lawyer” to “make reasonable efforts to ensure that the other lawyer conforms to the Rules of Professional Conduct.”
- Virginia Rule 5.1 tracks the Model Rules.

# Duties of Supervision

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- Model Rule 5.3—applies the obligations of Rule 5.1(a) to lawyers’ supervision of non-lawyers providing “assistance” to lawyers in the firm.
  - Comment [3] suggests that lawyers who use third-party services must make reasonable efforts to ensure that those services are performed in a manner that is consistent with the lawyer’s own obligations. The extent of the lawyer’s obligation turns on, among other things, the “education, experience and reputation of the nonlawyer.”
  - Who—or what—is a “non-lawyer”?
- Virginia Rule 5.3 again tracks the Model Rules.
  - But there is no corresponding Comment [3] in the Virginia Rules.
  - And the single comment in the Virginia Rules speaks expressly about lawyers employing support personnel like secretaries, investigators, and paraprofessionals.

# Fees

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- Even when GAI leads to efficiencies, under an hourly-fee arrangement, the client should be charged only for hours the lawyers actually spend working on the matter. See Model Rule 1.5.
- Virginia State Bar: currently seeking comment on an ethics opinion regarding the reasonableness of fees when a lawyer uses generative AI to save time. See Proposed Legal Ethics Opinions 1901.
  - Contemplates some manner of value-based billing,
  - “When evaluating fee reasonableness for a lawyer who uses generative AI or other productivity-enhancing tools or experience, Rule 1.5 does not equate reduced time with proportionally reduced fees.”
  - “[A] proper analysis should recognize that reasonable non-hourly fees can reflect efficiency gains, the specialized skill of effectively incorporating technology, and the value of the relevant services and output.



# **Ethics Resources and Court Rules Concerning GAI**

# Ethics Resources

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- ABA Formal Opinion 512 (July 29, 2024)
  - “To ensure clients are protected, lawyers using generative artificial intelligence tools must fully consider their applicable ethical obligations, including their duties to provide competent legal representation, to protect client information, to communicate with clients, to supervise their employees and agents, to advance only meritorious claims and contentions, to ensure candor toward the tribunal, and to charge reasonable fees.”

# Ethics Resources—Virginia

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- Virginia State Bar website has “Guidance on Generative Artificial Intelligence”
  - “By now it’s well known that lawyers must pay attention to “the benefits and risks associated with relevant technology.” Comment [6] to Rule 1.1. In the case of generative AI, those benefits and risks seem to be evolving by the day as the technology, and our skills to use it, rapidly develop.
  - Nonetheless, a lawyer’s basic ethical responsibilities have not changed, and many ethics issues involving generative AI are fundamentally similar to issues lawyers face when working with other technology or other people (both lawyers and nonlawyers). These resources attempt to provide some specific guidance on how to evaluate the benefits and risks of particular uses of generative AI and how to apply ethics rules and standards to generative AI applications.”

*Available at: <https://vsb.org/Site/Site/lawyers/ethics.aspx>*

# Ethics Resources—Virginia

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- “Guidance on Generative Artificial Intelligence” continued:
  - **Confidentiality:** “A lawyer must be very aware of the Terms of Service and any other information about the possible use of information input into an AI model.... Legal-specific products or internally-developed products that are not used or accessed by anyone outside of the firm may provide protection for confidential information, but lawyers must make reasonable efforts to assess that security and evaluate whether and under what circumstances confidential information will be protected from disclosure to third parties.
  - **Disclosure to clients:** “There is no per se requirement to inform a client about the use of generative AI in their matter. Whether disclosure is necessary will depend on a number of factors, including the existence of any agreement with or instructions from the client on this issue, whether confidential information will be disclosed to the generative AI, and any risks to the client from the use of generative AI.”
  - **Competence and supervision:** “As with any legal research or drafting done by software or by a nonlawyer assistant, a lawyer has a duty to review the work done and verify that any citations are accurate (and real).”

# Ethics Resources—Virginia Model Firm AI Policy



*The Virginia Bar Association*

VBA Special Committee on Small-Firm and Solo Practice

The Virginia Bar Association  
**Model Artificial Intelligence Policy for Law Firms**  
Version 1.0, May 2024

**DISCLAIMER:**

*This model is intended to provide guidance for law firms in developing policies on the use of artificial intelligence (AI) for law practice. A law firm may choose to adopt this policy in whole or in part or to adapt it according to the firm's needs. Given the pace of change in AI technologies, no model policy on AI use can be considered comprehensive. Instead, lawyers and law firms have an ethical obligation to stay abreast of related technologies and should update their policies accordingly. Mentions of the Virginia Rules of Professional Conduct are for reference only and should not be read as definitive Rules citations or in any way construed as legal ethics opinions.*

**Policy Objectives:**

The purpose of this policy is to establish a framework for responsible and effective use of artificial intelligence (AI) technologies within \_\_\_\_\_ [Law Firm Name]. This policy aligns with the Firm's commitment to client service, data privacy, confidentiality, and legal ethics. This policy applies to all employees, contractors, and any other individuals who have access to the Firm's systems, software, and hardware.

The term "AI" generally refers to Large Language Models, generative programs, and related tools that perform algorithmic functions on a particular data set. The technology develops responses intended to mimic human thought and expression.

AI technology is advancing rapidly, and use of these tools in law practice is becoming increasingly prevalent. Although AI can enhance productivity in some instances, responsible use of AI is essential to protect client confidentiality, maintain high standards of legal service, and avoid potential risks unique to the technology.

Improper use of or reliance on AI can result in (a) the risk that AI will introduce or reproduce false or misleading content, (b) increased potential for disclosure of confidential or proprietary information, including materials subject to copyright protection or work product privilege, and (c) privacy risks related to potential exposure of data.

This policy sets forth guidelines toward achieving the following objectives:

- To promote the safe and effective use of AI tools, including those designed for legal use;
- To mitigate the risks that AI could generate false or misleading outputs;
- To maintain the confidentiality and integrity of firm and client data;
- To comply with emerging laws, regulations, and guidelines concerning AI;
- To stay informed about developments in AI as these technologies evolve; and
- To encourage informed communication with clients and within the firm about AI use.

# Ethics Resources—Virginia

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- Virginia Bar Association—Model Artificial Intelligence Policy for Law Firms (May 2024)
  - “[P]olicy only is intended to address AI use in Virginia practice, in accordance with the Virginia Rules of Professional Conduct.”
  - Policy considerations for a firm:
    - Training and education
    - Legal AI in decisionmaking (should not be the sole tool)
    - Confidentiality
    - Validation and oversight
    - Firm authorization
    - Client authorization
    - Communication

# Ethics Resources

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- District of Columbia Bar Legal Ethics Committee Opinion: Attorneys' Use of Generative Artificial Intelligence in Client Matters (April 2024)
  - Discusses many of the ethics issues above. Details issues attorneys should consider and questions they should ask when using GAI, and suggests best practices for using GAI.
  - “We anticipate that GAI eventually will be a boon to the practice of law. Moreover, lawyers who use generative artificial intelligence do not need to be computer programmers who can write AI programs or critique AI code written by others. But they do need to understand enough about how GAI works, what it does, and its risks and limitations to become comfortable that the GAI will be helpful and accurate for the task at hand, and that it will not breach client confidentiality.”
  - “Lawyers should also be mindful of the implications GAI creates for their duties of supervision; their duty of candor to the tribunal and their fairness obligations to opposing parties and counsel; the reasonableness of their fees; and their obligations with respect to the client file.”

# Ethics Resources

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- California Bar Recommendations on Regulation of Use of Generative AI (November 16, 2023).
  - Provides a set of what it terms “best practices” to guide a lawyer’s compliance with the rules of professional conduct when using GAI.
  - For example, identifies confidentiality concerns and notes that “[a] lawyer must not input any confidential information of the client into any generative AI solution that lacks adequate confidentiality and security protections. A lawyer must anonymize client information and avoid entering details that can be used to identify the client.”
  - Also notes potential implication of privacy and other laws: “There are many relevant and applicable legal issues surrounding generative AI, including but not limited to compliance with AI-specific laws, privacy laws, cross-border data transfer laws, intellectual property laws, and cybersecurity concerns. A lawyer should analyze the relevant laws and regulations applicable to the attorney or the client.”



# Ethics Resources

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- Report and Recommendation of the New York State Bar Association Task Force on Artificial Intelligence (April 2024)
  - Four recommendations: (i) adopt guidelines and create a standing bar section or committee to address and update the guidelines on a going-forward basis; (ii) focus on education to allow stakeholders to apply existing law to AI; (iii) identify risks associated with AI to be addressed by future legislation; and (iv) assess the use of AI as a governance tool.
  - Guidelines are aimed at the issues discussed above. In part, they mirror the California Bar's recommendations.
    - Unlike Florida and California, though, the New York Bar identified a potential unauthorized practice of law concern, at least suggesting that AI was akin to a nonlawyer for an unauthorized-practice-of-law analysis.

# Ethics Resources

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- Mississippi Bar Ethics Opinion No. 267 (November 14, 2024)
  - “Lawyers in Mississippi may ethically use Generative AI, provided the lawyer has made appropriate safeguards to protect client confidential information, is competent to use the technology, takes precautions to verify the accuracy of the tool’s output, uses reasonable billing practices, and obtains the client’s informed consent when appropriate.”
- New Mexico Bar Opinion 2024-004 (September 24, 2024).
  - Permits lawyers to use GAI, and expressly contemplates the benefits in using it.
- Florida Bar Ethics Opinion 24-1 (January 19, 2024).
  - “Lawyers may use generative artificial intelligence (‘AI’) in the practice of law but must protect the confidentiality of client information, provide accurate and competent services, avoid improper billing practices, and comply with applicable restrictions on lawyer advertising. Lawyers must ensure that the confidentiality of client information is protected when using generative AI by researching the program’s policies on data retention, data sharing, and self-learning.”

# Ethics Resources

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- Other efforts.
  - Bars in other jurisdictions have started considering opinions or other practice guides.
  - Some bars have offered preliminary or informal guidance.

# Standing Orders in Federal Court

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- U.S. Courts of Appeals
  - No courts currently have a rule in place.
  - Fifth Circuit contemplated a rule on AI, but scrapped it after pushback from attorneys.
    - Order stated that “[p]arties and counsel are responsible for ensuring that their filings with the court, including briefs, shall be carefully checked for truthfulness and accuracy as the rules already require. ‘I used AI’ will not be an excuse for an otherwise sanctionable offense.”

# Standing Orders in Federal Court

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- District courts have a much more extensive collection of rules
- U.S. District Court for the Southern District of Ohio (Judge Michael J. Newman).
  - “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.”
  - Compare to *Mata*, which recognizes “there is nothing inherently improper about using a reliable artificial intelligence tool for assistance.”

# Standing Orders in Federal Court

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- U.S. District Court for the Northern District of Illinois (Magistrate Judge Gabriel Fuentes).
  - “Any party using any generative AI tool to conduct legal research or to draft documents for filing with the Court must disclose in the filing that AI was used, with the disclosure including the specific AI tool and the manner in which it was used.”
- U.S. District Court for the Northern District of Texas (Judge Brantley Starr).
  - Mandatory certification at time of appearance that either no portion of a filing will be drafted by GAI, or that it will be checked by a human being.
  - “Unbound by any sense of duty, honor, or justice, [GAI] act[s] according to computer code rather than conviction....”
- U.S. District Court for the Northern District of California (Judge Rita Lin).
  - GAI permissible, but “counsel must personally confirm” accuracy of research.

# Standing Orders in Federal Court

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- First Circuit : none
- Second Circuit : one SDNY court; all SDNY bankruptcy judges
- Third Circuit : one DNJ court; three EDPA courts; one MDPA court
- Fourth Circuit : one WDNC court
- Fifth Circuit : two EDTX courts; five NDTX courts; one SDTX court
- Sixth Circuit : one EDMJ court; one NDOH court; one SDOH court

# Standing Orders in Federal Court: Breakdown

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- Seventh Circuit: four NDIL courts
- Eighth Circuit: all EDMO courts; all DNE courts
- Ninth Circuit: five CDCA courts; four NDCA courts; one SDCA court; four DHI courts; one DNV court
- Tenth Circuit: three DCO courts; one EDOK court; three WDOK courts; all WDOK judges
- Eleventh Circuit: one NDAL court; one NDGA court
- DC Circuit: none
- Federal Circuit: none



# Standing Orders in Other Settings

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- United States Patent and Trademark Office (April 10, 2024).
  - Among other things, it notes that “[u]sing AI tools to assist with drafting documents ... is not prohibited” and “[t]here is no general or per se obligation to disclose when an AI tool is used...unless specifically requested by the USPTO.”
- NJ Supreme Court Guidelines (January 2024).
  - Notes that the “core ethical responsibilities of lawyers ... are unchanged by the integration of AI in legal practice.” It then walks through a number of the ethics rules discussed in this outline, and how AI may implicate them.
- Many lower state courts have been issuing standing orders.

# How Law Firms Are Using Artificial Intelligence?

# Firm Approaches to GAI

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- 31% of firms have been warned against use of GAI at work.
- 16% of firms encourage the use of GAI.
- 14% of firms offer training in how to use GAI writing and research tools.
- 51% of firms have said none of the above.

Law360 “AI Survey: Where Artificial Intelligence Stands in the Legal Industry” (April 2024), *available at* [https://assets.law360news.com/1826000/1826128/law360\\_pulse-ai\\_survey.pdf](https://assets.law360news.com/1826000/1826128/law360_pulse-ai_survey.pdf).

# What Tools Firms Are Using

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- 10% are developing an internally-built GAI tool.
- 35% work with at least one GAI provider.

Law360 “AI Survey: Where Artificial Intelligence Stands in the Legal Industry” (April 2024), *available at* [https://assets.law360news.com/1826000/1826128/law360\\_pulse-ai\\_survey.pdf](https://assets.law360news.com/1826000/1826128/law360_pulse-ai_survey.pdf).

# What Tasks Firms Employ GAI For

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- Results in 2024
  - Only two tasks were mentioned by as many as a fifth of respondents (legal research (22%) and document creation (20%)).
  - More than two-thirds of respondents “have no plans to ever use generative AI for compliance, billing, or preparing a court filing.”
- Results in 2025
  - 40% using AI for legal research
  - 32% for document summaries
  - Almost 30% for correspondence and document creation
  - More than 20% for e-discovery, contract review, marketing, and translation.

2025 Results: “These Attorneys Are AI ‘Power Users’ Reinventing Legal Work (March 2025), *available at* <https://www.law360.com/pulse/articles/2299585>

# Concerns Regarding Adoption of GAI

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- The most significant concern among respondents was AI's “imperfect grasp of legal ethics and standards” (78%), followed by a difficulty in maintaining client confidentiality and data privacy (59%).
- 82% of respondents were concerned about GAI providing incorrect responses.

Law360 “AI Survey: Where Artificial Intelligence Stands in the Legal Industry” (April 2024), *available at* [https://assets.law360news.com/1826000/1826128/law360\\_pulse-ai\\_survey.pdf](https://assets.law360news.com/1826000/1826128/law360_pulse-ai_survey.pdf).

# Considerations When Selecting a GAI Tool

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- How secure is the tool and the data you input?
- Does vendor get access to your prompts/outputs? Will the vendor use your data in any way to train/fine-tune its products? If you are co-developing a solution with an outside vendor, who will own it?
- How often does the system hallucinate? How has this been tested? Consider requesting a “model card” or “system card” or similar scorecard? (example: [GPT-4o System Card | OpenAI](#))
- What underlying model does the tool run on? Will there be routine updates to account for new models/capabilities? How will these be tested / how will you be alerted?
- Did vendor have the right to use the data it used to train the model and “RAG” the model? E.g., Case law? Legal databases?
- Has the tool been fine-tuned or augmented specifically for use in legal contexts? What additional datasets, guardrails/instructions, or testing has been done specifically for this environment?
- Are there any out-of-the-box trainings/best practices vendor can provide that you can leverage to train your lawyers/users?

# Considerations and Best Practices

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- Educate yourself on risks and benefits of tools, and be prepared to talk to your client about both
- If using, scrutinize the output for accuracy, reliability, and legal and regulatory compliance
- Exercise independent professional judgment in representing and providing advice to firm clients
- Prohibit entering client information, confidential firm data, or personally identifiable information into generative AI platforms, unless you have ensured protections *and* have consent of client
- Stay abreast of developments



**Questions?**

# What Does ChatGPT Want to Know?

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**Prompt: “I’m going to a legal ethics talk about the risks of generative artificial intelligence. Can you give me 15 questions to ask the panelists?”**

1. What ethical obligations do attorneys have when using generative AI tools in client-facing work?
2. Who bears responsibility when AI-generated legal content contains errors or bores—the lawyer, the firm, or the AI provider?
3. How should attorneys verify the accuracy of AI-generated research or drafts, given the risk of hallucinations or fabricated citations?
4. What are the risks of inputting confidential or sensitive client data into generative AI systems, especially those hosted in the cloud?
5. Should law firms require vendors to sign agreements addressing data security and ownership?
6. How should lawyers disclose the use of AI tools to clients under Rule 1.4 (duty to communicate)?
7. Does reliance on generative AI challenge a lawyer’s duty of competence under Rule 1.1, especially for junior lawyers still developing skills?
8. Could overreliance on AI tools result in failure to exercise independent professional judgment?
9. How should attorneys account for potential algorithmic bias in AI tools when preparing cases involving marginalized groups?
10. Is there a duty to investigate whether AI tools have been trained on discriminatory or non-representative data sets?
11. Should lawyers be ethically required to disclose to courts when they use generative AI in briefs or legal filings?
12. Do current rules (e.g., FRCP or local rules) sufficiently address AI-generated filings, or are new rules needed?
13. Can generative AI responsibly be used to expand access to legal services for *pro se* litigants or underserved communities, and what ethical risks arise in doing so?
14. How should law firms develop internal policies to govern AI use—and what kind of training should be mandatory for attorneys and staff?
15. How should the legal professional regulate itself to adapt to AI, without stifling innovation or inadvertently widening gaps in access or quality of legal representation.

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