

# Keeping Ethics at the Forefront: Using AI Responsibly in Client Services

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A CLE Seminar  
presented by

Joseph Hollander & Craft  
*Lawyers and Counselors* LLC

# Today's Presenters

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# Artificial Intelligence

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Although the legal profession tends to be slow moving in its adoption of innovation, innovation does occur, as it did with the development of the modern form of corporate law firm in the 1870s and the progressive adoption of new technologies into law firm practice.

Lawyers gradually abandoned quill pens for steel nibs, scribes at tall desks for typewriters, cumbersome copy presses for mimeographs and electronic copy machines, paper letters and couriered documents for email and fax, dependence solely on law libraries and hard copy texts for electronic search, and paper court filing for e-filing, among many others. All of these were innovative technologies and all impacted legal practice in important ways.

# Kansas Supreme Court's Ad Hoc Artificial Intelligence Committee

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## Duties:

- Study use of AI as it relates to the judicial branch
- Make recommendations to KSC on internal policies, including vetting AI vendors and software
- Make recommendations to KSC on policies for use of AI by attorneys, parties, other members of the public who use judicial branch services

# Artificial Intelligence

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AI in general:

“the ability of a digital computer or computer- controlled robot to perform tasks commonly associated with intelligent beings.”

<https://www.britannica.com/technology/artificial-intelligence>

# Alternate Intelligence

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In responding to Executive Order 13,859, the U.S. Department of Commerce's National Institute of Standards and Technology referenced the following two definitions for AI in its [\*U.S. Leadership in AI: A Plan for Federal Engagement in Developing Technical Standards and Related Tools\*](#) (Appendix I, p. 25).

AI definition from ANSI INCITS 172-2002 (R2007) Information Technology—*American National Standard Dictionary of Information Technology* (ANSDIT) (Revision and Redesignation of ANSI X3.172-1996):

- (1) A branch of computer science devoted to developing data processing systems that performs functions normally associated with human intelligence, such as reasoning, learning, and self-improvement.
- (2) The capability of a device to perform functions that are normally associated with humans.

# Artificial Intelligence

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- Types of AI models
  - **Natural language processing:** analyze large volumes of text data to identify patterns and relationship
  - **Machine Learning:** humans training machines to “learn” patterns based on data input and draw conclusions.
  - **Generative AI:** produce various types of content, including text, imagery, audio and synthetic data.

# Artificial Intelligence

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**Generative AI – “compiles data ‘to generate statistically probable outputs when prompted.’”**

Florida Bar Ethics Opinion 24-1 (January 19, 2024) (citing IBM, What is generative AI? (April 20, 2023))

**Generative AI uses LLMs.**

**Large Language Model (LLMs) – type of machine learning model that is trained on immense amounts of data, and capable of understanding and generating natural language.**

<https://www.ibm.com/topics/large-language-models>



# Generative AI Examples

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- OpenAI's Chat GPT
- Google's Gemini
- Microsoft's Copilot
- Spellbook – marketed as ChatGPT for Law
- Thomson Reuters - generative AI programming
- LexisNexis - generative AI programming

# Example

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## **Input: Write a poem about the pitfalls of a lawyer using AI.**

In a chamber where the books once towered high, A lawyer seeks assistance from an AI, Eager for the wisdom that it might supply, Hoping that on tech, he might rely.

But beware the pitfalls, oh so sly, For not all that glitters meets the eye, A tool so sharp, yet it can belie, The depth of human judgment, it might defy.

In codes and algorithms, it finds its core, Lacking the empathy we so adore, Legal nuances it might ignore, Misinterpreting what we implore.

Precision in language, it seeks to clone, Yet subtleties of law remain unknown, The richness of context, not shown, Leaving the lawyer in a zone, alone.

Ethical dilemmas, a treacherous sea, AI navigates with blind decree, Moral compass it lacks, can't foresee, The weight of justice and equity.

Dependence grows, skills wane away, The art of argument begins to fray, Critical thinking, once bright as day, Under AI's shadow, fades to gray.

Yet, in this tale, let's not despair, For technology's reach can repair, When used with caution, awareness, care, A partnership, valuable and rare.

So, let this be a guiding light, AI, a tool, but not outright, In law, where human touch is right, Together, they can reach new heights.

# MISSOURI INFORMAL ETHICS OPINION

## 2024-11

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**Subject:** Candor to the Court or Tribunal; Competence; Confidentiality; Supervision of Nonlawyers

**Summary:** lawyer's use of generative artificial intelligence (AI)

**Question:** Lawyer would like to use generative artificial intelligence (AI) platforms and services in Lawyer's practice and asks for guidance regarding whether Lawyer may ethically use this emerging technology. What ethical issues should Lawyer consider in developing a policy to use this technology in Lawyer's practice within Law Firm?

**Answer:** Various forms of artificial intelligence are used by lawyers every day. However, Lawyer rightly has distinguished that generative artificial intelligence, a type of AI wherein the platform being used is learning and further developing from each query or task to generate new content and produce an appropriate response in this context to assist Lawyer, requires an examination of ethical considerations just as any other new technology service or device does that is being considered for implementation into Law Firm's use. In developing a policy to use generative artificial intelligence platforms within Law Firm, this office provides the following initial guidance as an Informal Opinion on the subject of generative artificial intelligence. The Informal Opinion is not intended to be an exclusive list of ethical considerations, as all of the Missouri Rules of Professional Conduct pursuant to Rule should be considered, but it is intended to address key ethical considerations to the question presented. Lawyer should also analyze other legal considerations outside the scope of an informal opinion.

[2024-11 | Office of Legal Ethics Counsel & Advisory Committee of the Supreme Court of Missouri](#)

# Application of Ethical Rules

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Innovative technology may be disruptive, or it may be transformative. Lawyers also must assure that all their juristic activities (and some extra-juristic conduct) also comply with a second body of rules, what might be called “metarules,” consisting of regulations of how the lawyers behave, argue, and represent clients. These take the form of rules of professional responsibility, as well as applicable statutes, court cases, and administrative decisions. These metarules differ from jurisdiction to jurisdiction.

Although a lawyer’s work may be technically perfect, the techniques used in preparing it, the manner in which the work is performed, or other ancillary conduct may violate these metarules. Such violations may have grave consequences.

# Application of Ethical Rules

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## Focus for this CLE:

- Rule 1.1 – competence
- Rule 1.6 – confidentiality
- Rule 3.3 – candor toward the tribunal
- Rule 5.1 and 5.3 – supervision

## Rule 1.1 - Competence

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

Cmt 8: “To maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, ***including the benefits and risks associated with relevant technology***, engage in continuing study and education... .”

# Rule 1.1 - Competence

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## ABA Formal Opinion 512, July 29, 2024

- Lawyers need not become GAI experts
- Must have reasonable understanding of capabilities and limitations of GAI
- May draw on expertise of others for guidance
- May attend CLEs on the use of AI
- Lawyers **MUST REMAIN VIGILANT**

# Competence and Generative AI Use Case

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Input:



**You**

Act as an attorney and prepare a demand letter for a boundary dispute between Curtis and Dale. Dale redirected water and is flooding Curtis's property. The demand letter should be from Curtis's attorney to Dale.



# Competence and Generative AI Use Case

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Output:



**ChatGPT**

Below is a hypothetical example of a demand letter concerning a boundary dispute involving water redirection and flooding, written on behalf of Curtis to Dale. Please note that this is for illustrative purposes only and should not be considered legal advice. For legal matters, consult a licensed attorney in your jurisdiction.

# Example Output

[Your Law Firm's Letterhead]

[Today's Date]

Dale [Last Name]

[Address]

[City, State, ZIP Code]

Re: Boundary Dispute and Water Redirection Damaging Property

Dear Mr. [Last Name],

I write to you on behalf of my client, Curtis [Last Name], who resides at [Address], which is adjacent to your property. It has come to our attention that actions taken on your property have resulted in significant and ongoing damage to my client's property.

Specifically, it has been observed and documented that on or around [specific date(s)], modifications were made on your property that have redirected the natural flow of water onto my client's property. This alteration has caused extensive flooding to my client's land, resulting in damage to the landscaping, soil erosion, and has created a hazardous condition that threatens the safety and integrity of my client's property.

It is our understanding that these modifications were made without the necessary permits and without regard to the detrimental impact on my client's property. This conduct not only violates local zoning and environmental regulations but also constitutes a private nuisance under [specific state] law.

On behalf of my client, Curtis [Last Name], we hereby demand that you take immediate action to remedy the situation. This includes, but is not limited to:

1. Ceasing any further water redirection that impacts my client's property.
2. Taking all necessary measures to redirect the water flow back to its natural course or to an alternative route that does not harm my client's property.
3. Repairing any damage caused to my client's property as a result of the water redirection.
4. Providing assurance that such actions will not recur in the future.

We kindly request that you respond to this letter and commence corrective actions within 14 days from the date of this letter. Failure to address this matter may result in legal action being taken to seek injunctive relief, damages for the harm caused, and any other remedies available under the law.

We hope to resolve this matter amicably and without the need for litigation. Please contact me directly at [Your Phone Number] or via email at [Your Email Address] to discuss how you intend to rectify this situation.

Thank you for your prompt attention to this serious matter.

Sincerely,

[Your Name]

[Your Law Firm's Name]

[Your Address]

[City, State, ZIP Code]

[Your Phone Number]

[Your Email Address]



## Rule 1.6 - Confidentiality

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(a) a lawyer shall not reveal information relating to representation of a client unless the client consents after consultation ...

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

# Rule 1.6 - Confidentiality

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## Considerations

- What are you putting into ChatGPT or other AI?
  - client information, copyrighted or other protected data, trade secrets; uploading documents
- Office policies
- Client disclosures and consent

# Rule 1.6 - Confidentiality

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## ABA Opinion 512

- “...lawyers’ use of GAI raises confidentiality concerns under Model Rule 1.6 due to the risk of disclosure of, or unauthorized access to, client information. GAI also poses complex issues relating to ownership and potential infringement of intellectual property rights and even potential data security threats.”

# Rule 1.6 - Confidentiality

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## ABA Formal Opinion 512

- Informed consent:
  - lawyer's best judgment about why GAI tool is being used;
  - extent of the risk, including particulars about the kinds of client information that will be disclosed;
  - ways in which others might use the information against the client;
  - clear explanation of GAI tool's benefits;
  - boilerplate language insufficient



# Rule 1.6 - Confidentiality

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## ABA Formal Opinion 512

- “...lawyers should read and understand the Terms of Use, privacy policy, and related contractual terms and policies of any GAI tool they use...”
  - May need to consult with experts to understand
- Client consent not necessary for idea-generating

# Confidentiality and AI Use Case



Last month, I received an alarming email from someone I did not know: Rui Zhu, a Ph.D. candidate at Indiana University Bloomington. Mr. Zhu had my email address, he explained, because GPT-3.5 Turbo, one of the latest and most robust large language models (L.L.M.) from OpenAI, had delivered it to him.

My contact information was included in a list of business and personal email addresses for more than 30 [New York Times employees](#) that a research team, including Mr. Zhu, had managed to [extract](#) from GPT-3.5 Turbo in the fall of this year. With some work, the team had been able to “bypass the model’s restrictions on responding to privacy-related queries,” Mr. Zhu wrote.

My email address is not a secret. But the success of the researchers’ experiment should ring alarm bells because it reveals the potential for ChatGPT, and generative A.I. tools like it, to reveal much more sensitive personal information with just a bit of tweaking.

[Personal Information Exploit With OpenAI’s ChatGPT Model Raises Privacy Concerns - The New York Times](#)



## Rule 3.3 – Candor Toward the Tribunal

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- (a) A lawyer shall not knowingly:
  - (1) Make a false statement of fact or law to a tribunal *or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer*

# AI Use Pitfalls

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## Hallucinations -

- When a large language model (LLM), such as ChatGPT, generates false information. [www.techtarget.com](http://www.techtarget.com)
- When AI makes up something, which can include irrelevant, nonsensical, or factually incorrect information. [www.nytimes.com](http://www.nytimes.com)

# AI Use Pitfalls



Meta v. Avianca, Inc.

# AI Use Pitfalls

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## *Wadsworth v. Walmart Inc. and Jetson Electric Bikes, LLC*

- Order to Show Cause filed February 6, 2025
  - Plaintiffs filed Motion in Limine citing nine cases, eight of which did not exist.
  - Not identifiable by Westlaw cite, court could not locate by case name.
  - Defendants stated some case citations could be found on ChatGPT.
  - Attorneys ordered to provide cases, and if could not, show cause why he or she should not be sanctioned.

# AI Use Pitfalls

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## *Wadsworth v. Walmart Inc. and Jetson Electric Bikes, LLC*

- Response, dated February 10, 2025
  - “This matter comes with great embarrassment and has prompted discussion and action regarding the training, implementation and future use of artificial intelligence within our firm,” the response said.
  - “This serves as a cautionary tale for our firm and all firms, as we enter this new age of artificial intelligence.”

# AI Use Pitfalls

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*Wadsworth v. Walmart Inc. and Jetson Electric Bikes, LLC*

## SANCTIONED

- Rudwin Ayala - \$3,000 sanction and removed from lawsuit
- Michael Morgan - \$1,000 sanction
- Taly Goody - \$1,000 sanction

# AI Use Pitfalls

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*Christopher Kohls, et al. v. Keith Ellison, et al*, U.S. Dist. MN

- Minnesota AG defended law banning people from using deepfakes (video, pictures or audio clips made to look real by using AI) to influence an election.
- AG's expert, Jeff Hancock, a misinformation specialist and Stanford University communication professor, "used fake article citations generated by AI to support the state's arguments."
- Hancock (misinformation expert): used ChatGPT-4o while drafting his declaration, which hallucinated two citations
- Court: shattered his credibility in court
- <https://www.reuters.com/legal/government/judge-rebukes-minnesota-over-ai-errors-deepfakes-lawsuit-2025-01-13/>

# AI Use Pitfalls

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People v. Crabill - Colorado Supreme Court Suspended Crabill after he used ChatGPT and included false citations in a motion.

Crabill discovered the citations were false before the motion hearing and texted his paralegal:

**SUSPENDED**

10:02 Respondent: I think all of my case cites from ChatGPT are garbage...I can't even find the cases in Lexis.

10:03 Paralegal: Did you not check them after it gave them to you?

10:03 Respondent: no. like an idiot.

10:12 Paralegal: Are you going to withdraw it?

10:12 Respondent: I have no idea what to do. I am trying to find actual case law in our favor now to present to the judge. I don't have time for this...

The text message conversation between attorney Zachariah C. Crabill and his paralegal.



# AI Use Pitfalls

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# Some Courts are Addressing AI Use

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Judge Specific Requirements

Standard Forms

Biography

## Mandatory Certification Regarding Generative Artificial Intelligence

All attorneys and pro se litigants appearing before the Court must, together with their notice of appearance, file on the docket a certificate attesting either that no portion of any filing will be drafted by generative artificial intelligence (such as ChatGPT, Harvey.AI, or Google Bard) or that any language drafted by generative artificial intelligence will be checked for accuracy, using print reporters or traditional legal databases, by a human being. These platforms are incredibly powerful and have many uses in the law: form divorces, discovery requests, suggested errors in documents, anticipated questions at oral argument. But legal briefing is not one of them. Here's why. These platforms in their current states are prone to hallucinations and bias. On hallucinations, they make stuff up—even quotes and citations. Another issue is reliability or bias. While attorneys swear an oath to set aside their personal prejudices, biases, and beliefs to faithfully uphold the law and represent their clients, generative artificial intelligence is the product of programming devised by humans who did not have to swear such an oath. As such, these systems hold no allegiance to any client, the rule of law, or the laws and Constitution of the United States (or, as addressed above, the truth). Unbound by any sense of duty, honor, or justice, such programs act according to computer code rather than conviction, based on programming rather than principle. Any party believing a platform has the requisite accuracy and reliability for legal briefing may move for leave and explain why. Accordingly, the Court will strike any filing from a party who fails to file a certificate on the docket attesting that they have read the Court's judge-specific requirements and understand that they will be held responsible under Rule 11 for the contents of any filing that they sign and submit to the Court, regardless of whether generative artificial intelligence drafted any portion of that filing. **A template Certificate Regarding Judge-Specific Requirements is provided [here](#).**

## Rules 5.1 and 5.3 – Supervision

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The focus on AI as a computer aid that performs tasks that would otherwise be performed by a human and, therefore subject, especially to Rule 5.3 on “legal assistance.” Indeed, although there is no universal definition of AI, most definitions reference human activity.



## Rules 5.1 and 5.3 – Supervision

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Rule 5.3(a) – a lawyer shall make reasonable efforts to ensure the firm has in effect measures giving reasonable assurance that the person's conduct is compatible with the professional obligations of the lawyer

# Rules 5.1 and 5.3 – Supervision

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Supervision considerations:

- Lawyer may not delegate to generative AI any act that would constitute the practice of law (functions requiring personal judgment and participation)
- Training
- Office policies

# Rules 5.1 and 5.3 – Supervision

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## ABA Formal Opinion 512

- Training
  - Basics of GAI
  - Capabilities and limitations
  - Ethical issues
  - Best practices
  - Confidentiality

# Rules 5.1 and 5.3 – Supervision

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## ABA Formal Opinion 512

- “Managerial lawyers must establish clear policies regarding ... permissible use of GAI...:
  - Ethical and practical use of GAI tools
  - Risks associated with GAI

# Air Canada ordered to refund passenger after ‘misleading’ conversation with site’s AI chatbot

Story by Ariel Zilber • 4w • ⌚ 2 min read

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Air Canada was ordered to reimburse a passenger who was mistakenly promised a cheaper bereavement fare by the airline’s AI chatbot — a possible landmark decision as more companies turn to artificial intelligence for customer service.

Jack Moffat, a Vancouver resident, had asked the airline’s support chatbot whether it offered bereavement rates following the death of his grandmother in November 2022.

The chatbot responded by telling the grieving grandson he could claim the lower price up to 90 days after flying by filing a claim.



# Artificial Intelligence

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- Closing
  - Helpful tool
  - Cannot replace human judgment, experience, or morality
  - Cannot rely on for accuracy, and must check the work it produces
  - [50-State Survey of AI Policies](#)

# Thanks for Attending!

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## QUESTIONS?