

THE Legal Ethics & Malpractice Reporter

*A monthly commentary on current ethical issues in law practice
for members of the Kansas and Missouri Bars*

JANUARY 30, 2026

VOL. 7, No. 1

Joseph Hollander & Craft
LLC

Contents

FEATURE ARTICLE

When Clients Want to DIY With AI. 4

NEW AUTHORITY

ABA Formal Opinion 520. 9

ETHICS & MALPRACTICE RESEARCH TIP

New Article on Legal Malpractice & Ethics . . . 11

A BLAST FROM THE PAST

What Did Shakespeare Mean? 12

About This Publication

THE *Legal Ethics & Malpractice Reporter (LEMR, for short)* is a free, monthly publication covering current developments in ethics and malpractice law—generally from the perspective of the Kansas and Missouri *Rules of Professional Conduct*. Founded in 2020, this publication was envisioned by KU Law professor Dr. Mike Hoeflich, who serves as its editor in chief. In partnership with Professor Hoeflich, JHC’s legal ethics and malpractice group is pleased to publish this monthly online periodical to help attorneys better understand the evolving landscape of legal ethics, professional responsibility, and malpractice.

In addition to the digital format you’re presently reading, we publish *LEMR* as mobile-friendly blog articles [on our website](#). We also share a digest newsletter to our *LEMR* email subscribers whenever a new issue is published. (You may [subscribe here](#) if you aren’t already a subscriber.)

EDITORIAL TEAM



Editor-in-Chief

Dr. Michael H. Hoeflich

*John H. & John M. Kane Distinguished Professor of Law,
The University of Kansas School of Law*



Legal Editor

Carrie E. Parker

Attorney, Joseph, Hollander & Craft



Design & Publishing Editor

Luzianne Jones

Marketing & Operations Assistant, Joseph, Hollander & Craft

FEATURE ARTICLE

When Clients Want to DIY With AI

A GREAT deal of discussion has been devoted to lawyer use of generative AI in recent years. Far less discussion has addressed the issue of clients who insist that their lawyers use materials the client produced using generative AI.

Surveys show that an increasing number of clients are using AI in a number of ways. Many clients use AI to answer their legal questions. A 2025 survey of clients show that 14% have used AI and 43% would if the necessity arose. Many of these clients who use AI are using publicly available AI platforms that often produce inaccurate results. Further, it is the rare client who is an expert at generating AI prompts to produce optimal results. Still, many of these clients, seeking to save money of legal fees will insist that their lawyers use the documents and research results that they have produced. This presents several problems for the lawyer with such a client.

First, a lawyer cannot ethically use such results and documents without a thorough review. The Rules of Professional Conduct require that lawyers be thorough and knowledgeable about digital issues. Kansas Rule of Professional Conduct 1.1 requires:

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 8 to KRPC 1.1 requires a lawyer:

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, and comply with all continuing legal education requirements to which the lawyer is subject.

A lawyer in 2026 must understand that generative AI often produces inaccurate results including “hallucinations,” i.e. made-up citations. The only way to ensure that hallucinated citations are not included in final products filed in a

court or incorporated into documents is to specially research every AI-produced document.

Second, AI often misses relevant citations. This may occur because the questions asked (i.e., the prompts entered into the program) are not optimal. This can occur when anyone asks generative AI to respond to a legal question, but especially when that person lacks legal expertise. Even with the best prompts, AI-generated responses will not always produce the most relevant law.

Of course, if a client has used AI and wants to avoid lawyer fees by insisting that the lawyer use the documents produced by the AI, then there is going to be a problem. The lawyer will feel—rightly—an ethical obligation to take measures to ensure the accuracy of the documents, which will involve additional billed time, because a lawyer may not waive her professional responsibility obligations to be competent under Rule 1.1.

If the client insists that the lawyer use them, KRPC 1.2(a) leaves the ultimate decision to the lawyer. It states:

A lawyer shall abide by a client's decisions concerning the lawful objectives of representation, subject to paragraphs (c), (d), and (e), and shall consult with the client as to the means which the lawyer shall choose to pursue. A lawyer shall abide by a client's decision whether to settle a matter. In a criminal case, the lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify.

Since the decision about whether to use AI-generated documents without thorough review is a decision about the “means” for accomplishing the client's objective, the lawyer must discuss the issues involved with the client but is not ethically required to follow the client's wishes. The lawyer should inform that client that she has a right to terminate the representation for any reason and may do so in this case.

The following two hypotheticals illustrate the problem of client-supplied, AI-generated documents:

Hypothetical 1:

A bank employs a law firm to do collection work and—if necessary—litigation against credit card holders in default. The bank’s vice president believes that he can reduce legal costs by doing much of the document work in-house by using generative AI. The firm is informed that it must use the bank’s AI-produced documents.

Hypothetical 2:

A lawyer in a small town represents credit card debtors sued by credit card/debt collection companies. He is approached by a potential client who is in default on a credit card. The potential client insists that he will prepare all of the documents using ChatGPT in order to save money and that his attorney must use those documents.

What are the lawyer’s obligations in each of the two hypotheticals? Not only does the lawyer not have to follow the client’s wishes, but the lawyer is very likely ethically prohibited from doing so.

Reconsider the Rules of Professional Conduct mentioned above:

KRPC 1.1. Competence

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

(emphasis added).

KRPC 1.2. Scope of Representation

(a) A lawyer shall abide by a client’s decisions concerning the lawful objectives of representation, subject to paragraphs (c), (d), and (e), and **shall consult with the client as to the means which the lawyer shall choose to pursue.** A lawyer shall abide by a client’s decision whether to settle a matter. In a criminal case, the lawyer shall abide by the client’s decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify.

(b) A lawyer's representation of a client, including representation by appointment, does not constitute an endorsement of the client's political, economic, social or moral views or activities.

(c) A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent in writing.

(d) A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent, but a lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good faith effort to determine the validity, scope, meaning or application of the law.

(e) When a lawyer knows that a client expects assistance not permitted by the rules of professional conduct or other law, the lawyer shall consult with the client regarding the relevant limitations on the lawyer's conduct.

(emphasis added).

Appendix: SO 26-01

This court order was issued on January 28, 2026, too late for inclusion in the lead article. We will analyze it in the next issue of LEMR.

USE OF ARTIFICIAL INTELLIGENCE ("AI") IN PREPARING COURT FILINGS

Courts are seeing an increasing number of filings that include false statements of fact or law, including citations to fabricated or incorrect legal authority. It is possible that such filings have been generated by using artificial intelligence ("AI"). Although AI can assist the legal system in advancing the goal of furthering the "just, speedy, and inexpensive" resolution of cases, see FED. R. CIV. P. 1, AI tools can produce false statements of fact or law, including citations to fabricated or incorrect legal authority. This can waste judicial and party resources and undermine the integrity of the proceedings.

The court therefore reminds and cautions all lawyers and parties,

including pro se litigants, that they may not make a false or misleading statement of fact or law to the Court or fail to correct a false or misleading statement of material fact or law previously made to the Court. Litigants are responsible for the content of their own filings and for complying with all applicable procedural rules and duties of candor even when they use AI to generate all or portions of court filings. Litigants are therefore responsible for reviewing and verifying the accuracy of all content filed with this court that was drafted or assisted by an AI tool. This includes citations to legal authority, quotations, paraphrased assertions, legal analysis, factual and procedural backgrounds, and the like.

If the court has reason to believe that a litigant has not reviewed and verified the accuracy of the content in any court filing, the court may impose a range of sanctions. First and foremost, the court may sua sponte strike any filing that appears to violate the standards mentioned above— with or without prejudice to refile. Upon notice, the court may also impose more significant sanctions depending on the facts and circumstances of particular violations, such as imposing monetary sanctions, referring counsel to disciplinary authorities, disqualifying counsel, imposing filing restrictions, or dismissing a party's case.

The court also has broad discretion to require a party in any case to include a sworn statement in all filings disclosing the extent to which AI was used to generate the filing, naming the AI tool used, identifying which portion of the filing includes AI-generated content, and/or certifying that the filer personally reviewed and verified the accuracy of each legal authority cited therein.

This order will remain in effect until further order of the Court.

IT IS SO ORDERED this 28th day of January, 2026.

s/ John W. Broomes

John W. Broomes

Chief United\ States District Judge

NEW AUTHORITY

ABA Formal Opinion 520

The American Bar Association Standing Committee on Ethics and Professional Responsibility recently released Formal Opinion 520 relating to Rule 1.16(d) and what ethical obligations a lawyer has when terminating representation.

Kansas Rule of Professional Conduct 1.16(d), which is substantially similar to Model Rule 1.16(d), states:

Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee that has not been earned. The lawyer may retain papers relating to the client to the extent permitted by other law.

Comment 9, which is identical under KRPC 1.16 and MRPC 1.16, states:

Even if the lawyer has been unfairly discharged by the client, a lawyer must take all reasonable steps to mitigate the consequences to the client. The lawyer may retain papers as security for a fee only to the extent permitted by law.

KRPC 1.16(d) and comments do not give specifics about a lawyer's practical obligations on withdrawal. Formal Opinion 520 fills in some of these gaps.

The question considered by the Opinion is whether the lawyer is obliged to respond to a request for information that is not memorialized in file materials, including information explaining or elaborating on the materials contained in a previously surrendered file. The Opinion concludes that:

at times, reasonably practicable steps required by Rule 1.16(d) include complying with a request by a former client or by a former client's successor counsel for certain information that is not already memorialized in the client's file. This is a limited duty, however. In many circumstances, prompt compliance with a former client's request for the client's file will provide all the material information

available because the file is well maintained and complete in accordance with the law of the jurisdiction.

In essence, the lawyer's obligations to do what the ex-client wishes are not unlimited. But they very much depend on the circumstances of the representation (e.g., trial counsel may be obliged to provide unrecorded information to appellate counsel), the necessity of the information to the client's continuing legal interests, and whether the information is available from other sources.

Virtually every lawyer will face the question of how to ethically behave in the case of a withdrawal from representation, especially when they have been terminated by the client and are not feeling positive toward their ex-client. Opinion 520 is an extremely important guide for lawyers and one that every lawyer must read carefully.

ETHICS & MALPRACTICE RESEARCH TIP

New Article on Legal Malpractice & Ethics

Michael Ariens, *Legal Representation and Public Criticism*, 16 St. Mary's J. Legal Mal. & Ethics 149 (2025)

Professor Michael Ariens is one of the most thoughtful legal ethicists in the United States. In St. Mary's Journal of Legal Malpractice and Ethics, he reviews W. Bradley Wendel's book, *Canceling Lawyers: Case Studies of Accountability, Toleration, and Regret*.

Wendel is another well-known legal ethicist. In his book, Wendel argues that lawyers can be held accountable for their professional choices—a view that runs contrary to the traditional view that lawyers should be immune from such criticism.

Both the article and the book explore legal ethics, the rule of law, and societal expectations. Both are worth reading.

A BLAST FROM THE PAST

What did Shakespeare Mean?

“The first thing we do, let’s kill all the lawyers.”

— William Shakespeare, *Henry VI, Pt. 2*.

Most people quote this line as a way of critiquing lawyers and the legal profession. However, many others view this as a positive statement about lawyers—because it is part of the discussion between two rebels who want to overthrow the rule of law. For example, in *Walters v. Nat’l Ass’n of Radiation Survivors*, Justice John Paul Stevens explained: “a careful reading of that text will reveal, Shakespeare insightfully realized that disposing of lawyers is a step in the direction of a totalitarian form of government.” 473 U.S. 305, 371, 105 S. Ct. 3180, 3215, 87 L. Ed. 2d 220 (1985).

In a more recent discussion regarding the proper interpretation of the line, Literary Hub’s Olivia Rutigliano concludes:

“Let’s kill all the lawyers” is a complicated phrase that (somehow always) refers to the importance of maintaining a fair rule of law that protects the people. Whether lawyers symbolize evil or good is almost irrelevant; the most important thing about this quote is the upholding of a fair and just law system, itself.

What did Shakespeare mean when he wrote “let’s kill all the lawyers?” (Jan. 25, 2023), available online at <https://lithub.com/what-did-shakespeare-mean-when-he-wrote-lets-kill-all-the-lawyers/>.



josephhollander.com

KANSAS CITY

926 Cherry St
Kansas City, MO 64106
(816) 673-3900

LAWRENCE

5200 Bob Billings Pkwy
Lawrence, KS 66049
(785) 856-0143

OVERLAND PARK

10104 W 105th St
Overland Park, KS 66212
(913) 948-9490

TOPEKA

1508 SW Topeka Blvd
Topeka, KS 66612
(785) 234-3272

WICHITA

500 N Market St
Wichita, KS 67214
(316) 262-9393
