NEW YORK STATE BAR ASSOCIATION



LEGAL ETHICS GUIDELINES FOR LAWYERS' USE OF ARTIFICIAL INTELLIGENCE FROM THE NEW YORK STATE BAR ASSOCIATION COMMITTEE ON ARTIFICIAL INTELLIGENCE AND EMERGING TECHNOLOGIES

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2. EXECUTIVE SUMMARY

Artificial intelligence, generative artificial intelligence, and other emerging technologies are rapidly transforming the practice of law by offering new opportunities to enhance efficiency, expand access to justice, improve research and analysis, and support the delivery of legal services. These technologies, however, do not alter or diminish a lawyer's fundamental professional responsibilities. The New York Rules of Professional Conduct remain the foundation – our "North Star" – for evaluating lawyers' adoption and use of AI-enabled technologies, including the duties of competence, diligence, confidentiality, independent professional judgment, supervision, candor, and avoidance of conflicts of interest. As AI Systems become increasingly integrated into legal research, drafting, client communications, litigation, and law-practice management, attorneys must understand both the capabilities and limitations of the technologies they employ and maintain meaningful human oversight of AI-assisted work. New York's current approach reinforces this principle: the Rules of Professional Conduct apply regardless of the technology used, and attorneys remain accountable for the accuracy and integrity of their professional work.

he New York State Bar Association (NYSBA) has long opposed the unauthorized practice of law as an essential safeguard for the public and the integrity of the legal profession. Through successive reports and recommendations, the Association has emphasized the importance of protecting consumers from unauthorized legal services, enforcing applicable legal standards, and preserving professional accountability, while recognizing the need to expand access to legal services. [1] This longstanding commitment remains relevant as artificial intelligence transforms the delivery of legal services. As recognized in the NYSBA's *2024 Report and*

Recommendations of the Task Force on Artificial Intelligence, emerging technologies present new questions concerning the unauthorized practice of law and the responsibilities of attorneys who utilize them. [2] These Guidelines build upon that established policy framework, recognizing that technological innovation does not diminish the professional obligations of attorneys or the importance of protecting the public from unauthorized legal practice.

The recommended Guidelines that follow are intended to provide a practical, technology-neutral ethical framework that promotes responsible innovation while preserving the core values of the legal profession. They emphasize appropriate education and technological competence; protection of confidential and privileged information; independent verification of AI-generated research, citations, factual assertions, and legal analysis; appropriate supervision of lawyers, nonlawyers, vendors, and automated systems; transparency where required or appropriate; and continuing evaluation of risks involving accuracy, bias, cybersecurity, privacy, and reliability. The recommendations recognize that ethical guidance must remain sufficiently flexible to address technologies that have not yet emerged, thus propose periodic updates to the guidance. Consistent with New York's recently adopted court framework governing AI-assisted court papers, lawyers should remain responsible for independently reviewing their work and ensuring that technological assistance does not introduce fabricated (i.e., "hallucinated") authorities, false information, or other material errors. Ultimately, these guidelines seek not to discourage technological advancement, but to ensure that innovation remains subordinate to the lawyer's professional judgment, ethical obligations, and responsibility to clients, courts, and the administration of justice.

3. PURPOSE, SCOPE, AND DRAFTING PRINCIPLES

3.1 Purpose

These Guidelines explain how existing professional obligations apply when lawyers select, configure, authorize, supervise, or rely on AI Tools. They are intended to support responsible use without prescribing a particular product, technical architecture, or business model.

These Guidelines do not propose any amendment to the New York Rules of Professional Conduct nor to the Comments to those rules. In Section 7, the heading "Commentary" identifies the AIETC's own analysis of each Guideline. It does not refer to, and is not proposed as, an official Comment to any rule. Where Section 7 quotes an official Comment, it identifies that Comment by rule and number (for example, "Comment [8] to Rule 1.1").

3.2 Scope

The Guidelines apply to lawyers, law firms, legal departments, government law offices, legal-services organizations, and lawyers responsible for vendors or public-facing systems. They apply most directly when a system generates legal or factual content, affects a consequential decision, processes protected information, communicates externally, or can take action with limited human oversight.

3.3 Drafting Principles

3.3.1 Existing duties control. The Guidelines do not create a separate code of AI conduct.

3.3.2 *Use and Risk.* Obligations depend on use and risk, not on marketing labels or whether a product is described as generative, predictive, agentic, or automated.

3.3.3 *Human review must be meaningful*. A lawyer cannot satisfy professional duties by merely confirming that a system produced an answer.

3.3.4 *Verification is proportional*. Material, consequential, external, or difficult-to-reverse uses require greater scrutiny than routine internal uses.

3.3.5 *Confidentiality and Data Flows.* Confidentiality analysis follows actual data flows, including prompts, outputs, attachments, logs, recordings, metadata, model training, retention, subprocessors, plug-ins, and cross-matter retrieval.

3.3.6 *Specific Judgment Required.* Organizational approval assists but does not replace matter-specific judgment.

3.3.7 *Accountability.* Automated capability does not shift accountability away from the lawyer.

4. OPERATIVE GUIDELINES

INTENT OF SECTION 4
The text in this Section constitutes the operative Guidelines proposed for adoption. Commentary, practical applications, and supporting authorities elsewhere in the report are explanatory only. If an inconsistency arises, this Section controls.

4.1 Scope and Use of Terms

These Guidelines explain how existing obligations under the New York Rules of Professional Conduct (NYRPC) apply to a lawyer's use of artificial intelligence. They do not amend the NYRPC, create independent disciplinary obligations, or require a lawyer to use any particular technology.

These Guidelines apply most directly when an AI Tool generates content, informs substantive advice or a consequential decision, processes protected information, communicates externally, or can take action with limited human intervention.

Defined Terms. Capitalized terms used in these Guidelines have the meanings set out below. Other terms have their ordinary meaning or the meaning given in the NYRPC.

"**Artificial intelligence**" or "AI" means a machine-based system that uses inputs and model inference to generate predictions, recommendations, decisions, content, or actions.

"**AI Tool**" means an AI-enabled product or service that a lawyer, or a person acting under a lawyer's supervision, uses in the practice of law, such as a general-purpose AI assistant, a legal research or drafting platform, or a transcription or summarization service.

"**AI System**" means a combination of one or more AI models or AI Tools with data sources, software, integrations, and permissions that a lawyer or law firm builds, configures, or deploys. Examples include a retrieval platform connected to a firm's document management system, an agentic workflow authorized to take actions, and a public-facing chatbot. A lawyer's responsibilities for an AI System extend to the design, configuration, and deployment choices within the lawyer's or law firm's control.

Whether a technology is an AI Tool or an AI System depends on the lawyer's role, using a product or building, configuring, or deploying one, and not on the product's internal architecture or how it is marketed. Except where a Guideline refers specifically to an AI System, obligations stated in these Guidelines for AI Tools apply equally to AI Systems.

"**Material Use**" means a use of an AI Tool reasonably likely to affect substantive advice, strategy, evidence, the evaluation of outcomes, Protected Information, or an external communication or action.

"**Consequential Use**" means a use of an AI Tool that may materially affect a person's rights, opportunities, access to legal services, treatment, finances, liberty, or legal position, or a significant client or matter decision.

"**Protected Information**" means information subject to duties owed to current, former, or prospective clients, and information restricted by law, court order, contract, client instruction, ethical screen, or organizational policy.

USE OF MANDATORY TERMS
"Must" and "shall" identify an obligation derived from the NYRPC or other applicable law. "Should" identifies a recommended practice. "May" identifies permitted conduct. Each Guideline identifies the NYRPC provisions it is intended to aid in applying.

4.2 Guideline No. 1A: Competence Use of AI Tools

NYRPC 1.1(a)–(c)

An attorney is not required to use an AI Tool. An attorney may use artificial intelligence to represent clients effectively, as appropriate, and subject to court order, local rules, individual judge practices, and other authorities,[3] provided that the attorney does so competently. In doing so, the attorney must understand the benefits and risks associated with such technology.

4.3 Guideline No. 1B: Bias, Reliability, and Consequential Uses

NYRPC 1.1, 5.3, 8.4(g)

A lawyer who uses an AI Tool in a manner that materially affects a person's rights, opportunities, or treatment, including client or matter intake, employment and personnel decisions, jury or witness evaluation, risk or eligibility scoring, and the selection or prioritization of clients for representation, must take reasonable steps to understand whether

the tool's outputs may reflect bias arising from its training data, design, or deployment, and must exercise independent professional judgment rather than deferring to the output.

A lawyer may not do through an AI Tool what NYRPC 8.4(g) prohibits the lawyer from doing directly. A lawyer who learns that a tool is producing outputs that unlawfully discriminate in the practice of law must cease relying on it for that purpose.

4.4 Guideline No. 2A: Scope of Representation and Client Authority

NYRPC 1.1, 1.2 and 1.4

A lawyer may use AI to help advise the client as to whether to settle a matter or, in criminal cases, whether to enter a plea, waive a jury trial or testify; provided that the client retains the ultimate authority over the objectives of the representation. AI Tools vetted as described in this Guideline may supplement the attorney's knowledge or special skill, but the lawyer's own professional judgment, not the output of the tool, must support the advice given. Disclosure to the client of the lawyer's use of AI Tools is governed by Guideline 4A.

A lawyer should carefully review the AI outputs and validate their accuracy and use their professional judgement before relying on them.

A lawyer must make reasonable efforts to determine that an AI Tool's reliability, confidentiality and security safeguards are adequate for its intended use, and should work with reputable vendors and review the applicable terms of use. That determination may be made at the firm or organizational level, and a lawyer may reasonably rely on it, but the lawyer remains responsible for using the tool consistently with the NYRPC in the particular matter. Whether client consent is required is addressed in Guideline 6B.

4.4 Guideline No. 3A: Diligence and Verification of AI-Assisted Work

NYRPC 1.3

A lawyer may use AI Tools that support legal or factual research, drafting, document review, fact development, scheduling, deadline management, and other aspects of a representation. The lawyer must remain responsible for the work and must independently verify material output before relying on it or communicating it to a client, court, opposing counsel, or third party. A lawyer must carefully review the outputs of any AI Tool and independently confirm their accuracy before relying on them. Verification must use authoritative sources where the nature of the matter reasonably requires them.

4.5 Guideline No. 3B: AI Recording, Transcription, and Summarization of Conversations

NYRPC 1.1, 1.4, 1.6, 4.1, 8.4(c)

(a) Applicable law. Before using an AI Tool to record, transcribe, or summarize a conversation, a lawyer must comply with the recording laws of each jurisdiction in which a participant is located. New York and federal law permit recording with the consent of one

party, N.Y. Penal Law §§ 250.00, 250.05; 18 U.S.C. § 2511(2)(d). Other jurisdictions require the consent of every party.

(b) Clients. A lawyer should obtain the client's consent before using an AI Tool to record a conversation with the client. Consent may be obtained for each conversation or, where recording will be routine, in the engagement agreement. Undisclosed recording of a client is inconsistent with the lawyer's duty of loyalty and may involve deceit under NYRPC 8.4(c).4

(c) Other participants. Where a participant is not a client, the lawyer should, at a minimum, notify each participant before recording begins. The lawyer should obtain consent where applicable law requires it or the circumstances warrant, including in communications with prospective clients, witnesses, and opposing counsel, and in settlement discussions and mediations.5

(d) Before recording, a lawyer should consider whether recording is advisable in the circumstances, including the effect of a permanent record on privilege, confidentiality, discoverability, and the candor of the exchange. Absent a particular reason to record, the better practice is not to record.

(e) A lawyer must understand how the AI Tool transmits, stores, retains, and makes available the recording, transcript, and summary, and whether the vendor uses the content for model training or discloses it to third parties. The lawyer must reasonably control those data flows consistent with NYRPC 1.6(c).

(f) A lawyer must review an AI-generated transcript or summary for accuracy before relying on it or acting upon it.

(g) Particular caution is warranted in recording communications with co-counsel, experts, and investigators.6

4.6 Guideline No. 4A: Communication, Disclosure, and Consent

NYRPC 1.2, 1.4, 1.5(b), and 1.6

(a) Under NYRPC 1.4(b), a lawyer must explain the lawyer's use of an AI Tool to the extent reasonably necessary to permit the client to make informed decisions regarding the representation. Disclosure is required where:

(i) the client asks whether or how AI Tools are being used in the matter;

(ii) the output of an AI Tool is a significant basis for the lawyer's advice on a decision reserved to the client under NYRPC 1.2(a), including whether to settle or, in a criminal matter, whether to enter a plea, waive a jury trial, or testify;

(iii) the use requires the client's informed consent under NYRPC 1.6 (see Guideline 6B); or

(iv) the use affects the basis or rate of the fee or the expenses for which the client will be responsible (see Guideline 5A(e)).(b) Where is required, the lawyer should explain (i) the nature and role of the AI Tool, (ii) its reasonably foreseeable limitations or risks, and (iii) the extent of the lawyer's review and oversight.

(c) Outside paragraph (a), a lawyer may disclose the use of AI Tools but is not required to do so. Disclosure is not required for routine administrative functions such as word processing, spell and grammar checking, calendaring, or timekeeping.

(d) A lawyer must comply with any client instruction, engagement term, protective order, court rule, or other law governing disclosure, consent, or use of AI Tools.

4.7 Guideline No. 5A: Fees and Expenses

NYRPC 1.5

A lawyer shall not make an agreement for, charge, or collect an excessive or illegal fee or expense, whether or not AI Tools are used in the representation.

(a) *Hourly billing.* A lawyer who bills on an hourly basis may bill only for time actually expended, including time spent formulating inputs to an AI Tool and reviewing, verifying, and revising its outputs. A lawyer may not bill for time that would have been expended had an AI Tool not been used, or otherwise bill for the value of the work product rather than the time actually spent.

(b) *Learning and general competence.* A lawyer may not bill a client for time spent acquiring general familiarity with an AI Tool. A lawyer may bill for time reasonably spent adapting or applying a tool to the particular matter, to the extent that time is reasonable under NYRPC 1.5(a).

(c) *Costs.* The general cost of acquiring and maintaining AI Tools is ordinarily an overhead expense and may not be billed to a client as a disbursement unless the charge is for services or expenses incurred for, or reasonably allocable to, the client's matter, the basis for the charge is disclosed under NYRPC 1.5(b), and the amount is reasonable.

(d) *Non-hourly fees.* Flat, contingent, and other non-hourly fees remain subject to NYRPC 1.5(a). Efficiency gains from the use of AI Tools do not, standing alone, require a reduction in a non-hourly fee, but whether a fee is excessive is determined under all the factors in NYRPC 1.5(a), whether or not AI Tools were used.

(e) *Disclosure.* Under NYRPC 1.5(b), and subject to the exception in that rule for a regularly represented client, a lawyer must communicate the basis or rate of the fee and the expenses for which the client will be responsible, including any AI-related charges, before or within a reasonable time after commencing the representation, and in writing where required, including under 22 N.Y.C.R.R. Part 1215.

4.8 Guideline No. 6A: Confidentiality and Data Governance

NYRPC 1.6, 1.9(c), 1.18

A lawyer must not enter, transmit, expose, or otherwise use confidential information in an AI Tool in a manner that violates duties owed to current, former, or prospective clients. Before using an AI Tool with protected information, the lawyer must make reasonable efforts to understand and address material risks of unauthorized access, disclosure, use, or cross-matter exposure.

Depending on the circumstances, relevant safeguards may include access controls, authentication, encryption, retention and deletion controls, restrictions on model training and secondary use, segregation among clients and matters, controls over subprocessors and onward disclosure, incident-response commitments, audit logs, and procedures addressing material changes to terms or technical practices.

4.9 Guideline No. 6B: Preserving and Maintaining Confidentiality When Using AI Tools

NYRPC 1.6

A lawyer's duty under NYRPC 1.6 is not limited to what the lawyer enters into an AI Tool. Under NYRPC 1.6(c), a lawyer must make reasonable efforts to prevent unauthorized disclosure of, use of, or access to information protected by NYRPC 1.6, 1.9(c), and 1.18(b), which includes the information of former and prospective clients, not only current clients.

Where an AI Tool transmits client information to an outside service, retains it, trains on it, or can reach across matters, the lawyer must make reasonable efforts to understand and control those data flows before the tool is used.

Consistent with NYRPC 5.3, the nonlawyer-supervision standards apply by analogy, and the required degree of supervision rises with the likelihood that confidentiality problems may arise. Where a tool's data handling materially affects the representation, the lawyer must give the client information adequate for informed consent under NYRPC 1.4, 1.2, and 1.0(j).

4.10 Guideline No. 7A: Conflicts of Interest

NYRPC 1.7, 1.8(a), 1.9, 1.10, 1.11, 1.12 and 1.18

The use of an AI Tool does not, by itself, create a conflict of interest. A conflict may arise from the circumstances of use, including cross-client or cross-matter access, an AI Tool or AI System that defeats an ethical screen, or a lawyer's financial or business relationship with a provider.

(a) *Cross-matter and cross-client data.* Where an AI Tool retains, indexes, or trains on information relating to the representation of one client in a manner that makes that information

available in the representation of another, the lawyer must address the resulting duties under NYRPC 1.6, 1.9(c), and 1.18(b).

(b) *Ethical screens.* Where an ethical screen is in place, whether under NYRPC 1.10, 1.11, 1.12, or 1.18, as a condition of client consent under NYRPC 1.7, or by court order, the lawyer and the law firm must take reasonable steps to ensure that the screened lawyer does not obtain, through any AI Tool or AI System used by the firm, access to information or documents from which the lawyer is screened. Where the firm configures an AI System, those steps include configuring its data sources, retrieval, and access permissions to conform to the screen.

(c) *Personal-interest and material-limitation conflicts.* Under NYRPC 1.7(a)(2), a lawyer shall not represent a client where there is a significant risk that the lawyer's independent professional judgment on behalf of a client will be adversely affected by, or that the representation of one or more clients otherwise will be materially limited by, the lawyer's responsibilities to another client, a former client or a third person, or by the lawyer's own financial, business, property or other personal interests. A lawyer's ownership interest in, compensation arrangement with, or referral relationship to a provider of an AI Tool may create such a risk, and a transaction in which the lawyer's interest in a tool becomes adverse to the client may also implicate NYRPC 1.8(a).

(d) *Consent.* Where a conflict within NYRPC 1.7(a) exists, the representation may proceed only if the requirements of NYRPC 1.7(b) are satisfied, including that the lawyer reasonably believes the lawyer can provide competent and diligent representation to each affected client and that each affected client gives informed consent, confirmed in writing.

4.11 Guideline No. 8A: Candor, Accuracy, and Court Submissions

NYRPC 3.1, 3.3 and 8.4

As Officers of the Court, attorneys must make the inquiry required by NYRPC 3.1 and 3.3 and 22 N.Y.C.R.R. 130-1.1a before submitting a paper, including one prepared with the assistance of AI, and must confirm that every cited authority and quotation exists and supports the proposition for which it is cited. Whether a court requires disclosure or certification of AI use is governed by 22 N.Y.C.R.R. Part 161 and by the rules of the individual court.

4.12 Guideline No. 9A: Firm and Managerial Responsibilities

NYRPC 5.1

NYRPC 5.1 requires a law firm, and lawyers with "management responsibility" in the firm, to make "reasonable efforts" to ensure that all lawyers in the firm conform to the NYRPC when using AI Tools, and requires lawyers with "direct supervisory authority" over another lawyer to make reasonable efforts to ensure that the supervised lawyer does so. Reasonable efforts may include risk-based approval of tools and uses, written policies, training, access controls, designated points of contact, reporting and escalation procedures, periodic review, and enforcement appropriate to the firm's size, structure, and practice.

4.13 Guideline No. 9B: Direct Supervision of Lawyers

NYRPC 5.1

A lawyer with direct supervisory authority over another lawyer must make reasonable efforts to ensure that the supervised lawyer's use of AI Tools conforms to the NYRPC. The supervision must be reasonable in light of the supervised lawyer's experience, the tool and task, the sensitivity of the information, and the consequences of error. A supervisory lawyer must not assume that a firm-approved tool or policy eliminates the need to review the work in the particular matter.

4.14 Guideline No. 9C: Responsibilities of Subordinate Lawyers

NYRPC 5.2

A subordinate lawyer remains bound by the NYRPC when using an AI Tool, even when acting at the direction of a supervisory lawyer or under a firm policy. A subordinate lawyer does not violate the NYRPC by acting in accordance with a supervisory lawyer's reasonable resolution of a genuinely arguable question of professional duty. This protection does not apply when the directed conduct clearly violates the NYRPC.

4.15 Guideline No. 9D: Supervision of Nonlawyers, Vendors, and Automated Systems

NYRPC 5.3

A law firm must ensure that the work of nonlawyers using AI Tools is adequately supervised, and a lawyer with direct supervisory authority must adequately supervise that work. A lawyer who employs or retains a vendor using an AI Tool must make reasonable efforts to ensure that the services are provided consistently with the lawyer's professional obligations. Standards applicable to nonlawyer supervision may provide guidance by analogy for oversight of AI Tools and AI Systems, but neither an AI Tool nor an AI System is a person or a nonlawyer within the meaning of the NYRPC.

A lawyer is responsible for a nonlawyer's conduct in using an AI Tool that would violate the NYRPC if engaged in by a lawyer where the lawyer orders or directs the specific conduct or, knowing of it, ratifies it, or where the lawyer has managerial responsibility or direct supervisory authority and knows of the conduct at a time when its consequences could be avoided or mitigated but fails to take reasonable remedial action.

4.16 Guideline No. 9E: Agentic AI and Systems Authorized to Act

NYRPC 5.1 and 5.3

A lawyer who deploys an AI System capable of taking actions, changing records, communicating externally, or using tools or services remains responsible for its use in the representation. Reasonable oversight must be proportionate to the authority granted and the consequences of error. Reasonable supervision of such an AI System includes:

(a) defining in advance the scope of tasks the AI System is authorized to perform and the matters and data it may access, limited to what the task requires;

(b) requiring human review and approval by a lawyer before the AI System takes any action that is consequential or not readily reversible. These actions include filing or serving a document; communicating substantive information to a client, court, adverse party, or third party; transferring funds; executing or accepting an agreement; changing a deadline or calendar entry; modifying or deleting client records; changing access permissions; making a conflict determination; or disclosing confidential information;

(c) maintaining a record sufficient to determine what the AI System did, when, and on whose instruction;

(d) monitoring performance and suspend use when the AI System acts outside its authority or cannot be used consistently with the NYRPC; and

(e) periodically test material safeguards, including measures designed to prevent unauthorized instructions from causing external actions or disclosure.

4.17 Guideline No. 10A: Unauthorized Practice of Law and Public-Facing AI Systems

NYRPC 1.2(d), 5.5

A lawyer shall not use AI Tools to practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction. Whether conduct constitutes the practice of law is determined by applicable law, not by the technology used.

A lawyer who offers or provides legal services through an AI Tool or AI System, including through an online or automated service accessible from other jurisdictions, should consider where those services are offered and provided and whether the lawyer is authorized to practice there. A lawyer shall not assist another in the unauthorized practice of law, including through the design, configuration, deployment, or operation of an AI System that provides legal services to others. A lawyer who advises a client in good faith on whether, or how, an AI-enabled product or service may lawfully be offered does not thereby assist the unauthorized practice of law. See NYRPC 1.2(d).

A lawyer responsible for a public-facing AI System must make reasonable efforts to ensure that it does not mislead users about whether they are communicating with a lawyer and must provide the supervision necessary to prevent unauthorized or unsupervised legal services.

4.18 Guideline No. 11A: Pro Bono Legal Services

NYRPC 6.1

A lawyer who uses AI Tools in providing pro bono services is subject to the same obligations, and these Guidelines apply in the same way, as in any other representation. In fulfilling the

aspirational goals of this Rule, a lawyer may responsibly utilize AI Tools to assist in the delivery of pro bono public legal services, provided that:

1. The lawyer maintains independent professional judgment and supervises the use of such tools;

2. The lawyer reviews and verifies all AI-generated materials, advice, or outputs for accuracy and appropriateness;

3. The lawyer takes reasonable steps to safeguard client confidentiality and ensure that any client data entered into AI Tools is protected against unauthorized disclosure; and

4. Disclosure to the client of the use of AI is governed by Guideline 4A.

4.19 Guideline No. 12A: Communications Concerning a Lawyer's Services

NYRPC 7.1, 7.5, 8.4(c); see also Rules 5.1 and 5.3

A lawyer remains fully responsible for AI-generated content in a communication concerning the lawyer's services and may not attribute a violation to the AI Tool.

(a) A communication concerning a lawyer's services that is created in whole or in part with AI Tools is subject to NYRPC 7.1 to the same extent as a communication created without such tools. Under NYRPC 7.1(a), a lawyer shall not make a false or misleading communication about the lawyer or the lawyer's services; a communication is false or misleading if it contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading.

(b) Before dissemination, a lawyer shall review an AI-generated communication concerning the lawyer's services to ensure it contains no statement that is false or misleading, including fabricated results, reviews, testimonials, or endorsements, and no synthetic image, voice, or video that a reasonable recipient would believe depicts an actual person or event, absent conspicuous disclosure. A lawyer remains separately subject to NYRPC 8.4(c), which prohibits conduct involving dishonesty, fraud, deceit or misrepresentation.

(c) A lawyer whose communication concerns the lawyer's use of AI Tools must ensure that the communication is not false or misleading under NYRPC 7.1(a). A statement about the capabilities, accuracy, or results of the lawyer's AI Tools, or a comparison of them with the AI Tools or services of other lawyers, may be misleading if presented with such specificity as would lead a reasonable person to conclude that it can be substantiated when it cannot. See NYRPC 7.1, Comment [3]. Under NYRPC 7.1(c), a lawyer shall not state or imply that the lawyer is certified as a specialist in a particular field of law unless the lawyer has been certified by an organization approved by an appropriate authority of a state, the District of Columbia or a United States territory, or accredited by the American Bar Association, and the name of the certifying organization is clearly identified in the communication.

(d) An AI System that interacts with prospective clients and provides substantive information concerning a prospective client's legal rights, eligibility, available remedies, or recommended

course of action should promptly and clearly disclose that the user is communicating with an automated program and not with a lawyer. It must make that disclosure where the omission would make the communication false or misleading under NYRPC 7.1(a). This paragraph does not apply to an AI System used solely to collect basic contact or intake information, schedule an appointment, route an inquiry, or provide a clearly automated acknowledgment, unless its presentation would cause a reasonable person to believe that the person is communicating with a lawyer. NYRPC 7.1(d) separately requires that any communication made under NYRPC 7.1 include the name and contact information of at least one lawyer or law firm responsible for its content.

4.20 Guideline No. 13A: Solicitation Using AI Tools

NYRPC 7.1, 7.3 and 8.4

(a) A lawyer must comply with NYRPC 7.3 when using AI Tools to prepare or engage in solicitation, and shall not use AI Tools to avoid compliance with NYRPC 7.3.

(b) A lawyer is responsible for ensuring that any solicitation conducted through AI Tools, and any content generated by AI Tools for use in solicitation, complies with Rules 7.1 and 7.3 and the other Rules governing communications concerning a lawyer's services and solicitation.

(c) A lawyer shall not use AI Tools to engage in solicitation prohibited by NYRPC 7.3(b), to do so through the acts of another person, or to knowingly assist or induce another person to do so. NYRPC 7.3(b) prohibits solicitation by live person-to-person contact when a significant motive is the lawyer's or the law firm's pecuniary gain, subject to the exceptions in NYRPC 7.3(b)(1)–(3). Where an AI Tool conducts a solicitation through real-time voice or video interaction, a lawyer should assume that NYRPC 7.3(b) applies. A lawyer remains subject to Rules 7.1 and 8.4 for the content of any solicitation conducted through AI Tools, whatever the medium.

(d) A lawyer shall not use AI Tools to pose as a natural person in communicating with a prospective client.

(e) A lawyer who prepares or engages in a solicitation that incorporates computer-generated images, voice, or video that a substantial number of recipients would reasonably believe depict an actual individual, or that individual's actual views, where that fact would be material to a reasonable recipient, shall clearly and conspicuously disclose that the depiction is computer-generated. A lawyer shall not use a digital replica of an identifiable individual in a solicitation without that individual's written consent. See N.Y. Civil Rights Law §§ 50–51.

5. RECOMMENDATIONS

5.1 Adopt Updated Guidelines

The AIETC recommends that the House of Delegates adopts the updated Guidelines in Section 4 of this report as practical, technology-neutral guidance for applying existing professional obligations to lawyers' use of AI Tools.

5.2 Approve Periodic Updates

The AIETC recommends an annual review of these Guidelines and earlier review when material legal or technological developments warrant it. If material legal or technological developments warrant earlier updates, the House of Delegates permits the New York State Bar Association Executive Committee, acting *ad interim* for the House of Delegates, to approve periodic updates to the Guidelines. At the next scheduled meeting of the House of Delegates following any Executive Committee approved updates, the Executive Committee will report such updates and seek the House of Delegates' ratification of such changes.

5.3 Coordinate with Existing Professional Guidance

The AIETC recommends continued coordination with NYSBA sections, committees, New York courts, local bar ethics committees, legal-services organizations, law schools, technologists, and professional-liability and cybersecurity stakeholders. The purpose is to reduce conflicting guidance and identify emerging issues that are not adequately addressed by existing rules or law.

6. QUICK REFERENCE MATRIX

Topic	Rules	Core Considerations	Practice Check
Competence	1.1	Understand material capabilities, limitations, and risks; verify material output.	What is the task, what can go wrong, and how will the lawyer confirm the result?
Consequential use and bias	1.1, 5.3, 8.4(g)	Apply proportional review and do not defer professional judgment.	Could the use materially affect rights, access, opportunity, or treatment?
Client authority	1.2, 1.4	Client decisions remain with the client; advice remains the lawyer's.	Is the tool informing a decision reserved to the client?
Diligence	1.3	Verify material output using authoritative sources where appropriate.	Has the lawyer checked the source, citation, fact, calculation, and context?
Recording and summaries	1.1, 1.4, 1.6, 4.1, 8.4(c)	Comply with law, address data flows, and review accuracy.	Was notice or consent required or advisable, and what record will be retained?

Topic	Rules	Core Considerations	Practice Check
Client communication	1.0(j), 1.2, 1.4, 1.6	Disclose material uses; obtain informed consent where required.	Would the use affect the representation, client decisions, or protected information?
Fees	1.5	Bill actual reasonable time; disclose matter-specific charges; keep fees reasonable.	Is the invoice accurate, transparent, and consistent with the fee arrangement?
Confidentiality	1.1, 1.6, 1.9(c), 1.18	Understand and control access, retention, training, secondary use, and cross-matter exposure.	Where do prompts, files, outputs, logs, and metadata go?
Conflicts	1.7-1.12, 1.18	Protect screens and address provider-related personal interests.	Can another matter or user retrieve protected information?
Court submissions	3.1, 3.3, 8.4	Verify authorities, quotations, and material facts; check tribunal rules.	Does every citation exist and support the proposition stated?
Management and supervision	5.1-5.3	Adopt proportionate approval, training, review, and escalation controls.	Who is accountable for approving the tool, use, output, and external action?
Agentic systems	1.1, 1.6, 5.1, 5.3	Define authority, require approval for consequential actions, log activity, and provide a stop mechanism.	Can the system send, file, transfer, modify, delete, or disclose without lawyer approval?
UPL and public-facing systems	5.5	Assess jurisdiction and prevent misleading or unsupervised legal services.	Where is the service offered and who exercises legal judgment?
Pro bono	6.1	Apply the same professional standards and address access and bias.	Does automation lower quality or create language or digital-access barriers?
Marketing and solicitation	7.1, 7.3, 7.5, 8.4	Review content, disclose synthetic depictions when necessary, and do not impersonate a person.	Could a reasonable recipient be misled about the content, speaker, or legal relationship?

7. GLOSSARY

Terms defined in Section 4 are restated here for convenience; if there is any inconsistency, Section 4 controls. The remaining references are drawn from the sources cited and are provided to help readers follow this report. The AIETC does not adopt them as definitions.

7.1 Agentic AI

An AI System designed to pursue a goal through multiple steps and to use tools, services, data, or external systems with limited supervision. The ethical significance lies in the authority granted and the consequences of action, not in the label used by a provider.

7.2 AI Agent

A software component that can interpret an objective, select or sequence actions, and use available tools or services to perform a task. An AI Agent is ordinarily a component of an AI System.

7.3 Artificial Intelligence or "AI"

"Artificial intelligence" or "AI" means a machine-based system that uses inputs and model inference to generate predictions, recommendations, decisions, content, or actions. Artificial intelligence systems use machine and human-based inputs to:

(A) perceive real and virtual environments;

(B) abstract such perceptions into models through analysis in an automated manner; and

(C) use model inference to formulate options for information or action.[7]

7.4 AI Tool

An AI Tool is an AI-enabled product or service that a lawyer, or a person acting under a lawyer's supervision, uses in the practice of law, such as a general-purpose AI assistant, a legal research or drafting platform, or a transcription or summarization service. AI System

7.5 AI System

An AI System means a combination of one or more AI models or AI Tools with data sources, software, integrations, and permissions that a lawyer or law firm builds, configures, or deploys. Examples include a retrieval platform connected to a firm's document management system, an agentic workflow authorized to take actions, and a public-facing chatbot. A lawyer's responsibilities for an AI System extend to the design, configuration, and deployment choices within the lawyer's or law firm's control.

7.6 Consequential Use

A consequential use refers to a use that may materially affect a person's rights, opportunities, access to legal services, treatment, finances, liberty, legal position, or a significant client or matter decision.

7.7 Emerging Technology

Emerging Technology refers to new tools and ideas in early development that are growing fast and can change daily life and work, such as Generative AI and Agentic AI.

7.8 Generative AI or GenAI

Generative AI or GenAI refers to AI designed to produce new text, images, audio, video, code, or other content in response to prompts or other inputs.[8]

7.9 Hallucination / Fabrication

A hallucination or fabrication is generated content that is false, fictitious, inaccurate, unsupported, or not faithful to the source material. These Guidelines use descriptive terms, such as fabricated, fictitious, inaccurate, or unsupported content, where precision is important.

In the context of LLMs, the term "hallucination" has several meanings. In general, it denotes generated content that is nonsensical or unfaithful to the provided source material or to established facts.[9] The computing literature distinguishes two forms of hallucination: (1) *intrinsic*, where the LLM's output conflicts with the underlying material, and (2) *extrinsic*, where the LLM's output cannot be verified from the source content.[10] Hallucinations are a growing cause for concern in the court system.

7.10 Large Language Models or LLMs

"LLMs" (i.e., large language models) are AI models trained on large amounts of text to recognize patterns in language and to generate human-like text in response to a prompt. LLMs are incorporated in many AI Tools and AI Systems. In legal practice, they are used for tasks such as summarizing documents, drafting, legal research, and identifying names, dates, and other key information in documents.

7.11 Material Use

A material use is a use reasonably likely to affect the representation, the client's decision-making, substantive advice, strategy, evidence, evaluation of outcomes, protected information, or an external communication or action.

7.12 NYRPC or Rules of Professional Conduct

New York State's Rules of Professional Conduct, 22 N.Y.C.R.R. Part 1200, as amended through July 1, 2026 (Joint Orders of the Departments of the Appellate Division dated November 5, 2025, May 27, 2026, and June 1, 2026). Professional Standards — New York State Bar Association, https://nysba.org/attorney-resources/professional-standards/

7.13 Prompt

A prompt is an instruction, question, data set, document, image, recording, or other input provided to an AI Tool. Follow-up instructions, system instructions, retrieved documents, and tool outputs may also affect the result.

7.14 Protected Information

Protected information is information subject to duties owed to current, former, or prospective clients, as well as information restricted by law, court order, contract, client instruction, ethical screen, or organizational policy.

7.15 Synthetic Media

Synthetic media includes an image, voice, video, or other depiction generated or materially altered by AI in a manner that may appear to portray a real person, statement, event, or circumstance.

8. COMMENTARY AND PRACTICAL APPLICATIONS

This commentary explains the Guidelines in Section 4. It is not an official Comment to the NYRPC, does not create an independent disciplinary obligation, and does not reproduce the operative text. Each subsection below should be read with the corresponding Guideline in Section 4.

8.1 Attorney Competence

8.1.1 Guideline No. 1A; NYRPC 1.1: Competence Use of AI Tools

Commentary:

NYRPC Rule 1.1(a): "A lawyer should provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation." In addition, under Rule 1.1 (c), "[a] lawyer shall not intentionally: (1) fail to seek the objectives of the client through reasonably available means permitted by law and these Rules; or (2) prejudice or damage the client during the course of the representation except as permitted or required by these Rules."

Comment [8] to Rule 1.1 further provides that, "[t]o maintain the requisite knowledge and skill, a lawyer should . . . keep abreast of the benefits and risks associated with technology the lawyer uses to provide services to clients or to store or transmit confidential information."

D.C. Ethics Opinion 388 (Apr. 11, 2024), applying Comment [8] to ABA Model Rule 1.1, observes that a lawyer's ignorance or disregard of widely adopted technology presents a risk of ethical misconduct, and that there may come a time when the use of generative AI is standard practice. Note that Comment [8] to New York's Rule 1.1 is narrower: it addresses the benefits and risks of technology the lawyer uses. Neither the Rule nor the Comment requires a lawyer to adopt any particular technology. These Guidelines accordingly describe what competent use of AI requires of a lawyer who uses it, and identify the benefits a lawyer may wish to weigh, without stating that a lawyer should use AI in any given representation.

What competence requires. The duty of competence under Rule 1.1 is a duty to provide competent legal representation. It is not a duty to use AI, to become proficient in AI Tools generally, or to understand how AI Systems are designed or operate. A lawyer who does not use AI has no obligation under these Guidelines to learn about it. A lawyer who chooses to use an AI Tool must use it in a way that does not compromise the representation: by being aware of the ways in which its output may be unreliable, by verifying that output before relying on it, and by making reasonable efforts to protect client information entered into it (Rules 1.1 and 1.6(c)). These are practical obligations, not technical ones. A lawyer may meet them by relying on information from the vendor, from the lawyer's firm, or from a person with the relevant knowledge. See NYCLA Formal Op. 749; N.Y. City Bar Formal Op. 2024-5.

- "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." Virginia State Bar Guidance on Generative Artificial Intelligence.[11]
- "Policymakers across various sectors are grappling with the same question: how can we harness the transformative benefits of AI while mitigating its risks?"[12]
- "ChatGPT (and other generative AI programs) are tools, not persons, even if they may have administrators somewhere in the background," United States Magistrate Judge Anthony P. Patti[13]

Mata v. Avianca, Inc., 678 F. Supp. 3d 443 (S.D.N.Y. 2023) provides an object lesson. The *Mata* debacle began with a lawyer's fundamental misunderstanding of a technology that was new to him.
"The principal plaintiff's lawyer in that case regularly practiced in state courts in New York. The legal research database that he normally used was complete as to state court caselaw but had only limited access to federal caselaw, which became a problem when a case he had filed in state court was removed to federal court. He needed a new legal research tool."

The lawyer testified at the sanctions hearing, "I had heard about this new site which I assumed – I falsely assumed was like a super search engine called ChatGPT, and that's what I used," 678 F. Supp. 3d at 456. "With that incorrect understanding, he used ChatGPT to look for cases upon which he could rely in opposing a motion to dismiss his client's complaint."[14]

In *Billups v. Louisville Municipal School Dist.,* 2025 U.S. Dist. LEXIS 262670 (N.D Miss. Dec. 19, 2025), in the Analysis and Discussion section of the decision, the Court explained that "There's a difference between a seasoned, good lawyer and somebody who uses AI to look like one." The Court then reiterated that:

> "AI is a powerful tool, that *when used prudently*, provides immense benefits. When used carelessly, it produces frustratingly realistic legal fiction that takes inordinately longer to respond to than create. While one party can create a fake legal brief at the click of a button, the opposing party and court must parse through the case names, citations, and points of law to determine which parts, if any, are true."

Ferris v. Amazon.Com Servs., LLC, 778 F. Supp. 3d 879, 881 (N.D. Miss. 2025).

<u>Beneficial Uses of AI</u>

- Document review
- Initial research
- Preparation of drafts

- Summarization
- Note-taking

For additional examples of AI use by attorneys, judges, court employees, *see*, New York State Unified Court System, Interim Policy on the Use of AI (October 2025), https://www.nycourts.gov/LegacyPDFS/a.i.-policy.pdf

See also, article by U.S. District Judge for the Western District of Texas Xavier Rodriguez, *Judging AI: How U.S. Judges Can Harness Generative AI Without Compromising Justice*.[15]

Risks of AI Use

- Augmentation of Biases. AI Tools can reproduce and reinforce existing bias. The UCS Advisory Committee on Artificial Intelligence and the Courts identified two examples. First, a tool trained on historical data that reflects systemic inequities, such as racial disparities in sentencing, will likely replicate them, and may present biased results as neutral statistical output ("bias laundering"). Second, in criminal matters, using AI to assist in setting bail or determining a sentence can exacerbate entrenched disparities, because such tools may rely on metrics that create a self-confirming feedback loop.[16]
- Narrow datasets (which could lead to results that are inaccurate, incomplete, or outdated)

  Narrow datasets, which experts often refer to as "thin data," or "insufficiently rich data," may lead to inaccurate results/outputs and lead to the questioning of the validity of these results because the training data is not rich/complete enough. See, Julie Rogers & Alexandra Jonker, *What Is Data Bias?*, IBM Think (Oct. 4, 2024), https://www.ibm.com/think/topics/data-bias, for further information distinguishing AI Bias from Algorithmic Bias from Data Bias.

- Inaccurate or Inconsistent and Unreliable Results

  For example, in the case of *Matter of Weber,* 2024 N.Y. Slip. Op. 24258 pp. 12-13, 85 Misc. 3d 727, at 740 (Sur. Ct., Saratoga County Oct. 10, 2024), the Court found that damage calculations of an expert, who utilized Microsoft Copilot for his report, could not be credited as they were unreliable.[17]

  As demonstrated in this case, AI does not always produce the same output/result in response to the same input/prompt. For example, "…the Court entered the following prompt into Microsoft Copilot on its Unified Court System (UCS) issued computer: 'Can you calculate the value of $250,000 invested in the Vanguard Balanced Index Fund from December 31, 2004 through January 31, 2021?' and it returned a value of $949,070.97 — a number different than [the expert's]."

> "Upon running this same query on two (2) additional UCS computers, it returned values of $948,209.63 and a little more than $951,000.00, respectively." The Court noted, "While these resulting variations are not large, the fact there are variations at all calls into question the reliability and accuracy of Copilot to generate evidence to be relied upon in a court proceeding."
>
> Further, "Interestingly, when asked the following question: "are you accurate," Copilot generated the following answer: "I aim to be accurate within the data I've been trained on and the information I can find for you. That said, my accuracy is only as good as my sources so for critical matters, it's always wise to verify," *Weber* at 742.
>
> "When asked "are you reliable" Copilot responded with: "[y]ou bet. When it comes to providing information and engaging in conversation, I do my best to be as reliable as possible. However, I'm also programmed to advise checking with experts for critical issues. Always good to have a second opinion!" *Weber* at 742.
>
> When a follow-up question was asked, "are your calculations reliable enough for use in court," Copilot responded with "[w]hen it comes to legal matters, any calculations or data need to meet strict standards. I can provide accurate info, but it should always be verified by experts and accompanied by professional evaluations before being used in court . . ." *Weber* at 742.
>
> "It would seem that even Copilot itself self-checks and relies on human oversight and analysis. It is clear from these responses that the developers of the Copilot program recognize the need for its supervision by a trained human operator to verify the accuracy of the submitted information as well as the output," *Weber* at 742.

"[J]udicial independence connotes amongst other things, that decisions are made free from inappropriate influence. If courts started relying on AI systems in decision making, we might want to ask who built those systems and on what data, who controls that data and whether the data embeds hidden biases or priorities."[18]

"An algorithm cannot be impartial in the human sense, nor can it be held responsible in the way a person can. Even if AI could perfectly predict the outcomes a human judge would reach, we might still object that no one is actually judging – and for some, that might not accord with their concept of justice. Justice being seen to be done involves more than the giving of reasons. *Sometimes (not always) but sometimes, it is important for a particular issue to be ventilated in a court room, so that the opposing arguments can be seen by the public as well as the judge, and so the parties can be seen as well as (feel) heard"*[19] (emphasis added)

For further examples, see Symposium report on the next decade of Artificial Intelligence New York State Attorney General. https://ag.ny.gov/symposium-report-next-decade-ai

8.1.2 Guideline No. 1B; NYRPC 1.1, 5.3, 8.4(g): Bias, Reliability, and Consequential Uses

Commentary:

Rule 8.4(g) provides that a lawyer or law firm shall not unlawfully discriminate in the practice of law. A lawyer may not accomplish through an AI Tool what the rule prohibits the lawyer from doing directly, and the delegation of a task to an automated system does not shift responsibility for the result away from the lawyer. Where a nonlawyer operates the tool, Rule 5.3 applies, and the degree of supervision required rises with the likelihood that ethical problems will arise.

The Subcommittee on Bias and Equity of the UCS Advisory Committee has identified several mechanisms by which AI Tools may replicate or obscure existing disparities, including the propagation of bias from historical training data, the presentation of biased outputs as neutral statistical information, and the expansion of a tool approved for a narrow administrative purpose into substantive decision-making. The subcommittee concluded that the risk is greatest in criminal matters and least where AI assists with administrative tasks, and emphasized transparency and explainability as conditions of responsible use.

The degree to which an AI Tool's reasoning can be inspected or explained varies. Some systems are relatively interpretable, in that their logic, inputs, and data flows can be documented and reviewed. Others are opaque, whether because of model complexity, proprietary restrictions, or limited documentation, so that the relationship between a given input and a given output cannot meaningfully be traced. Opacity does not make a tool inaccurate, unreliable, or improper to use. It does bear on the level of verification and human oversight a competent lawyer must apply, on the lawyer's ability to explain the basis of advice to a client or a court, and on the lawyer's ability to supervise the tool's use under Rules 5.1 and 5.3.

Practical Application: Before deploying an AI Tool in any use identified in Guideline 1B, a lawyer should know, to the extent the provider discloses it, the data sources on which the tool relies, what it is being asked to decide or recommend, who reviews its output before anyone acts on it, and what would cause the lawyer to stop relying on it.[20]

8.1.3 Deepfakes

To disseminate court news (or make it more publicly available), the Arizona Supreme Court turned to AI Avatars, Victoria and Daniel.[21]

In court proceedings, however, Deepfakes/synthetic media poses several litigation challenges:

Authentication under Federal Rule of Evidence (FRE) 901

"…., deepfakes can mimic real individuals with near-perfect accuracy—posing unique risks of deception. They can also be mass-produced quickly and spread widely, raising concerns about their impact on judicial truth-seeking."[22] Rule 1.1(a) and (b).

"Because deepfakes are designed to gaslight the observer… any truism associated with the ancient statement 'seeing is believing' might disappear from our ethos," Judge Herbert B. Dixon, Jr. of the Superior Court of the District of Columbia.[23]

For example, in *Mendones v. Cushman & Wakefield, Inc.,* No. 23-cv-028772, 2025 WL 2613764 (Cal. Super. Ct. Sep. 9, 2025), the court imposed terminating sanctions against the plaintiffs in a housing dispute after the judge found that the plaintiffs intentionally submitted fabricated evidence in connection with their motion for summary judgment. See also, Judge Matthewman's article, The Coming Use and Misuse of Artificial Intelligence in the Courtroom: A Judicial Perspective and Proposal.[24]

In *Mendones,* "The court found that certain audio exhibits and graphic material were deepfakes or materially altered," *Id*. at 3–5. The court also questioned the authenticity of other evidentiary submissions, such as voicemail messages and video testimony, but stated that "it does not have the time, funding, or technical expertise to determine the authenticity of Plaintiffs' statements or conduct a forensic analysis of the suspect evidentiary submissions," *Id.* at 5.

The court "struck the operative complaint and dismissed the case with prejudice," *Id*. at 7.

The court stated that the terminating sanction imposed "serves the appropriately chilling message to litigants appearing before this Court: 'Use GenAI in court with great caution.'" *Id.*[25]

Reliability and Chain of Custody and Discovery Disclosures for AI-Generated Evidence.

For example, an attorney uses an AI Tool to identify relevant emails during discovery. Before producing the emails or relying on them in court, the attorney reviews the AI's results for accuracy and preserves records showing how the evidence was collected and processed. This demonstrates competent use of AI and helps ensure the reliability of the evidence.

Rule 403 Prejudice, Balancing Disclosure, and Jury Confusion with Synthetic Media.

For example:

In *State v. Horcasitas*, No. CR-2021-142720-001 (Maricopa Cnty. Super. Ct.), notice of appeal filed, No. 1 CA-CR 25-0191 (Ariz. Ct. App. May 7, 2025), the AI-generated video of the deceased victim was admitted at the sentencing hearing over defense objection.

"The defense attorney reportedly questioned whether the court placed undue reliance on the deepfake, and an appeal was filed citing potential judicial bias introduced by the emotionally resonant (but synthetic) testimony."[26] "The defendant was sentenced to ten years and six months in prison on the manslaughter charge, and an appeal is pending."[27]

In *Horcasitas*, although the creators of the video of the victim, Mr. Pelkey, "clearly acknowledged that it had been generated by AI, courts are struggling with how to identify and deal with deep fakes."[28]

In another matter, on March 26, 2025, in the New York State Supreme Court Appellate Division's First Judicial Department, a pro se litigant tried to argue his case using an AI Avatar without disclosing this to the court.[29]

When a justice questioned the pro se litigant regarding whether the video he was playing was counsel for his case, the pro se litigant stated that it was generated by him and it was not a real person. To which the justice responded, "I don't appreciate being misled."[30]

8.1.4 Use of AI in Criminal Court Cases

AI Use for Victim Impact Statement

During the criminal sentencing hearing in *State v. Horcasitas*, an AI Generated victim-Mr. Pelkey-delivered his own "Victim Impact" statement.[31] The victim's sister and family "used voice recordings, videos and pictures of the victim [Chris Pelkey] . . . to recreate him in a video using AI."[32]

Use of Virtual Reality Headsets to Demonstrate Claim of Self-Defense

The case, *State v. Miguel Rodriguez Albisu*, No. 23-002405-CF10A (Fla. Cir. Ct., Broward Cnty.) demonstrates how emerging technologies are being considered for use in criminal trials. In this 2025 case, a Florida judge used a VR headset to examine a crime scene. "This shows how technology can enhance understanding, but it also raises questions about how to validate and interpret such tech-derived evidence."[33]

At the pretrial hearing, the trial court judge "donned Oculus headsets to watch a 3D recreation" of the events leading up to the time that the Defendant pulled out a gun. While the court allowed the demonstrative aid at the pretrial hearing, it subsequently entered its Order Denying Defendant's Motion to Allow Forensic Examination.[34]

The court ultimately ruled that the VR Headsets could not be used at trial. The court also denied the Defendant's Stand Your Ground Motion to Dismiss.[35]

8.1.5 Breach of Confidentiality

How may a cybersecurity breach lead to the Disclosure of Client Information?

According to the New York County Lawyers Association Professional Ethics Committee Formal Opinion 749:

"Attacks on computer systems by those trying to gain confidential, proprietary, or other sensitive information for personal or political gain (including so-called "hacktivists") are reported with alarming frequency."

"Corporate clients have become proactive in attempting to ensure that its outside vendors—including lawyers—who have access to sensitive corporate information sufficiently protect that information from disclosure through inadvertence or cyber-attack."

"Individual clients are increasingly sensitive to the potential harm from widely reported data breaches, and similarly expect their lawyers to use appropriate measures to avoid unauthorized disclosure of personal data."

"Additionally, lawyers who represent clients who are located outside of New York may, in certain instances, be subject to laws in those other states that require a heightened level of protection of electronic communications. Mass. Gen. L. Ch. 93H, 201 C.M.R. 17 (requiring, where technically feasible, the encryption of personal information stored on portable devices and personal information transmitted across public networks or wirelessly); Nevada Senate Bill 227 (amending Nev. Rev. Stat. § 597.970 and requiring that data collectors who conduct business in the state encrypt data storage devices - Including computers, cell phones, and thumb drives – that contain personal information that are moved outside the secured physical and logical boundaries of the data collecting entity)."

"Lawyers must be responsive to technological developments as they become integrated into the practice of law. A lawyer cannot knowingly reveal client confidential information, and must exercise reasonable care to ensure that the lawyer's employees, associates, and others whose services are utilized by the lawyer not disclose or use client confidential information."

"The risks associated with transmission of client confidential information electronically include disclosure through hacking or technological inadvertence."

"A lawyer's duty of technological competence may include having the requisite technological knowledge to reduce the risk of disclosure of client information through hacking or errors in technology where the practice requires the use of technology to competently represent the client."

"A lawyer fulfills his or her duty of competence with respect to technology if the lawyer possesses the requisite knowledge personally, acquires the requisite knowledge in a timely manner and before performance is required, or associates with one or more persons who possess the requisite technological knowledge. If a lawyer is unable to satisfy the duty of technological competence associated with a matter, the lawyer should decline the representation."

In *James v. Cerebras Systems, Inc.*, No. 4:25-cv-09361-AMO 2026 WL 1962840 (N.D. Cal. July 7, 2026), Magistrate Judge Robert M. Illman of the Northern District of California entered two interlocking orders: an ESI Protocol and a Stipulated Protective Order.

CEO of Minerva26, Kelly Twigger notes that this is the first stipulated protocol to treat generative AI review as its own category of discovery — with its own disclosure rules, its own validation math, and a requirement that a party using AI to decide what gets produced disclose the prompts it used to do it.[36]

Pursuant to the order issued in *James v. Cerebras Systems, Inc.*, "Legal counsel remains responsible for ensuring the accuracy and completeness of all productions."

Twigger notes that "AI does not absorb a lawyer's duty under Rule 26(g). These tools do not reduce the duty of care, they raise it.[37] In regard to "security, all AI processing has to occur inside the secure review environment with no document content exported to an outside model absent an agreement."[38]

8.1.6 Hallucinations

In AI parlance, insertion of fictitious information is referred to as a ***hallucination***."[39] (emphasis added)

"Rather than conducting traditional research or verifying facts, the AI program produces a document or other output, in the format and style requested in the user's prompts, by predicting patterns based on its source information."

"As a result, any factual assertions or citations to legal authority included in the output may be inaccurate or unreliable.…generative AI programs occasionally fill in gaps in their source material by simply fabricating facts or citations."[40]

A "study published on September 4, 2025 by OpenAI researchers Adam Tauman Kalai, Edwin Zhang, and Ofir Nachum alongside Georgia Tech's Santosh S. Vempala[41] provided a comprehensive mathematical framework explaining why AI systems must generate plausible but false information even when trained on perfect data."[42] The AIETC cites this study for illustration and takes no position on its conclusions.

8.1.6.1 Concerns and Consequences of Attorneys Misuse of AI

Similar to the facts in *Mata v. Avianca, Inc*., in *U.S. v. Hayes*, 763 F. Supp.3d 1054, (E.D. Cal. 2025), an attorney who submitted a brief containing AI hallucinations continued to deny using AI.

In *Hayes*, the Magistrate Judge found: "Despite being provided multiple opportunities to candidly acknowledge and correct his errors as required under his duty of candor to the court, [the attorney] unfortunately failed to do so." *Id*. at 1064.

In terms of sanctions/penalties, the court ordered the attorney to pay $1,500 and the clerk of the court was to serve a copy of the order on the two bars where the attorney was admitted to practice, the California Bar and the District of Columbia Bar; and on the district judges and magistrate judges in the district. *Id*. at 1073.

In May 2025, retired Magistrate Judge Michael R. Wilner, who was appointed as Special Master in *Lacey v. State Farm General Insurance Co.*, 2025 U.S. Dist. LEXIS 90370 (C.D. Cal. 5 May 2025), ordered the plaintiff's lawyers to pay the defendant $31,100 as sanctions for filing a brief containing "bogus AI-generated research."

The Special Master noted that the brief was a "collective debacle" and faulted both law firms for failing to disclose the use of AI Tools, failing to check the validity of the research, and refiling the brief without fixing all the problems after they were put on notice of errors, *Id*. at 7.

The Special Master further noted that "[That the attorneys] had the information and the chance to fix this problem, but didn't take it." He concluded that the lawyers had acted in a manner "tantamount to bad faith" and taken together, their actions demonstrated "reckless conduct with the improper purpose of trying to influence" his analysis, justifying sanctions. *Id*. at 7-8.

The Special Master explained, "Directly put, Plaintiff's use of AI affirmatively misled me. I read their brief, was persuaded (or at least intrigued) by the authorities…only to find that they didn't exist. That's scary. It almost led to the scarier outcome…of including those bogus materials in a judicial order. Strong deterrence is needed to make sure that attorneys don't succumb to this easy shortcut," *Id*. at 10.

In a divorce matter, *Shahid v. Esaam,* 376 Ga. App. 145 (2025), the husband's lawyer submitted a final judgment containing fictitious citations, which was entered by the court. Neither the court nor the adversary discovered the false citations. It was not until the court of appeals found new bogus cases in the appellee's brief that it took a closer look and discovered the fictitious citations in the judgment entered by the lower court.

On appeal, the same lawyer cited 11 additional cases which the appellate court said were "either hallucinated or have nothing to do with the propositions for which they are cited, *Id.* at 2.

The appellate court noted that the appellee added insult to injury by requesting attorney's fees on appeal and supporting the request with one of the hallucinated cases, *Id*. The appellate court vacated the judgment, remanded the case, and ordered the lawyer personally to pay a penalty of $2,500 to the opposing party, *Id*.[43]

In *United States v. Michel,* Case No. 1:19-148-1(CKK) (D.D.C. Oct. 16, 2023) the defendant alleged that his attorney's reliance on AI for his closing argument constituted ineffective assistance of counsel. Defendant's supporting brief states: "Kenner's [defense counsel's] closing argument made frivolous arguments, misapprehended the required elements, conflated the schemes and ignored critical weaknesses in the government's case." The court rejected the claim, finding that the AI-generated portions of the closing argument were not prejudicial. *United States v. Michel,* 2024 U.S. Dist. LEXIS 156196, 2024 WL 4006545, at *19–20 (D.D.C. Aug. 30, 2024).

When denying the petitioner's motion for a new bail hearing, the court in *Ex Parte Lee*, No. 10-22-00281-CR 673 S.W.3d 755 (Tex. App. Jul. 19, 2023) noted that the petitioner's brief contained citations that did not exist and arguments that appeared to be generated by Generative Artificial Intelligence.[44]

8.1.6.2 Concerns and Consequences of Expert Witness's Misuse of AI

"In what may have been an issue of first impression, at least in Surrogate's Court practice, in *Matter of Weber*, the Court held that due to the nature of the rapid evolution of artificial intelligence and its inherent reliability issues that prior to evidence being introduced which has been generated by an artificial intelligence product or system, counsel has an affirmative duty to disclose the use of artificial intelligence and the evidence sought to be admitted should properly be subject to a *Frye* hearing prior to its admission, the scope of which should be determined by the Court, either in a pre-trial hearing or at the time the evidence is offered." [footnote omitted].

"Mr. Ranson [the expert] was adamant in his testimony that the use of Copilot or other artificial intelligence tools, for drafting expert reports is generally accepted in the field of fiduciary services and represents the future of analysis of fiduciary decisions; however, he could not name any publications regarding

its use or any other sources to confirm that it is a generally accepted methodology."

"… the record is devoid of any evidence as to the reliability of Microsoft Copilot in general, let alone as it relates to how it was applied here. Without more, the Court cannot blindly accept as accurate, calculations which are performed by artificial intelligence."

In another case, *Kohls v. Ellison*, No. 24-cv-03754, 2025 WL 66514 (D. Minn. Jan. 10, 2025), the expert witness declared, "I conduct studies on the impact of social media and artificial intelligence (AI) technology on misinformation and trust . . . ."

In the January 10, 2025 Order, U.S. District Court Judge Laura M. Provinzino noted '*the irony*' of the expert witness' mistake writing:

"Professor Hancock, a credentialed expert on the dangers of AI and misinformation, has fallen victim to the siren call of relying too heavily on AI — in a case that revolves around the dangers of AI, no less." *Id*. at 8. "… [W]hen attorneys and experts abdicate their independent judgment and critical thinking skills in favor of ready-made, AI-generated answers, the quality of our legal profession and the Court's decisional process suffer." *Id.* at 9. Further, the expert's over-reliance on AI "shatters his credibility with this Court." *Id.* at 10.

Practical Application: "Yet lawyers still do not seem to be getting the message that AI is dangerously fallible. Consequently, they are paying a price for violating their ethical duties in the form of court-ordered sanctions, referrals for discipline, lost motions, and occasionally, lost jobs."

"The lesson is plain: AI is not a substitute for a lawyer's critical thinking skills and judgment. To avoid damage to your client, professional embarrassment, and sanctions, do not file anything in a court that a lawyer has not personally researched and verified. If the court questions you about your AI usage, answer truthfully. And if you have presented fake citations, do not expect to be forgiven."[45]

8.1.6.3 Sanctions as a Remedy for AI Misuse

Court Sanctions include:

- Warnings
- Monetary Penalties
- Individual Accountability
- Disqualification
- Bar Referrals
- Mandatory Disclosure to all clients and courts
- Suspension of License to Practice Law

Rule 11 provides: "By presenting to the court a pleading, written motion, or other paper—whether by signing, filing, submitting, or later advocating it—an attorney or unrepresented party certifies that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances:… the claims, defenses, and other legal contentions are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law[.]" FED. R. CIV. P. 11(b)(2).

"'[T]he central purpose of Rule 11 is to deter baseless filings in district court and thus … streamline the administration and procedure of the federal courts,'" *Sec. & Exch. Comm'n v. Faulkner*, 2018 U.S. Dist. LEXIS 130510, at *5, WL 3708426, at *2 (N.D. Tex. Aug. 3, 2018) (quoting *Cooter & Gell v. Hartmarx Corp*., 496 U.S. 384, 393 (1990)).

For example, U.S. District Judge Fred Slaughter in Santa Ana imposed $10,000 sanction on Hagens Berman and partner Robert Carey, as well as a $3,000 fine on co-counsel Celeste Boyd for the "misuse" of artificial intelligence in several court filings in a lawsuit against the parent company of adult content social media site OnlyFans.[46]

Court Sanctions: Attorney Disqualification and Referral to the Bar.

In *Johnson v. Dunn*, 792 F. Supp. 3d 1241, 1246 (N.D. Ala. 2025), the court's sanctions included disqualification and referral to the bar. "Three attorneys for the Defendant confirmed in writing and at a hearing that the citations were hallucinations of a popular generative artificial intelligence ("AI") application, ChatGPT. In simpler terms, the citations were completely made up."

"Fabricating legal authority is serious misconduct that demands a serious sanction. In the court's view, it demands substantially greater accountability than the reprimands and modest fines that have become common as courts confront this form of AI misuse. As a practical matter, time is telling us – quickly and loudly – that those sanctions are insufficient deterrents. *Id*. at 1246.

"In principle, they do not account for the danger that fake citations pose for the fair administration of justice and the integrity of the judicial system. And in any event, they have little effect when the lawyer's client (here, an Alabama government agency) learns of the attorney's misconduct and continues to retain him." *Id*. at 1246.

"An appropriate and reasonable sanction must (1) have sufficient deterrent force to make this misuse of AI unprofitable for lawyers and litigants, (2) correspond to the extreme dereliction of professional responsibility that sham citations reflect (whether generated by artificial or human intelligence), and (3) effectively communicate that made-up authorities have no place in a court of law." *Id*. at 1246.

"Judge Manasco explicitly rejected the fines and public embarrassment imposed in earlier cases as insufficient deterrents. Instead, she imposed severe sanctions targeting individual accountability—disqualification, bar referrals, and mandatory disclosure to all clients and courts."[47]

"The court's opinion in *Johnson v. Dunn* should be required reading for all lawyers, but particularly those in large law firms where practice group leaders have supervisory roles and pleadings for important clients often bear the signatures of multiple attorneys, some of whom may not have authored the pleadings above which their name appears." [48]

In another case, *Noland v. Land of the Free, L.P.,* 114 Cal. App. 5th 426 (2025), the court observed that "'hallucination' is a particularly apt word to describe the darker consequences of AI. AI hallucinates facts and law to an attorney, who takes them as real and repeats them to a court. This court detected (and rejected) these hallucinations. But there are many instances — hopefully not in a judicial setting — where hallucinations are circulated, believed, and become 'fact' and 'law' in some minds. We all must guard against those instances." The court declined to award sanctions payable to opposing counsel, noting that although such sanctions "would be appropriate in some cases," respondents "did not alert the court to the fabricated citations and appear to have become aware of the issue only when the court issued its order to show cause." *Noland*, 114 Cal. App. 5th at 448.

Here, the attorney was directed to pay $10,000 in sanctions to the clerk of the court for deposit into the court's general fund; pursuant to Business and Professions Code section 6086.7, subdivision (a)(3), the clerk was ordered to forward a copy of the opinion to the State Bar; and the attorney was ordered to provide a copy of the opinion to his client and file a certification of compliance.

In the same vein, in *Versant Funding LLC v. Teras Breakbulk Ocean Navigation Enterprises, LLC*, No. 17-cv-81140, 2025 WL 1440351, at *7 (S.D. Fla. May 20, 2025), the court declared: "There is no room in our court system for the submission of fake, hallucinated case citations, facts, or law. And it is entirely preventable by competent counsel who do their jobs properly and competently."

In *Miller v. Regions Bank,* 833 F. Supp. 3d 1201, 1221 (2026), Alabama District Judge Harold D. Mooty III, stated: "The court is not ordering the harshest of Attorney Harp's sanctions because he made a mistake. The court is ordering them because, when confronted with that mistake, he chose dishonesty over candor and destruction over disclosure. Lawyers make errors. Competent and ethical lawyers own them."

"When lawyers are caught submitting AI-generated misrepresentations to the court, they have two options: they can either admit to their mistakes and show contrition, or they can attempt to cover up their mistakes and demonstrate a weakness of character unsuited to the legal profession.

"If they choose the former path, they will likely preserve their standing before the court. If they choose the latter, they may well lose their career."

"The court sincerely wishes that Attorney Harp had chosen the former path rather than the latter, and it warns anyone who may find themselves in a similar position to carefully consider the consequences of their next move and to confront their situation with upfront honesty and contrition."

"Any lawyer who believes this court will hesitate to vigorously investigate and impose career-altering sanctions for such misconduct is gravely mistaken."

8.1.7 Additional Risks

Judicial Expectations Regarding an Adversary's Fabricated Citations

Several courts have criticized opposing counsel for failing to bring an adversary's fabricated citations to the court's attention, or have stated an expectation that all parties will assist in identifying them. These decisions reflect judicial expectations rather than an established disciplinary duty under the NYRPC, which do not impose a general obligation on a lawyer to verify an adversary's citations. Rule 3.3(a)(2) requires disclosure of controlling adverse authority, not detection of an adversary's fabrications. A lawyer who does become aware that an adversary has submitted fabricated authority should consider whether Rule 3.3, Rule 8.4, or the court's own part rules counsel bringing the matter to the court's attention, and should recognize that courts increasingly expect it.

Duty to Disclose Hallucinations of Fictitious Citations and Case Law Misrepresentations by Adversary

In *Billups v. Louisville Mun. Sch. Dist*., 2025 U.S. Dist. LEXIS 262670 (N.D. Miss. Dec. 19, 2025) Judge Sharion Aycock observed "that the Defendant…could have flagged the fictitious citation and misrepresentation of case law [by Plaintiff's counsel] in a reply brief or supplemental filing." *Billups* at 22.

The Court then issued a charge. "Going forward, the Court expects all parties to assist in maintaining the integrity of the judicial process and to be diligent in flagging AI misuse. '[O]therwise, the risk is too great that such errors will persist undetected, potentially leading to an outcome unsupported by law,'", *Billups* at 22.

In *Elizondo v. City of Laredo,* No. 5:25-cv-50. 2025 U.S. Dist. LEXIS 140572 (S.D. Tex. July 23, 2025), Judge Marina Garcia Marmolejo issued an order noting "that Defendant, the City of Laredo, could have flagged these fictitious citations in a reply brief or supplemental filing. […] Although this oversight does not rise to the level of sanctionable conduct, the Court expects all parties to assist in maintaining the integrity of the judicial process by alerting the Court to such errors. The Court encourages greater diligence in flagging citation errors in the future— otherwise,

the risk is too great that such errors will persist undetected, potentially leading to an outcome unsupported by law." *Elizondo*, at *8.

See also, Appellate Division Second Department matter, *Landberg v. City of New York*, 2026 N.Y. Slip. Op. 03935 (2d Dep't, June 23, 2026) in which the Court, while sanctioning appellant's counsel for a GenAI-assisted brief containing fabricated citations and quotations, pointedly noted that respondents' attorneys, 'who are officers of the court,' had failed to alert the Court to the fabrications. (Thereby signaling an expectation applicable to all officers of the court).

Similarly, in *Dec v. Mullin*, 171 F.4th 940 (7th Cir. 2026), the Seventh Circuit also noted that opposing counsel failed to catch the hallucinations errors and bring it to the court's attention.

In *Deutsche Bank Natl. Trust Co. v. LeTennier*, 251 A.D.3d 97, 250 N.Y.S.3d 260 (3d Dep't, 2026), the first New York appellate decision to address sanctions for the misuse of generative AI, the Third Department imposed a $5,000 sanction on defense counsel for appellate briefs that cited fabricated decisions, noting that counsel continued to rely on fictitious authorities even after the problem was raised.

<u>AI ≠ Human Metacognition</u>

Human Metacognition[49] cannot be replicated by AI for LLMs are tools that "emulate the communicative function of language, not the separate and distinct cognitive process of thinking and reasoning."[50]

While the speed at which AI/GenAI produces results may be beneficial, this however may also contribute to risks such as unpredictability and the proliferation of inaccuracies, as illustrated in the case of *Jarrus v. Governor of Michigan,* No. 25-cv-11168, 2025 U.S. Dist. LEXIS 234830 (E.D. Mich. Dec. 2, 2025).

In *Jarrus*, the court noted that it was of no help that plaintiffs, and particularly Michael Jarrus, did not "fabricate cases or cite nonexistent decisions." *Jarrus* at *5.

Instead, the court stated that "when a case cite is 'real,' an attorney, or for that matter, a judge, might see a case they recognize and assume the quote or holding has been accurately represented," *Jarrus* at *5, quoting *Seither & Cherry Quad Cities, Inc. v. Oakland Automation, LLC,* No. 23-11310; No. 23-11342, 2025 U.S. Dist. LEXIS 143941, at *1 (E.D. Mich. July 28, 2025).

"Although ChatGPT generated 'holdings' that looked like they could plausibly have appeared in the cited cases, in fact it overstated their holdings to a significant degree." *Jarrus* at 5.

"And while a [human] litigant might get away with similar overstatements because they could, perhaps, reason their way to showing how a case's stated holding might extend to novel situations, an LLM *does not reason* in the way a [human] litigant must." *Id.*

"To put it in a slightly different way, LLMs do not perform the metacognitive processes that are necessary to comply with Rule 11." *Id.* at *5 -*6.

"When an LLM overstates a holding of a case, it is not because it made a mistake when logically working through how that case might represent a "nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law;" it is just piecing together a plausible looking sentence - one whose content may or may not be true." *Id*. at *6.

Practical Application: Chatbots do not conduct a "reasonable inquiry" into existing law or the evidentiary support for factual contentions. A large language model is a "word guesser" – it is "trying to predict what the next words would be if that sentence appeared on the internet.[51] It has "no way of 'knowing' whether that sentence it created about the case's holding was in fact true or false." *Id*.[52]

"Attorneys should understand that chatbots, including legal 'AI' chatbots, are large-language models, not a true 'artificial intelligence' out of the pages of science fiction. They are not designed to answer questions factually."[53]

"They are designed to mimic patterns of words, probabilistically. When they are 'right,' it is because correct things are often written down in the dataset they were trained on, not because they can independently fact-check themselves in the same way a human would."

So when an LLM "explains" the holding of a case, it does so because it predictively strings together a group of words that, when read by a lawyer, happens to represent something that is either true or false about that case. But on the back end, all the model was meant to do was make a sentence that "looks" correct, which it did. **[54]**

<u>AI as Scribe/Notetaker</u>

NYC Formal Opinion 2025-6. Risk of Revealing Confidential Information when AI is used to Record, Transcribe, and Summarize Conversations with Clients.

"The use of AI tools to record, transcribe, and summarize conversations between attorneys and clients implicates important ethical considerations. As a threshold matter, both ethical and legal concerns require lawyers to notify clients in advance that their conversations will be recorded to create AI-generated summaries."

"As part of their duty of competence under Rule 1.1, attorneys have a duty to acquire a facility with new legal technologies. This includes being conversant with the AI tools they use or are being asked to use by clients. For AI tools used by attorneys or their clients, attorneys need to acquire an understanding of the following issues, among others:

- What steps will be taken to ensure that the attorney, other firm employees, and the client understand at a non-technical level how the AI Tool works?

- What are the terms of service with the provider of the AI Tool that will be used?

- For videoconferencing platforms that have a default AI recording feature, how can this feature be disabled, if desired, and what can be done in case a conversation is inadvertently recorded (e.g. deleting the conversation with client permission)?

- In addition, and consistent with the principles set out in New York City Bar Ass'n Prof'l. Ethics Comm., Formal Op. 2024-5, note 1, *supra,* attorneys need to acquire an understanding of the security features provided by the AI Tool – and their limitations – in order to address the concerns about confidentiality and privilege discussed above.")

Law School Honor Code Violations & AI

According to The University of California at Berkeley School of Law's Generative AI Rule for Exams and Assessments Policy, GAI "Never may be employed for a use that would constitute plagiarism if the generative AI source were a human or organizational author." [55]

The purpose of the UC Berkeley, Artificial Intelligence Policy, effective June 2026, is stated as follows:

> Future lawyers may need to use artificial intelligence ("AI") fluently. But the current state of the technology requires that AI use be coupled with the cognitive skills necessary to strategically deploy the technology, to critically assess its work product, and to uphold ethical obligations to clients and to the legal system. In short, thinking remains the sine qua non of good lawyering (and of a quality legal education). This policy seeks to ensure that our courses focus on requisite cognitive skills by default. It provides students with the opportunity to develop the skills they need to conceptualize, outline, draft, revise, and edit their work by forbidding the use of AI for these purposes in connection with work submitted for credit. It also forbids using AI to translate work for credit, thus providing students with the opportunity to develop and exercise their own fluency with legal English.[56]

8.1.8 Exercising Caution and Due Care

Terms of Service, Privacy Policies, and Disclaimers

Meeting the duty of competence might require the attorney to read the terms of service, privacy policies, and disclaimers.

"Terms of Use can change frequently and a lawyer's obligation to understand the system's use of inputs is continuing. Accordingly, lawyers should periodically

monitor Terms of Use or other information to learn about any changes that might compromise confidential information." New York City Bar Ass'n Prof'l Ethics Comm. Formal Op. 2024-5.

AI ≠ Substitution for Attorneys' Judgment

"Current [generative artificial intelligence ("GAI")] for a general audience is not a reliable substitute for traditional fact and cite-checking, and lawyers who blindly rely on outputs produced by GAI do so at considerable peril." D.C. Bar Legal Ethics Comm. Ethics Op. 388.

No Abdication of the Gatekeeping Role Before Tribunals

Although courts have recognized that there is nothing inherently improper about using a reliable artificial intelligence tool for assistance, attorneys may not abdicate their "gatekeep[ing] role" in "ensur[ing] the accuracy of their filings," for instance. *Mata v. Avianca*, 678 F. Supp. 3d 443 (S.D.N.Y. June 22, 2023) (referring to Respondent's "submission of fake cases as an unprecedented circumstance" at that time).

No Abdication of an Attorney's Independent Judgment

In cases regarding expert witnesses, courts have noted that "Experts can use 'AI for research purposes' given its 'potential to revolutionize legal practice for the better.' *Daubert* issues arise only 'when attorneys and experts abdicate their independent judgment and critical thinking skills in favor of ready-made AI-generated answers.'" *Ferlito v. Harbor Freight Tools USA, Inc.,* No. 20-5615 , 2025 WL 1181699 (E.D.N.Y. Apr. 23, 2025) (quoting *Kohls*, 2025 WL 66514, at *4).

8.1.9 Ability to Learn

Fortunately, attorneys may work with others to assist them in meeting their duty of competence. New York City Bar Association Professional Ethics Committee Formal Opinion 2024-5 ("A lawyer or law firm should 'consult with IT professionals or cybersecurity experts to the extent necessary for the lawyer or law firm to ensure that any Generative AI system in which a lawyer would input confidential client information adheres to stringent security, confidentiality, and data retention protocols.'" (quoting State Bar of Cal., Standing Comm. on Prof. Resp. & Conduct, Practical Guidance for the Use of Generative Artificial Intelligence in the Practice of Law (Nov. 16, 2023); see also ABA Formal Op. 512 (July 29, 2024), at 3 ("Although there is no single right way to keep up with GAI developments, lawyers should consider reading about GAI tools targeted at the legal profession, attending relevant continuing legal education programs, and, as noted above, consulting others who are proficient in GAI technology")).

8.2 Scope of Representation and Client Authority

8.2.1 Guideline No. 2A; NYRPC 1.1, 1.2 and 1.4: Scope of Representation and Client Authority

Commentary:

Rule 1.2(a) provides: "Subject to the provisions herein, a lawyer shall abide by a client's decisions concerning the objectives of representation and, as required by Rule 1.4, shall consult with the client as to the means by which they are to be pursued. 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."

A lawyer may use AI Tools to assist in advising a client on these questions, but the allocation of authority the rule establishes is unaffected by the use of such tools. The decisions identified in Rule 1.2(a) belong to the client, and the advice on which the client relies remains the lawyer's own.

8.2.2 Annotated Bibliography

8.2.2.1 Generative AI Practical Guidance – State Bar of California

Summary: Practical guidance discussing generative AI use in law practice. Stresses disclosure of AI use, careful review of inputs/outputs, and ensuring that lawyers—not AI—retain professional judgment.

Link: https://www.calbar.ca.gov/Portals/0/documents/ethics/Generative-AI-Practical-Guidance.pdf

8.2.2.2 Legal Ethics Concerns When Using Generative Artificial Intelligence (ACC)

Summary: Surveys ethical issues of AI (accuracy, disclosure, confidentiality, candor). Raises questions of when disclosure is required to clients and courts.

Link: https://www.acc.com/sites/default/files/2025-06/6.4.25-AI-Ethics.pdf

8.2.2.3 Legal Ethics and Artificial Intelligence

Summary: Covers risks in using AI in litigation filings, including court rules requiring disclosure of AI use and risks of fabricated citations.

Link: https://www.deb.uscourts.gov/sites/deb/files/news/LEGAL%20ETHICS%20AND%20ARTIFICAIL%20INTELLIGENCE%20%28002%29.pdf

8.2.2.4 Large Language Models as Fiduciaries (John J. Nay, 2023)

Summary: Explores framing LLMs as quasi-fiduciary agents and aligning AI with legal standards through prompts. Supports building boundaries so AI does not usurp client authority.

Link: https://arxiv.org/abs/2301.10095

8.2.2.5 AI Ethics: An Empirical Study on the Views of Practitioners and Lawmakers[57]

Summary: Global survey of practitioners and policymakers about AI ethics principles (transparency, accountability, governance). Transparency is emphasized, aligning with Rule 1.2's requirements.

Link: https://arxiv.org/abs/2207.01493

8.2.3 Court Orders Regarding Attorney's Use of AI

8.2.3.1 Specific requirements

Judge Brantley Starr, Northern District of Texas: regarding Mandatory Certification Regarding Generative Artificial Intelligence.

"All attorneys and pro se litigants *** must, 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 data bases, by a human being. ***."

8.2.3.2 Standing Order for Civil Cases

Before Magistrate Judge Fuentes, Northern District of Illinois:

"Any party using any generative AI tool in the preparation or drafting of documents for filing with the Court must disclose in the filing that AI was used and the specific AI tool that was used to conduct legal research and/or to draft the document. Further, Rule 11 of the Federal Rules of Civil Procedure continues to apply, and the Court will continue to construe all filings as a certification, by the person signing the filed document and after reasonable inquiry, of the matters set forth in the rule, including but not limited to those in Rule 11(b)(2). Parties should not assume that mere reliance on an AI tool will be presumed to constitute reasonable inquiry ***."

8.2.3.3 Standing Order in Cases Assigned to Judge Baylson, Eastern District of Pennsylvania:

"If any attorney for a party, or a pro se party, has used Artificial Intelligence ('AI') in the preparation of any complaint, answer, motion, brief, or other paper,

filed with the Court, and assigned to Judge Michael M. Baylson, **MUST**, in a clear and plain factual statement, disclose that AI has been used in any way in the preparation of the filing, and **CERTIFY**, that each and every citation to the law or the record in the paper, has been verified as accurate." (emphasis in original).

8.2.4 Other Cases

8.2.4.1 *Belenzon v. Paws Up Ranch, LLC***,** CV 23-69-M-DWM (D. Mont. June 22, 2023).

Motion to admit granted "on the condition that pro hac counsel shall do his or her own work. This means that pro hac counsel must do his or her own writing; sign his or her own pleadings, motions, and briefs; and appear and participate personally. Use of artificial intelligence drafting programs, such as ChatGPT, is prohibited."

8.2.4.2 *Gouveia v. Meridian Fin. Investments, LLC*, No. 4D2025-0843 (Fla. 4th DCA Mar. 25, 2026)[58]

In his concurring opinion in this case, Judge Lott "highlight[s] the need for prophylactic, rather than remedial, solutions to the problem of improper use by pro se litigants of AI chatbots."

Judge Lott further notes in his concurrence that "Pro se litigants … are usually not repeat players in the court system. They have little experience or knowledge on how to litigate cases and how to, or not to, use tools like generative AI in that litigation."

The judge identifies three reasons why this creates problems for the courts.

- First, remedial sanctions or warnings, like the one the Court rightly imposes on Appellant today, do nothing to prevent the problem of the continued use of AI by new pro se litigants who never received such warnings.
- Second, there is a seemingly endless deluge of AI-generated drivel submitted by pro se litigants who have never received such warnings…. Most commonly, the recalcitrant litigant simply loses without court comment on the AI problem, which is often the most economical way for a court to dispose of a given dispute. Any judge on any bench right now understands the pervasiveness of the problem.
- Third, the AI-generated slop that pro se litigants serve up is a unique sort of gruel. Unlike real lawyers, AI Chatbots, at least in their current form, do not "think." They make predictions about what words ought to come next in response to a prompt that the user provides it.[59]

"This is a much more difficult task than warning or sanctioning litigants on the back end. I have not seen a perfect solution. Some courts have implemented rules

or standing orders requiring all litigants, attorney and self-represented alike, to disclose the use of AI and certify its accuracy."

"This is probably the right starting point, and I would support adoption of such a requirement for this Court."

"Chatbots are going to get better, and that's going to make these problems worse. The question now must be how to address them on the front end." [60]

The Federal Judicial Center explains how Judges will play several roles in regard to AI in the courtroom.[61]

Judges:

- will serve as evidentiary gatekeepers, applying the Federal Rules of Evidence (or state equivalents) to proffers of testimonial and documentary evidence, including and perhaps especially Rules 401, 402, and 403.
- will serve as guardians of the law, specifically values embedded in the Bill of Rights as well as statutes and rules of procedure and evidence.
- may serve as potential AI consumers who need to decide whether to receive or rely on AI-generated outputs to inform bail, probation, and sentencing decisions.
- will serve as communicators, translating the sometimes-complex inputs behind AI into plain-language instructions for jurors and case law precedent for lawyers.[62]

See also, The Judicial AI Consortium (JAIC),[63] a judges-only space focused on education, real-world guardrails, shared learning, and institutional integrity, co-founded by Judge Maritza Braswell, United States Magistrate Judge for the District of Colorado; Judge Scott Schlegel. Louisiana Fifth Circuit Court of Appeal; and Judge Xavier Rodriquez, United States District Court Judge for the Western District of Texas.

8.2.5 Key Resources

8.2.5.1 State Bar of California – Generative AI Practical Guidance (2024)

8.2.5.2 ACC – Legal Ethics Concerns When Using Generative Artificial Intelligence (2025)

8.2.5.3 US Courts – Legal Ethics and Artificial Intelligence guidance

8.2.5.4 John J. Nay – Large Language Models as Fiduciaries (2023)

This document compiles research articles, practical guidance, and ethical commentary on Rule 1.2 (Scope of Representation & Allocation of Authority Between Client & Lawyer) and its implications when lawyers use Artificial

Intelligence (AI) tools. It includes annotated summaries of key sources, direct links (with PDFs where available), and distilled themes relevant to professional responsibility.

8.2.5.5 AI Ethics: An Empirical Study on the Views of Practitioners and Lawmakers

8.2.5.6 Ohio Ethics Guide Artificial Intelligence for Lawyers and Judicial Officers (2026)

8.2.6 Thematic Connections & Implications for Rule 1.2

Disclosure & Informed Client Consent

Disclosure is essential when AI influences substantive advice, strategy, or evaluation of options. Clients should understand how AI is used, its limitations, and potential risks.

8.2.7 Human Oversight & Professional Judgment

AI cannot replace a lawyer's independent judgment. Lawyers must review, correct, and contextualize AI outputs before relying on them.

8.2.8 Alignment with Client Objectives & Consultation

Rule 1.2 distinguishes client objectives (decided by the client) from means (guided by the lawyer). AI suggestions must be discussed with the client, and client authorization for AI use should be explicit and reversible.

8.2.9 Risk Management & Confidentiality

Before inputting client data into AI Tools, lawyers must evaluate confidentiality, security, and privacy risks. Client consent may be necessary, especially with third-party systems.

8.2.10 Court Disclosure.

Disclosure of AI use to a court is addressed in Guideline 8A.

8.3 Diligence; Recording, Transcription, and Summarization

8.3.1 Guideline Nos. 3A & 3B; NYRPC 1.3, 1.4, 1.6, 4.1, and 8.4(c): Diligence and Verification of AI-Assisted Work; Recording, Transcription, and Summarization

Commentary:

Rule 1.3 states "A lawyer shall act with reasonable diligence and promptness in representing a client." And the lawyer should "pursue a matter on behalf of a client despite opposition, obstruction or personal inconvenience to the lawyer, and take whatever lawful and ethical measures are required to vindicate a client's cause or endeavor". In the case of

AI, carefully vetted AI Tools can enhance the lawyer's productivity and diligence, including helping with legal research, drafting and summarizing documents, and tracking important deadlines.

Rule 1.3: "A lawyer shall not neglect a legal matter entrusted to the lawyer." And a lawyer's workload must be controlled so that each matter can be handled competently. The use of carefully vetted AI Tools can enhance the lawyer's productivity allowing the lawyer to manage their workload better.

Rule 1.3 states: "A lawyer shall not intentionally fail to carry out a contract of employment entered into with a client for professional services, but the lawyer may withdraw as permitted under these Rules." A client's interests often can be adversely affected by the passage of time, including missing deadlines or overlooking the statute of limitation. Carefully vetted AI Tools, including calendaring, reminders and deadline tracking may prevent the neglect of important matters by helping the lawyer track important milestones and respond promptly. And a solo practitioner may use AI Tools to help prepare a plan, in conformity with applicable rules, that designates another competent lawyer to take over in the event of the lawyer's death or disability.

8.3.2 Enhancing Diligence and Promptness

AI Tools can support lawyers in meeting their duty to act diligently by helping with:

- Legal research (faster access to cases/statutes).
- Productivity (drafting, summarizing, issue-spotting).
- Administrative efficiency (calendaring, reminders, deadline tracking).

8.3.3 Vetting AI Tools Before Use

8.3.3.1 Evaluation & Vetting

Lawyers must carefully evaluate and vet AI Tools for reliability, accuracy, and security.

8.3.3.2 No Blind Reliance

Blind reliance on unverified outputs could lead to negligence, undermining diligence instead of enhancing it.

8.3.4 Disclosure to Clients

8.3.4.1 Informed Clients

Guideline 4A governs when disclosure to the client is required. Routine administrative uses, such as scheduling, ordinarily do not require it.

8.3.4.2 Transparency

Transparency ensures clients know how their case is being handled and builds trust.

8.3.5 Review & Verification of AI Outputs

8.3.5.1 Diligence

Competence and diligence requires lawyers to carefully review AI-generated results (research, summaries, action items) before relying on them (see Guideline 3A).

8.3.5.2 Double-Check

Failing to double-check could result in errors, missed deadlines, or incorrect advice.

8.3.6 Permission for Client Recordings

8.3.6.1 Client Recordings

Before using an AI Tool to record a client conversation, a lawyer should obtain the client's consent. NYC Bar Formal Op. 2025-6.

8.3.6.2 Local Recording Laws

Lawyers must ensure compliance with confidentiality obligations (Rule 1.6) and local consent-to-recording laws.

8.3.7 Risk of Over-Reliance

8.3.7.1 Over Reliance Risks

While AI can improve efficiency, a lawyer who over-delegates key diligence functions to AI without oversight risks ethical violations for lack of competence and responsibility.

8.3.8 Thematic Connections & Implications for Rule 1.3

8.3.8.1 Review & Validation of AI Output

Lawyers must carefully examine AI outputs before using them in client work. AI is a tool, not the decision-maker.

8.3.8.2 Avoiding Overreliance/Delegation

Core decision-making cannot be outsourced to AI. Even routine AI tasks need supervision.

8.3.8.3 Timeliness & Efficiency

AI can help meet deadlines and avoid delays.

8.3.8.4 Understanding Limitations & Risks

Lawyers should know the weaknesses of the AI Tools they use (hallucinations, bias), and when not to rely on them.

8.3.8.5 Confidentiality & Data Security

Before inputting client data, assess vendor safeguards and ensure compliance with confidentiality duties.

8.3.8.6 Supervision & Delegation to Nonlawyers / Tools

Lawyers must supervise staff and AI use in client matters to ensure ethical compliance.

8.3.8.7 Disclosure & Communication

Informing clients of AI use, especially when it affects substantive advice, promotes trust and transparency.

8.4 Communication

8.4.1 Guideline No. 4A; NYRPC 1.2, 1.4 and 1.6: Communication, Disclosure, and Consent

Commentary:

These Guidelines do not require a lawyer to disclose every use of an AI Tool. An AI Tool that identifies an issue for the client's decision, or assists in drafting the lawyer's explanation of risks, does not by itself trigger paragraph (a)(ii). The lawyer's own advice remains the basis for the client's decision. Routine uses that are not reasonably likely to affect the representation or the client's decision-making, such as ordinary word processing, calendaring, timekeeping, or spell and grammar-checking functions that incorporate AI, do not require disclosure.[64] Separate disclosure obligations may arise under a client's own instructions or engagement terms, under a court rule or individual part rule, or under an applicable protective order.

8.5 Fees and Expenses

8.5.1 Guideline No. 5A; NYRPC 1.5: Fees and Expenses

Commentary:

[1] Paragraph (a) requires that lawyers charge fees that are reasonable under the circumstances. The factors specified in (1) through (8) are not exclusive. Nor will each factor be relevant in each instance. Paragraph (a) also requires that expenses for which the client will be charged must be reasonable. A lawyer may seek reimbursement for the cost of services performed in-house, such as copying, or for other expenses incurred in-house, such as telephone charges, either by charging a

reasonable amount to which the client has agreed in advance or by charging an amount that reasonably reflects the cost incurred by the lawyer.

Analysis – Comparison of Other State Bar Associations:

Approximately 20 bar associations in the U.S. provided either a guidance or formal opinions on the use of AI in relation to fees determination or billing to clients and more specifically with reference to application of Rule 1.5.

8.5.2 State Bar Associations with Formal Ethics Opinions on Rule 1.5 (Fees) Regarding AI Use

8.5.2.1 American Bar Association. Formal Opinion 512: Generative Artificial Intelligence Tools[65]

Status: Issued July 29, 2024

Key Points:

Addresses Model Rule 1.5 on reasonable fees. Lawyers may charge for time spent using AI Tools (inputting information, reviewing output). Lawyers generally cannot charge clients for time spent learning how to use AI Tools. It may be unreasonable to charge the same flat fee when using AI as when not using it. All eight factors in Rule 1.5(a) apply equally when evaluating reasonableness of charges for AI Tools in flat or contingent fee arrangements.

Approach: Comprehensive analysis; suggests flat fees may need adjustment when AI is used

8.5.2.2 New York City Bar Association. Formal Opinion 2024-5: Ethical Obligations of Lawyers and Law Firms Relating to the Use of Generative Artificial Intelligence in the Practice of Law [66]

Status: Issued August 2024

Key Points:

Addresses limitations on what lawyers may charge for fees and costs under Rule 1.5. NYC attorneys may charge for actual time spent using AI (crafting prompts, reviewing outputs). New York lawyers must not charge hourly fees for time saved through AI use. AI-related costs should be disclosed in advance to clients as required by Rule 1.5(b). Alternative fee arrangements might better reflect AI efficiency than traditional hourly billing.

Approach: Follows California guidance format; emphasizes transparency and actual time billing.

8.5.2.3 Virginia. Legal Ethics Opinion 1901: Reasonable Fees and the Use of Generative Artificial Intelligence[67]

Status: Approved by the VSB Council on June 12, 2025 (vote: 61–1); approved by the Supreme Court of Virginia on November 24, 2025, effective immediately.

Key Points:

The Rules of Professional Conduct apply regardless of the technology used, and attorneys remain accountable for the accuracy and integrity of their professional work.

Time spent on a task is not the determinative factor in analyzing fee reasonableness under Rule 1.5; hourly fees must reflect actual time spent, but efficiency gains from AI do not, standing alone, require a reduction of non-hourly fees. The skill required to perform legal services properly may actually increase with AI use, as effective deployment requires specialized knowledge to prompt, verify, supplement, and integrate AI outputs into competent work product.

Supports value-based and other non-hourly billing structures that recognize the lawyer's judgment in deciding when and how to use AI Tools and the expertise needed to critically evaluate AI-generated content.

Under Rule 1.5(b), lawyers must adequately explain the basis of their fees, including why the lawyer's experience or technical skill contributes to the value of the services even when AI reduces the time expended.

Although prompted by generative AI, the opinion's analysis applies to value-based billing and other non-hourly fee arrangements generally.

Distinction: The first jurisdiction whose highest court has expressly held that lawyers are not ethically required to reduce fees solely because AI reduced the time spent. Directly departs from ABA Formal Opinion 512's suggestion that it may be unreasonable to charge the same flat fee when using a GAI tool as when not using it, and from stricter actual-time approaches such as North Carolina 2024 FEO 1.

8.5.2.4 North Carolina. 2024 Formal Ethics Opinion 1: Use of Artificial Intelligence in a Law Practice[68]

Status: Issued November 1, 2024

Key Points:

Lawyers may not bill clients for three hours of work when only one hour was actually experienced due to AI. Cannot inaccurately bill based on 'time-value represented' by end product if AI was used. Billing practices must be accurate, honest, and not clearly excessive (Rules 7.1, 8.4(c), and 1.5(a)). Flat fees are

permitted for AI-assisted work, provided the flat fee is not clearly excessive and client consents. May bill for AI-related expenses if specifically identified and client consents, preferably in writing.

Approach: Strict adherence to actual time spent when billing hourly

8.5.2.5 Florida. Advisory Opinion 24-1: Regarding Lawyers' Use of Generative Artificial Intelligence[69]

Status: Approved unanimously by Florida Bar Board of Governors on January 19, 2024

Key Points:

Addresses Rule 4-1.5 on fees and expenses. AI efficiency gains must not result in falsely inflated billable hours. Lawyers may not engage in billing practices that duplicate charges. Lawyers should consider contingent fee or flat billing arrangements so AI efficiency benefits accrue to both lawyer and client. May charge actual costs of using AI if disclosed to client, preferably in writing. Lawyers cannot charge clients for time spent learning how to use AI Tools.

Approach: Transparency required; encourages alternative fee structures

8.5.2.6 Kentucky. Ethics Opinion KBA E-457: The Ethical Use of Artificial Intelligence in the Practice of Law[70]

Status: Issued March 15, 2024

Key Points:

Lawyers must consider reducing fees when AI reduces time and effort on a matter. May charge clients for AI-related expenses if client agrees in advance and agreement is confirmed in writing. Cannot charge clients for cost of AI training or keeping abreast of AI developments.

Approach: Balances fee reductions with ability to charge for AI Tool costs

8.5.2.7 District of Columbia: Ethics Opinion 388

Attorneys' Use of Generative Artificial Intelligence in Client Matters[71]

Status: Issued April 2024

Key Points:

Lawyers must bill only for time actually spent, even if AI reduces work hours. Provides comparison to billing for reused work product: cannot charge second client same as first client for adapted work. May pass through direct costs of AI Tools as expenses if fee agreement allows.

Approach: Clear guidance that time saved benefits client, not lawyer in hourly billing

These jurisdictions have issued formal ethics opinions that represent a wide spectrum of approaches:

- ABA and NYC Bar offer comprehensive frameworks applicable across jurisdictions
- Virginia takes the most progressive stance, supporting value-based billing and rejecting automatic fee reductions
- North Carolina and DC take stricter approaches requiring hourly billing to reflect actual time spent
- Florida and Kentucky provide middle-ground guidance with emphasis on transparency

8.5.3 State Bar Associations with Guidance or Recommendations on Rule 1.5 (Fees) Regarding AI Use

8.5.3.1 NYSBA 2024 Report and Recommendations of the Task Force on Artificial Intelligence

Our NYSBA guidance, as a result of the April 2024 Report and Recommendations first issue, centers on two major components: if an AI Tool renders the work substantially more efficient, a reasonableness determination of the fees comes into play. Second, a reasonable surcharge for specific AI Tool usage must be disclosed to the client in advance and in writing.

Status: Published April 2024; Adopted by House of Delegates on April 6, 2024

Type: Comprehensive task force report with recommendations

Key Guidance on Rule 1.5:

AI-driven efficiency gains should be taken into account when determining what constitutes a ‘reasonable’ fee. If adding a ‘surcharge’ (amount above actual cost) when using AI Tools, must clearly state such charges in engagement letter. Total charges must remain reasonable even with AI surcharges.

The 2024 NYSBA Task Force report suggested that efficiency gains attributable to AI may bear on the reasonableness of a fee under Rule 1.5(a)(1). These Guidelines take no position on whether a lawyer’s decision not to use a particular AI Tool bears on the reasonableness of a fee. Rule 1.1 requires competence, not the adoption of any particular technology, and the Rules do not require a lawyer to purchase or deploy a specific category of tool.

8.5.3.2 California State Bar Practical Guidance for the Use of Generative Artificial Intelligence in the Practice of Law ("California Guidance")[72]

Status: Published November 16, 2023 by Standing Committee on Professional Responsibility and Conduct

Type: Practical guidance document (non-binding)

Key Guidance on Rule 1.5:

Addresses Rules 1.5 and Business & Professions Code sections 6147-6148 prohibiting unconscionable or illegal fees. Lawyers cannot charge hourly fees for time saved by using generative AI. May charge for costs associated with generative AI through fee agreement that explains the basis for all fees and costs. Time saved from AI use should benefit the client monetarily rather than the lawyer. Suggests developing alternative fee arrangements related to value of work rather than time spent.

Approach: Clear redistributive stance that AI time savings should benefit clients; emphasizes transparency

8.5.3.3 Illinois State Bar Association Artificial Intelligence Committee Report and Recommendations[73]

Status: Committee report and recommendations (ongoing); Illinois Supreme Court adopted AI policy for courts

Type: Committee recommendations and guidance

Key Guidance on Rule 1.5:

Addresses IRPC Rule 1.5(a) factors for evaluating reasonableness of fees when using AI. Discusses the 'AI efficiency paradox': as AI automates tasks, time-based billing becomes less justifiable. Provides detailed suggestions for addressing impact of AI on attorney fees. Recommends transitioning away from billable hour as dominant business model.

Approach: Forward-thinking; addresses fundamental billing model changes needed for AI era

8.5.3.4 Pennsylvania and Philadelphia Bar Associations: Joint Formal Opinion 2024-200: Ethical Issues Regarding the Use of Artificial Intelligence[74]

Status: Joint opinion issued 2024

Type: Joint formal opinion (listed here as it provides guidance rather than binding rules)

Key Guidance on Rule 1.5:

Lawyers shouldn't overcharge when AI boosts efficiency. If AI saves time, lawyer should not bill as if work was done manually. May bill for actual time spent or consider value-based fees. Padding hours when AI is used violates rule on reasonable fees.

Approach: Lawyers remain fully accountable; emphasizes honest billing practices

8.5.3.5 Missouri Bar. Informal Opinion Number 2024-11: Lawyer's Use of Generative Artificial Intelligence[75]

Status: Issued 2024 by Advisory Committee of the Supreme Court of Missouri

Type: Informal opinion with basic guidance

Key Guidance on Rule 1.5:

Addresses fees and costs in relation to AI use. Provides basic guidance consistent with ethical rules.

Approach: Brief, general guidance on fees and costs

8.5.3.6 Arizona Steering Committee on Artificial Intelligence and the Courts: Ethical Best Practices[76]

Status: Established by Arizona Supreme Court; released ethical best practices

Type: Best practices guidance

Key Guidance on Rule 1.5:

Lawyers who use hourly billing cannot bill clients for time saved by using AI

Approach: Clear guidance on hourly billing with AI; part of comprehensive best practices

8.5.3.7 Michigan State Bar. Artificial Intelligence for Attorneys: Frequently Asked Questions[77]

Status: Published guidance document

Type: FAQ guidance for attorneys and judges

Key Guidance:

Reminds attorneys to align AI use with court rules and ethical duties, including fee-related obligations

Approach: Practical FAQ format for attorneys and judiciary

8.5.3.8 Minnesota State Bar: Working Group on AI Report & Recommendations[78]

Status: Working group report with recommendations

Type: Working group recommendations

Approach: Comprehensive study of AI issues including ethical implications for billing

8.5.3.9 Mississippi Bar: Ethics Opinion No. 267 [79]

Status: Ethics opinion addressing AI

Type: Ethics opinion

Approach: General ethical guidance on AI use in practice

8.5.3.10 New Jersey Supreme Court: Preliminary Guidelines on the Use of Artificial Intelligence by New Jersey Lawyers [80]

Status: Published January 24, 2024

Type: Preliminary guidelines

Approach: Preliminary guidance covering multiple ethical areas including fees

8.5.3.11 Additional Jurisdictions Exploring AI and Fees

The following jurisdictions have formed task forces, committees, or working groups to study AI ethics issues, including fee-related concerns:

- Arkansas: Artificial Intelligence Task Force formed
- Colorado: Exploring recommendations
- Connecticut: Generative AI Committee and Judicial Branch Committee on AI in Connecticut Legal System
- Delaware: Delaware Commission on Law and Technology expanded mission to address lawyer competency with AI
- Georgia: State Bar Committee exploring AI issues
- Hawaii: State Bar examining AI issues; report expected
- Nevada: Advisory group formed
- Tennessee: Task force exploring recommendations
- Texas: Texas Bar Taskforce (TRAIL) issued Interim Report on Responsible AI in the Law

- Utah: Guidance on 'Using ChatGPT in Our Practices: Ethical Considerations'
- Washington: Legal technology task force formed

These jurisdictions have provided guidance, recommendations, or are actively exploring issues related to Rule 1.5 and AI use through:

- Task Force Reports: Comprehensive studies with recommendations (New York, Illinois, Minnesota, Texas)
- Practical Guidance: Non-binding guidance documents (California, Michigan, Arizona)
- Preliminary Guidelines: Early-stage guidance subject to refinement (New Jersey)
- Active Exploration: Committees and task forces studying issues (12+ states)

Even if these jurisdictions have not issued formal ethics opinions, their guidance documents and recommendations provide insights into ethical considerations for billing practices when using AI Tools. Many emphasize that time saved through AI should benefit clients, transparency is essential, and alternative fee arrangements may better reflect AI-assisted work than traditional hourly billing.

8.6 Attorney Confidentiality

8.6.1 Guideline No. 6A; NYRPC 1.6, 1.9(c), 1.18: Confidentiality and Data Governance

Commentary:

Rule 1.6(a) states: "A lawyer shall not knowingly reveal confidential information . . . unless: (1) the client gives informed consent."

Further, a lawyer "shall make reasonable efforts to prevent the inadvertent or unauthorized disclosure or use of, or unauthorized access to," such information. Rule 1.6(c).

<u>Risk of Revealing Confidential Information When AI Is Used to Record, Transcribe, and Summarize Conversations with Clients</u>

NYC Bar Association Formal Opinion 2025-6 ("With respect to the duty of competence, attorneys should independently review any recording, transcript, or summary of the conversation – regardless of who or what has prepared it – to ensure that it accurately reflects the conversation." See also Section 6.1 (Attorney Competence), "AI as Scribe/Notetaker."

NYC Bar Association Formal Opinion 2025-6 ("Attorneys also should consider what privacy and security safeguards are in place in an AI tool to protect the

data, including where data will be stored and for how long, how data might be retrievable through discovery, whether the tool uses such data for training, and whether there is a right to data deletion. Because much of this will be under the control of the AI provider, rather than the firm, attorneys should advise clients of the risks of the loss of confidentiality and privilege, particularly … where clients are using their own AI tools.").

Especially complicated ethical issues arise when it is the *clients* who choose to use their own AI Tools in conversations with their attorneys, a situation that is largely outside the control of the attorneys. This puts attorneys at risk of not being able to carry out their ethical responsibilities. One solution is to craft retainer agreements that seek to preclude clients from using their own AI Tools in conversations with attorneys and provide that any recordings will be done by the attorneys' own AI Tools.

If, however, clients refuse to agree to such terms and insist on using their own or commercially available AI Tools, attorneys should affirmatively disclaim responsibility for unreviewed AI-generated summaries of the conversations and otherwise warn the clients of the potential loss of confidentiality and privilege from using such tools."). The opinion also notes that attorneys may ask that conversations not be recorded, and may provide in retainer agreements that any recording, transcript, or summary prepared by a client's AI Tool will not be deemed binding on the attorney unless promptly provided to the attorney for independent review.

<u>Risk of Revealing Confidential Information and Its Subsequent Use in Training and Other Outputs</u>

8.6.1.1 D.C. Bar Legal Ethics Committee Ethics Opinion 388 ("Many currently available GAI products invite a conversation with their users. Attorney users seek to have GAI generate legal theories to support their client's claims or defenses. They may also share their own legal or factual theories hoping the GAI can provide legal and factual support. The attorney then reacts to the response with follow up inquiries. Through these inputs, the lawyer effectively may be disclosing her mental impressions to the GAI in the hope of getting further support and refining her strategy. Meanwhile, some GAI programs may be saving both the attorney's inputs (or 'prompts') and the GAI's own outputs to make that 'content' available to future users.")

8.6.1.2 D.C. Bar Legal Ethics Committee Ethics Opinion 388 ("Attorneys who would provide client confidences and secrets to a GAI product should ensure that product has implemented adequate security safeguards and controls to ensure confidentiality and protect against unauthorized access and use of client information.")

8.6.1.3 Note that using a hypothetical in discussions with the artificial intelligence tool might not address the concern. *See id.* ("urg[ing]

caution" as "[t]he more information a lawyer provides to a growing GAI dataset, the greater the likelihood that the GAI or one of its other users will be able to connect the dots and link the information the lawyer provided to the client in question" and noting that "GAI is, after all, artificial 'intelligence'").

8.6.1.4 "Even if a system does not use or share inputted information, it may lack 'reasonable or adequate security.'" New York City Bar Association Professional Ethics Committee Formal Opinion 2024-5 (quoting State Bar of Cal., Standing Comm. on Pro. Resp. & Conduct, Practical Guidance for the Use of Generative Artificial Intelligence in the Practice of Law (Nov. 16. 2023)).

New York City Bar Association Professional Ethics Committee Formal Opinion 2024-5 ("But a lawyer must not input any confidential information of the client into any Generative AI system that lacks adequate confidentiality and security protections, regardless of whether the system uses or shares inputted information, unless the client has given informed consent to the lawyer's doing so. Even with closed systems, a lawyer must take care that confidential information is not improperly shared with other persons at or clients of the same law firm, including persons who are prohibited access to the information because of an ethical wall.").

8.6.1.5 Citations to Some Prior Ethics Opinions Regarding Vendors and Diligence

- Virginia State Bar Guidance on Generative Artificial Intelligence.[81]
- D.C. Bar Legal Ethics Committee Ethics Opinion 388 ("One option that some GAI products provide to resolve confidentiality concerns is a zero data retention policy in which the provider of the GAI retains neither the inputs nor the outputs of the GAI's interaction with a particular user. As noted above, business users who pay to use a GAI product may be able to negotiate better terms than are available to users of a 'free' service that the provider makes available for the provider's own marketing and product development purposes.")

8.6.1.6 Other Opinions Regarding the Cloud

New York State Bar Association Committee on Professional Ethics Op. 1020 (Sept. 12, 2014) (a lawyer may use cloud-based storage to store and share client documents, provided the lawyer takes reasonable care to protect the confidentiality and security of the information).

8.6.1.7 Internal Controls and Policies

New York City Bar Association Professional Ethics Committee Formal Opinion 2024-5 ("A law firm may wish to consider implementing policies and control procedures to regulate the use of confidential client information in Generative AI systems if the law firm is going to make use of such systems.").

8.6.2 Preserving and Maintaining Confidentiality When Using AI Tools

Consistent with guidance related to Rule 5.3, the nonlawyer-supervision standards apply by analogy, and the required degree of supervision rises with the likelihood that confidentiality problems may arise. Where a tool's data handling materially affects the representation, the lawyer must give the client information adequate for informed consent under Rules 1.4, 1.2, and 1.0(j).

Protected information may be revealed even where a prompt omits the client's name, if the question, alone or combined with other information, would permit a third party to identify the client or the matter. Cf. ABA Formal Op. 511 (2024). Authorities differ on when client consent is required. ABA Formal Op. 512 advises that informed consent is required before a lawyer inputs information relating to the representation into a self-learning tool, and that general language in an engagement letter is not sufficient. N.Y. City Bar Formal Op. 2024-5 requires informed consent where the system lacks adequate confidentiality and security protections, and cautions that even in a closed system, information must not become available to persons screened from the matter.

8.7 Conflicts of Interest

8.7.1 Guideline No. 7A; NYRPC 1.7, 1.8(a), 1.9, 1.10, 1.11, 1.12 and 1.18: Conflicts of Interest Issues

Commentary:

[1] Loyalty and independent judgment are essential aspects of a lawyer's relationship with a client. The professional judgment of a lawyer should be exercised, within the bounds of the law, solely for the benefit of the client and free of compromising influences and loyalties. Concurrent conflicts of interest, which can impair a lawyer's independent professional judgment, can arise from the lawyer's responsibilities to another client, a former client or a third person, or from the lawyer's own interests. A lawyer should not permit these competing responsibilities or interests to impair the lawyer's ability to exercise independent professional judgment on behalf of each client. For specific Rules regarding certain concurrent conflicts of interest, see Rule 1.8. For former client conflicts of interest, see Rule 1.9. For conflicts of interest involving prospective clients, see Rule 1.18. For definitions of "informed consent," "writing" or "written," and "confirmed in writing," see Rules 1.0(j), (e), and (x), respectively.

Practical Application: If a lawyer's use of an AI Tool results in the lawyer obtaining the confidential information of another client, the lawyer's inability to use that information may materially limit the representation of the lawyer's own client, creating a conflict under Rule 1.7(a)(2). Alternatively, the lawyer's use of that information could make the lawyer materially adverse to the other client.

8.7.2 Analysis – Comparison of Other State Bar Associations.

8.7.2.1 American Bar Association (ABA) Formal Opinion 512 (July 2024)[82]

Opinion 512 does not include a specific discussion of conflicts, though it refers in footnotes to Model Rules 1.7, 1.8(b), and 1.9.

8.7.2.2 New York City Bar Association. Formal Opinion 2024-5 (August 2024)[83]

It briefly addresses conflicts of interest under Rules 1.7, 1.8, 1.9, 1.10, 1.11, and 1.12, specifically noting that where a Generative AI System uses client information, law firms must ensure the system implements any ethical screens required under the Rules.

8.7.2.3 Pennsylvania (with Philadelphia Bar Association) Joint Formal Opinion 2024-200 (May 2024)[84]

This joint formal opinion explicitly addresses Pennsylvania Rules of Professional Conduct 1.7 (Conflict of Interest: Current Clients) and 1.9 (Duties to Former Clients) in the context of AI use.

8.7.2.4 Massachusetts. General Guidelines (2024)[85]

Lawyers should beware of potential conflicts of interest if their firm wants to use an AI Tool that incorporates confidential information from current or former clients.

8.8 Candor to the Court

8.8.1 Guideline No. 8A; NYRPC 3.1, 3.3 and 8.4: Candor, Accuracy, and Court Submissions

Commentary:

[1] Rule 3.3: 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; (2) fail to disclose to the tribunal controlling legal authority known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel; or (3) offer or use evidence that the lawyer knows to be false. If a lawyer, the lawyer's client, or a witness called by the lawyer has offered material evidence and the lawyer comes to know of its falsity, the lawyer shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal. A lawyer may refuse to offer evidence, other than the testimony of a defendant in a criminal matter, that the lawyer reasonably believes is false.

[2] This Rule sets forth the special duties of lawyers as officers of the court to avoid conduct that undermines the integrity of the adjudicative process. A lawyer acting as an advocate in an adjudicative proceeding has an obligation to present the client's

case with persuasive force. Performance of that duty while maintaining confidences of the client, however, is qualified by the advocate's duty of candor to the tribunal. Consequently, although a lawyer in an adversary proceeding is not required to present an impartial exposition of the law or to vouch for the evidence submitted in a cause, the lawyer must not allow the tribunal to be misled by false statements of law or fact or evidence that the lawyer knows to be false.

- Submitting fictitious cases or quotations generated by AI may violate Rule 3.1, which prohibits asserting a position unless there is a basis in law and fact for doing so that is not frivolous, and Rule 3.3(a)(1). It may also constitute misconduct under Rule 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation) and Rule 8.4(d) (conduct prejudicial to the administration of justice).A lawyer who learns that the lawyer's submission contains a fabricated or inaccurate citation or quotation, whether or not generated by AI, must correct it where Rule 3.3(a)(1) so requires. Courts have imposed their most severe sanctions where lawyers, once alerted, failed to acknowledge and correct the error.

- Although a lawyer who inadvertently submits fictitious cases and quotes generated by AI may assert that that was not done "knowingly," it is no longer acceptable to assert that blind acceptance of AI-generated content constitutes, in the words of Comment [5] to Rule 1.1, "[c]ompetent … inquiry into and analysis of the factual and legal elements of the problem, and use of methods and procedures meeting the standards of competent practitioners."

Disclosure of AI use to a court. Under 22 N.Y.C.R.R. 161.3, attorneys are not required to disclose to a New York State court that generative AI was used in preparing a paper. Where a court has adopted the model rule in Appendix A to Part 161, the attorney's signature certifies that the paper has been reviewed and contains no fabricated or fictitious content. Requirements differ in other jurisdictions and in some federal courts, and a lawyer must check the rules of each court in which the lawyer appears. Submitting fabricated authorities risks sanctions under 22 N.Y.C.R.R. 130-1.1 and discipline under Rules 3.3 and 8.4.

8.8.1.1 Work Product Doctrine vs. Duty of Candor to the Court

Applying work product protection to legal communications with an AI provider is a developing area of the law. The specific confidentiality provisions and restrictions on further dissemination that a given AI service provides to the user will be a substantial, perhaps determinative, factor. The proponent of the protection should be prepared to establish those protections, a task often complicated by changes in terms of service. Conversely, an attorney who obtains another party's communications with an AI service, other than through court-ordered production, should hesitate before assuming that those communications will not be accorded any work product protection. And should a court suspect that an attorney has submitted an AI fabrication, the work product doctrine will scarcely be available to shield the attorney from inquiry on the point. *Morgan v.*

V2X, Inc., Civil Action No. 25–cv–01991–SKC–MDB, 2026 U.S. Dist. LEXIS 67939 (2026)

See, United States v. Heppner, No. 25 Cr. 503 slip op., 2026 WL 436479 (S.D.N.Y. Feb. 17, 2026).

In *Heppner*, a criminal matter, U.S. District Judge Rakoff, in the Southern District of New York, granted the government's motion, finding that the AI documents were protected by neither the attorney-client privilege nor the work product doctrine. *Id*.

When applying the three-part test for privilege, namely, the communication must be: (1) between privileged parties, (2) intended to be and actually kept confidential, and (3) made for the purpose of obtaining or providing legal advice, the court held that the Gen AI documents failed to meet the requirements of these tests. *Id*.

When applying these principles the court noted that:

- "[T]he AI Documents were not communications between Heppner and his counsel." "In the absence of an attorney-client relationship, the discussion of legal issues between two non-attorneys is not protected by attorney-client privilege," *Id*. at 5.[86]

- "[C]ommunications memorialized in the AI documents are not confidential" which are not privileged at the time of creation and do not become privileged merely because they are later shared with counsel, *Id.* at 6. Based on the "written privacy policy to which users of Claude consent," it states that "Anthropic collects data on both "users' inputs" and "Claude's outputs." This data could be retained, used for model training, and disclosed to third parties, including government authorities, *Id.* at 6-7. The court then concluded that "Heppner could have had no "reasonable expectation of confidentiality in his communications" with Claude," *Id.* at 7; See also, Footnote 3 of the Opinion.

- "Heppner did not communicate with Claude for the purpose of obtaining legal advice," from an attorney. Also, that "Claude disclaims that it provides legal advice." *Id.* at 7-8.

- Further, the court observed that work product protections have historically been rooted in shielding the mental impressions and legal theories of attorneys. *Id.* at 8-9.

In this case, the court held that a represented criminal defendant who used an AI Tool on his own initiative, without any direction or involvement from their attorney, could not claim work product protection over the resulting materials. *Id.* at 11-12.[87]

These outcomes are fact-dependent. One week before *Heppner*, in *Warner v. Gilbarco, Inc., 820 F. Supp. 3d 629 (E.D. Mich. 2026)* the Eastern District of Michigan reached the opposite result on work product, holding that a self-represented litigant's use of a public AI chatbot did not waive the protection because such programs are tools rather than persons, so the disclosure was not to an adversary or in a manner likely to reach an adversary. The two decisions turn on who used the tool, at whose direction, for what purpose, and under what terms of service. Heppner should not be read as establishing that any use of generative AI forfeits privilege or work-product protection, and the commentary on the decision has criticized language in the opinion that could be read that way. The practical guidance is unchanged: a lawyer should assume that information entered into a consumer AI Tool is neither confidential nor privileged unless the applicable terms and the circumstances of use support a contrary conclusion.

In a civil matter, *Morgan v. V2X*, when granting the Defendant's Motion to Amend the Stipulated Protective Order to add language that specifically addresses the use of modern artificial intelligence tools, U.S. Magistrate Judge Maritza Dominguez Braswell, in the District of Colorado, found that "AI interactions do not automatically compromise work product protections." *Id*. at 10. See Warner, 820 F. Supp. 3d 629 (E.D. Mich. 2026), at *4 (finding that even if pro se plaintiff's AI-generated information is discoverable, it is subject to work product protection and the protections were not waived because ChatGPT and other generative AI programs are tools, not persons, and the disclosure is therefore not to an adversary or in a way likely to get in an adversary's hands.)

"The court noted that in the context of a *pro se* litigant's use of AI to assist with their litigation preparation, the use of AI closely resembles the kind of confidential, strategy-laden iterative work product that Rule 26(b)(3) was designed to protect." *Id*. at 10.[88]

"In other words, given how AI tools function, it is entirely reasonable for a person to expect some privacy and confidentiality when interacting with these tools, even though they understand a third party is behind the tool collecting and storing their information." *Id* at 10.

In any event, work product protections are typically waived by disclosure to an adversary, or in circumstances that substantially increase the likelihood that an adversary will obtain the materials. *United States v. Am. Tel. & Tel. Co*., 642 F.2d 1285, 1297-1301 (D.C. Cir. 1980); *see also Warner*, *820 F. Supp. 3d 629 (E.D. Mich. 2026)*; *In re Qwest Commc'ns Int'l Inc*., 450 F.3d 1179, 1186 (10th Cir. 2006) (citing *Foster v. Hill,* 188 F.3d 1259, 1272 (10th Cir. 1999) for the

proposition that "the work-product doctrine is affected when a disclosure is to an adversary").

…even though AI use technically "discloses" information to a third party, it is highly unlikely the information will fall into the hands of an adversary absent some legal process to compel it. *Id.* at 10."

8.8.1.2 Attorney Court Filings are Verified, Accurate, Truthful

United States Court of Appeals Fifth Judicial Circuit, Court Decision on Proposed Rule notes that:

"The court, having considered the proposed rule, the accompanying comments, and the use of artificial intelligence in the legal practice, has decided not to adopt a special rule regarding the use of artificial intelligence in drafting briefs at this time.

Parties and counsel are reminded of their duties regarding their filings before the court under Federal Rule of Appellate Procedure 6(b)(1)(B) [sic — the reference is understood to be to Fed. R. App. P. 46(b)(1)(B), governing attorney conduct]. Parties 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."[89] (emphasis added)

8.8.2 Attorney's Use of AI Disclosed to the Court

8.8.2.1 Judge Evelyn Padin's General Pretrial and Trial Procedures

"The use of any GAI (*e.g.,* OpenAI's ChatGPT or Google's Bard) in any court filings requires a mandatory disclosure/certification that: (1) identifies the GAI program; (2) identifies the portion of the filing drafted by GAI; and (3) certifies that the GAI work product was diligently reviewed by a human being for accuracy and applicability." [90] See also in this report "Scope of Representation and Allocation of Authority Between Client and Lawyer" for additional examples of court orders/directives (rev. May 13, 2025).

8.8.2.2 Prohibition Against Smart Glasses in Court Facilities

"Effective July 20, 2026, "smart glasses" – i.e., eyewear or headwear containing a camera, microphone, computer or other technology that permit the user to record video or audio – either prescription or non-prescription, are prohibited inside any Unified Court System ("UCS") facility. The reason for this prohibition is to ensure that individuals cannot surreptitiously record court proceedings in violation of the New York State Civil Rights Law and applicable court rules."[91]

8.8.3 NYSBA Guidance: 2024 Task Force Report

NYSBA has not yet issued a formal ethics opinion addressing Rule 3.3 and AI. In the April 2024 AI Task Force Report — adopted by the House of Delegates on April 6, 2024 — NYSBA stated that in using AI Tools, attorneys must verify the accuracy of the information and legal authority produced by such tools and must correct any mistake.

In the 2024 AI Task Force Report, NYSBA stated that in using AI Tools, attorneys must verify the accuracy of the information and legal authority produced by such tools and must correct such mistakes, if any. Attorneys' signatures and attestations on legal documents submitted to court make representations about case law and other authorities, and the attorney's responsibility extends to AI hallucinations and deepfakes.

8.8.4 The AI Hallucination Problem

Generative AI "hallucinates," meaning that it produces false, inaccurate, or unsupported information, including supposed facts, law, or evidence, which may appear completely plausible. In ordinary experience, content and context usually signal that something is wrong. In AI-generated output, there will often be no apparent incoherence or implausibility to suggest that the output is incorrect, which is why some commentators prefer the term "AI fabrication." Hallucinations caused by AI in legal documents have increased materially since April 2024 when NYSBA's first AI report and recommendations were issued. As of September 2026, the leading public tracker, the AI Hallucination Cases database maintained by Damien Charlotin (HEC Paris), has identified more than 2,000 court decisions worldwide, most of them in U.S. courts, in which a court found or clearly implied that a party relied on hallucinated material. In a substantial share of these cases the responsible filer was a practicing lawyer rather than a self-represented litigant, and the pace of new documented cases has accelerated to several per day. Because the database records only fabrications that a court caught and wrote up, these figures represent a floor, not the true incidence.

Benchmarking research confirms that the underlying tools remain fallible. The Stanford HAI study (Magesh et al., *Hallucination-Free? Assessing the Reliability of Leading AI Legal Research Tools*, with testing conducted March–April 2024) found hallucination rates of 58%–82% per legal research prompt for general-purpose chatbots, and, even for purpose-built legal research tools, accuracy of 65% with a 17% hallucination rate for Lexis+ AI, and accuracy of 42% with a hallucination rate exceeding 33% for Westlaw AI-Assisted Research. The vendors have since released substantially updated products falling outside the scope of that study — LexisNexis's second-generation RAG 2.0 platform and, in August 2025, Thomson Reuters' Westlaw Advantage, which includes a hallucination checker designed to flag citations that may not be real. Independent benchmarking is ongoing; the most recent comprehensive effort is the Vals Legal AI Report (February 2025, last updated September 29, 2025). These figures will continue to change rapidly, and the numbers above are stated as of July 2026.

Rule 3.3 and its Comment [2] refer to an attorney presenting false statements of law or facts or evidence. Notwithstanding the pervasive use of AI, Rule 3.3 and its comment do not provide a definition of AI hallucination.

An AI hallucination definition (e.g. in commentaries) may give regulators and ethics bodies a better approach in offering lawyers clearer guidance on the nature of the ethical risks in this area.

In practice, the term "AI hallucinations" has been explicitly discussed in several U.S. cases in the context of legal filings and court proceedings. Courts have addressed the phenomenon of generative AI producing fictitious legal citations, quotations, and concepts, and have emphasized the professional obligations of attorneys to verify the accuracy of their filings.

8.8.4.1 Cases Regarding Hallucinations Continue to Arise

In *Dastou v. Holmes,* 2025 Mass. Super. LEXIS 211, the Court held that misuse of generative AI in legal filings that results in hallucinations - fabricated cases, quotes, and legal concepts - constitutes a violation of an attorney's professional obligations. The Court determined that lawyers cannot blame errors in their work product on AI technology and must thoroughly review all documents filed with the court. The Court found that the attorney's use of ChatGPT resulted in fictitious citations, quotations, and legal concepts being submitted to the court.

In *People v. Lerin H. (In re Baby Boy),* 2025 IL App (4th) 241427 the court recognized that while the use of AI is authorized while practicing in Illinois courts, users must understand its capabilities and thoroughly review any AI-generated content.

Further in *Park v. Kim,* 91 F.4th 610 (2d Cir. 2024), "Attorney [..]'s submission of a brief relying on non-existent authority reveals that she failed to determine that the argument she made was "legally tenable." The brief presents a false statement of law to this Court, and it appears that Attorney […] made no inquiry, much less the reasonable inquiry required by Rule 11 and long-standing precedent, into the validity of the arguments she presented."

U.S. case law is now beginning to include records containing AI-generated citation errors. For example, in *Mata v. Avianca, Inc.*, No. 22-CV-1461 (PKC), 678 F. Supp. 3d 443 (S.D.N.Y. 2023), attorneys submitted a brief containing multiple fictitious cases generated by ChatGPT, while in *People v. Crabill*, No. 23PDJ067 2023 WL 8111898 (Colo. O.P.D.J. Nov. 23, 2023), an attorney filed a motion citing non-existent authorities produced by generative AI. In both matters, the inaccurate citations became part of the official court record before they were identified and addressed. In many of these cases, attorneys claim they did not know the citations or quotations were false because they relied on the AI Tool without verification. While this may be a defense to "knowingly" making a false statement or frivolous argument under Rules 3.3 and 3.1, it reflects a lack of competence under Rule 1.1, particularly in light of 22 N.Y.C.R.R. Part 161 and the growing body of ethics opinions on the subject, discussed below.

8.8.5 22 N.Y.C.R.R. Part 161 Regulating the Use of AI for New York Attorneys

Effective June 1, 2026, the New York State Unified Court System adopted 22 N.Y.C.R.R. Part 161, governing attorneys' use of AI in the courts of the Unified Court System in both civil and criminal cases. [92]

Part 161 establishes a statewide policy. Section 161.3 permits the use of AI Tools in preparing papers and provides that attorneys and parties should not be required to disclose that use to the court. Section 161.4 provides that an individual court may adopt its own part rule governing AI use and, if it does, is encouraged to adopt the model rule set out in Appendix A. [93]

Appendix A is a model rule, not a statewide requirement. Where a court has adopted it, an attorney or party who uses an AI Tool in preparing a paper is required to review the paper carefully and independently ensure that it contains no fabricated or fictitious cases, statutes, or other material, and the signature on the paper certifies that such a review was conducted. Because Appendix A is adopted court by court, a lawyer must check the part rules of each court in which the lawyer appears.

Part 161 did not alter the authorities under which sanctions are imposed. A single fabricated citation in a filing may expose a lawyer to sanctions under 22 N.Y.C.R.R. 130-1.1 and 130-1.1a, to fee-shifting, and to discipline under Rule 3.3 and Rule 8.4, whether or not the court in question has adopted Appendix A.

The UCS Advisory Committee on AI and Courts' reasoning is set out in its Annual Report and in its October 24, 2025 memorandum to the Administrative Board. The Advisory Committee concluded that no new duty was needed, because the obligation to review a submission for accuracy already arises under 22 N.Y.C.R.R. 130-1.1 and 130-1.1a and Rule 3.3(a)(1), and that a uniform statewide policy was preferable to an accumulation of inconsistent individual part rules. That reasoning explains why Part 161 permits AI use, declines to require disclosure, and leaves Appendix A to adoption by individual courts. *UCS AI Advisory Committee Annual Report* at 6–9 & App. 4.

8.8.6 Bar Associations with Formal Opinions/Guidance Addressing Rule 3.3 and the Use of AI

8.8.6.1 American Bar Association (ABA) - Formal Opinion 512 (July 2024)

Opinion 512 addresses lawyers' ethical obligations under Model Rules 3.1, 3.3, and 8.4(c), emphasizing that overreliance on generative AI can result in making false statements of fact or law to tribunals, and requires lawyers to review AI outputs for accuracy before submitting materials to courts.

8.8.6.2 California State Bar - Practical Guidance for the Use of Generative Artificial Intelligence in the Practice of Law (November 2023)

The California Guidance notes that the duty of candor to tribunals means attorneys must check AI-generated citations and facts to avoid false statements in court.

8.8.6.3 Florida Bar - Advisory Opinion 24-1 (January 2024)

The Florida Bar states that failure to verify AI accuracy can lead to violations of Rule 4-3.3 (candor to the tribunal), and emphasizes that lawyers must verify the accuracy and sufficiency of all research performed by generative AI.

8.8.6.4 District of Columbia Bar - Ethics Opinion 388 (April 2024)

This Opinion addresses candor to tribunal and fairness obligations, specifically noting that Rule 3.3 comments forbid knowingly misrepresenting legal authority, including presenting AI-fabricated cases or quotes.

8.8.6.5 Pennsylvania Bar Association and Philadelphia Bar Association - Joint Formal Opinion 2024-200 (2024)

The opinion warns that lawyers must check and verify all citations and the material cited, and bluntly states that filing AI-generated cases in court without verifying them demonstrates a lack of due diligence.

8.8.6.6 New Jersey Supreme Court - Guidelines on the Use of Generative AI (2024)

The guidelines reiterate candor to tribunals, noting that attorneys must not present AI-produced output containing fabricated cases or facts, and submitting false or fake information generated by AI would violate rules against misrepresentations to the court.

8.8.6.7 North Carolina State Bar - 2024 Formal Ethics Opinion 1

Addresses candor obligations, recommending that if AI assists in generating content for court filings, lawyers must ensure the filing is factually and legally sound and free from deceptive or misleading content.

8.8.6.8 Oregon State Bar - Formal Opinion No. 2025-205

Addresses AI use in legal practice with emphasis on verification obligations.

8.8.6.9 Virginia Bar Association - Task Force on Artificial Intelligence guidance and Model AI Policy for Law Firms (2024)

Addresses validation and oversight obligations related to AI use.

8.8.6.10 New Hampshire Bar Association - Ethics Committee articles on AI

Notes that an attorney who does not properly vet AI-produced information may violate their duties of candor to the tribunal, fairness to the opposing party and counsel, and truthfulness in statements to others.

8.8.6.11 United States Patent and Trademark Office (USPTO) - Guidance on AI use (April 2024)

Patent attorneys have a duty of candor and truthfulness in dealings with the Office, and using AI that produces inaccurate statements could violate that duty if not corrected.

8.9 Attorney Supervision

8.9.1 Overview of Guidelines No. 9A-9E

Things to consider:

- *How may an attorney supervise AI/GAI?*
- *How does an attorney supervise what they may not know themselves*?

"Connected to the duties of confidentiality and competence, attorneys have a duty to ensure that those they supervise receive training in the use of AI tools and the ethical duties related to this, as well as ongoing supervision."

Attorneys have an independent duty to check the accuracy of the citations in any paper submitted to a court. As the court noted in *Billups v. Louisville Mun. Sch. Dist.,* 2025 U.S. Dist. LEXIS 262670 (N.D. Miss. Dec. 19, 2025), courts have consistently so held. See, e.g., J*ohnson v. Dunn*, 792 F. Supp. 3d 1241, 1264 (N.D. Ala. 2025) (attorney's obligation to check citations is not excused because he did not know co-counsel used generative AI); *Elizondo v. City of Laredo*, 2025 WL 2071072, at *3 (S.D. Tex. July 23, 2025) (law clerk's unsupervised AI use does not excuse attorney's failure to verify cited authorities); *Park v. Kim,* 91 F.4th 610, 615 (2d Cir. 2024) ("at the very least, the duties imposed by Rule 11 require that attorneys read, and thereby confirm the existence and validity of, the legal authorities on which they rely"); *Mid Central Operating Eng'rs Health & Welfare Fund v. HoosierVac LLC*, 2025 WL 574234, at *2–3 (S.D. Ind. Feb. 21, 2025) (AI-generated cases that appeared valid did not relieve attorney of duty of reasonable inquiry).

See also *Matter of Zareh*, 251 A.D.3d 73, 250 N.Y.S.3d 534, 2026 N.Y. Slip Op. 00619 (1st Dep't 2026) (publicly censuring, as reciprocal discipline, a reviewing attorney who, without reviewing or verifying its citations, filed in federal court a brief that the court found to be AI-generated and that misrepresented case law; the First Department held that the conduct violated Rules 3.1(a) and 3.1(b)(1), and noted that Rules 5.1(b)(2) and 5.1(d)(2)(ii) were also implicated by his failure to supervise the drafting associate).

The Guidelines in this section cover a law firm's supervisory responsibilities over lawyers in the firm, a law firm's supervisory responsibilities over nonlawyers employed or retained by the firm, and a subordinate lawyer's responsibilities not to violate the Rules of Professional Conduct even if following instructions given by a supervisory lawyer.

8.9.2 Guidelines No. 9A to 9E; NYRPC 5.1, 5.2 and 5.3: Firm and Managerial Responsibilities; Direct Supervision of Lawyers; Responsibilities of Subordinate Lawyers; Supervision of Nonlawyers, Vendors, and Automated Systems; Agentic AI and Systems Authorized to Act

Commentary:

Rule 5.1 contains four paragraphs; Guidelines 9A–9E address paragraphs (a) and (b). As explained in Comment [1] to Rule 5.1: "*Paragraph (a)* applies to law firms; *paragraph (b)* applies to lawyers with management responsibility in a law firm or a lawyer with direct supervisory authority over another lawyer." (emphasis added) The two paragraphs substantially overlap.

Thus, Rule 5.1 requires a law firm to make "reasonable efforts" to ensure that other lawyers in the firm comply with the various Rules bearing on the use of AI Tools. This mandate does not require ethical perfection, but it does require a law firm to take "reasonable" steps to move toward the goal of full compliance with the Rules of Professional Conduct by all lawyers in the firm.

The obligation imposed by Rule 5.1 was at issue in N.Y. City 2024-5 (2024), which focused on "generative" AI Tools. Opinion 2024-5 summarized that obligation as follows:

Managerial and supervisory lawyers should ***establish clear policies*** regarding the permissible uses of [G]enerative AI *and* ***make reasonable efforts*** to ensure that the law firm adopts measures that give reasonable assurance that the law firm's lawyers' … conduct complies with their professional obligations when using [G]enerative AI. This includes providing training on the ethical and practical aspects, and pitfalls, of [G]enerative AI use. (emphasis added)

Policies. What are appropriate "policies" regarding the use of AI Tools within a law firm? There is no one-size-fits-all uniform package of measures that every law firm must take to comply with Rule 5.1(a), but there are some basic principles, all of which relate to competence and many of which relate to confidentiality. To fulfill these basic principles, a law firm should adopt, publicize, and enforce policies such as the following:

A law firm should permit lawyers in the firm to use AI Tools only if those tools have been approved by law firm management.

The approval criteria should focus on whether an AI Tool will assist the law firm in providing competent representation at lower cost (in the long run), or more efficiently (meaning more quickly), or at a higher level of quality (meaning better research or better writing, even at a higher cost), or will otherwise add value for the client.

The approval criteria should also focus on ensuring that an AI Tool does not compromise confidentiality (compared to non-AI methods). Given the enormous

importance of maintaining confidentiality, which is a day-to-day concern for all lawyers and law firms, these Guidelines cover confidentiality in greater detail elsewhere. But with respect to policies that a law firm should consider adopting to comply with Rule 5.1(a):

- A law firm should ensure that all lawyers in the firm understand their confidentiality duties to current, former, and prospective clients under Rules 1.6, 1.9(c), and 1.18(b).

- Of particular relevance is Rule 1.6(c), which provides that a lawyer "shall make reasonable efforts to prevent the *inadvertent or unauthorized disclosure* or use of, or *unauthorized access* to, information protected by Rules 1.6, 1.9(c), or 1.18(b). (emphasis added)

- In many instances, a law firm will need to involve the law firm's own technology professionals or engage an outside technology consultant to assess and address risks to confidentiality.

A law firm should take reasonable measures to prevent lawyers from using any AI Tool:

- if the law firm has not approved it or

- if the lawyer has not been trained or demonstrated competence on that tool

Before approving an AI Tool, a law firm should understand at a general level the capabilities, limitations, and risks of that tool.

Before permitting any lawyer in the firm to use an AI Tool, the law firm should require that the lawyer using the tool either undergo basic training on how to use the tool or demonstrate basic competence with that tool, through a test or otherwise (in which case further training is optional rather than mandatory).

- The training route should focus on providing competent representation and protecting client confidential information.

- The test route recognizes that some lawyers have used these tools at home or for personal matters and do not need to spend time in formal training.

After a lawyer has used an AI Tool, the work must be checked either by the lawyer who performed the work or by another lawyer in the firm (or by co-counsel) to confirm that:

- The citations, quotations, and assertions are accurate and are not hallucinations or fundamental errors, and

- The work otherwise meets the law firm's standards for quality and competence.

- The work produced by an AI Tool should be double-checked whether it is to be sent to a client, opposing counsel, a tribunal, or to a third party.

To the extent required by the applicable Rules of Professional Conduct, the law firm must disclose to clients that the law firm is using AI Tools in the course of its work for the client.

- Ideally, this disclosure should be made in the letter of engagement to the client – but the law firm may instead disclose its use of AI Tools after the engagement begins but before the law firm uses AI Tools, or may be disclosed for each particular task or project using AI Tools.

- Most jurisdictions have not yet expressly addressed disclosure of AI Tools to clients, but ABA Formal Ethics Op. 512 (2024), which addressed a law firm's use of generative artificial intelligence ("GenAI"), noted that ABA Model Rules 1.6 (requiring either client consent to disclosure or use of confidential information or an exception to the duty of confidentiality) and Rule 1.4 (establishing a lawyer's duty of communication with a client) may require disclosure to a client if a lawyer is planning to use AI Tools in certain situations. Regarding the duty of communication, Opinion 512 said:

- Model Rule 1.4 [may] require disclosing the use of a GAI tool in the representation.

- Of particular relevance, Model Rule 1.4(a)(2) states that a lawyer shall "reasonably consult with the client about the means by which the client's objectives are to be accomplished." …

- The facts of each case will determine whether Model Rule 1.4 requires lawyers to disclose their GAI practices to clients or obtain their informed consent to use a particular GAI tool. Depending on the circumstances, client disclosure may be unnecessary. …

Client consultation about the use of a GAI tool is…necessary when its output will influence a significant decision in the representation, such as when a lawyer relies on GAI technology to evaluate potential litigation outcomes or jury selection. …

It is not possible to catalogue every situation in which lawyers must inform clients about their use of GAI. …Potentially relevant considerations include the GAI tool's importance to a particular task, the significance of that task to the overall representation, how the GAI tool will process the client's information, and the extent to which knowledge of the lawyer's use of the GAI tool would affect the client's evaluation of or confidence in the lawyer's work.

Reasonable efforts. What are "reasonable efforts" to ensure that all lawyers in the firm conform to the Rules of Professional Conduct with respect to AI Tools?

- As with clear policies, there is no monolithic recipe for reasonable efforts, but certain measures will be helpful in ensuring that all lawyers in the firm adhere to the policies that the law firm has adopted.

- Every law firm should develop at least basic written policies to govern the use of AI Tools by lawyers associated with the firm and send those policies to every lawyer in the firm. (The policies should also be sent to nonlawyers in the firm, but that is covered by Rule 5.3, which addresses nonlawyers, not by Rule 5.1, which addresses only lawyers.)

- The firm should periodically update and amplify those policies based on day-to-day experience in practice and on developments and changes in the profession generally, including changes in the nature and use of AI Tools.

    - The firm should notify all lawyers of the revised policy each time the firm makes a material change or addition to the guidelines.
    - The firm should also periodically send a revised version of the complete compilation of policies to all lawyers. Ideally, the revised version should be redlined against the prior version and should be searchable.

The firm should make these policies available online and/or in a written manual to all lawyers in the firm.

The firm should designate a lawyer or committee of lawyers in the firm to assist lawyers in the firm in locating and interpreting policies relevant to issues relating to the use of AI Tools. Interpretations should periodically be memorialized in writing and added to the firm's policy manual as additions to or comments on the firm's policies.

NYRPC Rule 5.1(a) applies to law firms as entities. It states that a "law firm shall make reasonable efforts to ensure that all lawyers in the firm conform to these Rules."

New York is one of very few jurisdictions in the United States whose Rules of Professional Conduct subject law firms as entities to professional discipline. Rule 5.1(a) imposes an obligation not on individual lawyers, who are separately covered by Rule 5.1(b), but on law firms as entities.

The most important phrase in Rule 5.1(a) is "reasonable efforts." The overarching idea is that a law firm cannot rely solely on trust, hope, positive role models, law school training in legal ethics, and other self-executing strategies to ensure compliance with the Rules of Professional Conduct. As Comment [2] indicates, a law firm must proactively "establish internal policies and procedures designed to provide reasonable assurance that all lawyers in the firm will conform to these Rules."Lawyers in a law firm who have either "management responsibility"

generally or "direct supervisory authority" over specific other lawyers are governed by Rule 5.1(b), which obligates lawyers in both categories to make "reasonable efforts" to ensure that other lawyers in the law firm conform to these Rules.

Rule 5.1(b) is summarized in Comment [2] to Rule 5.1 as follows:

> [2] Paragraph (b) requires lawyers with management authority within a firm or those having direct supervisory authority over other lawyers to make reasonable efforts to establish internal policies and procedures designed to provide reasonable assurance that all lawyers in the firm will conform to these Rules. …

Comment [3] to Rule 5.1 expands on the policies mandated by Rule 5.1(b), saying:

> [3]… [M]easures that may be required to fulfill the responsibility prescribed in paragraph (b) can depend on the firm's structure and the nature of its practice. In a small firm of experienced lawyers, informal supervision and periodic review of compliance with the required systems ordinarily will suffice. In a large firm, or in practice situations in which difficult ethical problems frequently arise, more elaborate measures may be necessary. Some firms, for example, have a procedure whereby junior lawyers can make confidential referral of ethical problems directly to a designated senior partner or special committee. *See* Rule 5.2. …

Rule 5.1(b)(1) consists of a single sentence: "A lawyer with management responsibility in a law firm shall make reasonable efforts to ensure that other lawyers in the law firm conform to these Rules."

Rule 5.1(b)(1) is essentially parallel to Rule 5.1(a), but whereas Rule 5.1(a) imposes an obligation on a "law firm," Rule 5.1(b)(1) imposes an obligation on any individual lawyer who has "management responsibility" in the firm.

As in Rule 5.1(a), the obligation imposed by Rule 5.1(b)(1) is to "make reasonable efforts to ensure that other lawyers in the law firm conform to these Rules" when using AI Tools.

These "reasonable efforts" are largely the same as the reasonable efforts required under Rule 5.1(a), except that a lawyer with management responsibility will typically be part of a management *group* and therefore may have limited input regarding such things as the criteria for approving AI Tools, training or testing a lawyer's competence with a particular AI Tool, or enforcing law firm policies and procedures regarding AI Tools.

The duty imposed by Rule 5.1(b)(1) thus overlaps the duty of the law firm as a whole to make reasonable efforts to ensure that other lawyers in the law firm conform to these Rules with respect to use of AI Tools.

Whether or not any particular *individual* lawyer with "management responsibility" in the firm must carry out any specific aspect of the law firm's duty under Rule 5.1(b), the *group* of lawyers with management responsibility must *collectively* ensure that the law firm as an entity complies with Rule 5.1(a). As a practical matter, this requires the management group as a body to divide up the duties listed under Rule 5.1(a) among individuals or groups of individuals with management responsibility.

Rule 5.1(b)(2) applies to all lawyers in a firm who have "direct supervisory authority over another lawyer" in the firm. It states: "A lawyer with direct supervisory authority over another lawyer shall make reasonable efforts to ensure that the supervised lawyer conforms to these Rules."

Rule 5.1(b)(2) differs from Rule 5.1(a) because, whereas Rule 5.1(a) imposes an obligation on a "law firm," Rule 5.1(b)(2) imposes an obligation only on lawyers who directly supervise at least one other lawyer in the firm.

Assuming the law firm as an entity and the lawyers in the firm with management responsibility have established policies, procedures, and enforcement mechanisms regarding use of AI Tools by lawyers in the firm, a lawyer with "direct supervisory authority" over another lawyer should make reasonable efforts to ensure that the supervised lawyer adheres to those policies and procedures. For example, a supervisory lawyer must provide supervision adequate to ensure that:

- The subordinate lawyer does not use an AI Tool for client work unless the tool has been approved by the law firm.

- The subordinate lawyer has been trained on the specific AI Tool (or a similar tool), or has passed the law firm's test on that tool, or has otherwise demonstrated competence regarding that AI Tool.

- To combat hallucinations by AI Tools, the lawyer with direct supervisory authority over the subordinate lawyer should double check the output of the AI Tool (either personally or by assigning some other lawyer or nonlawyer with adequate skills) to ensure that all citations and quotations provided by the AI Tool actually exist and are accurately cited or quoted. See Task Force Report at 59.

Rule 5.1(c) separately requires a law firm to ensure that the work of partners and associates is adequately supervised, as appropriate, and requires a lawyer with supervisory authority over another lawyer to adequately supervise that lawyer's work, including work performed with AI Tools. Rule 5.1(d) identifies when a lawyer is responsible for another lawyer's violation of the Rules, including where a lawyer with supervisory authority knows of the conduct in time to avoid or mitigate its consequences and fails to take reasonable remedial action. See *Matter of Zareh,* 251 A.D.3d at 76 n.1 (Rules 5.1(b)(2) and 5.1(d)(2)(ii) implicated by failure to supervise drafting associate).

Rule 5.2 ("Responsibilities of a Subordinate Lawyer") applies to all lawyers in a firm who are supervised by other lawyers in the firm. Rule 5.2(a) provides that a lawyer "is bound by these Rules notwithstanding that the lawyer acted at the direction of another person." Rule 5.2(b) provides that a subordinate lawyer "does not violate these Rules if that lawyer acts in accordance with a supervisory lawyer's reasonable resolution of an arguable question of professional duty." Rule 5.2(b) is a limited safe harbor. It applies only where the question of professional duty is genuinely arguable and the supervisory lawyer's resolution of it is reasonable. It does not protect a subordinate lawyer who follows an instruction that is clearly improper.

Rule 5.2(a) states the obvious proposition that a subordinate lawyer – typically an associate lawyer or of counsel lawyer – must comply with the Rules of Professional Conduct when using AI Tools.

Stated in the converse, Rule 5.2(a) states the equally obvious proposition that a subordinate lawyer using AI Tools must not violate the Rules of Professional Conduct.

If a subordinate lawyer believes that a law firm's policies regarding AI Tools or a superior lawyer's instructions regarding AI Tools violate the Rules of Professional Conduct, then the subordinate lawyer must not follow those policies. But that statement is too simplistic. What if the subordinate lawyer is unsure whether the policies or instructions are improper? That question is addressed by Rule 5.2(b).

Rule 5.2(b) answers a perplexing question: what if a supervisory lawyer and a subordinate lawyer disagree about whether the supervisory lawyer's instruction regarding the subordinate lawyer's use of AI Tools is unethical (i.e., violates the Rules of Professional Conduct)? This is an acute dilemma for the subordinate lawyer.

- On one hand, Rule 5.2(a) says that a subordinate lawyer "is bound by these Rules notwithstanding that the lawyer acted at the direction of another person" (meaning a supervisory lawyer).
    - Thus, a subordinate lawyer must refuse to obey a supervisory lawyer's instructions if the subordinate lawyer knows that obeying it would violate the Rules of Professional Conduct.
    - If the subordinate lawyer knows that obeying it would violate the Rules of Professional Conduct, the subordinate lawyer cannot acquire immunity from disciplinary action by saying she was "just following orders."
- On the other hand, as a practical matter, a subordinate lawyer who refuses to obey a supervisory lawyer's instructions could be fired for being insubordinate. The subordinate lawyer is thus caught between a rock and a hard place.

- Following ethically dubious instructions may lead to professional discipline for the subordinate lawyer.

- But refusing to follow questionable instructions may lead the law firm to terminate the subordinate lawyer.

Rule 5.2(b) addresses this dilemma in a limited way. Where the question of professional duty is genuinely arguable and the supervisory lawyer resolves it reasonably, a subordinate lawyer who acts in accordance with that resolution does not violate the Rules. The safe harbor does not extend to instructions the subordinate lawyer knows to be improper, nor to questions that can reasonably be answered only one way.

The essence of Rule 5.2 is captured in Comment [2] to Rule 5.2, which provides as follows:

[2] … **If the question can reasonably be answered only one way**, the duty of both lawyers is clear, and they are equally responsible for fulfilling it. However, **if the question is reasonably arguable**, someone has to decide upon the course of action. That authority ordinarily reposes in the supervisor, and a subordinate may be guided accordingly. (emphasis added)

In other words, instructions from a supervisory lawyer fall into one of two categories:

- Inarguable. Some questions have a clear answer -- they "can reasonably be answered only one way." As to these "inarguable" questions, the subordinate lawyer may follow instructions that are clearly ethical but must not follow instructions that are clearly unethical.
    - Refusing to follow a clearly unethical instruction will protect the subordinate lawyer against discipline for professional misconduct but will not protect the subordinate lawyer from being fired for insubordination.

    - A subordinate lawyer who is fired for refusing to follow a clearly unethical instruction might have a cause of action for retaliatory termination, but that is a question of law largely beyond the Rules of Professional Conduct.

- Arguable. Other questions are "reasonably arguable" – the subordinate lawyer believes that the supervisory lawyer's instruction is unethical but the supervisory lawyer has a reasonable argument that the instruction is ethical. Rule 5.2(b) gives the subordinate lawyer the right to obey such a "reasonably arguable" order without fear of being disciplined for professional misconduct.

- Comment [2] to Rule 5.2 provides an example: "[I]f a question arises whether the interests of two clients conflict under Rule 1.7, the supervisor's reasonable resolution of the question should protect the subordinate professionally if the resolution is subsequently challenged."

- Thus, even if the supervisory lawyer is later found to have been wrong and is professionally disciplined, the subordinate lawyer should be protected against discipline.

- How can a subordinate lawyer determine whether the supervisory lawyer has reached a "reasonable resolution of an arguable question of professional duty"?

Comment [2] to Rule 5.2 contains several suggestions, saying:

> [2] … To evaluate the supervisor's conclusion that the question is arguable and the supervisor's resolution of it is reasonable in light of applicable Rules of Professional Conduct and other law, it is advisable that the subordinate lawyer undertake research, consult with a designated senior partner or special committee, if any (see Rule 5.1, Comment [3]), or use other appropriate means.

A subordinate lawyer who follows these suggestions by undertaking "research" and/or by reaching out to "consult with a designated senior partner" or to consult with the firm's ethics committee, or who uses "other appropriate means," such as by engaging independent counsel outside the firm, as permitted by Rule 1.6(b)(4), should be protected against professional discipline (unless these measures lead the subordinate lawyer to conclude that the supervisory lawyer's instruction is plainly unethical).

Rule 5.3(a) imposes duties both on a law firm as an entity and on any lawyer in the firm with "direct supervisory authority" over nonlawyers.

Rule 5.3(a) provides, in essence, that a law firm shall ensure that nonlawyers who work for the firm are "adequately supervised, as appropriate." Likewise, a lawyer with "direct supervisory authority" over a nonlawyer shall "adequately supervise" the work of the nonlawyer, "as appropriate." In either case, Rule 5.3(a) requires the degree of supervision is that is "reasonable under the circumstances … "

Relevant factors for determining "reasonable" supervision include (among others):

- the "experience" of the supervised nonlawyer;

- the amount of work involved; and

- the likelihood that ethical problems might arise.

In contrast to Rule 5.1, which requires both (i) law firms as entities and (ii) individual lawyers with management responsibility or direct supervisory authority over other lawyers in the firm to make reasonable efforts to ensure that *lawyers* in the firm conform to the Rules of Professional Conduct with respect to AI Tools, Rule 5.3 requires law firms and managerial or supervisory lawyers to make reasonable efforts to ensure that *nonlawyers* working for the firm conform to the standards of conduct in the Rules of Professional Conduct with respect to AI Tools.

The measures needed to supervise nonlawyers adequately are essentially the same measures needed to supervise lawyers. As Comment [1] to Rule 5.3 notes, "Comments [2] and [3] to Rule 5.1, which concern supervision of lawyers, provide *guidance by analogy* for the methods and extent of supervising nonlawyers." (emphasis added)

Thus, Rule 5.3(a) requires law firms as entities and lawyers with management responsibility or direct supervisory authority over nonlawyers employed or retained by the law firm to develop internal policies, procedures, and enforcement mechanisms with respect to the use of AI Tools by nonlawyers, just as required by Rule 5.1(a) with respect to the use of AI Tools by lawyers.

Rule 5.3(a) is designed to ensure adequate supervision of nonlawyers such as "secretaries, investigators, law student interns and paraprofessionals … whether they are employees or independent contractors …." Thus, a law firm has the same duty to supervise nonlawyers from outside the firm (i.e., independent contractors) as the law firm has to supervise nonlawyers directly employed by the firm (employees).

In contrast to Rule 5.1(a), which mandates supervision over lawyers to ensure their compliance with the Rules of Professional Conduct, Rule 5.3(a) does not expressly refer to the Rules of Professional Conduct.

Rule 5.3(a) does not refer to the Rules of Professional Conduct because nonlawyers are not subject to the Rules of Professional Conduct.

But Comment [2] to Rule 5.3 makes clear that the goal of adequately supervising nonlawyers is to make sure that they live up to the same professional standards as lawyers. As Comment [2] says:

[2] With regard to nonlawyers, who are not themselves subject to these Rules, the ***purpose of the supervision*** is to give reasonable assurance that the ***conduct of all nonlawyers*** employed by or retained by or associated with the law firm, including nonlawyers outside the firm working on firm matters, ***is compatible with the professional obligations of the lawyers and the firm***. … (emphasis added)

In other words, a law firm's supervision of nonlawyers must be adequate to ensure that the law firm neither instructs nor permits a nonlawyer to engage in conduct with respect to AI Tools that would violate the Rules of Professional Conduct if done by a lawyer.

A law firm should ensure that nonlawyers who use AI Tools receive appropriate instruction concerning the ethical risks of that use, including in tasks that may appear routine.

Thus, the same policies, procedures, and enforcement mechanisms that apply to lawyers using AI Tools should apply to nonlawyers using AI Tools.

8.9.2.1 N.Y. City 2024-5 (2024)

- A lawyer using a Generative AI chatbot for client intake purposes should supervise the chatbot as Rule 5.3 would require for a nonlawyer performing the same function. A high degree of supervision may be required if there is a likelihood that ethical problems may arise. For example, a chatbot may fail to disclose that it is not a lawyer or may attempt or appear to provide legal advice, increasing the risk that a prospective client relationship or a lawyer–client relationship could be created.
- Opinion 2024-5's chatbot example cites Florida Bar Ethics Advisory Op. 24-1 (2024), which says (under the heading "Oversight of Generative AI"): "While Rule 4-5.3(a) defines a nonlawyer assistant as a 'a person,' many of the standards applicable to nonlawyer assistants provide useful guidance for a lawyer's use of generative AI."
- We agree that standards applicable to human nonlawyer assistants provide "useful guidance" to lawyers using AI Tools (generative or not), but we do not consider any AI Tool to be a "nonlawyer" within the meaning of Rule 5.3(a).
- Nevertheless, since human nonlawyers employed by or retained by law firms are likely to use AI Tools, and since AI Tools are steadily becoming more like humans, law firms may need to employ a "high degree of supervision" to ensure that nonlawyers (and lawyers) who use sophisticated AI Tools do not mislead clients, courts, or others to believe that the AI Tool is a lawyer or a human nonlawyer.

8.9.3 Agents and Agentic Systems

Some AI Systems do more than generate content; they may perform tasks or initiate actions with varying degrees of autonomy. A lawyer's ethical duties do not diminish as AI becomes more capable. Under Rules 1.1, 1.6, 5.1, and 5.3, lawyers must maintain appropriate supervision, protect client information, understand the technology they use, and remain responsible for all legal work performed with AI assistance. Professional judgment cannot be delegated to an AI System.

Practical Application:

In tech parlance, the need for constant Human oversight and involvement when using AI Tools is often referred to as Human in the Loop (HITL), or Human on the Loop, or Human over the Loop, etc.

In essence, whether using AI, GenAI, Agentic AI, or AI Agents or any AI Tools, for attorneys this means "Never Off the Hook."

8.10 Unauthorized Practice of Law

8.10.1 Overview

The Guidelines in this section discuss the relationship between AI Tools and the unauthorized practice of law ("UPL"). They take into account the Rules of Professional Conduct, statutes and court rules regulating the practice of law, and judicial decisions bearing on UPL.

The overall principle expressed in these Guidelines is that AI is a tool, not a lawyer. A living, breathing, licensed attorney must make ultimate decisions regarding the exercise of professional judgment and regarding the supervision of any person using AI Tools to offer legal advice, legal services, or individualized legal documents (such as letters, court papers, wills, and other documents based on law or incorporating law). An AI Tool is not admitted to practice law. Whether the unauthorized practice of law occurs turns on the conduct of the lawyers, nonlawyers, and entities that develop, deploy, market, or use the tool, as determined under the Judiciary Law.

Nevertheless, lawyers who use AI Tools to deliver legal services must avoid misleading or deceiving clients. Likewise, lawyers who help to form businesses aimed at creating or offering AI Tools aimed at addressing legal problems must not assist those businesses in engaging in UPL and must not assist in deceiving members of the public, lawyers, or tribunals about who is providing legal advice or exercising independent professional judgment.

8.10.2 Guideline No. 10A; NYRPC 5.5: Unauthorized Practice of Law and Public-Facing AI Systems

Commentary:

Rule 5.5, which was amended by New York's Appellate Division effective November 10, 2025, consists of a single sentence, with no subparagraphs. Rule 5.5 provides:

A lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so.

As explained in Comment [1] to Rule 5.5 (which was also amended effective November 10, 2025):

[1] A lawyer may practice law only in a jurisdiction in which the lawyer is authorized to practice. … Rule 5.5 applies to unauthorized practice of law in another jurisdiction by a lawyer through the lawyer's direct action, and also prohibits a lawyer from aiding a nonlawyer in the unauthorized practice of law.

Rule 5.5 thus covers two subjects:

- A "lawyer" personally must not engage in UPL. This concept expressed in Rule 5.5 as a prohibition on "practic[ing] law in a

jurisdiction in violation of the regulation of the legal profession in that jurisdiction"; and

- A lawyer shall not assist "another" in doing so.

The term "another" divides into three categories:

- Lawyers. People who are lawyers in one or more jurisdictions but are not permitted to practice law in the particular jurisdiction in question.
- Former lawyers. People who at one time were lawyers in good standing but who are no longer lawyers because they have retired, have become inactive, or have been suspended or disbarred.
- Nonlawyers who were never lawyers. People who were never lawyers (i.e., nonlawyers).

The Rules of Professional Conduct do not define the "practice of law" (or the "unauthorized practice of law"). Instead, the Rules of Professional Conduct treat the boundary around the practice of law to be a question of law, rather than a question of ethics, and consequently leave the definition of the practice of law to the legislature (through statutes) and to the courts (through judicial decisions and court rules, such as New York's court rules on temporary practice).

These Guidelines do not attempt to define the practice of law in any formal sense, but as a working definition the practice of law is often understood to be something like this:

- The "practice of law" means applying law to particular facts for the purpose of assisting another person either:
  - to identify and resolve a legal problem (such as how deal with a landlord who refuses to make repairs, or how to deal with a customer who is not paying invoices) or
  - to accomplish an objective that requires knowledge of and application of the law (such as entering into a contract, suing a tortfeasor, forming an entity, or drafting policies to comply with certain laws).
    - New York statutes effectively define the practice of law by prohibiting a "person" who is not a lawyer from engaging in certain activities, such as appearing in court on behalf of another or drafting legal documents for another.
- A nonlawyer who engages in such activities is engaging in the unauthorized practice of law. *See, e.g.,* New York Judiciary Law §§ 478, 484, 485, 486, and 495.
- Under Judiciary Law § 485-a, the unauthorized practice of law is either a misdemeanor or a felony, depending on certain factors.

- These Guidelines do not construe or interpret New York's UPL statutes, but studying other sources to gain an understanding of those statutes is essential to defining what is and is not the practice of law in New York.

Since AI Tools by themselves are not lawyers, a lawyer's direct use of AI Tools to assist the lawyer in practicing law in a jurisdiction where the lawyer is licensed to practice should not be deemed to be UPL. A lawyer's use of AI Tools might violate various Rules of Professional Conduct but not Rule 5.5.

For example, if a lawyer practicing in the lawyer's home jurisdiction were to divert calls and emails from clients and prospective clients to an AI Tool that would respond directly to those clients and prospective clients in the lawyer's name (without the lawyer's review), the lawyer would not be engaged in UPL.

However, the lawyer might be falling below the standard of care, violating various Rules of Professional Conduct, and violating various other laws. For example:

- If the AI Tool gave an incorrect answer on which the client relied and the client consequently suffered damages, then the lawyer might be committing malpractice – but malpractice and UPL are two different things.
- An open question is whether at some point (perhaps within a few years, or perhaps within a few decades) many clients could get more competent answers by interacting directly with an AI Tool, without any intervention of lawyers, than by going to a lawyer. In other words, as AI Tools improve, perhaps AI Tools will actually *reduce* the instance of malpractice – even without review by any lawyer – below the rate at which human lawyers commit malpractice. (Recent studies of driverless cars have shown that driverless cars are far less likely to get into accidents than cars driven by humans.)
- But even if that is true, the question remains whether clients would get even better answers by going to lawyers who augment and amplify their human legal services by using AI Tools effectively.
- Nevertheless, the question remains whether a competent lawyer can consistently add enough value to the AI Tool alone to justify the added cost of the lawyer's fees. For high-stakes matters the answer will usually be yes, but for small matters the answer is often likely to be no – many times the client will get a good enough answer from an AI Tool and it often won't be worth it for the client to pay a lawyer on top of the AI Tool in a matter where the stakes are small.
- A lawyer who outsourced his or her entire law practice to an AI Tool would also likely be engaged in deception if clients and prospective clients believed that the lawyer personally was responding to their inquiries (or was at least reviewing and approving answers provided by an AI Tool); whether it would also constitute UPL is not settled, as discussed below.

- Some might disagree, however, and the question whether an AI Tool operating without lawyer supervision is engaged in UPL is still not fully settled. The answer may depend as much on broad policy concerns as on definitions of UPL.
- As a matter of historical reality, the legal profession has frequently used UPL statutes and doctrines to protect the economic interests of lawyers by keeping out those offering less expensive methods of delivering legal services.
- For example, a company called Legal Zoom that offered the public customized document preparation online was sued by Connecticut, North Carolina, and South Carolina (and perhaps other states) around 2010. The suits alleged that Legal Zoom was engaged in UPL. After years of litigation, Legal Zoom either prevailed in those suits or settled on terms that allowed Legal Zoom to continue to operate subject to certain conditions.

The following points record considerations that arise in the broader policy debate over UPL and the delivery of legal services. They are set out as considerations that have been raised, not as positions of the Committee, and no Guideline rests on them.

- Some have argued that ethical guidelines should take into account the interests of society as a whole, and not only the economic interests of lawyers.
- But if AI Tools render law practice economically unviable or impractical or uncompetitive (compared to other job opportunities) for a critical mass of lawyers or aspiring lawyers, that may harm society as a whole, not just the economic interests of lawyers.
    - For example, if many clients begin to rely only on AI Tools and abandon human lawyers for many matters, lawyers who serve individual clients (and perhaps even corporate clients) may be unable to make a living or might have much better opportunities in fields other than law.
    - Likewise, if lawyers begin to rely on AI Tools rather than old-fashioned legal research and independent professional judgment when responding to client legal needs, law practice might become so efficient that far fewer lawyers will be needed – and far fewer lawyers will be available to take an active part in civil society, as by serving on school boards or in local, state, or federal government positions.

Thus, even if a lawyer fully reveals to clients and prospective clients that answers to client questions will be coming directly from an AI Tool without any input from or review by the lawyer (i.e., even if the lawyer was not deceiving clients in any way whatsoever), the diversion of all inquiries directly to the AI Tool might still be deemed to be UPL.

In contrast, if a lawyer offered legal services using an AI Tool in a jurisdiction where the lawyer was not admitted to practice and did not qualify under the temporary practice rules of that jurisdiction, then the lawyer might be establishing a "systematic and continuous" presence prohibited by that jurisdiction's rules on practice by lawyers not admitted there,

many of which are modeled on ABA Model Rule 5.5. Doing so would violate the first clause of New York Rule 5.5, which provides that a "lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction."

Importantly, however, the lawyer, not the AI Tool, would be engaging in UPL in the foreign jurisdiction.

Moreover, if the lawyer qualified to practice in another jurisdiction on a temporary basis, in compliance with that jurisdiction's temporary practice rules, then the lawyer would not be engaged in UPL.

In sum, conduct that would not constitute the UPL when a lawyer is not using AI Tools does not become UPL simply because the lawyer is using AI Tools. The focus should remain on the conduct of the human being (the lawyer), not the conduct of a non-human (an AI Tool that the lawyer is using).

If Lawyer A advised Lawyer B, who is admitted to practice in State X, to divert calls and emails from clients and prospective clients to an AI Tool that would respond directly to those clients and prospective clients in Lawyer B's name (without Lawyer B's review) in State X, Lawyer B would not be engaged in UPL.

Lawyer A might be violating the Rules of Professional Conduct relating to adequate supervision, or might be assisting Lawyer B in violating statutes and regulations prohibiting consumer deception, or might be engaged in common law fraud, or might be committing legal malpractice, but those forms of misconduct are independent of UPL and are therefore addressed in other sections of these Guidelines.

A violation of Rule 5.5 might arise, however, if Lawyer A assisted Lawyer B in setting up a corporation that would use AI Tools to offer legal services to the public. New York Judiciary Law § 495 generally prohibits a corporation or voluntary association, other than a professional entity such as a P.C. or PLLC, from practicing law or holding itself out as entitled to do so. The fact that the corporation would be owned and operated by a lawyer, and the fact that the "legal services" would be offered by an AI Tool rather than by human lawyers, would not negate a violation of § 495.

Even where a lawyer's own use of an AI Tool does not constitute UPL, a lawyer might be assisting UPL by helping a client who is a nonlawyer to offer legal services to the public based on AI Tools.

For example, suppose a nonlawyer client sought a lawyer's assistance in setting up a "law firm" that would use AI Tools to respond to legal questions from clients and to prepare legal documents (such as contracts and wills) for clients. Assisting a nonlawyer client in providing legal advice and legal documents to the public using AI Tools should violate Rule 5.5 just as much as assisting a nonlawyer in providing legal advice and legal documents to the public without using AI Tools. The prohibition is against assisting a nonlawyer in engaging in the unauthorized practice of law, regardless of the means or method the nonlawyer uses to provide legal advice and legal documents to the public.

Moreover, the lawyer would also be assisting in UPL in violation of Rule 5.5 if the lawyer assisted a nonlawyer in setting up a non-professional corporation or partnership (rather than a law firm) that would offer legal services to the public using AI Tools rather than human lawyers, because New York Judiciary Law § 495 provides: "(1) No corporation or voluntary association shall … (c) hold itself out to the public as being entitled to practice law, or to render legal services or advice, nor … (g) assume, use or advertise the title of lawyer or attorney, attorney-at-law, or equivalent terms in any language in such manner as to convey the impression that it is entitled to practice law or to furnish legal advice, services or counsel."

However, it remains an open question whether a lawyer would be assisting a nonlawyer client in UPL by setting up a non-professional corporation or partnership (i.e., not a law firm) through which the client would offer the public access to AI Tools that could be used to answer legal questions.

A nonlawyer might charge members of the public by the hour, by the question, by the project, by an annual subscription fee, or otherwise for access to AI Tools capable of responding to legal questions (if ChatGPT or Claude or some other developer of AI Tools would even permit such resale).

Whether a particular AI Tool or service constitutes the unauthorized practice of law is a question of law governed by Judiciary Law §§ 478, 484 and 495, enforceable by the Attorney General under § 476-a, and by judicial construction of those provisions. These Guidelines address what Rule 5.5 requires of lawyers and express no view on that question.

Indeed, many such AI Tools with capabilities to address legal questions or create legal forms or documents (such as wills or contracts) are already on the market, not only in free versions but also in upgraded paid versions.

8.11 Pro Bono Legal Services

8.11.1 Guideline No. 11A; NYRPC 6.1: Pro Bono Legal Services

Commentary:

Currently, Rule 6.1 provides that every lawyer should aspire to provide at least 50 hours of pro bono legal services each year to poor persons and to contribute financially to organizations that provide legal services to poor persons. While the Rule strongly promotes accessibility and service, it was drafted before the rise of AI-driven legal technologies. As such, it does not contemplate how AI Tools might expand pro bono capacity, streamline service delivery, or raise ethical concerns about competence, confidentiality, and oversight.
Rationale:

- **Expanding Access to Justice**: AI-assisted drafting, intake, and research tools can help lawyers efficiently serve more clients and expand access to underserved populations.[94]

- **Preserving Ethical Duties:** Explicitly referencing independent judgment, review, and confidentiality aligns with existing duties under Rules 1.1 (Competence), 1.3 (Diligence), 1.4 (Communication), and 1.6 (Confidentiality).[95]

- **Promoting Consistency Across Contexts:** Other states (e.g., California[96] and Maryland[97]) have begun issuing ethics guidance on AI use.

- **Maintaining Public Trust:** By requiring disclosure when AI materially informs representation, the Guideline reinforces transparency and client confidence in pro bono services.[98]

Lawyers may employ artificial intelligence or similar technologies to increase efficiency in delivering pro bono legal services. When doing so, lawyers must ensure that such technologies are competently used, that client information remains confidential, and that all work product is reviewed for accuracy and appropriateness. The use of such tools does not diminish the lawyer's duty of supervision, diligence, or independent professional judgment.

8.11.2 Thematic Connections and Implications for Rule 6.1

8.11.2.1 Scaling Without Compromising Quality

AI can help lawyers serve more clients efficiently, but quality control is essential to prevent harm to pro bono clients.

8.11.2.2 Disclosure & Transparency

Clients should be informed when AI is used in their matters, especially where it affects substantive advice or outcomes.

8.11.2.3 Maintaining Independent Judgment & Oversight

AI must assist, not replace, lawyer judgment. Human review of AI outputs is required.

8.11.2.4 Confidentiality & Security

Lawyers should ensure AI Systems protect client data, particularly for vulnerable pro bono clients.

8.11.2.5 Equity & Avoiding a Two-Tier System

AI use should not result in lower-quality services for pro bono clients compared to paying clients.

8.11.2.6 Training & Competence in AI Tools

Lawyers should be trained in ethical AI use to effectively expand pro bono services.

8.11.2.7 Bias, Fairness & Access Issues

AI Systems may reflect or amplify biases in their training data, design, or deployment. Lawyers should monitor outputs, especially when serving vulnerable populations. See Guideline 1B.

8.11.2.8 Digital Divide / Access Barriers

AI-based pro bono delivery should consider clients lacking internet or technology access.

8.11.2.9 Responsibility & Accountability

Lawyers remain responsible for all work product, even if generated with AI assistance.

8.12 Attorney Advertising and Communications

8.12.1 Guideline No. 12A; NYRPC 7.1, 7.5, 8.4(c); see also NYRPC 5.1, 5.3: Communications Concerning a Lawyer's Services

Commentary:

The Rules governing communications concerning a lawyer's services are technology-neutral: how a communication is generated does not alter the standards it must meet. As the ABA confirmed in Formal Opinion 512, a lawyer's existing professional obligations apply with full force to generative AI, and output-related responsibility rests with the lawyer, not the tool. Effective June 1, 2026, Rule 7.1 reaches all communications about the lawyer or the lawyer's services, and the defined term "advertisement" formerly in Rule 1.0(a) has been eliminated. AI-assisted website copy, social media content, comparison pages, and interactive chatbot communications are therefore subject to Rule 7.1's prohibition on false or misleading communications. The labeling, disclaimer and retention requirements of the former Rule 7.1 no longer exist.

Generative AI introduces failure modes that traditional review processes may not catch, such as hallucinated case results or statistics, invented client reviews or testimonials, synthetic "spokesperson" imagery, and confident but unverifiable claims about the firm's technological capabilities. Each implicates Rule 7.1 and, where dishonesty is involved, Rule 8.4(c). The Florida Bar, the first regulator to analyze advertising directly, concluded that lawyers may advertise their use of generative AI but cannot claim their AI is superior to that of other lawyers or firms unless the claim is objectively verifiable, a factual question determined case by case. New Jersey's Preliminary Guidelines and the Pennsylvania/Philadelphia Joint Formal Opinion likewise stress that AI does not dilute the duty to ensure that all communications, including marketing communications, are truthful and accurate, and California's guidance directs lawyers to review AI outputs for accuracy before any external use.

Chatbots warrant particular care because they occupy the boundary between communications concerning a lawyer's services, intake, and the practice of law. Florida Opinion 24-1 holds that AI chatbots communicating with clients or third parties must comply with lawyer

advertising restrictions and include a disclaimer that the chatbot is an AI program, not a lawyer or law firm employee, and that the lawyer is ultimately responsible if the chatbot provides misleading information to prospective clients or communicates in a manner that is inappropriately intrusive or coercive; the opinion also recommends screening questions limiting the chatbot's communications with persons already represented by counsel. This mirrors the ABA's framework for nonlawyer intake personnel in Formal Opinion 506, which supplies the appropriate supervision analogy under Rule 5.3. Where a chatbot's responses would cross from information into legal advice, Guideline 10A (Chatbots & UPL) and, for targeted outreach, Guideline 13A (Solicitation) govern.

Practical Application:

Before publishing AI-generated marketing content, a lawyer should verify every factual claim, result, statistic, and attributed statement against source records; include the name and contact information of at least one lawyer or law firm responsible for the content, as Rule 7.1(d) requires; conspicuously label synthetic depictions of persons or events; periodically audit chatbot transcripts for accuracy, tone, and inadvertent legal advice or solicitation; and ensure that marketing staff and vendors using AI Tools on the firm's behalf are supervised consistent with Rules 5.1 and 5.3.[99]

8.13 Solicitation Using AI Tools

8.13.1 Guideline No. 13A; NYRPC 7.1, 7.3 and 8.4: Solicitation and Recommendation of Professional Employment Using AI and GenAI

Commentary:

Note: Rule 7.3 was replaced in its entirety effective June 1, 2026, and Rule 1.0(c), which defined "computer-accessed communication," was deleted. New York City Bar Formal Opinion 2024-5 and the NYSBA Task Force Report quoted below construe the former Rules and should be read in light of the current Rule 7.3

(a) A formal opinion of the New York City Bar Association determined "Lawyers must not use Generative AI in a way that would circumvent their responsibilities under the Rules regarding marketing and solicitation." New York City Bar Association, "Formal Opinion 2024-5: Ethical Obligations of Lawyers and Law Firms Relating to the Use of Generative Artificial Intelligence in the Practice of Law," at 5.A

(b) The NYSBA Report and Recommendations of the Task Force on Artificial Intelligence provides "You [i.e., a lawyer] are responsible for all content that you post publicly, including content generated by [AI and generative AI] Tools." A formal opinion of the New York City Bar Association determined that " a lawyer must not use Generative AI to make false statements …" Formal Opinion 2024-5, supra, at 5.A

(c) The NYSBA Report and Recommendations of the Task Force on Artificial Intelligence provides that a lawyer "must be cautious when using the Tools for

advertising or solicitation purposes to ensure that [the lawyer] compl[ies] with ethical guidelines regarding truthful and non-deceptive communication." A formal opinion of the New York City Bar Association determined that " a lawyer must not use Generative AI … to search the internet for potential clients and send solicitations that would otherwise be prohibited under the Rules." Formal Opinion 2024-5, supra, at 5.A.

(d) Rule 7.3(b) prohibits a lawyer from soliciting professional employment by live person-to-person contact when a significant motive for doing so is the lawyer's or the law firm's pecuniary gain, unless the contact is with a lawyer, a person who has a family, close personal, or prior business or professional relationship with the lawyer or law firm, or a person who routinely uses for business purposes the type of legal services offered by the lawyer. See Rule 7.3(b)(1)–(3). Rule 8.4 provides "A lawyer or law firm shall not: (a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another …"

(e) A formal opinion of the New York City Bar Association determined that "a lawyer must not use Generative AI … to pose as a real person to communicate with prospective clients." New York City Bar Association, "Formal Opinion 2024-5: Ethical Obligations of Lawyers and Law Firms Relating to the Use of Generative Artificial Intelligence in the Practice of Law," at 5.A

9. ENDNOTES

[1] See New York State Bar Association, Report of the Ad Hoc Committee on Non-Lawyer Practice (May 1995) (recommending active enforcement of laws prohibiting unauthorized practice; approved in principle by the House of Delegates June 24, 1995); New York State Bar Association, Special Committee on the Law Governing Firm Structure and Operation, Preserving the Core Values of the American Legal Profession: The Place of Multidisciplinary Practice in the Law Governing Lawyers (2000), at 370; New York State Bar Association, Special Committee on Unlawful Practice of Law, Interim Report (2006), at 1–3 (endorsed by the House of Delegates April 1, 2006).
[2] New York State Bar Association, Task Force on Artificial Intelligence, Report and Recommendations (April 2024), at 31–32, 59 (approved by the House of Delegates April 6, 2024).
[3] Individual Practices of Magistrate Judge Arlene R. Lindsay § C.3 (E.D.N.Y. July 29, 2025), https://www.nyed.uscourts.gov/pub/rules/ARL-MLR.pdf.
[4] NYC Bar Formal Op. 2025-6 (Dec. 22, 2025).
[5] NYC Bar Formal Op. 2026-2 (Aug. 5, 2026).
[6] NYC Bar Formal Op. 2026-2 (Aug. 5, 2026) and Op. 2025-6 (Dec. 22, 2025)
[7] 15 U.S.C. § 9401(3). See also Hon. Xavier Rodriguez, Artificial Intelligence (AI) and the Practice of Law, 24 SEDONA CONF. J. 783, 788 (2023) (quoting CYNTHIA CWIK, PAUL W. GRIMM, MAURA GROSSMAN & TOBY WALSH, ARTIFICIAL INTELLIGENCE AND THE COURTS: MATERIAL FOR JUDGES, ARTIFICIAL INTELLIGENCE, TRUSTWORTHINESS, AND LITIGATION 6 (2022)) (defining artificial intelligence as "computer systems and applications that are capable of performing functions normally associated with human intelligence, such as abstracting, reasoning, problem solving, learning, etc.").
[8] Hon. Xavier Rodriguez, Artificial Intelligence (AI) and the Practice of Law, 24 SEDONA CONF. J. 783, 789 (2023) (citing Maura Grossman et al., The GPT Judge: Justice in a Generative AI World, 23 DUKE L. & TECH. REV. 1, 9–10 (2023)).
[9] Ziwei Ji et al., *Survey of Hallucination in Natural Language Generation*, 55 ACM Computing Surveys, art. 248, at 1–2 (2023).
[10] *Id.*
[11] Virginia State Bar, Guidance on Generative Artificial Intelligence, https://vsb.org/Site/Site/lawyers/ethics.aspx (last visited Sept. 25, 2026).
[12] Dame Victoria Sharp, President of the King's Bench Division, The Mayflower Lecture 2025, Courts and Tribunals Judiciary, https://www.judiciary.uk/speech-by-the-president-of-the-kings-bench-division-the-mayflower-lecture-2025/ quoting from Mimi Zou and Ellen Lefley, '*Generative AI and Article 6 of the European Convention on Human Rights: The Right to a Human Judge?*' in Mimi Zou, Cristina Poncibò, Martin Ebers, Ryan Calo (eds), *The Cambridge Handbook of Generative AI and the Law* (Cambridge University Press 2025) ch 25 at 451.
[13] *Warner v. Gilbarco*, 820 F.Supp.3d 629 (E.D. Mich. Feb. 10, 2026).
[14] D.C. Bar Legal Ethics Op. 388 (2024), https://www.dcbar.org/for-lawyers/legal-ethics/ethics-opinions-210-present/ethics-opinion-388
[15] Hon. Xavier Rodriguez, Judging AI: How U.S. Judges Can Harness Generative AI Without Compromising Justice, Judicature, https://judicature.duke.edu/articles/judging-ai-generative-ai-courts/.

[16] Advisory Committee on Artificial Intelligence and the Courts, *Annual Report to the Chief Judge and Chief Administrative Judge of the State of New York* 12 (Dec. 2025), https://www.nycourts.gov/LegacyPDFS/publications/pdfs/AI%20Annual%20Report%202025.pdf.
[17] Matter of Weber, 85 Misc. 3d 727, 2024 NY Slip Op 24258 (Sur. Ct. Saratoga Cnty. Oct. 10, 2024), https://law.justia.com/cases/new-york/other-courts/2024/2024-ny-slip-op-24258.html
[18] Dame Victoria Sharp, President of the King's Bench Division, *The Mayflower Lecture 2025: Tech, Truth and the Rule of Law*, Courts and Tribunals Judiciary (Nov. 20, 2025), https://www.judiciary.uk/speech-by-the-president-of-the-kings-bench-division-the-mayflower-lecture-2025/.
[19] Id.
[20] Advisory Committee on Artificial Intelligence and the Courts, Annual Report to the Chief Judge and Chief Administrative Judge of the State of New York at 11–13 & App. 6 (Dec. 2025), https://www.nycourts.gov/LegacyPDFS/publications/pdfs/AI%20Annual%20Report%202025.pdf.
[21] See S. Govindarao, Arizona Supreme Court Taps AI Avatars to Make the Judicial System More Publicly Accessible, AP News (Mar. 19, 2025), https://apnews.com/article/ai-artificial-intelligence-arizona-court-653060178ab9661a3ca6ddc37ac12907.
[22] Bobby Chesney & Danielle Citron, Deep Fakes: A Looming Challenge for Privacy, Democracy, and National Security, 107 Calif. L. Rev. 1753, 1768–1777 (2019).
[23] *"The 'Deepfake Defense': An Evidentiary Conundrum,"* Judges Journal, ABA Technology Journal, June 11, 2024; see, https://www.americanbar.org/groups/judicial/publications/judges_journal/2024/spring/deepfake-defense-evidentiary-conundrum/
[24] William Matthewman, The Coming Use and Misuse of Artificial Intelligence in the Courtroom: A Judicial Perspective and Proposal, 30 J. Tech. L. & Pol'y (2026) at p. 143. Available at: https://scholarship.law.ufl.edu/jtlp/vol30/iss2/1/.
[25] Mendones v. Cushman & Wakefield, Inc., No. 23CV028772, Order re Terminating Sanctions (Cal. Super. Ct. Sept. 9, 2025), https://cdn.prod.website-files.com/601987a724bdae251872ed2c/68cd47f5360c1ccf4320d24c_Deepfake_Sanctions_Decision__1758266619.pdf.
[26] Joseline Jean-Louis Hardrick, Deeply Moved by a Deepfake: AI's Expanding Role in the Courtroom, 72 THE FED. LAW. 1, 47 (Fall 2025); See also, Defense attorney appeals after AI video used in court sentencing, ABC15, https://www.abc15.com/news/region-southeast-valley/chandler/defense-attorney-appeals-after-ai-video-used-in-court-sentencing.
[27] State v. Horcasitas, No. CR-2021-142720-001 (Maricopa Cnty. Super. Ct.), notice of appeal filed, No. 1 CA-CR 25-0191 (Ariz. Ct. App. May 7, 2025).
[28] Should AI allow victims to address a sentencing court from the dead?, Michael Best & Friedrich LLP, https://www.michaelbest.com/insights/should-ai-allow-victims-to-address-a-sentencing-court-from-the-dead-102kdd8/.
[29] See Larry Neumeister, An AI Avatar Tried to Argue a Case Before a New York Court. The Judges Weren't Having It, AP News (Apr. 6, 2025), https://apnews.com/article/artificial-intelligence-ai-courts-nyc-5c97cba3f3757d9ab3c2e5840127f765.
[30] Id.
[31] *See,* Krasean, N. (2025, May 5). *Arizona Road rage victim speaks to killer through Artificial Intelligence*. FOX 10 Phoenix. https://www.fox10phoenix.com/news/arizona-shooting-victim-speaks-killer-through-artificial-intelligence;
See also, Cassell, P., Schwennesen, P., Soave, R., Sullum, J., Hazlett, T. W., & Ciaramella, C. J. (2025, May 8). *Should a killer's victim be able to "speak" at a sentencing through ai?* Reason.com. https://reason.com/volokh/2025/05/08/should-a-killers-victim-be-able-to-speak-at-a-sentencing-through-ai/; Surber, E. (2025, June 30). Victim "speaks" via AI, sparking an international conversation. Judicature. https://judicature.duke.edu/articles/ai-victim-impact-statement/
[32] See, Ana Faguy & Lily Jamali, Arizona Man Shot Dead in Road Rage 'Returns' to Address his Killer, BBC NEWS (May 7, 2025), https://www.bbc.com/news/articles/cq808px90wxo; and [https://perma.cc/6U6A-B8EX;
[33] *See*, O'Driscoll, S. (2025, January 3). Florida judge Wears VR headset to step inside simulation of crime scene. Newsweek. https://www.newsweek.com/virtual-reality-headset-court-judge-florida-aggravated-assault-case-2009193; Virtual Reality in the Courtroom, Law Practice Magazine (Mar./Apr. 2025), https://www.americanbar.org/groups/law_practice/resources/law-practice-magazine/2025/march-april-2025/virtual-reality-in-the-courtroom/.
[34] State v. Rodriguez Albisu, supra, Order Denying Defendant's Motion to Allow Forensic Animation (Apr. 29, 2025).
[35] State v. Rodriguez Albisu, supra, Order Denying Defendant's Urgent Motion for Reconsideration on Denial of Defendant's Stand Your Ground Motion to Dismiss and Expedited Ruling in Chambers (May 8, 2025).
[36] Inside The First Stipulated AI Review Protocol: James v Cerebras Systems (July 28, 2026). https://minerva26.com/inside-the-first-stipulated-ai-review-protocol-james-v-cerebras-systems/
[37] *Id.*
[38] *Id.*
[39] N.Y. State Unified Court Sys., *Interim Policy on the Use of Artificial Intelligence* (Oct. 10, 2025), https://www.nycourts.gov/advisory-committee-artificial-intelligence-courts.
[40] N.Y. State Unified Court Sys., *Interim Policy on the Use of Artificial Intelligence* (Oct. 10, 2025), https://www.nycourts.gov/advisory-committee-artificial-intelligence-courts.
[41] Adam Tauman Kalai, Ofir Nachum, Santosh S. Vempala & Edwin Zhang, Why Language Models Hallucinate (arXiv:2509.04664, Sept. 4, 2025).
[42] Muse, D., Elgan, M., Shah, A., & Markander, M. (2025, December 19). *OpenAI admits ai hallucinations are mathematically inevitable, not just engineering flaws*. Computerworld. https://www.computerworld.com/article/4059383/openai-admits-ai-hallucinations-are-mathematically-inevitable-not-just-engineering-flaws.html
[43] *See also* Artificial Intelligence Goes to Court, L.A. Cnty. Bar Ass'n (Sept. 5, 2025), https://lacba.org/?pg=lacba-news&blAction=showEntry&blogEntry=130388.
[44] Id.
[45] Id.
[46] Judge fines law firm Hagens Berman over AI errors in onlyfans case, Reuters (Dec. 15, 2025), https://www.reuters.com/legal/litigation/judge-fines-law-firm-hagens-berman-over-ai-errors-onlyfans-case-2025-12-15/
[47] See Hon. Ralph Artigliere (Ret.), When AI Policies Fail: The AI Sanctions in Johnson v. Dunn and What They Mean for the Profession, EDRM (July 31, 2025), https://edrm.net/2025/07/when-ai-policies-fail-the-ai-sanctions-in-johnson-v-dunn-and-what-they-mean-for-the-profession/.
48 See Federal Court Turns Up the Heat on Attorneys Using ChatGPT for Research, Esquire Deposition Solutions (Aug. 13, 2025), https://www.esquiresolutions.com/federal-court-turns-up-the-heat-on-attorneys-using-chatgpt-for-research/

[49]"Metacognition describes the processes involved when learners plan, monitor, evaluate and make changes to their own learning behaviours," Cambridge Assessment International Education, Education Brief: Metacognition 1, https://www.cambridgeinternational.org/Images/272307-metacognition.pdf.
[50] Riley, B. (2025, December 2). *Large language mistake*. Cognitive Resonance. https://buildcognitiveresonance.substack.com/p/large-language-mistake
[51] See, *Seither & Cherry Quad Cities, Inc. v. Oakland Automation, LLC*, No. 23-11310, 2025 LX 205874, 2025 WL 2105286, at *5 (E.D. Mich. July 28, 2025).
[52]For example, "[t]here are things that we hold to be facts, like the Earth being round. An LLM will tend to say that[,]" because that is, on average, what an LLM will predict based on the sheer quantity of text affirming that. "But if the context is right, it will also say the opposite because the internet does have text about the Earth being flat." Riedl, supra note 52; See also, *Jarrus v. Governor of Michigan* (Filed Case No. 25-cv-11168), at *5.
[53] For a primer, try Mark Riedl, A Very Gentle Introduction to Large Language Models Without the Hype, Medium, https://mark-riedl.medium.com/a-very-gentle-introduction-to-large-language-models-without-the-hype-5f67941fa59e [https://perma.cc/284C-FBXG]. Riedl is a professor in the Georgia Tech School of Interactive Computing and associate director of the Georgia Tech Machine Learning Center. See https://www.cc.gatech.edu/people/mark-riedl [https://perma.cc/E7G6-9D4S].
[54] *Jarrus v. Governor of Michigan* (Filed Case No. 25-cv-11168), at *5.
[55] Berkeley Law Generative AI Rule (Apr. 7, 2023), https://docs.google.com/document/d/1u9Mrblb4-CKIk_WFqLZvg1twpSEIRqHZuQ-8WtMT6eE/edit?tab=t.0; see also J. Hill, Is Unauthorized Artificial Intelligence Use in Law School an Honor Code Violation?, ABA J. (Nov. 4, 2025), https://www.abajournal.com/web/article/is-unauthorized-ai-use-in-law-school-an-honor-code-violation.
[56] Artificial intelligence policy, UC Berkeley Law, https://www.law.berkeley.edu/academics/registrar/academic-rules/artificial-intelligence-policy/.
[57] A. A. Khan *et al*., "AI Ethics: An Empirical Study on the Views of Practitioners and Lawmakers," in *IEEE Transactions on Computational Social Systems*, vol. 10, no. 6, pp. 2971-2984, Dec. 2023, doi: 10.1109/TCSS.2023.3251729.
[58] Gouveia v. Meridian Fin. Invs., LLC, No. 4D2025-0843 (Fla. 4th DCA Mar. 25, 2026), https://flcourts-media.flcourts.gov/content/download/2486572/opinion/Opinion_2025-0843.pdf
[59] E.g., Snell v. United Specialty Ins. Co., 102 F.4th 1208, 1227 n.7 (11th Cir. 2024) (Newsom, J., concurring) ("As I understand things, the LLM that underlies a user interface like ChatGPT creates, in effect, a complex statistical 'map' of how people use language—that, as machine-learning folks would say, is the m function.' How does it do it? Well, to dumb it way down, drawing on its seemingly bottomless reservoir of linguistic data, the model learns what words are most likely to appear where, and which ones are most likely to precede or follow others—and by doing so, it can make probabilistic, predictive judgments about ordinary meaning and usage.").
[60] E.g., Jim Ash, 11th and 17th Circuits Order Disclosure, Certification of AI Use in Court Filings, The Florida Bar (Feb. 9, 2026) (online at https://www.floridabar.org/the-florida-bar-news/11th-and-17th-circuits-orderdisclosure-certification-of-ai-use-in-court-filings/).
[61] James E. Baker, Laurie N. Hobart & Matthew Mittelsteadt, An Introduction to Artificial Intelligence for Federal Judges 6 (Fed. Jud. Ctr. Feb. 13, 2023), https://www.fjc.gov/content/375968/introduction-artificial-intelligence-federal-judges [https://perma.cc/2G8E-KNZ6].
[62] *Id*. *See* also, Harris Yegelwel, Cybersecurity Oversight: A Cautionary Tale for Directors (2015), https://scholarship.law.ufl.edu/cgi/viewcontent.cgi?article=1168&context=jtlp.
[63] Judicial AI Consortium (JAIC), https://www.aiforjudges.com/.
[64] ABA Formal Op. 512 (July 29, 2024) and NYC Bar Formal Op. 2024-5.
[65] American Bar Association, Formal opinion 512 www.americanbar.org/content/dam/aba/administrative/professional_responsibility/ethics-opinions/aba-formal-opinion-512.pdf
[66] Formal Opinion 2024-5: ETHICAL OBLIGATIONS OF LAWYERS AND LAW FIRMS RELATING TO THE USE OF GENERATIVE ARTIFICIAL INTELLIGENCE IN THE PRACTICE OF LAW https://www.nycbar.org/reports/formal-opinion-2024-5-generative-ai-in-the-practice-of-law/
[67] Virginia State Bar, Proposed Legal Ethics Opinion 1901 (Mar. 27, 2025), 2024-formal-ethics-opinion-1 https://vsb.org/Site/Site/news/rules-news/20250327-prop-1901-fees-ai.aspx
[68] N.C. State Bar, 2024 Formal Ethics Op. 1, https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/2024-formal-ethics-opinion-1/
[69] Fla. Bar Ethics Op. 24-1, https://www.floridabar.org/etopinions/opinion-24-1/
[70] Kentucky Bar Ethics Opinion E-457: AI Use in Law Practice for Commonwealth Attorneys, https://clearbrief.com/legal-ai-resources/kentucky
[71] D.C. Bar Legal Ethics Op. 388 (2024), https://www.dcbar.org/for-lawyers/legal-ethics/ethics-opinions-210-present/ethics-opinion-388
[72] The California Guidance states that: "A lawyer may use generative AI to more efficiently create work product and may charge for actual time spent (e.g., crafting or refining generative AI inputs and prompts, or reviewing and editing generative AI outputs). A lawyer must not charge hourly fees for the time saved by using generative AI. Costs associated with generative AI may be charged to the clients in compliance with applicable law. A fee agreement should explain the basis for all fees and costs, including those associated with the use of generative AI." https://www.calbar.ca.gov/Portals/0/documents/ethics/Generative-AI-Practical-Guidance.pdf
[73] Ill. State Bar Ass'n, AI Section Newsletter (Jan. 2025), https://www.isba.org/sections/ai/newsletter/2025/01/bereasonablepeopleaisimpactonlegalfees
[74] LawNext (Feb. 2025), https://www.lawnext.com/2025/02/a-compendium-of-legal-ethics-opinions-on-gen-ai-as-compiled-by-you-guessed-it-gen-ai.html
[75] Mo. Bar Informal Op. 2024-11, https://mo-legal-ethics.org/informal-opinion/2024-11/
[76] SUPREME COURT OF ARIZONA STEERING COMMITTEE ON ARTIFICIAL INTELLIGENCE AND THE COURTS (AISC) November 14, 2024 Generative AI: Ethical Best Practices for Lawyers and Judges. "Some AI is currently free to use, but other AI results in a cost to attorneys. This cost may be viewed as overhead and not billed to clients. Alternatively, if an attorney plans to bill the client for use of AI tools in the client's matter, the attorney must disclose these plans to the client in advance and in writing.16 In addition, an attorney using an hourly billing arrangement cannot bill the client for the time the attorney saved by using AI.17 For example, if an attorney would have spent two hours drafting a document that AI generated in less than a minute, the attorney cannot bill the client two hours unless the attorney actually spent two hours querying, checking, and supplementing the document or otherwise working on the client's matter." https://www.azcourts.gov/Portals/0/74/AISC%20Ethical%20Best%20Practices%20Guidance_For%20Publication.pdf
[77] State Bar of Mich., AI FAQs, https://www.michbar.org/opinions/ethics/AIFAQs
[78] Minnesota State Bar Association, Working Group on AI, Implications for Large Language Models (LLMs) on the Unauthorized Practice of Law (UPL) and Access to Justice (June 2024)" "Unreasonable fees i. ii. Each of the items above (e.g., book-based research, paper based letters,

paper discovery documents) can today be interpreted as "unreasonable." And clients' bills have benefited from "reasonable fees." How long before a court or other authority will rule that spending 10 hours on a task — that an LLM-backed tool can perform in 2 minutes — constitutes an "unreasonable fee" under Rule 1.5?" (p. 15)
https://s3.amazonaws.com/membercentralcdn/sitedocuments/msba/msba/0538/2559538.pdf?AWSAccessKeyId=AKIAIHKD6NT2OL2HNPMQ&Expires=1761929038&Signature=QVjIeWxdQsslSMRehVpMxKYVh7w%3D&response-content-disposition=inline%3B%20filename%3D"msba-ai-working-group-final-report-and-recommendations%2Epdf"%3B%20filename%2A%3DUTF-8%27%27msba%252Dai%252Dworking%252Dgroup%252Dfinal%252Dreport%252Dand%252Drecommendations%252Epdf&response-content-type=application%2Fpdf

[79] "Mississippi Rule of Professional Conduct 1.5(a) requires that all of a lawyer's fees and expenses be "reasonable" and includes a non-exclusive list of criteria for evaluating whether a fee or expense meets that standard. Rule 1.5(b) requires a lawyer to communicate to a client the basis on which the lawyer will charge for fees and expenses (unless the client is a regularly represented client and the terms are not changing). The required information must be communicated before or within a reasonable time of commencing the representation, preferably in writing. Therefore, if a lawyer wants to treat the GAI tool as an expense and charge the client for the use of the GAI tools or services, the lawyer must explain the basis for the charge within a reasonable time of commencing the representation, preferably in writing.
This logic applies if the lawyer uses the GAI tool himself or uses a third-party provider's GAI service. Thus, for example, if the lawyer uses a third-party provider's GAI tool to review thousands of voluminous contracts for a particular client and the provider charges the lawyer for using the tool on a per-use basis, it would ordinarily be reasonable for the lawyer to bill the client as an expense for the actual out-of-pocket expense incurred for using that tool, provided the lawyer communicates this to the client.
If, on the other hand, the lawyer chooses to treat GAI as an overhead expense, that is a different matter. Lawyers may not bill clients for general office overhead expenses, including the routine costs of maintaining a library, securing malpractice insurance, renting office space, and the like. Such overhead should be subsumed within the lawyer's charges for professional services. Accordingly, absent disclosure to the client, a lawyer should consider the cost of GAI tools and services to be overhead that may not be charged to the client.
Lawyers must also consider the impact that the use of GAI tools may have on the time they expend to complete certain tasks. One of the chief benefits of GAI tools is that they may allow lawyers to deliver legal services in a faster and more efficient manner. The benefit of any efficiency achieved must go to the client, not the lawyer. For example, lawyers who bill clients on an hourly basis for time spent on a matter may only bill for their actual time, and not more. Thus, regardless of the efficiencies achieved with GAI tools, the client should only be charged a reasonable fee for the legal services performed which means that the lawyer is only compensated for time actually and reasonably expended.
Further, lawyers should not bill their client for time spent to gain knowledge about GAI tools and services. Costs incurred in learning about GAI, in maintaining GAI-provided services, and keeping up to date with changes in its use, should be considered as a part of the lawyer's overhead, just like any other continuing legal education expense.
Moreover, the lawyer who charges a flat or contingency fee must also ensure the reasonableness of those fees when the lawyer uses a GAI tool. Because the use of a GAI tool may enable the lawyer to complete tasks more quickly than without the tool, it may be unreasonable for the lawyer to charge the same flat or contingency fee when using the GAI tool as when not using it.
The best practice is to memorialize any agreement that the lawyer and the client have regarding billing practices or billing terms relating to GAI tools and services in writing before billing the client. https://www.msbar.org/ethics-discipline/ethics-opinions/formal-opinions/267/

[80] N.J. Supreme Court, Notice to the Bar: Preliminary Guidelines on New Jersey Lawyers' Use of Artificial Intelligence (Jan. 25, 2024), https://www.njcourts.gov/sites/default/files/notices/2024/01/n240125a.pdf

[81] Virginia State Bar, *Guidance on Generative Artificial Intelligence*, https://vsb.org/Site/Site/lawyers/ethics.aspx (last visited Sept. 25, 2026).

[82] ABA Comm. on Ethics & Pro. Resp., Formal Op. 512 (2024), https://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/ethics-opinions/aba-formal-opinion-512.pdf

[83] "Where a Generative AI system uses client information, a law firm must ensure that the system implements any ethical screens required under the Rules. For example, if an ethical screen excludes a lawyer from any information or documents with respect to a client, the lawyer must not be exposed to such information or documents through the law firm's Generative AI systems." https://www.nycbar.org/reports/formal-opinion-2024-5-generative-ai-in-the-practice-of-law/

[84] "Lawyers must be vigilant in identifying and addressing potential conflicts of interest arising from using AI systems." https://www.lawnext.com/wp-content/uploads/2024/06/Joint-Formal-Opinion-2024-200.pdf

[85] Afton Pavletic, *The Wild West of Artificial Intelligence: Ethical Considerations for the Use of A.I. in the Practice of Law*, Assistant Bar Counsel, Massachusetts Office of Bar Counsel (2024), available at https://bbopublic.massbbo.org/web/f/The_Wild_West_of_Artificial_Intelligence.pdf.

[86] See, e.g., *In re Open AI, Inc., Copyright Infringement Litig.*, 802 F. Supp. 3d 688, 699 (S.D.N.Y 2025).

[87] See also United States v. Heppner, Harv. L. Rev. Blog (Mar. 2026), https://harvardlawreview.org/blog/2026/03/united-states-v-heppner/.

[88] See also *Warner v. Gilbarco, Inc., 2026 WL 37304),* at *4 (E.D. Mich. Feb. 10, 2026) (finding that even if *pro se* plaintiff's AI-generated information is discoverable, it is subject to work product protection and the protections were not waived because ChatGPT and other generative AI programs are tools, not persons, and the disclosure is therefore not to an adversary or in a way likely to get in an adversary's hands).

[89] U.S. Court of Appeals for the Fifth Circuit, Court Decision on Proposed Rule, https://www.ca5.uscourts.gov/docs/default-source/default-document-library/court-decision-on-proposed-rule.pdf?sfvrsn=5967c92d_2

[90] D.N.J., edrm.net/wp-content/uploads/2024/03/JUDGE-EVELYN-PADINS-1.B.pdf.

[91] N.Y. State Unified Court System, https://www.nycourts.gov/.

[92] See also A Code of Artificial Conduct: The New York Court System's First Policy on AI, Syracuse L. Rev., https://lawreview.syr.edu/a-code-of-artificial-conduct-the-new-york-court-systems-first-policy-on-ai/ (regarding the New York State Legislature considering amending the Civil Practice Law and Rules ("CPLR") with Senate Bill S2698 (the "Bill")). The Bill would require that an affidavit be submitted disclosing the use of generative AI in court filings and certify that a human reviewed and verified the content.

[93] Effective June 1, 2026, the New York State Unified Court System has adopted a new rule regarding the use of artificial intelligence, N.Y. State Bar Ass'n, https://nysba.org/effective-june-1-2026-the-new-york-state-unified-court-system-has-adopted-a-new-rule-regarding-the-use-of-artificial-intelligence/.

[94] Colleen V. Chien & Miriam Kim, Generative AI and Legal Aid: Results from a Field Study and 100 Use Cases to Bridge the Access to Justice Gap, 57 LOY. L.A. L. REV. 903–88 (2025).

[95] Erin Palmer, *AI Ethics in Law: Emerging Considerations for Pro Bono Work and Access to Justice*, PRO BONO INSTITUTE, (Aug. 29, 2024), https://www.probonoinst.org/2024/08/29/ai-ethics-in-law-emerging-considerations-for-pro-bono-work-and-access-to-justice/.

[96] The State Bar of California Standing Committee on Professional Responsibility and Conduct, *Practical Guidance for the Use of Generative Artificial Intelligence in the Practice of Law*, PRACTICAL GUIDANCE FOR THE USE OF GENERATIVE ARTIFICIAL INTELLIGENCE IN THE PRACTICE OF LAW (Nov. 16, 2023), https://www.calbar.ca.gov/Portals/0/documents/ethics/Generative-AI-Practical-Guidance.pdf.
[97] Pamela Langham, *Navigating Ethical Concerns for Lawyers Using AI*, MARYLAND STATE BAR ASSOCIATION (May 14, 2024), https://www.msba.org/site/site/content/News-and-Publications/News/General-News/Navigating_Ethical_Concerns_for_Lawyers_Using_AI.aspx.
[98] Delores Roxanne, *Digital Platforms and the Accessibility of Pro Bono Legal Services in the U.S.*, RESEARCHGATE (Jan. 20, 2025), https://www.researchgate.net/publication/388190058_Digital_Platforms_and_the_Accessibility_of_Pro_Bono_Legal_Services_in_the_US.
[99] ABA Comm. on Ethics & Prof'l Responsibility, Formal Op. 512 (July 29, 2024). Fla. Bar Ethics Op. 24-1 (Jan. 19, 2024) (framing the analysis under Fla. Rule 4-7.13, deceptive and inherently misleading advertisements). N.J. Supreme Court, Preliminary Guidelines on the Use of Artificial Intelligence by New Jersey Lawyers (Jan. 2024); Pa. Bar Ass'n & Phila. Bar Ass'n, Joint Formal Op. 2024-200 (2024). State Bar of Cal., Practical Guidance for the Use of Generative Artificial Intelligence in the Practice of Law (Nov. 16, 2023). ABA Comm. on Ethics & Prof'l Responsibility, Formal Op. 506 (June 7, 2023) (nonlawyer intake).

Memorandum

To: the Artificial Intelligence and Emerging Technologies Committee

From: Marjorie E. Gross

Date: August 30, 2026

I am a member of the Ethics Committee, but I am passing along these comments in my individual capacity, since I thought you should have them sooner, rather than after the Committee meets in mid-September. The Ethics Committee may comment separately.

The following comments are broken into two parts: (1) comments that are substantive, and (2) those that are more in the nature of drafting glitches.

Substantive

1. The introduction to the Ethical Guidelines states that the applicable NYRPC authorities follow later. But every box with a guideline begins with a NYRPC citation. The report should make clear that each Guideline is designed to aid compliance with the cited rule, but that what follows is not a quote from the NYRPC.

2. Guidelines 1A and 2A. The report does not cite any authority for the proposition that an attorney in certain circumstances **should** use AI to represent clients. The NYRPC studiously avoids advising what lawyers should (as opposed to must or may) do. Although the term "should" is used 276 times in the NYRPC, it is used very few times in the black letter, and many of those are in the defined term "reasonably should know" or what law firm supervisors should know. See also Rule 1.1 (lawyer should provide competent representation), 6.1 (what lawyers should aspire to regarding pro bono service), Rule 6.4 (with respect to law reform activities, lawyers should be mindful of obligations under other rules).

The only stated support for this position seems to be a DC Bar opinion on use of AI – Opinion 388. That opinion cites Comment 8 to ABA Model Rule 1.1 that to be competent "a lawyer should keep abreast of changes in the law and its practice, including the benefits and risks associated with relevant technology." (Comment [8] in the NYRPC provides that the lawyer should keep abreast of the benefits and risks associated with technology **the lawyer uses**.) The DC Bar opinion also states that "Because of society's embrace of technology, a lawyer's ignorance or disregard of it, including social media, presents a risk of ethical misconduct. But I don't read that opinion as stating that a lawyer therefore

should use AI in representing clients. It is similar to the DC Bar's opinion on social media, which said "Recognizing the pervasive use of social media in modern society, lawyers must at least consider whether and how social media may benefit or harm client matters in a variety of circumstances. We do not advise that every legal representation requires a lawyer to use social media. What is required is the ability to exercise informed professional judgment reasonably necessary to carry out the representation."

If the Task Force wishes to recommend what a lawyer should do, it should be more specific as to the benefits of using AI (e.g. increasing competence, decreasing lawyer time spent and therefore costs) and how to weigh the benefits and risks.

3. Citations to the NYRPC. Section 5.7 states that the Rules are as amended through November 10, 2025. The Rules have been amended three times since then, effective June 1, 2026 and July 1, 2026. The link in this section correctly links to the most recent amendments.

More importantly, there are several places where the report cites to Rule 1.7, which was amended effective November 10, 2025, but the report quotes the old rule, which referred to "differing interests" whereas the new Rule does not. See pages 9 and 56. The citation to Comment [1] on page 56 also cites the prior version. The last sentence has changed.

Similarly, page 12 refers to the definition of "advertisement" under Rule 1.0(a). In amendments to Rules 1.0 and 7.1 that became effective June 1, 2026, the term "advertisement" was eliminated and the Rules now apply to all communications about the lawyer or the lawyer's services. Also, paragraph (b) in the second box refers to "advertising and solicitation" rather than "communications about the lawyer and solicitation".

In addition, the carryover on page 12 refers to the standard as "false, deceptive or misleading." Rule 7.1 now prohibits false or misleading communications, although it is true that Rule 8.4 still prohibits deception (as you point out on page 58). See also paragraph (c), which refers to "truthful and non-deceptive communications under Rule 7.1."

See also Section 6.12 and 6.12.1 on page 89. Paragraph (a) in the box on this page states: (a) Content created in whole or in part with AI Tools that constitutes an “advertisement” within the meaning of Rule 1.0(a) is subject to Rules 7.1, 7.4, and 7.5 to the same extent as content created without such tools." This should be fixed. Not only is "advertisement" no longer defined, but Rule 7.4 no longer exists, although some of its content has been moved to 7.1(c).

Also, rethink paragraph (b) where it refers to advertising and deceptive. Ditto the "advertising" references under "Comments". And note, with respect to the practical

application on page 90 that the retention requirements formerly contained in Rule 7.1(k) no longer exist in the Rule.

Moreover, with respect to the discussion of solicitation on page 92, note that Rule 7.3 has been amended and no longer refers to real-time or interactive computer accessed communications. The definition of "live person-to-person contact in comment [2] includes in-person, face-to-face, live telephone, and other real-time visual or auditory person-to-person communications."

4. I find Guideline 9I unnecessarily confusing, because it depends on the subordinate believing but not knowing that the superior's direction is unethical. I believe the correct guideline is Guideline 9G, as described in section 3.16. What does 9I add but confusion?

5. On page 83, in the Section on UPL, it states " Ethical Guidelines should endeavor to take into account the interests of society as a whole, not just the economic interests of lawyers." Does that refer to your Ethical Guidelines? I thought your Ethical Guidelines were all supported by the NYRPC, and Rule 5.5 is not designed to take into account the interests of society as a whole.

Drafting

Cover. This is the only place where you refer to the Guidelines as Legal Ethics Guidelines. The report, in 8 places, refers to them as Ethical Guidelines, although the definition on page 2 says Ethics Guidelines (the “Guidelines”). The term "Guidelines" or "the Guidelines" is used on pages 13, 14, 66, 80 and 85.

p. 7. The first box says "in some instances". The second says "in some cases". The top box on page 8 and the box on page 40 say "cases". Consistency would be good.

p. 13. Second paragraph (c), line 2. Seems to be missing the word "and" after "solicitation".

p. 13, paragraph (e). The shall not/shall in the first line needs to be fixed. Also, fix all material in brackets before you send to the HOD. Ditto 7.3(e) on page 91.

p. 17 The parenthetical (n.d.-h). appears twice. What does it mean?

p. 27. Bar referrals appears twice.

p. 30. LLM is used here but not defined until p. 31.

p. 30. Bullet. The first line is missing the end of the sentence.

p. 40, 3 lines from bottom. Solely should be solo. Also, it's not clear how AI could help a solo prepare a plan that designates another competent lawyer to take over in the event of the lawyer's death or disability. A footnote would be helpful.

p. 44. Last paragraph, 4th line. First letter in It should be capitalized. Last sentence (beginning For example). This is missing the end of the sentence.

p.45. Last paragraph of 6.5.1. On line 2, relations should be relation. In addition, I would guess the 20 bar associations are opining on their own rules and not the NYRPC.

Also, the term Current NYSBA Guidance is used on this page but not defined until page 61.

p. 46. NY City 2024-5 is about use of AI by all New York lawyers, not just those in NYC.

P. 58. In 6.8.1.1., the first line says " Under RPCs, standing orders, etc. Civil Action No. 25–cv–01991–SKC–MDB. What does this mean?

p. 59. The second bullet contains this language: "communications memorialized in the AI documents are not confidential." which are not privileged at the time of creation do not become privileged merely because they are later shared with counsel, *Id.* at 6. Fix.

p. 74, 6.9.8, third bullet. The quote from NY City 1014- is missing and the second box has a stray close quote.

p. 86. On this page you seem to reach the legal conclusion that many AI Tools with capabilities to address legal questions or create legal forms or documents (such as wills or contracts) should not be considered to be engaged in UPL. Isn't it beyond your jurisdiction to give such opinions?

Memorandum

From: Committee on Professional Ethics

To: Committee on Artificial Intelligence and Emerging Technologies

Date: September 23, 2026

Re: AIETC Report "Legal Ethics Guidance for Using Artificial Intelligence"

The Bar Association distributed the AIETC's report to interested Bar Association Committees on August 27 and asked them to review it and to support its adoption by the NYSBA House of Delegates. We distributed the Report to our members seeking comment. But because our first meeting of the year was not until September 16, the Secretary of our Committee, Marjorie Gross, submitted individual comments on August 30.

Many of Marjorie Gross' comments are typos or glitches and we hope the AIETC will address them for the sake of clarity. To the extent that her substantive comments point out cited provisions in the Rules of Professional Conduct ("RPC") that have been amended, we trust that the AIETC will make appropriate corrections.

The Ethics Committee would like to focus its comments on two provisions in the AIETC report.

<u>Whether the Bar Should Recommend that Attorneys Should Use AI.</u>

Guideline 1A is called "Duty of Artificial Intelligence and Generative AI Competence", suggesting that a lawyer has a duty to use AI to provide competent representation. Guideline 1A states "An attorney may (and in some cases should) use artificial intelligence to represent clients effectively, as appropriate . . . ." Guideline 2A states "A lawyer may (and in some cases should) use AI to help advise the client as to whether to settle a matter or, in criminal cases, whether to enter a plea, waive a jury trial or testify . . . ." Guideline 3A states "A lawyer may (and in some cases should) use carefully vetted AI tools to help pursue a matter on behalf of a client."

The support for these recommendations appears in footnote 1, which cites two D.C. Bar opinions – D.C. Bar Legal Ethics Committee Opinions 371 (on the use of social media) and 388 (on the use of generative AI). As Ms. Gross pointed out in her letter, both opinions cite, as support for their discussions on competence, Comment 8 to ABA Model Rule 1.1, which states that to be competent "a lawyer should keep abreast of changes in the law and its practice, including the benefits and risks associated with relevant technology." But New York's version of Comment [8] differs from Comment [8] in the ABA Model Rules. New York's Comment [8] provides that the lawyer should keep abreast of the benefits and risks associated with technology **the lawyer uses**. Thus, we believe it is inappropriate for the NYSBA to state or imply that New York lawyers have a duty to, or otherwise should, adopt new technology – particularly when that technology presents all of the problems outlined in the AIETC report.

<u>Whether the Existence of AI Would Justify an Increase in Voluntary Pro Bono Hours</u>

It is not clear what the Report is recommending with respect to RPC Rule 6.1.

We would not object to a guideline that warns lawyers of the danger of using AI in the provision of pro bono legal services. The duties of competence, loyalty and confidentiality apply to all lawyers, whether or not the client is paying legal fees. But the AIETC Committee seems to be going further.

The "Comment" on page 87 reads as follows:

> "Currently, the Rule [6.1] reads in part: "Every lawyer should aspire to provide at least fifty hours of pro bono legal services each year to poor persons and to organizations that serve the poor." While the Rule strongly promotes accessibility and service, it was drafted before the rise of AI-driven legal technologies. As such, it does not contemplate how AI tools might expand pro bono capacity**,** streamline service delivery, or raise ethical concerns about competence, confidentiality, and oversight."

No proposed amendment to Rule 6.1 follows. Yet the following paragraph states, in part:

"Rationale for the Amendment:

- **Expanding Access to Justice:** AI-assisted drafting, intake, and research tools can help lawyers efficiently serve more clients and expand access to underserved populations.

* * * * *

- **Promoting Consistency Across Contexts:** Other states (e.g., California and Maryland) have begun issuing ethics guidance on AI use; updating Rule 6.1 would help New York remain a leader in ethical modernization. [footnotes omitted]

- **Maintaining Public Trust:** By requiring disclosure when AI materially informs representation, the Rule reinforces transparency and client confidence in pro bono services.

Comment.[❶¿Lawyers may employ artificial intelligence or similar technologies to increase efficiency in delivering pro bono legal services. When doing so, lawyers must ensure that such technologies are competently used, that client information remains confidential, and that all work product is reviewed for accuracy and appropriateness. The use of such tools does not diminish the lawyer's duty of supervision, diligence, or independent professional judgment."

It is not clear what amendments AIETC is referring to, or what "Rule" is being referred to in the third bullet above, or what "Comment [5]" is a comment to. There is already a comment [5] in Rule 6.1 of the RPC.

If the AIETC is proposing amendments to the New York Rules of Professional Conduct, they should provide them in the same way that the Committee on Standards of Attorney Conduct does, in legislative drafting form with changes from the existing RPCs marked.

The Committee on Professional Ethics would not support changing the currrent 50-hour voluntary pro bono provision, based solely on the unsupported claim that New York lawyers and their pro bono clients would meaningfully benefit from the use of AI, especially when the reliability and efficacy of the present AI technology is currently open to question. The Rules of Professional Conduct do not mandate the use of emerging technologies, and the Report of the AIETC demonstrates amply why AI does not currently eliminate the burdens of legal and fact research or the time required to draft appropriate legal documents.

As noted above, Comment [8] to Rule 1.1 of the NY RPC provides that the lawyer should keep abreast of the benefits and risks associated with technology **the lawyer uses**. It does not require the lawyer to adopt the latest technology. Requiring adoption of AI through the backdoor of increasing the number of suggested pro bono hours is unwarranted.

Comments AIETC Report

From: Marjorie Gross <marjgross@gmail.com>
Sent: Saturday, October 24, 2026 10:25 AM
To: dlanouette <dlanouette@hhk.com>
Cc: Miranda, David <dmiranda@nysba.org>; Suchocki, Katherine <KSUCHOCKI@NYSBA.ORG>; vdw1013 <vdw1013@gmail.com>; Marissa Moran <Mmoran@citytech.cuny.edu>; lcmm <lcmm@melchionnalaw.com>; Wally Larson, Jr. <wllarson@gmail.com>; Joseph Neuhaus <joe@neuhausarbitration.com>; Tyler Maulsby <tmaulsby@fkks.com>
Subject: AIETC Report

We are members of the Committee on Professional Ethics and we are writing to you as the Executive Committee liaison to our Committee. We are hoping that you can assist us with respect to the Report of the Committee on Artificial Intelligence and Emerging Technologies, which is scheduled to be presented to the House of Delegates on October 31.

The Report has evolved considerably since an early draft was circulated on August 27, and very substantially revised drafts have only been posted in the last few days. While the drafts are steadily improving, a preliminary review of version 6 of the draft, which the drafters circulated to us on October 22 (it was only posted late in the day on October 23 as version 7), reveals some continued areas of concern. In our view, there has been too little time to gather comments from concerned constituencies. We suggest that consideration of the report should be put off until the January meeting of the HOD.

To briefly recap, the initial draft prepared by the Committee on Artificial Intelligence and Emerging Technologies ("AIETC") was circulated on August 27, seeking comments by September 25. Members of the Ethics Committee submitted comment letters dated August 30 and September 23, and the Task Force did a very thorough revision of the draft, which considerably improved it. But a revised draft was not posted until after we inquired on October 18. A version dated October 5 was posted at that time, and the AIETC provided us with a further revised draft (version 5, dated October 18) on October 19. Each of these drafts is between 93 and 99 pages long, and the AIETC is not distributing marked drafts, so reading them involves a significant amount of time. While there was not time to collect comments on the full 95-page draft, we circulated Section 4 (the Guidelines) of the October 18 draft to the full Ethics Committee in advance of our regular meeting on October 21. Individual Committee members gave comments to Marj Gross, which Marj collected and passed on to the AIETC on October 22. In response to those comments, Luca Melchionna of the AIETC sent Marj proposed version 6 later on October 22 with an outline of the changes made.

While we appreciate that version 6 considers and constructively responds to many of the comments we have made, a quick review reveals continued areas of concern. For example, Guideline 4A deals with when a lawyer must disclose use of an AI Tool to a client. While the drafting of that Guideline has evolved considerably since the initial drafts, the Guideline continues to state that disclosure of use of AI is required where, in our view,

there is no basis in the Rules of Professional Conduct for that conclusion. Guideline 4A(a)(ii) states in part:

(a) Under NYRPC 1.4(b), a lawyer must explain the lawyer's use of an AI Tool to the extent reasonably necessary to permit the client to make informed decisions regarding the representation. Disclosure is required where . . . the output of an AI Tool is a significant basis for the lawyer's advice on a decision reserved to the client under NYRPC 1.2(a), including whether to settle or, in a criminal matter, whether to enter a plea, waive a jury trial, or testify . . . .

This Guideline would thus require disclosure of the fact that an AI Tool was used where its "output ... is a significant basis for the lawyer's advice on a decision reserved to the client." If, for example, a lawyer asks an AI-powered tool what the median recovery for a broken pelvis in a rear-end collision is, and the lawyer finds the answer credible and, based thereon, advises the client to accept or reject a settlement offer, the AI Tool's output would pretty clearly be a "significant basis" for the lawyer's advice. But the ethics rule on which Guideline 4A is based--Rule 4.1(b)--states only that a lawyer "shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation." Requiring disclosure of the use of AI in that circumstance presumes that the client would regard the fact that AI was used as important or material to the decision. Whether the client would view it as material depends on the facts and circumstances and can't be prescribed in this narrow fashion. Some clients will regard it as important; many others will not and will be relying on the lawyer's considered judgment based on all the information available to the lawyer.

In other places, the Report is loosely drafted and we think could benefit from further editing. For example, Guideline 10A states, "Whether conduct constitutes the practice of law is determined by applicable law, not by the technology used." It is unclear to us what this sentence contributes; strictly speaking, the use of some technology could indeed constitute the practice of law. The sentence could probably be deleted without any change in meaning.

These are just a couple of examples based on relatively quick review of the key parts of the Report by only a few members of the Ethics Committee. There are also a number of problems with the "Commentary and Practical Application" section of the Report, including that certain authorities do not support the propositions for which they are cited and the statements in that section conflict with the actual Guidelines. We are concerned that there has been no opportunity for the full Ethics Committee to review and discuss even the Guidelines, let alone the full 90+ page report. There also apparently have been comments from other committees, but they have not been posted or distributed so there has been no opportunity to consider the comments of others.

The ethical aspects of AI use is a subject of considerable legislative and judicial interest, and the State Bar's views on the subject are likely to carry considerable weight. We think it

is particularly important that we get this right, and so urge that the matter be put over until January to allow fuller participation of interested constituencies.

Marjorie Gross
Tyler Maulsby
Joseph Neuhaus