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What Would You Do? Ethical Dilemmas Faced by In-House Counsel

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Potentially Conflicting Ethical Obligations

- **Ethical Obligations to the Client**
  - Duty of Confidentiality
  - Duties of Competence & Diligence
  - Duty to Past Clients
  - Duties to Multiple Clients
- **Ethical Obligations to the Court**
  - Duty of Candor
  - Duty to Remediate
- **Ethical Obligations to the Adversary**
  - Duty to Bring Only Meritorious Claims and Defenses
  - Duty Not to Delay

What Would You Do in the Following Scenarios?

Scenario 1: Defending a Class Action Lawsuit

- Your company is defending a class action lawsuit over alleged misleading environmental disclosures.
- During discovery, outside counsel represents to the court that all environmental testing data has been produced.
- Weeks later, an in-house engineer reveals that one set of historical tests, stored on an old server, was missed. The test shows higher contamination at one site but doesn't affect 95% of class claims.
- The court has ruled on key motions assuming discovery was complete and opposing counsel hasn't raised the issue.
- The company *does not want to disclose* the missing data to the court.

What, if anything, should in-house counsel do about this error?

Scenario 1: Poll

What, if anything, should in-house counsel do about this error?

A: Do nothing. The omission was inadvertent, has minimal impact, and disclosing it would harm your client's position.

B: Conduct an internal review to determine exactly how the error happened and how material it is before deciding whether to involve the court.

C: Immediately produce the missing data to opposing counsel but let them decide whether to raise it with the court.

D: Inform outside counsel and decide whether to disclose the omission to the court, given the potential impact on past rulings and pending issues.

Ethical Obligations to the Court

Duty of Candor

A lawyer must:

- Disclose controlling legal authority known to the lawyer to be directly adverse to the position of the client. CRPC 3.3(a)(2).

A lawyer must not:

- Make false statements of fact or law to the court. CRPC 3.3(a)(1).
- Offer evidence the lawyer knows to be false. CRPC 3.3(a)(3).
  - A lawyer may refuse to offer the evidence.

Ethical Obligations to the Court

Duty to Remediate

- If the lawyer comes to know that material evidence offered to the court is false, the lawyer “shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal.”

  – But the lawyer must still abide by the duty of confidentiality to the client.

And…Ethical Obligations to Adversaries

Duty of Fairness to Opposing Parties and Counsel

A lawyer may not:

- "Unlawfully obstruct another party's access to evidence, including a witness." CRPC 3.4(a).
- "Destroy or conceal a document or other material having potential evidentiary value," or counsel or assist another person in doing so. CRPC 3.4(a).

  – *Potential criminal penalties: Cal. Pen. Code § 135; 18 USC §§ 1501-20.*

- "Suppress any evidence that the lawyer or the lawyer's client has a legal obligation to reveal or to produce." CRPC 3.4(b).
- Falsify evidence. CRPC 3.4(c).

But…Ethical Obligations to the Client

Duty to Maintain Confidentiality

- "It is the duty of an attorney to . . . maintain inviolate the confidence, and at every peril to himself or herself to preserve the secrets, of his or her client." Cal. Bus. & Prof. Code 6068(e)(1); *see also* CRPC 1.6.
  - Sole exception: an attorney may, but is not required to, reveal a client's confidential information if disclosure is necessary to prevent a criminal act that is likely to result in the death of, or substantial bodily harm to, an individual.
- **Remedial measures do not include disclosure of client confidential information**, which the lawyer is required to protect under Business and Professions Code section 6068, subdivision (e)(1) and rule 1.6.

Scenario 1: Poll

What, if anything, should in-house counsel do about this error?

A: Do nothing. The omission was inadvertent, has minimal impact, and disclosing it would harm your client's position.

B: Conduct an internal review to determine exactly how the error happened and how material it is before deciding whether to involve the court.

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Scenario 2: Representing a Small Company

- You are in-house counsel for a small startup.
- You are helping the company negotiate a deal to be acquired. Part of the deal involves equity and non-compete terms for the company's founders.
- One of the founders asks you to explain the deal terms to her.
- She also asks you if she should sign the deal.

Who do you represent at that moment? Should you answer the founder's questions?

Scenario 2: Poll

Who do you represent at that moment? Should you answer the founder's questions?

A: You represent both the company and the founder because she is a key stakeholder. You may explain the deal terms and give her legal advice, as long as her interests align with the company's.

B: You represent the company, not the founder. You may explain the terms objectively, but you cannot advise her on whether to sign or not, unless the company specifically allows you to represent its founders and there is no conflict of interest in representing both the company and the founder.

C: You represent the company, but you may advise the founder on whether to sign because she is a company executive, and your role includes supporting leadership in business decisions.

D: You represent the company, and you should not explain the terms or offer any advice because doing so could create an attorney-client relationship with the founder, violating your duty of loyalty to the company.

Scenario 2: Representing a Small Company

General rule

- "A lawyer employed or retained by an organization shall conform his or her representation to the concept that the client is the organization itself, acting through its duly authorized directors, officers, employees, members, shareholders, or other constituents . . . ." CRPC 1.13(a).

- True even if corporate legal counsel's advice affects the principals. *Skarbrevik v. Cohen, England & Whitfeld*, 231 Cal. App. 3d 692 (1991).

- True even in the context of a small, closely held corporation. *Sprengel v. Zbylut*, 253 Cal. App. 5th 1028 (two 50% owners of LLC).

Scenario 2: Representing a Small Company

But it's complicated

- "[A]n attorney for a closely held corporation may owe professional duties to individual owners with whom he or she has had 'close interaction.'" *Sprengel*, *supra*.
- Depends on totality of the circumstances, including:
  - size of company;
  - kind and extent of contacts
  - attorney's access to information relating to individual owner's interests.

Scenario 2: Representing a Small Company

So what does this mean?

- Your client is the company, not the owner.
- Explaining the deal terms to the owner may be okay.
- But advising the owner on whether or not she should sign *may* not be, depending on the circumstances.
- Clear communication is important.
- Permissible to represent both—but watch out for potential conflicts and consent rules. CRPC 1.13(g).

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Scenario 3: Working at Competitor Companies

- You are in-house counsel for Alpha, a company that develops wearable tech.
- You are overseeing a patent infringement lawsuit against Beta, Alpha's competitor, with outside counsel, Law Firm, LLC.
- Your boss, the Associate General Counsel (AGC), previously worked as an IP attorney at Beta.
- The AGC claims she had very limited involvement with the patent at issue during her time at Beta over 7 years ago but may have been in meetings where the patent was discussed.
- She has been walled off from the case and is not participating in or advising on the litigation.

Is the conflict of interest imputed to you? Can you represent Alpha in this matter?

Scenario 3: Poll

Is the conflict of interest imputed to you? Can you represent Alpha in this matter?

A: Yes, the conflict is automatically imputed to you because your boss (the AGC) is part of the legal team at Alpha, and her prior work with Beta creates a conflict of interest that extends to all in-house counsel under imputation rules. You must notify Beta and withdraw from the lawsuit.

B: No, the conflict is not imputed to you because your boss is not actively involved in the case and was only minimally exposed to the patent at issue over seven years ago. Since she is not very involved, you do not need to take additional steps to address the potential conflict, and you may continue representing Alpha.

C: Yes, the conflict is imputed to you because your boss was previously an IP attorney at Beta, and even minimal past exposure to the patent could create a material conflict. Ethical rules related to conflicts of interest apply broadly to in-house legal teams.

D: No, the conflict is not automatically imputed to you, but you should take additional steps to ensure proper screening measures are in place, notify Beta if necessary, and confirm that your boss does not provide any indirect input on the case. You may continue representing Alpha as long as the screen is effective and Beta does not challenge it.

Scenario 3: Working at Competitor Companies

Rule 1.10(a) of the California Rules of Professional Conduct

(a) While lawyers are associated in a firm, none of them shall knowingly represent a client when any one of them practicing alone would be prohibited from doing so by rules 1.7 or 1.9, unless

(1) the prohibition is based on a personal interest of the prohibited lawyer and does not present a significant risk of materially limiting the representation of the client by the remaining lawyers in the firm; or

(2) the prohibition is based upon rule 1.9(a) or (b) and arises out of the prohibited lawyer's association with a prior firm,* and

(i) the prohibited lawyer **did not substantially participate in the same or a substantially related matter**;

(ii) the prohibited lawyer is **timely screened** from any participation in the matter and is apportioned no part of the fee therefrom; **and**

(iii) written notice is promptly given to any affected former client to enable the former client to ascertain compliance with the provisions of this rule, which shall include a description of the screening procedures employed; and an agreement by the firm to respond promptly to any written inquiries or objections by the former client about the screening procedures.

Scenario 3: Working at Competitor Companies

Comments to Rule 1.10 of the California Rules of Professional Conduct

[1] In determining whether a prohibited lawyer's previously participation was substantial,* a number of factors should be considered, such as the **lawyer's level of responsibility in the prior matter**, the **duration of the lawyer's participation**, the **extent to which the lawyer advised or had personal contact with the former client**, and the **extent to which the lawyer was exposed to confidential information of the former client likely to be material** in the current matter.

[6] Standards for disqualification, and whether in a particular matter (1) a lawyer's conflict will be imputed to other lawyers in the same firm,* or (2) the use of a timely screen* is effective to avoid that imputation, are also the subject of statutes and case law. (*See, e.g.*, Code Civ. Proc., § 128, subd. (a)(5); Pen. Code, § 1424; *In re Charlisse C.* (2008) 45 Cal.4th 145 [84 Cal.Rptr.3d 597]; *Rhaburn v. Superior Court* (2006) 140 Cal.App.4th 1566 [45 Cal.Rptr.3d 464]; *Kirk v. First American Title Ins. Co.* (2010) 183 Cal.App.4th 776 [108 Cal.Rptr.3d 620].)

Ethical Screens

- The California Rules of Professional Conduct now expressly allow for use of ethical screens to avoid imputed conflicts **without client consent** in some cases.
- Previously recognized only in case law.

Ethical Screens

Key elements of an effective screen

- Imposition of screen in a **timely** manner
- Screened lawyer **can't share in fees** from the matters at issue
- **Notice** to affected clients
- **Prohibitions against communications** across the screen
- **Limitation on** prohibited person's **access** to screened matter's file
- **Limitation on access** of firm lawyers or other personnel to the prohibited person's documents and information

Scenario 3: Working at Competitor Companies

Takeaways

- Timely and thorough screening is required.
- "Firm" under the ABA Model Rule 1.10(a) includes corporate legal departments.
- California courts have held there is a rebuttable presumption that a plaintiff's lateral in-house lawyer who formerly worked for defendant shared defendant's confidential information with her current in-house peers. *See Advanced Messaging Techs., Inc. v. EasyLink Services Intern. Corp.*, 913 F.Supp.2d 900, 911 (C.D. Cal. Dec. 19, 2012).

Dynamic 3D Geosolutions, LLC v. Schlumberger Ltd., 2015 WL 4578681 (W.D. Texas Mar. 31, 2015).

APRIL 21, 2015

Entire In-House Legal Department Disqualified Following Lateral Hire

A Closer Look at *Dynamic 3D Geosolutions, LLC v. Schlumberger Ltd.*

Holland & Knight Alert

PDF

HIGHLIGHTS:

- This court opinion demonstrates that in-house legal departments can and will be treated the same as traditional law firms when it comes to imputation of conflicts and the resulting potential for disqualification.
- Although the extent to which lateral attorneys will be presumed to have learned pertinent confidences from their former clients and/or shared them internally or externally may vary from case to case or jurisdiction to jurisdiction, in-house legal departments are well-advised to think about setting up conflicts checking and screening systems which parallel their outside counterparts.

RELATED PRACTICE

Lawyer Ethics, Risk Management and Regulation

RELATED INDUSTRY

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Scenario 4: California Lawyers Working Outside of California

- You are a California-licensed attorney working remotely for a tech startup based in Texas.
- The startup frequently seeks your advice on California-specific legal matters, such as employment law and contract disputes.
- However, they also occasionally ask you to review Texas-specific contracts and provide guidance on local regulatory compliance.
- You are not licensed to practice law in Texas but feel confident in your ability to research and address these issues.

Are you engaging in the unauthorized practice of law (UPL) by advising on Texas-specific matters? What steps should you take to comply with California's ethical rule and multijurisdictional practice guidelines?

Scenario 4: Poll

Are you engaging in the unauthorized practice of law by advising on Texas-specific matters? What steps should you take to comply with California's ethical rule and multi-jurisdictional practice guidelines?

A: No, as long as you clearly disclose that you are only licensed in California and base your guidance on general legal principles, you are not engaging in the unauthorized practice of law in Texas. You may continue advising on Texas-specific matters.

B: Yes, advising on Texas-specific contracts and regulations without a Texas law license constitutes unauthorized practice of law. You must either obtain a Texas license or refrain from providing legal guidance on these issues.

C: Not necessarily, but to comply with ethical rules, you should limit your advice to California law and recommend that the company consult Texas-licensed counsel for state-specific matters. You may provide general contract analysis but should avoid interpreting Texas statutes or regulations.

D: No, because you are employed by the startup as in-house counsel, and California multi-jurisdictional rules allow in-house attorneys to advise on all legal matters that are relevant to their client. There are no restrictions on your ability to provide Texas-specific legal guidance as long as you believe you can competently do so.

California Lawyers Working Outside of California

The COVID pandemic changed the way we practice law

- Remote work
- California lawyers working for California firms or companies want to live in and work from other states
- What does this mean from a legal ethics perspective?

California Lawyers Working Outside of California

California's rule for California lawyers practicing elsewhere

California Rules of Professional Conduct, Rule 5.5(a)

(a) A lawyer admitted to practice law in California shall not:

(1) practice law in a jurisdiction **where to do so would be in violation of regulations of the profession in that jurisdiction**; or

(2) knowingly* assist a person* in the unauthorized practice of law in that jurisdiction.

California Lawyers Working Outside of California

Other state's rules for foreign lawyers working in the state

- *Many* states have a rule similar to Rule 5.5(b) of ABA Model Rules

> (b) A lawyer who is not admitted to practice in this jurisdiction shall not:
>
> > (1) except as authorized by these Rules or other law, **establish an office or other systematic and continuous presence** in this jurisdiction for the practice of law; or
> >
> > (2) **hold out to the public or otherwise represent that the lawyer is admitted** to practice law in this jurisdiction.

California Lawyers Working Outside of California

California State Bar Formal Ethics Opinion (Aug. 2023)

- "The committee recognizes that **lawyers working remotely may temporarily or permanently relocate to another state where the lawyer is not licensed to practice law**. This committee is not authorized to opine on issues of unauthorized practice of law, including whether a particular conduct or activity constitutes the unauthorized practice of law. California licensed lawyers practicing California law remotely in another state where they are not licensed **should consult the multijurisdictional practice and unauthorized practice of law rules and authorities of the state where they are physically present**.

- "The ABA and some other state bar and local ethics committees have issued opinions regarding unauthorized practice of law considerations for attorneys remotely practicing the law of the jurisdictions in which they are licensed while physically present in a jurisdiction in which they are not admitted."

California Lawyers Working Outside of California

Takeaways

- Rules in California and other states increasingly allowing California attorneys to live in other states while practicing law in California
- BUT have to check local rules for the jurisdiction and follow as the rules develop
- And consider taking or passing into local bar

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Scenario 5: Using AI in Legal Practice

- You are in-house counsel for a small startup that is highly cost-conscious.
- The CEO wants to understand data privacy compliance for a new product launch and asks you to do some preliminary research before engaging outside counsel.
- To save time, you decide to use a reputable AI chatbot with a deep research function to explore the question.
- The chatbot provides an insightful response, which you review and assess as approximately 90% accurate.
- You consider sending this initial research to outside counsel for verification and refinement.

Can you rely on AI tools for preliminary legal research? And what steps should you take to ensure compliance with ethical obligations?

Scenario 5: Poll

Can you rely on AI tools for preliminary legal research? And what steps should you take to ensure compliance with ethical obligations?

A: No, relying on AI-generated legal research is ethically problematic because AI tools can produce inaccurate, misleading, or hallucinated results. You should conduct your own legal research or engage outside counsel directly instead of using AI as an intermediary.

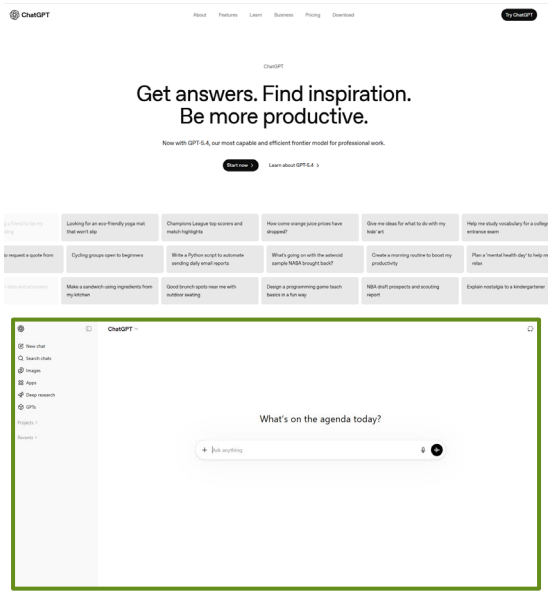
B: No, because AI tools may not be designed for legal research and could expose you to ethical risk and your client to embarrassment if you or outside counsel are misinformed by the AI results. Even if you verify the output, it is not advisable to use AI for legal research unless the tool is designed for this use.

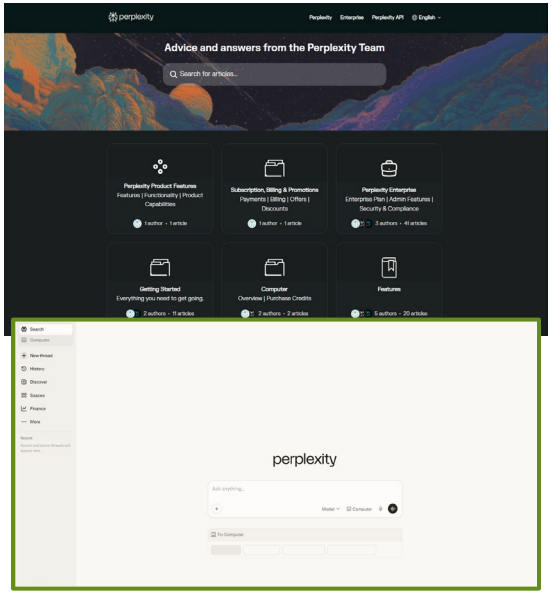
C: Yes, AI can be a useful research tool, and as long as you review the output critically before relying on it there are no ethical concerns. You may share the AI-generated research with outside counsel for confirmation without additional precautions.

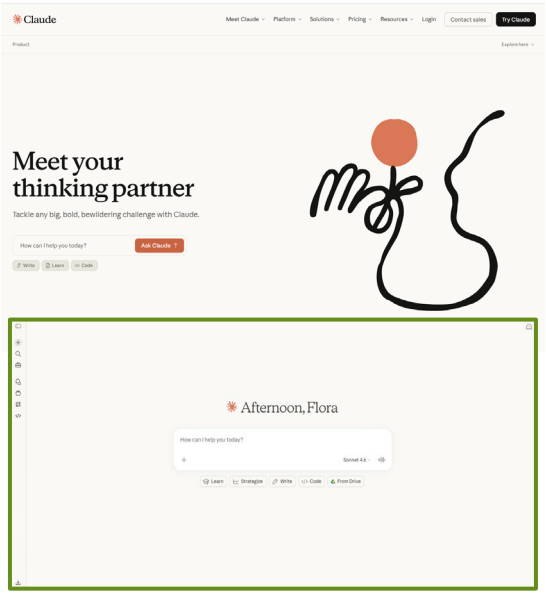
D: Yes, but AI-generated research should be treated as a starting point (like a google search), not a final source. You should independently verify the information using authoritative legal sources and disclose any AI usage to outside counsel when seeking their verification.

What is an AI Chatbot?

AI Chatbots, like ChatGPT, Perplexity, and Claude are applications that can create text, images, or other content in response to user prompts. In the legal context, they may be used for tasks such as brainstorming, research, drafting, or summarizing information.







What is Agentic AI?

AI systems that are designed to act with a degree of autonomy to plan, execute, and adapt tasks toward a defined goal. Common features include:

Autonomous Action

Executes multi-step tasks end-to-end with minimal human prompting.

Tool Use

Uses external tools (like browsers, email, databases, APIs, and software) to gather information and take action.

Iterative Reasoning

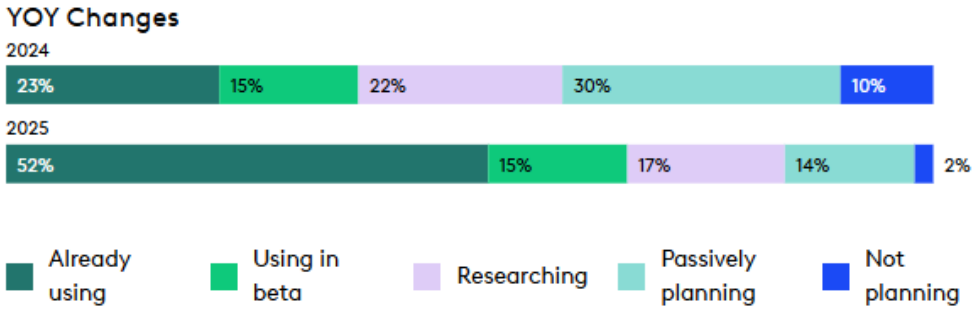
Continuously evaluates results, adjusts its approach, and retries until objectives are met or issues are flagged.

Uses for AI in Legal Work

- Brainstorming
- Contract & brief drafting
- Legal research & summarization
- Document review
- Discovery & fact research

In-house counsel are seeing large increases in adoption of AI year-over-year

Are you currently using, or planning to use, generative AI in your legal work?



Source: Everlaw & ACC GenAI Strategic Value for Corporate Law Departments, *October 2025*

What are the risks of using AI in legal work?

- **Accuracy & Hallucinations:** AI may produce incorrect, misleading, or entirely fabricated legal information, including nonexistent cases or citations

What are the risks of using AI in legal work?

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US appeals court fines lawyers $30,000 in latest AI-related sanction

By Mike Scarcella

March 16, 2026 12:14 PM PDT · Updated March 17, 2026



AI (Artificial Intelligence) letters and robot hand are placed on computer motherboard in this illustration created on June 23, 2023. REUTERS/Dado Ruvic/Illustration/File Photo Purchase Licensing Rights

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United States of America Follow

March 16 (Reuters) - An appeal containing fake case citations that misrepresent the law can be dismissed as frivolous, a U.S. federal appeals court panel said in a decision sanctioning two attorneys who submitted filings that bore hallmarks of artificial intelligence "hallucinations."

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BIGLAW

Am Law 100 Firm Accused Of Filing Brief Riddled With AI Hallucinations... AGAIN!

Fool me once...

By Joe Patrice on February 19, 2026 3:25 pm Share

Not every mistake is attributable to an AI hallucination. But once a firm suffers a couple admonishments from the court — including one that cost the firm over $50K to make right — its lawyers have to redouble their effort to keep every filing above reproach. Because the moment anything looks off, opposing counsel will wonder if it's the product of AI run amok and lax oversight.



And the court isn't likely to give the accused firm the benefit of the doubt.

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What are the risks of using AI in legal work?

- **Accuracy & Hallucinations:** AI may produce incorrect, misleading, or entirely fabricated legal information, including nonexistent cases or citations
- **Confidentiality Risks:** Entering sensitive client information into unsecured or public AI tools may result in unintended disclosure

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- **Privilege Concerns:** It remains unclear whether communications with AI tools are protected communications

What are the risks of using AI in legal work?



March 12, 2026 | Legal News, RPJ News & Publications

Federal Courts Split On Privileged Status of AI-Generated Documents

By Alice K. Jump and Kaycee Portillo-Sorto

- **Judge Jed S. Rakoff (S.D.N.Y.), *U.S. v. Heppner* (Feb. 10, 2026):**
  - AI-generated documents seized by the FBI from Defendant's home outlining a defense strategy against fraud charges were not privileged or work-product, even though they were later shared with his counsel and based on information received from counsel.
- **Judge Anthony P. Patti (E.D. Mich.), *Warner v. Gilbarco, Inc.* (Feb. 10, 2026):**
  - Plaintiff's documents created with generative AI were prepared in anticipation of litigation and protectable work product.

What are the risks of using AI in legal work?

- **Accuracy & Hallucinations:** AI may produce incorrect, misleading, or entirely fabricated legal information, including nonexistent cases or citations
- **Confidentiality Risks:** Entering sensitive client information into unsecured or public AI tools may result in unintended disclosure
- **Privilege Concerns:** It remains unclear whether communications with AI tools are protected communications
- **Regulatory Uncertainty:** The legal framework governing AI remains unsettled in the US and continues to evolve

What are the risks of using AI in legal work?







What ethical rules are implicated?

Rule 1.1: Duty of Competence

- A lawyer shall not intentionally, recklessly, with gross negligence, or repeatedly fail to perform legal services with competence.
- Competence in any legal service shall mean to apply the (i) learning and skill, and (ii) mental, emotional, and physical ability reasonably necessary for performance of service.

Rule 1.3: Duty of Diligence

- Lawyers must protect information relating to the representation and take steps to prevent unintended disclosure or unauthorized access to that information

Rule 5.1: Supervision and Unauthorized Practice

- Lawyer with supervisory authority over non-lawyer must make reasonable efforts to ensure non-lawyer's compliance and may be responsible for non-compliance

What does the California State Bar have to say?

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

EXECUTIVE SUMMARY

Generative AI is a tool that has wide-ranging application for the practice of law and administrative functions of the legal practice for all licensees, regardless of firm size, and all practice areas. Like any technology, generative AI must be used in a manner that conforms to a lawyer's professional responsibility obligations, including those set forth in the Rules of Professional Conduct and the State Bar Act. A lawyer should understand the risks and benefits of the technology used in connection with providing legal services. How these obligations apply will depend on a host of factors, including the client, the matter, the practice area, the firm size, and the tools themselves, ranging from free and readily available to custom-built, proprietary formats.

Generative AI use presents unique challenges; it uses large volumes of data, there are many competing AI models and products, and, even for those who create generative AI products, there is a lack of clarity as to how it works. In addition, generative AI poses the risk of encouraging greater reliance and trust on its outputs because of its purpose to generate responses and its ability to do so in a manner that projects confidence and effectively emulates human responses. A lawyer should consider these and other risks before using generative AI in providing legal services.

Updates to the Ethical Rules forthcoming in 2026…

The California Bar Standing Committee on Professional Responsibility and Conduct is planning to make amendments to the ethics rules this May. The proposed amendments would add new guidance for Artificial Intelligence for:

Rule 1.1 – Competence

Rule 1.3 – Diligence

Rule 1.6 – Confidential Information of a Client

Rule 3.3 – Candor to the Tribunal

Rules 5.1 and 5.3 – Supervisory Responsibilities

COPRAC Proposed Amendments

Amendments to rule 1.1 would:

- Include artificial intelligence as an example of relevant technology in current Comment [1].
- Add a new Comment [2] emphasizing that, when using technology, including artificial intelligence, a lawyer must independently review, verify, and exercise professional judgment regarding any output generated by the technology.

Amendments to rule 1.4 would:

- Add new Comment [5] clarifying that when a lawyer's use of technology, including artificial intelligence, presents a significant risk or materially affects the scope, cost, manner, or decision-making process of representation, the lawyer must communicate sufficient information regarding the use of technology to permit the client to make informed decisions regarding the representation. The comment also clarifies that this duty exists through the life of the representation based on the facts and circumstances, including the novelty of the technology, risks associated with the use of the technology, scope of representation, and sophistication of the client.

Amendments to 1.6 would:

- Add a new Comment [2] defining "reveal" to include exposing confidential information to technological systems, including AI tools where such exposure creates a material risk that the information may be used in a manner inconsistent with the lawyer's duty of confidentiality.

Amendment to 3.3 would:

- Add new Comment [3] clarifying that a lawyer's duty of candor toward the tribunal includes the obligation to verify the accuracy and existence of cited authorities, including ensuring no cited authority is fabricated, misstated, or taken out of context, before submission to a tribunal, including any cited authorities generated or assisted by artificial intelligence or other technological tools.

Amendments to 5.1 would:

- Modify existing Comment [1] to clarify that managerial lawyers must make reasonable efforts to establish internal policies and procedures governing the use of AI, in accordance with the Rules of Professional Conduct.

Amendments to 5.3 would:

- Modify the existing comment to clarify that a lawyer must give nonlawyer assistants appropriate instruction and supervision concerning all ethical aspects of their employment, including the use of technology in the provision of legal services, such as artificial intelligence.

Takeaways

Ethical use of AI in legal practice

- Do not put confidential, privileged, or non-public information into chatbots (absent explicit controls, as in certain enterprise accounts)
- When using AI for legal work—in particular for legal research—do so with caution and verification through other means
- Exercise caution not to delegate professional judgment to AI
- Set policies and conduct trainings
- Keep track of developments and guidance—things are changing fast

Scenario 5: Poll

Can you rely on AI tools for preliminary legal research and what steps should you take to ensure compliance with ethical obligations?

A: No, relying on AI-generated legal research is ethically problematic because AI tools can produce inaccurate, misleading, or hallucinated results. You should conduct your own legal research or engage outside counsel directly instead of using AI as an intermediary.

B: No, because AI tools may not be designed for legal research and could expose you to ethical risk and your client to embarrassment if you or outside counsel are misinformed by the AI results. Even if you verify the output, it is not advisable to use AI for legal research unless the tool is designed for this use.

C: Yes, AI can be a useful research tool, and as long as you review the output critically before relying on it there are no ethical concerns. You may share the AI-generated research with outside counsel for confirmation without additional precautions.

D: Yes, but AI-generated research should be treated as a starting point (like a google search), not a final source. You should independently verify the information using authoritative legal sources and disclose any AI usage to outside counsel when seeking their verification.

Thank You