PRESIDENTIAL TASK FORCE ON ARTIFICIAL INTELLIGENCE AND DIGITAL TECHNOLOGIES

CURRENT ETHICS OPINIONS AND REPORTS RELATED TO GENERATIVE ARTIFICIAL INTELLIGENCE

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CURRENT ETHICS OPINIONS AND REPORTS RELATED TO GENERATIVE ARTIFICIAL INTELLIGENCE

I. INTRODUCTION

Jurisdictions across the country have been working to address the unique issues and challenges to the legal profession posed by Generative Artificial Intelligence (GAI). In these summaries, the New York City Bar Association Presidential Task Force on Artificial Intelligence and Digital Technologies (Task Force)[1] highlights key requirements from American Bar Association (ABA) ethics opinions, formal ethics opinions from California, Washington, D.C., Florida, Kentucky, Michigan, North Carolina, New York (i.e., the New York City Bar Association and the New York State Bar Association), Pennsylvania (e.g., the Philadelphia Bar Association), Minnesota, Missouri, West Virginia, and the Massachusetts Attorney General and the New York Attorney General. These summaries of ethics opinions, bar association reports, and other resources discuss how the legal profession is currently using AI and may be relevant to practitioners seeking to learn more about GAI and legal ethics.[2]

While it is possible to draw conclusions from some of the specific summaries, overall, the summaries reflect the following general trends:

Lawyers' use of generative artificial intelligence in connection with the practice of law triggers numerous ethical duties that may arise depending on the nature of the use. The ethical duties include: (i) maintaining client confidence, (ii) understanding and knowing how to use

[1] The Task Force is composed of approximately 250 representatives of more than 50 committees, councils, and other task forces of the City Bar and adjunct members, including lawyers, academics, trade association representatives, consultants, technologists, and others. *See* Task Force Dashboard at https://www.nycbar.org/committees/task-force-on-digital-technologies/ and https://www.nycbar.org/wp-content/uploads/2025/05/PTFAIDT-Leadership-250430.pdf (All websites last accessed on May 28, 2025).

[2] The summaries were drafted by the Task Force Subcommittee on Artificial Intelligence and Legal Ethics (AI and Legal Ethics Subcommittee) and approved by the Task Force Subcommittee on Articles and Blogs. The AI and Legal Ethics Subcommittee's primary mission includes analyzing and reporting on the Rules of Professional Conduct; bar association ethics opinions; case law; and the laws and regulations governing the unauthorized practice of law. The current members of the AI and Legal Ethics Subcommittee include (1) Matthew K. Corbin, Managing Director at Aon; (2) Margaret Darin Hagan, Executive Director of the Legal Design Lab and Lecturer at Stanford Law School and the Stanford Institute of Design; (3) Subcommittee Co-Chair David Keyko, Partner at Pillsbury Winthrop Shaw Pittman LLP and City Bar Professional Ethics Committee Chair; (4) Subcommittee Co-Chair Tyler Maulsby, Immediate Past President of the Association of Professional Responsibility Lawyers and Partner at Frankfurt Kurnit Klein & Selz PC; (5) Lucian T. Pera, Partner at Adams & Reese LLP; (6) Alison Roffi, Deputy General Counsel at Orrick, Herrington & Sutcliffe LLP; (7) Roy D. Simon, former Professor and Director at Hofstra Institute for the Study of Legal Ethics, Hofstra University School of Law; and (8) Kaylin L. Whittingham, Managing Attorney at Whittingham Law. The Task Force Subcommittee on Articles and Blogs serves as a peer review for Task Force writings, especially articles, blogs, reports, statements, and other writings. Current subcommittee members include (1) Angelena Bradfield, Head of Policy and Government Affairs at Financial Technology Association; (2) Robert Mahari, Harvard Law School and MIT Media Lab; (3) Lorraine McGowen, Task Force Co-Chair and Partner at Orrick, Herrington & Sutcliffe LLP; (4) Robert Schwinger, Partner at Norton Rose Fulbright US LLP; (5) Edwin Smith, Massachusetts Uniform Law Commissioner and Partner at Morgan, Lewis & Bockius LLP; (6) Tiffany Smith, Partner at WilmerHale; and (7) Jerome Walker, Task Force Co-Chair and Partner at Jerome Walker PLLC.

generative artificial intelligence, (iii) verifying the output created by generative artificial intelligence, (iv) supervising lawyers and nonlawyers using generative artificial intelligence, (v) being candid to the court and client when using generative artificial intelligence, and (vi) not charging a client for the time saved by the use of artificial intelligence, among other things.

An exception to the similar reading of how the Rules of Professional Conduct apply to the use of generative artificial intelligence is the conclusion in the West Virginia opinion that an attorney should receive client permission to use generative artificial intelligence before using it. The other reports conclude that client disclosure is not needed provided the attorney is otherwise complying with the attorney's ethical responsibilities when using generative artificial intelligence.

Further, there has not been a call to amend the Rules of Professional Conduct or the comments to the Rules specifically to address generative artificial intelligence; rather, the current Rules are generally considered to be sufficiently robust to address the use of generative artificial intelligence. None of the below sources suggests that an attorney either may not or must use generative artificial intelligence to fulfill the attorney's duty of competence, but several note that a time in the future may come when an attorney must understand and use generative artificial intelligence to fulfill the attorney's duty of competence.

II. AMERICAN BAR ASSOCIATION OPINION 512

American Bar Association (ABA) Standing Committee on Ethics and Professional Responsibility Formal Opinion 512 (July 29, 2024) (ABA Formal Op. 512)[3]

ABA Formal Op. 512 provides an overview of the ethical issues associated with lawyers using generative artificial intelligence (GAI). The Opinion covers four key topics:

1. **Competence (Model Rule 1.1):**

    - Lawyers must provide competent representation, which includes understanding the benefits and risks associated with using GAI tools. Competence involves exercising the necessary legal knowledge, skill, thoroughness, and preparation.

2. **Confidentiality (Model Rule 1.6):**

    - Lawyers must protect client information when using GAI tools. Confidentiality applies to all information related to the representation of a client, regardless of its source, unless the client gives informed consent.

[3] Accessible at https://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/ethics-opinions/aba-formal-opinion-512.pdf.

3. **Communication (Model Rule 1.4):**

- Lawyers should reasonably consult with clients about the means to achieve their objectives, including the use of GAI tools. This includes advising clients promptly whenever there is important information to share.

4. **Reasonableness of Fees (Model Rule 1.5):**

- Lawyers' fees must be reasonable, including time spent using GAI tools and reviewing their outputs. In addition, lawyers should explain the basis for any charges related to GAI tools, preferably in writing.

- The Opinion further concluded that fees should reflect actual time spent on the case, even if GAI tools allow for more efficient work. In addition, the Opinion cautioned that lawyers should not pass on the cost of learning to use GAI tools unless the client specifically requests it.

The opinion also reasoned that lawyers must be transparent with clients about the use of GAI tools and any associated costs and acknowledged that the reasonableness of fees and ethical considerations may evolve as GAI tools become more integrated into legal practice.

III. CALIFORNIA RECOMMENDATIONS ON USE OF GENERATIVE AI

The State Bar of California's Standing Committee on Professional Responsibility and Conduct issued a paper titled *Practical Guidance for the Use of Generative Artificial Intelligence (GAI) in the Practice of Law*.[4] The guidance addressed the following issues:

1. **Competence:**

- GAI can be used in various aspects of legal practice, regardless of firm size or practice area. However, its use must conform to professional responsibility obligations. Lawyers must understand the risks and benefits of GAI tools, including issues related to data security, confidentiality, and the reliability of AI-generated outputs.

- Lawyers must maintain competence by staying informed about technological advancements and understanding how to use GAI tools effectively and ethically. Lawyers may also have a duty to disclose to the tribunal the use of GAI tools.

[4] California State Bar, "Practical Guidance for the Use of Generative Artificial Intelligence in the Practice of Law" (Nov. 16, 2023), accessible at https://www.calbar.ca.gov/Portals/0/documents/ethics/Generative-AI-Practical-Guidance.pdf.

- Lawyers cannot use GAI tools in a manner that would violate California law or court rules.

- Lawyers have a duty to supervise nonlawyers and other lawyers in the use of GAI.

2. **Confidentiality:**

- Lawyers must ensure that client information remains confidential when using GAI tools. This includes anonymizing client data and consulting with IT professionals to ensure adequate security measures are in place.

3. **Communication:**

- Lawyers should communicate with clients about the use of GAI tools, including how these tools will be used in their case and any associated risks.

4. **Reasonableness of Fees:**

- Lawyers must ensure that billing for GAI tools is transparent and reflects the actual value provided to the client. Overcharging or adding surcharges for the use of GAI tools is discouraged.

5. **Prohibition on Discrimination:**

- Lawyers cannot use GAI in a way that constitutes unlawful discrimination or harassment in violation of the California Rules of Professional Conduct or other law.

IV. WASHINGTON, D.C. OPINION 388

DC Bar Ethics Opinion 388[5] was issued in April 2024 and addressed the following topics:

1. **Competence:**

- Lawyers must understand the benefits and risks of using GAI tools to ensure they provide competent representation. This includes being aware of the limitations and potential inaccuracies of GAI.

[5] D.C. Bar Ethics Op. 388 (2024), accessible at https://www.dcbar.org/for-lawyers/legal-ethics/ethics-opinions-210-present/ethics-opinion-388.

- The use of GAI does not change the fundamental ethical obligations of lawyers. They must still adhere to the rules of professional conduct, including competence, confidentiality, and communication.

2. **Confidentiality:**

   - Lawyers must protect client information when using GAI tools. This involves ensuring that any data shared with GAI tools is secure and that client confidentiality is maintained.

   - With respect to confidentiality, the Opinion advised lawyers to ask two questions:

     1. Will information I provide to the GAI be visible to the GAI provider or other strangers to the attorney-client relationship?

     2. Will my interactions with the GAI affect answers that later users of the GAI will get in a way that could reveal information I provided to the GAI?

3. **Communication:**

   - Lawyers should communicate with clients about the use of GAI tools, including the potential risks and benefits as well as whether it will have any impact on the lawyer's fee. This ensures that clients are informed about how their information is being used and the role of GAI in their case.

4. **Reliability:**

   - Lawyers should be cautious about the reliability of GAI outputs. GAI tools can sometimes produce inaccurate or fabricated information, known as "hallucinations." Lawyers must verify the accuracy of GAI-generated content before relying on it in legal matters. This requirement also triggers a lawyer's obligation to ensure that any statement in court filings that may have been prepared with the assistance of GAI is true and accurate.

5. **Interactions:**

   - In certain circumstances, the opinion observed, lawyers may be obligated to retain certain interactions with GAI and provide those interactions to the client as part of the client's file.

V. FLORIDA OPINION 24-1

Florida Bar Advisory Opinion 2024-1[6] addresses the following issues:

1. **Confidentiality:**

    - Lawyers must protect the confidentiality of client information when using generative AI. This involves researching the AI program's policies on data retention, data sharing, and self-learning. In addition, absent client consent, a lawyer is not permitted to disclose client confidential information when using GAI unless such disclosure is impliedly authorized.

2. **Competence:**

    - Lawyers are responsible for their work product and professional judgment. They must develop policies and practices to verify that the use of generative AI is consistent with their ethical obligations.

3. **Billing Practices:**

    - The use of generative AI does not permit lawyers to engage in improper billing practices, such as double-billing. In an hourly billing matter, the lawyer must charge only for the time spent and any fees must be reasonable.

4. **Advertising:**

    - Generative AI chatbots that communicate with clients or third parties must comply with restrictions on lawyer advertising. They must include a disclaimer indicating that the chatbot is an AI program and not a lawyer or employee of the law firm.

5. **Technological Competence:**

    - Lawyers should maintain technological competence and educate themselves regarding the risks and benefits of new technology.

[6] Florida Bar Comm. on Ethics and Prof'l Responsibility, Formal Op. 24-1 (2024), accessible at https://www.floridabar.org/etopinions/opinion-24-1/.

VI. KENTUCKY OPINION E-457

Kentucky Bar Association Opinion KBA E-457[7] covers the following topics:

1. **Confidentiality:**

   - Attorneys must safeguard confidential client information when using AI. This includes ensuring that AI tools comply with confidentiality requirements.

2. **Communication:**

   - The opinion reasoned that a lawyer may have a duty to discuss the use of GAI with clients as part of the lawyer's duty of communication. The level of disclosure will depend on the circumstances of the representation but, in general, the lawyer has a duty to "provide the client with sufficient information to participate intelligently in decisions concerning the means by which the client's objectives are to be pursued." This may include discussing GAI options with the client, especially if the client's confidential information will be shared with a GAI tool.

3. **Fees:**

   - The Opinion cautioned that not all costs associated with GAI may be passed on to the client. For example, costs incurred in learning about AI, in maintaining AI provided services, and keeping up to date with changes in its use, should be considered part of the lawyer's overhead and not recoverable from the client. In addition, lawyers charging on an hourly basis cannot submit inflated bills for hours not actually spent on their case and cost savings should be passed on to the client. Although lawyers may request that their client reimburse them for the costs incurred in using GAI, the lawyer must explain the expected cost and obtain the client's agreement in advance to reimburse the lawyer for the expense.

4. **Compliance with Court Rules:**

   - Attorneys using AI must review and comply with relevant court rules regarding the use of AI in legal practice, including any rules regarding disclosure of the use of GAI to courts.

[7] Kentucky Bar Ethics Op. KBA E-457 (2024), accessible at https://cdn.ymaws.com/www.kybar.org/resource/resmgr/ethics_opinions_(part_2)_/kbae457artificialintelligenc.pdf.

5. **Ethical Duty to Stay Informed:**

- Attorneys have an ethical duty to stay informed about the use of AI in legal practice as part of the lawyer's duty of competence to stay abreast of technological developments in the profession. This includes understanding how AI works and the potential benefits and risks associated with its use.

6. **Supervision:**

- Attorneys serving as partners or managers in law firms that use AI have a duty to supervise the use of AI to ensure it complies with ethical standards. The level of supervision will depend on the experience of the lawyers and the tasks being performed by GAI, but a lawyer remains ultimately responsible for any work product generated using GAI.

VII. MASSACHUSETTS ATTORNEY GENERAL ADVISORY ON THE APPLICATION OF THE COMMONWEALTH'S CONSUMER PROTECTION, CIVIL RIGHTS, AND DATA PRIVACY LAWS TO ARTIFICIAL INTELLIGENCE

Four-page advisory guidance (including footnotes) [8]

POINTS OF NOTE:

The Attorney General's Office ("AGO") does not aim this guidance specifically at lawyers and never cites the Rules of Professional Conduct or statutes or court rules specifically governing lawyers. Rather, the AGO "issues this Advisory to provide guidance to developers, suppliers, and users of artificial intelligence and algorithmic decision-making systems (collectively, 'AI') about their respective obligations under two laws – the Massachusetts Consumer Protection Act and the Massachusetts Anti-Discrimination Law, plus implementing regulations for both laws.

1. **The Promise and Risk of Artificial Intelligence:**

The Advisory begins with a section headed "The Promise and Risks of Artificial Intelligence," which discusses potential harm to the public. For example, the Advisory says:

- Developers and suppliers promise that their AI systems and technology are accurate, fair, effective, and appropriate for given use cases. At the same time, developers and suppliers also claim that AI is a "black box," meaning that they do not know exactly how AI performs various processes or generates its results. They continue to market and sell AI

[8] The Massachusetts Office of the Attorney General, "Advisory on the Application of the Commonwealth's Consumer Protection, Civil Rights, and Data Privacy Laws to Artificial Intelligence" (April 2024), accessible at https://www.mass.gov/doc/ago-ai-advisory-41624/download.

systems knowing these shortfalls and that they may cause harm to consumers. There are many instances where AI systems fall short of suppliers' promises. AI has been found to generate false information or results that are biased or discriminatory. …

- Additionally, AI systems are being deployed in ways that can deceive consumers and the public as in the case of chatbots used to perpetrate scams or to surreptitiously collect sensitive personal data from consumers, deepfakes, and voice cloning used for the purpose of deceiving or misleading a listener about the speaker's true identity.

2. **The Laws and Regulations:**

The section headed "The Laws and Regulations" starts with detailed treatment of consumer protection laws, including six bullet points on "unfair or deceptive" practices. This section is of little interest to law firms, which tend to be sophisticated consumers accustomed to performing due diligence when purchasing products – but lawyers who advertise via audio and video media should note that the Advisory says it is a deceptive practice to "[m]isrepresent audio or video content of a person for the purpose of deceiving another to engage in a business transaction or supply personal information as if to a trusted business partner as in the case of deepfakes, voice cloning, or chatbots used to engage in fraud."

The Advisory ends by discussing anti-discrimination laws and privacy laws. This section is relevant to law firms that possess personal information of clients or employees or that use AI to assist in hiring or evaluating employees. The Advisory says:

- AI systems must also comply with the Commonwealth's Standards for the Protection of Personal Information …. This means that AI developers, suppliers, and users must take the necessary and appropriate steps to safeguard personal information used by those systems and are expected to comply with the breach notification requirements set forth in the statute.

- Furthermore, the Commonwealth's Anti-Discrimination Law prohibits developers, suppliers, and users of AI systems from deploying technology that discriminates against residents on the basis of a legally protected characteristic. This includes algorithmic decision-making that relies on or uses discriminatory inputs and that produces discriminatory results, such as those that have the purpose or effect of disfavoring or disadvantaging a person or group of people based on a legally protected characteristic. [Citations omitted.]

In sum, the Massachusetts AGO Advisory is useful for raising the possible impact that certain substantive laws governing consumer protection, privacy, and discrimination may have on law firms that use GAI, but the Advisory is too general to be of real value to lawyers and offers no guidance at all under the Rules of Professional Conduct.

VIII. MICHIGAN JUDICIAL OPINION 155

Michigan JI-155 (October 27, 2023)[9]

1. **Judicial Ethical Obligation:**

    - The Opinion notes that "Judicial officers, like lawyers, have an ethical obligation to maintain competence with and further educate themselves on advancing technology, including but not limited to artificial intelligence (AI)." According to the Opinion MPRC 1.1 applies not only to lawyers but to judges as well.

2. **Judicial Code of Conduct Highlighted:**

    - Canon 2. A judge should avoid impropriety and the appearance of impropriety in all activities. "Canon 2(B) and (C) could be triggered, for example, if a judicial officer uses an AI solution that is considered partial or unfair and may influence the judicial officer's judgment."

    - Canon 3. A judge should perform the duties of office impartially and diligently. "The judicial duties of a judge take precedence over all other activities."

    - "[a] judge should be faithful to the law and maintain professional competence in it."

3. **Disclosure of Usage:**

    - The Opinion notes that several courts have issued orders regarding the use of AI, with some requiring that attorneys notify the court of the use of AI and confirm accuracy of the work done with AI. "Other judges have gone further and required that attorneys certify that confidential information was not disseminated to an AI tool and that lawyers outline each section that uses generative AI."

4. **Takeaways:**

    - "AI does not understand the world as humans do, and unless instructed otherwise, its results may reflect an ignorance of norms or case law precedent."

[9] Michigan Bar Judicial Op. 155 (2023), accessible at https://www.michbar.org/opinions/ethics/numbered_opinions/JI-155.

- "What all experts agree is that artificial intelligence is not equivalent to human intelligence –and especially the intelligence that we expect from judges."

- "Judges must not only understand the legal, regulatory, ethical, and access challenges associated with AI, but they will need to continually evaluate how they or parties before them are using AI technology tools in their own docket."

- "Judicial use of AI must distinguish between using an AI application to decide and using AI to inform a decision."

5. **Conclusion:**

- Judges have an ethical obligation to understand technology including AI and ensure that AI tools are properly used and within the confines of the law and court rules. They must "maintain technological competence and understand AI's ethical implications to ensure efficiency and quality of justice."

IX. NORTH CAROLINA 2024 OPINION 1

1. **Competence and Confidentiality:**

- NC 2024 Opinion 1[10] concluded that a lawyer is ethically permitted to use GAI provided the lawyer uses any AI program, tool, or resource competently, securely to protect client confidentiality, and with proper supervision when relying upon or implementing the AI's work product in the provision of legal services. With respect to the duty of competence, this includes verifying the accuracy and reliability of AI-generated work products. In addition, the duty of confidentiality involves ensuring that AI tools comply with confidentiality requirements and that any data shared with AI systems is secure.

2. **Supervision:**

- Proper supervision is required when relying on AI-generated work products. Lawyers must review and approve AI outputs before using them in legal services to ensure they meet professional standards. In addition, a lawyer's duty of confidentiality and supervision remains the same regardless of whether the lawyer uses an offsite GAI program managed by a third party.

[10] North Carolina Bar Ethics Op. 2024-1 (2024), accessible at https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/2024-formal-ethics-opinion-1/.

3. **Accuracy:**

- Lawyers must also ensure that any statements submitted to a court, even if prepared using GAI, are truthful and accurate and the lawyer maintains ultimate responsibility for those statements.

4. **Obligation of Disclosure:**

- Depending on the circumstances under which a lawyer is using GAI in the representation of a client, the lawyer may have an obligation to disclose the use of GAI and whether it is outsourced. For example, "if a lawyer delegates substantive tasks in furtherance of the representation to an AI tool, the lawyer's **use** of the tool is akin to outsourcing legal work to a nonlawyer or other third-party resource or service, for which the client's advanced informed consent is required."

5. **Reasonableness of Fees:**

- Finally, any use of GAI must also comply with the rules regarding the reasonableness of fees and a lawyer cannot charge for time not actually spent, even if GAI permits the lawyer to accomplish a task faster than it would normally take without using GAI.

X. NEW YORK

A. New York City Bar Association Opinion 2024-05 (August 2024)[11]addresses the following topics:

1. **Duty of Competence:**

- Lawyers must understand how generative AI tools work and their limitations. This includes verifying the accuracy and reliability of AI-generated outputs.

2. **Confidentiality:**

- Lawyers must protect client confidentiality when using AI. This involves ensuring that AI tools comply with confidentiality requirements and that any data shared with AI systems is secure.

[11] N.Y.C. Bar Ethics Op. 2024-5 (2024), accessible at https://www.nycbar.org/wp-content/uploads/2024/08/20221329_GenerativeAILawPractice.pdf.

3. **Fee Arrangements:**

   - Lawyers must be transparent about any fees associated with the use of AI and ensure that these fees are reasonable.

4. **Avoiding Conflicts of Interest:**

   - Lawyers must ensure that the use of AI does not create conflicts of interest. This includes being aware of how AI tools handle data and whether they might inadvertently create conflicts.

5. **Supervision:**

   - Proper supervision is required when using AI-generated work products. Lawyers must review and approve AI outputs before using them in legal services to ensure they meet professional standards.

6. **Advertising and Solicitation:**

   - Lawyers must comply with rules governing advertising and solicitation when using AI tools. This includes ensuring that AI-generated content used in marketing is accurate and not misleading.

7. **Compliance with Law:**

   - Lawyers must ensure that their use of AI complies with all applicable laws and regulations.

8. **Duty to Consult with Clients:**

   - Lawyers should consult with clients about the use of AI in their cases, especially if it impacts the legal strategy or costs.

9. **Duty of Candor to Tribunals:**

   - Lawyers must ensure that AI-generated content used in court filings or communications with tribunals is accurate and truthful.

10. **Prohibition on Non-Meritorious Claims:**

    - Lawyers must ensure that AI tools are not used to generate frivolous or non-meritorious claims.

11. **Prohibition on Discrimination:**

    - Lawyers must ensure that the use of AI does not result in discriminatory practices.

B. Report and Recommendations of the New York State Bar Association Task Force on Artificial Intelligence.[12]

In April 2024, the New York State Bar Association Task Force on Artificial Intelligence published a report and recommendations to be presented to the New York State Bar Association House of Delegates which examined "the legal, social and ethical impact of artificial intelligence (AI) and generative AI on the legal profession."

The report addressed the following topics:

1. **Competence:**

    - The report highlights the need for more education and training for attorneys and judges to handle AI technology properly.

2. **Attorney-Client Privilege and Confidentiality:**

    - The report emphasizes the importance of ensuring that AI does not compromise attorney-client privilege. The report cautions that lawyers must also make reasonable efforts to prevent inadvertent or unauthorized access to or disclosure of client confidential information.

3. **History of AI and Generative AI:**

    - The report provided a history of the evolution of AI and GAI over the years and the types of AI that has been developed. The report also covered the relative benefits and risks of AI and GAI.

4. **Duty of Candor and AI Hallucinations:**

    - The report addresses ethical concerns, including AI's tendency to "hallucinate" or generate false information, which can lead to serious consequences in legal documents.

5. **Additional Ethical Concerns:**

    - The report also highlights additional ethical issues for lawyers when using AI and GAI, including the duty of supervision, and potential unauthorized practice of law concerns. The report also includes a sample engagement letter provision that lawyers can consider including in their engagement letters with clients.

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[12] New York State Bar Association, "Report and Recommendations of the New York State Bar Association Task Force on Artificial Intelligence" (April 2024), accessible at https://fingfx.thomsonreuters.com/gfx/legaldocs/znpnkgbowvl/2024-April-Report-and-Recommendations-of-the-Task-Force-on-Artificial-Intelligence.pdf.

6. **Legislative Efforts:**

- The report suggests that legislation may be necessary to govern the use of AI in the legal field.

C. New York State Attorney General AI Symposium Report (August 2024)[13]

The New York State Attorney General's Office (OAG) convened the symposium "The Next Decade of Generative AI: Fostering Opportunities While Regulating Risks" to explore the opportunities and risks of artificial intelligence (AI), particularly generative AI. The symposium covered AI's potential in healthcare, public information, administrative decision-making, and regulation, while also addressing the dangers of misinformation, bias, privacy violations, and market concentration.

Key Topics and Conclusions

1. AI's Benefits and Risks in Key Sectors

1. **Healthcare:**

- **Benefits**: AI is revolutionizing healthcare through early disease detection, precision medicine, administrative automation, and patient monitoring. Examples include AI-assisted mammogram analysis that predicts breast cancer risk up to five years in advance.

- **Risks**: Privacy concerns arise with AI continuously monitoring hospital rooms and homes. Bias in training data can exclude minority groups, and AI transcription tools often fail to accommodate diverse languages and accents. Human oversight remains essential.

2. **Misinformation and Deepfakes:**

- AI can enhance public access to information through chatbots, automated translations, and content generation.

- However, hallucinations (false AI-generated conclusions) and deepfake technology are major risks, particularly in political campaigns.

- Real-world examples: AI-generated robocalls impersonating politicians, doctored images of public figures, and fake news events like the AI-fabricated Pentagon explosion that briefly disrupted markets.

[13] Office of the New York State Attorney General, "Symposium Report on the Next Decade of Artificial Intelligence" (August 5, 2024), accessible at https://ag.ny.gov/sites/default/files/reports/oag-aisymposiumreport.pdf.

3. **Automated Decision-Making & Public Services:**

- AI can improve public services, such as tax calculations, benefits applications, and legal form assistance.
- However, algorithmic bias in hiring and eligibility screening remains a major concern, as AI often reinforces existing discrimination rather than eliminating it.
- The lack of transparency in AI decision-making makes it difficult to assess fairness or challenge biased outcomes.

2. Data Privacy and Market Concerns

- AI's reliance on vast training datasets raises copyright, bias, and competition issues.
- The use of copyrighted material without compensation is being actively litigated.
- AI companies that control vast datasets (e.g., through web scraping and exclusive partnerships) have a competitive advantage, creating concerns about monopolization in the AI industry.
- Synthetic data (AI-generated training data) can reinforce AI errors, leading to model collapse and unreliable outputs.

3. Proposed Strategies for Mitigating the Risks of AI

1. **Public Education & Transparency:**

- AI literacy is crucial to help the public recognize misinformation, deepfakes, and biased decision-making.
- Some proposed transparency measures include:
  - Watermarks on AI-generated content.
  - Disclosures when interacting with AI systems.
  - Plain-language data policies to clarify how AI tools collect and use data.

2. **Auditing & Accountability:**

- AI tools must be audited to assess bias and safety, but standardized audit processes remain undefined.

- Some potential solutions include:
    - AI model transparency laws (like NYC's Local Law 144 for hiring algorithms).
    - Certification programs for AI auditors.
    - External access for researchers to study AI models.

3. **Consumer Protections:**

- The White House's AI Bill of Rights proposes safeguards for AI decision-making, including:
    - Consumer opt-outs from automated decision-making (ADMT).
    - Legal protections against AI-driven discrimination and privacy violations.
    - California and Colorado are adopting similar principles in state AI legislation.

4. **Regulation and Oversight:**

- Debate exists over whether AI should be governed by:
    1. A centralized federal AI agency (like the EU AI Act model).
    2. A sector-specific regulatory approach, where agencies (e.g., HHS for healthcare, FTC for consumer protection) oversee AI within their domains.
- The OAG is monitoring regulatory models to determine the best path forward for New York.

4. Future Developments & Legislative Considerations

- Since the symposium, New York has enacted the SAFE for Kids Act, regulating algorithmic harms in social media targeting children.
- Colorado's AI Act (2024) introduced risk-based AI regulation, similar to the EU AI Act.
- The U.S. Senate's AI policy roadmap proposes $32 billion in AI investment and calls for federal AI legislation.

- The FTC, DOJ, and international regulators are working on AI antitrust and competition rules.

XI. PENNSYLVANIA: JOINT FORMAL OPINION 2024-200: ETHICAL ISSUES REGARDING THE USE OF ARTIFICIAL INTELLIGENCE

The Joint Formal Opinion 2024-200,[14] issued by the Pennsylvania Bar Association Committee on Legal Ethics and Professional Responsibility and the Philadelphia Bar Association Professional Guidance Committee, explores the ethical implications of artificial intelligence (AI) in legal practice. It provides guidance on how lawyers should integrate AI while maintaining their ethical obligations under the Pennsylvania Rules of Professional Conduct. The opinion addresses the following topics and issues:

1. **AI's Role in Legal Practice:**

   - AI is already transforming legal work by automating tasks such as legal research, document review, contract analysis, and predictive analytics. Generative AI, in particular, raises new ethical concerns because it not only analyzes but also generates content, requiring heightened vigilance from attorneys.

2. **Ethical Obligations and AI Use:**

   1. **Competence (Rule 1.1):**

      - Lawyers must be competent in AI use, understand its risks and benefits, and verify the accuracy of AI-generated outputs.

   2. **Confidentiality (Rule 1.6)**:

      - Attorneys must safeguard client information and avoid inputting confidential data into AI systems that may not be secure.

   3. **Communication with Clients (Rule 1.4)**:

      - Attorneys should inform clients if AI is used in their case and obtain consent when necessary.

[14] Pennsylvania Bar Association Comm. on Legal Ethics and Prof'l Responsibility and Philadelphia Bar Association Prof'l Guidance Comm. Joint Formal Op. 2024-200 (2024), accessible at https://www.pabar.org/Members/catalogs/Ethics%20Opinions/Formal/Joint%20Formal%20Opinion%202024-200.pdf.

4. **Candor to the Tribunal (Rule 3.3)**:

   - Lawyers must ensure AI-generated citations and case law are accurate, preventing misleading or false submissions.

5. **Truthfulness and Honesty (Rule 8.4):**

   - AI should not be used in a way that leads to deceit, misrepresentation, or fraudulent conduct.

6. **Avoiding Conflicts of Interest (Rules 1.7 & 1.9):**

   - AI tools must not inadvertently use data that creates conflicts between different clients.

7. **Supervision (Rules 5.1 & 5.3)**:

   - Lawyers must oversee AI tools as they would human staff to ensure compliance with ethical obligations.

8. **Avoiding the Unauthorized Practice of Law (Rule 5.5)**:

   - Lawyers should ensure AI does not operate as an independent provider of legal advice.

3. **Concerns About AI "Hallucinations" and Bias:**

   - AI-generated content may contain fabricated case law or incorrect information ("hallucinations") and inherit biases from the data they are trained on. Several court cases highlight how attorneys have been sanctioned for submitting AI-generated filings containing fictitious citations and lawyers must be aware of their ethical obligations in this regard.

4. **Judicial Responses to AI Misuse:**

   - Courts are implementing rules requiring attorneys to disclose whether they have used AI in legal filings. Some judges have imposed standing orders mandating verification of AI-generated citations.

5. **Best Practices for Lawyers Using AI:**

   - Verify all AI-generated legal research and citations.

   - Use AI in a way that upholds ethical obligations, including accuracy, confidentiality, and transparency.

- Avoid relying on AI without independent legal analysis and verification.
- Ensure AI-related expenses are reasonable and properly disclosed to clients.
- Continue education on AI developments and ethical considerations.

XII. MINNESOTA AI WORKING GROUP FINAL REPORT & RECOMMENDATION ON IMPLICATIONS OF LARGE LANGUAGE MODELS (LLMS) ON UNAUTHORIZED PRACTICE OF LAW (UPL) AND ACCESS TO JUSTICE

The Minnesota State Bar Association (MSBA) AI Working Group released a report[15] analyzing the legal and ethical implications of large language models (LLMs) like ChatGPT on the unauthorized practice of law (UPL) and access to justice. The report explores how AI might assist self-represented litigants (SRLs), impact legal ethics, and be regulated within the legal profession. The Working Group report addressed the following topics and issues:

1. **AI's Potential and Ethical Challenges:**
   - LLMs have superhuman speed in reading, analyzing, and generating text, which makes them potentially transformative for legal practice.
   - The main challenge is distinguishing between "legal information" and "legal advice." Traditionally, providing "legal advice" is considered the practice of law, while providing "legal information" is not. While legal professionals have historically been the sole providers of legal advice, LLMs can now apply law to specific facts, blurring this distinction.
   - AI poses risks related to confidentiality, competence, supervision, and potential bias but also offers significant benefits for legal efficiency and accessibility.

[15] Minnesota State Bar, "Implications of Large Language Models (LLMs) on the Unauthorized Practice of Law (UPL) and Access to Justice (2024)," accessible at https://s3.amazonaws.com/membercentralcdn/sitedocuments/msba/msba/0089/2561089.pdf?AWSAccessKeyId=AKIAIHKD6NT2OL2HNPMQ&Expires=1748465407&Signature=lCPePnyxeQf45cogyf9wcw8Mw5Y%3D&response-content-disposition=inline%3B%20filename%3D%22msba%2Dai%2Dworking%2Dgroup%2Dfinal%2Dreport%2Dand%2Drecommendations%2Epdf%22%3B%20filename%2A%3DUTF%2D8%27%27msba%252Dai%252Dworking%252Dgroup%252Dfinal%252Dreport%252Dand%252Drecommendations%252Epdf&response-content-type=application%2Fpdf.

2. **Unauthorized Practice of Law (UPL) in Minnesota:**

- Minnesota's UPL statute prohibits non-lawyers (including AI tools) from appearing in court, preparing legal documents, giving legal advice, or holding themselves out as attorneys.
- The statute aims to protect the public from unqualified legal service providers, but it lacks clear definitions for what constitutes "legal advice" versus "legal information."
- Some exceptions exist for certain document preparation tasks, labor organizations, and self-represented litigants.

3. **First Amendment Challenges to UPL Laws:**

- There is growing legal precedent challenging UPL laws under First Amendment free speech protections.
- Key Cases:
  - *Upsolve v. James* (2022): A New York court ruled that restricting Upsolve (a nonprofit using non-lawyers to assist in legal forms) likely violates free speech.
  - *Nutt v. Ritter* (2023): A federal court in North Carolina found that barring a retired engineer from giving engineering advice violated free speech.
- The report suggests Minnesota's UPL statute could face similar constitutional challenges.

4. **Regulation of AI in Legal Services:**

- Various global frameworks attempt to regulate AI, including:
  - The U.S. Executive Order on AI (2023) defines AI broadly and emphasizes the need for oversight.
  - The EU AI Act (2024) categorizes AI risks into four levels (Unacceptable, High, Low, and General-Purpose AI) and proposes different regulatory requirements based on risk level.
- The Working Group suggests a similar risk-based approach for AI in legal services.

5. **AI and Access to Justice:**

- The justice gap remains significant, with 92% of low-income Americans lacking access to sufficient legal help.
- Chief Justice John Roberts (2023 Year-End Report) noted that AI could help self-represented litigants by providing guidance on legal forms, processes, and basic legal information.
- The Working Group proposes an Access to Justice Legal Sandbox, allowing controlled experimentation with AI in legal services without UPL penalties.
- AI can assist with:
    - Forms completion for self-represented litigants.
    - Legal navigation assistance to help users understand processes.
    - Plain-language translations of complex legal terms.
    - Procedural guidance to ensure SRLs follow correct steps.

6. **Ethical Considerations for Lawyers Using AI:**

- Minnesota Rules of Professional Conduct require lawyers to:
    - Remain competent in evolving legal technologies.
    - Ensure confidentiality when using AI.
    - Verify AI-generated content to prevent errors.
    - Maintain professional independence and avoid conflicts of interest.
- The Working Group suggests educational programs for attorneys to better understand AI's legal and ethical implications.

7. **Future Recommendations**

- Establish a permanent MSBA AI Standing Committee to monitor AI developments.
- Encourage risk-based AI regulation, similar to the EU AI Act.

- Support ethical AI use while balancing UPL concerns with access to justice needs.

- Consider allowing AI-assisted legal services in low-risk scenarios, such as form completion, while maintaining human oversight.

XIII. MISSOURI INFORMAL OPINION NUMBER: 2024-11

SUMMARY: LAWYER'S USE OF GENERATIVE ARTIFICIAL INTELLIGENCE (AI)

Five-page informal ethics opinion[16]

POINTS OF NOTE:

The opinion addresses two questions: (1) May a lawyer ethically use GAI in law practice? and, if so, (2) What ethical issues should Lawyer consider in developing a policy to use this technology in Lawyer's practice within Law Firm?

The answers are broad and basic. The opinion cites and quotes various Rules and Comments but does not wrestle with the issues. Below are key excerpts from the opinion.

1. **Competence:**

   - First, Lawyer must consider the duty of competence in the appropriateness of use of generative AI. … Lawyer should get education and training to ascertain what types of generative AI are and are not appropriate for use by Law Firm. Not all generative AI platforms and services are intended for use by lawyers, and Lawyer must understand the risks and benefits of implementing use of these technologies.

2. **Confidentiality:**

   - Second, Lawyer must consider confidentiality. … Lawyer needs to carefully assess any generative AI platforms or services that will be used by Law Firm to ensure confidentiality of client information is maintained. Lawyer should carefully consider such factors as the terms and conditions of using a generative AI platform or service to understand the security of the information being inputted, how that information is being used by the platform or service, and what data sources the platform or service is using to produce responses to prompts or queries.

[16] Advisory Comm. of the Supreme Court of Missouri Legal Ethics Op. 2024-11 (2024), accessible at https://mo-legal-ethics.org/informal-opinion/2024-11/.

- Additionally, … [i]n considering the use of a generative AI platform or service, lawyers are required to make reasonable efforts to safeguard client confidential information in accordance with Rule 4-1.6(c) and Lawyer should consider the guidance of Comment [15] as to how client confidential information will be safeguarded.

3. **Obligation:**

- Third, to the extent court orders or court rules implicate the use of any generative AI platform or service, Lawyer should be mindful of the obligation pursuant to [Rule 3.4(c)] that prohibits knowingly disobeying an obligation under the rules of a tribunal.

4. **Professional Independence and Judgement:**

- Fourth, Lawyer and Law Firm must protect and maintain professional independence and independent professional judgment as required by Rule 4-5.4 and not rely solely on content created by a generative AI platform or service.

5. **Responsibility and Accuracy:**

- Fifth, if Lawyer or members of Law Firm use content produced with the assistance of a generative AI platform or service, just as any other time a lawyer is being assisted by a nonlawyer, there is a professional responsibility to verify the accuracy and content of the product in accordance with Rule 4-5.3.

6. **Supervision:**

- Sixth, in developing this generative AI use policy, Lawyer and Law Firm should also consider supervisory responsibilities in relation to [Rule 5.1], which requires managers and supervisors to ensure that other lawyers in the firm conform to the Rules of Professional Conduct.

7. **Reasonableness of Fees:**

- Seventh, Lawyer and Law Firm should consider how use of generative AI may impact the reasonableness of fees pursuant to Rule 4-1.5(a).

8. **Implications:**

- Finally, use of a product of generative AI can also implicate [Rule 3.3]. … At this point, generative AI tools are not always accurate, thereby requiring the careful attention to competence and supervision as outlined above to avoid any false statement of material fact or law to a tribunal.

XIV. WEST VIRGINIA JUDICIAL INVESTIGATION COMMISSION

A. JIC Advisory Opinion 2023-22 (October 13, 2023)[17]

Five-page Opinion.

1. **The Opinion sought to answer the following:**

    - Can a judge use AI to conduct legal research and to draft documents such as orders and opinions? Can a judge use AI to reach decisions in cases? What other ethical issues should a judge consider before utilizing AI?

2. **Judicial Rules highlighted in the Opinion:**

    - Rule 1.2 - Confidence in the Judiciary.
    - Rule 2.1- Giving Precedence to the Duties of Judicial Office
        - "The duties of judicial office, as prescribed by law, shall take precedence over all of a judge's personal and extrajudicial activities."
    - Rule 2.2 - Impartiality and Fairness
        - "A judge shall uphold and apply the law and shall perform all duties of judicial office fairly and impartially." Comment (2) "a judge must interpret and apply the law without regard to whether the judge approves or disapproves of the law in question."
    - Rule 2.4 - External Influences on Judicial Conduct
        - (B) "A judge shall not permit family, social, political, financial, or other interests or relationships to influence the judge's judicial conduct or judgment." Comment (1) "Confidence in the judiciary is eroded if judicial decision making is perceived to be subject to inappropriate outside influences."
    - Rule 2.5 - Competence, Diligence, and Cooperation
        - (A) "A judge shall perform judicial and administrative duties, competently and diligently." Comment (3) "[p]rompt disposition of the court's business requires a judge to devote adequate time

[17] West Virginia Judicial Investigation Commission Op. 2023-22 (2023), accessible at https://www.courtswv.gov/sites/default/pubfilesmnt/2023-11/JIC%20Advisory%20Opinion%202023-22_Redacted.pdf.

to judicial duties . . . and [to be] expeditious in determining matters under submission."

- Rule 2. 7 - Responsibility to Decide
  - "A judge shall hear and decide matters assigned to the judge, except when disqualification is required by Rule 2.11 or other law."

3. **Takeaways:**

- "Judges have a duty to remain competent in technology, including AI. The duty is ongoing."
- "A judge should NEVER use AI to reach a conclusion on the outcome of a case."
- "The time saved by using AI may be non-existent if the judge must spend hours ensuring appropriate attribution has been given."
- "A judge may use AI for research purposes but may not use it to decide the outcome of a case. The use of AI in drafting opinions or orders should be done with extreme caution."

4. **Conclusion:**

- Judges may use AI to conduct research and draft documents but must not use AI to decide cases. Judges have an ethical obligation to remain competent in technology and that includes AI.

B. Legal ethics opinion 24-01[18]

Eight-page Opinion.

1. **Non-Generative vs. Generative AI:**

- After noting various definitions for AI, the Opinion highlighted the distinction between non-generative and generative AI, noting that "generative AI can generate text, images, videos, or other data using generative models, often in response to prompts. Generative AI models learn the patterns and structure of their input training data and then generate new data that has similar characteristics."

[18] West Virginia Lawyer Disciplinary Board Legal Ethics Op. 2024-01 (2024), accessible at https://storage.googleapis.com/msgsndr/Rgd68xOkcVdteTsBkf6O/media/667ac9c219bb7a1f7a4df4c2.pdf.

2. **Competence:**

- The Opinion noted that "[t]here is nothing in the Rules of Professional Conduct that per se prohibits a lawyer from using AI as a tool in a law practice." However, "lawyers must not only be aware of AI' s ability to deliver efficient legal services to clients, but they must also take care to exercise independent judgment, communicate with clients, maintain client confidentiality, ensure fees and costs are reasonable, comply with advertising regulations, and supervise the work performed by AI."

3. **Rules of Professional Conduct highlighted in the Opinion:**

- Duty of Competence (Rule 1.1)
    - "A refusal to use technology that makes legal work more accurate and efficient may be considered a refusal to provide competent legal representation to clients."
    - "AI can be an effective tool in a lawyer's arsenal, but the unsupervised use of AI can have catastrophic results."
    - "AI programs are still machine-based and do not have the same level of understanding and judgment as a human lawyer when it comes to interpreting the nuance of legal principles and precedent."
- Duty of Diligence (Rule 1.3)
    - "To fulfil the lawyer's duty of diligence, a lawyer's use of AI resources requires human input, human oversight, and when necessary human intervention to correct mistakes."
- Duty to Communicate (Rule 1.4)
    - "A lawyer should obtain approval from the client before using generative AI, and this consent must be informed and should be confirmed in writing."
- Duty of Confidentiality (Rule 1.6)
    - "Lawyers using generative AI services (or any services on behalf of clients) should familiarize themselves with its terms of use and privacy policies before using the service."

- "Generative AI should not be used in the representation unless the lawyer is confident that the client's confidential information will be secure."

- Duty to Supervise
  - "Under Rules 5.1 and 5.3, lawyers are obligated to supervise the work of the AI used in the provision of legal services and understand the technology well enough to ensure compliance with the lawyer's ethical duties."
  - "One of the biggest risks associated with a lawyer's use of generative AI is overestimating the capabilities of the software or accepting the AI's work product on its face as credible."
  - "Lawyers should view AI at best as a secondary source and should never be relied upon as the primary source itself. Lawyers still need to make final substantive decisions on the exact content of and language used after reviewing the suggestions from AI."
- Duty of Candor to the Tribunal (Rules 3.3 and 4.1)
  - "The use of generative AI outputs that contain misrepresentations of fact or law, or that provide fake citations, implicates the lawyers' duty to be candid with the tribunal and to the opposing party and counsel."

4. **Conclusion:**

- A lawyer may use AI to complement her work, however, the lawyer's professional obligations including duties owed to clients, the courts and the profession under the Rules of Professional Conduct have not changed.

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