

LITIGATION SYSTEMS PRESS

UNDERSTANDING ATTORNEY USE OF ARTIFICIAL INTELLIGENCE

A Companion Guide for Lawyers and Clients

A plain-language explanation of how lawyers may use AI, the benefits and risks, the safeguards lawyers should use, and the choices clients may make.

AI is a Tool, Not a Lawyer.

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Educational resource — not a substitute for jurisdiction-specific ethics advice

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Purpose of This Guide

This guide explains how an attorney may use artificial intelligence while remaining responsible for the legal work. It is written so that a lawyer may use it as a practice guide and may also give it to a client who wants more information than appears in a short authorization form.

The guide is educational. It does not ask the client to sign anything and does not replace a case-specific discussion. A separate two-page form, Client Choice About the Use of Artificial Intelligence (AI), can record the client's choice when consent is appropriate or required. It is available in a general-use version and a public defender version at litigationsystemspress.com/ai-trial-advocacy.

The Five Principles

1. AI is a tool, not a lawyer. It does not replace the lawyer's judgment or the client's decisions.
2. A lawyer must understand the tool well enough to use it competently.
3. Case information must be protected wherever it is processed.
4. AI output must be checked against reliable sources before it is used.
5. The lawyer remains professionally responsible for the work.

You cannot delegate judgment. You cannot delegate responsibility.

FOR THE LAWYER

This guide summarizes the ABA Model Rules of Professional Conduct and ABA Formal Opinion 512. The Model Rules are models, not the controlling law in every jurisdiction. Review the rules adopted in your state, applicable ethics opinions, court orders, engagement terms, employer policies, and any law governing the information involved. Many states have issued their own ethics opinions on generative AI, and some courts have adopted AI-specific rules or orders. Check the guidance in each jurisdiction where you practice.

Primary authorities: ABA Model Rules of Professional Conduct; ABA Formal Opinion 512 (July 29, 2024).

What AI Is — and What It Is Not

Artificial intelligence is a broad name for computer systems that find patterns, organize information, or create an output from instructions and data. Generative AI can produce new text, images, audio, or other material. It may give an answer that sounds confident and complete even when the answer is wrong.

AI does not know a client, understand a courtroom, or exercise professional judgment. It does not reliably know whether a statement is true. It predicts an output from its training, instructions, and available information. For that reason, AI work should be treated as a draft or lead to investigate, not as a final answer.

How a Lawyer May Use AI

Depending on the tool and the case, AI may help a lawyer:

1. sort, search, summarize, or compare documents;
2. identify names, dates, subjects, or possible inconsistencies;
3. prepare timelines, charts, chronologies, or working lists;
4. transcribe or summarize recordings;
5. support legal research and issue spotting;
6. brainstorm questions, arguments, or case themes; and
7. prepare preliminary drafts of letters, motions, memoranda, or trial materials.

These uses can save time and improve organization. They may help the lawyer notice an issue that deserves closer review. They do not promise a better result, and they do not remove the need for attorney analysis.

Benefits and Limits

Possible Benefits

AI may help a lawyer review a large amount of material more efficiently, retrieve information faster, and create a useful first draft. Used carefully, it may leave more attorney time for counseling, negotiation, preparation, and advocacy. The value depends on the tool, the task, the quality of the source material, and the lawyer's review.

Material Risks

1. **Wrong or invented information.** AI may state false facts, create a citation that does not exist, misquote a source, or combine accurate details into a false conclusion.
2. **Missing information.** AI may overlook a page, fail to recognize an important fact, or leave out a qualification that changes the meaning.
3. **Poor context.** AI may misunderstand sarcasm, relationships, sequence, credibility, legal significance, or the client's personal priorities.
4. **Bias or outdated material.** Training data and source materials may be incomplete, old, or biased, which can affect the output.
5. **False confidence.** Clear writing can make an answer appear more reliable than it is. Repetition by the AI is not proof.
6. **Confidentiality and security.** Information sent outside the lawyer's system may be stored, accessed, disclosed, subpoenaed, or exposed in a breach.
7. **Overreliance.** A lawyer who accepts the output without independent review may miss errors and surrender judgment to the tool.

FOR THE LAWYER — COMPETENCE

A lawyer does not have to become an AI engineer. The lawyer must have a reasonable understanding of the particular tool's benefits and limits, or obtain help from someone who does. Because the technology and its policies change, competence requires continuing attention.

The appropriate level of review depends on the task and what is at stake. A low-risk formatting suggestion and a proposed factual assertion in a dispositive motion do not require the same scrutiny.

ABA Model Rule 1.1 and Comment [8]; ABA Formal Opinion 512, Part II.A.

Protecting Case Information

The duty of confidentiality is broader than the attorney-client privilege. It generally covers all information relating to the representation, no matter where the information came from. A fact does not become safe to disclose merely because it is in a public record.

Where the Information Goes

The practical question is whether case information remains in a system controlled by the lawyer that does not transmit it to an outside AI provider, or whether it is sent to an outside service for processing. A tool may run on the lawyer's computer yet still transmit information elsewhere.

The label on the product is not enough. A tool described as private, secure, enterprise, or local may still connect to outside services. The lawyer should verify what the selected product, account type, settings, and contract actually do.

Some case information carries its own limits. Discovery may be subject to a protective order, court rule, or agreement that restricts copying or sharing it. Sealed records, juvenile records, and certain medical or financial records may have separate legal protections. Before placing that material into an outside service, the lawyer should confirm that doing so is permitted.

Reducing the Information Shared

A lawyer should share no more information than reasonably needed for the task. Removing names, dates of birth, account numbers, addresses, and other direct identifiers can reduce risk. Replacing names with consistent labels can also help. These steps may not fully protect the client if the remaining facts could identify the person or matter.

What the Lawyer Should Review

Before placing case information into an AI service, the lawyer should understand:

1. what information the service receives and where it is processed;
2. whether prompts, files, and outputs are kept, and for how long;
3. whether the information may be used to train or improve a model;
4. whether employees, contractors, or other providers may access it;
5. how access is controlled and how data is protected;
6. whether the lawyer can delete the information and what happens when the account ends;

7. whether the lawyer will be notified of a breach or legal demand; and
8. whether the provider claims rights in the information or output.

FOR THE LAWYER — RULE 1.6 REVIEW

Risk is fact-specific. Consider the sensitivity of the information, the likelihood of access or disclosure, the safeguards available, the cost and difficulty of those safeguards, and whether they interfere with the representation. Read the current terms of use, privacy policy, security materials, and related contract terms, or consult someone qualified to do so.

ABA Model Rule 1.6(a) and (c), Comments [3], [18]–[19]; ABA Formal Opinion 512, Part II.B.

When the Client Should Be Told or Asked

Not every use of AI requires client consent. For example, a lawyer may use AI for general idea generation without entering information relating to a representation. Even then, the lawyer should consider whether the use is important enough that the client would reasonably expect to know about it.

Client consultation becomes more important when AI will process case information, affect an important decision, materially shape the work, change the fee, conflict with the engagement terms, or depart from the client's reasonable expectations.

Meaningful Consent

When informed consent is required, a broad statement such as “my lawyer may use AI” is not enough. The discussion should give the client enough information to make a real choice. It should explain:

1. why the lawyer wants to use AI and the expected benefit;
2. the kinds of case information that may be processed;
3. whether identifying or private details may be included;
4. whether the information will remain in a system controlled by the lawyer that does not transmit it to an outside AI provider, or will be sent to an outside service;
5. the material risks and the safeguards the lawyer will use;
6. reasonable alternatives, such as no AI, local processing, removing identifiers, or limiting the tasks; and
7. any extra cost to the client.

The permission should be limited to the identified matter and the uses described. A materially different tool, task, category of information, or risk may require a new discussion. The client may place reasonable limits on future use or withdraw permission for future use. The lawyer should explain how those choices may affect the work. Past processing or disclosure may not be reversible.

FOR THE LAWYER — INFORMED CONSENT

Under Model Rule 1.0(e), informed consent follows an explanation of material risks and reasonably available alternatives. Formal Opinion 512 states that informed consent is required before information relating to a representation is entered into certain self-learning generative AI tools that create a disclosure risk. Whether consent is required in another setting depends on the tool, facts, applicable rules, and jurisdiction.

Consent does not excuse incompetence, weak security, inadequate supervision, unreasonable fees, or false statements to a court.

ABA Model Rules 1.0(e), 1.4, and 1.6; ABA Formal Opinion 512, Parts II.B–II.C.

What the Lawyer Must Do

Use Safeguards That Fit the Risk

Reasonable safeguards may include using an approved account, limiting access, choosing a service that does not use case information for training, reducing the information submitted, removing identifiers, using local processing, encrypting devices and connections, applying retention and deletion controls, and documenting client restrictions.

No safeguard makes AI risk-free. The lawyer's job is to make a reasoned choice, use protections that fit the information and task, and avoid the tool when the remaining risk is not reasonable.

Check the Work

Before relying on AI output, the lawyer should:

1. compare factual statements with the original evidence or record;
2. open and read every cited case, statute, rule, quotation, and source;
3. confirm that authorities are current, controlling when represented as controlling, and accurately described;
4. look for omitted facts, adverse authority, bias, and missing context;
5. make sure the work answers the actual question and follows the client's instructions; and
6. revise the work using the lawyer's independent judgment.

Court Filings and Advocacy

A lawyer must not submit invented cases, false quotations, unsupported facts, misleading arguments, or other unreliable AI output. The lawyer should check the court's current rules and standing orders for any AI-related certification or disclosure requirement. If a filing turns out to contain a false statement of material fact or law, the lawyer must correct it.

Supervise People and Providers

Law firm leaders should set clear rules for approved tools, accounts, information, and tasks. Lawyers should train and supervise attorneys, staff, contractors, and vendors who use AI. A staff member's

use of an unapproved personal account can create the same confidentiality problem as the lawyer's own use.

A practical policy should identify prohibited uses, require review before external submission, address secure data handling, and provide a simple way to report mistakes or suspected disclosures. AI-generated drafts stored in a file should be labeled so later users know that the material requires verification.

FOR THE LAWYER — COURT AND SUPERVISION DUTIES

Rules governing meritorious claims, candor, and misrepresentation apply to AI-assisted work just as they apply to any other work. Managerial and supervisory lawyers must adopt reasonable measures and oversee lawyers and nonlawyers using the technology. Outsourcing the processing does not outsource professional responsibility.

ABA Model Rules 3.1, 3.3, 5.1, 5.3, and 8.4(c); ABA Formal Opinion 512, Parts II.D–II.E.

Judgment, Client Authority, and Communication

AI does not make the final legal or strategic decision. The lawyer exercises independent professional judgment, gives legal advice, and remains responsible for the work. The client keeps the decisions that the law and professional rules assign to the client.

The lawyer should consult with the client about the means used to pursue the client's objectives when the use is material. The lawyer should answer reasonable questions about AI use honestly and explain enough for the client to make an informed decision. In a civil matter, the client decides whether to settle. In a criminal matter, the client decides what plea to enter, whether to waive a jury trial, and whether to testify, after consultation with counsel.

An AI authorization is not a waiver of attorney-client privilege, confidentiality, work-product protection, or any legal right beyond the specific disclosure the client knowingly permits. It also does not authorize the AI provider to give legal advice to the client.

Fees and Expenses

If a lawyer bills by the hour, the client should be charged for the time actually spent using, reviewing, correcting, and applying the AI output — not the time the task might have taken without AI. A lawyer generally may not charge the client for the lawyer's ordinary time learning a tool that the lawyer uses regularly.

The lawyer should tell the client in advance about any AI-related charge. A routine subscription may be office overhead. A case-specific, per-use cost may be treated differently, but the expense must be reasonable and disclosed as required. Public defenders and other appointed counsel may instead state that the client will not be charged for the described AI use.

FOR THE LAWYER — BILLING

Fees and expenses must be reasonable. Hourly billing must reflect actual time. The basis of a charge for an AI service should be explained before it is imposed, preferably in writing. Review the engagement agreement and local law before treating a technology cost as a client expense rather than overhead.

ABA Model Rule 1.5; ABA Formal Opinion 512, Part II.F.

Questions a Client May Ask

1. What will AI help you do in my case?
2. Will my case information be transmitted to an outside AI provider?
3. Will names or private details be removed first?
4. Can the AI company keep my information or use it to train its AI?
5. Who will check the AI's work, facts, quotations, and legal citations?
6. Will AI affect an important recommendation or decision?
7. Will using AI cost me more?
8. May I limit or refuse the use, and what would that change?
9. Should I use AI tools myself to work on my case?

Protecting Your Own Case

FOR THE CLIENT — PROTECT YOUR OWN CASE

Do not type facts about your case into ChatGPT or any other public AI chatbot, and do not upload your discovery, statements, or messages from your lawyer. Talking to an AI tool is not talking to your lawyer. What you share may be stored by the AI company and may not be protected by the attorney-client privilege.

Courts are still developing the law. In *United States v. Heppner*, a federal court held that documents a represented criminal defendant independently created with a public AI tool, without direction from counsel, were protected by neither the attorney-client privilege nor the work-product doctrine. In *Warner v. Gilbarco*, another federal court protected a self-represented litigant's ChatGPT materials as work product. Results depend on the facts and applicable law. Ask your lawyer before using a public AI tool for your case.

Cases: United States v. Heppner, 2026 WL 436479 (S.D.N.Y. Feb. 17, 2026); Warner v. Gilbarco, Inc., 2026 WL 373043 (E.D. Mich. Feb. 10, 2026).

Attorney Implementation Checklist

1. **Define the task and information.** Identify what the tool will do, why it is appropriate, whether it requires information relating to a representation, and how sensitive that information is.
2. **Review the service.** Check the product, account, settings, terms, privacy, security, retention, training, access, deletion, and breach provisions.
3. **Choose safeguards.** Limit the data, remove identifiers where useful, control access, and use an approved environment.
4. **Check authority.** Review state rules, ethics guidance, client terms, employer policies, and court requirements.
5. **Consult the client.** Explain the use and obtain informed consent when required; document any restrictions.
6. **Use AI as a draft and verify it.** Preserve the original sources; check facts, quotes, law, citations, context, completeness, and adverse authority.
7. **Supervise, document, and reassess.** Apply firm policy to lawyers, staff, contractors, and providers; label unverified AI work; recheck the tool when the use, information, service, or risk materially changes.

Key ABA Authorities

1. [ABA Formal Opinion 512: Generative Artificial Intelligence Tools \(2024\)](#) — Competence, confidentiality, communication, court duties, supervision, and fees.
2. [Model Rule 1.0\(e\): Informed Consent](#) — Adequate information about material risks and reasonably available alternatives.
3. [Model Rule 1.1 and Comment \[8\]: Competence and Technology](#) — Competent work and continuing attention to the benefits and risks of relevant technology.
4. [Model Rule 1.2: Allocation of Authority](#) — Client objectives, consultation about means, and decisions reserved to the client.
5. [Model Rule 1.4: Communication](#) — Consultation and explanation sufficient for informed decisions.
6. [Model Rule 1.5: Fees](#) — Reasonable fees and expenses and advance communication of the basis for charges.
7. [Model Rule 1.6 and Comments \[3\], \[18\]–\[19\]: Confidentiality](#) — Protection of all information relating to the representation and reasonable security efforts.
8. [Model Rule 3.1: Meritorious Claims and Contentions](#) — A basis in law and fact for claims and defenses.
9. [Model Rule 3.3: Candor Toward the Tribunal](#) — Accuracy in statements and submissions to a tribunal.

10. Model Rule 5.1: Managerial and Supervisory Lawyers — Reasonable firm measures and supervision of lawyers.
11. Model Rule 5.3: Nonlawyer Assistance — Reasonable measures and supervision of nonlawyers and outside assistance.
12. Model Rule 8.4(c): Misrepresentation — Professional misconduct involving dishonesty, fraud, deceit, or misrepresentation.

Important Limitation

This guide is a general educational resource, not an ethics opinion or legal advice. Provider practices and technology change. The ABA Model Rules do not control unless adopted by the relevant jurisdiction, and states may impose different or additional duties. Before use, the lawyer should check current state rules, ethics opinions, court requirements, client instructions, engagement terms, employer policies, insurance requirements, contracts, and applicable privacy or data-security law.

About the Book

This guide accompanies *AI for Trial Advocacy: Practical AI Workflows to Organize Evidence, Streamline Strategy, and Master the Case* by Daniel M. H. King (Litigation Systems Press). The book teaches trial lawyers a step-by-step system for using AI in trial preparation while keeping judgment and responsibility where they belong: with the lawyer.

The book, this guide, and the client authorization forms are available at litigationssystemspress.com/ai-trial-advocacy.

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AI generates options. You make the decisions.