

ATTORNEYS RISK MANAGEMENT



ABA Issues Formal Opinion 512 on Generative AI-Related Ethics Issues

On July 29, 2024, the ABA's Standing Committee on Ethics and Professional Responsibility issued [Formal Opinion 512](#), titled "Generative Artificial Intelligence Tools." The opinion emphasizes lawyers' duties of competence (RPC 1.1), as well as identifying other areas in which the use of generative AI might implicated ethics concerns: confidentiality (RPC 1.6), communication (RPC 1.4), meritorious claims and contentions (RPC 3.1), candor towards the tribunal (RPC 3.3), supervisory responsibilities (RPC 5.1-3) and charging reasonable fees (RPC 1.5). The opinion should be read in its entirety, but here's a summary:

RPC 1.1 Competence: "To competently use a GAI tool in a client representation, lawyers need not become GAI experts. Rather, lawyers must have a reasonable understanding of the capabilities and limitations of the specific GAI technology that the lawyer might use. This means that lawyers should either acquire a reasonable understanding of the benefits and risks of the GAI tools that they employ in their practices or draw on the expertise of others who can provide guidance about the relevant GAI tool's capabilities and limitations."

RPC 1.6 Confidentiality of Information: "A lawyer using GAI must be cognizant of the duty under Model Rule 1.6 to keep confidential all information relating to the representation of a client, regardless of its source, unless the client gives informed consent, disclosure is impliedly authorized to carry out the representation, or disclosure is permitted by an exception. ... In considering whether information relating to any representation is adequately protected, lawyers must assess the likelihood of disclosure and unauthorized access, the sensitivity of the information,²⁸ the difficulty of implementing safeguards, and the extent to which safeguards negatively impact the lawyer's ability to represent the client."

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

**Confidential advice from experienced risk management counsel.
Visit www.attorneyriskmanagement.com or call: 844-782-RISK (7475).**

ATTORNEYS RISK MANAGEMENT



RPC 3.1 Meritorious Claims and Contentions: “As a matter of competence, as previously discussed, lawyers should review for accuracy all GAI outputs. In judicial proceedings, duties to the tribunal likewise require lawyers, before submitting materials to a court, to review these outputs, including analysis and citations to authority, and to correct errors, including misstatements of law and fact, a failure to include controlling legal authority, and misleading arguments.”

RPC 5.1-3 Supervisory Responsibilities: “Managerial lawyers must create effective measures to ensure that all lawyers in the firm conform to the rules of professional conduct, and supervisory lawyers must supervise subordinate lawyers and nonlawyer assistants to ensure that subordinate lawyers and nonlawyer assistants conform to the rules. ... Managerial lawyers must establish clear policies regarding the law firm’s permissible use of GAI, and supervisory lawyers must make reasonable efforts to ensure that the firm’s lawyers and nonlawyers comply with their professional obligations when using GAI tools.”

RPC 1.5 Fees: “[B]efore charging the client for the use of the GAI tools or services, the lawyer must explain the basis for the charge, preferably in writing. ... If a lawyer uses a GAI tool to draft a pleading and expends 15 minutes to input the relevant information into the GAI program, the lawyer may charge for the 15 minutes as well as for the time the lawyer expends to review the resulting draft for accuracy and completeness. ... The factors set forth in Rule 1.5(a) also apply when evaluating the reasonableness of charges for GAI tools when the lawyer and client agree on a flat or contingent fee. For example, if using a GAI tool enables a lawyer to complete tasks much more quickly than without the tool, it may be unreasonable under Rule 1.5 for the lawyer to charge the same flat fee when using the GAI tool as when not using it.”

None of these issues are new to this discussion, but as generative AI continues to evolve, so will lawyers’ duties. If you or your firm want assistance with crafting policies or strategies related to the use of generative AI, contact us to talk with one of our senior risk management counsel.

Have risk management or ethics questions? We’re here to help. To obtain a consultation, you should log in to [Attorneys Risk Management](#), and click on the “Request a Risk Management Consultation” button.



Confidential advice from experienced risk management counsel.
Visit www.attorneysriskmanagement.com or call: 844-782-RISK (7475).