



ADVISORY BULLETIN

A RISK MANAGEMENT PUBLICATION FOR LEGAL PROFESSIONALS



WHAT LEGAL PROFESSIONALS SHOULD KNOW ABOUT AI

According to [Britannica](#), Artificial Intelligence (AI) is “the ability of a digital computer or computer-controlled robot to perform tasks commonly associated with intelligent beings.” AI tasks may include learning, reasoning, problem-solving, understanding natural language, speech recognition and visual perception. The goal of AI is to simulate certain aspects of human intelligence, but it is not a replacement for any aspect of human intelligence.

AI tools such as ChatGPT and Google Bard™ are designed to understand and generate human-like text based on the input it receives and can be used for a wide range of natural language processing tasks and content generation, question answering, language translation and more.

How Can Legal Professionals Use AI

The American Bar Association’s (ABA) [Task Force on Law and Artificial Intelligence](#) provides useful information for attorneys regarding the potential use AI. The use of AI by legal professionals has arguably become increasingly common and may provide several benefits to attorneys.

However, it is essential to consider ethical considerations associated with the use of AI in the legal profession. Attorneys should understand and stay informed about the technical capabilities and limitations of AI tools, ensure compliance with ethical, legal and professional standards and use AI strictly as a tool to enhance their work rather than to replace their expertise.

Ethical Considerations

When attorneys use AI in their practice, they must navigate ethical considerations to ensure compliance with professional standards. Here are some key ethical considerations for attorneys when using AI:

- **Informed Consent:** The definition of “informed consent” in [ABA Model Rule 1.0](#) states that it is “the agreement by a person to a proposed course of conduct after the lawyer has communicated adequate information....” Attorneys should obtain informed consent from clients regarding the use of AI in their cases. Clients should understand how AI tools might impact their legal matters and have the opportunity to express any concerns.
- **Competence and Supervision:** [ABA Model Rules 1.1, 5.1 and 5.3](#) require attorneys to provide competent representation to their clients and not delegate tasks to others *that require the exercise of professional judgment without appropriate oversight*. This includes understanding the AI tools they use and ensuring its proper supervision and use.

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- **Confidentiality and Security:** [ABA Model Rule 1.6](#) also requires attorneys to maintain the confidentiality of client information. When using AI tools, attorneys should ensure that client data is adequately protected and that the tools comply with privacy and confidentiality rules. Attorneys must also ensure the security of AI systems to protect client data and maintain the integrity of the legal process. This includes safeguarding against cyber threats and unauthorized access.
- **Accountability:** [ABA Model Rule 2.1](#) requires attorneys to “exercise independent professional judgment and render candid advice.” Attorneys are ultimately responsible for the advice and decisions made in a case, even if they rely on AI tools. They should be able to explain and justify any use of AI to clients, opposing counsel and the court. Clear documentation of how AI tools were used and the results they provided is important for accountability.
- **Transparency:** [ABA Model Rule 4.1](#) require attorneys to be transparent with clients about the use of AI tools in their legal representation and is particularly important when AI tools influence legal outcomes or decisions.
- **Bias and Fairness:** [ABA Model Rule 8.4](#) prohibits attorney discriminatory conduct related to the practice of law. Attorneys should be aware of the potential biases in AI algorithms and take steps to mitigate them. If an AI tool introduces bias, it may lead to unfair outcomes, particularly in areas like sentencing or hiring decisions.

Addressing these ethical considerations is a first step towards helping an attorney responsibly integrate AI into their practice by leveraging its benefits while upholding professional standards benefiting their clients. Regular review of ethical guidelines from legal authorities and bar associations is essential to stay current with evolving best practices.

Remember that AI may be a useful “tool” for legal professionals. But attorneys should never forget that it is just that. A tool and not a substitute for their professional judgment and experience.



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