

## Ethics and Professionalism

ABA Formal Opinion 512, *Generative Artificial Intelligence Tools*  
(July 29, 2024). [pp. 186-87]

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## Ethics and Professionalism

### AI and legal ethics

- The explosion of ChatGPT
  - Nov. 30, 2022: ChatGPT debuts
  - May 2024: estimated 180 million active users
- *And* the lawyer hijinks began quickly...
  - *Mata v. Avianca, Inc.*, No. 22-CV-1461 (PKC), 2023 WL 4114965 (S.D.N.Y. June 22, 2023).
  - *U.S. v. Michel* (motion filed Oct. 16, 2023).



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## Ethics and Professionalism

### AI and legal ethics

- **Could you give me a summary one paragraph definition of artificial intelligence?**
- **ChatGPT: Artificial intelligence (AI)** refers to the simulation of human intelligence in machines, enabling them to perform tasks that typically require human cognition. This encompasses abilities such as learning, reasoning, problem-solving, perception, and language understanding. Through algorithms and computational models, AI systems can process vast amounts of data, adapt to new inputs, and execute tasks autonomously or augment human capabilities.



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## Ethics and Professionalism

### AI and legal ethics

- Current lawyer tools using AI:
  - Casetext
  - Lexis+ AI
  - Westlaw Precision
  - Microsoft Co-Pilot
  - Harvey.ai
  - HighQ Collaborate
  - Gideon
  - LexMachina
  - various e-discovery tools



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## Ethics and Professionalism

### AI and legal ethics

- Uses of AI tools for lawyers:
  - Summarize a lengthy document (e.g., deposition, opinion)
  - Legal research
  - Drafting a pleading, contract
  - Editing or proofing a draft
  - Analysis of a documents (e.g., appellate brief, contract)
  - Structure a deposition examination
  - Translate legalese
  - Due diligence review of contracts
  - E-discovery review
  - Marketing (e.g., turn article into social media posts)



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## Ethics and Professionalism

### AI and legal ethics

- Ethics guidance so far...
  - ABA Formal Opinion 512 (July 29, 2024), [https://www.americanbar.org/content/dam/aba/administrative/professional\\_responsibility/ethics-opinions/aba-formal-opinion-512.pdf](https://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/ethics-opinions/aba-formal-opinion-512.pdf)
  - D.C. Ethics Opinion 388 (April 2024), <https://www.dcbar.org/For-Lawyers/Legal-Ethics/Ethics-Opinions-210-Present/Ethics-Opinion-388>
  - Florida Opinion 24-1 (Jan. 19, 2024), <https://www.floridabar.org/etopinions/opinion-24-1/>
  - Ky. Bar Ass'n, Ethics Opinion KBA E-457 (March 15, 2024), [https://cdn.ymaws.com/www.kybar.org/resource/resmgr/Ethics\\_Opinions\\_\(Part\\_2\)\\_/kba\\_e-350.pdf](https://cdn.ymaws.com/www.kybar.org/resource/resmgr/Ethics_Opinions_(Part_2)_/kba_e-350.pdf)



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- Ethics guidance so far...
  - Mo. Informal Opinion 2024-11 (May 2024), <https://mo-legal-ethics.org/informal-opinion/2024-11/>
  - N.Y. City Bar Ass'n, Cte. on Prof'l Eth., Formal Opinion 2024-5 (Aug. 7, 2024), [https://www.nycbar.org/wp-content/uploads/2024/08/20221329\\_GenerativeAILawPractice.pdf](https://www.nycbar.org/wp-content/uploads/2024/08/20221329_GenerativeAILawPractice.pdf)
  - Pa. Bar Ass'n and Phila. Bar Ass'n, Joint Formal Opinion 2024-200 (May 2024), <https://www.pabar.org/Members/catalogs/Ethics%20Opinions/Formal/Joint%20Formal%20Opinion%202024-200.pdf>
  - W. Va. Lawyer Disc. Bd., Legal Eth. Op. 24-01 (June 14, 2024), <https://storage.googleapis.com/msgsndr/Rgd68xOkcVdteTsBkf6O/media/667ac9c2195b7a1f7a4df4c2.pdf>

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### AI and legal ethics

- Other authority:
  - Calif. St. Bar, *Practical Guidance for the Use of Generative Artificial Intelligence in the Practice of Law* (Nov. 16, 2023), <https://www.calbar.ca.gov/Portals/0/documents/ethics/Generative-AI-Practical-Guidance.pdf>
  - Ill. St. Bar Ass'n, Report of Task force on Artificial Intelligence, at: <https://www.americanbar.org/content/dam/aba/administrative/center-for-innovation/ai-task-force/skm-c360i23100414470.pdf>
  - Mich. St. Bar, *Artificial Intelligence for Attorneys-Frequently Asked Questions* (May 2024), <https://www.michbar.org/opinions/ethics/AIFAQs>

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### AI and legal ethics

- Other authority:
  - Minn. St. Bar Ass'n, Working Group on AI, *Implications of Large Language Models (LLMs) on the Unauthorized Practice of Law (UPL) and Access to Justice* (June 2024), <https://www.mnbar.org/docs/default-source/default-document-library/msba-ai-working-group-final-report-and-recommendations.pdf>
  - N.J. Sup. Ct. Cte. on Artificial Intelligence, *Preliminary Guidelines on New Jersey Lawyers' Use of Artificial Intelligence* (Jan. 24, 2024), <https://www.njcourts.gov/notices/notice-legal-practice-preliminary-guidelines-use-of-artificial-intelligence-new-jersey>
  - N.Y. St. Bar Ass'n, *Report and Recommendations of the New York State Bar Association Task Force on Artificial Intelligence* (April 8, 2024), available at <https://nysba.org/app/uploads/2022/03/2024-April-Report-and-Recommendations-of-the-Task-Force-on-Artificial-Intelligence.pdf>



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- Other authority:
  - Proposed Opinion: N.C. St. Bar, Proposed 2024 Formal Eth. Op. 1, Use of Artificial Intelligence in a Law Practice (Jan. 18, 2024), <https://www.ncbar.gov/for-lawyers/ethics/proposed-opinions/>
  - Tex. St. Bar, Taskforce for Responsible AI in the Law, *Interim Report to the State Bar of Texas Board of Directors* (July 2024), [https://www.texasbar.com/AM/Template.cfm?Section=Meeting\\_Agendas\\_and\\_Minutes&Template=/CM/ContentDisplay.cfm&ContentID=62597](https://www.texasbar.com/AM/Template.cfm?Section=Meeting_Agendas_and_Minutes&Template=/CM/ContentDisplay.cfm&ContentID=62597)
  - Va. St. Bar, Standing Cte. on Legal Ethics, *Guidance on Generative Artificial Intelligence* (Feb. 2024), <https://vsb.org/Site/Site/lawyers/ethics.aspx?hkey=bc8a99e2-7578-4e60-900f-45991d5c432b>



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### AI and legal ethics

- Plus two judicial ethics opinions:
  - St. Bar of Mich. Standing Committee on Judicial Ethics, JI-155 (Oct. 27, 2023), [https://www.michbar.org/opinions/ethics/numbered\\_opinions/JI-155](https://www.michbar.org/opinions/ethics/numbered_opinions/JI-155)
  - W. Va. Judicial Investigation Comm'n, JIC Advisory Op. 2023-22 (Oct. 13, 2023), [https://www.courtswv.gov/sites/default/pubfiles/mnt/2023-11/JIC%20Advisory%20Opinion%202023-22\\_Redacted.pdf](https://www.courtswv.gov/sites/default/pubfiles/mnt/2023-11/JIC%20Advisory%20Opinion%202023-22_Redacted.pdf)



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## Ethics and Professionalism

### AI and legal ethics

- Sources of law governing lawyer obligations concerning AI
  - Standard of care
  - Fiduciary duty
  - Statutory duties (e.g., deceptive trade practices acts)
  - Contracts (e.g., outside counsel guidelines)
  - New court rules and standing orders
  - Other law on AI



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### AI and legal ethics

- Ethics rules touching on AI use
  - Competence (Rule 1.1)
  - Diligence (Rule 1.3)
  - Client Communications (Rule 1.4)
  - Fees (Rule 1.5)
  - Confidentiality (Rules 1.6 and 1.9)
  - Prospective clients (Rule 1.18)
  - Candor toward tribunals (Rule 3.3)
  - Supervision (Rules 5.1 and 5.3)
  - Unauthorized Practice of Law (Rule 5.5)
  - Advertising (Rule 7.1)



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### AI and legal ethics

- Two key principles
- Competence (mainly Rules 1.1 and 1.3)
  - Fully understand each tool you use as a lawyer—does it contain or rely on AI?
  - How does it work? Is it built with lawyers in mind?
  - Check your (AI's) work.
- Confidentiality (mainly Rules 1.6 and 1.9(c))
  - Read TOS—any obligation of confidentiality?
  - What data is it trained on? Does it store or use for (or disclose to) others information input? How will output be used?



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### AI and legal ethics

- Generative AI in the courts
  - Responsible AI in Legal Services (RAILS), Duke Center on Law and Tech: Comprehensive, available at <https://rails.legal/resource-ai-orders/>

The screenshot displays the RAILS website header with the logo "RAILS RESPONSIBLE AI IN LEGAL SERVICES". Below the header is an Airtable interface showing a table of legal orders and rules. The table has columns for Document Name, Link to Source, Document Type, Judge/Author, Court Type, and Country. The data rows include various legal orders and rules, such as "Juvenile Local Rule 1.4, Use of Technology Info...", "Probate Local Rule 80, Use of Technology Info...", "Pleadings Using Generative Artificial Intelligence", "Disclosure and Certification Requirements for G...", "Standing Order Re: Artificial Intelligence ('AI')...", and "General Pretrial and Trial Procedures".

Document Name	Link to Source	Document Type	Judge/Author	Court Type	Court	Country
Juvenile Local Rule 1.4, Use of Technology Info...	<a href="https://www.williams...">https://www.williams...</a>	Local Rules	Judge Jeffrey A. Strausbaugh, Judge ...	State	Court of Common Pleas, Juvenile Division, De...	US
Probate Local Rule 80, Use of Technology Info...	<a href="https://www.williams...">https://www.williams...</a>	Local Rules	Judge Jeffrey A. Strausbaugh, Judge ...	State	Court of Common Pleas, Probate Division, De...	US
Pleadings Using Generative Artificial Intelligence	<a href="https://www.okadau...">https://www.okadau...</a>	General Order	Chief Judge Sarah A. Hall; Judge Jan...	Federal	US Bankruptcy Court Western District of Okla...	US
Disclosure and Certification Requirements for G...	<a href="https://www.okadau...">https://www.okadau...</a>	Standing Order	Magistrate Judge Jason A. Robertson	Federal	US DC Eastern District of Oklahoma	US
Disclosure and Certification Requirements - Ok...	<a href="https://www.okadau...">https://www.okadau...</a>	Standing Order	Judge Scott Peck	Federal	US DC Western District of Oklahoma	US
Standing Order Re: Artificial Intelligence ('AI')...	<a href="https://www.psdad...">https://www.psdad...</a>	Standing Order	Judge Michael M. Baylson	Federal	US DC Eastern District of Pennsylvania	US
General Pretrial and Trial Procedures	<a href="https://www.tsd.usc...">https://www.tsd.usc...</a>	Standing Order	Judge Gene E.K. Pratter	Federal	US DC Eastern District of Pennsylvania	US
Pleadings Using Generative Artificial Intelligence	<a href="https://www.tbcb.us...">https://www.tbcb.us...</a>	General Order	Judge Stacey G.C. Jernigan	Federal	US Bankruptcy Court Northern District of Texas	US

## Ethics and Professionalism

### AI and legal ethics

- Considerations in lawyer use of an AI tool
  - Lawyer competence
    - Does it **require** use of some AI tools? Does it **prohibit** use of some AI tools?
    - How can we tell the difference?
  - Role of the client in lawyer AI use
    - Is disclosure to the client required?
    - Is client consent required?
  - Tool-by-tool, use-case-by-use-case analysis needed?
    - Meeting bots
    - Contract or document analysis tools
    - Predictive analytics



## Ethics and Professionalism

### AI and legal ethics

- Diligence in adoption or use of an AI tool
  - Review of TOS
    - Evan Harris & David W. Tollen, “Fine print face-off: which top large language models provide the best data protection terms? (352),” <https://www.legalevolution.org/2024/04/fine-print-face-off-which-top-large-language-models-provide-the-best-data-protection-terms-352/>
  - Confidentiality; use of data; ownership of data
  - Market research
    - Designed for lawyers; used by lawyers
  - Need for client consent



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### AI and legal ethics

- May a lawyer ethically:
  - Use ChatGPT to draft a pleading?
  - Use Google to research a potential defense in a breach of contract matter?
  - Use Westlaw Precision’s AI to identify all potential defenses to a breach of contract action?
  - Use Grammarly to edit a brief?
  - Use Otter.ai to record and summarize a video meeting with a client?
  - Use AI tools (e.g., ChatGPT) to run across lawyer/firm’s documents and generate template documents for use inside firm?



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### AI and legal ethics

- Client and consumer use of AI legal tools

The screenshot shows the website interface for 'THERE'S AN AI FOR THAT'. The main heading is 'THERE'S AN AI FOR THAT' with a sub-heading '\*TAFT for short'. Below this, it states '12,487 AIs for 16,231 tasks and 4,804 jobs. Powered by Osum (Market research)'. A search bar contains the word 'law' and shows '291,923 searches today'. Below the search bar, it says '#1 AI aggregator. Updated daily. Used by 20M+ humans.' The page is categorized under 'AIs For You' and 'Tasks For You'. The footer includes the Tennessee Law Institute logo, the text 'TENNESSEE LAW INSTITUTE', the page number '25', and the website 'tnlawinstitute.com (800) 827-6716'.

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## Ethics and Professionalism

### AI and legal ethics

- Client and consumer use of AI legal tools
  - Is it UPL (e.g., Upsolve tool to help pro se bankruptcy filers get student loan relief)?
  - May/should lawyer let clients use such tools (e.g., to review resumes in hiring process; to analyze contracts from vendors)?

The screenshot shows the website interface for 'THERE'S AN AI FOR THAT'. The main heading is 'THERE'S AN AI FOR THAT' with a sub-heading '\*TAFT for short'. Below this, it states '12,487 AIs for 16,231 tasks and 4,804 jobs. Powered by Osum (Market research)'. A search bar contains the word 'law' and shows '291,923 searches today'. Below the search bar, it says '#1 AI aggregator. Updated daily. Used by 20M+ humans.' The page is categorized under 'AIs For You' and 'Tasks For You'. The footer includes the Tennessee Law Institute logo, the text 'TENNESSEE LAW INSTITUTE', the page number '26', and the website 'tnlawinstitute.com (800) 827-6716'.

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