ALASKA BAR ASSOCIATION
ETHICS OPINION 2025-1

Generative Artificial Intelligence & The Practice of Law Issue

What rules of professional conduct govern or should inform the use of generative artificial intelligence ("GAI") in the practice of law?

Questions Presented & Short Answers

1. Is it ethically permissible for a lawyer to use GAI to assist a client?

Yes, but before doing so, the lawyer should understand, to a reasonable degree, how the technology works, its limitations, and its ability (or not) to safeguard client confidences and secrets.

2. Does a lawyer using GAI have an ethical duty to review the GAI output to ensure it is free from errors and, if applicable, sufficiently advocates for a client's interests?

Yes.

3. Is it ethically permissible for a lawyer to input client confidences or secrets into an GAI tool?

It depends. Before doing so, the lawyer must review the program's policies on data retention, data sharing, and self-learning from user inputs to ensure that the GAI tool will protect client confidences and secrets. If client confidences and secrets are not protected by the GAI tool, then the lawyer must anonymize their inputs to protect client details.

4. Can a lawyer bill a client for the cost of using GAI?

Yes, but to do so, within a reasonable time after beginning the representation, the lawyer must explicitly disclose to the client (a) the client's liability for the charges; and (b) the basis on which the charges will be computed.

5. If using GAI reduces the time it takes a lawyer to perform legal work, does that need to be reflected in the fees the lawyer charges to their client?

Yes, lawyers must ensure that their fees remain reasonable and proportionate to the actual work performed. The lawyer may not duplicate fees for work done by GAI or bill clients for time that the lawyer did not work.

6. Does a lawyer who serves as a partner or manager of a firm that uses GAI, or a lawyer who supervises other lawyers or nonlawyers who use GAI, have an ethical responsibility to ensure that the use of GAI is compatible with the lawyer's professional obligations?

Yes.

Introduction

Artificial intelligence is the ability of computer systems to perform tasks that usually require human intelligence, like interpreting and drafting language, answering questions, making decisions, and learning from data inputs. This opinion focuses on a particular form of artificial intelligence—generative AI— which can create content and is relatively new and different from basic AI that lawyers have already been using for years. Among many other abilities, GAI-powered software can quickly perform legal research, draft pleadings, analyze contracts, and review and summarize documents, and it has the potential to greatly increase a lawyer's efficiency.

This opinion discusses some of the ethical issues that lawyers should consider when deciding when and how to use GAI in the practice of law. Like any technology, a lawyer's use of GAI must align with their professional responsibility obligations. How these obligations apply to the use of GAI may depend on many factors, including the client, matter, practice area, firm size, and the tools themselves, ranging from free and readily available to custom-built, proprietary tools. GAI is rapidly evolving, and this opinion does not address every ethical issue that may arise when using GAI in legal practice, now or in the future. Instead, it provides a starting point that discusses foundational rules and applicable ethical principles that should guide each lawyer's use of GAI in a professional capacity.[1]

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[1] Other jurisdictions that have evaluated the issues posed by GAI under their corresponding ethical rules, have reached similar conclusions. *See, e.g.*, Tex. Ethics Op. 705 (2025); N.C. Ethics Op. 2024-1 (2024); Mo. Informal Op. 2024-11 (2024); D.C. Ethics Op. 388 (2024); Ky. Ethics Op. E-457 (2024); ABA Comm. on Ethics & Prof'l Responsibility, Formal Op. 512 (2024) (hereinafter "ABA AI Opinion"); Fla. Ethics Op. 24-1 (2024); N.J. State Bar Ass'n, Task Force on Artificial Intelligence (AI) and the Law, Report, Requests, Recommendations, and Findings (2024); N.Y. State Bar Ass'n, Report & Recommendations of the Task Force on Artificial Intelligence (2024); Pa. State Bar & Philadelphia Bar Joint Formal Op. 2024-200 (2024); N.Y. City Bar Formal Op. 2024-5 (2024); W. Va. Ethics Op. 24-01 (2024); State Bar of Cal., Standing Comm. on Prof'l Resp. & Conduct, Practical Guidance for the Use of Generative Artificial Intelligence in the Practice of Law (Nov. 16. 2023); State Bar of Mich., JI-155 (Oct. 27, 2023).

Applicable Rules & Analysis

Numerous provisions of the Alaska Rules of Professional Conduct ("ARPC") govern or should inform the use of GAI in the practice of law. This includes, but is not limited to, Rules 1.1, 1.2, 1.3, 1.4, 1.5, 1.6, 3.1, 3.3, 4.1, 5.1, 5.3, and 8.4.

ARPC 1.1—Competence; ARPC 1.3—Diligence.

To "maintain[] competence" in the practice of law, "a lawyer should keep abreast of changes in the law and its practice, including the benefits and risks associated with relevant technology." APRC 1.1 cmt. Throughout its history, the legal profession has incorporated countless new technologies.[2] Some of these are now so critical to the profession—*e.g.*, email and word processing—that a lawyer likely cannot be competent *unless* they use those technologies. Lawyers should continually educate themselves on the evolving nature of GAI so they can exercise sound professional judgment as to whether adopting or regularly using GAI is or becomes "reasonably necessary" to represent their clients' interests. ARPC 1.1. The duty of "competence [is] ongoing and not delegable."[3] Before incorporating any GAI tool into the practice of law and throughout its use, lawyers must educate themselves about its capabilities and limitations, and its terms of use and other policies, to ensure that their use of it complies with the other ARPCs discussed below.

This dovetails with the requirement that lawyers "act with reasonable diligence" in representing clients. ARPC 1.3. To do so with respect to GAI use, lawyers must exercise sound, independent judgment and critically examine and improve GAI outputs to best support their client's interests and priorities. The scope of such review depends on the tool used and the task performed, and may include review to ensure the accuracy of legal citations, as discussed below. A lawyer's uncritical reliance on GAI tools can result in inaccurate legal advice to a client or misleading representations to a court or a third party that do not comport with the lawyer's ethical duties. *See* ARPCs 3.3 and 4.1.

Lawyers should also confirm whether and when any court rules or orders require them to disclose the use of GAI, as a lawyer's representation cannot be competent or diligent if it does not comply with such authorities.

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[2] *See, e.g.*, Alaska Ethics Op. 2014-3, Cloud Computing and the Practice of Law; Alaska Ethics Op. 98-2, Communication by Electronic Mail.

[3] Alaska Ethics Op. 2014-3, Cloud Computing and the Practice of Law at 1.

ARPC 1.2—Scope of Representation; ARPC 1.4—Communication.

"[A] lawyer shall abide by a client's decisions concerning the objectives of representation and shall consult with the client as to *the means by which* they are to be pursued," which may include the use of GAI. APRC 1.2 (emphasis added). Likewise, lawyers must "reasonably consult with th[eir] client[s] about the means to be used to accomplish the client's objectives," which also may include the use of GAI. ARPC 1.4 cmt. "In some situations—depending on both the importance of the action under consideration and the feasibility of consulting with the client—this duty will require consultation prior to taking action"—that is, before using GAI to assist with the representation. *Id.*

The facts of each case shape the duty to communicate with a client about the use of GAI. Of course, if a client asks, a lawyer should candidly disclose the extent to which they used GAI to conduct their work, as the rules requires lawyers to "promptly comply with reasonable requests for information." ARPC 1.4(a). The more difficult question is when unprompted disclosure is required. Many lawyers already routinely use GAI to provide legal services—for example, through legal databases like Lexis or Westlaw—and the use of these tools may be foreseeable and expected by clients. But in other instances, where GAI is used in a novel fashion, especially to perform substantive work, there may be a greater need for communication. To determine whether a lawyer should communicate their use of GAI to a client, the Committee recommends that the lawyer consider "the client's needs and expectations regarding the representation, the scope of representation, and the sensitivity of the case information that would be shared with the GAI tool."[4]

Several common scenarios illustrate when a lawyer should proactively disclose the use of GAI. For example, where a client is liable for the cost of using GAI—especially if it is a "significant expense"—the lawyer should disclose that cost as it may require a client's input. ARPC 1.4 cmt. As another example, "there may be situations where a client retains a lawyer based on the lawyer's particular skill and judgment, when the use of [GAI], without the client's knowledge, would violate the terms of the engagement agreement or the client's reasonable expectations regarding how the lawyer intends to accomplish the objectives of the representation."[5]

In sum, the duty to communicate with a client about the use of GAI depends mainly on the assistance provided. In instances where disclosing the nature and scope of GAI use is advisable, the engagement letter is the logical place to make such disclosures and to tee up a discussion with the client about how they want their lawyer to use GAI in the representation.

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[4] ABA AI Opinion at 9.

[5] *Id.*

ARPC 1.5—Fees.

GAI may provide lawyers with faster and more efficient ways to provide legal services to their clients, which should be reflected in the fees that lawyers charge. When incorporating GAI into a lawyer's practice, the lawyer must ensure that their fees remain reasonable and proportionate to the actual work performed and time expended. *See* ARPC 1.5(a).[6] A lawyer cannot duplicate charges for work done by GAI or falsely inflate billable hours for time saved by GAI. A lawyer must also proactively communicate with their client about the basis for fees. *See* ARPC 1.5(b).

Questions may arise as to when a lawyer may bill a client for costs associated with the use of an GAI tool. Lawyers use GAI tools in many ways—*e.g.,* within a legal search engine such as Westlaw—and the expense of some uses may be considered simply overhead for operating a legal practice. "In the absence of disclosure to a client in advance of the engagement to the contrary," such overhead should be "subsumed within the lawyer's charges for professional services."[7] In other circumstances, a lawyer may opt to pass on GAI costs to a client. Before doing so and within a reasonable time after commencing the representation, the lawyer must make explicit disclosures to the client about "(a) the client's liability for the charges; and (b) the basis on which the charges will be computed."[8]

To note, while the duty of competence requires every lawyer to stay abreast of technological advances, lawyers "may not charge clients for time necessitated by their own inexperience. Therefore, a lawyer may not charge a client to learn about how to use [GAI] that the lawyer will regularly use for clients, unless a client

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[6] ARPC 1.5(a) provides the following non-exhaustive list of factors to consider in assessing reasonableness: "(1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly; (2) the likelihood, that the acceptance of the particular employment will preclude other employment by the lawyer; (3) the fee customarily charged in the locality for similar legal services; (4) the amount involved and the results obtained; (5) the time limitations imposed by the client or by the circumstances; (6) the nature and length of the professional relationship with the client; (7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and (8) whether the fee is fixed or contingent."

[7] ABA Comm. on Ethics & Prof'l Responsibility, Formal Op. 93-379 (1993).

[8] Alaska Ethics Op. 95-4, Standards Governing Charges to Clients for Disbursements and Other Expenses.

requests or expressly approves such training.[9] In such instances, the lawyer should clearly communicate with the client about the cost of training and memorialize this agreement.

ARPC 1.6—Confidential or Secret Client Information.

Lawyers must "safeguard a client's confidences and secrets against unauthorized access, or against inadvertent or unauthorized disclosure," including by "others involved in transferring or storing client confidences or secrets." ARPC 1.6(c). This includes GAI if a lawyer inputs such confidences or secrets into a GAI program, whether by submitting prompts or queries, uploading data or documents, or otherwise. As with cloud computing, before using any GAI tool, "a lawyer should determine whether the provider of the services is a reputable organization" and "should specifically consider whether the provider offers robust security measures," including by reviewing the provider's terms of use and policies.[10] Such security measures in the context of GAI include strict prohibitions against retaining data, sharing data with third parties, and learning from user inputs—which is called "self-learning."

Most GAI programs "learn" by analyzing user inputs and adding those inputs to their existing response parameters. A "self-learning" GAI tool may store user inputs and reveal them in response to future inquiries, including inquiries by third parties, unless the GAI tool operates on a "closed" system. Some GAI tools keep inputted information entirely within a firm's own protected databases, called closed systems, which reduces the risk of sharing client confidences and secrets through self-learning. But it does not fully eliminate this risk if a firm has lawyers who are screened from certain matters and also use the same GAI tool, without further safeguards. To safely use GAI that self-learns outside of a closed system, lawyers must fully anonymize their inputs to protect client confidences and secrets, unless a client gives informed consent otherwise.

"A client may give informed consent to forgo security measures that would otherwise be required by this Rule." ARPC 1.6(c). Where there is a risk that a GAI tool may disclose inputted client confidences or secrets to a third party, a lawyer should (i) discuss with their client the proposed use of the GAI tool, (ii) advise their client of this risk, and (iii) obtain their client's informed consent to use the GAI tool, before inputting the client's confidences or secrets.

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[9] ABA AI Opinion, at 14.

[10] Alaska Ethics Op. 2014-3, Cloud Computing and the Practice of Law at 3 ("While a lawyer need not become an expert in [GAI], a lawyer must remain aware of how and where data are stored and what the service agreement says.").

ARPC 5.1—Responsibilities of Partners, Managers, and Supervisory Lawyers.

Law firm partners and other lawyers who have "comparable managerial authority" must "make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that all lawyers in the firm conform to the Rules of Professional Conduct." ARPC 5.1(a). Such reasonable efforts may include having policies and procedures related to the use of GAI. For example, law firms may choose to prohibit the use of GAI that learns from user inputs to reduce potential disclosure of client confidences and secrets.

The Committee does not intend to specify what GAI policies a law firm should adopt because it is the responsibility of each law firm leader to determine how GAI might be used in their firm and then establish a GAI policy that addresses the benefits and risks associated with that use—and to continually reassess these issues as technology evolves. As a part of this process, it is appropriate to review the law firm's existing cybersecurity policies and ensure that they take GAI into consideration.

Relatedly, lawyers who have "direct supervisory authority" over any other lawyer must "make reasonable efforts to ensure that the other lawyer conforms to the Rules of Professional Conduct." ARPC 5.1(b). This requires that any lawyer who supervises a junior lawyer who in turn uses GAI must understand enough about GAI to provide appropriate oversight and supervision.

ARPC 5.3—Responsibilities Regarding Nonlawyer Assistance.

A lawyer with direct supervisory authority over a nonlawyer must make reasonable efforts to ensure that the nonlawyer's conduct is compatible with the lawyer's professional obligations. ARPC 5.3. Though ARPC 5.3(a)(1)-(3) speak in terms of a "person" nonlawyer, many of the standards applicable to nonlawyer assistance should also guide a lawyer's use of GAI.

For example, a lawyer should review GAI work product in situations requiring work product review for nonlawyer assistants like paralegals. Lawyers are ultimately responsible for their own work product, regardless of whether it was originally drafted or researched by a human nonlawyer or GAI. Functionally, this means a lawyer must verify the accuracy and sufficiency of all GAI research—including for the reasons described below with respect to GAI "hallucinations." Failure to do so can lead to violations of the lawyer's duties of competence and candor to the tribunal, among others. Likewise, lawyers should not fully delegate to GAI anything that could constitute the practice of law and that requires a lawyer's judgment and participation, like negotiation on a client's behalf or offering legal advice.

The rule applies to nonlawyers both within and outside a firm. ARPC 5.3 cmt. The fact that a GAI tool might be operated by a third-party thus does not eliminate a lawyer's imperative to ensure that its work product is consistent with a lawyer's professional obligations.

ARPC 8.4—Misconduct.

It is professional misconduct for a lawyer to "engage in conduct involving dishonest, fraud, deceit, or misrepresentation that reflects adversely on the lawyer's fitness to practice law." ARPC 8.4(c). A lawyer's use of GAI may run afoul of this rule to the extent a lawyer relies on and presents untrue information provided by GAI. Among the reasons that GAI is controversial is its ability to respond to queries with "hallucinations"—outputs that are nonsensical or inaccurate—based in part on perceived patterns or objects that do not actually exist or are imperceptible to humans.[11] GAI has even hallucinated entire court decisions that lawyers have then cited in court briefs. These outputs can be quite deceptive as they appear on their face to be accurate.

Lawyers must confirm that the information GAI generates is true when relying on it in the practice of law. This includes ensuring the accuracy and relevance of citations used in legal documents or arguments. When citing legal authorities such as statutes, regulations, case law, or scholarly articles, lawyers must verify that the citations accurately reflect the content they are referencing. Lawyers must also ensure that GAI-generated content, like legal documents or advice, reflects sound legal reasoning.

Such efforts will also help ensure compliance with **ARPC 3.3—Candor Toward the Tribunal—**which prohibits lawyers from knowingly making and failing to correct false statements of fact or law to a tribunal. At least two courts in other jurisdictions have sanctioned or suspended lawyers for submitting filings with fake quotes and citations generated by GAI and failing to "come clean" to the court about their use.[12]

It also helps ensure compliance with **ARPC 3.1—Meritorious Claims and Contentions—**which prohibits lawyers from bringing claims that do not have a

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[11] In early 2024, researchers at Stanford University announced the preliminary results of a study finding that "[l]arge language models hallucinate at least 75% of the time when answering questions about a court's core ruling." Isabel Gottlieb & Isaiah Poritz, *Legal Errors by Top AI Models "Alarmingly Prevalent," Study Says*, Bloomberg Law (Jan. 12, 2024).

[12] *See Mata vs. Avianca, Inc.*, 2023 WL 4114965 (S.D.N.Y. June 22, 2023); *People v. Crabill*, No. 23PDJ067, 2023 WL 8111898 (Colo. O.P.D.J. Nov. 22, 2023).

basis in law. ARPC 3.1 also prohibits lawyers from bringing or defending claims without a basis in fact. If a lawyer suspects that a client may be providing GAI-generated or modified evidence, the lawyer should verify the veracity of the evidence to ensure that no fabricated facts are presented to a court.

Finally, ARPC 8.4(f) says it is professional misconduct to "engage in conduct that the lawyer knows is harassment or invidious discrimination" with individuals involved in the legal system. Some GAI is trained using historical and biased information—including information from eras when discrimination *was* the law—so lawyers should be cautious to avoid potential biases when using GAI, for example to screen potential clients.

Conclusion

In sum, a lawyer must reasonably ensure compliance with the lawyer's ethical obligations when using GAI tools. Those obligations include duties to (i) communicate with a client about the use of GAI where it may not be foreseeable or expected, (ii) avoid duplicative and excessive fees and costs for the use of GAI, (iii) confirm before using any GAI tool whether it will safeguard client confidences and secrets, (iv) set policies and procedures about the use of GAI and ensure appropriate supervision of others who use GAI within a firm, and (v) ensure the accuracy of GAI-provided information before communicating it to others. Lawyers should be cognizant that GAI is still in its infancy and not treat these ethical concerns as an exhaustive list. Rather, lawyers should continue to develop GAI technological competency and learn its benefits and risks when used in the practice of law.

Approved by the Alaska Bar Association Ethics Committee on April 3, 2025.

Adopted by the Board of Governors on April 23, 2025.