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CLIFFORD'S NOTES

Last December, the Illinois Supreme Court announced that the Rules of Professional Conduct and the Code of Judicial Conduct apply to the use of artificial intelligence (AI). It said courts "will be vigilant against AI technologies that jeopardize due process, equal protection, or access to justice."

It also said the "use of AI by litigants, attorneys, judges ... may be expected, should not be discouraged, and is authorized provided it complies with legal and ethical standards."

This comes on the heels of other legal entities issuing AI guidance. The American Bar Association (ABA) released Formal Opinion 512, stating it recognizes that lawyers don't need to be experts in technology. However, the ABA said attorneys must have a reasonable understanding of the various AI tools.

Attorneys must understand the risks. The opinion also sets ethical rules including but not limited to the duties of competence, confidentiality, client communication, candor toward the tribunal, supervisory duties and reasonable setting of fees.

Opinion 512 emphasizes that independent verification is necessary when using GenAI since it involves a large language model with access to an immense amount of data. Algorithms let generative AI create documents by gleaning information from numerous sources and databases.

This can create a dilemma for lawyers who have critical duties. For example, confidentiality is key between lawyers and clients. Opinion 512 provides that before client data is submitted to a GenAI tool, lawyers must review its privacy policy and terms of use, including data ownership and all contractual terms. The more specific the terms used by a lawyer — a client's name, date of birth, etc. — increases the chances the AI tool may be using it when it generates a similar question for the next legal user. That direct or indirect disclosure could amount to a breach of confidentiality.

Further, Opinion 512 suggests that clients must be informed if the lawyer is using the tools and provide informed consent before use. If time and money are being saved under hourly fee contracts the savings must be passed on to the client.

Informing the court of using AI may be required. Local rules must be checked. Some jurisdictions require being informed that AI was used. Above all, the opinion stresses a lawyer must verify all work before filing with the court since it's possible incorrect information or hallucinations were created by GenAI.



GUIDANCE ON ARTIFICIAL INTELLIGENCE

Illinois high court, bar associations set standards on how to use generative AI

BY BOB CLIFFORD

Certainly, lawyers can't rely on GenAI to provide counsel to clients as the tools are capable of creating inaccurate or misleading representations. Lawyers will find out the hard way if they do not verify the output, a clear violation of Illinois Rules of Professional Conduct Rule 1.1.

In March, the Illinois State Bar Association (ISBA) created its AI Task Force. The ISBA launched a Standing Committee on Artificial Intelligence and the Practice of Law composed of lawyers and judges throughout the state under immediate past president Shawn Kasserman. Its mission includes being "[a]ctively engage[d] in the review and development of legislation and court rules on the responsible use of AI in order to ensure the integrity of judicial and administrative processes, preservation of legal rights, and promotion of a strong and vibrant legal profession."

The Illinois Judicial Conference (IJC) launched an AI Task Force to assist the courts. The IJC's 2024 Strategic Initiatives identified AI as one of its key initiatives and appointed Williamson County Judge Jeffrey Goffinet and 17th Circuit Trial Court

Administrator Tom Jakeway as co-chairs. Palmer, who also is a member of the courts' AI Task Force, said: "AI has the potential to enhance customer service and operational efficiencies for the legal and judicial systems, but we must also be prudent of potential ethical challenges and the proper regulation of these tools."

Certainly, AI has revolutionized the world in countless ways, and the legal profession is no exception. The duties placed on lawyers are evolving, as the AI tools are constantly changing. Perhaps firms should create an AI Task Force or have their lawyers attend continuing legal education programs. The ISBA and other accredited organizations have committed to helping lawyers remain vigilant. [CL](#)

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