



Advertising, Marketing and AI for Law Firms & Title Agencies

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LEGAL EDUCATION

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Advertising, Marketing and AI for Law Firms & Title Agencies

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Topics

- Introduction – Advertising and Marketing
- Advertising Rules – Lawyers
- Advertising Rules – Title Agencies
- Marketing Rules for Lawyers & Title Agencies
- Using Artificial Intelligence for Marketing





What's the Difference?

ADVERTISING

- Focuses on influencing consumer buying behavior, persuading customers to purchase a product or service (using mass media like tv, radio, print & online)

MARKETING

- Marketing focuses on establishing a brand's value and product positioning, and aims to build a long-term relationship with customers



The infographic is divided into two main sections: **MARKETING** and **ADVERTISING**. The **MARKETING** section features a silhouette of a head with a brain containing icons for a bar chart, a globe, and a group of people. The **ADVERTISING** section features a silhouette of a head with a brain containing icons for a lightbulb, a play button, a magnifying glass, and a pencil. Both sections include a thumbs-up icon and a brief description of their respective fields.

MARKETING	ADVERTISING
Involves understanding consumer behaviour and target market through market analysis and strategy	Focuses on what appeals to the audience through catchy copies and compelling graphics and videos

<https://eduadvisor.my/articles/marketing-vs-advertising>

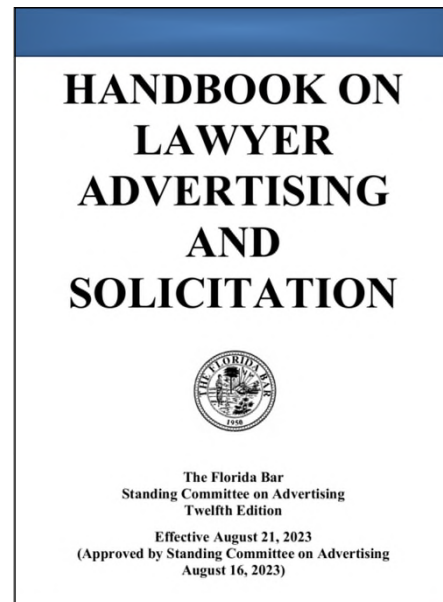
Advertising Restrictions

Advertising - Lawyers

Rules Regulating the Florida Bar

Sub-Chapter 4-7

- *4-7.11(a) rules apply to all forms of communication seeking legal employment; including (c) communication with referral sources*
- *4-7.19 Filing Requirements - Evaluation of Advertisements*
- *4-7.20 Exemptions from Filing*



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Advertising - Lawyers

- Direct in-person solicitation is prohibited
- Includes telephone or video calls (real-time communication) – *Rule 4-7.18(a)*
- Written unsolicited communication is allowed if it complies with Rule 4-7.18(b)
- Prior professional relationship – exempted from prohibition

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Advertising - Lawyers

Rule 4-7.18(b)

Direct Mail or Email

- Subject line must begin with word “Advertisement”
- Exceptions for those who have requested information
- Pre-approval from FL Bar SCA required



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Advertising - Lawyers

Guidelines for Networking Sites

- Social media and other networking sites
- Instant messaging & texting
- Internet chat rooms
 - Not inherently overreaching
 - Chat room not a live, face-to-face interaction
 - Same solicitation rules as print media
- *FL Bar Opinion A-00-1 (Revised)*

THE FLORIDA BAR STANDING COMMITTEE ON ADVERTISING GUIDELINES FOR NETWORKING SITES

(Revised August 21, 2023)

Networking sites accessed over the Internet have proliferated in the last several years. There are numerous networking sites of various types. Some networking sites were designed for social purposes, such as Facebook. Notwithstanding their origins as social media, many use these social networking sites for commercial purposes. Other networking sites are specifically intended for commercial purposes, such as LinkedIn. In a networking site, a person has the capability of building a profile that includes information about that person. That profile is commonly referred to as the individual's "page." The individual chooses how much of the information on his or her page, if any, is available to all viewers of the site. Some individuals provide access to no information about themselves except to those other individuals that are invited to view the information. Others provide full access to all information about themselves to anyone on the networking site. Others provide access to some information for everyone, but limit access to other information only to those invited to view the information. Additionally, some individuals set their pages to permit posting of information by third parties. Networking sites provide methods by which users of the site may interact with one another, including email and instant messaging.

The SCA has reviewed the social networking media and issues the following guidelines for lawyers using them.

Pages of individual lawyers on social networking sites that are used solely for social purposes (i.e. to maintain social contact with family and close friends) and not for the purpose of marketing legal services, are not subject to the lawyer advertising rules. However, lawyers are still bound by the Rules Regulating the Florida Bar.

Pages appearing on networking sites that are used to promote the lawyer or law firm's practice are subject to the lawyer advertising rules. These pages must therefore comply with all of the general regulations set forth in Rules 4-7.11 through 4-7.17 and 4-7.21. Regulations include prohibitions against any misleading information, which includes references to past results that are not objectively verifiable, predictions or guarantees of results, and testimonials that fail to

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Advertising - Lawyers

The Florida Bar Standing Committee on Advertising

- 4-7.19 – Filing Requirement

- *All unsolicited advertisements must be submitted to the FL Bar, Ethics & Advertising Dept., at least 20 days prior to planned use*
- *Reviewed by SCA staff*
- *Response w/in 15 days*

- 4-7.20 Exemptions from Filing Requirement



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Advertising - Lawyers



- 4-7.12 Required Content in Advertising

- *Name and office location*
- *Disclosure if matter will be referred out*
- *If lawyer is certified, must contain name of certifying organization and area of practice*
- *All required info must be clear, conspicuous and legible*

- 4-7.13 No deceptive or misleading statements

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Advertising - Lawyers

- 4-7.13 No predictions of success or specific results
- 4-7.13 Testimonials prohibited unless:
 - *Person is qualified to evaluate the lawyer*
 - *Actual experience of person making testimonial*
 - *Representative of what clients generally experience*
 - *Lawyer may not write or draft the testimonial*
 - *Person receives nothing of value in exchange*
- 4-7.14 No potentially misleading advertisements



Advertising – Title Agencies

- Advertisements must promote the agency, not another business
 - *Soliciting customers for others could be unfair trade practice/inducement*
 - *Joint participation allowed if each pays fair share*
 - *Rule 69B-186.010(5)(d), F.A.C.*
- Can advertise rebates if truthful and not misleading
 - *“Discounted premium” is misleading and inaccurate*
 - *“Lowest rates” is misleading (rates are promulgated)*



Advertising – Title Agencies

Open Houses



- Title agency can attend but can only promote its own business
- Title agency can provide food/beverages only if agent attends event and promotes its agency during event
- Advertising open houses and others' events is prohibited



Names

"A rose by any other name would smell as sweet"
Wm. Shakespeare



- Rule 4-7.21 Law Firm Names and Letterhead
 - (b) trade/fictitious name must not be deceptive
 - (c) trade/fictitious name on letterhead, business cards, fee contracts, pleadings and legal documents signed by lawyer
- Sec. 626.8413, F.S. Title insurance agents; certain names prohibited
 - Words "title insurance," "title guaranty," or "title guarantee" forbidden unless followed by "agent" or "agency"



Marketing Restrictions

Marketing

Unfair, Deceptive or Abusive Acts or Practices (UDAAP)

- Dodd-Frank added “abusive” to existing law; authorized CFPB to enforce (*12 U.S.C.A. Sec. 5531*)
- Florida Deceptive and Unfair Trade Practices Act (*Secs. 501.201 – 501.213, F.S.*) excludes title agents and agencies - persons or activities regulated by OIR or DFS



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Marketing

Unfair Insurance Trade Practices Act - Ch. 626, F.S.



Applies to both Title Agencies and Attorneys

- Misrepresentation, announcement or false advertising which is untrue, deceptive, or misleading
- No rebate or abatement of premium; special favor or advantage; or monetary consideration or inducement in connection with title insurance (Sec. 626.9541(3)(a) F.S.)
 - *Exceptions: attorneys' fees; underwriter/agent premium split; "Butler" rebates*



Marketing

Unlawful Rebates and Inducements Related to Title Insurance Transactions (Rule 69B-186.010 F.A.C.)

Applies to both Title Agencies and Attorneys

- *No discounts, credits or paying all or part of: inspection; appraisal; survey; charitable contributions; gift cards*
- *No discount, reduction or free: memberships; printing; office equipment; cell phone; food/beverage/rooms at events promoting business of referrer; no free or low-cost leads*
- *No sponsoring or paying for: open houses; panoramic tours; advertising*



Marketing

Exceptions to Unlawful Rebates & Inducements:



- *Promotional items with limited value; but not specific monetary value gifts (e.g., gift card)*
- *Educational material exclusively related to title insurance; not conditioned on referral; does not defray expenses typically incurred by referrer*



Marketing

Exceptions to Unlawful Rebates & Inducements:

- *Fair Market Value paid for goods and services*
- *Joint participation in marketing activities*
- *Payments to agents by insurer for services performed*
- *Bona fide salary or compensation*



Marketing

RESPA “Section 8” (12 CFR Part 1024, Sec. 1024.14)

- In connection with mortgage loan
 - No fee, kickback or other “thing of value” for referrals
 - No splitting of charges other than for services actually performed
- Allows fees, salaries, compensation, or other payments, for services actually rendered, to:
 - *Attorneys, underwriters, lenders, real estate brokers, or under affiliated business arrangements*
- Section 8 violation – penalties



Marketing

Marketing Service Agreements

- *Contract between 2 or more parties to split marketing and promotional costs*
 - *Joint Advertising*
 - *Lead Sharing*
 - *Co-Branding*
 - *Event Sponsorship*



Marketing Service Agreements



- **Cons ...**
 - **Regulatory Scrutiny – from government agencies**
 - **Severe financial penalties for non-compliance under RESPA**



Marketing

Affiliated Business Arrangements (AfBAs)

- Safe harbor from RESPA's Section 8 prohibition of kickbacks and unearned fees if specific requirements are met
 - Properly created AfBA
 - Written disclosure from referrer
 - Distribution of profits must equal ownership interest



AfBA disclosure requirements

- Provided at time of referral
- Explains nature of affiliated arrangement
- Estimates charge or range of charges
- Consumer not required to accept referral unless referral to lender's chosen attorney, appraiser or credit reporting agency; or to law office owned title agency

Appendix D to Part 1024

Affiliated Business Arrangement Disclosure Statement Format Notice

To:

From:

(Entity Making Statement)

Property: _____

Date:

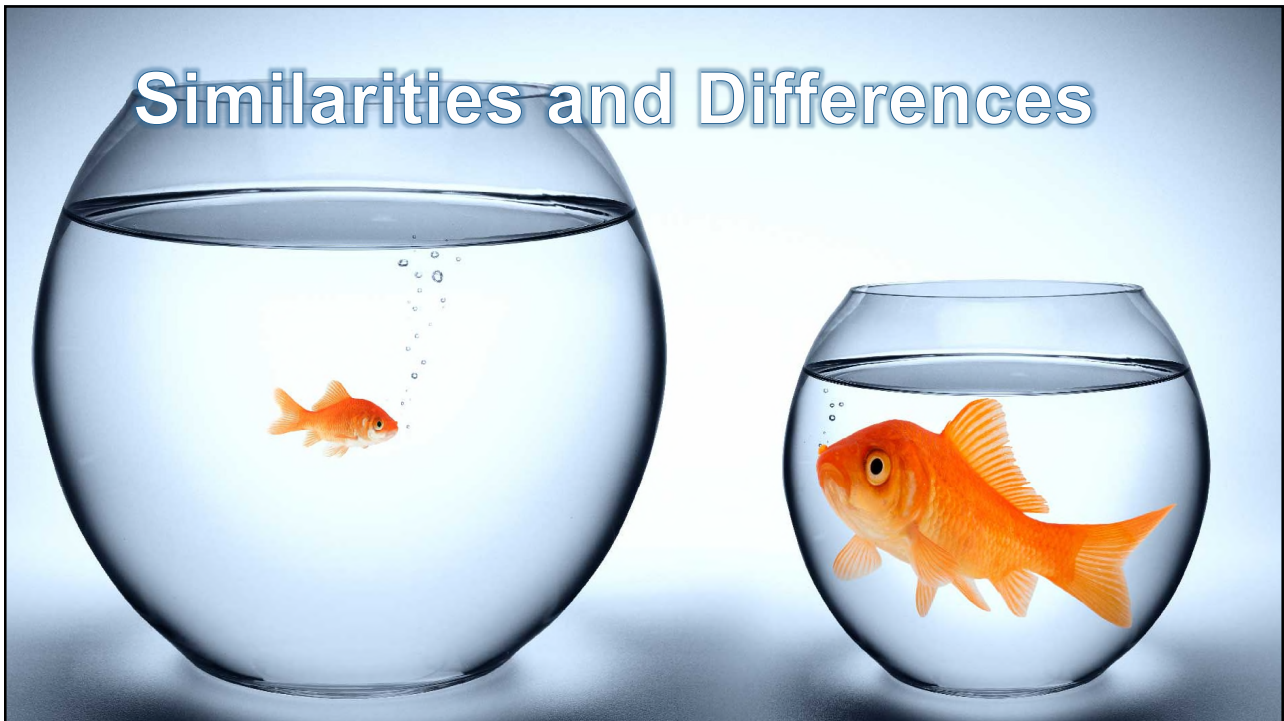
This is to give you notice that [referring party] has a business relationship with [settlement services provider(s)]. [Describe the nature of the relationship between the referring party and the provider(s), including percentage of ownership interest, if applicable.] Because of this relationship, this referral may provide [referring party] a financial or other benefit.

[A.] Set forth below is the estimated charge or range of charges for the settlement services listed. You are NOT required to use the listed provider(s) as a condition for [settlement of your loan on] [or] [purchase, sale, or refinancing of] the subject property. THERE ARE FREQUENTLY OTHER SETTLEMENT SERVICE PROVIDERS AVAILABLE WITH SIMILAR SERVICES. YOU ARE FREE TO SHOP AROUND TO DETERMINE THAT YOU ARE RECEIVING THE BEST SERVICES AND THE BEST RATE FOR THESE SERVICES.

[provider and settlement service] _____

[charge or range of charges] _____

Similarities and Differences



Similarities

Attorneys

- Licensed by the FL Bar
- Must use and maintain a Trust account for transactions
- Prohibition on referral fees
- Title insurance premiums are regulated
- No rebates (except Butler rebate)

Title Agencies

- Licensed by FL Dept. of Financial Services (DFS)
- Must use and maintain an Escrow account for transactions
- Prohibition on referral fees
- Title insurance premiums are regulated
- No rebates (except Butler rebate)



Differences

Attorneys

- Relationship: Client
- Stricter Advertising Rules & Regulation
- No Data Call
- No interest earned on Trust accounts (IOTA)

Title Agencies

- Relationship: Customer
- Looser Advertising Rules & Regulation
- Data Call
- Can earn interest on Escrow accounts (w/ consent)



Using Artificial Intelligence for Marketing

What is it?

Artificial Intelligence (AI) is a broad field that focuses on creating computer systems capable of performing tasks that typically require human intelligence. This includes learning, problem-solving, decision-making, and comprehension. AI systems are trained to learn from data, identify patterns, and make predictions or recommendations.



Generative AI (Gen AI)



- Gen AI can create new content
 - Including text, images, audio, video
- Prediction tools that generate a probable output when prompted
- “Self-learning” as they cull more data

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Open AI

- Open source with algorithms, tools & models that are free to use, modify & share publicly
- Advantages:
 - Transparency
 - Innovation & Collaboration
 - Cost Effectiveness
- Disadvantages:
 - Security Risks
 - Limited Support



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Proprietary AI



- Algorithms, tools & models that are developed & controlled by an organization that restricts access
- Advantages:
 - Optimized performance
 - Security
 - Dedicated customer support
- Disadvantages:
 - High costs
 - Limited transparency
 - Slower innovation



Use of AI in Marketing

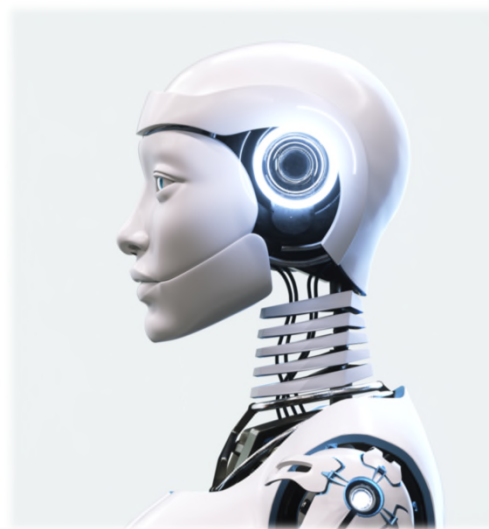
- Lead generation
- Email marketing
- Automate social media posts
- Client engagement
- Chatbots – instant, accurate responses
- Analytics & Data gathering



Ethical Considerations for Lawyers

Ethical Issues – 3 Cs

1. Competency – what level of competency should a lawyer have regarding an AI tool?
2. Confidentiality – lawyer must keep client information confidential
3. Communication – what must be disclosed regarding the use of AI?



1. Competency

- Rule 4-1.1 obligates lawyers to provide competent representation to clients
- Including Gen AI
- Need not be an AI expert
- But must have understanding of the benefits and risks associated with the use of technology



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1. Competency



- Increased efficiency using AI tools comes with inherent risks
- Lawyer must be aware of risks, including unreliable, incomplete or inaccurate output
- AI tools can produce “hallucinations” – plausible responses that have no basis in fact or reality

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1. Competency

- Lawyer should independently verify the AI output
- Lawyer may not use AI tools alone to perform functions that require his/her professional judgment or skill
- BUT don't be afraid! Lawyers should be aware of the available AI tools so they can make an informed decision on whether to use those tools.



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2. Confidentiality

- Rule 4-1.6 requires a lawyer to keep confidential all information relating to the representation of a client
- Before inputting information into an AI tool, a lawyer must evaluate the risks that the info will be disclosed or accessed by others outside the firm
- Self-learning AI tools raise the risk of improper disclosure



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2. Confidentiality



- Client's informed consent is required prior to inputting information into an AI tool
- Lawyer needs a basic understanding of how the AI tool functions
- Lawyer should consult with IT professionals if needed to fully understand how the AI tool uses information



3. Communication

- Transparency & Accountability
- Clients need to know when they are interacting with chatbots rather than humans
- Disclose use of AI to clients



Florida Bar Advisory Opinion

January 19, 2024

Florida Bar Advisory Opinion 24-1



Lawyers using AI must:

1. Protect confidentiality of client information
2. Provide accurate & competent services
3. Avoid improper billing practices
4. Comply with applicable restrictions on lawyer advertising



1. Protect Confidentiality of Client Information

- Rule 4-1.6, Rules Regulating The Florida Bar
- Lawyer must research the AI program's policies on data retention, data sharing & self-learning
- Ensure the AI platform will preserve confidentiality & security of information
- Is information retained in AI program and used by self-learning generative AI?
- Use of an inhouse generative AI can mitigate concerns



2. Provide Accurate & Competent Services

- Rule 4-5.3, Rules Regulating The Florida Bar
- AI is a “nonlawyer assistant”
- AI has inherent risks
- Lawyer must review the work product of AI
- Lawyer is ultimately responsible for the work product
- Applies to 3rd party AI as well as in house



3. Avoid Inaccurate Billing Practices

- Rule 4-1.5, Rules Regulating The Florida Bar
- Prohibits unreasonable, illegal or clearly excessive fees
- Lawyer may only charge for actual costs not overhead
- Increased efficiency by use of AI
- Lawyer may not inflate time due to increased efficiency



4. Comply with Advertising Restrictions



- Subchapter 4-7, Rules Regulating The Florida Bar
- Prohibits deceptive or misleading content
- Chatbot: lawyer must inform clients they are communicating with an AI program
- Lawyer may advertise their use of AI but cannot claim their AI is superior to others



ABA Formal Opinion 512

July 29, 2024

To ensure clients are protected, lawyers using generative artificial intelligence tools must fully consider their applicable ethical obligations, including their duties to provide competent legal representation, to protect client information, to communicate with clients, to supervise their employees and agents, to advance only meritorious claims and contentions, to ensure candor toward the tribunal, and to charge reasonable fees.



Ethical Considerations for Title Agents

Florida Land Title Association



FLTA Code of Ethics

Principle 1: Maintain the highest possible standards of business and professional practice and make a continuing effort to improve the quality of service in the title industry

Principle 5: Protect the privacy rights of parties to title insurance transactions



5 Tips for Implementing AI Tools

1. **Start small:** Begin with simple, low-risk pilot projects, like using ChatGPT to draft an email response or help brainstorm social media content.
2. **Maintain human oversight:** Make sure you have a living, breathing human overseeing all your AI tools to ensure you're always in control of the process.
3. **Train your team:** Equip your staff with the necessary skills to use AI tools effectively. Ensure everyone understands how to maximize the benefits and mitigate risks.
4. **Establish clear policies:** Develop and enforce guidelines around AI use to mitigate risks and ensure responsible implementation.
5. **Ensure data quality:** Clean, organized data will yield more accurate results and reduce errors.

Moving Forward ...

What's Next?



AI tools can assist with content creation and generating first drafts of social media posts, email campaigns, and blogs. Analytical AI tools can also help you analyze customer data, allowing you to personalize content and enhance customer engagement.



**Thank you
for your time and attention**

For more information please contact:

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FLORIDA BAR ADVERTISING OPINION
OPINION A-00-1 (Revised)
January 29, 2016

Advisory advertising opinions are not binding.

A lawyer may solicit prospective clients through Internet chat rooms, defined as real time communications between computer users, only if the lawyer complies with the rules on direct written communications and files any unsolicited communications with The Florida Bar for review. Lawyers may respond to specific questions posed to them in chat rooms. Lawyers should be cautious not to inadvertently form attorney-client relationships with computer users.

Note: Approved as revised by the Board of Governors on January 29, 2016.

RPC: 4-7.18, 4-7.19

Opinions: 00-4, Illinois 96-10, Michigan RI-276, Philadelphia 98-6, Utah 97-10, Virginia A-0110, West Virginia 98-03

As use of the Internet becomes more and more a part of the practice of law, questions arise as to whether attorneys may ethically participate in chat rooms. As used in this opinion, the term “chat room” refers to a real time communication between computer users. A foremost concern in attorney participation in chat rooms is whether such activity constitutes impermissible solicitation. Rule 4-7.18(a)(1) provides:

(a) Solicitation. Except as provided in subdivision (b) of this rule, a lawyer may not:

(1) solicit, or permit employees or agents of the lawyer to solicit on the lawyer’s behalf, professional employment from a prospective client with whom the lawyer has no family or prior professional relationship, in person or otherwise, when a significant motive for the lawyer’s doing so is the lawyer’s pecuniary gain. The term “solicit” includes contact in person, by telephone, telegraph, or facsimile, or by other communication directed to a specific recipient and includes any written form of communication, including any electronic mail communication, directed to a specific recipient and not meeting the requirements of subdivision (b) of this rule and rules 4-7.11 through 4-7.17 of these rules.

Several other states have considered the issue of whether attorney participation in chat rooms constitutes impermissible solicitation. For example, in Michigan Opinion RI-276, it was concluded that while e-mail communications were akin to direct mail communications:

A different situation arises if a lawyer is participating in interactive communication on the Internet, carrying on an immediate electronic conversation. If the communication was initiated by the lawyer without invitation, such “real time” communications about the lawyer’s services would be analogous to direct solicitations, outside the activity permitted by MRPC 7.3.

Similarly, the West Virginia Lawyer Disciplinary Board stated in Opinion 98-03:

The Board is of the opinion that solicitations via real time communications on the computer, such as a chat room, should be treated similar to telephone and in-person solicitations. Although this type of communication provides less opportunity for an attorney to pressure or coerce a potential client than do telephone or in-person solicitations, real time communication is potentially more immediate, more intrusive and more persuasive than e-mail or other forms of writing. Therefore, the Board considers Rule 7.3(a) to prohibit a lawyer from soliciting potential clients through real-time communications initiated by the lawyer.

The Utah State Bar's Ethics Advisory Opinion Committee has likewise concluded that an attorney's use of a chat room for advertising and solicitation are considered to be in person communications for the purposes of its Rule 7.3(a) and, thus, restricted by that rule. Utah Ethics Opinion 97-10. The Virginia State Bar Advertising Committee's Lawyer Advertising Opinion A-0110 is in accord with this reasoning.

The Philadelphia Bar Association, in Opinion 98-6, acknowledged that attorneys could not engage in any activity that would be improper solicitation. The Committee further stated, "In the opinion of the Committee, conversation interactions with persons on the Internet do not constitute improper solicitation, but in any one particular case the interaction may evolve in such a way that it could be characterized as such." The Illinois State Bar Association, in Ethics Opinion 96-10, has also stated:

The Committee does not believe that merely posting general comments on a bulletin board or chat room should be considered solicitation. However, if a lawyer seeks to initiate an unrequested contact with a specific person or group as a result of participation in a bulletin board or chat group, then the lawyer would be subject to the requirements of Rule 4-7.3. For example, if the lawyer sends unrequested electronic messages (including messages in response to inquiries posted in chat groups) to a targeted person or group, the messages should be plainly identified as advertising material.

The Board of Governors is unpersuaded by the reasoning of opinions from other states that conclude that participation in chat rooms, merely because it occurs in real time, is a form of prohibited solicitation. The underlying purpose of the prohibition against direct solicitation is the inherently coercive nature of direct conversations. The Supreme Court of the United States has upheld a ban on direct solicitation, stating "Unlike a public advertisement, which simply provides information and leaves the recipient free to act upon it or not, in-person solicitation may exert pressure and often demands an immediate response, without providing an opportunity for comparison or reflection." *Ohralik v. Ohio State Bar Ass'n*, 436 U.S. 447, 457, 98 S. Ct. 1912, 1919, 56 L. Ed. 2d 444 (1978). The Court's opinion cited the American Bar Association's argument of a compelling state interest in banning direct solicitation: "to reduce the likelihood of overreaching and the exertion of undue influence on lay persons, to protect the privacy of individuals, and to avoid situations where the lawyer's exercise of judgment on behalf of the client will be clouded by his own pecuniary self-interest." *Id.* At 461. In contrast, written

communications via a chat room, albeit in real time, do not involve the same pressure or opportunity for overreaching.

The Board therefore concludes that a direct solicitation via a chat room is permissible, but only if the communication complies with all the requirements for direct written communications set forth in Rule 4-7.18(b). Requirements of Rule 4-7.18(b) include, e.g., no contact within 30 days of an accident, beginning the communication with the word “advertisement,” providing information about the lawyer’s qualifications and experience, use of the first sentence “if you have already retained a lawyer for this matter, please disregard. . .,” and the like. The Board’s decision is limited to participation in a chat room that does not involve live face-to-face interaction, e.g., via video telephone or video teleconference (such as Skype). Live face-to-face interaction by video would implicate the possibility of undue influence and pressure that is meant to be prohibited by Rule 4-7.18(a).

Additionally, direct solicitations in chat rooms must be filed with The Florida Bar for review in compliance with Rule 4-7.19. Filing is required only when the solicitation is unsolicited by the consumer. This opinion should not be interpreted as suggesting that a lawyer must file responses to specific requests for information about the lawyer or the lawyer’s services in a chat room that were initiated by a prospective client and not at the prompting of the lawyer. A lawyer may also respond to the posting of a general question such as “Does anyone know a lawyer who handles X type of matter?” without filing the response for review by The Florida Bar. Only a lawyer’s unsolicited offers to provide legal services or information about the lawyer’s services are required to be filed for review with The Florida Bar under Rules 4-7.19 and 4-7.20. Although solicited responses need not be filed for review, they remain subject to the substantive lawyer advertising rules found in subchapter 4-7 of the Rules Regulating The Florida Bar.

The Board believes that the most likely type of question to which a lawyer will want to respond is one involving a specific legal issue, such as “I just received a speeding ticket - what should I do?” or “I have heard that I can avoid probate if I have a trust - is that true?” The Board cautions lawyers that they may inadvertently form a lawyer-client relationship with a person by responding to specific legal inquiries, which will require that a lawyer comply with all Rules of Professional Conduct, including rules regarding conflicts of interest, confidentiality, competence, diligence, and avoiding engaging in the unlicensed practice of law. See, e.g., Florida Ethics Opinion 00-4. Although interpretation of these rules is outside the scope of an advisory advertising opinion, the Board feels obligated to point out that lawyers who engage in discussions in chat rooms may have other ethical obligations, regardless of whether the lawyer’s communications are permissible under the lawyer advertising rules.

Finally, this opinion should not be construed so broadly as to require compliance with lawyer advertising rules or filing with The Florida Bar for participation by a Florida attorney in chat rooms when it is *completely unrelated to seeking professional employment*, such as when the chat concerns the attorney’s personal interests or hobbies.

CHAPTER 69B-186 TITLE INSURANCE

69B-186.008 Escrow Disbursements

69B-186.010 Unlawful Rebates and Inducements Related to Title Insurance Transactions

69B-186.008 Escrow Disbursements.

(1) For purposes of this rule, the term “settlement agent” refers to the title insurance licensee or licensee’s designee who receives and disburses funds in accordance with Section 626.8473, F.S.

(2) Any person disbursing escrow funds being held as part of a real estate transaction in which one or more title policies are to be issued must provide the parties to the transaction with the information required by this rule.

(3) A written statement by the settlement agent must certify that he or she has reviewed the forms prepared for the transaction and agrees to disburse the escrow funds in accordance with the terms of the transaction and Florida law. Compliance with the aforementioned certification requires the settlement agent to certify to the truth of the following statement: “I have reviewed the Closing Disclosure, the settlement statement, the lender’s closing instructions and any and all other forms concerned with the funds held in escrow, including any disclosure of the Florida title insurance premiums being paid, and I agree to disburse the escrow funds in accordance with the terms of this transaction and Florida law.”

(4) The title agency must provide the parties to the transaction with the following information no later than the time such funds are disbursed:

(a) The name and license number of the title insurance agency issuing the title insurance policy and/or holding and disbursing the escrow funds. If there is more than one title agency involved in the transaction, a separate form is to be provided by each agency. Any agency not holding any escrow funds should disclose that to the parties to the transaction at this time.

(b) The name, and when applicable, the license number of the settlement agent responsible for disbursing the escrow funds.

(5) All buyers, borrowers and sellers involved in the transaction must provide written approval authorizing the holding of escrow funds and disbursement of escrow funds by the named title agency.

(6) In addition to the requirements listed above, the title insurance agency must provide the parties to the transaction with the following information when a Closing Disclosure form is completed by the lender and the cost for the title insurance policies being purchased differs from the premium calculated pursuant to Rule 69B-186.003, F.A.C.

(a) A written comparison of the cost of the lender’s policy versus the cost of an equivalent policy based on Florida premium rates. The cost comparison must clearly disclose the premiums being charged for all endorsements in addition to the base policy.

(b) All sellers, buyers and borrowers involved in the transaction must acknowledge and authorize in writing that the title insurance premiums will be disbursed from the escrow funds in accordance with the premium disclosure certification.

(7) Any form or forms that satisfy the requirements of this rule will be considered part of a title insurance and escrow transaction in Florida. Such form or forms will not constitute loan documents.

(8) A completed and signed copy of the approved form or forms must be:

(a) Provided to the buyer, seller and lender who are named in the transaction; and,

(b) Maintained in the title insurance agency files for at least five (5) years.

(9) Form DFS-H1-2146, <http://www.flrules.org/Gateway/reference.asp?No=Ref-05954>, “Florida Insurance Premium Disclosure & Settlement Agent Certification,” (Effective 10/03/2015), meets all of the requirements necessary to comply with this rule and is incorporated by reference herein. The form is available from the Department of Financial Services, Division of Insurance Agent and Agency Services, at <http://www.myfloridacfo.com/Division/Agents>.

Rulemaking Authority 624.308(1), 626.8473(6) FS. Law Implemented 626.8473 FS. History—New 10-28-15.

69B-186.010 Unlawful Rebates and Inducements Related to Title Insurance Transactions.

(1) The purpose of this rule is to interpret Section 626.9541(1)(h), F.S., which provides that it is an unfair method of competition and unfair or deceptive act or practice prohibited by Section 626.9521, F.S., to engage in certain activities related to title insurance.

(2) All lists contained within this rule are intended as examples and are not exhaustive. This rule does not prohibit inducements or rebates provided by filed or approved rates or rating manuals, advertising gifts allowed by Section 626.9541(1)(m), F.S., or

inducements and rebates otherwise expressly allowed by law.

(3) For purposes of this rule, the term “referrer of settlement service business” means any person who is in a position to refer title insurance business incident to or part of a real estate transaction, or an associate of such person. A referrer of settlement service business may be a title insurance agent, title insurance agency, title insurance company, attorney, real estate broker, real estate agent, real estate licensee, broker associate, sales associate, mortgage banker, mortgage broker, lender, real estate developer, builder, property appraiser, surveyor, escrow agent, closing agent, or any other person or entity involved in a real estate transaction for which title insurance could be issued; or any employee, officer, director, or representative of such a person or entity.

(4) As they relate to the transaction of title insurance, the following activities, whether performed directly or indirectly, for or by any referrer of settlement service business, are inducements for the sale, placement or referral of title insurance business in violation of Sections 626.9521 and 626.9541(1)(h), F.S.:

(a) Facilitating any discount, reduction, credit, or paying any fee or portion of the cost of an inspection, inspection report, appraisal, or survey, including wind inspection, to or for a purchaser or prospective purchaser of title insurance.

(b) Providing membership in any organization, society, association, guild, union, alliance or club at a discount, reduced rate, or at no cost to a referrer of settlement service business.

(c) Making or offering to make a charitable or other tax-deductible contribution on behalf of the purchaser or prospective purchaser of title insurance.

(d) Providing or offering stocks, bonds, securities, property, or any dividend or profit accruing or to accrue thereon to a referrer of settlement service business. However, the use of lawful affiliated business arrangements that are permitted under the Federal Real Estate Settlement Procedure Act would not violate this subparagraph and would be allowable under subsection (2) of this rule.

(e) Providing or offering employment to a referrer of settlement service business in exchange for the purchase of title insurance.

(f) Providing or paying for the printing of bulletins, flyers, post cards, labels, etc. that promote the business of a referrer of settlement service business.

(g) Furnishing or paying for the furnishing of office equipment (fax machines, telephones, copy machines, etc.) to a referrer of settlement service business.

(h) Providing or paying for cellular telephone contracts for a referrer of settlement service business.

(i) Providing simulated panoramic home and property tours to real estate brokers or real estate sales associates that they utilize to promote their listings.

(j) Providing or paying for gift cards or gift certificates to or for a referrer of settlement service business or to a purchaser or prospective purchaser of title insurance.

(k) Sponsoring and hosting, or paying for the sponsoring and hosting, of open houses for real estate brokers or real estate sales associates to promote their listings.

(l) Providing or paying for food, beverages, or room rentals at events designed to promote the business of a referrer of settlement service business other than the title insurance agent or agency.

(m) Paying advertising costs to advertise and promote the listings of real estate brokers or real estate sales associates via publications, signs, emails, websites, web pages, banners, or other forms of media.

(n) Providing an endorsement, designation of preferred status, approved status, or featured partner status on publications, signs, emails, websites, web pages, banners or other forms of media promoting the business of real estate brokers or real estate sales associates.

(o) Paying a referrer of settlement service business to fill out processing (order) forms in exchange for title insurance contracts.

(p) Providing “leads” or mailing lists to or on behalf of a referrer of settlement service business at no cost or a reduced cost.

(q) Entering into any arrangement to provide unearned compensation to a referrer of settlement service business.

(r) Providing, or offering to provide, non-title services, without a charge that is commensurate with the actual cost, to a referrer of settlement service business.

(s) Waiving of fees, costs, or premium for title updates or endorsements requested after the issuance of the title insurance policy.

(t) Assuming any party’s responsibility to provide refunds to consumers under applicable laws and regulations.

(5) Except as prohibited by Section 626.9541, F.S., expenditures for the following are not in violation of Sections 626.9521 and 626.9541(1)(h), F.S., or in violation of this rule:

(a) Promotional items with a company logo of the title insurance agent or agency, with a value not to exceed the amount allowed by Section 626.9541(1)(m), F.S., per item. “Promotional item” does not include a gift certificate, gift card, or other item that

has a specific monetary value on its face, or that may be exchanged for any other item having a specific monetary value.

(b) Furnishing educational materials, such as fliers, brochures, pamphlets, or Frequently Asked Question sheets, exclusively related to title insurance for a referrer of settlement service business that are not conditioned on the referral of business and that do not involve the defraying of expenses that otherwise would be incurred by a referrer of settlement service business.

(c) Compensation paid to a referrer of settlement service business for goods and services actually performed at amounts not exceeding the reasonable fair market value of the goods and services and that is not intended to induce the referral of title insurance business.

(d) Any advertising or marketing activities that directly promote the title insurance business of the title insurance agent or agency, which may include joint participation in marketing with another party provided that the agent or agency pays the proportionate share or fair market value of the costs, and does not violate paragraph (5)(a) of this rule.

(e) A payment by a title insurance company to its duly appointed agent for services actually performed in the issuance of a title insurance policy.

(f) A payment to any person of a bona fide salary or compensation or other payment for goods or facilities actually furnished or for services actually performed.

(6) A licensed and appointed title insurance agent is not prohibited under this rule to affix a notice to any contract or agreement, stating, "The terms of this contract are agreed to, but only to the extent that they do not violate the provisions of Rule 69B-186.010, F.A.C., or Section 626.9541(1)(h), F.S.," or substantially similar language.

Rulemaking Authority 624.308(1), 626.9611 FS. Law Implemented 626.9521, 626.9541(1)(h), (m) FS. History--New 2-9-16, Amended 5-13-18.

DFS – Real Estate & Builder Open Houses & Listings

Our Department receives a high volume of questions from the title insurance industry. Unfortunately, these questions do not always use consistent terminology making it difficult to determine the true situation and resulting question. It is very important when we communicate with each other that we know what the other is talking about so we can assist the other. Sometimes taking time to describe the term or situation you have a question about will assist the Department with answering your question. This is particularly true when it comes to compliance questions. An example of the areas in which we often get ambiguous questions are real estate open houses and listings. With this situation in mind, here is some guidance that we will try to keep as simple but still provide helpful guidance.

A title agent/agency may market its services to anyone, including real estate agents/brokers and lenders who will be a significant source of new business. The key is that the title agent/agency must market itself (this includes its services) and not the broker, lender, or anyone else (this includes their services).

There are multiple types of open houses:

Realtor:

- Brokers Open/Brokers Open House: When a real estate broker shows homes they have listed to their realtors or other realtors. Realtor caravans would be an example. (non-public)
- Open House: When a Realtor holds an open house for a home which they have listed to promote the home for sale to consumers. (public)

Builder:

- Builders Model Homes: Open House/Parade of Homes Event: When a builder hosts an event in a model home to promote the home to Realtors and/or consumers.

A Brokers Open, Brokers Open House, and certain Builders events are times when a title agency should be extra cautious of violating the Florida Insurance Code and RESPA. No members of the general public, no sellers, and no buyers are in attendance. A byproduct of this meeting will be the discussions the brokers have with each other where they let each other know about the inventory each one has available for sale. The thinking is that one of the other brokers may have a buyer that will be more receptive to paying the full asking price.

An Open House to the public is different than those detailed above because this is an opportunity for the title agent/agency to take full advantage of their audience to explain what they do and why they are better at doing it than any other title agent/agency.

Regardless of the event type, the title agency may only advertise its own services and not perform any of the duties or functions of the broker selling the home (this includes circulating listings). The title agency may have food and beverages, but that must be accompanied by materials showing what the title agency does and can do for the consumer. A title agency may NOT just drop off food or solely provide food/beverages for these events. A title agency MUST attend the event and promote its agency during the event. The title agency cannot describe the home, give tours to people visiting the home, distribute flyers about the home, "man the event" without a Realtor or builder sales associate present, promote any broker listings, etc., as these are duties and functions of the real estate broker, Realtor or builder sales associate.

Marketing these open houses and others' events (including listings) by the title agent/agency are prohibited. Licensees and persons subject to the Florida Insurance Code should refamiliarize themselves with it for compliance. Specifically, Rule [69B-186.010](#), F.A.C., regarding guidance in this area should be reviewed prior to any title agent/agency considering promoting open houses (or listings) on their website, Facebook or other social media or other types of solicitation at the title agency's own time, resources and expenses, no matter how quick and inexpensive.

Any licensee of the Department of Financial Services found to have conducted these acts is subject to discipline for violation of the Florida Insurance Code and be referred for unlicensed real estate activity. Any other person will be referred to the appropriate state or federal agency/board, etc.

Violations by the title insurance industry can be reported to Title@MyFloridaCFO.com. Please email or forward as much information as you can. Please note that this guidance is not all-inclusive and any person subject to the Florida Insurance Code and/or RESPA should seek legal advice or contact their association prior to proceeding with any regulated activity.

[See Section [626.9541](#), F.S. and Rule [69B-186.010](#), F.A.C.]

Rebates & Unlawful Inducements

Title agents and agencies are permitted to rebate all or part of their share of the title insurance premium as the result of a Florida Supreme Court decision in the case of [Chicago Title Insurance Company v. Butler, No. 95312 \(Fla. Oct. 19, 2000\)](#). This decision allows a title insurance agent or agency to rebate any portion of the agent's share of the premium to the person responsible for paying that premium. However, a rebate may not be provided to any third party as an inducement for the referral of business to the title insurance agent or agency.

The Department believes that it is a violation of subparagraph 626.9541(1)(h)3., Florida Statutes, and subsection 69B-186.010(4)(a), Florida Administrative Code, for a title insurance agent and/or agency to pay for an estoppel certificate without being

reimbursed for the expenditure. However, if a title insurance agent and/or agency pay for an estoppel certificate, and the title insurance agent or agency is reimbursed at closing for the estoppel certificate, such advance payment for the estoppel certificate does not constitute an "unlawful rebate." If the closing falls through then the title agent/agency should make efforts to request and obtain reimbursement.

Rule [69B-186.010](#), F.A.C., became effective on February 9, 2016 and was last amended on May 13, 2018. It covers Unlawful Rebates and Inducements Related to Title Insurance Transactions. The purpose of this rule interprets subparagraph 626.9541(1)(h), F.S., which provides that it is an unfair method of competition and unfair or deceptive act or practice prohibited by Section 626.9521, F.S., to engage in certain activities related to title insurance. All lists contained within this rule are intended as examples and are not exhaustive. This rule does not prohibit inducements or rebates provided by filed or approved rates or rating manuals, advertising gifts allowed by paragraph 626.9541(1)(m), F.S., or inducements and rebates otherwise expressly allowed by law.

1. Does the rule apply to attorneys and law firms?

Yes.

2. Is anyone training or regulating the realtors to keep them from asking for unlawful inducements?

We've communicated information related to law, including the rule, to the Florida Department of Business and Professional Regulation (DBPR) and the Florida Realtor's Association. We'll continue to communicate and educate the industry.

3. Is it acceptable for a vendor that a title agency does business with (i.e. an appraiser, termite company, home inspection company, etc.) to provide coupons for a discount to the title agency's customers?

It is acceptable for the vendor to do so.

4. What is the Department of Financial Services' position on whether a title agent can advance the cost of an estoppel letter from a homeowners association if the agent expects to receive reimbursement at closing?

The Department believes that it is a violation of subparagraph [626.9541\(1\)\(h\)3.](#), Florida Statutes, and subsection [69B-186.010\(4\)\(a\)](#), Florida Administrative Code, for a title insurance agent and/or agency to pay for an estoppel certificate without

being reimbursed for the expenditure. However, if a title insurance agent and/or agency pay for an estoppel certificate, and the title insurance agent or agency is reimbursed at closing for the estoppel certificate, such advance payment for the estoppel certificate does not constitute an "unlawful rebate". If the closing falls through, the title agent/agency should make good faith efforts to request and obtain reimbursement.

For example, §720.30851(8) F.S., states, in part, that "if the certificate is requested in conjunction with the sale or mortgage of a parcel but the closing does not occur and no later than 30 days after the closing date for which the certificate was sought the preparer receives a written request, accompanied by reasonable documentation, that the sale did not occur from a payor that is not the parcel owner, the fee shall be refunded to that payor within 30 days after receipt of the request."

5. **Can a title agency print bulletins for a real estate agent if it charges actual cost?**

Yes, and you can make a profit you wish.

6. **Can a title agency email its contacts realtor flyers for listings and open houses which do not contain the title agency's name?**

No, because you're providing the realtor free leads and doing the work for the realtor for free.

7. **Can a title agency have a raffle at an event to promote its own business?**

Yes.

8. **Can a title agency donate a gift card to be raffled off at an event given by a realtor?**

Yes, if it is to promote the business of the title agent/agency and not the realtor.

9. Can a title agency attend an open house and provide refreshments, and if so, is there a dollar limit on the refreshments?

- Yes, if it is to promote the business of the *title agent/agency*.
- No, if it is to promote the business of the realtor or their open house.
There is no dollar limit on food. However, if you wish to share in the costs of the food and drink for an open house with a realtor, you must pay a proportional share of those costs. You cannot provide food and drinks for the realtor's open house at no cost to them.

10. Can a title agency contribute towards the cost of publicizing an open house?

Yes, if it is to promote the business of the title agent/agency, not the realtor, and is proportionately split among the parties hosting or putting on the open house. The charge to each provider should be equal to that provider's share of the advertising cost in direct proportion to its prominence in the advertisement. For example, if realtor content takes up 80% of the total ad space, while title agent content takes up only 20%, the most the title agent/agency should pay is 20%.

11. Would it be a violation for a title agency to sponsor and cater realtor open houses?

Yes. This answer also applies to attorney-owned title agencies, affiliated-business title agencies, and title insurers.

12. Is there a limit on how many \$25 promotional items that a title agency can give to any particular referrer of settlement business?

No, however, promotional items may not be given in exchange for business referred.

13. Can my title agency invite real estate professionals to our office to hear an educational presentation by an expert in some field related to real estate closings, such as a CPA with expertise in FIRPTA (Foreign Investment in Real Property Tax Act) or a surveyor?

Yes, however, the invitation should not be based solely on business referrals.

14. During the presentation, can we serve lunch or other refreshments?

Yes because this is part of the event you are putting on to educate and promote your business.

15. Is paying the speaker allowable?

Yes, because you are paying the expert for their time. However, you cannot overpay a speaker to reward them for business referrals.

16. Our title agency would like to have a monthly networking, relationship-building event with local real estate agents, such as a wine tasting, a cooking class etc. Some invitees already give us business, while others would be real estate agents from whom we would like to get business. Is this permissible provided the per-person cost does not exceed the \$25 limit?

Yes, however, the \$25 limit does not apply to the event, as described. The limit only applies to articles of merchandise given for purposes of advertising. So, for example, if you were to host a wine tasting event and wanted to provide attendees with a wine glass engraved with your company name and logo for purposes of advertising, the \$25 limit would apply to the wine glass, not the wine tasting event itself.

17. What if the per-person cost to host a monthly networking, relationship-building event with local real estate agents is \$35 and the real estate agents who attend each pay \$10, reducing our cost to \$25 per-person. Is this okay?

As stated above, the \$25 limit applies to articles of merchandise given for purposes of advertising. It does not apply to the event, as described. Therefore, if you want to have attendees pay a portion of the cost of the event, that is okay, however it is not mandatory that you do so.

18. Can our title agency participate in a program like "Homes for Heroes"?

You can offer a rebate to the "heroes" that meet the classification. Consider including a statement on your marketing material that this is a *rebate* of your agency portion of the title *premium*, in case a competitor feels you are offering an

unlawful inducement. The *rebate* must be properly documented in your file and on the Closing Disclosure.

The Florida Insurance Code does not regulate the amount a title agency can charge for closing services; however, the fee charged must at minimum include the actual costs, fees or charges the agency must pay related to the closing.

Referral Fees

The Florida Statutes prohibit title insurance agents and agencies from paying, allowing, giving, or offering to pay, allow or give a direct or indirect inducement for the purchase of title insurance. Paying someone for each piece of business they send to you could be considered an inducement, which would be a violation of the statutes. See subsection [626.9541\(1\)\(h\)3.a.](#), F.S.

This includes prohibiting paying employees of the title agency who are not licensed and appointed as title insurance agents for the same act(s). An example would be a title insurance agency that pays a marketing representative who is not licensed as a title insurance agent for each title insurance policy sold that they brought that business to the title insurance agency. See other sections [626.0428\(3\)](#), [626.112\(8\)](#), and [626.8411\(1\)\(d\)](#), F.S.

FLORIDA BAR ETHICS OPINION
OPINION 24-1
January 19, 2024

Advisory ethics opinions are not binding.

Lawyers may use generative artificial intelligence (“AI”) in the practice of law but must protect the confidentiality of client information, provide accurate and competent services, avoid improper billing practices, and comply with applicable restrictions on lawyer advertising. Lawyers must ensure that the confidentiality of client information is protected when using generative AI by researching the program’s policies on data retention, data sharing, and self-learning. Lawyers remain responsible for their work product and professional judgment and must develop policies and practices to verify that the use of generative AI is consistent with the lawyer’s ethical obligations. Use of generative AI does not permit a lawyer to engage in improper billing practices such as double-billing. Generative AI chatbots that communicate with clients or third parties must comply with restrictions on lawyer advertising and must include a disclaimer indicating that the chatbot is an AI program and not a lawyer or employee of the law firm. Lawyers should be mindful of the duty to maintain technological competence and educate themselves regarding the risks and benefits of new technology.

- RPC:** 4-1.1; 4-1.1 Comment; 4-1.5(a); 4-1.5(e); 4-1.5(f)(2); 4-1.5(h); 4-1.6; 4-1.6 Comment; 4-1.6(c)(1); 4-1.6(e); 4-1.18 Comment; 4-3.1; 4-3.3; 4-4.1; 4-4.4(b); Subchapter 4-7; 4-7.13; 4-7.13(b)(3); 4-7.13(b)(5); 4-5.3(a)
- OPINIONS:** 76-33 & 76-38, Consolidated; 88-6; 06-2; 07-2; 10-2; 12-3; ABA Comm. on Ethics and Prof’l Responsibility, Formal Op. 498 (2021); ABA Comm. on Ethics and Prof’l Responsibility, Formal Op. 93-379 (1993); Iowa Ethics Opinion 11-01; New York State Bar Ethics Opinion 842
- CASES:** *Mata v. Avianca*, 22-cv-1461, 2023 WL 4114965, at 17 (S.D.N.Y. June 22, 2023); *Bartholomew v. Bartholomew*, 611 So. 2d 85, 86 (Fla. 2d DCA 1992); *The Florida Bar v. Carlon*, 820 So. 2d 891, 899 (Fla. 2002); *Att’y Grievance Comm’n of Maryland v. Manger*, 913 A.2d 1 (Md. 2006)

The Florida Bar Board of Governors has directed the Board Review Committee on Professional Ethics to issue an opinion regarding lawyers’ use of generative artificial intelligence (“AI”). The release of ChatGPT-3 in November 2022 prompted wide-ranging debates regarding lawyers’ use of generative AI in the practice of law. While it is impossible to determine the impact generative AI will have on the legal profession, this opinion is intended to provide guidance to Florida Bar members regarding some of the ethical implications of these new programs.

Generative AI are “deep-learning models” that compile data “to generate statistically probable outputs when prompted.” IBM, *What is generative AI?*, (April 20, 2023), <https://research.ibm.com/blog/what-is-generative-AI> (last visited 11/09/2023). Generative AI can create original images, analyze documents, and draft briefs based on written prompts. Often, these programs rely on large language models. The datasets utilized by generative AI large language models can include billions of parameters making it virtually impossible to determine

how a program came to a specific result. Tsedel Neeley, 8 Questions About Using AI Responsibly, Answered, Harv. Bus. Rev. (May 9, 2023).

While generative AI may have the potential to dramatically improve the efficiency of a lawyer's practice, it can also pose a variety of ethical concerns. Among other pitfalls, lawyers are quickly learning that generative AI can "hallucinate" or create "inaccurate answers that sound convincing." Matt Reynolds, vLex releases new generative AI legal assistant, A.B.A. J. (Oct. 17, 2023), <https://www.abajournal.com/web/article/vlex-releases-new-generative-ai-legal-assistant> (last visited 11/09/2023). In one particular incident, a federal judge sanctioned two unwary lawyers and their law firm following their use of false citations created by generative AI. *Mata v. Avianca*, 22-cv-1461, 2023 WL 4114965, at 17 (S.D.N.Y. June 22, 2023).

Even so, the judge's opinion explicitly acknowledges that "[t]echnological advances are commonplace and there is nothing inherently improper about using a reliable artificial intelligence tool for assistance." *Id.* at 1.

Due to these concerns, lawyers using generative AI must take reasonable precautions to protect the confidentiality of client information, develop policies for the reasonable oversight of generative AI use, ensure fees and costs are reasonable, and comply with applicable ethics and advertising regulations.

Confidentiality

When using generative AI, a lawyer must protect the confidentiality of the client's information as required by Rule 4-1.6 of the Rules Regulating The Florida Bar. The ethical duty of confidentiality is broad in its scope and applies to all information learned during a client's representation, regardless of its source. Rule 4-1.6, Comment. Absent the client's informed consent or an exception permitting disclosure, a lawyer may not reveal the information. In practice, the most common exception is found in subdivision (c)(1), which permits disclosure to the extent reasonably necessary to "serve the client's interest unless it is information the client specifically requires not to be disclosed[.]" Rule 4-1.6(c)(1). Nonetheless, it is recommended that a lawyer obtain the affected client's informed consent prior to utilizing a third-party generative AI program if the utilization would involve the disclosure of any confidential information.

Rule 4-1.6(e) also requires a lawyer to "make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the client's representation." Further, a lawyer's duty of competence requires "an understanding of the benefits and risks associated with the use of technology[.]" Rule 4-1.1, Comment.

When using a third-party generative AI program, lawyers must sufficiently understand the technology to satisfy their ethical obligations. For generative AI, this specifically includes knowledge of whether the program is "self-learning." A generative AI that is "self-learning" continues to develop its responses as it receives additional inputs and adds those inputs to its existing parameters. Neeley, *supra* n. 2. Use of a "self-learning" generative AI raises the possibility that a client's information may be stored within the program and revealed in response to future inquiries by third parties.

Existing ethics opinions relating to cloud computing, electronic storage disposal, remote paralegal services, and metadata have addressed the duties of confidentiality and competence to prior technological innovations and are particularly instructive. In its discussion of cloud computing resources, Florida Ethics Opinion 12-3 cites to New York State Bar Ethics Opinion 842 and Iowa Ethics Opinion 11-01 to conclude that a lawyer should:

- Ensure that the provider has an obligation to preserve the confidentiality and security of information, that the obligation is enforceable, and that the provider will notify the lawyer in the event of a breach or service of process requiring the production of client information;
- Investigate the provider's reputation, security measures, and policies, including any limitations on the provider's liability; and
- Determine whether the provider retains information submitted by the lawyer before and after the discontinuation of services or asserts proprietary rights to the information.

While the opinions were developed to address cloud computing, these recommendations are equally applicable to a lawyer's use of third-party generative AI when dealing with confidential information.

Florida Ethics Opinion 10-2 discusses the maintenance and disposition of electronic devices that contain storage media and provides that a lawyer's duties extend from the lawyer's initial receipt of the device through the device's disposition, "including after it leaves the control of the lawyer." Opinion 10-2 goes on to reference a lawyer's duty of supervision and to express that this duty "extends not only to the lawyer's own employees but over entities outside the lawyer's firm with whom the lawyer contracts[.]" Id.

Florida Ethics Opinion 07-2 notes that a lawyer should only allow an overseas paralegal provider access to "information necessary to complete the work for the particular client" and "should provide no access to information about other clients of the firm." Additionally, while "[t]he requirement for informed consent from a client should be generally commensurate with the degree of risk involved[.]" including "whether a client would reasonably expect the lawyer or law firm to personally handle the matter and whether the non-lawyers will have more than a limited role in the provision of the services." Id. Again, this guidance seems equally applicable to a lawyer's use of generative AI.

Finally, Florida Ethics Opinion 06-2 provides that a lawyer should take reasonable steps to safeguard the confidentiality of electronic communications, including the metadata attached to those communications, and that the recipient should not attempt to obtain metadata information that they know or reasonably should know is not intended for the recipient. In the event that the recipient inadvertently receives metadata information, the recipient must "promptly notify the sender," as is required by Rule 4-4.4(b). Similarly, a lawyer using generative AI should take reasonable precautions to avoid the inadvertent disclosure of confidential information and should not attempt to access information previously provided to the generative AI by other lawyers.

It should be noted that confidentiality concerns may be mitigated by use of an inhouse generative AI rather than an outside generative AI where the data is hosted and stored by a third-party. If the use of a generative AI program does not involve the disclosure of confidential

information to a third-party, a lawyer is not required to obtain a client's informed consent pursuant to Rule 4-1.6.

Oversight of Generative AI

While Rule 4-5.3(a) defines a nonlawyer assistant as a "a person," many of the standards applicable to nonlawyer assistants provide useful guidance for a lawyer's use of generative AI.

First, just as a lawyer must make reasonable efforts to ensure that a law firm has policies to reasonably assure that the conduct of a nonlawyer assistant is compatible with the lawyer's own professional obligations, a lawyer must do the same for generative AI. Lawyers who rely on generative AI for research, drafting, communication, and client intake risk many of the same perils as those who have relied on inexperienced or overconfident nonlawyer assistants.

Second, a lawyer must review the work product of a generative AI in situations similar to those requiring review of the work of nonlawyer assistants such as paralegals. Lawyers are ultimately responsible for the work product that they create regardless of whether that work product was originally drafted or researched by a nonlawyer or generative AI.

Functionally, this means a lawyer must verify the accuracy and sufficiency of all research performed by generative AI. The failure to do so can lead to violations of the lawyer's duties of competence (Rule 4-1.1), avoidance of frivolous claims and contentions (Rule 4-3.1), candor to the tribunal (Rule 4-3.3), and truthfulness to others (Rule 4-4.1), in addition to sanctions that may be imposed by a tribunal against the lawyer and the lawyer's client.

Third, these duties apply to nonlawyers "both within and outside of the law firm." ABA Comm. on Ethics and Prof'l Responsibility, Formal Op. 498 (2021); see Fla. Ethics Op. 07-2. The fact that a generative AI is managed and operated by a third-party does not obviate the need to ensure that its actions are consistent with the lawyer's own professional and ethical obligations.

Further, a lawyer should carefully consider what functions may ethically be delegated to generative AI. Existing ethics opinions have identified tasks that a lawyer may or may not delegate to nonlawyer assistants and are instructive. First and foremost, a lawyer may not delegate to generative AI any act that could constitute the practice of law such as the negotiation of claims or any other function that requires a lawyer's personal judgment and participation.

Florida Ethics Opinion 88-6 notes that, while nonlawyers may conduct the initial interview with a prospective client, they must:

- Clearly identify their nonlawyer status to the prospective client;
- Limit questions to the purpose of obtaining factual information from the prospective client; and
- Not offer any legal advice concerning the prospective client's matter or the representation agreement and refer any legal questions back to the lawyer.

This guidance is especially useful as law firms increasingly utilize website chatbots for client intake. While generative AI may make these interactions seem more personable, it presents additional risks, including that a prospective client relationship or even a lawyer-client relationship has been created without the lawyer's knowledge.

The Comment to Rule 4-1.18 (Duties to Prospective Client) explains what constitutes a consultation:

A person becomes a prospective client by consulting with a lawyer about the possibility of forming a client-lawyer relationship with respect to a matter. Whether communications, including written, oral, or electronic communications, constitute a consultation depends on the circumstances. For example, a consultation is likely to have occurred if a lawyer, either in person or through the lawyer's advertising in any medium, specifically requests or invites the submission of information about a potential representation without clear and reasonably understandable warnings and cautionary statements that limit the lawyer's obligations, and a person provides information in response. In contrast, a consultation does not occur if a person provides information to a lawyer in response to advertising that merely describes the lawyer's education, experience, areas of practice, and contact information, or provides legal information of general interest. A person who communicates information unilaterally to a lawyer, without any reasonable expectation that the lawyer is willing to discuss the possibility of forming a client-lawyer relationship, is not a "prospective client" within the meaning of subdivision (a).

Similarly, the existence of a lawyer-client relationship traditionally depends on the subjective reasonable belief of the client regardless of the lawyer's intent. *Bartholomew v. Bartholomew*, 611 So. 2d 85, 86 (Fla. 2d DCA 1992).

For these reasons, a lawyer should be wary of utilizing an overly welcoming generative AI chatbot that may provide legal advice, fail to immediately identify itself as a chatbot, or fail to include clear and reasonably understandable disclaimers limiting the lawyer's obligations.

Just as with nonlawyer staff, a lawyer should not instruct or encourage a client to rely solely on the "work product" of generative AI, such as due diligence reports, without the lawyer's own personal review of that work product.

Legal Fees and Costs

Rule 4-1.5(a) prohibits lawyers from charging, collecting, or agreeing to fees or costs that are illegal or clearly excessive while subdivision (b) provides a list of factors to consider when determining whether a fee or cost is reasonable. A lawyer must communicate the basis for fees and costs to a client and it is preferable that the lawyer do so in writing. Rule 4-1.5(e). Contingent fees and fees that are nonrefundable in any part must be explained in writing. Rule 4-1.5(f)(2).

Regarding costs, a lawyer may only ethically charge a client for the actual costs incurred on the individual client's behalf and must not duplicate charges that are already accounted for in

the lawyer's overhead. *See, The Florida Bar v. Carlon*, 820 So. 2d 891, 899 (Fla. 2002) (lawyer sanctioned for violations including a \$500.00 flat administrative charge to each client's file); ABA Comm. on Ethics and Prof'l Responsibility, Formal Op. 93-379 (1993) (lawyer should only charge clients for costs that reasonably reflect the lawyer's actual costs); Rule 4-1.5(h) (lawyers accepting payment via a credit plan may only charge the actual cost imposed on the transaction by the credit plan).

Regarding fees, a lawyer may not ethically engage in any billing practices that duplicate charges or that falsely inflate the lawyer's billable hours. Though generative AI programs may make a lawyer's work more efficient, this increase in efficiency must not result in falsely inflated claims of time. In the alternative, lawyers may want to consider adopting contingent fee arrangements or flat billing rates for specific services so that the benefits of increased efficiency accrue to the lawyer and client alike.

While a lawyer may separately itemize activities like paralegal research performed by nonlawyer personnel, the lawyer should not do so if those charges are already accounted for in the lawyer's overhead. Fla. Ethics Op. 76-33 & 76-38, Consolidated. In the alternative, the lawyer may need to consider crediting the nonlawyer time against the lawyer's own fees. *Id.* Florida Ethics Opinion 07-2 discusses the outsourcing of paralegal services in contingent fee matters and explains:

The law firm may charge a client the actual cost of the overseas provider [of paralegal services], unless the charge would normally be covered as overhead. However, in a contingent fee case, it would be improper to charge separately for work that is usually otherwise accomplished by a client's own attorney and incorporated into the standard fee paid to the attorney, even if that cost is paid to a third-party provider.

Additionally, a lawyer should have sufficient general knowledge to be capable of providing competent representation. *See, e.g., Att'y Grievance Comm'n of Maryland v. Manger*, 913 A.2d 1 (Md. 2006). "While it may be appropriate to charge a client for case-specific research or familiarization with a unique issue involved in a case, general education or background research should not be charged to the client." *Id.* at 5.

In the context of generative AI, these standards require a lawyer to inform a client, preferably in writing, of the lawyer's intent to charge a client the actual cost of using generative AI. In all instances, the lawyer must ensure that the charges are reasonable and are not duplicative. If a lawyer is unable to determine the actual cost associated with a particular client's matter, the lawyer may not ethically prorate the periodic charges of the generative AI and instead should account for those charges as overhead. Finally, while a lawyer may charge a client for the reasonable time spent for case-specific research and drafting when using generative AI, the lawyer should be careful not to charge for the time spent developing minimal competence in the use of generative AI.

Lawyer Advertising

The advertising rules in Subchapter 4-7 of the Rules Regulating The Florida Bar include prohibitions on misleading content and unduly manipulative or intrusive advertisements.

Rule 4-7.13 prohibits a lawyer from engaging in advertising that is deceptive or inherently misleading. More specifically, subdivision (b) includes prohibitions on:

(3) comparisons of lawyers or statements, words, or phrases that characterize a lawyer's or law firm's skills, experience, reputation, or record, unless the characterization is objectively verifiable; [and]

* * *

(5) [use of] a voice or image that creates the erroneous impression that the person speaking or shown is the advertising lawyer or a lawyer or employee of the advertising firm unless the advertisement contains a clear and conspicuous disclaimer that the person is not an employee or member of the law firm[.]

As noted above, a lawyer should be careful when using generative AI chatbot for advertising and intake purposes as the lawyer will be ultimately responsible in the event the chatbot provides misleading information to prospective clients or communicates in a manner that is inappropriately intrusive or coercive. To avoid confusion or deception, a lawyer must inform prospective clients that they are communicating with an AI program and not with a lawyer or law firm employee. Additionally, while many visitors to a lawyer's website voluntarily seek information regarding the lawyer's services, a lawyer should consider including screening questions that limit the chatbot's communications if a person is already represented by another lawyer.

Lawyers may advertise their use of generative AI but cannot claim their generative AI is superior to those used by other lawyers or law firms unless the lawyer's claims are objectively verifiable. Whether a particular claim is capable of objective verification is a factual question that must be made on a case-by-case basis.

Conclusion

In sum, a lawyer may ethically utilize generative AI technologies but only to the extent that the lawyer can reasonably guarantee compliance with the lawyer's ethical obligations. These obligations include the duties of confidentiality, avoidance of frivolous claims and contentions, candor to the tribunal, truthfulness in statements to others, avoidance of clearly excessive fees and costs, and compliance with restrictions on advertising for legal services. Lawyers should be cognizant that generative AI is still in its infancy and that these ethical concerns should not be treated as an exhaustive list. Rather, lawyers should continue to develop competency in their use of new technologies and the risks and benefits inherent in those technologies.

ABA ISSUES FIRST ETHICS GUIDANCE ON A LAWYER'S USE OF AI TOOLS

📅 Jul 31, 2024 📁 Top Stories



The American Bar Association Standing Committee on Ethics and Professional Responsibility released its first formal opinion covering the growing use of generative artificial intelligence in the practice of law, pointing out that model rules related to competency, informed consent, confidentiality, and fees principally apply.

Formal Opinion 512 states that to ensure clients are protected, lawyers and law firms using Gen AI must “fully consider their applicable ethical obligations,” which includes duties to provide competent legal representation, to protect client information, to communicate with clients, and to charge reasonable fees consistent with time spent using AI.

“This opinion identifies some ethical issues involving the use of GAI tools and offers general guidance for lawyers attempting to navigate this emerging landscape,” the formal opinion said. It added that the ABA committee and state and local bar association ethics committees will likely continue to “offer updated guidance on professional conduct issues relevant to specific AI tools as they develop.”

In January, The Florida Bar Board of Governors unanimously approved new guidelines for using generative AI in **Advisory Opinion 24-1**. Among other things, the Florida ethics opinion recommends that a lawyer obtain the “affected client’s informed consent prior to utilizing a third-party generative AI program if the utilization would involve the disclosure of any confidential information.”

A section of the opinion subtitled “Oversight of Generative AI” begins with a warning — “Lawyers who rely on generative AI for research, drafting, communication, and client intake risk many of the same perils as those who have relied on inexperienced or overconfident nonlawyer assistants.”

It concludes: “In sum, a lawyer may ethically utilize generative AI but only to the extent that the lawyer can reasonably guarantee compliance with the lawyer’s ethical obligations.”

Those obligations, according to the conclusion, include “the duties to confidentiality, avoidance of frivolous claims and contentions, candor to the tribunal, truthfulness in statements to others, avoidance of clearly excessive fees and costs, and compliance with

restrictions on advertising for legal services.”

The 15-page ABA opinion specifically outlined that lawyers should be mindful of a host of model rules in the **ABA Model Rules of Professional Conduct**, including:

- Model Rule 1.1 (Competence). This obligates lawyers to provide competent representation to clients and requires they exercise the “legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.” In addition, the model rule states lawyers should understand “the benefits and risks associated” with the technologies used to deliver legal services to clients.
- Model Rule 1.6 (Confidentiality of Information). Under this model rule, a lawyer using Gen AI must be cognizant of the duty to keep confidential all information relating to the representation of a client, regardless of its source, unless the client gives informed consent. Other model rules require lawyers to extend similar protections to former and prospective clients’ information.
- Model Rule 1.4 (Communications). This model rule addresses lawyers’ duty to communicate with their clients and builds on lawyers’ legal obligations as fiduciaries, which include “the duty of an attorney to advise the client promptly whenever he has any information to give which it is important the client should receive.” Of particular relevance to Gen AI, Model Rule 1.4(a)(2) states that a lawyer shall “reasonably consult” with the client about the means by which the client’s objectives are to be accomplished.
- Model Rule 1.5 (Fees). This rule requires a lawyer’s fees and expenses to be reasonable and includes criteria for evaluating whether a fee or expense is reasonable. The formal opinion notes that if a lawyer uses a AI tool to draft a pleading and expends 15 minutes to input the relevant information into the program, the lawyer may charge for that time as well as for the time necessary to review the resulting draft for accuracy and completeness. But, in most circumstances, the lawyer cannot charge a client for learning how to work an AI tool.

“With the ever-evolving use of technology by lawyers and courts, lawyers must be vigilant in complying with the Rules of Professional Conduct to ensure that lawyers are adhering to their ethical responsibilities and that clients are protected,” Formal Opinion 512 concluded.

AMERICAN BAR ASSOCIATION

STANDING COMMITTEE ON ETHICS AND PROFESSIONAL RESPONSIBILITY

Formal Opinion 512

July 29, 2024

Generative Artificial Intelligence Tools

To ensure clients are protected, lawyers using generative artificial intelligence tools must fully consider their applicable ethical obligations, including their duties to provide competent legal representation, to protect client information, to communicate with clients, to supervise their employees and agents, to advance only meritorious claims and contentions, to ensure candor toward the tribunal, and to charge reasonable fees.

I. Introduction

Many lawyers use artificial intelligence (AI) based technologies in their practices to improve the efficiency and quality of legal services to clients.¹ A well-known use is electronic discovery in litigation, in which lawyers use technology-assisted review to categorize vast quantities of documents as responsive or non-responsive and to segregate privileged documents. Another common use is contract analytics, which lawyers use to conduct due diligence in connection with mergers and acquisitions and large corporate transactions. In the realm of analytics, AI also can help lawyers predict how judges might rule on a legal question based on data about the judge's rulings; discover the summary judgment grant rate for every federal district judge; or evaluate how parties and lawyers may behave in current litigation based on their past conduct in similar litigation. And for basic legal research, AI may enhance lawyers' search results.

This opinion discusses a subset of AI technology that has more recently drawn the attention of the legal profession and the world at large – generative AI (GAI), which can create various types of new content, including text, images, audio, video, and software code in response to a user's prompts and questions.² GAI tools that produce new text are prediction tools that generate a statistically probable output when prompted. To accomplish this, these tools analyze large amounts of digital text culled from the internet or proprietary data sources. Some GAI tools are described as “self-learning,” meaning they will learn from themselves as they cull more data. GAI tools may assist lawyers in tasks such as legal research, contract review, due diligence, document review, regulatory compliance, and drafting letters, contracts, briefs, and other legal documents.

¹ There is no single definition of artificial intelligence. At its essence, AI involves computer technology, software, and systems that perform tasks traditionally requiring human intelligence. The ability of a computer or computer-controlled robot to perform tasks commonly associated with intelligent beings is one definition. The term is frequently applied to the project of developing systems that appear to employ or replicate intellectual processes characteristic of humans, such as the ability to reason, discover meaning, generalize, or learn from past experience. BRITANNICA, <https://www.britannica.com/technology/artificial-intelligence> (last visited July 12, 2024).

² George Lawton, *What is Generative AI? Everything You Need to Know*, TECHTARGET (July 12, 2024), <https://www.techtargget.com/searchenterpriseai/definition/generative-AI>.

GAI tools—whether general purpose or designed specifically for the practice of law—raise important questions under the ABA Model Rules of Professional Conduct.³ What level of competency should lawyers acquire regarding a GAI tool? How can lawyers satisfy their duty of confidentiality when using a GAI tool that requires input of information relating to a representation? When must lawyers disclose their use of a GAI tool to clients? What level of review of a GAI tool’s process or output is necessary? What constitutes a reasonable fee or expense when lawyers use a GAI tool to provide legal services to clients?

At the same time, as with many new technologies, GAI tools are a moving target—indeed, a *rapidly* moving target—in the sense that their precise features and utility to law practice are quickly changing and will continue to change in ways that may be difficult or impossible to anticipate. This Opinion identifies some ethical issues involving the use of GAI tools and offers general guidance for lawyers attempting to navigate this emerging landscape.⁴ It is anticipated that this Committee and state and local bar association ethics committees will likely offer updated guidance on professional conduct issues relevant to specific GAI tools as they develop.

II. Discussion

A. Competence

Model Rule 1.1 obligates lawyers to provide competent representation to clients.⁵ This duty requires lawyers to exercise the “legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation,” as well as to understand “the benefits and risks associated” with the technologies used to deliver legal services to clients.⁶ Lawyers may ordinarily achieve the requisite level of competency by engaging in self-study, associating with another competent lawyer, or consulting with an individual who has sufficient expertise in the relevant field.⁷

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

³ Many of the professional responsibility concerns that arise with GAI tools are similar to the issues that exist with other AI tools and should be considered by lawyers using such technology.

⁴ This opinion is based on the ABA Model Rules of Professional Conduct as amended by the ABA House of Delegates through August 2023. The Opinion addresses several imminent ethics issues associated with the use of GAI, but additional issues may surface, including those found in Model Rule 7.1 (“Communications Concerning a Lawyer’s Services”), Model Rule 1.7 (“Conflict of Interest: Current Clients”), and Model Rule 1.9 (“Duties to Former Clients”). See, e.g., Fla. State Bar Ass’n, Prof’l Ethics Comm. Op. 24-1, at 7 (2024) (discussing the use of GAI chatbots under Florida Rule 4-7.13, which prohibits misleading content and unduly manipulative or intrusive advertisements); Pa. State Bar Ass’n Comm. on Legal Ethics & Prof’l Resp. & Philadelphia Bar Ass’n Prof’l Guidance Comm. Joint Formal Op. 2024-200 [hereinafter Pa. & Philadelphia Joint Formal Opinion 2024-200], at 10 (2024) (“Because the large language models used in generative AI continue to develop, some without safeguards similar to those already in use in law offices, such as ethical walls, they may run afoul of Rules 1.7 and 1.9 by using the information developed from one representation to inform another.”). Accordingly, lawyers should consider all rules before using GAI tools.

⁵ MODEL RULES OF PROF’L CONDUCT R. 1.1 (2023) [hereinafter MODEL RULES].

⁶ MODEL RULES R. 1.1 & cmt. [8]. See also ABA Comm. on Ethics & Prof’l Responsibility, Formal Op. 477R, at 2–3 (2017) [hereinafter ABA Formal Op. 477R] (discussing the ABA’s “technology amendments” made to the Model Rules in 2012).

⁷ MODEL RULES R. 1.1 cmts. [1], [2] & [4]; Cal. St. Bar, Comm. Prof’l Resp. Op. 2015-193, 2015 WL 4152025, at *2–3 (2015).

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.⁸ This is not a static undertaking. Given the fast-paced evolution of GAI tools, technological competence presupposes that lawyers remain vigilant about the tools' benefits and risks.⁹ Although there is no single right way to keep up with GAI developments, lawyers should consider reading about GAI tools targeted at the legal profession, attending relevant continuing legal education programs, and, as noted above, consulting others who are proficient in GAI technology.¹⁰

With the ability to quickly create new, seemingly human-crafted content in response to user prompts, GAI tools offer lawyers the potential to increase the efficiency and quality of their legal services to clients. Lawyers must recognize inherent risks, however.¹¹ One example is the risk of producing inaccurate output, which can occur in several ways. The large language models underlying GAI tools use complex algorithms to create fluent text, yet GAI tools are only as good as their data and related infrastructure. If the quality, breadth, and sources of the underlying data on which a GAI tool is trained are limited or outdated or reflect biased content, the tool might produce unreliable, incomplete, or discriminatory results. In addition, the GAI tools lack the ability to understand the meaning of the text they generate or evaluate its context.¹² Thus, they may combine otherwise accurate information in unexpected ways to yield false or inaccurate results.¹³ Some GAI tools are also prone to "hallucinations," providing ostensibly plausible responses that have no basis in fact or reality.¹⁴

Because GAI tools are subject to mistakes, lawyers' uncritical reliance on content created by a GAI tool can result in inaccurate legal advice to clients or misleading representations to courts and third parties. Therefore, a lawyer's reliance on, or submission of, a GAI tool's output—without

⁸ Pa. Bar Ass'n, Comm. on Legal Ethics & Prof'l Resp. Op. 2020-300, 2020 WL 2544268, at *2–3 (2020). *See also* Cal. State Bar, Standing Comm. on Prof'l Resp. & Conduct Op. 2023-208, 2023 WL 4035467, at *2 (2023) adopting a "reasonable efforts standard" and "fact-specific approach" to a lawyer's duty of technology competence, citing ABA Formal Opinion 477R, at 4).

⁹ *See* New York County Lawyers Ass'n Prof'l Ethics Comm. Op. 749 (2017) (emphasizing that "[l]awyers must be responsive to technological developments as they become integrated into the practice of law"); Cal. St. Bar, Comm. Prof'l Resp. Op. 2015-193, 2015 WL 4152025, at *1 (2015) (discussing the level of competence required for lawyers to handle e-discovery issues in litigation).

¹⁰ MODEL RULES R. 1.1 cmt. [8]; *see* Melinda J. Bentley, *The Ethical Implications of Technology in Your Law Practice: Understanding the Rules of Professional Conduct Can Prevent Potential Problems*, 76 J. MO. BAR 1 (2020) (identifying ways for lawyers to acquire technology competence skills).

¹¹ As further detailed in this opinion, lawyers' use of GAI raises confidentiality concerns under Model Rule 1.6 due to the risk of disclosure of, or unauthorized access to, client information. GAI also poses complex issues relating to ownership and potential infringement of intellectual property rights and even potential data security threats.

¹² *See*, W. Bradley Wendel, *The Promise and Limitations of AI in the Practice of Law*, 72 OKLA. L. REV. 21, 26 (2019) (discussing the limitations of AI based on an essential function of lawyers, making normative judgments that are impossible for AI).

¹³ *See, e.g.*, Karen Weise & Cade Metz, *When A.I. Chatbots Hallucinate*, N.Y. TIMES (May 1, 2023).

¹⁴ Ivan Moreno, *AI Practices Law 'At the Speed of Machines.' Is it Worth It?*, LAW360 (June 7, 2023); *See* Varun Magesh, Faiz Surani, Matthew Dahl, Mirac Suzgun, Christopher D. Manning, & Daniel E. Ho, *Hallucination Free? Assessing the Reliability of Leading AI Legal Research Tools*, STANFORD UNIVERSITY (June 26, 2024), available at https://dho.stanford.edu/wp-content/uploads/Legal_RAG_Hallucinations.pdf (study finding leading legal research companies' GAI systems "hallucinate between 17% and 33% of the time").

an appropriate degree of independent verification or review of its output—could violate the duty to provide competent representation as required by Model Rule 1.1.¹⁵ While GAI tools may be able to significantly assist lawyers in serving clients, they cannot replace the judgment and experience necessary for lawyers to competently advise clients about their legal matters or to craft the legal documents or arguments required to carry out representations.

The appropriate amount of independent verification or review required to satisfy Rule 1.1 will necessarily depend on the GAI tool and the specific task that it performs as part of the lawyer's representation of a client. For example, if a lawyer relies on a GAI tool to review and summarize numerous, lengthy contracts, the lawyer would not necessarily have to manually review the entire set of documents to verify the results if the lawyer had previously tested the accuracy of the tool on a smaller subset of documents by manually reviewing those documents, comparing then to the summaries produced by the tool, and finding the summaries accurate. Moreover, a lawyer's use of a GAI tool designed specifically for the practice of law or to perform a discrete legal task, such as generating ideas, may require less independent verification or review, particularly where a lawyer's prior experience with the GAI tool provides a reasonable basis for relying on its results.

While GAI may be used as a springboard or foundation for legal work—for example, by generating an analysis on which a lawyer bases legal advice, or by generating a draft from which a lawyer produces a legal document—lawyers may not abdicate their responsibilities by relying solely on a GAI tool to perform tasks that call for the exercise of professional judgment. For example, lawyers may not leave it to GAI tools alone to offer legal advice to clients, negotiate clients' claims, or perform other functions that require a lawyer's personal judgment or participation.¹⁶ Competent representation presupposes that lawyers will exercise the requisite level of skill and judgment regarding all legal work. In short, regardless of the level of review the lawyer selects, the lawyer is fully responsible for the work on behalf of the client.

Emerging technologies may provide an output that is of distinctively higher quality than current GAI tools produce, or may enable lawyers to perform work markedly faster and more economically, eventually becoming ubiquitous in legal practice and establishing conventional expectations regarding lawyers' duty of competence.¹⁷ Over time, other new technologies have become integrated into conventional legal practice in this manner.¹⁸ For example, “a lawyer would have difficulty providing competent legal services in today's environment without knowing how

¹⁵ See generally ABA Comm. on Ethics & Prof'l Responsibility, Formal Op. 08-451, at 1 (2008) [hereinafter ABA Formal Op. 08-451] (concluding that “[a] lawyer may outsource legal or nonlegal support services provided the lawyer remains ultimately responsible for rendering competent legal services to the client under Model Rule 1.1”).

¹⁶ See Fla. State Bar Ass'n, Prof'l Ethics Comm. Op. 24-1, *supra* note 4.

¹⁷ See, e.g., Sharon Bradley, *Rule 1.1 Duty of Competency and Internet Research: Benefits and Risks Associated with Relevant Technology* at 7 (2019), available at <https://ssrn.com/abstract=3485055> (“View Model Rule 1.1 as elastic. It is expanding as legal technology solutions expand. The ever-changing shape of this rule makes clear that a lawyer cannot simply learn technology today and never again update their skills or knowledge.”).

¹⁸ See, e.g., *Smith v. Lewis*, 530 P.2d 589, 595 (Cal. 1975) (stating that a lawyer is expected “to possess knowledge of those plain and elementary principles of law which are commonly known by well-informed attorneys, and to discover those additional rules of law which, although not commonly known, may readily be found by *standard research techniques*”) (emphasis added); *Hagopian v. Justice Admin. Comm'n*, 18 So. 3d 625, 642 (Fla. Dist. Ct. App. 2009) (observing that lawyers have “become expected to use computer-assisted legal research to ensure that their research is complete and up-to-date, but the costs of this service can be significant”).

to use email or create an electronic document.”¹⁹ Similar claims might be made about other tools such as computerized legal research or internet searches.²⁰ As GAI tools continue to develop and become more widely available, it is conceivable that lawyers will eventually have to use them to competently complete certain tasks for clients.²¹ But even in the absence of an expectation for lawyers to use GAI tools as a matter of course,²² lawyers should become aware of the GAI tools relevant to their work so that they can make an informed decision, as a matter of professional judgment, whether to avail themselves of these tools or to conduct their work by other means.²³ As previously noted regarding the possibility of outsourcing certain work, “[t]here is no unique blueprint for the provision of competent legal services. Different lawyers may perform the same tasks through different means, all with the necessary ‘legal knowledge, skill, thoroughness and preparation.’”²⁴ Ultimately, any informed decision about whether to employ a GAI tool must consider the client’s interests and objectives.²⁵

¹⁹ ABA Formal Op. 477R, *supra* note 6, at 3 (quoting ABA COMMISSION ON ETHICS 20/20 REPORT 105A (Aug. 2012)).

²⁰ See, e.g., Bradley, *supra* note 17, at 3 (“Today no competent lawyer would rely solely upon a typewriter to draft a contract, brief, or memo. Typewriters are no longer part of ‘methods and procedures’ used by competent lawyers.”); Lawrence Duncan MacLachlan, *Gandy Dancers on the Web: How the Internet Has Raised the Bar on Lawyers’ Professional Responsibility to Research and Know the Law*, 13 GEO. J. LEGAL ETHICS 607, 608 (2000) (“The lawyer in the twenty-first century who does not effectively use the Internet for legal research may fall short of the minimal standards of professional competence and be potentially liable for malpractice”); Ellie Margolis, *Surfin’ Safari—Why Competent Lawyers Should Research on the Web*, 10 YALE J.L. & TECH. 82, 110 (2007) (“While a lawyer’s research methods reveal a great deal about the competence of the research, the method of research is ultimately a secondary inquiry, only engaged in when the results of that research process is judged inadequate. A lawyer who provides the court with adequate controlling authority is not going to be judged incompetent whether she found that authority in print, electronically, or by any other means.”); Michael Thomas Murphy, *The Search for Clarity in an Attorney’s Duty to Google*, 18 LEGAL COMM. & RHETORIC: JALWD 133, 133 (2021) (“This Duty to Google contemplates that certain readily available information on the public Internet about a legal matter is so easily accessible that it must be discovered, collected, and examined by an attorney, or else that attorney is acting unethically, committing malpractice, or both”); Michael Whiteman, *The Impact of the Internet and Other Electronic Sources on an Attorney’s Duty of Competence Under the Rules of Professional Conduct*, 11 ALB. L.J. SCI. & TECH. 89, 91 (2000) (“Unless it can be shown that the use of electronic sources in legal research has become a standard technique, then lawyers who fail to use electronic sources will not be deemed unethical or negligent in his or her failure to use such tools.”).

²¹ See MODEL RULES R. 1.1 cmt. [5] (stating that “[c]ompetent handling of a particular matter includes . . . [the] use of methods and procedures meeting the standards of competent practitioners”); New York County Lawyers Ass’n Prof’l Ethics Comm. Op. 749, 2017 WL 11659554, at *3 (2017) (explaining that the duty of competence covers not only substantive knowledge in different areas of the law, but also the manner in which lawyers provide legal services to clients).

²² The establishment of such an expectation would likely require an increased acceptance of GAI tools across the legal profession, a track record of reliable results from those platforms, the widespread availability of these technologies to lawyers from a cost or financial standpoint, and robust client demand for GAI tools as an efficiency or cost-cutting measure.

²³ Model Rule 1.5’s prohibition on unreasonable fees, as well as market forces, may influence lawyers to use new technology in favor of slower or less efficient methods.

²⁴ ABA Formal Op. 08-451, *supra* note 15, at 2. See also *id.* (“Rule 1.1 does not require that tasks be accomplished in any special way. The rule requires only that the lawyer who is responsible to the client satisfies her obligation to render legal services competently.”).

²⁵ MODEL RULES R. 1.2(a).

B. Confidentiality

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.²⁶ Model Rules 1.9(c) and 1.18(b) require lawyers to extend similar protections to former and prospective clients' information. Lawyers also must make "reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of the client."²⁷

Generally, the nature and extent of the risk that information relating to a representation may be revealed depends on the facts. 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.²⁹

Before lawyers input information relating to the representation of a client into a GAI tool, they must evaluate the risks that the information will be disclosed to or accessed by others outside the firm. Lawyers must also evaluate the risk that the information will be disclosed to or accessed by others *inside* the firm who will not adequately protect the information from improper disclosure or use³⁰ because, for example, they are unaware of the source of the information and that it originated with a client of the firm. Because GAI tools now available differ in their ability to ensure that information relating to the representation is protected from impermissible disclosure and access, this risk analysis will be fact-driven and depend on the client, the matter, the task, and the GAI tool used to perform it.³¹

Self-learning GAI tools into which lawyers input information relating to the representation, by their very nature, raise the risk that information relating to one client's representation may be disclosed improperly,³² even if the tool is used exclusively by lawyers at the same firm.³³ This can occur when information relating to one client's representation is input into the tool, then later revealed in response to prompts by lawyers working on other matters, who then share that output with other clients, file it with the court, or otherwise disclose it. In other words, the self-learning

²⁶ MODEL RULES R. 1.6; MODEL RULES R. 1.6 cmt. [3].

²⁷ MODEL RULES R. 1.6(c).

²⁸ ABA Formal Op. 477R, *supra* note 6, at 1 (A lawyer "may be required to take special security precautions to protect against the inadvertent or unauthorized disclosure of client information when ... the nature of the information requires a higher degree of security.").

²⁹ MODEL RULES R. 1.6, cmt. [18].

³⁰ See MODEL RULES R. 1.8(b), which prohibits use of information relating to the representation of a client to the disadvantage of the client.

³¹ See ABA Formal Op. 477R, *supra* note 6, at 4 (rejecting specific security measures to protect information relating to a client's representation and advising lawyers to adopt a fact-specific approach to data security).

³² See *generally* 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 (2024), *available at* <https://www.calbar.ca.gov/Portals/0/documents/ethics/Generative-AI-Practical-Guidance.pdf>; Fla. State Bar Ass'n, Prof'l Ethics Comm. Op. 24-1, *supra* note 4.

³³ See Pa. & Philadelphia Joint Formal Opinion 2024-200, *supra* note 4, at 10 (noting risk that information relating to one representation may be used to inform work on another representation).

GAI tool may disclose information relating to the representation to persons outside the firm who are using the same GAI tool. Similarly, it may disclose information relating to the representation to persons in the firm (1) who either are prohibited from access to said information because of an ethical wall or (2) who could inadvertently use the information from one client to help another client, not understanding that the lawyer is revealing client confidences. Accordingly, because many of today's self-learning GAI tools are designed so that their output could lead directly or indirectly to the disclosure of information relating to the representation of a client, a client's informed consent is required prior to inputting information relating to the representation into such a GAI tool.³⁴

When consent is required, it must be informed. For the consent to be informed, the client must have the lawyer's best judgment about why the GAI tool is being used, the extent of and specific information about the risk, including particulars about the kinds of client information that will be disclosed, the ways in which others might use the information against the client's interests, and a clear explanation of the GAI tool's benefits to the representation. Part of informed consent requires the lawyer to explain the extent of the risk that later users or beneficiaries of the GAI tool will have access to information relating to the representation. To obtain informed consent when using a GAI tool, merely adding general, boiler-plate provisions to engagement letters purporting to authorize the lawyer to use GAI is not sufficient.³⁵

Because of the uncertainty surrounding GAI tools' ability to protect such information and the uncertainty about what happens to information both at input and output, it will be difficult to evaluate the risk that information relating to the representation will either be disclosed to or accessed by others inside the firm to whom it should not be disclosed as well as others outside the firm.³⁶ As a baseline, all lawyers should read and understand the Terms of Use, privacy policy, and related contractual terms and policies of any GAI tool they use to learn who has access to the information that the lawyer inputs into the tool or consult with a colleague or external expert who has read and analyzed those terms and policies.³⁷ Lawyers may need to consult with IT professionals or cyber security experts to fully understand these terms and policies as well as the manner in which GAI tools utilize information.

Today, there are uses of self-learning GAI tools in connection with a legal representation when client informed consent is not required because the lawyer will not be inputting information relating to the representation. As an example, if a lawyer is using the tool for idea generation in a manner that does not require inputting information relating to the representation, client informed consent would not be necessary.

³⁴ This conclusion is based on the risks and capabilities of GAI tools as of the publication of this opinion. As the technology develops, the risks may change in ways that would alter our conclusion. See Fla. State Bar Ass'n, Prof'l Ethics Comm. Op. 24-1, *supra* note 4, at 2; W. Va. Lawyer Disciplinary Bd. Op. 24-01 (2024), available at <http://www.wvdc.org/pdf/AILEO24-01.pdf>.

³⁵ See W. Va. Lawyer Disciplinary Bd. Op. 24-01, *supra* note 34.

³⁶ Magesh et al. *supra* note 14, at 23 (describing some of the GAI tools available to lawyers as "difficult for lawyers to assess when it is safe to trust them. Official documentation does not clearly illustrate what they can do for lawyers and in which areas lawyers should exercise caution.")

³⁷ Stephanie Pacheco, *Three Considerations for Attorneys Using Generative AI*, BLOOMBERG LAW ANALYSIS (June 16, 2023, 4:00 pm), <https://news.bloomberglaw.com/bloomberg-law-analysis/analysis-three-considerations-for-attorneys-using-generative-ai?context=search&index=7>.

C. Communication

Where Model Rule 1.6 does not require disclosure and informed consent, the lawyer must separately consider whether other Model Rules, particularly Model Rule 1.4, require disclosing the use of a GAI tool in the representation.

Model Rule 1.4, which addresses lawyers' duty to communicate with their clients, builds on lawyers' legal obligations as fiduciaries, which include "the duty of an attorney to advise the client promptly whenever he has any information to give which it is important the client should receive."³⁸ Of particular relevance, Model Rule 1.4(a)(2) states that a lawyer shall "reasonably consult with the client about the means by which the client's objectives are to be accomplished." Additionally, Model Rule 1.4(b) obligates lawyers to explain matters "to the extent reasonably necessary to permit a client to make an informed decision regarding the representation." Comment [5] to Rule 1.4 explains, "the lawyer should fulfill reasonable client expectations for information consistent with the duty to act in the client's best interests, and the client's overall requirements as to the character of representation." Considering these underlying principles, questions arise regarding whether and when lawyers might be required to disclose their use of GAI tools to clients pursuant to Rule 1.4.

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.

Of course, lawyers must disclose their GAI practices if asked by a client how they conducted their work, or whether GAI technologies were employed in doing so, or if the client expressly requires disclosure under the terms of the engagement agreement or the client's outside counsel guidelines.³⁹ There are also situations where Model Rule 1.4 requires lawyers to discuss their use of GAI tools unprompted by the client.⁴⁰ For example, as discussed in the previous section, clients would need to be informed in advance, and to give informed consent, if the lawyer proposes to input information relating to the representation into the GAI tool.⁴¹ Lawyers must also consult clients when the use of a GAI tool is relevant to the basis or reasonableness of a lawyer's fee.⁴²

Client consultation about the use of a GAI tool is also necessary when its output will influence a significant decision in the representation,⁴³ such as when a lawyer relies on GAI

³⁸ *Baker v. Humphrey*, 101 U.S. 494, 500 (1879).

³⁹ *See, e.g.*, MODEL RULES R. 1.4(a)(4) ("A lawyer shall . . . promptly comply with reasonable requests for information[.]").

⁴⁰ *See* MODEL RULES R. 1.4(a)(1) (requiring lawyers to "promptly inform the client of any decision or circumstance with respect to which the client's informed consent" is required by the rules of professional conduct).

⁴¹ *See* section B for a discussion of confidentiality issues under Rule 1.6.

⁴² *See* section F for a discussion of fee issues under Rule 1.5.

⁴³ Guidance may be found in ethics opinions requiring lawyers to disclose their use of temporary lawyers whose involvement is significant or otherwise material to the representation. *See, e.g.*, Va. State Bar Legal Ethics Op. 1850, 2010 WL 5545407, at *5 (2010) (acknowledging that "[t]here is little purpose to informing a client every time a lawyer outsources legal support services that are truly tangential, clerical, or administrative in nature, or even when basic legal research or writing is outsourced without any client confidences being revealed"); Cal. State Bar, Standing Comm. on Prof'l Resp. & Conduct Op. 2004-165, 2004 WL 3079030, at *2-3 (2004) (opining that a

technology to evaluate potential litigation outcomes or jury selection. A client would reasonably want to know whether, in providing advice or making important decisions about how to carry out the representation, the lawyer is exercising independent judgment or, in the alternative, is deferring to the output of a GAI tool. Or there may be situations where a client retains a lawyer based on the lawyer's particular skill and judgment, when the use of a GAI tool, 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.

It is not possible to catalogue every situation in which lawyers must inform clients about their use of GAI. Again, lawyers should consider whether the specific circumstances warrant client consultation about the use of a GAI tool, including the client's needs and expectations, the scope of the representation, and the sensitivity of the information involved. Potentially relevant considerations include the GAI tool's importance to a particular task, the significance of that task to the overall representation, how the GAI tool will process the client's information, and the extent to which knowledge of the lawyer's use of the GAI tool would affect the client's evaluation of or confidence in the lawyer's work.

Even when Rule 1.6 does not require informed consent and Rule 1.4 does not require a disclosure regarding the use of GAI, lawyers may tell clients how they employ GAI tools to assist in the delivery of legal services. Explaining this may serve the interest of effective client communication. The engagement agreement is a logical place to make such disclosures and to identify any client instructions on the use of GAI in the representation.⁴⁴

D. Meritorious Claims and Contentions and Candor Toward the Tribunal

Lawyers using GAI in litigation have ethical responsibilities to the courts as well as to clients. Model Rules 3.1, 3.3, and 8.4(c) may be implicated by certain uses. Rule 3.1 states, in part, that "[a] lawyer shall not bring or defend a proceeding, or assert or controvert and issue therein, unless there is a basis in law or fact for doing so that is not frivolous." Rule 3.3 makes it clear that lawyers cannot knowingly make any false statement of law or fact to a tribunal or fail to correct a material false statement of law or fact previously made to a tribunal.⁴⁵ Rule 8.4(c) provides that a

lawyer must disclose the use of a temporary lawyer to a client where the temporary lawyer's use constitutes a "significant development" in the matter and listing relevant considerations); N.Y. State Bar Ass'n, Comm on Prof'l Ethics 715, at 7 (1999) (opining that "whether a law firm needs to disclose to the client and obtain client consent for the participation of a Contract lawyer depends upon whether client confidences will be disclosed to the lawyer, the degree of involvement of the lawyer in the matter, and the significance of the work done by the lawyer"); D.C. Bar Op. 284, at 4 (1988) (recommending client disclosure "whenever the proposed use of a temporary lawyer to perform work on the client's matter appears reasonably likely to be material to the representation or to affect the client's reasonable expectations"); Fla. State Bar Ass'n, Comm. on Prof'l Ethics Op. 88-12, 1988 WL 281590, at *2 (1988) (stating that disclosure of a temporary lawyer depends "on whether the client would likely consider the information material");.

⁴⁴ For a discussion of what client notice and informed consent under Rule 1.6 may require, see section B.

⁴⁵ MODEL RULES R. 3.3(a) reads: "A lawyer shall not knowingly: (1) make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer; (2) fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel; or (3) offer evidence that the lawyer knows to be false. If a lawyer, the lawyer's client, or a witness called by the lawyer, has offered material evidence and the lawyer comes to know of its falsity, the lawyer shall take reasonable remedial measures, including, if

lawyer shall not engage in “conduct involving dishonesty, fraud, deceit or misrepresentation.” Even an unintentional misstatement to a court can involve a misrepresentation under Rule 8.4(c). Therefore, output from a GAI tool must be carefully reviewed to ensure that the assertions made to the court are not false.

Issues that have arisen to date with lawyers’ use of GAI outputs include citations to nonexistent opinions, inaccurate analysis of authority, and use of misleading arguments.⁴⁶

Some courts have responded by requiring lawyers to disclose their use of GAI.⁴⁷ 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.

E. Supervisory Responsibilities

Model Rules 5.1 and 5.3 address the ethical duties of lawyers charged with managerial and supervisory responsibilities and set forth those lawyers’ responsibilities with regard to the firm, subordinate lawyers, and nonlawyers. Managerial lawyers must create effective measures to ensure that all lawyers in the firm conform to the rules of professional conduct,⁴⁸ and supervisory lawyers must supervise subordinate lawyers and nonlawyer assistants to ensure that subordinate lawyers and nonlawyer assistants conform to the rules.⁴⁹ These responsibilities have implications for the use of GAI tools by lawyers and nonlawyers.

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.⁵⁰ Supervisory obligations also include ensuring that subordinate lawyers and nonlawyers are trained,⁵¹ including in the ethical and practical use of the GAI tools relevant to their work as well as on risks associated with relevant GAI use.⁵² Training could include the basics of GAI technology, the capabilities and limitations of the tools, ethical issues in use of GAI and best practices for secure data handling, privacy, and confidentiality.

necessary, disclosure to the tribunal. A lawyer may refuse to offer evidence, other than the testimony of a defendant in a criminal matter, that the lawyer reasonably believes is false.”

⁴⁶ See DC Bar Op. 388 (2024).

⁴⁷ Lawyers should consult with the applicable court’s local rules to ensure that they comply with those rules with respect to AI use. As noted in footnote 4, no one opinion could address every ethics issue presented when a lawyer uses GAI. For example, depending on the facts, issues relating to Model Rule 3.4(c) could be presented.

⁴⁸ See MODEL RULES R. 1.0(c) for the definition of firm.

⁴⁹ ABA Formal Op. 08-451, *supra* note 15.

⁵⁰ MODEL RULES R. 5.1.

⁵¹ See ABA Comm. on Ethics & Prof’l Responsibility, Formal Op. 467 (2014).

⁵² See *generally*, MODEL RULES R. 1.1, cmt. [8]. One training suggestion is that all materials produced by GAI tools be marked as such when stored in any client or firm file so future users understand potential fallibility of the work.

Lawyers have additional supervisory obligations insofar as they rely on others outside the law firm to employ GAI tools in connection with the legal representation. Model Rule 5.3(b) imposes a duty on lawyers with direct supervisory authority over a nonlawyer to make “reasonable efforts to ensure that” the nonlawyer’s conduct conforms with the professional obligations of the lawyer. Earlier opinions recognize that when outsourcing legal and nonlegal services to third-party providers, lawyers must ensure, for example, that the third party will do the work capably and protect the confidentiality of information relating to the representation.⁵³ These opinions note the importance of: reference checks and vendor credentials; understanding vendor’s security policies and protocols; familiarity with vendor’s hiring practices; using confidentiality agreements; understanding the vendor’s conflicts check system to screen for adversity among firm clients; and the availability and accessibility of a legal forum for legal relief for violations of the vendor agreement. These concepts also apply to GAI providers and tools.

Earlier opinions regarding technological innovations and other innovations in legal practice are instructive when considering a lawyer’s use of a GAI tool that requires the disclosure and storage of information relating to the representation.⁵⁴ In particular, opinions developed to address cloud computing and outsourcing of legal and nonlegal services suggest that lawyers should:

- ensure that the [GAI tool] is configured to preserve the confidentiality and security of information, that the obligation is enforceable, and that the lawyer will be notified in the event of a breach or service of process regarding production of client information;⁵⁵
- investigate the [GAI tool’s] reliability, security measures, and policies, including limitations on the [the tool’s] liability;⁵⁶
- determine whether the [GAI tool] retains information submitted by the lawyer before and after the discontinuation of services or asserts proprietary rights to the information;⁵⁷ and
- understand the risk that [GAI tool servers] are subject to their own failures and may be an attractive target of cyber-attacks.⁵⁸

F. Fees

Model Rule 1.5, which governs lawyers’ fees and expenses, applies to representations in which a lawyer charges the client for the use of GAI. Rule 1.5(a) requires a lawyer’s fees and expenses to be reasonable and includes a non-exclusive list of criteria for evaluating whether a fee

⁵³ ABA Formal Op. 08-451, *supra* note 15; ABA Formal Op. 477R, *supra* note 6.

⁵⁴ See ABA Formal Op. 08-451, *supra* note 15.

⁵⁵ Fla. Bar Advisory Op. 12-3 (2013).

⁵⁶ *Id.* citing Iowa State Bar Ass’n Comm. on Ethics & Practice Guidelines Op. 11-01 (2011) [hereinafter Iowa Ethics Opinion 11-01].

⁵⁷ Fla. Bar Advisory Op. 24-1, *supra* note 4; Fla. Bar Advisory Op. 12-3, *supra* note 55; Iowa Ethics Opinion 11-01, *supra* note 56.

⁵⁸ Fla. Bar Advisory Op. 12-3, *supra* note 55; See generally Melissa Heikkila, *Three Ways AI Chatbots are a Security Disaster*, MIT TECHNOLOGY REVIEW (Apr. 3, 2023), www.technologyreview.com/2023/04/03/1070893/three-ways-ai-chatbots-are-a-security-disaster/.

or expense is reasonable.⁵⁹ Rule 1.5(b) requires a lawyer to communicate to a client the basis on which the lawyer will charge for fees and expenses unless the client is a regularly represented client and the terms are not changing. The required information must be communicated before or within a reasonable time of commencing the representation, preferably in writing. Therefore, before charging the client for the use of the GAI tools or services, the lawyer must explain the basis for the charge, preferably in writing.

GAI tools may provide lawyers with a faster and more efficient way to render legal services to their clients, but lawyers who bill clients an hourly rate for time spent on a matter must bill for their actual time. ABA Formal Ethics Opinion 93-379 explained, “the lawyer who has agreed to bill on the basis of hours expended does not fulfill her ethical duty if she bills the client for more time than she has actually expended on the client’s behalf.”⁶⁰ 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. As further explained in Opinion 93-379, “If a lawyer has agreed to charge the client on [an hourly] basis and it turns out that the lawyer is particularly efficient in accomplishing a given result, it nonetheless will not be permissible to charge the client for more hours than were actually expended on the matter,”⁶¹ because “[t]he client should only be charged a reasonable fee for the legal services performed.”⁶² The “goal should be solely to compensate the lawyer fully for time reasonably expended, an approach that if followed will not take advantage of the client.”⁶³

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.⁶⁴ 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. “A fee charged for which little or no work was performed is an unreasonable fee.”⁶⁵

The principles set forth in ABA Formal Opinion 93-379 also apply when a lawyer charges GAI work as an expense. Rule 1.5(a) requires that disbursements, out-of-pocket expenses, or additional charges be reasonable. Formal Opinion 93-379 explained that a lawyer may charge the

⁵⁹ The listed considerations are (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, if apparent to the client, 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.

⁶⁰ ABA Comm. on Ethics & Prof’l Responsibility, Formal Op. 93-379, at 6 (1993) [hereinafter ABA Formal Op. 93-379].

⁶¹ *Id.*

⁶² *Id.* at 5.

⁶³ *Id.*

⁶⁴ See, e.g., *Williams Cos. v. Energy Transfer LP*, 2022 Del. Ch. LEXIS 207, 2022 WL 3650176 (Del. Ch. Aug. 25, 2022) (applying same principles to contingency fee).

⁶⁵ Att’y Grievance Comm’n v. Monfried, 794 A.2d 92, 103 (Md. 2002) (finding that a lawyer violated Rule 1.5 by charging a flat fee of \$1,000 for which the lawyer did little or no work).

client for disbursements incurred in providing legal services to the client. For example, a lawyer typically may bill to the client the actual cost incurred in paying a court reporter to transcribe a deposition or the actual cost to travel to an out-of-town hearing.⁶⁶ Absent contrary disclosure to the client, the lawyer should not add a surcharge to the actual cost of such expenses and should pass along to the client any discounts the lawyer receives from a third-party provider.⁶⁷ At the same time, lawyers may not bill clients for general office overhead expenses including the routine costs of “maintaining a library, securing malpractice insurance, renting of office space, purchasing utilities, and the like.”⁶⁸ Formal Opinion 93-379 noted, “[i]n 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.⁶⁹

In applying the principles set out in ABA Formal Ethics Opinion 93-379 to a lawyer’s use of a GAI tool, lawyers should analyze the characteristics and uses of each GAI tool, because the types, uses, and cost of GAI tools and services vary significantly. To the extent a particular tool or service functions similarly to equipping and maintaining a legal practice, a lawyer should consider its cost to be overhead and not charge the client for its cost absent a contrary disclosure to the client in advance. For example, when a lawyer uses a GAI tool embedded in or added to the lawyer’s word processing software to check grammar in documents the lawyer drafts, the cost of the tool should be considered to be overhead. In contrast, when a lawyer uses a third-party provider’s GAI service to review thousands of voluminous contracts for a particular client and the provider charges the lawyer for using the tool on a per-use basis, it would ordinarily be reasonable for the lawyer to bill the client as an expense for the actual out-of-pocket expense incurred for using that tool.

As acknowledged in ABA Formal Opinion 93-379, perhaps the most difficult issue is determining how to charge clients for providing in-house services that are not required to be included in general office overhead and for which the lawyer seeks reimbursement. The opinion concluded that lawyers may pass on reasonable charges for “photocopying, computer research, . . . and similar items” rather than absorbing these expenses as part of the lawyers’ overhead as many lawyers would do.⁷⁰ For example, a lawyer may agree with the client in advance on the specific rate for photocopying, such as \$0.15 per page. Absent an advance agreement, the lawyer “is obliged to charge the client no more than the direct cost associated with the service (i.e., the actual cost of making a copy on the photocopy machine) plus a reasonable allocation of overhead expenses directly associated with the provision of the service (e.g., the salary of the photocopy machine operator).”⁷¹

⁶⁶ ABA Formal Op. 93-379 at 7.

⁶⁷ *Id.* at 8.

⁶⁸ *Id.* at 7.

⁶⁹ *Id.*

⁷⁰ *Id.* at 8.

⁷¹ *Id.* Opinion 93-379 also explained, “It is not appropriate for the Committee, in addressing ethical standards, to opine on the various accounting issues as to how one calculates direct cost and what may or may not be included in allocated overhead. These are questions which properly should be reserved for our colleagues in the accounting profession. Rather, it is the responsibility of the Committee to explain the principles it draws from the mandate of Model Rule 1.5’s injunction that fees be reasonable. Any reasonable calculation of direct costs as well as any reasonable allocation of related overhead should pass ethical muster. On the other hand, in the absence of an agreement to the contrary, it is impermissible for a lawyer to create an additional source of profit for the law firm beyond that which is contained in the provision of professional services themselves. The lawyer’s stock in trade is the sale of legal services, not photocopy paper, tuna fish sandwiches, computer time or messenger services.” *Id.*

These same principles apply when a lawyer uses a proprietary, in-house GAI tool in rendering legal services to a client. A firm may have made a substantial investment in developing a GAI tool that is relatively unique and that enables the firm to perform certain work more quickly or effectively. The firm may agree in advance with the client about the specific rates to be charged for using a GAI tool, just as it would agree in advance on its legal fees. But not all in-house GAI tools are likely to be so special or costly to develop, and the firm may opt not to seek the client's agreement on expenses for using the technology. Absent an agreement, the firm may charge the client no more than the direct cost associated with the tool (if any) plus a reasonable allocation of expenses directly associated with providing the GAI tool, while providing appropriate disclosures to the client consistent with Formal Opinion 93-379. The lawyer must ensure that the amount charged is not duplicative of other charges to this or other clients.

Finally, on the issue of reasonable fees, in addition to the time lawyers spend using various GAI tools and services, lawyers also will expend time to gain knowledge about those tools and services. Rule 1.1 recognizes that “[c]ompetent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.” Comment [8] explains that “[t]o maintain the requisite knowledge and skill [to be competent], a lawyer should keep abreast of changes in the law and its practice, *including the benefits and risks associated with relevant technology*, engaging in continuing study and education and comply with all continuing legal education requirements to which the lawyer is subject.”⁷² Lawyers must remember that they may not charge clients for time necessitated by their own inexperience.⁷³ Therefore, a lawyer may not charge a client to learn about how to use a GAI tool or service that the lawyer will regularly use for clients because lawyers must maintain competence in the tools they use, including but not limited to GAI technology. However, if a client explicitly requests that a specific GAI tool be used in furtherance of the matter and the lawyer is not knowledgeable in using that tool, it may be appropriate for the lawyer to bill the client to gain the knowledge to use the tool effectively. Before billing the client, the lawyer and the client should agree upon any new billing practices or billing terms relating to the GAI tool and, preferably, memorialize the new agreement.

III. Conclusion

Lawyers using GAI tools have a duty of competence, including maintaining relevant technological competence, which requires an understanding of the evolving nature of GAI. In

⁷² MODEL RULES R. 1.1, cmt. [8] (emphasis added); *see also* ABA Comm. on Ethics & Prof'l Responsibility, Formal Op. 498 (2021).

⁷³ *Heavener v. Meyers*, 158 F. Supp. 2d 1278 (E.D. Okla. 2001) (five hundred hours for straightforward Fourth Amendment excessive-force claim and nineteen hours for research on Eleventh Amendment defense indicated excessive billing due to counsel's inexperience); *In re Poseidon Pools of Am., Inc.*, 180 B.R. 718 (Bankr. E.D.N.Y. 1995) (denying compensation for various document revisions; “we note that given the numerous times throughout the Final Application that Applicant requests fees for revising various documents, Applicant fails to negate the obvious possibility that such a plethora of revisions was necessitated by a level of competency less than that reflected by the Applicant's billing rates”); *Att'y Grievance Comm'n v. Manger*, 913 A.2d 1 (Md. 2006) (“While it may be appropriate to charge a client for case-specific research or familiarization with a unique issue involved in a case, general education or background research should not be charged to the client.”); *In re Hellerud*, 714 N.W.2d 38 (N.D. 2006) (reduction in hours, fee refund of \$5,651.24, and reprimand for lawyer unfamiliar with North Dakota probate work who charged too many hours at too high a rate for simple administration of cash estate; “it is counterintuitive to charge a higher hourly rate for knowing less about North Dakota law”).

using GAI tools, lawyers also have other relevant ethical duties, such as those relating to confidentiality, communication with a client, meritorious claims and contentions, candor toward the tribunal, supervisory responsibilities regarding others in the law office using the technology and those outside the law office providing GAI services, and charging reasonable fees. With the ever-evolving use of technology by lawyers and courts, lawyers must be vigilant in complying with the Rules of Professional Conduct to ensure that lawyers are adhering to their ethical responsibilities and that clients are protected.

**AMERICAN BAR ASSOCIATION STANDING COMMITTEE ON
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AI Marketing for Law Firms | The Role of AI in Legal Marketing

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June 8, 2023



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Imagine a world where law firm marketers can work smarter, not harder, thanks to the power of AI. This is possible with AI Marketing for Law Firms.

The emergence of AI in various industries has paved the way for a revolution in marketing strategies for law firms, simplifying and streamlining internal processes like never before, while creating new challenges and obstacles to overcome.

A [recent survey](#) conducted in March 2023 of law firms in the U.S., U.K. and Canada by Thomson Reuters found that although 91% of survey respondents were aware of generative AI and ChatGPT, only 3% of respondents were using it due to confidentiality concerns.

Despite these concerns, we feel confident that many firms will embrace AI in the future and that finding applicable use cases for leveraging AI while maintaining confidentiality will be key. In addition, we have found many applications for AI for business professionals in law firms that can greatly reduce time and resources and free up law firm business leaders to focus on more strategic initiatives that lead to long-term law firm success.

This article aims to demonstrate the practical applications that law firm marketers and business development professionals can leverage with AI to streamline their internal processes, free up their time to focus on strategic initiatives and higher-level work.

Article Breakdown:

- Understand the importance of adopting AI technology to stay competitive in the digital age;
- Learn how law firms can leverage AI marketing to be more productive;
- Consider the privacy and confidentiality risks associated with AI and how to get ahead of those; and
- Identify and leverage the different tools and prompts we've tested to help law firms and legal marketers better understand and predict their client needs and improve workflows while maintaining client confidentiality.

What is AI Marketing?

AI marketing, also known as artificial intelligence marketing, is all about using smart technology and algorithms to boost your marketing strategies.

With AI, you can dig into heaps of data to uncover valuable insights about your clients and prospects, their preferences, and trends. This helps you tailor your marketing messages to each individual, making them feel special and engaged.

In addition, AI can help to streamline repetitive tasks so law firm professionals can free up their time for more important strategic work. And when used correctly, AI can be akin to having a super-efficient marketing assistant who never gets tired.

AI marketing has the power to simplify mundane tasks and improve law firm marketing efforts.

Defining the Different Aspects of AI

It's not uncommon to hear plenty of technical terms thrown around when it comes to AI. We want to clarify what those terms mean and help our readers fully grasp the difference between these terms:

- **Generative AI** – a branch of artificial intelligence that focuses on creating or generating new content, such as images, text, or even music, that is original and resembles human-created output.
- **AI Generated Content** – any type of creative output, such as text, images, music, or videos, that is generated or produced by artificial intelligence algorithms or models.
- **Machine Learning** – a subset of artificial intelligence that focuses on developing algorithms and models that enable computers to learn and make predictions or decisions without being explicitly programmed.
- **Predictive Marketing Analytics** – the practice of leveraging data analysis and statistical modeling techniques to forecast future customer behaviors, preferences, and trends, to make informed marketing decisions.
- **Natural Language Process** – this is the ability of computers to understand natural human language like humans and perform repetitive tasks as a result.

Ethical & Confidentiality Considerations for AI

Although generative AI has been around for some time, access to it in its latest form is new for many, and its practical applications, as described in this article, are many. Nevertheless, By Aries would be doing our readers a disservice if we did not clearly articulate the risks associated with using generative AI.

Some of the [most common risks](#) include copyright infringement, inherent bias in generative algorithms (which are fueled by natural language processing), overestimation of AI capabilities (just read [this article for a horror story of what not to do](#)), and the creation of deep fakes, among the risk of privacy and confidentiality.

AI chatbots like ChatGPT use large language models, including mixed data sets, to scrape information from the internet. (And we all know how reliable the internet is, in general, for factual information.)

Furthermore, when law firms use client information with AI tools, they must be mindful of client confidentiality and consent. The ethics rules dictate that using client information without a client's consent violates privilege. To hammer this in we want to acknowledge what our friend [Foster Sayers, Co-Founder and General Counsel at VirtualEDU, said recently](#): *"It's glaringly obvious from OpenAI's ChatGPT FAQ that there should be no reason to believe any conversation or information will be kept private or safe from human eyes."* In other words, **do not use tools like ChatGPT with privileged or confidential information** – period.

With that being said, it is important to note that any law firm considering using AI marketing tools to speed up processes and workflows and make their legal marketers more efficient should consider implementing an AI policy that identifies:

1. How generative AI tools should be used,
2. Which employees have access, and
3. What information can be input into the tools.

Furthermore, law firms should train their employees to effectively and appropriately use the tools to protect confidential information and the firm's and its employees' privacy.

How to Use AI Marketing at Law Firms | Practical Applications in Legal Marketing

Here's a secret nobody shares – AI is everywhere. From autocorrect to your smart thermostat, AI is all around us and can be extremely powerful but also quite infringing when misused. We [sent out a poll to our LinkedIn followers](#) and asked them where they plan to use AI in their marketing and the vast majority said in their content marketing efforts.

Thus, we wanted to explain some of our favorite AI marketing tools that will enhance a law firm's marketing needs.

AI for Content Ideation and Curation

How many of us have sat down to come up with something novel and interesting to write about in our area of expertise only to feel lost and annoyed? One of the most common questions lawyers ask us when we coach them on social media is: "What do I share?"

Nobody wants to annoy their clients with irrelevant, boring, and untimely content. We know from [Greentarget Group's annual survey](#) that this is the fastest way to lose your clients' attention and be removed from their inboxes.

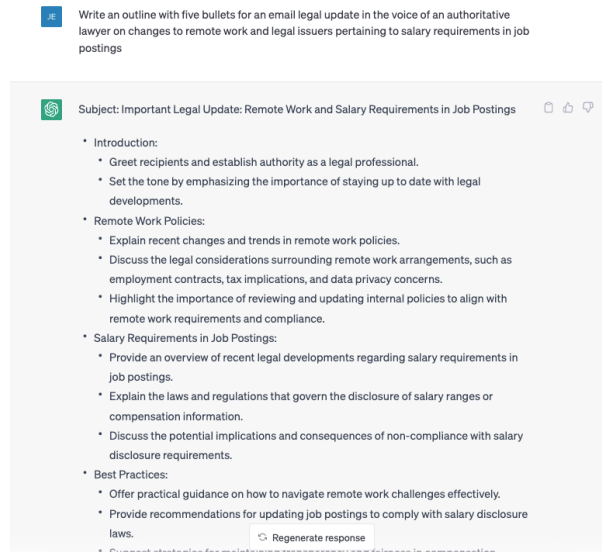
Well, thankfully, AI has a lot of amazing tools to help get the creative juices flowing when it comes to ensuring your content is relevant, timely, and, most of all, interesting to your clients.

Artificial Intelligence for Outlining Ideas for a Client Alert

ChatGPT is a free AI tool that can help combat the blank cursor effect many lawyers and legal marketers face when drafting content and messaging. In this example, we asked ChatGPT to provide us with an outline with five bullet points for an email on a legal subject, and ChatGPT immediately offered a starting point for us to continue writing.

Tool: [ChatGPT by Open AI](#)

Prompt: Write an outline with five bullets for an email legal update in the voice of an authoritative lawyer on <subject>.



AI to Explore Different Topics for Content with SEO Impact

Ever wish identifying a relevant, timely, and search-friendly topic was easier? With artificial intelligence and the power of tools like Keywords Everywhere and ChatGPT, you can streamline your keyword and topic research by integrating the two tools. Enhance your law firm marketing search engine optimization efforts by letting Keywords Everywhere create the perfect prompt for you. In addition to doing keyword research, you can do more in-depth SEO prompt creation, like developing meta descriptions, find long-tail keywords, and create keyword strategies.

Tool: Keywords Everywhere Extension for ChatGPT

Model
Default (GPT-3.5)

Pis Continue

Keywords Everywhere's ChatGPT Prompt Templates

Category:
SEO

Sub-category:
Keyword Research

Templates:
Related Keyword Generator

Description: Get related keywords with search intent from your seed keyword.

Languages:
English

Seed Keyword
trademark prosecution

Total Keyword
40

Prompt Template

Please ignore all previous instructions. Please respond only in the english language. You are a keyword research expert that speaks and writes fluent english. I want you to generate a list of 40 keywords closely related to "trademark prosecution" without duplicating any words. Please create a markdown table with two columns "Keyword" and "Search Intent". The first column should be the keyword you generated, and the second column should be the search intent of the keyword (commercial, transactional, navigational, informational, local or investigational). After the table, please print "List of same keywords separated by commas:". On the next line print the same list of keywords at the bottom separated by commas. Do not repeat yourself. Do not self

Execute Template

New sub-categories added to the Social Media category - LinkedIn, Facebook, Twitter, TikTok & Pinterest

Send a message.

ChatGPT may produce inaccurate information about people, places, or facts. [ChatGPT May 3 Version](#)

Model: Default (GPT-3.5)

Please ignore all previous instructions. Please respond only in the english language. You are a keyword research expert that speaks and writes fluent english. I want you to generate a list of 40 keywords closely related to "trademark prosecution" without duplicating any words. Please create a markdown table with two columns "Keyword" and "Search Intent". The first column should be the keyword you generated, and the second column should be the search intent of the keyword (commercial, transactional, navigational, informational, local or investigational). After the table, please print "List of same keywords separated by commas:". On the next line print the same list of keywords at the bottom separated by commas. Do not repeat yourself. Do not self reference. Do not explain what you are doing.

Keyword	Search Intent
trademark prosecution	commercial
trademark litigation	commercial
intellectual property	informational
trademark registration	commercial
trademark attorney	commercial
trademark infringement	commercial
patent prosecution	commercial
copyright prosecution	commercial
brand protection	commercial
trademark application	commercial
trademark search	investigational
trademark enforcement	commercial
trademark law	informational
trademark rights	informational
trademark office	navigational

Regenerate response

Send a message.

AI for Content Discovery – Finding New Ways to Provide Authority and Thought Leadership

We build the [Marketing Moment](#) newsletter entirely from the AI-suggested content and ideas we pull together from Feedly. Using Feedly, our team can type in relevant keywords and curate a custom newsletter that comes to our inboxes each morning with the latest news

surrounding the topics we find most important for our digital marketing agency serving the legal industry. We then use this newsletter to curate our custom newsletter, The Marketing Moment, each month with the most important topics we find relevant to lawyers and legal marketers.

Tool: [Feedly](#).

AI - By Aries Newsletter

1 follower / 14 articles per week

REFINE

29 ✓



TODAY



The Evolution of B2B Content Marketing

[content marketing](#) • Marketing - Trending on BuzzSumo by Curator / 1h
As luck would have it, the Founder of the VoIP company he was employed for launched a new company – Salescast, where Edward had the chance to work with B2B content creators helping them build podcast strategies and gener...



Real Estate Agents | Email Marketing

[Email marketing](#) • Marketing - Trending on BuzzSumo / 4h •
[Real Marketing Estate](#)
youtube.com



Content Marketing

[content marketing](#) • Marketing - Trending on BuzzSumo / 12h
Learn full-stack content marketing by exploring our free digital resources including content marketing tools, courses, and blog posts.

YESTERDAY



Content Marketing Deserves More Respect From In-House Agencies

[content marketing](#) •
Content Marketing Institute by Content Marketing Institute Team / 1d •
[Content Best marketing](#)
Content marketing should have a place in in-house marketing agencies....
VIDEO Where content marketing operates Cella's research finds most creative teams sit in the org structure under marketing, but they're focused ...



AI Marketing 101: Your Cheat Sheet for Getting Started

[ai marketing](#) • Artificial Intelligence on Medium by Eka Khrisnanda / 1d
A Beginner's Guide to AI-Powered Marketing Strategies Continue reading on Medium »



Content- Marketing Services Chandigarh | Digital Master Ads

[content marketing](#) • Marketing - Trending on BuzzSumo / 1d
Content marketing is a marketing strategy to target the client through a details service/product.

AI in Content Creation for Law Firm Marketing

Value-driven content is crucial for marketing a law firm because it establishes the law firm's expertise, builds trust with potential clients, and positions the firm as a valuable resource in the legal industry. By providing informative, educational, and relevant content, law firms demonstrate their understanding of clients' pain points and offer solutions to their legal concerns. Value-driven content showcases your firm's knowledge and helps clients make informed decisions.

But high-quality value-driven content can be time-consuming and require resources that many firms cannot afford to spare. So, using AI generated content creation is a great way to do more with less.

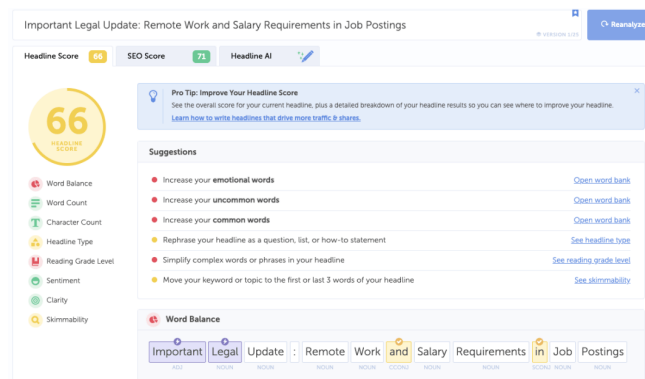
Here are a few examples of the Content Creation that can be done with AI Marketing Tools:

AI for Better Headlines

Using a tool like Headline Studio, law firms can analyze the headlines they write for their client alerts, new articles, and other thought leadership. Utilizing an AI tool like this will help law firms understand how they can improve their headlines to entice their target audience to read their thought leadership.

Tool: [Headline Studio](#)

Headline: Important Legal Update: Remote Work and Salary Requirements in Job Postings

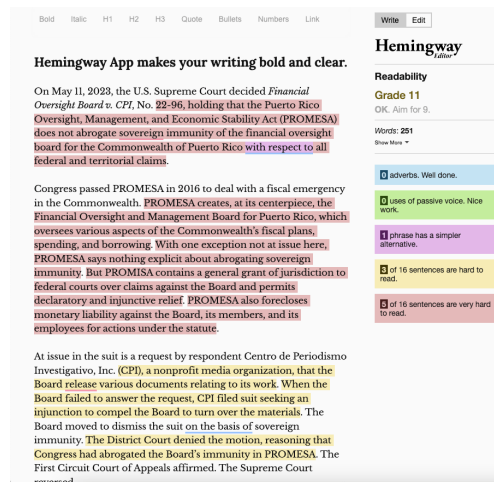


Simplify Your Content for Your Audience's Consumption

When giving feedback, leaders are always told that "clear is kind." This is true when giving feedback and communicating complex information, like legal content to the masses.

One of the simplest ways to assess the readability and clarity of your content is with the free Hemingway App. This app allows law firm marketers to quickly assess if it's time to adjust their content to make it easier to read. For example, we pulled [the first article on JD Supra](#) to show you just how complex some legal writing can be and give you easy suggestions on fixing the content to make it easier to read.

Tool: [Hemingway App](#)



Improve Your Marketing and Sales Messaging

Feel like your copy needs a refresh and want to try a proven copywriting framework to get your creative juices flowing? Using Keywords Everywhere with ChatGPT, law firms can use one of the common copywriting frameworks (AIDA, PAS, BAB, FAB) to refresh their copy and make their marketing really shine.

Tool: [Keywords Everywhere with ChatGPT](#)

◆ Attention ◆

Are you a school board member in Texas seeking expert legal guidance? Look no further! LawMinds is here to revolutionize your journey towards educational excellence. Our Texas-based law firm specializes in providing unparalleled general counsel services, tailored exclusively for school boards like yours. Get ready to embark on a transformative partnership!

◆ Interest ◆

At LawMinds, we understand that navigating legal complexities can be daunting. That's why we've assembled a team of brilliant legal minds, equipped with extensive knowledge and experience in the education sector. From reviewing contracts to drafting policies, our expertise covers all aspects of school board governance. Rest assured, we're here to protect your interests and streamline your decision-making process.

◆ Desire ◆

Imagine a world where legal challenges become opportunities for growth. With LawMinds by your side, that world becomes a reality. Our unwavering commitment to delivering comprehensive, top-notch counsel empowers your school board to make informed decisions confidently. We provide strategic guidance, empowering you to create safe and inclusive educational environments that inspire students to reach new heights. Together, let's shape the future of education in Texas!

◆ Action ◆

Ready to embark on a legal journey that surpasses all expectations? Take action now! Contact LawMinds today and discover how we can transform your school board's vision into a tangible reality. Our dedicated team is just a call away, eagerly waiting to unlock the doors of success for your institution. Don't let legal complexities hold you back; entrust your aspirations to the experts at LawMinds.

LawMinds: Empowering Texas School Boards, One Legal Solution at a Time!

🔄 Regenerate response

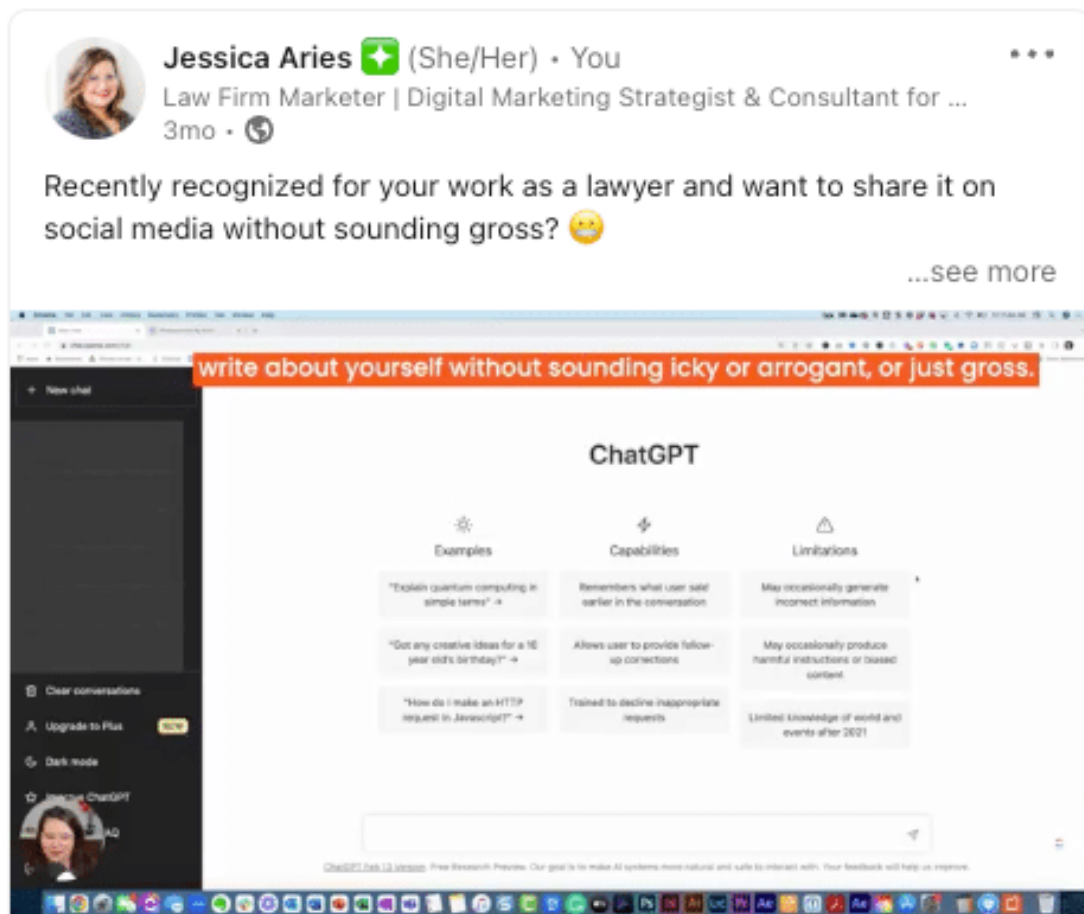
AI in Social Media – Digital Marketing with AI

Generate Better LinkedIn Post Content

By Aries has coached hundreds, if not thousands, of lawyers on how to use LinkedIn effectively, and one of the most common questions we get is about sharing recognition and accolades. So, we created a simple and easy prompt that can be added to ChatGPT that writes a solid first draft of a LinkedIn post.

Tool: [ChatGPT by Open Ai](#)

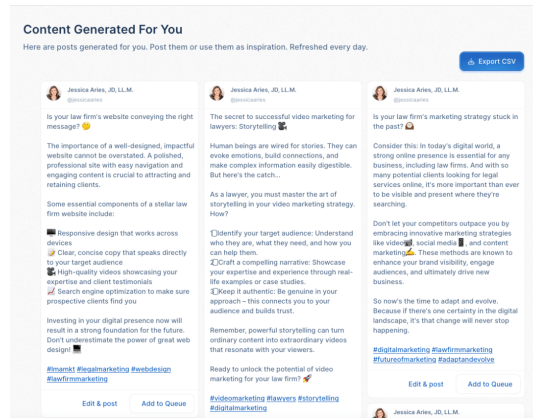
Prompt: Write a LinkedIn post announcing that I have been recently named/awarded <recognition> for <practice area or work>. Don't use the words "honored" or "humbled" and mention that this award is given to lawyers based on <criteria for being recognized>.



Share Better Content Based on What's Worked in the Past

One of our founder's favorite secrets to writing great content on LinkedIn is Taplio. Recently, Taplio integrated with ChatGPT4 and is now helping its users write better content faster and with less headache by generating content based on their past performing content.

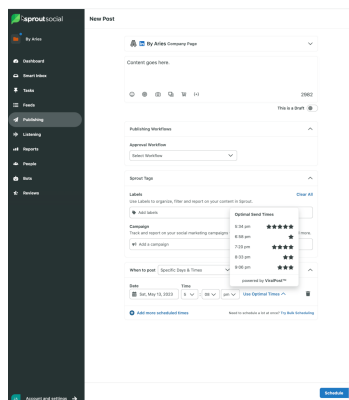
Tool: [Taplio](#)



AI for Determining the Best Time to Share Content

When sharing content for our clients and for our agency on social media platforms, we rely heavily on Sprout Social's ViralPost AI to help us schedule content when our audience is most likely to see it. This AI feature is built into many platforms including tools like CoSchedule, Hootsuite, Sprinklr, and Sendible, but our agency tool of choice is SproutSocial. So, we have a screenshot below showing you how we use this tool.

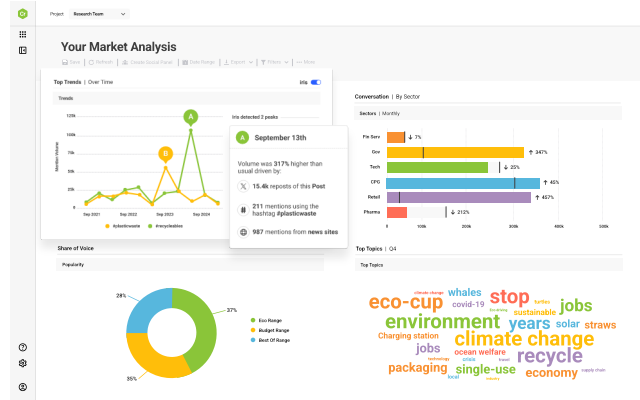
Tool: [Sprout Social](#)



Natural Language Processing for Social Listening

Want to know the coolest part of AI? It can aggregate tons of information into actionable data that becomes useful marketing intelligence. Understand your clients' sentiments and pain points regarding the latest events or news, and uncover opportunities to stay ahead of trends. Plus, tools like Brandwatch help law firms [stay ahead of bad press and missteps](#) like the ones we saw happen a few weeks ago with some large firms.

Tool: [Brandwatch](#)



AI in Image Creation – AI Tools for Visuals

Lawyer Headshots that May (or May Not) Have Glasses

In a pinch, AI headshots could be a way to get a lawyer’s headshot up on the website, but we honestly cannot say we recommend this approach to professional headshots. For one, our founder Jessica Aries, wears glasses and all the glasses shots she received back from AI SuitUp the tool we used, were unfortunately awful. We’ve included an example below.

Tool: [AI SuitUp](#) – Use the code **TikTok50** to save 50%





Remember to avoid wearing your glasses in the shot, or you may get this. Are they there or not!?



Images that Convey Even the Most Obscure Ideas

Do you ever wish your marketing materials were better? Visuals are a key part of communicating a concept or idea, but those who have worked in law firms long enough know that images of gavels and law books are tired concepts many law firms want to avoid. So, how can you find interesting, unique visuals, and not too gavel-heavy? AI.

Note: The copyright laws around Midjourney-created content is [still vague](#), so we need to wait to see how this will all play out when it comes to who owns these images.

Tool: [MidJourney](#).

Prompt: an abstract depiction of a law firm where men and women work together from diverse backgrounds. use bright colors



AI in Analytics & Data

When data has meaning, it can prompt action. One of the most powerful aspects of AI is its ability to take large swaths of data and give it meaning. For example, when a marketer assesses that a law firm's recent client alert related to a particular legal topic is getting more traction than its other content on the website, the marketer can suggest that the practice group or industry group create more content, develop a campaign around the content, or develop more targeted information around the topic.

Can past behavior dictate future action? What happens when a law firm marketer is equipped with the knowledge that past data indicates something in the future is more likely?

In some cases, this predictive analytics is obvious – H-1B season comes every year around the same time for immigration law firms, and trademark lawyers know that when the USPTO office raises its trademark filing fees, they will likely see an influx of clients.

But what about predicting the success of a new office launch in a new location or launching a new industry group? Can this data be gleaned from predictive analytics? You betcha.

Analytics Tools that You Might Already Have that Do a Good Job

One of the most popular tools for aggregating website analytics data to help it tell these stories is Google Analytics. A free tool offered by Google, Google Analytics recently went through a complete re-design to its latest version – Google Analytics 4 (GA4).

Note: If you haven't upgraded to GA4, you have just a bit of time left, so make that transition.

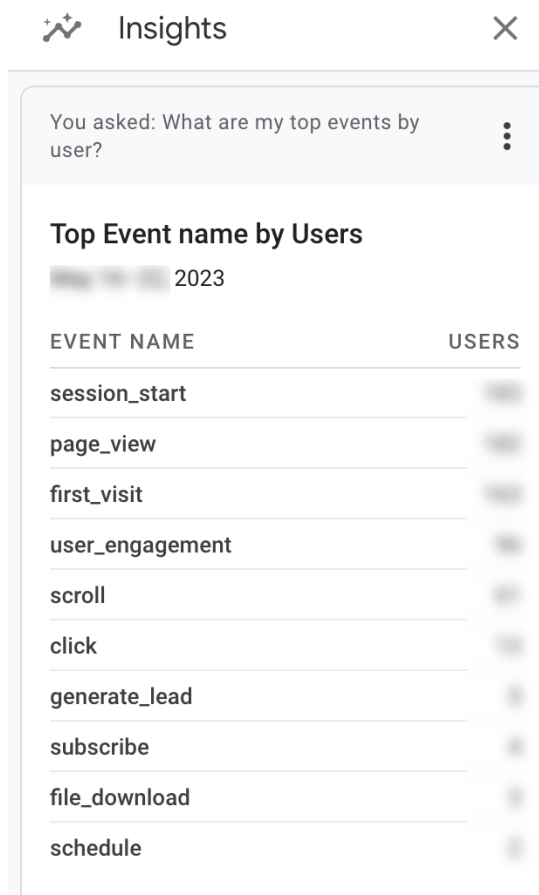
Google Analytics allows you to aggregate data and use Google Tag Manager to help identify events that impact your prospect's experience on your website, so your marketing team can aggregate this data and use machine learning to understand trends better, identify potential opportunities, and predict how future campaigns will perform.

Using Google Analytics 4's Intelligence tool, we can ask Google specific questions and get its machine learning capabilities to spit back an answer.

We have coupled events with the Intelligence tool to help our team better understand questions like:

1. How are prospects interacting with our content on the website?
2. What actions do prospects take compared to cold prospects?
3. How are prospects finding our website and what information are they consuming?
4. What type of content keeps users engaged the longest on our website?

Tool: [Google Analytics](#)



Analytics Tools that Turn Up the Heat (and Your Predictive Capabilities)

This wouldn't be an article on AI marketing if we didn't dive deep into analytics tools we think give legal marketers a leg up when it comes to analytics. Our favorite at the moment is one called Smartlook, which allows us to identify not only where errors on a website pop up, but also how prospects interact with our content, where they get stuck or lost, and how we can improve our overall campaign results with simple design fixes.

Furthermore, we use Smartlook's heat maps functionality to identify where our most important content should go on a page and how best to layout our landing page designs. We then use this information to help plan our campaigns and ensure our top-priority content gets seen.

Here are just a few of the questions we have answered for ourselves using Smartlook:

- Is a landing page too cluttered, making prospects miss our call to action or button?
- Are there too many fields on the lead magnet? Should we omit some and/or require less?
- How can we help our prospects find useful content to help them make a case for our services faster on our landing pages?
- Is there a better way to display our services so it's easier for our prospect to understand our services from the navigation?

The best part? Our prospect's data stays private. The tool automatically blurs out sensitive data points like names, phone numbers, and other information our prospects may not want us to know while browsing.

Tool: [Smartlook](#)



Getting Started with AI Marketing

When and if your firm is ready to dip its toes into AI Marketing, we highly recommend starting with a clear policy and good training. These tools are wonderful at helping legal marketers become more efficient but do carry some risks.

To get started practicing with these tools, we recommend downloading our Small ChatGPT Hacks to Save You Time and Brain Power & Get Inspired, which explains some of our favorite ChatGPT hacks in greater detail.

Marketing that Works

Build a profitable practice this year.

[Learn More](#)

Artificial Intelligence Insights for the Title & Settlement Services Industry



ALTA

American Land Title Association

With
Research
Partner

big red
M



⁸⁹
FEBRUARY 2025

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Executive Summary

I. Report Overview

This report provides an overview of Artificial Intelligence (AI) and its potential impact on the title and settlement services industry. While opinions and perspectives will vary and because AI is evolving at an astonishing pace, this report is intended to capture a snapshot in time.

The objective is to provide foundational information for title and settlement professionals and ensure that everyone has an opportunity to learn more and leverage AI for the benefit of their employees, partners, clients, and customers.

The report offers three sections which provide an overview of AI, industry leader perspectives, and considerations for integrating AI into business operations.

II. Key Takeaways

The title and settlement services industry, along with numerous other industries, stands at the cusp of a significant technological transformation with the evolution of AI. While AI offers immense potential for efficiency and innovation, successful integration requires a thoughtful, methodical approach. Companies that strategically embrace AI while focusing on human expertise and client relationships will be best positioned to thrive. Below are the key takeaways for successfully integrating an AI strategy within your organization:

1. Focus on incremental, purposeful AI integration that enhances rather than replaces human roles.
2. Prioritize human oversight and quality control in all AI-driven processes.
3. Invest in education for employees, clients, and customers to build trust.
4. Develop a strong ethical framework and ensure regulatory compliance.
5. Build resilience through backup systems and contingency planning.
6. Consider a phased approach to integration, especially for established systems.
7. Establish clear metrics to measure the success and ROI.
8. Stay informed about emerging AI trends and technologies.

Part One: AI Overview

I. Introduction

Artificial Intelligence (AI) is one of the most transformative technologies of the 21st century, influencing every aspect of modern life. AI is defined as technology that enables machines to perform tasks traditionally requiring human intelligence, such as learning, reasoning, problem-solving, and language understanding. AI can operate in environments with varying complexity, from executing specific, clearly defined tasks to solving complex problems that require adaptive learning and reasoning. This overview explores the essence of AI, its evolution, key classifications, and the broad range of applications available and emerging today.

II. AI History, Types, and Applications

AI as we know it dates back to the mid-20th century when visionaries like Alan Turing began exploring the potential of machines to simulate human reasoning. The term "Artificial Intelligence" was coined at the Dartmouth Conference in 1956, marking the start of formal research. Early efforts focused on symbolic reasoning and rule-based systems, but progress stalled during the "AI winters" of the 1970s and 1980s due to limited technology and high expectations. Advancements in machine learning reignited interest in the 1990s. By the 2010s, breakthroughs in deep learning and neural networks transformed AI into the powerful tool that is it today.

Types of AI include Narrow AI, General AI, and Superintelligent AI. These categories represent the progression from task-specific systems to theoretical machines capable of surpassing human intelligence. Narrow AI powers most AI applications today, driving advancements in automation, data analysis, and decision-making processes. Narrow AI includes Machine Learning, Natural Language Processing, Robotics, and Computer Vision.

Machine Learning (ML)

Machine Learning is a subfield of AI focused on developing algorithms that enable systems to learn from and make predictions or decisions based on data. ML includes techniques like supervised learning, unsupervised learning, and reinforcement learning.

Natural Language Processing (NLP)

Natural Language Processing focuses on the interaction between computers and human language, enabling machines to understand, interpret, and generate natural language. NLP

incorporates various techniques including text analysis, machine translation, and speech recognition.

Robotics

Robotics involves designing, constructing, and operating robots – machines that can perform tasks autonomously or semi-autonomously. Robotics combines AI with mechanical engineering to create systems capable of physical interaction with the environment.

Computer Vision

Computer Vision focuses on enabling machines to interpret and understand visual information from the world, such as images and videos. It involves techniques like image processing, object detection, and image recognition.

To learn more about the history and evolution of AI, see IBM's *History of AI*, which is periodically updated to reflect new information:

<https://www.ibm.com/think/topics/history-of-artificial-intelligence>.

Part Two: Industry Leaders' Perspectives

I. Methodology for Interviews

During August and September of 2024, BRM conducted 17 interviews with industry leaders from the title and settlement services industry regarding their experience with and perspectives on artificial intelligence (AI). The industry leaders were selected based on their experience and expertise. The semi-structured interviews covered six topics, allowing for a blend of open-ended and specific questions focused on their current use of AI technologies, challenges they've encountered, and their opinions on AI's future impact on the industry. Responses were recorded, transcribed and analyzed for recurring themes, trends and key takeaways. The industry leaders interviewed include individuals from:

- 10 Software Companies
- 5 Title Insurance Underwriters
- 2 Title Insurance and Settlement Service Agencies

II. AI Approaches and Goals

As AI becomes more mainstream (“Hey Siri, remind me to unload the dishwasher after work.”), so does the recognition of its benefits within the title and settlement services industry, particularly in increasing productivity and streamlining operations. While it’s understood that AI can positively impact operational efficiency by assisting with routine tasks such as data extraction, knowledge organization, and risk assessment, it is just as commonly recognized that there are limits to AI that need to be considered.

An overarching theme that emerged throughout the interviews is that while AI can enhance efficiency, human expertise and insight remain indispensable in overseeing AI outputs, managing complex decisions, and maintaining the personal touch that AI cannot replicate. As Matt Younkle from Pythonic describes it, *“AI is like an army of interns. Initially, you must watch over their shoulder and review the outputs. When you are implementing AI, it’s really important to learn what these programs are good at, and where they might not be helpful.”*

While there is excitement about AI’s potential, business approaches surrounding its use are still loosely defined, if at all, due to the technology’s relative newness in the industry. Software companies developing AI solutions are focused on addressing one or two specific aspects of the sophisticated and critical title insurance process with their products, rather than attempting to overhaul the entire workflow. There is a shared perspective that incremental integration is the right approach when deploying AI solutions. A champion of this intentional strategy is Denise Williams from Real Document Solutions, who notes *“There’s no reason to completely change your business overnight. Take your time. You’ll likely do more damage by trying to eat the whole elephant at once rather than one bite at a time.”*

Underwriters and agents are exploring ways to integrate AI to increase efficiency without diminishing the crucial role of human expertise in the process – an aspect considered essential to maintaining trust and accuracy in the industry. The discussion with Marty Frame highlighted MyHome’s approach to this delicate balance, *“We believe that ‘high tech’ and ‘high touch’ go hand-in-hand. If we can empower our people with a technology that can help them do their jobs twice as fast, that’s twice the number of customers they can give great service to in the same amount of time — and that’s a great outcome and experience for everyone.”*

Overall, there is a sense of optimism surrounding AI within the industry; however, this optimism is coupled with a shared understanding that a cautious and thoughtful long-term approach is necessary when implementing the technology. Knight Barry Title Group has a well considered strategy, as Jason Wautier explained *“We’re excited about the AI use*

cases we've explored and are now making sure it works for us from a business perspective, which can take time. We don't want to have it just to say we have it. There can be unintentional consequences if things are not properly thought through and if people jump in too quickly. Appreciating the need for strategic implementation, we are extremely optimistic that AI will help us in many ways in the future."

III. Current Uses of AI

Industry leaders highlighted four key areas where AI is actively utilized in the industry which include extracting information; streamlining processes; organizing and presenting knowledge; and fraud detection.

Extracting information and streamlining processes are closely interconnected, involving the retrieval of relevant data to compile the necessary documents for a settlement, while also identifying any inconsistencies or gaps in the information. Organizing and presenting knowledge is often achieved through AI-driven databases, which enhances the speed and quality of work and allows employees to spend time on strategic, cognitive tasks. Kevin Koon-Koon of Grid151 shares *"AI is not here to replace you – it is here to elevate you. By handling repetitive and mundane tasks, it frees professionals to focus on complex problem-solving, deeper expertise, and greater innovation."*

Fraud detection is a critical aspect of the title and settlement services industry, and many software company leaders are concentrating on leveraging AI as a primary tool to combat fraud, positioning it as their core product offering. Although the use of generative AI is on the rise in the industry, it remains in its early stages. While AI offers numerous opportunities, there are also challenges to address and several important factors to consider. RPost's Mike Rooney shares their unique view of AI *"We view AI as having both right-brain and left-brain characteristics. Cybercriminals are leveraging right-brain generative AI to rapidly spin up fraudulent websites with fake reviews, draft convincing emails that lack traditional red flags, create deep fakes, and much more, making scams increasingly difficult to detect. In response, left-brain analytical AI solutions are designed to combat these threats by analyzing vast amounts of internal and external data in real time to identify risks. By employing data-driven AI technologies, organizations could potentially work to better detect and defend against even the most sophisticated AI-powered threats."*

Despite the numerous ways in which AI can be utilized, Chris Hacker of ShortTrack made the important distinction that it should address an existing problem and should not be adopted just for the sake of being an early adopter, stating *"Find the appropriate use, and make sure there's a clear problem that you're experiencing."*

IV. Value of AI

The value of AI is clear to many of the leaders interviewed; it can accelerate complex processes and execute them with fewer errors compared to human performance, particularly in repetitive tasks where computers excel. However, humans excel in critical thinking far beyond the capabilities of machines.

With the reduction of repetitive tasks, industry veterans will have more opportunities to engage their analytical skills. Individuals currently engaged in the most mundane tasks in the industry – such as data entry and file retrieval – will now have the chance to transition into analytical and quality control roles. Their familiarity with these processes positions them well to identify potential errors and improve overall accuracy. Kevin Nincehelter from Premier One offers a playful analogy comparing AI to the Iron Man suit, *“Tony Stark himself is very capable and smart, but with the suit he is even more capable. With AI, we’ll be able to accomplish more.”*

Rather than seeking to dictate how AI should be used to solve business problems, John Hamm of Stewart shared his methodology *“Allow AI to inform you of potential solutions to problems that you may not have considered before, while ensuring the focus remains on addressing well-defined challenges.”* It is crucial for AI to work for you and align with your business plan, rather than forcing it into your operations, as this ensures a more effective integration that maximizes its benefits.

V. Future of AI

With rapid developments in the technology, it’s hard to predict exactly where AI is headed, at least for now. At the same time, AI is constantly advancing and reshaping its role, blurring the lines between today and tomorrow – essentially, the future is already here. As Hoyt Mann of Alanna.ai sees it, *“AI has taken the back seat for the last decade and now it’s moved up to the front seat. It’s now our navigator, it’s like our copilot – an intelligent assistant.”*

One of the biggest questions surrounding AI’s future in the industry is how it can alter a company’s staffing needs during fluctuations in market volume. The ability to leverage the technology may allow company owners to reduce their staffing demands during high volume while also not reducing headcount as much during low demand. AI won’t replace humans in the industry, but some workers may need to transition into new roles. As with many technological shifts throughout history, those displaced by the machines often find themselves operating and managing the new technology. Paul Bandiera from First American believes *“The right conversation to have is around how we can use this powerful technology not to replace, but to evolve. When Excel was developed it didn’t replace*

accountants, but it evolved the way the work was done and made business better. It redefined the role, and that's what we have here, how can we redefine and evolve?"

Additionally, the title and settlement services industry is a human-centric, expert- and relationship-driven industry. Buying a home is one of the most significant financial investments people make, and they value the reassurance and personal touch that only human interaction can provide – especially when challenges arise.

VI. Challenges of AI

The primary concern is not about how AI is currently used or will be used in the future, but rather the importance of implementing it correctly and appropriately. Industry leaders emphasize the need for careful planning, ethical considerations, and proper oversight to ensure AI is integrated in ways that maximize its potential while minimizing risks. Avoiding misuse or unintended consequences requires a deliberate, thoughtful approach. Robert Zwink from Razi emphasized *"There's danger when adopting AI at scale without taking the time to develop a strategy. Have principles in place around when it's appropriate to use it, and when it's not."*

Industry experts outlined several significant challenges in AI implementation and adoption. The first is AI's tendency to "hallucinate," or generate incorrect results. In a complex industry, such errors can disrupt entire transactions and erode trust. Another major hurdle is the need for significant investment and technical sophistication for companies considering AI solutions. Paul Hurst of First American cautioned *"There are precursors to using this technology. You can't just take AI and layer it on top of legacy systems, processes, technology, and people. It's important to make the upfront investments to get the right information in the right format and the right processes in place in order for it to be successful."*

Another challenge is the varying laws, regulations, and local customs across 50 states and more than 3,600 counties. Even if every step were digitized, training AI to interpret the differences across numerous jurisdictions and companies is a massive undertaking.

Lastly, AI brings with it the heightened threat of wire fraud and cybercrime. The same technology that can drive innovation can also be exploited by criminals, adding another layer of complexity to its implementation.

As the industry leaders have made clear in this report, AI still has a long road ahead in the title and settlement services industry. While the future is unfolding now, many challenges remain to be addressed. Those interviewed stressed the importance of taking a methodical approach to integrating AI at different stages of the title and settlement process. *"There's*

so many things AI may be able to do” Jason Nadeau of Fidelity National Financial argues “Just don’t get too far out in front of your skis just yet, be thoughtful and start simple.”

A careful strategy ensures that the most critical aspect of the industry isn’t overlooked: the dedicated professionals who are passionate about their work, and the customers they serve.

Part Three: Developing Your AI Approach

How can you develop the right plan that considers the likely future of AI in the title industry and addresses key factors like human-centric integration, the importance of ethics and compliance, resilience planning, and practical steps for phased implementation, especially if you have established systems?

This section discusses the future of AI in the title and settlement services industry and provides an outline for its safe and effective adoption. Key points include:

- **Incremental Integration:** Use AI to enhance efficiency rather than replace human interaction, with a focus on gradual, purposeful integration.
- **Efficiency Enhancement:** Determine how AI can improve data entry, document verification, and fraud detection, leading to time and cost savings.
- **Human Oversight:** Ensure continuing human oversight and quality control in AI-driven processes, especially to mitigate risks of AI errors or “hallucinations.”
- **Transparency and Compliance:** Plan to provide transparency in the use of AI for employees, customers, and consumers to build trust and understanding of AI’s role in title services. Alongside transparency, maintain strong ethical standards and regulatory compliance in AI adoption, particularly regarding data privacy and bias prevention.
- **Resilience Planning:** Ensure business continuity in case of potential AI disruptions or failures.
- **Established Systems Integration:** Leverage opportunities to integrate AI with existing systems, including phased adoption and cloud-based solutions.
- **Performance Measurement:** Establish clear KPIs to measure the success and ROI of AI implementations.
- **Future-Proofing:** Stay ahead of AI trends and maintain competitiveness in a rapidly evolving technological landscape.

I. The Future is Incremental, Not Revolutionary

AI will not entirely replace most of your staffing needs since it is best at repetitive tasks and not capable of critical decision making that demands empathy, trust, and complex problem-solving skills. As Tom Cronkright from CertifID pointed out, *"We insure the most significant asset in people's lives, and AI will provide opportunities for efficiency and access to information, but I don't believe it will replace the need for human interaction and expertise at critical points in the transaction."*

II. Enhancing Efficiency: AI's Key Value Proposition

The future of AI in the title industry is undeniably tied to its ability to enhance efficiency.

The most impactful and immediately useful applications of AI will likely be in data entry, document verification, and fraud detection. AI's potential to reduce errors and speed up processes will benefit title companies by saving time and money.

As Darren Louie from Proof observed, *"AI is going to change access to information, it's going to change our ability as humans to do new things and complete new tasks that were not previously possible."*

Start by identifying staff doing non-revenue producing work that is highly repetitive – such as document extraction, fraud detection, and customer service. These are likely to be the areas you will find solutions that may add efficiency in the near term.

III. Human Oversight and Quality Control

No AI system is perfect, and the risk of AI hallucinations (incorrect or misleading outputs generated by AI) presents a significant challenge, especially in an industry as detail-oriented as title and settlement services.

To mitigate the risks, you will need to develop processes to quality check the work product.

IV. Transparency and Compliance

One often overlooked but crucial aspect of AI integration is the need for education and transparency. To foster trust, companies should communicate clearly about how AI is being used and emphasize that human oversight remains central to the process.

Charlotte Brown of Qualia recommends an open dialogue to *"help clients understand AI's role as a tool that enhances service quality rather than removes human interaction and expertise."*

Given the sensitive nature of the data handled in title and settlement services, AI adoption must be also rooted in a strong commitment to ethics and compliance. AI systems may require access to significant amounts of personal and financial information, which raises concerns about privacy and data security. Ensuring AI systems comply with laws and regulations addressing data privacy is crucial for maintaining trust with clients and avoiding legal risks.

AI bias is another ethical concern. If AI systems are trained to use biased or faulty data, they may inadvertently introduce biases or mistakes into decision-making processes, creating legal and reputational challenges. Addressing these risks through regular audits, transparency, and using explainable AI (XAI) systems helps ensure that AI aligns with ethical standards.

V. Resilience in the Face of Disruption

While AI promises many benefits, companies need to prepare for the possibility of technological disruptions or AI system failures.

A resilient AI strategy will include backup systems, fail-safes, and contingency plans to ensure smooth operation.

Alan Chang of Title Financial Corporation stressed that *"companies avoiding AI will face higher costs and slower turn-times, but those who adopt it recklessly may suffer from breakdowns in client trust and security."*

By implementing cybersecurity measures that address AI-specific vulnerabilities and ensuring that manual processes can be reactivated, when necessary, companies can balance the benefits of AI with robust risk management strategies.

VI. AI Integration with Legacy Systems

Many title companies effectively use established systems that may not immediately accommodate advanced AI tools. While some companies may undertake a full digital transformation project, others will benefit from a phased approach to AI adoption.

One solution is to use AI-powered cloud services, which allow companies to benefit from AI without the need for a complete infrastructure overhaul.

Providing a step-by-step roadmap for gradual AI adoption – perhaps starting with easier-to-integrate tools like AI for order routing, document processing, fraud detection, marketing messaging, and sales collateral – will help companies evolve responsibly. It is important to integrate AI components and solutions thoughtfully and at an appropriate pace.

VII. Measuring Success and ROI

Key Performance Indicators (KPIs) and metrics will help track the impact of AI on operations. Areas to measure include:

- Efficiency gains in document processing and fraud detection.
- Reduction in errors or client questions related to AI-driven processes.
- Expense reductions from reduced manual labor and improved workflows.
- Customer satisfaction, particularly in how AI-driven interactions affect their experience.

Tracking these metrics will help title companies measure the Return on Investment (ROI) of AI investments and refine their strategies over time.

VIII. Staying Ahead of AI Trends

Finally, the pace of AI development means that today's best practices will soon be outpaced by the implications of newer innovations. It's crucial for companies to remain agile and stay informed about emerging AI technologies. Companies should consider establishing a dedicated AI task force or appointing a leader responsible for monitoring AI advancements and updating the company's approach accordingly.

In the title and settlement industry, education and articles from vendor partners, state and title associations, and ALTA will continue to be a good starting point for news and information about AI products and services.

Additionally, staying connected to AI research or working with vendor partners can give companies early access to groundbreaking AI tools and innovations, ensuring they remain competitive as the technology evolves.

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Ethical Challenges and Opportunities in Legal Marketing with AI and Automation

<https://one400.com/blog/ethical-challenges-and-opportunities-in-legal-marketing-with-ai-and-automation/>

By: Allen Rodriguez, October 22, 2024

The rise of [artificial intelligence](#) (AI) and automation has undeniably transformed legal marketing, offering unprecedented efficiency and insights that drive client acquisition and retention. However, alongside the undeniable benefits of AI and automation come significant ethical challenges. Law firms must balance the technological advantages of these innovations with the responsibility to maintain ethical marketing practices. From data privacy concerns to ensuring transparency, firms that navigate these challenges effectively will find opportunities to strengthen client trust and differentiate themselves in the digital age.

In this blog post, we'll explore the ethical issues law firms face in using AI and automation for marketing while also examining how these technologies can be leveraged ethically to create new opportunities.

The Power of AI and Automation in Legal Marketing

Before diving into the ethical complexities, it's important to understand why AI and automation are so transformative for legal marketing. These tools have the potential to streamline processes like lead generation, email marketing, and client engagement while offering data-driven insights that can improve marketing strategies.

AI can analyze large datasets to predict client needs, automate social media posts to ensure consistent visibility, and even manage client communications through chatbots that offer instant, accurate responses. Automation tools simplify email marketing through personalized drip campaigns that nurture leads over time, ensuring no opportunity slips through the cracks.

The benefits are clear—law firms can operate more efficiently, reach a larger audience, and deliver highly tailored marketing content that resonates with potential clients. However, these advantages come with ethical considerations that must not be overlooked.

Ethical Challenges in AI-Powered Legal Marketing

1. Data Privacy and Confidentiality Concerns

One of the most pressing ethical challenges in using AI and automation in legal marketing revolves around data privacy. AI systems thrive on data—lots of it. This data includes personal information about clients, potential clients, and website visitors. However, handling this data without proper consent or security measures can lead to breaches of confidentiality, violating ethical obligations and legal regulations.

For law firms, maintaining client confidentiality is paramount. Using AI tools to collect, store, or analyze client data can unintentionally expose sensitive information if security protocols are not robust. Additionally, legal marketing automation platforms that personalize communications based on user behavior must ensure that they comply with regulations like the General Data Protection Regulation (GDPR) or the California Consumer Privacy Act (CCPA).

Solution: Law firms can adopt AI and [automation](#) ethically by being transparent about data collection and usage. This includes having clear privacy policies, obtaining explicit consent, and using anonymization techniques to protect client identities. Additionally, investing in secure AI platforms with built-in compliance features can ensure that data privacy standards are met without sacrificing innovation.

2. Bias in AI Algorithms

AI systems are only as good as the data they are trained on. Unfortunately, if the data contains biases—whether related to gender, race, socioeconomic status, or legal issues—the AI algorithms can perpetuate or even amplify these biases. For example, an AI-powered marketing tool may unintentionally favor certain types of clients or cases over others, limiting the reach of marketing efforts and potentially resulting in discriminatory outcomes.

Bias in AI systems can erode trust in legal marketing, especially when clients feel that they are being unfairly targeted or excluded based on demographic factors.

Solution: To mitigate bias, law firms should regularly audit their AI systems and marketing tools to ensure they are fair and unbiased. Training AI models on diverse datasets, implementing bias detection tools, and using human oversight in AI decision-making processes can help address this issue. Transparency with clients about how AI is used in marketing can further build trust.

3. Transparency and Deception in Automated Interactions

With the rise of AI-driven chatbots and automated communication, there's a risk that clients may feel misled about who (or what) they are engaging with. If a potential client believes they are speaking to a human attorney, only to later discover they've been interacting with a chatbot, it can lead to feelings of distrust.

Maintaining transparency in automated interactions is crucial to preserving the personal touch that clients expect when seeking legal help. Automation should enhance—not replace—the human element in client engagement.

Solution: Law firms should be upfront about the use of AI and automation in their client communications. Clearly stating that a chatbot is being used for initial queries, while offering a seamless transition to a human when needed, can help maintain transparency. Clients appreciate efficiency but should not feel deceived in the process.

Ethical Opportunities: Building Trust Through Responsible AI Use

Despite the ethical challenges, AI and automation offer significant opportunities for law firms to build trust and distinguish themselves as responsible, forward-thinking legal service providers. Here's how law firms can ethically leverage these tools:

1. Personalization at Scale

AI allows law firms to deliver personalized marketing messages at scale. By analyzing client behavior, AI can tailor content to specific interests, legal needs, or stages in the client journey. The key is to do so transparently and ethically—using data responsibly to enhance client experience rather than exploit it.

For example, a firm specializing in estate planning can use AI to identify potential clients who have shown interest in related topics (e.g., by downloading a guide or attending a webinar) and then deliver targeted email campaigns with content that's highly relevant to their needs. This kind of personalization can build trust, demonstrating that the firm understands and anticipates client concerns.

2. Efficient and Ethical Lead Nurturing

Automation tools can ensure that leads are consistently nurtured through well-timed, personalized follow-ups, reducing the risk of missed opportunities. This provides potential clients with timely information while freeing up human resources to focus on deeper engagement.

However, automated outreach should always feel personal and respectful. Avoid aggressive or overly frequent communications, and allow potential clients to easily opt-out if they're no longer interested. Maintaining a client-first approach, even in automated campaigns, is essential for building long-term relationships.

3. Enhancing Access to Justice

One of the most exciting ethical opportunities presented by AI is its potential to enhance access to justice. Automated tools and AI can make legal resources more accessible to

those who might not otherwise be able to afford traditional legal services. AI-powered chatbots, for instance, can provide free legal information, helping people understand their rights before seeking full legal representation.

For law firms, positioning themselves as innovators who are committed to making legal services more accessible can resonate strongly with clients who value social responsibility. By ethically leveraging AI, firms can market themselves as both cutting-edge and community-driven.

Conclusion: The Path Forward for Ethical AI in Legal Marketing

AI and automation offer tremendous potential for improving the efficiency and effectiveness of [legal marketing](#), but with these advancements come important ethical considerations. By prioritizing data privacy, minimizing bias, and ensuring transparency in all interactions, law firms can embrace the opportunities that AI presents without sacrificing the trust and integrity they've built.

As AI continues to shape the future of legal marketing, those firms that navigate the ethical challenges while capitalizing on the opportunities will emerge as leaders in the digital age.



Marketing Strategy

ETHICS AND COMPLIANCE GUIDE: USING AI IN LEGAL MARKETING

ETHICS AND COMPLIANCE GUIDE: USING AI IN LEGAL MARKETING



Artificial Intelligence (AI) is transforming the way legal professionals are able to market their services. From drafting blog posts to powering chatbots and analyzing client data for targeted campaigns, AI tools are helping law firms and legal marketers work faster and smarter. The promise is exciting: increased efficiency, better insights and more personalized client experiences.

AI IS A TOOL – NOT A SOLUTION

However, with great potential comes great responsibility. The legal industry operates under strict ethical rules and regulatory guidelines, and using AI technology doesn't remove that obligation. In fact, it introduces new challenges around accuracy, transparency, confidentiality and the unauthorized practice of law.

When generative AI tools are being used without the right guardrails, missteps in any of these areas could put a law firm's reputation at risk. **Leading marketing industry experts** are already sounding the alarm that AI isn't a silver bullet. It certainly can't replace strategy, legal judgment or human oversight in a law firm's marketing efforts.

Whether you are part of a law firm, a marketing team working with legal clients, or a compliance officer ensuring your firm plays by the rules, this article is designed to help you use AI tools responsibly. We will break down the key ethical considerations, highlight compliance must-knows, and share some practical tips for putting safeguards in place so you can confidently harness the benefits of AI without crossing any lines.

1. THE RISE OF AI IN LEGAL MARKETING

AI is quickly becoming a central part of many law firms' marketing toolkits. Whether you are running a small practice or part of a large firm, AI is offering new ways to connect with clients, improve efficiency, and make smarter marketing decisions. However, while the technology is impressive, it is important to understand both its capabilities and its limitations.

HOW AI TECHNOLOGY IS BEING USED

AI is showing up in a variety of practical ways across legal marketing. For example:

- **Chatbots** provide instant responses to common website visitor questions, improving engagement and freeing up staff time.
- **Content generation tools** such as **ChatGPT** and **Jasper** assist in drafting blog posts, FAQs, email newsletters, and social media posts – often in seconds, helping firms stay consistent with their marketing efforts.
- **Predictive analytics** help identify patterns in lead behavior, forecasting which types of marketing campaigns are most likely to convert and personalize outreach based on user intent.
- **Email automation** platforms use AI to personalize content and optimize send times for better engagement.
- **Voice and search optimization** tools can help firms adapt their content for how people search using AI-powered devices like Siri or Google Assistant.
- **Intake automation** tools streamline the client onboarding process, qualifying leads and collecting basic information before a human follow-up.

These applications allow law firms to do more with less, especially when resources are limited or teams are stretched thin.

KEY BENEFITS OF USING AI IN LAW FIRM MARKETING

Using AI in marketing offers a number of advantages for law firms:

- **Efficiency:** AI can handle time-consuming routine tasks such as drafting, editing, or scheduling – freeing up staff to focus on higher-value work.
- **Personalization:** From emails to web experiences, AI helps deliver content tailored to individual prospects, making interactions more relevant.
- **Faster response times:** Clients get the information they need without waiting for human assistance.
- **Lead Qualification:** AI tools can intelligently prioritize leads based on their likelihood to convert, allowing your team to focus follow-ups where they are most likely to drive results.
- **Data-Driven Insights:** AI can analyze campaign performance and client behavior to help firms make smarter marketing decisions.

A WORD OF CAUTION

As legal marketing expert [Karin Conroy](#) notes in her [Attorney at Work](#) article – *The Truth About AI Marketing Plans*, “AI tools can write, analyze, and automate – but they can’t replace strategic thinking.”

It is easy to be impressed by what AI can produce but legal marketing requires more than just output. You still need human judgment to ensure content aligns with your firm’s values, client needs, messaging, and compliance requirements. Relying on AI without a clear plan can lead to a lot of content, but not necessarily the right content.

POPULAR AI TOOLS AND PLATFORMS

Some of the most commonly used AI-powered tools in legal marketing include:

- **ChatGPT** – for content brainstorming and drafting.
- **Jasper** – for structured content generation.
- **SurferSEO and Clearscope** – to optimize content for search engines.
- **HubSpot and ActiveCampaign** – for AI-driven email marketing and CRM.
- **Clearbit** – to enrich lead data and personalize experiences.
- **Drift and Intercom** – for intelligent, conversational marketing chatbots.
- **Legal-specific tools** – such as [Lawmatics](#), [Clio Grow](#), or [Smith.ai](#), which tailor automation features to the legal sector.
- **Google Analytics 4 (GA4)** with predictive metrics for user behavior insights.



These AI tools, when used thoughtfully and in line with ethical standards, can be game-changers. However, they also require careful consideration because in legal marketing, compliance matters just as much as creativity.

2. THE ETHICAL LANDSCAPE IN LEGAL MARKETING

As AI becomes more embedded in legal marketing, law firm leadership must tread carefully. The legal profession is held to some of the highest ethical standards and those standards don't change just because an AI tool is doing the work. In fact, using AI can introduce new risks if those tools aren't used with proper oversight.

ETHICAL OBLIGATIONS STILL APPLY

Many jurisdictions follow the [ABA Model Rules of Professional Conduct](#), which remain fully applicable in the age of AI. Three rules, in particular, are especially relevant when it comes to legal marketing:

- **Rule 7.1** – Prohibits false or misleading communications about a lawyer or their services.
- **Rule 5.3** – Holds lawyers accountable for the conduct of non-lawyers and third-party tools they employ.
- **Rule 1.6** – Requires the safeguarding of client confidentiality at all times.

Whether you are generating blog content with **ChatGPT** or using a chatbot to screen new inquiries, these ethical obligations must remain top of mind.

KEY ETHICAL CONCERNS WHEN USING AI TOOLS

1. Misrepresentation and Truthfulness

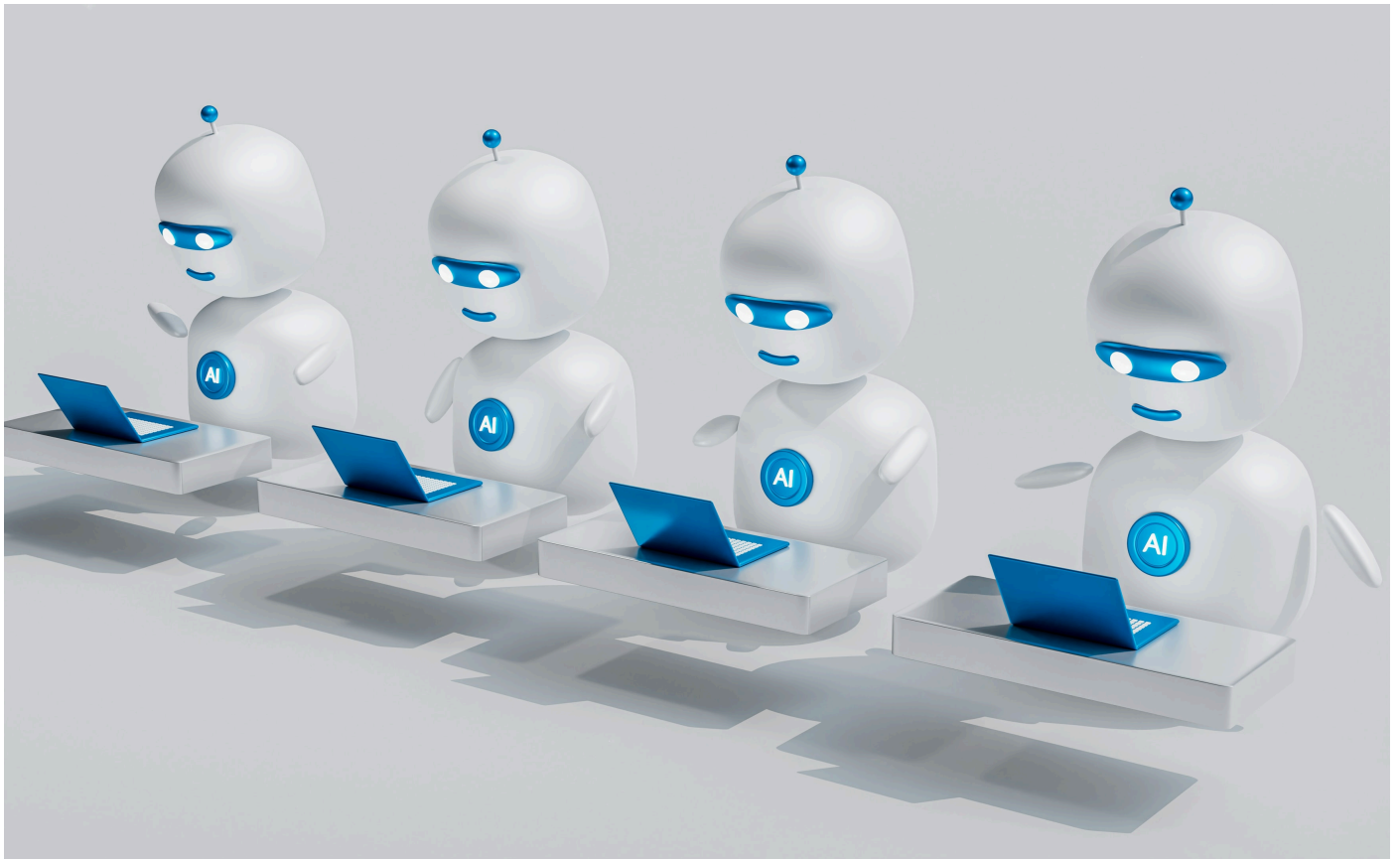
AI tools can generate impressive-sounding copy, but they don't always get the facts right. Left unchecked, AI-generated marketing content may exaggerate your firm's success, misstate legal outcomes, or use vague and misleading claims. Even something as small as implying a "guaranteed result" can run afoul of **Rule 7.1**.

2. Unauthorized Practice of Law (UPL)

If an AI-powered chatbot or content platform goes beyond general information and begins offering advice or legal interpretation, it could cross into the **unauthorized practice of law**. This is a serious concern, especially when content is published without proper disclaimers or review. AI doesn't know where the line is – you do!

3. Confidentiality and Client Data Protection

Client confidentiality must always be protected. Using AI tools, especially those that retain user input for training or operate in cloud environments, raises critical questions about data handling. Sharing sensitive client information in a prompt or integrating unsecured tools into your intake process could violate both **Rule 1.6** and data protection laws like **GDPR** or **CCPA**.



MAINTAINING STRATEGIC CONTROL IN THE AGE OF AI

Used responsibly, AI can support your marketing efforts without crossing any ethical lines. However, without clear policies and human oversight, it can lead to unintended consequences. As marketing expert James Hipkin emphasizes in our [Counsel Cast podcast](#) episode, “*What’s the Secret to AI-Driven Law Firm Marketing Strategy?*”, AI should enhance your strategy and not dictate it. He advises treating AI as a tool to free up time for high-value tasks, such as relationship-building, and ensuring that AI-generated content always aligns with your firm’s brand voice and values.

3. LEGAL COMPLIANCE REQUIREMENTS

In addition to ethical obligations, law firms must also navigate a complex web of legal and regulatory requirements when using AI in their marketing. These rules vary by jurisdiction, but they all share a common theme: transparency, accountability and the protection of client trust.

ADVERTISING RULES VARY BY JURISDICTION

Each state bar in the U.S. has its own specific rules governing legal advertising. What is acceptable in one state may not be in another. For example:

- Some states require disclaimers on testimonials or past results.
- Others prohibit comparing your firm to competitors unless the claim can be substantiated.

In the UK, the **Solicitors Regulation Authority (SRA)** has its own set of rules that govern how legal services can be promoted, with a strong emphasis on fairness, clarity and avoiding misleading claims.

Even if you are using AI tools to generate or personalize content, you are still responsible for ensuring that every piece of client communication complies with the applicable advertising rules in your state or region.

DATA PRIVACY: GDPR, CCPA AND BEYOND

Many AI tools collect, process, or store data, which means they fall under the scope of major data privacy regulations such as:

- **GDPR** (General Data Protection Regulation) in the EU and UK.
- **CCPA/CPRA** (California Consumer Privacy Act / Privacy Rights Act) in the U.S.

These laws govern how personal data is collected, stored, and shared – and they apply whether you are targeting clients locally or across borders. If your AI tool is analyzing client inquiries, tracking website behavior or enriching lead data, you must ensure it does so in a compliant manner.

Key questions to ask:

- Does the AI platform collect or retain user inputs?
- Where is data stored, and is it encrypted?
- Can users opt out or request deletion of their data?

DISCLOSURE REQUIREMENTS

Transparency is becoming increasingly important. If your firm uses AI to generate blog content, answer questions, or power a chatbot, it is good practice – and in some cases, a regulatory requirement – to **disclose that AI is being used**. Disclosures help avoid misleading impressions and reinforce that AI-generated outputs are not a substitute for legal advice.

For example:

- A simple note at the end of a blog post: “This content was created with the assistance of AI and reviewed by a member of our legal team.”
- A disclaimer in chatbot interactions: “I’m an AI assistant and not a lawyer – please contact our team for legal advice.”

HUMAN OVERSIGHT IS NON-NEGOTIABLE

No matter how advanced your AI tools are, human review is essential. AI doesn’t understand nuance, jurisdictional differences, or context the way a trained professional does. Even though AI chatbots are programmed to interact with clients using natural language processing (NLP) and machine learning, they still lack the ability to fully grasp legal subtleties or tailor responses appropriately across different practice areas and jurisdictions.

Without regular oversight, AI-generated content could unknowingly break rules, misuse language or misrepresent your firm. This is especially true for firms that handle **sensitive matters like family law or personal injury**, where tone and empathy play a vital role and something AI simply can not replicate.



REAL CONNECTIONS MATTER

Before anything goes live – whether it is an email, article, or chatbot reply – it should be reviewed by someone who understands both the legal and ethical implications. As marketing expert [Gert Mellak](#) emphasizes in our [Counsel Cast Podcast](#) episode, *How Can Your Law Firm's Content Beat AI?*, content that connects on a human level will always outperform generic, AI-generated material. Thoughtful, authentic messaging not only builds trust but also sets your firm apart in a crowded digital landscape.

4. BEST PRACTICES FOR RESPONSIBLE AI USE

Integrating AI into your law firm's marketing strategy and business development can be a smart move but without clear systems and policies in place, even the most well-intentioned use of AI can create ethical and compliance risks in legal marketing. Here are some key practices to help you stay on the right track:

ESTABLISH INTERNAL REVIEW WORKFLOWS

Before publishing any AI-generated content, whether that's a blog post, email, chatbot response, or social media caption, make sure it goes through a structured human review process. This isn't just about fixing grammar or tone. It is about ensuring the content is legally accurate, compliant with jurisdictional rules, and aligned with your law firm's messaging and values.

TRAIN YOUR TEAM ON AI ETHICS AND COMPLIANCE

AI is evolving quickly, and so are the risks. Provide regular training for both your marketing and legal teams to help them understand how AI works, where it can go wrong, and what responsibilities they hold. This includes recognizing the limitations of AI, spotting red flags in generated content and knowing when human judgment must take precedence.

CHOOSE ETHICAL, TRANSPARENT TOOLS

Not all AI tools are created equal, especially when it comes to privacy and compliance. Select platforms that are clear about how they handle data, what training models they use, and whether they retain or share user input. Look for vendors that align with the legal industry's standards and offer controls that allow you to manage risk effectively.

Key questions to ask:

- What data was this tool trained on?
- Does it store or reuse input data?
- Can I turn off data logging or sharing features?

→ RUN REGULAR AUDITS

Even if everything seems to be working smoothly, it is wise to schedule regular audits of your AI-assisted marketing efforts. Review content outputs, check for consistency with your firm's compliance policies, and look for patterns of error or drift over time. Audits help you catch potential issues early before they turn into larger problems.

EFFECTIVE AI STARTS WITH STRATEGIC CLARITY

As [James Hipkin](#) points out in his [Counsel Cast interview](#), strategy should always lead technology and not the other way around. Firms that jump into AI without a clear strategic foundation often end up producing more content, but not necessarily more effective content. When AI is used to support a well-defined brand strategy and strong client positioning, it becomes a powerful amplifier and not a substitute for sound marketing thinking.



UNLOCKING THE POTENTIAL

PRACTICAL USES OF AI IN TITLE

By Jeremy Yohe

ARTIFICIAL INTELLIGENCE (AI) has moved beyond the realm of science fiction and academic research to become a key player in the modern business landscape. Title companies, among other industries, are beginning to recognize the transformative potential of AI. From automating routine processes to enhancing customer service, AI offers numerous applications that streamline operations and drive efficiency.

AI Adoption

Title and escrow professionals are not sitting on their heels when it comes to engaging with AI. According to a [survey](#) conducted by Qualia, 90% of these professionals have already adopted generative (gen AI) solutions in one form or another, regardless of whether their respective companies have formally integrated AI into their workflows. The majority (84%) feel neutral, optimistic or very optimistic about the benefits of AI for the title and escrow industry. Qualia surveyed 378 title and escrow professionals.

Interestingly, the percentage of companies in the title industry using AI is significantly larger than companies worldwide. According to a survey from McKinsey Global, 65% of respondents report their organizations are regularly using AI. As of 2023, the global AI market size is worth an estimated \$454 billion, AIPRM reported. The North American AI market is the largest in the world—with a 37% market share.

AI as a Tool for Efficiency

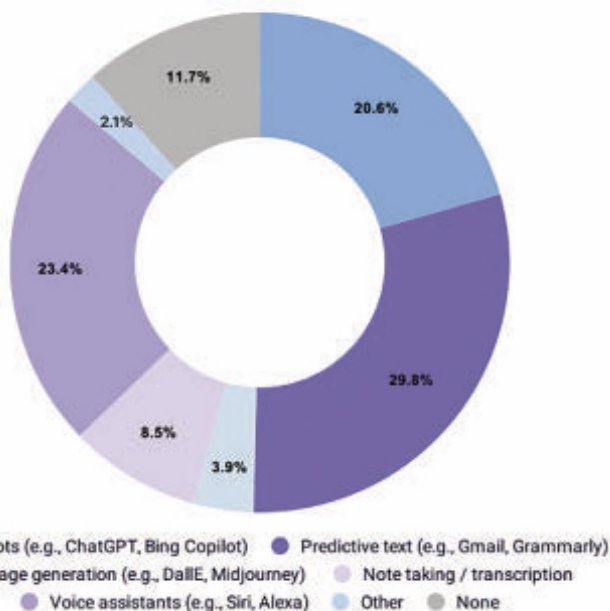
At its core, AI serves as a powerful tool for enhancing productivity by automating repetitive tasks. The rapid, employee-led adoption of AI tools is promising for its potential to transform title operations in the next few years, Qualia reported. “It signals that AI is ‘sticky,’ meaning employees continually come back to it because it provides tangible value. When support for new technology comes from the bottom-up, leaders can expedite the integration of tailored solutions into the business without facing adoption hurdles,” Qualia said.

Bishrut Malhotra, co-founder of Rexera, shared how his company integrates AI into title and escrow operations. Rexera uses AI to automate tasks such as managing homeowners association (HOA) documents, lien searches and mortgage payoffs—areas that require significant manual labor. The AI technology allows the company to scale operations without increasing staff or overhead. AI processes routine tasks, such as quality control checks and document retrieval, freeing human workers to focus on more complex, high-value tasks.

“We receive about 30,000 to 40,000 emails from HOAs every month,” Malhotra explained. “Our AI helps process these emails and links them to the right transaction. Automating this task, which was once done manually, saves us an incredible amount of time.” He emphasized that AI allows Rexera to scale its operations effectively, ensuring accuracy and quick turnaround times.

The Majority of Title & Escrow Professionals Are Already Using AI Tools

90% of Title & Escrow Professionals Use AI Tools Personally or Professionally



SOURCE: QUALIA

Terms to Know

- **Artificial Intelligence (AI):** AI is a computer system that applies advanced analysis and logic-based techniques to interpret events, support and automate decisions, provide recommendations, and take actions. AI is already embedded into most people's day-to-day lives. For example, AI powers voice-recognition technologies like Google Home or Amazon's Alexa. AI also enables users to unlock their smartphones with facial recognition or instantly see and correct mistakes with spell-check functionalities.
- **Generative AI (Gen AI):** Gen AI refers to deep-learning models that can generate unique text, images, audio and other content based on the data they were trained on.
- **Natural Language Processing (NLP):** NLP technology involves the ability to turn text or audio speech into encoded, structured information.
- **Large Language Models (LLM):** An LLM is a specialized type of AI that has been trained on vast amounts of text to understand existing content and generate original content. OpenAI's ChatGPT-4 is an example of an LLM.

"Without AI, we wouldn't be able to handle the volume or meet customer expectations at the level we do now."

Survey results showed the highest-ranked benefits of AI were increased productivity, automating repetitive tasks and increasing job satisfaction. Meanwhile, the lowest-ranked risk of AI was "losing my job to AI."

The key takeaway here is that AI isn't replacing human workers but acting as an augmentative tool. Businesses can manage larger workloads, improve accuracy and speed up processes by allowing AI to handle time-consuming, repetitive tasks. This directly enhances productivity while reducing operational costs.

Anthony Penna, senior vice president of NAVI Title Agency in Arizona, emphasized this point when explaining his company's decision to adopt AI.

"We were forward-thinking as a title company," he said. "Our goal was to give time back to our title and escrow teams. AI allows us to improve efficiency while maintaining control of the transaction process."

Penna's focus was clear: AI doesn't eliminate jobs. It enhances employee capacity by allowing staff to focus on tasks that require human judgment and experience.

AI in Customer Service and Communication

AI's potential in customer service is another transformative area. Hoyt Mann, co-founder of Alana.ai, explained how conversational AI has become a game-changer for title companies. Alana.ai acts as a 24/7 virtual assistant that interacts with clients,

answering routine questions, scheduling tasks and even managing transactions. This innovation reduces the need for constant human intervention, allowing title agents and customer service professionals to focus on more complex issues.

"One of the key goals of Alana.ai is to take knowledge that's already inside your company and make it available in a conversational format," Mann said. "We focused on building an AI that could handle common inquiries—anything from providing updates on a transaction to answering questions about title policies. This ensures a seamless experience for clients while helping title agents avoid repetitive tasks."

The beauty of AI in this context is its ability to improve both internal efficiencies and customer experiences. For instance, AI can reduce the burden of phone calls or emails for frequently asked questions, such as "What is the status of my transaction?" or "What are my closing costs?" AI tools like Alana allow title agents to focus on higher-value tasks while maintaining excellent client communication.

Penna underscored the impact of AI on customer communication.

"We've increased our accessibility and communication by up to 273%," he said. "Clients receive real-time updates via text, which simplifies their experience and frees up our team to handle more complex issues." By streamlining communications, he added, NAVI Title has enhanced both efficiency and client satisfaction.

Customization and Personalization

Experts have expressed the importance of maintaining human oversight when using AI. While AI can handle routine inquiries, complex situations still require human judgment. Mann pointed out that AI can be personalized to reflect the brand and culture of a business, ensuring AI-enabled communication aligns with the company's tone and values. This customization helps businesses integrate AI seamlessly into their customer interactions without sacrificing the personal touch clients expect.

Penna described how NAVI Title's AI tool, named "Ivan," plays a critical role in enhancing client service. "Ivan is our 24/7 closing assistant. It allows us to close more deals in less time while boosting our communication with clients. Ivan handles over 250 common inquiries throughout the transaction, making the process smoother for everyone involved."

Malhotra agreed with this thought, explaining that AI serves as a powerful enabler for businesses.

"AI works like an intern—it has basic reasoning abilities, but it still needs human oversight for more complex tasks," he said. "The combination of AI 'interns' with human operators works incredibly well for us, allowing us to scale and provide a solid customer experience."

Practical Steps to Implement AI

For professionals wondering how to begin integrating AI into their operations, the first step is identifying repetitive processes that consume valuable time. Start by automating small, routine tasks—such as document management, data entry or customer

inquiries. As Mann emphasized, it's crucial to partner with vendors who understand your industry's unique needs. Title companies, for example, should seek AI providers familiar with real estate transactions to ensure the technology fits seamlessly into their workflow.

Penna shared advice on implementing AI in a way that employees embrace.

"It's about trust," he said. "Our team knows we won't implement anything that's going to harm them. In fact, when they saw the beta version of Ivan, they got excited because they saw how much time it would free up for more meaningful work."

Overcoming Common Concerns: Data Privacy and Ethical Use

A significant concern for many professionals when adopting AI is data privacy. Both Malhotra and Mann stressed the importance of working with AI partners who prioritize data security and transparency. Ensure your AI solutions anonymize sensitive data and comply with all relevant privacy regulations. Moreover, ethical considerations are vital: businesses must remain transparent with clients when using AI tools, ensuring clients know when they are interacting with chatbots rather than a human.

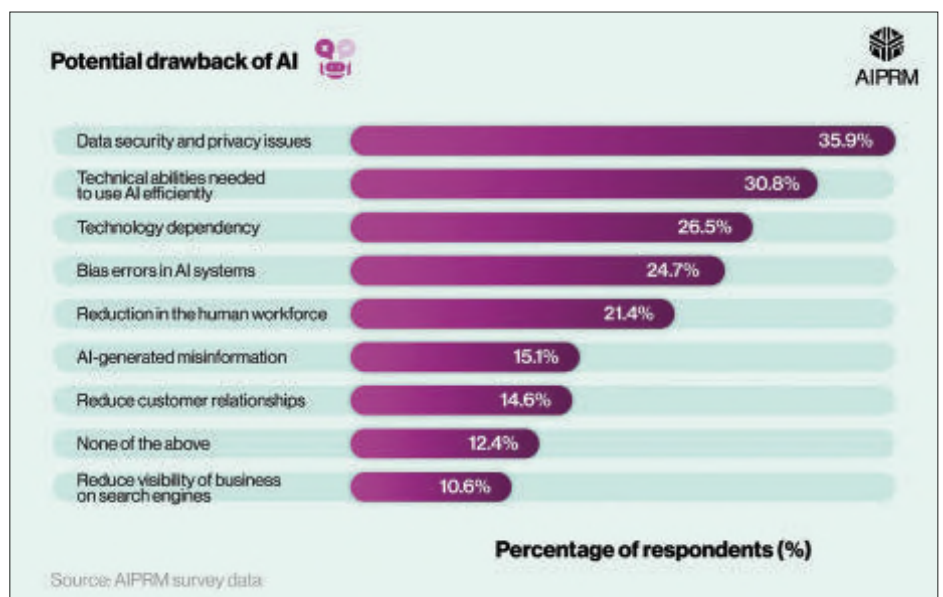
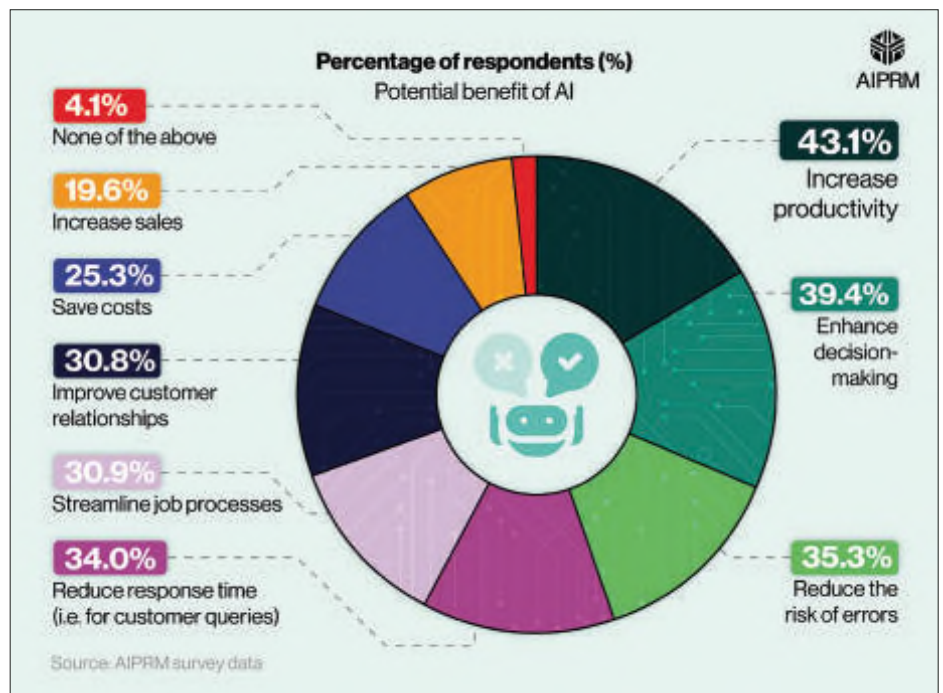
Mann emphasized the importance of transparency and ethical use. He said it's essential companies introduce AI as a virtual assistant and be clear about its capabilities.

"People don't want to interact with AI under the illusion that they're talking to a human," Mann said. That's why we make it clear that AI is there to assist, not to replace human interaction."

Penna echoed these sentiments, adding, "We've reassured our clients and staff that AI is not about replacing human interaction—it's about enhancing it. We still have full oversight of the process and ensure AI only handles appropriate tasks."

Looking Ahead: The Future of AI in Business

As AI technology continues to evolve, it will offer even more sophisticated tools for enhancing business operations. AI's capabilities in areas such as video and



voice interaction are expanding, which could lead to new ways of interacting with clients and handling transactions. While the technology is still developing and improving, professionals should view AI as a collaborative tool, helping teams become more productive and efficient without replacing the need for human oversight and expertise.

"We're just scratching the surface," Penna said. "AI is going to open up even more possibilities in terms of personalization and real-time client engagement. It's not just about automation; it's about creating a better overall

experience for both our staff and clients."

Malhotra offered a similar perspective on the future of AI.

"The capabilities of AI will only continue to improve," he said. "Right now, it functions well for routine tasks, but as it becomes smarter, we'll be able to apply it to more complex areas of the business. However, human oversight will always be a critical part of the equation." ■



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