

The Ethics of Tech: Generative AI



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Although the types of technology available to assist lawyers in the practice of law have changed, the rules governing attorney conduct have not.

What is *Generative AI*?



It does **not** think, reason, or understand the way people do.



It is a drafting and analysis assistant—fast, helpful, and often impressive—but not a lawyer, not a researcher, and not a source of legal judgment.



Like a very smart law clerk who sometimes lies to you.



Precocious sociopath – no regard for truth, health or well-being.

It is supplement, not a substitute.

It's
great
for:

- first drafts
- summarizing
- brainstorming
- simplifying complex text
- formatting or re-phrasing
- second set of eyes AFTER you have done your own research (the traditional way)
- organizational and administrative tasks

It is supplement, not a substitute.

**It is not
suitable
for:**

- final filings
- legal advice
- fact-based research
- complex legal reasoning and analysis
- anything requiring professional responsibility or ethical judgment

The Ethics of Using GAI

ABA Formal Opinion 512 (July 2024)

Texas Professional Ethics Opinion
705 (Feb. 2025)

What ABA Formal Opinion 512 has to say about “Competence.”

- Must have a reasonable understanding of capabilities and limitations, benefits and risks
 - Or draw on the expertise of others who can provide guidance
- Not a static undertaking
 - Moving target / constantly evolving
- Read about GAI, attend relevant CE, consult with experts

Texas Ethics Opinion 705



If you are going to use AI



MUST have a **reasonable** and current understanding of the technology



Because only then can you evaluate risks, limitations, and potential for exposing client confidential information

You have a duty to be competent in technology

ABA Model Rule 1.1, Comment 8 (2012)

- Lawyers must keep abreast of changes in the law and practice, including **benefits and risks associated with technology**.

Tex. Disc. Rule of Prof. Conduct, Rule 1.01, Comment 8 (2019)

- Because of the vital role of lawyers in the legal process, each lawyer should strive to become and remain proficient and competent in the practice of law, including the **benefits and risks associated with relevant technology**.

What does “Competence” mean?

- Possession of the ability to timely acquire legal knowledge, skill, and training reasonably necessary for the representation of the client.
- Extends to technological competence and applies to novel technologies. (Texas Ethics Opinions 665, 680, and 705)
- A lawyer is not required to use GAI.
- But should become aware of relevant GAI tools to make informed decision about whether to use them considering the client’s interests and objectives.

You have a duty to protect client information.

**ABA Model
Rule 1.6
(c):**

**“A lawyer shall make
reasonable efforts to
prevent the inadvertent or
unauthorized disclosure of,
or unauthorized access to,
information relating to the
representation of a client.”**

TDRPC 1.05

A lawyer shall not **knowingly** reveal confidential information to any person other than those who are permitted to receive it under TDRPC 1.05

Confidential
information

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graph LR; A[Confidential information] --> B[Privileged]; A --> C[Unprivileged client information]; B --> D["the information of a client protected by Rule 5.03 of the Texas Rules of Evidence or Rule 5.01 of the Federal Rules of Evidence"]; C --> E["all information relating to a client or furnished by the client during the court or by reason of representation"];
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Privileged

the information of a client protected by Rule 5.03 of the Texas Rules of Evidence or Rule 5.01 of the Federal Rules of Evidence

Unprivileged
client information

all information
relating to a client or
furnished by the
client during the
court or by reason of
representation

Supervision

ABA Formal Opinion 498 – March 2021

- Ethical obligation to establish **policies & procedures** to ensure compliance by subordinate lawyers and staff with Rules of Professional Conduct
 - Lawyer must act to safeguard client information against inadvertent/unauthorized disclosure **by other persons** participating in the representation of the client who are under lawyer's supervision.

Supervision of Lawyers- Amended TDRPC 5.01(a) and (b):

(a) A lawyer who individually or together with other lawyers **possesses managerial authority** in a law firm shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that all lawyers in the firm conform to these Rules.

(b) A lawyer having **direct supervisory authority** over another lawyer shall make reasonable efforts to ensure that the other lawyer complies with these rules.

Supervision of Non-Lawyers

Texas Disciplinary Rule of Professional Conduct 5.03 (a) - Responsibility Regarding Nonlawyer Assistants

A lawyer having direct supervisory authority over a nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer.

Fees - O.K. to Charge

- Charging client for **actual time spent** using GAI tool for purpose of representation
 - Including time spent refining outputs & checking work
- Expenses for **per-use fees** of a particular AI program if allowed by law & client accepts arrangement (similar to charging for tools like Lexis & Westlaw)
- Expenses for use of **vendor's AI program** that charges on a per-use basis

Fees - Not O.K. to Charge

- Charging hourly fees for time “saved”
 - **Never ok to charge for hours never actually expended**
 - Efficiency because of AI cannot result in falsely inflated claims of time
- Time spent learning to use an AI tool (unless it is a tool specifically requested by client & client agrees on fees)
- Cost of tool that functions similarly to equipping and maintaining law practice (overhead, similar to maintaining library, rent, etc.)

Duty to not engage in wasteful procedures

- Comment 6 to TDRPC 1.04:
 - **A lawyer should not abuse a fee arrangement based primarily on hourly charges by using wasteful procedures.**
- Example –
 - AI can analyze 600-page document in 10 minutes.
 - Lawyer does it in 10 hours.
 - Choosing to manually review the documents for ten hours and billing the client accordingly is likely a “wasteful procedure” if AI can do it in less time.

Review Court Rules

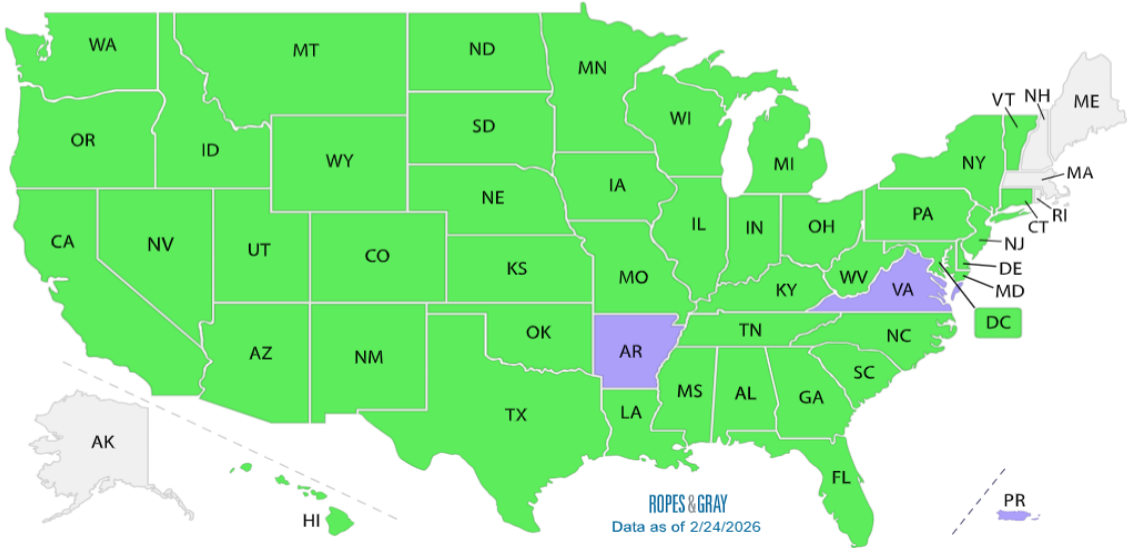
- Must be aware of how various courts treat the use of GAI
- Is use permitted?
- Are you required to disclose usage?
- <https://www.ropesgray.com/en/sites/artificial-intelligence-court-order-tracker>
 - 453 standing orders, local rules or decisions

Standing Orders, Local Rules, and Decisions on the Use of AI: State and Federal District Courts

453 standing orders, local rules, or decisions

The default map shows whether the majority of AI-related orders in a given state encompass any AI, or only generative AI. Click on the colored buttons below to reconfigure the map to display other categories. Click an individual state for detailed analysis.

- Majority of Orders Specific to Any AI vs. Generative AI
- Any AI Usage
- Generative AI Usage
- Requires Disclosure and/or Verification
- Suggests Cautious Use of AI
- Prohibits Use of AI
- Applies to AI Used for Research
- Applies to AI Used for Filings/Drafting
- Court-Imposed Consequences – Attorneys/Law Firms
- Court-Imposed Consequences – Parties



Have a Firm Policy in Place for Use of AI

- Establish guardrails that allow use in compliance with ethical and legal obligations
- Outline what is:
 - Permitted Usage (**Green**) – administrative tasks, marketing content, internal scheduling, meeting agendas, checklists, marketing drafts, brainstorming, internal summaries
 - Oversight Required (**Yellow**) – legal research, document review, first drafts, issue spotting, case summaries, draft arguments, research lead generation, alternative clauses, tone adjustments, outlines, summaries
 - Prohibited (**Red**) - Using unapproved AI Tools; Generating legal advice or filings without attorney review; Processing or sharing confidential client data; etc.

Have a Firm Policy in Place for Use of AI

- Require Firm authorization of AI Tools with required vetting criteria
- Require Attorney and Staff training on approved AI Tools
- Require verification of outputs
- Prohibit sharing of confidential and privileged information
- Set out when & how to inform clients, & when client consent required
- Set out policy regarding fees and expenses

Disclose usage & Get client informed consent



Inform clients if GAI tools will be used as part of their representation. TDRPC 1.03



Communicate adequate information and explanation about material risks of and reasonably available alternatives



Obtain client agreement



Required if intending to use confidential information in conjunction with GAI tools

Understand Obligations Under TRAI GA - Texas Responsible Artificial Intelligence Governance Act

- Took effect January 1, 2026.
- Set compliance expectations for the use of artificial intelligence (AI).
- Establishes a statewide framework to ensure AI systems are used ethically, transparently, and safely.

TRAIGA - Texas Responsible Artificial Intelligence Governance Act

- It applies **broadly** to any individual or entity using AI in Texas – “Deployers”
- According to the SBOT:

Most law firms will be “deployers” of AI if they use tools such as generative drafting, intake chatbots, e-discovery analytics, research copilots, or marketing automations.

TRAIGA - Texas Responsible Artificial Intelligence Governance Act

- Duties and prohibitions related to the use of AI systems, including prohibitions against:
 - intentionally using AI to incite self-harm, harm to others, or crime (§ 552.052);
 - using AI with the sole intent of impairing constitutional rights (§ 552.055); or
 - using AI to unlawfully discriminate against protected classes (§ 552.056).

Texas Supreme Court Proposed Changes to TRCP 13 and TRAP 9

- A provision that the signer reviewed the filing and verified its accuracy, including that the legal citations, quotations and holdings are not fabricated. An attorney can be sanctioned if the filing is found to be inconsistent with these representations.
- Public comments to proposed amendments to be submitted by September 1, 2026 at rulescoments@txcourts.gov
- To take effect on October 1, 2026

TRAIGA - what to do about it?

- Consider adopting NIST-aligned risk management for safe harbor
 - Substantial compliance with NIST AI Risk Management Framework serves as affirmative defense against enforcement actions
- Conduct due diligence on AI vendors- Ensure tech vendors' AI systems do not perform any prohibited functions