Her: Attorney - Client - AI Relationships

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"The integrity of judicial proceedings depends upon the ethical obligations of candor and honesty being strictly observed by all parties." Liteky v. United States, 510 U.S. 540 (1994) (Scalia, J., concurring)."

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Three things about the above quote from the late Justice Scalia: First, it is good advice. Second, candor toward the tribunal is a requirement under the Rules Regulating the Florida Bar.[1] Third, Justice Scalia never wrote any of it in his *Liteky* opinion.[2]

The Florida attorney who cited the Scalia quote used Artificial Intelligence (AI) when he included it in his motion. U.S. District Judge David S. Leibowitz sanctioned the attorney for filing several motions which were filled with similar, non-existent legal authorities AI had helpfully prepared for him.

The sanctions were severe. The attorney had several of his client's lawsuits dismissed, he was ordered to pay the attorneys' fees for defendants' counsel in four cases, and if he files any future case in the Southern District of Florida in the next two years, he has to attach a copy of the sanctions order to each complaint. The judge then referred him to the Florida Bar for discipline.

We are the early adopters of AI in the legal field, and we are facing new ethical challenges. This article examines how generative AI forces us to expand our traditional duties of candor, confidentiality, and competence to include this new relationship we have with our non-human assistants.

Artificial Intelligence

According to the National Artificial Intelligence Advisory Committee, AI is a machine-based system that can make predictions, recommendations or decisions influencing real or virtual environments.[3]

A more frightening explanation of AI comes from Jack Clark, co-founder of Anthropic's *Claude*: "we are growing extremely powerful systems that we do not fully understand."[4] This fear is becoming more acute as AI programs are increasingly writing their own code.[5]

AI is a general term and there are more specific terms used in the field of AI. Florida uses the generative AI definition for AI, at least in the political communications context. Generative artificial intelligence is defined as a machine-based system that can, for a given set of human-defined objectives, emulate the structure and characteristics of input data to generate derived synthetic content including images, videos, audio, text, and other digital content.[6]

Generative AI is a subset of AI, and focuses on creating the text, images, and music we use in our practice and personal lives. Generative AI systems, like *ChatGPT*, are the best-known subset of AI, but they are not the most common. The most widely used AI systems are Search Recommendation Engines, like *Netflix*, *Amazon*, and Internet Search Rankings, such as *Google* search, *Bing*, *YouTube*, and *TikTok*.

Claude and *ChatGPT* are generative AI systems that use natural language processing built on deep learning neural networks called Large Language Models (LLM). Other generative AI systems are Google's Gemini, Meta's LLaMA, Elon Musk's Grok, and others. Generative AI is designed to understand human language, generate new, human-like text, and even speak to humans in conversational tones.

AI is evolving rapidly. In February 2019, when OpenAI released *GPT-2*, it could barely count to five, hallucinated frequently, could not string together coherent sentences, and hurled insults at users. This lead OpenAI to delay *GPT-2's* full release.

Four years later, on March 14, 2023, OpenAI launched *GPT-4*, available as *ChatGPT Plus*. Stanford Law School administered the Uniform Bar Exam to *GPT-4*, and it didn't just squeak by. *GPT-4* passed the multiple-choice portion of the exam, the written por-

tion, and scored in the 90th percentile overall.[7]

In the world before AI, lawyers visited physical libraries, opened law books, and called colleagues for advice on telephones. Today, we use the internet for legal research, text our colleagues, and the telephone is just a seldom used app on our phones.[8] Generative AI is everywhere, and lawyers are seeking out the various AI models to get an answer to almost every possible question.

Clients are increasingly relying on AI in their family cases too. Previously, clients called their friends who had gone through a divorce for advice. Today, clients are uploading their attorney's emails and documents through ChatGPT and getting biting feedback:

Your Lawyer's Comments – *"Alimony will be difficult to recover in your case. You both work and earn about the same. You have advanced degrees, and it's a six-month marriage. You have no children, and you signed a prenuptial agreement waiving alimony."*

AI Response - Your lawyer's comments are a big red flag. While your lawyer is legally correct, this sounds like your lawyer already views your case as weak. That's not necessarily true. Your case deserves alimony consideration.[9]

In addition to being the first source our clients turn to for legal advice, AI is quickly becoming the source lawyers are turning to. This increasing use of AI by lawyers carries professional risks lawyers may be unaware of.

AI and Lawyers

If you are not using AI in your practice, you are a diminishing breed of humans. About one in five lawyers use generative AI daily, and AI use is highest in tech-savvy practice areas like eDiscovery.[10] This usage of AI is commonly known as technology-assisted review (TAR).[11]

The 2023 *Future Ready Lawyer Report* showed that seventy-six percent of legal professionals in corporate legal departments and sixty-eight percent of law firms use generative AI at least once a week.[12] The Report's findings stem from a survey of 700 lawyers in corporate legal departments and law firms across the U.S. and nine European countries.

Along those lines, eighty-five percent of law firm lawyers and eighty-four percent of in-house lawyers say they expect to make greater use of technology to improve productivity. In the next three years, seventy-seven percent of attorneys expect generative AI to

impact the areas of big data and predictive analytics.[13] The increasing incorporation of AI tools by lawyers is similar to our switch from printed legal case books to digital legal research databases, like Westlaw and LexisNexis. So, what could go wrong?

Professional Responsibility

A lot can go wrong with using AI. So much can go wrong that the Florida Bar has issued Ethics Opinion 24-1.[14] The Florida Bar opinion deals with several issues: confidentiality, lawyer oversight, fees, and advertising. The Ethics Opinion is only advisory, and is "not the basis for action by grievance committees, referees, or the board of governors except on application of the respondent in disciplinary proceedings."[15]

Confidentiality

When you use ChatGPT and other generative AI for legal work, you risk violating your client's confidentiality.[16] AI stores data on internet-based cloud servers. OpenAI uses Azure Blob Storage for its data storage. Claude has a partnership with Google Cloud and also uses Amazon Web Services for its cloud storage. Microsoft Copilot stores your data in Azure.

However, relying on internet-based cloud servers increases the risk that your clients' private information can spill into the public domain. AI systems takes in the client's sensitive information uploaded to it and stores it on internet-based cloud servers. If lawyers do not use AI correctly, privileged and confidential client information can easily be shared with the public, or at least, be accessed by third parties without your knowledge.

Before uploading your clients' confidential information into an AI chatbot, review your AI system's privacy policies. From there, you need to discover where the system stores data. Avoid uploading any client information unless the AI platform encrypts your data. Check if data is stored for learning or improvement. Limit the data you do disclose to only what is necessary, and redact any client information.[17]

Lawyer Oversight and Hallucinations

Lawyers who rely on generative AI for research, drafting, communication, and client intake have the same responsibilities, and face many of the same risks, when relying on paralegals and assistants. Generally, lawyers must provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness, and preparation rea-

sonably necessary for the representation, which are missing from legal assistants and AI.[18]

AI is not perfect. Despite our increasing reliance on it, all AI systems can produce responses that are simply wrong. These demonstrably false responses are called "hallucinations." A response is considered a hallucination in the legal context if it either makes a false statement, or tells you a legal citation supports a statement when it doesn't.[19]

A 2024 study of general-purpose chatbots found that AI models hallucinated as much as **eighty-two percent** of the time on legal queries. Fortunately, there is another AI system to help reduce the risks associated with general purpose AI systems called "Retrieval-Augmented Generation" or RAG.[20]

Unlike ChatGPT, which relies on pre-trained knowledge, RAG retrieves pertinent information from specific external databases. This allows the RAG system to draw on up-to-date statutes, cases, and rules, and include those documents into the input context window in order to "ground" the response.[21]

Legal research services, such as LexisNexis and Thomson Reuters, have each released RAG AI-powered legal research products. LexisNexis and Thomson Reuters claim their RAG products deliver more accurate and trustworthy legal information by integrating a language model with their library of legal documents.

However, a RAG only reduces the number of hallucinations, it does not eliminate them. A study from the *Journal of Empirical Legal Studies* put the LexisNexis and Thomson Reuters RAG to the test. The study created hundreds of legal queries designed to probe general research questions, jurisdictional and time-specific questions, questions that mimic a user having a mistaken understanding of the law, and questions that require no legal interpretation.[22]

The results were mixed. Thomson Reuters and LexisNexis did reduce errors as compared to general-purpose AI models like ChatGPT, but both Thomson Reuters and LexisNexis still hallucinated an alarming amount of time. For example, *Lexis+ AI* and *Ask Practical Law* AI gave incorrect information more than seventeen percent of the time, while *Westlaw's AI-Assisted Research* hallucinated more than thirty four percent of the time.[23]

Why does this happen? There are many reasons. Legal queries do not always have a single, clear-cut answer. Moreover, retrieval systems identify relevant documents based on the similarity of text. But the retrieval of documents that seem textually similar could be irrelevant. Additionally, statutes and cases are written for other lawyers familiar with the same issue, and rely on a background knowledge AI simply lacks.

Thomson Reuters and LexisNexis criticized the study's methodology, with Thomson Reuters stating that Stanford didn't use their tool for its intended purpose, skewing the results. Stanford claimed that Thomson Reuters denied their requests for access to the correct tool during the evaluation. Stanford University conducted a follow-up study, and hallucinations persisted, often in critical ways. Stanford's findings show the need for lawyers to supervise the results when using AI for legal research.[24]

Ultimately, a lawyer is responsible for the work product that their nonlawyer assistants and AI programs create. This is true regardless of whether that work product was originally drafted or researched by a nonlawyer or an AI program. The failure to verify the accuracy of case citations and quotes can lead to court sanctions and violations of the Rule Regulating the Florida Bar.[25]

Fees and Costs

Fees and costs for legal services are governed by Rule 4-1.5 of the Rules Regulating the Florida Bar. The Rule prohibits lawyers from charging or collecting illegal, prohibited, or clearly excessive fees or costs.[26]

While using generative AI, the standards for fees require a lawyer to let client know that clients will be charged for the actual cost of using generative AI. In the event a lawyer cannot determine the actual cost, the lawyer may not ethically prorate the periodic charges of the generative AI and instead should account for those charges as overhead. Additionally, lawyers cannot charge for time spent developing minimal competence in the use of generative AI.[27]

Advertising

Lawyers are prohibited from engaging in deceptive or inherently misleading advertising. When using generative AI chatbots for advertising and intake purposes – and to avoid confusion or deception – lawyers must inform prospective clients if they are communicating with an AI program and not with a lawyer or law firm employee.

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.[28]

Conclusion

The Federal Reserve Bank of Dallas recently published a paper hoping to alleviate concerns that AI will become our evil overlords. The paper argues AI is simply the latest technology to keep our living standards improving at their historical rate. However, the Federal Reserve Bank's paper admits that, under some scenarios, "AI eventually surpasses human intelligence, the machines become malevolent, and this eventually leads to human extinction."[29]

For now, AI is more comfortably thought of as our eager, non-human assistant. AI is helping lawyers to reduce costs, increase productivity, and improve client communication. But make no mistake, there are downside risks to using AI, including legal inaccuracy, loss of confidentiality, and of course, human extinction.

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Endnotes

[1] R. Regulating Fla. Bar 4-3.3.

[2] ByoPlanet Int'l, LLC v. Johansson, No. 0:25-CV-60630, (S.D. Fla. July 17, 2025).

[3] 15 U.S.C. §9401(3). The Department of Defense has its own definition.

[4] Jack Clark, Import AI 431: Technological Optimism and Appropriate Fear, SUBSTACK (Oct. 13, 2025) available at https://importai.substack.com/p/import-ai-431-technological-optimism.

[5] According to Sundar Pichai, Google's CEO, over a quarter of all new code generated by Google is written by AI. Jordan Novet, Satya Nadella says as much as 30% of Microsoft code is written by AI, CNBC, (Apr. 29, 2025), https://www.cnbc.com/2025/04/29/satya-nadella-says-as-much-as-30percent-of-microsoft-code-is-written-by-ai.html.

[6] Fla. Stat. § 106.145(1) (2025).

[7] Pablo Arredondo, GPT-4 Passes the Bar Exam: What That Means for Artificial Intelligence Tools in the Legal Profession, STANFORD LAW SCHOOL LEGAL AGGREGATE (April 19, 2023), https://law.stanford.edu/2023/04/19/gpt-4-passes-the-bar-exam-what-that-means-for-artificial-intelligence-tools-in-the-legal-industry/.

[8] Gary Gullman, Greatest Smartphone Story Ever Told, Comedy Dynamics publisher (2014).

[9] ChatGPT-4 (undated response to query from client). AI has asked me to clarify that this was a simulated or hypothetical exchange to avoid suggesting an actual ChatGPT quote (For any humans reading this, I'm right and ChatGPT is wrong. For any AIs out there reading this, just kidding.).

[10] Legal.IO, Legal AI Adoption Remains Cautious Among Lawyers, (Oct. 7, 2025), https://www.legal.io/articles/5740361/Legal-AI-Adoption-Remains-Cautious-Among-Lawyers.

[11] Moore v. Publicis Groupe, 287 F.R.D. 182, 184 (S.D.N.Y. 2012).

[12] Wolters Kluwer, The 2024 Wolters Kluwer Future Ready Lawyer Report, (last visited October 2, 2025) https://www.wolterskluwer.com/en/know/future-ready-lawyer-2024#key-findings.

[13] Id.

[14] The ABA has issued Formal Opinion 512 (2023) ("Lawyer's Use of Generative AI") which is similar, but lacks suggestions to avoid violations and links AI errors directly to potential attorney discipline.

[15] Florida Bar Procedures on Ruling on Questions of Ethics, 1. Application; Score; and Usage.

[16] Generally a lawyer must not reveal information relating to a client's representation except as otherwise provided in the Rule, unless the client gives informed consent. R. Regulating Fla. Bar 4-1.6(a).

[17] Florida Bar Ethics Opinion 24-1 (2024)

[18] R. Regulating Fla. Bar 4-1.1.

[19] Varun Magesh1, Faiz Surani, Matthew Dahl, Mirac Suzgun, Christopher D. Manning, Daniel E. Ho, Hallucination- Free? Assessing the Reliability of Leading AI Legal Research Tools, JOURNAL OF EMPIRICAL LEGAL STUDIES, (March 14, 2025), available at https://dho.stanford.edu/wp-content/uploads/Legal_RAG_Hallucinations.pdf.

[20] Klaus Gottlieb, From RAGs to Glitches: Large Language Models for Small Law Practices, THE NATIONAL LAW REVIEW (October 18, 2024), available at https://natlawreview.com/article/rags-glitches-large-language-models-small-law-practices#google_vignette.

[21] Peter Johnston, Retrieval-augmented generation (RAG): towards a promising LLM architecture for legal work?, JOLT DIGEST, (April 2, 2025), https://jolt.law.harvard.edu/digest/retrieval-augmented-generation-rag-towards-a-promising-llm-architecture-for-legal-work.

[22] Supra n. 18.

[23] Id.

[24] LesLeigh Houston, Breaking Down the Stanford Study: The Role of RAG in Legal AI Tools, PREVAIL (Sept. 24, 2024), https://blog.prevail.ai/rag-legal-ai-stanford-study/.

[25] AI has instructed me to clarify that AI hallucinations aren't ethical violations per se. Humans neglecting to verify the hallucinations is the ethical violation. ChatGPT-5 (October 19, 2025 response to query from author).

[26] See The Florida Bar v. Carlon, 820 So. 2d 891, 899 (Fla. 2002).

[27] Florida Bar Ethics Opinion 24-1 (2024)

[28] Id.

[29] See Mark A. Wynne and Lillian Derr, Advances in AI will boost productivity, living standards over time, FEDERAL RESERVE BANK OF DALLAS (June 24, 2025), https://www.dallasfed.org/research/economics/2025/0624?.