Model Rule 1.1 – Competence

"A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation."

Comment [8]: "To maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, including the benefits and risks associated with relevant technology. . . ."

Model Rule 1.6(a) – Confidentiality of Information

"A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation or the disclosure is permitted by paragraph (b)."

Fla. Proposed Advisory Opinion 24-1 - Confidentiality

"[I]t 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."

The Florida Bar Board of Governors' Review Committee on Professional Ethics -Proposed Advisory Opinion 24-1 (11/13/23)

Fla. Proposed Advisory Opinion 24-1 - Confidentiality

"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."

Recommendations in ethics opinions developed to address cloud computing "are equally applicable to a lawyer's use of third-party generative AI when dealing with confidential information."

Fla. Proposed Advisory Opinion 24-1 - Confidentiality

"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."

Confidentiality Concerns: Court Filings

UNITED STATES COURT OF INTERNATIONAL TRADE

THE HONORABLE STEPHEN ALEXANDER VADEN, JUDGE

ORDER ON ARTIFICIAL INTELLIGENCE

Because generative artificial intelligence programs challenge the Court's ability to protect confidential and business proprietary information from access by unauthorized parties, it is hereby:

ORDERED that *any* submission in a case assigned to Judge Vaden that contains text drafted with the assistance of a generative artificial intelligence program on the basis of natural language prompts, including but not limited to ChatGPT and Google Bard, must be accompanied by:

(1) A disclosure notice that identifies the program used and the specific portions of text that have been so drafted;

(2) A certification that the use of such program has not resulted in the disclosure of any confidential or business proprietary information to any unauthorized party;

Model Rule 5.3 – Responsibilities Regarding Nonlawyer Assistance

"With respect to a nonlawyer employed or retained by or associated with a lawyer:

(a) a partner, and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the person's conduct is compatible with the professional obligations of the lawyer.

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

Fla. Proposed Advisory Opinion 24-1 - Oversight of Generative AI

- Law firms should have policies in place to reasonably assure that the use of generative AI is compatible with the lawyers' own professional obligations

- Lawyers must always review the work product of generative AI, and verify the accuracy and sufficiency of all research performed by generative AI

- Lawyers should carefully consider what functions may ethically be delegated to generative AI, and may not delegate to generative AI any act that could constitute the practice of law

Model Rule 3.3(a) – Candor Toward the Tribunal

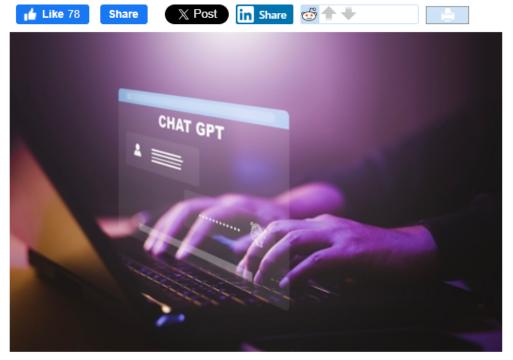"A lawyer shall not knowingly:

(1) make a false statement of material 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; . . . or

(3) offer evidence that the lawyer knows to be false. . . ."

Lawyers who 'doubled down' and defended ChatGPT's fake cases must pay $5K, judge says

BY DEBRA CASSENS WEISS

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A federal judge in New York City wrote in a June 22 decision that lawyers from Levidow, Levidow & Oberman "doubled down and did not begin to dribble out the truth until May 25"—after the judge issued an order to show cause why one of the lawyers shouldn't be sanctioned. Image from Shutterstock.

A federal judge in New York City has ordered two lawyers and their law firm to pay $5,000 for submitting a brief with fake cases made up by ChatGPT and then standing by the research.

In a June 22 decision, U.S. District Judge P. Kevin Castel of the Southern District of New York imposed the penalty on Peter LoDuca, Steven A. Schwartz and the firm Levidow, Levidow & Oberman.

The lawyers will also have to send letters to each judge falsely identified as the author of six nonexistent opinions. The letter must include a copy of Castel's opinion imposing the sanctions, the fake opinion attributed to the judge and a copy of an April 25 affirmation that continued to cite the cases.

Candor Toward the Tribunal

"[G]enerative artificial intelligence (such as ChatGPT, Harvey.AI, or Google Bard) . . . platforms are incredibly powerful and have many uses in the law: form divorces, discovery requests, suggested errors in documents, anticipated questions at oral argument. But legal briefing is not one of them. Here's why. These platforms in their current states are prone to hallucinations and bias. On hallucinations, they make stuff up—even quotes and citations."

United States District Court, N.D. Tex., Judge Brantley Starr, Mandatory Certification Regarding Generative Artificial Intelligence

Candor Toward the Tribunal

STIPULATION TO DISCIPLINE PURSUANT TO C.R.C.P. 242.19

l. Respondent's search on ChatGPT led him to what appeared to be cases that supported his client's position. At the time he utilized ChatGPT, Respondent was close to the deadline for filing this motion. Respondent describes that he had "tunnel vision."

m. Respondent did not read the cases he found through ChatGPT, nor did he key cite, shepardize, or otherwise take steps to verify their accuracy.

Stipulation to Discipline, People v. Crabill, Colo. 23PDJ067

Candor Toward the Tribunal

p. O.C.'s case was set for hearing on May 5. 2023. That morning. before the hearing, as he was preparing for the hearing, Respondent realized that some of the cases cited in the MSA he filed might not be accurate and/or might not exist. He engaged in the following text exchange with his paralegal:

10:02 Respondent: I think all of my case cites from ChatGPT are garbage...I can't even find the cases in Lexis.

10:03 Paralegal: Did you not check them after it gave them to you?

10:03 Respondent: no. like an idiot.

10:12 Paralegal: Are you going to withdraw it?

10:12 Respondent: I have no idea what to do. I am trying to find actual case law in our favor now to present to the judge. I don't have time for this...

Stipulation to Discipline, People v. Crabill, Colo. 23PDJ067

Candor Toward the Tribunal

r. Respondent appeared at the hearing which began at approximately 11:09 a.m. He did not immediately raise the problem with the citations with the court. Instead, the court raised the concerns with Respondent.

s. Judge Eric Bentley presided over the hearing and informed Respondent that he reviewed the motion and expressed concerns about the accuracy of the law Respondent cited.

t. Respondent responded, "for candor towards the tribunal, that was my experience this morning as well and I apologize for the incorrect case citing. I leaned a little too heavily on a legal intern in this case, who I believe got some mistake in case cites, so I apologize for that. I – I will remedy those, so I apologize for that."

u. Respondent's statements about relying on a legal intern were not true.

Stipulation to Discipline, People v. Crabill, Colo. 23PDJ067

Lawyer for Michael Cohen apparently cited nonexistent cases, judge says; new counsel pointed out problem

BY DEBRA CASSENS WEISS

DECEMBER 13, 2023, 3:21 PM CST

Michael Cohen, who was once a lawyer for former President Donald Trump, exits the courtroom of Trump's civil business fraud trial at the New York Supreme Court in New York in October. Photo by Yuki Iwamura/The Associated Press.

A lawyer representing former lawyer Michael Cohen in a bid to end supervised release, David M. Schwartz, is facing possible sanctions following an unusual footnote by a new counsel who joined the case.

The new counsel, E. Danya Perry, informed U.S. District Judge Jesse Furman of the Southern District of New York in a footnote that she was unable to verify three cases cited by Schwartz, a lawyer with Gerstman Schwartz, in a legal brief.

In a Dec. 12 order to show cause, Furman said he checked also, and "as far as the court can tell, none of these cases exist."

Model Rule 1.5 – Fees

"(a) A lawyer shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses. . . .

(b) The scope of the representation and the basis or rate of the fee and expenses for which the client will be responsible shall be communicated to the client, preferably in writing, before or within a reasonable time after commencing the representation, except when the lawyer will charge a regularly represented client on the same basis or rate. Any changes in the basis or rate of the fee or expenses shall also be communicated to the client."

Fla. Proposed Advisory Opinion 24-1 – Legal Fees and Costs

- 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 context of generative AI, a lawyer is required to inform the client, preferably in writing, of the lawyer's intent to charge the client the actual cost of using generative AI.

Fla. Proposed Advisory Opinion 24-1 – Legal Fees and Costs

- 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.

- 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.

Bias

Model Rule 8.4(g): "It is professional misconduct for a lawyer to: . . . engage in conduct that the lawyer knows or reasonably should know is harassment or discrimination on the basis of race, sex, religion, national origin, ethnicity, disability, age, sexual orientation, gender identity, marital status or socioeconomic status in conduct related to the practice of law."

Bias

"Another issue is reliability or bias. While attorneys swear an oath to set aside their personal prejudices, biases, and beliefs to faithfully uphold the law and represent their clients, generative artificial intelligence is the product of programming devised by humans who did not have to swear such an oath. . . . [S]uch programs act according to computer code rather than conviction, based on programming rather than principle."

United States District Court, N.D. Tex., Judge Brantley Starr, Mandatory Certification Regarding Generative Artificial Intelligence

Professional Judgment

Model Rule 2.1: "In representing a client, a lawyer shall exercise independent professional judgment and render candid advice."

Professional Judgment

"If the lawyer, in the exercise of his or her professional legal judgment, believes that the client is best served by the use of technology (e.g., ChatGPT, Google Bard, Bing AI Chat, or generative artificial intelligence services), then the lawyer is cautioned that certain technologies may produce factually or legally inaccurate content and should never replace the lawyer's most important asset – the exercise of independent legal judgment."

United States District Court, E.D. Tex., Local Rule AT-3(m) (Standards of Practice to be Observed by Attorneys)