

## Using ChatGPT in Our Practices: Ethical Considerations

As ChatGPT takes the world by storm, lawyers have started to experiment with using it (and other artificial intelligence) in their practices. But how does this growing practice implicate your duties to your clients under the rules of professional conduct?

Here are some things to keep in mind as you explore this new technology.

### 1. Duty of Communication & Client's Authority

Let the client decide whether you'll use ChatGPT. Under [rule 1.2](#), and [rule 1.4](#), we have a duty to consult with clients about how we are going to achieve their goals and to let them make informed decisions about the representation. Since AI is a new tool, clients may be interested or concerned about its use on their case.

**Our advice:** Tell the client that you would like to use AI in their case. Explain the benefits and risks. And let them make the ultimate decision.

### 2. Duty of Confidentiality

Be careful what you tell ChatGPT. Under [rule 1.6](#), lawyers must not reveal information related to the representation of a client. This includes revealing information to AI.

Were there any doubt, ChatGPT expressly and repeatedly warns its users that it is sharing the information we input. There is a warning in its [terms of use](#) (paragraph 3(c)), its [FAQ](#) (number 8), and even in a pop-up that appears when you first use the program:

#### How we collect data



Conversations may be reviewed by our AI trainers to improve our systems.



Please don't share any sensitive information in your conversations.

**Our advice:** Share with AI only the information you would share with anyone else, omitting names and other identifying information.

### **3. Reasonableness of Fees**

Be honest about your time. Under [rule 1.5](#), a lawyer's fee must be reasonable in light of (among other factors) the time it took to perform the work. But the factors also contemplate "the fee customarily charged in the locality for similar legal services." So if AI performs the work in a fraction of the time it would have taken you to accomplish the same task, how much should you bill the client?

We encountered a similar scenario when lawyers switched from using the bound reporters to electronic legal databases. As the research time shortened, so did our bills for legal research. The same is true here.

**Our advice:** Charge the client only for the time you spent using AI, *not* the time it would have taken you to do the work AI did for you.

### **4. Duty of Competence & Supervision**

Check "your" work! Under [rule 1.1](#), we have a duty to provide "competent representation" to our clients. And under [rule 5.3](#), we have a duty to supervise nonlawyer assistance, including services like AI. Together, these rules require that we ensure any services we use—including AI—are compatible with our professional obligations, including our duty of competence.

But we've all heard the horror stories. AI is good at [fabricating responses](#) that look legitimate to lawyers—and even when the lawyer asks ChatGPT to verify that the cases are real. And in another pop-up that appears when you first use the program, ChatGPT itself warns users that it is sometimes wrong:

**This is a free research preview.**



Our goal is to get external feedback in order to improve our systems and make them safer.



While we have safeguards in place, the system may occasionally generate incorrect or misleading information and produce offensive or biased content. It is not intended to give advice.

As a test, we asked ChatGPT whether using ChatGPT to perform legal work complied with the Utah Rules of Professional Conduct. Its answer was good – it caught the ethical implications concerning communication, competence, and confidentiality. But it did not catch the supervision or fees issues. And it suggested that the use of AI might be the unauthorized practice of law, a proposition that is intriguing but not accurate.

<p><b>Our advice:</b> Treat AI-generated results like a draft from a law clerk. Check any propositions or citations that you're not 100% sure about.</p>
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