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TODAY'S AGENDA



Carrier Perspective

AI AS A TOOL, AND NOT A DECISION MAKER

HUMAN EXPERTISE REMAINS ESSENTIAL

How Claims Professionals Are Using AI

- Develop claim chronologies and timelines
- Identify key facts, dates, and technical terminology
- Summarize complex environmental reports
- Organize large volumes of claim documentation
- Draft routine claim summaries and management reports



Questions I Ask Before Using AI

✓ Can AI help perform this task more efficiently?
✓ Does it improve the outcome?
✓ Is it *responsible* and *appropriate* to use AI for this task?

ETHICAL RISKS FOR INSURANCE PROFESSIONALS

CONFIDENTIALITY (Sensitive Claim Information)

↓

ACCURACY (Verify AI Output)

↓

TRANSPARENCY (Explainable Decisions)

↓

POOR AI GOVERNANCE (Oversight & Monitoring)

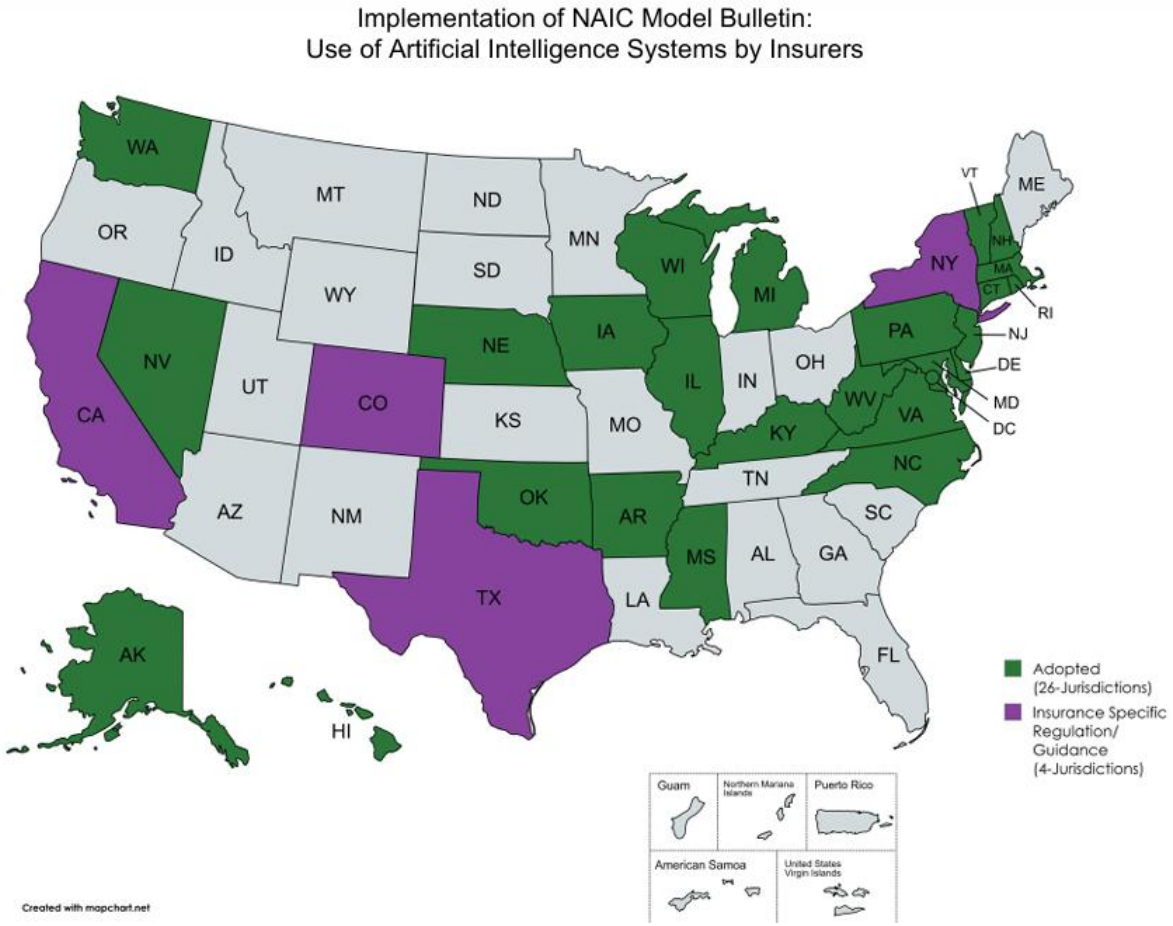
⬇

BAD FAITH & REGULATORY EXPOSURE

My Personal Guardrails

- ❌ Coverage Determinations
- ❌ Coverage Position Letters
- ❌ Claim Notes
- ✅ Organizing Information
- ✅ Summarization
- ✅ Productivity Assistance

INSURANCE-SIDE COMPLEXITY: NAIC MODEL BULLETIN: USE OF ARTIFICIAL INTELLIGENCE SYSTEMS BY INSURERS



24 states, plus DC have adopted the NAIC Model Bulletin on AI use by insurers

This creates a separate compliance layer for insurance work, *apart* from the state bar ethics rules.

NAIC Model Bulletin Requirements:

- Governance frameworks and written AI programs
- Bias prevention testing and disparate impact monitoring
- Clear documentation of AI decision-making processes
- Unfair claims settlement prevention protocols

- **The other 26 states are still developing rules**
- **Multi-state matters create exposure in both tiers**

*there are 56 NAIC jurisdictions

NAIC MODEL BULLETIN

Regulatory Focus is Shifting From Guidance → Examination & Enforcement Readiness.

- The **Model Bulletin on AI use by Insurers** is a guiding framework to ensure AI use complies with existing state insurance laws

- NAIC Model Bulletin Requirements:
  - ✓ Governance
  - ✓ Documentation & explainability
  - ✓ Bias prevention and monitoring
  - ✓ Fair Claims practices

- Adopted in 2023, the NAIC Model Bulletin covers marketing, underwriting, pricing and claims

AI CAN ASSIST CLAIMS PROFESSIONALS, BUT INSURERS REMAIN ACCOUNTABLE FOR EVERY CLAIM DECISION



Estate of Gene B. Lokken v. UnitedHealth Group, Inc., No. 23-cv-3514 (D. Minn. 2023) federal class action alleging inappropriate reliance on AI-assisted coverage determinations

Ethics

ETHICAL COMPLIANCE BASELINE: ABA OPINION 512

ABA Formal Opinion 512 (July 2024) [1]

Rule 1.1 - Competence:
Understand how your tools work

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."

- Lawyers cannot replace the judgment and experience necessary to competently advise clients about engagements or to draft the legal documents or arguments required to carry out representations)

Rule 1.6 - Confidentiality:
Client's data must be adequately protected in cloud tools

Secure *Informed Consent* by explaining why use the GAI tool, extent and risk of use, including potential disclosure and risk that information is used again client and benefits of use.

Disclosure Risks - Disclosure outside or the firm and disclosure inside the firm that could inadvertently lead to disclosure outside the firm. Lawyer A input client information in tool. In response to Lawyer B query, GAI tool used information from Lawyer A to generate response.

Rule 1.4 - Communication:
Clients should know when AI is being used

Rule 1.4(a)(2) A lawyer shall "reasonably consult with the client about the means by which the client's objectives are to be accomplished.

Beyond when client asks, if GAI will influence a significant decision in the representation, *e.g.*, outcome probability or jury selection

ETHICAL COMPLIANCE BASELINE: ABA OPINION 512

ABA Formal Opinion 512 (July 2024)

Rule 3.14 Meritorious Claims and Contentions: Facts versus fabricated fictions

"[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."

- Watch out for hallucinations influencing case framing!

Rule 3.3 and 8.4(c) Candor to Tribunals: Verify all citations and factual representations

A lawyer shall not engage in "conduct involving dishonesty, fraud, deceit or misrepresentation."

- Lawyers have a duty to the tribunal to review GAI-generated content before submitting it, including any analysis and legal citations, and to correct errors such as misstatements of law or fact, omissions of controlling authority, and misleading arguments.

ETHICAL COMPLIANCE BASELINE: ABA OPINION 512

ABA Formal Opinion 512 (July 2024)

Rules 5.1 and 5.3 Supervision: Human review of GAI output is required

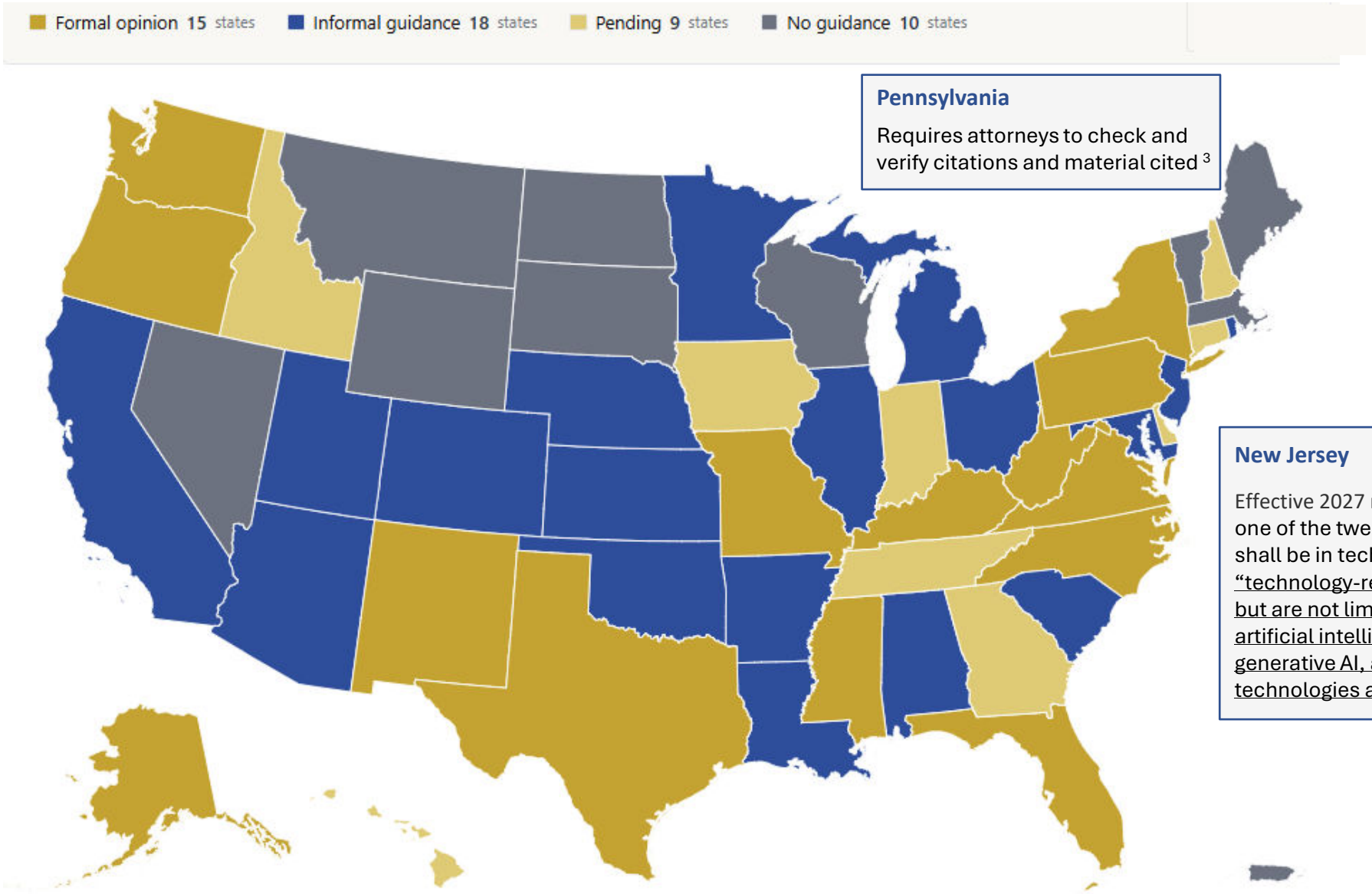
- Rule 5.1 - Responsibilities of Partners, Managers, and Supervisory Lawyers
- Rule 5.3 - Nonlawyer Assistance
- Managing attorneys must establish policies regarding firm use of GAI, including training on tool basis, capabilities, limitations, ethical issues present and ethics of use and disclosure risks.
- Nonlawyer supervision may require reference checks, vendor credential, vendor security policies, confidentiality agreements.
  - Tool mechanics – ensure nonlawyer GAI tool configured to ensure confidentiality and security of information, breach notification, investigate security measures and data retention, any claim to proprietary rights to the information, cyber attack vulnerability.

Rule 1.5 – Fees: Charge fairly for actual time spent [2]

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

- Hourly Engagements - GAI offers increased efficiency, but only bill for actual time. Input and review, not an estimation of how much time it would take without GAI
- Fixed / Contingent – "A fee charged for which little or no work was performed is an unreasonable fee."
- Expense – Should GAI be overhead subsumed within hourly fee or charge actual cost without markup (stand alone or embedded). If firm has made a significant investment in a proprietary system, agree with client in advance for per use charge. 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"
- May not charge for training time, unless a client requests a specific tool (seek consent to bill for training)

THE STATE FRAGMENTATION PROBLEM – 30 MORE RULES



Pennsylvania

Requires attorneys to check and verify citations and material cited [3]

New Jersey

Effective 2027 reporting period "At least one of the twenty-four hours of credit shall be in technology-related subjects." "technology-related subjects" include, but are not limited to, developments in artificial intelligence (AI), including generative AI, and other emerging technologies affecting legal practice. [4]

THE COURT PATCHWORK: SAME ENGAGEMENT, BUT DIFFERENT RULES

Northern District of Texas Local Civil Rule 7.2(f)
Must Disclose on the first page of Appearance.
May need to identify AI-assisted or generated sections, if ordered.

Eastern District of Pennsylvania, Judge Baylson Standing Civil Order.
Must disclose AND certify that every citation verified for accuracy.

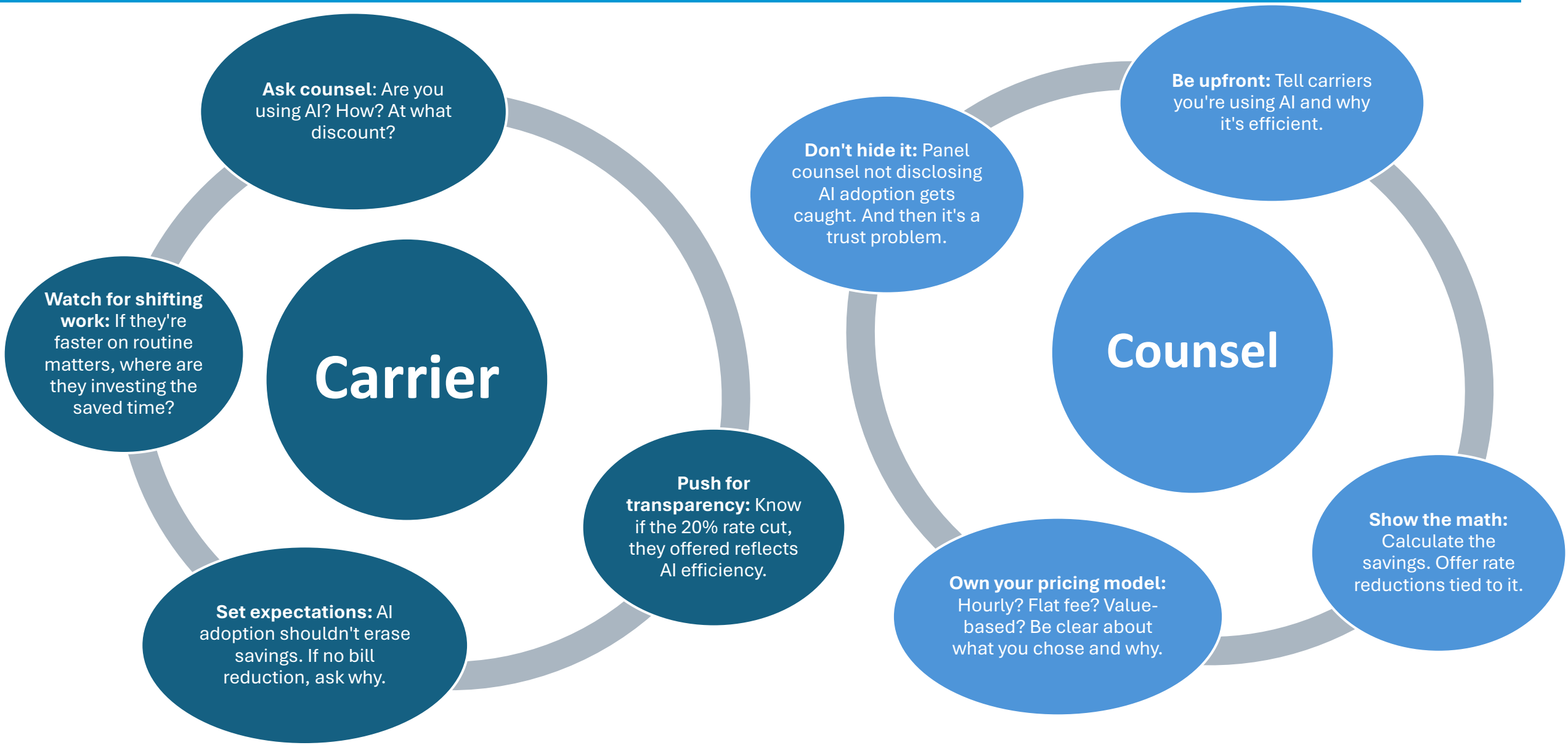
Hon. Michael Newman, USDC Ohio, Southern District of Ohio, Standing Order Governing Civil Cases.
No attorney for a party, or a *pro se* party, may use Artificial Intelligence ("AI") in the preparation of any filing submitted to the Court.



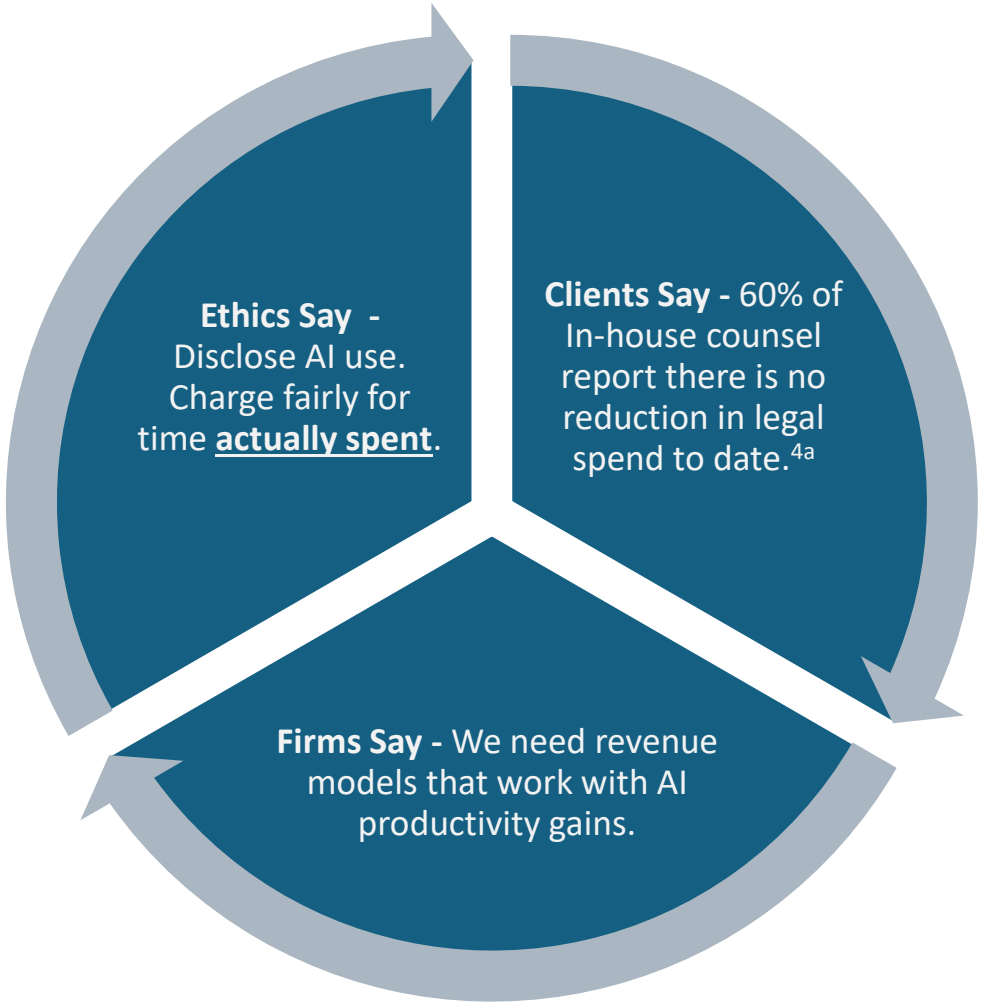
Fifth Circuit Court of Appeals.
Considered special rule for AI use and declined to adopt.

"Parties and counsel are reminded of their duties regarding their filings before the court under Federal Rule of Appellate Procedure 46(b)(1)(B)."

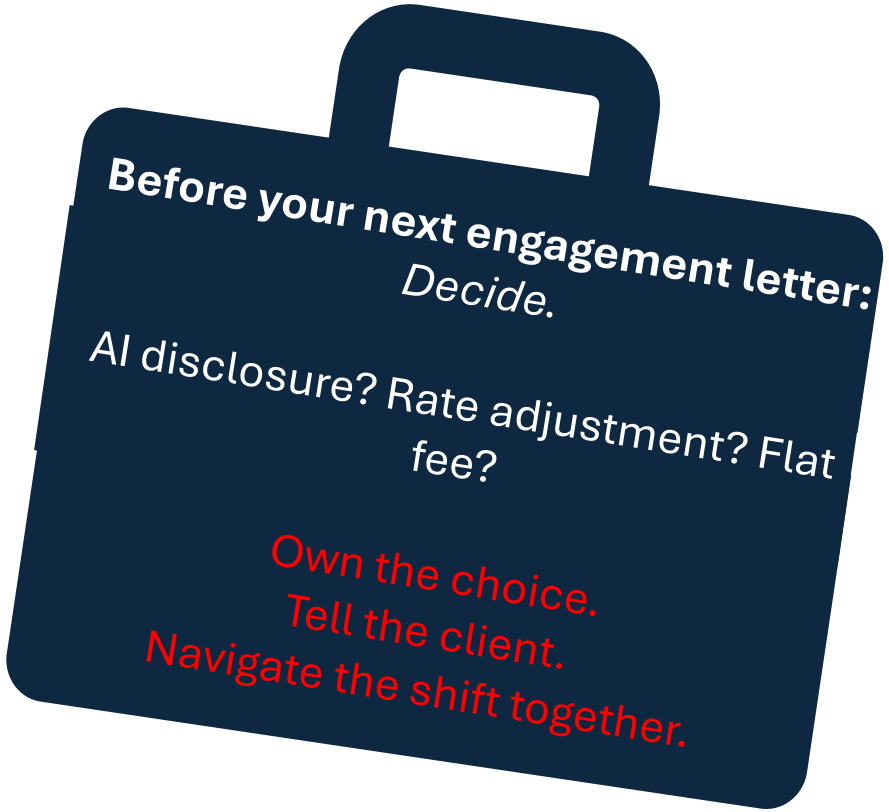
WHAT DOES AI ADOPTION MEAN: CARRIERS AND COUNSEL



THE REAL QUESTION



AI made legal work faster and more efficient.
Now: are you passing the savings on or are you keeping them?



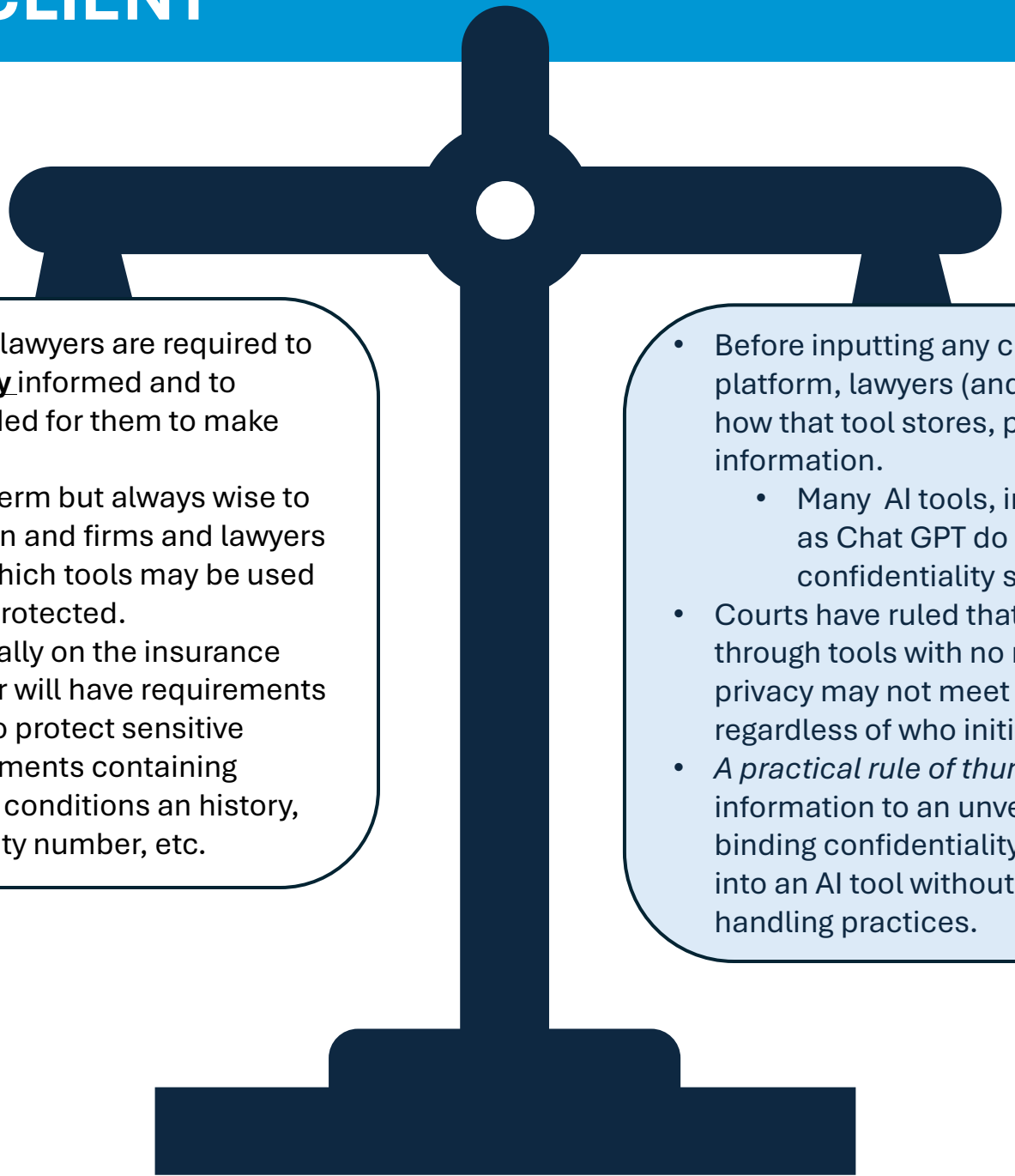
Attorney Perspective

What Do Professional Ethics Rules Actually Require When Using AI?

- According to the latest *Legal Trends Report*, 79% of legal professionals now use AI in their firms.
- For lawyers in daily practice, AI covers specific obligations that govern competence, confidentiality, supervision, and candor.
- It is important to note that using AI does not rid of one's ethical obligation. Rather, lawyers as individuals and firms (big or small) need to incorporate ethical obligations into the use of AI regardless of how regular the AI usage may be.



DUTIES TO CLIENT



- Embedded in Rule 1.4: lawyers are required to keep clients **reasonably** informed and to explain matters as needed for them to make informed decisions.
- Reasonably is a vague term but always wise to err on the side of caution and firms and lawyers should inform clients which tools may be used and how client data is protected.
- Often times and especially on the insurance defense side, the carrier will have requirements and protocols on how to protect sensitive materials such as documents containing information on medical conditions an history, wage loss, social security number, etc.

- Before inputting any client data into an AI platform, lawyers (and firms)must understand how that tool stores, processes, and shares information.
  - Many AI tools, including free platforms such as Chat GPT do not have legal confidentiality standards in place.
- Courts have ruled that communications made through tools with no reasonable expectation of privacy may not meet the duty of confidentiality, regardless of who initiated them.
- *A practical rule of thumb:* if you wouldn't email the information to an unvetted third party without a binding confidentiality agreement, don't enter it into an AI tool without first understanding its data handling practices.

CARE AND CAUTION

AI identifies common patterns and algorithms but does not understand why a standard legal approach might fail a client's unique, specific circumstances.

Lawyers have a duty not to make false statements of law or fact to a court. Submitting AI-generated legal research without verification, including citations that may be fabricated, can directly violate this rule and will be sanctioned.

AI is a great tool to increase productivity and efficiency; however, legal analysis and writing are often skills that cannot be duplicated.

Courts are increasingly requiring lawyers to certify their AI use in filings. What's required varies by jurisdiction and is evolving quickly, so always check local rules before filing.

Use AI as a tool not a crutch.

Compliance

GUIDING PRINCIPLES FOR AI USE

AI should augment professional judgment, not replace it

- In legal and claims environments, the ultimate responsibility for advice, coverage determinations, reserves, litigation strategy, claim denials, and regulatory compliance must remain with us – the qualified professionals.
  - Recent regulatory developments are increasingly reinforcing this expectation, particularly around claim denials and adverse actions.
- Treat AI output like a junior analyst's first draft. Verification is key.


New Jersey bill targets AI-powered insurance claim denials

The algorithm can help, but a human would have to pull the trigger on denials

CONSIDERATIONS FOR RESPONSIBLE AI ADOPTION –

Keep humans accountable for final decisions.

AI can assist with:

- Document review
- Claim triage
- Chronology creation
- Discovery support
- Coverage comparisons
- Regulatory research *(set parameters!)*
- Summarization of large records

However, AI should **not independently**:

- Deny claims
- Set reserves without review
- Render legal opinions
- Determine liability
- Make coverage determinations
- Approve litigation strategies

CONSIDERATIONS FOR RESPONSIBLE AI ADOPTION –

Require Transparency and Explainability.

For any AI-assisted conclusion, users should be able to answer:

- What information was analyzed?
- What AI tool was used?
- How was the recommendation generated?
- What independent review occurred?
- Why was the ultimate decision made?

If a decision cannot be explained to a judge, regulator, insured, claimant, or jury, you should not rely on it.

CONSIDERATIONS FOR RESPONSIBLE AI ADOPTION –

Organizational Structure and Governance

To build a robust and defensible AI use strategy:

- Establish an AI Governance team or committee with cross-functional representation.
- Develop a written policy on AI use – what is acceptable, and perhaps more importantly, what is not.
- Once an AI platform is selected, test for – biases, inconsistent recommendations and disparate impacts. Re-test as needed.
- Maintain documentation that is audit-proof – documenting inputs, prompts, outputs, adjustments – and where humans touched the process.

CONSIDERATIONS FOR RESPONSIBLE AI ADOPTION –

Don’t Be Outsmarted By AI

It’s not about AI taking over and causing a collapse of modern society.

To be fair, that is a risk. But for us, today, we can effectively manage when we remember:

- Inherent risk when we become overly reliant on AI recommendations – when we stop exercising independent judgement.
- Human-verified outputs (or lack thereof) can make or break a claim, a case, or an organization.
    - Standard tools and training should be provided to all AI users to assure consistency in output with meeting confidentiality obligations and ethical responsibilities.

Virginia – Corporate Perspective

JUGGLING RESPONSIBILITIES

To Be Determined







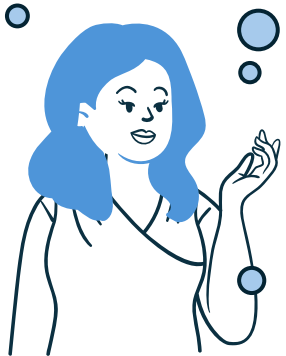
EU AI Act

Effective August 1, 2024

Client of Law Firms

Manager of an Internal Legal Department

Lawyer



Legal/Compliance Head for an Organization Using GenAI

Wrap Up:
Questions and Discussion

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QUESTIONS

THANK YOU

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Legal Disclaimer

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SOURCES

1 - American Bar Association (ABA) Standing Committee on Ethics and Professional Responsibility, Formal Opinion 512, "Generative Artificial Intelligence Tools" (July 29, 2024), *available at* https://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/ethics-opinions/aba-formal-opinion-512.pdf.

2 - *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).

3 – *Pa. Bar Ass'n Comm. on Legal Ethics & Pro. Resp. & Phila. Bar Ass'n Pro. Guidance Comm.*, Joint Formal Op. 2024-200 on Ethical Issues Regarding the Use of A.I." (July 29, 2024), *available at* *https://pba-documents.azurewebsites.net/api/GetDocument?file-id=46b75158-9813-4f63-8770-2069a6543412*

4 – Notice and Order – Continuing Legal Education – Amendments to Court Rule (R. 1:42-1) and to CLE Regulations (Regulations 103:1 and 201:1) to Add Technology-Related Subjects as a New CLE Requirement, available at "https://www.njcourts.gov/notices/notice-and-order-continuing-legal-education-amendments-court-rule-r-142-1-and-cle

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5 – https://blog.ipleaders.in/wp-content/uploads/2021/08/ethical-legal-symbol-businessman-hand-260nw-1886346529-1.jpg