

# **The Wrath of AI**

## **AI Will Never Replace Human Lawyers and Judges... Will It?**

**The Anthony M. Kennedy American Inn of Court  
Team 6**

**Select Legal Authorities**

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# CALIFORNIA RULES OF PROFESSIONAL CONDUCT

## Rule 1.1 Competence:

- (a) A lawyer shall not intentionally, recklessly, with gross negligence, or repeatedly fail to perform legal services with competence.

## Rule 1.3 Diligence:

- (a) A lawyer shall not intentionally, repeatedly, recklessly or with gross negligence fail to act with reasonable diligence in representing a client.
- (b) For purposes of this rule, “reasonable diligence” shall mean that a lawyer acts with commitment and dedication to the interests of the client and does not neglect or disregard, or unduly delay a legal matter entrusted to the lawyer.

## Rule 2.1 Advisor:

In representing a client, a lawyer shall exercise independent professional judgment and render candid advice.

### **Comment**

[1] A lawyer ordinarily has no duty to initiate investigation of a client’s affairs or to give advice that the client has indicated is unwanted, but a lawyer may initiate advice to a client when doing so appears to be in the client’s interest.

[2] This rule does not preclude a lawyer who renders advice from referring to considerations other than the law, such as moral, economic, social and political factors that may be relevant to the client’s situation.

## Rule 3.3 Candor Towards the Tribunal:

(a) A lawyer shall not:

- (1) knowingly\* make a false statement of 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;
- (2) fail to disclose to the tribunal\* legal authority in the controlling jurisdiction known\* to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel, or knowingly\* misquote to a tribunal\* the language of a book, statute, decision or other authority; or
- (3) offer evidence that the lawyer knows\* to be false. If a lawyer, the lawyer’s client, or a witness called by the lawyer, has offered material evidence, and the lawyer comes to know\* of its falsity, the lawyer shall take reasonable\* remedial measures, including, if necessary, disclosure to the tribunal,\* unless disclosure is prohibited by Business and Professions Code section

6068, subdivision (e) and rule 1.6. A lawyer may refuse to offer evidence, other than the testimony of a defendant in a criminal matter, that the lawyer reasonably believes\* is false.

- (b) A lawyer who represents a client in a proceeding before a tribunal\* and who knows\* that a person\* intends to engage, is engaging or has engaged in criminal or fraudulent\* conduct related to the proceeding shall take reasonable\* remedial measures to the extent permitted by Business and Professions Code section 6068, subdivision (e) and rule 1.6.
- (c) The duties stated in paragraphs (a) and (b) continue to the conclusion of the proceeding.
- (d) In an ex parte proceeding where notice to the opposing party in the proceeding is not required or given and the opposing party is not present, a lawyer shall inform the tribunal\* of all material facts known\* to the lawyer that will enable the tribunal\* to make an informed decision, whether or not the facts are adverse to the position of the client.

### **Comment**

[1] This rule governs the conduct of a lawyer in proceedings of a tribunal,\* including ancillary proceedings such as a deposition conducted pursuant to a tribunal's\* authority. See rule 1.0.1(m) for the definition of "tribunal."

[2] The prohibition in paragraph (a)(1) against making false statements of law or failing to correct a material misstatement of law includes citing as authority a decision that has been overruled or a statute that has been repealed or declared unconstitutional, or failing to correct such a citation previously made to the tribunal\* by the lawyer.

### *Legal Argument*

[3] Legal authority in the controlling jurisdiction may include legal authority outside the jurisdiction in which the tribunal\* sits, such as a federal statute or case that is determinative of an issue in a state court proceeding or a Supreme Court decision that is binding on a lower court.

[4] The duties stated in paragraphs (a) and (b) apply to all lawyers, including defense counsel in criminal cases. If a lawyer knows\* that a client intends to testify falsely or wants the lawyer to introduce false evidence, the lawyer should seek to persuade the client that the evidence should not be offered and, if unsuccessful, must refuse to offer the false evidence. If a criminal defendant insists on testifying, and the lawyer knows\* that the testimony will be false, the lawyer may offer the testimony in a narrative form if the lawyer made reasonable\* efforts to dissuade the client from the unlawful course of conduct and the lawyer has sought permission from the court to withdraw as required by rule 1.16. (See, e.g., *People v. Johnson* (1998) 62 Cal.App.4th 608 [72 Cal.Rptr.2d 805]; *People v. Jennings* (1999) 70 Cal.App.4th 899 [83 Cal.Rptr.2d 33].) The obligations of a lawyer under these rules and the State Bar Act are subordinate to applicable constitutional provisions.

### *Remedial Measures*

[5] Reasonable\* remedial measures under paragraphs (a)(3) and (b) refer to measures that are available under these rules and the State Bar Act, and which a reasonable\* lawyer would consider appropriate under the circumstances to comply with the lawyer's duty of candor to the tribunal.\* (See, e.g., rules 1.2.1, 1.4(a)(4), 1.16(a), 8.4; Bus. & Prof. Code, §§ 6068, subd. (d), 6128.) Remedial measures also include explaining to the client the lawyer's obligations under this rule and, where applicable, the reasons for the lawyer's decision to seek permission from the tribunal\* to withdraw, and remonstrating further with the client to take corrective action that would eliminate the need for the lawyer to withdraw. If the client is an organization, the lawyer should also consider the provisions of rule 1.13. Remedial measures do not include disclosure of client confidential information, which the lawyer is required to protect under Business and Professions Code section 6068, subdivision (e) and rule 1.6.

## **THE STATE BAR OF CALIFORNIA STANDING COMMITTEE ON PROFESSIONAL RESPONSIBILITY AND CONDUCT**

### **PRACTICAL GUIDANCE FOR THE USE OF GENERATIVE ARTIFICIAL INTELLIGENCE IN THE PRACTICE OF LAW**

#### **EXECUTIVE SUMMARY**

Generative AI is a tool that has wide-ranging application for the practice of law and administrative functions of the legal practice for all licensees, regardless of firm size, and all practice areas. Like any technology, generative AI must be used in a manner that conforms to a lawyer's professional responsibility obligations, including those set forth in the Rules of Professional Conduct and the State Bar Act. A lawyer should understand the risks and benefits of the technology used in connection with providing legal services. How these obligations apply will depend on a host of factors, including the client, the matter, the practice area, the firm size, and the tools themselves, ranging from free and readily available to custom-built, proprietary formats.

Generative AI use presents unique challenges; it uses large volumes of data, there are many competing AI models and products, and, even for those who create generative AI products, there is a lack of clarity as to how it works. In addition, generative AI poses the risk of encouraging greater reliance and trust on its outputs because of its purpose to generate responses and its ability to do so in a manner that projects confidence and effectively emulates human responses. A lawyer should consider these and other risks before using generative AI in providing legal services.

The following Practical Guidance is based on current professional responsibility obligations for lawyers and demonstrates how to behave consistently with such obligations. While this guidance is intended to address issues and concerns with the use of generative AI and products that use generative AI as a component of a larger product, it may apply to other technologies, including more established applications of AI. This Practical Guidance should be read as guiding principles rather than as "best practices."

## PRACTICAL GUIDANCE

Applicable Authorities	Practical Guidance
<p><b>Duty of Confidentiality</b>  <a href="#">Bus. &amp; Prof. Code, § 6068,</a>  <a href="#">subd. (e) Rule 1.6</a>  <a href="#">Rule 1.8.2</a></p>	<p>Generative AI products are able to utilize the information that is input, including prompts and uploaded documents or resources, to train the AI, and might also share the query with third parties or use it for other purposes. Even if the product does not utilize or share inputted information, it may lack reasonable or adequate security.</p> <p>A lawyer must not input any confidential information of the client into any generative AI solution that lacks adequate confidentiality and security protections. A lawyer must anonymize client information and avoid entering details that can be used to identify the client.</p> <p>A lawyer or law firm should consult with IT professionals or cybersecurity experts to ensure that any AI system in which a lawyer would input confidential client information adheres to stringent security, confidentiality, and data retention protocols.</p> <p>A lawyer should review the Terms of Use or other information to determine how the product utilizes inputs. A lawyer who intends to use confidential information in a generative AI product should ensure that the provider does not share inputted information with third parties or utilize the information for its own use in any manner, including to train or improve its product.</p>
<p><b>Duties of Competence and Diligence</b>  <a href="#">Rule 1.1</a>  <a href="#">Rule 1.3</a></p>	<p>It is possible that generative AI outputs could include information that is false, inaccurate, or biased.</p> <p>A lawyer must ensure competent use of the technology, including the associated benefits and risks, and apply diligence and prudence with respect to facts and law.</p> <p>Before using generative AI, a lawyer should understand to a reasonable degree how the technology works, its limitations, and the applicable terms of use and other policies governing the use and exploitation of client data by the product.</p> <p>Overreliance on AI tools is inconsistent with the active practice of law and application of trained judgment by the lawyer.</p> <p>AI-generated outputs can be used as a starting point but must be carefully scrutinized. They should be critically analyzed for</p>

Applicable Authorities	Practical Guidance
	<p>accuracy and bias, supplemented, and improved, if necessary. A lawyer must critically review, validate, and correct both the input and the output of generative AI to ensure the content accurately reflects and supports the interests and priorities of the client in the matter at hand, including as part of advocacy for the client. The duty of competence requires more than the mere detection and elimination of false AI-generated results.</p> <p>A lawyer’s professional judgment cannot be delegated to generative AI and remains the lawyer’s responsibility at all times. A lawyer should take steps to avoid over-reliance on generative AI to such a degree that it hinders critical attorney analysis fostered by traditional research and writing. For example, a lawyer may supplement any AI-generated research with human-performed research and supplement any AI-generated argument with critical, human-performed analysis and review of authorities.</p>
<p><b>Duty to Comply with the Law</b></p> <p><a href="#">Bus. &amp; Prof. Code, § 6068(a)</a></p> <p><a href="#">Rule 8.4</a></p> <p><a href="#">Rule 1.2.1</a></p>	<p>A lawyer must comply with the law and cannot counsel a client to engage, or assist a client in conduct that the lawyer knows is a violation of any law, rule, or ruling of a tribunal when using generative AI tools.</p> <p>There are many relevant and applicable legal issues surrounding generative AI, including but not limited to compliance with AI-specific laws, privacy laws, cross-border data transfer laws, intellectual property laws, and cybersecurity concerns. A lawyer should analyze the relevant laws and regulations applicable to the attorney or the client.</p>
<p><b>Duty to Supervise Lawyers and Nonlawyers, Responsibilities of Subordinate Lawyers</b></p> <p><a href="#">Rule 5.1</a></p> <p><a href="#">Rule 5.2</a></p> <p><a href="#">Rule 5.3</a></p>	<p>Managerial and supervisory lawyers should establish clear policies regarding the permissible uses of generative AI and make reasonable efforts to ensure that the firm adopts measures that give reasonable assurance that the firm’s lawyers and non lawyers’ conduct complies with their professional obligations when using generative AI. This includes providing training on the ethical and practical aspects, and pitfalls, of any generative AI use.</p> <p>A subordinate lawyer must not use generative AI at the direction of a supervisory lawyer in a manner that violates the subordinate lawyer’s professional responsibility and obligations.</p>

Applicable Authorities	Practical Guidance
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<p><b>Communication Regarding Generative AI Use</b></p> <p><a href="#">Rule 1.4</a></p> <p><a href="#">Rule 1.2</a></p>	<p>A lawyer should evaluate their communication obligations throughout the representation based on the facts and circumstances, including the novelty of the technology, risks associated with generative AI use, scope of the representation, and sophistication of the client.</p> <p>The lawyer should consider disclosure to their client that they intend to use generative AI in the representation, including how the technology will be used, and the benefits and risks of such use.</p> <p>A lawyer should review any applicable client instructions or guidelines that may restrict or limit the use of generative AI.</p>
<p><b>Charging for Work Produced by Generative AI and Generative AI Costs</b></p> <p><a href="#">Rule 1.5</a></p> <p>Bus. &amp; Prof. Code, §§ <a href="#">6147</a>–<a href="#">6148</a></p>	<p>A lawyer may use generative AI to more efficiently create work product and may charge for actual time spent (e.g., crafting or refining generative AI inputs and prompts, or reviewing and editing generative AI outputs). A lawyer must not charge hourly fees for the time saved by using generative AI.</p> <p>Costs associated with generative AI may be charged to the clients in compliance with applicable law.</p> <p>A fee agreement should explain the basis for all fees and costs, including those associated with the use of generative AI.</p>
<p><b>Candor to the Tribunal; and Meritorious Claims and Contentions</b></p> <p><a href="#">Rule 3.1</a></p> <p><a href="#">Rule 3.3</a></p>	<p>A lawyer must review all generative AI outputs, including, but not limited to, analysis and citations to authority for accuracy before submission to the court, and correct any errors or misleading statements made to the court.</p> <p>A lawyer should also check for any rules, orders, or other requirements in the relevant jurisdiction that may necessitate the disclosure of the use of generative AI.</p>
<p><b>Prohibition on Discrimination, Harassment, and Retaliation</b></p> <p><a href="#">Rule 8.4.1</a></p>	<p>Some generative AI is trained on biased information, and a lawyer should be aware of possible biases and the risks they may create when using generative AI (e.g., to screen potential clients or employees).</p> <p>Lawyers should engage in continuous learning about AI biases and their implications in legal practice, and firms should establish policies and mechanisms to identify, report, and address potential AI biases.</p>
<p><b>Applicable Authorities</b></p>	<p><b>Practical Guidance</b></p>

<b>Professional Responsibilities Owed to Other Jurisdictions</b> <a href="#">Rule 8.5</a>	A lawyer should analyze the relevant laws and regulations of each jurisdiction in which a lawyer is licensed to ensure compliance with such rules.
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**CALIFORNIA CODE OF JUDICIAL ETHICS**

CANON 3 – A JUDGE SHALL PERFORM THE DUTIES OF JUDICIAL OFFICE IMPARTIALLY, COMPETENTLY, AND DILIGENTLY

A. Judicial Duties in General

All of the judicial duties prescribed by law shall take precedence over all other activities of every judge. In the performance of these duties, these standards apply.

B. Adjudicative Responsibilities

- (1) A judge shall hear and decide all matters assigned to the judge except those in which he or she is disqualified.
- (2) A judge shall be faithful to the law regardless of partisan interests, public clamor, or fear of criticism, and shall maintain professional competence in the law.
- (3) A judge shall require order and decorum in proceedings before the judge.
- (4) A judge shall be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others with whom the judge deals in an official capacity, and shall require similar conduct of lawyers and of all staff and court personnel under the judge’s direction and control.
- (5) A judge shall perform judicial duties without bias or prejudice. A judge shall not, in the performance of judicial duties, engage in speech, gestures, or other conduct that would reasonably be perceived as (a) bias, prejudice, or harassment based upon race, sex, gender, gender identity, gender expression, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation, or (b) sexual harassment.
- (6) A judge shall require lawyers in proceedings before the judge to refrain from (a) manifesting, by words or conduct, bias, prejudice, or harassment based upon race, sex, gender, gender identity, gender expression, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation, or (b) sexual harassment against parties, witnesses, counsel, or others. This canon does not preclude legitimate advocacy when race, sex, gender, gender identity, gender expression, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, political affiliation, or other similar factors are issues in the proceeding.
- ...
- (8) A judge shall dispose of all judicial matters fairly, promptly, and efficiently. A judge shall manage the courtroom in a manner that provides all litigants the opportunity to have their matters fairly adjudicated in accordance with the law.

**LEGISLATION**

California Senate Bill 574 (2025-2026 Leg.), Generative Artificial Intelligence: Attorneys and Arbitrators

Existing law, the State Bar Act, provides for the licensure and regulation of attorneys by the State Bar of California, a public corporation. The act requires an attorney to strictly maintain client confidences and to preserve client secrets at their own peril.

This bill would obligate an attorney who uses generative artificial intelligence to practice law to ensure that confidential personal identifying, or other nonpublic information, is not entered into a public generative artificial intelligence system. The bill would also require an attorney to ensure that reasonable steps are taken to verify the accuracy of generative artificial intelligence material and to correct any erroneous or hallucinated output in any material used by the attorney.

Existing law requires every pleading, petition, written notice of motion, or other similar paper to be signed by the attorney of record, or if a party is unrepresented, by the party, thereby certifying to the best of the person's knowledge, information, and belief that it is not being presented primarily for an improper purpose and that the claims, defenses, and legal and factual contentions are warranted, as specified.

This bill would prohibit a brief, pleading, motion, or any other paper filed in any court from containing any citations that the attorney responsible for submitting the pleading has not personally read and verified, including any citation provided by generative artificial intelligence.

Existing law, the California Arbitration Act, provides a statutory framework for the enforcement of contractual arbitration under California law. The act establishes that a written agreement to submit a present or future controversy to arbitration is valid, enforceable, and irrevocable, except as specified. The act defines a neutral arbitrator as one who is selected jointly by the parties or by the parties' arbitrators, or is appointed by the court if the parties or their arbitrators cannot jointly select an arbitrator. The act requires a person selected to serve as a neutral arbitrator to disclose all matters that could cause a person aware of the facts to reasonably entertain a doubt as to the proposed neutral arbitrator's impartiality.

This bill would prohibit an arbitrator from delegating any part of their decision-making process to any generative artificial intelligence tool. The bill would prohibit an arbitrator from relying on information generated by generative artificial intelligence outside the record without making appropriate disclosures to the parties beforehand. The bill would require an arbitrator to assume responsibility for all aspects of an award, regardless of any use of generative artificial intelligence tools to assist with the decision-making process.

## CASELAW

*In re Domestic Partnership of Campos & Munoz*, D085584 (Cal. Ct. App. Mar. 5, 2026).

The Fourth District Court of Appeal addressed the consequences of AI-generated "hallucinated" legal citations appearing in court filings and judicial orders. During a dispute over visitation rights to a dog after the dissolution of a domestic partnership, the trial court's order relied on two fictional cases that had been cited by counsel and apparently originated from questionable sources, possibly generative AI tools. The appellate court held that relying on fabricated legal authorities constituted legal error and abuse of discretion. However, the court affirmed the trial court's order because the appellant forfeited the argument given that his own attorney drafted the proposed order containing the respondent's attorney's fake citations and failed to object or alert the court that the authorities were nonexistent. The court stressed that attorneys have a duty to verify every authority they cite, regardless of the original source. Because respondent's counsel repeated the fabricated citations in appellate briefings, again without verification, the court imposed monetary sanctions of \$5,000 and warned that courts and lawyers must guard against these sorts of legal falsities.

*Kjoller v. Superior Court*, No. S293723 Cal. (Jan. 14, 2026) (granting review).

A Nevada County District Attorney submitted a response to the defendant's habeas petition citing eight cases. Three of the eight cases did not exist and three more existed but were irrelevant to the DA's argument. After the defendant's counsel discovered the fabrications, he filed a motion for sanctions. After the Third District Court of Appeal twice denied sanctions without explanation, the California Supreme Court unanimously ordered the appellate court to issue an order to show cause as to why sanctions should not be imposed.

Noland v. Land of the Free, L.P., 114 Cal. App. 5th 426 (Ct. App. 2025).

This case was one of the first California appellate decisions addressing the misuse of generative artificial intelligence in legal filings. During the appeal, the plaintiff's attorney submitted briefs containing numerous quotations and case citations that were fabricated by generative AI tools and were not found in any real legal authority. The attorney admitted that he used AI to assist with legal research and drafting but failed to verify the citations. The California Court of Appeal affirmed summary judgment for the defendant and held that submitting AI-generated unverified legal authorities violated an attorney's duty of competence and candor to the court. The court imposed \$10,000 in sanctions on the attorney and published the opinion as a warning that lawyers must personally review and verify any authorities generated by AI before filing them in court.

United States v. Heppner, No. 25-cr-00503-JSR, 2026 WL 436479 (S.D.N.Y. Feb. 17, 2026).

In this landmark ruling, Judge Rakoff, held that a defendant's chat logs with a public AI database were not protected by attorney-client privilege or the work product doctrine because an AI tool cannot be an attorney or form an attorney-client relationship. The communications were also not confidential as the company's policies clearly state that a user's data will be disclosed to third parties, including the government. The court noted that users have no reasonable expectation of privacy or confidentiality when communicating with a publicly available AI platform. Judge Rakoff conceded, however, that had the defendant's counsel directed him to use the AI platform, the outcome of the case may have been different. In that case, the court reasoned that the AI platform may have been considered an agent of the lawyer. Judge Rakoff concluded by reminding legal professionals that while AI is a new technology, it remains subject to longstanding legal principles.

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