

# Using AI the Right (and Ethical) Way in a Litigation Practice

By Guy O. Kornblum

## The Role of AI

Let's face it: Artificial Intelligence ("AI") can be a real puzzle.<sup>1</sup> It is also intimidating and mysterious. Essentially, it is a "non-human" performing "human tasks." So, for those of us doing civil litigation, the question is: How much can we rely on AI to provide us with accurate information when we ask it to do so?

Further, how can *and should* we use what we develop?

As practicing lawyers we likely do not have the time to be experts in the science of artificial intelligence, but we do need to a) develop some understanding of AI as a tool and how it can be used, and b) be cautious in using it, particularly if we do not have a full understanding of how the AI process we are using works, who has access to it, and what it is going to provide in the way of assistance in a litigated matter. That is, we need to ensure that AI is being used responsibly and identify any potential ethical or privacy concerns before it is used.

Once this is confirmed and the process is vetted, we can then determine how its use fits into our handling of a litigated matter.

## The "Hype" to Use AI

AI is touted as being efficient for lawyers doing litigation to automate document review (including transcripts), provide AI driven summaries, and to perform research by finding cases *and* providing an AI driven analysis of them.<sup>2</sup> The internet has dozens of sites trying to sell lawyers on some type of AI system to use in their practice. While it may be efficient to use AI, the issue for us as lawyers is *how* to use it *appropriately* and *reliably* in our law practice – here with an emphasis on a litigation practice – within the professional rules which require that whatever information we ultimately use is accurate and credible and even citable as authority for a position taken.<sup>3</sup>

This is the issue for those of us who are working to keep up with the tools and trends that are available for lawyers practicing in the field of civil litigation and dispute resolution.<sup>4</sup>

If AI is a tool to be used, whatever assistance it provides must be verified. This is especially true when searching for citable legal authorities.<sup>5</sup> My experience in using it to find legal authority is that it can be misleading, inaccurate or just plain wrong. So, caution in using AI is advised. While accessing AI might be an efficient way to obtain useful information, whatever information is acquired must be checked and confirmed as reliable. The

number of AI sources on the internet is daunting<sup>6</sup> with so many trying to "sell" an AI driven product to make our law practice more efficient. However, with no credentialing or verification process, reliability becomes an issue. While AI itself is not authority for any legal proposition, it may lead to citable authority. If it does, the citable authority should be reviewed and confirmed as supporting and relevant to the point advanced. Unfortunately, that has not always been the case as there are examples of situations in which a lawyer has not confirmed the AI referenced authority, which turned out to be wrong and, in a few cases, non-existent.<sup>7</sup> And, when input is required by the AI program, we must be careful not to disclose privileged or otherwise confidential information unless the site is totally secure (which needs to be verified).<sup>8</sup>

## A Realistic Appraisal of AI's Role in Our Practice

We have been attracted to AI as a resource because it can potentially increase our efficiency. It can be a quicker and more efficient means of finding citable authority. Nonetheless, we fail to meet our professional obligations unless we verify the accuracy of the information AI locates.<sup>9</sup>

So, from a lawyer's perspective, there are two overriding considerations.

*First*, information that is disclosed to the AI source, whether it is public or accessible by those outside the lawyer's firm, must not be confidential (e.g., work product) or protected from disclosure by a



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privilege. *Second*, whatever information is retrieved must be verified so that it is accurate and reliable if used in a dispute or lawsuit whether in proceedings in court or out (e.g., a deposition). Ethical standards do not permit the use of information that is not accurate.<sup>10</sup>

The American Bar Association has spoken on the topic with Formal Opinion 512 (July 29, 2024) which states:

To ensure clients are protected, lawyers using generative artificial intelligence tools must fully consider their applicable ethical obligations, including their duties to provide competent legal representation, to protect client information, to communicate with clients, to supervise their employees and agents, to advance only meritorious claims and contentions, to ensure candor toward the tribunal, and to charge reasonable fees.<sup>11</sup>

While both traditional AI and generative AI require caution, this concern is particularly acute with generative AI, which produces new and original content.<sup>12</sup>

The San Francisco Superior Court, guided by statewide California rules (like Rule 10.430) has strict guidelines for AI use within the judicial branch<sup>13</sup> which emphasizes no confidential data which is

at risk for disclosure outside a restricted use, requires human oversight for accuracy and bias checks, and prohibits AI from making core judicial decisions. These rules aim to protect privacy, ensure fairness, and maintain judicial integrity, requiring each court to adopt a specific AI policy by late 2025, balancing AI efficiency with ethical standards.<sup>14</sup>

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San Francisco's policy allows judges and court staff to use AI tools. However, its guidelines provide that the user is responsible for the content and use. It further states that the user should: "Always review, edit, fact-check, validate, and/or test AI generated content, which isn't always accurate." It also requires disclosure of its use in certain circumstances.

These guidelines also recognize: "While AI-generated content can appear authoritative and polished, it can be inaccurate, biased, or misleading. GenAI use can also heighten the risk of privacy breaches, unauthorized data sharing, and cybersecurity threats. Furthermore, overreliance on GenAI for decisions that affect the public's rights or safety can reduce transparency, weaken accountability, and erode trust in government."<sup>15</sup>

These rules emphasize the two important points stated above: first, AI sources cannot be relied on *alone* for information that is used in briefing, court papers, appearances or to otherwise advance a client's case. Second, reasonable steps must be taken to ensure the accuracy of any AI-generated information which is relied on or used by a party to a dispute.<sup>16</sup>

### **Providing Competent Legal Representation by Understanding the Source<sup>17</sup>**

We have a duty to provide competent representation, which includes reliance on the tools we use such as technology. Before using any source that can generate original information, we should understand how its technology works, and what its limitations

are. So, AI is a resource – and perhaps a “starting point” – for a research task. It should never be relied on as a sole source. And as noted, once confidential information is used, the result cannot be accessible by those outside of the privilege zone.<sup>18</sup>

Further, lawyers should consider disclosing to a client any intent to use AI in representing that client, if the disclosure is material and significant to that representation. However, in my view, the use need not be disclosed (unless billing for its use) if the AI materials are just a starting point for finding relevant authorities and the latter becomes the source that is relied on for advocating a client’s cause. In that case the AI lead is imply that – a lead to professionally reliable authorities.

### Case Law So Far

The AI landscape has resulted in opinions that have commented on its use.<sup>19</sup> For example, in *Noland v. Land of the Free, L.P.*,<sup>20</sup> quotations in the plaintiff’s opening and reply briefs were fabricated. What was attributed to published cases was not in the cited cases. Other citations to cases by the plaintiff did not discuss what was represented. There were also citations to cases that did not exist. According to the opinion, these citations were the result of AI tools used by plaintiff’s counsel to prepare these briefs. This resulted in the case “hallucinations” which plaintiff’s counsel did not verify. While the court did further consider the case, it imposed a \$10,000 sanction on plaintiff’s counsel and referred the matter to the State Bar. The court stated:

Simply stated, no brief, pleading, motion, or any other paper filed in any court should contain *any* citations – whether provided by generative AI or any other source – that the attorney responsible for submitting the pleading has not personally read and verified.<sup>21</sup>

### A Comment on the State of AI as a Usable Resource

So, it comes as no surprise to conclude that we must ensure that AI does not lure attorneys into violating ethical principles and good practice.

AI is not a substitute for diligent work and research or making sure that work is accurate and consistent with legal precedents and sound professional judgment. As lawyers, we are accountable for all information we use in our practice and share with the court or counsel. So, to meet our professional responsibility, all AI generated sources should be checked and verified as accurate before used, relied on or disclosed to others in our practice.

So, it comes as no surprise to conclude that we must ensure that AI does not lure attorneys into violating ethical principles and good practice.

To emphasize, there should be no reliance on any AI research without verification of the authorities extracted. Here again, AI is a tool for finding citable authorities. In my view, once the authority is confirmed and verified as applicable, there need be no disclosure of the means (use of AI) to find it. At this point, it is the case, statutory, or other appropriate authority that is relied on, and the use of AI to get to that point of finding that reliable authority is not required, no more than if the attorney found the authority in an article or uncovered it in some other way. Now, the authority that is relied on is appropriate, and it is that authority which is relevant and becomes the focus of the client’s position, which it is supporting.

Thus, AI is a tool with the ultimate responsibility for its use always remaining with the lawyer. So, the caution light is on when consideration is given to its use. Yet, the world of AI is constantly evolving – and rapidly. There *may* be a day when AI generated information is a reliable and accurate source of information, including acceptable legal citations or resources, with a means of verification that confirms it. But for now, that is not the case. ■

<sup>2</sup> Mark Calaguas, *2024 Artificial Intelligence TechReport*, Am. Bar Assn. (Apr. 25, 2025), [https://www.americanbar.org/groups/law\\_practice/resources/tech-report/2024/2024-artificial-intelligence-techreport/](https://www.americanbar.org/groups/law_practice/resources/tech-report/2024/2024-artificial-intelligence-techreport/) (discussing use of AI for legal research, document review, and time-saving efficiencies). This article does not address other uses of AI, such as case outcome prediction.

<sup>3</sup> See Cal. Rules of Ct. Rule 3.1113(i)(1) (requiring that, if any authority other than California cases, statutes, constitutional provisions, or state or local rules is cited, a copy of the authority be lodged with the filing).

<sup>4</sup> This discussion excludes AI-assisted legal research tools, such as Westlaw AI, that support traditional case and statutory research leading to citable authorities.

<sup>5</sup> See fn. 3, *supra*.

<sup>6</sup> See *Legal AI Tools Essential for Attorneys*, Thomson Reuters (Dec. 18, 2025), <https://legal.thomsonreuters.com/blog/legal-ai-tools-essential-for-attorneys/>; *Best AI Tools for Legal Research: Complete Guide in 2026*, Rankings.io (Nov. 26, 2025), <https://rankings.io/blog/best-ai-tools-for-legal-research/> (listing Lexis+ AI, Westlaw Precision AI, CoCounsel, Vincent AI, Harvey AI, ChatGPT, and other tools lawyers can use to automate research and related tasks); *The 8 Best AI Tools for Legal Research in 2025*, LegalFly (Aug. 12, 2025), <https://www.legalfly.com/post/best-ai-tools-for-legal-research-in-2025> (describing multiple major AI platforms used by legal professionals).

<sup>7</sup> Examples of some cases in which this was the case are discussed *infra*.

<sup>8</sup> The magistrate judge in *United States v. Heppner* (S.D.N.Y. 2/17/26) \_\_\_ F.Supp.3d \_\_\_, 2026 WL 436479 recently ruled that written exchanges between a party and a generative artificial intelligence platform were not protected from inspection by either the attorney-client privilege or the work product doctrine, where there was no suggestion by counsel that the client engage in such exchanges.

<sup>9</sup> “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 a 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.” Standing Comm. On Prof. Responsibility & Conduct, State

<sup>1</sup> See Cole Stryker & Eda Kavlakoglu, What is Artificial Intelligence (AI)?, IBM, <https://www.ibm.com/think/topics/artificial-intelligence>.

Bar of Cal. *Practical Guidance for the Use of Generative Artificial Intelligence in the Practice of Law*, at 1 (2023), <https://www.calbar.ca.gov/sites/default/files/portals/0/documents/ethics/Generative-AI-Practical-Guidance.pdf>.

<sup>10</sup> See Cal. Rules of Ct. rule 8.1115(a); *The Bluebook: A Uniform System of Citation* (Columbia L. Rev. Assn. et al. eds., 21st ed. 2020); *California Style Manual* (4th ed. 2000).

<sup>11</sup> See Am. Bar Assn. Standing Comm. on Ethics & Prof. Responsibility, Formal Op. 512

(July 29, 2024) (addressing lawyers' ethical duties when using generative AI including competence, supervision, and verification of outputs); *Noland v. Land of the Free, L.P.*, 114 Cal.App.5th 426, 431, 443, 445-46, 448, 336 Cal.Rptr.3d 897 (2025) (imposing sanctions for submission of AI-hallucinated citations and emphasizing attorneys retain a nondelegable duty to verify all authorities); see also *Mezu v. Mezu* 267 Md. App. 354, 365, 367-68, 374, 346 A.3d 181 (2025) (addressing use of AI-generated research in appellate briefing where counsel submitted multiple fictitious and misquoted citations

and referring the matter to the state disciplinary authority); *Thaler v. Vidal*, 43 F.4th 1207, 1210-11, 1213 (Fed. Cir. 2022) (holding that federal law requires human inventorship and rejecting recognition of AI systems as inventors).

<sup>12</sup> See Am. Bar Assn. Standing Comm. on Ethics & Prof. Responsibility, Formal Op. 512, *supra*, at 1, 3 (explaining that generative AI systems create new content, including text, images, software code, audio, and video by learning patterns from internet or proprietary data sources and generating outputs to user prompts).

<sup>13</sup> See Cal. Rules Ct. 10.430; see also City & Cnty. of S.F., *San Francisco Generative AI Guidelines* § 2.3 (July 2025), <https://www.sf.gov/reports--july-2025--san-francisco-generative-ai-guidelines> (illustrating restrictions on unreviewed AI-generated official documents).

<sup>14</sup> Cal. Standards of Jud. Admin. Std. 10.80.

<sup>15</sup> See *San Francisco Generative AI Guidelines, supra*, § 2.3 (prohibiting reliance on AI-generated official documents without expert human review).

<sup>16</sup> See Formal Op. 512, *supra*; *Noland v. Land of the Free, L.P.*, *supra*; see also *Oneto v. Watson*, No. 22-cv-05206-AMO, 2025 WL 2901666, at pp. 2-3 (N.D. Cal. Oct. 10, 2025) (holding that although AI use is not prohibited, counsel must independently verify AI-generated content and that inclusion of unchecked or fictitious authorities violates Rule 11); Fed. R. Civ. P. 11(b); Justia, AI and Attorney Ethics Rules: 50-State Survey, <https://www.justia.com/trials-litigation/ai-and-attorney-ethics-rules-50-state-survey/>.

<sup>17</sup> Cal. Rules of Prof. Conduct r. 1.1 (competence), r. 1.3 (diligence).

<sup>18</sup> Cal. Rules of Prof. Conduct rr. 1.1, 1.3, 1.5, 3.1, 3.3, 5.1-.3. None of these rules expressly addresses the use of artificial intelligence; rather, courts and ethics authorities have interpreted these general duties to govern AI-assisted legal practice. See, e.g., Formal Op. 512, *supra*.

<sup>19</sup> See Formal Op. 512, *supra*; *Noland v. Land of the Free, L.P.*, *supra*; *Oneto v. Watson, supra*; see also J. Amberg, *Artificial Intelligence Goes to Court*, L.A. Cnty. Bar Assn. (Sept. 5, 2025), <https://lacba.org/?pg=lacba-news&blAction=showEntry&blogEntry=130388>.

<sup>20</sup> *Noland v. Land of the Free, L.P.*, *supra*.

<sup>21</sup> *Noland v. Land of the Free, L.P.*, *supra*, at 431; see also *People v. Alvarez*, 114 Cal. App.5th 1115, 1120, 337 Cal.Rptr.3d 585 (2025).