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Legal Ethics: What You Need to Know Entering 2026

Presented to RE/DC In-House Counsel
By Michelle Greer Galloway
On September 17, 2025

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Your Presenter

- Of Counsel in the IP Litigation Practice Group of Cooley LLP
- Lecturer in Law at Stanford University and Santa Clara University School of Law
- Certificate in DEI from Cornell
- Executive Committee, Litigation Section of California Lawyers Association (2018-2021)
- Past Chair, ABA Intellectual Property Section, Professional Ethics and Responsibility Committee
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- For information about seminars Michelle offers, go to <https://www.cooley.com/people/michelle-galloway> and click on the red box.



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Overview

- Ethics Updates: ABA opinions, State rules and opinions
- AI: Opinions, guidance and cases re use of AI
- Ethical Duties: Competence, Confidentiality, Loyalty, Candor
- Ethical Duties: Supervisory/Subordinate Attorneys
- Ethical Duties: Civility, Harassment and Discrimination
- Other Things Ethical Lawyers Should Not Do

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Public View of Judiciary and Lawyers in 2025

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Potential Impacts

- On Clients
 - Delayed justice
 - Unfair treatment
 - Chilling effects
- Generally
 - Erosion of public trust -- misconduct undermines public confidence in the judiciary's fairness and impartiality
 - Accountability gaps -- tolerance for unethical behavior

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S. Ct. Code of Conduct

- Code of conduct, signed by 9 Justices, released Nov. 13, 2023
 - "CANON 1: A JUSTICE SHOULD UPHOLD THE INTEGRITY AND INDEPENDENCE OF THE JUDICIARY. A Justice of the Supreme Court of the United States should maintain and observe high standards of conduct in order to preserve the integrity and independence of the federal judiciary."

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2025 Ethics Complaints Against Judges

- Failure to disclose personal involvements in proceedings
- Witness tampering
- Failure to schedule hearings
- Delays issuing rulings
- Threats against attorneys
- Throwing papers at attorney
- Pattern of rude, demeaning and biased remarks toward women and pro se litigants
- Sexual harassment

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DOJ Lawsuit Against Maryland Judges

- DOJ sued entire bench of the District of Maryland to challenge standing order that required a two-day injunction before deportation of detained noncitizens who filed habeas petitions
- Case assigned to Judge Cullen, a Trump appointee, W.D. Va., who dismissed the suit
 - “The executive branch is not the sole sovereign in the United States of America.” *U.S. v. Russell*, Case No. 1:25-cv-02029 (D. Md. Aug. 26, 2025)

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DOJ Ethics Complaint re Chief Judge Boasberg

- DOJ filed misconduct complaint against Chief Judge Boasberg, D.D.C.
 - At Judicial Conference meeting, Judge expressed concern that Trump administration might disregard Court rulings leading to constitutional crisis
 - Complaint: “Boasberg attempted to transform a routine housekeeping agenda into a forum to persuade... of his preconceived belief.”
 - DOJ complaint to Chief Judge Srinivasan (D.C. Ct. App.) (seeking investigation and possible impeachment referral)

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Judicial Comments (Alleged or Determined)

- To criminal defendants
 - “You’re a younger man. You’re a handsome man, and you are very well built, and you will be an attraction in state prison, and that’s thinking about being there for, potentially, up to 18 years is something you will have to think about. Is that the environment that you want to be in?”
 - Required individuals appearing to play a game he called “Game or Jail”
 - “You’re not even my property yet.”
- To domestic violence victims
 - “You’ve got some serious psychiatric treatment... it’s not his fault that you need help.”
 - Analogized “neurochemicals” released in abuse victim to elation of winning Super Bowl

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Long List of Judge's Alleged Improper Comments

Judge is accused of using racial slur, vulgar terms and 'libtard' label for employee offended by his comments

BY DEBRA CASSENS WEISS ([HTTPS://WWW.ABAJOURNAL.COM/AUTHORS/4/](https://www.abajournal.com/authors/4/))

OCTOBER 30, 2024, 11:42 AM CDT

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Executive Orders Targeting Firms

- “To extent permitted by law”
 - Suspend security clearances
 - Review/terminate contracts with firms AND with entities doing business with firm
 - Limit access to federal buildings

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Firms that Reached “Deals”

- After Executive Orders
 - Paul Weiss
- In Advance of Executive Orders
 - A&O Shearman
 - Cadwalader, Wickersham & Taft
 - Kirkland & Ellis
 - Latham & Watkins
 - Milbank
 - Simpson, Thatcher & Bartlett
 - Skadden, Arps
 - Willkie Farr
 - \$940M in “pro bono services”

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Firms Challenging Executive Orders

- Perkins Coie (*Williams & Connolly*)
- Jenner & Block (*Cooley*)
- WilmerHale (*Clement & Murphy*)
- Susman Godfrey (*Munger Tolles*)

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Int'l Take on Law Firm "Deals"

German Bar Association Warns Firms That Trump Deals Violate Legal Code

The German Bar Association has issued a warning to lawyers that they could be found in breach of their professional obligations if they work at or with any of the nine U.S. firms that made deals with the Trump administration.

5 minute read | June 01, 2025 at 04:00 PM By  **James Jackson**

<https://www.law.com/international-edition/2025/06/01/german-bar-association-warns-firms-that-trump-deals-violate-legal-code/?slreturn=20250602131021>

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ABA Ethics Opinions

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ABA Op. 512: GenAI Tools (July 29, 2024)

- “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.”

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ABA Op. 513: Duty to Inquire (2024)

- “As recently revised, Model Rule 1.16(a) provides that: “A lawyer ***shall inquire*** into and assess the facts and circumstances of each representation to determine whether the lawyer may accept or continue the representation.” To reduce the risk of counseling or assisting a crime or fraud, some level of inquiry and assessment is ***required before undertaking each representation.***” (emphasis added)

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Duty to Inquire Ongoing

- “***Further inquiry and assessment is required*** when the lawyer becomes aware of a change in the facts and circumstances relating to the representation that raises questions about whether the client is using the lawyer’s services to commit or further a crime or fraud.” (emphasis added)

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Duty to Inquire -- Resolution

- “The lawyer need not resolve all doubts. Rather, if some doubt remains even after the lawyer has conducted a reasonable inquiry, the lawyer may proceed with the representation as long as the lawyer concludes that doing so is unlikely to involve assisting or furthering a crime or fraud.”

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Lesson from UK

- UK Solicitors Regulation Authority prosecuting BigLaw firm for lack of procedure onboarding a client
 - Lateral partner brought Client with him to BigLaw firm
 - Client was a bank chairman later jailed for laundering billions
 - Firm's risk and compliance team raised concerns over Client's plans to buy a UK bank
 - Partner responded saying memo "untrustworthy" and that compliance team member was "[****] showing poor judgment and not knowing what he is doing."
 - SRA said this approach to due diligence was the "exact opposite" of what is required
 - See <https://www.rollonfriday.com/news-content/dentons-partner-called-colleague-big-prick-requesting-client-compliance-checks>

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ABA Op. 514: Legal Risks for Organization's Constituents (2025)

- "Where a lawyer—in-house or outside counsel—is giving advice to an organization client about future action of the organization, these provisions may require the lawyer to advise the organization when its actions pose a legal risk to the organization's constituents."
- "When an organization's lawyer provides advice to the organization about proposed conduct that may have legal implications for individual constituents, the constituents through whom the lawyer conveys advice may misperceive the lawyer's role and mistakenly believe that they can rely personally on the lawyer's advice. Rules 4.1, 4.3, and 1.13(f) require an organization's lawyer to take reasonable measures to avoid or dispel constituents' misunderstandings about the lawyer's role."

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Additional ABA Opinions in 2025

- ABA Op. 515 (Mar. 5, 2025) A Lawyer's Discretion to Report When a Client Commits a Crime Against the Lawyer or Against Someone Associated with, or Related to, the Lawyer.
- ABA Op. 516 (Apr. 2, 2025) Terminating a Client Representation Under MRPC 1.16(b)(1): What "Material Adverse Effects" Prevent Permissive Withdrawal?
- ABA Op. 517 (July 9, 2025) Discrimination in the Jury Selection Process

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State Ethics Opinions and Issues of Note

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Texas Op. 708 (May 2025) and Nondisparagement Clauses

- “A Texas lawyer may not participate in offering or making a client settlement agreement whose terms would impose greater restrictions on the lawyer’s right to practice law than those imposed by the law and Rules. For this reason, a lawyer may not participate in offering or making a client settlement agreement that commits a settling party’s lawyer not to disparage the opposing party within the context of the lawyer’s practice.”
- “A Texas lawyer may participate in offering or making a client settlement agreement that commits a settling party’s lawyer not to reveal confidential information related to the matter for marketing purposes, provided the restriction applies only to confidential information that, under the Rules, a lawyer may not reveal without client consent.”

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Texas Op. 707 (May 2025) In-House Counsel of Vendors

- “A for-profit company owned in part by nonlawyers engages in the unauthorized practice of law if it provides its customers the option of retaining the company’s full-time lawyer-employees at ‘actual cost’ on matters unrelated to the company’s interests. A lawyer-employee who assists the company in the unauthorized practice of law violates Rule 5.05(a)(2).”
- “A lawyer-employee of a for-profit company violates the prohibition against sharing fees with nonlawyers if the corporate employer receives fees or other economic benefit more than the actual cost of offering customers the option of retaining the lawyer-employee.”

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Ill. Op. 2025-1 Drafting Contracts Under Federal Law and UPL

- “Pursuant to Rule 5.5(d), a lawyer not licensed in Illinois may counsel an Illinois business on matters the lawyer is authorized by federal or other law or rule to provide in this jurisdiction. However, to the extent the non-Illinois lawyer seeks to advise an Illinois business on Illinois law, one of the exceptions to Rule 5.5(c) must apply.”

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NYSBA Op. 1276 (Oct. 2024): Fake Social Media Accounts

- “A lawyer who knows that an unknown or unidentified person is creating fake social media accounts in order to scam the public has no duty under the Rules of Professional Conduct to take any action to combat the fake accounts.”

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DC Op. 390 (Aug. 2025) Representation and Privilege Issues in Context of Prior Work

- “A lawyer’s prior work for a client occasionally becomes an issue in subsequent litigation or other representation on behalf of the same client. . . [L]awyer must consider whether a conflict exists that prevents the lawyer from taking on or continuing the representation, or whether to seek the client’s informed consent to a conflict.”

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Virginia Ethics Op. Updates

- Several ethics opinions withdrawn including Op. 1324 re receiving non-consensual tape recording from client and 278 re improperly obtained evidence

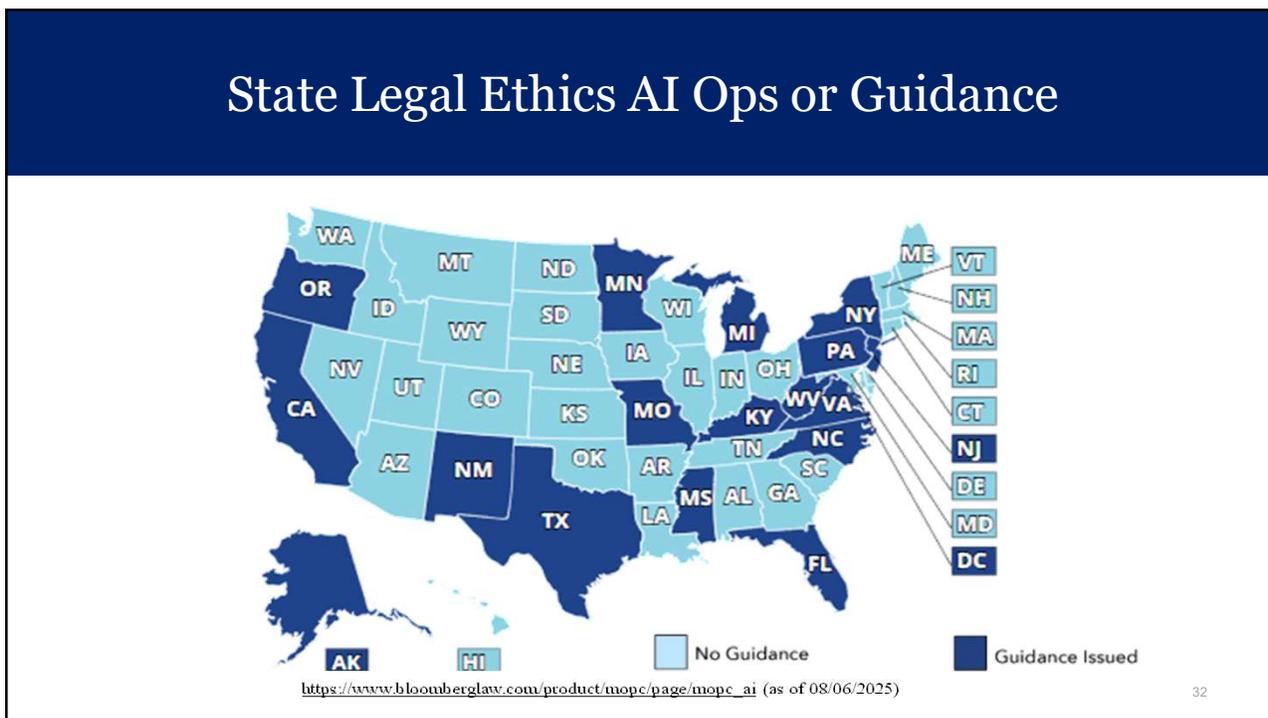
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Guidance Re AI and Ethics

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Ethical Responsibilities and Considerations



Competence



Communication



Confidentiality



Candor



Supervisory



Bias

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Attorney Judgment Cannot Be Replaced

- ABA Op. 512: “While GAI tools may be able to significantly assist lawyers in serving clients, they cannot replace the judgment and experience necessary for lawyers to competently advise clients about their legal matters or to craft the legal documents or arguments required to carry out representations.”

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CA Guidance

- Re Rules 1.1 and 1.3 (Diligence)
 - “Overreliance on AI tools is inconsistent with the active practice of law and application of trained judgment by the lawyer.”
 - “The duty of competence requires more than the mere detection and elimination of false AI-generated results. 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.” (emphasis added)

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DC Ethics Op. 388

- “Lawyers should understand that GAI products are not search engines that accurately report hits on existing data in a constantly updated database. The information available to a GAI product is confined to the dataset on which the GAI has been trained. ***That dataset may be incomplete as to the relevant topic, out of date, or biased in some way.*** More fundamentally, GAI is not programmed to accurately report the content of existing information in its dataset. Instead, GAI is attempting to create new content.” (emphasis added)

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PA and Philadelphia – Joint Formal Op. 2024-200: Communication With Client

- “Thus, if a lawyer chooses to use AI or any other technology, the lawyer has the responsibility to (1) understand the technology and how it works, (2) understand the benefits of the technology, (3) understand the risks of the technology, (4) check and verify all citations and the material cited, and (5) especially in cases where the benefits outweigh the risks, **have an obligation to educate the client and seek their informed consent to use the technology**. At their core, the obligations under all of the relevant Rules are subject to Rule 1.1.” (emphasis added)

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ABA Model Rule 1.6 – Confidentiality

- “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).”
- Rule amended to add 1.6(c)
 - “(c) A lawyer shall make ***reasonable efforts to prevent*** the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client.” (emphasis added)

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ABA Op. re Confidentiality

- ABA Op. 512: “Before lawyers input information relating to the representation of a client into a GAI tool, they must evaluate the risks that the information will be disclosed to or accessed by others outside the firm. Lawyers must also evaluate the risk that the information will be disclosed to or accessed by others ***inside the firm*** who will not adequately protect the information from improper disclosure or use . . .” (emphasis added)

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CA Guidance Re Confidentiality

- CA Guidance: “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***. A lawyer or law firm should consult with IT professionals or cybersecurity experts . . . 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.” (emphasis added)

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VA Guidance: Confidentiality

- “A lawyer must be ***very aware of the Terms of Service and any other information about the possible use of information input into an AI model.*** Many free, publicly available models specifically instruct users not to input any confidential or sensitive information and any information input into such a model might be disclosed to other users or used as part of the model’s training. Legal-specific products or internally-developed products that are not used or accessed by anyone outside of the firm may provide protection for confidential information, but lawyers must make reasonable efforts to assess that security and evaluate whether and under what circumstances confidential information will be protected from disclosure to third parties. It may be appropriate to consult with IT professionals or other experts before sharing confidential information with any generative AI product.” (emphasis added)

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AI, Confidentiality, and Privilege

- Should legal department (or other departments) be “walled off” so closed system does not train others in organization on data from legal?
- Will information received under NDAs be walled off from training AI at the company?
- Question: How far will “smaller walls” go before losing the value proposition of AI?

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ABA: Evaluate GenAI Output You Use!!!

- ABA Op. 512: “[A] lawyer’s reliance on, or submission of, a GAI tool’s output – ***without an appropriate degree of independent verification or review of its output***—could violate the duty to provide competent representation as required by Model Rule 1.1. While GAI tools may be able to significantly assist lawyers in serving clients, they cannot replace the judgment and experience necessary for lawyers to competently advise clients about their legal matters or to craft the legal documents or arguments required to carry out representations.” (emphasis added)

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And Then There Was a “Hallucination”

Here’s What Happens When Your Lawyer Uses ChatGPT

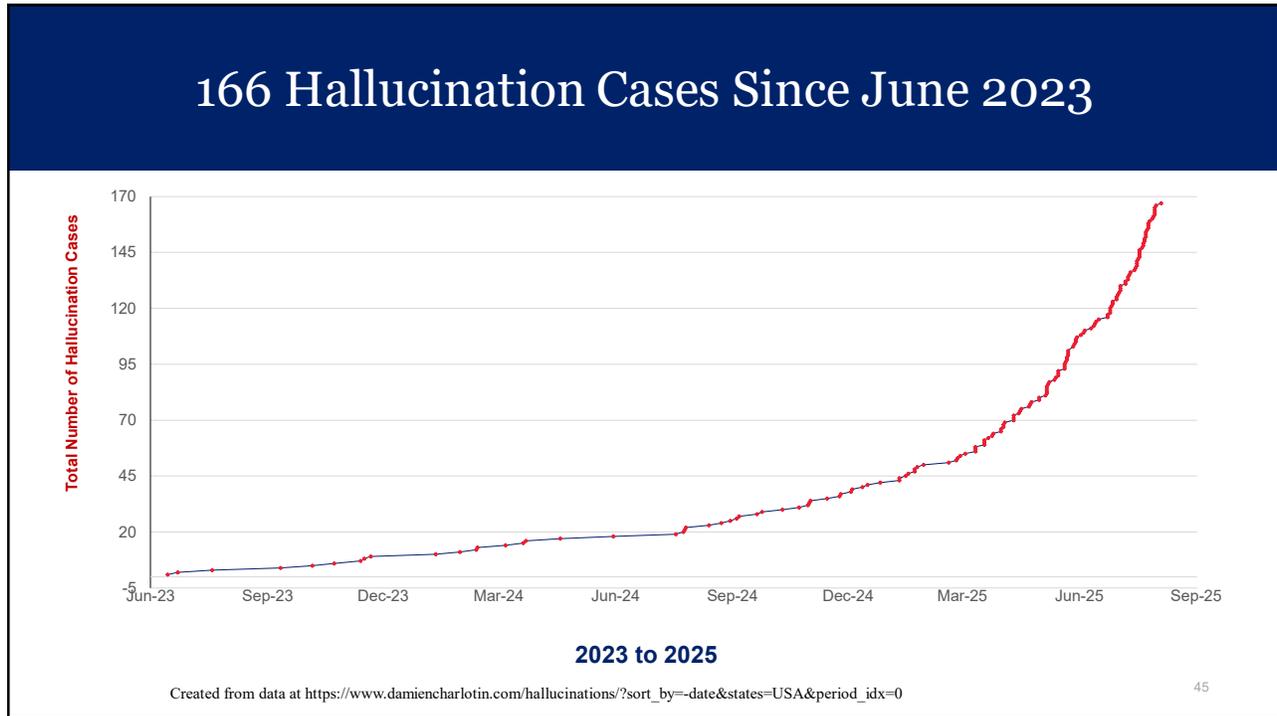
A lawyer representing a man who sued an airline relied on artificial intelligence to help prepare a court filing. It did not go well.



- “There was just one hitch: No one – not the airline’s lawyers, not even the judge himself – could find the decision or the quotations cited and summarized in the brief.”
- New York Times (May 27, 2023)

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AI-Related Standing Orders

- Prohibit AI and/or GenAI use
- Require disclosure of use
- Require certification
 - Accuracy/diligence
 - No disclosure of confidential information
- Some distinguish use of “legal search engines” from other programs

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Judges Using GenAI?

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Guidance

- Working Group on AI and the Courts of the American Bar Association's Task Force on Law and Artificial Intelligence published Navigating AI in the Judiciary: New Guidelines for Judges and Their Chambers available at
 - www.thesedonaconference.org/sites/default/files/publications/NavigatingAIintheJudiciary_PDF_021925_2.pdf
- Michigan State Bar
- Delaware Supreme Court issued interim policy (Oct. 2024)

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Judge Using AI in Opinion Drafting

- *Snell v. United Specialty Ins.*, (11th Cir. May 28, 2024)
 - Case centered on interpretation of insurance policy and the meaning of “landscaping”
 - Judge Newsom wrote concurring opinion discussing his use of [AI tool] in analyzing case/decision
 - “But—and this is my bottom line—I think that LLMs have promise. At the very least, it no longer strikes me as ridiculous to think that an LLM . . . might have something useful to say about the common, everyday meaning of the words and phrases used in legal texts.”

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State: Withdrawn Opinion and a Twist

- *Shahid v. Esaam* (Georgia Ct. App. June 30, 2025)
 - Trial court denied petition to reopen divorce citing two non-existent cases
 - Appellate court vacated and remanded
 - Twist: Appellee’s brief included 11 of 15 cases either hallucinated or irrelevant. Sanctioned \$2500

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Federal: Withdrawn Opinions

- Federal
 - *In re CorMedix Inc. Securities Litig.*, Case No. 2:21-cv-14020 (D.N.J. July 23, 2025) (text order stating “That Opinion and Order were entered in error” and that subsequent opinion would issue)
 - *Mississippi Association of Educators v. Board of Trustees of State Institutions Higher Learning*, Case No. 3:25-cv-00417 (S.D. Miss. Aug. 1, 2025) (characterizing original order as containing “clerical errors” that were corrected and that “No further explanation is warranted.”)

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Bar Admission and UPL

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Impersonating BigLaw Partner

- Multiple suits and report to SEC and FBI alleging fraud
 - Suit alleges a CA woman impersonated a BigLaw partner and a company CFO, tricking an employee into wiring \$55 million to fraudulent accounts.
 - *Orion Engineered Carbons GMBH v. Shufang Qin*, Case No. 8:24-cv-02409 (C.D. Cal. 2025)

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CA Bar Exam Feb. 2025

California Bar Exam Managed To Be Even Worse Than Expected

It almost didn't seem possible.

By Joe Patrice on February 26, 2025 1:04 pm  Share

<https://abovethelaw.com/2025/02/california-bar-exam-managed-to-be-even-worse-than-expected/>

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It Was Epic

- First use of Kaplan-authored questions and Meazure Learning platform
- Widespread technical failures -- login delays, proctor issues, submission errors
- Scoring: Psychometric imputation used for missing answers; proposals to extend provisional licensing

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CA Bar Feb. 2025 -- Aftermath

- Later revealed AI used to draft some questions; practice tests gave incorrect answers
- Efforts to punish test takers complaining about exam
 - Allegations that content of questions posted in social media complaints re exam before re-take sessions
 - Threaten to revoke or deny moral character determinations
- Class actions by exam takers
- CA bar suit against Meazure Learning
- CA Bar Executive Director resigned

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NY Bar Exam: What Can We Conclude?

Bar Exam Taker Suffers Apparent Heart Attack

The exam never stopped during what seems to have been a major medical emergency.

By Joe Patrice on July 31, 2025 10:41 am  Share

<https://abovethelaw.com/2025/07/bar-exam-taker-suffers-apparent-heart-attack/>

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Disbarred Lawyer Using Fake and Forged Identities to Practice

- Disbarred Ohio lawyer was sentenced to 37 months in prison and \$171K restitution for Social Security fraud
 - Used fake identities and forged credentials
 - Claimed to be Marine, a BigLaw alum, and a former college football player
 - Got job offers at 7 firms, including signing bonuses and 6 figure salaries
 - *US v. Crosby*, Case No. 1:23-cr-00111 (S.D. Ohio Nov. 8, Mar. 10, 2025); see also <https://news.bloomberglaw.com/litigation/ex-lawyer-who-lied-way-into-firm-jobs-gets-37-months-in-prison>

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SEC Attorney – Not an Attorney

- SEC's Office of Inspector General found SEC attorney who joined SEC in 2008, falsely certified that they were in good standing with a state bar 13 times from 2015-2024
 - State bar showed not in good standing since 2004
 - License administratively revoked in 2010 for failure to pay into state lawyer's fund
 - Attorney resigned
 - See <https://www.law360.com/pulse/articles/2366168/sec-atty-exits-after-hiding-revoked-license-oig-says>

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Lying About CLE

- Public censure for attorney who falsely certified he had completed CLE for 2017-2019 and that he possessed proof thereof
 - *In re Keith*, 2025 NY Slip Op. 03632 (App. Division (June 12, 2025))

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Pro Hac Vice Status and Habitual Practice

- Court sua sponte revoked pro hac vice status
 - Court granted attorney's application that stated she had been admitted pro hac vice 8 times in past 5 years
 - Attorney then filed supplement that identified 7 additional pro hac vice admissions
 - Based on that record, Court found that additional pro hac vice admission would constitute "habitual practice" in violation of NC rules
 - *In re Asheville Eye Associates Data Incident Litg.*, Case No. 25CV000809-100 (Superior Ct. Buncombe County, NC July 24, 2025)

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False Statements In Pro Hac Vice Applications

- Multiple judges in N.D. Cal denied or issued OSC re William P. Ramey III's applications to appear pro hac vice
- In one case,
 - Application stated he had been admitted 0 times in Court during past year but he had been admitted pro hac in at least 5 cases
 - Alleged error by paralegal but Court found "severe failure" to train and supervise; referred to Court's Standing Committee on Professional Conduct for discipline
 - *Cooperative Entertainment v. Alibaba Cloud US*, Case No. 25-cv-01842 (N.D. Cal. May 8, 2025) (Alibaba filed Motion for Sanction of Dismissal Une 6, 2025 and the case was dismissed with prejudice June 20, 2025)

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Duty of Competence

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ABA Model Rule 1.1 Competence

- Rule unchanged:
 - “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 amended:
 - Maintaining Competence: “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. . . .**” (emphasis added)

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Competence – CA Rule 1.1

- (a) “A lawyer shall not intentionally, recklessly, with gross negligence, or repeatedly fail to perform legal services with competence.
- (b) For purposes of this rule, ‘competence’ in any legal service shall mean to apply the (i) learning and skill, and (ii) mental, emotional, and physical ability reasonably* necessary for the performance of such service.”

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Lawyer Side Gig

- Two-year suspension where attorney admitted secretly accepting payments for legal work performed outside his firm, failing to open files or share profits, and misrepresenting his actions.
 - *In re Kelly*, Case No. 090086 (N.J. S. Ct. Feb. 21, 2025)

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Working Two Jobs

- Former GC of a public agency censured for operating a private law practice from government office
 - *In re Lundin*, Case No. 090510 (S. Ct. N.J. Mar. 25, 2025) (previous found to have violated state conflict of interest laws)

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Working Three Jobs

- Conveyancing solicitor struck off roll
 - She joined company 1 under contract specify she would work full time and only for organization; She took temporary, remote positions with companies 2 and 3 during June-July, 2021 (remote)
 - Between June 29 and July 16 she submitted time sheets to companies 2 and 3 for the same hours/same days
 - She claimed her total hours were accurate if specific days were not and that her “innate work ethic” allowed her to work long hours
 - <https://www.rollonfriday.com/news-content/solicitor-struck-working-three-law-firms-once> (June 6, 2025)

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In-House Counsel Suspended For Side-Gig

- Attorney had private practice and continued after accepting full-time in-house counsel role
 - While working in-house, attorney found to have committed gross neglect and had commingled client funds in his private practice
 - 3-month suspension
 - *In re Wynn*, Case No. 088757 (Sup. Ct. N.J. Mar. 8, 2024)

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Competence: Patterns and Takeaways

- Misrepresentation of licensing status
- Pro hac vice status and habitual practice
- Practicing while suspended
- Remote work obscuring dual employment situations

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Duty to Communicate

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That's A Lot of Messages

- Partner terminated for neglecting client matters
 - Firm discovered that he had “unplugged his office telephone from the wall and placed it under his desk”
 - When the phone was plugged in, there were over 150 unanswered telephone messages from clients and courts
 - Allegedly deleted all client files from the firm laptop and they were not recovered
 - *Disciplinary Counsel v. Stanley*, Case No. 2025-008 (Ohio Aug. 27, 2025) (suspension following default)

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Florida Attorney Ghosting Clients

- In April 2024, Florida Bar received first complaints about Michael Hurckes taking retainer fees and doing no work
- Two federal judges also referred Hurckes for discipline
 - Phillip Bantz, “Ghost” Florida Atty Left Long Trail of Irked Judges, Clients, law360 (undated) (reporting on *Fisher v. MAH Advising* (Hurckes’s firm))
- Aug. 29, 2025: Law360 reports that he is still in good standing
 - See Phillip Bantz, “I’m Flabbergasted”: Fla. Atty’s Accusers Rip Bar for Inaction (Aug. 29, 2025) available at <https://www.law360.com/articles/2382221/-i-m-flabbergasted-fla-atty-s-accusers-rip-bar-for-inaction>
- Sept. 5, 2025: Emergency petition to suspend Hurckes filed Sept. 5, 2025

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False Settlement Communication

- Complaint alleges associate
 - Falsely told opposing counsel that State Farm had agreed to settle each claim for \$50K
 - State Farm had not authorized settlement
 - Failed to inform client or firm about alleged settlement or subsequent motions for sanctions
 - *In re Holmer*, Commission No. 2025PR00017 (Ill. Atty Registration and Disciplinary Commission Complaint Feb. 26, 2025)

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Duty of Confidentiality/ Cybersecurity/Privileges

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Model Rule 1.6 – Confidentiality

- “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).”
- Rule amended to add 1.6(c)
 - “(c) A lawyer shall make **reasonable efforts to prevent** the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client.” (emphasis added)

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Leaked Ethics Exam

- Above the Law reported that at USC, ethics exam posted online for less than an hour
- Professor told students to delete the exam
 - See <https://abovethelaw.com/2025/05/ethics-exam-leaked-early-in-ironic-law-school-twist/>

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Recent Headline

- Clorox sued Cognizant for breach of contract, gross negligence, and misrepresentation
 - Alleges that “The cybercriminal just called the Cognizant Service Desk, asked for credentials to access Clorox’s network, and Cognizant handed the credentials right over.”
 - Seeks \$380M in damages
 - *The Clorox Co. v. Cognizant Worldwide*, Case No. RG25203303 (Superior Ct. Alameda County, CA July 22, 2025); see also <https://www.reuters.com/legal/government/clorox-accuses-it-provider-lawsuit-giving-hackers-employee-passwords-2025-07-22/Le>

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Cyberattacks/Breach PACER System

- PACER
 - PACER hacked targeting sealed documents
 - Ongoing investigation; new security protocols and restrictions implemented.
 - See <https://news.bloomberglaw.com/us-law-week/foreign-hackers-said-to-access-sealed-national-security-cases>;
<https://www.law360.com/articles/2374755/federal-courts-disclose-new-cyberattacks-on-pacer-system>

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UK Court System Breach

- HM Courts & Tribunals Service (managing court system in England) reported of technical problem affecting documents)
 - Investigation “found no evidence that any case outcomes were affected as a result of these technical issues.”
 - BBC reported that an IT issue caused evidence to go missing, overwritten, or lost
 - Judges and parties always had access
 - See Sophia Dourou, *HMCTS Says ‘No Evidence’ IT Bug Affected Case Outcomes*, law360.com (Aug. 12, 2025)

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Phishing “Case Management” Emails

Federal Courts Warn Attys Of Case Management Email Scam

By Lauren Berg

Law360 (November 6, 2024, 10:47 PM EST) -- The federal courts on Wednesday warned attorneys to beware of emails appearing to be official court filing notifications that try to convince recipients to click on a link to a "malicious website" filled with computer viruses.

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Confidential Court Decision Sent to Media

- In UK, confidential draft decision sent to parties for review 10 days before it was to be published
- Every page marked “Confidential Draft Judgement” and cover email and front page included warning:
 - "Neither the draft itself nor its substance may be disclosed to any other person or made public in any way. The parties must take all reasonable steps to ensure that it is kept confidential."
 - Media manager (non-lawyer) sent to journalists under a “press embargo”
 - Partner had been informed of intent to send to media
 - <https://www.rollonfriday.com/news-content/big-mistake-fieldfisher-accidentally-breaks-court-embargo> (May 2, 2025)

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Leak of Confidential Court Decision (UK)

- Law firms Hogan Lovells and Fieldfisher ordered to provide witness statements
 - Draft judgments circulated to firms before formally released
 - Reports that PrivatBank prevailed began circulating on social media
 - See <https://www.law360.co.uk/articles/2371046/biglaw-firms-ordered-to-explain-leak-of-privatbank-decision> (July 30, 2025)

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FBI Warns Hackers Targeting Firms

- Cybercriminals using phishing and social engineering to steal sensitive data
 - “SRG has victimized companies in many sectors... but began to consistently target U.S.-based law firms starting spring 2023, likely due to the highly sensitive nature of legal industry data.”
 - <https://www.law360.com/pulse/articles/2345104>

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US – Law Firm Breaches

- Law360.com has a Law Firm Data Breach Tracker
 - It uses breach notifications wiled with state AG offices that publish reports
 - As of 09/03/2025 it listed 59 breaches in 2025
 - See Xiumei Dong, *Law Firm Data Breach Tracker: Who's at Risk?*, law360.com (updated 09/03/2025)
 - In 2024, law360 identified 145 firms reporting data breaches
 - 138 from external breach or phishing
 - See Xiumei Dong, *Law Firm Data Breaches Hit New High as Threats Escalate*, law360.com (June 9, 2025)

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UK – Firms Hacked

- Solicitors Regulation Authority (SRA) issued 205 alerts in first ½ of 2025 (180% increase over 3 years)
- “More than 200 firms and lawyers have seen their names emblazoned on fake emails, forged trademarks, and bogus WhatsApp messages”
 - *Firm Names Hijacked in Wave of Industry Scams*, (June 11, 2025) available at <https://www.law.com/americanlawyer/2025/06/11/firm-names-hijacked-in-wave-of-industry-scams/>

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Breach of Confidentiality UK

- In UK, solicitor reprimanded
 - Left firm and removed and shared documents containing client confidential information with unidentified third party
 - Solicitor revealed breach to regulator
 - Reprimanded and ordered to pay £300 in costs
 - See Ashnish Sareen, *Private Client Pro Rebuked Over Client Confidentiality Breach* (June 26, 2025) available at <https://www.law360.co.uk/pulse-uk/articles/2357809/private-client-pro-rebuked-over-client-confidentiality-breach>

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Former GC Ordered to Destroy Files from Employer

- Storehouse in a Box terminated and sued Former-GC and COO alleging misappropriation of 280 folders and 13,000 files at time he was put on administrative leave
- Stipulation and Order of permanent injunction to stop using or accessing confidential information and destroy any information in his possession
 - *Storehouse In A Box v. Choi*, Case No. 25-cv-11713 (E.D. Mich. Aug. 18, 2025) (Stipulation and Order re Permanent Injunction) and Complaint (June 9, 2025)

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Privileged Documents Disclosed In Production

- Hogan Lovells disclosed privileged documents to opposing counsel during discovery
 - “The final tally was 4,321, at which point the High Court became involved.”
 - Court allowed most documents to be used; some privileged documents ordered returned
 - Jamie Hamilton, *Hogan Lovells accidentally discloses over 4,000 documents to BCLP* (RollOnFriday May 9, 2025) available at <https://www.rollonfriday.com/news-content/hogan-lovells-accidentally-discloses-over-4000-documents-bclp>

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Travel and Tech Devices

- Previously, cautioned US attorneys and exec travelling abroad
- Now, attorneys being warned about travel to US
 - Gail J. Cohen, *International Lawyers Headed to the US Advised to Take More Precautions*, Law.Com (Mar. 31, 2025)

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AI Meeting Assistant/Notetaker

The screenshot shows a chat interface with two messages from AI assistants. The first message, from 'Jeff's OtterPilot to Everyone' at 4:33 PM, says: 'Hi, I'm an AI assistant helping Jeff take notes for this meeting. Follow along the transcript here:'. Below this is a partially visible message: 'You'll also be able to see screenshots or key moments, add highlights, comments, or action items to anything being said, and get an automatic summary after the meeting.' The second message, from 'read.ai meeting notes' at 9:28 AM, says: 'added read.ai meeting notes to the meeting. Read provides AI generated meeting summaries to make meetings more effective and efficient. View our Privacy Policy at <https://www.read.ai/pp>. Type "read stop" to disable, or "opt out" to delete meeting data.'

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Risks

- Violations of call recording laws
 - Cal. Penal Code 632 Notetaker can join meeting and work silently in background
- AI notetaker may appear to leave meeting and still be in background
- AI may send notes to those who dropped off the call – even if they dropped to preserve privilege
- Creating potentially discoverable records
- Inaccurate records
- Records may be stored/shared

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Are Prompts Privileged?

- *Tremblay*, Case No. 23-cv-3223 (N.D. Cal. Aug. 8, 2024)
 - District Court found that prompts used by counsel doing analysis to support amended complaint were AWP (rejecting Magistrate’s ruling that they were not privileged)
 - “prompts were queries crafted by counsel and contain counsel’s mental impressions and opinions about how to interrogate [AI]”

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AI Wearables

- Conceptually, records what you hear and say
- May extract a “to-do list” or provide notes
 - To learn more see Dave Johnson, *I let AI Record My Every Waking Moment and Now I’ll Never Lose Another Friendly Argument Again*, Forbes (Sept. 4, 2025)

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Privilege Cases

- Supreme Court did not resolve conflict regarding “dual purpose” documents and privilege
- *In re FirstEnergy*, Case No. 24-3654 (6th Cir.) internal investigation protected by ACP and AWP

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Resources

- Isabel Gottlieb, *Generative AI Use Poses Threats to Attorney-Client Privilege*, Bloomberglaw.com (Jan. 23, 2024)
- *Protecting Attorney-Client Privilege and Work Product in a GenAI World*, LexisNexis Practical Guidance Journal (Mar. 20, 2024)

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Loyalty

Cooley

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Affiliates

- Defendant brought motion to disqualify alleging that Baker & McKenzie had a conflict
 - In 2016, nonparty Silverpeak Strategic Partners retained Baker and McKenzie's Peruvian office Estudio Luis Echeopar Garcia (ELEG) to advise on investment in Peruvian fuel distribution; the deal created a joint venture between Silverpeak and LPA (Plaintiff)
 - Court found that Phoeninca had no attorney-client relationship with Baker & McKenzie (engagement letter disclaimed)
 - Prior representation was not "substantially related"
 - Advanced conflict waiver applied
 - *Lukoil Pan Americas v. Phoeninca Investments*, Case No. 653336/2024, 2025 NY Slip Op 30884(U) (Supreme Court, NY County Mar. 17, 2025)

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Firm Screen Too Late

- In bankruptcy, Court disqualified Willkie Farr from representing Franchise Group
 - Willkie represented B. Riley Financial and Brian Kahn (ex-CEO) on range of matters
 - B. Riley Financial and Kahn involved in 2023 take-private deal at issue in bankruptcy
 - After filing bankruptcy, four “silos” of Willkie attorneys were formed but there were staffing overlaps
 - Willkie’s efforts to screen were late (“Willkie did not establish a wall for the take-private transaction until after it was concluded.”) and “cannot outweigh the actual conflicts . . .”
 - *In re: Franchise Group Inc.*, Case No. 1:24-bk-12480 (Bankr. D. Del. Feb. 2025)

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Sanctions But No DQ

- Horn Williamson firm represents home buyers suing over alleged design defects in homes
 - Firm subpoenaed two subcontractors without posting notice on the docket; firm did not mention subpoenas at discovery conference
 - Defendant’s motion to claw back confidential documents produced by third parties granted; motion to DQ Horn Williamson denied and precluded from admitting into evidence documents or testimony related to the confidential documents
 - Affirmed: “We emphasize that Horn Williamson’s misconduct as a legal professional in this matter, albeit ‘questionable,’ is troubling to this Court.”
 - *Welch v. Toll Brothers*, Case No. 1242 EDA 2023 (Superior Court of Pa. May 22, 2025)

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DQ: Obtained Priv. Docs of Opposing Party

- Chang brought a wrongful termination action
- First: Chang's Motion to DQ Defense Counsel
 - Change moved to DQ Able South Korea's counsel, Cole Schotz arguing Cole Schotz obtained information from Joshua Lim, attorney at Kim, Lim & Partners, Able South Korea's outside general counsel. Plaintiff Chang alleged that he believed Mr. Lim represented him in his individual capacity. Court ordered deposition of Mr. Lim.
 - In deposition of Mr. Lim, Able South Korea learned Chang and his counsel possessed 3 privileged and confidential documents obtained without authorization during employment
 - Lee had not produced the privileged documents prior to deposition
 - Lee filed the privileged documents in public docket of related state court action. Lee then filed the documents in this case. "Mr. Lee's conduct, even when giving him the benefit of the doubt, evinces blatant disregard for the letter and spirit of RPC 4.4(b)."

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DQ (*Chang v. Able C&C Co.*)

- Second: Able 's Motion to DQ plaintiff's counsel Lee
 - "Mr. Lee could have enlisted the Court's help to challenge Able South Korea's assertion. Instead, he decreed that the documents were not privileged."
 - "Mr. Lee's repeated refusal to return privileged documents and his proactive actions of publishing those same documents on two public dockets despite being warned of their privileged nature shows utter disregard for his ethical obligations."
 - Disqualified and Able awarded attorney's fees on motion
 - *Sehoon Chang v. Able C&C Co. Ltd.*, Case No. 23-cv-02590 (D.N.J. Apr. 17, 2025)

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Motion for Sanctions Based on DQ Motion

- Allen Exploration sought terminating sanctions for alleged filing of a false DQ motion
 - “Despite knowing the falsity of their claim, plaintiffs and their counsel repeatedly asserted that attorney Concannon represented and advised them, and he was even paid to do so, despite clear evidence to the contrary.”
 - “This falsehood, constantly repeated in numerous motions and discovery requests, was intended to mislead the court and circumvent the protections of attorney-client privilege.”
 - *Porter v. Allen*, Case No. 2:24-cv-14336 (S.D. Fla.) (Motion Feb. 4, 2025)

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Common Patterns and Implications

- Motions to disqualify have a high burden to show material conflict; prior representation must be substantially related
- Courts enforcing advanced waivers
- Delays in bringing motions often lead to motion denied
- Screening protocol must be deployed proactively/quickly

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Candor – The Use of AI

Cooley

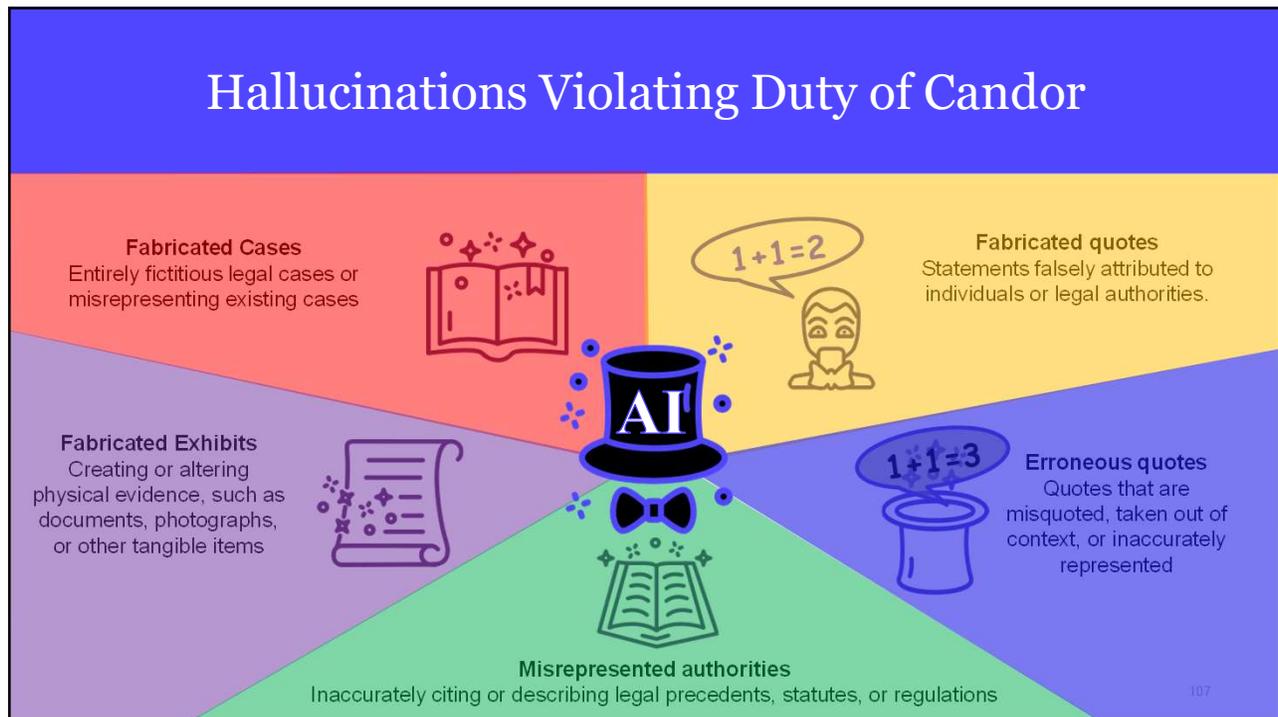
105

ABA Model Rules 3.1 and 3.3

- Rule 3.1: “A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous, which includes a good faith argument for an extension, modification or reversal of existing law.”
- Rule 3.3: “(a) A lawyer shall not knowingly: (1) 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 . . . (3) offer evidence that the lawyer knows to be false.”

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AI “Hallucination Cases”

- French researcher has created an online tracker
 - https://www.damiencharlotin.com/hallucinations/?sort_by=-date&parties=Expert&period_idx=0&only_professional_sanction=yes
- AI Law Librarians will be releasing the Interactive GenAI Legal Hallucination Tracker soon
 - <https://www.aialawlibrarians.com/2025/08/10/coming-soon-the-interactive-genai-legal-hallucination-tracker-sneak-peek-today/>

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Disqualification for AI-Generated Citations – Butler Snow

- *Johnson v. Dunn*, Case No. 2:21-cv-01701-AMM (N.D. Ala. July 23, 2025)
 - Background: Three attorneys from Butler Snow LLP sanctioned for filing motions containing five AI-generated fabricated legal citations
 - Court:
 - Parroting AI without verifying citations is “recklessness in the extreme, and it is tantamount to bad faith.”
 - Sanctions: attorneys publicly reprimanded; DQ from case; mandatory disclosure of order to their clients, opposing counsel, presiding judges, firm attorneys; referred to Alabama State Bar

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AI Hallucinations “Affirmatively Misled” Court

- *Lacey v. State Farm General Insurance Co.*, Case No. 2:24-cv-05205 (C.D. Cal.) (notice of settlement followed by order dismissing action July 24, 2025)
 - In coverage suit, attorney from Ellis George used AI to generate outline and sent to K&L Gates who incorporated in brief
 - Court: Special Master Michael R. Wilner found that the AI-generated citations “affirmatively misled” the court and nearly influenced a judicial order
 - Nine of 27 citations were inaccurate; some cases did not exist
 - Conduct found “tantamount to bad faith,” especially the re-submission of a **revised** brief that still contained hallucinated citations

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Lacey (continued)

- Sanctions
 - All supplemental briefs struck
 - Plaintiff's discovery motion denied
 - Plaintiff's law firms (Ellis George LLP and K&L Gates LLP) were ordered to pay \$31,100 in fees
 - Attorneys were required to inform their client of the misconduct

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AI Misquotations – A “Debacle and Embarrassment”

- *Vita Law Offices v. Lockridge Grindal Nauen* (D. Mass. 2025) (ruling pending as of Aug. 18, 2025)
 - Vita Law Offices sued Lockridge Grindal Nauen to collect fees
 - Cervantes Law, representing Vita, submitted brief with 18 altered quotations; AI used to “polish” drafts, changed quoted language and left quotation marks
 - Altered quotes included terms like “jurisdictional gamesmanship” and “litigation-driven reassessments”
 - Cervantes proposed non-monetary sanctions and said it now forbids use of any AI tool in filings with the court

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AI Fake Case – Attorney Gone From Firm

- *Jordan v. Chicago Housing Authority* (Cook County Circuit Court. Ill. July 2025)
- Post-trial motion to overturn a \$24M judgment included a fictitious case; Partner admitted using AI without checking case; 3 other attorneys and one in-house attorney reviewed the motion before filing
- The firm had an AI policy banning such use
- Partner had written an article on AI ethics in law; terminated

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“Train Wreck” of AI Fake Citations and Quotes -- Dismissal

- *ByoPlanet International LLC v. Peter Johansson*, Case No. 25-cv-60630 (S.D. Fla. 2025) (and other cases)
- ByoPlanet filed multiple suits after a judgment against ByoPlanet; counsel used AI to draft complaints and motions that included fabricated cases and quotations; attorney continued using AI after being put on notice of problem

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ByoPlanet Sanctions (continued)

- Attorney conduct reckless and in bad faith
- Violations of Rule 11, local rules and Florida Bar ethics
- 4 Federal cases dismissed without prejudice
 - Counsel to pay opposing counsel's fees
 - Attach Court's order to any new filing in S.D. Fla. For 2 years
 - Referred to Florida Bar
- "A reasonable attorney does not blindly rely on AI to generate filings"

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AI Fictitious Case and Real Case but Fictitious Quotations

- *Smith v. Athena Construction Group Inc.*, Case No. 1:18-cv-02080 (D.D.C. July 2025) (pending OSC)
 - Whistleblower action; counsel used AI tools to draft brief with one fabricated case, multiple misquoted real cases, misrepresented holdings; withdrew and self-reported to Pennsylvania Bar
 - Co-counsel signed and filed brief with verifying cites; apologized and withdrew brief

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Candor: The Non-AI Cases

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Suspended: Misled Foreign Tribunal (Appeal Pending)

- In copyright action, Court found attorney from Womble Bond Dickinson mislead Dutch tribunal about which suit (US or Dutch) began first; temporarily suspended; can purge through correcting error with Dutch tribunal. *Dmarcian v. DMARC Advisor BV*, Case No. 1:21-cv-0067 (W.D.N.C. Dec. 19, 2024)
 - Denied motion for stay pending appeal where “The prejudice claimed by the defendant is entirely of counsel’s own making.” (March 5, 2025)
 - 4th Cir. Appeal, Case No. 25-2085 (pending)

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OSC: Misrepresenting Subpoenas

- Seven attorneys ordered to show cause for failing to disclose all material facts in an ex parte § 1782 application for discovery for use in a foreign proceedings.
 - The application requested “leave to serve targeted subpoenas on Shell Chemical LP . . .” in connection with Dutch proceeding
 - It omitted that one subpoena was directed individually to the President of Shell Corporation
- Response included apology that filing “did not clearly communicate all the information that was necessary for the court to assess their request.”
- *Vestolit GmbH v. Shell Chemical LP*, C.A. Case No. 24-1401-CFC, D. Del. (Jan. 14, 2025) (motion to dismiss and quash briefed May 2025)

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OSC: Misleading Court Re Expert Availability

- Denying motion for new trial
 - “Krotoski’s representation to the government that the [expert] witness was ‘traveling’ was a lie.”
 - “[T]o date, Krotoski has never attempted to correct, or even explain, his lie.”
 - *US v. Lopez*, Case No. 2:23-cr-00055 (D. Nev. June 17, 2025)
- Following OSC
 - “[T]he details of his experience are wholly at odds with his actions during the trial, which candidly saddened and shocked the court as well. Unfortunately, the court has come to the only logical explanation for his conduct: entitlement. . . .”
 - Order declines to sanction attorney “at this time and instead admonishes him for his misleading arguments and misrepresentations . . .”
 - *US v. Lopez*, Case No. 2:23-cr-00055 (D. Nev. Sept. 3, 2025)

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Inaccurate Responses at Hearing: No Sanction

- Following hearing, attorney submitted a Notice of Clarification and Correction re answers counsel gave at hearing
 - Court: “Counsel’s purported confusion is belied by the record and is not a credible explanation for his failure to be forthcoming and candid with the Court. And, it has led to unnecessary expenditure of Court resources. While this conduct is sanctionable, at least under Rule 11, the Court declines to impose sanctions at this time. However, all lawyers in this case are reminded that at all times they shall follow the Rules of Civil Procedure and the various rules of professional conduct. Zealous advocacy for a client does not suspend these obligations.”
- *Grubhub v. Kroger*, Case No. 121-cv-05312 (N.D. Ill. June 9, 2025)

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GC False Affidavit – Personal Liability

- District Court sanctioned defendant’s General Counsel for submitting an affidavit that demonstrated reckless disregard for facts relevant to personal jurisdiction resulting in a 17-month delay in litigation.
 - Sanction under section 1927 \$158,488.11 in excess costs, expenses and fees, to be paid personally by attorney who submitted affidavit
- 9th Cir. Affirmed: “Attorneys are bound by rules of professional conduct that impose duties on attorneys as a requirement of holding a law license. Those duties include the duty of candor to the tribunal.”
 - *Rowland v. Watchtower Bible and Tract Society*, Case No. 24-5196 (9th Cir. July 7, 2025)

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Alleges In-House Counsel's False Testimony Should Pierce Privilege

- Sikorsky sued Babcock Mission Critical Services for breach of contract re purchase of helicopters
- Babcock counterclaimed alleging it had cancelled remainder of order
- Following trial, Sikorsky sold two helicopters at issue to a third party; a motion to reopen and supplement the trial record with this information was granted
- In April, motion for status conference filed accusing Sikorsky's former in-house counsel of giving testimony "blatantly inconsistent with the documentary evidence admitted at trial and the trial testimony of Sikorsky's own witnesses" (including a senior manager)
 - In an unrelated breach of contract matter in Texas, a Judge determined that the in-house attorney had "made false statements to the court."
 - *Sikorsky International Operations Inc. v. Babcock Mission Critical Services Ltd.*, Case No. 3:19-cv-00833 (D. Conn.); *Bristow Grp. Inc. v. Sikorsky Aircraft Corp.*, Case No. 19-3691 (S.D. Tex.) (motions filed April 2025)

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Supervisory and Supervised Attorneys

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ABA Model Rules 5.1 and 5.3: Supervisors

- Rule 5.1:
 - (b) A lawyer having direct supervisory authority over another lawyer shall make reasonable efforts to ensure that the other lawyer conforms to the Rules of Professional Conduct.
- Rule 5.3:
 - “(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; and”

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What Millennials and Gen Z Say About AI Use

- 47% fear AI could replace them – so they don’t disclose AI use
- 30% “unfamiliar with their company’s AI policy”
- 60% using personal apps or software rather than employer’s tools
 - Security and confidentiality risks
- 70% overwhelmed by number of tech tools at work
 - See Carolyn Crist, *Younger employees use AI at work but don’t want to tell their bosses, survey shows* (Aug. 11, 2025) (disclosing Cox Communication report) available at www.hrdiver.com

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The Hallucination Cases

Lack of oversight may be why younger lawyers use fake AI citations

BY DAVID WEISENFELD

[JUNE 1, 2025, 1:50 AM CDT \(/MAGAZINE/ISSUE/2025/06/\)](#)

ABA Journal

Why Training Partners To Supervise AI Is Now A Priority

By Steven Lerner

Law360 (May 27, 2025, 9:40 AM EDT) -- As law firms integrate generative artificial intelligence into their operations and teach attorneys to use it, some are getting their partners up to speed by training them specifically in how to supervise the use of these tools.

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Ethics Rules – Discrimination and Harassment

Cooley

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States

- 13 states have amended oath to require pledges of civility
 - See Lauren E. Bartlett, “*Human Rights and Lawyer’s Oaths*,” 36 *Geo. J. Legal Ethics* 411* 429-30.

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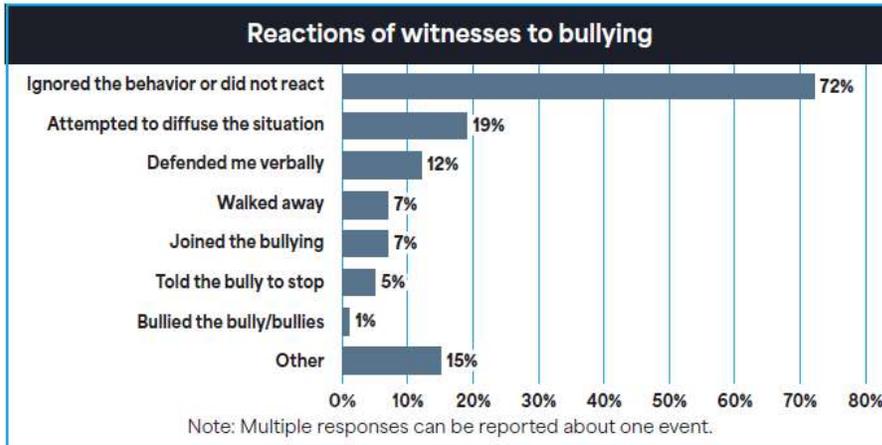
Illinois Report on Bullying in Legal Profession

- “Bullying” is defined as “inappropriate behavior intended to intimidate, humiliate, or control the actions of another person, including verbal, nonverbal, or physical acts.”
- Focused on 12 months in 2022 to 2023
- 6,000+ respondents
 - Stephanie A. Scharf and Roberta D. Liebenberg, “*Bullying in the Legal Profession: A Study of Illinois Lawyers’ Experiences and Recommendations for Change*,” Illinois Supreme Court Commission on Professionalism (October 2024)

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And when lawyers witnessed bullying ...



Stephanie A. Scharf and Roberta D. Liebenberg, "Bullying in the Legal Profession: Study of Illinois Lawyers' Experiences and Recommendations for Change," Illinois Supreme Court Commission on Professionalism (Oct. 2024)

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The Cost: Talent Walks

Women	Men	LGBTQ+	Heterosexual	Substantial impairment	No substantial impairment
28%	10%	25%	17%	28%	17%

Black	Hispanic	Multiracial	Asian American	White
24%	24%	24%	21%	17%

Note: The number of lawyers from other races and ethnicities who answered this question was close to zero.

Stephanie A. Scharf and Roberta D. Liebenberg, "Bullying in the Legal Profession: A Study of Illinois Lawyers' Experiences and Recommendations for Change," Illinois Supreme Court Commission on Professionalism (Oct. 2024)

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ABA

- ABA passed Resolution 523 urging legal organizations to study and address bullying
- “The time has come for the profession to move beyond the acceptance of bullying as the norm and take concrete steps toward fostering a professional environment for everyone and promoting a culture of respect and civility.” Amanda Robert, *ABA House takes aim at bullying in the legal profession*, abajournal.com (Aug. 12, 2025) (quoting Brandon Wolff)

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ABA Model Rule 8.4

- ABA Rule amended August 2016
 - “It is professional misconduct for a lawyer to:
 - (g) 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. This paragraph does not limit the ability of a lawyer to accept, decline or withdraw from a representation in accordance with Rule 1.16. This paragraph does not preclude legitimate advice or advocacy consistent with these Rules.”

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ABA Op. 493 (re Rule 8.4)

- Applies to practice, even outside representation of client
- Not restricted to “severe or pervasive” conduct
- Not intended to prevent “expressing opinions and ideas on matters of public concern, nor does it limit a lawyer’s speech or conduct in settings unrelated to the practice of law.”
- “Enforcement of Rule 8.4(g) is therefore critical to maintaining the public’s confidence in the impartiality of the legal system and its trust in the legal profession as a whole.”

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Partner Removed After Social Media Posts

Mayer Brown Lateral Cut Loose Over Social Media Posts Highlights 'Uneven' Vetting Process in Big Law

Mayer Brown terminated partner David Kreisler within two months of his hiring after becoming aware of social media posts on X.

3 minute read | July 25, 2025 at 06:34 AM By  Dan Roe

What You Need to Know

- Mayer Brown fired a recently hired lateral partner this month after discovering inappropriate online posts.
- The firm said it was unaware of the posts when it hired fund formation partner David Kreisler.
- Social media profiles don't commonly come up in lateral partner questionnaires, recruiters said.

<https://www.law.com/americanlawyer/2025/07/25/mayer-brown-lateral-cut-loose-over-social-media-posts-highlights-uneven-vetting-process-in-big-law/>

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Conditioning Extension of Time

- Counsel learned his wife was having emergency childbirth and requested extension on reply brief
- Opposing counsel (Quinn Emanuel, Kirkland, and Young Conaway) conditioned scheduling extension on omnibus hearing on outstanding motions
 - One take: *“This is just asshole behavior. This is why no one likes lawyers.”* — Joe Patrice, Above the Law
(https://abovethelaw.com/2025/08/lawyers-hold-newborn-for-ransom-in-scheduling-dispute/?utm_campaign=Above)

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Georgetown Law: Pregnant Student

Georgetown Law Finally Acts Like Decent People After Massive Outrage

They're FINALLY doing right by the student.

By KATHRYN RUBINO on November 25, 2024 at 11:28 AM

Abovethelaw.com

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Partner's Response When Pregnant Associate Parked In His Spot

- Pregnant associate parked in the spot of an Eversheds Sutherland partner
 - He used his Porsche to block her in and refused to move car when asked (others moved their cars so she could leave)
 - Demanded a written apology (which she did)
 - Demanded an in-person apology (which she declined)
 - <https://www.rollonfriday.com/news-content/exclusive-stroppy-eversheds-sutherland-partner-trapped-pregnant-associate-carpark>

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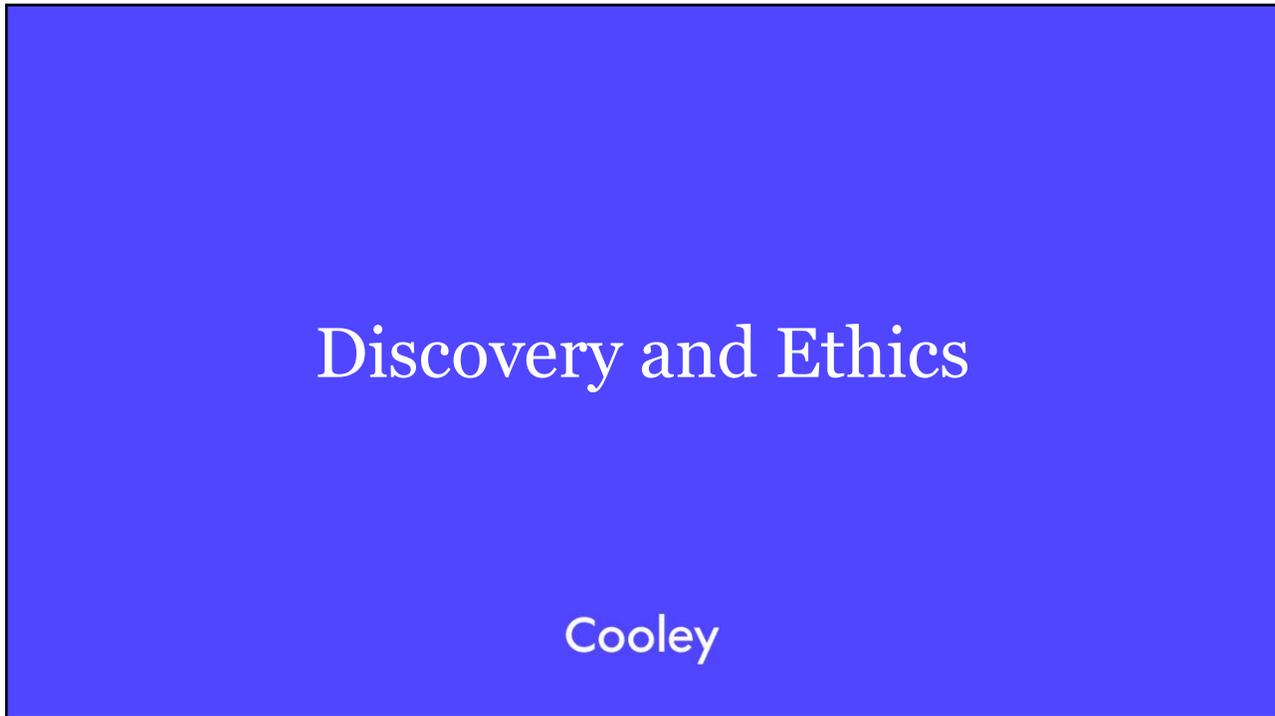
139

Additional Resources

- Andrea Keckley, *Workplace Bullying Can't Be A Rite of Passage For Attys*, www.law360.com (May 30, 2025)
- Anna Stolley Persky, *Bullying Is A Problem In The Legal Profession: How Can The Cycle Be Broken?*, ABA Journal (June 1, 2025)
- Leah Teague, *Civility Matters: Why Law Schools Must Teach Students to Disagree without Being Disagreeable*, 76 Baylor L. Rev. 1 (2024)
- Timothy W. Floyd, *Lawyers and Civil Discourse: Respect and Civility as a Matter of Professional Identity*, 76 Baylor L. Rev. 90 (2024)
- Melissa Mortazavi, *Incivility as Identity*, 2020 Mich. St. L. Rev. 939 (2020)

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Subliminal Messaging

- Dr. Lance B. Eliot, *General AI and Subliminal Messaging for Shadowy Persuasion*, Forbes (Oct. 30, 2024)
 - Image-based
 - Video-based
 - Audio-based
 - Text-Based

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AI and Rules of Evidence

- Sarah Martinson, *AI-Generated Evidence Rule Making Way to Public Comment*, law360.com (May 23, 2025)
- Jeff Overley, *Judiciary Advisors Back Development of AI Evidence Rules*, law360.com (Nov. 8, 2024)
- Suzanne Monyak, *Judges Mull Defining 'Moving Target' AI in Evidence Rules*, Bloomberg Law News (Apr. 2024)
 - One concern: Federal Judiciary Advisory Committee hearing testimony regarding AI

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Resources

- Maura R. Grossman & Hon. Paul W. Grimm (ret.), *Judicial Approaches to Acknowledged and Unacknowledged AI-Generated Evidence*, Colum. Sci. & Tech. L. Rev. (2025)
- *Deepfakes in Court: How Judges Can Proactively Manage Alleged AI-Generated Material in National Security Cases*, Forthcoming in The University of Chicago Legal Forum draft available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4943841

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Falsified Document In Deposition

- During deposition, attorney did not mark document as exhibit but presented a schematic with Bates number but altered date to witness and then questioned about date before
 - Magistrate found that lawyer “failed to identify to the witness, prior to eliciting testimony from the witness, that he was asking him about a falsified document”
- During hearing, attorney failed to comply with duty of candor in not identifying emails with partner about issue; partner failed to comply with duty of candor by not correcting misrepresentation
 - *CogniPower LLC v. Samsung Electronics Co., Ltd. et al.*, Case No. 2:23-cv-160-JRG (E.D. Tex. Mar. 31, 2025) (adopting March 18, 2025, Report and Recommendation)

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Sanctions

- Sanctions include
 - Two attorneys ordered to 30 hours of legal ethics courses over next 120 days
 - Pay fees and costs as well as Special Master and Special Master's Counsel
- *CogniPower LLC v. Samsung Electronics Co., Ltd.*, Case No. 2:23-cv-160-JRG (E.D. Tex. Mar. 31, 2025)

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Anti-Money Laundering

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Solicitors Regulation Authority and AML

- SRA targeting 700 inspections for 2024-2025
- Key areas where firms fall short
 - Client matter risk assessment
 - Policies and controls
 - Source of funds checks
 - Firmwide risk assessment
 - See Harriet Holmes, *8 Ways Law Firms can Prepare for SRA's AML Offensive*, law360.com (June 23, 2025)

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UK Examples

- Simpson Thacher failed to implement AML policies and risk assessments between 2017 and 2022; £300,000 fine and £62,000 in legal costs
- Dentons facing second proceeding after tribunal error

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Defamation, Libel, and Reputational Harms

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Fined for Filing Libel Suit: “Blatant Lack of Professionalism”

- In underlying case, Defendant’s counsel wrote email to plaintiff’s counsel that documents did not appear to have been filed under seal
- Plaintiff’s counsel brought libel suit; Court of Appeals affirmed dismissal under anti-SLAPP statute
- Sanction: \$2.5K in attorney fees for “frivolous” appeal
- Concurring opinion: “Perhaps the most alarming aspect of this case is the ease with which an attorney could so swiftly compromise his professionalism in response to a perceived slight.” *Potts v. Richardson*, Case No. A25A0111 (Ct. Appeals of Ga. June 27, 2025)

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Another Georgia Defamation Suit

- Underlying case family dispute where mother ordered to produce son's Nigerian passport to father
 - After hearing, Court asked attorney Aaron to draft order; attorney Okeke filed objections that proposed order included statements never made by Judge at hearing.
 - Then came the email
 - *Okeke v. Aaron*, Case No. 2025CV02803 (Ga. Superior Ct., Clayton County filed July 27, 2025)

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Attorney Aaron's Email To Opposing Counsel

You clearly lack any understanding of family law, any understanding of procedural posture and it's clear that you do not own a McCounaughy book because you are so disoriented and flustered when you are in Court. You think that you are being "aggressive" and "fighting" for your client but you are placing her in a worse off position with your ridiculous assertions. I assure you that you better get your rest each night before we have hearings because I will meet you there with zeal and relentless advocacy. You are rude, disrespectful, and the EPITOME of antiquated false male dominance. If you ever disrespect me the way you did yesterday, I will not stop at ensuring you are placed behind those doors in the Courtroom.

The fact that you are willing to lie for your client is disgusting! My client knows very well that she renewed the minor child's Nigerian passport. You are sticking your neck out to lie and I assure you, it will result in you falling off of the cliff.

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Alleged Defamation and Alleged Threats

- Patent infringement suit filed; new suit alleges accused infringer's outside counsel defamed inventor citing news article stating inventor pursuing quick settlements, that entities were "shells [that] go bankrupt," and that attorney said "before I'm done with you I'm going to bankrupt you"
- Amended answer alleges patentee's counsel threatened accused infringer's counsel stating "bad things happen to people and property."

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Recent Defamation Cases

- Strategic SLAPP suits
- Attorneys and parties making extrajudicial statements
- Client-Attorney Breakdown and Retaliation
- Corporate and Counsel Liability

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Theft and Fraud

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Theft/Fraud

- By posers
- By attorneys (misappropriation of client funds; theft from firms or colleagues)
 - Several cases re financial stress and addiction (including gambling)
 - Failure to supervise
 - Aiding and abetting
- By non-attorney staff
 - Failure to supervise

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Theft: Firm Credit Card

- Attorney disbarred
 - “Prolonged and fraudulent misuse of the Firm’s credit card to fund his exorbitant purchases for an online casino videogame”
 - Used to purchase at least \$16K in Amazon gift cards
 - *In re Frischberg*, Docket DRB 24-064 (N.J. Disciplinary Review Board Sept. 4, 2024)

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RICO Suit Alleging Overcharging Clients and Defrauding Auto Mfgs.

- Ford filed suit against CA firms and attorney alleging RICO violations using the “lemon law”
 - Under “lemon law” car manufacturers must pay court fees and costs
 - “The scheme was carried out through a sophisticated criminal enterprise of attorneys and law firms that ingeniously spread their fraudulent billings across thousands of cases against many auto manufacturers so that their fraudulent scheme would go undetected.”
 - Alleges one attorney billing a 57.5 hour work day
 - Alleges one attorney and associate “claimed to have attended two different trials in two different jurisdictions on a single day, totaling 29 hours of work”
 - *Ford Motor v. Knight Law Group*, Case No. 2:25-cv-04550 (C. D. Cal. May 2025)

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Aiding and Abetting

- Actions by non-clients
 - Aiding and abetting clients' alleged breach of fiduciary duty
 - M&A and bankruptcy contexts
- New twist – in-house counsel
 - Case in Nevada alleges in-house counsel helped client remove confidential information from a former client/corp to misappropriate trade secrets (also named officer of defendant corp.)

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Other Things Lawyers Shouldn't Do

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Trade Secret Suits

- Suits against former GCs re alleged theft of trade secrets
 - *Storehouse In A Box LLC v. Richard Choi*, Case No. 2:25-cv-11713 (E.D. Mich.); *Empower Clinic Services LLC v. Bio Filling Solutions*, Case No. 4:23-cv-04123 (S.D. Tex.)

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Income Tax Evasion

Former Moody's GC gets prison time for tax-filing failure on \$54M income while life 'all fell apart'

BY DEBRA CASSENS WEISS ([HTTPS://WWW.ABAJOURNAL.COM/AUTHORS/4/](https://www.abajournal.com/authors/4/))

OCTOBER 29, 2024, 9:06 AM CDT

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QUESTIONS?

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Conclusion

These materials are intended as an introduction to the subject matter covered in the presentation. The presentation and the materials contained herein do not attempt to provide legal advice for any particular situation. Each particular situation must be analyzed individually in light of all of the surrounding facts and circumstances. Because of the complexity of the legal issues that will always arise in connection with the subject matter hereof, it is critical that counsel be involved. These materials are provided for educational and discussion purposes *only* and are not to be copied, used or distributed outside of this seminar without the express written consent of Cooley LLP. Copyright Cooley LLP and Michelle Greer Galloway 2022-2025.

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