LAWYERS MUTUAL

AI POLICY TOOLKIT

RISK MANAGEMENT PRACTICE GUIDE OF LAWYERS MUTUAL

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AI POLICY TOOLKIT

Risk Management Practice Guide of Lawyers Mutual

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DISCLAIMER

This document is written for general information only. It presents some considerations that might be helpful in your practice. It is not intended as legal advice or opinion. It is not intended to establish a standard of care for the practice of law. There is no guarantee that following these guidelines will eliminate mistakes. Law offices have different needs and requirements. Individual cases demand individual treatment. Due diligence, reasonableness and discretion are always necessary. Sound risk management is encouraged in all aspects of practice.

SEPTEMBER 2026

Internet. Email. Wireless. Smartphones. Social media. Technology has changed rapidly in the last few decades. Technology's evolution has increased exponentially with the rise of Artificial Intelligence (AI) in recent years.

In simple terms, AI refers to computer programs that can perform tasks typically done by a human: decision-making, pattern recognition, and natural language processing. Generative AI programs (ChatGPT, Claude, Gemini) can produce content such as images, code, and text.

Truthfully, AI is not new. The annoying paperclip guy who popped up in your Word document in 1995? That was AI. So were your curated book recommendations from Amazon, music recommendations from iTunes, and your Netflix suggested watch list.

The change came in 2022, when chat-based models emerged putting you in the driver's seat. Now, a "prompt" instructs the AI on what it is supposed to do - draft a document, code a website, or create an image.

To make the best use of AI in your practice, you should understand what it really is and the potential benefits and risks. With that knowledge, you can choose the right AI model for your firm. A written AI Use Policy will solidify those findings and give everyone in the firm the information they need to use AI the right way.

UNDERSTANDING AI

AI systems are tools in your practice that can help automate routine office tasks, review contracts for risks, or scan and analyze thousands of records in seconds. Having a general understanding of how the technology works is the key to proper use. This enables attorneys to accurately assess whether an AI program works within their ethical and professional obligations.

Token

Tokens represent the fundamental building blocks of data in AI models. These can be words, syllables, pixels, or other predefined units. In general, tokens consist roughly of 4 characters.

Processing the relationships between tokens is key to AI models learning to predict, generate, and reason. Training datasets can include over a billion or trillion tokens. The speed in which the AI model learns and responds depends on how quickly these tokens are processed.

Tokens fall into different categories. Input tokens refer to the characters processed in your request. Output tokens are those generated in the AI's response. Reasoning tokens are internal reasoning steps before the output is produced. Cached tokens are reused tokens in a conversation history.

Think of tokens as a way to monitor usage – similar to mobile data. In general, the more tokens used means more thinking, which equals more expensive and longer time to generate.

Prompt

In general, a prompt is the question or instructions given to the AI tool so that it will generate output. Parameters include what you want to include or exclude, tone, output format, and uploaded examples.

A well-written prompt produces the best results. Effective prompts are clear, specific, and targeted. The idea is to fully identify the problem you want to solve.

Large Language Models

Large Language Models (LLMs) train on massive datasets to generate human-like language. LLMs identify relationships between words and phrases in a statistical

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AI systems are tools in your practice that can help automate routine office tasks, review contracts for risks, or scan and analyze thousands of records in seconds.

context. LLMs consider text as tokens, and the placement of the next word in a paragraph is a calculation of the probability of the next token.

LLMs produce text that resembles human speech or writing. Most well-known AI programs fall into this category of AI.

Machine Learning
Machine learning involves AI programs improving performance by learning from experience instead of explicit programming. The goal is to achieve self-learning by training the program on data to detect patterns and improve performance based on that analysis.

In general, the program will calculate probabilities and then recognize patterns and relationships in the data, building a decision model to create output.

Bias and Variance
How an AI model was trained can significantly impact the results it produces. The key metrics to consider when evaluating a model's reliability are bias and variance.

Bias refers to the tendency of AI to skew results based on the data the model was trained on. This may result from limited training data or the developer's own bias. However, biased input can lead to biased results.

Variance, in contrast, describes the change in a model's results when there are changes in data. Models can be sensitive to fluctuations in the training data and typically learn irrelevant details instead of the underlying patterns. These complex models often struggle with new data.

The best results come from a program with low bias and low variance.

Hallucination
AI hallucinations are a tendency to fabricate an answer when it can't find one. What causes hallucinations? In general, it's the nature of machine learning. AI learns based on pattern recognition, so outputs are based on the probability of being true.

AI potential benefits to law firms

- Legal Research
- Document Review
- Analysis Client
- Intake Client
- Communications

AI hallucinations often result from bias and variance. Often training data includes both accurate and inaccurate data, as well as social biases. Consider that one of the top sources cited on ChatGPT is Reddit, a social media forum platform, a stark reminder that AI cannot differentiate between fact and opinion.

THE BENEFITS OF AI

Even though AI sounds complex and scary, properly reviewed AI can be a great benefit for your firm. AI programs can increase efficiency and streamline processes, allowing you to focus on more complex issues and clients.

Legal Research
AI can search massive databases in a relatively short time. This provides you with extensive case law, statutes, and regulations without hours of manual searching through individual records. AI's pattern recognition capabilities can identify related issues that could otherwise be missed. AI can also summarize the materials for insights to build your case.

Document Review
Similarly, AI can scan documents and efficiently classify, tag, or summarize them. AI can identify specific clauses or inconsistencies between versions. This is especially helpful when reviewing contracts where risk analysis and regulatory compliance are needed.

Analysis
AI is a predictive tool. That means AI tools excel at assessing outcomes based on historical data. They can also estimate settlement values or identify judicial tendencies on legal issues.

> **Lawyers are responsible for any errors in the documents produced. Any AI-produced materials should be thoroughly reviewed and verified before being considered a final draft.**

Client Intake
AI tools can automate the intake process by sending forms to clients or scheduling appointments. AI can also improve the client's experience by explaining what the client can expect during their first visit.

Client Communications
In addition to enhancing the intake process, AI can improve communication and responsiveness. AI's document-drafting capabilities can transform legalese into language the client can understand. AI programs can also identify follow-up dates and action items from communications, making sure deadlines are added to the calendar.

RISKS AND ETHICAL CONSIDERATIONS WITH AI

While AI is a useful tool and can improve your practice, the abundance of AI tool options is complicated and not at all equal. It is important to recognize the limitations and risks associated with AI.

Knowing what to look for will help you maintain your professional and ethical obligations.

Confidentiality
Many AI tools are continually learning and training from user data and prompts. This means that when choosing an AI tool, you need to verify that your data - most importantly, your clients' data - will be used only for the specific purpose you provided.

Pay close attention to the user agreement regarding the use of data in this regard. An AI Vendor Checklist is included with this guide.

Accuracy
As described previously, AI can generate false results. There is a database that has identified 1,785 cases with hallucinated content so far - and the list is growing daily.

Lawyers are responsible for any errors in the documents produced. Any AI-produced materials should be thoroughly reviewed and verified before being considered a final draft. In addition, citation verification software can flag citations that are suspicious or unverifiable before filing.

Content Ownership
AI generates output based on training information. Much of this existing data is copyrighted material. Using an AI-produced blog post, website copy, or report could be infringement.

A better practice is to draft your own version and have an AI tool edit it. For example, an AI tool can change a formal tone to a more conversational one or rewrite website text to be more user-friendly.

Informed Consent
Your client should understand the use of AI in their case. The attorney should be transparent about the role of AI in the case and acquire informed consent.

To communicate your firm's use of AI, a "Use of Artificial Intelligence" clause can be added to the engagement letter or Terms of Representation. Sample language is included with this guide.

Costs
Part of informed consent is understanding the fees associated with the use of AI. Legal fees must be fair and reasonable and appropriately reflect the work completed.

If the use of AI changes the costs of the representation, clients must be informed. This could mean that AI cuts the time a task takes in half, resulting in significant savings

for the client on an hourly fee contract. It may also mean that the attorney needs to disclose the fee rate for AI usage if they have a pay-per-token license fee that will be passed on to the client.

FIND THE RIGHT TOOLS

One mistake often made is purchasing tools without a clear plan for how they fit into processes. But now that you have a better understanding of AI, you can safely find tools that fit within your practice. Here are some considerations before you choose an AI tool:

- Consider a specific scenario and which AI tool could be used to solve that problem, along with the desired outcome. Establish benchmarks to measure effectiveness.
- Evaluate how tools integrate with your existing systems. Depending on how you are using them, this may complicate procedures or protect client data.
- Review the user agreement for confidentiality and data security risks.
- Determine budget impact and future costs.
- Develop a strategy for implementation to minimize disruption and resistance.
- Look at existing policies and procedures and determine where AI fits or what needs to be adjusted, or if new policies need to be created. Tips for a written AI policy are included.

To assist you with selecting the right software, an AI Vendor Checklist is included with this guide.

HAVE A WRITTEN POLICY

To ensure your firm is uniform in its approach to AI, it's important to have a written AI Use Policy. This gives clear direction on what tools your firm allows and when they can and cannot be used.

- Provide a checklist for AI-generated content that requires multiple reviews of sources and citations.
- Identify acceptable AI tools and their use cases.
- Designate someone to monitor issues and limitations with AI programs and update the team with best practices or issue alerts.
- Establish access control parameters so that unauthorized users cannot use AI to view data that they normally would be restricted from seeing.
- Ensure that everyone who uses AI has the proper skills and knowledge to use it correctly.

A sample AI Use Policy is included with this guide.

CONCLUSION

AI presents a new frontier that can make the practice of law easier. The best rule of thumb is to consider AI a powerful assistant, not a replacement for your legal expertise or judgment.

Successfully implementing AI, or any new technology, requires understanding how it best serves your practice, its potential pitfalls, and how to mitigate those ethical risks. An AI Use Policy for your firm will make sure everyone maintains a high standard of care.

Note: *This is a sample form only and is written for the general purposes of facilitating clear expectations and avoiding misunderstandings between an attorney and client. It is not intended as legal advice or opinion and will not provide absolute protection against a malpractice action.*

SAMPLE ENGAGEMENT LETTER: AI Clause

USE OF ARTIFICIAL INTELLIGENCE

We use artificial intelligence (AI), potentially including generative artificial intelligence (Gen-AI), to enhance representation of our clients. We may use this technology to conduct legal research, prepare documents, and complete other tasks in providing legal services on your behalf. The Firm does not currently allow the input of confidential information into open-source AI tools such as ChatGPT. We will not enter any of your confidential information into AI or Gen-AI tools without your prior written authorization.

Like any technology, AI and Gen-AI carry some degree of risk, which may include errors in content, data security vulnerabilities, and system malfunctions. We have implemented reasonable measures to safeguard against these risks, and our lawyers always maintain oversight of all output generated by AI or Gen-AI tools. Accordingly, we believe and, by utilizing our services you agree, that the benefits of using this technology outweigh the related risks, and you consent to the use of this technology.

KEY PRINCIPLES FOR CREATING AN EFFECTIVE PROMPT

Getting the best results from your AI depends on writing an effective prompt. A good prompt communicates what you're looking for with context.

Here are the key principles to create an effective prompt:

1. **Tone**. This tells the AI the 'voice' you want the response to have. This can vary from a technical voice for legal documents to a conversational voice for client communications.
2. **Specific**. Provide clear details about what you are looking for. The more explicit directions and information you provide, the better the results will be.
3. **Context**. Explaining the why or purpose helps tailor the response. It helps the AI understand the topic and produce an appropriate output.
4. **Audience**. Identify who the intended recipient of the information is. This also helps tailor the response.
5. **Format**. Let the AI know how you want your results to be presented. It can produce a table, outline, executive summary, or presentation.
6. **Constraints**. If there are any limitations on the response, include these as well. Constraints can include length or exclude content to direct the output.
7. **Persona**. AI results are often better when the prompt identifies who is asking the question. For example, you may start the prompt with "you are a litigation attorney . . ." to give the AI an understanding of who is talking.
8. **Examples**. If you have a specific format or result in mind, it helps to attach an example of that so the AI can more effectively produce the result you want.
9. **Simplify**. If you have a complex task, divide it into smaller pieces to simplify the process. This can apply to a contract, court pleading, or other large document.
10. **Grammar**. Prompting works best if you write in complete sentences and proper grammar. While AI will generate responses with any input, the best results come with well-thought-out and drafted prompts.
11. **Refine**. If the results aren't exactly what you want the first time, remember that AI is an iterative tool. You can iterate and refine your results to get the response that you want.
12. **Validate**. Ask AI to check its own work or provide resources for citations.
13. **Save**. Once you find a prompt that consistently produces good results, save it. Create a prompt library which allows you to edit your prompts for new tasks instead of having to start over each time.

GENERATIVE AI VENDOR VETTING CHECKLIST

Preliminary Questions — Before You Look at Vendors

1. Is there a service that is already in the environment that could do the same or substantially similar task?

   ☐ Yes ☐ No

2. Is this limited to certain users or Firm-wide deployment?

   ☐ Limited Users ☐ Firm-Wide

   Is everyone on board if Firm-wide?

   ☐ Yes ☐ No

3. Will the service require new access, utilize existing access, or require expanded access from existing?

   ☐ New Access ☐ Existing Access ☐ Expanded Access

   What permissions are needed per the AI platform?

   What permissions are needed for users performing the AI task?

Vendor Vetting Checklist

1. Vendor Credibility

   ☐ Vendor has an established reputation as an AI software provider

   ☐ Vendor has an established business, leadership team, and legal-industry experience

   ☐ Vendor can provide references from law firms or legal organizations

   ☐ Vendor provides documentation of product capabilities and known limitations

   ☐ Vendor provides documentation of incident response procedures

   ☐ Vendor has no known data breaches

2. Security and IT Controls

   ☐ Vendor is SOC 2 Type II certified (or provides equivalent independent security audit)

   ☐ Data is encrypted in transit and at rest

   ☐ Multi-factor authentication is available

   ☐ Vendor has documented breach notification procedures

   ☐ Vendor provides information on data retention and deletion policies

3. Confidentiality and Data Protection
   - ☐ Client data remains the property of the lawyer or law firm
   - ☐ Vendor does not train models using customer data without consent
   - ☐ Vendor explains whether prompts or uploaded documents are stored
   - ☐ Vendor prevents other users from accessing confidential information
   - ☐ Vendor has sufficient safeguards in place to protect sensitive information from disclosure/leakage
   - ☐ The Lawyer/Firm has sufficient safeguards in place to protect sensitive information from disclosure/leakage

4. Accuracy and Human Oversight
   - ☐ Vendor discloses AI limitations and potential for errors or hallucinations
   - ☐ Product requires or encourages lawyer review of outputs
   - ☐ Vendor provides transparency regarding sources or citations when applicable

5. Ethical and Professional Responsibility Alignment
   - ☐ Vendor acknowledges lawyers' duties of competence, confidentiality, and supervision
   - ☐ Product is designed to assist lawyers, not replace professional judgment
   - ☐ Vendor training materials address responsible AI use in legal practice

6. Contract and Terms of Use
   - ☐ Terms of service protect confidentiality and ownership of client information
   - ☐ Vendor provides reasonable contractual liability protections
   - ☐ Vendor contract includes breach notification and data protection obligations

7. Billing and Fee Transparency
   - ☐ Vendor pricing structure is transparent
   - ☐ Vendor services allow lawyers to comply with ethical billing rules
   - ☐ Pricing does not encourage billing clients for time not actually spent

8. Risk Management Review
   - ☐ Vendor product reviewed internally for malpractice risk exposure
   - ☐ Vendor marketing materials do not imply the tool replaces legal judgment
   - ☐ Vendor agrees to cooperate if claims issues arise involving the tool

SAMPLE AI ACCEPTABLE USE POLICY

Purpose

This AI Acceptable Use Policy outlines the guidelines for the use of Artificial Intelligence ("AI") tools by [Law Firm Name] ("Firm"). It applies to all attorneys, staff, contractors, and affiliates ("Users") who have access to the Firm's systems and data. The purpose of this policy is to protect client confidentiality, ensure ethical compliance, and maintain professional standards.

Scope

This policy applies to all AI tools used for client service, administrative operations, or legal functions. AI tools may be proprietary, third-party, or integrated into software the Firm already uses. "AI Tools" refers to any software that generates content in response to a prompt, including, but not limited to images, text, code, video, or other content.

Ethical Standards

All Users must comply with the North Carolina State Bar Rules of Professional Conduct including but not limited to Rule 1.1 (Competence), Rule 1.4 (Communication), Rule 1.5 (Fees), and Rule 1.6 (Confidentiality), along with 2024 Formal Ethics Opinion 1 (Use of AI in a Law Practice) and 2011 Formal Ethics Opinion 6 (Subscribing to Software as a Service).

Acceptable Use Standards

To ensure Users meet ethical compliance and professional standards, the following guidelines must be followed:

- **Vendor Approval**. Only vendors vetted and approved by the Firm may be used. Personal AI accounts and AI tools not approved by the Firm are prohibited from use for Firm or client work.
- **Confidentiality**. AI Tools may only be used as approved by the vendor approval process. AI tools must comply with data privacy laws and confidentiality requirements before any data that is confidential, proprietary, or otherwise protected is shared with the AI.
- **Client Consent**. The Firm discloses AI use to clients by including language in its standard terms of engagement, as follows: [Insert Firm Language Here] (Sample language options are included with this guide.)
- **Professional Judgment**. Attorneys are solely responsible for the final work product. AI outputs must be reviewed by an attorney to apply professional judgment and make critical decisions on any client matter.
- **Accuracy and Verification**. All content generated by AI Tools must be reviewed by an attorney and verified to be accurate and acceptable before use in client matters.
- **Training and Communication**. Attorneys and staff must receive training on ethical use of AI, including benefits, risks, and best practices. The Firm encourages attorneys and staff to discuss any concerns or issues they encounter when using AI tools.

Prohibited Uses

The following uses are prohibited:

- Sharing confidential, proprietary, or otherwise protected information with an unapproved tool.
- Inputting any confidential, proprietary, or otherwise protected information into any consumer or free-tier AI tool, including personal accounts.
- Generating legal advice, case analysis, or filings without the oversight of an attorney's professional judgment.

- Presenting any AI-generated output regarding a client matter without completing verification protocols to ensure accuracy.
- Using AI for an adverse decision regarding a person. Such decisions require professional judgment. Any AI output on the subject must be reviewed for bias, accuracy, and compliance with laws, regulations, and the rules of professional conduct.
- Any use that violates this policy, the client's engagement terms, or outside counsel guidelines.
- Any use that violates local, state, federal, or international laws or professional ethical rules.

Verification Process

Any document containing AI-generated content that will be submitted to a court, arbitrator, or other tribunal is subject to the following verification process before submission, filing, or delivery.

- **Citations**. Verify every legal citation against a primary source. This includes case names, reporters, docket numbers, statutes, rules, and regulatory references.
- **Jurisdiction**. AI often misrepresents the jurisdiction of cited authorities in summaries. Confirm the jurisdiction of cited authorities.
- **Quotes**. Verify every quotation to a cited authority is accurate to the cited authority.
- **Holdings and procedural posture**. Confirm each cited case against the primary source for the court's ruling, reasoning, and procedural posture. Do not rely on the AI's summary.
- **Doctrinal reasoning**. AI-generated reasoning often sounds rational while applying the wrong doctrinal frame. Confirm that the legal tests, elements, or standard applied is correct and that the conclusion follows from it.
- **Bias and characterization**. Review cited authorities to ensure that there is no selective omission of unfavorable court rulings, no overstatements, and no omissions of controlling adverse authority.
- **Formatting and procedural rules**. Ensure any filings adhere to the court requirements, including any judge-specific procedural rules. This includes but is not limited to page and word limits, font type and spacing, caption formatting, and signature block formatting.
- **Attorney approval**. The responsible attorney must sign and date the verification form when completed. The form will be retained in the case file.

Billing Procedures

The Firm bills AI-assisted work in accordance with the North Carolina State Bar Rules of Professional Conduct, specifically Rule 1.5 regarding Fees and 2024 Formal Ethics Opinion 1 (Use of AI in a Law Practice). Generally:

- Operating expenses. AI that is integrated into existing programs should be treated as overhead and not billed to clients.
- Incurred expenses. The firm will identify AI platforms individually and determine whether charging per use is allowable and determine for each platform whether to bill as incurred expenses and at what cost.
- Hourly fee agreements. Firm will follow ethics rules for billing for actual time expended, including time spent prompting and reviewing output. Time saved will not be billed as part of hourly billing.
- Flat fee or contingent fee agreements. Firm will follow ethics rules for billing and will evaluate how to include efficiencies gained through working with AI tools into value billing, subscription billing, flat fees or contingent fee agreements. The responsible attorney shall review whether the agreed-upon rate remains reasonable when AI has been used to produce the work.

Incident Response

AI-related incidents or misuse must be promptly reported to the managing attorney immediately.

An AI incident includes:

- Inadvertent exposure of confidential, proprietary, or other protected information into an unapproved tool.
- Disclosure of confidential, proprietary, or other protected information through an AI tool's output.
- Submission of AI-generated content to a client, opposing counsel, court, or other third party that includes misstatements or other fabrications.
- Any provider breach, outage, or service disruption affecting firm data privacy.

AI-related incidents will follow the Firm's established data breach protocols.

Policy Updates

The Firm may review and update this policy to reflect changes in law, technology, or best practices. Users will be notified of any changes to the policy. Additional training may be required.

Acknowledgement

I acknowledge that I have read, understand, and agree to comply with this Policy. I understand that failure to adhere to this Policy may result in disciplinary action up to and including termination.

Signature: _____

Date: _____

AI CONTENT CHECKLIST

Matter: _____

Case No. _____ Document or filing: _____

Use Case: Drafting Research Analysis Summary Other: _____

Identify AI Program(s) Used _____

- ☐ Citations verified against primary source
- ☐ Quotations verified against primary source
- ☐ Rulings, reasoning, and procedural posture verified against primary source
- ☐ Cited authorities are from the controlling jurisdiction
- ☐ Doctrinal test or standards correctly stated; conclusion follows
- ☐ Cited authorities reviewed for no omissions
- ☐ Formatting and procedural rules compliance confirmed

Preparer _____ Date: _____

Final Attorney Approval _____ Date: _____