

# Ethical Issues in Using Artificial Intelligence



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**Lesson Plan**

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# **PART I**

## **Words and Phrases**

1) Artificial Intelligence: The development and use of computer programs that perform tasks which normally require human intelligence (Marchant – 2017). Although AI may provide a semblance of higher-order intelligence, it does so through algorithms, a series of commands that a computer system carries out in response to an input rather than through understanding, abstract reasoning and creative thinking used by human beings. (Brimo – 2025)

2) ChatGPT: An artificial intelligence chatbot which can understand and generate human-like text, code, and content based on user prompts. It operates by integrating enormous internet datasets to simulate natural conversation, write essays, solve problems, and analyze information.

3) Generative A.I.: Technology that creates human-like new content (text, images, music or even legal briefs) from existing massive datasets. In the legal sphere, current tasks include proof-reading, searching for applicable authority, drafting memoranda, questions for voir dire, deposition questions, proposing counterarguments for a brief, producing tables of contents for large documents or groups of documents.

4) Hallucinated Citations: References to legal authority that either do not exist or are submitted for the purpose of establishing a legal proposition that is not what was discussed in the decision. By way of example, see In re Martin, 670 B.R. 636 (Bankr. N.D. Ill. 2025).

5) Machine Learning: the capability of a computer to teach itself and learn from experience, thus constantly improving its own capabilities. (Marchant – 2017).

6) Natural Language Processing: The capability of computers to understand the meaning of spoken or written human speech and then to apply and integrate that understanding to perform human-like analysis. (Marchant – 2017).

7) Large Language Models (LLM) – Artificial intelligence used to analyze trillions of parameters to understand, analyze and summarize human-like text. The software can both comprehend and generate human language text.

8) Pattern-Based AI and Machine Learning: This is AI that extracts patterns from massive amounts of data and applies these patterns to solve statistical problems. The process by which patterns become recognized and updated as new data is inputted is known as machine learning. (Brimo – 2025)

9) Rule-Based AI: the application of logical rules expressed in “if/then” format to sets of facts and draws conclusions in a “true/false” format. (Brimo – 2025)

10) Widely used, interactive AI legal research tools each of which is easily available through a GOOGLE search:

Westlaw Edge	Casetext Compose
Courtroom5	BriefCatch
NextChapter	Fastcase
Upsolve	FirstLegal
Cara AI	Juro
Harvey AI	Lawdroid
Casemine	Lexicon
Donotpay	Kira systems
Casetext	Thoughtriver
Chatgpt	Bryter
Legartis	
Reveal (useful for document review and ediscovery)	
Brainspace (useful for document review and ediscovery)	

## Part II

### Ethical Risks associated with use of GAI

- 1) Due Diligence - A.I data must be validated with the law and the facts. Ethical issues can quickly arise when an attorney trusts artificial intelligence so much that he fails to check the machine produced content for accuracy. The largest risks to attorneys is using GAI may be overestimating the capabilities of the software or being overly credulous as to its output. (Bast, 2023)
  
- 2) Black Box Technology – The algorithms that run GAI are a closely guarded secret maintained by the developers. As a result, attorneys using GAI can do no more than rely upon the “black box” approach to the outcome they receive from their queries.
  
- 3) Bias – The software supporting the GAI algorithms have been developed by human beings. For this reason, user of GAI must allow for the possibility of bias and prejudice existing in the software engineers that has been built into the algorithm, some of which may be a violation of R.P.C. 8.4(g). [see discussion below].

**PART III**  
**Judicial Sanctions**  
**&**  
**Rules of Professional Conduct**

Introduction – Due diligence is a critical component of using GAI. The submission of or reliance upon use of unverified GAI materials may simultaneously violate multiple provisions in the Rules of Professional Conduct, statutory law and the Rules of Court. It may also forever destroy the level of trust an attorney has acquired over years of ethical interactions with judges and adversaries.

Instructor comment: by way of example, as per Professor Bast, see discussions in Mata vs. Avianca, Inc., 2023 WL 4114965 (S.D.N.Y. 2023) and Gates vs. Chavez, No. 2022CV31345 (El Paso County Dtst. Ct. filed May 5, 2023).

1) Hallucinations, inaccurate citation and advocacy that does not accurately relate to the holding of the cited case to law may trigger a number of harsh sanctions or the imposition of attorney discipline under the following:

Rule 1:4-8 – Frivolous pleadings provides in part:

(a) Effect of Signing, Filing or Advocating a Paper. The signature of an attorney or pro se party constitutes a certificate that the signatory has read the pleading, written motion or other paper. By signing, filing or advocating a pleading, written motion, or other paper, an attorney or pro se party certifies that to the best of his or her knowledge, information, and belief, formed after an inquiry reasonable under the circumstances:

2) N.J.S.A. 2A:15-59.1 – Frivolous pleadings:

a) (1) A party who prevails in a civil action, either as plaintiff or defendant, against any other party may be awarded all reasonable litigation costs and reasonable attorney fees, if the judge finds at any time during the proceedings or upon judgment that a complaint, counterclaim, cross-claim or defense of the non-prevailing person was frivolous.

b) In order to find that a complaint, counterclaim, crossclaim or defense of the non-prevailing party was frivolous, the judge shall find on the basis of the pleadings, discovery, or the evidence presented that either:

(1) The complaint, counterclaim, crossclaim or defense was commenced, used or continued in bad faith, solely for the purpose of harassment, delay or malicious injury; or

(2) The non-prevailing party knew, or should have known, that the complaint, counterclaim, crossclaim or defense was without any reasonable basis in law or equity and could not be supported by a good faith argument for an extension, modification or reversal of existing law.

c) In order to find that a complaint, counterclaim, crossclaim or defense of the non-prevailing party was frivolous, the judge shall find on the basis of the pleadings, discovery, or the evidence presented that either:

(1) The complaint, counterclaim, crossclaim or defense was commenced, used or continued in bad faith, solely for the purpose of harassment, delay or malicious injury; or

(2) The non-prevailing party knew, or should have known, that the complaint, counterclaim, crossclaim or defense was without any reasonable basis in law or equity and could not be supported by a good faith argument for an extension, modification or reversal of existing law.

### 3) R.P.C. 1:1 - Competence

A lawyer shall not:

(a) Handle or neglect a matter entrusted to the lawyer in such manner that the lawyer's conduct constitutes gross negligence.

(b) Exhibit a pattern of negligence or neglect in the lawyer's handling of legal matters generally. [Note: The case law has defined a pattern by proof of at least three instances of negligence. In re Baiamonte, 170 N.J. 184, 785 A.2d 422 (2001) (Reprimand).]

Instructor comment –The CLE new requirement of 1 credit in technology-related subjects is evidence of the Supreme Court's expectations of the skill level of New Jersey practitioners. The Court's new requirement is consistent with the ABA Rule 1:1, as expressed in the 2012 amended comment 8:

“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, engage in continuing study and education and comply with all continuing legal education requirements to which the lawyer is subject.”

The thrust of this comment must be weighed and evaluated within the context of the lightening speed at which legal technology is advancing, a fact that may mitigate a lack of a lawyer's level of knowledge.

At this point, at least 40 jurisdictions require their attorneys to be competent in technology. (Bast – 2023).

#### 4) R.P.C. 1:3 - Diligence

A lawyer shall act with reasonable diligence and promptness in representing a client.

Instructor comment: The failure of a lawyer to verify the findings provided by GAI as to accuracy and relevance may constitute evidence of a lack of reasonable diligence.

#### 5) R.P.C. 1:4 – Communication

(a) A lawyer shall fully inform a prospective client of how, when, and where the client may communicate with the lawyer.

(b) A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.

(c) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

(d) When a lawyer knows that a client expects assistance not permitted by the Rules of Professional Conduct or other law, the lawyer shall advise the client of the relevant limitations on the lawyer's conduct.

Instructor comment – This RPC requires that the lawyer explain the benefits and why the use of GAI is recommended, along with the risks and limitations. (Bast – 2023). In order to best comply with the RPC, the lawyer should probably require an informed consent from his client for the use of GAI resources.

6) R.P.C. 3:2 – Expediting litigation

A lawyer shall make reasonable efforts to expedite litigation consistent with the interests of the client and shall treat with courtesy and consideration all persons involved in the legal process.

Instructor comment: The initial consideration and subsequent withdrawal of GAI submissions replete with hallucinations or other gross misstatements of fact or law has the clear capacity to waste the time of the parties to the case and the tribunal.

7) R.P.C. 3.3. Candor toward the Tribunal

(a) A lawyer shall not knowingly:

(1) make a false statement of material fact or law to a tribunal;

(2) fail to disclose a material fact to a tribunal when disclosure is necessary to avoid assisting an illegal, criminal or fraudulent act by the client;

(3) fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel;

(4) offer evidence that the lawyer knows to be false. If a lawyer has offered material evidence and comes to know of its falsity, the lawyer shall take reasonable remedial measures; or

(5) fail to disclose to the tribunal a material fact knowing that the omission is reasonably certain to mislead the tribunal, except that it shall not be a breach of this rule if the disclosure is protected by a recognized privilege or is

otherwise prohibited by law. [See In re Seelig, 180 N.J. 234(2004).]

(b) The duties stated in paragraph (a) continue to the conclusion of the proceeding and apply even if compliance requires disclosure of information otherwise protected by RPC 1.6.

(c) A lawyer may refuse to offer evidence that the lawyer reasonably believes is false.

(d) In an ex parte proceeding, a lawyer shall inform the tribunal of all relevant facts known to the lawyer that should be disclosed to permit the tribunal to make an informed decision, whether or not the facts are adverse.

Instructor comment: This R.P.C. requires “knowing” misconduct. As a result, the negligent submission of a hallucination or palpably incorrect legal proposition could trigger discipline under R.P.C. 1:1(a) and 1:1(b). Once the lawyer knows that the GAI submission was false or inaccurate, he must take reasonable remedial measures. (Bast – 2023).

#### 8) R.P.C. 3.4. Fairness to Opposing Party and Counsel

A lawyer shall not:

(b) falsify evidence, counsel or assist a witness to testify falsely, or offer an inducement to a witness that is prohibited by law;

Instructor comment: Unlike other sections of this R.P.C. that require proof of knowing misconduct, paragraph (b) does specify a culpability state. As a result, it may fairly be interpreted by disciplinary authorities as a strict liability violation, or one based upon simple negligence under R.P.C. 1:1.

9) R.P.C. 5.1. Responsibilities of Partners, Supervisory Lawyers, and Law Firms

(a) Every law firm, government entity, and organization authorized by the Court Rules to practice law in this jurisdiction shall make reasonable efforts to ensure that member lawyers or lawyers otherwise participating in the organization's work undertake measures giving reasonable assurance that all lawyers conform to the Rules of Professional Conduct.

(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.

(c) A lawyer shall be responsible for another lawyer's violation of the Rules of Professional Conduct if:

(1) the lawyer orders or ratifies the conduct involved; or

(2) the lawyer having direct supervisory authority over the other lawyer knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

10) R.P.C. 5.3. Responsibilities Regarding Non-lawyer Assistants

With respect to a non-lawyer employed or retained by or associated with a lawyer:

(a) every lawyer, law firm or organization authorized by the Court Rules to practice law in this jurisdiction shall adopt and maintain reasonable efforts to ensure that the conduct of non-lawyers retained or employed by the lawyer, law firm or organization is [sic] compatible with the professional obligations of the lawyer.

(b) a lawyer having direct supervisory authority over the non-lawyer shall make reasonable efforts to ensure that the person's conduct is [sic]compatible with the professional obligations of the lawyer; and

(c) a lawyer shall be responsible for conduct of such a person that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if:

(1) the lawyer orders or ratifies the conduct involved;

(2) the lawyer has direct supervisory authority over the person and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action; or

(3) the lawyer has failed to make reasonable investigation of circumstances that would disclose past instances of conduct by the non-lawyer incompatible with the professional obligations of a lawyer, which evidence a propensity for such conduct.

Instructor comment: At a minimum, this Rule implicates a requirement to a non-lawyer's choice and use of research technology. A more expansive interpretation of the Rule would hold that a non-lawyer includes GAI in the form of chat bots and other computer-based research tools. (Bast – 2023).

11) R.P.C. 5.5 Lawyers Not Admitted to the Bar of This State and the Lawful Practice of Law

(a) A lawyer shall not:

(1) practice law in a jurisdiction where doing so violates the regulation of the legal profession in that jurisdiction; or

(2) assist a person who is not a member of the bar in the performance of activity that constitutes the unauthorized practice of law.

Instructor comment: This R.P.C. could be implicated when an attorney uses GAI or facilitates its use by a non-lawyer to provide legal advice in a jurisdiction other than the one where the lawyer is licensed to practice. (Bast – 2023).

## 12) R.P.C. 8.4 Misconduct

It is professional misconduct for a lawyer to:

(g) engage, in a professional capacity, in conduct involving discrimination (except employment discrimination unless resulting in a final agency or judicial determination) because of race, color, religion, age, sex, sexual orientation, national origin, language, marital status, socioeconomic status, or handicap where the conduct is intended or likely to cause harm.

Instructor comment: Discriminatory language can easily creep into an attorney's work product if the attorney fails to carefully check technologically produced writings. This is due to the fact that large language models (LLM) will absorb written language, even if it is discriminatory. Outputs from LLM are only as good as the text that trained it and the human preferences that refined it. By way of example, a wayward chat bot may assert discriminatory statements related to race, gender, national origin or other protected classes. (Bast – 2023).

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Professor Carol Bast, Artificial Intelligence and Ethics. (2023) University of Central Florida, Stars, Faculty Scholarship and Creative Works.

Professor Gary E. Marchant, Artificial Intelligence and the Future of Legal Practice (2017). ABA SciTech Law. 14(1), 20-23.