



# The State Bar of California

**FILED**

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**OPEN SESSION****AGENDA ITEM****6.3 MAY 2026****BOARD OF TRUSTEES****DATE:** May 14, 2026**TO:** Members, Board of Trustees

**FROM:** Committee on Professional Responsibility and Conduct  
Nima Mohebbi, Lead, Artificial Intelligence Working Group  
Rachel Brewer, Managing Attorney, Office of Professional Competence

**SUBJECT:** Request for Approval and Publication of Updated *2026 Practical Guidance for the Use of Generative Artificial Intelligence in the Practice of Law* and Update Regarding Incorporation of Artificial Intelligence into the California Rules of Professional Conduct

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## EXECUTIVE SUMMARY

This staff report seeks approval to publish the updated *2026 Practical Guidance for the Use of Generative Artificial Intelligence in the Practice of Law*, which replaces the 2023 version. The update clarifies how existing professional responsibility duties apply to the use of artificial intelligence (AI) technologies, including recent developments such as agentic AI. This item is in direct response to the Supreme Court of California's August 22, 2025, directive to the State Bar, requesting, among other things, that the State Bar consider addressing agentic AI. The staff report includes an update on forthcoming proposed amendments to the California Rules of Professional Conduct to address AI-related issues, which the Committee on Professional Responsibility and Conduct (COPRAC) has released for public comment, and briefly describes ongoing educational efforts.

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## RECOMMENDED ACTION

The agenda item requests that the Board approve the publication of and adopt the updated *2026 Practical Guidance for the Use of Generative Artificial Intelligence in the Practice of Law*.

## DISCUSSION

In response to the Supreme Court's August 2025 directive, COPRAC has pursued three parallel workstreams: (1) updated the *Practical Guidance for the Use of Generative Artificial Intelligence*

*in the Practice of Law* (action requested), (2) proposed amendments to the Rules of Professional Conduct (forthcoming), and (3) provided educational outreach to licensees (informational).

## BACKGROUND

On August 22, 2025, the Supreme Court of California directed the State Bar to consider whether the guiding principles provided in the agency's November 2023 *Practical Guidance for the Use of Generative Artificial Intelligence in the Practice of Law* (Practical Guidance) should be incorporated into comments for the California Rules of Professional Conduct. As part of that evaluation, the Court directed the State Bar to consider incorporating any additional guidance that may be warranted, considering recent generative AI developments. The Court specifically directed the State Bar to address attorneys' use of agentic AI tools, automated programs that can plan and execute tasks and iteratively work toward a defined goal with minimal or no human intervention. The letter from the Court is provided as Attachment A.

COPRAC reconvened its AI working group, which included ad hoc subject matter experts who are not members of COPRAC, and undertook a comprehensive review of the existing Practical Guidance and an assessment of the current generative AI landscape as it pertains to the legal profession. To that end, the working group:

- Reviewed developments in generative AI technology, capabilities, and risks since the issuance of the November 2023 Practical Guidance, including live demonstrations of agentic AI capabilities;
- Evaluated whether updates to the existing Practical Guidance, the Rules of Professional Conduct, or other authorities are warranted in light of AI developments; and
- Evaluated other means of disseminating information related to the ethical use of AI.

As a result of this evaluation and review, the working group developed updated Practical Guidance, proposed new and modified comments to the Rules of Professional Conduct, and issued an all-licensure email addressing AI "hallucinations"<sup>1</sup> and ethical obligations when using AI in the practice of law.

## PRACTICAL GUIDANCE (ACTION REQUESTED)

The updated Practical Guidance, provided as Attachment B, incorporates developments since November 2023, including the proliferation of generative AI tools in legal practice, increased judicial and regulatory attention to AI use, news coverage of AI hallucinations appearing in documents filed with courts, and a more refined understanding of the risks and benefits associated with this technology. As before, this document serves as a resource to provide guidance on this evolving technology while further rules and regulations are considered.

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<sup>1</sup> An AI "hallucination" is when an AI system generates information that sounds plausible and confident but is factually incorrect or entirely fabricated, such as inventing case citations, quotes, or misstating a ruling.

Specifically, the 2026 Practical Guidance expands the introduction and refines definitions and terminology, including highlighting the risk of AI hallucinations. The most substantive addition is a section dedicated to agentic AI. The guidance makes clear that increased autonomy does not reduce attorney responsibility. Rather, the greater the system's autonomy, the stronger the oversight obligation.

Additional changes include:

- Framing competence as having two distinct components: baseline technological competence (understanding the system's capabilities and risks before deployment) and ongoing independent professional judgment (reviewing, verifying, and correcting AI outputs). This version also positions competence as the first topic in the Practical Guidance, reflecting its primacy.
- Expanding the confidentiality section to address elevated risks posed by agentic systems that may have persistent access to firm emails, document management systems, client files, and other internal platforms.
- Clarifying the duty to supervise section by explicitly stating that attorneys must ensure subordinate attorneys and nonattorney staff receive adequate training and supervision when using AI.
- Expanding the billing guidance to clarify that general purpose AI costs constitute overhead and must be absorbed within an attorney's fee, while per use fees or custom AI implementations developed for a specific matter may be passed through to the client, provided the fee agreement clearly discloses this, the charges reflect actual cost, and no markup is added without the client's informed written consent.
- The duty of candor section now expressly states that the duty of candor cannot be delegated to AI and that attorneys must ensure no document is transmitted to a court without attorney review and approval—a direct response to the risks of both AI hallucinations and autonomous agentic filing.

Finally, throughout the guidance, the foundational principle governing all AI use in legal practice has been reinforced: The attorney remains fully responsible for all outputs and work product, regardless of the degree to which AI was used in their creation.

COPRAC recognizes that as technology continues to develop, additional regulation, including amendments to the Rules of Professional Conduct beyond the comments, may be necessary. However, until the use of generative AI presents issues not adequately addressed by existing rules and regulations, the proposed updated Practical Guidance, along with the proposed changes to various comments within the Rules of Professional Conduct, will remind attorneys of their existing professional responsibility obligations and assist them in applying those obligations to new and emerging technology.

**Proposed Amendments to the Rules of Professional Conduct (Forthcoming)**

At its March 13, 2026, meeting, [COPRAC approved proposed comment amendments](#) to rules 1.1, 1.4, 1.6, 3.3, 5.1, and 5.3 for a [45-day public comment period](#), ending May 4, 2026. After consideration of public comment, COPRAC will bring the proposed comment amendments to the Rules of Professional Conduct before the Board at a future meeting. As mentioned above, the proposed changes are to the comments of the rules, rather than the text of the actual rules. Any rule changes would ultimately require Supreme Court adoption.

**Ongoing Educational Efforts (Informational)**

COPRAC had three panels highlighting the ethical use of AI at its [2026 Ethics Symposium](#), one of which was entirely dedicated to the topic. Additionally, COPRAC issued an [all-licensee email](#) to California licensees on March 19, 2026. The email reminded attorneys that core ethical duties—including competence, diligence, and supervisory responsibility—apply fully to the use of AI tools. The email also highlighted the risks of AI hallucinations and invited public comment on the proposed amendments to the Rules of Professional Conduct. COPRAC's AI working group continues to develop additional educational efforts. Also, the Office of Strategic Communications issued a media advisory on April 13, 2026, detailing three State Bar discipline matters involving AI misuse and the submission of fabricated authorities in court filings.

**PREVIOUS ACTION**

[Recommendations from Committee on Professional Responsibility and Conduct on Regulation of Use of Generative AI by Licensees](#)

**FISCAL/PERSONNEL IMPACT**

None

**AMENDMENTS TO RULES**

None

**AMENDMENTS TO BOARD OF TRUSTEES POLICY MANUAL**

None

**STRATEGIC PLAN GOALS & IMPLEMENTATION STEPS**

Goal 3. Protect the Public by Regulating the Legal Profession

## RESOLUTIONS

**Should the Board of Trustees concur, it is:**

**RESOLVED**, that the Board of Trustees, upon recommendation of the State Bar Committee on Professional Responsibility and Conduct, approves the publication of the *2026 Practical Guidance for the Use of Generative Artificial Intelligence in the Practice of Law*, provided as Attachment B; and it is

**FURTHER RESOLVED**, that the Board of Trustees, upon recommendation of the State Bar Committee on Professional Responsibility and Conduct, approves the depublishation of the *2023 Practical Guidance for the Use of Generative Artificial Intelligence in Practice of Law*.

## ATTACHMENTS LIST

- A. Letter from the Supreme Court of California, dated August 22, 2025
- B. *2026 Practical Guidance for the Use of Generative Artificial Intelligence in the Practice of Law* (Clean)
- C. *2026 Practical Guidance for the Use of Generative Artificial Intelligence in the Practice of Law* (Redline)



## Supreme Court of California

JORGE E. NAVARRETE  
CLERK AND EXECUTIVE OFFICER  
OF THE SUPREME COURT

EARL WARREN BUILDING  
350 McALLISTER STREET  
SAN FRANCISCO, CA 94102  
(415) 865-7000

August 22, 2025

### SENT VIA USPS AND EMAIL

Erika Doherty, Interim Executive Director  
State Bar of California  
180 Howard Street  
San Francisco, CA 94105  
[REDACTED]

### **RE: Comments for the Rules of Professional Conduct Regarding the Use of Generative Artificial Intelligence**

Dear Ms. Doherty:

The court understands and appreciates that the State Bar has taken steps to provide guidance to attorneys licensed by the State Bar regarding the use of generative artificial intelligence (generative AI). In particular, the court is aware that, in November 2023, the State Bar's Committee on Professional Responsibility and Conduct published the "Practical Guidance for the Use of Generative Artificial Intelligence in the Practice of Law" to assist lawyers in navigating their professional and ethical obligations when using generative AI.

To ensure that attorneys across the state are aware of and familiar with the State Bar's guidance regarding generative AI, the court directs the State Bar to consider whether the guiding principles provided in its November 2023 "Practical Guidance" should be incorporated into the comments for the California Rules of Professional Conduct. As part of this evaluation, the State Bar is directed to consider incorporating into the comments for the Rules of Professional Conduct any additional guidance that may be warranted in light of recent or upcoming generative AI developments, including lawyers' use of "agentic AI" tools, which function as automated programs that can plan and execute tasks and iteratively work toward a defined goal without or with minimal human intervention.

Sincerely,

JORGE E. NAVARRETE

A handwritten signature in black ink, appearing to read "Jorge E. Navarrete", written over a circular stamp.

Clerk and  
Executive Officer of the Supreme Court

cc: Brandon Stallings, Chair, State Bar Board of Trustees  
José Cisneros, Vice-Chair, State Bar Board of Trustees

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

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

**EXECUTIVE SUMMARY  
CLEAN**

The Committee on Professional Responsibility and Conduct issued its original *Practical Guidance for the Use of Generative Artificial Intelligence in the Practice of Law* in November 2023. Since that time, developments in artificial intelligence technology have warranted review and revision of the guidance. This 2026 Practical Guidance replaces the 2023 version and, at the request of the California Supreme Court, addresses the unique challenges presented by the use of agentic artificial intelligence. This update reflects technological advances and further clarifies the intersection between artificial intelligence in legal practice and the core ethical duties of competence, confidentiality, communication, and candor to the court, among others.

Artificial intelligence (AI) tools are increasingly embedded in the everyday practice and administration of law and are becoming ubiquitous across legal services. Many technologies already used by attorneys such as legal research platforms, document review systems, and practice management tools incorporate some level of AI even when not traditionally thought of as AI or labeled as such. This Practical Guidance is intended to address the ethical considerations arising from the expanding use of generative AI enabled tools by attorneys. It clarifies how existing professional responsibility obligations apply when attorneys use or rely on these technologies in the provision of legal services.

Artificial intelligence refers to computer systems or software that are designed to perform tasks that would ordinarily require human intelligence, such as analyzing information, identifying patterns, making predictions or recommendations, or generating responses, based on data or programmed models rather than fixed instructions alone.

**Generative AI**

Generative AI is a subset of artificial intelligence designed to create new content, such as text, images, audio, video, computer code, or analytical outputs, in response to user prompts or inputs based on patterns learned from data rather than predefined processes.

Generative AI is a technology that has wide-ranging applications for the practice of law and administrative functions of the legal practice for all licensees, regardless of firm size, and all practice areas. Like any technology, generative AI must be used in a manner that conforms to

an attorney's professional responsibility obligations, including those set forth in the Rules of Professional Conduct and the State Bar Act. An attorney must understand the risks and benefits of the technology used in connection with providing legal services. How these obligations apply will depend on a host of factors, including the client, the matter, the practice area, the firm size, and the tools themselves, ranging from free and readily available to custom-built, proprietary formats.

Generative AI presents unique challenges; it uses large volumes of data, there are many competing AI models and products, and, even for those who create generative AI products, there is a lack of clarity as to how it works. In addition, generative AI may produce outputs that are probabilistic, not deterministic, and may generate plausible but inaccurate information, including purported citations to legal authority that does not exist (frequently called, "hallucinations"). Generative AI also poses the risk that information provided as an input may be used for learning purposes by the generative AI tool and as a result become part of, or be used to generate, a response to another user of the generative AI product. In a similar respect, it poses the risk of encouraging greater reliance and trust on its outputs because of its purpose to generate responses and its ability to do so in a manner that projects confidence and effectively emulates human responses. An attorney should consider these and other risks before using generative AI in providing legal services.

### **Agentic AI**

Generative AI products have increasingly incorporated "agentic" capabilities, which can enable systems to autonomously perform tasks or workflows without human prompting. Agentic systems are built not just with multi-step functionality, they can pursue goals, "plan," select tools, and even execute tasks without immediate human intervention. Examples include pleading revisions across multiple iterations, preparing discovery responses, coordinating review of documents, and autonomously facilitating client intake.

Agentic AI introduces an additional degree of autonomy, including the ability to initiate tasks or interact with external tools, and the capacity to conclude tasks without human review or approval. Yet, this autonomy does not satisfy a lawyer's duty to exercise independent judgment, nor does it alter an attorney's existing ethical obligations. Rather, the ability of agentic AI systems to initiate tasks or interact with external tools increases the risk that an attorney may rely on automated processes without contemporaneous review. Attorneys must not deploy agentic systems in a manner that allows the system to make substantive legal determinations, communicate legal advice, prepare and file pleadings, or otherwise act in a representative capacity without meaningful attorney supervision<sup>1</sup> and review. The attorney's duty of competence requires understanding the nature and extent of an agentic system's

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<sup>1</sup> The terms "supervise," "supervision," and "supervisory" are used in their ordinary sense unless referring specifically to a lawyer's supervisory responsibilities under Rules 5.1, 5.2, or 5.3 of the California Rules of Professional Conduct. The Committee notes that the duty of competence requires a lawyer to supervise technological agents.

autonomy, the circumstances under which it may act without prompting, the data sources it may access, and the safeguards necessary to prevent errors and ethical violations.

## **Conclusion**

The following Practical Guidance is based on professional responsibility obligations for attorneys and outlines the ethical duties required whenever an attorney relies on computational tools that generate, select, summarize, or act upon legal information. References to “generative artificial intelligence” include any current *or* future computational system that generates outputs, recommendations, or actions.

Critically, any use of AI must not diminish or abdicate professional judgment. An attorney remains fully responsible for any outputs and work product generated with the assistance of AI. Moreover, the greater the degree of autonomy afforded to an AI system (*i.e.*, agentic systems), the more important for the attorney to implement supervisory controls and verification mechanisms.

## PRACTICAL GUIDANCE

| Applicable Authorities                                                                                           | Practical Guidance                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
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| <p><b>Duties of Competence and Diligence</b></p> <p><a href="#">Rule 1.1</a></p> <p><a href="#">Rule 1.3</a></p> | <p>The duty of competence requires more than the mere detection and elimination of false or fabricated AI-generated results (<i>i.e.</i>, hallucinations). Competence, at its core, requires that the attorney (and not the technology) retains control over strategic decision-making and the ultimate exercise of professional judgment in the representation.</p> <p>When using AI, an attorney has two related duties of competence. First, an attorney must attain baseline technological competence by developing a reasonable understanding of the relevant AI system’s capabilities, data sources, limitations, and material risks and benefits before deploying it in connection with legal services. Second, an attorney must exercise independent professional judgment by reviewing, verifying, and correcting AI-generated outputs consistent with the learning and skill reasonably necessary for the representation. Competent use of AI-enabled tools therefore requires not only familiarity with the technology itself, but also the ongoing application of the attorney’s independent professional judgment to all outputs used in providing legal services.</p> <p>As noted, AI systems are known to produce outputs that may be false, misleading, fabricated, incomplete, or biased, and reliance on such outputs without appropriate scrutiny and review is inconsistent with an attorney’s professional obligations.</p> <p>An attorney’s professional judgment cannot be delegated to AI and remains the attorney’s responsibility at all times.</p> <p>These considerations are particularly important when utilizing agentic AI systems that incorporate increased autonomy into legal workflows. Agentic systems may initiate tasks, sequence legal steps, prioritize issues, or even interact with external tools without continuous attorney prompting. Such functionality necessarily increases the risk that strategic decisions typically within the ambit of the attorney will be shaped by automated processes rather than by the attorney’s independent judgement. The risk associated with hallucinated outputs can also be compounded when using agentic AI.</p> <p>As a result, lawyers remain responsible for reviewing and approving all outputs, decisions, advice, and filings. Competence in this context includes understanding system level characteristics such as autonomous task execution, retrieval mechanisms, and common failure modes,</p> |

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|                                                                                                                                                                         | <p>consistent with rule 1.1, as well as implementing appropriate supervision and verification processes.</p> <p>The greater the level of system autonomy, the greater the attorney's obligation to implement oversight mechanisms sufficient to ensure that professional judgment remains with the attorney. Moreover, because AI systems evolve over time through updates or model changes, an attorney's duty of competence includes periodic reassessment of the system's capabilities and risks including when deploying the system for new legal tasks.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| <p><b>Duty of Confidentiality</b></p> <p><a href="#">Bus. &amp; Prof. Code, § 6068, subd. (e)</a></p> <p><a href="#">Rule 1.6</a></p> <p><a href="#">Rule 1.8.2</a></p> | <p>Generative AI products often utilize the information that is input by the user, including prompts and uploaded documents or resources, to further train or refine the AI, and might also share such information with third parties or use it for other purposes. Even if the product does not utilize or share inputted information, it may lack reasonable or adequate security (<i>e.g.</i>, it could store or transmit information in ways that raise confidentiality concerns).</p> <p>The confidentiality risks presented by generative AI vary depending on whether the system is used as an isolated prompt-based tool, integrated with other applications and data, or deployed as an autonomous agent (including with ongoing data access and autonomy of action). The degree of attorney diligence and supervision must correspond to the level of system access and autonomy.</p> <p>As a general matter, an attorney must not input any confidential information of the client into a generative AI solution that may present material risks to confidentiality or security, absent informed client consent (see rule 1.0.1(e)) as to the underlying risks.</p> <p>An attorney has a duty to make reasonable efforts to protect client confidences when using generative AI. In fulfilling this duty, an attorney should take reasonable steps to understand how a generative AI product collects, uses, stores, and discloses information provided by the user. Reasonable efforts require more than reliance on generalized marketing assurances. This may include reviewing terms of use, privacy policies, or vendor documentation, recognizing that such materials may vary in technical complexity. It is important to understand that, in some cases, a user may agree to the terms of use and privacy policy simply by using the product. Depending on the circumstances, reasonable efforts may include consulting with qualified IT professionals or cybersecurity experts to ensure that any AI system in which an attorney would input confidential client information adheres to reasonable security, confidentiality, and data retention protocols. Breaches of confidentiality could occur via both prompt content and uploaded materials.</p> |

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|                                                                                                                                                                                          | <p>Agentic AI systems may be configured to access internal firm systems such as email, messaging platforms, document management systems, knowledge bases, client files, or calendaring systems. Unlike isolated prompt-based tools, such systems may have persistent or automated access to large volumes of confidential client information, raising acute confidentiality considerations under rule 1.6 and Business and Professions Code section 6068(e)(1).</p> <p>Attorneys must carefully evaluate and limit the scope of such access. Unrestricted or poorly configured agentic systems may unintentionally disclose confidential information (including across different matters) and even expose privileged material. As a result, an attorney remains responsible for ensuring that any agentic AI system is configured in a manner consistent with their duty of confidentiality and that appropriate monitoring and access controls are implemented. An attorney must not deploy an agentic AI system in a manner that permits autonomous external transmission of client information, including automated communications, filings, or data transfers, without appropriate safeguards and human review.</p> |
| <p><b>Duty to Comply with the Law</b></p> <p><a href="#"><u>Bus. &amp; Prof. Code, § 6068(a)</u></a></p> <p><a href="#"><u>Rule 8.4</u></a></p> <p><a href="#"><u>Rule 1.2.1</u></a></p> | <p>An attorney must comply with the law and cannot counsel a client to engage, or assist a client in conduct that the attorney knows is a violation of any law, rule, or ruling of a tribunal when using AI tools, including laws and rulings that are applicable to the use of such technology.</p> <p>There are many applicable legal issues surrounding generative AI, including but not limited to compliance with AI-specific laws, privacy laws, cross-border data transfer laws, intellectual property laws, and cybersecurity concerns. Because the legal and regulatory landscape governing generative AI is rapidly evolving, an attorney should continuously analyze and remain reasonably informed about the relevant laws and regulations applicable to the attorney, the client, and the specific use of the technology at issue.</p>                                                                                                                                                                                                                                                                                                                                                                     |

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| <p><b>Duty to Supervise Lawyers and Nonlawyers, Responsibilities of Subordinate Lawyers</b></p> <p><a href="#">Rule 5.1</a></p> <p><a href="#">Rule 5.2</a></p> <p><a href="#">Rule 5.3</a></p> | <p>Managerial and supervisory attorneys should establish clear policies regarding the uses of generative AI, including more autonomous or agentic AI tools, and make reasonable efforts to provide reasonable assurance that the conduct of the attorneys and non-attorneys' under supervision complies with the attorneys' professional obligations when using such technologies. This includes providing appropriate training on the ethical and practical aspects, and pitfalls, of any AI-enabled tools that perform tasks with limited or no real-time human direction.</p> <p>As AI technologies continue to evolve, managerial and supervisory attorneys should review and update applicable firm policies, controls, and associated training accordingly to address new risks and use cases, including those that may reasonably be anticipated as AI systems become more autonomous or are integrated into legal workflows. Moreover, attorneys should ensure that their attorney and non-attorney staff receive periodic training on the appropriate use of AI and safeguards surrounding the use of AI.</p> <p>A subordinate attorney must not use AI-enabled tools, including agentic AI systems, at the direction of supervisory attorney in a manner that violates the subordinate attorney's professional responsibility and obligations and must exercise independent professional judgment in evaluating whether such use is consistent with those obligations.</p> |
| <p><b>Communication Regarding Generative AI Use</b></p> <p><a href="#">Rule 1.4</a></p> <p><a href="#">Rule 1.2</a></p>                                                                         | <p>An attorney must evaluate their communication obligations throughout the representation based on the facts and circumstances, including the technology, risks associated with AI use, scope of the representation, and sophistication of the client.</p> <p>An attorney must consider disclosure to their client that they intend to use AI in the representation, including how the technology will be used, and the benefits and risks of such use. For example, disclosure may be appropriate where AI use materially affects decision-making processes. The use of AI in any form does not alter the attorney's obligation to ensure that the client understands who is providing legal advice and how substantive decisions affecting the representation are being made.</p> <p>An attorney must also follow any applicable client instructions or guidelines that may restrict or limit the use of AI in connection with the representation of the client.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |

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| <b>Charging for Work Produced by Generative AI and Generative AI Costs</b><br><a href="#">Rule 1.5</a><br><b>Bus. &amp; Prof. Code,</b><br><b>§§ <a href="#">6147–6148</a></b> | <p>An attorney may use generative AI to create work product and may charge for actual time spent (e.g., crafting or refining generative AI inputs and prompts, or reviewing and editing generative AI outputs). Hourly billing must reflect the time actually spent on the client’s matter, recognizing that generative AI may reduce the time required for certain tasks. Attorneys may consider using alternative billing structures such as flat fees for more predictable assignments and build the time savings created by AI use into their competitive rates for such assignments. Regardless of the billing structure chosen, fee agreements should clearly communicate how fees and costs are calculated and the extent to which generative AI factors into the attorney’s rates.</p> <p>The treatment of generative AI costs depends on whether such costs constitute general overhead or recoverable expenses incurred specifically for a client's matter. Subscription fees for generative AI tools that provide general office functionality, such as drafting assistance, research capabilities, or document review, typically constitute overhead expenses similar to library maintenance or general computer systems and thus should be absorbed within the attorney's fee rather than charged separately to clients.</p> <p>However, attorneys may charge clients for generative AI costs that are specifically incurred for the client's matter and go beyond general office operations, such as per use fees for specialized AI tools or costs for custom AI implementations developed for a particular matter. When charging such costs, the attorney must ensure the fee agreement clearly discloses that generative AI costs may be billed separately, the charges must reasonably reflect the attorney's actual cost, and no markup or profit element may be added without the client's informed written consent.</p> |
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| <p><b>Candor to the Tribunal; and Meritorious Claims and Contentions</b></p> <p><a href="#"><u>Rule 3.1</u></a></p> <p><a href="#"><u>Rule 3.3</u></a></p> | <p>The attorney’s duty of candor to the tribunal cannot be delegated to AI. The use (or ability) of AI to research, draft, summarize, or generate legal analysis does not diminish the attorney’s personal responsibility for the truthfulness and legal sufficiency of any submission to the court.</p> <p>In that respect, an attorney must review all outputs produced using AI tools for accuracy, including, but not limited to analysis and citations to authority before submission to the court, and must independently verify and correct any errors or misleading statements made to the court, regardless of whether such outputs were generated with or without real-time human direction.</p> <p>An attorney should also check for any rules, orders, or other requirements in the relevant jurisdiction that may necessitate the disclosure of the use of AI tools, including generative or autonomous AI systems, and should comply with any such disclosure obligations as applicable.</p> <p>Agentic AI tools may present additional risks. Where agentic AI is used in connection with court filings, attorneys must ensure that no document is transmitted to the court without attorney review and approval. Attorneys must not permit AI systems to autonomously file documents, communicate with the court, or make representations on the attorney’s behalf.</p> |
| <p><b>Prohibition on Discrimination, Harassment, and Retaliation</b></p> <p><a href="#"><u>Rule 8.4.1</u></a></p>                                          | <p>Attorneys should be aware of the risk of biased outputs and take appropriate steps to ensure compliance with relevant laws, regulations and rules of professional conduct. This can be of particular concern when using agentic AI as multiple agents can compound any underlying bias.</p> <p>For example, the use of AI in connection with employment actions or the screening of clients or candidates may present a risk of unlawful or unethical bias.</p> <p>Attorneys should engage in continuous learning about AI biases and their implications in legal practice Firms should establish policies and mechanisms to identify and address potential AI biases.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |

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| <b>Professional Responsibilities Owed to Other Jurisdictions</b><br><a href="#">Rule 8.5</a> | An attorney should analyze and understand the relevant laws and regulations of each jurisdiction in which an attorney is licensed and make reasonable efforts to remain current with changes in those laws and regulations in order to comply with applicable professional obligations. |
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**THE STATE BAR OF CALIFORNIA  
STANDING COMMITTEE ON  
PROFESSIONAL RESPONSIBILITY AND CONDUCT**

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

**EXECUTIVE SUMMARY  
REDLINE**

The Committee on Professional Responsibility and Conduct issued its original *Practical Guidance for the Use of Generative Artificial Intelligence in the Practice of Law* in November 2023. Since that time, developments in artificial intelligence technology have warranted review and revision of the guidance. This 2026 Practical Guidance replaces the 2023 version and, at the request of the California Supreme Court, addresses the unique challenges presented by the use of agentic artificial intelligence. This update reflects technological advances and further clarifies the intersection between artificial intelligence in legal practice and the core ethical duties of competence, confidentiality, communication, and candor to the court, among others.

Artificial intelligence (AI) tools are increasingly embedded in the everyday practice and administration of law and are becoming ubiquitous across legal services. Many technologies already used by attorneys such as legal research platforms, document review systems, and practice management tools incorporate some level of AI even when not traditionally thought of as AI or labeled as such. This Practical Guidance is intended to address the ethical considerations arising from the expanding use of generative AI enabled tools by attorneys. It clarifies how existing professional responsibility obligations apply when attorneys use or rely on these technologies in the provision of legal services.

Artificial intelligence refers to computer systems or software that are designed to perform tasks that would ordinarily require human intelligence, such as analyzing information, identifying patterns, making predictions or recommendations, or generating responses, based on data or programmed models rather than fixed instructions alone.

**Generative AI**

Generative AI is a ~~tool~~ subset of artificial intelligence designed to create new content, such as text, images, audio, video, computer code, or analytical outputs, in response to user prompts or inputs based on patterns learned from data rather than predefined processes.

Generative AI is a technology that has wide-ranging ~~application~~ applications for the practice of law and administrative functions of the legal practice for all licensees, regardless of firm size, and all practice areas. Like any technology, generative AI must be used in a manner that

conforms to ~~a lawyer's~~ an attorney's professional responsibility obligations, including those set forth in the Rules of Professional Conduct and the State Bar Act. ~~A lawyer should~~ An attorney must understand the risks and benefits of the technology used in connection with providing legal services. How these obligations apply will depend on a host of factors, including the client, the matter, the practice area, the firm size, and the tools themselves, ranging from free and readily available to custom-built, proprietary formats.

Generative AI ~~use~~ presents unique challenges; it uses large volumes of data, there are many competing AI models and products, and, even for those who create generative AI products, there is a lack of clarity as to how it works. In addition, generative AI may produce outputs that are probabilistic, not deterministic, and may generate plausible but inaccurate information, including purported citations to legal authority that does not exist (frequently called, "hallucinations"). Generative AI also poses the risk that information provided as an input may be used for learning purposes by the generative AI tool and as a result become part of, or be used to generate, a response to another user of the generative AI product. In a similar respect, it poses the risk of encouraging greater reliance and trust on its outputs because of its purpose to generate responses and its ability to do so in a manner that projects confidence and effectively emulates human responses. ~~A lawyer~~ An attorney should consider these and other risks before using generative AI in providing legal services.

### Agentic AI

Generative AI products have increasingly incorporated "agentic" capabilities, which can enable systems to autonomously perform tasks or workflows without human prompting. Agentic systems are built not just with multi-step functionality, they can pursue goals, "plan," select tools, and even execute tasks without immediate human intervention. Examples include pleading revisions across multiple iterations, preparing discovery responses, coordinating review of documents, and autonomously facilitating client intake.

Agentic AI introduces an additional degree of autonomy, including the ability to initiate tasks or interact with external tools, and the capacity to conclude tasks without human review or approval. Yet, this autonomy does not satisfy a lawyer's duty to exercise independent judgment, nor does it alter an attorney's existing ethical obligations. Rather, the ability of agentic AI systems to initiate tasks or interact with external tools increases the risk that an attorney may rely on automated processes without contemporaneous review. Attorneys must not deploy agentic systems in a manner that allows the system to make substantive legal determinations, communicate legal advice, prepare and file pleadings, or otherwise act in a representative capacity without meaningful attorney supervision<sup>1</sup> and review. The attorney's duty of competence requires understanding the nature and extent of an agentic system's

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<sup>1</sup> The terms "supervise," "supervision," and "supervisory" are used in their ordinary sense unless referring specifically to a lawyer's supervisory responsibilities under Rules 5.1, 5.2, or 5.3 of the California Rules of Professional Conduct. The Committee notes that the duty of competence requires a lawyer to supervise technological agents.

autonomy, the circumstances under which it may act without prompting, the data sources it may access, and the safeguards necessary to prevent errors and ethical violations.

### Conclusion

The following Practical Guidance is based on ~~current~~ professional responsibility obligations for ~~lawyers and demonstrates how to behave consistently with such obligations. While this guidance is intended to address issues and concerns with the use of~~ attorneys and outlines the ethical duties required whenever an attorney relies on computational tools that generate, select, summarize, or act upon legal information. References to “generative AI and products that use generative AI as a component of a larger artificial intelligence” include any current or future computational system that generates outputs, recommendations, or actions.

Critically, any use of AI must not diminish or abdicate professional judgment. An attorney remains fully responsible for any outputs and work product, it may apply to other technologies, including generated with the assistance of AI. Moreover, the greater the degree of autonomy afforded to an AI system (i.e., agentic systems), the more established applications of AI. This Practical Guidance should be read as guiding principles rather than as “best practices.” important for the attorney to implement supervisory controls and verification mechanisms.

## PRACTICAL GUIDANCE

| Applicable Authorities                                                                                                                                                                                                                                      | Practical Guidance                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
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| <p><del>Duty of Confidentiality</del></p> <p><del>Bus. &amp; Prof. Code, § 6068, subd. (e)</del></p> <p><del>Rule 1.6</del></p> <p><del>Rule 1.8.2</del></p> <p><u>Duties of Competence and Diligence</u></p> <p><u>Rule 1.1</u></p> <p><u>Rule 1.3</u></p> | <p><del>Generative AI products are able to utilize the information that is input, including prompts and uploaded documents or resources, to train the AI, and might also share the query with third parties or use it for other purposes. Even if the product does not utilize or share inputted information, it may lack reasonable or adequate security.</del></p> <p><del>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.</del></p> <p><del>A lawyer or law firm should consult with IT professionals or cybersecurity experts to ensure that any AI system in which a lawyer would input confidential client information adheres to stringent security, confidentiality, and data retention protocols.</del></p> <p><del>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.</del> <u>The duty of competence requires more than the mere detection and elimination of false or fabricated AI-generated results (i.e., hallucinations). Competence, at its core, requires that the attorney (and not the technology) retains control over strategic decision-making and the ultimate exercise of professional judgment in the representation.</u></p> <p><u>When using AI, an attorney has two related duties of competence. First, an attorney must attain baseline technological competence by developing a reasonable understanding of the relevant AI system’s capabilities, data sources, limitations, and material risks and benefits before deploying it in connection with legal services. Second, an attorney must exercise independent professional judgment by reviewing, verifying, and correcting AI-generated outputs consistent with the learning and skill reasonably necessary for the representation. Competent use of AI-enabled tools therefore requires not only familiarity with the technology itself, but also the ongoing application of the attorney’s independent professional judgment to all outputs used in providing legal services.</u></p> <p><u>As noted, AI systems are known to produce outputs that may be false,</u></p> |

| Applicable Authorities | Practical Guidance                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
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|                        | <p><u>misleading, fabricated, incomplete, or biased, and reliance on such outputs without appropriate scrutiny and review is inconsistent with an attorney's professional obligations.</u></p> <p><u>An attorney's professional judgment cannot be delegated to AI and remains the attorney's responsibility at all times.</u></p> <p><u>These considerations are particularly important when utilizing agentic AI systems that incorporate increased autonomy into legal workflows. Agentic systems may initiate tasks, sequence legal steps, prioritize issues, or even interact with external tools without continuous attorney prompting. Such functionality necessarily increases the risk that strategic decisions typically within the ambit of the attorney will be shaped by automated processes rather than by the attorney's independent judgement. The risk associated with hallucinated outputs can also be compounded when using agentic AI.</u></p> <p><u>As a result, lawyers remain responsible for reviewing and approving all outputs, decisions, advice, and filings. Competence in this context includes understanding system level characteristics such as autonomous task execution, retrieval mechanisms, and common failure modes, consistent with rule 1.1, as well as implementing appropriate supervision and verification processes.</u></p> <p><u>The greater the level of system autonomy, the greater the attorney's obligation to implement oversight mechanisms sufficient to ensure that professional judgment remains with the attorney. Moreover, because AI systems evolve over time through updates or model changes, an attorney's duty of competence includes periodic reassessment of the system's capabilities and risks including when deploying the system for new legal tasks.</u></p> |

| Applicable Authorities                                                                                                                                                                                                                                  | Practical Guidance                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
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| <p><del>Duties of Competence and Diligence</del></p> <p><del>Rule 1.1</del></p> <p><del>Rule 1.3</del></p> <p><u>Duty of Confidentiality</u></p> <p><u>Bus. &amp; Prof. Code, § 6068, subd. (e)</u></p> <p><u>Rule 1.6</u></p> <p><u>Rule 1.8.2</u></p> | <p><del>It is possible that generative AI outputs could include information that is false, inaccurate, or biased.</del></p> <p><del>A lawyer must ensure competent use of the technology, including the associated benefits and risks, and apply diligence and prudence with respect to facts and law.</del></p> <p><del>Before using generative AI, a lawyer should understand to a reasonable degree how the technology works, its limitations, and the applicable terms of use and other policies governing the use and exploitation of client data by the product.</del></p> <p><del>Overreliance on AI tools is inconsistent with the active practice of law and application of trained judgment by the lawyer.</del></p> <p><del>AI generated outputs can be used as a starting point but must be carefully scrutinized. They should be critically analyzed for accuracy and bias, supplemented, and improved, if necessary. A lawyer must critically review, validate, and correct both the input and the output of generative AI to ensure the content accurately reflects and supports the interests and priorities of the client in the matter at hand, including as part of advocacy for the client. The duty of competence requires more than the mere detection and elimination of false AI-generated results.</del></p> <p><del>A lawyer's professional judgment cannot be delegated to generative AI and remains the lawyer's responsibility at all times. A lawyer should take steps to avoid over reliance on generative AI to such a degree that it hinders critical attorney analysis fostered by traditional research and writing. For example, a lawyer may supplement any AI-generated research with human performed research and supplement any AI-generated argument with critical, human performed analysis and review of authorities.</del></p> <p><u>Generative AI products often utilize the information that is input by the user, including prompts and uploaded documents or resources, to further train or refine the AI, and might also share such information with third parties or use it for other purposes. Even if the product does not utilize or share inputted information, it may lack reasonable or adequate security (e.g., it could store or transmit information in ways that raise confidentiality concerns).</u></p> <p><u>The confidentiality risks presented by generative AI vary depending on whether the system is used as an isolated prompt-based tool, integrated with other applications and data, or deployed as an autonomous agent (including with ongoing data access and autonomy of action). The degree of attorney diligence and supervision must</u></p> |

| Applicable Authorities | Practical Guidance                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
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|                        | <p><u>correspond to the level of system access and autonomy.</u></p> <p><u>As a general matter, an attorney must not input any confidential information of the client into a generative AI solution that may present material risks to confidentiality or security, absent informed client consent (see rule 1.0.1(e)) as to the underlying risks.</u></p> <p><u>An attorney has a duty to make reasonable efforts to protect client confidences when using generative AI. In fulfilling this duty, an attorney should take reasonable steps to understand how a generative AI product collects, uses, stores, and discloses information provided by the user. Reasonable efforts require more than reliance on generalized marketing assurances. This may include reviewing terms of use, privacy policies, or vendor documentation, recognizing that such materials may vary in technical complexity. It is important to understand that, in some cases, a user may agree to the terms of use and privacy policy simply by using the product. Depending on the circumstances, reasonable efforts may include consulting with qualified IT professionals or cybersecurity experts to ensure that any AI system in which an attorney would input confidential client information adheres to reasonable security, confidentiality, and data retention protocols. Breaches of confidentiality could occur via both prompt content and uploaded materials.</u></p> <p><u>Agentic AI systems may be configured to access internal firm systems such as email, messaging platforms, document management systems, knowledge bases, client files, or calendaring systems. Unlike isolated prompt-based tools, such systems may have persistent or automated access to large volumes of confidential client information, raising acute confidentiality considerations under rule 1.6 and Business and Professions Code section 6068(e)(1).</u></p> <p><u>Attorneys must carefully evaluate and limit the scope of such access. Unrestricted or poorly configured agentic systems may unintentionally disclose confidential information (including across different matters) and even expose privileged material. As a result, an attorney remains responsible for ensuring that any agentic AI system is configured in a manner consistent with their duty of confidentiality and that appropriate monitoring and access controls are implemented. An attorney must not deploy an agentic AI system in a manner that permits autonomous external transmission of client information, including automated communications, filings, or data transfers, without appropriate safeguards and human review.</u></p> |

| Applicable Authorities                                                                                                                                                                                                                                 | Practical Guidance                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
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| <p><b>Duty to Comply with the Law</b></p> <p><del>Bus. &amp; Prof. Code, § 6068(a)</del></p> <p><del>Rule 8.4</del></p> <p><del>Rule 1.2.1</del></p> <p><u>Bus. &amp; Prof. Code, § 6068(a)</u></p> <p><u>Rule 8.4</u></p> <p><u>Rule 1.2.1</u></p>    | <p><del>A lawyer</del><u>An attorney</u> must comply with the law and cannot counsel a client to engage, or assist a client in conduct that the <del>lawyer</del><u>attorney</u> knows is a violation of any law, rule, or ruling of a tribunal when using <del>generative</del><u>AI tools, including laws and rulings that are applicable to the use of such technology.</u></p> <p>There are many <del>relevant and</del> applicable legal issues surrounding generative AI, including but not limited to compliance with AI-specific laws, privacy laws, cross-border data transfer laws, intellectual property laws, and cybersecurity concerns. <del>A lawyer</del><u>Because the legal and regulatory landscape governing generative AI is rapidly evolving, an attorney</u> should <u>continuously</u> analyze <u>and remain reasonably informed about</u> the relevant laws and regulations applicable to the attorney<del>-or</del>, the client<del>-</del>, <u>and the specific use of the technology at issue.</u></p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| <p><b>Duty to Supervise Lawyers and Nonlawyers, Responsibilities of Subordinate Lawyers-</b></p> <p><del>Rule 5.1</del></p> <p><del>Rule 5.2</del></p> <p><del>Rule 5.3</del></p> <p><u>Rule 5.1</u></p> <p><u>Rule 5.2</u></p> <p><u>Rule 5.3</u></p> | <p>Managerial and supervisory <del>lawyers</del><u>attorneys</u> should establish clear policies regarding the <del>permissible</del><u>uses of generative AI, including more autonomous or agentic AI tools,</u> and make reasonable efforts to <del>ensure that the firm adopts measures that give</del><u>provide</u> reasonable assurance that the <del>firm's lawyers and non-lawyers'</del><u>conduct of the attorneys and non-attorneys' under supervision</u> complies with <del>their</del><u>the attorneys'</u> professional obligations when using <del>generative AI</del><u>such technologies.</u> This includes providing <u>appropriate</u> training on the ethical and practical aspects, and pitfalls, of any <del>generative AI use</del><u>AI-enabled tools that perform tasks with limited or no real-time human direction.</u></p> <p><u>As AI technologies continue to evolve, managerial and supervisory attorneys should review and update applicable firm policies, controls, and associated training accordingly to address new risks and use cases, including those that may reasonably be anticipated as AI systems become more autonomous or are integrated into legal workflows. Moreover, attorneys should ensure that their attorney and non-attorney staff receive periodic training on the appropriate use of AI and safeguards surrounding the use of AI.</u></p> <p>A subordinate <del>lawyer</del><u>attorney</u> must not use <del>generative AI</del><u>AI-enabled tools, including agentic AI systems,</u> at the direction of a supervisory <del>lawyer</del><u>attorney</u> in a manner that violates the subordinate <del>lawyer's</del><u>attorney's</u> professional responsibility and obligations <u>and must exercise independent professional judgment in evaluating whether such use is consistent with those obligations.</u></p> |

| Applicable Authorities                                                                                                                                                                                                                      | Practical Guidance                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
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| <p><b>Communication Regarding Generative AI Use</b></p> <p><del>Rule 1.4</del></p> <p><del>Rule 1.2</del></p> <p><u>Rule 1.4</u></p> <p><u>Rule 1.2</u></p>                                                                                 | <p><del>A lawyer should</del><u>An attorney must</u> evaluate their communication obligations throughout the representation based on the facts and circumstances, including the <del>novelty of the</del> technology, risks associated with <del>generative</del> AI use, scope of the representation, and sophistication of the client.</p> <p><del>The lawyer should</del><u>An attorney must</u> consider disclosure to their client that they intend to use <del>generative</del> AI in the representation, including how the technology will be used, and the benefits and risks of such use. <u>For example, disclosure may be appropriate where AI use materially affects decision-making processes. The use of AI in any form does not alter the attorney's obligation to ensure that the client understands who is providing legal advice and how substantive decisions affecting the representation are being made.</u></p> <p><del>A lawyer should review</del><u>An attorney must also follow</u> any applicable client instructions or guidelines that may restrict or limit the use of <del>generative AI.</del><u>AI in connection with the representation of the client.</u></p>                                                                                                                                                                                                                                                                                                                                                                                               |
| <p><b>Charging for Work Produced by Generative AI and Generative AI Costs</b></p> <p><del>Rule 1.5</del></p> <p><del>Bus. &amp; Prof. Code, §§ 6147–6148</del></p> <p><u>Rule 1.5</u></p> <p><u>Bus. &amp; Prof. Code, §§ 6147–6148</u></p> | <p><del>A lawyer</del><u>An attorney</u> may use generative AI to <del>more efficiently</del> create work product and may charge for actual time spent (e.g., crafting or refining generative AI inputs and prompts, or reviewing and editing generative AI outputs). <del>A lawyer must not charge hourly fees for the time saved by using generative AI.</del><u>Hourly billing must reflect the time actually spent on the client's matter, recognizing that generative AI may reduce the time required for certain tasks. Attorneys may consider using alternative billing structures such as flat fees for more predictable assignments and build the time savings created by AI use into their competitive rates for such assignments. Regardless of the billing structure chosen, fee agreements should clearly communicate how fees and costs are calculated and the extent to which generative AI factors into the attorney's rates.</u></p> <p><del>Costs associated with generative AI may be charged to the clients in compliance with applicable law.</del></p> <p><del>A fee agreement should explain the basis for all fees and costs, including those associated with the use of generative AI.</del><u>The treatment of generative AI costs depends on whether such costs constitute general overhead or recoverable expenses incurred specifically for a client's matter. Subscription fees for generative AI tools that provide general office functionality, such as drafting assistance, research capabilities, or document review, typically constitute overhead</u></p> |

| Applicable Authorities                                                                                                                                                           | Practical Guidance                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
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|                                                                                                                                                                                  | <p><u>expenses similar to library maintenance or general computer systems and thus should be absorbed within the attorney's fee rather than charged separately to clients.</u></p> <p><u>However, attorneys may charge clients for generative AI costs that are specifically incurred for the client's matter and go beyond general office operations, such as per use fees for specialized AI tools or costs for custom AI implementations developed for a particular matter. When charging such costs, the attorney must ensure the fee agreement clearly discloses that generative AI costs may be billed separately, the charges must reasonably reflect the attorney's actual cost, and no markup or profit element may be added without the client's informed written consent.</u></p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
| <p><b>Candor to the Tribunal; and Meritorious Claims and Contentions</b></p> <p><del>Rule 3.1</del></p> <p><del>Rule 3.3</del></p> <p><u>Rule 3.1</u></p> <p><u>Rule 3.3</u></p> | <p><del>A lawyer</del><u>The attorney's duty of candor to the tribunal cannot be delegated to AI. The use (or ability) of AI to research, draft, summarize, or generate legal analysis does not diminish the attorney's personal responsibility for the truthfulness and legal sufficiency of any submission to the court.</u></p> <p><u>In that respect, an attorney must review all <del>generative AI</del> outputs produced using AI tools for accuracy, including, but not limited to; analysis and citations to authority <del>for accuracy</del> before submission to the court, and <u>must independently verify and</u> correct any errors or misleading statements made to the court, <u>regardless of whether such outputs were generated with or without real-time human direction.</u></u></p> <p><del>A lawyer</del><u>An attorney should also check for any rules, orders, or other requirements in the relevant jurisdiction that may necessitate the disclosure of the use of <del>generative AI</del> AI tools, including generative or autonomous AI systems, and should comply with any such disclosure obligations as applicable.</u></p> <p><u>Agentic AI tools may present additional risks. Where agentic AI is used in connection with court filings, attorneys must ensure that no document is transmitted to the court without attorney review and approval. Attorneys must not permit AI systems to autonomously file documents, communicate with the court, or make representations on the attorney's behalf.</u></p> |

| Applicable Authorities                                                                                                  | Practical Guidance                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
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| <p><b>Prohibition on Discrimination, Harassment, and Retaliation</b></p> <p><del>Rule 8.4.1</del> <b>Rule 8.4.1</b></p> | <p><del>Some generative AI is trained on biased information, and a lawyer</del> <u>Attorneys</u> should be aware of <del>possible biases</del> <u>the risk of biased outputs and take appropriate steps to ensure compliance with relevant laws, regulations and the risks they may create</u> <u>rules of professional conduct</u>. This can be of particular concern when using <del>generative</del> <u>agentic AI</u> as multiple agents can compound any underlying bias.</p> <p><u>For example, the use of AI (e.g., to screen potential in connection with employment actions or the screening of clients or employees).</u> <del>candidates may present a risk of unlawful or unethical bias.</del></p> <p><del>Lawyers</del> <u>Attorneys</u> should engage in continuous learning about AI biases and their implications in legal practice, <del>and firms</del> <u>Firms</u> should establish policies and mechanisms to identify, <del>report,</del> and address potential AI biases.</p> |
| <p><b>Professional Responsibilities Owed to Other Jurisdictions-</b></p> <p><del>Rule 8.5</del> <b>Rule 8.5</b></p>     | <p><del>A lawyer</del> <u>An attorney</u> should analyze <u>and understand</u> the relevant laws and regulations of each jurisdiction in which <del>a lawyer</del> <u>an attorney</u> is licensed <u>and make reasonable efforts to ensure compliance remain current</u> with <del>such rules</del> <u>changes in those laws and regulations in order to comply with applicable professional obligations</u>.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |



The State Bar of California

# **Request for Approval and Publication of Updated *2026 Practical Guidance for the Use of Generative Artificial Intelligence in the Practice of Law***

Nima Mohebbi, Lead, Artificial Intelligence Working Group, Committee on Professional Responsibility and Conduct  
Rachel Brewer, Managing Attorney, Office of Professional Competence

Board of Trustees Meeting, May 14–15, 2026

# Terminology

- **Artificial intelligence (AI):** Computer systems or software designed to perform tasks that would ordinarily require human intelligence, such as analyzing information, identifying patterns, making predictions and recommendations, or generating responses based on data or programmed models rather than fixed instructions.
- **Generative AI (Gen AI):** A subset of AI designed to create new content, such as text, images, audio, videos, computer code, or analytical outputs, in response to user prompts based on patterns learned from data rather than predefined processes.
- **Agentic AI:** A subset of Gen AI that enables systems to autonomously perform tasks or workflows without human prompting.



# Background and Need: August 22, 2025, Supreme Court of California Letter



Goal: Ensure attorneys are aware of and familiar with the Practical Guidance.



Directed the State Bar to consider whether the principles in the 2023 Practical Guidance should be incorporated into the comments for the California Rules of Professional Conduct.



Directed the State Bar to consider additional guidance that may be warranted in light of agentic AI.



# Committee on Professional Responsibility and Conduct Response



**Before the Board today:**  
Updated the Practical Guidance, incorporating agentic AI and clarifying and expanding on prior guidance.



**Forthcoming:** Proposed incorporating principles from the Practical Guidance into the California Rules of Professional Conduct.



**Informational:** Ongoing educational efforts, including panels at the April 2026 Ethics Symposium and an all-licensee email highlighting AI hallucinations.



## Key Amendments to the 2026 Practical Guidance

- Expands the introduction, refines definitions and terminology, and underscores that the attorney remains fully responsible.
- Adds an introductory section on agentic AI and incorporates related guidance throughout.
- Frames competence as having two distinct components:
  1. Baseline technological competence; and
  2. Ongoing independent professional judgment.
- Clarifies the duty to supervise subordinate attorneys and nonattorney staff in their use of AI.
- Expands the billing section to provide additional guidance.
- Clarifies that the duty of candor cannot be delegated and that attorneys must review and approve AI outputs.



## Recommended Action

- Approve publication of the *2026 Practical Guidance for the Use of Generative Artificial Intelligence in the Practice of Law*.
- Approve depublication of the *2023 Practical Guidance for the Use of Generative Artificial Intelligence in the Practice of Law*.