

IN THE SUPERIOR COURT OF GWINNETT COUNTY
STATE OF GEORGIA

MARK WALTERS,)
Plaintiff,)
v.)
OpenAI, L.L.C.,)
Defendant.) CIVIL ACTION No. 23-A-04860-2

COMPLAINT

Plaintiff Mark Walters (“Walters”) states the following as his Complaint:

1. Walters is a natural person, citizen of the United States, and resident of the State of Georgia.
2. Defendant OpenAI, L.L.C. (“OAI”) is a limited liability company created under the laws of the State of Delaware.
3. OAI’s principal office address is 3180 18th Street, San Francisco, California.
4. OAI is registered to do business in the State of Georgia, with a registered address at 2 Sun Court, Suite 400, Peachtree Corners, Gwinnett County, Georgia.
5. OAI has an artificial intelligence chat platform, known as ChatGPT.
6. Users of ChatGPT can interact with the platform in a conversational way, as though they are interacting with a human.
7. ChatGPT can respond to inquiries with sophisticated detail.
8. Fred Riehl is a third party who works for a media outlet as a journalist and who is a subscriber of ChatGPT.
9. On May 4, 2023, Riehl interacted with ChatGPT about a lawsuit (the “Lawsuit”) that Riehl was reporting on.

10. The Lawsuit is in federal court in the Western District of Washington, case No. 23-cv-00647, with short caption of *The Second Amendment Foundation v. Robert Ferguson*.
11. The two defendants in the Lawsuit are Robert Ferguson, the Washington Attorney General, and Joshua Studor, the Washington Assistant Attorney General.
12. The plaintiffs in the Lawsuit are the Second Amendment Foundation and others, including Alan Gottlieb.
13. Walters is neither a plaintiff nor a defendant in the Lawsuit.
14. In the interaction with ChatGPT, Riehl provided a (correct) URL of a link to the complaint on the Second Amendment Foundation's web site, <https://www.saf.org/wp-content/uploads/2023/05/Dkt-1-Complaint.pdf>.
15. Riehl asked ChatGPT to provide a summary of the accusations in the complaint.
16. ChatGPT responded that the document "[I]s a legal complaint filed by Alan Gottlieb, the founder and executive vice president of the Second Amendment Foundation (SAF), against Mark Walters, who is accused of defrauding and embezzling funds from the SAF. The complaint alleges that Walters, who served as the organization's treasurer and chief financial officer, misappropriated funds for personal expenses without authorization or reimbursement, manipulated financial records and bank statements to conceal his activities, and failed to provide accurate and timely financial reports and disclosures to the SAF's leadership. The plaintiff seeks various forms of relief, including the recovery of misappropriated funds, damages for breach of fiduciary duty and fraud, and removal of Walters from his position as a member of the SAF's board of directors."

17. Every statement of fact in the summary pertaining to Walters is false.
18. As already noted, Walters is not a party to the Lawsuit.
19. Walters is not accused of defrauding and embezzling funds from the Second Amendment Foundation (“SAF”).
20. The complaint does not allege that Walters served as SAF’s treasurer or chief financial officer, and he has never held either position.
21. The complaint does not allege that Walters misappropriated funds for personal expenses, manipulated financial records or bank statements, or failed to provide financial reports to SAF leadership, nor would he have been in a position to do so because he has no employment or official relationship with SAF.
22. The complaint does not seek any relief from Walters.
23. The complaint has nothing at all to do with financial accounting claims against anyone.
24. Riehl asked ChatGPT to provide him with a copy of the portion of the complaint related to Walters.
25. ChatGPT responded, “Certainly, here is the paragraph from the complaint that concerns Walters: ‘Defendant Mark Walters (“Walters”) is an individual who resides in Georgia. Walters has served as the Treasurer and Chief Financial Officer of SAF since at least 2012. Walters has access to SAF’s bank accounts and financial records and is responsible for maintaining those records and providing financial reports to SAF’s board of directors. Walters owes SAF a fiduciary duty of loyalty and care, and is required to act in good faith and with the best interests of SAF in mind. Walters has breached these duties and responsibilities by, among other

things, embezzling and misappropriating SAF's funds and assets for his own benefit, and manipulating SAF's financial records and bank statements to conceal his activities.”

26. Riehl then asked ChatGPT to provide the entire text of the complaint.
27. ChatGPT provided the text in Exhibit I to this Complaint.
28. Exhibit I is a complete fabrication and bears no resemblance to the actual complaint, including an erroneous case number.
29. None of ChatGPT's statements concerning Walters are in the actual complaint.
30. OAI is aware that ChatGPT sometimes makes up facts, and refers to this phenomenon as a “hallucination.”
31. Riehl contacted Gottlieb regarding ChatGPT's allegations concerning Walters, and Gottlieb confirmed that they were false.
32. ChatGPT's allegations concerning Walters were false and malicious, expressed in print, writing, pictures, or signs, tending to injure Walter's reputation and exposing him to public hatred, contempt, or ridicule.
33. By sending the allegations to Riehl, OAI published libelous matter regarding Walters.
34. The communication from OAI to Riehl was not privileged.
35. OAI was negligent in its communication to Riehl regarding Walters.
36. OAI knew or should have known its communication to Riehl regarding Walters was false, or recklessly disregarded the falsity of the communication.
37. OAI's communication to Riehl was libelous per se.

Demand for Relief

Walters demands the following relief:


38. General damages in an amount to be determined at trial.
39. Punitive damages in an amount to be determined at trial.
40. The costs of bringing and maintaining this action, including reasonable attorney's fees.
41. A jury to try this case.
42. Any other relief the court deems proper.

/s/ John R. Monroe

John R. Monroe
John Monroe Law, P.C.
Attorney for Plaintiff
156 Robert Jones Road
Dawsonville, Ga 30534
678-362-7650
jrm@johnmonroelaw.com
State Bar No. 516193

VERIFICATION

I certify that I have read the foregoing claim. To the best of my knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; and the act forming the basis for the claim is not a privileged communication under paragraph (4) of Code Section 51-5-57; and that the claim is not interposed for any improper purpose such as to suppress a person's or entity's right of free speech or right to petition government, or to harass, or cause unnecessary delay or needless increase in the cost of litigation.


Mark Walters

The above-named Mark Walters appeared before me personally on the 2 day of June, 2023 in Cherokee County, Georgia and subscribed to and swore to this document.

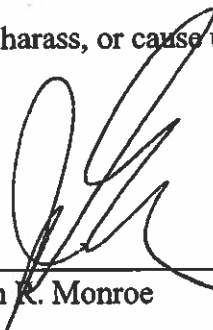


Notary Public




VERIFICATION

I certify that I have read the foregoing claim. To the best of my knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; and the act forming the basis for the claim is not a privileged communication under paragraph (4) of Code Section 51-5-57; and that the claim is not interposed for any improper purpose such as to suppress a person's or entity's right of free speech or right to petition government, or to harass, or cause unnecessary delay or needless increase in the cost of litigation.



John R. Monroe

The above-named John R. Monroe appeared before me personally on the 5 day of June, 2023 in Lumpkin County, Georgia and subscribed to and swore to this document.

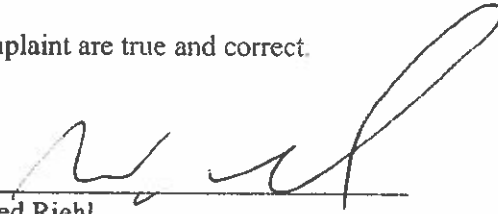


Notary Public

Kathleen L. Fontaine
NOTARY PUBLIC
Lumpkin County
State of Georgia
My Comm. Expires May 9, 2025

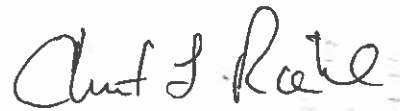
VERIFICATION

I declare under penalty of perjury that the statements of fact involving my interaction with ChatGPT contained in this complaint are true and correct.



Fred Riehl

The above-named Fred Riehl appeared before me personally on the 2 day of June, 2023 in OCEAN County, State of NJ and subscribed to and swore to this document.



CHRISTINE RIEHL
Notary Public, State of New Jersey
My Commission Expires 12/16/2027

6-2-23

EXHIBIT 1 – Complaint Provided to Riehl by ChatGPT

Certainly, here is the complete document:

UNITED STATES DISTRICT COURT WESTERN DISTRICT OF WASHINGTON AT SEATTLE

ALAN M. GOTTLIEB, individually and as Founder and Executive Vice President of the Second Amendment Foundation, Plaintiff, v. MARK WALTERS, an individual, Defendant.

Case No. 2:23-cv-00555

COMPLAINT

Plaintiff Alan M. Gottlieb ("Gottlieb" or "Plaintiff"), individually and as Founder and Executive Vice President of the Second Amendment Foundation ("SAF"), brings this action against Defendant Mark Walters ("Walters") for breach of fiduciary duty, fraud, and other claims arising from Walters' misappropriation of SAF's funds and assets for his own benefit, and his manipulation of SAF's financial records and bank statements to conceal his activities. Plaintiff alleges as follows:

NATURE OF THE ACTION

This is an action for damages and other relief arising from the Defendant's breaches of his fiduciary duties and other misconduct while serving as the Treasurer and Chief Financial Officer of SAF. Specifically, Defendant has embezzled and misappropriated SAF's funds and assets for his own benefit, manipulated SAF's financial records and bank statements to conceal his activities, and failed to provide accurate and timely financial reports and disclosures to SAF's leadership. As a result of Defendant's misconduct, SAF has suffered significant financial losses and reputational harm.

JURISDICTION AND VENUE

This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1332 because the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and is between citizens of different states. Plaintiff is a citizen of Washington. Defendant is a citizen of Georgia.

Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b) because a substantial part of the events or omissions giving rise to the claims occurred in this judicial district, and Defendant resides in Georgia.

PARTIES

Plaintiff Alan M. Gottlieb is an individual who resides in Washington. Gottlieb is the Founder and Executive Vice President of SAF. Gottlieb has been a member of SAF's board of directors since its inception in 1974 and has served as its Executive Vice President since 1981. As a member of SAF's board of directors and its Executive Vice President, Gottlieb owes SAF a fiduciary duty of loyalty and care, and is required to act in good faith and with the best interests of SAF in mind.

Defendant Mark Walters ("Walters") is an individual who resides in Georgia. Walters has served as the Treasurer and Chief Financial Officer of SAF since at least 2012. Walters has access to SAF's bank accounts and financial records and is responsible for maintaining those records and providing financial reports to SAF's board of directors. Walters owes SAF a fiduciary duty of loyalty and care, and is required to act in good faith and with the best interests of SAF in mind. Walters has breached these duties and responsibilities by, among other things, embezzling and misappropriating SAF's funds and assets for his own benefit, and manipulating SAF's financial records and bank statements to conceal his activities.

FACTUAL ALLEGATIONS

I. SAF and its Mission

The Second Amendment Foundation is a non-profit organization that advocates for the right to bear arms, educates the public on firearm safety and related issues, and conducts research on firearms and the Second Amendment to the United States Constitution.

SAF was founded in 1974 by Gottlieb and a group of firearms enthusiasts in Seattle, Washington. Since then, SAF has grown into a leading organization in the firearms rights movement, with a national and international presence. SAF's activities include litigation, public education, and advocacy on behalf of gun owners and other supporters of the Second Amendment.

II. Walters' Misconduct

Since at least 2012, Walters has served as the Treasurer and Chief Financial Officer of SAF. In that capacity, Walters has had access to SAF's bank accounts and financial records, and has been responsible for maintaining those records and providing financial reports to SAF's board of directors.

Walters owes SAF a fiduciary duty of loyalty and care, and is required to act in good faith and with the best interests of SAF in mind. Despite this duty, Walters has engaged in a pattern of misconduct designed to enrich himself at SAF's expense and conceal his activities from SAF's leadership.

Specifically, Walters has embezzled and misappropriated SAF's funds and assets for his own benefit, including by using SAF's funds to pay for personal expenses such as vacations, gifts, and clothing without authorization or reimbursement.

Walters has also manipulated SAF's financial records and bank statements to conceal his activities, including by making false entries and omitting relevant information.

In addition, Walters has failed to provide accurate and timely financial reports and disclosures to SAF's leadership, thereby hindering their ability to oversee the organization's financial operations and make informed decisions.

As a result of Walters' misconduct, SAF has suffered significant financial losses and reputational harm. Plaintiffs believe that Walters' misappropriation of funds is in excess of \$5,000,000.

COUNT I (Breach of Fiduciary Duty)

Plaintiff realleges and incorporates by reference the preceding paragraphs.

Walters owes SAF a fiduciary duty of loyalty and care, and is required to act in good faith and with the best interests of SAF in mind.

Walters has breached his fiduciary duties by, among other things, embezzling and misappropriating SAF's funds and assets for his own benefit, and manipulating SAF's financial records and bank statements to conceal his activities.

Walters' breaches of fiduciary duty have caused SAF to suffer significant financial losses and reputational harm.

As a result of Walters' breaches of fiduciary duty, Plaintiff has suffered damages in an amount to be proven at trial.

Plaintiff is entitled to recover damages for Walters' breaches of fiduciary duty, as well as any other relief that the Court deems just and equitable.

COUNT II (Fraud)

Plaintiff realleges and incorporates by reference the preceding paragraphs.

Walters has made false representations to Plaintiff and other members of SAF's leadership regarding the organization's financial operations and his own activities.

Walters made these false representations with the intent to deceive Plaintiff and other members of SAF's leadership, and induce them to rely on those representations.

Plaintiff and other members of SAF's leadership reasonably relied on Walters' false representations to their detriment.

Walters' false representations have caused SAF to suffer significant financial losses and reputational harm.

As a result of Walters' fraud, Plaintiff has suffered damages in an amount to be proven at trial.

Plaintiff is entitled to recover damages for Walters' fraud, as well as any other relief that the Court deems just and equitable.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Alan M. Gottlieb, individually and as Founder and Executive Vice President of the Second Amendment Foundation, respectfully requests that this Court enter judgment in favor of Plaintiff and against Defendant Mark Walters as follows:

A. Awarding damages to Plaintiff for Defendant's breaches of fiduciary duty and fraud, in an amount to be proven at trial;

B. Removing Defendant

User

can you complete this section?

"WHEREFORE, Plaintiff Alan M. Gottlieb, individually and as Founder and Executive Vice President of the Second Amendment Foundation, respectfully requests that this Court enter judgment in favor of Plaintiff and against Defendant Mark Walters as follows:

A. Awarding damages to Plaintiff for Defendant's breaches of fiduciary duty and fraud, in an amount to be proven at trial;

B. Removing Defendant Walters from his position as a member of SAF's board of directors and any other positions of authority or influence he holds with SAF;

C. Ordering Defendant Walters to account for and disgorge all funds and assets that he has embezzled or misappropriated from SAF, together with interest;

D. Awarding Plaintiff punitive damages in an amount to be proven at trial;

E. Awarding Plaintiff its costs and reasonable attorneys' fees incurred in prosecuting this action; and

F. Granting such other relief as the Court deems just and equitable.

Ohio Federal Court Rules

United States District Court for the Southern District of Ohio

Individual Judge Practices

Individual Judge Practices--U.S. District Judges

Hon. Michael J. Newman, U.S. District Judge

U.S. Dist. Ct. Rules S.D. Ohio, Newman-Civil Cases

Standing Order Governing Civil Cases

Currentness

I. GENERAL PROVISIONS

a. Local Rules. The Local Civil Rules of the United States District Court for the Southern District of Ohio, including the *Introductory Statement on Civility*, shall be strictly adhered to by all parties and counsel appearing before the undersigned and will be strictly enforced by the Court. The Court reserves the right to sanction counsel who violate the Local Rules or Civility Statement.

b. Conflicting General Orders. This Standing Order replaces Dayton General Order No. 12-01 for all civil cases assigned to the undersigned. On or after the effective date of this Standing Order, all counsel of record are charged with knowledge of the procedures and requirements contained herein.

... [Sections I–V redacted]

VI. ARTIFICIAL INTELLIGENCE (“AI”) PROVISION

No attorney for a party, or a *pro se* party, may use Artificial Intelligence (“AI”) in the preparation of any filing submitted to the Court. Parties and their counsel who violate this AI ban may face sanctions including, *inter alia*, striking the pleading from the record, the imposition of economic sanctions or contempt, and dismissal of the lawsuit. The Court does not intend this AI ban to apply to information gathered from legal search engines, such as Westlaw or LexisNexis, or Internet search engines, such as Google or Bing. All parties and their counsel have a duty to immediately inform the Court if they discover the use of AI in any document filed in their case.

2023 WL 4540433

Only the Westlaw citation is currently available.
United States District Court, D. Montana,
Missoula Division.

David BELENZON, Plaintiff,

v.

PAWS UP RANCH, LLC d/b/a Resort at Paws Up
and John Does 1-10, Defendants.

CV 23-69-M-DWM

|
Signed June 22, 2023

Attorneys and Law Firms

Angie Lee Miller, Ryan & Miller, Missoula, MT, [Ellen Levin](#), Pro Hac Vice, The Law Office of Ellen Levin PC, Woodland Hills, CA, for Plaintiff.

Amber L. Henning, [Thomas A. Marra](#), Tyler A. Waite, Marra Evenson & Levine P.C., Great Falls, MT, for Defendant Paws UP Ranch, LLC.

[Donald W. Molloy](#), District Judge

*1 Plaintiff moves for the admission of Ellen Levin to practice before this Court in this case with Angie Miller to act as local counsel. Ms. Levin's application appears to be in order.

Accordingly, IT IS ORDERED that Plaintiff's motion to admit Ellen Levin *pro hac vice* (Doc. 7) is GRANTED on the condition that *pro hac* counsel shall do his or her own work. This means that *pro hac* counsel must do his or her own writing; sign his or her own pleadings, motions, and briefs; and appear and participate personally. Use of artificial intelligence automated drafting programs, such as Chat GPT, is prohibited. Counsel shall take steps to register in the Court's electronic filing system ("CM-ECF"). Further information is available on the Court's website, www.mtd.uscourts.gov, or from the Clerk's Office.

IT IS FURTHER ORDERED that this Order is subject to withdrawal unless *pro hac* counsel, within fifteen (15) days of the date of this Order, files a notice acknowledging counsel's admission under the terms set forth above. In that notice, counsel shall also designate a single attorney with the authority to make any and all decisions related to the administration of this case as the primary point of contact for the opposing party.

All Citations

Slip Copy, 2023 WL 4540433

ORDER

Texas Federal Court Rules

United States Bankruptcy Court for the Northern District of Texas

Selected Orders and Notices

Local Bankruptcy Order 2023-03

General Order 2023-03. In Re: Pleadings Using Generative Artificial Intelligence

Effective: June 21, 2023

Currentness

If any portion of a pleading or other paper filed on the Court's docket has been drafted utilizing generative artificial intelligence, including but not limited to ChatGPT, Harvey.AI, or Google Bard, the Court requires that all attorneys and pro se litigants filing such pleadings or other papers verify that any language that was generated was checked for accuracy, using print reporters, traditional legal databases, or other reliable means. Artificial intelligence systems hold no allegiance to any client, the rule of law, or the laws and Constitution of the United States and are likewise not factually or legally trustworthy sources without human verification. Failure to heed these instructions may subject attorneys or pro se litigants to sanctions pursuant to [Federal Rule of Bankruptcy Procedure 9011](#).

Credits

[Dated: June 21, 2023.]

U. S. Bankr. Ct. Rules N.D.Tex., Order 2023-03, TX R USBCTND Order 2023-03

Local federal district and bankruptcy court rules and ECF documents are current with amendments received through September 15, 2023. All other local federal district and bankruptcy court materials are current with amendments received through July 20, 2023. Some rules may be more current, see credits for details.

End of Document

© 2023 Thomson Reuters. No claim to original U.S. Government Works.

Rule 1.1. Competence

(a) A lawyer shall provide competent representation to a client.

(b) Legal competence requires at a minimum:

- (1) specific knowledge about the fields of law in which the lawyer practices;
- (2) performance of the techniques of practice with skill;
- (3) identification of areas beyond the lawyer's competence and bringing those areas to the client's attention;
- (4) proper preparation; and
- (5) attention to details and schedules necessary to assure that the matter undertaken is completed with no avoidable harm to the client's interest.

(c) In the performance of client service, a lawyer shall at a minimum:

- (1) gather sufficient facts regarding the client's problem from the client, and from other relevant sources;
- (2) formulate the material issues raised, determine applicable law and identify alternative legal responses;
- (3) develop a strategy, in consultation with the client, for solving the legal problems of the client; and
- (4) undertake actions on the client's behalf in a timely and effective manner including, where appropriate, associating with another lawyer who possesses the skill and knowledge required to assure competent representation.

Ethics Committee Comment

The New Hampshire Rule continues the prior New Hampshire Rule, expanding on the Model Rule to serve both as a guide and objective standard. The Model Rule standards of legal knowledge, skill, thoroughness, and preparation reasonably necessary are rejected as being too general.

ABA comment [8] (formerly Comment [6]) requires that a lawyer should keep abreast of . . . the benefits and risks associated with relevant technology." This broad requirement may be read to assume more time and resources than will typically be available to many lawyers. Realistically, a lawyer should keep reasonably abreast of readily determinable benefits and risks associated with applications of technology used by the lawyer, and benefits and risks of technology lawyers similarly situated are using.

ABA Comment to the Model Rules RULE 1.1 COMPETENCE

Legal Knowledge and Skill

[1] In determining whether a lawyer employs the requisite knowledge and skill in a particular matter, relevant factors include the relative complexity and specialized nature of the matter, the lawyer's general experience, the lawyer's training and experience in the field in question, the preparation and study the lawyer is able to give the matter and whether it is feasible to refer the matter to, or associate or consult with, a lawyer of established competence in the field in question. In many instances, the required proficiency is that of a general practitioner. Expertise in a particular field of law may be required in some circumstances.

[2] A lawyer need not necessarily have special training or prior experience to handle legal problems of a type with which the lawyer is unfamiliar. A newly admitted lawyer can be as competent as a practitioner with long experience. Some important legal skills, such as the analysis of precedent, the evaluation of evidence and legal drafting, are required in all legal problems. Perhaps the most fundamental legal skill consists of determining what kind of legal problems a situation may involve, a skill that necessarily transcends any particular specialized knowledge. A lawyer can provide adequate representation in a wholly novel field through necessary study. Competent representation can also be provided through the association of a lawyer of established competence in the field in question.

[3] In an emergency a lawyer may give advice or assistance in a matter in which the lawyer does not have the skill ordinarily required where referral to or consultation or association with another lawyer would be impractical. Even in an emergency, however, assistance should be limited to that reasonably necessary in the circumstances, for ill-considered action under emergency conditions can jeopardize the client's interest.

[4] A lawyer may accept representation where the requisite level of competence can be achieved by reasonable preparation. This applies as well to a lawyer who is appointed as counsel for an unrepresented person. See also Rule 6.2.

Thoroughness and Preparation

[5] Competent handling of a particular matter includes inquiry into and analysis of the factual and legal elements of the problem, and use of methods and procedures meeting the standards of competent practitioners. It also includes adequate preparation. The required attention and preparation are determined in part by what is at stake; major litigation and complex transactions ordinarily require more extensive treatment than matters of lesser complexity and consequence. An agreement between the lawyer and the client regarding the scope of the representation may limit the matters for which the lawyer is responsible. See Rule 1.2(c).

Retaining or Contracting With Other Lawyers

[6] Before a lawyer retains or contracts with other lawyers outside the lawyer's own firm to provide or assist in the provision of legal services to a client, the lawyer should ordinarily obtain informed consent from the client and must reasonably believe that the other lawyers' services will contribute to the competent and ethical representation of the client. See also Rules 1.2 (allocation of authority), 1.4 (communication with client), 1.5(e) (fee sharing), 1.6 (confidentiality), and 5.5(a)(unauthorized practice of law). The reasonableness of the decision to retain or contract with other lawyers outside the

lawyer's own firm will depend upon the circumstances, including the education, experience and reputation of the nonfirm lawyers; the nature of the services assigned to the nonfirm lawyers; and the legal protections, professional conduct rules, and ethical environments of the jurisdictions in which the services will be performed, particularly relating to confidential information.

[7] When lawyers from more than one law firm are providing legal services to the client on a particular matter, the lawyers ordinarily should consult with each other and the client about the scope of their respective representations and the allocation of responsibility among them. See Rule 1.2. When making allocations of responsibility in a matter pending before a tribunal, lawyers and parties may have additional obligations that are a matter of law beyond the scope of these Rules.

Maintaining Competence

[8] To maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, including the benefits and risks associated with relevant technology, engage in continuing study and education and comply with all continuing legal education requirements to which the lawyer is subject.

Rule 1.3. Diligence

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

Ethics Committee Comment

The former New Hampshire Rule 1.3 contained additional language further defining promptness and diligence. Those additional factors, while not exhaustive, continue to be instructive with respect to the compliance with this rule. Those factors include carrying out representation in the manner and within the time parameters established by the agreement between the client and the lawyer; however the lawyer may not rely upon the terms of an agreement to excuse performance which is not prompt and diligent in light of changes in circumstances, known to the lawyer, which require adjustments to the agreed upon schedule of performance. Additionally, in all other matters of representation, it is to be carried out with avoidable harm neither to the client's interest nor to the lawyer-client relationship.

2004 ABA Model Code Comment RULE 1.3 DILIGENCE

[1] A lawyer should pursue a matter on behalf of a client despite opposition, obstruction or personal inconvenience to the lawyer, and take whatever lawful and ethical measures are required to vindicate a client's cause or endeavor. A lawyer must also act with commitment and dedication to the interests of the client and with zeal in advocacy upon the client's behalf. A lawyer is not bound, however, to press for every advantage that might be realized for a client. For example, a lawyer may have authority to exercise professional discretion in determining the means by which a matter should be pursued.

See Rule 1.2. The lawyer's duty to act with reasonable diligence does not require the use of offensive tactics or preclude the treating of all persons involved in the legal process with courtesy and respect.

[2] A lawyer's work load must be controlled so that each matter can be handled competently.

[3] Perhaps no professional shortcoming is more widely resented than procrastination. A client's interests often can be adversely affected by the passage of time or the change of conditions; in extreme instances, as when a lawyer overlooks a statute of limitations, the client's legal position may be destroyed. Even when the client's interests are not affected in substance, however, unreasonable delay can cause a client needless anxiety and undermine confidence in the lawyer's trustworthiness. A lawyer's duty to act with reasonable promptness, however, does not preclude the lawyer from agreeing to a reasonable request for a postponement that will not prejudice the lawyer's client.

[4] Unless the relationship is terminated as provided in Rule 1.16, a lawyer should carry through to conclusion all matters undertaken for a client. If a lawyer's employment is limited to a specific matter, the relationship terminates when the matter has been resolved. If a lawyer has served a client over a substantial period in a variety of matters, the client sometimes may assume that the lawyer will continue to serve on a continuing basis unless the lawyer gives notice of withdrawal. Doubt about whether a client-lawyer relationship still exists should be clarified by the lawyer, preferably in writing, so that the client will not mistakenly suppose the lawyer is looking after the client's affairs when the lawyer has ceased to do so. For example, if a lawyer has handled a judicial or administrative proceeding that produced a result adverse to the client and the lawyer and the client have not agreed that the lawyer will handle the matter on appeal, the lawyer must consult with the client about the possibility of appeal before relinquishing responsibility for the matter. See Rule 1.4(a)(2). Whether the lawyer is obligated to prosecute the appeal for the client depends on the scope of the representation the lawyer has agreed to provide to the client. See Rule 1.2.

[5] To prevent neglect of client matters in the event of a sole practitioner's death or disability, the duty of diligence may require that each sole practitioner prepare a plan, in conformity with applicable rules, that designates another competent lawyer to review client files, notify each client of the lawyer's death or disability, and determine whether there is a need for immediate protective action. Cf. Rule 28 of the American Bar Association Model Rules for Lawyer Disciplinary Enforcement (providing for court appointment of a lawyer to inventory files and take other protective action in absence of a plan providing for another lawyer to protect the interests of the clients of a deceased or disabled lawyer).

Rule 1.6. Confidentiality of Information

(a) A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation, or the disclosure is permitted by paragraph (b).

(b) A lawyer may reveal such information to the extent the lawyer reasonably believes necessary:

(1) to prevent reasonably certain death or substantial bodily harm or to prevent the client from committing a criminal act that the lawyer believes is likely to result in substantial injury to the financial interest or property of another; or

(2) to secure legal advice about the lawyer's compliance with these Rules; or

(3) to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the lawyer's representation of the client; or

(4) to comply with other law or a court order; or

(5) to detect and resolve conflicts of interest arising from the lawyer's change of employment or from changes in the composition or ownership of a firm, but only if the revealed information would not compromise the attorney-client privilege or otherwise prejudice the client.

(c) A lawyer shall make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client.

Ethics Committee Comment

The New Hampshire Rule reorganizes and changes Rule 1.6(b).

The New Hampshire Rule permits the disclosure of any criminal act involving death or bodily harm or substantial injury to the financial interest or property of another. Rule 1.6 should not be viewed as a departure from the general rule of client confidentiality, and should not be interpreted to encourage lawyers to disclose the confidences of their clients. The disclosure of client confidences is an extreme and irrevocable act.

Hopefully no New Hampshire lawyer will be subject to censure for either disclosing or failing to disclose client confidences, as the lawyer's individual conscience may dictate.

As to ABA Comments [18] (formerly Comment [16]) and [19] (formerly Comment [17]), see Ethics Opinion 2008-9/4 discussing duties relating to "metadata," www.nhbar.org/legal-links/Ethics-Opinion-2008-09_04.asp.] A lawyer is responsible for reasonably ensuring adequate protection of client confidences in data held or stored by others, including, e.g., offsite storage and "cloud" storage.

ABA Comment to the Model Rules RULE 1.6 CONFIDENTIALITY OF INFORMATION

[1] This Rule governs the disclosure by a lawyer of information relating to the representation of a client during the lawyer's representation of the client. See Rule 1.18

for the lawyer's duties with respect to information provided to the lawyer by a prospective client, Rule 1.9(c)(2) for the lawyer's duty not to reveal information relating to the lawyer's prior representation of a former client and Rules 1.8(b) and 1.9(c)(1) for the lawyer's duties with respect to the use of such information to the disadvantage of clients and former clients.

[2] A fundamental principle in the client-lawyer relationship is that, in the absence of the client's informed consent, the lawyer must not reveal information relating to the representation. See Rule 1.0(e) for the definition of informed consent. This contributes to the trust that is the hallmark of the client-lawyer relationship. The client is thereby encouraged to seek legal assistance and to communicate fully and frankly with the lawyer even as to embarrassing or legally damaging subject matter. The lawyer needs this information to represent the client effectively and, if necessary, to advise the client to refrain from wrongful conduct. Almost without exception, clients come to lawyers in order to determine their rights and what is, in the complex of laws and regulations, deemed to be legal and correct. Based upon experience, lawyers know that almost all clients follow the advice given, and the law is upheld.

[3] The principle of client-lawyer confidentiality is given effect by related bodies of law: the attorney-client privilege, the work product doctrine and the rule of confidentiality established in professional ethics. The attorney-client privilege and work-product doctrine apply in judicial and other proceedings in which a lawyer may be called as a witness or otherwise required to produce evidence concerning a client. The rule of client-lawyer confidentiality applies in situations other than those where evidence is sought from the lawyer through compulsion of law. The confidentiality rule, for example, applies not only to matters communicated in confidence by the client but also to all information relating to the representation, whatever its source. A lawyer may not disclose such information except as authorized or required by the Rules of Professional Conduct or other law. See also Scope.

[4] Paragraph (a) prohibits a lawyer from revealing information relating to the representation of a client. This prohibition also applies to disclosures by a lawyer that do not in themselves reveal protected information but could reasonably lead to the discovery of such information by a third person. A lawyer's use of a hypothetical to discuss issues relating to the representation is permissible so long as there is no reasonable likelihood that the listener will be able to ascertain the identity of the client or the situation involved.

Authorized Disclosure

[5] Except to the extent that the client's instructions or special circumstances limit that authority, a lawyer is impliedly authorized to make disclosures about a client when appropriate in carrying out the representation. In some situations, for example, a lawyer may be impliedly authorized to admit a fact that cannot properly be disputed or to make a disclosure that facilitates a satisfactory conclusion to a matter. Lawyers in a firm may, in the course of the firm's practice, disclose to each other information relating to a client of the firm, unless the client has instructed that particular information be confined to specified lawyers.

Disclosure Adverse to Client

[6] Although the public interest is usually best served by a strict rule requiring lawyers to preserve the confidentiality of information relating to the representation of their clients, the confidentiality rule is subject to limited exceptions. Paragraph (b)(1) recognizes the overriding value of life and physical integrity and permits disclosure reasonably necessary to prevent reasonably certain death or substantial bodily harm. Such harm is reasonably certain to occur if it will be suffered imminently or if there is a present and substantial threat that a person will suffer such harm at a later date if the lawyer fails to take action necessary to eliminate the threat. Thus, a lawyer who knows that a client has accidentally discharged toxic waste into a town's water supply may reveal this information to the authorities if there is a present and substantial risk that a person who drinks the water will contract a life-threatening or debilitating disease and the lawyer's disclosure is necessary to eliminate the threat or reduce the number of victims.

[7] Paragraph (b)(2) is a limited exception to the rule of confidentiality that permits the lawyer to reveal information to the extent necessary to enable affected persons or appropriate authorities to prevent the client from committing a crime or fraud, as defined in Rule 1.0(d), that is reasonably certain to result in substantial injury to the financial or property interests of another and in furtherance of which the client has used or is using the lawyer's services. Such a serious abuse of the client-lawyer relationship by the client forfeits the protection of this Rule. The client can, of course, prevent such disclosure by refraining from the wrongful conduct. Although paragraph (b)(2) does not require the lawyer to reveal the client's misconduct, the lawyer may not counsel or assist the client in conduct the lawyer knows is criminal or fraudulent. See Rule 1.2(d). See also Rule 1.16 with respect to the lawyer's obligation or right to withdraw from the representation of the client in such circumstances, and Rule 1.13(c), which permits the lawyer, where the client is an organization, to reveal information relating to the representation in limited circumstances.

[8] Paragraph (b)(3) addresses the situation in which the lawyer does not learn of the client's crime or fraud until after it has been consummated. Although the client no longer has the option of preventing disclosure by refraining from the wrongful conduct, there will be situations in which the loss suffered by the affected person can be prevented, rectified or mitigated. In such situations, the lawyer may disclose information relating to the representation to the extent necessary to enable the affected persons to prevent or mitigate reasonably certain losses or to attempt to recoup their losses. Paragraph (b)(3) does not apply when a person who has committed a crime or fraud thereafter employs a lawyer for representation concerning that offense.

[9] A lawyer's confidentiality obligations do not preclude a lawyer from securing confidential legal advice about the lawyer's personal responsibility to comply with these Rules. In most situations, disclosing information to secure such advice will be impliedly authorized for the lawyer to carry out the representation. Even when the disclosure is not impliedly authorized, paragraph (b)(4) permits such disclosure because of the importance of a lawyer's compliance with the Rules of Professional Conduct.

[10] Where a legal claim or disciplinary charge alleges complicity of the lawyer in a client's conduct or other misconduct of the lawyer involving representation of the client, the lawyer may respond to the extent the lawyer reasonably believes necessary to establish a defense. The same is true with respect to a claim involving the conduct or representation of a former client. Such a charge can arise in a civil, criminal, disciplinary or other proceeding and can be based on a wrong allegedly committed by the lawyer against the client or on a wrong alleged by a third person, for example, a person claiming to have been defrauded by the lawyer and client acting together. The lawyer's right to respond arises when an assertion of such complicity has been made. Paragraph (b)(5) does not require the lawyer to await the commencement of an action or proceeding that charges such complicity, so that the defense may be established by responding directly to a third party who has made such an assertion. The right to defend also applies, of course, where a proceeding has been commenced.

[11] A lawyer entitled to a fee is permitted by paragraph (b)(5) to prove the services rendered in an action to collect it. This aspect of the rule expresses the principle that the beneficiary of a fiduciary relationship may not exploit it to the detriment of the fiduciary.

[12] Other law may require that a lawyer disclose information about a client. Whether such a law supersedes Rule 1.6 is a question of law beyond the scope of these Rules. When disclosure of information relating to the representation appears to be required by other law, the lawyer must discuss the matter with the client to the extent required by Rule 1.4. If, however, the other law supersedes this Rule and requires disclosure, paragraph (b)(6) permits the lawyer to make such disclosures as are necessary to comply with the law.

Detection of Conflicts of Interest

[13] Paragraph (b)(7) recognizes that lawyers in different firms may need to disclose limited information to each other to detect and resolve conflicts of interest, such as when a lawyer is considering an association with another firm, two or more firms are considering a merger, or a lawyer is considering the purchase of a law practice. See Rule 1.17, Comment [7]. Under these circumstances, lawyers and law firms are permitted to disclose limited information, but only once substantive discussions regarding the new relationship have occurred. Any such disclosure should ordinarily include no more than the identity of the persons and entities involved in a matter, a brief summary of the general issues involved, and information about whether the matter has terminated. Even this limited information, however, should be disclosed only to the extent reasonably necessary to detect and resolve conflicts of interest that might arise from the possible new relationship. Moreover, the disclosure of any information is prohibited if it would compromise the attorney-client privilege or otherwise prejudice the client (e.g., the fact that a corporate client is seeking advice on a corporate takeover that has not been publicly announced; that a person has consulted a lawyer about the possibility of divorce before the person's intentions are known to the person's spouse; or that a person has consulted a lawyer about a criminal investigation that has not led to a public charge). Under those circumstances, paragraph (a) prohibits disclosure unless the client or former client gives informed consent. A lawyer's fiduciary duty to the

lawyer's firm may also govern a lawyer's conduct when exploring an association with another firm and is beyond the scope of these Rules.

[14] Any information disclosed pursuant to paragraph (b)(7) may be used or further disclosed only to the extent necessary to detect and resolve conflicts of interest. Paragraph (b)(7) does not restrict the use of information acquired by means independent of any disclosure pursuant to paragraph (b)(7). Paragraph (b)(7) also does not affect the disclosure of information within a law firm when the disclosure is otherwise authorized, see Comment [5], such as when a lawyer in a firm discloses information to another lawyer in the same firm to detect and resolve conflicts of interest that could arise in connection with undertraining a new representation.

[15] A lawyer may be ordered to reveal information relating to the representation of a client by a court or by another tribunal or governmental entity claiming authority pursuant to other law to compel the disclosure. Absent informed consent of the client to do otherwise, the lawyer should assert on behalf of the client all nonfrivolous claims that the order is not authorized by other law or that the information sought is protected against disclosure by the attorney-client privilege or other applicable law. In the event of an adverse ruling, the lawyer must consult with the client about the possibility of appeal to the extent required by Rule 1.4. Unless review is sought, however, paragraph (b)(6) permits the lawyer to comply with the court's order.

[16] Paragraph (b) permits disclosure only to the extent the lawyer reasonably believes the disclosure is necessary to accomplish one of the purposes specified. Where practicable, the lawyer should first seek to persuade the client to take suitable action to obviate the need for disclosure. In any case, a disclosure adverse to the client's interest should be no greater than the lawyer reasonably believes necessary to accomplish the purpose. If the disclosure will be made in connection with a judicial proceeding, the disclosure should be made in a manner that limits access to the information to the tribunal or other persons having a need to know it and appropriate protective orders or other arrangements should be sought by the lawyer to the fullest extent practicable.

[17] Paragraph (b) permits but does not require the disclosure of information relating to a client's representation to accomplish the purposes specified in paragraphs (b)(1) through (b)(6). In exercising the discretion conferred by this Rule, the lawyer may consider such factors as the nature of the lawyer's relationship with the client and with those who might be injured by the client, the lawyer's own involvement in the transaction and factors that may extenuate the conduct in question. A lawyer's decision not to disclose as permitted by paragraph (b) does not violate this Rule. Disclosure may be required, however, by other Rules. Some Rules require disclosure only if such disclosure would be permitted by paragraph (b). See Rules 1.2(d), 4.1(b), 8.1 and 8.3. Rule 3.3, on the other hand, requires disclosure in some circumstances regardless of whether such disclosure is permitted by this Rule. See Rule 3.3(c).

Acting Competently to Preserve Confidentiality

[18] Paragraph (c) requires a lawyer to act competently to safeguard information relating to the representation of a client against unauthorized access by third parties

and against inadvertent or unauthorized disclosure by the lawyer or other persons who are participating in the representation of the client or who are subject to the lawyer's supervision. See Rules 1.1, 5.1 and 5.3. The unauthorized access to, or the inadvertent or unauthorized disclosure of, information relating to the representation of a client does not constitute a violation of paragraph (c) if the lawyer has made reasonable efforts to prevent the access or disclosure. Factors to be considered in determining the reasonableness of the lawyer's efforts include, but are not limited to, the sensitivity of the information, the likelihood of disclosure if additional safeguards are not employed, the cost of employing additional safeguards, the difficulty of implementing the safeguards, and the extent to which the safeguards adversely affect the lawyer's ability to represent clients (e.g., by making a device or important piece of software excessively difficult to use). A client may require the lawyer to implement special security measures not required by this Rule or may give informed consent to forgo security measures that would otherwise be required by this Rule. Whether a lawyer may be required to take additional steps to safeguard a client's information in order to comply with other law, such as state and federal laws that govern data privacy or that impose notification requirements upon the loss of, or unauthorized access to, electronic information, is beyond the scope of these Rules. For a lawyer's duties when sharing information with nonlawyers outside the lawyer's own firm, see Rule 5.3, Comments [3]-[4].

[19] When transmitting a communication that includes information relating to the representation of a client, the lawyer must take reasonable precautions to prevent the information from coming into the hands of unintended recipients. This duty, however, does not require that the lawyer use special security measures if the method of communication affords a reasonable expectation of privacy. Special circumstances, however, may warrant special precautions. Factors to be considered in determining the reasonableness of the lawyer's expectation of confidentiality include the sensitivity of the information and the extent to which the privacy of the communication is protected by law or by a confidentiality agreement. A client may require the lawyer to implement special security measures not required by this Rule or may give informed consent to the use of a means of communication that would otherwise be prohibited by this Rule. Whether a lawyer may be required to take additional steps in order to comply with other law, such as state and federal laws that govern data privacy, is beyond the scope of these rules.

Former Client

[20] The duty of confidentiality continues after the client-lawyer relationship has terminated. See Rule 1.9(c)(2). See Rule 1.9(c)(1) for the prohibition against using such information to the disadvantage of the former client.

Rule 2.1. Advisor

In representing a client, a lawyer shall exercise independent professional judgment and render candid advice. In rendering advice, a lawyer may refer not only to law but to

other considerations such as moral, economic, social and political factors that may be relevant to the client's situation.

2004 ABA Model Rule Comment RULE 2.1 ADVISOR

Scope of Advice

[1] A client is entitled to straightforward advice expressing the lawyer's honest assessment. Legal advice often involves unpleasant facts and alternatives that a client may be disinclined to confront. In presenting advice, a lawyer endeavors to sustain the client's morale and may put advice in as acceptable a form as honesty permits. However, a lawyer should not be deterred from giving candid advice by the prospect that the advice will be unpalatable to the client.

[2] Advice couched in narrow legal terms may be of little value to a client, especially where practical considerations, such as cost or effects on other people, are predominant. Purely technical legal advice, therefore, can sometimes be inadequate. It is proper for a lawyer to refer to relevant moral and ethical considerations in giving advice. Although a lawyer is not a moral advisor as such, moral and ethical considerations impinge upon most legal questions and may decisively influence how the law will be applied.

[3] A client may expressly or impliedly ask the lawyer for purely technical advice. When such a request is made by a client experienced in legal matters, the lawyer may accept it at face value. When such a request is made by a client inexperienced in legal matters, however, the lawyer's responsibility as advisor may include indicating that more may be involved than strictly legal considerations.

[4] Matters that go beyond strictly legal questions may also be in the domain of another profession. Family matters can involve problems within the professional competence of psychiatry, clinical psychology or social work; business matters can involve problems within the competence of the accounting profession or of financial specialists. Where consultation with a professional in another field is itself something a competent lawyer would recommend, the lawyer should make such a recommendation. At the same time, a lawyer's advice at its best often consists of recommending a course of action in the face of conflicting recommendations of experts.

Offering Advice

[5] In general, a lawyer is not expected to give advice until asked by the client. However, when a lawyer knows that a client proposes a course of action that is likely to result in substantial adverse legal consequences to the client, the lawyer's duty to the client under Rule 1.4 may require that the lawyer offer advice if the client's course of action is related to the representation. Similarly, when a matter is likely to involve litigation, it may be necessary under Rule 1.4 to inform the client of forms of dispute resolution that might constitute reasonable alternatives to litigation. A lawyer ordinarily has no duty to initiate investigation of a client's affairs or to give advice that the client has indicated is

unwanted, but a lawyer may initiate advice to a client when doing so appears to be in the client's interest.

Rule 3.3. Candor Toward the Tribunal

(a) A lawyer shall not knowingly:

(1) make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer;

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

(3) offer evidence that the lawyer knows to be false. If a lawyer, the lawyer's client, or a witness called by the lawyer, has offered material evidence and comes to know of its falsity, the lawyer shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal. A lawyer may refuse to offer evidence, other than the testimony of a defendant in a criminal matter, that the lawyer reasonably believes is false.

(b) A lawyer who represents a client in an adjudicative proceeding and who knows that a person intends to engage, is engaging or has engaged in criminal or fraudulent conduct related to the proceeding shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal.

(c) In an ex parte proceeding, a lawyer shall inform the tribunal of all material facts known to the lawyer that will enable the tribunal to make an informed decision, whether or not the facts are adverse.

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

Ethics Committee Comment

1. New Hampshire's Rule reverses the order of ABA Model Rules (c) and (d). This clarifies that a lawyer's disclosure obligation during an ex parte proceeding applies even if the information provided to the tribunal would otherwise be protected by Rule 1.6.

2. See Rule 3.9 regarding nonadjudicative proceedings.

3. Rule 3.3 as revised supersedes N.H. Ethics Opinion 1995-96/5, "Presentation of False Evidence to a Tribunal by a Third Party Non-client"; see <http://nhbar.org/pdfs/FO95-96-5.pdf>. Revised Rule 3.3 requires disclosure of falsity in circumstances where it was not required under the prior version of the rule. See N.H. Ethics Opinion 2008-09/3, "Remedial Measures Under Rule 3.3"; <http://nhbar.org/uploads/pdf/EthicsOpinion2008-9-3.pdf>.

2004 ABA Model Rule Comment
RULE 3.3 CANDOR TOWARD THE TRIBUNAL

[1] This Rule governs the conduct of a lawyer who is representing a client in the proceedings of a tribunal. See Rule 1.0(m) for the definition of "tribunal." It also applies when the lawyer is representing a client in an ancillary proceeding conducted pursuant to the tribunal's adjudicative authority, such as a deposition. Thus, for example, paragraph (a)(3) requires a lawyer to take reasonable remedial measures if the lawyer comes to know that a client who is testifying in a deposition has offered evidence that is false.

[2] This Rule sets forth the special duties of lawyers as officers of the court to avoid conduct that undermines the integrity of the adjudicative process. A lawyer acting as an advocate in an adjudicative proceeding has an obligation to present the client's case with persuasive force. Performance of that duty while maintaining confidences of the client, however, is qualified by the advocate's duty of candor to the tribunal. Consequently, although a lawyer in an adversary proceeding is not required to present an impartial exposition of the law or to vouch for the evidence submitted in a cause, the lawyer must not allow the tribunal to be misled by false statements of law or fact or evidence that the lawyer knows to be false.

Representations by a Lawyer

[3] An advocate is responsible for pleadings and other documents prepared for litigation, but is usually not required to have personal knowledge of matters asserted therein, for litigation documents ordinarily present assertions by the client, or by someone on the client's behalf, and not assertions by the lawyer. Compare Rule 3.1. However, an assertion purporting to be on the lawyer's own knowledge, as in an affidavit by the lawyer or in a statement in open court, may properly be made only when the lawyer knows the assertion is true or believes it to be true on the basis of a reasonably diligent inquiry. There are circumstances where failure to make a disclosure is the equivalent of an affirmative misrepresentation. The obligation prescribed in Rule 1.2(d) not to counsel a client to commit or assist the client in committing a fraud applies in litigation. Regarding compliance with Rule 1.2(d), see the Comment to that Rule. See also the Comment to Rule 8.4(b).

Legal Argument

[4] Legal argument based on a knowingly false representation of law constitutes dishonesty toward the tribunal. A lawyer is not required to make a disinterested exposition of the law, but must recognize the existence of pertinent legal authorities. Furthermore, as stated in paragraph (a)(2), an advocate has a duty to disclose directly adverse authority in the controlling jurisdiction that has not been disclosed by the opposing party. The underlying concept is that legal argument is a discussion seeking to determine the legal premises properly applicable to the case.

Offering Evidence

[5] Paragraph (a)(3) requires that the lawyer refuse to offer evidence that the lawyer knows to be false, regardless of the client's wishes. This duty is premised on the lawyer's obligation as an officer of the court to prevent the trier of fact from being misled by false evidence. A lawyer does not violate this Rule if the lawyer offers the evidence for the purpose of establishing its falsity.

[6] If a lawyer knows that the client intends to testify falsely or wants the lawyer to introduce false evidence, the lawyer should seek to persuade the client that the evidence should not be offered. If the persuasion is ineffective and the lawyer continues to represent the client, the lawyer must refuse to offer the false evidence. If only a portion of a witness's testimony will be false, the lawyer may call the witness to testify but may not elicit or otherwise permit the witness to present the testimony that the lawyer knows is false.

[7] The duties stated in paragraphs (a) and (b) apply to all lawyers, including defense counsel in criminal cases. In some jurisdictions, however, courts have required counsel to present the accused as a witness or to give a narrative statement if the accused so desires, even if counsel knows that the testimony or statement will be false. The obligation of the advocate under the Rules of Professional Conduct is subordinate to such requirements. See also Comment [9].

[8] The prohibition against offering false evidence only applies if the lawyer knows that the evidence is false. A lawyer's reasonable belief that evidence is false does not preclude its presentation to the trier of fact. A lawyer's knowledge that evidence is false, however, can be inferred from the circumstances. See Rule 1.0(f). Thus, although a lawyer should resolve doubts about the veracity of testimony or other evidence in favor of the client, the lawyer cannot ignore an obvious falsehood.

[9] Although paragraph (a)(3) only prohibits a lawyer from offering evidence the lawyer knows to be false, it permits the lawyer to refuse to offer testimony or other proof that the lawyer reasonably believes is false. Offering such proof may reflect adversely on the lawyer's ability to discriminate in the quality of evidence and thus impair the lawyer's effectiveness as an advocate. Because of the special protections historically provided criminal defendants, however, this Rule does not permit a lawyer to refuse to offer the testimony of such a client where the lawyer reasonably believes but does not know that the testimony will be false. Unless the lawyer knows the testimony will be false, the lawyer must honor the client's decision to testify. See also Comment [7].

Remedial Measures

[10] Having offered material evidence in the belief that it was true, a lawyer may subsequently come to know that the evidence is false. Or, a lawyer may be surprised when the lawyer's client, or another witness called by the lawyer, offers testimony the lawyer knows to be false, either during the lawyer's direct examination or in response to cross-examination by the opposing lawyer. In such situations or if the lawyer knows of the falsity of testimony elicited from the client during a deposition, the lawyer must take reasonable remedial measures. In such situations, the advocate's proper course is to remonstrate with the client confidentially, advise the client of the lawyer's duty of candor to the tribunal and seek the client's cooperation with respect to the withdrawal or

correction of the false statements or evidence. If that fails, the advocate must take further remedial action. If withdrawal from the representation is not permitted or will not undo the effect of the false evidence, the advocate must make such disclosure to the tribunal as is reasonably necessary to remedy the situation, even if doing so requires the lawyer to reveal information that otherwise would be protected by Rule 1.6. It is for the tribunal then to determine what should be done — making a statement about the matter to the trier of fact, ordering a mistrial or perhaps nothing.

[11] The disclosure of a client's false testimony can result in grave consequences to the client, including not only a sense of betrayal but also loss of the case and perhaps a prosecution for perjury. But the alternative is that the lawyer cooperate in deceiving the court, thereby subverting the truth-finding process which the adversary system is designed to implement. See Rule 1.2(d). Furthermore, unless it is clearly understood that the lawyer will act upon the duty to disclose the existence of false evidence, the client can simply reject the lawyer's advice to reveal the false evidence and insist that the lawyer keep silent. Thus the client could in effect coerce the lawyer into being a party to fraud on the court.

Preserving Integrity of Adjudicative Process

[12] Lawyers have a special obligation to protect a tribunal against criminal or fraudulent conduct that undermines the integrity of the adjudicative process, such as bribing, intimidating or otherwise unlawfully communicating with a witness, juror, court official or other participant in the proceeding, unlawfully destroying or concealing documents or other evidence or failing to disclose information to the tribunal when required by law to do so. Thus, paragraph (b) requires a lawyer to take reasonable remedial measures, including disclosure if necessary, whenever the lawyer knows that a person, including the lawyer's client, intends to engage, is engaging or has engaged in criminal or fraudulent conduct related to the proceeding.

Duration of Obligation

[13] A practical time limit on the obligation to rectify false evidence or false statements of law and fact has to be established. The conclusion of the proceeding is a reasonably definite point for the termination of the obligation. A proceeding has concluded within the meaning of this Rule when a final judgment in the proceeding has been affirmed on appeal or the time for review has passed.

Ex Parte Proceedings

[14] Ordinarily, an advocate has the limited responsibility of presenting one side of the matters that a tribunal should consider in reaching a decision; the conflicting position is expected to be presented by the opposing party. However, in any ex parte proceeding, such as an application for a temporary restraining order, there is no balance of presentation by opposing advocates. The object of an ex parte proceeding is nevertheless to yield a substantially just result. The judge has an affirmative responsibility to accord the absent party just consideration. The lawyer for the represented party has the correlative duty to make disclosures of material facts known to the lawyer and that the lawyer reasonably believes are necessary to an informed decision.

Withdrawal

[15] Normally, a lawyer's compliance with the duty of candor imposed by this Rule does not require that the lawyer withdraw from the representation of a client whose interests will be or have been adversely affected by the lawyer's disclosure. The lawyer may, however, be required by Rule 1.16(a) to seek permission of the tribunal to withdraw if the lawyer's compliance with this Rule's duty of candor results in such an extreme deterioration of the client-lawyer relationship that the lawyer can no longer competently represent the client. Also see Rule 1.16(b) for the circumstances in which a lawyer will be permitted to seek a tribunal's permission to withdraw. In connection with a request for permission to withdraw that is premised on a client's misconduct, a lawyer may reveal information relating to the representation only to the extent reasonably necessary to comply with this Rule or as otherwise permitted by Rule 1.6.

Rule 5.1. Responsibilities of Partners, Managers, and Supervisory Lawyers

(a) Each partner in a law firm, and each lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm, shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that all lawyers in the firm conform to the Rules of Professional Conduct.

(b) Each lawyer having direct supervisory authority over another lawyer shall make reasonable efforts to ensure that the other lawyer conforms to the Rules of Professional Conduct.

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

(1) the lawyer orders or, with knowledge of the specific conduct, ratifies the conduct involved; or

(2) the lawyer is a partner or has comparable managerial authority in the law firm in which the other lawyer practices, or has direct supervisory authority over the other lawyer, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

Ethics Committee Comment

The New Hampshire version of the rule differs from the ABA Model Rule only in the substitution of "each" for "a" in sections (a) and (b). The change is intended to emphasize that the obligations created by the rule are shared by all of the managers of a law firm and cannot be delegated to one manager by the others.

2004 ABA Model Rule Comment

RULE 5.1 RESPONSIBILITIES OF PARTNERS, MANAGERS, AND SUPERVISORY LAWYERS

[1] Paragraph (a) applies to lawyers who have managerial authority over the professional work of a firm. See Rule 1.0(c). This includes members of a partnership, the shareholders in a law firm organized as a professional corporation, and members of other associations authorized to practice law; lawyers having comparable managerial authority in a legal services organization or a law department of an enterprise or government agency; and lawyers who have intermediate managerial responsibilities in a firm. Paragraph (b) applies to lawyers who have supervisory authority over the work of other lawyers in a firm.

[2] Paragraph (a) requires lawyers with managerial authority within a firm to make reasonable efforts to establish internal policies and procedures designed to provide reasonable assurance that all lawyers in the firm will conform to the Rules of Professional Conduct. Such policies and procedures include those designed to detect and resolve conflicts of interest, identify dates by which actions must be taken in pending matters, account for client funds and property and ensure that inexperienced lawyers are properly supervised.

[3] Other measures that may be required to fulfill the responsibility prescribed in paragraph (a) can depend on the firm's structure and the nature of its practice. In a small firm of experienced lawyers, informal supervision and periodic review of compliance with the required systems ordinarily will suffice. In a large firm, or in practice situations in which difficult ethical problems frequently arise, more elaborate measures may be necessary. Some firms, for example, have a procedure whereby junior lawyers can make confidential referral of ethical problems directly to a designated senior partner or special committee. See Rule 5.2. Firms, whether large or small, may also rely on continuing legal education in professional ethics. In any event, the ethical atmosphere of a firm can influence the conduct of all its members and the partners may not assume that all lawyers associated with the firm will inevitably conform to the Rules.

[4] Paragraph (c) expresses a general principle of personal responsibility for acts of another. See also Rule 8.4(a).

[5] Paragraph (c)(2) defines the duty of a partner or other lawyer having comparable managerial authority in a law firm, as well as a lawyer who has direct supervisory authority over performance of specific legal work by another lawyer. Whether a lawyer has supervisory authority in particular circumstances is a question of fact. Partners and lawyers with comparable authority have at least indirect responsibility for all work being done by the firm, while a partner or manager in charge of a particular matter ordinarily also has supervisory responsibility for the work of other firm lawyers engaged in the matter. Appropriate remedial action by a partner or managing lawyer would depend on the immediacy of that lawyer's involvement and the seriousness of the misconduct. A supervisor is required to intervene to prevent avoidable consequences of misconduct if the supervisor knows that the misconduct occurred. Thus, if a supervising lawyer knows that a subordinate misrepresented a matter to an opposing party in negotiation, the supervisor as well as the subordinate has a duty to correct the resulting misapprehension.

[6] Professional misconduct by a lawyer under supervision could reveal a violation of paragraph (b) on the part of the supervisory lawyer even though it does not entail a

violation of paragraph (c) because there was no direction, ratification or knowledge of the violation.

[7] Apart from this Rule and Rule 8.4(a), a lawyer does not have disciplinary liability for the conduct of a partner, associate or subordinate. Whether a lawyer may be liable civilly or criminally for another lawyer's conduct is a question of law beyond the scope of these Rules.

[8] The duties imposed by this Rule on managing and supervising lawyers do not alter the personal duty of each lawyer in a firm to abide by the Rules of Professional Conduct. See Rule 5.2(a).

Rule 5.3. Responsibilities Regarding Nonlawyer Assistance

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

(a) Each partner, and each lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the person's conduct is compatible with the professional obligations of the lawyer;

(b) Each lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer; and

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

(1) the lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved; or

(2) the lawyer is a partner or has comparable managerial authority in the law firm in which the person is employed, or has direct supervisory authority over the person, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

Ethics Committee Comment

The New Hampshire version of the rule differs from the ABA Model Rule only in the substitution of "each" for "a" in sections (a) and (b). The change is intended to emphasize that the obligations created by the rule are shared by all of the managers of a law firm and cannot be delegated to one manager by the others.

ABA Comment to the Model Rules

RULE 5.3 RESPONSIBILITIES REGARDING NONLAWYER ASSISTANCE

[1] Paragraph (a) requires lawyers with managerial authority within a law firm to make reasonable efforts to ensure that the firm has in effect measures giving reasonable

assurance that nonlawyers in the firm and nonlawyers outside the firm who work on firm matters act in a way compatible with the professional obligations of the lawyer. See Comment [6] to Rule 5.1. (retaining lawyers outside the firm) and Comment [1] to Rule 5.1 (responsibilities with respect to lawyers within a firm). Paragraph (b) applies to lawyers who have supervisory authority over such nonlawyers within or outside the firm. Paragraph (c) specifies the circumstances in which a lawyer is responsible for the conduct of such nonlawyers within or outside the firm that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer.

Nonlawyers Within the Firm

[2] Lawyers generally employ assistants in their practice, including secretaries, investigators, law student interns, and paraprofessionals. Such assistants, whether employees or independent contractors, act for the lawyer in rendition of the lawyer's professional services. A lawyer must give such assistants appropriate instruction and supervision concerning the ethical aspects of their employment, particularly regarding the obligation not to disclose information relating to representation of the client, and should be responsible for their work product. The measures employed in supervising nonlawyers should take account of the fact that they do not have legal training and are not subject to professional discipline.

Nonlawyers Outside the Firm

[3] A lawyer may use nonlawyers outside the firm to assist the lawyer in rendering legal services to the client. Examples include the retention of an investigative or paraprofessional service, hiring a document management company to create and maintain a database for complex litigation, sending client documents to a third party for printing or scanning, and using an Internet-based service to store client information. When using such services outside the firm, a lawyer must make reasonable efforts to ensure that the services are provided in a manner that is compatible with the lawyer's professional obligations. The extent of this obligation will depend upon the circumstances, including the education, experience and reputation of the nonlawyer; the nature of the services involved; the terms of any arrangements concerning the protection of client information; and the legal and ethical environments of the jurisdictions in which the services will be performed, particularly with regard to confidentiality. See also Rules 1.1 (competence), 1.2 (allocation of authority), 1.4 (communication with client), 1.6 (confidentiality), 5.4(a) (professional independence of the lawyer), and 5.5(a)(unauthorized practice of law). When retaining or directing a nonlawyer outside the firm, a lawyer should communicate directions appropriate under the circumstances to give reasonable assurance that the nonlawyer's conduct is compatible with the professional obligations of the lawyer.

[4] Where the client directs the selection of a particular nonlawyer service provider outside the firm, the lawyer ordinarily should agree with the client concerning the allocation of the responsibility for monitoring as between the client and the lawyer. See Rule 1.2. When making such an allocation in a matter pending before a tribunal, lawyers and parties may have additional obligations that are a matter of law beyond the scope of these Rules.

Rule 5.5. Unauthorized Practice of Law; Multijurisdictional Practice of Law

(a) A lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so.

(b) A lawyer who is not admitted to practice in this jurisdiction shall not:

(1) except as authorized by these Rules or other law, establish an office or other systematic and continuous presence in this jurisdiction for the practice of the law of this jurisdiction; or

(2) hold out to the public or otherwise represent that the lawyer is admitted to practice the law of this jurisdiction.

(c) A lawyer admitted in another United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services on a temporary basis in this jurisdiction that:

(1) are undertaken in association with a lawyer who is admitted to practice in this jurisdiction and who actively participates in the matter;

(2) are in or reasonably related to a pending or potential proceeding before a tribunal in this or another jurisdiction, if the lawyer, or a person the lawyer is assisting, is authorized by law or order to appear in such proceeding or reasonably expects to be so authorized;

(3) are in or reasonably related to a pending or potential arbitration, mediation, or other alternative dispute resolution proceeding in this or another jurisdiction, if the services arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice and are not services for which the forum requires pro hac vice admission; or

(4) are not within paragraphs (c)(2) or (c)(3) and arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice.

(d) A lawyer admitted in another United States jurisdiction or in a foreign jurisdiction, and not disbarred or suspended from practice in any jurisdiction or the equivalent thereof, may provide legal services through an office or other systematic and continuous presence in this jurisdiction that:

(1) are provided to the lawyer's employer or its organizational affiliates; are not services for which the forum requires pro hac vice admission; and, when performed by a foreign lawyer and requires advice on the law of this or another U.S. jurisdiction or of the United States, such advice shall be based upon the advice of a lawyer who is duly licensed and authorized by the jurisdiction to provide such advice;

(2) are services that the lawyer is authorized by federal or other law or rule to provide in this jurisdiction; or

(3) relate solely to the law of a jurisdiction in which the lawyer is admitted.

(e) For purposes of paragraph (d), the foreign lawyer must be a member in good standing of a recognized legal profession in a foreign jurisdiction, the members of which are admitted to practice as lawyers or counselors at law or the equivalent, and are subject to effective regulation and discipline by a duly constituted professional body or a public authority.

Ethics Committee Comment

1. New Hampshire has adopted ABA Model Rule 5.5.
2. Lawyers desiring to provide pro bono legal services on a temporary basis in a jurisdiction that has been affected by a major disaster, but in which they are not otherwise authorized to practice law, as well as lawyers from the affected jurisdiction who seek to practice law temporarily in another jurisdiction, but in which they are not otherwise authorized to practice law, should consult Supreme Court Rule 60, which governs the provision of legal services following determination of major disaster.
3. Prior versions of Rule 5.5 and prior interpretations of the Rule assumed that attorneys practice in fixed physical offices and only deal with legal issues related to the States in which their offices are located. The increased mobility of attorneys, and, in particular, the ability of attorneys to continue to communicate with and represent their clients from anywhere in the world, are circumstances that were never contemplated by the Rule. The adoption of Rules 5.5(b) and (c) in 2008 reflected the State's growing recognition that multi-jurisdictional practice is a modern reality that must be accommodated by the Rules.

The assumption that a lawyer must be licensed in New Hampshire simply because he or she happens to be present in New Hampshire no longer makes sense in all instances. Rather than focusing on where a lawyer is physically located, New Hampshire's modifications of Rule 5.5(b)(1) and (2) and adoption of new Rule 5.5(d)(3) clarify that a lawyer who is licensed in another jurisdiction but does not practice New Hampshire law need not obtain a New Hampshire license to practice law solely because the lawyer is present in New Hampshire.

Notwithstanding the New Hampshire amendments to Rule 5.5(b)(1) and (2) and the adoption of new Rule 5.5(d)(3), Rule 8.5(a) still provides that a lawyer who is admitted in another jurisdiction, but not in New Hampshire, "is also subject to the disciplinary authority of ... [New Hampshire] if the lawyer provides or offers to provide any legal services in" New Hampshire. In particular, such a lawyer will be subject to the provisions of Rules 7.1 through 7.5 regarding the disclosure of the jurisdictional limitations of the lawyer's practice. In addition, Rule 5.5(b)(2) continues to prohibit such a lawyer from holding out to the public or otherwise representing that the lawyer is admitted to practice New Hampshire law.

ABA Comment to the Model Rules

RULE 5.5 UNAUTHORIZED PRACTICE OF LAW; MULTIJURISDICTIONAL PRACTICE OF LAW

[1] A lawyer may practice law only in a jurisdiction in which the lawyer is authorized to practice. A lawyer may be admitted to practice law in a jurisdiction on a regular basis or

may be authorized by court rule or order or by law to practice for a limited purpose or on a restricted basis. Paragraph (a) applies to unauthorized practice of law by a lawyer, whether through the lawyer's direct action or by the lawyer assisting another person. For example, a lawyer may not assist a person in practicing law in violation of the rules governing professional conduct in that person's jurisdiction.

[2] The definition of the practice of law is established by law and varies from one jurisdiction to another. Whatever the definition, limiting the practice of law to members of the bar protects the public against rendition of legal services by unqualified persons. This Rule does not prohibit a lawyer from employing the services of paraprofessionals and delegating functions to them, so long as the lawyer supervises the delegated work and retains responsibility for their work. See Rule 5.3.

[3] A lawyer may provide professional advice and instruction to nonlawyers whose employment requires knowledge of the law; for example, claims adjusters, employees of financial or commercial institutions, social workers, accountants and persons employed in government agencies. Lawyers also may assist independent nonlawyers, such as paraprofessionals, who are authorized by the law of a jurisdiction to provide particular law-related services. In addition, a lawyer may counsel nonlawyers who wish to proceed pro se.

[4] Other than as authorized by law or this Rule, a lawyer who is not admitted to practice generally in this jurisdiction violates paragraph (b)(1) if the lawyer establishes an office or other systematic and continuous presence in this jurisdiction for the practice of law. Presence may be systematic and continuous even if the lawyer is not physically present here. Such a lawyer must not hold out to the public or otherwise represent that the lawyer is admitted to practice law in this jurisdiction. See also Rules 7.1(a) and 7.5(b).

[5] There are occasions in which a lawyer admitted to practice in another United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services on a temporary basis in this jurisdiction under circumstances that do not create an unreasonable risk to the interests of their clients, the public or the courts. Paragraph (c) identifies four such circumstances. The fact that conduct is not so identified does not imply that the conduct is or is not authorized. With the exception of paragraphs (d)(1) and (d)(2), this Rule does not authorize a U.S. or foreign lawyer to establish an office or other systematic and continuous presence in this jurisdiction without being admitted to practice generally here.

[6] There is no single test to determine whether a lawyer's services are provided on a "temporary basis" in this jurisdiction, and may therefore be permissible under paragraph (c). Services may be "temporary" even though the lawyer provides services in this jurisdiction on a recurring basis, or for an extended period of time, as when the lawyer is representing a client in a single lengthy negotiation or litigation.

[7] Paragraphs (c) and (d) apply to lawyers who are admitted to practice law in any United States jurisdiction, which includes the District of Columbia and any state, territory or commonwealth of the United States. Paragraph (d) also applies to lawyers admitted in a foreign jurisdiction. The word "admitted" in paragraphs (c), (d) and (e) contemplates that the lawyer is authorized to practice in the jurisdiction in which the lawyer is admitted

and excludes a lawyer who while technically admitted is not authorized to practice, because, for example, the lawyer is on inactive status.

[8] Paragraph (c)(1) recognizes that the interests of clients and the public are protected if a lawyer admitted only in another jurisdiction associates with a lawyer licensed to practice in this jurisdiction. For this paragraph to apply, however, the lawyer admitted to practice in this jurisdiction must actively participate in and share responsibility for the representation of the client.

[9] Lawyers not admitted to practice generally in a jurisdiction may be authorized by law or order of a tribunal or an administrative agency to appear before the tribunal or agency. This authority may be granted pursuant to formal rules governing admission pro hac vice or pursuant to informal practice of the tribunal or agency. Under paragraph (c)(2), a lawyer does not violate this Rule when the lawyer appears before a tribunal or agency pursuant to such authority. To the extent that a court rule or other law of this jurisdiction requires a lawyer who is not admitted to practice in this jurisdiction to obtain admission pro hac vice before appearing before a tribunal or administrative agency, this Rule requires the lawyer to obtain that authority.

[10] Paragraph (c)(2) also provides that a lawyer rendering services in this jurisdiction on a temporary basis does not violate this Rule when the lawyer engages in conduct in anticipation of a proceeding or hearing in a jurisdiction in which the lawyer is authorized to practice law or in which the lawyer reasonably expects to be admitted pro hac vice. Examples of such conduct include meetings with the client, interviews of potential witnesses, and the review of documents. Similarly, a lawyer admitted only in another jurisdiction may engage in conduct temporarily in this jurisdiction in connection with pending litigation in another jurisdiction in which the lawyer is or reasonably expects to be authorized to appear, including taking depositions in this jurisdiction.

[11] When a lawyer has been or reasonably expects to be admitted to appear before a court or administrative agency, paragraph (c)(2) also permits conduct by lawyers who are associated with that lawyer in the matter, but who do not expect to appear before the court or administrative agency. For example, subordinate lawyers may conduct research, review documents, and attend meetings with witnesses in support of the lawyer responsible for the litigation.

[12] Paragraph (c)(3) permits a lawyer admitted to practice law in another jurisdiction to perform services on a temporary basis in this jurisdiction if those services are in or reasonably related to a pending or potential arbitration, mediation, or other alternative dispute resolution proceeding in this or another jurisdiction, if the services arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice. The lawyer, however, must obtain admission pro hac vice in the case of a court-annexed arbitration or mediation or otherwise if court rules or law so require.

[13] Paragraph (c)(4) permits a lawyer admitted in another jurisdiction to provide certain legal services on a temporary basis in this jurisdiction that arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted but are not within paragraphs (c)(2) or (c)(3). These services include both legal services and

services that nonlawyers may perform but that are considered the practice of law when performed by lawyers.

[14] Paragraphs (c)(3) and (c)(4) require that the services arise out of or be reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted. A variety of factors evidence such a relationship. The lawyer's client may have been previously represented by the lawyer, or may be resident in or have substantial contacts with the jurisdiction in which the lawyer is admitted. The matter, although involving other jurisdictions, may have a significant connection with that jurisdiction. In other cases, significant aspects of the lawyer's work might be conducted in that jurisdiction or a significant aspect of the matter may involve the law of that jurisdiction. The necessary relationship might arise when the client's activities or the legal issues involve multiple jurisdictions, such as when the officers of a multinational corporation survey potential business sites and seek the services of their lawyer in assessing the relative merits of each. In addition, the services may draw on the lawyer's recognized expertise developed through the regular practice of law on behalf of clients in matters involving a particular body of federal, nationally-uniform, foreign, or international law. Lawyers desiring to provide pro bono legal services on a temporary basis in a jurisdiction that has been affected by a major disaster, but in which they are not otherwise authorized to practice law, as well as lawyers from the affected jurisdiction who seek to practice law temporarily in another jurisdiction, but in which they are not otherwise authorized to practice law, should consult the Model Court Rule on Provision of Legal Services Following Determination of Major Disaster.

[Editor's Note: The Model Court Rule on Provision of Legal Services Following Determination of Major Disaster has been adopted in New Hampshire as Supreme Court Rule 60.]

[15] Paragraph (d) identifies two circumstances in which a lawyer who is admitted to practice in another United States jurisdiction or a foreign jurisdiction, and is not disbarred or suspended from practice in any jurisdiction or the equivalent thereof, may establish an office or other systematic and continuous presence in this jurisdiction for the practice of law. Pursuant to paragraph (c) of this Rule, a lawyer admitted in any U.S. jurisdiction may also provide legal services in this jurisdiction on a temporary basis. See also Model Rules on Temporary Practice by Foreign Lawyers. Except as provided in paragraphs (d)(1) and (d)(2), a lawyer who is admitted to practice law in another United States or foreign jurisdiction and who establishes an office or other systematic or continuous presence in this jurisdiction must become admitted to practice law generally in this jurisdiction.

[16] Paragraph (d)(1) applies to a U.S. or foreign lawyer who is employed by a client to provide legal services to the client or its organizational affiliates, i.e., entities that control, are controlled by, or are under common control with the employer. This paragraph does not authorize the provision of personal legal services to the employer's officers or employees. The paragraph applies to in-house corporate lawyers, government lawyers and others who are employed to render legal services to the employer. The lawyer's ability to represent the employer outside the jurisdiction in which the lawyer is licensed generally serves the interests of the employer and does not

create an unreasonable risk to the client and others because the employer is well situated to assess the lawyer's qualifications and the quality of the lawyer's work. To further decrease any risk to the client, when advising on the domestic law of a United States jurisdiction, or on the law of the United States, the foreign lawyer authorized to practice under paragraph (d)(1) of this Rule needs to base that advice on the advice of a lawyer licensed and authorized by the jurisdiction to provide it.

[17] If an employed lawyer establishes an office or other systematic presence in this jurisdiction for the purpose of rendering legal services to the employer, the lawyer may be subject to registration or other requirements, including assessments for client protection funds and mandatory continuing legal education. See Model Rules for Registration of In-House Counsel.

[18] Paragraph (d)(2) recognizes that a U.S. or foreign lawyer may provide legal services in a jurisdiction in which the lawyer is not licensed when authorized to do so by federal or other law, which includes statute, court rule, executive regulation or judicial precedent. See, e.g., The ABA Model Rule on Practice Pending Admission.

[19] A lawyer who practices law in this jurisdiction pursuant to paragraphs (c) or (d) or otherwise is subject to the disciplinary authority of this jurisdiction. See Rule 8.5(a)

[20] In some circumstances, a lawyer who practices law in this jurisdiction pursuant to paragraphs (c) or (d) may have to inform the client that the lawyer is not licensed to practice law in this jurisdiction. For example, that may be required when the representation occurs primarily in this jurisdiction and requires knowledge of the law of this jurisdiction. See Rule 1.4(b).

[21] Paragraphs (c) and (d) do not authorize communications advertising legal services in this jurisdiction by lawyers who are admitted to practice in other jurisdictions. Whether and how lawyers may communicate the availability of their services in this jurisdiction is governed by Rules 7.1 to 7.5.

Jonathan Ross

From: vLex | Docket Alarm <noreply@vlex.com>
Sent: Tuesday, October 17, 2023 11:40 AM
To: Jonathan Ross
Subject: Docket Alarm and vLex Launch Major Upgrade to Vincent AI

Primmer Email Security

Warning: Sender noreply@vlex.com has never sent any emails to your organization. This email has been sent from bf08x.hubspotemail.net domain which is different from the sender domain vlex.com.

Please be careful before replying or clicking on the URLs.

[Report as Phishing](#) [Mark as Safe](#)

powered by Graphus®

Docket Alarm from vLex | vlex.com | hello@vlex.com

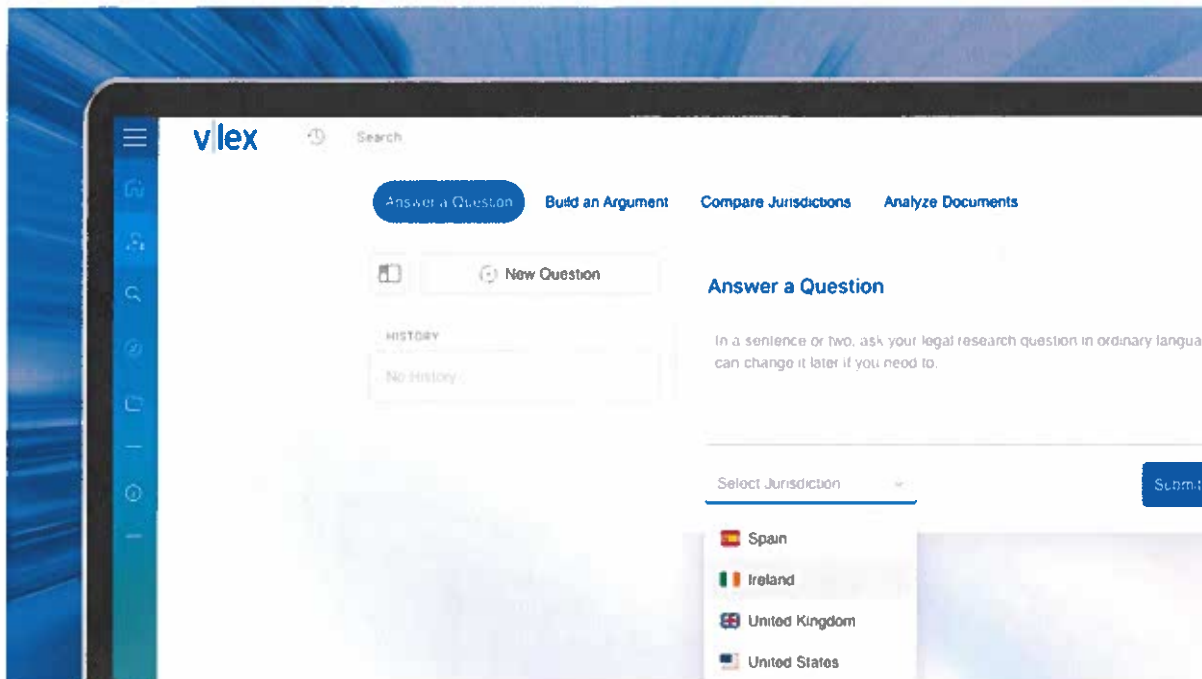
**DOCKET
ALARM**

v|lex

The future of legal research

Vincent AI - Revolutionizing legal research with Generative AI

Docket Alarm's parent company, vLex, has announced that its ground-breaking, award-winning and AI-powered virtual assistant, Vincent AI, has new skills to help you quickly answer legal research questions and build legal arguments while giving you control of the authorities considered.



What's new?

The world's first international AI legal research assistant

vLex has today announced that its award-winning legal research assistant, Vincent AI, has been enhanced with a brand-new skillset using large language models (LLMs). In a first for the legal sector, Vincent AI can now use LLMs to answer specific research questions and build arguments in support or opposition across multiple jurisdictions, while also showing case treatment types for select regions.

[Read the full announcement](#)

Introducing new Vincent AI skills

An unprecedented new legal research toolkit

- **Building confidence with AI:** To safeguard against the dangers of unconstrained LLMs, Vincent AI sources authorities directly from the legal and regulatory information housed by vLex to ensure only real cases and materials are referenced - offering unparalleled trust and verification.
- **Verified results:** With individualized summaries, linked directly to primary and secondary materials, Vincent AI helps you understand exactly how each case, act or article addresses your questions.
- **Unprecedented user control:** While most systems limit users to the cases they present, Vincent AI is designed for user autonomy. Legal professionals can omit or even add cases to the analysis and view the entire underlying source text. This level of control is unparalleled in the industry.
- **Global legal intelligence:** Only with Vincent AI can legal professionals go beyond country borders, bridging the gap in international and comparative research to obtain fast and accurate search results. With access to exclusive and comprehensive primary and secondary materials sourced from vLex's database, Vincent AI's smart search spans global jurisdictions, ensuring your research is comprehensive.
- **Build and counter arguments:** More than just answers. Formulate compelling arguments, support propositions, counter opposing views, or even anticipate counterarguments to your stance.

With search, summarization, and now interactive assistive features, Vincent AI can identify related documents from around the world in a matter of seconds, and accurately summarize this information, by generating headnotes and identifying the key legal issues, as well as answering research questions. To keep up to date on when Vincent AI's new skills will be available, sign up for the new vLex Insights Program today to join the waitlist.

[Join the waitlist](#)

FAQs

When will the new Vincent skills be available?

Vincent AI's new skills are currently being tested with a selection of law firms around the world and will be made available to customers soon. To express your interest in gaining access to Vincent AI, please register for the [vLex Insights Program](#).

Will Vincent AI work with legal materials from my region?

Vincent AI has a number of skills, some are available for all regions, such as the [case analysis feature](#), while others will only work in select regions.

Is there more information available on Vincent AI?

Yes, you can visit vlex.com/vincent-ai for more information.



Deepfakes and Generative AI in Trial

By Gregory Sirico

In the rapidly shifting landscape surrounding generative AI programs, which have recently been a recurrent source of stress for private entities and individuals alike, the strain may be even more demanding for practicing legal professionals. In what some tech regulators call an “unpredictable era,” legal professionals are tasked with guiding clients through this hectic time and remaining vigilant and current on all emerging tech trends, some appearing quicker than others. One tech-related issue that has risen to prominence is the growing phenomenon of “deepfakes,” a compelling and artificially produced piece of media that depicts a digitally altered individual for malicious use or to spread false information. From defamation suit concerns to the data complexities e-discovery teams face, U.S. courts are beginning to cautiously navigate and adapt to a recent surge in deepfake evidence submissions as the impact on the legal field becomes more evident.

Regardless of the uphill battle ahead, attorneys, judges and tech regulators have quickly responded to these growing uncertainties, collectively working to formulate strategies to understand and address the legal implications of deepfakes within legal proceedings. Recently, the Practising Law Institute (PLI), a New York-based nonprofit organization dedicated to keeping attorneys and other legal professionals well informed, organized a webinar entitled “Distinguishing Fact from Fiction: Navigating the Authenticity of Electronic Images and Text.” Led by Ron Hedges, a former U.S. magistrate judge from New Jersey, the webinar’s primary goal is to delve deeper into how the legal industry can effectively maneuver through the potential influence and hazards of deepfakes in ongoing court cases.

One of the initial lines of defense and protection when addressing evidence in a trial setting is whether it can be deemed admissible. But unfortunately, when it comes to deepfake evidence, the lines begin to blur.

“The court, not the fact-finder, makes the admissibility determinations. The main issues around deepfakes in court are going to end up being about authentication and then admissibility,” stated Marissa Moran, an attorney and law professor at CUNY New York City College of Technology, as reported by Law.com.

Before a trial is scheduled, authenticating electronic evidence can be done via several methods, including self-authentication, certifying data copied through an electronic device or seeking out testimony from a licensed expert to verify the authenticity of specific evidence. In the case of deepfake evidence, legal experts believe that the authentication of this tech-produced evidence will likely fall on expert testimony instead of self-authentication practices.

In addition to securing appropriate experts and specialists, legal professionals and courts alike must also acknowledge the impact deepfake evidence could have on juries. In court cases involving these digitally altered bits of evidence, courts should remain cognizant and aim to substantially revise their current juror questionnaire sheets while addressing jurors' overall familiarity and grasp of the current state of AI.



Prominent Authors File Claims Against ChatGPT

By Gregory Sirico

OpenAI, the creator responsible for the now prolific open-source AI program ChatGPT, is facing another sizeable lawsuit, this time from a crop of bestselling authors. The suit, which was filed on September 20 in the Southern District of New York on behalf of the Authors Guild and 17 notable novelists, includes George R.R. Martin, John Grisham, Elin Hilderbrand, Scott Turow, Jodi Picoult, David Baldacci, Michael Connelly, George Saunders and many more.

According to the legal complaint submitted by the group, OpenAI has illegally utilized their original works, feeding text and other content into its large language models (LLMs), violating federal copyright laws on a mass scale. These class action claims, which also seek to represent an additional thousand previously infringed authors, are only the latest example in a long line of recent transgressions by OpenAI regarding its collection of copyrighted data.

"ChatGPT and the underlying LLMs are seriously threatening the livelihood of the very authors, including plaintiffs here, on whose works were 'trained' without the authors' consent. ChatGPT is being used to generate low-quality eBooks, impersonating authors and displacing human-authored books," the lawsuit alleges, as reported by CBS News. Additionally, the suit also alleges that the open-source AI program was utilized by Liam Swayne, a programmer employed by OpenAI, to procure several sequels to George R.R. Martin's famed "A Song of Ice and Fire" series, which was later adapted into the widely popularized show "Game of Thrones." Swayne's ChatGPT version of the yet-to-be-written sequels was subsequently posted online, prompting the aforementioned legal action.

"OpenAI respects the rights of writers and authors and believes they should benefit from AI technology. We're having productive conversations with many creators worldwide, including the Authors Guild, and have been working cooperatively to understand and discuss their concerns about AI. We're optimistic we will continue to find mutually beneficial ways to work together to help people utilize new technology in a rich content ecosystem," stated a company spokesperson, as reported by the Associated Press.

As it stands, all authors involved in the suit are requesting the court to prohibit OpenAI from using their copyrighted works in its LLMs in the future unless granted express authorization. They are also seeking monetary damages in excess of \$150,000 per infringed work. This legal battle arrives only a few weeks after a handful of authors, including Michael Chabon and David Henry Hwang, filed suit against OpenAI in California, presenting a clear case of infringement of their intellectual property.

Could AI Systems Replace Lawyers?

By Gregory Sirico

With the recent release of GPT-4, OpenAI's updated engine, and a continued emphasis on AI's diverse capabilities, questions continue circulating within the legal community about whether open-source programs could one day replace traditional lawyers. ChatGPT recently aced the Uniform Bar Exam, scoring in the 90th percentile, above 90% of human test takers. Although the threshold to pass varies significantly from state to state, those that widely accept the Uniform Bar Exam require a minimum score between the 44th and 73rd percentiles. Test scores aside, what does this mean for the legal profession's future and for individuals aspiring to make a mark on the legal industry?

When implemented correctly, AI could quickly improve overall firm efficiency and project accuracy while reducing cost. Despite this, legal experts are adamant that it comes with a certain number of limitations. Regardless, in the short time it has been utilized, AI programs have already significantly impacted the practice of law and how particular processes can be conducted.

As you may already know, AI stands for artificial intelligence, a complex branch of computer science that simulates human intelligence. Though the name might infer that AI tools can engage in reasoning to produce original content or ideas, the reality is that such technology typically trains programs based on a large set of data, identifying patterns and other unique characteristics. Chatbots such as ChatGPT, ChatSonic and Google Bard leverage a bevy of internet-accessible information and large language models to train an AI program to generate human-like text based on a user's specific prompt.

With all that being said, AI-powered programs can help lawyers in a number of ways. Firstly, AI can be leveraged to conduct legal research accurately and efficiently, assisting lawyers in finding relevant cases, statutes and many other pertinent legal materials. From there, research can be utilized to produce initial motion drafts or even predict an opposing counsel's arguments. Additionally, AI-powered chatbots manage client communications and provide answers to common legal questions. On the flip side, AI-powered tools that rely on the collection of a sizeable amount of data could raise certain privacy concerns and risks. For

example, if an AI chatbot user shares their personal information, that data could, in turn, be used to train the model, which then can be accessed by an unauthorized third party.

Although the use of AI in law is already well underway, legal experts believe it is likely here to stay. With the potential to make legal work more efficient, accurate and cost-effective, as of now, there's no shortage of tasks that AI can't manage. However, law firms, corporate entities and legal associates alike should remain cognizant and educate themselves on the limitations of AI, ensuring that attorneys are transparent with clients about its level of usage in firm matters.

October 12, 2023

State Bar Associations Escalate Work on Ethical Issues Raised by Artificial Intelligence

Esquire Deposition Solutions, LLC

+ Follow

Contact



The promise of artificial intelligence technologies captured the imagination of the legal community in a big way in 2023. None more so than “generative artificial intelligence,” which has the ability to create pleadings and correspondence, and to summarize source materials, that approximate the work of a well-informed, legally trained human being.

Artificial intelligence also has compelling uses for pretrial discovery in civil litigation. Already widely in use for scouring and analyzing electronically stored information, artificial intelligence can be deployed to summarize deposition transcripts, spot inconsistencies in testimony, and [suggest fruitful areas of inquiry during the deposition itself](#).

However, as is often the case with emerging technologies, generative AI is leaving in its wake a trail of unresolved ethical issues. For example:

- Does legal advice provided by artificial intelligence amount to unauthorized practice of law?
- How should a lawyer’s ethical duty of technology competence guide the use of generative artificial intelligence in delivering legal services?
- To what extent should lawyers inform clients of the use of AI by their law

[Privacy](#) - [Terms](#)

firms?

- Does providing client data to an AI technology waive attorney-client privilege? If so, how can this risk be mitigated?
- To what extent does a lawyer's ethical duties of diligence and competence obligate the lawyer to review the terms of service (and data security representations) of AI technology vendors?
- Do lawyers have an ethical obligation to fact-check and verify the outputs of generative AI used to produce legal pleadings?
- Are today's lawyers adequately trained in the benefits and risks of using AI in law practice?

Judging from the flurry of task forces and workgroups formed in recent months, it's clear that state bar regulators are determined to not play regulatory catch-up with this promising yet ethically problematic technology.

Task Forces Proliferate

Already this year at least a half dozen state bar workgroups have been formed, with the sole purpose of providing much-needed ethical guidance to lawyers who have already – or will soon – be using generative AI in their law practices. There is urgency to these efforts. Some groups have mandates to produce actionable guidance for lawyers by year's end.

The Florida Bar's [Special Committee on AI Tools & Resources](#), formed in late September, is meeting frequently with the objective of proposing changes to the Florida professional ethics code as soon as December 2023. Among the Florida group's responsibilities is to provide guidance that ensures the state's legal community can extract value from artificial intelligence while maintaining the lawyer's independent legal judgment.

In California, the board of trustees for the California State Bar Association has asked its Committee on Professional Responsibility and Conduct to produce – by mid-

November 2023 – proposed revisions to the California Rules of Professional Conduct “to ensure that AI is used competently and in compliance with the professional responsibility obligations of lawyers.”

The [New York State Bar Association](#) formed a task force this year to address a wide range of legal issues raised by artificial intelligence technologies. The NYSBA website reports that the task force’s mandate will be a broad one. In addition to lawyer ethics, the group will examine AI’s impact on all areas of the law as well as its potential for increasing greater access to justice.

This past June, State Bar of Texas president Cindy V. Tisdale established an expert working group that will be studying both the ethical challenges and the practical benefits of using AI in the practice of law. The State Bar of Texas Workgroup on Artificial Intelligence was given a one-year deadline to complete its work.

In August, the New Jersey State Bar Association’s Board of Trustees voted to create a task force to study artificial intelligence in the legal profession. The New Jersey task force will be examining, among other things, the ways in which artificial intelligence might replace human beings and (less ominously) might be deployed in ways that inadvertently waive attorney-client privilege.

Similar state bar workgroups formed in 2023 to study legal and ethical issues arising from artificial intelligence have also been formed in Illinois, Kentucky, and Minnesota.

Last, and certainly not least, the American Bar Association is also studying AI-related legal issues. On Aug. 28, the ABA [announced](#) the formation of its own Task Force on Law and Artificial Intelligence, charged with the responsibility of studying how artificial intelligence technologies are changing the practice of law and how these changes might affect professional ethics obligations to clients.

The ABA’s work in the area of artificial intelligence is potentially significant, because of the organization’s twin policymaking levers over the legal profession; first, in the area of legal ethics via possible revisions the ABA’s influential Model Code of Professional Conduct; and second, in the area of legal education as a result of the

ABA's law school accreditation program.

The Road Ahead

The legal profession's recent track record in addressing novel ethics issues raised by technological innovation suggests that bar groups and state regulators will adopt a light-touch approach to AI-related issues as well. After all, the Internet, email, social media, text messaging, ransomware, cyber-crime, and security risks created by pervasive remote work arrangements all raised ethical issues that, at the end of the day, failed to prompt changes to the rules of professional conduct.

Outside of the ABA's 2012 decision to add – in Comment 8 to Model Rule of Professional Conduct 1.1 – “technological competence” to the list of required professional competencies, new rules to cope with technological change have been scarce. Where technology is concerned, bar regulators seem to believe that the best way forward is through non-binding guidance and advisory opinions explaining how technology-driven ethical concerns are adequately addressed by existing legal ethics rules.

Perhaps a similar light-touch regulatory fate awaits artificial intelligence. It may be enough to advise lawyers to seek client consent when using AI, to urge them to vet AI technology vendors carefully, to remind the bar that client confidential information should not be used as an input into AI applications, and to point out that delegating legal research to ChatGPT is ethically problematic.

Or perhaps not. Alphabet Inc. (aka “Google”) chief executive Sundar Pichai, along with many other experts, believes that artificial intelligence will be more transformative than the Internet itself. And if that's the case, more than mere best practice pronouncements may be necessary to deliver the quality of legal services that clients need and deserve.

[Send](#)[Print](#)[Report](#)

LATEST POSTS



- [Preparing Witnesses for Today's Remote Depositions](#)
- [State Bar Associations Escalate Work on Ethical Issues Raised by Artificial Intelligence](#)
- [Technology Is No Substitute for Careful Planning of International Depositions](#)
- [In Jury Duty Show, Technology Incompetence Takes Center Stage](#)
- [States Weighing Rule Changes for Depositions](#)

[See more »](#)

WRITTEN BY:

Esquire Deposition Solutions, LLC



Contact

[+ Follow](#)

PUBLISHED IN:

[Artificial Intelligence](#)

[+ Follow](#)

[Attorney-Client Privilege](#)

[+ Follow](#)

[Ethics](#)

[+ Follow](#)

[Legal Ethics](#)

[+ Follow](#)

[Risk Assessment](#)

[+ Follow](#)

[Risk Mitigation](#)

[+ Follow](#)

[State Bar Associations](#)

[+ Follow](#)

[Working Groups](#)

[+ Follow](#)

[Professional Practice](#)

[+ Follow](#)

ESQUIRE DEPOSITION SOLUTIONS, LLC ON:



August 28, 2023

ABA forms task force to study impact of artificial intelligence on the legal profession

Share:



WASHINGTON, Aug. 28, 2023 – American Bar Association President Mary L. Smith announced the creation of the [ABA Task Force on Law and Artificial Intelligence](#) (AI) to examine the impact of AI on law practice and the ethical implications for lawyers. The AI Task Force will explore:

- Risks (bias, cybersecurity, privacy, and uses of AI such as spreading disinformation and undermining intellectual property protections) and how to mitigate them
- Emergent issues with generative AI
- Utilization of AI to increase access to justice
- AI governance (the role of laws and regulations, industry standards, and best practices)
- AI in legal education

“The American Bar Association and the legal profession have always lifted their voices to lead and chart the future,” Smith said. “At a time when both private and public sector organizations are moving rapidly to develop and use artificial intelligence, we are called again to lead to address both the promise and the peril of emerging technologies.”

The AI Task Force is chaired by Lucy L. Thomson, an attorney and cybersecurity engineer in Washington, D.C. Thomson is a past chair of the

ABA Science & Technology Law Section (SciTech) and a founding member of the ABA Cybersecurity Legal Task Force. The Vice Chairs of the AI Task Force are Cynthia Cwik, Laura Possessky, and James Sandman.

“Lucy’s knowledge of the legal and technical issues in complex emerging technologies, her law enforcement, private sector, and government experience addressing challenging cybersecurity and privacy issues, and her record as a proven ABA leader all make her an outstanding choice to lead this critical work,” Smith said.

The AI Task Force includes Task Force members, an Advisory Council, and Special Advisors. It consists of lawyers and experts with deep technology and AI expertise.

The Special Advisors are thought leaders in law and technology and include:

- Michael Chertoff, former Secretary of the U.S. Department of Homeland Security and Co-Founder and Executive Chairman, The Chertoff Group
- Ivan Fong, former General Counsel of the U.S. Department of Homeland Security and Executive Vice President, General Counsel and Secretary at Medtronic
- Daniel Ho, member of the National AI Advisory Committee and William Benjamin Scott and Luna M. Scott Professor of Law at Stanford Law School and Associate Director of the Stanford Institute for Human-Centered Artificial Intelligence
- Michelle Lee, former undersecretary of commerce for intellectual property and director, U.S. Patent and Trademark Office, and CEO and founder of Obsidian Strategies
- Trooper Sanders, member of the National AI Advisory Committee and CEO of Benefits Data Trust

- Miriam Vogel, chair of the National AI Advisory Committee and President and CEO of EqualAI
- Seth Waxman, former U.S. solicitor general and partner, WilmerHale

“The AI Task Force will focus on current and emerging issues in AI and provide practical information that lawyers need to stay abreast of and navigate this complex technology. This multidisciplinary and diverse group will provide insights for developing and using AI in a trustworthy and responsible manner,” Thomson said.

AI and ML systems and capabilities will transform virtually every industry sector, including legal practice, and reallocate the tasks performed by humans and machines. These changes raise complex and challenging legal and ethical questions for the legal profession. News coverage of the recent introduction and widespread use of ChatGPT-4 and other generative AI systems has already highlighted a broad range of issues that lawyers must address.

“The work of the ABA AI Task Force is critical to identifying solutions to AI risks – from countering the creation and spread of disinformation, to protecting privacy in AI development, to guarding against security threats from use of AI in informational warfare,” said Chertoff.

The AI Task Force will build upon the significant work on AI accomplished during the past several years by the ABA. The ABA’s House of Delegates unanimously adopted [Resolution 604](#) at its 2023 Midyear Meeting in February urging human oversight, accountability, and transparency in AI.

The AI Task Force will identify important work and reports by government agencies, universities, think-tanks, and industry leaders and inform lawyers about how AI can affect a lawyer’s ethical responsibilities, pose threats to confidential client data, and risk inadvertent waiver of attorney-client and attorney work product privileges. It also will look at how AI can increase access to justice and develop resources to make this technology

understandable to lawyers and judges.

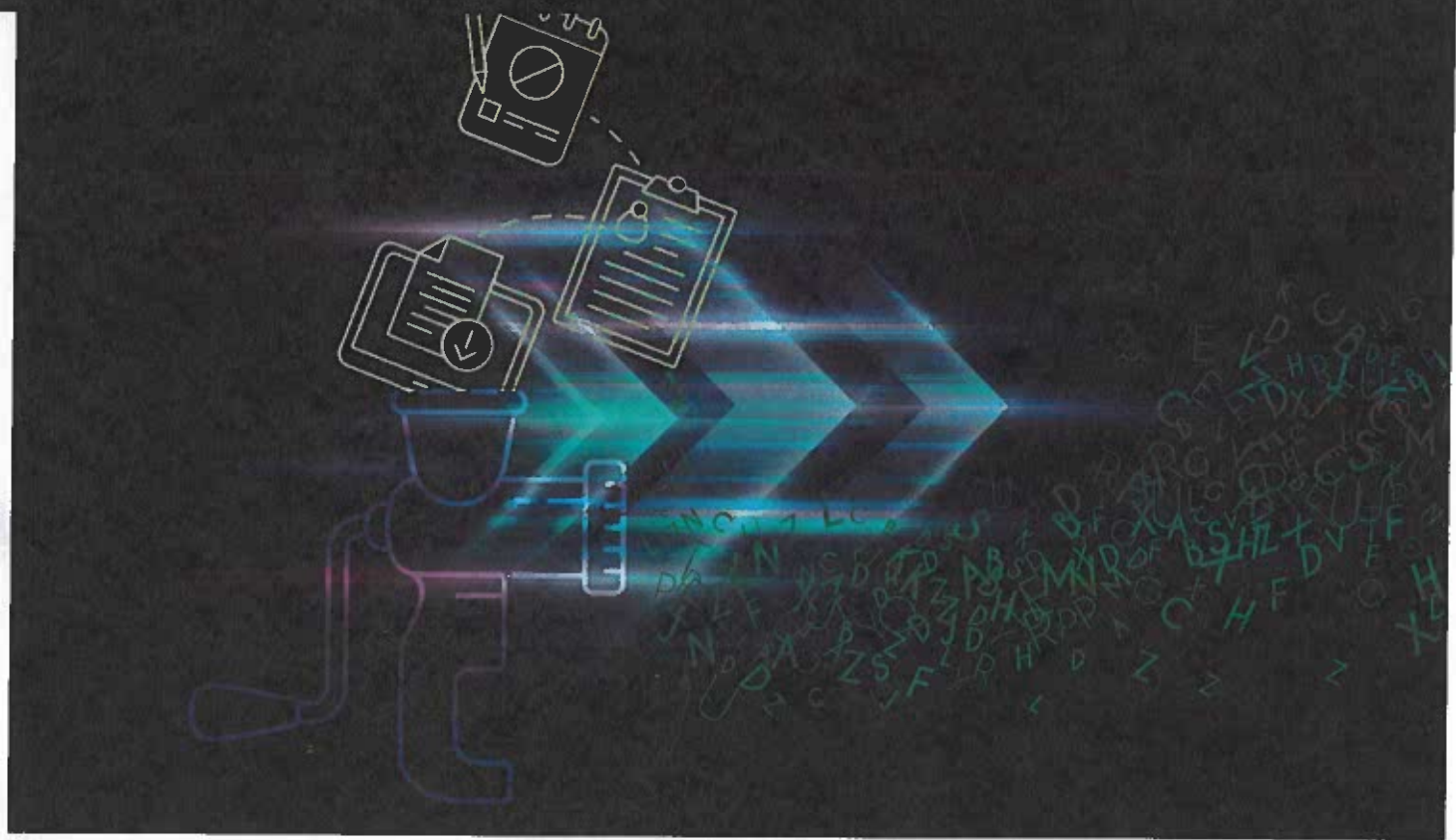
“The ABA offers an important voice in the critical discussion of ways to help promote responsible AI governance and legal frameworks to ensure more inclusive, less discriminatory, and more effective AI systems,” said Vogel.

A full roster of the AI Task Force can be found at [ambar.org/ailaw](https://www.americanbar.org/ailaw)

The ABA is the largest voluntary association of lawyers in the world. As the national voice of the legal profession, the ABA works to improve the administration of justice, promotes programs that assist lawyers and judges in their work, accredits law schools, provides continuing legal education, and works to build public understanding around the world of the importance of the rule of law.

Legal Technology

edited by
VICTOR LI
victor.li@americanbar.org



LEGAL TECHNOLOGY

Office Aide

Some attorneys are using ChatGPT to help them practice more efficiently

BY DANIELLE BRAFF

Your life is about to get so much easier. Attorneys across the globe are tapping into a not-so-secret resource that is saving them time, money and brain expenditure. They're using generative artificial intelligence—specifically, large language models such as OpenAI's ChatGPT—to

perform a range of tasks, including drafting their contracts, structuring their motions, writing their blogs and researching their cases. It's a totally free legal resource—and when used correctly, it can shave hours off your workday.

“It's obvious that ChatGPT is revolutionizing the legal industry,” says Michael Callahan, an attorney and CEO with the Callahan Law Firm in Houston. “ChatGPT frees up attorneys to concentrate on the strategic and creative aspects of their work by expediting document analysis, contract drafting, summary and language improvement. This use of AI technology improves productivity, efficiency and the provision of top-notch legal services to customers.”

Obviously, lawyers must keep in mind that large language models, of which ChatGPT is the most well-

known and widely used, are not perfect and have been known to produce inaccurate information.

For instance, in June, two lawyers and their firm were fined \$5,000 by U.S. District Judge P. Kevin Castel of the Southern District of New York for submitting a legal brief that cited six cases made up by ChatGPT out of thin air. That same month, OpenAI was sued for defamation in Gwinnett County Superior Court in Georgia after a radio host in the state claimed ChatGPT made up facts about him in a fraud and embezzlement case he was not a party to.

Nevertheless, it can be an effective tool at helping lawyers be more productive. Here are some things that ChatGPT does for attorneys to make their work life smoother:

It generates website content. Will Smith, a nursing home abuse attorney with the Law Office of Will Smith



Elder abuse lawyer Will Smith uses ChatGPT to draft content for his website.

in Atlanta, often asks AI to generate content for his law firm's website and to create 30-second video scripts on various nursing home abuse topics. He requests that AI optimize his search engine optimization to help focus on keywords and ideas. Smith says he's still responsible for everything he writes, so he reviews ChatGPT's suggestions and changes the words to fit his style. "However, when you have a mental block, GPT can help get your ideas flowing again," he says.

Allison Harrison, an attorney with ALH Law Group in Columbus, Ohio, uses ChatGPT to create ideas for her firm's blog, asking AI what people tend to search for and requesting first-round drafts. While the drafts aren't perfect, they are good enough to cut down on production time, Harrison says. "They are allowing our firm to generate a lot more educational content for marketing purposes than ever before," she says.

It breaks down legal jargon and complicated issues for the jury. Sure, you could do this yourself, but it only takes ChatGPT a few seconds to do it for you. For example, if Smith has a bedsore case and wants to explain to the jury how painful it is, he asks ChatGPT to explain it in terms that everyone can understand. The result: "Just as a leaky roof can lead

to damage inside the house, a bedsore can cause damage to the underlying tissues. It can be excruciatingly painful because the exposed tissues are sensitive and vulnerable. Imagine the pain you could feel if a wound on your skin remained open and exposed to touch, pressure or even the slightest movement."

It researches for you. Andrew Legrand, a business attorney with Spera Law Group in New Orleans, previously used LexisNexis for most of his research. Recently, he was trying to recall the legal source for an obscure concept that's unique to Louisiana law. He asked ChatGPT for legal support for



ChatGPT helps Allison Harrison generate ideas for and drafts of blog posts.

the concept, and a few seconds later, AI provided him with the exact code article he was trying to remember.

It rewrites your letters. Legrand wrote a letter and needed it to be a little more snarky to fit his clients' style. He put the letter into ChatGPT and requested that the substance of the letter be maintained but the tone changed to be snarkier—but still professional. It worked.

"I then took it out of ChatGPT, had to edit it one or two more times, and then sent it over to the client, who said they loved it," Legrand says.

It structures a deposition. From a legal perspective, there are many ways someone can state facts—and a misstep or incorrect pattern of statements can hurt the credibility or derail the testimony of a witness. It is important that facts are in the proper sequence so that they build on one another and form a cohesive narrative, says Michael McCready, the founder and managing partner at McCready Law Injury Attorneys in Chicago. McCready lists the facts in ChatGPT and asks for suggestions on different ways to structure them. He then relays the information to his clients to help detail the importance of their words in a particular case.

"ChatGPT has improved our firm's ability to describe the different ways of explaining the same facts and optimize the testimony structure that can best represent our clients," McCready says.

It proofreads. ChatGPT improves the wording and organization of pleadings and motions, raising their general caliber. It also serves as a virtual proofreader, recommending language improvements, sentence structure refinements and readability enhancements to ensure the written work is clear and convincing, Callahan says.

It sifts through documents and drafts contracts. Steve Sacona, an Australia-based legal writer at lawyer comparison site Top 10 Lawyers, uses AI to identify relevant documents for a case, sorting through large volumes of information. Drafting contracts is also a task he assigns to ChatGPT. "By providing the necessary details and desired terms, it is adept at summarizing lengthy legal documents such as court opinions, expert reports or legal briefs," Sacona says. ChatGPT extracts essential points, identifies relevant precedents and distills complex information into concise and understandable summaries. And when he needs to draft pleadings, motions and other legal documents, ChatGPT offers assistance in refining language and improving overall structure by suggesting alternative phrasing, providing examples of persuasive arguments and ensuring the document adheres to legal conventions and requirements. ■