

# Professional Ethics in an Age of Artificial Intelligence

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STATE AND LOCAL TAX FORUM

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# Learning Objectives

- Identify the ABA Model Rules relating to confidentiality and conflicts of interest, among other duties
- Appreciate the AICPA Statement of Standards for Tax Services
- Recognize the role of the ethical standards of the IRS contained in Circular 230
- Apply ethical standards to situations involving ethical dilemmas caused by the use or misuse of artificial technology and modern technology

# What Is AI?

## Three-toed Sloth a/k/a “AI”

The three-toed sloth (family Bradypodidae) is also called the **ai** in Latin America because of the high-pitched cry it produces when agitated. All four species belong to the same genus, *Bradypus*, and the coloration of their short facial hair bestows them with a perpetually smiling expression.



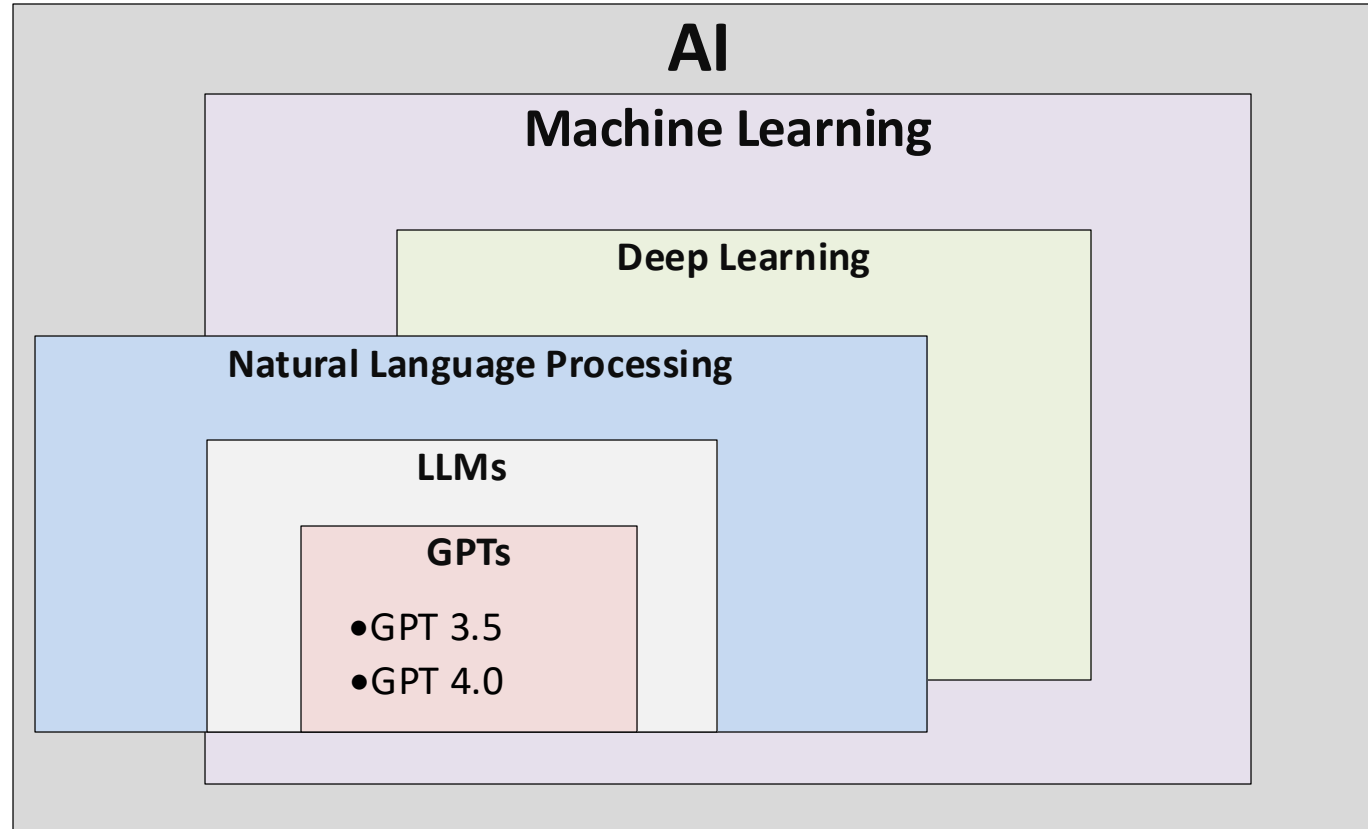
# AI Definitions and Foundations

- **Artificial Intelligence** is the ability of technology to learn, reason, infer meaning, or generate creative works.
- **Machine Learning** is a branch of Artificial Intelligence in which a computer learns from and/or responds *to data*.
- **Deep Learning** is a branch of Machine Learning that utilizes complex neural networks with potentially billions of parameters to learn patterns.
- **Natural Language Processing** leverages AI and ML techniques to interpret, generate or translate natural (human) language.

Natural Language Processing includes:

- **Large Language Models** – A class of deep learning models that have many parameters and/or that were trained on a large corpus.
- **Generative Pre-Trained Transformer (“GPT”)**– Class of deep learning models first created by Open AI to perform Natural Language tasks. Current versions are 3.5 and 4.
- **ChatGPT** – A specific application created by OpenAI to showcase their GPT model.
- **Private GPT Services**– Private access to GPT, the underlying technology of ChatGPT.

# AI Definitions and Foundations



# What Is AI?



**You**

What is the biggest challenge for tax professionals and AI?



**ChatGPT**

One of the primary challenges for tax professionals in leveraging AI is ensuring the accuracy and reliability of AI-driven tax solutions. While AI can greatly enhance efficiency and provide valuable insights, it requires meticulous validation and monitoring to ensure it complies with complex tax laws and regulations. Additionally, maintaining client confidentiality and data security is critical when integrating AI into tax processes. Balancing the benefits of AI with these regulatory and ethical considerations remains a significant challenge for tax professionals.



# ABA Formal Opinion 512

## **Adopted guidelines for the use of AI (July 29, 2024)**

To ensure clients are protected, lawyers using generative artificial intelligence tools must fully consider their applicable ethical obligations, including their duties to:

1. Provide competent legal representation,
2. To protect client information,
3. To communicate with clients,
4. To supervise their employees and agents,
5. To advance only meritorious claims and contentions,
6. To ensure candor toward the tribunal,
7. And to charge reasonable fees.



# Statement on Standards for Tax Services (SSTSs)

## **Statement on Standards for Tax Services (Effective January 1, 2024) NEW**

SSTS No. 1. General Standards for Members Providing Tax Services.

SSTS No. 2. Standards for Members Providing Tax Compliance Services, including Tax Return Positions.

SSTS No. 3. Standards for Members Providing Tax Consulting Services.

SSTS No. 4. Standards for Members Providing Tax Representations Services.

# Purpose and Function of Ethics Codes

- Reflect organizational values
- Articulate principles and standards
- Advise members of accepted conduct—and conduct that is not acceptable (behavior may be branded unethical even though it is not unlawful)
- Provide aspiration to members and, through enforcement measures, protect integrity of the organization
- Assist members in identifying ethical issues and provide a framework for resolution

## Polling Questions

# Polling Question 1

**Tightlipped Tony, a greedy and less experienced income tax consultant, has purchased access to AI tax technology. He is convinced that this new technology will help him devise new and clever justifications for risky alternate apportionment methods and other income-shifting tax strategies.**

**Tony doesn't plan to tell his clients about his new hi-tech research tool, because he wants to steal all the credit for developing the schemes and build a book of business bigger than his colleagues.**

**Does Tony have to disclose to his clients that he will be using AI technologies in providing their income tax advice?**

- A. No. It's none of their business how he develops his "top secret" planning strategies.
- B. No. There is no ethical reason that would require Tony to tell his clients that he intends to employ AI technology in developing their tax strategies. Using AI is no different than using RIA Checkpoint or Westlaw, and Tony isn't required to disclose his specific research tools to his clients.
- C. Yes, but only if Tony is a licensed attorney.
- D. Yes.

## Does Tony have to disclose to his clients that he will be using AI technologies in providing their income tax advice?

No. It's none of their business how he develops his "top secret" planning strategies.

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No. There is no ethical reason that requires Tony to tell his clients that he intends to employ AI technology in...

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Yes, but only if Tony is a licensed attorney.

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Yes.

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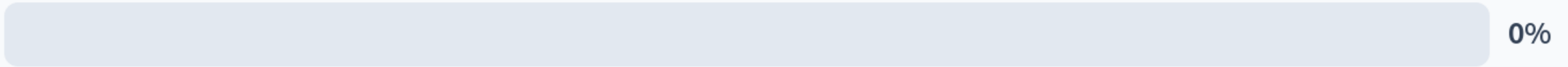
## Polling Question 2

**Adding on to the facts of Question 1, Tony is certain that the new technology will save him the big bucks he currently pays to his cadre of associates for research, although Tony might keep one or two senior staffers around to double check the AI results. Tony is going to establish a name for the AI tool, “AL Gore” (as in algorithm), and set an “as if performed by humans” billing rate for its use. Is this ethical?**

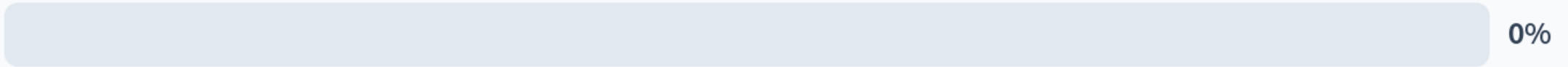
- A. Yes.
- B. No.
- C. It depends.

Tony is going to establish a name for the AI tool, "AL Gore" (as in algorithm), and set an "as if performed by humans" billing rate for its use. Is this ethical?

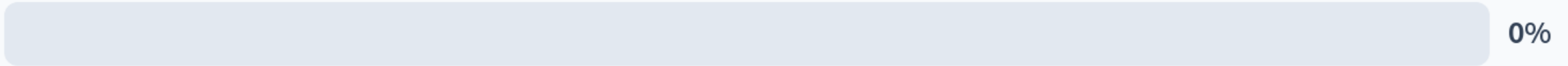
Yes



No



It depends



# Polling Question 3

**Darryl Dinosaur has made a thorough investigation of GAI technologies available for use in legal research. He has attended numerous CLEs and read many scholarly articles on the subject. Based on his study, Darryl is just not convinced that the risks of GAI producing the inaccurate results are outweighed by the efficiencies of using GAI to short-cut the process. Darryl has decided to prohibit the use of GAI by all attorneys in his firm, and force everyone to continue to prepare legal research the “old fashioned way.” Is Larry’s decision ethical?**

- A. Yes, but only if Darryl is a practicing attorney.
- B. Yes, but only if Darryl is a practicing CPA.
- C. Yes.
- D. No.



Darryl Dinosaur has thoroughly reviewed GAI he used for legal research through CLE and reading articles. Based on his review he is sure the risks that GAI will be inaccurate outweigh the efficiencies of its use. He has prohibited AI use by all. Ethical?

Yes. but only if Darryl is a practicing attorney.

0%

Yes. but only if Darryl is a practicing CPA.

0%

Yes

0%

No

0%

# Polling Question 4

Lawyer is representing a client/buyer, who resides in Texas, in a transactional matter to purchase residential real estate in New York from Seller in New York. The matter is not before a tribunal. The transaction has become contentious because Buyer and Seller are having a difficult time coming to terms on the agreement. Buyer and Seller have been engaging in negotiations on the transaction at Buyer's place of business in Texas. At a recent meeting, Client/Buyer privately made a specific threat to Lawyer to gravely physically harm Seller at their next meeting if seller refuses to accept Buyer's terms. Lawyer reasonably believes that Client/Buyer will carry out the threat.

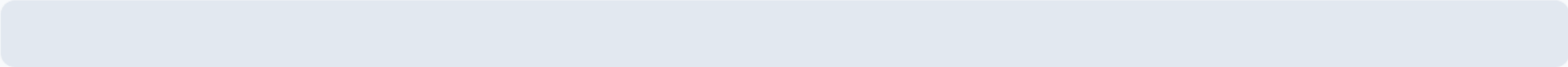
Lawyer is licensed in New York and Texas, and practices from an office in New York. New York is a Model Rules state and Rule 1.6, permits, but does not require, a lawyer to disclose information relating to the representation to the extent the lawyer reasonably believes necessary "to prevent reasonably certain death or substantial bodily harm." (Rule 1.6(b)(1)). Texas's confidentiality rule requires a lawyer to reveal such information, using the term "must reveal", client confidential information to prevent death or substantial bodily harm to another person.

Is lawyer required to disclose the threat by client/buyer to seller and if so which states version of Rule 1.6 applies?

- A. Yes, Texas.
- B. Yes, New York.
- C. No, Texas.
- D. No, New York.

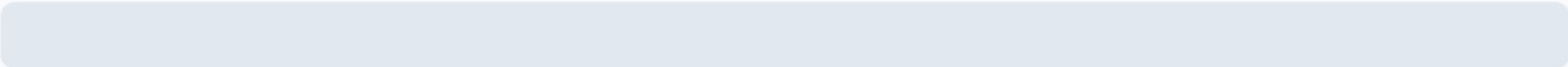
# Is lawyer required to disclose the threat by client/buyer to seller and if so which states version of Rule 1.6 applies?

Yes, Texas.



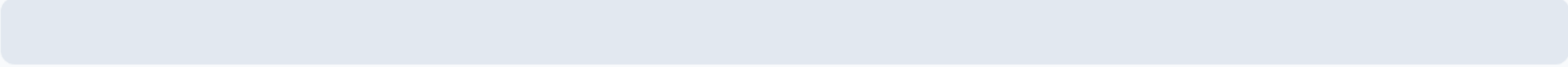
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Yes, New York.



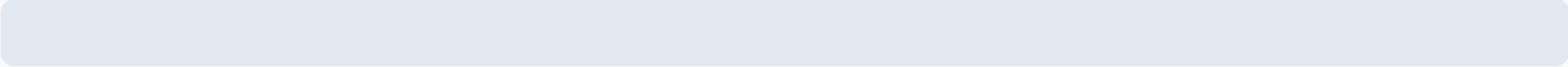
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No, Texas.



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No, New York.



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# Polling Question 5

**Larry Lacadaisy, however, is delighted with the use of GAI technology, and thinks it is going to save tons of time and money. His plans are to send all firm associates to GAI training, and then have them conduct all work using GAI research tools. The associates, of course, will get excellent training because they will be required to double check all research produced through GAI, which will free Larry up to bring in more business. He only plans to review the associates' final products if the results don't pass the smell test. Are Larry's plans ethical?**

- A. Yes – given that all lawyers who use GAI technology will be trained in its use and at least one lawyer will review each project produced by GAI, this is sufficient to satisfy the ABA Model Rules.
- B. No – Larry cannot abdicate his responsibility as a partner of his firm for the quality of the client work product.
- C. The answer will vary based on what each research project entails.

## Larry only plans to review the associates' final products if the results don't pass the smell test. Are Larry's plans ethical?

Yes – all lawyers using GAI technology will be trained in its use, at least one lawyer will review each project produced by GAI, this is sufficient.

0%

No – Larry cannot abdicate his responsibility as a partner of his firm for the quality of the client work product.

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The answer will vary based on what each research project entails.

0%

# Polling Question 6

**Lawyer is admitted to practice law in New York and Missouri, with Lawyer's office located in Missouri. Client residing in New York hires Lawyer to complete litigation in New York. Prior counsel on this matter forged the Client's signature on a document that was file with the tribunal, which has prejudiced the rights of Client going forward in this matter.**

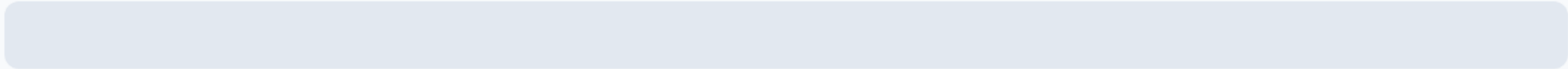
**New York requires Lawyer to report professional misconduct of another lawyer to New York's disciplinary authority even if doing so requires Lawyer to disclose information relating to the representation without the consent of the client. Missouri follows Model Rule 8.3, which requires Lawyer to report professional misconduct of another lawyer, but if Lawyer would have to reveal information relating to the representation in making such a report, the Lawyer only may report the misconduct if Client provides informed consent to make the disclosure.**

Which state version of Rule 8.3 governs Lawyer's reporting obligations?

- A. New York.
- B. Missouri.

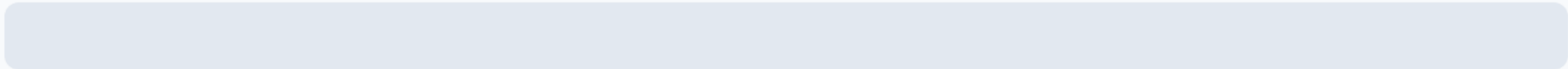
## Which state version of Rule 8.3 governs Lawyer's reporting obligations?

New York



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Missouri



0%

# Polling Question 7

**Penny Pincher Partner, attorney, thinks GenAI is great and likes to use it as often as possible. Penny asked her Paralegal, Able Andy, to use an experimental GenAI program to draft the closing arguments for a defendant she is representing in a federal criminal tax trial who was charged with 10 felony counts. The GenAI program ignored the best legal arguments and conflated the charges against the defendant. Able Andy didn't review the programs conclusions and gave the GenAI closing arguments to Penny for review. Penny knows Andy's work, so she doesn't review it and uses the GenAI generated closing argument at trial.**

**Penny and Andy then publicly blog that the GenAI program “turned days of legal work into seconds”, “wrote our closing”, “made history last week becoming the first use of GenAI in a federal trial” and was “an absolute game changer for complex litigation.”**

**The defendant was convicted on all 10 felony charges. It is later revealed that Penny had a financial stake in the GenAI program and experimented with it during trial so she could issue a press release afterward promoting the program.**

Did Penny or Andy commit any ethical violations?

- A. Penny violated ABA Rules 1.1 Competence and 3.3 Candor to Tribunal.
- B. Penny didn't violate any ABA ethics rules, but her Paralegal Able Andy did.
- C. Penny violated ABA Rule 5.3 and ABA Opinion 506. Responsibilities Regarding Non-Lawyer Assistants.
- D. It is perfectly fine to use experimental GenAI programs to assist in legal research.
- E. Both A and C.



## Did Penny or Andy commit any ethical violations?

Penny violated ABA Rules 1.1 Competence and 3.3 Candor to Tribunal.

0%

Penny didn't violate any ABA ethics rules, but her Paralegal Able Andy did.

0%

Penny violated ABA Rule 5.3 and ABA Opinion 506. Responsibilities Regarding Non-Lawyer Assistants

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It is perfectly fine to use experimental GenAI programs to assist in legal research

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Both A and C

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# Polling Question 8

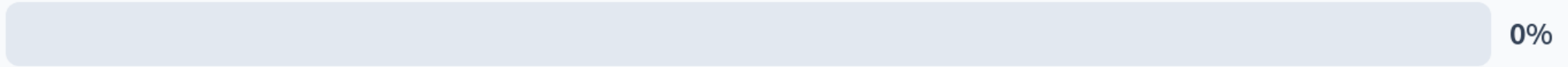
**Chuck is a trendy new “Gen Z” partner in a boutique SALT law firm. He enjoys a Saturday morning routine of Ubering down to the local latte shop with laptop in tow, connecting to the shop’s free public Wi-Fi, and finishing up the week’s work while enjoying a frappe latte mocha. Chuck uses the public Wi-Fi to finish researching and drafting a highly confidential tax planning memo to the tax director at Big-Bucks, Inc., which he sends by using his personal Gmail account.**

Is Chuck’s conduct:

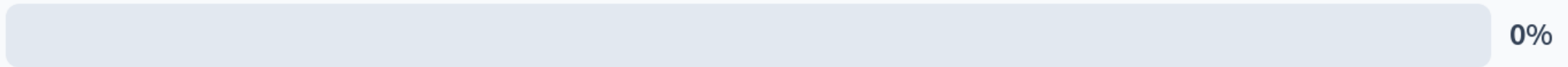
- A. Ethical.
- B. Unethical.

Chuck uses the public Wi-Fi to finish researching and drafting a highly confidential tax planning memo to the tax director at Big-Bucks, Inc., which he sends by using his personal Gmail account. Is Chuck's conduct:

Ethical



Unethical



# Polling Question 9

Phil is a SALT attorney who belongs to a private *Listserv* entitled “Seasoned SALT” that includes only tax professionals that Phil has known for decades. Phil recently won an administrative decision against the Department of Revenue on a hotly contested use tax refund claim. Phil is hoping the win will take his practice to the next level, so he decides, without asking his client, to circulate the public decision just to his SALT buddies. In the post, Phil lists the name of his client, the name of the case, the amount of the refund, the docket number, and a brief description of the issues – all matters of public record. Because the Department was so difficult, Phil is sure to mention that the Department rejected his client’s last settlement offer of 70% of the refund claim.

- A. Phil’s post is ethical.
- B. Phil’s post is ethical if he removes the reference to his client’s settlement offer.
- C. Phil’s post is ethical so long as he limits it to information found in the administrative decision which is publicly available.
- D. Phil’s article is unethical.

**Attorney Phil belongs to a Listsev called Seasoned SALT. Phil won a use tax refund claim v. DOR. Without telling client he posts the win with details on Listserv and mentions 70% settlement. Ethical?**

Phil's post is ethical.

0%

Phil's post is ethical if he removes the reference to his client's settlement offer.

0%

Phil's post is ethical so long as he limits it to information found in the administrative decision which is publicly available.

0%

Phil's article is unethical.

0%

# Polling Question 10

**A lawyer is a member of the American Center for Law & Justice, a religious legal organization, which advocates, on religious grounds, for the ability of private employers to terminate or refuse to employ individuals based on their sexual orientation or gender identity.**

Will the lawyer's membership in the legal organization constitute a violation of Rule 8.4(g)?

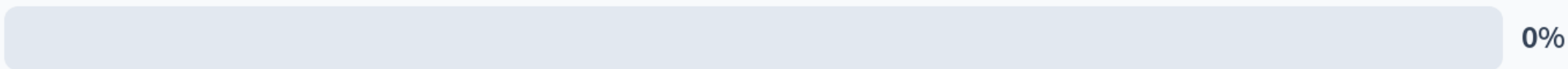
- A. Yes.
- B. No.
- C. Maybe.

## Will the lawyer's membership in American Center for Law & Justice, a religious legal organization, constitute a violation of Rule 8.4(g)?

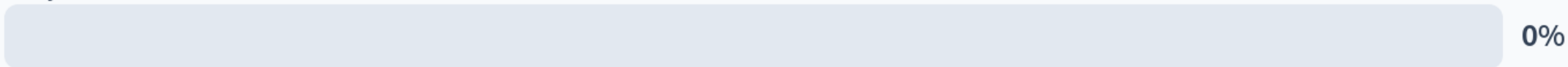
Yes



No



Maybe



# Polling Question 11

**Dandy N. Diligent is an attorney and CPA and is concerned about the privacy of his electronic communications with his SALT clients. Dandy decides to only communicate with his clients through an instant messaging service that, after a short period of time, automatically deletes his messages.**

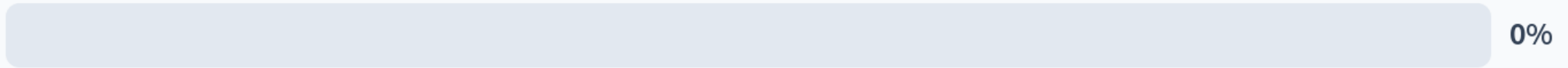
Is Dandy's behavior:

- A. Ethical.
- B. Unethical.
- C. Unethical if Dandy is practicing as an attorney, but unclear if Dandy is practicing as a CPA.

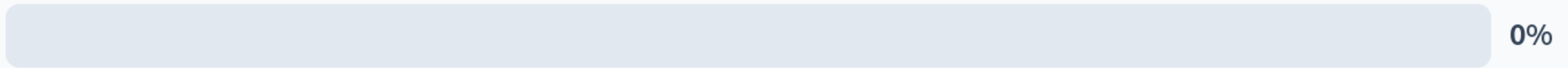


Dandy decides to only communicate with his clients through an instant messaging service that, after a short period of time, automatically deletes his messages. Is Dandy's behavior:

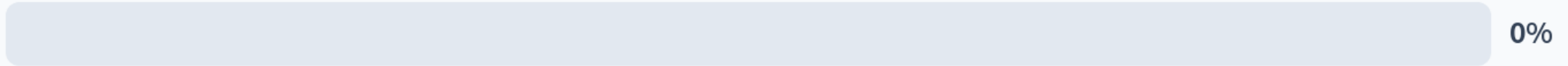
Ethical



Unethical



Unethical if Dandy is practicing as an attorney, but unclear if Dandy is practicing as a CPA



# Polling Question 12

**A lawyer serving as an adjunct professor supervising a law student in a law school clinic made repeated comments about the student's appearance and also made unwelcome, nonconsensual physical contact of a sexual nature with the student.**

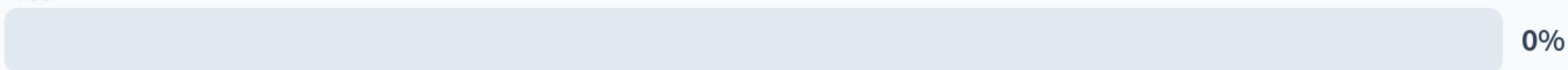
**Question:**

Would this conduct violate Rule 8.4(g)?

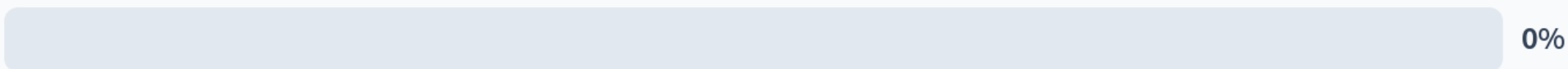
- A. Yes.
- B. No.
- C. Maybe.

An attorney serving as professor made comments about the student's appearance and made unwelcome, nonconsensual physical contact of a sexual nature with student. Would this conduct violate Rule 8.4(g)?

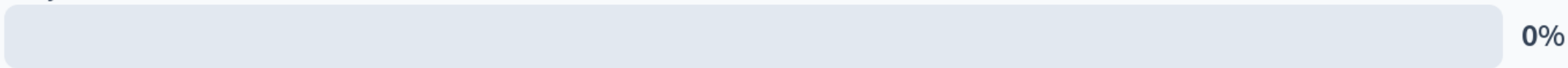
Yes



No



Maybe



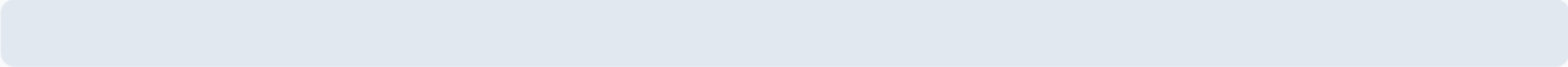
# Polling Question 13

**Steve is a licensed attorney and CPA and is well known as thorough and diligent. Even so, Steve is terrified of AI technology! He read the 2023 New York case about the lawyer who submitted an AI brief that contained fictitious citations to non-existent cases. When the bad cites were discovered, publicity destroyed that lawyer's practice and included court sanctions. Steve also believes that AI might result in the ultimate termination of all humankind. Based on that, Steve flatly refuses to have anything to do with AI technology. Is Steve's conduct ethical?**

- A. Yes.
- B. No.
- C. It depends.

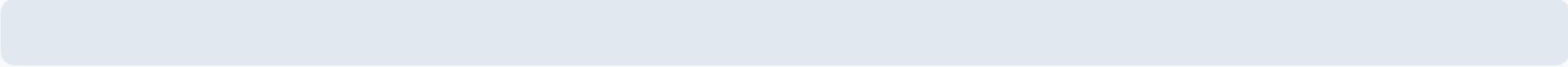
Steve flatly refuses to have anything to do with AI technology. Is Steve's conduct ethical?

Yes



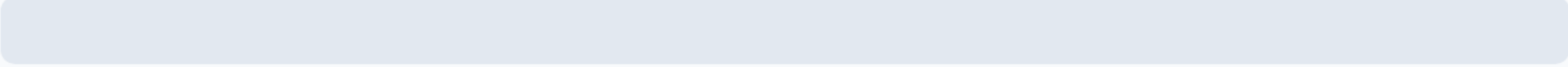
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No



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It depends



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# Polling Question 14

**As Tony is deciding how to use AI for his apportionment and income-shifting strategies, he realizes that he is going to have to input client confidential information into the AI system to ensure he gets the best possible results. Even so, he assumes that his clients' confidential information will be kept in the strictest confidence by his AI provider.**

**Is this a valid assumption?**

- A. Yes. All available AI tax services providers guarantee the confidentiality of user input.
- B. Yes, but Tony must still obtain his client's advanced permission to input the client's data into the AI system.
- C. No. The protection of client confidential information is up to the user – that is, if client-identifiable information is input into the AI service, it becomes part of the AI's base of knowledge and could be disclosed to other users.
- D. No. Tony is solely responsible for the protection of his client's confidential information, which is never guaranteed, but he may not enter client information into an AI system without express permission to do so.

## Tony assumes that his clients' confidential information will be kept in the strictest confidence by his AI provider. Is this a valid assumption?

Yes. All available AI tax services providers guarantee the confidentiality of user input.

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Yes, but Tony must still obtain client's advanced permission to input the client's data into AI system.

0%

No. The protection of client confidential information is up to the user.

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No. Tony is solely responsible for the protection of his client's confidential information.

0%

**Questions?**



# Appendices

# Introduction to AI Ethics

## Opening/Introductory Topics

# ABA Resolution 604

## **Adopted guidelines for the use of AI (February 2023)**

1. AI should be subject to human authority, oversight, and control
2. Accountability for consequences resulting from the use of AI
3. Transparency and traceability of AI products by documenting design and risk of data sets, procedures, and outcomes of using AI

# Executive Order on AI (October 30, 2023)

- Relies on the definition of “artificial intelligence” found at 15 U.S.C. 9401(3): “a machine-based system that can, for a given set of human-defined objectives, make predictions, recommendations or decisions influencing real or virtual environments.”
- Directs 50 federal agencies to engage in more than 100 specific actions to implement the President’s guidance in 8 policy areas.
  - Safety and Security
  - Worker Support
  - Consumer Protection
  - Federal Use of AI
  - Innovation and Competition
  - Consideration of AI Bias and Civil Rights
  - Privacy
  - International Leadership

# Executive Order on AI (October 30, 2023)

## Highlights

- Directs NIST to develop guidelines and best practices for “developing and deploying safe, secure, and trustworthy AI systems,” including with respect to cybersecurity, national security, and critical infrastructure.
- Directs the OMB Director to evaluate and propose new standards on the collection and processing of commercially available information that contains personally identifiable information.
- Requires OMB to establish an interagency council to coordinate use of AI by federal agencies and develop risk management activities for agencies.
- Directs all agencies to employ certain practices and training on proper use of AI to prevent AI misuse of federal government information.

# Corporate Policies – Law Firms

**Am Law 200 Policy:** Generative artificial intelligence tools such as ChatGPT (“AI”) may have some potential to assist in the provision of legal services. In their current form, however, the capability of AI tools to provide such assistance is limited and they must be used with caution. This policy is designed to permit certain use of AI given its current limited capability for legal services. Firm lawyers and non-lawyer personnel may use AI only in accordance with the following restrictions:

- Confidential client and Firm information, including client names and personal identifying information of others, may not be shared with an AI site or used in any AI tools. **Rule of Professional Conduct 1.6** generally precludes lawyers from revealing “information relating to the representation of a client unless the client gives informed consent ...” Users should carefully consider confidentiality and privilege issues before sharing any information.

# Ethical Norms in Taxation

## *Who determines what is “ethical behavior” for tax advisors?*

- **State Laws and Professional Organizations**
- **Professional Requirements:**
  - State Bar Associations (Mandatory and Elective)
  - State Boards of Accountancy
- **Professional Standards:**
  - ABA Model Rules
  - AICPA
- **Company Policies and Standards**

# Ethical Norms in Taxation (cont.)

## *Who determines what is “ethical behavior” for tax advisors?*

- **Tax Statutes**
  - Federal Statutes and Regulations
    - Internal Revenue Code
    - Treasury regulations
    - Circular 230
  - State Statutes, Regulations, and Rules
- **Civil Penalties**
- **Criminal Sanctions**



# Select ABA Model Rules Applicable to Tax Professionals

<b>ABA</b>	<b>Topic</b>
Rule 1.1	<i>Competence</i>
Rule 1.13	<i>Organizations as Clients</i>
Rule 1.4	<i>Communications</i>
Rule 1.5	<i>Fees</i>
Rule 1.6	<i>Confidentiality of Information</i>
Rule 3.1	<i>Meritorious Claims &amp; Contentions</i>
Rule 3.3	<i>Candor Toward the Tribunal</i>
Rule 4.2	<i>Communication with Person Represented by Counsel</i>
Rule 5.3	<i>Responsibilities Regarding Non-Lawyer Assistance</i>
Rule 5.5	<i>Unauthorized Practice of Law; Multijurisdictional Practice of Law</i>
Rule 7.3	<i>Direct Contact with Prospective Clients</i>
Rule 8.3	<i>Reporting Professional Misconduct</i>
Rule 8.4	<i>Misconduct</i>
Rule 8.5	<i>Disciplinary Authority; Choice of Law</i>

# Select ABA Opinions Applicable to Tax Professionals

<b>ABA Formal Opinion</b>	<b><i>Topic</i></b>
ABA Opinion 93-379	<b><i>Billing for Professional Fees, Disbursements &amp; Other Expenses</i></b>
ABA Opinion 477R	<b><i>Securing Communication of Protected Client Information</i></b>
ABA Opinion 480	<b><i>Confidentiality Obligations for Lawyer Blogging &amp; Other Public Commentary</i></b>
ABA Opinion 493	<b><i>Model Rule 8.4(g): Purpose, Scope, and Application</i></b>
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ABA Opinion 511R	<b><i>Confidentiality Obligations of Lawyers Posting to Listservs*</i></b>
ABA Opinion 512	<b><i>Generative Artificial Intelligence Tools</i></b>
ABA Opinion 513	<b><i>Duty to Inquire Into and Assess the Facts and Circumstances of Each Representation</i></b>

# Select State Ethics Rules & Opinions

State Rule or Opinion	Topic
State Bar of Cal. Standing Comm. On Pro. Resp. & Conduct	<b><i>Practical Guidance for the Use of Generative Artificial Intelligence in the Practice of Law, November 16, 2023</i></b>
Cal. Formal Op. 2010-179	<b><i>Duty of Confidentiality and Competence in Use of Technology</i></b>
Fla. Bar Ethics Op. No. 24-1	<b><i>Use of Generative Artificial Intelligence, January 19, 2024</i></b>
D.C Bar Ethics Opinion 388	<b><i>Attorney's Use of Generative Artificial Intelligence in Client Matters, April 11, 2024</i></b>
Missouri Informal Opinion 2024 – 11	<b><i>Lawyer's Use of Generative Artificial Intelligence, April 25, 2024</i></b>
Michigan Judicial Ethics Opinion 155	<b><i>Judicial officers must maintain competence with advancing technology, including but not limited to artificial intelligence, Oct. 27, 2023</i></b>
NY Social Media Ethics Guideline No. 3C	<b><i>Retention of Social Media Communications with Clients</i></b>

# AICPA Ethics Standards

## AICPA Code of Professional Conduct Structure

### Introduction

- Section 50 – Principles of Professional Conduct
- Section 90 – Rules: Applicability and Definitions
- Section 100 – Independence, Integrity, and Objectivity
- Section 200 – General Standards Accounting Principles
- Section 300 – Responsibilities to Clients
- Section 400 – Responsibilities to Colleagues
- Section 500 – Other Responsibilities and Practices
- ET Appendixes
- ET Topical Index

<http://www.aicpa.org/about/code/index.htm>

# AICPA Ethics Standards

## AICPA Code of Professional Conduct Principles

The Principles guide members in the performance of their professional responsibilities:

- Article I – Responsibilities
- Article II – The Public Interest
- Article III – Integrity
- Article IV – Objectivity and Independence
- Article V – Due Care
- Article VI – Scope and Nature of Services

# Statement on Standards for Tax Services (SSTs)

The AICPA's Statements on Standards for Tax Services (SSTs) are enforceable standards that apply to all AICPA members providing tax services. Certain states also incorporate the SSTs as part of their professional rules of conduct for CPAs.

The SSTs, based on the AICPA Statements on Responsibilities in Tax Practice (SRTPs) that were originally issued between 1964 and 1977, were first adopted by the AICPA Tax Executive Committee (TEC) in August 2000, and the most recent significant updates to the SSTs were made Jan. 1, 2010.

In October 2018, the TEC approved formation of an SSTS Revision Task Force to update the SSTs.

On Jan. 26, 2022, the TEC voted to expose the standards to the AICPA membership, with comments due Dec. 31, 2022, and an effective date of Jan. 1, 2024.

# Statement on Standards for Tax Services (SSTSs)

The task force held numerous meetings to identify and develop both updates to the current SSTSs and entirely new standards. As part of those efforts, the task force:

- Reorganized the SSTSs by type of tax work performed;
- Reviewed and revised the existing SSTSs to reflect the current state of the profession and the emerging needs of today's members; and
- Promulgated three new standards not previously addressed by the SSTSs regarding data protection, reliance on tools, and the representation of tax clients before taxing authorities.

The three new standards are:

1. SSTS 1.3. Data Protection
2. SSTS 1.4. Reliance on Tools
3. SSTS 4. Standards for Members Providing Tax Representation Services

# Statement on Standards for Tax Services (SSTSs)

## **Statement on Standards for Tax Services (Effective January 1, 2024) NEW**

SSTS No. 1. General Standards for Members Providing Tax Services.

SSTS No. 2. Standards for Members Providing Tax Compliance Services, including Tax Return Positions.

SSTS No. 3. Standards for Members Providing Tax Consulting Services.

SSTS No. 4. Standards for Members Providing Tax Representations Services.



# Corporate Policies – Accounting Firms

**Big Four Policy:** We recognize that the field of AI is rapidly evolving—and so is our approach. As the technology advances and legal, ethical, risk and regulatory standards mature, we will continue to review and evolve our approach as necessary.

Our approach to AI rests on **ten ethical pillars** across the AI lifecycle:

1. Fairness. AI solutions should be designed to reduce or eliminate bias against individuals, communities, and groups.
2. Transparency. AI solutions should include responsible disclosure to provide stakeholders with a clear understanding of what is happening in each solution across the AI lifecycle.
3. Explainability. AI solutions should be developed and delivered in a way that answers the questions of how and why a conclusion was drawn from the solution.
4. Accountability. Human oversight and responsibility should be embedded across the AI lifecycle to manage risk and comply with applicable laws and regulations.

# **Ethics Standards - ABA**

# Ethics Standards - ABA

## **Standards of the American Bar Association**

- Model Rules of Professional Conduct. Scope, Section 14 provides:
  - The Rules of Professional Conduct are rules of reason. They should be interpreted with reference to the purposes of legal representation and of the law itself. Some of the Rules are imperatives, cast in the terms "shall" or "shall not." These define proper conduct for purposes of professional discipline.
  - Others, generally cast in the term "may," are permissive and define areas under the Rules in which the lawyer has discretion to exercise professional judgment. No disciplinary action should be taken when the lawyer chooses not to act or acts within the bounds of such discretion.
  - Other Rules define the nature of relationships between the lawyer and others. The Rules are thus partly obligatory and disciplinary and partly constitutive and descriptive in that they define a lawyer's professional role. Many of the Comments use the term "should."
  - Comments do not add obligations to the Rules but provide guidance for practicing in compliance with the Rules.

# Ethics Standards - ABA

## **Standards of the American Bar Association**

- Model Rules of Professional Conduct. Scope, Sections 16 & 21 provide:
  - Compliance with the Rules, as with all law in an open society, depends primarily upon understanding and voluntary compliance, secondarily upon reinforcement by peer and public opinion and finally, when necessary, upon enforcement through disciplinary proceedings.
  - The Rules do not, however, exhaust the moral and ethical considerations that should inform a lawyer, for no worthwhile human activity can be completely defined by legal rules. The Rules simply provide a framework for the ethical practice of law.
  - The Comment accompanying each Rule explains and illustrates the meaning and purpose of the Rule.
  - The Preamble and the note on Scope provide general orientation. The Comments are intended as guides to interpretation, but the text of each Rule is authoritative.

# Select ABA Model Rules Applicable to Tax Professionals

<b>ABA</b>	<b><i>Topic</i></b>
Rule 1.1	<b><i>Competence</i></b>
Rule 1.13	<b><i>Organizations as Clients</i></b>
Rule 1.4	<b><i>Communications</i></b>
Rule 1.5	<b><i>Fees</i></b>
Rule 1.6	<b><i>Confidentiality of Information</i></b>
Rule 3.1	<b><i>Meritorious Claims &amp; Contentions</i></b>
Rule 3.3	<b><i>Candor Toward the Tribunal</i></b>
Rule 4.2	<b><i>Communication with Person Represented by Counsel</i></b>
Rule 5.3	<b><i>Responsibilities Regarding Non-Lawyer Assistance</i></b>
Rule 5.5	<b><i>Unauthorized Practice of Law; Multijurisdictional Practice of Law</i></b>
Rule 7.3	<b><i>Direct Contact with Prospective Clients</i></b>
Rule 8.3	<b><i>Reporting Professional Misconduct</i></b>
Rule 8.4	<b><i>Misconduct</i></b>
Rule 8.5	<b><i>Disciplinary Authority; Choice of Law</i></b>

# Ethics Standards - ABA

**Rule 1.1: Competence.**

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

# Ethics Standards - ABA

## **Rule 1.13: Organizations as Clients.**

A lawyer employed or retained by an organization represents the organization acting through its duly authorized constituents.

(b) If a lawyer for an organization knows that an officer, employee or other person associated with the organization is engaged in action, intends to act or refuses to act in a matter related to the representation that is a violation of a legal obligation to the organization, or a violation of law which reasonably might be imputed to the organization, and is likely to result in substantial injury to the organization, the lawyer shall proceed as is reasonably necessary in the best interest of the organization. In determining how to proceed, the lawyer shall give due consideration to the seriousness of the violation and its consequences, the scope and nature of the lawyer's representation, the responsibility in the organization and the apparent motivation of the person involved, the policies of the organization concerning such matters and any other relevant considerations.

# Ethics Standards - ABA

## **Rule 1.4: Communications.**

(a) A lawyer shall:

- (1) promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in Rule 1.0(e), is required by these Rules;
- (2) reasonably consult with the client about the means by which the client's objectives are to be accomplished;
- (3) keep the client reasonably informed about the status of the matter;
- (4) promptly comply with reasonable requests for information; and
- (5) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law.

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



# Ethics Standards - ABA

## **Rule 1.5: Fees.**

(a) A lawyer shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses. The factors to be considered in determining the reasonableness of a fee include the following:

- (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
- (2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
- (3) the fee customarily charged in the locality for similar legal services;
- (4) the amount involved and the results obtained;
- (5) the time limitations imposed by the client or by the circumstances;
- (6) the nature and length of the professional relationship with the client;
- (7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and
- (8) whether the fee is fixed or contingent.

# Ethics Standards - ABA

## **Rule 1.5: Fees (cont.)**

(b) The scope of the representation and the basis or rate of the fee and expenses for which the client will be responsible shall be communicated to the client, preferably in writing, before or within a reasonable time after commencing the representation, except when the lawyer will charge a regularly represented client on the same basis or rate. Any changes in the basis or rate of the fee or expenses shall also be communicated to the client.

(c) A fee may be contingent on the outcome of the matter for which the service is rendered, except in a matter in which a contingent fee is prohibited by paragraph (d) or other law. A contingent fee agreement shall be in a writing signed by the client and shall state the method by which the fee is to be determined, including the percentage or percentages that shall accrue to the lawyer in the event of settlement, trial or appeal; litigation and other expenses to be deducted from the recovery; and whether such expenses are to be deducted before or after the contingent fee is calculated. The agreement must clearly notify the client of any expenses for which the client will be liable whether or not the client is the prevailing party. Upon conclusion of a contingent fee matter, the lawyer shall provide the client with a written statement stating the outcome of the matter and, if there is a recovery, showing the remittance to the client and the method of its determination.

# Ethics Standards - ABA

## **Rule 1.5: Fees (cont.)**

(d) A lawyer shall not enter into an arrangement for, charge, or collect:

- (1) any fee in a domestic relations matter, the payment or amount of which is contingent upon the securing of a divorce or upon the amount of alimony or support, or property settlement in lieu thereof; or
- (2) a contingent fee for representing a defendant in a criminal case.

(e) A division of a fee between lawyers who are not in the same firm may be made only if:

- (1) the division is in proportion to the services performed by each lawyer or each lawyer assumes joint responsibility for the representation;
- (2) the client agrees to the arrangement, including the share each lawyer will receive, and the agreement is confirmed in writing; and
- (3) the total fee is reasonable.

# Ethics Standards - ABA

## **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).

# Ethics Standards - ABA

## **Rule 1.6: Confidentiality of Information (cont).**

(b) A lawyer may reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary:

- (1) to prevent reasonably certain death or substantial bodily harm;
- (2) to prevent the client from committing a crime or fraud that is reasonably certain to result in substantial injury to the financial interests or property of another and in furtherance of which the client has used or is using the lawyer's services;
- (3) to prevent, mitigate or rectify substantial injury to the financial interests or property of another that is reasonably certain to result or has resulted from the client's commission of a crime or fraud in furtherance of which the client has used the lawyer's services;
- (4) to secure legal advice about the lawyer's compliance with these Rules;
- (5) 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;
- (6) to comply with other law or a court order; or
- (7) 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.

# Ethics Standards - ABA

**Rule 1.6: Confidentiality of Information (cont).**

(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 Standards - ABA

## **Rule 3.1: Meritorious Claims & Contentions.**

A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous, which includes a good faith argument for an extension, modification or reversal of existing law. A lawyer for the defendant in a criminal proceeding, or the respondent in a proceeding that could result in incarceration, may nevertheless so defend the proceeding as to require that every element of the case be established.

# Ethics Standards - ABA

## **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 the lawyer 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.



# Ethics Standards - ABA

## **Rule 3.3: Candor Toward the Tribunal (cont).**

- (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) 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.
- (d) 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.

# Ethics Standards - ABA

**Rule 4.2: Communication with Person Represented by Counsel.**

In representing a client, a lawyer shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized to do so by law or a court order.

# Ethics Standards - ABA

## **Rule 5.3: Responsibilities Regarding Non-Lawyer Assistance.**

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

- a) a partner, and a 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) a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer; and
- 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 Standards - ABA

## **Rule 5.5: Unauthorized Practice of Law.**

A lawyer shall not:

- a) practice law in a jurisdiction where doing so violates the regulation of the legal profession in that jurisdiction; or
- b) assist a person who is not a member of the bar in the performance of activity that constitutes the unauthorized practice of law.

### Comment

[1] 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. Paragraph (b) 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. Likewise, it does not prohibit lawyers from providing professional advice and instruction to nonlawyers whose employment requires knowledge of law; for example, claims adjusters, employees of financial or commercial institutions, social workers, accountants and persons employed in government agencies. In addition, a lawyer may counsel nonlawyers who wish to proceed pro se.

# Ethics Standards - ABA

## **Rule 7.3: Direct Contact with Prospective Clients.**

- a) A lawyer shall not by in-person or live telephone, or real-time electronic contact solicit professional employment from a prospective client with whom the lawyer has no family or prior professional relationship when a significant motive for the lawyer's doing so is the lawyer's pecuniary gain unless the person contacted:
  - 1) is a lawyer; or
  - 2) has a family, close personal, or prior professional relationship with the lawyer.
- b) A lawyer shall not solicit professional employment from a prospective client by written or recorded or electronic communication or by in-person or telephone or real-time electronic contact even when not otherwise prohibited by paragraph (a) if:
  - 1) the prospective client has made known to the lawyer a desire not to be solicited by the lawyer; or
  - 2) the solicitation involves coercion, duress or harassment.
- c) Every written or recorded or electronic communication from a lawyer soliciting professional employment from a prospective client known to be in need of legal services in a particular matter and with whom the lawyer has no family or prior professional relationship, shall include the words "Advertising Material" on the outside envelope, if any, and at the beginning and ending of any recorded or electronic communication unless the recipient of the communication is a person specified in paragraphs (a)(1) or (a)(2).
- d) Notwithstanding the prohibitions in paragraph (a), a lawyer may participate with a prepaid or group legal service plan operated by an organization not owned or directed by the lawyer that uses in-person or telephone contact to solicit memberships or subscriptions for the plan from persons who are not known to need legal services in a particular matter covered by the plan.

# Ethics Standards - ABA

## **Rule 8.3: Reporting Professional Misconduct.**

- a) A lawyer having knowledge who knows that another lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to that lawyer's honesty, trustworthiness or fitness as a lawyer in other respects, shall inform the appropriate professional authority.
- b) A lawyer having knowledge who knows that a judge has committed a violation of applicable rules of judicial conduct that raises a substantial question as to the judge's fitness for office shall inform the appropriate authority.
- c) This Rule does not require disclosure of information otherwise protected by Rule 1.6 or information gained by a lawyer or judge while serving as a member of participating in an approved lawyer's assistance program to the extent that such information would be confidential if it were communicated subject to the attorney-client privilege.

# Ethics Standards - ABA

## **Rule 8.4: Misconduct.**

It is professional misconduct for a lawyer to:

- a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;
- b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;
- c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;
- d) engage in conduct that is prejudicial to the administration of justice;
- e) state or imply an ability to influence improperly a government agency or official or to achieve results by means that violate the Rules of Professional Conduct or other law;
- f) knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law; or
- g) engage in conduct that the lawyer knows or reasonably should know is harassment or discrimination on the basis of race, sex, religion, national origin, ethnicity, disability, age, sexual orientation, gender identity, marital status or socioeconomic status in conduct related to the practice of law. This paragraph does not limit the ability of a lawyer to accept, decline or withdraw from are presentation in accordance with Rule 1.16. This paragraph does not preclude legitimate advice or advocacy consistent with these Rules.

# Ethics Standards - ABA

## **Rule 8.5: Disciplinary Authority; Choice of Law.**

- a) **Disciplinary Authority.** A lawyer admitted to practice in this jurisdiction is subject to the disciplinary authority of this jurisdiction, regardless of where the lawyer's conduct occurs. A lawyer may be subject to the disciplinary authority of both this jurisdiction and another jurisdiction where the lawyer is admitted for the same conduct.
- b) **Choice of Law.** In any exercise of the disciplinary authority of this jurisdiction, the rules of professional conduct to be applied shall be as follows:
  - 1) for conduct in connection with a proceeding in a court before which a lawyer has been admitted to practice (either generally or for purposes of that proceeding), the rules to be applied shall be the rules of the jurisdiction in which the court sits, unless the rules of the court provide otherwise; and
  - 2) for any other conduct,
    - i. if the lawyer is licensed to practice only in this jurisdiction, the rules to be applied shall be the rules of this jurisdiction, and
    - ii. if the lawyer is licensed to practice in this and another jurisdiction, the rules to be applied shall be the rules of the admitting jurisdiction in which the lawyer principally practices; provided, however, that if particular conduct clearly has its predominant effect in another jurisdiction in which the lawyer is licensed to practice, the rules of that jurisdiction shall be applied to that conduct.



# Select ABA Opinions Applicable to Tax Professionals

<b>ABA Formal Opinion</b>	<b>Topic</b>
ABA Opinion 93-379	<i>Billing for Professional Fees, Disbursements &amp; Other Expenses</i>
ABA Opinion 477R	<i>Securing Communication of Protected Client Information</i>
ABA Opinion 480	<i>Confidentiality Obligations for Lawyer Blogging &amp; Other Public Commentary</i>
ABA Opinion 493	<i>Model Rule 8.4(g): Purpose, Scope, and Application</i>
ABA Opinion 506	<i>Responsibilities Regarding Nonlawyer Assistants</i>
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ABA Opinion 512	<i>Generative Artificial Intelligence Tools</i>
ABA Opinion 513	<i>Duty to Inquire Into and Assess the Facts and Circumstances of Each Representation</i>

# Select ABA Opinions Applicable to Tax Professionals

## ***ABA Opinion 477R: Securing Communication of Protected Client Information***

A lawyer generally may transmit information relating to the representation of a client over the internet without violating the Model Rules of Professional Conduct where the lawyer has undertaken reasonable efforts to prevent inadvertent or unauthorized access. However, a lawyer may be required to take special security precautions to protect against the inadvertent or unauthorized disclosure of client information when required by an agreement with the client or by law, or when the nature of the information requires a higher degree of security.

# Select ABA Opinions Applicable to Tax Professionals

## ***ABA Opinion 480: Confidential Obligations for Lawyer Blogging & Other Public Commentary***

Lawyers who blog or engage in other public commentary may not reveal information relating to a representation that is protected by Rule 1.6(a), including information contained in a public record, unless disclosure is authorized under the Model Rules.

# Select ABA Opinions Applicable to Tax Professionals

## ***ABA Opinion 493: Model Rules 8.4(g): Purpose, Scope, and Application.***

This opinion offers guidance on the purpose, scope, and application of Model Rule 8.4(g). The Rule prohibits a lawyer from engaging in conduct related to the practice of law that the lawyer knows or reasonably should know is harassment or discrimination on the basis of various categories, including race, sex, religion, national origin, and sexual orientation. Whether conduct violates the Rule must be assessed using a standard of objective reasonableness, and only conduct that is found harmful will be grounds for discipline.

Rule 8.4(g) covers conduct related to the practice of law that occurs outside the representation of a client or beyond the confines of a courtroom. In addition, it is not restricted to conduct that is severe or pervasive, a standard utilized in the employment context. However, and as this opinion explains, conduct that violates paragraph (g) will often be intentional and typically targeted at a particular individual or group of individuals, such as directing a racist or sexist epithet towards others or engaging in unwelcome, nonconsensual physical conduct of a sexual nature.

The Rule does not prevent a lawyer from freely expressing opinions and ideas on matters of public concern, nor does it limit a lawyer's speech or conduct in settings unrelated to the practice of law. The fact that others may personally disagree with or be offended by a lawyer's expression does not establish a violation. The Model Rules are rules of reason, and whether conduct violates Rule 8.4(g) must necessarily be judged, in context, from an objectively reasonable perspective.

# Select ABA Opinions Applicable to Tax Professionals

## ***ABA Opinion 506: Responsibilities Regarding Nonlawyer Assistants.***

A lawyer may train and supervise a nonlawyer to assist with prospective client intake tasks including obtaining initial information about the matter, performing an initial conflict check, determining whether the assistance sought is in an area of law germane to the lawyer's practice, assisting with answering general questions about the fee agreement or process of representation, and obtaining the prospective client's signature on the fee agreement provided that the prospective client always is offered an opportunity to communicate with the lawyer including to discuss the fee agreement and scope of representation.

Because Model Rule 5.5 prohibits lawyers from assisting in the unauthorized practice of law, whether a nonlawyer may answer a prospective client's specific question depends on the question presented. If the prospective client asks about what legal services the client should obtain from the lawyer, wants to negotiate the fees or expenses, or asks for interpretation of the engagement agreement, the lawyer is required to respond to ensure that the non-lawyer does not engage in the unauthorized practice of law and that accurate information is provided to the prospective client so that the prospective client can make an informed decision about whether to enter into the representation.

# Select ABA Opinions Applicable to Tax Professionals

## ***ABA Opinion 511R: Confidentiality Obligations of Lawyers Posting to Listservs\****

Rule 1.6 prohibits a lawyer from posting questions or comments relating to a representation to a listserv, even in hypothetical or abstract form, without the client's informed consent if there is a reasonable likelihood that the lawyer's questions or comments will disclose information relating to the representation that would allow a reader then or later to infer the identity of the lawyer's client or the situation involved.

A lawyer may, however, participate in listserv discussions such as those related to legal news, recent decisions, or changes in the law, without a client's informed consent if the lawyer's contributions will not disclose, or be reasonably likely to lead to the disclosure of, information relating to a client representation.

# Select ABA Opinions Applicable to Tax Professionals

## ***ABA Opinion 512: Generative Artificial Intelligence Tools***

To ensure clients are protected, lawyers using generative artificial intelligence tools must fully consider their applicable ethical obligations, including their duties to provide competent legal representation, to protect client information, to communicate with clients, to supervise their employees and agents, to advance only meritorious claims and contentions, to ensure candor toward the tribunal, and to charge reasonable fees.

# Select ABA Opinions Applicable to Tax Professionals

## ***ABA Opinion 513: Duty to Inquire and Assess the Facts and Circumstances of Each Representation.***

As recently revised, Model Rule 1.16(a) provides that: “A lawyer shall inquire into and assess the facts and circumstances of each representation to determine whether the lawyer may accept or continue the representation.” To reduce the risk of counseling or assisting a crime or fraud, some level of inquiry and assessment is required before undertaking each representation. Further inquiry and assessment is required when the lawyer becomes aware of a change in the facts and circumstances relating to the representation that raises questions about whether the client is using the lawyer’s services to commit or further a crime or fraud.

The lawyer’s inquiry and assessment will be informed by the nature and extent of the risk that the current or prospective client seeks to use, or persists in using, the lawyer’s services to commit or further a crime or fraud. If after having conducted a reasonable, risk-based inquiry, the lawyer determines that the representation is unlikely to involve assisting in a crime or fraud, the lawyer may undertake or continue the representation. If the lawyer has “actual knowledge” that the lawyer’s services will be used to commit or further criminal or fraudulent activity, the lawyer must decline or withdraw from the representation.

When the lawyer’s initial inquiry leaves the lawyer with unresolved questions of fact about whether the current or prospective client seeks to use or persists in using the lawyer’s services to commit or further a crime or fraud, the lawyer must make additional efforts to resolve those questions through further reasonable inquiry before accepting or continuing the representation. The lawyer need not resolve all doubts. Rather, if some doubt remains even after the lawyer has conducted a reasonable inquiry, the lawyer may proceed with the representation as long as the lawyer concludes that doing so is unlikely to involve assisting or furthering a crime or fraud.



# Select State Ethics Rules & Opinions

State Rule or Opinion	Topic
State Bar of Cal. Standing Comm. On Pro. Resp. & Conduct	<i>Practical Guidance for the Use of Generative Artificial Intelligence in the Practice of Law, November 16, 2023</i>
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D.C Bar Ethics Opinion 388	<i>Attorney's Use of Generative Artificial Intelligence in Client Matters, April 11, 2024</i>
Missouri Informal Opinion 2024 – 11	<i>Lawyer's Use of Generative Artificial Intelligence, April 25, 2024</i>
Michigan Judicial Ethics Opinion 155	<i>Judicial officers must maintain competence with advancing technology, including but not limited to artificial intelligence, Oct. 27, 2023</i>
NY Social Media Ethics Guideline No. 3C	<i>Retention of Social Media Communications with Clients</i>

# Select State Ethics Rules & Opinions

## **State Bar of Cal. Standing Comm. On Pro. Resp. & Conduct:**

### **Duty of Confidentiality:**

- A lawyer must not input any confidential information of the client into any generative AI solution that lacks adequate confidentiality and security protections. A lawyer must anonymize client information and avoid entering details that can be used to identify the client.
- A lawyer or law firm should consult with IT professionals or cybersecurity experts to ensure that any AI system in which a lawyer would input confidential client information adheres to stringent security, confidentiality, and data retention protocols.

### **Duty of Competence and Diligence:**

- It is possible that generative AI outputs could include information that is false, inaccurate, or biased.
- A lawyer must ensure competent use of the technology, including the associated benefits and risks, and apply diligence and prudence with respect to facts and law.
- Before using generative AI, a lawyer should understand to a reasonable degree how the technology works, its limitations, and the applicable terms of use and other policies governing the use and exploitation of client data by the product.
- Overreliance on AI tools is inconsistent with the active practice of law and application of trained judgment by the lawyer.

# Select State Ethics Rules & Opinions

## **Ca. Formal Op. 2010-179.: Duty of Confidentiality and Competence in Use of Technology.**

Whether an attorney violates his or her duties of confidentiality and competence when using technology to transmit or store confidential client information will depend on the particular technology being used and the circumstances surrounding such use.

Before using a particular technology in the course of representing a client, an attorney must take appropriate steps to evaluate:

1) the level of security attendant to the use of that technology, including whether reasonable precautions may be taken when using the technology to increase the level of security; 2) the legal ramifications to a third party who intercepts, accesses or exceeds authorized use of the electronic information; 3) the degree of sensitivity of the information; 4) the possible impact on the client of an inadvertent disclosure of privileged or confidential information or work product; 5) the urgency of the situation; and 6) the client's instructions and circumstances, such as access by others to the client's devices and communication.

An attorney's duties of confidentiality and competence require the attorney to take appropriate steps to ensure that his or her use of technology in conjunction with a client's representation does not subject confidential client information to an undue risk of unauthorized disclosure. Because of the evolving nature of technology and differences in security features that are available, the attorney must ensure the steps are sufficient for each form of technology being used and must continue to monitor the efficacy of such steps.

This opinion is issued by the Standing Committee on Professional Responsibility and Conduct of the State Bar of California. It is advisory only. It is not binding upon the courts, the State Bar of California, its Board of Governors, any persons, or tribunals charged with regulatory responsibilities, or any member of the State Bar.

# Select State Ethics Rules & Opinions

## **Fla. Bar Ethics Op. No. 24-1.: Use of Generative Artificial Intelligence.**

- Lawyers may use generative artificial intelligence (“AI”) in the practice of law but must protect the confidentiality of client information, provide accurate and competent services, avoid improper billing practices, and comply with applicable restrictions on lawyer advertising.
- Lawyers must ensure that the confidentiality of client information is protected when using generative AI by researching the program’s policies on data retention, data sharing, and self-learning.
- Lawyers remain responsible for their work product and professional judgment and must develop policies and practices to verify that the use of generative AI is consistent with the lawyer’s ethical obligations.
- Use of generative AI does not permit a lawyer to engage in improper billing practices such as double-billing.
- Generative AI chatbots that communicate with clients, or third parties, must comply with restrictions on lawyer advertising and must include a disclaimer indicating that the chatbot is an AI program and not a lawyer or employee of the law firm. Lawyers should be mindful of the duty to maintain technological competence and educate themselves regarding the risks and benefits of new technology.\*

\*Advisory Ethics Opinions are not binding.

# Select State Ethics Rules & Opinions

## **D.C. Bar Ethics Opinion 388: Attorney's Use of Generative Artificial Intelligence in Client Matters.**

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

We anticipate that GAI eventually will be a boon to the practice of law. Moreover, lawyers who use generative artificial intelligence do not need to be computer programmers who can write AI programs or critique AI code written by others. But they do need to understand enough about how GAI works, what it does, and its risks and limitations to become comfortable that the GAI will be helpful and accurate for the task at hand, and that it will not breach client confidentiality. Lawyers should also be mindful of the implications GAI creates for their duties of supervision; their duty of candor to the tribunal and their fairness obligations to opposing parties and counsel; the reasonableness of their fees; and their obligations with respect to the client file. (Excerpts from 19-page Opinion.)

Published: April 2024

# Select State Ethics Rules & Opinions

## **Missouri Informal Opinion 2024-11.: Lawyer's Use of Generative Artificial Intelligence.**

**Question:** Lawyer would like to use generative artificial intelligence (AI) platforms and services in Lawyer's practice and asks for guidance regarding whether Lawyer may ethically use this emerging technology. What ethical issues should Lawyer consider in developing a policy to use this technology in Lawyer's practice within Law Firm?

**Answer:** Various forms of artificial intelligence are used by lawyers every day. However, Lawyer rightly has distinguished that generative artificial intelligence, a type of AI wherein the platform being used is learning and further developing from each query or task to generate new content and produce an appropriate response in this context to assist Lawyer, requires an examination of ethical considerations just as any other new technology service or device does that is being considered for implementation into Law Firm's use. In developing a policy to use generative artificial intelligence platforms within Law Firm, this office provides the following initial guidance as an Informal Opinion on the subject of generative artificial intelligence. The Informal Opinion is not intended to be an exclusive list of ethical considerations, as all of the Missouri Rules of Professional Conduct pursuant to Rule should be considered, but it is intended to address key ethical considerations to the question presented. Lawyer should also analyze other legal considerations outside the scope of an informal opinion. (Excerpts from 5-page Opinion. Adoption date April 25, 2024)

# Select State Ethics Rules & Opinions

## **Michigan Judicial Ethics Opinion 155:**

**Judicial officers must maintain competence with advancing technology, including but not limited to artificial intelligence.**

Judicial officers have an ethical obligation to understand technology, including artificial intelligence, and take reasonable steps to ensure that AI tools on which their judgment will be based are used properly and that the AI tools are utilized within the confines of the law and court rules. Further, as AI rapidly advances, judicial officers have an ethical duty to maintain technological competence and understand AI's ethical implications to ensure efficiency and quality of justice. (October 27, 2023)

# Select State Ethics Rules & Opinions

## **NY Social Media Ethics Guideline No. 3C:**

### **Retention of Social Media Communications with Clients**

If an attorney utilizes social media to communicate with a client relating to legal representation, the attorney should retain records of those communications, just as she would if the communications were memorialized on paper.

The lawyer must take affirmative steps to preserve those emails and social media communications, which the lawyer believes need to be saved. However, due to the ephemeral nature of social media communications, “saving” such communications in electronic form may pose technical issues, especially where under certain circumstances, the entire social media communication may not be saved, may be deleted automatically or after a period of time, or may be deleted by the counterparty to the communication without the knowledge of the lawyer.

Casual communications may be deleted without impacting ethical rules.

A lawyer shall not deactivate a social media account, which contains communications with clients, unless those communications have been appropriately preserved.



# Ethics Standards – AICPA

# Ethics Standards – AICPA

## **AICPA Code of Professional Conduct Structure**

### Introduction

- Section 50 – Principles of Professional Conduct
- Section 90 – Rules: Applicability and Definitions
- Section 100 – Independence, Integrity, and Objectivity
- Section 200 – General Standards Accounting Principles
- Section 300 – Responsibilities to Clients
- Section 400 – Responsibilities to Colleagues
- Section 500 – Other Responsibilities and Practices
- ET Appendixes
- ET Topical Index

<http://www.aicpa.org/about/code/index.htm>

# Ethics Standards – AICPA

## **AICPA Code of Professional Conduct Framework**

- Maintain the good reputation of the profession.
- Serve the public interest.
- Perform services with:
  - Integrity
  - Due care
  - Professional competence
  - Independence & Objectivity
  - Confidentiality
  - Dissociate from others who behave unethically

# Ethics Standards – AICPA

## **AICPA Code of Professional Conduct Principles**

The Principles guide members in the performance of their professional responsibilities:

- Article I – Responsibilities
- Article II – The Public Interest
- Article III – Integrity
- Article IV – Objectivity and Independence
- Article V – Due Care
- Article VI – Scope and Nature of Services

# Ethics Standards – AICPA

## **AICPA Code of Professional Conduct:**

- Article III: Integrity
  - Integrity is an element of character fundamental to professional recognition.
  - Integrity is the quality from which the public trust derives and the benchmark against which a member must ultimately test all decisions.
  - Integrity requires a member to be, among other things, honest and candid within the constraints of client confidentiality. Service and the public trust should not be subordinated to personal gain and advantage.
  - Integrity also requires a member to observe the principles of objectivity and independence and of due care.

# Ethics Standards – AICPA

## **Professional Standards for Ethics – AICPA**

- Statement on Standards for Tax Services
  - “SSTS” or “Standards”
    - SSTS and interpretations issued thereunder reflect the AICPA’s standards of tax practice and delineate members’ responsibilities to taxpayers, the public, the government, and the profession.
    - Ongoing process to articulate standards
    - Promulgated by the Tax Executive Committee

# Statements on Standards for Tax Services (SSTS)

- These statements apply to all members providing tax services regardless of the jurisdictions in which they practice. Interpretations of these statements may be issued as guidance to assist in understanding and applying the statements.
- The SSTSs and their interpretations are intended to complement other standards of tax practice, such as Treasury Department Circular No. 230, Regulations Governing the Practice of Attorneys, Certified Public Accountants, Enrolled Agents, Enrolled Actuaries, Enrolled Retirement Plan Agents, and Appraisers before the Internal Revenue Service; penalty provisions of the Internal Revenue Code; and state boards of accountancy rules.
- ...enforcement of these rules, as part of the AICPA's Code of Professional Conduct Rule 201, General Standards, and Rule 202, Compliance With Standards (AICPA, Professional Standards, vol. 2, ET sec. 201 par..01 and ET sec. 202 par..01), will be undertaken on a case-by-case basis. Members are expected to comply with them.

# Statements on Standards for Tax Services (SSTS)

## **Statement on Standards for Tax Services (Effective January 1, 2024)**

SSTS No. 1. General Standards for Members Providing Tax Services.

SSTS No. 2. Standards for Members Providing Tax Compliance Services, including Tax Return Positions.

SSTS No. 3. Standards for Members Providing Tax Consulting Services.

SSTS No. 4. Standards for Members Providing Tax Representations Services.



# Policies on AI

# Executive Order on AI (October 30, 2023)

- Relies on the definition of “artificial intelligence” found at 15 U.S.C. 9401(3): “a machine-based system that can, for a given set of human-defined objectives, make predictions, recommendations or decisions influencing real or virtual environments.”
- Directs 50 federal agencies to engage in more than 100 specific actions to implement the President’s guidance in 8 policy areas.
  - Safety and Security
  - Innovación and Competition
  - Worker Support
  - Consideration of AI Bias and Civil Rights
  - Consumer Protection
  - Privacy
  - Federal Use Of AI
  - International Leadership

# Executive Order on AI (October 30, 2023)

## Highlights

- Directs NIST to develop guidelines and best practices for “developing and deploying safe, secure, and trustworthy AI systems,” including with respect to cybersecurity, national security, and critical infrastructure.
- Directs the OMB Director to evaluate and propose new standards on the collection and processing of commercially available information that contains personally identifiable information.
- Requires OMB to establish an interagency council to coordinate use of AI by federal agencies and develop risk management activities for agencies.
- Directs all agencies to employ certain practices and training on proper use of AI to prevent AI misuse of federal government information.

# ABA Resolution 604

## **Adopted guidelines for the use of AI (February 2023)**

1. AI should be subject to human authority, oversight, and control
2. Accountability for consequences resulting from the use of AI
3. Transparency and traceability of AI products by documenting design and risk of data sets, procedures, and outcomes of using AI

# ABA Formal Opinion 512

## **Adopted guidelines for the use of AI (July 29, 2024)**

To ensure clients are protected, lawyers using generative artificial intelligence tools must fully consider their applicable ethical obligations, including their duties to:

1. Provide competent legal representation,
2. To protect client information,
3. To communicate with clients,
4. To supervise their employees and agents,
5. To advance only meritorious claims and contentions,
6. To ensure candor toward the tribunal,
7. And to charge reasonable fees.

# Corporate Policies – Law Firms

**Am Law 200 Policy**: Generative artificial intelligence tools such as ChatGPT (“AI”) may have some potential to assist in the provision of legal services. In their current form, however, the capability of AI tools to provide such assistance is limited and they must be used with caution. This policy is designed to permit certain use of AI given its current limited capability for legal services. Firm lawyers and non-lawyer personnel may use AI only in accordance with the following restrictions:

- Confidential client and Firm information, including client names and personal identifying information of others, may not be shared with an AI site or used in any AI tools. **Rule of Professional Conduct 1.6** generally precludes lawyers from revealing “information relating to the representation of a client unless the client gives informed consent ...” Users should carefully consider confidentiality and privilege issues before sharing any information.

# Corporate Policies – Law Firms

Firm lawyers and non-lawyer personnel may use AI only in accordance with the following restrictions:

- AI-generated content, including citations, legal assertions, analysis, and factual representations are unreliable and must be independently verified through reliable means that do not utilize AI.
- AI-generated content may be used as one source of background information or as a starting point for research, which must then be fully developed, explored, and vetted by the user.

# Corporate Policies – Law Firms

- AI-generated content may include verbatim copyrighted material without the user's knowledge. The applicable infringement rules are not yet well-established, and are currently the subject of litigation. To reduce the risk of infringement, use AI-generated content only as a starting point to generate ideas or as assistance in formulating work product. Final work product should be the user's own. Users may not simply copy AI-generated content into client work product, the Firm's website, or any Firm materials.
- AI is not a substitute for the user's professional judgment or analysis. When using AI to assist with a project, the structure and content of the project's final work product must be based on the user's independent reasoning, which may be informed by, but not delegated to, AI.



# Corporate Policies – Law Firms

- Confidential client and Firm information, including client names and personal identifying information of others, may not be shared with an AI site or used in any AI tools. Rule of Professional Conduct 1.6 generally precludes lawyers from revealing “information relating to the representation of a client unless the client gives informed consent ...” Users should carefully consider confidentiality and privilege issues before sharing any information.
- Before incorporating AI-generated text in work product for a client, edited as required by 4 and 5 above, users must obtain approval from the supervising partner.
- Users must comply with all client restrictions on the use of AI.
- Users must comply with all court rules on the use of AI.

# Corporate Policies – Accounting Firms

**Big Four Policy.** We recognize that the field of AI is rapidly evolving—and so is our approach. As the technology advances and legal, ethical, risk and regulatory standards mature, we will continue to review and evolve our approach as necessary.

Our approach to AI rests on ten ethical pillars across the AI lifecycle:

1. **Fairness.** AI solutions should be designed to reduce or eliminate bias against individuals, communities, and groups.
2. **Transparency.** AI solutions should include responsible disclosure to provide stakeholders with a clear understanding of what is happening in each solution across the AI lifecycle.
3. **Explainability.** AI solutions should be developed and delivered in a way that answers the questions of how and why a conclusion was drawn from the solution.
4. **Accountability.** Human oversight and responsibility should be embedded across the AI lifecycle to manage risk and comply with applicable laws and regulations.

# Corporate Policies – Accounting Firms

5. **Data Integrity.** Data used in AI solutions should be acquired in compliance with applicable laws and regulations and assessed for accuracy, completeness, appropriateness, and quality to drive trusted decisions.
6. **Reliability.** AI solutions should consistently operate in accordance with their intended purpose and scope and at the desired level of precision.
7. **Security.** Robust and resilient practices should be implemented to safeguard AI solutions against bad actors, misinformation, or adverse events.
8. **Safety.** AI solutions should be designed and implemented to safeguard against harm to people, businesses, and property.
9. **Privacy.** AI solutions should be designed to comply with applicable privacy and data protection laws and regulations.
10. **Sustainability.** AI solutions should be designed to be energy efficient, reduce carbon emissions, and support a cleaner environment.