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Woodland Hills Tax & Estate Planning Council

Do Androids Dream Of Ethical Sheep?

Updates And Horror Stories re AI Use Among California Lawyers



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J.D. is an active member of the Los Angeles legal community. He is the Immediate Past Chair of the Executive Committee of the Los Angeles County Bar Association (LACBA) Trusts & Estates Section and a former Vice President of LACBA.

He also dedicates significant time annually towards pro bono matters, including pro bono representations of unaccompanied minors in Special Immigrant Juvenile Status cases and of victims of financial elder abuse in partnership with various nonprofit legal-aid organizations.

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A. KEY DUTIES FOR ATTORNEYS

   A. Competence
   B. Diligence
   C. Confidentiality
   D. Supervision
   E. Candor/Communication

B. BEST PRACTICES

C. WORST PRACTICES

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Key Duty # 1 – Competence

Cal. Bus. & Prof. Code § 6067	atty oath includes duty to faithfully discharge duties … to the best of one's "knowledge and ability"
Bus. & Prof. Code § 6068	various duties relevant to competence, e.g., maintain only legal and just actions and defenses, etc.
Cal. Rule of Prof. Conduct ("CRPC") 1.1	• Can't "intentionally, recklessly, with gross negligence, or repeatedly fail to perform legal services with competence." (CRPC 1.1(a).) • Competence = must apply (i) learning, skill, and (ii) mental, emotional, and physical ability rsbly necessary to perform svc. (CRPC 1.1(b).) • An incompetent atty may competently represent by (i) consulting or associating with a competent lawyer, (ii) acquiring sufficient learning and skill, or (iii) referring the matter. (CRPC 1.1(c).) • Willfulness sufficient but <u>not</u> necessary to violate CRPC 1.1.



Key Duty # 1 – Competence (cont'd)

NEW STATUTE [EFFECTIVE 1.1.27 UNDER S.B. NO. 574]

Bus. & Prof Code § 6068.1

- (a)(1) ["Nothing in this section shall be construed to abrogate an atty's duty to exercise rsbl competence and diligence in the practice of law"]
- (a)(2) ["atty shall not delegate the practice of law to genAI"]
- (a)(3)(B) [attys who use genAI shall take rsbl steps to:
  - (i) verify the accuracy of genAI outputs, including, but not limited to, the accuracy of all case and statutory citations; and
  - (ii) correct any erroneous or hallucinated output]



Key Duty # 2 – Diligence

CRPC 1.3(a)	lawyers shall not "intentionally, repeatedly, recklessly, or with gross negligence fail to act with reasonable diligence representing a client"
CRPC 1.3(b)	rsbl diligence means that lawyer acts w/ "commitment and dedication" to the client's interests and does not neglect, disregard, or unduly delay a legal matter entrusted to the lawyer."

Diligence may require use of special resources and capabilities.

- *Corollary*: Lawyers cannot ignore technological advancements, e.g., computerized legal research and computer accessible libraries. (*Whirlpool Fin'l Corp. v. GN Holds., Inc.* (7th Cir. 1995) 67 F.3d 605, 610.)

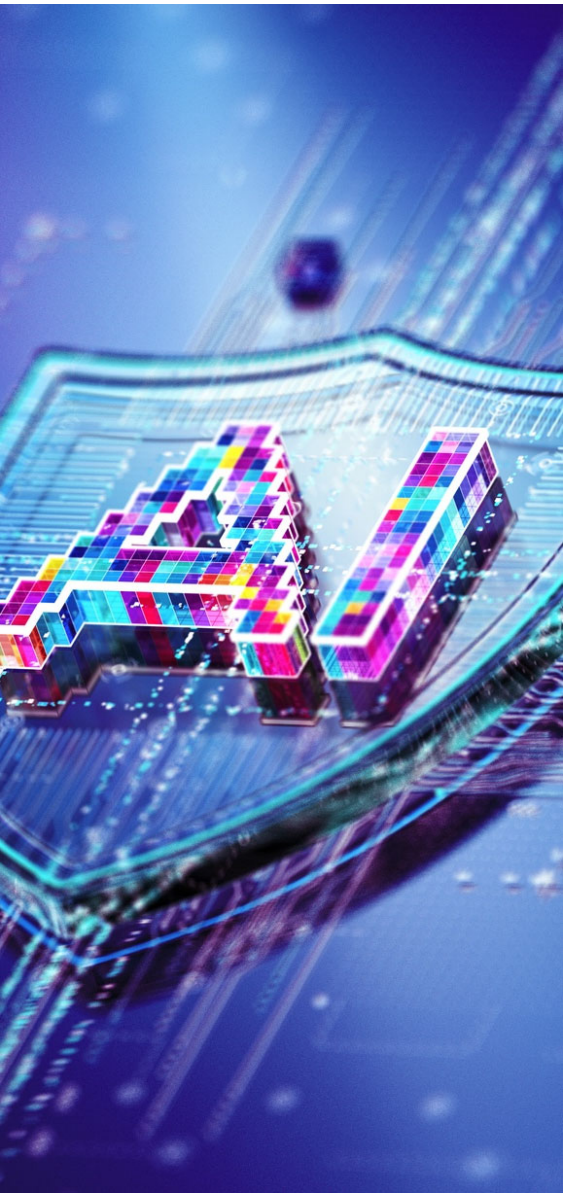


Key Duty # 2 – Diligence (cont'd)

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Key Duty # 3 – Confidentiality

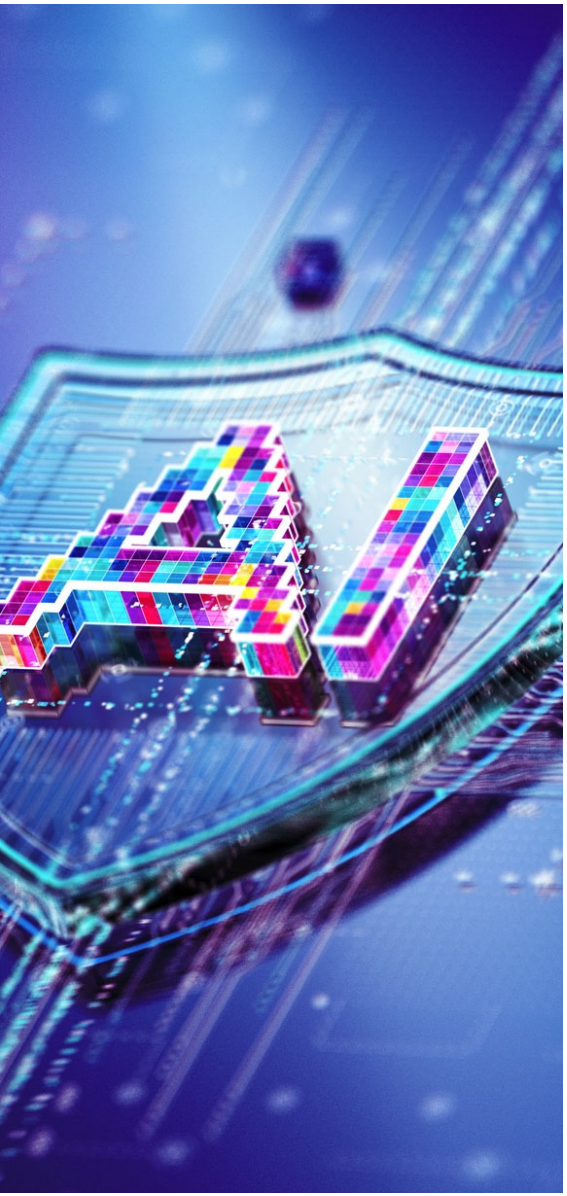
Bus. & Prof. Code § 6068(e)(1)	attys must maintain inviolate clt confidence and at every peril to him/herself preserve clt secrets
CRPC 1.6	attys shall not reveal 'confidential info' (per Bus. & Prof. Code § 6068(e)(1)) unless clt gives informed consent or disclosure is otherwise permitted

> Confidentiality is broader than atty-client privilege (see next pg.)

> "Secrets" may embrace any info gained during A-C relationship, i.e., any info relating to representation unless known generally.

Duration	survives termination of attorney-client relationship and persists even after client's death.

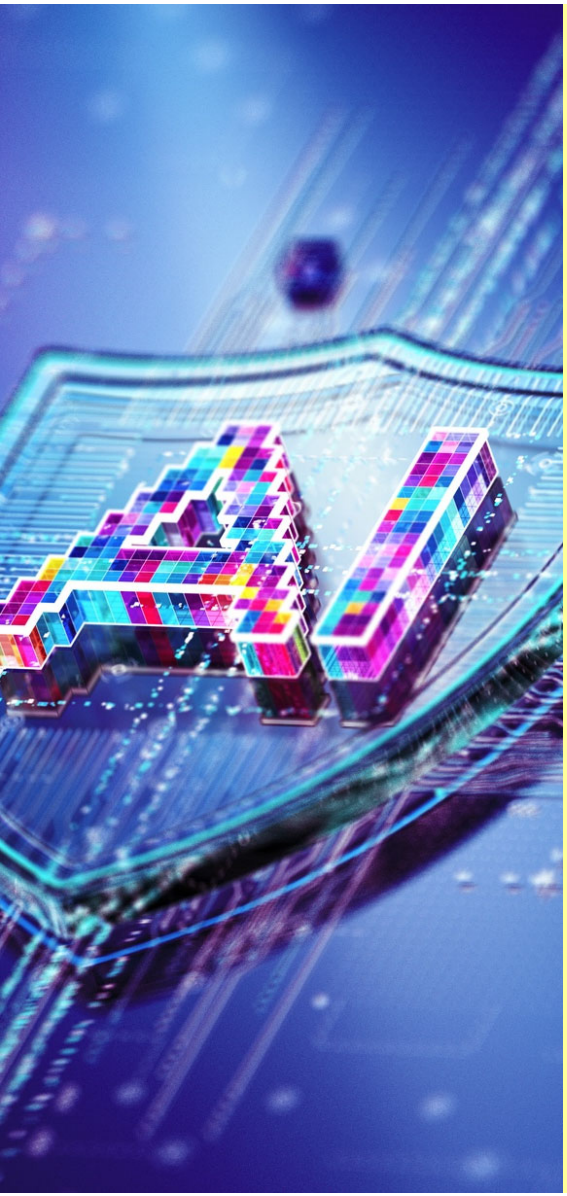
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Key Duty # 3 – Confidentiality (cont'd)

Attorney-Client ("A-C") Privilege, Generally	clts have priv to refuse to disclose, and to prevent others from disclosing, confidential comms. b/w clt and atty. (Ev. Code §§ 954, 950–53.)
Duration of A-C Privilege	terminates at final distribution of estate and discharge of personal rep. • (Law Rev. Comm. Cmt. To Ev. Code § 954.)
Exceptions to A-C Priv:	• Crime/Fraud (Ev. Code § 956, 956.5); • Parties claiming thru deceased clt (§ 957); • Malpractice & related claims (§ 958)

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Key Duty # 3 – Confidentiality (cont'd)

NEW STATUTE [EFFECTIVE 1.1.27 UNDER S.B. NO. 574]

Bus. & Prof Code § 6068.1(a)(3)

atty who uses genAI **shall "[n]ot enter confidential, personal identifying, and other nonpublic information**" into a genAI system if access to that system "is **not restricted to the atty and persons authorized by the atty** under obligations **to protect the confidentiality of the info**."



Key Duty # 4 – Supervision

Supervising *LAWYERS*

CRPC 5.1(a)	managerial lawyer must make rsbl efforts to ensure firm lawyers comply w/ CRPC and State Bar Act
CRPC 5.1(b)	lawyer w/ direct supervisory authority over other lawyer(s) must make rsbl efforts to ensure compliance w/ CRPC and State Bar Act by subordinate(s)
Duty to supervise applies:	• even if subordinate atty is experienced; • to contract and temporary lawyers; • to outsourced legal services (e.g., to other law firms).



Key Duty # 4 – Supervision (cont'd)

Supervising *NONLAWYER ASSISTANTS*

"Nonlawyer assistants" include:

- E.g., "secretaries, investigators, law student interns, paraprofessionals," whether independent contractors or employees (Cmt. to CRPC 5.3)

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Key Duty # 4 – Supervision (cont'd)

Supervising *NONLAWYER ASSISTANTS (cont'd)*

CRPC 5.3(a)	managerial lawyers must make rsbl efforts to ensure conduct of nonlawyers assistants is compatible w/ lawyer's duties (i.e., SBA and CRPC)
CRPC 5.3(b)	lawyers w/ direct supervisory authority over nonlawyer must make reasonable efforts to ensure nonlawyer's conduct is compatible with lawyer's duties
CRPC 5.3(c)	lawyer is responsible for nonlawyer assistant's conduct that would violate CRPC or SBA if engaged by lawyer where lawyer (1) orders or knowingly ratifies conduct, or (2) has managerial or direct supervisory authority over nonlawyer and knowingly fails to take remedial action when possible



Key Duty # 4 – Supervision (cont'd)

NEW STATUTES [EFFECTIVE 1.1.27 UNDER S.B. NO. 574]

Bus. & Prof Code § 6068.1(a)(2)	"**atty shall not delegate the practice of law to [genAI]**"
Bus. & Prof Code § 6068.1(a)(3)(B)	attys must take steps to **verify accuracy of genAI outputs and correct erroneous or hallucinated output**
Code of Civ. Proc. § 128.7(b)(2)	[no pleading, petition, motion, or other paper filed w/ a ct shall contain any citations that an atty responsible for submitting "the pleading has not ***personally verified***, including any provided by [genAI]"] [emph. added] • Code of Civ. Proc. § 128.7(a) [≥1 atty must sign and certify per filing]

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Key Duty # 5 – Candor & Communication

Candor With Court/Tribunal

CRPC 3.3

A lawyer may not:

- Make false statements of fact/law, or fail to correct prior false statements of material fact/law to tribunal
- Fail to disclose legal authority in controlling jdx known to be directly adverse, "or knowingly misquote… language of a book, statute, decision or other authority"
- Offer knowingly false evidence, incl. offering false testimony, and if false evidence is offered, lawyer must take rsbl remedial measures, incl. disclosure to tribunal unless prohibited by Bus. & Prof. Code § 6068(e)/CRPC 1.6 [re confidential info].)



Key Duty # 5 – Candor & Communication (cont'd)

NEW STATUTES [EFFECTIVE 1.1.27 UNDER S.B. NO. 574]

Bus. & Prof Code § 6068.1(a)(3)(C)	atty who uses genAI to assist in the practice of law sh**all "disclose the use of genAI to the court for all documents submitted to the ct *and* consider whether to disclose the use of genAI if it is used to create content provided to the public**." [emph. added].
Code of Civ. Proc. § 128.7(b)(2)(A)	briefs, pldgs, mtns, and other papers filed in ct shall not contain any citations that atty responsible for submitting has not **personally verified**, incl. any citation provided by [genAI]."



Key Duty # 5 – Candor & Communication (cont'd)

Candor With Court/Tribunal (Cont'd)

See also Cal. Rules of Court and Local and Courtroom Rules re genAI policies, incl. restrictions and disclosure req'ts

E.g., O.C.S.C. judge's Courtroom Rule re GenAI:

"Counsel and self-represented parties are responsible for providing the court w/ complete and accurate representations of the record, procedural history, and cited legal authorities. **Use of [genAI] is not prohibited**, **but counsel or the self-represented party must personally confirm"** accuracy and "**alone bear[] ethical responsibility**" for all statements made by genAI in filings, etc. [emph. added].



Key Duty # 5 – Candor & Communication (cont'd)

Candor With Court/Tribunal (Cont'd)

Be advised – California cts are already using genAI

E.g., SCLAC/LASC:

- "[J]udicial officers and staff access to a closed version of Microsoft Copilot," which "operates on a closed system, pulling information only from court-approved sources."
- Ct policy allows use of other tools, incl. "Google Gemini, Anthropic Claude, OpenAI ChatGPT, Thomson Reuters and LexisNexis, but only if" users follow guidelines set forth in Court's AI policy, incl. "prohibition against entering confidential, sealed or [PII]."
- Plus, "Learned Hand" tool as of January 2026.



Key Duty # 5 – Candor & Communication (cont'd)

Candor/Communication with Clients

CRPC 1.4(a)(2) atty must communicate w/ clt, incl. "consult[ing]" w/ clt re "means by which to accomplish… client's objectives in the representation"

Breach of duty to communicate may also constitute breach of duty to act competently. (*Calvert v. State Bar* (1991) 54 Cal.3d 765)

Failure to keep client informed about "significant developments" is grounds for discipline, and while "significant development" depends on nature/scope of representation, generally, identity of lawyers working on case and outsourcing of legal svcs. are significant developments. (Cal. State Bar Form.Opns. 2004-165 and 1994-138.)

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What GenAI/LLMs Are Good At vs. What They Aren't

Good at:

- ✓ Rewriting and adjusting tone
- ✓ Summarizing documents or written data
- ✓ Pulling information into tables
- ✓ First drafts
- ✓ Organizing messy information
- ✓ Automating rote actions at volume
- ✓ Applying well-codified rulesets

Unreliable at:

- ✗ Legal research without a grounded legal tool
- ✗ Facts it wasn't given
- ✗ Math it isn't built to check
- ✗ Knowing when it's wrong or when to ask clarifying questions (esp. off-the-shelf tools)

Best Practices for Lawyers

Duties: Competence, Diligence, Confidentiality

Competence

1. Take responsibility—***always*** ensure you (or a human) checks all output.
2. Use the right tools for the right job.
3. Always check state, county, and local, and courtroom rules re genAI/LLM policies, disclosures, etc.

Diligence

1. Keep learning and training, especially re prompting.
2. Take notice of those who have messed up in foreseeable ways.
3. Don't neglect/delay a case and use that as a justification to take shortcuts

Confidentiality

1. Only disclose client confidences if you have a rsbl expectation of privacy; most free/lay LLMs do not entail a rsbl expectation of privacy.
2. Ask vendors about data privacy and whether inputs are used to train.
3. Double check terms and conditions re confidentiality, if necessary
4. Try to anonymize things as a general practice

Best Practices for Lawyers

Duties: Supervision, Candor/Communication

Supervision

1. Have express policies & procedures if you have managerial/supervisory authority.
2. Discuss openly w/ colleagues when and how to use genAI.
3. Humans must check all genAI output. Always.
4. Attys & non-atty assistants alike must be taught before they use genAI tools and must receive ongoing training/supervision over time.

Candor & Communication

Re Courts:

1. Check whether your ct/judge prohibits or has disclosure or other requirements re genAI.
2. Double check all genAI out before filing with ct, including all factual and legal cites; signing atty is ultimately responsible.

Re Clients

1. Obtain express clt consent ***before*** using genAI or disclosing confidences.
2. Make sure clt is aware of assumptions/limitations of genAI and assists in reviewing output for accuracy.
3. Warn clts re risk of waiver of A-C privilege/confidentiality if *they* use non-confidential genAI.

High-Value GenAI Uses for T&E Attorneys and Professionals

Planning

Updating an old estate plan
→ Summarize it and flag what to revise

Drafting from a blank page
→ First Drafts of instruments

Funding that never gets done
→ Checklists that track it to done

Administration

Hours of fee-invoice math
→ Categorize entries, draft the attorney fee declaration

Every asset for the 706
→ One inventory, with discounts flagged

Heated beneficiary correspondence
→ Neutral, professional drafts

Litigation

A motion just landed
→ Outline the opposition, with authority

Piles of pleadings and discovery
→ Summaries you can navigate

Deposition and exam prep
→ Outlines and inconsistencies

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Worst Practices

Filing Papers W/out Checking GenAI Outputs; Refusing To Be Forthright When Confronted; Failing To Supervise; Demonstrating Ignorance About Common Pitfalls

Mata v. Avianca	(S.D.N.Y. 2023) 678 F.Supp.3d 443 (leading genAI discipline case)
Noland v. Land of the Free, L.P.	(2025) 114 Cal.App.5th 426 *(*leading CA genAI discipline case*)* [“A fake opinion is not ‘existing law’ and citation to a fake opinion does not provide a non-frivolous ground for extending, modifying or reversing existing law, or for establishing new law. An attempt to persuade a court or oppose an adversary by relying on fake opinions is an abuse of the adversary system.”]
Quinteros v. Harbor Distr., LLC	(2026) 121 Cal.App.5th 60 (recent CA genAI discipline case) [judge: “The most egregious example of misrepresentation of the law that I’ve ever seen.”]

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Worst Practices (cont'd)

1. **Blaming paralegals, assistants, law-student interns, and/or contract attys;**

2. **Failing to apologize if genAI is used improperly ("doubling down");**

3. **Using—or letting a client use—non-confidential AI;**
   - Potential waiver of A-C privilege/confidentiality *(U.S. v. Heppner* (S.D.N.Y. 2026))

4. **Failing to know or restrict expert reliance on genAI; and**
   - August 2026 Case re expert that signed report that was "90–85% ChatGPT" and where prompt was, "Show how [client] was 0% at fault for explosion" and how expert's "background and experience is well suited to render this professional opinion" (which came out in expert's depo—yikes!)

5. **Filling evidentiary gaps w/ genAI (or carelessly allowing others to do so)**
   - Victim impact statement (Arizona appeals court overturns 10.5-year prison sentence based on trial court's allowing of AI-generated victim of deceased victim)
   - Need to be on the lookout for clts, third parties, and opposing who may be using genAI to fabricate evidence

TOPICS FOR ROUNDTABLE DISCUSSION:

A. How are you hearing about integration of AI, for lawyers and other professionals?

B. Is anything working well for you or people you know, in terms of efficiencies gained/headaches saved?

C. How prevalent are formal policies, procedures, and trainings, in your experience?

D. How is the consent/disclosure process going (for clients and for other third parties)?

E. Is genAI a topic of discussion with experts yet (yours or opponents)?

F. What other genAI issues are you running into or do you foresee becoming big problems?

Questions?

Please contact me!



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