AI in the Practice: Productivity Tool or Malpractice Trap?

In 2023, a federal judge sanctioned two attorneys for submitting a brief that cited multiple cases that did not exist. All were generated by ChatGPT.

The Adoption Curve Has Outpaced the Risk Conversation

Artificial intelligence tools have moved from curiosity to operational reality in law firms faster than most risk managers anticipated. Harvey, CoCounsel, ChatGPT and a growing list of legal-specific AI platforms are now being used for everything from contract review and legal research to drafting motions and client communications.
The productivity gains are real. But so are the risks, and the legal profession has been slow to develop formal guardrails.

The challenge isn't that AI is inherently dangerous. The challenge is that attorneys are using these tools without firm-wide policies, without consistent training and often without disclosing their use to clients. In that environment, the conditions for a malpractice claim or a bar complaint are easier to meet than many management committees realize.

Three Ways AI Creates Professional Liability Exposure

Hallucinated citations are the most visible risk, but they're not the only one. AI language models are designed to generate confident-sounding text, not to verify legal accuracy. When an associate accepts AI output without independent verification, the resulting work product may contain fabricated case citations, misstatements of law, or analysis that sounds authoritative but is factually wrong. The supervising partner who signs off carries the liability.

Confidentiality breaches represent a subtler but potentially more serious exposure. Many AI tools, including free consumer versions of ChatGPT, use the content you submit to train their models. If an attorney pastes client facts, deal terms or privileged communications into one of these tools, that information may no longer be confidential. Most firms have not updated their confidentiality policies to address this. Most professional liability policies also haven't explicitly addressed it, which creates ambiguity at claims time.

Unauthorized practice and disclosure issues round out the picture. Some state bars have issued guidance requiring disclosure to clients when AI is used in their matters. Others are actively developing rules. Attorneys who don't track these developments or who assume no disclosure is required may find themselves facing bar complaints in addition to civil claims.

What a Reasonable AI Policy Looks Like

An effective firm-wide AI use policy doesn't need to be prohibitive, but it needs to be clear. At a minimum, it should specify which AI tools are approved for use, require human verification of all AI-generated work product before it's submitted or transmitted, prohibit inputting client-identifying information into nonapproved tools, and address disclosure obligations on a jurisdiction-by-jurisdiction basis.

From an insurance standpoint, carriers are beginning to ask about AI governance on professional liability renewal applications. Firms that can demonstrate a thoughtful and straightforward policy are better positioned than firms that have nothing in writing. The absence of a policy is increasingly being treated as a risk factor.

A Word From Gallagher

Gallagher's law firm practice team helps firms understand how AI use intersects with their professional liability coverage and what steps carriers are starting to expect. If you haven't reviewed your policy terms or drafted an AI use policy for your firm, we can help you think through both. Contact us to start that conversation.

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