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Oregon Issues Ethics Opinion on AI in Law Practice

**By Mark J. Fucile
Fucile & Reising LLP**

The Oregon State Bar recently issued an ethics opinion addressing the use of artificial intelligence—“AI”—tools in law practice. OSB Formal Opinion 2005-205 (2025) surveys the issues surrounding AI tools in law practice generally and is similar in scope and content to the comprehensive opinion the ABA issued on this topic last Summer—ABA Formal Opinion 512 (2024). The opinions are available, respectively, on the OSB and ABA websites. While not plowing any new ground, the Oregon opinion offers reassurance to Oregon practitioners that the national guidance in the ABA opinion applies with equal measure to local use of AI tools.

Like its ABA counterpart, the Oregon opinion focuses on competence and confidentiality—along with billing, supervision, and appropriate use in court filings. Oregon does not have comments to its RPCs, so the opinion borrows from both the ABA Model Rule comments and from a prior Oregon opinion on cloud computing—OSB Formal Opinion 2011-188 (rev. 2015).

On competence, the Oregon opinion stresses that lawyers must understand how the AI tools they are using in law practice work to meet their duty of competence. In doing so, the Oregon opinion cites the notorious New York case—*Mata v. Avianca, Inc.*, 678 F. Supp.3d 443 (S.D.N.Y. 2023)—where a

lawyer used Chat GPT to write a brief that included citations to non-existent cases and then claimed later in the face of sanctions that he didn't understand how the tool worked.

On confidentiality, the Oregon opinion relies on its earlier cloud computing counterpart to stress that lawyers need no understand the contractual assurances of confidentiality that are typically offered by commercial AI tools oriented toward law practice and other professional fields. It adds that while consumer AI tools are not prohibited in law practice, their use may need to be carefully tailored to avoid disclosing client confidential information in an unprotected environment.

Both the Oregon and ABA opinions implicitly acknowledge that they are offering current guidance in a very rapidly evolving area and that their analysis is based largely on the experience gained through integrating earlier waves of technological change into law practice. As such, neither bills itself as the "last word" on this changing topic. For the "here and now," however, they both offer prudent practical advice to lawyers incorporating AI into their practices.

ABOUT THE AUTHOR

Mark J. Fucile of Fucile & Reising LLP advises lawyers, law firms and legal departments throughout the Northwest on professional responsibility and risk management. Mark has chaired both the WSBA Committee on Professional Ethics and its predecessor, the WSBA Rules of Professional Conduct Committee. Mark has served on the Oregon State Bar Legal Ethics Committee and is a member of the Idaho State Bar Section on Professionalism & Ethics. Mark writes the Ethics Focus column for the Multnomah (Portland) Bar's *Multnomah Lawyer*, the Ethics & the Law column for the WSBA *Bar News* and is a regular contributor on legal ethics to the WSBA *NWSidebar* blog. Mark is a contributing author and the editor-in-chief for the WSBA *Legal Ethics Deskbook* and is a contributing author and principal editor for the OSB *Ethical Oregon Lawyer* and the WSBA *Law of Lawyering in Washington*. Before co-founding Fucile & Reising LLP in 2005, Mark was a partner and in-house ethics counsel for a large Northwest regional firm. He also teaches legal ethics as an adjunct for the University of Oregon School of Law at its Portland campus. Mark is admitted in Oregon, Washington, Idaho, Alaska and the District of Columbia. He is a graduate of the UCLA School of Law. Mark's telephone and email are 503.860.2163 and Mark@frllp.com.