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**Good Counsel:
New OSB Opinion on AI Tools in Law Practice**

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Earlier this year, the Oregon State Bar issued an ethics opinion broadly surveying emerging issues for lawyers using artificial intelligence tools—"AI tools"—in law practice. Formal Opinion 2025-205 adds an Oregon accent to a similar survey from the ABA last year from a national perspective in Formal Opinion 512. The opinions are available, respectively, on the OSB and ABA web sites.

The Oregon opinion, like its ABA counterpart, focuses primarily on competence and confidentiality. We'll discuss those two areas here with specific reference to the Oregon opinion.

Before we do, however, two qualifiers are in order.

First, although we'll focus on competence and confidentiality, the Oregon opinion addresses many other areas—including communicating with clients about the AI tools used in handling their work, billing for AI tools, supervision of both lawyers and staff using AI tools, and following any applicable court rules when using AI tools for briefs and other court filings.

Second, the Oregon opinion acknowledges that in this rapidly developing area, new issues are likely to arise and will require further analysis.

Understandably, the opinion is framed around general issues that also arose

during earlier waves of technological change in law practice. Those earlier waves, however, primarily brought greater efficiency. AI tools at some point may also involve a degree of professional judgment that may require new or different thinking.

Competence

Formal Opinion 2025-205 leads with the bedrock precept that lawyers under RPC 1.1 must competently handle client work.

An earlier Oregon State Bar opinion in the context of cloud computing—Formal Opinion 2011-188 (rev. 2015)—emphasized that competence under RPC 1.1 includes both substantive knowledge of applicable legal principles and understanding the technology we use in handling client work.

The new opinion echoes that approach. Formal Opinion 2025-205 emphasizes that lawyers exploring the use of AI tools in law practice must conduct sufficient due diligence to understand both their utility and their risks and must undertake adequate training before using them for client work. In some instances, lawyers will have the requisite technical competence to handle these tasks on their own. In others, they will need assistance from knowledgeable technology professionals—whether on a law firm’s staff, outside consultants, or a combination.

Formal Opinion 2025-205 cites *Mata v. Avianca, Inc.*, 678 F. Supp.3d 443 (S.D.N.Y. 2023), as a cautionary tale. *Mata*, which produced significant national media attention, involved a lawyer who didn't understand how the "free" version of Chat GPT worked, used it to write a brief that resulted in multiple citations to non-existent cases, and then had his partner (who, unlike the lawyer-drafter, was admitted in the federal district involved) file it without checking the accuracy of the cites. Aside from what *Mata* may say about human nature, it provides a powerful example of how not to approach new AI tools. The court in *Mata* was not amused with the lawyer's "I didn't understand what I was doing" defense. The lawyer, his partner, and their law firm were all sanctioned by the court.

Confidentiality

Formal Opinion 2025-205 addresses confidentiality in considerable detail. It begins by outlining the broad sweep of the confidentiality rule—RPC 1.6—and the specific responsibility lawyers have under RPC 1.6(c) for taking reasonable steps to protect client confidentiality.

Formal Opinion 2025-205 notes that some consumer AI tools—which the opinion calls "open models"—offer no assurance of confidentiality and typically use information provided to "train" the tool involved. That does not necessarily mean that a general consumer product can never be used in law practice. For

example, a personal injury lawyer might want to know about weather conditions in an area on the day of an accident. Using readily available internet sites to obtain this kind of information would ordinarily be permitted because it does not reveal client confidential information. By contrast, the lawyer in *Mata* entered increasingly client-specific search prompts into a “free” version of ChatGPT apparently without appreciating the confidentiality issues involved.

Formal Opinion 2025-205 counsels that, in theory, confidential information could be shared with an “open model” with a client’s informed consent. “Informed consent” is a defined term under RPC 1.0(g) and requires a discussion with the client in advance concerning the risks along with any benefits. A significant generic risk in this scenario is that privilege could be waived and, under OEC 511, waiver generally goes to the subject of a communication—not simply a particular conversation or isolated document.

By contrast, Formal Opinion 2025-205 notes that AI products tailored to legal work—which the opinion calls “closed models”—typically offer contractual assurances of confidentiality consistent with our duty as lawyers and do not use information shared to train the tool involved. The opinion cautions, however, that even with “closed models,” the contractual assurances warrant close review before sharing client confidential information with an AI tool.

Formal Opinion 2025-205 finds that with “closed models” offering solid contractual assurances of confidentiality from reputable vendors, client consent is ordinarily not required. The opinion cautions, however, that the need for client consent can turn on the sensitivity of the information involved, and the client concerned. In making these observations, the recent Oregon opinion again mirrors the general guidance offered earlier by OSB Formal Opinion 2011-188 in the context of electronic file storage.

ABOUT THE AUTHOR

Mark J. Fucile of Fucile & Reising LLP advises lawyers, law firms, and corporate and governmental legal departments throughout the Northwest on professional ethics 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 the editor-in-chief and a contributing author for the WSBA *Legal Ethics Deskbook* and a principal editor and contributing author 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.