

WSBA NWSidebar

Posted: June 2, 2025

New Alaska Ethics Opinion on Artificial Intelligence

By Mark J. Fucile

Fucile & Reising LLP

The Alaska Bar recently issued an ethics opinion addressing the use of artificial intelligence tools in law practice. Alaska Bar Ethics Opinion 2025-1 surveys the issues surrounding AI tools in law practice generally while focusing on competence, confidentiality, and billing. As such, it is broadly similar in scope and content to ABA Formal Opinion 512 that was issued last year.

For Washington lawyers, there is a nuance in the Alaska opinion's treatment of confidentiality that warrants note. When using AI tools for research, the search prompts can trigger confidentiality issues because AI tools often harvest inputs to "learn" information for future analysis. This can run headlong into a lawyer's duty of confidentiality under RPC 1.6 if the prompts are so specific as to reveal client confidential information. In the notorious New York case involving the lawyer who used a "free" version of a consumer AI tool to write a brief that included citations the AI tool simply made-up, the lawyer also used an increasingly specific series of prompts that may have revealed confidential information. Although the lawyer in *Mata v. Avianca, Inc.*, 678 F. Supp.3d 443 (S.D.N.Y. 2023), was sanctioned for the fake citations, the confidentiality issue is an important risk management teaching point as well.

Page 2

The Alaska opinion notes that confidentiality is often addressed by using an AI tool tailored to law practice with contractual assurances of confidentiality consistent with our own duty in that regard—typically by employing a “closed” system where a lawyer’s prompts will not be used to teach the AI tool and instead effectively remain within the lawyer’s account. In that sense, the approach is similar to law firm files stored on third-party remote servers and the Alaska opinion cites to its cloud-computing predecessor (Alaska Ethics Op. 2014-3) in this regard.

The Alaska opinion counsels that when lawyers use an AI tool that is not a closed system (such as general consumer products or services), they should “anonymize” their prompts. The Alaska opinion, however, doesn’t drill down further on the risks of even “anonymized” prompts. Albeit in the context of providing statistical data to legal aid funders, a recent Washington opinion—WSBA Advisory Op. 202402 (2024)—parses the confidentiality risks of anonymized data in an era when sophisticated programs can in some instances pair anonymous information with publicly available data to reconstruct, for example, client identity. In doing so, WSBA Advisory Opinion 202402 notes that Comment 4 to RPC 1.6 cautions that our duty of confidentiality extends to “disclosures . . . that do not in themselves reveal protected information but could

reasonably lead to the discovery of such information by a third person.” This risk seems especially pronounced when entering data in a powerful AI tool. That’s not to say that anonymizing inputs in a “non-closed” system is not a good idea, but in some circumstances it may not be a foolproof solution and suggests only using a closed system with appropriate contractual assurances of confidentiality for inputs that could reasonably—either directly or indirectly—reveal client confidential information.

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.