

COMPUTER AND TECHNOLOGY SECTION

Policies before Problems

Drafting AI Engagement Terms & Firm Rules

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How the Courts are Approaching AI Usage by Lawyers

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How Courts are Approaching AI

- Recent Cases
- Protective Orders
- Show Cause Orders
- Local Rules
- Certifications Required

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How others are approaching AI Usage by Lawyers

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How Others are Approaching AI

- Insurance Perspective
 - Claims/Grievances
 - Coverages / Exclusions / Limitations
- Law School Perspective
- Private Practice Perspective
- In House Perspective

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03**Is a GAI Policy Required?**

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The Short Answer is “Yes”

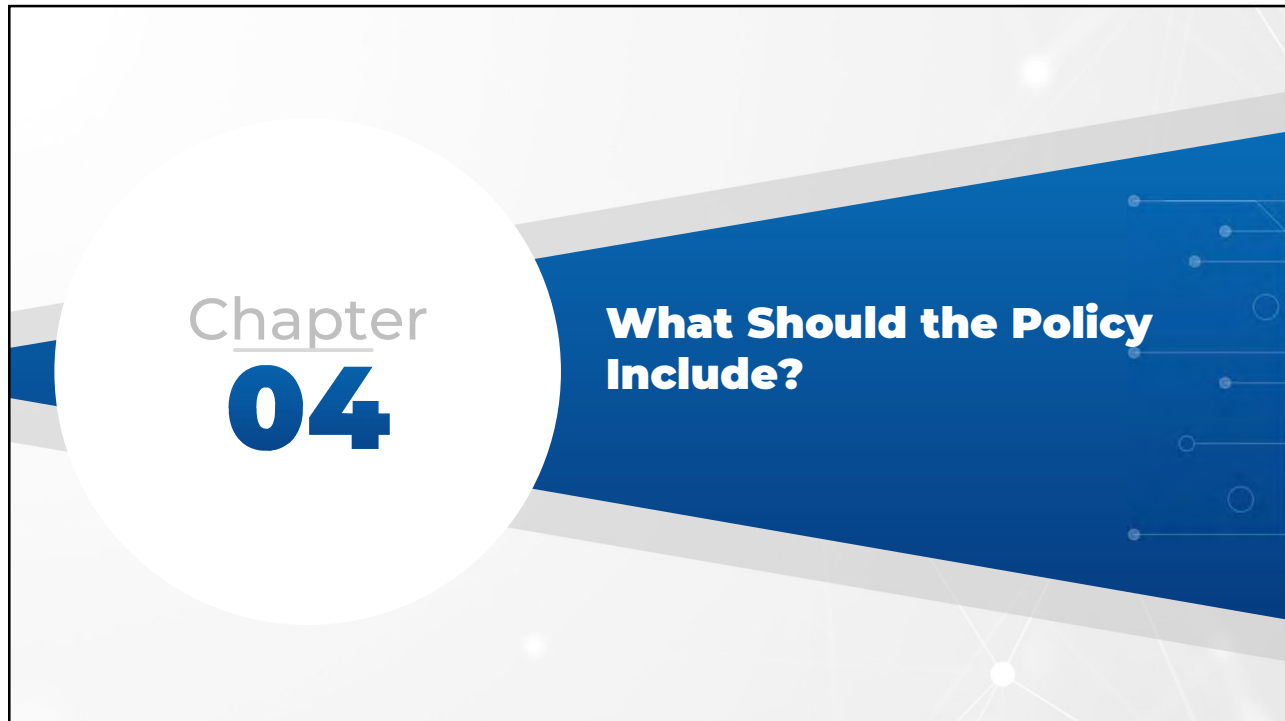
- Texas Disc. Rule Prof'l Conduct 5.01 (a) - Lawyers with managerial authority are required to make reasonable efforts to **establish internal policies and procedures** designed to provide reasonable assurance that all lawyers in the firm will conform to these Rules.
- **ABA Formal Opinion 512** requires that managerial lawyers establish clear policies regarding AI use and ensure compliance by all firm personnel.

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Why a Policy is Important (and in writing is best)

- Prevents Use without Guardrails
- Demonstrates Compliance – to clients, courts, & insurer
- Allows Control
- Facilitates Enforcement
- Offers Protection
- Mitigates Risk

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What Should the Policy Include?

Purpose & Scope

Why the policy exists and who and what it covers — all lawyers, staff, matters, and AI tools used in the practice.

Permitted & Prohibited Uses / Vetting of Tools

Define approved tasks and off-limits uses; require firm review and sign-off before any tool is adopted.

Data Privacy, Security & Retention

Bar entry of confidential or client data into unapproved tools; set storage, access, and deletion standards.

Verification & Quality Control

Require human review of every AI output for accuracy, authority, and citations before it leaves the firm.

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What Should the Policy Include?

Client Disclosure & Consent

Specify when and how clients are told about AI use, and when written consent must be obtained.

Vendor & Third Party Tools

Diligence vendors on confidentiality, training-data use, and contractual protection of client information.

Training & Professional Competence

Ongoing education on approved tools, their limits, and the duty of technological competence.

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What Should the Policy Include?

Incident Reporting & Breach Response

Clear channels to report errors or exposures, with defined escalation and remediation steps.

Monitoring, Enforcement & Accountability

Assign oversight and consequences so the policy is actually followed, not just written.

Policy Review & Continuous Improvement


Revisit the policy on a set schedule as tools, ethics rules, and risks evolve.

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THE DUTY TO SUPERVISE



TDPRC 5.01(b) - A lawyer having direct supervisory authority over another lawyer shall make reasonable efforts to ensure that the other lawyer complies with these rules



TDRPC 5.03(a) - A lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer

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The Duty to Supervise

- Training of ALL personnel imperative
 - On the policy and on the approved tools
- Document quality controls and verification of outputs
- Audit Trails
- Litigation Holds

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Chapter **06**

Communicating with Clients about AI

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Three Primary Communications to Consider

- Disclosures re: Use in Engagement Letters
- Informed Consent for Disclosure of Confidential Information
- Warnings to Clients about their own AI use

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Disclosures in Engagement Letters

TDRPC 1.03 — Duty to Communicate

The duty to keep clients reasonably informed is the basis for telling them, in the engagement letter, whether and how AI may be used in their matter.

- (a)** A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.
- (b)** A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

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Disclosures in Engagement Letters

In the Engagement Letter

State plainly whether the firm uses AI on the matter and for what purposes, so the client can make an informed decision about the representation.

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Informed Consent for Disclosure of Confidential Information

- **Texas Ethics Opinion 705:** In any case where the lawyer intends to provide confidential information to an AI program, Rule 1.05 will likely be implicated.
- **TDRPC 1.05:** A lawyer shall not **knowingly** reveal confidential information to any person other than those who are permitted to receive it under TDRPC 1.05 **unless client consents after consultation**, or another exception applies.

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“Informed Consent” is a Defined Term

- Client agreement
- to a proposed course of conduct
- after the lawyer has communicated **adequate information and explanation about material risks of and reasonably available alternatives**
- to the proposed course of conduct.

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What informed consent may look like:

- Discussion with the client about:
 - **benefits** of using the tool;
 - the extent of and specific information regarding the **risks**;
 - the **types** of client information that will be disclosed;
 - **steps taken** to verify that the tool will not reveal confidential information; and
 - reasonably available **alternatives** to using the tool.

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Warnings to Clients About Their Own Use of AI

- Waiver of Attorney Client Privilege and No Privilege
- No communication between a client and a licensed attorney
- Not made in confidence nor for the purpose of receiving legal advice
- *United States v. Heppner* (consumer version of Anthropic's Claude) to help analyze reports and generate backup documents. He sent those to his lawyer.
- Anthropic's policy advised retention of input and output

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The Engagement Letter

- Explicitly tell clients they are not to input facts, documents, or conversations in public AI tools. Give them examples of popular platforms so they understand
- Explain there is no privilege. They can waive attorney client privilege
- Get their signature that they read and understood

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Sample Language #1 - *In MORGAN, v V2X, Inc., (Colorado)*

- No party or authorized recipient may input, upload, or submit CONFIDENTIAL Information into any modern artificial intelligence platform, including any generative, analytical, or large language model-based tool (“AI”), unless the AI provider is contractually prohibited from:
 - (1) storing or using inputs to train or improve its model; and
 - (2) disclosing inputs to any third party except where such disclosure is essential to facilitating delivery of the service.

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Sample Language #1, continued

- Where disclosure to a third party is essential to service delivery, any such third party shall be bound by obligations no less protective than those required by this Order.
- In addition, the AI provider must contractually afford the party or authorized recipient the ability to remove or delete all CONFIDENTIAL information upon request. A party intending to use AI that it contends meets these requirements must retain written documentation.

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Sample Language #2

- To preserve the confidentiality of communications and maximize protection under the attorney-client privilege and work-product doctrine, **Client shall not**
- input, upload, transmit, summarize, analyze, or otherwise disclose any information relating to this representation—including facts, documents, communications, strategy, legal issues, draft materials, or attorney advice—
- into any artificial intelligence platform, including generative artificial intelligence platform, chatbot, automated search or query tool, or other third-party artificial intelligence system, whether public, consumer-facing, or enterprise-based, without Attorney’s prior written consent.

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Sample Language #2, continued

- Client acknowledges that disclosure of matter-related information to such third-party systems may create a risk of unauthorized access, data retention, secondary use, or waiver of privilege or other protections.
- Accordingly, Client agrees to communicate about this matter only through channels approved by Attorney and to direct any research, drafting, or analysis requests concerning the matter exclusively to Attorney or Attorney’s authorized personnel unless Attorney expressly instructs otherwise in writing.

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Sample Language #3

- To safeguard the confidentiality of this representation and preserve the attorney-client privilege, work-product doctrine, and all other applicable protections, **Client shall not**, under any circumstances **absent Attorney's prior written consent**,
- disclose, input, upload, transmit, paste, summarize, analyze, query, process, or submit any matter-related information, documents, communications, facts, legal issues, draft materials, attorney advice, mental impressions, strategy, or other content
- to any generative AI platform, chatbot, large language model, AI search engine, AI query tool, automated research tool, document-analysis system, or any other third-party artificial intelligence, machine-learning, or cloud-based system not expressly approved in writing by Attorney.

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Sample Language #3, continued

- Client shall not use any such system to research, review, rewrite, summarize, translate, organize, or generate content relating in any way to this matter.
- Client acknowledges that any disclosure to such systems may compromise confidentiality, result in storage, retention, training, review by third parties, or other secondary use, and may impair or waive privilege, work-product protection, or other legal protections.

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Sample Language #3, continued

- If Client makes, or reasonably suspects, any prohibited disclosure or use, Client shall immediately notify Attorney in writing, cease further use, take all remedial steps requested by Attorney, and cooperate fully in efforts to mitigate any resulting risk or prejudice.
- No disclosure to any such system is authorized except as Attorney expressly approves in advance in writing.

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