

How I Learned to Stop Worrying and Love Generative AI

I studied the recent ABA opinion on GenAI and distilled its lessons into a mnemonic device as an ethics checklist for the ever-changing GenAI tools that are presented to our firm for consideration. Consider the acronym SUBVERT.

BY RYAN M. BILLINGS

As the world scrambles to take advantage of the latest tools fueled by generative artificial intelligence (GenAI), lawyers struggle to keep up.

Articles that delve deeply into a particular tool are frequently obsolete shortly after they are published, and attorneys who educate themselves on a specific GenAI tool are often dismayed to learn that the next generation of the tool is already in beta or will be rolled out in a few months.

While ethical principles governing GenAI are hardly one-size-fits-all, an opinion by the ABA Standing Committee on Ethics and Professional Responsibility (Formal Opinion 512, issued July 29, 2024) attempts a wholistic review of the key ethical considerations in evaluating whether and how to use a specific GenAI tool. State Bar Ethics Counsel Sarah Peterson discussed the opinion in the October 2024 issue of *Wisconsin Lawyer*, and I encourage all attorneys to read it.

I studied the ABA opinion recently and attempted to distill its lessons into a mnemonic device to serve as an ethics checklist for the ever-changing GenAI tools that are constantly presented to our firm for consideration.

My efforts resulted in the acronym SUBVERT, as in “Generative AI will SUBVERT the status quo.” The acronym synthesizes the five areas of ethical concern raised by the ABA opinion, reminding attorneys that they need to:

Safeguard the confidentiality of privileged and other protected client information used as part of any input into GenAI tools;

Understand the technology sufficiently to exercise competent professional judgment concerning the risks and benefits of the GenAI tool used;

Bill ethically, appropriately, and transparently for the use of GenAI tools, communicating clearly with clients as to the basis of any charges that involve GenAI use;

VERify independently the accuracy of the outputs of the GenAI tool; and

Talk to clients, all persons under our supervision and, in appropriate circumstances, a court or tribunal about which GenAI tools we do and do not use and the policies and guidelines we follow concerning the use or prohibition of GenAI tools.

I developed the mnemonic device – with the help of ChatGPT – to help me remember the ethical considerations identified and simplify them so they can be readily applied when confronted with new GenAI tools. Each of the areas could be discussed at length, and I encourage Wisconsin attorneys to read the ABA opinion for a more detailed description.

We will always need experienced attorneys to exercise professional judgment. The hope is that GenAI can help process large swaths of information nearly instantaneously and thereby relieve attorneys of some of the more mind-numbing duties associated with the practice of law.

But it is up to us as attorneys to ensure that GenAI tools are used ethically and responsibly for the betterment of the profession. **WL**



Ryan M. Billings, Harvard 2004, is a litigator at Kohner, Mann & Kailas S.C., Milwaukee, and chairs the firm's business litigation department. Access the digital article at www.wisbar.org/wl. rbillings@kmksc.com