CHECKLIST FOR LAW FIRMS

Before client files go into an AI tool. The questions to ask first.

Source: ABA Formal Opinion 512, Generative Artificial Intelligence Tools (July 29, 2024). Georgia lawyers should check each item against the Georgia Rules of Professional Conduct.

Where client information goes

Model Rule 1.6

- [ ] Where does processing happen: on our hardware, the vendor's servers or a third party's?
- [ ] Does the tool learn from what we enter? If so, the opinion says the client's informed consent is needed first.
- [ ] Who at the vendor, or its subcontractors, can see our data, and under what conditions?
- [ ] How long is our data kept, and can we have it deleted and get confirmation?
- [ ] Have we read the terms of use and privacy policy, and can the vendor change them without notice?

Inside the firm

Model Rules 1.6 and 5.1

- [ ] Can the tool show one matter's information to someone walled off from it?
- [ ] Can access be limited by matter, client or group, and has anyone tested that?
- [ ] Do we have a written policy on which tools staff may use, and for what?
- [ ] Has everyone who will use it been trained on the policy and on the tool's limits?

Telling the client

Model Rules 1.4 and 1.6

- [ ] Does this use require the client's informed consent? Boilerplate in an engagement letter isn't enough.
- [ ] If a client asks how we use AI on their matter, can we answer specifically?
- [ ] Does the engagement agreement say how AI is used, where that matters to the client or the fee?

Checking the vendor

Model Rule 5.3

- [ ] Have we checked references, the vendor's credentials and its hiring practices?
- [ ] What are its security policies, and will it put them in writing?
- [ ] Will it sign a confidentiality agreement before it sees any client files?
- [ ] Does it have a conflicts check for the firms and parties it works with?
- [ ] Where could we seek relief if it breaks the agreement?
- [ ] Good practice beyond the opinion: how fast will it tell us about a breach, and how is our data returned or destroyed at the end?

Checking the output

Model Rules 1.1, 3.1, 3.3 and 8.4(c)

- [ ] Do we understand what the tool is good at and where it fails?
- [ ] Who verifies output before it reaches a client, opposing counsel or a court?
- [ ] Are citations and quotations checked against the source every time?

Billing for it

Model Rule 1.5

- [ ] Are we billing only actual time, not the time the tool saved?
- [ ] Is time spent learning a general tool kept off client bills, unless the client asked for that tool?
- [ ] Have we decided how, or whether, tool costs appear on an invoice?

> This is a list of questions, not legal advice. It summarizes an ABA ethics opinion in plain language and doesn't replace reading it or talking to your own ethics counsel.