MSBA's generative AI guidelines stress need for human fact-checking

Ian Round//May 27, 2025//

Key Takeaways:

- MSBA releases first advisory on generative AI in legal practice
- Lawyers must fact-check AI output and safeguard confidentiality
- ABA guidance echoed in non-binding Maryland recommendations
- Misuse of AI tools has led to real-world legal penalties

The Maryland State Bar Association stressed the need for lawyers to fact-check work produced with the help of generative artificial intelligence in its first guidelines on the ethical use of the technology.

Matthew D. Kohel, a partner at Saul Ewing, chaired the MSBA task force that developed the advisory document on generative artificial intelligence. (The Daily Record file photo)

The MSBA earlier this month published a [non-binding advisory document](#) that largely mirrored the guidance issued last year by the American Bar Association. It emphasized the obligation to provide competent representation, maintain client confidentiality, disclose the use of generative AI tools to clients and charge reasonable fees.

It said generative AI tools, such as ChatGPT and Claude, which are powered by large language models, have the power to make work more efficient, but warned that they often "hallucinate" facts.

"GAI may assist, but should never replace, an attorney's independent professional judgment," the advisory document, which the MSBA provided for free to The Daily Record, states. "Attorneys using GAI must review output to ensure that it is accurate, reliable and trustworthy, and the legal arguments are relevant to the particular legal issue at hand."

Lawyers in at least seven cases over the past two years have submitted AI-written filings with fake cases, leading to some of them facing fines or other disciplinary action, according to Reuters. In one of those cases, Reuters reported that a Manhattan judge fined two lawyers a total of $5,000 for citing cases that did not exist in a personal injury case against an airline.

Four attorneys for Butler Snow were recently found to have done the same thing in Alabama; two of them are also representing Maryland in a decades-old class-action case over health care in [Baltimore](#) jails, The Baltimore Banner reported.

A 2024 survey by Thomson Reuters found more than 60% of lawyers have used generative AI for work and 12% said they use it regularly.

Because some tools are trained using information entered by users, the MSBA cautions against the misuse of confidential client information.

Three attorneys from the firm Wiley noted in an article for Bloomberg Law that unscrupulous use of AI can risk attorney-client privilege and work-product immunity, because entering confidential information into an unsecure tool could constitute sharing it with a third party.

"Both types of protection are forfeited where there is no expectation of privacy and their content isn't protected work product," they wrote. "Even if a communication or file is protected, that protection can be waived if an attorney or client relays it to a non-party, thereby forfeiting any expectation of privacy. These principles become critical when evaluating AI tools, as they could directly or indirectly reveal confidential, proprietary, or even privileged information."

That's why Matt Kohel, who chaired the MSBA task force that developed the advisory document, uses enterprise versions of AI tools that keep data private, rather than the public versions that are trained on user data.

Kohel, a partner at Saul Ewing in Baltimore, said that despite the risks, the technology is useful in distilling large amounts of information.

"It adds a ton of efficiency if used properly," Kohel told The Daily Record. "You have to do it in a smart and thoughtful way."

MSBA Legal Content Attorney Pamela Langham, who also served on the task force, agreed.

"It's just another type of tool, and the Rules of Professional Conduct still apply," she said. "Blindly taking the output and cutting and pasting it into correspondence, a summary, a pleading, is not appropriate for anyone to do."

Langham writes extensively on generative AI, but she doesn't regularly use it in her legal practice.

"I've played on it a lot for professional reasons, but I'm not comfortable using it entirely yet when I am practicing law," she said. "I'm waiting until it's a lot more accurate."