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## 'Risk in AI': Law Firm Billing Will Need to Adapt

A new ABA ethics opinion touches on the ethics of billing for AI-supported work. The technology may force law firms to rely less on hourly billing.

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Artificial Intelligence



Mimi Lamarre

An American Bar Association ethics opinion this week touched on what has been a risky business area for Big Law in the emergence of generative AI: billing and fees related to AI-supported legal work.

“The thing that might actually be the biggest risk in AI is ethical billing, and it might be very hard to detect in the short term,” said Conan Hines, the director of legal technology at Fried, Frank, Harris, Shriver & Jacobson.

Lawyers and legal tech experts said that billing is risky because many lawyers may not know how much time to bill when using AI, particularly as the technology streamlines many matters that may have taken more time in the past.

[The ABA opinion](#) said that, if a lawyer uses a generative AI tool to draft a pleading and spends 15 minutes to enter information into the program, the lawyer may charge for that time as well as for the time necessary to review the draft for accuracy and completeness. “But, in most circumstances, the lawyer cannot charge a client for learning how to work” a generative AI tool, according to the opinion.

The opinion also outlines ethics advice for when law firms want to pass on the expense of AI tech tools to clients.

If a particular AI tool functions similarly to equipping and maintaining a legal practice, “a lawyer should consider its cost to be overhead and not charge the client for its cost absent a contrary disclosure to the client in advance,” reads the opinion, which also gives examples for when passing on the cost may be ethically sound.

Overall, AI-supported legal tasks may force law firms to consider more alternative fee arrangements—billing for the value of services provided, instead of only the number of hours, for instance—since the tech tools will inevitably cut down on the number of hours for some services.

Erez Liebermann, a litigation partner and member of the data strategy & security group at Debevoise & Plimpton, noted, “If you can use AI and harness its power, it can do in seconds what it might have taken somebody 20 minutes or even an hour previously. But you can’t bill based on how long it would have taken you if you were doing that as a practicing attorney on your own. Lawyers need to be very careful about the practices that they’re going to use, and change the way that they’re going to bill.”

“Lawyers may need to begin billing based on an alternative fee arrangement, and not based on historic analysis of how long a matter is going to take. If it’s not taking that long, it would be unethical to charge that much,” he added.

Even current flat fees may need to be re-evaluated. The new ABA opinion notes that if a generative AI tool allows a lawyer to complete tasks much more quickly than without the tool, it may be unreasonable under current ethics rules for the lawyer to charge the same flat fee when using the AI tool as when not using it. “A fee charged for which little or no work was performed is an unreasonable fee,” the ABA notes.

Already, [individual lawyer productivity](#) is down among big firms. The use of AI-supported tasks may further devalue an emphasis on hourly billing. Industry analysts have talked openly this year about how emphasizing outputs, like profitability, instead of inputs like hours, is a more useful gauge of lawyer performance.

“It’s not yet clear, as the guidance points out, how effective generative AI tools are going to be in the legal profession, and to what extent they’re going to become part of daily life. Depending on how that develops, the impact on billing could be significant,” said Frances Waldman, an of counsel at Gibson Dunn & Crutcher, and a member of its privacy, data innovation, and AI groups.

While many law firms may say generative AI hasn’t threatened most of their hourly fees, since their clients trust them for complex, bet-the-company guidance, the list of AI-involved tasks within law firms is growing.

The ABA opinion said lawyers now commonly use it for legal research, contract review, due diligence, document review, regulatory compliance, and drafting letters, contracts, briefs, and other legal documents.

Some lawyers confirmed that AI has not been fully integrated into the legal community’s work quite yet. “Lawyers right now are slow to adopt AI, but it’s definitely coming,” said Liebermann.

## AI Reminders

Overall, the ABA opinion this week reinforced what some tech-focused lawyers already knew: the continuing push and integration of AI into the practice of law has been unavoidable. Besides billing, the opinion also outlined the ethics of generative AI in communications, lawyer competence and confidentiality issues.

“The most striking thing to me if you read between the lines of the opinion is the idea of tech competence. It’s going to be more and more difficult to be a high-performing lawyer and to not be immersed in technology,” said Hines. “Firms are going to be hiring more types of talent that are going to bridge that gap.”

Despite the complexity of AI, the ABA opinion noted that lawyers must thoroughly review all work done through and by AI in order to ensure accuracy. It also placed an emphasis on client confidentiality and informed consent.

“There’s no question that informed consent is critical now, and so to the extent that lawyers are starting to learn AI and becoming more comfortable with it, figuring out how to tell clients about it is incredibly important,” Liebermann said.

Avi Gesser, co-chair of Debevoise’s data strategy and security group, noted that lawyers should “generally keep your clients informed of what you’re doing, as the rules talk about,” and to test out AI features for some time before integrating them into work processes.

The ABA’s standing committee on ethics and professional responsibility said their opinion this week was the first formal one covering the growing use of generative artificial intelligence in the practice of law. But many lawyers said that state bars are beginning to issue similar opinions; for instance, the California State Bar published a similar report in November 2023.

Waldman noted that the opinion goes further than previous state opinions to advise lawyers that they may need to tell clients when they are using internal generative AI tools, not just third-party technology.

“The opinion is good guidance not just for lawyers, but for anybody thinking about adopting AI,” said Gesser about the ABA opinion. “As AI features get added more routinely to tools that lawyers use, I think it’s valuable to remind people that you’re now using a new tool. Just because it’s part of some old tool that you used doesn’t mean it’s appropriate or safe to use for your legal work.”



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