



Courting Trouble: When AI Crosses the Ethical Line



**This program has been approved in Kentucky
for 1 Ethics credit.**

©2026 by the Kentucky Bar Association Continuing Legal Education Commission

Caroline J. Carter, Laura Cole, Cassie H. Cooper, Lori J. Reed, Editors

**All rights reserved
Published May 2026**

Editor's Note: These *2026 KBA Annual Convention* handbook materials are intended to provide current and accurate information about the subject matter covered. The program materials were compiled for you by volunteer authors and from national legal publications. No representation or warranty is made concerning the application of the legal or other principles discussed by the instructors to any specific fact situation, nor is any prediction made concerning how any particular judge or jury will interpret or apply such principles. The proper interpretation or application of the principles discussed is a matter for the considered judgment of the individual legal practitioner. The faculty and staff of the *2026 KBA Annual Convention* disclaim liability therefor. Attorneys using these materials or information otherwise conveyed during the program, in dealing with a specific legal matter, have a duty to research original and current sources of authority. In addition, opinions expressed by the authors and program presenters in these materials do not reflect the opinions of the Kentucky Bar Association, its Board of Governors, Sections, Committees, or members.

The Kentucky Bar Association would like to give special thanks to the volunteer authors who contributed to these program materials.

COURTING TROUBLE: WHEN AI CROSSES THE ETHICAL LINE

Ruth H. Baxter and Sheldon G. “Shelly” Gilman

I. UNDERSTANDING ETHICS ISSUES WHEN USING AI

- A. Basic Ethics Opinion on AI – [KBA Opinion E-457](#)
 - 1. Competence under [SCR 3.130\(1.1\)](#);
 - 2. Communication under [SCR 3.130\(1.4\)](#);
 - 3. Lawyer’s charges for fees & expenses under [SCR 3.130\(1.5\)\(a\) and \(b\)](#);
 - 4. Confidentiality of client information under [SCR 3.130\(1.6\)](#);
 - 5. Duty to comply with court rules when using AI under [SCR 3.130 \(3.3\)\(a\)](#); and,
 - 6. Supervising attorneys’ responsibility when using AI under [SCR 3.130\(5.1\)](#).
- B. [ABA Formal Opinion 512](#) on Use of AI
 - 1. Meritorious claims and contentions and candor toward the tribunal; and,
 - 2. Fees.
- C. Other States' Ethics Opinions
- D. Authority to Sanction Attorneys under [CR 11](#), [FRCP 11](#), and the Court's Inherent Authority to Sanction

II. SANCTIONS AND ATTORNEY DISCIPLINE ARE BEING IMPOSED ON ATTORNEYS WHO CROSS THE LINE

- A. Nature of AI Issues with Court Filings
 - 1. Non-existent cases generated by AI used in briefs;
 - 2. Erroneous case citations generated by AI used in filings; and,
 - 3. Fabricated quotations attributed to AI drafting tools.
- B. Procedure followed by Courts
 - 1. “Show Cause”;
 - 2. [Rule 11](#) Sanctions; and,
 - 3. Referrals to Bar Counsel.

C. Sanctions Given by Courts

1. Strike erroneous briefs;
2. Removal of attorney from the case;
3. Mandatory distribution of court sanction order to clients and courts;
4. Monetary penalties;
5. Payment of opposing counsel 's attorney's fees;
6. Order to refund or waive client's attorney's fees;
7. Disciplinary referrals or directives;
8. Mandatory legal education; and,
9. Donations to legal non-profit.

D. State Disciplinary Proceedings

1. Public reprimand; and,
2. Other discipline.

III. AI ISSUES LOOKING FORWARD: WHAT IS A “REASONABLE FEE” USING AI?

A. Factors in Determining a Reasonable Fee under [SCR 3.130\(1.5\)](#)

1. The time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
2. The likelihood that the acceptance of the particular employment will preclude other employment by the lawyer;
3. The fee customarily charged in the locality for similar legal services;
4. The amount involved and the results obtained;
5. The time limitations imposed by the client or by the circumstances;
6. The nature and length of the professional relationship with the client;
7. The experience, reputation, and ability of the lawyer or lawyers performing the services; and
8. Whether the fee is fixed or contingent.

- B. Ethical Principles for Imposing a “Reasonable Fee” requirement under [Rule 1.5](#)
1. Fiduciary character of the lawyer-client relationship.
 2. Protection of clients from lawyer overreaching.
 3. Preservation of public confidence in the profession.
 4. Fairness and transparency in the lawyer-client contract.
 5. Prevention of conflicts between financial interest and professional judgment.
- C. Kentucky [Rule 1.5](#) – No Unreasonable Fees and Determined by Factors
1. Bill padding and double-billing;
 2. Fees for doing nothing;
 3. Fees for doing very little;
 4. Doing very little and doing it badly;
 5. Doing way too much (*i.e.*, beating a dead horse);
 6. Doing remedial work;
 7. Too many lawyers are charging (*i.e.*, over lawyering);
 8. Charging lawyer rates for non-lawyer work; and
 9. Charging fees that exceed agreed upon fees even if deemed reasonable at the onset.
- D. What Effect Does [KBA E- 457](#) Have on “Reasonable Fees” Using AI?
1. Basics: Fees and expenses are subject to “reasonableness standards.”
 2. Requirement to provide client with information about the lawyer’s fees and costs.
 3. Rendering billing statements apprising the client as to the basis for attorneys’ billing and how it is determined.
 4. Factors using AI to consider:
 - a. Reduced fee may be appropriate.

- b. Those charging on an hourly basis cannot bill clients for hours not actually spent working.
 - c. If client is to pay AI expenses, then before billing client, the client's written consent must be obtained. Client must also know the expected cost.
 - d. No charge for costs incurred in learning and keeping up to date with AI changes.
- E. How Does [ABA Formal Opinion 512](#) Differ from KBA Opinion?
- F. Selected State Ethics Opinions and Guidance on Billing for AI Usage
 - 1. [Rule 1.5](#) governs.
 - 2. Where billing is hourly, AI generated efficiency does not justify billing the same hours if the lawyer did not actually expend that time.
 - 3. AI expenses may or may not be billable.
 - a. Client-specific charges may be passed through.
 - b. General usage subscriptions are considered office overhead.
 - c. Transparency matters.
 - d. Opinions emphasize client communications regarding AI costs and billing structure. Efficiency does not automatically reduce value.
- G. Virginia's Different Perspective – Adoption of [Legal Ethics Opinion 1901](#)

IV. [RULE 1.5 AS CONSTRUCTED IS OBSOLETE IN THE AGE OF AI – SHELLY'S OPINION](#)

- A. Advances in legal technology evolved incrementally without disrupting the assumption that legal services are the product of human labor and time.
- B. AI is a technology advance disrupting the foundational assumption.
- C. Time expended may be minimal, even when the quality or sophistication of the output is exceptional.
- D. The rule does not recognize skills that lawyers develop to frame legal issues.
- E. [Rule 1.5](#) undervalues results and disincentivizes technology efficiency.
- F. Ethics rules require attorneys to adopt technologies to improve efficiency but embeds an economic disincentive for doing so.

- G. Lawyer's unique value lies in using good legal judgment, trustworthiness, sound judgment, clear communications, and other elements not captured by the old factors.
- H. The Need for a Value and Outcome Based Paradigm
 - 1. A reasonable fee should be measured not by inputs but by outputs: accuracy, speed, reliability, and client impact.
 - 2. A "value- assistance model" that assesses reasonableness by quality of legal Judgment, risk management, and responsiveness, not the quantity of time expended.
 - 3. A "value-assurance pricing" – setting the fee according to the value and impact of the outcome including flat or fixed fees, capped fees, hybrid or flat fees plus successful-performance incentives.

V. SUGGESTED CLIENT AGREEMENTS REFLECTING AI COST AND VALUE ALLOCATION

- A. Lawyer's client agreement – Disclose basis or rate of the fee and expenses.
- B. AI disclosure clause: Explain use of AI and tasks it will do.
- C. Value and efficiency clause – Explain how use of AI may reduce billable time with value.
- D. Confidentiality and Ethics Assurances.
- E. Client consent for use of AI – Get informed consent in writing.