

THE COMPETENT LAWYER IN THE AI ERA:

AI Competence Is Now Required of Every Lawyer, Including the Ones Who Never Touch It

by Prof. Tracy L. M. Norton¹

A lawyer can decide not to use artificial intelligence in practice. But courts have now made it impossible to decide not to understand it. AI may already be in the work of the associates and paralegals whose filings a supervising lawyer signs, in the briefs opposing counsel serves and in the hands of clients who paste their case facts into a consumer chatbot before they ever call an attorney. Increasingly, courts are expanding what a competent lawyer must do to include accounting for the AI use of others.

The lawyer at highest risk for submitting hallucinated content is not the AI skeptic or even the complete AI-phobe. The danger lives at the point where comfort with the tool has out-run understanding of how it fails. How often a lawyer uses AI and how well that lawyer understands it are separate measures, a distinction Susan Tanner and I drew in a recent presentation on building institutional AI capacity.² When use exceeds understanding, a lawyer reads with less skepticism, and the instinct is well earned. With a human associate, fluency and judgment develop together, so polished work signals careful work and a spot check suffices. AI breaks that link. It produces correct *Bluebook* form, confident doctrinal vocabulary and an authoritative tone, the same signals a lawyer relies on to credit a strong associate's work, but behind the signals is no judgment. The polish outpaces the lawyer's judgment about whether any of it is right, and the lawyer must supply that judgment every time.

None of this requires a new ethics rule. Rule 1.1 of the Rules of Professional Conduct, regarding competence, is sufficient, and judges are starting to consider the rule as running in three directions.³

Supervision is not verification

Verification asks whether the output is accurate. Supervision asks whether it is good lawyering. Those are not the same question. A brief can be accurate in every citation, faithful to every quoted holding, and still be wrong for this client, in this posture, before this judge. Verification catches the fabricated case. It does not catch the brief that argues the losing theory competently.

This is why opting out of AI does not opt a lawyer out of the obligation. Supervision runs toward the work an attorney signs, whoever or whatever produced it. No one can supervise what they do not understand. A lawyer who has never opened a chatbot still signs an associate's AI-assisted brief, still re-

ceives opposing counsel's AI-assisted motion, still advises a client who used AI before the first meeting. The duty of competence attaches to all three.

Direction one: the work you sign

Rules 5.1 and 5.3 already establish that a lawyer answers for the work of the people that lawyer supervises. AI does not change that rule. It adds a new supervisee. The associate who used a chatbot to draft the brief, the paralegal who ran the research, the contract lawyer who summarized the record: their AI use becomes the supervising lawyer's problem when the filing goes out under the firm's name.

Hill v. Workday makes the point concrete.⁴ A lawyer filed a brief containing citations fabricated by AI. The court sanctioned not only that lawyer but the supervising attorney, who had not drafted the brief and had not written the fake citations, for failing to supervise the work. The court put the duty plainly: a supervising lawyer should read and understand the content of all pleadings and check the citations to ensure their accuracy. Supervisors who do not draft the defective pleading still fail in their duty of supervision when they do not catch what is in it. The court grounded part of its reasoning in Louisiana authority, citing *In re Kenney*.⁵ A decision not to touch AI personally offers no shelter here. Someone under that lawyer's supervision used it, and the filing went out under the firm's name.

Supervising that work is not the same as spot-checking it. This is where DIAL comes in, the workflow that turns supervision from a posture into a practice: Deliberate, Iterate, Audit, Log.⁶ Each stage draws on substantive legal knowledge, from framing a question precise enough to evaluate the answer to logging the basis for what the lawyer approved. A lawyer who cannot frame the right question, recognize a wrong answer or measure the output against what the matter actually requires is not supervising anything. That lawyer is laundering AI output through a signature line.

Direction two: the other side's filings

No rule requires a lawyer to police the opponent's brief. That is worth saying plainly, because the emerging norm can be overstated. Rule 3.3 governs a lawyer's own candor to the court, not the adversary's. But two things pull in the same direction anyway. Checking the authorities an argument relies on is ordinary Rule 1.1 diligence. And a fabricated citation in the other side's brief is an advantage available only to the lawyer who finds it. A hallucination in an opponent's filing is a gift, but only to the lawyer who opens it.

Courts are beginning to expect as much. In *Dec v. Mullin*, the 7th Circuit admonished the lawyer who filed non-existent citations and a false quotation, then added that opposing counsel's failure to catch the errors and bring them to the court's attention "also gives us pause, albeit to a lesser degree."⁷ In *Noland*, the California Court of Appeal confronted an opening brief in which 21 of 23 quotations were fabricated, yet opposing counsel answered on the merits without ever catching the problem, and the court noted the omission.⁸ Neither court held that the adversary breached a duty. Both courts noticed. That is how a norm forms before it hardens into a rule. The prudent reading is not to wait for the case that names the duty, but to read the other side's citations as carefully as one's own.

Direction three: the client who got there first

By the time a client retains counsel, the client may have already told an AI platform everything. *United States v. Heppner* shows the cost.⁹ A criminal defendant created documents using a public generative AI platform and later shared some with his lawyers, then asserted privilege over them. The court held that the documents were protected by neither the attorney-client privilege nor the work product doctrine. Sharing the information with the platform waived any protection, just as sharing it with any other third party would. A consumer chatbot is a third party.

Two lessons follow, and they run in opposite directions. The first is a duty to warn. Clients treat these tools as private. They are not, and Rule 1.4 makes explaining that risk part of competent representation, before the client hands a matter to a platform whose terms permit the provider to retain and read what it receives. The second is subtler. The court stressed that the defendant had not acted at counsel's direction. Counsel-directed AI use, structured to stay confidential, may stand differently. That distinction is why engagement letters are beginning to address AI, and why a lawyer's own confidentiality analysis under Rule 1.6 now extends to the platforms a client might use alone.

What competence looks like this month

None of this requires overhauling a practice overnight. It requires one deliberate step. Pick a single task where AI already shows up in the work, whether a lawyer runs it personally or signs it after someone else did. Write down which tool, what client information it touches, what will be verified and what will be disclosed. That one page is the start of a supervisory workflow, and it converts a vague worry about AI into a documented professional judgment. The five moves to the right are where to begin.

Footnotes

1. Assistant Professor of Law, Louisiana State University Paul M. Hebert Law Center.

2. Tracy L. M. Norton & Susan Tanner, *AI as a Team Sport: Building Institutional AI Capacity in Legal Education*, Ass'n of Am. Law Schs. Tech., Law & Legal Educ. Section Summer Webinar Series (June 10, 2026).

3. Beyond Rule 1.1, judges evaluating hallucinated AI output increasingly ask three further questions: whether the attorney supervised the work of nonlawyer assistants, junior lawyers and, in one case, cocounsel under Rules 5.1 and 5.3; whether the attorney checked opposing counsel's submissions and alerted the court to AI fabrications under Rule 3.3; and whether the attorney communicated with the client about AI use in the matter under Rule 1.4.

4. *Hill v. Workday, Inc.*, No. 3:23-cv-06558-PHK (N.D. Cal. Apr. 28, 2026), 2026 WL 1146289.

5. *In re Kenney*, 25-389 (La. App. 5 Cir. 10/23/25), 422 So.3d 905, 924.

6. Tracy L. M. Norton, *The Supervision Gap: AI and the Emerging Professional Identity Formation Obligation That Begins in Law School's First Year*, 31 Legal Writing: J. Legal Writing Inst. (forthcoming Mar. 2027), <https://ssrn.com/abstract=6471718>.

7. *Dec v. Mullin*, 171 F.4th 940, 947 (7th Cir. 2026).

8. *Noland v. Land of the Free, L.P.*, 114 Cal. App. 5th 426 (2d Dist. 2025).

9. *United States v. Heppner*, 820 F. Supp. 3d 292 (S.D.N.Y. 2026).

Practice Pointers: Five Moves Before You Sign

- 1 Run DIAL on any AI-assisted work: Deliberate, Iterate, Audit, Log.
- 2 Read and cite-check everything you sign, including work you did not draft (Rules 5.1 and 5.3).
- 3 Tell clients not to put case facts into consumer AI, and address platform terms in the engagement letter (Rule 1.6).
- 4 Check opposing counsel's authorities. Diligence and advantage point the same way (Rule 3.3).
- 5 If an error reaches a filing, disclose it fast. The cover-up is always worse.

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