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AttPro Ally

Fly the Friendly Skies
by managing client intake

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CLEARED FOR TAKEOFF:

Using Nonlawyer Assistants in Your Client Intake Process

By: Kate Gould, Esq.

Were you stuck on the tarmac before taking off on your last flight? Sitting on the runway can test your patience, especially if your flight is delayed or you find yourself in the middle seat. But rest assured, the pilots may have been completing their pre-flight checklist to ensure your safety and a smooth landing.

Any pilot will tell you that capable and courteous flight attendants are valuable members of the flight crew. Quite frankly, the plane couldn't leave the ground without their assistance. Your legal assistants and paralegals are likewise critical members of your team. However, like the captain of a plane, you are ultimately responsible for conducting the pre-representation checklist (your client intake process). While it may not be necessary for your safety, it is essential for your sanity and may even prevent a malpractice claim. Although you may be understandably eager to bring new business in the door and engage the client, it is crucial that you follow your office protocol when vetting potential clients. To handle the volume and streamline the process, this may likely mean that your legal assistant or paralegal must also assist. But what are the limitations of their involvement, if any?

The American Bar Association issued Formal Opinion 506 to offer guidance about a lawyer's ethical responsibilities when it comes to nonlawyer assistants helping with the client intake process. In short, a lawyer may train and supervise a nonlawyer, such as their legal assistant, paralegal, or office manager, to assist with certain prospective client intake tasks, including "obtaining initial information about the matter, performing an initial conflict check, determining whether the assistance sought is in an area of law germane to the lawyer's practice, and assisting with answering general questions about the fee agreement or process of representation…" Nonlawyer assistants are also permitted to obtain the potential client's signature on the fee agreement, provided they are always offered the opportunity to communicate with you to discuss the agreement and scope of representation – a best practice when engaging a client.

If you are unsure whether you are giving your nonlawyer assistant too much authority or asking them to perform duties beyond the ethical limitations, pause to consider the Rules of Professional Conduct implicated in the client intake process. Violating these rules can result in ethical issues before a prospective client even hires you and the case takes off.

Model Rule 5.3

ABA Model Rule 5.3 specifically addresses a lawyer's responsibilities regarding nonlawyer assistants. Rule 5.3(a) provides that a lawyer with managerial authority in a law firm "shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the person's conduct is compatible with the professional obligations of the lawyer." Further, a lawyer with direct supervisory authority over a nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer. Comment 2 of the Rule further explains that a lawyer must give their assistants appropriate instruction and supervision concerning the ethical aspects of their employment.

In Formal Opinion 506, the ABA highlighted the importance of a lawyer's delegation of client intake tasks as providing significant benefits and an opportunity to increase efficiency for lawyers. Valuable billable hours can be lost when attorneys handle administrative tasks themselves, including the prospective client intake process. However, before you can take advantage of the many benefits of using nonlawyer assistants to streamline the client intake process, you must have the proper policies in place and commit to the necessary training and supervision. Take the time to thoroughly explain the conflict check process, train your assistant to only collect basic information from the prospective client, and advise them on the extent to which they can answer questions from the prospective client.

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Model Rule 5.5

ABA Model Rule 5.5 is another rule of professional conduct which is immediately implicated when you delegate aspects of the client intake process to a nonlawyer assistant. Rule 5.5 governs the unauthorized practice of law and specifically prohibits a lawyer from assisting in such practice. However, the Rule does, in fact, contemplate that lawyers will delegate certain tasks to nonlawyer assistants. Comment 2 of the Rule specifically permits such action saying,

"[t]his Rule does not prohibit a lawyer from employing the services of paraprofessional and delegating functions, so long as the lawyer supervises the delegated work and retains responsibility for their work. See [the aforementioned] Rule 5.3."

One potential ethical pitfall under Rule 5.5 exists where a prospective client asks your nonlawyer assistant a question during an initial intake phone call or meeting. Whether your assistant or paralegal can answer the potential client's question depends on the nature of the question. The ABA cautioned in its Opinion that "if the prospective client asks about what legal services the client should obtain from the lawyer, wants to negotiate the fees or expenses, or asks for an interpretation of the engagement agreement, the lawyer is required to respond to ensure that the nonlawyer does not engage in the unauthorized practice of law."

What does this mean for the training you must provide? Take care to train your nonlawyer assistants to identify what questions require a lawyer's response. You may consider developing a boilerplate response for your assistant to say when confronted with such a question. Your assistant should advise the prospective client that they have jotted down the question and will pass it along to you for response. When you ultimately respond to the prospective client, consider it an opportunity to provide accurate information to aid in their decision as to whether to move forward with your firm as mandated by Model Rule 1.4.

Model Rule 1.4

In the Lawyers Professional Liability insurance world, Model Rule 1.4 (the Communications Rule) is often referenced as the rule that requires a lawyer to keep the client reasonably informed about the status of a matter and to promptly comply with reasonable requests for information. Unfortunately, sometimes a perceived lack of prompt communication can result in legal malpractice claim or bar grievance after you've been engaged. But subsection (b) of Rule 1.4 can apply before you are even retained as the client's lawyer as it requires a lawyer to "explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation." Thus, while your assistant or paralegal may provide the prospective client with a copy of the fee agreement for their review, you should discuss the substance of the agreement with the prospective client.

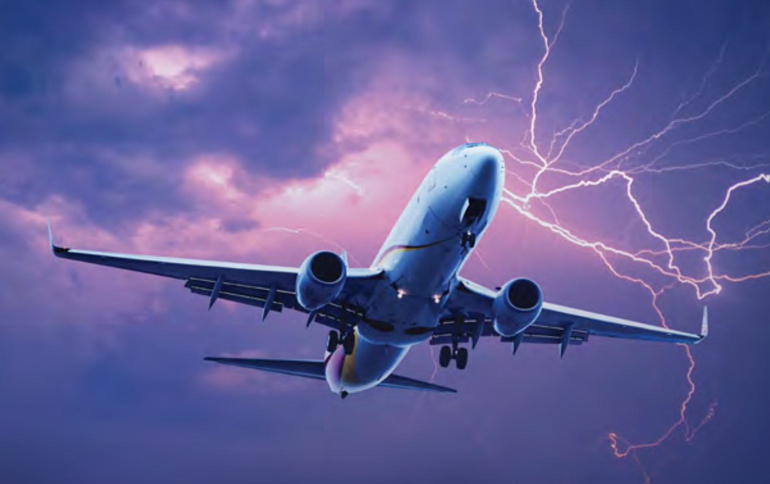
So, when presenting a proposed fee agreement, your legal assistant or paralegal must refrain from answering questions about the agreement's terms. Instead, you and the prospective client should discuss the scope of representation and your intended course of action. In short, nonlawyers may provide general information about the firm's billing structure—whether fees are hourly, contingency-based, or flat. They may also explain any administrative questions the client may have, such as when payments are due and how they are processed. But once the conversation shifts to interpreting a provision of the agreement, negotiating hourly rates, or who will be responsible for payment of certain expenses, your assistant should tell the prospective client they will pass the questions along to you for a discussion about the fee agreement before it is signed.

Model Rule 1.18

While your legal assistant or paralegal may fully understand the duty of confidentiality owed to clients who have hired the firm, they may not know they must likewise keep any information obtained from a prospective client confidential. Rule 1.18 outlines a lawyer's duties to prospective clients. Under this Rule, a person who consults with a lawyer about the possibility of forming a client-lawyer relationship with respect to a matter is considered a prospective client. Subsection (b) states that "[e]ven when no client-lawyer relationship ensues, a lawyer who has learned information from a prospective client shall not use or reveal that information, except as Rule 1.9 (Duties to Former Clients) would permit with respect to information of a former client."

The best practice would be to train any staff member that assists with intake to treat prospective clients and clients who have hired the firm the same when it comes to confidentiality. If there is any question, err on the side of caution and follow the protocols your office uses to maintain the confidentiality of communications and file materials of current clients.

In concluding Opinion 506, the ABA reiterated that delegating client intake must be "carefully and astutely managed," meaning it requires your continuous monitoring and supervision. As the Opinion notes, "what appears to be a simple question about how long the lawyer will spend on the matter may actually be a question about the representation itself and cannot be accurately answered without the lawyer's personal knowledge and expertise." So, before heading down the runway of a new matter with a prospective client, crosscheck your nonlawyer assistant and prepare for takeoff through an ethical client intake process.



TURBULENCE AHEAD: Your Client Used AI to Prepare for the Case, and **That May Be a Problem**

By: Teagan Wall, Esq.

Every attorney whose clients use ChatGPT, Claude, or other consumer public generative AI tools should pay close attention to what happened in a Manhattan federal courtroom this February.

On February 10, 2026, Judge Jed S. Rakoff of the U.S. District Court for the Southern District of New York decided that documents a defendant made with a consumer AI tool and later gave to his lawyer were not protected by attorney-client privilege or the work product doctrine. The defendant, Bradley Heppner, was indicted for fraud. While awaiting trial, he used an AI platform to prepare reports on his defense strategy and potential legal arguments, then included those 31 documents in his privilege log.

The court found no basis for attorney-client privilege because the communications were with an AI tool, not a lawyer, and were only later sent to counsel. Critically, Judge Rakoff noted that the platform's written privacy policy expressly reserved the right to disclose user data to third parties, including governmental regulatory authorities, and to collect user inputs to train the model. On that basis, Heppner could have had no reasonable expectation of confidentiality. The privilege log was rejected, and the documents were deemed discoverable.

What Your Client Does Before You Get Involved Matters

Most attorneys start thinking about privilege as soon as they are hired. But your client's involvement with their case began before they ever contacted you.

If non-lawyers use generative AI to research a new legal claim or draft messages before hiring a lawyer, those AI chat histories could be discovered and possibly used as evidence against them in court.

This is the gap the *Heppner* case revealed. Heppner said he wanted to organize his thoughts and share them with his lawyer. But the court found he created the documents without his lawyer's guidance and used a third-party platform that did not promise confidentiality. The prosecution also emphasized a point that trips up many clients: sharing non-privileged documents with an attorney does not make them privileged.

Judge Rakoff acknowledged that things might have changed if Heppner's lawyer had directed him to use the AI tool, which could have made it an agent of the lawyer. In other words, if an attorney specifically directs a client to use an AI platform for case-related tasks, within the context of the attorney-client relationship and with clear confidentiality instructions, those communications may be more likely to stay protected by privilege. To help preserve privilege, attorneys should guide clients in how and when to use AI tools, ensure any usage is documented as part of providing legal advice, and use platforms that promise confidentiality. This is a practical opportunity to educate clients from the outset and establish privilege-protective practices around emerging technology.

The ESI Angle Attorneys Need to Flag

The *Heppner* decision directly affects how you approach electronic discovery in your cases.

AI-generated documents are now clearly a type of potentially discoverable ESI. Clients who used ChatGPT, Claude, Copilot, Perplexity, Gemini, or similar generative AI tools to research their case, draft timelines, or consider their risks before contacting you may have created documents that opposing counsel can request, and courts can require.

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YOUR CLIENT USED AI, continued from previous page

Consider these initial steps for identifying, collecting, and preserving AI-generated ESI:

- Ask clients directly about any use of public or private AI tools related to the matter, including both research and draft documents.
- Request access to relevant AI chat histories, download logs, or transcripts. Many AI tools provide options to export conversations or history.
- Preserve this data promptly, as some platforms only retain history for limited periods or allow users to delete records.
- Document each step of collection, noting the platform, dates of use, and whether any information was shared externally.
- Coordinate with your IT team or an ESI specialist if needed, as accessing and maintaining the integrity of AI-generated data may require unique technical steps.

The use of AI in legal practice has likewise changed how lawyers should approach client intake. Updating your intake process to ask specifically about AI tool use connected to the matter is a concrete, practical step attorneys can take now. Add these questions to your intake process:

- Has your client used any AI tool to research the facts of this matter, draft communications, or think through their situation?
- Were any of those outputs shared with third parties, or created on platforms with terms of service that disclaim confidentiality?
- Does your client's organization have an AI use policy, and was the tool used inside or outside of it?

Some legal experts have raised whether a broad reading of *Heppner* could affect privilege whenever a non-human platform is used, such as Gmail, Westlaw, Lexis, or eDiscovery tools. That broader reading has been contested, and the law is still developing. The most widely accepted and cautious approach today is to treat information as unprotected when it is shared with or generated by third-party tools that do not guarantee confidentiality.

Most authorities currently view tools that function as conduits for communication between a client and their attorney, or that have strong privacy protections and attorney supervision, as lower risk from a privilege standpoint. Enterprise-level tools may be acceptable so long as they comply with data privacy and compliance policies. In the face of legal uncertainty, attorneys are increasingly advised to avoid using public-facing or consumer AI tools for privileged work unless confidentiality can be clearly assured and documented.

The main idea is simple: if a client shared sensitive information with a platform that does not protect confidentiality, those communications could show up in discovery.

Getting Your Arms Around It Before the Case Gets Away From You

The real challenge is that most clients will not mention this on their own. They used an AI tool because it seemed useful and private, and they did not realize they were creating documents that could matter in discovery.

Getting ahead of this requires two things. First, client communication at intake that specifically asks about AI tool use in connection with the matter. Second, a discovery process that accounts for AI-generated ESI as a potential data source, not just a novelty.

Working with counsel and client to identify where AI data resides, what platforms your client uses, what data those platforms retain, and how to preserve it appropriately should be part of your defensible case preparation.

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