

How Clients May Use AI To Monitor Attorneys

By **Ronald Levine** (December 13, 2023, 12:31 PM EST)

This article provides guidance for attorneys on how to prepare for the monitoring of their billable hours and work product via artificial intelligence applications.

With AI, clients will be able to monitor and evaluate their counsel's activities in new and much more advanced ways. Accordingly, it will be even more important for the client's expectations to be well defined, and for attorneys to utilize AI to make sure that they are meeting client expectations.

Prepare to be prescreened for AI adoption.

Lawyers should be prepared for client inquiries concerning the use of AI. Clients will not only want to know which applications are being used, but also how they are being used and whether the firms are monitoring their use.

Specifically, the client may inquire about which AI tools the firm uses or intends to use; if the firm has policies and best practices for the use of AI; if the firm tested the AI applications to make sure that they are effective, accurate and secure; and if the team that will work on the matter has been trained in the use of the tools.

Be clear and detailed in the terms of engagement.

Clients will not only demand the use of AI, they will also use AI's advanced analytic capacity to monitor compliance with the terms under which the firm was engaged. Accordingly, it is essential that those terms be addressed in detail at the outset of any engagement.

To avoid any misunderstanding when conducting the analysis, the scope of the representation and the fees and expenses for which the client will be responsible must be clearly communicated to the client. In most cases, the scope of work and fees are addressed in the lawyer's engagement letter.

A top priority is a clear explanation of the charges that the client should expect. In addition, to avoid confusion and limit malpractice exposure, you should define the scope of work in the engagement letter. The extent of a lawyer's duties to their client can and will be measured by those words.

In addition to describing what the lawyer will do, the letter should clarify what the lawyer will not be doing.

It is becoming increasingly common for clients to go beyond the lawyer's engagement letter. For example, they may decide to send their outside firms their own terms, which are often titled "outside counsel guidelines."

The outside counsel guidelines usually cover a wide variety of issues, including:

- Fees — and clients may require the lowest possible rates;
- Expenses that will and will not be reimbursed;
- Budgeting and reporting;



Ronald Levine

- Electronic billing requirements;
- Staffing guidelines, including the number and status of attorneys who can participate in the matter;
- Advance consent to conduct extensive research; and
- Conflicts of interest guidelines, including the entities — such as parents and subsidiaries — that should be considered the client.

Again, to avoid any misunderstandings or ambiguities, inconsistencies between the terms of the engagement letter and the outside counsel guidelines must be reconciled through negotiations with the client.

Practically speaking, in order to retain the client relationship, the outside counsel guidelines will inevitably override the terms of the engagement letter.

Outside counsel should expect that their performance will be carefully monitored. As discussed more below, due to the many rules of the road set forth in the engagement letter and the outside counsel guidelines, AI will make it easier for the client to keep track of compliance.

Expect the client to use AI to monitor compliance with the terms of engagement.

AI may well become an additional big brother looking over the attorney's shoulder, and further contribute to the considerable stresses and strains of legal practice.

In order to reduce the risk of running afoul of the terms of engagement, a legal project manager or billing coordinator must make sure that all work stays within the guidelines.

Among the tasks and processes that could be scrutinized are billing statements to determine whether projects have been completed within an appropriate period of time by attorneys at the lowest possible rate.

In addition, clients will monitor matters undertaken by the law firm that might run afoul of the client's conflicts policy.

Lastly, clients will inquire as to projects, including brief writing and document reviews, that did not incorporate a high level of AI assistance.

AI applications will be able to compare and contrast bills from various law firms in order to pick up inefficiencies in completing tasks.

They will also be able to monitor court dockets to follow a law firm's activities in order to flag any work that might violate the client's conflicts policies.

In addition, clients may audit the law firm's research work to see whether the firm is taking maximum advantage of AI tools.

Every attorney should take steps to prepare.

Whether or not a firm has adopted AI to a significant degree, it must be prepared to deal with the inevitable questions concerning the firm's use of AI and the client's use of AI to monitor the firm's performance.

The failure of firms to adopt AI will inevitably be flagged by clients as they use AI to monitor compliance with their outside counsel guidelines.

Law firms may also use AI to monitor their own compliance with their clients' demands.

At a minimum, law firms should be:

- Educating themselves about the various AI tools that are available in their practice areas;
- Drafting and distributing policies concerning the use of AI in the firm;
- Training attorneys in the use of AI tools that have been adopted;
- Assigning a committee to monitor the use of AI, including the security and accuracy of the applications;
- Ensuring that the terms of each attorney-client engagement, whether through the engagement letter or outside counsel guidelines, are read, understood and followed by the client's team; and
- Considering how AI can be incorporated into the management of each matter to ensure compliance with the terms of the attorney-client relationship.

While AI usage will increasingly become an essential part of any legal practice, it must be carefully monitored and controlled.

The legal team should not introduce AI into their practices without the knowledge of, and review by, firm management.

Clients should be made aware of AI tools that are being utilized, and the steps the firm takes to avoid cybersecurity risks and to guard client confidentiality.

AI will be a necessity, not a mere luxury, for law firms.

Lawyers must be prepared to adopt AI tools for much more than drafting and review of legal documents. AI must be integrated into the entire structure of the legal practice management.

There has been a considerable amount of discussion that AI may replace lawyers. The better view is that while AI cannot replace the human element in the practice of law, if lawyers fail to embrace AI wholeheartedly, they may be replaced by competitors who can satisfy the rapidly increasing demands from clients that their outside firms take advantage of the power and efficiencies offered by AI.

Ronald J. Levine is counsel at Herrick Feinstein LLP.

This article is excerpted from Practical Guidance, a comprehensive practice resource that includes practice notes, checklists, and model annotated forms drafted by experienced attorneys to help lawyers effectively and efficiently complete their daily tasks. For more information on Practical Guidance or to sign up for a free trial, please [click here](#).

Law360 and Practical Guidance are both owned by Lexis Nexis Legal & Professional, a RELX company.

The opinions expressed are those of the author(s) and do not necessarily reflect the views of their employer, its clients, or Portfolio Media Inc., or any of its or their respective affiliates. This article is for general information purposes and is not intended to be and should not be taken as legal advice.