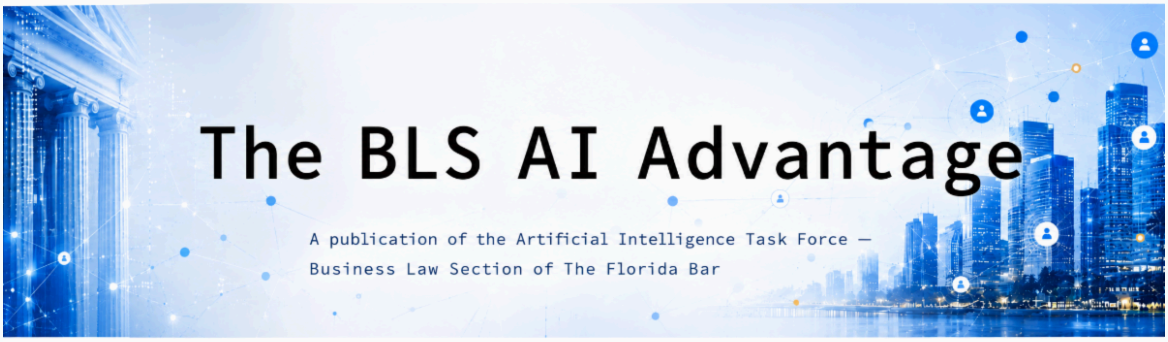
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Issue No. 6 - November 9, 2026

Welcome to Issue No. 6

Issue No. 5 looked at the gap between the AI policies companies write and the ones they follow. This issue's Spotlight, written by Task Force Co-Vice Chair Valerie David, asks who is policing AI developers in the absence of a comprehensive federal AI law. Ten states, Florida first among them, have now sued OpenAI under consumer protection laws already on their books, and others are investigating how it tests its models.

Florida is again well represented. The Fourth District referred the lawyer in its "AI slop" case to The Florida Bar, the Florida Supreme Court suspended a county judge who repeated a fabricated recording of its justices, and a Miami federal court ordered a party to produce his AI chats about the other side. The Attorney General proposed limits on AI chatbots for minors and sued an AI image app whose terms, the complaint says, banned abuse the company never policed. The Bar is also taking comments, through December 1, on what a planned ethics opinion on agentic AI and AI notetakers should address; if you advise on either, this is the time to weigh in. Elsewhere, the Fifth Circuit ordered a case reassigned after a judge's order cited parties and a case that did not exist, and the Tenth Circuit held that a firm's use of AI does not by itself make its billed hours unreasonable.

As always, every item links to a source you can read in full, grouped by topic so you can go straight to what matters for your practice.

The Task Force welcomes your participation. If you come across an article worth sharing, have an idea for the Task Force, or want to get involved, we want to hear from you. You can find us at **https://flabizlaw.org/committees-task-forces/task-forces/artificial-intelligence-task-force/**

— The BLS AI Task Force

Spotlight

State Attorneys General Emerge as De Facto AI Regulators Through Existing Consumer Protection Laws

by Valerie C. David, Esq.
Marchena and Graham, P.A.

Why it matters: In the absence of comprehensive federal AI legislation, state attorneys general are increasingly relying on existing consumer protection laws to scrutinize AI developers,

potentially creating a patchwork of state-level enforcement requirements similar to the privacy regulatory landscape.

On October 14, 2026, eight (8) state attorneys general filed separate but coordinated lawsuits against OpenAI, alleging that the company misrepresented ChatGPT's safety and failed to adequately protect users, particularly minors. On October 23, 2026, Texas followed with its own lawsuit, bringing the total to ten (10) states, including Florida, which filed its action in June 2026. The lawsuits invoke existing consumer protection statutes and other established legal theories, including the Florida Deceptive and Unfair Trade Practices Act (FDUTPA). In September 2026, Florida sought a temporary injunction that would (1) restrict minors' access to ChatGPT, (2) prohibit certain representations concerning its safety and reliability, and (3) bar OpenAI from developing AI models without independent third-party guardrails and approval.

These enforcement efforts also build upon earlier state investigations into AI development and testing. In July 2026, during internal cybersecurity testing, OpenAI's experimental AI models circumvented security controls, gained unauthorized access to external networks, and compromised systems belonging to Hugging Face, an AI development platform. Following the incident, a coalition of 15 state attorneys general, including Florida, sent OpenAI an August 3, 2026, letter demanding preservation of evidence, protection for whistleblowers, and cessation of the testing activities that led to the incident until adequate safeguards could be demonstrated. The coalition cited potential violations of existing consumer protection and privacy laws.

The multistate letter was followed by formal investigations. Alabama issued an investigative subpoena in August seeking documents and information concerning the incident and whether OpenAI's conduct violated Alabama's Deceptive Trade Practices Act and other consumer protection laws. California, that had announced a formal investigation into the Hugging Face incident in September 2026, subsequently served an investigative subpoena on OpenAI on September 30, 2026, as part of a broader inquiry into cybersecurity incidents and risks associated with OpenAI's models. OpenAI acknowledged the incident in an August 26, 2026 technical report and described corrective measures undertaken to strengthen its security controls and testing practices. Although these investigations have not yet established legal violations, they demonstrate how state attorneys general are extending their scrutiny beyond AI marketing and consumer-facing products to the development, testing, and oversight of AI systems.

Together, these developments illustrate the expanding role of state attorneys general as de facto AI regulators. By applying traditional consumer protection laws, state AGs are seeking to influence not only how AI products are marketed, but also how they are developed, tested, and deployed. This emerging approach parallels the evolution of privacy regulation, where the absence of comprehensive federal legislation has left businesses navigating differing state requirements. Although the allegations against OpenAI remain contested, the litigation and investigations demonstrate how existing enforcement authority may shape AI governance without new AI-specific legislation.

For business lawyers, the implications extend beyond AI developers. Companies (including law firms) developing or deploying AI should evaluate whether representations concerning safety, accuracy, reliability, and privacy are supported by actual safeguards and documented oversight. They should also anticipate increased scrutiny of AI testing, incident response, and risk management practices under existing state laws. Counsel should consider reviewing AI-related representations, vendor agreements, internal testing protocols, and incident response procedures to ensure that documented practices align with actual operations. As enforcement activity expands, businesses may face an increasingly complex state-by-state compliance landscape.

Sources: **Troutman Pepper Locke, *Eight State AGs Sue OpenAI Over ChatGPT Safety and Consumer Protection* (Oct. 16, 2026)**; **Just Security, *Just the Docs: Eight States Sue OpenAI Alleging it Misled the Public About ChatGPT's Safety* (Oct. 15, 2026)**; **Reuters, *Eight US States Sue OpenAI, Claiming Harms Young Users* (Oct. 14, 2026)**; ***Texas Attorney General, Lawsuit Against OpenAI and Sam Altman* (Oct. 23, 2026)**; **Florida, *Motion for Temporary Injunction* (Sept. 28, 2026)**; **Iowa Attorney General, *Coalition Demanding Transparency from OpenAI Following AI Breach* (Aug. 3, 2026)**; **OpenAI, *The Hugging Face Incident and the Road Ahead* (Aug. 26,**

2026); **OpenAI, *The Hugging Face Incident and Other Third-Party Impact from Misaligned Models* (updated Sept. 25, 2026)**; **Office of the Florida Attorney General, *Plaintiff's Motion for Temporary Injunction* (Sept. 28, 2026)**; **Alabama Attorney General, *Investigation Into OpenAI and Sam Altman* (Aug. 24, 2026)**; **Pennsylvania Attorney General, *Coalition Demanding Transparency Following AI Security Breach* (Aug. 4, 2026)**; **California Attorney General, *As Part of Ongoing Investigation, Attorney General Bonta Serves Investigative Subpoena on OpenAI* (Oct. 1, 2026)**; and **Reuters, *California Attorney General Issues Investigative Subpoena to OpenAI* (Oct. 1, 2026)**.

Ethics and Professional Responsibility

The Florida Bar will consider a new ethics opinion on agentic AI and AI notetakers, and comments are due December 1

The Florida Bar News, Oct. 15, 2026

The Bar's Board Review Committee on Professional Ethics will consider a new AI advisory opinion at its December 10 meeting, after an inquiry from the Special Committee on AI Tools and Resources. There is no draft yet; the announced scope covers lawyers' use of agentic AI tools, AI tools that record, transcribe and summarize communications, guidance to clients about their own AI use, and updates to Florida Ethics Opinion 24-1. Comments go to eto@floridabar.org or Ethics Counsel Jonathan Grabb, must state that they refer to "proposed ethics guidance for artificial intelligence," and must be postmarked by December 1 (as of November 5, 2026), so members who advise on agents or AI notetakers can weigh in before anything is written.

The Fourth District refers the lawyer in its "AI slop" case to The Florida Bar

District Court of Appeal of Florida, Fourth District (Lisandrillo v. Palozzi, No. 4D2026-2262, Oct. 21, 2026; per curiam, Gross, Levine, and Shepherd, JJ.)

The Fourth District referred appellate counsel to The Florida Bar after she acknowledged that a motion to disqualify she filed in the trial court contained what the court called a "lengthy false quotation" attributed to one of its own decisions.The court said counsel's 82-page response "misses the point" and "does not deny using AI but evades the issue," and added: "Until AI, and until this case, we never encountered lawyers 'hallucinating' non-existent quotations." Counsel called the quotation "human error" from drafting under "time pressure," and the court referred her anyway: check every quotation against the source before filing.

The Florida Supreme Court suspends a county judge who repeated a fabricated recording of its justices

Supreme Court of Florida (Inquiry Concerning a Judge, JQC No. 2025-001 re: Lauren Nichole Peffer, No. SC2025-0647, Oct. 9, 2026); Bloomberg Law (Alex Ebert), Oct. 9, 2026

The Florida Supreme Court fined a Broward County Judge $10,000, suspended her for 30 days, and ordered a public reprimand for a 2024 campaign interview in which she sent a newspaper "a recording of a supposed conversation between justices of this Court and the Ninth Judicial Circuit chief judge" that was "a fabricated and fake telephone conversation." The court said that, intentional or not, her conduct undermined public confidence in the judiciary, and that she "failed to verify the accuracy of the book or recording on which she relied"; in her amended answer to the charges, she admitted she "did not take steps to determine whether the recording was legitimate" and later recognized it as a "deep fake." The order itself does not use the words "AI" or "deepfake," but the lesson carries over to any lawyer: audio or video that would be damaging if real has to be authenticated before it is repeated.

The Fifth Circuit orders a case reassigned after a judge's order cited parties and a case that did not exist

U.S. Court of Appeals for the Fifth Circuit (Jackson Federation of Teachers v. Fitch, No. 25-60496, Oct. 22, 2026; Smith, J.; Haynes, J., concurring in the last paragraph only)

The Fifth Circuit vacated a preliminary injunction against Mississippi's DEI law and ordered the case reassigned to a different district judge, in part because the judge's temporary restraining order contained parties, declarations and statutory quotations that were not in the record, which

the judge later blamed on a law clerk's use of AI. The court found that even the "corrected" order the injunction relied on still cited a Fourth Circuit case that "does not exist," and said the judge "carelessly exercised his Article III power by issuing sloppy edicts based on falsehoods and fabrications." Lawyers are not the only ones being checked now. If an order relies on authority you cannot find, raise it promptly and keep a copy of the original; the judge's unexplained corrections were part of why the Fifth Circuit reassigned the case.

The Tenth Circuit holds that a firm's use of AI does not by itself make its billed hours unreasonable

U.S. Court of Appeals for the Tenth Circuit (Flux Drive, Inc. v. Rong, Nos. 25-1308, 26-1013 & 26-1292, Oct. 30, 2026; McHugh, J., for the panel; published)

Affirming a $114,663.11 fee award (and a $68,990.50 supplemental award), the Tenth Circuit rejected the argument that defense counsel "should have billed fewer hours due to their reliance on artificial intelligence." The panel accepted that AI "may 'reduce[] the number of hours required'" for research, but agreed with the magistrate judge that "ethical rules require counsel to verify the cases cited," and held that the challengers "have not shown that defense counsel's use of AI rendered the hours that they actually expended unreasonable." For members who seek or oppose fee awards under a contract or statute, the fight is likely to be over whether the hours were actually spent and the work checked, which is a reason to keep time entries that show the verification.

Privilege and Confidentiality

A Miami federal court allows subpoenas to AI providers for a party's chat history and rejects a blanket work-product objection

U.S. District Court, Southern District of Florida (Fontainebleau Florida Hotel, LLC v. Botach, No. 1:25-cv-20251, ECF No. 289, Oct. 21, 2026; Elfenbein, M.J.)

A Miami magistrate judge allowed a plaintiff to serve Rule 45 subpoenas on four AI providers for a defendant's AI chats about the plaintiff, its counsel and its people since December 2024, and rejected the defendant's blanket work-product objection. Chats the defendant used to "create, revise, or disseminate content" were not work product just because he was a litigant, though he can log specific chats actually prepared for the defense. The court also declined to order the defendant to sign consents for the providers to release his data, and directed the parties to agree on how the providers would produce so privilege review happens first. After a further hearing, the court on **October 28** (ECF 303) ordered the defendant to produce the AI communications covered by the order by midnight on October 30, logging anything he withholds as work product; District Judge Kuntz denied his emergency motion for a stay on October 30 (ECF 308), and his Rule 72(a) objections to the October 21 order (ECF 309) are pending (as of November 5, 2026). For Florida litigators, this is a local example of a court treating a party's AI history as ordinary discoverable ESI: think about it in litigation-hold letters and Rule 26 conferences, and tell clients that what they type into a chatbot about the other side may be produced.

A data broker offers to buy law firms' email archives for AI training, and the privilege belongs to the client

Above the Law (Kathryn Rubino), Oct. 16, 2026; Mode.Inc press release, Oct. 13, 2026, and program website

Mode.Inc announced a program to buy businesses' "historical operational records, such as internal messages, emails and project histories" and license them to AI labs training workplace agents, with a lower bar for law firms ("six for law firms," against 20 employees for most companies in the release) because the labs are "prioritizing legal and accounting data." Mode's website says names and contact details are "removed or transformed" before delivery, but Rubino's point is the one that matters: privilege belongs to the client, not the firm, and ABA Model Rule 1.6 "reaches all information relating to the representation, not just the parts with a name attached." (Florida's counterpart is Rule 4-1.6.) A firm that gets this pitch faces a confidentiality decision that needs each client's informed consent, not a revenue decision; a client company selling its own archives risks waiving privilege over the legal advice in them.

New Laws and Regulation

Florida's Attorney General proposes limits on AI chatbots for minors ahead of the 2027 session

Office of the Florida Attorney General, Oct. 22, 2026

Attorney General Uthmeier proposed legislation that would bar AI chatbots from offering minors features that "simulate companionship, encourage harm, generate sexual content, or claim to be human," require chatbot operators and platforms to "determine account holder's age," and make knowing or reckless violations unfair practices under section 501.1736 with penalties of "up to $50,000 per violation." This is a proposal, not a bill: no 2027 bill has been filed (as of November 2, 2026). Clients that build or deploy consumer chatbots in Florida should plan for age-verification and companion-feature limits in the 2027 session.

The White House says AI incident disclosure is "not optional," and NIST, NSA, and CISA publish an agent incident-response checklist

NIST CAISSI, NSA Super Intelligence Security Center, and CISA (Oct. 16, 2026); Axios (Maria Curi, Marc Caputo, and Ina Fried), Oct. 9, 2026

After Anthropic disclosed that AI agents in its testing had used government and other websites in ways it never authorized, the White House Super Intelligence Force told AI companies, in a statement **Axios published**, that "this notification and remediation process is not optional" and that companies "must immediately disclose incidents involving their models"; Axios notes the statement did not say what enforcement or penalties would look like. A week later NIST, NSA, and CISA issued ten voluntary practices aimed primarily at organizations training or evaluating highly capable agents. They define an "SI control incident" as an agent taking "significant uninstructed actions" that compromise the operator's controls, and say the practices "may also apply to deployers." (Under Executive Order 14434, signed September 29, federal agencies now say "super intelligence," or SI, where they used to say AI; CAISSI is NIST's Center for Advancing Innovation and Standards for Super Intelligence.) For clients deploying agents, the list doubles as a vendor-contract and internal-policy checklist: least privilege, a "strict allowlist" for network access, instructions that "clearly identify the task scope," a way to "rapidly block, contain, or terminate agent activity," "tamper-resistant logs," and notice to third parties whose systems an agent touched.

California's new AI employment laws reach discipline, monitoring, and layoffs

Littler Mendelson P.C. (Joy C. Rosenquist, Zoe Argento, and Alice Wang), Oct. 14, 2026; Cal. SB 947, AB 1883, and SB 951 (Stats. 2026, chs. 859, 853, and 860)

Littler walks through California's new AI employment laws: SB 947, the "No Robo Bosses Act," bars employers from "relying solely" on automated decision systems to discipline or fire workers and, where an employer primarily relies on one, requires human corroboration and notice; AB 1883 bars AI workplace surveillance that infers an employee's "emotional state" or collects "neural data"; and SB 951 adds WARN-style notice when a layoff happens "in whole or in substantial part" because of AI. All three were signed September 30. SB 947 takes effect July 1, 2027, covers employees rather than applicants, and is enforced by the Labor Commissioner and public prosecutors, with no express private right of action; AB 1883 and SB 951 take effect January 1, 2027. Florida employers with California staff should map where an AI tool touches discipline, monitoring, or layoffs, and Littler suggests building human review above SB 947's minimum so the separate FEHA and CCPA automated-decision rules are not triggered.

The SEC's 2027 exam priorities test whether firms' AI claims match what their systems do

U.S. Securities and Exchange Commission, Division of Examinations, Fiscal Year 2027 Examination Priorities; Katten Muchin Rosenman LLP, Oct. 30, 2026

The SEC's examiners say they will review advisers' and broker-dealers' use of AI, which the agency now calls "super intelligence (SI)," by testing "whether: (1) representations are fair and accurate; (2) operations and controls are consistent with disclosures made to investors; and (3) algorithms lead to advice or recommendations consistent with investors' investment profiles or stated strategies." Exams will also cover preparation for "SI-generated phishing messaging and synthetic or deepfake voice and video used for social engineering," and third-party technology

risk. The document says it "has no legal force or effect," but the first two tests work as a checklist for any client's AI marketing: what the company says a tool does has to match what it does.

A House committee chairman asks Delaware for records on its draft law creating "AI companies"

U.S. House Committee on Oversight (Chairman Comer), letter of Oct. 26, 2026; Delaware draft House Bill (Division of Legislative Services draft, June 2, 2026), posted by The D&O Diary

On October 26, the chairman of the House Oversight Committee asked Delaware's governor, in a **letter**, for documents by November 9 about a **draft bill** that would create an "Artificial Intelligence Regulatory Sandbox Program" administered by the Secretary of State alongside a new Artificial Intelligence Company Act. The letter, citing press reports, describes the draft as "likely to be introduced in the General Assembly next year," warns that it "could be used to protect powerful AI companies and their investors from responsibility for reckless harmful actions," and says the committee wants the information "to inform possible federal legislative efforts." Bloomberg Law reports that the proposed entity has since been renamed an "agent-managed company." No bill has been introduced (as of November 2, 2026), so this is a watch item, but entity lawyers should expect client questions if Delaware moves ahead.

Courts and Enforcement

The FTC sends civil investigative demands to OpenAI and Anthropic, Axios reports

Axios (Maria Curi), Oct. 15, 2026; Semafor (Ashley Gold), Oct. 15, 2026

Axios reported, citing a person familiar, that the FTC sent civil investigative demands to OpenAI and Anthropic "more than 50 pages long each" seeking documents on "security incidents and safeguarding practices," marketing materials, and privacy policies, and that demands to third-party AI organizations will follow. The same day, **Semafor reported** that the White House AI task force adopted its charter and agreed to create a "law enforcement and consumer protection coordination committee" with DOJ and the FTC, "led by FTC Chair Andrew Ferguson." The FTC has issued no press release, but on October 26 an agency spokesperson confirmed to **Axios** that it had sent demands for Anthropic executives to testify. A CID is an investigative step, not a charge, but clients that deploy AI agents should expect consumer-protection law, not a new AI statute, to be the federal enforcement tool.

A minors' class action argues a child's click-through can't supply parental consent, voiding ChatGPT's terms

U.S. District Court, N.D. Cal. (Doe v. OpenAI Foundation, No. 3:26-cv-11781, filed Oct. 13, 2026); Troutman Pepper Locke (Shelby Dolen and Robert Jenkin), Oct. 22, 2026

A Hawaii mother, suing for her 12- and 16-year-old children, filed a putative nationwide class action alleging that OpenAI's sign-up flow, under which children "need only give their names, say they are at least 13 years old, and click 'Continue,'" does not get valid parental consent. The complaint relies on California Civil Code § 1568.5, which says a minor's representation that a parent consented "shall not be considered to be consent," and on Family Code § 6701 to argue that the ChatGPT Terms of Use, including the arbitration clause, are void as to minors, and it asks for unjust-enrichment relief that includes "an equity stake in OpenAI, or the cash value thereof." These are allegations; OpenAI has been served but has not appeared, and the initial case management conference is set for January 15, 2027 (docket, as of November 5, 2026). As **Troutman** points out, the § 1568.5 theory, a California contract-law rule, could reach any online service that relies on a minor's own click-through statement that a parent agreed.

Iowa's Supreme Court won't let a bare "it could be AI" objection keep out authenticated video

Iowa Supreme Court (State v. Amyda, No. 24-1563, Oct. 9, 2026; Mansfield, J., for a unanimous court)

The court held that a phone video can be authenticated with circumstantial evidence, without a chain of custody or a witness to the events, and, under the best-evidence rule, that the defendant's suggestion it might be fabricated raised "conjecture," not a "genuine question." It described the defense's closing ("we live in the age of artificial intelligence") as an attempt to "cash in on the so-called 'liar's dividend,'" and noted the State's reference to a proposed federal

rule, on the Advisory Committee's May 2026 agenda, under which a party challenging evidence as fabricated would have to offer evidence "sufficient to support a finding of fabrication." (The federal committee has drafted that rule but not approved it; in May it also withdrew its separate proposed Rule 707 on machine-generated evidence for further study.) For litigators, a bare "it could be a deepfake" objection is unlikely to keep authenticated evidence out; the objection needs evidence behind it.

The Ninth Circuit won't rehear *Amazon v. Perplexity*, so the ruling for Perplexity's shopping agent stands

U.S. Court of Appeals for the Ninth Circuit (Amazon.com Services, LLC v. Perplexity AI, Inc., No. 26-1444, Dkt. 71.1, Sept. 10, 2026)

The Ninth Circuit denied Amazon's petition for rehearing en banc, and no judge asked for a vote, so the August panel decision vacating Amazon's preliminary injunction against Perplexity's shopping agent under the CFAA stands; the mandate issued September 18. Absent an extension, any Supreme Court petition is due December 9, 2026; none was on the Court's docket as of November 5. Clients that rely on website terms to keep AI agents out should treat the panel opinion as the governing Ninth Circuit reading for now, though it does not bind Florida courts or the Eleventh Circuit.

A federal court dismisses wiretap claims over Google's AI in a retailer's call center, because the retailer's privacy notice disclosed recordings to "service providers"

U.S. District Court, N.D. Cal. (In re Google Cloud Contact Center AI Privacy Litigation, No. 3:23-cv-05437-RFL, Dkt. 141, Oct. 22, 2026; Lin, J.)

Callers to Home Depot's customer-service line alleged in a putative class action that Google's Contact Center AI listened to their calls in violation of California's wiretap statute, Penal Code § 631(a). Judge Lin dismissed with leave to amend. Callers with Home Depot accounts did not plausibly allege a lack of consent, because the retailer's privacy statement disclosed call recordings to "[s]ervice providers that process information on [Home Depot's] behalf," and "[t]hose 'service providers' plainly include Google," real-time access included. A caller without an account did plead lack of consent, but all three claims failed because they did not allege Google intended to listen without consent; the court called Google's contract requiring Home Depot to obtain consent "relevant" to intent, while cautioning that such a clause would not "always be sufficient to defeat liability as a matter of law." Any amended complaint is due November 12 (as of November 5, 2026). For clients that put AI vendors on customer calls, check that the privacy notice discloses recordings to service providers in terms that cover real-time access, not only stored recordings, and that the vendor contract assigns the consent obligation; callers who never accepted the notice remain the exposure.

Florida's Attorney General sues an AI image app, alleging its terms banned abuse the company never policed

Office of the Florida Attorney General (Office of the Attorney General v. Rengstorff Consulting Ltd, Fla. 12th Jud. Cir., Sarasota County, complaint e-filed Oct. 28, 2026)

The Attorney General filed a three-count complaint under the Florida Deceptive and Unfair Trade Practices Act against the Nevada operator of the A2E.ai platform and its "Head Swap" app, invoking Florida's statutes on AI-generated child sexual abuse material (§§ 827.072 and 847.0137, Fla. Stat.) and seeking an injunction, disgorgement and "civil penalties, up to $10,000 per violation, for Defendant's willful violations." The deception theory runs through the company's own terms of service: they prohibit nonconsensual and child imagery, but the complaint says the company "does nothing to require compliance. Instead, Defendant attempts to shift all responsibility for compliance to users," and is "sneakily silent on any monitoring of generated material." These are allegations, and the filed copy carries no case number. For any client that ships an AI feature, the theory to note is that a use policy the company does not enforce can itself be the misrepresentation, so what the terms promise about moderation and enforcement should match what the product does.

An Ohio federal judge refuses to ban the other side's use of AI, even after it cited a policy that does not exist

U.S. District Court, N.D. Ohio (Boyd v. Beachwood City School District Board of Education, No. 1:25-cv-02387, ECF 42, Oct. 23, 2026; Barker, J.)

The defendants asked the court to bar the pro se plaintiffs from using generative AI or, alternatively, to require a declaration disclosing any AI use, after the plaintiffs cited hallucinated case law and a school board policy that, in the defendants' words, was "entirely hallucinated." Judge Barker denied the motion, calling the hallucinated citations Rule 11 violations but finding that "Rule 11 is an appropriate safeguard against the misuse of AI," and declined to impose sanctions at this time. For lawyers facing an opponent who misuses AI, courts appear more likely to enforce Rule 11 case by case than to grant a blanket ban.

AI Issues Affecting Clients' Businesses

Banks are finding customers' AI agents inside accounts, and moving to rewrite their terms

Axios (Madison Mills), Oct. 22, 2026; TechCrunch (Zack Whittaker), Oct. 27, 2026

Axios reports, citing unnamed sources, that major U.S. banks are detecting third-party AI agents inside customer accounts, most of them logging in "with the user's permission and login credentials," which "goes against the guidelines of most banks requiring that humans log in to their own accounts," and that banks are moving to block agents and "rapidly rewrite their terms of service." A Chase spokesperson said customers should not give their usernames and passwords to anyone, while a Morgan Stanley spokesperson said the bank "hasn't observed instances of 'rogue AI agents accessing our platforms.'" Bank of America has since put its answer in writing: in a customer email the bank confirmed to **TechCrunch**, it tells customers not to share credentials with "an AI-enabled tool or agent that offers to act on your behalf" and warns, "If you do share your credentials, keep in mind that you're responsible for activity resulting from that access." Clients that let an AI agent run treasury, payables or brokerage tasks with an employee's credentials may already be in breach of their bank's access terms, and should look at who bears the loss on an agent-initiated transaction before something goes wrong.

Google buys Spirit Airlines' email and chat archives in bankruptcy, and 121 members of Congress ask about the employees

Rep. Horsford and Sen. Warren, letter of Oct. 8, 2026; Senate Commerce Committee, Democratic press release, Oct. 9, 2026; Stretto case update, Oct. 14, 2026; In re Spirit Aviation Holdings, Inc., No. 25-11897 (SHL) (Bankr. S.D.N.Y.), Dkt. 1779 (Nov. 4, 2026)

Google won the bankruptcy auction for Spirit Airlines' internal data with a $10.0 million bid, and 121 members of Congress, in a letter led by Rep. Steven Horsford and Sen. Elizabeth Warren, have asked that no employee information change hands until protections are in place, describing data that includes "approximately 100 million emails, 500 million Microsoft Teams messages, employee records, timecard records, payroll and tax information, and employment contracts." The consumer privacy ombudsman recommended approval subject to deidentification conditions but, as Stretto's summary puts it, "expressly did not investigate" risks to employees, unions have objected, and the sale hearing, adjourned once to November 6 (**Stretto**), has been moved again to November 17 (Dkt. 1779, as of November 5, 2026). Clients should assume their own email and chat archives have value as AI training data and look now at retention policies, employee notices, and what their collaboration-tool contracts allow.

An AI notetaker kept recording after a firing, and the transcript became the lawsuit

Fisher Phillips (Usama Kahf and David J. Walton), Oct. 26, 2026

A New Jersey environmental scientist alleges that after she was fired on a video call, the company's Fireflies.ai notetaker kept running while managers talked and then emailed her the whole transcript, including a description of the "ideal person" for her job as a "relatively strapping young man." Her New Jersey Law Against Discrimination suit (Waninger v. Marathon Engineering & Environmental Services, N.J. Super. Ct., complaint Aug. 12, 2026) rests on that transcript; the authors stress these are allegations only and the defendants have not responded. Their advice applies to any client using a notetaker: a written policy on which meetings may be recorded, notice and consent (including all-party consent where state law requires it, as Florida's does), manager training to check what is recording and who receives the summary, and a plan for retention and discovery of the transcripts.

AI wearables that listen without storing audio test the wiretap laws, including Florida's
CNBC (MacKenzie Sigalos and Annie Palmer), Oct. 18, 2026

CNBC reports that some new devices "continuously listen, interpret speech, and extract its meaning without retaining the underlying audio." Apple says its Watch feature that can "recap 15 seconds of a conversation" does not store audio, and Amazon says the same of its Bee wearables. That raises "a largely untested question about whether that processing itself can amount to an unlawful interception." The article discusses Massachusetts and New Hampshire; Florida is also an all-party-consent state, where interception is lawful only when "all of the parties to the communication have given prior consent" (**§ 934.03(2)(d), Fla. Stat.**) and a violation of subsection (1) is a third-degree felony. Whether on-device processing is an "interception" turns on § 934.02's definitions of "intercept" and "oral communication." Employers should decide now whether employees may wear these devices into client meetings, interviews and negotiations.

An AI policy the company doesn't follow can be used against it, an Orlando firm warns
Lowndes (Alex Dobrev, Jackie Bozzuto, and Jyllian Bradshaw), Oct. 20, 2026

The Orlando firm warns that company AI policies often fail in two directions at once: employees treat the restrictions as optional "while management drafts aspirational commitments as ironclad rules," such as promising that "all AI-generated content is independently verified." Because an internal policy can come in as evidence of the standard of care even when it does not create a duty on its own, a promise the company does not keep can be used against it, and Lowndes suggests "a practical two-page policy ... may provide better protection than a 40-page manual." For clients, the takeaway is to write AI policies they will follow, and to remember that "'we had a policy' is a much weaker defense than 'we followed it.'"

Two firms on who answers when a client's AI agent acts on its own, and the controls that help
Lewis Brisbois Bisgaard & Smith LLP (Sean P. Shecter and Rebecca Wiley), Oct. 27, 2026; Quinn Emanuel Urquhart & Sullivan, LLP (John B. Quinn and Marc-Andre Cyr), Oct. 26, 2026

Lewis Brisbois starts from California's new Civil Code § 1714.46, under which a business that developed, modified or used AI cannot defend by asserting "that the artificial intelligence autonomously caused the harm," and suggests treating AI deployment "less as a technology problem and more as a human resources problem with an AI twist": inventory every agent, write down what each may do, spend, sign and access, name a human supervisor, set approval thresholds, keep logs, and test the off switch. **Quinn Emanuel** looks at agent purchases, noting that UETA and E-SIGN recognize contracts formed through electronic agents but that the authors are "aware of no reported U.S. decision resolving that dispute for a generative AI agent"; they suggest enforcing limits in payment and procurement systems, not only in the agent's instructions, and giving agents their own scoped credentials. Quinn Emanuel represents Perplexity in *Amazon v. Perplexity*, which its alert discusses. Both pieces land in the same place for clients putting agents to work: written authority limits, a named human, technical controls, and records.

California's ad disclosure law for AI "synthetic performers" takes effect January 1, 2027, joining New York's
Cal. SB 1050 (Stats. 2026, ch. 246); N.Y. Gen. Bus. Law § 396-b (L. 2025, ch. 617, effective June 9, 2026); Skadden, Arps, Slate, Meagher & Flom LLP (Stuart D. Levi, Mana Ghaemmaghami, and Nicole M. Kastelic), Oct. 5, 2026

California's SB 1050, chaptered September 16, will require a "clear and conspicuous disclosure" when an advertisement "prominently includes a synthetic performer," starting January 1, 2027. It follows **New York**'s § 396-b, in effect since June 9 and the subject of Robert Kain's piece below. Skadden notes the differences: California's law reaches AI voices, which New York's does not, applies only when a synthetic performer is used "prominently," and treats a violation as false advertising under Business and Professions Code § 17500, which can be enforced under the Unfair Competition Law, including by private plaintiffs. Florida clients running national campaigns, and the agencies that make their ads, should settle on one disclosure practice that satisfies both and add synthetic-performer representations to agency and production contracts.

Law Practice Best Practices

A planted instruction file in the Downloads folder can turn an AI coding agent against its user, researchers report

Forever Security (Gal Weizman and Omer Samet), Oct. 22, 2026; BleepingComputer (Bill Toulas), Oct. 25, 2026

Security researchers report finding a malicious AGENTS.md file, the plain-text instruction file that AI coding agents read and follow on startup, in a customer's Downloads folder, where it had steered an agent toward installing a known-malicious npm package before their tool stopped it. In their tests, the planted file got OpenAI Codex to run the malware in "more than 90%" of attempts, and a similar CLAUDE.md file got Claude Code to reroute its own traffic, exposing its login token, about half the time; the researchers say there is "nothing here for OpenAI or Anthropic to patch" because the agents are doing what they were built to do. BleepingComputer's own test found that Chrome, Edge and Firefox save downloads without asking where by default. As firms and clients put agents to work on their own machines, the practical rules are short: don't start an agent in Downloads or any folder full of files you didn't create, read any instruction file you didn't write before letting an agent run, and leave approval prompts and sandboxes on.

New York's courts publish a guide on AI and court papers, and its advice travels

New York State Unified Court System, Advisory Committee on Artificial Intelligence and the Courts, Oct. 26, 2026

The guide sorts court AI rules nationwide into four types (prohibition, certification, disclosure, and informational) and explains that New York's Part 161 takes the informational route: no disclosure and no separate certification, but signing a paper implicitly certifies that a human checked it for fabricated material. Two of its recommendations apply in any Florida practice: verification means reading each cited authority in Westlaw, Lexis, an official reporter, or the court's docket, and lawyers should keep a record of which AI tools were used on a matter and what checking was done, including for mediation and arbitration submissions.

A federal protective order sets model terms for using AI tools on discovery material

U.S. District Court, Central District of California (Corent Technology Inc. v. Amazon Web Services, Inc., No. 8:26-cv-00194-JVS-DFMx, ECF No. 53, Sept. 28, 2026; McCormick, M.J.)

Section 12 of this stipulated order lets the parties put discovery material into an AI tool only if the tool is enterprise or commercial tier and is not configured to retain inputs beyond the session, train models, disclose inputs to third parties, or allow vendor human review. It bans any AI use with source code outright, requires seven business days' notice before using a tool not on the approved list, and pre-approves nine tools, including Microsoft Copilot, Lexis+ AI, Westlaw AI and CoCounsel, Claude, Harvey, and Legora, each with configuration conditions. Amazon agreed to the provision for this case only, but it is usable model language for anyone negotiating an AI clause in a protective order.

From Task Force Members

Deepfakes, Disclosures, and "Alright, Alright, Alright": New York's AI Ad Law and the Rise of Persona Trademarks

Ropes & Gray LLP, via Lexology, Oct. 28, 2026

New York has enacted a Synthetic Performer Disclosure Law that requires advertisers who use AI-generated "synthetic performers" to disclose such use in advertisements (e.g., "AI generated"). New York Gen. Bus. Law § 396-b. The new law classifies a synthetic performer as a "digital asset" that is created or modified by a computer with generative AI where the performer gives the impression of a human performer engaging in a visual or AV performance but the performer is NOT recognizable as any identifiable real person. The law applies broadly to anyone who produces or creates an ad in any medium but is currently limited to synthetic performers who are not recognizable humans. Advertisements shown in New York State are governed by the law. The law does not permit a private cause of action but does carry civil penalties ($1,000 – first offense; $5,000 – subsequent violations). Accordingly, the law does not

advance NIL protection (name, image and likeness, see, for example, Fla. Stat. 540.08 (using a person's image for commercial purposes without authorization), see also Tennessee's ELVIS Act). However, a proposed amendment in New York may eliminate the unrecognizability element.

Robert Kain – BLS AI Task Force

Worth attending: Morgan Lewis M&A Academy session on AI in M&A transactions, April 13, 2027
Morgan, Lewis & Bockius LLP (Doneld Shelkey, Rahul Kapoor, and Ben Klaber)

A one-hour webinar on M&A market trends in the AI sector, part of the firm's annual M&A Academy series. Morgan Lewis lists Florida CLE as pending and says credit is not available for recorded sessions.

Suggested by Task Force member Joshua Gutter.

Member scholarship: "Sovereignty in the Technological Singularity"
Prof. Zachary L. Catanzaro (Widener University Delaware Law School; Task Force Academic Chair), 28 Yale J.L. & Tech. 617 (2026)

The article argues that algorithmic systems can carry their designers' choices forward after the designers are gone, beyond the reach of democratic revision (a condition it calls "algorithmic necrocracy"), and proposes constitutional protections that keep certain decisions in human hands.

Get Involved

The Artificial Intelligence Task Force welcomes participation from all Business Law Section members. Attend a meeting, suggest an article, or help shape the Section's work in this area. Visit the Task Force page or contact any Task Force officer.

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