



# 2026 International Client Seminar

## March 5-7, 2026

### Artificial Intelligence in 2026: A Global Odyssey

Joel R. Hlavaty  
Moderator  
FRANTZ WARD LLP  
Cleveland, Ohio  
[jhlavaty@frantzward.com](mailto:jhlavaty@frantzward.com)

# AI in 2026: A Global Odyssey

## The Benefits and Pitfalls of Artificial Intelligence

Artificial intelligence (“AI”) has long been a subject of science fiction books, movies, and television, and now it has become a reality that is causing much excitement, but also much debate and concern. While AI may provide some advantages and cost-savings for businesses as well as consumers, it also has the potential to cause significant issues if certain controls are not in place. This paper and the panel discussion will explore some of the ramifications and dangers that the use of AI presents, such as privacy, security, and ethical concerns, as well as job displacement, discrimination, and other employment issues. In the end, the hope is that everyone can better assess the benefits and pitfalls of using AI, making their own determination as to its use.

## The Trump Administration Establishes a Task Force

On December 11, 2025, President Donald J. Trump issued an Executive Order titled, “*Ensuring a National Policy Framework for Artificial Intelligence*,” that, among other things, directed the U.S. Attorney General to establish an AI Litigation Task Force to address and challenge any unconstitutional and otherwise unlawful state AI laws that harm innovation and may be preempted by federal law. President Trump stated he was acting decisively to ensure that our great technological pioneers can compete on the world stage, thereby ensuring America’s national security and economic prosperity in the field of AI. The Executive Order furthers the Trump Administration’s common sense approach to AI policy by attempting to remove unnecessary red tape, updating or removing rules that were created before the advent of AI, and developing new rules for the use of AI. To accomplish these objectives, the Executive Order directed applicable federal agencies to do the following:

- The Department of Justice and Attorney General were directed to establish an AI Litigation Task Force that is to challenge any state AI laws that are determined to be inconsistent with federal policy, including those that may be unconstitutional, preempted by federal law, or otherwise be unlawful as determined by the Attorney General. The task force was to be established within thirty (30) days of the issuance of the Executive Order. In early January U.S. Attorney General Pam Bondi announced that the task force would either be led by her or her appointee and consist of representatives from the offices of the Deputy and Associate Attorney General, the Justice Department’s Civil Division, and the Solicitor General’s office.
- The Department of Commerce and Secretary of Commerce were directed to publish an evaluation of existing state AI laws and to identify those that are deemed “onerous” and in conflict with national policy, including those that require AI models to alter truthful outputs or that compel disclosures that may violate the U.S. Constitution. Any egregious state laws are to be referred to the AI Task Force created by the Department of Justice. The Secretary of Commerce was to publish the evaluation within ninety (90) days of issuance of the Executive Order.
- In addition to the Secretary of Commerce’s evaluation of state laws, the Secretary was directed to issue a policy within ninety (90) days of the Executive Order that would outline the conditions under which the states with “onerous” AI laws would be eligible federal funding under the Broadband Equity Access and Deployment (BEAD) Program. The Executive Order also directed federal executive agencies to assess whether the awarding of monies under discretionary grant programs could be conditioned on states not enacting or enforcing conflicting AI laws.
- The Chairman of the Federal Communications Commission (FCC) was directed to determine whether to adopt a federal reporting and disclosure standard for AI models that would preempt conflicting state laws. This also was to be done within ninety (90) days of the issuance of the Executive Order.

## AI in 2026: A Global Odyssey

On December 12, 2025, the day after President Trump issued his Executive Order, FCC Chairman Brendan Carr issued a press release in which he stated:

President Trump’s historic Executive Order on artificial intelligence promotes America’s leadership in AI and advances our nation’s economic and national security interests. It does so by targeting excessive state regulations that would not only hold America back, but insert ideological bias into AI models. President Trump’s decisive action also ensures a policy framework that protects children, prevents online censorship, respects copyrights, and safeguards communities.

The FCC welcomes President Trump’s direction that the agency initiate a proceeding to determine whether to adopt a Federal reporting and disclosure standard for AI models that preempts conflicting State laws.

- The Federal Trade Commission (FTC) was directed to issue a policy statement that would explain and clarify how state laws that require alterations to truthful outputs from AI models were preempted by the FTC’s prohibition on unfair or deceptive acts or practices. This policy statement was to be issued within ninety (90) days of the Executive Order.
- Finally, the Executive Order instructed the Special Advisor for AI and Crypto and the Assistant to the President for Science and Technology to prepare legislative recommendations that would establish a uniform federal AI framework, which in turn would preempt state laws in conflict with national policy. The recommendations were to exclude certain areas, such as child safety protections, AI computer and data center infrastructure, and state government procurement.

### The Risks to the Attorney-Client Privilege

While AI may remove much of the analytical work conducted by attorneys, such as document review, legal research, detection of differences in documents, the initial drafting of documents, etc., it should not replace the strategic judgement, the ability to advise when outcomes are uncertain, and the human creativity that attorneys bring to a matter.

On July 29, 2024, the American Bar Association’s Standing Committee on Ethics and Professional Responsibility issued Formal Opinion 512 (“ABA Formal Opinion 512”) that established a comprehensive framework for attorneys with respect to generative artificial intelligence. Model Rule 1.6 regarding “Confidentiality” requires attorneys who use AI to keep confidential all communications relating to the representation of a client unless the client has given informed consent otherwise. In this regard, attorneys are not to rely on boilerplate language in an engagement letter to advise clients of the use of AI, but rather are required to explain to them why AI is being used, along with the type of information that may be disclosed and the risks and benefits of using AI.

It is important to recognize that apart from an attorney’s duty to maintain the confidentiality of client information, the attorney-client privilege applies to confidential communications made for the purpose of seeking or providing legal advice. The duty to maintain confidentiality is much broader than the attorney-client privilege, and the use of AI systems without proper safeguards jeopardizes both that duty of confidentiality and the attorney-client privilege. Additionally, a client’s independent use of an AI system to input information similarly threatens the attorney-client privilege should information in the AI system be exposed to third parties, albeit client maintain the ability to waive the privilege unlike their adversaries outside of uniquely specific circumstances.

# AI in 2026: A Global Odyssey

## Maintaining Professional Integrity and Avoiding Ethical Pitfalls

The use of AI generative models may threaten an attorney's professional integrity and lead to ethical violations should an attorney not be diligent and vigilant in its use. In this regard, there have been numerous cases reported in recent months that demonstrate the risks involved in not verifying the results achieved when using AI.

Notably, when an attorney accepts an engagement as co-counsel, even when the engagement is limited to being local counsel and a "bag carrier" for national counsel, the attorney's obligations to conduct reasonable inquiry into information provided to a court are nondelegable. See, e.g., *Wadsworth v. Walmart (D. WY 2025)* (wherein the court fined counsel – who did not draft an AI-generated motion in limine – for citing nine (9) cases that did not exist).

ABA Formal Opinion 512 requires attorneys and law firms to "fully consider their applicable ethical obligations" when using generative AI models. In this regard:

- Model Rule 1.1 of the Opinion addresses "Competence" and requires attorneys to exercise, "legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation," and to understand the capabilities and limitations, as well as the benefits and risks, associated with the use of an AI system.
- Model Rule 1.4 regarding "Communication" requires attorneys to disclose the use of AI to clients, even when the situation may not require informed consent under Rule 1.6. The best rule of thumb to follow is to provide a client with more information and communication rather than less.
- Model Rules 3.1, 3.3 and 8.4(c) require attorneys to review thoroughly – and to correct – any pleadings or filings prior to submitting them to a tribunal.
- Model Rules 5.1 and 5.3 require law firms to provide appropriate training to their attorneys on the ethical and practical use of AI.
- Model Rule 1.5 regarding "Fees" provides that an attorney may not charge a client for learning and getting up to speed on the use of a generative AI system or tool, but an attorney may charge a client for inputting information into an AI system and for reviewing the draft document produced by the AI system. The rule also provides that if a client expressly requests an attorney to use a specific AI tool and the attorney is not familiar with how to use that particular AI tool, it may be appropriate to charge the client for learning how to do so.

## Employment Risks: Dangers In The Hiring Process

The U.S. Equal Employment Opportunity Commission (EEOC), as well as the Department of Justice and the Department of Labor, had previously issued guidance during the Biden Administration on the use of AI. President Trump, however, revoked virtually all the Biden-era policies and guidance with respect to the use of AI, as well as many other topics, such as the use of the disparate impact theory of discrimination. While the guidance may have been revoked, the basic law followed by the EEOC and the courts has not changed, and the EEOC continues to scrutinize algorithms and technologies that may result in discriminatory hiring practices. Accordingly, some of the things that the EEOC and courts will analyze, and some of the things of which employers need to be aware, include:

- Technologies, such as video and audio screenings, that measure an applicant's character traits via their

## AI in 2026: A Global Odyssey

eye contact and voices in contrast to automated analyzers, as this may result in the downgrading or rejection of an applicant based on a disability.

- Algorithms that:
  - Limit job advertisements to targeted groups.
  - Screen resumes for key words or experiences.
  - Assess employee productivity.
  - Determine the setting of wages and wage increases.
  - Decide whom to promote or terminate.
- Technologies that do not evaluate job skills, but rather screen out applicants based on non-business-related factors.
- Technologies that:
  - Monitor employee activity, such as keystrokes, cursor activity, and emails.
  - Track employee performance.
  - Track employee location.

### Employment Risks: Potential Overtime Claims

The use of AI not only makes certain tasks easier and quicker to perform, but also may lead to the elimination of certain tasks that previously qualified an individual for an exemption from the overtime laws of the Fair Labor Standards Act (FLSA). In that regard, the FLSA, as well as corresponding state laws, have historically required the use of “discretion and independent judgment” to qualify for the executive, administrative, and professional exemptions from the payment of overtime wages. The use of AI in certain occupations, however, such as professional services and finance, may eliminate the “discretion and independent judgment” previously exercised by these workers. For example, the elimination of data analysis duties for accountants, whereby they search for duplicate transactions, spending patterns and financial fraud, could lead to a reclassification of those individuals.

Similarly, to the extent an AI generative tool can review and analyze documents previously analyzed by an attorney, an attorney conducting an extensive document review may argue that his or her task did not involve the use of “discretion and independent judgment” since their role could have been performed by a machine. A similar argument could be made by an attorney whose primary responsibility is to conduct legal research or do the initial drafting of a document.

While this is an extremely gray area, it is an area that bears observation as we increase the use of AI in the professional services sector.

### Practical Pointers

As discussed and demonstrated above, the use of AI poses several risks, but of course it also offers many efficiencies and advantages. Additionally, AI is here to stay and businesses need to adapt and learn to use AI or they may be left in the dust by their competitors. In utilizing AI, however, there are some steps to take to ensure its safe and productive use:

- Establish a policy regarding the use of AI; i.e., articulate the vision of the company for when and how it is to be used, and stress the ethical use of AI.
- Educate employees on the use of AI tools, including not only its benefits, but also its limitations and the potential for liability if misused.

## AI in 2026: A Global Odyssey

- Develop a risk management and AI governance program that provides guidelines, policies, and internal controls as to its responsible use. Management or the leadership/executive team should conduct periodic reviews of AI policies in order to update them in accordance with any new regulations, technological advancements, or organizational changes.
- Create a catalogue of the AI systems currently in use in the organization, whether sanctioned and approved or not, and maintain an inventory of their intended purpose, use, and limitations. Additionally, to the extent certain AI systems have not been sanctioned or approved, they should immediately be eliminated from an organization's systems.
- Communicate with clients, customers, etc. on the use of AI so that there is full disclosure and an understanding by clients, customers, etc. of its use by an organization.
- To the extent AI is used to generate documents, ensure that any results or findings contained in the document are accurate. For attorneys, this means verifying any case law, and any cites to transcripts, the legal record, or any facts.
- Establish a compliance function so that someone is responsible for monitoring and overseeing the use of all AI within an organization. This person or department would be responsible for establishing controls to reduce the risk of AI incidents, as well as policies to remedy any situations that may occur. An alert system should also be implemented that can detect and respond to any anomalies that may occur in an AI system.