



RETHINKING PROFESSIONAL RESPONSIBILITY: ETHICAL LEGAL BILLING IN THE AI ERA

By Susan E. Guthrie Esquire

The legal profession has always evolved with new technologies, from typewriters to e-filing, and each wave of innovation has required careful integration of technology in line with our ethical obligations. Today, artificial intelligence (AI) is reshaping how we work and once again compelling us to confront these fundamental duties.

One area where we are seeing this tension play out most clearly is in the arena of legal billing. According to a recent Axiom study, 79 percent of law firms use AI to boost efficiency, yet only 6 percent pass those savings on to clients.¹ This paradox, in which technology benefits providers more than clients, presents a fresh challenge for professional responsibility that we must address with diligence and transparency.

GUIDANCE ALREADY IN PLACE

We are not without direction. On July 29, 2024, the American Bar Association issued Formal Opinion 512, applying longstanding duties of competence, confidentiality, communication, supervision, and fair billing directly to the use of AI.² In Florida, these issues are further addressed by Ethics Opinion 24-1, which provides non-binding guidance on the ethical use of generative AI, including billing practices.³ Both frameworks underscore a central truth: while AI is a powerful tool, attorneys remain fully responsible for all work product and



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She is presenting a webinar on November 18, 2025, on AI and Mediation practice.

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judgment. Efficiency gains must not result in inflated claims of time. Clear disclosure helps clients understand how AI contributes to their matter and ensures they view efficiency as value rather than risk. As noted in the Florida Opinion, lawyers may want to consider adopting contingent fee arrangements or flat billing rates for specific services so that the benefits of increased efficiency accrue to the lawyer and client alike.

THE COLLISION OF AI AND THE BILLABLE HOUR

This challenge comes into sharp focus when considering how attorneys bill for their work once AI is introduced. How do we ethically charge for work completed in minutes rather than hours when software accelerates drafting, research, or document review? The billable hour is fundamentally at odds with AI-driven efficiency. If a tool reduces a two-hour document review to fifteen minutes, billing the client for the full two hours is indefensible.

This reality compels us to rethink time-based billing. Flat fees, subscription models, and success-based pricing provide practical alternatives that better align compensation with the true value delivered, not merely the time expended. For example, a flat fee for a document review or a mediation session gives clients cost certainty and allows lawyers to be rewarded for efficiency rather than penalized for it. Subscription models may be attractive to business clients who value ongoing access and predictability, while success-based pricing ties the lawyer's compensation directly to outcomes. These arrangements, however, raise ethical considerations themselves and must be carefully structured to comply with the rules of professional conduct in the applicable jurisdiction.⁴ For instance, some firms have piloted subscription plans for corporate clients that offer unlimited routine document reviews for a set monthly fee, creating both predictability for clients and steady revenue for the practice. When those reviews are accelerated by AI tools, the subscription structure makes clear that clients are paying for access and value rather than for artificially inflated hours. Each of these structures offers clarity, predictability, and fairness, while reinforcing client

trust at a moment when transparency matters most. Importantly, both ABA Formal Opinion 512 and Florida Ethics Opinion 24-1 support such models when they are implemented with transparency and without duplicative or inflated billing, underscoring that alternative fee arrangements must always be structured to comply with ethical requirements.

BEYOND LITIGATION

The implications are not limited to traditional firms. Dispute resolution professionals face parallel dilemmas. If mediators or arbitrators use AI to prepare for a session or analyze case data, disclosure is critical to avoid any perception of bias. This disclosure not only preserves neutrality but also reinforces fairness for all participants. Questions of billing also arise: how should neutrals fairly charge for AI-assisted work when efficiency disproportionately benefits one party? Flat fees can again provide a transparent and neutral solution.

PRACTICAL STEPS FORWARD

For legal professionals, developing clear, proactive policies is essential. Solos should educate themselves, and firms should adopt written AI protocols covering data security, verification procedures, and client communication. In Florida, disclosure of AI use in engagement letters is required under Ethics Opinion 24-1. Practitioners everywhere should, at a minimum, explain their use of AI to clients and document how efficiency gains are reflected in fees. A practical way to do this is by including a clause in the engagement letter such as: "This firm may use secure artificial intelligence tools to assist in document review and drafting. These tools increase efficiency and accuracy, and all outputs are reviewed by your attorney. The use of such tools will not increase your fees beyond what is reasonable and agreed. Any direct costs associated with AI tools will only be charged to the client if they are actual, necessary, and not already included in overhead." Above all, we must be able to articulate the value we provide beyond hours billed. Just as important, we should view AI tools as an opportunity to modernize our billing practices.

AN OPPORTUNITY, NOT A THREAT

The convergence of technology and ethics is a challenge, but also an opportunity to modernize our profession. By embracing alternative fee models, we can honor our duties of fairness and transparency while delivering a client-centered practice that reflects the realities of AI. As with every prior wave of innovation, this one requires adherence to our professional obligations. Embracing transparent fee models not only enhances client trust but may also promote access to justice by making costs more predictable and manageable for clients. The question now is whether we will cling to outdated structures or seize the chance to align our billing with the value we deliver. By doing so, we not only adapt to technological change but also strengthen public confidence in the profession's integrity and relevance.

FOOTNOTES

¹ Grant Evans, Law Firms Cash in While Clients Pay More: The AI Paradox Reshaping Legal Economics, Axiom (July 25, 2025), <https://www.axiomlaw.com/blog/law-firms-cash-in-while-clients-pay-more-the-ai-paradox-reshaping-legal-economics>

² ABA Standing Comm. on Ethics & Prof'l Responsibility, Formal Opinion 512: Generative Artificial Intelligence Tools (July 29, 2024), https://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/ethics-opinions/aba-formal-opinion-512.pdf

³ Fla. Bar, Ethics Advisory Opinion 24-1 on Generative Artificial Intelligence (Jan. 19, 2024), <https://www.floridabar.org/etopinions/opinion-24-1>.

⁴ See, e.g., ABA Comm. on Ethics & Prof'l Responsibility, Formal Op. 93-379 (1993), https://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/formal_opinions/93-379.pdf (addressing fee arrangements and prohibiting billing practices that inflate or duplicate charges); ABA Model Rule of Prof'l Conduct 1.5, https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_1_5_fees/ (requirements for reasonable fees and contingent arrangements); Fla. R. Prof'l Conduct 4-1.5, <https://ruledex.com/fl/r-regulating-fla-bar/chapter-4-rules-of-professional-conduct/4-1-client-lawyer-relationship/rule-4-1-5-fees-and-costs-for-legal-services/> (same under Florida law)



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INCAPACITY VS. VULNERABILITY: A DISTINCTION THAT MATTERS

By Shannon M. Miller, Esq., B.C.S.

An 87-year-old widow, active in Mahjong and the gym, begins giving large sums to a “friend” she met at the grocery store and to a persistent charity. She donates \$12,000 of her \$27,000 savings.

Is she incapacitated? Vulnerable? Exploitable? Are there laws that can protect her — or laws that prevent her from making financial decisions she freely chooses? For attorneys working with older clients, distinguishing incapacity from vulnerability is critical.

DEFINING INCAPACITY

Under Chapter 744 of the Florida Statutes, a person is incapacitated when they are unable to manage personal or financial affairs, usually based on medical evidence. Cognitive tests like the MOCA (Montreal Cognitive Assessment) are common tools.

These assessments help determine whether a guardian should be appointed. Incapacity triggers

formal legal consequences, including guardianship or limited powers under court supervision.

DEFINING VULNERABILITY

Florida Statute 415.102(28) defines a vulnerable adult as someone whose ability to perform daily activities or protect themselves is impaired due to physical, mental, or developmental limitations, brain damage, or aging.

Unlike incapacity, there are no standardized tests for vulnerability. Neuroscience shows brain changes over about 20 years: capacity becomes clearly impaired around year 10, while the first decade often reveals vulnerability. During this period, older adults may struggle to assess risk, distinguish truth from falsehood, and resist suggestion.

Research links cortical insula thinning to susceptibility to scams. One in five people over 70 will be scammed or exploited each year (AARP, 2024). Vulnerable adults may appear independent yet remain at high risk.