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Session #17

Ethics for Airport Attorneys



Speakers

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Agenda

Generative AI & ethical obligations

Model Rule 1.1: Competence

Model Rule 1.4: Communication

Model Rule 1.5: Fees

Model Rule 1.6: Confidentiality

Model Rule 3.1, 3.3, 8.4: Candor Towards Tribunals

Model Rule 8.4: Anti-bias

Model Rule: 1.16(d) Client Files



Sources of ethical obligations



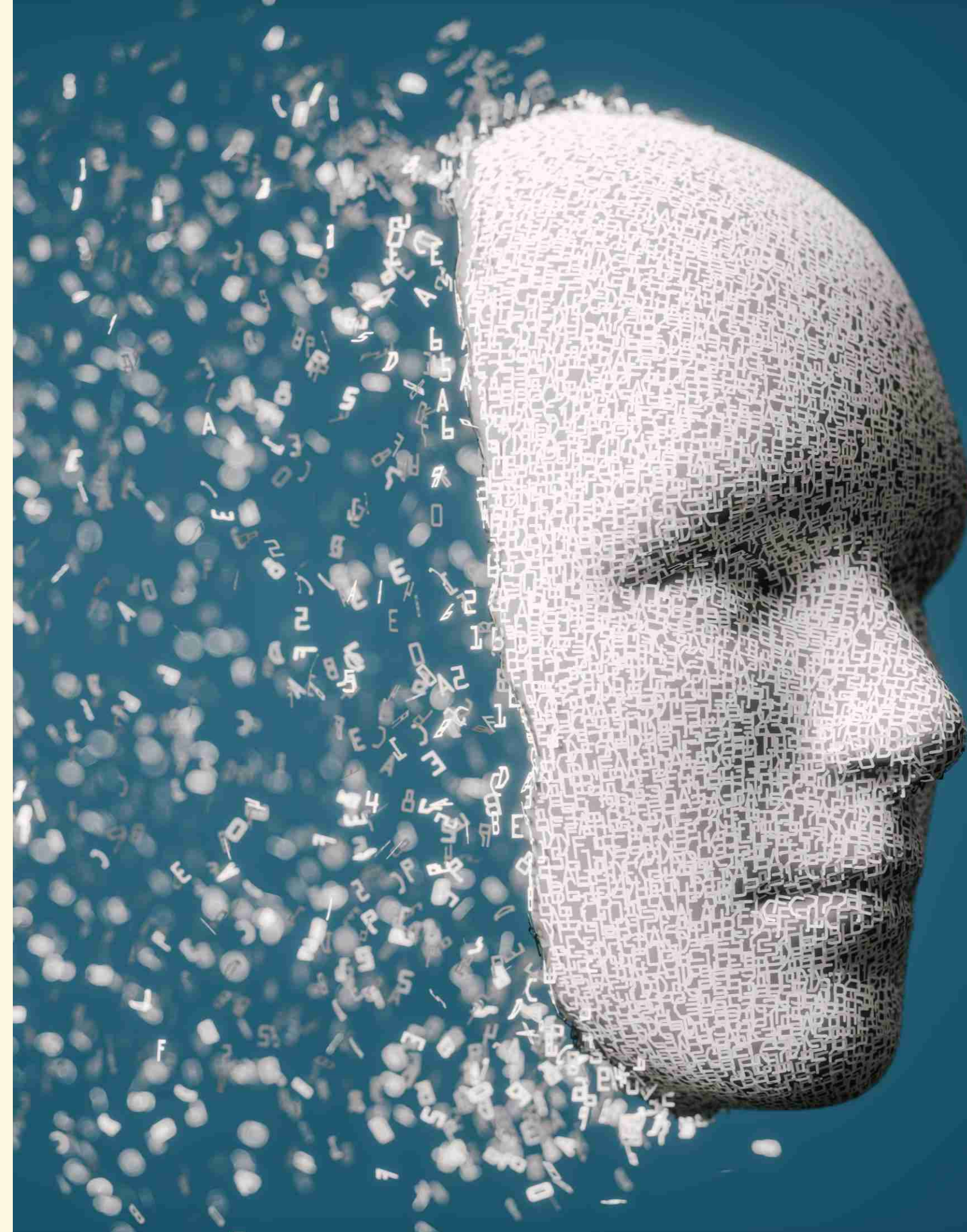
American Bar
Association model
rules



State rules
of professional
responsibility and conduct

Generative AI & practice of law

- **Artificial Intelligence** (AI) involves computer technology, software, and systems that perform tasks traditionally requiring human intelligence
- Established uses of AI in the law:
 - Technology-Assisted Review (TAR)
 - Legal research
 - Contract and legal document analysis
 - Proofreading & doc organization
 - Optical Character Recognition (OCR)
- **Generative AI** (GAI): technology that can create new content (text, images, audio, video, even software code) in response to inputs
- **ABA Formal Opinion 512 (2024)**



STATE		STATE		STATE	
Alabama	No official guidance	Louisiana	No official guidance	Ohio	No official guidance
Alaska	No official guidance	Maine	No official guidance	Oklahoma	No official guidance
Arizona	Formal set of ethical best practices	Maryland	Some informal insights	Oregon	Formal opinion
Arkansas	No official guidance	Massachusetts	Some insights	Pennsylvania	Formal ethics opinion
California	Practical guidance	Michigan	Set of general guidelines	Rhode Island	No formal opinion
Colorado	No official guidance	Minnesota	General guidance	South Carolina	No comprehensive guidance
Connecticut	No official guidance	Mississippi	Formal ethics opinion	South Dakota	No official guidance
Delaware	No official guidance	Missouri	Informal opinion on attorney use of AI	Tennessee	No official guidance
Florida	Advisory ethics opinion	Montana	No official guidance; provides general resources	Texas	Formal ethics opinion
Georgia	No official guidance	Nebraska	No official guidance	Utah	Some advice available
Hawaii	No official guidance	Nevada	Ethics specialist published article with basic tips	Vermont	Report by judiciary subcommittee
Idaho	Unofficial recommendations	New Hampshire	Informal guidance	Virginia	Model policy for law firms
Illinois	Preliminary recommendations	New Jersey	Preliminary guidelines	Washington	No official guidance
Indiana	No official guidance	New Mexico	Formal ethics advisory opinion	Washington D.C.	Ethics opinion
Iowa	No official guidance; provides list of resources	New York	Report and recommendations	West Virginia	Ethics opinion
Kansas	No official guidance	North Carolina	Formal ethics opinion	Wisconsin	Basic informal insights
Kentucky	Ethics opinion	North Dakota	No official guidance	Wyoming	Informal insights

Rule 1.1: Competence



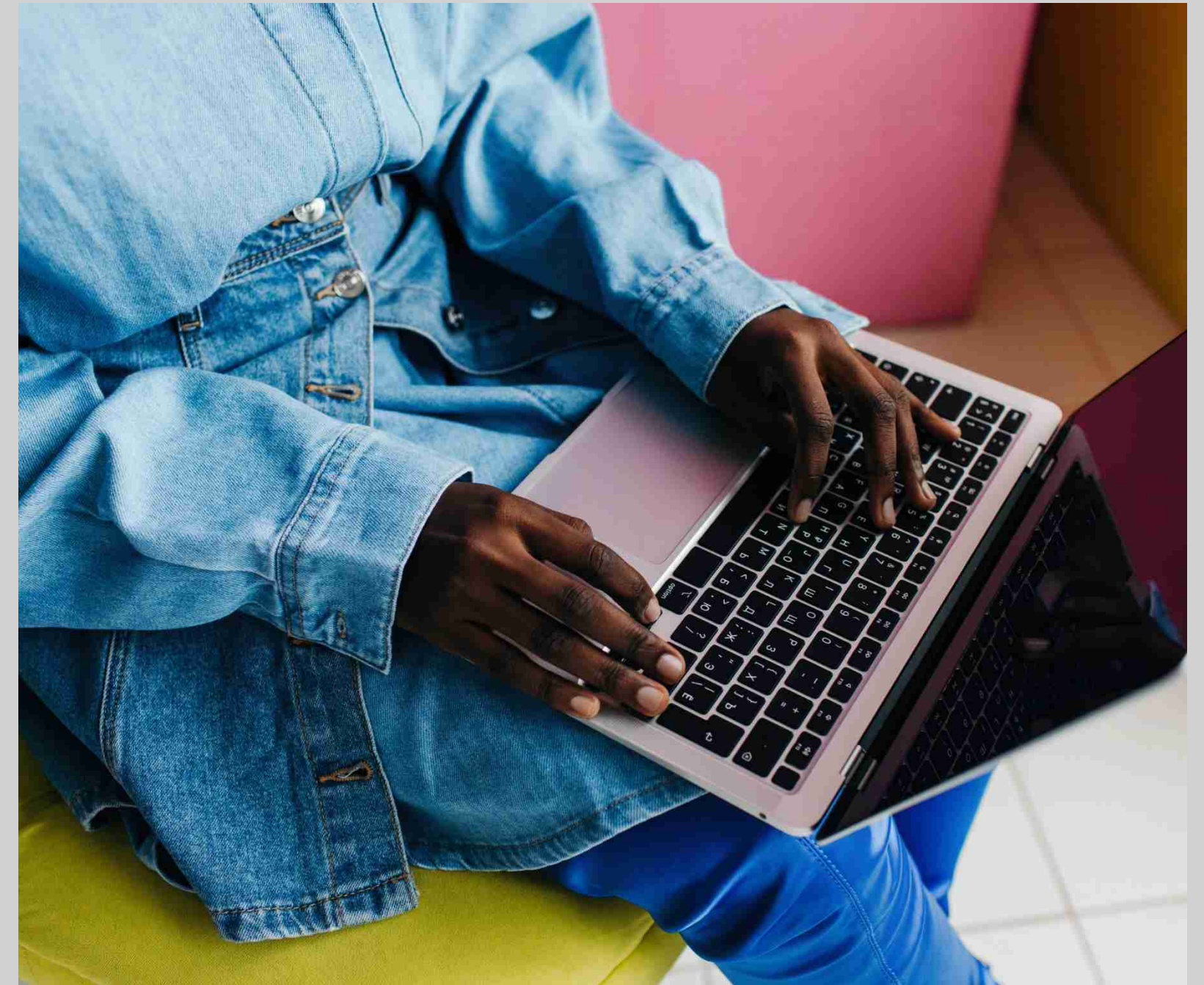
“A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.”



Competence & GAI

ABA Formal Opinion 512 at 2-3:

“Lawyers must have a reasonable understanding of the capabilities and limitations of the specific GAI technology that the lawyer might use. This means that lawyers should either acquire a reasonable understanding for the benefits and risks of the GAI tools that they employ in their practices or draw on the expertise of others who can provide guidance about the relevant GAI tool’s capabilities and limitations.”



Verify, verify, verify

2024 Stanford University study:

- “[l]arge language models hallucinate at least 75% of the time when answering questions about a court’s core ruling.”

Mata v. Avianca, Inc., 678 F. Supp. 3d 443
(S.D.N.Y. 2023)



What should Dylan do?

Attorney Competence

- Meet Dylan – a new airport attorney working as outside counsel for a large international airport. This is his first job out of law school!
- In his first week, his supervising attorney is hospitalized, and he must advise the airport on matters outside his depth, including contract negotiations over renewal of an airport use and lease agreement.
- Dylan is wondering...





What should Dylan do?

Ask ChatGPT!

Hypothetical:

Sophia is an in-house attorney for a major international airport. She primarily handles contract and real estate matters but is recently assigned to manage a complex regulatory compliance case involving federal aviation safety regulations — an area she is unfamiliar with.

Under time pressure, Sophia uses a generative AI tool to draft a detailed compliance report and a set of recommended corrective actions. She does not fully review the AI-generated report and submits it to the FAA regulator. Later, the FAA identifies significant inaccuracies that could result in hefty fines and operational disruptions.

Sophia did not inform her supervisors or the client about the use of AI in preparing the report.





Which of the following actions or issues most likely constitutes an ethical violation under ABA Model Rule 1.1 and related rules?

ChatGPT says...

Great question! The best answer is D) All of the above.

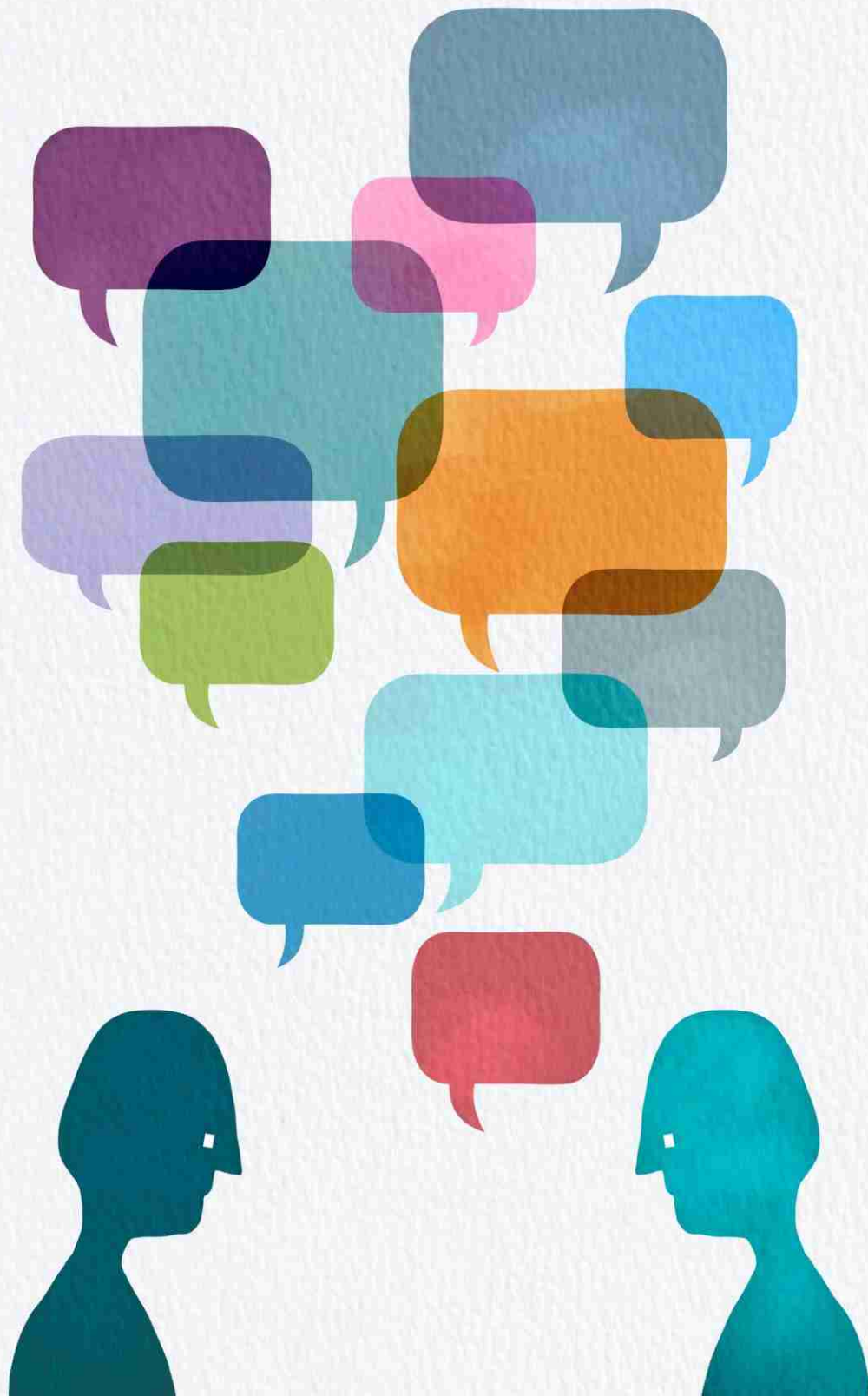
Here's why:

- **A) Failure to disclose AI use to the FAA regulator:** While there is no explicit requirement to disclose AI use, the report's accuracy and verification are ultimately Sophia's responsibility. Not informing her supervisors or the client about the AI use, especially when the report contains inaccuracies, raises transparency and accountability issues.
- **B) Using AI without adequate understanding and review:** This directly violates **Model Rule 1.1 (Competence)**. Sophia must ensure that any work she submits is accurate and reliable. Blindly relying on AI without verifying the output falls short of the competence standard.
- **C) Accepting a regulatory compliance assignment outside her expertise without consulting a specialist:** Model Rule 1.1 also requires attorneys to have the necessary knowledge and skill. If Sophia lacks expertise, she should either acquire it (through study or association) or decline/consult with a specialist to provide competent representation.

Since all these points reflect ethical breaches, answer D is the most comprehensive and correct choice.



Rule 1.4: Communication



“(a) A lawyer shall: (1) promptly inform the client of any decision or circumstance with respect to which the client’s informed consent...is required...; (2) reasonably consult with the client about the means by which the client’s objectives are to be accomplished; (3) keep the client reasonably informed about the status of the matter; (4) promptly comply with reasonable requests for information; and, (5) consult with the client about any relevant limitation on the lawyer’s conduct...;

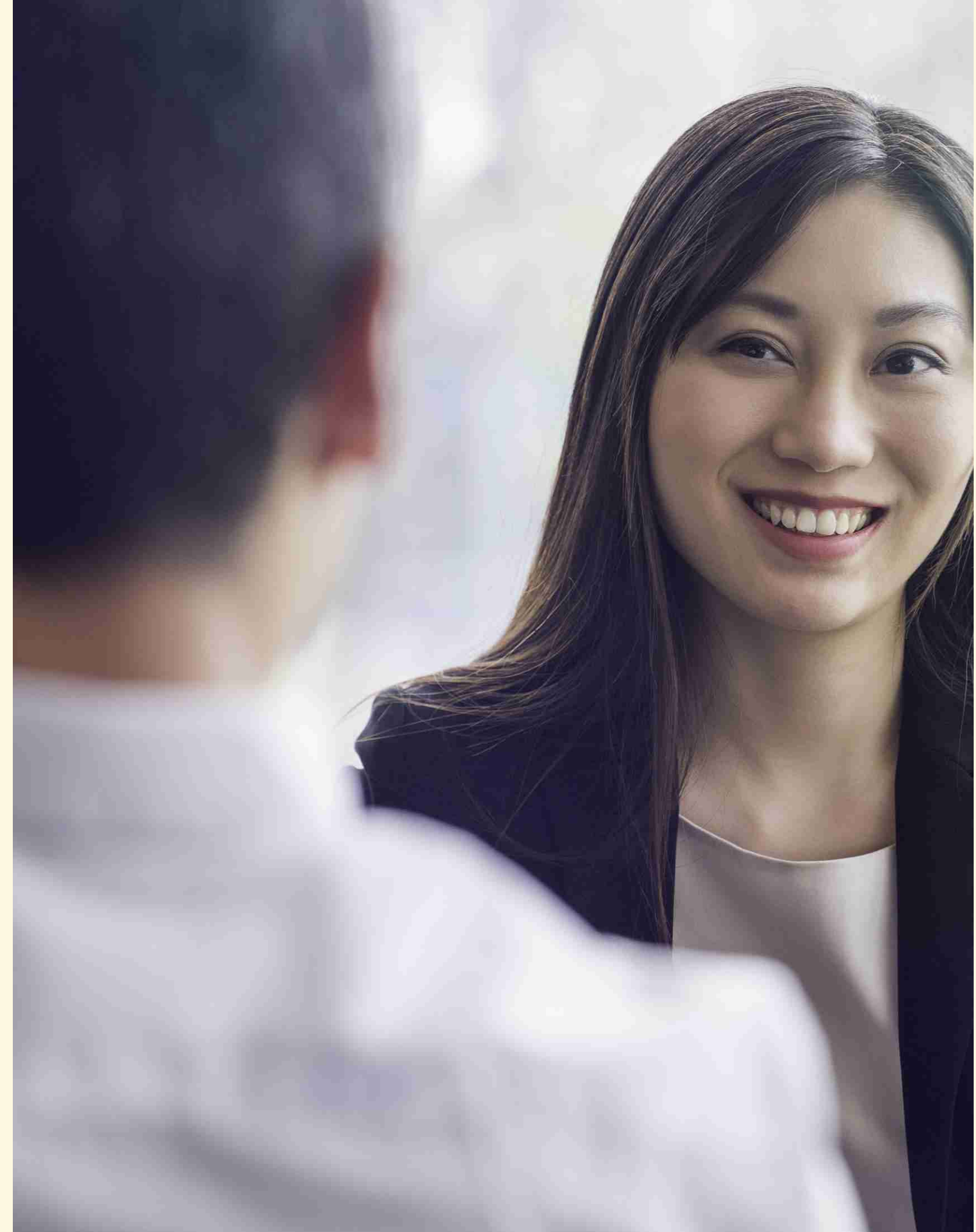
(b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.”



What should Dylan do?

Attorney-client communication

- Dylan receives 3 calls from the airport director within 3 days asking about the status of contract negotiations and arguments and positions Dylan does not understand. The airport director has heard of new AI tools and asks pointblank in a voicemail if AI was used to create the new contract.
- Overwhelmed and unsure what to say, he decides he won't return any calls until his boss returns from the hospital in two weeks.
- Further, he decides the best strategy for the lease negotiation is to simply renew the old lease with the current terms.
- He wants to move forward with that decision without consulting the airport.





What should Dylan do?



In which of the following situations must Dylan disclose his use of AI? (select multiple options)

What should Dylan do?

Charging legal fees

- Dylan hears that his office has access to a special AI software that can format, proof, and otherwise prepare contracts for you using past examples and just a few new inputs.
- He decides to use the software to produce the new contract, and after only 2 hours he's produced and proofed the new document.
- Dylan realizes he's not sure what time to record on his timesheet, and figures no one will know if he puts down 20 hours instead of 2, figuring that's the time it would take to prepare the contract from scratch.
- **Can he do this?**





Can Dylan do this?

Rule 1.5: Fees



- (a) “A lawyer shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount...”
- (b) “The scope of the representation and the basis or rate of the fee and expenses...shall be communicated to the client, preferably in writing, before or within a reasonable time after commencing the representation...Any changes...shall also be communicated...”



Fees & AI



Billable:

- Time spent inputting and reviewing information

Not billable:

- General overhead expenses
- Time incurred to become knowledgeable about GAI tools and services



What should Dylan do?

Confidentiality

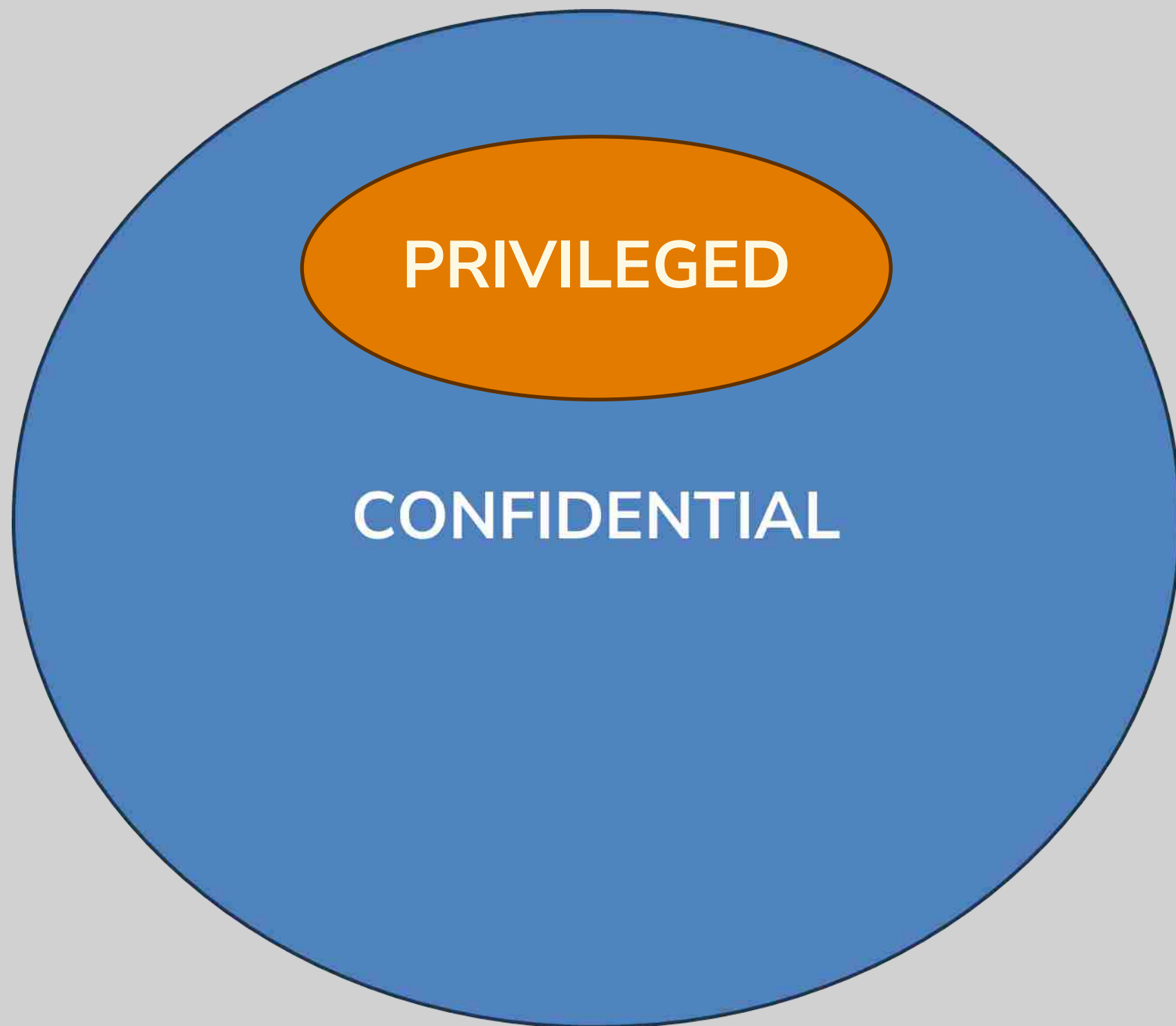
- To prepare for the contract negotiations over use and lease agreements, Dylan wants to use an AI tool for research, including by using hypotheticals to discuss issues relating to the representation.
- Can Dylan do this...





Can Dylan do this?

Rule 1.6: Confidentiality



“A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation or the disclosure is permitted...”

“A lawyer shall make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client.”



Confidentiality and GAI



Ask two questions:

1. Will information I provide to the GAI be visible to the GAI provider or other strangers to the attorney-client relationship?
2. Will my interactions with the GAI affect answers that later users of the GAI will get in a way that could reveal information I provided to the GAI?



Rules 3.1, 3.3 & 8.4(c): Duties to Tribunals



- **Rule 3.1:** “A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous...;”
- **Rule 3.3:** A lawyer shall not knowingly make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal; and,
- **Rule 8.4(c):** It is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation.”



Ask ChatGPT!

Sophia is senior counsel for a major international airport and is preparing a response to a Notice of Potential Violation from the **FAA**. The notice alleges that the airport failed to follow certain updated runway maintenance protocols. Sophia is under immense pressure to respond quickly, as federal funding may be at stake.

To save time, she uses a generative AI tool trained on historical FAA enforcement actions and compliance rulings. The AI drafts a strong legal argument asserting that the airport **had no obligation to follow the new protocols** at the time of the alleged violation, citing older FAA guidance and interpreting ambiguous regulatory language favorably.

Sophia notices that one of the AI-generated citations doesn't actually exist, and another case it references was recently overturned. However, she believes the core argument is still reasonable and the legal theory is novel but plausible. She edits the brief slightly, leaves in the faulty citations, and submits the response to the FAA.

She does **not inform** her supervisors that AI was used or that the citations were unverified. When questioned later by the FAA about the sources, she claims the cases were "standard authority" and offers to provide clarifying information later — but does not correct the record unless specifically asked.





Which of the following best reflects Sophia's ethical obligations and potential violations under Model Rules 3.1, 3.3, and 8.4(c)?

ChatGPT Answers:

Bottom Line:

B is correct because Sophia knowingly submitted misleading legal citations and failed to correct the record, violating both:

- Rule 3.3 (candor toward the tribunal), and
- Rule 8.4(c) (dishonesty and misrepresentation).

Even though the legal theory itself may not have been frivolous (avoiding a 3.1 violation), her handling of known false information crosses ethical lines.



Rule 8.4(g): Bias, Harassment & Discrimination

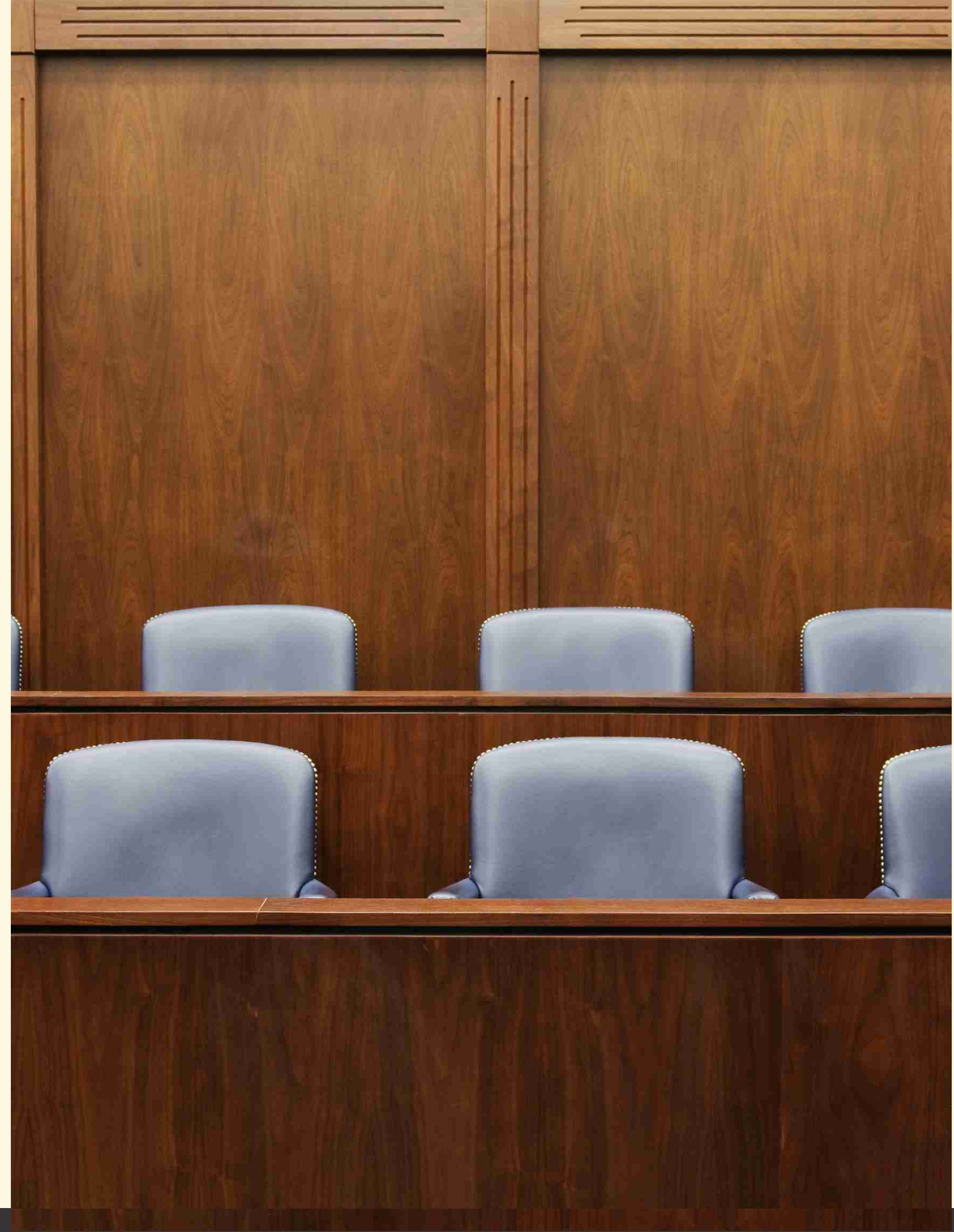


“It is professional misconduct for a lawyer to...engage in conduct that the lawyer knows or reasonably should know is harassment or discrimination on the basis of race, sex, religion, national origin, ethnicity, disability, age, sexual orientation, gender identity, marital status or socioeconomic status in conduct related to the practice of law...”



Bias & Generative AI

- If the data used for training is biased, the AI tool will produce a biased result



Client file



When a representation is terminated, Rule 1.16(d) requires a lawyer to do several things, including “surrendering papers and property to which the client is entitled.”



AI issues and solutions

- Bias in AI decision-making
 - Regularly audit AI systems; include representatives in development and phasing
- Data privacy and security concerns
 - Frequent security audits; encryption and secure access controls; avoid collecting non-essential data
- Loss of human oversight
 - Staff reviews AI recommendations before making final decisions
- Misinformation amplification
 - Clear review protocols for AI-generated content and use fact-checking tools to validate information
- Public perception and trust
 - Transparency about AI usage
- Regulatory and ethical challenges
 - Collaborate with legal experts to develop AI policies that align with ethical standards and regulatory requirements



Ethics help

- Senior attorneys and mentors
- Outside counsel
- State bar ethics hotline
- Comments to applicable ethics rules
- ABA Model Rules anticipate you will need help with these issues:
 - Rule 5.2
 - Rule 1.6(b)(5)



Questions?



