Navigating AI with Outside Counsel: Practical Tips for In-House Counsel

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Your Outside Counsel Is Using AI: Are You Ready?

Artificial intelligence (AI) has moved from the margins to the mainstream of legal practice. Many attorneys, likely including your outside counsel, now routinely use AI for research, drafting, document review and analysis.

If your outside counsel uses AI well, it can enhance the quality and thoroughness of work product, increase efficiency and reduce your bills. If used poorly, though, AI tools create a risk of confidentiality breaches, inaccurate outputs (including hallucinated quotations and citations) and other issues that can result in potentially significant exposure or embarrassment for your client.

As in-house counsel, you sit in the control tower of your client's legal affairs. It is therefore critical that you serve your client well not just by being careful about how you and your client use AI internally; you must also ensure your outside law firms are doing what you want them to do to protect your client while also delivering efficiency and AI-enhanced work product.

This article provides tips to help you navigate the terrain of working with outside counsel concerning AI; incorporate AI provisions into your outside counsel guidelines and work constructively with outside counsel as they seek to operate within your guidelines. (This article provides general guidance only; it is not legal advice and forms no attorney-client relationship. You should consult your own legal counsel concerning these issues.)

TIP 1:
Use an AI Addendum to Quickly Add AI Guidelines

To expedite incorporating AI into your existing outside counsel guidelines, consider issuing an AI addendum rather than fully revising your guidelines to address AI (at least as a stopgap measure). As with all your guidelines, make compliance with the AI addendum a condition of engagement.

TIP 2:
Define Permitted and Prohibited Uses and Tools

You will help yourself and your outside counsel by spelling out what is and is not acceptable concerning AI use. For example, you might consider:

- **Permitted**: Use of pre-approved AI tools for research, drafting, document review, deposition prep, analytics, summarization and translation, but only with human review and quality control.
- **Prohibited**: Using public, consumer-grade AI tools that train on user inputs or lack enterprise-grade confidentiality controls; uploading client-identifying data or privileged materials to such tools; or using AI to make autonomous legal judgments without attorney verification.

Practically, consider reminding outside counsel that both American Bar Association (ABA) Formal Opinion 512 (ABA 512) and Kentucky Bar Association (KBA) Ethics Opinion E-457 (KBA E-457) emphasize all attorneys' ongoing ethical obligations of competence and supervision. That means your outside lawyers cannot abdicate judgment to AI, and your guidelines should reflect that.

Regarding AI tools, consider implementing a tool registry; ask firms to list all AI tools used on your matters. This creates visibility and helps you and your client's IT personnel confirm that the tools your outside lawyers are using meet your security and confidentiality standards. Working with your outside counsel to develop a list of pre-approved AI tools for various uses will help you and them work efficiently to achieve your goals. But bear in mind that this is not a one-and-done effort;

because these tools frequently change, this is something to revisit regularly with your internal team and outside counsel.

TIP 3:
Protect Confidentiality

KBA E-457 is clear: An attorney using AI is "under a continuing duty to safeguard confidential client information." Therefore, consider requiring outside counsel to confirm that any AI tool handling client data:

- Prohibits model training on your data.
- Uses encryption in transit and at rest.
- Complies with your security standards.

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On the first bullet point above, ABA Formal Opinion 512 notes that even AI tools that are siloed within a firm "may disclose information relating to the representation to persons in the firm (1) who either are prohibited from access to said information because of an ethical wall or (2) who could inadvertently use the information from one client to help another client, not understanding that the lawyer is revealing client confidences." (ABA Formal Opinion 512 at 6-7.)

This is tricky territory for technological novices. Work with your in-house IT personnel or qualified outside consultants to develop requirements for outside counsel that will reasonably protect your client's confidential information.

TIP 4:
Require Human Verification

ABA 512 underscores that lawyers remain responsible for accuracy and candor. Therefore, consider requiring:

- **Human-in-the-loop**: All AI-assisted outputs must be independently verified for factual accuracy, legal analysis and valid citations; no submission to tribunals or clients without attorney review.
- **Citation hygiene**: For legal research generated or assisted by AI, outside counsel must (1) confirm that all cases, statutes and secondary sources exist; (2) verify that the facts of the case, the legal holding and any quotes from the case are correct; and (3) attach a source verification log (e.g., Shepard's or KeyCite screenshots or database links).

TIP 5:
Address Fees and Billing

KBA E-457 explicitly contemplates fee adjustments and prohibits billing phantom hours for AI-driven efficiencies. Therefore, consider including language in your AI addendum requiring firms to align fees with actual effort or an agreed value when AI accelerates tasks. There must be no phantom hours for work accelerated by AI.

Also, allow pass-through of AI platform charges only with advance written consent and a clear explanation of what the charges are and why they are reasonable. Again, this is something you can arrange in advance by establishing which tools counsel may use and what the acceptable pass-through charges can be.

An item that should *not* appear on your bill is any time for your outside counsel's AI training, unless you have explicitly asked them to do something they would not otherwise do *and* you have agreed in advance to pay them for it. KBA E-457 is clear on this issue: "[A]ttorneys have a continuing ethical responsibility to maintain competence in their law practice, and reliance upon technology to do so is just another aspect of the competency requirement." Thus, there is no need to compensate outside counsel for what they have an obligation to do irrespective of your engagement with them.

Finally, although much of the excitement concerning AI in the legal field, particularly for in-house counsel, revolves around increased efficiency and therefore lower bills, keep in mind that one benefit of AI can and should be that you receive enhanced, improved work product. Thus, if your outside counsel is using AI and you receive neither bill savings nor better work product, you should ask outside counsel to explain how they plan to improve their use of AI to realize these benefits going forward.

TIP 6:
Audit and Spot-Check

It always pays to trust but verify; you should inspect what you expect. Regarding your outside counsel's use of AI and compliance with your guidelines, this could include conducting periodic reviews of AI-assisted work product and billing, ensuring counsel followed verification protocols and determining whether counsel's fees reflect efficiencies (or are otherwise commensurate with the quality and quantity of work product). This can help ensure accountability without micromanaging. Outside counsel's AI use should help you, not become an unmanageable demand on your time.

Working Collaboratively Is Key

As in-house counsel, you can shape how your outside lawyers adopt and use AI tools for your client's benefit. By establishing clear expectations, requiring transparency, protecting confidentiality, ensuring accuracy and fairly addressing costs, you can harness AI's benefits while managing its risks. And by embedding these clear expectations into your outside counsel guidelines and working collaboratively with your outside counsel on these AI issues while you maintain practical oversight, you can capture AI's benefits without compromising confidentiality, accuracy or trust.

There is no doubt that AI is here to stay. Thus, the question is not whether your outside counsel will use AI, but whether they will use it competently, ethically and in alignment with your client's interests. Through proactive engagement and clear guidelines, you can ensure the answer is yes.

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