

FORMAL OPINION NO 2026-208
Chatbots and AI Agent Communications

Facts:

The growing use of artificial intelligence in the legal profession includes chatbots. Chatbots in connection with lawyers' services may interact with the public generally. Chatbots used to make the public aware of legal services available from an attorney, in general or on an attorney's website, for example, may be used as a tool for marketing and client intake.

Question:

May Oregon lawyers utilize chatbots to communicate with clients or potential clients on their websites or elsewhere with respect to their legal practice?

Conclusion:

Yes, qualified.

Discussion:

This opinion addresses some of an attorney's obligations regarding publicly available marketing and intake communications under the Oregon Rules of Professional Conduct (RPCs). The specific rules implicated by the examples above include RPC 1.1 (Competence); RPC 1.18, which outlines duties to prospective clients from a confidentiality and conflicts perspective; RPC 5.3, which may implicate supervisory responsibilities over third parties providing chatbot services; RPC 7.1, which prohibits false and misleading statements about a lawyer's services; and RPC 7.3(a), which, in relevant part, prohibits knowing solicitation of clients whose emotional or mental state is such that the person could not exercise reasonable judgment in employing a lawyer. These issues are explored in more detail below, but other rules may also be implicated depending on the specific use.

I. An Introduction to Chatbots and AI Agents

As a threshold matter, and as discussed in more detail in OSB Formal Ethics Opinion 2025-205, a lawyer making use of technology must understand in sufficient detail how it works in order to comply with RPC 1.1.

The use of chatbots and/or other online systems for client solicitation is not a recent development. Indeed, in 2017, the American Bar Association (ABA) recognized that chatbots, "computer program[s] that maintain[] a conversation with a user in natural

language, understand[] the intent of the user and send[] a response based on the business rules and data of the organization,” were being used for legal marketing and advised that “there is no need to fear artificial intelligence.”¹ However, there has been little analysis of the legal ethics issues that may arise from the use of these tools.

For the purposes of this opinion, the term “chatbot” refers to a software application (executing on suitable hardware) designed to simulate conversation with human users, typically through text or voice interactions. Chatbots can be rule-based (following predefined scripts) or powered by artificial intelligence (AI), enabling them to understand and respond to a wider range of inputs more naturally. They are commonly used in customer service, virtual assistants, websites, and messaging apps to answer questions, provide information, and assist with tasks. In this context, this opinion contemplates chatbots used by lawyers for client intake and legal marketing.

AI-powered chatbots go beyond basic rule-based systems by using technologies that allow them to understand, learn, and respond more like humans. The key AI components often involve natural language processing (NLP), machine learning, large language models (LLMs) and dialogue management. The technology around chatbots has evolved along with AI. Chatbots may also employ AI agents, a developing area of AI technology.

Although AI agents vary significantly in purpose and capabilities, an AI agent capable of learning may typically comprise a software system, perhaps residing “on top” of an existing AI or generative AI system, or otherwise engage with AI systems in a manner designed to autonomously perform tasks and make decisions. These AI agents facilitate the achievement of an ultimate goal by creating discrete “agents” to accomplish smaller, related sub-goals that, once accomplished, will contribute to the achievement of the ultimate goal. For example, if a lawyer gives an agentic AI the ultimate goal, “engage a person to become a client,” an agentic AI might create several “agents” to accomplish related sub-goals: one agent might be tasked with gathering client information, another might be tasked with drafting an engagement letter, and a third might be tasked with integrating the information gathered into the lawyer’s system utilized in client management. Together, the tasks accomplished by these agents facilitate the ultimate goal of “engaging” a new client. It is important to emphasize that these agentic AI can create “agents” without any intervening input from a human once it has been assigned an ultimate goal, relying instead on its versatile capabilities to process input signal data and adapt as the situation requires pursuant to the underlying machine learning processes it

¹ American Bar Association, *YourABA, Say Yes to Robots: AI in Legal Marketing* (Oct 2017), archived July 14, 2025, at <https://web.archive.org/web/20250714055928/https://www.americanbar.org/news/abanews/publications/youraba/2017/october-2017/say-yes-to-robots--ai-in-legal-marketing/>.

relies on, such as NLP. Over time, these agents may evolve to become more intelligent and versatile in various fields. Although some agents are more adapted to the tasks they are repeatedly assigned, at the same time, the independent nature of these agents from immediate human intervention requires greater care on the part of the lawyer to supervise them. Thus, chatbots that make use of AI agents possess a greater level of autonomy and, therefore, create potentially greater risk from a legal ethics perspective than do chatbots that do not make use of AI agents. The example above highlights the potential risk of independent agents. If one agent decides that sending an engagement letter to a prospective client furthers the goal of making that person a client, it may do so without notifying or consulting the lawyer, which might reasonably be construed by the client as the formation of an attorney-client relationship, even if the lawyer has no intention of representing the person. On the other hand, chatbots that do not make use of AI agents, while having high conversational ability, may have less autonomy, less decision-making ability, and less learning ability compared with a state-of-the-art AI agent, which translates to a lower risk of unexpected action beyond what was directly prompted. While there are currently far more chatbots that do not make use of AI agents, it is easy to imagine that chatbots powered by AI agents will become more common as the technology improves.

Lawyers are responsible for and have ethical duties with respect to chatbots they use with clients or prospective clients or make available for use by clients or prospective clients, such as via a website, smartphone, texting, or otherwise.

II. Selecting AI Software for Use in Legal Practice

As stated above, RPC 1.1 requires lawyers to be competent in both the law and in the tools that they use to provide legal services to clients.² Lawyers may utilize chatbots in their legal practice only if they have taken reasonable steps to become competent in the use of such technology. Here, competence requires understanding the benefits and risks associated with the specific use of the type of chatbot being used.³

Consequently, lawyers must consider and continually evaluate the following when determining whether and how to incorporate chatbots into their practice:⁴

2. See ABA Model RPC 1.1 cmt [8], which requires lawyers to “keep abreast of changes in the law and its practice, including the benefits and risks associated with relevant technology.” See also OSB Formal Ethics Opinion 2025-205, discussing use of AI more generally.

3. See OSB Formal Ethics Opinion 2025-205, discussing use of AI more generally.

4. See ABA Formal Ethics Op 477R (2017) (Securing Communication of Protected Client Information).

- Lawyers should understand how any chatbot that they utilize stores information. For example, some chatbots may collect user prompts to train the product for use by other future users. The collection of data raises questions related to the protection of confidential information (RPC 1.6(a); RPC 1.18(b)) and protection of the law practitioner-client privilege (OEC 503). Accordingly, before utilizing a chatbot, lawyers must confirm that any information communicated through or stored by technology is reasonably secure.⁵ This may include ensuring that encryption is always used, that client information is isolated from chatbot training information, that client information is not used for chatbot training, that information for different clients is separately isolated, and that all client information is secure from disclosure to any unauthorized person or any system, which may include other chatbots. Adequately understanding a chatbot may require lawyers to conduct research, attend training, or hire a professional to assist them.
- Lawyers should conduct due diligence on the chatbot and potential vendors. In computer software, a software product may rely at least in part on software products from other vendors. Such other software products and potential vendors should also be considered as part of the due diligence. The due diligence is to determine whether the product (including other underlying products) can be used in a manner consistent with the lawyer's ethical duties.
- Lawyers should also understand how their chatbot responds to prompts from prospective clients, and the mechanisms that are available to monitor and modify those responses. As discussed in more detail below, it will be the lawyer's obligation to take reasonable measures to prevent the tool from making representations that do not comply with that lawyer's professional obligations. This will be possible only if the communications made by the chatbot can be monitored by the lawyer and the responses modified if necessary.

Because the products are in a constant state of evolution, it is likely that these evaluations will need to be made initially at the time of purchase and periodically revisited.⁶

⁵ See OSB Formal Ethics Opinion 2011-188 (rev 2015) related to the obligations of using a third-party to store confidential information.

⁶ In a May 2024 report, the New Jersey State Bar's Task Force on Artificial Intelligence (AI) and the Law included criteria that may be helpful to an attorney seeking to select AI tools for use in their practice. See <https://njsba.com/wp-content/uploads/2024/05/NJSBA-TASK-FORCE-ON-AI-AND-THE-LAW-REPORT-final.pdf> at pp 17–19.

III. Monitoring and Supervision of Chatbot

RPC 5.3(a) imposes a duty on lawyers with direct supervisory authority over a nonlawyer to “make reasonable efforts” to ensure the nonlawyer’s conduct conforms with the lawyer’s professional obligations, and under RPC 5.3(b), the lawyer is generally responsible for the nonlawyer’s conduct. When outsourcing legal and nonlegal services to third-party providers, such as vendors of chatbot services, lawyers must ensure that the third party performs competently and, again, protects the confidentiality of information relating to any representations. This may include, for example, the importance of reference checks and vendor credentials, understanding the vendor’s security policies and protocols, familiarity with the vendor’s hiring practices, and using specific confidentiality provisions or agreements.

A. Inadvertent Creation of an Attorney Client Relationship

The Florida Bar noted that the use of chatbots in client solicitation and marketing “may make these interactions seem more personable, [and so] presents additional risks, including that a prospective client relationship or even a lawyer-client relationship has been created without the lawyer’s knowledge.”⁷ In Oregon, the existence of an attorney-client relationship depends on the reasonable belief of the client.⁸ It is certainly conceivable that a chatbot that sounds like a lawyer could cause a prospective client to believe that an attorney-client relationship had formed.⁹ In such cases, the chatbot’s conversations could subject the lawyer to duties that exist for clients, including duties of competence, diligence, and communication under RPCs 1.1, 1.3 and 1.4, for example. Thus, it is important, if chatbots are employed for client solicitation and marketing, that the website and chatbot include appropriate disclaimers that are clearly provided to clients and potential clients. In addition, whenever such an interaction occurs, it would be prudent to have a responsible lawyer be automatically notified and be able to promptly review any communications by the chatbot to ascertain (1) whether the interaction has given rise to an attorney-client relationship, (2) whether the interaction has triggered other responsibilities, and (3) whether steps need to be taken to either proceed with the prospective client’s case or notify them that no attorney-client relationship will ensue.¹⁰

7. Florida Bar Ethics Op 24-1 at 5 (Jan 19, 2024).

8. *In re Weidner*, 310 Or 757, 770, 801 P2d 828 (1990).

9. *See* Florida Bar Ethics Op 24-1 at 5 (Jan 19, 2024).

10. With appropriate training, this task may be delegated to staff.

B. Unauthorized, Improper, or False Communications

The use of chatbots and related systems may also create a risk under RPC 7.1 that the chatbot may communicate “false or misleading” information about a lawyer or their services. More than one state has opined that the use of a chatbot that does not identify itself as a chatbot rather than a person could be a misleading communication that runs afoul of this rule.¹¹

Lawyers must be careful that chatbots do not mislead clients or prospective clients about their expertise, experience, or past results. Similarly, lawyers must be careful that the chatbot does not attempt to provide legal advice, which could implicate the attorney in the unauthorized practice of law.¹² Thus, the lawyer should ensure that any chatbot used on their website is carefully programmed and that the lawyer reviews all communications so that any misstatements can be promptly corrected.

RPC 7.3(a)¹³ may also be implicated by automated client solicitation tools. This could result in interactions with a client or prospective client whose impaired physical, emotional, or mental state might be discernable to a human but not recognized by a chatbot. This could potentially violate RPC 7.3(a). Thus, it is important that lawyers promptly review such communications and interview each prospective client before forming or proceeding with an attorney-client relationship.

C. Safeguarding Client and Potential Client Confidential Information

RPC 1.6(a) imposes a requirement on lawyers to ensure that they do 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 by paragraph (b) [of the rule].” RPC 1.6(c) states that 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.” These obligations highlight the importance of due diligence that reaches beyond the

¹¹. Florida Bar Ethics Op 24-1 at 7 (Jan 19, 2024); New York City Bar Association Formal Opinion 2024-5 at 6.

¹². See Pennsylvania Bar Association, Philadelphia Bar Association, Joint Formal Op 2024-200 at 13, <https://www.pabar.org/Members/catalogs/Ethics%20Opinions/Formal/Joint%20Formal%20Opinion%202024-200.pdf> (opining that an attorney may be assisting a programmer in the unauthorized practice of law by allowing an AI program to provide legal advice).

¹³. RPC 7.3(a) provides that a lawyer may not solicit professional employment when “the lawyer knows or reasonably should know that the physical, emotional or mental state of the subject of the solicitation is such that the person could not exercise reasonable judgment in employing a lawyer.”

policies of the company that offers the chatbot service. A company providing a chatbot service may be utilizing other businesses' software as its foundation, or it may have other software integrated through various APIs (application programming interfaces) or other interfaces, which in turn may result in protected information being "revealed" to the third-party companies beyond what is stated in the policies of the company offering the chatbot service.

Lawyers have duties to prospective clients under RPC 1.18 even if an attorney-client relationship never forms. In particular, under RPC 1.18(b), lawyers may not use or reveal information communicated by prospective clients through a chatbot except to the extent that such use or revealing of information would be permitted with respect to information of a former client.¹⁴ Moreover, under RPC 1.18(c), after receiving "disqualifying information" through a chatbot, lawyers may not represent a client with interests materially adverse to the potential client in the same or a substantially related matter, except as permitted by RPC 1.18(d). Thus, it is important that lawyers who obtain sufficient information about the prospective client through a chatbot promptly enter the prospective client into their conflict management system.

D. Additional Risks Posed by AI Agents

Another potential risk comes in the form of independent action by the chatbot. A chatbot using an AI agent may be autonomous and able to take actions without specific prompting, which might, for example, include drafting and sending an email, a letter, a text, or other communication. Thus, in light of a lawyer's supervisory responsibilities under RPC 5.3, it would be prudent to subject autonomous learning or actions by a chatbot to lawyer approval. Ultimately, Oregon lawyers are professionally responsible to supervise the accuracy of all work product, including that produced by a chatbot.

IV. Conclusion

Oregon lawyers may utilize chatbots and AI agents in their practice, provided they maintain competence in the technology, implement appropriate safeguards, and fulfill their professional obligations under the Rules of Professional Conduct. As these technologies continue to evolve, lawyers must remain vigilant in their supervisory duties, regularly reassess their systems, and ensure that their use of AI tools serves to enhance rather than compromise their professional responsibilities to clients and prospective

¹⁴. OSB Formal Ethics Opinion 2005-11 outlines some of a lawyer's duties with regard to information from former clients. Under RPC 1.6, such duties may exist even if the information is neither privileged nor confidential.

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clients. The integration of chatbots into legal practice represents both an opportunity and an ongoing obligation requiring careful attention to the ethical considerations.

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