

RELIABLE COURT REPORTING



REVOLUTIONARY APPROACH

THE COMPETENCE PARADOX:
AI RAISES THE STANDARD
IT THREATENS TO
UNDERMINE

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THE INFLECTION POINT

In December 2025, the **American Bar Association's Task Force on Law and Artificial Intelligence** published its **Year 2 Report** with a clear message: the legal profession has moved past debating whether **to adopt AI**. The question now is **how to deploy it responsibly**.

Five judges collaborating with the **ABA Working Group** also published separate guidelines identifying appropriate AI applications:

 **Summarizing depositions and trial transcripts**

 **Identifying missing or misstated legal authority**

 **Creating case timelines from disparate sources**

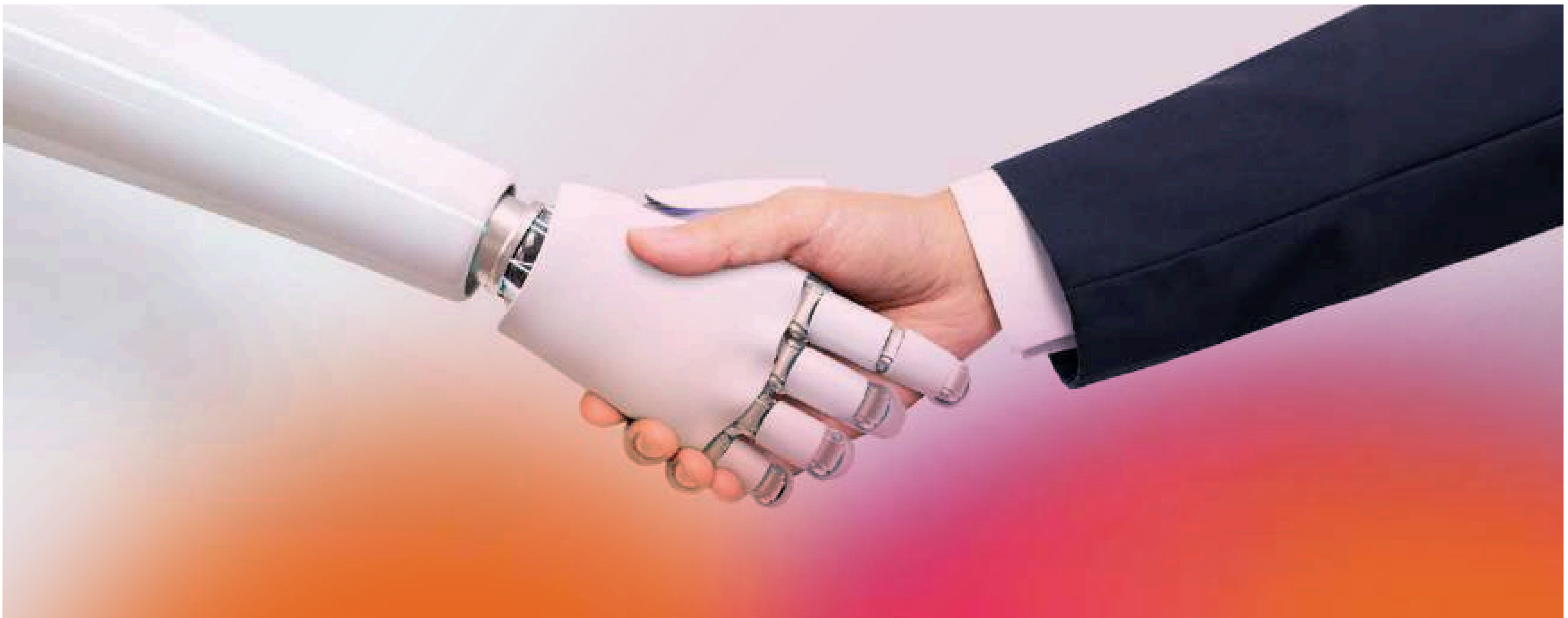
 **Verifying citation accuracy in briefs**

THE TENSION

AI offers incredible efficiency gains. But the ABA Year 2 Report also includes a critical qualifier: **no generative AI tool available has fully resolved the hallucination problem. Every AI-generated output requires human verification, no exceptions.**

And these aren't hypothetical guidelines. Federal courts are already drawing lines between consumer and professional AI use, with direct consequences for privilege and work product protection.

The result is a competence paradox. How do you capture AI's efficiency without compromising the verification that maintains professional accountability?



THE ARCHITECTURE OF PROFESSIONAL AI

The ABA report identifies a widening gap between large firms that can afford secure, professional-grade AI and solo practitioners or small firms relying on consumer tools that may compromise confidentiality or accuracy.

Consumer vs. Professional AI

	Consumer-Grade AI	Professional Legal AI
Training Data	Public web content and user data	Verified legal sources
Data Retention	May retain prompts for model training	Zero retention of client data
Verification	Requires external manual checking	Links every claim directly to source as part of workflow
Security	Generic consumer-grade protections	SOC2, HIPAA compliance standards
Privilege Protection	Consumer tools may waive protections via third-party disclosure	Enterprise tools used under attorney direction carry stronger protection

CONFIDENTIALITY REQUIREMENTS

The gap between consumer AI and professional legal AI isn't only about budget. Core to the consumer AI business model is the ability to retain and learn from user data. Professional legal AI is built around the opposite principle: **client data is never used to train models, because confidentiality is a fundamental requirement.**

Rule 1.6 of the ABA Model Rules requires lawyers to make reasonable efforts to prevent unauthorized access to client information. ABA Formal Opinion 512 extended that obligation explicitly to AI systems. In practice, that means:



❖ No retention of or training on client data

❖ No cross-user data sharing that could expose case information

❖ Compliance certifications that demonstrate reasonable efforts

COURTS ARE ALREADY ENFORCING THESE BOUNDARIES

Two recent federal decisions make clear that the **consumer/professional AI distinction carries real legal consequences.**

In **United States v. Heppner (S.D.N.Y. 2026)**, Judge Rakoff ruled that documents generated using a consumer AI tool were protected by neither **attorney-client privilege** nor **the work product doctrine**. The court's reasoning? The consumer platform expressly disclosed that user submissions were **not confidential**, making any disclosure to the tool a third-party disclosure that destroyed privilege. The defendant's unilateral use of the tool without attorney direction compounded the problem.

In **Warner v. Gilbarco (E.D. Mich. 2026)**, the court reached the opposite conclusion, finding that AI-assisted litigation materials **constituted work product**. The deciding factor: the tool was used as part of attorney-directed litigation preparation. As the court put it, "**ChatGPT and other generative AI programs are tools, not persons.**"

The deciding factors in both cases were not if **AI was used**, but if **the tool was confidential and whether counsel was directing the work or not**. Even so, no architectural choice guarantees privilege protection. **Attorney oversight and documentation practices remain essential.**

DEFENSIBLE AI ADOPTION

The competence paradox doesn't require practitioners to choose between efficiency and accountability. It requires tools where verification is built directly into the workflow.

THREE REQUIREMENTS FOR DEFENSIBLE AI ADOPTION

1

Verification Must Be Seamless:

If verifying AI output requires leaving the tool to manually check sources, the efficiency gain disappears. **Professional systems provide direct access to source material from within AI-generated summaries.**

The Heppner decision underscores why this matters beyond efficiency. Consumer AI without confidentiality protections may destroy privilege entirely. However, attorney-directed workflows with integrated verification carry stronger protection, but only when the tool makes verification part of the process, not an afterthought.

2

Security and Compliance Are Baseline:

Client confidentiality isn't negotiable. AI handling case data must operate with zero data retention policies, isolated user environments, and professional certifications that meet ethical standards.

3

AI Doesn't Decide, It Assists:

The ABA Report states that AI output "**should not be viewed as the final work product or a replacement for human critical thinking.**" When an attorney directs AI use as part of legal strategy, the output retains work product protection, and the attorney remains accountable for the work product that bears their name.

THE COMPETITIVE REALITY

Law firms are stratifying into three tiers of AI adoption:



The ABA has made it clear that AI belongs in legal practice. The hard work of building an infrastructure for responsible use presents both a challenge and an opportunity for law firms. Decisions made now will define competitive positioning for years. The firms that get this right won't just avoid risk, they'll operate at a level their competitors can't match.



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