

Liability in Transition: Remote Work, AI, and the Modern Standard of Care

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The Core Question

Has AI Changed the Standard of Care?

The standard of care governing legal practice hasn't fundamentally changed—but the tools required to meet it have. This creates a **double-edged sword**



Using AI without verification

Risk of ethics violations, sanctions, and malpractice exposure.

Ignoring AI entirely

Risk of falling below the level of reasonable competence.

The T.J. Hooper: A Timeless Lesson

The T.J. Hooper, 153 F.2d 107 (SDNY1931)—Two coal barges sank because their tugs lacked working radio sets to receive weather forecasts. Other tugs with radios retreated to safety.

"The standard of seaworthiness is not condemned to inertia or rigidity, but changes with advancing knowledge, experience, and the changed appliances of navigation. It is particularly affected by **new devices of demonstrated worth, which have become recognized as regular equipment by common usage**.

The court found a duty to carry radios—and its breach. The same principle applies to AI in legal practice today.



Regulatory Framework

ABA Formal Opinion 512 & Rule 1.1

Comment 8, Rule 1.1: "A lawyer should keep abreast of changes in the law and its practice, including the **benefits and risks associated with relevant technology** engage in continuing study and education..."

ABA Formal Opinion 512 (July 2024) makes clear that existing duties of **competence, confidentiality, communication, supervision, and reasonable fees** fully apply when lawyers use AI tools.

- 📘 Managerial lawyers must establish clear policies regarding the firm's permissible use of generative AI.



Sanctions Are Already Here

In re Griffiths (Az. 2026)

Arizona lawyer reprimanded for AI-generated brief with unverified citations—one case didn't exist, one didn't support the proposition cited. Conduct was negligent, not intentional. The violation was **failing to verify** not using AI.

Adams v. 3M (N.D. Al. 2026)

Federal court found fabricated citations and misquotes. Court issued a show cause order requiring counsel to confirm whether AI or the lawyer produced the errors. **Either way, sanctionable.**

Sullivan & Cromwell (2026)

Firm issued apology letter to federal judge for AI hallucinations in citations—**despite formal training policies.** Firm acknowledged protocols were not followed and is evaluating further enhancements.

Civil Liability and Risk Management

No reported civil malpractice suits from AI use yet — but severe sanctions like dismissal have occurred, creating exposure. *BioPlanet International v. Johansson*, 792 F.Supp.3d 1341 (SDFL2025) (case dismissed for AI hallucinations in complaint).

Best Practices



→ **Verify everything** — Shepardize citations — don't rely on AI-based checking tools alone.

→ **Formal training** — Firms and carriers must have mandatory AI use policies.

→ **Access equity** — If AI competence is required, how do solo practitioners and small carriers absorb costs?

Privilege & AI: A Conflict in the Courts

NO PROTECTION


United States v. Heppner (SDNY 2026)

Defendant's inputs into Claude —prepared in anticipation of criminal litigation —were **not protected** by attorney-client privilege or work product doctrine. Communications were not confidential (Anthropic's privacy policy permits disclosure), and Claude is not an attorney.

PROTECTED

Warner v. Gilbarco (EDMI 2026)

AI materials used by pro se plaintiff **were protected** as work product. The court reasoned that generative AI is a *tool*, not a person. The materials reflected plaintiff's internal drafting process, analysis, and thought process prepared in anticipation of litigation.

 These conflicting decisions highlight unresolved tension between privilege doctrine and AI tool usage. Attorneys must advise clients accordingly.



The Insurance Perspective

Remote Work & Claims Handling

The transition to remote and hybrid work has altered the traditional infrastructure of claims handling — moving from centralized offices and in-person supervision to distributed, less immediate environments.



Documentation Quality

Audits since 2020 show increased variability in file documentation and escalation timing in fully remote teams.



Unchanged Standard

Courts require reasonable investigation before denying claims. *Egan v. Mutual of Omaha* (1976). Remote work doesn't change the standard —it risks degrading how consistently it's met.



Bad Faith Risk

Operational gaps are precisely the type plaintiffs' counsel may reframe as systemic claims handling deficiencies in bad faith litigation.

AI in Claims Operations

Efficiency Gains —and New Risks

Insurers are actively piloting AI tools in claims operations:

01

Medical summarization—AI-assisted tools in bodily injury claims to reduce review time

02

Catastrophe triage—Property insurers using AI to estimate damages from photographs

03

Coverage letters—AI-generated first drafts of reservation of rights and denial letters



These gains raise questions about validation, consistency, and auditability—likely focal points in future litigation. Per *Mata v. Aviano* (SDNY2023): the duty remains human, and so does the liability.



The Same Double -Edged Sword

The T.J. Hooper Parallel

Just as radio sets became baseline equipment for reasonable navigation, AI tools will likely become part of the baseline for reasonable claims handling.

Emerging Bad Faith Arguments

Plaintiffs' counsel are already seeking discovery into claims handling technologies and internal guidelines. Future bad faith claims may argue:

- **AI should have been used** to identify relevant information more efficiently
- **AI was used improperly** without adequate safeguards

Other Emerging Risks

- Rise in pro per filings
- Plaintiff's use of AI in settlement demands and pleadings
- Fake AI/ deepfake evidence

Supervision

Supervising in a Remote & AI-Augmented World

ABA Model Rules 5.1 and 5.3 require more than passive review. Traditional supervision—built on proximity and real-time interaction—is less effective remotely. The obligation remains the same.

AI Supervision Gap

Reliance on a subordinate's AI-assisted work without meaningful review may constitute a failure of supervision.

Ramirez v. Humana (E.D.N.Y. 2025); *Thomas v. Commissioner* (U.S. Tax Ct. 2024)—both involving paralegals.

Claims Management Impact

Supervisors must evaluate not only conclusions, but the **processes used to reach them**—including whether AI tools were used appropriately and validated.

Security Risks

Remote work adds security issues: overheard privileged conversations, non-firewalled systems, and data exposure through AI platforms.

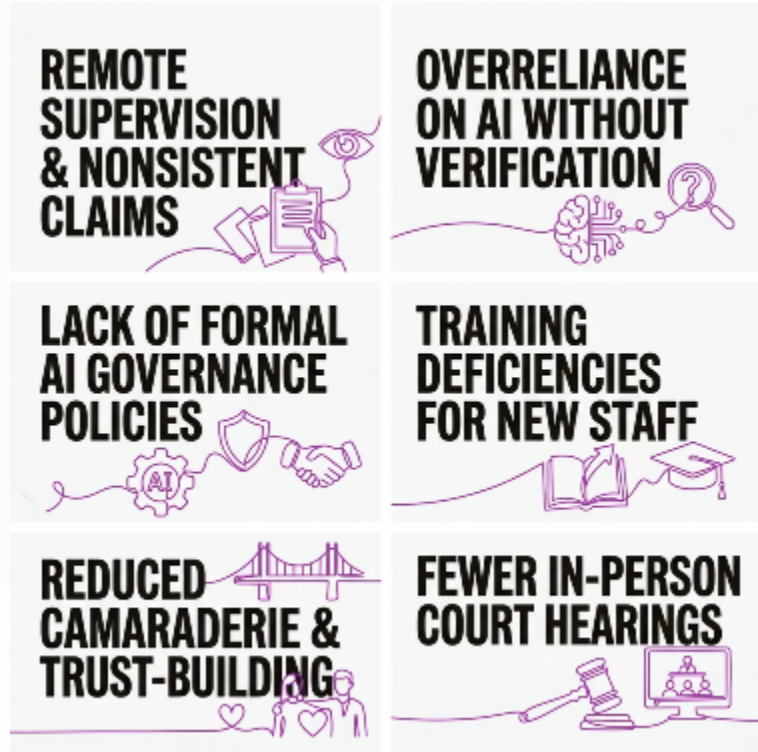


Mentorship

The Competency Gap in the Making

Professional judgment has traditionally developed through observation, repetition, and informal interaction—all diminished in remote environments. CLM has noted post-pandemic training gaps among newer lawyers and claims professionals, particularly in coverage analysis and bad faith avoidance.

AI may **accelerate this gap** by streamlining drafting and research, it reduces opportunities for junior professionals to build foundational skills.



Regulatory Expectations Are Rising



Regulators and courts will increasingly focus on **process** not just outcomes. The question will not simply be whether a claim decision was correct, but whether it was reached through a **reasonable and well-governed process**.

The NAIC has emphasized governance, risk management, and oversight in its AI guidance—including expectations around **transparency, accountability, and bias mitigation**.

40 states and D.C. have formally adopted ABA Model Rule 1.1, Comment 8 or its equivalent, requiring lawyers to stay informed about technological changes and associated risks.

Prompt Engineering as Professional Competency

Technological competence in AI goes beyond Google or Westlaw. **Prompt engineering**—crafting precise instructions to guide AI—is critical for accurate, reliable legal outputs.

i Michigan's 2025 AI Report: Failing to use AI that materially reduces costs "arguably could result in a lawyer charging an unreasonable fee."



Persona prompts—instruct AI to adopt a specific legal perspective

Fact-check prompts—compel AI to identify and verify sources

Cognitive verifier prompts—require AI to explain its reasoning

Conclusion

Disciplined Adoption Is the Strategy

Remote work and generative AI do not alter core duties —but they significantly reshape how those duties are performed and judged.

Standard Evolves Through Practice

As tools become widely adopted, they transition from optional to expected.

Supervision Must Be Deliberate

As workflows become more distributed, mentorship and oversight must become more intentional.

Process Is the Proof

Success requires demonstrating not only sound outcomes, but **sound processes**—supported by clear policies, robust supervision, and intentional training.

