

**The following is a template that a law firm can use to create a generative artificial intelligence (GAI) policy. The template is designed to be edited to suit your organization. Before drafting a policy, we recommend reading *An Overview of Ethical Considerations for Attorney Use of Generative Artificial Intelligence Technologies*.**

### **Summary of Relevant Sections for Consideration**

This summary section provides an overview of GAI policy concerns and provide a framework for drafting your policy.

- **1. Purpose and Scope:** defines the firm’s philosophy and policy on use of GAI tools by attorney(s) and support staff. States the firm's commitment to ethical obligations and client-centric service.
  - Mandatory section
  - Relevant MARPCs
    - 19-305.1
    - 19-305.3
- **2. Governance and Oversight:** defines the ultimate arbiter of data classification and GAI use. This section designates the solo practitioner as the GAI Governance Officer, responsible for approving AI tools, overseeing their use, and ensuring compliance with this policy.
  - Mandatory section
  - Relevant MARPC: 19-301.3
- **3. Data classification and handling:** this section establishes a multi-tiered data classification system with escalating restrictions on how each data type can be used with GAI tools.
  - Mandatory section
  - Relevant MARPC: 19-301.6
- **4. Authorized GAI tools:** provides list of GAI tools that have been reviewed by attorney and authorized for use by staff.
  - Optional
  - Alternatives
    - Allow list where only these tools may be used
    - Block list where these tools may not be used
- **5. Authorized use of GAI tools:** designates specific applications or workflows where GAI use is allowed. Options include legal research, document drafting, administrative tasks, etc. Together with section 5, this section defines whether the firm will encourage or restrict the use GAI tools.
  - Optional section

- **6. Prohibited uses of GAI:** designates specific applications or workflows where GAI use is not allowed.
  - Optional
- **7. Client communication and transparency:** statement of firm policy on communications with clients
  - Optional section
  - Relevant MARPC: 19-301.4
- **8. Training and competence:** establishes that GAI tools may only be used by staff who have who have sufficient competency to use GAI tools in compliance with this policy.
  - Mandatory section
  - Relevant MARPC: 19-301.1; 19-305.1
- **9. Security and confidentiality:** reminder of ongoing ethical and confidentiality concerns, stressing need to always be mindful of data classifications and authorized and prohibited uses.
  - Mandatory section
  - Relevant MARPC: 19-301.6
- **10. Policy violations:** establishes consequences for policy violations.
  - Mandatory section
- **11. Review and auditing:** defines how the GAI Governance Officer will monitor use of GAI tools by staff and build checks into workflows to catch any errors that may be produced by GAI tools.
  - Mandatory section

## 1. Purpose and scope

**Encouraging:** This policy embodies the firm's approach to generative artificial (GAI) intelligence technologies and their use by all employees. This policy is designed to harness the potential benefits of GAI while remaining mindful of our ethical duties and commitment to the highest levels of client service.

**Restrictive:** This policy establishes the firm's approach to generative artificial (GAI) intelligence technologies and their use by all employees. While GAI may evolve into an essential role within the firm's work, this nascent technology currently presents inherent risks and limitations. This policy is designed to allow for a deliberative investigation of GAI tools to identify best practices for mitigating risks and safeguarding confidential information. Any limited deployment of these tools should strictly adhere to our ethical obligations.

## 2. Governance and oversight

This policy establishes the role of AI Governance Office within the firm and designates [insert name] to serve in that role. The AI Governance Officer has the following duties:

- Periodically review and revise the Generative AI Policy.
- Ensure all employees have read and acknowledged the policy.
- As new GAI tools emerge, assess them for inclusion in the list of approved GAI tools and provide employee training when new tools are approved.
- Periodically review workflows and work products to ensure adherence to the policy.

## 3. Data classification and handling

All firm and client data shall be classified according to the following tiered system. The restrictions on the use of data with FAI tools increase with the sensitivity of the information.

- **Level 1: Public Data:** Information that is publicly available and poses no risk to the firm or its clients if disclosed.
  - **Content Examples:** Court opinions, published statutes and regulations, publicly filed documents, and firm marketing materials.
- **Level 2: Internal Firm Data:** Information related to the firm's operations that is not intended for public disclosure but would not cause significant harm if inadvertently released.
  - **Content Examples:** Internal templates (without client information), non-confidential administrative schedules, and anonymized case statistics for internal analysis.
- **Level 3: Confidential Client Data:** Non-public information provided by or related to a client that is subject to the duty of confidentiality.

- **Content Examples:** Client communications, draft legal documents, case notes, discovery materials, and any personally identifiable information (PII) of a client or opposing party.
- **Level 4: Highly Sensitive Client Data:** A subset of confidential client data that, if disclosed, could cause significant harm to the client, such as financial, proprietary, or privileged information.
  - **Content Examples:** Trade secrets, financial account information, medical records, and information subject to attorney-client privilege or a protective order.
- **Distinction between Level 3 and Level 4:** Documents or workflows that contain Level 3 data could have the confidential data removed and have the sanitized document be used with GAI. For example, when drafting a client communication, the client's PII should not be input into the GAI tool. Level 4 data cannot be anonymized and may never be disclosed.

#### 4.0 Authorized GAI tools

AI is the ability of technology to perform tasks commonly associated with intelligent beings. GAI is a type of AI technology that can produce various types of content, including text as well as audio and visual material.

Deterministic technology such as traditional spell check, optical character recognition, and document assembly software are not covered by this policy.

**Encouraging** (block list): As long as the data classification protections have been respected, employees may use generally use GAI tools in their work. Remember that Level 3 and Level 4 data must be treated carefully. The following tools, however, may never be used:

- [this list may include specific applications or classes of applications. For example, the firm might not want to allow the use of image generators]

**Restrictive** (allow list): The following GAI tools have been assessed by the AI Governance Officer and are authorized to be used where appropriate:

- [list specific tools or features of applications that may be used]

#### 5. Authorized use of GAI tools

[note: this section is optional. Depending on the type of policy you want to draft, you may want to only use either 5 or 6. If taking the restrictive approach, this section should be used. The bullet list below provides some inspirational ideas.]

GAI tools may only be used for the following purposes:

- Initial research into a new or emerging area of law where rough summaries are helpful.

- To draft a paragraph or small section of a document where the author has an outline and clearly provides the desired parameters into the prompt. Remember that GAI output should not be used verbatim and should only serve as a starting point for intensive editing.
- Assistance in parsing particularly dense or difficult to understand statutes.
- Assess the strengths and weaknesses of drafts in progress. Here, the GAI tool should not suggest language options but provide objective analysis.

GAI tools used for these tasks may only use Level 1 or Level 2 data. The use of GAI with Level 3 or Level 4 data is prohibited. [The use of GAI for drafting any client-facing document or court filing is prohibited.] If you are unsure about any aspects of the GAI tool or your workflow, consult the AI Governance Officer.

## 6. Prohibited use of GAI tools

[note: this section is optional. Depending on the type of policy you want to draft, you may want to only use either 5 or 6. If taking the encouraging approach, this section should be used]

This policy encourages the exploration and use of a wide range of GAI tools to enhance productivity and client service. Level 1 data is not subject to any prohibitions. New AI tools may be provisionally used with Level 1 data for evaluation purposes before formal approval.

When using GAI with Level 2 or 3 data, employees must use firm-approved, secure GAI tools from the authorized list that have been vetted by the AI Governance Officer.

Level 4 data may not be used with any GAI tool.

## 7. Client communication and transparency

**Encouraging:** This policy does not require specific disclosures regarding the use of GAI tools, as they are considered part of our standard practice. If a GAI tool will be used in a unique or novel way in a client's case, written consent will be obtained from the client.

**Restrictive:** This policy requires full transparency regarding the use of GAI in client matters. Engagement agreements must obtain informed consent from the client before using any GAI tool on their behalf. The disclosure will explain the firm's reasons for using GAI tools and confirm that all GAI work product will be thoroughly reviewed.

## 8. Training and competence

All employees using GAI tools must develop and maintain the requisite knowledge and skill to ethically and competently use the tools. The GAI Governance Officer will provide initial GAI

training. This may include a mandatory course of study. The GAI Governance Officer will monitor training needs as part of the policy review.

## **9. Security and confidentiality**

**Encouraging:** As part of the vetting process, the AI Governance Officer will review the privacy and security policies of any GAI tool approved for use. When exploring a GAI tool, employees are reminded to use only Level 1 data and to review privacy and security settings. If a GAI tool allows, prohibit the use of inputs for training data. Level 2 or Level 3 data may only be used with approved GAI tools. Level 4 data may never be used with a GAI tool.

Any suspected data breach or security incident involving a GAI tool must be reported to the GAI Governance Officer immediately.

**Restrictive:** As part of the vetting process, the AI Governance Officer will review the privacy and security policies of any GAI tool approved for use. All access to approved GAI tools will be through firm-managed accounts. GAI tools may only be used with Level 1 or Level 2 data. The use of GAI with Level 3 or Level 4 data is prohibited.

Any suspected data breach or security incident involving a GAI tool must be reported to the GAI Governance Officer immediately.

## **10. Policy violations**

Adherence to this policy is paramount. Any violation of this policy may result in progressive disciplinary action. The following factors will be taken into account:

- Severity: the actual or potential harm to clients or the firm.
- Intent: whether the violation was accidental, negligent, reckless, or intentional.
- Frequency: Whether it is a first offense or a recurring pattern of non-compliance.
- Cooperation and mitigating circumstances

Disciplinary actions will be determined on a case-by-case basis and conducted by the GAI Governance Officer. Disciplinary actions can include verbal or written warnings, suspension, or termination of employment.

## **11. Review and auditing**

This policy shall be reviewed every six months by the AI Governance Officer to ensure it remains relevant and effective. The primary goal of the review is to adapt the policy to significant changes in GAI technology and further develop firm workflows. The review should include checking changes to GAI tool's security protocols, privacy policies, and terms of service.

The AI Governance Officer will periodically spot check reviewing work product and usage logs, to verify adherence to this policy. Ongoing discussions with all employees about their use of GAI will ensure compliance, fostering a culture of responsible innovation, and shared accountability.