Sample Generative AI Use Policy for Defender Offices and CJA Practices

Oct 27, 2026 · Keith Smith

A fill-in-the-blanks starting point for an office or firm AI policy.

AI in Your Law Practice (NC CLE, November 19, 2026), Handout 3. Prepared by Keith Smith, Summit Legal Technologies.

The One-Page Policy: Front Sheet

Answer each in a line or two and post this page where your team works. The full template follows.

#	Question	Our answer	Rule	Template
1	**Approved tools and agents.** Which tools may touch client work? What may an agent do unasked?		1.1, 1.6(c)	§ 3, § 10
2	**Never-enter and ask-first lists.** What never goes in (Tier D); what needs the order's OK first (Tier C)?		1.6(c), court orders	§ 4
3	**Verification.** Who runs the Citation Chain (Handout 2)?		3.1, 3.3	§ 5
4	**Courts and incidents.** Whose AI orders apply? Who fixes a mistake?		3.3(a)(1)	§ 9, § 11
5	**Clients and consent.** What do we tell clients, and when do we ask first?		1.4	§ 7
6	**Supervision.** Who trains and checks staff and contract help?		5.1, 5.3	§ 6
7	**Billing.** How does AI show up on an invoice or a CJA voucher?		1.5	§ 8

Owner: _____ Adopted: _____ Next review: _____

> ***Notice.*** *Sample for educational purposes, prepared for the CLE program "AI in Your Law Practice" (November 18, 2026). It is not legal advice, and its author is not a lawyer. Adapt it to your firm and read the primary sources cited. Fill in or choose the [bracketed] text. Where it says "the firm's choice," the State Bar has not drawn that line; your policy does.*

[Firm Name] Generative AI Use Policy

Effective date: [date]. Policy owner: [name, title].

1. Purpose and Scope

1. This policy governs how [Firm Name] uses artificial intelligence (AI) tools in client work.
2. It applies to every lawyer, paralegal, staff member, contract attorney, and intern working on firm matters, on any device or account, including personal accounts.
3. The N.C. State Bar has said no Rule of Professional Conduct specifically addresses or prohibits AI use; its 2024 FEO 1 applies the existing Rules. This policy applies them to our practice.

2. Definitions

- **AI tool:** any software that uses AI to generate or analyze text, images, audio, or data, including general assistants, legal research AI, AI features in practice software, note-takers, and intake bots.
- **Approved tool:** an AI tool and account type listed in Section 3.
- **Personal account:** a free or individually purchased consumer account not managed by the firm.
- **Client information:** any information relating to a client representation, whatever its source.
- **Substantive legal work:** work that applies legal judgment to a client's matter, such as legal analysis, advice, or drafting a pleading or contract. [Firm to define and add examples; 2024 FEO 1 does not draw this line precisely.]
- **AI agent:** an AI tool that takes steps on its own to finish a task, such as searching, opening files, sending messages, or changing records.

3. Approved Tools

Only these tools and account types may be used with client information. Ask [policy owner] before using any other tool.

Tool	Account type	Approved uses	Approved by / date
[Tool name]	[e.g., firm business plan, training off]	[e.g., drafting, summarizing firm documents]	[Name / date]
[Legal research service]	[Firm subscription]	[Research; every result verified under Section 5]	[Name / date]
[Practice management AI feature]	[Firm license]	[e.g., deadline extraction, with every date checked]	[Name / date]
[Tool name]	[Personal account]	[Public or generic material only; no client information]	[Name / date]

AI agents. No AI tool may take an action it can't undo (sending, filing, deleting, sharing, or paying) without a lawyer's approval each time. For each approved agent feature, record what it may touch and where its activity log is kept: [list approved agent features, their limits, and where the log is kept]. New

York's bar guidance on agents (Guideline 9E, Oct. 31, 2026) is a useful model; no N.C. State Bar guidance mentions agents yet.

4. Information Limits: Never Enter, Ask First, Approved Tools Only

An ethics opinion can permit what a court order forbids, so every limit below names its source. **ORDER** = a court order or rule binds you. **STATE BAR** = 2024 FEO 1. **OUR POLICY** = this office's choice; the law may allow more.

Tier	Information	Examples	Rule	Source
A · Public	Public, invented, or truly de-identified material	Published opinions, public filings, statutes, fictional fact patterns, "A traffic stop was extended 21 minutes to wait for a drug dog"	Any approved tool; de-identified client facts only in tools with training off. Still verify.	OUR POLICY
B · Approved tools only	Client information that no order restricts	The client's account, our work product, medical and financial records, privileged strategy	Approved business-tier tools only (§ 3), vetted under § 10. The client's advance informed consent before AI does substantive work (§ 7). Never a consumer chatbot.	STATE BAR (FEO 1, Inq. 2, 5); OUR POLICY
C · Ask first	Material that came with an order or condition	Discovery under a Rule 16(d) protective order; grand jury transcripts disclosed to us; sealed filings; presentence reports	Before storing it in a new system or running any AI on it, read the order or rule and identify who may receive it. If it doesn't clearly allow the use, get written consent or a court order. Storage and AI processing are separate questions.	ORDER; OUR POLICY (if the order is unclear)
D · Never enter	Barred, or too dangerous	Anything an order bars from AI or outside vendors (for example, N.D. W. Va. designated Sensitive Materials in a public AI system that trains); cooperator, informant, and witness-security identities	No AI tool, on any account, until the order changes or the court approves.	ORDER; OUR POLICY (safety)

1. A fact pattern is not de-identified if, in our community, a few details could identify the client.
2. **Grand jury material.** Rule 6(e)(2)(B) lists who must keep grand jury matters secret: grand jurors, interpreters, court reporters, recording-device operators, transcribers, attorneys for the government, and certain people who receive disclosure under Rule 6(e)(3)(A)(ii)–(iii). Rule

6(e)(2)(A) bars imposing secrecy on anyone else. Defense counsel is not on the list. What binds us is the order or condition under which we received the material, so treat it as Tier C, never as free to upload.

3. **Inside the Fourth Circuit.** N.D. W. Va. Standing Order No. 1:26-mc-38 (June 16, 2026) applies in all criminal cases in that district; it does not bind the N.C. districts. The defense team may not put designated Sensitive Materials (eleven listed categories, such as confidential-source identities, witness-security information, non-defendant medical records, and footage of minors) into any AI tool without the government's prior written consent, and never into a public AI system that retains and trains on submitted data. Its definition of "AI tool" reaches AI features in ordinary software and local models.
4. **What that order does not cover.** Public-record material, material the defense obtains other than through discovery, and material pertaining solely and directly to the defendant. Redaction that resolves the basis for a designation ends it. Designation disputes go to the court after a good-faith conference; disputed material stays covered until the ruling. The order sets no standard for the government's refusal of consent.
5. **A silent order is not permission (OUR POLICY).** Get consent in writing or ask the court. If the order is the obstacle, propose language like Appendix C.

5. Verification and Sign-Off

1. The lawyer is fully responsible for AI's use and its effect on the client's matter. Review AI work yourself before relying on it (2024 FEO 1, Inquiry #1).
2. Before anything is filed or sent, every cited authority must be pulled from a source that is not the AI and read by a person. Quotes and pin cites must be matched, and a citator run. Use the Citation Chain of Custody: Pull, Read, Match, Validate, Confirm, Sign (Handout 2).
3. This applies to every citation, including those supplied by colleagues, contract attorneys, and other AI-assisted work.
4. Never verify an AI's answer by asking the same AI.
5. Relying on AI does not change the signer's duties under Rules 3.1 and 3.3 or any signature certification (N.C. R. Civ. P. 11 in state civil cases; in federal criminal cases, courts act under inherent authority, 28 U.S.C. § 1927, and local rules). A lawyer who adopts AI output is responsible for it (2024 FEO 1, Inquiry #4).
6. AI-generated dates, deadlines, and figures are checked against the source document.
7. Sign-off: [name or role] confirms verification and records who checked it and when in [location].

6. Supervision and Training

1. **Managers.** Under Rule 5.1(a), principals and managers must make reasonable efforts to ensure the firm has measures that reasonably assure its lawyers follow the Rules. The comments contemplate policies scaled to the firm's size.
2. **Staff and vendors.** Rule 5.3 applies parallel duties to nonlawyers employed by, retained by, or associated with the lawyer. 2024 FEO 1 relies on Rule 5.3 for third-party software vendors, including AI vendors.

3. **Policies and training.** ABA Formal Opinion 512 says managing lawyers must set clear policies on permitted AI use and that staff should be trained. (2024 FEO 1 does not address firm policies or training.)
4. Every person covered by this policy will complete [length] of training on this policy and the firm's approved tools within [number] days of hire, and at least [annually].
5. Questions about AI use go to [name], who will answer or escalate to [name].
6. [Policy owner] will ask all personnel, at least [annually], which AI tools they use for firm work. Answers are collected without blame.

7. Client Communication and Consent

This section follows 2024 FEO 1, Inquiry #5, which says disclosure depends on the technology, what it produces, and how much the lawyer relies on it.

1. **Ordinary uses.** Ordinary uses such as legal research or general practice management generally need no disclosure to the client.
2. **Substantive work.** Delegating substantive legal work to AI is treated like outsourcing legal work to a nonlawyer. That requires the client's advance informed consent (2024 FEO 1, citing 2007 FEO 12 and Rule 1.4(b)). The lawyer must still exercise independent judgment over the work.
3. **Fees.** If AI use will affect the fee, tell the client and ask for the client's input.
4. **Client terms.** Follow any client instruction or outside counsel guideline on AI use.
5. **Engagement letters.** The firm uses the sample paragraph in Appendix A, adapted as needed. It gives notice; it is not informed consent. ABA Formal Opinion 512 says boilerplate engagement-letter language is not enough consent to put client information into a self-learning tool.
6. Record client consent in [location].

8. Billing

This section follows 2024 FEO 1, Inquiry #6, and Rules 1.5(a), 7.1, and 8.4(c). North Carolina's standard is that a fee may not be "clearly excessive."

1. **Hourly work.** Bill only the time actually spent, not time the AI saved. The lawyer may keep the benefit of saved time by taking on more work.
2. **Flat fees.** The firm may charge a flat fee for AI-assisted work if the fee is not clearly excessive and the client consents.
3. **AI expenses.** AI-related costs may be charged to a client only if they are accurate, not clearly excessive, and agreed to by the client, preferably in writing (Rule 1.5(b)). This can be a charge tied to the client's matter or a general administrative fee that covers technology costs.
4. **The firm's choice:** [General-purpose AI subscriptions are overhead and are not passed through / The firm passes through these costs, as stated in the engagement letter: ___]. ABA Formal Opinion 512 says GAI tools that function as part of equipping the practice (its example: a grammar checker built into word-processing software) are overhead, while a third-party GAI service charged per use may ordinarily be billed as an expense. It also says lawyers may not bill clients for time spent learning a tool they will regularly use, unless the client asks for a specific tool.

5. **CJA vouchers (appointed cases).** The Guide to Judiciary Policy, Vol. 7A, has no AI provision, so match the cost to what it does cover. Computer-assisted legal research "may be allowed as a reimbursable out-of-pocket expense, provided that the amount claimed is reasonable" (§ 230.63.30(a)); attach the bill or explain the charge, for example by proration of monthly charges (§ 230.63.30(b)), with a justification over $500 (§ 230.63.30(c)). General office overhead is not reimbursable except in extraordinary circumstances (§ 230.66.10), and "CJA attorneys are expected to use their own office resources" (§ 320.70.30(a)). Software or litigation-support services "not typically available in a law office" need an application to the court in advance, through Form CJA 21, and consultation with the National Litigation Support Team when the expected cost exceeds $10,000 (§ 320.70.40). Confirm the treatment with your district's CJA supervising attorney or administrator before claiming any AI cost.

9. Court Rules and Disclosure

1. [Name] keeps a list of courts and judges where the firm practices that have AI orders or provisions. Check it before every filing.
2. Examples as of November 2026 (read the current order before relying on any summary):
    - **U.S. District Court, W.D.N.C.:** *In re: Use of Artificial Intelligence*, No. 3:24-mc-104, first entered June 18, 2024 and updated July 29, 2026. As court-order trackers quote it: every filing is deemed to certify that cited authorities exist and are accurately represented and that quotations are verbatim; verification is by the signer or an attorney of record working under the signer's supervision; a party offering AI-involved evidence is responsible for validating it. Read the current order on the court's website before relying on this summary. Individual judges also have AI provisions, such as Judge Orso's case management order.
    - **Cabarrus County Superior Court (Judicial District 25):** Revised Administrative Order 25-09 (Dec. 8, 2025) requires disclosure, generally at least 90 days before trial, when AI generates, offers, materially alters, enhances, or analyzes evidence. It does not require disclosure when AI helps draft briefs, motions, or pleadings that the lawyer reviews and adopts.
3. Where no AI-specific order exists, Rule 3.3, the court's inherent authority, 28 U.S.C. § 1927, and local rules still apply (and Rule 11 in civil cases).

Court or judge	Order and date	What it requires	Last checked
[ ]	[ ]	[ ]	[ ]

10. Confidentiality and Vendor Review

Rule 1.6(c) requires reasonable efforts to prevent unauthorized disclosure of or access to client information. Before a tool is added to Section 3, [policy owner] reviews it using the factors in 2024 FEO 1, Inquiry #2:

- ☐ The vendor's experience, reputation, and stability
- ☐ Whether the terms of service address confidentiality and security

- ☐ Whether data can be retrieved or safely destroyed if the vendor closes, changes owners, or the service ends
- ☐ Whether the vendor keeps submitted information, claims rights in it, or trains on it
- ☐ For tools built on another company's AI, whether inputs flow back to that program (Inquiry #3)

For AI features inside systems we already use, and for anything that touches protected discovery, also check:

- ☐ The exact product, feature, and plan. Box storage is not Box AI; Clio Manage is not Manage AI, and neither is Clio Work.
- ☐ The data-processing and AI terms for that plan, and the list of subprocessors, including the AI model provider.
- ☐ That "no training" covers files, prompts, and outputs, with no "service improvement" or feedback carve-out.
- ☐ Whether the AI features are separate from storage and can be turned off, and which documents they can read. Test that the AI sees only what the user is allowed to see (matter permissions, closed matters).
- ☐ Where prompts, outputs, indexes, and logs are kept, for how long, and who can delete them.
- ☐ Where an order like N.D. W. Va.'s applies: the government's consent or court approval, even if every item above checks out.

1. **Continuing duty.** The duty lasts as long as the tool is used. [Policy owner] re-reviews each approved tool at least [every six months] and when its terms change, consults security professionals periodically, and removes any tool that no longer appears secure.
2. **Firm servers.** The same duties apply to tools run on the firm's own servers (Inquiry #3).
3. **Privilege.** The State Bar did not decide whether sharing information with an AI tool affects the attorney-client privilege; it called that a legal question for the lawyer. Research it before relying on a tool for privileged material.

11. Incidents and Corrections

1. **Report immediately.** Anyone who finds an AI error in work that has gone out, or suspects client information went into an unapproved tool, tells [name] immediately.
2. **No blame for reporting.** The firm will not discipline anyone for promptly reporting a mistake, including their own.
3. **Correct the record.** Under Rule 3.3(a)(1), a lawyer may not knowingly fail to correct a false statement of material fact or law the lawyer previously made to a tribunal. If a filed document contains a bad citation or quote, the responsible lawyer will promptly correct it with the court.
4. **Data incidents.** Follow [the firm's data incident procedure].
5. [Name] records each incident and the fix, and reviews whether this policy needs to change.

12. Review Schedule

[Policy owner] reviews this policy at least [every six months], and sooner if the State Bar issues new guidance, a court changes its AI order, or an approved tool changes its terms. Last reviewed: [date]. Next review: [date].

Appendix A: Sample Engagement-Letter Paragraph

Sample language for discussion, drafted for this program. Adapt it to your practice and your approved tools.

> *Our firm uses technology, including artificial intelligence tools, to work efficiently. Our lawyers supervise that use, protect your information, and review all work before relying on it. For hourly work, we bill only for time actually spent. Before we use AI to perform substantive legal work on your matter, or place your confidential information in a tool outside our approved systems, we will ask for your consent.*

Appendix B: Staff Acknowledgment

I have read the [Firm Name] Generative AI Use Policy dated [date]. I understand it, and I agree to follow it. I will use only approved tools for firm work, keep client information out of unapproved tools, verify AI output as the policy requires, and report mistakes immediately.

Name: _____

Signature: _____

Date: _____

Appendix C: Sample Protective-Order Language on Litigation Technology

Sample language for discussion, drafted for this program; not legal advice. Its author is not a lawyer. Have a defender lawyer adapt it to your district's practice before proposing it.

> ***Approved litigation technology.*** *Defense counsel may store, process, and analyze Discovery Materials using litigation-technology services engaged by counsel for this representation, including secure hosting, OCR, search, and AI-assisted review, if the service: (a) is bound by contract to keep the materials confidential and not to use them to train or improve any model or for any other purpose; (b) limits access to the defense team and to the service personnel who need access to provide the service; (c) documents its subprocessors and data retention; (d) deletes the materials at the end of the case on counsel's request; and (e) gives prompt notice of any security incident.*
>
> *Materials designated [Sensitive / Attorneys' Eyes Only] may be processed by an AI tool only with [the government's written consent / leave of court]. The government may object to a particular service or category of materials, and the Court will resolve any dispute. Until this order is modified, any contrary term in it controls.*

Sources

- N.C. State Bar, 2024 Formal Ethics Opinion 1 (Nov. 1, 2024)
- ABA Formal Opinion 512 (July 29, 2024), news release
- Wendy J. Muchman on ABA Formal Opinion 512 (The Bar Examiner, Fall 2024), a summary article
- N.C. Rule 5.1
- N.C. Rule 5.3
- W.D.N.C. Local Rules and Orders
- Cabarrus County Revised Administrative Order 25-09
- N.D. W. Va. Standing Order No. 1:26-mc-38 (June 16, 2026), use of AI tools to review criminal discovery
- Fed. R. Crim. P. 6 (LII)
- Guide to Judiciary Policy, Vol. 7A, Ch. 2 (CJA compensation and expenses)
- Guide to Judiciary Policy, Vol. 7A, Ch. 3 (services other than counsel)
- ABA Formal Opinion 512, official PDF

As of November 2026. Prepared October 27, 2026; revised November 11, 2026. Through the State Bar's July 2026 council meeting, 2024 FEO 1 remained its only formal opinion on AI. Check for newer guidance and current court orders before adopting this policy.