



# ChatGPT Created This CLE Description\*

Technology in Local Government

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\*(and I edited it)

# Chat GPT Generated These Topics\*

- AI Tools
- Social Media
- Intellectual Property Issues
- Cybersecurity & Liability
- Electronic Notarization and Signatures
- Electronic Recording & Filing
- Public Notice

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# AI Tools

## For Lawyers

- Protect Confidentiality of Client Information
- Provide Accurate, Competent Services
- Avoid Improper Billing
- Comply with Restrictions on Lawyer Advertising



# AI Tools



## For Lawyers: Protect Confidentiality of Client Information

- Best practice: Obtain client informed consent before using AI tools
- Rule RTFB 4-1.6(c)(1), absent informed consent, lawyer may not reveal client information unless necessary to serve the client's interest provided client does not specifically require the information not to be disclosed.
- Research AI tool/program policies on data retention, data sharing, and self-learning to ensure compliance with ethical responsibilities regarding protection of information. Cf. FL Bar Ethics Ops. 12-3, 10-2; 07-2; 06-2.

# AI Tools

## For Lawyers: Provide Accurate, Competent Services

- Rule RTFB 4-5.3(a) defines nonlawyer assistant as a “person,” the rule is helpful guidance for use of AI Tools-- the Lawyer is ultimately responsible!
- Lawyers remain responsible for their work product and professional judgment of themselves and nonlawyer assistants inside and outside the firm. See FL Bar Ethics Op. 07-2.
  - duty of competence R. 4-1.1
  - candor R. 4-3.3
  - avoid frivolous claims R. 4-3.1
  - truthfulness R. 4-4.1
- Develop policies/practices to ensure that use of AI is consistent with all ethical obligations, including those to prospective clients via chatbots or otherwise (Rule RTFB 4-1.18, FL Bar Ethics Op. 88-6)

# AI Tools

## For Lawyers: Avoid Improper Billing

- Use of AI does not permit improper billing practices like double-billing for fees already accounted for in overhead (see The Fla. Bar v. Carlon, 820 So. 2d 891, 899 (Fla. 2002); Fla. Bar Ethics Ops. 76-33 & 76-38) and clearly excessive fees under Rule RTFB 4-1.5(a)-(b)
- Basis for fees must be communicated to client in writing Rule RTFB 4-1.5(e)
- Contingent fees and nonrefundable fees must be explained to client in writing. See Rule RTFB 4-1.5(e) & (f)(2).

# AI Tools

For Lawyers: Comply with Rules on Lawyer Advertising (RRTFB Ch. 4-7)

- Deceptive or misleading ads, Rule RTFB 4-7.13
  - Prohibits comparisons of lawyers or statements, words, or phrases that characterize a lawyer's or law firm's skills, experience, reputation, or record, unless the characterization is objectively verifiable
  - Prohibits use of a voice or image that creates the erroneous impression that the person speaking or shown is the advertising lawyer or employee of the advertising law firm unless the ad contains a clear and conspicuous disclaimer that the person is not an employee or member of the law firm
- Proactively disclose/notify people using website if chatbot is AI
- Lawyer should not claim their use of AI tools is superior to other firms unless objectively verifiable

# AI Tools

## For Lawyers

- American Bar Association Formal Opinion 512, available at: [https://www.americanbar.org/content/dam/aba/administrative/professional\\_responsibility/ethics-opinions/aba-formal-opinion-512.pdf](https://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/ethics-opinions/aba-formal-opinion-512.pdf)
- FL Bar Ethics Advisory Opinion 24-1, available at: <https://www.floridabar.org/etopinions/opinion-24-1/#:~:text=Lawyers%20may%20use%20generative%20artificial,applicable%20restrictions%20on%20lawyer%20advertising>
- AI Missteps in Court Filings Prompt Florida Bar Rules Review, Jim Ash, The Fla. Bar News, available at: <https://www.floridabar.org/the-florida-bar-news/ai-missteps-in-court-filings-prompt-florida-bar-rules-review/>



# AI Tools

For Staff, establish a Policy for use of AI Tools that requires the following:

- Compliance with Public Records Law and Retention Schedules
- Protocols for maintaining information security and confidentiality, where appropriate
- Ensure that use of AI is transparent and ethical in employee work product
- Identify a responsible department, like IT or Admin/Mgmt
- Training for Employees who will use AI Tools
- Tracking Use and Procurement of AI Tools

# Social Media & Intellectual Property Issues



- Social Media
  - Public Records
  - Privacy & Sunshine Issues
  - 1A issues
- Intellectual Property Issues
- Best Practices

# Public Records



- Social Media Posts, **including posts/comments/replies made by the public**, if allowed, are Public Records! Social Media sites **do not** automatically archive for you!
- Your **Local Government is responsible for archiving** those posts and ensuring they are kept for the **minimum retention periods** in the GS1-SL, available at: <https://files.floridados.gov/media/703328/gs1-sl-2020.pdf>

## **PUBLIC INFORMATION FILES**

**Item #128**

This record series documents an agency's efforts to disseminate information to the public about its programs and services through such activities as speeches, presentations, exhibits, displays, social media involvement and other activities. The series may include, but is not limited to, speeches (including outlines, speaking points and drafts), photographs or other illustrations used in agency publications or displays, applicable social media posts, and examples of brochures, handouts, or other items meant for public distribution. **NOTE:** Stocks of agency publications (e.g., brochures, pamphlets, handbooks, etc.) are not included in this series. See also "NEWS RELEASES" and "PUBLICATION PRODUCTION RECORDS."

*These records may have archival value.*

**RETENTION:** 90 days. *State agencies must contact the State Archives of Florida for archival review before disposition of records. Other agencies should ensure appropriate preservation of records determined to have long-term historical value.*

## **SOCIAL MEDIA ACCOUNT AUTHORIZATION RECORDS**

**Item #411**

This record series documents employee administrative access rights to an official agency account on a social media site including, but not limited to, Facebook, Twitter, YouTube, or an agency blog. Social media account authorizations allow authorized employees to create and maintain a specified account and content for that account. The series may include, but is not limited to, social media account information, authorization records, access rights records, and other related records.

**RETENTION:** 1 anniversary year after superseded or employee separates from employment.

# Public Records



# Privacy & Sunshine Issues



- Accidental Disclosure of Public Records Exempt/Confidential Information
- General Data Protection Regulation Compliance  
<https://gdpr.eu/what-is-gdpr/>
- Ensure training to help Commission/Council/Board members avoid Sunshine violations in their personal use of Social Media

# 1A Issues

- “Limited” or “Designated” Public Forum

Government property that is not traditionally open to the public, but once it has been and for so long as the property is open to the public, regulation in the Designated Public Forum is subject to the same standards as regulations in a Traditional Public Forum.

Cornelius v. NAACP Legal Def. & Educ. Fund, 473 U.S. 788, 799-800 (1985).

- Moderation Policy Statement on ALL City, County, and related entities’ Social Media Pages & Profiles

# 1A: Social Media Public Forum Statement

[Insert Department Name] has created this page as a limited public forum for the purpose of facilitating the dissemination of information and communication with the public concerning [Insert Description of Department/Type of Info to Be Provided]. Please be aware that when engaging with the [Insert Department Name] through social media, you agree to adhere to the following terms of use:

Florida has broad public records laws. All postings on this page, including personal information, may be public records under Florida public records laws and all information is being preserved by the County.

Please keep all comments and discussion on topic and related to the purpose of the page.

The following are expressly prohibited: pornography; graphic or obscene content; content that promotes illegal activity; violations of copyrights and trademarks; content that promotes, fosters or perpetuates discrimination on the basis of race, creed, color, age, religion, gender, marital status, status with regard to public assistance, national origin, physical or mental disability, gender identity or sexual orientation; content that constitutes an imminent threat; and solicitations, advertisements, or other content that is commercial in nature.

# Intellectual Property Issues



- Social Media, Public Meeting Presentations, Fliers, and anywhere else you can post a photo or words can open your local government to copyright, trademark, or other IP infringement claims
- Consider ownership of IP, especially as part of contracts for Photography, Advertisement, PR/Media, Websites, Public Art
  - who owns the images/digital files?
  - what can you use those images/files for?
  - where can those images be displayed/reproduced?



# Intellectual Property Issues

- You don't chew gum you found on the sidewalk, do you?
- **DO NOT USE** images you find laying around on the Internet or even from another local government Department without
  - Proper License
  - Proper Attribution
  - Consent of Artist & Subject



Image Used with Pixabay Content License © 2014 Ryan McGuire

# Intellectual Property Issues



**DO NOT USE** name, portrait, photo, video, or other likeness for use in commercial/advertising purposes without express consent— there is no intent element! Sec. 540.08, Fla. Stat.

- Creates cause of action for injunctive relief and damages
- Does not apply to “bona fide news”
- Does not apply to “any **photograph** solely as a member of the public and where the person is not named or otherwise identified in connection with the use of such photograph.”

Social media can be commercial/advertising purpose under Sec. 540.08, Fla. Stat. See Gibson v. BTS North Inc., 2018 U.S. Dist. LEXIS 24132 (S.D. Fla. Feb. 22, 2018).

# Best Practices

- Comments or No Comments?
- Archiving Software
- Social Media Policy
  - Page Administrators
  - Contact Information & Public Forum Statement on EVERY Page/Profile
  - Address Sunshine Law Issues
- Don't Chew Gum Off the Sidewalk (and leave images where you found them on the Internet)



# Cybersecurity

## Ch. 2022-220, Laws of Fla.

- Section 282.3185(3), Fla. Stat., Florida Digital Service will prepare local government cybersecurity training curriculum
- Section 282.3185(4), Fla. Stat., each local gov't will adopt cybersecurity standards consistent with best practices, including NIST Cybersecurity Framework by Jan 1, 2024 in Counties POP 75k+ Cities POP 25k+; by Jan 1, 2025 otherwise; and immediately notify Florida Digital Service
- Section 282.3185(5), Fla. Stat., within 12 hours, notify cybersecurity/ransomware incidents to FDLE Cybersecurity Operations Center, Cybercrime office, and local sheriff meeting requirements of statute
- Section 282.3185(6), Fla. Stat., provide Florida Digital Service an after-action report summarizing incident, resolution, insights gained within a week of remediation
- Section 282.3186, Fla. Stat. forbids ransom demand payment
- Section 815.062, Fla. Stat., creates 1st degree felony offenses for willful/knowning cyber attack against governmental entities

# Cybersecurity

## **Ch. 2022-221, Laws of Fla.**

Section 119.0725, Fla. Stat., makes confidential and exempt records held before, on, or after July 1, 2022: coverage limits/deductible/self insurance amounts for IT/data systems; information relating to critical infrastructure; cybersecurity incident information reported under section 282.3185, Fla. Stat.; network schematics, hardware/software config, encryption info; info that IDs detection, investigations, response practices for incidents; portions of meetings that would reveal any of the preceding information; provides for same to be available to law enforcement, auditor general, Cybercrime Office of FDLE, Florida Digital Service, and Chief Inspector General (for agencies under jdx of Governor)

# Cybersecurity

## Ch. 2023-32, Laws of Fla.

“Tik Tok Ban” for applications on government-issued devices; requires a public employer, definition includes cities and counties among other entities, to block all prohibited applications from public access on any network and virtual private network that it owns, operates or maintains; restrict access to any prohibited application on government-issued devices. In addition, IT must have the ability to remotely wipe and uninstall any prohibited application from a government-issued device, and no employee or officer may download such on a government-issued device. Prohibited applications are those internet applications created, maintained or owned by a foreign principal (the government or an official of the government, political party or member thereof, a partnership, association, corporation, organization or another combination of persons organized and having its principal place of business in any of the following countries of concern: People’s Republic of China, the Russian Federation, the Islamic Republic of Iran, the Democratic People’s Republic of Korea, the Republic of Cuba, the Venezuelan regime of Nicolas Maduro, or the Syrian Arab Republic) and that participate in activities including: collecting information, compromising e-mail or deploying ransomware, conducting cyber-espionage, conducting surveillance and tracking of individual users, or using algorithmic modifications to conduct disinformation or misinformation campaigns or any internet application that the Florida Department of Management Services deems to pose a security risk (this must be complied within 15 days of the department issuing a new list). Public employers may request a waiver from the Florida Department of Management Services to allow designated employees or officers to download and access a prohibited application on a government-issued device. Waivers are limited to no more than 1 year, unless extension is granted.

# Cybersecurity Liability

## **2024 Governor Veto of HB 473**

2024 House Bill 473 would have created section 768.401, Fla. Stat., providing that a local government that substantially complies with section 282.3185, Fla. Stat., is not liable for a cybersecurity incident.

# Electronic Notarization and Signatures



- **Section 117.021, Fla. Stat.**

- Electronic Notarization

- **Chapter 668, Fla. Stat.**

- Electronic Signatures and Uniform Electronic Transactions Act (UETA)
- The UETA effectively puts electronic records and signatures on equal footing as paper records and handwritten signatures. § 668.50(7), Fla. Stat.
- § 668.50(3)(b) excludes electronic signatures for the following transactions
  - documents for the creation and execution of wills, codicils, or testamentary trusts;
  - matters governed by the Uniform Commercial Code other than section 671.107 and chapters 672 and 680;
    - § 671.107, Waiver or renunciation of claim or right after breach.—A claim or right arising out of an alleged breach can be discharged in whole or in part without consideration by agreement of the aggrieved party in an authenticated record.
    - Ch. 672: FL UCC Sales and Ch. 680: FL UCC Leases
  - matters governed by the Uniform Computer Information Transactions Act



# Electronic Recording & Filing



- **Section 28.2221, Fla. Stat.**

- (2)(a) All documents Jan. 1, 1990 & later must be searchable online
- (2)(b) Exempt addresses must be included in official record online but not searchable on the official record index
- (5) Exempt military discharge, death certificates, court files relating to Family Law, Juvenile, or Probate must NOT be included online– records made public before June 5, 2002, must be removed if party requests in writing
- (6)(b) Exempt information may be disclosed to a title insurer/title agent, or title attorney for the purpose of conducting a title search

- **Section 28.22205, Fla. Stat.**

- AOSC13-7 Requiring E-Filing  
<https://supremecourt.flcourts.gov/content/download/240909/file/AOSC13-7.pdf>
- FSC Standards for Electronic Access to the Courts  
<https://www.flcourts.gov/content/download/219009/file/Updated-E-Access-Standards-August-2017-v18-clean.pdf>

# Electronic Transactions



- Wire Transfer Fraud
  - Consider updating your local government's Financial, Procurement, and/or Real Estate Policies to address Wire Transfers
  - Stop! Call! Verify! Wire Fraud Prevention Protocol
    - Encrypted Emails with Wire Instructions often look like Phishing Emails
    - Ensure that your Wire Transfer Protocol requires a trusted person to verify Wire Instructions/Account Numbers on both sides
    - Identify Trusted Persons
      - before Closing (Real Estate)
      - when Vendors register/are awarded (Procurement)
- Electronic Signature Policy

# Online Public Notice

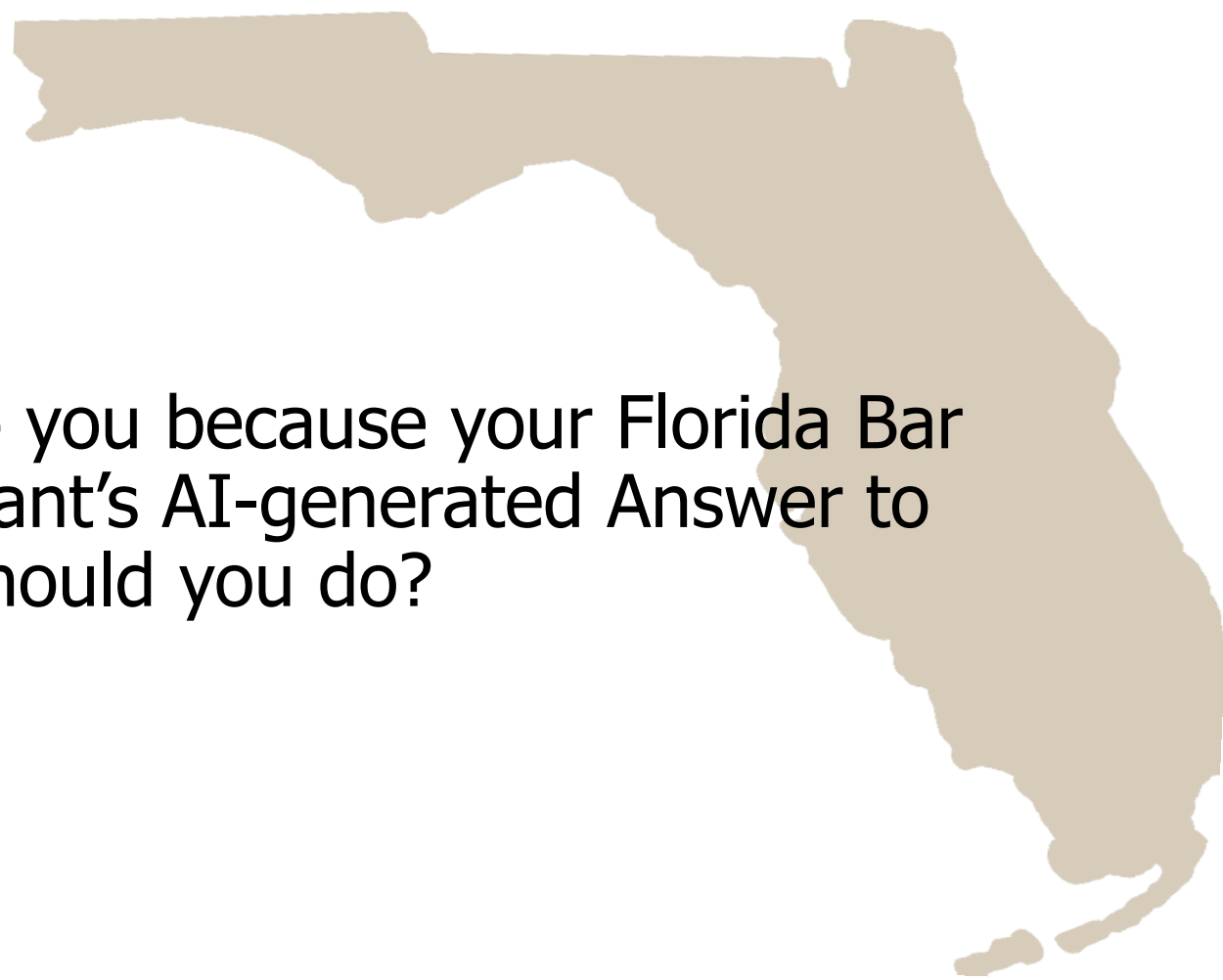


## 2022 HB 7049 (Ch. 2022-103, Laws of Fla.)

- Creates **Section 50.0311(2), Fla. Stat.**, to allow publication of legal notices under **Section 50.011, Fla. Stat.**, to be done online via **COUNTY** website or other website designated by the County.
- SO, Cities may follow suit once County so designates.
- (3) The governmental agency may publish advertisements and public notices on the County-designated website IF the cost of doing so is less than the cost of publishing in the newspaper
- (4) The governmental agency with at least 75% of its population in a county with population <160k may use a publicly accessible website IF AND ONLY IF that agency, at a hearing noticed in the newspaper, determines that there is sufficient access to the internet by broadband service

# Hypotheticals

Counsel for a Bank reaches out to you because your Florida Bar Number has been used in Defendant's AI-generated Answer to Bank's foreclosure action. What should you do?



# Hypotheticals

Contractor reaches out to Finance/Procurement and notifies them that they have not been paid. Finance/Procurement processed a change of wire/EFT information based on an email purporting to have come from Contractor's CEO, but it turns out that the email was forged. Finance/Procurement then paid an invoice for the full amount of the Project to the new wire/EFT account number.

# Hypotheticals

A disgruntled former employee has started posting outrageous comments critical of Staff to your local government's social media pages. Coincidentally, an anonymous email address has begun making requests for Staff's W2s and salary information. The social media pages do not have posted guidelines for conduct, but the local government does have a social media policy.

# Best Practices

- Adopt a social media policy
- Use a social media archiving service
- Adopt a cybersecurity policy under Section 282.3185(4), Fla. Stat., and immediately notice Florida Digital Service
- DO NOT USE AI TOOLS in your legal practice without painstakingly reviewing the content generated
- Adopt a policy for noticing public meetings, especially if online notice is available to your local government
- Adopt protocols/policy for wire transfers anywhere they are used
- LEAVE THE GUM ON THE SIDEWALK (and the images on the Internet)