



# Put the client first when you make deals with your vendors

## ETHICAL CONSIDERATIONS AND PRACTICAL SUGGESTIONS IN CASE FINANCING, AI PRODUCTS AND SOCIAL-MEDIA ADVERTISING

We must always keep our client's best interests in mind. This is stated repeatedly in the state Rules of Professional Conduct and in the overarching ABA Rules of Professional Responsibility. In the wake of the growing artificial-intelligence wave hitting the legal industry, we are inundated with new products. New solutions. These products are supposed to make us more efficient. To bring the costs pushed to our clients down. To eliminate menial tasks so we can use our brain power for high purposes. With this wave of new legal tech, new solutions are pushed at us every day. They pop up in our inbox. In our social media. In our conversations. But how do we potentially use these products, keeping in mind our ethical duties to do what is best for the client, and keeping this information secure and safe?

This article will give you some helpful tips for screening vendors' proposed solutions while preserving your ethical obligations to clients.

### Loan to plaintiffs and litigation financing

If you are in the personal-injury or mass-torts space, you know this all too well. Whether it is clients directly looking for loans to get by while their case is pending, or firms taking out litigation loans to finance the case, these loans can present an ethical quandary and the interest costs may constitute a significant roadblock to case resolution.

With client loans we must keep in mind our ethical obligations. We have a duty to make sure we use our best resources to, if the client *needs one*, get them the best rates possible. Being a trial lawyer, I cannot tell you how many times we come to try a case and we are "pot committed" because the referring lawyer let the client get loans with crazy interest rates that make the case impossible to resolve. Sometimes these lawyers just use litigation financing companies that give them box seats at sporting events rather than searching for the best rates. Well, that should end today.

Being in the legal tech world, and building a case marketplace of our own, I stumbled across a product called Claim Angel. They are a true marketplace for lenders that compete to make loans to the plaintiff at the best rate possible. They force lenders to cap their interest rates to even be on their marketplace. This makes it easy for us to fulfill our ethical obligations to help our clients secure the best rates. When lawyers know this product exists, yet choose to use their buddy's company which charges twice the interest, will it be an ethical violation? Please do your due diligence folks.

Then there are litigation-financing companies. These charge interest, and some very high interest. Some are recourse. Some are non-recourse. Ethically, you can pass the interest costs through to your clients if it's in your retainer and signed informed-consent is given. But when does it become just too much? If you take out \$100K and use a non-recourse loan and you owe \$200K, is that ethical? If disclosed, the answer seems to be yes, but is it the right thing? Shouldn't the attorney who is on a contingency fee bear the risk along with the client? This is something to consider as you grow your firm. I know of a lot of firms that use litigation financing that do not pass the interest to their clients. They use it as a firm expense. I know others that pass a portion. Others that pass the entire thing.

The biggest concern is when firms take out these loans with high interest rates, push them off to their clients, but then use that money to finance their lifestyles. This is where it gets out of hand and firms crumble and the clients are hung out to dry. Do your due diligence and compare rates. Thus far I have found Advocate Capital to be very competitive for recourse lending, and Priority Responding Funding for non-recourse lending.

### AI companies

I think you find a common thread in this article: Disclosures. If you are going to use AI and pass off the cost of it on

your client, you should notify them. AI is set to reduce overhead that is passed onto the client. For those billing per hour for a task that takes a human six hours, but takes an AI bot 10 minutes, that can be a very big problem. Perhaps doing flat-fee retainers is going to be the future over per-hour work; then firms can leverage AI use to do much more and not be bound by the "per hour" billing lifestyle.

But how do we vet these products? How do we know our client's medical records or information is secure? I believe you should do everything that is reasonable. Ask these companies if they are SOC 2 compliant. This is the holy grail of compliance for tech companies. They have a third party determine their compliance; HIPPA compliance is also rolled into this. This is something reasonable that a lawyer can do to ensure their client's information is protected when using a vendor in this space.

Another concern is a cyber attack. What can we as lawyers do? There are companies out there like EZ Tech that do your compliance for you. It is also a good idea to get malpractice insurance that covers you in case of a cyber attack.

I also go as far as to research the company and their founders. Some are just white-labeling CHAT GPT and calling it custom. With a little digging, you can tell that these companies are brand new, have no compliance, and are just trying for a quick sale. The bigger the company and the more funding they took in, the more likely they have taken steps to protect their company and your client's information.

### Social-media advertising use

We are starting to see a lot more advertisements pop up on our phones. From people holding up personal checks for \$250,000 in damages, claiming it came from using an AI company rather than a lawyer, to law firms claiming massive results for their clients. The key thing to remember is to not deceive the consumer who sees that ad. The AI company's claim to recovery without a lawyer is obviously false. That is false

advertising with substantial penalties. But what about attorneys claiming results on their websites or their social media ads? What are the things to consider?

First and foremost, you need to be honest. If you are publishing results as yours, they'd better be yours. Take a look at CACI 4016, Breach of Fiduciary Duty. If a consumer relies on a result on your webpage or social media ad, hires you, then gets a terrible result and realizes your boasted results were fake, what do you think will happen? Well, under the law, that lawyer is in very hot water. If you are going to list verdict and settlement results, just make sure you cite your source and/or can defend your claims of success.

Going back to the example of the person holding up a check claiming to have received it with an AI company rather than a lawyer. This very thing currently exists. These ads are played nationwide. Who is running them? A case-acquisition company. Not a law firm. This company gets the consumer to fill out a form about their legal issue. They then sell these "leads" to law firms, who follow up and try to sign the case.

So, is the law firm on the hook for the deceptive ad run by the lead-generation company? If you are paying for leads, you should get to see the content they are using to get the leads. There are ethical vendors out there. But there are far too many trying to make a

quick buck and defraud consumers and law firms. Be diligent. Your license and reputation are on the line.

### Conclusion

Vendors are integral to our success. Lean on your networks to get intel on products before you use them. And always think in your mind, "How does this affect the bottom line to my client?" before you sign on the dotted line.

*Robert T. Simon is co-founder of the Simon Law Group and acts as the primary trial attorney. He is a proud member of ABOTA, CAALA, CAOC, CASD and OCTLA, is a past president and active board member of Los Angeles Trial Lawyers' Charities.*