



Keith Call's Latest Ethics Column Addresses How AI Can Jeopardize Privileged Communications

The *Utah Bar Journal* has published [Keith Call's](#) latest *Focus on Ethics & Civility* column, [Open House, or Under Lock and Key? How Using AI in Litigation Risks Waiving Privilege](#), in its September/October 2026 issue. Co-authored with Madison Merrill, the article explores the evolving legal and ethical questions surrounding artificial intelligence (AI) use in litigation and its potential impact on attorney-client privilege and work product protections.

In the column, Keith and Madison examine recent court decisions addressing whether information shared with AI platforms may lose legal protections traditionally afforded to confidential attorney communications. The authors highlight the federal case *United States v. Heppner*, in which a court ordered disclosure of AI-generated documents after determining a criminal defendant's interactions with a public AI platform were not protected by either attorney-client privilege or the work product doctrine.

The article also reviews decisions reaching different conclusions, including *Warner v. Gilbarco, Inc.*, where a federal court characterized AI as a tool rather than an independent third party and upheld work product protection. Keith and Madison explain that these developing cases demonstrate the unsettled nature of privilege questions involving AI and underscore the importance of understanding how different courts may approach the issue.

In this installment of his ongoing *Focus on Ethics & Civility* series, Keith offers practical guidance for attorneys seeking to protect confidential information while leveraging AI technologies. The authors encourage lawyers to discuss AI use with clients, incorporate AI-related provisions into engagement agreements, supervise all AI use

connected to a matter, and implement internal policies governing approved platforms and permitted uses.

“By educating yourself and maintaining careful control over AI use, you retain valuable evidentiary privileges and ensure your case strategy stays safely behind locked doors,” the authors conclude.

At Spencer Fane, Keith helps corporate and individual clients with all of their litigation needs so they can stay focused on their core businesses and personal interests. He excels in defending lawyers in professional ethics and liability matters, as well as complex commercial, technology, and intellectual property litigation.

Read the full September/October 2026 *Utah Bar Journal* issue [here](#).