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Insights - Alert

AI Is Not Your Lawyer: Federal Court Rules AI-Generated Documents Are Not Privileged

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Key Takeaways

- A federal judge held that the attorney-client privilege and the work-product doctrine did not protect a defendant's artificial intelligence (AI)-generated documents from disclosure.

- Independent use of generative AI – particularly to assess legal exposure – may not be protected by the attorney-client privilege or the work-product doctrine, even when such materials are created in anticipation of discussions with counsel.

- The decision reinforces that privilege principles apply with equal force in the AI context: Communications shared with third-party platforms may not be considered confidential, and materials created outside counsel's supervision may fall outside work-product protection.

On Feb. 10, 2026, Judge Jed S. Rakoff of the U.S. District Court for the Southern District of New York issued a bench ruling holding that documents prepared using generative AI were not protected by attorney-client privilege or the work-product doctrine.[1] This decision is an important development, as it highlights the risk of using public-facing AI

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tools in legal proceedings, particularly when such tools are used outside the direction of counsel and lack confidentiality protections traditionally afforded to attorney-client communications and other privileged materials.

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I. Background

In *United States v. Heppner*, No. 25-cr-00503-JSR (S.D.N.Y. Oct. 28, 2025), the U.S. Department of Justice (DOJ) brought charges against Bradley Heppner, the founder of financial services company Beneficient, for securities fraud, wire fraud and related offenses. The charges stemmed from an alleged scheme to defraud investors through, among other things, misrepresentations concerning what was presented as an arm's-length lender but in reality was created and controlled by Heppner.

On Nov. 4, 2025, federal agents arrested Heppner and seized numerous electronic devices and hard copy records from his home. According to defense counsel, 31 documents on those devices consisted of AI-generated material created for the "purpose of obtaining legal advice." Defense counsel asserted privilege over the materials on the basis that they were created to facilitate discussions with counsel and because those documents were later shared with them. Defense counsel conceded, however, that the documents were prepared by Heppner and not at the direction of his attorneys.

The government moved for a ruling that the AI-generated documents were not privileged,[2] arguing that the AI tool was "plainly not an attorney," that the materials were not created for the purpose of obtaining legal advice and that privilege could not be retroactively conferred by transmitting the documents to counsel after their creation. The government also argued that work-product protection did not apply because the documents were not prepared at counsel's direction. Finally, the government emphasized that, unlike an attorney, a public-facing AI platform owes no duties of loyalty or confidentiality to its users, likening the materials to independent research – such as Internet searches or library materials – later shared with counsel. Rakoff agreed.

II. The Court's Ruling and Implications

A. AI Is Not Your Lawyer

Rakoff held that the AI-generated materials were subject to disclosure because any privilege was waived when Heppner shared information with a third-party AI platform, thereby failing to maintain the information's confidentiality. The court likewise rejected the application of the work-product doctrine, explaining that the AI platform is not legal

counsel, nor was it used at counsel's direction. In other words, because the AI-generated materials were created independently by Heppner, the materials could not qualify as protected work product.

B. Implications

Rakoff's ruling highlights that the independent use of public-facing generative AI in legal matters may forfeit the protections afforded under the attorney-client privilege and the work-product doctrine, leaving such materials vulnerable to disclosure. Companies using AI should therefore be mindful that while these tools create efficiency, they are by no means a substitute for legal counsel. Accordingly:

- **Assess confidentiality before using an AI tool**, including whether the platform is a closed enterprise system with strong privacy protections. Using AI platforms that permit data retention or training may defeat privilege claims, making it critical for compliance and litigation teams to weigh the use of these AI tools and their efficiency gains against evolving litigation risks.

- **Involve counsel early when using AI to analyze legal exposure.** Companies should establish policies and procedures governing AI use, including in the course of investigations and litigation. In these contexts, the processes by which a company undertakes the use of AI may prove significant, particularly where counsel actively directs and supervises such use in real time and in connection with legal proceedings.

The BakerHostetler White Collar, Investigations and Securities Enforcement and Litigation team and the Artificial Intelligence group are composed of dozens of experienced individuals, including attorneys who have served in the DOJ and at the U.S. Securities and Exchange Commission. Our teams have extensive experience in defending regulatory investigations and actions and in providing regulatory compliance counseling. We also advise clients across the full AI life cycle, including designing governance programs, defending enforcement actions and negotiating vendor AI provisions. Please feel free to contact any of our experienced professionals if you have questions about this alert.

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[1] Oral Order, *United States v. Bradley Heppner*, Case No. 1:25-cr-00503-JSR (S.D.N.Y. Feb. 10, 2026).

[2] *Id*., Mot. for a Ruling that Documents the Def. Generated Through an Artificial Intelligence Tool Are Not Privileged, ECF No. 22.

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