

Could Your AI Searches Become Evidence in a Family Law Case?

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As artificial intelligence becomes part of everyday life, a new family law discovery issue is beginning to emerge. What happens when attorneys seek a party's AI search history?

People are increasingly using AI tools to ask questions they might previously have entered into an internet search engine or discussed privately with a friend. In a contentious custody case, however, a search such as "how can I keep my children from my spouse?" could potentially take on a very different significance when viewed in the context of litigation.

Family law attorneys may begin seeking AI prompts, conversation histories, and other records during discovery or through subpoenas, particularly when those records could shed light on a party's intentions, state of mind, or conduct. A series of searches concerning hiding assets, restricting parenting time, monitoring a spouse, or keeping children away from the other parent could become relevant evidence depending on the facts of the case and applicable discovery rules.

Although traditional rules of discovery and evidence still apply, the use of AI presents a new and evolving area of uncertainty. Courts and practitioners may have to grapple with questions about the relevance, discoverability, authenticity, privacy, and admissibility of AI-generated conversations and search histories. Adding to the uncertainty, whether an AI provider retains the requested information, and whether it can or will disclose that information in response to a subpoena or other legal process, may vary significantly depending on the platform, its policies, and the circumstances of the request.

Nevertheless, the practical lesson for family law litigants is important: AI searches should not necessarily be treated as consequence-free conversations. Just as texts, emails, social-media activity, and internet searches can become relevant in litigation, AI interactions may increasingly become another source of electronically stored information.

For attorneys, this creates a new area of discovery to consider. For clients, it creates a new reason to think carefully about what is entered into an AI platform, particularly when a divorce, custody dispute, or other family law proceeding is anticipated.

As AI becomes more integrated into daily life, family law discovery will likely have to evolve with it.