

WHAT'S INSIDE

W(AI)ving the Privilege: AI Discoverability

Are your AI inputs protected by the attorney-client privilege or work product? Courts offer conflicting opinions.

“Rex non potest peccare” and the doctrine of sovereign immunity

Sovereign immunity protects the government and Indian tribes from civil suit. What is the origin of this doctrine?

Firm is Nominated to Tulsa People's Annual Reader's Choice A-List

Vote for Winters & King as a top full-service law firm in TulsaPeople's Magazine between April 1-14, 2026.

Contract Terms to Know: Representations and Warranties

Representations and warranties (promises in contracts) serve vital purposes for business transactions.

DID YOU KNOW?

In the 1893 case of *Nix v. Hedden*, the Supreme Court legally deemed tomatoes as vegetables (not fruit!). The Court explained tomatoes were vegetables for customs purposes because tomatoes were typically served with dinner and not dessert, despite botanically being a “fruit of a vine”.

CONTACT US

WINTERS & KING, INC.
CityPlex Towers
2448 E. 81st St., #5900
Tulsa, OK 74137
Phone: 918.494.6868



W(AI)ving The Privilege: AI Discoverability

By: Attorney James Rayment and Shareholder Spencer C. Pittman

Whether inputs and prompts shared with generative AI tools fall within the scope of evidentiary privileges, such as the attorney-client privilege or work product, remains an unsettled and increasingly consequential question. This issue has resulted in conflicting rulings across the country and is causing courts and practitioners to navigate uncharted territories.

The attorney-client privilege is a foundational legal principle that protects certain communications between a client and an attorney. An exception to the attorney-client privilege is when an otherwise privileged communication is disclosed to or in the presence of a third party, such as friends or family. An adjacent principle to the attorney-client privilege is the “work product doctrine,” which protects materials prepared in anticipation of litigation. Popular generative AI tools, such as ChatGPT, Grok, and Claude, are generally owned and operated by technology companies. If you share information with an AI tool, you may be directly sharing it with those technology companies, a third party, to train future AI-models. This leads to the question of whether AI inputs waive privileges. Courts are now beginning to address this question, but the answers are not unanimous.

In *U.S. v. Heppner* (25 Cr. 503, S.D.N.Y.) the defendant (a non-lawyer) was indicted by a grand jury. Police executed a search warrant and obtained, among other items, 31 documents that included the defendant's AI-inputs into a free-version of Claude, a generative AI tool. The defendant's use of Claude, before his retention of counsel, was for independent research and strategizing for his criminal defense along with exploring what possible criminal charges could be forthcoming. The defendant's counsel argued the AI inputs were work product and not discoverable. The government disagreed with the defendant's argument and sought the production of the AI inputs. Although the defendant subsequently had retained counsel and shared the AI prompts, the Court found that, in this case, the communications between the defendant and the publicly available AI tool were not protected by either the attorney-client privilege or the work product doctrine. The Court ruled that neither the attorney-client privilege nor the work product doctrine applied because the inputs were put into a free version of Claude, which (unlike certain paid or enterprise versions) “learned” or trained itself from user inputs. The Court also found the work product doctrine did not apply because the inputs were not used for the purpose of obtaining legal advice, were not prepared by or at the behest of his attorney, and did not reflect the defense counsel's strategy.

However, the same day as the *Heppner* ruling (Feb. 10, 2026), the E.D. of Michigan reached the opposite conclusion in *Warner v. Gilbarco, Inc.* (Case No. 2:24-cv-12333), an employment-related civil action. The plaintiff in *Warner* was a pro se litigant representing herself. The defendants were denied the plaintiff's AI inputs by the Court because Warner used the AI-inputs in “anticipation of litigation” (*i.e.*, work product) and despite using presumably the free-version of ChatGPT, the Court found the waiver of work product must be to the *adversary* or likely to get into an adversary's hands.

Courts in Oklahoma and within the 10th Circuit have not offered guidance on whether those Courts would take the *Heppner* or the *Warner* approach and find AI-tools are or are not “third parties” for purposes of work product, but one key takeaway is certain- expectations of privacy in AI inputs should be questioned at all times and will depend on a variety of factors, such as (i) counsel's involvement, (ii) the GenAI's privacy policy/terms, and (iii) the jurisdiction of the Court.

Instead of relying on AI to advise you or your business on your legal rights, contact the litigation team at Winters & King at 918-494-6868

“Rex non potest peccare” and the doctrine of sovereign immunity

By: Shareholder Spencer C. Pittman

The doctrine of sovereign immunity is the legal principle that a “sovereign” government (including federal, state, and tribal government) cannot be sued without express consent and waiver of the sovereign nation. The notion of sovereign immunity originates from the English common-law maxim that “the King can do no wrong,” or “rex non potest peccare” in Latin.



This legal maxim is said to have culminated from the following exchange:

A long time ago a lawyer was employed by an unfortunate fellow who had lost his leg when recklessly run down by the King’s carriage. Finding a great reluctance on the part of judges, who were appointed by the King, to entertain his poor client’s case, the lawyer resolved to go directly to the King.

On that historic occasion the King graciously received the counsel and his disabled client. The matter was shortly and respectfully presented to the monarch.

“And pray, counsel,” queried the King, “what does this have to do with me?”

The lawyer explained, “Why, Sire, the carriage is your excellency’s, and the coachman is in your majesty’s personal service, and my injured client was without fault. If it please my lord, redress for the wrong is sought at the pleasure of your highness.”

The king fenced for time by suggesting, “You, of course could make claim of the royal coachman.”

The lawyer lowered his head, but replied firmly, “True, my lord, but the coachman has not a pot, and by royal decree the wrongful acts of a man’s coachman are the wrongful acts of the man.”

“Yes,” mused the King, “please continue lawyer.”

“Then,” the lawyer persisted, “would not the wrong of the royal coachman be the wrong of your majesty’s?”

“No,” shot back the King, “It most certainly would not.”

In the utter silence following the royal disclaimer, the lawyer whispered, “Why, Sire, why is this so?”

“Because the King can do no wrong,” proclaimed the King.

As the stunned counsel and his client retired from the throne the ruler cried out, “Seize the impertinent barrister and the wretch who accompanies him and throw him in the dungeon. The nerve of the fellow to suggest the King could do wrong.”

And thus was born the doctrine of sovereign immunity.

(Excerpt from dissent in *Newman v. State ex rel. Bd. of Regents*, 1971 OK 84, ¶ 1, 490 P.2d 1079, 1081)

Firm is Nominated to Tulsa People’s 2026 Annual Reader’s Choice A-List

Winters & King is pleased to announce it is *again* nominated to TulsaPeople’s Annual Reader’s Choice A-List as a top 5 full-service law firm for 2026! The Firm advances to Round 2, the A-List Final Ballot, for voting from April 1-14, 2026.

You can vote at: www.tulsapeople.com/a-list/.

The Firm was previously selected to the TulsaPeople’s A-List in 2022, 2024, and 2025. We appreciate your vote, and thank you for trusting Winters & King to handle your legal matters.

Contract Terms to Know: Representations and Warranties

By: Attorney Zander Chonka

The contractual terms of “representations” and “warranties” serve as promises a party to a contract makes to another within a contract. The terms promote transparency and reduce the likelihood of disputes by clearly defining the assumptions underlying a business deal.

A “representation” is a statement about a past or present fact that helps induce the other party to enter into an agreement. A “warranty” is a promise that a particular fact or condition is true or will remain true in the future. In practice, the terms are often used together to establish what each party is relying on when entering into the contract. If one of the terms turns out to be untrue, the other party may have legal remedies such as damages or the legal right to terminate the agreement (rescission).



Example: A seller contracts to sell a piece of property with a buyer. The contract includes the following term:

Seller represents and warrants to Buyer that Seller is the lawful owner of Property and no undisclosed liens exist on the property. Seller will indemnify and hold Buyer harmless should any representation or warranty prove to be false after closing.

A previously undisclosed lien surfaces after closing. The buyer may now have a claim against the seller for breaching the representation and warranty relating to the undisclosed liens. Among other rights, the buyer may pursue a claim of fraud in the inducement and seek damages to remove the lien or to rescind the contract.