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Session 4

The State of AI in Legal Practice: An Update on Ethics & Implementation of AI into Legal Technology

Presented by:

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About the Presenters...

Brent J. Hoeft is the Practice Management Advisor for the State Bar of Wisconsin's Practice411™ Practice Management Program. He guides State Bar members on increasing law practice productivity and efficiency and advises on all things law practice management, including legal technology, information security practices, technology competence, employee management, policy and systems implementation, business development and marketing, and improving client relationship management. Prior to his time at the State Bar of Wisconsin, Brent was in private practice since 2006. In 2010, he founded Hoeft Law LLC, Wisconsin's first completely web-based virtual law firm providing legal services in business law, cybersecurity, and estate planning. Brent was also the founder of FirmLock Consulting, LLC, a cybersecurity behavior awareness consulting firm focusing on assisting solo and small law firms with cybersecurity training, education, and implementation of policies and procedures to better protect law firm data. Brent is a frequent presenter on legal technology, practice management, and cybersecurity. Since 2018, he has served as co-chair of the Technology Track for the Wisconsin Solo and Small Firm Conference (WSSFC) Planning Committee and had the honor of serving as the Conference Chair in 2022. Brent received his B.A. in Psychology from the University of Wisconsin-Eau Claire and his law degree from Cleveland State University College of Law. He lives in the Madison area with his family, where he enjoys mountain biking, camping, photography, and all things Wisconsin sports.

Sarah E. Peterson joined the State Bar of Wisconsin as Ethics Counsel in 2024. She received her undergraduate degree from the University of Wisconsin–Madison and her law degree from the University of Wisconsin Law School. Prior to coming to the State Bar, Ms. Peterson was employed for more than 20 years as an investigator, and then lead investigator, at the Office of Lawyer Regulation. She is a member of the State Bar of Wisconsin. She is a frequent speaker on professional ethics and is a liaison to the State Bar's Committee on Professional Ethics.

THE STATE OF AI IN LEGAL PRACTICE: AN UPDATE ON ETHICS AND IMPLEMENTATION OF AI INTO LEGAL TECHNOLOGY

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I. The New, Shiny Tech Tool: Generative Artificial Intelligence ("GenAI" or "GAI")

    A. GenAI is a type of artificial intelligence that can generate new content based upon patterns and probability algorithms in data upon which it has been trained. These models can understand ordinary language questions (prompts) and interact with the user in a conversational format.

    B. GenAI has quickly become integrated into law practice technology. GenAI became widely known to the public only in November 2022 when ChatGPT was announced.

    C. For more detailed explanations and discussions about what GenAI is as well as a description about other kinds of AI see Appendix C at the end of these materials.

    D. Cautionary Tales of Improper Use of Generative AI in Law Practice
        1. There have been many newsworthy instances of attorneys using public GenAI models like Chat GPT but failing to check the output generated. These kinds of GenAI models have a potential to "hallucinate" or make up information to provide the information being requested. Similar cases continue to show up in the news about lawyers not verifying accuracy of GenAI output.
            a) Arguably, these cases are not a GenAI issue but a lawyer issue and a failure to meet the duty of candor to a tribunal by not verifying the existence, truth and accuracy of the information being submitted to the court.
            b) Nonetheless, these cases continue to happen and will likely lead to more court rules and orders, and ethics opinions regarding use of GenAI.
    E. GenAI Strengths

        1. Legal Research within Legal Research vendor products (Westlaw, LexisNexis and vLexFastcase)
            a) Trust but verify – still need to VERIFY output and cases in valid legal databases.
        2. Initial drafts of legal documents
            a) Drafts that need review and customization by lawyers
        3. Review, summary, and analysis of documents or sets of documents
        4. Drafting general client communications and updates
        5. Creating education content and marketing

a) Newsletters, blog posts and client educational materials providing general guidance and information about legal matters.

6. Automating routine tasks

a) Scheduling, billing, workflows

7. Case analysis

a) Identify potential legal issues that can assist lawyers in developing legal strategies for the client's case.

F. Court Rules and Ethics Guidance

1. As a result of these newsworthy cases courts around the country have begun to issue court orders regarding the use of GenAI in submittals to the court.

a) See examples of court orders across the nation- https://www.ropesgray.com/en/sites/artificial-intelligence-court-order-tracker

b) Most of these court orders are implementing rules requiring disclosure of whether GenAI was used in creating the court filing, if so, to what extent, and certification that the lawyer independently verified all sources.

c) Many argue that these court orders and rules are redundant as the duty of candor to a tribunal already requires the lawyer to check the veracity, truth, and accuracy of anything submitted to the court.

d) Attorneys must be aware of the existence of these kinds of court orders and be ready to comply with any such orders by their local courts.

2. Ethical Guidance

a) The importance of adhering to ethical rules when using GenAI has now been addressed by various bar association ethical opinions or guidance.

b) Most recently, the American Bar Association's Standing Committee on Ethics and Professional Responsibility issued Formal Opinion 512 on the use of GenAI. ABA Standing Comm. on Ethics & Pro. Resp., Formal Op. 512, Generative Artificial Intelligence Tools (July 29, 2024), https://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/ethics-opinions/aba-formal-opinion-512.pdf

(1) The following are specific provisions of SCR Chapter 20 that must be considered when determining whether GenAI

should be integrated into a law practice. The common themes across the opinions from bar associations are:

    (a) lawyers must understand GenAI and stay educated about the benefits, risks, and limitations (SCR 20:1.1 Competence);

    (b) take reasonable steps to prevent unauthorized disclosure and informed consent prior to input of any client confidential information (SCR 20:1.6 Confidentiality);

    (c) supervise GenAI use by attorneys, staff and third-party vendors (SCR 20:5.1 and 5.3 Supervision of Subordinates);

    (d) verify GenAI outputs before submitting to courts and disclose where required (SCR 3.1, 3.3, and 8.4(c) Meritorious Claims and Candor to the Court);

    (e) communicate the use of GenAI to clients when necessary or asked (SCR 20:1.4 Communication with Clients);

    (f) inform clients about GenAI-related billing and duty to charge reasonable fees (SCR 20:1.5 Fees);

    (g) and be aware of the potential unauthorized practice of law issues (SCR 20:5.5).

c) Additional ethical guidance from state bar associations

    (1) See for example N.J. Cts., Supreme Ct. of N.J., Preliminary Guidelines on New Jersey Lawyers' Use of Artificial Intelligence, https://www.njcourts.gov/sites/default/files/notices/2024/01/n240125a.pdf; Pa. Bar Ass'n Comm. on Legal Ethics & Pro. Resp. & Philadelphia Bar Ass'n Pro. Guidance Comm. Joint Formal Op. 2024-200, Ethical Issues Regarding the Use of Artificial Intelli-gence, https://www.pabar.org/Members/catalogs/Ethics Opinions/Formal/Joint Formal Opinion 2024-200.pdf; State Bar of Mich., Ethics JI -155, https://www.michbar.org/opinions/ethics/numbered_opinions/JI-155; Fla. Bar Ethics Op. 24-1, https://www.lawnext.com/wp-content/uploads/2024/01/FL-Bar-Ethics-Op-24-1.pdf; State Bar of Cal. Standing Comm. on Pro. Resp. & Conduct, Practical Guidance for the Use of Generative Artificial Intelligence in the Practice of Law,

https://www.calbar.ca.gov/Portals/0/documents/ethics/Generative-AI-Practical-Guidance.pdf. Minn. State Bar Ass'n, Working Grp. on AI, Implications of Large Language Models (LLMs) on the Unauthorized Practice of Law (UPL) and Access to Justice, https://www.mnbar.org/docs/default-source/default-document-library/msba-ai-working-group-final-report-and-recommendations.pdf; State Bar of Tex., Taskforce for Responsible AI in the Law, Interim Report to the State Bar of Texas Board of Directors, https://www.texasbar.com/AM/Template.cfm?Section=Meeting_Agendas_and_Minutes&Template=/CM/ContentDisplay.cfm&ContentID=62597; N.Y. State Bar Ass'n Task Force on Artificial Intelligence, Report and Recommendations to NYSBA House of Delegates, https://nysba.org/app/uploads/2022/03/2024-April-Report-and-Recommendations-of-the-Task-Force-on-Artificial-Intelligence.pdf.

    d) Bar associations generally are taking the approach that the current ethical rules are sufficient in addressing the potential risks involved with the use of GenAI. So, given what has been learned in 2023 and 2024 and the current guidance regarding GenAI, what practical steps should lawyers take when implementing GenAI into the law practice?

    e) See also Frequently Asked Questions and Suggested Best Practices – Carolyn Elefant

II.   Application of "Reasonable Efforts" Analysis with GenAI

    A. SCR 20:1.6: Confidentiality - Must make *reasonable efforts* to prevent disclosure of client information to 3rd parties without client's consent.

        1. Wisconsin Formal Ethics Opinion EF-15-01 provides guidance on "reasonable efforts" regarding technology:

            a) "To be reasonable, those efforts must be commensurate with the risks presented. Because technologies differ and change rapidly, the risks associated with those technologies will vary. Moreover, because the circumstances of each law practice vary considerably, the risks associated with those law practices will also vary. Consequently, what may be reasonable efforts commensurate with the risks for one practice may not be for another. And even within

a practice, what may be reasonable efforts for most clients may not be for a particular client."

    b) Factors to consider:

        (1) the information's sensitivity;

        (2) the client's instructions and circumstances;

        (3) the possible effect that inadvertent disclosure or unauthorized interception could pose to a client or third party;

        (4) the attorney's ability to assess the technology's level of security;

        (5) the likelihood of disclosure if additional safeguards are not employed;

        (6) the cost of employing additional safeguards;

        (7) the difficulty of implementing the safeguards;

        (8) the extent to which the safeguards adversely affect the lawyer's ability to represent clients;

        (9) the need for increased accessibility and the urgency of the situation;

        (10) the experience and reputation of the service provider;

        (11) the terms of the agreement with the service provider; and

        (12) the legal and ethical environments of the jurisdictions in which the services will be performed, particularly regarding confidentiality.

    c) Note: While this list is not exclusive, it provides a good basis for assessing risk.

2. See ABA Comment [18] and [19] to SCR 20:1.6

    a) 20:1.6(d) When the lawyer is transmitting a communication that includes information relating to the representation of a client, the lawyer must take reasonable precautions to prevent the information from coming into the hands of unintended recipients.

    b) The unauthorized access to, or the inadvertent or unauthorized disclosure of, information relating to the representation of a client does not constitute a violation of paragraph (c) if the lawyer has made reasonable efforts to prevent the access or disclosure. This duty of reasonable precautions, however, does not require that the lawyer use special security measures if the method of communication affords a reasonable expectation of privacy.

     c) Special circumstances, however, may warrant special precautions. A client may require the lawyer to implement special security measures not required by this Rule or may give informed consent to forgo security measures that would otherwise be required by this rule.

B. Application of "Reasonable Efforts" Analysis

    1. The "reasonable efforts" analysis must be done not only for the technology being used within your law firm, but also on the use of that technology in connection with each client/matter on a case-by-case basis as well.
       a) So, what may be reasonable to use for the estate plan of the Smith's down the road, may not be reasonable to use with the Fortune 500 company client's trade secrets matter, and vice-versa.

    2. This analysis is also fluid, as what is a reasonable effort now may not be enough in the future as technology evolves. Therefore, the firm should revisit this analysis to see if the technology is being used appropriately to mitigate risks to the client and their confidential information.

    3. **NOTE:** The analysis will change as technologies evolve and new options become readily available.

       a) **ALSO NOTE:** The reasonable efforts analysis must also consider the nature of your law practice, the specific characteristics of the client, and the specific characteristics of the specific matter. This is fluid and must be reconsidered each time. The following examples of analysis do not consider these characteristics

C. Reasonable Efforts/Precautions with GenAI

    1. Benefits of GenAI
       a) Efficiency gains – GenAI can perform data intensive tasks must faster than any human is able.
       b) Ideation Tool – GenAI is very good at generating ideas. Beneficial for making sure that all areas of a task or argument are being considered and what potential counterarguments might be raised in response to those arguments.
       c) Research – AI has been used in legal research for decades. GenAI when used on a closed data set specific to verified legal precedence and sources can produce very accurate responses to legal research

queries along with accurate summaries of vast amounts of information.

d) Generation of guides and client information about the legal process.

e) Marketing ideas. Ideas for social media posts, blog posts, and marketing copy.

f) Time savings – Time saved in some of the less high level but necessary tasks in representing clients frees up more time for the attorney to focus on more high-level tasks associated with the representation. Potential for better representation due to time saved on the lower-level tasks.

2. Risks of GenAI

a) Confidentiality - Potential for inadvertent disclosure of confidential information or copyrighted information if it is uploaded to GenAI models that use the information to then continue training the model.

b) Hallucinations – GenAI is trained to return results that it is prompted to retrieve. To meet that directive, GenAI will sometimes make up sources and information.

c) Bias – It is difficult to ascertain the data that the model is trained upon. If the data used for training is biased, then the GenAI can also return biased results.

d) Improper prompting – if the user is not trained in creating good prompts, then the results will similarly be poor. Proper prompting will ensure better and more accurate results.

e) Vendor differences in terms of service – different GenAI vendors have different terms of service and policies on how they handle data entered into the system.

f) Intellectual Property issues/Copyright, Trade Secrets risks – currently there is ongoing litigation regarding copyrighted works and how GenAI LLMs are accessing and using that information.

g) Misunderstanding of proper use of GenAI as a tool.

3. Reasonable Efforts to comply with ethical rules

a) Understand your current processes and workflow. Know the areas where you are experiencing inefficiencies and analyze whether these areas are tasks that are strengths of GenAI where implementation of GenAI could increase efficiency.

b) Understand the strengths and limitations of GenAI as a tool. General, public, GenAI models are not great as a search engine, and they will not reliably produce consistent contracts and legal

pleadings. They are, however, very good at summarizing large sets of data and information, writing correspondence, drafting marketing materials, generating ideas for blog or social media posts, drafting firm policies, and more.

c) Understand the GenAI model terms of service so you know what the product/company does with information inputted into the system. All terms of service are different so this must be closely reviewed in every instance.

d) Do not upload confidential information. The default rule should be not to upload personally identifiable information, confidential client information, trade secrets, or copyrighted materials. If you are considering doing so you must undertake a due diligence investigation into the specific tool you are using so you can be sure that you have taken reasonable efforts to make sure that information will not be used for any purposes or trained upon by the GAI model.

e) Use products that are designed for legal use by companies that have been around for a while in the legal space. These products will offer better protections as they are designed for the legal industry and these providers understand the ethical duties required of attorneys.

f) Disclose to courts when required and clients when necessary – This must be determined on a client-by-client basis. All inputs of confidential client information must be accompanied by informed consent from the client prior to doing so. Investigate whether the court you are appearing in has a local rule or order governing GenAI.

g) Supervise all lawyers and nonlawyers in their use of GenAI.

h) Have a written GenAI use policy. This helps to assure that everyone in your firm understands what can and cannot be done when using GenAI and what products can be used.

i) Be aware of the potential for bias. GenAI products are trained on the whole of the internet which includes a lot of information – good, bad, biased, and otherwise. Therefore, the outputs can include some of that same bad or biased information.

j) Disclose use of GenAI where required. As discussed, some courts have issued rules/orders regarding GenAI. If a client asks, be sure to disclose whether GenAI is used in their representation.

k) ALWAYS verify any output. Output should always be considered a first draft requiring oversight and verification of all results.

l) Remember: GenAI should be used as a starting point, not the final product.

III. Use Cases and Example of AI Tools for Legal

    A. Possible uses for GenAI

       1. Much of the focus on GAI in in the practice of law is in relation to client specific legal tasks, drafting motions and briefs in support that are filed with the court. It is possible that this focus arises from the newsworthy cases of attorney misuse of GAI. However, a substantial amount of time spent in a law practice does not involve client-specific legal tasks. There are many ways to use GAI to increase efficiency and productivity in your law practice.

         a) Generating intake forms.

         b) Analyze documents, compare documents, generate drafts of legal documents (i.e., Contracts, estate planning documents, NDAs, custody agreements, etc.)

         c) Providing clients with information, support chatbots providing clients with general information about legal matters and what to expect from the process, answering FAQs about the process, or offering guidance on necessary documents they will need to gather for their matter.

         d) Ask a GAI tool to research your law firm and compile a list of all of the positive results and negative reviews and based upon those results on how your firm can improve client experience.

         e) Alternative dispute resolution simulations based on historical data and case law in the jurisdiction.

         f) Mock jury preparations. Asking the GAI model to stand in as the role of a juror. Present your case and ask the GAI model what questions a juror would have.

         g) Assisting with opening and closing statements with a litigation matter.

         h) Case analysis to compare facts in current matters to outcomes in similar cases to determine likely outcomes and setting expectations with clients.

         i) Assisting with style and tone in client communications.

         j) Generating educational content for clients such as guides for preparation of court hearings, depositions, mediation preparation etc.

        k) Legal research

        l) Automating processes for routine tasks and workflows

        m) Increasing efficiency and productivity to free up time for high levels of legal assistance.

            (1) Often compassion for your clients and being a trusted advisor and guide through a difficult, anxious, and stressful time in your client's lives is what clients are ultimately seeking. They are often in situations where nobody totally "wins." Freeing up the time normally devoted to routine behind-the-scenes tasks, processes, and paperwork provides more time for client facing interactions and from the client's perspective a more attentive experience with their attorney.

B. Uses by type of law practice

    1. **DISCLAIMER**: The products listed below are just a sample of some of the AI products available. This list is neither exclusive, nor is it an endorsement of any of these products. It is by no means an exhaustive list (such a list would number over 500 GAI legal tech products - see [LegalTech Hub GAI Legal Tech Map](#)). These are provided as examples of what is available and use of any of the listed products should only be done after doing your own due diligence investigation into whether these products are appropriate for use in your firm.

    2. General Practice Management, Advertising, and Other Non-Legal Focused Work

        a) Applications:

            (1) Practice Management Software: AI built into existing Practice Management Software applications.

                (a) [Clio Duo](#) – GAI assistant that operates within Clio practice management software

                (b) [Mycase IQ](#) - GAI assistant that operates within Mycase practice management software

                (c) [Smokeball Archie AI](#) - GAI assistant that operates within Smokeball practice management software

                (d) [Filevine AI](#) – GAI assistant within Filevine practice management software for midsized firms

(2) Office Productivity Software - Microsoft Copilot (not legal specific but MS365 is nearly ubiquitous in the legal industry)

    (a) Microsoft 365 Copilot is the paid Copilot that is integrated into the Microsoft environment and across commonly used application like Word, Outlook, Excel, OneNote, and more.

(3) Marketing and Advertising: AI can create personalized marketing content, manage social media campaigns, and analyze market trends.

    (a) Generally available Public GenAI models for non-client related uses

        (i) OpenAi ChatGPT

        (ii) Google Gemini

        (iii) Anthropic Claude

        (iv) Perplexity AI

(4) Website Builders - Morphic: An AI-assisted website builder

(5) Notetaking, Client Education and Presentation

    (a) Notion – Notetaking and AI Workspace

    (b) Google NotebookLM – upload notes, PDFs, websites, documents, presentations and NotebookLM can summarize and make connections across content. Providing insights and tools that can assist you in further learning about a topic or new way to share the content with others.

    (c) Gamma AI – Presentations and education AI generation

    (d) Other Public GenAI models mentioned above, like ChatGPT, Claude, etc., are also able to be used for creating client education materials that are easily understandable for the average person.

        (i) Information can be generated at whatever level the client is able to understand and translated into whatever language is needed. Allows law firms to meet their clients where they are.

(6) Client Communication: AI chatbots can handle initial client inquiries, schedule appointments, and provide basic information.

(a) Chatbots are able to interact in many languages

(b) Lawdroid Builder and Lawdroid Copilot are examples of these services

(7) Legal Specific AI Assistants

(a) Paxton AI –All in one legal assistant

(b) Harvey

(c) Lawdroid Copilot

3. Transactional Attorneys

a) Applications:

(1) Contract Drafting and Review: AI can draft contracts based on templates and review them for compliance and risk factors.

(2) Due Diligence: AI can analyze large volumes of documents to identify relevant information and potential issues.

(3) Legal Research: AI can quickly find relevant case law, statutes, and regulations.

b) Example AI Products:

(1) AI Powered Document Drafting, Review, and Summarization

(a) Litera Kira Systems: An AI-powered contract analysis tool that helps with due diligence and contract review.

(b) Spellbook – Complete AI suite for transactional attorneys; Word Plug-in and first "AI agent" for multi-document transactions

(c) Gavel Exec – Legally trained AI document creation and redlining (Word Plugin)

(d) Draftwise

(2) Legal Research AI platforms and AI Assistants that allow for document summary, review, and drafting

(a) Lexis+AI & Lexis Protégé - Legal Research plus GAI skills

(b) Westlaw Precision with Cocounsel – Legal Research plus GAI skills

(c) vLex/Fastcase Vincent AI – Legal Research plus GAI skills

4. Litigation Attorneys

a) Applications:

(1) Predictive Analytics: AI can predict case outcomes based on historical data and trends.

(2) E-Discovery: AI can sift through large volumes of electronic data to find relevant documents for litigation.

(3) Brief and Motion Drafting: AI can assist in drafting briefs and motions by providing relevant case law and arguments.

b) Example AI Products:

(1) Lexis+AI & Lexis Protégé - Legal Research plus GAI skills

(2) Westlaw Precision with Cocounsel – Legal Research plus GAI skills

(3) vLex/Fastcase Vincent AI – Legal Research plus GAI skills

(4) Everlaw: An AI-powered e-discovery platform that helps with document review and case preparation.

(5) Logikcull: Helps with large document review and due diligence by automating document sorting and flagging potential risks

(6) LexMachina – Provides predictive analytics for litigation, helping attorneys understand case trends and outcomes.

(7) Westlaw Edge – Legal Research, GAI, Litigation Analytics

(8) vLex Analytics and DocketAlarm with VincentAI

(9) Briefpoint: Automates the drafting of discovery request and response documents

(10) Clearbrief AI – AI litigation legal writing tool Word ad-on

APPENDIX A

"Reasonable Efforts" Analysis for Evaluating Technology Risks and Benefits

See Wisconsin Formal Ethics Opinion EF-15-01 (Revised 2017)

Note: Efforts must be commensurate with the risks presented. Technology changes rapidly so re-evaluation must be done. Circumstances of each law practice vary considerably and must be analyzed with the specific circumstances of the firm in mind. Likewise, within a law practice, circumstances will vary from client-to-client and case-to-case.

Factors to consider:

- The information's sensitivity;

- The client's instructions and circumstances;

- The possible effect that inadvertent disclosure or unauthorized interception could pose to a client or third party;

- The attorney's ability to assess the technology's level of security;

- The likelihood of disclosure if additional safeguards are not employed;

- The cost of employing additional safeguards;

- The difficulty of implementing the safeguards;

- The extent to which the safeguards adversely affect the lawyer's ability to represent clients;

- The need for increased accessibility and the urgency of the situation;

- The experience and reputation of the service provider;

- The terms of the agreement with the service provider; and

- The legal and ethical environments of the jurisdictions in which the services will be performed, particularly regarding confidentiality.

Additionally see Standards | Legal Cloud Computing Association for recommendations on vetting a cloud computing vendor, which AI companies would be included as.

APPENDIX B

Additional Resources

GenAI

Generative AI for Lawyers: What It Is, How It Works, and Using It for Maximum Impact (lexisnexis.com)

AI Terms for Legal Professionals: Understanding What Powers Legal Tech (lexisnexis.com)

Frequently Asked Questions and Suggested Best Practices Related to Generative myshingle.com
Carolyn Elefant, January 7, 2024

Ethical Implications of Using Generative AI (americanbar.org)

Overview ‹ Detect DeepFakes: How to counteract misinformation created by AI — MIT Media Lab

Deepfakes — Judge Scott Schlegel (judgeschlegel.com)

ABA Law Practice Magazine - A Lawyer's Guide to Getting Started with Generative AI

Technology in the Law Practice

2023 American Bar Association Tech Report (americanbar.org)

AffiniPay 2025 Legal Industry Report

Clio Legal Trends Report | Clio

Appendix C

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Ethical Dilemma
Ethical Considerations When Using Generative Artificial Intelligence

Using generative artificial intelligence (GAI) can save you a lot of time and drudgery, when used correctly in your practice. But what are the ethical considerations?

BY SARAH E. PETERSON

Comments (0)

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Question

My firm is exploring using generative artificial intelligence (GAI) to gain efficiencies in our representation of clients. What special ethical considerations should we think about when deciding whether to use GAI?

Answer

The increased use of GAI tools in the practice of law has spurred robust discussions about how lawyers should navigate their ethical responsibilities when employing GAI.

Sarah E. Peterson, *U.W. 2000, is ethics counsel with the State Bar of Wisconsin. Ethics question? Call the* Ethics Hotline *at (608) 229-2017 or (800) 254-9154. Formal Ethics Opinions are at* wisbar.org/ethop.

In July 2024, the American Bar Association (ABA) issued Formal Opinion 512,[1] providing an in-depth analysis and discussion of rules lawyers should consider when evaluating whether to use GAI and which GAI tool to use.

The central message regarding the intersection of ethics and GAI is this: Lawyers' core ethical responsibilities are unchanged, just as they were unchanged with the introduction of the use of computers and the internet in the practice of law.

What is GAI? LexisNexis defines *artificial intelligence*, the "AI" in GAI, as "[c]omputer software and systems that learn, plan, reason or process natural language as they go rather than only relying on pre-programmed tasks, i.e., speech recognition, computer vision, translation between (natural) languages, as well as other mappings of inputs."

The article defines *generative artificial intelligence* as "an algorithm that generates new outputs based on the data it has been trained on. … Generative AI creates new content in the form of images, text, audio, and more."[2]

Competence

SCR 20:1.1 requires lawyers to provide "competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation."

Comment 8 to that rule states: "To maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, including the benefits and risks associated with relevant technology."

Certainly, the requirement that a lawyer maintain competence in relevant technology applies to GAI. A lawyer can neither ignore GAI altogether nor use it without first understanding it. The ABA opinion explains:

"Over time, other new technologies have become integrated into conventional legal practice in this manner. For example, a lawyer would have difficulty providing competent legal services in today's environment without knowing how to use email or create an electronic document. As GAI tools continue to develop and become more widely available, it is conceivable that lawyers will eventually have to use them to competently complete certain tasks for clients."

The duty of competence also requires lawyers who use GAI to carefully review the original content created by GAI and exercise independent professional judgment in assessing the content's accuracy and efficacy. In other words, artificial intelligence is not a substitute for real intelligence. As the ABA opinion explains:

"A lawyer's reliance on, or submission of, a GAI tool's output – without an appropriate degree of independent verification or review of its output – could violate the duty to provide competent representation as required by Model Rule 1.1. While GAI tools may be able to significantly assist lawyers in serving clients, they cannot replace the judgment and experience necessary for lawyers to competently advise clients about their legal matters or to craft the legal documents or arguments required to carry out representations."

Confidentiality

SCR 20:1.6 prohibits a lawyer from revealing "information relating to the representation of a client unless the client gives informed consent, except for disclosures impliedly authorized in order to carry out the representation."[3] The duty of confidentiality extends to former clients (SCR 20:1.9) and prospective clients (SCR 20:1.18).

Before inputting any confidential client information into a GAI tool, the lawyer must be aware of the risk of that information being disclosed to or accessed by other people. When using commercially available GAI tools, the information might be used by the tool to teach itself and then disclosed when answering another user's prompt. Even if a firm has a proprietary GAI tool, there is a risk that confidential information input into the tool may be disclosed in response to another lawyer's prompt and the information passed on to another client of the firm.

The ABA opines that because of those risks, it is necessary to obtain a client's informed consent before entering confidential information into a GAI tool:

"Because many of today's self-learning GAI tools are designed so that their output could lead directly or indirectly to the disclosure of information relating to the representation of a client, a client's informed consent is required prior to inputting information relating to the representation into such a GAI tool. When consent is required, it must be informed. To obtain informed consent when using a GAI tool, merely adding general, boiler-plate provisions to engagement letters purporting to authorize the lawyer to use GAI is not sufficient."

The ABA opinion also discusses the information a lawyer needs to evaluate the risk that confidential information will be accessed or disclosed:

"As a baseline, all lawyers should read and understand the Terms of Use, privacy policy, and related contractual terms and policies of any GAI tool they use to learn who has access to the information that the lawyer inputs into the tool or consult with a colleague or external expert who has read and analyzed those terms and policies. Lawyers may need to consult with IT professionals or cyber security experts to fully understand these terms and policies as well as the manner in which GAI tools utilize information."

Communication

Even if a lawyer concludes that there is no risk of revealing confidential client information by use of a GAI tool, a lawyer must consider whether the communication rule, SCR 20:1.4, requires the lawyer to disclose to the client the use of a GAI tool.

Particularly relevant is SCR 20:1.4(2), which requires a lawyer to "reasonably consult with the client about the means by which the client's objectives are to be accomplished." In determining whether it is necessary to disclose the use of GAI to a client, the ABA recommends the lawyer consider "the GAI tool's importance to a particular task, the significance of that task to the overall representation, how the GAI tool will process the client's information, and the extent to which knowledge of the lawyer's use of the GAI tool would affect the client's evaluation of or confidence in the lawyer's work."

The ABA opinion goes on to state: "Even when Rule 1.6 does not require informed consent and Rule 1.4 does not require a disclosure regarding the use of GAI, lawyers may tell clients how they employ GAI tools to assist in the delivery of legal services. Explaining this may serve the interest of effective client communication. The engagement agreement is a logical place to make such disclosures and to identify any client instructions on the use of GAI in the representation."

If a client asks whether a lawyer uses or intends to use GAI, the lawyer must answer honestly. If a client requests that a lawyer not use GAI, the lawyer must abide by the client's wishes. If a lawyer and a client disagree on the use of GAI in a representation, and the lawyer believes the client's position will prevent the lawyer from providing diligent and competent representation to the client, the lawyer should discuss the concerns with the client and, if necessary, withdraw from the representation.[4]

Fees and Billing

If a lawyer and a client agree on the use of GAI, they must also agree on the fees and expenses associated with its use. The requirement under SCR 20:1.5(a) that fees and expenses be reasonable applies to the use of GAI, just as it does to more traditional methods of practicing law.

SCR 20:1.5(b) requires that the rate and basis for any fees and expenses be communicated to the client; in some situations, the communication must be in writing. The ABA opinion offers several general considerations for firms when they are setting billing policies around the use of AI:

- Lawyers who bill clients an hourly rate for time spent on a matter must bill for their actual time.

- To the extent a particular tool or service functions similarly to equipping and maintaining a legal practice, a lawyer should consider its cost to be overhead and not charge the client for its cost absent a contrary disclosure to the client in advance.

- Lawyers must remember that they cannot charge clients for time necessitated by their own inexperience. However, if a client explicitly requests that a specific GAI tool be used in furtherance of the matter and the lawyer is not knowledgeable in using that tool, it may be appropriate for the lawyer to bill the client to gain the knowledge to use the tool effectively.

The use of GAI in the practice of law will likely result in significant changes in the way firms bill clients. If the total fees and expenses are reasonable and the client is informed of the rate and basis of the fees and expenses, firms are free to develop new methods of billing, such as unit billing or value billing.

Meritorious Claims & Contentions and Candor Toward the Tribunal

In addition to ethical obligations to their clients, lawyers also have ethical obligations to the court. Those obligations must be considered when using GAI.

Output from a GAI tool needs to be carefully reviewed to ensure a lawyer's submission to the court is not frivolous (SCR 20:3.1), does not knowingly make a false statement of law or fact (SCR 20:3.3), and does not make an unintentional representation (SCR 20:8.4(c)).

The ABA opinion gives examples of situations in which these rules have been implicated and discusses how courts are managing such situations:

- Issues that have arisen to date with lawyers' use of GAI outputs include citations to nonexistent opinions, inaccurate analysis of authority, and use of misleading arguments.

- Some courts have responded by requiring lawyers to disclose their use of GAI. As a matter of competence, as previously discussed, lawyers should review for accuracy all GAI outputs. In judicial proceedings, duties to the tribunal likewise require lawyers, before submitting materials to a court, to review these outputs, including analysis and citations to authority, and to correct errors, including misstatements of law and fact, failure to include controlling legal authority, and misleading arguments.

Lawyers should be aware of local court rules or policies that regulate the use of GAI tools.

Supervisory Responsibilities

SCR 20:5.1 and SCR 20:5.3 require managerial lawyers to make reasonable efforts to ensure that the firm uses measures that provide reasonable assurance that all lawyer and nonlawyer staff conform to the Rules of Professional Conduct. This responsibility extends to any vendor a law firm contracts with to perform work on behalf of the firm.

The ABA opines the following for firms that choose to use GAI tools:

"Managerial lawyers must establish clear policies regarding the law firm's permissible use of GAI, and supervisory lawyers must make reasonable efforts to ensure that the firm's lawyers and nonlawyers comply with their professional obligations when using GAI tools. Supervisory obligations also include ensuring that subordinate lawyers and nonlawyers are trained, including in the ethical and practical use of the GAI tools relevant to their work as well as on risks associated with relevant GAI use. Training could include the basics of GAI technology, the capabilities and limitations of the tools, ethical issues in use of GAI and best practices for secure data handling, privacy, and confidentiality."

Because of the ever-changing nature of GAI, it is likely that firms will need to regularly update policies on the use of GAI and conduct ongoing training in its use.

Promises and Pitfalls

This article is not an exhaustive examination of ethical considerations when using GAI. Lawyers have a duty to comply with all Rules of Professional Conduct at all times.

The use of GAI tools in the practice of law is full of promises and pitfalls. Lawyers should continually educate themselves and their staff on the appropriate and ethical use of such tools.

Endnotes

1 This article examines only the analysis and discussion found in ABA Formal Opinion 512. Several other jurisdictions have issued opinions or guidelines regarding the use of GAI. *See* Preliminary Guidelines on New Jersey Lawyers' Use of Artificial Intelligence (Jan. 24, 2024); Florida Bar Ethics Opinion 24-1 (Jan. 19, 2024); State Bar of California Practical Guidance for the Use of Generative Artificial Intelligence in the Practice of Law (Nov. 16, 2023); Pennsylvania Bar Association and Philadelphia Bar Association Joint Formal Opinion 2024-200 (May 22, 2024); New York State Bar Association Report and Recommendations of the State Bar Association Task Force on Artificial Intelligence (April 2024).

2 "AI Terms for Legal Professionals: Understanding What Powers Legal Tech," LexisNexis Legal Insights, March 23, 2023.

3 Wisconsin Formal Ethics Opinion EF-17-02 discusses the breadth of information covered by SCR 20:1.6(a). SCR 20:1.0(f) defines *informed consent* as "the agreement by a person to a proposed course of conduct after the lawyer has communicated adequate information and explanation about the material risks of and reasonably available alternatives to the proposed course of conduct."

4 SCR 20:1.16 (a), (b).

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Dilemma: AI and Storing Client-related Information

No matter how new the technology is regarding information relating to the representation of a client, it remains important that lawyers carefully consider how client information is stored and used internally – the rule and a lawyer's duties remain the same, no matter which technology is used.

BY SARAH E. PETERSON

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April 9, 2025 – You decide it's time to start using generative artificial intelligence (GAI). How secure does information on the GAI platform need to be?

Question

My law firm is looking at options for a GAI platform. I recently heard that even if we create our own internal platform or pay for a commercial product that provides robust security protocols, we still need to have practices in place to guard against internal inadvertent disclosure or unauthorized access to confidential client information.

I'm a little confused. My firm has always kept an electronic brief bank with copies of briefs, motions, samples, and templates from prior client representations. It prevents us from having to reinvent the wheel with every representation, which benefits our clients.

Isn't storing information on a GAI platform the same thing?

Answer

Before addressing the question, let's review the scope of confidentiality. SCR 20:1.6(a) prohibits a lawyer from disclosing "information relating to the representation," absent informed consent from the client or implied authorization. SCR 20:1.6(b) and (c) delineate other exceptions to the otherwise broad prohibition of SCR 20:1.6(a).

The term "all information relating to the representation" casts a very wide net. It applies to all information, regardless of its source, regardless of whether the information has otherwise been made public. It applies to disclosures by a lawyer that do not in themselves reveal protected information but could reasonably lead to the discovery of such information, such as client identity, by a third person.[1]

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To get back to the question: Yes, storing confidential client information on a GAI platform is the same as maintaining a brief bank. In both situations, regardless of how or where the information is stored, the firm must have in place "reasonable efforts to prevent inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client." SCR 20:1.6(d). This includes preventing against disclosure to other clients of the firm.

An Example Case

A 2023 discipline case out of Arkansas[2] illustrates the pitfalls of using the internally stored confidential information of one client in the representation of another client. In that case, the information was stored on a file-sharing app. Company A hired the lawyer to represent them in obtaining a medical marijuana cultivation license. The lawyer was later hired by another company, Company B, that was a direct competitor of Company A. The lawyer filed applications for medical marijuana cultivation licenses for both clients. Only Company B received a license.

Shortly after Company A learned they had not been awarded a license, they learned from several sources that Company B's application mirrored their application in several sections, suggesting that the information contained in Company B's application had allowed others to deduce the identity of Company A. Company B's application also contained Company A's proprietary information.

A newspaper article cited in the disciplinary matter stated, "Electronic fingerprints on [Company B]'s internal documents and company emails … show how the contents of [Company A]'s application funnel in [Company B]'s hands through accounts linked to its previous attorney." The article explained that someone signed into a file-sharing program as the attorney replaced Company A's name and biographical information with the information for Company B, and that Company A's information was deleted within the section detailing the business plan while the wording of the plan itself stayed roughly the same."

The attorney was found to have violated SCR 20:1.6(a) for failing to get Company A's informed consent to share proprietary information with any competitor, including Company B.[3]

Careful Consideration Is Needed

While this case is an extreme example of at least negligent, and perhaps intentional, misconduct by the attorney, it demonstrates the need for lawyers to carefully consider how information relating to the representation of a client is stored and used internally.

This includes taking steps to prevent protected information relating to the representation of one client from being disclosed to another client of the firm.

It also includes taking steps to prevent disclosure to lawyers who have been screened off from participation in a matter for conflict or other reasons.[4] This does not mean that a lawyer may never use documents prepared for former clients as models for future clients – reuse of portions of such documents is permissible as long as there is no reasonable prospect that a third party could identify the original client.

For example, a lawyer may use the same legal argument in support of a legal proposition in every motion for a change in custody and placement in a family matter, although the specific facts of each matter are protected. A lawyer may also usually copy standard contract clauses from one client's contract to another.

What is required is that the lawyer not include information that would allow a third party to identify the client or secret or proprietary information belonging to a client.

Closely Review GAI Output

While it is obvious that a lawyer needs to keep client information such as names, contact information, and financial and medical records confidential, it may be less obvious that business plans, strategy, negotiated contract terms, property division details, and all other "information relating to the representation" also needs to be protected.

As a reminder, SCR 20:1.6(a) protects information otherwise made public (in, for example, a public application filing) and information that could lead to the discovery of protected information (such as specific details of a business that could lead to the discovery of your client's identity). Thus, prior to sharing a GAI output with another client or filing it with a court, lawyers need to carefully review GAI outputs to ensure protected information relating to the representation of another client is not contained therein.

As with hallucinations and false answers, the problem is not created by GAI output itself but rather is created when the output is not carefully reviewed by someone with actual intelligence.

Keep Clients Informed

The use of a secure platform may obviate the need for informed consent prior to the use of GAI in a client's case.[5] However, because of novelty of its use (which is, of course, wearing off) it is advisable that you inform clients of that fact that you will be using GAI and how you will be using it.[6]

While some clients will expect that you use it to provide more efficient legal services, other clients might be wary of its use.

The increased use of GAI in the practice of law is bringing the topic of confidentiality to the forefront. While the rule and a lawyer's duties remain the same, it is good to consider how those duties might be carried out in a different environment.

Ask Us!

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Formal Ethics Opinions: wisbar.org/ethop

Practice411™: (800) 957-4670, or practicehelp@wisbar.org

Endnotes

[1] *See* SCR 20:1.6 and ABA Comments [3] and [4]; Wisconsin Formal Ethics Opinion EF-17-02; and *Disciplinary Proceedings against Merry*, 2024 WI 16.

[2] *In re: Michael W. Langley*, Supreme Court Committee on Professional Conduct, CPC Docket No. 2022-035.

[3] The lawyer was also found to have violated the equivalent of SCR 20:1.4(a)(2) and (3) and SCR 20:1.7(a) in relation to his representation of Company A and received a 6-month license suspension, followed by 18 months of probation.

[4] SCR 20:1.0 (n) defines "screened" as, "the isolation of a lawyer from any participation in a matter through the timely imposition of procedures within a firm that are reasonably adequate under the circumstances to protect information that the isolated lawyer is obligated to protect under these rules or other law." See Wisconsin Formal Ethics Opinion EF_22-01 for a discussion of what an effective screen looks like.

[5] See ABA Formal Opinion 512 for a discussion of what factors to consider when determining whether informed consent to the use of GAI is required.

[6] SCR 20:1.4(b) requires that a lawyer "explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation."

Comments (0)

Current State of Generative AI in Legal:

Benefits, Risks, and Best Practices

Generative artificial intelligence (GenAI) has the potential to revolutionize many aspects of legal practice. However, using GenAI also raises ethical and professional considerations.

BY BRENT J. HOEFT

Technology is interwoven with the practice of law, transforming the way lawyers work and interact with clients. One of the most significant advancements in technology is generative artificial intelligence (GenAI), which has the potential to revolutionize many aspects of legal practice. However, the adoption of GenAI also brings with it a host of ethical and professional considerations.

It has been almost two years since the public introduction of ChatGPT, the large language model (LLM) created by OpenAI. ChatGPT was adopted at a rate never before seen, reaching 100 million active monthly users in only two months.[1] By comparison, TikTok and Instagram took nine months and 2.5 years respectively to hit that same milestone.[2] GenAI technology has been implemented into the legal industry at an unprecedented pace. The power of the technology and the speed of adoption have fostered lawyers' and regulators' curiosity and apprehension. The number of ethics opinions and guidance published over the past year is evidence of the unprecedented effect GenAI has had on the legal industry already and the anticipation of what is to come.[3]

Generative Artificial Intelligence (GenAI)

What is GenAI? AI does not have a set definition. It is usually understood to mean computer processes, tasks, and outputs that are thought to require some level of human intelligence to complete. GenAI is a specific type of AI in which the model can generate new predictive output — text, images, audio, video — based on patterns and algorithms in the data it has been trained on. The ability for users to input instructions or

requests, called prompts, in ordinary language and interact with the GenAI users in a conversational format make it very easy to use and is the basis, in part, for the unprecedented rate of adoption by the public and the legal community.

The terms GenAI and LLMs are often used interchangeably. The major distinction is that LLMs are a subset of GenAI. LLMs focus on the generation of text output, whereas GenAI output can be text, images, video, audio, or programming code.

GenAI models are trained on vast datasets and use advanced machine learning techniques to generate text, answer questions, and perform various tasks, all in natural language. These capabilities make GenAI a powerful tool

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for legal professionals, enabling them to streamline processes and improve efficiency. However, rapid adoption without understanding the strengths and limitations of the tool has led to some misuse of the tool in the practice of law.

Cautionary Tales

Most people have now heard stories about the numerous instances in which lawyers used public GenAI models to prepare filings with a court without verifying the generated output, leading to significant misrepresentations to the court. These cases highlight the importance of checking the accuracy of GenAI outputs because failing to do so violates the duty of candor to the tribunal.

For example, there have been cases in which lawyers submitted court documents containing fabricated case citations generated by GenAI. Such mistakes not only undermine the lawyer's credibility but also have serious legal consequences. However, it must be stressed that GenAI is one kind of tool that when understood and used correctly can enhance — not replace — the efficiency and quality of the legal services delivered. The tool has its weaknesses, and it is the lawyer's duty to understand the benefits and the risks of this technology. Therefore, this article readdresses the strengths and weaknesses of GenAI and the importance of verifying GenAI outputs, which is the lawyer's duty no matter where the output came from.

Ethical Guidance from Bar Associations

These cautionary tales put the spotlight on the risks of lawyers using GenAI in the practice of law. Lawyers have an obligation to understand and abide by the ethical rules under Wisconsin's Rules of Professional Conduct, codified in Supreme Court Rules (SCR) chapter 20. The importance of adhering to ethical rules when using GenAI has now been addressed by various state bar association ethical opinions[4] or guidance.[5] Most

recently, the American Bar Association's Standing Committee on Ethics and Professional Responsibility issued Formal Opinion 512 on the use of GenAI.[6]

The following are specific provisions of SCR chapter 20[7] that must be considered when determining whether GenAI should be integrated into a law practice. The common themes across the opinions from bar associations are that lawyers must understand AI and stay educated about the benefits, risks, and limitations (SCR 20:1.1 Competence); take reasonable steps to prevent unauthorized disclosure (SCR 20:1.6 Confidentiality); supervise GenAI use by attorneys, staff, and third-party vendors (SCR 20:5.1 and 20:5.3 Supervision of Subordinates); verify GenAI outputs before submitting to courts (SCR 20:3.1, 20:3.3, and 20:8.4(c) Meritorious Claims and Candor to the Court); communicate the use of GenAI to clients when necessary or asked (SCR 20:1.4 Communication with Clients); inform clients about AI-related billing and the duty to charge reasonable fees (SCR 20:1.5 Fees); and be aware of the potential unauthorized-practice-of-law issues (SCR 20:5.5).

Bar associations generally are taking the approach that the current ethical rules are sufficient in addressing the potential risks involved with the use of GenAI. So, given what has been learned in 2023 and 2024 and the current guidance regarding GenAI, what practical steps should lawyers take when implementing GenAI into a law practice?

Considerations and Best Practices

Competency is a fundamental requirement for lawyers. According to SCR 20:1.1, lawyers must have the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation of their clients. SCR 20:1.1, Comment 8, clarifies that competence includes "understanding the benefits and risks associated with relevant technology." This means that lawyers must make reasonable efforts to stay updated and educated on technological

advancements, such as GenAI, that could affect their practice.

Education on the benefits and risks of technology in the law practice is key to lawyer compliance with SCR 20:1.1. With GenAI it is exceedingly difficult to stay on top of the fast-paced changes taking place. Lawyers should become educated about the benefits and risks of GenAI by obtaining continuing legal education about GenAI and ethics, reading articles, listening to podcasts, and using GenAI.

Benefits of GenAI

As with any tool, GenAI has its strengths and limitations. It is important to understand how GenAI can enhance legal practice so these benefits can be weighed against any potential risks. Some of the many areas in which GenAI can be used, and related benefits, are listed below.

• **Legal Research.** Although outputs must be verified, the speed and accuracy of the research task can be improved by GenAI. Publicly available GenAI (for example, ChatGPT, Gemini, and Anthropic) should not be considered legal research tools. If lawyers use these public models, all outputs must be scrutinized and verified. A safer tool would be one of the GenAI models integrated into legal-research-specific products (for example, Lexis + AI, Westlaw Precision, and vLex VincentAI). These tools limit the universe of information to their vast and trusted databases of legal authority and therefore reduce the frequency of hallucinations. Verification of all outputs is necessary even with the legal-specific models because nuances in the law are prevalent and therefore inaccurate results are possible.

• **Drafting or Reviewing Documents.** GenAI can create initial drafts of legal documents that lawyers can review and customize. Some products can analyze a user's document library and create legal documents in the style and format consistent with past documents. Again, although offerings from legal-specific GenAI are recommended (for example,

Spellbook, Casetext CoCounsel), Microsoft Copilot for Microsoft 365 is also able to perform drafting tasks and can be limited to a user's data within the user's system. Practice management software providers are also starting to implement GenAI models into their systems, allowing users to limit the GenAI to the database of their own law firm documents and data already stored with the practice management software.

• **Client Communication.** GenAI can help draft general client communications and updates. It can assist with clarity and tone to improve communications with clients.

• **Marketing and Education.** GenAI can generate content for newsletters, blogs, social media posts, and client educational materials. For example, GenAI can assist with summarizing and distilling the process that can be expected in a client matter into an informational one-page document presented at an understandable level for the client.

• **Automating Tasks.** GenAI can assist with automating routine tasks, such as scheduling, billing, and the client intake process.

• **Firm Policy and Procedure Generation.** GenAI can assist with creating first drafts of law firm policies. Law firms can use GenAI as a starting point for generating information security policies, GenAI use policies, and employee policies and procedures.

• **Idea Machine.** GenAI can be used to help generate ideas to combat writer's block or to evaluate whether there is anything that a user has not thought about when writing about a topic.

• **Increased Efficiency.** Adopting some or all of these suggestions for how GenAI could benefit a law practice allows lawyers to free up more time that can be used to provide better client service. Using the technology as a tool to assist with time-consuming back-end tasks enables the lawyer to provide better in-person communication with clients, leading to greater client satisfaction.

Risks of GenAI

Despite its benefits, GenAI poses several risks and has limitations that must be considered.

• **Confidentiality.** There is a risk of inadvertent disclosure of confidential information if lawyers are uploading it to GenAI models. The LLMs backing the GenAI products learn on data. Many of the public GenAI products use inputted data from users to continue the training of the models.

• **Hallucinations.** GenAI can generate inaccurate or completely made-up information.

• **Bias.** There is potential for bias in the training data used to develop the GenAI model, leading to biased outputs.

• **Improper Prompting.** Poorly crafted prompts can result in poor outputs.

• **Vendor Terms.** Different GenAI vendors have different terms of service and data-handling policies, which lawyers must understand to protect client information.

• **Unauthorized Practice of Law.** As noted by the Minnesota State Bar Association Working Group on AI, historically only humans were capable of applying law to specific facts but today's LLMs are now capable of making similar analysis, raising concerns over GenAI being relied on for legal advice.[8] Although these LLMs appear capable of legal analysis supplanting professional judgment for the output of LLMs (which is based on predictive patterns rather than true reasoning and legal analysis), serious concerns are raised regarding the unauthorized practice of law.

• **Supervision of GenAI Use.** Supervising lawyers must ensure that all GenAI users in a law practice are trained on and comply with GenAI policies and ethical requirements.

• **Copyright Concerns**. Clients with copyright concerns might not want their information inputted into GenAI out of concerns about losing copyright protection. There are numerous ongoing court cases regarding GenAI and copyrighted materials.[9]

To mitigate these risks, lawyers must be diligent in their use of GenAI, ensuring that they understand the technology and implement appropriate safeguards. This includes regular training, robust policies, and continuous monitoring of GenAI outputs.

Best Practices for Getting Started with Implementing Generative AI into a Law Practice

To maximize the benefits of GenAI while mitigating its risks, lawyers must adopt a proactive and informed approach. This includes regular training, continuous monitoring, and adherence to ethical guidelines.

The following are some recommended best practices when considering whether to use GenAI and then implementing it into a law practice:

• Keep current with education and knowledge about the strengths and limitations of GenAI.

• Become familiar with GenAI by purchasing a paid, public version of ChatGPT and using it outside the law practice to generate ideas, plan vacations, lists, and generate suggestions in everyday life.

• Understand the terms of service of the GenAI model.

• Avoid uploading confidential information.

• Use legal-specific GenAI tools that are designed with good-quality protections and controls.

• Disclose the use of GenAI to clients and courts when necessary and required.[10]

• Recognize that GenAI may be reasonable to use with certain clients or certain matters but that the reasonableness analysis must be done for each client and each matter.

• Create and enforce a GenAI use policy.

• Educate all law firm users and supervise attorneys and staff in the use of GenAI within the firm.

• Understand how to effectively create prompts to return better and more accurate output from GenAI.

• Be aware of the potential for bias in GenAI outputs.

• Understand that billing for time saved when using GenAI will result in unreasonable fees.

• Discuss how the law firm will address with clients the firm's decision to use or not use GenAI.

• Always verify all GenAI outputs before using them in court filings or other legal documents.

Implementing these practices ensures that lawyers use GenAI responsibly and ethically, maintaining the trust of their clients and upholding professional standards. Choosing the right tool depends on the specific needs of the legal practice and the nature of the tasks performed. By selecting tools designed for legal use, lawyers can benefit from enhanced protections and better alignment with ethical requirements.

Conclusion

GenAI continues to present both opportunities and challenges for the legal profession. By understanding and adhering to ethical rules and guidance, lawyers can harness the power of GenAI to enhance their practice while safeguarding client confidentiality and maintaining professional integrity. As technology continues to evolve, ongoing education and vigilance are essential to navigate this dynamic legal landscape effectively.

Readers who have questions about implementing GenAI into their law practices can reach out to Practice411™, the State Bar of Wisconsin's Practice Management Program, by visiting www.wisbar.org/practice411 or emailing practicehelp@wisbar.org. **WL**

ENDNOTES

[1] Benj Edwards, *ChatGPT Sets Record for Fastest-Growing User Base in History, Report Says*, Ars Technica (Feb. 1, 2023), https://arstechnica.com/information-technology/2023/02/chatgpt-sets-record-for-fastest-growing-user-base-in-history-report-says/.

[2] *Id.*

[3] These recommendations were appropriate when this article was written but given the speed at which things are changing regarding GenAI and the legal industry, some of the information might change or become obsolete. Readers should check current recommendations for using GenAI in law practices.

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[6] ABA Standing Comm. on Ethics & Pro. Resp., Formal Op. 512, *Generative Artificial Intelligence Tools* (July 29, 2024), https://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/ethics-opinions/aba-formal-opinion-512.pdf.

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[8] Minn. State Bar Ass'n, Working Grp. on AI, *Implications of Large Language Models (LLMs) on the Unauthorized Practice of Law (UPL) and Access to Justice* (June 2024), https://www.mnbar.org/docs/default-source/default-document-library/msba-ai-working-group-final-report-and-recommendations.pdf.

[9] Joe Panettieri, *Generative AI Lawsuits Timeline: Legal Cases vs. OpenAI, Microsoft, Anthropic, Nvidia and More,* Sustainable Tech Partner (Aug. 5, 2024), https://sustainabletechpartner.com/topics/ai/generative-ai-lawsuit-timeline/.

[10] *See* Ropes & Gray, *Artificial Intelligence Court Order Tracker*, https://www.ropesgray.com/en/sites/artificial-intelligence-court-order-tracker. (This is an interactive map tool to keep track of the court orders issued in various jurisdictions in the U.S.) **WL**