

BALANCING ETHICS AND INNOVATION:

*Exploring the Role of AI
in the Landscape of
Legal Practice*





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AGENDA

Overview of AI: terms and concepts

Ethical Considerations for Lawyers

- Rule 1.1 – Duty of Competence
- Rules 1.4 – Client Communication
- Rule 1.6 – Confidential Information
- Rules 3.1 and 3.3 – Meritorious Claims, Candor to Tribunal
- Rule 5.3 – Supervision of Non-Lawyers
- Rule 8.4.1 – Avoiding Bias and Discrimination

Chat GPT Answers Questions

GLOSSARY OF TERMS

Machine Learning vs. Deep Learning

Predictive vs. Generative AI

Large Language Model (LLM)

Chatbot, GPT-3.5, GPT-4, ChatGPT

Hallucinations

WHAT IS ARTIFICIAL INTELLIGENCE?

- The theory and development of computers to simulate human intelligence.
 - **Machine learning** – application of algorithms to large data sets that allow computers to perform tasks without being explicitly programmed to do the task.
 - **Deep learning** – use of a layered structure of algorithms called an artificial neural network to simulate human brain processes to allow computer to learn unsupervised and generate new content.

PREDICTIVE VS. GENERATIVE AI



Predictive AI uses data to spot patterns and extrapolate potential futures (patterns + predictions – machine learning)



Generative AI uses deep learning to generate new content based on the data it is trained on

LARGE LANGUAGE MODELS

- Form of generative AI in field of natural language processing using deep learning techniques.
- Involves use of artificial neural network architecture called a transformer to understand and generate text.
- Trained on vast quantities of available text to process sequential text and learn statistical relationships and importance between and among words to generate new content.
- Examples: GPT-3.5 and GPT-4 from OpenAI, LLaMA from Meta, and PaLM2 and BERT from Google.

CHATBOTS, CHATGPT, GPT-3.5, GPT-4

- Chatbot: type of AI program designed to simulate human-like conversation with users through natural language processing
 - Siri, Cortana, Alexa
 - Google Bard
 - ChatGPT
- ChatGPT widely used Chatbot based on GPT-3
- Chatbot Generative Pre-Trained Transformer (GPT)
- GPT-4 is more powerful LLM (powers Co-Counsel, Lexis AI)

HALLUCINATIONS

- Content that sounds plausible but is factually incorrect or completely made up.
 - GPT made up polling data it then relied upon.
 - Case against Avianca in NY where lawyer used ChatGPT to write brief, contained made-up case citations.
- Arises out of AI model's training biases, lack of real-world understanding, or limitations in data set.
- Jeff Pfeifer, the chief product officer for LexisNexis in the United Kingdom and North America, says there's no generative AI platform that is "hallucination-free."

AI
PROGRAMS
AVAILABLE
FOR LAW

Lexis+ AI

CaseText

Co-Counsel

Diligen, Juro

Disco AI, Relativity AI

ChatGPT

Google Bard

ETHICAL CONSIDERATIONS IN USE OF AI

- Competence (Rule 1.1)
- Communication with Clients (Rule 1.4)
- Confidential Information (Rule 1.6)
- Meritorious Claims, Candor to Tribunal (Rules 3.1, 3.3)
- Supervision of Non-Lawyers (Rule 5.3)
- Avoiding Bias and Discrimination (Rule 8.4.1)

RULE 1.1 DUTY OF COMPETENCE

- Rule 1.1: A lawyer shall not intentionally, recklessly, repeatedly, or with gross negligence, fail to provide legal services with competence.
- Duty of competence requires lawyers to closely supervise, review, and ensure the accuracy of any work generated by artificial intelligence.

RULE 1.1 CONTINUED

- Duty of competence also requires lawyers to develop facility with the technological tools commonly used in the practice of law.
- Comment [1] to Rule 1.1, “[t]he duties set forth in this rule include the duty to keep abreast of the changes in the law and its practice, including the benefits and risks associated with relevant technology.”

COMPETENT USE OF AI IN LEGAL PRACTICE



CHATBOT: ANSWER IS ONLY AS
GOOD AS THE PROMPT; MUST FACT-
CHECK RESPONSES



CONTRACT REVIEW AND DILIGENCE:
SIZE OF DATA POOL AND INPUT OF
PARAMETERS MATTERS



DOCUMENT REVIEW, E-DISCOVERY
AND INVESTIGATIONS: CODING
MATTERS

TEST OF GPT-3.5 AND GPT-4 PERFORMANCE IN DILIGENCE & CONTRACT REVIEW

- Zuva AI tested both GPT-3.5 and GPT-4 on contract review and diligence; versions revealed difference in ability.
- GPT-3.5 able to identify and explain indemnification clauses in an uploaded contract as long as the headers accurately explained content.
- GPT-3.5 missed indemnification clause where header was misleading.
- GPT-4 identified both indemnification clauses (correct and incorrect header).
- Even GPT-4 missed 3 out of 4 change of control clauses in a contract with complicated wording.

ABILITIES OF AI: CORPORATE

- Document review – gather, review, and analyze employee records, personnel files, and corporate documents; assist in investigations.
- Detect employee misconduct, morale, removal of sensitive documents.
- Contract review – summary of clauses, flag termination dates, renewals, market terms, identify and explain clauses (Co-Counsel, Juro, Diligen, Latch).
- **All of the above require supervision and oversight.**

ABILITIES OF AI: LITIGATION

- Document review and analysis (Lexis AI, CaseText, Co-Counsel)
- Brief comparisons and analysis (Lexis AI, Co-Counsel)
- Legal research (Lexis AI, *maybe* ChatGPT)
- Discovery and document summaries (Disco, Relativity)
- Deposition preparation (Co-Counsel)
- **All of the above require supervision and oversight**

LIMITATIONS ON AI ABILITIES

- According to technical paper for GPT-4, the model “still is not fully reliable...Great care should be taken when using language model outputs, particularly in high-stakes contexts, with the exact protocol (such as human review, grounding with additional context, or avoiding high-stakes uses altogether) matching the needs of specific applications.”

RULE 1.4: CLIENT COMMUNICATION

- Rule 1.4(a)(2): A lawyer shall reasonably consult with the client about the means by which to accomplish the client's objectives in the representation...
- Might include disclosure of reliance on AI tools.
 - Efficiency and value-add for client concerned about budget.
 - Concerns about accuracy and diligence if client is organization, insurance company.

RULE 1.6 – SAFEGUARDING CLIENT INFO

- Rule 1.6(a): “A lawyer shall not reveal information protected from disclosure by Business and Professions Code section 6068, subdivision (e)(1) unless the client gives informed consent,” subject to certain exceptions.
- Duty extends to information that is processed or stored electronically. (Cal. State Bar Formal Opn. No. 2015-193 [Lawyers must understand the “benefits and risks associated with relevant technology” before engaging with that technology].)

RULE 1.6 CONTINUED

- ChatGPT stores all content inputted into the model, analyzes it, and ‘learns’ the information for future use.
- ChatGPT acknowledges its collection and storage of user-inputted content: “When you use our Services, we may collect Personal Information that is included in the input, file uploads, or feedback that you provide to our Services.”
- Such “input” could include sensitive client information, legal strategies, or privileged communications.

TAKING CARE WITH CLIENT CONFIDENCES

- Use reputable platforms and understand how they safeguard info.
- Attorneys must be well-trained on first and second-level review of AI-assisted document productions, which fall under the umbrella of “reasonable steps” attorneys must take to avoid inadvertent disclosure. (Fed. R. of Evid., Rule 502(b); *Regents of Univ. of Cal. v. Superior Court*, 165 Cal. App. 4th 672, 681-82 (2008).)
- Attorneys must also be familiar with clawback procedures for inadvertent production of privileged material.

RULES 3.1, 3.3: MERITORIOUS CLAIMS & CANDOR TO TRIBUNAL

- Rule 3.1(a)(2): A lawyer shall not present a claim or defense in litigation that is not warranted under existing law, unless it can be supported by a good faith argument for an extension, modification, or reversal of the existing law.
- Rule 3.3(a)(1)-(2): A lawyer shall not knowingly make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer . . . or knowingly misquote to a tribunal the language of a book, statute, decision or other authority . . .
- Failing to cite-check and fact-check generative AI content places lawyers at risk of violating Rules 3.1 and 3.3.

RULE 5.3: SUPERVISION OF NON-LAWYERS

- Rule 5.3(b): A lawyer having direct supervisory authority over the nonlawyer, whether or not an employee of the same law firm, shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer . . .
- Reliance on generative AI content without human supervision arguably violates Rule 5.3.

RULE 8.4.1: AVOIDING BIAS & DISCRIMINATION

- The California Rules of Professional Conduct prohibit unlawful discrimination in the course of representing a client and in the operation of a law firm.
- According to OpenAI, which released ChatGPT earlier this year, “We trained an initial model using supervised fine-tuning: **human AI trainers** provided conversations in which they played both sides—the user and an AI assistant.”
- Humans have implicit and explicit biases which can be imported into LLM.

REASONS FOR BIAS IN AI-GENERATED CONTENT



**BIAS PRESENT IN
TRAINING DATA**



**BIAS PRESENT IN
LANGUAGE ITSELF**



**UNDERREPRESENTED
GROUPS/VIEWPOINTS
NOT REPRESENTED IN
TRAINING DATA**



**AMBIGUOUS
CONTEXT LEADS
TO MOST
PROBABLE
RESPONSE**



**ECHO CHAMBER
EFFECT**

WE ASKED CHATGPT: IS IT ETHICAL FOR LAWYERS TO RELY ON YOU?



As an AI language model, I don't have personal opinions, beliefs, or ethical considerations. However, I can provide some information.

The ethical use of content generated by AI language models like me by lawyers is a nuanced topic. While AI models can be valuable tools for research, legal professionals should approach the use of AI-generated content with caution. AI-generated content should not be the sole basis for legal decisions or advice.

To answer your question directly: It can be ethical for lawyers to rely on content generated by AI language models, but only if used responsibly and in conjunction with their own legal expertise, judgment, and critical evaluation of the information provided. Lawyers should also verify the accuracy and applicability of AI-generated content through reliable legal sources before applying it to specific cases or providing legal advice.

WE ASKED CHATGPT: CAN AI GENERATE ORIGINAL THOUGHTS?



As an AI language model, I don't possess consciousness or true creativity like humans do. I can generate responses based on patterns in the data I was trained on, but my responses are limited to the knowledge and information present in that data. While I can generate novel combinations of words and sentences, they are not truly original thoughts in the human sense.

Any apparent creativity in my responses is a result of the vast amount of text data I have been trained on, which allows me to provide relevant and contextually appropriate answers to a wide range of queries. However, my responses are essentially extrapolations and combinations of patterns I've seen in the data, rather than independent creative thought.

True creativity, imagination, and the ability to generate genuinely original thoughts are unique human cognitive abilities that rely on a combination of experiences, emotions, consciousness, and complex brain processes that AI models like me do not possess.

WHAT CAN'T AI DO FOR LAWYERS?



Call on experience to
understand likely
outcomes



Predict human behavior



Behave ethically and
loyally



Advocate for client



QUESTIONS?

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SOURCES

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