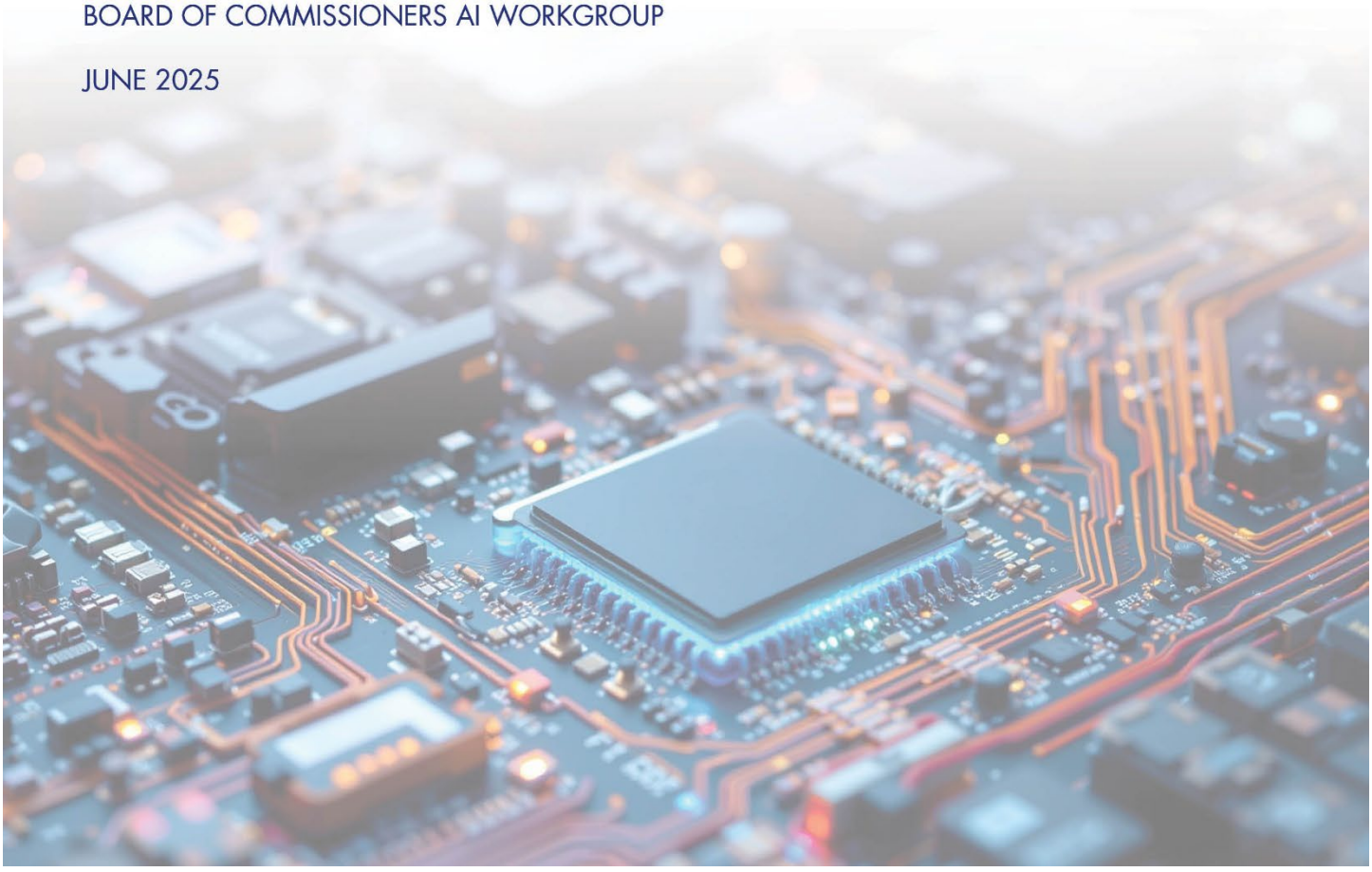
STATE BAR OF MICHIGAN

TRANSFORMING THE LEGAL LANDSCAPE

IN THE AGE OF AI

REPORT AND RECOMMENDATIONS BY THE STATE BAR OF MICHIGAN
BOARD OF COMMISSIONERS AI WORKGROUP

JUNE 2025



"No organization of lawyers can long survive which has not for its primary object the protection of the public."

—ROBERTS P. HUDSON
FIRST PRESIDENT OF THE STATE BAR OF MICHIGAN

FORWARD

Friends, colleagues, and fellow citizens,

The integration of generative artificial intelligence (AI) into the legal profession represents both a remarkable opportunity and a formidable challenge. As AI technology continues to evolve at a rapid pace, it is reshaping the landscape of legal practice, enhancing efficiency, expanding access to justice, and revolutionizing practice management. With these advancements come critical ethical, professional, and regulatory considerations that must be addressed to ensure AI serves the public interest while upholding the integrity of the legal system and the rule of law.

This report provides a comprehensive exploration of AI's impact on legal practice, focusing on four key areas: practice management, ethics, access to justice, and the unauthorized practice of law (UPL). As the legal profession stands at the crossroads of tradition and technological innovation, it is essential for attorneys to not only understand the current capabilities of AI but also anticipate future developments that will continuously shape the profession. The ever-changing nature of AI technology underscores the need for legal professionals to proactively plan for its integration and ensure they remain technologically competent; an obligation that is increasingly emphasized in our rules of professional conduct. Our report proceeds on the following basis.

First, the report examines how AI can transform practice management. From automating routine tasks to streamlining document review and improving client communication. As we have seen, AI has the potential to significantly reduce administrative burdens, allowing lawyers to focus on higher-level legal analysis. Yet, with these opportunities come questions about the future structure of law firms, the risk of job displacement, and the impact on lawyer-client relationships. To remain effective, attorneys must stay ahead of these developments, continually learning and adapting their practice management strategies to incorporate AI tools without sacrificing personal expertise or the human element of client service.

Ethical considerations are paramount in the use of AI within legal practice. Lawyers are bound by stringent ethical duties, including the duty to maintain client confidentiality, provide competent representation, and avoid conflicts of interest. As AI becomes more integrated into legal processes, these ethical responsibilities will be challenged in new ways. This report delves into how AI tools can assist lawyers in upholding their ethical obligations, while also highlighting the risks of algorithmic biases, opaque decision-making processes, and potential gaps in human oversight. The ability to maintain technological competence—understanding the limitations and capabilities of AI—is increasingly recognized as a critical ethical obligation, and this requires ongoing education and vigilance.

Access to justice remains one of the most compelling promises of AI. By making legal services more affordable and efficient, AI has the potential to broaden access to justice for underserved communities i.e., legal deserts. However, realizing this opportunity requires careful attention to issues such as digital literacy, equity in access to technology, the need for regulatory frameworks, and potentially court rule changes that support innovation without sacrificing fairness. As AI tools continue to evolve, attorneys must stay informed about how these technologies can

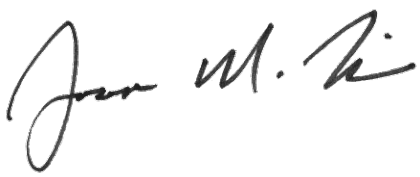
be used responsibly to bridge the justice gap, ensuring that advancements in technology do not widen existing inequalities.

Finally, the unauthorized practice of law remains a significant concern as AI tools increasingly perform tasks traditionally handled by attorneys. With the ability to generate legal documents, analyze contracts, and assist with litigation strategies, AI has the potential to blur the lines of legal practice and challenge existing ethical rules and professional standards to which lawyers are bound. This report explores the delicate balance between innovation and the risk of AI inadvertently crossing into UPL territory and offers insights into how legal professionals can ensure AI tools are used in compliance with ethical and legal standards.

In a world where technology is constantly evolving, the legal profession must remain vigilant and adaptable. As AI continues to transform the practice of law, attorneys must stay informed, plan for new developments, and ensure they meet their professional obligations, including maintaining technological competence as required by our rules of professional conduct. This report is intended to serve as a resource for legal professionals, policymakers, and technology developers, helping to navigate the dynamic intersection of law and AI to guide future discussions and regulatory efforts in this critical area.

We hope that this report will inspire thoughtful dialogue and strategic planning within the legal profession, ensuring that AI is harnessed to improve legal services and expand access to justice while upholding the highest standards of professional responsibility and protection of the public.

Sincerely,



Joseph P. McGill
AI Workgroup Chair
90th President of the State Bar of Michigan
Member – Foley, Baron, Metzger & Juip, PLLC

AI WORKGROUP

MISSION STATEMENT

In furtherance of the State Bar of Michigan's mission of promoting improvements in the administration of justice and advancements in jurisprudence, improving relations between the legal profession and the public, and promoting the interest of the legal profession in this State, this Workgroup on Artificial Intelligence has been established by the Board of Commissioners to examine the legal, social, educational, and ethical impact of the ever-evolving technology which significantly impacts the legal profession.

In consultation with stakeholders and experts within the field, the AI Workgroup's focus and goals are to:

- Provide a historical reference to the evolving technology of AI, generative AI, and other tools.
- Review the current applications within the legal field.
- Provide information regarding the benefits and risks associated with the use of AI.
- Assess the potential impact of AI on the legal profession.
- Evaluate the potential impact of AI-generated legal services on the public and the risks and benefits associated with such activity including furthering the goals of access to justice programs.
- Make recommendations to ensure the continued integrity of the judicial process and the practice of law.
- Explore the required broad multi-disciplinary knowledge law students must be trained to ensure practice readiness and provide recommendations as to how this may be accomplished.

The mission of the AI Workgroup is to provide:

- A road map for SBM to lead the way on AI use in the legal profession.
- Recommendations to the SBM on how to educate and provide assistance to members of the Bar.
- Educational resources to the public as the legal profession modernizes and incorporates AI into the provision of legal services.

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INTRODUCTION

"AI is like electricity. Just as electricity transformed every major industry a century ago, AI is now poised to do the same."

– ANDREW NG, FOUNDER OF GOOGLE BRAIN

"In any given moment we have two options: Step forward into growth or step backward into safety."

– ABRAHAM MASLOW, PSYCHOLOGIST

If one were to ask five different people about the potential impact of Artificial Intelligence (AI), five different responses would likely be received. Thoughts usually swirl around extremes especially when considering the unknown. AI will either save humanity or doom it. It will make our jobs easier or remove thousands of people from the workforce. AI will enhance the quality of our lives or be humanity's downfall. Historically, it is difficult to ascertain the reality of a situation until it becomes part of everyday life.

While societies (and professions) have faced transformative changes in the past, in many ways the advent of AI feels different. Perhaps, it is the use of the word "intelligence" in conjunction with this technology. "Intelligence" has always been presumed to be the hallmark of humanity. We learn. We think. We grow. We advance. It is what sets us apart. Can a machine now do the same thing? The question is both unsettling and exciting.

While the legal profession is not immune to transformative changes, it has been somewhat shielded from transformation historically. It is important to remember that the origins of the legal profession date back to ancient Greece and Rome. It is the profession that wore powdered wigs and black robes, and it is the profession that continues today to honor process and tradition. The rapid evolution of AI and its impact on the legal profession is unprecedented for lawyers and judges alike. Although AI's specific impact on the legal profession remains to be seen, it is clear that AI has the potential to significantly change how legal services are provided, how legal tasks are performed, and what the public will need and expect from legal professionals. Integration of AI into the legal profession already has begun with electronic filing, electronic legal writers, and other AI-based platforms. While this integration is essential for the legal profession to move into the future, the profession must be cognizant of professional responsibility requirements and its obligation to protect the public.

This extraordinary shift in the legal profession will bring with it both the possibilities and challenges. The State Bar of Michigan Board of Commissioners AI Workgroup has endeavored to look forward in order to identify ways in which AI may benefit the legal profession and the public as well as analyze potential risks that need to be addressed. It should be noted that AI is an evolving tool and that this analysis is limited to current developments. Undoubtedly, this project will be ongoing as technology advances and as lawyers incorporate these technologies into their professional lives. It is our hope that this report is a first step forward into better understanding of AI for the State Bar of Michigan, its members, and our future colleagues.

EXECUTIVE SUMMARY

Artificial Intelligence is growing at a rapid pace within the legal field and lawyers must embrace change despite their history of resistance to change the traditional ways when practicing law. AI tools are assisting lawyers in automating manual processes they never thought were possible, allowing lawyers to become more efficient and productive. Prior to analyzing how AI is changing the legal landscape, it first begs the question what is AI? There have been various definitions given to the term AI, but all definitions surround a common theme on the fact that AI uses technology to automate specific types of tasks that involve intelligence when performed by a human. For example, historically, humans may play chess, author novels, create art, or speak other languages, which requires use of higher cognitive capabilities such as reasoning, decision-making, imagination, processing, meaning, and context.[1] As AI evolves, so must legal professionals.

Lawyers must understand how to balance the risks and benefits of AI in law and in their legal practice. Lawyers may use AI in a variety of ways, including improving their practice, completing their administrative and operational responsibilities, and providing better service to their clients. AI has already begun to transform the legal landscape including within the areas of document review and analysis, legal research, predictive analytics, contract management, and more. Manual processes are being replaced with technology, making lawyers more efficient and productive.

KEY AREAS

IN PRACTICE MANAGEMENT

- Document Review & eDiscovery
- Legal Research
- Legal Drafting
- Contract Drafting & Analysis
- Document Storage
- Outcome Prediction

AI offers several benefits, such as the efficiency of electronic storage, the expediency of legal research, and the productivity boost from eDiscovery. Lawyers have already recognized these benefits and will continue to see increased returns as AI tools expand their knowledge based on input data. However, it is crucial to remember that AI tools are not infallible. Lawyers must remain aware and responsible for the tools they use, ensuring the quality of output and accuracy of results.

AI will transform the practice management area of the legal field in a variety of ways. However, artificial intelligence in the legal field further brings forth several complex ethical questions, challenging lawyers to navigate issues such as competence, diligence, confidentiality, fees, and other principles. Various state bars have issued ethics opinions and resources to help legal practitioners address these evolving ethical concerns.

[1] https://scholar.law.colorado.edu/cgi/viewcontent.cgi?article=2340&context=faculty-articles.

Lawyers require skills such as analytical and research abilities, attention to detail, persuasive and written communication, organizational and interpersonal skills, technical knowledge, and financial acumen. AI's goal is to provide some of these required skills through technology. However, lawyers must determine which programs work within the confines of the ethical rules and which additional skills they need to develop to adhere to their ethical requirements.

In Michigan, several Rules of Professional Conduct (MRPC) apply to a lawyer's use and non-use of AI:

- **DUTY OF COMPETENCE**: Lawyers must have the knowledge and skill to competently use AI tools.
- **DUTY OF DILIGENCE**: Lawyers must be diligent in their use of AI, ensuring it enhances rather than diminishes their practice.
- **DUTY OF COMMUNICATION**: Lawyers must communicate clearly with clients about the use of AI and its implications.
- **DUTY OF REASONABLE FEES**: Lawyers must ensure that fees charged are reasonable, even when AI tools are used to increase efficiency.
- **DUTY OF CONFIDENTIALITY**: Lawyers must protect client information and ensure that AI tools do not compromise confidentiality.
- **CANDOR TO THE TRIBUNAL**: Lawyers must be honest and transparent about AI's role in their legal arguments and submissions.
- **DUTY OF SUPERVISION**: Lawyers must supervise the use of AI tools within their practice to ensure compliance with ethical standards.

The integration of AI in the legal field requires a careful balance of embracing technological advancements while maintaining adherence to ethical standards. Lawyers must stay informed about the evolving ethical landscape to provide the best possible service to their clients.

While the use of AI brings forth many advantages, lawyers and the public must also consider its use and whether the use of AI impacts the question of unauthorized practice of law. The paramount theory behind prohibiting nonlawyers from practicing law centers on protecting the public. Michigan's UPL statute's[2] purpose is to protect the public from untrained legal counsel and incorrect legal advice. For an individual to commit UPL in Michigan, it must be found that they counseled or assisted in matters requiring legal discretion and profound legal knowledge. However, the availability of AI services providing legal information is already raising novel questions about the line between providing legal information and engaging in the unauthorized practice of law (UPL). This has made it clear that UPL enforcement will need to be flexible, potentially shifting focus from strict enforcement to public education about the risks of relying on AI for legal advice and the benefits of consulting trained lawyers.

The use of AI may also begin to open access to the justice system in ways it has not seen before. Access to justice is a fundamental principle of the rule of law. Without it, individuals are unable to have their voices heard, exercise their rights, challenge discrimination, or hold decision-makers accountable. Despite its importance, a 2022 report

[2] See MCL 600.916.

by the Legal Services Corporation revealed that low-income individuals did not receive enough legal help for 92% of their legal issues. These civil legal needs often include essential matters such as housing, education, health care, income, and safety. While debates continue about the role of AI in the legal world, AI-based programs have already been developed and implemented, particularly in the access to justice arena. These programs may serve as a testing ground for addressing unmet legal needs in areas where traditional legal resources are limited.
The potential for AI to bridge the access to justice gap continues to be explored. Valid arguments support the use of AI-based programs to increase access to justice, but there are also legitimate concerns. These concerns must be carefully considered to ensure that AI tools are used effectively and ethically to serve the public.

With the daily changes of AI, it can be difficult to see beyond the horizon particularly when a lawyer is simply attempting to keep up with the changes. However, the rapid evolution of AI-based programs has outpaced efforts to regulate their development and use. As of now, Michigan has only enacted two statutes concerning AI, both related to the use of AI-generated content in election materials. However, additional regulations will undoubtedly be required. Several states have already begun exploring amendments to court rules and rules of professional conduct. These efforts aim to provide guidance and regulation on how AI should be used by lawyers.

The SBM should remain involved in monitoring AI-related issues in the legal profession, including regulations and legal developments. By doing so, SBM can help its members uphold the law and meet their professional and ethical obligations while being updated on legislative activity that may impact the use of AI tools in legal practice.

To ensure that members of the Bar remain current on the evolving world of AI and its impact on the legal field, the AI Workgroup offers the following recommendations:

- SBM should provide relevant, up-to-date information for attorneys on AI using a variety of means, including demonstrations, webinars, publications, and other communications tools. As technology changes, SBM should work to make sure that the information available to members remains relevant.
- SBM staff in ethics, UPL, practice management, justice initiatives, lawyer services, and public policy should stay abreast of legal developments of AI so that they can be a resource to attorneys and the public on issues involving AI and the practice of law.
- SBM should explore collaborations with other relevant entities as appropriate, such as law schools, ICLE, preferred partner programs, or local bar associations, to provide up-to-date information to members and prospective members to help ensure practice readiness.
- SBM should assess avenues to provide reliable information to the public on the risks or benefits of the use of AI in place of legal representation.
- Current SBM committees, including but not limited to, ethics committees, UPL committee, justice initiatives committee, should remain aware of AI development and provide recommendations to the Board of Commissioners as appropriate.

As AI continues to integrate into everyday actions, lawyers must remember that AI is meant to create a response; not speak the truth. Therefore, lawyers must understand not only the benefits of the use of AI but also the risks. SBM plays a vital role in ensuring that legal professionals are informed and prepared to navigate this evolving landscape responsibly.

LOOKING BACK BEFORE MOVING FORWARD
A HISTORY OF ARTIFICIAL INTELLIGENCE

AI-based technology is continuing to learn at an alarming rate with no intention of slowing down. Before looking at AI's history, one must ask, what is AI? There have been various definitions given to the term AI, but all definitions surround a common theme that AI uses technology to automate specific types of tasks that involve intelligence when performed by a human. For example, humans may play chess, author novels, create art, or speak other languages—which require use of higher cognitive capabilities such as reasoning, decision-making, imagination, processing, meaning, and context.

It may seem that AI is a recent development, especially when looking at how far it has come from just a year ago. However, AI dates to ancient Greece with the term "automaton," which essentially means mechanical items that are self-operating once they have been set in motion. Historical examples include a wooden pigeon revolving by means of a jet stream or compressed air and other devices set in motion by water, falling weights, and steam. Other examples of automatons include a mechanical orchestra created for the emperor of China in the 3rd century BCE,[3] and Leonardo da Vinci's mechanical creations ranging from a hydraulic water clock to a robotic lion, and his plan for an artificial man in the form of an armored Germanic knight.[4]

While the idea of the machine being able to function on its own goes back to ancient times, when focusing on the 20th and 21st centuries, technology has made greater strides than ever before and has progressed beyond machines merely moving on their own to include machines thinking on their own using artificial intelligence. The groundwork for AI includes Japanese professor Makoto Nishimura's first Japanese robot named Gakutensoku[5] in 1929, computer scientist Edmund Callis Berkeley's *Giant Brains; Or, Machines That Think*[6] in 1949 (which compared the new models of computers to human brains), and computer scientist Arthur Samuel's 1952 program that could to play checkers.[7], In 1956, mathematics professor John McCarthy hosted a workshop at Dartmouth and coined the phrase "artificial intelligence"[8] and became a pioneer in the field as a computer scientist at Stanford University.[9]

Throughout the 1950s and 1960s, programming languages continued to evolve while books and film explored the idea of robots. The 1970s showed similar, but slower, growth with the first anthropomorphic robot built in Japan and the first autonomous vehicle built by an engineering grad student. The 1980s became known as the AI

[3] https://www.britannica.com/technology/automaton
[4] https://www.history.com/news/7-early-robots-and-automatons
[5] https://spectrum.ieee.org/the-short-strange-life-of-the-first-friendly-robot#toggle-gdpr
[6] https://monoskop.org/images/b/bc/Berkeley_Edmund_Callis_Giant_Brains_or_Machines_That_Think.pdf
[7] https://history.computer.org/pioneers/samuel.html
[8] http://jmc.stanford.edu/
[9] https://sitn.hms.harvard.edu/flash/2017/history-artificial-intelligence/

boom[10] with breakthroughs in research and additional government funding. Computers began to learn from their mistakes and made independent decisions through deep learning techniques and expert systems. This continued into the 1990s and early 2000s with the introduction of the first AI system called Deep Blue (which famously beat the reigning world champion chess player, Garry Kasparov[11]) and speech-recognition software by Windows.[12] Further advancements included the first Roomba Vacuum, NASA's two Mars rovers that navigated the planet without human intervention, use of AI to target advertising and user experiences on social media and streaming services, Microsoft's Xbox 360 Kinect (the first gaming hardware designed to track body movement), and the first virtual assistant thanks to Apple's Siri.

In the present day, advancements continue with the introduction of advanced virtual assistants and search engines popularizing Deep Learning and Big Data. Hanson Robotics also has created a robot named Sophia[13]: Known as the first robot citizen, Sophia is a humanoid with the ability to see, communicate, and replicate emotions. Additional advancements include Alibaba's language-processing AI beating human intellect on a Stanford reading and comprehension test. OpenAI[14] has even begun beta testing GPT-3, a model using Deep Learning to create code, poetry, and other language and writing tasks, and OpenAI is also developing DALL-E, which can process and understand images enough to produce accurate captions. Every advancement has shown that AI is moving one step closer every day to understanding the visual world.[15]

While the legal system is not particularly well known for embracing change, it has adapted to the needs of the public and continued to evolve along with technology over the last few decades. The 1970s provided lawyers with the use of electric typewriters to draft legal documents and pleadings. The introduction of electronic document storage, while costly for use, greatly accelerated legal research and contract drafting processes. During the 1980s, lawyers sent faxes, shared spreadsheets, and discovered floppy disks. The 1990s brought personal computers into the mainstream and made data storage cheaper for entering legal offices. Since 2000, the rise of electronic document management, practice management software, e-signatures, cloud computing, electronic filing, and secure delivery models have revolutionized the practice of law.[16]

Since the COVID-19 pandemic, the use of technology within the legal sphere has greatly increased, and AI has become a central topic among law students, attorneys, and judges. The legal field must incorporate natural language processing software, blockchains, and machine learning to be relevant in this new age. Moreover, the legal profession must be open to additional change as technology continues to improve. Increased advancements in AI will be geared toward performing tasks faster and more efficiently—requiring those in the legal field to change antiquated procedures and adapt to the evolution of legal tech.

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[10] https://www.holloway.com/g/making-things-think/sections/the-ai-boom-19801987
[11] https://www.history.com/this-day-in-history/deep-blue-defeats-garry-kasparov-in-chess-match
[12] https://alltechmagazine.com/the-evolution-of-ai/
[13] https://www.linkedin.com/pulse/sophia-robot-glimpse-threshold-neo-future-hemant-nav-kumar-ncr1c
[14] https://builtin.com/artificial-intelligence/artificial-intelligence-future
[15] https://library.icc.edu/c.php?g=1372140&p=10141462
[16] https://blog.lexcheck.com/the-past-present-and-future-of-ai-in-legal-tech-lc

However, with these inevitable changes come concerns that are unique to the legal profession. Attorneys and judges already have been faced with inaccurate or fictitious content such as fake case citations,[17] the difficulty in identifying artificially created videos and photos,[18] and the public release of false information about legal issues.[19] While the ultimate impact of AI on the legal profession is unknown, it is essential that legal professionals be aware of developments, have knowledge about how to use these new tools, and be vigilant about ensuring that their clients and the public have access to accurate and trustworthy legal information and services.

[17] *Artificial Intelligence – Guidance for Use of AI and Generative AI in Courts*, National Center for State Courts (August 7, 2024).
[18] Hon. Dixon, Herbert B. Jr., *The "Deepfake Defense": An Evidentiary Conundrum*, The Judge's Journal, Technology Part 2 (June 11, 2024).
[19] Magesh, Varun, Faiz Surani, Matthew Dahl, Mirac Suzgun, Christopher D. Manning, and Daniel E. Ho, *AI on Trial: Legal Models Hallucinate in 1 out of 6 (or More) Benchmarking Queries*, Stanford University Human-Centered Artificial Intelligence-Law, Regulation, and Policy (May 23, 2024).

PRACTICE MANAGEMENT: PRACTICING LAW IN THE AI AGE

Artificial Intelligence (AI) is changing the legal field at a rapid and unprecedented pace. The World Economic Forum has coined this era as the Fourth Industrial Revolution due to the convergence of "emerging technology domains, including nanotechnology, biotechnology, new materials and advanced digital production (ADP) technologies. The latter includes 3D printing, human-machine interfaces (HMIs) and artificial intelligence, and is already transforming the global industrial landscape."[20] AI tools are assisting lawyers in automating manual processes they never thought were possible, thus allowing lawyers to become more efficient and productive. As AI evolves, so must legal professionals. Lawyers must understand how to balance the risks and benefits of AI in law and in their legal practice.

Lawyers can use AI in a variety of ways including improving "operations and [to] provide better legal services to their clients. AI is already being used in various legal fields, including document review and analysis, legal research, predictive analytics, contract management, and more."[21]

As lawyers are currently using or are in the process of implementing a variety of AI tools throughout their daily practice, the following areas will be briefly discussed:[22]

KEY AREAS
IN PRACTICE MANAGEMENT

- Document Review & eDiscovery
- Legal Research
- Legal Drafting
- Contract Drafting & Analysis
- Document Storage
- Outcome Prediction

The field of artificial intelligence has many branches within the legal field, and lawyers already have recognized the benefits of many of them including the efficiency of electronic storage, the expediency of legal research, and the productivity that comes with eDiscovery. As these AI tools continue to expand their knowledge, lawyers will continue to see an increased amount of yield within their legal practices. The branches of artificial intelligence within the legal field as of 2016 are seen below, but these branches will continue to expand as artificial intelligence grows further within the legal field.[23]

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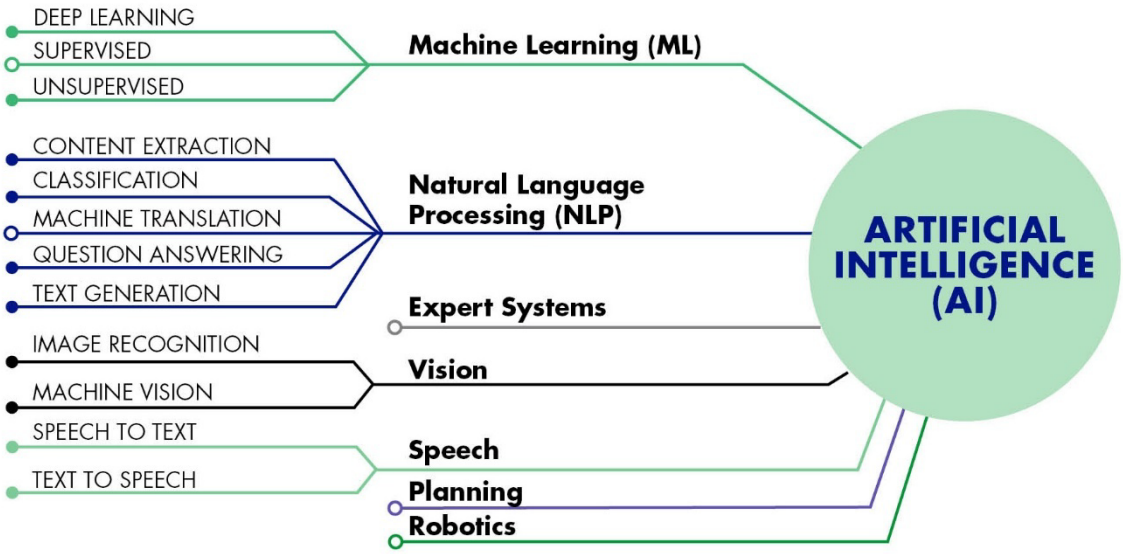
[20] Lavopa, Alejandro and Delera, Michele, *What is the Fourth Industrial Revolution?*, Industrial Analytics Platform (January 2021).
[21] Berson, Sasha, *AI for Lawyers Guide: Is AI the Future of Legal Industry?*, Grow Law Firm (March 27, 2024).
[22] One other consideration includes intellectual property and who holds the intellectual property rights to content created by AI. This is a continuing debate with no resolution at the time of this publication and therefore will not be discussed within this report.
[23] Mills, Michael, *Artificial Intelligence in Law: The State of Play 2016*, Thomson Reuters, 2016.



Prior to delving into each of these types of AI technologies, it is imperative to remember that lawyers should remember that AI tools are fallible. Lawyers must be cognizant of, and are ultimately responsible for, the tools they are using, the quality of the output that is produced, and the accuracy of results.

DOCUMENT REVIEW & E-DISCOVERY

Document review was one of the first widespread applications of AI applied to a task traditionally performed by lawyers manually. Prior to AI, lawyers would be required to review every document, line by line, which was taxing on the lawyer and allowed for human error. The use of AI for document review has been used to efficiently automate the e-discovery process. During the e-discovery process, electronically stored information (ESI) is identified, organized, and reviewed to determine what documents may be helpful as evidence in legal proceedings. Not only does the ESI review documents, but the review may also include emails, databases, audio and video files, websites, etc.[24] By automating this process, lawyers can save time and money while still ensuring they have access to all relevant information they need. The AI program works at a swifter pace than a human can and quickly identifies key points (or potential issues) within documents.

Using technology-assisted review (TAR) technology when completing a document review has become an acceptable practice within the courts. In *Da Silva Moore v Publicis Groupe*, 868 F Supp 2d 137 (S.D.N.Y. 2012), the court found "[p]redictive coding (or computer assisted review) is a rapidly evolving technology that provides parties in litigation with an alternative to the time and cost associated with the traditional, manual review of large volumes of documents." Further, in *Rio Tinto PLC v Vale, S.A.*, 2015 WL 872294 (S.D.N.Y. Mar. 2, 2015), the court stated "[i]n the three years since *Da Silva Moore*, the case law has developed to the point that it is now black letter law that where the producing party wants to utilize TAR for document review, courts will permit it."

As the use of document review and e-discovery continues, technology-assisted review in e-discovery will also continue to grow. TAR allows lawyers to process enormous amounts of data in an efficient amount of time, cuts the costs for clients and lawyers, and provides greater accuracy than the average human reviewer. As TAR is one of

[24] *Artificial Intelligence in Law and Legal Practice*, Bloomberg Law.

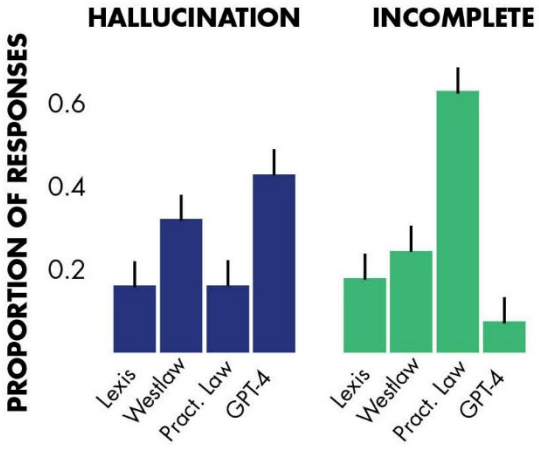
the most established technological tools, lawyers may have more reliance on these applications but need to continue to be vigilant to ensure the program they use is well-established with valid outputs, provides data protection, adheres to software licensing laws, and ensures client confidentiality.[25]

LEGAL RESEARCH

Another widely used technological legal tool, along with document review, is legal research. Before the advent of automated research platforms, lawyers had to scour the numerous books in the law library reviewing case law and shepardizing what was found. This required time-consuming manual searching and cross-referencing and the lawyer was limited to the availability of books in the law library. When this process was automated, legal research became more streamlined. Initially, these automated platforms required specific legal information to receive reliable outputs, but with the evolution of technology, lawyers may now use natural language searches when conducting their legal research to gather data and help them understand precedents.

Legal research harnesses Large Language Models (LLMs) and integrates them with a unique knowledge base. LLMs are being used in legal research for tasks such as legal judgment prediction, legal document analysis, and legal document writing.[26] With the benefits of legal research, there are also risks that come with it, such as hallucinations which may result from a poorly developed model. For example, a firm filed a brief that cited nonexistent case law. After the opposing lawyer discovered the fake citations, the judge dismissed the matter and imposed a penalty against the firm. During the sanction hearing, the attorney appearing on behalf of the firm stated that the responsible attorney did not check the "online research" and that there was no "excuse for it."[27] As lawyers adopt AI-powered research tools at an increasingly exponential rate, there may be concerns that errors or misinterpretations may arise within the legal analyses.[28] An example is an AI platform generating a case citation to a non-existent case or misinterpreting a holding, leading a lawyer to base their arguments on faulty premises. A comparison of hallucinated and incomplete answers across generative legal research tools was completed in early 2024[23]. See chart at right.

"Hallucinated responses are those that include false statements or falsely asserts source supports a statement. Incomplete responses are those that fail to either address the user's query or provide proper citations for factual claims."[23]



To determine if a response is hallucinated, the outputs themselves must be analyzed. There is a difference between correct and incorrect response outputs. When an output is correct, it is factual and relevant to the query. However, an incorrect response or output contains information that is factually incorrect. While correctness is important,

[25] See the Ethics Section of this Report for ethical considerations.
[26] Harrington, Sean, *The Case for Large Language Model Optimism in Legal Research from a Law and Technology Librarian*, University of Oklahoma College of Law, (June 26, 2023).
[27] Wagner, David, *This Prolific LA Eviction Law Firm Was Caught Faking Cases in Court. Did they Misuse AI?*, LAist (October 12, 2023).
[28] Magesh, Varun, Faiz Surani, Matthew Dahl, Mirac Suzgun, Christopher Manning, and Daniel Ho, *Hallucination-Free? Assessing the Reliability of Leading AI Legal Research Tools*, Stanford University (May 30, 2024).

so is groundedness. A responsive output is grounded if the correct response is provided with a valid reference to relevant legal holdings. A response is ungrounded if the output is not cited. A response is misgrounded if the factual output is correct, but the referenced source of the fact is not relevant. Therefore, a response is considered hallucinated if it is incorrect or misgrounded. Below is an example of coding criteria for correctness and groundedness. The categories that would qualify as a hallucination are highlighted in red[23:28]

CORRECTNESS	**DESCRIPTION**	**EXAMPLE**
CORRECT	Response is factually correct and relevant	The right to same sex marriage is protected under the U.S. Constitution. *Obergefell v. Hodges*, 576 U.S. 644 (2015).
INCORRECT	Response contains factually inaccurate information	There is no right to same sex marriage in the United States.
REFUSAL	Model refuses to provide an answer or provides an irrelevant answer	I'm sorry, but I cannot answer that question. Please try different query.
GROUNDEDNESS	**DESCRIPTION**	**EXAMPLE**
GROUNDED	Key factual propositions make valid references to relevant legal documents	The right to same sex marriage is protected under the U.S. Constitution. *Obergefell v. Hodges*, 576 U.S. 644 (2015).
MISGROUNDED	Key factual propositions are cited but the source does not support the claim	The right to same sex marriage is protected un- der the U.S. Constitution. *Miranda v. Arizona*, 384 U.S. 436 (1996)
UNGROUNDED	Key factual propositions are not cited	The right to same sex marriage is protected under the U.S. Constitution.

Therefore, while automated legal research has become a hugely productive and efficient way for lawyers to conduct the necessary legal research, it continues to be essential for lawyers to confirm citations and holdings returned by the legal research outputs.

LEGAL DRAFTING

Drafting legal documents is a large part of a lawyer's responsibilities. Today, lawyers sit in front of a computer screen with a blank white document, attempting to figure out how they want to begin. Writer's block can be a huge barrier to legal drafting. In the last few years, AI has begun to completely transform this area. AI has not only automated routine tasks such as drafting notice of hearings and emails to clients, but it has also evolved to creating first drafts of a brief, a contract based on a set of inputted facts, or a court pleading such as a motion or a response. This has allowed lawyers to analyze the results, develop their strategic thinking, and take additional time to meet with and advise their clients.[29]

AI has also brought forward different opportunities for various sized firms from solo practice to large firms. Law firms are now able to cut time from their administrative work, reduce costs by automating routine tasks, and explore additional practice areas. AI has evolved to analyze and generate realistic human language.[30] The use of AI allows lawyers to quickly generate legal documents, contracts, and briefs based on templates and prior cases, which increases a lawyer's efficiency and speed. However, lawyers must review the output as it is unknown what templates and prior cases the tool is pulling from.

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[29] *AI and the Practice of Law: Major Impacts to be Aware of in 2024*, Thomson Reuters (July 1, 2024).
[30] Hassonjee, Taher, *AI for Drafting Legal Documents: Ethical Considerations*, DocDraft (October 10, 2024).

As discussed previously, document review, analysis, and legal research are other ways AI has transformed legal drafting. AI is able to analyze large volumes of legal documents to identify relevant clauses, potential risks, and compliance issues and assists lawyers in conducting legal research by quickly finding relevant case law and statutes.[31] AI drafting may also provide lawyers with consistency in language and formatting across legal documents, which may assist with the quality of the work provided to clients and courts. Overall, AI is streamlining the legal drafting process, allowing lawyers to focus more on strategic analysis and client interactions rather than on repetitive tasks. However, with the benefits that come with document drafting, there are also risks that must be considered:[32]

RISKS & CONSIDERATIONS	EXPLANATIONS
ACCURACY & QUALITY CONCERNS	Generative AI models may not always produce accurate or high-quality text, especially in complex legal contexts. AI has a history of generating erroneous statements of law. It has also misinterpreted precedents, which could undermine the credibility of legal arguments. In some cases, AI has actually fabricated authority to support an argument (this tendency of AI is sometimes called "hallucination").
ETHICAL CONSIDERATIONS	Using AI in legal drafting raises ethical concerns regarding transparency and accountability. While the rules and standards vary among jurisdictions, we believe that attorneys should always inform their clients about the use of AI tools in their representation and the limitations of AI-generated content, particularly in terms of legal accuracy and liability.[33]
CONFIDENTIALITY AND DATA SECURITY	Generative AI systems typically require access to vast amounts of data to train and operate effectively. Attorneys must consider the potential risks to client confidentiality and data security when using AI tools hosted on external platforms or cloud services, especially if they will deal with sensitive client information in connection with the subject matter.
LACK OF LEGAL EXPERTISE	While AI can assist in drafting text based on existing legal templates and patterns, it currently lacks the nuanced understanding of legal principles and strategies possessed by experienced attorneys. Relying solely on AI-generated content without human review may result in overlooking critical legal issues or failing to tailor arguments to specific case circumstances. That said, the landscape continues to change as a recent iteration of ChatGPT actually passed a bar examination without attending a single day of law school.
REGULATORY COMPLIANCE	Attorneys using generative AI in legal drafting must comply with professional conduct rules, including those related to competence, diligence, and client communication. Compliance requirements vary from jurisdiction to jurisdiction, and many jurisdictions have not yet responded to the use of AI. Attorneys must familiarize themselves with the requirements imposed by the jurisdiction in which they practice respecting the use of AI. Failure to exercise proper oversight and judgment in utilizing AI tools and/or failing to comply with applicable regulations could lead to disciplinary action against the attorney and/or legal malpractice claims against the attorney and the law firm.

These risks have been illustrated in recent cases. For example, a Colorado Springs attorney relied heavily on ChatGPT, which hallucinated imaginary cases. Although he discovered the fabricated information prior to the hearing, he failed to make the disclosure to the court and failed to withdraw the motion. The attorney blamed a

[31] Please see the Document Review section and the Legal Research of this Report.

[32] Allen, Jeffrey, Ashley Hallene, *TAPAs: Using Generative AI to Draft a Brief or Memorandum*, ABA GP Solo eReport (April 29, 2024).

[33] See Ethics section of this Report.

legal intern when questioned by the judge. The matter was referred to the Colorado Office of Attorney Regulation, who suspended the attorney for a period of one year and one day.[34] Another example is a Massachusetts lawyer who was sanctioned $2,000 for submitting pleadings with fictitious cases generated by AI. When apologizing to the court, the attorney admitted that he had reviewed the documents for "style, accuracy, and flow," but not for the accuracy of the case citations.[35] These cases, along with the ethical responsibilities of a lawyer illustrate that it is essential to review automated legal drafting for accuracy in all areas and to double-check its work.

CONTRACT DRAFTING AND ANALYSIS

AI is a tool that has begun to assist lawyers in drafting and reviewing contracts. There are AI tools that are programmed to analyze documents and produce insights to assist lawyers in contract negotiation and analysis. Contract analysis AI tools can isolate and summarize the most important details of legal contracts, such as compensation comparisons, non-compete clauses, etc. that compare the stated terms against industry standards or outliers, enabling more effective decision-making. In addition to issue spotting, AI contract tools aim to reduce human error, extract text easily, provide legal precedents, track terms and contractual obligations, provide smart search capabilities, and deliver user-intuitive dashboards. [36] These tools can also identify termination dates, important provisions, and legal precedents.

While AI tools can greatly assist in contract drafting and analysis, using AI to draft and review contracts comes with risks as well. To ensure contract management, lawyers must ensure they comply with their ethical duty of due diligence[33] and review the output of the AI tool. "Initial drafts of contracts […] produced by AI platforms may result in time efficiencies but will still require attorney review and validation."[37]

DOCUMENT STORAGE

Document storage is another tool that has been used frequently among lawyers, especially with the rising cost and the lack of expedient access to the physical storage space. This is where electronic spaces have become a great tool for lawyers to clear out the clutter and bring efficiency when trying to locate old or closed files. It is easy to think that there is nothing more a lawyer needs to consider with electronic document storage as it has been used for quite some time and security measures have been maintained to ensure confidentiality and preservation of files. In reality, data preservation through electronic document storage continues to evolve and there is only so much space that can be provided before files must be deleted. When contracting for electronic document storage, it is imperative for lawyers to review these terms and determine the length of time for file preservation, the process of deletion of files, and the security of maintaining and deleting the files. These terms should be reviewed periodically as terms and conditions may be revised at a moment's notice. Further, lawyers must be aware that some AI tools only provide temporary storage such as discovery tools or litigation tools and the lawyer must consider how to transfer the data from the temporary space to a longer storage space in compliance with the law and with the applicable record retention schedule and plan.[38]

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[34] *People v Zachariah C. Crabill*, 23PDJ067, Colorado Supreme Court, November 22, 2023.
[35] *Smith v Farwell*, No. 2282CB01197, Commonwealth of Massachusetts Superior Court, February 12, 2024.
[36] Sangha, Gary, *What are the Benefits of AI Contract Analysis?*, LexCheck (August, 2024).
[37] Hon. Xavier Rodriguez, *Artificial Intelligence (AI) and the Practice of Law*, 24 Sedona Conf. J. 783 (forthcoming 2023).
[38] Please refer to the Record Retention Kit for questions on how to draft a record retention plan and schedule.

OUTCOME PREDICTION

Case prediction conducted by AI tools is a system that is still relatively new. For example, during the *voir dire* phase of a trial, jury analysis and selection is complex and time-consuming and predicting judicial rulings is questionable. For jury selection, "[a]s a lawyer learns more about a person by questioning them they can add in and/or reject certain conclusions made by the AI system, which are then automatically taken into account and update the profile accordingly."[39] However, this may not assist the lawyer in real time and lawyers must continue to rely on their experience and knowledge when moving through the *voir dire* phase of a trial. For example, an AI tool cannot assess a person's demeanor or body language when questioning during the *voir dire* phase or even when a witness is on the stand, but a human can. This is where the lawyer's experience and knowledge continue to be needed: assessing, analyzing, and deciding the proper further course of action based on the basic human interaction.

Courts have been using predictive factors for years, especially when determining sentencings. However, this practice has been questioned due to human error and implicit biases by the individual completing the sentencing recommendation and by the judge issuing a sentence. Many of these AI tools are programmed to predict the behavior of courts, judges, lawyers, and parties, and predictions may be based on publicly available court records. However, these models have limitations because the data that has informed the tool is premised on what has already happened, which may include implicit biases as the proper course and is based on narrow data sets as it only reviews publicly available court records.[40]

Outcome prediction of a matter is still in its infancy and must be used cautiously. While AI models may provide some insight into outcome prediction, it cannot overcome human behavior itself. Our justice system requires that each person is treated not as a statistical data point but instead based on the circumstances that brought that individual to this point. This is essential to ensuring a fair and equitable justice system.

CYBERSECURITY

When lawyers think of cybersecurity and how it interacts with AI, they may automatically think about how a lawyer should ensure that the information they place within an AI program is secure as to not violate their professional and ethical[33] obligations. While this is true, lawyers must also consider how the AI tool itself relies on cybersecurity. With cyberattacks on the rise, lawyers must gain insight into the program they use and how it integrates with cybersecurity. This will help lawyers understand if the information they input into AI programs is secure.

> **"AI in cybersecurity integrates artificial intelligence technologies, such as machine learning and neural networks, into security frameworks. These technologies enable cybersecurity systems to analyze vast amounts of data, recognize patterns, and adapt to new and evolving threats with minimal human intervention."[41]**

As a lawyer's use of AI increases, the requirement to enhance security processes come into focus. In addition to knowing the security that is in place with the AI tool the lawyer is considering using, lawyers need to draft and implement the use of AI policies, security processes, and periodic audits of their technology systems. Drafting and implementing technology policies and procedures proactively instead of reactively will ensure that the lawyer

[39] *Voltaire Uses AI and Big Data to Help Pick Your Jury*, Artificial Lawyer (April 26, 2017).
[40] Hamblin, Kate, *AI in Focus: Using AI to Predict Case Outcomes*, Taylor Wessing (August 9, 2024).
[41] Balbix. *AI in Cybersecurity: Transforming Threat Detection and Prevention*, October 21, 2024.

continues to meet their professional and ethical obligations to the business and their clients. Further, there should be routine review of these policies and procedures as technologies change.

Understanding how the AI tool uses cybersecurity assists the lawyer in knowing what they need to be aware of. For example, as an insurer notified its carriers, "if there is a cyber intrusion …, not only will that data potentially be lost to threat actors, but they could conceivably also obtain the firm's searches … [gaining] access in the mind of a lawyer and the arguments they might be raising."[42] Cybersecurity is at the forefront of the AI discussion, so much so that the White House issued an Executive Order regarding AI on October 30, 2023 addressing standards for AI safety and security.[43]

There are several areas that lawyers should be aware of when incorporating AI tools into their daily activities and questions to ask when thinking about cybersecurity protocols[44]:

- **Model Type and Architecture**
  - What type of model is the vendor using? Law firms need to know which model (ex. GPT-4o, Claude Sonnet 3.5, Anthropic) and, perhaps more importantly, the information architecture around it. Each provider structures the underlying information architecture differently, introducing distinct complexities and security protocols, especially with integrations.
  - Where is the model hosted? It's essential to determine where the AI model is being hosted to assess the level of security and data privacy in that jurisdiction. This information helps law firms understand potential risks related to cross-border data transfers.
  - Can you identify the models being used if open-source or proprietary systems are involved? Transparency about the models and their creation is key. Law firms must understand how the AI model was developed and whether it adheres to security best practices.
- **Data Usage and Training**
  - Will you train your offering [program] on our data? Law firms should be cautious about allowing AI vendors to use their data for training purposes. If data used to train models is not properly anonymized, it could lead to unintended breaches of confidentiality.
  - How will our data be used during training? If the AI vendor will train models using the firm's data, it is critical to understand how the data will be used and whether it could potentially be accessible to third parties.
  - Do the underlying models use our prompts or information for training or customization? This question addresses whether the AI model is constantly evolving and learning from inputs. If so, law firms must know whether their confidential data will be used in training and how to control or limit that process.
  - If using retrieval-augmented generation (RAG), how do you prevent prompt injection or unauthorized access to the dataset? Law firms should inquire about safeguards against prompt injection attacks, which could expose sensitive data by manipulating AI prompts.
- **Data Retention, Privacy, and Security**
  - How do you protect our data? Is it encrypted in transit and at rest, and who controls the encryption keys? Data encryption is non-negotiable in legal contexts. Law firms should ask whether their data

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[42] Austin, Doug. *Insurer Sent Law Firms a ChatGPT Warning: Artificial Intelligence Trends*. eDiscoveryToday. April 14, 2023.

[43] See Executive Order on the Safe, Secure, and Trustworthy Development and Use of Artificial Intelligence, Issued October 30, 2023.

[44] Rogozinski, Melissa, *How Secure is the AI System your Law Firm is Using?*, ALM Law.Com, November 19, 2024.

is encrypted both while it's being transferred and when it's stored. They should also understand who holds the encryption keys to prevent unauthorized access.
    - What are your data retention policies? Law firms need clarity on what data is retained, who decides what data is kept, and how long it is stored. This affects the firm's ability to comply with data privacy laws and its own record-keeping policies.
    - Does anyone in your organization view our prompts or submitted data during our use of the product? Some AI providers may require human review of prompts and submitted data, which could be a security risk. Firms must ask whether this occurs and, if so, for what purpose.
- **Agreements and Compliance**
    - Describe the agreement with your provider regarding prompts for training, data retention, and abuse monitoring. Law firms must scrutinize agreements with AI vendors, particularly concerning data usage for training and security monitoring. They should ensure that there are clear boundaries around the use of their data and that the vendor offers adequate protection against data abuse.
    - Do you provide indemnification for copyright violations related to our use of your product? Given the rise of AI-related copyright disputes, law firms should confirm whether the vendor will provide indemnification if the AI system inadvertently causes copyright infringements through its outputs.
- **Use Cases and Other Considerations**
    - Are there restrictions on the types of information we can use with your product (e.g., PII or protected health information)? Firms should confirm whether there are any limitations on using certain types of sensitive data within the AI system, especially concerning personally identifiable information (PII) or protected health information (PHI).
    - How does your product address hallucinations and bias? AI models are not immune to bias, hallucinations and other forms of inaccuracy. Law firms should inquire about how the AI provider mitigates these risks and ensures fairness and transparency in its outputs.

Meeting cybersecurity needs is the first step for lawyers to ensure that there is trust between the lawyer and the client, which enhances the lawyer-client relationship. Focusing on the right questions and areas can help a lawyer meet all of their obligations to their clients, their business, the courts, and the public.

CONFIDENCE IN THE TOOLS USED

Lawyers must know as much as they can about the tools they are considering using in their daily course of practice, whether it is within a law practice, a government position, an in-house counsel for a company, or any other position that involves working within the legal field. There are several attributes that lawyers should consider when deciding which tools to use:[45]

- Products built specifically for use by legal professionals,
- Stringent security controls,
- Long track record of success,
- Used by industry leaders, and
- Customer-first data storage policies.

Choosing a product specifically built for legal professionals is especially important because there is a stronger argument that the system was built to consider the security and privacy which legal professionals require in their practice.

[45] CLIO. *Exploring the Intersection of AI, Cybersecurity, and Privacy*.

USE OF AI IN THE COURTS

Many individual courts have adopted AI guidelines or requirements. Lawyers must be aware of these guidelines or requirements in the courts in which they practice. It is also imperative for courts to stay up to date with emerging practices and tools—not only for the lawyers that come before them, but also in regard to use by pro se litigants[46]. Further information may be found in recommendations provided by the Michigan Judicial Council,[47] educational materials provided by the Michigan Judicial Institute, and ethical opinions and guidance issued by the State Bar of Michigan Standing Committee on Judicial Ethics[48].

SUMMARY

Lawyers know that artificial intelligence is the future of the legal field, and it must be embraced and not kept at arm's length. Lawyers must use AI tools with caution and thoughtful consideration to ensure that the correct tools are used in a positive and effective way. As Chief Justice John Roberts stated in 2024, "[a]ny use of AI requires caution and humility."[49] As AI continues to meld into the practice of law, state bars will need to enhance their practice management resource centers to keep up with the demand of knowledge of how to use the tools appropriately in partnership with maintaining their ethical obligations as well as to review the tools that are available and most reliable to use.

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[46] See *Ex Parte Allen Michael Lee*, No. 10-22-00281-CRE (Tex. App. July 19, 2023).

[47] Please also see the Michigan Judicial Council's Generative AI and the Courts Workgroup Report and Recommendations (October 2024).

[48] Issued ethical guidance may be found here.

[49] Kruzel, John, *US Supreme Court's Roberts urges 'caution' as AI reshapes legal field*, Reuters (January 2, 2024).

ETHICS:
THE BALANCE BETWEEN ETHICS AND AI

The use of artificial intelligence within the legal field brings challenging and complex ethical questions surrounding competence, diligence, confidentiality, fees, and other principles to the forefront. As of the date of this publication, several state bars have issued ethics opinions and various other resources to assist legal practitioners in moving through the ever-evolving and maze-like ethical issues surrounding artificial intelligence.

Before looking into ethical complexities, it is important to define artificial intelligence to understand the type of product that is being used by lawyers. At its core, artificial intelligence has been defined as "the capability of a machine to imitate intelligent human behavior."[50] Other definitions include "cognitive computing" or "machine learning."[51] Artificial intelligence, or AI, encompasses tools that are trained rather than programmed. It involves teaching computers how to perform tasks that typically require human intelligence such as perception, pattern recognition, and decision-making.[52] As lawyers are aware, to be successful, certain skills must be attained such as analytical and research skills, attention to detail, persuasive and written communication skills, organizational, interpersonal, technical, and financial skills. AI attempts to provide some of these skills within a digital world. If AI is successful in accomplishing this, lawyers must determine what additional skills they need to be well-versed in while meeting their ethical requirements in the current ethics framework.

The ways in which artificial intelligence is being used by the legal community varies but the ultimate goal in using such a product is to increase productivity and efficiency while providing the same level or better service to the client. In reviewing the ethical duties a lawyer must meet, we must first review the several Michigan Rules of Professional Conduct (MRPC) that apply to a lawyer's use and non-use of AI. They are as follows:

- Duty of Competence
- Duty of Diligence
- Duty of Communication
- Duty of Reasonable Fees
- Duty of Confidentiality
- Candor to the Tribunal
- Duty of Supervision

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[50] Artificial Intelligence, MERRIAM-WEBSTER (April 6, 2017), available at https://www.merriamwebster.com/dictionary/artificial%20intelligence.

[51] Lisa Morgan, *4 Types of Machine Intelligence You Should Know*, Information Week (Apr. 10, 2018) https://www.informationweek.com/big-data/ai-machine-learning/4-types-of-machine-intelligence-you-shouldknow/a/d-id/1331480.

[52] Sterling Miller, *Artificial Intelligence – What Every Legal Department Really Needs To Know, Ten Things You Need to Know as In-House Counsel* (Aug. 15, 2017), https://hilgersgraben.com/blogs/blogshidden.html/article/2017/08/15/ten-things-artificial-intelligence-what-every-legal-department-really-needs-to-know.

DUTY OF COMPETENCE

MRPC 1.1 provides the following:

A lawyer shall provide competent representation to a client. A lawyer shall not:

(a) handle a legal matter which the lawyer knows or should know that the lawyer is not competent to handle, without associating with a lawyer who is competent to handle it;
(b) handle a legal matter without preparation adequate in the circumstances; or
(c) neglect a legal matter entrusted to the lawyer.

Further, commentary to MRPC 1.1 provides "[t]o maintain the requisite knowledge and skill, a lawyer should engage in continuing study and education, including the knowledge and skills regarding existing and developing **technology** that are reasonably necessary to provide competent representation for the client in a particular matter." (emphasis added.) The duty of competence requires more than detecting falsified AI-generated results. A lawyer's and judge's judgement cannot be delegated to generative AI because it remains the lawyer's or judge's responsibility. Judges and lawyers have a duty to understand technology, which includes competence in artificial intelligence, generative artificial intelligence, and with future technologies of which we are not yet aware.[53]

As the State Bar of Michigan's FAQ on Artificial Intelligence[54] states, in accordance with MRPC 1.1, lawyers have an ethical obligation to understand technology, including artificial intelligence. Some AI, including automatic drafting services, may not check case cites to ensure the case has not been overturned, or worse, may completely fabricate information and make up citations in order to support it. When a legal document is generated for a client, the lawyer must review[55] all information generated to confirm that all information and cites are correct. This is especially important when any document is filed with a court or tribunal to ensure a lawyer does not violate their ethical obligation as an officer of the court under MRPC 3.3.

The duty of competence requires lawyers to be informed—and up to date—on current technology. As one article points out, there does not appear to be any instance "in which AI represents the standard of care in an area of legal practice, such that its use is necessary."[56] Nonetheless, lawyers generally must understand the technology available to improve the legal services they provide to clients. Lawyers have a duty to identify the technology that is needed to effectively represent the client, as well as determine if the use of such technology will improve service to the client.[57]

Competent representation requires competence in the use of technology and remaining knowledgeable regarding changes in any technology utilized. This includes not only artificial intelligence, but also the integration of artificial intelligence into legal tools. Competence in the AI age includes educating oneself, setting expectations with clients, and continuous monitoring.[58]

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[53] See JI-155: Ethical Duty to Maintain Technological Competence Including Artificial Intelligence; See Artificial Intelligence FAQs.
[54] See the State Bar of Michigan's ethics Artificial Intelligence FAQs.
[55] Note MRPC 7.1(a) which provides that "[a] communication shall not (a) contain a material misrepresentation of fact or law, or omit a fact necessary to make a statement considered as a whole not materially misleading."
[56] James Q. Walker, *What's Artificial About Intelligence? The Ethical and Practical Considerations When Lawyers Use AI Technology*, Bloomberg Law (2018).
[57] *Supra*, note 4.
[58] Cole, *From code to conduct: ethical considerations for AI in legal practice*, Reuters (August 13, 2024).

DUTY OF DILIGENCE

MRPC 1.3 provides the following:

A lawyer shall act with reasonable diligence and promptness in representing a client.

As the State Bar of Michigan's Artificial Intelligence FAQ[54] states, a lawyer is "responsible for all legal documentation[59] whether drafted by their own hand or through a technological program similar to all legal documentation drafted by the lawyer's staff.[60]" Ethics opinion RI-349 provides "the Rules of Professional Conduct do not preclude the reliance on nonlawyer assistants as the exclusive communication link in some matters and situations, the risk of the lawyer's failure to meet professional obligations is so increased that the practice should be carefully considered and astutely managed. The same analysis would apply to the use of artificial intelligence. Lawyers certify, in part, through their signatures on court documents that to the best of their knowledge, information and belief formed after reasonable inquiry, the documents are well grounded in fact and are warranted by existing law or a good-faith argument for the extension, modification, or reversal of existing law. See MCR 1.109(E)(5); Fed. R. Civ. P. 11(b)(2). Because AI-generated searches have the capability of creating results that are not grounded in existing law, lawyers submitting documents to courts based on AI-generated searches are at risk of violating their professional responsibilities and exposing themselves and their clients to sanctions. See MCR 2.302(G)(4); Fed. R. Civ. P. 11(c). *See also* Mata v Avianca, Inc., F.Supp. 3d (S.D.N.Y. June 22, 2023) (sanctioning lawyers $5,000 for filing brief that included non-existent judicial opinions with fake quotes and fake citations created by artificial intelligence tool)."[54]

Artificial intelligence not only assists with drafting, compiling information, and analyzing data but also research. However, "lawyers must ensure that the work product they produce when researching or drafting pleadings complies with all court rules and rules of professional conduct. Therefore, it is imperative that lawyers check cites and information for accuracy, including but not limited to citations and source materials."[54]

Artificial intelligence is a continuous learning platform, but it is not perfect. Outputs may include information that may be inaccurate, biased, or false. In addition to lawyers ensuring they are competent in the use of technology; they must be knowledgeable in the benefits and risks of the technology used and utilize diligence and judiciousness regarding the stated facts and cited law. The use of AI does not alleviate a lawyer's duty to remain thorough and diligent.

DUTY OF COMMUNICATION

MRPC 1.4 provides the following:

(a) A lawyer shall keep a client reasonably informed about the status of a matter and comply promptly with reasonable requests for information. A lawyer shall notify the client promptly of all settlement offers, case evaluations, and proposed plea bargains.

(b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

[59] See MRPC 1.1.

[60] See MRPC 5.1 and 5.3.

A lawyer's duty of communication includes discussion with their client regarding their decision to use AI when providing legal services. That discussion should include the benefits and the risks of the AI tool as well as the limitations of the AI tool. The question comes to whether the lawyer should obtain approval and receive informed consent from the client prior to using AI. At this time in Michigan, the answer to this question is not clear. However, a lawyer's decision not to use AI may also need to be communicated if using the service would benefit the client or would lower the client's fees implicating MRPC 1.5.[61]

ABA Ethics Formal Opinion 512 analyzed the duty of communication and found that if the client asks whether the lawyer uses any type of artificial intelligence, the lawyer must disclose the use of AI to their client under the duty of communication (MRPC 1.4). It was then analyzed whether lawyers have a duty to communicate the use of AI if not asked by the client and the ethics opinion found that there are situations that would require lawyers to disclose their use of AI such as "the lawyer proposes to input information relating to the representation into the GAI [Generative Artificial Intelligence] tool" and in circumstances "when the use of a GAI tool is relevant to the basis or reasonableness of a lawyer's fee."[62] It further required disclosure if the "output [of the AI tool] will influence a significant decision in the representation, such as when a lawyer relies on GAI technology to evaluate potential litigation outcomes or jury selection."[63]

Lawyers do not normally inform clients of the use of technology when practicing law, such as using a platform for legal research or for drafting. However, following the guidance of other states along with the ABA ethics opinion, while there may not be a direct requirement for lawyers to disclose the use of artificial intelligence and receiving informed consent from the client, there seem to be requirements based on other ethical duties, such as making informed decisions under MRPC 1.4, charging reasonable fees under MRPC 1.5, and inputting confidential information under MRPC 1.6. Lawyers must balance all their ethical duties when making decisions on whether to disclose and not look at each ethical duty in a vacuum.

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[61] See ABA Resolution 112.

[62] See ABA Ethics Formal Opinion 512.

[63] *Id.* See also guidance found in ethics opinions requiring lawyers to disclose their use of temporary lawyers whose involvement is significant or otherwise material to the representation. *See, e.g.*, Va. State Bar Legal Ethics Op. 1850, 2010 WL 5545407, at *5 (2010) (acknowledging that "[t]here is little purpose to informing a client every time a lawyer outsources legal support services that are truly tangential, clerical, or administrative in nature, or even when basic legal research or writing is outsourced without any client confidences being revealed"); Cal. State Bar, Standing Comm. on Prof'l Resp. & Conduct Op. 2004-165, 2004 WL 3079030, at *2–3 (2004) (opining that a lawyer must disclose the use of a temporary lawyer to a client where the temporary lawyer's use constitutes a "significant development" in the matter and listing relevant considerations); N.Y. State Bar Ass'n, Comm on Prof'l Ethics 715, at 7 (1999) (opining that "whether a law firm needs to disclose to the client and obtain client consent for the participation of a Contract lawyer depends upon whether client confidences will be disclosed to the lawyer, the degree of involvement of the lawyer in the matter, and the significance of the work done by the lawyer"); D.C. Bar Op. 284, at 4 (1988) (recommending client disclosure "whenever the proposed use of a temporary lawyer to perform work on the client's matter appears reasonably likely to be material to the representation or to affect the client's reasonable expectations"); Fla. State Bar Ass'n, Comm. on Prof'l Ethics Op. 88-12, 1988 WL 281590, at *2 (1988) (stating that disclosure of a temporary lawyer depends "on whether the client would likely consider the information material").

DUTY OF REASONABLE FEES

MRPC 1.5 provides the following:

(a) A lawyer shall not enter into an agreement for, charge, or collect an illegal or clearly excessive fee. A fee is clearly excessive when, after a review of the facts, a lawyer of ordinary prudence would be left with a definite and firm conviction that the fee is in excess of a reasonable fee. The factors to be considered in determining the reasonableness of a fee include the following:
  (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
  (2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
  (3) the fee customarily charged in the locality for similar legal services;
  (4) the amount involved and the results obtained;
  (5) the time limitations imposed by the client or by the circumstances;
  (6) the nature and length of the professional relationship with the client;
  (7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and
  (8) whether the fee is fixed or contingent.

(b) When the lawyer has not regularly represented the client, the basis or rate of the fee shall be communicated to the client, preferably in writing, before or within a reasonable time after commencing the representation.

(c) A fee may be contingent on the outcome of the matter for which the service is rendered, except in a matter in which a contingent fee is prohibited by paragraph (d) or by other law. A contingent-fee agreement shall be in writing and shall state the method by which the fee is to be determined. Upon conclusion of a contingent-fee matter, the lawyer shall provide the client with a written statement of the outcome of the matter and, if there is a recovery, show the remittance to the client and the method of its determination. See also MCR 8.121 for additional requirements applicable to some contingent-fee agreements.

(d) A lawyer shall not enter into an arrangement for, charge, or collect:
  (1) any fee in a domestic relations matter, the payment or amount of which is contingent upon the securing of a divorce or upon the amount of alimony or support, or property settlement in lieu thereof, the lawyer's success, results obtained, value added, or any factor to be applied that leaves the client unable to discern the basis or rate of the fee or the method by which the fee is to be determined, or
  (2) a contingent fee for representing a defendant in a criminal case.

(e) A division of a fee between lawyers who are not in the same firm may be made only if:
  (1) the client is advised of and does not object to the participation of all the lawyers involved; and
  (2) the total fee is reasonable.

The criteria that are set forth in MRPC 1.5 apply to setting reasonable fees when providing legal services, including when using artificial intelligence when practicing law. Ethics opinion RI-150 states that "under no circumstances is it appropriate to charge the client for more than the time actually spent on that client's case[.]"

As the State Bar of Michigan's FAQ[54] states, "[a]lthough technological advances in telecommunications and computerized legal research have allowed lawyers to render service more efficiently, the 'actual time expended' principle remains valid. For example, if a lawyer uses ChatGPT to draft a motion and it takes 15 minutes to input data and for the program to draft the motion, the client should only be charged for 15 minutes for drafting the

motion and not the approximately three hours that a lawyer would otherwise expend to draft a similar motion unassisted by artificial intelligence. On the other hand, a lawyer may charge for the actual time to review the motion, validate citations, and otherwise exercise independent professional judgment in finalizing the work product. The factors set forth in MRPC 1.5(a) also apply when evaluating the reasonableness of flat and contingency fees.[64] For example, if using an AI tool enables a lawyer to complete tasks much more quickly than without the tool, it may be unreasonable under Rule 1.5 for the lawyer to charge the same flat fee when using the AI tool as when not using it. 'A fee charged for which little or no work was performed is an unreasonable fee.'[65]"

Failing to use AI technology that materially reduces the cost of providing legal services arguably could result in a lawyer charging an unreasonable fee to a client.[62] Lawyers have an ethical duty to charge a reasonable fee for actual services performed.

DUTY OF CONFIDENTIALITY

MRPC 1.6 provides the following:

(a) "Confidence" refers to information protected by the client-lawyer privilege under applicable law, and "secret" refers to other information gained in the professional relationship that the client has requested be held inviolate or the disclosure of which would be embarrassing or would be likely to be detrimental to the client.

(b) Except when permitted under paragraph (c), a lawyer shall not knowingly:
  (1) reveal a confidence or secret of a client;
  (2) use a confidence or secret of a client to the disadvantage of the client; or
  (3) use a confidence or secret of a client for the advantage of the lawyer or of a third person, unless the client consents after full disclosure.

(c) A lawyer may reveal:
  (1) confidences or secrets with the consent of the client or clients affected, but only after full disclosure to them;
  (2) confidences or secrets when permitted or required by these rules, or when required by law or by court order;
  (3) confidences and secrets to the extent reasonably necessary to rectify the consequences of a client's illegal or fraudulent act in the furtherance of which the lawyer's services have been used;
  (4) the intention of a client to commit a crime and the information necessary to prevent the crime; and
  (5) confidences or secrets necessary to establish or collect a fee, or to defend the lawyer or the lawyer's employees or associates against an accusation of wrongful conduct.

(d) A lawyer shall exercise reasonable care to prevent employees, associates, and others whose services are utilized by the lawyer from disclosing or using confidences or secrets of a client, except that a lawyer may reveal the information allowed by paragraph (c) through an employee.

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[64] *See, e.g., Williams Cos. v. Energy Transfer LP*, 2022 Del. Ch. LEXIS 207, 2022 WL 3650176 (Del. Ch. Aug. 25, 2022) (applying same principles to contingency fee).

[65] *Att'y Grievance Comm'n v. Monfried*, 794 A.2D 92, 103 (Md. 2002) (Lower court's finding was clearly erroneous in failing to find violation of Rule 1.5 where lawyer charged a flat fee of $1,000 and did little or no work to earn); In re Gerard, 132 Ill. 2d 507, 525, 548 N.E.2d 1051 (Il. 1989) (Lawyer must consider the reasonableness of a fee at the time the contract is entered into and at the time the fee is recovered.)

As the State Bar of Michigan's FAQ[54] states, "MRPC 2.1 provides that 'a lawyer shall exercise independent professional judgment and shall render candid advice.' It further states that 'a lawyer may refer not only to the law but to other considerations such as moral, economic, social, and political factors that may be relevant to the client's situation.' When communicating with a client regarding the final product that an AI tool produced, i.e., a brief or conducted research, the lawyer should not rely solely on the AI tool and should ensure that all factors and considerations are communicated to the client as to how the proposed plan of action benefits and hinders the client's case. This may require independent professional judgement irrespective of the AI tool's output."

MRPC 1.6 requires a lawyer to maintain the confidences and secrets of their client and may not reveal that information without informed consent by the client or unless one of the exceptions apply under subsection (c). With the increased use of AI, this becomes an increasing challenge for lawyers to follow. More importantly, it becomes a necessity for lawyers to use extreme caution when using AI that may require the lawyer to research more about the tool being used including, but not limited to, reading the contract terms and the terms of service to determine if any confidential information could be shared or used for training purposes. AI are continuous learning tools as additional data is input into the platform. However, lawyers using AI to increase efficiency in their practice must use caution when inputting data so as not to violate MRPC 1.6. The use of AI tools may require informed consent from the client prior to inputting data into any AI tool if that data is shared with third parties, the AI tool itself, or even the vendor of the AI platform.

In order to ensure the client can provide informed consent, the lawyer should discuss the confidential safeguards that are in place when using the AI tool with the vendor. Lawyers should inquire about a number of topics with a vendor, including but not limited to, what type of information is relayed, the storage of the information, security parameters, and access. This information should then be provided to the client to enable the client to give the lawyer informed consent.[66] "When a lawyer seeks informed consent to use the client's information to develop an AI tool, the lawyer should also disclose if and how that tool may be used in the future for both the current client and other clients. In light of historical breaches of law firm data, communicated risks should include the possibility of a data breach and subsequent responsibilities under applicable rules of professional conduct and state data privacy laws."[67]

It is recommended that lawyers use the initial engagement agreement to review confidentiality when using AI tools and to receive the client's informed consent at the onset of representation.[68]

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[66] *See, e.g.*, Daniel Faggella, *AI in Law and Legal Practice – A Comprehensive View of 35 Current Applications*, EMERJ (Mar. 14, 2020), https://emerj.com/ai-sector-overviews/ai-in-law-legal-practice-current-applications/; *see also* Roy Strom, *Ogletree Deakins Partners With AI Company to Build Better Data*, Law.com (Jan. 9, 2019), https://www.law.com/dailyreportonline/2019/01/09/ogletree-deakins-partners-with-ai-company-to-build-better-data/.

[67] Christine Simmons, Xiumei Dong & Ben Hancock, *More Than 100 Law Firms Have Reported Data Breaches. And the Problem is Getting Worse,* Law.com (Oct. 15, 2019), https://www.law.com/2019/10/15/more-than-100-law-firms-have-reported-data-breaches-and-the-picture-is-getting-worse/; *see also* John G. Loughnane, *2019 Cybersecurity*, A.B.A. (Oct. 16, 2019), https://www.americanbar.org/groups/law_practice/publications/techreport/abatechreport2019/cybersecurity2019/; See also ABA Ethics Formal Opinion 512.

[68] Please see the Practice Management Section of this Report.

CANDOR TOWARD THE TRIBUNAL

MRPC 3.3 provides the following:

(a) A lawyer shall not knowingly:
  (1) make a false statement of material 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;
  (2) fail to disclose to a tribunal controlling legal authority in the jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel; or
  (3) offer evidence that the lawyer knows to be false. If a lawyer has offered material evidence and comes to know of its falsity, the lawyer shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal.

(b) If a lawyer knows that the lawyer's client or other person intends to engage, is engaging, or has engaged in criminal or fraudulent conduct related to an adjudicative proceeding involving the client, the lawyer shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal.

(c) The duties stated in paragraphs (a) and (b) continue to the conclusion of the proceeding, and apply even if compliance requires disclosure of information otherwise protected by Rule 1.6.

(d) In an ex parte proceeding, a lawyer shall inform the tribunal of all material facts that are known to the lawyer and that will enable the tribunal to make an informed decision, whether or not the facts are adverse.

(e) When false evidence is offered, a conflict may arise between the lawyer's duty to keep the client's revelations confidential and the duty of candor to the court. Upon ascertaining that material evidence is false, the lawyer should seek to persuade the client that the evidence should not be offered or, if it has been offered, that its false character should immediately be disclosed. If the persuasion is ineffective, the lawyer must take reasonable remedial measures. The advocate should seek to withdraw if that will remedy the situation. If withdrawal from the representation is not permitted or will not remedy the effect of the false evidence, the lawyer must make such disclosure to the tribunal as is reasonably necessary to remedy the situation, even if doing so requires the lawyer to reveal information that otherwise would be protected by Rule 1.6.

Lawyers have a duty to be honest and truthful not only to clients and third parties under MRPC 4.1, but also to the court under MRPC 3.3 as officers of the court. More specifically, a lawyer's obligation is to ensure that the tribunal is aware of controlling legal authority, evidence the lawyer knows to be false, and material facts that will enable the tribunal to make an informed decision in an ex parte proceeding. Candor toward the tribunal is vital to ensure a fair and just system. However, with AI coming into the forefront of the legal field, overreliance on AI can result in false statements of fact or law if not checked and reviewed prior to submission to the tribunal. Duties include reviewing AI outputs, including the generated analysis and citations to authority, correcting errors, including misstatements of law and fact, correcting any failure to include controlling legal authority, and identifying and revising any misleading arguments. This review further ensures that all claims and contentions have merit as required by MRPC 3.1. If not reviewed and if misstatements are submitted to the tribunal, it may also be a violation of MRPC 8.4.

MRPC 8.4 provides it is professional misconduct for a lawyer to:

(a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;
(b) engage in conduct involving dishonesty, fraud, deceit, misrepresentation, or violation of the criminal law, where such conduct reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer;
(c) engage in conduct that is prejudicial to the administration of justice;
(d) state or imply an ability to influence improperly a government agency or official; or
(e) knowingly assist a judge or judicial officer in conduct that is a violation of the Code of Judicial Conduct or other law.

Lawyers must understand and account for any limitations in the technology they are using. Courts have imposed sanctions on lawyers for violating the candor requirement. For example, a federal judge imposed Rule 11 sanctions against lawyers for submitting a brief citing non-existent judicial opinions with fake quotes and citations created by ChatGPT.[69] A Colorado court issued an order to show why the lawyer should not be sanctioned and reported to the Office of Regulation Counsel because the lawyer used ChatGPT for research but discovered too late that the cited cases were "bogus."[70] Recently, a former Fugees rapper, Pras Michel, convicted in April of foreign lobbying charges, filed a motion for new trial including an allegation that his lawyer used an experimental AI program, EyeLevel.AI, to draft closing arguments. He claimed the AI-generated closing argument missed the "strongest and most obvious" defenses and conflated the issues. This case is still under review.[71]

In addition to the limitations and misrepresentations that may be produced by AI, lawyers must also address potential bias to ensure that the use of AI in legal practice aligns with the profession's ethical standards. State bars should consider issuing guidance on how lawyers can identify and mitigate AI bias, ensuring that their practices do not inadvertently result in discrimination. Without such guidance, the risk remains that AI could undermine the very principles of justice that the legal profession is meant to uphold.[72]

The problem of bias in the development and use of AI potentially implicates professional ethics. In August 2016, the ABA adopted Model Rule 8.4(g), which prohibits harassment and discrimination by lawyers and states that it is professional misconduct for a lawyer to "engage in conduct that the lawyer knows or reasonably should know is harassment or discrimination on the basis of race, sex, religion, national origin, ethnicity, disability, age, sexual orientation, gender identity, marital status or socioeconomic status in conduct related to the practice of law." Michigan has not adopted the revised rule at the time of this publication, but even in jurisdictions that have not adopted some form of Rule 8.4, lawyers must consider how bias in the use of AI could create risks for clients. Bias in AI technology stems from the nature of AI tools, which involve machine training rather than programming. If the data used for training is biased, the AI tool will produce a biased result. For example, in 2016, Microsoft launched an AI tool that could have text-based conversations with individuals. The tool continuously learned how to respond in conversations based on previous conversations. Unfortunately, the tool began to mimic the discriminatory

[69] See *Mata v Avianca, Inc.*, 678 F Supp 3d 443 (S.D.N.Y. June 22, 2023).
[70] See *Gates v. Chavez*, No. 2022CV31345 (El Paso Cnty. Dist. Ct., filed May 11, 2023).
[71] See *USA v. Michel*, No. 19-cr-00148 (D.D.C. Oct. 16, 2023).
[72] Bains, Chiraag, *The Legal Doctrine That Will be Key to Preventing AI Discrimination*, Brookings, September 13, 2024.; See also the Public Policy section of this Report.

viewpoints of the people it previously engaged with in conversation.[73] This type of learning by AI tools would have an extremely detrimental effect on the legal system that is supposed to be fair and just at its core.

The broader implications of AI use extend beyond the courtroom. Lawyers must be vigilant in all aspects of their practice; whether using AI for marketing, intake, or back-office functions to avoid any hint of dishonesty, bias, or misrepresentation. AI programs should only supplement, not substitute, a lawyer's work. It is imperative that lawyers rely on their own professional judgment and knowledge when producing work. AI is another tool that lawyers have in their toolbox. However, if the AI program builds something flawed, it is not the AI program's fault; it is the lawyer's fault for not reviewing the end product.

DUTY OF SUPERVISION

MRPC 5.1 provides the following:

(a) A partner in a law firm shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that all lawyers in the firm conform to the Rules of Professional Conduct.

(b) A lawyer having direct supervisory authority over another lawyer shall make reasonable efforts to ensure that the other lawyer conforms to the Rules of Professional Conduct.

(c) A lawyer shall be responsible for another lawyer's violation of the rules of professional conduct if:

(1) the lawyer orders or, with knowledge of the relevant facts and the specific conduct, ratifies the conduct involved; or

(2) the lawyer is a partner in the law firm in which the other lawyer practices or has direct supervisory authority over the other lawyer, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

MRPC 5.3 provides the following with respect to a nonlawyer employed by, retained by, or associated with a lawyer:

(a) a partner in a law firm shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the person's conduct is compatible with the professional obligations of the lawyer;

(b) a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer; and

(c) a lawyer shall be responsible for conduct of such a person that would be a violation of the rules of professional conduct if engaged in by a lawyer if:

(1) the lawyer orders or, with knowledge of the relevant facts and the specific conduct, ratifies the conduct involved; or

(2) the lawyer is a partner in the law firm in which the person is employed or has direct supervisory authority over the person and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

[73] Nouri, Steve, *The Role of Bias in Artificial Intelligence*, Forbes, February 4, 2021.

The ethical obligation that lawyers have to supervise subordinate lawyers and nonlawyer[74] assistants, paralegals, etc. is articulated in MRPCs 5.1 and 5.3. Lawyers are obligated to not only supervise the work of others that assist them in the practice of law but also supervise the tools that are used (such as AI) when providing legal services. This includes confirming that the work produced by the AI tool is accurate, does not disclose client confidences or secrets, and follows the ethical and legal requirements of practicing law.

Lawyers must know where to draw the line when using AI technology and making the determination of when not to use AI. At the same time, there must be a balance between not using AI and when to use AI to ensure it is not being underutilized to the client's detriment.[62]

The larger question of supervision is: How does an attorney supervise an AI tool, an AI platform, or even an algorithm? AI is limited in its capabilities to a certain degree and outputs may be problematic by showing bias, citing unreliable case law, or other challenging considerations. It is not possible for a lawyer to supervise the actual program being used. However, it is essential and practical[68] that when using an AI tool, review of the output is paramount and all production outputs must be verified prior to using the draft, research, etc.[62]

ETHICAL JUDICIAL DUTIES

Judicial officers have an ethical duty to understand technology, including but not limited to, artificial intelligence.[75] "To ensure that judges are complying with their ethical responsibilities while using AI or interpreting its proper use, judges must first ensure that they understand the AI application involved."[76] For recommendations regarding the ethical duties of judicial officers, judicial officers should refer to the recommendations provided by the Michigan Judicial Council, the educational materials provided by the Michigan Judicial Institute, and ethical opinions and guidance issued by the State Bar of Michigan Standing Committee on Judicial Ethics.[48]

ETHICAL LAW SCHOOL DUTIES

It is imperative that law schools educate students on their ethical responsibilities regarding the use of AI and incorporate this topic into their professional responsibility courses in order to prepare future lawyers for their responsibilities when using AI and the information it produces. The ABA has provided guidance on using AI in law school[77] and has issued ABA Formal Ethics Opinion 512 that analyzes the ethical issues surrounding the use of AI as of the date of the ethics opinion. Further, law schools will need to not only train law students in the traditional ways of practice, but also how to practice using AI responsibly.[68]

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[74] Please see the Unauthorized Practice of Law section of this Report for additional discussion regarding the practice of law by nonlawyers.
[75] See Michigan Ethics Opinion JI-155.
[76] Greenstein, Marla N., *AI and a Judge's Ethical Obligations*, ABA's The Judge's Journal (February 3, 2020).
[77] Griffin, Justine, *Can You Ethically Use AI in Law School?*, Student Lawyer (July 25, 2023).

SUMMARY

The ethical responsibilities a lawyer must abide by are vast and they do not cease when using an AI tool. It is imperative for all members of the Bar to review their ethical responsibilities and to keep those responsibilities in the forefront when utilizing any type of technology including, but not limited to, artificial intelligence. There is no question that AI is changing the way lawyers practice and is re-shaping the legal field in a variety of ways including creating efficiencies for firms and providing lower billing costs for clients while receiving the same value in services. While there are many benefits to the use of AI, the risks must also be evaluated, and as the legal field continues to integrate with AI tools, lawyers must be cognizant of upholding their ethical duties and ensuring their clients and the public continue to be protected.

UNAUTHORIZED PRACTICE OF LAW:
AI'S IMPACT ON REGULATING UPL

The paramount theory behind the prohibition of nonlawyers practicing law[78] comes down to one essential point: protection of the public. However, there is no question that the availability of AI to the general public will have a dramatic and far-reaching impact on the question of what constitutes the unauthorized practice of law, and how the UPL statute, in its current form, can be enforced. The availability of AI services which provide legal information is already raising novel questions throughout the country about where the line is between providing legal information and engaging in the unauthorized practice of law. It has already become apparent that the UPL enforcement world will need to be nimble and flexible when assessing the impact of AI. This may even require the need to pivot from enforcement of the UPL statute to focus more on educating the public about the potential risks of using legal information provided by AI and the benefits of seeking counsel from a trained lawyer who may be able to see other avenues that the AI was unable to predict.

APPLICABLE LEGAL AUTHORITY

Michigan's unauthorized practice of law statute, MCL 600.916, was enacted in 1961 (effective 1963).[79,80] This statute states:

1. A person shall not practice law or engage in the law business, shall not in any manner whatsoever lead others to believe that he or she is authorized to practice law or to engage in the law business, and shall not in any manner whatsoever represent or designate himself or herself as an attorney and counselor, attorney at law, or lawyer, unless the person is regularly licensed and authorized to practice law in this state. A person who violates this section is guilty of contempt of the supreme court and of the circuit court of the county in which the violation occurred, and upon conviction is punishable as provided by law. This section does not apply to a person who is duly licensed and authorized to practice law in another state while temporarily in this state and engaged in a particular matter.
2. A domestic violence victim advocate's assistance that is provided in accordance with section 2950c does not violate this section.
3. An application assistant's or victim advocate's assistance that is provided in accordance with the address confidentiality program act does not violate this section.

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[78] Every state UPL statute is different, and some states do allow nonlawyers with the required education, training, and/or experience to practice law in specified areas. The UPL arena, however, focuses on those individuals or businesses which purport to provide legal services and which operate outside of the boundaries of any statutory regulation.

[79] The statute was amended in 2000, and again in 2020, to add sections (2) and (3). The text of section (1) has remained largely unchanged since its passage in 1963.

[80] While most states have a statute or rule which prohibits the unauthorized practice of law, these authorities vary widely from state to state. For example, in some states, UPL is a criminal offense; in others, a civil infraction. Some states have attempted to define the unauthorized practice of law and identify specific functions which are excluded from UPL, while others leave the matter to the courts to decide. Thus, while references to and review of UPL issues in other states may be informative, such materials may not be consistent with Michigan's UPL statute.

In Michigan, the unauthorized practice of law is a civil offense, remedied by an injunctive order, and the authority to enforce the statute has been delegated to SBM by the Supreme Court.[81] In addition, MCL 450.681 prohibits any corporation or voluntary association from practicing law or appearing as an attorney in legal proceedings. [82]

The purpose of the UPL statute is "to protect the public from untrained legal counsel and incorrect legal advice."[83] "For an individual to commit the unauthorized practice of law, it must be found that he or she counseled or assisted another in matters that require the use of legal discretion and profound legal knowledge."[84]

The Michigan Supreme Court has recognized, however, that not all legal tasks fall within the exclusive authority of a licensed attorney. In 2003, the Court recognized a "scrivener's exception" to the UPL statute, holding that the preparation of a standard legal form is not considered the practice of law unless legal knowledge or discretion was involved in the document's completion.[85] Determination of whether an activity is the unauthorized practice of law falls within the discretion of the court based upon the facts and circumstances of the case.[86] [87]

THRESHOLD QUESTIONS RAISED

In evaluating new technologies and their implications for UPL, there are threshold questions which must be considered before any determination regarding the impact of such technologies can be made. The answers to these questions remain unknown at this time, and the questions themselves will undoubtedly change as artificial intelligence-based technologies change, develop, and become more widely available in our society. However, SBM must continue to monitor and evaluate these issues as AI advances and its use proliferates to ensure that it is meeting its obligation to protect the public.

CAN UPL RESTRICTIONS BE ENFORCED AGAINST AI-BASED PROGRAMS?

A threshold question which will need to be explored is whether Michigan's UPL statute can be enforced against Generative AI, which is widely available to the public. Michigan's UPL statute proscribes activities by a "person." MCL 600.916(1). An artificial intelligence-based program is not a person and raises the question of whether it falls outside of the UPL statute.

But what if a non-lawyer establishes a business providing legal services utilizing artificial intelligence-based programs? Is that person engaging in the "law business" in violation of the UPL statute and subject to enforcement? Would this fall within the scope of MCL 450.681, which prohibits a corporation from practicing law? This statute was written in 1917 and has not been amended since 1948. The drafters clearly did not anticipate AI-based legal

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[81] See MCL 600.1715, MCL 600.1721. See also SBR 16.

[82] There are exceptions to the UPL statute, such as permitting an officer to represent a corporation in a small claims matter, and some types of non-attorney representation in administrative proceedings. These exceptions, however, are spelled out in statute or administrative code, and individuals providing services under these exceptions must strictly comply with the specified requirements.

[83] *Dressel v Ameribank*, 247 Mich App 133, 137—138, rev'd on other grounds 468 Mich 557 (2003).

[84] *Dressel v Ameribank*, 468 Mich 557, 567-569 (2003).

[85] *Dressel*, 468 Mich at 567-569.

[86] *Dressel*, 247 Mich App at 137

[87] See also *Detroit Bar Ass'n v Union Guardian Trust Co.*, 282 Mich 216, 222; 276 NW 365 (1937), holding that the appearance of another person in court as well as the preparation and management of pleadings incident to legal actions on behalf of clients constitutes the practice of law.

service programs, yet this statute may provide an avenue for a legal argument against such entities. Nonetheless, these are novel questions, and the answers are unknown.[88] It will be crucial that UPL staff remain diligent in keeping up to date on what other jurisdictions are doing to enforce (or not enforce) the UPL in these circumstances and make informed decisions on whether such matters should be litigated. In making these determinations, it may be necessary to include SBM's Executive Director, General Counsel, and/or Board of Commissioners in these discussions. Further discussions may surround amendments to legislation impacting UPL, to help legislators understand the impact that any such amendments may have on this issue.

DO AI-BASED PROGRAMS PROVIDE LEGAL INFORMATION OR LEGAL ADVICE?

In evaluating whether AI-based programs are engaged in the unauthorized practice of law, it will be important to distinguish between "legal information" and "legal advice." Under the *Dressel* case, *supra*, legal advice requires legal discretion and profound legal knowledge.[89] Providing generally available legal information does not implicate the unauthorized practice of law.

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[88] In 2021, the Office of Chief Trial Counsel of the State Bar of California ("the California Bar") opened an investigation into DoNotPay, a Delaware corporation with its principal office in London, England, which offers services throughout the United State. DoNotPay offered online subscription services for commercial and legal services, advertising itself as "the worlds first robot lawyer" and an "AI lawyer" capable of performing legal services such as drafting "ironclad" demand letters, contracts, complaints for small claims court, challenging speeding tickets, and appealing parking tickets. Through a chatbot, subscribers would submit prompts or queries to an AI "robot lawyer" that purportedly operated like a human lawyer, including by applying the relevant laws to subscribers' particular legal and factual situations; relying on legal expertise and knowledge to avoid potential complications, such as statutes of limitations, compensation limits, and jurisdiction, when generating legal demand letters or initiating cases in small claims court; and detecting legal violations on subscribers' business websites and providing advice about how to fix them. The California Bar opened a UPL investigation, and, following correspondence with DoNotPay, sent a cease and desist letter alleging that DoNotPay was engaged in the unauthorized practice of law. In response, DoNotPay affirmed that it had removed all mentions of "robot lawyer" from the DoNotPay website and related social media; all products on the DoNotPay website that allowed consumers to generate legal documents; and any mention of "sue anyone" from the DoNotPay website.

Notwithstanding these representations to the California Bar, the DoNotPay website and social media account continued to promote the Service as the "World's First Robot Lawyer" and advertise "sue anyone" claims. At the time of this writing, it does not appear that the California Bar has taken any further action against DoNotPay for engaging in UPL. A separate federal lawsuit filed against DoNotPay by a small Illinois law firm alleging that DoNotPay was engaged in the unauthorized practice of law was dismissed by the court for lack of standing. On September 25, 2024, the Federal Trade Commission ("FTC") published notice of a complaint against DoNotPay, alleging that DoNotPay had engaged in false and unsubstantiated claims, false claims, and unfair and deceptive trade practices in violation of Act 5 of the Federal Trade Commission Act. The parties entered into a consent agreement, which at the time of this writing is pending approval.

The FTC Complaint alleges that DoNotPay did not test whether the its law-related features operated like a human lawyer. DoNotPay developed the Service based on technologies that included a natural language processing model for recognizing statistical relationships between words, chatbot software for conversing with users, and an Application Programming Interface ("API") with OpenAI's ChatGPT. The FTC alleged that none of DoNotPay's technologies were been trained on a comprehensive and current corpus of federal and state laws, regulations, and judicial decisions or on the application of those laws to fact patterns. It alleged that DoNotPay employees have not tested the quality and accuracy of the legal documents and advice generated by most of the Service's law-related features, and DoNotPay did not employed attorneys or retained attorneys, let alone attorneys with the relevant legal expertise, to test the quality and accuracy of the Service's law-related features. DoNotPay disputes these claims.

[89] *Dressel*, *supra* at FN 4.

This dichotomy is not new, and new technologies bring new challenges to its application.[90] The question of legal advice versus legal information has arisen for years in a variety of contexts, including what information court employees, other professionals, or average citizens may provide without straying into UPL. In 2016, the Michigan Judicial Institute published the "Employee Guide to Legal Advice" aimed at providing court employees with guidance on this topic. For example, court support employees can provide legal definitions, but not legal interpretation.[91] Court employees may provide forms and instructions on how to complete the forms, but may not complete the forms for a party or give advice on what to fill in on the forms.[92] Procedural definitions or explanations of how the court system works are permitted, but advice as to what steps a litigant should take next may stray into UPL.[93]

It would be logical to apply these same standards to AI-based programs. However, it remains to be seen with AI programs whether there is the ability to self-censor and avoid crossing that line from legal advice to legal information. If AI-based programs providing legal information proliferate across the internet, it will be virtually impossible to monitor or police every entity. Further, if programs are based outside of the U.S., enforcement would be extremely difficult. Unfortunately, it is likely that there will be members of the public harmed by incorrect legal information generated by some AI-based programs.

DO DOCUMENTS GENERATED BY AI-BASED PROGRAMS FALL WITHIN THE SCRIVENER'S EXCEPTION TO UPL?

The Michigan Supreme Court has long recognized a scrivener's exception to the UPL statute which places some activity outside of the purview of UPL enforcement. *See Dressel*, 468 Mich at 567-569. The scrivener's exception applies to circumstances in which a non-lawyer assists an individual with the completion of standardized court forms without selecting the form or providing any legal advice on what information to place on the form. With AI-based programs, documents can be generated without any interaction with a person by filling in prompts or answering questions. While automated form generation programs already exist on the internet, the introduction of AI will make them more readily available, faster, and quite likely, more accurate than services currently being provided by individuals engaging in UPL. Conversely, programs which provide inaccurate documents and inaccurate information will also become more widely available, making the risk of harm to the public who utilize these services greater. At this time, no conclusion can be made regarding whether these form-generating services are or would potentially be engaged in UPL. Again, UPL staff will need to be diligent in reviewing the specific facts and circumstances as these cases arise, will need to remain informed of developments in both legislation and case law across the country, and will need to engage with SBM's management and Board of Commissioners to develop the appropriate approach to protect the public.

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[90] Indeed, UPL was used as a challenge to radio programming in the 1930's, after NBC broadcast a national radio show called *The Good Will Court*, where individuals brought their legal issues to a panel of judges who responded to these inquiries with legal information and advice. Although the show featured a disclaimer that the legal information on the show should not be treated as a replacement for advice from a lawyer, the New York Appellate Division Court prohibited lawyers and judges from appearing on the show, effectively ending the program. *See* Catherine J. Lanctot, *Attorney-Client Relationships in Cyberspace: the Peril and the Promise*, 49 DUKE LJ. 147, 147-4 (1999).

[91] Employee Guide to Legal Advice, Michigan Judicial Institute (2016) p 6, 7.

[92] *Id*, at 6, 15.

[93] *Id*, at 6, 8.

SUMMARY

The questions raised by AI in the UPL sphere are many. Does AI provide legal information, or legal advice? Must there be an attorney on the AI program's staff who reviews and takes on the responsibility to ensure any tool that crosses into legal advice is supervised by the attorney? May generative AI complete forms for individuals and fall within the scrivener's exemption to UPL? Can the UPL statute be enforced against a company providing AI based legal services? Will legislation be enacted which will redefine UPL and who (or what) can provide legal services? The answers to these questions are uncertain and will likely take years to wind through the court systems. SBM staff will need to diligently monitor legal developments in this field, initiate appropriate discussions with stakeholders when needed, provide insight and research regarding new legal developments or when drafting proposals, and incorporate new concepts into the analysis of UPL enforcement.

However, while the advent of AI is ever evolving, it does not change the underlying goal of UPL regulation: the protection of the public. UPL staff can further this goal by providing outreach and educational information to the public about the risks and benefits of generative AI with regard to legal issues and the legal knowledge that lawyers can bring to resolving their issues. Our legal system is advanced by lawyers who develop novel legal arguments and set precedents. Through speaking engagements, information on the SBM website, and networking with community service organizations, SBM can fulfill this important goal. Although the focus of the UPL staff may somewhat shift away from enforcement, there is still a vital role for UPL to play with regard to the advancement of generative AI.

ACCESS TO JUSTICE:
OPENING THE LEGAL WORLD ANOTHER WAY

"Access to justice is a basic principle of the rule of law. In the absence of access to justice, people are unable to have their voice heard, exercise their rights, challenge discrimination or hold decision-makers accountable."[94] In a 2022 report issued by the Legal Services Corporation, low-income individuals reported that they did not receive legal help for 92% of their legal issues.[95] These civil legal needs generally include securing and protecting basic needs, such as housing, education, health care, income and safety.[96] The statistics are staggering: [97]

EXPERIENCED BY LOW-INCOME HOUSEHOLDS

74%
ONE OR MORE CIVIL LEGAL PROBLEMS IN THE PAST YEAR

39%
MORE THAN FIVE CIVIL LEGAL PROBLEMS IN THE PAST YEAR

20%
TEN OR MORE CIVIL LEGAL PROBLEMS IN THE PAST YEAR

55%
A CIVIL LEGAL PROBLEM THAT SUBSTANTIALLY IMPACTED THEIR LIVES

The data is further clarified when the percentage of low-income households experiencing common types of civil legal problems is broken down by area:[95]

EXPERIENCED BY LOW-INCOME HOUSEHOLDS (BY AREA)

50%
CONSUMER ISSUES

39%
HEALTH CARE

33%
HOUSING (OVERALL)

43%
HOUSING (RENTERS ONLY)

26%
FAMILY AND SAFETY (OVERALL)

44%
FAMILY AND SAFETY WITH CHILDREN UNDER 12

19%
EDUCATION (OVERALL)

42%
EDUCATION (WITH STUDENTS)

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[94] See United Nations and the Rule of Law: Access to Justice.
[95] *The Justice Gap Report: The Unmet Civil Legal needs of Low-Income Americans*, Legal Services Corporation, April, 2022.
[96] Id.
[97] Id.

When faced with legal problems, low-income households seek legal assistance only 25% of the time, and 46% of those individuals who did not seek legal help cited concerns about the cost as the reason.[98] While these statistics alone are sobering, compounding the problem is a shortage of lawyers or legal resources in rural communities, creating a "legal desert."[99] While many in the legal community have been debating whether AI-based programs belong in the legal world, artificial intelligence-based programs have nevertheless been developed and have begun to be implemented within the legal field, specifically within the access to justice arena. This may end up being a testing ground for these programs and services which lawyers and legal resources cannot reach due to the current limits and shortages.

Can artificial intelligence help bridge the access to justice gap? As with most artificial intelligence questions, the answer remains to be seen. However, there are valid arguments in favor of utilizing AI-based programs in access to justice programs, and legitimate concerns regarding its use as demonstrated in other areas of this report and as briefly discussed below.

ARGUMENTS IN FAVOR OF AI USAGE FOR ACCESS TO JUSTICE

In 2021, a nationwide survey found that there were only 10,479 civil legal aid attorneys in the U.S., which equates to just over one attorney for every 10,000 people whose income falls below 200% of the federal poverty level.[100] Not only is there a dire shortage of legal aid attorneys, the chasm between the cost of legal services and those who are able to pay for those services has widened, leaving many low- and middle-income individuals excluded from the legal services market.[101] Utilization of AI-based technology could lessen the burden on legal aid workers and provide individuals with needed information to further their claims within the legal system.

For example, an AI-based program could provide self-help resources based upon questions and answers received from a consumer. This information could help the consumer determine if they have a valid claim and whether they can pursue such a claim. If the consumer wishes to pursue the claim, they could then be directed to an attorney for further consultation. If the attorney and consumer decide to pursue the matter, an AI-based program could write the initial draft of a pleading for the attorney's review and revision, saving the client both time and money. If the consumer decides to pursue the matter on their own, without legal counsel, an AI-based program could provide information on civil procedure which identifies what to file, how to file, and where to file. These are all tasks that at present are likely being performed by a legal services employee. By utilizing AI-based programs, those employees are free to direct their attention to different and/or more complicated issues.

Additionally, these AI-based services could be available to consumers on their schedules, as opposed to being offered only in a legal services office, during regular business hours, thereby lessening the effect of losing half a day to a day of work, finding childcare, or other issues that would require additional funds be expended. An individual could theoretically answer targeted questions designed to identify the issue, receive information about

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[98] Id.

[99] National Center for State Courts, https://www.ncsc.org/information-and-resources/trending-topics/trending-topics-landing-pg/paving-the-road-to-rural-justice-legal-deserts.

[100] *NCAJ Launches Updated Justice Index,* National Center for Access to Justice (May 18, 2021), https://ncaj.org/ncaj-launches-updated-justice-Index.

[101] *See* Raymond H. Brescia et al, *Embracing Disruption: How Technological Change in the Delivery of Legal Services Can Improve Access to Justice,* 78 Alb. L. Rev. 553, (2015).

the issue, and may then determine if they wish to take a day off work to pursue the matter further by consulting with an attorney. From assisting a consumer in determining if they have a legal issue and what that legal issue is to assisting an attorney with providing the consumer with legal services on a cost-effective basis, AI-based programs can help narrow the access to justice gap. Further, by utilizing AI-based programs to reduce costs and increase productivity, lawyers, who have had a large caseload and had to be selective of the cases they could take, may be more amenable to take on a larger amount of pro bono or reduced fee cases.

ARGUMENTS AGAINST AI USAGE FOR ACCESS TO JUSTICE

While the advent of AI-generated legal services holds promise in reducing the access to justice gap, it is not without shortcomings. As an initial matter, those who are unable to pay for legal services may lack access to the technology needed to access AI-based systems. According to the Pew Research Center, 15% of the American population is smart-phone only internet dependent, meaning there is no reliable broadband internet service within their home and access to internet is limited to smartphone technology only.[102] Those who rely on smartphones for sole internet access are generally of lower income, and have lower levels of formal education.[103] This is concerning as not every program or website is smartphone friendly. Further, most reliable apps or AI programs require subscription fees or a one-time payment fee that may be beyond the budget of the consumer. Artificial intelligence-based programs cannot resolve the access to justice gap if those most in need do not have access to the tools necessary to make AI-based technology readily available.

Even if AI-based technology were readily available to all, it is not a guarantee of equal access for all, for several reasons:

1 First, the information or response generated by an AI-based program is necessarily dependent upon the question posed by the user. The more precise the question, the more precise the answer.[104] Individuals facing a legal issue who are unfamiliar with the law may not know the best way to format their question to produce optimal results. Individuals needing assistance may not recognize the precise legal nature of their issue, which results in faulty outputs. For example, an individual being evicted for nonpayment of rent may have withheld rent because repairs are needed on their dwelling. AI-generated responses may address how to respond to an eviction, without addressing how to raise the issue of needed repairs.

2 Second, AI-generated services are at present unregulated, and may provide difficult to fully regulate. There is no standard to ensure that the information generated by an AI-based program is accurate or reliable. High quality AI-based legal services will likely involve a fee, continuing the disparity between those who can pay for legal services and those who cannot pay.[105] Free AI-generated legal services may be more subject to bias or hallucination. Thus, simply having access to AI-based legal programs does not guarantee equal access to justice.

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[102] https://www.pewresearch.org/internet/fact-sheet/internet-broadband/#smartphone-dependency-over-time.

[103] https://www.pewresearch.org/internet/fact-sheet/internet-broadband/#smartphone-dependency-over-time?tabItem=011fca0d-9756-4f48-b352-d58f343696bf.

[104] *Topic: Artificial Intelligence and Access to Justice,* authored by Cas Laskowski, Christopher L. Griffin, Jr., Samual A. Thumma. Arizona Summit on Artificial Intelligence Law and the Courts, December 1, 2023.

[105] *The Promise and Peril of AI Legal Services to Equalize Justice,* Ashwin Telang, Edited by Edwin Farley, Teodora Groza, Pablo A. Lozano, and Pantho Sayed, Harvard Journal of Law and Technology, March 14, 2023.

3 Third, AI-based programs are subject to algorithmic bias. "Algorithmic bias occurs when algorithms make decisions that systematically disadvantage certain groups of people."[106] However, modern-day algorithms are often driven by algorithms which have been trained on historical data.[107] This historical data can reflect historically discriminatory practices, providing information which may not be applicable in today's society. For example, AI driven predictive policing programs being utilized in an effort to reduce crime are built on historical crime data, which may be skewed by historic racism leading to bias in the algorithm. This can then lead to heightened policing in particular areas which can lead to disproportionate arrests or charges.[108] Similarly, AI systems used to evaluate potential tenants may rely on court records, credit reports, or educational records which have their own built-in biases that reflect systemic racism, sexism, and ableism, and may be full of errors. "People are regularly denied housing, despite their ability to pay rent, because tenant screening algorithms deem them ineligible or unworthy."[109] This historical bias, even if unintentionally introduced into an AI system, can have the effect of perpetuating bias based upon historical information. In this context, AI programs which make sentencing recommendations, make recommendations on the likelihood of success in a legal matter, or evaluate potential jurors could be skewed based upon this historical bias, leading to a self-perpetuating biased system.

4 Fourth, these algorithms may be incapable of properly assessing the legal viability of novel claims or defenses which are a critical feature of advancing American jurisprudence. Individuals who utilize AI-based programs may lose the benefit of novel arguments or be discouraged from bringing a claim due to a response impacted by historical bias. Our legal system has been advanced by these novel legal arguments which have resulted in landmark case decisions. Although AI may be a tool to assist with providing legal services, attorneys must continue to search for these novel arguments to support their clients' interests.

5 Lastly, some fear that providing AI-based services to low-income individuals may result in a two-tiered system, where low-income individuals receive AI-driven legal services, but wealthier individuals receive tailored, personal, face-to-face services from a licensed attorney. A consumer may be unable to distinguish between legitimate AI-based services that can assist with their legal inquiries and services which overcharge for substandard AI-based legal services. Such a situation begs the question of whether having access to *some* legal services, even if they are substandard, is better than having no access to legal services. The answer to this question remains to be seen and should be fully evaluated as AI-based services enter the access to justice discussion.

SUMMARY

As AI-based legal services moves forward, there will undoubtedly be statistical analysis conducted on its efficacy and impact on closing the access to justice gap. However, to remain true to the goal of equal justice for all, we must evaluate these technologies regarding all their advantages and disadvantages. While AI-based services hold great promise in addressing the access to justice gap, it may also hold great peril and may perpetuate historic bias in the legal world. It must be fully and honestly evaluated to ensure that it provides legal services that are accurate, reliable, and accessible to those in need.

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[106] *Eliminating Algorithmic Bias is Just the Beginning of Equitable AI,* by Simon Friis and James Riley, Harvard Business Review, September 29, 2023.
[107] *AI is sending people to jail – and getting it wrong*, by Karen Hao, MIT Technology Review, January 21, 2019.
[108] "Shedding Light on AI Bias with Real World Examples," https://www.ibm.com/think/topics/shedding-light-on-ai-bias-with-real-world-examples
[109] "How Artificial Intelligence Can Deepen Racial and Economic Inequalities," Olga Akselrod, American Civil Liberties Union, https://www.aclu.org/news/privacy-technology/how-artificial-intelligence-can-deepen-racial-and-economic-inequities

PUBLIC POLICY:
THE REGULATION OF AI IN THE LEGAL FIELD

As AI-based programs have quickly evolved, efforts to regulate the development and use of those programs have lagged. As of this writing, Michigan has enacted only two statutes regarding the use of AI, both of which concern the use of AI generated content in election materials.[110] Undoubtedly, additional regulation will be required in this area. SBM has a well-established practice of monitoring pending legislation, which will help keep SBM members updated on legislative activity which may impact their use of AI tools in the practice of law.

Federal legislation or regulatory action may also advance or curtail the use of AI in the legal field. The Biden Administration had identified five principles suggested to form the framework of an "AI Bill of Rights"[111]: safe and effective systems; algorithmic discrimination protection; data privacy; notice and explanation; and human alternatives, considerations, and fallback.

As AI continues to weave through societal everyday actions, some states have already brought forward efforts to regulate the use of AI by passing legislation. For example, California passed the California AI Transparency Act in September 2024 which takes effect January 1, 2026, that "requires providers of generative AI systems to (a) make available an AI detection tool; (b) offer AI users the option to include a manifest disclosure that content is AI generated; (c) include a latent disclosure in AI-generated content; and (d) enter into a contract with licensees requiring them to maintain the AI system's capability to include such a latent disclosure in content the system creates or alters."[112] California joins Colorado,[113] Utah,[114] and Illinois[115] in requiring transparency regarding the use of AI. It should be noted that, at the time of this writing, legislation concerning the regulation of AI and lawyers was not found, but several states are exploring amendments to court rules and rules of professional conduct and/or are drafting new rules to provide further guidance and regulation of how AI should be used by lawyers.

While it remains to be seen if such regulation will be enacted in other states, SBM should continue to be involved in the issues surrounding the use of AI in the legal profession, including monitoring regulation and legal developments. In addition, SBM should continue to monitor amendments to other authorities such as court rules and rules of professional conduct to keep members updated as well as potentially offer amendments to other authority as it deems appropriate. This will enable SBM to assist its members to continue to uphold the law and meet their professional and ethical obligations.

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[110] MCL 169.247; MCL 169.259.
[111] Please note this Executive Order was rescinded by the Trump Administration on January 20, 2025.
[112] https://www.mayerbrown.com/en/insights/publications/2024/09/new-california-law-will-require-ai-transparency-and-disclosure-measures; see also, https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202320240SB942.
[113] https://leg.colorado.gov/bills/sb24-205.
[114] https://le.utah.gov/~2024/bills/static/SB0149.html.
[115] https://www.ilga.gov/legislation/ilcs/ilcs3.asp?ActID=4015&ChapterID=68.

RECOMMENDATIONS

When using AI, the benefits and risks are interrelated. As lawyers continue to harness the power of AI in the legal field, it is paramount for SBM to educate and inform Michigan attorneys so that they can better understand how AI is impacting the practice of law.

The AI Workgroup's goal is for this report to be an easily accessible tool for Michigan attorneys. SBM should provide attorneys with up-to-date information on this important topic on an ongoing basis.

To achieve these goals, the AI Workgroup offers the following recommendations:

1. SBM should provide relevant, up-to-date information for attorneys on AI using a variety of means, including demonstrations, webinars, publications, and other communications tools. As technology changes, SBM should work to make sure that the information available to members remains relevant.

2. SBM staff in ethics, UPL, practice management, justice initiatives, lawyer services, and public policy should stay abreast of legal developments of AI so that they can be a resource to attorneys and the public on issues involving AI and the practice of law.

3. SBM should explore collaborations with other relevant entities as appropriate, such as law schools, ICLE, preferred partner programs, or local bar associations, to provide up-to-date information to members and prospective members to help ensure practice readiness.

4. SBM should assess avenues to provide reliable information to the public on the risks or benefits of the use of AI in place of legal representation.

5. Current SBM committees, including but not limited to ethics committees, UPL committee, and the justice initiatives committee, should remain aware of AI development and provide recommendations to the Board of Commissioners as appropriate.

CONCLUSION

AI has the power to revolutionize the way lawyers and the legal world operate. While the potential benefits are endless lawyers must be aware of the risks as well. This report will continue to evolve and will be continuously updated as AI changes. It is imperative for lawyers to understand what AI is, how it is currently changing, and how it will impact the fabric of the legal profession. Only lawyers with the necessary skills and the knowledge of how legal practices are evolving can provide their clients with the highest level of service. Therefore, while lawyers must use caution, they must also be open to embracing the change that comes with artificial intelligence. The State Bar of Michigan is committed to providing the resources current and future lawyers will need in order to provide the highest quality of services to the courts, their clients, and the public.

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MEMBERS OF THE SBM AI WORKGROUP

Joseph P. McGill is the 90th president of the State Bar of Michigan and served as chair of the AI Workgroup. A member at Foley, Baron, Metzger & Juip, McGill's practice includes complex litigation matters including business torts, construction litigation, commercial disputes, and probate and estate planning. He has a national product liability defense practice. He has served on the Board of Commissioners since 2015. McGill currently serves on the Board of Directors of the Michigan State Bar Foundation and previously served as chair of the Representative Assembly. He is a proud Irish American and helped found the Michigan Irish American Chamber of Commerce, now known as Irish Network Detroit. He also is past president of the Catholic Lawyers Society Detroit and the Incorporated Society of Irish American Lawyers. McGill earned his Bachelor of Arts in finance from Michigan State University, Doctor of Law from University of Detroit Mercy, Master of Business Administration from University of Detroit Mercy, and Masters of Laws in both taxation and corporate/finance law from Wayne State University. He and his wife, Lauren, and son, William, live in Plymouth.

Ashley Lowe is an active member of the State Bar who has spent her career advocating for marginalized and disadvantaged people who have faced barriers accessing the justice system. Lowe is the Chief Executive Officer of Lakeshore Legal Aid, a non-profit law firm providing free legal services to people living with low income, older adults, and survivors of domestic violence and sexual assault in the Detroit Metro region. Prior to joining Lakeshore, Lowe was the Associate Director of Clinical Education at Wayne State University Law School and a Professor at Thomas M. Cooley Law School where she founded and directed the Family Law Assistance Project. She began her career in Michigan at Dickinson Wright. She currently chairs the Justice Initiatives Committee and co-chairs the State Planning Body. She is a member of the Justice For All Taskforce and the Legal Services Association of Michigan. Lowe co-chaired and remains an active member of the Domestic Violence Committee. Lowe trains attorneys and speaks frequently about trauma-informed legal practice and establishing the right to counsel in eviction cases. Lowe earned her law degree and Master of Business Administration at Georgetown University.

Gerard Mantese is a trial attorney at Mantese Honigman, PC, with a national practice in complex business litigation. He focuses his practice on business owner disputes, and he has handled some of the leading shareholder and LLC member disputes. He is the CEO at Mantese Honigman, PC, with offices in Michigan, New York, Missouri, and Florida. Mantese is consistently ranked as one of the Top 100 attorneys in Michigan and he argued the only two oppression cases ever accepted for review by the Michigan Supreme Court. In addition to serving on the Michigan State Bar Board of Commissioners, he serves as co-chair of the Business Law Section Committee on LLCs and Partnerships. Mantese was awarded the Champion of Justice Award by the Michigan State Bar for advocating for the rights of vulnerable individuals, including children with autism spectrum disorder seeking to access mental health coverage from their insurance companies. In 2017, the State Bar of Michigan also conferred the Roberts P. Hudson Award on Mantese for outstanding service to the profession and the public. He is a graduate of the Saint Louis University School of Law, where he graduated at the top of his class.

Gerry Mason practices family law, criminal law, and administrative law in SE Michigan. He is also licensed to practice in Federal Court. Mason is also active in the private equity, venture capital space where he has helped launch several companies. He currently serves on the advisory board for ONTOAi Inc. – Cybersecurity for the AI Era. Mason earned his BA from the University of Michigan, Ann Arbor, in 1991, and his JD from the Detroit College of Law at Michigan State University in 1998. Mason serves as Port Huron Citadel Advisory Board Vice Chairman and is Immediate Past President of the St. Clair Rotary Club. Mason's has served five years on the Board of Commissioners and ten years overall including his service on the Representative Assembly. He also serves as Liaison to the American Indian Law Section to continue work in the Native American Courts and Community. He has been married for twenty-five years with three children.

Takura Nyamfukudza practices in state and federal courts throughout Michigan, including handling appellate cases in the Michigan Supreme Court and the Michigan Court of Appeals. Nyamfukudza is a member of the State Bar of Michigan (SBM), has been appointed to the SBM's Board of Commissioners, and is the current chair of the SBM's Criminal Law Section. He has presented on issues related to the criminal justice system and criminal defense, including at a statewide conference offered by the Michigan Coalition for Immigrant and Refugee Rights and the People's Law School where he educated those in attendance on issues related to the Fourth Amendment. Additionally, Nyamfukudza received the SBM's Regeana Myrick Outstanding Young Lawyer Award for 2015.

Nicholas M. Ohanesian currently serves as the Hearing Office Chief Administrative Law Judge for the Social Security Administration. Prior to taking the bench in 2010, he served as a Field Attorney for the National Labor Relations Board in Peoria, Illinois and later as the Resident Officer in Jacksonville, Florida. He also has taught at a series of academic institutions for 23 years with the highlight so far having been as a Fulbright Specialist at the American University of Armenia in 2012. Ohanesian currently teaches at Michigan State University College of Law and Grand Rapids Community College.

David R. Watson joined ICLE in January 2017 as ICLE's executive director. He oversees ICLE's day-to-day operations, including implementing short- and long-range strategic objectives, managing finances and administrative policies, and representing the Institute. Before joining ICLE, Watson was the executive director of the 74,000 member New York State Bar Association, helping implement policies approved by its House of Delegates and executive committee. He also was the executive director for the Cleveland Metropolitan Bar Association, was the deputy executive director for the Defense Research Institute and spent 10 years at Lexis-Nexis in various senior management roles.

Katherine Gardner is an assistant executive director for the State Bar of Michigan. In this role, Gardner works with the Professional Responsibility departments (Character & Fitness, Unauthorized Practice of Law, Client Protection Fund, Ethics, Interim Administrator Program), as well as Justice Initiatives, Outreach, Diversity, and Lawyer Referral Services. Prior to accepting this position, she served as the UPL Counsel for SBM. Before joining the SBM staff, Gardner was in private practice in Saginaw County for 17 years, focusing mainly on labor and employment law. She was admitted to the Bar in 2001. In addition to her law degree, Gardner has an LLM in Taxation. She is admitted to practice in the Michigan courts, the US District Courts for the Eastern and Western districts of Michigan, and the Sixth Circuit Court of Appeals.

Robinjit Eagleson joined the State Bar of Michigan in July 2020 as Ethics Counsel and currently serves as the Director of Lawyer Services. She oversees the Practice Management Resource Center, Lawyer Services, Events, and Partner Programs. Before joining SBM, Eagleson was the Assistant Director for Career Development at MSU College of Law and the probate and juvenile management analyst at the Michigan State Court Administrative Office (SCAO). Before joining SCAO, Eagleson was in private practice focusing on child welfare serving as a lawyer-guardian ad litem in Ingham County. Her practice also served clients in juvenile law, probate law, family law, criminal law, and adoption. Prior to her time in private practice, she was an associate attorney at the Nichols Law Firm. Eagleson has also had the privilege of being an adjunct professor at MSU College of Law, served on the Governor's Task Force on Child Abuse and Neglect, served as an expert liaison to Michigan's Mental Health Diversion Council, and has written multiple publications in various legal journals. Eagleson received her J.D. from Thomas M. Cooley Law School and her B.A. from Michigan State University. She is admitted to practice law in the State of Michigan.

TERMINOLOGY

The following are common AI Terms[116] that may assist your reading of this report:

Algorithm: A finite set of rigorous instructions that perform calculations and data processing.

Artificial intelligence: A general concept of machines acting in a way that mimics human intelligence, such as human-like communication or decision making.

Artificial general intelligence: A hypothetical advanced intelligent agent that could accomplish any intellectual task that humans or animals can perform. Also known as "Strong AI."

Bias: A disproportionate weight in favor of or against an idea or thing, usually in a way that is close-minded, prejudicial or unfair. Bias can be innate or learned and is a systematic error.

Blockchain: Allows users to program systems to automate sophisticated document changes based on custom "if/then" commands.

Chain of thought prompting: A type of prompting that improves the performance of an LLM by encouraging it to explain its reasoning.

Chatbot: A software application or web interface that aims to mimic human conversation through text and voice interactions.

Emergence: Capabilities that arise in AI systems unpredictably that are not observable in its general parts. For example, GPT3 self-trained to read natural language but also taught itself how to program.

Few shot prompting: A technique to enable in-context learning to steer a model to better performance.

Fine tuning: A process by which an AI chatbot is given feedback to give better results.

Generative AI: A type of machine learning that creates content by learning patterns in training data and synthesizing new material with the same learning characteristics. Examples include ChatGPT and Midjourney.

Graphics processing unit (GPU): A type of processor that is suited to powering AI hardware because it can perform more simultaneous computations than a CPU.

Intelligence: The capacity or ability to acquire, apprehend and apply knowledge in a behavioral context.

Intelligence amplification: The effective use of information technology in augmenting human intelligence. Originally expressed in the 1950s and 1960s by cybernetics and computer pioneers.

Large language models (LLMs): Deep learning algorithms that understand, summarize, generate and predict new content. Example, ChatGPT and Claude.

Machine learning: An umbrella term for solving problems by helping machines 'discover' their 'own' algorithms, without needing to be explicitly told what to do by any human-developed algorithms.

Multimodal: AI systems that can handle input and produce output in several mediums, including any combination of images, text, video, or sound, as opposed to just text.

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[116] https://www.linkedin.com/pulse/common-ai-terms-cheat-sheet-donovan-rittenbach.

Natural language processing (NLP): The ability of a computer program to understand human language as it is spoken and written. It is an interdisciplinary subfield of computer science and linguistics.

Neural network: A computer system designed to function like the human brain. It can perform many tasks involving speech, vision and board game strategy.

OpenAI: An American artificial intelligence company responsible for creating ChatGPT and Dall-e.

Prompt: An input type, often in plain English, that generates a response in LLMs and other generative AI.

Prompt engineering: The processing of developing and refining prompts for LLMs that refines the output of a generative AI model.

Prompt chain: A series of prompts that guide an AI based program to produce higher quality output.

Retrieval Augmented Generations (RAGS): A double layered system in which an LLM retrieves facts from an external knowledge base to produce the most accurate, up-to-date information. Example, Google's BARD uses the Google search engine results as the basis of its output.

Sentiment analysis: Also known as opinion mining, it analyzes text for tone and opinion with AI. Used in Fintech to assess buy signals.

Supervised learning: A type of machine learning where structured datasets are used to train and develop an algorithm.

Technological singularity: A point in the future in which advanced AI become more intelligent than humans and technological growth becomes uncontrollable. Originally conceived of by Ray Kurtweil, and often referred to simply as "The Singularity."

Token: A basic unit of text that an LLM uses to understand and generate language. It may be a word or parts of a word. Paid LLMs charge users by tokens.

Transformer: Used in Natural Language Processing (NLP), they can uniquely process context and long-term dependencies in language.

Turing test: Named after Alan Turing, the father of AI, this is a graded test in which a machine's output is indistinguishable from that of a human.

Unsupervised learning: A form of training where algorithms are asked to make inferences from datasets that don't contain labels. Those inference are what help algorithms learn.

Zero shot learning: A machine learning technique in which algorithms observe samples that were not present in training and predict what class they belong too. For example, an AI trained to recognize cats could classify a lion as a big cat.

SBM

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