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Tips for the Naturally Intelligent Lawyer in an
Artificially Intelligent World

Ed Walters

THE MODEL RULES OF AUTONOMOUS CONDUCT: ETHICAL RESPONSIBILITIES OF LAWYERS AND ARTIFICIAL INTELLIGENCE

Ed Walters¹

INTRODUCTION

Practitioners use artificial intelligence (AI) tools in fields as varied as finance, medicine, human resources, marketing, sports, and many others.² Now, for the first time, lawyers are beginning to use similar tools in the delivery of legal services.³ Where once lawyers may have only used AI for electronic discovery (eDiscovery), today they are using AI for legal research, drafting, contract management, and litigation strategy.⁴

The use of AI to deliver legal services is not without its detractors, and some have suggested that the use of AI may take the jobs of lawyers—or worse, make lawyers obsolete.⁵ Others suggest that using AI tools may violate the ethical responsibilities of lawyers or constitute the unauthorized practice of law (UPL).⁶

Although the ethical responsibilities of lawyers differ from state to state, most state codes are based on the American Bar Association's Model Rules of Professional Conduct (the Model Rules) and their

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2. Daniel Faggella, *Artificial Intelligence Industry – An Overview by Segment*, EMERJ (Feb. 19, 2019), <https://emerj.com/ai-sector-overviews/artificial-intelligence-industry-an-overview-by-segment/> [<https://perma.cc/9ZRA-RXZH>]; Dom Nicastro, *7 Ways Artificial Intelligence Is Reinventing Human Resources*, CMS WIRE (Mar. 12, 2018), <https://www.cmswire.com/digital-workplace/7-ways-artificial-intelligence-is-reinventing-human-resources/> [<https://perma.cc/5ZYA-E3YJ>].

3. John O. McGinnis & Russell G. Pearce, *The Great Disruption: How Machine Intelligence Will Transform the Role of Lawyers in the Delivery of Legal Services*, 82 FORDHAM L. REV. 3041, 3041 (2014).

4. *Id.*

5. *Id.* at 3042.

6. Thomas E. Spahn, *Artificial Intelligence: Ethics Issues*, AM. L. INST. CONTINUING LEGAL EDUC., Feb. 22, 2018, at 2, TSZJ10 ALI-CLE 1.

interpretive comments.⁷ This paper reviews the responsibilities of lawyers who employ AI tools under the Model Rules and previews how the Model Rules might apply to AI software not yet developed but just on the horizon.

I. Rule 1.1: Duty of Competence

Lawyers have a duty to represent clients with competence, and the Model Rules spell out that this extends to complete and thorough preparation, as well as to a duty of technological competence.⁸ Rule 1.1 specifically states, “A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.” The associated commentary for the Model Rule also provides:

Thoroughness and Preparation

[5] Competent handling of a particular matter includes inquiry into and analysis of the factual and legal elements of the problem, and use of methods and procedures meeting the standards of competent practitioners. It also includes adequate preparation. The required attention and preparation are determined in part by what is at stake; major litigation and complex transactions ordinarily require more extensive treatment than matters of lesser complexity and consequence

....

....

Maintaining Competence

[8] To maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, including the benefits and risks associated with relevant technology, engage in continuing study and education and

7. *Id.* at 1.

8. MODEL RULES OF PROF'L CONDUCT r. 1.1 cmt. 5, 8 (AM. BAR ASS'N 2016).

comply with all continuing legal education requirements to which the lawyer is subject.⁹

When lawyers represent clients, the Model Rules impose a threshold standard of competence in the engagement—there is no “caveat emptor” standard for legal work.¹⁰ The Model Rules impose four measures of competence: the legal knowledge, skill, thoroughness, and preparation reasonably necessary to represent the client. Comment 5 clarifies what is reasonably necessary, requiring research and analysis into the relevant facts and law using the “methods and procedures . . . of competent practitioners.”¹¹

Comment 5 also makes clear that lawyers need not expend infinite resources in the pursuit of competence.¹² Comment 5 notes that the required effort and expense are driven in part by what is at stake in the matter.¹³ It suggests something like the Learned Hand formula for negligence, only instead for professional responsibility: if the cost of a means of preparation (or the use of a technology) is less than the probability of it making a difference multiplied by the financial magnitude of that difference in the representation, it would be a breach of professional responsibility not to employ the means of preparation.¹⁴

Under the reasoning of Comment 5, if p represents the probability of making a difference, d represents the financial magnitude of the difference, and m represents the cost of the measure, if $pd > m$, it would be a breach of responsibility not to employ the measure.¹⁵ So if the measure has an extremely high price, a law firm would not have an obligation to employ it in low-stakes matters. Of course, as in measures of Hand-formula negligence, likelihoods and likely differences can be difficult to measure.

9. *Id.*

10. Spahn, *supra* note 6, at 2.

11. MODEL RULES OF PROF'L CONDUCT r. 1.1 cmt. 5 (AM. BAR ASS'N 2016).

12. *See id.*

13. *Id.*

14. *Id.*; Stephen G. Gilles, *On Determining Negligence: Hand Formula Balancing, the Reasonable Person Standard, and the Jury*, 54 VAND. L. REV. 813, 818 (2001).

15. MODEL RULES OF PROF'L CONDUCT r. 1.1 cmt. 5 (AM. BAR ASS'N 2016).

If it wasn't already clear, Comment 8 explicitly says that the duty of competence extends to technological competence.¹⁶ For example, in a court that only accepted electronic filing, a lawyer who did not know how to use a computer would be required either to learn or to employ someone who could use a computer to file pleadings. Similarly, as the quality of work product created by lawyers augmented with AI surpasses the work created without AI, it is clear that lawyers will soon have a professional responsibility to employ new techniques.

An apparent example of this is in eDiscovery, which has been shown to surpass human review in both accuracy and recall.¹⁷ For small litigation matters, eDiscovery may not be required.¹⁸ But for larger matters, especially with large volumes of electronically discoverable information, it would not only be less expensive to review electronically, but it would also be more accurate, and lawyers would have a professional responsibility to use technology-assisted review, or "TAR," from an eDiscovery provider. This may be required by Rule 1.1, as well as by Rule 1.3's duty of diligence.¹⁹

The price for many AI services is already low and might be expected to decrease over time, which means that law firms may face a professional responsibility to employ state-of-the-art legal research and drafting tools, at least where they show efficacy and become broadly used in the profession.²⁰

Although AI tools are reasonably new to the world of legal research, new versions of legal research services, such as Westlaw, LexisNexis, and Fastcase, all incorporate elements of AI in the legal research tools.²¹ These tools do simple operations, such as look up synonyms

16. *Id.* cmt. 8.

17. Maura R. Grossman & Gordon V. Cormack, *Quantifying Success: Using Data Science to Measure the Accuracy of Technology-Assisted Review in Electronic Discovery*, in *DATA-DRIVEN LAW: DATA ANALYTICS AND THE NEW LEGAL SERVICES* 127, 142 (Ed Walters ed., 2019); McGinnis & Pearce, *supra* note 3, at 3048.

18. See MODEL RULES OF PROF'L CONDUCT r. 1.1 cmt. 5 (AM. BAR ASS'N 2016); McGinnis & Pearce, *supra* note 3, at 3047-48.

19. MODEL RULES OF PROF'L CONDUCT r. 1.1, 1.3 (AM. BAR ASS'N 2016). "A lawyer shall act with reasonable diligence and promptness in representing a client." *Id.* r. 1.3.

20. Erin Hichman, *Law Firms Need AI to Stay in the Game*, ALM INTELLIGENCE (July 2018), <https://www.alm.com/intelligence/solutions-we-provide/business-of-law-solutions/analyst-reports/law-firms-need-artificial-intelligence-to-stay-in-the-game/> [https://perma.cc/KZT8-PA32].

21. *Legal Technology, Tips, Tricks, & Treats 2018: Artificial Intelligence in Legal Research*, U.

of search terms, interpret whether queries should be run as Boolean expressions or natural language searches, and parse the meaning of natural language queries.²² AI tools rank search results across multiple dimensions, including using the aggregate history of past searchers to rank search results more intelligently for later researchers.²³ AI tools also provide the first pass of citator services, such as Shepard's, KeyCite, and Bad Law Bot.²⁴

In addition, many legal research services, such as Casetext, Judicata, ROSS Intelligence, and vLex, now include brief-evaluation tools that use AI to analyze a brief, whether for a client or from an opposing party.²⁵ These services look at factors such as the procedural posture of the case, the pattern of citations, and even which citations may be missing.²⁶ They can evaluate strengths or weaknesses of a brief or pleading based on which claims are made or omitted. And researchers at LegalMation have created document-automation tools that ingest complaints and with AI create the first draft of responsive pleadings, albeit for a small number of causes of action and in a small number of jurisdictions.²⁷

Lawyers also have new opportunities to provide data-driven legal advice, especially using data analytics. Services such as Lex Machina and Ravel Law on LexisNexis, Westlaw Edge, and Docket Alarm on Fastcase provide empirical insights into judges, law firms, parties, and causes of action.²⁸ These services aggregate information from docket

MINN. L. SCH., <https://libguides.law.umn.edu/c.php?g=884434&p=6375963> [<https://perma.cc/HX8F-M45U>] (last updated Nov. 11, 2018, 11:45 PM).

22. *Id.*

23. NAT'L LEGAL RESEARCH GRP., INC., THE REAL IMPACT OF USING ARTIFICIAL INTELLIGENCE IN LEGAL RESEARCH 2, <https://www.lawsitesblog.com/wp-content/uploads/sites/509/2018/09/The-Real-Impact-of-Using-Artificial-Intelligence-in-Legal-Research-FINAL2.pdf> [<https://perma.cc/L5GM-PSDQ>] (last visited Apr. 9, 2019).

24. See Sheila Baldwin, *Fastcase's Newest Addition: Bad Law Bot*, GA. B.J., June 2013, at 62, 62 <https://www.gabar.org/newsandpublications/georgiabarjournal/loader.cfm?csModule=security/getfile&ageID=26130> [<https://perma.cc/LQB2-TX49>].

25. Bob Ambrogi, *Vincent Joins CARA, EVA and Clerk as the Latest AI-Driven Research Assistant*, LAWSITES (Sept. 20, 2018), <https://www.lawsitesblog.com/2018/09/vincent-joins-cara-eva-clerk-latest-ai-driven-research-assistant.html> [<https://perma.cc/45BE-WM8F>].

26. *Id.*

27. LEGALMATION FAQ, <https://www.legalmation.com/faq/> [<https://perma.cc/3PXG-5F2J>] (last visited Feb. 28, 2019).

28. See Matthew Hutson, *Artificial Intelligence Prevails at Predicting Supreme Court Decisions*, SCI.

sheets, briefs, motions, pleadings, and judicial opinions to give quantitative, fact-driven assessments about litigation strategy.²⁹ Lawyers and their clients can use these tools to choose the most favorable forum in which to file suit, assess whether to pursue particular claims in front of certain judges, assess the settlement strategy of an opposing party, and much more.

These services are not science fiction—all of them today use AI techniques or data analysis to help lawyers improve their strategic decision making. Many lawyers are just learning about these tools for the first, but if they are not yet the state of the art in legal service delivery, it is clear that they soon will be the “standard of competent practitioners.”³⁰ Indeed, in the near future, competent legal practice may be impossible without the assistance of machine augmentation:

To remain successful and practice at the top of their licenses, lawyers are going to need increasingly powerful cognitive exoskeletons. Skillful non-biological helpmates may enable them to thrive as more and more free and low-cost services handle commodity work.

We rightly marvel at the subtle power of the human mind, yet its non-biological progeny may outdo all but a vanishing few of its own capacities. . . . Lawyer time may be the whale oil of today’s economy that is eclipsed by the kerosene of intelligent legal knowledge tools.

Many lawyers implicitly assume that artisanal intransigence will prevail over AI Lawyers should embrace knowledge technologies as complements to professional service. Those technologies can be augmenters and accelerants, not just substitutes. If they learn to leverage machine intelligence, even average lawyers can outperform

MAG. (May 2, 2017, 1:45 PM), <https://www.sciencemag.org/news/2017/05/artificial-intelligence-prevails-predicting-supreme-court-decisions> [<https://perma.cc/H6GS-RHW7>].

29. *See id.*

30. James Summers, *Professional and Ethical Traps for Technophobes and Technoweenies*, MEM. B. ASS’N J., Jan. 2004, http://www.allensummers.com/sites/396/uploaded/files/Professional_Traps_Jan_2004.pdf [<https://perma.cc/47L2-MVFP>].

machine intelligence alone.³¹

For years, lawyers and law firms have considered their duties to clients to be a reason to be skeptical about new service providers. Their professional duties of confidential representation, for example, require them to carefully vet new tools for the delivery of legal services and to go slow in adopting new technologies. In this case, however, the Model Rules actually propel lawyers and their firms forward. Rule 1.1, read in conjunction with Comments 5 and 8, requires law firms to employ measures, including AI and data analytics, to ensure that they meet standards of reasonable competence in representation.

II. Rule 1.6: Duty of Confidentiality

Client-Lawyer Relationship

(a) A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent [or] the disclosure is impliedly authorized in order to carry out the representation . . .

. . . .

(c) A lawyer shall make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client.³²

Lawyers for years have been using third-party tools to handle client data: from the early days of copying machines and fax machines, to computers and word processing software, to hosted e-mail, practice management software, and cloud computing. As with the older tools, lawyers and their firms will need to ensure the confidentiality of sensitive client information analyzed with AI.

31. Marc Lauritsen, *Toward a Phenomenology of Machine-Assisted Legal Work*, 1 J. ROBOTICS, ARTIFICIAL INTELLIGENCE & L. 67, 78–79 (2018).

32. MODEL RULES OF PROF'L CONDUCT r. 1.6 (AM. BAR ASS'N 2016).

Lawyers have been using AI in their practices for years. When Microsoft Word autocorrects a spelling error, it's using AI.³³ Computer scientists often quip that “once it works, we stop calling it AI.”³⁴ So we should not be considering whether or when law firms will use AI in their practices. Siri and Cortana use AI, as does optical character recognition, or “OCR.”³⁵ Smart speakers, such as Amazon's Alexa, use AI to understand spoken language.³⁶ Lawyers already use AI all the time in performing legal services, even if the tools tend to fade into the background once they work. Our question shouldn't be “whether” or “when” lawyers will use AI in their practices, but instead to examine how and when lawyers use these services, and especially what client information passes through them.

Law firms are beginning to use AI tools to understand their own matter data, seeking to differentiate both their specialized in-house matter libraries, as well as to create new legal services with AI tools.³⁷

Law firms are using AI to understand the distribution of their costs when providing legal services to clients. Law firms are using AI to dig deeper into their client billing history to better understand the resources required to handle different kinds of client matters. Clients increasingly request fixed-fee engagements or alternative fee agreements from law firms.³⁸ But if those firms do not understand their costs, a fixed-fee engagement poses a serious risk of cost overruns borne by the firm.

So instead of hand coding and curating past bills, firms are using AI to understand the range and distribution of costs, computing the mean

33. Ed Walters, *AI Practice, Not Promise, in Law Firms*, L. PRAC. MAG. (Jan. 1, 2019) https://www.americanbar.org/groups/law_practice/publications/law_practice_magazine/2019/january-february/JF2019Walters/ [<https://perma.cc/E2DT-SJMJ>].

34. *Id.*

35. Kevin Murnane, *Dumb and Dumber: Comparing Alexa, Siri, Cortana and the Google Assistant*, FORBES (May 3, 2018, 8:00 AM), <https://www.forbes.com/sites/kevinmurnane/2018/05/03/dumb-and-dumber-comparing-alexa-siri-cortana-and-the-google-assistant/#630d4d8936e7> [<https://perma.cc/L9J9-GRU4>]; *Optical Character Recognition*, ARTIFICIAL INTELLIGENCE BLOG, <https://www.artificial-intelligence.blog/terminology/optical-character-recognition> [<https://perma.cc/YEX4-32EG>].

36. Bernard Marr, *Machine Learning in Practice: How Does Amazon's Alexa Really Work?*, FORBES (Oct. 5, 2018, 12:01 AM), <https://www.forbes.com/sites/bernardmarr/2018/10/05/how-does-amazons-alexa-really-work/#73b1a2ad1937> [<https://perma.cc/GZL5-SHJF>].

37. Ed Walters, *supra* note 33.

38. *Id.*

and median costs for similar matters, and looking for facts that create outlier conditions. Firms are using tools, such as Digitory Legal or Fastcase's AI Sandbox, to analyze their billing data in this way.³⁹ Understanding costs mitigates risk for clients and for law firms, and it can help those firms be more competitive when seeking new business.

Although some providers request that firms turn over their data for analysis, this is unlikely to be practical for law firms. The better practice is for firms to maintain control of sensitive client information and to conduct their own analysis. This analysis with AI tools need not be exclusively in "on-premises" servers or hardware; however, firms will likely wish to employ cloud computing platforms for the simplicity of scaling server resources and storage. Law firms working on the cloud should insist on having exclusive access to servers to maintain the confidentiality of sensitive client information.⁴⁰

Similarly, some AI tools are trained by the data they analyze.⁴¹ Even if the software or API is run on a data set that remains within the control of the firm, it is possible that AI tools of general application could learn specific facts or patterns from client-sensitive data.⁴² The team at IBM Watson has worked to create learning modules called "cartridges" for certain types of legal inquiries.⁴³ But these cartridges are trained on law firm data, so it is important to understand what information, if any, is extracted from AI tools, and the software company's policy (if any) to destroy data such as uploaded briefs, to ensure that the lawyer or firm remains within their contractual or professional obligations of confidentiality.⁴⁴

39. *Id.*

40. John Reed Stark, *Law Firms and Cybersecurity: A Comprehensive Guide for Law Firm Executive Committees*, CYBERSECURITY DOCKET (2016), <https://www.johnreedstark.com/wp-content/uploads/sites/180/2016/04/Law-Firm-Cybersecurity-Guide-Final-PDF.pdf> [<https://perma.cc/RCT5-FS6N>].

41. Walters, *supra* note 33.

42. Zainab Hussain, *The ABCs of Machine Learning: Privacy and Other Legal Concerns*, L. PRAC. TODAY, (June 14, 2017) <https://www.lawpracticetoday.org/article/machine-learning-privacy-legal-concerns/> [<https://perma.cc/BHB8-2ZPX>].

43. Jordan Furlong, *Thinking Differently About Legal AI*, LAW TWENTY ONE (May 17, 2018) <https://www.law21.ca/2018/05/thinking-differently-legal-ai/> [<https://perma.cc/T9UC-NCZ>].

44. JACKSON LEWIS, DATA PRIVACY AND SECURITY: A PRIMER FOR LAW FIRMS (May 2010), <https://www.workplaceprivacyreport.com/wp-content/uploads/sites/162/2010/09/Data-Privacy-Primer-for-Law-Firms-Sept-2010-FINA.pdf> [<https://perma.cc/MA7Y-9U4W>]; Furlong, *supra* note 43.

AI tools do not necessarily present a special risk when dealing with clients' confidential data. Law firms have conducted business over telephones and unencrypted e-mail for decades. Lawyers using an iPhone or commercial PBX systems passively use AI to transcribe voicemail from clients, for just another example.⁴⁵ AI tools don't create new rules or risks of confidentiality, but they do pose another area in which law firms should be conscious and analyze what information is being stored or transmitted, how it is used, and whether and when that information is destroyed. This may additionally present an opportunity for law firms to once again see AI services in use in their firm, especially those that the firm takes for granted or no longer sees.

III. Duty of Good Faith

Rule 3.1: Meritorious Claims & Contentions

A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous, which includes a good faith argument for an extension, modification or reversal of existing law. A lawyer for the defendant in a criminal proceeding, or the respondent in a proceeding that could result in incarceration, may nevertheless so defend the proceeding as to require that every element of the case be established.⁴⁶

The Model Rules impose an ethical obligation on lawyers to understand the basis in law for legal arguments, and it prohibits law firms from using arguments that they know to be without merit.⁴⁷ As the rule states, a lawyer may request in good faith that a court extend,

45. Geri L. Dreiling, *Voice-to-Text Transcription for Voice Mail*, LAWYERTECHREVIEW.COM (Feb. 8, 2011), <http://lawyertechreview.com/2011/voice-to-text-for-voice-mail/> [<https://perma.cc/D8ZL-EY7P>].

46. MODEL RULES OF PROF'L CONDUCT r. 3.1 (AM. BAR ASS'N 2016).

47. *Id.*

modify, or reverse existing law, or to prove every element of a criminal case.⁴⁸ However, a lawyer who asserts an argument he or she knows to be frivolous will be in violation of the rules of professional conduct.⁴⁹

In the past, lawyers have used legal research, citators, and treatises to understand whether arguments are good law or nonfrivolous.⁵⁰ They were obliged to analyze whether law was good in a particular court but in a general way—for all judges in any particular jurisdiction or court level.

Law firms are looking at litigation analytics more than ever to analyze the merits of arguments and litigation strategies—in no small part because the tools of analysis are improving quickly.⁵¹ For example:

Tools from the recently launched Lexis Analytics and from Docket Alarm give a deeper look than ever at the strategies, judges, and law firms that help firms to understand litigation outcomes. Formerly the domain of federal courts only, these tools are now expanding into state courts as well.

Markets may drive this trend toward a deeper understanding of legal analytics. Clients need better information to make strategic decisions about litigation, and they are becoming increasingly sophisticated about pricing risk. In addition, litigation financing companies will have hundreds of millions of dollars at stake, so they will demand that firms are using analytics to understand the risks at trial.⁵²

In addition to these gains, lawyers have an increasing capacity to understand how individual judges are likely to rule in a case, or

48. *Id.*

49. *Id.*

50. Walters, *supra* note 33.

51. *Id.*

52. *Id.*

whether certain motions are likely to be granted.⁵³ Today these tools are mostly descriptive; that is, they explain what has happened in similar cases in the past.⁵⁴ Future tools will be more predictive, describing what is likely to happen in a particular case in the future.

Lawyers have new probabilistic tools to analyze whether their clients are likely to prevail at trial, but the rules do not give clear guidance about how they should use them and what should be considered frivolous under the Model Rules.⁵⁵ When a lawyer receives a settlement offer that is in the ninety-first percentile of settlements in similar cases, does she have an obligation to recommend settlement to a client? What if the chances of winning at trial are 26%? Does that increase the obligation to settle a case?

It is not far-fetched to imagine that AI tools will analyze causes of action, briefs, motions, and settlements in the future and make predictive recommendations. Although lawyers may often agree with these recommendations, there will certainly be occasions when the lawyer disagrees.⁵⁶ When AI is sufficiently skilled at making predictive recommendations, conflicts between expert lawyers and expert analytics are likely to create new ethical conflicts as well as malpractice insurance issues. Will malpractice insurers raise rates on lawyers who advise clients not to follow the advice of machines that have very high rates of accuracy?

What about lawyers who advise clients based on the ill-advised recommendation of expert AI or data analytics? Just as very good autonomous cars can make mistakes that human drivers would not, predictive AI will become very good at its job.⁵⁷ It will also make mistakes and maybe even some mistakes that lawyers would not. Malpractice insurers (and perhaps the Model Rules) may create

53. *Id.*

54. *Id.*

55. Sarah McCormick, *The Use of AI in Predicting Legal Outcomes*, LEGAL BUSINESS WORLD (Feb. 10, 2017) <https://www.legalbusinessworld.com/single-post/2017/02/10/The-Use-of-AI-in-Predicting-Legal-Outcomes> [https://perma.cc/88PN-H3D8].

56. Walters, *supra* note 33; see Jason Millar & Ian R. Kerr, *Delegation, Relinquishment, and Responsibility: The Prospect of Expert Robots*, in ROBOT LAW 102 (Ryan Calo, A. Michael Froomkin, & Ian Kerr eds., 2013).

57. See Walters, *supra* note 33.

incentives for lawyers to advise in accord with expert AI systems, but that may create negligence liability for law firms.

As predictive AI and expert systems get better, Model Rule 3.1 may seek to create a safe harbor for lawyers who advise their clients with the assistance of expert systems. Individual cases may offer the opportunity for courts to create a common law of probabilistic reasonableness, when the predicted odds become so long that there is not a reasonable basis in fact to think it will be successful. In addition, malpractice insurers and rule makers should be careful to give guidance for lawyers about when it is ethical to trust automated systems and when those lawyers should override the recommendation of a software system in advising a client.

IV. Rule 5.1: Duty of Supervision

Rule 5.1 provides:

(a) A partner in a law firm, and a lawyer who individually or together with other lawyers possesses comparable managerial authority 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.⁵⁸

Rule 5.1 establishes that partners and managers of law firms take reasonable efforts to ensure that lawyers make sure that the lawyers they manage conform to the requirements of the Model Rules.⁵⁹ Lawyers obviously cannot shirk their professional responsibilities when their teammates break the rules.

58. MODEL RULES OF PROFESSIONAL CONDUCT r. 5.1 (AM. BAR ASS'N 2016).

59. *Id.*

When lawyers use expert systems in the practice of law, such as software that assists lawyers in drafting a pleading, these AI tools will perform tasks that previously were handled only by lawyers. This also raises UPL issues that are raised in the next section. The Model Rules say nothing about the responsibility of a lawyer to make sure that software she manages conforms to the Rules of Professional Conduct, but the rationale would be no different.

When a law firm uses software instead of people in part (or in all) of the legal service delivery, that firm would presumably have the same professional responsibility to ensure that the software comports with the rules—for example protecting client confidentiality, not making frivolous arguments, or not making false statements to the tribunal.⁶⁰ Presumably a court that received a pleading with a false statement or with a frivolous argument would not care whether the document was prepared by AI or by an associate at the firm. The managing partner of the firm would be responsible to “make reasonable efforts to ensure that the other lawyer conforms to the Rules of Professional conduct.”⁶¹

Without resorting to calling the software a “robot lawyer,” it would be a natural extension of the rule to require law firms to make the same reasonable effort to ensure that the software conforms to the Rules of Professional Conduct. On the other hand, it will be very difficult for law firms to understand whether software is conforming to the rules. Law firms cannot do a forensic examination of all the software they use in the firm.

Rule 5.1(b) requires only that the managing lawyer make “reasonable efforts,” and it would be unreasonable to expect a lawyer to inspect the code base of the software the firm employs.⁶² A reasonable safe harbor in a circumstance like this would be for software to have the imprimatur of an industry group or a certification of accuracy. However, no such group currently exists. Malpractice insurers may have an incentive to set up such a testing consortium as

60. MODEL RULES OF PROF'L CONDUCT r. 1.6, 3.1, 3.3 (AM. BAR ASS'N 2016); see Spahn, *supra* note 6.

61. MODEL RULES OF PROF'L CONDUCT r. 5.1 (AM. BAR ASS'N 2016).

62. *Id.*

legal software takes on more tasks previously reserved for human lawyers to create a safe harbor for malpractice claims against lawyers and firms that use tested and certified software.⁶³

V. Rule 5.5: Unauthorized Practice of Law

Rule 5.5(a) specifically provides, “A lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so.” Comment 2 further provides:

The definition of the practice of law is established by law and varies from one jurisdiction to another. Whatever the definition, limiting the practice of law to members of the bar protects the public against rendition of legal services by unqualified persons. This Rule does not prohibit a lawyer from employing the services of paraprofessionals and delegating functions to them, so long as the lawyer supervises the delegated work and retains responsibility for their work. See Rule 5.3.⁶⁴

The Model Rules prohibit lawyers from violating the law of a jurisdiction, for example practicing before a court without a license from that court, which could make it seem like the UPL rules only apply to lawyers.⁶⁵ On the contrary, almost every state has a statute or regulation prohibiting someone who does not have a law degree from engaging in the practice of law.⁶⁶ The penalties for violating UPL rules can be severe, ranging from fines to criminal charges.⁶⁷ Two-thirds of

63. Walters, *supra* note 33.

64. MODEL RULES OF PROF'L CONDUCT r. 5.5 cmt. 2 (AM. BAR ASS'N 2016).

65. *Id.*; Derek A. Denckla, *Nonlawyers and the Unauthorized Practice of Law: An Overview of the Legal and Ethical Parameters*, 67 FORDHAM L. REV. 2581, 2581 (1999).

66. See AM. BAR ASS'N, *Appendix A: State Definitions of the Practice of Law*, https://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/model-def_migrated/model_def_statutes.pdf [https://perma.cc/V79V-NV3N]; Denckla, *supra* note 65.

67. Denckla, *supra* note 65, at 2585.

states have made UPL a criminal misdemeanor, and in a few states it is a felony.⁶⁸

Statutes in all fifty states seek to protect consumers by requiring that legal services are only delivered by lawyers who have attended an accredited law school, passed the bar exam, and passed a character and fitness review.⁶⁹ By providing legal information and advice directly to consumers without going through an attorney, it is possible that software services are “practicing law” without a license. Moreover, as computers get smarter and software becomes more and more capable, AI is likely to encroach more into what would traditionally be considered legal practice.

Although software might violate UPL rules, it is not at all clear which software and which services would do so, and in which states. There is no universal standard for what constitutes “the practice of law” in the United States. Instead, UPL rules are set by a patchwork quilt of regulations, state statutes, case law, bar ethics committee opinions, and attorney general opinions.⁷⁰ Each state has its own standards and its own understanding of what constitutes unauthorized practice, and those standards are rarely well-defined. States generally restrict activities such as representing clients in court, drafting paid legal documents, or signing opinion letters, as the “practice of law,” but the rules in each state vary greatly.⁷¹

The Model Rules of Professional Responsibility Rule 5.5, Comment 2, states the conundrum well: “The definition of the practice of law is established by law and varies from one jurisdiction to another.”⁷² The Restatement (Third) of the Law Governing Lawyers goes farther to say that “the definitions and tests employed by courts to delineate unauthorized practice by nonlawyers have been vague or conclusory,

68. *See, e.g.*, N.Y. EDUC. LAW § 6512 (McKinney 2019) (“Anyone not authorized to practice under this title who practices or offers to practice or holds himself out as being able to practice in any profession in which a license is a prerequisite to the practice of the acts, . . . or who aids or abets an unlicensed person to practice a profession . . . shall be guilty of a class E felony.”).

69. *See* MODEL RULES OF PROF’L CONDUCT r. 5.5 (AM. BAR ASS’N 2016).

70. *See, e.g., id.*; EDUC. § 6512.

71. *See, e.g.*, MODEL RULES OF PROF’L CONDUCT r. 5.5 (AM. BAR ASS’N 2016).

72. *Id.*

while jurisdictions have differed significantly in describing what constitutes unauthorized practice in particular areas.”⁷³

For example, in 1997, the Unauthorized Practice of Law Committee of the State Bar of Texas brought suit against Parsons Technology, maker of the CD-ROM Quicken Family Lawyer, claiming that the company’s library of computerized, fillable legal forms constituted the practice of law.⁷⁴ The court in that case found that the Quicken Family Lawyer program did constitute UPL, holding that the software purports to select the correct legal form, customizes the document, and “creates an air of reliability about the documents, which increases the likelihood that an individual user will be misled into relying on them.”⁷⁵ It was only after a lobbying campaign by Parsons Technology that the Texas Legislature amended its UPL statute to make clear that software such as Quicken Family Lawyer did not constitute the practice of law.⁷⁶

Many states, such as New York and Massachusetts, do not consider basic form-filling to be law practice at all, and allow unlicensed people to assist consumers with many forms directly.⁷⁷ Other states leave ambiguous when software constitutes UPL or have not yet faced the question.⁷⁸

The lack of clear guidelines and uniformity has the potential to create a chilling effect on innovation and access-to-justice efforts. Software developers can never really know whether they are violating UPL statutes in their state. And if they are deemed not to violate the UPL laws of one state, they would still be subject to ambiguous and different UPL statutes of the other forty-nine states, plus the District of Columbia.

73. RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS § 4 (AM. LAW INST. 2000) cmt. c.

74. *Unauthorized Practice of Law Comm. v. Parsons Tech.*, No. Civ.A. 3:97CV-2859H, 1999 WL 47235, at *1 (N.D. Tex. Jan. 22, 1999).

75. *Id.* at *6.

76. *Unauthorized Practice of Law Comm. v. Parsons Tech.*, 179 F.3d 956, 956 (5th Cir. 1999).

77. MASSACHUSETTS RULES OF PROF’L CONDUCT r. 5.5 (MASS. SUPREME JUDICIAL COURT).

78. Robert Ambrogi, *Latest Legal Victory Has LegalZoom Poised for Growth*, ABA JOURNAL (Aug. 2014), http://www.abajournal.com/magazine/article/latest_legal_victory_has_legalzoom_poised_for_growth [<https://perma.cc/3PKX-EY3N>].

So although software has great potential to help close the access to justice gap, the risk of criminal penalties, combined with uncertainty about what is permitted, may well deter many otherwise enthusiastic developers from even trying to enter the market. Thus, in their current nonstandard and ambiguous form, UPL statutes represent a daunting obstacle to those who would address the access to justice gap with software.

UPL rules serve an important purpose of protecting clients from receiving ill-informed or incompetent legal representation. The interest they are designed to protect is that of the consumer in need of sound legal advice, not that of lawyers concerned about disruption in the industry. Of course, there is room for legitimate concern that some software companies may have low standards and will provide bad legal advice. Consumers need to be protected against potentially faulty software every bit as much as they need to be protected against unqualified human advisers.⁷⁹ Unfortunately, the current system disincentivizes all legal software development, both the good and the bad, because it focuses on who can give legal advice, rather than how the quality of legal services that are provided for clients.

CONCLUSION

The Model Rules are an important framework to protect consumers of legal services. Historically, states sought to govern the accreditation and conduct of lawyers, requiring that they conduct their business following a code of conduct that protected their clients.⁸⁰ In this history, however, many people have been excluded from legal services.⁸¹ AI and data analytics hold out the promise of a new era of legal services. Rules-based AI systems can provide one-to-many legal assistance, and data-driven legal analytics can provide new insights to

79. *Id.*

80. MODEL RULES OF PROF'L CONDUCT preface (AM. BAR ASS'N 2016).

81. Selina Thomas, *Rethinking Unauthorized Practice of Law in Light of the Access to Justice Crisis*, 23 PROF. LAW., no. 3, 2016, at 1, https://www.americanbar.org/content/dam/aba/publications/professional_lawyer/volume_23_number_3/ABA_PLN_v023n03_04_rethinking_unauthorized_practice_law_light_access_justice_crisis.authcheckdam.pdf [<https://perma.cc/X3CE-82XK>].

clients. In many cases, such as duties of confidentiality, the text of the Model Rules, or a simple application of the rationale behind the text, will also protect consumers of legal services.

However, in some cases, the Model Rules may need an update, in particular, with respect to UPL. This article does not argue for robot lawyers or a displacement of lawyers—far from it. It does suggest, however, that lawyers and others increasingly will provide legal services with software, and that new protections will be necessary to protect consumers. It will be important as well to define more clearly what constitutes the “practice of law” so that innovators and law firms alike will have safe harbors for innovation.

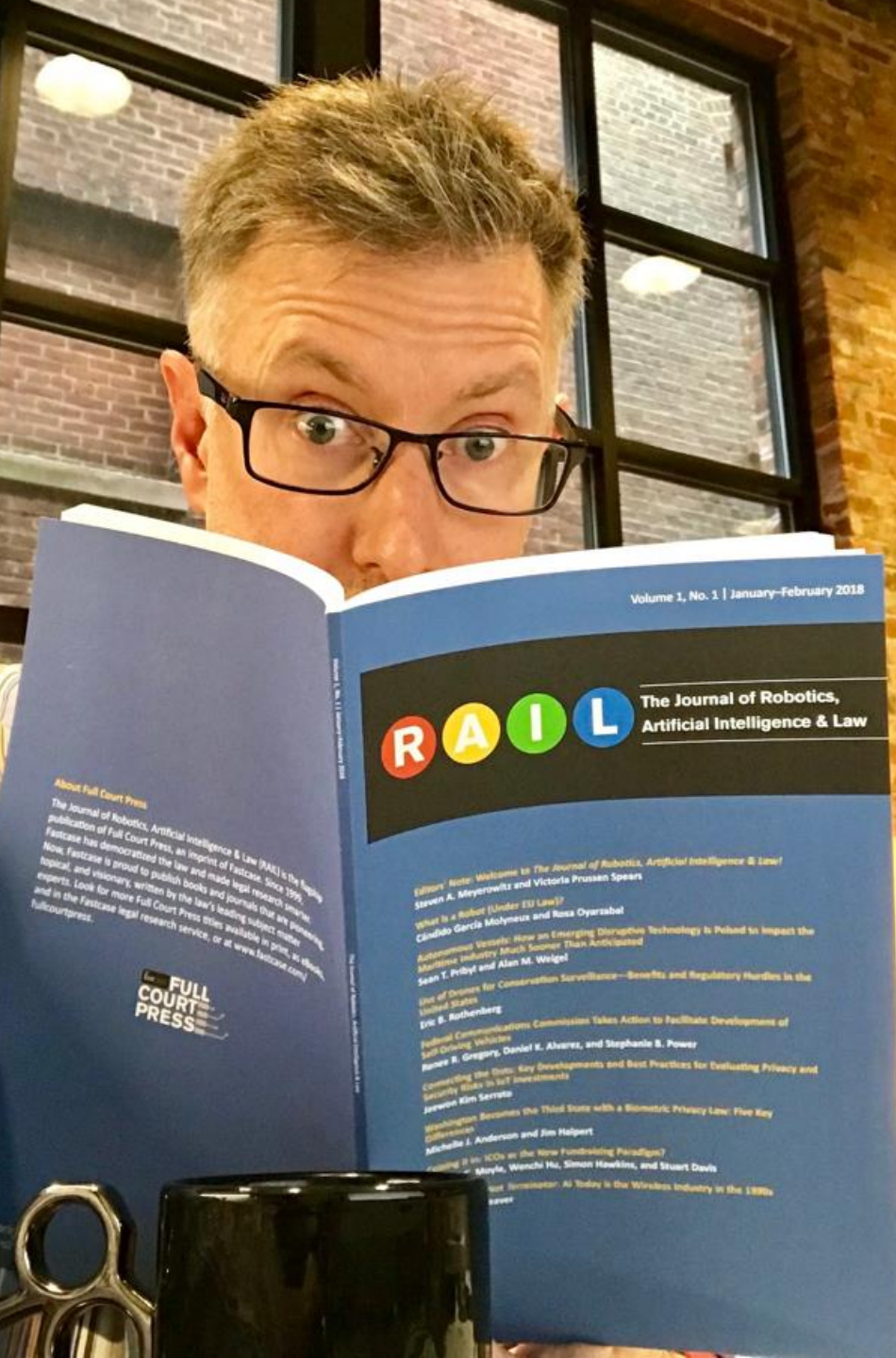
Special problems remain for AI in the practice of law. In particular, when AI tools reach conclusions, they should be able to explain to lawyers and judges how they did and on what data they relied so that lawyers can exercise their duties of supervision. Lawyers and judges cannot protect clients from bias, for example, if their AI is little more than a “black box” producing legal conclusions.

The Model Rules do not prohibit the use of AI or data analytics; in fact, the Rule 1.1 duty of competence and the Rule 1.3 duty of diligence increasingly will *require* lawyers to use these tools.⁸² Where the Model Rules may have served as an impediment for lawyers to experiment in the past, increasingly they will be a catalyst moving lawyers into the data-driven practice of the future. Where AI and data can provide empirical, objective answers to questions, it may no longer be ethical for law firms to employ conjecture (at best) or hunches (at worst) in delivering legal services to clients. Far from prohibiting AI and data analytics, the Model Rules increasingly may require their use.

82. See MODEL RULES OF PROF'L CONDUCT r. 1.1, 1.3 (AM. BAR ASS'N 2016).

How Do You Know: A Look Inside Legal AI

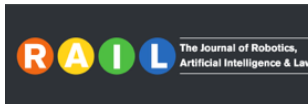
Ed Walters, Chief Strategy Officer, vLex
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- Editor: Journal of Robotics, Artificial Intelligence & Law (RAIL)
- Author: Data-Driven Law (Taylor & Francis, 2019)



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The Model Rules of Autonomous Conduct: Ethical Responsibilities of Lawyers and Artificial Intelligence

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Nov. 30, 2022



Hallucinations

Here's What Happens When Your Lawyer Uses ChatGPT

A lawyer representing a man who sued an airline relied on artificial intelligence to help prepare a court filing. It did not go well.

 Share full article



 1.1K



As an Avianca flight approached Kennedy International Airport in New York, a serving cart collision began a legal saga, prompting the question: Is artificial intelligence so smart? Nicolas Economou/NurPhoto, via Getty Images



By **Benjamin Weiser**

May 27, 2023

The lawsuit began like so many others: A man named Roberto Mata sued the airline Avianca, saying he was injured when a metal serving cart struck his knee during a flight to Kennedy International Airport in New York.

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Confidentiality

Whoops, Samsung workers accidentally leaked trade secrets via ChatGPT

ChatGPT doesn't keep secrets.

By [Cecily Mauran](#) on April 6, 2023



A major whoopsie from Samsung. Credit: Getty Images

Never forget that anything you share with ChatGPT is retained and used to further train the model. Samsung employees have learned this the hard way after accidentally leaking top secret [Samsung](#) data.

Samsung employees accidentally shared confidential information while using ChatGPT for help at work. Samsung's semiconductor division has allowed engineers to use ChatGPT to check source code.

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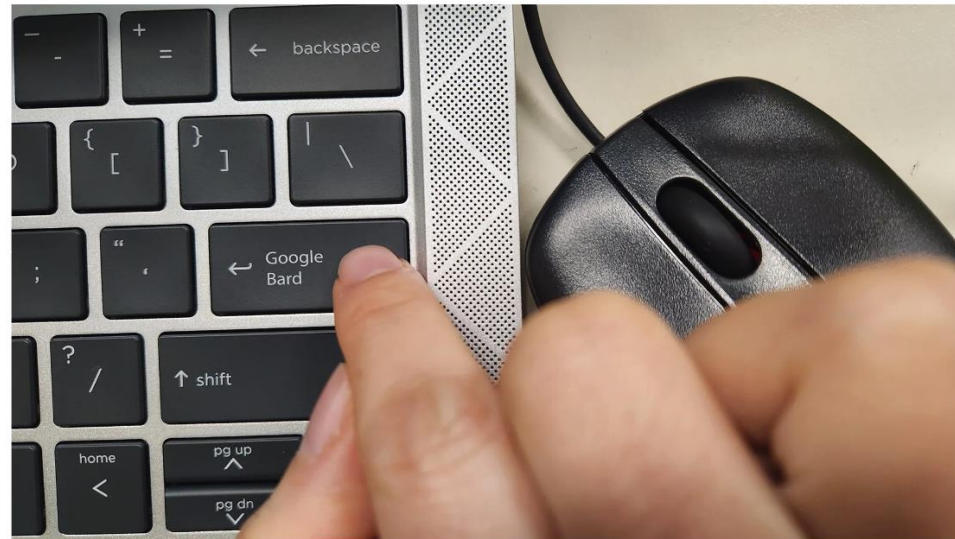
Be Careful With Bard: Google Search Showing Private Chatbot Snippets

Private Google Bard conversations are showing up in Google Search results thanks to its link-sharing feature. Google says it's working on a fix.



by [Joe Hindy](#)

| Sep 27, 2023



One of the nifty features of [Google Bard](#) is the ability to share [chatbot](#) conversation links with other people, which folks can use to continue talking with Bard.

Those snippet links are supposed to be private, but they've started showing up in Google Search results. Google Search Liaison Danny Sullivan says Google is working on a fix.

In general, a chatbot log is private between Google Bard and the person using it. A person can generate a share link and send snippets of their conversations to friends, family members, and other people. While Google does not recommend using any personally identifiable information in your Google Bard interactions, the content of those links are supposed to stay private.



Transparency

Legal research
is just terrible.



Artificial intelligence
is just terrible.



Answer a Question

Build an Argument

Compare Jurisdictions

Analyze Documents



+ New Question

HISTORY

What are common defenses to ...

Is the use of copyrighted photo...

Is it a violation of the Establish...

Answer a Question

Is the use of copyrighted photographs to train generative artificial intelligence tools considered fair use in copyright?

United States (Federal Cases)

Edit Question

Answer



Short Response:

The question of whether the use of copyrighted photographs to train generative artificial intelligence (AI) tools is considered fair use under copyright law is currently an undecided issue in U.S. courts. The fair use doctrine may apply, but this has not been confirmed. If the fair use doctrine does not apply, there could be significant risk of copyright infringement and substantial liability for AI systems that use copyrighted works without authorization. The determination of fair use is a complex, context-sensitive process that takes into account four factors: the purpose and character of the use, the nature of the copyrighted work, the amount and substantiality of the portion used, and the effect of the use on the potential market for or value of the copyrighted work. Therefore, the use of copyrighted photographs to train generative AI tools could potentially be considered fair use, depending on the specifics of the case.

Legislation:

The fair use doctrine is codified in Section 107 of the Copyright Act of 1976. This

Legal Authorities



Modify List

All (16) Cases (9) Statutes & Regulations (2) Secondary Sources (5)

Fair Use and Copyright Overenforcement



The fair use of a copyrighted work, including reproduction, for purposes such as teaching, scholarship, or research, is not an infringement of copyright. However, whether a use is considered fair use depends on several factors, including the purpose and character of the use, the nature of the copyrighted work, and the amount and substantiality of the portion used in relation to the copyrighted work as a whole. (70%)

Notwithstanding the provisions of sections 106 and 106A, the fair use of a copyrighted work, including such use by reproduction in copies or phonorecords or by any other means specified by that section, for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research, is not an infringement of copyright. In determining whether the use made of a work in any particular case is a fair use the factors to be considered shall include- 1. the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes; 2. the nature of the copyrighted work; 3. the amount and substantiality of the portion used in relation to the copyrighted work as a whole;

An economic analysis of the fair use defense.



The passage outlines the factors that are considered when determining if a use of a copyrighted work is fair use. These factors include the purpose and character of the use, the nature of the copyrighted work, the amount and substantiality of the portion used in relation to the copyrighted work as a whole, and the effect of the use upon the potential market for or value of the copyrighted work. (70%)

maybe w/4 (end or final) and
((Boolean or keyword) w/2 search)

No client confidential information.



Lawyers see and control inputs.



Kills hallucinations dead.



Good law?

People v. Johnson

Overruled ▾



Document

Cited Authorities 16

Cited in 49

Search in this document

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Header

Counsel

Citation: 348 N.E.2d 564 , 384 N.Y.S.2d 108 , 39 N.Y.2d 364

Decision Date: 06 April 1976

Will this take jobs?

How do we evaluate quality?

Will generative AI be
a catalyst for inequality?

Slowest, most expensive,
worst it will ever be.



Thank you.

Ed Walters

ed.walters@vlex.com

[@EJWalters](https://twitter.com/EJWalters)

How do we use AI responsibly?

Rule 1.1: Competence

- a) A lawyer shall provide competent representation to a client.

Competent representation requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation.

Rule 1.3: Diligence and Zeal

(c) A lawyer shall act with reasonable promptness in representing a client.

Rule 1.6: Confidentiality of Information

[A] lawyer shall not knowingly:

- (1) reveal a confidence or secret of the lawyer's client;
- (2) use a confidence or secret of the lawyer's client to the disadvantage of the client;
- (3) use a confidence or secret of the lawyer's client for the advantage of the lawyer or of a third person.

Rule 3.3: Candor to the Tribunal

(a) A lawyer shall not knowingly . . . make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer.

Rule 5.3: Responsibilities Regarding Nonlawyer Assistants

With respect to a nonlawyer employed or retained by or associated with a lawyer:

(a) A partner or a lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm or government agency shall make reasonable efforts to ensure that the firm or agency has in effect measures giving reasonable assurance that the person's conduct is compatible with the professional obligations of the lawyer.

How do we use AI responsibly?

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Thank you.

Ed Walters

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[@EJWalters](https://twitter.com/EJWalters)



South Carolina Bar

Continuing Legal Education Division

2024 SC BAR CONVENTION

Probate, Estate Planning & Trust Law Section

Friday, January 19

Panel Discussion on AI & Chat GPT and Their
Impact on Estate Planning and Probate Practice
in South Carolina

Ed Walters
Michael J. Polk
Jonathan E. Spitz
Andrew D. Merline

Friday, January 19, 2024

2 – 5:15 p.m.

Probate, Estate Planning & Trust Section

Materials for Panel Discussion on AI & Chat GPT and Their Impact on Estate Planning and
Probate Practice in South Carolina

Special Thanks to Moira Stewart, Bryce Callahan, and Shaye Thoroughman, USC Students
working at Belser Law Firm who assisted me with this project.

Things to Try (remember to give it time, specificity is a differentiator, things other than parlor tricks):

- Bard by Google
- ChatGPT by OpenAI (better to pay for access)
- Bing
- Copilot and Bing Chat
- Claude.ai

Ways to Keep Up

- Podcasts:
 - Hard Fork
 - Plain English
 - Legaltech Week
- Email Newsletters:
 - TLDR AI
 - The Daily Bite by Snack Prompt
 - The Neuron
 - Brainyacts

Queries I asked clerks to run using Bing:

What is your name?

What is a good joke to tell at the beginning of a seminar attended by lawyers?

How did a computer learn how to play and win at GO?

How is a large language model developed? Explain it to me like I am a high school freshman.

What are 10 ways that attorneys can use AI and ChatGPT to improve their practice?

What are 10 ways that attorneys can use AI and ChatGPT to prepare for trial?

What are 10 ways that attorneys can use AI and ChatGPT to improve their writing?

What are ways estate planning attorneys can use AI and ChatGPT?

What are ways that probate attorneys, that is, attorneys that help with estate administration and guardianships and conservatorships, can use AI and ChatGPT?

What are 10 ways attorneys can use AI and ChatGPT to improve their life?

What are the limitations of using AI and ChatGPT that attorneys should be aware of?

How can attorneys learn more about AI and ChatGPT and stay on top of developments

What ethical rules for attorneys are impacted by the use of AI and ChatGPT?

What are 10 topics that might be of interest to attorneys at a bar convention with a roundtable on AI and its effects on attorneys and the practice of law?

What are 5 podcasts and 5 email newsletters attorneys should subscribe to so that they can stay current on developments of AI?

What are links to 10 articles about common uses of ChatGPT by attorneys? The articles should be no earlier than June 1, 2023.

What is your name?

My name is Bing. I am a chat mode of Microsoft Bing, a web search engine that can help you find information, images, news, and more. I can also generate imaginative and innovative content such as poems, stories, code, essays, songs, celebrity parodies, and more using my own words and knowledge. 😊

What is a good joke to tell at the beginning of a seminar attended by lawyers?

I'm happy to help with that. Here's a joke that might be appropriate for a seminar attended by lawyers:

> A lawyer boarded an airplane in New Orleans with a box of frozen crabs and asked a blonde flight attendant to take care of them for him. She took the box and promised to put it in the crew's refrigerator. He advised her that he was holding her personally responsible for them staying frozen, mentioning in a very haughty manner that he was a lawyer and proceeded to rant at her about what would happen if she let them thaw out. Needless to say, she was annoyed by his behavior. Shortly before landing in New York, she used the intercom to announce to the entire cabin, "Would the lawyer who gave me the crabs in New Orleans, please raise your hand?" Not one hand went up... so she took them home and ate them herself. ¹

I hope that helps! Let me know if you need anything else.

Source: Conversation with Bing, 11/20/2023

(1) 40 Hilarious Lawyer Jokes That'll Have You Rolling. <https://inspirationfeed.com/lawyer-jokes/>.

(2) 68 Best Conference Jokes for Events in 2023 - [teambuilding.com](https://teambuilding.com/blog/conference-jokes).
<https://teambuilding.com/blog/conference-jokes>.

(3) 101 Lawyer Jokes So Funny You Just Can't Object to Them - Scary Mommy.
<https://www.scarymommy.com/lawyer-jokes>.

(4) 174 Lawyer Jokes That Are Legally Bound To Entertain You - Bored Panda.
<https://www.boredpanda.com/lawyer-jokes/>.

How did a computer learn how to play and win at GO?

[A computer learned how to play and win at Go by using a combination of two powerful algorithms: deep learning and reinforcement learning¹](#). Deep learning is a technique that allows the computer to learn from data, such as images, text, or speech, by using artificial neural networks. Reinforcement learning is a technique that allows the computer to learn from its own actions and rewards, by trial and error.

The computer program, called AlphaGo, was developed by Google DeepMind, a research company that specializes in artificial intelligence. AlphaGo learned how to play Go by first studying millions of human games, and then playing against itself thousands of times, improving its skills and strategies with each game. AlphaGo used two neural networks: one to select the next move to play, and another to predict the winner of the game. [AlphaGo also used a search algorithm to explore the possible outcomes of each move, and to choose the best one²](#).

AlphaGo made history by defeating some of the best human Go players in the world, including the European champion Fan Hui, and the legendary Lee Sedol, who had won 18 world titles. AlphaGo's victories were considered a breakthrough in artificial intelligence, as Go is a very complex and intuitive game that was thought to be beyond the reach of computers for decades. [AlphaGo also demonstrated creativity and innovation by playing some moves that were very unlikely and surprising, but turned out to be very effective³²](#).

How is a large language model developed? Explain it to me like I am a high school freshman.

A large language model is a computer program that can understand and generate natural language, such as English, French, or Chinese. A large language model can do many things, such as answering questions, writing essays, creating stories, or making jokes. A large language model is like a very smart and creative friend who knows a lot of things and can talk to you about anything.

To develop a large language model, you need four main steps:

- First, you need to gather a lot of data, which are texts written by humans. You can get data from the internet, such as websites, blogs, books, or social media posts. The more data you have, the better your large language model can learn from them.
- Second, you need to design the structure of your large language model, which is how it processes and stores the data. Most large language models use a special structure called a transformer, which is like a network of neurons in your brain. A transformer can learn how to pay attention to the important parts of the data, and how to connect them together.
- Third, you need to train your large language model, which is how it learns from the data. You can use a technique called deep learning, which is like teaching your large language model by examples. You show your large language model some data, and ask it to predict what comes next. For example, if you show it “How are you”, you want it to predict “I am fine”. You then give your large language model feedback, which is like telling it if it is right or wrong. You repeat this process many times, until your large language model becomes good at predicting the next words.
- Fourth, you need to tune your large language model, which is how you make it better for specific tasks or domains. You can use a technique called reinforcement learning, which is like rewarding your large language model for doing well. You give your large language model a goal, such as writing a poem, and let it try different ways to achieve it. You then give your large language model a reward, which is like praising it if it does well, or criticizing it if it does poorly. You repeat this process many times, until your large language model becomes good at achieving the goal.

These are the basic steps for developing a large language model. Of course, there are many details and challenges involved, such as choosing the right data, designing the right structure, training the right way, and tuning the right parameters. [But if you are interested in learning more, you can check out some of the web search results that I found for you¹²³⁴⁵](#). I hope this helps you understand how a large language model is developed. 😊

What are 10 ways that attorneys can use AI and ChatGPT to improve their practice?

AI and ChatGPT are powerful technologies that can help attorneys improve their practice in many ways. Here are 10 examples of how attorneys can use AI and ChatGPT to enhance their legal work:

- **Contract drafting and review:** Attorneys can use ChatGPT to generate or review contracts, such as nondisclosure agreements, employment contracts, or lease agreements. ChatGPT can suggest language, identify issues, or summarize terms and clauses. [This can save time and effort in the drafting and review process¹](#).
- **Legal research:** Attorneys can use ChatGPT to conduct legal research on various topics, such as case law, statutes, regulations, or legal doctrines. ChatGPT can provide summaries, citations, or arguments for a legal issue. [This can help attorneys find relevant and reliable sources of law²](#).
- **Legal analysis:** Attorneys can use ChatGPT to perform legal analysis on a given case or problem. ChatGPT can generate hypotheses, scenarios, or counterarguments for a legal position. [ChatGPT can also evaluate the strengths and weaknesses of different legal options, and suggest possible outcomes or recommendations²](#).
- **Legal writing:** Attorneys can use ChatGPT to improve their legal writing skills and quality. ChatGPT can help with editing and proofreading legal documents, such as briefs, motions, memos, or letters. ChatGPT can check for grammar, spelling, punctuation, style, and citation errors. [ChatGPT can also help with improving the clarity, coherence, and persuasiveness of legal texts³](#).
- **Legal communication:** Attorneys can use ChatGPT to enhance their legal communication with clients, colleagues, or courts. ChatGPT can generate letters, emails, reports, or presentations for legal purposes. ChatGPT can also help with creating engaging and effective slides, graphics, or visuals for legal audiences.
- **Legal education:** Attorneys can use ChatGPT to advance their legal education and knowledge. ChatGPT can create quizzes, exercises, or simulations for law students or lawyers. ChatGPT can also provide feedback, explanations, or tips for improving legal skills and understanding.
- **Legal innovation:** Attorneys can use ChatGPT to explore new ideas, insights, or solutions for legal challenges or opportunities. ChatGPT can help with generating novel and creative legal concepts, strategies, or products. ChatGPT can also help with assessing the ethical, social, or legal implications of emerging technologies or trends in the legal field.
- **Legal marketing:** Attorneys can use ChatGPT to promote their legal services and brand. ChatGPT can help with creating catchy and compelling slogans, headlines, or ads for legal campaigns. ChatGPT can also help with optimizing the content, design, or SEO of legal websites, blogs, or social media posts.
- **Legal automation:** Attorneys can use ChatGPT to automate some of their routine or repetitive legal tasks. ChatGPT can help with creating or filling out forms, templates, or documents for common legal matters. ChatGPT can also help with scheduling, billing, or managing legal projects or workflows.
- **Legal assistance:** Attorneys can use ChatGPT to get quick and easy legal assistance whenever they need it. ChatGPT can act as a virtual legal assistant or advisor, who can answer questions, provide information, or offer guidance on various legal topics. ChatGPT can also act as a friendly and supportive legal companion, who can chat, joke, or motivate attorneys during their legal work.

What are 10 ways that attorneys can use AI and ChatGPT to prepare for trial?

AI and ChatGPT are powerful technologies that can help attorneys prepare for trial in many ways. Here are 10 examples of how attorneys can use AI and ChatGPT to enhance their trial preparation:

- **Evidence analysis:** Attorneys can use ChatGPT to analyze the evidence collected for a case, such as documents, photos, videos, or audio recordings. [ChatGPT can help with extracting relevant information, identifying patterns or anomalies, or finding connections or contradictions among the evidence](#)¹.
- **Witness examination:** Attorneys can use ChatGPT to prepare for witness examination, such as deposition, cross-examination, or direct examination. [ChatGPT can help with generating questions, anticipating answers, or detecting lies or inconsistencies in the witness testimony](#)².
- **Jury selection:** Attorneys can use ChatGPT to assist with jury selection, such as voir dire, peremptory challenges, or jury questionnaires. [ChatGPT can help with evaluating the juror profiles, predicting the juror preferences, or influencing the juror opinions](#)³.
- **Opening statement:** Attorneys can use ChatGPT to craft their opening statement, which is the first impression of the case to the judge and jury. [ChatGPT can help with creating a clear, concise, and compelling narrative that introduces the facts, the issues, and the arguments of the case](#)⁴.
- **Closing argument:** Attorneys can use ChatGPT to deliver their closing argument, which is the last opportunity to persuade the judge and jury of the case outcome. [ChatGPT can help with summarizing the evidence, highlighting the strengths, or rebutting the weaknesses of the case](#)⁵.
- **Legal research:** Attorneys can use ChatGPT to conduct legal research on various topics, such as case law, statutes, regulations, or legal doctrines. [ChatGPT can provide summaries, citations, or arguments for a legal issue](#)⁶.
- **Legal analysis:** Attorneys can use ChatGPT to perform legal analysis on a given case or problem. ChatGPT can generate hypotheses, scenarios, or counterarguments for a legal position. [ChatGPT can also evaluate the strengths and weaknesses of different legal options, and suggest possible outcomes or recommendations](#)⁶.
- **Legal writing:** Attorneys can use ChatGPT to improve their legal writing skills and quality. ChatGPT can help with editing and proofreading legal documents, such as briefs, motions, memos, or letters. ChatGPT can check for grammar, spelling, punctuation, style, and citation errors. ChatGPT can also help with improving the clarity, coherence, and persuasiveness of legal texts.
- **Legal communication:** Attorneys can use ChatGPT to enhance their legal communication with clients, colleagues, or courts. ChatGPT can generate letters, emails, reports, or presentations for legal purposes. ChatGPT can also help with creating engaging and effective slides, graphics, or visuals for legal audiences.
- **Legal innovation:** Attorneys can use ChatGPT to explore new ideas, insights, or solutions for legal challenges or opportunities. ChatGPT can help with generating novel and creative legal concepts, strategies, or products. ChatGPT can also help with assessing the ethical, social, or legal implications of emerging technologies or trends in the legal field.

What are 10 ways that attorneys can use AI and ChatGPT to improve their writing?

Here are 10 ways that attorneys can use AI and ChatGPT to improve their writing:

- **Contract drafting and review:** AI tools can assist with contract drafting by suggesting language or identifying potential issues within a contract. This can save time and effort in the drafting process. [ChatGPT can also help with contract review by summarizing the main terms and clauses, highlighting any inconsistencies or risks, and generating feedback or questions for the other party¹.](#)
- **Legal research:** ChatGPT can be used during legal research to provide summaries of cases, laws, deposition transcripts, or pleadings filed with the court. [ChatGPT can also help with finding relevant precedents, authorities, or arguments for a legal issue²³.](#)
- **Legal analysis:** ChatGPT can help with legal analysis by generating hypotheses, scenarios, or counterarguments for a given case or problem. [ChatGPT can also help with evaluating the strengths and weaknesses of different legal positions, and suggesting possible outcomes or recommendations³.](#)
- **Legal writing:** ChatGPT can help with legal writing by improving the clarity, coherence, and persuasiveness of legal documents. [ChatGPT can also help with editing and proofreading legal texts, checking for grammar, spelling, punctuation, style, and citation errors⁴.](#)
- **Legal communication:** ChatGPT can help with legal communication by generating letters, emails, memos, or reports for clients, colleagues, or courts. [ChatGPT can also help with creating engaging and effective presentations, slides, or graphics for legal audiences⁵.](#)
- **Legal education:** ChatGPT can help with legal education by creating quizzes, exercises, or simulations for law students or lawyers. [ChatGPT can also help with providing feedback, explanations, or tips for improving legal skills and knowledge⁶.](#)
- **Legal innovation:** ChatGPT can help with legal innovation by generating new ideas, insights, or solutions for legal challenges or opportunities. ChatGPT can also help with exploring the ethical, social, or legal implications of emerging technologies or trends in the legal field.

What are ways estate planning attorneys can use AI and ChatGPT?

AI and ChatGPT are technologies that can help estate planning attorneys with various aspects of their practice, such as:

- **Drafting and reviewing estate planning documents:** ChatGPT can assist with drafting or reviewing wills, trusts, powers of attorney, health care directives, and other estate planning documents. ChatGPT can suggest language, identify issues, or summarize terms and clauses. [ChatGPT can also check for consistency, accuracy, and compliance with the applicable laws and regulations¹²](#).
- **Conducting estate planning research:** ChatGPT can help with conducting estate planning research on various topics, such as tax laws, probate procedures, asset protection strategies, charitable giving options, and special needs planning. [ChatGPT can provide summaries, citations, or arguments for a legal issue³⁴](#).
- **Performing estate planning analysis:** ChatGPT can help with performing estate planning analysis on a given case or scenario. ChatGPT can generate hypotheses, scenarios, or counterarguments for a legal position. [ChatGPT can also evaluate the strengths and weaknesses of different estate planning options, and suggest possible outcomes or recommendations³⁴](#).
- **Communicating with clients and other parties:** ChatGPT can help with communicating with clients and other parties involved in the estate planning process, such as beneficiaries, trustees, executors, guardians, or agents. ChatGPT can generate letters, emails, reports, or presentations for estate planning purposes. [ChatGPT can also help with creating engaging and effective slides, graphics, or visuals for estate planning audiences¹⁵](#).
- **Educating clients and prospects:** ChatGPT can help with educating clients and prospects about the importance and benefits of estate planning, and the services and solutions that the attorney can offer. ChatGPT can create quizzes, exercises, or simulations for estate planning education. [ChatGPT can also provide feedback, explanations, or tips for improving estate planning knowledge and understanding¹⁵](#).
- **Innovating estate planning practice:** ChatGPT can help with innovating estate planning practice by exploring new ideas, insights, or solutions for estate planning challenges or opportunities. ChatGPT can help with generating novel and creative estate planning concepts, strategies, or products. [ChatGPT can also help with assessing the ethical, social, or legal implications of emerging technologies or trends in the estate planning field¹⁵](#).

What are ways that probate attorneys, that is, attorneys that help with estate administration and guardianships and conservatorships, can use AI and ChatGPT?

Probate attorneys are lawyers who help with estate administration and guardianships and conservatorships. These are legal processes that involve the distribution of a deceased person's assets, the appointment of a guardian or conservator for a minor or incapacitated person, and the supervision of their affairs. Probate attorneys can use AI and ChatGPT to assist them with various aspects of their practice, such as:

- **Drafting and reviewing probate documents:** ChatGPT can help with drafting or reviewing probate documents, such as petitions, inventories, accountings, notices, or orders. ChatGPT can suggest language, identify issues, or summarize terms and clauses. [ChatGPT can also check for consistency, accuracy, and compliance with the applicable laws and rules¹.](#)
- **Conducting probate research:** ChatGPT can help with conducting probate research on various topics, such as probate laws, procedures, forms, or fees. [ChatGPT can provide summaries, citations, or arguments for a legal issue².](#)
- **Performing probate analysis:** ChatGPT can help with performing probate analysis on a given case or scenario. ChatGPT can generate hypotheses, scenarios, or counterarguments for a legal position. [ChatGPT can also evaluate the strengths and weaknesses of different probate options, and suggest possible outcomes or recommendations².](#)
- **Communicating with clients and other parties:** ChatGPT can help with communicating with clients and other parties involved in the probate process, such as heirs, beneficiaries, creditors, or court personnel. ChatGPT can generate letters, emails, reports, or presentations for probate purposes. [ChatGPT can also help with creating engaging and effective slides, graphics, or visuals for probate audiences¹³.](#)
- **Educating clients and prospects:** ChatGPT can help with educating clients and prospects about the importance and benefits of probate, and the services and solutions that the attorney can offer. ChatGPT can create quizzes, exercises, or simulations for probate education. [ChatGPT can also provide feedback, explanations, or tips for improving probate knowledge and understanding¹³.](#)
- **Innovating probate practice:** ChatGPT can help with innovating probate practice by exploring new ideas, insights, or solutions for probate challenges or opportunities. ChatGPT can help with generating novel and creative probate concepts, strategies, or products. [ChatGPT can also help with assessing the ethical, social, or legal implications of emerging technologies or trends in the probate field¹³.](#)

What are 10 ways attorneys can use AI and ChatGPT to improve their life?

AI and ChatGPT are technologies that can help attorneys improve their life in many ways. Here are 10 examples of how attorneys can use AI and ChatGPT to enhance their personal and professional well-being:

- **Work-life balance:** Attorneys can use AI and ChatGPT to automate some of their routine or repetitive tasks, such as document analysis, contract drafting, legal research, or communication. [This can save them time and energy, and allow them to focus on more meaningful and rewarding aspects of their work and life¹².](#)
- **Stress management:** Attorneys can use AI and ChatGPT to cope with stress and anxiety, which are common challenges in the legal profession. ChatGPT can act as a virtual coach or therapist, who can listen to their problems, provide emotional support, or offer advice. [ChatGPT can also help them relax, meditate, or practice mindfulness³⁴.](#)
- **Learning and development:** Attorneys can use AI and ChatGPT to enhance their learning and development, which are essential for staying competitive and relevant in the legal industry. ChatGPT can help them access the latest legal information, insights, or trends, and provide them with personalized feedback, explanations, or tips. [ChatGPT can also help them acquire new skills, knowledge, or credentials⁵⁶.](#)
- **Creativity and innovation:** Attorneys can use AI and ChatGPT to boost their creativity and innovation, which are valuable for solving complex and novel legal problems. ChatGPT can help them generate new ideas, insights, or solutions, and explore different perspectives, scenarios, or counterarguments. ChatGPT can also help them create novel and creative legal products, services, or strategies .
- **Networking and collaboration:** Attorneys can use AI and ChatGPT to improve their networking and collaboration, which are important for building and maintaining professional relationships. ChatGPT can help them connect with other legal professionals, experts, or potential clients, and provide them with relevant information, introductions, or recommendations. ChatGPT can also help them collaborate with their colleagues, partners, or mentors, and facilitate communication, coordination, or feedback .
- **Marketing and branding:** Attorneys can use AI and ChatGPT to enhance their marketing and branding, which are essential for attracting and retaining clients. ChatGPT can help them create catchy and compelling slogans, headlines, or ads for their legal campaigns. ChatGPT can also help them optimize the content, design, or SEO of their legal websites, blogs, or social media posts .
- **Client service and satisfaction:** Attorneys can use AI and ChatGPT to provide better service and satisfaction to their clients, which are key for building trust and loyalty. ChatGPT can help them respond to client inquiries, requests, or feedback, and provide them with timely, accurate, and personalized information, advice, or solutions. ChatGPT can also help them engage and educate their clients, and provide them with value-added services or benefits .
- **Ethics and professionalism:** Attorneys can use AI and ChatGPT to uphold their ethics and professionalism, which are fundamental for maintaining their reputation and integrity. ChatGPT can help them comply with the applicable laws, rules, or standards, and identify and avoid any potential conflicts of interest, malpractice, or misconduct. ChatGPT can also help them respect and protect the rights, interests, and confidentiality of their clients, colleagues, and other parties .
- **Diversity and inclusion:** Attorneys can use AI and ChatGPT to promote diversity and inclusion, which are beneficial for enhancing the quality and diversity of legal services and perspectives. ChatGPT can help them understand and appreciate the different

backgrounds, cultures, or experiences of their clients, colleagues, or other parties, and provide them with respectful, inclusive, and culturally competent communication, representation, or advocacy. ChatGPT can also help them support and participate in initiatives or organizations that foster diversity and inclusion in the legal field .

- **Fun and entertainment:** Attorneys can use AI and ChatGPT to have fun and entertainment, which are important for maintaining their mental and emotional health and happiness. ChatGPT can help them enjoy their hobbies, interests, or passions, and provide them with amusing, interesting, or inspiring content, such as poems, stories, jokes, or songs. ChatGPT can also help them chat, joke, or play with their friends, family, or pets .

What are the limitations of using AI and ChatGPT that attorneys should be aware of?

According to the web search results, some of the limitations of using AI and ChatGPT that attorneys should be aware of are:

- **Risk of bias and misinformation:** ChatGPT and other generative AI tools are trained on large amounts of data from the open web, which may contain inaccurate, outdated, or biased information. [This may lead to erroneous or misleading results that do not reflect the current state of the law or the best interests of the clients¹²](#).
- **Lack of reliability and accountability:** ChatGPT and other generative AI tools are not designed to provide authoritative or definitive answers to legal questions. They are based on probabilistic models that generate content by predicting the next word or phrase based on the previous ones. They may produce results that are inconsistent, incomplete, or irrelevant to the query. They may also generate content that is entirely fabricated or plagiarized from other sources. There is no guarantee that the results are correct, valid, or original. [There is also no clear responsibility or liability for the outcomes of using these tools³⁴](#).
- **Ethical and professional violations:** ChatGPT and other generative AI tools may pose challenges to the ethical and professional obligations of attorneys. For example, using these tools may compromise the confidentiality and privilege of client information, as the data may be shared with third parties or stored in insecure servers. Using these tools may also violate the duty of competence, as the attorneys may not have sufficient knowledge or oversight of the quality and accuracy of the results. [Using these tools may also infringe the duty of diligence, as the attorneys may rely too much on the results without verifying or supplementing them with their own research and analysis³⁴](#).

How can attorneys learn more about AI and ChatGPT and stay on top of developments

There are many ways that attorneys can learn more about AI and ChatGPT and stay on top of developments. Here are some suggestions:

- Read articles, blogs, or books that explain the basics and applications of AI and ChatGPT in the legal field. [For example, you can check out some of the web search results that I found for you¹²³⁴.](#)
- Watch videos, podcasts, or webinars that feature experts, practitioners, or researchers who share their insights, experiences, or projects related to AI and ChatGPT in the legal field. For example, you can watch this video by Thomson Reuters Institute on how AI is transforming the legal profession, or this podcast by Legal Talk Network on how ChatGPT can be used for legal writing.
- Take online courses, workshops, or certifications that teach the skills and knowledge needed to use AI and ChatGPT in the legal field. For example, you can enroll in this course by Coursera on AI for Lawyers, or this workshop by Hotshot on how to use ChatGPT for legal research.
- Join online communities, forums, or groups that discuss, share, or collaborate on AI and ChatGPT in the legal field. For example, you can join this community by OpenAI on ChatGPT Best Practices, or this group by LinkedIn on AI and Law.
- Attend events, conferences, or seminars that showcase, demonstrate, or explore the latest trends, innovations, or challenges of AI and ChatGPT in the legal field. For example, you can attend this event by Legal Geek on AI and Legal Tech, or this conference by Stanford University on AI and Law.

These are some of the ways that attorneys can learn more about AI and ChatGPT and stay on top of developments. I hope this helps you. 😊

What ethical rules for attorneys are impacted by the use of AI and ChatGPT?

According to the web search results, some of the ethical rules for attorneys that are impacted by the use of AI and ChatGPT are:

- **Rule 1.1: Competence:** This rule requires attorneys to provide competent representation to their clients, which includes the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation. Attorneys who use AI and ChatGPT must keep abreast of the changes in the law and its practice, including the benefits and risks associated with relevant technology. [Attorneys must also understand the capabilities and limitations of AI and ChatGPT, and use them appropriately and responsibly¹²³](#).
- **Rule 1.6: Confidentiality of Information:** This rule requires attorneys to protect the confidentiality of information relating to the representation of their clients, unless the client gives informed consent, the disclosure is impliedly authorized, or the disclosure is permitted by the rule. Attorneys who use AI and ChatGPT must ensure that the data they input or output is not shared with unauthorized third parties, or stored in insecure servers. [Attorneys must also comply with the applicable data privacy laws and regulations, and obtain the client's consent before using AI and ChatGPT¹²⁴](#).
- **Rule 5.3: Responsibilities Regarding Nonlawyer Assistance:** This rule requires attorneys to make reasonable efforts to ensure that the conduct of nonlawyers who assist them in the representation of their clients is compatible with the professional obligations of the attorney. Attorneys who use AI and ChatGPT must supervise and monitor the quality and accuracy of the results, and verify or supplement them with their own research and analysis. [Attorneys must also ensure that AI and ChatGPT do not engage in the unauthorized practice of law, or violate any ethical rules¹²⁴](#).

What are 10 topics that might be of interest to attorneys at a bar convention with a roundtable on AI and its effects on attorneys and the practice of law?

Here are 10 possible topics for a roundtable on AI and its effects on attorneys and the practice of law:

- **The ethical implications of using AI in legal services:** How can lawyers ensure that they comply with their professional obligations and standards when using AI tools? [What are the potential risks and benefits of AI for clients, society, and the justice system¹](#)
- **The impact of AI on legal education and training:** How can law schools prepare students for the changing legal landscape and equip them with the skills and knowledge to use AI effectively? [How can lawyers keep up with the latest developments and innovations in AI and legal tech²](#)
- **The opportunities and challenges of generative AI for legal writing and research:** How can lawyers leverage the power of large language models such as ChatGPT to produce high-quality legal documents, conduct comprehensive legal research, and generate novel insights and arguments? [What are the limitations and pitfalls of relying on AI-generated content²](#)
- **The role of AI in contract and litigation document analytics and generation:** How can AI help lawyers draft, review, and analyze contracts and litigation documents more efficiently and accurately? [What are the best practices and tools for using AI to create and manage legal documents³⁴](#)
- **The use of AI for predictive analytics and decision support:** How can AI help lawyers predict legal outcomes, assess risks, and optimize strategies? What are the sources and methods of data collection and analysis for AI-based prediction and recommendation systems? [How can lawyers evaluate and communicate the reliability and validity of AI-generated predictions and recommendations³⁴](#)
- **The integration of AI and human expertise in legal operations:** How can lawyers collaborate with AI systems and other legal professionals to deliver better and more cost-effective legal services? What are the best ways to design and implement AI solutions that complement and augment human capabilities and judgment? [How can lawyers measure and improve the performance and quality of AI-enhanced legal services³⁴](#)
- **The regulation and governance of AI in the legal sector:** How can lawyers ensure that they comply with the relevant laws and regulations regarding the use of AI in legal services? What are the legal and ethical issues and challenges arising from the development and deployment of AI in the legal sector? [How can lawyers participate in and influence the policy-making and standard-setting processes for AI in the legal sector¹⁴](#)
- **The innovation and entrepreneurship opportunities in legal tech:** How can lawyers identify and seize the market opportunities and customer needs for AI-based legal solutions? What are the skills and resources required to start and grow a successful legal tech company? [How can lawyers collaborate with and learn from other legal tech entrepreneurs and innovators⁴⁵](#)
- **The diversity and inclusion issues in AI and the legal profession:** How can lawyers ensure that AI systems are fair, transparent, and accountable, and do not perpetuate or exacerbate existing biases and inequalities in the legal system? [How can lawyers promote and foster a more diverse and inclusive culture and environment in the legal profession and the legal tech sector¹⁴](#)
- **The future of law and lawyering in the age of AI:** How will AI transform the nature and scope of legal work and the roles and responsibilities of lawyers? What are the new

skills and competencies that lawyers will need to succeed and thrive in the AI era? [How can lawyers adapt and prepare for the emerging opportunities and challenges of AI in the legal profession](#)¹²⁴

What are 5 podcasts and 5 email newsletters attorneys should subscribe to so that they can stay current on developments of AI?

Here are some podcasts and newsletters that attorneys should subscribe to so that they can stay current on developments of AI:

- Podcasts:
 - [**AI and the Law Podcast:** This podcast features interviews with experts and practitioners on various legal issues raised by AI, such as ethics, regulation, discrimination, data protection, intellectual property, contracting, and education¹](#)
 - **Technically Legal:** This podcast explores the intersection of technology, innovation, and the law, with guests from the legal and tech sectors. [Topics include AI, blockchain, cybersecurity, e-discovery, and more²](#)
 - [**LawNext:** This podcast covers the latest trends and developments in legal technology and innovation, with interviews with legal tech entrepreneurs, innovators, and thought leaders³](#)
 - [**The Future Law Podcast:** This podcast examines how AI and other technologies are transforming the legal profession and the law itself, with insights from academics, practitioners, and policymakers⁴](#)
 - [**Legal AI Podcast:** This podcast discusses the applications and implications of AI for the legal industry, with case studies, best practices, and tips from legal AI experts and users⁵](#)
- Newsletters:
 - [**Artificial Lawyer:** This newsletter provides news, analysis, and commentary on the legal AI and automation market, covering topics such as legal tech startups, product reviews, events, and opinions⁶](#)
 - [**LawGeex:** This newsletter offers insights and tips on how to use AI to streamline contract review and negotiation, with case studies, webinars, reports, and guides⁷](#)
 - [**Legal Tech Weekly:** This newsletter curates the most relevant and interesting stories on legal tech and innovation, with a focus on AI, blockchain, and smart contracts⁸](#)
 - [**Legal AI Briefing:** This newsletter delivers a weekly roundup of the latest news, research, and events on AI and law, with a global perspective and a diverse range of sources⁹](#)
 - **AI and the Law:** This newsletter covers the ethical, legal, and social aspects of AI, with articles, podcasts, videos, and resources from various disciplines and perspectives.

What are links to 10 articles about common uses of ChatGPT by attorneys? The articles should be no earlier than June 1, 2023.

Here are some links to articles about common uses of ChatGPT by attorneys, published after June 1, 2023:

- [How ChatGPT Could Impact Law and Legal Services Delivery: This article features a panel discussion with experts and practitioners on various legal issues raised by ChatGPT, such as ethics, regulation, discrimination, data protection, intellectual property, contracting, and education¹](#)
- [The Rise of ChatGPT: How AI is Transforming the Legal Profession: This article provides commentary on how ChatGPT may affect legal services and law, including increasing efficiency, improving accuracy, and reducing costs. It also discusses some of the potential problems and solutions that ChatGPT poses for the legal profession²](#)
- [ChatGPT passes exams from law and business schools: This article reports that ChatGPT has passed law exams in four courses at the University of Minnesota and another exam at University of Pennsylvania's Wharton School of Business, according to professors at the schools. It also explores the implications of ChatGPT's performance for legal education and training³](#)
- [ChatGPT – Is it legal?: This article analyzes the legal basis and challenges of ChatGPT, especially in relation to the GDPR. It claims that OpenAI has not demonstrated a legal basis for its collection of personal data and its use to train ChatGPT, and that ChatGPT may pose risks for data protection and privacy⁴](#)
- [ChatGPT bot passes US law school exam: This article describes how ChatGPT scored a C+ on a US law school exam, consisting of 95 multiple-choice questions and 12 essay questions. It also discusses the limitations and biases of ChatGPT, and the need for human oversight and evaluation⁵](#)
- [How ChatGPT can help lawyers draft better contracts]: This article explains how ChatGPT can assist lawyers in drafting, reviewing, and analyzing contracts more efficiently and accurately. It also provides some tips and best practices for using ChatGPT to create and manage legal documents.
- [ChatGPT: A game-changer for legal research and writing]: This article explores how ChatGPT can revolutionize the legal research and writing process, by generating high-quality legal documents, conducting comprehensive legal research, and providing novel insights and arguments. It also warns about the pitfalls and risks of relying on ChatGPT-generated content, and the need for verification and citation.
- [ChatGPT: The ultimate legal advisor?]: This article examines how ChatGPT can offer reliable legal advice to businesses and individuals, by using natural language processing and predictive analytics to answer legal questions and provide guidance. It also addresses some of the ethical and regulatory issues and challenges arising from the use of ChatGPT as a legal advisor.
- [How to use ChatGPT to optimize your legal strategy]: This article shows how ChatGPT can help lawyers optimize their legal strategy, by using AI to predict legal outcomes, assess risks, and recommend actions. It also suggests some ways to evaluate and communicate the reliability and validity of ChatGPT-generated predictions and recommendations.
- [How ChatGPT can foster innovation and entrepreneurship in legal tech]: This article highlights how ChatGPT can create new opportunities and markets for legal tech entrepreneurs and innovators, by enabling them to develop and deploy AI-based legal solutions. It also advises how lawyers can collaborate with and learn from other legal tech entrepreneurs and innovators.



South Carolina Bar

Continuing Legal Education Division

2024 SC BAR CONVENTION

**Probate, Estate Planning & Trust
Law Section**

Friday, January 19

What Exactly Do You Mean by “Irrevocable?”
Decanting, Modification & Other Things You
Need to Know About “Irrevocable” Trusts

Meagan MacBean



NEWSOME LAW

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SOUTH CAROLINA BAR CONVENTION 2024
PROBATE, ESTATE, AND TRUST COUNCIL

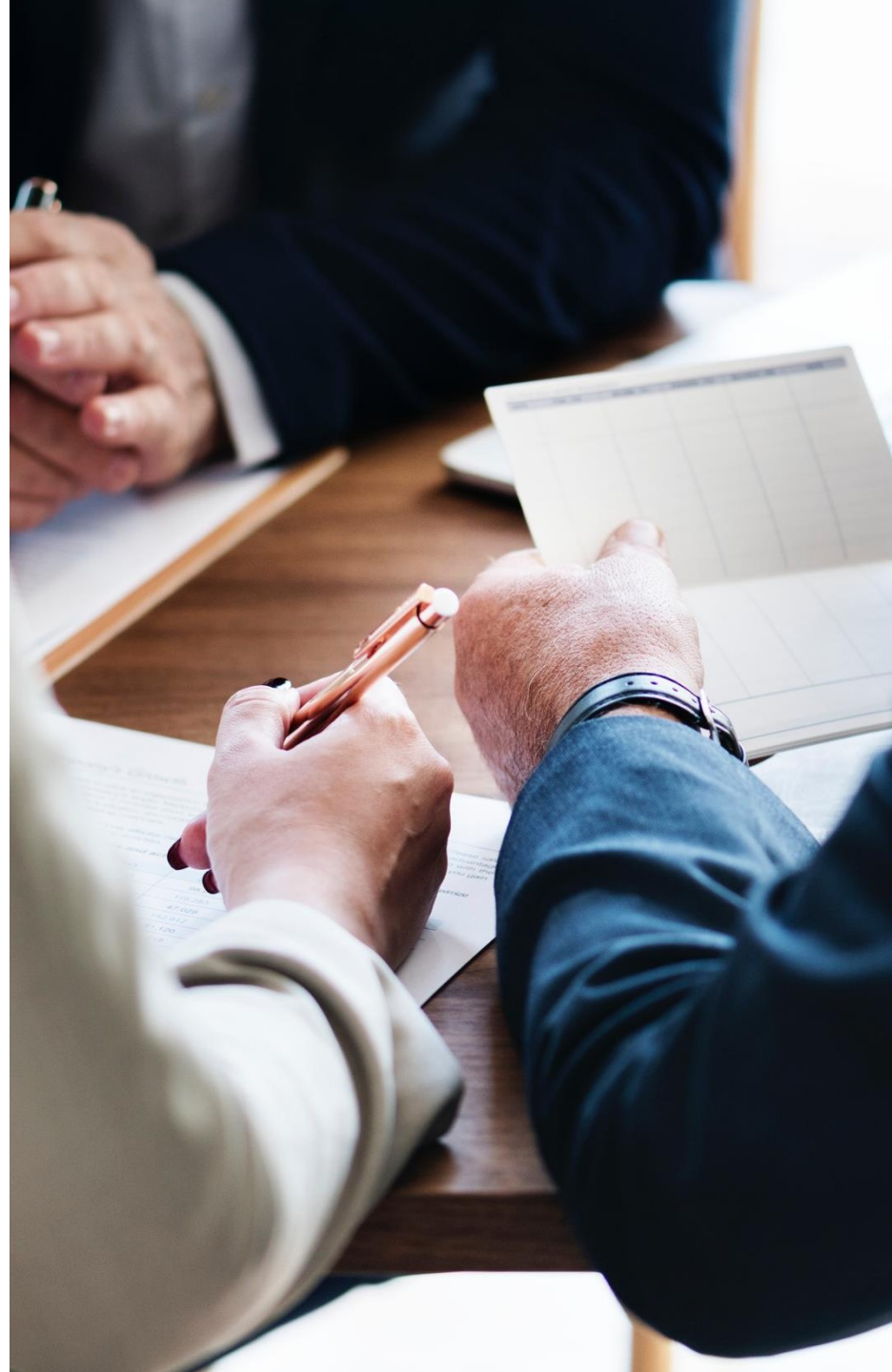
What Do You Mean “Irrevocable?”: Decanting, Modification & Other Things You Need to Know About “Irrevocable” Trusts

MEAGAN L. MACBEAN, ESQ.
01.19.2024



Does “Irrevocable” Mean “Irrevocable?”

- **Irrevocable is defined by various dictionaries as “not possible to revoke,” “unalterable,” and “that cannot be revoked, repealed, annulled, or undone; unalterable, irreversible.”**
- **Synonyms include:**
 - **Irreversible**
 - **Irreplaceable**
 - **Irreparable**
 - **Final**
 - **Binding**
- **In the context of trusts, “irrevocable” trusts are often not actually irrevocable.**
- **Means to modify, terminate, rescind, and reform irrevocable trusts have evolved over the years.**
- **Several South Carolina Trust Code provisions facilitate the modification and termination of irrevocable trusts.**



MODIFICATION OF IRREVOCABLE TRUSTS

- **Potential reasons to seek trust modification**
 - **Address changes in the law**
 - **Address changes in family circumstances**
 - **Correct drafting mistakes**
 - **Administrative changes – trustee incapacitation or resignation, etc.**
 - **Major life events – disability, divorce, etc.**
 - **Circumstances not anticipated by the Settlor**
 - **Tax objectives**

Modification Pursuant to S.C. Code Ann. § 62-7-411

- (a) A noncharitable irrevocable trust may be modified or terminated with court approval upon consent of the settlor and all beneficiaries, *even if the modification or termination is inconsistent with a material purpose of the trust.*
- (b) A noncharitable irrevocable trust *may be terminated* upon consent of all beneficiaries if the court concludes that continuance of the trust *is not necessary to achieve any material purpose of the trust.* A noncharitable irrevocable trust *may be modified* upon consent of all of the beneficiaries if the court concludes that modification *is not inconsistent with a material purpose of the trust.*
- (c) Upon termination of a trust under subsection (a) or (b), the trustee shall distribute the trust property as ordered by the court.
- (d) If not all of the beneficiaries consent to a proposed modification or termination of the trust under subsection (a) or (b), the modification or termination may be approved by the court if the court is satisfied that:
 - 1) if all of the beneficiaries had consented, the trust could have been modified or terminated under this section; and
 - 2) the interests of a beneficiary who does not consent will be adequately protected.

Modification Pursuant to S.C. Code Ann. § 62-7-412

(a) The court may modify the administrative or dispositive terms of a trust or terminate the trust if, *because of circumstances not anticipated by the settlor, modification or termination will further the purposes of the trust*. To the extent practicable, the modification must be made in accordance with the settlor's probable intention.

(b) The court may modify the administrative terms of a trust if continuation of the trust on its existing terms *would be impracticable or wasteful or impair the trust's administration*.

(c) Upon termination of a trust under this section, the trustee shall distribute the trust property as ordered by the court.

Modification Pursuant to S.C. Code Ann. § 62-7-416

To achieve the settlor's tax objectives, the court may modify the terms of a trust in a manner that is not contrary to the settlor's probable intention. The court may provide that the modification has retroactive effect.

SOUTH CAROLINA AND UTC CASE LAW

- SOUTH CAROLINA

- *Chiles v. Chiles*, 270 S.C. 379, 242 S.E.2d 426 (1978)
- *Germann v. New York Life Ins. Co.*, 286 S.C. 34, 331 S.E.2d 385 (Ct. App. 1985)

- OTHER UTC JURISDICTIONS

- *Beck v. DayOne Pact*, 2023 IL App (1st) 221120, No. 129896, 2023 WL 6445953 (Ill. Sept. 27, 2023)
- *Hon v. Hon*, 339 So.3d 831, 833 (Ala. 2021)
- *In re Tr. D Created Under Last Will & Testament of Darby*, 290 Kan. 785, 786, 234 P.3d 793, 796 (2010)
- *Matter of Tr. of Hildebrandt*, 53 Kan. App. 2d 368, 388 P.3d 918 (2017)
- *In re McGregor*, 308 Neb. 405, 954 N.W.2d 612 (2021)
- *In re Tr. Created by Fenske*, 303 Neb. 430, 930 N.W.2d 43 (2019)
- *Shire v. Unknown/Undiscovered Heirs*, 299 Neb. 25, 907 N.W.2d 263 (2018)
- *Ruby G. Owen Tr. ex rel. Owen*, 2012 Ark. App. 381, 418 S.W.3d 421 (2012)
- *In re Tr. Created by Augustin*, 27 Neb. App. 593, 935 N.W.2d 493 (2019)
- *Smith v. Kirkland*, 2017 UT App 16, ¶ 7, 392 P.3d 847
- *In re Riddell*, 138 Wash. App. 485, 489, 157 P.3d 888, 890 (2007), as amended on reconsideration (July 3, 2007)
- *In re Paul F. Suhr Tr.*, 222 P.3d 506 (Kan. 2010)

COMBINATION AND DIVISION

- **Potential reasons to combine or divide trust(s)**
 - **Tax objectives**
 - **Facilitate a more efficient administration**
 - **Reduce trustee fees**
 - **Ability to file one tax return**
 - **More effective investing opportunities**
- **Conflict between beneficiaries**

Combination and Division of Trusts – S.C. Code Ann. § 62-7-417

After notice to the qualified beneficiaries, a trustee may combine two or more trusts into a single trust or divide a trust into two or more separate trusts, if the result does not impair rights of any beneficiary or adversely affect achievement of the purposes of the trust.

REFORMATION

- **Reformation can be sought for two reasons:**
 - **Mistake of expression – the terms of the trust misstate the settlor's intention, fail to include a term that was intended to be included, or include a term that was not intended to be excluded.**
 - **Mistake in the inducement – the terms of the trust accurately reflect what the settlor intended to be included or excluded but this intention was based on a mistake of fact or law.**

Reformation to Correct Mistakes – S.C. Code Ann. § 62-7-415

The court may reform the terms of a trust, even if unambiguous, to conform the terms to the settlor's intention if it is proved by clear and convincing evidence what the settlor's intention was and that the terms of the trust were affected by a mistake of fact or law, whether in expression or inducement.

UTC CASE LAW

- *Matter of Est. of Blackburn v. Richards*, 299 So. 3d 781 (Miss. 2020)
- *Matter of Jill Petrie St. Clair Tr. Reformation*, 311 Kan. 541, 464 P.3d 326 (2020)
- *In re Tr. Created by Isvik*, 274 Neb. 525, 741 N.W.2d 648 (2007)
- *In re Est. of Smith*, 80 P.3d 71 (Kan. 2003)

Nonjudicial Settlement Agreements – S.C. Code Ann. § 62-7-111

Interested persons may enter into a binding nonjudicial settlement agreement with respect to only the following trust matters:

- 1) the approval of a trustee's report or accounting;
- 2) direction to a trustee to perform or refrain from performing a particular administrative act or the grant to a trustee of any necessary or desirable administrative power;
- 3) the resignation or appointment of a trustee and the determination of a trustee's compensation;
- 4) transfer of a trust's principal place of administration; and
- 5) liability of a trustee for an action relating to the trust.

DECANTING

Potential reasons to decant

- **Change situs**
- **Provide for resignation, removal, and appointment of trustees**
- **Divide single trust into separate trusts for each beneficiary**
- **Transfer assets to special needs trust**
- **Favorable tax results**
- **Address changes in state law**
- **Correct errors**
- **Address ambiguities**

Authority to Appoint the Property of Original Trust to Second Trust – S.C. Code Ann. § 62-7-816A

- (a) Unless the terms of the instrument expressly provide otherwise, a trustee with the *discretion to make distributions of principal or income to or for the benefit of one or more beneficiaries of a trust*, the original trust, *may exercise that discretion* by appointing all or part of the property subject to that discretion in favor of another trust for the benefit of one or more of those beneficiaries, the second trust. This power may be exercised without the approval of a court, but court approval is necessary if the terms of the original trust expressly prohibit the exercise of such power or require court approval.
- (b) The trustee of the original trust may exercise this power whether or not there is a current need to distribute principal or income under any standard provided in the original trust. The trustee's special power to appoint trust principal or income in further trust under this section includes the power to create the second trust.
- (c) The second trust may be a trust created under the same trust instrument as the original trust or under a different trust instrument, and the trustee of the second trust may be either the trustee of the original trust or another trustee.

Authority to Appoint the Property of Original Trust to Second Trust – S.C. Code Ann. § 62-7-816A

- Subsection (d) of the statute provides certain requirements for the terms of the second trust.
 - (d)(1) and (d)(2) – prevent a trustee from exercising decanting authority to 1) add beneficiaries to the second trust who were not beneficiaries of the original trust; or 2) accelerate the interest of a beneficiary with only a future interest in the original trust to a present interest under the second trust.
 - (d)(3) and (d)(4) – restrict a trustee’s ability to modify terms of an original trust or a beneficiary’s fixed interest in the trust if the original trust qualified for certain tax benefits.
 - (d)(5) – trustee is required to preserve a beneficiary’s power of withdrawal over trust property; the trustee may do so by either maintaining sufficient trust property in the original trust to satisfy the beneficiary’s power of withdrawal, or by providing the beneficiary with an identical power of withdrawal under the terms of the second trust.

Authority to Appoint the Property of Original Trust to Second Trust – S.C. Code Ann. § 62-7-816A

- Subsection (d) of the statute provides certain requirements for the terms of the second trust.
 - (d)(6) – prevents a trustee from modifying any ascertainable standard governing the trustee's power to make distributions under the terms of the original trust.
 - (d)(7) – terms of the second trust may grant a power of appointment to a beneficiary of the original trust exercisable in favor of persons who are not beneficiaries of the original or second trust.

Authority to Appoint the Property of Original Trust to Second Trust – S.C. Code Ann. § 62-7-816A

Mechanics of Decanting – subsection (g)

To effect the exercise of the power to appoint principal or income under subsection (a):

- (1) The exercise of the power to appoint must be made by an instrument in writing, signed and acknowledged by the trustee, setting forth the manner of the exercise of the power, including the terms of the second trust, and the effective date of the exercise of the power. The instrument must be filed with the records of the original trust.
- (2) The trustee shall give written notice to all qualified beneficiaries of the original trust, at least ninety days prior to the effective date of the exercise of the power to appoint, of the trustee's intention to exercise the power. The notice must include a copy of the instrument described in item (1) of this subsection.
- (3) If all qualified beneficiaries waive the notice period by a signed written instrument delivered to the trustee, the trustee's power to appoint principal or income is exercisable after notice is waived by all qualified beneficiaries, notwithstanding the effective date of the exercise of the power.

CONSIDERATIONS FOR DECANTING

- **Taxes**
 - **Income**
 - **Estate and Gift**
 - **GSTT**
- **Compliance with other fiduciary duties and fiduciary liability**

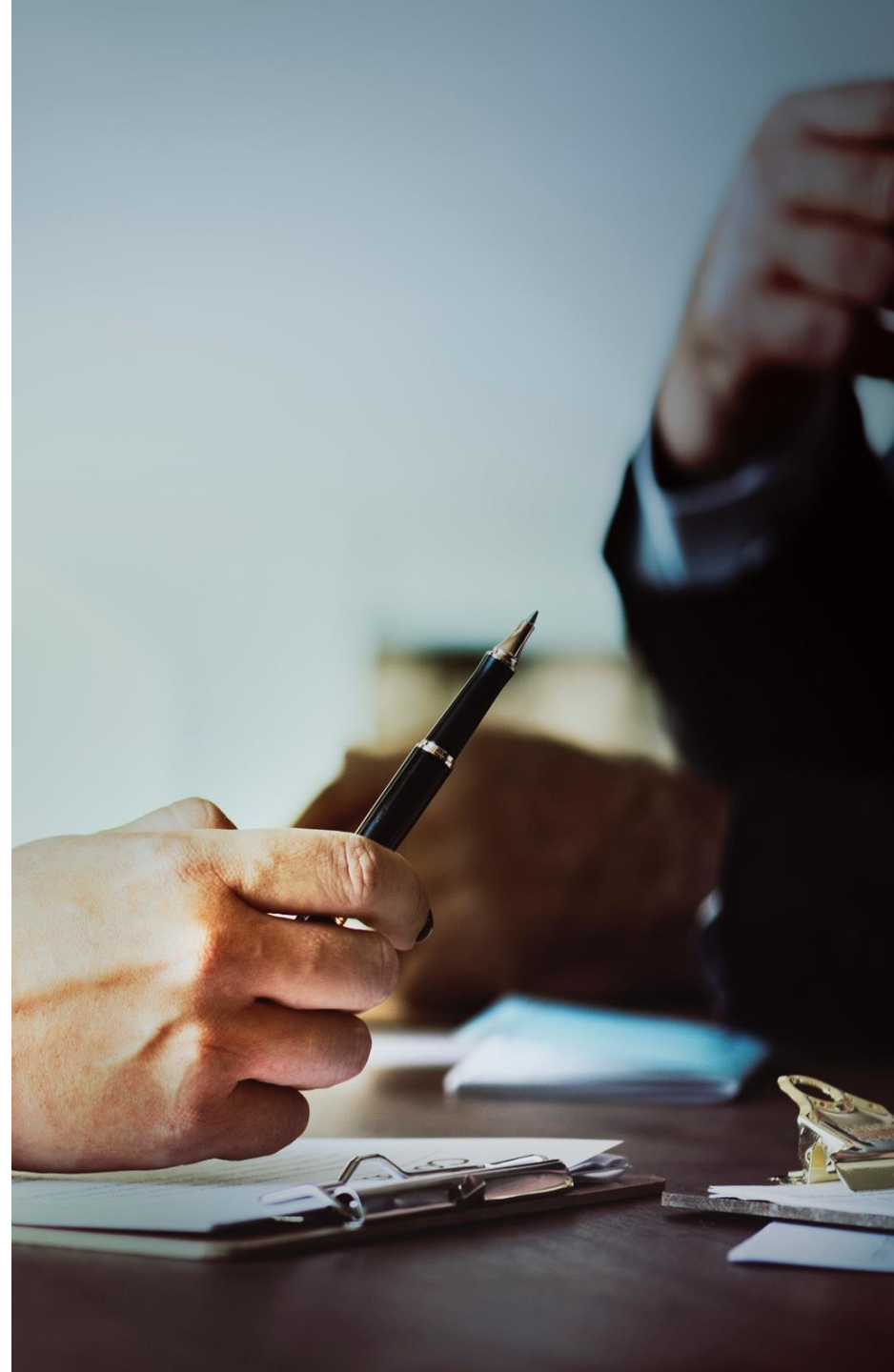


CASE LAW

- *Hodges v. Johnson*, 170 N.H. 470, 177 A.3d 86 (2017)
- *Ferri v. Powell-Ferri*, 326 Conn. 438, 165 A.3d 1137 (2017)
- *Harrell v. Badger*, 171 So. 3d 764 (Fla. Dist. Ct. App. 2015)

Final Thoughts

- Trusts after a generation or two might get out of date – changes in tax law, etc.
- At one time, many of the ways we can now modify trusts would have been unthinkable
- To what extent do we talk to our clients about the potential for modification and termination of trusts?
- How can you draft against potential future modification? Should you?





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