

Ethics in the Age of AI
32nd Annual LLCs, LPs and Partnerships

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I. Introduction

A. Objective of Program

This program is intended to gain insight into the ethical and professional responsibility dilemmas that arise when utilizing ChatGPT¹ and similar generative AI technologies in the legal field.² We will address the potential pitfalls and evolving responsibilities of Texas partnership attorneys in this new era. As noted, generative programs have the ability to interact with the questioner but also the possibility of giving incorrect information (sometimes referred to as “hallucinations”).³ Generative alternative intelligence systems have been getting a lot of attention since the release of ChatGPT3 in late November of 2022.

For attorneys, the development of generative text AI creates both wonder and awe, it is at once wonderful and awful. It is wonderful in that it will probably be a very useful tool for a profession that relies on the effective use of words to inform and persuade. It is awful in that it seems likely to change the way in which the services currently provided by lawyers are delivered.

Thinking about general generative AI requires users to consider issues of *onotology*⁴ and *epistemology*⁵. In other words, it requires consideration of both the way the world really is and the way in which we come to know what the world is. Put in yet another way, it entails not only what the facts or law objectively are, but the steps we need to take to learn and accurately portray them. For a lawyer, whose *métier*⁶ combines the talents of objectively evaluating a legal or factual situation and communicating that evaluation in a way that is persuasive to an adverse party or forum for the benefit of a client, general generative AI is a truly sharp knife which, if carefully and thoughtfully used, will be a very effective tool but, if used carelessly or dishonestly can do tremendous harm to the person with whom the lawyer is in communication, and at times, the lawyer and client as well. Thus, generative AI (particularly general generative AI, which is generative AI the application of which is not limited to a particular area of knowledge) implicates one of the most nettlesome issues addressed by the ethical rules: the balance between the duty to zealously and persuasively represent the lawyer’s client and the lawyer’s duty not to mislead adversaries and others.

B. Matters not covered

It is not surprising that the recent releases of more robust generative AI raises many questions, some of which have not yet been asked. This presentation is focused on the issues of the implication of generative AI with respect to the ethical responsibilities of lawyers.⁷

1. *The regulation of the development of AI.*

There is a lot of concern about the unregulated AI which has arisen since the release of ChatGPT in November of 2022. This concern culminated in the release of an open letter from several people, the best known of whom is Elon Musk.⁸ The background of the letter is explained

in the FAQs that accompanies it.⁹ The letter presented an opportunity to present ChatGPT's ability to use rhetorical devices.¹⁰

Early in June, the European Parliament adopted its negotiating position on the use of AI which will be used in the European Union's talks with member states.¹¹ The proposed rules aim to ban the use of AI for biometric surveillance, emotion recognition, and predictive policing. The rules would also require AI systems, like ChatGPT, to disclose content that is generated by AI.

The White House also recently released its five principles that would serve as a blueprint for an "AI Bill of Rights."¹² The five principles, identified by the White House Office of Science and Technology Policy, are meant to guide the design, use, and deployment of AI systems to protect the public. Those five principles are: (1) safe and effective systems, (2) algorithmic discrimination protections, (3) data privacy, (4) notice and explanation, and (5) human alternatives, consideration, and fallback. In summary, the principles seek to protect the public from unsafe and ineffective systems and from discrimination by algorithms, ensure that systems are used and designed in an equitable way, protect sensitive data, require notice that AI is being used, and allow a person to opt out of the AI system and have access to a person who can assist with issues or problems.

Of course, the outcome of the European Parliament's proposed rules and the White House's "AI Bill of Rights" is yet to be seen, but it is clear that governing bodies have acknowledged the importance of some regulations on the development and use of AI in the future.

2. *The impact of AI on employment.*¹³

Of the major concerns surrounding ChatGPT and the use of AI technology, is their impact on employment. Will the new technology make some jobs obsolete? For lawyers in particular, will ChatGPT replace us all with its large language models and capabilities? These questions have actually been at the forefront of some research for several years. In October 2020, the World Economic Forum concluded that while AI would likely take away approximately 85 million jobs globally by 2025, it would also generate 97 million new jobs in fields ranging from big data and machine learning to information security and digital marketing.¹⁴

A joint report by the White House and the European Commission was released in December 2022 which looked at the impact of AI on the future workforces in the EU and the US.¹⁵ The "Executive Summary" of the report does a good job of capturing the potential and the concerns surrounding AI in the workplace. The summary begins with "AI is a fast-evolving technology with great potential to make workers more productive, to make firms more efficient, and to spur innovations in new products and services. At the same time, AI can also be used to automate existing jobs and exacerbate inequality, and it can lead to discrimination against workers." The report acknowledges that AI has been around for some time, but that it has historically affected more "routine" tasks. The recent developments in AI have the potential to automate "nonroutine" tasks, such as drafting a motion for summary judgment, which may affect a larger portion of the workforce and careers which were not previously affected.

Once again, we are in a time of uncertainty as to how recent advancements will affect the workforce, but there is general acknowledgement that it will be affected. For those of us in the legal field, the question becomes how can we best adapt to the advancements and incorporate them into our practice so that we can take advantage of the efficiencies the technology provides while also meeting our legal and ethical obligations.

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