

Ethics

Conflicts, Competence, & Confidentiality

PANEL CHAIR:

William D. Burns - Gilmore & Bell, P.C. - Kansas City, MO

PANELISTS:

Randy J. Curato - ALAS, Inc. - Chicago, IL

Mark A. Webster - Aon Risk Solutions - Kansas City, KS

Kimberly J. Min - Whiteford Taylor & Preston LLP - Baltimore, MD

nabl

The Workshop

OCTOBER 18-20, 2023

Welcome

- To receive full CLE credits, ensure your registration includes your final schedule by [October 26](#).
- Visit our mobile app, “[NABL Events](#)” and select The Workshop to access Q&A, polls, and other materials.
- For any assistance, visit the registration desk.
- This session is exclusively for attendees of the NABL Workshop. Members of the media are asked to verify quotes for attribution with speakers prior to publication. Email began@nabl.org for assistance.

nabl

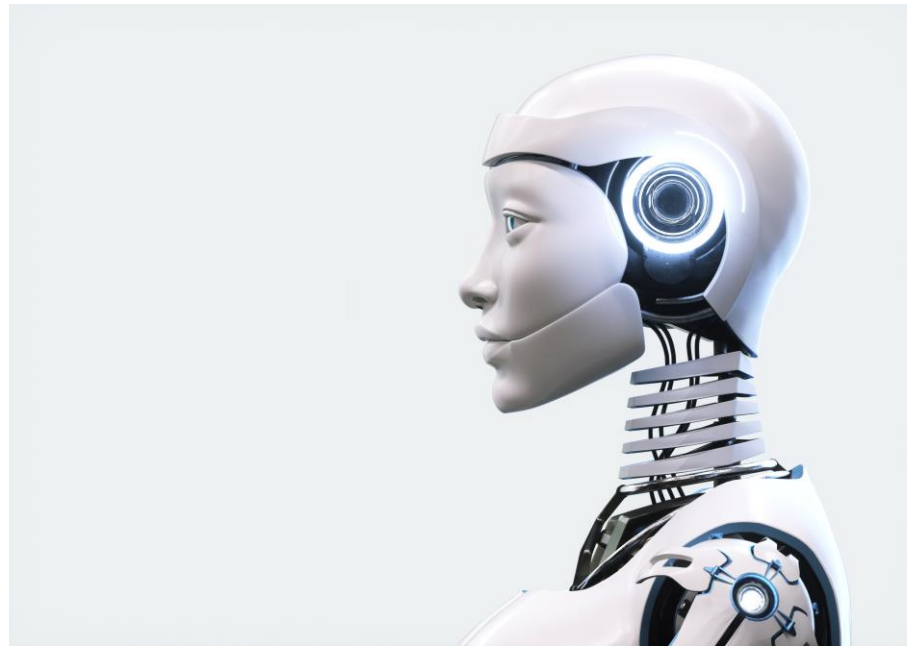
The Workshop

OCTOBER 18–20, 2023

If AI gave this presentation...

Prompt: Assume you're presenting to a group of lawyers. How would you explain generative AI tools (like ChatGPT) to the group so they could consider the pros and cons of use of generative AI in their legal practice?

Answer: 



nabl

The Workshop

OCTOBER 18-20, 2023

Key Terms and Concepts

Artificial Intelligence: The use of technology to mimic human intelligence to perform tasks

Machine Learning: The use of large data sets to “train” artificial intelligence tools

Generative AI: Artificial intelligence tool that can be used to create content (text, video, graphics, etc.)

Large Language Model (LLM): Type of artificial intelligence trained on massive dataset of text and code that is able to generate human-like text, translate languages, write different kinds of creative content, and answer questions.

Chat GPT Disclaimers

ChatGPT 3.5 disclaimer:

- “May occasionally generate incorrect information.”
- “May occasionally produce harmful instructions or biased content.”
- “Limited knowledge of world and events after 2021.”



Cautionary Tales

Lawyers have real bad day in court after citing fake cases made up by ChatGPT

Lawyers fined \$5K and lose case after using AI chatbot "gibberish" in filings.

JON BRODKIN - 6/23/2023, 12:32 PM



Getty Images | style-photography

[Enlarge](#)

nabl

The Workshop

OCTOBER 18-20, 2023

Texas Judge: NO AI in this Court!

“...These platforms are incredibly powerful and have many uses in the law: form divorces, discovery requests, suggested errors in documents, anticipated questions at oral argument. But legal briefing is not one of them. Here’s why. These platforms in their current states are prone to hallucinations and bias. On hallucinations, they make stuff up—even quotes and citations. Another issue is reliability or bias. While attorneys swear an oath to set aside their personal prejudices, biases, and beliefs to faithfully uphold the law and represent their clients, generative artificial intelligence is the product of programming devised by humans who did not have to swear such an oath. As such, these systems hold no allegiance to any client, the rule of law, or the laws and Constitution of the United States (or, as addressed above, the truth)....”

<https://www.txnd.uscourts.gov/judge/judge-brantley-starr>

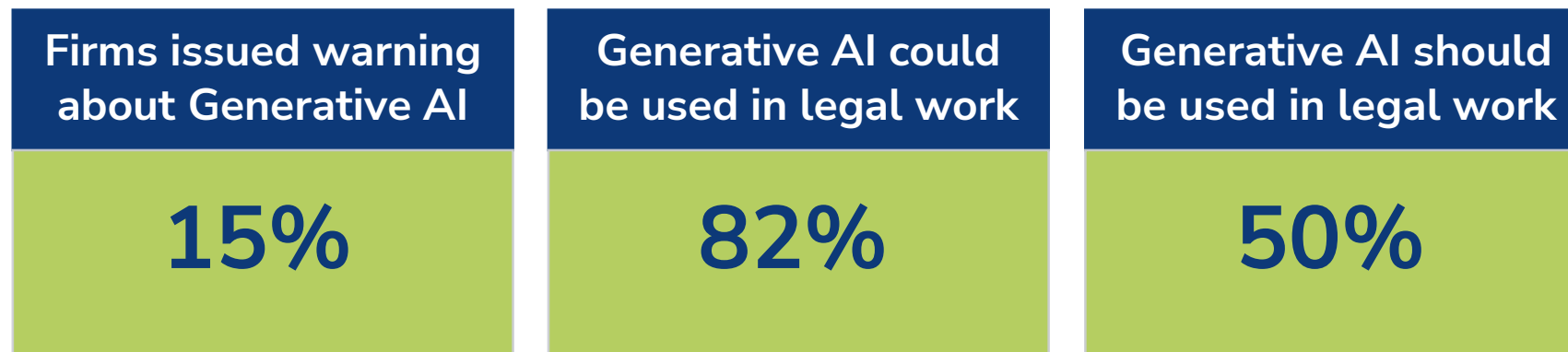


nabl

The Workshop

OCTOBER 18–20, 2023

Thomson Reuters Survey



Reasons for reluctance to recommend usage

- Accuracy (most cited)
- Privacy
- Confidentiality of client information
- Data security
- Bias

Poll Question # 1

Have you used ChatGPT or other Generative AI tool in your practice?

- Yes – I have used a Generative AI tool available to the public in my practice.
- Yes – I have used a Generative AI tool built or sanctioned by my firm in my practice.
- No.

Rule 1.1.

Competence



Rule 1.1 requires lawyers to provide competent representation to clients

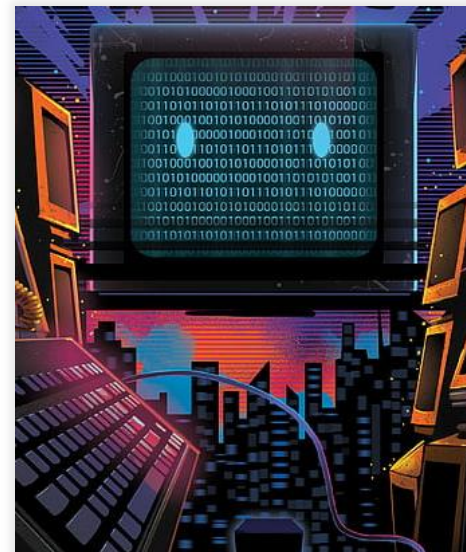
- Comment 8 obligates lawyers to be aware of changes affecting the law and law practice, including benefits and risks of relevant technology.

Competent usage of LLM complicated in current iterations of the technology

- Information not accurate and complete
- No sourcing of information to assess quality

Confidentiality

- **Rule 1.6** – requires that lawyers protect information relating to the representation and take steps to prevent unintended disclosure or unauthorized access to that information.
 - Will asking a client-specific question reveal client information?
- Platforms use prompts and other information to further train and improve the systems.
- No means to assure information is provided will not be used and may appear in responses provided to subsequent users.



Confidentiality – Cybersecurity Implications

Enhanced need to safeguard client information and protect systems in light of increasing cyberattacks and use of generative AI to launch increasingly sophisticated attacks.

April 2023 Cybersecurity report

- Organizations face 1,248 attacks per week
- 1 out of 40 attacks target a law firm or insurance provider

1/4 of law firms have experienced a data breach (2022 ABA survey)

Law firms now facing litigation regarding allegedly inadequate data safeguards and resulting breaches

Other Model Rules Implicated



Rule 1.4

Requires lawyers to reasonably consult with their clients about the means by which the clients' objectives are to be accomplished.

Rule 8.4

States that conduct involving dishonesty, fraud, or deceit is professional misconduct.

Rule 1.5

Requires that lawyers only charge reasonable fees and expenses.

Conflicts

- **Personal Interest Conflict**
- **Confidential Information Conflict**
- **Rule 1.8(b) Conflict**
- **Duties to former clients**



Poll Question #2

Does your firm have a policy on the use of Generative AI tools in practice?

- Yes – All such tools are prohibited.
- Yes – The policy provides guidelines for use of Generative AI tools.
- No.

Sample AI Tool Policy Provisions

Policy may require that attorneys:

Educate themselves on terms of use, benefits, and risk of tools.

Scrutinize output for accuracy, reliability, and legal and regulatory compliance.

Consider obligations to communicate with clients about use of tools.

Continue to exercise independent professional judgment in representing and providing advice to the firm's clients.

Prohibit entering client information, confidential firm data, or personally identifiable information into generative AI platforms.

AI Tools Tailored To Legal Practice

- Harvey AI
- CoCounsel (Casetext/Thomson Reuters)
- Microsoft 365 Copilot
- Spellbook
- HighQ
- Litera
- Contract Express



nabl

The Workshop

OCTOBER 18–20, 2023

Benefits of AI in Legal Practice

- Efficiency (cost and time savings)
- Effectiveness (eliminate human error)
- Eliminate menial tasks (repetitive work can be delegated to software)



Questions?

nabl

The Workshop

OCTOBER 18–20, 2023

Thank you nabl Sponsors!

Platinum 
DELAFIELD & WOOD LLP

 ImageMaster.

 LexisNexis®

Gold

 Ballard Spahr
LLP

 **BAM**
BUILD AMERICA MUTUAL

BRACEWELL

Bryant
Miller
Olive

BUTLER | SNOW

CHAPMAN
Focused on Finance

 DAC Bond®

 GILMORE BELL

 IceMiller

KUTAKROCK

 MAYNARD NEXSEN

 **MCCALL**
PARKHURST & HORTON

Silver

 HALL
RENDER
KILLIAN HEATH & LYMAN

 HINCKLEY
ALLEN

 MILES &
STOCKBRIDGE

 **MS&B**
McMANIMON • SCOTLAND • BAUMANN

 SQUIRE
PATTON BOGGS

 **RK**
REYES KURSON

Bronze

 **FOLEY & JUDELL, L.L.P.**
ATTORNEYS AND COUNSELLORS AT LAW

 **JH**
JONES HALL

 McCarter
English &

 **DORSEY**
always ahead