NATIONAL ASSOCIATION OF BOND LAWYERS
THE WORKSHOP 2023
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Ethics – Conflicts, Competence and Confidentiality

Speaker's Outline

1. Introduction
   a. Outsourcing this presentation to artificial intelligence tools
2. AI/LLM Overview
   a. Key terms and concepts
      i. "Artificial Intelligence": the use of technology to mimic human intelligence to perform tasks
      ii. "Machine Learning" use of large data sets to "train" AI on patterns.
      iii. "Generative AI" Artificial intelligence tools that can be used to create content (text, video, graphics, etc.)
      iv. "Large Language Models (LLMs)" – 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.
      v. General purpose generative AI (chatGPT) vs. context specific tools (Harvey)
   b. ChatGPT/Generative AI limitations
      i. "May occasionally generate incorrect information. May occasionally produce harmful instructions or biased content. Limited knowledge of world and events after 2021." - ChatGPT disclaimer
      ii. "ChatGPT is incredibly limit, but good enough at some things to create a misleading impression of greatness. [I]t's a mistake to be relying on it for anything important right now. [I]t's a preview of progress; we have lots of work to do on robustness and truthfulness. - Sam Altman, CEO of Open AI
   c. Cautionary Tales and AI in the Wild
      i. ChatGPT and LLMs hallucinate –
         1. Lawyers in airline suit sanctioned for citing fake cases (hallucinated by ChatGPT) in a filing.
         2. Colorado attorney reprimanded for including fake cases (hallucinated by ChatGPT) in a filing.
      ii. Texas Judge: No ChatGPT in this Court! –
         1. https://techcrunch.com/2023/05/30/no-chatgpt-in-my-court-judge-orders-all-ai-generated-content-must-be-declared-and-checked/
         2. https://www.txnd.uscourts.gov/judge/judge-brantley-starr
            a. "…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) ….”

    iii. Tech company bans employee use of generative AI tools over confidentiality concerns regarding company data.

    iv. Internal, proprietary software code submitted to ChatGPT subsequently incorporated into an unrelated ChatGPT answer.

  d. Thomson Reuters survey of attorneys

    i. 15% of respondents – firms issued warnings about generative AI

    ii. 82% said generative AI could be used in legal work

    iii. 50% said generative AI should be used

    iv. Reasons for reluctance to proscribe usage

      1. Accuracy (most cited)

      2. Privacy

      3. Confidentiality of client info

      4. Data security

      5. Bias

3. Competence   Rule 1.1 requires lawyers to provide competent representation to clients.

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

  b. Competent usage of LLM complicated in current iterations of the technology

    i. Information not accurate and complete

    ii. No sourcing of information to assess quality

  c. Rule 1.4 – requires lawyers to reasonably consult with their clients about the means by which the clients' objectives are to be accomplished.

    i. Must Artificial Intelligence be disclosed?

  d. Rule 8.4 – states that conduct involving dishonesty, fraud, or deceit is professional misconduct.

    i. Is using Generative artificial intelligence without disclosure dishonest or deceitful?

  e. Rule 1.5 – requires that lawyers only charge reasonable fees and expenses.

    i. Can time spent using generative AI be billed to a client? If work becomes more efficient, must fees come down?

  f. Rules 5.1 and 5.3 impose supervisory responsibilities on other lawyers. Supervising lawyers would need to carefully monitor any use of generative AI tools to ensure compliance with other rules and overall competence of representation.

4. Confidentiality

  a. 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?

    i. Entering confidential information into a generative AI platform immediately places that information outside of the firm's secure systems and onto third-party

services where the firm can no longer ensure that appropriate safeguards are in place to protect the information.
- ii. Platforms use prompts and other information to further train and improve the systems.
    1. Amazon software developers included proprietary Amazon code in a prompt and later discovered that code regurgitated by ChatGPT in other contexts.
- b. Generative AI can be used in cyberattacks – enhanced need to safeguard client information and protect systems in light of increasing cyberattacks and use of generative AI to launch increasingly sophisticated attacks.

5. Conflicts
    a. Personal Interest Conflict
    b. Confidential Information Conflict
    c. Rule 1.8(b) Conflict
    d. Duties to former clients
6. Sample AI Policy for law firms may require that attorneys:
    a. Educate themselves on terms of use, benefits, and risk of tools
    b. Scrutinize output for accuracy, reliability, and legal and regulatory compliance
    c. Consider obligations to communicate with clients about use of tools.
    d. Continue to exercise independent professional judgment in representing and providing advice to firm's clients
    e. Prohibit entering client information, confidential firm data, or personally identifiable information into generative AI platforms.
7. AI Products for Lawyers
    a. Harvey AI
    b. CoCounsel (Casetext/Thomson Reuters)
    c. Microsoft 365 Copilot
    d. Spellbook
    e. HighQ
    f. Litera
    g. Contract Express
    h. More every day…
8. Benefits of AI
    a. Efficiency
    b. Effectiveness
    c. Elimination of menial tasks