



2024 Bankruptcy at the Beach Seminar

Ethics Update

Roman Ashley Shaul
Alabama State Bar
General Counsel

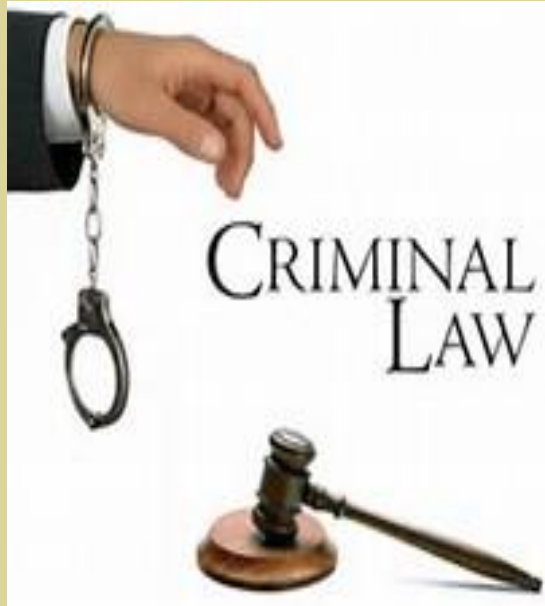


Alabama State Bar
Office of General Counsel

2023 OGC Statistics

• Complaints Received	1276
• Complaints Screened Out	790
• Private Reprimands	19
• Public Reprimands	11
• Transfer (Rule 27)	2
• Suspensions	10
• Disbarments	14
• Informal Opinions Issued	2250
• Disciplinary Commission Cases	144
• Disciplinary Board Hearings	10
• Number of CLE/Programs	95

Beware Criminal and Family Law?



Changes to the Alabama Rules of Disciplinary Procedure



time to
UPDATE

2023 Disciplinary Rule Changes

Disciplinary Commission (“DC”):

1. Expand from 4 members to 6 members.
2. Members of the DC are not required to be a Bar Commissioner.

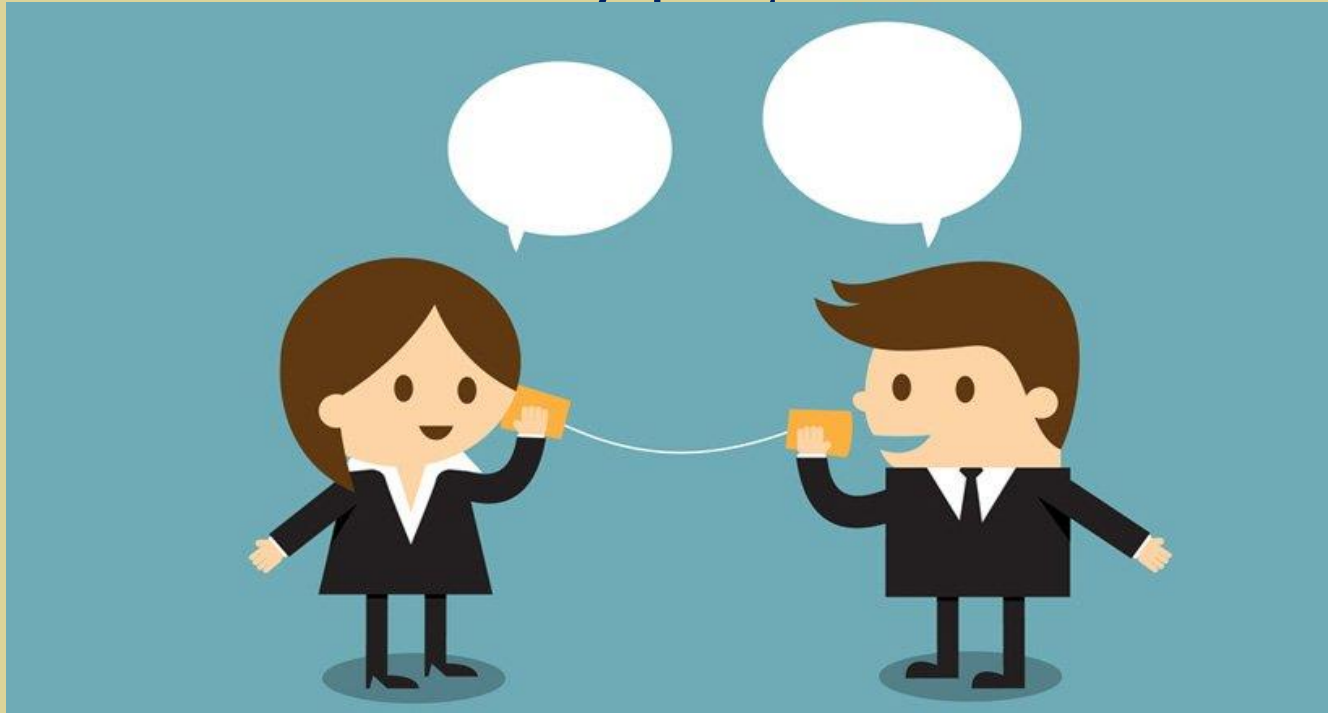
Disciplinary Board (“Board”):

1. Expand from 3 panels to 5 panels.
2. Members of the Board are not required to be a Bar Commissioner.

Most Common Disciplinary Issues for
Bankruptcy Lawyers




You *MUST* Communicate With Your
Client



Rule 1.4 Communication

(a) A lawyer shall keep a client **reasonably informed** about the status of a matter and **promptly** comply with **reasonable** requests for information.

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



“the single biggest
problem in
communication is the
illusion that it
has taken place”

-George Bernard Shaw

Additional Thoughts on Client Communication

1. Make sure the client knows how to communicate with you (BUT...set appropriate barriers).
2. Be careful contacting clients through social media.
3. Your clients may be very emotional. Do not risk your livelihood over your clients.

No Sex with Clients or Their Family Members!!



Rule 1.8 – Prohibited Transactions (l) & (m)

(l) A lawyer shall not engage in sexual conduct with a client or representative of a client that exploits or adversely affects the interests of the client or the lawyer-client relationship, including, but not limited to:

(1) requiring or demanding sexual relations with a client or a representative of a client incident to or as a condition of legal representation;

(2) continuing to represent a client if the lawyer's sexual relations with the client or the representative of the client cause the lawyer to render incompetent representation.

Procrastination Kills !



Rule 1.3 Diligence

A lawyer shall not willfully neglect a legal matter entrusted to him or her.

Rule 3.2 Expediting Litigation

A lawyer shall make reasonable efforts to expedite litigation consistent with the interests of the client.

Rule 3.2 Expediting Litigation

Committee Comments:

...Although there will be occasions when a lawyer may properly seek a postponement for personal reasons, it is not proper for a lawyer to routinely fail to expedite litigation solely for the convenience of the advocates. Nor will a failure to expedite be reasonable if done for the purpose of frustrating an opposing party's attempt to obtain rightful redress or response...

...It is not a justification that similar conduct is often tolerated by the bench and bar.

...Realizing financial or other benefit from otherwise improper delay in litigation is not a legitimate interest of the client.

Not Being Truthful





**CANDOR
TOWARD THE
TRIBUNAL**

Rule 3.3

Purpose of the rule

1. Rule 3.3 describes a duty owed to the Court.
2. Provides remedy for misstatements.
3. This duty qualifies the duties you owe to your client.
4. As an advocate, you are not vouching for the evidence. The tribunal is responsible for assessing the probative value.
5. The advocate is generally not required to have personal knowledge of matters asserted therein.

Definition

Tribunal - denotes a court, an arbitrator in a binding arbitration proceeding or a legislative body, administrative agency or other body acting in an adjudicative capacity. A legislative body, administrative agency or other body acts in an adjudicative capacity when a neutral official, after the presentation of evidence or legal argument by a party or parties, will render a binding legal judgment directly affecting a party's interests in a particular matter.



Conflict of interest

Rule 1.7 Conflict of Interest: General Rule

(a) A lawyer shall not represent a client if the representation of that client will be directly adverse to other clients, unless:

(1) The lawyer reasonably believes the representation will not adversely affect the relationship with the other client; and

(2) Each client consents after consultation.

Rule 1.7 Conflict of Interest: General Rule

(b) A lawyer shall not represent a client if the representation of that client may be materially limited by the lawyer's responsibilities to another client or a third person, or by the lawyer's own interest, unless:

(1) The lawyer reasonably believes the representation will not be adversely affected; and

(2) The client consents after consultation. When representation of multiple clients in a single matter is undertaken, the consultation shall include explanation of the implications of the common representation and the advantages and risks involved.

Rule 1.9 Conflict of Interest: Former Client

A lawyer who has formerly represented a client in a matter shall not thereafter:

(a) Represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client, unless the former client consents after consultation; or

(b) Use information relating to the representation to the disadvantage of the former client except as Rule 1.6 or Rule 3.3 would permit or require with respect to a client or when the information has become generally known.

Conflict Examples

1. You represent a husband and wife at the time of filing the petition, but they later divorce.
2. You represented a husband and wife together in their first bankruptcy. Years later one of the spouses wants you to represent her in a different bankruptcy.
3. What are the Ethical Obligation of an attorney to file an AP ?

Conflict Examples

4. You are retained to represent a corporation, but the President and CEO wants you (or a member of your firm) to represent them in a bankruptcy.
5. Specific questions about legal obligations imposed by statutes and rules. (i.e., splitting fees).

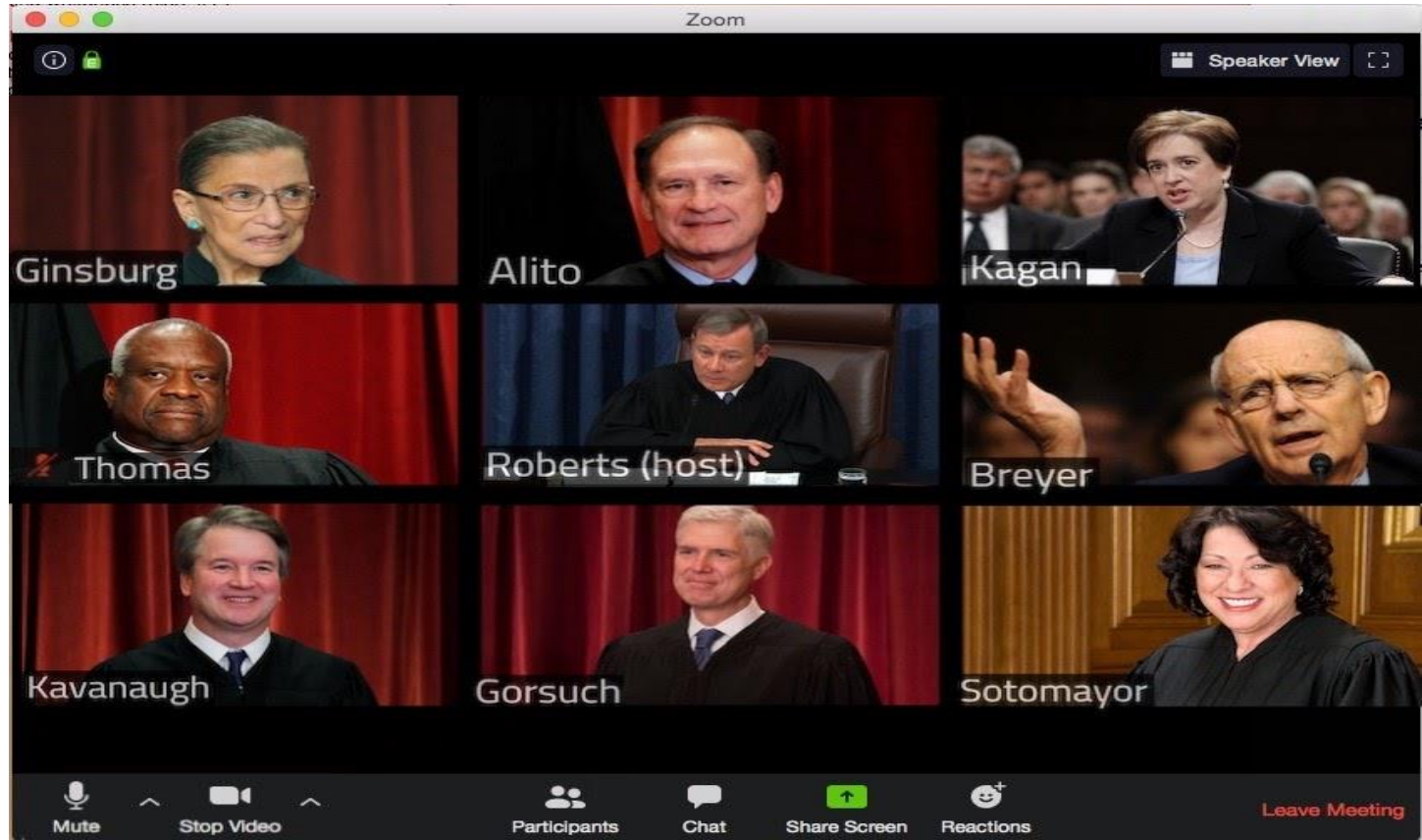
Living

In a

Virtual

World

Major Institutions Have Changed

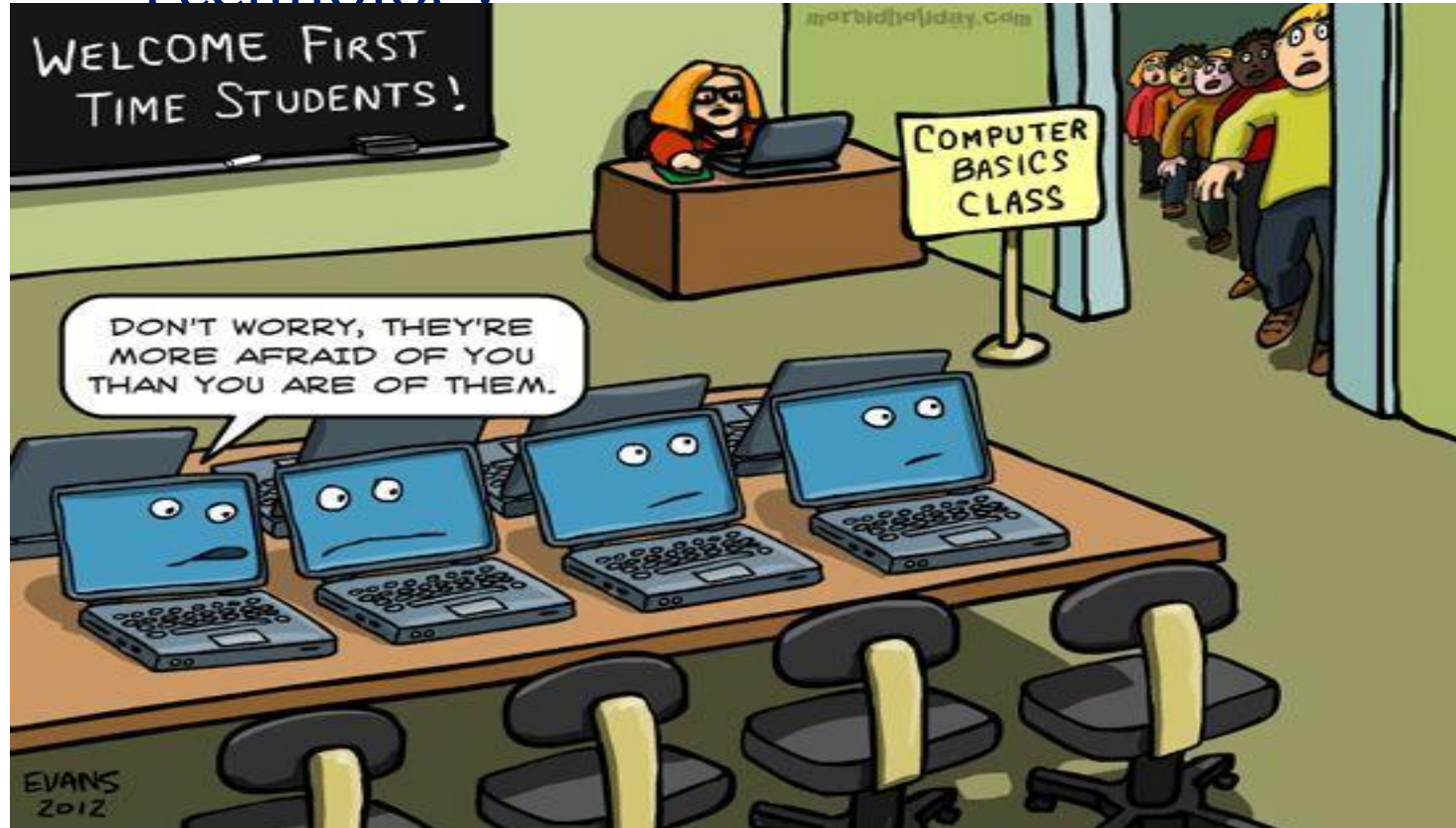


Local Courts and Governments Have

Ch...



People Are Still Afraid of Technology



Rule 1.1 Competence

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 1.1 Competence

Competence = Knowledge (including technology)

Competence = Skill (admit exhibits remotely)

Competence = Thoroughness

Competence = Preparation

That is reasonably necessary for the representation.

Public Support for Technological Change

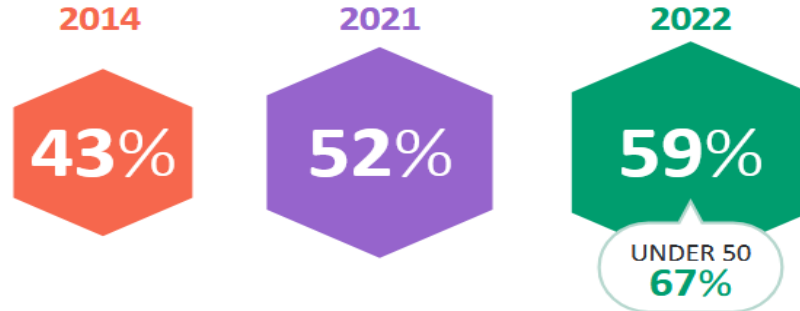
// FIGURE 6

Comfort levels with remote court appearances are on the rise.

STATE OF THE STATE COURTS // 2022 POLL

Q: “If you had business with the courts and this service was available online via videoconferencing...would you use it?”

*Percent saying they would **definitely** or **probably** use video to appear for a case before the court.*



The Downside of Technology



LAWYER²⁴⁷

Data Breaches

Getting struck
by a lightning



1 in 960.000

Dating a
millionaire



1 in 220

Experiencing a
data breach

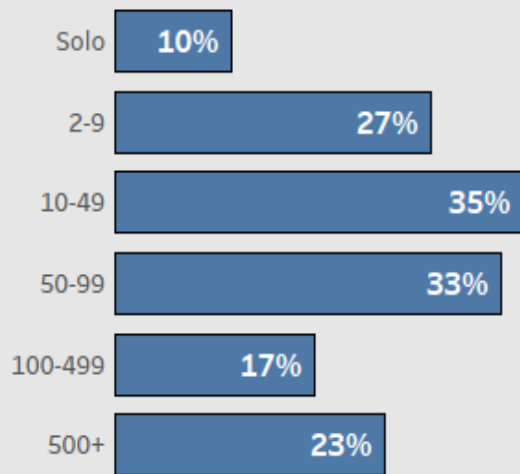


1 in 4

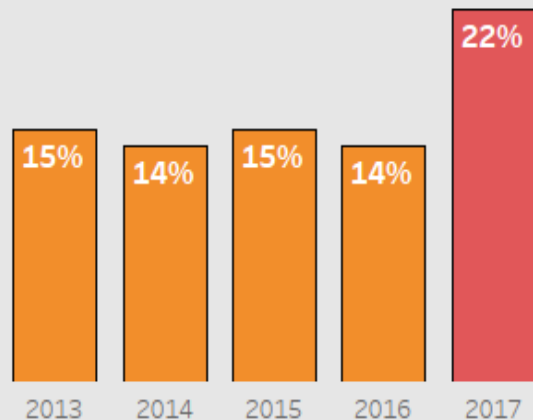
Midsize Law Firms Report Most Breaches

Over a third of firms with 10 to 99 attorneys were reportedly compromised in 2017.

Law firms that reported security breaches in 2017, by attorney count



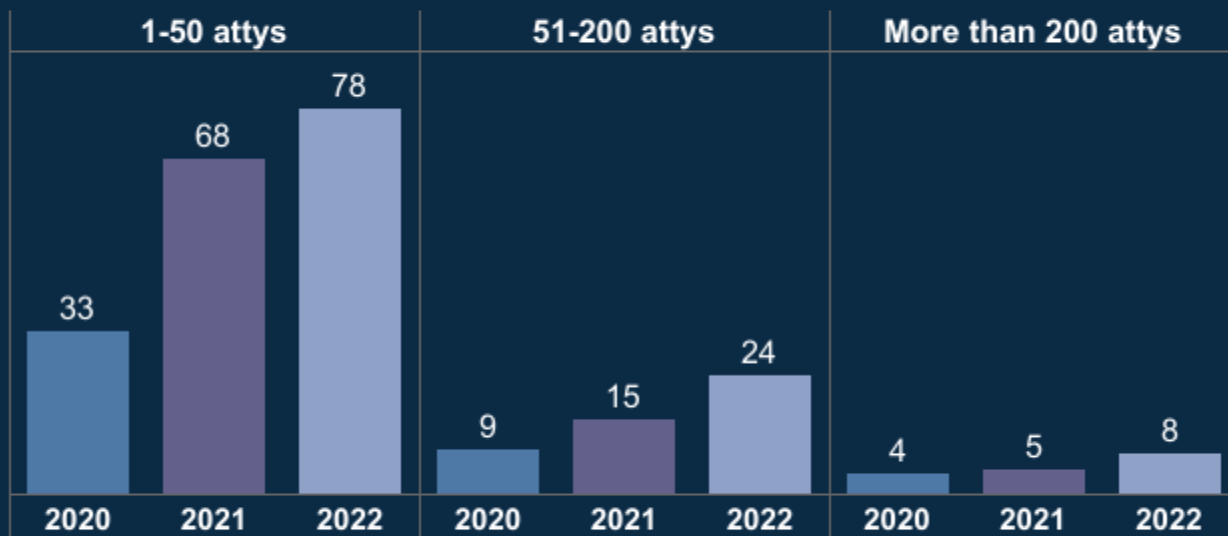
The number of firms surveyed that have experienced a breach in the past jumped 8 percentage points



Source: ABA Techreport 2017

Law Firm Data Breaches Surged Again in 2022

Over 100 law firms reported data incidents to state authorities in 2022, exceeding the previous two years.

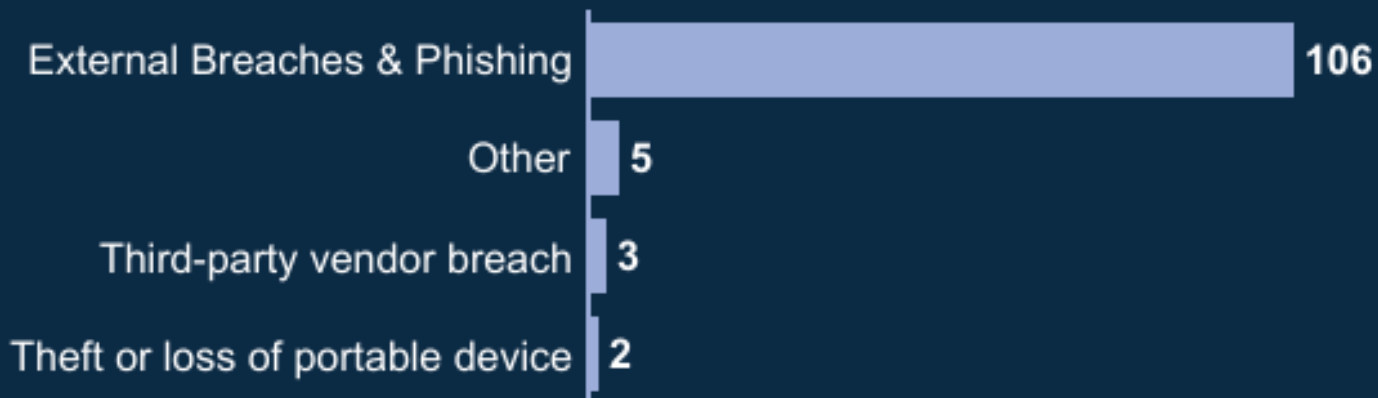


Source: State public disclosure records for breaches reported in 2022. (Does not include all states)

 LAW360 | Pulse

How Law Firms Were Breached

External breaches, including phishing, hacking and malware attacks, were the most commonly identified source of data exposure events.



Source: State public disclosure records for breaches reported from January 2021 through April 2022. (Does not include all states.)



ABA Formal Op. 477R (5/21/2017)

“Securing Communication of Protected Client Information”

1. Duty to prevent inadvertent or unauthorized disclosures
2. Reasonable efforts standard (safeguards) (sensitivity, likelihood, cost, difficulty, ease to use)

What are “Reasonable Efforts”

1. Did you call the bank or your client before you acted?
2. Do you understand your technology. (Security on?)
3. Is the software manufacturer still in this business?
4. Are you backing up your data?
5. Are you working with reputable vendors?
6. Are you training your staff?

ABA Formal Op. 483 (10/17/2018)

“Lawyers’ Obligations After an Electronic Data Breach or Cyberattack”

- Before breach, develop data breach plan
- Must monitor for data breach
- Stop breach and restore systems
- Reasonably determine what occurred
- Provide notice of data breach to clients
- Notice must give sufficient information

Statutory Obligations

- Alabama Data Breach Notification Act (6/1/2018)
 - * Applies to lawyers and law firms
 - * Deals with “SPII”
 - * Requires tech safeguards & timely notice
- HIPPA
- Gramm Leach Bliley Act
- Sarbanes Oxley

When Your Home is Now Your Office



When Your Home is Now Your Office

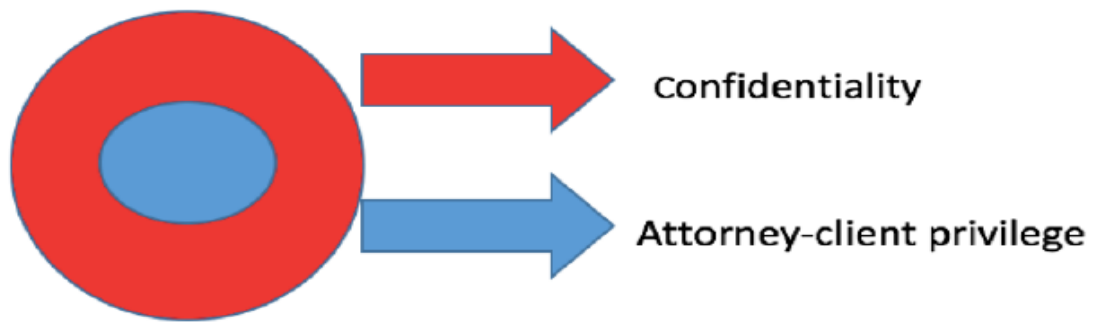
- Same security obligations exist.
- Home systems are generally more vulnerable.
- How are you backing up data from your home system?
- Are you using your firm issued computer?
- Be mindful of people in your home.

Client Confidentiality



Rule 1.6 CONFIDENTIALITY OF INFORMATION

(a) A lawyer shall not reveal information relating to representation of a client unless the client consents after consultation, except for disclosures that are impliedly authorized in order to carry out the representation, and except as stated in paragraph (b).



Beware of Metadata
(or Be Aware of Metadata) ?



Ethical Propriety of Metadata Mining

Formal Opinion 2007 – 02:

“Lawyers have a duty under Rule 1.6 to use reasonable care when transmitting electronic documents to prevent the disclosure of metadata containing client confidences or secrets.”

Where Else Do I Find Confidential Information?

1. Copiers/Printers.
2. External hard drives/computers.
3. Outsourced billing/word processing.



ARTIFICIAL INTELLIGENCE

What is Generative AI ?

Generative AI is a type of artificial intelligence technology that can produce various types of content, including text, imagery, audio and synthetic data.

The technology was first introduced in the 1960s in chatbots. But it was not until 2014, with the introduction of Generative Adversarial Networks, or GANs -- a type of machine learning algorithm -- that generative AI could create convincingly authentic images, videos and audio of real people.

Who is Using Generative AI ?

57% of consumers are aware of generative AI tools, such as ChatGPT.

86% of lawyers are aware of generative AI tools.

51% of lawyers have used (or plan to start using) AI tools this year.

**LexisNexis Legal & Professional. *Generative AI Captures Imagination of Lawyers, Law Students, Consumers Alike*. March 20, 2023.

Who is Using Generative AI ?

Wednesday, May 31, 2023

Some Law Schools Already Are Using ChatGPT To Teach Legal Research And Writing

By Paul Caron

1.3k
Shares



27



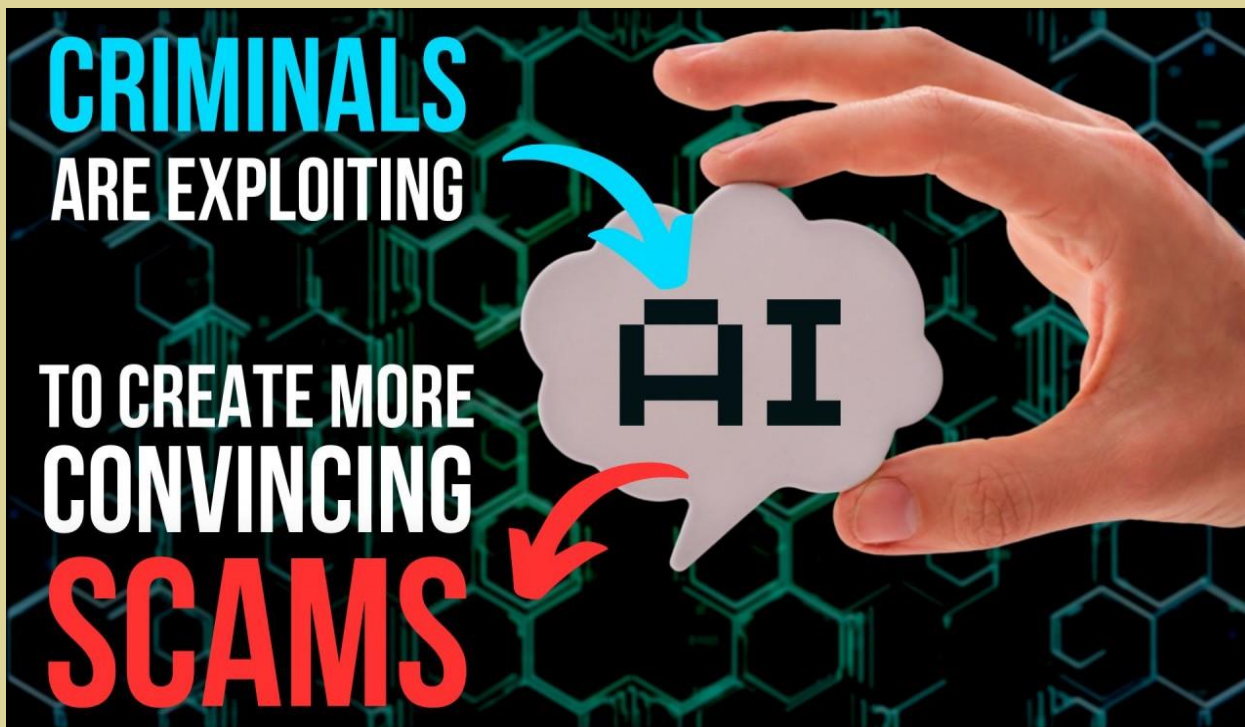
17

in

4



Who is Using Generative AI ?





watsonx.ai

Now available—a next generation enterprise studio for AI builders to train, validate, tune and deploy AI models

Start your free trial →

Book a live demo →

Customize your journey ▾

Experiment with foundation models and build prompts with Prompt Lab

Build machine learning models automatically with AutoAI

Prepare and visualize data with Data Refinery

Prompt Lab

Sample prompts

Classification

Scenario classification
Classify scenarios based on project categories.

Sentiment classification
Classify reviews as positive or negative.

Generation

Marketing email generation
Generate email to marketing campaigns.

Thank you note generation
Generate thank you note for workshop attendees.

Extraction

Name entity extraction
Find and classify entities in unstructured text.

Structured Freform

Set up

Instruction

Tell the model what to do.

Examples

Input	Output
Enter your example input here.	Enter your desired output.

[Add example +](#)

Try

Test your prompt

Input	Output
Enter your test input.	Generated output appears here.

Generate →

Projects

Kate's sandbox

1/8

Experimenting with AI

1/8 2/8 3/8 +3

Marketing emails

1/8 2/8 3/8

Climate Change Impacts on the Global Food Supply

1/8 2/8





Lexis+ AI™

Introducing Lexis+ AI



Copilot

Your everyday AI companion



X.AI INTRODUCING
GROK
BY ELON MUSK



Terms of Service Didn't Read

"I have read and agree to the Terms"

is the biggest lie on the web. We aim to fix that.

DoNotPay

[Bumer Phones](#)

[Warranty](#)

[Free Trials](#)

[How To Cancel](#)

[Refunds](#)

[Unban Account](#)

The World's First Robot Lawyer

The DoNotPay app is the home of the world's first robot lawyer. Fight corporations, beat bureaucracy and sue anyone at the press of a button.

ROSS Intelligence will shut down amid lawsuit from Thomson Reuters

BY LYLE MORAN

DECEMBER 11, 2020, 11:50 AM CST

Like 58

Share

Tweet

Share



Image from Shutterstock.com

ROSS Intelligence, which launched an AI-based legal research platform six years ago, announced Friday that it plans to cease operations early next year because of an ongoing copyright infringement lawsuit that Thomson Reuters brought against the company.

Thomson Reuters filed a [lawsuit](#) with the U.S. District Court for the District of Delaware in May, alleging that ROSS Intelligence had stolen “critical features” of Thomson Reuters’ Westlaw legal research platform to develop its own legal research offering.

“Litigation is expensive—no matter how speculative the claims against you nor how worthy your position,” ROSS Intelligence said in a [statement on the company’s website](#). “With our company ensnared by this legal battle, we have been unable to





ChatGPT

Hello GPT-4o



Why are Lawyers Using Generative AI?

“People have quickly discovered the platform can churn out persuasive and eloquent copy that would take a human hours, days, months or even years to write, including drafts of emails, legal briefs, essays and books.”

ABA Journal. *Words with Bots*. June/July 2023.

How are Legal Departments Using AI?

“In particular, areas of significant utility for legal departments include contract analysis, due diligence, electronic discovery, monitoring patent portfolios and legal budgeting.”

How are Legal Departments Using AI?

“... AI tools can be used to efficiently...

identify contract clauses of concern;

suggest contract modifications...;

generate reports analyzing large data sets or document collections;

monitor outside counsel activity;

or assess areas in which legal budgets might be revamped.”

How are Legal Departments Using AI?

“Further, AI can provide valuable insights to guide legal strategy by helping to predict outcomes based on precedent and other factors.”

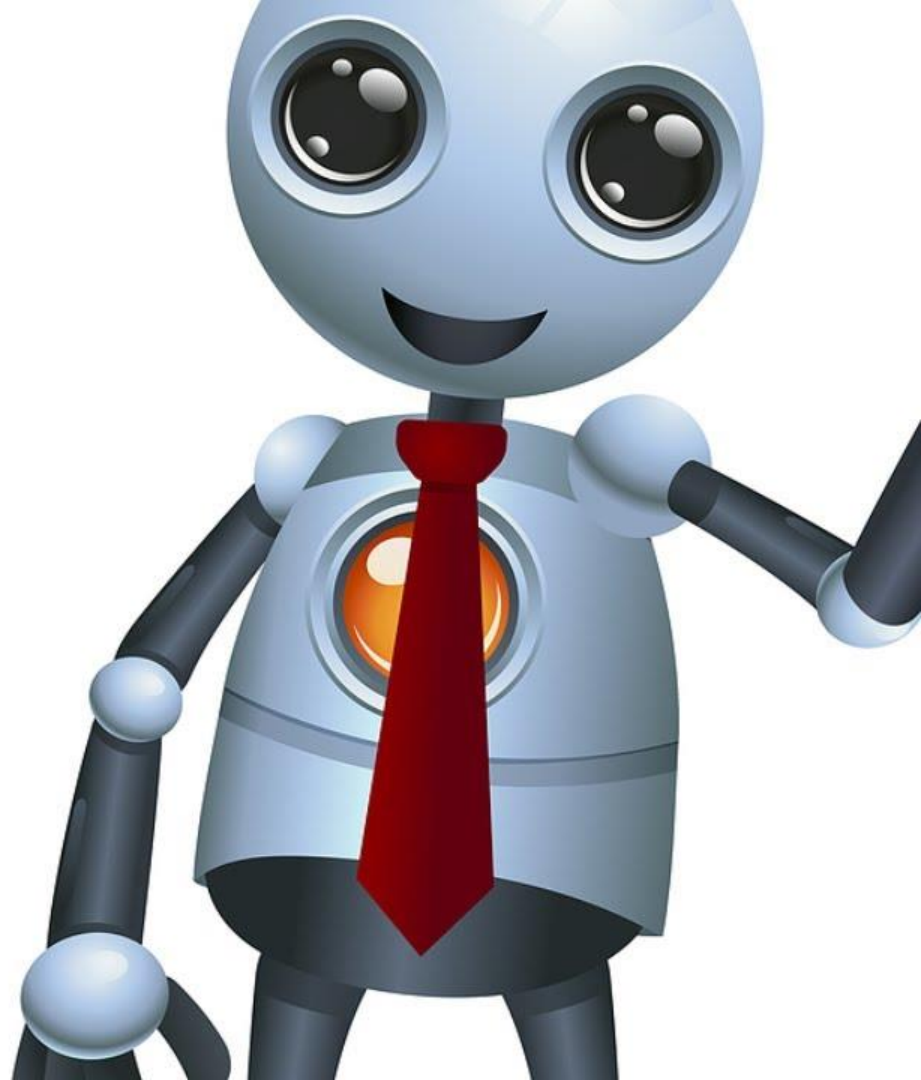
Law 360. The Future of Legal Ops: AI Has Important Role to Play. December 20, 2022.

CHAT GPT EXAMPLES



ChatGPT

Latest
Update



ChatGPT Examples

“Hi, ChatGPT. What can ChatGPT do for lawyers (in 100 words or less)?”

[ABA Journal](#). *Words with Bots*. June/July 2023.

ChatGPT Examples

“As an AI language model, ChatGPT can provide assistance to lawyers in various ways. It can help with legal research by quickly searching and analyzing large volumes of legal documents and cases to extract relevant information. It can also assist in drafting legal documents such as contracts, briefs and pleadings, by suggesting language and formatting options based on context and legal precedent. Additionally, ChatGPT can assist with legal analysis by providing insights and recommendations on complex legal issues based on its vast database of legal information.”

ChatGPT Examples

“Is ChatGPT trying to take lawyers’ jobs away (in 100 words or less)?”

[ABA Journal](#). *Words with Bots*. June/July 2023.

ChatGPT Examples

“No. ChatGPT is not trying to take lawyers’ jobs away. Instead, it can assist lawyers by providing them with a powerful tool to enhance their work efficiency, accuracy and productivity. While ChatGPT can automate certain tasks such as legal research and document drafting, it cannot replace the expertise and experience of a skilled lawyer. In fact, the use of AI technology like ChatGPT can help lawyers to focus on more complex and high-level tasks that require human reasoning and judgment.”

[ABA Journal](#). *Words with Bots*. June/July 2023.

ChatGPT Examples

“Now say that in rhyme.”

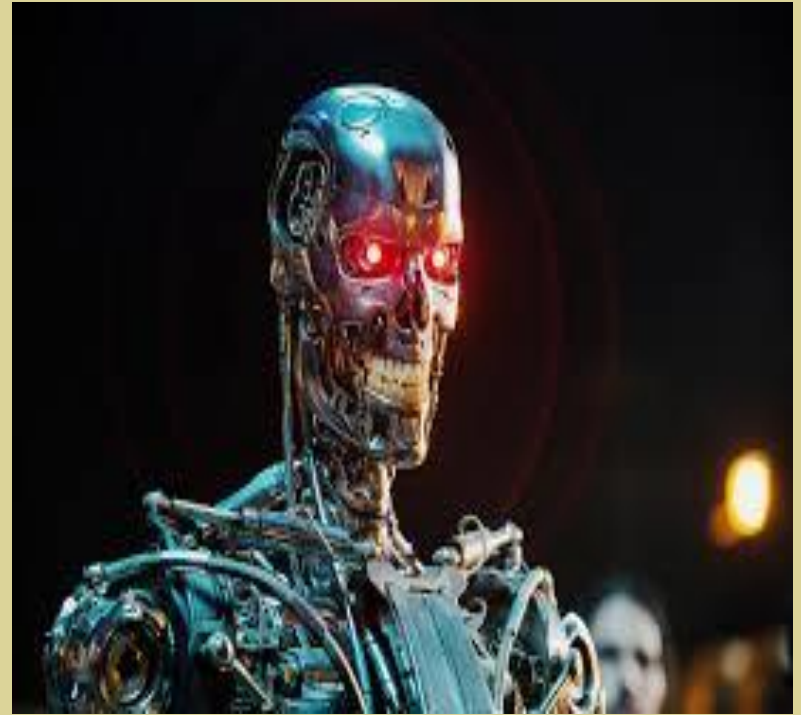
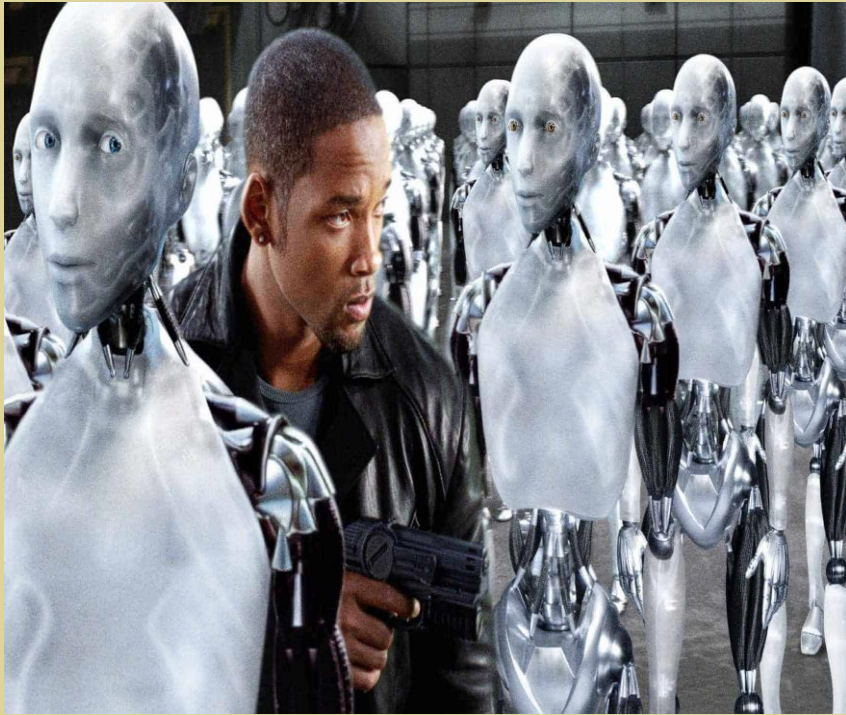
[ABA Journal](#). *Words with Bots*. June/July 2023.

ChatGPT Examples

“ChatGPT knows its limits well.
It cannot replace lawyers with its spell.
For only humans can bring the skill,
Of judgment and experience, to fulfill.
So fear not, lawyers, ChatGPT is your friend. It’s
here to assist **and help you to the end.**”

ABA Journal. *Words with Bots*. June/July 2023.

To the End of What ?



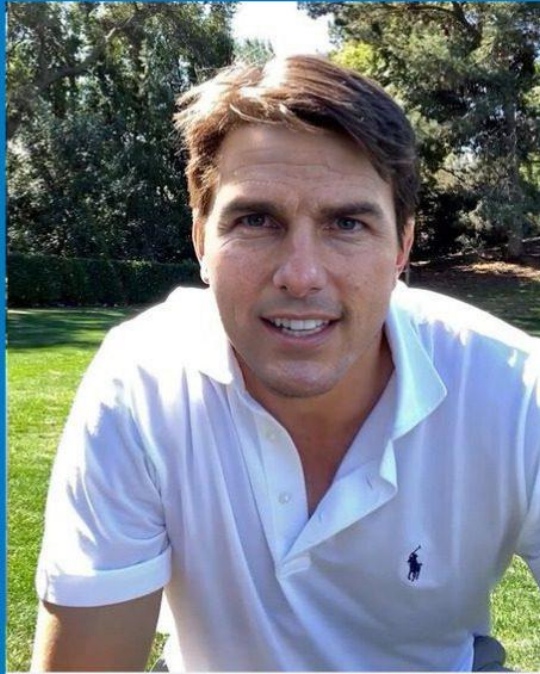
What are Some Concerns with Generative AI ?

1. False information.
2. Misleading Information.
3. Discriminatory Information.
4. Plagiarism.
5. Disclosure of Confidential Information.

What are Some Concerns with



ORIGINAL



DEEPAKE

What are Some Concerns with Generative AI ?

Teen responds to classmate creating AI nudes of female students

Smerconish



Scandal erupted at a New Jersey high school after a male student used AI to make fake nude photos of female students. One of the victims tells CNN's Michael Smerconish, "I shouldn't be sad, I should be mad."

06:59 - Source: CNN

What is Real?



gencraft_ai @gencraft_ai

Ad

"Girl with blonde hair wearing a backpack in a train"

By Gencraft: the world's fastest (and free!) AI image and video generator



Gencraft - AI Art Generator

★★★★★ 1.5K reviews

Free · Graphics & Design

Install

269

210

1.6K

23M

Share

Mata v. Avianca, Inc., SDNY (May
2023)

“In an affidavit filed Thursday, attorney Steven Schwartz of Levidow Levidow & Oberman PC acknowledged that it ‘was in consultation with generative artificial intelligence website ChatGPT’ that he located and cited six cases that ‘this court has found to be nonexistent.’”

Law360. *Attorney Citing ‘Bogus’ Cases From ChatGPT is ‘Unprecedented.’* May 30, 2023.

State of Colorado v. Zachariah C.
Crabill

(November 21, 2023)

A Colorado attorney has been temporarily suspended after he used "sham" case law citations produced by the artificial intelligence platform ChatGPT in a motion and lied to a judge that an intern produced the errors, according to a state disciplinary ruling.

Law360. Colo. Atty Suspended For Using 'Sham' ChatGPT Case Law. November 27, 2023.

Judge Stephen A. Vaden
U.S. Court of International Trade

“Generative artificial intelligence programs that supply natural language answers to user prompts, such as ChatGPT or Google Bard, create novel risks to the security of confidential information.

Users having “conversations” with these programs may include confidential information in their prompts, which in turn may result in the corporate owner of the program retaining access to the confidential information.”

Standing Order on Artificial Intelligence. June 8, 2023.

Judge Brantley D. Starr
Northern District of Texas

“While attorneys swear an oath to set aside their personal prejudices, biases and beliefs to faithfully uphold the law 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).”

Judge Donald W. Molloy
District of Montana

"Pro hac counsel must do his or her own writing; sign his or her own pleadings, motions and briefs; and appear and participate personally. **Use of artificial intelligence automated drafting programs, such as ChatGPT, is prohibited.**"

Order. June 6, 2023.

5th Circuit Court of Appeals

Fifth Circuit Rule 32.3

32.3. Certificate of Compliance. See Form 6 in the Appendix of Forms to the FED. R. APP. P. Additionally, counsel and unrepresented filers must further certify that no generative artificial intelligence program was used in drafting the document presented for filing, or to the extent such a program was used, all generated text, including all citations and legal analysis, has been reviewed for accuracy and approved by a human. A material misrepresentation in the certificate of compliance may result in striking the document and sanctions against the person signing the document.

5th Circuit Court of Appeals

3. This document complies with the AI usage reporting requirement of 5TH CIR. R. 32.3 because:

- no generative artificial intelligence program was used in the drafting of this document, or**
- a generative artificial intelligence program was used in the drafting of this document and all generated text, including all citations and legal analysis, has been reviewed for accuracy and approved by a human.**

Judges' Ethical Duties Implicated by AI.

CONCLUSION

Judicial officers have an ethical obligation to understand technology, including artificial intelligence, and take reasonable steps to ensure that AI tools on which their judgment will be based are used properly and that the AI tools are utilized within the confines of the law and court rules. Further, as AI rapidly advances, judicial officers have an ethical duty to maintain technological competence and understand AI's ethical implications to ensure efficiency and quality of justice.

[State Bar of Michigan, JI-155, October 27, 2023.](#)

Judges' Ethical Duties Implicated by AI.

Based upon the foregoing, the Commission is of the opinion that a judge may use AI for research purposes but may not use it to decide the outcome of a case. The use of AI in drafting opinions or orders should be done with extreme caution. The Commission hopes that this opinion fully addresses the issues which you have raised. Please do not hesitate to contact the Commission should you have any questions, comments or concerns.



JUDICIAL INVESTIGATION COMMISSION
City Center East - Suite 1200 A
4700 MacCorkle Ave., SE
Charleston, West Virginia 25304
(304) 558-0169 • FAX (304) 558-0831

[JIC Advisory Opinion, 2023-22, October 13, 2023.](#)

ChatGPT- 40 Upgrade

Today, GPT-4o is much better than any existing model at understanding and discussing the images you share. For example, you can now take a picture of a menu in a different language and talk to GPT-4o to translate it, learn about the food's history and significance, and get recommendations

ChatGPT- 40 Upgrade

In the future, improvements will allow for more natural, real-time voice conversation and the ability to converse with ChatGPT via real-time video. For example, you could show ChatGPT a live sports game and ask it to explain the rules to you.

Some Ethical Rules that are Implicated by AI.

1. Rule 1.1 Competence
2. Rule 1.6 Confidentiality
3. Rule 3.3 Candor Toward the Tribunal
4. Rule 1.4 Communication
5. Rule 1.5 Fees
6. Rules 5.1 & 5.3 Supervision
7. Rule 5.5 Unauthorized Practice of Law

E **T** **H** **I** **C** **S**

A 3D illustration featuring six white, stylized human figures standing in a line on a white reflective surface. Each figure is holding a large, thick, 3D letter. From left to right, the letters are: a red 'E', an orange 'T', a yellow 'H', a light green 'I', a dark green 'C', and a blue 'S'. The figures are positioned behind their respective letters, with their arms and hands visible as they hold the letters. The background is a plain white surface, and the entire scene is set against a light beige border.

Ethics Opinions

Rule 18, Alabama Rules of Disciplinary Procedure. Conduct not subject to disciplinary action:

If, before engaging in a particular course of conduct, a lawyer makes a full and fair disclosure, to the Office of General Counsel, said inquiry shall be considered confidential. Additionally, if said lawyer receives a formal or informal opinion from the Office of General Counsel that the proposed conduct is permissible, such conduct shall not be subject to disciplinary action.



QUESTIONS

ANSWERS



2024 Bankruptcy at the Beach Seminar

Ethics Update

Roman Ashley Shaul
Alabama State Bar
General Counsel