

BY MORGAN B.
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Practicing in a New World

How generative AI is transforming the legal landscape.

BENJAMIN FRANKLIN ONCE SAID, "... IN THIS WORLD, NOTHING IS CERTAIN EXCEPT death and taxes."¹ Yet, in recent years, this quote has missed a third key certainty. Now, nothing in life is certain except death, taxes, and the constant evolution of technology. The rise in new technology has rapidly and undoubtedly changed the landscape of the legal profession.

1. NCC Staff, *Benjamin Franklin's Last Great Quote and the Constitution* (Nov. 13, 2022), law.isba.org/4au9cVK.



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ISBA RESOURCES >>

- ISBA PracticeHQ, *Vetting AI for Attorneys*, law.isba.org/3NCMGaf.
- Hon. E. Kenneth Wright Jr, Hon. Michael Chmiel, & Edward Casmere, *Artificial Intelligence Update*, Bench & Bar (Dec. 2023), law.isba.org/3GM7PEv.
- David A. Johnson Jr., *Five Steps for Performing Due Diligence on an Acquisition Target's Use of Generative AI*, The Counselor (Nov. 2023), law.isba.org/3RRt520.

In an era defined by rapid technological advancement, the legal profession finds itself at the nexus of innovation and tradition. Generative artificial intelligence (AI), stands as proof of the transformative power of technology, promising to reshape the landscape of law and advocacy.

This article examines the intersection of generative AI and the legal profession, exploring how this new, ever-changing technology is redefining the practice of law. From automating routine tasks to modernizing legal research, generative AI is a catalyst for change that has the potential to expand access to justice. But the use of generative AI also raises critical questions about technology and legal ethics.

Generative AI

Generative AI refers to a subset of AI technology designed to generate new content, such as text or images, that is often indistinguishable from content created by humans.² Generative AI systems are built using deep learning techniques, particularly with recurrent neural networks (RNNs) and more advanced models like generative adversarial networks (GANs) and variational autoencoders (VAEs).³

Benefits of using generative AI

Generative AI has the potential to offer several benefits to the legal profession:

Document automation. Generative AI can assist in generating legal documents, contracts, and agreements quickly.⁴ This can save lawyers time by automating the drafting of routine documents, allowing them to focus on more complex legal work. In turn, lawyers can bill

fewer hours (and charge clients less money) for routine drafting projects.

Legal research. Generative AI can help legal professionals conduct extensive legal research faster and more efficiently. It can analyze large volumes of legal texts, cases, and statutes to provide applicable information and precedents.

Predictive analytics. Generative AI can analyze historical case data to predict legal outcomes.⁵ This can assist lawyers in making more informed decisions, such as whether to take a case to trial or pursue settlement negotiations. This feature can help lawyers who charge contingent fees to make significantly more money while potentially bearing less risk.

Document analysis. Generative AI can simplify document analysis by conducting due diligence and reviewing contracts.⁶ For example, generative AI can conduct due diligence in mergers and acquisitions by reviewing and summarizing large sets of documents, helping lawyers identify potential risks and opportunities. Additionally, generative AI can review and isolate important information from contracts, allowing lawyers to identify key terms and potential issues. This generative-AI feature can be particularly useful in contract management and compliance.

2. McKinsey & Co., *What is Generative AI?* (Jan. 19, 2023), law.isba.org/41pkOW9.

3. Alyssa Schroer, *What Is Artificial Intelligence?*, Built In (Jul. 27, 2023), law.isba.org/4ao8Spf; George Lawton, *What Is Generative AI? Everything You Need to Know*, TechTarget (Oct. 2023), law.isba.org/3Tw4z7Q; AMAZON WEB SERVICES, INC., *What Is GPT?*, law.isba.org/3RtDEH5.

4. Kritika Singh, et al., *16 AI Legal Drafting Tools for Effortless Legal Perfection*, Geekflare (Aug. 28, 2023), law.isba.org/3GQ6XP4.

5. Matthew Stepka, *Law Bots: How AI Is Reshaping the Legal Profession*, American Bar Association (Mar. 2022), law.isba.org/3RMQTUm.

6. Rob Toews, *AI Will Transform the Field of Law*, (Dec. 19, 2019), law.isba.org/3Rrrsqk.

TAKEAWAYS >>

- Generative artificial intelligence (AI) is a category of AI that can generate content indistinguishable from content created by humans.
- For attorneys, generative AI can be a useful tool that can increase efficiency and simplify complex tasks. However, attorneys must be careful in using generative AI results, and some courts require disclosing whether AI was used in an attorney's work.
- The Illinois Rules of Professional Conduct provide several pointers applicable to the ethical use of generative AI, and somewhat imply disclosing to clients when this tool is being used to assist their case.

LAWYERS SHOULD ALWAYS AND CLEARLY COMMUNICATE WITH THEIR CLIENTS ABOUT THE USE OF AI IN CASES, INCLUDING ITS BENEFITS AND LIMITATIONS. ALSO, LAWYERS SHOULD BE SURE TO OBTAIN INFORMED CONSENT, WHEN NECESSARY, FROM CLIENTS.

Access to justice. Generative AI has the power to increase access to justice in numerous ways. Chatbots powered by generative AI can provide preliminary help to potential clients and/or *pro se* litigants by answering common legal questions.⁷ The automation of routine tasks through generative AI can reduce operational costs for law firms.⁸ This in turn can lead to legal services becoming more affordable to a broader range of the public. In theory, this could result in a decrease in the number of *pro se* litigants, who often require more of the court's attention. Furthermore, generative AI can assist in translating legal documents and conversations, making it easier for legal professionals to work across different languages and communities.

Pitfalls of using generative AI

The use of generative AI in the legal profession offers various benefits, but it also raises several concerns that need to be carefully addressed, specifically:

Accuracy. Generative AI systems can, and often do, make errors, which is particularly problematic in legal matters where precision is essential. Relying on AI-generated documents or recommendations without thorough human review can lead to errors materially affecting a matter. For example, an attorney in New York used AI to write a pleading. The AI-generated pleading fabricated quotes and cited nonexistent

2024 Lincoln Award Legal Writing Contest Winners

The first-place winner of the 2024 Lincoln Award Legal Writing Contest is **Morgan Handwerker**, whose submission, "Practicing in a New World," appears in this issue of the Illinois Bar Journal.

In second place is **Donna Etemadi** for her article, "Decoding the Dilemma of Deep-fakes." The third-place entry was awarded to **Jessica Pullen** for her entry, "Social Service: Illinois Supreme Court Rule Allows Service Via Social Media, Text, and Email." Each of their articles will appear in an issue of the Illinois Bar Journal later this year.

The first, second, and third-place winners received \$2,500, \$1,500, and \$1,000, respectively. They were among 18 other submissions, some of which also will appear in upcoming issues of the Illinois Bar Journal.

On behalf of the contest's sponsors—the Illinois Bar Journal Editorial Board and the ISBA Young Lawyers Division—we would like to congratulate the winning authors and thank all contest participants and judges. Details about the 2025 Lincoln Award Legal Writing Contest will be announced this spring. Information also will be posted online at isba.org/ibj/lincolnwritingaward.

court opinions.⁹ Ultimately the attorney was sanctioned by the U.S. District Court for the Southern District of New York.¹⁰

Bias and fairness. An AI model can inherit biases from the data it is trained on.¹¹ In the legal context, biased AI outputs can lead to unjust outcomes and reinforce existing disparities.¹² Therefore, AI has the potential to perpetuate such bias and unfairness, which is actively being combated by many legal professionals through various diversity, equity, and inclusion initiatives.

Lack of legal expertise and overreliance on AI. Generative AI lacks the nuanced understanding and legal expertise that human lawyers possess.¹³ Complex legal matters often require the interpretation of law, ethics, and context, which generative AI may not fully grasp. There is a risk that lawyers may become overly dependent on generative-AI tools, potentially neglecting their own critical reasoning, legal skills, and professional judgment.

Data privacy and security. Legal documents contain restricted and confidential information.¹⁴ The use of generative AI in document formation, analysis, and management must prioritize data privacy and security to protect client information from breaches

or unauthorized access. The more information that an attorney inputs into generative AI, the more exposure and risk of malpractice for the attorney. This is particularly problematic when lawyers use publicly available generative-AI tools like ChatGPT that often lack strict and necessary data confidentiality protections.

Client understanding. Clients may not fully understand the role of generative AI in their legal matters. Lawyers should ensure that clients are informed about the use of generative-AI tools in their matter, including the benefits and the limits of generative AI to manage the client's expectations.

Job displacement. The automation of

7. Jeffrey R. Schoenberger, *Artificial and Superficial Intelligence*, 111 Ill. B.J. 42 (Aug. 2023), available at law.isba.org/41wXhme.

8. *Id.*

9. Dan Mangan, *Judge Sanctions Lawyers for Brief Written by A.I. With Fake Citations*, CNBC (Jun. 22, 2023), law.isba.org/484c75X; see also Benjamin Wieser, et al., *The ChatGPT Lawyer Explains Himself*, N.Y. Times (Jun. 8, 2023), law.isba.org/47acv1w.

10. Mangan, *supra* note 9.

11. Luca CM Melchionna, *Bias and Fairness in Artificial Intelligence*, New York State Bar Ass'n (Jun. 29, 2023).

12. Clio, *AI and the Law: What are the Ethical Considerations?*, law.isba.org/3GPYrbm.

13. Andrew Zashin, *Dangers of Over-Reliance on AI in the Legal Profession*, Pittsburgh Jewish Chronicle (July 13, 2023), law.isba.org/3GPrU6n.

14. *Legal AI: The Unseen Data Privacy Risks*, LegalFly (Aug. 9, 2023), law.isba.org/48n1gUr.

2024 Lincoln Award Legal Writing Contest Judges



Hon. Terrence J. Lavin

Justice Lavin of the First District of the Illinois Appellate Court spent 27 years as a civil trial lawyer in Chicago, is a past president of the ISBA and the Society of Trial Lawyers, and is a fellow of the American College of Trial Lawyers and the International Academy of Trial Lawyers.



Hon. Michelle A. Vescogni

Associate Judge Michelle A. Vescogni of the Thirteenth Judicial Circuit presides primarily over domestic relations cases. Judge Vescogni serves on the board of directors of the Illinois Judges Association and the Illinois Bar Foundation. She is a long-time member of the Illinois State Bar Association, currently serving on the Bench & Bar Section Council and the Standing Committee on the Attorney Registration and Disciplinary Commission.



Adam B. Lawler

Adam Lawler is an attorney and entrepreneur from Marion and founded the Lawler Brown Law Firm, where he currently serves as managing partner. Under his leadership, the firm has grown into a team of six attorneys and a support staff of more than 24 individuals.



Howard L. Huntington

Howard L. Huntington is a partner at Franco Moroney Buenik, LLC, in Chicago. He focuses on commercial litigation, construction defect, construction injury, product liability, and transportation litigation law.



Michelle D. Porro

Michelle Porro is a partner at Porro Niermann Law Group in Aurora, and concentrates on workers' compensation law. She currently serves on the Illinois State Bar Association's Workers' Compensation Law Section Council. She has served on the ISBA Assembly and is a past-president of the DuPage Association of Women Lawyers.

routine legal tasks through generative AI has led to concerns about job insecurity within the legal profession, potentially impacting paralegals, legal assistants, and other support staff.¹⁵ As generative AI is used to increase efficiency in the legal field, it could result in fewer available jobs for paralegals, legal assistants, and other support staff.

Unauthorized practice of law. The use of generative AI in providing legal information or advice should comply with legal regulations. As set forth more fully below, many courts are placing restrictions on the usage of generative AI. Lawyers

must ensure that they are not utilizing generative AI features to engage in the unauthorized practice of law, and their use of this technology should adhere to jurisdiction-specific rules and procedures.

Addressing the above concerns requires careful ethical considerations, ongoing supervision, and development of clear guidelines and rules for the use of generative AI in the legal profession. Legal professionals should use generative AI as a tool to enhance their practice rather than replace their expertise. Overall, lawyers need to ensure that they uphold their ethical obligations to clients and the legal system.

THE LEGAL PROFESSION SHOULD VIEW AI AS A TOOL, NOT A REPLACEMENT, ENSURING THAT JUSTICE REMAINS GUIDED BY HUMANS CONSISTENT WITH THE PRINCIPLES OF FAIRNESS AND EQUITY.

Ethical considerations in using generative AI

As set forth above, there are numerous ethical concerns lawyers may face while using generative AI, such as ensuring that clients have competent and knowledgeable legal representation, maintaining confidentiality, and using best billing practices.¹⁶ The Illinois Rules of Professional Conduct (IRPC) provide ethical rules for attorneys practicing law in Illinois. When it comes to generative AI and legal practice, there are numerous intersections and considerations within the IRPC.¹⁷

Competence (IRPC 1.1). Rule 1.1 requires attorneys to provide competent representation to their clients.¹⁸ With the rising use of generative AI to conduct legal research, lawyers should stay up to date on changes to statutes or new caselaw. Furthermore, with the integration of generative AI in the legal profession, lawyers should be competent not only in traditional legal skills but also in the use and understanding of generative AI tools. They should use generative AI effectively

15. Steve Lohr, *A.I. Is Coming for Lawyers, Again*, N.Y. Times (Apr. 10, 2023), [law.isba.org/48n1qaH](https://www.nytimes.com/2023/04/10/us/politics/ai-lawyers.html).

16. Mark C. Palmer, *The Rise of ChatGPT: Ethical Considerations for Legal Professionals*, 2Civility (May 12, 2023), [law.isba.org/3TwBFnV](https://www.civility.com/2023/05/12/chatgpt-ethical-considerations-for-legal-professionals/).

17. Natalie Pierce, et al., *ChatGPT Doesn't Have Ethical Obligations, But Attorneys Do*, Bloomberg Law (July 11, 2023), [law.isba.org/3v54Sw5](https://www.bloomberglaw.com/news/2023/07/11/chatgpt-doesnt-have-ethical-obligations-but-attorneys-do/); Devin Bates, *ChatGPT: A Lawyer's Friend or Ethical Time Bomb? A Look at Professional Responsibility in the Age of AI*, JD Supra (Apr. 20, 2023), [law.isba.org/48ivAj0](https://www.jdsupra.com/legalnews/chatgpt-a-lawyers-friend-or-ethical-time-bomb-a-look-at-professional-responsibility-in-the-age-of-ai-1214440/).

18. Ill. R. Prof'l Conduct 1.1.

to provide competent representation while also staying informed about generative AI's constraints and potential biases. Though it is not explicitly in the IRPC, comment 8 to Rule 1.1 suggests that lawyers should stay current with technology's impact on the practice of law. This seemingly includes understanding generative AI's role and its implications for legal practice.

Responsible representation (IRPC 1.3). Rule 1.3 obligates lawyers to act with reasonable diligence when representing their clients.¹⁹ Lawyers should use generative-AI tools to enhance their ability to represent clients effectively and efficiently, while not neglecting their duty of responsible, diligent advocacy.

Communication (IRPC 1.4). Simply put, Rule 1.4 requires lawyers to reasonably communicate with their clients.²⁰ When using generative AI in legal matters, lawyers should ensure that clients understand the role of generative-AI tools, the potential implications, and how generative AI may affect their cases. Clear communication regarding the use of generative AI is essential.

Reasonable fees (IRPC 1.5). Lawyers must charge reasonable fees for their services.²¹ The use of generative AI can impact the efficiency of legal services, potentially affecting billing practices. For example, an ethical conundrum arises when a lawyer must decide if they should spend an hour reviewing documents versus spending 10 minutes reviewing the synthesis of documents provided by generative AI. While a client may prefer for the lawyer to use generative AI, which would decrease fees, generative AI lacks the ability to understand nuanced details of documents. Lawyers must carefully self-reflect on best practices. In sum, lawyers should be transparent with clients about the use of generative AI and how it may affect legal fees.

Confidentiality (IRPC 1.6). Rule 1.6 mandates attorneys to protect the confidentiality of client information.²² When using generative AI for legal research, document review, or other tasks,

lawyers must safeguard generative-AI systems to maintain client confidentiality and that sensitive information is not inadvertently disclosed. When using generative AI, lawyers should consider data security and privacy requirements, ensuring that generative-AI systems and the data it handles comply with rules related to client confidentiality and trust account management.

Conflict of interest (IRPC 1.7, 1.8, and 1.9). Generative AI can assist lawyers in conflict checks and identifying potential conflicts of interest. However, as per Rules 1.7, 1.8, and 1.9, lawyers remain responsible for conducting thorough conflict checks and managing conflicts of interest.²³

Candor to the tribunal (IRPC 3.3). When using AI-generated documents or information in legal proceedings, lawyers must ensure that they comply with Rule 3.3, which pertains to candor toward the tribunal.²⁴ Lawyers should accurately represent the sources of AI-generated content so as to not mislead the court.

Maintaining integrity and avoiding misrepresentation (IRPC 8.4). Rule 8.4 prohibits attorneys from engaging in "dishonesty, fraud, deceit, or misrepresentation."²⁵ Lawyers must be cautious when using generative AI to ensure that AI-generated content is accurate and does not misrepresent facts or law.

These intersections highlight the importance of lawyers adapting to technological advancements like generative AI while upholding their ethical duties and obligations under the IRPC.

Generative AI and the judiciary

To combat inappropriate usage of generative AI, some judges are requiring mandatory reporting if generative AI is used to draft any filing. Depending on the jurisdiction, attorneys are required to disclose using any kind of generative AI in a pleading to the court²⁶ or only disclose when using generative AI.²⁷ Some judges require a general AI disclosure whereas others require disclosure on the specific portion of the filings in which generative

AI was used.²⁸

By way of example, Judge Brantley Starr of the U.S. District Court for the Northern District of Texas in his standing order has a mandatory certification attesting no portion of any filing will be drafted using generative AI or if any language was drafted by generative AI, it was checked by a human for accuracy.²⁹ Furthermore, Magistrate Judge Gabriel A. Fuentes with the U.S. District Court for the Northern District of Illinois implemented a standing order that requires parties to disclose if they used generative AI tools in document preparation.³⁰

Advice for lawyers using generative AI

When lawyers use generative AI in their legal practice, it is essential to approach its adoption thoughtfully and ethically. Here is some advice for lawyers when using generative AI:

Understand the technology. Invest time in understanding how generative AI works, including the capabilities and limitations. While AI can automate tasks, it is essential that a lawyer maintain a hands-on approach and exercise judgment in reviewing AI-generated content. To that end, lawyers should always verify the accuracy of AI-generated documents and recommendations. Additionally, lawyers who intend to use generative AI in their practice should consider participating in training and continuing legal education programs to enhance their generative AI proficiency. Moreover, lawyers should regularly assess how generative AI may

19. Ill. R. Prof'l Conduct 1.3.

20. Ill. R. Prof'l Conduct 1.4.

21. Ill. R. Prof'l Conduct 1.5.

22. Ill. R. Prof'l Conduct 1.6.

23. Ill. R. Prof'l Conduct 1.7, 1.8, 1.9.

24. Ill. R. Prof'l Conduct 3.3.

25. Ill. R. Prof'l Conduct 8.4.

26. JD Supra, *Court-Mandated AI Disclosures: What You Need to Know When Using AI in Court Filings* (Jul. 13, 2023), [lawisba.org/3RwvSw9](https://www.lawisba.org/3RwvSw9).

27. *Id.*

28. *Id.*

29. Judge Brantley Starr, Mandatory Certification Regarding Artificial Intelligence, [lawisba.org/3ROdjUn](https://www.lawisba.org/3ROdjUn).

30. Magistrate Judge Gabriel A. Fuentes, Standing Order for Civil Cases Before Magistrate Judge Fuentes (May 31, 2023), [lawisba.org/3GQ7O2e](https://www.lawisba.org/3GQ7O2e).

affect their legal practice and be prepared to make changes as needed.

Ethical considerations. Ensure that usage of generative AI aligns with lawyers' ethical obligations pursuant to the IRPC. First, lawyers should always and clearly communicate with their clients about the use of generative AI in cases, including its benefits and limitations. Also, lawyers should be sure to obtain informed consent, when necessary, from clients. One potential solution is to add a section to an engagement agreement delineating the usage of generative AI when handling a client matter.

Prioritize data security and privacy. Lawyers may want to consider investing in extra layers of cybersecurity protection depending on the extent to which they


plan to use generative AI. Finally, lawyers must be cognizant of, and comply with, jurisdiction-specific rules and regulations governing the use of generative AI in legal practice.

By maintaining a proactive and ethical approach to using generative AI, lawyers can harness the benefits of this technology while upholding their professional responsibilities.

Conclusion

Generative AI is poised to revolutionize the legal profession in ways we could have only imagined years ago. Its ability to automate routine tasks, streamline legal research, and provide predictive insights holds tremendous promise for legal practitioners and their clients. However,

as we embrace this technology, we must remain alert in addressing the ethical and practical challenges it presents.

While generative AI can enhance efficiency and accessibility, it must not overshadow the critical legal expertise and human judgment lawyers provide. The legal profession should view generative AI as a tool, not a replacement, ensuring that justice remains guided by humans consistent with the principles of fairness and equity. By responsibly integrating generative AI into our legal practices, we can uphold the integrity of the profession while advancing access to justice. In this dynamic partnership between humans and machines, the legal profession stands on the edge of a new era, one where innovation and tradition coexist. 

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