



Navigating Elder Law Ethics in the Age of AI – Innovation While Avoiding Pitfalls



Presented By:
Rebecca A Hobbs,
Esq., CELA

1

1

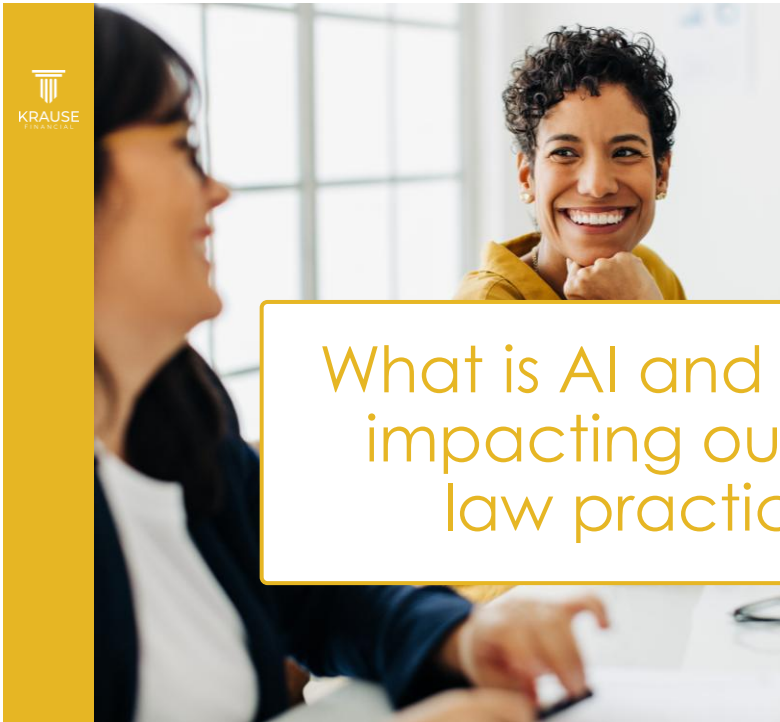


Learning Objectives

1. What is AI and how is it impacting our elder law practices?
2. Ethical Duties
 - a) Duty of Competence and Diligence
 - b) Client Communications, Disclosure of AI, and Confidentiality of Information
 - c) Candor to the Tribunal
 - d) Fees and Billing
 - e) Unauthorized Practice of Law, Marketing, and Advertising
3. Case studies
4. Best practices, procedures and tips for avoiding ethical traps with AI in your office

2

2



3



What is Artificial Intelligence?

- 15 U.S. Code § 9401, AI is defined as "a machine-based system that can, for a given set of human-defined objectives, make predictions, recommendations, or decisions influencing real or virtual environments."
- Non-generative AI
 - Focuses on tasks such as classification, prediction, and decision-making based on input data
 - It does not create new content but instead automates processes while learning and adapting over time
- These AIs have been trained to follow specific rules and do a particular task
- Generative AI
 - Can produce new content that is similar but not identical to the original data, such as text, images, videos, and other data, in response to specific prompts
 - It learns from data that it is trained on, or data that is inputted and generates new data with similar characteristics

4

AI is for the future....right?

AI is no longer a concept of tomorrow—it's here, shaping the way we work and live today



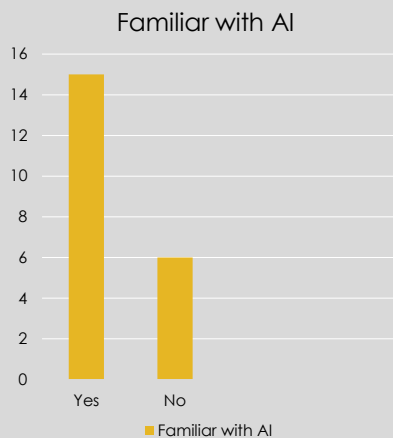
Internal survey of our firm

Background on office:

- 15 attorneys (youngest atty out of law school 4 years) – extending to practicing for 55 years
- 5 Partners
- 25 Staff – youngest 24 yrs old

5

5

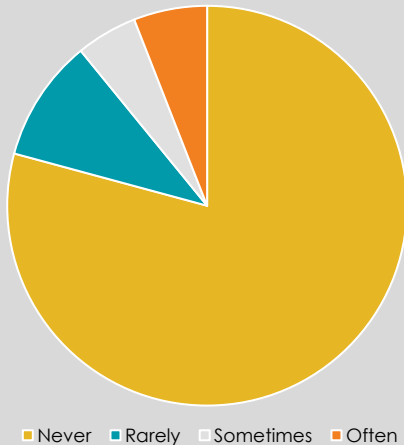


6

Internal AI Survey

- 21 survey responses – all anonymous (no identifying information on survey as far as role, age, etc.)

6



■ Never ■ Rarely ■ Sometimes ■ Often

7

Use of AI in the office

How often do you use generative AI in your daily work?

Options: Never / Rarely / Sometimes / Often / All the time

- 16 answered never
- 2 answered rarely
- 1 answered sometimes
- 2 answered often

For those that used AI – the primary use of AI in the office was for drafting correspondence such as emails, letters

7



Internal AI Survey: What are the biggest advantages of AI?

- Helping to improve the way sentences are worded
- Re-wording correspondence and freeing up time to allow staff to work on other tasks, which require more critical thinking than AI can provide
- It is faster in a fast pace and work-heavy work environment. It does the research for you.
- I think generative AI's best use may be in the litigation context, where a chat client could easily review a huge amount of discovery information, summarize it and perhaps offer insights
- Fast and helps when you are at a loss for words to explain your ideas
- Accomplish tasks quicker
- Saving time, provides shortcuts
- Save time and money
- Helpful for research
- Helps initiate and start up of a given project which can sometimes be the hardest part
- Better wording and sentence structure and faster results

8

8

Nobody wants to be the poster child for “What Not to Do”

9

9

Nobody wants to be the poster child for “What Not to Do”

- *Wadsworth v. Walmart Inc.*, No. 2:23-CV-118-KHR, 2025 WL 608073 (D. Wyo. Feb. 24, 2025)
- *People v. Crabill*, Colo. O.P.D.J., No. 23PDJ067 (Nov. 23, 2023)
- *Park v. Kim*, 91 F.4th 610 (2d Cir. 2024)
- *Mata v. Avianca, Inc.* No. 22-CV-1461 (PKC), 2023 WL 4114965 (S.D.N.Y. June 22, 2023)
- *Ex Parte Allen Michael Lee*, 673 S.W.3d 755 (Tex. App. Jul. 19, 2023)



Ethical Duties

11

11

Duty of Competence and Diligence

- Stay informed and updated on current technology and the risks thereof
 - Comment 8 to Model Rule 1.1 explicitly notes that maintaining competence means being informed not only about legal developments but also about technological changes, including both the benefits and inherent risks of emerging tools like AI
- The duty of competence requires attorneys to have a reasonable understanding of the capabilities and limitations of generative AI

12

12



Duty of Confidentiality

- Before using any technology, it is important that the lawyer understands the risks of that information being accessed or disclosed to others outside of the firm
- Reasonable efforts must be made to prevent the inadvertent, unauthorized disclosure, or unauthorized access to information relating to the representation of the client
- Inputting confidential information in generative AI requires a very fact driven risk analysis

13

13



Client Communication and Disclosure of Use of AI

- ABA Formal Opinion 512, lawyers might be required to disclose their use of generative AI tools to clients
 - the opinion states that there are situations where the lawyer shall be required to disclose the use of the AI tools
 - States differ on whether disclosure of use of AI is required to client; however, disclosure is required by many states and courts
- Best practice is to advise clients of the use of generative AI tools to be utilized in the representation. This should be done in writing and in a way that the client understands

14

14



Meritorious Claims and Contentions and Candor Toward the Tribunal

- Under Model Rule 3.3, lawyers are prohibited from knowingly making false statements of law or fact to the tribunal or failing to correct material false statements previously made
- Lawyers are responsible for reviewing and verifying the accuracy of generative AI content before using it in legal proceedings

15

15



Supervisory Responsibilities

- Supervising lawyers must make reasonable efforts to ensure that lawyers and nonlawyers comply with professional obligations when using generative AI tools
- Managerial lawyers are tasked with establishing policies for their offices regarding the use of AI and ensuring compliance
 - The policy should establish guidelines for the ethical, responsible, and efficient use of AI within the law firm

16

16



Reasonable Fees

- If a lawyer is charging hourly, the lawyer must bill for their actual time spent
- Reasonableness of fee - if generative AI causes the task to be accomplished quicker, it may be unreasonable for the same flat fee to be charged
- A lawyer may not bill a client for general overhead expenses
- Before charging the client for use of generative AI tools or services, the lawyer must explain the basis for the charge in writing

17

17



Disclosure of AI in the Fee Agreement

- Since state requirements for disclosure vary in both necessity and scope, it is best practice to disclose the use of AI tools to clients proactively
- Best practice is also to disclose all fees and costs related to AI in writing in your letter of engagement
- In cases where informed consent is necessary to disclose confidential information, simply adding "boiler-plate provisions" to a fee agreement is insufficient
- The fee agreement should clearly explain how the use of AI will impact the client's fees

18

18



Unauthorized Practice of Law, Marketing, and Advertising

- If prospective clients are interacting with an AI chatbot on the lawyer's website it is important that the prospective client understands that they are communicating with an AI bot and not with a human, this should be disclosed.
 - Ultimately, the lawyer is responsible if the bot provides misleading information to the prospective client
- AI must not provide legal advice or perform tasks requiring legal judgment without a licensed attorney's oversight

19

19



Case Studies

20

20

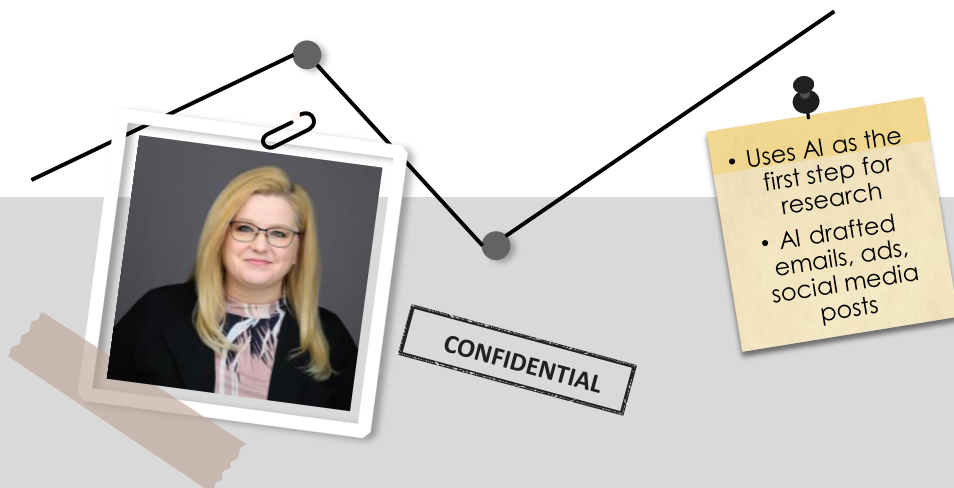
Case Study #1: Jim



21

21

Case Study #2: Hilda



22

22

Case Study #3: Scott



23

23

Case Study #4: Pilar



24

24



Best practices, procedures
and tips for avoiding ethical
traps with AI in your office

25



Best Practices: Duty of Competence

1. Regularly update your knowledge of AI risks, benefits, and technological advances.
2. Consult with IT professionals and participate in ongoing training and industry conferences.
3. Provide comprehensive training and supervision for both legal and nonlegal staff.
4. Meticulously review and verify all AI-generated content for accuracy.
5. Learn about AI tools specifically applicable to elder law, such as those used for estate planning, Medicaid planning, or guardianship documentation.
6. Understand the functionalities and limitations of these tools to maximize their potential while mitigating risks.

26

26



Best Practices: Client Communications, Disclosure of Use of AI, and Confidentiality of Information

1. Disclose the use of generative AI tools as part of the representation process, in writing and in language clients can easily understand.
2. Best practice is to disclose the use of generative AI, even in states where it is not explicitly required.
3. Incorporate disclosure in engagement agreements but ensure this is tailored to comply with state-specific rules.
4. Provide detailed explanations about AI use to ensure elder law and special needs clients, who may be more vulnerable, fully understand the benefits and risks.
5. Obtain informed client consent before entering sensitive or confidential information into AI tools.

27

27



Best Practices: Court Disclosure, Candor to the Tribunal

1. Always verify the accuracy of AI-generated information before submission.
2. Use AI tools as a supplement, not a replacement, for professional legal judgment.
3. Correct any false statements previously made to the tribunal.
4. Remain informed about state-specific rules on disclosing AI usage in court.

28

28



Best Practices: Review and Supervising of AI

1. Create a comprehensive, written policy on the use of AI that covers both generative and non-generative tools
2. Require all staff and attorneys to sign confidentiality agreements that specifically address the handling of client data within AI systems
3. Provide regular training sessions on the ethical use of AI, including potential risks and best practices for secure data handling
4. Use available templates as a starting point
 - Modify and tailor these sample policies to meet the specific needs of your firm and jurisdiction

29

29



Best Practices: Fees and Billing

1. Charge only for the actual time expended on the client's matter—even if AI improves efficiency.
2. Disclose and explain any additional fees related to the use of AI tools.
3. Proactively incorporate a section in your fee agreement detailing the potential use of AI tools.
 - Review and comply with your state's disclosure requirements regarding the use of AI.
4. Do not rely on boilerplate language; provide clients with clear and detailed explanations regarding the use of AI, especially when it involves confidential information.

30

30



Best Practices: Unauthorized Practice of Law, Marketing, and Advertising

1. Disclose to users on your website that they are interacting with an AI program, not a licensed attorney or staff member. This prevents confusion and sets clear expectations
2. Monitor AI chatbot outputs to ensure the information provided is accurate and not misleading
3. Take extra precautions for elder law clients who may not understand they are communicating with an AI bot
4. Ensure that the chatbot does not provide legal advice or perform tasks requiring legal judgment. All such functions must remain under the oversight of a licensed attorney
5. Adhere to ethical marketing principles, especially when targeting vulnerable populations (e.g., elder law clients). Avoid overly aggressive or fear-based messaging

31

31



Know your Technology and Stay Current

1. Ensure regular software updates to address bugs, privacy, and security improvements
2. Vet AI vendors and their subcontractors rigorously—consult with IT professionals when necessary.
3. Recognize that generative AI can exhibit biases. Implement measures to monitor and mitigate any potential bias to avoid discriminatory outcomes.
4. Use AI tools designed specifically for legal practice when dealing with client data, document generation, or research.
5. Consult IT or cybersecurity professionals when necessary to understand the implications of AI tools' operations.
6. Carefully review AI-generated output for accuracy and safeguard sensitive data with appropriate security protocols.
7. Align your firm's data privacy practices with industry best practices and regulatory expectations.

32

32

Conclusion

Don't be the cautionary tale of the legal world—you know, the office everyone whispers about as 'what not to do in law practice.' Instead, let's aim to be the precedent people cite for getting it right!

33

33



34

34