



Task Force on Artificial Intelligence (AI) and the Law: Report, Requests, Recommendations, and Findings

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NJSBA Task Force on Artificial Intelligence and the Law: Official Report, Recommendations, and Findings

Executive Summary:

This report includes the collaborative efforts and conclusions of the New Jersey State Bar Association's 27-member Task Force on Artificial Intelligence and the Law. As such, it addresses fundamental considerations and provides practical, actionable guidance for attorneys and legal professionals to use AI while maximizing its benefits safely and ethically. Critical areas explored include understanding AI's benefits, recognizing potential risks, selecting appropriate AI tools, ensuring data protection and effectively training staff.

This report is designed to serve as a practical resource. The conclusions and recommendations herein emphasize the importance of prioritizing AI education, establishing baseline procedures and guidelines, and collaborating with data privacy, cybersecurity, and AI professionals as needed. Given the complexity of the topic and the resources necessary for attorneys to safely use AI, interim measures such as adopting temporary guidelines are recommended until a comprehensive AI policy can be developed and implemented. These priorities and recommendations are essential to ensure the responsible integration of AI in legal practice and adherence to ethical and legal standards.

Finally, this report highlights several important social justice concerns related to the use of AI, including the importance of transparency in AI software algorithms, bias mitigation, and equitable access to AI tools. The Task Force concluded that legal AI tools should be reviewed for fairness and accessibility, particularly tools designed for individuals from marginalized or vulnerable communities. Understanding the risks and benefits of AI as related to social justice is crucial to maintaining a just and inclusive legal system that benefits all members of society.

Introduction and Background

The NJSBA Task Force on AI and the Law is comprised of 27 attorneys and industry experts. It was established in late 2023 with the objectives of examining the impact of AI on the legal profession and providing practical guidance to attorneys and legal professionals. The Task Force, co-chaired by Steven Eisenstein, Rebecca Rakoski and Dr. Robert Spangler, aimed to provide attorneys and legal professionals with the tools, education, guidance and resources needed to safely and ethically navigate and benefit from the growing use of AI in the legal field.

The Task Force was organized into four workgroups, each dedicated to addressing specific facets of AI's interaction with the legal domain. These workgroups (Artificial Intelligence and Social Justice Concerns, Artificial Intelligence Products and Services, Education and CLE Programming, Ethics and Regulatory Issues) were asked to deliver findings and/or recommendations tailored to the needs of New Jersey's legal community.

Each workgroup operated independently, conducting thorough research, analysis and deliberation. Workgroup findings were reported back to the entire Task Force in group meetings. This report represents the culmination of these efforts.

Focus of the Report

A central tenet of this Task Force was to avoid duplicating the existing efforts of other state and regional AI task forces and committees. Instead, it sought to build on the insights and expertise of these groups by contributing practical information and recommendations tailored to the specific needs of New Jersey's legal community.

Similarly, in crafting this report, the Task Force acknowledged the dynamic nature of the field and the continuous evolution of AI technologies. As such, the recommendations presented here are designed to remain relevant and to be adapted in line with future developments. This report is intended to serve as the initial installment in a series of statements, guidance documents, videos and educational resources that will be updated as needed and focused on the intersection of AI and the law.

Summary of Requests, Findings, and Recommendations

The following primary requests, findings and recommendations underscore the importance of education, ethical considerations and responsible implementation of AI tools in the legal profession.

Requests for the NJSBA Board of Trustees:

1. The NJSBA should continue to provide diverse educational opportunities for attorneys on AI selection and use, as well as the impact of AI on the practice of law.
2. The NJSBA should establish a permanent group dedicated to AI, the evolving technological landscape and its application to the legal profession.

Recommendation for further discussion:

1. It is recommended to propose that the New Jersey MCLE Board require attorneys to earn one CLE credit every two years in technology-related legal subjects. Specifically, given the ethics and social justice issues inherent in using AI in the practice of law, the Task Force recommends that one of the five required ethics credits for CLE compliance be technology related.

Findings:

1. Legal professionals must understand that education, knowledge and guidance are necessary to operate AI tools safely and ethically in a legal setting.
2. When assessing AI tools and services, it is crucial to categorize them according to their intended users and recipients. Tools designed for the public, as opposed to legal professionals, should not be used for tasks considered "the practice of law."
3. When evaluating AI tools and services, it is essential to identify and document how data, especially client data, is transmitted, used and stored by the AI to ensure its confidentiality. This information should guide the assessment of whether a particular AI tool is suitable for its intended use.
4. All law firms should adopt an organizational AI policy with a risk assessment framework (sample template provided in Appendix 2).
5. The Rules Governing the Courts of New Jersey, the New Jersey Rules of Evidence and the Rules of Professional Conduct are sufficiently flexible to address considerations relating to AI.

Additional Findings and Recommendations:

This report acknowledges the ever-evolving nature of AI and offers initial guidance, rather than definitive policies. Subsequent tools and recommendations will be provided as the technology progresses, with a continued emphasis on practicality. The following additional findings and recommendations support this mission:

Additional recommendations for further discussion:

1. The Task Force recommends the creation of a monthly or bi-monthly AI email newsletter distributed by the NJSBA. This newsletter would feature curated articles, case studies, instructional videos and updates on AI-related topics relevant to the legal profession. Additionally, it could include highlights from recent court decisions involving AI, interviews with experts in the field and announcements about upcoming AI-related events and conferences.
2. The Task Force proposes the establishment of an AI hub on the NJSBA website. This hub would provide access to various resources, including educational videos, toolkits, best practice guides and FAQs.
3. The Task Force recommends the publication of a comprehensive compendium of AI-related legislation, rules and other legal materials. Compiled by Hon. Ronald J. Hedges (Ret.) and published by the NJSBA, this compendium would serve as a valuable resource for legal professionals seeking to navigate the complex legal landscape surrounding AI. Updated regularly, the compendium would be available as both an e-book and a PDF on the NJSBA website, providing legal professionals with easy access to the latest information on AI-related legal frameworks. A draft of this compendium has been submitted to the Task Force for review and consideration.

Additional findings:

1. The practice of law is poised for substantial transformation due to AI. While the full extent of this transformation remains to be seen, attorneys must keep abreast of and adapt to evolving technological landscapes and embrace opportunities for innovation and specialization in emerging AI-related legal domains.
2. The bench, bar and public must be able to easily determine when AI or generative AI is used in a legal matter. It is equally important to understand how to use AI correctly in light of applicable laws and rules. The Task Force will continue to monitor this and will provide subsequent recommendations.
3. When developing or implementing AI systems, collaboration with data privacy experts, cybersecurity professionals and/or AI professionals is highly recommended to ensure responsible integration and adherence to ethical and legal standards.
4. As technology evolves, and with cloud computing and AI becoming increasingly integral to legal practice, lawyers may lose additional control over data privacy and security. Consequently, some of the responsibility for protecting sensitive information may need to shift from law firms to their technology providers, potentially enhancing data protection as these providers are often better equipped to manage sophisticated privacy and cybersecurity challenges.
5. Although considerable advances have occurred that improve access to technology for all demographic and socio-economic groups, ongoing focus is required to ensure that all

individuals have access to the technology and tools – including AI – that will allow them to understand and pursue available legal rights and remedies.

6. Guidelines and rules for the use of AI by both pro se litigants and attorneys should prioritize and ensure general awareness and appreciation of the limitations and risks of the use of AI and promote equitable access to AI tools and technologies.
7. Partnerships and collaborative networks should be established with a broad spectrum of legal entities, advocacy groups, social justice organizations and policymakers to promote fair, unbiased and ethical deployment of AI as a resource to be available and applied in appropriate civil and criminal matters. Such collective endeavors would enhance AI development and application in legal matters with a particular sensitivity toward justice, equality and ethical considerations.
8. A structured and reliable framework for ongoing dialogue, review and scrutiny of AI use by courts, legal service organizations and the bar must be established and maintained to ensure appropriate access and implementation of AI for all demographics – in particular underserved, marginalized and at-risk communities. This entails tracking the evolution of AI and actively assessing the direct and ancillary effects on various demographic groups. Continuous monitoring and evaluation will enable the legal profession to proactively address potential disparities and strategies to mitigate any adverse impacts.

Understanding Artificial Intelligence: The Basics

Attorneys must comprehensively understand the risks, benefits and core principles of AI.

AI refers to technology that enables machines to mimic human intelligence (National Institute of Standards and Technology, 2024). AI plays a crucial role in enhancing user experiences and streamlining tasks in various applications, such as:

1. Video conferencing tools that use AI algorithms for background noise cancellation (Li & Liu, 2012) and automatic transcription.
2. Virtual assistants from companies like Apple, Google, Amazon, and Microsoft that use AI to understand and respond to spoken or written user commands.
3. AI-powered tools like Suggested Replies in Outlook and Outlook Mobile that use machine learning to suggest responses based on the context of the email.* (Kannan et al., 2016).

**While not the case for all AI tools, Suggested Replies in Outlook and Outlook Mobile can help users save time and effort while maintaining privacy.*

It is critical to acknowledge that not all AI is created equal. Generative AI, for instance, goes beyond basic data processing and interaction by generating new content – including text, images, videos and more – from a potentially vast array of sources (Lv, 2023). Generative AI tools increase efficiency in the practice of law, but may also pose significant risks, including our ability to distinguish between real and fabricated data and data privacy and ethical issues. Accordingly, verifying accuracy and understanding sources provided by AI is critical. Furthermore, attorneys must familiarize themselves with the concept of "hallucinations" in AI. Hallucinations arise when AI systems produce outputs that appear plausible but lack factual basis, often presenting the content with an air of authority, complicating their detection. (MIT Sloan Teaching & Learning Technologies, 2024). These inaccuracies can have significant practical and ethical implications, especially in legal contexts where accuracy and reliability are paramount. Therefore, attorneys must exercise caution when relying on AI-generated content and diligently verify its validity to ensure sound decision-making and uphold the integrity of the legal process.

Ethics and Regulatory Issues Work Group: Impact on the Practice of Law

Work Group Members:

Hon. Ronald J. Hedges (Ret.)*, Seth Abrams, Christopher J. Asakiewicz, Trina L. Glass, Robert B. Hille*, Michael Paglione

*Note: * Indicates Co-Chair*

The Ethics and Regulatory Issues Work Group of the Task Force studied AI and its potential implications for the law and the legal system. After a series of meetings and comprehensive research, the following conclusions were drawn:

- The current state of the law, including the Rules Governing the Courts of New Jersey, the NJRE and the RPCs, are sufficiently flexible to address considerations relating to AI.
- As with any technology, AI use in legal matters should be scrutinized for compliance with relevant laws and regulations.
- The increasing use of AI and generative AI technologies by attorneys and legal professionals could significantly disrupt the industry's traditional hourly billing model. Significant use of these technologies may conflict with current billing practices in light of ABA Model Rule 1.5(a)(1) (American Bar Association, 2024).

Focus of Our Examination

The work group's examination began with a thorough exploration of the nature of AI, investigating its potential as a legal tool and considering both its responsible use and potential misuse by legal professionals and the public. The work group next assessed how such use or abuse could affect the legal profession, legal practice and the integrity of the law. Additionally, the work group examined the potential impact on the administration of justice and evaluated whether existing legal frameworks required revision to effectively address emerging and future concerns presented by AI.

The examination focused on the following key areas:

1. **Preservation of Legal Obligations:** A significant consideration centered on the responsible use of AI tools while upholding confidentiality obligations, privilege protections and intellectual property rights, as maintaining these legal safeguards ensures the integrity of legal proceedings and protects the rights of all parties involved.
2. **Identification of AI Usage:** Another critical consideration involved the potential need to clearly identify instances where AI, particularly generative AI, is employed. This extends to understanding the nature of AI-generated output – including how it was produced – and metadata analysis, which is integral to the court's gatekeeping function and ensures transparency in the legal process.
3. **Ensuring Integrity and Reliability:** There was a clear consensus on the importance of ensuring the integrity and reliability of AI-generated products. This encompasses accountability measures to prevent misuse, detection of fabricated evidence (such as deep fakes) and adherence to established evidentiary standards outlined in the New Jersey

Rules of Evidence (NJRE), particularly concerning the definition of original evidence (see NJRE 1002 and 1003).

Examples of Law Examined by the Working Group

The examination included a review of the relevant RPCs and an analysis of *Baxt v. Liloia*, 155 N.J. 190 (NJ 1998). The following RPCs can establish a standard in legal malpractice cases.

1. 1.0(a), (c), (f), (i), (j), (k), (o), (p)
2. 1.4
3. 1.6 and comment (Note proficiency requirement in (f))
4. 1.16(d)
5. 3.1 (fake authorities from AI)
6. 3.3 (see 3.1)
7. 3.4 (see 3.1)
8. 4.1 (see 3.1)
9. 4.4(b) and *Stengart v. Loving Care Agency, Inc.*, 201 N.J. 300 (NJ 2010)
10. 5.1, 5.2 and 5.3

Of particular significance are the following RPCs to consider when dealing with any technology: RPC 1.0(p) (defining metadata), RPC 1.6 (pertaining to client confidentiality duties and the obligation to stay abreast of technological advancements, in conjunction with RPC 1.0(i), (j), and (k) defining reasonableness), RPC 4.4(b) (addressing confidentiality duties to third parties) and RPC 5.3 (establishing liability for vendor breaches). These RPCs encompass various technological obligations and considerations.

Additionally, depending on the circumstances, NJRE 101(a)(3), 101(b)(3), 801(e), 901, 1001, 1004 and 1006 may also be implicated, along with NJ Court Rules 4:10, 4:25-7 and -8, and 3:13.

The Emergence of AI and its Practical Impact on the Practice of Law

This Task Force has observed a significant increase in the past 12 months in the availability of AI and GAI tools designed for both consumers and the legal profession. Before using these tools, it is imperative that legal practitioners:

1. Thoroughly scrutinize the claims made by AI providers regarding the capabilities and security of their tools.
2. Remain cognizant of the critical areas where AI is likely to have the most significant initial impact on legal practice.
3. Differentiate between AI tools designed for the public and those designed for the practice of law.

The Task Force has also identified several key areas where we believe AI may to emerge and substantially influence the practice of law in the near future:

- 1. Document drafting:** Generative AI-powered tools may streamline the document drafting process by automating repetitive tasks like contract generation and legal document preparation, giving lawyers more time to focus on complex strategy, research and client relationships.
- 2. Research:** AI may facilitate faster and more comprehensive legal research by analyzing vast amounts of case law, statutes and other legal documents. Moreover, AI-driven data analytics tools may uncover insights and trends that would elude manual review, potentially enhancing the quality and depth of legal analysis.
- 3. Correspondence:** AI-powered communication tools, such as email drafting for non-legal matters and/or automation platforms, may enable attorneys to manage client communications more efficiently. These tools are designed to provide timely responses, schedule appointments and draft and summarize routine correspondence, freeing up valuable time for higher-value tasks.
- 4. General case preparation:** AI and Generative AI technologies may eventually offer valuable support in case preparation, from predictive analytics for case outcomes to organizing and summarizing voluminous evidence. By automating tasks like evidence management and deposition analysis, attorneys can focus on developing persuasive legal strategies and advocating for their clients more effectively.
- 5. Misuse of AI to fabricate evidence and data:** The potential misuse of AI to fabricate documents, data and other materials raises significant concerns, particularly regarding the authenticity of evidence. This issue extends to conspiracy theorists and others, highlighting the importance of adhering to evidence rules such as Rules 803, 14, 15, and 18. Lawyers must play a crucial role to safeguard against the proliferation of counterfeit evidence and falsified documents. Lawyers should also consider disclaimers and representations to protect against the inadvertent violation of the Rules of Professional Conduct.

6. AI as a discovery tool: AI may streamline legal discovery by significantly enhancing efficiency. It may enable the rapid analysis of extensive datasets encompassing various forms of data such as documents, video, audio, photos and more. Through advanced algorithms and machine learning, AI may streamline the review of diverse data types, potentially saving substantial time and resources for legal teams. Ultimately, the use of AI-driven discovery may facilitate thorough and effective preparation for litigation or regulatory compliance.

7. AI trial preparation tools:

AI trial preparation tools, including those for jury selection, promise to transform legal strategies. Using advanced algorithms and machine learning, these tools will analyze data to aid in developing comprehensive trial strategies. By efficiently assessing potential jurors' backgrounds and biases, AI may optimize jury selection for favorable outcomes, enhancing legal representation and decision-making during litigation. However, it is essential to consider the impact of any bias in AI tools when creating and using them.

8. AI integration with case management software:

Integrating case management software with AI and generative AI capabilities might turn these programs into virtual assistants, potentially streamlining tasks like document generation and workflow optimization. Simplifying document management and enhancing workflow efficiency could help legal practitioners navigate their caseloads more effectively. Additionally, AI and generative AI features empower users to extract valuable insights from extensive datasets, facilitating informed decision-making and expediting case resolution. This innovative synergy might ensure superior client service delivery, heightened productivity and reduced errors in legal operations.

9. AI integration with practice management software: Much like previous examples, integrating AI with practice management software could streamline scheduling, billing and routine administrative tasks while providing actionable insights. Empowering legal professionals with data-driven analysis would also likely enhance decision-making and client service delivery.

10. AI trial presentation tools: While futuristic, the use of AI at trial may assist in presenting evidence to judges and juries in an informative and effective manner. It could significantly enhance the courtroom presentation of evidence, resulting in greater jury involvement and understanding of the issues presented.

Substituted Judgment

Significant concern arises when attorneys rely on AI to replace their professional judgment. For instance, while AI can be employed to efficiently analyze extensive surveillance footage and extract key moments, attorneys maintain an ethical duty to personally review the footage. The legal community must grapple with the critical question of distinguishing between processes that enhance human performance and those that supplant it.

Similarly, another crucial issue is determining whether the ethical rules apply solely to the final product submitted to the court or extend to the numerous intermediate steps leading to that final product.

Rise of New Areas of Practice

The widespread availability of AI and AGI is a transformative event that will potentially reshape the legal landscape, much like the internet revolutionized communication and commerce. As AI becomes increasingly sophisticated and ubiquitous, new legal practice areas will emerge to address critical issues such as bias, transparency, accountability and fairness in AI decision-making. Lawyers specializing in these fields will be instrumental in guiding the responsible deployment of AI technologies and ensuring compliance with evolving legal and regulatory frameworks.

Furthermore, as AI increasingly permeates various aspects of society, legal frameworks must adapt to address emerging challenges and opportunities. This may entail the enactment of new legislation, the revision of existing regulations and the establishment of ethical guidelines for AI usage across industries.

While the full extent of AI's impact remains to be seen, attorneys must keep abreast of and adapt to evolving technological landscapes and embrace opportunities for innovation and specialization in emerging AI-related legal domains.

Artificial Intelligence in Legal Products and Services: Practical Guidance and Key Insights

Work Group Members:

John Allen, Kelly Castor, Philip W. Lamparello*, Scott R. Malyk, Stephanie J. Wilson*

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This section aims to offer practical, actionable guidance for legal professionals seeking to integrate or who have integrated AI tools and services into their practices. It combines extensive research, including interviews with stakeholders across the AI and legal industries, with lived experience and AI expertise to provide a nuanced understanding of AI's role and its challenges.

AI tools, particularly those facing the public like ChatGPT, Bing, Gemini and Claude, are scrutinized for their suitability in legal matters. Accordingly, the Task Force recommends against their use for specific legal tasks due to potential ethical, privacy and security implications. Instead, it categorizes GAI tools and recommends a set of easy-to-follow questions to assist legal professionals in making informed decisions about employing AI in their practice. This guidance will be updated as technology advances.

Finally, this section emphasizes the need for a foundational framework to guide practitioners in evaluating AI technologies and ensure the upholding of ethical standards and privacy concerns.

State of Artificial Intelligence in the Legal Profession

The rapid advancement of AI technology has fostered the development of many new tools in the legal industry, from upgrades and integration into existing software to novel innovations. Legal professionals are inundated with marketing materials touting the benefits of these AI solutions, including claims of significant time and cost savings. However, the need for established safety and data privacy standards, coupled with the absence of objective evaluation criteria, makes it difficult for practitioners to assess the effectiveness of these tools.

Concerns about security, privacy and regulatory compliance further complicate the adoption of AI in legal practice. Furthermore, the rise of generative AI introduces additional intricacies. This technology can produce novel content, such as textual compositions, imagery or sound, by identifying and applying patterns extracted from extensive data compilations encompassing a considerable segment of the internet, necessitating a continuous process of adaptation and assessment of any established guidelines.

Despite these challenges, this report provides a foundational framework through the use of easy-to-follow questions to help guide legal professionals in understanding, evaluating and determining whether to employ a given AI technology in a legal setting. This framework will continue to evolve as the technology and applications mature.

Our Research

The findings presented in this section of the report result from extensive research, including interviews with AI technology providers, legal industry experts, AI specialists and legal practitioners. The insights from these interviews provide a nuanced understanding of the current landscape and the challenges legal professionals face in adopting AI. By combining input from

various companies and industry experts, the report aims to offer actionable recommendations and strategic insights for navigating the evolving terrain of AI in the legal profession.

Over 50 companies were evaluated, including vendors specializing in eDiscovery, law firm management, cybersecurity and data privacy, legal research, legal writing and contract drafting.

Integration of Artificial Intelligence in Law Firms and Legal Practice

When evaluating GAI tools, it's crucial to classify them into specific categories based on their intended users. Distinguishing between tools that are specifically designed for the public and those designed for the practice of law will help to avoid potentially significant issues with respect to data privacy, ethics and other concerns.

A. AI Tools Intended for the Public:

Guidance:

Lawyers should only use AI tools designed for the practice of law, as opposed to those designed for the public when using client data, generating documents or conducting research (when using any AI, have a plan to prevent sharing or storing sensitive information). However, public tools can be useful to spark creativity and as an aid when structuring ideas for an email, letter or more, provided no client information is shared with them and any information they produce is comprehensively reviewed for accuracy. Examples of public AI tools generally unsuitable for sensitive or private information include, but are not limited to, ChatGPT, Gemini and Claude.

Key Considerations:

As with all essential tools, education, knowledge and guidance are needed to operate AI tools intended for the public safely.

AI tools intended for the public gather data from the internet and various other sources (Vial et al., 2021), often without citation. Unlike focused and vetted professional AI tools, which are designed for specific use cases in the legal profession and rely on carefully curated, highly accurate and factually proven sources and data, AI tools intended for the public generate content and provide potential insights on a wide range of topics drawn from all available sources, typically with minimal or no data protection or confidentiality. Their use for any matter that could be considered "the practice of law" should be restricted, and any other use requires careful consideration due to potential privacy, security and ethical concerns.

While there are risks associated with their use, the complete prohibition of legal practice AI tools or AI tools intended for the public in a legal practice may not be advisable. For example, public-facing AI may offer inspiration for simple, non-legal tasks. Additionally, the ongoing integration of AI into everyday tools underscores the inevitability of its presence in legal workflows. A blanket prohibition might inadvertently encourage unsanctioned or inappropriate use of AI tools intended for the public on personal devices.

B. Tools Tailored for Legal Professionals:

Guidance:

An expanding array of industry-specific AI tools tailored to the unique requirements of legal professionals is emerging. Many well-established legal software providers have either introduced or anticipate introducing and integrating AI or GAI features into their software. While these tools may offer enhanced privacy controls compared to AI tools intended for the public, evaluating their safety and capabilities remains challenging due to the absence of standardized regulations governing their development and implementation, but is essential to ensure compliance with the Rules of Professional Conduct.

Key Considerations:

As legal AI becomes more prevalent, law firms and attorneys must evaluate its privacy, security and ethical implications. The absence of standardized regulations governing AI and GAI, coupled with the American Bar Association's amendment in 2012 to its Model Rules of Professional Conduct Rule 1.1 to include technological competence (Simons, 2018), underscores the need for a proactive approach to understanding and evaluating these tools' potential risks and benefits.

When considering the adoption of legal-specific AI tools, it's essential to scrutinize the vendor's handling of data, security measures and compliance with relevant legal and ethical standards. Additionally, understanding the tool's intended use, risks, limitations and potential biases is vital to ensuring its appropriate use and upholding the integrity of the work produced using the AI tools.

To assist legal professionals in this endeavor, this Task Force has compiled a practical **AI in Legal Products and Services Selection Criteria**. These criteria include questions and standards that can be used to evaluate whether a given AI tool is suitable for use.

AI in Legal Products and Services Selection Criteria

How to Use This Selection Criteria

This selection criteria provides a framework for evaluating AI products and services tailored for the legal profession. It offers questions, considerations and evaluation criteria to assist legal professionals in making informed decisions when assessing AI tools.

Note: This selection criteria is not for use with public-facing AI tools like ChatGPT, Gemini, Copilot, Claude or similar platforms.

Software Reputation and Footprint: Moral and Ethical Alignment

When assessing legal AI tools, consider the provider's reputation, longevity and ownership. A company's track record reflects its reliability, stability and commitment to ethics.

Before committing to a new AI product or service, it may also be beneficial to thoroughly review the provider's ownership structure and identify potential conflicts of interest (particularly when evaluating newer companies). Understanding the ownership and leadership of the software provider can help to ensure that the AI tools you choose are compatible with the values and priorities of your legal practice.

These questions may be useful when evaluating the suitability of new AI tools and services.

Q. Does the company have a proven track record of providing reliable, secure and compliant solutions specifically tailored to the legal sector?

Q. Are there any case studies, testimonials or references from other legal professionals who have successfully used the tool? Reaching out to colleagues or requesting references from the provider can yield valuable insights.

Q. If the company is relatively unknown, who are its owners, and are there any potential ethical concerns related to the ownership structure? Researching the company's website, press releases and financial disclosures can help uncover this information.

Key Considerations in Selecting an AI Vendor

- a. **Type of technology:** Understanding whether general AI or GAI has been used is critical in evaluating and avoiding potential risks.
- b. **Problem the AI is solving for:** Consider whether an AI product you are evaluating is designed to simplify an existing task. If not, it may complicate your practice and add an extra layer instead of improving efficiency. Before adopting an AI solution, evaluate if it aligns with your needs and can integrate into your current processes to provide benefits rather than challenges.
- c. **Data sources:** Gaining an understanding of the quality and source of the data used by AI systems is crucial for evaluating their potential reliability and performance. Equally important is understanding whether user prompts and/or

user-supplied data will be included in the AI system's training data, as this can lead to unintentional and unexpected confidentiality and ethics issues.

- d. **Privacy standards:** Evaluating vendors' data collection and ownership standards, privacy protocols and cybersecurity safeguards is essential for ensuring client confidentiality and regulatory compliance.
- e. **Cybersecurity measures:** It is important to assess the cybersecurity measures implemented by the vendor to maintain data integrity and avoid or minimize the risks posed by cyber threats.
- f. **Bias recognition:** Recognizing and mitigating bias within AI algorithms contributes to upholding fairness and equity in legal processes.
- g. **Integration, training and support:** Examining a vendor's provisions for integration, training and ongoing support can streamline implementation and enhance the user experience.
- h. **Data localization:** Consideration of the jurisdictional location of data and AI engines ensures compliance with regulatory frameworks and data sovereignty principles.
- i. **Updates and monitoring:** Examining the frequency of product updates, adherence to bias auditing, issue monitoring, technical and ethical standards, responsiveness to problems, update criteria and user notification methods offers insight into a company's dedication to your safety and success. Infrequent updates without an established cadence may be cause for concern.
- j. **Differences among software options:** Are there pricing plans offering differing levels of data access? If so, do the less expensive versions of the software rely on outdated data or datasets that need to be updated more frequently?

Danger Areas and Pitfalls

Data privacy laws and regulations, much like AI, are continuously evolving. Several states, including New Jersey, have passed comprehensive data privacy legislation. However, the implementation of these laws is progressing at varying rates across different states. These privacy laws and regulations require an organization to understand and disclose to data subjects (individuals whose personal data is collected, processed, stored or otherwise used by organizations) the nature of the data collected, the legal basis for the collection and the rights a data subject has regarding their data.

AI systems are trained on data, so their use may be impacted by data privacy laws and regulations, particularly for organizations with international operations. International regulations, such as the European Union's General Data Protection Regulation (GDPR) (Voss & Houser, 2019) and the proposed EU AI Act, must be understood to ensure compliance and avoid potential financial and legal consequences.

Transparency and Accuracy in GAI Usage

When using GAI, it is important to ask if its use is transparent to users when generating the data they engage with. Transparency helps legal professionals identify potential ethical risks and understand the content's nature, allowing them to make informed decisions about its reliability and relevance to their needs.

Furthermore, it is beneficial to ascertain if there is a straightforward process for users to provide feedback on errors or inconsistencies in AI-generated content. Understanding the vendor's prioritization of user feedback, their review and reporting processes, and who is responsible for monitoring and acting upon feedback offers insights into the company's integrity.

Artificial Intelligence Education for the Legal Profession

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Addressing the knowledge gap among attorneys regarding AI is critical. This section outlines a plan for educating the New Jersey legal community, including the NJSBA's AI Task Force's collaborative efforts with the New Jersey Supreme Court Committee on Artificial Intelligence to develop a dynamic curriculum and monitor advancements in AI.

A robust array of programs proposed for integration into the NJSBA's educational schedule for 2024 can be found at NJSBA.com. The programs will help ensure legal professionals are equipped to navigate the evolving AI landscape effectively.

Recommendations:

1. Development and Implementation of an Adaptable AI Curriculum:

The NJSBA should continue the development and implementation of a comprehensive AI curriculum that addresses foundational concepts and emerging trends in AI technology. This curriculum should be adaptable, allowing for updates and revisions as new developments arise. Collaboration with experts from academia, industry and the legal profession should be sought to ensure the curriculum remains current and relevant.

2. Proposal for a Monthly or Bi-Monthly AI Email Newsletter:

The Task Force recommends the creation of a monthly or bi-monthly AI email newsletter distributed by the NJSBA. This newsletter would feature curated articles, case studies, instructional videos and updates on AI-related topics relevant to the legal profession.

Additionally, it could include highlights from recent court decisions involving AI, interviews with experts in the field and announcements about upcoming AI-related events and conferences.

3. Creation of an AI Hub on NJSBA.com:

The Task Force proposes the establishment of an AI hub on the NJSBA website. This hub would provide access to various resources, including educational videos, toolkits, best practice guides and FAQs.

4. Publication of a Compendium of AI Legislation, Rules, and More:

The Task Force recommends the publication of a comprehensive compendium of AI-related legislation, rules and other legal materials. Compiled by Judge Hedges and published by the NJSBA, this compendium would serve as a valuable resource for legal professionals seeking to navigate the complex legal landscape surrounding AI. Updated regularly, the compendium would be available as both an e-book and PDF on the NJSBA website, providing legal professionals with easy access to the latest information on AI-related legal frameworks. A draft of this compendium has been submitted to the Task Force for review and consideration.

5. Proposed MCLE Requirement Revision: The Task Force recommends requesting that the New Jersey MCLE Board consider amending the MCLE requirements to require attorneys to earn one CLE credit in technology-related subjects every two years. Given the ethical and social justice implications of technology in the legal system (such as safeguarding client data and understanding the potential risks associated with AI and GAI), we propose changing the current ethics and diversity requirement to "Ethics, Diversity, and Technology" and making the new one-hour credit requirement part of that mandate.

Next Steps

The Task Force is committed to taking proactive measures to ensure ongoing education and adaptation to the evolving landscape of AI in the legal profession. Continuous monitoring of AI developments will be conducted, with regular updates provided to Task Force members and the broader legal community using the AI newsletter and AI hub on NJSBA.com. This will involve staying abreast of emerging technologies, regulatory changes and notable AI case law. Additionally, the Task Force will remain flexible, adjusting schedules and topics to address emerging trends and challenges.

The Task Force also recognizes the importance of interdisciplinary collaboration in navigating the complex intersection of AI and the law. To this end, efforts will be made to engage with allied professionals such as CPAs, cybersecurity experts, data privacy professionals and law enforcement. This collaboration will facilitate knowledge sharing, best practice development and the identification of potential areas for joint action.

By staying vigilant, fostering collaboration and engaging with stakeholders across various sectors, the Task Force aims to ensure that the legal community is well-equipped to navigate the opportunities and challenges presented by AI in the years to come.

Artificial Intelligence and Social Justice Concerns

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Integrating AI into the legal system offers benefits but requires vigilance. The vast data processing and potential for inaccurate correlations demand:

1. Rigorous monitoring and evaluation to prevent misuse and unintended consequences.
2. Transparency regarding the data powering AI systems, especially those with legal implications.
3. Clear insight into the replicability of AI-generated results to maintain accountability and foster trust among legal professionals and the public.

Public Use of AI and Unauthorized Practice of Law (UPL)

In an era where AI is increasingly integrated into daily life, the public – especially those unable to afford professional legal services and used to using AI for other purposes – might turn to publicly available AI tools for legal guidance. This trend could inadvertently expose individuals to legal risks without the safeguards provided by legal professionals. Additionally, AI's ability to produce seemingly authoritative and precise responses may lead laypersons to misconstrue its capabilities and outputs as infallible, fostering a false sense of legal security.

While this scenario remains speculative, it's crucial to recognize it as a potential future outcome requiring proactive consideration. To address this, we must collaborate with those regulating the practice of law to enhance public awareness of the limitations and risks associated with relying on AI for legal advice. Similarly, it may be necessary to implement stricter guidelines and regulatory frameworks for AI-generated legal content while ensuring the accessibility of affordable legal services. Above all, as these technologies evolve, continuous monitoring, discussion and collaboration are essential.

Addressing Risks, Including At-Risk Populations

AI's rapid data processing capability offers efficiency and innovation opportunities but also harbors significant risks related to bias and discrimination (Chen et al., 2024). For instance, the case of Amazon discontinuing its AI recruitment tool due to gender bias underscores the necessity for ongoing AI system monitoring to ensure adherence to ethical guidelines and avoidance of perpetuating existing inequalities. Specifically, the bias stemmed from the tool being trained on a dataset predominantly comprising men's resumes, leading it to favor male candidates (Andrews & Bucher, 2022). This example emphasizes the dangers of unchecked AI in decision-making processes.

The legal industry should examine the lessons learned from the challenges faced by other sectors when developing and implementing AI to avoid repeating similar mistakes and to proactively address potential issues, including:

1. **Racial bias:** AI can exhibit bias or discriminatory behavior if it's trained on biased data or designed with biased algorithms. This can happen due to: use of historical training

data; biased labels or annotations in the data; algorithmic biases, feedback loops that perpetuate bias, lack of diversity in development teams and lack of transparency in algorithmic development (Blount, 2024).

2. **Economic inequality through automated decisions:** In financial sectors, AI-driven decisions such as loan approvals and credit scoring can perpetuate economic disparities, potentially sidelining those from disadvantaged backgrounds (Addy et al., 2024). A similar bias in legal decision-making AI could negatively impact vulnerable populations.
3. **Health care disparities:** AI in health care risks worsening existing disparities (Hastings, 2024) and raises concerns regarding how similar disparities could, without proper intervention, occur within the legal system.
4. **Privacy and surveillance:** The use of surveillance technologies, including facial recognition, may pose significant risks various communities (Swaminathan & Danks, 2024), emphasizing the need for responsible AI that respects privacy rights and provides accountability.
5. **Predictive policing:** Predictive policing relies on historical crime data and may amplify prejudice by disproportionately targeting minority communities and exacerbating systemic biases.

This approach can create a feedback loop where increased police presence in certain neighborhoods leads to more arrests and higher reported crime rates, reinforcing the perception that these areas are more prone to crime. This, in turn, leads to further over-policing and surveillance. Algorithms may disproportionately target minority communities due to the data they are trained on, often overlooking the underlying social and economic factors that contribute to criminal behavior.

Addressing the racial biases inherent in predictive policing requires careful consideration of the data used, increased transparency and accountability in algorithmic decision-making and a broader effort to address systemic inequalities within the criminal justice system.

6. **Forensic science:** Forensic science increasingly relies on software, including AI, for data analysis, probability calculations, model training and quality assurance. This reliance on "black box" software can be problematic, as it blurs the line between human judgment and machine judgment. Attorneys must be mindful of potential challenges to the admissibility of evidence and the credentials of experts who rely on AI in their analyses.

These examples emphasize the necessity for a nuanced approach to mitigate the risks associated with AI, particularly in the context of social justice concerns. They underscore the importance of integrating fairness and bias mitigation techniques into the development of legal AI products. Engaging a diverse range of professionals in designing, implementing and reviewing AI systems is crucial to ensuring equitable and responsible outcomes for society. Furthermore, it is imperative to draw lessons from past integrations of AI and related technologies to avoid repeating mistakes and to foster positive societal impacts.

AI and Access to Justice

While much has been said about the potential pitfalls associated with AI, it also has the potential to help many people. For example, AI may improve access to justice by making legal services more efficient and available. However, this potential is contingent upon equitable access to AI tools and technologies, which requires reliable access to the internet, a rudimentary understanding of technology and the ability to navigate AI-driven systems.

Unequal access to high-speed internet, especially in rural and underserved urban areas, hinders the fair adoption of AI. Providing universal high-speed internet access enables vulnerable communities to benefit from AI-powered legal aid and support services. However, it is crucial to address the social inequalities that contribute to this digital divide, such as disparities in technological capital and resources (Comi et al., 2024). Bridging this gap is essential for ensuring that the benefits of AI in the legal system are accessible to all, regardless of their socioeconomic background or geographic location.

Moreover, there may come a time when providing legal aid and support for vulnerable communities in New Jersey leverages AI in a manner that addresses systemic inequities rather than exacerbating them. Upholding ethical guidelines and ensuring fairness in AI applications are imperative steps toward achieving access to justice for all residents of New Jersey. Policymakers, legal professionals and technology experts in New Jersey must collaborate and develop strategies that prioritize equitable access to AI tools and technologies, address digital disparities and uphold ethical standards to ensure that AI contributes positively to the pursuit of justice in the state.

Next Steps and Recommendations

To effectively navigate the complexities presented by the integration of AI within a legal practice and to capitalize on its potential to foster social justice, the following strategic initiatives are recommended:

1. Although considerable advances have occurred that improve access to technology for all demographic and socio-economic groups, ongoing focus is required to ensure that all individuals have access to the technology and tools – including AI – that will allow them to understand and pursue available legal rights and remedies.
2. Guidelines and rules for the use of AI by both pro se litigants and attorneys should prioritize and ensure general awareness and appreciation of the limitations and risks of the use of AI and promote equitable access to AI tools and technologies.
3. Partnerships and collaborative networks should be established with a broad spectrum of legal entities, advocacy groups, social justice organizations and policymakers to promote fair, unbiased and ethical deployment of AI as a resource to be available and applied in appropriate civil and criminal matters. Such collective endeavors would enhance AI development and application in legal matters with a particular sensitivity toward justice, equality and ethical considerations.
4. A structured and reliable framework for ongoing dialogue, review and scrutiny of AI use by courts, legal service organizations and the bar must be established and maintained to

ensure appropriate access and implementation of AI for all demographics – in particular underserved, marginalized and at-risk communities. This entails tracking the evolution of AI and actively assessing the direct and ancillary effects on various demographic groups. Continuous monitoring and evaluation will enable the legal profession to proactively address potential disparities and strategies to mitigate any adverse impacts.

With time, consideration and open dialogue, the legal profession can help steer the course of AI integration to maximize its benefits while mitigating its risks. This proactive and inclusive approach ensures that the advancement of AI technologies in our industry aligns with the overarching principles of equity, justice and ethical responsibility, reinforcing the commitment to upholding the dignity and rights of all people.

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Appendix 1:

Essential Factors for Selecting AI Products and Formulating an AI Policy in Legal Firms: A Starting Point

This guidance provides initial discussion items law firms and/or legal professionals can use to navigate integrating AI tools into their practices.

From understanding the risks and advantages of AI to selecting appropriate tools, ensuring data protection and training staff, each aspect is designed to help legal professionals address vital factors that must be considered. When undertaking substantial AI projects, it is advisable to consult with data privacy and AI experts throughout the integration process. Simultaneously, it is of utmost importance to maintain detailed records of any interactions involving AI, GAI and client data.

Disclaimer

This guidance is designed to initiate conversations and serve as a starting point for law firms considering the integration of AI into their practices. It is not intended to replace a comprehensive AI policy. By addressing the key questions and considerations outlined in this guidance, law firms can take proactive steps toward using AI in alignment with ethical and legal considerations.

Key Considerations

1. **Understanding AI risks:** Alongside its advantages, AI presents potential risks such as data privacy concerns and ethical dilemmas. Conducting a thorough risk assessment is crucial for identifying and mitigating these risks.

Here are some key questions to consider, and if possible, ask the AI software provider when starting a risk assessment for AI:

1. What are the potential risks associated with the AI system, such as data privacy breaches, bias or unintended consequences?
2. How is the AI system trained, and what data sources are used? Are there any potential biases or limitations in the training data?
3. If the system is specifically designed to work with sensitive data of any kind, what measures are in place to ensure the security and privacy of the data used by the AI system?
4. How are the AI system's decisions or outputs validated and monitored for accuracy and fairness?
5. What are the potential legal and ethical implications of the AI system's actions or decisions?
6. What is the plan for addressing and mitigating any identified risks or unintended consequences?
7. How will transparency and replicability be monitored and maintained?

8. What is the process for involving stakeholders, such as AI experts, legal professionals and ethical advisers in the risk assessment and management process?

These questions can help organizations identify, evaluate and mitigate some of the potential risks when implementing AI systems.

2. Leverage AI's advantages and choose the right tools: Before investing in an AI tool, thoroughly investigate its capabilities to determine whether it can deliver the desired benefits, such as increased efficiency and cost savings, in a responsible and secure manner. With the exponential growth of AI tools tailored to the legal sector, it is essential to select tools aligned with your firm's needs and use cases.

Establishing key performance indicators (KPIs) can help gauge the effectiveness of AI tools in improving legal services. Given the wide range of choices available, retaining a trusted technology adviser can significantly assist in navigating the increasingly complex landscape of AI product options, especially for those in traditionally non-technical professions.

3. Ensure data protection: To address data protection and privacy concerns, establish clear policies for data usage with AI tools. Keep up to date with changing data protection laws and verify that both you and your AI software or service providers adhere to industry-standard best practices for data privacy and security.

The National Institute of Standards and Technology (NIST) provides a valuable resource, the NIST Privacy Framework, for organizations looking to establish robust data privacy standards. This comprehensive tool offers a structured approach to identifying, evaluating, and addressing privacy risks, along with recommendations for implementing effective controls and protective measures. By adopting the guidelines outlined in the NIST Privacy Framework, organizations can align their data privacy practices with industry standards and best practices (“Getting Started | NIST,” 2021).

More information about NIST’s Privacy Framework is available at <https://www.nist.gov/privacy-framework/getting-started-0>

4. Train your staff: Regular training sessions should cover technical aspects and ethical considerations of using AI tools. Law firm staff should be well-versed in data protection guidelines.

5. Manage integrating AI with existing systems: It is essential to collaborate with data privacy and AI professionals as necessary during the integration process of AI tools with existing systems. Additionally, it is crucial to document any interactions between AI, GAI and client data, specifying the tools used and the data involved.

6. Stay current with technology: Law firms must stay updated on advancements in technology in two ways – first, through maintaining subscriptions to relevant publications or by attending industry conferences, and second, through software updates that fix bugs, privacy and security issues and more.

7. Attribute AI content when necessary: Law firms should establish and follow clear guidelines on attributing content generated or inspired by AI. Providing staff with a framework for acknowledgment can streamline this process.

8. Monitor AI for bias and errors: Law firms must adopt and adhere to regular fact-checking and bias review procedures to ensure the accuracy and integrity of AI-generated content. It is vital for law firms to report any identified bias or errors to the AI software or service provider(s) immediately.

9. Consider the impact of AI: Evaluate how AI may affect the financial aspects of law practice, and if necessary, consider adapting billing models to align with client expectations regarding AI's ability to streamline tasks that were previously time-consuming. *Note: Ensure that any changes to billing models are clearly communicated to clients prior to engagement.*

10. Know your legal obligations: Using the guidance provided in this report, as well as educational materials and information published by the NJSBA, the Administrative Office of the Courts (AOC), and other trusted legal sources, ensure that you thoroughly understand the legal and ethical obligations you must consider or adhere to when incorporating AI or GAI into your legal practice.

Appendix 2:

Sample Artificial Intelligence and Generative Artificial Intelligence Use Policy

1. Purpose

This policy establishes guidelines for the ethical, responsible, and efficient use of Artificial Intelligence (AI) and Generative Artificial Intelligence (GAI) technologies within the law firm. It aims to ensure compliance with legal and ethical standards, safeguard client confidentiality and uphold the highest level of professional conduct while harnessing the benefits of AI and GAI tools.

2. Scope

This policy applies to all individuals who currently use or plan to use AI and GAI tools to support the practice of law, including employees, partners, associates, contractors, vendors, finance and accounting professionals, billing companies and law firm staff members.

Note: To comply with RPC 1.1, attorneys must reasonably understand the technology they use, including its risks and proper usage. They must also diligently protect confidentiality and privilege. When considering AI tools and services, attorneys should only use credible vendors that provide adequate safeguards to fulfill their professional responsibilities under the RPCs.

3. Definitions

3.1. Artificial Intelligence (AI): Computer systems simulate human intelligence processes, including learning, reasoning, and self-correction (“Artificial Intelligence | NIST,” 2024).

3.2. Generative Artificial Intelligence (GAI): A subset of AI focused on creating new content, such as text, images, or audio, based on patterns learned from training data (“Artificial Intelligence | NIST,” 2024).

4. Approval and Oversight

4.1. Any use of AI or GAI tools must receive approval from the firm's designated AI Oversight Committee before implementation.

4.2. The AI Oversight Committee is responsible for evaluating each AI or GAI tool's potential benefits, risks, and ethical implications and determining its suitability for firm-wide use.

4.3. The AI Oversight Committee conducts regular audits and assessments of AI and GAI tools to ensure ongoing compliance with this policy and relevant laws and regulations.

4.4 List the Firm’s AI Oversight Committee members here:

5. Ethical and Legal Compliance

5.1. All usage of AI and GAI tools must adhere to applicable laws, regulations and professional ethical standards, including the Rules of Professional Conduct (RPCs) governing client confidentiality, data protection and intellectual property.

5.2. AI and GAI tools shall not be used to engage in or promote discriminatory, biased or unethical practices.

5.3. The firm shall maintain transparency with clients when using AI and GAI tools on their matters and obtain informed consent when necessary.

5.4. Only GAI or AI tools designed explicitly for legal matters and with sufficient client data protection should be used for specific legal issues. No public-purposed AI tools should be used for specific legal matters, and no client or other sensitive or regulated data should be shared with public-purposed AI tools.

6. Data Protection and Confidentiality

6.1. Any data used for training or operating AI and GAI tools must be appropriately secured and protected by the firm's data protection policies and relevant laws and regulations.

6.2. Strict access controls require only authorized personnel to use AI and GAI tools and access associated data. While ensuring this does not happen in today's remote work environment is complex, a strict compliance model and proper use of standard security technology like VPNs will provide incentives for correct usage and consequences for policy violation.

6.3. Necessary technical and organizational measures are implemented to prevent unauthorized disclosure or exposure of confidential client information through AI and GAI tools.

7. Human Oversight and Review

7.1. All outputs generated by or with the assistance of AI and GAI tools must undergo review and validation by qualified human professionals before use in any legal matter (every review is cataloged for audit purposes).

7.2. AI and GAI tools augment and support human expertise, but do not replace it. Human professionals must make all final decisions and judgments.

7.3. Clear protocols are established for escalating issues or concerns related to AI and GAI tool outputs to the appropriate supervisory authority.

8. Training and Education

8.1. All personnel using AI and GAI tools must receive comprehensive training on their proper use, limitations and potential risks before using them for any firm matter or activity.

8.2. Ongoing education and resources are provided to ensure personnel stay informed about AI and GAI technologies' developments and best practices in the legal profession.

9. Intellectual Property and Ownership:

9.1. The firm respects third parties' intellectual property rights in developing, training and using AI and GAI tools.

9.2. AI or GAI models, algorithms or outputs developed using the firm's resources or data are considered the firm's intellectual property unless otherwise agreed upon.

10. Monitoring and Review

10.1. The AI Oversight Committee continuously monitors AI and GAI tools' use and performance to identify potential issues, biases or errors.

10.2. The AI Oversight Committee regularly reviews and updates this policy to ensure continued relevance and effectiveness amid evolving technologies, legal standards and ethical norms.

10.3. Audits of work products created with GAI or AI are regularly performed to ensure accuracy, and the human review record is checked as part of this process.

11. Enforcement and Reporting

11.1. Violations of this policy may result in disciplinary action, including termination of employment or position in the firm, regardless of what the level of that position may be.

11.2. All personnel must report suspected policy violations or concerns regarding the usage of AI and GAI tools to the AI Oversight Committee or firm management.

12. Acceptance

As AI becomes more common, it will become increasingly important to understand its place in an expanded system of practice. It is important to note that this technology may change significantly and often. As such, it is the shared responsibility of all employees to maintain an understanding of the latest developments, risks and best use cases AI can provide.

By implementing an AI and GAI use policy, the law firm underscores its commitment to the ethical, responsible and compliant use of these technologies while using their potential to enhance the quality and efficiency of legal services provided to clients.

Appendix 3:

Questions for Vendors When Selecting AI Products and Services

What training is available to understand the technology better and avoid dangerous areas/pitfalls?

Key considerations: Inquire about comprehensive training and support that covers technical issues, ethical considerations and best practices for applying AI in a legal context.

Are there any case studies, testimonials or references from other legal professionals who have successfully used the tool?

Key considerations: Reach out to colleagues or request references from the provider to gain valuable insights into the tool's effectiveness and user experiences.

How do you monitor accuracy and detect potential issues?

Key considerations: Understand the vendor's quality control measures, such as audits, testing and monitoring for errors or biases. Inquire about their process for addressing and resolving identified issues.

Who is this software intended for: solo practitioners, small law firms, mid-size firms, large firms?

Key considerations: Ensure the vendor's offering aligns with your legal practice's size and needs and can scale according to your growth plans.

What are your recommended best practices for using this tool and adhering to the Rules of Professional Conduct (RPCs)?

Key considerations: Seek guidance on using the AI tool in compliance with RPCs, including maintaining client confidentiality, ensuring proper supervision and avoiding conflicts of interest.

How do we place appropriate data privacy and security disclosures in our retainer agreements and other documents to ensure clients understand and can be satisfied by the safeguards and protocols put in place when using your product?

Key considerations: When discussing data privacy and security with an AI vendor, ensure they address the following:

- 1. Data ownership, access, protection measures and compliance with laws and regulations*
- 2. Data breach notification, remediation, retention and deletion policies*
- 3. Subcontractor management and employee training practices*
- 4. Termination procedures and data handling post-termination*

Addressing these points helps protect your data and meet your organization's privacy and security requirements.

Does the company have a proven track record of providing reliable, secure and compliant solutions specifically tailored to the legal sector?

Key considerations: Request any information the company will provide to assess its commitment to providing reliable and compliant solutions for the legal industry.

Are there any other client disclosures required of attorneys beyond the retainer?

Key considerations: Determine if additional disclosures or notifications are needed when using the AI tool, such as informing clients about AI usage, obtaining consent or explaining limitations and risks.

If the company is relatively unknown, it may be helpful to know who the owners are and if there are any potential ethical concerns related to the ownership structure.

Key considerations: Research the company's website, press releases and financial disclosures to uncover information about the owners and identify any potential ethical concerns.

Appendix 4

Key Terms to Know

Understanding key terms in AI is essential for attorneys navigating the complex landscape of technology in the legal sphere. While the following terms represent critical concepts, it is important to note that this list is not exhaustive. Nonetheless, familiarity with these terms will empower legal professionals to engage with AI-related issues and make informed decisions effectively.

The key terms below have been referenced from NIST's Glossary, which can be found here: https://airc.nist.gov/AI_RMF_Knowledge_Base/Glossary

- 1. Artificial intelligence (AI):** Intelligent systems that mimic the human mind, such as solving complex problems, reasoning and problem-solving, often used in legal research, document analysis, and predictive analytics.
- 2. Machine learning:** A subset of AI that enables systems to learn from data and improve performance over time without being explicitly programmed, used for tasks like case prediction and contract analysis in legal practice.
- 3. Deep learning:** Advanced machine learning technique using neural networks with multiple layers to learn patterns and representations from data, applied in tasks like natural language processing (NLP) for contract review and sentiment analysis.
- 4. Natural language processing (NLP):** AI technology enables computers to understand, interpret and generate human language, which is critical for tasks like automated document summarization and legal document classification.
- 5. Bias:** Systematic errors or inaccuracies introduced by AI algorithms or data that result in unfair outcomes, requiring legal professionals to assess and mitigate bias in AI systems used for decision-making.
- 6. Transparency:** The degree to which AI systems' decisions, data usage and operations are understandable and explainable, which is crucial for ensuring accountability and regulatory compliance in legal contexts.
- 7. Replicability:** The ability to reproduce AI experiments or results to validate findings and ensure reliability is essential for establishing AI applications' credibility in legal research and analysis.
- 8. Large language model (LLM):** AI-powered software designed to manage and organize legal documents, streamline workflows and improve legal document review and production efficiency.
- 9. Algorithm:** A step-by-step procedure or rules for solving a problem or accomplishing a task. AI often uses it to process data and make decisions, and its legal applications include predictive modeling and risk assessment.
- 10. Bias auditing:** The process of systematically evaluating and identifying biases in AI systems, including data collection, model development and decision outputs, to ensure fairness and equity in legal applications and decision-making processes.