Understanding the Legal Hurdles of Artificial Intelligence: Questions to Ask and How to be Protected, *New Jersey Law Journal*

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Almost three years after the release of ChatGPT, the AI boom continues to impact and shape the practice of law. Most agree we have only scraped the tip of the artificial intelligence iceberg, with its true potential still unknown. This article will discuss recent developments and ethical concerns brought on by the use of artificial intelligence in the practice of law. However, concerns relating to the dissemination of misinformation and data privacy transcend the legal field and are applicable to every industry and even to our clients.

Legal professionals familiar with AI tools are well-advised to adhere to recommended procedures, which help maintain ethical standards and protect client data. Staying informed about how emerging technologies are changing the legal landscape is increasingly important.

In these rapidly evolving times, it is paramount that both attorneys and their clients remain informed and up to date on new legal requirements governing the use of artificial intelligence. Attorneys using artificial intelligence must be careful to avoid common mistakes that can inadvertently spread false information or otherwise compromise client data.

U.S. Courts and Regulatory Bodies Address the Ethical Concerns Posed by Artificial Intelligence

There is a renewed focus within the legal community on addressing the ethical concerns and potential for misuse of artificial intelligence. In particular, courts across the U.S. are beginning to adopt rules and procedures to combat the ethical concerns posed by artificial intelligence.

Below are some examples of disclosure requirements that courts around the U.S. have already implemented:

- **District of New Jersey:** Judge Evelyn Padin amended her general pretrial and trial procedures to require a mandatory disclosure whenever attorneys use generative AI for court filings. If any portion of a filing was drafted with an AI tool, the lawyer must identify the AI program used, identify which sections of the document were AI-generated, and certify that a human diligently reviewed the AI's output for accuracy and relevance. This disclosure/certification must accompany the filing, ensuring the court is informed of AI involvement.
- **Eastern District of Pennsylvania:** Judge Michael Baylson of the Eastern District of Pennsylvania issued a standing order requiring any attorney (or pro se party) appearing before him to affirmatively disclose AI use in the preparation of any filing. The order mandates “a clear and plain factual statement” in the document if the filing party used an AI tool, and further requires the lawyer to certify that every citation to law or the record has been verified for accuracy.

In addition to judicial action, there has been a new development concerning the evidentiary standards that may apply to AI-generated content. In June 2025, the Committee on Rules of Practice and Procedure approved amendments to the Federal Rules, creating Federal Rule of Evidence 707. The new rule is designed to address growing concerns around the use of AI-generated evidence, particularly when such evidence functions similarly to expert testimony and raises parallel questions of reliability, bias, error, and interpretability.

The rule states:

When machine-generated evidence is offered without an expert witness and would be subject to Rule 702 if testified to by a witness, the court may admit the evidence only if it satisfies the requirements of Rule 702 (a)-(d). This rule does not apply to the output of simple scientific instruments.

While new rules and procedures vary, the overarching trend shows that courts are becoming more stringent around the use of artificial intelligence and require compliance with explicit disclosures and procedures regarding the use of artificial intelligence in both case filings and the production of evidence.

Common Use Cases for Artificial Intelligence by Attorneys

The use of artificial intelligence in the legal field is still in its infancy, but we have identified areas where artificial intelligence can provide significant benefits to lawyers. We expect overall attorney productivity to increase through the automation of recurring tasks and the use of quicker analysis tools.

More specifically, many attorneys have already expanded the use of artificial intelligence into their workflow to provide efficiency with client work. Examples of how attorneys are using AI chatbot technology include:

- Copilot assistance, organization, and summarization of emails and meeting transcripts
- Contract drafting and analysis
- Research
- Summarization tools to review documents and brief preparation
- Manage large volumes of legal data
- Real-time language translation
- Generate customized reports and updates

Challenges and Concerns Surrounding the Use of Artificial Intelligence

Artificial intelligence, like most technological advances, presents both solutions and new problems that the end-user must navigate. For attorneys, the upside and efficiency provided by AI tools is not without compromise.

One of the most prevalent issues relates to the potential for AI tools to create hallucinations and spread misinformation. This is of particular concern for attorneys as the accuracy of statements of facts presented at a legal proceeding remains of the utmost importance. Attorneys frequently make certifications related to the sufficiency and accuracy of statements in court filings.

What is even more concerning is that the potential error may not stem directly from the documents prepared by the attorney. In several instances, it has been reported that clients have used AI tools to generate content and then forwarded it to their attorney without review. In that case, the error is likely to cause significant harm when the attorney relies on the

client-created content. Therefore, attorneys should verify where client information is generated before relying on that information which may have been AI generated.

Another major consideration in the adoption of AI relates to data privacy. Attorneys must be mindful when creating prompts and uploading documents, as the information provided maybe used to continuously train the AI model or become public, which could be a breach of attorney confidentiality and obligation of the attorney client privilege. The retention of data poses a potential risk as sensitive client and firm information may fall into the hands of bad actors. This brings into question the ethical obligations of an attorney to protect client data and maintain confidentiality.

Best Practices for Attorneys Using Artificial Intelligence

Despite the unknowns surrounding artificial intelligence, the rate of adoption and use of AI tools such as chatbots continue to grow amongst lawyers and non-lawyers alike. At Porzio, Bromberg and Newman, we adhere to prescribed procedures and test AI tools well before they are onboarded. The firm has developed an entire team focused primarily on reviewing new technologies and determining if those technologies meet our internal standards for both accuracy and data governance.

In addition, the firm maintains standard operating procedures and adopted a GAI Policy governing the use of artificial intelligence. These procedures are constantly reviewed and updated to keep pace with our clients' real-time needs.

One important AI governance tip for attorneys and clients alike is to keep humans in the loop. That means having a real person directly engaged in the review and oversight of AI tools and the content they produce. The benefits of human review cannot be overstated, as there have been numerous reported instances of fake or false AI-generated content that have been submitted in court filings. In some instances, AI tools went as far as to create fake case citations for legal precedent.

AI tools can make legal work more efficient, but lawyers need to use them with caution and good judgment. By staying informed and applying these tools thoughtfully, lawyers and firms alike can use AI to their advantage and ensure they get the benefits of the technology without risking their ethical duties or clients' trust.

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