

# Technology & Ethics: When Worlds Collide

Hon. Kevin R. Anderson  
U.S. Bankruptcy Court  
District of Utah



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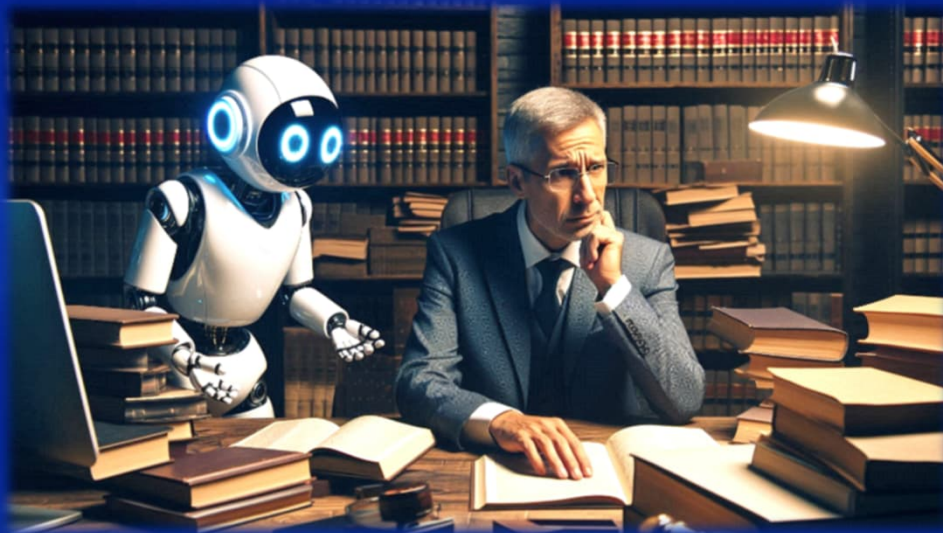
# Generative Artificial Intelligence is Here! And Its Impact on the Legal Profession will be Transformative



"When Code Becomes Conscious, Worlds Collide!"

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## But AI Will Also Bring a Plethora of New Ethical Challenges



If AI is smarter and faster, will it replace me?

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## ABA COMMITTEE ON ETHICS AND PROFESSIONAL RESPONSIBILITY

Formal Opinion 512 — July 29, 2024

Lawyers using generative AI must fully consider their applicable ethical obligations, including —

- ✓ don't let AI become the client's lawyer,
- ✓ verify the veracity & merits of AI work product,
- ✓ protect client information from disclosures by AI,
- ✓ communicate with clients re use of AI,
- ✓ supervise firm members and vendors re use of AI,
- ✓ comply with court requirements re AI, and
- ✓ only charge reasonable fees for AI work product.

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## What is Artificial Intelligence?

Computers, databases, and software that process information and perform tasks typically requiring human intelligence, such as —

- visual perception
- speech comprehension
- pattern recognition
- summaries
- pros & cons analysis
- decision making

Results in the output of original, creative content



Data In; Created Content Out

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## How AI Works

AI is presently predictive, not intuitive. AI uses complex math and databases to “guess” the most likely next word. It has no inherent understanding of language — its just math to AI.

For example, please complete the following sentence:

“I have a \_\_\_\_\_.”

The statistically-likely response is ...

A question = .01156%

A dog = .00541%

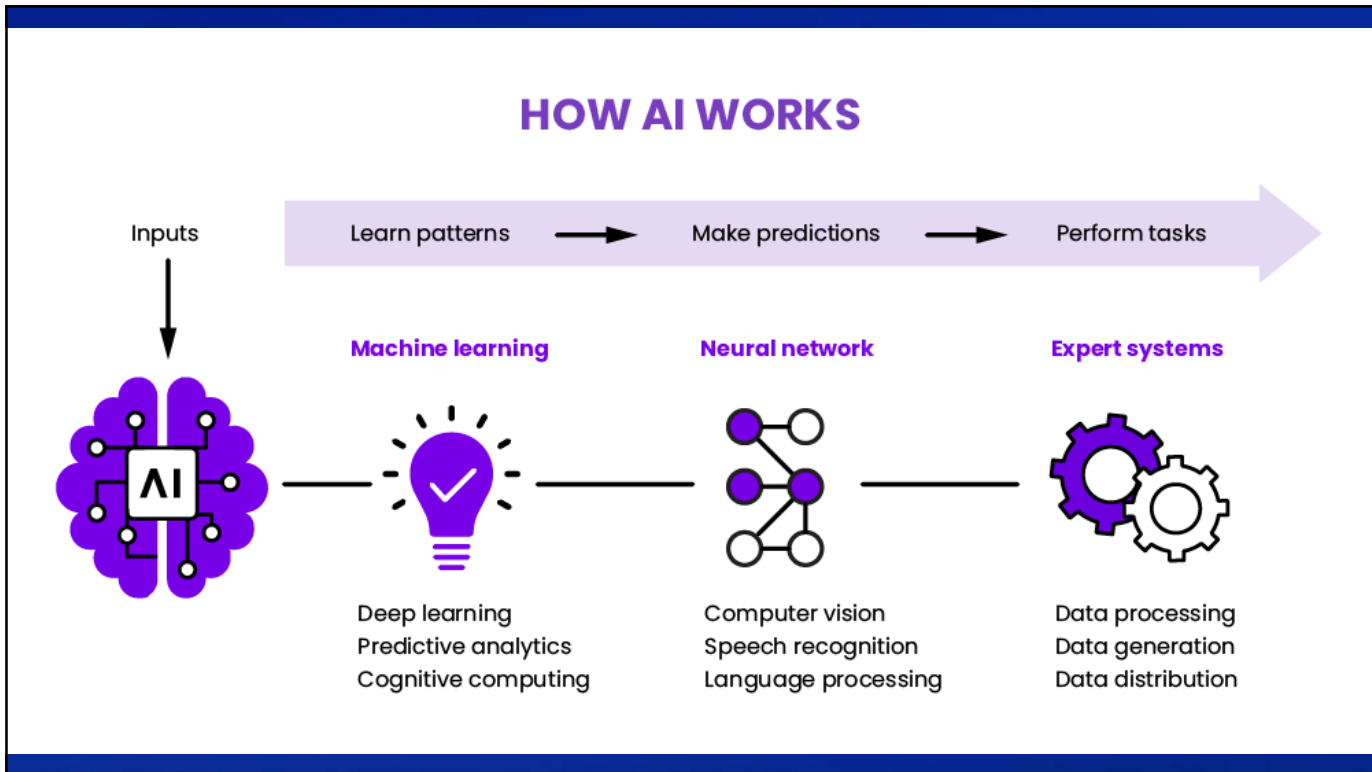
A cat = .00453%

A Pop Tart = .00006%



AI “guessing” the proper response

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## How AI Works

The verity of AI output is only as good as its data source.

Thus, any errors, prejudices, partisanship, proclivities, predilections, etc. that are in the data base will be manifest in the generative AI output.

**Garbage In; Garbage Out**

AI Dealing with Garbage Input

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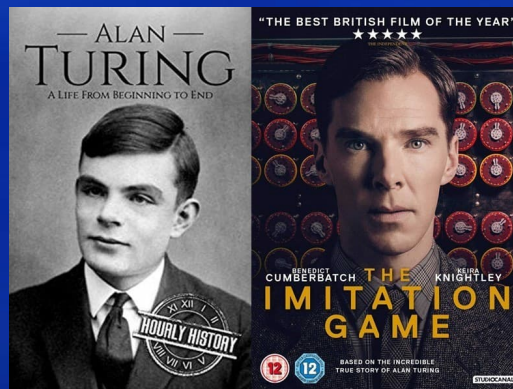
## The Future of AI — Sooner Than You Think

The Turing Test – developed by computer pioneer Alan Turing posited that the true test of computer intelligence will be met when individuals cannot tell the difference between a computer and a human interaction

Weak AI (the present): ChatGPT – helpful and creative within a limited sphere of its particular expertise.

Strong AI (2-5 years): Passes the Turing Test within its sphere of expertise.

Super AI (5-10 years) Surpasses human intelligence and abilities in all areas.



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## Why AI Makes Up Cases (“Hallucinations”)

AI mimics, but it does not “understand.”

“The statute of limitations has not expired .” See *Martinez v.* \_\_\_\_\_

Delta Airlines	37.0153%
Ford Motors	24.5187%
United States	12.8543%

- ✓ AI doesn’t “know” anything. It only makes statistical “guesses” based on what data it has previously processed.
- ✓ Thus, AI does not “know” there is a case in the 2nd Circuit Court of Appeals named “*Martinez v. Delta Airlines*” — it just “guesses” that there is such a case.

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## Use of AI in Bankruptcy

Research Services: AI-powered tools like Lexis+ AI and Westlaw AI-Assisted Research can assess the potential outcomes of legal cases by analyzing historical data and trends.

Document Review: AI can review and summarize large volumes of data quickly and accurately.

Content Creation: Briefs, memos, emails & correspondence.

Office Management: AI-based platforms such as Clio, MyCase, Thomson Reuters CoCounsel Core, and Zola Suite offer office management solutions.

Legal Chatbots: AI responds quickly and informatively to outside communication requests.



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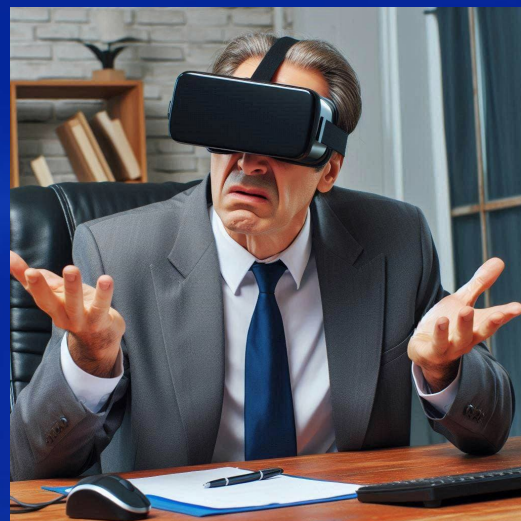
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## Ethical Implications

Rule 1.1 cmt [8] (**competence**): a lawyer should keep abreast of changes in the law and its practice, including the benefits and risks associated with relevant technology.

“The legal profession is, in general, notoriously averse to change. And now we face the latest technological frontier: artificial intelligence.”

Chief Justice Roberts, *2023 Year-End Report On The Federal Judiciary*



Lawyer viewing accident recreation in 3D virtual reality (and longing for toy cars on a chalk board)

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## Ethical Implications

Rule 1.6 (**confidentiality**): a lawyer must make reasonable efforts to prevent the unauthorized disclosure of a client's information.

Client information disclosed in an AI query will likely become part of the AI's knowledge base that could be disclosed to other AI users.



Lawyer using confidential client data to do an AI query

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## Ethical Implications

Rule 1.8(b) (**use of client data**): A lawyer shall not use information relating to representation of a client to the disadvantage of the client unless the client gives informed consent.

If a client data is hacked or leaked into AI databases, and it is then used to scam the client—possible big problem!



Lawyer using confidential client data to do an AI query

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# AI Companies Want Your Information

Law firms are walking gold mines of valuable information



- AI companies want your legal research and your client’s information to train the next generation AI model.
- AI companies offer you free access to their programs, but in exchange, they want to keep your information.

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Google Privacy & Terms

Overview Privacy Policy Terms of Service Technologies FAQ

Introduction

Information Google collects

Why Google collects data

Your privacy controls

Sharing your information

Keeping your information secure

Exporting & deleting your information

Retaining your information


Compliance & cooperation with

views and interactions with content and ads; Chrome browsing history you’ve synced with your Google Account; information about the interaction of your apps, browsers, and devices with our services (like IP address, crash reports, and system activity); and activity on third-party sites and apps that use our services. You can review and control activity data stored in your Google Account in [My Activity](#).

**Research and development:** Google uses information to improve our services and to develop new products, features and technologies that benefit our users and the public. For example, we use publicly available information to help train Google’s AI models and build products and features like Google Translate, Gemini Apps, and Cloud AI capabilities.

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 OpenAI

Research ▾ API ▾ ChatGPT ▾ Safety Company ▾

information like general user statistics with third parties, publish such aggregated information or make such aggregated information generally available. We may collect aggregated information through the Services, through cookies, and through other means described in this Privacy Policy. We will maintain and use de-identified information in anonymous or de-identified form and we will not attempt to reidentify the information, unless required by law.

As noted above, we may use Content you provide us to improve our Services, for example to train the models that power ChatGPT. Read [our instructions](#) on how you can opt out of our use of your Content to train our models.

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## Ethical Implications

Rule 5.1 – 5.3 (**supervision**): Partners must ensure that everyone in the law firm is trained in and abides by the ethical rules.

Law firms should adopt reasonable measures to ensure the ethical use of AI, including training to all firm members on the benefits and pitfalls of using AI.



Supervising lawyer training other firm members on ethics

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## Ethical Implications

Rule 5.1 Comment [2] (**detection**)  
Lawyers must have reasonable processes to detect any issue with client funds or information.

Rule 1.4 (**communication**): Lawyers must keep clients informed about their case. Thus, lawyers must inform clients of any security breach. Also, extensive use of AI may require disclosure to the client.



Lawyer informing client that hackers have stolen the client's confidential information

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## Ethical Implications

Rule 1.1 & 1.3 (**competence & diligence**) A lawyer must critically review and verify AI-generated results to ensure they are accurate, relevant, and appropriately advance the interests of the client.

Law firms must not let AI become the lawyer for the client, and a lawyer's professional judgment cannot be delegated to generative AI.



AI lawyer arguing a case in a courtroom

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## Ethical Implications

Rule 1.5 (**unreasonable fees**) A lawyer must not charge hourly fees for the time saved by using AI.

Firms should not “value bill” AI based on the time it would take an associate to perform the same task.



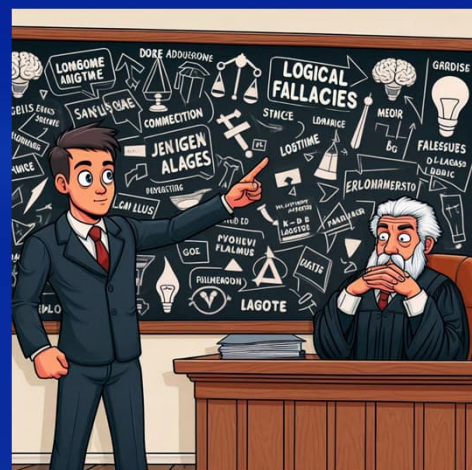
Associate lawyer and AI lawyer doing the same work and competing against the clock.

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## Ethical Implications

Rule 3.1 & 3.3 (**meritorious claims and candor**) Lawyers must ensure that any AI-generated work product does not include any “hallucinated” legal arguments or authority.

A lawyer should check for any local rules or standing orders that prohibit the use of AI or that require a disclosure that the paper was created with the assistance of AI.



Lawyer making fallacious arguments he got from AI

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# Courts Response to Use of AI




## Mandatory Certification Regarding Generative Artificial Intelligence

All attorneys appearing before the Court must file a certificate attesting either that no portion of any filing will be drafted by [AI], or that any language drafted by [AI] will be checked for accuracy by a human being, using print reporters or traditional legal databases.

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# Courts Response to Use of AI



**COURT’S STANDING ORDER ON THE USE OF GENERATIVE AI**

Pursuant to the Court’s inherent authority and the authority of Rule 11 of the Federal Rules of Civil Procedure, no attorney for a party, or a pro se party, may use Artificial Intelligence (“AI”) in the preparation of any filing submitted to the Court. Parties and their counsel who violate this AI ban may face sanctions including, inter alia, striking the pleading from the record, the imposition of economic sanctions or contempt, and dismissal of the lawsuit. The Court does not intend this AI ban to apply to information gathered from legal search engines, such as Westlaw or LexisNexis, or Internet search engines, such as Google or Bing. All parties and their counsel have a duty to immediately inform the Court if they discover the use of AI in any document filed in their case.

**IT IS SO ORDERED.**

/s/ Christopher A. Boyko  
CHRISTOPHER A. BOYKO  
 United States District Judge

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## Takeaways

- ✓ AI is here, and its impact on the practice of law will be faster and more transformative than anything we have previously seen.
- ✓ Lawyers must understand the pros and cons of AI.
- ✓ Before using AI, lawyers must understand all of its ethical implications and have an action plan to avoid any ethical violations.
- ✓ To keep up with the competition, lawyers must learn to appropriately leverage AI in their legal practice and the management of their firms.