The Use of Artificial Intelligence in the Legal Profession

Current as of: 03/28/2023

by The Practical Guidance Attorney Team

This article discusses the use of Artificial Intelligence (AI) in the legal profession, including how AI can assist attorneys in accomplishing various legal tasks, as well as concerns that such usage may involve. The article also provides an assortment of related resources that will provide additional guidance regarding the emergence of AI in the legal profession.

Overview of AI

AI is already well entrenched in the legal community and it is readily apparent that it will play an increasingly more prevalent and critical role in how attorneys accomplish a wide variety of legal tasks. From contract preparation, document reviews, and legal analysis, the use of AI has and shall continue to assist attorneys in the representation of clients. AI tools will allow counsel to circumvent what in the past has been time consuming undertakings and, thereby, allow them to dedicate more time to higher level tasks associated with the representation of their clients.

AI is computer software programmed to perform specific algorithms, which are sets of code programmed to perform tasks, analyze and recognize patterns in large sets of data, reach conclusions from such patterns, predict future outcomes, and make informed decisions based on such data. The primary concepts involved in AI are machine processing, machine learning, machine perception, and machine control. In this context the use of the word "machine" means an artificially intelligent system, which may include, among other things, computer software or a network of systems that serve to operate a more complex device. It entails training machines to learn based upon the data inputted into the machine, thereby allowing the machine to ascertain patterns in the subject data and reach conclusions based thereon. Data is what drives the AI machine engine, and the larger the data set, the more that AI can learn from that data.

AI can produce actual work product, legal analysis, and predictions, as opposed to providing information, such as search results, which require review and analysis to generate work product. While the potential usage of AI in the legal field is substantial, it is not without risk and should be embraced with caution as this area continues to develop over time. While AI may perform numerous legal tasks and assist counsel in timely and efficiently representing clients, it should be viewed as a tool rather than a replacement for attorney work product and diligence. In other words, AI can serve as one of several tools counsel may use to enhance efficiency and provide advice and counsel to clients, but counsel must still perform their jobs, exercise care and judgement, and ensure that any reliance on any AI generated results is verified and reasonable.

Use of AI in the Legal Profession

The benefits of AI in the legal industry are vast and include:

- **Contract preparation and review**. AI can prepare initial drafts of legal documents, such as contracts, briefs, and demand letters, and provide suggestions for language that can be used in legal documentation. AI can review agreements and documents to identify and correct problems, such as missing, inconsistent, or erroneous terms.

- **Document review and organization in litigation**. Complex commercial litigation matters and related discovery can involve voluminous document productions, sometimes consisting of tens of thousands of documents or more. AI can help counsel identify and locate relevant documents, such as documents that involve a specific subject matter or issue, a person's name, a geographic location, a date, or particular

buzz words, and thereby assist counsel in what would otherwise be the exhausting endeavor of having each document individually reviewed. Human review can be time consuming and expensive and runs the risk that relevant documents will be inadvertently overlooked.

• **Due diligence in M&A and other transactions.** As with document review in litigation, AI products can assist counsel with the identification and retrieval of documentation pertinent to M&A transactions. Through the use of AI products, counsel can retrieve specific documents relevant to the due diligence, such as documents regarding a particular subject matter, location, or agreements containing a specific term or clause.

• **Legal research.** AI can summarize important aspects of cases and decisions, such as fact patterns, legal conclusions, and court rulings. AI-powered legal research tools can allow counsel to rapidly search large databases to gather relevant data, precedents, laws, regulations, statutes, and case law for specific jurisdictions.

• **Predictive case analysis.** AI assistance can help counsel determine the potential value of a case and predict the outcome of a particular matter. Predictive coding can also be utilized to analyze relevant data and information and help identify potential risks in exiting or threatened litigation, which can lead to more informed decisions and better risk assessments for counsel and their clients.

• **Document organization and management**. AI based document management software can enable attorneys to store and organize legal files, including case files, contracts, electronic communications, etc. AI based organization can greatly facilitate and expedite locating, maintaining, and safeguarding critical documents and voluminous amounts of information.

• **Judiciary determinations.** AI has been utilized to assist judges with respect to sentencing and bail decisions.

Potential AI Issues

While the apparent benefits of AI in the legal industry are clear, the use of AI in conducting legal tasks must nonetheless proceed with caution. The technology is still evolving and the accuracy of the results may be unproven and, in certain instances, the results may contain errors. Counsel will want to verify, to the greatest extent possible, that any AI generated results are accurate before relying on AI with respect to any work product or legal determinations. As AI's usage in the legal profession is still, relatively speaking, in its early stages, issues will likely arise as the technology progresses and usage is expanded over time.

Counsel must ensure that any use and reliance upon AI in the performance of any legal task is reasonable under the circumstances and that the results are verified. Counsel may be subjected to liability if they utilize AI-generated results or work product that are erroneous and prove detrimental to the client's interests. While AI-driven products can greatly facilitate counsel in accomplishing legal tasks, counsel is still ultimately responsible for their work product.

The use of AI may entail entering into licensing and other agreements that will set forth the terms and permitted uses of the subject technology. In such transactions, important contract terms and legal issues that will need to be addressed will include, among other things, permitted usage, ownership issues, the protection of trade secrets and confidential information, representations and warranties, indemnification, limitation of liability, and product liability.

The prevalence and proliferation of AI in commerce and industries will create opportunities throughout the legal profession. For example, the ever-increasing use of AI in consumer products creates potential liability. Product liability is based on theories of (1) negligence, (2) breach of warranty, and (3) negligence. AI vendors will need to protect themselves from potential liabilities and claims through, among other things, the inclusion of warranty disclaimers and limitation of liability clauses in their agreements. On the other hand, consumers who sustain injuries while using AI driven products will seek relief for their losses if they are attributable to the subject AI. Consider, for example, accidents that have occurred with AI-driven automobiles.

AI remains largely unregulated at the current time, but it likely that more regulations will be adopted going forward. The ABA adopted a Resolution 604 at its 2023 midyear meeting addressing how attorneys, regulators, and other stakeholders should address issues of accountability, transparency, and traceability in artificial intelligence. The resolution calls for (1) requiring entities that design, develop, and use AI to adopt guidelines that ensure that AI products and systems are controlled by human authority; (2) holding organizations accountable for consequences (including injury or harm caused by their actions) related to the use of AI, unless reasonable steps to prevent the injury were taken; and (3) requiring developers to document important decisions made with respect to the design and risk of data sets, procedures, and outcomes underlying the subject AI. The U.S. Chamber of Commerce has also recently called for the implementation of regulations to govern artificial intelligence technology, with concerns that such technology does not impair growth or present a national security risk.

While the use of AI is already having a significant impact on the legal profession, there are many unanswered questions about AI. This article addressed some of the ways AI is already influencing the practice of law and potential issues attorneys may encounter using AI when representing their clients. While the potential uses of AI are extensive, such use in the legal profession it is not without inherent and unknown risks. With increased usage and visibility, the need for regulations and safeguards is becoming apparent, and the call for regulation will likely increase along with the growth of AI itself. Although the future use of AI by attorneys is exciting and will increasingly expand with time, caution is always advisable.

Related Content

Practice Notes

Commercial Transactions

- Artificial Intelligence Key Legal Issues

- Artificial Intelligence and Automation in E-Commerce

- Big Data Analytics Privacy Law Considerations

Data Privacy & Security

- NIST Issues Artificial Intelligence Risk Management Framework (AI RMF 1.0)

- Biometric Privacy and Artificial Intelligence Legal Developments

Insurance

- Artificial Intelligence and Robots in the Workplace: Best Practices

Articles

Civil Litigation

- Evaluating The Legal Ethics Of A ChatGPT-Authored Motion

- Litigators Should Approach AI Tools With Caution

Intellectual Property & Technology

- Trade Secrets May Offer The Best Protection For AI Innovation

- AI-Generated Comic Art Not Protected, Copyright Office Says

- [Artists Slam AI Apps As '21st-Century Collage Tool' In IP Suit](#)

- [A Look At Future AI Questions For The US Copyright Office](#)

- [Copyright & Trademark Policy To Watch In 2023](#)

Labor & Employment

- [5 Open Questions About New York's AI Discrimination Law](#)

- [Anticipating What ChatGPT Means For The Workplace](#)

- [ChatGPT Risks and the Need for Corporate Policies](#)

Tax

- [IRS Plans Netflix-Like AI Tech For Audit Selection, Official Says](#)

Financial Services Regulation

- [Comment: US Federal Trade Commission warns AI abuses will be regulatory focus](#)

- [Banks lack 'regulatory incentives' to adopt anti-money laundering tech, FATF warns](#)

Administrative Materials

- [Technology Assessment: Artificial Intelligence](#)

- [Artificial Intelligence: Emerging Opportunities, Challenges, and Implications for Policy and Research](#)

- [M-21-06 Guidance for Regulation of Artificial Intelligence Applications](#)

- [Consumer Protection: Congress Should Consider Enhancing Protections around Scores Used to Rank Consumers](#)

End of Document