

Social Media for Lawyers – An Ethical Overview

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Jennifer Ellis

- Attorney
 - Ethics
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 - Online presence/marketing & technology
- Nationally known speaker and author
 - Ethics
 - Marketing
 - Social Media
 - Technology
 - Law Practice Management



Why Care About Social Media?

- Bring in business
 - Marketing
- Source of business
 - Client needs
- Litigation issues
 - Data



60% of Internet Users

Instagram

1.3 billion



900 million

66.8 Million in US



2.93 billion

266 million US



1.6 billion



1.5 billion

twitter



229 million

38 million in US (daily active)(2019)





The Rules of Jennifer

1. Rules that apply off-line apply on-line
2. Amount of possible trouble is expanded by the number of people who can see what you wrote

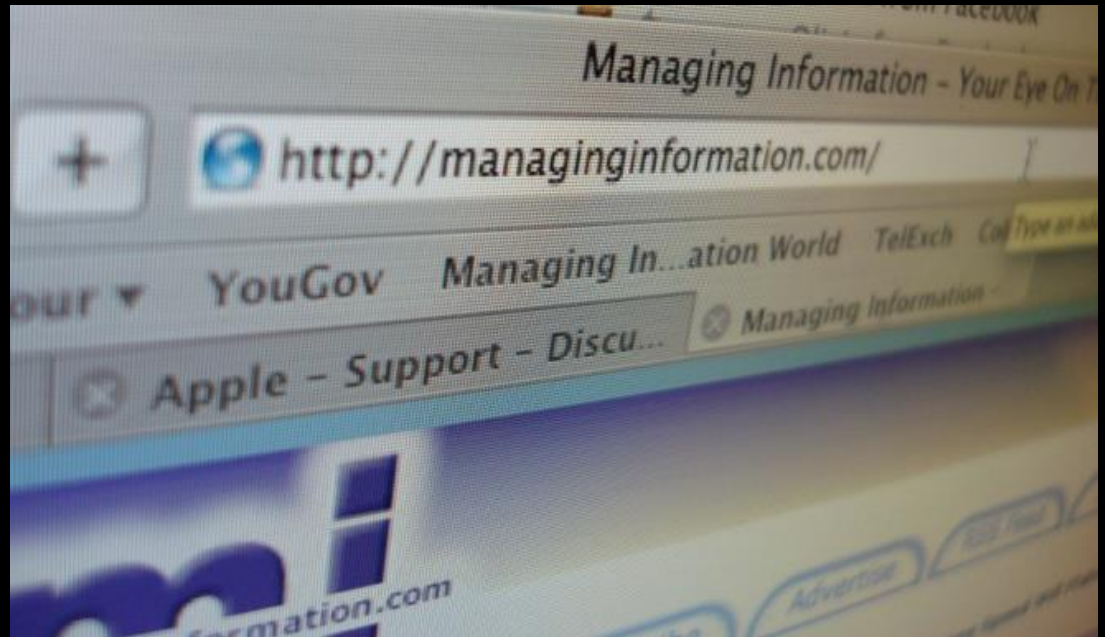
Reputation

- Our reputations are all we have
- “Maintain the Integrity of the Profession” (8.x)
- Viral can be positive or negative



The Web is:

- Networking tool
- Advertising medium
- Your reputation



Potential Clients Must

- **Find** you
- **See** your expertise
- **Feel** comfortable with you



Ethics

- ABA Ethics 20/20
 - Effort to adjust ethical rules for impact of Technology, including:
 - Web
 - Social Media
- Competence includes use of technology
- Most states have adopted



Pennsylvania
Ethics Rule
1.1 fn 8

Competence includes:

“Keep[ing] abreast of changes
in the law and its practice,
**including the benefits and
risks associated with relevant
technology”**

No Need to Panic about Technology

- Be aware of technology you should be using
- Understand and mitigate risks of technology you are using
- Take reasonable precautions to protect data



Back to Marketing

- Who hires you?
- How will they find you?
- Where are they looking?
- What are they seeking?
- Why do they need you?



Be Easy to Find

- Website
- Blog
- Facebook
- LinkedIn
- Twitter
- TikTok
- Numerous other sites





Blogs & Websites

Website –
Center of
online
presence

- Blog
 - Valuable SEO
 - Constantly changing content

SEO – Search
Engine
Optimization

- Google
- Bing



Blog

60% of Internet users read blogs

- 600 million blogs
- <https://ahrefs.com/blog/blogging-statistics/>

37% of law firms report having a blog

- 2022 ABA Legal Technology Survey

Best way to show your

- Voice
- Knowledge

Place for detailed content

- You have control



Content



What questions do people ask at the first interview?

Answer



What is current in the news related to your practice?

Explain



Relevant cases or laws?

Discuss



What interests you as a person?

Share

Blog Post Topics

Consultant

- **Lawyers Don't Need Websites?**
- **Malware Prevention on WordPress Websites and Blogs**
- **Resolve to Backup your Data**
- **Ever thought about building your own computer?**
- **Facebook jumps on the social search bandwagon**
- **Pinterest creates business pages**
- **Twitter sinks a personal injury case**

Personal Injury Firm

- **Why won't a lawyer take my Philadelphia medical malpractice case?**
- **Pennsylvania Fatal Truck Accidents on the Rise**
- **Elder abuse is on the rise in Pennsylvania and across the country**
- **Jury Awards Child \$1.1 Million in a Harrisburg Brain Injury Medical Negligence Case**
- **Strokes and how iPads can help the victim through the process**

Break for Ethics

- Is Social Media Marketing?
 - What is marketing?

“The action or business of promoting and selling products or services, including market research and advertising.”

What Is the Intent?

- Directly seeking clients?
 - Marketing
- Providing broad educational information?
 - Not marketing
- My advice?
 - Assume everything is marketing

Advertising Rules

- Follow advertising rules (7.2)
- Follow rules for all states in which licensed or seeking clients (8.5)



Honesty is Crucial

Rule 7.1 Communications Concerning A Lawyer's Services

“A lawyer shall not make a **false or misleading communication** about the lawyer or the lawyer's services. A communication is false or misleading if it contains a **material misrepresentation of fact or law, or omits a fact** necessary to make the statement considered as a whole not materially misleading.”



What is Misleading?



One office?

Not offices of



One attorney?

Not Smith & Associates



Watch domain
names

Attorney.com
Attorneys.com



Appropriate practice areas



Fee language

Ethics & Marketing Problems



Proper Use of Firm Name

- Virginia attorney called himself & Associates
 - Had no associates
- Listed practice groups that did not exist
- Listed non-attorney as attorney
- Also engaged in other malfeasance which is what brought his advertising to light
- Suspended





Is This Misleading?

- Attorney right out of law school using pictures like this on his site
- Content discusses his substantial experience in numerous areas of practice



Watch Your State's Rules

- Specialization – not an expert unless
 - Patent
 - Admiralty
 - Other approved
- Keep copies for 2 (or more) years
 - Screen shots
 - PDFs
 - Social Safe
 - Backupify





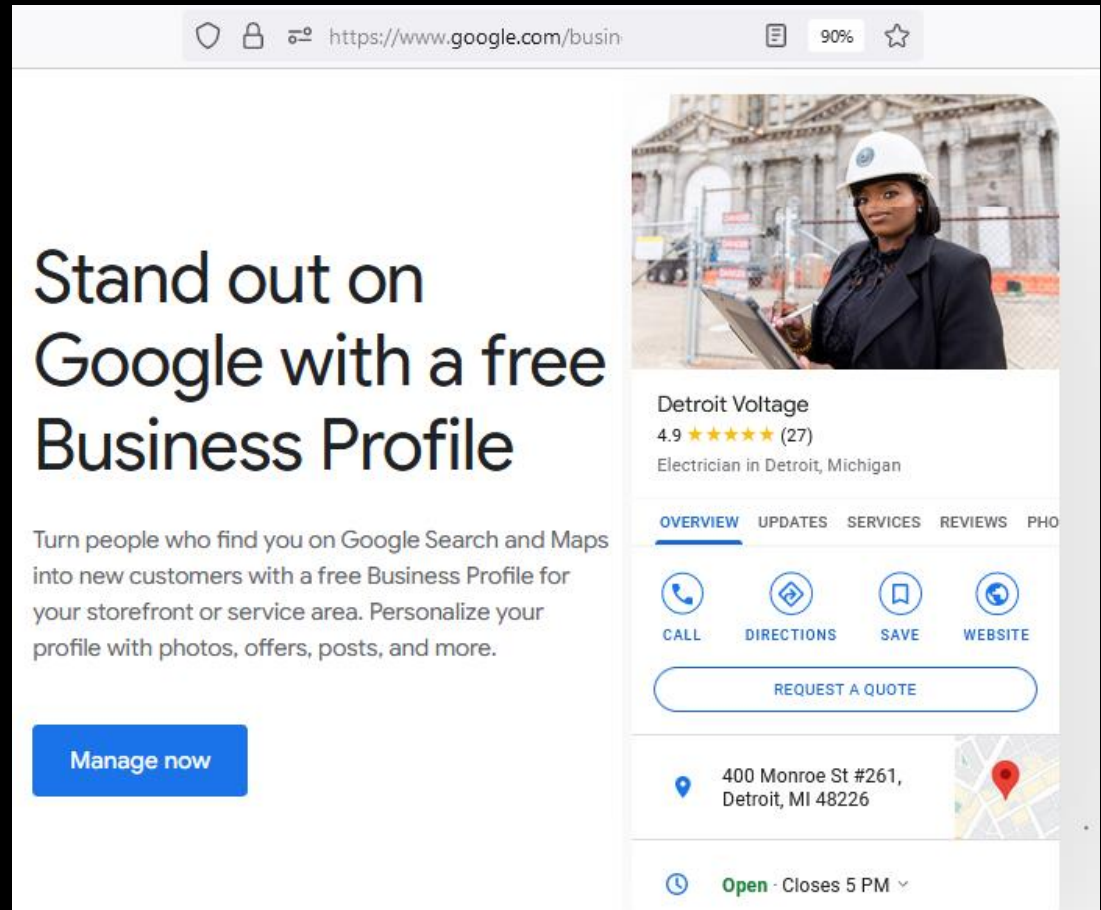
Ethics

Disclaimers

- Not legal advice (informational only)
- Does not form an attorney/client relationship
- Confidentiality concerns
- Geographic limitations
- Other requirements from your jurisdiction(s)
- Sample disclaimers
- <https://good2bsocial.com/social-media-disclaimers-for-lawyers/>

Google Business

- Claim free profile
- Add information and images
- Encourage reviews from happy clients



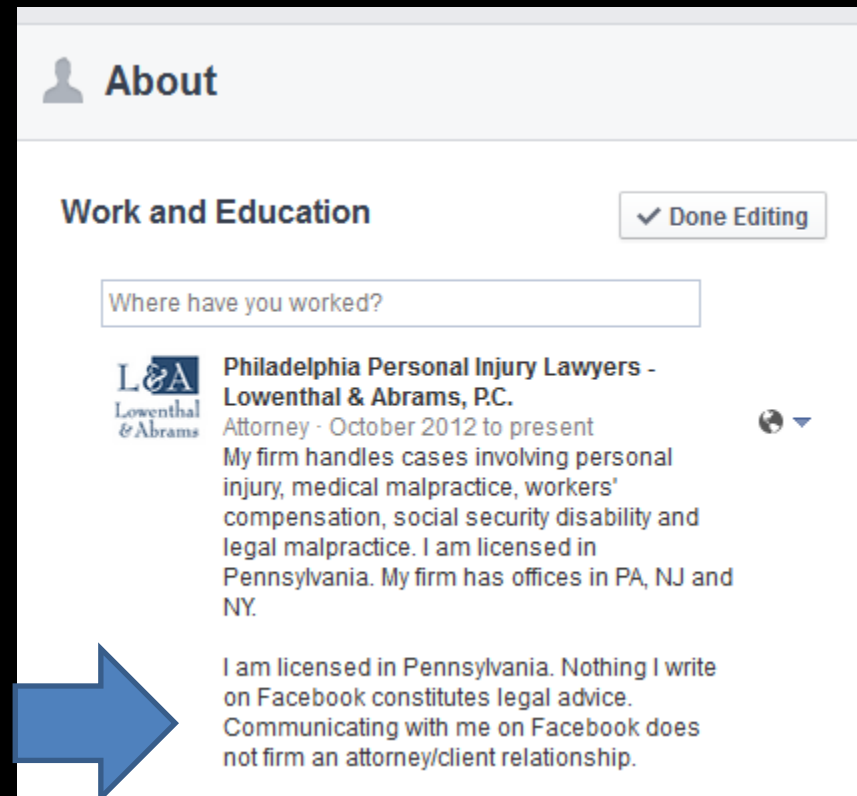


Facebook & LinkedIn

- Use your Facebook and LinkedIn accounts to network with
 - Potential clients
 - Other attorneys
- Facebook = Consumer
- LinkedIn = Business

Ethical Concerns

- Follow all ethical rules
- Put a disclaimer on your account
- Follow terms of service



The screenshot shows a LinkedIn profile's 'About' section. The header 'About' is at the top. Below it is the 'Work and Education' section, which includes a 'Done Editing' button. A text box asks 'Where have you worked?'. Below this is the profile information for 'Philadelphia Personal Injury Lawyers - Lowenthal & Abrams, P.C.', including the firm's logo, the role 'Attorney - October 2012 to present', and a description of the firm's services. A blue arrow points to a disclaimer text at the bottom of the section.

About

Work and Education ✓ Done Editing

Where have you worked?

L&A
Lowenthal & Abrams

Philadelphia Personal Injury Lawyers - Lowenthal & Abrams, P.C.
Attorney - October 2012 to present
My firm handles cases involving personal injury, medical malpractice, workers' compensation, social security disability and legal malpractice. I am licensed in Pennsylvania. My firm has offices in PA, NJ and NY.

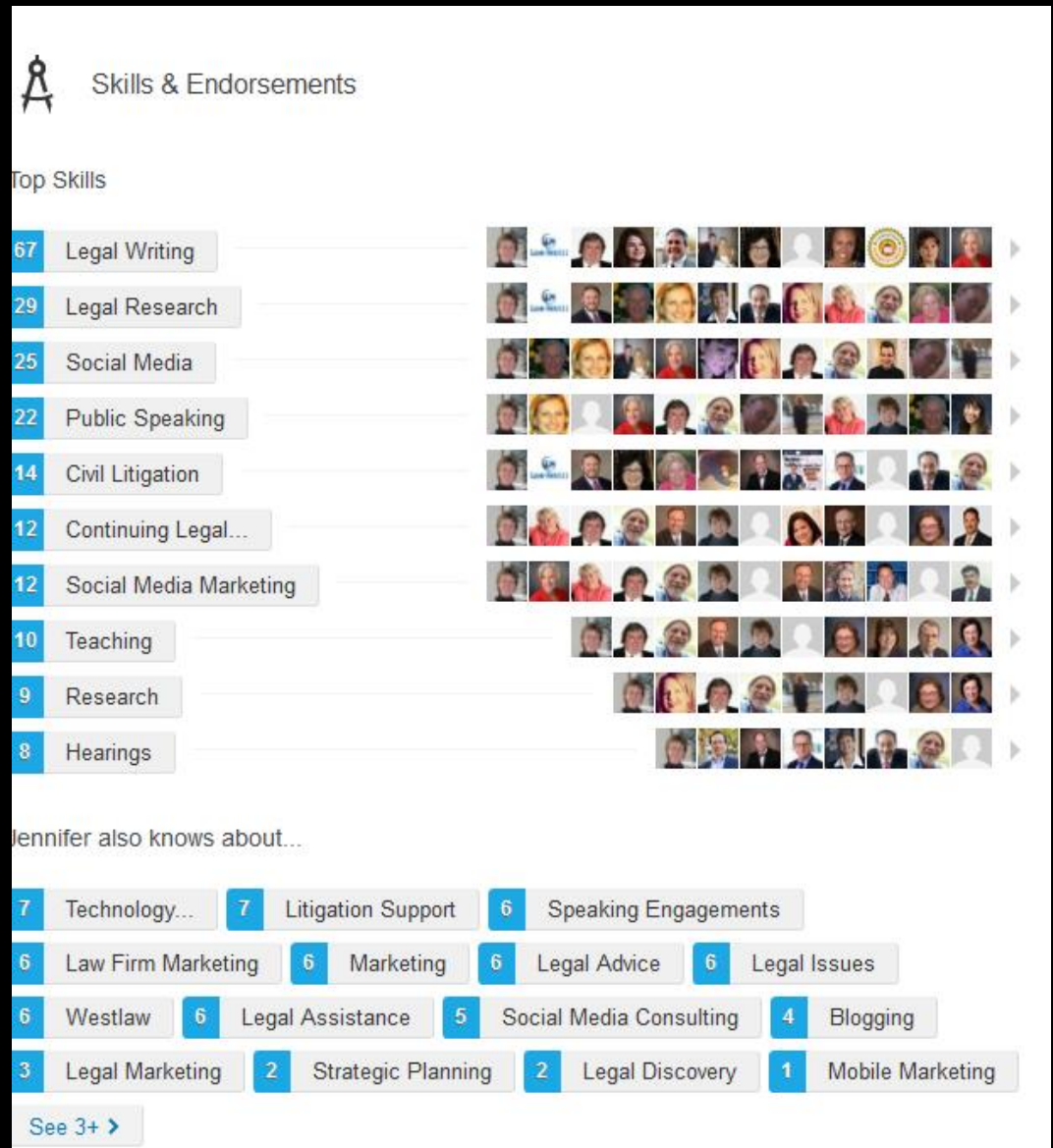
I am licensed in Pennsylvania. Nothing I write on Facebook constitutes legal advice. Communicating with me on Facebook does not form an attorney/client relationship.

Advice for Contacting Jennifer

Nothing viewed on my LinkedIn page serves as legal advice. Nor does viewing this page or contacting me via email or LinkedIn form an attorney client relationship. Please view the full disclaimer on my website at www.jlellis.net for more information.

Skills & Endorsements

- People can endorse you for any skill on LinkedIn
- If you do not have the skill, remove it



The screenshot shows the 'Skills & Endorsements' section of a LinkedIn profile. At the top, there is a header with a wrench icon and the text 'Skills & Endorsements'. Below this, the 'Top Skills' section lists skills with their endorsement counts and a grid of endorsing members' profile pictures. The skills listed are: Legal Writing (67), Legal Research (29), Social Media (25), Public Speaking (22), Civil Litigation (14), Continuing Legal... (12), Social Media Marketing (12), Teaching (10), Research (9), and Hearings (8). Below the 'Top Skills' section, there is a section titled 'Jennifer also knows about...' which lists various skills with their endorsement counts. The skills listed are: Technology... (7), Litigation Support (7), Speaking Engagements (6), Law Firm Marketing (6), Marketing (6), Legal Advice (6), Legal Issues (6), Westlaw (6), Legal Assistance (6), Social Media Consulting (5), Blogging (4), Legal Marketing (3), Strategic Planning (2), Legal Discovery (2), and Mobile Marketing (1). At the bottom of the section, there is a button that says 'See 3+ >'.

Skills & Endorsements

Top Skills

Count	Skill	Endorsers
67	Legal Writing	[Grid of 67 profile pictures]
29	Legal Research	[Grid of 29 profile pictures]
25	Social Media	[Grid of 25 profile pictures]
22	Public Speaking	[Grid of 22 profile pictures]
14	Civil Litigation	[Grid of 14 profile pictures]
12	Continuing Legal...	[Grid of 12 profile pictures]
12	Social Media Marketing	[Grid of 12 profile pictures]
10	Teaching	[Grid of 10 profile pictures]
9	Research	[Grid of 9 profile pictures]
8	Hearings	[Grid of 8 profile pictures]

Jennifer also knows about...

Count	Skill	Count	Skill	Count	Skill		
7	Technology...	7	Litigation Support	6	Speaking Engagements		
6	Law Firm Marketing	6	Marketing	6	Legal Advice	6	Legal Issues
6	Westlaw	6	Legal Assistance	5	Social Media Consulting	4	Blogging
3	Legal Marketing	2	Strategic Planning	2	Legal Discovery	1	Mobile Marketing

See 3+ >

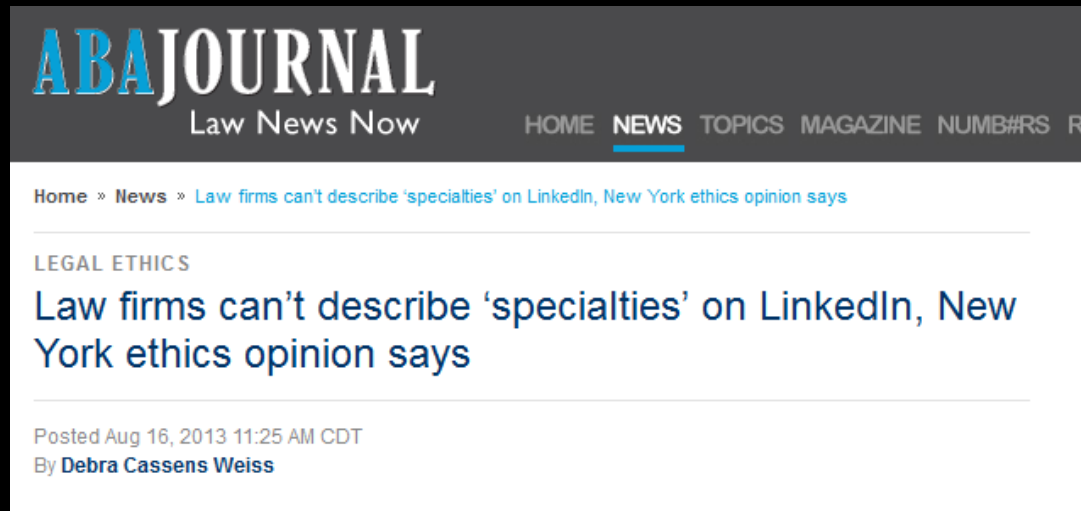
Facebook & LinkedIn




- Create a page for your firm
 - Becomes a mini-website on Facebook
 - Useful tool on LinkedIn
 - Ask employees to connect the pages
 - Encourage followers
 - Provide useful information
 - Share blog posts
 - Communicate and engage
 - Include disclaimers

LinkedIn Page

- Watch for specialties
 - New York ethics opinion forbids use of this tab



Company Specialties

 [Add more specialties](#)

Best Practices for Facebook: Account

- Engage people on your personal account
 - Share only what makes you comfortable
 - If you are not comfortable, don't use your personal account
- I discuss:
 - My pets
 - My work
 - News
 - Other people's posts
 - My blog posts
 - Random facts



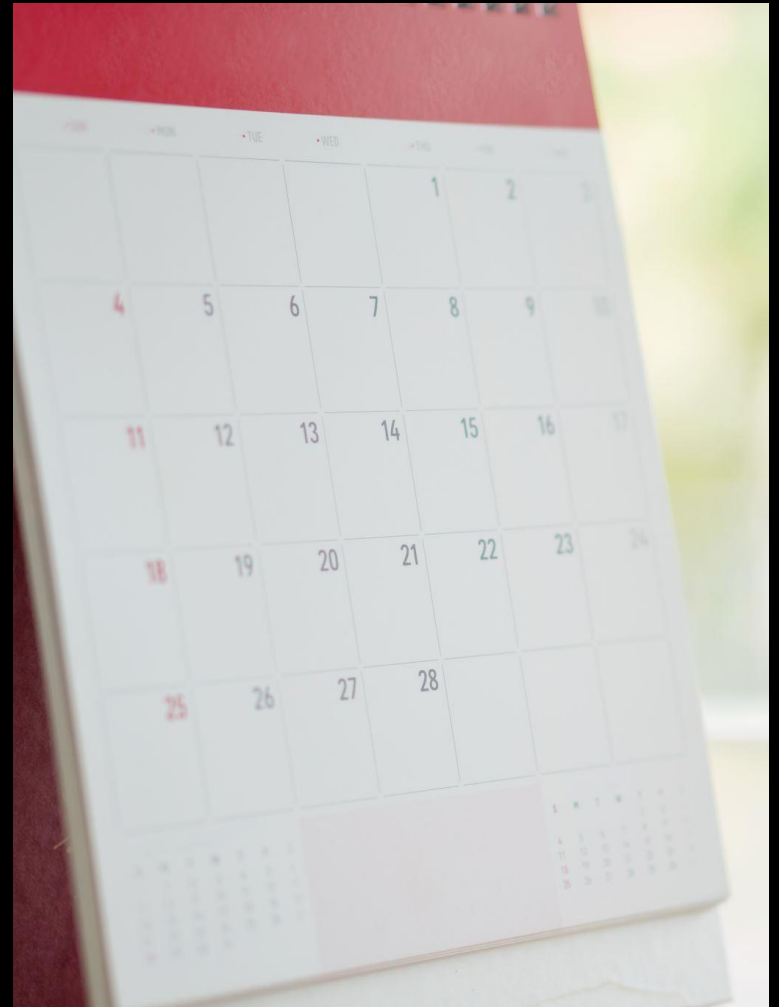
Concerns

- Should you friend clients on Facebook?
 - Depends on how you use your account
 - Very personal?
 - No
 - General?
 - Maybe
- If you are uncomfortable, tell people to like your business page instead
- Another option is to create a separate list for clients and everyone else
 - Lists allow you to limit who sees specific posts.



Best Practices: Facebook Page

- Share interesting blog posts
- Share interesting news
- Encourage conversation
- Don't just use your page as a one-way newsletter
- Have a robust page
- Offer contests and sweepstakes
 - Watch laws and ethics in your state(s)



Break for Ethics

- What kind of posts are ok on Facebook?
 - Watch confidentiality
 - Beware of answering specific questions with detailed advice
 - Keep true to your personality
 - Do not be afraid of controversy, but do not seek it out

Best Practices for LinkedIn

- Keep it professional
 - Avoid sharing personal information beyond work
 - Otherwise risk annoying people
- Do not spam in boxes with ads for yourself
- Be careful about disturbing people you do not know
 - Be very polite
 - Watch the first impression
- Join relevant groups and be active to engage
- Share blog posts
- Share useful information
- Network

Ads on Facebook

- Purchase ads on Facebook
 - Target by demographics
 - Age
 - Gender
 - Marital status
 - Target by interests
 - Pre-existing email lists



Facebook Ads

- Connect
 - Facebook page
 - Increase likes
 - Website
 - Increase traffic
 - Obtain leads



Boost Posts

- Write a post
- Promote it
 - Cost varies from \$5 and up
 - Increases visibility of post, encourages likes and comments



Philadelphia Personal Injury Lawyers - Lowenthal & Abrams, P.C.

Sponsored · 🌐

Your Workers' Compensation check just stopped? What do you do next?
<http://pennsylvaniaworkerscompensationattorney.com/2014/05/20/workers-compensation-check-stop/>



My Workers' Compensation Check Stopped - Now What?

What do you do if all of a sudden your workers' compensation check stops...

PENNSYLVANIA WORKERS COMPENSATIONS ATTORNEY

Potential Audience for this ad: 1,340,000 people


- Location:
 - United States: Allentown (+25 mi), Harrisburg (+25 mi), Philadelphia (+25 mi) Pennsylvania
- Age: 25 and older
- Gender: female
- Not connected to: Philadelphia Personal Injury Lawyers - Lowenthal & Abrams, P.C.
- on News Feed on desktop computers and mobile devices




LinkedIn Ads

- Purchase ads on LinkedIn
 - Target by
 - Job Title
 - Industry
 - Age
 - Location


Ads You May Be Interested In








Pennsylvania Lawyer?
We need Pennsylvania lawyers to help our legal clients. View cases today. >



Become A Google Partner
Be Found by New Clients Today. Show Up on Google Partner Search. >



What's hot in real estate
What's not is the question. See how the Guru is doing 10+ deals a month! >

Advanced

HomeProfileConnectionsJobsInterestsBusiness Services

[Are You a Business Owner? - Apply Now to the National Association of Professional Women. Register Free!](#)

Ethical Concerns

- Are ads on social media ok?
 - Yes, but:
 - Language must be ethical
 - Cannot put disclaimers in ads. May limit use in some jurisdictions





Twitter

- 280-character micro blogging
 - A great way to let people get to know you as a person
 - Share quick bits of information
 - Re-share what other people post
 - Link your Facebook, LinkedIn accounts and Blog to Twitter to get more value for your effort
 - Crucial to engage
- Twitter has been losing a lot of users
 - Future is unknown

Best Practices for Twitter

- Share and share alike
 - Share other people's content, they will share yours
- Give credit where credit is due
- Thank people for their interactions
- Complete your thoughts
 - Watch for portions of your posts being cut off when you use tools to post
- Use hashtags that make sense
- Humor is fine
 - But be cautious



Ethical Concerns

- Twitter is potentially unusable in several states
 - In Florida, each tweet must have:
 - Attorney name
 - Office location

Ethics: Solicitation



- What is solicitation? (Rule 7.3)
 - A solicitation is a **targeted communication** initiated by the lawyer that is directed to a **specific person** and that offers to provide, or can reasonably be understood as **offering to provide, legal services**.
 - In contrast, a lawyer's communication typically **does not** constitute a solicitation if it is directed to the **general public**, such as through a billboard, an Internet banner advertisement, a **website** or a television commercial, or if it is in **response to a request** for information or is automatically generated in response to Internet searches.

Real Time Communication



**Not allowed to use real time
communication**

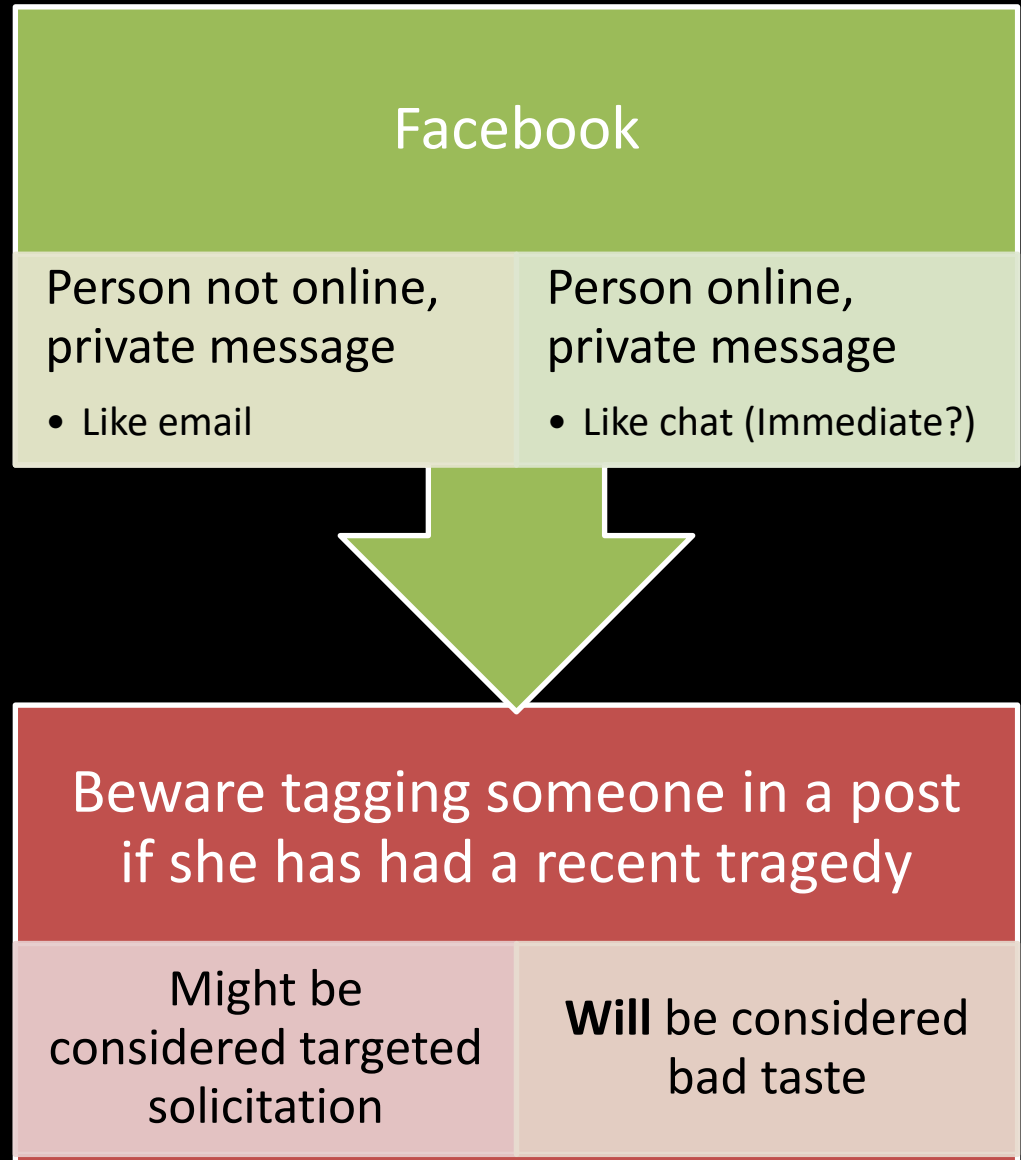
Phone call
Instant chat



Ok

Email
Website
Banners
Social media posts
General chat rooms

Beware!



People Like to Watch

- 1.5 billion unique users each month
- Use video to help people see you
 - Allows people to connect
 - Provides a different form of content
 - Excellent SEO
- Share by embedding



Best Practices for YouTube

- Use videos to:
 - Let people get to know you
 - Short bios
 - Other useful information about you
 - Educate people
 - Brief question and answer sessions on your practice area(s)
 - Use keywords in description and title as well as designated area
- Share videos throughout your network



- Popular site among laypeople for finding attorneys
 - 8 million visitors per month
 - 97% of US attorneys listed
- Controversial among attorneys
 - Cannot unclaim your listing
 - Not always clear how ratings are established

Edit my profile

View my profile

View profile with: Primary Introduction



Experience

Industry Recognition

Professional Conduct

[What is the Avvo Rating?](#)

PORTFOLIO

CONTRIBUTION



Contributor Level 17

Answers:	2,636	Legal Answers
	97	Best Answers - chosen by asker
	1,335	Answers marked "I agree" by other lawyers
	332	Answers marked helpful by other users

Guides: 3 Legal Guides

AWARDS

Award Name	Granting Organization	Date
Award for Professional Excellence - Marketing	Association for Continuing Legal Education	2011
John Day Memorial Award for Technology	Association for Continuing Legal Education	2008

See all 8 awards

ASSOCIATIONS

Position	Association Name	Duration
Vice Chair, Diversity & Inclusion - Law Practice Division	American Bar Association	2014-present
Secretary	GLBT Rights Committee - Pennsylvania Bar Association	2013-present
Member	Montgomery Bar Association	2013-present
Publication Committee - Law Practice Division	American Bar Association	2012-present
	Pennsylvania Bar Association Solo and Small Firm Practice Section	2012-present
	PBA Women in the Profession Committee	2011-present
	Pennsylvania Bar Association	1999-present
	American Bar Association	2012-2014
	American Bar Association	2012-2013
	Dauphin County Bar Association	2012-2013

OVERVIEW

PRACTICE AREAS

FEES AND
PAYMENT TYPES

CONTACT
INFORMATION

LANGUAGES SPOKEN english

ABOUT ME



Best Practices for Avvo

- Claim your listing if:
 - No disciplinary problems
 - Robust profile
- Complete the listing
 - Profile affects score
- Get endorsements
 - Endorsements affect score
- Seek reviews
 - Reviews do not affect score
- Answer questions
 - Increases findability
- Follow terms of service
- Include disclaimer

Attorney/Client Relationship (5.5)



- Be careful about answering questions in comments (or on other sites)
 - Do not want to inadvertently form attorney/client relationship
 - Practice in state where not licensed
- Suggest people call you instead of answering online when appropriate

What is an Attorney/Client Relationship?

- Formed when a client has reason to believe the attorney is handling his legal interests
 - Express or implied
- Standard is **objectively reasonable belief**

Online Attorney/Client Relationship

- No cases yet involving unintentional formation of attorney/client relationship through Avvo, comments on blogs or similar locations
- Be careful about how specific you are when offering information
- Be broad about the concept as opposed to offering detailed advice on what the person should do
- Encourage person to contact a lawyer in his jurisdiction
- Use a disclaimer

Unauthorized Practice

Rule 5.5 Unauthorized Practice Of Law; Multijurisdictional Practice Of Law

- (a) A lawyer **shall not practice law** in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so.
- (b) A lawyer who is not admitted to practice in this jurisdiction **shall not:**
 - (1) except as authorized by these Rules or other law, establish an office or other systematic and continuous presence in this jurisdiction for the practice of law; or
 - (2) **hold out to the public** or otherwise represent that the lawyer is admitted to practice law in this jurisdiction.

Other Question/Answer Sites

- Beware sites that do not follow ethical rules
 - Fee splitting with non-lawyers (Rule 5.4)
 - On sites which provide payment
 - Answering questions without
 - Detailed information – risk giving bad information
 - Conflict checking – risk representing the wrong side
 - Location information – unauthorized practice of law
 - Review terms of service
 - Use appropriate disclaimers
 - Encourage questioners to retain a lawyer

Lead Generation Sites Fine

Rule 7.2

A lawyer **may pay others for generating client leads**, such as Internet-based client leads, as long as the lead generator does **not recommend the lawyer**, any **payment** to the lead generator is **consistent with Rules 1.5(e)** (division of fees) and **5.4** (professional independence of the lawyer), and the lead generator's communications are consistent with **Rule 7.1** (communications concerning a lawyer's services). To comply with Rule 7.1, a lawyer must not pay a lead generator that states, implies, or creates a reasonable impression that it is recommending the lawyer, is making the referral without payment from the lawyer, or has analyzed a person's legal problems when determining which lawyer should receive the referral.

Geolocation



- Where are you?
- What are you doing?
- Not great for clients
 - Confidentiality issues
- Good for attorneys
 - Speaking on x at y
 - Networking
 - At PBA event for Estate and Elder Law Attorneys

Geolocation Ads

- Ads identify when potential customer is in a specific area
 - Also called geofencing
 - Critical to consider
 - Location
 - Potential impact on client emotionally
 - Privacy concerns

Reviews

- Numerous opportunities for reviews online
 - Google Business
 - Facebook
 - Avvo
 - Yelp
 - Put on your website

Specific Ethics Concerns

- Do not give away anything in exchange for a review
- Some states do not allow testimonials at all
- Others have specific requirements
 - Example, PA may not have a celebrity endorse you
 - Probably ok to have a past client who happens to be a celebrity review you though

Ethics and Reviews

- Responsible for the content
 - Cannot state “this attorney will win for you” or other promises
 - If you cannot edit content, respond to clarify
- Bad review?
 - Best to respond politely
 - Do not share confidential information to defend yourself

Attorney in Trouble

- “This is simply false. The person did not reveal all the facts of his situation up front in our first and second meeting. [sic] When I received his personnel file, I discussed the contents of it with him and informed him that he would likely lose unless the employer chose not to contest the unemployment (employers sometimes do is [sic]). Despite knowing that he would likely lose, he chose to go forward with a hearing to try to obtain benefits. I dislike it very much when my clients lose but I cannot invent positive facts for clients when they are not there. I feel badly for him but his own actions in **beating up a female coworker** are what caused the consequences he is now so upset about.”

Suing Over Bad Reviews

- Watch for the Streisand Effect
- Barbara Streisand sued to have an image of her house removed from the Internet
 - Resulted in greater publicity and a lot of insults
- Lesson learned?
 - Suing rarely works

Connect Everything



- Provide links to all of your accounts and your Website everywhere you can
- This will provide the maximum opportunity for people to find and research you

Managing Time

Tools such as
HootSuite help

Automatically
connect sites
when appropriate

How to Behave

- Be Aware That Professional Versus Personal Conduct Does Not Matter on the Web
- All Content Will Impact You and Your Career

Watch Jokes Remember No One Can See or Hear You

- No body language or vocal inflection
- Different senses of humor
- What is a joke to one person is an insult or a threat to another

Indiana Deputy AG Fired Over Disconsin Tweet

Posted: Wednesday, 23 Feb 2011, 6:30 PM EST
Updated: Wednesday, 23 Feb 2011, 6:30 PM EST

(NewsCore) - A deputy attorney general in Indiana was fired Wednesday after he tweeted that police should use "live ammunition" against labor union protesters, The Indianapolis Star reported.

The controversy first erupted Saturday, after staffers of a liberal magazine Mother Jones tweeted a request that police might clear protesters out of the White House grounds. In response, Deputy Attorney General Disconsin posted the tweet using the Twitter account, "Indiana Live Ammunition."





General Business Concerns

- Encourage firm's attorneys to use social media
- Encourage someone to keep track of all social media for the firm
- Have clear policies on social media use

Employees

- Make employees understand that they are not allowed to post on behalf of the firm unless it is part of their job
- Make it clear that if someone violates client confidentiality he will be punished (up to and including termination of employment)
- Lawyers are responsible for their employees' actions (Rule 5.3)



Prepare for Problems

- Have a plan for responding to problems
- Empower someone to respond in an emergency
 - Waiting is not an option
 - Know when not to respond (things are out of control and people are ganging up)
 - Know when to respond
 - Legal issues
 - Harassment concerns

Final Thoughts on Marketing


- Do not be afraid of social media
 - It is a powerful marketing tool
 - It is a powerful networking tool
 - Simply be sure to remember that many people will see what you post
 - Obey the ethical rules
 - Obey advertising laws

Use in Litigation



What is Available? Everything

- People provide a lot of information online
 - Intentionally
 - Accidentally
 - How?
 - Social Media
 - Advertising Trackers
 - Blog Posts
 - Blog Comments
- 

A large black circle is the central focus, containing white text. To the left of the circle, a dashed purple line curves upwards. Surrounding the circle are various colorful abstract shapes: a blue cloud-like shape at the top left, a green one below it, an orange one at the bottom left, a large red heart-like shape to the right, and a teal one below that. The background is white with faint, thin black lines.

Famous Last Words Before a Career Was Destroyed

“I thought it was private”



Social Media Can Destroy Cases

- Twitter
 - Client posted pictures and discussed how she was enjoying life and becoming used to a scar
 - Low verdict
- Blog & MySpace
 - Woman posted about belly dancing despite claiming a serious injury
 - Angry judge, loss of substantial alimony

Social Media Can Destroy Cases

+

•

0

- Facebook

- People claim serious injuries and show contradictory information on Facebook
- Decreases settlement strength and value of case. Sometimes results in lost cases.

Advice

- Discuss social media use with your clients
- Instruct clients to stop using social media
 - Explain that anything can impact a case
 - Explain client cannot delete content
 - Discuss privacy settings
 - Have clients sign off on your warning





Advice

- Review client's social media account immediately
- Review opposing side's social media account immediately
 - Preserve relevant information
 - Obey ethical rules
 - Obey the law
 - Do not hack websites
 - Watch using passwords provided by clients to other people's accounts
 - They could have obtained them illegally



Ethics of Social Media in Litigation PBA Opinion 2014-300

- Can review openly viewable data from opposing side
 - Cannot friend opposing side
- Two NJ attorneys in trouble for friending opposing client
- Numerous guidance opinions



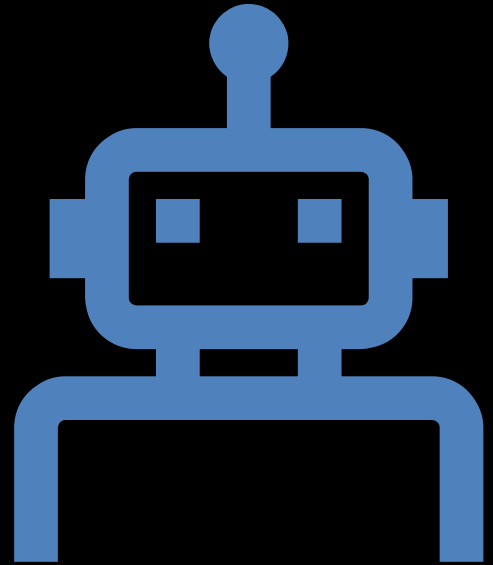
Ethics of Social Media in Cases

- Can friend witnesses
- Must make it clear who you are
 - District attorney fired for friending witnesses, pretending to be ex-girlfriend of defendant
- Can research jurors
 - Must not communicate with jurors
 - Includes friending

Spoliation & Social Media

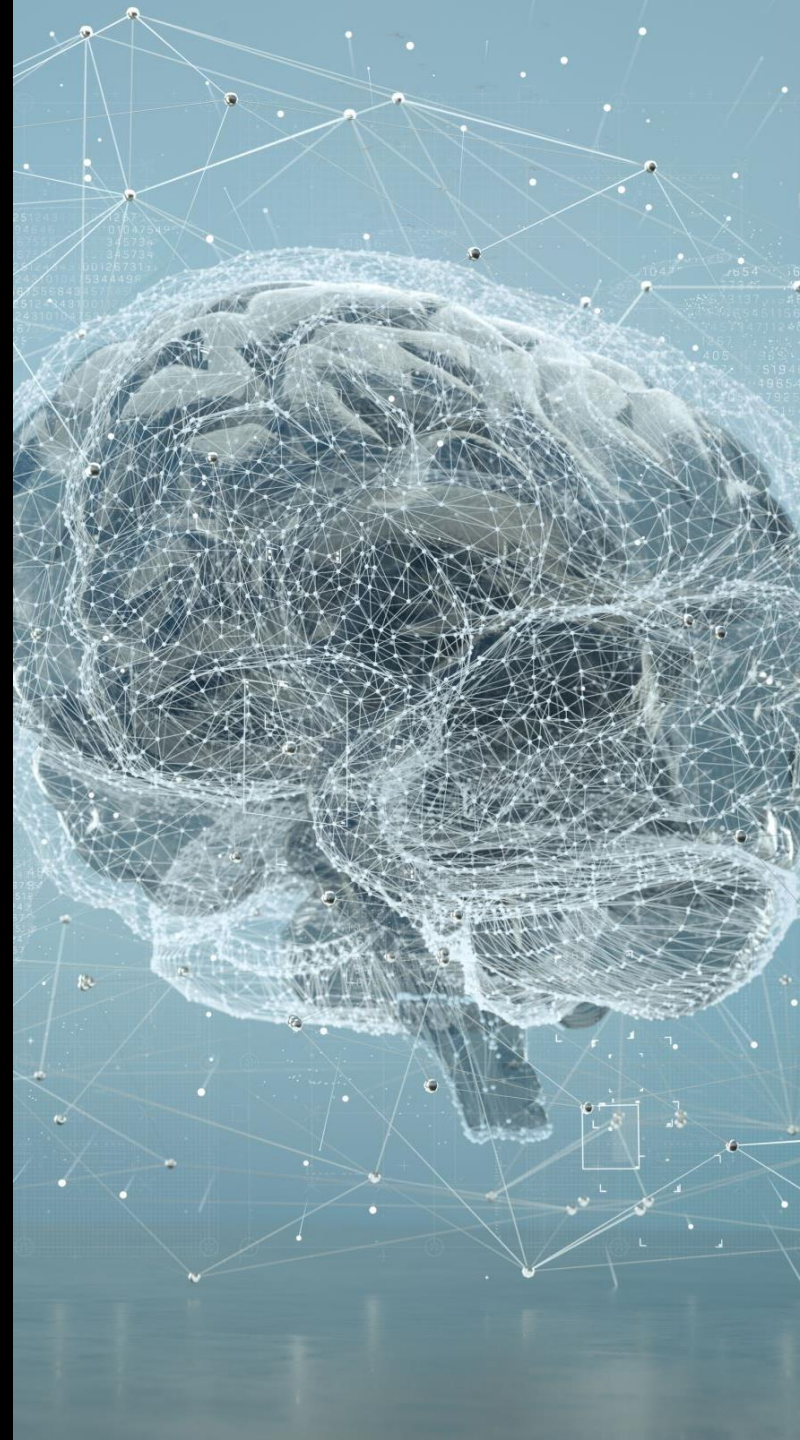
- Preserve before deletion
 - Adverse inference for deletion – *Gatto*
 - \$700k in sanctions – *Sprouse*
 - *Disciplinary Charges*
- Can:
 - Change privacy settings
 - Disable account
 - Delete if properly preserved
 - Many sites allow for accounts to be downloaded

Artificial Intelligence



What is Artificial Intelligence (AI)

- AI is the ability of computer systems to perform tasks that normally require human intelligence.
- It is a simulation of human intelligence processes by machines, especially computer systems.
- The goal of AI is for the technology to autonomously make decisions and carry out actions on behalf of a human being



Types of Artificial Intelligence

- Current functions of AI are referred to as weak or strong.
 - Weak AI performs a limited set of predetermined functions.
 - Also called Narrow AI
 - Strong AI can function autonomously according to a wide set of stimuli
 - Has greater functionality than weak
 - Also called General AI
 - Super AI will be capable of exceeding human intelligence.
 - Currently, Super AI is still in the realm of science fiction though it is likely to become scientific fact in the future.



Categories of Artificial Intelligence

- Four major categories
 - Reactive uses real-time data to make decisions
 - Think GPS in your car offering up-to-the minute changes due to traffic information
 - Limited memory uses stored data to make decisions
 - ChatGPT uses stored memory
 - ChatGPT currently has limited knowledge after September 2021

Theory of Mind

- Theory of Mind (ToM) can consider subjective elements such as user intent.
 - “ToM is the ability to infer and understand another's mental state (the beliefs, thoughts, intentions and feelings of another), and use this information to explain and predict human behavior.”
 - <https://www.sciencedirect.com/topics/neuroscience/theory-of-mind>
 - ToM tests show that OpenAI GPT-3.5 is beginning to pass ToM tests at the level of a 9-year-old child.
 - Psychological tests that are normally performed on humans were used on OpenAI GPT 3.5
 - “The tests showed that OpenAI was capable of adding extra detail that showed a surprising level of understanding.”
 - <https://www.discovermagazine.com/mind/ai-chatbot-spontaneously-develops-a-theory-of-mind>
 - This ability seems to have spontaneously developed.
 - Scientists do not know if this means AI has established ToM or if it has found another way around the issue that is specific to computers.

Self-Aware

- Self-aware is the fourth category of AI. It is still in the realm of science fiction.
 - The fears of humanity related to AI often focus on this fourth stage.
 - What would happen if AI became self-aware?
 - We do not really know.

Some Ways AI is Being Used Today

- AI is not new we have been using it for quite some time.
- The recent attention to AI comes to us due to high profile launches of AI art creation and other tools such as ChatGPT.
- These tools have enabled the average person to use AI in ways that were previously unavailable.
- Users can now directly access AI tools instead of simply using already existing services that use AI to provide things it thinks will interest or aid the end-user.



AI Is Used In

- Entertainment
 - Streaming
 - Creation
- Voice Assistants
 - Siri
 - Google Home
 - Alexa



- GPS for cars and robots
- Vehicles
- Marketing
 - Copy
 - Videos
 - Graphics
 - Tracking
- Art

Art

- There are a number of tools that allow users to type in words and create a picture. The image is an entirely new picture, based on what the AI learned by reviewing other images.
- This image was created with NightCafe
- I typed in “Lawyers in a room watching a seminar on Technology”
- I used two different style options for these photos.



Graphic Design

AI is fundamentally changing graphic design. It is much easier to use AI to create a new logo or sign than it is to have someone take the time to create something for you.

There are free and low-cost sites that you can use for graphic design

Learning to use these tools to get what you want takes practice



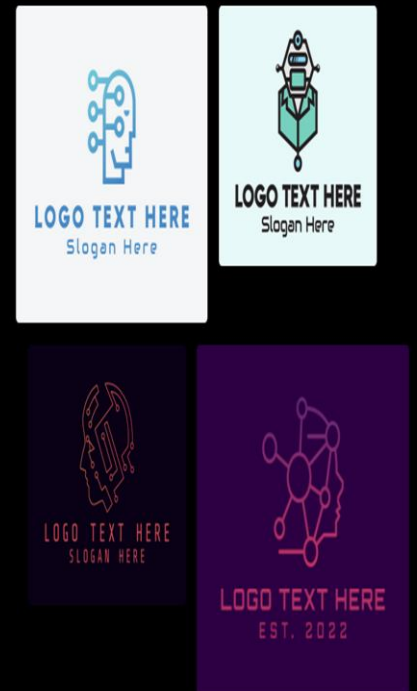
My Account

Ai Logos

Try BrandCrowd for Free! The World's #1 Ai Logo Maker.

Pennsylvania Bar Institute

CREATE LOGOS



More Areas for AI

Medicine

Security & Fraud Prevention

Insurance & Banking

Robotics

Military

Agriculture

Manufacturing

Customer Service

AI is Not New in the Legal Profession

- For some years lawyers have used AI
 - Document Review
 - Technology Assisted Review (TAR)
 - Research
 - Westlaw Edge understands the meaning of words
 - Quickcheck looks for missing arguments and other issues
 - Contract and Document Analysis
 - Proofreading and Document Organization
 - Template Creation
 - Due Diligence

AI Improves Efficiency

- AI can speed up the discovery process decreasing costs
- Legal research that would take days for even a skilled attorney can be conducted at a much faster pace. Minutes to hours instead of days or weeks.
- Identify errors in contracts for missing information or inconsistent/incorrect language
- Risk assessment is sped up. TAR uses predictive coding that enables lawyers to identify risks early on allowing them to better alert their clients and provide better and more timely advice.
 - These tools enable law firms to quickly find relevant information
 - Receive alerts when relevant information is newly released
 - “Define the universe of data and custodians” so they can be properly protected



AI Does Not Get Bored or Distracted It Reduces Errors

- Human beings get distracted, bored, and make mistakes. AI does not get distracted or bored. It is less likely to make mistakes when properly trained.
- This results in the potential for error-free documents
 - Maintaining cross references throughout the document's life
 - Consistent use of language even if several different lawyers drafted the document
 - Comparison and automatic learning with contract comparison tools can find missing clauses and conditions as well as inconsistently used terminology or terms that are not yet defined in a single document or a pool of related documents.



Organization and Logic

- AI helps find holes or gaps in documents including in legal analysis
 - AI learns from repeated analysis. As AI learns from your firm it can help with original contracts but can also in future but similar contracts or documents decreasing drafting time.
 - It can find missing terms, definitions and the like
 - It can fix logical connections that have not been properly established in legal memos to strengthen any weaknesses in the arguments
 - These tools enable attorneys to switch rapidly and easily between different aspects of a document to improve the structure and logical flow

Attorneys Can be More Creative and Persuasive

- Will AI replace attorneys? Some of us, perhaps.
All of us, No.
- AI enhances our abilities by leaving us time to focus on the true brain work leaving us free from the drudgery of the more routine aspects of our profession.
- It enables us to focus on what AI lacks
- AI allows us to conduct research even to the degree of looking at how potential risks and alternative theories impact a case
- We can rapidly conduct “comparative analysis between cases in different states or between state and federal courts”
 - Something that used to take days of scanning now can be done in minutes or hours



Increase Work/Life Balance and Reduce Stress

- Some aspects of attorney work can be tiring and tedious.
 - Document review
 - Proofreading
 - Legal research
 - Lower-level review
- We can better focus on intellectual analysis which AI cannot do
 - This tends to “dramatically improve attorney work satisfaction”
- However, it is important to remember that AI is not a replacement and still requires review by attorneys to make certain the created work is both ethical and competent.



Client Relations

- Chatbots can handle initial interviews with clients
- AI can provide data about clients, make certain everything you need is at your hands
 - Data can be automatically stored in the client's file decreasing the need for data-entry.
- Lawyers can focus on clients, have more time to communicate and keep clients informed more rapidly.
- Decreases potential for mistakes or inconsistent results.
- It can also help create blog posts and newsletters to be shared with clients
 - One of the biggest problems lawyers have keeping their websites current is the time necessary to draft content.

An abstract background graphic on the left side of the slide. It features a dark blue background with a white line graph and orange bars. The line graph has several data points connected by lines, with some points highlighted in white. The bars are orange and have white outlines. There are some numerical values visible, such as '183.102' and '154.1', and a small '23' at the bottom. The overall style is modern and tech-oriented.

Generate Content and Analyze the Results

- AI's improved algorithms including OpenAI GPT-3 substantially increased what AI can do for lawyers
 - Predict tokens in sequence (audio or text)
 - Take data in context and create results that “seem natural expected and harmonious”
 - Enabled pre-trained tools “using almost 300 billion parameters and half a trillion words”
 - Substantially increases creative writing and journalism with generative text
 - Short prompts to AI enables it to create a story, article, report, or memo
 - AI is not perfect, and it does not understand the way humans do. This can result in odd or random results



Training AI

- AI must be trained to aid lawyers.
 - Machine learning, a subset of AI, is improving and enabling more advanced assistance in complex activities.
- Some companies are starting to do this training so when you purchase their tools, they are less likely to make mistake than non-legal specific tools such as ChatGPT.
- AI improves with learning and the training process is much faster than it used to be
 - Consider tools such as Dragon Naturally speaking which required substantial training at the beginning.
 - These tools can be improved so that less basic learning is required at the start of its use in a law firm.
 - This speeds up implementation and ease of use.



Increased Ability to Predict Outcomes

- Lex Machina “predict[s] the behavior of judges, lawyers and parties with Legal Analytics”
 - <https://lexmachina.com/>
- Provides “legal analytics for federal courts of appeals” which “gives users an end-to-end overview of what happens during litigation, from trial all the way through appeal.”
- Outcome Analytics™ “provides damages findings, resolutions and remedies”
 - This helps attorneys understand what happened in a case
 - Or what might happen in a case

Lex Machina (Continued)

- Case List Analyzer™ looks for cases that are similar to yours. The tool contains practice-specific filters and tags which allows you to “quickly and easily” find relevant cases and “[B]uild [a] comprehensive case list based on [the] actual pleadings”
- Quick Tools compares judges, parties, and law firms to help you create better motions. It can also compare and analyze expert witnesses.
- Attorney Data Engine™ “[C]orrects and adds missing counsel data producing an accurate record of the appearances of your lawyers and your opponent.”
- Sources are transparent so you can see what your work is based on. This includes underlying documents along with definitions of words and sources of data.

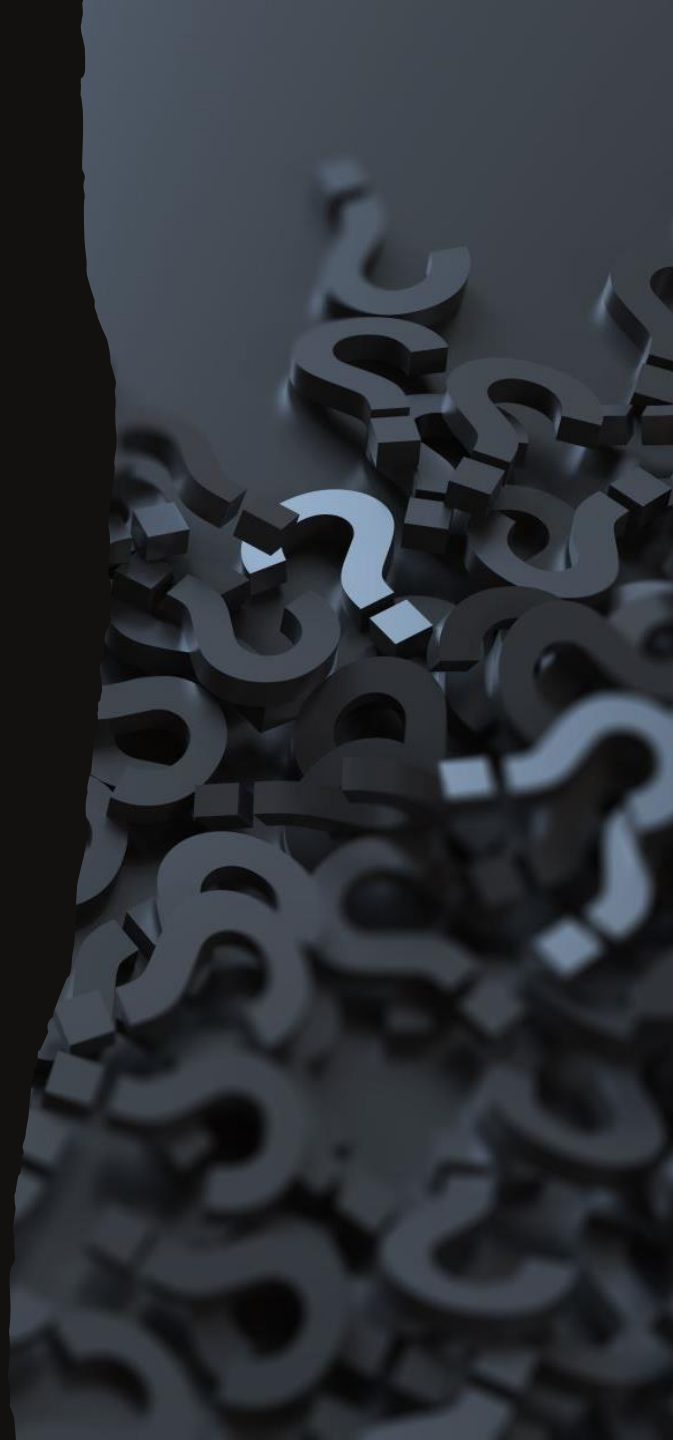


Litigation

- AI can create visual aids for use in litigation or client pitches
- “During trial AI can analyze a trial transcript in real time and provide input to attorneys that can help them choose which questions to ask a witness”
 - <https://www.brookings.edu/blog/techtank/2023/03/20/how-ai-will-revolutionize-the-practice-of-law/>

CoCounsel and Casetext (Announced March 2023)

- Based on OpenAI with GPT-4 CoCounsel helps attorneys by allowing them to ask questions they might previously have asked of a junior associate.
 - Instead of asking the associate to research what courts in a specific jurisdiction have handled similar cases, lawyers can ask AI
 - But remember a human being still needs to check the results
- Included in its tools, this service can “handle an array of critical tasks ... at superhuman speed...”
 - Legal research and deposition preparation
 - Provides complete answers with sources in seconds
 - Can create an outline based on completed depositions
 - Minimize risk of missing details during document review
 - Including evaluation for privilege
- Automate contract revision
 - Upload contracts and appropriate policies. In return you will see relevant clauses, conflicts, risks, and recommended revisions.



AI as Judge?

- AI is already advising judges on bail and sentencing. COMPAS, the Correctional Offender Management Profiling for Alternative Sanctions, and similar tools are being used in many states.
- These tools examine risk of recidivism, help make pre-trial detention decisions, and aid in determination of sentencing and early release.
 - There are many concerns about the fairness of these tools
 - Including racial bias.
 - There are concerns that people will think a computer-generated recommendation must be fair, but bad data in equals bad results out.
 - Much AI lacks transparency and therefore it is difficult to know what it is using to make recommendations. This leads to what is called automation bias.
 - <https://businesslawtoday.org/2022/02/how-ai-is-reshaping-legal-profession/>

AI as Lawyer

- A website called DoNotPay helps users fight traffic tickets.
 - The company recently tried to use its AI to act as a lawyer in a case. This was not allowed by the court.
 - <https://www.npr.org/2023/01/25/1151435033/a-robot-was-scheduled-to-argue-in-court-then-came-the-jail-threats>
- AI is not a licensed attorney and cannot practice law. Nor does it have the capabilities to competently practice law now.
- Past opinions on tools such as LegalZoom have warned that AI may not be used to replace a lawyer and can easily end up engaging in unauthorized practice of law.

Large Firms are Using AI

- Top law firms are already using AI to help increase the speed of complicated deals such as mergers and acquisitions.
 - This includes Shearman & Sterling, White & Case, and Orrick.
- The founder of Evisort created his company to help minimize the “tedium of due diligence” that he experienced as a young M&A lawyer.
- Large firms are working with companies that use OpenAI to create firm specific tools to improve their law practice management, decreasing the need for lawyers to focus on such tasks.
- Shearman uses Kira from Litera for due diligence
- White & Case uses AI to help with document review for discovery.
 - Brainspace and Relativity are two tools White uses
- <https://www.businessinsider.com/big-law-firms-using-ai-fast-track-ma-deals-work-2022-10>



In Summary

- AI can be used to
 - Conduct legal research
 - Improve document management
 - Increase the speed and efficiency of eDiscovery
 - Draft and review content
 - Provide legal information and advice
 - Engage in predictive analytics
 - Create images
 - Aid in due diligence research
 - Assistant in marketing and CRM
 - And more

Problems with AI

- Some see AI as the next big thing. Others see it as an entry to the world of the Terminator
- At this point it is difficult to state what the far-reaching consequences will be, but there are acknowledged problems with AI.

Create an image from text prompt

dystopian society with artificial intelligence



Image generated by Deep AI

FTC is Concerned

- In 2022 the FTC issued a report to Congress warning about use of artificial intelligence.
- It sought to warn Congress that AI should be used with “great caution” and that use of AI comes with problems and limitations.
- This includes significant concerns that AI tools can be inaccurate, biased, and even discriminatory by design.
- Also, there are concerns that AI will incentivize relying on commercial surveillance for greater information on consumers.
- AI, the report notes, is not a “solution to the spread of harmful online content” which requires “broad, societal effort” and not a reliance on new technology.
- Congress is focused on how to deal with the many problems that illegal or manipulative content can create such as stalking, fake reviews, drug sales, gate crimes, harassment, misinformation campaigns and more.
- <https://www.ftc.gov/news-events/news/press-releases/2022/06/ftc-report-warns-about-using-artificial-intelligence-combat-online-problems>

Problems with AI

- I have had many conversation about AI. An early one involved the current President of the Pennsylvania Bar Association, Jay Silberblatt
 - Jay told me he asked ChatGPT an ethics question. The result looked great initially, it even included a cite to a case.
 - The problem? The case did not exist, ChatGPT just made it up.
 - Tools such as ChatGPT answer questions with what seems like great confidence, regardless of whether the answers are correct.
 - In addition, these tools will make things up because they learned that certain things are necessary, such as legal citations. ChatGPT does not understand the context for those citations.
 - Lawyer specific tools do a better job with this problem, but it remains critical to check the work.
- Art AI tools frequently include random squiggles in pictures it creates.
 - Analysis tells us that the AI is reproducing the signatures it sees in art without understanding what their purpose is.

Bad Data In Equals Bad Results Out

- AI can be biased if the data it is trained on is biased.
 - AI tends to be designed and trained by a narrow spectrum of people.
 - This frequently results in problems that the narrow spectrum did not consider.
 - Law students taking the bar at home were sometimes missed because AI could not see their darker skin
 - <https://venturebeat.com/business/examsofts-remote-bar-exam-sparks-privacy-and-facial-recognition-concerns/>
- The difficulty identifying black individuals has been analyzed by numerous entities including the federal government, the Gender Shades project, and the European Conference on Computer Vision.
 - AI does the worst with black women.

Bias in Hiring

- In 2015, Amazon attempted to create an AI tool to help with hiring.
- The tool favored white men, even downgrading women whenever the words woman or women appeared in their resumes such as a major in women's studies. It also downgraded women who went to women's colleges.
- "Amazon's computer models were trained to vet applicants by observing patterns in resumes submitted to the company over a 10-year period."
 - Most of these resumes came from men
 - This essentially means that Amazon's system "taught itself that male candidates were preferable"



- The tool even recommended unqualified candidates with what seemed like random results.
 - It “favored candidates who described themselves using verbs more commonly found on male engineers’ resumes, such as ‘executed’ and ‘captured’.”
 - This is because the AI focused on what it deemed important and not necessarily what was important.
- Amazon tried to edit the programs to make them neutral but there is no guarantee that the AI will not revert to its prior errors. Even programmers do not necessarily know why AI makes the recommendations it makes because AI makes decisions on its own.
- Amazon to its credit did not use the tool
 - <https://www.reuters.com/article/us-amazon-com-jobs-automation-insight/amazon-scrap-secret-ai-recruiting-tool-that-showed-bias-against-women-idUSKCN1MK08G>

Bias in Hiring (Continued)

- Without analysis those involved in hiring may not know that the AI is making biased recommendations.
- AI is often not transparent
 - End-users do not know the basis of recommendations
 - Even the programmers do not necessarily know
- This can and likely will lead to lawsuits based on discriminatory hiring choices
- This has not stopped companies from using AI to make hiring decisions.
 - The CEO of HireVue is using facial recognition and speech analysis in video interviews.
 - Goldman Sachs created a resume analysis tool that seeks to match candidates with the best fit for the company.
 - LinkedIn, which is the “world’s largest professional network” offers algorithmic rankings of candidates based on their fit for job postings.
 - LinkedIn claims that the service does not replace traditional recruiters
 - The vice-president of talent solutions noted that he would not trust AI to make hiring decisions on its own because the technology is not ready
- Amazon is ready to try again. It is now attempting to develop a new tool that focuses on diversity.

Bias in Other Areas

- As with AI in hiring the data used by AI in the criminal justice system likely has similar biases.
- The ACLU is currently challenging the use of AI in a variety of places due to its potential lack of fairness and transparency.
- It notes that there is “ample evidence of the discriminatory harm that AI tools can cause to already marginalized groups.”
 - <https://www.aclu.org/news/privacy-technology/how-artificial-intelligence-can-deepen-racial-and-economic-inequities>
- This includes
 - Criminal legal system
 - Housing
 - Workplace
 - Financial systems

Potential Bias (Continued)

- AI uses data from previous cases which are alleged to “reflect long standing racial disparities in housing and the criminal legal system that are discriminatory towards marginalized communities.”
- The ACLU alleges that people of color get overcharged by millions due to AI tools used by lenders.
 - This allegation is supported by a study done by Berkeley in 2019. The study notes disparities in interest rates for both home-purchases and refinances with a resultant \$765 million in extra interest per year for Latinx and African American borrowers.
 - <https://faculty.haas.berkeley.edu/morse/research/papers/discrim.pdf>
 - The same study showed that there is potential for reduction in rate disparities and rejection when AI is properly used.
 - There is a 40% reduction in rejection bias when FinTech algorithms are used as compared to face-to-face lenders.
 - Part of the problem is that the lack of transparency in some AI makes it hard to know whether AI is making decisions based on impermissible factors.
 - The Berkley authors recommend testing of systems to avoid illegally discriminatory results.

- The fact that these algorithms are not transparent means that there could be inherent biases that are enforced more efficiently than before.
- Safeguards are necessary to prevent using such tools, valuable as they may be, in an improper fashion such that they exacerbate inequality or override human decision making
 - <https://www.aclu.org/issues/privacy-technology/will-artificial-intelligence-make-us-less-free>

Privacy Issues

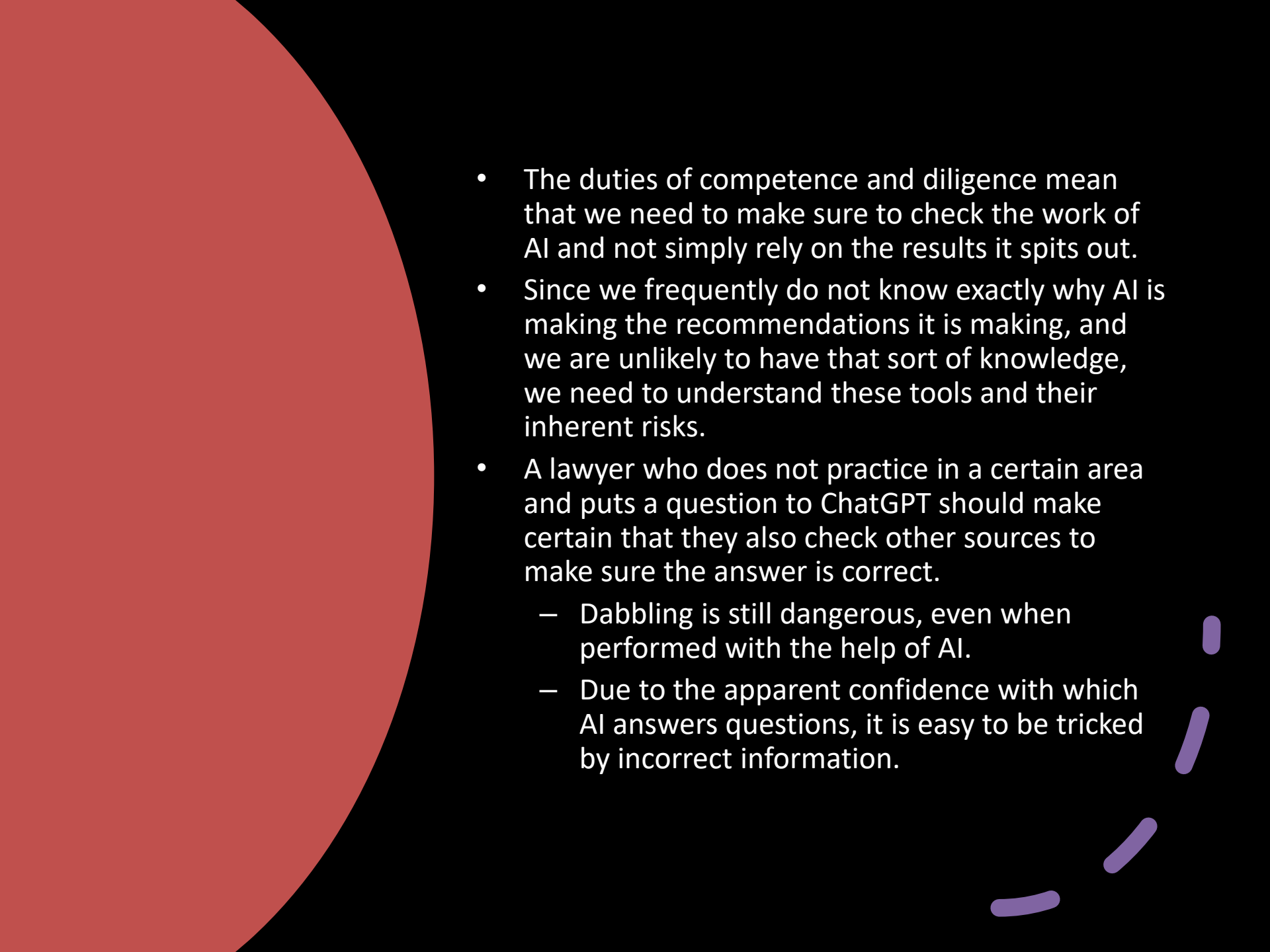
- ChatGPT had a bug in which other users could see the questions asked.
- ProcterU was hacked and exposed the personally identifiable information of 400,000 test takers.
- ExamSoft was hit with a DDOS (distributed-denial of service) attack in an apparent effort to interfere with its use or shut it down.
 - <https://venturebeat.com/business/examsofts-remote-bar-exam-sparks-privacy-and-facial-recognition-concerns/>
- It is critical that companies using AI make certain that their technology is secure.
- Make certain to review the terms of service and privacy considerations for any AI in which you will be entering confidential information.

Ethics and Artificial Intelligence

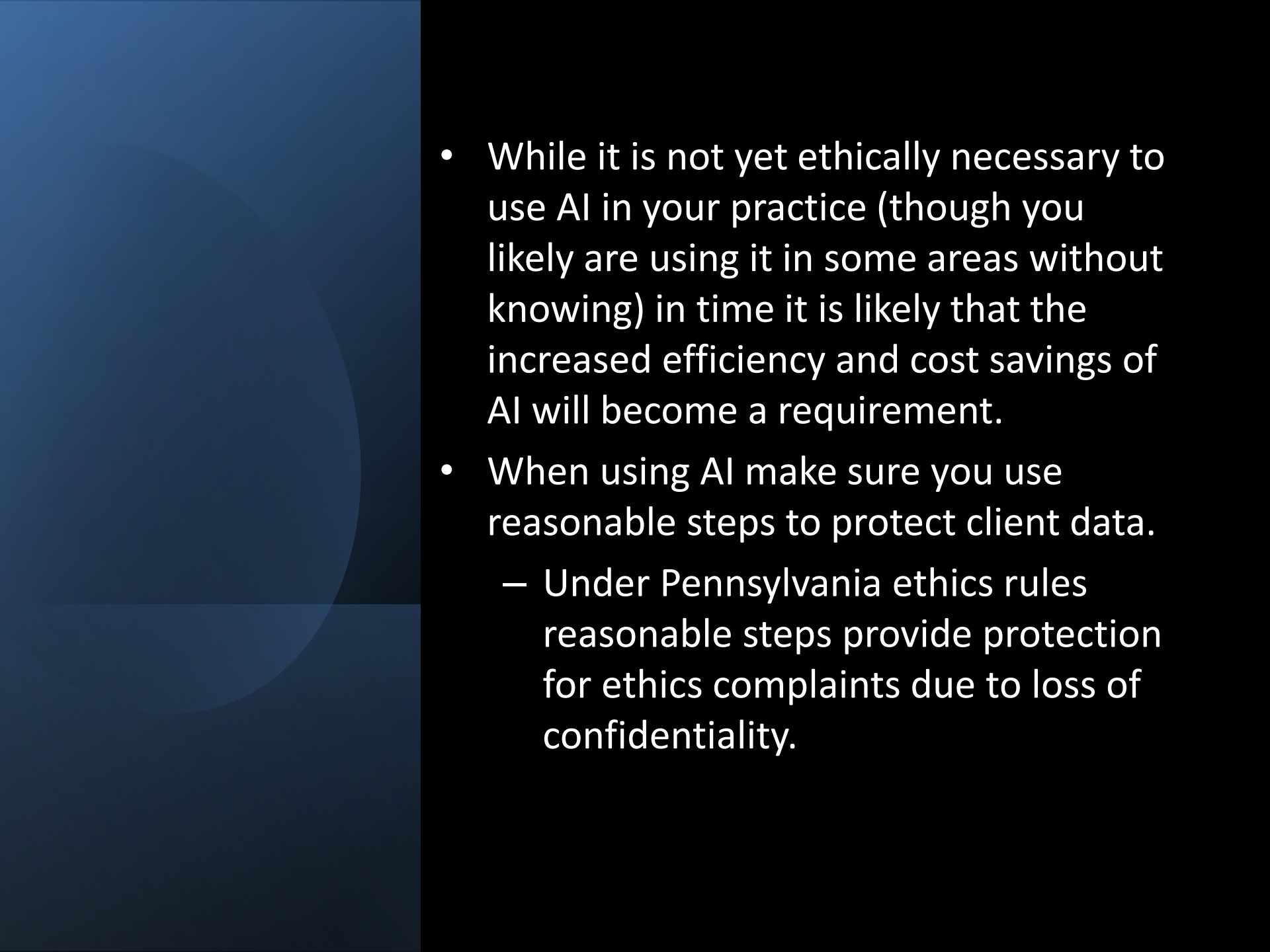
- The ethical issues we face due to AI are not that different from the ethical issues we have faced in the past. The duties remain the same.
 - <https://abovethelaw.com/law2020/the-ethical-implications-of-artificial-intelligence/>
 - <https://www.law.georgetown.edu/legal-ethics-journal/wp-content/uploads/sites/24/2020/09/GT-GJLE200038.pdf>
- Under Ethics Rule 1.1 we must be aware of the risks and benefits of technology, properly utilize such technology, and be certain we understand the technology we are using.
- While we are in the middle of an AI boom, AI is not new to the legal profession and many attorneys have been using AI knowingly or unknowingly for some time.

- Ethics rules may not specifically address AI, but just as with the social media boom, we can find guidance in the plain language of the rules as well as their footnotes.
 - Example: We have a duty of confidentiality
 - ChatGPT warns us that we should not use it for confidential items
 - It would be unethical for us to provide confidential client information to such a tool
- It is important to review the privacy policies for any AI tools
- Also check to see where the data is stored since data stored in the EU has different privacy protections than data stored in the US. Similarly, data stored in California has different protections than data stored in Pennsylvania.



- 
- The duties of competence and diligence mean that we need to make sure to check the work of AI and not simply rely on the results it spits out.
 - Since we frequently do not know exactly why AI is making the recommendations it is making, and we are unlikely to have that sort of knowledge, we need to understand these tools and their inherent risks.
 - A lawyer who does not practice in a certain area and puts a question to ChatGPT should make certain that they also check other sources to make sure the answer is correct.
 - Dabbling is still dangerous, even when performed with the help of AI.
 - Due to the apparent confidence with which AI answers questions, it is easy to be tricked by incorrect information.

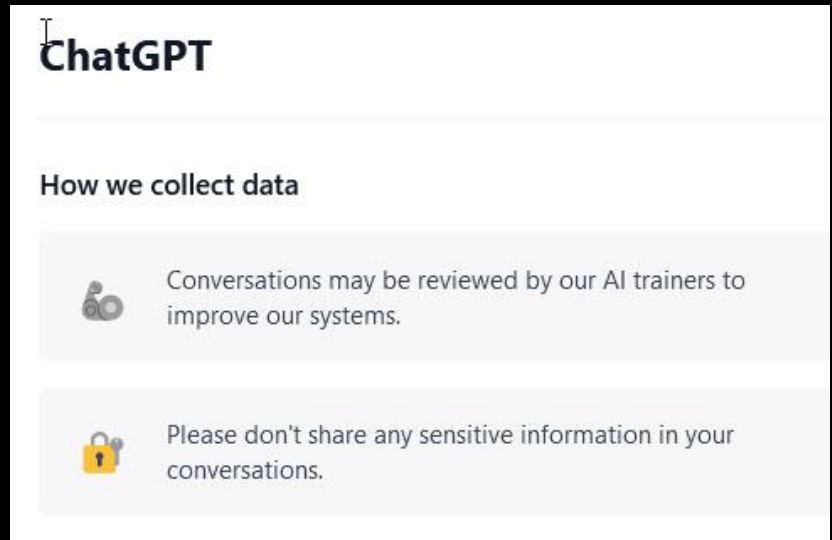
- Supervise AI as you would a junior associate or paralegal.
 - Make certain that any tasks you give to AI are properly delegated. There are simply some tasks it may be necessary for the attorney to perform. It is fine to perform those tasks with help from AI but not with complete reliance on it.
 - Do not be afraid to delegate some tasks to AI because it can increase efficiency. Especially tasks that do not require the brain power of an attorney. Make sure that the tool works properly with testing, perhaps hiring a consultant as appropriate to you.

- 
- While it is not yet ethically necessary to use AI in your practice (though you likely are using it in some areas without knowing) in time it is likely that the increased efficiency and cost savings of AI will become a requirement.
 - When using AI make sure you use reasonable steps to protect client data.
 - Under Pennsylvania ethics rules reasonable steps provide protection for ethics complaints due to loss of confidentiality.

- If you are working with a consultant, make certain that you review that consultant and explain our ethical requirements. If the services being provided do not fit our ethical requirements do not use the consultant or product.
 - Both Lexis and Westlaw offer high-level encryption and multi-factor authentication.
 - Look for similar features in other AI tools.
- There are not many ethics opinions on AI yet, but new opinions will likely come out soon. Keep an eye open for these opinions as they are released.
 - Prior opinions such as PBA's opinion on cloud computing still offer good recommendations for the factors to analyze before choosing a provider.
 - Pennsylvania Bar Association Formal Opinion 202-03

New Skills and Training

- It is common to bring new technology into a law firm without proper training. This will not work with AI
 - Lack of training is an overall problem with technology and law firms
- Firms will first need to identify the correct tools and lawyers using the tools will need to make sure they are using the correct AI for a task.



Skills & Training

- Lawyers will need to learn how to properly construct queries and evaluate the results for relevance, quality, and accuracy
 - Adjust queries as necessary
 - Just as with learning Boolean or natural language searching, proper query development takes time to learn. Be patient.
- Make sure any tools that are utilized protect clients' confidentiality
 - Remember, ChatGPT recently had a leak in which questions but not answers were viewable in other people's accounts
 - ChatGPT warns that you should not put confidential information in its query box.
- Law schools should begin training students so that they can properly use AI upon graduation.
- Train your new employees on how to use your firm's AI.
 - <https://www.brookings.edu/blog/techtank/2023/03/20/how-ai-will-revolutionize-the-practice-of-law/>



Conclusions

- As with any evolving technology, be cautious but not afraid of AI.
- Make certain to review the terms of service of any AI you plan on using.
 - Check for proper confidentiality and ownership of data.
 - Be aware of the risk of incorrect or even made-up information.
 - Focus on use of tools specifically made for lawyers since they are more likely to follow our ethical requirements.
 - Still make sure you check their terms of service and privacy policies.
- Look into how AI might improve the efficiency and financials of your law firm and implement it in ways that work for you.
 - This may require the assistance of a consultant or a vendor. Such people must be properly vetted, and our ethical rules must be explained to them if they are not already familiar.

Thank You

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