ChatGPT – What an Attorney Needs To Know When Using This New Tool

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Since November 2022, the public has had access to a new AI that has taken the world by storm – ChatGPT.[1] This revolutionary language processing model tuned into a viral phenomenon, generating more than one million users within the first five days of its release.[2] In the beginning, many were just using the AI to generate answers to silly prompts, but as time went on professionals and students learned more about its power and capabilities.[3] For example, the ChatGPT AI has passed a Wharton MBA exam, several law school exams, and a US Medical Licensing exam.[4] Lawyers can use ChatGPT for routine legal issues such as case summaries, transaction drafting, testimony review and much more.[5] But, as this technology advances it is important for attorneys to understand how to integrate this new tool while maintaining ethical standards.

According to the ABA Model Rule 1.1, lawyers must maintain competency in their work and this rule has been adapted to reflect competency within the realm of technology.[6] Rule 1.1 requires an attorney to have level of competency with technological advancements, such as ChatGPT, to ensure adequate representation of clients.[7] Attorneys must have a rudimentary understanding to be able to use this new tool ethically and to be able to

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[1] WSJ Podcasts – The Journal, *The Company Behind ChatGPT* (1/17/2023), https://www.wsj.com/podcasts/the-journal/the-company-behind-chatgpt/0bfd236d-faec-4420-8859-2895ea78312d.

[2] *Id.*

[3] Nicole Black, *The Case for ChatGPT: Why Lawyers should embrace AI*, ABAJournal (Feb. 21, 2023, 1:11 PM) https://www.abajournal.com/columns/article/the-case-for-chatgpt-why-lawyers-should-embrace-ai.

[4] *Id.*

[5] *Id.*

[6] Sharon D. Nelson & Jown W. Simek, *Why Do Lawyers Resist Ethical Rules Requiring Competence With Technology*, 42 VNA J. (2015).

[7] *Id.*

ensure that the program works properly to assist with providing competent legal advice. In addition, attorneys must be aware of the limitations of ChatGPT.[8] Although ChatGPT's answers may seem correct, the AI can still be wrong.[9] For example, ChatGPT has poor knowledge of current events, so any questions asked of it about events that happened after 2021 are likely to be wrong.[10]The AI is also likely to be unaware of novel arguments to existing to existing precedent because of this. ChatGPT, like humans, can misinterpret a question asked of it and provide an incorrect answer based on how the AI interpreted the prompt.[11]

ABA Model Rule 5.3 is also relevant for attorneys who use ChatGPT.[12] Rule 5.3 covers the responsibilities of attorneys regarding non-lawyer assistance, which includes AI like ChatGPT.[13] This rule also extends to non-lawyer assistance, such as paralegals, who may use ChatGPT.[14] To manage this supervisory duty, attorneys needs to limit any interactions clients have with ChatGPT and any other AI. This may take the form of a chatbot on a law firm's webpage which is used to help with client. Attorneys also need to review any work that has is going to be submitted which has been generated, in part or in whole, by ChatGPT. Similarly, ChatGPT also intersects with FRCP Rule 11 which requires attorney to sign and certify any forms that are being provided to the Federal Courts[15] By review and the work product of ChatGPT is accurate and correct the attorney will be able to protect themselves from possible sanctions and use the AI correctly.[16]

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[8] Black, *supra* note 3.

[9] Alex Hughes, *ChatGPT: Everything you need to know about OpenAi's GPT-3 tool*, BBC Sci. Focus Mag. (Feb. 2, 2023), https://www.sciencefocus.com/future-technology/gpt-3/.

[10] *Id.*

[11] *Id.*

[12] Amy B. Cyphert, *A Human Being Wrote This Law Review Article: GPT-3 and the Practice of Law*, U.C. Davis L. Rev. 401, 433 (2021)

[13] *Id.*

[14] *Id.*

[15] *Id.*

[16] *Id.*

Attorneys must also consider other ethical implications that have been found to be involved with AI.[17] These implications include bias and "hallucinations".[18] AI tools like ChatGPT are trained on data sets which may unknowingly include bias. This bias enters the chatbot from the information it was trained on, essentially "baking in" the bias.[19] With this bias that is "baked in" a user may receive an answer from ChatGPT which may include bias.[20] If the attorney who uses it does not catch this and corrects it, they may perpetuate the bias themselves.[21] Hallucinations are somewhat similar. A hallucination within AI is a generated response that is believeable as an answer, but is incorrect, not justified by its data, and has a tendency to be deceptive.[22] This blend of fact and fiction can have a destructive impact on the public and the legal industry, especially if the information spreads through jurisprudence and virally across social media and the internet.

In conclusion, ChatGPT has emerged as a game-changing tool in the legal industry, providing lawyers with new opportunities to streamline their work processes to improve their services. However, with this new technology comes new ethical responsibilities, requiring lawyers to ensure they have the competency to use ChatGPT ethically and be vigilant about bias in its responses.

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[17] Cade Metz, *The New Chatbots Could Change the World. Can You Trust Them?*, N.Y. TIMES (Dec. 10, 2022), https://www.nytimes.com/2022/12/10/technology/ai-chat-bot-chatgpt.html.

[18] *Id.*

[19] Jake Silberg & James Manyika, *Tackling bias in AI (and in humans)*, McKinsey Glob. Inst. (June, 2019), https://www.mckinsey.com/featured-insights/artificial-intelligence/tackling-bias-in-artificial-intelligence-and-in-humans.

[20] *Id.*

[21] *Id.*

[22] Ziwei Ji et al., *Survey of Hallucination in Natural Language Generation*, ACM J. (Nov. 17, 2022) https://dl.acm.org/doi/10.1145/3571730.