



TRAVERSING THE CHANGING TIDES OF CHILD SUPPORT

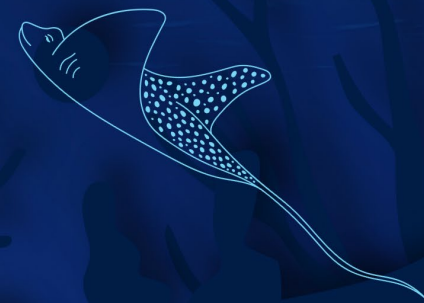


CHILD SUPPORT DIRECTORS ASSOCIATION



Mapping the New Horizon

Generative AI and its Place in Child Support Legal Practice



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AI – The Stuff of Fiction

Popular in the collective imagination



Introduction – Cont'd

A New and Immediate Horizon

November 2022 – ChatGPT launched





Presentation Navigational Map



Overview

Where are We Going?

⚓ What is AI?

- ◆ Definitions
- ◆ History

⚓ Legal Impacts

- ◆ Confidentiality
- ◆ Competence
- ◆ Supervision
- ◆ Candor





What is AI?

AI is a Broad Category

Working Definitions

- ⚓ Artificial Intelligence (AI) –
 - ◆ Simulation of human intelligence in machines
- ⚓ Generative Artificial Intelligence (GenAI) –
 - ◆ Tools of application where users create content using AI
- ⚓ Large Language Models (LLMs) –
 - ◆ Example of GenAI





What is AI? – Cont'd



History of AI

3 Eras

⚓ Symbolic AI/Rule Based AI (1950s – 1990s)

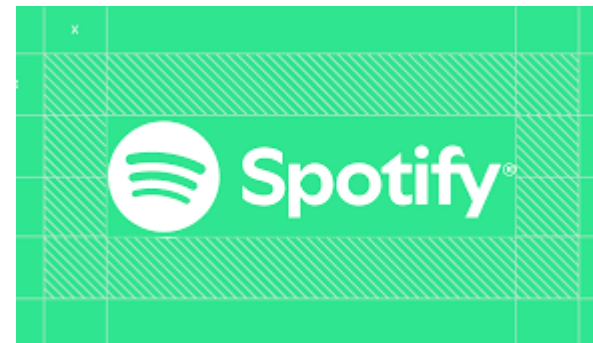
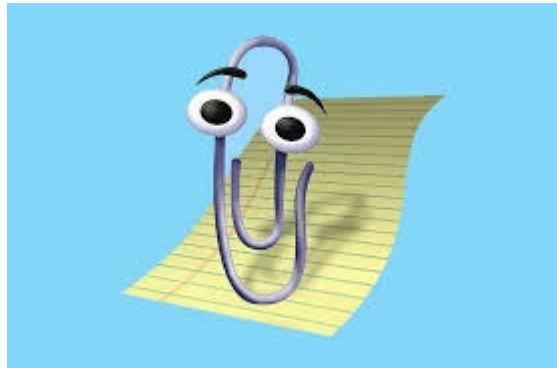
⚓ Machine Learning (1990s – 2010s)

⚓ Deep Learning (2010s – present)



AI Tools Already Available & Ubiquitous

AI is already a part of our daily lives!





Legal Impacts of AI - Confidentiality



Confidentiality

Threats to Duty of Confidentiality

- ⚓ Inputs are not confidential
- ⚓ Black box algorithm
- ⚓ Data Security





Legal Impacts of AI - Confidentiality



- ⚓ It is the duty of an attorney to do all of the following:
 - ◆ To maintain inviolate the confidence, and at every peril to himself or herself to preserve the secrets, of his or her client.
 - Bus. & Prof. Code §6068(e)

- ⚓ All files,...shall be confidential, and shall not be open to examination or released for disclosure for any purpose not directly connected with the administration of the child and spousal support program.
 - Family Code §17212(b)





Legal Impacts of AI - Confidentiality



⚓ A lawyer shall not reveal information protected from disclosure by Business and Professions Code section 6068, subdivision (e)(1) unless the client gives informed consent, or the disclosure is permitted by paragraph (b) of this rule.

- Rule 1.6, Rules of Professional Conduct

⚓ A lawyer shall not use a client's information protected by Business and Professions Code section 6068, subdivision (e)(1) to the disadvantage of the client unless the client gives informed consent, except as permitted by these rules or the State Bar Act.

- Rule 1.8.2, Rules of Professional Conduct





California State Bar Executive Summary

Practical Guidance

- ⚓ Anonymize information and avoid entering details that can be used to identify the client/case participant.
- ⚓ Consult with IT professionals or cybersecurity experts when choosing an AI system.
- ⚓ Review the Terms of Use or other information to see how the product utilizes inputs.





Legal Impacts of AI - Competence



Competence and Diligence

Threats to Duty of Competence and Diligence

⚓ Hallucinations

- ◆ Failure of correctness
- ◆ Failure of groundedness

⚓ Bias

⚓ Overreliance





Legal Impacts of AI - Competence



⚓ Failure of Correctness

- ◆ Tools response either contains factually inaccurate information, or refuses to provide answer, or provides irrelevant answer.

⚓ Failure of Groundedness

- ◆ Key factual propositions are unsupported by any citation at all (“ungrounded”); or
- ◆ Cited, but source does not support the claim (“misgrounded”).





Legal Impacts of AI - Competence



What contributes to Hallucinations?

⚓ Legal Research is Hard!

- ◆ Can you always find a case or statute directly on point?
- ◆ Authority – but is it applicable authority?
- ◆ Sycophancy – Remember a human is still doing the prompt.





Legal Impacts of AI - Competence



Real World Consequences

Competence & AI in the News

⚓ *Mata v. Avianca, Inc.* (SDNY 2023)

⚓ Mike Lindell Defamation Suit (Colorado 2025)

⚓ Michael Cohen (New York 2023)





Legal Impacts of AI - Competence



- ⚓ A lawyer shall not intentionally, recklessly, with gross negligence, or repeatedly fail to perform legal services with competence.
- ⚓ Competence is the (i) learning and skill, and (ii) mental, emotional and physical ability reasonably necessary for the performance of such service.

- ⚓ If a lawyer does not have sufficient learning and skill ... the lawyer ... may provide competent representation by
 - ◆ (i) associating with or, ... consulting another lawyer whom they believe to be competent;
 - ◆ (ii) acquiring sufficient learning and skill before performance is required; or
 - ◆ (iii) referring the matter to another competent lawyer.
 - Rule 1.1, Rules of Professional Conduct





Legal Impacts of AI - Competence



⚓ A lawyer shall not intentionally, repeatedly, recklessly or with gross negligence fail to act with reasonable diligence in representing a client.

⚓ “Reasonable diligence” shall mean that a lawyer acts with commitment and dedication to the interests of the client and does not neglect or disregard, or unduly delay a legal matter entrusted to the lawyer.

- ◆ Rule 1.3, Rules of Professional Conduct





Legal Impacts of AI - Competence



California State Bar Executive Summary

Practical Guidance

- ⚓ Be a lifelong student.
- ⚓ Human cross check is required.
- ⚓ Start planning on how to integrate AI and human oversight.
- ⚓ Consider if communication about AI usages with clients/case participants is required.
- ⚓ Be proactive – promulgate policies and procedures for staff to follow.
- ⚓ Gen X & Elder Millennials make friends with Gen Z.





Legal Impacts of AI - Supervision



Supervision of Subordinate Lawyers and Non-Lawyers

Threats to Duty to Supervise



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Legal Impacts of AI - Supervision



⚓ A lawyer who individually or together with other lawyers possesses managerial authority in a law firm, shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that all lawyers in the firm comply with these rules and the State Bar Act.

⚓ A lawyer having direct supervisory authority over another lawyer, whether or not a member or employee of the same firm, shall make reasonable efforts to ensure that the other lawyer complies with these rules and the State Bar Act.





Legal Impacts of AI - Supervision



⚓ A lawyer shall be responsible for another lawyer's violation of these rules and the State Bar Act if:

- ◆ The lawyer orders, or with knowledge of the relevant facts and of the specific conduct, ratifies the conduct involved; or

- ◆ The lawyer, individually or together with other lawyers, possesses managerial authority in the law firm in which the other lawyer practices, or has direct supervisory authority over the other lawyer, whether or not a member or employee of the same law firm, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.
 - Rule 5.1, Rules of Professional Conduct





Legal Impacts of AI - Supervision



⚓ A lawyer shall comply with these rules and the State Bar Act notwithstanding that the lawyer acts at the direction of another lawyer or other person.

⚓ A subordinate lawyer does not violate these rules of the State Bar Act if that lawyer acts in accordance with a supervisory lawyer's reasonable resolution of an arguable question of professional duty.

- Rule 5.2, Rules of Professional Conduct





Legal Impacts of AI - Supervision



⚓ With respect to a nonlawyer employed or retained by or associated with a lawyer:

- ◆ A lawyer who individually or together with other lawyers possesses managerial authority in a law firm, shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the nonlawyer's conduct is compatible with the professional obligations of the lawyer;
- ◆ A lawyer having direct supervisory authority over the nonlawyer, whether or not an employee of the same law firm, shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer; and
- ◆ A lawyer shall be responsible for conduct of such a person that would be violation of these rules or the State Bar Act if engaged in by lawyer if:





Legal Impacts of AI - Supervision



- (1) the lawyer orders or, with knowledge of the relevant facts and of the specific conduct, ratifies the conduct involved; or
- (2) the lawyer, individually or together with other lawyers, possesses managerial authority in the law firm in which the person is employed, or has direct supervisory authority over the person, whether or not an employee of the same law firm, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.
 - Rule 5.3, Rules of Professional Conduct





Legal Impacts of AI - Supervisor



California State Bar Executive Summary

Practice Guidance

- ⚓ Establish clear policies and procedures regarding permissible uses of generative AI.
- ⚓ Provide regular training on new tools and updates.
- ⚓ Audit work product.
- ⚓ See CSSI Letters 24-08 and 25-06





Legal Impacts of AI - Candor



Candor to the Court and Clients (Case Participants)

Threats to Duty of Candor

AI in the Courtroom Sparks Backlash After Entrepreneur Uses Avatar to Argue Case





Legal Impacts of AI - Candor



⚓ A lawyer shall not:

- ◆ (1) bring or continue an action, conduct a defense, assert a position in litigation, or take an appeal, without probable cause and for the purpose of harassing or maliciously injuring any person; or
- ◆ (2) present a claim or defense in litigation that is not warranted under existing law, unless it can be supported by a good faith argument for an extension, modification, or reversals of the existing law.

⚓ A lawyer for the defendant in a criminal proceeding, or the respondent in a proceeding that could result in incarceration, or involuntary commitment or confinement, may nevertheless defend the proceeding by requiring that every element of the case be established.

- Rule 3.1, Rules of Professional Conduct





Legal Impacts of AI - Candor



⚓ A lawyer shall not

- ◆ (1) knowingly make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer;
- ◆ (2) fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel, or knowingly misquote to a tribunal the language of a book, statute, decision or other authority; or
- ◆ (3) offer evidence that the lawyer knows to be false. If a lawyer, the lawyer's client, or a witness called by the lawyer, has offered material evidence, and the lawyer comes to know of its falsity, the lawyer shall take reasonable remedial measures, including, if necessary disclosure to the tribunal, unless disclosure is prohibited by Business and Professions Code section 6068(e) and rule 1.6. A lawyer may refuse to offer evidence, other than the testimony of a defendant in a criminal matter, that the lawyer reasonably believes is false.
 - Rule 3.3, Rules of Professional Conduct





California State Bar Executive Summary

Practical Guidance

- ⚓ Verify if court prohibits or otherwise requires disclosure about use of AI.
- ⚓ Candor to case participants/clients
 - ◆ Delegation of work to another attorney is a significant development, same may be true for an AI tool.
 - ◆ Do a holistic evaluation – importance of task delegated; likelihood AI tool will make a mistake; safeguards to mitigate risks.





Thank You!

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