



Real Estate, Responsibility, & the Rise of AI: *Navigating Ethics in Property Transactions*

Drew Teague & Madeline McCall |

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Today's Objectives:

- (a) Define “AI” and examine how it has developed into the 21st Century
- (b) Whether (and how) lawyers and business professionals can use generative AI in an ethical manner in the ordinary course of their practices/business
- (c) Explore and consider how market leaders are currently using AI and the path for the future



AI Generally: An Introduction

What is “AI” and how has technology evolved throughout history?

- “Artificial Intelligence” defined:
 - Computer systems capable of performing tasks normally done by humans.
- Brief AI history
 - Alan Turing’s concepts of AI (1935)
 - AI plays checkers (1951/1952)
 - Jabberwacky chatbot (1988)
 - IMB Watson on Jeopardy! (2011)
 - ChatGPT, CoPilot, CoCounsel, and industry specific AI programs (2020s)



Seymour Cray's early supercomputer from ~1960.

The Four Categories of AI: *defined by function.*

Reactive Machine AI:

Technology systems without memory that are designed to perform very specific tasks

Limited AI:

Programs with short-term memory used to detect patterns and predict outcomes

Theoretical:

Theory of Mind AI:

Artificial intelligence capable of understanding the thoughts and emotions of others

Self-Awareness AI:

Artificial intelligence with its own set of needs, beliefs, and emotions



Professional Guidance

American Bar Association

- ABA Resolution 604 (February 6, 2023)
 - Aimed at organizations that design, develop, deploy and use AI, and urges such organizations to follow specific guidelines
 - Comments from the ABA:
 - Not appropriate to shift legal responsibility to a computer or an algorithm rather than to responsible individuals and entities
 - Noted that the White House Office of Science and Technology Policy released a blueprint for an AI Bill of Rights for “building and deploying automated systems that are aligned with democratic values and protect civil rights, civil liberties, and privacy.”

American Bar Association (continued)

- ABA Formal Opinion 512 (July 29, 2024)
 - Specifically identifies rules that should be considered by lawyers utilizing GenAI
 - Competence (1.1)
 - Confidentiality (1.6, 1.9(c) and 1.18(b))
 - Communication (1.4)
 - Meritorious Claims and Contentions and Candor to the Tribunal (3.1, 3.3 and 8.4(c))
 - Supervisory Responsibilities (5.1 and 5.3)
 - Fees (1.5) – For billable hour attorneys, this will take adjusting as use of AI will lower the amount of time for a task and thereby the billables.

Bar Guidance from California – Practical Guidance for the Use of Generative Artificial Intelligence in the Practice of Law (November 23, 2023)

- The California Bar issued a practical guide with applicable rules with guidance for the use of AI in practice.
- Duty of Confidentiality: A lawyer: (i) must not input any confidential info into any GenAI solution that lacks adequate confidentiality and security protections; (ii) must anonymize client info and avoid entering identifying info; (iii) should consult with IT professionals or cybersecurity experts to ensure the AI system adheres to stringent security protocols and ensure the GenAI provider does not share or use the inputted info.
- Duties of Competence and Diligence: A lawyer: (i) must ensure the competent use of the technology and apply diligence and prudence with respect to facts and law; (ii) should reasonably understand how the technology works, its limitations and the applicable policies governing the use and exploitation of client data by the product; (iii) must critically analyze, review, validate, and correct for accuracy and bias; and (iv) avoid over-reliance on GenAI to the extent it hinders critical attorney analysis fostered by traditional research and writing. **Overreliance on AI is inconsistent with the active practice of law and application of trained judgement by the lawyer.**
- Duty to Comply with the Law: A lawyer: (i) cannot counsel or assist a client to engage in conduct that the lawyer knows is a violation of any law, rule or order when using GenAI and (ii) should analyze the relevant and applicable laws and regulations.

Bar Guidance from California (continued)

- Duty to Supervise & Responsibilities of Subordinate Lawyers: Managerial and supervisory lawyers should establish clear policies about the permissible use of GenAI.
- Communication Regarding GenAI Use: A lawyer should: (i) evaluate their communication obligations throughout the representation based on the facts and circumstances; (ii) consider disclosure to their client that they intend to use GenAI; and (iii) review applicable client instructions relating to the use of GenAI.
- Charging for Work Produced by GenAI and GenAI Costs: A lawyer may use GenAI to efficiently create work product and may charge for actual time spent but must not charge hourly fees for the time saved.
- Candor to the Tribunal and Meritorious Claims and Contentions: A lawyer: (i) must review all GenAI outputs and correct any errors or misleading statements made to the court; and (ii) should check for any local rules or orders that may necessitate the disclosure of the use of GenAI.
- Prohibition on Discrimination, Harassment and Retaliation: Some GenAI is trained on biased info and lawyers should continuously learn about AI biases and their implications in legal practice while establishing policies and mechanisms to identify, report and address potential AI biases.

Other States' Guidance for Lawyers

- New York State Bar Association – Task Force on Artificial Intelligence
- Florida Bar Association's Board of Governors – Ethics Advisory Opinion 24-1
- State Bar of Michigan – Ethics Opinion JI-155 (October 27, 2023)
- New Jersey – Preliminary Guidelines on the Use of Artificial Intelligence by New Jersey Lawyers (January 24, 2024)

As AI becomes more prevalent, additional bar associations are issuing their own guidance.



Kentucky Rules of Professional Conduct & Interpretation from the Kentucky Bar Association's Ethics Opinions

SCR 3.130(1.1) - Competence

- A lawyer shall **provide competent representation** to a client. Competent representation requires the legal **knowledge, skill, thoroughness** and **preparation** reasonably necessary for the representation.

Ethics Opinion KBA E-457 confirms that a lawyer must keep up-to-date with artificial intelligence.

SCR 3.130(1.6) Confidentiality of Information

- (a) A lawyer **shall not reveal information** relating to the representation of a client unless the client gives **informed consent**, the **disclosure is impliedly authorized** in order to carry out the representation or the disclosure is **permitted by paragraph (b)**.
- (b) A lawyer may reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary: (1) to prevent reasonably certain death or substantial bodily harm; (2) to secure legal advice about the lawyer's compliance with these Rules; (3) to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved, or to respond to allegations in any proceeding, including a disciplinary proceeding, concerning the lawyer's representation of the client; or (4) to comply with other law or a court order.

Ethics Opinion KBA E-457 affirms that the duty to maintain a client's confidentiality continues during the use of AI.

SCR 3.130(1.4) - Communication

- A. A lawyer shall: (1) promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in Rule 1.0(e), is required by these Rules; (2) **reasonably consult with the client about the means by which the client's objectives are to be accomplished;** (3) keep the client reasonably informed about the status of the matter; (4) promptly comply with reasonable requests for information; and (5) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law.
- B. A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

Ethics Opinion KBA E-457 explicitly states that there is not an ethical duty to disclose the rote use of AI generated research for a client's matter, subject to three exceptions.



Ethical Considerations for Business Professionals

Ethnical Considerations for Business Professionals

- Non-disclosure or other confidentiality provisions should be considered when underwriting a transaction on the “business” side.
- Potential disclosure of sensitive information in lending transactions.
- Consideration of biases in AI algorithms, particularly with regarding to “making decisions”.
- Use of narrowly tailored products that are fit for the specific use needed (rather than ChatGPT and similar generative AI). Know what you’re using and seek trainings on your specific AI to keep up with capabilities and how it works.
 - Know your product: Attorneys have access to very specific programs for diligence and drafting, both transactional and litigation.



Three Ethnical Considerations for Lawyers

Accuracy, Transparency, and Confidentiality

Accuracy

- AI-generated fictions
 - *AI often “hallucinates”*
- AI may not be trained or understand the specific issues relevant to your transaction or matter.
- The possibility of “local law” issues

Transparency

Upon client engagement, should you disclose the anticipated use of AI?

- Make a judgement call regarding the depth of disclosure
- As previously discussed, Ethics Opinion KBA E-457 states that there is no duty to disclose AI used to generate research unless it was third-party outsourced, the client is being charged for the AI program, or disclosure is required by Court Rules.
- On the flip side, to satisfy “Informed Consent” rule, simple boilerplate disclosures in an engagement letter may not be enough to meet the “informed” portion of the definition.

*The use of AI increases efficiency and your client’s billable hours should reflect that productivity.

Confidentiality

- The uploading of confidential or proprietary information can only be done with the informed consent of all parties.
- As previously discussed, metadata encrypted in documents (and even emails) can contain sensitive client information.
 - *E-mail add-ins can be incorporated in programs like outlook where metadata is removed from e-mail attachments before they are sent.*



Applying AI to Legal Practice

How can we incorporate AI into the legal profession?

Document Drafting	Research/Diligence	Client Communication
• Summarizing • Proof-reading/editing • Creation of “playbooks” with standard approved provisions to have AI draft relevant provisions based on precedent	• Outline case law and statutes (always double-check citations) • Review/summarize large sets of documents and organize quickly in digestible formats	• Answering FAQs on firm websites • Modifying emails to change tone or remove legal jargon



Applying AI to CRE Management and Transactions

How is AI being used by CRE Professionals?

- Databases summarize and group properties and data by type or terms
 - If the input data is incorrect, the output will also be incorrect. Still can be human error in the process.
- Generate marketing materials
- Create budgets, models and forecasts
- Streamline reporting data
- Brokers can compare data to match buyers or tenants with properties
- Monitor trends
- Drafting of new agreements or updating of existing agreements



What does the future of AI look like?

What does the future of AI look like in the legal profession?

- Landscape continues to evolve as technology continues to evolve.
- Existing and evolving current tools you should be aware of:
 - Westlaw's CoCounsel, Lexis, Casetext, Harvey, Legora, DraftWise.
- Vincent by FastCase in collaboration with the Kentucky Bar Association
- What does the future hold?
 - Continued advances and updates will come fast, with new features and capabilities, so users need to stay up to date with the AI they are using.
 - CoCounsel – 1.0 released in 2024, beta tested 2.0 and released it in Feb. 2025. Constantly working on new abilities, speed, capacity, features, etc.

What does the future of AI look like in the CRE space?

AI for Performance

- Reduced error in accounting for financial reporting
- Business professionals will need to incorporate AI to match efficiency of competitors
- Get comfortable using AI to manage properties and meet financing requirements

AI's Impact on the Ground

- Property Operations
- Investor Relations
- Business Support
- Asset Management
- Finance and Accounting
- Acquisitions



Madeline McCall

E-mail: *mmccall@fbtlaw.com*



Drew Teague

E-mail: *wteague@fbtlaw.com*

thank you

