



# AI in Estate Planning: Ethical and Practical Considerations

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## Agenda

- What is Artificial Intelligence (AI)?
- Exploring an Estate Planning Scenario
- How can AI be Leveraged?
- The Softer Side of Estate Planning
- AI In the Wild – How Are Courts Responding?
- Recommendations for the Savvy Advisor

## What is Artificial Intelligence (AI)?

- AI is the replication of human intelligence by a machine.
- Generative AI mimics the problem-solving and decision-making capabilities of the human mind by leveraging:
  - Computers;
  - Collected Data; and
  - Machines.
- Recently, there has been an emergence of AI tools marketed towards estate planning and family office professionals.
- A research report released by Goldman Sachs predicted that 44% of legal tasks could be automated through the use of AI tools, which could have a major impact on the operations of law firms.

## **Consider the Following Scenario**

**Your long-time client calls to share that the mental condition of her mother has rapidly declined. Your client would like to review her mother's existing estate planning documents to understand what to expect when the inevitable occurs. Additionally, your client wants to determine the size of her mother's estate and her authority to manage her mother's affairs at this stage in her life.**

## How Can AI Be Leveraged in This Scenario?

*That call — a grieving daughter reaching out to discuss a delicate and emotional life occurrence — cannot (and, frankly, should not) be supplanted by AI.*

However, AI tools exist that might help with the following areas:

1. Estate Summarization
2. Document Drafting
3. Client Communication

## Estate Summarization

GenAI can potentially review and summarize complex estate planning documents and asset compilations.

In our scenario, you might upload the ailing mother's financial and estate planning documents to an AI server and use it as a quasi-search engine.

### Advantages:

- Time Saving

### Disadvantages:

- Data Privacy Considerations
- Unreliable Accuracy
- Loss of Human Analysis
- Loss of Training

## Document Drafting

Language Models (LLMs) can provide an initial draft of standard estate planning documents.

In our scenario, you might use LLMs to update the fiduciary designations on basic documents such as a Power of Attorney

### Advantages:

- Time Saving
- Potentially Cost Effective

### Disadvantages:

- Unreliable Accuracy
- Disfavored (or prohibited) by Courts

## Client Communications

AI may be used to translate legal jargon into client-friendly language.

In our scenario, you might ask a GenAI software to “explain the concept of delayed revocation in a health care power of attorney in Illinois.”

### Advantages:

- Quickly Simplifies Complex Concepts
- Time Saving
- Increases Responsiveness
- Little to No Data Privacy Concerns

### Disadvantages:

- Unreliable Accuracy
- Loss of Training



## The Softer Side of Estate Planning

- The nature of our relationships are personal.
- Holistic relationships are *critical*. Consider yourself more than a lawyer or financial advisor.
- Client connections are forged through years of professional and personal investment.
- In estate planning, the most meaningful connections with clients come at difficult times in their life.

## AI In the Wild

### *Mata v. Avianca, Inc., (2023)*

In New York, a lawyer representing a man who sued an airline relied on ChatGPT to help prepare a court filing.

The judge discovered that their brief included citations and made-up quotes from six nonexistent cases.

The lawyer and his firm were jointly subject to sanctions.

The lawyer might also face a referral to New York disciplinary authorities.

### Quotes from Judge Castel's Opinion

“It promotes cynicism about the legal profession and the American judicial system.”

“Technological advances are commonplace and there is nothing inherently improper about using a reliable artificial intelligence tool for assistance. But existing rules impose a gatekeeping role on attorneys to ensure the accuracy of their filings.”

“Levidow Firm abandoned their responsibilities when they submitted non-existent judicial opinions with fake quotes and citations created by the artificial intelligence tool ChatGPT, then continued to stand by the fake opinions after judicial orders called their existence into question.”



# AI In the Wild Cont.

## Standing Orders of the Honorable Judge Brantley Starr

### Mandatory Certification Regarding Generative Artificial Intelligence

All attorneys and pro se litigants appearing before the Court must, together with their notice of appearance, file on the docket a certificate attesting either that no portion of any filing will be drafted by generative artificial intelligence (such as ChatGPT, Harvey.AI, or Google Bard) or that any language drafted by generative artificial intelligence will be checked for accuracy, using print reporters or traditional legal databases, by a human being. These platforms are incredibly powerful and have many uses in the law: form divorces, discovery requests, suggested errors in documents, anticipated questions at oral argument. But legal briefing is not one of them. Here's why. **These platforms in their current states are prone to hallucinations and bias. On hallucinations, they make stuff up—even quotes and citations. Another issue is reliability or bias. While attorneys swear an oath to set aside their personal prejudices, biases, and beliefs to faithfully uphold the law and represent their clients, generative artificial intelligence is the product of programming devised by humans who did not have to swear such an oath. As such, these systems hold no allegiance to any client, the rule of law, or the laws and Constitution of the United States (or, as addressed above, the truth). Unbound by any sense of duty, honor, or justice, such programs act according to computer code rather than conviction, based on programming rather than principle. Any party believing a platform has the requisite accuracy and reliability for legal briefing may move for leave and explain why. Accordingly, the Court will strike any filing from a party who fails to file a certificate on the docket attesting that they have read the Court's judge-specific requirements and understand that they will be held responsible under Rule 11 for the contents of any filing that they sign and submit to the Court, regardless of whether generative artificial intelligence drafted any portion of that filing. A **template Certificate Regarding Judge-Specific Requirements is provided here.****

## AI In the Wild Cont.

### Academics Caution Against the Rapid Development of AI

- No one knows how powerful and pervasive AI will become– not even the leaders in the industry who are developing it.
- Some leaders in the AI industry seek to automate every task possible– even if it results in a loss of agency.
- Others leaders in the AI industry seek balance and want AI to remain a tool to “assist in the project of human flourishing.”
- In either case, sharp attention should be paid to the moral and ethical guidance that we offer as estate planners. Consider, can this be emulated by AI? Should it be?

## Recommendations for the Savvy Advisor

- Remain open to the technological developments of AI. As the technology improves, so will its utility to your practice.
- Be cautious and conservative when engaging with any AI tool that requires the input of sensitive documents to protect the privacy of your clients.
- Honor the personal and human nature of estate planning– avoid over-automating your practice.
- Stay up-to-date on statutory and case law developments, as the legal industry is still developing its stance on AI.

Questions?



## Keep in Touch!

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