

Emerging Issues in Attorney AI Use

A Tishkoff PLC eBook



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Introduction

The legal profession is witnessing the integration of artificial intelligence into traditional practices. AI's capacity to process vast information, automate routine tasks, and derive analytical insights is transforming the legal sector. Client expectations are evolving with these technological advancements. Businesses increasingly expect legal service providers to adopt these technologies to enhance efficiency and reduce costs.

This eBook analyzes emerging issues surrounding AI use by attorneys in litigation contexts relevant to business, construction, real estate, and employment disputes. The analysis covers current AI applications, ethical considerations, implications for discovery and research, potential for legal malpractice, and future impact on the legal profession.

Please note this eBook should be used for learning and illustrative purposes. It is not a substitute for consultation with an attorney with expertise in this area. If you have questions about a specific legal issue, we always recommend that you consult an attorney to discuss the particulars of your case.



Current Applications of Artificial Intelligence in Litigation Workflows

AI has become an indispensable tool for legal professionals. It enhances efficiency and accuracy across multiple legal tasks. Attorneys now have access to sophisticated AI-powered platforms that improve litigation workflows. These tools assist at every stage of the litigation lifecycle.

AI automates repetitive and intellectually demanding tasks that traditionally consumed substantial attorney time. This automation allows lawyers to focus on more complex, strategic, and client-centric aspects of legal work. The primary motivation for AI adoption is increased productivity through automation and rapid information processing.

AI Litigation Application	Description
Understanding Client Needs	AI litigation analytics tools analyze past cases to identify patterns and anticipate challenges.
Researching Opposing Counsel	AI provides intelligence on opposing firms' litigation history, strategies, and potential inconsistencies.
Analyzing Judge's Case History	Analytics tools reveal judges' citation preferences, motion grant rates, and case management tendencies.

AI Litigation Application	Description
Conducting Legal Research	AI identifies legal principles within court opinions and locates relevant case law.
Analyzing Case Briefs	AI examines arguments and cited authorities, identifying weaknesses and verifying citations.
Drafting Legal Documents	AI expedites document creation by suggesting language and anticipating counterarguments.
Monitoring Case Developments	AI tracks new filings and developments in existing cases.
Predictive Analytics	AI analyzes historical data to predict litigation outcomes and settlement probabilities.
E-Discovery	AI automates identification and review of electronically stored information.

AI Litigation Application	Description
Fact Investigation	AI functions as an intelligent search engine for case-related documents.
Evidence Analysis	AI identifies patterns in datasets and highlights inconsistencies in witness statements.

Various specialized AI tools serve different litigation functions. These include comprehensive legal research platforms (Bloomberg Law, Lexis+ AI, CaseText CoCounsel), general legal assistance tools (Harvey), e-discovery platforms (RelativityOne AI), case strategy tools (Opus 2), fact analysis systems (DISCO's Cecilia AI), predictive analytics platforms (Lex Machina, Solomonica), and specialized drafting assistants (Briefpoint, Legalyze.ai).



Emerging Ethical Considerations

Attorneys must address ethical considerations when integrating AI into legal practice. These considerations include maintaining competence, safeguarding client confidentiality, navigating algorithmic bias, avoiding unauthorized practice of law, and ensuring proper supervision.

Attorneys must possess a reasonable understanding of AI benefits and risks. This requires sufficient technological knowledge to evaluate AI tools for specific legal tasks. The duty of competence requires continuous learning as AI technology evolves.

Client confidentiality concerns arise when sensitive information is input into AI systems. Attorneys must ensure adequate data protection. Different AI systems handle data differently. "Open" systems may use inputted information to train models or share with third parties. "Closed" systems typically maintain information within protected databases. Public generative AI models risk storing confidential information and potentially sharing it with other users.

Algorithmic bias presents a critical ethical issue. AI systems trained on biased data may perpetuate discriminatory outcomes. Attorneys must critically evaluate AI outputs and consider potential bias.

Attorneys must ensure AI use doesn't facilitate unauthorized practice of law by non-lawyers. Delegation of tasks requiring legal judgment to AI systems could constitute aiding non-lawyers in law practice. The boundary between permissible AI assistance and unauthorized practice remains ambiguous.

Attorneys must supervise AI systems as they do non-lawyer staff. AI-generated content requires thorough attorney review before client use or court submission. Law firms should establish clear AI use policies and provide adequate training.

The duty of candor may require attorneys to disclose AI use in document preparation to courts. Submitting AI-generated content with false citations constitutes a serious ethical violation.

Attorneys must ensure reasonable fees when using AI. They must consider how AI affects time requirements for legal services and adjust billing accordingly.

The Implications of AI in Discovery Processes

AI has reshaped document review and litigation preparation in e-discovery. In cases with substantial electronically stored information, AI accelerates relevant document identification. This streamlines discovery workflows and reduces client costs. AI automates identification and classification of electronic documents based on case relevance.

Technology-assisted review (TAR) or predictive coding uses machine learning to predict document relevance based on human expert input. Courts increasingly accept TAR as a reliable document review method. The process involves training software using expert-classified "seed set" documents. Predictive coding offers more efficient and often more accurate document review than purely manual methods.

Beyond initial discovery, AI analyzes evidence more deeply. AI tools process entire case files, extract key facts, identify important relationships, and organize information into coherent narratives. AI identifies patterns, extracts relevant information, and flags inconsistencies within large evidence volumes. AI can uncover hidden correlations between seemingly unrelated information.

In business litigation, AI applications serve numerous functions. AI reviews documents for anti-competitive behavior in antitrust cases. It analyzes prior art datasets in intellectual property disputes. AI examines financial records for fraud evidence. It analyzes communications for discrimination patterns in employment disputes.





The Evolving Role of AI in Legal Research

AI fundamentally alters legal research methods. It enables rapid analysis of case law, statutes, and regulations. AI-driven platforms identify relevant legal information more efficiently than traditional methods. AI transcends keyword searches by using natural language processing techniques, providing contextually accurate results. AI excels at analyzing case law repositories, instantly identifying relevant precedents. AI tools efficiently summarize complex case law, statutes, and regulations. They identify controlling authority on specific legal issues and suggest related follow-up points.

AI plays an evolving role in statutory interpretation. AI tools identify relevant statutory rules and evaluate their application to specific facts. One approach treats legal documents like software programs, applying software engineering methods to statutory analysis. However, AI interpretation depends on training data and question framing. Human legal expertise remains necessary for statutory interpretation.

AI assists in developing persuasive legal arguments by identifying precedents and suggesting counterarguments. AI-powered platforms analyze opposing counsel's briefs for strengths and weaknesses. However, AI-generated arguments require thorough review for accuracy and soundness.

Using AI in Contract Review



AI transforms real estate contract review by automating analysis of lease agreements, purchase agreements, and financing documents. AI tools identify key clauses, flag potential risks, and highlight inconsistencies across documents. Many platforms compare contracts against standard clause libraries to identify non-standard terms.

AI benefits in real estate contract review are substantial and multifaceted. AI enables time savings through automation. It provides improved analysis accuracy. AI enhances risk identification capabilities. It increases transaction efficiency. AI potentially reduces legal fees. It ensures consistent review processes.

Despite advantages, AI contract review presents several risks. These include potential inaccuracy and "hallucinations" in AI outputs. AI may lack contextual understanding of legal terms. There exists algorithm bias potential in contract analysis. Data privacy concerns arise when processing sensitive contract information. There is risk of over-reliance on AI without human verification.

Practical applications demonstrate AI's versatility in real estate law. AI performs quick lease agreement review for non-standard terms. It conducts property purchase contract risk analysis. AI compares lease terms across property portfolios. It enables rapid generation of court-ready real estate agreements.

Application of AI in Employment Law



Hiring

Promotion

Termination

AI increasingly analyzes employee lifecycle data in employment law. AI tools process hiring, promotion, performance, and termination data. They monitor employee productivity and identify underperformance. This provides valuable insights for data-informed human resources decisions.



AI can identify discriminatory practice patterns in employee data. However, algorithms trained on biased historical data may perpetuate inequalities. Employers must audit AI tools for bias and ensure anti-discrimination law compliance.

AI applications in employment law include law firm spending and matter management analytics, employment contract and compliance document drafting, regulatory compliance navigation, recruitment candidate assessment, skill gap analysis, performance monitoring, hours and productivity tracking, and FMLA eligibility determination.

Legal Malpractice or Ethical Violations from AI Use

Documented ethical violations include attorneys submitting AI-generated briefs containing fabricated judicial decisions and citations. These incidents resulted in sanctions and fines, demonstrating failure to uphold competence duties.

Generative AI tools risk client confidentiality breaches. Even purportedly private AI models pose risks. The data-driven nature of AI creates substantial risk of inadvertent confidential information disclosure.

Failure to supervise AI systems adequately can lead to inaccurate information in client matters. The supervision obligation extends to AI use in legal tasks.

Algorithmic bias creates significant ethical violation and malpractice risk. In employment law, AI decision-making that results in discrimination can have legal consequences. Uncritical reliance on biased AI systems may perpetuate discrimination.

Attorneys may inadvertently aid unauthorized practice of law through AI use. Clear boundaries between permissible AI assistance and prohibited unauthorized practice must be maintained.

AI integration raises ethical considerations about legal service billing. Attorneys must ensure fees remain reasonable and transparent with AI use.





Future Impact of AI on the Profession

AI will significantly affect attorney roles and responsibilities. Lawyer productivity will increase through AI automation. Attorneys will shift toward higher-value activities as AI handles routine tasks. New specialized roles will emerge to manage AI legal technologies. Law practice will place greater emphasis on strategic thinking and client interaction rather than procedural work.

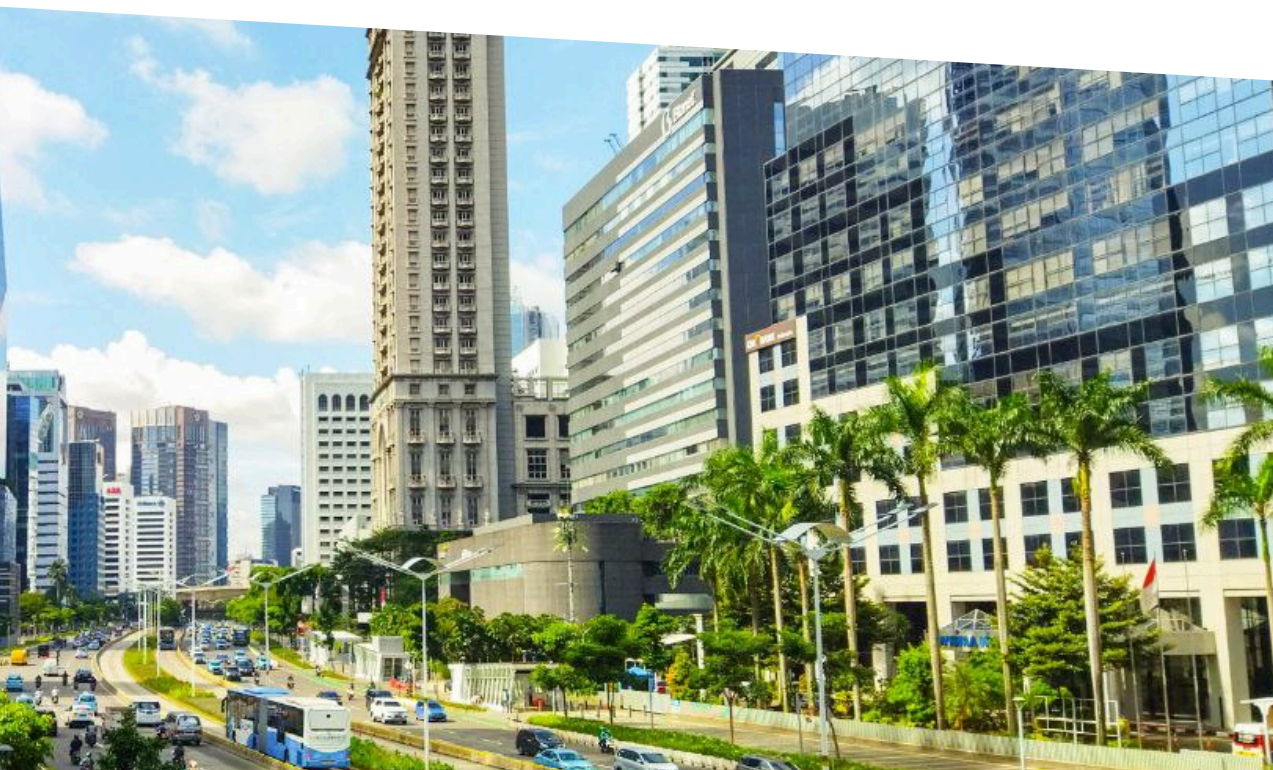
AI will impact law firm structures and business models in several ways. Firms will gradually move away from the billable hour model. AI technology will level the industry playing field between large and small firms. Law practices will face investment requirements in AI infrastructure and training. Firm structures will evolve to incorporate AI as a core operational component.

AI promises enhanced legal service accessibility and affordability, through AI-powered chatbots and virtual legal assistants, wider adoption of online dispute resolution platforms, and democratized access to legal services.

Conclusion

For responsible AI adoption, law firms should implement comprehensive measures. They must develop clear AI usage policies and guidelines for all personnel. Firms should invest in comprehensive training on ethical AI use for attorneys and staff. Robust data security protocols must be implemented to protect client information. Verification procedures for AI-generated content should be established as standard practice. Regular bias audits of AI systems should be conducted to ensure fairness. Human oversight must be maintained in all AI-assisted legal work. Transparency with clients about AI use should be practiced consistently.

The legal profession will be shaped by continued AI advancement and integration. While AI offers efficiency, accuracy, and access improvements, it presents significant ethical and practical challenges requiring proactive address. A thoughtful, responsible approach to AI adoption will help firms better serve clients while upholding fundamental legal profession principles.



Questions about business law or litigation?

Contact Tishkoff

Tishkoff PLC specializes in business law and litigation. For inquiries, contact us at www.tish.law/contact/. & check out Tishkoff PLC's Website (www.Tish.Law/), eBooks (www.Tish.Law/e-books), Blogs (www.Tish.Law/blog) and References (www.Tish.Law/resources).

Tishkoff PLC
407 North Main Street
Ann Arbor, Michigan 48104

 Tish.Law

 tishkoffplc@tish.law

 855.TISH.LAW

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