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Maintained

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This practice note provides an overview of the primary issues relating to the use of ChatGPT, a new artificial intelligence (AI) chatbot, in the practice of law. It discusses key issues that lawyers should consider when using ChatGPT or other artificial intelligence programs as tools in their practice and advises of possible uses of ChatGPT in daily practice.

For additional resources on generative AI, see [Generative Artificial Intelligence \(AI\) Resource Kit](#).

For more on AI in litigation, see [Evaluating The Legal Ethics Of A ChatGPT-Authored Motion](#), [Litigators Should Approach AI Tools With Caution](#), and [Why Legal Depts. Should Embrace AI's Work Potential](#).

What Is ChatGPT?

In November 2022, OpenAI launched ChatGPT, an artificial intelligence chatbot that has since risen to fame. In fact, many experts hail the chatbot as the best artificial intelligence chatbot on the market. ChatGPT, powered by a robust database and computing techniques trained to recognize human speech patterns, "doesn't exactly know anything." Steven Shankland, [Why We're Obsessed With the Mind-Blowing ChatGPT AI Chatbot](#), CNet (Feb. 19, 2023, 5:00 a.m.). Instead, it relies on its vast database to respond in a way that mimics human speech patterns. The product has quickly gained over 30 million users per day—a feat that other technology products have taken years to accomplish. *Id.* Given the rapid success of ChatGPT and its widely acclaimed capabilities, the use of ChatGPT in legal practice may become inevitable.

The "basic" version of the ChatGPT product is free to users, with a paid subscription version of the product expected to be launched soon at an expected price of \$20 per month. Fionna Agomuoh & Luke Larsen, [What Is ChatGPT? Here's How To Use The AI Chatbot Everyone's Talking About](#) (April 12, 2023 11:24 a.m.). Be aware of the potential advantages of the subscription service, which offers faster response times and access to additional features. [Introducing ChatGPT Plus](#), OpenAI (Feb. 1, 2023).

General Functionality

ChatGPT can engage in a conversational-style interaction with users, allowing you to ask it questions and provide it with specific directions. This means that users can provide the chatbot with narrow requirements (e.g., proofread this paragraph and make it more persuasive). Users can explain what type of "work" they want ChatGPT to do, such as:

- Drafting an email about a specific topic
- Providing background information on an issue –or–
- Proofreading a document

Given ChatGPT's broad functionality and the newness of the technology, the potential functions of the technology are still being developed.

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Further, users can provide specific rules that ChatGPT has to function within. While these rules can be used in a harmful way, such as the "Do Anything Now" rules that users have created to force ChatGPT to ignore its Moderation API protocols and take biased positions on different topics, these rules could also be used in useful ways. See [Tricking ChatGPT: Do Anything Now Prompt Injection](#), Medium (Feb. 15, 2023). For example, an attorney seeking to understand legal issues in a given case could instruct ChatGPT to pretend that it was a lawyer—a workaround to the moderation software that prevents ChatGPT from providing legal advice. Updates to the Moderation API protocols cause users to invent new and more elaborate prompts to overcome responses that are otherwise limited.

Why Use ChatGPT

The potential utility of ChatGPT in legal practice is still mostly unexplored. Certainly, as explained more fully below, ChatGPT's functionality is limited, and there is a great deal of room for error. However, the potential for ChatGPT to serve as an extremely useful tool for attorneys, whether that be through administrative tasks or substantive work, is clear. Attorneys should recognize the potential of this software to save them time, create smoother processes, and better their work as practitioners. As with all technologies, ChatGPT is a tool, and not a substitute for an actual attorney. But its usefulness as a tool should not be ignored.

Perhaps more importantly than the cost- and time-saving aspects of ChatGPT, you should consider whether there is an ethical duty to become fluent in this new technology. Most states have adopted Comment 8 to Model Rule 1.1 of the Model Rules of Professional Conduct, requiring attorneys maintain competence with technology. See [Litigation Technology Competence State Law Survey](#). Given this requirement, it may be wise to remain current with the technology, and work to incorporate it appropriately into legal practices—especially as the tool becomes more tested and well-recognized as a tool for attorneys.

Limitations

While ChatGPT is bound to be a useful tool, it is important to recognize that there are several significant limitations to the product.

- **Inaccuracy.** ChatGPT has been fed robust data to allow it to smoothly answer questions and respond to inquiries in a human-like structure. The chatbot's ability to mimic speech patterns in its responses leads to responses that are either reasonably accurate, or inaccurate but reasonable sounding. While ChatGPT can be used to substantively understand issues or to draft responses, practitioners should ensure the accuracy of all ChatGPT assertions and take care not to rely on ChatGPT as producing wholly correct responses. Overreliance on ChatGPT for accuracy could cause serious issues for attorneys who fail to catch errors in ChatGPT's work product.
- **Lack of current data.** ChatGPT is not connected to the internet, and its data is limited to 2021. Matt G. Southern, [OpenAI's ChatGPT Update Brings Improved Accuracy](#), Search Engine Journal (Jan. 10, 2023). As such, using ChatGPT for any functions that would necessitate current information would be ill-advised. It is important to remember that any research or knowledge that ChatGPT relays is inherently limited, especially in the area of law—where case law can quickly become outdated and legislation can quickly be enacted. Beware relying on ChatGPT for substantive knowledge of topics that may be outdated based on its current data set and keep track of when (and if) that data set is updated.
- **Lack of confidentiality.** The use of ChatGPT in the legal context brings about unique issues relating to confidentiality. Under both the Model Rules of Professional Conduct and the attorney-client privilege doctrine, attorneys must maintain strict confidentiality for their clients. To mitigate this risk, ensure that any data fed into the ChatGPT software has been redacted, with all identifying and privileged information removed. Prudent practitioners should treat interactions with ChatGPT as if it were a third party that should not be privy to any private client information.

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Beware overreliance on ChatGPT, as even its creators acknowledge that it is not able or authorized to provide legal advice, and that it frequently provides plausible, but inaccurate, responses. Users colloquially refer to these responses as "hallucinations."

Potential Uses of ChatGPT in Legal Practice

While attorneys have been using legal service tools that implement some forms of artificial intelligence for years, the vast disparities between ChatGPT's capabilities and prior artificial intelligence tools' capabilities creates new opportunities for attorneys to develop uses for the tool. It is important, however, to act with caution. Given the concerns over accuracy, lack of current information, the risks for bias, and the issues with confidentiality, it would be unwise to treat ChatGPT as anything more than a tool. That being said, ChatGPT could be used in legal practice in a variety of ways. Of course, you should take caution not to include any confidential information when asking ChatGPT to do any of these tasks.

Revising and Proofreading

Many attorneys already use some form of editing software to revise and improve their writing. While ChatGPT may not be specifically designed for legal writing, using ChatGPT in reviewing and revising writing could be extremely efficient. Not only can you provide ChatGPT with simple proofreading tasks (e.g., reviewing an email for typos and grammar issues) but you can also ask ChatGPT to do more complex editing such as:

- Asking the software to rewrite and incorporate edits to increase persuasiveness
- Asking the software to narrow the focus of writing, such as by eliminating the portions of a draft that focus on a specific issue

Because ChatGPT's software uses natural language processing, its ability to edit and redraft writing can be particularly useful. Users can also prompt more unusual revision tasks, such as simplifying or summarizing a block of text. The sophistication of the software also allows users to prompt ChatGPT with additional rules. For example, a user can engineer a prompt that defines certain parameters and assigns values for ChatGPT to conform its response, like the following:

Please adhere to the following parameters. Each parameter is set on a scale from 1 to 10, where higher values represent more of the associated attribute. After your response please provide a bulleted list of the parameters and their values. Parameter 1 is Complexity, higher values will produce more intricate sentences and vocabulary. Parameter 2 is Professionalism, higher values will produce formal language suitable for professional settings.

Using similar prompts allows you to increase or decrease Complexity and Professionalism in the response. Alternatively, you can analyze your own writing in accordance with these parameters. ChatGPT is not limited to only these parameters and users can define the parameters in other ways.

For example, when asked to redraft the first paragraph of this practice note to "increase professionalism," ChatGPT provided:

This practice note offers a comprehensive overview of the essential considerations related to the utilization of ChatGPT, an innovative AI-powered chatbot, in the field of law. It outlines the key concerns that lawyers must keep in mind while leveraging ChatGPT or other AI programs as tools in their practice and highlights potential applications of ChatGPT in daily practice.

Trying again, but focusing on the chatbot drafting to "increase persuasiveness," ChatGPT provided:

With the rise of innovative AI-powered technologies in the legal industry, it is imperative that attorneys remain cognizant of the critical considerations associated with utilizing ChatGPT, a cutting-edge chatbot. This practice note provides an in-depth overview of these crucial factors and emphasizes the pivotal role they play in

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leveraging ChatGPT or other AI programs as effective tools in legal practice. Additionally, it highlights the vast potential applications of ChatGPT in daily practice, making a compelling case for attorneys to consider its adoption as an essential tool for legal excellence.

Both prompts were well-taken and provided solid, completely usable responses. Situationally, ChatGPT can provide extremely nuanced editing that many attorneys can benefit from.

Simple Drafting Tasks

While it is unwise to trust ChatGPT to write an entire motion or an entire agreement, litigators and corporate attorneys alike could benefit from ChatGPT's ability to quickly—and often, effectively—draft simple documents. Emails, for instance, that you might otherwise spend valuable time writing and rewriting to ensure accuracy and professionalism, could be drafted with simple instructions to the chatbot and quick revisions from the attorney. Keep in mind that you can ask ChatGPT to edit its own work, which it does quite efficiently—for example, when asked "can you write me an email to an opposing attorney asking to meet and confer?" ChatGPT quickly provided the following email:

Sure, I can help you draft an email to an opposing attorney asking to meet and confer. Here is a sample email:

Subject: Request for Meet and Confer

Dear [Opposing Attorney's Name],

I hope this email finds you well. I am writing to request a meet and confer conference between our parties to discuss the [issue/ case/ dispute] currently before us. As you are aware, we have been working on resolving this matter for some time now, but unfortunately, we have not been able to reach a mutually acceptable solution.

I believe a meet and confer conference would be an efficient way for us to discuss the issues at hand, and hopefully, make progress towards a resolution. During this conference, I propose that we discuss our respective positions, share any relevant information or evidence, and explore potential areas of compromise.

I am available to meet at your convenience and suggest that we schedule a meeting within the next two weeks. Please let me know if this time frame works for you and if there are any specific dates or times that you would prefer.

Thank you for your attention to this matter, and I look forward to your response.

Best regards,

[Your Name]

ChatGPT readily accepted the next edit: "Edit the email to make it an initial meet and confer for a newly filed case" and re-wrote the email:

Certainly, here's an updated version of the email for an initial meet and confer for a newly filed case:

Subject: Request for Initial Meet and Confer

Dear [Opposing Attorney's Name],

I hope this email finds you well. My name is [Your Name], and I am the attorney representing [Your Client's Name] in the recently filed case of [Case Name and Number].

As we begin this case, I believe it would be beneficial for us to have an initial meet and confer conference to discuss the case's procedural and substantive issues. During this conference, I propose that we review the pleadings, discuss discovery expectations, and explore potential areas of agreement or disagreement.

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I am available to meet at your convenience and suggest that we schedule a meeting within the next two weeks. Please let me know if this time frame works for you and if there are any specific dates or times that you would prefer.

Thank you for your attention to this matter, and I look forward to working with you.

Best regards,

[Your Name]

While still imperfect, ChatGPT can continue to edit the email to the extent needed—or, at the very least, this prompt gives attorneys a springboard to easily edit the email themselves.

Further, ChatGPT may have the ability to adapt prior documents into template documents that can be recycled for future use. ChatGPT could also redraft documents to focus on different clients or different topics, retaining the original substance. For example, ChatGPT could potentially rewrite a simple demand letter for a different client or redraft a response to standard interrogatories or requests for admissions for a different matter.

There are myriad other ways in which ChatGPT could repurpose prior work, such as by taking an objective memorandum and rewriting it in persuasive form, which could allow an attorney to quickly pull language from the memorandum into a brief. ChatGPT could also be fed specific case quotes and asked to take those quotes and formulate an argument based on their substance. While any such writings would need close supervision, the simple act of starting the writing process can save significant time.

By feeding the source directly to ChatGPT, you can mitigate the risk that ChatGPT will provide inaccurate responses. Further, with enough finesse—and potential "prompt engineering" (as explained below)—ChatGPT could become extremely effective in these tasks. Consider ways in which requests can be phrased to generate the correct output, and do not hesitate to ask ChatGPT to revise its own work.

Conducting Document Review or Due Diligence

ChatGPT has the potential to quickly review and analyze data in ways that current document review or due diligence software programs lack. ChatGPT's artificial intelligence can identify relevant documents, privilege issues, or other "hot" issues much more efficiently than through a manual review, and much more adeptly than through a Boolean search for certain terms.

Research

While ChatGPT's dataset is limited in time, and while it cannot be relied upon for accuracy, using ChatGPT to kickstart research can save valuable time. ChatGPT can identify the seminal case law on a topic or areas of concern in a demand letter, giving you a first idea of what areas need more research. ChatGPT could also provide you with opposing counsel's potential counter-arguments, allowing you to determine where they may need to conduct additional research.

You can also ask ChatGPT to quickly synthesize cases or large sets of research. By feeding ChatGPT research, the chatbot could quickly reduce the research to its key points. This could effectively enable you to convey the substance of their research to clients or other attorneys, or just gain a better understanding of the case themselves. Of course, it is important to recognize the software's limitations—when asked to summarize different cases, ChatGPT was able to provide concise summaries of major holdings. However, when asked about finer points of law in those cases, ChatGPT struggled:

[Prompt: Summarize Chaffee v. Kraft Gen. Foods, 886 F. Supp. 1164, 1169 \(D.N.J. 1995\)](#)

Response: Chaffee v. Kraft General Foods is a federal district court case in New Jersey that involved a claim of age discrimination under the Age Discrimination in Employment Act (ADEA). The plaintiff, Chaffee, alleged that he was terminated from his employment as a district sales manager due to his age and filed a lawsuit against

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his former employer, Kraft General Foods. . . . [Author note: ChatGPT provided a several paragraph response here that does not need to be replicated]

Prompt: Does the Chaffee case have holdings on judicial admissions?

Response: After reviewing the Chaffee v. Kraft Gen. Foods case, I can confirm that the case does not have any holdings on judicial admissions. The case primarily deals with the issue of age discrimination under the Age Discrimination in Employment Act (ADEA) and focuses on the burden-shifting framework commonly used in discrimination cases. The court in Chaffee did not address any issues related to judicial admissions, which is a legal doctrine that involves a party's admission of a fact that is binding on them in the course of legal proceedings.

There, ChatGPT is wrong. In fact, the *Chaffee* case discusses judicial admissions at length: for example, explaining that "[b]efore addressing Kraft's bases for summary judgment, the Court must determine whether the statement made by Chaffee's advocate, in his presence, is an admission, binding upon the client." [Chaffee v. Kraft Gen. Foods, 886 F. Supp. 1164, 1168 \(D.N.J. 1995\)](#). So, while you can use ChatGPT for broader topics, its capabilities may still be limited when asked about finer points of law.

ChatGPT can also help users craft Boolean inputs to conduct a search. Imagine asking ChatGPT to develop search terms based on the type of case you want to find and it can provide the string to input into the search bar. For example, you can prompt ChatGPT to "Craft a boolean search looking to find cases in California that address when a contract has been breached in bad faith." To this, ChatGPT responded:

Here's a boolean search string you can use to find cases in California that address breach of contract in bad faith:

("breach of contract" OR "breached the contract" OR "breaching the contract") AND ("bad faith" OR "unfairly" OR "intentionally" OR "fraudulent") AND California

You can modify the search by including specific terms related to your case or excluding irrelevant terms to refine your results further. Keep in mind that this search may not capture all relevant cases, and you should review the cases to ensure their relevance to your specific legal issue.

In this vein, attorneys can use ChatGPT to supplement with search queries that could be run more broadly.

Looking to the Future

ChatGPT cannot be substituted for an attorney. But given enough practice, an attorney can maximize ChatGPT's power and increase their efficiency. Using ChatGPT as a springboard for research, writing, and review, may allow litigators to get a free—or at the least, more cost effective—pair of metaphoric eyes on their work. The potential of this tool cannot be overlooked, even if some practitioners hesitate embracing a technology that remains so untested.

Lawyers—and, specifically, law firm information technology departments—should be aware of the potential importance of prompt engineering, and how it can increase the utility of the ChatGPT program. "Prompt engineering is the process of crafting and optimizing text prompts for large language models to achieve desired outcomes." Lucas Mearian, [How To Train Your Chatbot Through Prompt Engineering](#), ComputerWorld (Mar. 21, 2023). By using prompt engineering, lawyers can maximize the efficacy of their requests to ChatGPT and encourage the software to work for them in more appropriate ways. ChatGPT is extremely new, and the ways it can be used for attorneys are plentiful but will likely take significant honing. By playing around with the chatbot, you can get familiar with what commands and prompts elicit more accurate responses and can determine how best to use the software. Through researching—or purchasing—prompt engineering tools, litigators can effectively maximize ChatGPT's potential.

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Checklists

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