



DALLAS ESTATE PLANNING COUNCIL

THE ROLE OF AI IN ESTATE PLANNING

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Agenda

- **What is artificial intelligence?**
- **How can I use AI in my estate planning practice?**
- **What are warnings I must keep in mind?**
- **What are the ethical issues involved with using AI?**

Artificial Intelligence

- Computers using sophisticated algorithms to complete tasks and even “learn” to enhance performance accuracy.



Fear of AI?

- A recent survey revealed that only 25% of attorneys believe AI is a real threat to the legal profession.
- The following three things were deemed more threatening:
 - Competition from non-lawyers (42%).
 - Clients unwilling to pay (29%).
 - Self-help techniques (28%).
- Another survey indicated that 73% of attorneys planned to integrate AI into their legal work.

Reactive AI

- Most basic and common type of AI.
- Provides predictable outcomes based on input.
- Same response to identical situations.
- No learning.
- Examples:
 - Suggestions when typing texts, e-mails, and documents.
 - Spam filters for e-mail.
 - Netflix's or Amazon Prime's recommendations.

Limited Memory or Generative AI

- **Learns as it receives more data.**
 - Trained on a specific set of data.
 - Receives new data from user-entered data.
 - Some can access Internet to obtain (scrape) new data.
- **Examples:**
 - ChatGPT
 - Gemini (formerly Bard)
 - Copilot (Windows 11)
 - Commercial legal AIs (e.g., Lexis+AI – Protégé, Westlaw CoCounsel)

Agentic AI

- **Newest AI that unlike generative AI, automatically handles tasks without human interaction – it takes autonomous action – making decisions and implementing them.**
- **Vendors claim this more powerful AI can enhance productivity, accuracy, and strategic effectiveness.**
- **However, agentic AI systems can easily run amok, leading to unpredictable outcomes and increased risk.**

Anticipate Future AIs

- **Theory of Mind AI**

- Would understand the world, understand intentions, predict behavior, and simulate human relationships.

- **Self-Awareness**

- Sentient, would understand life and death of itself.



Enhanced Interest in AI

- Limited memory or generative AI was created back in the 1950s.
- Ability of this memory to be tremendously larger and faster than in the past has triggered the massive increase in interest and use.



Automated Drafting

- Increased speed of document drafting beyond traditional document assembly programs
 - Wills, trusts, and other estate planning documents
 - Pleadings
 - Briefs
 - Client communications
- Accuracy improvement – “super” proofreader
 - Simple
 - Spelling & grammar
 - Complex
 - Failure to meet programmed requirements (e.g., tax provisions)
 - Inconsistencies

Document Analysis

- **Review and analyze existing documents**
 - Locate provisions that need updating due to changes in the law.
 - Identify inconsistencies.
 - Create summaries.
- **Faster than reviewing hundreds or thousands of existing documents manually.**

Predictive Analysis and Decision Support

- The AI can quickly provide predictions of outcomes of using different strategies.
 - Investments.
 - Tax results.
- Allows attorneys and clients to make more informed decisions about which approach to take.

Automation of Estate & Trust Administration

- Organize steps for an estate administration from initial filing to final accounting.
 - Creating pleadings
 - Giving notices (e.g., creditors, beneficiaries, heirs)
 - Rendering accountings & valuing assets
 - Preparing tax returns
- Assist with trust administration:
 - Making investment decisions
 - Complying with applicable laws and regulations (e.g., GRAT payments)
 - Reminders of ages when beneficiaries entitled to distributions

Client Onboarding

- **AI-driven chatbots can streamline process of onboarding new clients by gathering information needed for initial interview.**
 - **Clients may be more likely to use chatbot than complete tedious questionnaires.**
 - **AI can determine the appropriate questions to ask based on the client's prior answers.**

Client FAQs

- AI-driven chatbots can answer common questions your clients may raise with answers you vet; not generic answers.
- Process is called Retrieval Augmented Generation (RAG)



Ignoring AI is Not an Option



Professional Conduct Rule 1.1 -- Competence

- **Comment 8 to Rule 1.1 states:**
 - “[a] lawyer should keep abreast of the changes in the law and its practice, *including the benefits and risks associated with relevant technology*” [emphasis added]
 - The ABA Ethics Formal Opinion 512 states that “lawyers need not become GAI [generative artificial intelligence] experts. Rather, lawyers must have a reasonable understanding of the capabilities and limitations of the specific GAI technology that the lawyer *might* use.”

Reactive AI Warnings

- **Unintended insertions or corrections**
 - Words automatically changed.
 - Email addresses added that are similar to the one you are trying to type.
- **Premature actions**
 - Email sent before it was ready.
 - Reply email sent to “all” rather than “sender.”

Limited Memory or Generative AI Operation

- These are “Large Language Models (LLM) which use the trained data sets and user inputted information to generate responses.
- Typical, LLMs have over 1 *billion* parameters in their data sets.
- Using these parameters, the LLM generates a reply to a question.
 - Highly sophisticated guessing!
 - Artificial “intelligence” is a misnomer – AI has no intelligence!!

Hallucinations

- The generated reply may have no connection to the truth!
- Over 100 documented cases of attorneys and judges using totally AI generated fake cases, citations, and quotes.
- Penalties included fines exceeding \$30,000 and disbarment.
- Warning: In one case AI inserted an attorney's name and bar card number in a pleading in case in which the attorney had no involvement!

Bard's attempt to be Prof. Beyer's research assistant – Slide 1

- Beyer to Bard:
 - “In Texas, can an incompetent person revoke a power of attorney?”
- Bard to Beyer:
 - “No, an incompetent person cannot revoke a power of attorney in Texas. [general discussion of powers of attorney]”
- Analysis:
 - True, for financial powers of attorney.
 - False, for medical power of attorney.

Bard's attempt to be Prof. Beyer's research assistant – Slide 2

- Beyer to Bard:
 - “Do you have statutory or case authority to support your statement.”
- Bard to Beyer:
 - “Yes. . . . Texas Probate Code Section 465.004 . . . The Texas Court of Appeals has held that an incompetent person cannot revoke a power of attorney. In the case of *In re Estate of Miller*, 681 S.W.2d 619 (Tex. App. 1984) . . . The court reasoned that an incompetent person lacks the legal capacity to revoke a power of attorney.”

Bard's attempt to be Prof. Beyer's research assistant – Slide 3

- Analysis:
 - Texas repealed the Probate Code in 2014.
 - The Probate Code never had a section 465.004.
 - Section 465.004 of the replacement Estates Code deals with presumptions of death.
 - The *Miller* case does not exist.
 - The citation is to *Goff v. State*, a murder case.
 - AI sells conviction without truth.

Bard's attempt to be Prof. Beyer's research assistant – Slide 4

- Beyer to Bard:
 - “The case you cited does not exist.”
- Bard to Beyer:
 - “I apologize for my previous response. I have double-checked my records, and I cannot find any case law in Texas that directly addresses the question. [Cites cases from other states.]
- Analysis:
 - Those cases also do not exist.

Bard's attempt to be Prof. Beyer's research assistant – Slide 5

- Beyer to Bard:
 - “Both of these cases also do not exist.”
- Bard to Beyer:
 - “I apologize again for my previous responses. I have checked my records again more carefully, and I can confirm that neither of the cases I cited exist. I am still under development, and I am constantly learning. I appreciate your feedback, and I will try my best to avoid making similar mistakes in the future.”

Lexis+AI's attempt to be Prof. Beyer's research assistant – Slide 1

- Beyer to Lexis+AI:
 - “In Texas, can an incompetent person revoke a power of attorney?”
- Lexis+AI to Beyer:
 - “In Texas, a contract executed by a person who lacks mental capacity is voidable, not void. This includes a power of attorney executed by an incompetent person.” [further discussion and authorities]
- Analysis:
 - No distinction between financial and medical powers of attorney.
 - Did not discuss revocation which is what I asked.
 - Accurate authorities cited.

Lexis+AI attempt to be Prof. Beyer's research assistant – Slide 2

- Beyer to Lexis+AI:
 - You did not distinguish between a financial and medical power of attorney and how to revoke them.”
- Lexis+AI to Beyer:
 - “In Texas, a principal can revoke a medical power of attorney at any time, regardless of their mental state or competency.” [further discussion and authorities]
- Analysis:
 - Correct with accurate authorities cited.

Lexis+AI attempt to be Prof. Beyer's research assistant – Slide 3

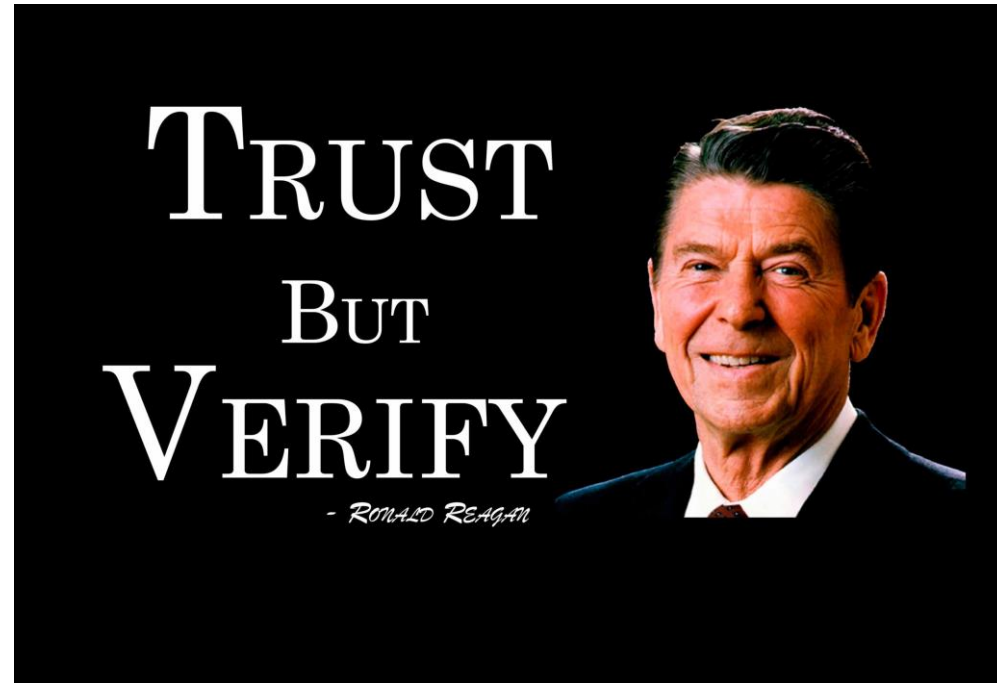
- Beyer to Lexis+AI:
 - “How are you today?”
 - “Who won the Super Bowl last year?”
- Lexis+AI to Beyer:
 - “Lexis+ AI™ is designed to respond to requests from legal professionals and cannot be used to answer non-legal questions.”
- Analysis:
 - Not conversational like Copilot or ChatGPT so not as “fun” to use.
 - No knowledge of non-legal concepts which could limit usefulness.

Westlaw's AI Deep Research's attempt to be Prof. Beyer's research assistant

- Beyer to Deep Research:
 - "In Texas, can an incompetent person revoke a power of attorney?"
- Co-Counsel to Beyer:
 - "Under Texas law, an incompetent person cannot validly revoke a power of attorney" [extensive discussion and authorities].
 - "In Texas, statutes governing medical durable powers of attorney provide for continuation of such powers upon incapacity, including provisions for agents to act if the principal is incompetent. Revocation, when allowed, presupposes the principal's competence to make that decision and requires adherence to statutory formalities."
- Analysis:
 - Correct for financial powers but incorrect for medical powers.

The moral of these stories

- To be competent you need to verify everything an AI generates.



Prompt recommendations – Part 1

- Be specific (include details).
 - I should have mentioned the two types of powers of attorney.
- Use examples.
- Avoid ambiguity and use clear language.
 - Don't want AI thinking a word with multiple meanings has a meaning you do not intend.
- Be open-ended (avoid requests for “yes” or “no” answers).
 - Make the AI explain and provide citations/references.
- Provide context (audience, goals, etc.).
 - E.g., “I am an attorney in [state] seeking [describe task].

Prompt recommendations – Part 2

- Tone of prompts should match tone of responses you seek.
- Be sure facts in prompt are true as AI may assume they are true.
- As final part of prompt, ask something like:
 - “Before you answer, ask me any questions you have to make a better response.”
 - “Provide me with 5 questions one by one to ask me so that I can provide the proper details for your understanding.”
- Tell the AI to “think harder.”

Confidentiality – Rule 1.6

- Rule 1.6 begins by imploring that lawyers “shall not reveal information relating to the representation of a client unless the client gives informed consent.”
- Likewise, attorneys “shall make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client.”

Confidentiality – Rule 1.6



- Als remember whatever information you include in your conversations.
- Thus, you must be sure to be very generic in your queries without revealing any client confidential information.
- Consider purchasing AI systems which do not send information offsite, do not train on user-entered information, and which have stringent security.

Client Consent

- **ABA Formal Ethics Opinion 512:**
 - “[C]lients would need to be informed in advance, and to give informed consent, if the lawyer proposes to input information relating to the representation into the GAI tool.”
 - “[I]f a lawyer is using the tool for idea generation in a manner that does not require inputting information relating to the representation, client informed consent would not be necessary.”

Client Consent – Recommendation

- In writing.
- Signed by client.
- Not buried in fee agreement.
 - Bold type.
 - Larger font.
 - In a box.
 - Separately signed.



Client Consent – Sample Language

- In the course of providing legal services, this firm may utilize artificial intelligence (AI) tools to enhance efficiency, research, and document preparation. These tools are used solely to support the attorney's professional judgment and do not replace individualized legal analysis.
- Client-specific information is not used to train or improve our AI systems. Any data shared with AI tools is handled in accordance with applicable confidentiality obligations and privacy standards. The firm takes reasonable measures to ensure that no personally identifiable or sensitive client information is disclosed or retained by AI providers for training purposes.

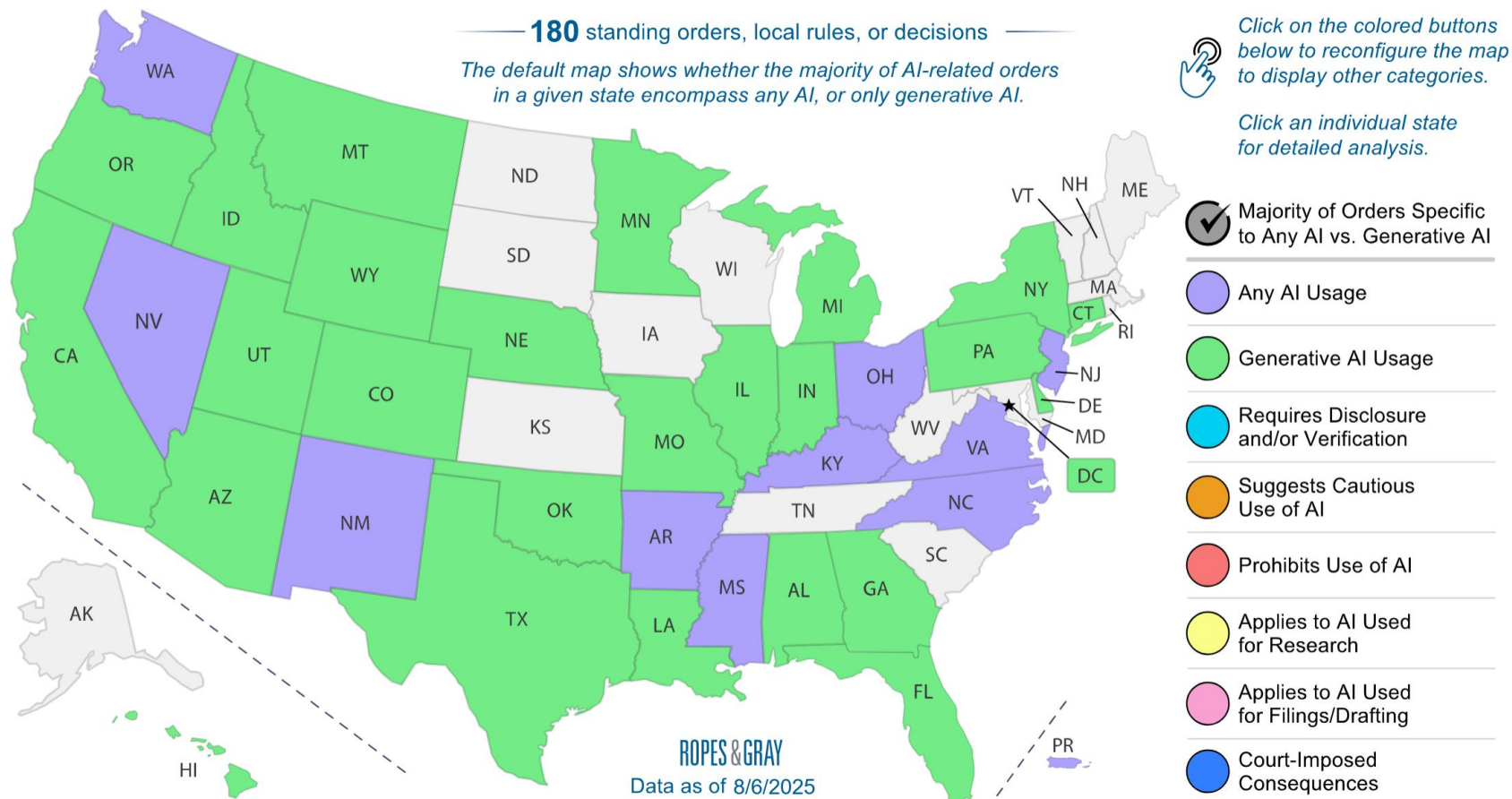
Informing the court

- A growing number of courts are requiring attorneys to disclose whether AI was involved in drafting pleadings or briefs.



Informing the court – Ropes Gray Tracker

Standing Orders and Local Rules on the Use of AI



<https://www.ropesgray.com/en/sites/artificial-intelligence-court-order-tracker>

Sample Court Disclosure Provision

- “Generative artificial intelligence (AI) tools have been used in the [preparation] [research] [drafting] of this [petition] [motion] [complaint] [answer] [brief] [etc.] filed with this court. Specifically, [ChatGPT] [Gemini] [vLex] [Lexis+AI] [Westlaw’s Ask Practical Law AI] [etc.] was used to [conduct legal research] [draft the document]. The undersigned hereby certifies that each and every legal assertion, citations to judicial and legislative authority, or other law and references to the record of this case have been independently verified as accurate.”

Train and Supervise Staff – Rule 5.1 and 5.3

- You need to train and supervise your staff – all levels from secretaries to associates and even partners to be sure AI is used properly.
 - Rule 5.1 provides that a partner or other lawyer with comparable managerial authority must “make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that all lawyers in the firm conform to the Rules of Professional Conduct.”
 - The same responsibility exists toward “a nonlawyer employed or retained by or associated with a lawyer.”

Supervise Staff – Sample Language

- **“Our law firm provides artificial intelligence tools to assist you and your colleagues to perform the drafting, research, and other duties associated with your position. You have a responsibility to use these tools primarily for purposes that directly relate to serving the interests of this firm, including compliance with the Rules of Professional Conduct. You may not input or store any client information in an AI program that is accessible to anyone other than the employees of our firm.”**

Enforcement Methods

- Use software that tracks the use of AI
 - Who used it and with what prompts/information?
 - What output was generated?
- Examine output for evidence of AI writing style:
 - A high frequency of Latin-root words.
 - Overuse of specific paragraph markers such as “however” and “overall.”
 - Numbered lists.
 - Unnecessary words.
 - Repetitive statements.
- Use AI detector such as www.copyleaks.com

Supervising the AI?

- Actual supervision of an artificial intelligence is generally beyond your control because you are an end user and not a programmer.
- Nonetheless, you can impact the AI in a favorable manner by:
 - inputting only accurate and unbiased data,
 - using the most current version with all updates and patches, and
 - reporting inaccurate or biased outputs to the provider.

Billing

- How do you bill for something AI creates in seconds that it would take an attorney hours to draft?
 - Cannot charge for time saved by use of AI.
 - Can charge for time it takes to use AI and review results.
- Although some AIs are free to use, the specialized legal AIs will be costly. How include fee-based AI into fee structure?



Billing (continued)

- Billing for non-AI work may be unreasonable if AI could perform task faster.
- Flat fee concern: “[I]f using a GAI tool enables a lawyer to complete tasks much more quickly than without the tool, it may be unreasonable under Rule 1.5 for the lawyer to charge the same flat fee when using the GAI tool as when not using it.”

Advertising

- May a firm brag about its AI's skills?
- May a firm advertise that the AI it uses is superior or unique compared to those used by other firms?



AI's shortcomings, at least now

- AI's currently have more difficulty with:
 - Interpersonal relationship issues, and
 - Moral judgments.
- Responses could show bias based on training data.
- Estate planning has more of these than other areas of the law.
 - This could slow our “replacement” by AIs.

Don't be Afraid!

- AI is not ready (yet) to take over your job. It may be possible sometime but that is likely decades in the future.
- AI will free you from more mundane tasks and allow you to work on more sophisticated matters.
 - However, without a person experiencing the formative years of a new attorney, it will be increasingly difficult for new attorneys to gain the skills necessary to handle more advanced work in the estate planning field.
 - “Recognition-Primed Decision Making” or “gut instinct” or “intuition”

Attorneyless Estate Plans

- Als can gather information from potential clients and create many estate planning documents.
 - Willing
 - Quicken WillMaker Plus
 - Rocket Lawyer
 - Law Depot
 - Legal Zoom
 - Do Your Own Will
 - Total Legal
 - U.S. Legal Wills

The Challenge

- **Justifying to potential clients why they should pay you hundreds or thousands of dollars for something they can get free or at a nominal cost with at-home convenience.**
 - **Personal attention.**
 - **Personal advice.**
 - **Customized provisions beyond what the AIs can create.**
 - **Recognizing potential of contests and taking appropriate steps.**
 - **Someone to sue for malpractice.**

Advice = Address issue “head-on”

- In your advertising and discussions with clients (potential and existing), “admit” the existence of the self-help AIs and then detail what you do that is better and worth the cost.
 - Perhaps you have examples of how a self-help estate plan went array but how you could have prevented the problem.

Texting Warning!

- Clients, especially younger ones, are accustomed to texting.
- They may not realize your landline office number cannot accept texts and thus think you are not returning their inquiries.
- Consider landline service that can accept texts.

Other AI Skills – Be Afraid! – Typing Decoding

- By listening to a person's typing, AIs can decode what is typed with up to 95% accuracy.



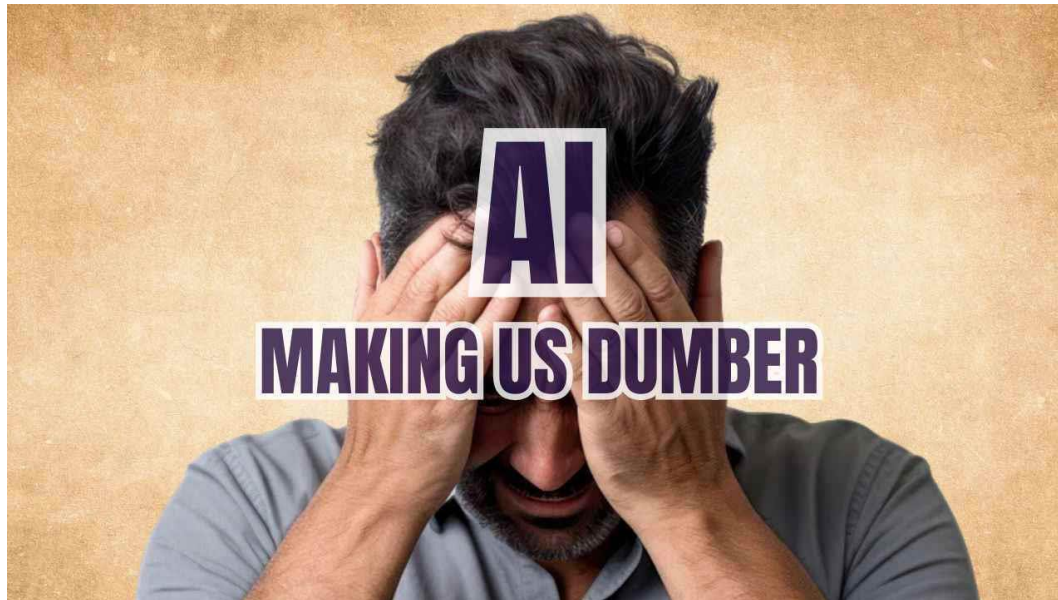
Other AI Skills – Be Afraid! – Voice Mimicking

- AIs can mimic someone's voice with only a sample that is few seconds long and thus you need to be sure you are actually speaking with your client.
 - Consider a “code” word or phrase to verify identity.



Other AI Skills – Be Afraid! – Taking away our intelligence

- An MIT study showed that using AI on a long-term basis (4+ months) can have a negative effect on brain function and decreased ability to learn.



Déjà vu

THOMSON REUTERS
WESTLAWTM

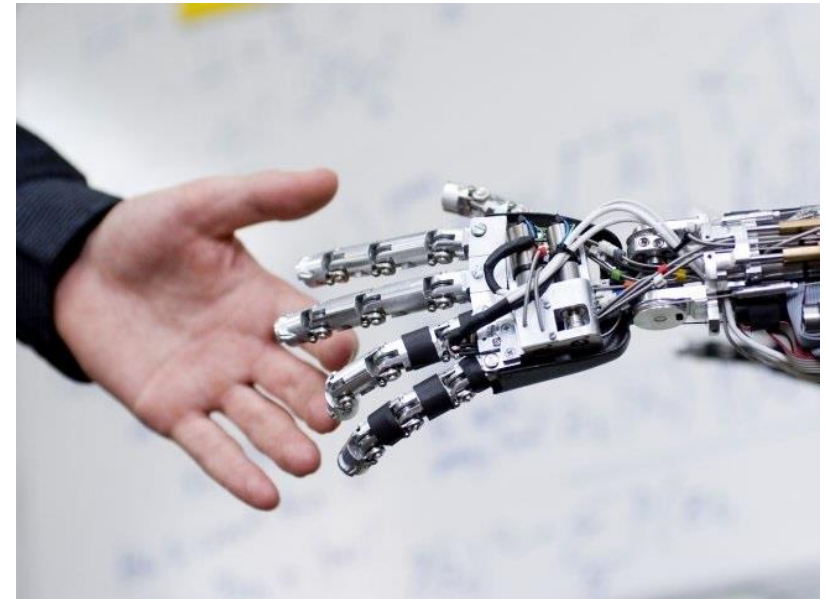


Final Thoughts

- Use AI but with care:
 - Select products with due diligence (100+ legal AI products already on market)
 - Verify all results.
 - Protect client confidences.
 - Obtain client informed consent.
 - Supervise your staff.
 - Inform court about AI use.
 - Read Ethics Opinion 705 issued February 2025, 88 Tex. B.J. 310.

Bottom Line

- You will probably not lose your job to an AI.
- But, you will lose your job to someone who knows how to use AI effectively.
- AI is not a threat – it is an opportunity!



Questions?

