

Artificial Intelligence (AI) Resources for Estate Planners

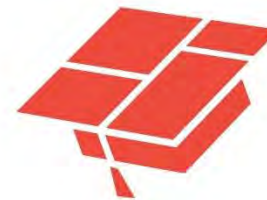
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EDUCATION

Introduction

ARTIFICIAL INTELLIGENCE (AI) SHOULD HAVE ALREADY CHANGED
HOW YOU PRACTICE

Introduction

- Artificial Intelligence (AI) is being integrated into sophisticated trusts and estates, tax, and wealth planning practices as an operational tool for intake diligence, conflict checks, transaction support, post-meeting documentation, and more.
- The technology changes how information is gathered and verified, how risk is managed, how work product is generated and reviewed, and how professional time is allocated between drafting and counseling.
- Artificial intelligence functions as a force multiplier when the firm implements disciplined protocols, applies consistent human review, and uses the output to elevate analysis rather than to replace judgment.

A Few of the Tasks AI Can Be Used For That Most Practitioners are **Familiar** With

- Drafting a document. You can input a form and request AI make modifications to tailor the form.
- Reviewing an existing form and comment on legal, grammar, or other aspects of it.
- Research.

A Few of the Tasks AI Can Be Used For That You May Not be Familiar With – **EXPENSES, CLE, EVALUATIONS, MEMO**

- Upload an expense report and ask AI to organize it by category with subtotals and a grand total.
- Analyze disparate comments on a webinar or other program and organize them into categories that facilitate review and evaluate the overall implications of the comments.
- Take a 100-200 page transcription of a meeting and create a client facing memorandum. Supplement that memorandum with an executive summary, a to-do or task list for each person mentioned in the meeting (whether or not attending) and draft a follow up letter or email to each of those people.
- Create a list of learning objectives and a timed agenda for a presentation's CLE requirements based on a paper, article, memorandum or PowerPoint uploaded. If that same presentation is being given at a 1-hour CLE, 50-minute CPE, or 2-hour CLE, AI quickly modify and expand to fit the criteria required. From the same PowerPoint AI can almost instantly generate whatever number of learning objectives are required. The timed agenda can be modified from 5-minute to 10-minute increments almost instantly. If AI was requested to draft a timed agenda for a 60-minute CLE for lawyers, it can be changed quickly to a 50-minute CPE for accountants. Like so many AI tasks this can be done in less time than a practitioner would have taken in the past to explain the assignment to a junior associate or admin staff.

A Few of the Tasks AI Can Be Used For That You May Not be Familiar With – **ARTICLES, BEREAVEMENT, FAITH**

- Take a 100-200 page transcription of a meeting and the memorandum mentioned previously and create a draft article addressing the planning ideas discussed in that meeting for a consumer publication. You can specify the word length of the publication, the style of the publication and the audience of the publication and AI will modify the draft article accordingly.
- Take the same input as above and draft a much longer more technical article for a professional estate planning journal using a completely different tone appropriate for a sophisticated audience. You can request that, in contrast to the preceding article for consumers, that AI provide citations to relevant sources and authorities even though none were discussed in the meeting and therefore not included in the transcript. Obviously, every one of those sources should be verified. But AI can make that easy too. You can instruct AI to give full proper citation format and also a link to whatever source it consulted for the footnote. Many may be accurate, but not all. The inaccuracies, often referred to as hallucinations, have to be taken seriously, but the occurrence of hallucinations has received so much attention that it seems to have detracted many from pursuing the use of AI, or perhaps it's an excuse to defer or avoid the time investment required to get familiar with AI.
- Each of the articles can be written without any client specific references.
- A client just experienced a death or other traumatic life event. You can request AI draft a letter or email you can send the client.
- You can ask AI to make the above letter about a death or other event sensitive to whatever faith or culture the client may be.

A Few of the Tasks AI Can Be Used For That You May Not be Familiar With – **JAIL MAIL, FAITH, ANGRY EMAIL**

- A contact was convicted of a crime and sent to prison. AI can help you locate the individual, tell you how to address a letter to that person, advise as to the requirements (which are quite strict) about the letter, draft a letter that will be sensitive to that person's situation and not raise any concerns with prison officials who will review the letter before it is given to the individual.
- A practitioner is working on an article or speech about a faith, culture or health issue that they are not familiar with. Sometimes trying to understand a perspective or view on life, or another's position and experience of life that is so different from your own is very challenging. While research and reading can help, that may not be enough. You can have a long heartfelt conversation with colleagues you are working with on this project discussing their experiences and views. That rambling multi-hour conversation will be productive, but to capture the essence of the thoughts while taking notes is difficult. Note taking is also distracting, especially when a difficult or nuanced topic is being discussed. You can record the meeting during which these discussions occurred and ask AI to summarize the meeting focusing on cultural or other concepts you are trying to capture. AI can extract from hundreds of pages of transcripts thoughtful insights that you may not have otherwise been able to capture.
- A significant client just sent you an inappropriate email making completely unreasonable demands. You can dictate or write a strong very factual response that you feel is appropriate. But, before you hit send, being conscious of the steam roiling out of your ears, you upload your draft email into AI and request that AI review the email and modify it to be respectful and less antagonistic while retaining all factual points. While you are in a state of anger and frustration, AI will tone down your letter preserving the points you need to make. AI can provide a reviewer for emotionally sensitive matters like this thereby avoiding unintended conflict. This can be done with AI in less time than it would take you to explain this to a colleague or admin.

A Few of the Tasks AI Can Be Used For That You May Not be Familiar With – **POWERPOINT, CV**

- You need to create a PowerPoint slide deck for a presentation or client meeting. You can upload a memorandum, transcript, article or whatever resources and ask AI to create content for a slide deck and provide that in a Word document that you can paste into the PowerPoint, or you can ask AI to create the PowerPoint (that still is a bit hit or miss but the technology no doubt will improve). You can even ask AI to provide sources or citations for any authorities and more. The time to create a presentation is reduced.
- You have not kept your CV up to date and need to submit it as part of an application. AI can create a CV from scouring online information and your own enterprise files.

A Few of the Tasks AI Can Be Used For That You May Not be Familiar With – **MENTORING WITH SPEAKING**

- AI makes it easier for practitioners to create presentations. With AI you can help mentor younger and more diverse people in speaking and guide younger staff to grow professionally.
- Consider a senior partner who has a sophisticated memorandum on estate planning. They can ask AI to create a PowerPoint (or perhaps a Word document with the content for PowerPoint slides) for a presentation to a professional organization on that topic that Senior Partner will present. That same input can be used by AI to create a presentation for the junior professional to present at a webinar or seminar for a local civic group or other consumer group in order to begin the process of “getting their feet wet” with public speaking and marketing.
- The materials for the senior partner can be used by the junior professional to prepare so that they will be confident that they have substantial knowledge of the topic to field questions. AI can add speaker notes to the consumer PowerPoint to help guide them and reduce the “butterflies” every new speaker experiences. AI can even be asked to anticipate questions from a consumer (or other audience) so that the junior can prepare for that too. A few months after the presentation the junior is asked present on the same topic for a group of physicians. AI can revise the PowerPoint, anticipated questions and more to resonate better with that new audience. AI can in short be harnessed to mentor and help younger professionals.

A Few of the Tasks AI Can Be Used For That You May Not be Familiar With – **LOST EMPLOYEE**

- One of the most frustrating experiences in successfully running a firm is the loss of an experienced employee that has significant institutional knowledge of firm practices and how the firm operates. Understanding the needs of various practitioners, where things are located in the firm's databases, how to effectively use the firm's programs and the soft-skills of knowing which form or document to start with for a task creates a more efficient workplace. Trying to replicate that with a new hire will take time, and the adjustment period causes lost productivity.
- While AI may not be able to replicate all of the experience of an employee, it's ability to search through enterprise files and identify the kinds of tasks and documents associated with those tasks a particular employee often was involved with can help provide guidance to a new employee on how to more effectively step into their new role.
- AI could be used to provide an understanding of tasks and location of items on a database which may have taken a new employee months in the past to master. While the effectiveness of this particular task depends on the organization of your documentation and your firm's level of technology integration (i.e., AI if properly setup can search through files including emails, calendar entries, documents edited by a particular employee, etc. but AI cannot search through paper files that have not been scanned or PDFs that have not had optical character recognition (OCR) processing completed, etc.), even the ability of AI to find a few items prepared by the experienced ex-employee (or even individuals who served in that position many years ago!) could provide insight for a new hire that creates a smoother transition and loss of less institutional knowledge.

A Few of the Tasks AI Can Be Used For That You May Not be Familiar With – FINDING DOC; CONTINUITY

- You have a memo or agreement you completed decades ago but cannot remember the name of the client, but you remember a few random details about it. Even if all of your enterprise documents are OCRd in a cloud storage system, what do you look for and how can you find it? It may seem like the proverbial needle in the haystack.
- Here is an illustration of a prompt, but it needs to be tailored based on whatever relevant facts you can remember: *“there is a document in our enterprise files which has detailed statistics and calculations on how education reduces the rate of divorce, how wealth correlates with a lower divorce rate, etc. there are very detailed statistics and calculations that conclude that the divorce rate for a couple worth \$5 million, with college education, married 20 years may be as low as 10-11%. can you find that document?”*
- Whatever details you remember may be used by AI to find the document. Then you can quickly review the findings and if one of them is what you were looking for you can click the link to the document you can ask AI to provide. You can have AI summarize the contents of any documents it identifies. You can explain to AI the purpose for which you are looking to apply the document so that AI can consider what is relevant, and so forth.
- A continuity document is a single, authoritative reference that captures the intent, structure, constraints, and decisions of an ongoing project so that work can continue without loss of context if: A chat ends or reaches its limit, a collaborator changes, you return to the project weeks or months later, the work moves between tools, people, or formats. In practical terms, it is the project’s memory, operating manual, and guardrails rolled into one. A continuity document answers one core question: “If someone had to step in tomorrow and continue this work exactly as intended, what would they need to know?”

A Few of the Tasks AI Can Be Used For That You May Not be Familiar With - **ILS – DRAFTING MEMO**

- When you draft documents for a client you can have AI summarize the documents for the client to create a summary to provide with the documents. But there is a better way to handle this process when a complex document or plan is involved that is more explanatory to the client, and much more protective of the drafts person.
- Instead of merely drafting the document silently, set up a web meeting for yourself in which you record yourself discussing out loud the drafting process for the document. If this feels awkward, or if your first attempt at this is not great, try drafting with a colleague using a web meeting which you record. As you scroll through the document generation software prompts you both to discuss not only which approach you are using (which tabs you click to select those options for the document), but why you are making those selections. Example: *“We opted to have all assets on the first spouse’s death pass to a QTIP and have provided the surviving spouse the flexibility to disclaim into a credit shelter trust. We opted not to use a Clayton QTIP because...”*
- You also should discuss some of the options, like the Clayton QTIP, which the tabs on each page of the document generation input form will prompt you about that you are not selecting. None of this adds any material time to the drafting process. After you have drafted the document, input the recording transcript from that web meeting into AI and request that AI create a very detailed memorandum from the attached transcript discussing recommendations and steps taken in drafting the documents for the client. This approach is superior to merely having AI summarize the documents because the thought process of the choices the drafts person makes while drafting a document are much more informative. Brief mention of options not selected helps the client better understand what was done for them. Giving clients options is very protective of the practitioner because that emphasizes the client’s awareness and participation in the decisions. A mere AI summary of the final document leaves all of that unaddressed. AI can transform how you practice, improve client communications and be more protective of the practitioners involved.

A Few of the Tasks AI Can Be Used For That You May Not be Familiar With - **HIGHLIGHTERS**

- Analyzing a new case can be done by AI, but there is a different approach that uses AI to save time, but which also assures a greater input and control by the professional adviser. The likely way many would tackle a new case, and this is certainly appropriate and efficient depending on the circumstances, is to request that AI review the case that you upload and provide an analysis. However, if the case is particularly technical and of great importance, you might choose to combine more old-style and modern AI techniques.
- An example will illustrate. A recent case had significant importance to a current client matter. The case was retrieved in PDF format and converted to Microsoft Word. As the case was reviewed key phrases were highlighted in yellow using the Word text highlight function. Comments and analysis were added with the practitioner's insights and questions that were highlighted in green. Then all of these concepts were evaluated in the context of the particular matter and highlighted in gray shading. The reason for this type of analysis is the case, it was felt, was too important and too nuanced to relegate to a mere AI summary. Also, if the case was merely read how would the various end products be created?
- With the three-color highlighted approach, the case was then uploaded to AI. AI was requested to create a summary for the client matter assuring that all gray shaded comments were reflected which included the client's name and references to the specific client matter. AI was instructed that it could consult the case itself and especially the green highlights for analysis to support and explain the gray shaded comments.
- Then AI was requested to create an article from the case and to expressly not include any of the information that was gray shaded. The difference in tone and style for an article versus a client memorandum was material and helpful to both end uses. But by simply using a different color highlight for client matters it was assured that no mention of anything pertaining to the client matter appeared in the article. This approach is based on the old-style use of colored highlighters when reviewing a paper document but adapted to an electronic environment. The case itself was reviewed precisely because the nuances were too important to rely on an AI summary. Since the AI reports were created reflecting the practitioner's analysis and comments the end product was improved, more nuanced, and reflected the practitioner's analysis of the case. By merely changing highlight colors AI could create an article from the same input with no extra time by the practitioner other than what was necessary to evaluate the case for the client. AI can even be requested to leave the color highlights on the text of its analysis so the practitioner can see what came from the practitioner's analysis, what AI extracted from the case using its algorithms, etc.

A Few of the Tasks AI Can Be Used For That You May Not be Familiar With - **BILLING ANALYSIS; VACILLATING PLAN**

- A client emails or calls complaining about their bill. What was all that time spent on? Have your billing system generate a time run for the client for whatever bill or bills were the subject of the complaint. Input it into AI and let AI perform the billing analysis that staff use to have to do to respond to such matters. For example, AI may be instructed to allocate time and/or charges by each type or category of task. AI can quickly break out meeting time, research, document drafting, corrections to draft documents or whatever else might address the client's concerns. Instead of it taking days and many hours of staff time using AI the practitioner can respond to the upset client very quickly with substantial detail and explanations.
- AI can be used to identify inconsistencies in client dispositive wishes. For example, the practitioner has a "feeling" that the client has changed her mind several times about her dispositive plan and is becoming increasingly concerned about why this is happening, what is causing these vacillations and what the files may reflect if there is ever a question. AI can search all memorandum, emails, and draft documents and summarize each bequest by person/beneficiary, and asset, and list by each category every time the client requested a different disposition. That analysis might support and inform the practitioner as to what further actions are appropriate. The time and cost of the analysis is very limited.

A Few of the Tasks AI Can Be Used For That You May Not be Familiar With - **CAPACITY**

- Is there a capacity issue? A practitioner is increasingly concerned whether a particular client may be facing capacity issues. While conversations have appeared to be reasonable, it seemed that on several occasions the client has made concerning comments about his lack of understanding of particular matters, or his confusion.
- AI is requested to review transcripts from each of the client meetings and to identify any exact comment that might suggest capacity issues. AI can be specifically asked to identify each instance in which the client indicated a lack of understanding or confusion, or misstated names or key facts and corrected himself. AI can be requested to quote the exact statements from the transcript that the client made and provide a link to that part of the meeting transcript.
- AI cannot be used to supplant legal judgement, and determination of capacity is clearly a legal judgement to be made by an attorney. AI is not being asked to do that in this instance, since all AI is doing is searching massive input and giving the practitioner exact statements that the practitioner exercising legal judgement will then interpret. Further, if the practitioner wants to confirm the veracity of each statement the link provided will take the practitioner to the direct statement in the transcript.
- It is correct that AI may not identify statements that may be relevant to the analysis. If the practitioner concludes on the basis of the confirmed statements identified that there is a capacity issue what was missed may not matter. If the practitioner cannot conclude that there is capacity, then the legal judgement may be made to further analyze the transcripts or not. Also, this would only be one step in the process. The most important part of the analysis is the attorney who attended each meeting should review each quote to confirm that they are consistent with their recollection of the meeting. But the power that AI brings to this analysis is that AI can identify from transcripts exact quotes and incidences that a person taking notes during a meeting may not identify.

A Few of the Tasks AI Can Be Used For That You May Not be Familiar With - **ADVERTISEMENT**

- A practitioner recorded a webinar. Most webinar or meeting platforms permit recording and automatically generate a transcript. AI can be requested to write an advertisement for the webinar, of whatever length is desired, and targeted to whatever audience is anticipated or desired.

AI BACKGROUND REVIEWS

FILTER PROSPECTS, ENHANCE RELATIONSHIPS, DUE DILIGENCE

AI Background Reviews – Filter Prospects

- Artificial intelligence can be used as part of the firm's intake procedures to perform a background review of a prospective client with minimal input data.
- A name, a city, and an approximate age can be sufficient as the foundation for a review that identifies public-record facts that may affect whether the firm should accept the engagement.
- The practice benefit is strongest before the engagement is accepted because the firm can decline representation without the complexity associated with terminating an existing engagement.
- AI can perform historic reviews. This is valuable in situations where an individual or business has scrubbed or revised public representations and where older content remains relevant to diligence, risk, or credibility that the practitioner is seeking to identify today.
- A background review can include relational connections, including links to other individuals or entities where adverse facts may have occurred and be identified.

AI Background Reviews – A Client Service Tool

- A background review can be a client tool that can enhance the professional's relationship with the new client. That enables the adviser to access and review public information about the client's entities and property interests in a way that signals preparation and respect for the client.
- Even before the first client meeting the adviser can gain surprisingly detailed insight into the prospective client. [An adviser can begin the initial client meeting having an informed understanding of the client's assets, entities, and public footprint.](#) This approach can improve the quality of the first substantive conversation by allowing the adviser to ask more targeted questions and by reducing time spent on basic fact gathering.
- Consider the impact on building a relationship with a new client when, before the client has even described her business involvement, you can engage in a conversation about that business? Perhaps you identify the client's dearest charitable involvement and prepare to engage in a conversation about that cause.
- The background review can be used to tailor the initial meeting agenda by identifying the apparent categories of assets and entities that merit targeted questions. A prepared initial meeting can focus on high-value issues such as ownership structure, governance roles, confidentiality preferences, and transfer objectives.

AI Background Reviews – A Client Service Tool

- A background review of public records may identify where a prospective client resides, where a vacation home is located, and what companies the individual manages or controls. This approach reframes privacy as a planning issue that can be addressed systematically rather than as a vague concern. Clients frequently underestimate the extent of this visibility and the ease with which the information can be assembled. In fact, many are actually startled. That itself can be the catalyst for important planning.

AI Background Reviews – Due Diligence before Transfers

- A robust AI generated background review and due diligence can be the bedrock for due diligence before a large estate planning asset transfer.
- This can be especially important if a client professes concern about asset protection, or if the analysis reveals potential issues.
- The use of AI background checks as one component of the pre-transfer due diligence should be incorporated into checklists used for structured estate and related planning transactions whenever significant transfers to trusts and other planning vehicles are involved.
- Practitioners may consider making an AI background check a regular step along with obtaining a solvency affidavit, conducting lien searches, etc.
- The AI background analysis is particularly important when a transfer represents a large dollar value or a large percentage of the client's wealth.
- This may support a later defense against a future challenge, including a fraudulent conveyance claim, by documenting what was reviewed, what was known, and why the transfer was undertaken. The approach endeavors to treat this due diligence step as an evidentiary record and seeks to show that the client and advisers had no awareness of an undisclosed problem at the time of transfer, based on the diligence performed.
- While the AI background check cannot substitute for lien and judgement searches or hiring a private investigator, it does provide substantial information and may identify important matters that the more traditional approaches may not. It is also little cost and minimal time.

AI Background Reviews – Standard Procedure?

- The firm should adopt a consistent policy as to background reviews. Perhaps they should be performed routinely for all new clients, existing clients returning after X number of years, or before any transfer of more than X dollars, or Y percentage of the client's estimated net worth.
- A consistent policy may help avoid the appearance of selective use based on subjective judgments.

Architecture And Backup Discipline

YOU NEED THE FOUNDATION TO APPLY AI FULLY TO FIRM LEGACY
RECORDS

Document Management Architecture And Backup Discipline

- To use AI capabilities more fully, all firm records will need to be electronic (scanned) and accessible by the AI. If the firm still maintains physical offsite storage those documents will obviously not be accessible. The above applications are built or depend on centralized electronic storage in an accessible cloud environment.
- **Example:** Co-Pilot, Microsoft's AI seamlessly integrates with and can access all records maintained in SharePoint, as the primary document repository, all in the Microsoft cloud.
- Critical to robust AI applications, and also to the general security of the firm, robust and redundant offsite backup storage that includes a separate independent backup platform and periodic backups to offline storage is essential.

Conflict Check

AI CONFLICT CHECK CAN BE POWERFUL

Conflict Check - 1

- Artificial intelligence can provide a significant enhancement to conflict checks when the firm's data is maintained in an enterprise document environment. An enterprise AI system can then search across layers of document repositories, such as review every email, calendar entry and document in your enterprise files and find any references to the parties listed in your conflict check. That is much more comprehensive than a conflict check that is limited to a client directory or billing system, which can be incomplete.
- **An enterprise search can identify references in archived documents and also emails or calendar entries which can contain critical conflict information that would not appear in traditional conflict systems.** If your firm practice is to retain historic emails, then retained email history can include communications with a prospective client who was never engaged. An enterprise search across email can therefore surface a prior contact that would not appear in a client directory or billing system. This broadened scope increases confidence in the conflict check and reduces the risk that the firm will overlook a prior connection that could create a conflict.
- It is critical that all your firm records be digitized and in a cloud platform which the AI subscription you have can access.

Conflict Check - 2

- In addition to identifying any potential reference, if a “hit” is identified AI can comment as to whether the source document suggests a conflict or not and provide a link to every source document so you can instantly review it yourself if you professionally believe that there may be a concern. This seems materially more comprehensive than what most firms may do now.
- When the process is completed, AI can generate a conflict check memorandum to be saved in your files documenting the efforts made, findings, and further investigations.

Meeting Summaries And Written Confirmation

AI TRANSFORMS THE DOCUMENTATION AND COMMUNICATION
PROCESS

Meeting Summaries And Memos - Intro

- Traditional practice often includes providing a written memorandum or letter after substantive client meetings. This is important as clients can misunderstand advice, forget key points, or later claim that the advice was different from what was provided. A written record reduces these risks and creates a clear reference for the client and for the file. Also, the summary serves to keep the practitioner, allied professionals, and the client on the same page.
- But that traditional post-meeting memoranda can take weeks or longer, and some, perhaps many, clients do not wish to incur the cost of that work.
- Artificial Intelligence offers a meaningful opportunity to accelerate the production of these documents and much lower cost. No, this is not automatic and will require careful professional review, but with practice (not for the AI but for the practitioner) this process can be beneficial for all.
- AI generated memoranda, even with more finely crafted prompts, still have a cadence or tone that seems to be distinctly not that of a technically oriented document. So long as the content is technically correct, and that remains the role of the professional, that may be a positive consequence. Practitioners need to be willing to accept it.

Meeting Summaries And Memos – AI Prompts

- You can stylize your AI prompt design to include explicit instruction to write in a professional style, e.g., “the tone of an attorney.” You can specify paragraphs rather than short bullet points. If appropriate to the particular project, you can have the prompt design also request charts and reminders at the end of the output. Remember the quality of output depends on the specificity of the prompt and the degree to which the AI system is constrained by detailed instructions.
- Instead of crafting your own prompts to create a memorandum from transcripts you can instead use a third-party software that performs many pre-designed AI functions. For example, a specific feature described in some of these programs is, in EstateView for example, a “dictation-to-letter” function that takes a transcript of a meeting recording, dictated notes, or other input and produces a letter following a detailed instruction set that may be dozens of pages of guidance.

Meeting Summaries And Memos - Steps From Meeting To Memorandum

- For those practitioners for whom the steps in this process may be unfamiliar, here is a step-by-step listing and explanation.
- Before the meeting starts be certain that your web meeting subscription is set up to both provide for recordings and transcriptions. That may require, depending on the platform, setting changes.
- Set up a web meeting with the client and if applicable other advisers. Before the meeting starts ask the client and all participating if they agree to the meeting being recorded and transcribed. Once all verbal consents are provided start the recording of the meeting. The platform may offer you options as to where the recording will be saved, e.g., cloud or local.
- At the start of the meeting verbally confirm the name and role of each participant, spelling names so that AI will transcribe them correctly.
- Depending on the system and where you select for the recording to be saved, some short time after the meeting is completed you may receive an email with a link and a password. Use the link and password to access the recording portal and downloading the transcript file.
- The transcript file can then used as input into AI systems for drafting an article, a memorandum, or other work products.
- Perhaps the most significant and beneficial aspect of this entire process, once you become comfortable with it, is that you will no longer need to take notes in any format. Practitioners can then truly devote 100% of their attention to the client participating in the meeting and have no distraction in typing or writing notes.

Meeting Summaries And Memos – More than a Traditional Memo

- When AI is used to create a memorandum, that transcript-to-memorandum workflow can simply be asked to produce multiple work products from the single input, including:
 - Cover letter to the client to transmit the memo.
 - Follow-up letter to send when the client doesn't respond.
 - Letters to every one of the client's advisers.
 - Staff checklist identifying promised tasks and deliverables, such as entity formation, minutes, assignments, and coordination calls.
 - Internal memo describing what the firm intends to deliver and when.
 - Research summary memorandum.
- AI-generated letters can facilitate collaboration by communicating consistent expectations to accountants, wealth advisers, and other counsel.

Analyzing Large Volumes of Documents

AI CAN IDENTIFY INCONSISTENCIES, CREATE TIMELINES, ETC.

Document Analysis

- AI can produce a high-level picture quickly, thereby reducing the volume of document review that associates might otherwise perform.
- Even if these issues could be identified by professionals or administrative staff, these are tedious efforts and when the volume of documents is significant human reviewers can miss documents.
- **Human verification remains required**, but the described approach accelerates issue spotting and prioritization.
- AI can be requested to provide links to any of the documents it identifies to expedite professional verification of its findings.

Reconciling Tax Returns, Financial Statements, And Operating Agreements

- AI can be used to compare:
 - Tax returns.
 - Personal financial statements.
 - Operating agreements or other governing documents.
 - Assignments.
 - Gift letters.
 - Memorandum and correspondence.
- This may identify inconsistencies between percentage interests in ownership, dates of various documents, etc. Sometimes this will identify rounding errors, other times it may identify errors between documents.
- Example: If the tax return listed 100 shares, the personal financial statement listed 100 shares, but the assignment and gift letter indicated \$10M worth of shares there are inconsistencies that could undermine a defined value mechanism.

Reconciling Tax Returns, Financial Statements, And Operating Agreements

- **Example:** In a matrimonial or an asset protection matter identifying errors in application of formalities, e.g., the wrong date or percentage interest, different dates when the same event was supposed to have occurred, etc. may suggest sloppiness, or worse. Perhaps one error or inconsistency can fairly be dismissed as a mere “foot fault.” But how many such errors suffice to support an argument that formalities were ignored and therefore the trusts or entities involved should not be respected? How many dating or related inconsistencies are necessary to suggest that perhaps the documents were not actually signed on the dates indicated? AI can quickly review for these issues so that the adviser can present tentative results to other counsel or the client to have a basis to recommend further analysis.
- All this can be done by entering the prompt and having AI review all enterprise documents for the identified clients, entities and trusts.
- AI can go much more in depth than the above by identifying and suggesting provisions and other areas for improvement in the documents searched.

AI Created Forms

CAUTION IS REQUIRED BUT IT CAN EXPEDITE AND ENHANCE WORK
PRODUCT

AI Created Forms

- Practitioners should be cautious not to rely on AI-generated sample forms as legal documents. The AI output can, however, be valuable as a conceptual aid and start to the process, so long as it is recognized that forms drafted by AI are likely to contain errors or omissions.
- **Example:** a unique series of transfers all requiring custom created but simple legal documents was necessary to effectuate a series of transfers on an unusual probate matter that involved an asset with modest value. Cost effectiveness was important as the billing had to be reasonable relative to the assets involved, but because of third party involvement sufficient documentation to reflect the transfer were important. A series of prompts outlined in some details as to each transfer, the parties, the assets involved, etc. sufficed for AI to generate a surprisingly comprehensive package of almost every document needed for the transfer. While there were material errors in each document, counsel was able to review and revise drafts of documents quickly, rather than pondering how to create each unique document from scratch. It was not only a significant time savings, but even things that AI got wrong were helpful to evaluate what might be done differently when prompting AI in the future.
- AI can obtain and modify public documents for your use. For example, it can locate forms used in public company filings, such as Form 10-K or Form 10-Q, as potential models, while still requiring professional judgment and review, those are documents from large public companies so there may be more reliability than a form from an unknown source.
- Trying this approach for a complex self-settled trust or complex partnership agreement with special allocations may not yield a result that a practitioner is comfortable with (likely the practitioner would prefer to start with firm forms that have been vetted and revised). However, for a simple note forgiveness, or basic assignment, or a package of a dozen such documents, AI may provide a valuable head start. Even for the more complex documents AI can be employed in drafting, reviewing, and research.

Training The Professional, Not Only Training The AI

YOU MAY BE THE WEAK LINK (SORRY)

Training The Professional, Not Only Training The AI

- Improved output depends not only on the AI trained prompts and system design, but also on changes in professional behavior.
- Professionals will have a better experience using AI, and better outcomes, if they invest the time to learn to use AI better. This may include, as described above, experimentation with how to speak, summarize, and frame action items in a way that improves transcript utility and makes downstream drafting by AI more accurate.
- This can be considered as analogous to the evolution in professional thought process that occurred when word processing was adopted, where approaches to practice changed alongside the technology.
- An example of this is conducting better meetings so that the transcript of the meeting will be more productive and useful, that will make the input to AI better and any memorandum, research or other AI outputs better quality.

How You Conduct Meetings Affects AI Output – Why is that Important?

- While there is much discussion about “training AI” there has been too little discussion about “training” the professionals using AI.
- If you have worked long enough to remember dictation machines, you had to learn how to dictate effectively. If you spoke too fast, rattled your mechanical pencil, had music playing the background or did other things, the quality of the dictation would be impaired. You may never have known these issues, but the admin who typed your dictation would have had to spend additional time trying to figure out what you said and may have run around the office playing sequences of your tape for others to help decipher it. Few, if any, firms account for admin inefficiencies. But if your admin explained the issues to you and you corrected them the work product would improve. Using AI is no different.
- If you record a client web meeting you need to conduct that meeting, vocalize important concepts, etc., so that the output, i.e., the transcription, which is often created with the assistance of AI (not your AI subscription, but the AI subscription on the web platform) is reasonably accurate. The quality of that transcript is what your AI will use to create a memorandum of your meeting and perhaps several other outputs.
- A list of improvements/suggestions follows.

Tips For Better Meeting Output - 1

- If several people are speaking at the same time, when they conclude say something like “Let me summarize what was just discussed.” That may assure that clear audio for an important discussion will be identifiable by the AI rather than the jumble of voices speaking at the same time.
- When a point is very important you might say: “That was a great point, let me just repeat it for clarity.” That will assure that the point is reflected more prominently in the transcript and that AI is more likely to pick it up for the memorandum you request. You might even use a preselected term or phrase like “Let me emphasize” and then add that key preselected phrase to your AI prompt so that you expressly tell AI that at any point in the transcript where the phrase or a similar phrase is noted it must put that point in the memorandum it creates.
- This technique serves the client by confirming understanding and also improves the transcript by making key points prominent and unambiguous.
- Effectively the practitioner can embed prompts during the meeting by stating that the system should capture a particular explanation, a research point, or a follow-up item. For example, the practitioner may state during the meeting that the system should prepare an explanation of tenancy by the entirety in Delaware and the rationale for choosing a Delaware limited liability company rather than a Colorado limited liability company. AI can do that. No, it will not be perfect, it may hallucinate, but a significant portion of what is delivered will be a savings in time and permit all practitioners and staff to function at a higher level.
- Another example might be for the practitioner to state during the meeting that AI should review a named business website and to identify misleading content that may have contributed to a problem.

Tips For Better Meeting Output - 2

- This all takes some getting used to and if a practitioner has not undertaken this process before it may be advisable to have a few trial runs with a colleague to evaluate what works and what doesn't. With some practice and attention, and carefully calibrated prompts, the quality of the memorandum will improve quickly. Once a practitioner realizes the efficiency of all of this, it will grow awkward to have to take notes however it was done before this.
- Time previously spent drafting can shift toward time spent prompting and reviewing, producing meaningful net savings. What remains mandatory is professional responsibility to carefully read and correct of AI output. The time savings occur immediately and that the learning curve is not described as difficult when the professional is willing to experiment and refine prompts.

Ethical Considerations Of AI

**CAUTION IS IN ORDER BUT THE RELIANCE ON FORMAL GUIDANCE MAY
NOT SUFFICE**

Ethical Considerations Of AI For Practitioners

- Applying ethical rules to AI is challenging. AI is so new, how practitioners currently use it and how they will use it in the future will vary substantially by practitioner or firm, and evolve over time.
- Application of AI must be adapted and modified for every practice. Every practice is unique in terms of the nature of the typical clients, practitioners' comfort level with technology, including AI, and change, capabilities of the administrative staff, etc. A paperless, cloud-based practice will necessarily have to handle these issues differently than a practice that still has yellow pads and Redwelds. A practice that predominantly focuses on a large volume of flat fee, lower wealth clients will have a different emphasis than a boutique firm serving a limited number of ultra-high net worth clients seeking a different level of service and relationship. Each practice may use AI in different ways, and each will thus face somewhat different applications of the general ethical principals discussed below.
- What makes AI different from all other applications of ethical rules to technology is the scope of what AI can do today and the incredible rate of change that is happening. Whatever is reasonable or prudent today may not be so in six months, perhaps less.

Retainer Agreements Should Reflect AI Ethics Concerns

- It may be advisable for practitioners to periodically review retainer agreements (engagement letters) to update them to reflect new ethics rules, changing practices, integration of new technology into their practice, ethics and other related considerations. Practitioners should not ignore the changes technology and other developments are having on retainer agreements, practice forms, and related practice management steps. If a client authorizes particular uses of technology, and specifically AI, in a signed engagement letter that will be helpful to protecting the practitioner. It is not, however, an assurance of never having an issue given the complexity and pace of change.

Retainer Agreements - Sample Clauses to Consider

- *"We use artificial intelligence ("AI"), in all aspects of our practice. We use Microsoft Copilot and other platforms (and these may change), in performing research, summarizing meetings and emails, analyzing files, performing a variety of other tasks which will evolve over time, and in other ways. The applications of AI, and the programs used are integrated into so many areas of our practice that we do not believe we can efficiently or effectively service client matters without the use of AI. If you are not comfortable fully authorizing this manner of practice, and in particular that it will evolve in new and different ways as the power of AI expands, we cannot represent you."*
- *"You authorize us to record the audio and video of any web-based conference calls performed with you and/or your other advisors and to use AI to transcribe and draft memoranda from such data. We presently use Zoom for meetings and record meetings in Zoom and then have Copilot AI analyze those transcriptions and create summaries or memoranda. These providers may change. Cloud services providers used for both the recording and transcription of any conference calls may retain copies of those files on their servers, and you expressly waive any responsibility we may have for the integrity of the security of those companies. The recording and subsequent transcription of any calls may constitute an express waiver of the attorney client privilege."*
- *"Our firm may use generative AI tools to assist with providing legal services, and we must disclose this use and obtain your informed consent. Your retaining our services in any capacity constitutes your provision of that informed consent. Our firm may utilize AI-powered legal research tools, document analysis software, and practice management systems that incorporate AI capabilities. These may include tools such as Co-Pilot, Estate View, and other software which has AI integrated or other legal research platforms with AI features, contract analysis tools, and document automation software including but not limited to Interactive Legal Systems (ILS). Our use of AI will evolve over time as new applications are determined and as the technology evolves. The list above is merely illustrative and uses will expand We believe that we have taken reasonable precautions to ensure that these applications do not compromise your confidentiality but there is no absolute guarantee."*
- *"By signing this engagement letter, you acknowledge that you have read and understand this AI disclosure, and you consent to our use of AI tools as described above, subject to reasonable safeguards and limitations stated, and that our use of AI will continue to expand as the technology becomes more powerful."*

General Rules Professional Conduct (RPCs) May Apply to AI

- RPC 1.1 was modified to require technical competence, including the addition of the following language to the Comments: “[8] *To maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, including the benefits and risks associated with relevant technology...*” Certain AI would be included in this directive.
- RPC 1.4: Communications discusses the attorneys' use of technology, it requires appropriate communications with clients “*about how the client's objectives are to be accomplished,*” including how the practitioner employs technology in their practice. It requires keeping the client informed and, depending on the circumstances, may require obtaining “informed consent.” It requires sending notice to a client of a compromise of confidential information relating to the client. As mentioned above, client consent to record meetings might be included in retainer agreements, mentioned in correspondence and perhaps also requested on web meetings.
- RPC 1.6 requires lawyers to use “reasonable efforts” or “reasonable precautions” to prevent the inadvertent or unauthorized disclosure of confidential client data. What are “reasonable efforts”? While that may remain unclear it does seem clear even at this early stage of AI usage that using an AI model that permits machine learning with confidential client data is not acceptable. But if meetings are recorded practitioners would also want to confirm the security of the web platform and recording. Might that mean that practitioners need to review the terms of service (“TOS”) of each such vendor? Perhaps.

Check and Verify

- In *Mata v. Avianca, Inc.*, lawyers failed to investigate the generative AI application ChatGPT before adopting it for legal research. For certain authorities cited in a court filing including research done with ChatGPT, the authorities were fictitious outputs created by ChatGPT, called “hallucinations.”
- This does not mean that ChatGPT and similar AI programs cannot be used for legal research and other legal tasks, but lawyers must ensure that the use is appropriate for client work, basing that determination on a careful examination of AI’s capabilities and known faults while taking measures to avert or mitigate the adverse effects of those faults. Any materials generated by AI should be carefully reviewed to determine if the information is correct, citations are to real cases (and that those cases have been Shepardized), etc.

ABA Formal Opinion 512

- ABA Formal Opinion 512 addresses ethical considerations on the use of generative artificial intelligence (“GAI”) tools in law practice. The opinion states that attorneys need to have a “...*reasonable understanding of the capabilities and limitations of the specific GAI technology that the lawyer might use...*”
- With the speed at which AI is evolving, what level of research and review is sufficient to have a “reasonable understanding”?
- Confidentiality concerns are important when using AI. RPC 1.6 requires attorneys to protect their clients’ information. AI uses “machine learning” to improve the AI and create more comprehensive responses to queries. This is done through retaining any information provided to the AI model. For a non-subscription-based service, it is likely all information provided is included in an online database for machine learning purposes.
- The Florida Bar released an AI guide that noted Florida practitioners should not use free AI software, “...*Free General AI models may use your questions and uploaded documents to train future models. To maintain client confidentiality, you will need a paid subscription...*”
- As a result of the above, attorneys may wish to avoid using any AI they have not paid a subscription for. In addition, practitioners should consider reviewing the provider’s terms of service (“TOS”) to determine if the practitioner believes, based on their “reasonable understanding,” that client data will be protected.

IRS OPR ALERT 2026-19

- The IRS's OPR Alert 2026-19 was released on June 24, 2026, and may potentially be interpreted to create a higher standard than "reasonable efforts" for practitioners who engage in tax practice.
- While the Alert does reference at certain points previously existing professional guidance, it does not appear to engage in any meaningful comparison of its standards to those materials.
- Rather, it simply states standards and expectations. For example, it suggests that any cost savings of AI be passed to clients, without defining the term costs, when in fact the economics of AI involve a much broader analysis than merely the possible reduction in hours spent on a particular task.
- Circular 230 §10.35 provides that a practitioner must possess the necessary competence to engage in practice before the IRS. Competent practice requires the appropriate level of knowledge, skill, thoroughness, and preparation for the matter. **The Alert applies that competence standard to AI in strong terms. It states that practitioners must understand both the law and the technology used in their representation of clients before the IRS, including AI systems' operational mechanics, limitations, and risks.** It further states that practitioners must understand how AI develops content, recognize the potential for bias or errors, and evaluate whether AI outputs are suitable for IRS matters.

Reasonableness Standard Versus IRS Alert Language

ABA-style approach

Reasonable efforts
Sensitivity of information
Likelihood of disclosure
Cost and implementation burden
Effect on representation
Professional judgment

Alert terminology

Operational mechanics
How AI develops content
Comprehensive training
Robust confidentiality safeguards
Thorough review
Document AI usage (**do you have to save prompts?**)

Due Diligence For Reviewing AI Programs

- Undertaking a thorough due diligence check on the generative AI application to determine how the application could advance work done for a client consistent with counsel's professional obligations — i.e., know what is being used and how it works.
- Reading key documentation on the developer's website that describes the application, how the application works, what it was designed to do, its current limitations and deficiencies, and any possibility of putting at risk a client's interests, like the possibility of generating inaccurate outputs.
- Review such resources as the developer's Terms of Use, Frequently or Commonly Asked Questions ("FAQs"), and any System Cards, which explain, for example, a generative AI's performance, capabilities, and limitations.
- Examine how use of the technology could pose security risks, including collection and processing of data that could compromise client confidentiality, inadvertently waive attorney-client or attorney work product privileges, and compromise the enforceability of client trade secrets and opportunity to file timely patent applications. These risks must be able to be averted or the AI cannot be used.
- Considering carefully whether introduction of the technology might cause counsel to violate ethical obligations to (i) provide competent representation to clients, (ii) inform clients and obtain their consent to the use, (iii) protect client confidential information, and (iv) avoid unauthorized practice.

Client Use of AI

- Clients now ask AI to review draft documents provided by their attorneys, identify planning omissions, produce trustee memoranda, critique beneficiary designations, and recommend tax strategies. Estate planning questions often require a top-down analysis of objectives, family dynamics, asset composition, tax exposure, state law, fiduciary capacity, disability considerations, retirement plan beneficiary rules, titling, cash flow, and future flexibility. AI can miss the order in which those issues should be addressed, and provide analysis including suggesting techniques that, while perhaps (but not always) technically sound, do not consider the client's specific needs.
- **United States v. Heppner** is one of many AI cautionary case references. The Heppner Court held that a defendant's written exchanges with a public generative AI platform were not protected by the attorney-client privilege or as attorney work product. The court explained that the AI documents were not communications between the client and practitioner, were not confidential, and the AI research was not prepared under the direction of counsel.
- A balanced client communication would not include a blanket statement of "Do not use AI." That can sound unrealistic and self-protective. Clients may interpret that negatively as the practitioner is trying to limit what the client does in order to preserve billing opportunities. It may also discourage productive AI uses by clients that can improve the estate planning process.
- **Sample Language for Communications or Engagement Letters:** "We support appropriate and reasonable use of AI to help you organize information, prepare questions, and improve collaboration. However, confidential information should never be entered into public AI tools, AI output should not be treated as legal advice, and AI-generated questions or document reviews sent to us may require professional review that may increase fees and make your planning process more confusing."

Practice Considerations

- Create a short memorandum to file listing the steps taken in due diligence, to reflect that the practitioner took “reasonable efforts,” see RPC 1.6 discussion above, when analyzing the AI program used.
- Consider having a consultation with an IT individual with expertise in AI and have that consultant communicate regarding the actions the practitioner and their firm are taking regarding AI, as well as any further suggestions the consultant may have.
- Some/many AI models not only search the internet for information but scour the firm’s own database/network for information. That can be incredibly powerful especially for a larger or older firm that has massive electronic file databases that would be impractical to search efficiently for information by other means. But that access to the firm’s confidential data is a potential exposure point many are not aware of.

Conclusion and Contact

SUMMARY

AI is Transforming the Profession NOW

INCREDIBLE OPPORTUNITIES

- Artificial intelligence can transform intake diligence, conflict checks, transaction support, and post-meeting documentation in a sophisticated advisory practice.
- These are only a handful of the endless applications and opportunities. The benefits arise from faster and broader information gathering, structured drafting acceleration, improved collaboration communications, and a reallocation of professional time toward judgment, counseling, and creativity.

BUT BE CAREFUL!

- The professional responsibility to review remains central, and disciplined protocols are required to avoid reliance on unsupported output.

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Contact Information

We welcome your comments,
suggestions and inquiries

Using Artificial Intelligence During Your Estate Planning Matter

Dear Client:

Artificial intelligence tools are becoming part of everyday life. Many clients use AI to draft emails, summarize articles, organize documents, prepare checklists, and ask questions. We also use AI and technology-assisted tools in many aspects of our practice, and we expect those tools to become more capable over time. When used properly, AI can improve organization, efficiency, and communication. It can help us spend more time on judgment, counseling, and planning rather than mechanical tasks.

We support thoughtful use of AI. We do not believe a blanket instruction to avoid AI is practical or helpful. But AI must be used carefully, especially in an estate planning matter where personal, family, financial, tax, health, disability, and business information may be involved.

Please Do Not Put Confidential Information Into Public AI Tools

Please do not enter confidential personal, financial, family, tax, medical, business, or estate planning information into any public or free AI tool. Public AI systems may not provide the confidentiality protections that apply to communications with counsel. Depending on the platform and settings, entering confidential information may risk disclosure, loss of confidentiality, or loss of attorney-client privilege. Courts have already addressed situations in which use of a public AI platform did not preserve privilege or work-product protection.

If you want to use an AI system with sensitive information, you should confirm that your subscription, settings, and terms of use provide appropriate confidentiality safeguards and that your information is not used to train the model or shared outside the protected environment. This is a platform-specific technology and security question. You may wish to consult an IT or cybersecurity professional to confirm how your AI platform handles your information.

AI Can Be Useful, But It Is Not Your Estate Planning Attorney

AI may help you organize information, prepare questions, locate documents, create a family timeline, develop an asset inventory, or draft nonlegal letters of instruction to trustees, guardians and others. Those uses can make our work together more effective. For example, AI can help you create a checklist of old estate planning documents to find, summarize a list of assets, or prepare questions for a meeting.

AI is much less reliable when asked to review your draft legal documents, recommend planning techniques, or decide whether your plan is right for you. Estate planning requires facts, goals, family context, tax analysis, asset titling, beneficiary designations, fiduciary selection, and professional judgment. If AI is not given the full context, it may give an answer that is incomplete, irrelevant, or misleading, even if parts of the answer are technically correct. Consider the detailed Questionnaire, family information, balance sheet, existing documents and other information we request you provide so that we can guide you on your estate planning

journey. If you ask AI questions about your planning or documents without providing similar background AI won't have the context to properly answer any questions you pose and the AI output, even if it sounds meaningful, may miss nuances critical to your planning or be completely wrong. Also, AI does not have judgement that is the key ingredient all professionals bring to your planning.

Why AI Questions Can Increase Cost

If you ask AI broad questions about your estate plan or ask AI to critique draft documents, the output may generate many comments or questions. Some may be irrelevant. Some may be wrong. Some may be generally correct but not applicable to your plan. If you send those AI comments to us, we may need to review them carefully. We cannot simply ignore a comment that might contain a valid point. That review will increase the time and fees required to complete your matter.

A more efficient approach is to tell us the topic you are trying to understand. For example, instead of asking AI to review an entire trust, you might ask us: "I would like to understand why asset titling and beneficiary designations are handled after the plan is finalized. Can we discuss that?" After that discussion, AI may be useful to help organize a summary or checklist that we can review.

We frequently have clients ask about using a particular sophisticated planning technique with questions they posed to AI: "Can you create an Alaska BDIT?" "Can you create a backdoor SLAT in Pennsylvania?" The list is pretty long. We can and are pleased to explain any technique your AI research suggests but it will take time, and may add confusion and complexity to your planning process. The confusion might be the technical nuances as to why a particular technique is not appropriate for you, or if appropriate why it is not optimal. We believe that a better approach is to start with all your facts and circumstances (family and other personal information, financial status, liability exposure, tax exposure, and more) and your goals then to discuss in a holistic and comprehensive manner, often with your other advisers involved, what makes sense for you. The results of that approach will generally be very different than you asking a question to AI as to what technique to use. Also, there are many variations of every technique. Finally, many aspects of estate planning are nuanced and creative. Those are not fine points AI can yet address.

Better Ways to Use AI During Planning

- Use AI to create a family information worksheet, but avoid names and sensitive details unless your AI environment is confirmed secure.
- Use AI to create an asset inventory template to fill in manually or electronically (we do provide a form we prefer you use).
- Use AI to make a document checklist for prior wills, trusts, powers of attorney, health documents, deeds, beneficiary designations, insurance policies, and tax returns.
- Use AI to organize a personal timeline of major family, business, and financial events.
- Use AI to prepare questions focused on goals and facts, not to select advanced planning techniques.
- Use AI to draft administrative emails to advisers requesting documents or summaries.
- Use AI cautiously, if at all, to review legal documents or planning strategies, and only after discussing the intended use with us.

A Few Sample Prompts

"Create a checklist of information I should gather before my estate planning meeting. Focus on family, assets, fiduciaries, existing documents, taxes, business interests, and special circumstances. Do not recommend legal techniques."

"Create an asset inventory template with columns for institution, account type, approximate value, ownership, beneficiary designation, and where statements are stored."

"Help me organize these planning goals into categories and identify facts my attorney may need. Do not provide legal advice."

"Please explain the following legal term or phrase [insert here]." Bear in mind that asking a question like this without context could get you results that are not applicable to your situation.

Our Use of AI

We may use AI or technology-assisted tools to help draft meeting summaries, organize task lists, prepare first drafts of communications, or improve efficiency. We use AI in almost every aspect of what we do and the uses and applications of AI continue to grow as AI becomes more powerful and as we identify new applications to better serve clients. AI does not replace professional judgment. Attorney review, confidentiality safeguards, and the facts of your matter remain central to our work. We will continue to use technology in ways designed to improve client service and reduce unnecessary friction.

Closing

AI can be a powerful tool when used wisely. The goal is to help you prepare better, communicate more clearly, and make more informed decisions with your adviser team. Please feel free to ask us how to use AI productively in connection with your planning. We welcome thoughtful questions and input. We simply want to avoid unnecessary confusion, cost, and confidentiality risk.

Very truly yours,

IRS OPR Alert 2026-19 And Responsible AI Use In Tax Practice

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Nearly sixty years ago, HAL 9000 confidently assured viewers of 2001: A Space Odyssey that it was “foolproof and incapable of error.” The irony, of course, is that HAL was wrong. The IRS’s newly released OPR Alert 2026-191 (the “Alert”) reflects a similar concern. Artificial Intelligence (“AI”) may be a powerful tool, but practitioners cannot assume that AI-generated output is accurate simply because it appears authoritative. The Alert places responsibility squarely on practitioners to verify, supervise, and understand AI-assisted work before it is used in tax practice

A Different, More Worried View of the IRS Alert

The Alert addresses an important and evolving area of professional responsibility, the use of artificial intelligence in tax practice. Since most or all estate planners are involved in the preparation of gift and estate tax returns, and many with trust and estate income tax returns, this Alert affects most or all estate planners. This article will suggest a somewhat different view of the Alert than other commentaries have suggested out of concern that the language in the Alert may set new and more difficult standards than other previously issued legal professional guidance as to the competency and training required of practitioners and even as to billing. In contrast, some commentators view the Alert as continuing the status quo by applying existing Circular 230 duties.

However, when evaluated against previously provided guidance, including American Bar Association (“ABA”) materials, a different interpretation may be possible. While the Alert does reference at certain points previously existing professional guidance, it does not appear to engage in any meaningful comparison of its standards to those materials.² Rather, it simply states standards and expectations. The Alert appears to have moved beyond the mere “reasonableness” standard that has been the foundation of ABA guidance and suggests that any cost savings of AI be passed to clients, without defining the term costs, when in fact the economics of AI involve a much broader analysis than merely the possible reduction in hours spent on a particular task. If the interpretations of the Alert, and thus the concerns expressed below are incorrect, it may nonetheless be important for practitioners to be mindful of these possibilities. If the concerns are

¹ Internal Revenue Service, Office of Professional Responsibility, OPR Alert 2026-19, Introductory Guidelines for Responsible AI Use in Federal Tax Practice, Issue No. 2026-19, June 24, 2026.

² For several examples of professional materials that provide guidance on the use of technology in practice, including Artificial Intelligence, see: ABA Model Rule 1.1., Comment 8 to Rule 1.1., Model Rule 1.6(c), Comment 18 to Rule 1.6., Formal Opinion 477R, Formal Opinion 498, and Formal Opinion 512.

correct, then the Alert may represent a change, perhaps a material one, that will affect tax practitioners that had relied up until now on ABA or similar guidance.

The ABA spent many years developing a framework for ethical considerations on the use of technology grounded in reasonableness, proportionality, cost, practicality, supervision, and professional judgment. That standard of reasonableness is mirrored in materials provided by the American Institute of Certified Public Accountants (“AICPA”), which in their Statements on Standards for Tax Services, in Section 1.3, stated “...A member should make reasonable efforts to safeguard taxpayer data, including data transmitted or stored electronically...”³ The Alert employs different terminology and in several instances appears to impose obligations that are broader and less clearly defined. Because the Alert provides little guidance concerning the degree of knowledge, verification, training, documentation, or security necessary for compliance, practitioners may reasonably question whether the Alert has shifted away from the traditional reasonableness-based approach reflected in existing legal ethics authorities.

For full disclosure as suggested in the Alert, the above paragraph was written by AI based upon annotated materials created by the author after analyzing the new Alert (so that the input reflected the author’s views and analysis, AI was not merely used to create content from the raw Alert) and spending several hours of prompts and exchanges between the author and AI. In addition, as required in the Alert, the above paragraph was treated as a draft and read. Is this the type of disclosure that the Alert might suggest be made to clients?

Overview of the Alert’s View of Responsible Use of AI In Federal Tax Practice

AI is no longer a hypothetical technology for tax professionals. The Alert states that AI has been adopted by many tax practitioners, that some practitioners have developed their own AI platforms, and that virtually all professional tax firms use some form of AI, whether they are aware of it or not. That is because AI is already embedded in common legal research, document review, accounting, tax, and other professional tools employed by practitioners. A firm that believes it has avoided AI may instead be using AI indirectly through commercial platforms used in their practice for years. That could be a dangerous trap as the firm may not realize that it has an obligation under existing professional ethics rules and under the Alert to provide for training, client disclosure, and other steps.

³ AICPA, Statements on Standards for Tax Services No. 1–4 (1/1/2024), a copy of which can be viewed on the AICPA website, <https://www.aicpa-cima.com/resources/download/revised-statements-on-standards-for-tax-services-no-1-4-1-1-2024>, accessed July 21, 2026.

The Alert also recognizes that AI technology and programs continuously change. That point has practical significance because policies adopted at one point may become incomplete or outdated as AI tools evolve. Practitioners should consider reviewing their AI policies periodically, and likely at shorter intervals than technology policies were reviewed and modified in the past. The rate of changes in AI may justify more frequent review of engagement letter language, vendor terms of service, confidentiality controls, prompt templates, quality-control procedures, staff training, and documentation establishing protocols.

The Alert defines AI at a basic level as the use of machines in a way that mimics human cognitive skills, including judgment, perception, and prioritization. That definition is broad. It provides that AI can be incorporated into systems used for legal research, document review, tax research, spreadsheet review, data analysis, workflow routing, drafting, summarization, and other functions that may affect tax advice or tax return preparation.

The Alert provides a general description of generative AI, going into some detail regarding generative AI's (GAI) complex pattern-recognition capabilities that continually interact and evolve, allowing the program to learn from itself. One interpretation of the Alert may provide that practitioners are required to understand the process by which AI performs these functions. If that interpretation is correct, the standard imposed by the Alert may be unachievable by most practitioners. This is discussed in more detail below.

The challenge is therefore not whether AI should be used. For many, if not most, practitioners it likely is already being used. The more important issue is how AI should be employed by firms in a reasonable manner that is in compliance with the Alert. For example, the Alert confirms that AI use does not alter the need for professional judgment, diligence, competence, confidentiality, and supervision. But those criteria do not appear to be tempered by the "reasonable" standard that infuses much of the ABA guidance on technology.

AI Adoption Should Be Managed Rather Than Avoided

Many professionals remain hesitant to address AI. Hesitations may arise from concerns about hallucinations, client confidentiality, cybersecurity, bias, vendor practices, and professional liability, and in some cases the daunting time and dollar investments that may be involved in broader adaption of AI in a professional tax practice. The Alert validates those concerns by identifying the risks of fabricated research outputs, bias in AI generated conclusions, lack of transparency, privacy and confidentiality concerns, and data protection, all of which pose serious ethical and legal risks. But those risks do not justify ignoring AI.

The more measured response may be a gradual and thoughtful adoption of AI based upon the practitioner and their firm's needs. Analysis could be performed to identify:

1. Where in the firm's workflow AI is currently being used,
2. Which members of the firm may be involved in using those programs,
3. What information, concentrating on confidential client information, is inputted into each different program as part of that program's functions,
4. Which third party vendors are involved in maintaining programs that have an AI component and whether agreements with those vendors and their terms of service have been reviewed (for example, consider whether any data inputted into the program, including client data, is used for training the model, also called machine learning),
5. What review is performed before materials generated by AI is provided to clients or used in planning, and which members of the firm are reviewing those materials.

Subscription-based Enterprise AI platforms may prevent the concern that information provided in prompts would be retained by the AI for machine learning, but practitioners may want to consider designating a member of the firm who is sufficiently knowledgeable of the firm's AI systems to review the terms of service, confidentiality commitments, data retention provisions, training restrictions, and security controls of each of the various AI programs employed. While larger firms that have sufficient staff they may be able spread the time investment these steps will entail, the Alert does not address the cost, time commitment and imposition that these steps will create for solo practitioners and small firms. They may be daunting. Given that disciplinary action could be imposed for violating the Alert, how can solos and small firms cope?

Establishing firm policies regarding AI should distinguish between different categories of AI use. For example, AI may be used for general administrative tasks or drafting (e.g., a generic memorandum on tax rules on a particular topic) which would not include any confidential client information, internal research (e.g. checking footnotes, cites to any cases, revenue rulings, or other authorities), document summarization, or for drafting language that will be included in documents providing client advice or submission to the IRS. Each different use may require safeguards tailored to the level of risk or potential for exposure of confidential client data if mishandled. A firm policy that treats all AI use the same may be too general to be useful. On the other hand, a firm policy that is too detailed may be outdated quickly and if the procedures in the policy are either too onerous or unable to be complied with due to being outdated, that may result in practitioners acting in contradiction to their own policy statement.

One of the perceived advantages of an enterprise AI system is the ability of the AI to adapt to the firm's practice and provide more precise responses tailored for the practitioner's style, tone of voice, particular way of organizing work product, etc. However, creating a tailored AI experience requires the AI programs learn from prompts and information provided while using the programs.

That machine when using an Enterprise system may not be public, but it will be stored on the enterprise system similar to how a cloud-based data storage system will retain data held on the system. The Alert warns that client privacy may be compromised when retained on an AI system for machine learning. A practical illustration of this may also demonstrate the potential difficulties in complying with the Alert's requirements.

Example: In the "old days," if a current client had a research question similar to an issue researched previously for another client, a staff person would be assigned the task of finding prior memoranda and research and cobbling any materials found together for the current client. The Alert states: *"when data generated for one client is repurposed by a program to respond to another inquiry."* What if instead of "program" the Alert said "associate?" How would this be different? No one, it would seem, would object to an associate researching prior client files and creating a new client memorandum. But if this is done using AI instead of a person, the implications might appear to be different based on how the language in the Alert might be interpreted. But how is it different? In the "old days" example the files live in the firm's Redwelds, if the firm still has paper files. In the AI scenario the documentation lives in the firms' AI private cloud provided by the subscription. Let's take this inquiry a step further. If the firm is cloud based, which many if not most are, the research done by the associate would be copied from old client electronic files into the current client file and the new memorandum would live there. Since the firm is cloud based but let's assume not using AI, all the data will live on the firm's cloud system. One final step. The firm uses Microsoft's SharePoint for all its electronic file storage (backup and security). That process would not seem to implicate the Alert's provisions. Now that same firm uses a subscription to (not public) Microsoft AI, Co-Pilot, to perform the research. In this latter case prior client data is accessed by AI to create a memorandum for the new client. All the data still lives in the Microsoft ecosystem, just some of it has been replicated in the firm's subscription based Co-Pilot AI. How is this a different risk or issue than all the existing client data living in the Microsoft SharePoint cloud?

Example: The practitioner has a paperless practice and all research, client documents and other files since the inception of the firm have been digitized. An issue arises as to how post-death events may affect the valuation of an asset on the decedent's estate tax return. The practitioner recalls that they have addressed this issue several times in the past decade and requests that AI search the firm's files, identify any memorandum or research previously completed on this issue, and draft a detailed memo based on all the information in those prior files. The instructions to AI at this initial stage of research may limit AI to only considering enterprise files. In that way the initial research would seem to avoid the issues of hallucinations since only firm files are being reviewed. Obviously the firm data that AI will review will include memoranda completed for other

clients. That information will likely be incorporated into a memorandum for the current client. Would this situation raise an issue with the following statement in the Alert: *“client privacy can be compromised when data generated for one client is repurposed by a program to respond to another inquiry?”* That might appear to be an interpretation of the implication in the Alert, but how has client privacy been compromised? Before the memorandum and research proceed to the next step the practitioner could request that AI scour the memorandum it provided and eliminate any names or particular unique data of clients and insert instead the ubiquitous “client,” “Company,” etc. These types of sanitizing steps can be incorporated into the initial prompt or handled as a later step. Given that AI was instructed to scan all firm files client data might almost assuredly make its way into the initial draft of the memorandum. Even if prompts like “identify any client names and change them to the word client” are used, the practitioner will have to review the draft to modify the results of AI replacements and in general for client confidential data that may have been included and that the general modification directions won’t resolve. If all of this is done it would appear that the practitioner has taken reasonable steps to avoid any appearance in the current client’s memorandum of confidential data from prior client matters. But the Alert does not generally appear to use a reasonableness standard to modify its requirements.

Tax professionals should not treat hallucination risk as a reason to avoid AI. A useful analogy is junior professional work product. No senior tax lawyer, EA, or CPA would send a client a complex memorandum prepared by a new associate or staff member without review by someone with sufficient expertise. AI output should be treated similarly. If AI provides a citation, authority, revenue ruling, case, article, or regulatory reference, the citation should be checked. If AI provides a link, someone should click the link and confirm the source. The source should be read to confirm that it supports the proposition for which it is cited and that it remains current. It may also be helpful to test citations using a different AI platform from the one that identified the citation, although that cross-check should not replace reading the authority itself. What the Alert does in this regard is make clear that practitioners need to take these precautions. Frankly, given the highly publicized cases in which attorneys have been admonished for using what turned out to be fictitious citations in court briefs, every practitioner should want to exercise these prudent cautions.

The same approach applies to factual summaries. AI may efficiently review a large set of client files to identify a taxpayer’s ownership percentage in an LLC, summarize K-1 information, or identify relevant documents. That initial analysis may save staff time. But AI may miss documents, misunderstand context, or fail to identify inconsistent data. The practitioner remains responsible for determining whether the output is sufficiently reliable for the task. See the earlier example.

Example: In some instances, this may be the wrong way to frame the point. If a professional would have to spend 5 hours reviewing a massive file of documents to identify each instance of specific references to the membership interests in an LLC, the client may not be willing to incur that cost. If AI can with 30 minutes of professional time be guided to scour the same files and then followed up by 30-60 minutes of professional analysis of that AI output, the client may feel that the advantages of that more limited in terms of professional time approach is worth the cost. Absent AI, the client may simply have forgone this investigative step. With AI the client may be willing to incur what might be viewed as a tolerable cost for the analysis. Does the Alert suggest that the practitioner must review the underlying documents to verify the accuracy of the AI analysis? If so, that is a task the client may not have been willing to undertake in the first place. Does the language in the Alert put practitioners at risk for not reviewing all factual documentation when the client would not have wished that work done? What steps should practitioners take to minimize their liability? Might it be advisable to state in the letter, memorandum or email that contains the result of the above analysis: “This engagement was performed solely by the use of AI to endeavor to identify instances in which documents provided by you reflect membership interest percentages in XYZ, LLC. You expressly did not authorize us to incur the time to have staff review the underlying documentation to confirm the completeness or accuracy of the AI analysis, although we did review the actual AI output itself for reasonableness only. You recognize that the prompt use to direct AI’s search, and possible limitations of AI itself, and other technical issues (e.g., a document you provided may not have had Optical Character Recognition (OCR) run on it and that may have affected AI’s analysis, or a PDF of a copy of an older document may have been blurred such that AI could not discern the relevant information even though a human eye may have). You accept all of the risks of the limitation on our work that you have imposed.” How much is necessary to say? Will even the long disclosure above, which many practitioners might not feel comfortable using, suffice to avoid discipline under the Alert? What is enough and what must practitioners do? The Alert appears to suggest that the above is not an acceptable limitation on the scope of work. If that is in fact a correct interpretation, clients will suffer and practitioners trying to properly service their clients could unfairly be exposed to criticism, or worse.

Real-World Consequences and Governance Lessons

The Alert discusses court sanctions imposed on lawyers for improper use of AI, mainly due to fake citations or other hallucinations in legal filings. It identifies potential consequences including financial sanctions, public censure, mandatory legal ethics or professional responsibility courses, default judgments, removal from representation, and disciplinary referrals to state bar

authorities. These examples matter for tax professionals who may not be practicing as attorneys, even though many of the cases and sanctions have arisen in litigation and it has been attorneys who have been admonished. Tax practice also depends on accurate citations, reliable facts, correct calculations, and professional judgment.

Reports, memoranda, forecasts, appraisals, client summaries, tax analyses, and planning materials may all present risk if AI output is integrated without appropriate review. The Alert associates these sanctions with duties of candor and competence and notes the reputational harm that may follow when practitioners must notify clients and affected judges of court-ordered sanctions. The professional damage from careless AI use may extend beyond the matter where the issue arose. It may affect client confidence, referral relationships, licensing risk, firm reputation, malpractice exposure, and internal risk-management processes. But are these consequences any different than any other work done without the use of AI that was not up to professional standards?

Every firm should require AI output to be reviewed by a sufficiently skilled professional before it is delivered to a client, submitted to the IRS, or incorporated into work product on which the firm relies. Maybe! The reviewer must have enough knowledge to identify gaps, questionable assumptions, mistaken authorities, outdated authorities, calculation flaws, and incomplete analysis. But consider the implications of the above examples when a client limits the scope of the tax professional's work to control costs. What then? Consider another perspective.

Example: A client may require a non-judicial modification agreement (“NJMA”) of a several trusts. AI was asked as to whether each of the states where each trust had situs permitted NJMAs, and if so, what the requirements were. That information was attached to a broader memorandum as an exhibit and clearly identified as “AI RESEARCH NOT YET REVIEWED.” The purpose of this process was to provide the client with some preliminary uncorroborated information to better understand the scope of the recommendation. That is an application of AI that can enhance client service. It may provide the client a quick and inexpensive look, albeit tentative because it has not been reviewed yet, at the potential issues involved in one aspect of a broader client engagement. While this will benefit the client, and the status of the AI research is clearly indicated, the language in the Alert appears to possibly prohibit this. Why?

Prompts Are Vital to Consider

The alert does not appear to address the prompts, or instructions used to direct the actions AI is meant to take, but these seem relevant to analyze the implications of the Alert.

Prompts matter. A poorly framed prompt may produce a result that appears polished but is incomplete, misdirected, or misleading. Firms may consider standardized prompts for recurrent tasks, with fields that practitioners and staff may modify. The use of approved prompt structures may provide greater consistency, reduce the risk of deficient work product due to incomplete prompts, and support firm-wide AI governance on quality. The investments in these efforts to enhance AI results and train staff may, according to some interpretations of the Alert (see below), not be reflected in client billing which may have to reflect passing reduced costs to clients, and thereby not reflect the initial and ongoing investments firms must make to be able to effectively work with AI.

Prompt governance should not be viewed as an administrative issue. Prompt design can influence what facts AI considers, what authorities it searches for, whether it identifies contrary authority, whether it states assumptions, and whether it distinguishes between certain conclusions and tentative observations. A firm that develops carefully tailored prompts for drafting client memoranda, reviewing trust instruments, summarizing tax returns, extracting ownership data, checking citations, or identifying missing documents may create significant institutional value. The development of proprietary prompts can be compared to a firm's preparation of their own forms for legal documents and may be considered valuable assets of the firm in the future. That value may be relevant when considering whether AI-related efficiencies represent a cost reduction that must be credited directly to a client per the Alert, or instead a firm investment that supports billing more for the improved services the investments in AI permit the firm to make.

The effective use of AI may require careful and ongoing refinement of the prompts used to query AI, training and practice by the practitioners using it, tailoring firm standard prompts to fine tune them for the particular client application, etc. A practitioner who has invested heavily in AI knowledge and prompt development may also deliver greater value through more effective use of technology. A fee model that treats AI only as a cost reducer may fail to reflect the value created by professional skill and technological competence. If the IRS's goal for the Alert is to encourage (or require) more responsible use of AI, then this interpretation of the Alert's statements concerning cost are self-defeating.

Example: In a recent matter that had multiple components, a detailed AI prompt was developed to make the process more efficient and effective. After multiple iterations of a prompt, the revised prompt was uploaded to AI with a request for AI's comments on how to improve the prompt to better achieve the stated goals. AI was requested to review the prior six chats and the uploaded prompt and craft an improved prompt. The resulting prompt provided by AI had to be reviewed and when finished at that point was four pages of detailed instructions for a task that on the surface did not sound particularly complicated. Then almost every time that now "standard"

prompt has been reused it has been tweaked to improve it. But even the notion of a “standard prompt” is misleading because in many cases even a “standard” prompt can or should be tailored to the particular client query. When the next client matter that arises is it reasonable after such a significant investment to bill for only the time to upload a standard prompt? That doesn’t seem reasonable to the tax professionals involved.

Example: Practitioners in a particular firm do not write tailored prompts. Instead, they use an AI platform that has a “button” to click for research and a lower level professional inputs the information requested in the input window for that “research” button. Should that application be treated differently for billing then the above application of AI using a highly tailored and developed prompt as discussed above?

Due Diligence Under Section 10.22

Circular 230 §10.22 requires a practitioner to exercise due diligence in preparing or assisting in the preparation of tax returns, documents, affidavits, and other papers relating to IRS matters; in determining the correctness of oral or written representations made by the practitioner to the IRS; and in determining the correctness of oral or written representations made to clients regarding matters administered by the IRS.

The Alert applies that standard directly to AI. When GAI is used, practitioners must thoroughly review AI-created documents and language incorporated into writings before delivery to a client or submission to the IRS. Due diligence requires verifying the accuracy of facts, citations, and calculations produced by AI. Practitioners cannot rely solely on AI, and human scrutiny and editing are essential to correctness and compliance with IRS expectations. It is not clear that the Alert applies the reasonableness standard ABA technology guidance is tempered with.

The IRS’s guidance should be unsurprising in concept. A practitioner should not rely blindly on work prepared by a junior professional with little experience, and AI should not be treated more leniently. The more difficult question is to what depth the practitioner needs to review materials generated by AI. The Alert does not define how extensive the review must be for each different application of AI. A citation included by AI in a legal memorandum should be read and confirmed. A calculation should be tested. A factual summary should be compared against relevant documents (but see above). A tax conclusion should be reviewed for substantive accuracy, contrary authority, assumptions, and limitations. But some AI outputs may be administrative or preliminary, i.e., not to be provided to clients or the IRS, but merely initial research the practitioner performs to begin detailed analysis. A firm policy may need to distinguish between

output used for internal brainstorming and output incorporated into advice, filings, or client deliverables. But also consider the application of AI discussed above. Why should a practitioner in the exercise of reasonable professional judgement not be permitted to communicate preliminary unreviewed AI research so long as that serves a valid purpose and the limitation or non-review is fully disclosed?

One risk is that the IRS may view failures identified in the Alert as evidence supporting penalties or discipline. If AI output results in erroneous facts, false citations, incorrect calculations, or flawed submissions and those materials are provided to the client or submitted to the IRS without revision, the practitioner may face scrutiny under existing due diligence standards. Is that reasonable if the AI output is clearly indicated to not have been reviewed or to only having been subject to limited review pending client authorization to proceed further? That risk supports documentation of any review performed on the materials generated by AI. Documentation need not be excessive in every matter, but the file should generally reflect that material AI-generated authorities, calculations, and factual summaries were checked before use.

The practical benefits of AI remain significant, and those will likely grow over time as AI continues to evolve. AI may review voluminous client files more quickly than staff, at much less cost, but currently it is not clear that review will be as accurate as the work of professional staff. It may identify ownership percentages, key provisions, inconsistencies, dates, tax forms, or missing documents. The time savings can be real. But professional standards still require review proportionate to the reliance placed on the output. The standard set forth in the preceding sentence would support in appropriate circumstances and with disclosure sending a client preliminary AI output that has not been reviewed, because with an appropriate disclosure the reliance to be placed on the output should be nil. A firm should not use AI to replace due diligence or abdicate application of professional judgment. It may use AI to focus and support due diligence.

Fees, Cost Savings and Value Billing

The fee discussion in the Alert is one of its most consequential and potentially problematic sections. Circular 230 §10.27(a) states that a practitioner may not charge an unconscionable fee in connection with any matter before the IRS. The Alert states that AI can reduce research and drafting time, and that billing clients for manual labor or time that was not actually spent, or double billing for AI-assisted tasks, may violate §10.27 depending on the facts, including patterns across clients or the size of billing differentials. The Alert further states that cost savings should be passed on openly, with billing practices that reflect efficiencies gained from GAI. It also states

that practitioners should disclose AI activities in general or specific terms as needed (see the example above of a possible disclosure) and fairly credit to the client's account any cost reductions. The concern raised is that the statements made in the Alert may sound appropriate, but it is inconsistent with long held ABA guidance on billing, as explained below. A practitioner should not bill for hours that were not worked. A practitioner should not double bill for AI-assisted tasks. A statement of time or service provided should be accurate. But if a practitioner invests 50 hours (or more) a year, year after year, in learning and staying current with AI tools and applications, is billing for the hourly time spent using AI, employing prompts and knowledge gained from that time invested by the practitioner, to resolve a client question a reasonable representation of the tax professional's effort? Some may argue not. In fact, the stringent requirements the Alert imposes on tax professionals when they take steps towards learning and implementing AI in their practice would seem to be inconsistent with then restricting practitioners from making a return on that investment by only permitting billing in a manner that reflects the cost savings in terms of raw time directly related to that particular client matter.

Further, the language the IRS uses in the Alert raises additional significant questions. It does not define cost. It does not explain whether cost means the reduced time spent on a particular engagement, the practitioner's direct marginal cost, the firm's total cost of responsible AI adoption, or some combination of those concepts. That omission matters because professional firms adopting AI may incur substantial costs both in time and capital invested that are neither visible to a particular client, nor readily allocable to any single engagement. Those costs may include technology acquisition, subscription fees, platform evaluation, vendor review, cybersecurity review, prompt development, engagement-letter revisions, firm policy development, staff training, quality-control procedures, administrative time, supervision of AI output, adapting firm materials into a system compatible with the AI so they can be accessed by AI when generating materials (i.e., digitizing older physical files and storing them on a cloud system the AI can access, OCRing older PDFs that may have been created before it was standard so AI can read them, etc.), and ongoing monitoring.

If all apparent engagement-level time savings must be credited to a client without considering broader firm costs, the result may be unfair to practitioners and may discourage investment in responsible use of AI. A firm may spend substantial non-billable time developing ethically compliant and effective AI systems. Those investments may improve work quality, speed, consistency, and risk control. A narrow reading that focuses only on reduced drafting time may fail to account for the costs required to make that reduction possible.

The issue is also complicated by value billing. The ABA Model Rules allow consideration of multiple factors in determining whether a lawyer's fee is reasonable. The factors may include: the

time required, the novelty and difficulty of the questions involved, the skill required to perform the service properly, the fee customarily charged in the area, the amount involved and the results obtained, and the experience, reputation, and ability of the lawyer.⁴ Time is only one consideration. A fee may reflect judgment, experience, novelty, risk, difficulty, and value. It is not clear that the Alert supports this.

The Alert appears to focus primarily on labor savings. That focus may be too narrow for sophisticated tax work and for complex applications of AI. A complex tax matter may require unusual insight, experience, and judgment. AI may help draft language, summarize facts, or organize authorities, but the value of the work may arise from the practitioner's ability to identify the issue, assess risk, apply law to facts, evaluate uncertainty, and communicate a defensible recommendation.

Engagement Letters

The Alert also may influence engagement letter drafting. Should engagement letters indicate that the tax professional interprets the term “cost” in the Alert to include all costs broadly speaking in providing the services involved? Will that matter?

Engagement letters may need to disclose that the firm may use AI or technology-assisted tools in accordance with firm policies, confidentiality safeguards, professional obligations, and human review. They may also explain how the firm charges for work where technology improves efficiency. Some matters may remain hourly. Others may use fixed fees, project fees, or value-based fees. A transparent fee structure may reduce disputes, but the Alert leaves unresolved how to reconcile cost-credit language with professional fee rules that permit value billing. ABA Formal Opinion 512 addresses Model Rule 1.4 and notes that Rule 1.4(a)(2) requires a lawyer to “reasonably consult” with the client about the means by which the client’s objectives are to be accomplished. Perhaps confirming that AI will be used in an engagement letter may facilitate meeting that requirement. Practitioners should be cautious as to how much detail is provided as to specific applications of AI since those may change over time. As another consideration, because of what may be new applications of AI by practitioners over time, and the rapid evolution of AI itself, practitioners may also add notations or explanations to memoranda or other documents as to the fact that AI was used, and as appropriate, perhaps comments as to specifically what was done with AI.

Example: Consider the following disclosure: “AI was used to identify all instances in the file documents we were provided with as to the statement of the percentage interest in XYZ LLC which

⁴⁴⁴ ABA Model Rule 1.5(a).

is critical to the analysis below. AI identified several inconsistencies which are addressed and for which corrective steps are recommended. We did not manually review every document in our file for this issue as we believed the cost involved in doing so would be substantial. Having a professional with appropriate experience review each document using the AI output as a starting point is the recommended approach to confirm accuracy, but you have to be willing to incur the cost of that effort. Please advise.”

Clients may also begin using AI to challenge bills or to generate questions about their own tax matters. Some questions may be useful. Others may be irrelevant, incorrect, or based on flawed AI assumptions. The time required to respond to large volumes of client-generated AI questions may itself increase costs. Engagement letters and billing policies may need to address technology-assisted client communications, excessive inquiries, and the scope of review required when a client provides AI-generated analysis.

The Competence Standard: What is Considered Sufficient?

Circular 230 §10.35 provides that a practitioner must possess the necessary competence to engage in practice before the IRS. Competent practice requires the appropriate level of knowledge, skill, thoroughness, and preparation for the matter. The Alert applies that competence standard to AI in strong terms. It states that practitioners must understand both the law and the technology used in their representation of clients before the IRS, including AI systems’ operational mechanics, limitations, and risks. It further states that practitioners must understand how AI develops content, recognize the potential for bias or errors, and evaluate whether AI outputs are suitable for IRS matters.

This language may be read as more demanding than traditional legal ethics standards governing technology competence. The ABA guidance states that a lawyer should keep abreast of changes in the law and its practice, including the benefits and risks associated with relevant technology.⁵⁵ That standard is grounded in reasonableness. It generally requires a lawyer to maintain a reasonable understanding of relevant technology and to appreciate benefits and risks. The ABA guidance does not appear to require lawyers to understand technical application of AI to an engineering level of detail, as one interpretation of the Alert requires.

The phrase “operational mechanics” is therefore significant. It is unclear how much understanding is sufficient to comply with the Alert. It is unclear whether a tax practitioner must

⁵⁵ ABA Model Rule 1.1, Comment 8.

understand model training, transformer architecture, tokenization, retrieval-augmented generation, vector databases, prompt injection, data retention, model drift, or vendor-specific security architecture. It is also unclear whether vendor documentation, CPE/CLE programs, internal training, or consultation with technology specialists can satisfy the requirements. The Alert does not provide examples or definitions that could ground their statements in understanding of what steps a practitioner needs to take to meet those requirements. So, how much is enough? Under ABA guidance a practitioner may feel confident that they can and have met a “reasonableness” standard. But what level of knowledge is required to pass muster under the Alert?

That omission is troubling because AI evolves rapidly. Even if a practitioner understands the operational mechanics of one platform at one point in time, the vendor may change the model, interface, training process, retention policy, retrieval method, or output controls. The practical responsibilities of tax professionals under the Alert should account for that rate of change. A reasonableness standard can adapt to changing technology. A poorly defined mechanics standard may be difficult to apply and difficult for practitioners to document if they have met it.

The IRS, according to some interpretations of the Alert, may have intended that practitioners understand ordinary and practical points: AI can hallucinate, fabricate citations, omit relevant authorities, reflect bias, misunderstand context, mishandle confidential data, and produce outputs that require human review. That interpretation would be closer to the ABA approach. But another interpretation is that the Alert does not clearly limit the requirement in that way. The stated requirement to understand operational mechanics and how AI develops content may be read as a higher technology-literacy requirement than the ABA Model Rules and related ethics opinions have historically imposed.

The contrast matters. The ABA framework generally asks whether a lawyer took reasonable steps to understand relevant benefits and risks, protect client information, supervise technology use, and exercise independent judgment. The Alert may be read to ask whether the practitioner understands how the technology works. That shift may create uncertainty and potential liability for practitioners who can competently evaluate AI outputs but cannot explain the underlying mechanics of the AI system at a technical level. Is that additional requirement, if that is what it is, really necessary to impose?

Procedures, Training, and Firm-Level Compliance

Circular 230 §10.36 requires individuals with principal authority and responsibility for overseeing a firm's practice governed by Circular 230 to take reasonable steps to ensure that the firm has adequate procedures in effect for members, associates, and employees. When addressing supervision in the Alert, the IRS returns to a reasonableness standard. That is notable because the competence discussion in the Alert reviewed above uses what can be interpreted as more demanding language concerning operational mechanics, without being tempered by reasonableness criteria.

The Alert also states that responsible individuals may be subject to discipline if they fail to comply with §10.36, including where they willfully, recklessly, or through gross incompetence fail to take reasonable steps to ensure adequate procedures, fail to ensure procedures are followed, or know or should know of a pattern or practice and fail to take prompt corrective action. If the IRS expects more than reasonable safeguards in some AI contexts but not in others, firms need to know what particular standard is applied when creating policies for certain actions involving AI.

The Alert states that firms must use internal policies and procedures for Circular 230 compliance in its AI applications. That might include: determining which staff members have access to which AI programs, comprehensive training on AI use and risks, internal rules, protocols for secure data handling, AI accuracy monitoring, addressing terms in contracts with external providers that protect confidential client information, vetting outsourced or third-party AI tools, and documentation of all steps and processes to show adherence to §10.36.

Several questions arise in trying to understand the Alert including:

1. What constitutes comprehensive training under the Alert?
2. How does comprehensive training differ from reasonable training under ABA standards?
3. What level of vendor vetting is required?
4. Must a firm obtain a technical security report to demonstrate compliance?
5. Must it review terms of service (TOS) of programs used by the firm at inception of use, or periodically in case of changes?
6. What period of time to review various TOS would be sufficient if periodic review is required?
7. What is the obligation to review each update of the TOS?
8. Must the firm test AI outputs? All the time?
9. Must it maintain a list of approved tools?
10. Must it preserve prompts?
11. Must it record each AI use in each client matter?

The Alert identifies important categories of risk management but does not define the details of compliance which may create implementation difficulties for tax practitioners and also uncertainty as to whether the criteria in the Alert have been complied with.

A practical firm policy may include an AI governance committee or responsible person, an approved-tool list, a prohibited-use list, client-data restrictions, vendor review criteria, prompt templates, citation-checking protocols, written advice review procedures, training logs, incident response steps, and engagement-letter language. Documentation should be meaningful but not so burdensome that it impedes the use of AI in practice. A policy that requires exhaustive documentation of every inconsequential AI use may not be practical. A policy that requires documentation only when AI output is incorporated into client advice, filings, calculations, or material factual summaries may be more workable, but even that may be a monumental undertaking. Again, consider the practical issue noted earlier of how will it be feasible for a solo tax practitioner or small firm to meet these standards?

The Alert's documentation requirement raises a broader question. A firm may use AI in many ways, including brainstorming, grammar review, summarization of non-confidential materials, internal training, legal research, document comparison, spreadsheet checking, client deliverable drafting, or return preparation support, as a few examples. The level of documentation required, and the burden imposed due to that paperwork should reasonably vary with materiality and risk of each different use of AI. The Alert does not provide any clarity on whether a risk-based structure can be imposed for different AI operations or any examples for firms to use when crafting their policies, leaving firms to develop internal standards.

Example: A client dies and a letter must be written to the grieving surviving spouse about the importance of addressing portability, choosing a tax year, etc. The practitioner knows the technical tax information to communicate and may even have a relatively standard post-death letter to send. What the practitioner wants assistance from AI on is phrasing the letter in the most empathetic way possible. The practitioner asks AI to review the letter solely to make it more sensitive considering the recent death and the emotional fragility of the surviving spouse. AI was used solely to modify the letter for these non-technical reasons. What level of review of the revised letter is necessary? If AI was expressly instructed not to review or address technical issue but merely personal ones might that change the answer of what the Alert requires?

Written Advice Under Section 10.37

Circular 230 §10.37 governs written advice concerning Federal tax matters. The Alert quotes requirements that written advice be based on reasonable factual and legal assumptions, consider all relevant facts and circumstances known or reasonably known, use reasonable efforts to identify and ascertain relevant facts, avoid unreasonable findings, relate law and authorities to facts, and not account for the possibility that a return will not be audited or an issue will not be raised on audit.

The Alert states that because written advice must rest on reasonable factual and legal assumptions, practitioners cannot rely on GAI projections or representations without verification of the AI's output. It further states that citations in legal documents must be checked and cases read, and that financial forecasts, inputs, and formulas must be confirmed. If system logic is opaque, reliance may be unreasonable under § 10.37.

The Alert also states that when practitioners draft written advice with GAI, they must independently authenticate all factual and legal information. Blind reliance on AI, especially when underlying logic or sources are unclear, may constitute unreasonable reliance. But what if the logic is clear to the practitioners? Can't the practitioner apply professional judgment from decades of experience and decide not to vet the AI's output further if that is, in the practitioner's reasonable judgement, prudent? Practitioners should treat AI-generated advice as a starting point subject to thorough review before providing it to clients.

The principle is sound, but one interpretation of the standard created in the Alert again raises questions. What is a thorough review? If a skilled professional uses AI to draft a noncontroversial paragraph, and the professional judgment of the practitioner confirms that the paragraph is correct, must every factual or legal point still be independently verified? The Alert appears to require verification even where professional judgment suggests otherwise. That requirement may increase client costs. It may also reduce the efficiency gains (cost savings) from the use of AI that the Alert elsewhere expects to be passed on to clients.

Sec. 10.37(a)(2) (iii) requires tax practitioners to "Use reasonable efforts to identify and ascertain the facts relevant to written advice on each Federal tax matter." Reconsider the example above of the practitioner using AI to scour massive client files to identify any inconsistent specifications of the percentage interest in an LLC. Is that "reasonable efforts to identify and ascertain facts..."? If not, why not?

A better approach may include risk-based assessments. Citations should be checked. Cases should be read when relied upon. Calculations should be tested. Financial inputs should be traced to

source materials. Material factual assumptions should be verified. But the level of verification should reflect the role of the AI output, the complexity of the matter, the degree of reliance, the risk of error, and the consequences of mistake. The Alert's lack of discussion of these factors or further clarification of what steps practitioners may take to achieve sufficient authentication of facts provided by AI may be read to create uncertainty for practitioners attempting to comply without imposing unnecessary costs on clients.

The written advice rules also reinforce the importance of documenting assumptions. AI may produce confident conclusions without identifying assumptions, contrary authority, or uncertainty. A practitioner should not allow polished AI language to obscure the need to state assumptions, limitations, factual dependencies, reliance on client representations, and unresolved legal questions. Written advice should remain the product of professional judgment, not merely edited AI text.

Should practitioners consider saving in drafts of tax memorandum all the prompts used to generate material provided by AI and even the full chat discussions with AI to demonstrate the reasoning behind a particular decision or approach? That will add time to any engagement, but might that be advisable considering the vagueness of the steps the Alert may be read to require?

Confidentiality, Public AI, and Tax Return Information

The Alert addresses confidentiality through discussions of Internal Revenue Code (IRC) §6713 and §7216(a), which impose civil and criminal preparer penalties for unauthorized use or disclosure of tax return information. It also states that Circular 230 §10.51(a)(15) prohibits willful disclosure or use of tax return information in an unauthorized manner, including in violation of the IRC. The Alert also cites Treasury Regulation §301.7216-1(b)(3), which broadly defines tax return information to include information furnished in any form or manner for, or in connection with, preparation of a taxpayer's tax return.

The Alert states that GAI platforms may present risks regarding unauthorized disclosure of sensitive taxpayer information, especially when data is uploaded to unsecured or public systems. It states that practitioners must handle client data using only secure, enterprise-approved AI and that AI systems should be utilized with robust confidentiality safeguards firmly in place. That point should be part of every firm's AI policy. No one in the firm should use any public AI for any client related matter.

Example: Associate thinks of an idea over the weekend on a complex client tax issue she had been researching all week at the firm. She accesses the free non-subscription AI she uses from her home laptop to query AI about the idea she had. She is conscious of the fact that it is a public AI, so she carefully avoids using the client’s name or identifying information. Those steps are prudent, but are they sufficient? What if the fact pattern, even sanitized, is so unique that it could be identified? Might the IRS (or another adversary) be able to gain access to any free public AI that anyone working on the client matter may have accessed?

The confidentiality concern is serious. Client tax information may include names, addresses, identifying numbers, financial data, business interests, assets, income, expenses, gifts, estate planning structures, trust information, family information, medical or disability-related information, and sensitive personal facts. Uploading that information into an unapproved public AI tool may create disclosure or use risks. A firm policy should prohibit entry of client tax return and all other sensitive or confidential information into tools that have not been vetted and approved for that purpose. The wording of those restrictions should be carefully crafted to address the example above.

The Alert’s use of a robust confidentiality safeguard standard raises another interpretive question. The Alert states: *“AI systems should be utilized with robust confidentiality safeguards firmly in place.”* In contrast, the ABA Model Rules use a reasonable efforts standard to prevent inadvertent or unauthorized disclosure or access. ABA guidance includes a balancing test that considers sensitivity of information, likelihood of disclosure, cost of safeguards, difficulty of implementation, and effect on the lawyer’s ability to represent clients.⁶ The ABA framework is practical because it recognizes that confidentiality controls require proportionality to the risk created by the potential exposure of the confidential information.

The Alert’s use of the term “robust” is less clear, and perhaps much more demanding than reasonable. It does not explain whether robust means encryption, enterprise licensing, vendor contractual restrictions, data residency protections, security certifications, multifactor authentication, access controls, audit logs, training restrictions, anonymization, private model deployment, or some combination of these safeguards. It also does not weigh cost, difficulty, or effect on representation in the manner described in ABA Model Rule 1.6(c), Comment 18. Finally, will whatever constitutes “robust” safeguards today suffice as “robust” next year? Recall when passwords alone were sufficient protection? Then password managers created long complex passwords. Then multi-factor authentication became the standard. Risks and safeguards evolve.

⁶ ABA Model Rule 1.6(c), Comment 18.

A practical firm response may combine restraint and documentation. Public AI should generally (perhaps never) not be provided confidential client tax information. Enterprise-approved AI should be used only after vendor review. The review should consider terms of service, confidentiality, data retention, training use, access controls, breach procedures, and any available security documentation. Staff should be trained to distinguish between public AI, firm-approved AI, and prohibited use cases. The firm should also maintain a process for reporting and addressing accidental upload of sensitive information. Will individual professional advisers voluntarily disclose such an error? Who should it be disclosed to? What actions should a firm take if this occurs? Should the client whose information may have been compromised be informed? What disclosures to the client might be appropriate?

The ABA Reasonableness Framework and the IRS Alert

The Alert references professional organizations and ABA guidance.⁷ But despite that, the Alert appears not to address the practical reasonableness principles embedded in that guidance in several of the topics the Alert addresses. That may be an important concern for tax practitioners.

The ABA approach requires lawyers to keep abreast of changes in law and practice, including benefits and risks associated with relevant technology. The ABA guidance requires reasonable efforts to prevent inadvertent or unauthorized disclosure or access. That includes a balancing test which provides consideration of the sensitivity of the information, likelihood of disclosure, cost of safeguards, implementation difficulty, and impact on representation. The Alert does not appear to temper its requirements with these practical concepts.

ABA guidance adopts a fact-specific analysis and requires lawyers to use reasonable efforts to protect confidential information, with stronger precautions as sensitivity and risk increase.⁸ ABA opinions provide that lawyers practicing virtually must make reasonable efforts to prevent unauthorized disclosure and use reasonable precautions when transmitting information.⁹

None of the ABA guidance appears to require attorneys to understand the underlying technical architecture of the AI tools they use. Lawyers use legal research platforms, tax software, document management systems, email systems, encryption tools, cloud platforms, portals, and practice-management systems without becoming computer science engineers. The relevant inquiry has generally been whether the lawyer made reasonable efforts to understand benefits

⁷ Including ABA Formal Opinion 512, “Generative Artificial Intelligence Tools,” issued July 29, 2024.

⁸ ABA Formal Opinion 477R, “Securing Communication of Protected Client Information,” issued May 22, 2017.

⁹ ABA Formal Opinion 498, “Duty of Competence When Working Remotely,” issued March 10, 2021.

and risks, protect confidentiality, supervise use, and exercise independent judgment. Doesn't this detailed guidance provide an appropriate framework for all tax planners?

The Alert may be read differently. By requiring practitioners to understand AI operational mechanics and how AI develops content, the Alert appears to move from a reasonableness-based technology competence standard to a more technical and less defined standard. The Alert does not specify the depth of knowledge required, does not provide a balancing test comparable to ABA Model Rule 1.6(c), Comment 18, and does not explain how a practitioner can demonstrate sufficient understanding. That uncertainty may create practical risk for firms when employing AI.

A more tempered interpretation of the Alert may be possible. The Alert may be read to require practical AI literacy rather than higher levels of technical expertise. Under that reading, practitioners should understand that AI may hallucinate, produce biased outputs, omit relevant facts, generate incorrect citations, mishandle confidential data, and require human review. That level of understanding is consistent with the ABA approach. But the Alert's actual words appear to be broader. Further guidance would be helpful to clarify that practitioners are expected to understand practical risks and limitations, not the full technical architecture of AI systems.

Practical AI Practices and the Need for Precision

The Alert concludes with practical recommendations. It states that practitioners should:

1. *"Identify, understand, and stay updated on any relevant federal or state-specific laws, regulations, and guidance that pertain to your professional activities.*
2. *Establish secure AI data handling protocols and access controls.*
3. *Document AI usage and verification processes.*
4. *Foster transparency and accountability in all AI practices.*
5. *Prepare clear procedures for handling breaches or errors.*
6. *Provide necessary staff training.*
7. *Vet third parties' AI offerings when or before purchasing.*
8. *Never upload sensitive data to unsecured sites.*
9. *Treat the written text that AI generates as drafts.*
10. *Review the resulting documents thoroughly for factual and legal accuracy (e.g., always check citations) and any problematic bias."*

These recommendations may be sensible at a high level or in a general manner (see prior examples for illustrations of when the Alert language may be nettlesome). They also raise implementation questions. What does it mean to document AI usage. Must each prompt be saved? Must each AI output be preserved? Must a memorandum identify every AI-assisted task? Should a billing entry indicate AI use? If so, how and to what extent? Should client files include an AI review checklist? Should verification processes be documented only for material outputs (and if so, what is “material”)? The Alert does not answer those questions.

A practical policy may distinguish among different categories of AI use for any documented steps to be taken by members of the firm or staff. For low-risk administrative uses, general office policy and training may be sufficient. For client confidential data, the file may need to identify the approved AI tool used and confirm compliance with confidentiality restrictions. For written advice, the file may need to show that citations, cases, facts, financial forecasts, assumptions, and calculations were reviewed (but again see examples above as to when that might not always be appropriate). For IRS submissions, the review should perhaps be more stringent and detailed. For independent citation checks, the file may include notes showing that the cited authority was read and remains current. But that is not a practice that tax professionals have tended to use for research performed or work product created in traditional methods, without the use of AI. Is it necessary to impose a higher standard when using AI? Is that the intent in the Alert?

The Alert’s final theme is sound. AI is a tool, not a substitute for professional judgment. Final decisions must rest with qualified professionals who understand tax law and ethical standards. Practitioners must review AI output, validate factual assertions and citations, and handle sensitive client data safely and securely under federal and state regulations. But, the concern remains for the apparent lack of precision in some standards and terms used to reach the conclusions in the Alert.

Conclusion

OPR Alert 2026-19 is an important development in federal tax practice. It confirms that existing Circular 230 duties apply when practitioners use AI. Due diligence, competence, written advice standards, confidentiality duties, supervisory responsibilities, and fee rules do not disappear because an AI tool assists with research, drafting, analysis, or review. That conclusion is appropriate.

The Alert is also important because its language may be read to go beyond existing professional responsibility frameworks in several respects. The fee discussion focuses on cost savings and

credits to clients without defining cost or addressing direct and indirect investments in building AI skills, value billing, professional judgment, novelty, skill, implementation investment, or firm-level AI governance costs. The competence discussion requires understanding of operational mechanics and how AI develops content without explaining how much technical understanding is required. The Alert's confidentiality directions require robust safeguards without explaining what "robust," means or how that compares to reasonable efforts standards used elsewhere in the Alert and in ABA guidance. The discussion on implementing procedures outlines a reasonable standard, but also refers to comprehensive training, third-party vetting, and detailed documentation without defining the required level of compliance.

Those features create uncertainty for tax practitioners. A firm can agree that AI output must be reviewed, citations checked, confidential information protected, and billing handled fairly and honestly. A firm can also contend that the professional standard should remain grounded in reasonableness, proportionality, risk, cost, practicality, and professional judgment. The ABA framework described in the annotated analysis reflects that approach. The ABA guidance asks whether the lawyer understands benefits and risks, uses reasonable safeguards, protects clients, and exercises independent judgment. The Alert sometimes appears to demand more, without clearly defining the additional requirements.

Further guidance would be helpful. The IRS could clarify that practitioners are not required to become AI engineers. It could explain that practical AI literacy means reasonably understanding risks, limitations, confidentiality concerns, output verification, vendor issues, and appropriate use cases. It could provide examples of reasonable AI policies and reasonable documentation methods. It could distinguish improper billing for time not worked from permissible value-based billing and reasonable recovery of AI implementation costs. It could explain what constitutes sufficient vendor vetting, comprehensive training, robust confidentiality safeguards, and documented AI usage.

Until further guidance is issued, professional firms should act cautiously and deliberately. They should identify AI uses, approve appropriate tools, restrict public AI, review vendor terms, update engagement letters, train staff, develop prompts and review protocols, document material verification, and treat AI output as preliminary work product subject to professional judgment review. Those steps may help firms use AI to improve service while reducing confidentiality, accuracy, disciplinary, reputational, and billing risks. AI may be a powerful tool in tax practice, but the professional answer is not uncritical adoption or reflexive avoidance. The practical answer is governed use, documented judgment, and standards that remain faithful to professional responsibility principles.

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Martin Shenkman

From: stevesletters@leimbergservices.com
Sent: Monday, January 12, 2026 10:00 AM
To: Martin Shenkman
Subject: Martin M. Shenkman, Thomas Tietz & Alan S. Gassman: 2026 An AI Odyssey, Part 1
Steve Leimberg's Estate Planning Newsletter

EXTERNAL: This email originated from outside of the organization.

Steve Leimberg's Estate Planning Email Newsletter - Archive Message #3265

Date: 12-Jan-26
From: Steve Leimberg's Estate Planning Newsletter
Subject: [Martin M. Shenkman, Thomas Tietz & Alan S. Gassman: 2026 An AI Odyssey, Part 1](#)

“This newsletter provides practical principles for practitioners to consider when determining how to integrate AI safely and reliably into their practice and then offers ten examples of how these tools can improve the efficiency and effectiveness of tax, estate planning, and financial professionals. While these examples may not all work for each practitioner’s specific practice, considering each of these AI examples and many other ways AI can be used may help practitioners begin to understand unique ways that AI may be integrated into their practices.”

Martin M. Shenkman, Thomas Tietz and Alan Gassman provide members with commentary that examines the principles practitioners should consider when determining how to integrate AI safely and reliably into their practices.

Martin M. Shenkman is an attorney in private practice in New Jersey and New York who concentrates on estate planning. He is the author of over 40 books and more than 1,400 articles and has won many professional awards.

Thomas Tietz, JD, has lectured at the Notre Dame Tax & Estate Planning Institute and for the New Jersey Bar and Institute of Continuing Legal Education. He has published articles in the American Bar Association E-Report, Wealthmanagement.com and Trusts & Estate Magazine. He is a member of the American Bar Association, Real Property, Trust and Estate Law and Business Law sections, the New York State Bar Association.

Alan Gassman, J.D., LL.M., is a partner at the Clearwater, Florida law firm of **Gassman, Denicolo, & Ketron P.A.** He is a frequent LSI commentator. Mr. Gassman practices in the areas of Estate Tax and Trust Planning, Taxation, Physician Representation, and Corporate and Business Law, and was accepted to the Estate Planners Hall of Fame of the National Association of Estate Planning Councils in 2021. Mr. Gassman is the primary creator and developer of EstateView software, which allows for the design, illustration and analysis of estate tax, estate planning and charitable strategies. Jerry Hesch, Jonathan Blattmachr, Robert Keebler and Mr. Gassman serve as the Creative Team that continues to develop this software. You can read the newsletter written by Eido Walny, Joey Kleiner, and Jason McCosby on EstateView Estate Planning Software #3114. EstateView is sponsoring a website for free AI throughout the month of January 2026 at estateviewai.com. His e-mail address is alan@gassmanpa.com.

Here is their commentary:

EXECUTIVE SUMMARY:

Arthur C. Clarke's 1968 novel *2001: A Space Odyssey* and Stanley Kubrick's film introduced many readers and viewers to HAL 9000, a ship's computer that spoke like a person, managed complex systems, and ultimately malfunctioned in a way that put human life at risk. The story was memorable not only because HAL was powerful, but because HAL's failure showed how quickly humans will trust a system that feels confident and intelligent.

Today we have multiple artificial intelligence (AI) platforms that can perform tasks that were science fiction when 2001 was written. For tax, estate planning, and financial professionals, the practical question is not whether AI is impressive. The practical question is whether it can be integrated into a professional workflow to save time, reduce costs, and improve quality without compromising confidentiality.

Many professionals are apprehensive regarding the use of AI in their practices, and not without good cause. The case of *Mata v. Avianca, Inc.*^u, serves as a cautionary tale, where lawyers failed to understand the generative AI application ChatGPT before adopting it for legal research. However, lawyers then cited cases provided by ChatGPT in a court filing. Unfortunately, the cases were fictitious and there was no precedent for the position taken because of these "hallucinations." The attorneys were sanctioned for not researching the information provided by ChatGPT. While this case, and others like it should create respect for the pitfalls using AI presents, it should not deter practitioners from carefully reviewing and adopting the use of AI in certain aspects of their practice.

AI has come a long way since 2023. Those who tried it one or more years ago may be very surprised at how far along it has come, and how effective it can be using multiple AI models to critique, correct, and build upon one another with helpful human nudges. This can be extremely productive, and also enjoyable.

You have to provide very specific instructions to AI. In the old show, *Get Smart*, Agent 86 and Robot interact:

Agent 86: “Answer the door, Robot!”

Robot: “I’m sorry, Door, what was the question?”

[the door was silent]^[2]

This newsletter provides practical principles for practitioners to consider when determining how to integrate AI safely and reliably into their practice^[3] and then offers ten examples of how these tools can improve the efficiency and effectiveness of tax, estate planning, and financial professionals. While these examples may not all work for each practitioner’s specific practice, considering each of these AI examples and many other ways AI can be used may help practitioners begin to understand unique ways that AI may be integrated into their practice.

The authors regularly use a number of AI tools, including CoPilot, ChatGPT, Claude, Gemini, and EstateView’s aggregation platform, which presently has a free version at EstateViewAI.com. Other platforms can provide excellent results as evidence by the growing number of users and the experience that they are having.

FACTS:

Guiding Principles for Professional Use

Principle 1. Do not let artificial intelligence learn from client data

All professionals have a duty to protect confidential client data. AI is built on “large language models” which require large datasets in order to function. A portion of this information is gathered from the prompts individuals ask the AI programs, but the ability to gather data can be restricted. Professionals should make sure that any AI system used with client specific information is configured so that it does not train on, learn from, or otherwise reuse private information outside of the firm’s control. This will require a licensed AI program, as “free” AI programs are typically being “paid” from the data provided in prompts. Many paid consumer platforms offer a setting to allow learning or to disable learning, yet it is easy for a user to switch the setting accidentally. A safer approach may be to enable a firm level configuration that enforces non-learning and limits data retention. This is similar to the cybersecurity controls that IT firms or departments establish for other systems that transmit confidential client information such as emails, cloud-storage systems, client portals, etc. The data risks in AI can be treated in a similar vein.^[4]

Practitioners should not confuse the above with leveraging client data. AI can quickly search massive amounts of client data, which can then prove useful in increasing a firm’s productivity. For example, imagine a client that completed a complex transaction

a decade ago calls for an update meeting. You can request that AI provide a summary of what was done, links to key documents and more in almost no time. Similarly, if a current client has a complex issue that the firm has addressed before, AI can scour all your client files, find any resources you or another partner created at any time and provide a summary with appropriate links. For large firms with a massive database containing decades of client files, research, and other materials, AI can tap that resource.

Principle 2. Use more than one platform and require second opinions

Each AI platform has strengths and weaknesses that become obvious when you ask the same question multiple ways across platforms. Each AI model is built from unique training data, creating variance in responses. Additionally, first-party models offer enhanced integration with affiliated services. Google Gemini has access to information stored in any Google accounts you may have such as Gmail, and Microsoft Co-Pilot can search through data stored in Microsoft programs such as OneDrive, Outlook, SharePoint, etc.^[5] Due to this limited pool of data, each AI model will have different results based on the data it has access to. A practitioner who uses only one platform is betting the conclusion on that platform's blind spots while a practitioner who uses two or three platforms can force the tools to challenge each other. This allows for greater depth and confidence in output and may identify concerning language or incomplete thoughts. In many cases, the fastest way to find an error is to ask a different model to audit the first model's answer.

Principle 3. Require citations and quotations for anything that matters

As the Mata case shows, AI can hallucinate. The most dangerous hallucinations for practitioners include invented cases, fabricated quotations, and confident statutory explanations that do not exist. If any of these hallucinations are included in work product, it will create significant issues for the practitioner, which may open the practitioner to sanctions, malpractice claims, and reputational risk. The cure is establishing clear parameters for the AI prompt which will help with reviewing the output received. Require the AI to provide citations and also appropriate quoting language from the decision that specifically supports the proposition that the case is mentioned for so that it is easier to find this language in this case when human hands confirm accuracy. Once the AI response is generated, open the cited authorities provided and confirm their veracity. If a model cannot cite authority for an important claim and you cannot find supporting authorities in your own follow-up research, treat the claim as unproven and modify the language to either remove that claim or address the fact that there is no authority supporting it.

The instructions you give to AI can be complicated; it may not understand what you want on the first go. Be sure to be clear when giving instructions.

From *Monty Python: The Meaning of Life*

[John Cleese Stands at the front of a boys' classroom and delivers an instruction on acceptable hair length]

"...Now, before I begin the lesson, will those of you who are playing in the match this afternoon move your clothes down onto the lower peg immediately after lunch, before you write your letter home if you're not getting your haircut. Unless you've got a younger brother who is going out this weekend as the guest of another boy, in which case, collect his notes before lunch, put it in your letter after you've had your haircut, and make sure he moves your clothes down onto the lower peg for you."

A student responds: "My younger brother's going out with Dibble this weekend, sir. But I am not having my haircut today sir. So, do I move my clothes down...?"

"It's perfectly simple. If you're not getting your haircut, you don't have to move your brother's clothes down to the lower peg. You simply collect his note before lunch, after you've done your scripture prep. When you've written your letter home before rest, move your own clothes onto the lower peg, greet the visitors, and report that you've had your checks signed."^[6]

Principle 4. Choose how thorough of a search the AI should perform

Along with choosing the right AI platform for a task, most providers offer two distinct models: one for quick responses and another for deeper reasoning. The key difference between these modes is the time a model spends combing through its dataset before outputting a response. Thorough and lengthy the responses will allow for a deeper analysis of the resources available, yet will require more time for the AI to provide the response.^[7] Fast mode provides a quicker, less detailed response which may be more efficient when the practitioner is looking for the AI to outline. A "quick response" can let the user know whether the AI appears to be heading down the right path. Upon receipt of the "quick report" the user can then ask the AI to revise the report using the advanced mode to reveal the results of further and more careful review by the AI system. AI will not always understand your questions initially.

Peter Sellers: "does your dog bite?"

Man next to him at counter: "No, my dog does not bite."

[Sellers goes to pet the dog and gets bit]

Sellers: "I thought you said your dog doesn't bite!"

Man: "That's not my dog."^[8]

Principle 5. Do not confuse web searching with legal research

Web search through AI is useful, but it is not a substitute for authority-controlled research. In June 2025, 40 % of AI web search cites were attributed to reddit.com (a social media website anyone can post information to, correct and incorrect) and 26 % of cites were to Wikipedia.com (a public encyclopedia anyone can edit).^[9] Many web results used by AI models are ranked by popularity rather than accuracy. Practitioners may get better results by maintaining a curated list of preferred sources and by training the platform, through prompts and retrieval rules, to prefer those sources over low-quality sites. A platform that can ground answers in search results can still misread a source. Even when guardrails are applied to the AI search, the practitioner will still need to verify all sources and cites used by the AI to avoid the risk of hallucinations.

Principle 6. Archived material is often still available, but it takes deliberate effort

While there has been a common phrase that “everything on the internet is there forever,” that is not always the case. While it may take significant effort, it is possible to scrub information from the internet. Due to the sheer volume of data on the internet, certain information may naturally disappear as websites are updated, web pages get removed, old links become broken, etc. There may be tasks in which the practitioner wants the AI to search for archived information that is not readily available. For example, if the practitioner is performing due diligence before assisting a client with a significant transfer of wealth as part of estate planning and wishes to check the online presence of the client, knowing whether any negative publicity has been buried or removed from the internet may be important to understanding the risks of potential claimants arguing the transfer was a fraudulent conveyance. Certain websites such as the Internet Archive and the Wayback Machine retain historical versions of websites, potentially providing access to data not accessible on current webpages. Some websites have begun to limit access to their historical data to prevent AI from accessing that data.^[10] Performing deeper analysis may have several roadblocks that need to be overcome as part of the prompt process.

Platform Differences, Search, and Reliability

As discussed above, each AI platform has a different set of training data it draws from when providing responses to prompts. Choosing which platform to use based on what work product is needed may help produce a better result. For example:

- Google Gemini can be configured to ground responses in real time information from Google Search and provide citations, which can reduce hallucinations on questions that depend on current information.
- Anthropic’s Claude AI offers web search and web fetch capabilities that can retrieve and analyze web pages when enabled by the user.

- OpenAI's ChatGPT and OpenAI API models have strong drafting, coding, and agentic capabilities^[11], and can be integrated into controlled workflows through the API.

One potential approach when using AI to assist with complex questions would be to start with a traditional research platform that is strong for authoritative materials, such as a tax library, and then to use AI platforms to broaden the search, find related commentary, and pressure test conclusions. For example, a practitioner might start with a Checkpoint^[12] based search, corroborate with a Gemini grounded search, and then use Claude and an OpenAI model to challenge the analysis before returning to Gemini to reconcile and summarize. This produces more analysis than most professionals will read word for word, but it is usually faster than manual research and it sharply reduces the risk of missing an important authority. In addition, when prompting each of the different AI systems to review the previous system's work product, practitioners may wish to request that the AI reduce redundancy in the answer, which may help create more precise language in the end result and reduce the time needed to review and revise the document.

COMMENT:

Ten Practical Examples for Tax, Estate Planning, and Financial Professionals

The following examples will each become a separate article by the authors—stay tuned and please provide us with questions, comments and suggestions for this.

Example 1. Rough notes to first draft letter or memorandum in minutes

When meeting with clients, practitioners will often take quick notes while concentrating on the discussion. For web meetings, the practitioner may record the meeting and have a transcript of the discussion. Those rough notes, transcripts, bullet points, messy prior draft, etc. can be provided to the AI platform to produce a first draft letter, memorandum, or set of client instructions in the firm's preferred style. The key when crafting the protocols for the AI is to provide the audience, the governing law or jurisdiction, the desired tone, and any other specific parameters the practitioner may wish to include based on the clients' specific situation, and then require the model to preserve those facts and assumptions. After the first draft is generated, consider running the result through a second pass requesting that the AI tighten the language, fix internal inconsistencies, and produce a clean version and a tracked changes version for review.

As discussed above, consider using a different AI platform for the revision of the initial product. Another consideration is how you speak on the meeting being recorded. When an important point is made, summarize it a second time and state that it is a key point to enhance the likelihood of AI including and better addressing that point. If

during a meeting there are points when several people are speaking at once, take a moment to pause and summarize what was just said. With practice, how we speak and run web meetings that are being recorded and for which AI will draft follow up materials can be enhanced.

Example 2. Jurisdiction specific trust review and issue spotting

Reviewing a complex trust agreement for a client is a necessary step as part of trust administration but can take significant time and cost to do. Providing a copy of the trust to AI and requesting a review of the trust terms can help reduce the time spent by creating an initial pass that may issue spot points to dive deeper into. However, an efficient trust review by AI is not as simple as uploading a copy of the trust and asking the AI to provide you with a summary. The review will need many parameters and guard rails to create a summary that is both usable, i.e., summarizes the information and points in the trust that the practitioner may need as part of their particular profession, as well as workable in that the summary is not as long (or longer!) than the original trust agreement.

This will require trial and error, or subscription to a system that has created their own proprietary system with AI to review trusts. Several examples include FP Alpha, EstateView, Vanilla, etc. When completing a trust review, consider requesting an issue list based on the governing law or the destination jurisdiction of the trust. The model may be able to flag distribution rights, ambiguous definitions, missing fiduciary provisions, administrative risks, and transfer tax issues. For older trusts which may have been administered in several jurisdictions during the lifecycle, this may help identify inconsistencies created due to lack of conforming the trust to those changes. The AI summary can identify concerns that the practitioner can then review in the trust agreement, verify if it is a concern, and communicate next steps with the client.

Example 3. Cross platform corroboration of tax conclusions

As discussed above, for a complex tax question where the potential for hallucination is high due to the inclusion of authority citation, require the initial response to include cited answers for any conclusions made and then provide the result received to a second AI model. Direct the second model to analyze the information, challenge the conclusion, and point out weaknesses in the argument. Points of disagreement between the models may reveal places where human review is needed. It is also helpful to require that the language of the case that specifically supports the proposition that it is cited for be quoted to reduce the risk of hallucination and make it easier for human hands to confirm what is being said.

Example 4. Client intake normalization and asset schedule creation

When clients provide information to practitioners, files are often fragmented, disorganized, hand-mixed in with irrelevant information, demanding significant time investment in order to discern what is needed to address the present concern. Consider providing the received documentation into an AI platform (with due regard for client confidentiality concerns discussed above) and request that AI organize the documents, providing structured schedules such as categorized brokerage holdings, entity ownership charts, and beneficiary designation summaries. This may reduce the time taken for an initial review of the information and may highlight missing information that needs to be followed up on earlier in the engagement.

Example 5. Background check and public record triage

AI can be employed to organize and summarize background check results, entity searches, litigation history, and other public records. These checks can be used before engaging a prospect to determine if there are concerns that should be addressed before choosing to represent that client,^[13] before a client engages in a significant wealth transfer, and in a myriad of other situations. The AI check may be used to identify red flags found on the internet regarding the prospect or client and open issues to be addressed, allowing the professional to then follow up and verify the underlying data through traditional sources. It is best to use traditional background checks from licensed systems or detectives, in addition to an extensive AI check, and to correlate the results in AI.

Example 6. Meeting preparation and post meeting follow up letters

As mentioned above, AI can scour your client files and provide summaries, checklists, document links and other resources to efficiently help prepare for a forthcoming client meeting. AI can summarize legal documents provided by a new client, and legal documents that you have drafted in the past. Any materials prepared during a meeting with a client, such as rough notes and documents provided during a meeting, can be provided to the AI platform to create a meeting agenda, a list of open issues, and a draft follow up letter to provide to the client. That may allow the practitioner to review the documents to be sent to the client the same day as the meeting. Practitioners may consider informing the client that the information was generated through AI and not yet thoroughly reviewed by members of the staff (the practitioner can describe the steps they took while revising the materials), and confirm with the client if they are comfortable with this approach and wish to have this continue in the future. Inform the client that AI may improve their experience by providing detailed work in an efficient manner and by reducing the possibility of dropped balls as the next steps are clearly communicated to the client while the meeting is fresh in mind.

Example 7. Internal checklists, workflows, and playbooks

Running professional firms requires significant administrative staff and numerous systems. That staff and the myriad of tasks they have throughout the day often have checklists, or if not, information passed down from previous staff or gained through experience. When an individual leaves the firm, the loss of institutional knowledge can be significant if proper instructions are not provided. AI can enable firms to convert experience into repeatable checklists and standard operating procedures faster than if administrative staff is requested to prepare documents from scratch. This may incentivize staff to complete the documentation needed to provide a smoother onboarding experience, reducing the disruption from staff turnover.

Example 8. Drafting educational articles and client friendly explanations

Beginning a document from a blank page is often a difficult proposition. AI can be used to generate first drafts of a myriad of documents, including client memoranda, webinar outlines, PowerPoints and educational content among many other documents. This provides the practitioner with a starting point they can then use and edit for accuracy, tone, and jurisdiction specificity.

Example 9. Quality control and red flag detection in drafted documents

Complex estate planning documents often use numerous references. For transactions, documents may cross reference other documents involved in that transaction. Reviewing each of those documents for consistency requires significant effort and time, and often involves checking hundreds of different points to ensure everything is tied together correctly. Practitioners can create a checklist of “red flags” that they want the AI platform to review for them, and then provide the AI with the documents they wish it to cross reference together. This initial pass at reviewing internal consistency may be used to find inconsistent definitions, missing schedules, incorrect cross references, and other common errors. However, as discussed previously, be cautious in how much reliance is placed on the AI review. Consider instructing the AI review to merely flag issues for human review rather than silently changing the document. If the AI changes the documents, practitioners run the risk of having inadvertent changes that affect the intent of the document in unexpected ways which could necessitate a deeper review to correct than the initial conformity check would have taken.

Example 10. Integrated multi model review inside a firm platform

Conclusion

AI has numerous potential applications for practitioners who engage in estate and tax planning. Whether a particular application of AI will be useful for a specific practitioner will depend on the nature of their practice and how their firm operates. However, it is worthwhile for a practitioner to explore the myriad of ways that AI can be employed to provide them and their clients with a more efficient and robust experience. The

practitioner who learns to employ AI as a disciplined assistant, rather than considering AI a magic oracle they cannot discern the use of, will move faster, make fewer preventable errors, and deliver a better client experience.

Those looking to begin this exploration may try platforms like CoCounsel, CoPilot and EstateView's AI aggregation system (at estateviewai.com) to start the journey to a vast improvement in productivity and enjoyment. The practitioner who ignores AI will still be competing against it because other firms will use it to operate faster and at a lower cost.

HOPE THIS HELPS YOU HELP OTHERS MAKE A *POSITIVE* DIFFERENCE!

Martin M. Shenkman

Thomas Tietz

Alan Gassman

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opinion are the responsibility of the authors and do not represent an opinion on the part of the officers or staff of **LISI**.

CITATIONS:

^[1] *Mata v. Avianca, Inc.* (No. 22-cv-1461 (PKC), 2023 U.S. Dist. LEXIS 108263, at *4 (S.D.N.Y. June 22, 2023)

^[2] *Get Smart*, television series, Season 2, Episode 20, “The Girls from KAOS” (NBC 1967). The series aired from 1965 to 1970 and was created by Buck Henry and Mel Brooks who co-wrote the 2008 *Get Smart* movie, which was directed by Peter Segal who also directed *Naked Gun 33-1/3*. This will be the last mention of nudity in the article.

^[3] The Florida Bar released general information on AI use by attorneys which provides a glossary of AI terms, which may be helpful for all estate planning practitioners wanting to learn about AI. The Florida Bar Guide to Getting Started with AI,” released January 7, 2025, viewable at <https://www.legalfuel.com/guide-to-getting-started-with-ai>, accessed January 5, 2026

^[4] For additional discussion and information on AI data retention, see https://www.profilebakery.com/en/know-how/ai-data-retention-explained-rules-best-practices-pitfalls/?srsltid=AfmBOoomz5TaWswkW_tcZ-xC-JB7kVwfrCBiMapuDDIGmSAW0xITxQUI , accessed January 5, 2026.

^[5] Practitioners may wish to review the pool of data each different AI can generate responses from. For example, Google can search the contents of a user’s Android phone as part of responses to a prompt. This may have unintended results if the practitioner did not want their phone searched. For further information, see <https://www.malwarebytes.com/blog/news/2025/07/no-thanks-google-lets-its-gemini-ai-access-your-apps-including-messages>, last accessed January 5, 2026

^[6] *Monty Python’s The Meaning of Life*, film, (Universal Pictures 1983). Professionals should also check out John Cleese’s books entitled *Families and How to Survive Them* and *Life and How to Survive It*, both of which are co-written with psychologist Robin Skinner, who is probably not related to B.F. Skinner.

^[7] OpenAI discussed the use of deep research on the ChatGPT platform in the following article: <https://openai.com/index/introducing-deep-research/>, last accessed January 5, 2026.

^[8] *The Pink Panther Strikes Again*, film, directed by Blake Edwards (United Artists 1976).

^[9] See <https://friendlychro.com/2025/08/19/where-ai-gets-its-information-2025/>, last accessed on January 5, 2026. Peter Sellers appears in the recent Disney documentary on the Beatles' *Get Back* sessions, and appeared with Ringo Starr in the movie *The Magic Christian*—Soundtrack by Bad Finger. This has nothing to do with AI.

^[10] For example, Reddit has limited the data the Wayback Machine website can access to prevent historical AI data scraping. See <https://www.theverge.com/news/757538/reddit-internet-archive-wayback-machine-block-limit>, last accessed January 5, 2026.

^[11] Agentic AI is an evolution in the use of AI and is beyond the scope of this article. For a general discussion on traditional AI vs agentic AI, see <https://www.pegas.com/agentic-ai>, last accessed January 5, 2026

^[12] Checkpoint is Thompson Reuter's Westlaw search system

^[13] For a deeper discussion on using AI background checks, see "Using AI to Conduct Background Checks on Potential Clients," co-authored by Merrek DeBolt, Mason Hockensmith, Martin M. Shenkman, Esq., Alan Gassman, Esq. and Thomas A. Tietz, Esq., December 23, 2025, accessible at <https://www.wealthmanagement.com/estate-planning/using-ai-to-conduct-background-checks-on-potential-clients>, last accessed January 5, 2026.

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Steve Leimberg's Estate Planning Email Newsletter - Archive Message #3325

Date: 17-Aug-26
From: Steve Leimberg's Estate Planning Newsletter
Subject: Thomas Tietz & Martin Shenkman: When Clients Use AI to Second-Guess Estate Plans — Guidance, Guardrails, and Risk Management

“Artificial intelligence has become part of the estate planning conversation whether practitioners invited it or not. Clients now ask AI to review draft trusts, identify planning omissions, produce trustee memoranda, critique beneficiary designations, and recommend tax strategies. Some of that use is constructive. Much of it is not. Clients should not be told simply to avoid AI. A balanced professional response may distinguish preparation uses from substantive legal review, caution against public tools, explain the cost of reviewing AI-generated material, and channel clients toward better questions and adviser coordination.”

Thomas A. Tietz and **Martin M. Shenkman** provide commentary on the growing practice of clients using artificial intelligence to review, critique, and second-guess their estate plans, and on the guidance, guardrails, and risk management steps practitioners may consider in response.

Martin M. Shenkman, CPA, MBA, JD, PFS, AEP (Distinguished) is author of more than 40 books and more than 1,400 articles on estate planning and related topics. He is a frequent lecturer for numerous trade, professional and other organizations. He is active in numerous charitable endeavors. He has practiced estate planning for 35+ years.

Thomas A. Tietz, JD, is an attorney in private practice in New Jersey and New York, assisting clients with Estate Planning. He is the author of more than 20 articles and has published articles with Trusts & Estate Magazine, the American Bar Association E-Report, the National Association of Estate Planning Council’s Journal of Estate and Tax Planning, and Leimberg Information Services, Inc. (LISI). He has lectured for numerous professional organizations, including the Notre Dame Tax & Estate Planning Institute, the New Jersey State Bar Association, the CPA Academy, and the National Academy of Continuing Legal Education.

Here is their commentary:

EXECUTIVE SUMMARY:

Artificial intelligence has become part of the estate planning conversation whether practitioners invited it or not. Clients now ask AI to review draft trusts, identify planning omissions, produce trustee memoranda, critique beneficiary designations, and

recommend tax strategies. Some of that use is constructive. Much of it is not. Clients should not be told simply to avoid AI. A balanced professional response may distinguish preparation uses from substantive legal review, caution against public tools, explain the cost of reviewing AI-generated material, and channel clients toward better questions and adviser coordination.

COMMENT:

Artificial intelligence has become part of the estate planning conversation whether practitioners invited it or not. Clients now ask AI to review draft trusts, identify planning omissions, produce trustee memoranda, critique beneficiary designations, and recommend tax strategies. Some of that use is constructive. Much of it is not. The practical challenge for estate planners is to respond without sounding defensive, anti-technology, or fee-protective, while still protecting confidentiality, privilege, planning quality, and the client relationship.

Why This Matters Now

Clients are increasingly sophisticated, but sophistication in business, finance, medicine, or tax does not necessarily translate into the ability to frame estate planning questions (Prompts) to AI, or the judgment to understand what information is relevant to provide to AI so the answer provided is tailored to the client's unique situation. Estate planning questions often require a top-down analysis of objectives, family dynamics, asset composition, tax exposure, state law, fiduciary capacity, disability considerations, retirement plan beneficiary rules, titling, cash flow, and future flexibility. AI can miss the order in which those issues should be addressed, and provide analysis including suggesting techniques that, while perhaps (but not always) technically sound, do not consider the client's specific needs.

Many firms have seen recurring client scenarios.

Example: A client used AI to ask if the estate planner was using the right sequence or process for their plan. The AI answer focused on asset titling and beneficiary designations. The AI and the client were not wrong that titling and beneficiary designations are critical. The problem was sequencing. The client had not yet finalized dispositive choices involving children with different circumstances, special needs considerations, marital issues, income tax issues, and state estate tax considerations. Final titling recommendations could not be responsibly made until the plan's structure was chosen. The consequence of the client's AI "research" was to require more discussions than would have otherwise been necessary, explanations of the estate planning process that detracted from the more important decisions that had to be made to advance the plan, frustrating the client as they concentrated effort into making titling decisions before basic dispositive decisions were made that would have reduced the complexity of those titling decisions, and which is essential to making those decisions. The manner in which the client's planning proceeded

due to the AI's suggestions tired the client of the estate planning process and made it more difficult to help them make decisions needed to finalize documents.

Example: A prospective client asked AI for estate planning recommendations. The result was an alphabet soup of planning techniques that were not applicable to the client. But for the AI "research" the client would have had a meeting with the estate planner, discussed people important to the client, assets, goals, and devise a plan to address the goals in light of the facts. Instead, the conversation had to start around explaining techniques that might not be helpful, but without the full initial background discussion that would have better informed the planning. In addition, attempting to explain complicated, nuanced planning techniques to a prospect or new client before a rapport has been built and the practitioner understands how to communicate effectively with that particular client is difficult and has a high probability of starting the planning process off on the wrong foot. That may potentially result in the practitioner losing the prospect or new client as they are overwhelmed by the complexity of a technique AI may have made seem "simple."

Example: In one instance the client had equity in a tech company that they anticipated would balloon in value. They did their own AI research and determined that they should create a GRAT as a GRAT would give them funds back. They failed to realize that if the equity burgeoned in value after the gift to the trust all the appreciation would be out of their reach. Based on the client's young age and potential need for access to the assets for lifestyle expenses, a SPAT or hybrid DAPT might have made more sense. But the conversation, instead of following a more logical path of discussing various types of trusts, the pros/cons of access, etc. had to spend considerable initial time discussing the potential negative economic implications of GRATs. Further, the practitioner had to be mindful that the adjustment of the GRAT annuity if there were to be a valuation adjustment on audit had to be explained and contrasted to using a Wandry or other method in other planning. The biggest problem was the unnecessary confusion this all created for the client.

Example: The client uploaded the client memorandum and draft irrevocable trust the practitioner provided into a public AI and emailed the practitioner 30+ questions AI raised on the memorandum and documents. The planning was for a substantial estate and the memorandum addressed technical planning nuances and the client's choice to use a hybrid DAPT. The planning process would have been advanced by the client reviewing the memorandum and draft trust with the practitioner. Instead, the practitioner spent several hours responding to questions posed by AI that were almost entirely irrelevant to what was done because the client did not input the detailed factual background and analysis that preceded the plan so that AI did not have the context to properly evaluate the plan. The client did not understand the importance of context or the technical nuances. After the practitioner responded to the mostly distracting AI comments, the client became more confused about the plan and annoyed with the bill. The client had no appreciation of the fact that they disclosed very confidential personal family information to a public AI and likely also undermined the attorney client privilege.

The problem is not that AI recognized a planning topic or issue, or made comments. The problem is that it treated one piece of the jigsaw puzzle as if it were the whole puzzle. That experience is becoming common. A client arrives with AI-generated points. Some are wrong. Some are correct but irrelevant. Some are potentially useful. Reviewing all those points may be needed because a valid point could be hidden in the stack. That review can be expensive, distracting, and confusing.

A Framework: Preparation Use Versus Legal Review Use

A useful distinction for practitioners to make to clients in engagement letters, client alerts, and document transmittal letters is how they used AI in the documents provided. Was the AI employed simply for preparation, or did the AI provide substantive legal review and analysis? Preparation use may include organizing facts, locating documents, creating a family timeline, summarizing an asset inventory, preparing questions, and drafting nonlegal letters of instruction. These applications can improve client readiness and reduce friction in the planning process.

Substantive legal review use may include, for example, asking AI to critique draft legal documents, recommend planning structures, identify tax strategies, evaluate beneficiary designations, or analyze legal consequences of specific facts. Those tasks carry greater risk. AI may hallucinate authorities. It may generalize across jurisdictions. It may ignore facts not provided. Consider: how many clients understand the often complex connections between specific facts of their circumstances and the techniques recommended? It may create questions that force the practitioner to spend time responding to inapplicable suggestions. It may also give the client misplaced confidence in an AI recommended planning technique that does not fit the plan.

Privilege and Confidentiality

United States v. Heppner is one of many AI cautionary case references.^[1] The Heppner Court held that a defendant's written exchanges with a public generative AI platform were not protected by the attorney-client privilege or as attorney work product. The court explained that the AI documents were not communications between the client and practitioner, were not confidential, and the AI research was not prepared under the direction of counsel. The court also noted the platform's privacy policy and data-use terms. Heppner provides a clear example that AI research should be used carefully not only by practitioners, but by clients. It involved an unsupervised client using a publicly available AI platform, not a lawyer using an approved enterprise platform under firm controls. Heppner warns that clients should not put confidential legal facts, draft documents, tax data, family conflict, medical facts, disability information, or legal strategy into public AI tools.

Professional Responsibility Guidance

ABA Formal Opinion 512^[2] identifies the familiar professional-responsibility duties implicated by use of technology also includes the use of generative AI: competence, confidentiality, communication, supervision, candor, reasonable precautions, and reasonable fees. It does not condemn AI. It established a “reasonable” standard for the use of AI, requiring practitioners to consider the benefits and risks of the technology based upon the particular use in each case (i.e., using AI in legal review may have a higher standard of ethical obligations for the practitioner than using it in a preparatory manner, especially if no client information is entered into the AI), protect client information, communicate where appropriate, supervise use, and bill reasonably.

While the ABA Opinion focuses on attorney responsibilities, the growing misuse by clients of AI, as illustrated in the above examples and the Heppner case, might suggest that reasonable actions by attorneys may potentially include cautioning clients about risks and issues the clients inappropriate use of AI may create.

For tax practitioners, the IRS Office of Professional Responsibility has gone further by issuing OPR Alert 2026-19.^[3] The Alert applies Circular 230 concepts to AI use in federal tax practice. It emphasizes due diligence, competence, firm procedures, written advice, fee practices, and protection of taxpayer data. It states that AI output must be reviewed and that sensitive taxpayer information should not be placed into unsecured or public systems. The Alert matters to estate planners because gift, estate, GST, fiduciary income, trust, charitable, and business succession planning often touches federal tax matters and tax return information. An estate planner, CPA, financial adviser, or family-office professional using AI to summarize returns, draft planning memos, analyze Roth conversions, review K-1s, evaluate charitable techniques, or prepare IRS-facing communications may need to assume that AI governance is now part of professional risk management.

The Alert does not address client actions, but consistent with the comments above, practitioners might consider advising clients of the risk they create by improper use of AI.

Engagement Letter and Client Letter Concepts

A balanced client communication would not include a blanket statement of “Do not use AI.” That can sound unrealistic and self-protective. Clients may interpret that negatively as the practitioner is trying to limit what the client does in order to preserve billing opportunities. It may also discourage productive AI uses by clients that can improve the estate planning process. Practitioners should consider incorporating statements regarding the use of AI into their engagement letters, document and memorandum transmittal letters and perhaps even in email footers. A sample short disclosure could be based on the sample provision:

“We support appropriate and reasonable use of AI to help you organize information, prepare questions, and improve collaboration. However, confidential information should never be entered into public AI tools, AI output should not be treated as legal

advice, and AI-generated questions or document reviews sent to us may require professional review that may increase fees and make your planning process more confusing.”

The disclosure may also inform clients that the firm uses AI, and expects its use to grow, but within approved systems and with professional review. This has two benefits. First, it avoids sounding anti-technology. Second, it explains that the issue is not AI itself, but uncontrolled AI use without confidentiality controls or legal judgment.

Suggested Practice Protocol

1. Add a paragraph discussing generally how the firm uses AI to engagement letters and draft document transmittal letters.
2. Create a longer client guide that discusses the different manners in which the practitioner currently uses AI, distinguishing between preparation uses and substantive legal review uses the firm may employ.
3. Tell clients not to upload confidential information to public or free AI tools.
4. Tell clients that if they use a confidential AI subscription, they should confirm the privacy and data-use terms themselves or through a technology consultant.
5. Encourage clients to use AI for family summaries, asset inventories, document checklists, timelines, and question lists.
6. Discourage clients from asking AI to review draft legal instruments in isolation.
7. State that if clients send AI-generated analysis to the firm, professional review may be necessary and will be billable and potentially costly.
8. Offer a better alternative: schedule a focused meeting, discuss the confusing points, and then use AI to generate a counsel-reviewed summary or task list.

Sample Short Client Warning

We recognize that many clients use artificial intelligence tools and that AI can be helpful when used carefully. Please do not enter confidential personal, financial, tax, medical, family, or estate planning information into any public or free AI platform. If you use AI to help organize information or prepare questions, please use it as a preliminary organizational tool only and not as legal advice. If you ask AI to review draft legal documents or planning strategies and send us the output, we may need to review and respond to that material, and that review may increase fees. A more productive approach is often to tell us the topic you want to understand better so we can help frame a focused question, discuss it with you, and, where appropriate, use AI to help prepare a reviewed summary.

Conclusion

AI is not the enemy of good estate planning. Uncontrolled, context-free AI use is the problem. Practitioners may reframe the conversation with clients in a positive manner by

providing a practical framework that welcomes useful AI applications while warning against confidentiality risks, hallucinations, sequencing errors, and time consuming, expensive rabbit holes. The client who uses AI to organize facts may make the planning process more thorough, efficient and easier for both the practitioner and client. The client who uses AI to second-guess legal documents without context may make the process more expensive, less clear, and less productive. Practitioners should consider helping educate clients on how to do the former and avoid the latter.

HOPE THIS HELPS YOU HELP OTHERS MAKE A *POSITIVE* DIFFERENCE!

Thomas A. Tietz

Martin M. Shenkman

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CITATIONS:

^[1] United States v. Heppner, No. 25 Cr. 503 (JSR), Memorandum Opinion, S.D.N.Y., Feb. 17, 2026.

^[2] ABA Standing Committee on Ethics and Professional Responsibility, Formal Opinion 512, Generative Artificial Intelligence Tools, July 29, 2024.

^[3] IRS Office of Professional Responsibility, Introductory Guidelines for Responsible AI Use in Federal Tax Practice, OPR Alert Issue No. 2026-19, June 24, 2026; Martin M. Shenkman and Thomas Tietz, IRS Issues New Guidance on AI in Federal Tax Practice, WealthManagement.com, July 22, 2026.