



The State Bar *of California*

Generative AI Thought Exchange: Results

COPRAC, July 28, 2023



The State Bar *of California*

We asked:

What are the most important perspectives/issues for us to consider as we explore the use of and possible regulation of attorney use of generative AI?

Breakdown of Participation



256
Participants



207
Thoughts



3,980
Ratings

How long have you been a licensed attorney in California?



%		Answer
16%	(37)	0-5 years
17%	(41)	6-10 years
14%	(34)	10-15 years
11%	(26)	16-20 years
16%	(37)	21-30 years
26%	(61)	31 years or more



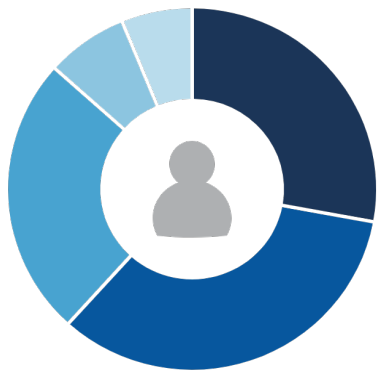
Breakdown of Participation







 256
Participants

 207
Thoughts

 3,980
Ratings

Are you already using generative AI in your legal practice?



%		Answer
28%	(64)	 I've never used it, and I'm not planning to.
34%	(79)	 I've never used it, but open to trying it.
25%	(58)	 I've tried it a few times.
7%	(16)	 I use it about once a week.
6%	(14)	 I use it daily.



Breakdown of Participation



256
Participants

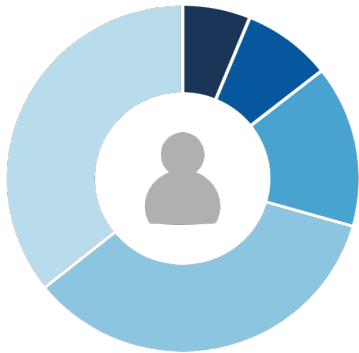


207
Thoughts



3,980
Ratings

Regulatory bodies should play a large role in developing and enforcing regulations for the use of generative AI in law.



%		Answer
6%	(13)	Strongly disagree
8%	(17)	Disagree
15%	(33)	Neither agree nor disagree
35%	(77)	Agree
36%	(79)	Strongly agree



Demographic question: Are you already using generative AI in your legal practice?

Number of Likert Scale questions: 1

	Overall	I've never used it, and I'm not planning to.	I've never used it, but open to trying it.	I've tried it a few times.	I use it about once a week.	I use it daily.
Average Score	23%	10%*	18%	41%*	40%	14%
The existing Rules of Professional Conduct and other authorities governing a lawyer's professional responsibility obligations sufficiently address the use of generative AI in the law.	23%	10%*	18%	41%*	40%	14%

Results that are statistically different from the overall result are succeeded by an asterisk ()

Demographic question: Are you already using generative AI in your legal practice?

Number of Likert Scale questions: 1

	Overall	I've never used it, and I'm not planning to.	I've never used it, but open to trying it.	I've tried it a few times.	I use it about once a week.	I use it daily.
Average Score	71%	80%*	77%	62%*	73%	43%
Regulatory bodies should play a large role in developing and enforcing regulations for the use of generative AI in law.	71%	80%*	77%	62%*	73%	43%

Results that are statistically different from the overall result are succeeded by an asterisk ()







Thought Themes:

- Duty to Review/Supervise
- Accuracy/Quality of Outputs
- Need for Attorney Analysis
- Confidentiality/Privilege
- Authentication
- Copyright
- Communication/Disclosure
- Unauthorized Practice of Law
- Equity/Access
- Bias
- Regulation vs. Education





Highly Ranked Thoughts - Overall



To increase awareness of generative AI's limits and the lawyer's duty to check its work consistent with Rules 5.1-5.5 Generative AI may hallucinate and generate inaccurate law. Lawyers can leverage the benefits of gen AI, but must check any and all output for accuracy

4.3  (28 )
Ranked #1 of 207

Encourage the development of generative AI, but require the attorney to review, edit, and then adopt the resulting material as her/his own work. Generative AI can create a lot of efficiencies, but must not reduce the trustworthiness of, or accountability for, the resulting material.

4.3  (27 )
Ranked #2 of 207

A licensed attorney must remain responsible for all their legal services. They should not be permitted to delegate responsibility with impunity to AI Just a lawyer is responsible for supervising support staff, a lawyer must remain responsible for the work output produced by a machine. Accountability

4.3  (24 )
Ranked #3 of 207



Highly Ranked Thoughts by Topic: Duty to Review/Supervise

The most important issue is to prevent attorneys from blindly relying on AI which, unlike treatise materials, is devoid of human consideration. Meeting professional responsibility requirements needs human professional consideration, not blind reliance on machine generated material.

4.1  (25 )

I think it's important to allow the use of AI in a practice, but make it misconduct to fail to review the contents of what is drafted by AI. AI is a great time saver, but we are already seeing instances where attorneys must continue to be responsible for the content.

4.0  (19 )

Fear of over-reliance on AI. It is a lawyer’s responsibility to manage his/her/their cases. That management includes a direct requirement that the attorney decide on strategy.

4.0  (10 )

Rule 5.3 might stand to be revised to include supervision of generative intelligence as a form of nonlawyer. I think while most of our Rules of Professional Conduct cover most issues related to using AI, specifying that AI must be supervised is helpful.

3.9  (26 )



Highly Ranked Thoughts by Topic: Accuracy/Quality

Attorneys must carefully review all documents for accuracy and completeness AI is trained on faulty information, and it is trained to answer questions without necessarily "knowing" the answer. AI often generates false info.

4.1  (28 )

Attorneys should be trained in the proper use of AI, especially its limits and vulnerabilities, rather than be forbidden from using it. Generative AI without legal oversight will encourage pro se litigants to rely on such services to their own peril.

4.0  (26 )

Accuracy is critical. AI may unreliable and difficult to test for accuracy.

4.0  (23 )

Hindering of Analysis; Work Product issues; Inaccuracies in Law and Facts due to AI fabrication; Potential Improper Non-attorney usage Reliance on AI could hinder critical attorney analysis fostered by traditional research and drafting; or lead to inadvertent ethical violations.

3.8  (29 )

Inaccuracies in Law and Fact AI drafting programs can fabricate authorities. Rules should require disclosure of AI use in briefs, & verification that authorities were shepardized

3.8  (29 )

It's all depends on the database and the accuracy of the law. Lawyers should be aware of the accuracy of the results. Lawyers should always double check all results generated by the AI.

3.8  (24 )



Highly Ranked Thoughts by Topic: Attorney Analysis

Generative AI may be an efficient and cost-saving means of research. It cannot be an end run around careful analysis of each unique case. If we allow this, we will get regurgitations, not innovation. The law is constantly evolving, because of conscientious analysis of each case.

4.1  (25 👤)

validating output AI can leverage facts and popular opinions to generate logical arguments, but does not have a moral compass guiding when one should outweigh the other

4.0  (21 👤)

Fear of over-reliance on AI. It is a lawyer's responsibility to manage his/her/their cases. That management includes a direct requirement that the attorney decide on strategy.

4.0  (10 👤)

There is an important distinction between legal information and legal advice. Generative AI should never cross the line between providing objective (i.e. procedural) information and providing legal advice.

3.9  (28 👤)



Ethical obligations AI can be a good tool for simple tasks but my fear is that those in the legal profession will rely on it for things that require nuanced thought



3.8  (28 👤)







Highly Ranked Thoughts by Topic: Attorney Analysis Continued

- GenAI is cheap/great for "scut work" but use will affect how young lawyers are trained and develop the knowledge/experience/wisdom needed to advance** Access to justice - esp for the middle-class gap in access to legal expertise - relies on training the next generation of lawyers

3.7  (18 )
- Lack of personal insight, perspective and experience.** It could limit a client's ability to get the full benefits of the input of an attorney.

3.6  (27 )
- lack of care in attorney work product and relying too much on AI and not proofreading or evaluating for each client, using it for more money than care** would reduce possible work product and care that goes into a client evaluation and case

3.6  (18 )
- AI can add many rapid advancements to an attorney's day.** Perhaps now our value will be the judgment and experience we bring to a matter and not the quantity of hours we spend on it.

3.4  (21 )



Highly Ranked Thoughts by Topic: Confidentiality/Privilege

Client Confidentiality Unclear how information is being collected and shared. Do not want to risk exposing sensitive and privileged information. 3.9 ★★★★★ (28 👤)

Confidentiality Given AI requires human input in order to generate output, there's risk of violation (exposure to 3rd parties) when confidential info is inputted. 3.8 ★★★★★ (28 👤)

Protecting client confidentiality when using AI, especially when linked to other applications and/or third parties. Duty of confidentiality is arguably the most important duty an attorney owes their client (at least in CA) and AI 'universe' is still fully unknown. 3.8 ★★★★★ (9 👤)

Client Confidentiality Inputting client data into an AI program will make it available for output to a third party using the same AI program. 3.7 ★★★★★ (29 👤)

Is using AI secure/confidential? If attorneys input fact pattern that contains confidential information, it should not be subject to subpoenas, access by non client without consent. 3.7 ★★★★★ (25 👤)

What level of verification of AI generated work product is required to ensure it can actually be considered attorney work product? If it isn't attorney work product, then it is not protected from disclosure, capable of easy replication, etc. 3.6 ★★★★★ (17 👤)



Highly Ranked Thoughts by Topic: Authentication

I think generative AI raises important issues regarding authentication of evidence that need to be addressed as much by the Legislature as by the Bar. AI seems to have a great capacity for creating fake information that appears genuine. That poses a real threat to the use of evidence.

4.1  (20 )

Fraud detection expanding expert analysis

3.5  (19 )

IP infringement, data protection and the use of NFTs to certify the authentication of an information AI uses data available in the Internet and copy it without asking for permission. NFTs are useful to certify who is the author and the ownership.

3.0  (17 )

Everything that is AI produced must be double-checked in traditional sources and authenticated.

0.0  (0 )

We also must update authentication requirements for evidence to ensure it was not produced by AI without human review and assent

0.0  (0 )



Highly Ranked Thoughts by Topic: Copyright

Copyrights AI platforms generate the content, so there may be copyright issues involved that attorneys must address.

3.7  (10 )

Copyright Issues and Plagiarism Need rules clarifying liability for copyright infringement or plagiarism when using AI drafting programs, which pull data from others' work.

3.5  (29 )

Copyright Sharing, using, and publishing material from generative AI implicates copyright issues

3.2  (24 )

Plagiarism People's original work should be protected

3.2  (24 )

IP infringement, data protection and the use of NFTs to certify the authentication of an information AI uses data available in the Internet and copy it without asking for permission. NFTs are useful to certify who is the author and the ownership.

3.0  (17 )



Highly Ranked Thoughts by Topic: Communication/Disclosure

If an attorney does written legal research using AI, and shares it with a client directly, the attorney should disclose that fact in the research. AI research can be correct or not correct. Research that is passed on verbatim without a disclosure may be given too much weight.

3.9  (19 )

Attorneys using AI must be held accountable for all content submitted to a court and to co- and opposing counsel. Full disclosure of AI use and attorney accountability.

3.9  (9 )

Inaccuracies in Law and Fact AI drafting programs can fabricate authorities. Rules should require disclosure of AI use in briefs, & verification that authorities were shepardized

3.8  (29 )

Disclosure of AI use is not the answer. It would lead to blaming AI for whatever problem is created. The solution is to treat AI like any other tool. This is important to avoid the temptation to blame AI for errors - when in reality the attorney needs to remain 100% responsible for the content.



3.8  (28 )



What level of attorney scrutiny/review is expected for AI-generated documents.
Improper billing for AI-generated work will likely also be an issue. Using AI to harass or overwhelm opposing counsel and/or the court by creating and filing a large number of frivolous motions or pleadings.



3.6  (29 )







Highly Ranked Thoughts by Topic: Unauthorized Practice of Law

Individuals seeking legal advice through generative AI and getting incorrect information Many Californians cannot afford an attorney and may turn to AI to try to get information/advice. Without proper design, they may get wrong info. 4.2  (17 )



Attorneys should be trained in the proper use of AI, especially its limits and vulnerabilities, rather than be forbidden from using it. Generative AI without legal oversight will encourage pro se litigants to rely on such services to their own peril. 4.0  (26 )



We should protect against the unauthorized practice of law by nonlawyers utilizing generative AI to pass off their services as legal in nature GenAI can help consumers with issues that may not require a lawyer (e.g., letter to a landlord), but they should not be duped by vendors. 3.9  (26 )



While generative AI itself should be more regulated, attorneys should be trusted to make use of it ethically just like any other tool in the arsenal. For now, attorneys have ethics rules that apply to AI. My concern is that Generative AI makes the unlicensed practice of law substantially easier. 3.6  (25 )



Unauthorized practice of law I believe generative AI will lead to the usage of non-licensed staff to prepare pleadings and discovery that is filed/served in litigation. 3.5  (28 )



Highly Ranked Thoughts by Topic: Equity/Access

Access to AI AI platforms are like a Wild West right now but eventually I, it might be consolidated to just a few power players, limiting access. 3.5  (10 )

Potential of AI to compound existing socioeconomic inequities It's important that legal tools aren't used to further entrench inequality 3.5  (8 )



generative ai has potential to expand access to courts, but needs to be done thoughtfully there is a risk that generative ai could exacerbate existing inequalities in the court system 3.3  (26 )



Availability of legal services Generative AI offers the possibility of making legal services more widely available 3.1  (25 )



Gen. AI can be increase access to justice: non-lawyers should be able to use it to get legal advice . The State should create standards for this. Lawyers charge too much for most people. Instead of barring GenAI, set the standards for a GenAI to be able to practice law. 3.0  (19 )





Highly Ranked Thoughts by Topic: Bias

Bias in training dataset Implicit bias has proven to be an issue in all data-trained models so far. We should safeguard against potential sources of injustice in our profession 3.7  (27 )



I am worried about potential bias in output generated using AI models stemming from the data used in training the model. It may not be apparent to an attorney that a given AI model is generating biased output. 3.7  (26 )



Confidentiality and Bias Third-party AI providers will have access to otherwise confidential attorney-client communication. The program may reflect bias of the developer. 3.6  (26 )



The human user's prompts create a high risk of bias — these are the questions or requests posed to AI. Prompts that are too narrow, avoid addressing certain issues, skew facts, and/or are leading questions are a way to control AI's output. 3.6  (10 )







Highly Ranked Thoughts by Topic: Regulation



Same as perspectives/issues to consider re use and regulation of attorney use of Westlaw or LexisNexis or other tools. Vendors of AI tools for attorneys will need to convince attorneys of their trustworthiness. 3.9  (23 )

The unreliability of AI As has been seen recently, AI isn't reliable or accurate. Without regulations governing the use of AI in the law, we will see more problems 3.7  (28 )

AI is a tool, an inspiration, not a solution. It is always the attorney's responsibility to verify and sign-off on the paper/legal analysis. At this point, more regulation is unnecessary and will stifle innovation. 3.7  (20 )

Ensure that the attorney is responsible for ethics - whether using AI tools or not. Probably should be little regulation on what the AI should be allowed to do, as long as the licensee reviews and approves all work. 3.6  (29 )

Regulating generative AI at this early stage would be terribly difficult as new uses are being developed daily. I see the AI as another tool to use. Because it isn't going away. 3.6  (28 )

While generative AI itself should be more regulated, attorneys should be trusted to make use of it ethically just like any other tool in the arsenal. For now, attorneys have ethics rules that apply to AI. My concern is that Generative AI makes the unlicensed practice of 3.6  (25 )



Highly Ranked Thoughts by Topic: Education

Instead of thinking in terms of regulation, the bar should sponsor research in how AI can help attorneys manage cases. AI has the potential to revolutionize case management. Existing eDiscovery tools are nothing compared to the potential of AI.

4.0  (19 )

The State Bar should spend energy developing AI tools to help attorneys rather than trying to look for ways to expand the scope of existing rules There are already enough rules to follow. Focus on innovation and improvement.

3.8  (19 )

Educating attorneys on the capabilities and limitations of generative AI. In my practice experience, older attorneys often resist learning to use new technology appropriately. But younger attorneys may err too.

3.7  (6 )

Generative AI is a major breakthrough that can add vast improvements and efficiencies to the practice of law. There is too much emphasis on fearing new technology. AI has the potential to make our lives as attorneys easier.

3.4  (27 )

