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# The More You Avoid AI, the More You Violate the Model Rules

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*This Note explores the use of Artificial Intelligence (AI) in law and how it will transform what is deemed reasonable for lawyers to accomplish. It explores the present introduction of AI into law firm workflows, the anticipation of its increasing prevalence, and its potential to enhance efficiency, accuracy, and time management. I argue that the increased capabilities and utilization of AI will change what is reasonable for lawyers to do under the American Bar Association's Model Rules.*

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## INTRODUCTION

Tom Girardi,<sup>1</sup> the highly renowned civil litigator,<sup>2</sup> said that one day “[i]t may

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1. Girardi knows a thing or two about the Model Rules given how many he has broken. *See* Ciaran McEvoy, *Grand Jury Charges Disbarred Plaintiffs’ Lawyer Tom Girardi with Wire Fraud for Allegedly Embezzling Over \$15 Million in Client Money*, U.S. ATT’Y’S OFF., CENT. DIST. CAL. (Feb. 1, 2023), <https://www.justice.gov/usao-cdca/pr/grand-jury-charges-disbarred-plaintiffs-lawyer-tom-girardi-wire-fraud-allegedly> [<https://perma.cc/ZL7G-ENW2>]

2. Tom Girardi was the cofounder of the now-defunct Girardi & Keese and was well known for his work representing plaintiffs in high-profile cases. In February of 2023 he was indicted by “federal grand juries in two states on fraud charges for allegedly swindling more than \$18 million from clients.” Matt Hamilton & Harriet Ryan, *Tom Girardi, Disgraced L.A. Lawyer and ‘Real Housewives’ Spouse, Indicted on Fraud Charges*, L.A. TIMES (Feb. 1, 2023, 5:52 PM), <https://www.latimes.com/california/story/2023-02-01/tom-girardi-indictment-la-lawyer> [<https://perma.cc/JD3F-T3KT>]. He was disbarred from the California State Bar in 2022 due to an accumulated 205 complaints to the California State Bar over forty years. *See also* Meghann Cuniff, *Revealing 205 Complaints Against Tom Girardi in 40 Years, California State Bar Says It ‘Could Have Done More’ About Now-Disbarred Lawyer*, L. & CRIME (Nov. 4, 2022, 1:26 PM), <https://lawandcrime.com/high-profile/revealing-205-complaints-against-tom-girardi-in-40-years-california-state-bar-says-it-could-have-done-more-about-now-disbarred-lawyer/> [<https://perma.cc/T9TP-W7XN>].

even be considered legal malpractice not to use artificial intelligence” because doing so “would be analogous to a lawyer in the late twentieth century still doing everything by hand when this person could use a computer.”<sup>3</sup> Artificial Intelligence—or just AI for short—is the “simulation of human intelligence processes by machines” in various contexts of differing complexity.<sup>4</sup> In the not-too-distant future, the widespread use of this technology will transform the expectations of what is considered reasonable for lawyers to do.

In the past, humans have used automation to increase efficiency, speed, and accuracy, and to free up time to do other, more important things. The adoption of AI systems is already beginning to grow. We are already seeing law firms integrate AI into their workflows and should expect other firms to increasingly do the same.<sup>5</sup> The future of AI in legal work still must overcome certain hurdles—like a worry about AI taking our jobs, a lack of trust in the system, and a lack of clarity regarding liability—yet steps are already being taken today to help clarify those questions and ease those fears. The most notable influence of AI, however, will be how increased reliance on it will transform clients’ expectations of their lawyers, and thus, the duties that their lawyers will be subject to—both by the American Bar Association’s (ABA) Model Rules (Model Rules) and by their own malpractice or liability insurance.

## I. ARTIFICIAL INTELLIGENCE’S HISTORY, PROMISE, AND EXAMPLES OF CURRENT APPLICATION IN THE LEGAL FIELD

### A. Automation of Repetitive Tasks

Automation streamlines repetitive tasks. Webster’s Dictionary defines automation as the “automatically controlled operation of an apparatus, process, or system by mechanical or electronic devices that take the place of human labor.”<sup>6</sup> Through the advancement of technology, humans have been able to automate increasingly complex processes.<sup>7</sup>

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3. Neil Sahota, *Will A.I. Put Lawyers Out of Business?*, FORBES (Feb. 9, 2019, 10:43 PM), <https://www.forbes.com/sites/cognitiveworld/2019/02/09/will-a-i-put-lawyers-out-of-business/?h=319ad5f031f0> [https://perma.cc/7XP8-B3AY].

4. Lev Craig & Nicole Laskowski, *Artificial Intelligence (AI)*, TECHTARGET, <https://www.techtarget.com/searchenterpriseai/definition/AI-Artificial-Intelligence> [https://perma.cc/TN5X-NQ2W] (last visited Oct. 22, 2024).

5. “Nearly all large law firms expect their investment in Generative Artificial Intelligence (Gen AI) technologies to increase over the course of the next five years . . . .” Geoffrey D. Ivnik, *Biggest Law Firms Making Major Investments in Generative AI*, LEXISNEXIS (Feb. 9, 2024), <https://www.lexisnexis.com/community/insights/legal/b/thought-leadership/posts/biggest-law-firms-making-major-investments-in-generative-ai> [https://perma.cc/4558-YCYH].

6. *Automation*, MERRIAM WEBSTER, <https://www.merriam-webster.com/dictionary/automation> [https://perma.cc/36TC-HCZE] (last visited Oct. 22, 2024).

7. *History of Automation: From Self-Moving Chariots to Business Applications*, AIRSLATE (Sept. 27, 2023), <https://blog.airslate.com/history-of-automation-business-applications/> [https://perma.cc/LH4T-XUDV].

The first tasks to be automated were those governed by a purely logical decision-making process. In 1912, American policeman Lester Wire designed the first electric traffic light, installed in Cleveland, Ohio, in 1914.<sup>8</sup> Similarly, around 1930, switchboard operators became obsolete when technology that allowed telephone users to simply dial another phone (without the aid of an operator) became widespread.<sup>9</sup> Twenty years later, on September 2, 1969, America's first automatic teller machine (ATM) made its public debut, dispensing cash to customers at Chemical Bank in Rockville Centre, New York.<sup>10</sup> These first three examples are automated everyday processes that are entirely based on simple, logical output: traffic lights follow procedures dependent on either predetermined timing or sensors; automatic switchboards connect callers depending on what numbers they dial; and ATMs use logic to log and dispense money in an account. But as everyday life became more complex, more sophisticated automation became not only useful but necessary.

While early automation focused largely on simple logical input, increased technological progress allowed for the automation of more complex tasks involving multiple variables and data sources. For example, plagiarism checkers have automated the task of deciphering whether a work is plagiarized—they will “crawl web content and index it, scanning . . . text for similarities against a database of existing content on the internet.”<sup>11</sup> Similarly, services like Google Translate have automated the task of translating documents.<sup>12</sup> While the translations are not always perfect, they are created within mere seconds; this makes it more economical to have the computer translate the document and then have a person search for errors, rather than make a person translate the entire document themselves. In the same vein of thinking, advances in computation have also enabled the automation of navigation,<sup>13</sup> trading stocks and securities,<sup>14</sup> and even advanced chess playing.<sup>15</sup>

8. Larry Clark, *Traffic Signals: A Brief History*, WASH. ST. MAG., <https://magazine.wsu.edu/w eb-extra/traffic-signals-a-brief-history/> [<https://perma.cc/S5GX-4N32>] (last visited Oct. 22, 2024).

9. Greg Daugherty, *The Rise and Fall of Telephone Operators*, HISTORY (Oct. 2, 2023), <https://www.history.com/news/rise-fall-telephone-switchboard-operators> [<https://perma.cc/3CDP-2Q7Y>].

10. *First ATM Opens for Business*, HISTORY (Aug. 31, 2021), <https://www.history.com/this-day-in-history/first-atm-opens-for-business> [<https://perma.cc/QP69-5EBB>].

11. Tegan George & Jack Caulfield, *How Do Plagiarism Checkers Work?*, SCRIBBR (July 18, 2022), <https://www.scribbr.com/plagiarism/how-do-plagiarism-checkers-work/> [<https://perma.cc/ETK8-T9UF>].

12. Omnizant, *Pros and Cons of Using Google Translate to Create a Multilingual Website*, JD SUPRA (Aug. 26, 2022), <https://www.jdsupra.com/legalnews/pros-and-cons-of-using-google-translat e-9111604/> [<https://perma.cc/8ZDJ-W54M>].

13. Using services like Google Maps, computers can leverage algorithms—such as Dijkstra's algorithm and A\* search algorithm—to find the most efficient route. *How Does Google Map Works?*, GEEKSFORGEEKS (Dec. 23, 2022), <https://www.geeksforgeeks.org/how-does-google-map-works/> [<https://perma.cc/GM26-Z3U2>].

14. Jean Folger, *Automated Trading Systems: The Pros and Cons*, INVESTOPEDIA (Mar. 4, 2021), <https://www.investopedia.com/articles/trading/11/automated-trading-systems.asp> [<https://perma.cc/L6SK-WRQC>].

15. And in 1997, an artificial intelligence called “Deep Blue” defeated Garry Kasparov at chess—an effort that began forty years earlier when the first chess computers began appearing. AIRSLATE, *supra* note 7.

Ultimately, any repetitive task has the potential to become automated. The only limits are that of currently available technology, and with advances in technology showing no sign of slowing down, it is not bold to believe that many of the repetitive tasks that lawyers work on will soon be (or at least partially) automated. Already, some services have automated repetitive tasks such as finding legal precedents,<sup>16</sup> finding conflicts of interest,<sup>17</sup> and even drafting arguments.<sup>18</sup> AI has been successful in automating repetitive tasks in other fields, and it shows a great deal of promise in doing the same for the legal field.

### *B. Improved Efficiency, Speed, and Accuracy*

AI in the legal field is helpful because efficiency, speed, and accuracy are all important for competitive and client-centric legal practice. In a winner-take-all system, corporations have shown that they are willing to pay firms a premium for even the slightest advantage.<sup>19</sup> Large law firms have been quicker than smaller firms to embrace AI-based technologies, probably because large firms are competing for clients that demand the advantages that those technologies offer.<sup>20</sup>

According to data from the ABA, 26% of firms with 100 or more lawyers use AI-based technology, yet for the profession as a whole that statistic falls to only 8%.<sup>21</sup> As several legal technology consultants have observed, “[l]arge law firms simply cannot afford—for monetary and brand reasons—to be left behind. Clients will begin to see the efficiencies of AI and its extraordinary possibilities wherever AI is used. Artificial intelligence will be a honeypot to clients seeking those efficiencies and possibilities.”<sup>22</sup>

AI firms are already highlighting the advantages of their technology, supplying

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16. According to Westlaw’s website, “Westlaw Edge is powered by AI-enhanced capabilities that can help you research more effectively and be more strategic.” *Westlaw Edge - A.I. Powered Legal Research*, THOMSON REUTERS, <https://legal.thomsonreuters.com/en/products/westlaw-edge> [<https://perma.cc/UKA3-HM2A>] (last visited Oct. 22, 2024).

17. Husch Blackwell automated their conflicts check process using AI; this Note will talk more about them in-depth later. *Paving the Way for RPA in the Law Industry*, AUTOMATION ANYWHERE, <https://www.automationanywhere.com/resources/customer-stories/husch-blackwell> [<https://perma.cc/JSA3-X36U>] (last visited Oct. 22, 2024).

18. Services like Kira claim that AI can help close the gaps in previous contract drafting software. Rachel Vanni, *How AI Accelerates the Legal Contract Drafting Process*, KIRA (May 27, 2020), <https://kirasystems.com/learn/how-ai-accelerates-the-legal-contract-drafting-process/> [<https://perma.cc/Y5KW-QPFD>].

19. For example, in high frequency trading, financial trading firms “use enormously sophisticated technology to wring out every last bit of delay—down to the microsecond level or even less—in getting that information and in executing their trades.” David Schneider, *Sophisticated Technology Now Drives Global Financial Trading to Extremes of Time and Space*, MCKAY BROTHERS, <https://www.mckay-brothers.com/the-microsecond-market/> [<https://perma.cc/WJ3T-V7HC>] (last visited Oct. 22, 2024).

20. See generally Adam Eckart, *Transactional Technology*, 23 TRANSACTIONS: TENN. J. BUS. L. 361, 367 (2022).

21. *Id.*

22. Sharon D. Nelson & John W. Simek, *Running with the Machines: Artificial Intelligence in the Practice of Law*, OR. ST. B. BULL., Dec. 2017, at 22.

statistics and case studies to demonstrate its effectiveness in the legal field. For example, on their website, an advanced AI provider called v500 collected a variety of statistics detailing how AI can improve efficiency in the legal industry.<sup>23</sup> Another example of this is LawGeex Self-Funded Study: “Comparing the Performance of Artificial Intelligence to Human Lawyers in the Review of Standard Business Contracts.”<sup>24</sup> In that study, “US lawyers with decades of experience in corporate law and contract review” were placed to compete against LawGeex’s AI system to spot issues in Non-Disclosure Agreements (NDAs).<sup>25</sup> The twenty lawyers were made to issue spot legal issues in five NDAs.<sup>26</sup> According to LawGeex “[t]he research was conducted with input from academics, data scientists, and legal and machine-learning experts, and was overseen by an independent consultant and lawyer.”<sup>27</sup> The results of the experiment were that “the LawGeex Artificial Intelligence achieved an average 94% accuracy rate, ahead of the lawyers who achieved an average rate of 85%.”<sup>28</sup> Not only was the LawGeex AI 9% more accurate than the real lawyers, it was also able to finish that work in a fraction of the time that it took the real lawyers to do it.<sup>29</sup>

But the increased accuracy is not the only consideration in favor of AI—AI does not need breaks, take lunches, or ask for vacations. AI systems can work through the night without sleep indefinitely—so not only are they more accurate, but they are also more efficient.

These are just a few examples of the types of improvements in efficiency, accuracy, and speed that AI can bring to the legal field. While there are still areas of

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23. Some notable statistics listed on the website are as follows:

1. According to a recent report by McKinsey & Company, AI technology has the potential to automate up to 40% of the tasks performed by paralegals, legal assistants, and junior lawyers, freeing up time for more strategic and complex legal work. 2. AI-powered document processing can extract key information from legal documents up to sixty times faster than manual processing, according to a study by IDC. 3. In a survey by Thomson Reuters, over 70% of legal professionals said that they believe AI will significantly impact the legal industry in the next few years, with document automation and contract analysis being the most popular use cases. 4. AI technology can help law firms to reduce the risk of errors and compliance violations by up to 90%, according to a study by the University of Aberdeen. 5. By automating document processing tasks, law firms can reduce their document processing time by up to 80%, according to a report by Deloitte. 6. In addition to speeding up document processing, AI technology can improve accuracy. A study by Ernst & Young found that AI technology can reduce the error rate in contract analysis by up to 90%.

*The AI Advantage: How Law Firms Are Boosting Efficiency and Precision with Lightning-Fast Technology*, V500 SYSTEMS: BLOG (May 11, 2022), <https://www.v500.com/the-ai-advantage-how-law-firms-are-boosting-efficiency-and-precision-with-lightning-fast-technology/> [https://perma.cc/BFT4-7X3C].

24. LAWGEEX, COMPARING THE PERFORMANCE OF ARTIFICIAL INTELLIGENCE TO HUMAN LAWYERS IN THE REVIEW OF STANDARD BUSINESS CONTRACTS (Feb. 2018) (ebook), (<https://ai.lawgeex.com/rs/345-WGV-842/images/LawGeex%20Book%20AI%20vs%20Lawyers%202018.pdf>) [https://perma.cc/F2QL-VGRB] (last visited Apr. 6, 2023).

25. *Id.*

26. *Id.*

27. *Id.*

28. *Id.*

29. *Id.*

the law where AI might lag in being helpful, such as generating original ideas or handling foreign scenarios, the pace at which AI is growing and the continued demand for such systems ensures that even in sectors where AI is currently deficient, it will not be long before it is ahead.

*C. Examples of Successful AI Implementation in Law Firms*

Already, AI has had a positive impact on the automation of repetitive tasks in the field of law. Husch Blackwell, a law firm of approximately 900 attorneys in twenty offices across the United States,<sup>30</sup> is one notable example of a firm that has integrated AI into its regular workforce. There, one of the firm's managing attorneys expressed interest in making the process of checking conflicts easier and asked an automation team to make an AI bot that would scan emails received by the law firm from prospective clients, cross check the email and those matters with an internal database, and highlight any conflicts of interest to the user.<sup>31</sup> The AI bot then packaged that information into another email and sent it to the relevant internal department so that a separate team of lawyers could inspect the likely prospects who needed legal services.<sup>32</sup> Such automation systems have the potential to save some money for big law firms. Husch Blackwell was so pleased with the implementation of AI in their workflow that they have continued looking for more ways to integrate AI into their work. Currently, according to the AI provider for Husch Blackwell, the firm

has 13 ideas in the automation pipeline, and its [automation] team meets regularly to discuss which ideas have merit and the highest return on investment. Husch Blackwell is starting to investigate opportunities to improve inefficiencies in knowledge management, the area that helps retain and win new business. It also plans to send its process improvement and automation architect to offices to keep evangelizing [automation] and get employees excited about it.<sup>33</sup>

Another example of a firm that has begun to fold AI into its workload is Orrick, Herrington & Sutcliffe (or just Orrick for short).<sup>34</sup> Orrick is piloting the use of Clearbrief, an AI-based Microsoft Word plug-in that helps attorneys write legal briefs by suggesting improvements throughout the writing process, like examples of relevant case law they might not have included that could strengthen their

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30. *Meet Our Team*, HUSCH BLACKWELL, <https://www.huschblackwell.com/people#page=1&sort=alpha&title=67703> [<https://perma.cc/WLY6-9NHB>] (last visited Oct. 22, 2024).

31. *Paving the Way for RPA in the Law Industry*, *supra* note 17.

32. *Id.*

33. *Id.*

34. Sindhu Sundar, *As Big Law Looks to Tech to Help Draft Legal Briefs and Log Billing Hours, Top Firms Like Orrick and Shearman & Sterling are Using AI to Fast-Track Work on M&A Deals*, BUS. INSIDER (Oct. 20, 2022, 10:33 AM), <https://www.businessinsider.com/big-law-firms-using-ai-fast-track-ma-deals-work-2022-10> [<https://perma.cc/K2UW-MAHB>].



argument.<sup>35</sup> Using Clearbrief, Orrick lawyers can select any sentence in their briefs and see AI-powered suggestions for the best pages from discovery, transcripts, or any uploaded PDFs that relate closely to that text.<sup>36</sup> The system cuts down the time that would otherwise be spent sifting through discovery in search of the supporting documents for each individual assertion made in the brief.<sup>37</sup> This is useful because while lawyers will often remember details from evidence in discovery, they rarely remember the relevant page numbers and citations necessary to reference that document. Clearbrief can find those citations automatically.

Similarly, Allen & Overy (A&O) partnered with a startup backed by ChatGPT creator Open AI to introduce Harvey, a chatbot intended to help its lawyers with a variety of legal tasks.<sup>38</sup> The Magic Circle firm<sup>39</sup> rolled out the tool across its network of forty-three offices to automate and enhance tasks such as contract analysis, due diligence, and regulatory compliance.<sup>40</sup> Harvey is the product of a startup by the same name, founded last year by a former O'Melveny & Myers antitrust litigator and former DeepMind and Google Brain scientists.<sup>41</sup> The head of A&O's markets innovation group, David Wakeling, described the AI tool as a "game-changer" that "can work in multiple languages and across diverse practice areas, delivering unprecedented efficiency and intelligence."<sup>42</sup> Wakeling said that the firm had seen "some amazing results" during trials for the tool, which began last November, and saw around 3,500 of its lawyers ask Harvey around 40,000 questions relating to their day-to-day client work.<sup>43</sup> Harvey uses natural language processing, machine learning, and data analytics to automate tasks and can answer questions asked in natural language.<sup>44</sup> Of course, given that AI is still very new and imperfect, Harvey's output still needs "careful review" by A&O lawyers.<sup>45</sup> The software even comes with a disclaimer that it can still "hallucinate," meaning it can produce inaccurate or misleading results—a problem that large language models are prone to.<sup>46</sup> Still, A&O

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35. *Id.*

36. *Id.*

37. *Pricing*, CLEARBRIEF, <https://clearbrief.com/pricing> [<https://perma.cc/VM9L-JNNU>] (last visited Oct. 22, 2024).

38. *It's a Kind of Magic*, L. SOC'Y GAZETTE (May 20, 2004), <https://www.lawgazette.co.uk/news/its-a-kind-of-magic/42082.article> [<https://perma.cc/LJ88-CGAZ>].

39. The "Magic Circle" is an informal term describing the five most prestigious London-headquartered multinational law firms, which generally outperform the rest of the London law firms on profitability. *Id.*

40. Victoria Basham, *Allen & Overy Integrates ChatGPT-Style Chatbot to Boost Legal Work*, GLOB. L. POST (Feb. 16, 2023), <https://www.globallegalpost.com/news/allen-overly-integrates-chatgpt-style-chatbot-to-boost-legal-work-1735539269> [<https://perma.cc/6Z9V-MYGT>].

41. *Id.*

42. *Id.*

43. *Id.*

44. *Id.*

45. David Wakeling, *A&O Announces Exclusive Launch Partnership with Harvey*, A&O SHEARMAN (Feb. 15, 2023), <https://www.allenoverly.com/en-gb/global/news-and-insights/news/a-o-announces-exclusive-launch-partnership-with-harvey> [<https://perma.cc/A485-2Y6R>].

46. *Id.*

is confident that Harvey will help generate insights, recommendations, and predictions based on large volumes of data, “enabling lawyers to deliver faster, smarter, and more cost-effective solutions to their clients.”<sup>47</sup>

One final example comes from the firm Sherman & Sterling, which uses AI tools to expedite work on mergers and acquisitions (M&A) deals.<sup>48</sup> Sherman & Sterling already uses a wide gamut of AI tools, but one of the firm’s “go-tos for deals due diligence” is a tool called Kira.<sup>49</sup> Kira—owned by the company Litera—is an advanced contract drafting software.<sup>50</sup> According to Kira’s website, Kira can screen existing contracts “more effectively than humans,” can provide “increased clarity and protection from disputes,” and can offer “in-depth information to assist attorneys in contract negotiation.”<sup>51</sup> Tools like Kira are extremely useful for performing due diligence in M&A deals, since the tool can find evidence of issues that could potentially kill a deal or that should otherwise be addressed in negotiations,<sup>52</sup> saving valuable time for firms like Sherman & Sterling.

All these examples highlight the same phenomenon: Law firms are already implementing AI to produce more efficient and accurate work. As the cost of AI tools becomes cheaper, we should expect that even more firms will start using AI more frequently.

## II. THE FUTURE OF ARTIFICIAL INTELLIGENCE IN LEGAL WORK AND ITS IMPACT ON THE LEGAL SERVICES INDUSTRY

### *A. Adoption Rates of AI by Legal Professionals and Organizations*

The adoption rate of AI in the legal setting is still low but is expected to rise,<sup>53</sup> especially as legal professionals and their organizations become more aware of its potential applications and benefits. In 2020, the ABA’s Legal Technology Survey Report said that only 7% of respondents surveyed reported using AI tech tools in their firms.<sup>54</sup> That said, the share of respondents who reported using AI tech tools in their firm was higher for firms of 100 or more lawyers—for that cohort, 17% of respondents said they used AI tools.<sup>55</sup> In other words, larger firms are more inclined to integrate AI. This is a byproduct of the competitive nature of large law firms, the

47. *Id.*

48. Sundar, *supra* note 34.

49. *Id.*

50. Vanni, *supra* note 18.

51. *Id.*

52. *Id.*

53. Marcus Belanger, *From Cost Savings to AI Adoption: How Law Firms Are Outsourcing Support Roles*, THOMAS REUTERS (Jul. 25, 2024), <https://www.thomsonreuters.com/en-us/posts/legal/legal-outsourcing-support-roles/> [https://perma.cc/X9DT-4U9Q].

54. Lyle Morgan, *Law Firms Are Slow to Adopt AI-Based Technology Tools, ABA Survey Finds*, AM. BAR ASS’N J. (Oct. 22, 2020, 12:13 PM), <https://www.abajournal.com/web/article/law-firms-are-slow-to-adopt-artificial-intelligence-based-technology-tools-aba-survey-finds> [https://perma.cc/Q9PT-8AW4].

55. *Id.*

constant chase for an edge over opponents, and the fact that they have the funds and staffing needed to take on AI integration. Interestingly, that same ABA Legal Technology Survey also said that less than a quarter of respondents believed that their firms were interested in purchasing AI-based software and tools.<sup>56</sup> Yet at the same time, around one-third of respondents believed they did not know enough about AI to be able to answer questions regarding their firm’s plans on whether to integrate AI into their workflow.<sup>57</sup> Together, these two principles suggest that perhaps lawyers are hesitant to believe that their firms are interested in buying AI tools because they do not feel like they understand the tools enough. Similarly, legal directors and executives themselves do not fully understand yet or see the value of AI integration. However, we are living in exciting times where the use and capabilities of AI are growing quickly. OpenAI’s release of ChatGPT—a free large language model AI chatbot that has had tremendous success<sup>58</sup>—has certainly accelerated the adoption of AI tools for lawyers and the public.

### *B. Predicted Growth and Development of AI in Legal Work.*

#### *1. What Will Happen Next?*

Even with low adoption in its current state, the future of AI adoption in the legal field is still expected to grow.<sup>59</sup> A recent study by researchers at Princeton University, the University of Pennsylvania, and New York University found that “legal services” was an industry most “exposed to advances in language modeling.”<sup>60</sup> Per the authors, “exposure” is “agnostic as to the effects of AI on the occupation,” meaning that it includes both scenarios where the AI replaces the job or enhances the job.<sup>61</sup> And another study by economists at Goldman Sachs found that “[w]eighting [sic] our estimates by the employment share of each occupation in the US Occupational Employment and Wage Survey . . . and aggregating to the industry level, we estimate that one-fourth of current work tasks could be automated by AI in the US . . . , with particularly high exposures in administrative (46%) and legal (44%) professions. . . .”<sup>62</sup> This means that legal professionals can be hopeful

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56. *Id.*

57. *Id.*

58. *Introducing ChatGPT*, OPENAI, <https://openai.com/blog/chatgpt> [<https://perma.cc/38Z4-UD2G>] (last visited Oct. 22, 2024).

59. “[T]he global legaltech artificial intelligence market was valued at approximately USD 3,245 million in 2018 and is expected to generate around USD 37,858 million by 2026, at a CAGR of around 35.94% between 2019 and 2026.” *Global LegalTech Artificial Intelligence Market Is Expected to Reach Around USD 37,858 Million By 2026*, ZION MKT. RSCH. (Mar. 26, 2019), <https://www.zionmarketresearch.com/news/legaltech-artificial-intelligence-market> [<https://perma.cc/ZK4H-4AKY>].

60. ED FELTEN, MANAV RAJ, & ROBERT SEAMANS, HOW WILL LANGUAGE MODELERS LIKE CHATGPT AFFECT OCCUPATIONS AND INDUSTRIES? 3 (2023), [https://papers.ssrn.com/sol3/paper.cfm?abstract\\_id=4375268](https://papers.ssrn.com/sol3/paper.cfm?abstract_id=4375268) [<https://perma.cc/HHR3-47WW>].

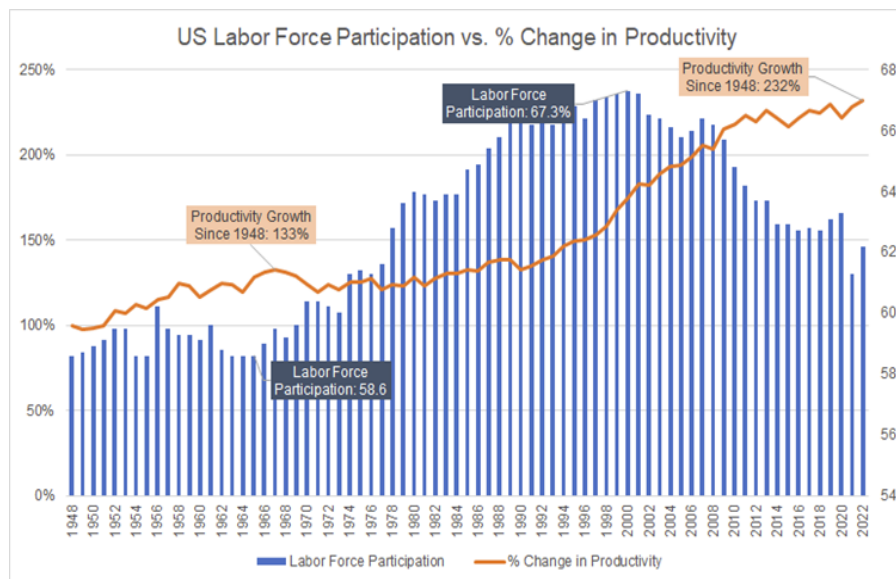
61. *Id.*

62. Joseph Briggs & Devesh Kodnani, *Global Economics Analyst: The Potentially Large Effects of Artificial Intelligence on Economic Growth*, GOLDMAN SACHS (Mar. 26, 2023), <https://www.ansa.it/d>

that almost half of their current work will be automated. However, this does not mean that lawyers will necessarily benefit financially from this—if past increases in productivity are any indicator, lawyers will keep working around the same hours and earning the same wages, though some may have a harder time finding a job depending on the legal work they do.<sup>63</sup>

## 2. Will Firm Sizes Start to Shrink?

According to data from the Federal Reserve Economic Data (FRED)—a large database of economic data and indicators maintained by the Federal Reserve Bank of St. Louis—there is only a weak correlation between labor force participation (the percentage of the population that is either working or actively looking for work) and productivity growth.



(Blue bars represent the labor force participation rate.<sup>64</sup> The orange line represents labor productivity.<sup>65</sup> Both datasets used annual, aggregated amounts.)

ocuments/1680080409454\_ert.pdf [https://perma.cc/8D58-XAV9].

63. Since around the 1980s, increases in wages have not kept up proportionally with increases in productivity. “Since the late 1970s, our policy choices have led directly to a pronounced divergence between productivity and typical workers’ pay.” *The Productivity–Pay Gap*, ECON. POL’Y INST. (Oct. 2022), <https://www.epi.org/productivity-pay-gap/> [https://perma.cc/4B2A-TFJZ]; see also Juhohn Lee, *Why American Wages Haven’t Grown Despite Increases in Productivity*, CNBC (July 19, 2022, 1:26 PM), <https://www.cnbc.com/2022/07/19/heres-how-labor-dynamism-affects-wage-growth-in-america.html> [https://perma.cc/FL5L-PHBZ].

64. FED. RES. ECON. DATA, LABOR FORCE PARTICIPATION RATE (CIVPART), fig.1, <https://fred.stlouisfed.org/series/CIVPART#0> [https://perma.cc/XR7Z-242C] (last visited Oct. 22, 2024).

65. FED. RES. ECON. DATA, NONFARM BUSINESS SECTOR: LABOR PRODUCTIVITY (OUTPUT PER HOUR) FOR ALL WORKERS (PRS85006092), fig.1, <https://fred.stlouisfed.org/series/PRS85006092>

This suggests that American businesses typically do not shrink their workforce whenever they see gains in productivity. Instead, businesses recognize that the gains in productivity help their bottom line, profit margins, and growth trajectory. The same is true for law firms, especially larger law firms. Increases in productivity thanks to AI are unlikely to lead firms to significantly decrease their workforce's total headcount.<sup>66</sup> That is not to say that all lawyers are safe, because the adoption of AI might be bad news for some lawyers (mainly, those who fail to embrace it).

### *3. Who Are We Cutting? Who Are We Hiring?*

The growing use of AI in the legal industry is unlikely to result in the mass firing of older or technologically challenged employees (though some cuts are possible). While legal professionals have historically been able to work into their later years—more so than older workers in other professions<sup>67</sup>—they have been slow to adopt new technologies.<sup>68</sup> For example, it took lawyers a considerable amount of time to embrace email and communications encryption,<sup>69</sup> and even today, some still rely on outdated technology like faxes.<sup>70</sup> Though that isn't to say that in *all* instances the technology savvy will be advantaged; there will still be instances where the skill and experience of older lawyers, who use outdated technology, might still be preferred to new associates who are familiar with new technology. Despite the increasing use of AI in the legal field, the industry will likely continue to resist technological change—at least enough to not start cutting

[<https://perma.cc/6HS5-H48B>] (last visited Oct. 22, 2024).

66. Eric Weisburg, *You Won't Lose Your Job to AI. You'll Lose Your Job to Someone Using AI*, DATOS INSIGHTS: BLOG (Jan. 30, 2024), <https://datos-insights.com/blog/eric-weisburg/you-wont-lose-your-job-to-ai-youll-lose-your-job-to-someone-using-ai/> [<https://perma.cc/2PZU-827T>].

67. The oldest white-collar workforces in the United States are “legal secretaries and administrative assistants” with a median age in the workforce of 53.5 years old and “judges, magistrates, and other judicial workers” with median age of 54.4 years old. Samuel Stebbins, Grant Suneson & Douglas A. McIntyre, *These are the Jobs With the Oldest Workforces in the United States, from Farmers to Shuttle Drivers*, USA TODAY (Oct. 26, 2021, 10:00 AM), <https://www.usatoday.com/story/news/nation/2021/10/26/these-jobs-have-oldest-workforce-country/6166671001/> [<https://perma.cc/LPA5-HRWE>]. Only school bus drivers, “farmers, ranchers, and other agricultural managers” were older with median ages of 54.7 and 56.8, respectively. *Id.*

68. “Historically, the legal industry has been slow to embrace change, especially in terms of technology adoption.” Infotrack, *Why are Many Firms Still Reluctant to Implement Legal Technology?*, AM. BAR ASS'N J. (Nov. 10, 2021, 2:45 PM), <https://www.abajournal.com/advertising/article/why-are-many-firms-still-reluctant-to-implement-legal-technology> [<https://perma.cc/CD9W-3PDF>].

69. Victor Li, *Lawyers Slow to Adopt Email Encryption and Other Forms of Secure Communications*, AM. BAR ASS'N J. (Oct. 5, 2015, 4:10 PM), [https://www.abajournal.com/news/article/survey\\_finds\\_lawyers\\_are\\_slow\\_to\\_adopt\\_email\\_encryption\\_and\\_other\\_forms\\_of](https://www.abajournal.com/news/article/survey_finds_lawyers_are_slow_to_adopt_email_encryption_and_other_forms_of) [<https://perma.cc/9ART-7EB6>].

70. “While many industries have abandoned faxes, lawyers are nevertheless sometimes required to send or receive a fax, whether by courts, other governmental offices, insurance companies or even other lawyers.” Nicole Black, *The Facts About the 21st-Century Fax—and How Lawyers Can Use it to Their Advantage*, AM. BAR ASS'N J. (Feb. 22, 2019, 6:30 AM), <https://www.abajournal.com/news/article/the-facts-about-the-21st-century-fax> [<https://perma.cc/FV6J-VPZ7>].

headcount. Both lawyers and clients place a high value on experience,<sup>71</sup> and the industry has shown a reluctance to adopt new technologies.<sup>72</sup> We are unlikely to see cuts to older or technologically challenged employees—though a decrease through attrition is likely in larger firms.

While firms are unlikely to face great layoffs, we are likely to see a shift or preference change in whom they hire. More than before, tech competency will be not a premium but a requirement.<sup>73</sup> Already, to be an in-demand lawyer you must have a strong hold on technology.<sup>74</sup> As AI permeates the legal field, competency with those systems too will become a requirement for lawyers—especially young lawyers.

### *C. Challenges and Obstacles to AI Implementation in the Legal Industry*

Many obstacles need to be overcome before the legal industry can properly embrace AI's true potential. Among those are the fear and mistrust that lawyers have of AI systems, worries about technology moving too abruptly, attorney liability for mistakes, and long-term consequences for employment.

#### *1. Fear of Losing Your Job*

Some lawyers fear that AI will affect their jobs and compensation. There are worries that AI will constrain workers' leverage to bargain for higher wages.<sup>75</sup> Joanna J. Bryson, an English researcher and associate professor from the University of Bath, believes that “[t]he inflated discourse around AI increases the risk that a government will (mis)assess the value of human lives to be lower than the perceived costs of maintaining those lives.”<sup>76</sup> The same will likely be true for large law firms

71. “Experienced lawyers with a proven track record are in higher demand than a new lawyer just starting. Experienced lawyers can charge more because their experience and knowledge make them more valuable.” *How Much Do Lawyers Cost: Fees Broken Down by State*, CONTRACTSCOUNSEL (Aug. 17, 2021), <https://www.contractsounsel.com/b/how-much-do-lawyers-cost> [https://perma.cc/N7G7-FH7J].

72. Infotrack, *supra* note 68.

73. “In today’s market, attorneys need to be holistic problem solvers capable of meeting a client’s needs beyond just giving them legal advice. And in many cases, that means knowing how and when to leverage technology.” Rhys Dipshan, *Tech Competency for Tomorrow’s Lawyers is About More Than Just Tech Proficiency*, LEGALTECH NEWS (Aug. 31, 2021), <https://www.law.com/legaltechnews/2020/08/31/tech-competency-for-tomorrows-lawyers-is-about-more-than-just-tech-proficiency/> [https://perma.cc/YL8H-ZNZ2].

74. “More and more, to be an in-demand lawyer, your command of technological skills needs to be more than knowing how to tweet or post a like or do an Instagram story. Employers in the legal field are placing a premium on more advanced skills, new research indicates. More than 6 in 10 lawyers (62%) surveyed by Robert Half Legal said that their hiring decisions are influenced more by job candidates’ technical abilities than their soft skills.” *Employers Want Lawyers with Tech Skills*, NAT’L JURIST (Oct. 16, 2019, 12:59 PM), <https://nationaljurist.com/national-jurist-magazine/employers-want-lawyers-tech-skills/> [https://perma.cc/V9PF-HWJ7].

75. “[T]echnology doesn’t have to take over all aspects of a job to leave workers worse off . . . technology could erode workers’ bargaining power.” Ben Casselman, *Pandemic Wave of Automation May Be Bad News for Workers*, N.Y. TIMES (Sept. 25, 2021), <https://www.nytimes.com/2021/07/03/business/economy/automation-workers-robots-pandemic.html> [https://perma.cc/73SE-HQK9].

76. Joanna J. Bryson, *The Past Decade and Future of AI’s Impact on Society*, in TOWARDS A NEW

that sometimes see revenue per lawyer—an analogous assignment of value to human life—as the “holy grail” of law firm economics.<sup>77</sup> Similarly, the use of AI can lead to higher productivity, which means fewer billable hours, a dynamic that threatens the current dominant business model in legal work: hourly billing.<sup>78</sup> The issue with assigning value is that attorneys will not be compensated for their competency since the systems they operate will take over the heavy lifting. However, this is unlikely because even in industries where the heavy lifting is done by large machinery—think construction workers, trucks, and mine operators—those workers are still compensated more for gaining skills and certifications relevant to that machinery.<sup>79</sup> Similarly, lawyers will be compensated for their skills in using AI properly. Ironically, AI will not hurt lawyers’ salaries. In fact, those who embrace it will benefit.<sup>80</sup>

The larger existential threat to the profession is whether lawyers will be needed at all. But that fear is also overblown. To understand more, we look to farmers and their interaction with technological advancements. The chart below shows the number of farmworkers in millions in the United States from 1950 to 2000.

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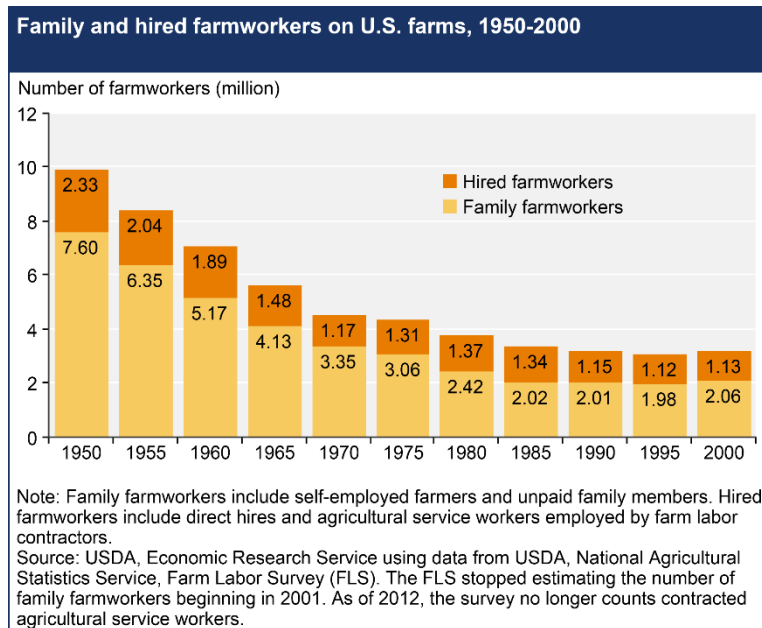
ENLIGHTENMENT? A TRANSCENDENT DECADE (2019), <https://researchportal.bath.ac.uk/en/publications/the-past-decade-and-future-of-ais-impact-on-society> [<https://perma.cc/X8QF-3GY9>].

77. *Revenue Per Lawyer Is the ‘Holy Grail’ of Firm Economics, but Southeast Firms Show the Metric’s Anomalies*, DAILY REP. (May 13, 2020), <https://plus.lexis.com/document?pdmfid=1530671&pdDocFullpath=%2Fshared%2Fdocument%2Flegalnews%2Furn%3AcontentItem%3A62NP-9DT1-DY35-F53K-00000-00&pdcontentcomponentid=375723&ecomp=&earg=&prid=6da3a563-a211-47d2-b523-115bf6c1b01e&crd=16821721-03ae-4e9e-9482-8c93d3c8a144&pdsdr=true> [<https://perma.cc/Q8PF-PY8R>].

78. Steve Lohr, *A.I. Is Coming for Lawyers, Again*, N.Y. TIMES (April 10, 2023), <https://www.nytimes.com/2023/04/10/technology/ai-is-coming-for-lawyers-again.html> [<https://perma.cc/T2QM-NJAE>].

79. For Example, a “doubles and triples” endorsement authorizes the holder of a commercial driver’s license to pull multiple trailers at the same time after passing a test with their state’s department of motor vehicles. Commercial drivers who hold the doubles and triples endorsement tend to earn 7.59% more in California. *Truck Driver Salary in California*, INDEED, <https://www.indeed.com/career/truck-driver/salaries/CA> [<https://perma.cc/C33M-3Z3R>] (last visited Oct. 22, 2024).

80. Michael Gerstenzang & David Stiepleman, *Generative AI Is a Catalyst for Law Firms and Talent Development*, BLOOMBERG LAW (Sep. 25, 2023), <https://news.bloomberglaw.com/us-law-week/generative-ai-is-a-catalyst-for-law-firms-and-talent-development> [<https://perma.cc/7FCR-LKHM>]; see also Geoffrey D. Ivnki, *The Disconnect Between Law Firms and Clients on Use of Gen AI*, LEXIS NEXIS: L. INSIGHTS (Feb. 9, 2024), <https://www.lexisnexis.com/community/insights/legal/b/thought-leadership/posts/the-disconnect-between-law-firms-and-legal-departments-on-impact-of-gen-ai> [<https://perma.cc/E2FU-6JJU>].



(Source: U.S. Department of Agriculture)<sup>81</sup>

The interesting thing to note is that around 1985, the total farmworker headcount starts to stabilize. Even in farming, innovative technology can only go so far in terms of automation—at some point, you need to have a human verify and (at the very least) maintain the system. Farmers have had access to driverless tractors, weather forecasting, genetically engineered seeds, precise global positioning system (GPS) coordinates software, and other technological advances, and yet farming as a profession has not died.<sup>82</sup>

What we can learn from this comparison is that advances in technology do not always pose an existential threat to a profession. While there are examples of jobs that have been lost to automation (such as switchboard operators and traffic cops), those jobs are ones that were inherently simple and did not require making judgment calls in novel scenarios. On the other hand, farmers (like lawyers) deal with juggling problems across disciplines and ultimately making judgment calls. Indeed, a good farmer needs to be an expert in economics (to price their grain, negotiate land, and pay employees), mechanical engineering (to build silos, irrigation pivots, and

81. U.S. DEP'T OF AGRIC.: ECON. RSCH. SERV., FARM LABOR (2023), <https://www.ers.usda.gov/topics/farm-economy/farm-labor/> [https://perma.cc/DG23-V73B].

82. “Modern farms and agricultural operations work far differently than those a few decades ago, primarily because of advancements in technology, including sensors, devices, machines, and information technology. Today’s agriculture routinely uses sophisticated technologies such as robots, temperature and moisture sensors, aerial images, and GPS technology.” U.S. DEP'T OF AGRIC.: NAT'L INST. OF FOOD & AGRIC., AGRICULTURE TECHNOLOGY, <https://www.nifa.usda.gov/topics/agriculture-technology> [https://perma.cc/3RFC-GYN4] (last visited Oct. 22, 2024).



maintain equipment), biology (to understand the health of their crops and to decide which crops are best to plant), and weather forecasting (to predict the long and short-term impact to their crops), and then consider all things when making a judgment call.

The inventions that have aided farmers have increased their efficiency, but they have not gotten rid of the primary decision maker who ultimately makes the judgment call on what to do: the farmer. The same will be true for lawyers and the new tools of AI. Yes, AI might automate and speed up many (if not all) lawyerly functions, but there will still need to be a lawyer at the end of it all to make judgment calls.

Critics might point to the graph provided as evidence that lawyers will have the same fate and see a decrease in their total headcount. This is unlikely to happen. Farmers can only produce so much product, and any excess product only lowers the price of already thin margins into an unprofitable area.<sup>83</sup> Lawyers, on the other hand, typically have a surplus of demand.<sup>84</sup>

In all, it is understandable that lawyers might be apprehensive to accept AI into their field because of fear of the technology's consequences on their wages and employment. But while their worries are not unfounded, lawyers should rest assured that those threats are very unlikely to become reality if they are quick to adopt AI-based tools—or, at the very least, quicker than their colleagues.

## 2. Mistakes and Trust in AI

Another fear that lawyers have about using AI relates to the technology's propensity to make mistakes. This is especially true with large language models that tend to “hallucinate.”<sup>85</sup> In the context of AI, a hallucination is “[a] well-known phenomenon in large language models, in which the system provides an answer that is factually incorrect, irrelevant or nonsensical, because of limitations in its training data and architecture.”<sup>86</sup> This is incredibly problematic for lawyers. Can you imagine how much trouble a litigator would be in for turning in a brief with fake citations?<sup>87</sup>

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83. Additionally, the federal government also subsidized farms to protect them against fluctuations in price to the tune of around \$30 billion per year—law firms have no such protections. Chris Edwards, *Cutting Federal Farm Subsidies*, 162 CATO INST. 1 (2023), <https://www.cato.org/briefing-paper/cutting-federal-farm-subsidies#> [<https://perma.cc/996K-YZGG>].

84. Sara Merken, *New Law Firm Data Shows ‘Skyrocketing’ Demand for U.S. Lawyers*, REUTERS (May 19, 2021, 4:38 PM), <http://web.archive.org/web/20210520175546/https://www.reuters.com/business/legal/new-law-firm-data-shows-skyrocketing-demand-us-lawyers-2021-05-19/>.

85. Tom Simonite, *AI Has a Hallucination Problem That’s Proving Tough to Fix*, WIRED (Mar. 9, 2018, 7:00 AM), <https://www.wired.com/story/ai-has-a-hallucination-problem-thats-proving-tough-to-fix/> [<https://perma.cc/5PTV-Q6XL>].

86. Cade Metz, *What Makes A.I. Chatbots Go Wrong?*, N.Y. TIMES (Apr. 4, 2023), <https://www.nytimes.com/2023/03/29/technology/ai-chatbots-hallucinations.html> [<https://perma.cc/3DSU-D7XV>].

87. We don’t have to imagine anymore, lawyers in New York were sanctioned last June for citing to fake ChatGPT cases in their legal briefs. Sara Merken, *New York Lawyers Sanctioned for Using Fake ChatGPT Cases in Legal Brief*, REUTERS (Jun. 26, 2023, 1:28 AM), <https://www.reuters.com/legal/new-york-lawyers-sanctioned-using-fake-chatgpt-cases-legal-brief-2023-06-22/> [<https://perma.cc/7LSA-E5W3>].

ABA Model Rule 3.3—Candor Toward the Tribunal—states that: “A lawyer shall not knowingly: (1) make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer . . . .”<sup>88</sup> While the “knowingly” language in Model Rule 3.3 might provide some protection, that protection would be in conflict with Model Rules 1.1 and 1.3, regarding competence and diligence, respectively.<sup>89</sup> Lawyers are subject to discipline if they turn in incorrect citations to cases or incorrectly interpret jurisprudence. So, for lawyers to trust AI, AI will need to improve its accuracy. But that is likely to happen fast—we have already seen a large jump in the accuracy from the release of GPT-3.5 to GPT-4.<sup>90</sup>

Additionally, even when accuracy is not 100%, AI can still be useful because lawyers can always verify the work created. For example, after hours of research on Westlaw, a lawyer might turn to AI to find a case with specific facts. The AI might spit out a citation for that case. Of course, the lawyer should not take that case as gospel—they should verify that the case exists, is controlling, and says the same thing that the AI claims. Nonetheless, it is quicker to verify a sole case rather than read multiple cases.

An analogous concern of lawyers relates to the safety of AI systems in terms of data protection and confidentiality issues. Technology presents serious risks to confidentiality for lawyers using AI.<sup>91</sup> This is especially true for tools such as ChatGPT, which are not locally hosted and might be collecting data on the back end for all queries made to it. Steve Mills, the chief AI ethics officer at Boston Consulting Group, said that in his view, “you should not put anything into these tools you don’t want to assume is going to be shared with others.”<sup>92</sup> While lawyers fears are well-founded, there exist ways to make data queries secure and private (though these may come at a premium).

Another obstacle that the legal profession must overcome is the clarifying of liability for mistakes around AI. Determining who is at fault when an AI system fails

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88. MODEL RULES OF PRO. CONDUCT r. 3.3 (AM. BAR ASS’N 1983), [https://www.americanbar.org/groups/professional\\_responsibility/publications/model\\_rules\\_of\\_professional\\_conduct/rule\\_3\\_3\\_candor\\_toward\\_the\\_tribunal/](https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_3_3_candor_toward_the_tribunal/) [https://perma.cc/4Z8A-YGGJ] (last visited Oct. 23, 2024).

89. See *infra* Section III.

90GPT-4, OPENAI (Mar. 14, 2023), <https://openai.com/research/gpt-4> [https://perma.cc/W3WB-XFTS]. GPT-3.5 and GPT-4 refer to different versions of the underlying AI model that powers ChatGPT’s software. *Id.* These versions represent advancements in natural language processing technology, with each iteration aiming to improve accuracy, understanding, and capability over its predecessor. *Id.* Even though GPT-4 was released only one year after its predecessor, the software saw a big leap in its capabilities. *Id.*

91. *Remember Your Ethical Duties When it Comes to Encryption*, AM. BAR ASS’N (Oct. 2019), <https://www.americanbar.org/news/abanews/publications/youraba/2019/october-2019/remember-your-ethical-duties-when-it-comes-to-encryption/> [https://perma.cc/7RNU-RVXQ].

92. Catherine Thorbecke, *Don’t Tell Anything to a Chatbot You Want to Keep Private*, CNN (Apr. 6, 2023, 10:46AM), <https://www.cnn.com/2023/04/06/tech/chatgpt-ai-privacy-concerns/index.html> [https://perma.cc/E8YM-CAGC].

is a complicated task that requires considering many factors.<sup>93</sup> Depending on the circumstances, anyone from the data provider, the designer, the manufacturer, the programmer, the user, the AI system itself, or even no one can be to blame.<sup>94</sup> For example, if the training data provided to the AI was poor then the AI system will perform poorly even if everything else was done right.<sup>95</sup> Likewise, manufacturing could err even when a system was designed perfectly. At every step of the pipeline of an AI system—from its initial data collection to its ultimate use by the user—something or someone could have made a mistake that will result in an error. Even then, there also are errors that might have no one to blame, like a single-event upset.<sup>96</sup>

There are a few different theories that would permit lawyers to escape liability for an error caused by AI, assuming the error was not caused by the user in the first place. For example, there could be contractual liabilities against the AI's parent company emanating from the breach of a condition or certain warranties in an implied warranty of fitness or quality of the AI system.<sup>97</sup> On the flip side, tort liabilities could stem from a product liability theory that asserts that the injury sustained by the AI system was based on defective design, data collection, programming defects, or a failure to properly warn about risks.<sup>98</sup>

Even though the issue of liability still needs clearing up, different actors are beginning to ready themselves for potential liability disputes. Some legal insurance providers have begun to warn their policyholders of the risks of using AI tools such as ChatGPT.<sup>99</sup> And last year, the European Commission released a proposed

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93. Lee Gluyas & Stefanie Day, *Artificial Intelligence - Who Is Liable When AI Fails to Perform?*, CMS, <https://cms.law/en/gbr/publication/artificial-intelligence-who-is-liable-when-ai-fails-to-perform> [https://perma.cc/LEL8-E5KX] (last visited Oct. 23, 2024).

94. *Id.*

95. “Data needs a quality standard because once you input something for artificial intelligence and machine learning algorithms, the material is processed and spit out, regardless of whether the data is correct.” Jane Hillman, *Data Quality and AI Safety: 4 Ways Bad Data Affects AI and How to Avoid It*, PROFILE (Oct. 24, 2023), <https://www.prolific.co/blog/data-quality-and-ai-safety> [https://perma.cc/TY6V-ABRN].

96. A single-event upset is “a bit flip in a memory element of a semiconductor device” that is caused by cosmic particles hitting atoms in the atmosphere, creating a shower of neutrons and protons, which in turn may interact with electronic circuits. *Neutron-Induced Single Event Upset (SEU) FAQ*, MICROSEMI (Aug. 2011), [https://www.microsemi.com/document-portal/doc\\_download/130760-neutron-seu-faq](https://www.microsemi.com/document-portal/doc_download/130760-neutron-seu-faq) [https://perma.cc/NJ2S-GTTH]. Steps can be taken to minimize the risk of a single-event upset, but they are impossible to guarantee against. *Id.*; see also D. Binder, E. C. Smith, & A. B. Holman, *Satellite Anomalies from Galactic Cosmic Rays*, 22 IEEE TRANSACTIONS ON NUCLEAR SCI. 2675 (1975), <https://ieeexplore.ieee.org/stamp/stamp.jsp?tp=&arnumber=4328188> [https://perma.cc/H9BA-6BTY].

97. William A. Tanenbaum, Kiyong Song, & Linda A. Malek, *Theories of AI Liability: It's Still About the Human Element*, REUTERS (Sept. 20, 2022, 9:53 AM), <https://www.reuters.com/legal/litigation/theories-ai-liability-its-still-about-human-element-2022-09-20/> [https://perma.cc/TC5G-GR97].

98. *Id.*

99. Isha Marathe, *An Insurer Sent Law Firms a ChatGPT Warning. It Likely Won't Be the Last*, LAW.COM (Apr. 13, 2023, 5:32 PM), [https://www.law.com/legaltechnews/2023/04/13/an-insurer-sent-law-firms-a-chatgpt-warning-it-likely-wont-be-the-last/?utm\\_source=email&utm\\_medium=enl&utm\\_content=20230417&utm\\_campaign=morningminute&utm\\_term=law](https://www.law.com/legaltechnews/2023/04/13/an-insurer-sent-law-firms-a-chatgpt-warning-it-likely-wont-be-the-last/?utm_source=email&utm_medium=enl&utm_content=20230417&utm_campaign=morningminute&utm_term=law) [https://perma.cc/4Y62-DBZJ].

directive that would create a “presumption of causality” against the AI system’s developer, provider, or user.<sup>100</sup> Liability for mistakes that AI makes will need to be cleared up before more lawyers will feel comfortable using these systems.

### III. HOW NOT USING ARTIFICIAL INTELLIGENCE MIGHT BE SEEN AS A VIOLATION OF THE ABA’S MODEL RULES.

#### *A. What Are the Model Rules*

This note has discussed how technology can automate repetitive tasks, how AI has been implemented in law firms, and the reasons why AI use is growing within the law. We have also learned how the future of AI in legal work might affect a firm’s hiring process, as well as some of the challenges to AI adoption. Let us now discuss why in the not-so-distant future evasion of AI in the legal field might be seen as a violation of the ABA’s Model Rules.

The ABA’s Model Rules of Professional Conduct are a set of rules and notes on the professional and ethical duties of lawyers in the United States.<sup>101</sup> Lawyers are required to follow the rules of professional conduct of the jurisdictions where they are licensed and where they practice law, and most states have adopted rules that closely track the ABA Model Rules.<sup>102</sup> Recently, in 2018, California updated its rules to closely resemble the Model Rules.<sup>103</sup>

#### *B. Model Rule 1.1*

Rule 1.1 says that “[a] lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.”<sup>104</sup> The rule does not say anything about technology—however, in 2012 the ABA “formally approved a change to the Model Rules of Professional Conduct to make clear that lawyers have a duty to be competent not only in the law and its practice, but also in technology.”<sup>105</sup> That year the ABA’s House of Delegates voted to amend Comment

100. *The EU AI Liability Directive Will Change Artificial Intelligence Legal Risks*, DEBEVOISE & PLIMPTON (Oct. 24, 2022), <https://www.debevoise.com/insights/publications/2022/10/the-eu-ai-liability-directive-will-change> [https://perma.cc/XZ2G-FL3E].

101. *The Kutak Commission*, KUTAK ROCK, <https://www.kutakrock.com/general-content/the-kutak-commission> [https://perma.cc/WAH4-9YFU] (last visited Oct. 23, 2024).

102. *Alphabetical List of Jurisdictions Adopting Model Rules*, AM. BAR ASS’N (Mar. 28, 2018), [https://www.americanbar.org/groups/professional\\_responsibility/publications/model\\_rules\\_of\\_professional\\_conduct/alpha\\_list\\_state\\_adopting\\_model\\_rules/](https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/alpha_list_state_adopting_model_rules/) [https://perma.cc/HBZ8-2EUB].

103. The new rules closely resemble the ABA’s Model Rules—notice how the numbering was made to mirror the ABA’s numbering. STATE BAR OF CAL., RULES OF PROFESSIONAL CONDUCT CROSS-REFERENCE CHART (2018), <https://www.calbar.ca.gov/Portals/0/documents/rules/Cross-Reference-Chart-Rules-of-Professional-Conduct.pdf> [https://perma.cc/X7FQ-AXNT].

104. MODEL RULES OF PRO. CONDUCT r. 1.1 (AM. BAR ASS’N 1983), [https://www.americanbar.org/groups/professional\\_responsibility/publications/model\\_rules\\_of\\_professional\\_conduct/rule\\_1\\_1\\_competence/](https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_1_1_competence/) [https://perma.cc/T66R-CT6A] (last visited Oct. 23, 2024).

105. Robert J. Ambrogì, *Tech Competence*, LAWSITES, <https://www.lawnext.com/tech-competence>

8 to Model Rule 1.1 to now read the following:

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, engage in continuing study and education and comply with all continuing legal education requirements to which the lawyer is subject.<sup>106</sup>

Adding to the interpretation of the amended comment, the Summary of Commissions Proposals regarding the comment states that “it is important to make this duty [to keep up with relevant technology] explicit because technology is such an integral—and yet at times invisible—aspect of contemporary law practice.”<sup>107</sup> This is not just a Model Rule—so far forty states have formally adopted the revised comment to Rule 1.1<sup>108</sup> What this means is that a lawyer is likely to be required to keep up with AI technology as adoption of the technology becomes more widespread—and if they fail to do so, Rule 1.1, governing competency, might have something to say about it.

### C. Model Rule 1.3

The analysis for AI adoption under Rule 1.3 is similar. Here the rule states simply that “[a] lawyer shall act with reasonable diligence and promptness in representing a client.”<sup>109</sup> Importantly, Webster’s Dictionary defines “promptness” as “1: being ready and quick to act as occasion demands; 2: performed readily or immediately.”<sup>110</sup> This does not mean that a lawyer has to do things necessarily quickly, just that they have to do things with *reasonable* quickness. To analogize, imagine a scenario with two different dry-cleaning firms, “Dry-Cleaning A” and “Dry-Cleaning B,” both of which have a reputation for being prompt in returning clean clothing. Now imagine that Dry-Cleaning A—along with the entire dry-cleaning industry as a whole—starts using a new tetrachloroethylene solvent that dries three times quicker than traditional solvents. Meanwhile, Dry-Cleaning B sticks to the old, true, and tested method. Since the industry switched to the new tetrachloroethylene solvent, what *reasonable promptness* means in the context of dry-cleaning changes to be three times shorter than before. The same is likely to happen

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[<https://perma.cc/CPS3-ELQV>] (last visited Oct. 23, 2024).

106. MODEL RULES OF PRO. CONDUCT r. 1.1 cmt. (AM. BAR ASS’N 1983), [https://www.americanbar.org/groups/professional\\_responsibility/publications/model\\_rules\\_of\\_professional\\_conduct/rule\\_1\\_1\\_competence/comment\\_on\\_rule\\_1\\_1/](https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_1_1_competence/comment_on_rule_1_1/) [<https://perma.cc/Z39W-896Y>] (last visited Oct. 23, 2024).

107. AM. BAR ASS’N, ABA COMMISSION ON ETHICS 20/20 8 (2012), [https://www.americanbar.org/content/dam/aba/administrative/ethics\\_2020/20120508\\_ethics\\_20\\_20\\_final\\_hod\\_introduction\\_and\\_overview\\_report.authcheckdam.pdf](https://www.americanbar.org/content/dam/aba/administrative/ethics_2020/20120508_ethics_20_20_final_hod_introduction_and_overview_report.authcheckdam.pdf) [<https://perma.cc/CQ9Y-NJYM>].

108. Ambrogi, *supra* note 105.

109. MODEL RULES OF PRO. CONDUCT r. 1.3 (AM. BAR ASS’N 1983), [https://www.americanbar.org/groups/professional\\_responsibility/publications/model\\_rules\\_of\\_professional\\_conduct/rule\\_1\\_3\\_diligence/](https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_1_3_diligence/) [<https://perma.cc/T8S8-ZBCZ>] (last visited Oct. 23, 2024).

110. *Promptness*, MERRIAM WEBSTER, <https://www.merriam-webster.com/dictionary/promptness> [<https://perma.cc/FJ3B-7DFJ>] (last visited Oct. 23, 2024).

to legal firms in the legal industry—when legal firms start adopting AI to help with laborious tasks, such as reviewing long contracts, the time that is considered *reasonably prompt* will shrink. Here, lawyers who do not adopt AI risk violating Model Rule 1.3 because their work will no longer be *reasonably prompt* relative to the work of other lawyers.

#### D. Model Rule 1.5

The same analogy used for Rule 1.3 can be recycled for Rule 1.5, which states that “[a] lawyer shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses . . . .”<sup>111</sup> As technology enables firms to charge less for their services—thanks to AI—what is considered a *reasonable fee* will change. Since AI allows lawyers to do more with less, the cost of legal work should go down, and in turn, the duties of lawyers to charge less for their services shall go down as well. While, sadly, Rule 1.5 is rarely enforced,<sup>112</sup> perhaps a technological revolution could become the basis for jump-start enforcement.

#### E. What Does this Mean?

The Model Rules—and their analogous adoptions in most of the U.S. States—set out a standard for lawyers to follow on ethics and professionalism. Advances in AI make implementing AI into the legal field paramount as failure to do so can result in violating rules of competency (Model Rule 1.1), diligence (Model Rule 1.3), and fees (Model Rule 1.5). In other words, not using AI will be seen as a violation of the ABA’s Model Rules as AI adoption becomes widespread. And while a violation of the Model Rules is not a guarantee of disciplinary action, malpractice liability and insurance coverage can be affected by a lawyer’s failure to work competently and promptly, and to bill appropriately. Regardless of whether these rules are enforced, or whether insurance carriers incentivize lawyers to adopt AI-based technologies, lawyers who fail to recognize the relevance of AI advances to their professional obligations may lose out in the market for legal services as clients come to realize that they are not getting what they deserve.

#### CONCLUSION

Over the next few years, AI will become increasingly important in the legal field. AI is already being used in firms to prewrite contracts, perform due diligence and conflicts checks, answer legal questions, find clients, and more. Though there are significant hurdles that AI must overcome—such as worries about AI taking

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111. MODEL RULES OF PRO. CONDUCT r. 1.5 (AM. BAR ASS’N 1983), [https://www.americanbar.org/groups/professional\\_responsibility/publications/model\\_rules\\_of\\_professional\\_conduct/rule\\_1\\_5\\_fees/](https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_1_5_fees/) [https://perma.cc/5J6V-4BV7] (last visited Oct. 23, 2024).

112. “There is general agreement that [the Model Rule 1.5 sub] rules are rarely if ever enforced.” *Excessive Legal Fees: Protecting Unsophisticated Consumers, Class Action Members, and Taxpayers*, MANHATTAN INST. (May 25, 2000), <https://manhattan.institute/event/excessive-legal-fees-protecting-unsophisticated-consumers-class-action-members-and-taxpayers> [https://perma.cc/YL8D-ZFJP].

legal jobs, trust in the software, and intricacies as to who is liable for mistakes—these hurdles are already beginning to be addressed by insurance firms and governments. As adoption increases, consumers' expectations of legal services will change and so will the definition of what is reasonable under the Model Rules. Lawyers who learn how to utilize AI tools today will be at an advantage in terms of job security for the near future as AI skills become foundational for modern-day legal practice. AI might not be coming for your job, but it will certainly transform it, and those who adapt to the changing landscape will be best positioned to remain good, responsible, quality lawyers.