GENERATIVE AI IN LEGAL PRACTICE:
OPPORTUNITIES, RISKS, AND BEST PRACTICES
COURSE OUTLINE

COURSE OVERVIEW
- Understanding the Basics of GAI
- Explore Possible Use Cases
- Examine Risks and Ethical Considerations
- Determine Best Practices for Implementation

Professional and Ethical Considerations for GAI Use
- Obligations Affecting Clients
- Obligations Affecting Courts
- Obligations Affecting Business of Law

Introduction to AI Technology
- Machine
- Learning
- Natural Language Processing
- Computer Vision
- Robotics
- Neural Networks

Generative AI Terms to Know
- GOFAI (Good Old-Fashioned Artificial Intelligence)
- GAI (Generative Artificial Intelligence)
- LLM (Large Language Model)- ChatGPT
- NLP (Natural Language Processing)
- AGI (Artificial General Intelligence)
- RAG (Retrieval-Augmented Generation)
- ASI (Artificial Superintelligence)
- Fine Tuning
- Prompt/Output

General Products vs. Law-Specific Products
- General Products (ChatGPT, Gemini, Claude, Llama)
- Law-Specific Products (LexisNexis, Thomson Reuters, Harvey)

How GAI Can Aid Lawyers
- Initial Drafts
- Legal Research and Motion Practice
- Discovery and Depositions
- Trial Prep and Evidence

RULES OF PROFESSIONAL CONDUCT

Duty of Competence
- Rule 1.1

Charging for Work Produced by Generative AI
- Rule 1.5
- Bus. & Prof. Code, §§ 6147–6148

Hypothetical
Maria, a defense attorney, is representing a client in a high-stakes corporate litigation case. To prepare for negotiations, she decides to use an AI-powered tool that predicts settlement outcomes based on historical data of similar cases. The tool suggests a settlement range significantly lower than what Maria's client initially expected, based on the trends observed in recent cases.

Maria knows the tool's prediction could potentially lower her client's expectations and may lead her to push for a quicker, albeit less favorable, settlement. Maria also realizes that relying solely on the tool's predictions without considering all relevant factors might not fully serve her client's interests.

What is an ethical consideration Maria faces in this scenario?

Debrief of Hypothetical
- Correct Answer is (D): All of the above.
- Maria faces multiple ethical considerations in this scenario:
- Accuracy and Relevance of Data (A): Maria must ensure that the data used by the AI tool is current, relevant, and accurately reflects the dynamics of her specific case. Relying on outdated or irrelevant data could lead to poor advice and potentially harm her client's position.
- Transparency (B): Should Maria disclose to her client that she used an AI tool to inform her advice, ensuring transparency in how she arrived at her recommendations? If she does, this disclosure helps maintain the client's trust and allows them to make informed decisions. It may also be required under rule 1.4.
- Client's Best Interests (C): Maria must critically assess whether the AI's predictions align with her client's best interests, considering not just the data but also the specific circumstances and strategic goals of her client.

Risks and Considerations
- Confidentiality
- Accountability and Decision-making
- Privacy Concerns with the AI technology
- Bais and Fairness in AI models

Duty of Confidentiality
- Bus. & Prof. Code, § 6068, subd. (e)
- Rule 1.6
- Rule 1.8.2

Outsourcing Legal/Nonlegal Services Through GAI
- ABA Formal Opinion 512

Privacy Concerns
- What does the model do with data?
- How could it potentially expose sensitive client information?
- Are there privacy implications of using GAI in data analysis and storage?
- Are there safeguards to protect client privacy?

Specific Concerns for Self-Learning GAI Tools
- Lawyers must evaluate the risk of GAI tool information being disclosed to or accessed by others in the firm, which could be inadvertently improperly disclosed outside of the firm by another lawyer (Rules 1.6, 1.8.2).
- The information could also be disclosed to those prohibited from accessing it due to ethical walls (Rules 1.7, 1.9, 1.10).
- ABA Formal Opinion 512 advises that a client's informed consent is required before inputting their information into such a GAI tool; COPRAC guidance says that informed consent may be required.

Communication Regarding GAI Use
- Rule 1.4
- Rule 1.2

If Informed Written Consent Is Required, What Must It Include?
ABA Formal Opinion 512 says the client must have the lawyer's best judgment about:
- Why the GAI tool is being used;
- The extent of, and specific information about, the risk of GAI use, including particulars about:
  - the kinds of client information that will be disclosed,
  - the ways in which others might use the information against the client's interests,
  - potential risk of later users having access to client's information; and
- The GAI tool's benefits to the representation.
- ***Boiler-plate provisions to engagement letters purporting to authorize the lawyer to use GAI is not sufficient.***

Hallucinations
- What are hallucinations?
  - False or misleading AI-generated content
  - False statements (e.g., made up case law, stating that it is legal/illegal to do something that it isn't)
  - False assertions (e.g., misstating the holding of a real case, citing a case that does not stand for a correct factual proposition)
- What are the risks?
  - Inefficiencies and additional workload
  - Poor advocacy/ incompetence
  - False/misleading statements to a judicial officer

Candor to the Tribunal; and Meritorious Claims and Contentions
- Rule 3.1
- Rule 3.3
- Jurisdictional requirements may require disclosure of generative AI use or create other obligations:
  - Local Rules
  - Standing Orders
  - Other requirements in the relevant jurisdiction

Hypothetical

Larry, a practicing attorney, decides to integrate a GAI tool into his practice to assist with drafting legal documents. He uses the tool to generate a first draft of a client's will based on information provided during a consultation. Before finalizing the document, Larry reviews the draft for accuracy and appropriateness but does not verify all legal references or double-check the AI's application of state-specific estate laws, assuming the AI's output is accurate.

Later, it is discovered that the will has significant errors related to the distribution of assets, which do not align with the client's explicit wishes and state law, potentially leading to legal challenges after the client's death.

What ethical consideration did Larry fail to adequately address when using the GAI tool?

Debrief of Hypothetical

- Correct Answer: B) Verifying the legal accuracy and applicability of the AI-generated document.
- Larry's primary failure lies in not adequately verifying the legal accuracy and applicability of the information generated by the AI tool. According to the guidance provided in the document, while generative AI can assist in legal document preparation, it remains the attorney's responsibility to ensure that all outputs, including legal references and applications of law, are accurate and relevant to the client's specific situation. This includes a thorough review and validation of the AI's work against current legal standards and the specific needs of the client, beyond just checking for technical accuracy. Larry's oversight highlights the risk of overreliance on AI without sufficient attorney oversight, potentially leading to errors that could impact the client adversely. This scenario underscores the need for a lawyer's critical analysis and review as outlined under the duties of competence and diligence in the AI guidance document.

Balancing the Risks
Duty to Supervise Lawyers and Non-Lawyers

- Rule 5.1
- Rule 5.2
- Rule 5.3

Prohibition on Discrimination, Harassment, and Retaliation

- Rule 8.4.1

Duty to Comply with the Law

- Bus. & Prof. Code, § 6068(a)
- Rule 8.4
- Rule 1.2.1
- There are many relevant and applicable legal issues and regulations relevant to GAI use, including:
  - AI-specific laws;
  - Privacy/cybersecurity laws;
  - Cross-border data transfer laws; and
  - Intellectual property laws.

Professional Responsibilities Owed to Other Jurisdictions

- Rule 8.5

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RELEVANT LINKS AND AUTHORITIES

GUIDANCE AND OPINIONS
- *Practical Guidance for the Use of Generative Artificial Intelligence in the Practice of Law*, State Bar of California (2024)
- ABA Formal Ethics Opinion No. 512

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  - Rule 1.1
- Charging for Work Produced by Generative AI
  - Rule 1.5
  - Bus. & Prof. Code, §§ 6147–6148
- Duty of Confidentiality
  - Bus. & Prof. Code, § 6068, subd. (e)
  - Rule 1.6
  - Rule 1.8.2
- Communication Regarding GAI Use
  - Rule 1.4
  - Rule 1.2
- Candor to the Tribunal; and Meritorious Claims and Contentions
  - Rule 3.1
  - Rule 3.3
- Duty to Supervise Lawyers and Non-Lawyers
  - Rule 5.1
  - Rule 5.2
  - Rule 5.3
- Prohibition on Discrimination, Harassment, and Retaliation
  - Rule 8.4.1
- Duty to Comply with the Law
  - Bus. & Prof. Code, § 6068, subd. (a)
  - Rule 8.4
  - Rule 1.2.1
- Professional Responsibilities Owed to Other Jurisdictions
  - Rule 8.5