



AMERICAN
BANKRUPTCY
INSTITUTE

Alexander L. Paskay Memorial Bankruptcy Seminar

Ethics and Professional Responsibility

Hon. D. Sims Crawford

U.S. Bankruptcy Court (N.D. Ala.) | Birmingham

Prof. Kirsten K. Davis

Stetson University College of Law | Gulfport, Fla.

Monique D. Hayes

DGIM Law LLC | Miami

American Bankruptcy Institute

Total Recall: Advancements and Ethical Considerations for Artificial Intelligence In the Practice of Law

Moderator: Monique D. Hayes - DGIM Law, PLLC, Aventura, Florida

Panelist: Hon. D. Sims Crawford – U.S. Bankruptcy Court Northern District of Alabama

Kristen K. Davis – Stetson University College of Law

I. Introduction

1. Definition of AI and generative AI in legal practice.
2. Brief overview of AI adoption in law firms and courts.
3. Ethical considerations from ABA Formal Opinion 512
4. The balance between embracing technology and maintaining professional standards.
- Interactive Element: Quick poll on attendees' experience with AI.

II. Understanding AI Tools in Legal Practice

1. Tools for document review, legal research, case prediction, contract analysis, and client communication
2. AI-powered bankruptcy case analysis and court automation tools.
3. Considerations for selecting AI tools (e.g., data security, accuracy).
- Scenario: A law firm's implementation of AI for bankruptcy case management.

III. Ethical Implications and Compliance

1. Are existing model rules sufficient to regulate AI use, or is new legislation required?
2. Model Rule 1.1 (Competence): The duty to understand AI capabilities and limitations
3. Model Rule 1.6 (Confidentiality): Risks of data breaches and privilege waivers
4. Model Rule 5.3 (Supervision): Lawyers' responsibility for AI outputs as if AI were a staff member
5. Rule 702 of the Federal Rules of Evidence and Rule 9017 Federal Rules of Bankruptcy Procedure and Expert Opinions Aided by AI
6. ABA and state bar guidelines, and local court rules on AI usage and risk mitigation.
7. Bankruptcy Court Standing Orders: Jernigan; Hall, and Lloyd
- Interactive Element: Discussion on potential blind spots in ethical compliance.

IV. Benefits and Risks of AI Adoption

- Objective: Assess the practical impact of AI on law firms and courts.
- Discussion Points:
 1. Increased efficiency and cost savings.

American Bankruptcy Institute

2. Potential risks: Bias in AI models, cybersecurity concerns, loss of human judgment
3. The impact on client relations and access to justice.

- Case Study: A.I. for Claims Analysis

V. Addressing Key Legal and Ethical Questions

1. Should AI-driven efficiencies influence how attorney fees are assessed?
2. What frameworks exist for evaluating AI-generated legal work for accuracy and reliability?

- Interactive Element: Pro/con discussion to explore potential solutions.

VI. The Future of AI in Legal Practice

1. Emerging trends: Predictive analytics, AI-assisted mediation, automated litigation tools
2. The role of regulation and best practices in ensuring ethical AI use
3. How law schools and CLE programs are adapting to AI advancement

- Engagement Activity: Attendees' perspectives on AI's role in their future practice.

VII. Q&A and Closing Thoughts

- “Is AI ultimately good or bad for the legal profession?”
- Closing Remarks: Best practices for AI adoption and ethical compliance.

American Bankruptcy Institute

Total Recall: Advancements and Ethical Considerations for Artificial Intelligence in the Practice of Law



Meet Our Panelists



Monique D. Hayes

*DGIM Law, PLLC
Miami, FL*



Hon. D. Sims Crawford

*United States Bankruptcy Court
N. D. Alabama*



Prof. Kristen K. Davis

*Stetson University College of Law
Gulfport, FL*



Introduction

Artificial Intelligence (AI) is rapidly transforming the practice of law, providing tools that enhance the speed and efficiency of legal services. From researching legal issues, to reviewing and analyzing documents, and predicting litigation and settlement outcomes, AI is reshaping how bankruptcy professionals approach legal challenges. Its ability to process vast amounts of data quickly allows for better decision-making and early detection of financial fraud.

In this presentation, we will delve into how AI is impacting key aspects of the practices including ethical obligations to clients and the court.

BREAKING NEWS

President Trump announces \$500 Billion Investment In AI



Program Overview

1. Understanding AI and its applications in law.
2. Available tools and practical use cases.
3. Ethical Implications and risks.
4. Future Trends.
5. Interactive Q&A

POLL

Have you used AI in your practice?

AI in Legal Practice

Artificial Intelligence is also making significant strides in the legal profession, transforming how legal professionals operate and enhancing the delivery of legal services. By harnessing AI's capabilities, legal practitioners can analyze large volumes of case law, statutes, and legal documents swiftly and accurately, leading to more informed decision-making and efficient case management.

However, the integration of AI in the practice also brings about significant ethical considerations. Issues such as data privacy, the reliance on potentially biased algorithms, and the implications of AI-driven decision-making must be critically examined.

Natural Language Processing

Natural language processing (NLP) is a subfield of computer science and artificial intelligence (AI) that uses machine learning to enable computers to understand and communicate with human language.

Predictive Analytics

By utilizing predictive analytics, AI helps practitioners anticipate case outcomes, allowing for timely and proactive strategic decision making. Uses in the bankruptcy context include valuation and financial projections as well as settlement guidance.

Legal Automation Tools

Everything from client intake to case management and document assembly can now be performed using market AI tools.

Practical Application of AI in Law

Legal Research

Lexis+ AI, CaseText CoCounsel

Document Review

Relativity, Everlaw

Drafting and Analysis

BriefCatch, ContractPodAI



Ethical Implications and Blind Spots

To ensure clients are protected, lawyers using generative artificial intelligence tools must fully consider their applicable ethical obligations, including their duties to provide competent legal representation, to protect client information, to communicate with clients, to supervise their employees and agents, to advance only meritorious claims and contentions, to ensure candor toward the tribunal, and to charge reasonable fees.

ABA Formal Opinion 512

-  **Competence**
-  **Confidentiality**
-  **Candor**



Risks and Mitigation Strategies

| | |
|--|---|
| <p>Deep Fakes</p> <p>As AI technology rapidly develops, there are increasing concerns about the ability of court's to detect and dismiss "deepfake" evidence.</p> | <p>AI Governance</p> <p>AI can assist in implementing advanced encryption techniques to protect sensitive information during transmission and storage, ensuring that client data remains confidential.</p> |
| <p>Cyber Security</p> <p>In the event of a security incident, AI can automate responses to mitigate damage. This includes isolating affected systems and alerting IT personnel, thereby minimizing downtime and protecting patient information.</p> | <p>Insurance</p> <p>There are many benefits to incorporating AI into the practice. The risks are also many. Might insurance be sufficient to mitigate the risks?</p> |



New Rules or Enforcement of Existing Regulations?

Most of the rules governing the practice were established well before artificial intelligence became generally accessible. Now with the ethical concerns and risks presented by artificial intelligence, it is important to consider whether the existing rules are sufficient.

Enforce Existing Rules

Model Code of Judicial Conduct
Model Code of Professional Conduct

Expand Rules to Address New Realities

Grimm-Grossman Rule Proposals to Amend FRE 901 to Address AI-generated Evidence and Deepfakes



AI and Attorney Fees

Should Bankruptcy Courts considering Fee Applications take into account whether the applicant used available AI technology in determining the reasonableness of fees under Section 330 of the Bankruptcy Code ?

Looking to ABA Model Rule 1.4 some commentators believe, a lawyer's decision **not** to use AI also may need to be communicated to the client if using AI would benefit the client. Indeed, the lawyer's failure to use AI could implicate ABA Model Rule 1.5, which requires lawyer's fees to be reasonable. Failing to use AI technology that materially reduces the costs of providing legal services arguably could result in a lawyer charging an unreasonable fee to the client.



Future of AI in Bankruptcy Law

Artificial Intelligence is reshaping practice and development in bankruptcy by providing innovative tools and resources that enhance the capabilities of the professionals. This technology facilitates ongoing education and skills development, but also presents risks related to confidentiality and the unauthorized practice of law.

Case Administration

AI can assist in managing the fast-moving parts of a bankruptcy case including scheduling, tracking deadlines, and task oversight.

Projections, Valuations . . . Unauthorized Practice

One bankruptcy court has found certain bankruptcy software provided by non-profit UpSolve, Inc., to assist with chapter 7 filings using AI to prepare petition and schedules amounted to the unauthorized practice of law ([In re Peterson, 2022 WL 1800949, at *2 \(Bankr. D. Md. June 1, 2022\)](#))



Q&A and Interactive Discussion

Is AI Good or Bad for Legal Practice?



Efficient



Powerful



Dangerous



Closing and Additional Resources

IMPACT OF AI ON THE LEGAL PROFESSION AND THE COURTS
U.S. SUPREME COURT CHIEF JUSTICE JOHN ROBERTS



Education and Reports

Valu-AI-tion and Restructur-AI-ng: Navigating the Future with Artificial Intelligence.

<https://cle.abi.org/product/valu-ai-tion-and-restructur-ai-ng-navigating-future-artificial-intelligence>

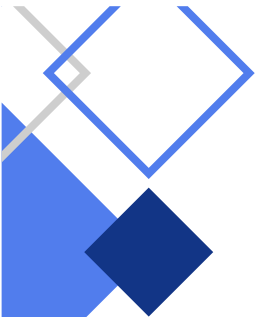
Formal Opinion

American Bar Assn. Formal Opinion 512

https://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/ethics-opinions/aba-formal-opinion-512.pdf

Thank You

For your attention! If you have any questions or would like to discuss further, please feel free to reach out.



Faculty

Hon D. Sims Crawford is a U.S. Bankruptcy Judge for the Northern District of Alabama in Birmingham, appointed on Sept. 1, 2016. He previously served as a Chapter 13 Standing Trustee in the Northern District of Alabama from 2004 until his appointment as a bankruptcy judge. Judge Crawford is a member of the National Conference of Bankruptcy Judges, ABI and the Alabama State Bar, and he has served on the Bankruptcy Judges Advisory Group (BJAG) and the Human Resources Advisory Council (HRAC), both of which provide advice to the Administrative Office of the U.S. Courts and to the committees of the Judicial Conference. He is currently serving as the bankruptcy-judge representative to the Committee on Codes of Conduct for the Judicial Conference of the United States. Judge Crawford received his B.A. from the University of Alabama and his J.D. from Samford University Cumberland School of Law.

Dr. Kirsten K. Davis is a Professor of Law and Provost's Faculty Fellow for Generative Artificial Intelligence and Higher Education at Stetson University College of Law in Gulfport, Fla. Her work focuses on the intersection of legal communication and legal ethics. Most recently, Dr. Davis has been studying the impact of generative artificial intelligence on legal communication, legal ethics, and higher education. This past year, she has given talks on generative AI to law faculty, law students, administrators, lawyers and judges. She is leading a group of more than 400 law professors who are exploring the impacts of generative AI on legal writing education and practice. Dr. Davis's course, Legal Writing with Generative AI, was one of the first of its kind to be offered to law students. Her essay, "A New Parlor is Open: Legal Writing Faculty Must Develop Scholarship on Generative AI and Legal Writing," argues that generative AI represents the beginning of a paradigm shift in legal writing and identifies the "big issues" of legal writing that will need scholarly investigation. Prior to joining the faculty at Stetson, Dr. Davis was a federal judicial clerk, an attorney at Jones Day, and a faculty member at the Arizona State University Sandra Day O'Connor College of Law. She has served on the board of directors of the Association of Legal Writing Directors and the Legal Writing Institute, and she is a past chair of the Association of American Law Schools Annual Meeting Program Committee and of its Section on Women in Legal Education. Dr. Davis also is a past chair of the Florida Bar's Standing Committee on Professionalism and served on its Special Committee to Review Professionalism. She currently serves as the program co-chair for the AALS Section on Technology, Law, and Legal Education, as a member of the Legal Writing Institute's AI Committee, and as a member of the Florida Bar Standing Committee on Technology. Dr. Davis has received Stetson's Dean's Award for Extraordinary Service, its Award for Teaching Excellence, its Homer and Dolly Hand Award in Faculty Research, and its Dickerson-Brown Award for Faculty Excellence in Faculty Scholarship. She was recognized for her work in online education with the 2021 Stetson Board of Trustees COVID-19 Innovation Award. In addition, the AALS Section on Technology, Law, and Legal Education selected her for its 2024 Technology Mentorship Award, and the ABA Legal Technology Resource Center named her to its distinguished Women of Legal Tech list for 2024. Dr. Davis founded Stetson's Institute for the Advancement of Legal Communication. She received her J.D. *summa cum laude* from The Ohio State University Moritz College of Law, where she was admitted to the Order of the Coif, and her Ph.D. in human communication from Arizona State University Hugh Downs School of Human Communication.

Monique D. Hayes is a partner with DGIM Law LLC in Miami, where she centers her practice of wealth preservation and protection, including corporate restructuring, business succession and estate planning. Her experience in bankruptcy includes claim prosecution, asset sales and acquisitions, financial transactions, fraud litigation, restructuring, due diligence and transactional matters. She previously was with Goldstein & McClintock LLLP, where she practiced in the areas of business transactions, commercial litigation and corporate restructuring. Ms. Hayes has experience advising fiduciaries, corporate and nonprofit board members, entrepreneurs and small businesses. She has successfully represented clients in a broad range of matters, including asset sales and acquisitions, finance transactions, bankruptcy plan confirmations, avoidance actions, D&O claim litigation, Ponzi scheme and other fraud litigation. She also has experience representing franchisors in franchisee bankruptcy proceedings. In the innovation and technology sector, Ms. Hayes has represented start-ups, entrepreneurs and founders in corporate formations and restructuring, due diligence and related transactional matters. Ms. Hayes is a member of ABI's inaugural class of "40 Under 40" in 2017 and has been featured in the 40 Under 40 Outstanding Lawyers of Miami-Dade County, received the IWIRC Rising Star Award, and been recognized by *Brickell Magazine* as one of the Top 20 Professionals Under 40. She has also been lauded as a "Florida Rising Star" by *Super Lawyers* magazine and a "Top Up and Comer" by *Florida Trend* magazine. She received the prestigious Kathryn Heidt Award from the Business Law Section of the American Bar Association. Prior to entering private practice, Ms. Hayes clerked for U.S. Bankruptcy Judge Laurel Myerson Isicoff and was a housing attorney for Legal Services of Greater Miami, Inc. A member of the Florida Bar, she is admitted to practice before the U.S. District Courts for the Southern and Middle Districts of Florida. Ms. Hayes is a former chair of the International Women's Insolvency and Restructuring Confederation's Florida Network and a past president of the Wilkie D. Ferguson, Jr. Bar Association (a National Bar Association affiliate). She received her undergraduate degree in political science with honors from the University of South Florida and her J.D. *cum laude* from the University of Miami School of Law, where she was a member of the Bar and Gavel Honor Society, named to the Dean's List, awarded the Dean's Honor Scholarship, and received the C.A.L.I. Excellence for the Future Award in Chapter 11 Bankruptcy Skills.