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Commercial Banking, Collections and Bankruptcy

The newsletter of the Illinois State Bar Association's Section on Commercial Banking, Collections and Bankruptcy

Report to President Shawn Kasserman – 9/27/23

Editor's Note: An ad hoc ISBA committee on artificial intelligence drafted the report below providing an overview of artificial intelligence in the practice of law and recommendations for the ISBA Board of Governors. No formal action has been taken by the Illinois State Bar Association on this report.

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This ad hoc committee was charged by ISBA President Shawn Kasserman to provide recommendations to the ISBA Board of Governors on steps the ISBA can take to deal with the impact of artificial intelligence ("AI") in the practice of law with particular emphasis on the practice in Illinois.

I. The Rise and Use of Artificial Intelligence in the Legal Profession

Analogizing the school book story of the boy with his finger in the dike saving the town, today that boy would be standing on the beach watching as a tsunami approaches the shore as he stands helpless before the rising tide of change. That is how rapid and comprehensive the change we will see due to the use of artificial intelligence in every aspect of our lives. As the ABA noted, we "are in an age when it's easy to harness computer power to engage in learning: it's cheap, and there are massive amounts of data from which to learn."

In March, it was announced that ChatGPT passed the bar examination by a significant margin. It is no longer some sci-fi story. It is a reality we must understand.

AI has the potential to be a powerful tool to increase lawyers' effectiveness and the public's access to justice. ChatGPT, which we are now playing with, is a general AI. Legal AI models have yet to be established. Since ChatGPT was introduced to the public in November 2022, we have witnessed a flood of technology incorporating AI. However, the speed of change of this technology also requires lawyers to exercise the application of this technology in a manner consistent with the requirements of the Illinois Rules of Professional Responsibility.

A. Will AI Replace Lawyers?

According to ChatGPT (with thanks to Nelson Rosario and with all reservations on the source):

"While AI has the potential to automate certain tasks and improve efficiency in the legal field, it is unlikely to completely replace lawyers….AI can augment legal practice, but it is unlikely to replace the skills, expertise and judgment that human lawyers bring to the profession."

In a recent study, Goldman Sachs estimated that generative AI could automate 44 percent of legal tasks in the U.S. What's more, it estimated that 46 percent of administrative tasks in the country are at risk of automation, while 35 percent of business and financial operations and 31 percent of sales tasks could also be automated. Lawyers will remain the human component in the service arena – a robot cannot sign a pleading.

In many law firms, non-generative AI is already being utilized for the leg work that has been the work of young associates, contract counsel, and paralegals. For example, Technology Assisted Review ("TAR") is utilized for document review, contract review, due diligence, and market research. To date, it has not been shown to be a replacement for any personnel, but it is being used as another tool in the firm's toolbox. The uses of AI have yet to be fully explored. Some law firms are already developing their own generative artificial intelligence ("GAI") model utilizing their internal database.

B. How Do/Can We Use It?

Lawyers are only as effective as the information they receive. AI may enhance the service offered by lawyers and replace lower-level assistants. It has the potential of improving and reducing the cost of

services offered and freeing lawyers for more significant work using their expertise, experience, and knowledge to serve their clients.

AI has been effective in e-discovery for several years (e.g.,TAR) and it allows firms to leverage their own work product to better serve their clients. Some current uses of AI in the legal profession include: assessment of legal risk by prediction and compliance, decision making for legal processes, contract review, due diligence review, legal research, document preparation, and fraud detection.

C. Regulation of AI in the Legal Profession.

The organized bar has historically been reactive in addressing changes in technology. Congress has been working to understand and imagine AI and the organized bar is nowhere close to understanding the uses, benefits, and risks of AI. If Congress is having difficulty, then the organized bar will also be struggling with the concept. If history is any indication, it will take years to develop safeguards on the use of AI.

II. Relevant Definitions

A. Artificial general intelligence ("AGI," also called "hard AI") is "the ability of a digital computer…to perform tasks commonly associated with intelligent beings. The term is frequently applied to the project of developing systems endowed with the intellectual processes characteristics of humans, such as the ability to reason, discover meaning, generalize, or learn from past experiences." AGI is a machine that can think and act like a reasonably intelligent human under the same or similar circumstances, or exceed this standard. AGI is the type of artificial intelligence you see in a movie like *Her* or *Terminator*. AGI ***does not*** exist today.

B. Narrow artificial intelligence (also called "weak AI"), on the other hand, "is a specific type of artificial intelligence in which a learning algorithm is designed to perform a single task, and any knowledge gained from performing that task will not automatically be applied to other tasks." Examples of narrow AI include AI designed to play chess or recommend a movie on Netflix. Narrow AI cannot perform a task outside of its narrow training set. For example, an AI trained to play chess cannot add 1+1.

For purposes of this report, artificial intelligence includes two types of narrow AI: (1) generative artificial intelligence and (2) intelligent automation, which are defined below.

Generative artificial intelligence "is a type of artificial intelligence technology that can produce various types of content, including text, imagery, audio and synthetic data."

Intelligent automation "…combines AI and automation technologies, enabling the automation of low-level tasks within your business."

III. Statement of Principles of Illinois Lawyers Regarding the Need for Self-Regulation of Artificial Intelligence

A. The legal profession is largely self-governing. Although other professions also have been granted powers of self-government, the legal profession is unique in this respect because of the close relationship between the profession and the processes of government and law enforcement. This connection is manifested in the fact that ultimate authority over the legal profession is vested largely in the courts.

B. To the extent that lawyers meet the obligations of their professional calling, the occasion for government regulation is obviated. Self-regulation also helps maintain the legal profession's independence from government domination. An independent legal profession is an important force in preserving government under law, for abuse of legal authority is more readily challenged by a profession whose members are not dependent on government for the right to practice.

C. The legal profession's relative autonomy carries with it special responsibilities of self-governance. The profession has a responsibility to assure that its regulations are conceived in the public interest and not in furtherance of parochial or self-interested concerns of the bar.

IV. Statement of Existing Duties of Illinois Lawyers Relative to Artificial Intelligence

A. Competence

Under Rule 1.1 of the Illinois Rules of Professional Conduct, "[a] lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation." Comment 8 to Rule 1.1 states that "…a lawyer should keep abreast of changes in the law and its practice, including the benefits and risks associated with relevant technology…"

1. Under the existing rule, a lawyer should have awareness of the benefits and risks of relevant technology, which includes artificial intelligence.
2. Best practices in the application of this rule would require as part of a lawyer's competent representation personally checking any fact, law, or citation generated by artificial intelligence, and to require a lawyer to stay informed of changes in artificial intelligence technology prior to its use.

B. Communication

Under Rule 1.4 of the Illinois Rules of Professional Conduct, "[a] lawyer shall… reasonably consult with the client about the means by which the client's objectives are to be accomplished…[and]… explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation."

1. Under the existing rule, clients should be made aware that any portion of a lawyer's work product is created by artificial intelligence and should grant informed consent to the use of generative artificial intelligence.
2. Best practices in the application of this rule would require that the client's engagement agreement specifically address the use of artificial intelligence.

C. Confidentiality

Under Rule 1.6 of the Illinois Rules of Professional Conduct, "[a] lawyer shall not reveal information relating to the representation of a client…"

1. In 2016, the ISBA issued Advisory Opinion 16-06 regarding whether the use of Cloud-based storage violated the requirement under Rule 1.6 to maintain confidentiality. This advisory opinion noted: "Because technology changes so rapidly, we decline to provide specific requirements for lawyers when choosing and utilizing an outside provider for cloud-based services." The advisory opinion then recommended that prior to implementing a Cloud-based storage system a lawyer should investigate multiple items including: Reviewing safeguards that should be employed; determining whether the provider has implemented security precautions to protect client data from inadvertent disclosures; and requiring an agreement to reasonably ensure that the provider will abide by the lawyer's duties of confidentiality and immediately notify the lawyer of any breaches or outside requests for client information.
2. Best practices in the application of this rule and advisory opinion would require that lawyers investigate the use of artificial intelligence prior to deploying it. This inquiry should at a minimum require understanding how to utilize the technology without inadvertently disclosing client confidences.

   a. Example: It is very likely that submitting attorney-client information to a Cloud-based large language model ("LLM") like ChatGPT, is a violation of attorney-client privilege. While OpenAI does not use user data, inputs, or outputs to train its models, disclosure of this data for training purposes is not the only concern. OpenAI expressly "receive[s] rights in input and output necessary to provide [the user] with [OpenAI's] services, comply with applicable law, and enforce [OpenAI's] policies." This almost certainly means OpenAI receives the right to review the information. This means, if an attorney submits a prompt to a generative pre-trained transformer ("GPT") model, and that prompt contains attorney-client privileged information, OpenAI has the right to review that information. This would be a violation of Rule 1.6(e). Another concern is whether opposing counsel might be able to compel OpenAI to provide the prompt pursuant to subpoena. Attorneys should avoid including confidential client information in a prompt sent to a Cloud-based large language model.

   b. It is important to note that other LLMs hosted by different companies might use user input and the resulting output to train future models. Attorneys should review the company's data policy to ascertain what rights the company receives in input and output.

   c. Consulting with the client regarding the use of AI tools and obtaining the client's informed consent to the use of those tools based on the risks and benefits they present would also be consistent with Rule 1.2(a)'s requirement that a lawyer "consult with the client as to the means by which the [objectives of the representation] are to be pursued." If the client believes that the risks of (for example) a breach of confidentiality outweigh the benefits that the AI tool could provide, the client must have the opportunity to instruct the lawyer not to use the tool.

D. Advisor

Under Rule 2.1 of the Illinois Rules of Professional Conduct "…a lawyer shall exercise independent professional judgment…"

1. Best practices in the application of this rule would require a lawyer not to merely accept the "judgment" of artificial intelligence. Rather lawyers must exercise their independent professional judgment to ensure their clients' interests are protected.

V. Business Challenges

1. The AI revolution appears to be positioned to radically affect the billing structure of the legal industry and dramatically alter the billable hour structure of the practice. Value based billing may be will be taking the place of the billable hour structure for routine tasks.
2. There will be more competition from AI-driven tech companies operating as alternative legal service providers ("ALSP").
3. Law firms will develop their own technology and begin to operate offering AI as a Service ("AIaaS"), offering the same services as ALSPs. Law firms will develop their own AI tools and begin to package them as AIaaS. This will present many legal and ethical challenges.
4. The Chicago Bar Foundation ("CBF") has been running a study on alternative billing models that are acceptable. Since 2013, the CBF has been studying alternatives to the billable hour via the Justice Entrepreneurship Program ("JEP"). They have reached the conclusion that "[t]he billable hour is a barrier to accessing affordable legal services because it lacks transparency and predictability. The average legal consumer is on a budget and needs to understand what solution to their legal problem they can afford. The billable hour does not allow the consumer to make this determination."

To remedy this, they have released a tool called the Pricing Toolkit. The CBF/JEP describe the Pricing Toolkit as follows:

"This version of the Pricing Toolkit is a collaboration between The Chicago Bar Foundation and A Different Practice (ADP). Helping lawyers learn how to price based on

value instead of time is a core strategy for both the CBF and ADP to increase access to justice and promote a healthier, more sustainable practice of law."

VI. Ethical Considerations

A. Under Rule 1.5 of the Illinois Rules of Professional Conduct a lawyer is obligated to charge a reasonable amount for their fees.

1. ChatGPT was released in December 2022. Just prior to this, in September 2022, ISBA President Rory T. Weiler penned an article for the Illinois Bar Journal titled "Our Finest Hours." In that article, President Weiler stated: "…the determination of what is or is not a reasonable fee boils down to this salient and controlling factor: How many hours, counsel? And therein lies the rub. We all know that if we're being paid by the hour, our fee is going to be determined not by how brilliant of a lawyer we are, or how much experience we have, or how novel and successful our arguments might have been, or how nice of an outcome we secured for the client. Fees are determined by billable hours, period. There is no consideration of the value we added or used to achieve a good outcome for our client."
2. Generative AI instantaneously produces email and letter drafts, and, with the right prompting, is capable of producing drafts of pleadings, motions, and memos with citations, etc. (which require verification by an attorney). The hallucination problem—defined below—can be drastically mitigated by using reasonable prompting techniques. The use of reasonable prompting techniques can also mitigate the problem of hallucinated legal citations. However, because of the nature of how this technology works, hallucinations cannot be completely eliminated. Any work product generated by a LLM should be thoroughly reviewed by an attorney. Conceptualize this relationship like the relationship between a first-year associate and a partner in a law firm. The partner should always review all associate's work product for accuracy. Attorneys should seek assistance in understanding reasonable prompting techniques to better understand how to avoid hallucinations and other similar problems.
3. Understanding AI hallucinations
    a. "A hallucination or artificial hallucination (also called confabulation or delusion) is a confident response by an AI that does not seem to be justified by its training data." Hallucinations are generally wrong answers.
    The following examples are examples of hallucinated caselaw (with citation). These examples were hallucinated verbatim by GPT-4. The cases cited in these two examples do not exist.
    1. Example One: "In the case of *Martinez v. K Mart Corp.*, 944 N.E.2d 968 (Ill. App. 2011), the plaintiff fell in a K Mart store and claimed that the store was negligent for failing to adequately warn of the hazard. The court held that the store had fulfilled its duty to maintain the property in a reasonably safe condition by placing a "wet floor" sign in the area where the plaintiff fell. However, the court also noted that the presence of a warning sign alone may not necessarily absolve the property owner of liability if the hazard was not adequately marked or if the sign was not placed in a conspicuous location."
    2. Example Two: "In the case of *Williams v. J.C. Penney Co., Inc.*, 830 N.E.2d 699 (Ill. App. 2005), the plaintiff fell on a wet floor in a J.C. Penney store and claimed that the store was negligent for failing to adequately warn of the hazard. The court held that the store had fulfilled its duty to maintain the property in a reasonably safe condition by placing a "wet floor" sign in the area where the plaintiff fell and by cordoning off the area with caution tape."

    b. The hallucination problem is not all bad. Hallucination arguably represents a form of creativity. This is important because it represents the first time that humans have made a machine that is capable of being creative.
4. In that world, it may no longer be reasonable for an attorney to charge for all their time. Projects that may have taken hours will now be completed in minutes. The need for legal thought will remain, but the end result of that thought will be produced much more efficiently.
5. As ISBA President Weiler concluded in "Our Finest Hours," "[w]e need to reevaluate using the billable hour as the controlling metric for fees…because it negatively affects the public we serve. Focusing solely on billable hours as a form of compensation has the unintended effect of concentrating lawyers' attention on the billable hour, not what is or might best be done to advance the client's interests."
6. In advancing our clients' interests in compliance with Rule 1.5, those reasonable fees can currently be structured under the billable hour, contingency fee, fixed fee, advanced payment fee retainers, etc.

7. A 2022 survey by the Florida Bar Association showed 67 percent of responding attorneys using the billable hour. Although this data is not available for Illinois, it is likely that the percentage of Illinois lawyers using the billable hour is similar.
8. Assuming Illinois lawyers are similarly situated and loosely 67 percent of our 95,000 attorneys also utilize the billable hour, we need to be prepared to recognize that a massive change in the business model for the majority of our attorneys (63,650) is about to occur as they shift from a straight billable hour model to some alternative.
9. But this is not just a challenge to the majority of lawyers' business models or an acceleration of the existing trend towards value-based billing. It is also an opportunity to increase access to justice.
10. The American Bar Association's Practice Points published an article by Leonard Wills titled "Access to Justice: Mitigating the Justice Gap." This article summarizes the issue as follows: "Access to justice remains one of the fundamental principles of the rule of law. Access to justice consists of the 'ability of individuals to seek and obtain a remedy through formal or informal institutions of justice for grievances.' This process usually requires individuals to obtain legal representation—or at a minimum legal advice. Without legal assistance, individuals can struggle to navigate through the complexity of court procedures. An individual's failure to understand court procedures, and the substantive law-related issues of their case can lead to the loss of a home, children, job, income, and liberty."
11. This same article cites an American Bar Association study and Washington Post reporting stating: "Here in the U.S.—and other parts of the world—legal representation continues to remain expensive for most. This lack of affordability limits an individual's access to justice, and contributes to what some refer to as the justice gap. A recent study shows that approximately 80 percent of low-income individuals cannot afford legal assistance. The middle-class struggles, too: a study shows that 'forty to sixty percent of their legal needs go unmet.'"
12. As of April 2023, Fox 32 Chicago reports that to be middle class in Illinois, your income would need to be between "$48,377 to $144,410." With the obvious implication that those with low income earn less than $48,377.
13. As of 2021, the population of Illinois is 12,582,032. Approximately 46.18 percent of Illinois households (loosely 5,810,382 people) would be classified as middle class, earning between $50,000 and $149,999. And approximately 35.22 percent of Illinois holds (loosely 4,431,392 people) would be classified as low-income, earning less than $50,000 per year.
14. When used properly, GAI should increase efficiency. But with 80 percent of legal need going unmet for over 4 million of our low-income Illinoisans and 60 percent of legal need going unmet for almost 6 million of our middle-class Illinoisans, there is a huge opportunity to both increase access to justice and improve the lives and businesses of Illinois lawyers.
15. Simply put, with the anticipated transition away from the billable hour and with the added efficiency that lawyers augmented with artificial intelligence can produce, Illinois lawyers can and should price services based on value to the client.
16. This will allow lawyers to focus solely on the elements of law only a lawyer can handle, while automating those items that can be automated via either intelligent automation or generative artificial intelligence.
17. The end result will be a reduction in cost of legal services, as a result of lower costs and an increase in the size of the client base as the middle and lower classes will be able to afford alternative pricing models.
18. Currently, in compliance with Rule 1.5, fees can be structured under the billable hour, contingency fee, fixed fee, advanced payment fee retainers, etc.
19. In September 2020, with the input of members of the Illinois State Bar Association, the Chicago Bar Association, and Chicago Bar Foundation's Task Force on the Sustainable Practice of Law and Innovation released their report. With regard to the billable hour that report stated:
    a. "One of the biggest impediments to affordable legal help in the consumer and small business market is that the market for legal services today is largely opaque when it comes to pricing. People who might be able to afford the legal help they need often do not even try to get a lawyer because they have no idea what it might cost. This problem exists because the billable hour remains the primary means of pricing services in this market. In addition to lacking transparency and cost certainty for clients, the billable hour also misaligns incentives for efficiency, innovation, and value. In contrast, fixed and subscription fee billing have become the norm in most other industries today. Consumers expect companies to tell them up front how much their products and services are going to cost. Doing so allows all consumers, especially budget-conscious consumers, to determine whether the product or service fits within their budget prior to making the purchase. Legal services should be no different, and in fact many attorneys

(e.g., attorneys in the CBF Justice Entrepreneurs Project) already have recognized the importance and benefits of offering fixed and subscription fee agreements: predictability and transparency for the legal consumer and better cash flow for the attorney. Not surprisingly, the response from legal consumers has been overwhelmingly positive. Yet because the Rules of Professional Conduct don't explicitly permit the use of these other types of fee agreements (only implicitly in IRPC 1.5 and 1.15) or the filing of fee petitions based on these agreements, many attorneys and judges question whether using them is ethical. Choosing to avoid the risk associated with the uncertainty, most attorneys continue to resort to hourly rate agreements, which is problematic for legal consumers and attorneys alike. The proposed comment to Rule 1.5 is meant to achieve two goals. The first goal is to clarify that offering fee agreements based on arrangements other than an hourly rate is permitted under the Rules. The second goal is to encourage broader use of these alternative agreements by attorneys through the provision of concrete examples of fee arrangements not based on an hourly rate. The proposed Supreme Court Rule is meant to clarify for judges and attorneys that any fee agreement that is reasonable under the circumstances under Rule 1.5 can be the basis for a fee petition and does not require time-based entries except in the limited circumstances specified in the Rule. The new Rule will explicitly allow lawyers who utilize other types of value-based fee agreements to petition for fees without having to revert to the billable hour, encouraging more lawyers to offer this more consumer-friendly pricing and improving access to affordable legal help in the process."\

The Task Force recommended maintaining the requirement that fees be reasonable but make clear that reasonably priced alternatives to the billable hour are acceptable. To accomplish this, they recommended a comment be added to Rule 1.5. Specifically:

b. PROPOSED COMMENT FOR RULE 1.5: FEES

> i. Types of Fee Agreements Permitted: Rule 1.5 allows fee agreements that are not based on an hourly rate so long as the fee is reasonable for the services performed. Attorneys are encouraged to make fee agreements that are not based on an hourly rate because it makes the cost of legal services more transparent, predictable, and often more affordable for clients. Some examples of these types of fee agreements include: • fixed fees by task or phase of a case, • fixed fees for an entire case, • recurring fixed monthly fees (also called a subscription fees), • pure contingency fees (the attorney receives a percentage of the amount recovered for the client), • reverse contingency fees (the attorney receives a percentage of the amount of money saved for the client), or • a hybrid of any of these arrangements. The fees received under these fee agreements must be reasonable as allowed under Rule 1.5. Lawyers using these fee agreements may establish the reasonableness of fees based upon the value provided.

The Task Force further recommended a new Illinois Supreme Court Rule 300 on Attorney Fee Petition. Structured as follows:

Rule 300 – Attorney's Fee Petitions

(a) In any action where an attorney's fees are recoverable by statute, rule, contract, or order of the Court, an attorney may file a fee petition. The fee petition can be based on any fee agreement that is allowed under Rule 1.5 of the Rules of Professional Conduct, so long as:

1. the fee petition is based on the attorney's written fee agreement with their client,
2. the fee agreement with their client was reasonable under the circumstances as allowed under Rule 1.5, and
3. the fee petition includes a reasonable summary of the value of the attorney's services to their client and of the fee agreement. A contingent fee agreement, however, cannot be the basis for a fee petition against an opposing party.

(b) An attorney's fee petition does not require time-based entries unless:

1. the attorney's fee agreement was based, in whole or in part, on an hourly rate;
2. the attorney seeks to recover more than the amount the client agreed to pay under the fee agreement, and the

amount of the award is not otherwise fixed by statute, rule, contract, or order of the court; or

3. the attorney had a contingent fee agreement with their client and seeks to recover a fee under a statutory, contractual, or other fee-shifting provision.

(c) The fact that the attorney originally took the case on a pro bono basis shall not prevent the attorney from petitioning for and recovering fees so long as the attorney complies with sections (a)(3) and (b) of this Rule.

The Task Force further recommended adding comments to the new Rule 300 to state:

(c) "This Rule clarifies that any fee agreement that is reasonable under the circumstances under Rule 1.5 may be the basis for an attorney's fee petition, with limited exceptions. Historically, courts have required attorney's fee petitions to be based on an hourly fee arrangement even when that was not the agreement with the client. Under Rule 1.5, there are many fee agreements beyond the traditional hourly billing model that are allowed. Examples include recurring fixed monthly fees, fixed fees for an entire case or part of a case, and contingent fees, among others. Going forward, if the fee petition is based on the actual fee agreement with the client and includes a summary of the value of the services provided to the client, courts cannot require submission of time-based entries unless section (b) applies. The Rule clarifies that a contingent fee agreement can be used as the basis for a fee petition except when the attorney seeks to enforce the petition against an opposing party, in which case section (b) of the Rule applies. Nothing in this Rule, however, is intended to displace the longstanding law that allows a discharged attorney who has asserted a lien on a former client's recovery from enforcing that lien. Section (c) of the Rule codifies the prevailing case law that an attorney can file a fee petition even though they originally took the case pro bono so long as the attorney complies with this Rule. The public policies that support fee shifting statutes and rules would be frustrated if the award of attorney's fees were dependent on the type of fee arrangement the attorney had with their client. Determining the value of the attorney's services to the client involves more than the actual legal services provided. It includes other value the client receives from a particular fee agreement that is not based on the traditional hourly billing model. Examples include price transparency, price certainty, risk management, convenience, accessibility, and peace of mind. An additional way the value of the attorney's services should be recognized is the attorney's skill in explaining the legal process to the client and helping the client to understand what happened, what is happening, and what is likely to happen in the future of the legal matter. An attorney with this skill will limit uncertainty and stress for the client."

20. The Illinois State Bar Association's Artificial Intelligence Committee believes the addition of the comment to Rule 1.5 and the addition of Rule 300 would position Illinois lawyers to ethically adjust to the challenges of artificial intelligence, transition away from the billable hour as the dominant business model, and increase access to justice for the Illinois population.
21. The Committee further notes that as part of the work of the JEP, an incubator for alternatives to the billable hour, there is a document available for download: The Pricing Toolkit. This resource should be shared with all Illinois attorneys interested in beginning the thought process of how to transition from the billable hour to value based billing.

Much as the Attorney Registration and Disciplinary Commission concluded in 2016 about Cloud-based services, "Because technology changes so rapidly, we decline to provide specific requirements for lawyers when choosing and utilizing an outside provider for…" artificial intelligence. However, we would remind lawyers of their existing ethical obligations as applied to artificial intelligence. We also ask the Illinois State Bar Association help preserve our duties as a self-regulating profession by proactively working to add the comment to ethical Rule 1.5 and to create the proposed Supreme Court Rule 300 to allow both: (1) lawyers to successfully navigate the changing business environment created by artificial intelligence and (2) to increase access to justice for underserved Illinoisans by clarifying that alternative billing structures are acceptable and encouraged in Illinois.

VII. Conclusions and Recommendations

The legal industry will be contending with how to position itself in the new AI paradigm. This is an evolving technology that is difficult to predict. Although litigation may not see as much radical change as other parts of the practice, solo practitioners and small- and mid-sized firms will need to adapt to the changes and challenges. We will have to focus on technological development and the human interaction of the practice. As attorneys we have an ethical responsibility to stay abreast of the changes and benefits of technology and the other rules. The existing rules have been designed and do take into consideration evolving technologies.

The Committee makes the following recommendations for the ISBA:

1. Develop a series of educational programs to educate attorneys and staff on the benefits, limits and uses of AI.
2. Conduct a study on the effects of AI on the unique issues facing the practice in Illinois.
3. Conduct a study on the use of AI in the development of access to justice.
4. Suggest recommendations to the courts and bar on rules and procedures regarding the use of AI in the practice.
5. Establish a separate, standing committee on the use, governance, and development of AI to focus on

the unique challenges facing the profession.

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1. https://www.americanbar.org/groups/professional_responsibility/publications/professional_lawyer/27/1/the-future-law-firms-and-lawyers-the-age-artificial-intelligence/.
2. https://www.abajournal.com/web/article/latest-version-of-chatgpt-aces-the-bar-exam-with-score-in-90th-percentile.
3. There now are LLMs which you can put on a server (338 GB of space needed) and run from a computer with only 16 GB of ram (meaning you can have your own in-house AI).
4. LLMs have been created which can now put on a server (338 GB of space needed) and run from a computer with only 16 GB of ram (meaning you can have your own in-house AI).
5. "The Potentially Large Effects of Artificial Intelligence on Economic Growth." Briggs/Kodnani. March 26, 2023.
6. https://www.texasbar.com/AM/Template.cfm?Section=articles&Template=/CM/HTMLDisplay.cfm&ContentID=46315.
7. https://www.nytimes.com/2023/08/24/upshot/artificial-intelligence-regulation.html. The bar should be looking at ways for the profession to use the benefits of AI while minimizing the risks.
8. https://www.britannica.com/technology/artificial-intelligence.
9. https://www.techopedia.com/definition/32874/narrow-artificial-intelligence-narrow-ai.
10. https://www.techtarget.com/searchenterpriseai/definition/generative-AI.
11. https://www.ibm.com/topics/intelligent-automation.
12. These principles were drawn from the Preamble to the Illinois Rules of Professional Conduct.
13. The ISBA Artificial Intelligence committee thanks the MIT Task Force on Responsible Use of Generative AI for Law. As we all seek to adjust to the rapidly changing artificial intelligence landscape, their willingness to share draft reports to obtain feedback and input as well as spark thought on the topic of artificial intelligence and law were immensely helpful to the creation of this report.
14. https://www.isba.org/sites/default/files/ethicsopinions/16-06.pdf.
15. The committee was split on including the provision regarding business challenges but this provision was included by a 6-5 vote of the committee.
16. The Pricing Toolkit can be downloaded here: https://adifferentpractice.com/?sdm_process_download=1&download_id=3285.
17. https://www.isba.org/ibj/2022/09/ourfinesthours.
18. *Mata v Avianca, Inc.*, 22-cv-1461 (S.D.N.Y. June 22, 2023) (https://storage.courtlistener.com/recap/gov.uscourts.nysd.575368/gov.uscourts.nysd.575368.54.0_2.pdf)
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24. https://www.census.gov/quickfacts/fact/table/IL/BZA210221.
25. https://namecensus.com/demographics/illinois/.
26. https://chicagobarfoundation.org/wp-content/uploads/2023/04/task-force-report.pdf.
27. There is case law in the nursing home cases which may differ from this comment.
28. https://adifferentpractice.com/?sdm_process_download=1&download_id=3285.
29. The ABA task force will focus on six key issues:
- Impact of AI on the legal profession
- Access to justice
- AI benefits and challenges
- AI governance
- AI and legal education
- AI risk management

See: https://www.americanbar.org/groups/leadership/office_of_the_president/artificial-intelligence/.
30. Attorneys are currently responsible for the contents of their pleadings and the Committee does not believe any further requirements are needed on this point. See Supreme Court 137 and FRCP 11.

Rule 45. Remote Appearances in Circuit Court Proceedings

(a) Definitions.

(1) The terms "remote" or "remotely" mean the participation of all or some case participants in a court proceeding by telephone, video conference, or other electronic means. Except as otherwise specifically provided in this rule, a remote appearance or court proceeding shall be equivalent to an in-person appearance or court proceeding for all purposes.

(2) The term "in-person" means the participation of all or some case participants in a court proceeding by being physically present in the courtroom.

(3) "Case Participant" means any individual participating in a court proceeding including, but not limited to, the parties, criminal defendants, minors, lawyers, guardians *ad litem*, guardians, youth in the care of the Department of Children and Family Services (DCFS), witnesses, experts, interpreters, treatment providers, probation officers, pretrial officers, DCFS caseworkers and contract service providers, court reporters, clerks of court, and the judge presiding over the case. This term does not include jurors, the public, or members of the media that are not a party or witness in the case.

(4) For purposes of this rule:

(i) "Civil Matters" shall mean the following case types as defined in the Manual on Recordkeeping, adopted by the Supreme Court under M.R. 1218, as most recently amended: Arbitration (AR), Chancery (CH), Eminent Domain (ED), Eviction (EV), Foreclosure (FC), Government Corporation (GC), Guardianship (GR), Law: Damages over $50,000 (LA), Law: Damages $50,000 or less (LM), Mental Health (MH), Miscellaneous Remedy (MR), Probate (PR), Small Claim (SC), Tax (TX), Adoption (AD), Dissolution with Children (DC), Dissolution without Children (DN), Family (FA), Contempt of Court (Civil) (CC), Civil Law Violation (CL), Miscellaneous Criminal (non-classified criminal actions) (MX), and Order of Protection (OP).

(ii) "Criminal Matters" shall mean the following case types as defined in the Manual on Recordkeeping, adopted by the Supreme Court under M.R. 1218, as most recently amended: Criminal Felony (CF), Criminal Misdemeanor (CM), Conservation (CV), Driving Under the Influence (DT), Domestic Violence (DV), Major Traffic (MT), Ordinance (OV), Quasi-Criminal (QC), Minor Traffic (TR), and Contempt of Court (Criminal) (CC).

(iii) "Juvenile Delinquency Matters" shall mean the Juvenile Delinquent (JD) case type as defined in the Manual on Recordkeeping, adopted by the Supreme Court under M.R. 1218, as most recently amended.

(iv) "Juvenile Abuse, Neglect, and Dependency Matters and Juvenile Intervention Matters" shall mean the Juvenile Abuse and Neglect (JA) and Juvenile (JV) case types as defined in the Manual on Recordkeeping, adopted by the Supreme Court under M.R. 1218, as most recently amended.

(b) General Provisions.

(1) A judge presiding over a case in which the option to appear remotely without any advance approval is permitted may, in the exercise of the judge's discretion, require a case