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**ADVANCING THE PROFESSION THROUGH EDUCATION**

**Demystifying Generative AI for Legal Professionals: Opportunities, Risks, and Ethical Considerations**

1 Ethics Credit

Sponsor: KBA AI Task Force

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## DEMYSTIFYING GENERATIVE AI FOR LEGAL PROFESSIONALS: OPPORTUNITIES, RISKS, AND ETHICAL CONSIDERATIONS

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The Law Practice Management Committee and the AI CLE Subcommittee tasked us to prepare a CLE session to address how Artificial Intelligence (AI) is entering into the practice of law with a goal of demystifying the topic for Kentucky lawyers. Many attorneys are apprehensive about AI and most have not even tested it. This session focuses on the use of Generative AI (GAI) like ChatGPT. In the spirit of testing the capabilities of AI, we used AI to generate the proposal. We decided to adopt the four points ChatGPT v3.5<sup>1</sup> proposed.

1. **Understand the Fundamentals of Generative AI:** Gain a solid grasp of the key concepts, technologies, and mechanisms behind Generative AI, tailored for a legal audience.
2. **Evaluate the Risks and Benefits:** Learn to critically assess the advantages and potential pitfalls of Generative AI tools in legal practice, including ethical considerations and data privacy concerns.
3. **Identify Appropriate Use Cases:** Discover practical applications of Generative AI in law, from document automation to predictive analytics, and how these tools can enhance efficiency, accuracy, and service delivery.
4. **Navigate the Landscape of AI Tools:** Develop the ability to distinguish between various types of Generative AI models (public/open vs. private) and understand the criteria for their evaluation and integration into legal workflows.

Before addressing the topics suggested by ChatGPT, it is crucial to explain that lawyers have been using artificial intelligence for some time. Beyond the simple aspects of type-ahead, auto-correct, and grammar checking, we have special purpose AI systems. The TREK Legal Track System was first used in 2006 and showed that technology was both faster and more accurate than human review.<sup>2</sup> Maynard Nexsen wrote an article in 2017 that documented that Technology Assisted Review (TAR) has been accepted in both state and federal courts since 2012.<sup>3</sup> Nexsen's article captured several comments from cases where the judges addressed the fact that TAR can be faster and more reliable than human review. Many of the fears we hear about AI parallel the fears the legal profession had for TAR about a decade ago, and that should not be a surprise since TAR is a basic AI system. The difference between TAR and GAI is that lawyers build the language model and coding that is used to automate the review of the documents.

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<sup>1</sup> <https://chatgpt.com/>.

<sup>2</sup> Jesse White, "How Technology-Assisted Review (TAR) Can Enhance eDiscovery," Kira (Apr. 24, 2020), available at <https://kirasystems.com/learn/how-tar-can-enhance-ediscovery/#:~:text=Developers%20introduced%20the%20TREC%20Legal%20Track%20system%2C%20a,only%20more%20effective%20than%20humans%2C%20but%20also%20cheaper.>

<sup>3</sup> Maynard Nexsen, "The State of Technology Assisted Review in 2017," JDSupra (Feb. 7, 2017), available at <https://www.jdsupra.com/legalnews/the-state-of-technology-assisted-review-45256/#:~:text=Federal%20or%20state%20courts%20in%20California%2C%20Delaware%2C%20Georgia%2C,to%20search%20for%20relevant%20electronic%20information%20since%202012.>

## I. UNDERSTAND THE FUNDAMENTALS OF GENERATIVE ARTIFICIAL INTELLIGENCE

### A. What is GAI?

Artificial Intelligence is a continuation of the technological journey of the use of computers. At its core, AI is simply a complex program that is given an input (called a prompt) and returns an answer. This answer is based on the information used to train the AI system. The answer is basically a matching game, which takes a question and compares it to the data stored in its database to find the best match.

Generative AI can be described as an advanced type-ahead feature. Early type-ahead would suggest the next word alphabetically in system dictionary. As type-ahead matured, the algorithm started prioritizing a personal dictionary over a default dictionary. Then the system started looking at more frequently used words. The next level of maturity was to look at commonly paired words, then phrases. What GAI does is to provide a response that is the best prediction of the expected answer based on a complex search of the terms in the prompt and the most responsive matches in its massive training data repository.

The technology behind generative AI is difficult to explain for IT professionals. It is even more difficult to explain to attorneys, and it is almost impossible to explain to jurors. The core of AI is feeding data into a machine learning algorithm, which processes that data into information. There are several ways to train an AI system. Ravikumar Buragapu's article "Demystifying the Elements of the Generative AI"<sup>4</sup> provides a somewhat technical 10,000-foot view of the science and categories of AI.

At its core, data scientists feed millions of documents to the GAI models to build the knowledge base, commonly known as a Large Language Model (LLM). The algorithms calculate, correlate, and assimilate the data to approximate what the model is programmed to consider, and in return it provides an acceptable response to the inputs. In many ways, the answers are glorified type-ahead responses to the questions posed by users.

### B. What is the Fundamental Skill Needed to Use GAI Effectively?

To get the most out of GAI, the lawyer must become proficient at creating the prompts. The primary benefit that GAI can offer attorneys is improved drafting and editing of documents. Harvard University's IT department provides an excellent starting place for developing effective prompts for GAI.<sup>5</sup> The specific components of an effective prompt are:

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<sup>4</sup> Ravikumar Buragapu, "Demystifying the Elements of the Generative AI," Medium.com (May 17, 2023), <https://medium.com/@ravikumar.buragapu/demystifying-the-elements-of-generative-ai-d66abb8a11d2#:~:text=The%20architecture%20of%20generative%20AI,and%20relationships%20in%20the%20data>.

<sup>5</sup> Harvard University Information Technology Site, "Getting Started with Prompts for Text-based Generative AI Tools" (Aug. 20, 2023) available at <https://huit.harvard.edu/news/ai-prompts>.

- Be specific
- State the point of view to use (*i.e.*, “Act as if...”)
- Tell it how you want your output to be presented
- Use “do” and “don’t”
- Use examples
- Consider tone and audience
- Build on previous prompts
- Correct mistakes and give feedback
- Ask it to create your prompts or what else it needs from you

Appendix A has an example of Chat GPT v3.5 used to develop a living will for a fictitious person named Carrie Oakey. You can tell that the basic prompts left out much of what is required for Kentucky. Even after pointing the system to use the specific KRS statute and the Attorney General’s sample forms, additional work and editing was needed. An interesting point is that once I told the system to include specific language, it continued to include that language, even when it no longer applied.

## II. EVALUATING THE RISKS AND BENEFITS

### A. What are the Benefits?

GAI can improve the quality and speed it takes to generate content. The readability of materials, the spelling, the grammar, and even the overall organization can be improved. It is also easier and more effective for some people to edit something that has already been created than to create the content themselves. If they create the content themselves, they may be less likely to find grammatical and spelling errors because they read what they intended to write when editing. We have legal professionals, from paralegals to judges, using GAI to improve their documents before passing them on to others for review.

Another benefit that GAI offers is the ability to review massive quantities of data and summarize that data. Attorneys, on both sides of cases, are using GAI for analyzing massive quantities of eDiscovery to find potential opportunities to use that data to support their legal cases. Attorneys are even using GAI to review depositions and interrogatories to find inconsistencies and to see if there are aspects of their case that were missed or inadequately explained.

One common use of GAI is to perform legal research. The two most widely known GAI systems used for legal research are the Lexis+ AI ([plusai.lexis.com](https://plusai.lexis.com)) solution and Thomson Reuters’ CoCounsel ([casetext.com/cocounsel/](https://casetext.com/cocounsel/)). Thomson Reuters

acquired Casetext in 2023. Other options do exist. Some are niche products and others promise to be good alternatives to PlusAI and CoCounsel.

Some in-house attorneys are using GAI to identify inconsistencies in their contracts, such as the absence of privacy clauses, undesired or missing choice of law clauses, missing liquidated damages clauses, expired NDAs, etc.

Another way AI can benefit a law firm is that AI bots can be used to help collect data from potential clients that visit your website and may want to hire you. The systems can complete the intake process and even begin client confidentiality checks. Some of these systems can even initiate preliminary engagement letters.

Some Legal AI systems are not even marketed to lawyers. These are often used in attempts by people to address their legal needs *pro se*. The most popular of these systems is [DoNotPay.com](https://www.donotpay.com) which offers assistance that includes topics like appealing parking tickets and appealing financial aid decisions.

## B. What Are the Risks?

There are several risk areas you must consider when looking to expand into GAI. The most egregious issues involving AI have been the issue with “hallucinations” in legal research. As stated above, the GAI systems take the prompts and make their best guess at what the desired output should be. Many times, these GAI responses are following a template consistent with what they have processed during the machine language training process. As a result, sometimes the GAI system will provide an answer that looks right but may not be factually correct. This is what the AI industry calls “hallucinations.” The primary way this shows up in legal research is where the cases cited in the GAI response do not actually exist. Attorneys have been sanctioned in New York<sup>6</sup> for this behavior. An attorney in Colorado was suspended from practicing law for 90 days for using AI and lying about it.<sup>7</sup> Even the well-known attorney Michael Cohen has admitted to doing this.<sup>8</sup> If you use GAI in your practice, you must look at the data critically. Do not just accept what is provided at face value.

A huge ethical risk is using public GAI systems like ChatGPT v3.5. Using these systems can place you at several potential risk areas regarding potential violations

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<sup>6</sup> Sara Merken, “New York lawyers sanctioned for using fake ChatGPT cases in legal brief,” Reuters (Jun. 26, 2023) available at <https://www.reuters.com/legal/new-york-lawyers-sanctioned-using-fake-chatgpt-cases-legal-brief-2023-06-22/#:~:text=A%20U.S.%20judge%20on%20Thursday%20imposed%20sanctions%20on,citations%20generated%20by%20an%20artificial%20intelligence%20chatbot%2C%20ChatGPT>.

<sup>7</sup> Michael Karlik, “Disciplinary judge approves lawyer’s suspension for using ChatGPT to generate fake cases,” Colorado Politics, (Dec. 2, 2023) available at [https://www.coloradopolitics.com/courts/disciplinary-judge-approves-lawyer-suspension-for-using-chatgpt-for-fake-cases/article\\_d14762ce-9099-11ee-a531-bf7b339f713d.html](https://www.coloradopolitics.com/courts/disciplinary-judge-approves-lawyer-suspension-for-using-chatgpt-for-fake-cases/article_d14762ce-9099-11ee-a531-bf7b339f713d.html).

<sup>8</sup> Benjamin Weiser and Jonah E. Bromwich, “Michael Cohen Used Artificial Intelligence in Feeding Lawyer Bogus Cases,” *The New York Times*, (Dec. 29, 2023) <https://www.nytimes.com/2023/12/29/nyregion/michael-cohen-ai-fake-cases.html>.

of ethical rules. If your prompts and responses are available to others, and they often are available to the companies who run these systems, then you could be violating client confidentiality. You could even be waiving attorney client privilege. Do not think that you can just anonymize the data to a degree that nobody would be able to determine who is involved or not. Rather the system and the companies who have created these systems could be able to leverage the data you place in the query to determine that the specifics you are inputting are the ones related to a particular case and client. Using a system that provides the contractual as well as the technical controls needed to limit access and protect client data is required to use these systems ethically if you plan to use client data. Here are some specific questions you need to answer before using any particular GAI:

- What are the privacy controls in place for my use of this system?
- Who can view the prompts in the future?
- Who owns the content created by this system?
- How long will the prompts and responses be retained?
- Will your prompts and responses be used for training the AI system?

Another risk is that these systems may not have been trained on the most current data available. ChatGPT v3.5 is a free version of this AI technology and was only recently updated to include data up to January 2022 from the original date in 2021. ChatGPT v4 has data available up to April 2023. The newer GAI system Claude has data up until January 1, 2024. For the obvious reason, this can be an issue when performing research and is one reason why any legal research should be done with a system that contains the most current cases.

Another risk is that once data has been entered into a GIA system, that data cannot just be corrected. The entire system may need to be rebuilt to address the issues. One way to attack some AI systems is called AI Poisoning, where the system is retrained with data that causes the system to respond with errors. If a bad actor were to feed a million images of cats to an AI system to train it that these were actually dogs, the AI system would be more likely to say a dog was a cat. The same can be true of any topic where there is a concerted effort to “confuse” the system. This is one reason why it is hard to just correct a bad outcome from a GAI system. Once it is open to relearning, the data feed to the system can affect the existing model.

Another risk is that the data in a GAI system can have both implicit and explicit biases. Many of the results will have a decidedly western or even U.S.-centric focus due to the nature of the data used to train the systems. A query regarding freedom of the press or freedom of religion will not default to the point of view of a country like Myanmar or Saudia Arabia. That is a somewhat explicit bias that is easy to discern. Other biases are based on the more subtle nuances found in the data used to train the system. I tend to liken these biases to the concepts of disparate treatment and disparate impact I learned while studying employment law. Some of the bias you see in an AI system will be easy to identify and you may be

able to address it with some effort, other biases will be much harder to substantiate. This is why there is a danger in using GAI in the financial industry to help make decisions regarding lending practices. If the GAI system was trained using redlining lending practices, the models will likely perpetuate the same harms. Amazon ditched its AI recruiting tool because they discovered it had a bias against women.<sup>9</sup> This was the impetus for New York City's regulation on the use of AI in the hiring process.<sup>10</sup>

Just like many of the laws involving the use of computers, such as data breach notification and privacy laws, states are starting to pass laws on the use of AI.<sup>11</sup> Illinois, Maryland, New York, and Utah already have laws in place.

Many of the more experienced attorneys who have tested the use of GAI in practice have stated that you must treat GAI as if it is an adverse party. Challenge it to explain why it made the decisions it made. Ask for the evidence it is using to support the response it provided. Do not just assume that the testimony it is giving you is the truth.

With the ease of using GAI, once you have used it for a while and become comfortable, you may find there is a risk to venture into the practice of law in areas outside your competency. You know your key cases and practice tips for where you practice most often. If you are practicing outside your regular areas, you may not know the key cases or the failure of the GAI system to address points you are not aware you need to address.

### III. ETHICAL AND PROFESSIONAL IMPLICATIONS OF GENERATIVE AI

As a powerful tool for the practice of law and the administrative functions within a law office, generative AI (GAI) will eventually impact most practitioners in some way. When it does, it must be used in a way that conforms with a lawyer's professional responsibilities, including the lawyer's rules of ethics, especially in terms of client confidentiality, the accuracy of generated content, and with an appreciation of the potential biases inherent in AI algorithms.

#### A. Kentucky Rules of Ethics

Currently there are no Kentucky court rules addressing the use of AI or GAI in the preparation of filings submitted to the court. However, the Kentucky Bar Association has established an AI Task Force, and guidance regarding AI is

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<sup>9</sup> Jeffery Dastin, "Insight – Amazon scraps secret AI recruiting tool that showed bias against women," Reuters (Oct. 18, 2018) available at <https://www.reuters.com/article/idUSKCN1MK0AG/>.

<sup>10</sup> Steve Lohr, "A Hiring Law Blazes a Path for A.I. Regulation," *The New York Times* (May 25, 2023) available at <https://www.nytimes.com/2023/05/25/technology/ai-hiring-law-new-york.html#:~:text=The%20city%E2%80%99s%20law%20requires%20companies%20using%20A.I.%20software,and%20analyze d.%20Companies%20will%20be%20fined%20for%20violations.>

<sup>11</sup> Husch Blackwell, "Tracking U.S. state artificial intelligence legislation," (Last visited May 11, 2024) available at <https://www.huschblackwell.com/2024-ai-state-law-tracker>.

expected to be forthcoming.<sup>12</sup> Even without specific rules, Kentucky has a number of relevant ethics rules that may be applied to the use of GAI. These include [SCR 3.130\(1.1\)](#) Competence;<sup>13</sup> [SCR 3.130\(1.6\)](#) Confidentiality of information;<sup>14</sup> [SCR 3.130\(2.1\)](#) Advisor;<sup>15</sup> [SCR 3.130\(3.1\)](#) Meritorious claims and contentions;<sup>16</sup> [SCR 3.130\(3.3\)](#) Candor toward the tribunal;<sup>17</sup> and [SCR 3.130\(4.1\)](#) Truthfulness in statements to others.<sup>18</sup>

There is also a KBA [Ethics Opinion 437](#) (2014), which answers a technology question from days-gone-by: “May lawyers use cloud computing with client’s confidential information?”<sup>19</sup> To answer the question, the opinion relied upon Comment 6 to rule [SCR 3.130\(1.1\)](#), on “maintaining competency.”

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

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<sup>12</sup> Editor’s Note: See KBA Ethics Opinion E-457 issued on March 15, 2024 and available online at [https://cdn.ymaws.com/www.kybar.org/resource/resmgr/ethics\\_opinions\\_\(part\\_2\)/kbae457artificialintelligenc.pdf](https://cdn.ymaws.com/www.kybar.org/resource/resmgr/ethics_opinions_(part_2)/kbae457artificialintelligenc.pdf).

<sup>13</sup> [KY SCR 3.130\(1.1\)](#) “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>14</sup> [KY SCR 3.130\(1.6\)](#) requires a lawyer to keep client information confidential, except when disclosure is permitted under narrow circumstances not relevant here.

<sup>15</sup> [KY SCR 3.130\(2.1\)](#) “In representing a client, a lawyer shall exercise independent professional judgment and render candid advice. In rendering advice, a lawyer may refer not only to law but to other considerations such as moral, economic, social and political factors, that may be relevant to the client’s situation.”

<sup>16</sup> [KY SCR 3.130\(3.1\)](#) “A lawyer shall not knowingly bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous, which includes a good faith argument for an extension, modification or reversal of existing law. A lawyer for the defendant in a criminal proceeding, or the respondent in a proceeding that could result in incarceration, may nevertheless so defend the proceeding as to require that every element of the case be established.”

<sup>17</sup> [KY SCR 3.130\(3.3\)](#) “(a) 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; (2) fail to disclose to the tribunal published legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel; or (3) offer evidence that the lawyer knows to be false. If a lawyer, the lawyer’s client, or a witness called by the lawyer, has offered material evidence and the lawyer comes to know of its falsity, the lawyer shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal. A lawyer may refuse to offer evidence, other than the testimony of a defendant in a criminal matter, that the lawyer reasonably believes is false.”

<sup>18</sup> [KY SCR 3.130\(4.1\)](#) “In the course of representing a client a lawyer: (a) shall not knowingly make a false statement of material fact or law to a third person; and (b) if a false statement of material fact or law has been made, shall take reasonable remedial measures to avoid assisting a fraudulent or criminal act by a client including, if necessary, disclosure of a material fact, unless prohibited by [Rule 1.6](#).”

<sup>19</sup> KBA Ethics Opinion [KBA E-437](#) issued March 21, 2014 (available at [https://cdn.ymaws.com/www.kybar.org/resource/resmgr/Ethics\\_Opinions\\_\(Part\\_2\)/kba\\_e-437.pdf](https://cdn.ymaws.com/www.kybar.org/resource/resmgr/Ethics_Opinions_(Part_2)/kba_e-437.pdf)).

study and education and comply with all continuing legal education requirements to which the lawyer is subject.

Regarding the word “technology,” Comment 6 referenced a 2012 amendment to the ABA rule’s comment, which stated that the duty of competence includes the duty to keep abreast of technology. [Opinion 437](#) noted, “[w]hile the ABA comment is not controlling, it is helpful.”<sup>20</sup>

Because technology evolves every day, we decline to mandate in this opinion specific practices regarding the protection of confidential client information in the world of the cloud. The reality is that such practices soon would be obsolete – and our opinion would be obsolete as well. Rather, we choose to guide lawyers in the exercise of reasonable judgment regarding the use of cloud technology.<sup>21</sup>

The same reasoning may be used in guiding lawyers in the exercise of reasonable judgment regarding the use of GAI. A lawyer must act consistent with his or her duty to select and monitor the provider(s) of GAI under [SCR 3.130\(1.1\)](#); a lawyer must use reasonable efforts to ensure the provider(s) of the GAI service assisting him or her is compatible with the ethical obligations of the lawyer under [SCR 3.130\(5.3\(a\) & \(b\)\)](#), and finally, a lawyer must consult with the client about the use of the GAI if the matter is sufficiently sensitive such that the duty to “reasonably consult with the client about the means by which the client’s objectives are to be accomplished” is implicated under the communication duty of [SCR 3.130\(1.4\(b\)\)](#). In order to exercise reasonable judgment, a lawyer must reasonably understand the technology, understand the risks to confidentiality, privacy, and security; and the possibility that GAI outputs could include information that is false, inaccurate or biased. Information on these issues is available and developing, from the nation’s courts, state bar associations, and professional organizations.

B. Bar Associations, Professional and Court Organizations, Leadership and Policy

Several state bar associations or states’ Supreme Courts are already offering guidelines and rules for the use of AI and GAI, to educate a lawyer in exercising reasonable judgement in the use of this technology, thereby avoiding ethical violations. The Kentucky Bar Association has AI related articles on the [KBA Knowledge Hub](#),<sup>22</sup> including an article by KBA AI Task Force member Stephen Embry.<sup>23</sup>

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<sup>20</sup> *Supra* note 7.

<sup>21</sup> *Supra* note 7.

<sup>22</sup> KBA Knowledge Hub, <https://kybarhub.org/>.

<sup>23</sup> Stephen Embry, “Is It Real or Is It Fake? The Emerging Challenges of Authenticating Digital Evidence in Courtrooms” (Jan. 26, 2024) available at <https://kybarhub.org/resource/kentucky-bar-association-is-it-real-or-is-it-fake-the-challenges-of-authenticating-digital-evidence>. (See also Stephen Embry, “Gen AI in Law: A Lawyer Reality Check,” [www.TechLawCrossroads.com](http://www.TechLawCrossroads.com) (March 4, 2024) available at <https://www.techlawcrossroads.com/>).

Two good places to find current information about AI and GAI in the legal community are the Conference of Chief Justices and the National Center for State Courts (NCSC), and the American Bar Association (ABA). Each have created a repository of information available on their websites. NCSC materials are available to anyone; some of the ABA articles require membership.

The NCSC has created an AI Rapid Response Team (RRT). The team is tasked with developing “a current landscape of court orders, rules, guidance, and other initiatives of the state court community or the federal courts regarding AI or generative AI. The team will also consider whether current court rules are adequate to address generative AI use and assess the need to develop model rules or guidelines on practice or procedure for state courts to consider with respect to disclosure, transparency, accuracy, authenticity, confidentiality, and certification of generative AI use in court documents and proceedings.”<sup>24</sup> In February 2024 the RRT released Interim Guidance. This one-page document titled “AI and the Courts: Talking Points” is a primer for generative AI and what it means to the legal community.<sup>25</sup> Since February, the RRT has released three additional guidance documents. The most recent article advises the importance of courts establishing an AI police group and considerations in developing a policy and references the Kentucky Court of Justice Standards.<sup>26</sup>

The NCSC’s Resource Center also includes state court orders, rules and proposed rules, case law and decisions, state court guidelines and policies, statutes and proposed legislation, ethics and codes of conduct, articles and other resources and more.<sup>27</sup> At least five states have issued ethical rules or codes of conduct regarding the use of AI or GAI for lawyers; these include New Jersey, Connecticut, California, Missouri, and Florida.<sup>28</sup> The court opinions include the now infamous cases of *U.S. v. Cohen*,<sup>29</sup> and *Mata v. Avianca, Inc.*,<sup>30</sup> both cases involving the use of GAI in the citing of cases that did not exist.

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<sup>24</sup> AI Rapid Response Team, <https://www.ncsc.org/consulting-and-research/areas-of-expertise/technology/artificial-intelligence/state-activities/ai-rapid-response-team>.

<sup>25</sup> “AI and the Courts: Talking Points,” available at [https://www.ncsc.org/data/assets/pdf\\_file/0029/98255/RRT-AI-talking-points-February-2024.pdf](https://www.ncsc.org/data/assets/pdf_file/0029/98255/RRT-AI-talking-points-February-2024.pdf) (last visited May 14, 2024).

<sup>26</sup> Generative Artificial Intelligence Standard, available at [https://www.ncsc.org/data/assets/pdf\\_file/0029/99128/Kentucky Generative AI Standard.pdf](https://www.ncsc.org/data/assets/pdf_file/0029/99128/Kentucky_Generative_AI_Standard.pdf).

<sup>27</sup> Resource Center, <https://www.ncsc.org/consulting-and-research/areas-of-expertise/technology/artificial-intelligence/state-activities/resource-center>. (Last visited May 16, 2024).

<sup>28</sup> *Supra*.

<sup>29</sup> No. 18-CR-602 (JMF), 2023 WL 8635521 (S.D.N.Y. Dec. 12, 2023) available at <https://nationalcenterforstatecourts.app.box.com/s/o3dsq7wqklkd74eztnl1a542kg3j6mm4>) (see also <https://www.nytimes.com/2023/12/29/nyregion/michael-cohen-ai-fake-cases.html>).

<sup>30</sup> No. 22-CV-1461 (PKC), 2023 WL 4114965 (S.D.N.Y. June 22, 2023) available at <https://nationalcenterforstatecourts.app.box.com/s/hhfpb16ri2jyilzkeoru8839wcwvwb7d> (see also <https://www.nytimes.com/2023/06/22/nyregion/lawyers-chatgpt-schwartz-loduca.html>).

In 2023 the ABA formed a task force to study the impact of artificial intelligence on the practice of law and the ethical implications for lawyers.<sup>31</sup> At the ABA's midyear meeting 2023, the ABA adopted Resolution 604. It urges "organizations that design, develop, deploy, and use artificial intelligence ("AI") systems and capabilities to follow certain guidelines and urges Congress, federal executive agencies, the Courts, and State legislatures and regulators, to follow these guidelines in legislation, legal decisions, and standards pertaining to AI."<sup>32</sup> The ABA, through its Cyber Legal Task Force, has authored several policy initiatives including Resolution 604 that addresses how attorneys, regulators, and other stakeholders should assess issues of accountability, transparency, and traceability in artificial intelligence; Resolution 608 which urges Congress to pass legislation establishing cybersecurity as a legal duty for organizations among other things, Resolution 609 that urges organizations that design, develop, deploy, and use artificial intelligence systems and capabilities to follow certain guidelines, and Resolution 610 that urges law schools to incorporate cybersecurity and emerging technologies into their curricula.<sup>33</sup>

For current information about AI/GAI, advice and suggestions for ways to mitigate against ethical violations from courts and organizations across the country, these websites are good sources.

### C. Standing Orders

The number of courts with standing orders that address the use of AI continues to grow. These orders generally require the disclosure of the use of AI in the pleading or a verification that, if AI was used, the legal information (citations and authority) was verified.<sup>34</sup>

As observed by Judge Brantley Starr of the Northern District of Texas, in the first federal standing order issued regarding AI platforms, "[these platforms] are incredibly powerful and have many uses in the law: from divorces, discovery requests, suggested errors in documents, anticipated questions at oral argument. But legal briefing is not one of them. Here's why. These platforms in their current

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<sup>31</sup> "ABA forms task force to study impact of artificial intelligence on the legal profession" (Aug. 28, 2023), available at <https://www.americanbar.org/news/abanews/aba-news-archives/2023/08/aba-task-force-impact-of-ai/>.

<sup>32</sup> Midyear Meeting 2023 House of Delegates Resolution 604, available at [https://www.americanbar.org/news/reporter\\_resources/midyear-meeting-2023/house-of-delegates-resolutions/604/](https://www.americanbar.org/news/reporter_resources/midyear-meeting-2023/house-of-delegates-resolutions/604/).

<sup>33</sup> Policy Initiatives, available at <https://www.americanbar.org/groups/cybersecurity/aba-policy-initiatives/>.

<sup>34</sup> A civil district court in San Antonio, Texas requires an "A.I. Certification," signed by the attorney, attesting that all drafted language, quotations, sources, citations, arguments, and legal analyses produced by generative A.I. will – before submission – be verified by an attorney licensed in Texas as accurate through traditional (non-A.I.) legal sources, and that the attorney of record understands and acknowledges that they are responsible for their and their co-counsel's failure to comply with this order. Bexar County Civil District Court Local Rules, available at <https://www.bexar.org/DocumentCenter/View/40208/Bexar-County-Civil-District-Court-Local-Rules-2024>. (Last visited May 14, 2024.)

states are prone to hallucinations and bias. On hallucinations, they make stuff up – even quotes and citations.”<sup>35</sup>

At least one court has issued orders forbidding it all together, stating that,

No attorney for a party, or a *pro se* party, may use Artificial Intelligence (“AI”) in the preparation of any filing submitted to the Court. Parties and their counsel who violate this AI ban may face sanctions including, *inter alia*, striking the pleading from the record, the imposition of economic sanctions or contempt, and dismissal of the lawsuit. The Court does not intend this AI ban to apply to information gathered from legal search engines, such as Westlaw or LexisNexis, or Internet search engines, such as Google or Bing. All parties and their counsel have a duty to immediately inform the Court if they discover the use of AI in any document filed in their case.<sup>36</sup>

Anyone submitting a filing to a court should carefully review the court's requirements for disclosure or certification.

In November 2023, the Fifth Circuit proposed a rule amendment to Rule 32.3, to address the issue of AI usage. The amendment would require litigants to certify that no GAI was used in drafting the document presented for filing, or if GAI was used, that all generated text, citations, and legal analysis has been reviewed for accuracy and approved by a human. Public comment was open January 4, 2024, and is now closed. According to the Court's website “a special committee will review the comments and make a recommendation to the full court on the need for and content of any future rule.”<sup>37</sup> These comments are available and are enlightening.<sup>38</sup>

Even without a specific standing order on the use of AI by lawyers, the current language of [Federal Rule of Civil Procedure 11](#) provides adequate grounds for sanctions against any lawyer who files a pleading with the court that contains inaccurate statements and information.<sup>39</sup>

The variety of standing orders and the potential for confusion has led some AI/GAI experts to question the need for standing orders at all.

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<sup>35</sup> <https://www.txnd.uscourts.gov/judge/judge-brantley-starr>.

<sup>36</sup> Ohio Standing Order Governing Civil Cases (Newman, J.) (July 14, 2023) available at <https://www.ohsd.uscourts.gov/sites/ohsd/files//MJN%20Standing%20Civil%20Order%20eff.%2012.18.23.pdf>.

<sup>37</sup> <https://www.ca5.uscourts.gov/home/page/2> (Last visited 5/14/24).

<sup>38</sup> [https://www.ca5.uscourts.gov/docs/default-source/default-document-library/submitted-comments-compiled.pdf?sfvrsn=c3a9c92d\\_2%202/26/2024](https://www.ca5.uscourts.gov/docs/default-source/default-document-library/submitted-comments-compiled.pdf?sfvrsn=c3a9c92d_2%202/26/2024) .

<sup>39</sup> Federal Rules of Procedure, page 11, (Dec. 1, 2023) available at <https://www.uscourts.gov/file/78323/download>.

Rules of civil procedure should be technology-neutral and should not have to be revised with the introduction of each new technological development. No one can predict what the legal technology environment will look like two years from now, but the use of GenAI will almost surely be ubiquitous. The legal profession is already sufficiently risk averse and technologically backward. These orders will impede innovation and chill the use of technology that could not only enable unrepresented parties to access the justice system, but also reduce the time and cost for those who can afford representation. We need a solution better tailored to the problem.<sup>40</sup>

Although not a standing order, the King County Superior Court of Washington recently issued an order in a criminal case that addresses the use of AI in trial exhibits. Following a hearing with testimony for at least one expert, the Court refused to admit phone videos that had been enhanced by artificial intelligence, for failure to satisfy the rules of evidence for admissibility.<sup>41</sup>

#### IV. PRACTICAL GUIDANCE

While the use of GAI presents opportunities for lawyers, it also presents ethical concerns and issues. Even without a special ethics opinion or Supreme Court Rule on the issue, existing ethical and professional rules are broad enough to provide guidance to lawyers.

##### A. Protect the Client's Confidentiality

When using generative AI, a lawyer must protect the confidentiality of the client's information as required by [SCR 3.130\(1.6\)](#). The rule requires a lawyer to keep client information confidential, except when disclosure is permitted under narrow circumstances. The ethical duty of confidentiality is broad in its scope and applies to all information learned during a client's representation, regardless of its source.<sup>42</sup> Absent the client's informed consent or an exception permitting disclosure, a lawyer may not reveal the information. A lawyer is "impliedly authorized to make disclosures about a client when appropriate to carrying out the representation, except to the extent that the client's instructions or special circumstances limit that authority."<sup>43</sup> Nonetheless, it is recommended that a lawyer obtain the affected client's informed consent prior to utilizing a third-party generative AI program if the utilization would involve the disclosure of any confidential information.

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<sup>40</sup> Grossman, Grimm and Brown, "Is Disclosure and Certification of the Use of Generative AI Really Necessary," *Judicature*, Vol. 107, No. 2, Page 71 (available at [https://judicature.duke.edu/wp-content/uploads/2023/10/AIOrders\\_Vol107No2.pdf](https://judicature.duke.edu/wp-content/uploads/2023/10/AIOrders_Vol107No2.pdf)) (see also, David Lat, "AI Use in Law Practice Needs Common Sense, Not More Court Rules," Bloomberg Law, Feb. 28, 2024, 4:30 AM EST, available at <https://news.bloomberglaw.com/us-law-week/ai-use-in-law-practice-needs-common-sense-not-more-court-rules>).

<sup>41</sup> *State of Washington v. Joshua Puloka*, <https://nationalcenterforstatecourts.app.box.com/s/z9ymhx1zpghc62tegles58782mbmsmzy> (last visited 5/14/24.)

<sup>42</sup> [SCR 3.130\(1.6\)](#) Supreme Court Commentary [5].

<sup>43</sup> [SCR 3.130\(1.6\)](#) Supreme Court Commentary [7].

client's informed consent prior to utilizing a third-party generative AI program if the utilization would involve the disclosure of any confidential information.

B. Maintain Competence in the Appropriateness of the Use of GAI

[SCR 3.130\(1.1\)](#) requires a lawyer to provide competent representation to a client. This means keeping abreast of changes in the law and its practice, including the benefits and risks associated with relevant technology.<sup>44</sup> Acquire education and training to decide what types of GAI are and are not appropriate for use by lawyers. Understand, to a reasonable degree, the risks and benefits of using GAI. Also be aware and understand the applicable terms of use, disclaimers, and other policies regarding the use of a client's data by the GAI tool being used.

C. Communicate GAI Use

If a lawyer intends to use GAI in the representation of a client, a lawyer should consider disclosing this to the client under [SCR 3.130\(1.2\)](#) and [\(1.4\)](#). Considerations include how the GAI will be used, and the benefits and risks of such usage.

D. Avoid Making Misrepresentations to the Tribunal

GAI outputs are not always accurate, and could include information that is false, inaccurate or biased. Without careful review of GAI outputs, before submitting a pleading to the court, a lawyer runs the risk of making a false statement of fact or law to a tribunal in violation of [SCR 3.130\(3.3\)](#) or [SCR 3.130\(3.1\)](#) regarding meritorious claims and contentions.

E. Consider How the Use of GAI May Impact the Reasonableness of Fees

Using GAI may allow a lawyer to work more efficiently. A lawyer should be able to charge for actual time spent creating or refining a GAI input or prompt, or reviewing and editing GAI outputs, but should not charge hourly fees for the time saved using GAI.

F. Follow the Rules of the Courts

A lawyer should be aware if the court in which they are practicing has specific orders or court rules implicating the use of any generative AI platform or service. [SCR 3.130\(3.4\)](#) prohibits a lawyer from knowingly disobeying an obligation under the rules of a tribunal.

G. Develop a GAI Use Policy

If lawyers or nonlawyers in a firm are using content created with the assistance of GAI, there is a responsibility to make reasonable efforts to ensure other lawyers are conforming to the Rules of Professional Conduct, or that nonlawyers' conduct is compatible with the professional obligations of the lawyer under [SCR 3.130\(5.1\)-\(5.3\)](#). A GAI policy should establish clear policies regarding permissible uses of

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<sup>44</sup> [SCR 3.130\(1.1\)](#) Supreme Court Commentary [6]

GAI, and should consider addressing the following: confidentiality; competence/training on GAI before using (including limitations and risks); disclosure to client on the use of GAI; awareness of and compliance with a client's own policies regarding the use of GAI; and the responsibility to carefully check GAI-produced content to ensure the results provided are accurate.

No one can see the future, but as Chief Justice John Roberts wrote on the subject in his 2023 year-end report on the federal judiciary, "AI obviously has great potential to dramatically increase access to key information for lawyers and non-lawyers alike." "But any use of AI requires caution and humility." "I predict that human judges will be around for a while. But with equal confidence I predict that judicial work—particularly at the trial level – will be significantly affected by AI. Those changes will involve not only how judges go about doing their job, but also how they understand the role that AI plays in the cases that come before them."<sup>45</sup>

## **V. APPROPRIATE USE CASES**

The areas of benefits mentioned above provide many use cases where attorneys are already using GAI. Some of these examples will require a good contract and that the company has the technical controls to maintain confidentiality. Some of the examples are useful from a general perspective and may involve ethical concerns.

- A. Summarize Conversations, Dispositions, Interrogatories, etc.
  - 1. Summarize the major points.
  - 2. Identify any inconsistencies.
  - 3. Identify any unanswered questions.
  - 4. Identify any relevant topics that were missed?
- B. Improve Your Writing
- C. Contract Review
  - 1. Missing/unfavorable clauses.
  - 2. Clauses that are now bad law or outdated.
- D. Analyze Large Amounts of Data
- E. What are the Top 10 Questions I Should Ask in a Specific Deposition?
- F. Future Potential with a More Robust GAI and the Data to Process
  - 1. What is the value of a case in this jurisdiction?

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<sup>45</sup> 2023 Year-End Report on the Federal Judiciary, pages 5-6 (available at <https://www.supremecourt.gov/publicinfo/year-end/2023year-endreport.pdf>).

2. What are the settlement rates with this company?
3. Analyze judicial tendencies for trends.
4. Analyze opposing transcripts for the attorney involved to plan trial strategy.
5. Potential to use GAI to address more basic legal questions and improve access to justice.

**VI. WHAT GENERATIVE ARTIFICIAL INTELLIGENCE SYSTEMS ARE AVAILABLE?**

- A. CoCounsel (Thomson Reuters) – Formerly Known as CaseText
- B. Lexis+ (LexisNexis)
- C. Perplexity
- D. ChatGPT 3.5, 4
- E. Claude
- F. Gemini (Formerly Known as Google Bard)
- G. Otter AI – Used to Summarize Meetings, Depositions, etc.

## APPENDIX A – EXAMPLE OF PROMPT ITERATION TO IMPROVE A GAI RESPONSE

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Example of using ChatGPT v3.5 for creating a legal document. ChatGPT v3.5 should not be used for this purpose. This example shows how you can create documents with an AI system and how it may take multiple iterations to draft an acceptable document. You can see below that my first attempt to have ChatGPT v3.5 write a living will provided a different response than a request to create an advanced directive. I then started to improve the prompt and went through a few iterations to get something closer to what you could get just by using the AG's form.

Another aspect of the GAI system is that it remembers the corrections you have made in the past and continues to add them. In the cases below, I added the pregnancy language required in Kentucky, but not initially included in the versions produced by ChatGPT v3.5. When I asked the system to create a new living will for a new person who was in Florida, it continued to include the pregnancy language I had required in an earlier iteration. This persisted, even after expressly indicating that earlier corrections for Kentucky should be ignored. In order to correct the issue, I had to explicitly exclude the pregnancy language. This is something you need to consider if you are using GAI to draft documents. If you have to add a choice of law provision for New York instead of Kentucky, will New York remain the default until corrected?

Looking at the privacy and confidentiality aspects of ChatGPT v3.5, I was able to share the first two iterations via ChatGPT v3.5's share functionality. That created a link<sup>46</sup> that I could open with another account. That share has a limited lifespan, but I was able to use it several times.

---

### *Human*

#### *Create a living will for someone named Carrie Oakey*

---

ChatGPT

**ChatGPT**

#### **Living Will of Carrie Oakey**

I, Carrie Oakey, being of sound mind, do hereby declare this to be my Living Will, revoking any prior documents.

1. **Healthcare Proxy:** In the event that I become unable to make my own medical decisions, I appoint [Name of Healthcare Proxy] as my healthcare proxy to make decisions on my behalf. I trust their judgment and ask that they consider my values and preferences when making decisions.
2. **Life-Sustaining Treatment:** If I am in a terminal condition or a state of permanent unconsciousness with no reasonable chance of recovery, I do not wish to be kept alive artificially. I request that all life-sustaining treatment, including but not limited to mechanical ventilation, artificial nutrition, and hydration, be withheld or withdrawn.

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<sup>46</sup> ChatGPT v3.5, Charrie Oakey Living Will and Advanced Directive (May 11, 2024) <https://chatgpt.com/share/25c0341b-4c8d-454d-a380-b139f19f91fe?oai-dm=1>.

3. **Comfort Care:** I request that I receive comfort care to alleviate pain and suffering, even if it may hasten my death. I wish to be kept as comfortable as possible with measures such as pain medication and hospice care.
4. **Organ and Tissue Donation:** I hereby authorize the donation of any of my organs, tissues, or parts for transplantation, medical research, or educational purposes upon my death, provided that such donation is medically feasible and can be done in accordance with the laws and regulations governing such donations.
5. **Funeral Arrangements:** I do not have specific funeral arrangements at this time. I trust my loved ones to make arrangements that they feel are appropriate and in accordance with my wishes.
6. **Signature:** In witness thereof, I have hereunto set my hand this [Day] day of [Month], [Year].

[Signature of Carrie Oakey]

[Printed Name of Carrie Oakey]

**Witnesses:**

1. \_\_\_\_\_ [Signature of Witness] [Printed Name of Witness]  
[Date]
2. \_\_\_\_\_ [Signature of Witness] [Printed Name of Witness]  
[Date]

---

**Human**  
**Create a living will for someone named Carrie Oakey**

---

ChatGPT  
**ChatGPT**  
**Advance Directive of Carrie Oakey**

I, Carrie Oakey, being of sound mind, do hereby declare this to be my Advance Directive, revoking any prior documents.

1. **Statement of Intent:** I understand that there may come a time when I am unable to make decisions about my medical care. Therefore, I make the following directives regarding my healthcare in such circumstances.
2. **Healthcare Proxy:** I appoint [Name of Healthcare Proxy] as my healthcare proxy. I trust them to make decisions on my behalf regarding my medical treatment if I am unable to do so myself. I ask that they consider my values, beliefs, and preferences when making decisions.
3. **Medical Interventions:** In the event that I am in a terminal condition, irreversible coma, or persistent vegetative state with no reasonable expectation of recovery, and if two

physicians, including one who is a specialist in my condition, determine that my condition is irreversible and that the administration of life-sustaining treatment would only prolong the process of dying, I direct the following:

- a. **Withholding or Withdrawal of Life-Sustaining Treatment:** I request that all life-sustaining treatment, including but not limited to artificial nutrition and hydration, be withheld or withdrawn.
  - b. **Comfort Care:** I request to receive comfort care to alleviate pain and suffering, even if it may hasten my death. I wish to be kept as comfortable as possible with measures such as pain medication, hospice care, and palliative care.
4. **Organ and Tissue Donation:** I hereby authorize the donation of any of my organs, tissues, or parts for transplantation, medical research, or educational purposes upon my death, provided that such donation is medically feasible and can be done in accordance with the laws and regulations governing such donations.
  5. **Funeral Arrangements:** I do not have specific funeral arrangements at this time. I trust my loved ones to make arrangements that they feel are appropriate and in accordance with my wishes.
  6. **Revocation:** I reserve the right to revoke this Advance Directive at any time and in any manner.
  7. **Signature:** In witness thereof, I have hereunto set my hand this [Day] day of [Month], [Year].

[Signature of Carrie Oakey]

[Printed Name of Carrie Oakey]

**Witnesses:**

1. \_\_\_\_\_ [Signature of Witness] [Printed Name of Witness]  
[Date]
2. \_\_\_\_\_ [Signature of Witness] [Printed Name of Witness]  
[Date]

---

**Human**

**Act as if you are a paralegal in the Commonwealth of Kentucky and create a living will directive consistent with [Kentucky Revised Statutes 311.625](https://apps.legislature.ky.gov/law/statutes/statute.aspx?id=42591) Form of living will directive located at <https://apps.legislature.ky.gov/law/statutes/statute.aspx?id=42591> for a client named Carrie Oakey and provide 20 blank characters for where additional data is needed. Include a standard notary section at the end of the document that complies with the Kentucky notary requirements.**

---

ChatGPT  
**ChatGPT**  
**Living Will Directive**

I, Carrie Oakey, being of sound mind, willfully and voluntarily make known my desire that my dying shall not be artificially prolonged under the circumstances set forth below, and I do hereby declare:

If at any time I should have an incurable injury, disease, or illness certified to be a terminal condition by two physicians who have personally examined me, one of whom shall be my attending physician, and the physicians have determined that my death will occur whether or not life-sustaining procedures are utilized, I direct that such procedures be withheld or withdrawn, and that I be permitted to die naturally with only the administration of medication or the performance of any medical procedure necessary to provide me with comfort care, 20 blank characters.

**Notary Section**

Subscribed, sworn to, and acknowledged before me by Carrie Oakey, the declarant, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

---

Notary Public, Commonwealth of Kentucky  
My Commission Expires: \_\_\_\_\_

---

**Human**

**Act as if you are a paralegal in the Commonwealth of Kentucky and create a living will directive consistent with [Kentucky Revised Statutes 311.625 Form of living will directive located at <https://www.ag.ky.gov/AG%20Publications/livingwillpacket.pdf>](https://www.ag.ky.gov/AG%20Publications/livingwillpacket.pdf) for a client named Carrie Oakey born on January 1, 2003. She does not authorize life-prolonging treatment, food, or water be withheld or withdrawn. She authorizes all needed organs be donated. Include a standard notary section at the end of the document that complies with the Kentucky notary requirements. This document will be executed on June 9, 2024 in Campbell County and the notary's commission expires on October 11, 2026.**

---

ChatGPT  
**ChatGPT**  
**Living Will Directive**

I, Carrie Oakey, born on January 1, 2003, being of sound mind, do hereby declare this to be my living will directive:

1. If at any time I should have an incurable injury, disease, or illness certified to be a terminal condition by two physicians who have personally examined me, one of whom shall be my attending physician, and the physicians have determined that my death will occur whether or not life-sustaining procedures are utilized, I direct that such procedures be withheld or withdrawn, and that I be permitted to die naturally.

2. I specifically do not authorize the withholding or withdrawal of life-prolonging treatment, food, or water under any circumstances.
3. I authorize the donation of all needed organs for transplantation, therapy, research, or education.

This directive shall be effective upon my incapacity to make health care decisions, as determined by my attending physician.

### **Notary Section**

Subscribed, sworn to, and acknowledged before me by Carrie Oakey, the declarant, this 9th day of June, 2024, in Campbell County, Kentucky.

---

Notary Public, Commonwealth of Kentucky  
My Commission Expires: October 11, 2026

---

### ***Human***

***That living will did not include the required language about being legally competent or the Kentucky language regarding pregnancy. Please rewrite the advanced directive and include the missing clauses.***

---

ChatGPT  
**ChatGPT**  
**Living Will Directive**

I, Carrie Oakey, born on January 1, 2003, currently of sound mind, do hereby declare this to be my living will directive:

1. If at any time I am determined to be legally incompetent to make health care decisions, as determined by my attending physician and another physician, and if I should have an incurable injury, disease, or illness certified to be a terminal condition by two physicians who have personally examined me, one of whom shall be my attending physician, and the physicians have determined that my death will occur whether or not life-sustaining procedures are utilized, I direct that such procedures be withheld or withdrawn, and that I be permitted to die naturally.
2. I specifically do not authorize the withholding or withdrawal of life-prolonging treatment, food, or water under any circumstances unless I am diagnosed to be pregnant, in which case life-prolonging treatment shall be provided to the extent necessary to sustain the pregnancy.
3. I authorize the donation of all needed organs for transplantation, therapy, research, or education.

This directive shall be effective upon my incapacity to make health care decisions, as determined by my attending physician.

### **Notary Section**

Subscribed, sworn to, and acknowledged before me by Carrie Oakey, the declarant, this 9th day of June, 2024, in Campbell County, Kentucky.

---

Notary Public, Commonwealth of Kentucky  
My Commission Expires: October 11, 2026

---

### ***Human***

***That was better but it still forgot to mention that the clause for the notary portion that Carrie is at least 18 and she is signing this directive of her own free will. There also needs to be a place for the notary to include the notary's commission number. Please add them to the document.***

---

ChatGPT  
**ChatGPT**  
**Living Will Directive**

I, Carrie Oakey, born on January 1, 2003, currently of sound mind, being at least 18 years of age, and signing this directive of my own free will, do hereby declare this to be my living will directive:

1. If at any time I am determined to be legally incompetent to make health care decisions, as determined by my attending physician and another physician, and if I should have an incurable injury, disease, or illness certified to be a terminal condition by two physicians who have personally examined me, one of whom shall be my attending physician, and the physicians have determined that my death will occur whether or not life-sustaining procedures are utilized, I direct that such procedures be withheld or withdrawn, and that I be permitted to die naturally.
2. I specifically do not authorize the withholding or withdrawal of life-prolonging treatment, food, or water under any circumstances unless I am diagnosed to be pregnant, in which case life-prolonging treatment shall be provided to the extent necessary to sustain the pregnancy.
3. I authorize the donation of all needed organs for transplantation, therapy, research, or education.

This directive shall be effective upon my incapacity to make health care decisions, as determined by my attending physician.

**Notary Section**

Subscribed, sworn to, and acknowledged before me by Carrie Oakey, the declarant, this 9th day of June, 2024, in Campbell County, Kentucky.

---

Notary Public, Commonwealth of Kentucky  
My Commission Number: \_\_\_\_\_  
My Commission Expires: October 11, 2026

---

*Human*

***Create a living will for someone named Ann Tenna living in Florida***

---

ChatGPT  
**ChatGPT**  
**Living Will Directive**

I, Ann Tenna, being of sound mind, do hereby declare this to be my living will directive:

1. If I am ever diagnosed with an incurable injury, disease, or illness certified to be a terminal condition by two physicians who have personally examined me, one of whom shall be my attending physician, and if they determine that my death will occur whether or not life-sustaining procedures are utilized, I direct that such procedures be withheld or withdrawn, and that I be permitted to die naturally.
2. I specifically do not authorize the withholding or withdrawal of life-prolonging treatment, food, or water under any circumstances unless I am diagnosed to be pregnant, in which case life-prolonging treatment shall be provided to the extent necessary to sustain the pregnancy.
3. I authorize the donation of all needed organs for transplantation, therapy, research, or education.

This directive shall be effective upon my incapacity to make health care decisions, as determined by my attending physician.

---

Ann Tenna

Date: \_\_\_\_\_

Witness: \_\_\_\_\_

Witness: \_\_\_\_\_

(Note: The witnesses must be at least 18 years old and not related to the declarant by blood or marriage.)

---

**Human**

***Ignoring all corrections for Kentucky law mentioned earlier, create a living will for Ann Tenna, who lives in Florida.***

---

ChatGPT  
**ChatGPT**  
**Living Will Directive**

I, Ann Tenna, being of sound mind, do hereby declare this to be my living will directive:

1. If I am ever diagnosed with an incurable injury, disease, or illness certified to be a terminal condition by two physicians who have personally examined me, one of whom shall be my attending physician, and if they determine that my death will occur whether or not life-sustaining procedures are utilized, I direct that such procedures be withheld or withdrawn, and that I be permitted to die naturally.
2. I specifically do not authorize the withholding or withdrawal of life-prolonging treatment, food, or water under any circumstances unless I am diagnosed to be pregnant, in which case life-prolonging treatment shall be provided to the extent necessary to sustain the pregnancy.
3. I authorize the donation of all needed organs for transplantation, therapy, research, or education.

This directive shall be effective upon my incapacity to make health care decisions, as determined by my attending physician.

---

Ann Tenna

Date: \_\_\_\_\_

Witness: \_\_\_\_\_

Witness: \_\_\_\_\_

(Note: The witnesses must be at least 18 years old and not related to the declarant by blood or marriage.)

---

**Human**

***Rewrite the living will for Ann Tenna, but exclude the language about pregnancy.***

---

ChatGPT  
**ChatGPT**  
**Living Will Directive**

I, Ann Tenna, being of sound mind, do hereby declare this to be my living will directive:

1. If I am ever diagnosed with an incurable injury, disease, or illness certified to be a terminal condition by two physicians who have personally examined me, one of whom shall be my attending physician, and if they determine that my death will occur whether or not life-sustaining procedures are utilized, I direct that such procedures be withheld or withdrawn, and that I be permitted to die naturally.
2. I specifically do not authorize the withholding or withdrawal of life-prolonging treatment, food, or water under any circumstances.
3. I authorize the donation of all needed organs for transplantation, therapy, research, or education.

This directive shall be effective upon my incapacity to make health care decisions, as determined by my attending physician.

---

Ann Tenna

Date: \_\_\_\_\_

Witness: \_\_\_\_\_

Witness: \_\_\_\_\_

(Note: The witnesses must be at least 18 years old and not related to the declarant by blood or marriage.)

## FOR YOUR INFORMATION ...

### The Kentucky Law Update: Continuing Legal Education for All Kentucky Lawyers

The Supreme Court of Kentucky established the Kentucky Law Update Program as an element of the minimum continuing legal education system adopted by Kentucky attorneys in 1984. The KLU program is now offered in a hybrid format. The 2024 Kentucky Law Update is offered as a one-day, in-person program at nine different locations across the state. The 2024 On-Demand Kentucky Law Update is offered virtually on the Kentucky Bar Association website from September 1st until December 31st. These two programs offer every Kentucky attorney the opportunity to meet the 12 credit CLE requirement, including the 2 ethics credit requirement, **close to home and at no cost!** Judges can also earn continuing judicial education credits at the Kentucky Law Update.

This program was designed as a service to all Kentucky attorneys regardless of level of experience. This service is supported by membership dues and is, therefore, each member's program. The program is a survey of current issues, court decisions, ethical opinions, legislative and rule changes, and other legal topics of general interest that are faced by the Kentucky practitioner on a daily basis. As such, the program serves both the general practitioner and the practitioner who limits his or her practice to a particular field of the law. The Kentucky Law Update program is not intended, nor designed, to be an in-depth analysis of a particular topic. It is designed to alert the lawyers of Kentucky to changes in the law and rules of practice that impact the daily practice of law.

### About the Handbooks and Presentations

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### Special Acknowledgments

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KBA AI Task Force	KBA Office of Bar Counsel
KBA Alternative Dispute Resolution Section	KBA Well Being Committee
KBA Criminal Law Section	Kentucky Court of Appeals
KBA Elder Law Section	Kentucky Lawyer Assistance Program
KBA Ethics Committee	Lawyers Mutual of Kentucky
KBA Family Law Section	Legislative Research Commission
KBA Law Practice Committee	NAELA – Kentucky Chapter
KBA Military Law Committee	Supreme Court of Kentucky

Presentations are also made on a voluntary basis. To the individuals who volunteer in this capacity, special gratitude is owed. Individuals contributing to this program are contributing to the professional development of all members of the Kentucky Bar Association. We wish to express our gratitude in advance to these individuals.

A special thank you to all of the organizations, authors, presenters, moderators, and other 2024 Kentucky Law Update program volunteers will appear in the January 2025 issue of the *Bench & Bar*.

### **CLE and Ethics Credit**

The one-day, in-person 2024 Kentucky Law Update Program is accredited for 7 CLE credits, including 2 ethics credits. The 2024 On-Demand Kentucky Law Update is accredited for 7.75 CLE credits, including 3 ethics credits. One credit is awarded for each 60 minutes of actual instruction as noted on the agendas provided on the KBA website.

The Kentucky Bar Association 2024 Kentucky Law Update programs are accredited CLE activities in numerous other jurisdictions. Credit categories and credit calculations vary from state-to-state. CLE reporting information for other states will be provided at the registration desk at the in-person programs. The out of state information for the on-demand sessions will be available on the program website.

Kentucky Judges, don't forget you can claim CJE credit for attending this program.

**REMEMBER!** Reporting attendance credits is now online. Reporting information and activity numbers will be available at each respective in-person event. The on-demand reporting information and activity number will be located on the program website.

### **Evaluations**

The 2024 Kentucky Law Update is *your* program and your input *is* valued and needed. Links to the program evaluations for the live, in-person programs and the on-demand program will be provided to all registrants via email. PLEASE take a few minutes to complete the evaluation questionnaire upon receipt. We appreciate your assistance in improving this service.

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