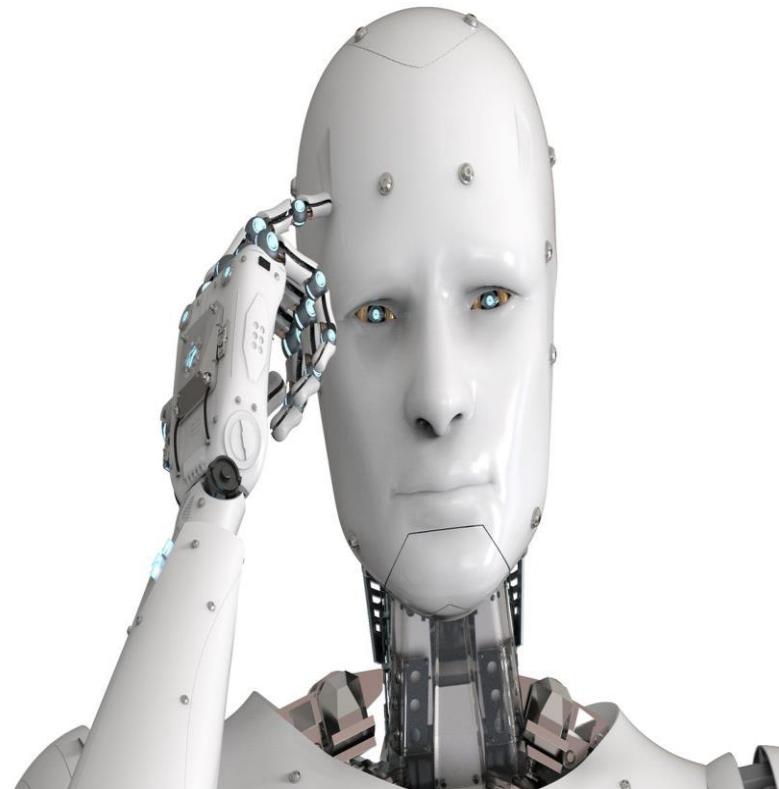


AI Trends and Ethics

**Cari Sheehan, Assistant
General Counsel**
csheehan@taftlaw.com

Taft /

Agenda



[This Photo](#) by Unknown Author is licensed under [CC BY](#)

Define Artificial Intelligence and GenAI

Ethics of AI under the Model Rules of Professional Conduct – ABA Formal Opinion 512

GenAI Example: ChatGPT

Note-Taking AI Platforms

Other Platforms for AI

Jurisdictional/Court Requirements of AI

Usage of AI with Clients

Defining Artificial Intelligence

- **Artificial Intelligence (“AI”):** Technology that allows machines to learn and perform tasks that typically require human intelligence using algorithms and data
- **Generative AI (“GenAI”):** a type of artificial intelligence technology that produces new text, images, audio, and other content based on training data that includes examples of the desired output. Users enter prompts, questions, queries, or other inputs that induce the GenAI model or tool to produce output.
 - Capabilities are limitless: Summarize information, translate text, or perform similar tasks.
 - Used in publicly available tools, e.g., ChatGPT, DALLE, Midjourney



Risks of GenAI

- Producing inaccurate, erroneous, or incomplete output;
- Exposing confidential firm or client information to unauthorized disclosure or infecting firm devices or systems with malware;
- Obligating the firm to comply with undesirable or unacceptable terms and conditions, such as agreeing to indemnify others or granting a license in firm or client information, Prompts, or outputs;
- Violating lawyers' ethical obligations, including but not limited to obligations regarding confidentiality, competence, diligence, communication, supervision, fees, and unauthorized practice of law;
- Breaching outside counsel guidelines or other terms of our engagements with clients;
- Violating privacy, copyright, or other laws;
- Violating the rules of a court or other tribunal;
- Exposing the firm or its lawyers to lawsuits alleging malpractice, breach of fiduciary duty, or other claims; and
- Replicating bias.

Building Trust in Picking an AI/GenAI

- **Explainability:** AI systems should be able to provide clear explanations and justifications for their decision-making processes.
- **Human Oversight:** Human experts should have the ability to review and intervene in AI systems to ensure ethical and responsible outcomes.
- **Disclaimers:** Read the disclaimers on each platform!

DO NOT FORGET THE ETHICAL RULES!

ETHICS OF AI

ABA Formal Opinion
512 (July 2024)





COMPETENCY

- **Rule 1.1 – Competency**
 - Lawyers must provide competent representation to a client
 - Lawyers must have the requisite legal knowledge, skill, thoroughness, and preparation necessary to effectively represent a client
- **Rule 1.1, Comment 6**
 - 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 the technology relevant to the lawyer's practice***, engage in continuing study and education and comply with all continuing legal education requirements to which the lawyer is subject.



Confidentiality



CONFIDENTIALITY

- **Rule 1.6 – Confidentiality**
 - Lawyers shall not reveal information relating to the representation of a client unless the client gives informed consent
 - Lawyers must take reasonable steps to prevent the disclosure of confidential information
 - There is no exception under Rule 1.6(b) for artificial intelligence.
 - You need to know how the information in input is being used, stored, and accessed!



COMMUNICATION

- **Rule 1.4 – Communication**
 - Lawyers shall promptly inform clients of any decision or circumstances needing the client's consent and/or input
 - Lawyers have a duty to keep clients reasonably informed of the status of the matter, and to consult with clients regarding the means in which a lawyer uses to accomplish the client's objective



FEES

- **Rule 1.5 – Fees**
 - Instructive regarding fees, but not definitive because based on “reasonableness”
 - You cannot charge “what you would have spent” – you can only charge for “actual time and work performed”



BIAS/PREJUDICE/DISCRIMINATION

Rule 8.4(a), (d), and (g) – The “Kitchen Sink” Rule

(a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;

* * *

(d) engage in conduct that is *prejudicial to the administration of justice*;

* * *

(g) engage in conduct, in a professional capacity, manifesting, by words or conduct, *bias or prejudice* based upon race, gender, religion, national origin, disability, sexual orientation, age, socioeconomic status, or similar factors. Legitimate advocacy respecting the foregoing factors does not violate this subsection. A trial judge's finding that preemptory challenges were exercised on a discriminatory basis does not alone establish a violation of this Rule.



SUPERVISION

- **Rules 5.1 (Supervision Subordinate Lawyers) and Rule 5.3 (Supervision of Non-Lawyers)**
 - Requires lawyers to adequately supervise and train other lawyers and nonlawyers (e.g., administrative staff, vendors, etc.)
- **Considerations:**
 - Can you definitively say that your assistant, law clerks, vendors, experts, outside counsel, etc. . . are not using AI to produce legal documents, analysis, or the like?
 - Can you definitively say that in using AI your assistant, law clerks, vendors, experts, outside counsel, etc. . . are complying with the Rules of the Professional Conduct in using AI?

TRUTH

TRUTHFULNESS

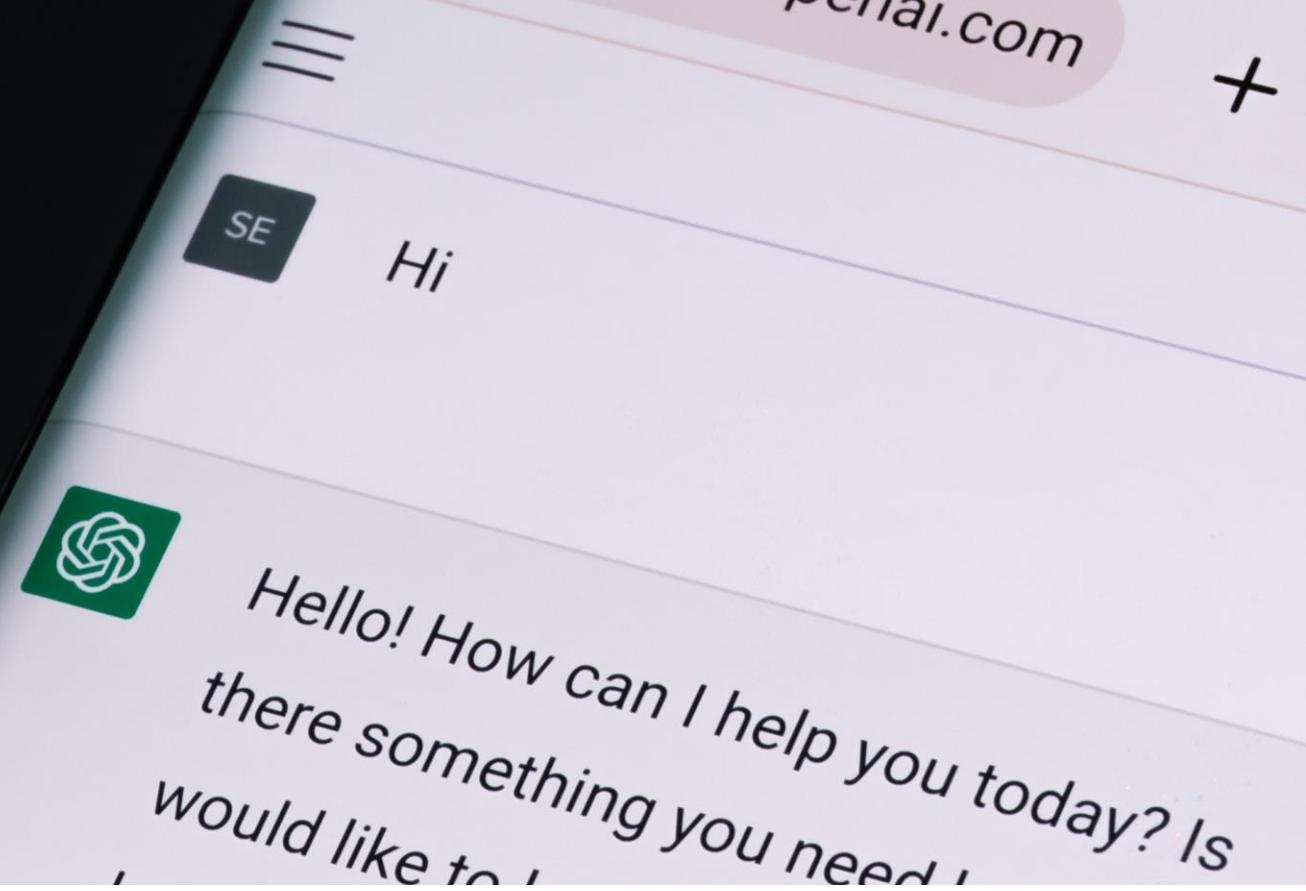
- **Rule 4.1 – Truthfulness in Statements to Others**
 - Lawyer shall not make a false statement of material fact or law to a third person
 - Lawyer shall not fail to disclose a material fact to a third person when disclosure is necessary to avoid assisting in criminal or fraudulent act by a client, unless disclosure is prohibited by Rule 1.6
- **Other truthfulness rules that could be implicated:**
 - Rules 3.3 (Candor to Tribunal), 3.4 (Fairness to Opposing Counsel), and 7.1 (Truthfulness in Attorney Advertising)

EXAMPLE: GenAI vs. Ethics





Welcome to ChatGPT
in your OpenAI account



CHATGPT

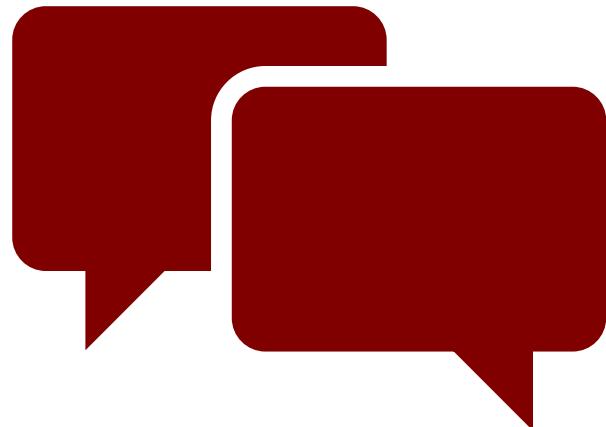
Taft/

CHATGPT (openai.com)

It is a “Generative Pre-trained Transformer”

- **ChatGPT 3.5 (Plus):** No longer option.
- **GPT-4:** legacy model.
- **GPT-4o Mini:** faster for everyday tasks; producing safer and more useful responses; faster speed – can be free version or paid version. Paid version costs \$20/month for faster speed and exclusive access to beta features like browsing, plugin and code interpreters.
- **GPT-4o:** best for complex tasks producing safer and more useful responses; Costs \$20/month for faster speed and exclusive access to beta features like browsing, plugins, and code interpreters
- **DALL-E:** AI system that can create realistic images and art from a description in natural language; Cost ‘credits’ per usage

ChatGPT – Temporary Chat Feature



This Chat will not appear in history, use or create memories, or be used to train ChatGPT models. For safety purposes, OpenAI (ChatGPT) may keep a copy for up to 30 days.

ChatGPT Capabilities

Language Generation:

It can generate text in a natural language that is difficult to distinguish from text written by a human.

Question Answering:

It can answer questions based on a given context or topic.

Text Completion:

It can complete partially written text with suggestions that are contextually relevant.

ChatGPT Capabilities

Text Summarization:

It can summarize long pieces of text into a shorter, more concise version.

Language Translation: It can translate text from one language to another.

Sentiment Analysis:

It can analyze the tone and sentiment of text.

Chatting:

It can engage in conversations with users and provide them with relevant responses.

ChatGPT Capabilities

Explain Stock
(buying/selling)
Options Trading

Design Database
Schema

E.g., design for
online
merchandise store

Brainstorm
Names

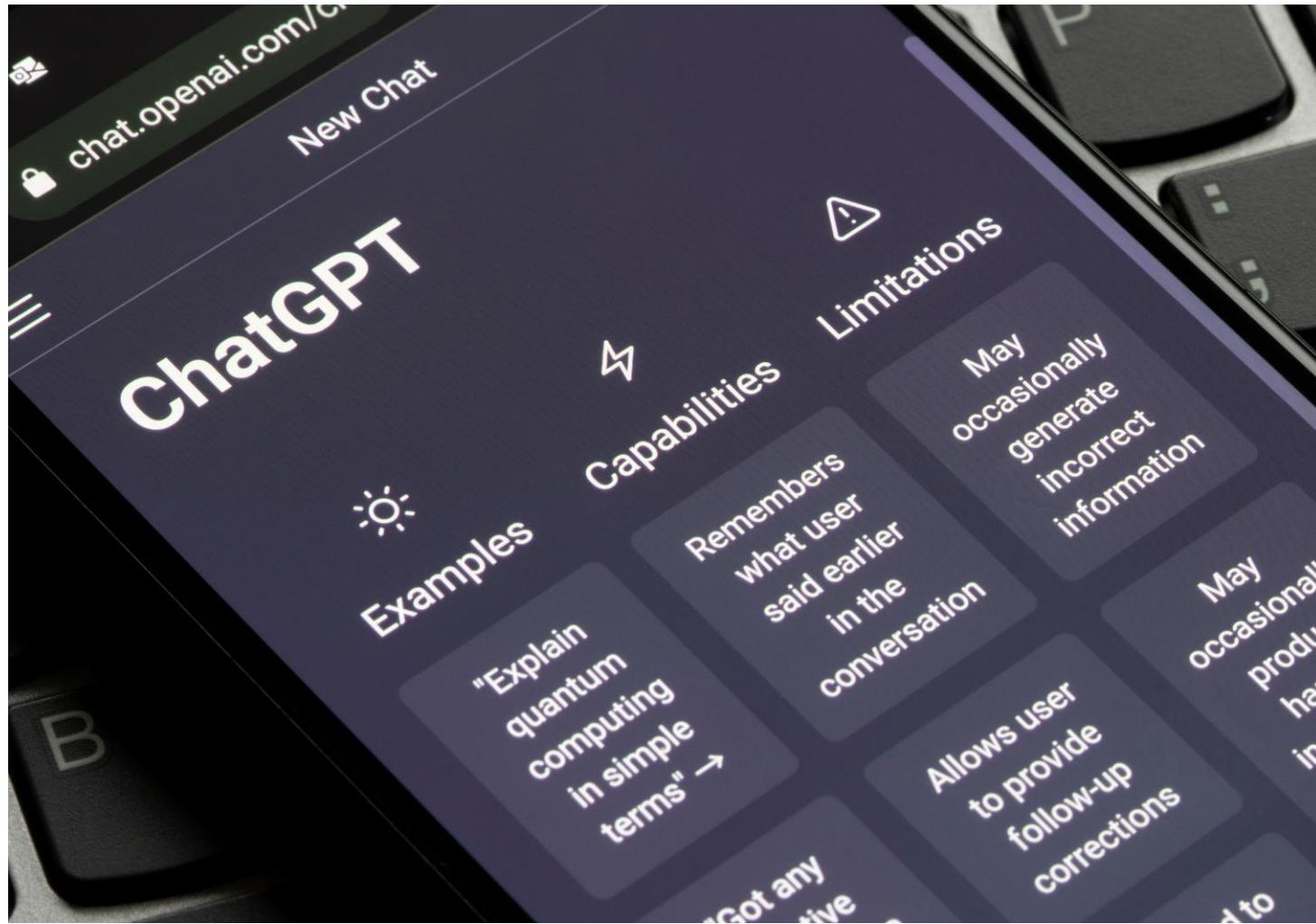
Recommend
Activities

E.g., team-
building day with
remote employees

Plug-In Features and More!

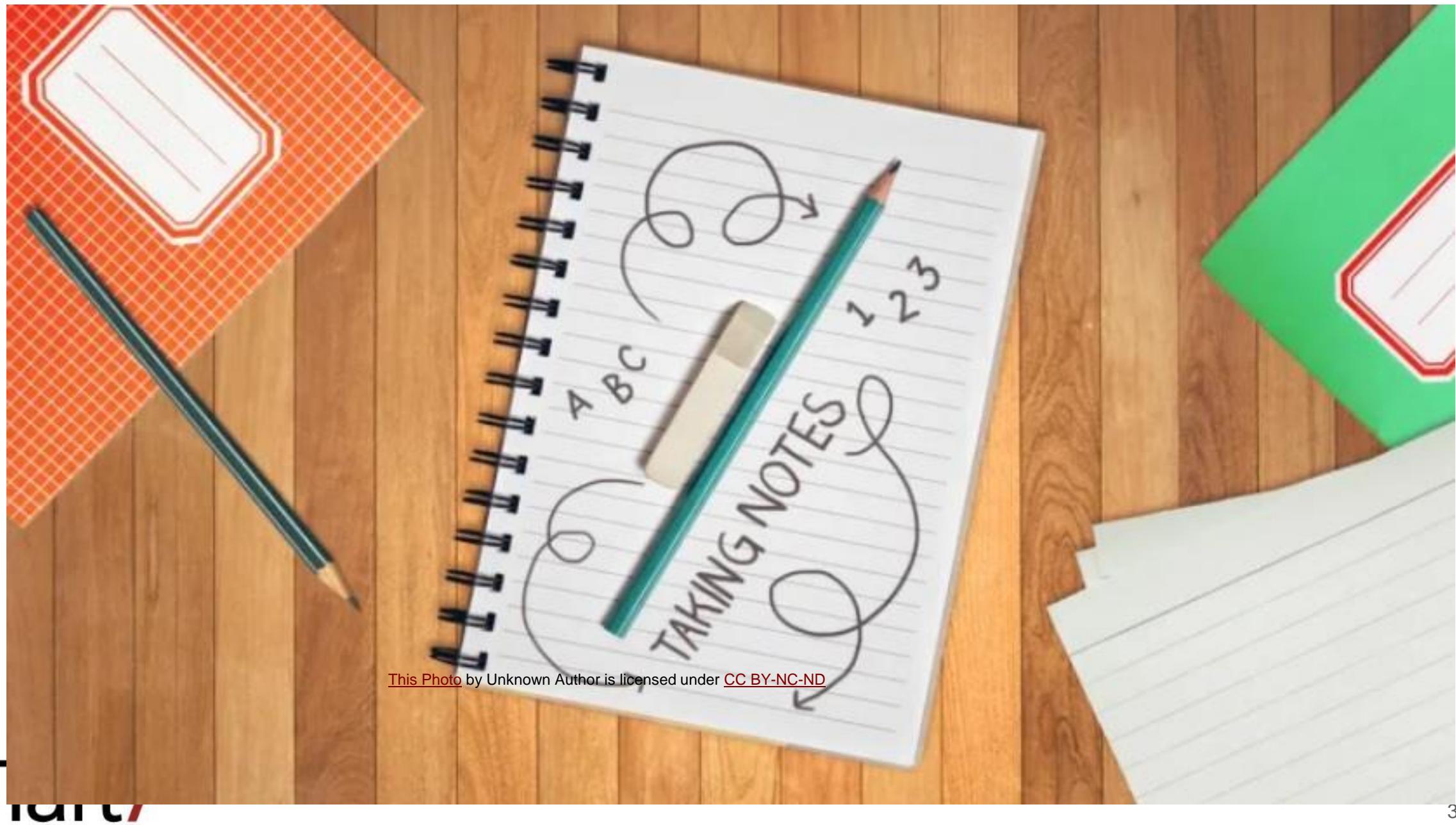
Reminder: Cautionary Measures

- Public generative AI tools, like ChatGPT and Google Bard, should NOT, at this time, be utilized for substantive client legal work.
- Do NOT include any sensitive, confidential, or proprietary information when searching or querying.
- Do NOT include any client information (e.g. names, addresses, phone numbers, etc.) in searches or queries.
- Do NOT upload any documentation.
- These tools should NOT be utilized in any way that might directly or indirectly disclose personally identifiable information.
- Utilize these tools as a starting-place; any and all outputs from such tools should be critically reviewed prior to sharing internally or externally.



What happens if everyone uses ChatGPT

CENTRAL COMEDY



[This Photo](#) by Unknown Author is licensed under [CC BY-NC-ND](#)

AI Note-Taking and Videoconferencing (Third-party Tools)

Fireflies.ai

Otter.ai

Read.ai

AI Note-Taking Tools (Third-party Tools)

ZOOM

Teams

Others

What Ethical Issues or Client Issues Arise in using Note-Taking Tools?



Ethical/Client Issues

- Evidence Creation (volumes of unwanted evidence!)
- Document Management/Storage & Collection
- Inadvertent Disclosure/Confidentiality
- Supervision
- Sharing Data with Third Parties
- Control Over Data
- Deletion of Data
- Security
- Accuracy and Reliability of Data
- Wiretapping Statutes

Reminder: Take Cautionary Measures

- NEVER click on an unfamiliar link (in emails, websites, or during webinars)
- Do NOT download or attempt to download any software
- Be cautious in downloading or introducing an AI notetaking tool into ZOOM or Teams meetings you are hosting, particularly client meetings.
- If a non-client meeting, and AI notetaking assistant introduced, assume it will be recorded, transcribed, and summarized. Request copy of transcript for accuracy. You may be able to deny consent to the notetaking assistant.

Other GenAI Programs



Other Platforms

- Kira Systems - Machine Learning Contract Search, Review and Analysis Software | Kira Systems
 - Kira Systems analyzes and reviews contracts and documents within minutes; finds clauses and discrepancies in contracts within seconds
 - Kira automatically highlights and extracts provisions that are important to you and helps you organize your data for analysis
 - Import, Process, Analyze, Search/Review, Export Reports

Other Platforms

Westlaw Next and MORE!

**Where do
jurisdictions/courts
stand on the use of
AI in the legal
practice?**





**Where does your
Firm stand with
the use of
GenAI
programs?**

This Photo by Unknown Author is licensed under CC BY-ND



WHEN IN DOUBT

REACH OUT!

QUESTIONS?

Cari Sheehan, Assistant General Counsel
csheehan@taftlaw.com