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**DEFENSE QUARTERLY**

**FALL 2023**

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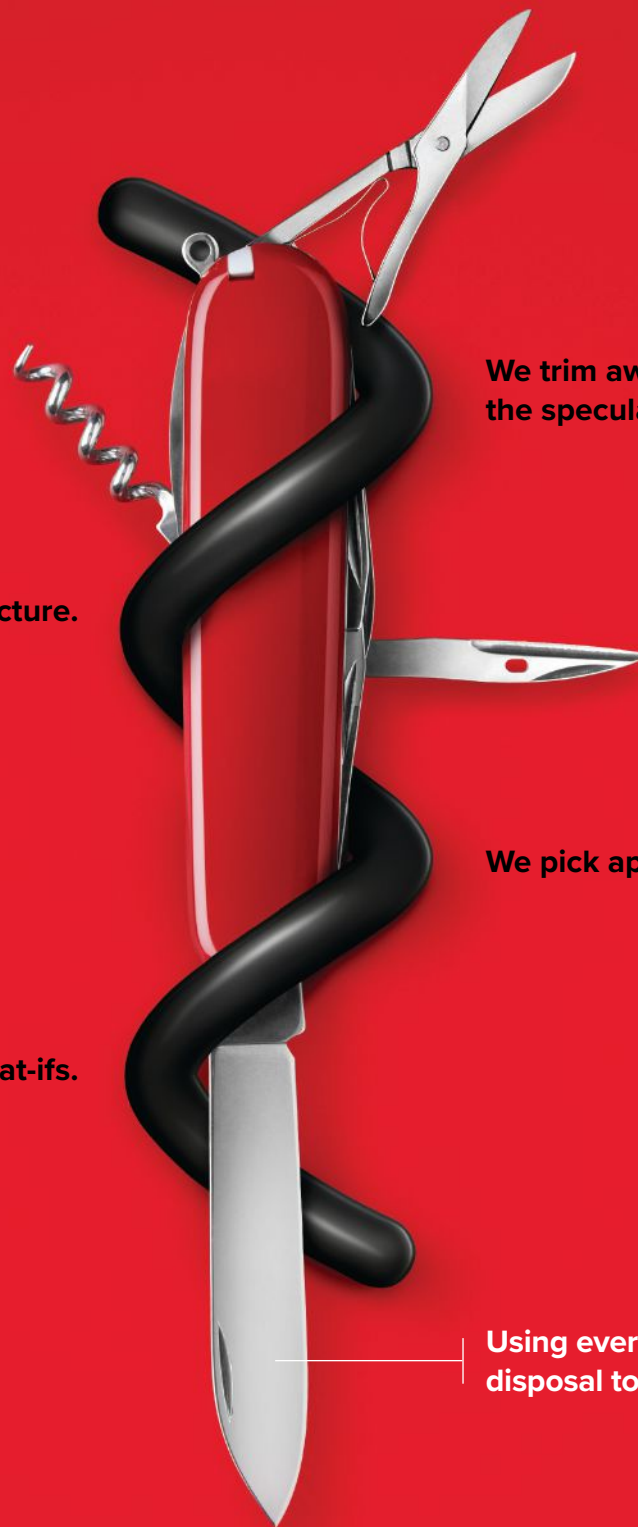
**The Implications of  
Artificial Intelligence  
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## Looking Ahead in the Rearview Mirror

**Michael K. Callahan** is assistant general counsel-litigation at Eversource Energy in Boston, Massachusetts. He is the Second Vice Chair of the DRI Corporate Counsel Committee.

Fall is officially upon us, and with that comes a chill in the air and color in the trees (at least here in New England). Fall also brings the inevitable budget projections for the upcoming year as well as the challenging effort to identify and assess future risks and how to mitigate them. The role of in-house counsel has changed significantly in recent years. The scope and tenor of litigation has increased with far more of us seeing the proliferation of class action lawsuits and other mass tort claims. At the same time, the regulatory environment is becoming more complex, while the pressure to reduce costs and do more with less grows daily. None of us have a crystal ball to predict what 2024 will bring, yet we are guided by past events, and we can use our historical knowledge and experience to set the course going forward. By examining the legal and/or regulatory risks the business has faced in the past and prioritizing them based on likelihood, significance, costs, and outcome, you can better understand future risks, and identify which matters will require the most resources and be able to allocate roles and responsibilities.

As we work through this annual process, all of us are looking for the right balance in quality of work, efficiencies, speed, flexibility, responsiveness, and cost.

It's not an easy task, and, in all candor, most of us will not get it right . . . and I include myself in that category. There are always opportunities for improvement such as use of KPIs, AI, legal operations, and other technology. Unfortunately, the day-to-day workload and "crisis" (not to mention cost) often get in the way of any progress in assessing and implementing these

options. The resources at **DRI**, however, can provide the opportunity to learn from the best and utilize the skill, knowledge of years of experience of highly qualified practitioners to get you up to speed quickly. In 2024, DRI offers **seminars** and **webinars** in many disciplines, including asbestos, retail and hospitality, insurance coverage, professional liability, construction, civil rights and governmental tort liability, products liability and litigation skills. But don't just take my word for it, go to **DRI's education page** and see for yourself.

And, if you aren't a member of DRI's **Corporate Counsel Committee (C3)**, I strongly encourage you to join.

It is comprised exclusively of in-house counsel engaged in working to help its members successfully navigate the challenges unique to in-house practice. C3's efforts are conceptually organized around four broad areas of interest to in-house lawyers, including corporate management and governance, litigation management, corporate compliance and commercial/business operations. A valuable feature of membership in C3 is that **in-house counsel who are members of DRI and members of C3 are eligible for free registration to DRI seminars!**

Finally, I hope you enjoy the terrific articles in this issue of *In-House Defense Quarterly*, as they

have particular application to what we do every day. I also encourage you to get involved by submitting an article for publication to **any of the DRI publications**. If you have an interest, please reach out to [submissions@dri.org](mailto:submissions@dri.org) for more information.

None of us have a crystal ball to predict what 2024 will bring, yet we are guided by past events, and we can use our historical knowledge and experience to set the course going forward.



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*In-House Defense Quarterly* (ISSN 1931-8685) is published quarterly by DRI, 222 South Riverside Plaza, Suite 1870, Chicago, IL 60606. Telephone: (312) 795-1101. Fax: (312) 795-0747.

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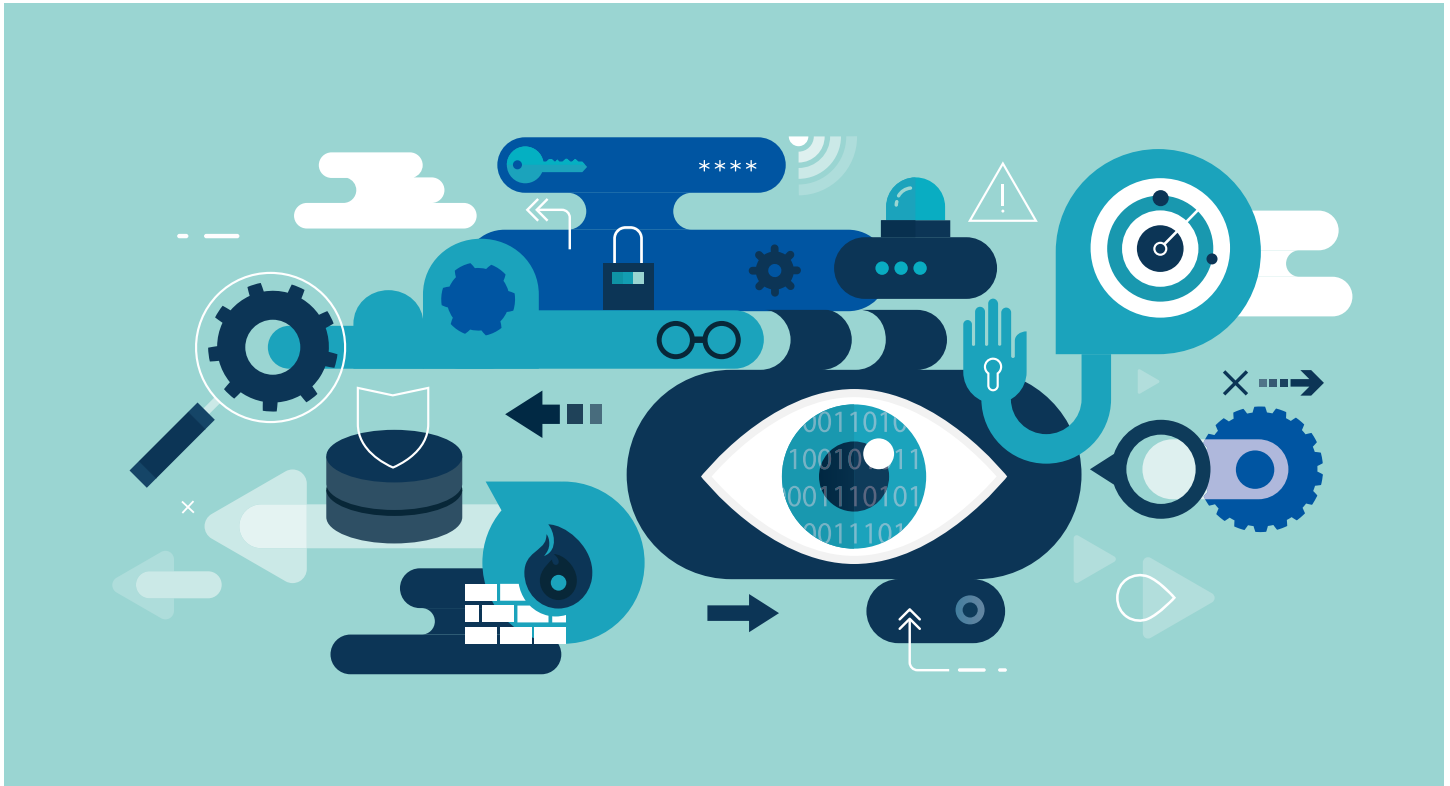


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“GO WITH THE (DATA) FLOW”

By Laura Clark Fey and Will Davis

# Recent EU-US DPF Adequacy Decision Provides Organizations with an Efficient, Cost-Effective Option for Transatlantic Personal Data Transfers



The European Commission has adopted its adequacy decision for the EU-US Data Privacy Framework (“EU-US DPF”). The EU-US DPF adequacy decision shows that

the European Commission feels that “the United States ensures an adequate level of protection—comparable to that of the European Union—for personal data transferred

from the EU to US companies under the new framework.” The Head of the International Section of the Norwegian Data Protection Authority, Tobias Judin, called the



**Laura Clark Fey**, one of the first twenty-seven US attorneys recognized as Privacy Law Specialists through the International Association of Privacy Professionals (IAPP), leads Fey LLC, a global data privacy and information governance law firm. She and her team help multinational and US organizations develop and implement practical solutions to their unique data privacy and information governance challenges. Laura is the immediate past-Chair of DRI’s Cybersecurity and Data Privacy Committee. Laura is chair of DRI Center for Law and Public Policy’s Data Privacy and Protection Working Group, a member of the Center’s AI Working Group, and a member of the International Association of Defense Counsel. Laura is also a member of the

inaugural class of IAPP Fellows of Information Privacy (FIP), a Certified U.S. and European Privacy Professional (CIPP US/E), and a Certified Information Privacy Manager (CIPM). The US Department of Commerce and the European Commission selected her as an arbitrator in connection with the former EU-US Privacy Shield Framework Binding Arbitration Program. Laura, who is also an IADC member, teaches Global Data Protection Law at the University of Kansas School of Law. She has also taught International Issues at Baylor Law School.

**Will Davis** is an associate attorney at Fey LLC. He assists Fey LLC clients in addressing a wide variety of global privacy, information security, and information governance challenges. Will has been designated as an IAPP Fellow of Information Privacy (FIP) and is an IAPP Certified US, European, and Canadian Information Privacy Professional (CIPP/US/E/C). Will is also an IAPP Certified Information Privacy Manager (CIPM,) and has received the ACEDS eDiscovery Executive Certificate (eDEX). He was recently designated as a OneTrust Certified Privacy Professional (OCPP).

The authors would like to extend a special thank you to Randy Willnauer for his contributions to this article.

DPF adequacy decision a “win-win” noting that it “makes it easy for businesses to transfer personal data to a specific country at the same time that measures are in place to protect the rights of individuals.” This adequacy decision became effective on July 10, 2023. Though it is certain the EU-US DPF adequacy decision will be challenged, for the moment, this is a major development in the facilitation of EEA-US dataflows.

**Though it is certain the EU-US DPF adequacy decision will be challenged, for the moment, this is a major development in the facilitation of EEA-US dataflows.**

### Overview of the EU-US DPF Adequacy Decision

The European Commission has [stated](#) that “[t]he adequacy decision on the EU-US Data Privacy Framework covers data transfers from any public or private entity in the EEA to US companies participating in the EU-US Data Privacy Framework.” If a US organization receiving data from the European Economic Area (EEA) self-certifies to the EU-US DPF, such EEA personal data will be able to flow freely and safely from the EEA to such US organization that participates in the EU-US DPF without the need for additional safeguards under Article 46 of the GDPR. However, the safeguards that have put in place by the US government in the area of national security related to the EU-US DPF’s adequacy decision will also facilitate the use of other transfer mechanisms, such as Standard Contractual Clauses (“SCCs”) and Binding Corporate Rules (“BCRs”) if US organizations cannot (or decide not to) self-certify to the EU-US DPF.

### How Organizations can Join the EU-US DPF

#### Privacy Shield-Certified Organizations

Per the Department of Commerce (“DOC”), organizations that have self-certified their commitment to comply with the EU-US Privacy Shield Framework Principles may begin relying immediately on the EU-US DPF adequacy decision to receive personal data transfers from the European Union/European Economic Area. [See DOC DPF Guidance](#). However, such organizations must update their privacy policies for DPF compliance and complete their EU-US DPF self-certification by October 10, 2023. *See id.*

Organizations that are self-certified to comply with the EU-US Privacy Shield Framework Principles but do not wish to participate in the EU-US DPF must complete, in accordance with International Trade Administration (“ITA”) procedures, the withdrawal process referred to in section (f) of the ITA’s Supplemental Principle on Self-Certification.

#### Organizations Not Privacy Shield-Certified

For those organizations not already Privacy Shield-certified, on July 17, 2023, the ITA launched a [website](#) where users can get more information about the EU-US DPF, sign up with an account on the site, and perform the self-certification process. To certify under the EU-US DPF (or re-certify on an annual basis), the European Commission has [stated](#) that organizations must publicly declare their commitment to comply with the EU-US DPF Principles; make their privacy policies available; and fully implement them. Per the EU-US DPF adequacy decision, as part of organizations’ re-certification application, organizations must submit information to the DOC concerning, among other things, the name of the relevant organization seeking self-certification; a description of the purposes for which the organization will process personal data; the personal data that will be covered by the certification; and the chosen verification method, the relevant independent recourse mechanism, and statutory body with jurisdiction to enforce the organization’s compliance with the EU-US DPF

Principles. The DOC listed seven steps for entities to take to properly self-certify to the EU-US DPF. The key elements of the seven steps laid out on the EU-US DPF website are set forth below, along with a bonus recommendation we have added concerning third-party service provider management:

- **Confirm Your Organization’s Eligibility to Participate in the EU-US DPF.** To qualify for participation in the EU-US DPF, organizations must be subject to the jurisdiction of the competent US authorities, the US Federal Trade Commission (“FTC”) or Department of Transportation (“DOT”). Some entities (e.g., many banks, insurers, and non-profits) will not be eligible to participate.
- **Develop an EU-US DPF Compliant Privacy Policy Statement.** To join the EU-US DPF, eligible organizations must certify that they abide by the [EU-U.S. DPF Principles](#), and must draft their privacy policies in accordance with such EU-US DPF Principles. Organizations must also list the organization’s independent recourse mechanisms in the policy and include a statement that they adhere to the EU-US DPF Principles. It is important to note that an organization self-certifying must, at the time of self-certification, provide accurate information about the location of its applicable privacy policy or policies. If such an organization is covering Human Resources (“HR”) and non-HR data, it must indicate the location of the applicable policy or policies for each type of data covered under the organization’s self-certification. The Notice Principle requires the privacy policy to include, among a number of other topics, information concerning:
  - o (i) the participation of the organization, and any of its subsidiaries, in the EU-US DPF;
  - o (ii) the commitment of the organization to subject to the DPF all EU personal data received in reliance on relevant part(s) of the DPF program;
  - o (iii) the type of personal data collected;
  - o (iv) the purpose of the processing;



- o (v) the type or identity of third parties to which personal data is disclosed and the purposes for doing so;
  - o (vi) individual data subject rights under the DPF, and how to exercise them;
  - o (vii) how to contact the organization;
  - o (viii) available redress avenues (including the organization's selected independent dispute resolution entity); and
  - o (ix) the organization's liability in cases of onward transfers to third parties.
- **Implement an Appropriate Independent Recourse Mechanism for Each Type of Personal Data Covered by Its Self-Certification.** Self-certifying organizations must provide an independent recourse mechanism (e.g., JAMS, BBB National Programs (BBB NP), TRUSTe, International Centre for Dispute Resolution-American Arbitration Association (ICDR-AAA), PrivacyTrust, VeraSafe), at no charge to individual data subjects, to investigate unresolved complaints brought under the EU-US DPF Principles. This mechanism must be in place prior to an organization's self-certification. If an organization's self-certification covers HR data (i.e., personal information about your organization's own employees, past or present, collected in the context of the employment relationship), your organization must "...agree to cooperate with and comply with the advice of the appropriate European data protection authorities with regard to such data." [How to Join the Data Privacy Framework \(DPF\) Program \(part 2\)](#).
  - **Confirm Appropriate Third-Party Processor Selection, Contracting, and Monitoring Procedures are Implemented.** Because organizations are required to enter into specified contractual provisions with their third-party processors and because they may face liability for actions of its processors unless they prove they are not responsible for the event giving rise to the damage, certifying organizations should ensure they have appropriate third-

party processor selection, contracting, and monitoring procedures in place.

- **Make the Required Contribution for the Annex I Binding Arbitration Mechanism.** EU data subjects have the option under the EU-US DPF to invoke binding arbitration to determine whether a participating organization has violated its obligations under the EU-US DPF Principles as to that data subject and whether any such violation remains fully or partially unremedied. The DOC committed to maintaining a fund, to which participating organizations are required to contribute, to cover arbitral costs, including arbitrator fees, up to specified maximum amounts, based on the participating organization's annual revenues. The ICDR-AAA was selected by the DOC to administer arbitrations and manage the arbitral fund. To make the required contribution, entities should visit the ICDR-AAA's website at <http://go.adr.org/privacyshieldfund.html>.
- **Verify DPF Attestations and Assertions.** According to the DOC, self-certifying organizations must "...have procedures in place for verifying that their attestations and assertions about its DPF privacy practices are true and that those privacy practices have been implemented as represented and in accordance with the DPF Principles." [How to Join the Data Privacy Framework \(DPF\) Program \(part 2\)](#). Organizations must verify their attestations and assertions through self-assessment or through third-party compliance reviews.
- **Designate an Internal Contact to Address EU-US DPF Requests, Complaints, and Compliance.** Organizations participating in the EU-US DPF are required to provide a contact for the handling of complaints, access requests, and issues concerning their compliance with the EU-US DPF. This contact may be the corporate officer certifying the organization's compliance with the EU-US DPF Principles, or another official within the organization, such as a Chief Privacy Officer. Under the EU-US DPF Principles, organizations

are required to respond to data subjects' requests and complaints within 45 days.

- **Compile the Information Required to Self-Certify and Submit Certification:** Prior to submitting a self-certification via the EU-US DPF website, organizations should compile the information required as part of the ITA's online self-certification process. Then, the self-certification form should be completed. (See [required self-certification information](#)).

### Although Organizations May Already Self-Certify to the UK-US Extension and Swiss-US Data Privacy Framework, Such Frameworks Are Not Yet Finalized

Although the UK-US Extension and Swiss-EU Data Privacy Frameworks are not yet finalized, organizations can already self-certify their compliance with such frameworks. That being said, organizations may prefer to wait until they can rely on such frameworks to support relevant cross-border transfers before committing to compliance with such frameworks. In the remainder of this section, we provide information about such frameworks.

- **UK Extension.** The UK has committed to the creation of a data bridge to the US via the UK Extension to the EU-US DPF, which acknowledges the adequacy of protection provided to UK citizens by the EU-US DPF. Effective July 17, 2023, eligible organizations in the US may self-certify their compliance pursuant to the UK Extension, but they may not begin relying on the UK Extension to receive personal data transfers from the UK and Gibraltar until the United Kingdom's adequacy regulations implementing the data bridge for the UK Extension are finalized and in force. Organizations wishing to participate in the UK Extension must also participate in the EU-US DPF.
- **Swiss-U.S. Framework.** As of July 17, 2023, the Swiss-US Data Privacy Framework ("Swiss-US DPF") principles enter into effect. Organizations that previously self-certified their commitment to comply with the Swiss-US Privacy Shield Framework Principles must comply with the Swiss-US DPF Principles, including

by updating their privacy policies. Those organizations do not need to make a separate, initial self-certification submission to participate in the Swiss-US DPF; however, they may not begin relying on the Swiss-US DPF to receive personal data transfers from Switzerland until the date of entry into force of the Swiss Federal Administration's anticipated recognition of adequacy for the Swiss-US DPF. The updating and renaming of the privacy principles under the Swiss-US DPF will not change such an organization's re-certification due date. Organizations that self-certified their commitment to comply with the Swiss-US Privacy Shield Framework Principles, but do not wish to participate in the Swiss-US DPF, must complete, in accordance with ITA procedures, the withdrawal process referred to in section (f) of the Supplemental Principle on Self-Certification.

### Enforcement of the EU-US DPF

Organizations participating in the EU-US DPF are required to implement an independent recourse mechanism that is available to investigate and resolve data subject complaints and disputes at no cost to data subjects. The recourse mechanism must also include procedures for verifying compliance with the EU-US DPF Principles. The sanctions implemented (if necessary) through the recourse mechanism must be rigorous enough to ensure compliance by participating organizations. The sanctions should include, among other penalties, publicity for findings of non-compliance and deletion of data in appropriate circumstances, suspension and removal of a seal, compensation for data subjects for losses incurred because of non-compliance, and various injunctive awards. If organizations participating in the EU-US DPF fail to comply with the rulings of the independent recourse mechanism, the independent recourse mechanism is required to "... notify the governmental body with applicable jurisdiction or the courts, as appropriate, and the US Department of Commerce." See [EU-U.S. DPF website enforcement page](#).

Numerous administration and enforcement bodies are working together to

## Numerous administration and enforcement bodies are working together to implement the EU-US DPF.

implement the EU-US DPF. The DOC will administer the EU-US DPF and will monitor certifying organizations' compliance with the EU-US DPF. Either the FTC or DOT will enforce compliance obligations under the EU-US DPF, depending on the type of organization that is under review.

The DOC will monitor, on an ongoing basis, certifying organizations' compliance with the EU-US DPF Principles through a variety of different mechanisms. For example, the DOC will "carry out 'spot checks' of randomly selected certifying organizations, as well as ad hoc compliance reviews of specific organizations when potential compliance violations are identified (e.g., reported to the DOC by third parties)." During these compliance reviews, the DOC will review, among other things, whether: (1) point(s) of contact for handling complaints and data subject requests are available and responsive; (2) the organization's privacy policy is readily available, both on its website and via a hyperlink on the DOC's website; (3) the organization's privacy policy continues to comply with the certification requirements and (4) the organizations' chosen independent dispute resolution mechanism is available to handle complaints. Among other sanctions, organizations participating in the EU-US DPF that have been "... found to have persistently failed to comply with the DPF Principles..." will be removed from the EU-US DPF list by the DOC and required to "... return or delete the personal information they received under the relevant part(s) of the DPF program." See *id.*

### Key Compliance Obligations under the EU-US DPF

Key compliance obligations under the EU-US DPF, include, but are not limited to, the following:

- **Subjecting All EEA Personal Data to the EU-US DPF.** Organizations must

subject to the EU-US DPF Principles all personal data they receive from the EEA in reliance on the EU-US DPF.

- **Conducting Required Administrative Functions.** Organizations must fulfill the mandatory administrative functions required by the EU-US DPF. And other administrative functions required to be completed by US organizations prior to self-certification to the EU-US framework (e.g., providing contact information for requests and complaints; paying necessary fund contributions).
- **Entering into Compliant Data Processing Agreements.** Organizations must incorporate the requisite contractual terms referenced under the *Accountability for Onward Transfer Principle* when personal data is being transferred from the EEA to the US for processing purposes under the EU-US DPF.
- **Abiding by EU-US DPF Principles.** Organizations must comply with the EU-US DPF Principles including the notice; choice (*i.e.*, the right for individuals to choose that their personal data not be disclosed to a third party or used for a different purpose than the purpose for which their personal data was originally collected); accountability for onward transfers; security; data integrity and purpose limitation; access (*i.e.*, individuals' rights of access, amendment, rectification, and deletion of personal data); and recourse, enforcement and liability principles. Compliance with such principles will require, among other actions, updating the organization's privacy notice in accordance with the relevant EU-US DPF Principles; meeting obligations to provide EU data subjects with access and other rights to which they are entitled under the EU-US DPF; and implementing an independent recourse mechanism.

### Overview of the Limitations and Safeguards on Access to Personal Data by US Intelligence Agencies

A key element the EU-US DPF adequacy decision is based on is the [Executive Order on 'Enhancing Safeguards for United States Signals Intelligence Activities'](#) and its accompanying regulations adopted by the Attorney General ("**Executive Order**").

For Europeans whose personal data is transferred to the US, the Executive Order provides for protections and redress mechanisms, such as: (1) Binding safeguards that limit access to data by US intelligence authorities to what is necessary and proportionate to protect national security; (2) Enhanced oversight of activities by US intelligence services to ensure compliance with limitations on surveillance activities; and (3) The establishment of an independent and impartial layered redress mechanism. This redress mechanism includes a process through which complaints regarding access to complainants' personal data by US Intelligence Community bodies can be made to a Civil Liberties Protection Officer ("CLPO"), whose decisions on a matter are enforceable unless appealed by either the complainant or the Intelligence Community body to the new Data Protection Review Court ("DPRC"). The DPRC has the authority to resolve disputed rulings by the CLPO.

### Broader Impact of the Limitations and Safeguards on Access to Personal Data by US Intelligence Agencies on Other Lawful Transfer Mechanisms

The Commission has stated that "[a]ll the safeguards that have been put in place by the US Government in the area of national security (including the redress mechanism) apply to all data transfers under the GDPR to companies in the US, regardless of the transfer mechanisms used. These safeguards therefore also facilitate the use of other tools, such as standard contractual clauses and binding corporate rules." This statement from the European Commission likely contemplates that the adequacy decision and the resulting safeguards tied to it will make the use of SCCs and other lawful transfer mechanisms stronger in the eyes of the European Commission and EEA Data Protection Authorities.

In the post-Privacy Shield world, organizations have had no option but to pivot to reliance on other lawful transfer mechanisms to legally transfer personal data from the EU to the US. For many organizations, SCCs have been the preferred transfer mechanism for the past couple of years, but recent penalties imposed for cross-border transfers, such as the **mas-**

**sive fine imposed on Meta Ireland** despite its use of SCCs for personal data transfers, demonstrate that SCCs are not a bulletproof solution. Additionally, BCRs and other mechanisms (e.g., approved codes of conduct) are expensive and often require a time-consuming, cumbersome implementation process, and are generally only implemented by very large organizations (e.g., eBay, Intel, HP). Therefore, although other transfer mechanisms may be stronger now in the eyes of the European Commission, there is a strong argument for organizations to pivot to self-certification to the EU-US DPF.

### Should Your Organization Self-Certify?

It is uncertain whether the EU-US DPF will remain in force because—like Privacy Shield and Safe Harbor before it—the EU-US DPF will be challenged on grounds that it does not adequately protect EEA personal data. NOYB, a European digital rights advocacy nonprofit based in Vienna, Austria, is expected to raise such a challenge. NOYB is broadly known for raising the challenge that ultimately invalidated the EU-US DPF's predecessor, Privacy Shield. NOYB's founder, Max Schrems, **vowed to challenge** the EU-US DPF virtually as soon as the adequacy decision was handed down, noting that he expects the question of the validity of the EU-US DPF "to be back at the Court of Justice by the beginning of next year." Despite the impending challenge from NOYB, however, both the DOC and the European Commission have expressed their confidence in the EU-US DPF being upheld. As the European Commission has noted, the framework was drafted expressly to address the problems and fill the gaps in the Privacy Shield laid out in the *Schrems II* decision.

Participation in the EU-US DPF is likely to be viewed as a good option for most organizations receiving personal data from the EEA in the US because (1) self-certification to the EU-US DPF will permit the transfer of personal data from the EEA to such organizations without the need for additional safeguards, (2) it is likely that some customers/clients will want/prefer such organizations to participate in the EU-US DPF, (3) such organizations will not be required

to help prepare Transfer Impact Assessments ("TIAs") under the GDPR to support such transatlantic personal data transfers (although if a DPF-certified organization will be transferring EU personal data to organizations or suppliers in other third countries for which an adequacy decision is not in place, a TIA should be completed to support such transfer), and (4) the costs of self-certification would generally be lower than the cost of maintaining SCCs with multiple third parties, especially for organizations with numerous contracts in place. Our view is that organizations that are able to comply with the EU-US DPF principles should strongly consider participating in the EU-US DPF. Organizations considering certification should conduct a privacy compliance assessment and remediate any gaps in EU-US DPF compliance (and in GDPR compliance) before self-certifying, even if they self-certified under past Privacy Shield certification.

Organizations that have maintained their Privacy Shield certification will be able to certify automatically to the EU-US DPF, after making the relatively limited updates that are required. The deadline for such organizations to self-certify to the EU-US DPF is October 10, 2023. Other organizations may self-certify as soon as they have confirmed their ability to comply and have taken the necessary steps to self-certify. It is expected that the FTC and DOT will be strictly enforcing the EU-US DPF, so it will be important for certifying organizations to confirm they are and remain EU-US DPF compliant.

### If Your Organization Self-Certifies, Does Your Organization Need Other Transfer Mechanisms in Place?

The EU-US DPF will serve as an efficient and cost-effective mechanism for many organizations conducting transatlantic personal data transfers to conduct such transfers without the need to implement additional safeguards. This is especially important for small and medium-sized businesses, as implementing SCCs and BCRs can be extremely expensive and time-consuming.

However, some organizations may consider using transfer mechanisms under Article 46 of the GDPR in addition to rely-

ing on the EU-US DPF adequacy decision. During the International Association of Privacy Professionals' "The EU-US Data Privacy Framework in Practice" LinkedIn live web conference, the DOC's Alex Greenstein mentioned that companies may want to consider SCCs or other transfer mechanisms as a "belt and suspenders" solution for compliance to be used in conjunction with participation in the EU-US DPF.

If organizations choose to continue to rely on SCCs or certain other transfer mechanisms, it is worth noting that the changes brought about by the new safeguards and redress mechanisms included in President Biden's executive order will require them to update their TIAs (e.g., editing TIAs to properly account for new safeguards related to government access).

Although implementing compliant SCCs or other lawful transfer mechanisms, along with certifying to the EU-US DPF, as a "belt and suspenders" approach, may provide some benefits (e.g., allowing entities choosing to withdraw from the EU-US DPF to retain data received in reliance on the EU-US DPF and SCCs without having to affirm they will continue to apply the EU-US Principles to such data) we generally recommend that organizations self-certify and only utilize the additional safeguards if absolutely necessary for transfers that may involve organizations and suppliers in third countries without an adequacy decision.

### Looking Ahead

Moving forward, we recommend keeping apprised of further developments in this area. Potential developments to watch out for include data transfer frameworks tailored to cover entities excluded by the scope of the EU-US DPF (e.g., healthcare and financial services entities), as well as both narrower and broader government frameworks (e.g., state-specific adequacy decisions; a US adequacy decision if a comprehensive federal privacy law is ever passed). Specific compliance obligations for cross-border data transfers are a moving target, and it will be important for organizations engaging in cross-border personal data transfers to stay on top of the latest legal developments in Europe and beyond.



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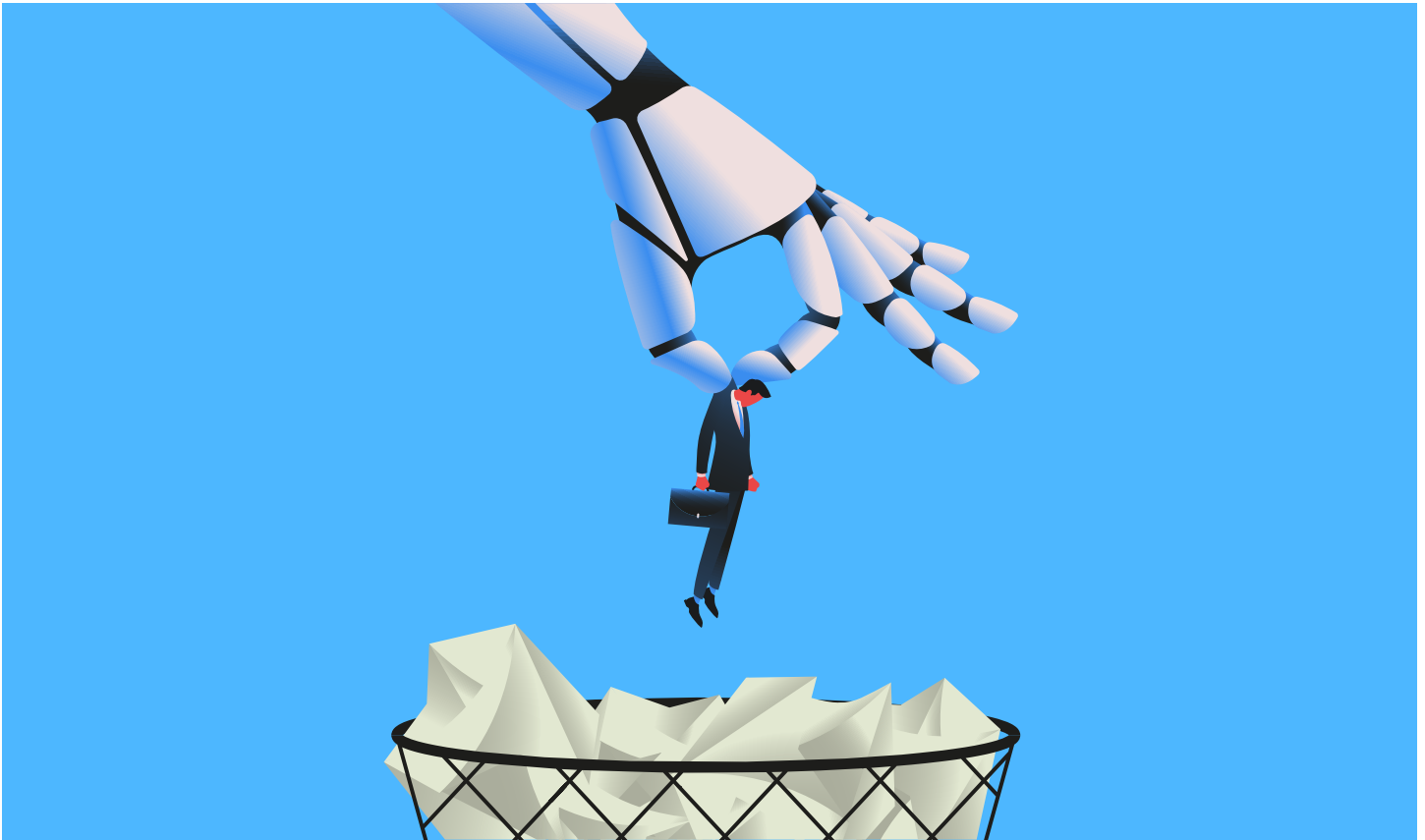
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By Marc E. Williams and Anna J. Williams

# The Implications of Artificial Intelligence on the Civil Defense Lawyer



The image of a robot takeover once existed only in media and literature. Now, fear of robot-like machines continues to creep its way into the professional realm with the ever-innovating field of artificial intelligence (“AI”). Although the true extent of the impact of AI on the legal profession (and the overall global labor market) remains unclear, the technology already possesses a significant ability, for better or for worse, to alter existing professional norms. While writing this article, I asked ChatGPT, “What will be the impact of arti-

ficial intelligence on the practice of law?” The machine answered, “Artificial intelligence (AI) is already having a significant impact on the practice of law, and its influence is expected to continue growing in the future.” In its full response, the machine listed all major points that I sought to raise in this article about AI’s impact: automation of legal work, the increasing value of efficiency, AI as a transformative technology, and accompanying ethical concerns raised by AI systems. In effect, my conversation with the machine about the impact

of the machine underscored its increasing capability to place itself directly within the legal profession.

AI describes a massive body of technology geared toward training computer systems or machines to perform tasks that ordinarily require human intelligence. (Prashnu Verma and Rachel Lerman, *A Curious Person’s Guide to Artificial Intelligence*, Tech (May 7, 2023). Concerns over AI’s impact on the legal profession escalated with the advancement of large language models like ChatGPT. (Lee B. Ziffer,



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*The Robots are Coming: AI Large Language Models and the Legal Profession*, American Bar Association, Practice Points. Feb. 28, 2023). Large language models (“LLMs”) produce human-like responses based on the input of massive text-based datasets. Because LLMs only become smarter and more refined with every input, weary onlookers fear that the machine will inevitably replace human intelligence.

If you are a customer of Amazon, you are subject to their AI commerce platform every time you log onto their website. The Amazon system is designed to learn your buying preferences and present you with options consistent with your prior buying decisions. Likewise, Facebook uses an AI interface that presents paid ads in your timeline taken from the subjects of your search engine entries. If you search for information on desktop printers, voila! An ad for a printer will appear in your Facebook timeline. This is AI.

Fears of robot takeover are misplaced. Even though AI is rapidly developing, the technology has already proven to be incredibly useful, rather than ruinous, to various professions – including the legal

**Even though AI is rapidly developing, the technology has already proven to be incredibly useful, rather than ruinous, to various professions – including the legal field.**

field. For instance, Technology Assisted Review of eDiscovery is a product of AI that expedited a once-tedious task reserved for new associates or contract lawyers. While TAR (or any present AI system) is not foolproof, its profound impact on expediting and expanding the process of discovery cannot be overstated. (*Myths and Facts about Technology Assisted Review*, <https://legal.thomsonreuters.com/en/insights/articles/myths-and-facts-about-technology-assisted-review>).

TAR is not the only example of disruptive legal technology that changed the legal landscape. In fact, disruptive legal technologies that emerged in the 20th century alongside the development of the computer have consistently and profoundly impacted the legal profession in many forgotten ways. *A History of How Technology Has Transformed the Legal Field*, E-discovery 101 (Sep 9, 2021). For instance, for many decades, law firms and clients have used predictive analytics, or data points such as costs and outcomes of similar cases to determine how to evaluate the efficiency of case-resolution. In the 1970s, digital legal research eliminated the traditional, time-consuming practices of print-based legal research. In the 1990s, the legal profession started using online dispute resolution and e-Filing systems to keep up with the explosion of connectivity and information. At the turn of the century, the profession responded to the technology boom by automating case management, time-tracking, and billing. As the 2000s progressed, so did digital productivity tools, legal apps, video conferencing, and blockchain contracts. Now, as a positive product of the COVID-19 pandemic, case handling, depositions, mediations, hearings, and even trials are handled remotely in ways that were once considered impossible. Many of these now ordinary digital products were at one time viewed with harsh skepticism.

Accordingly, simply because AI exists as an abstract concept to most does not render it dangerous or useless to lawyers. Rather, with basic human understanding, AI can become a competitive tool that automates mundane tasks and advances legal practice areas by forcing the industry to meet new market demands for specialization. While there is little doubt that AI disrupts the existing norms of the legal profession by catalyzing the demise of the billable hour and generalized practice, lawyers must adapt alongside the technology to improve their expertise, output, and client relationships.

A technological transformation in the legal industry is afoot. To survive it, the legal profession must examine its practices and requisite professional skills. This article takes a multifaceted approach toward analyzing the impact of AI on the civil

defense lawyer. First, this article will examine AI’s role as a modern disruptor to a traditional profession predicated on exclusivity. Then, this article will analyze two key products of AI’s disruption: the demise of the billable hour and changing professional demands. Finally, this article will conclude with a series of solutions to quiet the disruption and adapt with automation.

### AI as the Modern Disruptor

Generative AI is the new technological disruptor in the legal profession. This broad, rapidly developing category of technology can produce documents, drafts, and data only seconds after a basic human input. The hallmark feature of generative AI is its ability to create text, sound, or images based on minimal human prompts and constantly improving, trained data sets. For instance, the technology can generate English essays, professional headshots, and even covers of songs by an artist of choice. (Verma and Lerman). ChatGPT and similar software fall within the category of generative AI.

What makes generative AI so disruptive is its potential to expedite human processes and, for some, its potential to replace the need for human intelligence. Before GPT, someone writing an essay might conduct cursory research on a topic, outline the topic, and create several drafts before completion. With generative AI, this same person can invest a minuscule fraction of that time into the project by simply generating a series of prompts. Generative AI enhances efficiency tenfold.

However, efficiency comes at a cost to professionals. Professionalism relies on exclusivity. In other words, a professional must have some set of trained, special skills not available to a lay person to make them useful in the labor market. For lawyers, a significant portion of their exclusivity rests in their research, analytical, and writing skills. Of course, access to exclusive knowledge and skills comes with a price tag. And, naturally, where there is no shortage of demand, the supplier – lawyers – can control the price. Economic leverage controls the profitability of the legal system, but generative AI poses a significant threat to it by bringing efficiency to the forefront. (Rebecca J. Kunkel, *Artificial Intelligence*,

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*Automation, and Proletarianization of the Legal Profession*, 56 CREIGHTON L. REV. 69 (2022)).

With efficiency at the forefront, recipients of costly professional services are thinking differently. Not only can genera-

## With efficiency at the forefront, recipients of costly professional services are thinking differently.

tive AI models like ChatGPT expedite professional services, but these models can also improve accessibility to the information, documents, and processes professionals follow. To be clear, this does not mean that increasingly capable machines create decreasingly necessary professional intervention. Rather, these machines reshape and redefine traditional services, such as legal services, into a more-for-less model. (Richard Susskind, *Tomorrow's Lawyers: An Introduction to Your Future* (3d ed. 2023)). Lawyers can do more in less time than ever before, which in turn means that clients can access more and, perhaps, pay less for that work product. This has the potential to revolutionize the pricing of legal services, and perhaps, lead to (finally!) the demise of the billable hour.

The lure of efficiency is tempting, even to a professional. However, the unbridled use of generative AI in the legal profession poses significant ethical concerns that, without proper understanding, create dire consequences for clients and in courtrooms. For instance, Steven Schwartz, a lawyer in New York, fell victim to ChatGPT's occasional hallucinations, or output of false information, in federal court. In the case of *Roberto Mata v. Avianca, Inc.*, Schwartz cited six cases generated by ChatGPT during his legal research. A legitimate citation followed each case; however, it was soon discovered by opposing counsel and the court that these cases, and citations, did not exist. Schwartz, in an affidavit responding to the Court's Order to Show Cause, admitted to using the research tool and promised to never use it again without verifying the authenticity of each source.

Stephen Schwartz, his co-counsel Peter LoDuca, and their law firm Levidow, Levidow & Oberman were ordered to pay a \$5,000 fine for "acts of conscious avoidance and false and misleading statements to the court." (Sara Merken, *New York Lawyers Sanctioned for Using Fake ChatGPT Cases in Legal Brief*, (June 26, 2023, 4:28 AM), <https://www.reuters.com/legal/new-york-lawyers-sanctioned-using-fake-chatgpt-cases-legal-brief-2023-06-22/>).

Ultimately, what happened to Schwartz is a common fault of the current form of generative AI. The machine is trained to produce responses based on a prompt. Schwartz most likely asked ChatGPT to give him cases applicable to a favorable proposition in his case. Accordingly, the machine analyzed its databank of case law, likely found on the internet, and produced a response with only the favorable, most applicable portions of each case. The efforts of the lawyer to find an easy solution to a common lawyer task (legal research) ended up costing him not only the case and a monetary sanction, but his credibility before any judge where he practices.

Generative AI poses several other risks to the legal profession and to most any subject area it touches. First, the system inherits the bias of the humans that train it with their inputs. As of now, generative AI lacks the capability to discern harmful human thought patterns. This is partly because humans themselves struggle to understand their implicit biases. Even so, training generative AI on inherently flawed information can exacerbate implicit biases. For instance, in 2016, Microsoft launched its Twitter AI-based chatbot named Tay. Microsoft intended for Tay to be a playful internet chatbot which would respond to user's prompts. But less than 24 hours after going live on the internet, Microsoft removed Tay, as it had devolved into what many see too commonly on social media: a hate-filled, antisemitic, racist, and hate-spewing robot. (*Microsoft Chatbot is Taught to Swear on Twitter*, (Mar 24, 2016), <https://www.bbc.com/news/technology-35890188>).

Aside from being an inherently flawed model, generative AI may also pose a privacy risk to legal professionals and their clients. For instance, one should never put

client confidential information into a Chat GPT inquiry, as the system will utilize all data fed into it in answering other inquiries. Unless the user has the forethought, understanding, and option to change data and privacy settings before using the system, everything put into a generative AI system stays in the system to train a better response for the next input. Lawyers could potentially divulge confidential information in their quest for the perfect paragraph or absolute answer. Lawyers could accidentally upload confidential files into a public databank when seeking a simple proofread or argument enhancement. The privacy concerns are great.

The final remaining ethical challenge in the age of generative AI is in assigning value to legal work product. If the system is truly capable of altering the practice of law by automating nearly half of it, then lawyers must reconsider what is a reasonable fee in light of what the system can produce. (Amy B. Cyphert, *A Human being Wrote This Law Review Article: GPT-3 and the Practice of Law*, 55 UC Davis L. REV. 401 (2021)). This ethical reconsideration is perhaps the start of a larger conversation on billing, which we address later in this article. Needless to say, generative AI will force a change within many areas of the legal profession.

Despite developments in generative AI that dramatically enhance efficiency, data about lawyers and their legal research tendencies tells a different story about its present utility. According to the ABA's 2022 Profile of the Legal Profession, lawyers are spending more time conducting legal research than in previous years. Nearly half of lawyer's report that their research begins on free online search engines like Google. However, only 10% currently use the artificial intelligence tools in their firms. Interestingly, the number increases to 19% at larger law firms with more than 100 employees. (American Bar Association, *ABA Profile of the Legal Profession*, (2022)). In April of 2023, Thomson Reuters issued a report on ChatGPT and its use in law firms. The report demonstrates the legal profession's predicament: while 82% of lawyers agreed that generative AI can apply to legal work, only 51% agreed that it should be applied to legal work. (Thomson Reuters,

*New Report of Chat GPT & Generative AI in Law Firms Shows Opportunities About, Even as Concerns Persist*, <https://www.thomsonreuters.com/en-us/posts/technology/chatgpt-generative-ai-law-firms-2023/>).

Still, despite this professional divide, companies continue to innovate what may become the new normal in the legal profession. For instance, in May 2023, LexisNexis announced its new generative AI platform Lexis+AI, a generative AI platform equipped to produce research, summaries, and documents. (Rhys Dipshan, *LexisNexis Announces Generative AI Platform Lexis+AI, Automating Search, Drafting and Summary Tasks*, (2023)). Shortly thereafter, Thomson Reuters announced its partnership with Microsoft to bring generative AI to its legal products, like Westlaw Precision, in 2023. (Matt Reynolds, *Thomas Reuters Partners with Microsoft for Generative AI Push*, (May 23, 2023)). In fact, other law firms already use generative AI in their practice. For instance, international law firm Allen & Overy launched Harvey in February 2023. Harvey is a legal-specific generative AI platform that assists its lawyers in conducting research with natural language instructions. (Caroline Hill, *Allen & Overy Breaks the Internet (and New Ground) with Co-Pilot Harvey*, (Feb. 16, 2023), <https://legaltechnology.com/2023/02/16/allen-overy-breaks-the-internet-and-new-ground-with-co-pilot-harvey/>). In the United States, Troutman Pepper launched its Generative AI Task Force in May 2023 to explore the use of generative AI within the firm and practice. (*Troutman Pepper Launches Generative AI Task Force*, (May 10, 2023)). Practice specific generative AI avoids some possible errors because it is trained only on firm data or accurate case law. However, even if a generative AI system reflects an intranet of information, it is unlikely, in its current model, to escape the occasional hallucination or output of misinformation.

The speed at which lawyers embrace generative AI in their practice may certainly change as the technology improves its accuracy and privacy functions and as the technology is embraced by subscription-based legal research platforms. But delay in the implementation of generative AI in the legal profession will not

slow down its overall impact on lawyers. We must exercise our comprehension and critical thinking skills to answer the questions raised by generative AI and adapt to the professional opportunities it creates. If anything, generative AI forces the legal profession to confront some of its longest-standing systems and skillsets – the billable hour and the exclusivity of lawyering. In other words, in the age of AI and its accompanying emphasis on efficiency, lawyers must redefine how and for what services exactly they are billing. While the practice may be slow to adopt the technology, there is no doubt that it will force a rapid change in professional norms.

### The Demise of the Billable Hour

Generative AI forces the legal profession to confront its standard billable hour model. In the background of the billable hour, the capability of generative AI to automate the legal profession creates a significant economic risk. Because the legal profession primarily relies on the billable hour model, which itself relies on the heavy-lifting of legal work being completed by less experienced associates, any time-saving technology inherently poses some risk to diminishing the total revenue generated in a law firm. But even in the age of AI, this proposition is not new. For decades, disruptive technologies like TAR, machine prediction, and research add-ons unsettled the billable hour model. However, none of these technologies possessed the production capabilities of generative AI.

Ironically, the billable hour originated from a desire to maintain efficiency and transparency between lawyer and client in an increasingly complex legal system. Early legal services were traditionally offered on a fixed-fee basis, billed at the conclusion of a matter. From the fixed-fee model, other payment arrangements like contingencies and retainers emerged. However, between the 1930s and 1940s, state bar associations struggled with stagnant attorney incomes, increasingly complex discovery requirements, and expanding federal regulations. Clients began equating the value of legal services with the length of time it took to resolve their legal matter. Major law firms sprouted across the country. All of these elements created the perfect win-

down for the billable hour and its detailed record-keeping to rise in prominence. The increase in legal work, the length of time it took to complete that work, and the market competition raised incomes and revenues nationwide under the billable hour model. (Stuart L. Pardau, *Bill, Baby, Bill: How the Billable Hour Emerged as the Primary Method of Attorney Fee Generation and Why Early Reports of its Demise May Be Greatly Exaggerated*, 50 Idaho L. Rev. 1 (2014)).

Leverage is an integral characteristic of the profitability of the billable hour and the modern law firm. The system relies on fewer, more experienced lawyers who can filter work to more, less experienced lawyers. The billable hour model allows firms to generate revenue based on hourly rates multiplied by the time and effort spent on a case. Both the hourly rates and time spent often reflect the experience level of the lawyers at work. Both the costs saved, and revenue generated reflect a pyramid structure that filters more time-consuming tasks like research and drafting to lesser-experienced associates. Each of the elements combine to increase the income firm-wide. Each of the elements also necessitate detailed time-keeping and productivity tracking. Since the complexity of legal work increased in the mid-20th century, the billable hour has remained the dominate economic model for law firms and a preferred model for clients eager to track the resolution of their legal problems.

Despite its dominance, the model is a source of great criticism both within the profession, where it is viewed as a foe to efficiency, innovation and growth, and from consumers, who view it as incentivizing inefficiency and promoting a lack of access and cost transparency. Furthermore, a historic economywide drop in productivity, yet increase in legal work as a result of the pandemic has pushed many law firms to reconsider their pricing structures. (Andrew Maloney, *The American Lawyer, As Productivity Drops, Will More Law Firms Move Away From Billable Hour?*, (Jan. 18, 2023)). In fact, the request to use and the ultimate use of alternative fee arrangements, rather than the billable hour, rose during the pandemic. The 2023 *Citi Hildebrandt Client Advisory Survey*



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found that in 2022, large firms expected AFAs to account for 20.5% of their total revenue, a figure up 4.5% from 2016 (2023 Citi Hildebrandt Client Advisory). Additionally, 39% of large firms expected that over half of their revenue in 2022 would come from AFAs and other pre-negotiated discounts. Alternative billing systems are providing modern firms more flexibility at work. Notably, these alternative billing systems focus on the quality of the output rather than the time input. Even so, Citi also concluded that the billable hour is not at its total end.

That is – until now. Generative AI changes the narrative and the controls. For consumers of legal services, disruptive technologies like generative AI are empowering. Legal consumers have greater access to the justice system than ever before. Albeit not at the moment, a future, improved form of generative AI can easily be used to formulate legal answers and documents that many consumers could not otherwise readily afford. Generative AI can also expedite the time-consuming aspects of the increasingly complex legal process. For the legal profession, this future requires careful consideration of changing client expectations.

Richard Susskind describes this problematic paradigm as the “More-for-Less Challenge.” (Susskind, *Tomorrow’s Lawyers*). In essence, there is no foreseeable decrease in the demand for legal services, especially in the increasingly digital age. However, technology shifts the expectations of those seeking legal services. If technologies like generative AI can make access to quality legal services much cheaper and much faster than ever before, very few clients, corporate or everyday citizens, will pass up that opportunity.

As always, skeptics caution that merely because something is cheaper or faster does not mean that the technology makes the service inherently better, but in a world of generative AI, this is simply untrue. The output produced by generative AI replaces the human knowledge behind the input with increasing precision. Accordingly, the human knowledge inputted into the machine becomes increasingly devalued as the machine becomes smarter. Thus, in time, the cheaper and faster option pre-

ented to clients may, in fact, be much more reliable than ever before.

This is particularly true where the generative AI model is not simply ChatGPT, but a system created by legal research experts with information exclusive to their subscription services. For instance, Lexis+AI is described as, “[A] generative AI platform designed to transform legal work. Lexis+AI is built and trained on the largest repository of accurate and exclusive legal content, leveraging an extensive collection of documents and records to provide customers with trusted, comprehensive legal results with unmatched speed and precision and backed by verifiable, citable authority.” (Lexis Nexis Launches Lexis AI). Generative AI products produced by legal research companies can be trained on both factually and legally correct data sets that, for the time being, remain unavailable to free services like ChatGPT. While these machines may not be totally free of hallucinations and other research woes, there is certainly a higher degree of precision that lawyers can strategically adopt to streamline their output more efficiently than ever before. Not only can lawyers utilize the machines to conduct research and enhance comprehension, but lawyers can also have the machines automate the traditional drafting process while cutting back on many hours spent drafting and editing. Accordingly, client expectations will shift away from the traditional notion of legal services. Managing those expectations will require, at the very least, an explanation of why this technology is not being used.

Under the traditional billable hour model, the automation and efficiency potential produced by generative AI cuts against once reliable revenue streams and stifles the demand for much technical and associate-level work. For example, if you were researching the admissibility of scientific or technical evidence in a certain jurisdiction, that research could take an associate several hours to research the issue, read the cases and prepare a memo. Lexis+AI or Westlaw Precision, however, could provide case citations and write a memo summarizing the answer in a matter of seconds after entry of a simple, one-sentence inquiry. The lawyer would, of course, have to verify the conclusion. But compar-

ing the time and cost of traditional research with the time to generate an AI conclusion is marked.

While automation does not replace legal work, it dramatically changes the value of it in the economy. For instance, in March 2023, Goldman Sachs issued a research report predicting the effects of AI on economic growth. On average, the report predicted that all industries would experience approximately 25% automation because of AI. But, when broken down by industry, the report predicts that 44% of legal work could be subject to automation because of AI. (Briggs, and Kodnani, *The Potentially Large Effects of Artificial Intelligence on Economic Growth*, (Mar. 26, 2023), Much of that work is in commercial transactions, not tort litigation, but the ability to transform litigation through resolution platforms running AI data sets that analyze similar factual and legal situations make it likely that litigation as we know it will be forever altered by use of AI tools.

This statistic places the legal profession in the second-highest automation-risk category. However, automation does not necessarily implicate a full-scale replacement of lawyers. Rather, it requires lawyers to develop specialized skillsets and offerings to maintain the marketability of the costs of their services. It also requires that law firms explore creative, cost-effective ways to engage clients with either the implementation of new billing structures, like flat-fees and subscription arrangements, or the production of higher value legal services. Valuation, of course, belongs to a consumer most likely eyeing efficiency more than ever before. As such, high value legal services must either embrace AI by offering a technologically enhanced work product or provide for something that a machine cannot yet replace. In an upcoming age where legal information is readily and, for the most part, reliably available, it is the assigned value of legal work, particularly as characterized by the traditional billable hour model, rather than the work itself, that is truly disrupted.

### Meeting Changing Professional Demands

Combatting the economic implications of generative AI’s automation requires that

the legal profession differentiate its services through specialization and creative business models. The burden of differentiation will fall largely on young associates who typically find most of their work in traditional time-consuming tasks like document review and legal research. These tasks, if not already, will be dramatically expedited as the legal profession implements different modes of generative AI.

The concept of automation, albeit fear-inducing in many corporate conversations, is not wholly synonymous with replacement, decreased job prospects, or slowed job growth. Rather, automation in the gen-

**The concept of automation, albeit fear-inducing in many corporate conversations, is not wholly synonymous with replacement, decreased job prospects, or slowed job growth.**

erative AI sphere is an opportunity for specialization. Young associates looking to differentiate themselves should focus on a specialization and how it can relate to generative AI.

The legal profession has already experienced varying degrees of automation, many of which were most closely felt by younger associates. A prime example of this is the entire field of eDiscovery, which exploded in the middle of the 2000s. Before eDiscovery, young associates spent much of their early career combing for relevant documents in rooms full of banker's boxes. But as technology boomed with the progression of the 21st century, the entire field of law confronted a massive explosion of data and, naturally, the complications associated with it. The field of eDiscovery emerged and, along with it, so did many new job specializations like eDiscovery specialists, data analysts, and program managers. Not only did the role of document review change, but so did the necessary credentials of those expected to perform it. The expansion of the field of eDiscovery also

resulted in rapid market growth and profits. For instance, in 2022, the global eDiscovery market was valued at \$11.2 billion. By 2027, it is predicted that the market will reach a value of \$17.1 billion. (*eDiscovery Market Statistics*, (June 2022)). Rest assured, automation is not the end of the legal profession.

Accordingly, differentiation does not require completely redefining the role of an associate. Rather, differentiation requires that associates, and all lawyers, utilize disruptive technologies, like generative AI, as a tool to enhance their technological competence and sharpen their traditional lawyering skills. Rather than a method of replacement, generative AI enhances the capability of legal professionals who take the time to understand it. As a result, new, necessary credentials, job positions, and revenues will enter the field of law. Maintaining an advantageous position in the future labor market requires using and understanding generative AI.

Lawyers, particularly young associates, must become technologically competent to appropriately and successfully differentiate themselves in the changing workforce. It would be remiss to not acknowledge the dramatic impact that generative AI will have on traditional legal work. Generative AI is a streamlining tool that will replace a significant portion of time spent on client interactions, research, drafting, and review. However, if used correctly, the streamlining, or automation, effect of generative AI can increase workload capacity, accuracy, and overall legal knowledge. If anything, what generative AI replaces creates an opportunity for savvy associates to increase the quality of their output and their overall productivity earlier in their careers. Especially in the administrative sense, AI can replace nonbillable, tedious tasks while freeing up time to spend on billable work. The ability to devote extra time to billable work, along with a new set of tools brought about by generative AI, will most likely increase the quality of legal work beyond the typical measure of experience.

Furthermore, many young associates are products of a highly connected, technologically driven generation. Later Millennial's and Gen-Z's lifelong understanding

of technology, and the speed at which they can adapt to its new versions, will be a great asset to their careers and to the practice of law, so long as ethical and privacy risks are not overlooked. Young associates should devote time and energy into understanding the strengths and weaknesses of each generative AI model before implementing it into their practice. By understanding both the strengths and weaknesses of generative AI, young associates can use it to enhance their work product and to maintain relevant among shifting workforce demands. A fruitful future in the legal profession depends on technologically competent associates who can understand, utilize, and innovate alongside generative AI.

As for the legal profession as a whole, lawyers of all experience levels must understand generative AI as neither a static nor linear concept. Generative AI is a form of automation that can adapt and integrate within the legal profession so long as members understand its purpose. Even in the digital age, it is remarkably unlikely that generative AI can replace the counseling and strategic decision-making skills of an attorney.

Even considering the impact of generative AI on the future of law, traditional advocacy skills are not fleeting. In fact, they may be more important than ever before. While generative AI can automate many areas of the legal profession, it cannot yet replace the necessary human component of meaningful advocacy and counsel. However, that is not to say that some creators have not tried. For instance, DoNotPay is an AI chatbot that provides legal services to consumers via mobile app. DoNotPay attempted to send an AI-powered chatbot into a courtroom to contest a consumer's traffic ticket in February 2023. DoNotPay founder Joshua Browder abandoned the plan after being threatened with six months of jail time by "state bar prosecutors." (Megan Cerullo, *AI-Powered "Robot" Lawyer Won't Argue in Court after Jail Threats*, CBS News (Jan 26, 2023),

While the legal profession did not warmly embrace the idea of an AI-powered robot-lawyer in the courtroom, this situation exemplifies how the profession is navigating the boundaries of technology and lawyering. On the one hand, AI is incred-

ibly useful to the research, writing, and management side of practice. On the other hand, AI in the courtroom is viewed as premature and dangerous. These are rational. AI is not yet able to train out the inherent human bias of those feeding it information. And while it may be able to replace some levels of thinking, it cannot entirely displace human nature, empathy, instinct, or rationality. The role of a lawyer as a counselor is invaluable. For these reasons, it is important that traditional advocacy skills are not forgotten as lawyers adapt to the age of generative AI.

### Conclusion

Generative AI is the latest, but certainly not the last, disruptive technology to enter the labor market. While generative AI is still in its early stages, its future capabilities will force a change in the legal profession. These changes require the legal profession to make business adaptations to better serve an increasingly digital market. First, the legal profession must reexamine the utility of the billable hour in the efficiency-focused age of generative AI. Second, the legal profession must transform their skillsets to keep pace with changing

professional demands. The value of a counselor is irreplaceable; however, a counsel in the age of generative AI must be adaptable to render useful advice. Ultimately, generative AI is as much a disruptor as a transformer of the legal profession. The legal profession must set aside its skepticism and strategically embrace a future with generative AI to maintain their overall value.



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# How Can Lawyers Use ChatGPT? I Asked It.



I'm a proponent of ChatGPT and large language models. If used properly, it can help us be better lawyers and provide better work product and customer service. So, how should we use it? I asked it, and its responses were helpful. Before I share what ChatGPT said, here are a few caveats:

- **Confidential, proprietary, and attorney-client information.** Don't share any of this with ChatGPT. Keep your queries broad and general.
- **Don't over-rely on ChatGPT.** It's not Westlaw or Lexis. It's not a legal research platform.
- **Sometimes, it lies.** Never take what it says at face value. Double-check and validate its output. And yes, despite this, it is an extraordinary tool.
- **Use the latest version.** Pay 20 bucks a month and use ChatGPT 4. 4.5 will come out soon.
- **Be transparent.** Be transparent with others that you're using it (like I am below).

So, with these caveats in mind, let me preface what you're about to read. Lawyers often ask how they can use ChatGPT. YouTube videos, podcasts, blog posts, and arti-



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cles address this. Watch, listen, and read them. I wanted to know ChatGPT's ideas about how we lawyers should use it. So, I

## I wanted to know ChatGPT's ideas about how we lawyers should use it. So, I asked it a bunch of questions.

asked it a bunch of questions. Below is a cut- and-paste of its answers.

Is there redundancy below? Yes. Are some suggestions unhelpful? Yes. But a pattern reveals itself. First, ChatGPT is the first to tell you it's not a lawyer, it cannot provide legal advice, and its content should be double-checked. Second, it reveals a tremendous amount of common sense and imagination when tackling issues we face daily as lawyers. And third, it shows it can be a helpful sounding board for lawyers to work through their ideas, theories, and strategies.

I hope you enjoy the following, and if you do, you have ChatGPT to thank. The following is directed to law firms, in-house counsel, and outside counsel.

### Using Prompts on ChatGPT

Here are some tips for lawyers using prompts on this platform:

- 1. Be Specific:** Clearly outline what you seek to ensure you receive the most accurate and relevant response.
- 2. Avoid Confidential Information:** Never include client-specific details or confidential information in your questions.
- 3. Remember the Knowledge Cutoff:** The platform's knowledge is updated until September 2021, so other sources will be necessary for newer legal developments.
- 4. Request Summaries:** If you're dealing with a complex topic, you can ask for summaries or breakdowns to make the information more digestible.
- 5. Utilize for Brainstorming:** Ask open-ended questions if looking for different angles or approaches to a problem.

- 6. Ask for Sources:** While the platform can't directly link to sources, you can ask for names of critical cases, statutes, or academic works that you can later look up for more in-depth research.
- 7. Clarify Jurisdiction:** Laws vary by country and even within regions of countries. Clearly state the jurisdiction you're interested in.
- 8. Review and Verify:** Always double-check the information provided, especially before applying it to actual legal scenarios.
- 9. Engage in Iterative Queries:** If the initial response isn't exactly what you need, continue the conversation or rephrase your question.
- 10. Limitations:** Remember that while the platform is a powerful tool, it can't replace the nuanced judgment and expertise that a practicing lawyer brings. It's a supplement, not a replacement.
- 11. Stay Updated:** Laws and legal interpretations change. The platform's response may be based on laws as of the last update, so ensure you cross-check with current laws.
- 12. Use for Drafting:** The platform can be valuable for drafting documents, letters, or other written material. However, always ensure you review and tailor outputs to the specifics of your case.

Remember, the platform is a tool. While it can provide valuable insights, information, and guidance, it should be one of several resources you utilize in your legal practice. Always exercise your professional judgment.

Writing prompts serve as guiding questions or statements designed to inspire a specific type of response. Understanding their different aspects can help you craft effective prompts and get the desired answer:

- 1. Clarity:** Ensure your prompt is clear and straightforward, minimizing ambiguity.
- 2. Specificity:** Be precise about what you're asking. Specific questions lead to specific answers.

- 3. Context:** Providing a brief background or context can help understand the nature of the answer you seek.
- 4. Open vs. Closed:** Decide if you want a detailed (open-ended) response or a concise (closed) one. E.g., "Describe the process of..." vs. "Is the process of...?"
- 5. Tone:** Your prompt's tone can guide the response's tone. A serious prompt will get a serious answer, while a light-hearted one might yield a more casual response.
- 6. Limitations:** If you have word count restrictions or a specific format, mention it in the prompt.
- 7. Directive Words:** Use words that guide the type of response you want, such as "list," "describe," "compare," "argue," etc.
- 8. Follow-Up:** If the initial response isn't quite what you wanted, ask follow-up questions or request clarifications.
- 9. Examples:** Sometimes, providing an example within the prompt can help clarify the type of response you're looking for.
- 10. Multiple Questions:** If you have several aspects you want to cover, break them down into individual questions rather than combining them all into one.
- 11. Purpose:** Be aware of the goal of your prompt. Whether for learning, brainstorming, decision-making, etc., tailoring your prompt to that purpose can guide the response.
- 12. Iteration:** It's okay to rephrase and ask again if the first response doesn't hit the mark. Iterative questioning can help refine the answer.

By understanding these aspects and adjusting your prompt accordingly, you increase the likelihood of receiving the exact answer you're seeking from this platform or any other situation where effective prompting is necessary.

### How Do I Verify ChatGPT

Double-checking the information and guidance provided by ChatGPT, especially in critical areas like litigation, is crucial. Here are some steps you can take to validate and ensure the accuracy of the assistance you receive:

1. **Primary Sources:** Always refer to primary legal sources, such as case law, statutes, regulations, and court rules. Verify it from the source if ChatGPT cites a specific case or provision.
2. **Legal Research Platforms:** Use platforms like Westlaw, LexisNexis, or other legal databases to research and validate the information. These platforms are regularly updated with the latest case law and statutes.
3. **Consult Colleagues:** Discussing with colleagues or mentors can provide additional perspectives and insights. They might be aware of recent developments, nuances, or local practices that could be relevant.
4. **Seek Expert Opinion:** For specialized areas or complex matters, consider consulting with experts in the field, whether they are seasoned litigators, forensic experts, or other professionals.
5. **Legal Publications:** Law journals, bar association publications, and legal news sources can provide deeper insights and updates on particular topics.
6. **Continuing Legal Education (CLE):** CLE seminars and webinars often discuss recent developments and best practices in various legal areas. Attending these can help you validate and expand on the information from ChatGPT.
7. **Court Clerks & Administrators:** Court clerks or administrators can be a valuable resource for procedural questions or clarifications. They can guide you on local rules, deadlines, and other court-specific details.
8. **Case Strategy & Role-playing:** If you use ChatGPT to brainstorm case strategies or simulate arguments, practice these with colleagues. Mooting sessions can help identify any oversights or weaknesses.
9. **Ethical Guidelines:** Ensure any advice or strategy aligns with ethical guidelines. Consulting the rules of professional conduct for your jurisdiction and seeking guidance from ethics committees or experienced attorneys can be beneficial.

10. **Regularly Update Yourself:** The legal field is dynamic, with new rulings, legislative changes, and interpretations. Stay updated by regularly attending CLEs, reading legal news, and participating in professional associations.
11. **Maintain Skepticism:** Always approach ChatGPT's advice as a starting point rather than a definitive answer. Use your judgment and legal training to evaluate the validity and applicability of the information.

Remember, while ChatGPT is a powerful tool, it's not infallible. Relying on multiple sources and human expertise ensures a comprehensive and accurate understanding of litigation matters.

### How to Keep Client Information Confidential

When using the ChatGPT platform, or any other platform, it's essential to ensure client information remains confidential and protected. Here are some steps to protect client information when using ChatGPT:

1. **No Personally Identifiable Information (PII):** Never input names, addresses, social security numbers, or any other identifiable information into the chat.
2. **Generalize Queries:** If you need to ask a question about a client's situation, generalize the information so it doesn't identify any specific individual or entity.
3. **Limit Details:** Do not provide specific details that could be combined to identify a person or organization.
4. **Clear Chat History:** Regularly clear your chat history, and ensure the platform doesn't store chat data. OpenAI's policy, at my last update in September 2021, is not to store users' chat logs.
5. **Secure Your Device:** Make sure the device you use to access ChatGPT has updated security features, strong passwords, and encryption if necessary.
6. **Educate & Train:** If you're part of an organization, ensure everyone understands the importance of data protection and how to interact securely with platforms like this.
7. **Stay Updated:** OpenAI may update its privacy policies, so reviewing these is

good to understand how your data is handled periodically.

8. **Use VPN:** Using a Virtual Private Network (VPN) can provide an additional layer of security, especially if you're accessing the platform from an unsecured network.
9. **Be Cautious with Third-party Integrations:** If you're using any third-party plugins or integrations with ChatGPT, ensure they also adhere to stringent data protection standards.
10. **Feedback & Reporting:** If you ever notice anything suspicious or have concerns about the platform, contact the provider for clarity.

Remember, while platforms like ChatGPT can be valuable tools, they should never be the repository for sensitive information. Always use them with an understanding of their limitations and potential risks.

### How Do You Train Your Team to Use ChatGPT

A structured training approach would be beneficial to ensure that a law firm's team can effectively use ChatGPT. Here's a step-by-step guide on how a law firm can teach its team to use this platform:

1. **Orientation Session:** Hold a kickoff meeting to introduce the team to ChatGPT, explaining what it is, its capabilities, and its potential benefits to the firm.
2. **Interactive Demonstrations:** Conduct live demos showcasing how to pose questions to ChatGPT, interpret its responses, and utilize its insights in daily tasks.
3. **Use Cases:** Present specific scenarios where ChatGPT can be beneficial:
  - Legal research assistance
  - Drafting and writing aid
  - Brainstorming legal arguments
  - Simplifying legal jargon
  - General knowledge enhancement
4. **Hands-on Workshops:** Organize workshops where team members can practice using ChatGPT under guided scenarios. They can then share their experiences, challenges, and insights with the group.
5. **Dos and Don'ts:** Emphasize the importance of not sharing confidential or sensitive client information with

the platform. Go over other best practices and potential pitfalls to avoid.

6. **Feedback Loop:** Create a mechanism where team members can share feedback after using ChatGPT. This can help identify areas where additional training might be needed.
7. **Advanced Training:** As team members become more comfortable with the basics, introduce more advanced uses or techniques to maximize the benefits of ChatGPT.
8. **Regular Updates:** The world of AI and tech is evolving rapidly. Schedule periodic refresher sessions to introduce new features or updates to the platform and address any emerging questions or challenges.
9. **Resource Compilation:** Create a central repository, possibly on the firm's intranet, with guides, FAQs, and best practices related to using ChatGPT. This serves as a quick reference for team members.
10. **Mentoring:** Identify early adopters or more tech-savvy team members and encourage them to mentor colleagues facing challenges or who are unfamiliar with AI tools.
11. **Evaluation:** After a set period, evaluate the effectiveness of ChatGPT in the firm's operations. Collect feedback to understand its impact on productivity, research quality, and overall efficiency.
12. **Continual Learning:** Encourage a culture of continual learning. As AI and technology progress, staying updated and adapting to new tools will be crucial for the firm's success.

By adopting a systematic and hands-on approach to training, a law firm can ensure its team is well-equipped to harness the capabilities of ChatGPT efficiently.

### Creating and Implementing ChatGPT Protocols

Instituting policies when using platforms like ChatGPT in a law firm or legal department is essential to protect client confidentiality and maintain professional standards. Here are some suggested policies:

1. **Clear Purpose of Use:** Define the reasons for using ChatGPT. This might include legal research assistance,

brainstorming, or explaining legal topics, among other purposes.

2. **No Personal or Confidential Data:** Under no circumstances should attorneys or staff input confidential or personally identifiable information into the platform. This includes client names, case specifics, or any other sensitive data.
3. **Training and Awareness:** Ensure all users understand the platform's capabilities and limitations. This includes understanding the platform's privacy policy and the potential risks involved.
4. **Generalized Queries:** If a user has to ask a question related to a case, they should be trained to generalize the question in a way that doesn't compromise client details or specifics.
5. **Regular Audits:** Review how staff members use the platform. This could be done by checking randomly selected queries or discussing best practices openly.
6. **Device and Network Security:** Ensure that devices accessing ChatGPT are secure, with updated anti-virus software, strong passwords, and encrypted connections. Use a VPN, especially when accessing the platform from outside the office.
7. **No Advice Reliance:** Make it clear that while ChatGPT can provide information, legal advice or decisions should be based on an attorney's judgment and not solely on the platform's response.
8. **Document Retention:** Establish a policy regarding the retention of ChatGPT conversations. Decide whether they should be saved (in a secure manner) or deleted after the session.
9. **Feedback Loop:** Encourage users to provide feedback on their experiences with the platform. This helps identify areas where additional training or policy adjustments might be needed.
10. **Review of Platform Updates:** Platforms evolve, changing their terms of service, capabilities, and privacy policies. Designate someone to periodically review these changes and assess their implications for your firm or department.

11. **Limit Access:** Only allow access to ChatGPT for employees who need it for their roles. Consider implementing access controls or permissions.

12. **Incident Reporting:** Establish a protocol for reporting and handling any potential breaches or misuse of the platform.

Remember, platforms like ChatGPT can be valuable tools but are not a replacement for human judgment, especially in sensitive professions like law. Policies should balance leveraging the technology and ensuring the highest standards of confidentiality and professionalism.

### How Lawyers Shouldn't Use Chat GPT

Here are ways lawyers shouldn't use this platform:

1. **Substitute for Legal Research:** Don't rely solely on this platform for comprehensive legal research. Always consult primary sources and relevant legal databases.
2. **Confidential Information:** Never input confidential or personally identifiable information related to a client or case. Always protect attorney-client privilege.
3. **Sole Source for Advice:** Don't use this platform as the only source of advice for critical legal decisions. It should complement, not replace, professional judgment.
4. **Expect Real-Time Updates:** Since the knowledge is updated up to September 2021, don't expect current legal developments or changes post this date.
5. **Legal Representation:** Don't represent to clients or others that the advice from this platform equates to legal representation or specialized expertise.
6. **Final Drafts:** While it can assist with drafting, don't use the platform's output as a final draft without thorough review and customization.
7. **Court Submissions:** Don't use information from here for court submissions without thorough verification from primary and updated sources.
8. **Over-reliance:** Don't over-rely on the platform for decision-making. It's a tool, not a replacement for a lawyer's expertise, experience, and judgment.

9. **Assume Jurisdictional Accuracy:** Always specify the jurisdiction you're asking about, and don't assume the platform knows local regulations without clarification.
10. **Skip Verification:** Never accept answers as definitive without verifying against the latest laws, regulations, and case law.
11. **Replace Training:** While the platform can provide information, it shouldn't replace proper training, continuing legal education, or mentorship.

While this platform can be a valuable supplement for legal professionals, it should never replace the legal profession's rigorous standards, judgment, and methodologies.

### How Lawyers Should Use Chat GPT

Here's how lawyers can optimally and responsibly use this platform:

1. **Preliminary Research:** Understand unfamiliar legal topics or concepts using the platform.
2. **Brainstorming:** Engage in open-ended queries for different angles or approaches to legal challenges.
3. **Drafting Aid:** Get help with phrasing, organization, or general structure when drafting documents, letters, or memoranda.
4. **Clarify Concepts:** If you're having trouble understanding a complex legal principle, ask for a simplified explanation.
5. **Comparative Insights:** For lawyers involved in international law, this platform can provide initial insights into foreign legal systems or principles.
6. **Stay Anonymous:** Use the platform for inquiries without revealing client-specific details, ensuring confidentiality and privilege remain intact.
7. **Specific Jurisdiction Mention:** Always specify which jurisdiction or legal system you refer to, ensuring you get the most accurate response.
8. **Training and Quizzes:** Use the platform to quiz yourself on legal principles or to help train junior staff.
9. **Secondary Source:** Treat the platform as a secondary source. While it provides valuable information, always cross-check facts and interpretations with primary sources.

10. **Engage Iteratively:** Don't hesitate to ask follow-up questions or seek clarification on any given answer.

11. **Updates and Trends:** Ask about historical trends, major cases, or significant shifts in legal thought up to 2021. Remember, this platform supplements a lawyer's skills and expertise. It can provide valuable preliminary insights and assist with various tasks but should not replace rigorous legal methodologies, direct research, or professional judgment.

### How Law Firms Can Use ChatGPT

Law firms can incorporate platforms like ChatGPT to assist their lawyers in various ways. Here's a step-by-step guide:

1. **Objective Setting:** Determine the goal of using ChatGPT in the firm. It could be for legal research, drafting assistance, client FAQ answers, or even internal training and knowledge sharing.
2. **Training:** While ChatGPT is user-friendly, a brief training session introducing lawyers to the tool and its capabilities can ensure more practical use.
3. **Integration:**
  - **\*\*Legal Research\*\*:** ChatGPT can assist lawyers in brainstorming legal issues, understanding legal concepts, or getting an overview of certain areas of law.
  - **\*\*Drafting Assistance\*\*:** ChatGPT can help lawyers draft language, clarify legal terms, or generate content for generic documents.
  - **\*\*Client Communication\*\*:** Create an FAQ bot for clients to get quick answers on general legal processes, firm-specific queries, or generic legal questions.
  - **\*\*Internal Training\*\*:** New associates or interns can use ChatGPT as a supplementary training tool to understand legal concepts, firm policies, or procedural questions.
4. **Data Security:** Since law firms deal with sensitive information, it's crucial to ensure that lawyers are cautioned against sharing confidential or client-specific information with the platform. Review the platform's data handling and privacy policies.

5. **Feedback Mechanism:** Set up a feedback loop where lawyers can share their experiences, suggestions, or challenges using the tool. This helps adjust how the tool is used and optimize its benefits.

6. **Regular Updates:** Ensure that the platform is kept up to date to benefit from the latest features and improvements. Also, regular refreshers or training can be beneficial as the tool evolves.

7. **Ethical Considerations:** Ensure that AI tools like ChatGPT align with the ethical obligations of lawyers in your jurisdiction. It's essential to understand that ChatGPT cannot replace the judgment of a seasoned lawyer but can be a supplementary tool.

8. **Billing and Costs:** Determine if and how the use of ChatGPT will be reflected in billing. If the platform speeds up research or drafting, this could be a value-add for clients.

9. **Review and Monitor:** Periodically review the effectiveness and accuracy of the tool in legal applications. This ensures that the tool meets the firm's objectives and is used effectively and ethically.

Incorporating an AI tool like ChatGPT can be a significant asset to law firms, but its implementation needs careful planning and consideration.

### How Law Firms Can Use ChatGPT to Market

Law firms can use platforms like ChatGPT in various ways to market themselves, enhance client engagement, and differentiate their services. Here are some strategies to consider:

1. **Interactive Website Feature:** Integrate ChatGPT into the firm's website to answer general legal questions, provide insights about the firm's services, or help guide potential clients through the site. This real-time interaction can make your firm stand out.
2. **Content Creation:** Use ChatGPT to assist in brainstorming topics or drafting articles for the firm's blog or newsletter. Regular, quality content can help SEO position the firm as a thought leader.



3. **Client Education:** Host webinars or virtual workshops where ChatGPT assists in answering FAQs or generating scenarios. Demonstrating tech-savviness can impress potential clients and show that the firm is forward-thinking.
4. **Social Media Engagement:** Share snippets or insights from ChatGPT on social media channels to engage followers and drive discussions.
5. **Client Onboarding:** Use ChatGPT to assist in client onboarding processes, answering initial questions, and providing overviews of what clients can expect. This can streamline the process and make it more interactive.
6. **Testimonials & Case Studies:** While ChatGPT itself can't create testimonials, it can assist in drafting compelling case studies or highlight client success stories, which can be marketed on various platforms.
7. **Interactive E-books & Guides:** Create downloadable resources for potential clients using insights from ChatGPT. These resources can be used as lead magnets.
8. **Feedback Collection:** Use ChatGPT to interactively collect client feedback, which can be used for testimonials or refine services.
9. **Event Participation:** If the firm is attending or hosting events, ChatGPT can assist in preparing talking points, presentation materials, or engaging interactive sessions.
10. **Networking:** Use the platform to generate insights or discussion points that lawyers can use to initiate engaging discussions in networking scenarios.
11. **Client Newsletters:** Integrate insights or updates generated with the help of ChatGPT into the firm's regular client communication.

Remember, while ChatGPT can be a valuable tool in the marketing toolkit, it's essential to maintain the human element. Personal relationships, trust, and expertise are paramount in the legal industry. Use the platform as a supplement to, not a replacement for, these core values.

## How Can Law Firms Use ChatGPT to Onboard New Team Members

Assisting a law firm in onboarding a new lawyer involves administrative, educational, and integration tasks. ChatGPT can aid in various capacities:

### 1. Orientation Material:

- **Research:** ChatGPT can provide insights into best practices for lawyer onboarding across various jurisdictions and firm types.
- **Content Creation:** Assist in drafting or refining orientation documents, guides, and handbooks that detail the firm's practices, culture, and policies.

### 2. Legal Research and Updates:

- **Catch-up:** If the new lawyer is transitioning from a different jurisdiction or legal specialty, ChatGPT can provide overviews, summaries, or updates related to the specific area of law they'll be working in.

### 3. Training Modules:

- **Drafting and Procedures:** Offer guidance on specific drafting techniques, legal research methods, or other procedural aspects the firm emphasizes.
- **Practice Scenarios:** Generate hypothetical scenarios for the new lawyer to work on, helping them acclimate to the firm's typical cases.

### 4. Integration with the Team:

- **Team Introductions:** While ChatGPT cannot replace personal interactions, it can help draft structured introduction emails or materials to help the new lawyer get acquainted with team members.
- **Feedback Mechanisms:** Assist in creating feedback forms or surveys that the new lawyer can use to provide input on their onboarding experience.

### 5. Technical and Software Training:

- **Guidance:** Explain or provide an overview of the firm's specific legal software or tools based on general knowledge up to the last training data in September 2021.

### 6. Firm Culture and Policies:

- **Quiz Creation:** Design quizzes or interactive modules based on the firm's policies, culture, and practices, ensuring the new lawyer comprehends and integrates smoothly.

### 7. Mentoring and Development:

- **Mentoring Programs:** Provide insights into effective mentoring programs tailored for law firms, helping new lawyers integrate faster and more efficiently.
- **Professional Development:** Offer suggestions for training programs, webinars, or courses that might benefit the new lawyer's growth within the firm.

### 8. Ongoing Support:

- **Query Handling:** Serve as a resource for the new lawyer to pose general legal or procedural questions as they acclimate to their role.

### 9. Feedback and Adjustments:

- **Review Mechanism:** After a set period, ChatGPT can help structure a review process to assess the new lawyer's integration, identifying areas of improvement in the onboarding process.

### 10. Networking and Growth:

- **Networking Tips:** Offer guidance on building professional relationships, both within and outside the firm, essential for a lawyer's career.

By leveraging ChatGPT during the onboarding process, a law firm can ensure a smoother transition for the new lawyer, making the integration process more efficient and comprehensive. However, blending this with personal interactions and hands-on training is crucial for the best results.

## How Can Law Firms Use ChatGPT to Mentor

Using ChatGPT to create and implement a mentoring program for law firms can be a blend of leveraging the platform's knowledge and fostering human relationships. Here's a guide on how to do that:

1. **Needs Assessment:** Use ChatGPT to gather information on best practices for mentoring programs in profes-

sional settings. Pose questions about such programs' essential components, benefits, and challenges.

**2. Program Objectives:** Define clear objectives for your mentoring program. Whether it's skill development, knowledge transfer, or career progression, having clear goals will help structure the program effectively.

**3. Matching Process:**

- **Criteria Development:** Ask ChatGPT about effective criteria used in other mentoring programs. This can include areas of expertise, career aspirations, personality traits, etc.
- **Automation:** Consider developing a tool or using existing software to match mentors and mentees based on criteria. ChatGPT can help brainstorm features or functionalities for such a tool.

**4. Training Modules:**

- **Mentor Training:** Use ChatGPT to draft content or topics for mentor training sessions. These can cover effective mentoring techniques, communication skills, and setting expectations.
- **Mentee Training:** Similarly, develop training for mentees to help them understand how to make the most of the mentoring relationship.

**5. Resource Creation:**

- **Guides & Best Practices:** Use ChatGPT to help draft mentorship guides, checklists, or best practice documents that can be distributed to participants.
- **Scenario Discussions:** Engage with ChatGPT to generate hypothetical mentoring scenarios or challenges. These can be used in training sessions or workshops to guide discussions.

**6. Feedback Mechanisms:**

- **Surveys & Feedback Forms:** Discuss with ChatGPT the essential components of feedback forms or surveys to assess the effectiveness of the mentoring relationship and program.
- **Feedback Analysis:** Once feedback is collected, you can pres-

ent critical points or trends to ChatGPT and ask for suggestions on improvements or addressing challenges.

**7. Periodic Check-ins:** Develop a schedule for mentors and mentees to report progress, challenges, and successes. ChatGPT can assist in drafting templates or agendas for these check-ins.

**8. Program Evolution:** As the mentoring program progresses, continue to engage with ChatGPT to gather insights on evolving trends in professional mentoring, potential enhancements, and ways to address challenges.

**9. Engage in Peer Discussions:** Consider creating a forum or platform where mentors or mentees can share experiences, ask questions, or seek advice. While this is primarily human-driven, ChatGPT can be a supplementary resource for answering generic queries or providing insights.

**10. Evaluation & Reporting:** At the end of a defined period, evaluate the success and impact of the mentoring program. Use ChatGPT to help structure evaluation criteria, analyze feedback, and draft reports on the program's outcomes.

By integrating ChatGPT into the process, law firms can benefit from a vast knowledge base, ensuring their mentoring program is well-structured, effective, and continually improving. However, remember that the true essence of a mentoring relationship lies in human interaction, empathy, and mutual growth. ChatGPT should be used to facilitate and enhance this process, not replace it.

### How Can Law Firms Use ChatGPT to Enhance Their Diversity and Inclusion Efforts

Utilizing ChatGPT can be a beneficial tool in enhancing your law firm's diversity and inclusion (D&I) efforts. Here's how you can leverage this platform:

**1. Research and Education:**

- **Knowledge Base:** Ask ChatGPT about best practices, strategies, and successful case studies related to D&I in professional settings, especially in law firms.

- **Workshop Content:** Develop content for internal workshops or seminars on D&I. ChatGPT can assist in generating topic ideas, resources, or discussion points.

**2. Awareness and Training:**

- **Unconscious Bias Training:** Use ChatGPT to gather information about unconscious bias, its impacts, and ways to mitigate it. This can be integrated into training programs.
- **Diversity Celebrations:** Ask ChatGPT about significant cultural, racial, or LGBTQ+ events or celebrations that the firm can acknowledge or celebrate to foster inclusivity.

**3. Policy Development:**

- **Policy Review:** Review your firm's existing D&I policies and ask ChatGPT for suggestions or areas of improvement based on current best practices.
- **Feedback Mechanism:** Use ChatGPT to help structure feedback forms or surveys to gather employee insights about the firm's D&I efforts.

**4. Recruitment:**

- **Diverse Hiring:** Ask ChatGPT about strategies or platforms catering to diverse legal hiring.
- **Inclusive Job Descriptions:** Seek guidance on creating inclusive job descriptions or evaluating existing ones for potential biases.

**5. Mentoring and Sponsorship:**

- **Diverse Mentoring Programs:** Use ChatGPT to understand the benefits of diverse mentoring programs and how they can be structured.
- **Sponsorship Initiatives:** Gather insights on how sponsorship can play a role in advancing D&I, especially for underrepresented groups.

**6. Employee Resource Groups (ERGs):**

- **Formation and Management:** If you're considering forming ERGs, use ChatGPT to understand their potential structure, benefits, and challenges.
- **ERG Activities:** Seek suggestions for activities or initiatives

ERGs can undertake to promote D&I.

## 7. Feedback and Adjustments:

- **Feedback Analysis**: Present aggregated feedback (without personal identifiers) to ChatGPT and ask for suggestions or strategies based on the feedback trends.
- **Continuous Improvement**: Periodically review D&I efforts with the assistance of ChatGPT to understand evolving best practices and make necessary adjustments.

## 8. External Engagement:

- **Partnerships**: Explore potential partnerships or collaborations with organizations that promote D&I in the legal industry. ChatGPT can provide insights or suggestions based on existing models.

## 9. Measuring Impact:

- **Metrics and KPIs**: Use ChatGPT to understand relevant metrics and KPIs that can be used to measure the impact and effectiveness of D&I efforts.

## 10. Communication:

- **Internal Communication**: Generate content or communication strategies with the help of ChatGPT to keep the firm's members informed and engaged with D&I initiatives.
- **External Communication**: Showcase the firm's D&I efforts on external platforms like the firm's website or social media. ChatGPT can help brainstorm content ideas or communication strategies.

Remember, while ChatGPT can provide a wealth of knowledge and suggestions, the success of D&I initiatives lies in genuine commitment, continuous efforts, and fostering a culture of inclusion at every level of the firm.

## How Law Firms Can Use ChatGPT to Improve Communications with Clients

Improving your law firm's communications with clients is crucial for building trust, fostering strong relationships, and ensuring client satisfaction. ChatGPT can assist in various capacities:

### 1. Client Onboarding:

- **Automated Responses**: ChatGPT can help draft templates for introductory emails, welcome packages, and FAQs for new clients, ensuring clarity and setting expectations from the outset.
- **Client Surveys**: Design client intake surveys or feedback forms to better understand their needs, concerns, and preferences.

### 2. Email Communication:

- **Template Creation**: Draft concise and clear email templates for everyday situations, such as case updates, document requests, or billing inquiries.
- **Best Practices**: Provide guidelines on effective email communication, ensuring clarity, professionalism, and timely responses.

### 3. Documentation:

- **Clarity**: Assist in simplifying legal jargon in client-facing documents or contracts, making them more accessible.
- **Document Summaries**: Create summaries or overviews of lengthy legal documents, helping clients grasp the essentials without wading through complex legal language.

### 4. Meetings and Consultations:

- **Agenda Setting**: Offer guidance on structuring meeting agendas to ensure productive consultations.
- **Follow-up**: Draft follow-up email templates or notes to summarize meeting outcomes and next steps.

### 5. Educational Content:

- **Knowledge Base**: Suggest topics or draft content for client newsletters, blog posts, or informational pamphlets that explain legal concepts and updates in the law or offer general legal tips.
- **Webinars & Workshops**: Provide insights or topics for webinars and workshops to educate clients on areas relevant to their cases or interests.

### 6. Feedback Mechanisms:

- **Client Feedback**: Design feedback forms or surveys to gauge

client satisfaction and gather suggestions for improvement.

- **Analyze Feedback**: Use feedback to generate insights on areas of improvement. ChatGPT can help interpret feedback trends and suggest actionable strategies.

### 7. Technological Solutions:

- **Communication Platforms**: Offer overviews or insights into practical communication tools or software that can streamline client communications.
- **Security**: Provide guidelines on ensuring secure communication, especially when sharing sensitive legal documents or information.

### 8. Training and Workshops:

- **Communication Training**: Suggest topics or modules for internal workshops to enhance lawyers' communication skills.
- **Scenario Simulations**: Create hypothetical client scenarios to practice effective communication and problem-solving techniques.

### 9. Crisis Communication:

- **Guidelines**: Draft guidelines or strategies for handling crises or sensitive situations, ensuring transparent and constructive communication with clients.

### 10. Consistency:

- **Brand Voice**: Help define or refine the firm's brand voice, ensuring consistent communication across all client touchpoints.

### 11. Multilingual Support:

- **Translation Assistance**: While not a replacement for professional translation services, ChatGPT can provide basic translations or insights into legal terms in various languages for initial communications or general queries.

By integrating these strategies and tools, a law firm can enhance its communications, leading to better client relationships, increased trust, and improved overall client satisfaction. While ChatGPT can provide tools and guidance, genuine empathy, active listening, and understanding are irreplaceable aspects of effective communication.

## How Lawyers Can Use ChatGPT to Improve Their Writing

Lawyers can leverage ChatGPT to improve their writing in various ways:

1. **Proofreading and Editing:** While ChatGPT isn't a dedicated proofreading tool, posing specific questions about grammar, syntax, or phrasing can help identify areas of improvement in a draft.
2. **Vocabulary Enhancement:** Ask for synonyms or better phrasing for specific terms or sentences to diversify vocabulary and make arguments more compelling.
3. **Structure and Organization:** Outline your argument or points and ask ChatGPT for feedback on the logical flow or organization of the content.
4. **Clarification:** If you're trying to explain a particular point or legal concept, you can ask ChatGPT to provide a concise explanation. Comparing its answer with yours can offer new perspectives or more precise phrasing.
5. **Drafting Assistance:** If you're struggling to start a particular section or need help with transitional phrases, you can ask ChatGPT for suggestions.
6. **Citations and References:** While ChatGPT doesn't directly access external databases, you can ask about standard ways to cite sources or general information about specific legal precedents (up to the last update in September 2021).
7. **Style Guides:** Ask for reminders or clarifications about legal writing conventions, punctuation, and other style guide elements specific to legal documents.
8. **Practice:** Practice makes perfect. Pose hypothetical scenarios to ChatGPT and draft responses or arguments. Then, seek feedback or alternative phrasings from the platform.
9. **Brainstorming:** When dealing with complex issues, you can use ChatGPT to brainstorm angles, perspectives, or arguments. The generated responses can provide new insights or directions for your writing.
10. **Legal Jargon Simplification:** Lawyers must often communicate complex legal concepts to clients or the general

public. Ask ChatGPT to simplify legal jargon or concepts to ensure clarity in communication.

11. **Reading Recommendations:** Ask ChatGPT for book or article recommendations on legal writing or related topics to further hone your skills.

While ChatGPT can be a valuable tool for improvement, it's essential to critically evaluate any suggestions it offers and ensure they align with legal standards and the specific needs of the document.

## How Can You Have ChatGPT Write Like You

While you cannot "train" ChatGPT in the traditional sense to specifically write like you, you can guide it to emulate your writing style more closely by following these steps:

1. **Provide Samples:** Start your session by providing ChatGPT with your writing samples. This helps to set the context and gives it a feel for your style.
2. **Be Specific:** If you have a particular tone or style in mind (e.g., formal, casual, humorous, terse), specify that before posing your question.
3. **Iterate:** The more you interact with ChatGPT, the better it becomes at understanding your preferences within the session. If the output isn't quite right, rephrase your request or provide further context.
4. **Feedback Loop:** After generating a response, you can point out aspects that align with your style and those that don't. For instance, "That's close, but I'd typically use shorter sentences." Or, "I like the content, but I usually use more casual language."
5. **Use Specific Examples:** If you have particular phrases, idioms, or sentence structures you frequently use, share them. For instance, "I often start my arguments with the phrase 'Consider this scenario...'"
6. **Limitations:** Remember that ChatGPT doesn't have a persistent memory of user interactions for privacy reasons, so you'll have to guide it each time you begin a new session.
7. **Practice:** With repeated interactions and guidance, you'll get better at

instructing ChatGPT to produce content that aligns with your desired style. While these steps can help guide ChatGPT to produce content that resembles your style, reviewing and editing the outputs as needed to ensure they genuinely reflect your voice and meet your standards is essential.

## How Should Trial Lawyers Use ChatGPT

Trial lawyers can use this platform in multiple ways to supplement their preparation and practice:

1. **Legal Principles Refresher:** Get a quick refresher on specific legal doctrines, principles, or statutes.
2. **Mock Questions:** Brainstorm potential questions for witnesses or practice potential lines of inquiry.
3. **Case Law Overviews:** Ask for summaries or explanations of notable cases that might be pertinent to their current case.
4. **Evidentiary Issues:** Get insights or a general understanding of complex evidentiary rules or principles.
5. **Legal Argument Structure:** Seek guidance on structuring arguments or legal theories for presentations in court.
6. **Opening/Closing Statement Aid:** Use the platform to help draft or refine opening or closing statements.
7. **Jury Instructions:** Get assistance drafting or understanding specific jury instructions.
8. **Legal Analogies:** Brainstorm analogies to explain complex legal concepts to a lay jury.
9. **Research Assistance:** Get guidance on legal research approaches or sources for specific topics.
10. **Historical Context:** Understand the historical background or context of specific laws or legal principles.
11. **Rhetorical Techniques:** Ask for tips on rhetorical techniques or methods to make arguments more compelling.
12. **Trial Presentation Tips:** Seek advice on effectively presenting information during a trial, including using visual aids.

**13. Ethical Considerations:** Clarify any general ethical concerns or questions related to trial practice.

**14. Mock Trial Feedback:** Pose hypothetical trial scenarios and get feedback or insights on strategies and approaches.

However, trial lawyers must remember that while the platform provides valuable preliminary insights, it should not replace rigorous trial preparation, consultation of primary legal sources, or reliance on one's professional judgment and expertise. It's a supplementary tool, not a primary resource.

### How Can Young Lawyers Use Chat GPT?

Young lawyers can harness this platform in various ways to aid their early career development and tasks:

- 1. Legal Concepts Clarification:** Seek explanations or simplifications of intricate legal concepts or doctrines.
- 2. Legal Research Pointers:** Ask for guidance on approaching legal research for specific topics.
- 3. Drafting Assistance:** Get help drafting, organizing, or structuring legal documents, contracts, or pleadings.
- 4. Professional Development Tips:** Seek advice on career progression, networking, and building a reputation in the legal community.
- 5. Mock Scenarios:** Pose hypothetical situations to practice argumentation or to anticipate counterarguments.
- 6. Case Law Summaries:** Request summaries or interpretations of important cases relevant to their work.
- 7. Ethical Queries:** Gain insights into general ethical considerations or dilemmas faced in legal practice.
- 8. Negotiation Techniques:** Learn about negotiation strategies and techniques for various legal situations.
- 9. Interview Preparation:** Get tips for preparing for job interviews or understanding what law firms look for in associates.
- 10. Mentorship Guidance:** Seek advice on finding and working with mentors in the legal field.
- 11. Time Management:** Ask for tips on managing workload, balancing multi-

ple cases, or handling the pressures of legal practice.

**12. Networking Tips:** Get insights into effective networking strategies specific to the legal industry.

**13. Book Recommendations:** Discover essential readings or books to enhance their legal knowledge and skills.

**14. Bar Exam Prep:** Use the platform for clarifications while studying for the bar exam or understanding complex legal topics.

**15. Practice Management:** Learn basics about starting a practice, client management, or dealing with administrative tasks.

Young lawyers must remember that while the platform is a valuable tool for assistance and learning, it doesn't replace the in-depth study, hands-on experience, mentorship, and professional discernment necessary for legal practice. Always cross-check information and exercise professional judgment.

### How To Train Your Team

This platform can be an invaluable tool for training your legal team. Here's a step-by-step guide on how to integrate it into your training program:

- 1. Legal Concepts Clarification:**
  - Encourage team members to ask questions about complex legal concepts or principles for a simplified explanation.
- 2. Mock Scenarios:**
  - Craft hypothetical legal scenarios or dilemmas, ask the platform for guidance, and then discuss the answers as a team.
  - Test your team's knowledge by comparing their responses with the platform's answers.
- 3. Research Skills:**
  - Seek guidance on best practices for legal research on specific topics.
  - Use the platform as a starting point, then challenge your team to delve deeper into primary sources.
- 4. Drafting Practice:**
  - Use the platform to critique and refine draft documents, contracts, or pleadings prepared by team members.
  - Compare drafted documents with model examples from the platform.

**5. Ethical Discussions:**

- Pose ethical dilemmas and use the platform's responses as a basis for group discussions on legal ethics.

**6. Legal Updates & Trends:**

- Ask about historical legal trends or significant cases up to 2021 to ensure team members are familiar with foundational developments.

**7. Negotiation and Litigation Simulations:**

- Seek advice on negotiation strategies or litigation techniques, then role-play these scenarios with your team.

**8. Professional Development:**

- Encourage team members to ask about career growth, networking, and building a strong legal reputation.

**9. Feedback & Quizzes:**

- After sessions or modules, use the platform to generate quizzes or tests for your team to assess retention and understanding.

**10. Comparative Law Insights:**

- For international firms, gain insights into legal systems across different jurisdictions to provide a broad perspective.

**11. Resource Recommendations:**

- Ask for book or article recommendations on specific legal topics to create a reading list for ongoing learning.

**12. Case Studies:**

- Create hypothetical or sanitized real-world case studies and ask the platform for analysis or strategy suggestions. Discuss these in group sessions.

**13. Soft Skills Development:**

- Seek advice on improving communication, client management, and other soft skills crucial for lawyers.

Always keep in mind:

- **Supplement, Not Replace:** This platform is a supplementary tool. Traditional training methods, hands-on experience, and mentorship remain vital.
- **Confidentiality:** Avoid sharing specific details from actual cases.
- **Stay Updated:** The platform's last update was in 2021. Ensure your team

cross-references with current laws, regulations, and legal developments. Incorporating this platform into your training regimen can provide diverse learning opportunities, enhancing the depth and breadth of your team's legal education.

### How Can In-House Counsel Use ChatGPT?

In-house counsel, tasked with providing legal guidance to corporations and organizations, can utilize this platform in a variety of ways:

1. **Legal Refreshers:** Quickly clarify or refresh knowledge on specific legal principles, statutes, or regulations relevant to their industry.
2. **Contract Drafting:** Seek assistance drafting clauses, understanding specific contract terms, or reviewing standard contract language.
3. **Risk Management:** Understand potential risks in specific legal scenarios or get a general overview of best practices in risk mitigation.
4. **Regulatory Compliance:** Ask for summaries or explanations about specific regulations, especially if branching into unfamiliar territory.
5. **Case Law Overviews:** Request summaries of significant cases that might impact the organization's operations or industry.
6. **Negotiation Strategies:** Gain insights into negotiation tactics, especially for contracts or business deals.
7. **Policy Drafting:** Get help drafting or refining company policies to ensure legal compliance and clarity.
8. **Training Development:** Use the platform to develop training materials or scenarios for company staff on legal topics.
9. **Ethical Considerations:** Clarify ethical dilemmas or best practices in corporate settings.
10. **Legal Research Guidance:** When delving into new areas of law or international regulations, get pointers on where to start or what to focus on.
11. **Intellectual Property:** Understand basics or nuances related to patents, trademarks, copyrights, or trade secrets relevant to the company.

12. **Legal Trends:** Ask about historical or current trends in corporate law up to the platform's last update in 2021.

13. **Jurisdictional Queries:** For multinational corporations, gain initial insights into legal principles across different jurisdictions.

14. **Litigation Prep:** If the company faces litigation, use the platform for preliminary case strategy brainstorming or understanding specific litigation procedures.

15. **Stakeholder Communications:** Draft or refine communications to stakeholders on legal matters, ensuring clarity and accuracy.

In-house counsel must remember that while this platform provides valuable insights, it's essential to cross-reference information with current laws, organizational policies, and other legal resources. The platform should be considered a supplementary tool, not a sole legal advice source.

### How Can In-House Counsel Use ChatGPT to Hire and Manage Outside Counsel?

Utilizing ChatGPT can assist in-house counsel in hiring and managing outside counsel by offering insights, best practices, and clarifications. Here's how the platform can be employed:

1. **Criteria Development:** Assist in-house counsel in crafting criteria for evaluating potential outside counsel by providing insights into what qualities, experiences, or specializations might be crucial for the task.
2. **Interview Preparation:** Suggest questions or topics to discuss with potential outside counsel to gauge their expertise and suitability during interviews.
3. **Cost Management:** Offer strategies or tips for negotiating fees and managing costs when engaging with outside counsel.
4. **Engagement Best Practices:** Provide general guidelines on establishing clear communication channels, setting expectations, and crafting engagement agreements with outside counsel.
5. **Conflict Checks:** Guide in-house counsel on best practices for conduct-

ing conflict of interest checks and what to consider when evaluating potential conflicts.

6. **Performance Metrics:** Help establish metrics or key performance indicators (KPIs) to evaluate the performance of outside counsel.

7. **Communication Tips:** Offer strategies for ensuring efficient, clear, and productive communication between in-house and outside counsel.

8. **Knowledge Transfer:** Offer tips on facilitating effective knowledge transfer between the company and outside counsel, ensuring they are well informed about the company's specifics.

9. **Ethical Considerations:** Provide insights into ethical considerations when hiring and managing outside counsel.

10. **Feedback Loop:** Guide on constructively providing feedback to outside counsel and establishing a continuous improvement cycle.

11. **Termination Insights:** If there's a need to end the relationship with an outside counsel, ChatGPT can guide how to do so while adhering to contractual and ethical considerations.

12. **Document Management:** Offer best practices to manage, store, and share documents with outside counsel, ensuring data security and compliance.

13. **Case Studies:** Share general experiences or case studies about working with outside counsel, which can help in-house counsel anticipate potential challenges or opportunities.

While ChatGPT can offer general guidance and support in hiring and managing outside counsel, in-house lawyers should rely on their judgment, company-specific considerations, and direct consultations with peers or experts when making decisions.

### How Can In-House Counsel Use ChatGPT to Oversee Litigation?

Overseeing litigation is a complex task that requires careful attention to detail, strategy, and communication. ChatGPT can be a supportive tool for in-house counsel during the litigation process in the following ways:

1. **Understanding Litigation Process:** For those new to litigation or specific types of cases, ChatGPT can explain the general stages and processes involved.
2. **Case Law Research:** While detailed case law research should be done using specialized databases, ChatGPT can provide foundational knowledge and insights into legal principles and precedents.
3. **Strategic Planning:** Get general advice or insights on litigation strategy, such as potential arguments, counterarguments, or procedural tactics.
4. **Document Review Tips:** Gain insights into best practices for document discovery, ensuring comprehensive and compliant responses.
5. **Scenario Testing:** Input hypothetical litigation scenarios to explore potential legal outcomes or strategies.
6. **Communication with Outside Counsel:** Get guidance on communicating effectively with outside counsel, ensuring strategy alignment, and understanding priorities.
7. **Risk Assessment:** Explore potential risks associated with litigation strategies, helping in-house counsel advise the company on the best path forward.
8. **Cost Management:** Obtain insights into best practices for managing litigation costs and budgeting.
9. **Court Procedures:** Clarify questions regarding court procedures, rules, or etiquette in various jurisdictions.
10. **Settlement Considerations:** Gain insights into factors to consider when evaluating settlement opportunities, including potential advantages and drawbacks.
11. **Public Relations Strategy:** Understand general guidelines for managing public relations during litigation to protect the company's reputation.
12. **Training and Workshops:** Use ChatGPT to create interactive Q&A sessions or mock trial scenarios, aiding in preparing witnesses or understanding the litigation landscape better.
13. **Monitoring Progress:** Get tips on monitoring and evaluating the progress of the litigation, ensuring milestones

stones are met and objectives are achieved.

14. **Post-Litigation Review:** After litigation concludes, obtain insights into best practices for post-mortem analysis to learn from the experience and improve future litigation strategies.

While ChatGPT can be a valuable tool in aiding in-house counsel during litigation, it's essential to use it as a supplementary resource. Detailed research, consultations with litigation experts, and understanding each case's unique specifics remain paramount.

### How Can You Use ChatGPT for Contracts?

Using the platform this way can streamline the contract drafting and review process, helping you craft robust and transparent agreements.

This platform can be an invaluable tool for training your legal team. Here's a step-by-step guide on how to integrate it into your training program:

1. **Legal Concepts Clarification:**
  - Encourage team members to ask questions about complex legal concepts or principles for a simplified explanation.
2. **Mock Scenarios:**
  - Craft hypothetical legal scenarios or dilemmas, ask the platform for guidance, and then discuss the answers as a team.
  - Test your team's knowledge by comparing their responses with the platform's answers.
3. **Research Skills:**
  - Seek guidance on best practices for legal research on specific topics.
  - Use the platform as a starting point, then challenge your team to delve deeper into primary sources.
4. **Drafting Practice:**
  - Use the platform to critique and refine draft documents, contracts, or pleadings prepared by team members.
  - Compare drafted documents with model examples from the platform.
5. **Ethical Discussions:**
  - Pose ethical dilemmas and use the platform's responses as a basis for group discussions on legal ethics.

### 6. Legal Updates & Trends:

- Ask about historical legal trends or significant cases up to 2021 to ensure team members are familiar with foundational developments.

### 7. Negotiation and Litigation Simulations:

- Seek advice on negotiation strategies or litigation techniques, then role-play these scenarios with your team.

### 8. Professional Development:

- Encourage team members to ask about career growth, networking, and building a strong legal reputation.

### 9. Feedback & Quizzes:

- After sessions or modules, use the platform to generate quizzes or tests for your team to assess retention and understanding.

### 10. Comparative Law Insights:

- For international firms, gain insights into legal systems across different jurisdictions to provide a broad perspective.

### 11. Resource Recommendations:

- Ask for book or article recommendations on specific legal topics to create a reading list for ongoing learning.

### 12. Case Studies:

- Create hypothetical or sanitized real-world case studies and ask the platform for analysis or strategy suggestions. Discuss these in group sessions.

### 13. Soft Skills Development:

- Seek advice on improving communication, client management, and other soft skills crucial for lawyers.

Always keep in mind:

- **Supplement, Not Replace:** This platform is a supplementary tool. Traditional training methods, hands-on experience, and mentorship remain vital.
- **Confidentiality:** Avoid sharing specific details from actual cases.
- **Stay Updated:** The platform's last update was in 2021. Ensure your team cross-references with current laws, regulations, and legal developments.

Incorporating this platform into your training regimen can provide diverse learning

opportunities, enhancing the depth and breadth of your team's legal education.

### How Can In-House Counsel Use ChatGPT to Review Contracts?

In-house counsel can utilize the ChatGPT platform to review contracts in several ways. However, it's essential to understand that the platform does not replace human legal judgment. Here are some suggested uses:

1. **Contract Summarization:** Input specific clauses or sections and ask ChatGPT for a plain-language summary or explanation.
2. **Legal Definitions:** If legal jargon or terms need clarification, ChatGPT can provide definitions or explanations.
3. **Comparison:** Provide details from a contract and ask ChatGPT if it's standard or if there are potential areas of concern based on general contract norms.
4. **Drafting Assistance:** If you need help formulating or revising clauses, ask ChatGPT for suggestions.
5. **Legal Research:** While ChatGPT can't browse the internet in real-time, it contains a vast amount of knowledge (up to its last update in 2021) that can be tapped into for general legal principles, case law, and more.
6. **Scenario Modeling:** Present hypothetical situations to ChatGPT to understand potential legal implications based on the contract's terms.
7. **Checklist Creation:** Ask ChatGPT to help create checklists for contract review, due diligence, or other legal processes.
8. **Red Flag Identification:** While not foolproof, you can ask ChatGPT to identify potential "red flags" or areas of concern in specific contract clauses based on general practices.
9. **Negotiation Points:** ChatGPT can suggest potential negotiation points based on contract terms if you're preparing for negotiations.
10. **General Questions:** Use ChatGPT as a sounding board for general legal questions or brainstorming.

However, there are some caveats:

- **Always Use Human Judgment:** AI tools should be used as an aid, not a replacement, for human expertise.
- **Confidentiality:** Be careful about sharing sensitive or confidential details. Always ensure you're securely using the platform and avoid sharing specific personal or company details.
- **Updates:** As of now, ChatGPT has a knowledge cutoff in September 2021. This means it won't be aware of changes in laws, regulations, or standards after this time.

Suppose in-house counsel chooses to use ChatGPT or similar platforms for contract review. In that case, it's essential to do so cautiously and always cross-check with current laws, regulations, and internal company standards.

### How Can In-House Counsel Use ChatGPT to Draft Contracts

In-house counsel can utilize ChatGPT to assist in drafting contracts by leveraging its knowledge of contract language, structures, and general legal principles. Here's how:

1. **Clause Suggestions:** Describe the specific purpose of a clause you need, and ChatGPT can suggest language or structure based on typical contractual language.
2. **Formatting and Structure:** Ask for guidance on structuring specific contract sections.
3. **Contract Templates:** In-house counsel can request general templates or starting points for NDAs, service agreements, or lease contracts.
4. **Terminology Clarification:** If you're unsure about the proper wording or terminology for a specific provision, ChatGPT can provide guidance.
5. **Risk Mitigation:** Describe a specific risk or concern, and ChatGPT can suggest clauses commonly used to address or mitigate that risk.
6. **Alternative Clause Language:** If you're trying to make a clause more favorable to your side or more neutral, ChatGPT can provide alternative wording.
7. **Explanatory Side Notes:** While drafting, if there's a clause you're unsure about, ChatGPT can provide explana-

tions or insights into its purpose and implications.

8. **Checklists:** Ask ChatGPT to provide a checklist of things to consider or include for specific contract types.
9. **Legal Precedents:** While ChatGPT cannot browse the latest cases, it can provide insights from case law and legal principles up to its last update in September 2021.
10. **Jurisdiction-specific Provisions:** If you're drafting a contract for a specific jurisdiction, ChatGPT can suggest standard clauses or considerations for that jurisdiction based on its training data.

However, keep in mind:

- **Always Use Human Judgment:** ChatGPT is a tool that aids the drafting process but doesn't replace the expertise and judgment of an attorney. A legal professional should thoroughly review all drafts.
- **Data Security and Confidentiality:** Avoid directly sharing sensitive or confidential information. When seeking advice on specific clauses, keep the information generalized and don't provide specific business details.
- **Updates and Relevance:** ChatGPT's knowledge is based on data up to September 2021. Ensure that any guidance received is cross-referenced with current laws, regulations, and best practices.

In-house counsel should always be responsible for drafting and ensuring the contract serves the organization's best interests. ChatGPT can be a valuable assistant in this process, but human expertise remains paramount.

### How Can In-House Counsel Use ChatGPT to Assist with HR

Given the intersection of employment law and HR practices, in-house counsel can employ ChatGPT to assist with various HR (Human Resources) issues. Here are some ways in which the platform can be utilized:

1. **Legal Definitions:** ChatGPT can clarify legal jargon or terms related to employment law, such as "exempt vs. non-exempt" or "at-will employment."



2. **Policy Review:** Provide general descriptions of HR policies, and ChatGPT can offer insights on common best practices and potential legal concerns.
3. **Scenario Analysis:** Present hypothetical HR situations to gauge potential legal implications based on general employment law principles.
4. **Training Material:** Seek suggestions for topics to cover in HR or legal compliance training, such as sexual harassment prevention or workplace safety.
5. **Legal Research Assistance:** While ChatGPT can't conduct real-time online research, it contains knowledge up to September 2021 and can offer insights into historical cases, laws, and regulations.
6. **Drafting Assistance:** When creating or revising HR documents, such as employee handbooks or internal policies, ChatGPT can offer drafting suggestions or language examples.
7. **Understanding Regulations:** Ask about specific employment regulations or laws in your jurisdiction to get a general understanding.
8. **Conflict Resolution:** Seek guidance on best practices for resolving workplace disputes or conflicts from a legal perspective.
9. **Compliance Checklists:** Ask ChatGPT to help create checklists for HR compliance, ensuring that essential legal aspects are covered in policies or procedures.
10. **Benefits and Compensation:** Get a basic understanding of laws related to employee benefits, compensation, overtime, etc.

However, there are important considerations to keep in mind:

- **Human Judgment:** ChatGPT can provide general advice but doesn't replace human expertise, especially in complex HR issues requiring nuanced understanding.
- **Confidentiality:** Avoid sharing sensitive employee or company-specific information. Pose questions in a general or hypothetical manner to preserve confidentiality.

- **Updates and Currency:** ChatGPT's knowledge goes up to September 2021. After this date, the platform won't know any recent legal changes or evolving HR best practices.
- **Jurisdictional Differences:** Employment laws vary significantly by country, state, or city. Always specify the jurisdiction in your questions and cross-check with local regulations.

Lastly, constantly collaborate with HR professionals when addressing HR-related issues. Their expertise in the practical aspects of HR and legal insights will lead to the most comprehensive solutions.

### How Can In-House Counsel Use ChatGPT to Develop Corporate Protocols and Procedures

In-house counsel can use ChatGPT to assist in the development of internal protocols and standard operating procedures (SOPs) in various ways:

1. **Research and Background:** Gain insights into best practices for SOPs and protocols used in different industries or for specific processes.
2. **Drafting Assistance:** When constructing SOPs, ChatGPT can provide language suggestions, formatting tips, or structural guidelines.
3. **Clarification of Legal Requirements:** For SOPs that have a legal compliance aspect, ChatGPT can provide summaries or explanations of relevant laws and regulations up to its last update in September 2021.
4. **Risk Assessment:** Provide a general description of a proposed protocol, and ChatGPT can identify potential legal or operational risks based on its knowledge.
5. **Template Suggestions:** Request templates or example structures for specific types of SOPs, which can serve as starting points for your documents.
6. **Feedback Loop Creation:** Inquire about best practices for establishing feedback mechanisms within SOPs, ensuring they remain updated and relevant.
7. **Training Points:** When rolling out new protocols or SOPs, ChatGPT can assist in identifying key points or top-

ics that should be emphasized during training.

8. **Change Management:** Gain insights into best practices for implementing changes in protocols and SOPs, ensuring smooth transitions and legal compliance.
9. **Scenario Testing:** Pose hypothetical scenarios to gauge how a protocol might fare in different situations, helping to identify potential weaknesses or areas for improvement.
10. **Benchmarking:** Ask about standard procedures in specific industries or sectors to benchmark your organization's protocols against standard practices.

However, there are several things to consider:

- **Collaboration:** While in-house counsel plays a crucial role, it's essential to collaborate with other departments and stakeholders. They will provide practical insights into operational aspects, while legal can ensure compliance and risk mitigation.
- **Avoid Specifics:** Ensure you don't share confidential or sensitive internal information with the platform. Pose questions in a generalized manner.
- **Human Review:** ChatGPT is a tool and should be used as an aid. Any protocol or SOP developed with its assistance should undergo a thorough review by relevant internal teams to ensure accuracy, practicality, and compliance.
- **Continuous Updates:** Business environments, legal landscapes, and operational needs change. Regularly review and update SOPs, and remember that ChatGPT's knowledge is up to 2021, so cross-reference with current laws and industry best practices.

By leveraging ChatGPT as a supplementary tool, in-house counsel can develop robust and compliant internal protocols and SOPs efficiently.

### How Can In-House Counsel Use ChatGPT to Create Corporate Compliance Programs

Corporate compliance programs ensure a company adheres to all relevant regu-

lations, standards, and ethical practices. ChatGPT can be a valuable tool for in-house counsel in developing and implementing these programs. Here's how:

1. **Regulatory Overview:** Understand applicable regulations and standards in various jurisdictions and industries.
2. **Program Frameworks:** Offer insights into effective corporate compliance programs' essential elements and best practices.
3. **Risk Assessment Guidance:** Provide steps and considerations for conducting a risk assessment, identifying potential areas of vulnerability.
4. **Policy Drafting Assistance:** Assist in drafting clear and effective compliance policies and procedures, offering feedback and language recommendations.
5. **Training Development:** Aid in creating training materials or modules to educate employees on compliance standards, responsibilities, and best practices.
6. **Monitoring Mechanisms:** Share insights on establishing effective monitoring and reporting mechanisms to ensure continuous adherence to compliance standards.
7. **Scenario Testing:** Present hypothetical situations to get feedback on potential compliance issues, helping to refine program components.
8. **Whistleblower Programs:** Guide on creating mechanisms for employees to report non-compliance without fear of retaliation.
9. **Compliance Technology:** ChatGPT doesn't offer direct tech solutions but can inform about types of technologies or software platforms commonly used in corporate compliance efforts.
10. **Benchmarking:** Offer insights into compliance standards in similar industries or sectors, helping to ensure that the company's program aligns with or exceeds industry norms.
11. **Continuous Improvement:** Guide regularly reviewing and updating the compliance program in light of evolving regulations, business changes, and lessons learned.
12. **Cultural Integration:** Offer strategies to integrate compliance into the company's culture, ensuring it's not

just a checklist but a core part of its operations.

13. **Stakeholder Communication:** Provide advice on effectively communicating the importance of compliance to various stakeholders, from top management to frontline employees.
14. **Case Studies:** Share general experiences or examples of compliance challenges and successes, offering valuable lessons and insights.
15. **Audit and Review:** Provide general tips or considerations for conducting compliance audits or third-party assessments.

While ChatGPT can provide valuable guidance and insights, in-house counsel must combine this with detailed research, expert consultations, and an understanding of the company's unique circumstances and risks. Effective compliance programs require a nuanced approach tailored to each organization's needs, operations, and challenges.

### How Can In-House Counsel Use ChatGPT to Ensure Corporate Compliance

ChatGPT can assist in-house counsel in a variety of ways when it comes to ensuring company compliance with laws and regulations. Here's how:

1. **Clarifying Laws:** ChatGPT can provide explanations or summaries of specific laws and regulations until its last update in September 2021.
2. **Compliance Checklists:** Inquire about crucial compliance considerations for specific laws, regulations, or industries, and ChatGPT can offer general checklists or guidelines.
3. **Scenario Analysis:** Present hypothetical situations and ask about potential legal implications based on known regulations and laws.
4. **Best Practices:** Seek insights into best practices related to compliance in specific areas or industries based on general knowledge and trends up to 2021.
5. **Training Content:** Ask for topic suggestions, general content, or points to cover in legal and compliance training sessions.
6. **Audit Preparation:** Use ChatGPT to understand general steps and consid-

erations for preparing for compliance audits in various areas.

7. **Risk Identification:** Describe a process or practice, and ChatGPT can flag potential legal or compliance risks based on its knowledge.
8. **Document Review Assistance:** While not a substitute for thorough legal review, ChatGPT can assist in identifying potential compliance concerns in draft policies, contracts, or other documents.
9. **Updates and Changes:** Ask about significant changes or updates in specific areas of law or regulations (up to 2021) to ensure older practices are still compliant.
10. **International Insights:** ChatGPT can offer overviews of compliance requirements in various jurisdictions if the company operates internationally, based on its training data.

However, there are vital considerations to remember:

- **Knowledge Limit:** ChatGPT's last update was in September 2021. It won't be aware of changes in laws or regulations after this date. It's essential to verify information with updated sources.
- **Supplementary Tool:** ChatGPT is a tool to aid the compliance process, not replace it. Always rely on thorough internal review processes, consultations with experts, and current legal databases.
- **Confidentiality:** Be cautious about sharing sensitive or proprietary company information. Pose questions in a generalized manner to avoid revealing specifics.
- **Local Expertise:** Local counsel's expertise is invaluable for multinational companies. Laws can vary widely across jurisdictions, and even if ChatGPT provides an overview, local attorneys should verify compliance.
- **Complexity of Law:** Legal compliance is often multifaceted. While ChatGPT can provide general insights, nuances might require more in-depth research and consultation.

In-house counsel can use ChatGPT as a starting point or supplementary resource

in the compliance process, but it's essential to utilize other resources and methods to ensure comprehensive compliance.

### How Can In-House Counsel Use ChatGPT to Advise Their Companies

ChatGPT can assist in-house counsel in advising their company in various capacities. Here's how the platform can be leveraged:

- 1. Legal Research:** For initial research on legal issues, ChatGPT can provide a broad understanding of legal principles, case law, statutes, and regulatory standards, acting as a jumping-off point for more detailed research.
- 2. Drafting Assistance:** ChatGPT can help refine legal documents, contracts, and other communications, ensuring clarity and comprehensiveness.
- 3. Scenario Analysis:** In-house counsel can input hypothetical situations to explore potential legal ramifications, helping to anticipate challenges and advise proactively.
- 4. Legal Updates:** While the data is up to September 2021, ChatGPT can provide a foundational understanding of existing regulations and legal trends, aiding in-house counsel in staying informed.
- 5. Clarifications:** Complex legal terms or concepts can be broken down and explained, aiding in-house counsel in their role as a translator of legal jargon for the company.
- 6. Risk Assessment:** Gain insights into potential legal risks in various scenarios, enabling in-house counsel to better advise on risk mitigation strategies.
- 7. Training:** ChatGPT can create interactive training modules or Q&A sessions, facilitating legal education for company employees on compliance, policies, or other relevant topics.
- 8. Negotiation Tactics:** By simulating negotiations or presenting arguments, ChatGPT can provide feedback, potential counterarguments, or negotiation strategies.
- 9. Comparative Analysis:** Get insights into how similar issues are handled in other jurisdictions or industries, helping to benchmark and advise on best practices.

**10. Policy and Procedure Guidance:** ChatGPT can provide general guidelines or feedback to ensure alignment with legal and industry standards when crafting or revising company policies.

- 11. Stress Testing:** Present strategies, positions, or solutions to ChatGPT to identify vulnerabilities, strengths, or alternative approaches.
- 12. Stakeholder Communication:** Get advice on best practices for communicating legal issues or decisions to company stakeholders, ensuring effective communication.
- 13. Networking and Resources:** While ChatGPT can't connect directly to external sources, it can guide in-house counsel towards authoritative organizations, publications, or experts beneficial for specific topics.

While ChatGPT can be a valuable tool for in-house counsel, it's vital to use it as a supplementary resource. Critical legal decisions and advice should always be grounded in comprehensive research, expert consultations, and a deep understanding of the company's unique circumstances.

### How Can In-House Counsel Use ChatGPT to Communicate with Their C-Suite

In-house counsel can use the ChatGPT platform to communicate with the C-suite in several innovative ways:

- 1. Research:** Quickly clarify legal questions or concepts before communicating them to the C-suite.
- 2. Drafting Assistance:** Use ChatGPT to help draft clear, concise memos, presentations, or other documents.
- 3. Scenario Planning:** Roleplay or brainstorm potential situations and their legal implications.
- 4. Data Presentation:** Use ChatGPT to help summarize and present complex legal data or concepts in a more digestible form.
- 5. Training:** Create interactive Q&A sessions for C-suite members to familiarize them with legal concepts or upcoming changes.
- 6. Frequent Updates:** Schedule regular chats to keep the C-suite updated on

recent legal developments that might impact the business.

- 7. Interactive FAQ:** Create a list of frequently asked legal questions for the C-suite, and utilize ChatGPT to answer them in real time.
  - 8. Terminology Clarification:** Quickly define and explain legal jargon so the C-suite can make informed decisions.
- When leveraging a tool like ChatGPT, ensure the information is accurate and suitable for the specific context. While ChatGPT is a valuable resource for initial research and drafting, the in-house counsel should always review final communications for accuracy and appropriateness.

Indeed, the ChatGPT platform can be a valuable tool for in-house counsel looking to enhance their communication skills. Here's how:

- 1. Practice:** In-house counsel can roleplay conversations with ChatGPT, simulating interactions with the C-suite, board members, or other stakeholders. This provides a risk-free environment to try out different communication styles or strategies.
- 2. Feedback on Drafts:** They can input draft memos, emails, or presentations to get feedback on clarity, structure, and language. This iterative process can help refine the message and delivery.
- 3. Terminology Clarification:** ChatGPT can assist in simplifying complex legal terms and concepts, making it easier for in-house counsel to communicate these ideas to non-legal colleagues.
- 4. Q&A:** Practicing by asking ChatGPT legal or hypothetical questions can help in-house counsel anticipate and prepare for the questions they might get from their business counterparts.
- 5. Improve Active Listening:** By reading and analyzing responses from ChatGPT, in-house counsel can practice their active listening skills, focusing on understanding before formulating a response.
- 6. Expand Knowledge Base:** The vast information available in ChatGPT can help in-house counsel become familiar with a broader set of topics, enabling them to communicate more effec-

tively with various departments in their organization.

7. **Enhance Writing Skills:** By comparing their written content with the outputs from ChatGPT, in-house counsel can identify areas for improvement in clarity, brevity, and effectiveness.
8. **Stress Testing Arguments:** Counsel can present arguments or positions to ChatGPT to get counterpoints or potential challenges, helping them to prepare for real-world discussions and negotiations.

Remember, while ChatGPT can be a valuable tool for skill development, human feedback is also essential. Combining insights from ChatGPT with mentorship, workshops, and real-world practice will give in-house counsel a comprehensive approach to honing their communication skills.

### How Can In-House Counsel Use ChatGPT to Train Their Team

In-house counsel can leverage ChatGPT to train their legal team in multiple ways:

1. **Interactive Tutorials:** Design a series of Q&A sessions with ChatGPT on specific legal topics. This allows team members to learn by posing questions and receiving answers in real-time actively.
2. **Mock Scenarios:** Create hypothetical situations or case studies and have the team interact with ChatGPT to navigate them, gaining insights into potential strategies and approaches.
3. **Legal Research:** Encourage team members to use ChatGPT as an initial step in their research process. It can provide quick answers, relevant case law, or explain complex legal concepts.
4. **Drafting Practice:** Team members can submit draft documents to ChatGPT for review and feedback, helping refine their drafting skills.
5. **Legal Updates:** Use the platform to stay updated on recent legal developments. Although ChatGPT's last training data is up to September 2021, it can still provide foundational knowledge, which can be built upon with more recent sources.
6. **Soft Skill Development:** Besides technical legal training, team members

can practice negotiation, client interaction, and other soft skills by simulating conversations with ChatGPT.

7. **Terminology Clarification:** New team members, especially those transitioning from other fields, can quickly get up to speed on legal jargon by querying ChatGPT.
8. **Diverse Perspectives:** Pose hypotheticals or challenging questions and observe how ChatGPT might approach a problem, helping the team think more broadly about solutions.
9. **Feedback Loop:** After team members have interacted with ChatGPT, gather feedback on what they found useful and areas of improvement. This can help tailor future training sessions.
10. **Consistency in Advice:** Ensure team members provide consistent legal advice by cross-referencing answers with ChatGPT.

It's important to remember that while ChatGPT is a powerful tool, it should complement traditional training methods rather than replace them. Combining ChatGPT's capabilities with workshops, mentorships, and real-world experiences will provide a holistic training approach for the legal team.

### How Can In-House Counsel Use ChatGPT to Mitigate Risks

ChatGPT can be a valuable tool for in-house counsel in risk management and mitigation efforts. Here's how the platform can assist:

1. **Information Gathering:** Use ChatGPT to quickly clarify legal concepts, recent changes in legislation, or industry standards that might impact the organization.
2. **Scenario Analysis:** Input hypothetical scenarios to get insights into potential risks and liabilities. This helps in-house counsel foresee and prepare for possible challenges.
3. **Legal Updates:** While ChatGPT's knowledge goes up to September 2021, it can provide foundational information on various jurisdictions' laws and regulations, allowing counsel to know baseline legal requirements.
4. **Drafting Assistance:** Develop draft risk assessment documents, policies,

or contract clauses with the help of ChatGPT, ensuring that they cover essential areas of concern.

5. **Training:** Create interactive Q&A sessions for various company departments to educate them about potential risks in their areas and the necessary mitigation strategies.
6. **Contract Review:** Use the platform to help identify potential risk areas in draft contracts or agreements, ensuring that you're not inadvertently taking on undue liabilities.
7. **Regulatory Compliance:** Get an overview of compliance requirements in various jurisdictions or industries to ensure the company isn't exposed to regulatory risks.
8. **Risk Management Best Practices:** Obtain information about best practices in risk management, which can help craft a comprehensive risk management strategy.
9. **Stress Test Arguments:** Present arguments or positions to ChatGPT to see potential counterarguments or challenges, preparing in-house counsel for real-world negotiations or disputes.
10. **Networking and External Resources:** While ChatGPT doesn't connect users to external sources, it can guide in-house counsel towards authoritative organizations, publications, or expert names that might benefit risk management efforts.

While ChatGPT can provide a wealth of information and support in risk management, combining its insights with other risk management tools, expert consultations, and real-world data specific to the organization's context is essential.

### How Can You Use ChatGPT to Help You Develop a Case Strategy

Using ChatGPT to develop a case strategy for litigation can be a valuable supplement to your analysis and the counsel of your legal team. Here's a step-by-step guide on how to maximize the platform for this purpose:

1. **Clarify Objectives:** Clearly define your case's objectives. Are you aiming to negotiate a settlement, secure a favorable verdict, or perhaps get the

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case dismissed? Your strategy will depend on your endgame.

2. **General Overview:** Provide ChatGPT with a general, anonymized overview of the case's facts, issues, and relevant laws without disclosing confidential information.
3. **Research and Precedents:** Ask ChatGPT about similar cases, legal precedents, or relevant statutes. While its last update was in September 2021, it can still provide historical context and insights.
4. **Brainstorming Sessions:** Use ChatGPT as a sounding board to explore different angles or perspectives of your case. The platform can offer various approaches based on the information you provide.
5. **Strengths and Weaknesses:** Discuss the strengths and weaknesses of your case. ChatGPT can help you analyze potential pitfalls or areas the opposing side might target.
6. **Evidence and Testimony:** Discuss the types of evidence you have and what you might still need. ChatGPT can also guide on the kind of expert witnesses that might be beneficial.
7. **Potential Arguments:** Role-play potential courtroom scenarios with ChatGPT, testing both your primary arguments and potential counter-arguments.
8. **Alternative Dispute Resolution (ADR):** Discuss ADR methods' potential benefits and drawbacks, like mediation or arbitration, for your specific case.
9. **Jurisdictional Considerations:** Explore how jurisdictional issues might affect your case strategy, especially involving multi-state or international elements.
10. **Ethical Considerations:** Ensure your strategies adhere to ethical guidelines. If in doubt, you can discuss ethical issues or dilemmas with ChatGPT.
11. **Feedback Loop:** As your case evolves, refine your strategy. You can review and discuss developments with ChatGPT to continuously adapt and strengthen your approach.
12. **Post-Case Reflection:** After the conclusion of the litigation, you can review

the case's outcomes with ChatGPT, discussing what went well and areas for improvement. This reflection can help in future cases.

Remember, while ChatGPT can provide a wide range of insights, it's essential to always consult with your legal team, mentors, or experienced attorneys when developing a case strategy. They can offer nuanced advice tailored to the specifics of your case, jurisdiction, and the personalities involved.

### How Can You Use Chat GPT to Develop a Case Theme

Using ChatGPT to help develop a case theme can be beneficial by generating ideas, consolidating complex information, and refining narratives. Here's a step-by-step guide on how to leverage the platform for this purpose:

1. **Background Research:** Begin by providing a generalized overview of the case's facts and legal issues (without revealing confidential or sensitive information). Ask for relevant legal principles, precedents, or analogous situations.
2. **Brainstorming Ideas:** Pose open-ended questions like "What could be potential themes for a breach of contract case involving a business partnership?"
3. **Evaluating Analogies:** Analogies can help juries understand complex issues. You might ask, "What are effective analogies to explain fiduciary duties?" or other relevant topics.
4. **Assessing Strengths and Weaknesses:** Present hypothetical scenarios similar to your case and inquire about potential strengths and weaknesses. This can help you predict opposing arguments and address them in your theme.
5. **Refining Narratives:** If you have a rough idea of a theme, you can input it and ask for refinements or different perspectives. For instance: "I'm considering a theme around 'broken trust' in a business relationship. How can I expand or refine this?"
6. **Audience Perspective:** You can simulate different viewpoints by asking how different audiences, such as

a judge, jury, or opposing counsel, might perceive a particular argument or theme.

7. **Case Graphics and Demonstratives:** Inquire about effective visual aids or graphics supporting your theme. For example: "What kind of visual aids might best illustrate the concept of 'diluted company shares'?"
8. **Avoid Specifics:** Always generalize your inquiries to prevent divulging confidential or specific information about your case or client.
9. **Cross-Check with Legal Strategy:** After obtaining input on potential themes, always cross-reference them with your overarching legal strategy, ensuring that your theme aligns with your case's facts and legal arguments.
10. **Final Review:** As always, have your proposed theme reviewed by colleagues or mentors. An external perspective, combined with ChatGPT's input, will provide a holistic view of the chosen theme's potential effectiveness.

While ChatGPT can be a valuable tool in brainstorming and refining, remember that human judgment remains paramount, particularly with the nuances and subtleties of litigation.

### How Can You Use ChatGPT to Develop a Case Theory

Developing a case theory is a critical aspect of litigation, and while ChatGPT can be a valuable tool, it should be used in conjunction with human judgment and experience. Here's how you can leverage this platform to develop a case theory:

1. **Legal Foundations:** Start by asking about the relevant laws, statutes, or precedents related to your case type. This ensures your theory is grounded in law.
2. **Hypothetical Scenarios:** Frame your case as a hypothetical scenario (avoiding confidential specifics) and ask for potential theories or approaches.
3. **Strengths and Weaknesses:** Present generalized aspects of your case to gauge potential strengths and weaknesses. This can provide insights into how to shape your theory based on the most compelling aspects of your case.

4. **Test Arguments:** Input hypothetical arguments related to your case and ask for counterarguments. This can help you anticipate and prepare for opposing counsel's strategy.
5. **Fact Patterns:** If there are historical or analogous cases with similar fact patterns, ask about those to draw potential insights and theories.
6. **Evidence Evaluation:** Discuss (in general terms) the types of evidence available and ask how they might support or weaken various case theories.
7. **Witness Perspectives:** If you have key witnesses, present generalized descriptions of their testimonies and inquire about how their statements might be used to shape or support a case theory.
8. **Jury Perception:** Ask how a jury perceives different theories. This is especially important in cases where jury biases or preconceptions can play a significant role.
9. **Refinement and Elaboration:** Once you have a preliminary theory, you can present it (again, in general terms) and ask for feedback, refinements, or further elaboration.
10. **Ethical and Strategic Considerations:** Ensure that any theory you develop meets ethical standards. Additionally, ask about strategic implications or potential long-term consequences of pursuing specific theories.
11. **Avoid Specifics:** As always, be careful not to provide specific or confidential information about your case or client. Frame your queries in generalized or hypothetical terms.
12. **Human Review:** After using ChatGPT to help in the development process, review your case theory with colleagues, mentors, or other legal professionals to get human insights and perspectives.

ChatGPT can expedite the brainstorming and refining process when developing a case theory. However, the platform should be a complementary tool, not a substitute for experienced legal judgment.

### How Can You Use ChatGPT to Draft Discovery

Using ChatGPT to assist in drafting written discovery in a lawsuit can help generate ideas, understand legal terminology, and formulate questions. Here's a guide on how you might leverage the platform for this purpose:

1. **Initial Research:** If you're unfamiliar with a specific area of law or topic, ask general questions to get an overview and relevant legal principles.
2. **Brainstorming Interrogatories:** Pose hypotheticals to the platform to brainstorm potential interrogatory questions. For example: "What are common interrogatories for a personal injury case involving a car accident?"
3. **Document Requests:** Similarly, you can ask about standard documents that might be requested in a specific type of case.
4. **Formulating Questions:** If you're struggling with wording, you can input a rough draft of your question and ask for a more formal or clear rephrasing.
5. **Definitions:** Use the platform to understand or define legal terms and concepts. For instance: "Define 'spoliation of evidence' in the context of civil litigation."
6. **Avoid Specifics:** Always generalize your queries to avoid inputting confidential or client-specific information. Instead of asking about "John Doe's car accident on Elm Street," ask about "a car accident at an intersection."
7. **Review and Verify:** Always review and verify any content generated by ChatGPT. While the platform can provide guidance, the ultimate responsibility for accurate, relevant, and legally sound discovery requests lies with the attorney.
8. **Ethical Considerations:** Be aware of your jurisdiction's ethical guidelines and best practices regarding using AI and other technologies in legal practice.
9. **Final Review:** After drafting discovery with the platform's assistance, it's crucial to have it reviewed by an experienced attorney, either yourself or a colleague, before finalizing.

10. **Continuing Legal Education (CLE):** Consider attending CLE courses on the intersection of AI and legal practice. This will give you insights into best practices and potential pitfalls.

Using ChatGPT or similar platforms can streamline parts of the discovery drafting process, but they should complement, not replace, the expertise and judgment of a legal professional.

### How Can You Use ChatGPT to Interview Witnesses

Interviewing witnesses is an essential part of litigation. While ChatGPT can't replace the nuanced skills of an experienced attorney, it can assist in preparation. Here's how you can use ChatGPT to prepare:

1. **Understand the Basics:** Ask the platform about the fundamentals of witness interviews, techniques, and best practices.
2. **Objective Clarification:** Clearly define your goals for each interview. Are you trying to gather information, confirm facts, or assess the reliability of a witness? Your questions will vary based on the objective.
3. **Question Generation:** Provide general topics or themes without revealing confidential details. ChatGPT can suggest potential questions or topics you might want to cover.
4. **Test Questions:** Practice asking your prepared questions to ChatGPT and gauge the responses. This can help in refining questions for clarity and effectiveness.
5. **Response Anticipation:** Anticipate how a witness might respond. You can role-play with ChatGPT, where the platform can simulate the potential answers of a witness based on the questions you provide.
6. **Body Language & Non-Verbal Cues:** While ChatGPT can't observe non-verbal cues, you can ask for tips on what to look for in witnesses' body language or how to interpret specific non-verbal reactions.
7. **Legal Considerations:** Ensure your questions and approach adhere to relevant legal guidelines. You can ask ChatGPT about legal principles surrounding witness interviews, though

always consult up-to-date sources and your legal team.

- 8. Ethical Considerations:** Consider ethical considerations and best practices when interviewing witnesses to ensure your approach is above board.
- 9. Feedback Loop:** After a mock-interview session, you can reflect on the process with ChatGPT, discussing what went well and areas for improvement.
- 10. Post-Interview:** After conducting actual witness interviews, you can discuss the outcomes with ChatGPT (without revealing confidential information) and prepare for subsequent steps or further interviews.

While ChatGPT can be a valuable preparatory tool, remember that it's crucial to maintain your case's confidentiality and not rely solely on the platform. Always consult with colleagues, mentors, and legal professionals to ensure thorough preparation.

### How Can ChatGPT Help with Securing Evidence

While ChatGPT can't directly help you secure evidence like an investigator or a subpoena might, it can undoubtedly assist you in strategizing and understanding the steps and considerations involved. Here's how you might use the platform for this purpose:

- 1. Understand the Basics:** Start by asking about the basic principles of evidence collection, preservation, and admission in the relevant jurisdiction.
- 2. Identify Potential Evidence:** Discuss (in generic terms to avoid breaching confidentiality) the nature of the case with ChatGPT. The platform might help you brainstorm potential types of evidence that could be relevant.
- 3. Legal Procedures:** Learn the legal procedures for obtaining evidence, such as subpoenas, discovery requests, or depositions.
- 4. Digital Evidence:** If your case involves electronic or digital evidence, ask about best practices for collecting, preserving, and presenting this kind of evidence.
- 5. Preservation:** ChatGPT can inform you about preserving evidence and ensuring its chain of custody to make it admissible in court.

- 6. Expert Testimony:** For complex cases requiring specialized knowledge (e.g., forensic accounting or medical malpractice), ChatGPT can give insights into the expert witnesses you might need and how their testimony can be used.
- 7. Potential Pitfalls:** Discuss common mistakes made during the evidence collection process and how to avoid them.
- 8. Case Law & Precedents:** While ChatGPT's knowledge cut off in September 2021, it can still provide information on significant case law or precedents up to that time, which may guide your approach.
- 9. Ethical Considerations:** Ensure your evidence-collection methods adhere to ethical guidelines. Ask about ethical considerations specific to evidence collection and presentation.
- 10. Strategy Development:** Use ChatGPT as a sounding board to discuss potential evidence strategies. This can include decisions on what evidence to prioritize or how to counter potential challenges from the opposing side.

Remember, while ChatGPT can provide insights, explanations, and guidance on many topics, consulting directly with fellow attorneys, investigators, and experts in the relevant field is essential. Always prioritize the confidentiality and integrity of your case.

### How Can Chat GPT Help You Review Documents

Using ChatGPT to assist in document review for litigation can be helpful for understanding, strategizing, and generating insights. However, it's essential to exercise caution, especially concerning confidentiality and the nuances of legal interpretation. Here's how you might proceed:

- 1. Understanding Document Review:** If you're new to the process, start by asking ChatGPT about the basics and best practices of document review in litigation.
- 2. Strategy Development:** Discuss (in general terms) the nature of the case and the expected types of documents. ChatGPT can provide insights into

how similar cases approached document review, what to look for, and potential pitfalls.

- 3. Search Terms and Keywords:** One major part of electronic document review is developing search terms and keywords. Share generic topics or themes (without divulging confidential details), and ChatGPT can suggest potential keywords or phrases that might be relevant.
  - 4. Document Summarization:** For long or complex documents, you can share non-confidential portions to get a summarization or explanation from ChatGPT.
  - 5. Legal Concepts and Terms:** If you come across legal jargon or concepts you're unfamiliar with, ChatGPT can provide definitions, explanations, and context.
  - 6. Confidentiality and Security:** NEVER upload or share actual confidential documents or sensitive information with ChatGPT. Instead, describe the nature of the content in general terms if you need assistance.
  - 7. Mock Arguments:** If a particular document's content becomes a contention point, you can role-play potential courtroom arguments with ChatGPT to test the strength of your position.
  - 8. Cross-referencing Information:** ChatGPT can provide information on topics that can help cross-reference the facts or claims made in the documents. For instance, if a document references a particular law or event, ChatGPT can provide details (up to its last training data in September 2021).
  - 9. Ethical Considerations:** Ensure your document review process follows ethical guidelines. Ask ChatGPT about ethical considerations specific to document review and legal research if in doubt.
  - 10. Feedback Loop:** After you've conducted a portion of the document review, reflect on the process with ChatGPT to discuss what went well and areas for improvement.
- While ChatGPT can be a valuable assistant in understanding and strategizing around document review, it's essential to work closely with your legal team, use spe-

cialized legal software for the bulk of the review, and consult human expertise for critical decisions.

### How Can ChatGPT Help You Summarize Documents

Using ChatGPT to summarize documents for litigation can save time and provide a clear understanding of the content. However, it's crucial to prioritize confidentiality and ensure no sensitive information is shared. Here's a step-by-step approach:

1. **Document Pre-processing:** Before sharing any content, ensure it's been stripped of any sensitive or personally identifiable information. Redact confidential information or use hypothetical/generic terms.
2. **Document Introduction:** Give ChatGPT a brief introduction about the document's nature (e.g., an email concerning a business transaction, a contract, a witness statement) to set the context.
3. **Excerpt Sharing:** Share manageable excerpts or segments of the document with ChatGPT for summarization. This is especially useful for lengthy or complex sections.
4. **Request Summarization:** After sharing an excerpt, specifically ask ChatGPT to provide a concise summary.
5. **Clarifications:** If certain parts of the document contain technical jargon or concepts you're unfamiliar with, ChatGPT can help clarify or explain them.
6. **Validation:** Once you receive a summary, cross-check it with the original document to ensure accuracy and completeness. This is vital given the nuances of legal documents.
7. **Compilation:** After summarizing various sections or documents, compile the summaries into a coherent overview or report as needed.
8. **Seeking Context:** If the summarized content refers to a legal principle, statute, or case you're unfamiliar with, you can ask ChatGPT for background information or context (up to its last update in September 2021).
9. **Feedback Loop:** Reflect on the summaries and clarifications provided by ChatGPT. If certain summaries weren't on point, you can refine your

instruction or provide more context to improve the output.

10. **Ethical Considerations:** Always ensure that you maintain the integrity and confidentiality of your case. When in doubt, consult with your legal team about the appropriateness of sharing even redacted or anonymized content.

While ChatGPT can be a handy tool for getting quick summaries and understanding document content, always exercise caution. Relying on human expertise, especially in the nuances of litigation, is essential.

### How Can ChatGPT Help You Summarize Depositions

Summarizing depositions using ChatGPT can be efficient, but it's essential to maintain confidentiality and ensure no sensitive or personally identifiable information is shared. Here's how you might proceed:

1. **Redaction and Anonymization:** Remove or anonymize sensitive information before sharing any content from a deposition. Use generic terms or pseudonyms for names, places, and other identifiable details.
2. **Deposition Introduction:** Provide ChatGPT with a brief overview of the deposition's context (e.g., a witness deposition related to a contract dispute) to set the stage for the summary.
3. **Segmented Sharing:** Depositions can be lengthy. Break down the deposition into manageable sections or topics and share one section at a time with ChatGPT for summarization.
4. **Specific Requests:** Ask ChatGPT to summarize the shared section. Specify a brief overview or a more detailed summary depending on your needs.
5. **Key Points Highlight:** If there are critical points, themes, or pieces of testimony you're particularly interested in, highlight them when sharing. This ensures the summary captures those points adequately.
6. **Clarifications and Definitions:** Depositions might contain technical terms, industry jargon, or legal principles. ChatGPT can provide clarifications or definitions if needed.
7. **Validation:** After receiving a summary for a section, cross-check it against the

original deposition to ensure it accurately captures the essence and details.

8. **Compilation:** Once all sections are summarized, you can manually compile them into a cohesive summary document or by sharing the individual summaries with ChatGPT and asking it to integrate them coherently.
9. **Seeking Context:** If the deposition refers to laws, statutes, or cases you're unfamiliar with, you can ask ChatGPT for additional information (up to its last update in September 2021).
10. **Feedback Loop:** Reflect on the summaries provided. If they aren't meeting your expectations, adjust your instructions or provide more context to ChatGPT for better results in the next attempt.
11. **Confidentiality and Ethics:** Always prioritize confidentiality. While ChatGPT doesn't store conversations, it's vital to avoid sharing information that could compromise the case or individuals involved.

While ChatGPT can be a valuable tool for summarizing content, always ensure that you or another legal professional review the final summary to ensure its accuracy and captures all crucial details.

### How Can You Use ChatGPT to Prepare for Depositions

Using ChatGPT to prepare for a deposition can be effective. Here's a brief guide on how you might proceed:

1. **Familiarize with the Basics:** Ask about the basics of a deposition, the process, what to expect, and any etiquette or rules to be aware of.
2. **Mock Deposition:** You can simulate a mock deposition. Provide a brief background on the case and then begin asking questions as if ChatGPT is the deponent or vice versa.
3. **Review Case Details:** Share (without revealing any confidential information) general details about your case and get insights, questions, or angles you might not have considered. Remember to keep specifics anonymous and generic.
4. **Question Formulation:** If you're taking the deposition, you can practice formulating your questions here. The



platform can provide feedback on clarity and potential objections or suggest alternative ways to phrase them.

5. **Answers Practice:** If you are being deposed, you can practice answering questions. The platform can help refine concise, clear, and non-incriminating answers.
6. **Objection Identification:** As you simulate the deposition, you can ask ChatGPT about potential objections to questions or answers and their reasons.
7. **Legal Research:** You can ask for explanations or summaries of relevant laws, statutes, or case law (up to the last update in September 2021).

8. **Relaxation and Mental Prep:** A deposition can be stressful. You can ask for meditation techniques, relaxation exercises, or ways to remain calm under pressure.

**If you're considering using ChatGPT or another large language model, register for the platform and experiment with it responsibly. You'll discover all sorts of uses.**

9. **Post-Deposition:** After your deposition, you can reflect on what happened, ask for feedback, or prepare for the next steps in your case.

Always remember while ChatGPT can provide general advice and information, it's essential to consult with an attorney for specific legal guidance tailored to your situation.

#### Conclusion

If you're considering using ChatGPT or another large language model, register for the platform and experiment with it responsibly. You'll discover all sorts of uses.



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# Addressing Mental Health and Accommodation Issues Head-On



Employers are more commonly facing issues regarding the accommodation of mental health issues in the workplace; issues that impact the company's legal obligations under employment law while trying to get past the stigma that is all too often associated with these requests. These issues can turn a simple workplace conversation into a complex battle with the Equal Employment Opportunity Commission ("EEOC"). This article should help employ-

ers analyze those issues and provide practical advice for what to do when the request for accommodation comes in.

The Americans with Disabilities Act ("ADA") prohibits covered employers from discriminating against disabled individuals in the full range of employment-related activities, including recruitment, advancement, pay, benefits, discipline, and discharge. Under the ADA, the term "disability" means: "(a) A physical or **men-**

**tal** impairment that substantially limits one or more of the major life activities of [an] individual; (b) a record of such an impairment; or (c) being regarded as having such an impairment." 42 U.S.C. § 12102(2) (1994); 29 C.F.R. § 1630.2(g) (emphasis added).

A mental impairment means—  
(2) Any **mental or psychological disorder**, such as an intellectual disability (formerly termed "mental retardation"),



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organic brain syndrome, emotional or mental illness, and specific learning disabilities.

29 C.F.R. § 1630.2(h)(2) (emphasis added).

“[T]he definition of ‘disability’ . . . shall be construed broadly in favor of expansive coverage to the maximum extent permitted by the terms of the ADA. The primary object of attention in cases brought under the ADA should be whether covered entities have complied with their obligations and whether discrimination has occurred, not whether the individual meets the definition of disability. The question of whether an individual meets the definition of disability under this part should not demand extensive analysis.” 29 C.F.R. § 1630.1.

### Mental Health Impacts the Workplace

A mental health condition can impact various aspects of an individual’s life, including the ability to achieve maximum productivity in the workplace. According to the Centers for Disease Control and Prevention (“CDC”):

- Nearly one in five U.S. adults suffer from one or more mental illnesses (18.3% of the population / 44 million people);
- 71% of adults regularly report at least one symptom of stress, such as a headache, feeling overwhelmed, or anxious; and
- Many adults with mental health disorders also need care for other physical health conditions, including heart disease, diabetes, respiratory illness, and other disorders affecting muscles, bones, and joints. The costs of treatment for individuals suffering both a mental and physical health condition are two to three times higher than for those without co-occurring illnesses.

(Workplace Health Promotion, *Centers for Disease Control and Prevention*, <https://www.cdc.gov/workplacehealthpromotion/index.html>).

Mental illnesses such as depression “are associated with higher rates of disability and unemployment.” *Id.* Depression interferes with a person’s ability to complete physical job tasks about 20% of the time and reduces cognitive performance about

35% of the time. *Id.* The CDC estimates that only 57% of employees who report moderate depression and 40% of those who report severe depression receive treatment to control symptoms. *Id.*

Even after taking other health risks—like smoking and obesity—into account, employees at high risk of depression had the highest health care costs during the three years after an initial health risk assessment. *Id.* Depression is estimated to cause 200 million lost workdays each year at a cost to employers of \$17 to \$44 billion. *Id.* According to the World Health Organization (“WHO”), during the first year of the COVID-19 pandemic, global prevalence of anxiety and depression increased by 25%. (COVID-19 Pandemic Triggers 25% Increase in Prevalence of Anxiety and Depression Worldwide, WHO, <https://www.who.int/news/item/02-03-2022-covid-19-pandemic-triggers-25-increase-in-prevalence-of-anxiety-and-depression-worldwide>).

The scope of mental health’s impact on the workplace cannot be understated, affecting both profitability and productivity in the workplace. According to the National Alliance of Mental Health (“NAMI”), mental health conditions cost employers more than \$100 billion and 217 million lost workdays each year. (Why Employers Need to Talk About Mental Illness in the Workplace, NAMI, <https://namipierce.org/why-employers-need-to-talk-about-mental-illness-in-the-workplace/>).

### Stigma Involving Mental Health

While the scope and effect of mental health’s impact in the workplace is undeniable, mental health disabilities can be particularly challenging for employers and employees. One reason for this challenge is the stigma associated with mental illness. This stigma is “rooted in negative stereotypes of persons with mental disorders as dangerous, incompetent, unpredictable, hopelessly ill, and yet somehow responsible for their illness.” (Marjorie L. Baldwin, Ph.D., Allan C. DeSerpa, Ph.D., and Steven C. Marcus, Ph.D., *Workplace Disclosure of Serious Mental Illness and Gainful Employment: Theory and Evidence*, *The Journal of Mental Health Policy and*

Economics, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC10174120/#R10>).

The stigma often leads to an employee being faced with a difficult decision as to whether to disclose a mental impairment to an employer. While concealing a mental impairment may maintain employee’s “privacy, protects them from disability-related discrimination, and ensures that they will be treated like other workers . . . concealment can also be psychologically stressful and economically detrimental” to employees, and employers, by extension. *Id.*

The EEOC also believes this stigma is a concern in the workplace, concluding that “individuals with psychiatric disabilities face employment discrimination because their disabilities are stigmatized or misunderstood . . . [based on] myths, fears, and stereotypes.” EEOC Enforcement Guidance on the Americans with Disabilities Act and Psychiatric Disabilities, EEOC Notice No. 915.002 (March 25, 1997) (“EEOC Guidance”).

### Typical ADA Issues Involving Mental Health

By addressing mental health issues in the workplace, including being proactive about identifying these issues, employers can increase productivity and employee retention, as well as compliance with governing state and federal law addressing the same. While the ADA requires an individualized analysis for any employee claiming protection or requesting an accommodation under the ADA, the EEOC’s Guidance addresses, among other topics, issues that employers frequently face in dealing with mental health issues in the workplace. (*Id.*) The following provides a few key highlights from this EEOC guidance, to equip employers with a deeper understanding of how to handle ADA mental health issues in the workplace.

- Determining whether a mental health impairment substantially limits performance of a major life activity (and thus may constitute a “disability”) must be made without regard to **mitigating measures**, including medications prescribed to control the impairment. EEOC Guidance, Q6.
- Chronic, **episodic conditions** may constitute substantially limiting

- impairments if they are substantially limiting when active or have a high likelihood of recurrence in substantially limiting forms. For some individuals, psychiatric impairments such as bipolar disorder, major depression, and schizophrenia may remit and intensify, sometimes repeatedly, over the course of several months or several years. EEOC Guidance, Q8.
- An impairment substantially limits an individual's ability to **interact with others** if, due to the impairment, s/he is significantly restricted as compared to the average person in the general population. Some unfriendliness with coworkers or a supervisor would not, standing alone, be sufficient to establish a substantial limitation in interacting with others. An individual would be substantially limited, however, if his/her relations with others were characterized on a regular basis by severe problems, for example, consistently high levels of hostility, social withdrawal, or failure to communicate when necessary. EEOC Guidance, Q9.
  - An impairment substantially limits an individual's **ability to concentrate** if, due to the impairment, s/he is significantly restricted as compared to the average person in the general population. For example, an individual would be substantially limited if s/he was easily and frequently distracted, meaning that his/her attention was frequently drawn to irrelevant sights or sounds or to intrusive thoughts; or if s/he frequently experienced his/her "mind going blank." EEOC Guidance, Q10.
  - Employers must keep all information concerning the medical condition or history of its applicants or employees, including information about psychiatric disability, **confidential** under the ADA. This includes medical information that an individual voluntarily tells his/her employer. Employers must collect and maintain such information on separate forms and in separate medical files, apart from the usual personnel files. EEOC Guidance, Q15.
  - Employers are not responsible for monitoring whether employees take their **medication** because doing so does not remove a barrier that is unique to the workplace. EEOC Guidance, Q28.
  - Employers may discipline a disabled individual for violating a **workplace conduct** standard even if the misconduct resulted from a disability—provided that the workplace conduct standard is job-related for the position in question and is consistent with business necessity. For example, nothing in the ADA prevents an employer from maintaining a workplace free of violence or threats of violence, or from disciplining an employee who steals or destroys property. Thus, an employer may discipline an employee with a disability for engaging in such misconduct if it would impose the same discipline on an employee without a disability. EEOC Guidance, Q30.
  - However, though the ADA does not require an employer to excuse past **misconduct**, employers must reasonably accommodate a disabled individual to enable him/her otherwise to meet such a conduct standard in the future, barring undue hardship, because reasonable accommodation is always prospective. For example, a reference librarian frequently loses her temper at work, disrupting the library atmosphere by shouting at patrons and coworkers. After receiving a disciplinary suspension, she discloses her disability, states that it causes her behavior, and requests a leave of absence for treatment. The employer may discipline her because she violated a conduct standard – a rule prohibiting disruptive behavior towards patrons and coworkers – that is job-related for the position in question and consistent with business necessity. The employer, however, must grant her request for a leave of absence as a reasonable accommodation, barring undue hardship, to enable her to meet this conduct standard in the future. EEOC Guidance, Q31.
  - If a disabled individual engages in **misconduct** because s/he is not taking his/her **medication**, the employer should focus on the employee's conduct and explain to the employee the consequences of continued misconduct in terms of uniform disciplinary procedures. It is the employee's responsibility to decide about medication and to consider the consequences of not taking medication. EEOC Guidance, Q32.
  - An individual does not pose a **direct threat** solely because s/he takes a medication that may diminish coordination or concentration for some people as a side effect. Whether such an individual poses a direct threat must be determined on a case-by-case basis, based on a reasonable medical judgment relying on the most current medical knowledge and/or on the best available objective evidence. Therefore, an employer must determine the nature and severity of the individual's side effects, how those side effects influence his/her ability to safely operate the machinery, and whether s/he has had safety problems in the past when operating the same or similar machinery while taking the medication. If a significant risk of substantial harm exists, then an employer must determine if there is a reasonable accommodation that will reduce or eliminate the risk. EEOC Guidance, Q33.
  - An employer may refuse to hire someone based on his/her history of **violence** or threats of violence if it can show that the individual poses a direct threat. A determination of a "direct threat" must be based on an individualized assessment of the individual's present ability to safely perform the functions of the job, considering the most current medical knowledge and/or the best available objective evidence. To find that an individual with a psychiatric disability poses a direct threat, the employer must identify the specific behavior on the part of the individual that would pose the direct threat. This includes an assessment of the likelihood and

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imminence of future violence. EEOC Guidance, Q34.

- An individual who has attempted **suicide** does not necessarily pose a direct threat when s/he seeks to return to work. As with other questions of direct threat, an employer must base its determination on an individualized assessment of the person's ability to safely perform job functions when s/he returns to work. Attempting suicide does not mean that an individual poses an imminent risk of harm to him/herself when s/he returns to work. In analyzing direct threat (including the likelihood and imminence of any potential harm), the employer must seek reasonable medical judgments relying on the most current medical knowledge and/or the best available factual evidence concerning the employee. EEOC Guidance, Q35.

## Accommodations vary, just as people's strengths, work environments, and job duties also vary.

### Reasonable Accommodations For Psychiatric Disabilities

Under the ADA and other nondiscrimination laws, employers must provide "reasonable accommodations" to qualified employees with disabilities.

Reasonable accommodations are adjustments to a work setting that make it possible for qualified employees with disabilities to perform the essential functions of their jobs. Accommodations vary, just as people's strengths, work environments, and job duties also vary.

Reasonable accommodations for individuals with psychiatric disabilities may include (but are not limited to):

#### Flexible Workplaces

- Telecommuting and/or working from home.
- Part-time work hours, job sharing, adjustments in the start or end of

work hours, compensation time and/or "make up" of missed time.

#### Leave

- Sick leave for reasons related to mental health, flexible use of vacation time, additional unpaid or administrative leave for treatment or recovery, leaves of absence and/or use of occasional leave (a few hours at a time) for therapy and other related appointments.

#### Breaks

- Breaks according to individual needs rather than a fixed schedule, more frequent breaks and/or greater flexibility in scheduling breaks, provision of backup coverage during breaks, and telephone breaks during work hours to call professionals and others needed for support.

#### Workplace Modifications

- Reduction and/or removal of distractions in the work area.
- Addition of room dividers, partitions, or other soundproofing or visual barriers between workspaces to reduce noise or visual distractions.
- Private offices or private space enclosures.
- Office/work space location away from noisy machinery.
- Reduction of workplace noise that can be adjusted (such as telephone volume).
- Increased natural lighting or full-spectrum lighting.
- Music (with headset) to block out distractions.

#### Equipment/Technology

- Audio/video recorders for recording/reviewing meetings and training sessions.
- "White noise" or environmental sound machines.
- Handheld electronic organizers, software calendars, and organizer programs.
- Remote job coaching, laptop computers, personal digital assistants and office computer access via remote locations.

- Software that minimizes computerized distractions such as pop-up screens.

#### Job Duties

- Modification or removal of non-essential job duties or restructuring of the job to include only the essential job functions.
- Division of large assignments into smaller tasks and goals.
- Additional assistance and/or time for orientation activities, training and learning job tasks and new responsibilities.
- Additional training or modified training materials.

#### Management/Supervision

- Implementation of flexible and supportive supervision style; positive reinforcement and feedback; adjustments in level of supervision or structure, such as more frequent meetings to help prioritize tasks; and open communication with supervisors regarding performance and work expectations.
- Additional forms of communication and/or written and visual tools, including communication of assignments and instructions in the employee's preferred learning style (written, verbal, e-mail, demonstration); creation and implementation of written tools such as daily "to-do" lists, step-by-step checklists, written (in addition to verbal) instructions and typed minutes of meetings.
- Regularly scheduled meetings (weekly or monthly) with employees to discuss workplace issues and productivity, including annual discussions as part of performance appraisals to assess abilities and discuss promotional opportunities.
- Development of strategies to deal with problems before they arise.
- Written work agreements that include any agreed upon accommodations, long-term and short-term goals, expectations of responsibilities and consequences if not meeting performance standards.

- Education of all employees about their right to accommodations.
- Relevant training for all employees, including coworkers and supervisory staff.

(Accommodations for Employees with Mental Health Conditions, *U.S. Dept. of Labor, Office of Disability Employment Policy*, <https://www.dol.gov/agencies/odep/program-areas/mental-health/maximizing-productivity-accommodations-for-employees-with-psychiatric-disabilities>).

A recent jury trial in the United States District Court for the District of Massachusetts highlighted the risk an employer faces when presented with a request for a mental health accommodation. In *Menninger v. PPD Development, L.P.*, the plaintiff, Dr. Lisa Menninger, was an executive at a global laboratory services company. At some point, her employer told her that her job duties would shift to require a more interactive and visible role. The prospect of this change prompted Dr. Menninger to disclose, for the first time to her employer, that she suffered from “generalized anxiety disorder that includes social anxiety disorder and panic attacks.” *Menninger v. PPD Dev., L.P.*, 2022 U.S. Dist. LEXIS 138967, at \*4-5 (D. Mass. Mar. 22, 2022). Dr. Menninger submitted an accommodation form along with a form from her psychiatrist, who noted that changes to Dr. Menninger’s role would increase her anxiety and make it “substantially more difficult, if not impossible, for [Plaintiff] to perform her job” and submitted five specific requests for accommodations regarding the same. *Id.*

The employer agreed to two accommodations but denied three requested accom-

modations, on the basis that the requested accommodations involved essential job functions. *Id.* at \*8-10. The employer ultimately terminated Dr. Menninger’s employment following an eight (8) month medical leave, after the denial of three accommodation requests. *Id.* at \*10.

After an 11-day trial, a jury ultimately found that the employer violated the ADA (as well as corresponding Massachusetts state law), awarding a \$24 million total verdict to Dr. Menninger—\$1.565 million in back pay, \$5.465 million in front pay, \$5 million for past emotional distress, \$2 million for future emotional distress, and \$10 million in punitive damages.

### Service Animals As Reasonable Accommodations

Another area where employees are increasingly requesting an accommodation is via the use or presence of a service animal. Title I of the ADA (applying to workplaces) does not automatically require employers to allow the use or presence of service or emotional support animals, whether a dog, miniature horse, or other animal, to assist disabled individuals in the workplace. In fact, Title I does not define, mention, or refer to service or emotional support animals at all, though employers may allow their use or presence, as a reasonable accommodation depending on the specific circumstances.

In other words, the same reasonable accommodation standards and analysis apply with regard to service or emotional support animals as for all other types of accommodations in the workplace. For example, as with any request for an accommodation, the employer may need more

extensive medical information regarding the employee’s disability, explaining specifically how the service animal’s presence will relate to his or her ability to perform the duties of the job, in order to evaluate the request.

In addition, if employers permit the use of service or emotional support animals in the workplace as a reasonable accommodation, employers have discretion to require that the disabled employee leash, crate, or otherwise control the animal at all times and that the employee maintain sanitary conditions and take care of the animal’s needs.

**Mental health impacts the workplace, and employers must be educated, prepared, and ready to address these issues.**

### Final Thoughts

Mental health impacts the workplace, and employers must be educated, prepared, and ready to address these issues. On the front end, employers need to think broadly as to when the ADA is triggered in the context of mental health issues. Employers should also be purposeful and diligent in engaging in the interactive process, even for requests for accommodations that may seem unreasonable or untenable.



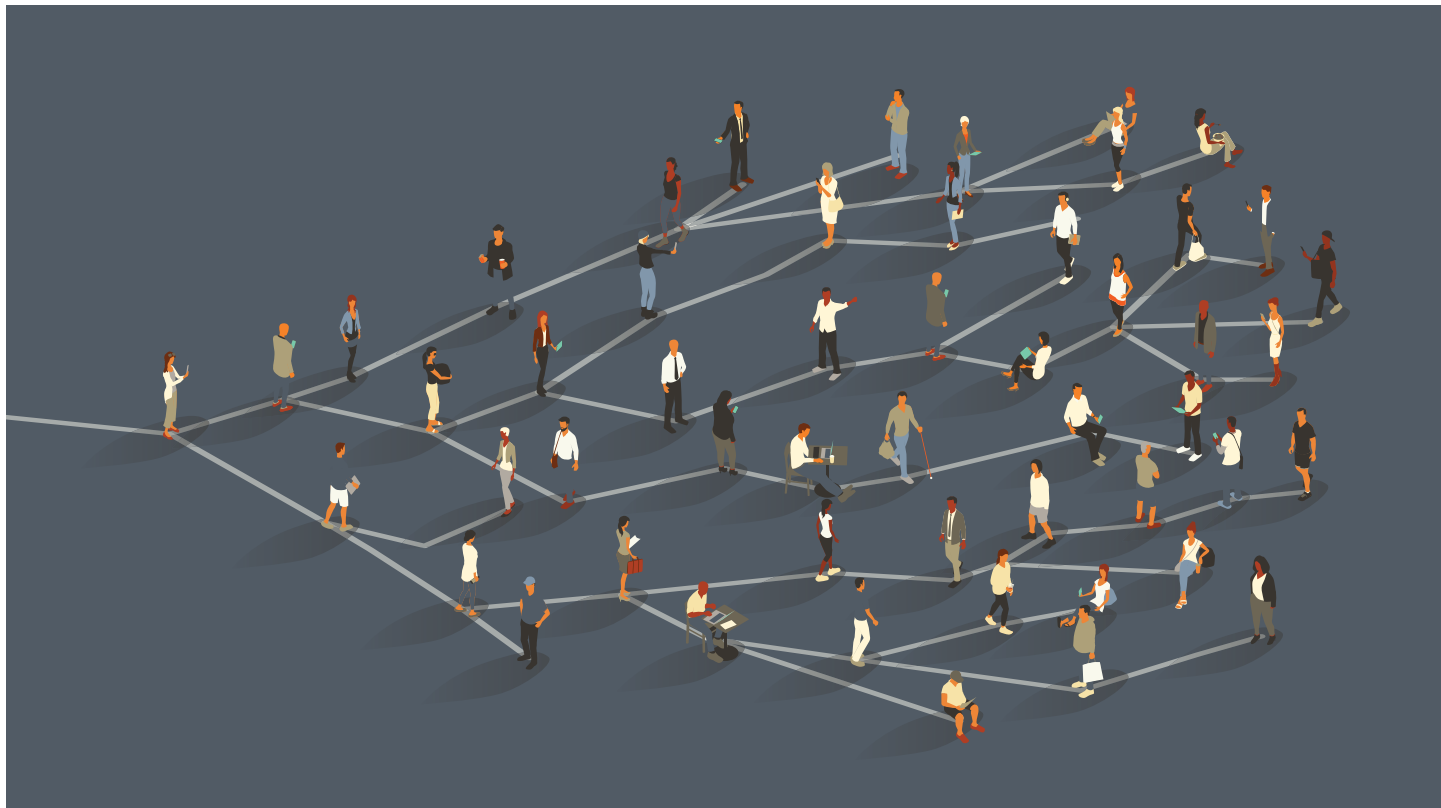
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By Ebony S. Morris and Valerie E. Fontenot

# The Attack on DEI: Safeguarding Corporate DEI Initiatives Post-Supreme Court's Affirmative Action Decision



The United States Supreme Court's recent decision to strike down affirmative action admissions policies in higher education certainly caused a whirlwind reaction from the legal community. On June 29, 2023, the Supreme Court ruled that race-conscious college admissions policies at two universities aimed at maintaining racially diverse

student bodies violated the Equal Protection Clause of the Fourteenth Amendment, which broadly prohibits discrimination based on race.

In, *Students for Fair Admissions Inc. v. President & Fellows of Harvard College*, Docket No. 20-1199, and *Students for Fair Admissions Inc. v. University of North*

*Carolina*, Docket No. 21-707, a nonprofit group called Students for Fair Admissions ("SFFA") sued Harvard College and the University of North Carolina. SFFA's mission is to prevent higher education institutions from considering race at all in the college admissions process.



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In both cases, SFFA argued that race-conscious admissions policies discriminated against certain applicants on the basis of their race, color, or ethnicity in violation of the Fourteenth Amendment and Title VI and asked the Court to reverse *Grutter v. Bollinger*, 539 U.S. 306 (2003) and hold that universities receiving funds under Title VI may not lawfully implement such policies.

The lower courts in both Harvard and UNC found in favor of the universities, holding that they each had a compelling interest in diversity and had narrowly tailored their race-conscious admissions policies to achieve results that could not otherwise be achieved through race-neutral means. In a not so surprising ruling reversing the lower courts, Chief Justice Roberts characterized the diversity goals in educational settings as “commendable” in his majority opinion, but in a seeming contradictory following statement he opined that “[r]acial classifications are simply too pernicious to permit.”

The Court’s decision has unfortunately emboldened conservative groups to challenge DEI initiatives outside of the educational universe. Shortly after the Court’s ruling, several attorneys general sent a joint letter on July 13, 2023, to Fortune 100 companies in the United States and warned them that race-based preferences “whether under the label of ‘diversity, equity, and inclusion’ or otherwise,” may violate federal and state antidiscrimination laws. The state attorneys general urged companies to “immediately cease any unlawful race-based quotas or preferences” or be “held accountable—sooner rather than later—for your decision to continue treating people differently because of the color of their skin.”

More recently, several conservative groups have challenged corporations such as Amazon and Comcast on their DEI initiatives. The American Alliance for Equal Rights, a nonprofit whose stated purpose is to challenge race and ethnicity-based preferences, is suing two international law firms for their diversity fellowships after the Supreme Court outlawed affirmative action. With the recent uptick in DEI challenges, corporations dedicated to DEI should be prepared to defend its inter-

nal and external DEI initiatives. In order to effectively defend against future litigation risks, companies should begin engaging their key stakeholders to evaluate and decide how to approach DEI programs.

## In order to effectively defend against future litigation risks, companies should begin engaging their key stakeholders to evaluate and decide how to approach DEI programs.

First, corporations should consider broadening their definition of “diversity.” With DEI programs in the spotlight, companies can seek to improve diversity through initiatives focused on criteria that will increase racial diversity within the profession. In addition to race, corporations can include factors such as socioeconomic status, first generation attorneys, unique personal circumstances, and geographic diversity to broaden their DEI initiatives following the Court’s affirmative action ruling.

Corporations should also remind their employees, colleagues, and clients, that DEI initiatives cover more than just race. In fact, it is a well-known fact that the number one beneficiary of affirmative action since its inception has been white women. Corporations should educate their stakeholders on their overall DEI goals to increase voices of all kinds whether it be based on race, gender, religion, or sexual identity, which help the corporation better meet their client needs.

Another strategy companies should consider is using racial data to stress the importance of DEI initiatives. Racial data is the most powerful tool in justifying DEI’s current existence. Organizations that are neither able to demonstrate an evidence-based reason for DEI programs’ existence, nor an evidence-based assessment for DEI programs’ effectiveness will never be able to decouple their DEI efforts from short-lived trends and fads. Lily Zheng, *How to*

*Effectively – and Legally – Use Racial Data for DEI*, July 24, 2023.

More importantly, companies should continue to strengthen their diverse pipelines. According to Law360 data from August 2021, attorneys who identify as Hispanic/Latino, African American/Black, Asian American, Native American or Alaska Native, Native Hawaiian/Pacific Islander, and two or more races, make up 18.1% of all attorneys and 9.7% of equity partners in the US law firms they surveyed. These numbers represent abysmal representation within the profession, and the Court’s ruling will further lead to a reduction of diversity within the profession. Given the numbers and the Court’s ruling, corporations should not shy away from maintaining diverse pipelines, including recruitment at HBCUs. Corporations dedicated to DEI efforts must remain dedicated to strengthening their diverse pipeline initiatives and casting a wider net to attract and keep diverse candidates.

## Although the Supreme Court’s recent decision focuses on affirmative action in higher education, it will influence broader conversations and unfortunately, pave the way for more DEI attacks.

Although the Supreme Court’s recent decision focuses on affirmative action in higher education, it will influence broader conversations and unfortunately, pave the way for more DEI attacks. Regardless of the Supreme Court’s decision, corporations should continue to prioritize their DEI efforts and fight against attacks on maintaining diversity within the profession.





# Attorney Fee Request Considerations for Life Insurance Companies in Federal Interpleader Actions



Interpleader is an invaluable tool for life insurance companies to mitigate risks associated with the frequent occurrences of competing claims, or even the potential for competing claims, to death benefits. It allows an insurer in possession of a payable, disputed benefit to avoid the potential for both multiple litigation and multiple liability by requesting the court to determine the rightful recipient. The expenses involved are easily justifiable considering the significant risks avoided, and attorney fee awards are generally allowed. Because interpleader actions are intended to be “simple, speedy, efficient and economical,” *See Hunter v. Fed. Life Ins. Co.*, 111 F.2d 551, 557 (8th Cir. 1940), attorney fee awards

are modest and should not significantly deplete the proceeds at issue. Given the limited nature of compensable expenses, the varying detail required to support a fee request, and the inconsistency with which fees are ultimately awarded, interpleader plaintiffs (particularly life insurance companies) should seek fees more strategically rather than reflexively.

## Federal Interpleader Law Overview

Interpleader “is an equitable proceeding that ‘affords a party who fears being exposed to the vexation of defending multiple claims to a limited fund or property that is under his control a procedure to settle the controversy and satisfy his obligation in a single proceeding.’” *United States*

*v. High Tech. Prods., Inc.*, 497 F.3d 637, 641 (6th Cir. 2007) (quoting 7 Charles Alan Wright, et al., *Federal Practice and Procedure* § 1704 (3d ed. 2001)). “[A] stakeholder must have a good faith belief that there are or may be colorable competing claims to the stake,” which “is not an onerous requirement.” *Michelman v. Lincoln Nat’l Life Ins. Co.*, 685 F.3d 887, 894-5 (9th Cir. 2012). “It is immaterial whether the stakeholder believes that all claims against the fund are meritorious. Indeed, in the usual case, at least one of the claims will be very tenuous.... [N]othing more is implied than that the claims alleged must meet a minimal threshold level of substantiality.” *Federal Practice and Procedure* § 1704. Even the threat of potential multiple litigation,



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not merely the possibility of multiple liability, is sufficient to warrant interpleader relief. *See Auto Parts Mfg. Miss., Inc. v. King Constr. of Houston, L.L.C.*, 782 F.3d 186, 194 (5th Cir. 2015).

An interpleader action usually proceeds in two stages. “During the first stage, the court determines whether the stakeholder has properly invoked interpleader, including whether the court has jurisdiction over the suit, whether the stakeholder is actually threatened with double or multiple liability, and whether any equitable concerns prevent the use of interpleader.” *High Tech. Prods., Inc.*, 497 F.3d at 641. “During the second stage, the court determines the respective rights of the claimants to the fund or property at stake via normal litigation processes, including pleading, discovery, motions, and trial.” *Id.*

Interpleader relief may be pursued in federal court through either Rule 22 of the Federal Rules of Civil Procedure or the Federal Interpleader Act, codified at 28 U.S.C. §§ 1335, 1397, 2361. These are commonly referred to as “rule interpleader” and “statutory interpleader,” respectively. The general interpleader principles outlined above apply to both rule and statutory interpleader actions, as does the general rule that federal courts have the discretionary authority to award attorney fees. How that discretion is exercised, however, is often inconsistent from court to court (and even judge to judge) and problematic for life insurance companies.

### Attorney Fee Recovery in Federal Interpleader Cases

“Under the American Rule, absent statutory authorization or an established contrary exception, each party bears its own attorney’s fees.” *Colombrito v. Kelly*, 764 F.2d 122, 133 (2d Cir. 1985); *see also Hall v. Cole*, 412 U.S. 1, 4-5 (1973) (“Although the traditional American rule ordinarily disfavors the allowance of attorneys’ fees in the absence of statutory or contractual authorization, federal courts, in the exercise of their equitable powers, may award attorneys’ fees when the interests of justice so require.”). Despite no express authorization to award attorney fees in either the Federal Interpleader Act or Rule 22 of the Federal Rules of Civil Procedure, there is an estab-

lished contrary exception based on the equitable nature of the interpleader remedy. While attorney fees are not granted as a matter of course in federal interpleader actions, “[i]t is settled that a federal court has discretion to award costs and counsel fees to the stakeholder in an interpleader action whenever it is fair and equitable to do so.” *Sun Life Assurance Co. of Canada v. Sampson*, 556 F.3d 6, 8 (1st Cir. 2009); *but see, e.g., New York Life Ins. Co. v. Youa Vang*, No. 5:09CV10, 2010 U.S. Dist. LEXIS 6172 (W.D.N.C. Jan. 5, 2010) (denying fees after concluding that state law governs the availability of fee awards in federal interpleader actions).

The theory behind an interpleader fee award “is that plaintiff by seeking resolution of the multiple claims to the proceeds benefits the claimants and that plaintiff should not have to absorb attorneys’ fees in avoiding the possibility of multiple litigation.” *Aetna Life Ins. Co. v. Outlaw*, 411 F. Supp. 824, 826 (D. Md. 1976) (citations omitted); *see also Stonebridge Life Ins. Co. v. Kissinger*, 89 F. Supp. 3d 622, 627 (D.N.J. 2015) (“Because the stakeholder is considered to be helping multiple parties to an efficient resolution of the dispute in a single court, courts find that the stakeholder attorney’s fees are justified.”).

Attorneys’ fees are justified in many interpleader actions for several reasons. First, an interpleader action often yields a cost-efficient resolution of a dispute in a single forum, rather than multiplicitous, piecemeal litigation. Second, the stakeholder in the asset often comes by the asset innocently and in no way provokes the dispute among the claimants. Third, fees for the stakeholder typically are quite minor and therefore do not greatly diminish the value of the asset. *In re Mandalay Shores Co-Op Housing Ass’n*, 21 F.3d 380, 383 (11th Cir. 1994).

An award of attorney fees in a federal interpleader action is generally considered appropriate where the plaintiff is “(1) a disinterested stakeholder, (2) who had conceded liability, (3) has deposited the disputed funds into court, and (4) has sought a discharge from liability.” *Septembertide Pub., B.V. v. Stein & Day, Inc.*, 884 F.2d 675, 683 (2d Cir. 1989). The following factors are typically considered in deter-

mining whether an interpleader fee award is warranted: “(1) whether the case is simple; (2) whether the interpleader-plaintiff performed any unique services for the claimants or the court; (3) whether the interpleader-plaintiff acted in good faith and with diligence; (4) whether the services rendered benefited the interpleader-plaintiff; and (5) whether the claimants improperly protracted the proceedings.” *Royal Indem. Co. v. Bates*, 307 F. App’x 801, 806 (5th Cir. 2009) (citation omitted). An interpleader fee award will typically not be granted if the stakeholder contributed to the controversy that necessitated litigation, unreasonably delayed in seeking interpleader relief, or prematurely sought such relief without sufficient basis. Federal Practice and Procedure § 1719.

If an interpleader fee award is deemed appropriate, the resulting amount should be modest and not significantly deplete the total fund at issue. *See Hunter*, 111 F.2d at 557. The scope of compensable expenses is very limited. “By its very nature [an interpleader fee award] is of a relatively small amount simply to compensate for initiating the proceedings.” *Ferber Co. v. Ondrick*, 310 F.2d 462, 467 (5th Cir. 1962). Recoverable interpleader fee awards are confined to “attorney fees billed to prepare the complaint, obtain service of process on the claimants to the fund, and secure the plaintiff’s discharge from liability and dismissal from the lawsuit.” *Van Dusseldorp v. Ho*, 4 F. Supp. 3d 1069, 1071 (S.D. Iowa 2014) (citation omitted). Charges for professional services outside of this narrow scope of tasks are typically not included in an interpleader fee award, including: “preparing to defend a potential collateral claim or counterclaim,” *Sun Life Assurance Co. v. Bew*, 530 F. Supp. 2d 773, 776 (E.D. Va. 2022); conducting discovery-related tasks, *Midland Nat’l Life Ins. Co. v. Ingersoll*, No. 13-C-1081, 2014 U.S. Dist. LEXIS 175041, at \*12-13 (E.D. Wis. Dec. 18, 2014); conducting background research to determine the necessity of an interpleader, *Del. Life Ins. Co. v. Moore*, No. 18cv944-L, 2019 U.S. Dist. LEXIS 27968, at \*15-16, 18-19 (S.D. Cal. Feb. 21, 2019); and work related to recovery of attorney fees, *id.* and *Wells Fargo Bank, N.A. v. Ramirez*, 19-CV-04561 (FB)(PK),

2019 U.S. Dist. LEXIS 245895, \*5 (E.D.N.Y. Dec. 13, 2019).

Despite work related to attorney fee recovery not being compensable, detailed supporting information is usually required to justify an award. Courts compare the requested fee amount to the “lodestar” amount, which equals the reasonable hourly rate multiplied by the hours reasonably expended. *Robinson v. Equifax Info. Servs., LLC*, 560 F.3d 235, 243 (4th Cir. 2009). District courts use the following factors to evaluate the reasonableness of both rates and hours worked:

- (1) the time and labor expended;
- (2) the novelty and difficulty of the questions raised;
- (3) the skill required to properly perform the legal services rendered;
- (4) the attorney’s opportunity costs in pressing the instant litigation;
- (5) the customary fee for like work;
- (6) the attorney’s expectations at the outset of the litigation;
- (7) the time limitations imposed by the client or circumstances;
- (8) the amount in controversy and the results obtained;
- (9) the experience, reputation and ability of the attorney;
- (10) the undesirability of the case within the legal community in which the suit arose;
- (11) the nature and length of the professional relationship between attorney and client; and
- (12) attorneys’ fees awards in similar cases.

*Id.* at 243-44; *but see Sun Life Assur. Co. v. Bailey*, No. CIV-14-1011-HE, 2016 U.S. Dist. LEXIS 2212, at \*2-3 (W.D. Okla. Jan. 8, 2016) (“[T]he court may deviate from the lodestar method based on its evaluation of equitable considerations, particularly when the case has resolved without judicial determination of a prevailing party.” (citation omitted)).

Fee applicants “bear[] the burden of establishing entitlement to an award and documenting the appropriate hours expended,” *Hensley v. Eckerhart*, 461 U.S. 424, 437 (1983), which requires them to “prov[e] [the] hours [claimed] by submitting meticulous, contemporaneous time records that reveal... all hours for which compensation is requested and how those hours were allotted to specific tasks,” *Case v. Unified School District No. 233*, 157 F.3d 1243, 1250 (10th Cir. 1998) (citation omitted). Fee applicants must also establish that

the rates requested are “in line with those prevailing in the community for similar services by lawyers of reasonably comparable skills, experience and reputation.” *Blum v. Stenson*, 465 U.S. 886, 895 n.11 (1984). “In addition to the attorney’s own affidavits, the fee applicant must provide satisfactory specific evidence of the prevailing market rates in the relevant community for the type of work for which he seeks an award.” *Plyler v. Evatt*, 902 F.2d 273, 277 (4th Cir. 1990). “Examples of the type of specific evidence that... is sufficient to verify the prevailing market rates are affidavits of other local lawyers who are familiar both with the skills of the fee applicants and more generally with the type of work in the relevant community.” *Edward D. Jones & Co., L.P. v. Am. Nat’l Ins. Co.*, No. 1:19-cv-00018-JMC, 2020 U.S. Dist. LEXIS 237512, at \*11 (D.S.C. Dec. 17, 2020) (citations omitted). A district court “abuse[s] its discretion by awarding the hourly rates requested [by the fee applicant] in the absence of ‘satisfactory specific evidence of the prevailing market rates.’” *Robinson*, 560 F.3d at 245.

Finally, fee awards “are generally awarded against the interpleader fund, but may, in the discretion of the court, be taxed against one of the parties when their conduct justifies it.” *Septembertide Pub., B.V.*, 884 F.2d at 683 (citation omitted). Taxing fees against a party may be appropriate where an “unreasonable litigation posture” prevents the interpleader from “following the ordinary interpleader sequence of depositing funds in court and then being dismissed from the suit,” *id.*, or based on a “claimant’s bad faith or misconduct during the interpleader action,” *Citibank, N.A. v. Jericho Baptist Church Ministries, Inc.*, No. PX 16-01697, 2017 U.S. Dist. LEXIS 75496, at \*12 (D. Md. May 17, 2017). Courts have discretion to charge the prevailing party, charge the losing party, or to allocate the fee award among all parties. *Combined Ins. Co. of Am. v. Estate of Montano*, No. 2:20-cv-9463-SVW, 2021 U.S. Dist. LEXIS 189230, \*12 (C.D. Cal. July 26, 2021) (taxing losing party for particularly weak claims that lacked evidentiary support).

## Attorney Fee Recovery for Life Insurance Companies

Despite the general principles applicable to interpleader fee awards outlined above, some courts frequently (and sometimes illogically) treat life insurance companies differently than other interpleader plaintiffs and outright deny requests for attorney fees. A review of over 200 life insurance interpleader cases nationwide decided over the last decade provides notable data (*jurisdiction and benefit amount details below*). Fee requests were granted 56.6% of the time with an average fee of \$8,105.97 (median fee of \$6,543.64). The fees awarded amounted to an average of 7.7% of the benefit at issue and a 19.3% average reduction of the often already self-reduced fee amount requested. Courts in three circuits – Second, Seventh, and Eleventh – categorically exclude life insurance companies from recovering attorney fees in interpleader actions (with only rare, outlier exceptions), while courts in other circuits are much more permissive (yet inconsistent).

The primary reason for categorical denial of interpleader fee requests made by life insurance companies is that competing claims to benefits are a part of their ordinary course of business. This position gained steam following a 1965 Second Circuit ruling that a district court did not abuse its discretion in refusing to award interpleader fees to several insurance companies, noting “[w]e are not impressed with the notion that whenever a minor problem arises in the payment of insurance policies, insurers may, as a matter of course, transfer a part of their ordinary cost of doing business of their insureds by bringing an action for interpleader.” *See Travelers Indem. Co. v. Israel*, 354 F.2d 488, 490 (2d Cir. 1965). The Eleventh Circuit later held that “attorneys’ fees are not warranted... when a stakeholder’s interpleader claim arises out of the normal course of business.” *In re Mandalay Shores Co-op. Housing Ass’n, Inc.*, 21 F.3d at 383.

The principle behind the normal-course-of-business standard is simple: an insurance company, for example, avails itself of interpleader to resolve disputed claims to insurance proceeds—disputes that arise with some modicum of regularity. In a sense, the insurance

company will use interpleader as a tool to allocate proceeds and avoid further liability. As the costs of these occasional interpleader actions are foreseeable, the insurance company easily may allocate the costs of these suits to its customers. Unlike innocent stakeholders who unwittingly come into possession of a disputed asset, an insurance company can plan for interpleader as a regular cost of business and, therefore, is underserving of a fee award.

*Id.*; see also *Genworth Life and Annuity Ins. Co. v. Hubbell*, No. 19 CV 6547, 2020 U.S. Dist. LEXIS 154862, at \*6-7 (N.D. Ill. Aug. 26, 2020) (“Weighing possible future expenses against [the] probability of occurrence [of competing claims] is precisely what an insurance company does when it sets premiums. This ability to mitigate costs ahead of time importantly distinguishes insurance companies from other types of stakeholders who might bring an interpleader action.”). “Only where there are unique circumstances, such as particularly complex or novel proceedings, might a court award attorneys’ fees to an insurance company in an interpleader action,” *Riversource Life Ins. Co. v. Martell*, 3:20-CV-00749 (KAD), 2020 U.S. Dist. LEXIS 267159, at \*12 (D. Conn. Dec. 23, 2020), and “[t]he fact that Plaintiff may have had to spend additional time in this case compared to others does not give rise to an automatic inference that such additional time is an expense outside the ordinary cost of doing business,” *Metro. Life Ins. Co. v. Estate of Seagrove*, No. 1:18-CV-0920, 2019 U.S. Dist. LEXIS 32001, at \*11 (N.D.N.Y. Feb. 28, 2019).

Some courts in the more restrictive circuits, however, use their inherent discretion to challenge or distinguish the ordinary course of business reasoning. A district court in Wisconsin disagreed that retaining counsel and commencing an interpleader lawsuit to determine the rightful beneficiary to a life insurance policy was a part of the life insurance company’s ordinary course of business. *Thrivent Fin. for Lutherans v. Warpness*, No. 16-C-1321, 2017 U.S. Dist. LEXIS 99432, at \*7-9 (E.D. Wisc. June 27, 2017). Recognizing the straightforward nature of life insurance contracts and the fact that “the vast

majority of policies” are paid without issue, the court noted that interpleader actions are typically “only needed when the insured fails to clearly designate a beneficiary.” *Id.* at \* 8.

It is only when its insured fails to make clear his intentions when significant changes in his life inevitably occur that an insurer is forced to incur the additional expense of hiring a lawyer in order to meet its obligations under the contract. While interpleader actions are not uncommon, they are the exception and are hardly an ordinary part of the business of life insurance companies.

*Id.* at \*7; see also *Transamerica Life Ins. Co. v. Bell*, No. 1:19-CV-1552-MHC, 2020 U.S. Dist. LEXIS 149357, at \*2-4 (N.D. Ga. Mar. 26, 2020) (finding, contrary to several other cases within the same district, that applicability of Georgia’s slayer statute was a “unique” issue and “involves a dispute that does not ordinarily rise in the course of the insurance business.”).

Even courts within the more permissive circuits often rely on the ordinary course of business rationale to deny interpleader fee requests to life insurance companies. See, e.g., *Hogan v. Jackson Nat’l Life Ins. Co.*, 142 F. Supp. 3d 220, 223 (D.R.I. 2015) (The insurer “ostensibly uses interpleader actions in the regular course of its business, gains a benefit from the actions, and can pass the expense of the benefit onto its policy holders.”); *Securian Life Ins. Co. v. Dawson*, No. 17-1259, 2018 U.S. Dist. LEXIS 154313, at \*4 (D. Del. Sept. 10, 2018) (inviting a fee motion but noting that [a] warding attorney fees to insurance companies would shift their ordinary business expenses to the claimants, which is not generally appropriate.”); *Lincoln Nat’l Life Ins. Co. v. Chico Girls II, LLC*, No. 1:16CV214, 2017 U.S. Dist. LEXIS 65119, at \*12 (N.D. W. Va. Apr. 28, 2017) (“[T]his interpleader action is of the typical sort that is a part of [the insurer’s] ordinary course of business.”); *Transamerica Annuity Serv. Corp. v. Symetra Life Ins. Co.*, No. H-16-1426, 2017 U.S. Dist. LEXIS 15550, at \*20 (S.D. Tex. Feb. 3, 2017) (denying interpleader fees because the insurer “has not provided any evidence that it filed this action outside of the normal course of its business...”); *United of Omaha Life Ins. Co.*

*v. Freeman*, No. 2:22-cv-1492, 2023 U.S. Dist. LEXIS 76843, at \*3 (S.D. Ohio May 2, 2023) (denying insurer’s interpleader fee request because the costs constitute “an ordinary cost of doing business”); *United of Omaha Life Ins. Co. v. Kaplan*, No. CV 18-3228 PA, 2018 U.S. Dist. LEXIS 179486, at \*7 (C.D. Cal. Oct. 17, 2018) (“[A]n award of fees is not justified and is instead better considered an ordinary cost of the life insurance business.”); *Guardian Life Ins. Co. of Am. v. Cortes*, No. 16-438 KG/GJF, 2017 U.S. Dist. LEXIS 4134, at \*10 (D.N.M. Jan. 10, 2017) (denying an insurer interpleader fees because it “is in a better position to absorb and pass on those costs as necessary and foreseeable costs of doing business”).

Another reason occasionally relied on to deny interpleader fee requests made by life insurance companies, albeit illogical, is that they “are not traditional disinterested stakeholders who come into disputed moneys through no fault of their own; they entered the insurance business and their business benefits from interpleader actions.” *Hogan*, 142 F. Supp. 3d at 223. “Although it is true that an interpleader action benefits both claimants and the courts by promoting expeditious resolution of the controversy in one forum, the chief beneficiary of an interpleader action is the insurance company.” *Minnesota Mut. Life Ins. Co. v. Gustafson*, 415 F. Supp. 615, 618 (N.D. Ill. 1976). This line of cases holds that “an interpleader action brought by... an insurance company is brought primarily in the company’s own self-interest.” *Sun Life Assur Co. v. Thomas*, 735 F. Supp. 730, 733 (W.D. Mich. 1990); see also *Martell*, 2020 U.S. Dist. LEXIS 267159, at \*11-12; *Unum Life Ins. Co. of Am. v. Scott*, No. 3:10CV00538, 2012 U.S. Dist. LEXIS 8869, at \*8 (D. Conn. Jan. 24, 2012). The “self-interest” attributed to life insurance companies, however, is indistinguishable from that of other stakeholders. The sole purpose of all interpleader actions, regardless of the plaintiff or its business, is to be discharged from further liability related to the proceeds at issue. “Insofar as these [self-interest rationale] decisions rest on the notion that the stakeholder benefits by being discharged, they are wrongly decided because all stakeholders benefit by being able to use

interpleader and that alone does not negate the equitable considerations supporting an award of attorney fees.” Federal Practice and Procedure § 1719; *see also Prim-erica Life Ins. Co. v. Frantz*, 371 F. Supp. 3d 960, 965 (D. Kansas 2019). A “disinter-ested stakeholder” should instead be char-acterized as “a party without an interest in the ultimate disposition of the funds.” *Am. Heritage Life Ins. Co. v. Baker*, No. 3:18-cv-02178, 2019 U.S. Dist. LEXIS 206085, at \*5-6 (N.D. Ohio Nov. 27, 2019).

For those courts that do not dismiss life insurance interpleader fee requests out of hand, interpleader fee requests are frequently denied for lack of sufficient supporting detail, often with an oppor-tunity to provide supplemental material. *See, e.g., First Horizon Bank v. Camera*, No. 2:22-CV-00003-CEA, 2022 U.S. Dist. LEXIS 138680, at \*10-11 (E.D. Tenn. July 8, 2022) (“[W]ithout further explanation, the Court would be unable to find that attor-ney fees and costs in this amount were rea-sonable and necessary.”); *Southern Farm Bureau Life Ins. Co. v. Brown*, No. 18-0429, 2019 U.S. Dist. LEXIS 28797, at \*6-7 (W.D. La. Feb. 22, 2019) (“[A]dditional informa-tion is needed in order to be able to deter-mine whether the award requested... is reasonable.”); *UNUM Life Ins. Co. of Am. v. Stearman*, No. CIV-16-1396-W, 2017 U.S. Dist. LEXIS 227146, at \*7-10 (W.D. Okla. Oct. 27, 2017) (denying interpleader fees where the insurer “did not identify each attorney for whom compensation is sought, provide information about each attorney’s experience and skill or present evidence of the comparable norm.”); *Combined Ins. Co. of Am. v. Christian*, No. 1:14CV647, 2015 U.S. Dist. LEXIS 111354, at \*15 (M.D.N.C. Aug. 24, 2015) (finding an insufficient basis for determining that the requested attor-ney’s fees were reasonable based on the limited supporting materials submitted). Many parties invited to submit supplemen-tal supporting information appear to have declined the opportunity, presumably rec-ognizing that the expense involved would exceed or effectively diminish the amount sought. As previously discussed, charges outside of a very narrow scope of tasks are typically not included in an interpleader fee award – and that includes preparing a motion for fees and the necessary support-

ing materials. *See Moore*, 2019 U.S. Dist. LEXIS 27968, at \*18-19 (“Another category of work which Plaintiff may not recover is work related to Plaintiff’s recovery of attor-neys’ fees.” (citations omitted)).

### Practical Takeaways for Life Insurance Companies

The first, and most obvious, takeaway for life insurance companies is to resolve com-peting claims short of litigation when pos-sible – whether internally or even after outside counsel is retained. A diplomatic, rather than heavy-handed, approach to discussions with claimants is beneficial

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should litigation become necessary. Ex-plain the interpleader process and why payment cannot be made absent a settle-ment agreement or court order can go a long way in defusing initial hostility. Posi-

tioning the company as truly disinterested and non-adversarial will serve to limit and discourage substantive (non-declaratory judgment) claims, which are the primary driver of expense in interpleader cases and not included in the narrow scope of com-pensable expenses when attorney fees are awarded.

While life insurance companies should preserve the right to seek attorney fees in their pleadings, the actual pursuit of those fees should be made on a case-by-case basis. Particular consideration should be given to the applicable jurisdiction and the benefit amount at issue.

- Applicable Jurisdiction

Absent extraordinary circumstances, pursuing an interpleader attorney fee award in the Second, Seventh, and Eleventh Circuits is throwing bad money after good. And if prior cases are predictive of future decisions, most courts within those circuits will not find your circumstances all that extraordinary. While interpleader fee requests in other circuits have a greater likelihood of success, they are also very unpredictable. Research similar cases decided by the presiding judge if available because circuit and even district level research is unlikely to provide a high level of confidence in the outcome.

Circuit	Case Count Since 2014	% Cases Fees Awarded	Average (Median) Fee Awarded	Fees Awarded % of Benefit	% Fee Reduction from Request
1st	5	60.0%	\$9,172 (\$8,000)	6.9%	34.3%
2nd	12	8.3%	\$4,480 (\$4,480)	7.6%	0.0%
3rd	14	78.6%	\$10,410 (\$6,000)	9.1%	24.0%
4th	17	76.5%	\$5,147 (\$4,216)	7.1%	18.6%
5th	21	66.7%	\$9,204 (\$7,613)	4.1%	16.4%
6th	26	46.2%	\$9,584 (\$9,097)	10.4%	20.0%
7th	7	14.3%	\$5,245 (\$5,245)	2.7%	50.0%
8th	12	75.0%	\$5,585 (\$5,090)	3.9%	10.1%
9th	49	75.5%	\$9,129 (\$7,000)	10.1%	15.6%
10th	12	66.7%	\$5,580 (\$4,682)	6.6%	24.9%
11th	30	23.3%	\$6,440 (\$6,946)	3.3%	35.0%
Combined	205	56.6%	\$8,106 (\$6,544)	7.7%	19.3%

- **Benefit Amount at Issue**  
Courts are understandably reluctant to significantly deplete the funds at issue to pay an insurance company's counsel, so avoid pursuing fees in cases involving small benefit amounts. Doing so could make bad law by encouraging expansion of the already growing "ordinary course of business" denial rationale and any recovery would be negligible considering the narrow scope of compensable work in fee awards.

Amount at Issue	Case Count Since 2014	% Cases Fees Awarded	Average (Median) Fee Awarded	Fees Awarded % of Benefit	% Fee Reduction from Request
\$0 - \$25K	25	36.0%	\$3,491 (\$3,389)	28.1%	17.5%
>\$25K - \$50K	27	55.6%	\$5,339 (\$4,572)	13.1%	23.2%
>\$50K - \$100K	39	76.9%	\$5,580 (\$5,060)	6.7%	24.4%
>\$100K - \$250K	56	53.6%	\$8,009 (\$7,048)	5.4%	20.7%
>\$250K - \$500K	32	43.8%	\$13,514 (\$13,387)	3.7%	10.6%
>\$500K	26	69.2%	\$12,864 (\$7,901)	1.4%	12.8%

Finally, a general strategy of more carrot and less stick could be more economical in the long run – especially when coupled with an alternative fee arrangement with partner law firms experienced (and efficient) in interpleader matters. Consider offering to waive the attorney fee request in exchange for the competing claimants' consent to the motions to deposit the proceeds and for dismissal. If accepted, the minimal amount waived could easily be less than the non-compensable work that would be necessary to secure the fee award (i.e., briefing the contested fee requests, submitting the requisite supporting detail to justify the requested fee, and potentially another round of briefing in cases initially assigned to a magistrate judge pursuant to 28 U.S.C. § 636). At the very least, the small amount sought will be effectively reduced by the work to secure the fees – and that is before the judge potentially makes further reductions after scrutinizing the submitted billing statements and affidavits.



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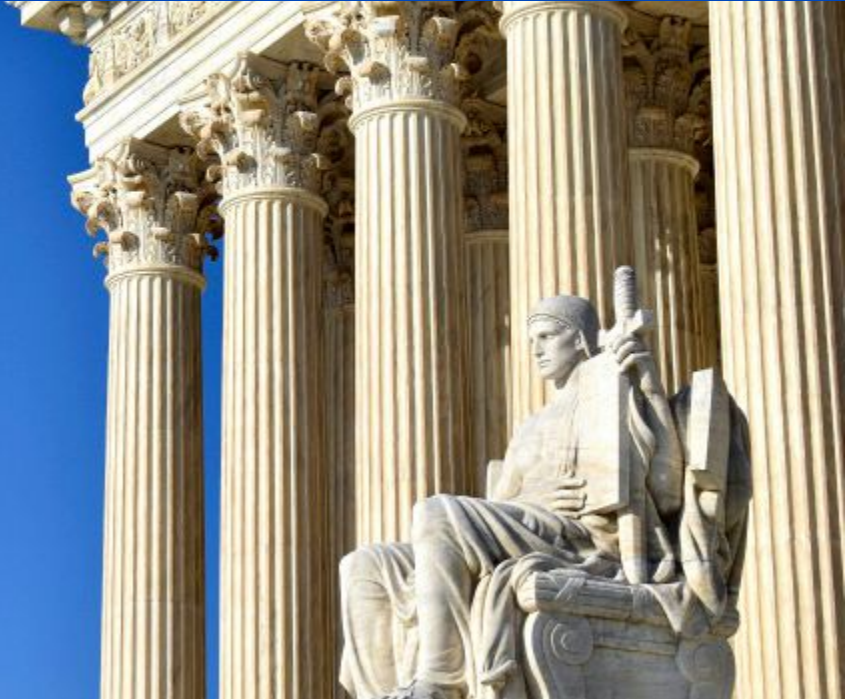
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