

Expert Q&A on Generative AI and LLMs for Estate Planners

by Practical Law Litigation

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An expert Q&A with Michael D. Whitty, a partner at Smith, Gambrell, & Russell LLP, discussing key concerns for estate planners when considering using generative artificial intelligence (AI) and large language models (LLMs) in an estate planning and estate administration practice.

Recent breakthroughs in artificial intelligence (AI) technology and the increased use of generative AI and large language models (LLMs) to create powerful commercial offerings have raised many different legal questions including the use of AI in the practice of law.

For an overview of AI and LLMs in general, see Practice Notes:

- [Artificial Intelligence Key Legal Issues: Overview.](#)
- [Artificial Intelligence and Machine Learning: Overview.](#)
- [Using Artificial Intelligence in Law Departments.](#)
- [Artificial Intelligence and Legal Ethics.](#)

Practical Law asked Michael D. Whitty, a partner at Smith, Gambrell, & Russell LLP to discuss his views on the use of AI and LLMs in the estate planning and probate practice.

What are potential common uses of AI and LLMs in the estate planning context?

Estate planners should consider using AI and LLMs to assist in the production of client facing materials and summaries. Many estate planning clients need simple and concise summaries of their documents and explanations of the legal and tax strategies being implemented in their estate plans. AI and LLMs may have the capability to accurately and efficiently create and produce those client facing materials to assist the estate planner in delivering estate planning services to the client in a format in which the client can understand. AI and LLMs may be a great compliment to and enhance the work that the estate planner is doing. They can function as a fairly quick source for a first draft, but should not be considered as tools to replace the legal work of the estate planner.

The estate planning attorney should review and analyze the client's unique asset profile, dispositive wishes, and tax considerations to determine the best overall estate planning strategies for the client and to determine what tools will be most effective in implementing that strategy. AI and LLMs are one of many tools that an estate planning attorney can use to aid in that process and provide incredible promise for the enhanced delivery of legal services in both the near and distant future.

AI and LLMs may be particularly helpful to estate planners because of their ability to:

- Summarize an estate plan.
- Create visual resources for clients, including charts and tables depicting diverse options for a client's estate plan or illustrating a client's existing estate plan.
- Assist in preparation of the first drafts of the client's planning documents.
- Assist with performing legal research needed to implement new or complex plans or estate administrations.
- Generate schedules to ensure all estate administration deadlines are met.

What significant risks do generative AI and LLMs present in the estate planning and estate administration context?

AI and LLMs are an emerging and continually advancing technology. Though they may be impressive tools when used properly, they carry **significant risks** to an attorney that freely uses the technology without adequately

monitoring and checking the accuracy of the output. The most pressing risks include:

- **Inaccuracy.** AI and LLMs are known to hallucinate, meaning they provide incorrect answers with a high degree of confidence, and they are known to produce false or illogical answers.
- **Confidentiality.** Just as AI and LLMs can access comparable materials developed for other firms whose documents have become accessible, AI and LLMs may make the attorney's own client documents available for use by the AI program for other firms.

What are the primary ethical pitfalls of using generative AI and LLMs, and how can estate planners avoid them?

Estate planners must use extreme caution when using AI and LLMs. An estate planning attorney who relies on AI and LLM in an irresponsible manner may open themselves up to malpractice claims and ethical violations. For example, malpractice or ethical violations may occur when:

- An attorney relies on AI and LLMs with inadequate review or oversight, instead of relying on his or her own knowledge. This can result in the attorney relying on inaccurate information to the client's detriment. For example, counsel cannot rely on timetables or

schedules set by AI without checking the accuracy of the timetable. It is ultimately counsel's responsibility to ensure that no deadlines are missed regardless of the outputs and schedules provided by AI.

- Failing to obtain consent from the client before using generative AI in the client's case or failing to disclose that use to the client.
- Improperly billing the client for time spent on work that was actually done by generative AI.

What types of procedural and substantive issues are likely to arise in litigation stemming from the use of generative AI and LLMs?

Projections of what kind of issues will arise in litigation stemming from the use of generative AI and LLMs is very speculative, as this is a relatively new phenomenon. However, it is possible that litigation may stem from attorneys relying too heavily on AI and LLMs without double checking against other sources, particularly if search results are deficient or produce hallucinations. The result would be similar to technical malpractice from over-reliance on legal databases without knowing how to perform comprehensive searches. Similar outcomes could result from using AI and LLM with inadequate search terms.

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