

PRACTICE TIPS



TECH TIPS

How ChatGPT and Other AI Could Impact Your Practice

By NJSBA Staff

Artificial intelligence (AI) is here to stay. The emerging technology of ChatGPT, a powerful AI language model, has the potential to transform legal practice through its ability to provide general legal advice, along with legal research, contract drafting and document review. Here are some key points on the basics of AI and how attorneys can use it to their advantage.



What is AI and how does it work?

AI is a technology that leverages computers and machines to mimic the problem-solving and decision-making capabilities of the human mind. Popular AI programs like ChatGPT take question prompts from users and create an answer by pulling data from the internet, research papers, computer code and other sources. When the question is entered, high-speed algorithms do quick math to calculate the frequency that certain words or ideas appear in the search. The answer is determined by the probability that the information is relevant to the user.

Is AI a new phenomenon?

Other industries, like the medical field, have relied on AI technology for years. Doctors save time and lives by using computer-generated reports from MRIs, CT scans and blood tests to flag health issues. Attorneys may one day rely on AI to help draft their legal filings. But just like AI didn't replace doctors, lawyers will always be needed to interpret the results and make decisions. You, and your humanity, are essential to the equation.

Is the information produced by AI accurate?

Not always. AI scrubs the internet for information and pulls from an extremely wide set of data. Of course, the internet is rife with misinformation and well-intentioned articles that may be inaccurate. ChatGPT will present the information it collects as accurate, so it's up to the user to fact-check the information provided and exercise good judgment when applying it to a case. Attorneys have been fined for submitting legal briefs prepared by ChatGPT that cited cases which didn't exist. Remember, AI is best used as a guide or a tool for generating ideas. It is not meant for copying and pasting.

WRITER'S CORNER

Allow Me to Introduce Myself

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An effective introduction enhances any piece of writing. As lawyers and advocates for our clients, we should consider using introductions more often and purposefully.

Most of us intuitively react the same way when we meet a person—we introduce ourselves. That introduction is short and helpful. It is designed to share something about the speaker that will be meaningful for the conversation to follow.

Yet when we write, we often dispense with helpful, plain language introductions. By habit or convention, we often launch immediately into the argument. If we include any introduction at all, it is comprised primarily of unhelpful legalese like “Comes

now the plaintiffs by and through their attorney...” Without an effective introduction, we lose a valuable opportunity to orient the reader and to persuade.

An effective introduction exploits what is known as the “serial position effect.” This effect was first discovered by the psychologist Hermann Ebbinghaus whose experiments on memory



revealed that listeners most accurately recalled the first and last items on a list. The first item on the list had the benefit of recency, because this information was learned first it was most solidified.

An introduction occupies the serial position in our legal writing. The information conveyed in the introduction and conclusion will be most memorable to the judge. For this reason, the introduction is valuable real estate in the landscape of our briefs that we can use for persuasive effect.

An effective introduction contains four elements.

First, it sets the stage. It introduces the parties and their dispute. It states concretely what legal issue or issues are addressed

in the brief. It puts focus before detail, priming the judge to understand the argument to follow.

Second, it creates a roadmap. It contains a few reasons why the client should prevail. These should be pithy versions of the best arguments for the relief sought. If the judge retains nothing else from the brief, the judge will retain these helpful highlights.

Third, it motivates. It uses logos, ethos, or pathos to persuade the judge to take some action rather than allow the status quo to persist. Appeals to logos focus on rationality. These types of appeals typically rely upon facts, figures, and data. Appeals to ethos focus on credibility and authority. These types of appeals ask the judge to put trust in the lawyer. Appeals to pathos play on the judge's emotion. These appeals ask the fact-finder to evaluate the case using beliefs and values. The path of least resistance for any judge is to do nothing. Motivation appeals push the judge into action.

Fourth, it previews the clash. Except in cases of joint or unopposed motions, there will always be counterarguments and oppositional positions. An effective introduction frames the issue in a way favorable to our clients, staking out the appropriate ground and forcing our opponent to argue on our turf.

Here is an example of a brief introduction to a summary judgment motion that contains these four elements:

This case is about the ice defendant Big Store, Inc. allowed to accumulate on December 15, 2023, not about what shoes plaintiff Patricia Pedestrian was wearing that day. Ms. Pedestrian is entitled to summary judgment in her favor because there is no dispute of material fact that this ice was a known and dangerous condition that Big Store, Inc. should have remedied. Big Store, Inc. was negligent. Ms. Pedestrian was not the first person to fall that day. In fact, for weeks Big Store, Inc.'s employees had reported customers slipping as they entered the store. Big Store, Inc. had a contract with an on-call snow removal company but elected not to call for service because Big Store, Inc. was trying to cut costs. They put profits over people, and now they should pay.

As you can see from this example, an effective introduction primes the reader to not only understand but agree with the argument to follow.

Not only do the four elements of an effective introduction improve our legal writing, thinking about them before writing an argument forces us to become more strategic advocates. If we cannot communicate this key information in a paragraph or two, there is little hope that the judge will be left with these points as the major takeaway after reading the entirety of the brief. Consider spending additional time crafting an effective introduction in your next piece of legal writing. ■