



AMERICAN
BANKRUPTCY
INSTITUTE

Midwest Regional Bankruptcy Seminar

Artificial Intelligence and Ethics

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Outline for ABI MRBS/AI Plenary Panel: Artificial Intelligence and Ethics

I. INTRODUCTION

A. Current Statistics and Commonly Used AI Tools

- Present recent survey data/statistics on AI adoption among bankruptcy professionals
 - Most commonly used AI tools (e.g., ChatGPT, Lexis, Harvey, CoCounsel, etc.)
 - Percentage of usage of those AI tools
 - Primary use: legal research, document summarization/review, drafting and outline, case management, client communication, internal efficiency

B. Distinguishing Open-AI from Legal AI

- Define open-AI (e.g., ChatGPT, general-purpose large language models)
- Define legal AI (AI tools specifically designed for legal practice, such as contract analysis, e-discovery, and legal research platforms)
- Highlight key differences:
 - Confidentiality
 - Intended use cases
 - Regulatory and ethical considerations

C. Overview of Legal AI

- Explain what legal AI encompasses
 - Automation of routine tasks
 - Enhanced legal research capabilities
 - Predictive analytics for case outcomes
 - Document review and due diligence
- Discuss how legal AI is currently being integrated into bankruptcy practice

II. ETHICAL CONCERNS

A. Ethical Obligations

- Discuss the duty of competence and diligence in the context of AI
- Explore whether there is an obligation to use AI to provide efficient and effective representation
- Consider the risks of over-reliance or inappropriate use of AI

B. Ethical Use of AI

- Emphasize that AI is not foolproof; discuss potential for errors and hallucinations
- Outline strengths (speed, efficiency, data analysis) and weaknesses (lack of context, hallucinations, bias) of legal AI tools

- Address the importance of human oversight and critical review of AI-generated outputs

C. Understanding How AI Works

- Stress the need for lawyers to understand the basics of how AI tools function
- Discuss transparency, explainability, accountability challenges
 - The “black box” nature of AI tools – can undermine trust among users like law where transparency, reliability and ethical standards are paramount.
- Highlight the importance of ongoing education and training

III. DEMONSTRATION

A. Live Demonstration

- Show a video or walkthrough of using an AI tool in a bankruptcy context
 - Example: drafting a motion, conducting legal research, or analyzing case data
- Illustrate both effective use and common pitfalls/errors
- Share *Shahid v. Esaam* opinion that contains references to invalid citations with hallucinated cases.

B. Review of Prompts and Outputs

- Provide screenshots of sample prompts and AI-generated responses
- Offer these in the ABI materials so the audience can reference if they’d like and be able during the presentation for discussion

C. Interactive Q&A (If Time Permits)

- Allow audience to ask questions
- Discuss real-world examples of both successful and problematic AI use
 - Most problematic, known examples are likely linked to use of ChatGPT

IV. CONCLUSION AND TAKEAWAYS

- Summarize key points on the responsible and ethical use of AI in bankruptcy law
- Provide resources for further learning and best practices
 - Perhaps include resources in materials and notify audience additional resources available in submitted materials
- Encourage ongoing conversations as AI technology evolves in the legal field

Faculty

Neil Berman is the law clerk to Hon. Tyson A. Crist of the U.S. Bankruptcy Court for the Southern District of Ohio in Dayton. He previously clerked for Retired Bankruptcy Judges Guy R. Humphrey, Thomas F. Waldron and William T. Bodoh, and was an associate in the bankruptcy department of the law firm of Dinsmore & Shohl. Mr. Berman received his J.D. from the University of Toledo College of Law.

Ashley A. Brown is an associate with Dentons and a member of the firm's Restructuring, Insolvency and Bankruptcy practice group in its Louisville, Ky., office. She represents debtors, committees, trustees and other parties in interest in chapter 11 and chapter 7 bankruptcy cases. She also assists clients with commercial litigation matters. Prior to joining Dentons, Ms. Brown served as an extern in the Jefferson County Commonwealth Attorney's Office, where she gained experience in all aspects of litigation, including successfully leading a jury trial with a limited license that resulted in a guilty verdict. She also worked in the Kentucky Court of Justice in Louisville, where she drafted opinions, orders and judgments regarding various pleadings, and researched and analyzed legal issues for the court. Ms. Brown received her B.S. in political science in 2013, her M.S. in justice administration in 2015 *magna cum laude* from the University of Louisville, and her J.D. *magna cum laude* in 2023 from the University of Louisville Brandeis School of Law.

Chacey R. Malhouitre is a member of Jackson Kelly PLLC and the firm's Transactional Practice Group Leader in Lexington, Ky. She focuses on restructuring, insolvency and business bankruptcy, as well as commercial litigation. Ms. Malhouitre has experience in workout situations and bankruptcy proceedings, including debtor representation, sale transactions, protection of creditor rights and defending preference actions. She was a recipient of the 2021 ABI Asset Sale of the Year for the sale of assets in the *In re Lighthouse Resources Inc., et al.* proceedings. Ms. Malhouitre is a member of ABI and the International Women's Insolvency & Restructuring Confederation. She is admitted to practice in Kentucky and before the U.S. District Courts in the Southern District of Indiana, Eastern and Western Districts of Arkansas, Northern District of Illinois, and Eastern and Western Districts of Kentucky. Ms. Malhouitre received her B.A. *cum laude* in political science from Colorado State University and her J.D. in 2005 from the University of Kentucky College of Law.