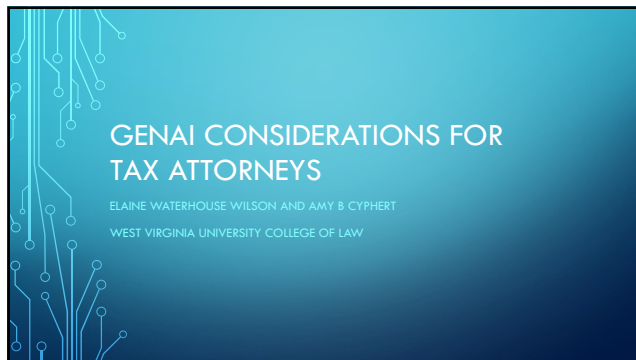
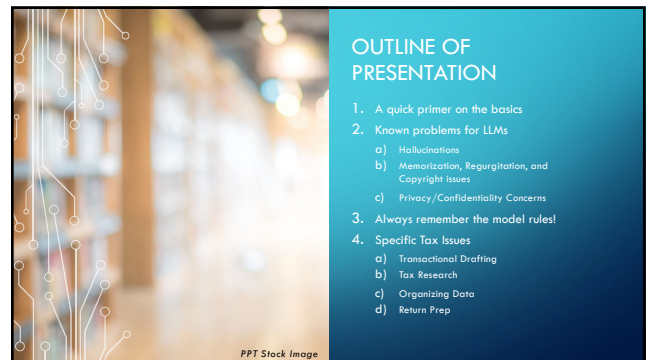
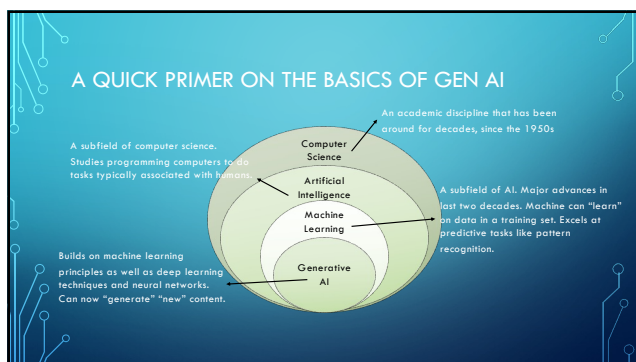




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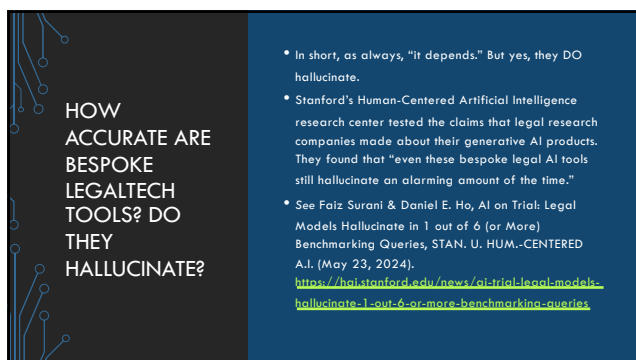
2



3



4



5



6

WHAT DO THE MODEL RULES SAY ABOUT LAWYERS' DUTIES WITH RESPECT TO GENAI?

MORE THAN YOU MIGHT REALIZE!

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RULE 1.1 - COMPETENCE

- Model Rule 1.1 provides that "A lawyer shall provide competent representation to a client."
- Comment 8 is modeled off the 2012 amendments to Model Rule 1.1 and specifically focuses on technical competence.
- Comment 8 provides that "a lawyer should keep abreast of changes in the law and its practice, including the benefits and risks associated with relevant technology[.]"

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RULE 1.6 CONFIDENTIALITY AND PRIVACY (WITH A RELATED NOTE ON PRIVILEGE)

- Model Rule 1.6 provides that "A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation or the disclosure is permitted by paragraph (b)."
- Read the fine print – many of these services are collecting your inputs and using those to train/fine tune the model. That's a potential violation depending on what you upload.
- Recent court decisions have also examined how GenAI models might impact attorney-client privilege issues

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RULE 5.3 DUTY TO SUPERVISE

- Model Rule 5.3 governs lawyers' duties to supervise "nonlawyer assistance"
- Note the history here – the term "assistance" used to be "assistants." This change was intentional on the part of the Model Rules drafters and meant to reinforce that lawyers must supervise technology like AI

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OTHER ETHICAL ISSUES



1.3 Diligence – an obligation to use these tools!



1.4 Communication – an obligation to explain use (including black box effect) to client!



5.4 Professional Independence



5.5 Unauthorized Practice of Law

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FORMAL GUIDANCE FOR ATTORNEYS

- ABA Formal Opinion 512 (July 29, 2024)
- WV Office of Disciplinary Counsel Lawyer Disciplinary Board Legal Ethics Opinion 2024-01 Artificial Intelligence (June 14, 2024) (cited in ABA opinion)
- Many judges and districts now have standing orders on the use of AI in their courtrooms

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GENAI AND TAX PRACTICE



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TRANSACTIONAL DRAFTING



• Unlike litigation-based documents, transactional documents don't have a case cite prompt to check

- Preparing forms themselves
- First draft of basic forms
- Looking for specific clauses
- Checking for consistency
- Indexing and cross referencing

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TAX RESEARCH

- General use gen AI scrapes from the whole internet
- We know bad tax advice exists on the internet...
- Using an AI tool specifically for tax filters out this noise



These statistics are from BlueJ, a proprietary AI-Tax Research data base, found at <https://www.bluej.com/>

See also:
[CCH AnswersConnect](#)
 Bloomberg Tax AI Assistant
 Accordance

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DATA ORGANIZATION

- AI is good at data organization
- HOWEVER, can you put actual client data into AI for it to organize for you
- Confidentiality issues...
- What if your clients do it for themselves?



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TAX RETURN PREP



- We have all heard of horror stories of clients putting their tax returns into AI and telling us how our return was wrong...
- Confidentiality issues
- What about privilege in the tax prep context?
- Professional advice and nuance (or the lack thereof...)

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QUESTIONS?



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