Schneider Smeltz
Spieth Bell LLP

(216) 696-4200
www.sssb-law.com

## AUTOMATING LEGACY: AI'S APPLICATIONS IN ESTATE PLANNING

*By Veronica T. Garofoli, Esq. & Brittany M. Payne, Esq.*

*Schneider Smeltz Spieth Bell LLP*
*Cleveland, Ohio*

Over the last decade, the use of Artificial Intelligence ("AI") has enhanced our lives in many ways. From Siri and Alexa, to Chat-GPT, AI has made tasks easier and more efficient. With AI's ever increasing presence, it's no surprise that questions are emerging from curious clients and professionals regarding the impact of AI on estate planning.

## GENERAL OVERVIEW OF AI

It is important to first understand what artificial intelligence is and what the estate planning process entails. According to Merriam-Webster dictionary, artificial intelligence is the capability of computer systems or algorithms to imitate intelligent human behavior.[1] This could come in the


Veronica T. Garofoli


Scan the QR code for Veronica's bio, or visit https://www.sssb-law.com/attorneys/veronica-t-garofoli/


Brittany M. Payne


Scan the QR code for Brittany's bio, or visit https://www.sssb-law.com/attorneys/brittany-m-payne/

form of machine learning, which allows for a computer to identify patterns based on data and produce a result based upon information provided. Over time, AI might use the information provided to identify patterns, improve efficiencies, and produce a final product that can be used. There are various AI tools currently available, some are free and others require a fee to use.

While helpful, AI is less personal than interacting with a human, and it relies heavily on the accuracy of the information provided in creating a final response and product. Estate planning is often a deeply personal process that involves understanding a client, their assets and intended beneficiaries for their assets, and details regarding the management and disposition of those assets during periods of incapacity and at death. Depending on the value of a client's estate and the client's goals, an estate planner may also be focused on providing transfer tax planning as a part of the estate planning process.

## CURRENT USES OF AI IN ESTATE PLANNING

Generally speaking, AI is already being used to assist in the estate planning process. Financial professionals may use AI to gather a client's information and recommend a specific portfolio to match a client's goals. Additionally, AI tools may be used to manage assets and recommend asset allocation, reduce taxes, and model a client's current estate flow. Estate planners can use this information to help clients develop or modify an estate plan to meet the client's objectives. AI tools can quickly produce estate plan summaries from client documents with guided templates and workflows. Some planners even use AI to automate initial document production and create efficiencies in their practice, such as scheduling meetings, automating emails, setting follow-up reminders and creating invoices. The key to the effective use of information produced by AI is the analysis that accompanies it by a trained professional. Without a trained eye, there may be hidden dangers to a user's reliance on AI for a task as important, and as personal, as estate planning.

## PITFALLS WITH AI GENERATED ESTATE PLANNING DOCUMENTS

To test AI, we took to Chat-GPT to ask everyone's favorite chatbot to draft a last will and testament and a durable power of attorney for finances based upon Ohio law. The result? Simple cookie cutter templates in less than 30 seconds that provide a decent structure, but overall flawed documents to a trained eye. The overall lack of explanation to the untrained user could lead to various pitfalls that could become costly and expensive during periods of incapacity or upon death.

For example, the AI generated last will and testament fails to inform the user of the formalities required under Ohio law to execute a last will and testament. The AI generated will calls for the signature of two witnesses, but does not inform the user of who should serve as a witness, and the formalities required by Ohio law to execute a will. Without meeting these formalities, the AI generated will may be found invalid under the current laws in Ohio, resulting in an intestate estate administration that could look very different from the user's intended result.

AI is wholly dependent on the information and prompts it is provided. An individual using AI may not appreciate all of the issues that should be considered in a will when giving prompts to AI. As a result, an AI generated will may fail to include key provisions and terms. For example, unless prompted, the AI generated will includes an exercise of a power of appointment. Powers of appointment are incredibly powerful estate planning techniques that carry significant tax consequences, as they allow for the holder of such a power to redirect assets among a particular class of beneficiaries determined by the grantor of the power. Sound complicated? It can be, which is why the expertise of a professional trained in estate planning is of the utmost importance.

The AI generated will also does not adapt to complex scenarios. We are not cookie-cutter people and an AI generated will cannot account for unique situations like a blended family, minor children, family members with special needs, or a family-owned business. Failing to customize an estate plan in these complex scenarios can prevent someone's final wishes from being met—and it can have unintended consequences for that person's beneficiaries. Relying on a shortcut like AI to create a will might seemingly make things easier and cheaper during the user's lifetime, but if a mistake is made, that mistake could cost an intended beneficiary their inheritance, disqualify a disabled beneficiary from receiving government assistance, and ultimately lead to more cost to the estate if litigation is required to resolve ambiguity or family disputes.

The AI generated general durable power of attorney for finances ("GDPOA") offered little improvement. The AI generated GDPOA fails to define terms of art, like "incapacity," and states that the power of attorney "shall become effective immediately upon my incapacity" but does not explain how "incapacity" should be determined. By failing to define incapacity and identify how incapacity would be determined (such as an evaluation by two doctors) to the untrained user, the document is vague which may cause unintended problems for the principal's agent and family in assisting them in a crisis.

The overall structure of the AI generated GDPOA was reasonable, but when it came to the powers the user could grant to an agent, the draft GDPOA specifically stated the user should "List specific powers and limitations, if any, such as banking, real estate transactions, investments, etc." The AI generated GDPOA failed to inform the user of the pros and cons of including particular powers. The chatbot assumes that the user knows what powers can be granted to an agent under Ohio law, or knows how to locate the powers to include them. When prompted to provide common powers and limitations, the chatbot produced a short list of common powers and limitations, but certainly did not provide an exhaustive list of common powers and limitations that a lawyer might include in their own draft. The chatbot also failed to address so called "hot powers," which are extraordinary powers that can be granted to an agent which have the ability to alter an individual's overall estate plan. Understanding all of these powers and limitations is critical to an individual in the estate planning process, and as estate planners, we often take the time to give real life examples of how providing these powers could lead to an unintended result.

## RISKS ASSOCIATED WITH AI IN ESTATE PLANNING

To its credit, the Chat GPT chatbot did get one thing right by informing the user that the drafts produced should only be used as a starting point, and should be reviewed by a trained legal professional to ensure appropriate compliance with the user's state law. A robot in a three-piece suit is still a robot. Sometimes AI "hallucinates" which means AI creates inaccurate, fabricated or illogical responses to queries and presents them as correct or credible. As estate planning professionals, it is our responsibility to ensure that if AI is used in our practice, that we understand how the technology produces the end result, and whether the product poses any significant risks to our clients.

There are also valid concerns about the privacy and confidentiality of client information that is entered into AI tools. Estate planning is often a deeply personal process where an estate planning attorney is engaged to understand the client, the client's goals, the client's assets and intended beneficiaries and strategize the management and disposition of the client's assets during periods of incapacity or at death. A common risk associated with estate planning involves the use of surveys or questionnaires to collect initial personal information regarding the client, their family, and assets that can be completed and may be sent digitally. With an increasing number of data breaches and cyber-attacks that could compromise a client's sensitive information and could lead to potential liability, it is important that a lawyer working with a client ensures there are appropriate safeguards in place to protect disclosure of sensitive information.

Lawyers have a responsibility to reasonably protect the inadvertent or unauthorized disclosure of or unauthorized access to a client's personal and financial information.[2] In using a third-party application to produce a draft estate plan, consider asking questions about how a client's information is protected and secured by the company producing the application. If the response seems inadequate, it might require the lawyer to pass on its use. Attorneys must be attentive to how client information entered into AI will later be used. Lawyers should also be careful to ensure that they have adequate insurance coverage in the event of a security breach.

Lawyers and law firms also must ensure oversight of the use of AI by subordinate attorneys, staff and vendors, and should develop and implement an internal office AI use policy.[3] An AI use policy should include directives to disclose the use of AI tools to clients, mechanisms for oversight and review of all outputs from AI tools, preventative measures regarding the disclosure of sensitive client information in nonsecure AI tools, as well as limitations on the use of AI tools used by the lawyer/firm. Lawyers should also seek guidance from ethics counsel or their local or state bar association on whether it is proper to pass along costs of the AI technology itself to clients.[4]

## CONCLUSION

Generally speaking, AI tools are great for any task that requires consistency, speed, recall and memory. AI tools can create documents in seconds to help clients visualize their estate plan, quickly produce estate plan summaries from client documents

with guided templates and workflows, and summarize a client's prior estate planning documents or financial reports. AI produces time savings on repeat tasks like document review and initial draft generation and that could make it more financially beneficial for clients and for law firms to adopt alternative fee arrangements such as flat fees rather than the historical billable hour model.

While we have come quite a long way with AI, estate planning is a deeply personal, nuanced, and legally technical process. Overall, AI power tools can aid estate planning attorneys and firms in many ways, but it cannot replace the human touch, empathy, and expertise that estate planning lawyers provide to their clients. Individuals should be cautious in using AI without the expertise of a trained professional, and trained professionals using AI tools should remain vigilant to ensure the protection of confidential client information.

**ENDNOTES:**

[1] https://www.merriam-webster.com/dictionary/artificial%20intelligence.

[2] Ohio Rules of Prof. Cond. Rule 1.6 (confidentiality of information).

[3] Ohio Rules of Prof. Cond. Rule 5.1 to 5.3 (law firms and associations).

[4] Ohio Rules of Prof. Cond. Rule 7.1 to 7.4 (information about legal services).

Schneider Smeltz
Spieth Bell LLP

(216) 696-4200
www.sssb-law.com