

BAR BRIEFS

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When The Tough Cases Demand Results



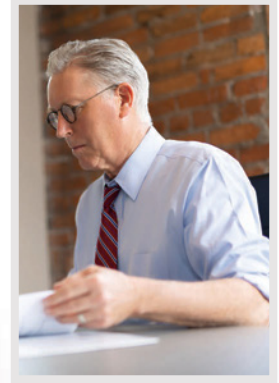
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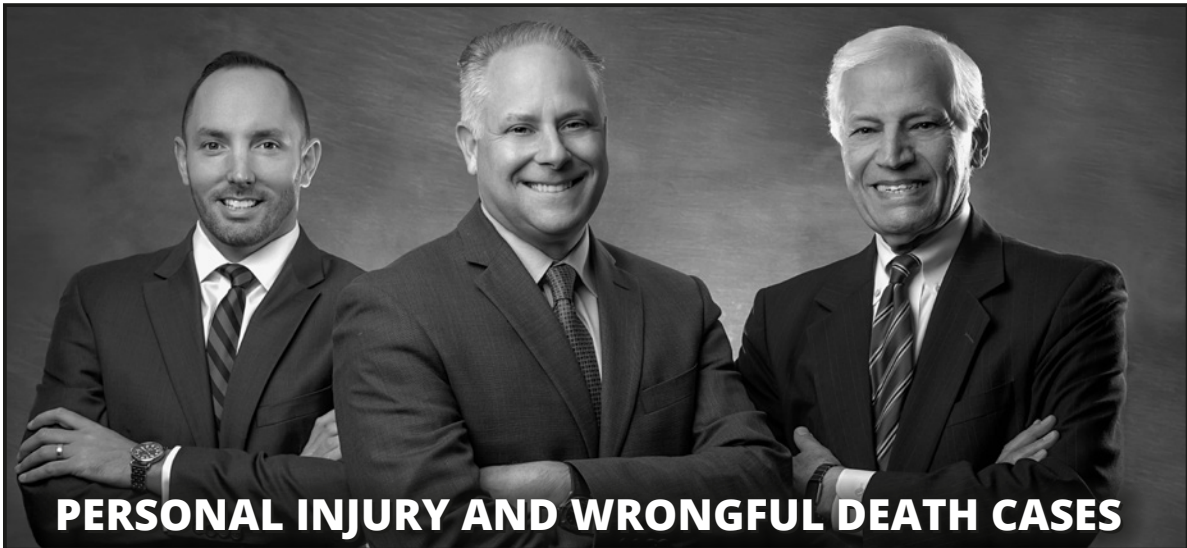
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At What Cost?

By Farrah Ramdayal-Howard, President,
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We live in an age where communication is easier than ever before. With a few keystrokes, thoughts can be broadcast to hundreds, thousands, or even millions of people. Social media, email, instant messaging, and Zoom have all transformed the way we interact. But I would even venture to say it has changed the way we see ourselves—the expectations and respect we have for one another and for ourselves. With every leap forward, we should ask: What is the cost of all this advancement? What’s at stake?

There is no denying that technology has changed us. It has stripped away the natural pauses that once guided human interaction. A generation ago, disagreements were handled face-to-face or through carefully crafted letters. Both required time and thought. Today, arguments unfold in real time on public platforms, often in heated bursts of 280 characters or less. The immediacy of technology has removed the filters of reflection and empathy.

The illusion of anonymity has also fueled what I call, “keyboard courage.” People type things they would never say aloud in person. The result is a culture of quick tempers, sharp words, and growing hostility. Families, colleagues, and even professionals can all fall into the trap of harshness, because the medium itself tends to reward it. On social media, outrage can generate likes and shares far more than kindness or professionalism.

Yet, I’ve never believed that technology is the enemy. It has given us remarkable tools: the ability to meet with clients across distances, to file documents in seconds rather than days, to research cases with a few keystrokes, and to stay connected even when we are far apart. For lawyers, technology has

made our work faster, more efficient, and in many ways more accessible to the people we serve. Advancement itself is not the problem: it is how we choose to use technology to advance ourselves. At the end of the day, we are held accountable for the decisions we make and the way we carry ourselves.

Perhaps a reminder that even as technology advances and artificial intelligence grows, there is no shortcut or substitute for integrity. In a profession where resistance and posturing are often mistaken for strengths, it can feel easier to be sharp, fast, and impatient. But as lawyers, we have both an opportunity and an obligation to rise above that temptation—to choose something more, something better.

From the moment we entered law school, we were taught that ethics are not an elective but a foundation of our profession. We studied professional responsibility, we sat through courses on legal ethics, and we were reminded—again and again—that the privilege of practicing law carries with it a duty to uphold the highest standards. The Michigan Rules of Professional Conduct codify these expectations, requiring us to practice with honesty, fairness, respect, and civility. These are not aspirational ideals; they are binding obligations.

Our commitment to civility must remain constant. Advancement is good, progress is necessary, and innovation will always be part of our profession. But none of it can replace the human value of kindness. It is about preserving the integrity of our profession, strengthening our effectiveness, and ensuring as human beings we guard one of the most valuable things we have, respect for ourselves and respect for each other, something technology could never give us.

We should ask:

**What is the
cost of all this
advancement?**

What’s at stake?



Practical Collection: The Uncharted Frontier

By Angelo Donofrio, Trial Attorney at Lucido & Manzella, PC



What good is your work if you are not paid? Law schools never teach lawyers how to protect and collect their fees. You may have been privileged to have one professor from law school address the topic, but I was only given one hour in a final lecture by one of my third-year professors. You may even be privileged enough to have clients that always pay. However, knowing how to collect your fee and preserve it for later is critical to your survival as a lawyer. This article, the first of a four-part series, will explore how to preserve your rights to your fee, collect that fee if you must file suit, and explain how you may collect judgments generally. I am a seven-year veteran of this profession with both criminal and civil clients. Collection (for lawyers, and other clients) forms a large part of my practice.

As a practical matter, you should always have a signed copy of a fee agreement defining the scope of the representation. While you do not need to sign it, you want the client to sign so he is aware of what both his and everyone's obligations are. The Statute of Frauds also looms large. A client's signature is necessary since the representation may not conclude in one year, and you may later seek enforcement of that contract against the client.¹ Be sure to draft your agreements specifically, and in conformity with your duties under the Michigan Rules of Professional Conduct, and exclude those items that are unnecessary to prosecution of the client's case(s).²

You should also have clients fill out an intake sheet with personal information like their name, address, phone number, and email. Have clients indicate where they work and provide an emergency contact in case. You should always take a copy of a driver's license (and/or photo ID) and have the client provide his social security number (or at least the last four numbers). Some names are common and this helps to distinguish clients. This also provides you with valuable information for later (like when you garnish a bank account or an employer, or file a judgment lien, which requires personally identifying information). If a client pays by check, make a copy of it since you may need to garnish that bank (and any accounts there) later. Your fee agreement should contain a provision entitling you to your *actual* costs and attorney's fees to sue and collect delinquent balances (yes, this is legal). I have always listed my hourly collection rate as lower than my general hourly rate.³ Once the representation starts, send bills to clients and sureties every month, or when other charges come due (like a motion, deviation, or trial fee), and bill for everything you do.

If you perform work for an incorporated company, you should have the individual validate his position with that entity

and confirm his apparent authority to sign a fee agreement. This can be established simply with a business card (or a search online of someone's LinkedIn profile), though in my experience, the owner of the company has come to a meeting.⁴ In those instances, the owner's signatures individually and on behalf of the company provide two potential recovery sources.

Though tempting and sometimes unavoidable, going beyond the scope of the fee agreement could be dangerous. You should indicate that work beyond the original scope requires a new fee agreement (like after a judgment, sentencing, or completion of the original task(s)). Appeals, motions for reconsideration, or relief from judgment should require new retainers and fee agreements.⁵

Sureties⁶ are important if you feel the client is uncollectible or lacks sufficient means to pay for the representation after the case starts. A suretyship agreement is "[a] special promise to answer for the debt, default, or misdoings of another person" and it needs to be in writing, and signed by the person against whom it is charged.⁷ A collateral promise is one "for debts already owed," while an original promise is one "to pay for goods or services to be rendered in the future[.]"⁸ An original promise is "not within the statute of frauds as a promise to pay the debt or default of another," so "it need not...be in writing."⁹ Conversely, a collateral promise to

¹ MCL 566.132(1)(a).

² Michigan Rule of Professional Conduct Rule 1.2: Scope of Representation, Commentary: Services Limited in Objectives or Means.

³ *Silverman v Korn*, 339 Mich App 384 (2021) leave for appeal denied by *Silverman v Korn*, 509 Mich 933 (2022).

⁴ To establish a claim of ostensible agency, a plaintiff must show:

[First] The person dealing with the agent must do so with belief in the agent's authority and this belief must be a reasonable one; [second] such belief must be generated by some act or neglect of the principal sought to be charged; [third] and the third person relying on the agent's apparent authority must not be guilty of negligence.

Markel v William Beaumont Hospital, 510 Mich 1071, 1071 (2022) (citing *Grewe v Mt Clemens General Hospital*, 404 Mich 240, 253 (1978) (quotation marks and citations omitted; alterations in original))

⁵ See MCR 2.117(C) regarding the duration of an attorney's appearance, and how that appearance, whether limited or not, ends after final judgments or orders are rendered.

⁶ "A surety is one who undertakes to pay money or take any other action if the principal fails therein." *In re Forfeiture of \$ 8,141 of United States Currency*, 172 Mich App 790, 792 (1988).

⁷ MCL 566.132(1)(b).

⁸ *Manuel v Gill*, 270 Mich App 355, 376-77 (2006), reversed on other grounds, 481 Mich 637 (2008).

⁹ *Highland Park v Grant-Mackenzie Co*, 366 Mich 430, 443 (1962).

pay for goods and services already rendered *does* fall within the statute of frauds (meaning a written, signed document is needed for enforcement).¹⁰

Stated plainly, you should require that every surety acknowledge, in writing, that he is responsible for the principal-/client's obligations; past, present, and future. Let us not forget; a contract supported by consideration is enforceable, regardless of the distinctions made above regarding collateral or original promises.

Your fee agreement should also protect your rights to an attorney's lien. An attorney's lien can be one of two kinds: (1) a general, retaining, or possessory lien, or (2) a special, particular, or charging lien. A general or retaining lien is the right to retain possession of all documents, money, or other property of the client until the fee for services is paid.¹¹ The special or charging lien is an equitable right to have the fees and costs due for services secured out of the judgment or recovery in a particular suit.¹² An attorney's charging lien creates a lien on a judgment, settlement, or other money recovered as a result of the attorney's services.^{13 14} Luckily, Michigan law recognizes "...a divorce court's power to enforce charging liens secured by a judgment of divorce."¹⁵ However, a charging lien may not be imposed on a client's real property, unless (1) the parties have an express agreement providing for a lien, (2) the attorney obtains a judgment for the fees and follows the proper procedure for enforcing a judgment, or (3) special equitable circumstances exist to warrant imposition of a lien.¹⁶

As with all things, having the client agree, in writing, to both types of attorney's liens is necessary to protect your fee. In your fee agreement and settlement documents, having the client

agree that you are entitled to your fees first is imperative. Any documents or judgments should contain provisions rendering your rights superior to the client's. These documents should indicate that any payment(s) are directed to your IOLTA account. In the case of settlement checks, the payor should name your firm's IOLTA account as payee. This allows you to later distribute the money accordingly. In a divorce with real property, it is important to write provisions prioritizing your rights over the client's rights. If there is a sale, then a judgment should specifically state that your lien attaches to it. Recording the attorney's lien (or the judgment itself) helps give notice to a title company when a sale takes place, assuring that your rights are protected.

In conclusion, collect personal information sooner rather than later. Execute signed documents with explicit terms because written acknowledgments are hard to surmount when a fee dispute arises later. These tips will make a world of difference when we talk next about suing to collect your fees.

¹⁰ *David E. Ghannam, PC v Hamame*, No. 335286 at 8 (Ct App, Mar 20, 2018) (cited by *Schier, Deneweth & Parfitt, PC v Bennett*, 206 Mich App 281, 282-83 (1994), appeal denied by *Schier v Bennett*, 448 Mich 927 (1995)) (emphasis added).

¹¹ *Kysor Industrial Corp v D M Liquidating Co*, 11 Mich App 438, 444 (1968).
¹² *Id*; see also 3 Michigan Law & Practice, Attorneys & Counselors, § 161, p. 486-87.

¹³ *Doxtader v Sivertsen*, 183 Mich App 812, 815 (1990).

¹⁴ While not codified in a statute the existence of a common-law attorney's charging lien is recognized in Michigan. *Kysor*, 11 Mich App, at 445 (see also *Miller v Detroit Automobile Inter-Ins Exchange*, 139 Mich App 565, 568 (1984).

¹⁵ *Souden v Souden*, 303 Mich App 406, 411 (2013).

¹⁶ *George v Sandor M Gelman, PC*, 201 Mich App 474, 478 (1993)

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Use of AI in Family and Probate Law

By Timothy P. Flynn and Frank L. Briguglio, Clarkston Legal



Full Disclosure: to illustrate for the reader how AI is being integrated into the practice of law, this post was created via collaboration between the human authors and Google's AI tool. The approximate word count breakdown is 75% human authorship and 25% AI generated content. The AI portion is noted in the text below. The image contained in this post was generated by Google's Gemini platform.

Advancement of AI has polarized us into two primary groups: those who believe that AI is a savior for humanity and those who believe AI will bring about the demise of humanity; think Skynet from the Terminator franchise.

Although AI has taken the world by storm over the past 5-years, large language model AI has been instrumental in legal research since the 1980s. This post goes beyond the legal research capabilities of AI and examines how AI has affected the legal industry as a whole, particularly family and probate law practices.

In the early days of computerized legal research, practitioners would input complex Boolean search requests and the computer would output a list of relevant cases and statutory cites. Then the attorney would manually deconstruct and assess the output, utilizing what was useful or on point.

These days, everyone with access to the Internet has access to a broad menu of AI: **Claude** for in-depth detailed research; **DeepSeek** for reasoning and logic; **Gemini** for generation of images; and **Chat GPT** for light-hearted Q and A.

Classic Legal AI Missteps

Earlier this month, AI struck again, when pillow mogul Mike Lindell's lawyers filed a brief in federal court in Colorado containing fictitious case citations; Lindell's lawyers were sanctioned \$3000 by the judge. No one knows why AI is unpredictably prone to occasional "hallucinations" but the practice is highly unsettling, especially if you are involved with high-stakes litigation and you are depending on lawyers to file briefs with federal courts on your behalf.

This type of hallucination also occurred in a New York

case where opposing counsel could not find the cases cited in the opponent's brief. This was because the AI tool used to write the brief hallucinated to fictitious caselaw. The lawyer that propounded the brief did not proof the work product output of the computer.

Some federal judges, perhaps in reaction to these ridiculous AI missteps and case site hallucinations, require certification by the filing attorney that AI did not play any part in drafting a filed pleading, brief, or other document. If an attorney violates this certification, the attorney is subject to sanction by the court.



Family Law and AI

When pundits warn about AI replacing humans in various industries, they are not referring to lawyers that appear before referees or judges in family court. Fortunately, with each case depending on its own circumstances and depending on the local personalities involved in the local county family court, AI is a long way off from even supplementing the work load, let alone taking over.

Bottom line in family court is that the personalities need to be present to carry the day. This includes the parties themselves, their lawyers, referees and of course the judge.

Of course, complex property issues and extensive legal briefing are always subject to an AI assist. We have high-net-worth individuals where AI generated briefing and analysis comes into play. Also, our law firm's new client management

software has a useful AI component that allows us to bring that functionality into the courtroom.

Most often, however, our lawyers walk into court sans computer and go toe to toe with opposing counsel over the facts and relative equities of a case; old school. Overall, family law is just not cut out for a significant AI assist.

Probate Law and AI

Probate law tends to be, on average, a bit more document-intensive. Therefore, probate law lends itself to AGI assistance more readily than family law. For example, new AI programs are available that allow lawyers to review their myriad extensive trust and estate planning documents for changes in the law or any number of custom filters or objectives.

Trust documents are not “one-size-fits-all” to be sure. At our law firm, trust instruments are customized to the clients’ needs and fit securely into a comprehensive estate plan. Estate plans are customized based on the circumstances and the intent of the settlor.

Wealthier individuals often have tax issues embedded into their estate planning needs. AI legal software is now available that can crunch the time it takes to review, analyze, and integrate complex tax provisions into a trust instrument. The software can then ensure that all the other component documents within a particular estate plan are consistent with the tax treatment of various trust issues.

Probate litigation is again bringing the disputes – often family disputes – into the courtroom of a local probate judge; usually with local probate practitioners. Depending on the crux of the dispute, AI may or may not be very useful in resolving the dispute.

State Bar of Michigan Addresses the Use of AI in the Practice of Law

Now we reach the portion of this post where AI provides a useful service in the creation of a law blog post. The State Bar of Michigan’s June 2025 publication, *Transforming the Legal Landscape in the Age of AI*, is 56 pages long. A useful AI query is to have the document summarized. The key components of the report are summarized in the italicized paragraphs below and are not the original work product of the author.

The document is a report on the integration of generative artificial intelligence into the legal profession, exploring its opportunities, challenges, ethical considerations, and implications for practice management and access to justice.

The key areas of AI’s impact on legal practice, as outlined in the document, include:

1. Document Review & eDiscovery: Automating the review of electronically stored information (ESI) to save time, reduce costs, and improve accuracy.

2. Legal Research: Streamlining research processes using natural language searches and large language models (LLMs), while addressing risks like hallucinated responses.

3. Legal Drafting: Generating drafts for legal documents, contracts, and briefs, enhancing efficiency but requiring careful review for accuracy and ethical compliance.

4. Contract Drafting & Analysis: Assisting in drafting and analyzing contracts, identifying key provisions, and reducing human error.

5. Document Storage: Managing electronic storage with considerations for security, retention policies, and compliance with record-keeping laws.

6. Outcome Prediction: Using AI tools for case prediction, jury analysis, and judicial rulings, though limited by human behavior and biases.

7. Cybersecurity: Integrating AI into security frameworks to analyze data, recognize patterns, and adapt to threats, while ensuring client confidentiality and data protection.

These areas highlight AI’s potential to enhance efficiency, reduce costs, and improve legal services, while requiring vigilance to address ethical, accuracy, and security concerns.

The risks of unauthorized practice of law (UPL) with AI include:

1. Blurred Line Between Legal Information and Legal Advice: AI tools may unintentionally cross the line from providing general legal information to offering legal advice, which requires legal discretion and profound legal knowledge.

2. Lack of Regulation: AI-based legal services are largely unregulated, raising concerns about the accuracy and reliability of the information provided.

3. Potential Public Harm: Incorrect or misleading legal information generated by AI could harm users who rely on it without consulting a licensed attorney.

4. Scrivener’s Exception: AI tools generating legal documents may fall under the scrivener’s exception, but this depends on whether legal knowledge or discretion is involved, creating ambiguity in enforcement. The scrivener’s exception to unauthorized practice of law (UPL) allows non-lawyers to assist individuals in completing standardized legal forms without selecting the form or providing legal advice on what information to include. This exception applies when no legal knowledge or discretion is involved in the document’s completion.

For AI-based programs, the scrivener’s exception raises questions about whether automated form generation falls within this exception, especially as AI tools become more advanced and widely available. The accuracy and reliability of AI-generated documents will be critical in determining

whether they comply with this exception or risk violating UPL regulations.

5. Challenges in Enforcement: Michigan’s UPL statute applies to “persons,” making it unclear whether AI programs or companies using AI can be held accountable under current laws.

6. Bias and Hallucinations: AI tools may produce biased or fabricated outputs, leading to flawed legal advice or documents.

7. Public Misunderstanding: Consumers may struggle to distinguish between legitimate AI legal tools and substandard or deceptive services, increasing the risk of exploitation.

These risks highlight the need for careful monitoring, public education, and potential legislative updates to address the evolving role of AI in legal services.

Ok, back to human authorship. One area that was not addressed in the SBM’s report was: client privacy within the context of AI assisted research. Perhaps this concern was deemed outside the scope of the SBM’s task force. It would be intuitive and typical for an attorney to input various details –some of them identifying– into a large language model AI

platform in order to get a desired output. The more detailed and refined the inputs, the more accurate the output.

Some clients may not want the details of their case to be floating around in an AI platform, potentially accessible to third parties. To combat this, some of the platforms like Chat GPT have rolled out a “law” version of their service – ChatGPT 4 – that guarantees confidentiality of both query and output. The monthly fee for the enhanced service is approximately \$60.

AI is Coming to a Law Firm Near You

The march of technology is relentless; we cannot avoid it, but we can temper its impact. One little known fact is that the recently passed so-called “Big Beautiful Bill” contains a decade long ban on the state regulation of AI. The congressional act proscribes nearly all forms of state laws designed to regulate or limit AI platforms.

So, take note state legislatures, Congress has declared a “hands off” approach to the development of AI over the next decade. That’s a long runway for the industry to stretch its long legs. The legal process is at base a human process. Family law and probate disputes are human disputes. Local family and probate jurists, at least for the foreseeable future, are human jurists.

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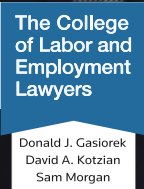
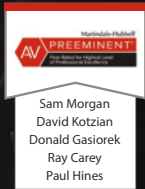


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CRIMINAL LAW THINK TANKS

Save the Dates!

- 

October 6th / 12 PM - 1:30 PM
Free Sentencing Alternatives
presented by MSU Extension
- 

November 10th / 12 PM - 1:30 PM
Enhance Your Case!
Digital Forensics and Media Enhancement
presented by Primeau Forensics
- 

December 1st / 12 PM - 1:30 PM
Get it Right!
Tips for Presenting and Perfecting the PSI
presented by Agent Rupright, MDOC

All presentations will be held at
The Macomb County Office of Public Defender
22 Market St. Mt. Clemens, MI 48043
There will also be a Zoom option
provided with registration



EST. 1906

Lunch will be provided and each course is
eligible for up to 1.0 CLE Credits

