MSBA

Minnesota
State Bar
Association

WORKING GROUP
ON AI

Implications of Large Language Models (LLMs) on the Unauthorized Practice of Law (UPL) and Access to Justice

JUNE
2024

The MSBA Assembly adopted this report and its recommendations as noted on June 20, 2024.

Working Group Members:

- **Damien Riehl** — Chair — vLex, SALI
- **Brandon Engblom** — Housing & Redevelopment Authority of Duluth, Minnesota
- **Ann Kraemer** — Kraemer Law
- **Karen Odash** — Fisher Phillips
- **Navin Ramalingam** — Robins Kaplan
- **Kirsten Schubert** — Dorsey & Whitney
- **Thomas Schumacher** — Medtronic
- **Todd Scott** — Minnesota Lawyers Mutual Insurance
- **J. Singleton** — Mid-Minnesota Legal Aid
- **Alena Stankaitis** — Student at University of Saint Thomas School of Law

Ex Officio Members

- **Robin Wolpert**, MSBA Past President, Sapientia Law

Staff

- **Nancy Mischel**, MSBA

Table of Contents

SECTION 1.
Introduction

In November 2022, ChatGPT was released, and in just two months, it had over 100 million monthly active users — making ChatGPT the fastest-growing consumer application in history. Large Language Models (LLMs) like ChatGPT have the potential to transform legal practice, since the law is entirely words. Lawyers' primary tasks: (1) read words, (2) analyze words, and (3) write words. For the first time in human history, a machine can do all three of those things at superhuman speed and at a postgraduate level. LLMs can potentially transform legal practice; they can also potentially transform society and its adherence to the rule of law.

In early 2023, the Minnesota State Bar Association (MSBA) appointed us, the members of this Working Group, to determine how "artificial intelligence" (AI)[1] might relate to the unauthorized practice of law (UPL). The group's mandate was wide and largely undefined, a welcome development that gave our Working Group the latitude to explore broader potential effects than if the MSBA had made our mandate more circumscribed. As such, we have expanded this group's mandate to include analysis of how LLMs might relate to lawyers' ethical obligations under the Minnesota Rules of Professional Conduct, as well as how LLMs might be used to improve access to justice.

During this Working Group's discussions over the past year, we have analyzed the relationship between AI and UPL, as well as exploring how those concepts might relate to (and potentially improve) the access-to-justice crisis. We have long known that our current legal system does not properly serve most legal needs, which remain unmet. Knowing that AI continues to evolve, our objective has been to examine how these advancements might align with helping fulfill our profession's ethical and legal obligations to help ensure justice for all.

We also explored what "Artificial Intelligence" and "Large Language Models" mean, and at a basic level how they work. We believe further clarity about AI-backed tools will be critical to sensible oversight of their use in connection with the law. As a simple framing concept, such tools do not "think." Rather, in their most basic concept, they convert text to a string of numbers (vector embeddings) and rely on statistics and math to "predict" the next set of numbers which are then displayed as text. AI tools have been used for many years in various contexts, including legal research. The expansion into these so-called LLMs supported by massive computing power and offered broadly to consumers to generate new text based on a user's query is driving this change.

---

[1] Throughout this document, the Working Group uses the terms "AI" and "LLMs" and "Generative AI" interchangeably.

Central to our inquiry — determining the role of "artificial intelligence" in the context of UPL — are the definitions and distinctions between "practice of law," "legal information," and "legal advice." These terms have evaded bright-line definitions throughout their history, and we don't believe that this Working Group will succeed in providing more-meaningful definitions, where so many others (e.g., courts) have consistently failed to do so. But this Working Group's document may help elucidate how existing definitions are probably insufficient today, where the line between "legal information" and "legal advice" is largely indistinguishable.

In doing our work, our focus has extended beyond the technical aspects of AI: We have also addressed the ethical, regulatory, and practical implications of AI in legal services. Throughout, we anchor our discussion with Minnesota's rules, judicial opinions, and professional conduct standards in Minnesota — as well as similar decisions and developments around the country.

Our group greatly benefited from our June 2023 meeting with Susan Humiston, Director of the Office of Lawyers Professional Responsibility, and ethics attorney Eric Cooperstein. In that meeting, we discussed the potential for sandboxes in regulating legal technologies, cases where non-lawyers provided legal assistance to help serve the access-to-justice gap (e.g., Upsolve's First Amendment claim), and the role of LLM-based disclaimers. We're grateful for the contributions of attorneys Humiston and Cooperstein, whose conversation underscored the need for a nuanced approach to legal technologies, balancing consumer protection and professional standards with potential benefits to access-to-justice initiatives.

Despite our profession's ethical obligations to help ensure equal justice for all, we must acknowledge our failure to provide adequate access to justice. In 2022, the Legal Services Corporation reported that low-income Americans do not receive sufficient legal help for 92% of their substantial civil legal problems. LLMs offer powerful tools to address this justice gap. By assisting self-represented litigants with forms, navigation, and plain-language translation, LLMs have the potential to democratize access to justice, enabling more equitable participation in our legal system.

To better harness the potential of LLMs in serving access-to-justice initiatives, we propose the creation of an Access to Justice Legal Sandbox. This regulatory sandbox would provide a controlled environment for organizations to use LLMs in innovative ways, without the fear of UPL prosecution. By permitting experimentation and evaluation, this sandbox could foster legal innovation while ensuring that the deployment of these technologies is both safe and beneficial. This approach aligns with our profession's commitment to justice and fairness, ensuring that the benefits of LLMs are accessible to all Minnesotans, regardless of their ability to afford legal representation. Given the dire need for support, we believe this Sandbox approach should move quickly.

We also acknowledge that MSBA members must learn how to integrate LLMs and technology into their practices. We acknowledge that lawyers might have many questions about their livelihoods. And we encourage the MSBA to provide educational sessions to its members regarding LLMs and their implications today. And also discussing how legal practice might be affected in the near future.

Throughout this document, we outline an approach that seeks to provide a nuanced analysis that aligns with both the letter of the UPL law, as well as its spirit. We assess the broader implications of AI in the legal sector, considering both risks associated with over-regulation, as well as AI's potential benefits in enhancing access to justice. Balancing these factors can help ensure that our profession demonstrates its commitment to upholding the central tenet of our Constitution: equitable justice for all.

Our goal is to provide some guidance on navigating the complexities of LLMs usage for legal tasks, helping ensure that both lawyers and the public can harness this powerful tool to analyze, interpret, and align with the law. While some in our profession approach Large Language Models with apprehension, our year-long analysis has filled us with optimism. We see LLMs not as a threat, but as a beacon of hope, offering unprecedented opportunities to enhance our profession's service and extend a helping hand to those most in need of legal assistance. In doing so, we can simultaneously uphold our profession's commitment to justice, fairness, and public protection.

SECTION 2.
Overview of UPL in Minnesota

As a threshold matter, determining whether anyone (or any tool) violates the UPL statute first requires an analysis of that statute's text, as well as interpretive caselaw.

2.1. Minnesota's UPL Statute

Below are the relevant portions of Minnesota's Unauthorized Practice of Law statute:

> Subdivision 1. **Prohibitions**. It shall be unlawful for any **person** or **association of persons**, except members of the bar of Minnesota admitted and licensed to practice as attorneys at law, to **appear as attorney or counselor at law** in **any action or proceeding in any court** in this state to maintain, conduct, or defend the same, except personally as a party thereto in other than a representative capacity, or, by word, sign, letter, or advertisement, to hold out as competent or qualified to **give legal advice or counsel**, or to **prepare legal documents**, or as being engaged in advising

or counseling in law or acting as attorney or counselor at law, or in **furnishing to others the services of a lawyer** or lawyers, or, for a fee or any consideration, to give legal advice or counsel, perform for or furnish to another legal services, or, for or without a fee or any consideration, to prepare, directly or through another, for another person, firm, or corporation, any will or testamentary disposition or instrument of trust serving purposes similar to those of a will, or, for a fee or any consideration, to **prepare for another person**, firm, or corporation, **any other legal document**, except as provided in subdivision 3.

Subd. 2. **Corporations**. No corporation, organized for pecuniary profit, except an attorney's professional firm organized under chapter 319B, by or through its officers or employees or any one else, shall maintain, conduct, or defend, except in its own behalf when a party litigant, any action or proceeding in any court in this state, or shall, by or through its officers or employees or any one else, give or assume to **give legal advice or counsel** or perform for or furnish to another person or corporation **legal services**; or shall, by word, sign, letter, or advertisement, solicit the public or any person to permit it to prepare, or cause to be prepared, any will or testamentary disposition or instrument of trust serving purposes similar to those of a will, or **hold itself out** as desiring or willing to **prepare any such document**, or to give legal advice or legal services relating thereto or to **give general legal advice or counsel**, or to act as attorney at law or as supplying, or being in a position to supply, the services of a lawyer or lawyers; or shall to any extent engage in, or hold itself out as being engaged in, the business of supplying services of a lawyer or lawyers; or shall cause to be prepared any person's will or testamentary disposition or instrument of trust serving purposes similar to those of a will, or any other legal document, for another person, firm, or corporation, and receive, directly or indirectly, all or a part of the charges for such preparation or any benefits therefrom; or shall **itself prepare, directly or through another, any such document for another person, firm, or corporation**, except as provided in subdivision 3.

MINN. STAT. § 481.02, subds. 1–2 (2024) (emphasis added).

In summary, Minnesota's UPL statute appears to implicate people and corporate entities that perform one or more of these tasks:

1. appear in court as an attorney on behalf of another
2. give "legal advice or counsel" or "legal services"
3. prepare legal documents
4. hold themselves out (or advertise themselves) as an attorney.

This prohibition is followed by Subdivisions 3, 3a, and 7, which contains the following exceptions:

- **Personal Document Drafting**: Any person may draw, without charge, any document in which they, their employer, or their firm or corporation is a party, except for wills or trust instruments. Subd. 3(1).
- **Emergency Will Drafting:** In an emergency where death is imminent, a person may draw a will for another if there's insufficient time for an attorney. Subd. 3(2).
- **Insurance Company Defense:** Insurance companies can defend their insureds through selected lawyers in accordance with policy terms. Subd. 3(3).
- **Labor Organization Advice:** Bona fide labor organizations can give legal advice to their members in employment-related matters. Subd. 3(5).
- **Non-Testamentary Document Drafting:** Any person or corporation may draw non-testamentary legal documents like leases, notes, and deeds, for or without a fee. Subd. 3(8).
- **Legal Q&A Publication:** Established farm journals or newspapers may publish legal Q&As answered by a licensed attorney, provided no charges or legal services are offered. Subd. 3(11).
- **Rental Property Actions:** Authorized agents of residential rental property owners may commence and maintain actions in court for possession of the property, with certain restrictions. Subd. 3(12)
- **Specialized Legal Assistant Services:** Services by a specialized legal assistant with a specialty license issued before July 1,1995, are allowed. Subd. 3(14).
- **Sole Shareholder Representation:** The sole shareholder of a corporation may appear on behalf of the corporation in court. Subd. 3(15).
- **Association Representation:** Officers, managers, partners, employees, or agents of a condominium, cooperative, or townhouse association may represent the entity in conciliation court or related district court actions. Subd. 3(16).
- **Real Estate Closing Assistance:** Real estate brokers, salespersons, or closing agents may draw or assist in drawing papers related to property transactions and charge for these services, with future restrictions by the supreme court. Subd. 3a.
- **Clerical Service Provision:** Corporations may provide clerical services or information to attorneys for their professional work, with the attorney maintaining full responsibility for the services received. Subd. 7.

MINN. STAT. § 481.02, subds. 3, 3a, 7 (2024)

Legislative purpose. The reasons why, in 1931, Minnesota's legislature enacted the UPL statute (and the purpose of similar statutes nationwide) are unclear. The statutory language on its face appears to seek to protect the public from

unscrupulous people who might deceive the would-be client, causing that person harm. One court noted that "The protection of the public, as the purpose of confining law practice to a licensed bar, ancient as it is in its origin, is of vital importance today." *Gardner v. Conway*, 234 Minn. 468, 478, 48 N.W.2d 788, 795 (Minn. 1951).

A 2024 *Yale Law Journal* article from Stanford Law professors — investigating thousands of pages of archival material — traced the origins of UPL statutes to the Great Depression and guild protectionism.[2] This Working Group takes no position on the Minnesota UPL statute's intended purpose. Minnesota courts' applications of Minnesota's UPL statute have provided varied analyses, as described below.

2.2. Minnesota Caselaw on the Unauthorized Practice of Law

The Minnesota Supreme Court has developed and applied five factors to determine when the unauthorized practice of law has occurred. *Gardner v. Conway*, 48 N.W.2d 788 (Minn. 1951) (involving a public accountant who provided clients with advice about tax laws while preparing their income tax returns).

(1) **Holding Out to the Public**: "In further confirmation of the conclusion that defendant was practicing law, the evidence establishes that he advertised and held himself out as a 'Tax Consultant,' which by reasonable implication advised the public that he was competent to give legal advice on the law of taxation." *Id.* at 798.

(2) **Giving Legal Advice & Counsel**: "For a consideration, and as part of his regular income tax work, defendant advised and determined for the taxpayer whether the latter had attained the status of a lawful marriage with a woman with whom he had been living but to whom he had never been ceremonially married." *Id.*

---

[2] Nora Freeman Engstrom and James Stone, *Auto Clubs and the Lost Origins of the Access-to-Justice Crisis*, Yale Law Journal (Feb. 16, 2024), *available at* https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4728564. *See also* Laurel Rigertas, *The Birth of the Movement to Prohibit the Unauthorized Practice of Law*, Quinnipac Law Review (2018), *available at* https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3128969 (studying the origins of UPL in the late 1800s and early 1900s); Barlow F. Christensen, *The Unauthorized Practice of Law: Do Good Fences Really Make Good Neighbors-Or Even Good Sense?*, American Bar Foundation Research Journal (1980), *available at* https://www.jstor.org/stable/827980 (tracing the origins of UPL back to the founding of the profession in 1700s colonial America); Deborah L. Rhode & Lucy Buford Ricca, *Protecting the Profession or the Public? Rethinking Unauthorized-Practice Enforcement*, Fordham Law Review (2014), *available at* https://ir.lawnet.fordham.edu/flr/vol82/iss6/2/ (discussing the need for UPL to focus on public interests, and dating the beginning of UPL enforcement back to the early twentieth century).

(3) **Performing Legal Services**: "Whether a difficult or doubtful question of law is resolved by the giving of advice to, or the doing of an act for, another must in each case depend upon the nature of the problem involved." *Id.* at 797.

(4) **Dealing with Complex Legal Matters**: "When an accountant or other layman who is employed to prepare an income tax return is faced with difficult or doubtful questions of the interpretation or application of statutes, administrative regulations and rulings, court decisions, or general law, it is his duty to leave the determination of such questions to a lawyer." *Id.*

(5) **The Public would be Protected by its Regulation**: "The protection of the public, as the purpose of confining law practice to a licensed bar, ancient as it is in its origin, is of vital importance today." *Id.* at 795.

2.3. Legal Practice and Applicable MN Rules of Professional Conduct (e.g., Competence, Confidentiality)

While the MSBA's mandate did not specifically mention legal practice, the organization's wide purview allowed us to explore how LLMs might relate to lawyers' practice, including applicable rules and practical considerations.

The rules of professional conduct address lawyers' ethical responsibility, which may be implicated using LLMs — as well as how lawyers' use of technology can help them avoid unreasonable fees. The relevant portions of Minnesota's Rules of Professional Conduct are as follows:

Rule 1.1: *Competence*.

A lawyer shall provide *competent representation* to a client. Competent representation requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation.

Rule 1.18: *Duties to Prospective Client*.

(a) A person who consults with a lawyer about the possibility of forming a client-lawyer relationship with respect to a matter is a prospective client.

(b) Even when no client-lawyer relationship ensues, a lawyer who has consulted with a prospective client shall not use or reveal information obtained in the consultation, except as Rule 1.9 would permit with respect to information of a former client.

(c) A lawyer subject to paragraph (b) shall not represent a client with interests materially adverse to those of a prospective client in the same or a substantially related matter if the lawyer received information from the prospective client that could be significantly harmful to that person in the matter, except as provided in paragraph (d). If a lawyer is disqualified from representation under this paragraph, no lawyer in a firm with which that lawyer is associated may knowingly undertake or continue representation in such a matter, except as provided in paragraph (d).

Rule 1.5: *Fees*.

(a) A lawyer shall not make an agreement for, charge, or collect an *unreasonable fee* or an unreasonable amount for expenses. The factors to be considered in determining the reasonableness of a fee include the following:

(1) the *time and labor required*, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;

…

(3) the fee *customarily charged* in the *locality* for similar legal services;

(4) the *amount involved* and the results obtained;

(5) the *time limitations* imposed by the client or by the circumstances; …

Rule 1.6: *Confidentiality of Information*.

(a) Except when permitted under paragraph (b), a lawyer shall not knowingly reveal information relating to the representation of a client.

(b) A lawyer may reveal information relating to the representation of a client if: (1) the client gives informed consent . . . (3) the lawyer reasonably believes the disclosure is impliedly authorized in order to carry out the representation.

(c) A lawyer shall make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client.

Rule 5.3: *Responsibilities Regarding Nonlawyer Assistants*.

> With respect to a nonlawyer employed or retained by or associated with a lawyer: (a) a partner and a lawyer, who individually or together with other lawyers possess comparable managerial authority in a law firm, shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the nonlawyer's conduct is compatible with the professional obligations of the lawyer; (b) a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer; and (c) a lawyer shall be responsible for the conduct of a nonlawyer that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if: (1) the lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved; or (2) the lawyer is a partner or has comparable managerial authority in the law firm in which the person is employed, or has direct supervisory authority over the person, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

Rule 5.4: *Professional Independence of a Lawyer*

> . . . (b) A lawyer shall not form a partnership with a nonlawyer if any of the activities of the partnership consist of the practice of law.

Minn. R. Prof'l Conduct 1.1, 1.18 1.6, 5.3 (2022).

2.3.1 MIT Task Force and Other States' Guidance

This Working Group has taken inspiration from several other groups that have considered how LLMs fit into existing ethical rules. In particular, we have been impressed with the work of MIT and Stanford, whose Task Force on Responsible Use of Generative AI for Law ("MIT Task Force") provided helpful suggestions on how to align LLM-based processes with lawyers' existing ethical obligations: https://law.mit.edu/pub/generative-ai-responsible-use-for-law

The MIT Task Force's guidance has helped shape the documents provided by the State Bar of California, Argentina, and several others. As such, the MSBA Working Group sees no need to re-create the wheel. Rather, we reference the link above, including these principles:

1. **Duty of Confidentiality** to the client in all usage of AI applications;
2. **Duty of Fiduciary Care** to the client in all usage of AI applications;
3. **Duty of Client Notice and Consent*** to the client in all usage of AI applications;

4. **Duty of Competence** in the usage and understanding of AI applications;
5. **Duty of Fiduciary Loyalty** to the client in all usage of AI applications;
6. **Duty of Regulatory Compliance** and respect for the rights of third parties, applicable to the usage of AI applications in your jurisdiction(s);
7. **Duty of Accountability and Supervision** to maintain human oversight over all usage and outputs of AI applications;

*Consent may not always be required — refer to existing best practices for guidance. We [MIT Task Force] also seek feedback on whether or when consent may be advisable or required.

2.3.2 Rules based on both Client Risk and Client Benefits

In this Working Group's estimation, the Minnesota Rules of Professional Conduct rules already offer good guidance regarding LLMs. We consider those rules' applicability to LLMs in two ethical categories:

1. **Rules on Client Risk:** Most of these rules seek to ensure that lawyers do not do things that might cause their clients undue risk, including requiring competence and preserving confidentiality.
   a. **Competence.** Lawyers must, of course, ensure that LLM-based output is accurate.
   b. **Confidentiality.** Lawyers must, of course, ensure that their tools, including LLM-backed tools, ensure client confidentiality.
   c. **Supervisory authority.** Lawyers must, of course, ensure that they properly supervise and delegate responsibilities. That includes delegation to both humans and to machines.
2. **Rules on Client Benefits:** In addition to those Risk-Based rules, additional Benefit-Based rules — giving clients benefits — including requiring lawyer "competence" and prohibiting an "unreasonable fee" has relevance to our LLM purview:
   a. **Competence** includes "benefits associated with relevant technology"
      i. Under Comment 8 to Rule 1.1, lawyers "should keep **abreast** of **changes** in the law and its practice, including the **benefits** and risks associated with **relevant technology**." *Available at* https://www.revisor.mn.gov/court_rules/pr/subtype/cond/id/1.1/
      ii. The rule requiring competence also includes *benefits* of advancing technology:
         1. In the past, **book-based legal research** was the norm. But book-based legal research — and their efficiencies — are outdated, favoring **electronic legal databases'** speed.

2. In the past, **paper-based letters** and faxes were the norm. But those inefficiencies are outdated, favoring **email's** speed. See ABA Formal Opinion No. 99-413 (Mar. 10, 1999) ("A lawyer may transmit information relating to the representation of a client by unencrypted e-mail.")

3. In the past, **paper discovery documents** were the norm. But those inefficiencies are outdated, favoring **electronic documents (ESI)** and their concomitant speed (e.g., searching). *See U.S. v. O'Keefe,* 537 F.Supp.2d 14 (D. D.C. 2008) ("I expect the government to preserve the electronically stored information in its native format"); *Lawson v. Love's Travel Stops & Country Stores*, Civ. No. 1:17-CV-1266 (M.D. Pa. Dec 23, 2019) ("Advancements in technology now enable us to collect, retain, analyze and review electronically stored information (ESI) on a scale which was unimaginable a generation ago.").

b. **Unreasonable fees**

i. Each of the items above (e.g., book-based research, paper-based letters, paper discovery documents) can today be interpreted as "unreasonable." And clients' bills have benefited from "reasonable fees."

ii. How long before a court or other authority will rule that spending 10 hours on a task — that an LLM-backed tool can perform in 2 minutes — constitutes an "unreasonable fee" under Rule 1.5?

"Old lawyering" always gives way to "new lawyering." Lawyers in the 1930s were less technologically sophisticated than those in the 1950s, who were less sophisticated than those in the 1980s, who were less sophisticated than those in the 2000s, who were less sophisticated than those in 2024. Lawyers have a duty to keep abreast of technological changes — including LLM-based changes — to both (1) avoid undue risk and (2) ensure client benefits. And we should not let risks overshadow client benefits: They are both important, ethically.

We would encourage our proposed successor AI Standing Committee to consider whether Minnesota should adopt — or perhaps adapt — the fine work of other organizations who have assessed LLM use into the context of lawyers' existing ethical duties.

SECTION 3.
Regulating "legal advice" and "practice of law," not "legal information"

One of this Working Group's tasks is to determine how LLMs might relate to "legal advice" and the "practice of law." But as noted above, Minnesota's UPL statute does not define the "practice of law," nor does the statute define "legal advice." Furthermore, the statute does not define permissible "legal information" (e.g., statutes, cases, regulations, treatises, court handbooks, court pro se guides, lawyer websites).

As such, any interpretation of the "practice of law" or "legal advice" might seek to cross-reference courts' interpretations, including those above. But even those descriptions do not provide any clarity to distinguish "practice of law" or "legal advice" from permissible "legal information" (e.g., legal books, caselaw, treatises).

First impression: "Legal Advice" vs. "Legal Information" The question of whether AI and LLMs might constitute "legal information" or "legal advice" appears to be a matter of first impression. After doing a full analysis of Minnesota cases and statutes, we're not aware of any Minnesota court or any other authority that has considered this question.

Legal Information has always included primary law, as well as secondary materials:

- **Primary law**: Statutes, regulations, caselaw, administrative opinions
- **Secondary materials:** In addition, "legal information" similarly includes treatises, articles, and commentaries on the law.
- **Lawyers' websites:**
    - Is a law firm website — discussing a lawyer's areas of expertise — performing UPL?
    - "Injured in a car crash? Here's what you need to know about Minnesota law!"
    - Probably not. Especially if you include disclaimers: "This is not legal advice."

Legal information has also always included legal concepts (e.g., elements of a breach of contract claim), as well as propositions (e.g., Black Letter Law) — all as provided by legislators, judges, and regulators.

Legal information underpins our legal system's foundation. It must be accessible to all. We're all bound by the law — so we should all have access to it. As the Supreme Court noted in 2020, "'Every citizen is presumed to know the law, and... 'all should have free access' to its contents.'" That access to legal information

is provided by various free resources, such as Google Scholar (for cases) and Cornell's Legal Information Institute (for statutes).

No court or authority clearly distinguishes "legal information" from "legal advice" or "practice of law." The Minnesota Supreme Court has noted that attorney-client privilege applies "only to advice which is legal in nature." *Polaris, Inc. v. Polaris, Inc.*, 967 N.W.2d 397, 408 (Minn. 2021). Of course, this "definition" is circular — essentially "Legal advice is advice that is legal." That definition provides no clarity regarding our LLM-based task.

***Gardner's* discussion of "legal advice" without addressing "legal information."** The central piece of Minnesota case law discussing the unauthorized practice of law related to furnishing "legal advice" is *Gardner v. Conway*, 48 N.W.2d 788 (Minn. 1951) (involving a public accountant who provided clients with advice about tax laws while preparing their income tax returns). The relevant portion relate to "resolving legal questions" through "advice" or "action":

> "Generally speaking, whenever, as incidental to another transaction or calling, a layman, as part of his regular course of conduct, *resolves legal questions* for another — at the latter's request and for a consideration — by giving him *advice* or by *taking action* for and in his behalf, he is practicing law if difficult or doubtful legal questions are involved which, to safeguard the public, reasonably demand the application of a trained legal mind."

Gardner v. Conway, 48 N.W.2d 788, 796 (Minn. 1951) (emphasis added). Query whether any court would find that a machine (e.g., LLM) has *Gardner's* requisite "trained legal mind." And *Gardner* does not attempt to distinguish "legal information" from "legal advice."

The American Bar Association defines the "practice of law" as "the application of legal principles and judgment with regard to the circumstances or objectives of a person that require the knowledge and skill of a person trained in the law," and "[a] person is presumed to be practicing law when . . . [g]iving *advice* or counsel to persons." ABA TASK FORCE ON THE MODEL DEFINITION OF THE PRACTICE OF LAW, *Definition on the Practice of Law* (Sep. 18, 2002), https://www.americanbar.org/groups/professional_responsibility/task_force_model_definition_practice_law/model_definition_definition/ (emphasis added).

But the ABA, like other authorities, refers to a "person" — not the LLM-based machines that is this Working Group's charge. And the ABA, like Minnesota courts, declines to distinguish "legal advice" from "legal information."

Minnesota Rules of Professional Conduct. Comments to the MPRC — which governs Minnesota's licensed attorneys — state that attorney-client communication "includes a disclosure of the *facts* and *circumstances* giving rise to the situation, any explanation reasonably necessary to inform the client or other person of the *material advantages* and *disadvantages* of the proposed course of conduct and a discussion of the client's or other person's *options* and *alternatives*." Comment: Informed

Consent [6], Rule 1.0: Terminology, MINN. RULES OF PRO. CONDUCT, https://www.revisor.mn.gov/court_rules/pr/subtype/cond/id/1.0/ (emphasis added).

But as noted above, converting a person's "facts and circumstances" into an explanation of law (statutory or caselaw) that can give "material advantages and disadvantages" is no longer the sole provenance of humans; LLMs are now able to provide those explanations easily and quickly.

And because the Minnesota Rules of Professional Conduct apply to licensed attorneys — not LLMs — this definition does not aid this Working Group in performing its required tasks.

What is the line between "legal information" and "legal advice"? In contrast to our historical concept of "legal information," our concept of "legal advice" has historically been viewed as applying that legal information (e.g., legal concepts, statutes, caselaw) to a client's specific facts. (Or, if you prefer, "applying specific facts to law.") Throughout human history, the only entities that could apply law to specific facts were humans.

LLMs can now apply law to facts. With today's LLMs, machines are now increasingly capable of applying the law to specific facts. As such, our Working Group is assessing novel questions about whether LLMs providing "legal information" might also constitute "legal advice."

Upload a statute and caselaw into an LLM, asking the LLM to consider how a person's specific facts apply to statutory law and caselaw, and the LLM will provide a response. And that response might be shockingly similar to words that a lawyer might write. Perhaps even better.

Disclaimers. Massively popular LLMs (e.g., ChatGPT, Gemini, CoPilot) run by some of the world's largest companies (e.g., Microsoft, Google, OpenAI) are also likely to provide the same types of disclaimers as lawyers provide on firm websites: "This is not legal advice." Of course, these disclaimers help keep lawyers from creating attorney-client relationships. Do they also keep consumers from believing that any attorney-client relationship exists — when consumers use tools like LLMs?

Or are disclaimers insufficient, where a vulnerable population may not fully appreciate the risk, even with such disclaimers? Unsophisticated people, people unfamiliar with our legal system, immigrants, and other non-English speakers (even with AI translation tools) who may not appreciate the impact of relying on such AI generated responses and so such disclaimers are not effective and pose a real risk to certain populations.

At the same time, what legal sources do those vulnerable populations rely upon today? Google searches? Their friends and family? And are LLM-backed tools better or worse than the status quo? And how will today's LLMs compare to tomorrow's LLMs, which are rapidly improving? Are some legal problems (e.g.,

criminal law) more risky than other use cases (e.g., landlord-tenant law)? And does the Bar have a role in educating the population about potential pitfalls? We recommend Bar further balance LLMs' risk and benefits — for particular use cases, and for particular populations.

As we note below, other regulators — the new European AI Act for example — prohibit certain uses, and have higher restrictions for others, and only in the lowest risk areas allow such disclaimers. *See* AI Act, adopted March 13, 2024. This risk-based framework, described later in this paper, could help identify to what extent disclaimers sufficiently protect the public in such applications.

Declining to provide definitions. For the reasons discussed above, this Working Group declines to create definitions that would attempt to distinguish "legal advice" from "legal information." We think that attempting to clearly differentiate those terms would be an exercise in futility, as they are so dependent on context, and even then, subject to differing views. In addition, interpreting statutes is the province of the Minnesota courts, not this Working Group.

As such we decline to define "legal advice" as distinguished from "legal information," since we think that drawing any distinction between the two is very, very difficult — if not impossible in the abstract. That has likely always been true, and its likely impossibility is even more apparent now that LLMs can apply law to particular facts. Impossibility may be the reason that no court has attempted to distinguish "legal advice" from "legal information" in the UPL statute's nearly 95-year history.

Only humans who are deemed to have "good character" may provide "legal advice" — as a matter of current law.

In addition to the challenging issue of defining ante hoc legal "information" vs. legal "advice," Minnesota (and other states) has other critical requirements for the privilege of "practicing law."

These include competency requirements such as holding a 4-year bachelor's degree, earning a juris doctorate from an accredited law school, and passing both an Ethics test and the Bar exam. More importantly, the Board of Law Examiners, and its process, was "established to ensure those who are admitted to the bar have the necessary competence **and character** to justify the trust and confidence that clients, the legal system, and the legal profession place in lawyers. https://ble.mn.gov/wp-content/uploads/2021/09/BLE-Rules-10-1-21.pdf (Bold added).

Minnesota law and the Rules of Professional Conduct outline a host of obligations that inure to "people" regarding ethical and legal duties that make no sense when applied to an LLM following a statical formula. This would be the same as applying them to a calculator (albeit it an amazingly powerful one). Evaluating "character" and an expectation of professional ethics is not perfunctory. Rather, it is ingrained within

the very fabric of our justice systems given the potential for attorneys to create harm by abusing their license, and to help protect the reality and perception of fairness in our courts; yet others see this as window dressing. *See* https://clp.law.harvard.edu/knowledge-hub/magazine/issues/character-and-fitness/a-higher-bar/

We do not offer a solution to this challenge, and instead highlight it as an area the Working Group often debated without resolution. An issue so important, and complex given the potential of AI to radically improve access to justice for so many, warrants a group of more robust, diverse experts and stakeholders than represented by this Working Group.

We recommend that the MSBA establish an AI Standing Committee, which should pay close attention to the American Bar Association's parallel work on this topic. Some members also suggested the European model of regulating uses may be more suited to improving access to justice for certain lower risk activities, like assisting in applications, and not in other cases, such as criminal cases with a constitutional right to counsel.

SECTION 4.
First Amendment Challenges to UPL laws

This Working Group is aware of challenges that might implicate the constitutionality of Minnesota's UPL laws as applied to specific use cases. In two federal cases, two federal courts have held that "unlawful practice" statutes were unconstitutional violations of the First Amendment's "Free Speech" clause. We discuss each here.

Upsolve: In *Upsolve v. James*, the Southern District of New York granted Upsolve a preliminary injunction, using an "as applied" standard to hold that Upsolve's argument — that New York's UPL statute unlawfully constrains Upsolve's ability to provide low-income persons information, thereby constraining Upsolve's freedom of speech — is likely to succeed on the merits. The case is currently being appealed to the Second Circuit. *Upsolve, Inc. v. James*, Case No. 1:22-cv-00627-PAC (S.D.N.Y. May 24, 2022), *available at* https://www.docketalarm.com/cases/New_York_Southern_District_Court/1--22-cv-00627/Upsolve_Inc._et_al_v._James/68/, appealed to Case No. 22-1345 (2d Cir.), *available at* https://www.docketalarm.com/cases/US_Court_of_Appeals_Second_Circuit/22-1345/Upsolve_Inc._v._James/

Nutt: In a similar case in North Carolina, *Nutt v. Ritter*, a federal court recently held that the North Carolina Board of Examiners for Engineers and Surveyors violated a retired engineer's free-speech rights. In December, the federal court held that the regulators' attempt to prohibit the retired engineer from providing an engineering

report constituted an unconstitutional violation of free speech. The court reasoned that the engineering guild's "interests must give way to the nation's profound national commitment to free speech." *Nutt v. Ritter*, Case No. 7:21-cv-00106 (E.D.N.C. Dec. 20, 2023), available at https://www.docketalarm.com/cases/North_Carolina_Eastern_District_Court/7--21-cv-00106/Nutt_v._Ritter_et_al/63/

These two cases raise similar, difficult questions: Can states continue asserting UPL statutes without impinging on free speech rights? Upsolve is before the Second Circuit, and North Carolina federal courts appeal to the Fourth Circuit. Our Working Group's deadline has passed while both cases are being appealed. In the interim, our Working Group wonders that if those federal district court decisions are upheld, would Minnesota's UPL statute face similar First Amendment challenges?

SECTION 5.
Causes of Action: Alternatives to UPL

Of course, if the UPL statute doesn't apply to LLM-backed tools — which might be considered "legal information" rather than "legal advice" — one might then wonder how a consumer who uses those tools might recover from the type of public harm that UPL ostensibly seeks to protect? Common-law and statutory claims might protect members of the public.

Below are statutory and common-law claims that might apply in these scenarios:

(1) **Negligence**: Plaintiffs could argue that the LLM-backed tool's provider had a duty to ensure the tool's reliability and accuracy in providing legal advice, the tool's failure to provide correct legal advice breached that duty, and if the person suffered a legal detriment or financial loss as a direct result of relying on the incorrect advice provided by the tool, then the breach of duty by the provider can be considered the proximate cause of the person's injury.

(2) **Product Liability**: Plaintiffs could argue that the LLM-backed tool was defective in providing accurate legal advice, making it unreasonably dangerous for its intended use, and that this defect, which existed at the time it was provided, directly caused the plaintiff's legal or financial harm.

(3) **Misrepresentation**: Plaintiffs could argue that the provider of the LLM-backed tool made a false representation about the tool's reliability in providing legal advice, knew or was indifferent to the truth of this representation, and intended for the plaintiff to rely on this advice in making legal decisions.

(4) **Unfair or Deceptive Trade Practices**: Plaintiffs could argue that the provider of the LLM-backed tool engaged in deceptive trade practices by

misleading consumers about the quality and reliability of the tool in providing legal advice.

(5) **Breach of Contract**: Plaintiffs could argue that a contract was formed for the provision of accurate legal advice using the LLM-backed tool, the plaintiff fulfilled any conditions precedent by using the tool as intended, the defendant breached the contract by failing to provide accurate advice, and the plaintiff suffered damages as a result.

(6) **Consumer Protection**: Plaintiffs could argue that the provider of the LLM-backed tool violated the Consumer Protection Act by using misrepresentation or misleading statements about the tool's accuracy and reliability in providing legal advice, constituting unfair or deceptive business practices.

(7) **False Advertising**: Plaintiffs could argue that the provider of the LLM-backed tool had the intent to deceive, made a statement or advertisement claiming the tool's reliability in providing legal advice, which was false or misleading, and as a result, the plaintiff suffered damages.

(8) **Fraud**: Plaintiffs could argue that the provider of the LLM-backed tool made a false representation about the tool's reliability in providing legal advice, which was a material fact, knew or lacked confidence in the truth of this representation, intended for the plaintiff to rely on this advice, and as a result, the plaintiff suffered damage.

A potential benefit of declining to assert UPL violations, instead leveraging these *existing* causes of action:

- **UPL,** as a criminal claim, requires a regulatory authority (e.g., prosecutors) to bring a lawsuit or regulatory proceeding. Prosecutions under UPL are very, very rare.
- **These private causes of action** (civil) can be brought by *any plaintiff* with standing. So this could effectively be a "private cause of action" for UPL — which can be brought by any wronged person.

Given the alternatives to UPL, many statutory and common-law claims, with even broader supporting caselaw and enforcement capabilities, can address challenges in applying the UPL statute to LLM-based tools. We also acknowledge the possibility that our courts and legislature might create new common-law or statutory claims regarding LLM-backed technologies. These existing and potential claims can effectively serve UPL's ostensible purpose: public protection.

SECTION 6.
Overview of the Regulation of Artificial Intelligence

6.1. Definitions of "Artificial Intelligence"

Since this Working Group has been asked to address "artificial intelligence," that term requires a definition. Such a definition is difficult to find, since "artificial intelligence" has been a term used since the 1950s — so that term's application to any particular technology has been a matter of moving goalposts:

- **1950s**: "Artificial Intelligence" might have included **calculators**
- **1980s**: "Artificial Intelligence" might have included **spreadsheets**
- **2000s**: "Artificial Intelligence" might have included **MapQuest** and **Google Maps**
- **2010s:** "Artificial Intelligence" might have included **IBM Watson**
- **2020s**: "Artificial Intelligence" now apparently includes **Generative AI**, including **LLMs**.
- **2030s**: What technology might constitute "Artificial Intelligence" in the coming decade?

Given the moving goalposts, we look to various authorities, which have attempted to define the term "AI."

6.1.1. Organisation for Economic Co-operation and Development

The OECD defines "artificial intelligence" as follows:

> An AI system is a machine-based system that, for explicit or implicit objectives, infers, from the input it receives, how to generate outputs such as predictions, content, recommendations, or decisions that can influence physical or virtual environments."

https://oecd.ai/en/ai-principles

This definition could include two AI sub-types:

1. **Symbolic AI** (aka "Good Old Fashioned AI," or "GOFAI") is an approach to artificial intelligence that relies on predefined symbolic rules and logic to perform tasks such as reasoning, problem-solving, and knowledge representation, treating information as symbols and manipulating them according to formal rules.
   https://en.wikipedia.org/wiki/Symbolic_artificial_intelligence
2. **Connectionist AI** is an approach to artificial intelligence that models computational processes as interconnected networks of simple units, similar

to neurons in the brain, which can learn and adapt by adjusting connections based on input data for tasks like pattern recognition and decision-making. https://en.wikipedia.org/wiki/Connectionism

Today's Transformer-based LLMs (e.g., ChatGPT, Gemini, LLaMA) are a form of Connectionist AI, since they are based on Neural Nets, which seek to mimic brains' neurons. Because ChatGPT is a Transformer-based LLM that spurred this Working Group's inception, we choose to apply the definition of "artificial intelligence" to LLMs — and tools that deploy LLMs.

6.1.2 U.S. Executive Order and 15 U.S.C. 9401(3)

President Biden's Executive Order, signed on October 30, 2023, provides this definition of "AI":

> The term "artificial intelligence" or "AI" has the meaning set forth in 15 U.S.C. 9401(3): a machine-based system that can, for a given set of human-defined objectives, make predictions, recommendations, or decisions influencing real or virtual environments.

Section 3(b) of the Executive Order on the Safe, Secure, and Trustworthy Development and Use of Artificial Intelligence (Oct. 30, 2023), *available at* https://www.whitehouse.gov/briefing-room/presidential-actions/2023/10/30/executive-order-on-the-safe-secure-and-trustworthy-development-and-use-of-artificial-intelligence/

In turn, here is 15 U.S.C. 9401(3) and its statutory definition:

> (3) Artificial intelligence
>
> The term "artificial intelligence" means a machine-based system that can, for a given set of human-defined objectives, make predictions, recommendations or decisions influencing real or virtual environments. Artificial intelligence systems use machine and human-based inputs to-
>
>> (A) perceive real and virtual environments;
>>
>> (B) abstract such perceptions into models through analysis in an automated manner; and
>>
>> (C) use model inference to formulate options for information or action.

15 U.S.C. 9401(3), *available at* https://uscode.house.gov/view.xhtml?req=(title:15%20section:9401%20edition:prelim)

Again, this broad definition includes both Symbolic AI and Connectionist AI, so our Working Group chooses to include its application to LLMs.

6.1.3. EU AI Act (Adopted March 13, 2024)

The EU AI Act provides this definition of "AI":

> 'AI system' is a machine-based system designed to operate with varying levels of autonomy and that may exhibit adaptiveness after deployment and that, for explicit or implicit objectives, infers, from the input it receives, how to generate outputs such as predictions, content, recommendations, or decisions that can influence physical or virtual environments;

EU AI Act, Article 3(1), *available at* https://data.consilium.europa.eu/doc/document/ST-5662-2024-INIT/en/pdf

The European Parliament adopted the AI Act by plenary vote on March 13, 2024. The general framework of this regulation regulates AI by its intended use. It creates four risk levels/categories and requires all AI offerings to be assessed prior to being released into the EU market:

(1) Unacceptable risk AI systems, which are prohibited outright;

(2) High risk AI systems that pose a significant risk to health, safety or fundamental rights, which must meet requirements for: data quality; documentation and traceability; transparency; human oversight; accuracy, cybersecurity and robustness; demonstrated competence via 'conformity assessments'; and if deployed by public authorities, registered in a public EU database (with some exceptions).

(3) Low risk AI systems, which require providers to ensure AI systems that interact with individuals are designed and developed to guarantee individual users are aware they are interacting with an AI system, and encourages providers to develop and commit to industry codes.

(4) General purpose AI models, which require providers to: perform fundamental rights impact assessments and conformity assessments; implement risk management and quality management systems to continually assess and mitigate systemic risks; inform individuals when they interact with AI, and that AI content be labelled and detectable; and test and monitor for accuracy, robustness and cybersecurity. It notes that GPAI models with systemic risk are subject to greater testing and reporting requirements.

The EU AI act's general risk-based framework may provide a useful structure for regulating AI in connection with legal services. We recommend a more detailed analysis of how this framework might apply.

6.1.4. MSBA Working Group's focus on LLM-based "AI"

Of course, while all the definitions above are helpful, for the purposes of this Minnesota State Bar Association Working Group, none of those definitions is binding. Our work is informed by all the definitions above, and we address our particular focus on the type of "AI" that is most at issue at this group's inception in 2023 — and the type of "AI" that most applies to legal work: Large Language Models (LLMs) and LLM-backed tools.

SECTION 7.
Lawyers' Obligations to Promote Access to Justice

We as lawyers have an obligation to help ensure that everyone has access to justice. Those obligations are enshrined in our profession's rules and regulations. But our profession's "special responsibility" to ensure the "quality of justice" is failing.

7.1. Rules obligating lawyers to help ensure access to justice

The Preamble to the American Bar Association's (ABA) Model Rules of Professional Conduct provide that "[a] lawyer, as a member of the legal profession, is a representative of clients, an officer of the legal system and *a public citizen having special responsibility for the quality of justice*." American Bar Association, Model Rules of Prof'l Conduct Preamble & Scope (2023) (emphasis added), *available at* https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/model_rules_of_professional_conduct_preamble_scope/.

Our responsibility to ensure justice is so important that the ABA Model Rules and Minnesota Rules of Professional Conduct both direct lawyers to "aspire" to render at least 50 hours of pro bono services per year. *Id.* at R. 6.1, *available at* https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_6_1_voluntary_pro_bono_publico_service/; Minn. R. Prof'l Conduct 6.1 (2023), https://www.revisor.mn.gov/court_rules/pr/subtype/cond/id/6.1/.

Our ethical obligation to promote access to justice must evolve over time to ensure that the dynamic technological advances in the legal profession advance, rather than hinder, the ability for all people, regardless of resources, to meaningfully participate in the legal system to protect and access their rights.

7.2. Our failure to provide access to justice

But despite our ethical obligations, we are failing. In 2022, the Legal Services Corporation found "[l]ow-income Americans do not get any or enough legal help for 92% of their substantial civil legal problems." Legal Services Corporation, *The Justice Gap: The Unmet Civil Legal Needs of Low-Income Americans* (2022), https://justicegap.lsc.gov/resource/executive-summary/.

The need to radically improve Self-Represented Litigants' access to and participation in the legal system is clear. Generative AI and related technologies may provide powerful tools to help address systemic issues that contribute to this justice gap.

Chief Justice John Roberts, in his *2023 Year-End Report on the Federal Judiciary*, provided these words regarding the power of AI to help low-income individuals:

> For those who cannot afford a lawyer, AI can help. It drives new, highly accessible tools that provide answers to basic questions, including where to find templates and court forms, how to fill them out, and where to bring them for presentation to the judge — all without leaving home. These tools [AI] have the welcome potential to smooth out any mismatch between available resources and urgent needs in our court system.[3]

Those words seem pretty clear: Chief Justice Roberts appears to favor using LLMs to help the low-income population, bridging the access-to-justice gap. We should, too.

As the legal profession grapples with the changes that Generative AI will inevitably bring, it must ensure that we do not outright prohibit the public's use of these new technologies, which can create a more equitable and accessible legal system for all stakeholders.

7.3. Opportunities to increase Access to Justice

Generative AI has the capacity to change society. Regarding access to justice, our LLM regulations could lead us down two divergent paths:

1. **Democratize the law**, giving everyone unprecedented access to justice
2. **Further exacerbate inequalities**, widening the access-to-justice gap

---

[3] Chief Justice John G. Roberts, Jr., *2023 Year-End Report on the Federal Judiciary* (Dec. 31, 2023), *available at* https://www.supremecourt.gov/publicinfo/year-end/2023year-endreport.pdf

If we create regulations that only permit licensed attorneys to access Generative AI for legal purposes, only those who can afford an attorney will benefit. The poor will, again, be left out. The rich will continue to hire lawyers, who will continue using the best LLM-backed tools. The poor — who lack representation, needing those LLM-backed tools the most — will be denied them.

With proper guardrails in place, Generative AI could create massive benefits in assisting self-represented litigants (SRLs) to access reliable resources and understand how to navigate the judicial system, without violating UPL statutes and regulations or otherwise constitute the unauthorized practice of law as interpreted by the Minnesota Supreme Court.

Below are several potential areas where Generative AI might be applied for SRLs. Each section addresses potential UPL concerns, if any.

This section focuses on civil law applications. While there are undoubtedly worthy criminal law applications, the right to counsel in criminal cases alleviates some of the issues faced by SRLs in the civil context.

7.3.1. Forms assistance

Forms assistance is a powerful access-to-justice tool that may help SRLs more effectively participate in the legal system. Without forms, many SRLs may not know what procedural steps to take or what facts the Court requires to evaluate a claim (e.g., the dates and method by which a tenant informed their landlord of a serious repair issue, the paperwork and forms needed to support a SRL's filing).

The Minnesota Courts and legal aid currently maintain public document automation programs that use predefined logic to assist SRLs in creating legal forms. The forms ask the SRL a series of questions and with behind-the-scenes logic, use the SRL's answers to fill out legal forms.

For example, existing automated forms help SRLs fill out simple legal documents and letters, like a Delegation of Parental Authority or a Security Deposit Demand Letter, as well as complete court forms like an Answer to an Eviction Complaint or a Request for a Restraining Order. Generative AI could be used to amplify the power of document automation in several ways.

Automate forms. First, Generative AI could augment the actual automation process. Using AI to create a first draft of an automated form saves the author time and could thereby greatly increase the number of automated forms that the Courts and legal aid offer to the public free of charge. The UPL analysis would remain the same for forms generated with AI as with forms generated using existing non-AI methods.

Conversational interface. Second, Generative AI could create a more conversational interface for end users, as contrasted with the existing scripted flow chart-based model.

- In current document automation programs, the program's author creates a script that is applied to all users.
- Generative AI has the potential to create an interface that is more responsive to SRL inputs:
  - For example, authors currently use static "Learn More" features to offer legal definitions and other clarifications. Generative AI could be leveraged to make it easier for SRLs to ask clarifying questions and receive the same substantive information contained in a "Learn More" feature.
  - In addition, common features such as a multi-select list --- for example, a list of common rental repair issues --- could become more powerful by presenting commonly co-occurring issues and evolving over time based on user inputs.
  - Finally, automated forms could prompt SRLs for an open narrative description of their legal issue and use use the information in this narrative to prefill relevant portions of the form (with later validation by the SRL) and ask the SRL follow-up questions for elements that are not sufficiently addressed in the SRL's initial response.
  - This application raises some UPL risks if the AI responses stray into the territory of providing advice or a recommendation of how an SRL should respond.

Quality assurance. Third, Generative AI could assist with reviewing SRLs forms for errors. This is possible to some extent with existing tools — such as programming an automated form to check that a date provided makes sense — but Generative AI could flag such errors with greater ease, and without requiring the automated form author to anticipate every possible type of error.

For example, many immigration forms require applicants to list each address at which the applicant has lived in the past. AI could be harnessed to flag gaps or overlaps in address history, and even flag inconsistencies between an applicant's narrative (for example, an applicant's affidavit in support of an asylum claim) and address history. This reduces waste and burden for all parties.

Narrative creation. Finally, Generative AI could enhance automated forms by crafting narrative text in the produced legal documents, such as by creating a letter using a specified "tone."

For example, a tenant could craft a letter notifying their landlord of necessary repairs and requiring that those repairs be made within 14 days in accordance with state law. With generative AI, the SRL could choose the tone of the letter, depending on the nature of the SRLs relationship with the landlord.

This final application creates a larger risk of potentially violating the UPL statute, as it involves applying the SRL's facts, as provided during the document assembly

process, to create a tailored legal work product. But we think that risk is properly balanced with the benefits to SRLs.

7.3.2. Navigational assistance

Generative AI can be used to create a chatbot that uses retrieval augmented generation (RAG) and cites its sources. This chatbot could assist SRLs with finding legal information, while minimizing the risk of hallucination.

For example, a chatbot could ingest resources available on an organization's legal information website, so when an SRL asks a question, the chatbot can return the website's relevant resources, along with the resource's plain-language summary. This can help the SRL decide which resources they would like to explore further. To address UPL considerations, the chatbot should be instructed to never tell the SRL what course of action they should take.

7.3.3. Plain language translation

Generative AI can help SRLs understand the law by creating plain language "translation" of statutes, contract terms, case law, and other material that contains legalese. Ideally, attorneys can serve as an intermediary to ensure that the 'translation' is accurate. But as Generative AI becomes more popular, accessible, and accurate (precise), SRLs will likely use Generative AI for this purpose without the benefit of having an attorney first review the plain language version to ensure its accuracy.

Generative AI tools that do not apply an SRL's specific facts to the law likely avoid UPL concerns. And again, the tools can be programmed to avoid UPL risk.

7.3.4. Procedural assistance

Court procedures can be difficult for SRLs to research and understand. Generative AI can help SRLs identify which sources contain relevant procedural rules and explain what those rules mean (see Plain Language Translation above).

Like several of the other examples mentioned, UPL risk can be minimized by instructing the chatbot not to tell SRLs what course of action to take.

7.3.5. Identifying an appropriate legal resource

Generative AI could assist SRLs by helping to identify that a given problem is legal in nature and what kind of legal practitioner might be able to help. Particularly when integrated within general search engines, Generative AI has the capacity to direct them to legal resources that might be able to assist.

A recent study found that 74% of low-income households in the United State experienced at least one civil legal problem in the past year. (Legal Services Corporation, *The Justice Gap: The Unmet Civil Legal Needs of Low-Income*

Americans (2022), available at www.justicegap.lsc.gov) But when the study inquired as to whether those households sought legal help for these issues, the study determined that study participants sought legal help for just 19% of their civil legal problems. *Id.* The study found that when the legal issue was less obviously legal in nature (e.g., did not involve going to court), low-income Americans were less likely to seek help. *Id.*

As Generative AI becomes more commonly used, it can help direct SRLs to resources for problems they might not identify as being legal. This application poses little UPL risk as it simply directs SRLs to potential legal resources rather than, for example, providing SRLs with legal advice.

7.4. Creating an Access to Justice Legal Sandbox

We recommend a pilot project to "test out" Generative AI in an acute area of need, such as housing or immigration. We further recommend a cross-stakeholder AI Standing Committee to further define and refine such a pilot, including representatives from the Attorney General's Office, the Courts, legal aid experts in the target areas who have close familiarity with the needs, as well as private legal professionals.

An LLM Sandbox. Creating a Generative AI Access to Justice Sandbox will foster legal innovation while also providing protections for SRLs or potentially other parties who may offer solutions adhering to UPL laws. A sandbox could create a controlled environment with close regulatory oversight that allows Generative AI to be applied in innovative ways to further access to justice. Under this model, the relative impacts of new Generative AI approaches can be closely monitored and evaluated to determine whether statutory or regulatory changes are in the public interest. To the extent such a project would seek a change or modification to law, it would work with the Judicial Branch and potentially the Legislature for modification or a "safe harbor."

Other sandboxes. Minnesota has previously allowed for similar sandbox "pilot" approaches. The Legal Paraprofessional Pilot Project, launched in 2021, allows non-attorney paraprofessional to represent clients, including in court, in certain case types. (Minnesota Judicial Branch, Legal Paraprofessional Pilot Project, available at www.mncourts.gov/lppp)

Utah's sandbox. Utah also provides a model for a more expansive sandbox. The Utah Legal Sandbox seeks to find innovative solutions to the justice gap by allowing entities to apply for permission to pilot service models that would otherwise violate unauthorized practice of law rules. (Utah Supreme Court, Utah Office of Legal Services Innovation, available at https://utahinnovationoffice.org/). The Utah Office of Legal Services Innovation could serve as a model for creating a similar sandbox in Minnesota, which would allow organizations seeking to improve access to justice

in Minnesota to apply innovative Generative AI approaches to help SRLs navigate the legal system.

Minnesota LLM Sandbox. Like Minnesota's Legal Paraprofessional Pilot Project, which allowed non-attorney professionals to represent clients in limited case types, a regulatory sandbox could specify certain areas of law. If the sandbox was narrowed in such a way, regulators should balance considerations of which areas of law have the greatest access to justice gaps, which areas most significantly impact basic human needs such as the shelter and security, and where Generative AI has the greatest potential to be significantly impactful in increasing access to justice. If the sandbox is to be limited to particular areas of law, the access to justice community should be engaged to assist with weighing these considerations.

Housing Sandbox. Analyzed within such a rubric, an area ripe for a regulatory sandbox is housing law. Safe and secure shelter is a core human need, and many housing cases feature a power imbalance between a sophisticated landlord or financial institution and an individual lay person. The effectiveness of existing SRL tools, such as forms assistance, could be magnified by incorporating generative AI.

Immigration Sandbox. Another area of law that Generative AI has great potential to benefit is Immigration Law. Our country's immigration laws control immigrants' ability to obtain legal work, live in a country free from persecution, and access basic support. While a regulatory sandbox would likely need to be implemented on a federal level, practitioners and funders can focus resources on leveraging Generative AI in ways that stay within the bounds of existing regulatory controls.

Conciliation Court Sandbox. It's this group's understanding that the Minnesota Supreme Court's committee on legal paraprofessional pilot project has already suggested sandboxes for conciliation. This group agrees that this would be a good use case for leveraging Generative AI-backed tools.

Other potential Sandboxes. Beyond those sandboxes above, we think that there's potential for other sandboxes, which would fall into what our group considers a "low risk" category.

Ultimately, as part of its professional obligations to promote access to justice, the legal community must direct its energy and resources toward ensuring that generative AI's potential to transform participation in the legal system closes the access to justice gap, rather than exacerbating it.

7.5. Minnesota's Legal Aid Organizations

This Working Group's guidance seeks to cover and potentially help [legal aid organizations funded by the Legal Services Advisory Committee](#), including without

limitation the [direct service and support program grant recipients](link) that received funding in the most recent LSAC funding cycle.

- Anishinabe Legal Services
- Cancer Legal Care
- Central Minnesota Legal Services
- HOME Line
- Housing Justice Center
- ICWA Law Center
- Immigrant Law Center of Minnesota
- Justice North (formerly LASNEM)
- Law School Clinics:
    - University of Minnesota Law School
    - University of St. Thomas School of Law
    - Mitchell Hamline School of Law
- Legal Assistance of Dakota County
- Legal Assistance of Olmsted County
- LegalCORPS
- Legal Services of Northwest Minnesota
- Mid-Minnesota Legal Aid
- Minnesota Disability Law Center
- Minnesota State Law Library
- Rainbow Health
- Southern Minnesota Regional Legal Services
- The Advocates for Human Rights
- Tubman
- Volunteer Lawyers Network (VLN)

SECTION 8.
Risk-based Frameworks for AI Regulations

Our Working Group has considered implementing a risk-based framework for LLM use in legal tasks. At least two other national and international entities have sought to investigate and regulate Generative AI, including LLMs. Those include both:

1. U.S. President's Executive Order on the Safe, Secure, and Trustworthy Development and Use of Artificial Intelligence
2. The European Union's final draft of the Artificial Intelligence Act (AI Act), approved March 13, 2024

Both take a risk-based approach, seeking to assess the amount of risk in various use cases and applications of Generative AI. This document will summarize each of those risk-based frameworks, in turn.

8.1. U.S. President's Executive Order on the Safe, Secure, and Trustworthy Development and Use of Artificial Intelligence

Signed on October 30, 2023, Executive Order 14110, titled "Safe, Secure, and Trustworthy Development and Use of Artificial Intelligence," aimed to establish a comprehensive framework for responsible AI development and deployment in the United States.

The order outlines a risk-based approach to AI development and use. It emphasizes the need for robust evaluations and policies to mitigate risks before deployment, focusing on addressing the most pressing security risks such as biotechnology, cybersecurity, and critical infrastructure. The order also highlights the importance of responsible innovation, competition, and collaboration to unlock AI's potential while managing its risks

The Executive Order's goals:

1. **Lead in responsible AI development:** The order seeks to position the US as a leader in developing and using AI ethically and responsibly.
2. **Mitigate risks and maximize benefits:** The order seeks to address potential risks associated with AI while fostering its benefits for society and the economy.

Below are Key areas of focus:

● **Safety and security:** The order mandated standards for AI safety and security, requiring developers of certain high-risk systems to share testing results and safety information with the government.
● **Privacy and civil rights:** It emphasized the protection of individuals' privacy and civil rights in the development and use of AI.
● **Equity and fairness:** The order aimed to prevent and address biases and discrimination arising from AI systems.
● **Consumer and worker protection:** It sought to safeguard consumers and workers from potential harm caused by AI, including job displacement and unfair treatment.
● **Innovation and competition:** The order encouraged continued innovation and fostered a fair and competitive environment for AI development.
● **Global leadership:** It emphasized international collaboration and the development of shared principles for responsible AI across different countries.

8.2. European Union's Artificial Intelligence Act (AI Act)

The European Union's (EU) draft of the Artificial Intelligence Act (AI Act), released in January 2024, similarly provides a risk-based approach, including potential benefits.

Like the executive order above, the AI Act provides similar goals:

- **Foster innovation in trustworthy AI:** By encouraging responsible development practices, the Act seeks to position the EU as a global leader in the field.

- **Safeguard fundamental rights:** The framework prioritizes the protection of fundamental rights and ethical principles, ensuring AI applications align with human values.

- **Mitigate potential risks:** By addressing potential ethical issues and societal concerns, the Act seeks to create a safe and responsible environment for AI adoption.

The AI Act adopts a risk-based approach, classifying AI systems into four categories with varying levels of regulation:

- **Unacceptable Risk (Prohibited):** This category encompasses high-risk applications deemed inherently harmful and banned outright. This includes:

  - **Social scoring systems**: Evaluating individuals for non-essential purposes like access to services.

  - **Emotion recognition for manipulative purposes**: Exploiting user vulnerabilities by analyzing emotional state.

  - **Real-time remote biometric identification for general crime prevention:** Extensive use in public spaces.

- **High Risk:** This category includes applications with significant potential for harm and requires strict regulations. Examples include:

  - **Recruitment tools** using AI for candidate selection.

  - **Biometric identification** in law enforcement for specific purposes with safeguards.

- **Limited Risk:** This category encompasses applications with lower potential for harm, subject to proportionate regulations. These include AI systems that generate or manipulate image, audio, or video content (e.g., deepfakes).

- **Minimal Risk:** This category includes applications deemed low-risk, requiring minimal regulatory intervention. Most AI systems will fall into this category and will be subject to fewer obligations.

8.3. Minnesota's potential risk-based approach

This Working Group believes that Minnesota might consider adopting a similar risk-based approach to assessing the risks and benefits of using LLMs in legal contexts. By recognizing that some legal uses of LLMs are less risky than others, Minnesota can ensure that these technologies' deployment for legal tasks are both safe and beneficial. This approach aligns with the principles outlined in the Executive Order on AI, emphasizing the need for responsible development and use while addressing potential risks.

Aligned with the risk-based approach outlined above, we believe that the Legal Aid and Access to Justice use cases, as described in Section 5, fall under the Minimal Risk category. These applications of Generative AI — including forms assistance, navigational assistance, plain language translation, procedural assistance, and identifying appropriate legal resources — are designed to empower self-represented litigants (SRLs) and enhance their ability to navigate the legal system effectively. By providing tools that assist SRLs, these applications can help increase access to justice without posing significant risks that would necessitate stringent regulations.

Given Generative AI's potential to significantly increase access to justice without posing substantial risks, we recommend that the Minnesota State Bar Association draft an opinion letter stating that organizations seeking to assist SRLs in the manner outlined in Section 5 should not be subject to prosecution under the unauthorized practice of law (UPL) statute. Such an opinion letter would provide clarity and assurance to entities working to develop and deploy these low-risk, high-impact tools, fostering innovation in legal aid and ensuring that the benefits of Generative AI are accessible to all Minnesotans, regardless of their ability to afford legal representation.

We also believe that a successor AI Standing Committee should further explore potential use cases, and that successor commission might consider exploring which use cases, if any, belong in each of these categories:

- Unacceptable Risk (Prohibited)
- High Risk
- Limited Risk
- Minimal Risk

SECTION 9. Conclusion

For the past year, the Minnesota State Bar Association Working Group on AI has met regularly, exploring the multifaceted relationship between Large Language Models (LLMs), the Unauthorized Practice of Law (UPL) statutes, and lawyers' ethical obligations. Our journey began with societal recognition of LLMs' transformative potential in legal practice, which inherently interprets and manipulates language. Our work has sought to balance the technological risks with the risks of over-regulation, as well as the potential benefits that LLMs can offer to enhance access to justice.

As we recommend a risk-based regulatory framework, akin to approaches taken by the U.S. government and the European Union, we think that categorizing LLM use in legal contexts into distinct risk levels can help ensure that these technologies are deployed safely and beneficially. And we particularly think that LLMs can greatly assist self-represented litigants (SRLs) navigate our legal system. If organizations are protected from potential UPL prosecution, they can help SRLs with low-risk Generative AI tools, thereby fostering innovation in legal aid.

We also propose the creation of an Access to Justice Legal Sandbox to pilot Generative AI applications in areas of acute need, including housing or immigration law. This type of controlled environment could allow for close regulatory oversight and the evaluation of new AI approaches to determine their impact on — and potential improvement of — access to justice.

We recognize that our legal profession has always had a duty to support equal justice for all, but we must acknowledge that we have fallen *far short* of our ideals. The stark reality is that low-income Americans receive inadequate legal help for the vast majority of their significant legal issues. Our profession's failing underscores the urgent need for innovative solutions. LLMs present a promising opportunity to bridge our vast access-to-justice gap. By leveraging technology responsibly, our profession can allow organizations to offer vital assistance to those who have been underserved by our legal system, fulfilling our ethical obligations and moving closer to the ideal of justice for all.

As noted throughout this document, this Working Group recommends that the MSBA create an AI Standing Committee, which will continue to explore, oversee, and guide all of the work described above. LLMs continue developing rapidly. The AI Standing Committee should keep abreast of those rapid developments, permitting agile adjustments to our profession's approach to this document's noted challenges and promises.

The world stands on the precipice of a new era in legal work, and we believe that the Minnesota State Bar Association can help us through this next stage — not with fear, but with hope. By carefully navigating the risks and benefits of LLMs, we have the opportunity to not only enhance the efficiency and effectiveness of legal work but also to democratize access to justice for all Minnesotans. Our optimism is grounded in the belief that by embracing responsible innovation — innovating not in spite of LLMs, but because of them — we can truly uphold our profession's commitment to public protection, fairness, and access to justice.

MSBA AI/UPL Working Group Recommendations

1. **AI Standing Committee:** That the MSBA establish an AI Standing Committee: 1) to consider whether Minnesota should adopt the work of other organizations who have assessed LLM use in the context of lawyers existing ethical duties; 2) to further explore potential use cases, and 3) to pay close attention to the ABA's parallel work on this topic. *The AI Standing Committee shall operate in accordance with the MSBA Bylaws.*
2. **Access to Justice Legal Sandbox:**
   a. **Creation of Sandbox:** That the MSBA pursue creation of an Access to Justice Legal Sandbox to better harness the potential of LLMs in serving access-to-justice initiatives. This regulatory sandbox would provide a controlled environment for organizations to use LLMs in innovative ways, without the fear of UPL prosecution. By permitting experimentation and evaluation, this sandbox could foster legal innovation while ensuring that the deployment of these technologies is both safe and beneficial.
   b. **Initial Sandbox Pilots:** That the MSBA pursue a pilot project to "test out" Generative AI in an acute area of need, such as housing or immigration and that the MSBA create a cross-stakeholder AI Standing Committee to further define and refine such a pilot, including representatives from the Attorney General's Office, the Courts, legal aid experts in the target areas who have close familiarity with the needs, as well as private legal professionals.

   The AI Standing Committee will continue to study the sandbox/pilot project proposals and make recommendations to the MSBA Board of Governors.

3. *Educational Sessions:* That the MSBA provide educational sessions to its members regarding LLMs and their implications today, including discussing how legal practice might be affected in the near future. *The AI Standing Committee is directed to create educational sessions and/or make recommendations to the Board of Governors related to particular programs.*
4. *Risk-Based Framework:* That Minnesota adopt a risk-based regulatory framework to assessing the risks and benefits of using LLMs in legal contexts, akin to approaches taken by the U.S. government and the European Union. *The AI Standing Committee is directed to continue to study this proposal and make recommendations to the Board of Governors.*
5. Opinion Letter: That the MSBA seek a draft opinion letter stating that organizations seeking to assist SRLs in the manner outlined in Section 5 should not be subject to prosecution under the unauthorized practice of law (UPL) statute. *The AI Standing Committee is asked to submit a draft request letter for the MSBA President to send to the Office of Lawyers Professional Responsibility requesting that it issue an advisory opinion.*
6. **AI Standing Committee Oversight:** That the AI Standing Committee be authorized to oversee — and give reports to the MSBA regarding — all of the initiatives above.

NOTE: Recommendations language in italics was added by the MSBA Assembly prior to adoption.