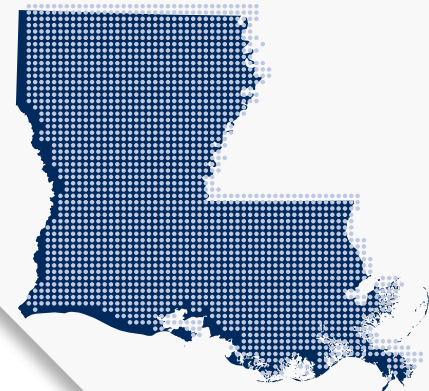




# WHY “TAPPING THE BRAKES”

## Should Be Part of Your Tech Philosophy



By Scott L. Sternberg and Meghan E. Carter

Just a few years ago, the pages of the *Louisiana Bar Journal* declared that lawyers needed to adopt a “Tech Philosophy,” and you still do.

But, young lawyer or otherwise, your tech philosophy for your practice doesn’t have to be an unqualified “yes.” With artificial intelligence (AI) taking center stage, even tech-forward practices should be purposeful and considered. Remember to always ask the most important question: Do I understand this technology?

While it's tempting to get an edge with new tech, it's not always the best philosophy to assume competency or to try and shoehorn new tech into your practice. (This includes the use of technology that your opposing counsel or cooperating counsel may not be versed on at all.) Early adopters of tech aren't just young lawyers, but it can't be denied that, as a younger lawyer, you are exposed to more, earlier, and probably have more natural affinity for tech. But that doesn't mean you have to adopt — or, worse, use it — when you or it are not ready. Use the tech that works for your practice, just as you chose the type of tech that works in your personal life.

For example, one of your authors drives an electric car, and one drives a high-miles-per-gallon diesel SUV. One car was sold on the tax credits, zero emissions and is plugged every 300 miles. The other was sold for its family size, modern "clean" diesel emissions and hybrid-like gas mileage. There's a shared love of "new" and efficient in both cases.

Just like we were sold on our "modern" cars, no doubt someone has tried to sell (or incessantly email) you on a new technology that will completely revolutionize the practice of law, like the "pocket part" bagat term searches and e-discovery. But, as in our vehicle example above, your Tech Philosophy should consider the virtue: Is this technology new, and do you understand it? Do you have control of its capabilities and deficiencies?

If not, pump the brakes and be okay with asking questions or investigating further before deploying it. Test it out. Try to get it right. Just because it looks like it might revolutionize your practice does not mean that it will be a value-add to the client, or to you. Also, it could completely confound your colleagues.

The latest tech opportunity and challenge to your Tech Philosophy are the letters "A" and "I." The world has not been so enraptured with tech this revolutionary since the Internet's coming of age (remember the "information superhighway"?). AI is buzzy. Soon, all of your products will be "AI-enhanced." So, should you use tools that feature or promote AI in your practice? How?

First, in using a new technology that can take the place of a human's work, you have to consider your obligations and responsibilities as a lawyer. We have an ethi-

cal duty to provide "competent" representation, including enough competency with technology to use it effectively.

With AI tools (whether Chat GPT or a more specific application), it's important to remember that AI is only as good as its universe of knowledge (the language model) and what your "inputs" are. Because of your ethical obligations, be sure to review with a critical eye even seemingly correct statements of law.

Failing to do so could be disastrous. You may have heard about the lawyer who was sanctioned by a federal district court in New York for submitting a brief with entirely made-up case law cited in support. The lawyer had used AI and claimed not to be aware of the fact that AI could (or would) create fictitious law. In another instance, a lawyer in Colorado was suspended from the Colorado state bar for improper use of AI, where the lawyer used ChatGPT to search for cases to support a motion but failed to realize the case law used was false or fictitious. The moral of the story is to be cautious and learn more about AI's outputs before relying on it.

Here's another note on AI's output. In addition to checking for accurate statements of law and analysis, be aware of the risk of plagiarism. Without knowing where the AI pulled its information from, your document could look a lot like someone else's. So, from "hallucinations" of cases that do not exist to whole-cloth copying of other's material, use your best judgment and scrutinize the AI's output. Don't be one of those lawyers disciplined, sanctioned and embarrassed by their poor or mishandled use of these technologies.

The same discernment applies to the AI's "inputs," too. Be mindful of using AI with your client's information. Sure, some discovery applications with AI can summarize discovery or medical records and maintain confidentiality. But, with others like ChatGPT, if you use client information to generate a response, you may be disclosing sensitive client information. The company offering the tool might have reviewers who could view the information, or the disclosure to the AI itself may be problematic. The use of that information by the AI company, particularly if you're using a free or freemium version, may be a violation of your obligations to the client and the profession.

For these reasons, many courts and state bar associations have already implemented rules requiring you to disclose when you've used AI in briefs or other documents filed with the court. Always check your state and federal court's local rules for any rules requiring disclosure of AI or other related rules.

Above all, learn about the AI you use and how it works — before you implement it in your practice. Make sure you're not causing more work for yourself by considering who will be using your AI tools with you.

Many understandably want to join the race and use new tech. It's also okay to be hesitant, conservative or even concerned about fast-paced and new technology that you didn't grow up with. Caution is appropriate when you're not fully confident in the tool, and, with AI, it is the opinion of these authors that you should not be fully confident — at least not for a while.

But, at the same time, don't write the technology off as "not your generation" or "not for your practice." It will be (and it already is, you just may not know it). With a conservative but inquisitive philosophy, you cannot go wrong. Sure, you might be late to the party. But you'll enjoy the view on the way there.

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