

HOW TO WRITE WINNING ARBITRATION BRIEFS

THE DO'S AND DON'TS OF INTRODUCING AI INTO PRACTICE



#1 Blurb

Generative artificial intelligence has lit the world on fire with claims it will supercharge your practice, but time will tell whether AI presents the sea change it claims. Along with the time savings, however, and the ease of analyzing large amounts of documents in seconds, implementing AI into your workflow is not without dangers. Any use of AI must begin with its best practices; properly understanding the correct way to implement into your arbitration workflow is critical to staying ahead of the competition.



#2 Introduction

There is no perfect formula for a winning arbitration brief, but the most successful advocates harness the future, increasingly turning to generative AI ("AI") to speed workflows, brainstorm, and offer alternative phrasing for critical paragraphs. AI has the potential to transform legal writing, but be warned: along with the promise, there are pitfalls.



#3 Proper Utilization of AI

Therapist. Mentor. Even girlfriend or boyfriend. Users increasingly task AI to stand in the shoes of each of these. But generative AI is not any of these. It is a tool and nothing more. Understanding what AI is and is not will help you use it for its strengths and avoid its weaknesses.

First, AI is not a person on the other end of the computer, typing bespoke responses to everything you prompt. Rather, it is a prediction machine, placing the next most probable word end to end repeatedly, until it determines it has reached a logical conclusion. Second, AI does not "know" anything; it can only guess at what a human would say next. But just as with humans, AI may get it wrong or "hallucinate," selecting the wrong word, and after that, another wrong word, until the result appears confident but is entirely incorrect. This is how AI makes errors no human would make, such as suggesting eating rocks or glue.

This is critical to understand. AI does not reach into a vetted database and find an answer. It is generating an answer. AI has no concept of truth, so it has no internal checking mechanism to prevent hallucinations. If you ask it to find arbitration awards, it will begin by searching Google, but when it comes to drafting a response, it may decide to make up an arbitration award out of digital air because everything it has been trained on leads to that conclusion, regardless of whether the award exists at all.

Legal generative AI, such as Westlaw Advantage and Lexis Protégé, attempts to solve this problem by limiting results to only what is found in their respective databases. This solves the hallucination issue, but so heavily restricts what the AI can produce that it can be seductive to turn to systems such as OpenAI's ChatGPT or Google's Gemini because those two systems will generate longer (but potentially incorrect) answers.

DON'T: Mistake AI as a replacement for an attorney. AI will generate anything you ask it to and lacks the guardrails taught in law school.

DON'T: Treat AI like it is searching Google, finding only reputable sources, and then returning precise results. If AI thinks a human would say a word next, even if it is the wrong word, it will confidently return an incorrect result.

DON'T: Waste time by typing "please" and "thank you." AI is not a person and does not care.

Second, AI is useful for the one thing it does well: manipulating the English language. Accordingly, asking AI to find an appropriate word, revise a paragraph to be more "legalistic," or summarize a long document are all things at which AI excels. AI speeds up workflows by producing content faster than an attorney can. AI can also reiterate on one concept or sentence repeatedly, far more than what an attorney billing by the hour can. When thought of as a tool, rather than a correct-answer machine, utilizing AI yields tangible benefits.

DO: Use AI to re-draft paragraphs to test tone or word choice.



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DO: Use AI to compress data, e.g., summarize a 56-page case into three short paragraphs. Note, however, AI may still hallucinate, so it is imperative to be familiar with the underlying documents.

DON'T: Allow AI to do your thinking for you. You must still read case law and arbitration awards to understand what they say, as if you purely rely on AI, it may get it wrong.

AI can thus be thought of as a writing tool. Everything put into the tool must be carefully verified, but AI, by guessing the next word, can take on the role of a seasoned legal writer or skilled negotiator. AI can also be helpful in brainstorming, as it can generate dozens of ideas in seconds that may take a team days to produce. But, of course, you must analyze each idea on its merits.

That then, is the key takeaway: you must still think. There is no outsourcing of legal thought to AI, regardless of how confident it may appear when it spits out a four-page answer. AI is not a free associate at your arm; it is an extension of your own writing ability and thought. Proper utilization of AI will enhance your work product—but cannot replace you.

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