Steve Leimberg's Estate Planning Email Newsletter - Archive Message #3325

Date:	**17-Aug-26**
From:	**Steve Leimberg's Estate Planning Newsletter**
Subject:	**Thomas Tietz & Martin Shenkman: When Clients Use AI to Second-Guess Estate Plans — Guidance, Guardrails, and Risk Management**

"Artificial intelligence has become part of the estate planning conversation whether practitioners invited it or not. Clients now ask AI to review draft trusts, identify planning omissions, produce trustee memoranda, critique beneficiary designations, and recommend tax strategies. Some of that use is constructive. Much of it is not. Clients should not be told simply to avoid AI. A balanced professional response may distinguish preparation uses from substantive legal review, caution against public tools, explain the cost of reviewing AI-generated material, and channel clients toward better questions and adviser coordination."

Thomas A. Tietz and **Martin M. Shenkman** provide commentary on the growing practice of clients using artificial intelligence to review, critique, and second-guess their estate plans, and on the guidance, guardrails, and risk management steps practitioners may consider in response.

Martin M. Shenkman, CPA, MBA, JD, PFS, AEP (Distinguished) is author of more than 40 books and more than 1,400 articles on estate planning and related topics. He is a frequent lecturer for numerous trade, professional and other organizations. He is active in numerous charitable endeavors. He has practiced estate planning for 35+ years.

Thomas A. Tietz, JD, is an attorney in private practice in New Jersey and New York, assisting clients with Estate Planning. He is the author of more than 20 articles and has published articles with Trusts & Estate Magazine, the American Bar Association E-Report, the National Association of Estate Planning Council's Journal of Estate and Tax Planning, and Leimberg Information Services, Inc. (LISI). He has lectured for numerous professional organizations, including the Notre Dame Tax & Estate Planning Institute, the New Jersey State Bar Association, the CPA Academy, and the National Academy of Continuing Legal Education.

Here is their commentary:

EXECUTIVE SUMMARY:

Artificial intelligence has become part of the estate planning conversation whether practitioners invited it or not. Clients now ask AI to review draft trusts, identify planning omissions, produce trustee memoranda, critique beneficiary designations, and recommend tax strategies. Some of that use is constructive. Much of it is not. Clients should not be told simply to avoid AI. A balanced professional response may distinguish preparation uses from substantive legal review, caution against public tools, explain the cost of reviewing AI-generated material, and channel clients toward better questions and adviser coordination.

COMMENT:

Artificial intelligence has become part of the estate planning conversation whether practitioners invited it or not. Clients now ask AI to review draft trusts, identify planning omissions, produce trustee memoranda, critique beneficiary designations, and recommend tax strategies. Some of that use is constructive. Much of it is not. The practical challenge for estate planners is to respond without sounding defensive, anti-technology, or fee-protective, while still protecting confidentiality, privilege, planning quality, and the client relationship.

Why This Matters Now

Clients are increasingly sophisticated, but sophistication in business, finance, medicine, or tax does not necessarily translate into the ability to frame estate planning questions (Prompts) to AI, or the judgment to understand what information is relevant to provide to AI so the answer provided is tailored to the client's unique situation. Estate planning questions often require a top-down analysis of objectives, family dynamics, asset composition, tax exposure, state law, fiduciary capacity, disability considerations, retirement plan beneficiary rules, titling, cash flow, and future flexibility. AI can miss the order in which those issues should be addressed, and provide analysis including suggesting techniques that, while perhaps (but not always) technically sound, do not consider the client's specific needs.

Many firms have seen recurring client scenarios.

<u>Example</u>: A client used AI to ask if the estate planner was using the right sequence or process for their plan. The AI answer focused on asset titling and beneficiary designations. The AI and the client were not wrong that titling and beneficiary designations are critical. The problem was sequencing. The client had not yet finalized dispositive choices involving children with different circumstances, special needs considerations, marital issues, income tax issues, and state estate tax considerations. Final titling recommendations could not be responsibly made until the plan's structure was chosen. The consequence of the client's AI "research" was to require more discussions than would have otherwise been necessary, explanations of the estate planning process that detracted from the more important decisions that had to be made to advance the plan, frustrating the client as they concentrated effort into making titling decisions before basic dispositive decisions were made that would have reduced the complexity of those titling decisions, and which is essential to making those decisions. The manner in which the client's planning proceeded due to the AI's suggestions tired the client of the estate planning process and made it more difficult to help them make decisions needed to finalize documents.

Example: A prospective client asked AI for estate planning recommendations. The result was an alphabet soup of planning techniques that were not applicable to the client. But for the AI "research" the client would have had a meeting with the estate planner, discussed people important to the client, assets, goals, and devise a plan to address the goals in light of the facts. Instead, the conversation had to start around explaining techniques that might not be helpful, but without the full initial background discussion that would have better informed the planning. In addition, attempting to explain complicated, nuanced planning techniques to a prospect or new client before a rapport has been built and the practitioner understands how to communicate effectively with that particular client is difficult and has a high probability of starting the planning process off on the wrong foot. That may potentially result in the practitioner losing the prospect or new client as they are overwhelmed by the complexity of a technique AI may have made seem "simple."

Example: In one instance the client had equity in a tech company that they anticipated would balloon in value. They did their own AI research and determined that they should create a GRAT as a GRAT would give them funds back. They failed to realize that if the equity burgeoned in value after the gift to the trust all the appreciation would be out of their reach. Based on the client's young age and potential need for access to the assets for lifestyle expenses, a SPAT or hybrid DAPT might have made more sense. But the conversation, instead of following a more logical path of discussing various types of trusts, the pros/cons of access, etc. had to spend considerable initial time discussing the potential negative economic implications of GRATs. Further, the practitioner had to be mindful that the adjustment of the GRAT annuity if there were to be a valuation adjustment on audit had to be explained and contrasted to using a Wandry or other method in other planning. The biggest problem was the unnecessary confusion this all created for the client.

Example: The client uploaded the client memorandum and draft irrevocable trust the practitioner provided into a public AI and emailed the practitioner 30+ questions AI raised on the memorandum and documents. The planning was for a substantial estate and the memorandum addressed technical planning nuances and the client's choice to use a hybrid DAPT. The planning process would have been advanced by the client reviewing the memorandum and draft trust with the practitioner. Instead, the practitioner spent several hours responding to questions posed by AI that were almost entirely irrelevant to what was done because the client did not input the detailed factual background and analysis that preceded the plan so that AI did not have the context to properly evaluate the plan. The client did not understand the importance of context or the technical nuances. After the practitioner responded to the mostly distracting AI comments, the client became more confused about the plan and annoyed with the bill. The client had no appreciation of the fact that they disclosed very confidential personal family information to a public AI and likely also undermined the attorney client privilege.

The problem is not that AI recognized a planning topic or issue, or made comments. The problem is that it treated one piece of the jigsaw puzzle as if it were the whole puzzle. That experience is becoming common. A client arrives with AI-generated points. Some are wrong. Some are correct but irrelevant. Some are potentially useful. Reviewing all those points may be needed because a valid point could be hidden in the stack. That review can be expensive, distracting, and confusing.

A Framework: Preparation Use Versus Legal Review Use

A useful distinction for practitioners to make to clients in engagement letters, client alerts, and document transmittal letters is how they used AI in the documents provided. Was the AI employed simply for preparation, or did the AI provide substantive legal review and analysis? Preparation use may include organizing facts, locating documents, creating a family timeline, summarizing an asset inventory, preparing questions, and drafting nonlegal letters of instruction. These applications can improve client readiness and reduce friction in the planning process.

Substantive legal review use may include, for example, asking AI to critique draft legal documents, recommend planning structures, identify tax strategies, evaluate beneficiary designations, or analyze legal consequences of specific facts. Those tasks carry greater risk. AI may hallucinate authorities. It may generalize across jurisdictions. It may ignore facts not provided. Consider: how many clients understand the often complex connections between specific facts of their circumstances and the techniques recommended? It may create questions that force the practitioner to spend time responding to inapplicable suggestions. It may also give the client misplaced confidence in an AI recommended planning technique that does not fit the plan.

Privilege and Confidentiality

United States v. Heppner is one of many AI cautionary case references.[1] The Heppner Court held that a defendant's written exchanges with a public generative AI platform were not protected by the attorney-client privilege or as attorney work product. The court explained that the AI documents were not communications between the client and practitioner, were not confidential, and the AI research was not prepared under the direction of counsel. The court also noted the platform's privacy policy and data-use terms. Heppner provides a clear example that AI research should be used carefully not only by practitioners, but by clients. It involved an unsupervised client using a publicly available AI platform, not a lawyer using an approved enterprise platform under firm controls. Heppner warns that clients should not put confidential legal facts, draft documents, tax data, family conflict, medical facts, disability information, or legal strategy into public AI tools.

Professional Responsibility Guidance

ABA Formal Opinion 512[2] identifies the familiar professional-responsibility duties implicated by use of technology also includes the use of generative AI: competence, confidentiality, communication, supervision, candor, reasonable precautions, and reasonable fees. It does not condemn AI. It established a "reasonable" standard for the use of AI, requiring practitioners to consider the benefits and risks of the technology based upon the particular use in each case (i.e., using AI in legal review may have a higher standard of ethical obligations for the practitioner than using it in a preparatory manner, especially if no client information is entered into the AI), protect client information, communicate where appropriate, supervise use, and bill reasonably.

While the ABA Opinion focuses on attorney responsibilities, the growing misuse by clients of AI, as illustrated in the above examples and the Heppner case, might suggest that reasonable actions by attorneys may potentially include cautioning clients about risks and issues the clients inappropriate use of AI may create.

For tax practitioners, the IRS Office of Professional Responsibility has gone further by issuing OPR Alert 2026-19.[3] The Alert applies Circular 230 concepts to AI use in federal tax practice. It emphasizes due diligence, competence, firm procedures, written advice, fee practices, and protection of taxpayer data. It states that AI output must be reviewed and that sensitive taxpayer information should not be placed into unsecured or public systems. The Alert matters to estate planners because gift, estate, GST, fiduciary income, trust, charitable, and business succession planning often touches federal tax matters and tax return information. An estate planner, CPA, financial adviser, or family-office professional using AI to summarize returns, draft planning memos, analyze Roth conversions, review K-1s, evaluate charitable techniques, or prepare IRS-facing communications may need to assume that AI governance is now part of professional risk management.

The Alert does not address client actions, but consistent with the comments above, practitioners might consider advising clients of the risk they create by improper use of AI.

Engagement Letter and Client Letter Concepts

A balanced client communication would not include a blanket statement of "Do not use AI." That can sound unrealistic and self-protective. Clients may interpret that negatively as the practitioner is trying to limit what the client does in order to preserve billing opportunities. It may also discourage productive AI uses by clients that can improve the estate planning process. Practitioners should consider incorporating statements regarding the use of AI into their engagement letters, document and memorandum transmittal letters and perhaps even in email footers. A sample short disclosure could be based on the sample provision:

"**We support appropriate and reasonable use of AI to help you organize information, prepare questions, and improve collaboration. However, confidential information should never be entered into public AI tools, AI output should not be treated as legal**

advice, and AI-generated questions or document reviews sent to us may require professional review that may increase fees and make your planning process more confusing."

The disclosure may also inform clients that the firm uses AI, and expects its use to grow, but within approved systems and with professional review. This has two benefits. First, it avoids sounding anti-technology. Second, it explains that the issue is not AI itself, but uncontrolled AI use without confidentiality controls or legal judgment.

Suggested Practice Protocol

1. Add a paragraph discussing generally how the firm uses AI to engagement letters and draft document transmittal letters.
2. Create a longer client guide that discusses the different manners in which the practitioner currently uses AI, distinguishing between preparation uses and substantive legal review uses the firm may employ.
3. Tell clients not to upload confidential information to public or free AI tools.
4. Tell clients that if they use a confidential AI subscription, they should confirm the privacy and data-use terms themselves or through a technology consultant.
5. Encourage clients to use AI for family summaries, asset inventories, document checklists, timelines, and question lists.
6. Discourage clients from asking AI to review draft legal instruments in isolation.
7. State that if clients send AI-generated analysis to the firm, professional review may be necessary and will be billable and potentially costly.
8. Offer a better alternative: schedule a focused meeting, discuss the confusing points, and then use AI to generate a counsel-reviewed summary or task list.

Sample Short Client Warning

We recognize that many clients use artificial intelligence tools and that AI can be helpful when used carefully. Please do not enter confidential personal, financial, tax, medical, family, or estate planning information into any public or free AI platform. If you use AI to help organize information or prepare questions, please use it as a preliminary organizational tool only and not as legal advice. If you ask AI to review draft legal documents or planning strategies and send us the output, we may need to review and respond to that material, and that review may increase fees. A more productive approach is often to tell us the topic you want to understand better so we can help frame a focused question, discuss it with you, and, where appropriate, use AI to help prepare a reviewed summary.

Conclusion

AI is not the enemy of good estate planning. Uncontrolled, context-free AI use is the problem. Practitioners may reframe the conversation with clients in a positive manner by providing a practical framework that welcomes useful AI applications while warning against confidentiality risks, hallucinations, sequencing errors, and time consuming, expensive rabbit holes. The client who uses AI to organize facts may make the planning process more thorough, efficient and easier for both the practitioner and client. The client who uses AI to second-guess legal documents without context may make the process more expensive, less clear, and less productive. Practitioners should consider helping educate clients on how to do the former and avoid the latter.

HOPE THIS HELPS YOU HELP OTHERS MAKE A *POSITIVE* DIFFERENCE!

Thomas A. Tietz
Martin M. Shenkman

CITATIONS:

[1] United States v. Heppner, No. 25 Cr. 503 (JSR), Memorandum Opinion, S.D.N.Y., Feb. 17, 2026.
[2] ABA Standing Committee on Ethics and Professional Responsibility, Formal Opinion 512, Generative Artificial Intelligence Tools, July 29, 2024.
[3] IRS Office of Professional Responsibility, Introductory Guidelines for Responsible AI Use in Federal Tax Practice, OPR Alert Issue No. 2026-19, June 24, 2026; Martin M. Shenkman and Thomas Tietz, IRS Issues New Guidance on AI in Federal Tax Practice, WealthManagement.com, July 22, 2026.