

THE SPOTLIGHT

BROUGHT TO YOU BY ROBINS KAPLAN LLP'S WEALTH PLANNING,
ADMINISTRATION, AND FIDUCIARY DISPUTES GROUP



What Every Fiduciary Should Know about AI

WELCOME TO THE SPOTLIGHT

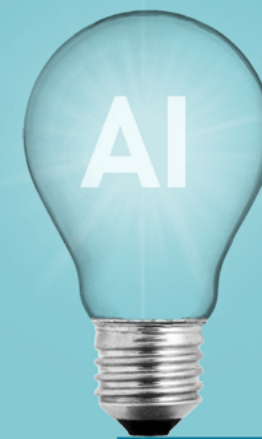
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The Spotlight strives to provide a forum to discuss the latest news and compelling issues impacting fiduciaries and those to whom fiduciaries owe duties. Whether you are an officer, director, trustee, beneficiary, trust officer, attorney, financial advisor, or anyone impacted by the law governing fiduciaries, we hope that you will find this newsletter interesting, informative, and perhaps at times even a bit entertaining.

Fiduciary disputes come in many varieties, but they share some consistent themes that involve the erosion of trust, high emotion, and opportunities—sometimes missed—for creative approaches to avoid or resolve litigation. As practitioners and teachers of fiduciary law, our attorneys have built a reputation for excellence in meeting the needs of individuals and organizations facing complex fiduciary issues, starting with the transactional and estate planning work that can mitigate risk from the beginning. We counsel individuals and business owners in a broad range of fiduciary issues, from estate planning and business succession, to dispute resolution and litigation when unavoidable.

Is there a topic affecting your practice that you would like us to discuss in an upcoming issue of The Spotlight? Let us know at all_marketing@robinskaplan.com.

- Denise S. Rahne and Steven K. Orloff



Letter from the Editor

Like you, many of us within Robins Kaplan's Wealth Disputes Group enjoy cinema. I personally love sci-fi and, while researching AI's impact on fiduciary disputes, repeatedly thought of old favorites like *Blade Runner* and *Terminator 2: Judgment Day*.

So far, at least, generative AI bears little resemblance to these Hollywood depictions. For example, in my practice, I use AI for research and some limited writing, but don't foresee lawsuits one day being tried by humanlike robots with real hair and skin. Nor do I anticipate humanity having to band together to fight "the machines." But that doesn't mean AI won't continue to reshape the way both lawyers and fiduciaries do their jobs.

This edition of The Spotlight delves into the growing intersection between AI and fiduciary duties. As technology advances rapidly, fiduciaries face new challenges in ensuring their duties of care and loyalty are met. AI promises real benefits: improved market insights, personalized investment strategies, and risk management based on predictive modeling. AI will likely do all this while saving fiduciaries and their clients significant time and expense.

These benefits are, of course, offset by countervailing concerns regarding confidentiality, quality control, and transparency. In this issue, we provide insights into the key issues fiduciaries must consider when adopting AI tools. We explore the importance of ensuring AI systems comply with fiduciary standards and the ethical implications of using AI, particularly its impact on client confidentiality and data privacy. We aim to help fiduciaries integrate AI tools into their practices while safeguarding their clients' trust and confidence. After all, while AI will be a valuable tool, it will be the fiduciaries themselves who are ultimately responsible for ensuring they understand the technology and are meeting their legal and ethical obligations.

- Thomas Berndt

Partner at Robins Kaplan LLP



RISKS & REWARDS OF GENERATIONAL WEALTH

Our Wealth Planning, Administration, and Fiduciary Disputes Group recently hosted its annual Wealth Disputes Seminar. This year's program, "Roots, Branches, and Wings: Risks and Rewards of Generational Wealth," provided a comprehensive exploration of the complex issues fiduciaries face when guiding families through wealth transfer and preservation. The event, held in November, was an exceptional gathering of legal professionals, fiduciaries, wealth advisors, and thought leaders who came together to share insights and strategies for navigating the complexities of wealth transfer and preservation.

One of the key highlights of this year's event was the keynote address by Alan Harter, CEO and Founder of Pactolus. Alan's presentation, which focused on fostering healthy financial legacies that can endure both market fluctuations and the complexities of family dynamics, was compelling and insightful. His approach, which blends technical expertise with a deep understanding of the emotional aspects of wealth management, provided attendees with practical advice for helping clients successfully navigate the intricacies of generational wealth.

The program also covered various critical topics, from estate planning for multigenerational families to the evolving role of fiduciaries in family businesses. One particularly timely session addressed the ethical considerations fiduciaries must weigh when managing wealth in a changing social and political landscape, including how wealth transfer can affect historically excluded groups. The discussions were rich in real-world examples, offering attendees valuable strategies and tools they could immediately apply in their work with clients.



BOARD GOVERNANCE IN THE AGE OF AI: NAVIGATING RISKS OF NOTE-TAKING TOOLS

BY ANNE LOCKNER

Recently, during a virtual meeting of a board-of-directors committee, the chair noticed one of the absent committee members had suddenly appeared in attendance. But after closer review, the chair realized it was not the human board member who had joined, but rather, the member's "AI assistant" that automatically joins any meeting listed on the missing board member's calendar, summarizes meeting content, and then circulates notes to all those included on the meeting appointment. This is a scary scenario for many organizations, but especially for those like boards and board committees, whose meetings are the backbone for corporate governance.

Artificial intelligence (AI) tools are rapidly transforming the way organizations conduct business, manage information, and communicate, including AI-powered note-taking tools, which promise increased efficiency by transcribing meetings, summarizing discussions, and providing actionable insights. While these tools offer convenience and utility, they also introduce significant governance risks—particularly for corporate boards, where confidentiality, privilege, and trust are paramount.

Boards must tread carefully when incorporating AI tools into their workflows. AI note-taking tools, if not implemented thoughtfully, can inadvertently compromise the confidentiality of board discussions, including privileged communications and sensitive executive-session deliberations. This article explores the governance challenges posed by AI note-taking tools and offers strategies to mitigate these risks while harnessing the benefits of AI responsibly.

AI note-taking tools use advanced natural language processing to transcribe conversations in real time, summarize key points, and even suggest follow-up actions. For boards, these tools promise to streamline processes, improve documentation accuracy, and free up directors and corporate secretaries to focus on strategic decision-making rather than minutes-taking.

The sensitive nature of board discussions, however, makes the use of such tools far more complex than their adoption in routine business contexts. Boardrooms are the epicenter of organizational strategy, risk management, and governance, often dealing with highly confidential and legally sensitive matters. As such, the use of AI in these spaces cannot be undertaken lightly.

KEY GOVERNANCE RISKS

1. Confidentiality Breaches

AI note-taking tools process data in ways that can expose sensitive boardroom information to unintended parties. Many tools rely on cloud-based platforms for transcription and analysis, creating the risk of unauthorized access or data breaches. If confidential information about mergers, acquisitions, strategic plans, or litigation is compromised, the organization could face legal, reputational, and competitive harm.

2. Loss of Privileged Communications

Certain board discussions are protected by attorney-client privilege. Introducing an AI note-taking tool into these discussions can inadvertently waive privilege if the tool is not adequately secured or its use is not carefully controlled. The loss of privilege can expose sensitive information in future legal proceedings or be used to competitively disadvantage the company.

3. Compromising Executive-Session Privacy

Executive sessions allow boards to deliberate privately without the presence of management or external advisors. These sessions are critical for candid discussions, particularly regarding performance evaluations, succession planning, or sensitive governance matters. Recording or transcribing these discussions with AI tools risks eroding the sanctity of the executive session and may deter directors from speaking openly.

4. Regulatory and Legal Risks

Depending on the jurisdiction and industry, boards may face regulatory obligations to safeguard certain types of information. For example, healthcare and financial services boards may handle data protected under HIPAA or GLB regulations. The use of AI tools that do not comply with these requirements can expose the organization to penalties and litigation.

5. Data Ownership and Vendor Risks

Many AI tools are provided by third-party vendors who may assert ownership or access rights over the data processed by their platforms. Boards must carefully assess whether their chosen tool's terms of service adequately protect the organization's intellectual property and sensitive information.

BEST PRACTICES FOR RESPONSIBLE USE OF AI NOTE-TAKING TOOLS

Boards seeking to leverage AI tools while safeguarding governance integrity should adopt the following strategies:

1. Assess Necessity and Scope

Before adopting an AI note-taking tool, boards should critically assess whether the tool is necessary and appropriate for their context. In some cases, traditional note-taking methods may be more suitable for preserving confidentiality and privilege.

2. Choose the Right Tool

Not all AI tools are created equal. Boards should conduct thorough due diligence to select tools designed with robust security features, such as end-to-end encryption, data localization, and compliance with relevant regulations. Tools that allow local data storage rather than cloud processing may offer enhanced security.

3. Establish Clear Usage Policies

Boards should develop and enforce policies governing the use of AI tools, including:

- Prohibiting the use of AI tools during executive sessions or privileged discussions.
- Restricting access to AI-generated transcripts and summaries to authorized personnel only.
- Implementing protocols for having an attendee or corporate secretary review and revise AI-generated notes to ensure accuracy and then delete AI-generated data not required for preservation.

4. Engage Legal Counsel

Legal counsel should be consulted to ensure the use of AI tools does not compromise attorney-client privilege or violate regulatory requirements. Counsel can also advise on contractual terms with vendors to protect the organization's interests.

5. Provide Training for Directors and Staff

Directors and board staff must understand the risks associated with AI tools and how to use them responsibly. Training should include guidance on identifying sensitive discussions where AI tools should not be used.

6. Monitor and Review

The board should periodically review the use of AI tools to ensure they remain appropriate and secure. This includes monitoring for updates to vendor terms of service, changes in regulatory landscapes, and advancements in AI technology that may introduce new risks or opportunities.

AI note-taking tools can potentially enhance board efficiency and governance, but only if implemented thoughtfully and cautiously. Boards must balance the benefits of these tools with the need to preserve confidentiality, privilege, and trust. By adopting a proactive and informed approach, boards can navigate the risks of AI responsibly while reaping its advantages.

The boardroom is a unique environment where the stakes are high, and the margin for error is small. As AI tools become increasingly integrated into corporate governance, board members must remain vigilant about the risks and ensure their use aligns with best practices in governance and compliance.

AI tools are not inherently problematic, but their misuse can have profound consequences. For board members, the guiding principle should be clear: Technology must serve governance, not undermine it. By prioritizing confidentiality, privilege, and the integrity of executive discussions, boards can embrace innovation without compromising their core responsibilities.

ANNE LOCKNER is a partner in the firm's Business Litigation Group who handles complex business disputes, including fiduciary disputes that arise among companies and their shareholders, officers, and directors.



Navigating AI and Fiduciary Duties:

TEN KEY QUESTIONS FOR
YOUR ORGANIZATION

BY THE WEALTH DISPUTES TEAM

Integrating artificial intelligence (AI) into legal practice presents valuable opportunities as the industry continues to evolve. AI has the potential to revolutionize workflows, enhance decision-making, and improve client service by streamlining repetitive tasks, providing data-driven insights, and automating time-consuming processes. However, these advancements also introduce challenges that cannot be ignored. While AI offers efficiencies and innovations, it raises critical questions regarding its ethical use, compliance with regulatory frameworks, and potential impacts on fiduciary duties. As legal professionals and fiduciaries, it is crucial to understand the delicate balance between leveraging technological innovations and ensuring that client interests, privacy, and trust are safeguarded.

The integration of AI into fiduciary duties is not simply about adopting new technology—it's about doing so responsibly and in a way that upholds the fundamental principles of professional integrity. Fiduciaries are legally obligated to act in the best interests of their clients, maintain confidentiality, and exercise due care. Any use of AI must align with these obligations. Whether AI is used to assist with estate planning, risk management, or wealth distribution, the potential impact on fiduciary duties must be thoroughly assessed. Fiduciaries must ensure that AI tools are not only compliant with current legal frameworks but also that they do not inadvertently undermine client trust through bias, lack of transparency, or inadequate oversight. Thoughtfully considering the implications of AI helps ensure its successful and ethical integration into fiduciary practice.

Here are ten critical questions to ask before implementing a new AI tool, to ensure its use aligns with fiduciary duties and strengthens client relationships:

- 1. DATA SECURITY:** How can you ensure that AI systems protect sensitive client and beneficiary data while complying with confidentiality and privacy regulations?
- 2. COMPLIANCE WITH DUTIES:** What steps have you taken to verify that AI tools align with your fiduciary obligations of loyalty, care, and transparency?
- 3. BIAS AND FAIRNESS:** How can you identify and mitigate biases in AI systems to maintain impartiality and fairness in your decision-making?

4. **CLIENT-CENTRIC AI:** In what ways does your use of AI enhance your ability to prioritize and act in your clients' best interests without compromising their trust?
5. **ONGOING OVERSIGHT:** What governance structures are in place to continuously monitor and evaluate AI outputs for reliability and compliance?
6. **REGULATORY ADAPTATION:** How are you staying informed about evolving regulations to ensure your use of AI complies with fiduciary standards?
7. **TRANSPARENCY IN TECHNOLOGY:** How can you effectively communicate the role of AI in your fiduciary decision-making to clients and beneficiaries?
8. **ETHICS AND INTEGRITY:** What ethical principles guide your AI strategies, and how do they reinforce your fiduciary responsibilities?
9. **RISK MANAGEMENT:** How can you address potential inaccuracies or failures in AI systems that could jeopardize client interests?
10. **TEAM READINESS:** Are you providing your team with the knowledge and expertise required to oversee AI responsibly and align it with fiduciary best practices?

By thoughtfully addressing these questions, your organization can embrace the benefits of AI while staying true to the principles that define fiduciary excellence. The integration of AI is not just about adopting new technologies—it's about doing so responsibly, ethically, and with a clear focus on serving client interests. With careful planning and a commitment to upholding your fiduciary duties, AI can become a powerful tool to enhance your practice and reinforce the trust that your clients rely on.

Learn More:



The integration of AI is not just about adopting new technologies—it's about doing so responsibly, ethically, and with a clear focus on serving client interests.

MEET OUR ISSUE EDITOR:

THOMAS BERNDT
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Thomas Berndt represents both major corporations and small businesses in complex civil lawsuits. He has extensive experience representing both plaintiffs and defendants in high-stakes disputes involving alleged fraud, breach of contract, breach of fiduciary duty, shareholder oppression, antitrust violations, and unfair trade practices. Through his experience in some of the country's most high-profile financial litigations—including the Lehman Brothers' bankruptcy, Bernie Madoff fraud, and LIBOR-manipulation scandal—Tom has developed an in-depth understanding of shareholder rights and other corporate governance issues, equity and debt securities, futures contracts and options, and benchmark manipulation.

FEATURE BIO:

GABRIEL BERG
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Gabriel Berg is a partner in Robins Kaplan's New York office. A true trial lawyer, Gabe has tried numerous complex commercial jury trials, bench trials and arbitrations, as plaintiffs and defendants across a broad range of business sectors. From the moment he meets a client to his final words in closing argument, he weighs every strategic decision by considering its impact on the trial. Even in matters that settle quickly, this trial-focused approach increases the value of his cases. While Gabe has won numerous cases through motion practice and interlocutory appeal, he has had the unique opportunity to gain trial experience from his first year of practice 26 years ago to today. He firmly believes that trials are most often won by the combination of pretrial preparation, effective cross-examination, and the ability to strategize nimbly during trial. Over the course of his career, Gabe has tried cases involving high-stakes claims for breach of contract, breach of fiduciary duty, fraud, misappropriation of trade secrets, patent infringement and others.

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