

# Agricultural Law

The newsletter of the Illinois State Bar Association's Section on Agricultural Law

## Profile of Ag Law Section Council Member: Cari Rincker

BY SARA PESKA & EAN ALBERS

### Background and introduction

**Full Name:** Cari Rincker

**Hometown or Current Residence:** Shelbyville, IL for both!

**Law School Attended and Year of Graduation:** Pace University 2007 (transferred from Regent University, School of Law)

**Year Admitted to the Illinois Bar:** First admitted in 2007 (New Jersey); admitted to the Illinois Bar in 2015

**Current Role or Status (e.g., practicing attorney, judge, retired):** Attorney in private practice; principal of Rincker Law, PLLC

**Brief overview of your current or most recent practice:** Rincker Law is a practice focusing on Food, Farm and Family. We help multi-generational family farms focus on business planning, estate planning and estate planning while navigating family changes—marriage (prenups!), divorce and death (*i.e.*, probate and trust administration). We also help the agriculture sector with intellectual property and real estate matters.

*Continued on next page*

Profile of Ag Law Section Council Member: Cari Rincker  
1

Oil and Gas Law Ownership Rights and Surface Issues  
4

Top 5 Email Management/Organization Tips for Outlook  
8

Unlocking the Potential of Generative AI for Lawyers: Red Flags and Best Practices  
10



Speaker Carolyn Elefant (left) presented “Artificial Intelligence – A Primer for Illinois Practitioners” at the 32nd Annual Agricultural Law Seminar. Carolyn is pictured with Sponsor/Moderator Cari B. Rincker.



Ag Law Seminar Sponsor/Moderator Cari B. Rincker with Coordinator/Moderator Andrew G. White. A big thank you to Andrew for planning this successful Seminar!

## Cari Rincker

CONTINUED FROM PAGE 1

### Career path and practice

#### What inspired you to pursue a legal career, particularly in a rural setting?

I was an intern on Capital Hill through the Texas A & M University, College of Agriculture and Life Science's agriculture policy program. I originally went to law school because I was interested in agriculture policy.

After spending a decade in New York City, it was ultimately family that brought me back home to a rural community. My desire to start a family and then later after my children were born to live where I could have more family support.

I spent a decade worried about the change of running my law practice from a metropolitan area to a small town—my only regret is not doing it sooner!

#### What areas of law have you focused on throughout your career?

Early on in my career, I did Door Law. I took what came in through the Door. And eventually my first divorce came my way. There is a saying that lawyers don't find their law practice, their practice finds them. That is how I feel about my family law practice. In a sense, family law is a calling insofar that we are helping families navigate these difficult transitions.

Presently, my family law practice is more geared towards high net worth farm divorces and mediation. I particularly enjoy helping farm families navigate the divorce and separation because divorce is one of the Big D's that can destroy a family farm—but with the right care and attention, it can be preserved for succession throughout the process.

I grew up on a multi-generational family farm. Working in the area of food and agriculture law has always been in my wheelhouse. Specifically, I have counseled farmers, agri-businesses and food entrepreneurs on starting, growing, merging or ending their businesses. A goal that I have for 2026 is to develop a fractional General Counsel program for farms and agri-businesses on a



Cari Rincker

subscription basis.

#### Did you always intend to practice in a rural area? Why or why not?

No, I did not. For a while, I ran from it into the Borough of Manhattan in New York where the population of my hometown fit into a few city blocks. But my country heart yearned for some space, freedom and fresh air again. Although I love going back to NYC, I haven't regretted my decision to move home for one minute. It has been a welcomed change of pace.

#### Describe your typical client base and the community you serve.

I have had some challenges as my food and agriculture law practice is more national while my family law practice is more local. This dichotomy is challenging from a business standpoint, especially as my law practice grows to be more concentrated with agriculture law.

#### What did you enjoy most about your legal career?

It's the hard that makes it good, right? I do not love the battle of litigation or the war rooms before trial but some of my biggest accomplishments were fighting my way

## Agricultural Law

This is the newsletter of the ISBA's Section on Agricultural Law. Section newsletters are free to section members and published at least four times per year. Section membership dues are \$35 per year.

To join a section, visit [www.isba.org/sections](http://www.isba.org/sections) or call 217-525-1760.

### OFFICE

ILLINOIS BAR CENTER  
424 S. SECOND STREET  
SPRINGFIELD, IL 62701  
PHONES: 217-525-1760 OR 800-252-8908  
WWW.ISBA.ORG

### EDITOR

Cari Brett Rincker

### COMMUNICATIONS MANAGER

Celeste Niemann  
✉ [cniemann@isba.org](mailto:cniemann@isba.org)

### ART DIRECTOR

Ticara Turley  
✉ [tturley@isba.org](mailto:tturley@isba.org)

### PUBLICATIONS ATTORNEY

Kelsey Burge  
✉ [kburge@isba.org](mailto:kburge@isba.org)

### AGRICULTURAL LAW SECTION COUNCIL

Garrett Wilks Thalgott, Chair  
Nancy Metsker-Handegan, Vice-Chair  
James R. Grebe, Secretary  
Alan E. Stumpf, Ex-Officio  
Tambra K. Cain  
Keith W. Casteel  
Brandon Clark  
Jonathan William Coppess  
Kenneth E. Davies  
Kenneth R. Eathington  
Laurie A. Harmon, CLE Coordinator  
James F. Kane, CLE Coordinator  
James C. Krupp  
Michael A. Mattingly  
Matthew L. McArthy  
Edward J. Mitchell  
James R. Myers  
Paul A. Osborn, CLE Committee Liaison  
Lynne R. Ostfeld  
Jerry W. Quick  
Cari Brett Rincker, Newsletter Editor  
Ruth E. Robinson, CLE Coordinator  
Craig J. Sondgeroth  
Kyle M. Tompkins  
Andrew G. White, CLE Coordinator  
J. Nelson Wood  
Ted M. Niemann, Board Liaison  
Kimberly A. Furr, Staff Liaison  
William A. Peithmann, Associate Member

DISCLAIMER: This newsletter is for subscribers' personal use only; redistribution is prohibited. Copyright Illinois State Bar Association. Statements or expressions of opinion appearing herein are those of the authors and not necessarily those of the Association or Editors, and likewise the publication of any advertisement is not to be construed as an endorsement of the product or service offered unless it is specifically stated in the ad that there is such approval or endorsement.

Articles are prepared as an educational service to members of ISBA. They should not be relied upon as a substitute for individual legal research.

The articles in this newsletter are not intended to be used and may not be relied on for penalty avoidance.

through 2, 3, 5, 7 day trials throughout my career. One case in particular was rewarding to me as my client was being alienated from the other parent and he is now the sole custodial parent—this trial was particularly memorable because my son was 5 months old making the long nights before each day of trial more difficult.

**What aspects of the practice were most challenging or frustrating?**

Moving from a larger metropolitan community to another smaller community can always be difficult, especially if you are used to doing things in a different way. Learning the new culture and procedures are always a challenge.

**Was there anything you actively worked to change or improve in the legal system or in your practice environment?**

I tried to work on some new case management orders, similar to another county in Illinois, along with a small group of attorneys. Change is hard when certain county bars are used to certain procedures. I have also been an advocate for financial mediation on family law matters believing that courts should maintain a roster of mediators who are able to mediate child support, spousal maintenance, and the division of assets/debt in a divorce.

**How has rural legal practice changed over the course of your career?**

The most notable change is Zoom court/remote hearings that have been available post pandemic that has made it easier to practice in multiple counties.

**Accomplishments and contributions**

**What professional accomplishments are you most proud of?**

Early in my career, my Food & Agriculture Law Blog made the Top 100 Blawg list. I won the Excellence in Agriculture Law (Private Practice) from the American Agriculture Law Association (AALA) and the Early Career Award from Texas A & M University.

**Have you been involved in community service, local organizations, or bar association work? Please describe.**

I serve on the board of directors for

a not-for-profit trying to raise monies to build a daycare in my hometown. I volunteer as general counsel to a junior college foundation board. I am also the editor of the newsletter for the ISBA Agriculture Section Council.

**Are there any cases, projects, or experiences that stand out as especially meaningful or impactful?**

I was a graduation commencement speaker at Lake Land College, circa 2019. It was surreal being at my alma mater speaking to over 2,000 graduates and families. I am a big believer in the junior college educational system.

**Looking ahead**

**What advice would you give to young attorneys considering rural practice?**

In 2025, technology allows for virtual staff and offices. I have remote employees and independent contractors in numerous positions.

Don't be afraid of AI. Instead of hiding from it, learn to embrace it. It's here to stay.

**What opportunities do you think exist today in rural law practice that didn't exist earlier in your career?**

Virtual mediation! Mediators can help facilitate conversations with litigants from the comforts of their own locations. This is something that was rarely done early pre-pandemic. This should be embraced by

mediators, rural practitioners and litigants alike.

**Are there services, programs, or initiatives you'd like to see the Illinois State Bar Association expand or implement?**

Yes, I would love to see more CLE programs that are more step-by-building-step. The family law section did an excellent How To Series on a myriad of family law topics and this would be welcomed in different practice areas such as estate planning, real estate, trademarks, business planning, bankruptcy, etc.

**Anything else you'd like to share with your peers or the broader legal community?**

Like any organization, the ISBA has come alive for me now that I have joined two Section Councils. Anything you can do to help get involved would only strengthen this Section Council and your individual experience with ISBA. Please consider contributing to the newsletter or get involved in a committee. ■

*Sara, an attorney with Mahoney & Mahoney, LLC, serves as the general practice branch of the firm as well as supports the large litigation practice of Mahoney & Mahoney.*

*Ean R. Albers is an associate attorney with Hasselberg Grebe Snodgrass Urban & Wentworth, located in Peoria and Lacon, Illinois.*



ILLINOIS BAR JOURNAL

---

**BECOME *an* AUTHOR**

---

**SHOULDN'T YOU BE AN IBJ AUTHOR?**  
Write for the Illinois Bar Journal and...

- ESTABLISH YOURSELF AS A SUBJECT MATTER EXPERT.
- EARN FREE CLE CREDIT! (SEE RULE 795 (d)(7).)
- RECEIVE A FREE COMMERCIAL-PRINT GRADE PDF OF YOUR ARTICLE.

**ISBA.ORG/IBJ/MANUSCRIPTGUIDE**

# Oil and Gas Law Ownership Rights and Surface Issues

BY DAVID M. FOREMAN

## Introduction

Historically, an owner of real estate, in fee simple absolute, was thought to own a pie shaped cubit, extending from the center of the Earth, all the way up to the heavens. This traditional rule of ownership is a gross over simplification which, as we shall see, does not truly apply in the case of oil and gas.

Oil and gas are the residue of ancient animal or vegetable deposits, which have been compressed under the surface of the Earth by tremendous geological forces for eons. Although they may not be minerals in the scientific sense, they are considered to be minerals, for legal purposes. *Gillette v. Chicago, Wilmington and Franklin Coal Company*, 382 Ill. 241 (1943).

The word “minerals” in the phrase “including coal and other minerals,” has been held to include oil and gas, as a matter of law. *Nance v. Donk Brothers Coal & Coke Co.*, 13 Ill. 2d 399 (1958). The legal definition of the term “minerals” is rather broad. It is akin to what most would consider natural resources which are found underground and may be mined or produced.

The important point for our purposes here is that oil and gas share a unique attribute which distinguishes them from all other minerals, namely, they are fugacious. Unlike hard minerals such as coal or limestone, they do **not** remain static. Instead, oil and gas migrate in response to changes in the surrounding geological conditions. Oil and gas do **not** naturally or continuously flow, like water in underground streams. Rather, they're trapped in rock, sand or limestone formations, underneath the surface of the Earth, where they are subject to near constant geological pressures that hold them fixed in place.

While the natural conditions remain

undisturbed, oil and gas generally remain static. However, oil and gas may migrate in response to either naturally occurring or artificial changes in the surrounding geological conditions. For example, once a pressurized oil or gas bearing formation is penetrated by the drilling of a well, oil and gas begin moving towards the well bore, being the point of least resistance. It is this fugacious quality of oil and gas which distinguishes them from all other minerals. Moreover, it is this unique characteristic which is largely responsible for shaping the law of oil and gas as we know it today.

## Ownership

Since we have only limited information concerning the geological landscape thousands of feet below the surface and since oil and gas may migrate during the course of production, it is difficult to say, with any degree of certainty, where a specific quantity of oil and gas that has been produced may have originated. Depending upon the geological circumstances involved, oil produced from a given well bore may have migrated or drained from underneath adjoining acreage. The two questions thus posed were who “owns” the oil and gas, 1) while it remains in place and perhaps more importantly, 2) once it is produced.

Courts in various jurisdictions have grappled with the issue, resulting in two different theoretical approaches. Historically, oil and gas were likened to wild animals and or riparian waters. Due to their fugacious nature, they were referred to as minerals *ferae naturae*. As such, they were **not** owned by anyone, while they remained in their natural state, but could only become subject to ownership when reduced to actual possession or “capture.” This is an intriguing, if not accurate premise, antiquated by science and technology, remains partially in effect.

A point bearing emphasis is that the

practical difficulty of identifying where oil and gas originated, has resulted in an ownership theory, which is unlike any other substance, known to the law. Although the “rule of capture” remains the law in virtually all jurisdictions where oil and gas is produced, the ownership theory of oil and gas in place, varies by jurisdiction. Some states recognize the “ownership theory,” some accept the “**non**-ownership theory.” The analogy to wild animals or riparian waters has been abandoned, mainly because oil and gas generally only migrate in response to some artificial disruption of natural forces occasioned by man. Observation has revealed that they do **not** simply flow, naturally like water in an underground stream, or wander of their own accord like wild animals.

A better understanding of the nature and properties of oil and gas, has caused the law to evolve accordingly. The differences in ownership theory of oil and gas in place is interesting, but perhaps less important than the rule of ownership once it is captured, produced, sold and realized into monetary gain. That after all is the primary objective of most owners and developers.

## Oil and gas in place: Ownership vs. exclusive rights

In some states, the owner of the real estate is said to “own” the oil and gas underneath the surface. This theory is referred to as the “ownership in place theory.” This, however, does **not** mean that one may prevent others from undertaking production activities, on their own land, which may cause the oil or gas to migrate, because, while it remains underground, oil and gas remain subject to the rule of capture.

In other states, such as Illinois, the landowner does **not** “own” the oil and gas in place underneath his or her property in a conventional sense. Rather he or she owns the “exclusive right” to use his or

her land to explore for and produce it. The owner of the mineral rights has been held to own the exclusive right to prospect for oil and gas by drilling a well on the property. Illinois is therefore categorized as what is commonly referred to as an “exclusive rights” or “**non**-ownership theory” state. See *Williams & Meyers, Oil and Gas Law*, Sections 203, 203.1.

Under Illinois Law, oil and gas under the ground are **not** capable of ownership separate and distinct from the real estate. *Murgarger v. Franklin*, 18 Ill. 2d 344, 163 N.E.2d 818 (1960). Due to its fugacious nature, it's been said that there can be no such thing as absolute title to oil and gas in place, underground. *Reed v. Texas Company*, 22 Ill. App. 2d 131, (1959); *Poe v. Ulrey*, 233 Ill. 56; *Updike v. Smith*, 378 Ill. 600 (1942); *Trigger v. Carter Oil Co.*, 372 Ill. 182 (1939).

An owner of oil and gas rights owns merely the exclusive right to prospect and attempt to produce it. *Pickens v. Adams*, 7 Ill. 2d 283, 131 N.E.2d 38 (1956). Although one may not own the oil or gas in place, they have a legally protectable right to explore for it and may prevent and recover for an invasion of that right as a trespass and/or conversion.

## The rule of capture

The difference in ownership theory is largely academic as “the rule of capture” applies in either case. Operation of the rule leads to essentially the same result by means of a slightly different legal path, notwithstanding the ownership theory involved. It also defines the correlative rights of the parties to produce from a common reservoir.

According to the rule of capture, the person who owns the mineral rights of land where the well bore is located, also owns any oil or gas produced therefrom, regardless of where it may have originated. Oil and gas become personalty capable of ownership, separate and distinct from the land upon severance from the realty (*i.e.*, the moment it is captured and enters the well bore). Until that moment, oil and gas remains subject to capture by other producers that have a well bore which penetrates into the same oil bearing

formation or reservoir. Until oil or gas is actually produced, severed from the real estate and reduced to physical possession, each remains subject to capture, by anyone legally producing from the common source or supply. *Trigger v. Carter Oil Co.*, 372 Ill. 182 (1939) and *Continental Resources of Illinois v. Illinois Methane LLC*, 364 Ill. App. 3d 361 (5th Dist. 2006).

The rule of capture is not only a rule of necessity, it is very pragmatic as well. It rewards the risk borne by the parties who drilled the well(s). If they had to share the bounty of their efforts with their neighbors, because some of the oil and gas being produced is draining from beneath adjoining land, they would be less inclined to make the investment required to prospect for, discover and produce oil and gas. The rule of capture provides a very simplistic, yet economically efficient result. It correlates risk with reward. It balances the correlative rights of parties to exploit a common supply of reservoir, with the entrepreneurial initiative that must be undertaken to do so. Simply put, “finders keepers, losers weepers.”

As a consequence of the Rule of Capture, a landowner has no cause of action for drainage caused by a neighboring well. The oil produced becomes the property of the person who captured it through a lawful well, bottomed on his or her land, regardless of the fact that the oil may have migrated from beneath neighboring property. The neighbor's remedy to prevent drainage and/or displacement is, to go and do likewise, also known as “first come, first serve.”

These two rules create competition, promote recovery and reward initiative, but are not without draw backs. This sort of “every man for himself” philosophy, may in fact over promote drilling, which could in turn, lead to a rapid decline in reservoir pressure and ultimately less production from the formation than would be realized in a more gradual, controlled development program. That, however, is an issue for the Illinois Department of Natural Resources, Office of Oil and Gas Resource Management, One Natural Resources Way, Springfield, Illinois 62702-1271. Reservoir optimization and management is controlled by well spacing and density

regulations. Operation of Pool Wide Units, Waterflooding, Unitization, and other agency rules authorized by the Illinois Oil and Gas Act, 225 ILCS 725/1 *et seq.* may be found in 62 Ill. Admin Code, Part 240.10 *et seq.* Having discussed the nature of oil and gas ownership, we now turn to another unusual aspect of mineral rights.

## Severance of mineral rights

Ownership of real estate has been likened to a bundle of twigs. The bundle is comprised of an almost infinite number of rights or uses. Ownership of the various minerals, are twigs included in the bundle. Any one of them may be severed, split off, removed from the bundle and owned separate and apart from the others.

There are essentially two ways of severing mineral rights from the surface or other rights. One is by reservation, wherein the Grantor conveys the real estate, but reserves all or a portion of the minerals. The second is by express grant, where the owner of the real estate expressly conveys the mineral rights to a third party.

Much confusion has resulted from deeds which “except” all or a portion of the minerals rather than reserving them or making the conveyance “subject to” prior reservations or grants. It may be unclear whether an exception refers to a current reservation or a prior grant. This confusion is compounded by the fact that title insurance policies typically do **not** cover minerals.

Although Illinois case law recognizes “exceptions” to the granting clause of an instrument, it is better practice to avoid use of the term “except” when drafting a mineral conveyance. Instead, expressly refer to the mineral rights as being either prior **or** current grants or reservations.

Mineral rights can not only be severed from the surface, they can also be divided up several different ways. They may be divided into terms, by time, or divided three dimensionally, by formation. The ability to slice and dice mineral ownership by time or space can result in a number of possibilities that can make determining title very challenging. Each case must be judged on its own particular facts. Each chain of title must be examined. Further, a host of

legal rules regarding the construction of instruments and conveyance, intended to resolve ambiguities, may actually lead to results which are contrary to the parties' subjective intent.

Minerals are conveyed unless reserved or excepted. In a warranty deed, the Grantor warrants title to the real estate including the minerals, unless the minerals have specifically been made the subject of an exception or reservation. *Updike v. Smith*, 878 Ill. 600 (1942).

The act of splitting the minerals from the other land rights is referred to as "severance." Whenever minerals are severed from the surface, two distinct estates come into being: The *mineral estate* and the *surface estate*. These two separate estates may be conveyed and subdivided as other interest and real estate. *Shell Oil Co. v. Moore*, 382 Ill. 556 (1943).

### Implied easement in favor of mineral estate

A mineral estate is a freehold estate under Illinois law. As such, the owner of it is entitled to all the usual remedies at law and in equity for protection of the rights and incidents of ownership of real estate. *Pickens v. Adams*, 7 Ill. 2d 283 (1956).

As stated above, due to their fugacious character, oil and gas are incapable of separate distinct ownership from the land, until they are actually found and produced. A deed to minerals carries not only title to solid minerals, but also what is necessary to acquire title to or possession of the fugacious minerals, meaning the right to enter upon the surface to explore and if found, to reduce them to possession. *Pickens v. Adams*, 7 Ill. 2d 283 (1956).

The important point for our purposes here is that a severed oil and gas interest carries with it an implied right to use so much of the surface as is reasonably necessary to enjoy the mineral estate. The law implies a right to use the surface, to access the minerals, in much the same way the law implies an easement over retained land, adjacent to a public road in the grant or deed of conveyed land, in order to allow access as the tract conveyed would otherwise be land locked. In the case of minerals, the access is three dimensional

and is both horizontal and vertical.

The mineral estate is the "dominant estate" and the surface estate is the "servient estate." The servient estate bears a burden of use, in favor of the dominant estate. It is necessary for the owner of the severed mineral estate to use some of the surface, in order to benefit from, or enjoy the mineral estate. For example, a certain amount of surface is necessary to build roads, drill wells, and if successful, lay flow lines, electric lines, and erect storage tanks, etc.

The implied right is one of reasonable use. It extends to both primary and secondary recovery. It is not unlimited. What is reasonable, depends upon the circumstances. It is submitted that a use would not be permitted, if it unreasonably interfered with a large majority of the landowner's primary use and enjoyment of the surface.

### Surface owner's rights

When there has been **no** severance of the minerals from the surface, there is little dispute as to the parties' surface rights. The lease agreement itself contains provisions and covenants which address these uses. However, where the minerals have been severed from the surface, the surface owner often times finds him or herself subject to the uses of which they were unaware, that can negatively impact their current and future use of the surface. Since most title insurance policies don't cover minerals, surface owners may not appreciate the significance of the severance or the implied easement which arises therefrom.

In these cases, the surface owners have to put up with all of the adverse effects associated with oil and gas operations, but enjoy none of the resulting benefits. This often leads to acrimony and is fertile ground for litigation, dispute, and in some cases vandalism or interference with production.

In most cases, the surface owner unwittingly finds themselves holding what they perceive to be the short end of the stick, not realizing that it was removed from the bundle of rights, before they purchased it. Not being aware of the pre-existing legal situation, it seems unfair. Surface owners often become angry or

upset, when the operator commences new activities and they discover that they are not "in on the deal."

This friction between surface owners and mineral owners/developers was the primary impetus behind the Drilling Operations Act, **765 ILCS 530/0.01** *et seq.*, which is discussed below.

### The Drilling Operations Act

In an effort to assuage the surface owners, the legislature first passed and later amended the Drilling Operations Act, to require operators who drill **new** wells, to notify and meet with surface owners to discuss certain issues such as the location of roads etc. in an attempt to work out a mutually agreeable solution before new wells are drilled. Failing that, there are provisions for calculating damages, and tendering payment.

The Drilling Operations Act is a significant departure from prior common law, in one important respect, namely that it purports to make the operator continually liable for land taken out of production by reason of any new drilling operations. This obligation could be substantial. Therefore, it is necessary to understand when the Act applies and when it does **not**.

The Drilling Operations Act only applies to the drilling of new wells. It does **not** apply to re-working operations. 765 ILCS 530/3. Moreover, the Act only applies when the surface owner has **not** consented in writing to the drilling operations **and**: a) there has been a complete severance of the ownership of the oil and gas from the ownership of surface **or** b) where the surface owner also owns an interest in oil and gas which is the subject of either 1) an administrative integration proceeding brought pursuant to 225 ILCS 725/1 *et. seq.*, 62 Ill. Admin Code 240.132 or 2) a proceeding brought pursuant to the Oil and Gas Rights Act, 765 ILCS 520/0.01 *et. seq.*

If the surface owner executes an Agreement or a Release, then the Act does **not** apply. Any such document should be clear on its face, that the landowner is accepting a lump-sum payment in full satisfaction of all current and future damages, including the right to all future

compensation for the land being taken out of production. This presents an interesting, but unresolved question as to the effect on future owners, specifically, whether the current owner can waive a successor's right to future compensation, for land taken out of production by reason of the new drilling operations. Based on how waivers of subsidence rights in coal deeds have been, I would submit, the answer is affirmative. Time will surely tell. In the meantime, it is advisable to obtain a written release whenever possible.

Another similar, but unanswered question is likewise presented, when the surface was severed from the minerals *after* the property was leased. In my opinion, the property was subject to the lease when the severance occurred and the Drilling Operations Act does **not** apply to these situations. The lease (*i.e.*, written agreement) was made with the person(s) who owned the surface at the time. The lease thus constitutes an "agreement in writing" to the drilling operations, and it includes an express easement for the right to use the surface. The grant of that easement is in the chain of title and all subsequent conveyances are on notice of and subject to it.

To my knowledge, this issue has **not** yet been litigated in this State. Parties should recognize that political and public opinion appears to be shifting towards surface owners and it would be naive to think that such forces could not influence a Court's decision in the event of a dispute.

There is also a question as to the validity of the statute's requirement that the operator compensate the surface owner for the loss of value of commercial crop corresponding to the lands taken out of production, because of the use thereof by the operator for roads and production equipment. Said provision requires the operator to pay for the exercise of a right which it already possesses.

If the minerals were severed first, then the surface owner acquired the property, subject to that severance and the implied easement arising from it. The right to use as much of the surface as is reasonably necessary was acquired along with the mineral rights from the original owner and the original owner of those rights was paid

consideration and compensation for them.

Both the Illinois and Federal Constitution prohibit taking of property without due process of law. The statute, which was largely a compromise, requires the operator proposing to drill a new well to pay additional damages, each year, for the value of the crop that could have been raised on the land which is taken out of production, in order to exercise a right which already exists. This issue also has **not** been decided by any Appellate Court in Illinois and may likely not be, given the cost of litigation and appeals, relative to the damages involved.

Lastly, for those that have attempted to comply with the Act in the absence of an agreement with the surface owner, there are some questions concerning the procedure for appraising and tendering payment for damages. The Act has a method and a formula for calculating damages.

## Compaction

The Drilling Operations Act does **not** make any reference to "compaction" or alleged damages resulting from same in subsequent years. Rather, the Act divides surface damages and the operator's duties into 3 categories according to project completion:

1. Drilling Operations—duty to pay reasonable damages to growing crops, etc.
2. Production Operations—duty to pay reasonable damages to growing crops, etc.
3. Post Cessation, Plugging and Abandonment Operations—duty to restore the surface.

The initial tender for drilling operations should include damages to "growing crops, trees, shrubs, fences, roads, structures, improvements, personal property and livestock thereon," resultant from drilling. See 765 ILCS 5/6(A)(1).

Only in the event drilling is successful, the well is completed and "put on pump" is the surface owner entitled to compensation for "the loss of value of a commercial crop corresponding to lands taken out of production because of the use thereof by the operator for roads and **production** equipment." See 765 ILCS 530/6(A)(3).

If the well was a "dry hole", then the only concern is with damages under

section A(1) (*i.e.*, crop damages) and the duty to restore the surface to a condition "as near as practicable" to the condition of the surface prior to commencement of drilling operations.

The statutory formula for calculating crop damages also applies to subsequent activities. However, the Act does **not** give rise to a claim for compaction or "diminished productive capacity" in subsequent years for the initial entry and use of the surface during drilling operations, absent proof of the operator's negligence. See 765 ILCS 530/6(A)(4).

## Summary

In summary, The Drilling Operations Act was well intended to provide guidance and diffuse what could be an incendiary situation, but in practice, can provide more questions than answers. The unique nature of ownership rights and the ability to sever minerals from the surface results in conflicts which the law must balance. Although the rules have remained much the same for many years, the technology and circumstances to which they are applied are ever changing. No doubt, the law of oil and gas will evolve accordingly to meet those challenges. ■

*David M. Foreman is an attorney with Foreman & Kessler Ltd, located in Salem, Illinois.*

*This article was originally published in Mineral Law (December 2025, Vol. 52, No. 2), the newsletter of ISBA's Section on Mineral Law.*



**ISBA CENTRAL**  
ONLINE COMMUNITIES

**OUR ONLINE COMMUNITY**  
where ISBA members can ask and answer questions, receive referrals, and connect with other members.

 **CENTRAL.ISBA.ORG**

# Top 5 Email Management/Organization Tips for Outlook

BY KIMBERLY A. HILTON

## MANAGING EMAIL CAN BE

**OVERWHELMING**, especially when you're juggling multiple tasks or handling a high volume of messages. Fortunately, Microsoft Outlook offers several powerful features to help streamline your workflow, improve productivity, and ensure you never miss an important task or email. Here are my top five email management tips for Outlook to help you stay organized and efficient.

### 1) Leverage Quick Parts for Repetitive Email Responses

If you find yourself sending similar responses or messages regularly, Outlook's *Quick Parts* feature is a real game-changer. This tool allows you to save text snippets—like responses to frequently asked questions, meeting invitations, or standard replies—so you can insert them into an email with just a few clicks.

To use Quick Parts:

- To save a new Quick Part:
  - Compose a new email (Click New Email in the Ribbon) and type the text you want to save.
  - Highlight the text you just typed and go to the *Insert* tab.
  - Click on *Quick Parts*, then select *Save Selection to Quick Part Gallery*.
  - Give your Quick Part a name and hit *OK*.
- To use a new Quick Part:
  - Compose a new email (Click New Email in the Ribbon).
  - Make sure your cursor is in the body section of the email.
  - Click on the *Insert* tab and select the saved snippet.
  - OR—you can type the first 4 or more characters of the name of the Quick Part, and you can press *Enter* or *Tab* to have the remainder of the Quick Part auto-fill.

This can significantly speed up your email responses and ensure consistency in your communication. I frequently use this feature when communicating with potential clients or with my administrative contractors where the information I am communicating is exactly the same. No need to continually re-type the same message over and over again.

NOTE: Quick Parts are not available on Outlook for Mac or Outlook on the web.

### 2) Streamline Workflows with Quick Steps

Outlook's *Quick Steps* feature allows you to automate repetitive tasks that require multiple steps. Whether it's moving emails to a specific folder, forwarding a message, or creating a new task, Quick Steps can save you time by consolidating several actions into one click.

To set up Quick Steps:

- Navigate to the *Home* tab and look for the *Quick Steps* section.
- Click on *Create New* to define your custom action.
- Give your Quick Step a name you will remember and then choose what you want to happen. You can choose from predefined actions like *Move to Folder*, *New Meeting*, or *Reply & Delete*, or create a combination of actions.

Once you've set up Quick Steps, you can apply them to emails with a single click, helping you stay on top of your inbox and boosting your efficiency. Remember that you will want to only use this when the steps are always the same—emails forwarded to the same person and then filed in the same folder—each time. I would recommend only having around 6 Quick Steps because any more than that, you spend more time looking for the appropriate Quick Step than just performing the steps yourself in Outlook.

NOTE: Quick Steps are not available on Outlook for Mac or Outlook on the web.

### 3) Organize Your Inbox with Folders and Categories

While Outlook's search functionality is excellent, it's always beneficial to have a clear organizational system in place. Using *Folders* and *Categories* can help you manage your emails and keep your inbox clutter-free.

Folders allow you to sort emails into specific categories or files. I maintain a folder/sub-folder structure that breaks saved emails down to Administrative, Client Matters, and Closed Client Matters. Under each of these 3 folders, I maintain subfolders for each type of administrative matter or each client or closed client. To create a folder:

- Right-click on your inbox or another folder in the folder pane.
- Select *New Folder*, then give it a name and hit *Enter*.

With a solid folder and category system in place, you can quickly find the information you need and keep your inbox from becoming overwhelming.

You can also use Outlook's search function to search by folder or your entire mailbox. This is very helpful when you accidentally drag and drop an email into the wrong folder. If you use the search bar at the top of Outlook, you can use the dropdown menu immediately to that box's left to search the specific folder you are in or you can use it to search Current Mailbox or All Outlook Items. Most often, if I cannot remember where I saved an email, I will use Current Mailbox to search all folders in my mailbox to find the email I need.

Bonus Tip: You can change your settings to force Outlook to save emails to the same folder it was sent from (so long as the folder is not the Inbox Folder). So, if you are responding to an email that is in a client folder, your response will not be saved to Sent Items but will be saved directly in the client folder. To change this setting, click on *File>Options>Mail*. Then, in the *Save Messages* section, check the

second box which reads “When replying to a message that is not in the Inbox, save the reply in the same folder.”

#### 4) Regularly Back Up Your Data with .PST Files

Email backups are essential, particularly if you rely heavily on Outlook for both personal and professional communication. To ensure that your email data is always safe, it’s wise to create regular backups using a *Personal Storage Table* (.PST) file.

To create a .PST backup:

- Open Outlook and go to the *File* tab.
- Select *Open & Export*, then click *Import/Export*.
- Choose *Export to a file* and select *Outlook Data File (.pst)*.
- Choose the folders you want to back up (e.g., Inbox, Sent Items, Client X) and save the .PST file to a secure location.

Creating .PST backups ensures that even if you lose access to your Outlook data, you’ll have a secure copy to restore

from. I like to use this to backup the email for my client files. This allows me to save the email communications when a matter is closed without making my Outlook box any bigger than it has to be. Remember, a large Outlook file size will likely slow down your computer and will lead to Outlook “hanging” or not responding when you need it to work. If you need to access the email in the future, you can open the .pst file in Outlook and see the messages just as they were when you backed them up.

#### 5) Flag Emails for Follow-Up

One of the most useful features in Outlook for staying on top of your tasks is the ability to flag emails for follow-up. Flagging an email marks it as important, so you don’t forget to take action on it. You can set deadlines or reminders, making it easy to manage emails that require further attention.

To flag an email:

- Right-click on the email you want to flag.

- Select *Follow Up*, then choose from options like *Today*, *Tomorrow*, *This Week*, or *Custom* to set a specific reminder date.

You can also use the *Task* pane to view all flagged emails and tasks in one place, ensuring nothing slips through the cracks. You can also view all reminders for email you have flagged using the *To Do App*.

By utilizing these five email management tips—Quick Parts, Quick Steps, organized folders, .PST backups, and flagging for follow-up—you can take control of your Outlook inbox and improve your productivity. Whether you’re managing personal or professional emails, these features help reduce time spent on repetitive tasks, keep you organized, and ensure you never miss important messages or deadlines. With a little setup, Outlook can become a powerful tool for managing your email workflow efficiently. ■

*This article was originally published in Legal Technology (February 2025, Vol. 32, No. 3), the newsletter of ISBA’s Standing Committee on Legal Technology.*



## Illinois State Bar Association High School Mock Trial Invitational

March 14-15  
Lincoln Land Community College  
Springfield, IL

The 2026 ISBA High School Mock Trial Invitational will be held on Saturday, March 14, and Sunday, March 15, 2026, at Lincoln Land Community College in Springfield.

Judges, lawyers, paralegals, law students, and other legal professionals are needed to act as presiding judges, jurors/evaluators, and bailiffs for each trial. You do not have to be a litigator to volunteer! Deadline to sign up is February 2, 2026.

[isba.org/teachers/mocktrial](https://isba.org/teachers/mocktrial)



ILLINOIS STATE  
BAR ASSOCIATION

# Unlocking the Potential of Generative AI for Lawyers: Red Flags and Best Practices

BY CAROLYN ELEFANT

**GENERATIVE AI (GenAI) IS REVOLUTIONIZING** industries worldwide, including the legal profession. While this technology presents immense opportunities, it also comes with unique challenges that lawyers must understand and navigate. This guide highlights the red flags lawyers should watch for when using GenAI and offers actionable best practices to ensure its ethical and effective use in legal practice.

## Why Generative AI matters for lawyers

GenAI tools like ChatGPT, Claude, and Perplexity have the potential to transform how lawyers work. From drafting legal documents to summarizing transcripts and analyzing case law, these tools offer significant time savings and increased efficiency. However, lawyers must balance the convenience of AI with the profession's ethical obligations of accuracy and due diligence.

## Common red flags in using Generative AI

### 1. Document Formatting Errors

AI often struggles with certain file formats, especially scanned PDFs that lack proper OCR (Optical Character Recognition). If you upload a poorly formatted document, AI may fabricate or misinterpret its contents. Uploading text-based formats like Word documents or plain text can help ensure accuracy.

### 2. Math and Numerical Discrepancies

Despite its advanced capabilities, GenAI is prone to calculation errors. Lawyers who rely on AI for fee calculations or analyzing numerical data must double-check its output. Interestingly, while AI is unreliable at performing calculations, it excels at identifying inconsistencies in numerical data, such as discrepancies in tables.

### 3. Inaccurate Visual Representations

When asked to generate diagrams or visual aids, GenAI often misrepresents scale or dimensions. For example, AI-generated images of transmission lines might depict incorrect distances or numbers of affected properties. While useful for preliminary brainstorming, lawyers should not rely on AI-generated visuals for court presentations or legal arguments.

### 4. Imprecise Contract Analysis

AI tools frequently oversimplify or misinterpret complex contract terms. For instance, an indemnification clause might be summarized incorrectly, omitting critical details. Moreover, AI can conflate terms, turning "A or B" obligations into "A and B." Lawyers must manually verify all AI-generated summaries to avoid malpractice risks.

### 5. Fabricated Legal Citations

Perhaps the most infamous red flag is AI's tendency to "hallucinate" legal citations. While the output may look realistic,



the referenced cases or articles may not exist. Even when AI provides seemingly legitimate links, lawyers must click through and verify the sources to ensure authenticity.

### 6. Misunderstandings and Misreadings

AI tools occasionally misinterpret even straightforward documents, leading to significant errors. For example, when tasked with summarizing a Supreme Court transcript, ChatGPT generated inaccurate summaries of the arguments. This demonstrates the importance of cross-checking AI outputs with the original documents.

### 7. Inherent Biases

Generative AI models often reflect societal biases. For instance, a generic request for an image of a lawyer might yield a white man in a suit unless explicitly instructed otherwise. Similarly, gendered assumptions can influence AI-generated content, such as emphasizing work-life balance for women over professional goals.

### Bonus Red Flag: Plagiarism Risks

AI-generated content can inadvertently replicate existing materials, raising potential copyright concerns. Before using AI-generated marketing or blog content, lawyers should run it through a plagiarism checker to avoid legal disputes.

## Best practices for using GenAI in legal practice

To mitigate risks and maximize benefits, lawyers should adopt the following strategies:

### 1. Understand the Limitations

Awareness of GenAI's potential pitfalls is the first step to

responsible use. Recognize where the technology excels (e.g., spotting data inconsistencies) and where it struggles (e.g., legal reasoning or numerical calculations).

### 2. Verify All Outputs

Whether it's a contract review, case citation, or legal brief, always double-check the AI-generated content. Treat the AI as a junior associate whose work requires supervision.

### 3. Use Paid Models

Paid versions of tools like ChatGPT and Claude offer advanced capabilities, including higher character limits and improved accuracy. Investing in these versions ensures better performance.

### 4. Cross-Check Using Multiple Platforms

Leverage different GenAI tools to validate outputs. For example, use ChatGPT for drafting and Perplexity for verifying citations. This redundancy reduces the risk of relying on incorrect information.

### 5. Provide Specific Prompts

Detailed and precise instructions improve AI output. For instance, if generating marketing images, specify diverse representations to counteract biases.

### 6. Incorporate AI Training

Correct errors by providing feedback to the AI platform. This

not only improves your interaction but contributes to refining the technology for broader use.

### 7. Run Plagiarism Checks

Before publishing AI-generated content, ensure originality by using plagiarism detection tools. Even better, personalize the content to reflect your unique voice and insights.

## Embracing AI responsibly

Generative AI offers unparalleled opportunities for innovation in legal practice, but it is not a silver bullet. By understanding its limitations and implementing safeguards, lawyers can harness its potential while maintaining the profession's high standards of accuracy and integrity.

As technology evolves, staying informed and adaptable will be key to leveraging AI responsibly. If you're ready to dive deeper into GenAI for lawyers, consider joining specialized training programs to refine your skills and stay ahead in this rapidly changing landscape. ■

*This article was originally published on January 21, 2025, on the MyShingle.com blog of Law Offices of Carolyn Elefant, and is republished here with permission.*

# ILLINOIS LAWYER NOW

Presented by the Illinois State Bar Association

## CALLING ALL LEGAL BLOGGERS!

Are you an ISBA member with a legal blog? The ISBA wants to help elevate your content and make it available to a wider audience through Illinois Lawyer Now.

Be a part of one of the **FIRST** state bar-sponsored legal blog aggregation sites!

Joining is easy and **FREE**, simply fill out the quick form at [IllinoisLawyerNow.com/join](https://IllinoisLawyerNow.com/join)



# JOINT *Midyear Meeting*

December 11-12, 2025 | JW Marriott Chicago

Presented by THE ILLINOIS STATE BAR ASSOCIATION and THE ILLINOIS JUDGES ASSOCIATION



