



AMERICAN
BANKRUPTCY
INSTITUTE

Rocky Mountain Bankruptcy Conference

Emerging Bankruptcy Issues

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Emerging Issues - How to Apply Old Rules to New Technology

Panel Discussion Outline

I. Introduction [Brelle]

A. Brief Overview - This panel will discuss how new technologies are interacting with legal principles, legal practice and the administration of justice, with particular focus on the recent emergence of Artificial Intelligence, particularly generative AI.

B. In general, technology solutions have been adopted by the legal community and the courts just as society at large.

1. Law Practice.

a) Legal research shifted from the law library to online research applications (e.g., LEXIS, Westlaw) and general search applications (e.g., Google), and more recently – and with mixed results – to AI platforms (e.g., ChatGPT).

b) Case files and other records have moved to cloud storage platforms.

c) Expansion of home internet access at greater speeds has enabled remote work and reduced the need for traditional law offices.

2. Courts.

a) Submission of physical papers at court filing window and review of case files at clerk's office replaced by web-based filing applications (e.g., PACER, CM/ECF).

b) Accelerated by the impact of the Covid-19 pandemic, proliferation of court hearings by video conference (e.g., Zoom, Microsoft Teams).

3. Bankruptcy Process

a) Submission of documents to Trustees via Stretto and other software

b) Zoom and telephonic 341 meetings

C. Recently, lawyers and courts have had to address how the broader adoption of technology continues to infiltrate the field of law, including the recognition of property rights that did not meaningfully exist years ago, the use of a person's email or social media accounts to provide legal notice, and the rise in popularity of artificial intelligence tools, especially generative AI.

1. The 5th Circuit was considering a requirement that attorneys declare they either did not use AI in their brief or that if they did, humans reviewed the accuracy of

the pleadings. It did not adopt this rule but reminded parties of their duties under Federal Rule of Appellate Procedure 46(b)(1)(B).

“A member of the court’s bar is subject to suspension or disbarment by the court if the member is guilty of conduct unbecoming a member of the court’s bar.”

II. Artificial Intelligence.

A. We Are Using AI Without Knowing It

1. ChatGPT examples - [Tom]
 - a) Gettysburg Address written by Trump
 - b) Westlaw/Lexis example
 - c) AI presentation materials
2. Examples - [Tom]
 - a) AI controls our online experiences...what movie and dating recommendations we receive; what job ads we see; etc.
 - b) Ask audience about examples of when they searched for something online or even talked about it with someone, and then ads for it started popping up everywhere.
3. Cautionary Tales - Where Can AI Go Wrong? [Tom]
 - a) Product Design Issues - Many products and services that use algorithms are not being thoughtfully designed. (Ex: Pulse Oximeter)
 - b) Product Training Issues - Historical data contains biases. Algorithms are unaware of this and are thus prone to replicating the past.
 - c) We are professionals and clients expect us to bring our experience along with our technical knowledge.
 - d) Cat-Lawyer Video - Rod Ponton at a Zoom hearing in Texas. “I’m here live. I’m not a cat.”



Filter turns lawyer into cat during Zoom hearing

4. Other examples of AI in your Law Practice [Amanda]
 - a) Speech-to-text conversion programs
 - b) Language translation
 - c) Chatbots - law firm websites

B. Why It's Important to Know - [Kim]

1. Implicit Bias
2. Protection of Privileged or Proprietary Data
3. Out of date - Information only good through 2022 -
 - a) Priority wages - section 507(a)(4)
 - b) Chapter 13 eligibility - section 109(e)
 - c) Subchapter V eligibility - section 1182(1)(a)
4. Ask Audience

C. AI Gone Wild

1. Hallucinations - [Tom]
2. Imaginary cases - [Malhar]
 - a) *Mata v. Avianca, Inc.*, 678 F. Supp. 3d 443 (S.D.N.Y. 2023) (imposing sanctions on attorney who used ChatGPT for legal research even though attorney was not aware that ChatGPT could make up cases, and failed to check whether the citations were real or accurate).
 - b) *Park v. Kim*, 91 F.4th 610 (2nd Cir. 2024) (referring attorney to grievance panel for relying on ChatGPT without checking its results and for citing non-existent decision in reply brief).
 - c) *People v. Crabill*, 2023 WL 8111898, at *1 (Colo. O.P.D.J. Nov. 22, 2023) (suspending attorney for violating various ethical rules by failing to check cases provided by ChatGPT).
3. Courts' responses to AI behaving badly [Malhar]
 - a) Standing orders (e.g., N.D. Tex., N.D. Ill.)
 - b) Changes to Local Rules (e.g., E.D. Tex.)

D. Ethics - Professionals need to add their experience and knowledge – “Garbage in Garbage Out” problem [Kim/Amanda]

1. Access to Justice
 - a) May miss issues such as exemptions for individual debtors
2. May embolden pro se litigants to submit generative AI-authored papers that are not based on actual cases. (see Fifth Circuit Rule 32.3)

E. Where is the intersection of bankruptcy law and AI? - [Malhar/Amanda]

1. Noticing methods: e.g., email, social media accounts (see also IV. below)
2. Potential adjudication of simple/numerous matters: e.g., omnibus claims objections
3. Fee Examiners
4. Financial advisor data analysis?
5. Access to Justice
6. Professional Rules

F. What evidentiary issues arise? - [Kim]

1. Algorithms can't be cross-examined
2. The technology is proprietary and costs large sums to develop. Companies will not want to explain how it works to their competitors or the public.
3. The technology is extremely complicated and its decisions can be impossible for even its developers to explain. (Black Box Problem)

III. Ownership of Social Media Accounts. [Malhar]

- A. *CTLI, LLC*, 528 B.R. 359 (Bankr. S.D. Tex. 2015).
- B. *Vital Pharmaceuticals, Inc. v. Owoc*, 652 B.R. 392 (Bankr. S.D. Fla. 2023).
- C. *JLM Couture, Inc. v. Hayley Paige Gutman*, 91 F.4th 91 (2d Cir. 2024).
- D. Has anyone scheduled an "influencer" account as a property interest? Would it be part of the estate?

IV. Beyond "Snail Mail" and Publications: Email and Social Media Notice. [Malhar & Amanda]

- A. ECF Notice vs. Email Notice
 1. FRBP 7004
- B. Crafting Notice in Mass Tort Bankruptcies: privacy concerns



Emerging Bankruptcy Issues

Applying Old Rules to New Technology



New Technologies Interacting with
Legal Principals, Legal Practice,
and the Administration of Justice

Artificial Intelligence





Ownership of Social Media Accounts



Beyond "Snail Mail" and Publications: Email and Social Media Notice

AI-RELATED LOCAL RULES AND STANDING ORDERS

Federal Court Local Rules and General Orders:

- Western District of Oklahoma Bankruptcy Court General Order 23-01 states that attorneys must 1) identify the program used and the specific portions of text for which a generative artificial intelligence program was utilized; (2) certify the document was checked for accuracy using print reporters, traditional legal databases, or other reliable means; and (3) certify the use of such program has not resulted in the disclosure of any confidential information to any unauthorized party. <https://www.okwb.uscourts.gov/sites/okwb/files/GenOrder23-01.pdf>
- Eastern District of Texas: Local Rule at 3 says the following: “ If the lawyer, in the exercise of his or her professional legal judgment, believes that the client is best served by the use of technology (e.g., ChatGPT, Google Bard, Bing AI Chat, or generative artificial intelligence services), then the lawyer is cautioned that certain technologies may produce factually or legally inaccurate content and should never replace the lawyer’s most important asset – the exercise of independent legal judgment. If a lawyer chooses to employ technology in representing a client, the lawyer continues to be bound by the requirements of Federal Rule of Civil Procedure 11, Local Rule AT-3, and all other applicable standards of practice and must review and verify any computer generated content to ensure that it complies with all such standards.” <https://txed.uscourts.gov/sites/default/files/goFiles/GO%2023-11%20Amending%20Local%20Rules%20Effective%20December%201%2C%202023.pdf>
- Northern District of Texas Bankruptcy Court General Order 2023-03 states “If any portion of a pleading or other paper filed on the Court’s docket has been drafted utilizing generative artificial intelligence, including but not limited to ChatGPT, Harvey.AI, or Google Bard, the Court requires that all attorneys and pro se litigants filing such pleadings or other papers verify that any language that was generated was checked for accuracy, using print reporters, traditional legal databases, or other reliable means.” <https://www.txnb.uscourts.gov/sites/txnb/files/news/General%20Order%202023-03%20Pleadings%20Using%20Generative%20Artificial%20Intelligence-signed.pdf>
- The Eastern District of Missouri provides guidance on its website titled “Self-Represented Litigants” that prohibits filings drafted by generative AI. <https://www.moed.uscourts.gov/self-represented-litigants-srl>
- D. Hawaii General Order 23-1 entitled “In re: Use of Unverified Sources” states that briefs and memoranda generated by AI platforms like ChatGPT and Bard (among other things) have increased the court’s concern about accuracy of filings and requires any counsel or party using material “generated by an unverified source” must submit a declaration that advises the court of reliance on such sources and verifies that the counsel or party has confirmed that “any such material is not fictitious.” <https://www.hid.uscourts.gov/cms/assets/23a3ee72-c96c-42c4-b184-e8a748a00f64/General%20Order%20on%20the%20Use%20of%20Unverified%20Sources.pdf>

Federal Court - Judge Specific Requirements:

- D. Arizona Judge James A. Soto has issued orders requiring counsel and pro se litigants who submit pleadings using generative AI to verify that any generated language was checked for accuracy “by using print reporters, traditional legal databases, or other reliable means by a human being.” <https://www.ropesgray.com/-/media/ropes-post-pilot/microsites/ai/pdfs/2024/feb/daz-judge-soto-ai-order.pdf?rev=48578eadc7ac498aa2c4a962b8641909&hash=1D49EEF4B667A4BD8AB0403EC77B10B0>

- N.D. Illinois Judge Coleman has a standing order listed on the court’s website titled “Memorandum of Law Requirements” in which she prohibits any use of AI to draft memoranda or “as authority to support” a motion. This language uniquely forbids AI itself from being cited as a source, rather than the more typical practice found in other court orders which address citations created by AI. The order does not refer to generative AI specifically and applies to any AI. <https://www.ilnd.uscourts.gov/judge-cmp-detail.aspx?cmpid=626>

N.D. Illinois Judge Iain D. Johnston: “Anyone—counsel and unrepresented parties alike—using AI in connection with the filing of a pleading, motion, or paper in this Court or the serving/delivering of a request, response, or objection to discovery must comply with Rule 11(b) and Rule 26(g) of the Federal Rules of Civil Procedure, and any other relevant rule, including any applicable ethical rule.” <https://www.ilnd.uscourts.gov/judge-cmp-detail.aspx?cmpid=1409>

- Judge Hudson, Judge David Novak, Judge Hannah Lauck, and Judge Roderick Young from the Eastern District of Virginia have been issuing pretrial orders, such as the one found in *Kelly v. Altria Client Services, LLC et al*, Docket No. 3:23-cv-00725, which include a paragraph addressing the “Use of Artificial Intelligence.” The instruction states: “Should any party utilize artificial intelligence for the preparation of any filing, they must identify the use of the artificial intelligence in the filing and provide a certification that they have reviewed all citations for accuracy.” The use of the phrase “preparation” (as opposed to “drafting”) could indicate disclosure and verification are required when any AI tools are used in any part of the preparatory process, including research. <file:///Users/malharpagay/Downloads/Kelly-Altria.pdf>; file:///Users/malharpagay/Downloads/Active_142088156_1_EDVA%20-%20Judge%20David%20J%20Novak.pdf; file:///Users/malharpagay/Downloads/Active_142096833_1_EDVA%20-%20Judge%20M%20Hannah%20Lauck.pdf; file:///Users/malharpagay/Downloads/Active_142113593_1_EDVA%20-%20Judge%20Roderick%20C%20Young-1.pdf

- Judge Brantley Starr, United States District Judge for the Northern District of Texas requires attorneys to read and adhere to the following: No portion of any filing in the case can be drafted by generative artificial intelligence (AI). If AI is used for drafting, all such content must be verified for accuracy by a human being. Any language generated by AI, including quotations, citations, paraphrased assertions, and legal analysis, must be

checked against print reporters or traditional legal databases before submission. <https://www.txnd.uscourts.gov/judge/judge-brantley-starr>

- Judge Michael Baylson from the Eastern District of Pennsylvania issued a standing order that requires the disclosure of any AI use in court filings. This order mandates that litigants certify the accuracy of citations produced with AI assistance, encompassing even seemingly minor tools like Grammarly. <https://www.paed.uscourts.gov/sites/paed/files/documents/procedures/Standing%20Order%20Re%20Artificial%20Intelligence%206.6.pdf>
- Magistrate Judge Gabriel Fuentes from the Northern District of Illinois has the following standing order: “Any party using any generative AI tool to conduct legal research or to draft documents for filing with the Court must disclose in the filing that AI was used, with the disclosure including the specific AI tool and the manner in which it was used.” [https://www.ilnd.uscourts.gov/_assets/_documents/_forms/_judges/Fuentes/Standing%20Order%20For%20Civil%20Cases%20Before%20Judge%20Fuentes%20rev%27d%205-31-23%20\(002\).pdf](https://www.ilnd.uscourts.gov/_assets/_documents/_forms/_judges/Fuentes/Standing%20Order%20For%20Civil%20Cases%20Before%20Judge%20Fuentes%20rev%27d%205-31-23%20(002).pdf)
- Judge Stephen Vaden of the Court of International Trade’s standing order requires disclosure of any generative AI program used and of all portions of text drafted with the assistance of generative AI, as well as certify that the use of the generative AI tool did not disclose confidential information to unauthorized parties. Judge Vaden expressed his concern that generative AI tools “that supply natural language answers to user prompts, such as ChatGPT or Google Bard, create novel risks to the security of confidential information.” <https://www.cit.uscourts.gov/sites/cit/files/Order%20on%20Artificial%20Intelligence.pdf>
- Judge Leslie Kobayashi of the District of Hawaii requires that anyone “who utilizes any generative artificial intelligence (AI) tool in the preparation of any documents to be filed with the Court, must disclose in the document that AI was used and the specific AI tool that was used. The unrepresented party or attorney must further certify in the document that the person has checked the accuracy of any portion of the document drafted by generative AI, including all citations and legal authority.” <https://www.hid.uscourts.gov/cms/assets/95f11dcf-7411-42d2-9ac2-92b2424519f6/AI%20Guidelines%20LEK.pdf>
- Judge Scott Palk of the Western District of Oklahoma requires that “any party, whether appearing pro se or through counsel, who utilizes any generative artificial intelligence (AI) tool in the preparation of any documents to be filed with the Court, must disclose in the document that AI was used and the specific AI tool that was used. The unrepresented party or attorney must further certify in the document that the person has checked the accuracy of any portion of the document drafted by generative AI, including all citations and legal authority.” https://www.okwd.uscourts.gov/wp-content/uploads/AI_Guidelines_JudgePalk.pdf
- Judge Gene Pratter of the Eastern District of Pennsylvania requires that requires “counsel

(or a party representing himself or herself) disclose any use of generative Artificial Intelligence (“AI”) in the preparation of any complaint, answer, motion, brief, or other paper filed with the Court, including in correspondence with the Court. If counsel (or a party representing himself or herself) has used generative AI, he or she must, in a clear and plain factual statement, disclose that generative AI has been used in any way in the preparation of the filing or correspondence and certify that each and every citation to the law or the record in the filing has been verified as authentic and accurate.” https://www.paed.uscourts.gov/sites/paed/files/documents/procedures/praso1_0.pdf

- New Jersey District Judge Evelyn Padin’s standing order requires that “The use of any GAI (e.g., OpenAI’s ChatGPT or Google’s Bard) for any court filings requires a mandatory disclosure/certification that: (1) identifies the GAI program; (2) identifies the portion of the filing drafted by GAI; and (3) certifies that the GAI work product was diligently reviewed by a human being for accuracy and applicability.” <https://www.njd.uscourts.gov/sites/njd/files/EPPProcedures.pdf>

- Magistrate Judge Jeffrey Cole in the Northern District of Illinois provides that: “Any party using AI in the preparation of materials submitted to the court must disclose in the filing that an AI tool was used to conduct legal research and/or was used in any way in the preparation of the submitted document. Parties should not assume that mere reliance on an AI tool will be presumed to constitute reasonable inquiry. The Federal Rules of Civil Procedure, including Rule 11, will apply.” <https://www.ilnd.uscourts.gov/assets/documents/forms/judges/Cole/Artificial%20Intelligence%20standing%20order.pdf>

- Judge Christopher A. Boyko of the Northern District of Ohio has standing order on the use of generative AI that prohibits use of AI in any filing submitted to the Court (exempting legal or Internet search engines). <https://www.ohnd.uscourts.gov/sites/ohnd/files/Boyko.StandingOrder.GenerativeAI.pdf>

- Judge Michael Newman of the Southern District of Ohio has a standing order prohibiting litigants from using AI in preparing filings. But importantly, Newman carves out an exception for AI in legal and internet search engines. He also requires litigants to inform the court if they discover that AI was used in creating a filing. <https://www.ohsd.uscourts.gov/sites/ohsd/files/MJN%20Standing%20Civil%20Order%20eff.%2012.18.23.pdf>

- Magistrate Judge Peter Kang of the U.S. District Court for the Northern District of California issued a standing order that addresses the difference between generative AI tools and tools that use other categories of AI and stating that the disclosure requirement does not apply to the use of traditional AI such as “the use of traditional legal research, word processing, spellchecking, grammar checking or formatting software tools (g., Lexis, Westlaw, Microsoft Word or Adobe Acrobat).” Judge Kang’s order addresses the disclosure requirements for AI and filings with the court, AI and confidentiality, AI and evidence (recognizing that “AI-generated documents or materials (for example, created

by a party prior to the commencement of litigation) are or may become exhibits, evidence or the subject of factual disputes in an action”). <https://cand.uscourts.gov/wp-content/uploads/judges/kang-phk/Civil-Standing-Order-PHK-001.pdf>

- Central District of California’s Judge Oliver has a standing order that requires parties using generative AI to “generate any portion of a brief, pleading, or other filing” to submit a separate declaration disclosing the use of gen AI and certifying the review and accuracy of any AI-generated content. This language appears to be specific to the use of gen AI in drafting court filings. <https://www.cacd.uscourts.gov/honorable-rozella-oliver>
- Central District of California’s Judge Blumenfeld has updated his standing orders for civil cases to require parties using gen AI to “generate any portion of” a court filing, to submit a separately filed document disclosing the use of gen AI and certifying the review and accuracy of any AI-generated content. This language appears to be specific to the use of gen AI in drafting court filings, and does not appear to apply to the use of gen AI for research or other supportive, non-drafting tasks. <https://www.cacd.uscourts.gov/sites/default/files/documents/SB/AD/1.%20Civil%20Standing%20Order%20%283.1.24%29%20%5bFinal%5d.pdf>
- Northern District of California’s Judge Martínez-Olguín’s standing order requires lawyers to confirm the accuracy of content generated by “ChatGPT or other such tools,” and any submissions “containing AI-generated content” must include certification that lead trial counsel has personally verified the content’s accuracy. The order also holds counsel responsible for “maintaining records of all prompts or inquiries submitted to any generative AI tools” in the event that those records become relevant. <https://www.cand.uscourts.gov/wp-content/uploads/2023/03/AMO-Civil-Standing-Order-11.22.2023-FINAL.pdf>
- Northern District of California Judge Rita F. Lin’s standing order states: “Use of ChatGPT or other such generative artificial intelligence tools is not prohibited, but counsel must personally confirm for themselves the accuracy of any research conducted by these means, and counsel alone bears ethical responsibility for all statements made in filings.” <https://www.cand.uscourts.gov/wp-content/uploads/2023/03/2024-05-17-Civil-Standing-Order.pdf>
- S.D.N.Y. - Judge Arun Subramanian’s standing order does not use the phrase “artificial intelligence” but explicitly refers to generative AI programs by cautioning counsel about the use of “ChatGPT or other such tools,” reminding lawyers of the need to check the accuracy of output. It does not impose any limitations on the use of such tools. https://www.nysd.uscourts.gov/sites/default/files/practice_documents/AS%20Subramanian%20Civil%20Individual%20Practices.pdf
- E.D. Oklahoma Magistrate Judge Jason A. Robertson and W.D. Okla. Judge Scott Palk’s standing order applies to the use of generative AI for “preparation of any documents” and requires disclosure of “the specific AI tool” used, and certification that output drafted by gen AI tools was checked for accuracy. The title and primary portion of the order specify

that the order applies only to “generative artificial intelligence.” The use of the phrase “preparation” (as opposed to “filing” or “drafting”) could indicate disclosure and verification are required when generative AI tools are used in any part of the preparatory process, including

research. <https://www.oked.uscourts.gov/sites/oked/files/AI%20Guidelines%20JAR%209.27.23.pdf>; https://www.okwd.uscourts.gov/wp-content/uploads/AI_Guidelines_JudgePalk.pdf

- S.D. Texas Judge Olvera requires all attorneys appearing before the Court to file a certificate, with their proposed scheduling order, attesting either that no portion of any filing will be drafted by gen AI or any language drafted by gen AI will be checked for accuracy. The Court will strike any filing from a party who fails to file this certificate. The rules also contain a sample certificate. https://www.txs.uscourts.gov/sites/txs/files/Judge_Olvera_Local_Rules_%28Civil%29_1-18-24_-_Amended.pdf

- N.D. Texas Judge Brantley Starr and Judge Matthew J. Kacsmayk’s standing order requires all parties, whether or not they use generative AI, to file a certification attesting either that no filings will be drafted with gen AI, or that any content drafted with gen AI will be checked for accuracy. <https://www.txnd.uscourts.gov/judge/judge-brantley-starr>; <https://www.txnd.uscourts.gov/judge/judge-matthew-kacsmayk>

- W.D. Texas Judge Fred Biery: entering orders reminding counsel of ethical duties to be honest with court and that their signature constitutes affirmation of their papers’ accuracy in light of “this modern environment of artificial intelligence.” <https://www.ropesgray.com/-/media/ropes-post-pilot/microsites/ai/pdfs/2024/feb/judge-fred-biery-wdtx---montez-v-esparza.pdf?rev=829549344f3c4bbb9ac2723bb5eeba67&hash=30A8F9B96C04FEA7D82BED064CDA5CE1>

- Texas 394th Dist. Judge Roy Ferguson: Although this standing order’s preamble mentions “generative artificial intelligence,” the substantive section appears to apply to all AI tools, as it requires anyone utilizing “any form of artificial intelligence for legal research or drafting” to submit a certification. The certification itself—which references gen AI—requires an attestation that anything “created or contributed to by generative artificial intelligence” is “verified as accurate through traditional (non-AI) legal sources.” Accordingly, this order could require all parties who use any form of AI to submit an attestation about the use of generative AI, whether or not generative AI was actually used. <https://img1.wsimg.com/blobby/go/2f8cb9d7-adb6-4232-a36b-27b72fdcd38/downloads/Standing%20order%20Regarding%20Use%20of%20Artificial%20Int.pdf?ver=1702005034427>

- District of Colorado Judge S. Kato Crews has updated his standing orders for civil cases to require that any motion filed under Federal Rules of Civil Procedure 12 or 56, or any opposed motion, contain a certification stating whether generative AI was using “in preparing the filing.” Filings must certify either that “no portion of the filing was drafted by AI,” or that any language drafted by AI—even if later edited by a human—was

personally reviewed for accuracy and correct citations using traditional legal databases. The court will strike filings that fail to include this certification. https://www.ropesgray.com/-/media/ropes-post-pilot/microsites/ai/pdfs/2024/april/skc_standing_order_civil_cases_v2.pdf?rev=2d2955c2e70a47d387f50dc4bcabe6a9&hash=64773809E51B7F5FEB94552A189BAF04

- District of Montana Judge Donald Molloy in the context of orders granting requests to admit counsel pro hac vice, Judge Molloy has issued at least one such order in which he specifies that pro hac counsel “shall do his or her own work” and that “[u]se of artificial intelligence automated drafting programs, such as Chat GPT, is prohibited.” This language seems to refer to generative AI tools, although the broad scope of the language may indicate that the prohibition applies to research as well as drafting/filing. Notably, some of Judge Molloy’s more recent orders have not included this prohibition on the use of gen AI. Attorneys should pay particular attention to any orders from Judge Molloy granting pro hac vice status to confirm whether they contain this language. <https://storage.courtlistener.com/recap/gov.uscourts.mtd.73612/gov.uscourts.mtd.73612.8.0.pdf>

Non-Federal Court Local Rules and General Orders:

- NY Erie County Supreme Court—Judge Grisanti: Judge Grisanti’s courtroom rules require disclosure if gen AI is used to draft any filings, and requires the filer to attest that all citations and language have been verified for accuracy. Gen AI is explicitly defined in the rules as artificial intelligence that is “capable of generating new content (such as images or text) in response to a submitted prompt (such as a query) by learning from a large reference database of examples.” This definition seemingly encompasses most mainstream gen AI platforms. https://www.nycourts.gov/LegacyPDFS/courts/8jd/pdfs/IAS_Rules/JudgeGrisanti2024.pdf

- NY Erie County Supreme Court Commercial Division – Judge Colaiacovo: The rules require parties to disclose if they “use any [gen AI] resources or material.” Although the order specifies that such disclosure must identify the particular gen AI program used, identify the “portion of the filing drafted” by gen AI, and certify human review for accuracy, the order’s plain language appears to apply broadly to any use of gen AI “resources or material,” not merely when gen AI is used to draft portions of filings. As a result, the order likely applies to the use of gen AI both for drafting filings and conducting research or performing other tasks in connection with the matter. https://www.nycourts.gov/LegacyPDFS/courts/8jd/pdfs/IAS_Rules/JudgeColaiacovo2024.pdf

- NY Integrated Domestic Violence Court – Judge Dawson: The rules require parties to disclose if they “use any [gen AI] resources or material.” Although the order specifies that such disclosure must identify the particular gen AI program used, identify the “portion of the filing drafted” by gen AI, and certify human review for accuracy, the order’s plain language appears to apply broadly to any use of gen AI “resources or

material,” not merely when gen AI is used to draft portions of filings. As a result, the order likely applies to the use of gen AI both for drafting filings and conducting research or performing other tasks in connection with the matter. <https://www.nycourts.gov/legacyPDFS/COURTS/1jd/supctmanh/Rules/IDV-tandra-dawson.pdf>

- NY Chautauqua County Supreme Court – Judge Hanlon: Judge Hanlon’s courtroom rules require disclosure if gen AI is used to draft any filings, and requires the filer to attest that all citations and language have been verified for accuracy. Gen AI is explicitly defined in the rules as artificial intelligence that is “capable of generating new content (such as images or text) in response to a submitted prompt (such as a query) by learning from a large reference database of examples.” This definition seemingly encompasses most mainstream gen AI platforms. https://www.nycourts.gov/LegacyPDFS/courts/8jd/pdfs/IAS_Rules/JudgeHanlon2024.pdf

- Pennsylvania Common Pleas Court, Cuyahoga County – Judge Russo: The rules require attorneys to file a certification attesting that no portion of any filing will be drafted by generative artificial intelligence or that any language drafted by generative artificial intelligence will be checked for accuracy. The rules specifically mention ChatGPT, Harvey.AI, and Google Bard as examples and contain a template certificate for attorneys to use. <https://cp.cuyahogacounty.gov/court-resources/judges/judge-john-j-russo/>

- Illinois Cook County Circuit—Judge Horan: The order requires all attorneys appearing before the Court to indicate in the caption of any filing if the attorney prepared the filing using large language model artificial intelligence. The order specifically names ChatGPT as an example of a large language model artificial intelligence. The order explicitly states that failure to include the disclosure may result in sanctions for the attorney. https://ocj-web-files.s3.us-east-2.amazonaws.com/orders/SO%202024%20CH%20Judge%20Horan%20Calendar%209%20Calendar%20Courtroom%20Procedures%20%28Apr.%205%202024%29.pdf?VersionId=bD2yzSkzx_owNaYWACofBcjjmOLSuHM7

- Illinois Cook County Circuit Court – Judge Cleary: The standing order requires disclosure if a party has used any AI in the “creation” of a filing. That disclosure must be part of the same document. In such cases, the party must also verify the existence and accuracy of any authority cited. The order does not distinguish between gen AI or other forms of AI, so it is applicable to all AI usage. There are no carveouts or exceptions for AI-powered research tools. https://ocj-web-files.s3.us-east-2.amazonaws.com/orders/2024-02-14%20-%20Law%20-%20Cleary%20-%20Standing%20Order%20-%20Jury%20Trials_1.pdf?VersionId=52.h8FUkpiXjregHJvFdSuOJhYBlw9KZ

- Illinois Human Rights Commission – Judge Weinthal: The standing order cautions parties against using gen AI to compose legal pleadings. The order specifically calls out gen AI products ChatGPT, Harvey.AI, and Google Bard, emphasizing that the platforms “do not provide the necessary guarantees of accuracy and reliability that are required for

legal writing.” Lastly, the order reminds parties that they will be responsible for the accuracy of their pleadings and makes clear that use of gen AI will not provide a legal defense to allegations that information provided by such a tool was misleading or untrue. However, this order does not prohibit or restrict the use of Gen

AI. <https://hrc.illinois.gov/content/dam/soi/en/web/hrc/documents/standing-order-for-all-cases-filed-before-the-als.pdf>

- 30th District Court (TX) – Judge McKnight: Although this standing order’s preamble mentions “generative artificial intelligence,” the substantive section appears to apply to all AI tools, as it requires anyone utilizing “any form of artificial intelligence for legal research or drafting” to submit a certification. The certification itself—which references gen AI—requires an attestation that anything “created or contributed to by generative artificial intelligence” is “verified as accurate through traditional (non-AI) legal sources.” Accordingly, this order could require all parties who use any form of AI to submit an attestation about the use of generative AI, whether or not generative AI was actually used. <https://topics.txcourts.gov/LocalRulesPublic/PreviewAttachment/1866>

- 78th District Court (TX) – Judge Kennedy: Although this standing order’s preamble mentions “generative artificial intelligence,” the substantive section appears to apply to all AI tools, as it requires anyone utilizing “any form of artificial intelligence for legal research or drafting” to submit a certification. The certification itself—which references gen AI—requires an attestation that anything “created or contributed to by generative artificial intelligence” is “verified as accurate through traditional (non-AI) legal sources.” Accordingly, this order could require all parties who use any form of AI to submit an attestation about the use of generative AI, whether or not generative AI was actually used. <https://topics.txcourts.gov/LocalRulesPublic/PreviewAttachment/1866>

- Bexar County, TX – Local Rules: The local rules require pleadings to contain a certification that any materials “produced” by generative AI have been verified through “traditional (non-A.I.) legal sources.” While such certification is targeted at the use of generative AI, the requisite verification process seemingly prohibits the use of any AI when evaluating the gen AI-generated content and does not distinguish between AI generally and generative AI. <https://www.bexar.org/DocumentCenter/View/40194/Bexar-County-Civil-District-Court-Local-Rules-2024-1924?bidId=>

- Idaho Office of Administrative Hearings – Chief Administrative Hearing Officer Nickels: The policies manual authorizes hearing officers to require gen AI certifications at their discretion. The language of the certification is also at the hearing officers’ discretion, but the policies manual recommends certain language that would make parties check the portion of their filings drafted by gen AI for accuracy. The policies manual also allows for hearing officers to include a provision in any order to the parties with similar language to the certification. In that circumstance, the parties would not have to affirmatively include a certification. The policies manual also prohibits hearing officers from using AI in preparing orders. <https://oah.idaho.gov/wp-content/uploads/2024/03/Policies-Manual-12.31.23.pdf>

Faculty

Gabrielle L. Albert is an associate with Keller Benvenuti Kim LLP in San Francisco, where she advises clients in all aspects of corporate bankruptcy cases. She has represented all significant constituencies, including debtors, creditors, creditors' committees, landlords, indenture trustees and ad hoc committees. Her bankruptcy experience covers a variety of industries including tort plaintiffs, gym chains, retail chains, online merchants, oil and gas and utilities. Ms. Albert is a member of ABI and is the sponsorship co-chair of its 2024 Rocky Mountain Bankruptcy Conference. In addition, she has been a frequent guest lecturer at the University of California, Davis on bankruptcy for undergraduates. Ms. Albert received her B.A. in 1994 from the University of California, Berkeley and her J.D. from UCLA School of Law in 1997.

Thomas J. Freeman is an attorney with Fiedler Law Firm, P.L.C. in Omaha, Neb., and is a civil rights lawyer who specializes in employment law. He has advised and represented individuals, corporations, county governments, the State of Nebraska, and Native American tribes and entities on matters including commercial contracts, litigation and risk management, corporate governance and employment law. Mr. Freeman has litigated cases in both state and federal courts and at the trial and appellate levels. He is licensed to practice in state and federal courts in the State of Nebraska, the Eighth Circuit Court of Appeals and the U.S. Supreme Court. For more than a decade, Mr. Freeman was a law professor at Creighton University. He also helped lead a team that developed a national high school curriculum on algorithmic bias for the ADL. Mr. Freeman has been published in such legal journals as the *William & Mary Business Law Review* and the *Georgetown Journal of Law & Public Policy*. He is a frequent speaker on podcasts and at academic and legal conferences on topics like algorithmic bias, data science ethics, networking, business law and leadership. In addition, he was elected to the executive board of the Midwest Academy of Legal Studies in Business, and he serves on the editorial board of the *Nebraska Lawyer*. Mr. Freeman is a member of the Academy of Legal Studies in Business and the Nebraska State Bar Association, and is rated AV-Preeminent by Martindale-Hubbell. He received his B.A. in liberal arts in 2004 from Bellevue University, his J.D. in 2007 and his M.S. in negotiation and dispute resolution in 2009 from Creighton University School of Law, and his M.B.A. in 2012 from Creighton University College of Business Administration.

Amanda B. George is a trial attorney for the U.S. Trustee for Region 5, serving in the New Orleans field office. She joined the Department of Justice in 2008 through the Attorney General Honors Program. Ms. George practices in the U.S. Bankruptcy Courts for the Eastern and Middle Districts of Louisiana, appearing in all manners of bankruptcy cases and litigating a wide variety of issues in the chapter 11, chapter 7 and chapter 13 arenas. She is a member of Louisiana State Bar Association, the Federal Bar Association and ABI. Ms. George received her A.B. in finance from Tulane University's Freeman School of Business and her J.D. from Tulane Law School.

Malhar S. Pagay is a business lawyer with Pachulski Stang Ziehl & Jones in Los Angeles, where he focuses his practice on the development and implementation of strategic alternatives for and against distressed businesses. A member of the firm's Healthcare Restructuring Group, he has substantial experience representing chapter 11 debtors, trustees, unsecured creditors, creditors' committees and

other parties in the contexts of bankruptcy cases, adversary proceedings, commercial litigation, mediations, domestic and international business transactions, business reorganizations, and out-of-court corporate restructurings of debt. Mr. Pagay has broad industry experience, including in health care and life sciences, real estate, technology, retail, manufacturing, transportation, sports and entertainment. His recent representations include reorganizing the Ruby Tuesday casual-dining chain with more than 200 restaurants through a debt-for-equity transaction with its secured lenders, implemented through a chapter 11 plan confirmed after only four months in bankruptcy; counseling technology entrepreneur Yueting “YT” Jia, the founder of mobility ecosystem company Faraday Future, in the successful restructuring of more than \$3 billion in debt held almost entirely by creditors located in the People’s Republic of China (this representation was recognized at Global M&A Network’s 13th Annual Turnaround Atlas Awards as “Cross-Border Turnaround of the Year”); advising a creditors’ committee in connection with a successful hospital reorganization; and completing a § 363 sale of a \$100 million Class A commercial office property over the objections of co-owners. He also has served as principal counsel to China Export & Credit Insurance Corp. and its Chinese policyholders and clients in complex U.S. insolvency matters. Mr. Pagay has lectured both in the U.S. and internationally regarding a variety of legal issues, including cross-border transactions and insolvencies. He has been named a “Super Lawyer” in the field of Bankruptcy & Creditor/Debtor Rights every year since 2009 in a peer survey conducted by *Law & Politics* and the publishers of *Los Angeles* magazine, and he is rated AV-Preeminent by Martindale-Hubbell. In addition, he has been listed among *The Best Lawyers in America* in the practice areas of Bankruptcy and Creditor/Debtor Rights/Insolvency and Reorganization Law and Litigation – Bankruptcy. Mr. Pagay received his B.A. in 1989 from Yale University and his J.D. in 1994 from the University of Southern California.

Hon. Kimberley H. Tyson is Chief U.S. Bankruptcy Judge for the District of Colorado in Denver, initially appointed to the bench in May 2017 and appointed Chief Judge in 2021. Prior to that, she was in private practice, where she concentrated in workouts, bankruptcy and related commercial litigation. From March 2011 until her appointment to the bench, Judge Tyson served as a chapter 7 trustee. She has served as the Tenth Circuit representative on the National Conference of Bankruptcy Judge’s Board of Governors, and she is a member of the Colorado Bar Association’s Bankruptcy Subcommittee and its former chair. Judge Tyson is an active ABI member and has served on the advisory board of its annual Rocky Mountain Bankruptcy Conference since 2003. After law school she clerked for Hon. John K. Pearson of the U.S. Bankruptcy Court for the District of Kansas and Hon. Jerry G. Elliot of the Kansas Court of Appeals. Judge Tyson received her B.A. at Smith College and her J.D. at the University of Kansas School of Law.