



CLE Webinar

# AI on Trial

## Navigating AI's Developing Legal Landscape

August 26, 2025



# AI on Trial: Navigating AI's Developing Legal Landscape

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## Speakers



**Erin Gibson**

Partner

Global Co-Chair,  
Technology sector  
Chair, International  
Trade Commission  
practice



**John Gibson**

Partner

Co-Chair, US  
Business &  
Commercial  
Litigation



**Danny Tobey**  
**M.D., J.D.**

Partner

Global Co-Chair and  
Chair of DLA Piper  
Americas AI and  
Data Analytics  
Practice



**Scott**  
**Murray**

Of Counsel



**Honorable**  
**Andrew J.**  
**Peck**

Senior Counsel

Business & Practice  
Feb. 13, 2023, 4:00 AM

AI-powered "robot" lawyer won't argue in court after jail threats

BY MEGAN CERULLO  
UPDATED ON: JANUARY 26, 2023 / 1:08 PM / MONEYWATCH

ChatGPT Almost Passed the Bar Exam  
Competent Lawyers Do Much More

By Mary Lu Bilek and Deborah Merritt  
Opinion

Court Imposes Sanctions On Lawyers Who Filed Bogus Cases After Relying On ChatGPT For Legal Research

REUTERS®

Some law professors fear AI will replace them as others see opportunity

by Karen Sloan  
January 10, 2023 7:19 PM EST

THE WHITE HOUSE



OCTOBER 30, 2023

FACT SHEET: President Biden Issues Executive Order on Safe, Secure, and Trustworthy Artificial Intelligence

The New York Times

*Here's What Happens When Your Lawyer Uses ChatGPT*

A lawyer representing a man who sued an airline relied on artificial intelligence to help prepare a court filing. It didn't go as well.



By Benjamin Weiser  
May 27, 2023

No ChatGPT in my court: Judge orders all AI-generated content must be declared and checked

Devin Coldewey @techcrunch / 7:32 PM

Opinion: DoNotPay Controversy Illuminates Urgent Need for Regulatory Reform

By Maya Markovich & Tom Gordon • Published in Analyses & Trends • August

ILLINOIS TECH

GPT-4 Passes the Bar Exam

Daniel Martin Katz, law professor at Illinois Tech's Chicago-Kent College of Law, demonstrates that OpenAI's latest deep learning model excels in complex legal reasoning and has profound implications for the legal profession.



# What We Will Cover in Today's Session



*How do we ethically/effectively use AI as courtroom advocates?*

*Check out our other webinars on litigation & enforcement against alleged AI harms.*

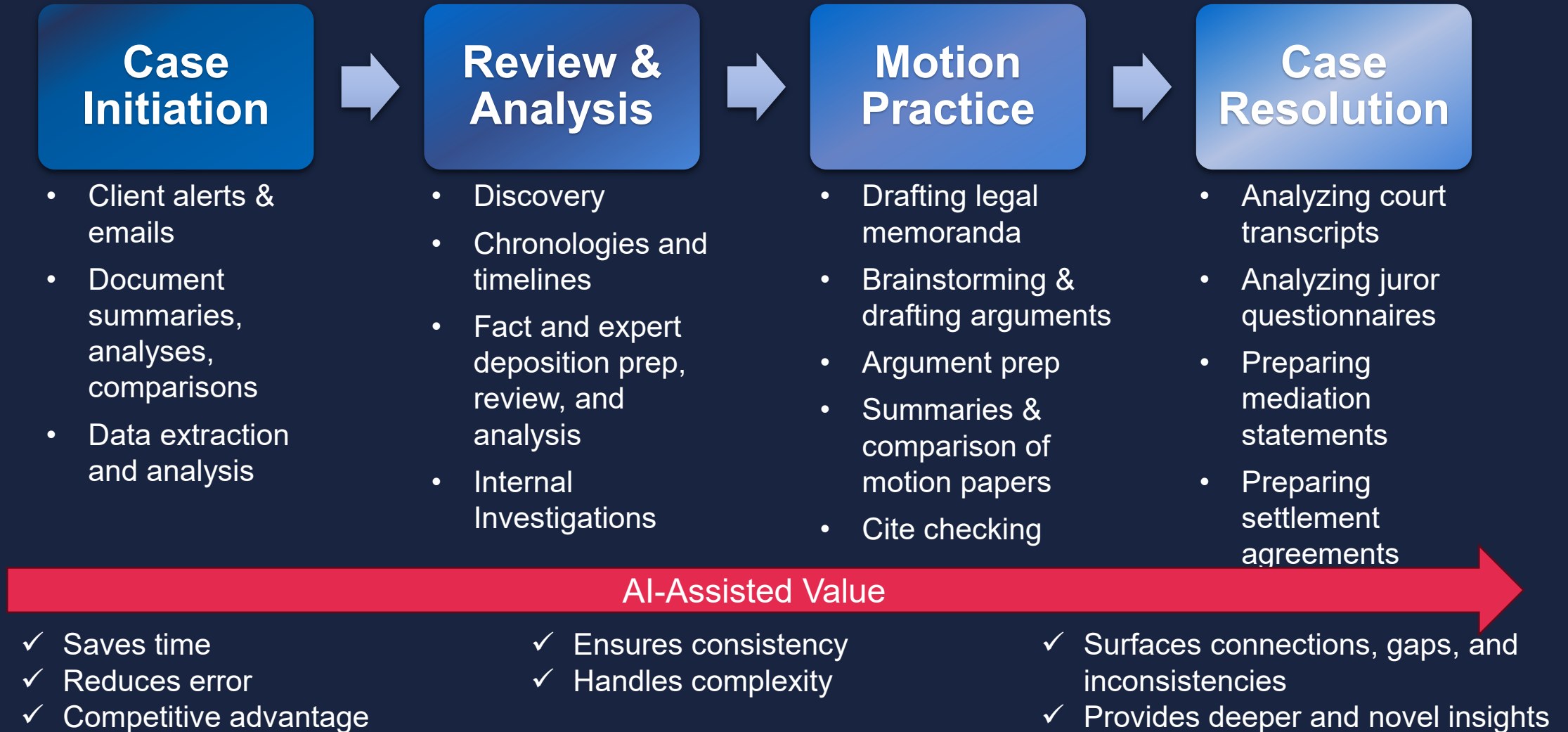
➤ <https://www.dlapiper.com/en/events/ai-disputes-webinar-series>

# Building on baseline GenAI capabilities

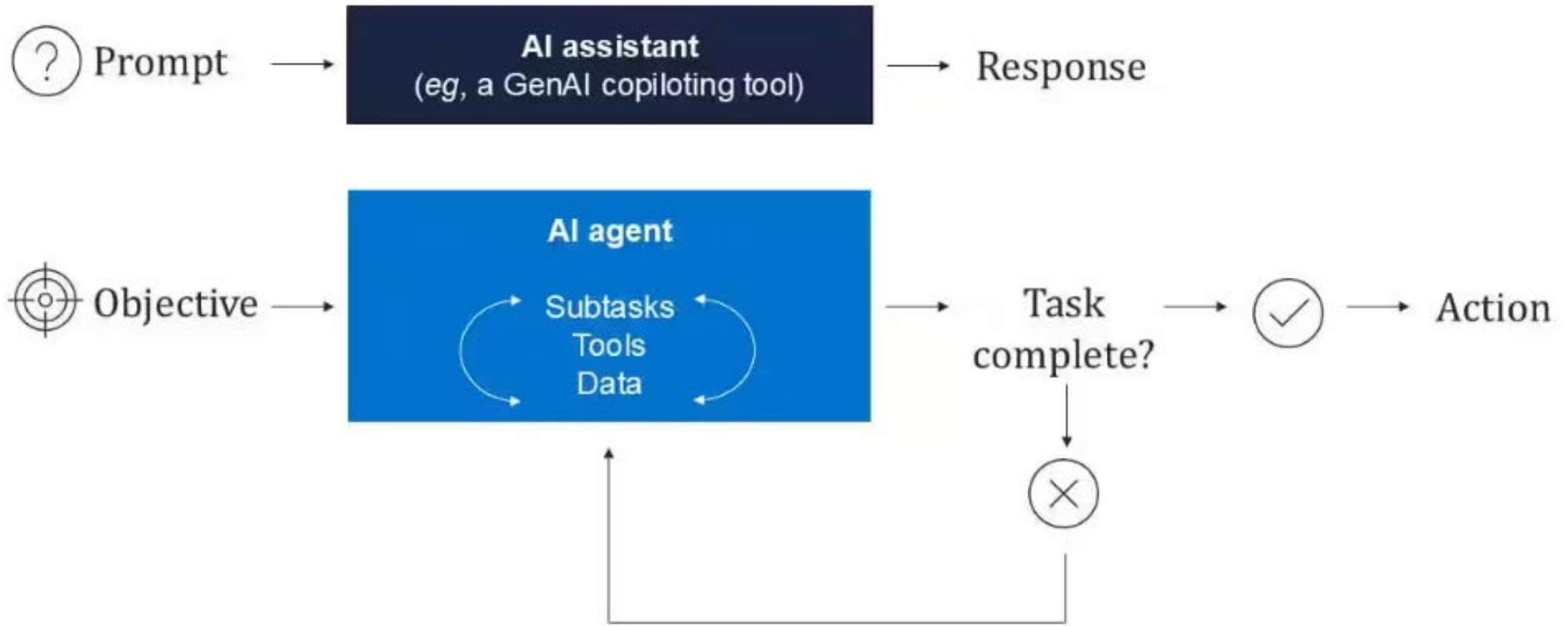
Capability	Description
Text generation	Generate human-like text, given some initial input, while incorporating context and generating relevant and cohesive responses.
Summarization	Condense larger bodies of text into shorter, coherent summaries, capturing the main ideas of the original text.
Extraction	Identify and extract specific information from a text. LLMs can extract structured information from unstructured text.
Classification	Classify texts into predefined categories, like the type of document, genre of a book, and general topic labeling.
Translation	Translate text from one language to another.
Rephrasing	Rewrite, paraphrase, or restate that same information in different ways while retaining the original meaning. The LLM can be given specific instructions to match a particular type of tone, format, length and other variables.
Formatting	Formatting and structuring text.
Semantic similarity	The conceptual inverse of rephrasing, LLMs can identify texts that have similar meanings, even if they are written differently. It can also identify semantic difference and propose text revisions that would align two passages semantically (useful for automatically redlining a contract provision, for example).
Question answering	Answer questions based on a given context or based on training data. LLM can handle both factoid questions and more complex, reasoning-based questions.
Sentiment analysis	Classify the sentiment of text, such as whether a message is positive or negative.

# Disputes Use Cases and Workflows

Licensed Tools

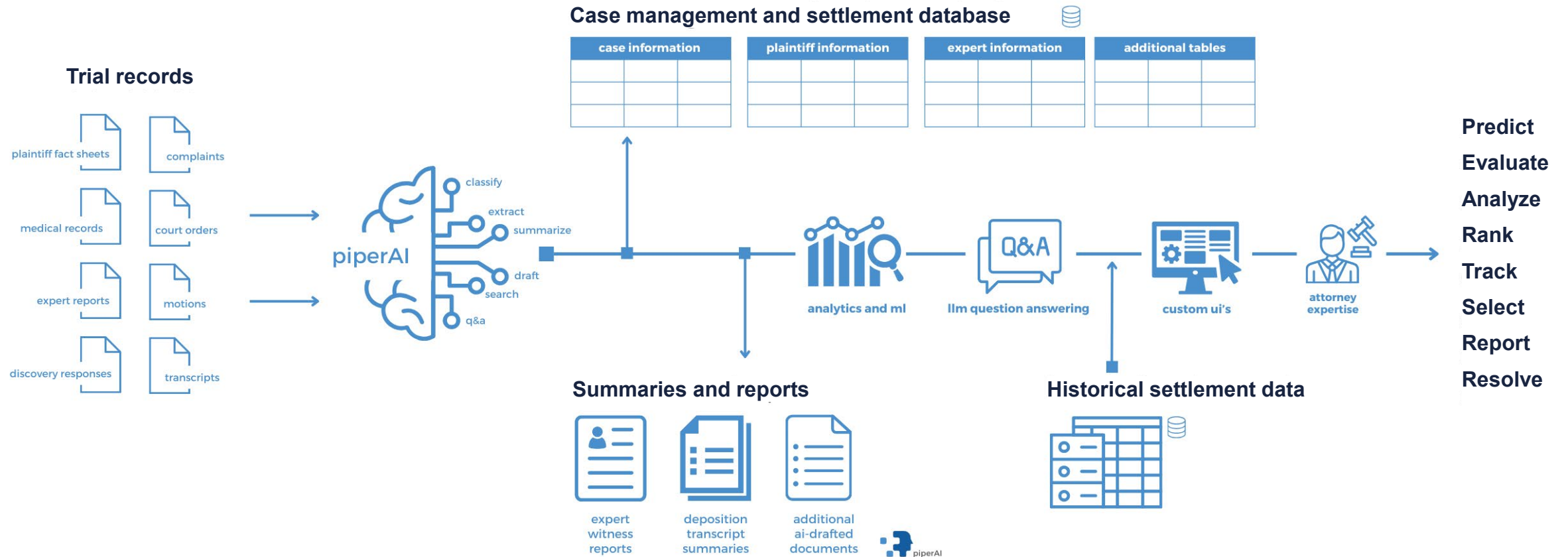


# The Rise of Agentic AI



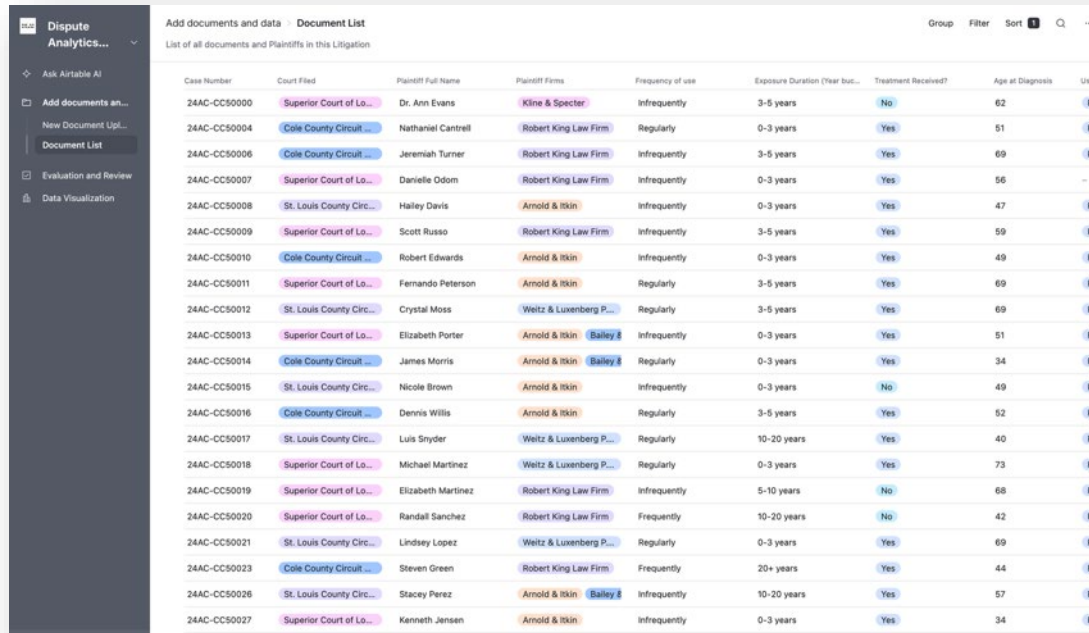
# Leveraging AI Agents at Scale

Customized legal AI agents are used throughout the process to facilitate case management and resolution.





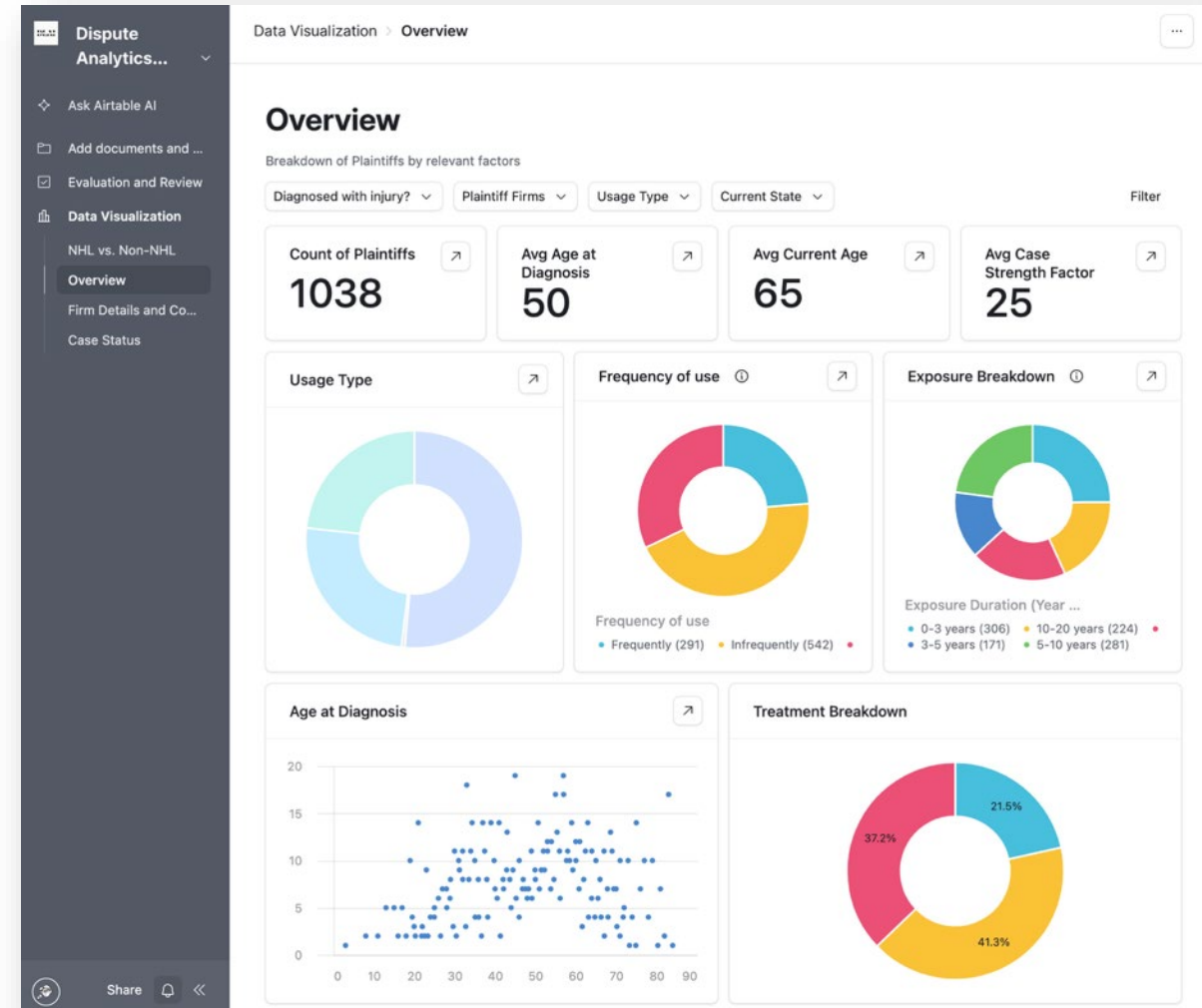
# Unlocking Data Analytics and Visualizations for Decision-Making



Case Number	Court Filed	Plaintiff Full Name	Plaintiff Firms	Frequency of use	Exposure Duration (Year but...	Treatment Received?	Age at Diagnosis
24AC-CC50000	Superior Court of Lo...	Dr. Ann Evans	Kline & Specter	Infrequently	3-5 years	No	62
24AC-CC50004	Cole County Circuit	Nathaniel Cantrell	Robert King Law Firm	Regularly	0-3 years	Yes	51
24AC-CC50006	Cole County Circuit	Jeremiah Turner	Robert King Law Firm	Infrequently	3-5 years	Yes	69
24AC-CC50007	Superior Court of Lo...	Danielle Odom	Robert King Law Firm	Infrequently	0-3 years	Yes	56
24AC-CC50008	St. Louis County Circ...	Hailey Davis	Arnold & Itkin	Infrequently	0-3 years	Yes	47
24AC-CC50009	Superior Court of Lo...	Scott Russo	Robert King Law Firm	Infrequently	3-5 years	Yes	59
24AC-CC50010	Cole County Circuit	Robert Edwards	Arnold & Itkin	Infrequently	0-3 years	Yes	49
24AC-CC50011	Superior Court of Lo...	Fernando Peterson	Arnold & Itkin	Regularly	3-5 years	Yes	69
24AC-CC50012	St. Louis County Circ...	Crystal Moss	Weitz & Luxenberg P...	Regularly	3-5 years	Yes	69
24AC-CC50013	Superior Court of Lo...	Elizabeth Porter	Arnold & Itkin (Bailey)	Infrequently	0-3 years	Yes	51
24AC-CC50014	Cole County Circuit	James Morris	Arnold & Itkin (Bailey)	Regularly	0-3 years	Yes	34
24AC-CC50015	St. Louis County Circ...	Nicole Brown	Arnold & Itkin	Infrequently	0-3 years	No	49
24AC-CC50016	Cole County Circuit	Dennis Willis	Arnold & Itkin	Regularly	3-5 years	Yes	52
24AC-CC50017	St. Louis County Circ...	Luis Snyder	Weitz & Luxenberg P...	Regularly	10-20 years	Yes	40
24AC-CC50018	Superior Court of Lo...	Michael Martinez	Weitz & Luxenberg P...	Regularly	0-3 years	Yes	73
24AC-CC50019	Superior Court of Lo...	Elizabeth Martinez	Robert King Law Firm	Infrequently	5-10 years	No	68
24AC-CC50020	Superior Court of Lo...	Randall Sanchez	Robert King Law Firm	Frequently	10-20 years	No	42
24AC-CC50021	St. Louis County Circ...	Lindsey Lopez	Weitz & Luxenberg P...	Regularly	0-3 years	Yes	69
24AC-CC50023	Cole County Circuit	Steven Green	Robert King Law Firm	Frequently	20+ years	Yes	44
24AC-CC50026	St. Louis County Circ...	Stacey Perez	Arnold & Itkin (Bailey)	Infrequently	10-20 years	Yes	57
24AC-CC50027	Superior Court of Lo...	Kenneth Jensen	Arnold & Itkin	Infrequently	0-3 years	Yes	34

Validated extractions from legal documents

Analytics and visualizations  
from extracted values



# But... Is AI Good / Bad for the Justice System?

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## GOOD

- Better demonstrative visualizations
- Affordable litigation
- Faster handling of mass data
- Seeing insights across docket



## BAD

- **Deepfakes** / evidentiary confusion
- **Hallucinations** & errors
- **Deskilling** / automation bias
- **Dehumanization** of law
- Algorithmic bias
- Lack of **explainability** & **transparency**

# COURTROOM ISSUES

# Privilege in the Age of AI – Work Product Doctrine Risks

- **AI-generated content may qualify as work product** if created in anticipation of litigation or for trial preparation.
  - Includes legal research, strategy memos, draft filings produced with AI assistance
- **Protection can be lost if shared improperly.**
  - If AI outputs are shared with third parties (e.g., non-legal team members, external consultants, or stored on platforms with unclear data policies), courts may find that the protection has been waived.
- **Platform data policies matter.**
  - Many AI tools retain user inputs and outputs for training or analytics. If the platform can access or reuse the content, it may undermine the confidentiality required for work-product protection.
- **Distinguishing between fact and opinion work product.**
  - AI tools may generate factual summaries or legal conclusions. Courts may treat factual outputs as more discoverable, while opinion-based outputs (e.g., strategy or legal theories) may be more protected.
- **Metadata and logs can expose strategy.**
  - Even if the AI output is protected, usage logs, prompts, and revision history stored by the platform may reveal litigation strategy or attorney thought processes.





# Privilege in the Age of AI

- Disclosure to Third Parties

- Unlike communications with legal counsel, interactions with AI platforms are not inherently protected. Inputting confidential information into public AI platforms may be considered disclosure to a third party.
- → **Waives AC privilege**, especially if the platform retains access or uses the data for training or other purposes.
  - Includes inputs and outputs
  - Anonymized data still risky if unique or traceable
- Beware of inadvertent disclosure.

- Residual Data and Reuse

- Many GenAI tools retain user inputs and outputs. This creates a risk that privileged content could resurface in future responses to other users, undermining confidentiality

- In-House Counsel Challenges

- In-house lawyers who also serve business roles may blur the line between legal and non-legal communications.
- Using AI tools in such contexts can complicate privilege claims, especially if non-lawyers are able to access the outputs.



# Can AI Evidence Be Admitted in Court?

**Daubert Standard** (FRE 702)  
requires expert evidence to be:

- Relevant – helps the judge or jury understand the case
- Reliable – based on sound methods and principles

Applies to human experts and **increasingly to AI-generated outputs**

AI-generated **outputs must meet the same criteria**

- Must be  **tied to facts of the case**
- Should **assist the judge or jury** in understanding evidence or determining a fact
- Must be **explainable** and **reproducible**
  - Black-box models or unclear training data may struggle to meet this standard
  - Relevance may be challenged if:
    - The AI's training data is unrelated to the case
    - The output lacks context or interpretability

Some courts have excluded AI outputs due to lack of transparency

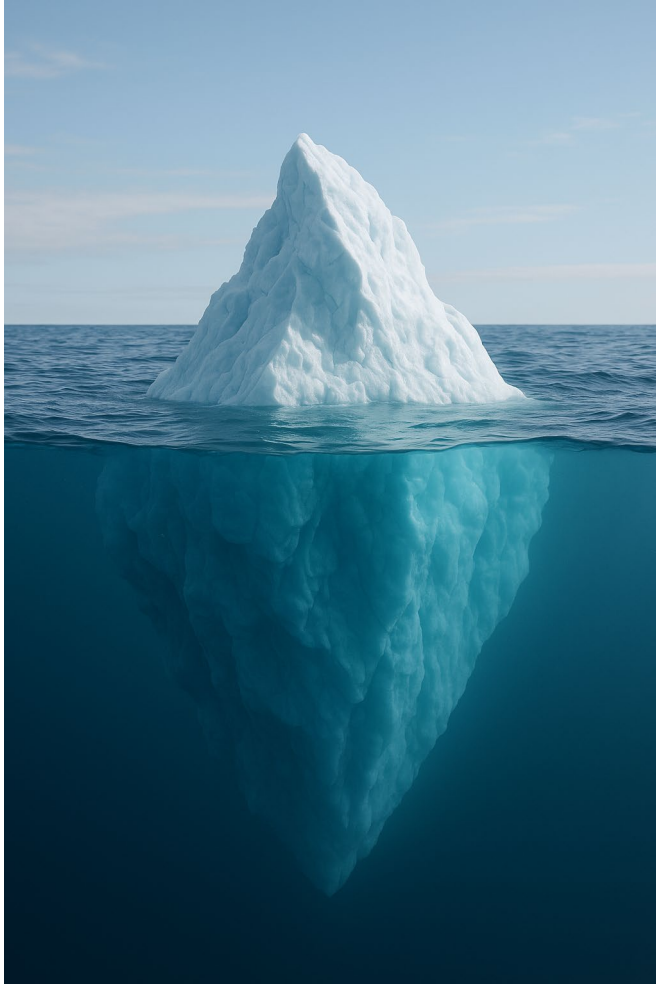
- Others have allowed them when accompanied by **expert testimony**

Questions / Challenges:

- ☐ What data was the AI tool trained on?
- ☐ Are methods scientifically valid?
- ☐ Is the system tested and peer-reviewed?

# Proposed Federal Rule of Evidence 707

Under public comment until February 2026



- **Purpose:** To ensure AI-generated evidence meets the same reliability standards as expert testimony under Rule 702
- **Requirements for Admissibility:**
  - Based on sufficient facts or data
  - Produced through reliable principles and methods
  - Reliably applied to the case facts
- **Scope:** Applies to machine-generated evidence offered without an expert witness.
  - Excludes simple scientific instruments
- **Implications:**
  - Courts will scrutinize AI inputs/prompts, internal processes, and outputs
  - Discovery disputes may arise over how AI-generated evidence was created, including privilege and transparency concerns

# Judicial Attitudes Toward AI

- **Ethical Concerns:**

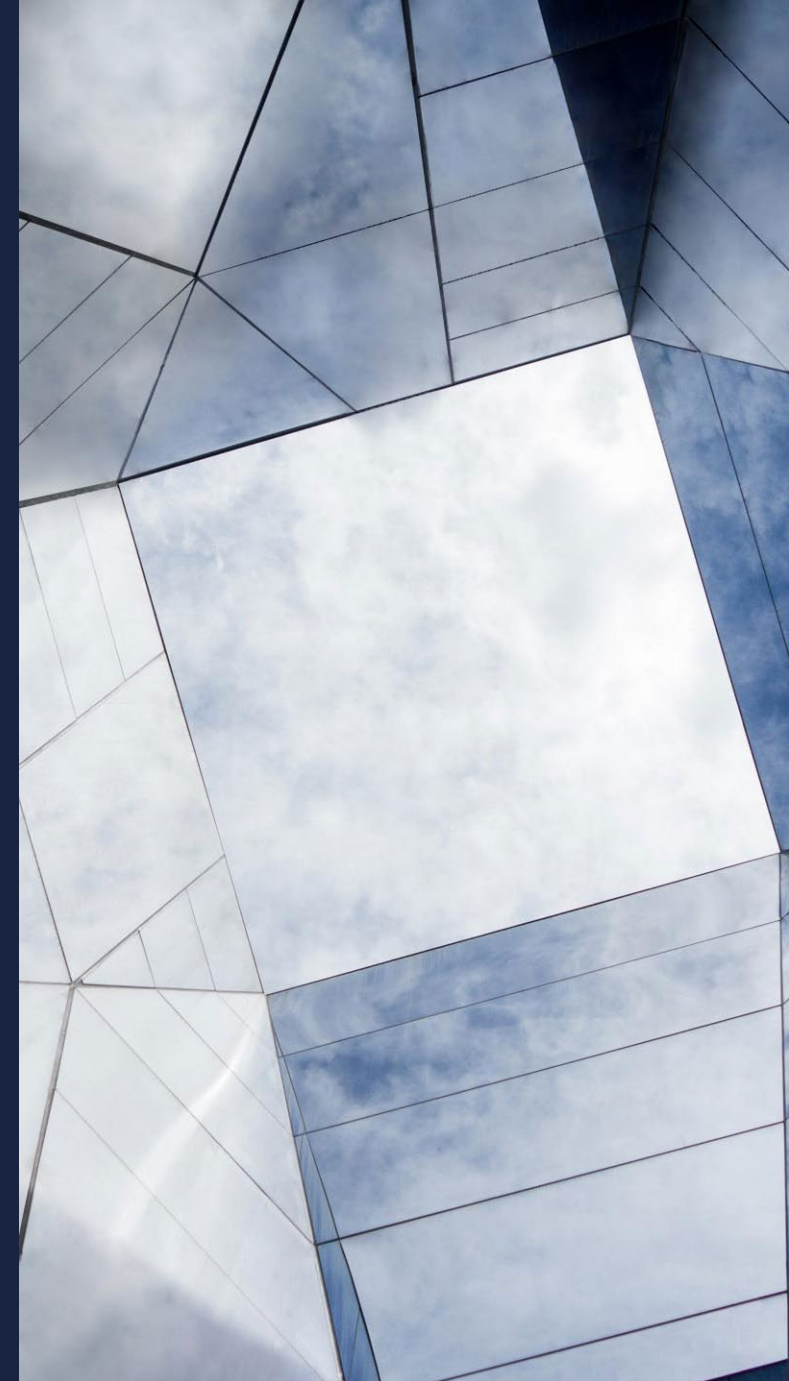
- Judges must avoid ex parte communication via AI-generated content
- Confidentiality risks when using open AI systems
- Bias in AI tools may compromise impartiality and fairness

- **Competence Requirement:**

- Judges and lawyers must understand AI capabilities and risks
- Must supervise staff and ensure ethical AI use in hiring and legal processes

- **Case-by-Case**

- Local rules / Individual Judges' rules





# Case Example: *Washington v. Puloka*

- **Context:** AI-enhanced video evidence in a criminal trial.
- **Outcome:** Court excluded the video and expert testimony due to **lack of acceptance in the forensic video analysis community**
- **Key Issues:**
  - AI tool (Topaz Labs) **lacked peer review and transparency**
  - Introduced **artificial details**, compromising forensic integrity
  - Failed Frye standard of general acceptance in the relevant scientific community

Courts demand rigorous validation and community acceptance for AI tools used in evidence enhancement



# Avianca v. Mata

## The court's reasoning for sanctions

- The filing of papers “without taking the necessary care in their preparation” is an “abuse of the judicial system” that is subject to Rule 11 sanction. (p.22)
- “Rule 11 creates an “incentive to stop, think and investigate more carefully before serving and filing papers.” (p.22)
- “Rule 11 ‘explicitly and unambiguously imposes an affirmative duty on each attorney to conduct a reasonable inquiry into the viability of a pleading before it is signed.’” (p. 22-23)

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
ROBERTO MATA,

Plaintiff,

22-cv-1461 (PKC)

-against-

OPINION AND ORDER  
ON SANCTIONS

AVIANCA, INC.,

Defendant.

-----X  
CASTEL, U.S.D.J.

In researching and drafting court submissions, good lawyers appropriately obtain assistance from junior lawyers, law students, contract lawyers, legal encyclopedias and databases such as Westlaw and LexisNexis. Technological advances are commonplace and there is nothing inherently improper about using a reliable artificial intelligence tool for assistance. But existing rules impose a gatekeeping role on attorneys to ensure the accuracy of their filings. Rule 11, Fed. R. Civ. P. Peter LoDuca, Steven A. Schwartz and the law firm of Levidow, Levidow & Oberman P.C. (the “Levidow Firm”) (collectively, “Respondents”) abandoned their responsibilities when they submitted non-existent judicial opinions with fake quotes and citations created by the artificial intelligence tool ChatGPT, then continued to stand by the fake opinions after judicial orders called their existence into question.

# State Bar Guidance



## **NYSBA TASK FORCE ON ARTIFICIAL INTELLIGENCE**

### **REPORT AND RECOMMENDATIONS TO NYSBA HOUSE OF DELEGATES**

**APRIL 6, 2024**

## **Joint Formal Ethics Opinion gives Practical Guidance On Artificial Intelligence**

Posted on: Aug 8, 2024

By Daniel J. Siegel

Recognizing that Artificial Intelligence ("AI") has fundamentally transformed the practice of law by revolutionizing various aspects of legal work, the Pennsylvania Bar Association Committee on Legal Ethics and Professional Responsibility and the Philadelphia Bar Association Professional Guidance Committee released Joint Formal Opinion 2024-200 ("Ethical Issues Regarding the Use of Artificial Intelligence"). The Opinion is intended to give Pennsylvania lawyers guidance on how to ethically use AI, particularly in light of cases in which lawyers have submitted briefs that cited false or otherwise unreliable information.

[Home](#) > Florida Bar Ethics Opinion OKs Lawyers' Use Of Generative AI, But With Cautions

## **Florida Bar Ethics Opinion OKs Lawyers' Use Of Generative AI, But With Cautions**

COMMENTARY

## **What To Know About the New Jersey Judiciary's Guidelines for Attorney AI Use**

"The New Jersey Supreme Court Committee on Artificial Intelligence has released interim, preliminary guidelines to remind attorneys of the court's Rules of Professional Conduct (RPCs) that may be implicated by their use of artificial intelligence (AI)," write Barnes & Thornburg attorneys.

## **THE STATE BAR OF CALIFORNIA STANDING COMMITTEE ON PROFESSIONAL RESPONSIBILITY AND CONDUCT**

### **PRACTICAL GUIDANCE FOR THE USE OF GENERATIVE ARTIFICIAL INTELLIGENCE IN THE PRACTICE OF LAW**

#### **EXECUTIVE SUMMARY**

# Example Court Orders

## State Court

**DEPT. C31 STANDING ORDER RE: ARTIFICIAL INTELLIGENCE**

Generative artificial intelligence (AI) programs that supply natural language answers to user prompts, such as ChatGPT or Google Bard, are now in wide use.

If an attorney for a party, or a self-represented party, has used generative AI, including but not limited to ChatGPT and Google Bard, in the preparation of any complaint, answer, motion, brief, or other paper filed with the Court and assigned to Judge Kimberly A. Knill, they **MUST**, in a clear and plain factual statement, disclose that AI has been used in any way in the preparation of the filing and **CERTIFY** each and every citation to the law, or the record in the paper, has been verified as accurate.

## Federal Court

15	<b>h. Artificial Intelligence</b>
16	Any party who uses generative artificial intelligence (such as ChatGPT,
17	Harvey, CoCounsel, or Google Bard) to generate any portion of a motion, brief,
18	pleading, or other filing must attach to the filing a separate declaration disclosing the
19	use of artificial intelligence and certifying that the filer has reviewed the source
20	material and verified that the artificially generated content is accurate and complies
21	with the filer’s Rule 11 obligations.



# TRIAL EXPERIENCE & INSIGHTS

# Examples of AI use at DLA Piper

Capability	Platforms	Example use case
<b>Legal research</b>	Lexis+, Westlaw, VitalLaw, RB Source, CoCounsel	Analysis of FRCP rules applicable to document requests in federal court
<b>Summarization</b>	CoCounsel, Harvey	Summarize plaintiff's expert report for high-level overview
<b>Translation</b>	CoCounsel, Harvey	Comprehend case results in global jurisdictions
<b>Deposition preparation</b>	CoCounsel, Harvey	Generate outline to depose a medical expert on various injury types

Capability	Platforms	Example use case
<b>Document drafting</b>	CoCounsel, Practical Law, HighQ, Brief Analyzer, Harvey	Draft a formal letter requesting documents under FOIA for an EEOC investigation
<b>Data structuring</b>	CoCounsel, Harvey	Generate a timeline of key events from a series of case notes in a dispute involving a medical insurance company and claims of billing fraud
<b>Motion creation and automation</b>	Contract Express, Practical Law, HighQ, Brief Analyzer	Automate client-specific filings for mass torts
<b>Data, trends, analytics, and expert research</b>	Internal Tool, Relativity, VitalLaw, Lex Machina, Lexis Verdict & Settlement Analyzer)	Trackers, predictions and visualizations for plaintiff notices and responses, MDL coordination, settlement amounts, and court/judge/counsel behavior

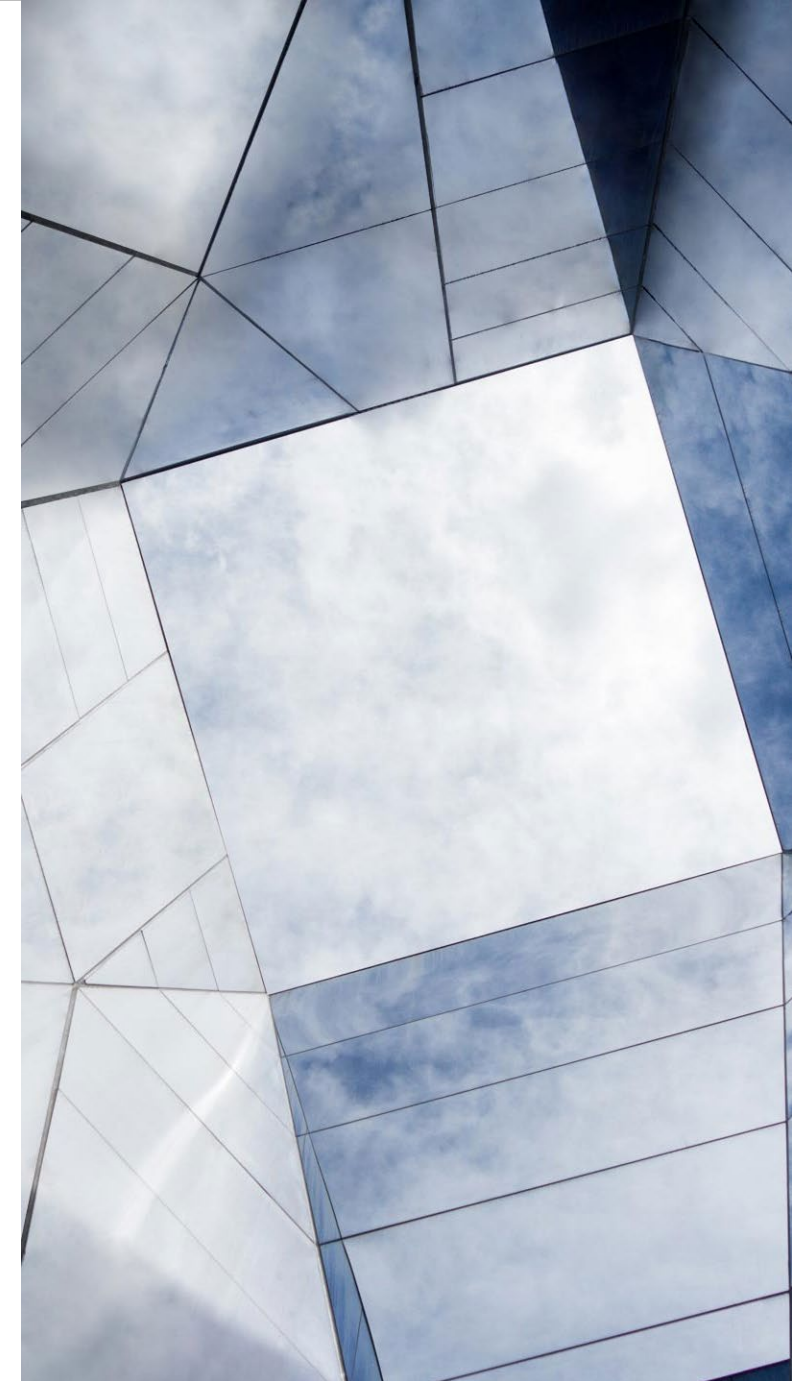
# Courtroom war stories from DLA litigators

## Targeted Use Cases in Trial



# Best Practices

- **Use enterprise or internal AI tools**
  - Prefer **closed, internal** systems with strong privacy controls
  - **Avoid public platforms** unless they offer enterprise-grade confidentiality
- **Mark AI-generated content clearly**
  - **Label** outputs as P&C, A/C Communication, Attorney Work Product
- **Understand the tool's data policies**
  - **Avoid tools that store or reuse inputs**
- **Inform and train all members of legal team**
  - **Educate** legal teams about the risks of using AI tools
  - Implement policies to **restrict AI use to appropriate contexts and personnel**
- **Follow ABA and State Bar guidance**







## Speakers



**Erin Gibson**

Partner

Global Co-Chair,  
Technology sector  
Chair, International  
Trade Commission  
practice

erin.gibson@  
us.dlapiper.com



**John Gibson**

Partner

Co-Chair, US  
Business &  
Commercial  
Litigation

john.gibson@  
us.dlapiper.com



**Danny Tobey  
M.D., J.D.**

Partner

Global Co-Chair and  
Chair of DLA Piper  
Americas AI and  
Data Analytics  
Practice

danny.tobey@  
us.dlapiper.com



**Scott  
Murray**

Of Counsel

scott.murray@  
us.dlapiper.com



**Honorable  
Andrew J.  
Peck**

Senior Counsel

andrew.peck@u  
s.dlapiper.com



# Thank you

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# APPENDIX

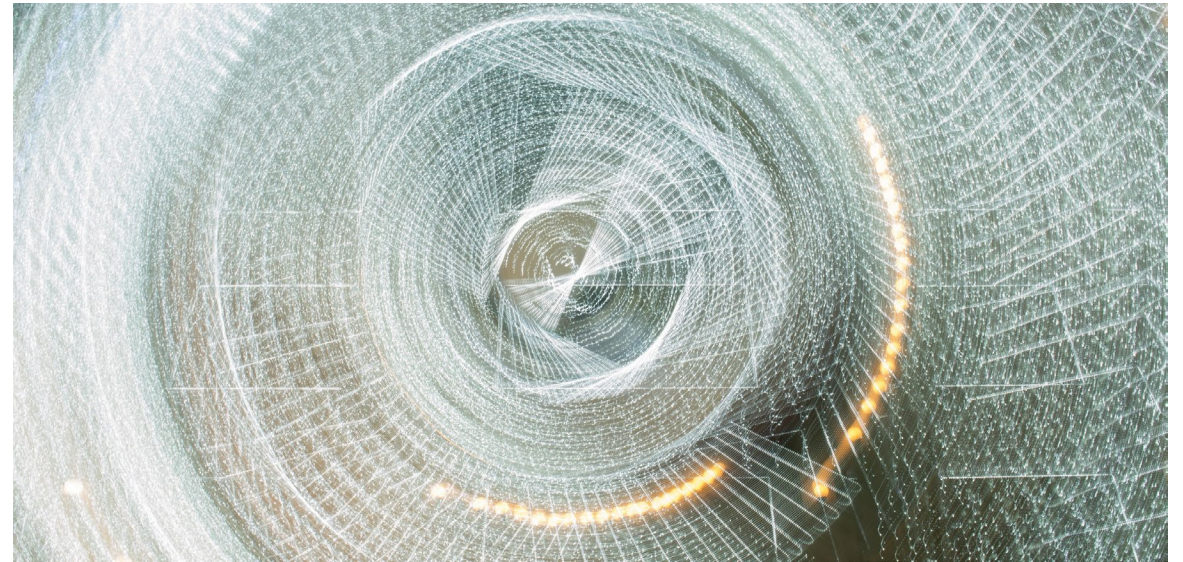


# Key Assumption: AI is a legal assistant, not a lawyer

**Lawyers use their own independent judgment before finalizing any work product**



Legal technology (e.g., billing, legal research, accounting, communication, drafting, etc.)



Assistance from human or AI legal assistants

# Legal Ethics Themes



Source: See generally, ABA Model Rules



# Foundation for ethical uses of AI



# Rule 1.1 - Competence

**A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.**

## Application

- Lawyers must have a reasonable understanding of the capabilities and limitations of the technology they use.
- Can rely on the expertise of others.
- If using a Gen AI tool, should have an appropriate degree of independent verification.
- The appropriate degree of verification depends on the tool and the task.

Source: ABA Model Rule 1.1 and Comment 8.

# Rule 1.3 - Diligence

**A lawyer shall act with reasonable diligence and promptness in representing a client.**

Comment 1: A lawyer may exercise professional discretion in determining how a matter should be pursued. See Rule 1.2.

Comment 2: A lawyer's workload must be controlled so that each matter can be handled competently.

## **Application**

- Technology, like AI, may assist lawyers in maintaining their workload
- AI is not expected, but that could evolve in the future

# Rule 1.6 - Confidentiality

**A lawyer can not reveal information relating to the representation of a client unless the client gives informed consent.**

**A lawyer must make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client.**

## Application

- DLA Piper evaluates all technology for appropriate confidentiality considerations before approving such tools for use
- This is because it is important to confirm Gen AI tools will comply with our confidentiality obligations

Source: ABA Model Rule 1.6 and Comments.

# Rule 3.3 - Candor

**(a) A lawyer shall not knowingly (1) make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer; (2) fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel; or (3) offer evidence that the lawyer knows to be false...**

- Comment 2, in part: “What is required of lawyers, however, is that they inform themselves about the facts of their clients' cases and the applicable law and determine that they can make good faith arguments in support of their clients' positions.”
- **Application**
  - Using AI that limits its investigation to a real, domain-specific source of information, and that shows its work, will help lawyers “avoid conduct that undermines the integrity of the adjudicative process.”

Source: ABA Model Rule 3.3 and Comments