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Committee on Artificial Intelligence and the Courts

COMMITTEE ON ARTIFICIAL INTELLIGENCE AND THE COURTS'

FINAL REPORT TO THE HAWAIʻI SUPREME COURT

DECEMBER 15, 2025

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In response to the emergence and rapid evolution of artificial intelligence ("AI") tools and platforms in the legal field, the Committee on Artificial Intelligence and the Courts ("Committee") was established by Chief Justice Mark E. Recktenwald on April 16, 2024. The Committee's starting point was to, among other things, research AI's capabilities, evaluate its potential use with the Judiciary's operations and administrative processes, and assess its known risks.

The Committee acknowledges the profound impact Chief Justice Recktenwald (Ret.) has had on shaping a forward-looking judiciary, and our work, under Acting Chief Justice Sabrina S. McKenna, remains dedicated to building upon that legacy, ensuring that our courts are well-equipped to navigate the complexities and opportunities presented by AI in the years to come. As stated by the AI Rapid Response Team at the National Center for State Courts, as AI continues to advance and evolve "it must be treated as a journey and not a destination."

Per the Hawai'i Supreme Court's 2024 Order Establishing the Committee on Artificial Intelligence and the Courts ("Order"), the Committee hereby submits its final report on the following:

I.   History and Current Status of AI technology use in the Judiciary and by court users;
II.   Findings as to:
   a. How to provide guidance and/or policies regarding AI usage;
   b. How to approach, incorporate, and/or implement AI technology into court operations;
   c. How AI can be used to meet the needs of self-represented litigants;
   d. How to identify legal and ethical issues that could arise from the use of AI technology in court operations and in the practice of law; and
III.   Recommendations for the Hawai'i Supreme Court.

The Committee is co-chaired by the Honorable Vladimir P. Devens, Associate Justice of the Hawaiʻi Supreme Court, and the Honorable John M. Tonaki, Circuit Court Judge in the First Circuit. The Committee was comprised of members representing the Hawaiʻi State Judiciary, United States District Court – District of Hawaiʻi, the Hawaiʻi Access to Justice Commission, the Criminal Justice Research Institute, the University of Hawaiʻi William S. Richardson School of Law, and the president and attorney members of the Hawaiʻi State Bar Association. *See* Appendix 1 for a full list of current Committee members, which includes additional members who joined after the filing of the Order creating the Committee.

The Committee held their inaugural meeting on May 3, 2024, and continued to meet monthly. Due to the breath of topics within AI, the Committee formed four Subcommittees to address various topics as reflected in the Order. The Subcommittees met regularly and provided monthly updates to the Committee.[1]

I.   Status of AI Technology Use in the Judiciary and with Court Users

Similar to other state courts nationwide, the Hawaiʻi State Judiciary has strategically adopted certain Generative AI ("GAI") applications while maintaining a prudent approach — carefully evaluating GAI capabilities to ensure these tools are deployed effectively, securely, and responsibly. When the proper safeguards are in place, legal research represents one promising area where GAI enhances natural language processing and enables more sophisticated, iterative query responses. In this last year, the Judiciary has also tested and

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[1]   As part of its work, the Committee reviewed AI reports and policies from various jurisdictions and consulted with representatives from Illinois, Maryland, New York, and Duke University.

experimented with other GAI functions, including the launch of the Judiciary's chatbot named KolokoloChat.

a. **Legal Research Tools**

Currently, Judiciary personnel have access to multiple AI-enhanced legal research platforms, including Paxton.ai, Bloomberg Law's AI Lab, and finally, the appellate courts have Westlaw Precision which utilizes an AI search function.[2]

Paxton.ai, is a GAI legal research platform powered by a large language model trained on primary legal sources—including statutes, case law, rules, and regulations at both state and federal levels. Paxton supplies hyperlinked citations to referenced authorities and incorporates a citator tool for case law validation. The platform also features an AI drafting assistant that enables users to experiment with text generation and editing. Users can upload documents for automated summarization and analysis, with the file analysis feature capable of responding to content-specific prompts or comparing multiple documents to efficiently identify key differences and commonalities. Information generated by the platform can be reviewed by the user before being utilized.

The second GAI research tool available to the Judiciary is Bloomberg Law. Bloomberg Law originally piloted a GAI-powered question-and-answer search feature within its tax research interface. This feature utilizes a large language model to deliver rapid AI-generated responses that link directly to state and federal primary law, as well as Bloomberg's Portfolios, and Navigators content collections.

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[2]   All use of legal research tools by Judiciary employees are subject to the *Hawai'i State Judiciary Guardrails for the Acceptable Use of Artificial Intelligence (AI) Tools and Platforms,* as discussed in Section II.a.

Recently, Bloomberg Law integrated GAI across its platform, making their enhanced tool available to goverment subscribers this past year. Bloomberg Law features two GAI tools, "Bloomberg Law Answers," which provides quick answers to search questions using relevant legal documents in Bloomberg, and Bloomberg's "AI Assistant," which is a chat-based tool that can generate summaries of legal documents and answer targeted questions specific to those documents. The Judiciary's use of Bloomberg Law has to date not been as extensive as Paxton.ai and Westlaw Precision, however, training on this AI platform has been scheduled for December 2025.

Finally, judges participated in a demonstration and trial of Thomson Reuters' Westlaw Precision, that includes a GAI enhancement to the existing Westlaw legal research platform. Westlaw Precision, which is being adopted by several federal courts of appeals including the Fifth Circuit and others, represents the legal industry's integration of advanced AI into established research workflows. The appellate courts also engaged in active demonstrations of Thomson Reuters' Co-Counsel, which combines GAI legal research with a legal assistant functionality, including drafting capabilities and document summarization and analysis. The appellate courts now have a full active subscription to Westlaw Precision that includes the GAI research tool as well as two licenses to review Co-Counsel to determine if additional Co-Counsel licenses could be beneficial.

b. **Operational AI Uses**

The Judiciary has tested and experimented with AI tools to support Judiciary operations and to promote and expand access to justice. This past year, the Judiciary, in partnership with the University of Hawaiʻi at Mānoa's Information and Computer Sciences Department, created

an interactive, artificial intelligence powered chatbot called KolokoloChat. Launched on May 1, 2025, KolokoloChat provides the public with a new and efficient way to search and locate court information and resources on the Judiciary's website.[3] This innovative tool streamlines interactions with the courts and improves access to justice for all Hawaiʻi residents. KolokoloChat has been rigorously trained on a vast database of court rules, procedures, and frequently asked questions. It is designed to understand natural language, allowing users to interact in a natural conversational manner. KolokoloChat's features include, among other things, 24/7 availability, instant answers to frequently asked questions, access to online forms, and resources for court patrons, including self-represented litigants. KolokoloChat represents the Judiciary's use of technology advancements to enhance service to our community. By providing quick and easy access to vital information, KolokoloChat is empowering individuals to navigate the legal system with greater ease, confidence, and efficiency. The Judiciary's data review shows that the most frequently asked questions include traffic fines and collections and family law related questions. Over 10,000 chat sessions have been initiated since its launch with early data showing that 37% of users are asking KolokoloChat questions outside of business hours and receiving answers within seconds.[4] This is a prime example of how AI can be leveraged and implemented to increase and facilitate access to justice. To ensure the best user experience, the Judiciary will continue to implement enhancements that improve the chatbot's performance and efficiency.

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[3]   *See* Press Release, Haw. State Judiciary, Hawaiʻi State Judiciary Launches AI-Powered KolokoloChat for Law Day 2025 (May 1, 2025), *https://www.courts.state.hi.us/news_and_reports/2025/05/hawaiʻi-state-judiciary-launches-ai-powered-kolokolochat-for-law-day-2025.* Users can find the KolokoloChat icon in the lower right corner of the Judiciary website: https://www.courts.state.hi.us/

[4]   Judiciary Innovations Officer, Angela K. Min. KolokoloChat data from May 1, 2025 – November 1, 2025.

AI technology holds significant promise and potential to transform judicial operations—improving efficiency and productivity, automating routine and repetitive tasks that could mitigate staffing challenges, organizing and summarizing large amounts of information, and expanding access to justice through resources designed for self-represented litigants. At the same time, any AI system employed by the Judiciary must safeguard and never encroach upon or compromise the independence, impartiality, and decision-making authority of our courts and judges. AI should serve to support and augment judicial functions, but never supplant judicial autonomy.

It should also be noted that AI raises the risk of exacerbating the knowledge and resource gap between represented clients who can afford attorneys with access to sophisticated subscription-based AI tools and platforms, and self-represented litigants who must depend on free AI resources that may lack comparable accuracy or comprehensiveness. With the assistance of AI, the Judiciary continues to be committed to modernizing its services and making the judicial system more responsive to the needs of all court users.

II.   Findings in Various Areas of AI

a. How to Provide Guidance and/or Policies Regarding AI Usage

AI Guidance and Policies Subcommittee Members ("Policies Subcommittee"): Judge Keith Hiraoka (Co-Chair), Jenny Silbiger (Co-Chair), Judge Clarissa Malinao, Judge Michelle Laubach, Mai NguyenVan, Sajed Naseem, Jennifer Ueki, Mark. M. Murakami, Jesse Souki, Kenneth Fukunaga, and Matthew Stubenberg.

Also worked with members of other subcommittees with whom our work overlapped: Justice Vladimir Devens, Judge John Tonaki, Judge Annalisa Bernard Lee, Judge Jeffrey Ng, Judge Kathleen Watanabe, Daylin-Rose Heather, Angela Min, Glenn Melchinger, Erin Harbinson, Aerielle Reynolds, Professor Emile Loza de Siles, and Lucy Carillo.

The Policies Subcommittee developed recommendations for guidance and policies with respect to AI use for the following three groups: Justices and judges, Judiciary employees, and Attorneys and Self-Represented Litigants. The Policies Subcommittee members reviewed information from various resources, including from the American Association for the Advancement of Science; America Bar Association; American Scientist; Arizona Summit on Artificial Intelligence Law and the Courts; Association for the Advancement of Artificial Intelligence; Bloomberg Law; Bolch Judicial Institute at Duke Law; Conference of State Court Administrators; District of Columbia Courts; Duke Law & Technology Review; Florida Bar; Indiana Archives and Records Administration; Judicial Council of California; Kansas Office of Information Technology Services; Kentucky Court of Justice; Louisiana Supreme Court; Maryland Judiciary; National Association for Court Management; National Center for State Courts; National Civil Justice Institute; New Jersey Supreme Court; Northwestern Journal of Technology and Intellectual Property; The Sedona Conference; Stanford University; The State Bar of California; State Bar of Michigan; State of Connecticut Judicial Branch; Supreme Court of Virginia; Utah Judicial Council; Utah Supreme Court; Virginia Supreme Court; Washington State Bar Association; and West Virginia Judicial Investigation Commission.

i. ***Justices and Judges***

A group of judges on the Policies Subcommittee reviewed and analyzed the Hawaiʻi Revised Code of Judicial Conduct and the Principles of Professionalism for Hawaiʻi Judges to identify canons, rules, and principles relevant to a justice or judge's use and required knowledge of AI. This group, along with others from the Committee, drafted a proposed memorandum addressed to justices and judges. The memorandum highlights provisions from the

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aforementioned sources relevant to AI use and the need to maintain competence in the emerging area of AI technology, including the responsible use of AI tools and awareness of its potential impact on judicial decision-making. The memorandum was approved by Chief Justice Recktenwald for distribution to all justices and judges. A copy of the memorandum may be found at Appendix 2.

ii. *Judiciary Employees*

The Policies Subcommittee also drafted the *Hawaiʻi State Judiciary Guardrails for the Acceptable Use of Artificial Intelligence (AI) Tools and Platforms* ("Guardrails"). The Guardrails are intended for justices, judges, and Judiciary employees who use, or may consider using, AI in their work. They were based in part on the Hawaiʻi Supreme Court Law Library AI Usage Recommendations, the Maryland Judiciary's *Acceptable Use of Artificial Intelligence (AI) Tools and Platforms*, the Hawaiʻi State Judiciary's cybersecurity guidelines, and Statewide Policy nos. 11 (General Guidelines of the Rules/Laws Governing Conduct of Judiciary Employees), 24 (Internet Development Strategy & Policy Statement), and 29 (Policy on Use of Technology Resources). The Judiciary's Ōlelo Hawaiʻi Program Administrator, Johanna Chock-Tam, provided information along with members of the Judiciary's Human Resources and Judiciary Information Technology and Systems departments who provided valuable input. The Hawaiʻi Government Employees Association was consulted on the Guardrails, which were approved by Chief Justice Recktenwald and have been forwarded to all Judiciary staff, through the Administrative Director of the Courts. A copy of the Guardrails may be found at Appendix 3.

iii. *Attorneys and Self-Represented Litigants*

The Policies Subcommittee analyzed the Hawaiʻi Rules of Professional Conduct and Hawaiʻi Rules of Civil Procedure to identify rules that apply to an attorney's use of AI and drafted a proposed letter for Chief Justice Recktenwald to send to the members of the Hawaiʻi State Bar Association ("HSBA"). Chief Justice Recktenwald finalized the letter and transmitted it to HSBA president Mark M. Murakami on January 21, 2025. The Chief Justice's letter was intended to raise the legal community's awareness of AI's potential impact on the Judiciary and the practice of law.   The letter highlighted pertinent rules of professional conduct and civil procedure, and the American Bar Association's Formal Opinion 512 relating to an attorney's legal and ethical obligations.   A copy of the letter may be found at Appendix 4.

In addition, the judges on the Policies Subcommittee, along with the judges on the Committee and members of the Ethics Subcommittee, drafted a proposed form titled *Order Regarding Use of Artificial Intelligence Tools* and *Declaration about Use of Artificial Intelligence*, relating to a disclosure requirement if AI was used to draft a court submission. When applicable, this proposed approach would require any attorney or self-represented party filing a document to include a declaration that AI was used in the drafting of their document and that the party has verified the accuracy of the legal authorities cited therein. The proposed form was based in part on orders currently used by the United States District Court for the District of Hawaiʻi and other federal courts.   The proposal is currently under consideration by the Hawaiʻi Supreme Court.

b. **How to Approach, Incorporate, and/or Implement AI Technology into Court Operations**

Court Operations Subcommittee Members: Judge John Tonaki (Chair), Judge Annalisa Bernard Lee, Judge Jeffrey Ng, Judge Kathleen Watanabe (Ret.), Dr. Erin Harbinson, Aerielle Reynolds, and Lucy Carrillo,

AI and machine learning systems and capabilities will transform virtually every industry sector and has the potential to reallocate the tasks performed by humans and machines. AI provides extraordinary opportunities for innovation, productivity, error reduction, improved workplace safety, enhanced efficiency, and lower costs. It enables computers and other automated systems to perform tasks that have historically required human cognition and, for certain tasks, at speeds that far outpace what humans can do.[5]

When considering the adoption of AI-assisted technology into any aspect of court operations, the current operation must first be assessed, identifying the court's goals and needs and determining whether the AI technology furthers or promotes those goals and needs. The Judiciary must also identify the operations that could be improved and benefit from AI tools, such as automating repetitive functions, data input, data analysis, summarizing, drafting, and other tasks.

The risks associated with adopting an AI tool must be carefully evaluated, in areas such as "hallucinations,"[6] data security, and staff concerns about job replacement. The Judiciary must ensure that any new technology complies with existing technology or security policies and technology infrastructure standards. AI systems should be safe and secure, which requires

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[5]   *See* ABA Task Force on Law and Artificial Intelligence, Addressing the Legal Challenges of AI: Year 1 Report on the Impact of AI on the Practice of Law (August 2024).

[6]   "Hallucinations" are false information or misleading responses generated by AI.

robust, reliable, repeatable, and standardized evaluations of AI systems; AI systems should be tested after they are deployed; developers and institutions should minimize security risks; the Judiciary should support responsible innovation and competition; and AI should support the creation of jobs, advance equity and civil rights, and operate transparently.[7]

The Court Operations Subcommittee also contributed to the formulation and drafting of Guardrails. *See* Appendix 3. These Guardrails must be considered with the implementation of any future AI technology relating to the Judiciary.

In considering the adoption or implementation of any new AI technology, the Court Operations Subcommittee recommends the formation of a committee to oversee the development and management of the AI technology ensuring consistency with the Judiciary's mission and values. The committee should include judges, administrative personnel, and information technology personnel. Before implementing or purchasing any new AI technology, the committee should become well-informed as to how the technology will be used, its risks, and the vendor's terms of use. Applicable procurement requirements must then be established.

Technology should not be used to replace jobs as human oversight over the work produced by technology will remain critical. Given that GAI use by courts is relatively new and AI technology is not completely reliable, the National Center for State Courts recommends that *"*AI-generated output should not be relied upon until it has been reviewed by a human subject matter expert[,]" which is an approach referred to as "Human-in-the-Loop."[8] Legal processes and procedures are often complex and nuanced. As such, technology can never fully replace

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[7]   *See* White House Executive Order 14110 on the Safe, Secure, and Trustworthy Development and Use of Artificial Intelligence (2023).

[8]   Nat'l Ctr. for State Courts, AI Rapid Response Team, AI and the Courts: Getting Started (March 2024).

human judgment that is rooted in subjective knowledge of the court system and practices. However, the reality is that, in some areas of the state, the Judiciary has had difficulty filling court administrative positions. For instance, on Maui, Kauaʻi and in Kona, the number of court clerks has greatly diminished causing the courts to find it increasingly difficult to operate on a consistent and efficient basis. Thus, it is hoped that AI-assisted technology can be employed to mitigate operational challenges and fill gaps by providing much needed assistance.

The expectation is that AI-assisted technology can play a part in streamlining future court operations and workflow. Such technology can potentially increase efficiency and productivity. It should not replace human judgment but instead supplement operations by performing certain tasks with court personnel oversight.

While recommendations for specific AI-assisted technology were generally beyond the expertise of the Court Operations Subcommittee, the Subcommittee did preliminarily identify two AI systems which it believes have the potential to improve court operations. These proposed systems would require the recommended working group's consideration and vetting and would need to also follow the Guardrails before adoption and implementation.

i. *Intelligent Document Processing*

Intelligent document processing ("IDP") is an artificial intelligence powered tool that automates data extraction from paper-based documents or document images ("PDFs"). IDP tools use a combination of GAI, natural language processing, and/or machine learning to extract unstructured data contained within documents and transforms it into structured data for use in research and analysis. Additionally, IDP tools have the ability to verify the data they extract

and collect, by cross-referencing existing databases or applying predetermined rules to check for errors. IDP systems also can redact personal identifiable information from documents.

Across various case types, there are voluminous documents filed with the courts that contain a wealth of information that could be used to increase efficiency, promote informed decisions, and advocate for resources, both for the Judiciary and for members of the public who interact with or are impacted by the courts. However, much of this information is presently limited in its accessibility, as it requires staff, in a time-consuming process, to manually read documents, extract relevant information, and log this information into a document or spreadsheet. The Judiciary's capacity for this work is limited due to current staffing constraints.

While many documents filed with the courts in their current form are presently amenable to processing using an IDP tool, other documents are not. IDP tools are unable to process and extract information from pre-printed forms that are filled in by hand by court users which are then scanned as PDFs for filing, such as the information filled out by petitioners requesting an Order for Protection. Converting such forms into a fillable PDF that would allow court users to input the required information as a typed document would make them more readable for processing by an IDP tool.

An IDP system could initially be deployed and targeted in those Judiciary departments involved with data collection and compilation where immediate efficiency gains are possible.

ii.   *AI Tools for the Production of Transcripts and Court Minutes*

Fireflies.ai, a transcription and court minutes AI tool, was explored and used on a trial basis in the Fifth Circuit. A video recording of a court session uploaded to a Fireflies account will produce a transcript of the proceeding with the user being notified by e-mail when the

transcript is completed. Samples of court summary minutes were used to demonstrate its capabilities to a Fifth Circuit IT specialist to assess whether it could be used to address that circuit's severe staffing shortage of court clerks. The Judiciary has and currently faces difficulties recruiting and retaining court clerks, as experienced clerks have retired or transitioned to other employment and the demanding work is technical, voluminous, and fast-paced. The Judiciary continues to focus on recruitment and retention of this job classification through a number of strategies. Nevertheless, court clerks who remain can struggle to keep up with court minutes for each case despite their best efforts. The Judiciary and this Committee have identified this as a major concern, as one of the most important tasks in a courtroom's daily functions, is the timely production of the minutes for a court proceeding because the minutes are essential to document and review the history of a case. Judges, court staff, the parties and the public rely on minutes to determine the status of cases, including the preparation and approval of court orders.

While Fireflies.ai did not fully meet expectations and the Judiciary's needs at that time, the Judiciary continues to explore other similar AI programs that can accurately draft court minutes and transcriptions, and believes AI has the potential to greatly assist court staff and court users here. *See* further discussion in Section c.3. The Court Operations Subcommittee will continue to identify other aspects of court operations that can be enhanced and improved with the use of AI-assisted tools.

   c. **Using AI to Meet the Needs of Self-Represented Litigants**

Access to Justice Subcommittee Members ("ATJ Subcommittee"):
Judge Joseph Cardoza (Ret.) (Co-Chair), Angela Min (Co-Chair), Judge Annalisa Bernard Lee,
Judge Jeffrey Ng, Jenny Silbiger, Glenn Melchinger, Benjamin Leider,
and Matthew Stubenberg.

In the area of access to justice, AI holds immense potential to bridge the gap for underserved populations and to streamline legal processes. The ATJ Subcommittee focused its efforts on the following areas and tools:

i. *Plain Language and Videos*

First, GAI can be applied to translate complex legal language into plain, easily understood terms, and to produce instructional materials including AI-generated videos to support public comprehension of procedures and processes. This is particularly beneficial for limited-English proficient individuals and/or court users who are not familiar with legal terminology. AI-powered tools can, among other things, summarize lengthy legal documents, simplify and explain court procedures step-by-step, and provide definitions of legal terms in everyday language. Third-party AI programs such as Claude.ai, Chat-GPT, and other AI tools have these capabilities and can customize instructions to various reading and comprehension levels. Additionally, third-party AI programs can translate instructions from English into other languages in a matter of minutes, though any official use should be subject to review by human subject matter language experts.

Second, the ATJ Subcommittee recognizes that effective learning and communication avenues can vary among the different segments of the general public. While the courts attempt to explain and formulate useful instructions, sometimes those well-intended documents do not land well and create more confusion than helpful assistance. AI can also create videos from written instructions, providing an alternative method to explain complex legal procedures. This can be especially useful for individuals with varying literacy proficiency levels or those who

prefer visual learning. AI can also animate/avatar step-by-step guides, provide visual

demonstrations of legal processes, and create videos that explain and simplify legal concepts.

In the past, to accommodate visual learners, the Judiciary produced videos on various

topics to educate the community and public at large. However, these videos require a great deal

of time to create and edit. With third-party AI video tools such as Synthesia, the Judiciary can

convert existing instructional PDF documents into informational videos in English and other

languages in a matter of minutes.[9]

Recently, Judge Sokolow from the Third Circuit asked members from the ATJ

Subcommittee for assistance in providing videos that could help explain family court

procedures and assorted family law court forms. Once an AI tool is vetted and approved for

use, there will be no limit to the type and number of informational videos that may be produced

on an unlimited number of topics. To ensure accuracy, video content will be drafted by

knowledgeable subject matter experts. AI tools will then be used to expeditiously tailor each

video into multiple versions for access by diverse users.

The use of AI tools to guide and assist self-represented litigants in locating and properly

completing forms relevant to their desired relief will promote and improve procedural

efficiency and enhance the user experience within the court system. Implementing secure AI

tools for these purposes will provide immediate and wide-ranging impact for self-represented

litigants and make the court process easier to understand, use, and navigate.

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[9]   *See* Synthesia, https://www.synthesia.io/.

ii.   *AI Applied to Data Research*

AI presents the potential opportunity for the Judiciary to efficiently identify cases

involving self-represented litigants. The Judiciary currently lacks a search field that indicates

whether a party is proceeding in a self-represented capacity. In the past, Judiciary staff spent

significant amounts of time researching this information, reviewing case notes and other data

fields to determine whether a party was self-represented. With the appropriate AI tool,

Judiciary staff can train an AI model using cases with known self-represented litigants. After

staff testing and fine tuning the AI model, staff can then scan the cases in the Judiciary's

database and flag those involving self-represented parties. AI enables the tool to interpret data

fields with flexibility, accommodating variations in how court clerks enter information and

allowing adjustments to changes in case date formats.

Utilizing AI tools to identify and flag cases involving self-represented parties will

facilitate and promote time-efficient research by the Judiciary to track and assess the judicial

system's impact on self-represented litigants. For instance, data analysis can identify stages of

the case where self-represented litigants face disproportionate challenges and determine sources

of preventable delays in case resolution. Identifying such procedural bottlenecks can prompt a

thoughtful review of court rules or forms, improving service to self-represented litigants, and

supporting broader access to justice.

iii.   *Increasing Language Access and Translation*

As part of the research and review of potential use cases for AI translation in the courts,

we note that for court proceedings, translation accuracy is critical. For context, an AI tool

piloted in the Fifth Circuit did not quite meet reliability expectations in terms of producing

accurate English-to-English transcripts from oral testimony without human review and editorial oversight. Based on our review to date, machine translation and AI tools are generally not sufficiently reliable for courtroom use at the present time, but may still have other limited beneficial use cases.[10]

The Sedona Conference's guidelines on *Navigating AI in the Judiciary* are generally in accord with these observations, but suggest one potential use case for machine translation tools: "GAI tools may be used for unofficial/preliminary translation of foreign-language documents."[11] However, this guideline does not recommend the translation of oral testimony, as opposed to documents, from a foreign language into English or *vice versa*.

These conclusions are supported by Cristina Llop, a bilingual attorney who studies AI, machine translation, and access to justice.[12] Ms. Llop offers a few other potential use cases, including: (1) translating declarations and witness statements, (2) converting court forms and pleadings into different languages, (3) making legal guides and court websites more accessible, and (4) supporting real-time interpretation in court help centers, however, these suggestions come with reservations and caveats. Although AI tools may sound fluent, they may nonetheless

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[10]   *See* Nat'l Ctr. for State Courts, Machine Translation: Considerations and Cautions for Courts (2025), *available at* https://www.ncsc.org/sites/default/files/media/document/NCSC%20Machine%20Translation%20Guide_0.pdf.

[11]   *See* Hon. Herbert B. Dixon Jr. et al., *Navigating AI in the Judiciary: New Guidelines for Judges and Their Chambers,* 26 SEDONA CONF. J. 1, 7 (forthcoming 2025), https://www.thesedonaconference.org/sites/default/files/publications/NavigatingAIintheJudiciary_PDF_021925_2.pdf.

[12]   *See, e.g.,* Cristina Llop, Summary of Presentation at Stanford Legal Design Lab's AI and Access to Justice Research Webinar*, AI, Machine Translation, and Access to Justice (Feb. 7, 2025), *available at* https://justiceinnovation.law.stanford.edu/tag/cristina-llop/.

be inaccurate and unreliable necessitating human-in-the-loop verification by subject matter experts.

We respectfully suggest the following potential use cases along with an initial set of caveats, which may serve as a foundation for developing workflows that improve efficiency and support court operations:

- Initial/preliminary translations of written witness statements: AI tools might be used in the right context, to generate a preliminary translation that can help reduce the workload of a certified translator prior to signature, submission, and official use.

- Conversion of court forms and websites into different languages: Ms. Llop commented that this work should go hand in hand with efforts to revise court forms and websites to *plain language*. AI tools can then assist with the initial heavy lift of drafting court forms and creating websites into other languages, provided the tool has proven to be sufficiently trained on a sufficient amount of data to accurately translate into any given targeted language. All such translated materials would ultimately need to be reviewed and vetted by native or other certified subject matter experts in the designated language.

- Support for interpreters/translators in court help centers or clerk offices: It is possible that where a given AI tool has proven to be sufficiently accurate in translating to and from a target language, AI tools may be used to support simple or basic interpretation of non-critical information.

There may also be emergency situations or other exigent circumstances in which, *but for* the use of translation technology, a court could not act or justice would be delayed to the point of being denied. Such potential uses, where an AI tool can provide assistance in the absence of any other resources, may also be considered as well as other use cases.

The ATJ Subcommittee will continue to pursue and explore areas where AI tools will increase access to justice and assist court users.

Legal and Ethical Issues That Could Arise from the Use of AI Technology in Court Operations and with the Practice of Law

Legal and Ethical Issues Subcommittee Members ("Ethics Subcommittee"):
Judge Stephanie Char (Chair), Judge Keith Hiraoka, Daylin-Rose Heather, Jesse Souki, Glenn Melchinger, and Professor Emile Loza de Siles.

The Ethics Subcommittee first researched the uses of AI, in general, and more specifically, the use of GAI in the legal field. This included reviewing caselaw, reports from various sources such as the ABA, the National Association for Court Management ("NACM"), the National Center for State Courts ("NCSC"), as well as Opinions and Advisories from different states. With the knowledge gained and built upon (keeping in mind that GAI is evolving from day to day), the Ethics Subcommittee then reviewed the Hawaiʻi Revised Code of Judicial Conduct, the Hawaiʻi Rules of Professional Conduct ("HRPC"), Hawaiʻi Rules of Evidence ("HRE") and the Federal Rules of Evidence ("FRE"). The Ethics Subcommittee analyzed, among other things, which rules from the above sources may be most applicable and/or implicated by the use of GAI and considered potential comments, suggestions, and/or recommendations to those rules in order for the Judiciary to best prepare itself when, not if, using and/or confronted with the use of GAI. The lynchpin, if you will, in all these analyses is Hawaiʻi Rules of Civil Procedure ("HRCP") Rule 11. This Subcommittee believes that *at this time*, Rule 11, as it is written and applied, is broad enough to provide adequate safeguards.

i. *Hawaiʻi Rules of Professional Conduct*

AI tools have proven to be a disruptive force across the business world. As is clear from the sanctions order in *Mata v. Avianca*[13], related to fake case citations generated by ChatGPT,

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[13] *See* Mata v. Avianca, Inc., 678 F.Supp.3d 443 (S.D.N.Y. 2023).

the legal profession is far from immune to the spell of AI. [14] In the *Mata* case, attorneys for the

plaintiff filed a 10-page brief challenging dismissal of the case. The opposing party filed a

response indicating that many, if not all of the citations were either fake, or did not stand for the

propositions that the plaintiff attorneys claimed they did. Upon inquiry from the Court,

plaintiff's attorneys conceded that they utilized ChatGPT for their legal research. Ultimately,

the court held a hearing and sanctioned the plaintiff's attorneys $5,000.00 each after finding

they acted in bad faith. The bulk of the Court's findings rested squarely within Rule 11 of the

Federal Rules of Civil Procedure. As noted in the recent ABA's Standing Committee on Ethics

and Professional Responsibility's Formal Opinion 512 ("ABA Formal Opinion 512"), the use of

AI implicates and raises multiple ethical concerns.[15]   The subsection below discusses the

HRPC that are most applicable and implicated by an attorney's use of AI.

This subsection will provide a summary discussion of the primary ethical issues raised

by the use of AI under the HRPC. Preliminarily, the Subcommittee considers the ethical

obligations for attorneys to be adequately set forth in the current HRPC. The fact that AI tools

may cause attorneys to confront those same ethical obligations in newly developing frontiers

does not change or alter those ethical obligations already imposed on attorneys.

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[14]   Benjamin Weiser, *Here's What Happens When Your Lawyer Users ChatGPT,* N.Y. TIMES (May 27, 2023) https://www.nytimes.com/2023/05/27/nyregion/avianca-airline-lawsuit-chatgpt.html; Siddartha Rao & Andrew Ramstad, *Legal Fictions and ChatGPT Hallucinations: 'Mata v. Avianca' and Generative AI in the Courts,* LAW.COM (Dec. 21, 2023), https://www.law.com/newyorklawjournal/2023/12/21/legal-fictions-and-chatgpt-hallucinations-mata-v-avianca-and-generative-ai-in-the-courts/ (last visited Dec. 10, 2025).

[15]   *See e.g.,* Am. Bar Ass'n Standing Comm. on Ethics & Prof'l Resp., Generative Artificial Intelligence Tools: Formal Op. 512 (July 29, 2024), *available at* https://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/ethics-opinions/aba-formal-opinion-512.pdf.

1. Competence

> **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.
>
> ***Maintaining Competence***
> *[6]. To maintain the requisite knowledge and skill, a lawyer should engage in continuing study and education and keep abreast of changes in the law and its practice, including the benefits and risks associated with relevant technology. See comments [18] and [19] of Rule 1.6.*

Given the requirements of HRPC Rule 1.1 and its comment that attorneys should keep abreast of relevant technology, it is vital for attorneys to understand the potential benefits and perils of using any AI tool, which may vary with any given use case. Among those perils that the *Mata* case attorneys did not seem to understand or appreciate is the fact that GAI engines are "black boxes" that create (among other things) text through processes that are not well understood or observable. They do this by predicting the next statistical word in a sequence—or the next paragraph, or page.[16] Arguably, they do not know anything and are not wed to any truth. It has been said that eliminating 100% of "hallucinations," *i.e.* information that is not valid and reliable, is impossible because of their design.[17] Even legal-specific AI systems that

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[16]   Marco Ramponi, *How ChatGPT Actually Works*, ASSEMBLY AI (Dec. 23, 2023), https://www.assemblyai.com/blog/how-chatgpt-actually-works/ (discussing how LLMs take input "tokens" and then seek to predict the next word in a sequence; an understanding of language based on statistical relationships between words in usage across the training data set).

[17]   *See* 26 COLUM. SCI. & TECH. L. Rev. 110 2025.

are grounded in specific curated documents and databases have been found to hallucinate or generate misleading and inaccurate information.[18]

All of this makes it imperative that attorneys carefully assess when to use GAI and perhaps avoid it for mission critical issues. Attorneys must recognize when the use of GAI is appropriate and must be diligent and careful to comply with all legal and ethical requirements across the many bodies of rules that govern. In short, attorneys using AI need to consider developing systems for workflows and techniques, systems for human oversight, methods to appropriately prompt answers, and where possible, methods to ground answers in specific documents to improve outputs and ensure accuracy with their end work product.

2. Confidentiality

Rule 1.6. CONFIDENTIALITY OF INFORMATION.

(a) A lawyer shall not reveal confidential information relating to the representation of a client unless the client consents after consultation, the disclosure is impliedly authorized in order to carry out the representation, or as stated in paragraph (b) or (c).

Attorneys using ChatGPT should also be aware of a well-publicized incident where Samsung employees apparently entered sensitive data and proprietary code into a public-facing ChatGPT account, which resulted in Samsung banning such uses of AI at the company.[19] It should go without saying that inputting any sensitive information or client information into a

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[18]   Varun Magesh, Faiz Surani, et. al, *Hallucination-Free? Assessing the Reliability of Leading AI Legal Research Tools*, J. EMPIRICAL LEGAL STUD. (Mar. 14, 2025)*, available at* https://dho.stanford.edu/wp-content/uploads/Legal_RAG_Hallucinations.pdf (discussing how hallucinations persist despite the use of retrieval augmented generation; assessing claims of Lexis and Westlaw).

[19]   Kate Park, *Samsung Bans Use of Generative AI Tools Like ChatGPT After April Internal Data Leak*, TECHCRUNCH (May 2, 2023), https://techcrunch.com/2023/05/02/samsung-bans-use-of-generative-ai-tools-like-chatgpt-after-april-internal-data-leak/.

public facing AI tool that is not secured and designed to keep that information confidential is potentially risking severe confidentiality breaches. If the allegations in *The New York Times Company v. Microsoft Corporation, OpenAI, Inc., et al.*, No. 23-CV-11195,[20] lawsuit are accurate, such information could be accessible to the companies hosting AI training data, thus placing the information in the hands of an unintended third-party. In these instances, if a GAI engine is prompted in the right way, it could produce content that is *verbatim* or nearly verbatim original copyrighted work product.[21] In short, what goes in can potentially come right back out, if the system is prompted correctly. Thus, confidentiality obligations apply and must be considered when using AI tools.

3. Communication

> **Rule 1.4.   COMMUNICATION.**
>
> (a)   A lawyer shall:
> (1)   promptly inform the client of any decision or circumstance with respect to which the client's consent after consultation, as defined in Rule 1.0(c), is required by these Rules;
> (2)   reasonably consult with the client about the means by which the client's objectives are to be accomplished[.]
>
> *[3]Paragraph (a)(2) requires the lawyer to reasonably consult with the client about the means to be used to accomplish the client's objectives. In some situations – depending on both the importance of the action under consideration and the feasibility of consulting with the client – this duty will require consultation prior to taking action. In other circumstances, such as during a trial when an immediate decision must be made, the exigency of the situation may require the lawyer to act without prior consultation. In such cases the lawyer must nonetheless act reasonably to inform the client of actions the lawyer has taken on the client's behalf. Additionally, paragraph (a)(3) requires that the lawyer keep the client reasonably informed about the status of the matter, such as significant developments affecting the timing or the*

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[20]   S*ee* Complaint, *The New York Times Company v. Microsoft Corp., OpenAI, Inc., et al.*, No. 23-CV-11195 (S.D.N.Y. Dec. 27, 2023), *available at* https://nytco-assets.nytimes.com/2023/12/NYT_Complaint_Dec2023.pdf.

[21]   *See id.* at 30; *see also* Michael M. Grynbaum & Ryan Mac, *The Times Sues OpenAI and Microsoft Over A.I. Use of Copyrighted Work,* N.Y. Times (Dec. 27, 2023), https://www.nytimes.com/2023/12/27/business/media/new-york-times-open-ai-microsoft-lawsuit.html.

substance of the representation, or any serious unauthorized or inadvertent disclosures of
confidential information as covered by Rule 1.6.

Depending on the facts and circumstances of a given case, attorneys should consider

discussing and disclosing the use of AI for certain purposes, potentially to all persons involved

in the litigation. In addition, attorneys should discuss the potential use of GAI with clients and

obtain client consent before using GAI for the client's case or matter. We reference ABA

Formal Opinion 512,[22] which discusses the duty of attorneys to communicate with clients about

AI use consistent with acting in a client's best interests. Certainly, where a client requests

disclosures, the lawyer must comply. Where a client requests that their lawyer not use AI, the

lawyer, must then determine the most effective way to proceed.

4. Independent Judgment

Rule 2.1.   ADVISOR.

In representing a client, a lawyer shall exercise <u>independent professional judgment</u> and render candid advice. In rendering advice, a lawyer may refer not only to law but to other considerations such as moral, economic, social and political factors, that may be relevant to the client's situation.

Although AI tools present potential benefits and efficiencies, they are "black boxes" that

generate outputs with little to no transparency or explainability, except perhaps through even more

powerful AI models, which may also hallucinate. Further, they will confidently generate false text,

fake case citations, and other false information. All this means the buck stops with attorneys, who

must take responsibility and supervise the outputs just as if the AI were a law clerk or new associate.

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[22]   *See generally,* ABA Formal Opinion 512, *supra* n. 53.

The adverse potential issues raised by the *Mata* case and the potential impact of AI on other rules discussed herein may be obviated or avoided by the competent, informed, considered exercise of professional judgment.[23]

5. Meritorious Claims and Contentions and Candor Toward the Tribunal and Opposing Counsel

Several rules are implicated by the issues raised in the *Mata* case and other similar cases, in which false statements and representations were made to the court and opposing counsel. If attorneys fail to exercise independent judgment and fail to validate and verify outputs from AI tools, these are the potential adverse effects: false and inaccurate contentions are presented to the courts, causing chaos, waste, inefficiency, distrust, and failed advocacy. Interestingly, *Noland v. Land of the Free*, is a case in which the *opposing* party failed to bring to the court's attention the wrongfully cited and fabricated legal authority contained in the filing parties' brief. The court discovered the discrepancies on its own. As a result, the opposing party's request for attorneys' fees was denied.[24]

Rule 3.1. MERITORIOUS CLAIMS AND CONTENTIONS.

A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis for doing so that is not frivolous, which includes a good faith argument for an extension, modification, or reversal of existing law. A lawyer for the defendant in a criminal proceeding, or the respondent in a proceeding that could result in incarceration, may nevertheless so defend the proceeding as to require that every element of the case be established.

Rule 3.3. CANDOR TOWARD THE TRIBUNAL.

(a) A lawyer shall not knowingly:

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[23]   *See Wadsworth v. Walmart inc.*, D. Wyo., No.2:23-cv-118-KHR (Feb. 24, 2025). *See also* Claudia Ray, *If you Think it "Thinks," Think Again,* KIRKLAND & ELLIS (Jul. 3, 2023), https://www.kirkland.com/publications/article/2023/07/if-you-think-it-thinks-think-again.

[24]   *See Noland v. Land of the Free*, 114 Cal. App. 5th 426 (2025).

(1) make a false statement of material fact or law to a tribunal;
(2) fail to disclose a material fact to a tribunal when disclosure is necessary to avoid assisting a criminal or fraudulent act by the client;
(3) 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
(4) offer evidence that the lawyer knows to be false. If a lawyer has offered material evidence and comes to know of its falsity, the lawyer shall take remedial measures to the extent reasonably necessary to rectify the consequences.

Rule 3.4. FAIRNESS TO OPPOSING PARTY AND COUNSEL.

A lawyer shall not:
(a) unlawfully obstruct another party's access to evidence or unlawfully alter, destroy or conceal a document or other material having potential evidentiary value. A lawyer shall not counsel or assist another person to do any such act;
(b) falsify evidence or counsel or assist a witness to testify falsely;
 . . . .
(g) in trial, allude to any matter that the lawyer does not reasonably believe is relevant or that will not be supported by admissible evidence, assert personal knowledge of facts in issue except when testifying as a witness, or state a personal opinion as to the justness of a cause, the credibility of a witness, the culpability of a civil litigant or the guilt or innocence of an accused[.]

Rule 4.1. TRUTHFULNESS IN STATEMENTS TO OTHERS.

 In the course of representing a client a lawyer shall not knowingly:
 (a) make a false statement of material fact or law to a third person; or
 (b) fail to disclose a material fact to a third person when disclosure is necessary to avoid assisting a criminal or fraudulent act by a client.

Rule 8.4. MISCONDUCT.

It is professional misconduct for a lawyer to:
(a) attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;
 . . . .
(c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;

ABA Formal Opinion 512 discusses an attorney's duty to make meritorious claims based on law and fact, as well as to correct false statements made to any tribunal. [25] In using non-existent case citations and apparently failing to check and verify their citations, the *Mata* case is also notable in that the attorneys there purportedly misunderstood and believed that ChatGPT was "like a super search engine."[26] This can cause unsuspecting attorneys to double down and perhaps delay disclosing their inaccuracies until a court issues an order to show cause, compounding an initial error in misunderstanding the technology and its capabilities and limitations.[27]

Far from *Mata* being a one-off, singular example, many other cases have arisen in which litigants have failed to understand the nature of GAI models, failing to recognize that "even state-of-the-art models are prone to producing falsehoods—they exhibit a tendency to invent facts in moments of uncertainty."[28] While this has created valid concern, existing rules requiring validation before submission, such as HRCP 11 and 26(g), already address the primary risks of an attorney's failure to understand AI's limitations.[29]

6. Supervisory Responsibilities

There has been a slow evolution in the ethics relating to using even those technologies that everyone now takes for granted—including e-mail, which has been used for over a quarter century.[30]

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[25]   ABA Formal Opinion 512, *supra* n. 53 at 9.

[26]   *Mata,* 678 F.Supp.3d at 456; *see also* Rao & Ramstad*, supra* n. 14*.*

[27]   *Mata,* 678 F.Supp.3d at 449; Rao & Ramstad, *supra* n. 14.

[28]   Hunter Lightman, Vineet Kosajaru, Yura Burda et al., *Let's Verify Step by Step*, ARVIX (May 31, 2023), https://arxiv.org/pdf/2305.20050.

[29]   *See* HRCP Rule 11and Rule 26.

[30]   Mark C. Palmer, *Ethical Consideration for Lawyers Regarding Email Encryption,* 2CIVILITY (June 23, 2023)*,* https://www.2civility.org/ethical-considerations-for-lawyers-regarding-email-encryption/.

The cautious, slowly developing legal environment must now contend with AI tools that can draft

e-mails, suggest edits, and create other content for users at all levels of the environment, often from

apps that fit in the palm of one's hand. As a result, there are several professional conduct rules

implicated for supervisors and employees.

Rule 5.1. RESPONSIBILITIES OF PARTNERS, MANAGERS, AND SUPERVISORY LAWYERS.

(a)   A partner in a law firm, and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm, shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that all lawyers in the firm conform to the Rules of Professional Conduct.
(b) A lawyer having direct supervisory authority over another lawyer, including law-student interns licensed under Rule 7 of the Rules of the Supreme Court of the State of Hawaiʻi, shall make reasonable efforts to ensure that the other lawyer conforms to the Rules of Professional Conduct.
(c)   A lawyer shall be responsible for another lawyer's violation of the Rules of Professional Conduct if:
　　　　(1)   the lawyer orders or, with knowledge of the specific conduct, ratifies the conduct involved; or
　　　　(2)   the lawyer is a partner or has comparable managerial authority in the law firm in which the other lawyer practices, or has direct supervisory authority over the other lawyer, including law-student interns licensed under Rule 7 of the Rules of the Supreme Court of the State of Hawaiʻi, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

Rule 5.3.　　　RESPONSIBILITIES REGARDING NONLAWYER ASSISTANTS.

 With respect to a nonlawyer employed or retained by or associated with a lawyer:
(a)   a partner in a firm who individually or together with other lawyers possesses comparable managerial authority in a firm, shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the person's conduct is compatible with the professional obligations of the lawyer;
(b) a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer; and
 (c)   a lawyer shall be responsible for conduct of such a person that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if:

(1)   the lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved; or
(2)   the lawyer is a partner or has comparable managerial authority in the law firm in which the person is employed, or has direct supervisory authority over the person, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

[2] Paragraph (a) requires lawyers with managerial authority within a firm to make reasonable efforts to establish internal policies and procedures designed to provide reasonable assurance that nonlawyers in the firm will act in a way compatible with the Rules of Professional Conduct. Reasonable efforts should include careful consideration of the use of technology and office resources connected to the internet, external data sources, and external vendors providing services relating to client data, and the use of client data. See Comment [2] to Rule 5.1. Paragraph (b) of this Rule applies to lawyers who have supervisory authority over the work of a nonlawyer. Paragraph (c) specifies the circumstances in which a lawyer is responsible for conduct of a nonlawyer that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer.

Law firms which permit employees to use AI tools confront a host of potential issues and concerns that run the entire gamut discussed in the HRPC, including data security issues, client confidentiality, accuracy and reliability of drafted documents, and proper verification before submitting filings to a court. There is a risk of "shadow IT"—the use of unapproved devices and software for work using data without proper disclosures to an organization. When one adds to this the proliferation of new AI tools and new court certification and disclosure requirements regarding AI tool usage, then the burden to "trust but verify" becomes more onerous and complex.

7. Fees

Rule 1.5.   FEES.

(a)   Reasonableness of Fee. A lawyer shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses. The factors to be considered in determining the reasonableness of a fee include the following:
(1)   the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;

(2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
(3) the fee customarily charged in the locality for similar legal services;
(4) the amount involved and the results obtained;
(5) the time limitations imposed by the client or by the circumstances;
(6) the nature and length of the professional relationship with the client;
(7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and
(8) whether the fee is fixed or contingent, and in contingency fee cases the risk of no recovery and the conscionability of the fee in light of the net recovery to the client.
(b) Manner In Which Fees are Earned. <u>The scope of the representation and the basis or rate of the fee and expenses for which the client will be responsible shall be communicated to the client in writing before or within a reasonable time after commencing the representation</u>, except when the lawyer will charge a regularly represented client on the same basis or rate, or if it is reasonably foreseeable that the total cost of representation to the client, including attorney's fees, will be $250.00 or less. Any changes in the basis or the rates of the fee or expenses shall also be communicated to the client in writing. Fee payments received by a lawyer before legal services have been rendered are presumed to be unearned and shall be held in a trust account pursuant to Rule 1.15 of these Rules. Fee agreements may not describe any fee as non-refundable or earned upon receipt.

ABA Formal Opinion 512 discusses the duty of attorneys to charge reasonable fees.[31] The introduction of AI may present efficiencies for certain tasks and use cases. Some attorneys report the ability to do more, more quickly and efficiently—or eliminate repetitive tasks, creating time to devote to higher level work. While AI is still developing, AI tools could conceivably, one day, be required if they help accomplish the same result in less time with sufficient validity and reliability. It is in this same way the word processor has effectively supplanted the typewriter in creating written documents rendering typewriters obsolete, and that e-mail and other messaging applications have replaced "snail mail" and faxes. The 2023 Year-End Report on the Federal Judiciary included a discussion of the development of attorneys using technology from quills to typewriters to personal computers, and cautioned that "any use

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[31] *See generally,* ABA Formal Opinion 512, *supra* n. 53 at 11-14.

of AI requires caution and humility."[32] It is not beyond our imagination that legal work which would take an attorney 5-7 hours of computer-assisted (non-GAI) research would now, with the assistance of GAI, cut that time in half, or more, and the end result would be a full pleading or brief, only requiring that it be fact-checked by the attorney. Whereas the 5-7 hours of work would equal 'x' amount, as being a "reasonable fee", would the attorney now raise their hourly "reasonable fee" to meet the same amount in the latter scenario that incurred less time to complete? Would a higher fee still be considered "reasonable" in light of the fact that GAI actually made the attorney's work easier and less time consuming?

ii.   *Hawaiʻi Revised Code of Judicial Conduct*

The Policies and Ethics Subcommittees collaborated on the review and comments to the Hawaiʻi Revised Code of Judicial Conduct, see Appendix 2.

iii.   *Hawaiʻi Rules of Evidence*

The application of AI in legal proceedings introduces unique challenges within the framework of the HRE. As AI-generated data and analyses become more common in litigation, courts and practitioners must address novel questions relating to authenticity, reliability, and probative value, while also remaining mindful of potential biases and ethical concerns. This section outlines the primary evidentiary considerations under the HRE relevant to AI and proposes areas for potential guidance or rule modification.

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[32]   CHIEF JUSTICE'S 2023 YEAR-END REPORT ON THE FEDERAL JUDICIARY at 5-6 (2023), *available at* https://www.supremecourt.gov/publicinfo/year-end/2023year-endreport.pdf.

1. Relevance and Admissibility under HRE 401, 402, and 403

Rule 401 Definition of "relevant evidence".

"Relevant evidence" means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.

Rule 402 Relevant evidence generally admissible; irrelevant evidence inadmissible.

All relevant evidence is admissible, except as otherwise provided by the Constitutions of the United States and the State of Hawaiʻi, by statute, by these rules, or by other rules adopted by the supreme court. Evidence which is not relevant is not admissible.

Rule 403 Exclusion of relevant evidence on grounds of prejudice, confusion, or waste of time.

Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.

Under HRE 401, evidence is deemed relevant if it makes a fact of consequence more or less probable. HRE 402 further stipulates that all relevant evidence is admissible unless a law or rule excludes it. AI-generated evidence, such as predictive analytics or automated data classifications, can influence outcomes in court by adding probative value to certain claims. Yet, AI outputs' inherently complex and potentially opaque nature raises concerns over reliability and interpretability.[33] Courts must critically and carefully assess whether AI-derived

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[33]   The interpretability problem is discussed by Judge Grimm (Ret.) as follows:

> The technical challenge of explaining AI decisions is known as the "interpretability problem," and an entire domain of research exclusively devoted to this problem has emerged, known as "Explainable AI" ("XAI"). Those who advocate for XAI believe that AI can only be trustworthy if it can be explained to humans, although they acknowledge that the level or type of explanation may vary for different applications or users. NIST has outlined four principles of XAI which include (i) explanation—that AI systems deliver accompanying evidence or the reason(s) for all outputs; (ii) meaningful—that AI systems provide explanations that are understandable to

insights meaningfully advance relevant factual determinations and ensure they are not simply

novel but substantively helpful to the case.[34]

In addition, transparency regarding the algorithms, data inputs, and training

methodologies behind AI-generated evidence is critical to supporting its probative value.

Where appropriate, courts may require detailed disclosures from parties to clarify how an AI

system generated particular results.[35] Such transparency protects against admitting evidence

that could inadvertently introduce bias or distort outcomes due to factors embedded within the

AI's design or data inputs, as discussed previously.[36]

2. Reliability under HRE 702 and the *Daubert* Standard

Rule 702 Testimony by experts.

If scientific, technical, or other specialized knowledge will assist the trier of fact to
understand the evidence or to determine a fact in issue, a witness qualified as an expert by
knowledge, skill, experience, training, or education may testify thereto in the form of an
opinion or otherwise. In determining the issue of assistance to the trier of fact, the court may
consider the trustworthiness and validity of the scientific technique or mode of analysis
employed by the proffered expert.

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individual users; (iii) explanation accuracy—that the explanations correctly reflect the AI
system's process for generating the outputs; and (iv) knowledge limits—that the AI system only
operates under the conditions for which it was designed or when the system reaches sufficient
confidence in its output.

See Paul W. Grimm, Maura R. Grossman & Gordon V. Cormack, *Artificial Intelligence as Evidence*, 19
NW. J. TECH. & INTELL. PROP. 9, 61 (2021).

[34] *See id.* at 41 (internal citations omitted).

[35] *See id.* at 48-51.

[36] *See id.* at 46-47.

The admissibility of AI evidence may also hinge on HRE 702, which governs expert testimony. Consistent with the *Daubert* standard, widely applied to assess scientific validity, HRE 702 mandates that expert testimony be reliable and relevant.[37] Courts typically evaluate expert evidence for reliability using factors such as testability, peer review, error rates, and general acceptance in the scientific community. Given that AI models and their outputs may have limited transparency and varied error rates, courts will need to scrutinize these systems to ensure they meet reliability standards.[38]

Tailoring the *Daubert* analysis to account for AI's specific characteristics may be necessary. For instance, courts should assess the quality of training data, known biases within the algorithm, and the system's consistency in producing accurate results.[39] Without such scrutiny, courts risk admitting AI-generated evidence that may inadvertently perpetuate systemic biases or inaccuracies.[40]

3. Authentication under HRE 901

> **Rule 901** Requirement of authentication or identification.
>
> (a) General provision. The requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims.

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[37]   Hawaiʻi courts have not adopted the *Daubert* test; however, because the HRE is patterned on the FRE, the federal courts' construction of the federal counterparts of the HRE is instructive. *State v. Vliet*, 95 Hawaiʻi 94, 105, 19 P.3d 42, 53 (2001).

[38]   *See, e.g.,* Grimm, *supra* n. 35 at 79–85 (discussing the reliability with which a transcription tool meets the threshold of sufficient accuracy).

[39]   *See* Cynthia Cwik, Paul W. Grimm, Maura Grossman & Toby Walsh, *Artificial Intelligence, Trustworthiness, and Litigation*, Am. Ass'n for the Advancement of Sci. (2022), *available at* https://doi.org/10.1126/aaas.adf0786.

[40]   *See id. at* 7.

(b) Illustrations. By way of illustration only, and not by way of limitation, the following are examples of authentication or identification conforming with the requirements of this rule:

(1) Testimony of witness with knowledge. Testimony that a matter is what it is claimed to be.

(2) Nonexpert opinion on handwriting. Nonexpert opinion as to the genuineness of handwriting, based upon familiarity not acquired for purposes of the litigation.

(3) Comparison by trier or expert witness. Comparison by the trier of fact or by expert witnesses with specimens which have been authenticated.

(4) Distinctive characteristics and the like. Appearance, contents, substance, internal patterns, or other distinctive characteristics, taken in conjunction with circumstances.

(5) Voice identification. Identification of a voice, whether heard firsthand or through mechanical or electronic transmission or recording, by opinion based upon hearing the voice at any time under circumstances connecting it with the alleged speaker.

(6) Telephone conversations. Telephone conversations, by evidence that a call was made to the number assigned at the time by the telephone company to a particular person or business, if (A) in the case of a person, circumstances, including self-identification, show the person answering to be the one called, or (B) in the case of a business, the call was made to a place of business and the conversation related to business reasonably transacted over the telephone.

(7) Public records or reports. Evidence that a writing authorized by law to be recorded or filed and in fact recorded or filed in a public office, or a purported public record, report, statement, or data compilation, in any form, is from the public office where items of this nature are kept.

(8) Ancient documents or data compilation. Evidence that a document or data compilation, in any form, (A) is in such condition as to create no suspicion concerning its authenticity, (B) was in a place where it, if authentic, would likely be, and (C) has been in existence twenty years or more at the time it is offered.

(9) Process or system. Evidence describing a process or system used to produce a result and showing that the process or system produces an accurate result.

(10) Methods provided by statute or rule. Any method of authentication or identification provided by statute or by other rules prescribed by the supreme court.

HRE 901 requires that evidence be authenticated through a showing that it is what the

proponent claims it to be. For AI evidence, this can pose significant challenges due to the

"black box" nature of many machine learning models, which operate through complex

algorithms that are not easily explained, observed or understood.[41] This characteristic can make

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41   *Id*.

it difficult for attorneys, judges, and jurors to verify the origins or inner workings of AI-generated data. The process of authenticating AI-generated evidence may, therefore, need to incorporate specialized expert testimony or corroborative documentation, paralleling approaches used for other complex forms of evidence.[42]

There is a growing scholarly consensus that existing authentication standards may be insufficient for certain types of digital or AI-generated evidence, particularly with respect to "deepfakes"[43] and other types of synthetic media.[44] Proposals to amend HRE 901 could include additional criteria, such as requiring external corroboration or expert assessment, to bolster confidence in the authenticity of such evidence.[45]

Deepfake technology, which can produce realistic but fabricated audiovisual media, exemplifies the potential dangers of AI in evidentiary contexts. The high level of sophistication in deepfake technology necessitates enhanced verification measures, as such media can mislead fact-finders and undermine confidence in judicial outcomes. Although HRE 901 provides a

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[42]   *See* Rebecca A. Delfino, *Deepfakes on Trial: A Call to Expand the Trial Judge's Gatekeeping Role to Protect Legal Proceedings from Technological Fakery*, 74 HASTINGS L.J. 293, 296–97 (2023); *see also* Daniel J. Capra, *Deepfakes Reach the Advisory Committee on Evidence Rules*, 92 FORDHAM L. REV. 2491, 2495 (2024).

[43]   Black's Law Dictionary 983 (12th ed. 2009) (defining "Deepfake" as "A false video, audio recording or other medium that is generated or manipulated by computer, often using artificial intelligence, with the intent to deceive viewers or listeners").

[44]   *See generally, e.g.,* Delfino, *supra* n. 44; Capra, *supra* n. 41.

[45]   *See, e.g.,* Delfino, *supra* n. 44 at 340–48 ("[T]he challenges of deepfake . . . can be best addressed by amending the Rules for authenticating digital audiovisual evidence, instructing the jury on its use of that evidence, and limiting counsel's efforts to exploit the existence of deepfakes"); and Capra, *supra* n. 44 at 2505–06 ("[P]roductive solutions include heightening the standard of proof or requiring an additional showing of reliability," "only after some showing by the opponent has been made," and suggestions that "it might be a deepfake" or "deepfakes are easy to do" should be a nonevent).

framework for authenticating digital media, it lacks specific provisions to address the unique

challenges presented by deepfakes, including the risk of juror confusion or undue influence.[46]

In light of these risks, scholars suggest reallocating some level of fact-finding

responsibility from juries to judges in the authentication process. This shift would align with

broader proposals to amend the FRE to include heightened standards for the admissibility of

digital and synthetic evidence. Amending HRE 901 to reflect similar standards could help

courts address the unique evidentiary challenges that deepfake technology poses.

4. Practice Considerations for Legal Practitioners and Judges

Legal practitioners and judges must remain attentive and informed about AI's rapidly

evolving capabilities, limitations, and implications for evidentiary standards. Educational

resources from organizations such as the National Institute of Standards and Technology and

the American Association for the Advancement of Science offer valuable insights for assessing

AI's reliability, validity, and potential biases.[47]

Attorneys presenting AI evidence should be prepared to provide comprehensive

documentation regarding the AI tools' training data, validation protocols, and known

limitations. Likewise, judges may benefit from regular training on AI and its evidentiary

applications and shortcomings to ensure balanced and informed rulings.

The use of AI presents the Judiciary with many challenges that have prompted a re-

examination of the sufficiency of existing court rules. That said, in this report the Ethics

Subcommittee preliminarily concludes that existing rules embody foundational principles that

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[46]   *See id.*

[47]   *See* Cwik, *supra* n. 41 at 3.

are sufficiently robust to allow the Judiciary and the legal profession to address the issues created by GAI as they arise. That is, the current rules are drafted to accommodate advances in technology and: (1) encompass and promote ethical requirements for attorneys and judges; and (2) promote the protection of both clients and the integrity of the legal system in the face of increasing use of AI-generated content. The Ethics Subcommittee does acknowledge that advances in AI are qualitatively different than other technologies, and that continuing study and consideration of steps and rules to address these dynamic developing tools will be required in the future.

For this report, the Ethics Subcommittee has no proposed rule changes at this time given the sufficiency and adequacy of the current rules in effect. The Ethics Subcommittee believes that the rules as they are written are broad enough to encompass the use of GAI across the spectrum of rules. In considering what still may need to be done, similar to other jurisdictions and the recommendation of a leading legal expert in this area, we recommend a *"wait and see"* approach, as it is clear GAI technology continues to evolve at a rapid pace.

Recommendations by the Ethics Subcommittee pertain to developing avenues to effectively disseminate information and educate the legal community with respect to the use and ethics related to AI, to prevent and avoid missteps that have been written about, including hallucinations, which will hopefully obviate or temper the immediate need for any future rule changes:

- Mandatory CLE regarding AI: Further discussion should be had as to not making AI CLE mandatory because new and novel issues frequently confront the profession. If we were to make each new challenge or issue mandatory, CLE hours would accumulate quickly;
- Law school ethics course specifically concerning the use of AI;
- Yearly AI-related topics presented at judicial education conferences;

- CLE regarding accessing AI content;
- Webinars made available to the bar relating to AI; and
- Providing supportive resources for practitioners regarding the ethical use of A.I. *See, e.g.,* Artificial Intelligence: Ethics, Louis L. Biro Law Library, *available at* https://libraryguides.law.uic.edu/c.php?g=1431863 (last visited, July 1, 2025); Artificial Intelligence, Gallagher Law Library, *available at* https://lib.law.uw.edu/AI (last visited, July 1, 2025); AI and Legal Ethics, UChicago Library, *available at* https://guides.lib.uchicago.edu/AI (last visited, July 1, 2025).

III. <u>Recommendations to the Hawaiʻi Supreme Court</u>

At this time, and in addition to the efforts launched since this Committee was convened in 2024, the Committee recommends the following:

a. In considering the implementation of approved AI tools and any new AI technology at the Judiciary, the formation of a committee to oversee the management of AI technology ensuring consistency with the court's mission and values is recommended. The committee should include judges, administrative personnel, and Judiciary Information Technology and Systems Departments to vet AI systems and technology proposals;

b. To effectively disseminate information and educate the legal community with respect to the use and ethics related to AI, it is recommended that the Judiciary continue to work with the HSBA, the law school, and national organizations to offer resources to attorneys, including but not limited to, CLEs, law school ethics courses, yearly AI-related topics presented at judicial education conferences, and webinars; and

c. It is recommended that the Committee continue as a standing or ad-hoc committee to keep abreast of, and further explore AI assisted tools and continue

its work in the respective areas of AI. Co-Chairs Justice Devens and Judge

Tonaki are willing to continue co-chairing the Committee.

APPENDICES

APPENDIX 1:   Members of The Committee on Artificial Intelligence and the Courts

APPENDIX 2:   Summary of provisions of the Hawaiʻi Revised Code of Judicial Conduct applicable to judges who use AI technology.

APPENDIX 3:   Hawaiʻi State Judiciary Guardrails for the Acceptable Use of Artificial Intelligence (AI) Tools and Platforms

APPENDIX 4:   Chief Justice Recktenwald's letter was transmitted to HSBA president Mark M. Murakami on January 21, 2025

APPENDIX 1

MEMBERS OF

THE COMMITTEE ON ARTIFICIAL INTELLIGENCE AND THE COURTS

1. From the Hawaiʻi State Judiciary Hawaiʻi Supreme Court:
   a. The Honorable Vladimir P. Devens (Co-Chair).
2. From the Hawaiʻi State Judiciary Intermediate Court of Appeals:
   a. The Honorable Keith K. Hiraoka.
3. From the Hawaiʻi State Judiciary First Judicial Circuit:
   a. The Honorable John M. Tonaki (Co-Chair);
   b. The Honorable Clarissa Y. Malinao.
4. From the Hawaiʻi State Judiciary Second Judicial Circuit:
   a. The Honorable Annalisa M. Bernard Lee.
5. From the Hawaiʻi State Judiciary Third Judicial Circuit:
   a. The Honorable M. Kanani Laubach;
   b. The Honorable Jeffrey W. Ng.
6. From the Hawaiʻi State Judiciary Fifth Judicial Circuit:
   a. The Honorable Kathleen N. Watanabe (Ret.);
   b. The Honorable Stephanie R. Char.
7. From the Hawaiʻi State Judiciary Office of the Administrative Director of the Courts:
   a. Daylin-Rose H. Heather;
   b. Angela K. Min;
   c. Jenny R. Silbiger.
8. From the Hawaiʻi State Judiciary Information Technology and Systems Department:
   a. Mai T. NguyenVan;
   b. Sajed Nassem.
9. From the Hawaiʻi State Judiciary Human Resources Department:
   a. Jennifer K. Ueki
10. From the Hawaiʻi Access to Justice Commission:
    a. The Honorable Joseph E. Cardoza (Ret.)
11. From the Hawaiʻi State Bar Association:
    a. Mark M. Murakami (2025 HSBA President);
    b. Jesse K. Souki (2024 HSBA President);
    c. Kenneth K. Fukunaga;
    d. Glenn T. Melchinger;
    e. Terence J. O'Toole.
12. From the Criminal Justice Research Institute:
    a. Dr. Erin E. Harbinson;
    b. Aerielle I. Reynolds.
13. From the University of Hawaiʻi William S. Richardson School of Law:
    a. Professor Emile Loza de Siles;
    b. Benjamin Leider;
    c. Matthew Stubenberg;
14. From the United States District Court, District of Hawaiʻi:
    a. Lucy Carrillo.

Hawai'i Revised Code of Judicial Conduct
Principles of Professionalism for Hawai'i Judges
Provisions Implicated by Artificial Intelligence

A judge must maintain competence with advancing technology, including artificial intelligence **(AI).**[1]

Rule 1.1 of the Hawai'i Rules of Professional Conduct (**HRPC**) states: "A lawyer shall provide competent representation to a client." Comment [6] to HRPC Rule 1.1 counsels the need to keep abreast of "the benefits and risks associated with relevant technology." The need for technological competence applies to judges as well.

The preamble to the Hawai'i Revised Code of Judicial Conduct directs judges to "aspire, at all times, to conduct that ensures the greatest possible public confidence in their . . . competence." AI is not a piece of hardware or software, but a technology that gives a computer the ability to perform tasks, solve problems, or draft documents that would otherwise require human intelligence. *Extractive* AI pulls information from a data set. *Generative* AI maps relationships between words and phrases in massive data sets — called large language models (**LLMs**) in the case of text data — to generate new content in response to a request or prompt.[2] As AI use increases, so does the requirement to maintain competence about what is available, how it works, how it is used, and how its use could impact judicial decision-making.

HAWAI'I REVISED CODE OF JUDICIAL CONDUCT

CANON 1
A JUDGE SHALL UPHOLD AND PROMOTE THE INDEPENDENCE, INTEGRITY, AND IMPARTIALITY OF THE JUDICIARY AND SHALL AVOID IMPROPRIETY AND THE APPEARANCE OF IMPROPRIETY.

Rule 1.1. COMPLIANCE WITH THE LAW

A judge shall comply with the law, including the Hawai'i Revised Code of Judicial Conduct.

Rule 1.2. PROMOTING CONFIDENCE IN THE JUDICIARY

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[1] *See SBM — State Bar of Michigan Ethics Opinion JI-155,* https://www.michbar.org/opinions/ethics/numbered_opinions/JI-155 (last visited Aug. 23, 2024) .

[2] *See* Gary E. Marchant, National Civil Justice Institute, Artificial Intelligence, Judges, and Legal Ethics 3 (Jul. 20, 2024), *available at* https://ncji.org/wp-content/uploads/2024/06/2024-NCJI-Judges-Forum-AI-Judges-and-Legal-Ethics-Marchant.pdf.

A judge shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary and shall avoid impropriety and the appearance of impropriety.

CANON 2
A JUDGE SHALL PERFORM THE DUTIES OF JUDICIAL OFFICE IMPARTIALLY, COMPETENTLY, AND DILIGENTLY.

Rule 2.3. BIAS, PREJUDICE, AND HARASSMENT

(a)　　A judge shall perform the duties of judicial office without bias or prejudice.

Rule 2.5. COMPETENCE, DILIGENCE, AND COOPERATION

(a)　　A judge shall perform the duties of judicial office competently and diligently.

COMMENT:

[1]　　Competence in the performance of the duties of judicial office requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary to perform a judge's responsibilities of judicial office.

Rule 2.9. EX PARTE COMMUNICATIONS

(a)　　A judge shall not initiate, permit, or consider ex parte communications, or consider other communications made to the judge outside the presence of the parties or their lawyers, concerning a pending or impending matter, except as follows:

. . . .

(3)　　A judge may consult with court staff and court officials whose functions are to aid the judge in carrying out the judge's adjudicative responsibilities, provided that any factual information received by the judge that is not part of the record is timely disclosed to the parties. A judge may also consult with other judges, except that the judge shall not have an ex parte discussion of a case with a judge who has either previously been disqualified from or has appellate jurisdiction over the matter. A consultation under this Rule does not abrogate the judge's responsibility personally to decide the matter.

. . . .

(6)　　A judge may initiate, permit, or consider an ex parte communication when serving on a therapeutic or specialty court, such as a mental health court or drug court, provided that the judge reasonably believes that no party will gain a procedural, substantive, or tactical advantage as a result of the ex parte communication and any factual information received that is not part of the record is timely disclosed to the parties.

. . . .

(c)　　Subject to Rule 2.9(a)(3) and Rule 2.9(a)(6), a judge shall not investigate facts in a matter independently, but shall consider only the evidence presented and any facts that may properly be judicially noticed.

(d)　　A judge shall make reasonable efforts, including providing appropriate supervision, to ensure that this Rule is not violated by court staff, court officials, and others subject to the judge's direction and control.

COMMENT:

. . . .

> [6] *The prohibition against a judge investigating the facts in a matter extends to information available in all media, including electronic.*

Rule 2.12. SUPERVISORY DUTIES

(a) A judge shall require court staff, court officials, and others subject to the judge's direction and control to act in a manner consistent with the judge's obligations under this Code.

(b) A judge with supervisory authority for the performance of other judges shall take reasonable measures to ensure that those judges properly discharge their judicial responsibilities, including the prompt disposition of matters before them.

Rule 2.15. RESPONDING TO JUDICIAL AND LAWYER MISCONDUCT

. . . .

(b) A judge having knowledge that a lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question regarding the lawyer's honesty, trustworthiness, or fitness as a lawyer shall inform the appropriate authority.

PRINCIPLES OF PROFESSIONALISM FOR HAWAIʻI JUDGES

7. To the extent possible, a judge should give all issues in controversy deliberate, informed, impartial and studied analysis and consideration; a judge should explain, when necessary, the reasons for the decisions of the court.

8. A judge should make all reasonable efforts to decide promptly all matters presented for decision.

The exponential increase in the use of AI requires judges to understand how AI tools can potentially affect their conduct and docket. For example, judges should know the risks involved with using information from a confidential case or litigants' personal information to formulate prompts for a generative AI platform that "feeds" its LLM with user queries.

As another example, Rule 2.3(a) could be triggered if a judge uses an AI solution that is, or may be considered, biased, partial, or unfair. Because AI learning algorithms are trained on content created by humans, they may produce outputs that inadvertently promote stereotypes, reinforce prejudices, or exhibit unfair biases.[3] An algorithm may weigh factors that the law or society consider inappropriate, or may do so with a weight that is inappropriate for the context. This is why knowledge of and familiarity with AI technology is essential. AI does not understand

the world as humans do, and unless instructed otherwise, its results may reflect an ignorance of norms or legal precedent. And most AI programs continue to learn, which requires adjustments to algorithms and formulas as they receive new data. Because of this learning capacity, AI applications may need to be reevaluated on an ongoing basis, even when precedent addresses the same AI tool.

Rule 2.9(c) and (d) cautions that a judge's use of AI could be considered independent investigation, and prompts judges to remember that *generative* AI is designed to invent, and to consider using *extractive* AI with retrieval-augmented generation (**RAG**)[4] instead. RAG is an AI framework for retrieving facts from an accurate, reliable, external knowledge base to supplement the LLM's internal representation of information, and to allow users access to the LLM's sources to check its results for accuracy.

Rule 2.15(b) is implicated when AI is used improperly — such as when a lawyer files a brief citing a non-existent case, commonly referred to as a "hallucination."

Principles 7 and 8 are implicated because AI can generate graphics (photographs), video, and audio "deep fakes" that could be offered into evidence at trial or in evidentiary hearings. Judges should be familiar with the capabilities and limitations of generative AI to make appropriate evidentiary rulings when, for example, a photograph, video, or audio recording that may have been enhanced or even created by an AI platform is offered into evidence.

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[3] Utah Judicial Council, Interim Rules on the Use of Generative AI (Oct. 25, 2023), https://nationalcenterforstatecourts.app.box.com/.

[4] *See What is retrieval-augmented generation?,* IBM.COM, https://research.ibm.com/blog/retrieval-augmented-generation-RAG (last visited June 13, 2025)*.*

Hawaiʻi State Judiciary Guardrails for the Acceptable Use of Artificial Intelligence (AI) Tools and Platforms v.1.0

Last updated: September 16, 2025

According to the federal National Institute of Standards and Technology, an *AI system* is "an engineered or machine-based system that can, for a given set of objectives, generate outputs such as predictions, recommendations, or decisions influencing real or virtual environments." AI systems can respond to a *query* — a question or request — by creating text, images, audio, video, and other digital content.

The rapid development of AI systems has prompted the Hawaiʻi State Judiciary to develop these guardrails for Judiciary personnel who use them. All Judiciary employees, temporary employees, emergency hires, contractors (including independent contractors), and vendors must follow these guardrails when using AI systems for Judiciary business. Please refer to this document often, as guidance on this subject may change based on advances in AI and the enactment of new regulations and legislation. Please check the Judiciary intranet regularly for updates if you use AI systems for your work.

You must make a conscious effort to protect the confidentiality, integrity and availability of Judiciary assets and data. These guardrails cover predictive and generative AI except where otherwise stated. If the guardrails are silent about application to a specific use, they should be interpreted broadly to minimize risk to the Judiciary from the particular use.

Guardrails:

E Mālama I Kou Kuleana: Be Responsible

- Employees should obtain supervisor approval before using an AI system. Supervisors should be aware whether those they supervise write reports or conduct research using AI.

- Only use AI systems that are approved by the Judiciary. You may contact the Office of the Administrative Director of the Courts to find out if an AI system is Judiciary-approved. Judiciary approval means the Judiciary has determined an AI system is acceptable to use from a technological perspective, and not that it is free from risk. This includes risk relating to confidentiality and privacy, and risk that content generated may be inaccurate, copyrighted, or the product of bias. You must be aware of potential risks and take steps to avoid or mitigate them even though you use a Judiciary-approved AI system.

- Do not enter passwords or other confidential, sensitive, personally identifiable, or non-public information in the AI chat prompt. Once information is entered in an AI system, it is no longer under Judiciary control and could become publicly available.

- Create AI-specific accounts by using your Judiciary email address, and never re-use passwords from other accounts when you use a Judiciary AI system.

- Judiciary AI accounts may not be used for personal matters.

E Hō'oia I Ka Huapuka: Be Accountable

- AI systems have been reported to hallucinate, or make up, information. You must fact check and review all AI-generated content before routing it to anyone, or using it in a document you create or edit.

- Perform reasonable due diligence to ensure no copyrighted material is used without proper attribution or permissions.

- Use discretion and good judgment when submitting queries or uploading information to the AI prompt, and when sharing AI-generated information with the public.

E Hana Me Ka Akahai: Be Mindful

- There are no guarantees that information entered in an AI system will not be used to train it to improve searches, content generation, or other activities. Assume that all information you enter in an AI system will become public and/or accessible to the AI system vendor or contractor hired by the Judiciary, and their subcontractors or vendors.

- Copyrighted material could be contained in AI-generated responses without attribution or permission from the copyright owner.

- AI systems may be trained on material that reflects bias. Generated content may evidence bias or contain potentially offensive or harmful material. You must ensure that biased or otherwise inappropriate material is not reflected in any Judiciary work product. You may refer to Judiciary Statewide Policy Advisory Committee (SPAC) Policy 23 (Discrimination/Harassment-Free Workplace) for guidance. SPAC policies are available on the Judiciary Intranet, under the "Resources" menu.

- Members of the public may request production of Judiciary records under the Hawai'i Uniform Information Practices Act, Hawaii Revised Statutes Chapter 92F and its implementing regulations and, therefore, your use of AI and its output may become matters of public record.

- Your use of AI systems may implicate SPAC Policies 11 (General Guidelines Governing Conduct of Judiciary Employees) and 29 (Use of Technology Resources). Please read these policies before using any AI system for your work.

MAKA'ALA — CAUTION:

You must take great care when you enter content into an AI system because the information you upload and the results you get are available to AI employees, developers, learners, and the public. When using a Judiciary-approved AI system, you are still obligated to ensure the information contained in your work product is accurate, complies with all applicable laws and regulations (including copyright laws), contains proper attribution, and does not contain material that reflects unintended and/or undesirable bias, or is otherwise inappropriate. Use of AI systems could expose you to potential loss and/or abuse of sensitive, confidential, or personally identifiable information, even if these guardrails are followed. If you have any questions or concerns, ask your supervisor before using any AI system.

END

January 21, 2025

Via email: president@hsba.org

Mark M. Murakami, President
Hawaii State Bar Association
1100 Alakea Street, Suite 1000
Honolulu, HI   96813

> Re: Artificial Intelligence (AI) in the
>   Practice of Law in Hawai'i

Dear President Murakami,

On April 16, 2024, an order was entered establishing the Committee on Artificial Intelligence and the Courts, co-chaired by Justice Vlad Devens, and Judge John Tonaki. The Committee's role was to examine issues and make recommendations related to the use of AI in the practice of law. Based on the Committee's work and recommendations, this letter provides initial guidance to Hawai'i State Bar Association members.

As with any developing and evolving technology, AI will have an effect on the courts and the practice of law. On the one hand, AI can provide opportunities to enhance access to justice by allowing attorneys to leverage AI to serve more clients. AI also has the potential to make the judiciary's administration of justice more efficient. On the other hand, as with any technology used in the legal profession, its use is subject to the rules adopted by the Hawai'i Supreme Court. In particular, the Hawai'i Rules of Professional Conduct and Hawai'i Rules of Civil Procedure should guide an attorney's use of AI in their practice and before the courts.

Attorneys are responsible for their advice to clients, work product, pleadings they file in court, maintaining competence in technology, and protecting confidential client information. Attorneys have a duty to avoid making misrepresentations of fact or law to their clients and the courts. The following is not meant to be an exhaustive list, but these are some of the rules that the Committee identified that all attorneys using AI should be familiar with:

- Hawai'i Rules of Professional Conduct Rules 1.1 [Competence], 1.3 [Diligence], 1.4 [Communication], 1.6 [Confidentiality of Information], 1.15 [Preserving Identity of Funds and Property of a Client or Third Person], 3.1 [Meritorious Claims and Contentions], 3.3 [Candor Toward the Tribunal], 3.4 [Fairness to Opposing Party and Counsel] and 5.3 [Responsibilities Regarding Nonlawyer Assistants]; and

- Hawai'i Rules of Civil Procedure Rule 11 [Signing of Pleadings, Motions, and Other Papers; Representations to the Court; Sanctions] and Rule 37 [Failure to Make or Cooperate in Discovery; Sanctions].

These obligations remain unchanged or unaffected by AI's availability and are currently broad enough to govern its use in the practice of law.

The American Bar Association also recently published Formal Opinion 512, regarding Generative Artificial Intelligence Tools, released by its Standing Committee on Ethics and Professional Responsibility, on July 29, 2024. The ABA recommends that attorneys using AI should:

[E]ensure clients are protected, lawyers using generative artificial intelligence tools must fully consider their applicable ethical obligations, including their duties to provide competent legal representation, to protect client information, to communicate with clients, to supervise their employees and agents, to advance only meritorious claims and contentions, to ensure candor toward the tribunal, and to charge reasonable fees.

The Formal Opinion also notes that with "the ever-evolving use of technology by lawyers and courts, lawyers must be vigilant in complying with the Rules of Professional Conduct to ensure that lawyers are adhering to their ethical responsibilities and that clients are protected."

We will continue to monitor the development of AI and its use in practice to ensure clients are protected and the efficient administration of justice is maintained by the courts.

The Justices sincerely appreciate the leadership of Justice Devens and Judge Tonaki, the outstanding work of the Committee and the HSBA's participation in that effort. Please share this communication with your members and encourage HSBA leadership to stay attuned to any developing issues associated with the emergence of AI technology in the legal profession. We look forward to continuing to work with HSBA on this and other issues important to the profession

Sincerely,

MARK E. RECKTENWALD
Chief Justice

MER/jma
Cc: Cathy Betts, HSBA Executive Director
     All Justices and Judges Statewide