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## ETHICAL IMPLICATIONS OF UTILIZING GENERATIVE ARTIFICIAL INTELLIGENCE IN THE LEGAL PROFESSION: A CAUTIONARY NOTE ON POTENTIAL MODEL RULES OF PROFESSIONAL CONDUCT VIOLATIONS

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### I. INTRODUCTION

In recent years, the legal profession has witnessed a transformative shift in the way lawyers approach their work, thanks to the growing utilization of generative artificial intelligence (“GAI”), such as Chat Generative Pre-Trained Transformer (“ChatGPT”) and similar language models. These cutting-edge technologies have found their way into legal practices, offering attorneys unprecedented access to vast repositories of legal knowledge and the ability to draft documents, perform legal research, and communicate with clients more efficiently. However, this technological

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advancement is not without its ethical and professional challenges. As lawyers increasingly turn to GAI tools in their daily tasks, they must navigate a delicate balance between competence and candor in their legal practice. Failure to employ these GAI tools effectively may lead to violations of the Model Rules of Professional Conduct (“Model Rules”), particularly in terms of competence, and could even inadvertently result in breaches of candor to the tribunal, especially when GAI-generated content is cited in court proceedings. This raises critical questions about the proper and responsible integration of GAI in the legal profession and underscores the need for ethical considerations and guidelines to ensure that technology augments, rather than undermines, the core principles of legal ethics.

Aside from the abbreviations, ChatGPT wrote the paragraph above in less than one second after I prompted it to write an introductory paragraph for a paper on the intersection of specific Model Rules and the rise of GAI in the legal profession. ChatGPT is a popular large language model (“LLM”). LLMs are trained on a wide range of data, such as articles, books, and internet sources, to understand and generate human-like responses.<sup>2</sup> ChatGPT now has access to the internet itself.<sup>3</sup> Based on the information available, LLMs process human prompts and generate responses by predicting the next words based on words it has already seen through its training.<sup>4</sup> LLMs are a subset of a broader artificial intelligence

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<sup>2</sup> Lucas Mearian, *What are LLMs, and How are They Used in Generative AI*, COMPUTERWORLD (May 30, 2023, 3:00 AM), <https://www.computerworld.com/article/3697649/what-are-large-language-models-and-how-are-they-used-in-generative-ai.html>; *LLM vs Generative AI: A Comprehensive Comparison*, MLK (Oct. 22, 2023), <https://machinelearningknowledge.ai/llm-vs-generative-ai-a-comprehensive-comparison/>.

<sup>3</sup> Antoinette Radford & Zoe Kleinman, *ChatGPT Can Now Access up to Date Information*, BBC NEWS (Sept. 27, 2023), <https://www.bbc.com/news/technology-66940771>. Previously, ChatGPT’s knowledge base was limited to data up to September 2021. *Id.*

<sup>4</sup> Mearian, *supra* note 2.

“AI”) category, generative artificial intelligence (“GAI”), and are referred to as such in this note.<sup>5</sup> GAI includes AI models that generate new content, including text, music, and videos.<sup>6</sup> ChatGPT is an AI model that generates new text by answering questions and follow-up questions prompted by users in a conversational, human-like manner.<sup>7</sup>

ChatGPT remains one of the most popular LLMs since OpenAI released the model in November 2022.<sup>8</sup> While its capabilities are promising, OpenAI is transparent about ChatGPT’s limitations, stating, “ChatGPT sometimes writes plausible-sounding but incorrect or nonsensical answers.”<sup>9</sup> These nonsensical answers are known as “hallucinations.”<sup>10</sup> ChatGPT hallucinates approximately fifteen to twenty percent of its outputs.<sup>11</sup> The prevalence of hallucinations and other risks of GAI<sup>12</sup> pose ethical concerns when lawyers undoubtedly rely on the information ChatGPT provides.

On June 26, 2023, a judge sanctioned two New York lawyers for citing six fictitious cases produced by ChatGPT in a

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<sup>5</sup> *LLM vs Generative AI: A Comprehensive Comparison*, *supra* note 2.

<sup>6</sup> *LLM vs Generative AI: A Comprehensive Comparison*, *supra* note 2.

<sup>7</sup> OpenAI, *Introducing ChatGPT* (Nov. 30, 2022),

<https://openai.com/blog/chatgpt>.

<sup>8</sup> *LLM vs Generative AI: A Comprehensive Comparison*, *supra* note 2; OpenAI, *supra* note 7.

<sup>9</sup> OpenAI, *supra* note 7.

<sup>10</sup> Mearian, *supra* note 2.

<sup>11</sup> Alex Woodie, *Hallucinations, Plagiarism, and ChatGPT*, DATANAMI (Jan. 17, 2023),

<https://www.datanami.com/2023/01/17/hallucinations-plagiarism-and-chatgpt/>. However, after the incident involving ChatGPT and Mr. Schwartz, OpenAI announced a new approach to help reduce hallucinations. Marvie Basilan, *OpenAI Announces New Approach to Fight AI ‘Hallucinations’ After Legal Fabrications*, INT’L BUS. TIMES (June 1, 2023, 12:01 AM), <https://www.ibtimes.com/openai-announces-new-approach-fight-ai-hallucinations-after-legal-fabrications-3696947>. There is skepticism about the success of this new approach. *Id.*

<sup>12</sup> See *infra* Section III.A.ii for a discussion of other risks of GAI.

legal brief.<sup>13</sup> The presiding judge ordered the lawyers and their law firm to pay 5,000 dollars in fines for acting in bad faith and making “acts of conscious avoidance and false and misleading statements to the court.”<sup>14</sup> In the sanctioning order, the judge stated it is not “inherently improper” for lawyers to utilize AI “for assistance.”<sup>15</sup> Still, ethical rules impose a “gatekeeping role on attorneys to ensure the accuracy of their filings.”<sup>16</sup> Steven Schwartz, the lawyer who wrote the brief, admitted that he used ChatGPT to research the client’s case against Avianca Airlines.<sup>17</sup> Another lawyer, Peter LoDuca, submitted the brief.<sup>18</sup> Avianca lawyers notified the judge when they could not find several of the cases cited in the brief.<sup>19</sup> Mr. Schwartz, a lawyer for over 30 years, stated he was “unaware that its content could be false” despite ChatGPT warning it can “produce inaccurate information.”<sup>20</sup> Mr. Schwartz explained that he asked ChatGPT if the cases it produced were real, and ChatGPT responded in the affirmative and stated that the cases were available on legal databases such as LexisNexis and Westlaw.<sup>21</sup> However, Mr. Schwartz later contradicted these statements in a declaration when he admitted his suspicion of ChatGPT generating inaccurate information.<sup>22</sup> This contradiction supported the judge’s finding of bad faith.<sup>23</sup>

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<sup>13</sup> Sara Merken, *New York Lawyers Sanctioned for Using Fake ChatGPT Cases in Legal Brief*, REUTERS (June 26, 2023, 4:28 PM), <https://www.reuters.com/legal/new-york-lawyers-sanctioned-using-fake-chatgpt-cases-legal-brief-2023-06-22/>.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> Kathryn Amrstrong, *ChatGPT: US Lawyer Admits Using AI for Case Research*, BBC NEWS (May 27, 2023), <https://www.bbc.com/news/world-us-canada-65735769>.

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> *Mata v. Avianca, Inc.*, No. 22-cv-1461 PKC, 2023 U.S. Dist. LEXIS 108263, at \*27 (S.D.N.Y. June 22, 2023).

<sup>23</sup> *Id.*

While this is the most publicized incident of ChatGPT producing fake cases, it is not the only one. In the same month, a Colorado lawyer, Zachariah Crabill, used ChatGPT to draft a motion to dismiss.<sup>24</sup> Once again, ChatGPT cited multiple fictitious cases.<sup>25</sup> Like Mr. Schwartz first claimed, Mr. Crabill stated, “it never dawned on me that this technology could be deceptive.”<sup>26</sup>

The prevalence of GAI in the legal profession is growing, and its future looks bright. According to an April 2023 study published by the Thomson Reuters Institute, eighty-two percent of law firm lawyers said GAI is applicable to legal work, and fifty-one percent stated GAI should be applied to legal work.<sup>27</sup> While the study found only three percent of respondents were using GAI, thirty-four percent of firms were contemplating the decision to utilize GAI.<sup>28</sup> ChatGPT is not the only GAI model available to practitioners. LexisNexis and Westlaw are two primary resources legal practitioners use to access legal information.<sup>29</sup> Both of these databases have created their own version of GAI. As of summer 2023, Lexis+ AI is available.<sup>30</sup> The system was created and trained on the most

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<sup>24</sup> Quinn Ritzdorf, *Colorado Springs Attorney Says ChatGPT Created Fake Cases He Cited in Court Documents*, KRDO (June 13, 2023, 3:56 PM), <https://krdo.com/news/2023/06/13/colorado-springs-attorney-says-chatgpt-created-fake-cases-he-cited-in-court-documents/>.

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> Thomson Reuters Inst., *New Report on ChatGpt & Generative AI in Law Firms Shows Opportunities Abound, Even as Concerns Persist*, THOMSON REUTERS (Apr. 17, 2023), <https://www.thomsonreuters.com/en-us/posts/technology/chatgpt-generative-ai-law-firms-2023/>.

<sup>28</sup> *Id.*

<sup>29</sup> Olufunmilayo B. Arewa, *Open Access in a Closed Universe: Lexis, Westlaw, Law Schools, and the Legal Information Market*, 10 LEWIS & CLARK L. REV. 797, 798 (2006).

<sup>30</sup> *The Power of Artificial Intelligence in Legal Research*, LEXISNEXIS (May 16, 2023), <https://www.lexisnexis.com/community/insights/legal/b/though>

extensive collection of accurate legal content.<sup>31</sup> Therefore, the risk of hallucinations is minimal with Lexis+ AI.<sup>32</sup> Westlaw released a similar GAI platform in fall 2023.<sup>33</sup> Reducing the risk of hallucinations could increase the number of lawyers who adopt GAI, as hallucinations are one of the main reasons lawyers are hesitant to adopt GAI in their practice.<sup>34</sup> With numerous law firms using or considering the utilization of GAI and LexisNexis and Westlaw capitalizing on its growth, lawyers must consider its ethical implications.

This note serves as a cautionary notice to practitioners about the Model Rules they could violate when improperly using GAI or failing to use GAI altogether. This note will proceed in four parts. Part II will discuss the Model Rules and how states model their professional responsibility rules after the Model Rules. Part III will explain a lawyer's duty of competence and candor toward the tribunal and how GAI usage and non-usage can violate these duties. More specifically, Part III will discuss a lawyer's duty of technology competence from comment eight of Model Rule 1.1, which emphasizes the importance of understanding the benefits and risks of GAI. Further, Part III will explain a lawyer's duty of candor toward

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t-leadership/posts/the-power-of-artificial-intelligence-in-legal-research.

<sup>31</sup> *LexisNexis Announces Launch of Lexis+ AI Commercial Preview, Most Comprehensive Global Legal Generative AI Platform*, LEXISNEXIS (May 4, 2023),

<https://www.lexisnexis.com/community/pressroom/b/news/posts/lexisnexis-announces-launch-of-lexis-ai-commercial-preview-most-comprehensive-global-legal-generative-ai-platform>.

<sup>32</sup> Bob Ambrogi, *LexisNexis Enters the Generative AI Fray with Limited Release of New Lexis+ AI, Using GPT and Other LLMs*, LAWSITES (May 4, 2023), <https://www.lawnext.com/2023/05/lexisnexis-enters-the-generative-ai-fray-with-limited-release-of-new-lexis-ai-using-gpt-and-other-llms.html>.

<sup>33</sup> *Westlaw Precision Now has Generative AI*, THOMSON REUTERS, <https://legal.thomsonreuters.com/en/c/westlaw/westlaw-precision-now-with-generative-ai> (last visited Nov. 22, 2023).

<sup>34</sup> Hugo Guzman, *AI's 'Hallucinations' Add to Risks of Widespread Adoption*, CORP.COUNS. (Mar. 23, 2023, 6:20 AM), <https://www.law.com/corpcounsel/2023/03/23/ais-hallucinations-add-to-risks-of-widespread-adoption/>.

the tribunal and how lawyers must verify GAI-generated work before its submission to the court and correct any misstatements of law already submitted to avoid violating this duty. Part IV will propose best practices for lawyers to use GAI in accordance with their ethical obligations of competence and candor. These best practices include advocating for mandatory continuing legal education (“CLE”) credits on GAI, designing policies to verify GAI-generated work through human review and correcting any GAI-generated mistakes already submitted to the court, as well as judges creating orders for lawyers to sign attesting to the accuracy of any GAI-generated work. Finally, Part V will conclude with the rising prevalence of GAI in the legal profession and the importance of using GAI with competence and candor to avoid professional responsibility rule violations.

## II. MODEL RULES OF PROFESSIONAL CONDUCT

In 1983, the American Bar Association (“ABA”) created the Model Rules as a set of legal ethics rules for states to adopt.<sup>35</sup> The Model Rules govern how lawyers should handle situations such as lawyer duties of competence, diligence, confidentiality, and loyalty; conflicts of interest; conduct owed to the court; and more.<sup>36</sup> The Model Rules and their comments significantly influence how courts apply professional responsibility rules.<sup>37</sup> All fifty states and the District of Columbia have adopted the Model Rules and model their state-specific professional responsibility rules based upon the framework of the Model

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<sup>35</sup> Legal Info. Inst., *Model Rules of Professional Conduct*, CORNELL L. SCH., [https://www.law.cornell.edu/wex/model\\_rules\\_of\\_professional\\_conduct](https://www.law.cornell.edu/wex/model_rules_of_professional_conduct) (last visited Nov. 22, 2023).

<sup>36</sup> *Id.*

<sup>37</sup> Legal Info. Inst., *Legal Ethics*, CORNELL L. SCH., [https://www.law.cornell.edu/wex/legal\\_ethics](https://www.law.cornell.edu/wex/legal_ethics) (last visited Nov. 22, 2023).

Rules.<sup>38</sup> Lawyers' adherence to professional responsibility rules is paramount because the legal profession is largely self-governing.<sup>39</sup> Each lawyer is responsible for observance of professional responsibility rules.<sup>40</sup> Lawyers are subject to discipline when they violate their state's equivalent of the Model Rules.<sup>41</sup> Although the Model Rules existed before the creation of GAI, the Model Rules are rules of reason,<sup>42</sup> and were intended to adapt to present times.<sup>43</sup>

### III. POTENTIAL MODEL RULE VIOLATIONS WHEN LAWYERS UTILIZE AND FAIL TO UTILIZE GAI

#### A. COMPETENCE

Model Rule 1.1 states, "[a] lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation."<sup>44</sup> This explicit duty has existed since the Model Rules' adoption in 1983,<sup>45</sup> but its application has changed over the years. In 2012,

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<sup>38</sup> *Jurisdictional Rule Comparison Charts*, A.B.A.,

[https://www.americanbar.org/groups/professional\\_responsibility/policy/rule\\_charts/](https://www.americanbar.org/groups/professional_responsibility/policy/rule_charts/) (last visited Nov. 22, 2023); *Alphabetical List of Jurisdictions Adopting Model Rules*, A.B.A.,

[https://www.americanbar.org/groups/professional\\_responsibility/publications/model\\_rules\\_of\\_professional\\_conduct/alpha\\_list\\_state\\_adopting\\_model\\_rules/](https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/alpha_list_state_adopting_model_rules/) (last visited Nov. 22, 2023).

<sup>39</sup> MODEL RULES OF PRO. CONDUCT Preamble 10 (AM. BAR ASS'N 1983).

<sup>40</sup> MODEL RULES OF PRO. CONDUCT Preamble 12 (AM. BAR ASS'N 1983).

<sup>41</sup> MODEL RULES OF PRO. CONDUCT r. 8.4 (AM. BAR ASS'N 1983).

<sup>42</sup> MODEL RULES OF PRO. CONDUCT Preamble 14 (AM. BAR ASS'N 1983).

<sup>43</sup> Natalie A. Pierce & Stephanie L. Goutos, *Why Lawyers Must Responsibly Embrace Generative AI* 8 (BERKELEY BUS. L. J., Working Paper No. 2, 2024), <https://ssrn.com/abstract=4477704>.

<sup>44</sup> MODEL RULES OF PRO. CONDUCT r. 1.1 (AM. BAR ASS'N 1983).

<sup>45</sup> See *Model Rules of Professional Conduct*, A.B.A.,

[https://www.americanbar.org/groups/professional\\_responsibility/publications/model\\_rules\\_of\\_professional\\_conduct/](https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/) (last visited Nov. 10, 2023).



the ABA Commission on Ethics 20/20 (the “Commission”) issued a report explaining the need to update regulations to accommodate technological advancements.<sup>46</sup> The report noted that “[l]awyers must understand technology in order to provide clients with the competent and cost-effective services that they expect and deserve.”<sup>47</sup> The Commission also proposed making a lawyer’s understanding of the benefits and risks of technology explicit.<sup>48</sup>

Subsequently, in 2012, the ABA amended comment eight to Model Rule 1.1 to read as follows: “[t]o maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, *including the benefits and risks associated with relevant technology*, engage in continuing study and education and comply with all continuing legal education requirements to which the lawyer is subject.”<sup>49</sup> The addition of “including the benefits and risks associated with relevant technology” established a lawyer’s affirmative obligation to remain current with technological advancements to provide competent representation.<sup>50</sup> This amendment encouraged lawyers who began their practice prior to the widespread adoption of computers to actively seek educational training on relevant technology.<sup>51</sup> What technology is considered relevant

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<sup>46</sup> Am. Bar Ass’n Comm’n on Ethics 20/20, *Introduction and Overview* 1 (Aug. 2012), [https://www.americanbar.org/content/dam/aba/administrative/ethics\\_2020/20121112\\_ethics\\_20\\_20\\_overarching\\_report\\_final\\_with\\_disclaimer.pdf](https://www.americanbar.org/content/dam/aba/administrative/ethics_2020/20121112_ethics_20_20_overarching_report_final_with_disclaimer.pdf).

<sup>47</sup> *Id.* at 3.

<sup>48</sup> *Id.* at 8.

<sup>49</sup> *Lawyers’ Duty of Technology Competence by State in 2022*, PERCIPIENT (Mar. 23, 2022), <https://percipient.co/lawyers-duty-of-technology-competence-by-state-infographic/>; MODEL RULES OF PRO. CONDUCT r. 1.1 cmt. 8 (AM. BAR ASS’N 1983) (emphasis added).

<sup>50</sup> Pierce & Goutos, *supra* note 43, at 10.

<sup>51</sup> Catherine Garner, *Chasing the Duty of Competency in Legal Technology*, VAND. UNIV.: JETLAW (Jan. 6, 2023), <https://www.vanderbilt.edu/jetlaw/2023/01/06/chasing-the-duty-of-competency-in-legal-technology/>.

was intentionally left vague to accommodate future technological advancements.<sup>52</sup>

As GAI continues to rise in popularity, the ABA has adopted two resolutions concerning the use of AI in the legal profession. Resolution 112, adopted in 2019, urges practitioners to address the following issues associated with AI usage: “(1) bias, explainability, and transparency of automated decisions made by AI; (2) ethical and beneficial usage of AI; and (3) controls and oversight of AI and the vendors that provide AI.”<sup>53</sup> Next, Resolution 604, adopted in 2023, “[u]rges organizations that design, develop, deploy, and use . . . AI . . . systems and capabilities to follow these guidelines” and “urges Congress, federal executive agencies, and State legislatures and regulators, to follow these guidelines in legislation and standards pertaining to AI.”<sup>54</sup> These resolutions further stress the importance of understanding the risks and benefits of GAI and the need for guidelines to govern its responsible usage within the legal profession.

Given the duty of technology competence created by comment eight to Model Rule 1.1, the ABA’s recent resolutions, and eighty-two percent of lawyers recognizing GAI’s application to legal work,<sup>55</sup> GAI is undoubtedly relevant technology. Accordingly, lawyers in states adopting a technology competence rule must understand the benefits and risks associated with GAI to provide competent representation and avoid competence rule violations. As of 2023, forty states have adopted the duty of technological competence outlined in comment eight of Model Rule 1.1, with the language verbatim

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<sup>52</sup> *Id.*

<sup>53</sup> Pierce & Goutos, *supra* note 43, at 12; Am. Bar Ass’n, *Adopted as Revised Resolution 112*, <https://perma.cc/A3EM-NWAU> (last visited Nov. 22, 2023).

<sup>54</sup> Am. Bar Ass’n House of Delegates, *Resolution 604*, A.B.A. (Feb. 6, 2023), <https://www.americanbar.org/content/dam/aba/directories/policy/midyear-2023/604-midyear-2023.pdf>.

<sup>55</sup> Thomson Reuters Inst., *supra* note 27.

or only slightly different.<sup>56</sup> Lawyers, especially those in states with a duty of technological competence, must understand GAI's benefits, such as increasing efficiency, enhancing decision-making, and providing clients with cost-efficient services.<sup>57</sup> These lawyers must also understand GAI's risks, such as biased outputs, hallucinations, and lack of explainability.<sup>58</sup>

#### i. BENEFITS OF GAI

One significant benefit of lawyers utilizing GAI is increased efficiency.<sup>59</sup> A study found that sixty-seven percent of in-house lawyers "felt buried in low-value work."<sup>60</sup> Attorneys within large law firms share this sentiment. One third of law firms with over a thousand employees complete low-value work one out of every three hours.<sup>61</sup> GAI serves as a solution to this problem, as a 2023 report estimated that forty-four percent

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<sup>56</sup> *Litigation Technology Competence State Law Survey*, LEXIS+ (Mar. 21, 2023), <https://www.lexisnexis.com/pdf/practical-guidance/ai/litigation-technology-competence-state-law-survey.pdf>.

<sup>57</sup> Tanguy Chau, *Unlocking the 10x Lawyer: How Generative AI Can Transform the Legal Landscape*, FORBES (Aug. 16, 2023, 6:30 AM), <https://www.forbes.com/sites/forbestechcouncil/2023/08/16/unlocking-the-10x-lawyer-how-generative-ai-can-transform-the-legal-landscape/?sh=3a84a68401c0>; Erica Sandberg, *How Law Firms are Using Artificial Intelligence in Their Practices*, U.S. NEWS (July 31, 2023, 11:00 AM), <https://law.usnews.com/law-firms/advice/articles/how-law-firms-use-ai>.

<sup>58</sup> Pierce & Goutos, *supra* note 43, at 2.

<sup>59</sup> Increased efficiency also helps lawyers act with reasonable diligence and promptness that Model Rule 1.3 requires. However, this Model Rule is outside the scope of this note.

<sup>60</sup> *artificiallawyer, 67% of Inhouse Lawyers 'Feel Buried in Low-Value Work'*, ARTIFICIAL LAWYER (July 28, 2020), <https://www.artificiallawyer.com/2020/07/28/67-of-inhouse-lawyers-feel-buried-in-low-value-work/>.

<sup>61</sup> Chau, *supra* note 57.

of legal tasks are automatable.<sup>62</sup> GAI can extract relevant data during discovery within seconds, which could take lawyers weeks to complete.<sup>63</sup> GAI can also classify and organize large volumes of documents.<sup>64</sup> Further, GAI can complete other low-value tasks, such as preliminary research and drafting, which allows lawyers to dedicate more time to high-value tasks.<sup>65</sup> These high-value tasks include engaging with clients and formulating litigation strategies.<sup>66</sup> Therefore, understanding how to use GAI to automate low-value tasks enables lawyers to concentrate on strategic work that increases efficiency and serves clients competently.<sup>67</sup> Further, lawyers can utilize GAI to fill individual-level gaps, such as automatically correcting a lawyer's tendency to overlook capitalizing proper nouns.<sup>68</sup> This type of GAI use increases efficiency by decreasing the time a lawyer spends editing and revising documents.

Another benefit of utilizing GAI is enhanced decision-making. By providing lawyers with current information,<sup>69</sup> GAI enables lawyers to make the most informed decisions for their

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<sup>62</sup> Daniel Farrar, *To Future-Proof Their Firms, Attorneys Must Embrace AI*, FORBES (July 13, 2023, 9:00 AM),

<https://www.forbes.com/sites/forbesbusinesscouncil/2023/07/13/to-future-proof-their-firms-attorneys-must-embrace-ai/>.

<sup>63</sup> Pierce & Goutos, *supra* note 43, at 21.

<sup>64</sup> Bhavya Bhatt, *How can Lawyers Leverage ChatGPT for Their Practice?*, BAR AND BENCH (Jan., 28, 2023, 8:00 AM),

<https://www.barandbench.com/law-firms/view-point/the-viewpoint-how-can-lawyers-leverage-chatgpt-for-their-practice>.

<sup>65</sup> Pierce & Goutos, *supra* note 43, at 21.

<sup>66</sup> Sandberg, *supra* note 57.

<sup>67</sup> *Id.*

<sup>68</sup> Anita Bernstein, *Lawyering in the Age of Artificial Intelligence: Minding the Gaps in Lawyers' Rules of Professional Conduct*, 72 OKLA. L. REV. 125, 140 (2019).

<sup>69</sup> While ChatGPT was once limited to information up to September 2021, it can now use the internet to provide up-to-date information to its users. Radford & Kleinman, *supra* note 3. Also, Lexis+ AI provides its users with the most up-to-date legal information. *LexisNexis Announces Launch of Lexis+ AI Commercial Preview, Most Comprehensive Global Legal Generative AI Platform*, *supra* note 31.

clients.<sup>70</sup> GAI can also synthesize substantial amounts of information into concise summaries and cite the information.<sup>71</sup> The ability of GAI to quickly complete the initial analysis of a legal problem allows lawyers to focus on the problematic research questions.<sup>72</sup> With access to vast information and the ability to focus on the intricacies of a client's case, GAI enhances a lawyer's decision-making capabilities.

Further, another benefit to the use of GAI within the legal field is the creation of cost-efficient services. Because the utilization of GAI saves lawyers time, lawyers can bill fewer hours to clients, lowering the cost of legal services.<sup>73</sup> It is predicted that law firms that fail to utilize GAI will no longer remain cost-competitive and will ultimately lose clients.<sup>74</sup> As the Commission noted in its 2012 report, part of a lawyer's duty of competence is understanding relevant technology in order for lawyers to provide cost-efficient services.<sup>75</sup> An expert on professional responsibility, Roy Simon, warns lawyers that "charging for 10 hours of your time to do work that AI could do in 10 minutes sounds like an excessive fee" and could financially disadvantage your client.<sup>76</sup> Therefore, utilizing GAI allows lawyers to provide their clients with the cost-efficient services they deserve.

## ii. RISKS OF GAI

As previously mentioned, hallucinations refer to GAI's production of plausible-sounding outputs that are factually incorrect.<sup>77</sup> ChatGPT hallucinates fifteen to twenty percent of its

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<sup>70</sup> Chau, *supra* note 57.

<sup>71</sup> *Id.*

<sup>72</sup> *Id.*

<sup>73</sup> Sandberg, *supra* note 57.

<sup>74</sup> See Chau, *supra* note 57.

<sup>75</sup> Am. Bar Ass'n Comm'n on Ethics 20/20, *supra* note 46, at 3.

<sup>76</sup> Anita Bernstein, *Lawyering in the Age of Artificial Intelligence: Minding the Gaps in Lawyers' Rules of Professional Conduct*, 72 OKLA. L. REV. 125, 140 (2019).

<sup>77</sup> Bernard Marr, *ChatGPT: What Are Hallucinations and Why Are They a Problem for AI Systems*, BERNARD MARR & CO. (Mar. 22, 2023),

outputs.<sup>78</sup> Hallucinations create risk when lawyers undoubtedly rely on the information ChatGPT or other GAI systems provide. One of the main ways to address GAI hallucinations is to incorporate human review to check the accuracy of outputs.<sup>79</sup> Purchasing legal-based GAI is another solution to a high rate of hallucinations. As Lexis+ AI was created and trained on the most extensive collection of accurate legal content, its risk of hallucinations is minimal.<sup>80</sup>

Another risk of GAI is inherent biases. When trained on biased data, a GAI system can reflect those biases in its outputs.<sup>81</sup> Therefore, GAI systems are prone to biases because the data it is trained on reflects human biases.<sup>82</sup> Evidence also exists for biases among other AI software. Facial recognition technology, for example, experiences difficulty accurately identifying subjects who are female, black, and between eighteen and thirty years of age.<sup>83</sup> Unfortunately, this can lead GAI systems to produce harmful outputs by reflecting race and gender stereotypes.<sup>84</sup> Although GAI developers are responsible for correcting these biases,<sup>85</sup> lawyers must be aware

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<https://bernardmarr.com/chatgpt-what-are-hallucinations-and-why-are-they-a-problem-for-ai-systems>.

<sup>78</sup> Woodie, *supra* note 11.

<sup>79</sup> Marr, *supra* note 77.

<sup>80</sup> LexisNexis Announces Launch of Lexis+ AI Commercial Preview, *Most Comprehensive Global Generative AI Platform*, *supra* note 31; Ambrogi, *supra* note 32.

<sup>81</sup> Keith A. Call, *Focus on Ethics & Civility: The Day Your Life Changed Forever*, 36 UTAH BAR J. 53, 53 (2021).

<sup>82</sup> Bradston Henry, *The Good, the Bad, and the Biased: Is Bias in Generative AI a Flaw or a Feature?*, DEV (May 3),

<https://dev.to/devsaturion/the-good-the-bad-and-the-biased-is-bias-in-generative-ai-a-flaw-or-a-feature-57go>.

<sup>83</sup> Alex Najibi, *Racial Discrimination in Face Recognition Technology*, HARV. UNIV. (Oct. 24, 2020),

<https://sitn.hms.harvard.edu/flash/2020/racial-discrimination-in-face-recognition-technology/>.

<sup>84</sup> Flori Needle, *What is AI Bias? [+ Date]*, HUBSPOT BLOG, <https://blog.hubspot.com/marketing/ai-bias> (June 12, 2023).

<sup>85</sup> Mearian, *supra* note 2.

of GAI's potentially biased outputs and exercise caution to avoid using biased information.

Further, there is a lack of explainability with current GAI systems. An AI system is explainable when it is transparent about how it works.<sup>86</sup> However, even legal prediction programs produce results without showing the factors that influence the results.<sup>87</sup> Explainability will help users understand GAI outputs and allow GAI systems to overcome false positives and explain its mistakes.<sup>88</sup> Most important is the ability of a GAI system to explain why it made a mistake so the designers of the system can train it not to make the same mistake again.<sup>89</sup> This level of explainability would increase users' trust in GAI systems, which could encourage its adoption because "trust through understanding is essential to facilitate uptake."<sup>90</sup>

To remain competent in today's legal field, lawyers must remain current on GAI and understand all its benefits and risks.<sup>91</sup> Armed with this knowledge, lawyers must review GAI output for accuracy, as GAI models are prone to hallucinations and biases. The Massachusetts Institute of Technology ("MIT") has developed guidelines for lawyer's use of GAI and recognized "[m]aking use of GAI and accepting outputs as fact without understanding how the technology works and or critically reviewing how outputs are generated" is inconsistent with a lawyer's duty of competence.<sup>92</sup> If a lawyer uses GAI without validating its output, they could violate their duty of

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<sup>86</sup> Janet Bastiman, *Explainability in AI: Why You Need It*, NAPIER (July 19, 2021), <https://www.napier.ai/post/explainability-in-ai>.

<sup>87</sup> Dana Remus & Frank Levy, *Can Robots Be Lawyers? Computers, Lawyers, and the Practice of Law*, 30 GEO. J. LEGAL ETHICS 501, 550 (2017).

<sup>88</sup> Bastiman, *supra* note 86.

<sup>89</sup> *Id.*

<sup>90</sup> *Id.*

<sup>91</sup> The benefits and risks explained above detail some of GAI's main risks and benefits. The discussion of all benefits and risks is outside the scope of this note, but lawyers should be aware of all the risks and benefits of GAI.

<sup>92</sup> *Task Force on Responsible Use of Generative AI for Law*, MIT COMPUTATIONAL L. REP. (June 2, 2023), <https://law.mit.edu/ai>.

competence, mainly if it results in mistakes or omissions. Not understanding how to use GAI or its risks is not a valid excuse recognized by courts for being incompetent.<sup>93</sup> Therefore, ensuring the accuracy of GAI-generated work contributes to the thoroughness and preparation necessary for competent representation.

While misusing GAI could result in a competency violation, so could refusing to use AI. Competency requires a lawyer to possess the legal knowledge and skill reasonably necessary for representation.<sup>94</sup> With the use of GAI on the rise, supplementing one's practice with GAI is becoming essential for competent representation. MIT emphasizes that "skillfully integrating" GAI with other relevant work tools is critical to using GAI consistently with a lawyer's duty of competence.<sup>95</sup> Unfamiliarity with GAI could rise to a competency violation as a lawyer must maintain the requisite knowledge and skill of relevant technology. Because the Commission has noted that a lawyer's duty of competence includes understanding relevant technology to provide cost-efficient services,<sup>96</sup> refusal to utilize GAI that results in a lawyer charging a client an excessive fee could also violate a lawyer's duty of competence among other Model Rules.<sup>97</sup> Further, not utilizing GAI could contribute to subpar representation compared to lawyers competent in GAI. Attorneys have cautioned that "AI won't replace lawyers, but lawyers who use AI will replace lawyers who don't."<sup>98</sup>

## B. CANDOR TOWARD THE TRIBUNAL

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<sup>93</sup> Pierce & Goutos, *supra* note 43, at 12-13.

<sup>94</sup> MODEL RULES OF PRO. CONDUCT r. 1.1 (AM. BAR ASS'N 1983).

<sup>95</sup> *Task Force on Responsible Use of Generative AI for Law*, *supra* note 92.

<sup>96</sup> Am. Bar Ass'n Comm'n on Ethics 20/20, *supra* note 46, at 3.

<sup>97</sup> Model Rule 1.5 prohibits lawyers from charging client's unreasonable fees. While relevant, this Model Rule exceeds the scope of this note.

<sup>98</sup> Suzanne McGee, *Generative AI and the Law*, LEXISNEXIS, <https://www.lexisnexis.com/html/lexisnexis-generative-ai-story/> (last visited Nov. 22, 2023).



Model Rule 3.3(a)(1) states, “[a] lawyer shall not knowingly . . . make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer.”<sup>99</sup> The Model Rules include “court” in the definition of “tribunal.”<sup>100</sup> All fifty states and the District of Columbia have adopted this rule verbatim or have an equivalent rule prohibiting lawyers from knowingly making false statements to the court.<sup>101</sup> Model Rule 3.3 and each state’s rule on candor to the court impose “knowingly” as a prerequisite for making a false statement to the court. “Knowingly” is defined by the Model Rules and most states as “actual knowledge of the fact in question” or what “may be inferred from the circumstances.”<sup>102</sup> Even at the federal level, similar rules ensure attorneys do not knowingly file statements containing false law. Rule 11 of the Federal Rules of Civil Procedure (“FRCP”) requires lawyers who submit filings to the court to sign the document, which “certifies that to the best of the person’s knowledge” its content is “warranted by existing law or supported by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law.”<sup>103</sup>

As mentioned above, OpenAI is transparent about ChatGPT’s hallucinations, warning users of the risk on their homepage.<sup>104</sup> With this knowledge readily available, courts can

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<sup>99</sup> MODEL RULES OF PRO. CONDUCT r. 3.3(a)(1) (AM. BAR ASS’N 1983).

<sup>100</sup> *Id.* at r. 1.0(m).

<sup>101</sup> Am. Bar Ass’n CPR Pol’y Implementation Comm., *Variations of the ABA Model Rules of Professional Conduct: Rule 3.3: Candor Toward the Tribunal*, A.B.A. (Dec. 13, 2022),

[https://www.americanbar.org/content/dam/aba/administrative/professional\\_responsibility/mrpc-3-3.pdf](https://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/mrpc-3-3.pdf).

<sup>102</sup> MODEL RULES OF PRO. CONDUCT r. 1.0(f) (AM. BAR ASS’N 1983); *see* Am. Bar Ass’n CPR Pol’y Implementation Comm., *Variations of the ABA Model Rules of Professional Conduct: Rule 1.0: Terminology*, A.B.A. (Jan. 2, 2020),

[https://www.americanbar.org/content/dam/aba/administrative/professional\\_responsibility/mrpc\\_1\\_0.pdf](https://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/mrpc_1_0.pdf).

<sup>103</sup> FED. R. CIV. P. 11(b), (b)(2).

<sup>104</sup> OpenAI, *supra* note 7.

infer lawyers' knowledge of GAI hallucinations.<sup>105</sup> Therefore, knowledge of the potential falsity of GAI outputs can be imputed, and lawyers can violate this rule when they submit ChatGPT or other GAI-generated information to the court without human verification.

Lawyers can also violate this rule when they "fail to correct a false statement of material fact or law."<sup>106</sup> Mr. Schwartz and his firm received sanctions for making false statements to the court and acting in bad faith.<sup>107</sup> In an affidavit on May 25, 2023, Mr. Schwartz claimed "he was misled by ChatGPT into believing that it had provided him with actual judicial decisions" after he asked if the cases were real and ChatGPT responded in the affirmative.<sup>108</sup> However, asking ChatGPT whether the cases it produced were real suggests he doubted the existence of the cases before he admitted this doubt in a declaration made on June 6, 2023.<sup>109</sup> In the declaration, Mr. Schwartz stated ChatGPT's answers "confirmed his by-then-growing suspicions that the chatbot has been responding 'without regard for the truth of the answers it was providing.'"<sup>110</sup> Mr. Schwartz's contradicting statements further supported the judge's finding of bad faith.<sup>111</sup>

False statements of law already submitted to the court do not relieve a lawyer of their duty of candor toward the court. While a lawyer has a duty to avoid making false statements of law to the court, a lawyer also has a duty to *correct* a false statement of law made to the court. Once Mr. Schwartz suspected the falsity of the cases ChatGPT cited, he had an obligation to correct the false statements of law, which Mr.

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<sup>105</sup> Hallucinations are also a primary risk of GAI that lawyers must understand as part of their duty of technology competence.

<sup>106</sup> MODEL RULES OF PRO. CONDUCT r. 3.3(a)(1) (AM. BAR ASS'N 1983).

<sup>107</sup> *Id.*

<sup>108</sup> *Id.*

<sup>109</sup> *Id.*

<sup>110</sup> *Id.* at \*27.

<sup>111</sup> *Mata v. Avianca, Inc.*, No. 22-cv-1461 PKC, 2023 U.S. Dist. LEXIS 108263, at \*26 (S.D.N.Y. June 22, 2023).

Schwartz was reluctant to do.<sup>112</sup> In the Colorado case, Mr. Crabill filed his motion to dismiss without knowledge of the fake cases ChatGPT produced but realized the errors on the day of the hearing when he could not find the cases.<sup>113</sup> Although there is no public disciplinary history for Mr. Crabill available on the Colorado Office of Attorney Regulation Counsel website, a former Colorado judge opined he “violated his ‘duty of candor to the tribunal.’”<sup>114</sup>

#### IV. USING GAI WITH COMPETENCE AND CANDOR

Competency does not require lawyers to become experts in the field of GAI but rather possess the skills reasonably necessary for representation.<sup>115</sup> Therefore, attorneys must become proficient at utilizing GAI to ensure competent GAI use. Becoming proficient starts with learning and training.

The legal community must advocate for mandatory CLE credit on GAI. While the ABA recommends that bar associations conduct CLEs on technology,<sup>116</sup> only three states have a mandatory requirement. Florida and North Carolina require CLE credit on technology,<sup>117</sup> while New York requires CLE credit on cybersecurity, privacy, and data protection.<sup>118</sup> No

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<sup>112</sup> *Id.* at \*3.

<sup>113</sup> Ritzdorf, *supra* note 24.

<sup>114</sup> *Id.*

<sup>115</sup> MODEL RULES OF PRO. CONDUCT r. 1.1 (AM. BAR ASS’N 1983).

<sup>116</sup> Am. Bar Ass’n Comm’n on the Future of Legal Servs., *Report on the Future of Legal Services in the United States* 43 (Aug. 2016), <https://www.srln.org/system/files/attachments/2016%20ABA%20Future%20of%20Legal%20Services%20Report-Web.pdf>.

<sup>117</sup> Bob Ambrogi, *Another State Moves Closer to Mandating Tech CLE, but Limited to Cybersecurity*, LAWSITES (July 2, 2020), <https://www.lawnext.com/2020/07/another-state-moves-closer-to-mandating-tech-cle-but-limited-to-cybersecurity.html>.

<sup>118</sup> *New York Becomes First State to Require CLE in Cybersecurity, Privacy and Data Protection*, HUNTON ANDREWS KURTH (Aug. 15, 2022), <https://www.huntonprivacyblog.com/2022/08/15/new-york-becomes-first-state-to-require-cle-in-cybersecurity-privacy-and-data-protection/>.

state currently requires CLE credit on GAI or AI in general. However, CLE courses in GAI are available to satisfy general CLE requirements. For example, the ABA offers an online CLE titled “Uses and Abuses of Generative AI and Ethics of Its Use by Attorneys and Judges.”<sup>119</sup> Similarly, the Practising Law offers an online CLE titled “The Ethics of Generative Artificial Intelligence” that discusses the relationship between GAI and the Model Rules.<sup>120</sup>

The availability of CLEs on GAI is a step in the right direction. Still, as the prevalence of GAI in the legal profession increases, mandatory CLE credits on GAI are necessary to ensure competence across the profession. Comment eight of Model Rule 1.1 states that a lawyer must “keep abreast of change in the law and its practice, including the benefits and risk associated with relevant technology” and “engage in continuing study and education.”<sup>121</sup> State bar associations mandating CLE credits in GAI combine both these requirements because CLEs can teach lawyers about the benefits and risks of GAI while keeping them engaged in continuous education.

In addition to seeking CLE credits on GAI, lawyers can gain competence in GAI by watching training videos for whichever GAI model they employ. For example, Lexis+ AI offers videos showing how to utilize its interactive search bar and its drafting, summarizing, and document analysis tools.<sup>122</sup> Additional training videos are available depending on the user’s subscription.<sup>123</sup> Overall, learning how to use the features

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<sup>119</sup> *Uses and Abuses of Generative AI and the Ethics of Its Use by Attorneys and Judges*, A.B.A., <https://www.americanbar.org/events-cle/ecd/ondemand/432896610/> (last visited Nov. 22, 2023).

<sup>120</sup> *The Ethics of Generative Artificial Intelligence*, PRACTICING L. INST., <https://www.pli.edu/programs/E/the-ethics-of-generative-artificial-intelligence> (last visited Nov. 22, 2023).

<sup>121</sup> MODEL RULES OF PRO. CONDUCT r. 1.1 cmt. 8 (AM. BAR ASS’N 1983).

<sup>122</sup> *Transform Your Legal Work*, LEXIS+ AI, <https://www.lexisnexis.com/en-us/products/lexis-plus-ai.page?int-camp=lexisplus-sign-on> (last visited Mar. 13, 2024).

<sup>123</sup> For example, videos on how to use Lexis+ AI to answer complex legal questions, identify the most current law, start a client email,

Lexis+ AI or other GAI models offer will help lawyers gain the knowledge and skill reasonably necessary to represent clients.

Further, lawyers must regularly review GAI-generated work for accuracy regularly because of GAI's risk of producing hallucinations and biased outputs. Lawyers must compare all GAI-generated content and citations to appropriate legal resources and databases to ensure the work is accurate. A lawyer or law firm purchasing legal-specific GAI, such as Lexis+ AI, decreases the risk of hallucinations in GAI-generated work.<sup>124</sup> However, double-checking any GAI-generated work for accuracy is the best practice at this stage in GAI's adoption. Lexis+ AI makes this process easy because it is transparent with the sources it uses to generate its answer.<sup>125</sup> Lexis+ AI presents its users with the list of authorities it used to reach its answer, which allows users to double-check the accuracy of the answer based on the sources it used.<sup>126</sup> If a lawyer fails to verify GAI-generated work for accuracy, GAI is not the entity responsible for any misstatements of law. As a professional responsibility law professor once cautioned, "[y]ou are ultimately responsible for the representations you make. It's your bar card."<sup>127</sup>

Human review of GAI-produced work is the best practice to ensure the content of filings is accurate before submission to the court. However, if a lawyer fails to do so or does not realize a mistake before filing, they must correct any inaccuracy later realized. Correcting an error shows candor and may contribute to a lawyer avoiding sanctions for a rule violation. The judge who sanctioned Mr. Schwartz and his firm

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draft a legal memo, and write a cease and desist letter are available for users logged in as law school faculty.

<sup>124</sup> Ambrogi, *supra* note 32.

<sup>125</sup> *Legal AI vs. ChatGPT: What Makes Them Different?*, LEXISNEXIS (Oct. 17, 2023),

<https://www.lexisnexis.com/community/insights/legal/b/though-t-leadership/posts/legal-ai-vs-chatgpt-what-makes-them-different>.

<sup>126</sup> *Id.*

<sup>127</sup> Karen Sloan, *A Lawyer Used ChatGPT to Cite Bogus Cases. What are the Ethics?*, REUTERS (May 30, 2023, 5:15 PM),

<https://www.reuters.com/legal/transactional/lawyer-used-chatgpt-cite-bogus-cases-what-are-ethics-2023-05-30/>.

might have avoided ordering sanctions if Mr. Schwartz had admitted the cases were fake after the opposing party questioned their existence.<sup>128</sup> In the Colorado case, Mr. Crabill stated, “in hindsight, the first thing I should have done when your honor took the bench was to move to withdraw the motion and request to refile after curing the inaccuracies.”<sup>129</sup> These recent cases illustrate that honesty with the court is the best policy once an attorney realizes inaccuracies in their filing.

Considering these cases, law firms and solo practitioners adopting GAI into their practice must implement policies for responsible GAI practices. The first step should include training on how to use the GAI models adopted in the workplace. In addition to learning how to use the GAI models, training should highlight relevant ethical considerations, like technology competence and candor toward the court. Training should also educate lawyers on all the risks and benefits of GAI, like hallucinations and biases, although continuous learning is needed to stay abreast of any new developments. Lawyers must also implement a system to detect biases in GAI-generated work so it is not relied upon. Moreover, a policy for human review of GAI-produced work must exist before lawyers submit filings to the court to ensure accurate filings. This policy could require a lawyer or a paralegal to compare all GAI-generated case law to a reliable database, such as LexisNexis or Westlaw. Lastly, protocol should exist to withdraw and correct filings submitted to the court that contain GAI-created inaccuracies.

While lawyers create policies for responsible GAI use on the front end, judges can do the same on the back. To ensure lawyers exhibit competence and candor in their courtroom,

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<sup>128</sup> Lyle Moran, *Judge in ChatGPT Case Most Troubled by Attorneys' Lack of Candor*, LEGALDIVE (June 26, 2023), <https://www.legaldive.com/news/chatgpt-lawyer-fake-cases-lawyer-uses-chatgpt-sanctions-generative-ai/653925/>.

<sup>129</sup> Clara Geoghegan, *Colorado Lawyer Cited Fake Cases in Motion Written with ChatGPT*, LAW WEEK COLORADO (June 21, 2023), <https://www.lawweekcolorado.com/article/colorado-lawyer-cited-fake-cases-in-motion-written-with-chatgpt/>.

some judges have proactively required lawyers to sign AI pledges certifying they have reviewed any AI-generated material submitted to the court.<sup>130</sup> The requirement to sign a statement vouching for the accuracy of work submitted could increase the likelihood that a lawyer will take the time necessary to check the accuracy of AI-generated work. At least three federal judges have required such a statement after Mr. Schwartz submitted the brief citing six fictitious cases that ChatGPT produced. These judge-made rules are more explicit and specific than FRCP Rule 11.<sup>131</sup> Judge Brantley Starr of the United States District Court for the Northern District of Texas was the first judge to order lawyers to sign an AI pledge. Judge Starr's AI pledge reads as follows:

I, the undersigned attorney, hereby certify that I have read and will comply with all judge-specific requirements for Judge Brantley Starr, United States District Judge for the Northern District of Texas.

I further certify that no portion of any filing in this case will be drafted by generative artificial intelligence or that any language drafted by generative artificial intelligence—including quotations, citations, paraphrased assertions, and legal analysis—will be checked for accuracy, using print reporters or traditional legal databases, by a human being before it is submitted to the court. I understand that any attorney who signs any filing in this case will be held responsible for the contents thereof according to applicable rules of attorney discipline, regardless of whether generative

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<sup>130</sup> Matthew Nigriny & John Gary Maynard, *Pitfalls of Attorney AI Use in Brief Prep has Judges on Alert*, LAW360 (July 25, 2023, 1:06 PM), <https://www.law360.com/articles/1702491/pitfalls-of-attorney-ai-use-in-brief-prep-has-judges-on-alert>.

<sup>131</sup> *Task Force on Responsible Use of Generative AI for Law*, *supra* note 92.

artificial intelligence drafted any portion of that filing.<sup>132</sup>

Following Judge Starr's lead, Judge Stephen Alexander Vaden of the United States Court of International Trade issued an order requiring lawyers to disclose what GAI program the lawyer used and what portions of the document GAI assisted in drafting.<sup>133</sup> Moreover, Judge Micheal Baylson of the United States District Court of the Eastern District of Pennsylvania issued a similar order for lawyers to disclose the use of GAI and to certify both citations to the law and record are accurate.<sup>134</sup> These judges' orders are likely not the last of their kind. These orders stress the importance of using GAI responsibly because the lawyer who signs off on the work will be responsible for any inaccuracies. These certifications promote candor and require lawyers to think twice before mindlessly submitting a GAI-generated document before the court.

## V. CONCLUSION

The transition from print legal sources to electronic databases was the first major technological shift in the legal profession; GAI is the second.<sup>135</sup> This transition is evident in the profession because many lawyers are already supplementing their practice with GAI or are considering its adoption.<sup>136</sup> The rise of GAI in the legal profession promises great benefits and great risks. It is a lawyer's ethical duty to understand the benefits and risks of GAI to provide competent representation to clients. It is also a lawyer's ethical duty to ensure that documents submitted to the court do not contain false law and that any misstatements already submitted to the court are

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<sup>132</sup> *Ex parte Lee*, 673 S.W.3d 755, 757 n.2 (10th Cir. 2023).

<sup>133</sup> Nigriny & Maynard, *supra* note 130.

<sup>134</sup> *Id.*

<sup>135</sup> See Colin E. Moriarty, *The Legal Ethics of Generative AI – Part 3*, COLORADO LAWYER (Oct. 2023), <https://cl.cobar.org/features/the-legal-ethics-of-generative-ai-part-3/>.

<sup>136</sup> Thomson Reuters Inst., *supra* note 27.



corrected. Failure to abide by these duties could result in professional responsibility rule violations.

Therefore, to ensure competent and candor usage of GAI, lawyers must advocate for mandatory CLE credits on GAI because proficiency in GAI starts with learning. In addition, lawyers can learn by watching training videos on the GAI model they adopt. However, learning about GAI models is not enough. Lawyers must verify GAI-generated work through human review and act proactively if a lawyer submits a GAI-generated error to the court. Policies for human review and retraction of any erroneous filings should exist at a lawyer's place of employment. In addition, judges can require lawyers to sign an order attesting to the accuracy of any GAI-produced work, so lawyers are reminded of their duty not to make false statements of law or arguments on unwarranted law. As ChatGPT said itself, these precautions are necessary to "ensure that technology augments, rather than undermines, the core principles of legal ethics."