

Artificial Intelligence:

THE NEED FOR STATE COURT LEADERSHIP

This article explores the importance of state court leadership in the era of generative artificial intelligence. It advocates for proactive engagement and strategic leadership from courts to shape this evolving landscape, support access and fairness, and advance justice in a period of rapid technological change.

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A Transformative Moment in Society

State courts stand at a significant moment in history. The rapid growth of generative artificial intelligence (Gen AI) has the potential to propel us into a new chapter in the practice of law and court operations, even while the capabilities and risks associated with Gen AI technologies are only partially understood. For state courts, the question looms large: In the face of this technological transformation, will we be bystanders or active participants? The choice we make today will yield lasting effects on the legal system and will shape the trust and confidence the public holds in the judicial system. To uphold that public trust, this article sets out a framework for state courts to provide guidance and guardrails to support the ethical, safe, and secure use of AI and Gen AI by judges and court staff, lawyers, and court systems.

State Court Users

State courts serve and shape several communities: internal consumers, i.e., judges and court staff, including judicial law clerks and assistants; lawyers; and self-represented or unrepresented court users and members of the public. Gen AI has the potential to fundamentally change relationships with each of these groups, requiring recalibration of expectations, roles, and responsibilities.

What is AI?

Artificial Intelligence, or AI, refers to machine-based technologies that make predictions, recommendations, or decisions. AI technologies use machine and human-based inputs to perceive environments, abstract such perceptions into models through automated analysis, and formulate opinions through model inference. Generative artificial intelligence, or Gen AI, is a subset of AI in which machine-based systems create text, images, or other content based on predictive models derived from training with large datasets.

Judicial Officers and Court Staff

For judges and court staff, Gen AI technologies offer the potential to expedite routine processes, such as review of pleadings for sufficiency and compliance with court rules, preliminary research and organization of information, and structuring of template documents. Automation of these daily functions, such as preliminarily flagging court applications that appear to be missing required content so that staff can review those submissions before scheduling a hearing, can enable judges to reallocate resources to more complex tasks. At the same time, Gen AI also brings challenges, including the need to evaluate the authenticity of evidence and to differentiate real content from deepfakes. To the extent that Gen AI is used without sufficient oversight by lawyers and unrepresented litigants, judges and court staff also may be required to conduct deeper review of legal pleadings and possibly to manage an influx of AI-generated filings by vexatious litigants. To address these developments, state courts should provide comprehensive training for judges at all levels and court staff about how to use Gen AI in their work and how the availability of Gen AI to the public affects their duties. Court systems should also consider development of a vision statement for their use of Gen AI.

Lawyers

As the regulators of legal practice, state supreme courts should promptly address the questions and concerns of legal practitioners who are using or may use Gen AI. While this effort should involve collaboration with state and local bar associations and other stakeholders, court leaders should exercise responsibility for ensuring that the ethical practice of law evolves appropriately in response to the capabilities and limitations of Gen AI to the extent practicable in light of administrative structures.¹ Guidance to lawyers may involve amendments or new comments to the rules of professional conduct, advisory opinions issued by designated committees, or new procedural requirements, such as mandatory certifications regarding the use of Gen AI in legal submissions. State courts should take the lead in developing and delivering training to lawyers both independently and in partnership with bar associations and other continuing legal education providers. Further, state courts should advise or remind lawyers about who to contact with specific professional responsibility and ethics questions. In light of the speed of Gen AI's evolution, state courts should be prepared to update preliminary guidance to respond to new technological developments and to specific questions raised by lawyers.

¹ See, e.g., *Mata v. Avianca*, __ F.Supp.3d __ (S.D.N.Y. June 22, 2023) (2023 WL 4114965; 2023 U.S. Dist. LEXIS 108263), in which lawyers were sanctioned for reliance on cases generated by ChatGPT in legal submissions (<https://perma.cc/PML3-582W>).



Public Court Users

Gen AI has the potential to democratize the law, offering tools that help self-represented litigants navigate the court system. Yet Gen AI cannot and will not solve the justice gap (which the National Center for State Courts has described as “the chasm between legal needs and available legal services in our state courts”²), and it must not be misunderstood as an equivalent substitute for legal representation. In the best-case scenario, Gen AI can narrow the justice gap by enabling people who otherwise would navigate the courts on their own to access and effectively use higher-quality tools than currently available through an internet search.

Courts should consider a multipart approach to support nonlawyer court users. First, courts

should provide public-facing information about how judges and court staff are and are not using Gen AI to provide transparency and avoid misinformation. Second, courts should provide plain-language information about public Gen AI options that court users may find on their own, noting the limitations on such resources. Third, courts should engage in ongoing communications with legal service providers and community advocates to incorporate their input into the development of policies and practices related to Gen AI. Through these strategies, state courts can harness the benefits of AI while minimizing risks, ensuring that while access to justice is broadened, the reliability and accuracy of legal information and processes are not compromised.

² “Justice for All: A Roadmap to 100% Civil Access to Justice,” p. 1 (<https://perma.cc/Y8Y4-XD9S>).

New Jersey's Proactive Approach

Through the vision of Chief Justice Stuart Rabner, the New Jersey Judiciary has positioned itself to learn as much as possible about AI and its implications for legal practice and court operations. In summer 2023, two pivotal groups were established: the New Jersey Supreme Court Committee on AI, which focuses on public-related issues including the practice of law, and a separate internal Working Group on Judiciary Use of AI, which explores policies for ethical AI use by the courts.

New Jersey's approach is notable for its coalition building. Administrative Director of the Courts Glenn A. Grant chairs the 34-person committee, with retired federal judge and AI expert Katherine Forrest as vice-chair. The committee includes individuals with expertise in technology, judicial and administrative leaders, lawyers, educators, security specialists, legal service providers, and nonlawyer advocates. This inclusive model fosters buy-in and collaboration, ensuring that as AI transforms the legal landscape, all segments of the legal community move forward together.

The supreme court committee and the internal working group quickly developed critical strategies that set an example for how state court systems can and should approach Gen AI. These strategies seek to balance the benefits available through AI technologies, including the potential to improve court access and legal resources for unrepresented court users with the very real risks that flow from biases associated with AI tools. They reflect the court's ongoing promise to prioritize fairness, inclusion, and neutrality over expediency.

Guidance to the Court Workforce

As a first step, the internal working group drafted an initial message to judges and staff, reminding all court employees that existing codes of conduct prohibit the sharing of confidential court information, which includes inputting confidential information into public Gen AI systems. As authorized by the supreme court, the judiciary provided that initial guidance to its entire workforce in August 2023, following up in October 2023 with a comprehensive, but still preliminary, policy on how judges and court staff can and cannot use Gen AI in their work.

Ongoing reminders to the judiciary workforce emphasize that open AI tools consider large amounts of data of unknown accuracy and with the potential to yield unfair, incomplete, inaccurate, or biased results. Accordingly,

content generated in response to a query to such a generative AI tool must be presumed to contain potential biases, and judges and court staff must exercise caution when using such AI-generated content within approved parameters.

Guidance for Lawyers and the Public

The committee submitted preliminary recommendations to the supreme court in January 2024. The court authorized initial deliverables, including two public-facing policies:

- The "Preliminary Guidelines on the Use of Artificial Intelligence by New Jersey Lawyers" focus on five main aspects of professional conduct that may be implicated by the use of AI: accuracy and truthfulness; honesty/candor and communication; confidentiality; prevention of misconduct,

including discrimination; and oversight.³ The New Jersey Supreme Court authorized the preliminary guidelines to be effective immediately while also providing directions for lawyers to raise individual questions about specific AI ethics issues and provide comments and suggestions to inform the committee's ongoing work.

- The “Statement of Principles for the New Jersey Judiciary’s Ongoing Use of Artificial Intelligence, Including Generative Artificial Intelligence” explains to the public how the courts will and will not use AI to align with and advance the core principles of independence, integrity, fairness, and quality service.⁴ In the statement, the judiciary promises to “engage in ongoing oversight to ensure that AI technologies are Transparent, Explainable, Accurate, Reliable, and Secure.” In addition, it also affirms that AI technologies will be used to support access, fairness, and equity for all parties.

In addition to public information, guidelines for lawyers, and ongoing guidance to the workforce, the committee also coordinated and provided initial training on Gen AI and established a schedule for ongoing CLE programs with the New Jersey State Bar Association (NJSBA) and others. Further, members of the committee participated in the judiciary’s annual Judicial College and Staff College in November 2023, offering both introductory and practical courses on Gen AI for judges and court executives. Judges and court leaders, including external experts, continued and expanded on those introductory

AI trainings at statewide civil, criminal, family, and municipal education conferences in spring 2024.

As authorized by the New Jersey Supreme Court, the committee developed a survey that was administered to around 75,000 registered and active New Jersey lawyers regarding their knowledge, perceptions, and use of Gen AI. More than 6,400 attorneys completed the survey, sharing their views and offering more than 1,800 narrative responses. The judiciary published major takeaways from this large-scale survey in a June 12, 2024 notice to the bar (see <https://tinyurl.com/4rcjj278>). Overall, survey respondents reported little knowledge and understanding of how generative AI technologies work and how they can be used in legal practice. Informed by the survey responses, the New Jersey Judiciary has launched a series of CLE programs at no cost to attendees, which started with a program on the Ethics of AI Use in July 2024.

The committee’s ongoing work continues to focus on the multiple communities affected by Gen AI. In anticipation of situations in which self-represented court users could improperly rely on AI technologies⁵ without yet understanding the capacity of those technologies to generate inaccurate and false content, the judiciary has posted a notice on the self-represented page of its website to reinforce the distinction between AI technologies and legal representation and to help court users find reputable legal services as needed (see <https://tinyurl.com/bdhubke33>).

³ See <https://perma.cc/36LL-AHL8>.

⁴ See <https://perma.cc/EQU2-AF5A>.

⁵ See, e.g., *Kruse v. Karlen et al.*, case no. ED111172 (Feb. 13, 2024), in which the Missouri Court of Appeals imposed sanctions on a self-represented litigant who submitted a slew of fabricated cases to the court (<https://perma.cc/3N5T-73XN>).

Regulation of Uses of AI in State Courts

California, Florida, New York, and New Jersey legal associations also provided early guidance to lawyers about the ethical uses and limitations of Gen AI.

In California, the Committee on Professional Responsibility and Conduct submitted recommendations to the state bar association, which were approved and published in November 2023. The committee's "Practical Guidance for the Use of Generative Artificial Intelligence in the Practice of Law"⁶ does not carry the weight of an ethics opinion or court rule but does assist lawyers in thinking through the ethical issues associated with Gen AI. The guidance also can be cited if a lawyer is alleged to have engaged in wrongdoing through using AI.

After seeking public comment on a proposal, the Florida Bar Association issued guidance to legal practitioners in Advisory Opinion 24-1 on January 19, 2024.⁷

On April 6, 2024, the New York State Bar Association Task Force on Artificial

Intelligence released a report and recommendations, focusing on the need for guidelines, education, regulation, and the role of the law (see <https://perma.cc/EMF9-4ZMU>).

The New Jersey State Bar Association Task Force on AI and the Law issued its final report and recommendations in May 2024, providing practical guidance to lawyers and law firms as to the assessment of AI tools and services, as well as templates for organizational AI policies (see <https://perma.cc/DGA2-ZRYJ>).

The core message from the California, Florida, and New York bar associations aligns with that adopted by the New Jersey Supreme Court: that the advent and expanding use of Gen AI technologies does not fundamentally change lawyers' responsibilities or their standards of professional conduct. Lawyers remain responsible to oversee and ensure the accuracy of their work, including communications to the court and clients, to maintain confidentiality, and to otherwise comply with the rules of professional conduct.

⁶ This is described as "a living document that is periodically updated as the technology evolves and matures, and as new issues are presented" (<https://perma.cc/TG7W-HKVY>).

⁷ See <https://perma.cc/3QE4-ASZK>.



Conclusion

As society confronts the transformative potential of Gen AI, state courts face a choice that will define our role in the future legal landscape. By embracing leadership in AI, courts can ensure they not only adapt to but also shape the evolution of legal practice and administration. The courts' response to AI will determine the future direction of the practice of law and judicial management. The time for us to decide is now. As we make this critical choice, we must remember that the public's trust and confidence are at stake. State courts have the opportunity to lead the way in ensuring that as the legal landscape changes, justice remains fair, accessible, secure, and effective. The path forward is clear: to engage, lead, and shape the future.