

FILED

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IN THE CIRCUIT COURT
THIRD JUDICIAL CIRCUIT
MADISON COUNTY, ILLINOIS

CLERK OF CIRCUIT COURT #91
THIRD JUDICIAL CIRCUIT
MADISON COUNTY, ILLINOIS

**JUDGE SARAH D. SMITH STANDING ORDER ON USE OF ARTIFICIAL
INTELLIGENCE (AI) IN CIVIL CASES**

I. USE OF ARTIFICIAL INTELLIGENCE- In accordance with Illinois Supreme Court Policy on Artificial Intelligence (January 1, 2025) this Court embraces the advancement of AI. The Court acknowledges the integration of AI into the legal profession offering potential efficiencies of the practice of law. However, AI in the courtroom can also present concerns regarding authenticity, accuracy, and bias. This provision outlines the expectations this Court has regarding the use of AI in her courtroom.

For the purposes of this order, "Artificial Intelligence" or "AI" refers to any technology that simulates human intelligence to perform tasks such as reasoning, learning, or generating text. This includes, but is not limited to, generative AI tools like ChatGPT, Google Gemini, Claude, Westlaw Precision/Co-Counsel, Lexis+ AI, and similar platforms means any system capable of generating content or performing analysis, including, but not limited to, generative AI, large language models (e.g., ChatGPT), machine-learning software, and any tool that synthesizes or analyzes data beyond simple formatting, translation, transcription, or grammar correction.

This guidance is issued to assist attorneys appearing before the Court in understanding the acceptable use of (AI) tools in litigation. While AI can enhance efficiency and productivity, its use must remain consistent with professional responsibilities, ethical standards, and procedural rules. The Court highly encourages the responsible use of AI, while retaining human oversight and legal judgment at all stages.

I. AI and Pleadings: Counsel and self-represented litigants are responsible for providing the Court with complete and accurate representations in any submission (including filings, demonstratives, evidence, and oral argument). The use of ChatGPT or any other research tool is not prohibited, however, counsel and self-represented litigants must at all times personally confirm for themselves the accuracy of any content generated by these tools. Attorneys and self-represented litigants must ensure that any filing prepared with the assistance of generative artificial intelligence is thoroughly reviewed for factual and legal accuracy prior to submission. These tools are capable of producing content that may be factually incorrect or legally unsound.

All counsel and self-represented parties are reminded that, consistent with Illinois Supreme Court Rule 137, the person signing any pleading, motion, or other

paper remains fully responsible for its content, regardless of whether it was drafted in whole or in part by generative AI. The Court will not accept the excuse that such content was prepared by AI, staff, or others when assessing potential violations of Rule 137 or applicable ethical obligations. Attorneys are further reminded of their professional obligations under the Illinois Disciplinary Rules of Professional Conduct, including the duty of candor to the tribunal and the prohibition against knowingly offering false statements of law. Attorneys must also remain proficient and competent in the practice of law, including recognizing the benefits and risks associated with relevant technology.

Any submission to the Court of inaccurate information due to AI generation such as case law hallucinations, in appropriate statements of law, or ghost citations may subject counsel to sanctions.

In sum, generative AI can be used as a complementary tool but should not be a replacement for traditional legal research and human judgment.

II. AI and Discovery: Any discovery responses, including but not limited to answers to interrogatories, Rule 213(f) disclosures, and Rule 214 document productions, that are generated in whole or in part using artificial intelligence (AI) tools must be verified for factual accuracy, legal sufficiency, and compliance with Illinois Supreme Court Rules. Counsel remain fully responsible for all responses submitted to the Court and may not rely on AI-generated boilerplate language, general objections, or speculative assertions.

The Court expects discovery responses to be specific, complete, and responsive. The use of AI does not excuse failure to meet discovery obligations. If AI or Technology-Assisted Review (TAR) is used to aid in document review or interrogatory preparation, the responding party must disclose the method used upon request and ensure adequate validation and human oversight.

Attorneys and parties shall ensure that no confidential, privileged, or protected health information is uploaded or transmitted to AI tools that store or share data externally unless adequate security measures are in place and disclosures comply with applicable privacy laws. Failure to safeguard such information may result in sanctions and may be treated as a waiver of any claimed privilege.

- a. Electronically Stored Information (ESI)-** As defined in Illinois Supreme Court Rule 201(b)(4), includes any data or data compilations from which electronically stored information can be obtained, directly or after translation. Parties have a duty to preserve ESI relevant to litigation, and sanctions may be imposed for failure to do so. Parties are to confer early in the litigation process to address ESI issues and potentially agree on the scope of discovery and preservation efforts.

ESI Discovery Procedures: Within 14 days of the first production request involving potential ESI, counsel shall confer to discuss and define:

1. Identity of custodians and data sources;
2. Proposed search terms, metadata fields, date ranges, threads, and de-duplication methods;
3. Initial production formats (native, searchable PDF, TIFF, etc.);
4. Whether technology assisted review (TAR) will be used in the ESI process;
5. Whether there is the potential for conducting discovery in phases or stages as a method for reducing costs and burden; and
6. The potential need for a protective order and any procedures to which the parties might agree for handling inadvertent production of privileged information and other privilege waiver issues.

b. Technology Assisted Review (TAR)- The Court recognizes that TAR can be a faster and cheaper process than a traditional linear document review. Parties utilizing TAR software (also called predictive coding, computer assisted review, or supervised machine learning) to search and identify relevant documents to disclose during the discovery process must notify opposing counsel in their response that the documents were identified thru use of this technology.

c. Attorney Certification of Discovery Responses Using AI Assistance- In light of increasing use of artificial intelligence (AI) tools to assist in the review and summarization of factual records—including medical records, police reports, and other case documents—the Court issues the following directive to ensure the integrity of discovery responses and compliance with the Illinois Supreme Court Rules:

1. **Responsibility for Accuracy:** Attorneys remain fully responsible for the content and accuracy of all interrogatory answers and other written discovery responses, regardless of whether AI tools or software were used to assist in their preparation.
2. **Disclosure of AI Use:** If AI or automated summarization tools were used to assist in answering interrogatories or summarizing client records, counsel must disclose that fact to opposing counsel at the time of service. The disclosure shall not waive privilege but must identify the general category of tool used (e.g., “AI-powered medical summarization tool”). Commons AI tools used in discovery response preparation include but are not limited to: Harvy AI, CaseText, Co-Counsel, DISCO Cecilia, Lexis+, Westlaw Precision AI, ZyDoc, Lexitas Medical Summary Tools.

3. **Certification Requirement:** Attorneys must file a signed certification attesting that:

- They have personally reviewed the discovery responses;
- They have verified that the answers are accurate and complete based on their own legal judgment;
- They are not relying solely on the AI tool's output to determine the sufficiency or completeness of the responses. (*See attached Sample Certification Regarding the Use of Artificial Intelligence in Discovery Responses, APPENDIX 1*)

4. **Sanctions:** Failure to comply with this Order, including reliance on erroneous or incomplete AI-generated discovery responses, may result in sanctions under Illinois Supreme Court Rule 219, including orders to compel, cost-shifting, or other appropriate remedies.

d. Attorney Use of AI Tools During Depositions or Court Proceedings To protect the integrity of proceedings, preserve privilege, and avoid violation of protective orders, attorneys intending to use artificial intelligence (AI) tools during depositions or in court proceedings must adhere to the following protocol. Many artificial intelligence (AI) tools, including both free and subscription-based platforms, may inadvertently store, retain, or transmit sensitive data entered into the system, even when the provider claims that the tool is "closed source," "secure," or "private." Counsel must not assume privacy or privilege merely because a vendor represents that the system is secure. Such tools can create legal and ethical risks that may jeopardize confidentiality or violate court orders.

A witness is absolutely prohibited from utilizing AI tools or software to generate answers to deposition questions. A deposition, either discovery or evidentiary, is not meant to be a collaborative process with outside influence; it is designed to elicit testimony that is the product of the witness's own mind without any coaching or assistance. Using AI technology to generate, suggest, or supplement deposition answers constitutes impermissible coaching and obstruction of the discovery process. Such conduct undermines the truth-seeking function of the deposition process and may be subject to sanctions under Illinois Supreme Court Rule 219(c) or other applicable rules.

1. **Required Checklist Before Using AI Tools in Depositions**

- Confirm that the AI tool does not record or store audio or video input from depositions or court.

- Review the tool's Terms of Use and Privacy Policy for any clauses about data collection or usage for model training.
- Disable microphone, camera, or real-time streaming features unless explicitly approved by the Court and all parties.
- Confirm that all data processing is local or encrypted; avoid tools that store data on external servers without safeguards.
- Do not input or transmit any content designated as confidential or protected under a protective order.
- Ensure the tool does not share input data with third parties or retain session history without secure deletion controls.
- Confirm that client-attorney communications are not entered into AI systems during live proceedings.
- Obtain explicit consent from all parties if any tool used interacts with live deposition testimony or recordings.

2. Protective Order Violations and Risks Use of AI tools during proceedings covered by a protective order may create violations in the following ways:

- Inadvertent disclosure of confidential material to third-party platforms, particularly if prompts or inputs are stored offsite;
- Violation of data-handling restrictions by entering or summarizing sensitive information in tools not authorized by the protective order;
- Breach of non-disclosure or storage limitations imposed by stipulations or court orders regarding deposition content.

Attorneys must review the terms of any protective order in place and ensure that no tool used transmits or stores protected material.

Violations may result in sanctions, exclusion of evidence, or waiver of confidentiality protection.

3. Use of Real-Time AI Tools in the Courtroom: AI tools used in real time for trial support (eg. Transcription review, argument suggestion, or objection analysis) must not disrupt proceedings or influence the jury in any way. Such tools shall not be visible or audible to any juror. Any use of such materials that interferes with decorum or pace of the trial may be restricted.

III. AI and Evidentiary Issues: AI is fundamentally shifting the landscape of evidence in courtrooms, introducing both powerful tools and complex challenges for admissibility and reliability. As such, the Court plays a critical gatekeeping role in evaluating AI-generated evidence, ensuring it meets established standards for authenticity, reliability, and fairness. Lawyers and experts must verify AI output and avoid reliance on unvetted AI-generated content. These rules do not apply to demonstrative evidence.

a. Discovery/Disclosure of AI-Generated Evidence- At least ninety (90) days prior to trial, any party that seeks to introduce evidence enhanced or generated by an artificial intelligence program shall give timely notice and disclose such evidence to the opposing party via affidavit of the attorney or analyst with the following:

1. That Exhibit "X" is evidence that was enhanced or generated by technology utilizing AI, specifically describing what portion of the evidence was generated or enhanced;
2. Name or describe what technology was used to enhance the evidence, the date it was enhanced or generated, how it operates, and what steps were taken to enhance the evidence with that technology, any algorithm used to enhance or create the evidence;
3. Certification that the evidence was reviewed by a human for accuracy;
4. Documentation (or a description of the method used) to demonstrate the AI tool's reliability and validity in producing or enhancing the evidence;
5. Verification that the evidence and the algorithm used to create or enhance the evidence has been preserved in its original and AI-processed form; and
6. Attach a copy of the original version of the evidence in addition to any enhanced version of the evidence.

Any party contesting the disclosure and use of AI enhancement or generation of evidence after receiving this notice must within thirty (30) days of disclosure provide opposing counsel with notice challenging the evidence and proffering a sufficient factual basis to overcome the proponent's certification.

A hearing on this matter may be requested to evaluate methodology, validation, known error rate, and usage acceptance, and accuracy of the proposed evidence.

Any new AI-generated evidence discovered or intended for use after this deadline must be disclosed within 7 days of the event or knowledge thereof and may be subject to exclusion.

AI-generated evidence is subject to all rules of authentication and reliability, including Illinois Rules of Evidence 401–403, 702, and relevant case law. Parties are reminded that pursuant to the Best Evidence Rule and other Illinois Rules of Evidence, should this enhanced evidence be deemed admissible at trial, the original unenhanced evidence will be admitted together with the enhanced version unless the proponent is able to demonstrate good cause why the original should not be admitted.

The above referenced disclosure deadlines for AI enhanced or generated evidence as well as Expert Report Disclosures shall be included in all Case Management Orders.

b. Expert Use of AI Generated or Enhanced Evidence- If any expert witness relies on AI or AI-generated data or tools in forming their opinions, their report shall include a detailed description of the AI used, how it was applied, and a demonstration of its reliability in forming those opinions. An expert submitting or utilizing AI content must explain in non-technical yet substantive terms the system that was used in its creation; explain and describe any algorithms used, how and with what input that system was trained, whether the system is open or closed; how the system reached its particular decision, recommendation, or prediction; and why the training and system is reliable and trustworthy.

In sum, the methodology and operation of the AI tool must be transparent to the extent that opposing parties have a fair opportunity to cross-examine the expert regarding the AI tool's processes and decision-making pathways based on the information it is given; and potential biases or limitations inherent in the AI tool.

If the expert relies on proprietary AI software (ie. Black Box testimony) that they do not own or cannot explain due to proprietary secrets they then cannot demonstrate reliability, reproducibility, error rates, or acceptance. Without this information, opposing counsel and the Court cannot meaningfully cross-examine the expert or verify results and said opinions are likely to be excluded.

c. Use of AI Generated or Enhanced Evidence at Trial- Any use of AI or AI enhanced substantive evidence or exhibits will be carefully labelled as such.

Parties are advised that if AI generated or enhanced evidence is presented to the jury, the court may entertain or provide sua sponte a limiting instruction advising the jury of the character of the evidence, the process of the evidence creation, and that the jury is entitled to weigh its credibility accordingly.

d. Use of AI technology in Jury Selection- Any party intending to use artificial intelligence or algorithmic tools for juror profiling, social media analysis or selection strategy must disclose such use in advance of voir dire. The disclosure shall identify the nature of the tool, and what public or private data it analyzes.

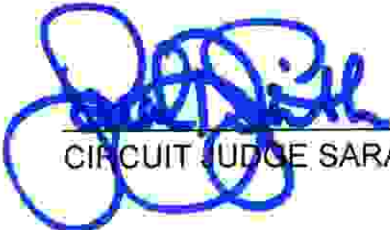
e. Prohibition on AI-Assisted Juror Interaction- No party, attorney, or their agent may use artificial intelligence tools to communicate with, target, or attempt to influence jurors or potential jurors. The court recognizes the use of "digital voir dire" or "juror analytics" to review publicly available social media posts. Use of programs such as LexisNexis Social Discovery, Jury Analyst, JuryStar, Jury+, and JurySelection.com is not prohibited.

However, the use of AI to deliver targeted messaging such as campaign style data mining, and the utilization of microtargeting ads on Facebook or other social media platforms visible to only devices in Madison county or specific devices near the courthouse or any other digital campaign designed to reach individuals based on their jury service is strictly prohibited and may result in sanctions or contempt proceedings.

The Court will periodically review this Standing Order in light of emerging AI practices, Illinois case law and/or Illinois Supreme Court Rules and evolving standards. Attorneys and litigants are strongly encouraged to remain informed about emerging legal, ethical, and technological developments relating to artificial intelligence and its use in litigation. Continuous education in these areas promotes professionalism, enhances the administration of justice, and ensures responsible use of evolving tools in litigation.

SO ORDERED:

24 September 2024
DATE


CIRCUIT JUDGE SARAH D. SMITH

APPENDIX 1

Attorney Certification of Discovery Responses Involving AI Assistance

This form is to be completed and signed by any attorney submitting discovery responses in this Court where artificial intelligence (AI) tools were used in the preparation, drafting, or review of those responses. This certification is designed to ensure compliance with Illinois Supreme Court Rule 137, 213 and 214, and any applicable standing orders of the Court regarding the ethical and responsible use of AI in legal proceedings.

Certification

I, the undersigned attorney, hereby certify the following regarding the discovery responses submitted in this matter:

1. I have reviewed all responses submitted to ensure they are factually accurate, complete, and responsive to the discovery requests served.
2. To the extent any AI tool (e.g., ChatGPT, Claude, Gemini, CoCounsel, or similar software) was used to assist in drafting or organizing responses, I have verified that all such content was reviewed and edited by counsel for legal sufficiency and accuracy.
3. I have not relied on AI tools to generate objections or responses without applying professional judgment and tailoring to the specific facts and legal context of the case.
4. No confidential or privileged material was entered into any AI system that stores or transmits information to external servers, except where such use is permitted by protective order or by prior agreement of the parties.
5. The use of AI in preparing these responses has not compromised the integrity of any factual statement, legal objection, or disclosure requirement under Illinois law.

I certify that the foregoing is true and correct to the best of my knowledge, information, and belief.

Attorney Signature

Printed Name: _____