

Generative Artificial Intelligence and California's Judicial Branch

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Administrative Presiding Justice, Court of Appeal, Sixth Appellate District

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“Society, government, and, therefore, our court system must address the many issues and questions presented by the developing field of artificial intelligence. We must do this in a careful and deliberative fashion.”

Chief Justice Patricia Guerrero

Foundational Questions

1. Should generative AI be used in California's judicial branch?
2. In what ways can (or should) generative AI be used in California's judicial branch?
3. How can public trust and confidence in the courts be preserved or enhanced?
4. If generative AI is used by the branch, how will confidentiality and privacy be maintained?
5. How do generative AI and judicial ethics intersect?

What Is Generative AI?

- A type of artificial intelligence that creates new content
 - Many formats (e.g., text, audio, pictures, video, source code) and languages
 - Almost any subject
- Already available in numerous consumer products, with many more in development

Generative vs. Traditional AI



Traditional AI

- Solves specific problems and performs specific tasks using predetermined algorithms and rules
- Examples: Virtual assistants, user-specific content recommendations for entertainment and commerce



Generative AI

- Creates completely new content without additional programming
- Examples: ChatGPT, Gemini, Copilot, Dall-E, Midjourney
- Legal field: Casetext CoCounsel, Lexis+ AI, Westlaw Precision

Generative vs. Traditional AI

- Many areas of overlap, including:
 - Many traditional AI tasks could be done by generative AI
 - Many risks of generative AI are shared with traditional AI
 - May be difficult for users to know which type they're using

Misuse of Generative AI in the Courts

The ChatGPT Lawyer Explains Himself

Mr. Schwartz, who has practiced law in New York for 30 years, said in a declaration filed with the judge this week that he had learned about ChatGPT from his college-aged children and from articles, but that he had never used it professionally.

He told Judge Castel on Thursday that he had believed ChatGPT had greater reach than standard databases.

“I did not comprehend that ChatGPT could fabricate cases,” he told Judge Castel.

Misuse of Generative AI in the Courts

26. The Clerk of the United States Court of Appeals for the Eleventh Circuit has confirmed that the decision is not an authentic ruling of the Court and that no party by the name of “Vargese” or “Varghese” has been party to a proceeding in the Court since the institution of its electronic case filing system in 2010. A copy of the fake “Varghese” opinion is attached as Appendix A.

Factual background:

Anish Varghese (“Varghese”), a resident of Florida, purchased a round-trip airline ticket from China Southern Airlines Co Ltd (“China Southern”) to travel from New York to Bangkok with a layover in Guangzhou, China. On the return leg of his journey, Varghese checked in at Bangkok for his flight to Guangzhou but was denied boarding due to overbooking. China Southern rebooked him on a later flight, which caused him to miss his connecting flight back to New York. As a result, Varghese was forced to purchase a new ticket to return home and incurred additional expenses.

China Southern argues that the Chapter 13 filing could not toll the Montreal Convention’s limitations period because Varghese did not file a claim in bankruptcy. But, as the district court noted, the Eleventh Circuit has not yet addressed this issue, and the weight of authority from other circuits suggests that a debtor need not file a claim in bankruptcy to benefit from the automatic stay. See, e.g., *In re Gandy*, 299 F.3d 489, 495 (5th Cir. 2002); *In re BDC 56 LLC*, 330 B.R. 466, 471 (Bankr. D.N.H. 2005).

Why Focus on Generative AI?

- Benefits of the evolving technology
- Concern about how generative AI will affect society and public institutions
- Unique challenges
 - Generates completely new content
 - Delivers results confidently
 - Widely available
 - Can be unpredictable
- Desire to proactively address risks

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1. Should generative AI be used in California's judicial branch?

Yes, with limitations and safeguards

- Look for beneficial uses
- Assess risks
- Ensure safeguards are in place
- Generative AI is a tool, not a substitute for judicial discretion or due process

Use of generative AI is inevitable

- Easily accessible
- Incorporated into existing products

2. In what ways can (or should) generative AI be used in the judicial branch?

- Evaluate which uses have benefits that outweigh the risks
- Identify uses that are inevitable or unavoidable
 - Both by courts and by court users
- Establish safeguards for any chosen or unavoidable uses

2. Use in the judicial branch, continued

Examples with particular promise:

- Improving court administration and management
- Enhancing research and analysis

Other possibilities:

- Increasing access to justice
- Reducing subconscious human biases
- Assisting with data entry and document review

3. How can public trust and confidence in the courts be preserved or enhanced?

- Risks will need to be addressed, including:
 - Bias, fairness, ethics
 - Accountability and transparency
 - Privacy, confidentiality, and safety
 - Validity and reliability
- Some uses of AI could increase trust and confidence

4. How can the branch maintain confidentiality and privacy?

- Concerns about privacy, unauthorized disclosure, and potential misuse
 - Generative AI models are trained on large amounts of data
 - Users must consent to the use of their data to train the model
 - Risks can be hard for users to identify or understand
 - Users don't always know they're using generative AI (or any AI)
- Need to protect courts' work product and court users' personal information

5. How do generative AI and judicial ethics intersect?

- Generative AI poses ethical questions in areas that include:
 - Do current ethics canons and rules apply?
 - Ability of judicial officers to independently decide how to use AI tools
 - Improper delegation of judicial decisionmaking
 - Supervision of employees using generative AI
 - Privacy and confidentiality
- Judicial officers will need guidance on navigating these issues

Recommendation: Create Artificial Intelligence Task Force

- An AI task force can:
 - Oversee branch research on uses and consequences of generative AI
 - Coordinate branch actions and make sure entities are not acting inconsistently or duplicating efforts
- Coordination by a task force can help the branch and council act quickly
- Task force could include the chairs of four internal committees: Executive and Planning, Legislation, Rules, and Technology
- The task force can delegate work to other advisory bodies (e.g., Data Analytics, ITAC) or the Administrative Director

Recommendation: Work with Supreme Court ethics committees

- Supreme Court committees set policy on judicial ethics
 - Supreme Court Advisory Committee on the Code of Judicial Ethics
 - Supreme Court Committee on Judicial Ethics Opinions
- Judicial officers will need guidance navigating ethical issues brought on by use of generative AI
- Committees could decide whether to recommend amendments to the Code of Judicial Ethics or issue advisory opinions on specific ethical issues

Recommendation: Direct CJER to prepare educational materials and programs

- The Center for Judicial Education and Research should develop education
 - About the uses, benefits, and risks of generative AI
 - For judicial officers, court staff, and Judicial Council staff
- Education is needed quickly because generative AI products are already widely available and there is concern about its impacts on the judicial branch

Summary of Recommendations



Create Artificial Intelligence Task Force to oversee consideration, coordination, and development of branch actions



Work with the Supreme Court committees on judicial ethics to consider amendments to the Code of Judicial Ethics or otherwise address issues concerning the use of generative AI



Direct the Center for Judicial Education & Research to promptly begin preparing educational materials and programs on generative AI