

The Rise of AI and Resulting Oversight and Accountability Issues in Restructuring Matters

American College of Bankruptcy
Seventh Circuit Fellows Annual Seminar

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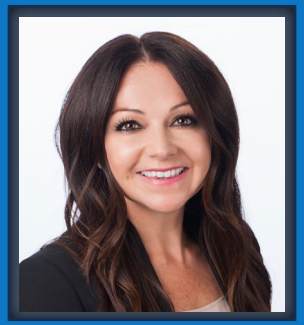
Meet the Panel



Ebba Gebisa
Latham & Watkins
(MODERATOR)



Hon. Catherine J. Furay
U.S. Bankruptcy Court
W.D. Wisconsin



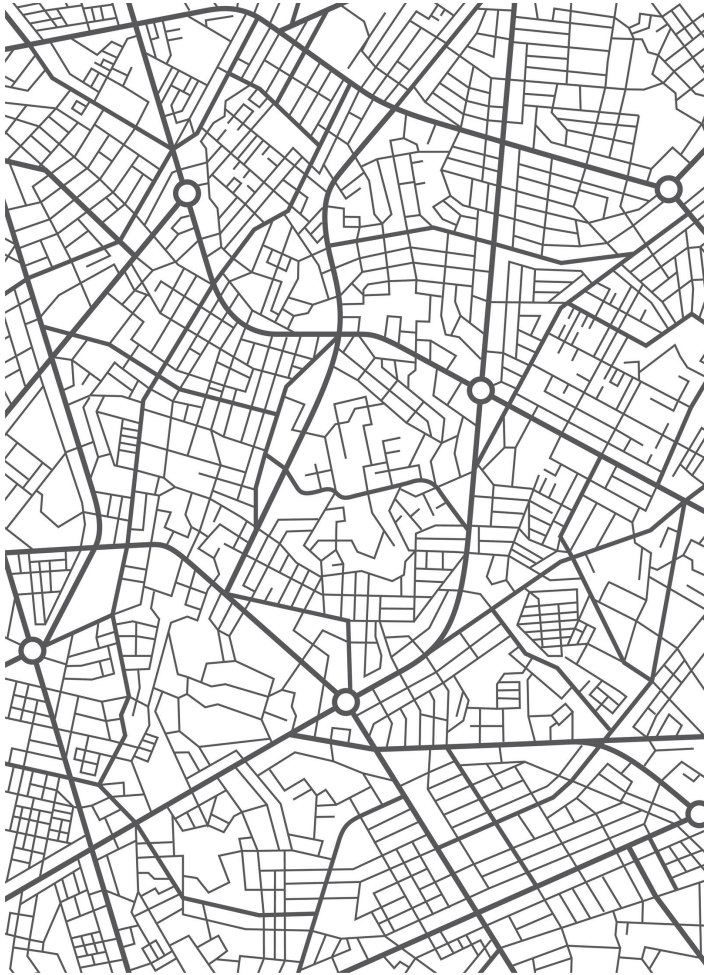
Tania M. Moyron
Dentons US LLP



Randall G. Reese
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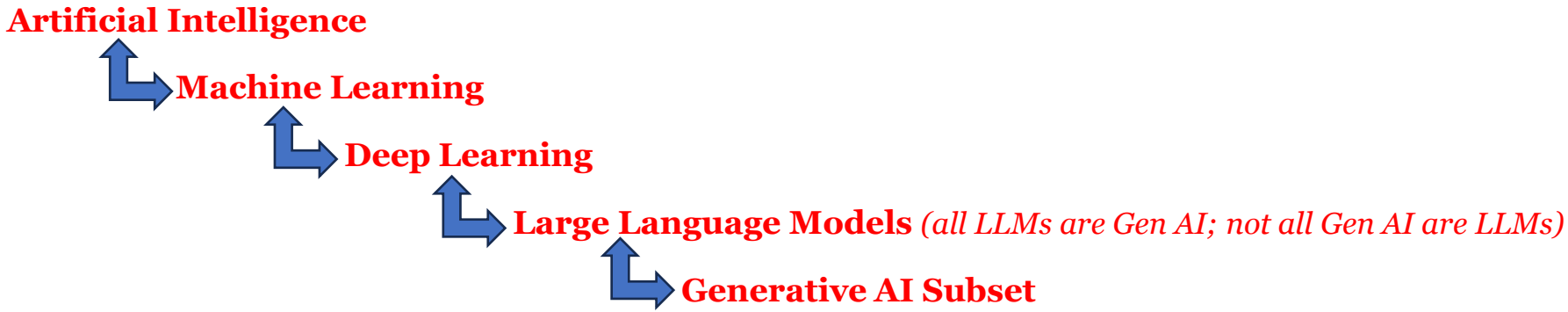
Today's Roadmap

- What ethical duties are implicated when lawyers use AI?
- What rules related to the use of AI apply at filing?
- What are practitioners and courts seeing in recent AI-related filings?
- What kinds of errors are creating AI-related problems?
- How are courts responding — sanctions, required CLE, fees, disclosure, certification?
- What risks outside of court filings exist regarding AI?
- What are the appropriate AI guardrails?



First, Keeping Up with the AI Lingo

- **Artificial Intelligence (AI)** = broad field of computer science focused on systems creation that can perform tasks requiring human-like intelligence (e.g., reasoning, learning, problem-solving)
- **Machine Learning (ML)** = specific approach within AI where systems learn patterns from data without being explicitly programmed for each task
- **Deep Learning** = subset of machine learning using neural networks with multiple layers
- **Large Language Model (LLM)** = specialized type of *deep learning* model trained on high volume of text data to understand and generate human language (e.g., Claude Opus 4, LLama 4, GPT-5)
- **Generative AI** = AI systems capable of creating new content through text, images, code, audio or video (includes LLMS, as well as other Generative AI like DALL-E and Midjourney)



What Legal Requirements & Duties Apply to AI Use?

ABA Formal Opinion 512: 2024 guidance from ABA on the ABA Model Rules of Professional Conduct relevant to the use of AI

Competence (Model Rule 1.1): understand the AI tool and its benefits/risks/limits

Verification (Model Rules 3.1, 3.3): check authorities, quotes, propositions, facts

Confidentiality (Model Rule 1.6): confidentiality of client info; assess disclosure risks

Communication (Model Rule 1.4): promptly inform client when required and "reasonably consult" client re: the means for accomplishing client's objectives

Supervision (Model Rules 5.1, 5.3): train lawyers/staff to ensure compliance with the Rules of Professional Conduct; vet vendors

Candor and Correction (Model Rules 3.3, 8.4(c)): do not file unsupported work or knowingly make false statements of law or fact; no misrepresentations



Fees (Model Rule 1.5): only bill actual time spent on the work product and reasonable expenses

Bankruptcy Rule 9011(b): any court submission must not have any "improper purpose," all claims and defenses are warranted, and all allegations and factual contentions have evidentiary support

What Legal Requirements & Duties Apply to AI Use?

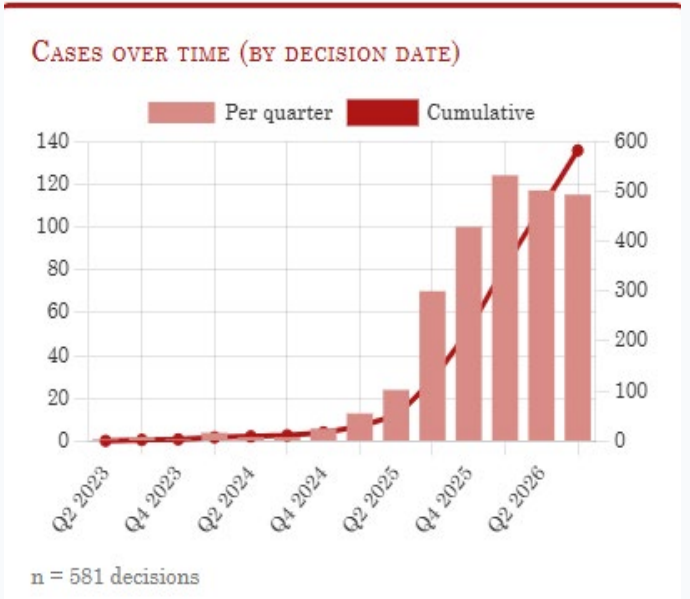
Practical Takeaways:

- Lawyers are not prohibited from using AI, but are ethically bound to ensure the accuracy of any court submission and the confidentiality of any and all client information
- Lawyers have an ethical duty to promptly report to court the discovery of any AI errors
- Lawyers/staff should be properly trained on the benefits, risks, and limitations of proper use of AI, and guardrails put in place to ensure compliance with the Rules of Professional Conduct



AI Errors: From Warnings to Enforcement – the Current Lay of the Land

- The issue is not just whether AI can hallucinate.
- Courts are now asking:
  - Who verified the filing?
  - Who supervised?
  - What do applicable Local Rules require?
  - What counsel did after discovering the AI-related problem?



Damien Charlotin, lawyer and data scientist who maintains a database that tracks court orders related to AI hallucinations, has identified over 580 cases of hallucination in U.S. courts *by lawyers* as of 10/5/2026[1]

Bankruptcy Courts' Tools Include: FRPB Rule 9011, court-specific AI orders, inherent authority, Bankruptcy Code § 105, fee consequences, CLE requirements, and filing restrictions/protocols

[1] Charlotin's work has been cited to in courts around the country. *See, e.g., Fletcher v. Experian* Info. Solutions, Inc., 168 F.4th 231, 234 (5th Cir. 2025).

Types of AI-Related Errors

Error Type	Practical Risk
Nonexistent cases	The cited authority does not exist
Fabricated quotations	The case may exist, but the quoted language does not
Misrepresented authority	The case exists, but does not support the proposition cited
False factual assertions	The filing gets facts or procedural history wrong
No verification before filing	Lawyer signs or submits filing without adequate review
No correction after error discovery	Lawyer fails to correct, explain, or disclose candidly after issue surfaces

Practical Takeaways: Which errors are easiest to catch, and which are most likely to slip through review? What are practitioners and courts doing to prevent such errors?

Representative AI Incidents & Remedies

Courts are not just focused on AI Hallucinations

Court Focus	Examples	Penalties
Verification Before Filing	*In re Martin* (N.D. Ill. July 18, 2025) *In re Richburg (Bankr. D. S.C. Aug. 29, 2025)* *In re Wise (Bankr. W.D. La. Apr. 9, 2026)*	Rule 9011 (nonmonetary) sanctions, monetary sanctions, required CLE, filings struck from record; future filing restrictions until compliance
Fabricated Quotations and Legal Propositions	*Fletcher v. Experian* (5th Cir. Feb. 18, 2026)	$2,500 sanction for fabricated quotations and misrepresentations of law/fact
Supervision and Candor after Discovery	*LNU v. Blanche* (9th Cir. June 3, 2026)	Discipline/$2,500 sanction under Fed. R. App. P. 46(b) and 9th Circuit Rule 46-2; 6-month suspension; future filing requirements re: disclosure of AI use
Bankruptcy Procedure	*Rosslyn2016 / Texas Esencia / Timbers2020* (Bankr. S.D. Tex. July 14, 2026)	Civil contempt, $29,877 fees, required CLE

Practical Takeaway: Under what circumstances should remediation reduce sanctions? Are these remedies mainly deterrent, corrective, educational, or reputational?

Court AI Rules: Recent Changes to State & Local Rules

See, e.g., Law 360 Tracker on Federal Judge Standing Orders on AI Usage

Model	What Changes	Example
Rule 9011 Responsibility	No separate AI filing step; signer reviews and verifies AI-assisted content.	S.D.N.Y. Bankr. Local Rule 9011-1(d)
Verification without Separate Disclosure	AI-drafted language must be checked against reliable source; sanctions risk	N.D. Tex. Bankruptcy General Order 2023-03
Disclosure + Attestation	Filing discloses AI use, identifies program and affected text; certifies accuracy and confidentiality compliance	W.D. Okla. Bankruptcy General Order
Dedicated Form	Separate form identifies the generative AI program and certifies manual verification	S.D. Cal. Bankruptcy General Order 210 / Form CSD 5013
Statewide Signatory Representation	Local rules displaced; signer represents that legal authorities exist and are accurately cited	Florida AOSC26-12 / Rule 2.515

Discussion Point: Is disclosure useful, or is certification enough?

Before You File: What Does This Court Require?

✓ **Is there a required form?**	S.D. Cal. Bankr. Court requires Form CSD 5013 for generative AI use
✓ **Is disclosure required in the filing?**	Some courts require disclosure of the tool and how it was used
✓ **Is certification enough?**	Some courts focus on signer representations that authorities exist and were checked
✓ **Is there no AI-specific step?**	Rule 9011 still requires reasonable inquiry and accurate filings
✓ **Is confidentiality addressed?**	Some courts require confirmation that AI did not disclose confidential information

Checklist mindset: It's not enough to just ask if the AI hallucinated, you must know the rules for your specific court

Where Might AI be Used Outside of the Courtroom: What Guardrails are in place?

- **Out of Court Workouts / ABCs / receiverships:** fewer public filings; fewer automatic checks
- **Claims admin & creditor communications:** AI may answer questions, summarize case info, or triage documents
- **Vendor & professional workflows:** lawyers may rely on AI outputs they did not personally generate
- **Fees & efficiency:** AI may change the time spent, value delivered, and who benefits from savings



Practical Takeaway: who verifies output, supervises the process, and is responsible for correction or escalation?

Questions?