

Exhibits

Proposed Rules for the Use of Artificial Intelligence Tools in ARIAS*U.S. Arbitrations

- Exhibit 1** 2025 AAA -ICDR Guidance on Arbitrators' use of AI Tools- March 2025
- Exhibit 2** AAAi Standards for AI in ADR- 2025
- Exhibit 3** New York City Bar Presidential Task Force on Artificial Intelligence and Digital Technologies- Current Ethics Opinions and Reports Related to Generative Artificial Intelligence- May 2025
- Exhibit 4** Guideline on the Use of Artificial Intelligence in Arbitration (2025); The Chartered Institute of Arbitration, UK
- Exhibit 5** Guidelines on the Use of Artificial Intelligence in Arbitration; Silicon Valley Arbitration & Mediation Center, April 2024
- Exhibit 6** Petition to Vacate Arbitration Award based on alleged outsourcing of adjudicatory role to AI: *John LaPaglia v Valve Corporation*, No. 3:25-cv-0833-RBM-DDL, (U.S. Dist. Ct. S.D. Cal., April 8, 2025)

Exhibit 1



AAA-ICDR® Guidance on Arbitrators' Use of AI Tools — March 2025

AI technology powers useful tools for lawyers and arbitrators. AI tools can summarize and draft documents, check facts, and verify citations, allowing arbitrators to focus on delivering fair and informed decisions.

The AAA-ICDR encourages arbitrators to embrace this technology while adhering to their professional obligations under the **Code of Ethics for Arbitrators in Commercial Disputes** and the **Code of Professional Responsibility for Arbitrators of Labor Management Disputes** to ensure fairness, integrity, and confidentiality.

Considerations when Using AI Tools

1. Accuracy and Reliability of Information:

- AI tools provide valuable assistance but occasionally generate incomplete or inaccurate information. Arbitrators should apply their expertise to critically evaluate and verify outputs and to ensure that information aligns with the standards of accuracy and reliability required in arbitration.
- When using AI tools, arbitrators should cross-reference outputs against primary sources to ensure accuracy.

2. Maintaining Fairness and Due Process:

- **Canon I** of the Code of Ethics¹ requires that arbitrators ensure their use of AI tools enhances the arbitration process while maintaining the principles of fairness and due process. The thoughtful use of many tools can streamline workflows without compromising fairness.
- By understanding the utility and limitations of AI tools, arbitrators can make informed decisions about how best to incorporate them into their practice.

3. Independent Decision-Making:

- **Canon V** requires arbitrators to retain complete control over decision-making. Arbitrators should use AI tools that support—not replace—the arbitrator's judgment and expertise.
- When using AI tools for legal research or evidence analysis, arbitrators should ensure their decisions reflect their independent evaluation and reasoning.

4. Transparency with Parties:

- Arbitrators should disclose their use of generative AI tools when such use materially impacts the arbitration process or the reasoning underlying their decisions.

¹The cited canons are from the Code of Ethics for Arbitrators in Commercial Disputes. The Code of Professional Responsibility for Arbitrators of Labor Management has similar provisions.



Confidentiality and Data Protection

1. Safeguarding Confidential Information:

- Arbitrators must ensure their use of AI tools complies with their confidentiality obligations under Canon VI and applicable arbitration rules. Arbitrators should always use secure tools and platforms to handle sensitive case information.
- Arbitrators should not put confidential information, such as party names or case specifics, into tools that do not guarantee data protection.

2. Selecting the Right AI Tools:

- By choosing AI tools with robust data security and confidentiality measures, arbitrators can confidently integrate these technologies into their workflows.

Competence and Professionalism

Arbitrators are encouraged to stay informed about AI advancements and their practical applications. Many AI tools are intuitive and accessible, enabling easy incorporation into a practice. Developing proficiency with AI tools reflects an arbitrator's commitment to professionalism and continuous improvement.

Conclusion

AI tools can empower arbitrators to work more efficiently and effectively, allowing them to focus on delivering fair and well-reasoned decisions. No technology is a replacement for an arbitrator's expertise; it may be an enhancement, enabling greater precision and efficiency. By integrating AI tools thoughtfully and carefully, arbitrators can harness the tools' full potential while maintaining the highest standards of professionalism and ethics.

Exhibit 2



AAAI Standards for AI in ADR

Introduction

The American Arbitration Association-International Centre for Dispute Resolution® (AAA-ICDR®) sets the standards for fair, efficient, and cost-effective alternative dispute resolution (ADR). We pioneer and refine procedural rules informed by our extensive experience administering millions of cases. Our processes work and have kept up with the times for a century. Parties, advocates, and neutrals place their trust in us and rely on our expert staff every day.

Artificial Intelligence (AI) is fundamental to the next century of ADR, and ADR processes must evolve. We embraced this new technology early. We are fluent in AI. We will continue to build it into our processes.

The AAA-ICDR is also a mission-driven nonprofit. We want all users of ADR services to benefit from AI, and we want to lead the field in responsible and ethical use of AI. To those ends, we encourage advocates, neutrals, and other ADR administrators to apply these AAAI Standards.

AI in ADR

The AAA-ICDR is an ADR administrator. Administrators maintain technology platforms and case management processes, and AI has an important and growing role in that. Staff use AI in their own work and uphold the integrity of AI tools deployed for use by parties, advocates, and neutrals.

Neutrals use AI tools to streamline tasks and do quality work. In the spirit of ADR, they should work toward fair, cost-effective, and efficient resolution of disputes while upholding ethical standards. They also have a duty to remain impartial and exercise independent judgment.

Advocates also use AI tools to streamline tasks and do quality work. An ADR administrator does not have a formal role to play in advising lawyers about efficient client service but we encourage advocates to be leaders in incorporating AI for better, faster, and cheaper outcomes.

The AAAI Standards provide a comprehensive framework for responsible AI use in ADR. They address Ethical and Human-Centric Values, Privacy and Security, Accuracy and Reliability, Explainability and Transparency, Accountability, and Adaptability.

Standard 1: Ethical and Human-Centric Values

ADR Administrators: Design AI systems that align with ethical standards, support fair and unbiased outcomes that respect the rights of all participants, and safeguard equity in dispute resolution. Design AI systems with human oversight that are imbued with appropriate values, mitigate bias, and preserve control over critical decisions.



Neutrals: Any existing ethical obligations still apply when using AI. Preserve human perspective and judgment when using AI. Critically evaluate how parties and advocates use AI. Avoid overreliance on technology or outputs provided by one party or one vendor. Rely instead on direct review of evidence and reasoned deliberation in reaching conclusions.

Advocates: Any existing ethical obligations still apply when using AI. Validate alignment between AI outputs and recognized legal principles, ensuring independent human judgment controls. Cooperate with neutrals on how best to leverage AI in presenting a case.

Standard 2: Privacy and Security

ADR Administrators: Manage data responsibly with strict attention to privacy while adhering to data governance standards. Foster trust in the dispute resolution process by protecting data confidentiality, integrity, and system reliability while defending against external threats and ensuring operational resilience.

Neutrals: Confirm that any external AI tools used—whether for document translation, analytics, scheduling, or other purposes—meet relevant security standards, preventing leakage of confidential data.

Advocates: If external AI tools are used, confirm that they meet relevant security standards. Anonymize or otherwise protect case data to preserve party confidentiality and ensure compliance with privacy obligations.

Standard 3: Accuracy and Reliability

ADR Administrators: AI applications should provide reliable outputs, maintain consistency under varied conditions, and communicate any limitations or the need for human oversight at key points in the process. AI applications should adhere to industry standards for uptime and response time to human inputs.

Neutrals and Advocates: Outputs from AI tools should be reviewed to verify accuracy against trusted source materials, including evidence, party filings, and legal authorities.

Standard 4: Explainability and Transparency

ADR Administrators: AI systems should allow staff and participants in the process to understand and trust their outputs. Clearly communicate the choices made in developing AI applications to enhance delivery of services.

Neutrals: Weigh the probative value of AI outputs in submissions by parties and examine them for misstatements, bias, or dubious references. When in doubt, seek clarification. Communicate to case participants the ways in which AI informs the neutral's process.

Advocates: Examine AI outputs for misstatements, biased outputs, or dubious references. Explain how AI was used, and correct any errors promptly.



Standard 5: Accountability

ADR Administrators: Establish human ownership over AI across processes. Carefully select and continuously assess third-party vendors to ensure reliable performance and alignment with values.

Neutrals: Maintain a working knowledge of AI capabilities. Avoid shortcuts that could compromise quality. Understand risks, benefits, and ethical considerations for AI tools. And ensure automated document summaries or data analysis never overshadow firsthand examination of evidence and arguments.

Advocates: Exercise professional judgment when leveraging AI tools for analysis, research, scheduling, or other purposes. Confirm outputs through human scrutiny informed by professional expertise.

Standard 6: Adaptability

ADR Administrators: Establish and apply standards for monitoring and evaluation of AI systems. Commit to staff training, research, and feedback loops that maintain a culture of innovation and AI literacy.

Neutrals: Continually update knowledge about AI technologies. Incorporate AI-assisted scheduling, translation, evidence organization, and other tools if they enhance clarity and minimize delays, but evaluate every dispute according to its unique context.

Advocates: Continually update knowledge about AI technologies, and seek to apply AI in a manner that supports the goals of ADR. Examples include: streamlining discovery, expediting legal research, and delegating certain administrative tasks.

Exhibit 3

The logo for the New York City Bar, featuring the text "NEW YORK CITY BAR" in a bold, serif font, centered between two horizontal blue bars. The top bar is slightly wider than the bottom bar.

**NEW YORK
CITY BAR**

**PRESIDENTIAL TASK FORCE ON
ARTIFICIAL INTELLIGENCE AND DIGITAL TECHNOLOGIES**

**CURRENT ETHICS OPINIONS AND REPORTS
RELATED TO GENERATIVE ARTIFICIAL INTELLIGENCE**

MAY 2025

THE ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK
42 West 44th Street, New York, NY 10036
212.382.6600 | www.nycbar.org

TABLE OF CONTENTS

	<u>Page</u>
I. INTRODUCTION	1
II. AMERICAN BAR ASSOCIATION OPINION 512	2
III. CALIFORNIA RECOMMENDATIONS ON USE OF GENERATIVE AI.....	3
IV. WASHINGTON, D.C. OPINION 388	4
V. FLORIDA OPINION 24-1	6
VI. KENTUCKY OPINION E-457	7
VII. MASSACHUSETTS ATTORNEY GENERAL ADVISORY ON THE APPLICATION OF THE COMMONWEALTH’S CONSUMER PROTECTION, CIVIL RIGHTS, AND DATA PRIVACY LAWS TO ARTIFICIAL INTELLIGENCE.....	8
VIII. MICHIGAN JUDICIAL OPINION 155.....	10
IX. NORTH CAROLINA 2024 OPINION 1.....	11
X. NEW YORK.....	12
A. New York City Bar Association Opinion 2024-05 (August 2024) addresses the following topics:.....	12
B. Report and Recommendations of the New York State Bar Association Task Force on Artificial Intelligence.	14
C. New York State Attorney General AI Symposium Report (August 2024)	15
XI. PENNSYLVANIA: JOINT FORMAL OPINION 2024-200: ETHICAL ISSUES REGARDING THE USE OF ARTIFICIAL INTELLIGENCE.....	18
XII. MINNESOTA AI WORKING GROUP FINAL REPORT & RECOMMENDATION ON IMPLICATIONS OF LARGE LANGUAGE MODELS (LLMS) ON UNAUTHORIZED PRACTICE OF LAW (UPL) AND ACCESS TO JUSTICE.....	20
XIII. MISSOURI INFORMAL OPINION NUMBER: 2024-11.....	23
XIV. WEST VIRGINIA JUDICIAL INVESTIGATION COMMISSION	25
A. JIC Advisory Opinion 2023-22 (October 13, 2023).	25
B. Legal ethics opinion 24-01	26

CURRENT ETHICS OPINIONS AND REPORTS RELATED TO GENERATIVE ARTIFICIAL INTELLIGENCE

I. INTRODUCTION

Jurisdictions across the country have been working to address the unique issues and challenges to the legal profession posed by Generative Artificial Intelligence (GAI). In these summaries, the New York City Bar Association Presidential Task Force on Artificial Intelligence and Digital Technologies (Task Force)¹ highlights key requirements from American Bar Association (ABA) ethics opinions, formal ethics opinions from California, Washington, D.C., Florida, Kentucky, Michigan, North Carolina, New York (i.e., the New York City Bar Association and the New York State Bar Association), Pennsylvania (e.g., the Philadelphia Bar Association), Minnesota, Missouri, West Virginia, and the Massachusetts Attorney General and the New York Attorney General. These summaries of ethics opinions, bar association reports, and other resources discuss how the legal profession is currently using AI and may be relevant to practitioners seeking to learn more about GAI and legal ethics.²

While it is possible to draw conclusions from some of the specific summaries, overall, the summaries reflect the following general trends:

Lawyers' use of generative artificial intelligence in connection with the practice of law triggers numerous ethical duties that may arise depending on the nature of the use. The ethical duties include: (i) maintaining client confidence, (ii) understanding and knowing how to use

¹ The Task Force is composed of approximately 250 representatives of more than 50 committees, councils, and other task forces of the City Bar and adjunct members, including lawyers, academics, trade association representatives, consultants, technologists, and others. *See* Task Force Dashboard at <https://www.nycbar.org/committees/task-force-on-digital-technologies/> and <https://www.nycbar.org/wp-content/uploads/2025/05/PTFAIDT-Leadership-250430.pdf> (All websites last accessed on May 28, 2025).

² The summaries were drafted by the Task Force Subcommittee on Artificial Intelligence and Legal Ethics (AI and Legal Ethics Subcommittee) and approved by the Task Force Subcommittee on Articles and Blogs. The AI and Legal Ethics Subcommittee's primary mission includes analyzing and reporting on the Rules of Professional Conduct; bar association ethics opinions; case law; and the laws and regulations governing the unauthorized practice of law. The current members of the AI and Legal Ethics Subcommittee include (1) Matthew K. Corbin, Managing Director at Aon; (2) Margaret Darin Hagan, Executive Director of the Legal Design Lab and Lecturer at Stanford Law School and the Stanford Institute of Design; (3) Subcommittee Co-Chair David Keyko, Partner at Pillsbury Winthrop Shaw Pittman LLP and City Bar Professional Ethics Committee Chair; (4) Subcommittee Co-Chair Tyler Maulsby, Immediate Past President of the Association of Professional Responsibility Lawyers and Partner at Frankfurt Kurnit Klein & Selz PC; (5) Lucian T. Pera, Partner at Adams & Reese LLP; (6) Alison Roffi, Deputy General Counsel at Orrick, Herrington & Sutcliffe LLP; (7) Roy D. Simon, former Professor and Director at Hofstra Institute for the Study of Legal Ethics, Hofstra University School of Law; and (8) Kaylin L. Whittingham, Managing Attorney at Whittingham Law. The Task Force Subcommittee on Articles and Blogs serves as a peer review for Task Force writings, especially articles, blogs, reports, statements, and other writings. Current subcommittee members include (1) Angelena Bradfield, Head of Policy and Government Affairs at Financial Technology Association; (2) Robert Mahari, Harvard Law School and MIT Media Lab; (3) Lorraine McGowen, Task Force Co-Chair and Partner at Orrick, Herrington & Sutcliffe LLP; (4) Robert Schwinger, Partner at Norton Rose Fulbright US LLP; (5) Edwin Smith, Massachusetts Uniform Law Commissioner and Partner at Morgan, Lewis & Bockius LLP; (6) Tiffany Smith, Partner at WilmerHale; and (7) Jerome Walker, Task Force Co-Chair and Partner at Jerome Walker PLLC.

generative artificial intelligence, (iii) verifying the output created by generative artificial intelligence, (iv) supervising lawyers and nonlawyers using generative artificial intelligence, (v) being candid to the court and client when using generative artificial intelligence, and (vi) not charging a client for the time saved by the use of artificial intelligence, among other things.

An exception to the similar reading of how the Rules of Professional Conduct apply to the use of generative artificial intelligence is the conclusion in the West Virginia opinion that an attorney should receive client permission to use generative artificial intelligence before using it. The other reports conclude that client disclosure is not needed provided the attorney is otherwise complying with the attorney's ethical responsibilities when using generative artificial intelligence.

Further, there has not been a call to amend the Rules of Professional Conduct or the comments to the Rules specifically to address generative artificial intelligence; rather, the current Rules are generally considered to be sufficiently robust to address the use of generative artificial intelligence. None of the below sources suggests that an attorney either may not or must use generative artificial intelligence to fulfill the attorney's duty of competence, but several note that a time in the future may come when an attorney must understand and use generative artificial intelligence to fulfill the attorney's duty of competence.

II. AMERICAN BAR ASSOCIATION OPINION 512

*American Bar Association (ABA) Standing Committee on Ethics and Professional Responsibility Formal Opinion 512 (July 29, 2024) (ABA Formal Op. 512)*³

ABA Formal Op. 512 provides an overview of the ethical issues associated with lawyers using generative artificial intelligence (GAI). The Opinion covers four key topics:

1. Competence (Model Rule 1.1):

- Lawyers must provide competent representation, which includes understanding the benefits and risks associated with using GAI tools. Competence involves exercising the necessary legal knowledge, skill, thoroughness, and preparation.

2. Confidentiality (Model Rule 1.6):

- Lawyers must protect client information when using GAI tools. Confidentiality applies to all information related to the representation of a client, regardless of its source, unless the client gives informed consent.

³ Accessible at https://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/ethics-opinions/aba-formal-opinion-512.pdf.

3. **Communication (Model Rule 1.4):**

- Lawyers should reasonably consult with clients about the means to achieve their objectives, including the use of GAI tools. This includes advising clients promptly whenever there is important information to share.

4. **Reasonableness of Fees (Model Rule 1.5):**

- Lawyers' fees must be reasonable, including time spent using GAI tools and reviewing their outputs. In addition, lawyers should explain the basis for any charges related to GAI tools, preferably in writing.
- The Opinion further concluded that fees should reflect actual time spent on the case, even if GAI tools allow for more efficient work. In addition, the Opinion cautioned that lawyers should not pass on the cost of learning to use GAI tools unless the client specifically requests it.

The opinion also reasoned that lawyers must be transparent with clients about the use of GAI tools and any associated costs and acknowledged that the reasonableness of fees and ethical considerations may evolve as GAI tools become more integrated into legal practice.

III. CALIFORNIA RECOMMENDATIONS ON USE OF GENERATIVE AI

The State Bar of California's Standing Committee on Professional Responsibility and Conduct issued a paper titled *Practical Guidance for the Use of Generative Artificial Intelligence (GAI) in the Practice of Law*.⁴ The guidance addressed the following issues:

1. **Competence:**

- GAI can be used in various aspects of legal practice, regardless of firm size or practice area. However, its use must conform to professional responsibility obligations. Lawyers must understand the risks and benefits of GAI tools, including issues related to data security, confidentiality, and the reliability of AI-generated outputs.
- Lawyers must maintain competence by staying informed about technological advancements and understanding how to use GAI tools effectively and ethically. Lawyers may also have a duty to disclose to the tribunal the use of GAI tools.

⁴ California State Bar, “Practical Guidance for the Use of Generative Artificial Intelligence in the Practice of Law” (Nov. 16, 2023), accessible at <https://www.calbar.ca.gov/Portals/0/documents/ethics/Generative-AI-Practical-Guidance.pdf>.

- Lawyers cannot use GAI tools in a manner that would violate California law or court rules.
 - Lawyers have a duty to supervise nonlawyers and other lawyers in the use of GAI.
2. **Confidentiality:**
 - Lawyers must ensure that client information remains confidential when using GAI tools. This includes anonymizing client data and consulting with IT professionals to ensure adequate security measures are in place.
 3. **Communication:**
 - Lawyers should communicate with clients about the use of GAI tools, including how these tools will be used in their case and any associated risks.
 4. **Reasonableness of Fees:**
 - Lawyers must ensure that billing for GAI tools is transparent and reflects the actual value provided to the client. Overcharging or adding surcharges for the use of GAI tools is discouraged.
 5. **Prohibition on Discrimination:**
 - Lawyers cannot use GAI in a way that constitutes unlawful discrimination or harassment in violation of the California Rules of Professional Conduct or other law.

IV. WASHINGTON, D.C. OPINION 388

DC Bar Ethics Opinion 388⁵ was issued in April 2024 and addressed the following topics:

1. **Competence:**
 - Lawyers must understand the benefits and risks of using GAI tools to ensure they provide competent representation. This includes being aware of the limitations and potential inaccuracies of GAI.

⁵ D.C. Bar Ethics Op. 388 (2024), accessible at <https://www.dcbbar.org/for-lawyers/legal-ethics/ethics-opinions-210-present/ethics-opinion-388>.

- The use of GAI does not change the fundamental ethical obligations of lawyers. They must still adhere to the rules of professional conduct, including competence, confidentiality, and communication.

2. **Confidentiality:**

- Lawyers must protect client information when using GAI tools. This involves ensuring that any data shared with GAI tools is secure and that client confidentiality is maintained.
- With respect to confidentiality, the Opinion advised lawyers to ask two questions:
 1. Will information I provide to the GAI be visible to the GAI provider or other strangers to the attorney-client relationship?
 2. Will my interactions with the GAI affect answers that later users of the GAI will get in a way that could reveal information I provided to the GAI?

3. **Communication:**

- Lawyers should communicate with clients about the use of GAI tools, including the potential risks and benefits as well as whether it will have any impact on the lawyer's fee. This ensures that clients are informed about how their information is being used and the role of GAI in their case.

4. **Reliability:**

- Lawyers should be cautious about the reliability of GAI outputs. GAI tools can sometimes produce inaccurate or fabricated information, known as "hallucinations." Lawyers must verify the accuracy of GAI-generated content before relying on it in legal matters. This requirement also triggers a lawyer's obligation to ensure that any statement in court filings that may have been prepared with the assistance of GAI is true and accurate.

5. **Interactions:**

- In certain circumstances, the opinion observed, lawyers may be obligated to retain certain interactions with GAI and provide those interactions to the client as part of the client's file.

V. FLORIDA OPINION 24-1

Florida Bar Advisory Opinion 2024-1⁶ addresses the following issues:

1. Confidentiality:

- Lawyers must protect the confidentiality of client information when using generative AI. This involves researching the AI program's policies on data retention, data sharing, and self-learning. In addition, absent client consent, a lawyer is not permitted to disclose client confidential information when using GAI unless such disclosure is impliedly authorized.

2. Competence:

- Lawyers are responsible for their work product and professional judgment. They must develop policies and practices to verify that the use of generative AI is consistent with their ethical obligations.

3. Billing Practices:

- The use of generative AI does not permit lawyers to engage in improper billing practices, such as double-billing. In an hourly billing matter, the lawyer must charge only for the time spent and any fees must be reasonable.

4. Advertising:

- Generative AI chatbots that communicate with clients or third parties must comply with restrictions on lawyer advertising. They must include a disclaimer indicating that the chatbot is an AI program and not a lawyer or employee of the law firm.

5. Technological Competence:

- Lawyers should maintain technological competence and educate themselves regarding the risks and benefits of new technology.

⁶ Florida Bar Comm. on Ethics and Prof'l Responsibility, Formal Op. 24-1 (2024), accessible at <https://www.floridabar.org/etopinions/opinion-24-1/>.

VI. KENTUCKY OPINION E-457

Kentucky Bar Association Opinion KBA E-457⁷ covers the following topics:

1. Confidentiality:

- Attorneys must safeguard confidential client information when using AI. This includes ensuring that AI tools comply with confidentiality requirements.

2. Communication:

- The opinion reasoned that a lawyer may have a duty to discuss the use of GAI with clients as part of the lawyer's duty of communication. The level of disclosure will depend on the circumstances of the representation but, in general, the lawyer has a duty to "provide the client with sufficient information to participate intelligently in decisions concerning the means by which the client's objectives are to be pursued." This may include discussing GAI options with the client, especially if the client's confidential information will be shared with a GAI tool.

3. Fees:

- The Opinion cautioned that not all costs associated with GAI may be passed on to the client. For example, costs incurred in learning about AI, in maintaining AI provided services, and keeping up to date with changes in its use, should be considered part of the lawyer's overhead and not recoverable from the client. In addition, lawyers charging on an hourly basis cannot submit inflated bills for hours not actually spent on their case and cost savings should be passed on to the client. Although lawyers may request that their client reimburse them for the costs incurred in using GAI, the lawyer must explain the expected cost and obtain the client's agreement in advance to reimburse the lawyer for the expense.

4. Compliance with Court Rules:

- Attorneys using AI must review and comply with relevant court rules regarding the use of AI in legal practice, including any rules regarding disclosure of the use of GAI to courts.

⁷ Kentucky Bar Ethics Op. KBA E-457 (2024), accessible at [https://cdn.ymaws.com/www.kybar.org/resource/resmgr/ethics_opinions_\(part_2\)/kbae457artificialintelligenc.pdf](https://cdn.ymaws.com/www.kybar.org/resource/resmgr/ethics_opinions_(part_2)/kbae457artificialintelligenc.pdf).

5. **Ethical Duty to Stay Informed:**

- Attorneys have an ethical duty to stay informed about the use of AI in legal practice as part of the lawyer’s duty of competence to stay abreast of technological developments in the profession. This includes understanding how AI works and the potential benefits and risks associated with its use.

6. **Supervision:**

- Attorneys serving as partners or managers in law firms that use AI have a duty to supervise the use of AI to ensure it complies with ethical standards. The level of supervision will depend on the experience of the lawyers and the tasks being performed by GAI, but a lawyer remains ultimately responsible for any work product generated using GAI.

VII. MASSACHUSETTS ATTORNEY GENERAL ADVISORY ON THE APPLICATION OF THE COMMONWEALTH’S CONSUMER PROTECTION, CIVIL RIGHTS, AND DATA PRIVACY LAWS TO ARTIFICIAL INTELLIGENCE

Four-page advisory guidance (including footnotes)⁸

POINTS OF NOTE:

The Attorney General’s Office (“AGO”) does not aim this guidance specifically at lawyers and never cites the Rules of Professional Conduct or statutes or court rules specifically governing lawyers. Rather, the AGO “issues this Advisory to provide guidance to developers, suppliers, and users of artificial intelligence and algorithmic decision-making systems (collectively, ‘AI’) about their respective obligations under two laws – the Massachusetts Consumer Protection Act and the Massachusetts Anti-Discrimination Law, plus implementing regulations for both laws.

1. **The Promise and Risk of Artificial Intelligence:**

The Advisory begins with a section headed “The Promise and Risks of Artificial Intelligence,” which discusses potential harm to the public. For example, the Advisory says:

- Developers and suppliers promise that their AI systems and technology are accurate, fair, effective, and appropriate for given use cases. At the same time, developers and suppliers also claim that AI is a “black box,” meaning that they do not know exactly how AI performs various processes or generates its results. They continue to market and sell AI

⁸ The Massachusetts Office of the Attorney General, “Advisory on the Application of the Commonwealth’s Consumer Protection, Civil Rights, and Data Privacy Laws to Artificial Intelligence” (April 2024), accessible at <https://www.mass.gov/doc/ago-ai-advisory-41624/download>.

systems knowing these shortfalls and that they may cause harm to consumers. There are many instances where AI systems fall short of suppliers' promises. AI has been found to generate false information or results that are biased or discriminatory. ...

- Additionally, AI systems are being deployed in ways that can deceive consumers and the public as in the case of chatbots used to perpetrate scams or to surreptitiously collect sensitive personal data from consumers, deepfakes, and voice cloning used for the purpose of deceiving or misleading a listener about the speaker's true identity.

2. **The Laws and Regulations:**

The section headed "The Laws and Regulations" starts with detailed treatment of consumer protection laws, including six bullet points on "unfair or deceptive" practices. This section is of little interest to law firms, which tend to be sophisticated consumers accustomed to performing due diligence when purchasing products – but lawyers who advertise via audio and video media should note that the Advisory says it is a deceptive practice to "[m]isrepresent audio or video content of a person for the purpose of deceiving another to engage in a business transaction or supply personal information as if to a trusted business partner as in the case of deepfakes, voice cloning, or chatbots used to engage in fraud."

The Advisory ends by discussing anti-discrimination laws and privacy laws. This section is relevant to law firms that possess personal information of clients or employees or that use AI to assist in hiring or evaluating employees. The Advisory says:

- AI systems must also comply with the Commonwealth's Standards for the Protection of Personal Information This means that AI developers, suppliers, and users must take the necessary and appropriate steps to safeguard personal information used by those systems and are expected to comply with the breach notification requirements set forth in the statute.
- Furthermore, the Commonwealth's Anti-Discrimination Law prohibits developers, suppliers, and users of AI systems from deploying technology that discriminates against residents on the basis of a legally protected characteristic. This includes algorithmic decision-making that relies on or uses discriminatory inputs and that produces discriminatory results, such as those that have the purpose or effect of disfavoring or disadvantaging a person or group of people based on a legally protected characteristic. [Citations omitted.]

In sum, the Massachusetts AGO Advisory is useful for raising the possible impact that certain substantive laws governing consumer protection, privacy, and discrimination may have on law firms that use GAI, but the Advisory is too general to be of real value to lawyers and offers no guidance at all under the Rules of Professional Conduct.

VIII. MICHIGAN JUDICIAL OPINION 155

*Michigan JI-155 (October 27, 2023)*⁹

1. **Judicial Ethical Obligation:**

- The Opinion notes that “Judicial officers, like lawyers, have an ethical obligation to maintain competence with and further educate themselves on advancing technology, including but not limited to artificial intelligence (AI).” According to the Opinion MPRC 1.1 applies not only to lawyers but to judges as well.

2. **Judicial Code of Conduct Highlighted:**

- Canon 2. A judge should avoid impropriety and the appearance of impropriety in all activities. “Canon 2(B) and (C) could be triggered, for example, if a judicial officer uses an AI solution that is considered partial or unfair and may influence the judicial officer’s judgment.”
- Canon 3. A judge should perform the duties of office impartially and diligently. “The judicial duties of a judge take precedence over all other activities.”
- “[a] judge should be faithful to the law and maintain professional competence in it.”

3. **Disclosure of Usage:**

- The Opinion notes that several courts have issued orders regarding the use of AI, with some requiring that attorneys notify the court of the use of AI and confirm accuracy of the work done with AI. “Other judges have gone further and required that attorneys certify that confidential information was not disseminated to an AI tool and that lawyers outline each section that uses generative AI.”

4. **Takeaways:**

- “AI does not understand the world as humans do, and unless instructed otherwise, its results may reflect an ignorance of norms or case law precedent.”

⁹ Michigan Bar Judicial Op. 155 (2023), accessible at https://www.michbar.org/opinions/ethics/numbered_opinions/JI-155.

- “What all experts agree is that artificial intelligence is not equivalent to human intelligence –and especially the intelligence that we expect from judges.”
- “Judges must not only understand the legal, regulatory, ethical, and access challenges associated with AI, but they will need to continually evaluate how they or parties before them are using AI technology tools in their own docket.”
- “Judicial use of AI must distinguish between using an AI application to decide and using AI to inform a decision.”

5. **Conclusion:**

- Judges have an ethical obligation to understand technology including AI and ensure that AI tools are properly used and within the confines of the law and court rules. They must “maintain technological competence and understand AI’s ethical implications to ensure efficiency and quality of justice.”

IX. NORTH CAROLINA 2024 OPINION 1

1. **Competence and Confidentiality:**

- NC 2024 Opinion 1¹⁰ concluded that a lawyer is ethically permitted to use GAI provided the lawyer uses any AI program, tool, or resource competently, securely to protect client confidentiality, and with proper supervision when relying upon or implementing the AI’s work product in the provision of legal services. With respect to the duty of competence, this includes verifying the accuracy and reliability of AI-generated work products. In addition, the duty of confidentiality involves ensuring that AI tools comply with confidentiality requirements and that any data shared with AI systems is secure.

2. **Supervision:**

- Proper supervision is required when relying on AI-generated work products. Lawyers must review and approve AI outputs before using them in legal services to ensure they meet professional standards. In addition, a lawyer’s duty of confidentiality and supervision remains the same regardless of whether the lawyer uses an offsite GAI program managed by a third party.

¹⁰ North Carolina Bar Ethics Op. 2024-1 (2024), accessible at <https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/2024-formal-ethics-opinion-1/>.

3. **Accuracy:**

- Lawyers must also ensure that any statements submitted to a court, even if prepared using GAI, are truthful and accurate and the lawyer maintains ultimate responsibility for those statements.

4. **Obligation of Disclosure:**

- Depending on the circumstances under which a lawyer is using GAI in the representation of a client, the lawyer may have an obligation to disclose the use of GAI and whether it is outsourced. For example, “if a lawyer delegates substantive tasks in furtherance of the representation to an AI tool, the lawyer’s **use** of the tool is akin to outsourcing legal work to a nonlawyer or other third-party resource or service, for which the client’s advanced informed consent is required.”

5. **Reasonableness of Fees:**

- Finally, any use of GAI must also comply with the rules regarding the reasonableness of fees and a lawyer cannot charge for time not actually spent, even if GAI permits the lawyer to accomplish a task faster than it would normally take without using GAI.

X. NEW YORK

A. New York City Bar Association Opinion 2024-05 (August 2024)¹¹ addresses the following topics:

1. **Duty of Competence:**

- Lawyers must understand how generative AI tools work and their limitations. This includes verifying the accuracy and reliability of AI-generated outputs.

2. **Confidentiality:**

- Lawyers must protect client confidentiality when using AI. This involves ensuring that AI tools comply with confidentiality requirements and that any data shared with AI systems is secure.

¹¹ N.Y.C. Bar Ethics Op. 2024-5 (2024), accessible at https://www.nycbar.org/wp-content/uploads/2024/08/20221329_GenerativeAILawPractice.pdf.

3. **Fee Arrangements:**
 - Lawyers must be transparent about any fees associated with the use of AI and ensure that these fees are reasonable.
4. **Avoiding Conflicts of Interest:**
 - Lawyers must ensure that the use of AI does not create conflicts of interest. This includes being aware of how AI tools handle data and whether they might inadvertently create conflicts.
5. **Supervision:**
 - Proper supervision is required when using AI-generated work products. Lawyers must review and approve AI outputs before using them in legal services to ensure they meet professional standards.
6. **Advertising and Solicitation:**
 - Lawyers must comply with rules governing advertising and solicitation when using AI tools. This includes ensuring that AI-generated content used in marketing is accurate and not misleading.
7. **Compliance with Law:**
 - Lawyers must ensure that their use of AI complies with all applicable laws and regulations.
8. **Duty to Consult with Clients:**
 - Lawyers should consult with clients about the use of AI in their cases, especially if it impacts the legal strategy or costs.
9. **Duty of Candor to Tribunals:**
 - Lawyers must ensure that AI-generated content used in court filings or communications with tribunals is accurate and truthful.
10. **Prohibition on Non-Meritorious Claims:**
 - Lawyers must ensure that AI tools are not used to generate frivolous or non-meritorious claims.
11. **Prohibition on Discrimination:**
 - Lawyers must ensure that the use of AI does not result in discriminatory practices.

B. Report and Recommendations of the New York State Bar Association Task Force on Artificial Intelligence.¹²

In April 2024, the New York State Bar Association Task Force on Artificial Intelligence published a report and recommendations to be presented to the New York State Bar Association House of Delegates which examined “the legal, social and ethical impact of artificial intelligence (AI) and generative AI on the legal profession.”

The report addressed the following topics:

1. Competence:

- The report highlights the need for more education and training for attorneys and judges to handle AI technology properly.

2. Attorney-Client Privilege and Confidentiality:

- The report emphasizes the importance of ensuring that AI does not compromise attorney-client privilege. The report cautions that lawyers must also make reasonable efforts to prevent inadvertent or unauthorized access to or disclosure of client confidential information.

3. History of AI and Generative AI:

- The report provided a history of the evolution of AI and GAI over the years and the types of AI that has been developed. The report also covered the relative benefits and risks of AI and GAI.

4. Duty of Candor and AI Hallucinations:

- The report addresses ethical concerns, including AI's tendency to "hallucinate" or generate false information, which can lead to serious consequences in legal documents.

5. Additional Ethical Concerns:

- The report also highlights additional ethical issues for lawyers when using AI and GAI, including the duty of supervision, and potential unauthorized practice of law concerns. The report also includes a sample engagement letter provision that lawyers can consider including in their engagement letters with clients.

¹² New York State Bar Association, “Report and Recommendations of the New York State Bar Association Task Force on Artificial Intelligence” (April 2024), accessible at <https://fingfx.thomsonreuters.com/gfx/legaldocs/znpnkgbowvl/2024-April-Report-and-Recommendations-of-the-Task-Force-on-Artificial-Intelligence.pdf>.

6. **Legislative Efforts:**

- The report suggests that legislation may be necessary to govern the use of AI in the legal field.

C. **New York State Attorney General AI Symposium Report (August 2024)**¹³

The New York State Attorney General’s Office (OAG) convened the symposium “The Next Decade of Generative AI: Fostering Opportunities While Regulating Risks” to explore the opportunities and risks of artificial intelligence (AI), particularly generative AI. The symposium covered AI’s potential in healthcare, public information, administrative decision-making, and regulation, while also addressing the dangers of misinformation, bias, privacy violations, and market concentration.

Key Topics and Conclusions

1. **AI’s Benefits and Risks in Key Sectors**

1. **Healthcare:**

- **Benefits:** AI is revolutionizing healthcare through early disease detection, precision medicine, administrative automation, and patient monitoring. Examples include AI-assisted mammogram analysis that predicts breast cancer risk up to five years in advance.
- **Risks:** Privacy concerns arise with AI continuously monitoring hospital rooms and homes. Bias in training data can exclude minority groups, and AI transcription tools often fail to accommodate diverse languages and accents. Human oversight remains essential.

2. **Misinformation and Deepfakes:**

- AI can enhance public access to information through chatbots, automated translations, and content generation.
- However, hallucinations (false AI-generated conclusions) and deepfake technology are major risks, particularly in political campaigns.
- Real-world examples: AI-generated robocalls impersonating politicians, doctored images of public figures, and fake news events like the AI-fabricated Pentagon explosion that briefly disrupted markets.

¹³ Office of the New York State Attorney General, “Symposium Report on the Next Decade of Artificial Intelligence” (August 5, 2024), accessible at <https://ag.ny.gov/sites/default/files/reports/oag-aisymposiumreport.pdf>.

3. **Automated Decision-Making & Public Services:**

- AI can improve public services, such as tax calculations, benefits applications, and legal form assistance.
- However, algorithmic bias in hiring and eligibility screening remains a major concern, as AI often reinforces existing discrimination rather than eliminating it.
- The lack of transparency in AI decision-making makes it difficult to assess fairness or challenge biased outcomes.

2. **Data Privacy and Market Concerns**

- AI's reliance on vast training datasets raises copyright, bias, and competition issues.
- The use of copyrighted material without compensation is being actively litigated.
- AI companies that control vast datasets (e.g., through web scraping and exclusive partnerships) have a competitive advantage, creating concerns about monopolization in the AI industry.
- Synthetic data (AI-generated training data) can reinforce AI errors, leading to model collapse and unreliable outputs.

3. **Proposed Strategies for Mitigating the Risks of AI**

1. **Public Education & Transparency:**

- AI literacy is crucial to help the public recognize misinformation, deepfakes, and biased decision-making.
- Some proposed transparency measures include:
 - Watermarks on AI-generated content.
 - Disclosures when interacting with AI systems.
 - Plain-language data policies to clarify how AI tools collect and use data.

2. **Auditing & Accountability:**

- AI tools must be audited to assess bias and safety, but standardized audit processes remain undefined.

- Some potential solutions include:
 - AI model transparency laws (like NYC’s Local Law 144 for hiring algorithms).
 - Certification programs for AI auditors.
 - External access for researchers to study AI models.

3. Consumer Protections:

- The White House’s AI Bill of Rights proposes safeguards for AI decision-making, including:
 - Consumer opt-outs from automated decision-making (ADMT).
 - Legal protections against AI-driven discrimination and privacy violations.
 - California and Colorado are adopting similar principles in state AI legislation.

4. Regulation and Oversight:

- Debate exists over whether AI should be governed by:
 1. A centralized federal AI agency (like the EU AI Act model).
 2. A sector-specific regulatory approach, where agencies (e.g., HHS for healthcare, FTC for consumer protection) oversee AI within their domains.
- The OAG is monitoring regulatory models to determine the best path forward for New York.

4. Future Developments & Legislative Considerations

- Since the symposium, New York has enacted the SAFE for Kids Act, regulating algorithmic harms in social media targeting children.
- Colorado’s AI Act (2024) introduced risk-based AI regulation, similar to the EU AI Act.
- The U.S. Senate’s AI policy roadmap proposes \$32 billion in AI investment and calls for federal AI legislation.

- The FTC, DOJ, and international regulators are working on AI antitrust and competition rules.

XI. PENNSYLVANIA: JOINT FORMAL OPINION 2024-200: ETHICAL ISSUES REGARDING THE USE OF ARTIFICIAL INTELLIGENCE

The Joint Formal Opinion 2024-200,¹⁴ issued by the Pennsylvania Bar Association Committee on Legal Ethics and Professional Responsibility and the Philadelphia Bar Association Professional Guidance Committee, explores the ethical implications of artificial intelligence (AI) in legal practice. It provides guidance on how lawyers should integrate AI while maintaining their ethical obligations under the Pennsylvania Rules of Professional Conduct. The opinion addresses the following topics and issues:

1. AI's Role in Legal Practice:

- AI is already transforming legal work by automating tasks such as legal research, document review, contract analysis, and predictive analytics. Generative AI, in particular, raises new ethical concerns because it not only analyzes but also generates content, requiring heightened vigilance from attorneys.

2. Ethical Obligations and AI Use:

1. Competence (Rule 1.1):

- Lawyers must be competent in AI use, understand its risks and benefits, and verify the accuracy of AI-generated outputs.

2. Confidentiality (Rule 1.6):

- Attorneys must safeguard client information and avoid inputting confidential data into AI systems that may not be secure.

3. Communication with Clients (Rule 1.4):

- Attorneys should inform clients if AI is used in their case and obtain consent when necessary.

¹⁴ Pennsylvania Bar Association Comm. on Legal Ethics and Prof'l Responsibility and Philadelphia Bar Association Prof'l Guidance Comm. Joint Formal Op. 2024-200 (2024), accessible at <https://www.pabar.org/Members/catalogs/Ethics%20Opinions/Formal/Joint%20Formal%20Opinion%202024-200.pdf>.

4. **Candor to the Tribunal (Rule 3.3):**
 - Lawyers must ensure AI-generated citations and case law are accurate, preventing misleading or false submissions.
 5. **Truthfulness and Honesty (Rule 8.4):**
 - AI should not be used in a way that leads to deceit, misrepresentation, or fraudulent conduct.
 6. **Avoiding Conflicts of Interest (Rules 1.7 & 1.9):**
 - AI tools must not inadvertently use data that creates conflicts between different clients.
 7. **Supervision (Rules 5.1 & 5.3):**
 - Lawyers must oversee AI tools as they would human staff to ensure compliance with ethical obligations.
 8. **Avoiding the Unauthorized Practice of Law (Rule 5.5):**
 - Lawyers should ensure AI does not operate as an independent provider of legal advice.
3. **Concerns About AI “Hallucinations” and Bias:**
 - AI-generated content may contain fabricated case law or incorrect information (“hallucinations”) and inherit biases from the data they are trained on. Several court cases highlight how attorneys have been sanctioned for submitting AI-generated filings containing fictitious citations and lawyers must be aware of their ethical obligations in this regard.
 4. **Judicial Responses to AI Misuse:**
 - Courts are implementing rules requiring attorneys to disclose whether they have used AI in legal filings. Some judges have imposed standing orders mandating verification of AI-generated citations.
 5. **Best Practices for Lawyers Using AI:**
 - Verify all AI-generated legal research and citations.
 - Use AI in a way that upholds ethical obligations, including accuracy, confidentiality, and transparency.

- Avoid relying on AI without independent legal analysis and verification.
- Ensure AI-related expenses are reasonable and properly disclosed to clients.
- Continue education on AI developments and ethical considerations.

XII. MINNESOTA AI WORKING GROUP FINAL REPORT & RECOMMENDATION ON IMPLICATIONS OF LARGE LANGUAGE MODELS (LLMs) ON UNAUTHORIZED PRACTICE OF LAW (UPL) AND ACCESS TO JUSTICE

The Minnesota State Bar Association (MSBA) AI Working Group released a report¹⁵ analyzing the legal and ethical implications of large language models (LLMs) like ChatGPT on the unauthorized practice of law (UPL) and access to justice. The report explores how AI might assist self-represented litigants (SRLs), impact legal ethics, and be regulated within the legal profession. The Working Group report addressed the following topics and issues:

1. AI's Potential and Ethical Challenges:

- LLMs have superhuman speed in reading, analyzing, and generating text, which makes them potentially transformative for legal practice.
- The main challenge is distinguishing between “legal information” and “legal advice.” Traditionally, providing “legal advice” is considered the practice of law, while providing “legal information” is not. While legal professionals have historically been the sole providers of legal advice, LLMs can now apply law to specific facts, blurring this distinction.
- AI poses risks related to confidentiality, competence, supervision, and potential bias but also offers significant benefits for legal efficiency and accessibility.

¹⁵ Minnesota State Bar, “Implications of Large Language Models (LLMs) on the Unauthorized Practice of Law (UPL) and Access to Justice (2024),” accessible at <https://s3.amazonaws.com/membercentralcdn/sitedocuments/msba/msba/0089/2561089.pdf?AWSAccessKeyId=AKIAIHKD6NT2OL2HNPMQ&Expires=1748465407&Signature=1CPePnyxeQf45cogyf9w8Mw5Y%3D&response-content-disposition=inline%3B%20filename%3D%22msba%2Dai%2Dworking%2Dgroup%2Dfinal%2Dreport%2Dand%2Drecommendations%2Epdf%22%3B%20filename%2A%3DUTF%2D8%27%27msba%252Dai%252Dworking%252Dgroup%252Dfinal%252Dreport%252Dand%252Drecommendations%252Epdf&response-content-type=application%2Fpdf>.

2. **Unauthorized Practice of Law (UPL) in Minnesota:**

- Minnesota’s UPL statute prohibits non-lawyers (including AI tools) from appearing in court, preparing legal documents, giving legal advice, or holding themselves out as attorneys.
- The statute aims to protect the public from unqualified legal service providers, but it lacks clear definitions for what constitutes “legal advice” versus “legal information.”
- Some exceptions exist for certain document preparation tasks, labor organizations, and self-represented litigants.

3. **First Amendment Challenges to UPL Laws:**

- There is growing legal precedent challenging UPL laws under First Amendment free speech protections.
- Key Cases:
 - *Upsolve v. James* (2022): A New York court ruled that restricting Upsolve (a nonprofit using non-lawyers to assist in legal forms) likely violates free speech.
 - *Nutt v. Ritter* (2023): A federal court in North Carolina found that barring a retired engineer from giving engineering advice violated free speech.
- The report suggests Minnesota’s UPL statute could face similar constitutional challenges.

4. **Regulation of AI in Legal Services:**

- Various global frameworks attempt to regulate AI, including:
 - The U.S. Executive Order on AI (2023) defines AI broadly and emphasizes the need for oversight.
 - The EU AI Act (2024) categorizes AI risks into four levels (Unacceptable, High, Low, and General-Purpose AI) and proposes different regulatory requirements based on risk level.
- The Working Group suggests a similar risk-based approach for AI in legal services.

5. **AI and Access to Justice:**

- The justice gap remains significant, with 92% of low-income Americans lacking access to sufficient legal help.
- Chief Justice John Roberts (2023 Year-End Report) noted that AI could help self-represented litigants by providing guidance on legal forms, processes, and basic legal information.
- The Working Group proposes an Access to Justice Legal Sandbox, allowing controlled experimentation with AI in legal services without UPL penalties.
- AI can assist with:
 - Forms completion for self-represented litigants.
 - Legal navigation assistance to help users understand processes.
 - Plain-language translations of complex legal terms.
 - Procedural guidance to ensure SRLs follow correct steps.

6. **Ethical Considerations for Lawyers Using AI:**

- Minnesota Rules of Professional Conduct require lawyers to:
 - Remain competent in evolving legal technologies.
 - Ensure confidentiality when using AI.
 - Verify AI-generated content to prevent errors.
 - Maintain professional independence and avoid conflicts of interest.
- The Working Group suggests educational programs for attorneys to better understand AI's legal and ethical implications.

7. **Future Recommendations**

- Establish a permanent MSBA AI Standing Committee to monitor AI developments.
- Encourage risk-based AI regulation, similar to the EU AI Act.

- Support ethical AI use while balancing UPL concerns with access to justice needs.
- Consider allowing AI-assisted legal services in low-risk scenarios, such as form completion, while maintaining human oversight.

XIII. MISSOURI INFORMAL OPINION NUMBER: 2024-11

SUMMARY: LAWYER’S USE OF GENERATIVE ARTIFICIAL INTELLIGENCE (AI)

Five-page informal ethics opinion¹⁶

POINTS OF NOTE:

The opinion addresses two questions: (1) May a lawyer ethically use GAI in law practice? and, if so, (2) What ethical issues should Lawyer consider in developing a policy to use this technology in Lawyer’s practice within Law Firm?

The answers are broad and basic. The opinion cites and quotes various Rules and Comments but does not wrestle with the issues. Below are key excerpts from the opinion.

1. Competence:

- First, Lawyer must consider the duty of competence in the appropriateness of use of generative AI. ... Lawyer should get education and training to ascertain what types of generative AI are and are not appropriate for use by Law Firm. Not all generative AI platforms and services are intended for use by lawyers, and Lawyer must understand the risks and benefits of implementing use of these technologies.

2. Confidentiality:

- Second, Lawyer must consider confidentiality. ... Lawyer needs to carefully assess any generative AI platforms or services that will be used by Law Firm to ensure confidentiality of client information is maintained. Lawyer should carefully consider such factors as the terms and conditions of using a generative AI platform or service to understand the security of the information being inputted, how that information is being used by the platform or service, and what data sources the platform or service is using to produce responses to prompts or queries.

¹⁶ Advisory Comm. of the Supreme Court of Missouri Legal Ethics Op. 2024-11 (2024), accessible at <https://mo-legal-ethics.org/informal-opinion/2024-11/>.

- Additionally, ... [i]n considering the use of a generative AI platform or service, lawyers are required to make reasonable efforts to safeguard client confidential information in accordance with Rule 4-1.6(c) and Lawyer should consider the guidance of Comment [15] as to how client confidential information will be safeguarded.
3. **Obligation:**
 - Third, to the extent court orders or court rules implicate the use of any generative AI platform or service, Lawyer should be mindful of the obligation pursuant to [Rule 3.4(c)] that prohibits knowingly disobeying an obligation under the rules of a tribunal.
 4. **Professional Independence and Judgement:**
 - Fourth, Lawyer and Law Firm must protect and maintain professional independence and independent professional judgment as required by Rule 4-5.4 and not rely solely on content created by a generative AI platform or service.
 5. **Responsibility and Accuracy:**
 - Fifth, if Lawyer or members of Law Firm use content produced with the assistance of a generative AI platform or service, just as any other time a lawyer is being assisted by a nonlawyer, there is a professional responsibility to verify the accuracy and content of the product in accordance with Rule 4-5.3.
 6. **Supervision:**
 - Sixth, in developing this generative AI use policy, Lawyer and Law Firm should also consider supervisory responsibilities in relation to [Rule 5.1], which requires managers and supervisors to ensure that other lawyers in the firm conform to the Rules of Professional Conduct.
 7. **Reasonableness of Fees:**
 - Seventh, Lawyer and Law Firm should consider how use of generative AI may impact the reasonableness of fees pursuant to Rule 4-1.5(a).
 8. **Implications:**
 - Finally, use of a product of generative AI can also implicate [Rule 3.3]. ... At this point, generative AI tools are not always accurate, thereby requiring the careful attention to competence and supervision as outlined above to avoid any false statement of material fact or law to a tribunal.

XIV. WEST VIRGINIA JUDICIAL INVESTIGATION COMMISSION

A. JIC Advisory Opinion 2023-22 (October 13, 2023)¹⁷

Five-page Opinion.

1. The Opinion sought to answer the following:

- Can a judge use AI to conduct legal research and to draft documents such as orders and opinions? Can a judge use AI to reach decisions in cases? What other ethical issues should a judge consider before utilizing AI?

2. Judicial Rules highlighted in the Opinion:

- Rule 1.2 - Confidence in the Judiciary.
- Rule 2.1- Giving Precedence to the Duties of Judicial Office
 - "The duties of judicial office, as prescribed by law, shall take precedence over all of a judge's personal and extrajudicial activities."
- Rule 2.2 - Impartiality and Fairness
 - "A judge shall uphold and apply the law and shall perform all duties of judicial office fairly and impartially." Comment (2) "a judge must interpret and apply the law without regard to whether the judge approves or disapproves of the law in question."
- Rule 2.4 - External Influences on Judicial Conduct
 - (B) "A judge shall not permit family, social, political, financial, or other interests or relationships to influence the judge's judicial conduct or judgment." Comment (1) "Confidence in the judiciary is eroded if judicial decision making is perceived to be subject to inappropriate outside influences."
- Rule 2.5 - Competence, Diligence, and Cooperation
 - (A) "A judge shall perform judicial and administrative duties, competently and diligently." Comment (3) "[p]rompt disposition of the court's business requires a judge to devote adequate time

¹⁷ West Virginia Judicial Investigation Commission Op. 2023-22 (2023), accessible at https://www.courtswv.gov/sites/default/pubfiles/mnt/2023-11/JIC%20Advisory%20Opinion%202023-22_Redacted.pdf.

to judicial duties . . . and [to be] expeditious in determining matters under submission."

- Rule 2.7 - Responsibility to Decide
 - "A judge shall hear and decide matters assigned to the judge, except when disqualification is required by Rule 2.11 or other law."

3. **Takeaways:**

- "Judges have a duty to remain competent in technology, including AI. The duty is ongoing."
- "A judge should NEVER use AI to reach a conclusion on the outcome of a case."
- "The time saved by using AI may be non-existent if the judge must spend hours ensuring appropriate attribution has been given."
- "A judge may use AI for research purposes but may not use it to decide the outcome of a case. The use of AI in drafting opinions or orders should be done with extreme caution."

4. **Conclusion:**

- Judges may use AI to conduct research and draft documents but must not use AI to decide cases. Judges have an ethical obligation to remain competent in technology and that includes AI.

B. **Legal ethics opinion 24-01**¹⁸

Eight-page Opinion.

1. **Non-Generative vs. Generative AI:**

- After noting various definitions for AI, the Opinion highlighted the distinction between non-generative and generative AI, noting that "generative AI can generate text, images, videos, or other data using generative models, often in response to prompts. Generative AI models learn the patterns and structure of their input training data and then generate new data that has similar characteristics."

¹⁸ West Virginia Lawyer Disciplinary Board Legal Ethics Op. 2024-01 (2024), accessible at <https://storage.googleapis.com/msgsndr/Rgd68xOkcVdteTsBkf6O/media/667ac9c219bb7a1f7a4df4c2.pdf>.

2. **Competence:**

- The Opinion noted that “[t]here is nothing in the Rules of Professional Conduct that per se prohibits a lawyer from using AI as a tool in a law practice.” However, “lawyers must not only be aware of AI’s ability to deliver efficient legal services to clients, but they must also take care to exercise independent judgment, communicate with clients, maintain client confidentiality, ensure fees and costs are reasonable, comply with advertising regulations, and supervise the work performed by AI.”

3. **Rules of Professional Conduct highlighted in the Opinion:**

- Duty of Competence (Rule 1.1)
 - “A refusal to use technology that makes legal work more accurate and efficient may be considered a refusal to provide competent legal representation to clients.”
 - “AI can be an effective tool in a lawyer’s arsenal, but the unsupervised use of AI can have catastrophic results.”
 - “AI programs are still machine-based and do not have the same level of understanding and judgment as a human lawyer when it comes to interpreting the nuance of legal principles and precedent.”
- Duty of Diligence (Rule 1.3)
 - “To fulfil the lawyer’s duty of diligence, a lawyer’s use of AI resources requires human input, human oversight, and when necessary human intervention to correct mistakes.”
- Duty to Communicate (Rule 1.4)
 - “A lawyer should obtain approval from the client before using generative AI, and this consent must be informed and should be confirmed in writing.”
- Duty of Confidentiality (Rule 1.6)
 - “Lawyers using generative AI services (or any services on behalf of clients) should familiarize themselves with its terms of use and privacy policies before using the service.”

- “Generative AI should not be used in the representation unless the lawyer is confident that the client's confidential information will be secure.”
- Duty to Supervise
 - "Under Rules 5.1 and 5.3, lawyers are obligated to supervise the work of the AI used in the provision of legal services and understand the technology well enough to ensure compliance with the lawyer's ethical duties.”
 - “One of the biggest risks associated with a lawyer's use of generative AI is overestimating the capabilities of the software or accepting the AI's work product on its face as credible.”
 - “Lawyers should view AI at best as a secondary source and should never be relied upon as the primary source itself. Lawyers still need to make final substantive decisions on the exact content of and language used after reviewing the suggestions from AI.”
- Duty of Candor to the Tribunal (Rules 3.3 and 4.1)
 - "The use of generative AI outputs that contain misrepresentations of fact or law, or that provide fake citations, implicates the lawyers' duty to be candid with the tribunal and to the opposing party and counsel.”

4. **Conclusion:**

- A lawyer may use AI to complement her work, however, the lawyer’s professional obligations including duties owed to clients, the courts and the profession under the Rules of Professional Conduct have not changed.

Presidential Task Force on AI and Digital Technologies

Lorraine S. McGowen, Co-Chair

Edward So, Co-Chair

Jerome Walker, Co-Chair

Contact

Mary Margulis-Ohnuma, Senior Policy Counsel | 212.382.6767 | mmargulis-ohnuma@nycbar.org

Exhibit 4

Guideline on the Use of AI in Arbitration (2025)

Policy and Professional Practice Team

Cristen Bauer, Ciarb Head of Policy, cbauer@ciarb.org

Technology Thought Leadership Group | AI Guideline Drafting Committee

Claire Morel de Westgaver, Chair

Amy Endicott

Annabelle Onyefulu ACI Arb

Carlos Carvalho MCI Arb

Fabio Solimene

Harry Borovick

Karolina Jackowicz FCI Arb

Kateryna Honcharenko MCI Arb

Matthew Lavy KC

Maud Piers

Meriam Al Rashid

Peter Neumann FCI Arb

Copyright © The Chartered Institute of Arbitrators. All rights reserved. No part of this publication may be reproduced, stored in a retrieval system of any nature, or transmitted, in any form or by any means including photocopying and recording, without the written permission of Ciarb. The commission of any unauthorised act in relation to this material may result in civil or criminal actions. The views expressed in this publication should be taken as those of the authors only unless it is specifically indicated that Ciarb has given its endorsement.

Where authors are named on our Ciarb materials, the author asserts their moral right and any similar rights that accrue to the author of the work arising under the Copyright, Designs and Patents Act 1988 and, so far as is legally possible, any broadly equivalent rights such author may have in any territory of the world. The author is to be identified as the author of this work.

CI Arb® and CI ARB® are registered trade marks of The Chartered Institute of Arbitrators.

Should you require any further information or have any queries, please contact our Legal Team at legal@ciarb.org.

Preamble

In recent years new technology has become an integral part of the legal profession. Information technology tools used in arbitration include tools powered by or otherwise embodying Artificial Intelligence (AI). The development of AI is complemented by the ongoing demand for increased professional efficiency which is expected to continue and possibly accelerate.

Introduction

The Chartered Institute of Arbitrators Guideline on the Use of AI in Arbitration (2025) (the '**Ciarb AI Guideline**') seeks to give guidance on the use of AI in a manner that allows dispute resolvers, parties, their representatives, and other participants to take advantage of the benefits of AI, while supporting practical efforts to mitigate some of the risk to the integrity of the process, any party's procedural rights, and the enforceability of any ensuing award or settlement agreement.

The Ciarb AI Guideline is based on current and known developments in the industry and the procedural issues to which the use of AI gives rise and may give rise in the future. The Ciarb AI Guideline seeks to address the impact of AI on arbitration rather generally. The Ciarb AI Guideline is not intended to be a manual or user guide to different AI Tools. Its authors nonetheless acknowledge that due to the rapid development of new technologies, there may be a need to revisit and update the Ciarb AI Guideline periodically.

The Ciarb AI Guideline is intended for use in conjunction with, and does not supersede, any applicable laws, regulations or policies, or institutional rules related to the use of AI in an arbitration.

The Ciarb AI Guideline addresses issues that participants in arbitral proceedings should keep in mind when considering the use of AI.

Part I outlines the benefits and risks of the use of AI in arbitration.

Part II sets out general recommendations on the use of AI in an arbitration.

Part III addresses arbitrators' powers to give directions and make rulings on the use of AI by parties in arbitration.

Part IV addresses the use of AI in arbitration by arbitrators.

Appendix A is a template agreement on the use of AI in arbitration.

Appendix B is a template procedural order on the use of AI in arbitration.

Although the plain English uses and definitions of these terms may vary outside of the Ciarb AI Guideline, the capitalised terms used in the Ciarb AI Guideline have the following meanings.

- **AI** is a machine-based system that, for explicit or implicit objectives, infers from the input it receives, how to generate outputs such as predictions, content, recommendations, or decisions that can influence physical or virtual environments. Different AI systems vary in their levels of autonomy and adaptiveness after deployment (*OECD definition).
- **AI Tool** is a tool or platform which relies on, incorporates, or utilises some form of AI.
- **GenAI Tool** is an AI Tool consisting of deep-learning models capable of generating narrative text, computer code, financial analysis, mathematical calculations, graphics or other output which either serves as a substitute for human-generated output or materially modifies human-generated output.¹
- **Hallucination** (AI context) refers to an invented and fictitious piece of information generated by an AI Tool and presented by that AI Tool as factually correct.
- **Machine learning** is the use of data to imitate the way humans learn within a computer system, which may form part of or contribute to an AI system.²
- **Natural language processing** refers to a computer science programme capable of identifying, processing and responding to written or spoken language.
- **Mandatory rule** means a valid and binding rule of applicable law, regulation, or public policy, the application of which may not be waived by agreement of parties, by the Tribunal, or otherwise by an individual or entity subject to it.
- **Tribunal** means the arbitrator or arbitrators who have been duly appointed to decide a given dispute and who have accepted such appointment.

¹ Cf definition from IBM website: “Generative AI refers to deep-learning models that can generate high-quality text, images, and other content based on the data they were trained on.”

² Cf definition from IBM website: “. . . computers and machines to imitate the way that humans learn, to perform tasks autonomously, and to improve their performance and accuracy through experience and exposure to more data.”

1. Benefits of AI in arbitration

1.1. Efficiency and quality: AI has the potential to significantly enhance the arbitral process in terms of efficiency and quality. A vast range of AI Tools are available to individuals and organisations involved in legal disputes. These tools may be used in different contexts and phases of a dispute with a view to assist with various tasks including those listed in this section.

1.2. Legal research: AI-based research tools can outshine engines that use traditional search technologies by excelling in adaptability and continuous improvement. Their superiority lies not only in user-friendliness, facilitated by Natural Language Processing (NLP) driven enhanced search capabilities, but also in their ability to construct predictive models, discerning precisely what users seek in their queries.

1.3. Data analysis: AI can expedite the processing of intricate information through the utilisation of text mining and text analysis tools. The deployment of AI, for instance, for the detection of conflicting statements within text can offer an objective means of identifying essential patterns, correlations, and disparities within vast datasets.

1.4. Text generation: AI Tools can assist with systemising, structuring, generating and summarising texts, as well as ensuring that the wording used is consistent and coherent, grammatically correct and clear.

1.5. Collecting evidence: AI has the potential of streamlining the taking of evidence in an efficient and consistent way.

1.6. Translation and interpretation: AI Tools have the potential to translate documents used in the proceedings and perform simultaneous translation of statements made during the proceedings including witness examinations. Such tools may also play a role in harmonising the interpretation of documents and statements where several languages are used in the proceedings.

1.7. Transcription of Hearings: AI Tools can generate hearing transcripts at a fraction of the cost of human stenographers.

1.8. Detecting the use of AI: AI detection tools can detect deep fakes and assess the authenticity of evidence by ascertaining that it has not been fabricated by other AI technology.

1.9. Case analysis: AI Tools have the potential to go beyond legal research and data analysis and provide predictions of potential case outcomes and insights on the likely response to certain procedural strategies or arguments. Such tools could increase efficiency and predictability of outcome.

1.10. Equal treatment of parties: AI can be used to help remedy “inequality of arms”, if the right tools are available to an under resourced party at reasonable cost.

2. Risks associated with use of AI in arbitration

2.1. The use of AI Tools in arbitration gives rise to several risks, including enforceability of arbitral awards and other adverse implications for due process rights, the rule of law, the administration of justice, the credibility and legitimacy of arbitration, and the environment. Ensuring transparency in the deployment of these tools and exercising caution regarding ethical, procedural and technological concerns, including those listed in this section, is of paramount importance.

2.2. Confidentiality: The use of third-party AI entails substantial risks in regard to confidentiality, which is a fundamental prerequisite in the realm of arbitration. Inputting confidential data into a third-party AI Tool will inevitably raise concerns about how such data is stored, protected from outside access, used for machine learning purposes and potentially presented to third parties as output from their use of the same AI platform. Real-world AI applications can use multiple tools and platforms, which may make it difficult to identify which data is being used and where it is stored. It’s important to carefully consider the context in which the relevant data was given and whether permission has been obtained to use it for purposes beyond resolving the dispute. The use of confidentiality agreements and a deeper understanding of how such tools protect confidentiality from misuse or cyber attacks will be necessary. When evaluating and considering AI Tools, it is important to consider whether the AI Tool has been vetted, has sufficient privacy and security standards, and whether it is an open or closed model. Not all AI Tools are equal in this regard.

2.3. Data integrity and security: Cybersecurity is a vital concern, particularly due to a general trend to move away from traditional hard-copy submissions and increasingly sophisticated hacking, phishing schemes, and other threats. Participants in arbitral proceedings should be informed of and vigilant regarding any enhanced vulnerability to cybersecurity threats flowing from AI use by arbitration participants and third parties.

2.4. Impartiality and independence: Questions related to bias take on a distinct character when contemplating the use of an AI Tool by arbitrators. In this context, potential algorithmic bias may emerge due to the selection of a specific dataset and the configuration of a particular algorithm. Apart from the bias issue and its implications for the objectivity of the information supplied to arbitrators via an AI

Tool, there is also the peril of affirmational authority bias and cognitive inertia that could impact arbitrators who rely on AI. In order to limit such risks, arbitrators or other authorities using AI for their decisions need to assume responsibility for the outcome and rationale of their decisions. The extent to which impartiality or independence risks arise will obviously vary widely depending on how certain AI Tools are used by arbitrators. Using an AI Tool to search for evidence on an issue within the case documents submitted by parties carries a different (and likely far lower) risk than use of an AI Tool to decide an issue in dispute.

2.5. Due process: The use of AI Tools in arbitration may give rise to due process issues including inequality of arms and significant discrepancies in parties' respective ability to understand the case advanced against them. The use of an AI Tool as an aid in factual case analysis might impinge upon the right to present a party's case and the implicit obligation of arbitrators to consider and address all of the parties' arguments and exhibits, rather than a limited selection determined by an AI Tool. Use of an AI Tool as an aid to identify the relevant legal framework may also carry such risk. Also in this case, paternity of the decision and assumption of responsibility are crucial aspects to limit the risk of due process violations.

2.6. The "Black box" problem: Comprehending the precise mechanism by which an AI Tool arrives at a particular outcome can prove challenging. While users may be able to scrutinise the data used for training a prediction tool and the underlying algorithm designed to detect patterns, users may not fully grasp the algorithm's intricate evolution and functioning. This inherent "black box" quality may impede human oversight over the accuracy of decisions or predictions produced by the AI Tool. Even where such assessment is possible, the "black box" nature of many AI Tools can encumber the obligation to furnish transparent and truthful justifications for specific decisions. As a result, a cautious approach becomes imperative when using information generated under such circumstances. The same applies to hallucinations, such as academic sources and pieces of legislation or evidence.

2.7. Enforceability of arbitral awards: The rapid advancement of technology has led to a number of legislative and regulatory initiatives. In the short term, this may lead to uncertainty, as some AI Tools may be banned or restricted in certain jurisdictions. It is, therefore, imperative that the parties' choice of technology and the conduct of a case do not conflict with any mandatory rule, applicable laws, regulations or policies, or institutional rules related to the use of AI in an arbitration.

2.8. Impact on energy use and the environment: AI Tools tend to require a high level of energy and therefore the use of AI in arbitration and its potential benefits may need to be considered in light of any impact of proceedings on the environment.

2.9. The extent to which any of these risks are potent in any particular arbitration will depend on the AI Tool in question, the nature of the arbitration, and the use to which the AI Tool is being put.



3. General

3.1. Parties and arbitrators are encouraged to make reasonable enquiry about any prospective AI Tool to be used in an arbitration with a view to understand the technology, function, and data to the best of their ability.

3.2. Parties and arbitrators are encouraged to engage in understanding the potential risks associated with any prospective use of AI and weigh perceived benefits of using AI Tools against any arbitration-related risks flowing from AI use and other adverse implications for due process rights, the rule of law, the administration of justice, the credibility and legitimacy of arbitration, and the environment.

3.3. Parties and arbitrators are encouraged to make reasonable enquiry about any AI-related law, regulation, rule of court (if relevant) applicable in the relevant jurisdictions.

3.4. Unless the Tribunal and the parties expressly agree to the contrary in writing (subject to any applicable mandatory rule), the use of an AI Tool by any participant in the arbitration, shall not diminish their responsibility and accountability that would otherwise apply to them without the use of an AI Tool.



4. Arbitrators' powers to give directions and make procedural rulings on the use of AI

4.1. The use of AI by parties falls within the general power of arbitrators to conduct the proceedings including giving directions and making procedural rulings, subject to any express prohibition agreed by the parties or flowing from mandatory applicable laws, regulations, policies, or institutional rules, to the extent that it may have an impact on the procedure.

4.2. To the extent relevant in proceedings which it conducts, the Tribunal may appoint AI experts if they require their assistance with understanding any AI Tool or aspects of AI and/or potential implications of adopting the relevant tool or technology in the circumstances of the case.

4.3. Arbitrators may regulate the use of AI by parties with a view to preserve the integrity of arbitral proceedings which they oversee and ensure the validity and enforceability of any ensuing awards.

4.4. Subject to the private use of AI by parties, arbitrators may require disclosure of the use of an AI Tool (see Article 7 Disclosure).

4.5. Arbitrators may not regulate the private use of AI by parties to the extent that such private use does not interfere with the proceedings and the integrity of the arbitration process and is generally allowed in litigation in the domestic courts in the relevant jurisdiction.

4.6. Arbitrators are encouraged to record any decision on the use of AI in a procedural order. The arbitrators and the parties may review and reconsider any decision on the use of AI during the course of the proceedings. If the use of AI was contentious, the arbitrators may consider addressing the use of AI in its award.

4.7. If parties fail to comply with directions or procedural orders on the use of AI, arbitrators should assess any impact of that failure on the proceedings. Arbitrators may thereafter take any measure to remedy that failure, make any further rulings on the use of AI, draw any appropriate conclusion (including drawing adverse inferences, if appropriate), or take such failure into account when awarding costs.

5. Party autonomy

5.1. Subject to any limitation or prohibition flowing from applicable laws, regulations or policies, institutional rules, or the arbitration agreement, the parties may by their agreement exercise their autonomy to agree whether and how AI may be used by parties in the arbitration. The parties may also propose specific AI Tools that may or may not be utilised or agree on any limits thereof.

5.2. When the arbitrator receives a request for arbitration, it should ascertain whether and how the parties provided for the use of AI in their arbitration agreement.

5.3. In case the arbitration agreement is silent or unclear on the use of AI, and the parties have not raised the issue in their initial communications with the institution or the arbitrators, the arbitrators are encouraged to invite the parties to express their views on the subject at the appropriate time (either at the first case management conference or later).

5.4. The parties may discuss the subject of the use of AI. Although, the arbitrators may intervene in the discussion to clarify what AI Tools or classes of tools may be available to the parties, how they could be used in the course of the arbitral proceedings, any risks thereof (e.g., as to accuracy, privacy etc.), and any other issues of that the arbitrators or the institution consider the parties should be aware.

6. Ruling on use of AI and admissibility of AI-generated material in the arbitration record

6.1. In case of any disagreement between parties on the use of AI in the arbitral proceedings, arbitrators may be requested to make a ruling on the use of AI based on the overall circumstances of the case.

6.2. If the arbitrators consider that the use (or non-use) of AI by one or more parties jeopardises the integrity of the arbitral proceedings, arbitrators may make a ruling on the use of AI of their own motion after consulting the parties.

6.3. In making a ruling on the use of AI, arbitrators may take into account any benefits of using the relevant AI Tool (including any cost and/or time saving) and any risks associated with such AI Tool including whether it may have an impact on the evidence, fairness including due process and equality of arms, and confidentiality.

6.4. In making a ruling on the use of AI, arbitrators may consider the nature and specific features of the relevant AI Tool, including the data underpinning the output produced, the presence of any bias, as well as the quality, accuracy and security of the AI Tool.

6.5. In considering a challenge to the bias of an AI Tool, arbitrators are encouraged to consider the data used to train the model (where available and appropriate). Arbitrators may also consider requesting disclosure by the party using the model of any debiasing tools used within the model and any audits conducted for bias, although it may not be possible to fully eliminate bias from a model without impacting its accuracy.

6.6. In assessing whether AI-assisted or AI-generated content may be admitted to the record, arbitrators may (where relevant) assess the extent to which source data for the machine-generated content is on the record. Where the link between evidential source material and the model output is not clear, and where that link is a relevant factor in assessing whether the content should be admitted, arbitrators may seek submissions from the parties to explain how inputs from the record are linked to machine-generated outputs.

6.7. When making a ruling on the use of AI, arbitrators must consider and be guided by applicable laws, regulations or policies, or institutional rules related to the use of AI in an arbitration. Among others, this legal and regulatory framework includes: (i) the law of the seat of arbitration; (ii) the law and rules governing the proceedings, including the institutional arbitration rules; (iii) the national laws of parties; and (iv) any applicable ethical rules.

6.8. Although such laws and regulations may not be expressly aimed at regulating the use of AI in arbitral proceedings (e.g., those on privacy, cybersecurity, copyright and competition, which may have a broader and more general reach), they may nonetheless affect the arbitrators' or the parties' decision to allow, prohibit or limit the use of AI in the arbitration proceedings in question. Local laws and regulations may be mandatory in the relevant legal systems, which may affect the validity and/or enforceability of awards issued in conflict with them.

7. Disclosure

7.1. Disclosure of the use of an AI Tool may be required to the extent that its use may have an impact on the evidence, the outcome of the arbitration or otherwise involve a delegation of an express duty toward the arbitrators or any other party.

7.2. Disclosure of the use of AI may be required to ensure transparency over its use and ultimately preserve the integrity of the arbitration and/or the validity and enforceability of the award. The rationale for disclosure is to provide an opportunity for other arbitration participants to understand the manner and context in which AI has been used or is to be used.

7.3. Unless otherwise agreed by the parties, and after consulting them, the arbitrators may impose certain AI-related disclosure obligations on the parties including any party-appointed experts or factual witness. In this context, arbitrators may make directions as to the type of AI covered by the obligation to disclose, circumstances in which disclosure is required, to whom disclosure is to be made and within which timeframe.

7.4. Unless ordered otherwise, any duty to disclose is of a continuous nature and will generally stand throughout the entire arbitration proceedings.

7.5. In formulating a duty to disclose and assessing a party's compliance, the arbitrators may consider any potential inconsistency between disclosure and any duty of confidentiality or legal impediment entitling a party to withhold certain information about their case.

7.6. If a party fails to disclose the use of an AI Tool in contravention to the arbitrator's direction, the arbitrator may take steps to inquire about the failure to disclose and give parties an opportunity to comment.

7.7. Arbitrators should assess any impact of such failure to disclose on the integrity of the proceedings. Arbitrators may thereafter take any measure to remedy that failure, make any further rulings on the use of AI, draw any appropriate conclusion (including drawing adverse inferences, if appropriate), or take such failure into account when awarding costs.



8. Discretion over use of AI by arbitrators

8.1. Arbitrators may consider using AI Tools in the context of their mandate to enhance the arbitral process including its efficiency and the quality of the arbitrators' decision-making.

8.2. Arbitrators should not relinquish their decision-making powers to AI but may use AI to support more accurate and efficient processing of submitted information, always ensuring independent judgement. Arbitrators are advised to refrain from using AI in ways that could compromise the integrity of the proceedings or the validity or enforcement of the award. Specifically, the Tribunal should avoid delegating any tasks to AI Tools, such as legal analysis, research and interpretation of facts and law, or application of the law to the facts, if such use could influence procedural or substantive decisions.

8.3. Arbitrators should also independently verify the accuracy and correctness of information obtained through AI, ensuring their judgement is free from confirmation bias and other distortions. They should conduct their own research, using AI-generated information as a supportive tool, while maintaining a critical perspective to prevent undue influence on their decisions, including through appropriate supervision.

8.4. An arbitrator shall assume responsibility for all aspects of an award, regardless of any use of AI to assist with the decision-making process.

9. Transparency over use of AI by arbitrators

9.1. Unless otherwise agreed by the parties, the arbitrators are encouraged to consult with the parties on the use of any AI Tool by the arbitrators and provide the parties with an opportunity to comment and oppose to such tool being used by the arbitrators. If the parties disagree on the use of AI by the arbitrators, the arbitrators should refrain from using the specified AI Tool. Where the parties agree on the specific use of AI by the arbitrators, the arbitrators are encouraged to make a decision to proceed or not in light of all the circumstances of the case including considerations detailed in paragraphs 8.1 – 8.4 above.

9.2. An arbitrator sitting on a Tribunal should consult with the other arbitrators sitting on the same Tribunal on their use of any AI Tool in the context of its mandate.

Agreement on the Use of AI in Arbitration

[**Note:** May be stand-alone or incorporated into arbitration agreement]

This Agreement on the Use of AI in Arbitration is made on the [●] day of [●] YEAR

between:

(1) [●], a company registered in [●] with registered number [●] whose registered office is at [●] (hereinafter, along with its permitted successors and assignees, called the “[●]”);

And

(2) [●], a company registered and existing under the laws of [●] with registered number [●] whose registered office is at [●] (hereinafter, along with its permitted successors and assignees, called the “[●]”);

(Individually [●] and [●] being a “**Party**” and collectively the “**Parties**”).

Whereas

1. On [●] the Parties entered into [●] (the “**Contract**”).
2. The Contract includes the following arbitration clause (the “**Arbitration Clause**”): [●].
3. Subject to any applicable laws, the Parties intend to regulate the use of AI Tools in the context of any arbitration proceedings under the Arbitration Clause.

Now the parties hereby agree as follows:

4. The Parties, including their representatives and experts in the proceedings, are allowed to use AI Tools in preparation for or during the arbitration proceedings.
5. The use of AI Tool shall be limited to the permitted AI Tools [OPTIONS: (i) as listed in Annex [●]; (ii) or having the following characteristics: [●]; (iii) or excluding the following tools [●]; or (iv) excluding tools having the following characteristics [●] (the “**Permitted AI Tools**”).

6. The use of any Permitted AI Tools shall only be allowed for the performance of the following activities in connection with the arbitration [research], [document review] [search for inaccuracies], [document formatting] [language review and improvement] (the “**Permitted Use**”).
7. The Party intending to use a Permitted AI Tool shall:
 - 7.1. Ensure that its representatives and experts agree to the terms of this Agreement and comply with it as if they were a Party to it.
 - 7.2. Comply at all times with, and adapt the use of such tool to, the terms of this Agreement and any applicable laws.
 - 7.3. Disclose its intention to use of one or more Permitted AI Tools and include sufficient information to clearly identify the intended use and the relevant tool, including the related version.
 - 7.4. Use reasonable efforts to understand any biases and/or limits relevant to the chosen Permitted AI Tool and take reasonable steps to mitigate such biases and/or limits with an aim of preserving the integrity of the arbitration and/or the validity and enforcement of the resulting award. In doing so, the Parties shall comply with any laws, ethical rules or professional standards applicable to the use of AI Tools in the context of arbitration.
 - 7.5. Use reasonable efforts to independently verify the sources and accuracy of any output of any Permitted AI Tool used in the course of the arbitration from a factual and legal standpoint and correct any inaccuracies before submitting the relevant document or other evidence in the proceedings and at all times during the proceedings in case such inaccuracies are found after submission of an affected document or evidence.
 - 7.6. Refrain from using any AI Tool to produce output which may mislead the arbitral Tribunal appointed for the proceedings (the “Tribunal”) and/or the other Parties, including but not limited to any fabrication or falsification of any evidence, obtainment of inaccurate output as a result of the use of prompts aimed at obtaining a desired outcome.

- 7.7. Preserve confidentiality of any confidential information or data inputted the chosen Permitted AI Tool, including by redacting or anonymising inputted materials where required or appropriate.
8. The Tribunal shall have a right to investigate (including through the appointment of AI experts), inquire, seek information and clarifications, give directions and decide on the use of any AI Tools. Where required by the arbitral Tribunal, the Parties agree to cooperate with the arbitral Tribunal to help evaluating whether any AI Tool, the way it is used or the aim it is used for are allowed, including by helping reproduce and evaluate the outputs received by any of the Parties in using a specific AI Tool by disclosing the prompts used for the specific input.
9. Nothing in this procedural order shall prevent a party or its legal representatives from using AI Tools privately, to the extent that such private use does not interfere with the proceedings and the integrity of the arbitration process and is generally allowed in litigation in the domestic courts in the relevant jurisdiction.

Use of AI by the tribunal

10. Subject to any applicable laws, the parties agree that:

10.1. The Tribunal and any members thereof and each of the arbitrators composing it shall be allowed to use any AI Tools they deem appropriate for the purposes of the arbitration it being understood that the Tribunal and any members thereof:

10.2. In using any AI Tool the Tribunal and any members thereof:

10.2.1. Shall disclose the use of any AI Tools in advance of the relevant use.

10.2.2. Shall not be freed of its personal obligation to independently analyse the facts, the applicable law, and the evidence.

10.2.3. Shall not rely on AI-generated output without having independently verified the relevant sources and accuracy of the obtained outputs.

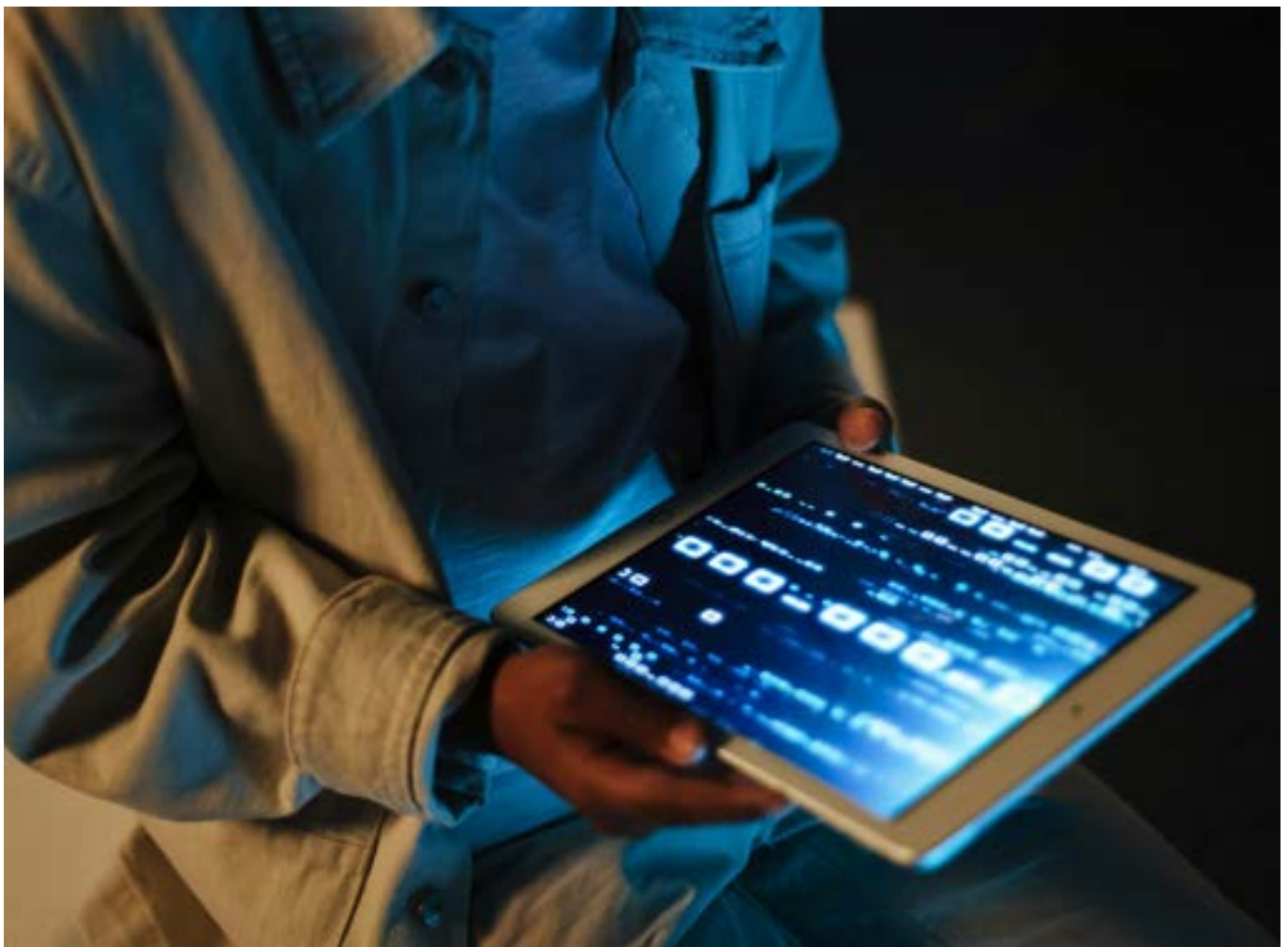
10.2.4. Shall not delegate any decision-making responsibilities to the AI Tool and assume paternity and responsibility for the relevant output.

10.2.5. Shall not use AI Tools in a way that may affect the integrity of the arbitration and/or the validity and enforcement of the resulting award.

Agreement to use the Ciarb Guideline on the Use of AI in Arbitration

11. Subject to any applicable laws, the Parties and the Tribunal agree that:

- 11.1. The Chartered Institute of Arbitrators Guideline on Use of AI in Arbitration (2025) (the '**Ciarb AI Guideline**') shall serve as guiding principles to all participants in the proceeding.
- 11.2. In case of conflict between the terms of this Agreement and the Ciarb AI Guideline, the latter shall prevail.



Procedural Order on the Use of AI in Arbitration

[**Note:** the following language should be modified as appropriate, taking into account the views of the parties. It may be incorporated into PO 1/Terms of Reference or take the form of a stand-alone procedural order.]

Option 1 (short form):

Procedural Order on the Use of AI In Arbitration

Having consulted with the parties regarding the potential benefits and risks of using artificial intelligence (AI) in this arbitration, and the utility of the Chartered Institute of Arbitrators Guideline on Use of AI in Arbitration (2025) (the ‘Ciarb AI Guideline’) to address such risks, and having afforded the parties a reasonable opportunity to express their views on the matter, it is hereby:

Ordered

that the Tribunal and other participants in this arbitration shall be guided by the Ciarb AI Guideline in the conduct of the proceedings.

It is so ordered.

Date: -----
[Name, Arbitrator OR Presiding Arbitrator]

Option 2 (long form):

Procedural Order on the Use of AI In Arbitration

[Reference any preliminary management conference or other procedural meeting when AI and the Ciarb AI Guideline were discussed.]

The Tribunal has formulated this Order following consultation with the parties at the [PRELIMINARY MANAGEMENT CONFERENCE] on the use of artificial intelligence (AI) in this arbitration and the measures provided herein. Capitalised terms used herein shall have the meanings assigned in the Chartered Institute of Arbitrators Guideline on Use of AI in Arbitration (2025) (the '**Ciarb AI Guideline**').

The Tribunal has a duty to do everything reasonably within its power to ensure the integrity of the proceedings and the enforceability of the award, while also endeavouring to conserve time, costs, and other resources. The use of rapidly evolving AI (and generative AI in particular) applications in arbitration by various participants holds the promise of greater effectiveness and efficiency. However, it also entails risks that are materially different (or more difficult to manage) than those typically present when participants do not employ AI Tools, as described in the Ciarb AI Guideline.

"High Risk AI Use" means any use of an AI Tool in the arbitral proceedings that entails one or more of the following risks: breach of privacy and confidentiality obligations, compromise of data security and integrity, the potential to materially undermine the procedural integrity of the arbitration, or the potential to assert a non-human influence on the award, whether or not such influence elevates the risk of annulment or non-enforcement of the award. High Risk AI uses include: [INSERT LIST HERE]

The Tribunal having afforded the parties a reasonable opportunity to express their views and giving due consideration to their comments on the matters addressed herein, it is hereby:

Ordered

1. That the Tribunal and other participants in this arbitration shall be guided by the Ciarb AI Guideline in the conduct of this arbitration.
2. Any participant in the arbitration engaging in a specific High Risk AI Use shall promptly disclose it to the Tribunal, the parties, and party representatives in writing and include:

- 2.1. identification of the AI Tool used, the document or activity for which it was used, and in the case of a document drafted in whole or in part by a GenAI Tool, the specific portions of text that have been so drafted; and
- 2.2. a certification that the use of such AI Tool has not resulted in the disclosure of any confidential or business proprietary information to any unauthorised party.
3. Following disclosure of a High Risk AI Use relating to a party submission to the Tribunal (which for this purpose shall extend to a party – appointed expert report), in addition to any applicable time period within which to respond or reply to the submission, the other party(ies), shall have **[seven (7)]** days to comment on the particular High Risk AI Use and the other party shall have an additional **[seven (7)]** days to submit a reply thereto.
4. The Tribunal may not commence a particular High Risk AI Use unless the parties have had reasonable opportunity to comment on the proposed use, in conformity with the following requirements:
 - 4.1. The Tribunal shall give the parties written notice describing the specific High Risk AI Use and identifying the AI Tool(s) to be used.
 - 4.2. Within fourteen (14) days of service of the notice the parties may submit written briefs, [consider length limitations], expressing their views on the proposed High Risk AI Use.
 - 4.3. Not later than the deadline for submitting written briefs as provided immediately above, either party may request a telephone or video procedural hearing on the proposed High Risk AI Use(s), in which case the Tribunal shall schedule the hearing at earliest feasibility.
 - 4.4. Within fourteen (14) days of the hearing the Tribunal may issue a written decision affirming its intent to engage in the High Risk AI Use, which shall articulate measures it will take to eliminate or minimise to the extent reasonably possible any risks identified reasonably identified by parties. If the Tribunal fails to issue such decision within the time limit, it shall refrain from engaging in the subject High Risk AI Use.
 - 4.5. Notwithstanding any other provision of this Order or the Ciarb AI Guideline, but without derogating in any way from the Tribunal’s ethical duties, the following uses of AI Tools by the Tribunal shall not constitute High Risk AI Use: [INSERT LIST HERE].

5. Any provision of this Order violating an applicable mandatory rule shall be deemed amended to the minimum extent necessary to comply with the subject mandatory rule, failing which it shall be deemed severed and deleted here from, and the remainder of this Order shall remain in full force and effect. All deadlines stated herein shall be strictly enforced. This Order shall remain in force unless amended or rescinded by the Tribunal in a subsequent order. It is so ordered.

Date: _____
[Name, Arbitrator OR Presiding Arbitrator]

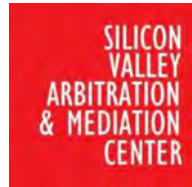


Exhibit 5

SILICON VALLEY ARBITRATION & MEDIATION CENTER

GUIDELINES ON THE USE OF ARTIFICIAL INTELLIGENCE IN ARBITRATION

1st Edition 2024



SVAMC Guidelines on the Use of Artificial Intelligence in Arbitration

Opened for public consultation on 31 August 2023
Published on 30 April 2024

Silicon Valley Arbitration & Mediation Center
555 Bryant Street, Ste. 524
Palo Alto, California 94301 USA
Tel: +1 650.308.9860
www.svamc.org

All Rights Reserved
© 2024 [Silicon Valley Arbitration & Mediation Center, Inc.](http://www.svamc.org)

Licensed for use under [Creative Commons Attribution-NoDerivatives 4.0 International](https://creativecommons.org/licenses/by-nd/4.0/). You are free to copy this work under the license terms.

CONTENTS

Foreword 4

Introduction 5

Members of the SVAMC AI Task Force for the Drafting of the 2024 Guidelines 6

Members of the SVAMC AI Task Force 7

Preliminary Provisions 8

 Application of the Guidelines 8

 Definition of AI 8

 Non-derogation of any mandatory rules 8

Part I: Guidelines for All Participants in Arbitrations 9

 GUIDELINE 1 Understanding the uses, limitations, and risks of AI applications 9

 GUIDELINE 2 Safeguarding confidentiality 9

 GUIDELINE 3 Disclosure 10

Part 2: Guidelines for Parties and Party Representatives 11

 GUIDELINE 4 Duty of competence or diligence in the use of AI 11

 GUIDELINE 5 Respect for the integrity of the proceedings and the evidence 11

Part 3: Guidelines for Arbitrators 12

 GUIDELINE 6 Non-delegation of decision-making responsibilities 12

 GUIDELINE 7 Respect for due process 12

Commentary 13

 Preliminary Provisions 13

 GUIDELINE 1 *Understanding the uses, limitations, and risks of AI applications* 15

 GUIDELINE 2 *Safeguarding confidentiality* 17

 GUIDELINE 3 *Disclosure* 17

 GUIDELINE 4 *Duty of competence or diligence in the use of AI* 18

 GUIDELINE 5 *Respect for the integrity of the proceedings and the evidence* 19

 GUIDELINE 6 *Non-delegation of decision-making responsibilities* 19

 GUIDELINE 7 *Respect for due process* 20

Model Clause For Inclusion in Procedural Orders 21

Foreword

Since its founding, SVAMC has grown to be the voice of global technology dispute resolution through the collective efforts of SVAMC's Officers and Executive Committee, SVAMC's Tech List and the legion of its tech industry members. The publication of these general principles for the use of AI is a fitting tribute to SVAMC's tenth anniversary and its collective industriousness and dedication to promoting fairness, efficiency and transparency in arbitral proceedings.

I'd like to give special thanks to Sarah Reynolds, my predecessor as CEO, and Gary Benton, the SVAMC founder and former Chair, who initiated the SVAMC AI Guidelines project about a year ago. They recognized that the rising emergence of new AI technologies creates the critical need to harness the power of AI to positively shape the best practices for its use in domestic and international arbitration.

The seemingly daunting project was undertaken by the SVAMC Task Force and its Drafting Subcommittee, consisting of Benjamin Malek (Chair), Orlando Federico Cabrera Colorado, Elizabeth Chan, Dmitri Evseev, Marta Garcia Bel, Sofia Klot, Soham Panchamiya, and Duncan Pickard. The Drafting Subcommittee sought the broadest possible participation of experts throughout the international arbitration community, first by circulating a draft set of the AI Guidelines in August 2023 and then providing a lengthy comment period to December 2023, which was extended to February 2024. We are grateful that we received hundreds of thoughtful comments from arbitrators, corporate parties, advocates, universities, educational and arbitral institutions.

An AI Guidelines Review Committee of respected independent practitioners was established to scrutinize the draft, to review the large volume of revisions suggested during the comment period, and to submit a revised draft of the AI Guidelines for finalisation by the Drafting Subcommittee and the approval of SVAMC's Executive Committee. The AI Guidelines Review Committee worked cooperatively at a steady pace for two months. We thank the Review Committee and the Drafting Subcommittee and appreciate what they have accomplished, which is reflected in numerous substantive changes to the circulated draft.

The SVAMC AI Guidelines will be subject to continuing analysis and review to ensure that future editions adapt to the accelerating changes in the capabilities of artificial intelligence technologies.

Thanks again to all of the dedicated participants in this challenging exercise of thought leadership. We hope that the Model Clause for Inclusion in Procedural Orders will be routinely adopted within the global arbitration community.

Jonathan W. Fitch, *CEO*
Silicon Valley Arbitration & Mediation Center

Introduction

These Guidelines on the Use of Artificial Intelligence in Arbitration (the **Guidelines**) introduce a principle-based framework for the use of artificial intelligence (**AI**) tools in arbitration at a time when such technologies are becoming increasingly powerful and popular. They are intended to assist participants in arbitrations with navigating the potential applications of AI.

These Guidelines can be used in domestic or international arbitrations and are meant to serve as a point of reference for arbitral institutions, arbitrators, parties and their representatives (including counsel), experts, and, where relevant, other participants in the arbitral process. To that end, the Guidelines provide a Model Clause that can be incorporated into procedural orders to make the Guidelines applicable to all participants involved in a particular arbitration proceeding.

The Guidelines are prefaced by preliminary provisions that clarify the scope and application of the principles contained herein. The body of the Guidelines is organized into three chapters: one chapter containing Guidelines that generally apply to all participants in the arbitration process, regardless of their role; a second chapter containing Guidelines that address specific uses of AI by parties and party representatives (including counsel); and a third chapter with Guidelines addressing particular considerations that may arise when arbitrators use AI.

In order to ensure that the Guidelines remain up-to-date with the latest advancements in technology, we make it a priority to update them frequently.

Benjamin I. Malek, *Chair*
Orlando Federico Cabrera Colorado
Elizabeth Chan
Dmitri Evseev
Marta García Bel
Sofia Klot
Soham Panchamiya
Duncan Pickard
SVAMC AI Task Force Guidelines Drafting Subcommittee

Members of the SVAMC AI Task Force for the Drafting of the 2024 Guidelines

Chair

Benjamin I. Malek
T.H.E. Chambers, New York

Guidelines Drafting Subcommittee

Orlando Federico Cabrera Colorado
Hogan Lovells, Mexico City

Elizabeth Chan
Tanner De Witt, Hong Kong

Dmitri Evseev
Arbitra International, London

Marta García Bel
Freshfields Bruckhaus Deringer, New York

Sofia Klot
Klot Arbitration, Uruguay

Soham Panchamiya
TLP Advisors, Dubai

Duncan Pickard
Debevoise & Plimpton, New York

Administrative Assistant

Agustina Alfaro
Chaffetz Lindsey, New York

Guidelines Review Committee

Amy Endicott
Arnold & Porter, San Francisco

Gaela Gehring Flores
Hughes Hubbard & Reed, Washington, D.C.

Sofía De Sampaio Jalles
Armesto & Asociados, Madrid

James P. Ferguson
Mayer Brown, Chicago

Rebeca E. Mosquera
Reed Smith, New York

Alexis Mourre
MCL Arbitration, Paris

Aníbal Sabater
Chaffetz Lindsey, New York

Professor Dr. Maxi Scherer
Wilmer Hale, London

Karim Youssef
Youssef & Partners, Egypt

Eduardo Zuleta
Arbitration Chambers, Colombia

Members of the SVAMC AI Task Force¹

Chair

Benjamin I. Malek
New York, NY, USA

Ben Davies
Calgary, Canada

Ryan E. Long
Santa Monica, CA, USA

Members

Philip Argy
Sydney, Australia

Frank Emmert
Indianapolis, IN, USA

Rebeca E. Mosquera
New York, NY, USA

Aakriti Anurag Tewari
Delhi, India

Demilade Elemo
Dundee, Scotland, UK

Sophie Nappert
London, England, UK

Karl Bayer
Austin, TX, USA

Dmitri Evseev
London, England, UK

Philip D. O'Neill, Jr.
Boston, MA, USA

Diana Bayzakova
Tashkent, Uzbekistan

Robert Flack
San Francisco, CA, USA

Soham Panchamiya
Dubai, UAE

Gary Benton
Palo Alto, CA, USA

Marta Garcia Bel
New York, NY, USA

Claire Pauly
Paris, France

Orlando Federico Cabrera Colorado
Mexico City, Mexico

Luisa Fernanda García Orozco
New York, NY, USA

Duncan Pickard
New York, NY, USA

Emanuel Cardenas
Washington, DC, USA

Wendy Gonzales
Amsterdam, Netherlands

Matteo Pistillo
Boston, MA, USA

Elizabeth Chan
Hong Kong

David Huebner
Los Angeles, CA, USA

Angelo Prata de Carvalho
Brasília, Brazil

Jerry Cohen
Boston, MA, USA

Vivien Khoo
Hong Kong

Hon. Christine Santini (Ret.)
São Paulo, Brazil

Sofia Cozac
Bucharest, Romania

Sofia Klot
Montevideo, Uruguay

Aisha Suleiman
Iowa City, IA, USA

Merra Kurubalan
San Francisco, CA, USA

¹ This list represents the members of the SVAMC AI Task Force as of the publication date of the guidelines. For an up-to-date list of members, visit svamc.org.

Preliminary Provisions

Application of the Guidelines

These Guidelines shall apply when and to the extent that the parties have so agreed and/or following a decision by an arbitral tribunal or an arbitral institution to adopt these Guidelines.

Definition of AI

As used in these Guidelines, the term "AI" refers to computer systems that perform tasks commonly associated with human cognition, such as understanding natural language, recognising complex semantic patterns, and generating human-like outputs.

Non-derogation of any mandatory rules

These Guidelines shall not derogate from any legal obligations, ethical duties, or rules of professional conduct, or any other binding rules applicable to the arbitration proceedings or persons participating in them.

Part I: Guidelines for All Participants in Arbitrations

GUIDELINE 1

Understanding the uses, limitations, and risks of AI applications

All participants involved in arbitration proceedings who use AI tools in preparation for or during an arbitration are responsible for familiarising themselves with the AI tool's intended uses and should adapt their use accordingly.

All participants using AI tools in connection with an arbitration should make reasonable efforts to understand each AI tool's relevant limitations, biases, and risks and, to the extent possible, mitigate them.

GUIDELINE 2

Safeguarding confidentiality

All participants in international arbitration are responsible for ensuring their use of AI tools is consistent with their obligations to safeguard confidential information (including privileged, private, secret, or otherwise protected data). They should not submit confidential information to any AI tool without appropriate vetting and authorisation.

Special attention should be paid to policies on recording, storage, and use of prompt or output histories and of any other confidential data submitted to the AI tool. Only AI tools that adequately safeguard confidentiality should be used with confidential information. Participants should assess the data use and retention policies offered by available AI tools and opt for secure solutions.

Where appropriate, participants should redact or anonymise materials submitted to an AI tool.

GUIDELINE 3

Disclosure

Disclosure that AI tools were used in connection with an arbitration is not necessary as a general matter.

Decisions regarding disclosure of the use of AI tools shall be made on a case-by-case basis taking account of the relevant circumstances, including due process and any applicable privilege.

Where appropriate, the following details may help reproduce and evaluate the output of an AI tool:

1. the name, version, and relevant settings of the tool used;
2. a short description of how the tool was used; and
3. the complete prompt (including any template, additional context, and conversation thread) and associated output.

Part 2: Guidelines for Parties and Party Representatives

GUIDELINE 4

Duty of competence or diligence in the use of AI

Party representatives shall observe any applicable ethical rules or professional standards of competent or diligent representation when using AI tools in the context of an arbitration.

Parties shall review the output of any AI tool used to prepare submissions to verify it is accurate from a factual and legal standpoint. Parties and party representatives on record shall be deemed responsible for any uncorrected errors or inaccuracies in any output produced by an AI tool they use in an arbitration.

GUIDELINE 5

Respect for the integrity of the proceedings and the evidence

Parties, party representatives, and experts shall not use any forms of AI in ways that affect the integrity of the arbitration or otherwise disrupt the conduct of the proceedings.

Parties, party representatives and experts shall not use any form of AI to falsify evidence, compromise the authenticity of evidence, or otherwise mislead the arbitral tribunal and/or opposing party(ies).

Part 3: Guidelines for Arbitrators

GUIDELINE 6

Non-delegation of decision-making responsibilities

An arbitrator shall not delegate any part of their² personal mandate to any AI tool. This principle shall particularly apply to the arbitrator's decision-making process. The use of AI tools by arbitrators shall not replace their independent analysis of the facts, the law, and the evidence.

GUIDELINE 7

Respect for due process

An arbitrator shall not rely on AI-generated information outside the record³ without making appropriate disclosures to the parties beforehand and, as far as practical, allowing the parties to comment on it.

Where an AI tool cannot cite sources that can be independently verified, an arbitrator shall not assume that such sources exist or are characterised accurately by the AI tool.

² The terms "their", "they", and "them" as used in these Guidelines in relation to any of the individual participants in an arbitration, are used as singular, gender-inclusive pronouns.

³ Some jurisdictions recognise the principle of *iura novit arbiter*, or the "arbitrator knows the law", pursuant to which arbitrators may have the authority to apply laws, case law and precedents not cited by the parties. This principle has also been applied in investment treaty cases and by the International Court of Justice. The extent of this authority may vary depending on the jurisdiction. However, this Guideline does not preclude in any way the application of the principle of *iura novit arbiter*, where appropriate.

Commentary

Preliminary Provisions

Application of the Guidelines

The Guidelines seek to establish a set of general principles for the use of AI in arbitration. Intended to guide rather than dictate, they are meant to accommodate case-specific circumstances and technological developments, promoting fairness, efficiency, and transparency in arbitral proceedings.

These Guidelines may be adopted, in whole or in part, in the arbitration agreement or by the parties and/or the tribunal at any other time subsequently, including during the course of arbitral proceedings (*see Model Clause for Inclusion in Procedural Orders*).

As applied to international arbitrations, the Guidelines acknowledge the multi-faceted and multi-jurisdictional nature of such proceedings. Given the potential for various national laws to apply—for instance, an arbitration seated in Paris, governed by Mexican law, with hearings in Hong Kong—it becomes necessary to harmonise the potentially disparate local and international standards relating to the use of AI.

Accordingly, these Guidelines do not intend to replace or override local AI laws or regulations (*see non-derogation of any mandatory rules*). Instead, they serve as a supplementary international standard that provides a common denominator for AI's ethical and effective use in international arbitrations.

Development of best practices around the use of AI in international arbitration is only beginning, and these Guidelines aim to contribute to that effort. As such, they are a tool that assists parties, arbitral tribunals, institutions and others in navigating the application of AI, with an understanding that technologies, local laws and international standards will continue to evolve.

Definition of AI

There is no single definition of AI, and even existing definitions may evolve over time. For this reason, it is essential to clarify how the term should be understood in the Guidelines.

The definition adopted is meant to be broad enough to encompass both existing and future foreseeable types of AI but not so broad as to encompass every type of computer-assisted automation tool. Rather, the definition focuses on modern technologies that tend to be more autonomous, complex, multifunctional, and probabilistic than traditional automation tools based on rule-based deterministic logic.

Modern AI systems are usually based on machine learning, a set of computer science techniques that allow machines to learn patterns and make intelligent predictions based on the data on which they have been trained. Machine learning algorithms have existed for decades and are employed behind the scenes in various technology products used by dispute resolution professionals, such as spelling and grammar

checkers, email spam filters, search engines, optical character recognition (also known as “OCR”), or machine translation.

With the advent of technological advances such as deep neural networks, large language models, and generative AI, however, it has become possible for the general public to interact with multi-purpose AI systems directly. The potential uses for AI in the field of dispute resolution have exploded, even as the risks and limitations of these tools have become more difficult to comprehend. For example, deep neural networks can learn highly complex patterns and abstractions. Still, these patterns are recorded in a largely indecipherable form even to the computer scientists who created the models. Moreover, such models generate outputs based on statistical probabilities rather than a defined set of rules.

Large language models are a type of deep neural network trained on vast amounts of textual data and capable of generating natural-sounding and plausible (but not necessarily accurate) responses to a given prompt. AI tools that can generate meaningful text, images or other types of output that appear creative and extrapolate well beyond the data the model was trained on are often referred to as generative AI. Generative AI is used in tasks such as question-answering, summarising text, and producing drafts based on a given input or instruction.

It is important to note that, while generative AI systems tend to receive the most publicity and are the most accessible to the general public, there are other equally complex types of AI, such as those powering recommendation or classification tools, sometimes known as evaluative or discriminative AI. The focus of these Guidelines is not solely on generative AI but rather on all modern types of AI tools, whether intended to perform a specific evaluation or to generate outputs that resemble human-created content (including text, sound, or visual images).

Non-derogation of any mandatory rules

This provision recognises that the use of AI tools and AI applications in arbitrations may be subject to a range of rules and regulations, whether at the domestic or international level. These include, but are not limited to, laws, domestic statutes or international treaties on the use and development of AI, domestic rules of professional conduct, ethical and professional standards, and applicable arbitration rules, all of which can indirectly impact how certain professionals can use AI tools in an arbitration setting.

These Guidelines should not be construed as detracting or derogating from any of the above-mentioned rules and regulations. To the extent that these Guidelines are incompatible with any applicable mandatory rules and regulations, the latter should prevail.

GUIDELINE 1

Understanding the uses, limitations, and risks of AI applications

Participants should make reasonable efforts to understand, at least in general terms, the functionality, limitations, and risks of the AI tools they use in preparation for or during the course of an arbitration proceeding, as well as techniques for mitigating the limitations and risks inherent in AI tools. For example, for tools that use generative AI, participants should recognise the known limitations of such tools, such as their tendency to perpetuate biases contained in the training data, their propensity to mix up or invent information to fill gaps in knowledge, and their inability to identify the true logic or sources of information used to produce a given output, as further described below.

Participants should assess the AI tool's terms of use and data handling policies to understand if the tool's data treatment is consistent with any applicable confidentiality, privacy, or data security obligations, engaging technical experts as appropriate (see *Guideline 2* and commentary thereto).

Notably, participants should be aware of the following limitations, biases, and risks that (at present) are inherent in the use of certain AI tools.

"Black-box" problem

Generative AI tools produce natural-sounding and contextually relevant text based on speech patterns and semantic abstractions learned during their training. However, these outputs are a product of infinitely complex probabilistic calculations rather than intelligible "reasoning" (the so-called "black box" problem). Despite any appearance otherwise, currently available AI tools lack self-awareness or the ability to explain their own algorithms.

In response to this problem, participants may, as far as practical, use AI tools and applications that incorporate "explainable AI" features or otherwise allow them to understand how a particular output was generated based on specific inputs. "Explainable AI" is a set of processes and methods that allows human users to comprehend how an AI system arrives at a certain output based on specific inputs. "Explainable AI" can help promote transparency, increase trust in the AI tool's accuracy, and help ensure fairness when applied in an arbitration context. However, a complete understanding of complex AI systems may be beyond the reach of non-technical individuals, and this Guideline does not impose an expectation of thorough understanding. There are also technical and cost-related limitations to explaining fully how AI systems work, especially those systems employing complex algorithms and machine learning techniques.

Quality and representativeness of the training data

Large language models and other AI tools are trained using specific datasets and parameters, and their capabilities are a function of that particular training. Even the most advanced AI tools will exhibit biases and blind spots resulting from limitations in underlying datasets and training protocols. Moreover, general-purpose AI tools may not be well-suited for tasks requiring specialised knowledge or case-specific information, unless they are fine-tuned or provided with more relevant data.

Errors or “hallucinations”

Large language models may “hallucinate” or offer incorrect but plausible-sounding responses when they lack information to provide an accurate response to a particular query. Hallucinations occur because these models use mathematical probabilities (derived from linguistic and semantic patterns in their training data) to generate a fluent and coherent response to any question. However, they typically cannot assess the accuracy of the resulting output.

Hallucinations can be reduced through various techniques such as “prompt engineering” (*i.e.* crafting the query in a manner that is more likely to generate a better response) and “retrieval-augmented generation” (*i.e.* providing the model with relevant source material together with the query), but they are difficult to eliminate completely.

Augmentation of biases

An AI tool’s training data may reflect biases that can be perpetuated through the use of the tool. Participants in arbitrations should minimise the risks associated with flawed or biased predictions by exercising their own independent judgement.

This is especially important when existing biases in the data may create, exacerbate, or perpetuate any form of discrimination or profiling in the search and appointment of individuals as arbitrators, experts, counsel, or any other roles in connection with arbitrations. Biases may occur when the underrepresentation of certain groups of individuals is carried over to the training data used by the AI tool to make selections or assessments. Participants should exercise extreme caution when using any AI tool for such purposes, especially if they are unaware of how the selection or assessment algorithm works.

Using AI tools to help identify a suitable candidate for a specific role in connection with an arbitration is a particularly sensitive matter, and participants should be mindful of the impact such use may have on diversity and the fair representation of diverse individuals.⁴ In summary, participants are urged to: (i) use their personal judgement to evaluate the output of these AI tools, including from a diversity standpoint; (ii) to the best of their ability, become aware of the potential biases that may underlie the AI tool’s output and, to the extent possible, mitigate them; and (iii) use AI tools that control for biases.

⁴ The term “diversity”, as used in this Commentary, encompasses race, ethnicity, national origin, religion, gender, sexual orientation, gender identity, age, and ability, as well as intersections between these characteristics.

GUIDELINE 2

Safeguarding confidentiality

Different jurisdictions have their own rules on confidentiality, privilege, and secrecy of information.

Participants bound by these duties should limit themselves to using AI tools that adequately safeguard confidential information or otherwise refrain from inputting any such data into AI tools that do not guarantee confidentiality.

Some AI tools may retain information provided to them for a variety of purposes or even state that the service providers have rights to all the information that users enter. The use of these publicly available AI tools in the context of an arbitration could pose a risk of disclosing confidential information. By contrast, business-oriented or privacy-oriented AI tools and vendors may offer similar functionality but with additional safeguards for confidentiality.

Before using an AI tool, participants should assess the confidentiality policies, features, and limitations of the tool, engaging technical experts as appropriate (*see Guideline 1* and commentary thereto).

GUIDELINE 3

Disclosure

This Guideline does not impose any per se obligation to disclose the use of AI in arbitration. The use of AI is becoming increasingly common and is being incorporated into a variety of technological tools used in the context of an arbitration proceeding. In this evolving landscape, defining a set of generally applicable criteria for disclosure of AI does not seem feasible and could create more controversy than it resolves.

At the same time, the Guideline acknowledges the possibility that disclosure of the use of AI may be appropriate in some circumstances. Indeed, disclosure may be required by professional rules or more broadly to avoid misleading other participants in the arbitration process. In some circumstances, disclosure could be used as a means to mitigate concerning uses of AI that would otherwise fall under Guideline 5.

Disclosure concerning AI-related issues should, in principle, be resolved using the existing mechanisms for resolving disclosure disputes in the context of an arbitration, which, in most cases, is done by the tribunal under the procedural rules applicable to the arbitration.

Specific outputs from generative AI tools are necessarily a function of the inputs, as well as the characteristics of the AI tool itself. Accordingly, where the specific outputs of an AI tool are deemed to warrant disclosure, such disclosure should, in principle, cover the information necessary to reproduce and evaluate such output. In the case of generative AI tools, the input parameters typically include the full conversation history and additional text submitted to the AI model along with the query. The same considerations would apply, *mutatis mutandis*, to the use of AI tools that are not “generative” but rather evaluative, such as recommender or classification systems.

GUIDELINE 4

Duty of competence or diligence in the use of AI

Scope

This Guideline draws attention to some of the risks that may arise when party representatives delegate legal tasks (such as summarising cases, writing portions of briefs or oral submissions, or conducting legal research) to AI tools without reviewing the AI tool's output to make sure it is accurate, from a factual and legal standpoint.

As established in the Commentary to Guideline 1, certain generative AI tools may be prone to errors and hallucinations, and their output can include inaccurate legal citations or mistakes in the presentation or interpretation of facts, evidence, and legal authorities. Accordingly, this Guideline reminds party representatives (and particularly legal professionals) of their ethical and professional duty to review any work product created by, or with the help of, AI and remain responsible for inaccurate submissions made during an arbitration.

The tribunal and opposing counsel may legitimately question a party, witness, or expert as to the extent to which AI tool has been used in the preparation of a submission and the review process applied to ensure the accuracy of the output.

Guideline 4 does not impose an independent standard of review of party representatives' conduct. Rather, it contains *renvoi* to any applicable rules of professional conduct or responsibility to determine the level of diligence and reasonableness required when using AI tools. Party representatives on record will ultimately be deemed responsible for any non-compliance with this Guideline.

Consequences of non-compliance

Not all AI-induced errors are created equal. In some cases, an AI-induced error may be legitimately inadvertent, even after a reasonable review, or may be inconsequential or have no significant impact on the arbitration. In other cases, AI-induced errors and hallucinations can compromise the integrity of the proceedings, or result in a skewed presentation of the facts, the law or the evidence (*see Guideline 5*).

The tribunal can take these factors into account when deciding how to address submissions containing AI-induced errors and inaccuracies. If a submission is found to be inaccurate as a result of the use of an AI tool, the tribunal's powers will include the ability to strike the submission, order its correction, disregard the submission, attach lower credibility to it, and draw inferences as appropriate.

GUIDELINE 5

Respect for the integrity of the proceedings and the evidence

This Guideline prohibits any use of AI that compromises the integrity of the arbitration or the authenticity of evidence. While deploying AI can enhance the efficiency of arbitration proceedings, its potential misuse may disrupt due process and corrupt an arbitral tribunal's findings.

The duty is to protect the integrity of the proceedings, not to mislead the arbitral tribunal, and not to submit false or adulterated evidence. Fraudulent behaviour and misconduct, such as submitting false documents or resorting to so-called "guerilla tactics", can occur with or without the use of AI.

Advancements in AI, however, particularly in generative AI and deep fakes, can heighten the risks of manipulated or false evidence, making it significantly easier to create fake evidence that can appear strikingly convincing to the naked eye or that can sometimes be virtually indistinguishable from authentic versions. It can also make it more costly or difficult to detect any such manipulation through forensic and other means.

This Guideline reminds parties to be aware and vigilant of these heightened risks while emphasising the importance of ensuring the fairness and integrity of the proceedings when using AI. Parties, party representatives and experts should simply not use AI tools to fabricate evidence, distort evidence, or compromise the integrity of the proceedings under any circumstances.

If the arbitral tribunal determines that a party has violated this Guideline, it may consider, in addition to any other measures available under the governing law and the applicable arbitration rules or the *lex arbitri* (such as, for example, striking the evidence from the record, or deeming it inadmissible), deriving adverse inferences, and taking the infringing party representatives' conduct into account in its allocation of the costs of the arbitration.

GUIDELINE 6

Non-delegation of decision-making responsibilities

Non-delegation of personal mandate

This Guideline underlines the critical principle that an arbitrator's mandate, especially their ultimate decision-making function, is personal and non-delegable. This Guideline does not prohibit or ban the use of AI tools by arbitrators to assist them in fulfilling their responsibility and duty to analyse the facts, arguments, evidence, and the law, and to issue a reasoned decision.

While AI tools are capable of managing information, analysing data, and predicting outcomes, they must not replace the human judgement, discretion, responsibility, and accountability inherent in an arbitrator's

role. Therefore, arbitrators must be mindful that they are not inadvertently delegating part of this personal mandate to the AI tool.

This Guideline reinforces that arbitrators need to review the output produced by any AI tool to ensure it is accurate and shall take full responsibility for any errors or inaccuracies. If an arbitrator uses a generative AI tool to assist in the analysis of the arguments or the drafting of any part of a decision or award, the arbitrator cannot simply reproduce the AI's output without making sure it adequately reflects the arbitrator's personal and independent analysis of the issues and evidence at hand.

This Guideline reminds arbitrators that, even as technology evolves, their personal responsibility in rendering decisions remains paramount. AI tools can enhance efficiency and provide insights, but the arbitrator must make the ultimate decisions, preserving the human element essential to the fairness and integrity of arbitration proceedings. The arbitral tribunal will not be released from its duty to personally review the file and/or draft any arbitral tribunal's decision. At all times, the arbitrators remain responsible for their use of AI during the arbitration.

GUIDELINE 7

Respect for due process

This Guideline focuses on the principle of due process when using AI in arbitration. It emphasises the arbitrator's duty to disclose any reliance on AI-generated outputs outside the record that influence their understanding of the case, to the extent that any outputs are used, allowing parties the opportunity to comment. This approach ensures transparency and upholds the parties' right to be heard.

At the same time, it acknowledges that disclosure requirements may vary depending on the specific AI application used.

The Guideline also stresses the arbitrator's responsibility to avoid assuming the existence of authoritative sources from AI outputs. It prompts arbitrators to evaluate the reliability of AI-derived information independently and critically. Arbitrators, like parties and party representatives, must independently and critically evaluate AI-derived information to ensure reliability.



Model Clause For Inclusion in Procedural Orders

The Tribunal and the parties agree that the Silicon Valley Arbitration & Mediation Center Guidelines on the Use of Artificial Intelligence in Arbitration (**SVAMC AI Guidelines**) shall apply as guiding principles to all participants in this arbitration proceeding.

**For any questions, concerns, or suggestions
regarding the Guidelines, please contact
AITaskForce@svamc.org**

About Silicon Valley Arbitration & Mediation Center:

SVAMC is a non-profit serving the global technology sector through educational programming and related activities. SVAMC works with leading technology companies, law firms, ADR institutions, and universities in Silicon Valley and around the globe to promote effective and efficient resolution of technology-related business disputes. Visit www.svamc.org for additional information, or contact us at info@svamc.org.

Exhibit 6

1 **MORROW NI LLP**
Xinlin Li Morrow (Cal. Bar No. 281707)
2 3333 Michelson Drive Suite 300
Irvine, CA 92612
3 Email: xinlin@moni.law
Phone: +1 (213) 282-8166

4 *Attorney for Petitioner*

5
6
7
8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**

10 JOHN LAPAGLIA, an individual,

11 Petitioner,

12 vs.

13 VALVE CORPORATION, a corporation.

14 Respondent.

Case No. Pending '25CV0833 RBM DDL
Miscellaneous (Arbitration vacatur)
**PETITION TO VACATE ARBITRATION
AWARD; MEMORANDUM OF POINTS
AND AUTHORITIES IN SUPPORT
THEREOF**

1 John LaPaglia (“Mr. LaPaglia”), by and through his undersigned counsel, respectfully
2 submits this Petition to Vacate Arbitration Award and supporting Memorandum of Points and
3 Authorities.

4 **I. PRELIMINARY STATEMENT**

5 Pursuant to the Federal Arbitration Act, 9 U.S.C. §§ 1 *et seq.*, Mr. LaPaglia seeks to vacate
6 an arbitration award transmitted to his counsel on January 8, 2025, by an American Arbitration
7 Association arbitrator, Michael Saydah (“Arbitrator Saydah”), in favor of Valve Corporation
8 (“Valve”), the operator of the Steam Store (“Steam”).

9 Arbitrator Saydah’s award is subject to vacatur for three independent reasons: (1) Arbitrator
10 Saydah consolidated Mr. LaPaglia’s claims alongside 22 others’ in violation of the parties
11 arbitration agreement, which prohibited such consolidation without consent; (2) Arbitrator
12 Saydah’s refused to permit Mr. LaPaglia to submit an expert report proving Valve possesses a
13 monopoly market share, core to Mr. LaPaglia’s monopolization case (then ruled that Valve was not
14 a monopoly based on Valve’s one-sided submissions that Mr. LaPaglia, deprived of the best
15 evidence of such market share, was unable to rebut); and (3) Arbitrator Saydah outsourced his
16 adjudicative role to Artificial Intelligence (“AI”). In short, Arbitrator Saydah exceeded his
17 authority under the parties’ arbitration agreement and refused to hear evidence material and
18 pertinent to Mr. LaPaglia’s antitrust claims. Accordingly, as set forth in detail below, Arbitrator
19 Saydah’s award must be vacated pursuant to 9 U.S.C. §§ 10(a)(3), (a)(4).

20 **II. JURISDICTION AND VENUE ARE PROPER IN THIS COURT**

21 Mr. LaPaglia is a citizen of Connecticut. Valve Corporation’s principal place of business
22 and state of incorporation are both Washington. Mr. LaPaglia’s consolidated arbitration took place
23 in La Jolla, California, within this judicial district.

24 **III. FACTUAL AND PROCEDURAL BACKGROUND**

25 Personal Computer (“PC”) game sales generate tens of billions of dollars annually, the
26 overwhelming majority of which—[REDACTED]—flows through one company, Valve Corporation.
27
28

1 Valve's share of the PC game market is so great because Valve's online game store, Steam,
2 dominates the distribution of PC games. Just like with music on iTunes, third-party PC game
3 developers provide their games on Steam, and consumers purchase these games on Steam, with
4 Steam functioning as a middleman. But unlike the market for music, with competitor platforms like
5 Spotify, Steam is the only place most PC games can be purchased.

6 Mr. LaPaglia is a consumer of PC games and filed a claim demanding compensation for the
7 higher prices he paid as a result of Valve's antitrust violations. He also filed a claim for breach of
8 warranty stemming from a defective PC game he had purchased. This claim was unique to Mr.
9 LaPaglia and not shared by the other claimants before Arbitrator Saydah.

10 The consolidated hearing before Arbitrator Saydah was held in-person in La Jolla,
11 California in December 2024. Exhibit 1. Without Mr. LaPaglia's consent, Arbitrator Saydah
12 consolidated Mr. LaPaglia's claims with 22 other individuals who alleged antitrust and state law
13 unfair competition claims against Valve. Mr. LaPaglia did not consent to this consolidation at the
14 preliminary hearing.

15 The resulting consolidated hearing bore little resemblance to the individual, fair arbitration
16 Mr. LaPaglia had contracted for. With so many consumer claims being consolidated, the vast
17 majority of witnesses were consumers testifying as to their use of Steam. Only 3 of 18 witnesses
18 addressed the antitrust claims—an expert for each side and one witness that Valve chose. Arbitrator
19 Saydah refused to enforce any subpoenas issued for the appearance of Valve employees. During the
20 arbitration, Mr. LaPaglia testified to and presented evidence supporting his claim that Valve sold
21 him a defective PC game and refused to refund it. Valve also cross-examined Mr. LaPaglia on this
22 claim. But Arbitrator Saydah did not address this claim at all in his decision.

23 Most troublingly, Arbitrator Saydah refused to let Mr. LaPaglia offer into evidence an
24 expert report which established Valve's overwhelming [REDACTED] market share. Exhibit 2, 1700-05;
25 Exhibit 3, 1780-88. Arbitrator Saydah had originally ordered that the report be produced, Valve
26 refused to produce it, but then Valve was forced to produce the report to Mr. LaPaglia's counsel in
27 a *different* arbitration *during* the final merits hearing before Arbitrator Saydah. Yet despite
28 previously ordering its production, and although the report was sitting on Mr. LaPaglia's counsel's

1 computer in the arbitration, Arbitrator Saydah refused to let Mr. LaPaglia’s counsel offer it into
2 evidence. *Id.*

3 During breaks in the arbitration, Arbitrator Saydah told the parties he wanted to issue a
4 decision quickly because he had a trip scheduled to the Galapagos islands. Declaration of William
5 Bucher. Arbitrator Saydah also revealed that he uses AI to write articles for him. *Id.* The hearing
6 took place over 10 days, generating a 2,000-page transcribed record. *Id.* The final post-hearing
7 brief was submitted on December 23, 2024, and the Award, at 29 pages long, was issued 15 days
8 later (with Christmas and New Years in the middle) on January 7, 2025, when Arbitrator Saydah
9 was scheduled to leave for the Galapagos. *Id.*

10 The award bore the hallmarks of AI drafting. For example, when ChatGPT is asked whether
11 the now-public portions of the award were written by a human or AI, ChatGPT concludes the
12 opinion was mostly likely written by AI.¹ Affidavit of David Jaffe.

13 **IV. LEGAL ARGUMENTS**

14 **A. Arbitrator Saydah exceeded his power in consolidating Mr. LaPaglia’s claims with 22** 15 **other individuals’**

16 The agreement between Valve and Mr. LaPaglia prohibited consolidation of claims absent
17 consent of all parties, yet Arbitrator Saydah consolidated the claims anyway. The Federal
18 Arbitration Act (FAA) “requires courts to enforce privately negotiated agreements to arbitrate, like
19 other contracts, in accordance with their terms.” *Volt Info. Sciences v. Leland Stanford Jr. Univ.*,
20 489 U.S. 468, 478 (1988). Section 10(a)(4) of the FAA permits vacatur where an arbitrator
21 “exceeded their powers.” Arbitrators exceed their powers when they act outside the scope of the
22 parties’ contractual agreement. *Cristo v. Charles Schwab Corp.*, 2021 U.S. Dist. LEXIS 244294,
23 *38, 2021 WL 6051825 (S.D. Cal. 2021). In consolidating Mr. LaPaglia’s antitrust claims
24 alongside 22 other individuals’ claims and issuing one ruling that was to apply to all 23 claimants,
25 Arbitrator Saydah exceeded his authority.

26
27
28 ¹ Because ChatGPT is not a secure, closed-loop platform, only a publicly available portion of the award was queried,
rather than Mr. LaPaglia’s entire award.

1 Arbitrators exceed their powers when they deny a party the “right to arbitration according to
2 the terms for which it contracted.” *W. Emplrs Ins. Co. v. Jefferies & Co.*, 958 F.2d 258, 261 (9th
3 Cir. 1992) (finding an arbitrator exceeded their powers and ordering lower court to vacate
4 arbitration award after moving party was “forced to arbitrate according to terms for which it did not
5 bargain”). While courts do not make a habit of vacating arbitral awards solely for errors in contract
6 interpretation, vacatur is required where the arbitrators’ actions are not a plausible interpretation of
7 the agreement. *Seaguard Elecs., LLC v. Audiovox Corp.*, 2023 U.S. Dist. LEXIS 137988 (C.D. Cal.
8 2023) (citing *Lagstein v. Certain Underwriters at Lloyd's*, 607 F.3d 634 (9th Cir. 2010)).

9 Section 11 of the Steam Subscriber Agreement (SSA) is clear: YOU AND VALVE
10 AGREE TO RESOLVE ALL DISPUTES AND CLAIMS BETWEEN US IN **INDIVIDUAL**
11 BINDING ARBITRATION.” Exhibit 4 (emphasis added). Clause 11.D of the SSA leaves no room
12 for misinterpretation:

13 YOU AND VALVE AGREE NOT TO BRING OR PARTICIPATE IN A CLASS
14 OR REPRESENTATIVE ACTION, PRIVATE ATTORNEY GENERAL
15 ACTION, WHISTLE BLOWER ACTION, OR CLASS, COLLECTIVE, OR
16 REPRESENTATIVE ARBITRATION, EVEN IF AAA’S RULES WOULD
17 OTHERWISE ALLOW ONE. THE ARBITRATOR MAY AWARD RELIEF
18 ONLY IN FAVOR OF THE INDIVIDUAL PARTY SEEKING RELIEF AND
19 ONLY TO THE EXTENT OF THAT PARTY’S INDIVIDUAL CLAIM. You and
20 Valve also agree not to seek to combine any action or arbitration with any other
21 action or arbitration without the consent of all parties to this Agreement and all
22 other actions or arbitrations. This Agreement does not permit class, collective, or
23 representative arbitration. A court has exclusive authority to rule on any assertion
24 that it does.

20 Arbitrator Saydah exceeded his authority when he consolidated the disparate claimants
21 before him. The contract left no room for Arbitrator Saydah to determine that the contract permits
22 collective proceedings at all. To the contrary, the agreement is clear “a court has exclusive
23 authority to rule on any assertion that it does.” *Cf. United Paperworkers Int’l Union v. Misco, Inc.*,
24 484 U.S. 29, 38 (1987) (“The arbitrator may not ignore the plain language of the contract.”).
25 Arbitrator Saydah did not err by misreading the contract. He lacked the authority to even attempt to
26 determine whether the contract permitted nonconsensual consolidation before him; that power was
27 reserved for a court.

1 Arbitrator Saydah acted outside the scope of his authority under the agreement, exceeding
2 his powers per 9 U.S.C. § 10(a)(4). “[A]n arbitrator does not have authority to expand the action
3 submitted to him into a class action in favor of all similarly situated employees. *Michelson's*
4 suggests that arbitrators do not have power to add new parties to arbitration proceedings, at least
5 not without the consent of all the parties. That proposition is consistent with the FAA's emphasis on
6 the power of the courts to determine disputes over arbitrability and to compel arbitration.” *Pacific*
7 *Reinsurance Management Corp. v. Ohio Reinsurance Corp.*, 935 F.2d 1019, 1026-1027 (9th Cir.
8 1991).²

9 **B. Arbitrator Saydah refused to hear pertinent and material evidence of Valve’s**
10 **overwhelming market share**

11 The FAA permits vacatur “where the arbitrators were guilty of misconduct . . . in refusing
12 to hear evidence pertinent and material to the controversy.” 9 U.S.C. § 10(a)(3). During the
13 arbitration, Arbitrator Saydah refused to allow Mr. LaPaglia to present an expert report (the
14 “Schwartz Report”) that calculated Valve’s market share at [REDACTED]

15 The Schwartz Report (1) was pertinent and material to Mr. LaPaglia’s antitrust and unfair
16 competition claims, (2) directly contradicted Valve’s expert report and testimony, (3) was written
17 with more reliable information than even that Valve allowed its own expert to access, and (4) was
18 the same report that convinced a federal judge to grant class certification to a group of game
19 developers in a parallel antitrust case against Valve.

20 Courts vacate arbitral decisions for a refusal to hear evidence when the arbitrator’s decision
21 makes the hearing fundamentally unfair. *Moonshadow Mobile, Inc. v. Labels & Lists, Inc.*, 2024
22 U.S. Dist. LEXIS 205380, *20, n.3, 2024 WL 4709915 (D. Oregon 2024) (vacating award even
23 though no ill-will or intentional conduct was attributable to the arbitrator). Vacatur is warranted
24 where the arbitrator’s evidentiary decisions are “substantially inadequate.” *Lindsey v. Travelers*
25 *Commer. Ins. Co.*, 636 F. Supp. 3d 1181, 1183-1184 (E.D. California 2022) (Granting vacatur
26

27 ² One victim of this extra-contractual consolidation with other claimants was Mr. LaPaglia’s unique, individual breach
28 of warranty claim for his purchase of a defective game. In the final ruling in the consolidated proceeding, it was
literally forgotten about.

1 where an arbitrator ruled employee in employment discrimination dispute failed “to show race was
2 even a factor” in employer’s pay decisions after refusing to compel production of documents
3 showing a Black employee was paid much less than similarly qualified White coworkers), citing
4 *Fed. Deposit Ins. Corp. v. Air Fla. Sys., Inc.*, 822 F.2d 833, 842 (9th Cir. 1987).

5 Mr. LaPaglia alleged Valve operates an illegal monopoly in violation of federal and state
6 competition laws, including Section 2 of the Sherman Antitrust Act (“Sherman 2”). An essential
7 factor in the resolution of Sherman 2 claims is the company’s market share. *Dreamstime.com, LLC*
8 *v. Google LLC*, 54 F.4th 1130, 1137 (9th Cir. 2022) (“In the context of a Section 2 claim . . .
9 market share is perhaps the ‘most important factor to consider’ when determining whether a
10 defendant has monopoly power. . . To meet the first element of a Section 2 claim, a plaintiff
11 generally must . . . establish that the defendant possesses market share in that market sufficient to
12 constitute monopoly power.”).

13 Section 2 of the Sherman Act makes it unlawful to monopolize trade, violation of which can
14 be proven with either direct or indirect evidence of monopoly power. 15 U.S.C. § 2; *Optronic*
15 *Techs., Inc. v. Ningbo Sunny Elec. Co.*, 20 F.4th 466, 484 (9th Cir. 2021). A market share of 50%
16 or more establishes a prima facie inference of monopoly power in Section 2 contexts. *See* Merger
17 Guidelines n. 30 (U.S. Department of Justice and the Federal Trade Commission 2023); *see also*
18 *Pac. Steel Grp. v. Commercial Metals Co.*, 2021 U.S. Dist. LEXIS 97113, *16-17, 2021 WL
19 2037961 (N.D. Cal. 2021) (“Given that the complaint includes allegations of 50% market share and
20 ‘[s]ubstantial barriers to entry . . . that make CMC’s market power durable,’ . . . the Court finds that
21 PSG has plausibly alleged CMC’s market power in the rebar manufacturing market”).

22 Arbitrator Saydah prevented Mr. LaPaglia from presenting an expert report showing Valve
23 possesses a [REDACTED] market share, far above any judicial or agency-recognized threshold for presuming
24 monopoly power.

25 The Award itself recognized that Valve’s share of the PC game market was “a major
26 dispute” in the case, with Valve’s expert maintaining the company “has a 22% to 23% market
27 share,” below the threshold for the inference of monopoly power. Exhibit 1, at 24. But Valve’s
28 expert’s estimate was not based on Valve’s internal market data like the Schwartz Report was.

1 Instead, Valve’s expert only relied on publicly available guesstimates from Internet websites.
2 Relying on Valve’s one-sided presentation, Arbitrator Saydah found Valve did not have more than
3 50% of the market, meaning Mr. LaPaglia never benefited from a presumption that Valve
4 unlawfully possesses monopoly power, prejudicing Mr. LaPaglia with respect to the ultimate
5 outcome of the arbitration.

6 Where evidence that is excluded is “unquestionably relevant” to prove the moving party’s
7 claims, the decision to exclude such evidence justifies vacatur. *Lindsey v. Travelers Commer. Ins.*
8 *Co.*, 636 F. Supp. 3d at 1185, citing *Hoteles Condado Beach, La Concha & Convention Center v.*
9 *Union de Tronquistas Local 901*, 763 F.2d 34 (1st Cir. 1985).

10 Furthermore, Arbitrator Saydah’s decision not to allow the presentation of the expert report
11 was itself inexplicable, further justifying vacatur. *Lindsey v. Travelers Commer. Ins. Co.*, 636 F.
12 Supp. 3d at 1185 (“This case is an example of a similarly inexplicable refusal to hear ‘evidence
13 pertinent and material to the controversy’”).

14 As part of the pre-trial information exchange process, Arbitrator Saydah ordered Valve to
15 produce the Schwartz Report calculated using Valve’s own data. It was on the basis of that very
16 same expert report that Judge Jamal Whitehead certified a class of PC game developers who are
17 currently suing Valve for the same anticompetitive conduct alleged by Mr. LaPaglia. Order
18 Certifying Class, *In re Valve Antitrust Litigation*, No. 2:21-cv-00563-JNW (W.D. Washington
19 2024).

20 Valve refused to comply with Arbitrator Saydah’s order to produce the report, but
21 Arbitrator Saydah did not take action to enforce his own production order. Mr. LaPaglia’s counsel,
22 however, gained access to the report after it successfully compelled Valve to produce it in a
23 separate proceeding. Mr. LaPaglia’s counsel asked Arbitrator Saydah for permission to present the
24 report, and Arbitrator Saydah denied the request. In explaining his denial, the arbitrator seemed
25 keenly aware of the vacatur risk he was creating. “[REDACTED]

26 [REDACTED]

27 [REDACTED]” Exhibit 3, 1780-88.

28

1 **C. Arbitrator Saydah exceeded his power in outsourcing his adjudicatory role to**
2 **Artificial Intelligence**

3 Section 10(a)(4) of the FAA permits vacatur where an arbitrator “exceeded their powers.”
4 This occurs when an arbitrator acts outside the scope of the parties’ contractual agreement. *Cristo*
5 *v. Charles Schwab Corp.*, 2021 U.S. Dist. LEXIS 244294, *38, 2021 WL 6051825.

6 Artificial intelligence was used to draft the award, supplanting Arbitrator Saydah’s fact
7 finding and adjudicative role with facts found by a machine. Arbitrator Saydah admitted to the
8 parties that he uses ChatGPT to write articles. Specifically, during a break, Arbitrator Saydah told a
9 story about how he had been assigned to write a short article on an aviation club he was part of, and
10 that he had used ChatGPT to write it to save time. Declaration of William Bucher. Arbitrator
11 Saydah also noted for the parties that he was leaving for a trip to the Galapagos soon and wanted to
12 get the case done before then. Declaration of William Bucher.

13 Arbitrator Saydah’s opinion for Mr. LaPaglia’s case has telltale signs of AI generation. The
14 facts section cites facts that are both untrue and not presented at trial or present in the record. For
15 example, Arbitrator Saydah’s decision states, without source attribution, that “Other platforms such
16 as Roblox innovate in other ways with more mature content like horror elements paying off.”
17 Exhibit 1, at 26. But Roblox is a *children’s* game with no horror elements. No testimony or
18 document in the record, or anything, suggested otherwise. This sort of hallucinating or mixing up
19 of facts is frequent when using AI tools to write content. Arbitrator Saydah’s seemingly random,
20 uncited reference to Roblox’s marketing strategy that is only tangentially related to the parties’
21 dispute betrays the use of artificial intelligence to find “facts.”

22 Similarly, the decision states that “Just last year Sony and Microsoft partnered together to
23 explore cloud gaming and streaming solutions using Microsoft Cloud Azure” and that “There is
24 also major competition from China with their own developers and platforms, and also competition
25 from companies in the United States, in the race to capture the Chinese market for PC Games.” *Id.*
26 Neither of these statements were in the record or otherwise evidenced or even argued, and neither
27 fact findings bear any citations, again demonstrating Arbitrator Saydah relied on generative AI to
28 determine the facts of the case and make decisions on market power and competition for him.

1 Prompted by these observations, Mr. LaPaglia’s counsel’s law clerk asked ChatGPT
2 whether it believed the Roblox paragraph was written by a human or AI.³ ChatGPT stated that the
3 paragraph’s awkward phrasing, redundancy, incoherence, and overgeneralizations “suggest that the
4 passage was generated by AI rather than written by a human.” Affidavit of David Jaffe.

5 The decision must be vacated because, by relying on AI to reach his ruling, Arbitrator
6 Saydah exceeded his authority bound by the scope of the parties’ arbitration agreement. The
7 parties’ arbitration agreement empowers “a neutral arbitrator” to resolve disputes between them.
8 Exhibit 4. The agreement also binds the arbitrator, who is responsible for supplying “a written
9 decision” and a “statement of reasons” for their holding. *Id.* An arbitrator’s reliance on generative
10 AI to replace their own role, and the parties’ submissions, in the litigation process betrays the
11 parties’ expectations of a well-reasoned decision rendered by a human arbitrator.

12 Just as courts have vacated awards when the decision-making is outsourced to a person
13 other than the arbitrator appointed, so too must a court vacate when that decision making is
14 outsourced to an AI. *See Move, Inc. v. Citigroup Global Mkts.*, 840 F.3d 1152, 1159 (9th Cir. 2016)
15 (vacating where “there is simply no way to determine whether” an unqualified “imposter” on the
16 arbitration panel “influenced other members of the panel or that the outcome of the arbitration was
17 affected by his participation”), citing *Stivers v. Pierce*, 71 F.3d 732, 747 (9th Cir. 1995)
18 (“Particularly on a small board, . . . it is difficult if not impossible to measure the impact that one
19 member's views have on the process of collective deliberation. Each member contributes not only
20 his vote but also his voice to the deliberative process.”); *See also Bassett's Adm'r v. Cunningham's*
21 *Adm'r*, 50 Va. 684, 692 (Va. 1853) (“The authority of an arbitrator cannot be delegated to an
22 agent. . . In this case the arbitrators appointed other persons to examine the accounts and vouchers
23 in the case, and adopted their conclusions without examining the vouchers themselves. This was
24 held sufficient ground for setting aside the award.”)

25
26
27 _____
28 ³ While the decision is marked confidential and not publicly available, Valve made a redacted version of the identical
opinion from another claimant before Arbitrator Saydah publicly available in a separate court proceeding. The decision
contains the exact same paragraph, unredacted, word for word, that was used for the ChatGPT inquiry.

1 **V. CONCLUSION**

2 Because Arbitrator Saydah's award was the product of an improperly consolidated hearing,
3 a refusal to hear evidence, and AI, it is respectfully submitted that Mr. LaPaglia's Petition for
4 Vacatur should be granted and the award be set aside.

5 Dated: April 8, 2025

Respectfully submitted,
Morrow Ni LLP

6
7
8 By: /s/ Xinlin Li Morrow
Xinlin Li Morrow
9 *Attorney for Plaintiff*

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28