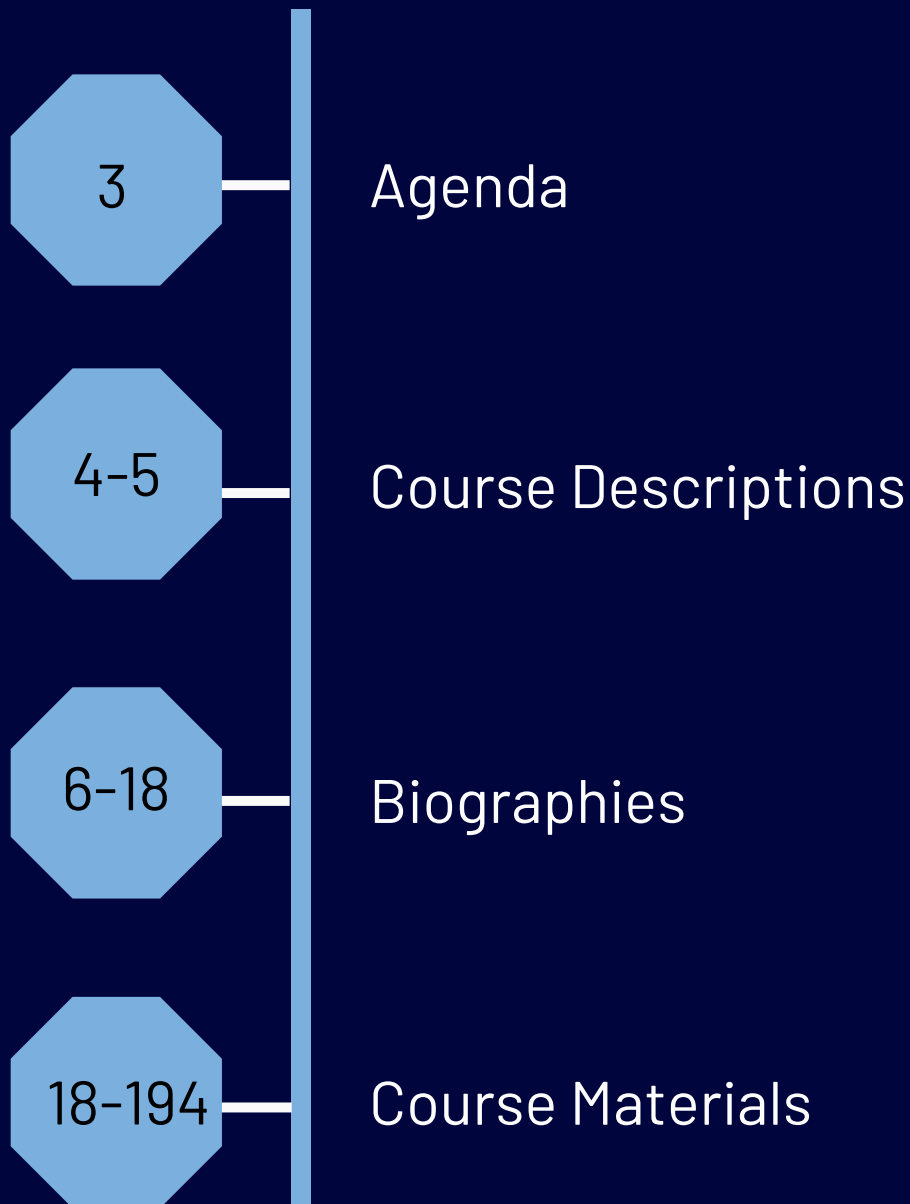


CLE EVENT COURSE MATERIALS

TUESDAY, AUGUST 5, 2025



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Second Annual CLE Day Tuesday, August 5, 2025

Widener University Delaware Law School
4601 Concord Pike
Wilmington, DE 19803

Agenda

6 CLE credits (4 substantive, 2 ethics) in Delaware, Pennsylvania, and New Jersey, may self-report CLE Agenda and Course Descriptions

7:30 a.m. – Registration Check-in and Complimentary Breakfast

8:30 a.m. – Welcome and Opening Remarks

Tamisha Hopkins, Associate Director of Alumni Engagement,
Widener University Delaware Law School

Stacey F. Anderson, Esq. '20, Chairwoman, Delaware Law School Black Alumni Network

Todd J. Clark, Esq., Dean and Professor of Law, Widener University Delaware Law School

9:00 am Session #1: How to Manage a Law Firm and Excel in Your Practice (1 Substantive)

10:00 am Session #2: How to Become a Judge (1 Substantive)

11:00 am Session #3: Artificial Intelligence & the Courts (1 Substantive)(available in-person & virtually)

12:00 pm – Lunch

1:00 pm – Session #4: Navigating Education Law in the U.S.: Protecting Rights & Ensuring Access (1 Substantive)

2:00 pm – Session #5: Changes in Non-Discrimination Policies and Practices: A Review of Executive Orders & Litigation (2 Ethics)

How to Manage a Law Firm and Excel in Your Practice

Running a successful law firm requires more than legal expertise—it demands strong leadership, strategic investment, and the ability to navigate both challenges and opportunities. This CLE course brings together experienced law firm founders and managing partners to share their insights on what it takes to build and sustain a thriving practice. From the difficulties of firm management to the rewarding aspects of leadership, our speakers will discuss the realities of running a law firm, the importance of investing in staff and personal growth, and the diverse resources available to support firm success. Attendees will gain practical strategies for balancing legal work with business management, fostering a strong firm culture, and positioning their practice for long-term sustainability. Whether you're a solo practitioner or managing a growing team, this course will equip you with the tools to lead effectively and excel in your practice.

Panelists:

Felicia Brownell, Esq.

Janell Foster, Esq. '19

Larry Kimmel, Esq.

Samuel D. Pratcher, Esq.

Dan Wynam, Esq.

Moderator: Vernon Vassallo, Esq. '21

How to Become a Judge

Step inside the world of the judiciary and discover what it truly takes to become a judge. In this dynamic course, participants will gain insider insights from esteemed members of the bench as they demystify the paths to the judiciary—whether by election, appointment, or application. Through candid conversations, you'll explore the ethical challenges judges and judicial candidates face and walk away with a clearer understanding of how to navigate the journey to the bench with integrity, purpose, and confidence.

Panelists:

Hon. David Hume '97

Hon. James DeLeon '76

Hon. Demetrica Todd '95

Moderator: Karima Yvelerton, Esq. '16

Artificial Intelligence & the Courts

Artificial Intelligence (AI) is rapidly evolving across the country and has penetrated many aspects of daily life. In the legal profession, AI has touched how law enforcement approaches investigation, influenced how attorneys conduct research and writing, and altered how the courts operate. At last year's Inaugural CLE Day, the audience was introduced to facial recognition technology and its impact on criminal defense. This year the BAN CLE Planning Committee is inviting the audience to engage with panelists to be educated on how artificial intelligence meets civil practice and court administration. These technologies have taken serious form and lawyers and judges must stay knowledgeable of the technology capabilities and limitations.

Panelists:

Isaac Sommers, Esq.

Hon. Karoline Mehalchick

Diane Robinson

Hon. Herbert Dixon, Jr.

Dan Wynam, Esq.

Moderator: Christlynn Dornevil, Esq. '18

Navigating Education Law in the U.S.: Protecting Rights and Ensuring Access for All Students

This Continuing Legal Education (CLE) course provides an in-depth exploration of the fundamental aspects of education law in the United States, with a particular emphasis on the legal protections afforded to students from vulnerable populations. The session will examine recent regulatory changes and executive actions shaping education law, focusing on their impact on key laws such as the Individuals with Disabilities Education Act (IDEA), as well as the rights of English Language Learners (ELLs), immigrant populations, and marginalized communities. Attendees will gain a thorough understanding of how these developments, along with other critical education laws, are influencing the educational experiences and protections for all students.

Panelist:

Natasha Felder, Esq.

Ashli Giles-Perkins, Esq.

Chadê Biney-Amissah, Esq. '21

Moderator: Shahirah Brown, Esq. '17

Changes in Non-Discrimination Policies and Practices: A Review of Executive Orders

As the White House has issued executive orders and memorandums re-evaluating diversity, equity, and inclusion (DEI) policies, organizations across sectors are grappling with the shifting legal and political landscape. With new federal directives impacting DEI-focused hiring and the allocation of federal funds, the future of federally funded programs remains uncertain. This CLE course brings together leading voices from education, law firm leadership, and nonprofit organizations to examine the current and future state of anti-discrimination policies. Our panelists will discuss the legal and practical implications of recent policy changes, explore strategies for compliance and advocacy, and debate the fundamental question: Is DEI really dead, or is it evolving? Attendees will gain critical insights into how these developments affect their practice, organizations, and communities, as well as practical approaches to navigating the new era of diversity, equity, and inclusion.

Panelists:

Professor Craig Green, Esq.

Rochelle Gumapac, Esq. '06

Dwayne Bensing, Esq.

Moderator: Darlene Williams

Biographies

Listed in order of sessions



Felicia Brownell, Esq. owns and is Managing Attorney for the Brownell Law Group LLC. The Brownell Law Group is a distinguished woman-owned full-service law practice dedicated to providing top-tier legal representation across Delaware and Pennsylvania on legal matters for individuals and corporate clients. Established in 2018, the practice is dedicated to excellence and integrity, providing a broad spectrum of legal services designed to address client needs in both civil and criminal matters. The Brownell Law Group prides itself on building strong, personalized relationships with its clients by taking the time to understand each client's unique situation and objectives, and then providing tailored solutions that

align with their goals. Whether navigating complex corporate transactions or seeking justice in personal injury cases, clients receive dedicated and effective legal representation.

Prior to beginning her legal career, Felicia built a substantial financial services career in Finance and Risk Management at the regional and global levels. She has over 20 years' experience, including most recently at JP Morgan Chase, where she was a business unit Chief Financial Officer and the Head of Firmwide Impact Data & Insights.

Felicia has received numerous awards and recognition, including from the State of Delaware House of Representatives for her facilitation and advocacy of the Delaware Equal Pay Act. Because of her efforts, the law in Delaware now prohibits prospective employers from asking job applicants about their salary history and from screening applications based on compensation earned in previous positions before extending the candidate an offer. The legislation began the process of helping Delaware narrow the pay disparity between men, women, and minorities.

Felicia is a Wharton graduate from the University of Pennsylvania, holds a MBA in Finance from Villanova University, as well as a Juris Doctorate from Delaware Law School. She is a member of the American Bar Association, the Pennsylvania Bar Association, and the Delaware Bar Association. She has been admitted to practice law by the Supreme Court of Pennsylvania, the Supreme Court of Delaware, and the United States District Court for the District of Delaware.

Felicia resides in Delaware with her husband and children.



Janell S. Foster, Esq. '19, is a Chester, Pennsylvania native and a Delaware Widener Law School graduate. Janell is the proud owner and managing attorney of the Law Office of Janell S. Foster, located in Media, Pennsylvania. Janell is a first-generation law school graduate and attorney who believed God when he told her that she would be a champion for the people. Despite all adversity, Janell opened her own law firm to fight for justice for all people. Janell puts God first in everything she does and is grateful for the love and support of her husband, children, family & friends.

In her professional life, Janell is a versatile litigator driven by client-focused advocacy coupled with exceptional legal knowledge and skill. Her clients trust her to listen to their needs and offer competent and realistic legal advice. Every client matters to Janell, and it is essential that she achieves the best outcome for each client. Janell's practice focuses on criminal, elder, and family law. Janell is also the author of a children's book series titled "The Super Hair Squad", which follows the adventures of three African American superhero girls who have magical superpowers in their hair. Janell wrote this book to inspire young girls of color to embrace their natural beauty & power and build their self-confidence. Janell believes that every person can achieve their dreams, and whether she is in the courtroom advocating for her clients or in a classroom reading her book to children to inspire them to dream big, she makes sure to give each person hope for a bright future, no matter what life brings their way.



Larry Kimmel, Esq., a AV Preeminent peer-rated attorney and Kimmel Carter's managing partner, is highly regarded by his peers, opposing counsel, and clients alike. Through his passion, his in-depth knowledge of the law, and his persuasive abilities, Mr. Kimmel has amassed an impressive record of settlements and verdicts for motor vehicle accident victims, injured workers, and victims of nursing home neglect, including numerous multimillion-dollar settlements.

As a past president of the Delaware Trial Lawyers Association and a former chair of the Workers' Compensation Section of the Delaware State Bar Association, he played a key role in passing Delaware's new underinsured motorist laws, raising the minimum bodily injury limits in Delaware, along with other laws that protect the rights of personal injury plaintiffs and workers' compensation claimants in the First State.

Mr. Kimmel is passionate about serving Delawareans both through his legal work and through community service. As past chair of the Blue-Gold Basketball Board of Trustees, he goes above and beyond to ensure that the annual Blue-Gold All-Star Basketball Games are successful fundraisers for various charities, while also providing unique educational opportunities for the student-athletes involved. Mr. Kimmel is also a founding member and a former co-chair of the Jewish Federation of Delaware's Ben-Gurion Society, which encourages philanthropy among the state's young Jewish community.



Samuel D. Pratcher, III, Esq., is a managing partner at Pratcher Krayner, LLC. Samuel was born in Wilmington, Delaware, and graduated from Salesianum High School. He graduated with honors from Hampton University in 2005 with a Bachelor of Science degree in Political Science. In 2009, he received his law degree from Thomas M. Cooley School of Law. While in law school, Samuel served as judicial extern to the Honorable Joseph J. Farnan, Jr., in the United States District Court of Delaware. He gained valuable experience researching and writing court opinions on civil rights and employment law matters.

After law school, Samuel completed a year clerkship with The Honorable Charles H. Toliver, IV of the Superior Court of the State of Delaware. As a law clerk, he conducted research and assisted in writing court opinions in business litigation, personal injury, and criminal law matters.

Attorney Pratcher has received recognition from his peers as a top personal injury lawyer in the State of Delaware (Delaware Today Magazine, Top Lawyer 2013, 2016, 2019-2023). Attorney Pratcher has gained national recognition from the National Academy of Personal Injury Attorneys (NAOPIA) for being selected as a Top 10 personal injury attorney in Delaware in 2013, 2016, 2017, 2018, 2019, 2020, 2021, 2022, and 2023. Super Lawyers selected Mr. Pratcher as a 2017 and 2018 Rising Star in the practice of law for the State of Delaware. No more than 2.5% of Delaware attorneys are selected for this honor. Super Lawyers selected Mr. Pratcher as a top personal injury attorney in 2021 - 2024.

Mr. Pratcher is admitted to practice in Delaware, New Jersey, Pennsylvania, the United States District Court of Delaware, and the Supreme Court of the United States of America.



Dan Wyman, Esq. is a progressive pathfinder with 15+ years of industry experience in Law, Legal Technology, and AI. He is known for his strategic thinking and deep industry expertise, building a career on creating and delivering practical, business-focused legal solutions across complex and evolving landscapes.

With a blended background as an Attorney and Leader in eDiscovery Client Services, Dan brings tremendous expertise in his role as a Lead Sales Engineer, seamlessly consulting on cutting edge workflows and products to maximize operational efficiency for Relativity's customers. Dan is highly skilled in cyber security, guiding some of the largest global law firms and corporations through cloud transformation. He plays a key role in infusing the customer voice in the Relativity product roadmap and is an invaluable contributor to the creation and maintenance of Relativity's world-renowned certification program. He has played an important role in driving the success of Relativity's Justice for Change program and has guest lectured at colleges and universities on topics impacting many facets of the industry.

Dan graduated summa cum laude from Suffolk University Law School in 2010 and resides in Plymouth, Massachusetts. Outside of work, he loves spending time with his family, board games, music, and Boston sports teams.



Vernon Vassallo, Esq. '21, is an associate at Whitbeck Beglis. He served as a Judicial Law Clerk for Judge Natalie J. Haskins and Judge Felice G. Kerr of Delaware Family Court. Vernon is a first-generation college student from the Wilmington area who graduated from Delaware Law School in 2021. In law school, Vernon served as the Vice President of the Student Bar Association, Vice President of the Black Law Students Association, Pro Bono Chair and Articles Editor of the Delaware Journal of Corporate Law, Secretary of the Transactional Law Honor Society, and a participant in Youth Court.

Vernon has deep roots in the Delaware community, working for the Grand Opera House, volunteering with a low-income tax clinic in Delaware, and serving the Office of the United States Senator Thomas R. Carper. He graduated magna cum laude from Goldey-Beacom College and earned the highest-grade point average for his degree program. Outside of work, Vernon enjoys cooking, rock climbing, cycling, and working with youth through his involvement in the Bellefonte Lions Club.



Christlynn Dornevil, Esq. '18 is a Cyber Claim Counsel working in the cyber insurance realm. As a Cyber Claims Counsel, Christlynn makes determinations on whether certain first-party and third-party events are covered under cyber insurance policies. Christlynn also has 4 years of experience working as a Cybersecurity and Data Privacy Associate Attorney where she assisted her clients with incident response efforts for events stemming from business email compromise to ransomware events.

Christlynn is 2018 graduate of Widener University Delaware Law School, where she served as an Articles Editor for the Widener Law Review.



The Honorable James DeLeon '76, graduated from Howard University in 1970 and from Delaware Law School in 1976. He served as an officer in the United States Army Corps of Engineers from 1970 to 1985. In 1987, he was first elected as a judge for the Philadelphia Municipal Court.

In 2002, Judge DeLeon ran for the Pennsylvania Supreme Court, and in 2023, he ran for Mayor of Philadelphia. After many years of public service, he retired from the bench on December 31, 2021.

Since 2005, he has also served as an officer in the United States Coast Guard Auxiliary. In addition, he is an attorney for the Philadelphia Democratic City Committee and practices law privately.

Judge DeLeon is married and has four children, nine grandchildren, and one great-grandson. He is also a member of Kappa Alpha Psi Fraternity Inc



The Honorable David Hume IV, '97, became a Magistrate in Chancery in February 2025. Before joining the Court, he had a long history of public service, having worked over 25 years with the Delaware Department of Justice as a Deputy Attorney General, including serving as Chief Prosecutor for Sussex County from 2016 to 2023. In 2023, Magistrate Hume joined the Delaware Department of Justice's Appellate Unit, practicing before the Delaware Supreme Court, while serving as the Chief Legal Ethics Officer. Magistrate Hume served as a law clerk for the Honorable Richard F. Stokes, the Honorable Merrill C. Trader, and the Honorable Rosemary B. Beauregard. He received his B.A. from the University of Delaware and received his J.D. from the Delaware Law School (formerly Widener University School of Law).



The Honorable Demetrica Todd '95. When confirmed by the New Jersey State Senate in March 2023, Demetrica became the first African American Superior Court Judge appointed in Salem County. Prior to Superior Court, Demetrica was the Municipal Court Judge in Vineland, Salem, and Deptford Township, and the Central Judicial Processing Judge for Cumberland County. When appointed in Vineland in January 2017, Demetrica became the first African American and first female to serve as judge, and later Chief Judge in the City of Vineland. Demetrica also served as an adjunct professor at the University of Phoenix and Wilmington University for over 13 years. Demetrica graduated from Widener University in 1995 with a B.S. in Business Administration, in 1996 with a master's in taxation, and from Rutgers School of Law – Camden in 2001 with a Juris Doctor. After obtaining her graduate degree, Demetrica worked three years as an auditor and tax accountant for Price Waterhouse Coopers, LLP, and successfully completed 3 parts of the CPA exam before returning to law school.

After graduating from law school, Demetrica worked for two years as a tax and corporate attorney at Stradley, Ronon, Stevens and Young, LLP in Philadelphia. Subsequently, Demetrica served as the Director of Economic Development at Gateway Community Action Partnership in Bridgeton, NJ, where she successfully leveraged \$10,000,000 while securing more than \$2,000,000 in grant funding for a neighborhood revitalization project, and secured a state charter to establish and operate a federal credit union. For 12 years while employed at Gateway, Demetrica also served as the Public Defender in Bridgeton Municipal Court, and in 2012 became the first African American in the City of Bridgeton and in Cumberland County to be appointed to the position of Municipal Prosecutor.

Demetrica is the Treasurer for CompleteCare Health Network, and previously served on the boards of Seabrook and Cumberland County Women Hall of Fame. She is a member of Zeta Phi Beta Sorority, Inc., Association of Black Women Lawyers-NJ, and New Jersey State, Salem and Cumberland County Bar Associations. She is also the Co-Chair for Vicinage XV Committee on Diversity, Inclusion and Community Engagement and a member of the New Jersey State Bar Association Special Committee on Racial Equity in the Law. She previously served as the Panel Chair for NJ Supreme Court District I Fee Arbitration Committee.

Demetrica served as Vice Chair for Bridgeton Area PAL and Pittsgrove Township Planning Committee; and is a former board member of Literacy Volunteers of Cumberland County and Cumberland County Habitat for Humanity. Previously, Demetrica served as a 4-H county and state double dutch judge, member of Rutgers Cooperative Advisory Council, Pittsgrove Township Recreation Committee, leadership facilitator for the national organization InRoads and Cumberland County College Student Leadership Institute, and ten years as Co-Chairperson of the Widener University African American Alumni Association. **Cont.**

Demetrica is the recipient of several community awards, including the 2025 Richie Kates Lifetime Achievement Award, 2023 BABU Community Leader Award, 2021 Vineland African American Community Development Corporation Coretta Scott King Award, 2019 Soroptomist International of Cumberland County Ruby Award, 2016 Barrister of the Year by The National Stop the Violence Alliance, 2015 Bridgeton High School Distinguished Alumni Hall of Fame and the 2012 NAACP-Greater Vineland Branch Business Award. In addition, Demetrica was an invited honoree in 2019 to receive the Kappa Community Development Corporations African-American Women Achievers Award, the Bridgeton Chapter of the National Coalition of Black Women award in 2020, Cumberland County Bridgeton Legends award in 2022, and the 2023 Manna from Heaven, Richard T. Smith President's Award . Her hobbies include spending time with her daughter, reading, working in her community and traveling.



Karima Yelverton, Esq.'16 is an Assistant District Attorney at the Philadelphia District Attorney's Office. Since 2023, she has been a member of the Special Investigations Unit where she investigates weapons discharges by law enforcement, complaints of public corruption, and conducts active prosecutions of off-duty misconduct by municipal employees. She is the first Black American lead prosecutor in Pennsylvania to obtain a manslaughter conviction for a homicide by an on-duty police officer after a jury trial.

Prior to joining the DAO, Karima was Assistant Solicitor to the Philadelphia Register of Wills, the Hon. Tracey Gordon, where she assisted the Register and Solicitor with hearings for disputed probate matters and managed the Clerk of Orphans' Court Office. She also specialized in community outreach related to the "Tangled Title" crisis, which affects at least 2% of residential properties in Philadelphia.

Karima also previously served as a Philadelphia Assistant Public Defender, representing indigent defendants in criminal matters. She began her legal career as a clerk for the Hon. Sheila Woods-Skipper during her term as President Judge of the First Judicial District. In both positions, Karima assisted some of the most neglected members of our society – persons with mental health challenges and those who were unable to afford an attorney.

Karima received her J.D. from Widener University Delaware Law School, and graduated Magna Cum Laude with a B.A. in Risk Management and Insurance from Temple University Fox School of Business. Karima is active in the community and a member of several legal associations. In 2019 and 2022, she served as President of the Philadelphia Chapter of The National Bar Association, Women Lawyers Division, an affinity bar organization established in 1981 to serve the needs of Black women attorneys. She is currently Secretary of the Board of Governors of the Philadelphia Bar Association and an Appointed Member of the 2024-2025 Barristers Association of Philadelphia Executive Committee.

Karima is a Philadelphia native and attended high school at Bodine High School for International Affairs.



The Honorable Herbert B. Dixon, Jr. is a senior judge on the Superior Court of the District of Columbia. He was appointed to successive 15-year terms on the court – first by President Ronald Reagan and subsequently by President William Clinton. Upon the announcement of Judge Dixon’s retirement and assumption of senior judge status, the Legal Times/National Law Journal referred to him as the “Technology Judge.” Judge Dixon’s “X” handle (formerly Twitter) is @Jhbdixon.

Judge Dixon currently serves on the Advisory Council of the ABA Task Force on Law and Artificial Intelligence and is a contributing author to the ABA’s 2024 book publication, “Artificial Intelligence: Legal Issues, Policy, and Practical Strategies.” He is a former member of the ABA Board of Governors and the ABA House of Delegates. He is the technology columnist for The Judges’ Journal magazine and the immediate past chair of the ABA Journal magazine’s Board of Editors.

Judge Dixon was the chair of the Superior Court’s Electronic Filing Pilot Project, which received national recognition for its success, and oversaw implementation of the court’s technology-enhanced courtroom project. Judge Dixon is a former chair of the National Conference of State Trial Judges. He received his J.D. degree from Georgetown University Law Center and a Bachelor of Science degree in Electrical Engineering from Howard University.



The Honorable Karoline Mehalchick On July 11, 2023, President Joseph R. Biden, Jr. nominated Judge Karoline Mehalchick to be a District Judge for the United States District Court for the Middle District of Pennsylvania. Her nomination was confirmed by the United States Senate on January 31, 2024. President Biden signed her commission on February 5, 2024, and she was sworn in as a District Judge on February 6, 2024. Prior to her confirmation as a District Judge, Judge Mehalchick served the Court as a United States Magistrate Judge for over a decade, having been appointed by the judges of the United States District Court to that position in July 2013.

With that appointment, she became the first woman judge to sit in the Scranton vicinage of the Middle District of Pennsylvania. She was reappointed to the position for a second term in 2021 and appointed Chief Magistrate Judge in January 2021. In her decade as a magistrate judge, Judge Mehalchick presided over, served as a referral judge, or acted as a settlement officer in thousands of civil, criminal, and petty offense matters. Judge Mehalchick is a graduate of the Schreyer Honors College of the Pennsylvania State University, and the Tulane University School of Law in New Orleans, Louisiana, where she was a Tulane Law Scholarship recipient and student attorney in the Environmental Law Clinic. Upon graduating from law school, she served as a law clerk to the Honorable Trish Corbett, the first woman judges of the Court of Common Pleas of Lackawanna County. After completing her clerkship with Judge Corbett, Judge Mehalchick joined the law firm of Oliver, Price & Rhodes in Clarks Summit, where she became a partner in 2008. Judge Mehalchick currently serves as the Jurist in Residence at Widener Commonwealth Law School for the 2025-2027 term.

In addition to her regular judicial duties, Judge Mehalchick has served on the Judicial Conference Committee on Codes of Conduct, as a member of the Administrative Office of the United States Courts Magistrate Judges Advisory Group and is a member of the Third Circuit Judicial Council’s Reentry Courts and Workplace Conduct committees. Within the Middle District of Pennsylvania, Judge Mehalchick helped create the Prisoner Litigation Settlement Program and presides over the Scranton vicinage’s CARE court, the district court’s reentry program. Judge Mehalchick is an active member of the Federal, Pennsylvania, and Lackawanna Bar Associations. Cont.

Judge Mehalchick currently serves as President-Elect of the Federal Bar Association and will become President of the national organization in October 2025. Judge Mehalchick is also a Past President of the Middle District of Pennsylvania Chapter of the FBA. Since September 2018, Judge Mehalchick has served as Vice President of Production for the Ballet Theatre of Scranton. She also participates in weekly Scholar Exchanges through the National Constitution Center, leading middle and high school students in discussions about constitutional issues and civil discourse. Throughout her legal career, Judge Mehalchick has been recognized for her contributions to the bar and community and is a recipient of the PBA's Michael K. Smith Excellence in Service Award, the LBA's Margaret P. Gavin Award, which is presented to an outstanding young lawyer member of the Lackawanna Bar Association who is dedicated to service to the bar and community. Judge Mehalchick was recognized in 2012 as one of thirty-five Pennsylvania "Lawyers on the Fast Track" by The Legal Intelligencer, and in May 2020, the PBA's Commission on Women in the Profession as a "Woman Trailblazer."



Diane Robinson, Ph.D. is a Principal Court Research Associate in the Research Division. Since joining the NCSC in 2019, her project work has focused on data governance, including data collection, data quality, use of data, and data sharing; guardianships and conservatorships; and elder issues. She leads the TRI/NCSC AI Policy Consortium on Law and Courts, the National Open Court Data Standards (NODS) implementation project, the Guardianship & Technology project, and the Center for Elders and the Courts. She earned her Ph.D. at the University of Arkansas for Medical Sciences, her M.S. in Education at Indiana University and her B.A. at Texas A&M University. She was previously the Director of Research and Justice Statistics for the Arkansas court system and was also the state director for the Court Appointed Special Advocate (CASA) program in Arkansas.



Isaac Sommers, Esq. is a Texas native who graduated from Howard Payne University in 2018 and from Harvard Law School in May 2021. During law school, Isaac participated in the Cyberlaw and Crimmigration Clinics, served as an editor for the Harvard Latine Law Review, the Harvard Human Rights Journal, and the Harvard Journal of Law and Public Policy; and he engaged in appellate litigation brief-writing and research with various legal internships (including a Federal Public Defender's Capital Habeas Unit, the West Virginia Attorney General's Office, and a private criminal defense attorney). After graduating, Isaac clerked for the Honorable Jeremy D. Kernodle of the United States District Court for the Eastern District of Texas, after which Isaac joined Ropes & Gray's Washington, D.C. office as part of the litigation and enforcement practice group. At Ropes, Isaac has worked on a variety of trial and appellate-level civil commercial litigation matters. Isaac has also co-authored a number of articles addressing the intersection of AI and the law, has advised on best practices concerning the use of AI, and helped design and currently helps update Ropes & Gray's AI Court Order Tracker.



Chadê Biney-Amissah, Esq. ‘21 didn’t enter education through the courtroom — she started in a North Philadelphia classroom, teaching African American History to ninth graders who had already learned that school wasn’t always built with them in mind. That early work shaped everything that followed. Over more than a decade in education — as a teacher, school leader, curriculum designer, and now attorney — Chadê has built a career around one belief: students deserve systems that protect them, not punish them.

Today, she serves as Assistant General Counsel for the School District of Philadelphia, where she represents the district in special education due process hearings and advises leadership on everything from discipline and Section 504 to Title IX and school climate. She’s a trusted voice on how to navigate law and policy while keeping students at the center. Before that, she worked as a Special Education Associate at Wisler Pearlstine LLP, representing public school entities across Pennsylvania and negotiating solutions in some of the most high-stakes education disputes in the state.

But Chadê’s legal career has always been shaped by her time in schools. She spent over ten years in the classroom and in district leadership, including as Assistant Director of Literacy at Mastery Charter Schools and Master Teacher at Simon Gratz High School, where she led restorative practices, DEI initiatives, and coached leaders across networks. She knows what it’s like to sit in an IEP meeting with a student and their parent — and now, she brings that insight into policy development, legal strategy, and systemic reform.

Chadê also teaches graduate students at Arcadia University (School Law) and Bryn Athyn College (African American History), and she’s been invited to speak across the region — including at the Pennsylvania School Solicitor’s Symposium and multiple university panels on special education, race, and student advocacy.

She holds a J.D. from Widener University Delaware Law School, an M.S.Ed. in Urban Education from the University of Pennsylvania, and a B.A. in English from Temple University. She is admitted to practice law in Pennsylvania and New Jersey.

At every step, Chadê brings together the head and the heart — using the law not just as a compliance tool, but as a lever for justice and belonging in public education.



Natasha Felder, Esq., is a distinguished attorney with extensive experience in special education law, juvenile and criminal defense, and youth advocacy. Currently serving as an Assistant General Counsel for the School District of Philadelphia's Special Education/School Law Unit, Natasha advises schools and administrative offices on the federal and state requirements related to the identification, evaluation, and support of students with disabilities. She also represents the School District in special education due process matters before the Office for Dispute Resolution and at meetings to establish students' Individualized Education Programs.

Previously, Natasha held impactful roles in legal and advocacy organizations. She served as a Staff Attorney with the Defender Association of Philadelphia where she represented clients in both adult and juvenile courts. Her work as a Stoneleigh Foundation Emerging Leader Fellow with the Youth Sentencing & Reentry Project led to the creation of a toolkit for improving representation for girls in the justice system.

Before practicing law, Natasha worked extensively with youth identified with disabilities requiring specialized instruction in residential programs and community settings across Philadelphia and surrounding counties. As an Applied Behavior Analyst at Elwyn and a Residential Counselor at Devereux, she supported the implementation of education and treatment plans, often serving as a 1:1 assistant—a role considered a related service in special education programming. Natasha also leveraged data and goals from Individualized Education Programs (IEPs) to secure appropriate community-based programming for youth as a Reintegration Worker and later as a Juvenile Probation Officer.

Committed to community and professional service, Natasha is currently the Vice President of Administration for the Barristers' Association of Philadelphia, Inc., having served on its executive board from 2023 to 2024. An active member of the Pennsylvania Bar, Natasha's career is driven by her passion for advocacy, equity, and empowering underserved youth. From 2021 to 2024, Natasha served on the board of directors for Rock to the Future, a Philadelphia nonprofit providing music education and mentorship to youth in underserved communities. During her tenure, she served as Recording Secretary and Co-Chair of the Nomination and Governance Committee. A lifelong Philadelphian, Natasha holds a Juris Doctor from Villanova University Charles Widger School of Law, where she was awarded the Faculty Recognition Award and the Joseph R. Wenk Civil Justice Clinic Award. She earned a Master of Science in Criminology from Saint Joseph's University, magna cum laude, and a Bachelor of Science in Criminal Justice/Pre-Law from Lincoln University, summa cum laude.



Ashli Giles-Perkins, M.Ed., Esq., (she/they) originally joined the Philadelphia office of the Education Law Center in October 2020 as an Independence Foundation Public Interest Law Fellow before transitioning into a Staff Attorney role two years later. Ashli's fellowship work centered on addressing the significant educational injustices for youth involved in the child welfare and juvenile justice systems in the Philadelphia area who entered, resided in, or transitioned out of residential facilities. As a staff attorney, Ashli works on issues ranging from exclusionary discipline, discriminatory policies targeting

LGBTQ+ youth and students of color, Black Girls Education Justice, enrollment barriers for youth in care, and appropriate services for students with disabilities. Ashli provides know-your-rights trainings for students, families and communities, and works on legislation-and-policy initiatives to ensure oversight, accountability, and access to a quality education for system-involved youth.



Shahirah Brown, Esq. '17, a first-generation college graduate and professional student, obtained her Juris Doctor degree from Widener University Delaware Law School in 2017 and holds a Bachelor of Business Administration from Temple University. Her passion for law and social justice inspired her to join the legal profession, leading her to the Defender Association of Philadelphia. As an Assistant Public Defender, she tirelessly safeguarded the civil liberties of families in the Philadelphia community. Shahirah transitioned in August 2021 to the Office of General Counsel at The School District of Philadelphia, Special Education, to ensure students with disabilities in Philadelphia have access to free and appropriate education (FAPE).

Throughout her legal career, Shahirah has consistently demonstrated a profound commitment to the Philadelphia community, whether through her active participation on boards or by providing direct services to the Philadelphia Community. Shahirah has served in leadership positions on several boards, primarily focused on serving the African American community. These roles have allowed her to contribute to various initiatives aimed at empowering and uplifting African Americans. Her involvement includes mentoring young professionals, advocating for social justice, and supporting educational programs. These organizations include, but are not limited to, The Women Lawyer Division of the National Bar Association (Vice President, Recording Secretary), and The Barristers' Association of Philadelphia (Corresponding Secretary), the National Council of Negro Women, Inc. (Recording Secretary), and The Young Lawyer Division of the Philadelphia Bar Association (Prior Cabinet Member, Board of Governors). Through her dedicated service, Shahirah has helped advance the mission of these organizations, making a significant impact on the community.

Driven by her commitment to community service, Shahirah has created and participated in numerous initiatives. During her time at the Defender Association of Philadelphia, she spearheaded a summer program providing high school interns with valuable courtroom exposure and trial experience. She participated in expungement clinics and "shop talk" series at local barbershops organized by the Defender Association of Philadelphia. Shahirah participates in Will Clinics hosted by the Senior Law Center, generously volunteers as an Achieve Now Tutor, and serves as a Youth Aid Panelist (YAP), playing a vital role in rehabilitating and preventing young people accused of low-level offenses from entering the court system. She is passionate about mentoring youth, often serving as a panelist to educate high school students on the importance of a college education and the legal system.

Most notably, Shahirah cohosted a successful Women's Day Brunch in 2022 and officially incorporated "Sistas In Suits" in 2024, creating an empowering collective of professional women dedicated to breaking barriers and shattering stereotypes. Founded on the principles of unity, resilience, and excellence, Sistas in Suits aims to foster a community where women of all backgrounds can thrive and support each other in all endeavors. Committed to mentorship, advocacy, and leadership, Sistas in Suits provides a platform for women to network, collaborate, and advance in their respective careers and break into new fields. Through workshops, seminars, and networking events, Sistas in Suits equips attendees with the tools and resources needed to navigate professional challenges and achieve their goals. This organization is not just a professional network—it's a sisterhood united in the pursuit of excellence, empowerment, and equality. With its signature blend of style, substance, and sophistication, Sistas in Suits is redefining what it means to be a woman in a suit, leaving a mark on the world one power move at a time.

Shahirah consistently demonstrates an unwavering commitment to justice and community service in Philadelphia. In 2021, she was honored in the Philly Bar YLD Member Spotlight for her extensive volunteer work, including speaking engagements with students at Young Scholars Charter School during Law Week and serving as a judge for the Bradway Mock Trial. In 2023, she received the prestigious F. Sean Peretta Service Award in recognition of her significant contributions and dedication to community service. In 2024, she was named a Women of Influence Rising Star by the Philadelphia Business Journal. Most recently, she received the 2025 Young Emergent Leader Award from the National Coalition of 100 Black Women, Inc., and was recognized as one of the Legal Intelligencer's Lawyers on the Fast Track. Outside of her professional commitments, Shahirah is a proud member of Delta Sigma Theta Sorority, Inc., actively contributing to its mission and initiatives. She is also an avid reader and values quality time with her family and friends.



Dwayne Bensing, Esq. joined the ACLU of Delaware in 2020, after serving for three years with the U.S. Department of Education's Office for Civil Rights and two years with the U.S. Department of Justice's Civil Rights Division. After graduating from the University of Pennsylvania Law School, Dwayne began his legal career at Fried, Frank, Harris, Shriver & Jacobson, LLP, in Washington, D.C. Prior to attending law school, Dwayne was selected as a Truman Scholar in 2006 and taught middle-school Science and Social Studies in Philadelphia Public Schools as a Teach for America corps member. Dwayne's work with ACLU-DE has included education equity, free speech, and the rights of incarcerated people. Dwayne became Legal Director of ACLU-DE in 2022.

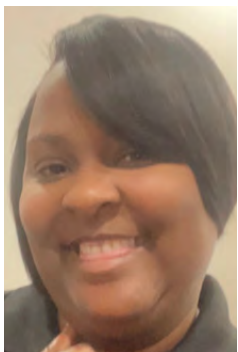


Craig Green, Esq. is the Klein Professor of Law and Government at Temple Law School, where he has taught federal courts, civil procedure, and constitutional law for twenty years, receiving various awards for teaching and scholarship, along with a PhD in legal history from Princeton University in 2018. Before Temple, he was an appellate lawyer at the Department of Justice, a law clerk for then-Judge Merrick Garland in the District of Columbia, and a law clerk for Judge Louis Pollak in Philadelphia. His research has been published in many top-ranked law reviews, and he is currently writing a book about the legal history of states, the United States, and Native Land during the Founding Era.



Rochelle Gumapac Esq. '06 is a partner in White and Williams' Wilmington Office and Managing Partner of the firm's Rhode Island Office. Rochelle is a skilled litigator who focuses on complex civil litigation arising from environmental/toxic tort, product liability, real estate professional malpractice, personal injury, premises liability, insurance bad faith claims and construction defect and design. She is also experienced in commercial litigation that arises in and out of bankruptcy, preference actions, fraudulent conveyance actions, cash collateral disputes and claim objection and resolution.

In addition to practicing law, she is the firm's first Diversity, Equity, and Inclusion Officer and is responsible for DEI initiatives and programming for over 200 attorneys across 10 offices. She is President of the Defense Counsel of Delaware and is the immediate past Delaware State Representative for the Defense Research Institute. Rochelle is a member of the International Association of Defense Counsel and a board member of the Philadelphia Diversity Law Group and former board member of the Multicultural Judges and Lawyers Section of the Delaware Bar Association. She has expanded various committees and initiatives in the firm, legal community, and within client organizations



Darlene Williams is a graduate student who has spent 15 years in child advocacy, social services, mental health, and healthcare — driven by the belief that everyone should have the opportunity to reach their potential. Darlene's experience working on issues pertaining to disadvantaged youth in both non-profit and government settings, such as Delaware's Department of Services for Children, Youth and their Families, and the Children's Hospital of Philadelphia (CHOP), has given her deep insight into the real-world importance and impact of compliance practices. She has also observed that the most functional and effective workplaces are those that balance structure with empathy. Darlene, who was raised in poverty in West Philadelphia, now resides in Ardmore, PA, where she is a single

mother to a teenage son and an adopted special needs (and formerly foster) middle schooler. She is a graduate of Chestnut Hill College with a BS in Criminal Justice and holds a certificate in Health Law and Compliance from Widener University School of Law. Darlene is a member of the Planning Committee for the Second Annual CLE Day hosted by the Black Alumni Network (BAN).

COURSE 1 MATERIALS

GENERAL ARTICLE: Law Firm Knowledge Management: A Selected Annotated Bibliography *

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Reporter

106 Law Libr. J. 175 *

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Author: Andrew M. Winston **

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Highlight

This selected annotated bibliography covers scholarly research articles on knowledge management in law firms. The annotations are preceded by an introduction high-lighting salient themes that emerge in this literature. These include the use and effectiveness of information technology in law firm knowledge management, the human side of knowledge sharing, and lessons for law firm and law school librarians.

Text

[*176] Introduction

Law Firm Knowledge Management

P1 Knowledge management refers to the strategies, techniques, and tools used by an organization to capture, retain, analyze, organize, improve, and share data, information, and knowledge relating to the operation and administration of its business.

1 Knowledge management in the law firm context involves a firm's "ability to identify, capture, and leverage the internal knowledge of individuals" at the firm and to combine this knowledge with knowledge derived from vendors and other external sources to "enhance the ability of all law firm staff to create and share knowledge across the firm, to provide excellent client service, and to compete in an increasingly aggressive professional legal services environment."

2 In plainer and more intuitive language, knowledge management for law firms means "[w]ho we know, what we know and how we do what we do." 3 Law firm

(c) Andrew M. Winston, 2014. The author would like to thank Timothy L. Coggins, Associate Dean for Library and Information Services & Professor of Law, and Suzanne B. Cornell, Associate Director for Reference, Research, and Instructional Services, both at the University of Richmond School of Law, for their invaluable input and advice on this article. An earlier and shorter version of this article was submitted in a class at the College of Computing and Informatics at Drexel University.

1 TODD R. GROFF & THOMAS P. JONES, INTRODUCTION TO KNOWLEDGE MANAGEMENT 2 (2003).

2 T. du Plessis & A.S.A. du Toit, Knowledge Management and Legal Practice, 26 INT'L J. INFO. MGMT. 360, 360 (2006).

P3 Knowledge **management** in **law firms** involves a number of tools and services for more effectively managing, sharing, and using knowledge in a variety of areas: the law and how to provide legal services; clients and their businesses and industries; the expertise, skills, and backgrounds of firm attorneys and staff; and referral sources, experts, possible merger candidates or lateral hires, and other third parties. In 2012, a survey of knowledge **management** in **law firms** and corporate **law** departments conducted by the International Legal Technology Association, identified the following major legal knowledge **management** tools and services (among others):

- . Collections of precedents, model documents, legal research, and legal opinions
- . Intranets or portals
- . Automated document assembly
- . Web 2.0 collaboration tools, such as wikis, blogs, and team sites
- . Enterprise search
- . Document **management** systems
- . Firm intranets
- . Transactional and litigation matter information systems
- . Extranets 17

[*178] Overview of Annotated Articles

P4 This overview discusses broad themes that emerge in the annotated articles and is followed by a discussion highlighting points of particular interest to librarians in **law firms** and in **law** schools. This annotated bibliography is selective in that it covers scholarly, research-based articles in English that focus primarily on **law firm** knowledge **management** and were published from 1999 to 2013. The articles are grouped into different categories based on their primary areas of focus. Despite the size of the legal industry in the United States and worldwide, and the nature of **law firms** as knowledge-driven enterprises, there is relatively little academic research about knowledge **management** in the **law firm** context. 18 Nonetheless, both **law firm** and **law** school librarians can draw useful lessons about how knowledge **management** works--and challenges to be overcome in its successful implementation and use--from these empirical studies.

Information Technology

P5 Most of the articles in this bibliography focus on how information technology is used in **law firm** knowledge **management**. Apistola and Lodder present a framework for **law firms** to consider in evaluating whether and to what extent different technology tools (e.g., e-mail, intranets, the Internet, groupware, knowledge systems) might be useful in addressing different aspects of **law firms'** knowledge **management** needs (developing, sharing, and evaluating administrative data, declarative knowledge, procedural knowledge, and analytical knowledge).¹⁹ Lawyers at the South African firms surveyed by Du Plessis and Du Toit generally reported positive attitudes toward

¹⁵ Lisa Gianakos, *KM Professionals: A Natural Fit for LPM, in* KNOWLEDGE **MANAGEMENT**: INTELLIGENT BUSINESS AT ITS BEST 6 (2013), <http://epubs.iltanet.org/i/143561>.

¹⁶ Chris Emerson & Amy Wu, *The Pricing Professional's KM Toolkit, in* KNOWLEDGE **MANAGEMENT**: INTELLIGENT BUSINESS AT ITS BEST, *supra* note 15, at 14.

¹⁷ *2012 Knowledge Management Survey Results, in* KNOWLEDGE **MANAGEMENT**: TYING THE ORGANIZATION TOGETHER 6, 13 (2012), *available at* <http://read.uberflip.com/i/68817>.

¹⁸ Many of these articles were authored or coauthored by a single scholar, Dr. Petter Gottschalk of the BI Norwegian Business School.

¹⁹ Martin Apistola & Arno R. Lodder, *Law Firms and IT: Towards Optimal Knowledge Management*, 2005 J. INFO. L. & TECH., nos. 2 & 3, § 5, http://www2.warwick.ac.uk/fac/soc/law/elj/jilt/2005_2-3/apistola-lodder.

the use of information technology for knowledge management and high usage of Internet and intranet applications, but little use of extranets and a surprising level of uncertainty about the knowledge management systems their firms used. 20

P6 Articles authored or coauthored by Gottschalk focus on firms' use of technology in knowledge management. In his first article, Gottschalk develops the hypothesis, based on a survey of Norwegian law firms, that a positive relationship exists between information technology use and law firm knowledge management. 21 Further research by Gottschalk indicated that the extent to which law firms use information technology generally has a significant impact on the extent to which they use information technology for knowledge management. 22 In a 2000 article, Gottschalk determined that law firms did not, contrary to expectations, use information technology significantly less than consulting firms in knowledge management, [*179] although law firms made heavier use of databases rather than more general information sources. 23

P7 Gottschalk's subsequent research addressed more specific research topics. In 2003, Gottschalk and Khandelwal explored a "stages of growth" model (an analytical tool used in organizational and information technology research) for the development of law firm information technology systems in connection with their knowledge management processes. In this model, firms pass from (1) having only "end-user tools" such as e-mail and word processors, to (2) using information technology to identify "who knows what" within the firm, to (3) using information technology to retrieve information stored in documents such as contracts, memoranda, etc. in the "what they know" phase, to (4) using information technology systems in such a way that the systems themselves help provide solutions--the "how they think" phase. 24 The results of the research did not confirm that the Australian law firms studied moved through these stages of growth in the manner hypothesized, although the research did suggest that the number of lawyers and the number of information technology workers tended to predict the stage of information technology knowledge management projects at a firm. 25 In 2004, Gottschalk and Khandelwal published the results of research on Norwegian and Australian law firms that provided limited support for the applicability of the stages-of-growth model in the law firm knowledge management context. 26

P8 In 2009, Gottschalk and Karlsen revisited the stages-of-growth model in light of newer research. In an article that first reviews the law firm business model, the role of lawyers as knowledge professionals, and the idea of knowledge organizations, they found that most of the firms surveyed were in the third stage of growth (which centers on the use of technology to afford access to stored precedents, documents, e-mails, and other materials

²⁰ Du Plessis & Du Toit, *supra* note 2, at 369.

²¹ Petter Gottschalk, *Knowledge Management in the Professions: Lessons Learned from Norwegian Law Firms*, 3 J. KNOWLEDGE MGMT., no. 3, 1999, at 203, 210.

²² Petter Gottschalk, *Use of IT for Knowledge Management in Law Firms*, 1999 J. INFO. L. & TECH. no. 3, § 8, http://www2.warwick.ac.uk/fac/soc/law/elj/jilt/1999_3/gottschalk.

²³ Petter Gottschalk, *Knowledge Management Systems: A Comparison of Law Firms and Consulting Firms*, 3 INFORMING SCI. 117, 123 (2000).

²⁴ Petter Gottschalk & Vijay K. Khandelwal, *Determinants of Knowledge Management Technology Projects in Australian Law Firms*, 7 J. KNOWLEDGE MGMT., no. 4, 2003, at 92, 93-96.

²⁵ *Id.* at 102-03.

²⁶ Petter Gottschalk & Vijay Khandelwal, *Stages of Growth for Knowledge Management Technology in Law Firms*, 44 J. COMPUTER INFO. SYS., no. 4, 2004, at 111, 121.

used and generated in law practice). 27 Their newer research did not, however, confirm that law firms consistently progress through the stages of growth in order. 28

P9 Gottschalk addressed an area of great interest to lawyers when in 2002 he explored whether client demands were driving law firms' implementation of information technology in knowledge management, although his research results did not show that client desires had a significant impact on firms' selection of information technology for knowledge management purposes. 29 Clients reported higher levels of satisfaction with firms that could readily receive from and share with [*180] clients both administrative and substantive information about client matters. 30 As Gottschalk noted in his conclusion, however, client demand for effective use of technology in managing practice knowledge is likely only to increase. 31

P10 In a 2001 article, Gottschalk explored the use of information technology in "inter-organizational knowledge management," or knowledge management among law firms that are members of networks in which business is referred and, to an extent, knowledge is shared. 32 A study of Norwegian members of Eurojuris, a network of firms in nineteen European countries that has invested heavily in information technology, showed that member firms were using the network for finding solutions to legal problems, selecting among possible solutions, and evaluating the solutions selected, but not cooperating on cases. 33 In an article the following year, Gottschalk and Khandelwal compared research on interorganizational knowledge transfer based on surveys of Norwegian and Australian firms. While firm cooperation (cooperation among law firms on a national, international, or global level) 34 and knowledge cooperation (sharing administrative, declarative, procedural, and analytical knowledge) 35 predicted the use of information technology in support of such networks in Norway, only knowledge cooperation was such a predictor in Australia. 36

The Human Side of Knowledge Management

P11 Other articles address interpersonal and behavioral aspects of law firm knowledge management. Topics include the dynamics of knowledge sharing, the importance of firm culture in successful knowledge management, and the attorney behaviors that can arise when a knowledge management system has been introduced into a law firm.

27 Petter Gottschalk & Jan Terje Karlsen, *Knowledge Management in Law Firm Business*, 16 J. SMALL BUS. & ENTERPRISE DEV. 432, 440 (2009).

28 *Id.* at 432.

29 Petter Gottschalk, *Law Firm Clients as Drivers of Law Firm Change*, 2002 J. INFO. L. & TECH. § 6, http://www2.warwick.ac.uk/fac/soc/law/elj/jilt/2002_1/gottschalk.

30 *Id.*

31 *Id.*

32 Petter Gottschalk, *Benefits from Information and Communication Technology Facilitating Inter-Organisational Knowledge Networks: The Case of Eurojuris Law Firms in Norway*, 2001 J. INFO. L. & TECH., http://www2.warwick.ac.uk/fac/soc/law/elj/jilt/2001_2/gottschalk.

33 *Id.* § 5.

34 Petter Gottschalk & Vijay K. Khandelwal, *Inter-Organizational Knowledge Management: A Comparison of Law Firms in Norway and Australia*, 42 J. COMPUTER INFO. SYS. (SPECIAL ISSUE) 50, 52 (2002).

35 *Id.*

36 *Id.* at 50.

P12 In a 2009 article, Forstenlechner, Lettice, and Bourne stress the importance of exchanging "personal know-how" with peers, identifying it as a "key predictor of fee income" based on their case study of a large global law firm 37 They conclude that the significance of this form of knowledge transfer was due not to inadequate knowledge management technology but to lawyers' preference for personal information exchange, noting that, although knowledge management involves, at its core, automation of knowledge processes, "it remains a discipline highly dependent on human interaction." 38

[*181] P13 In their research on current information services in a large London law firm, Attfield, Blandford, and Makri found that knowledge management staff served as "intelligent filters." 39 Their article highlights the importance of back-propagation of information from users about their requirements and preferences in order to enable knowledge management professionals to customize the information provided to their users' needs. 40

P14 Brivot considered whether implementation of a centralized knowledge management system that emphasized the collection of attorney work product in a central repository resulted in attorneys losing power within the organization to administrators. 41 Despite lawyers' fears, the research suggested that attorneys actually gained power as a result of knowledge management, even though the creation and sharing of knowledge in the firm had become more bureaucratized. Significantly, those without social capital could still access valuable knowledge even in the absence of personal relationships with those possessing the knowledge. 42

P15 Lustri, Miura, and Takahashi studied a knowledge-sharing initiative at a Brazilian law firm. The initiative, which involved three experienced lawyers and three trainee lawyers, was designed to provide the trainees with tacit knowledge about client service, marketing, and the business of law that was held by the more senior attorneys. 43 The authors found that this model developed the desired competencies more quickly than the firm's conventional training. 44

P16 Olatokun and Elueze explored knowledge sharing in Nigerian law firms. They learned that associations among lawyers engaged in knowledge sharing, lawyers' attitudes about their personal contributions to knowledge sharing, and the use of information technology were stronger predictors of knowledge sharing than attorneys' positive attitudes toward it. 45

P17 Choo and others studied knowledge management in a large Canadian law firm that had invested significantly in knowledge management strategy, technologies, and processes. They found that the firm's "information culture"--its "values, norms, and practices with regard to the management and use of information" 46--was more important

37 Ingo Forstenlechner et al., *Knowledge Pays: Evidence from a Law Firm*, 13 J. KNOWLEDGE MGMT., no. 1, 2009, at 56, 64.

38 *Id.* at 66. "Personal service from the KM team" was also identified as a key predictor of fee income. *Id.*

39 Simon Attfield et al., *Social and Interactional Practices for Disseminating Current Awareness Information in an Organisational Setting*, 46 INFO. PROCESSING & MGMT. 632, 632 (2010).

40 *Id.* at 643.

41 Marion Brivot, *Controls of Knowledge Production, Sharing and Use in Bureaucratized Professional Service Firms*, 32 ORG. STUD. 489 (2011).

42 *Id.* at 503.

43 Denise Lustri et al., *Knowledge Management Model: Practical Application for Competency Development*, 14 LEARNING ORG. 186 (2007).

44 *Id.* at 200.

45 Wole M. Olatokun & Isioma N. Elueze, *Analysing Lawyers' Attitude Towards Knowledge Sharing*, 14 S. AFRICAN J. INFO. MGMT., no. 1, 2012, at 1, 1.

to information use outcomes 47 than "information management"--the "application of management principles to the acquisition, organization, control, dissemination, and use of information." 48

[*182] P18 Brivot and Gendron explored what effect a centralized, precedent-oriented knowledge management system had on the interpersonal dynamics of lawyers in a Paris law firm. 49 Rather than resulting in management surveillance of work product (referred to as the "panopticon" model), the authors instead found patterns of mutual surveillance by lawyers within the firm as they accessed and evaluated colleagues' work, as well as behaviors involving the ostentatious display of work as self-promotion and the hiding of documents in shadow networks outside the official knowledge management system. 50

Effect on Fee Income

P19 In 2009, Forstenlechner, Lettice, and Bourne, using the results of an intensive case study of one of the largest multinational law firms in the world, addressed the knowledge management issue that many practitioners might view as central: the effect of knowledge management on law firm revenue. 51 This research supported the proposition that knowledge management increases a law firm's fee income. 52 One hopes that other researchers will further explore the financial benefits of knowledge management to law firms.

Implementation

P20 Beaumont explored the complexities of implementing knowledge management in a midsized regional firm in the United Kingdom, detailing the firm's technological initiatives, new knowledge management support roles, and major achievements after the first year and a half, such as starting precedent repositories and creating platforms for sharing internal knowledge. 53

P21 Research by Hunter, Beaumont, and Lee on Scottish law firms found that while the firms in question used information technology in service of knowledge management, only some of the firms used dedicated personnel to actively manage their knowledge management functions. 54 The authors argue that knowledge management functions must be adequately staffed if firms are to effectively convert their tacit knowledge to explicit knowledge, and that the industry's focus on technology solutions overlooks this element of knowledge management. 55

P22 Fombad, Boon, and Bothma conducted extensive research on the level of knowledge management activity by law firms in Botswana. In one article, the trio detail the results of that research, which determined that knowledge

⁴⁶ Choo et al., *supra* note 4, at 493.

⁴⁷ *Id.* at 491.

⁴⁸ *Id.* at 492.

⁴⁹ Marion Brivot & Yves Gendron, *Beyond Panopticism: On the Ramifications of Surveillance in a Contemporary Professional Setting*, 36 ACCT. ORGS. & SOC'Y 135 (2011).

⁵⁰ *Id.* at 152.

⁵¹ Forstenlechner et al., *supra* note 37.

⁵² *Id.* at 66.

⁵³ Jon Beaumont, *Knowledge Management in a Regional Law Firm: A Worthwhile Investment or Time Wasted?*, 27 BUS. INFO. REV. 227 (2010).

⁵⁴ Laurie Hunter et al., *Knowledge Management Practice in Scottish Law Firms*, 12 HUM. RESOURCE MGMT. J., no. 2, 2002, at 4, 12.

⁵⁵ *Id.* at 17-18.

management efforts by those firms--most of which are very small--consisted primarily of using precedent, research, weekly learning reports, records management, and training [*183] junior lawyers; more sophisticated functions like know-how systems or work product databases were much less common. 56 In another article, the authors used the results of their research to propose detailed recommendations for implementing knowledge management, such as picking appropriate technologies, having lawyers invest ten percent of their time taking seminars and communicating with others in the legal community about knowledge management, and rewarding attorneys who perform knowledge management work and crediting them for time spent on it. 57

International Aspects

P23 Beaverstock's research on ten London-based international law firms explored knowledge management in the context of expatriation of legal knowledge. 58 The author found that knowledge dissemination and sharing varied geographically depending on the location of the satellite offices. 59 In east Asia, knowledge-transmission was one-way, from the English lawyers to their local colleagues. 60 In Europe and North America, in contrast, knowledge was developed and shared in both directions, with local attorneys sometimes playing an equal role in the management of their offices. 61

Lessons for Law Librarians

Law Firm Librarians

P24 The scholarship on law firm knowledge management provides insights for law librarians in law firms, particularly those who are or would like to become involved in their firms' knowledge management activities. Several of the case studies discussed in these articles include descriptions of the knowledge management departments or functions of large and mid-sized law firms:

. Forstenlechner, Lettice, and Bourne offer an overview of knowledge management at one of the three largest law firms in the world. This firm had a high ratio of knowledge management staff to attorneys, a high level of investment in knowledge management, and a knowledge management team led by a partner with the title of chief knowledge officer. 62 The firm used a hybrid approach in which the strategic direction and infrastructure for knowledge management are established at the firm level to support knowledge management initiatives at the practice group level. 63

. Beaumont describes a case study of knowledge management implementation at a regional U.K. law firm that involved the addition of new [*184] "Knowledge Fee-earners" embedded in each of the firm's fifteen practice teams. 64 The initial accomplishments of this knowledge management initiative included precedent

⁵⁶ Madeleine C. Fombad et al., A Survey of Knowledge Management in Law Firms in Botswana, 19 AFRICAN J. LIBR. ARCHIVES & INFO. SCI. 141, 149 (2009).

⁵⁷ M.C. Fombad et al., Strategies for Knowledge Management in Law Firms in Botswana, US. AFRICAN J. INFO. MGMT., no. 2, 2009, § 7.

⁵⁸ Jonathan V. Beaverstock, "Managing Across Borders": Knowledge Management and Expatriation in Professional Service Legal Firms, 4 J. ECON. GEOGRAPHY 157 (2004).

⁵⁹ *Id.* at 173-74.

⁶⁰ *Id.* at 173.

⁶¹ *Id.* at 173-74.

⁶² Forstenlechner et al., *supra* note 37, at 57-59.

⁶³ *Id.* at 58.

banks, the use of consistent cover sheets for firm documents, the implementation of a firm intranet, the development of blogs and wikis for internal knowledge sharing, how-to guides, transaction toolkits, and fee and billing information resources. 65

. Brivot details a knowledge management system implemented at a large Paris law firm that involved the creation of a searchable database of legal opinions and other documents created by firm attorneys, with a selection categorized as "best practice" documents by a standards committee at the firm. 66

. Attfield, Blandford, and Makri describe current awareness services at a 900-lawyer law firm with knowledge management staff that includes professional support lawyers, knowledge management executives, paralegals, and researchers. 67

P25 Law firm librarians involved in the design and development of knowledge management at their firms will discover in the annotated articles that there is no single path for the evolution of law firm knowledge management. In a series of articles published from 2003 to 2009, Gottschalk proposed that law firm knowledge management follows four stages-of-growth: (1) "end-user tools" or "lawyer-to-technology," (2) "who-knows-what" or "lawyer-to-lawyer," (3) "what-they-know" or "lawyer-to-information," and (4) "how they think" or "lawyer-to-application." 68

Despite a number of attempts to verify this progression, Gottschalk's research ultimately did not support the hypothesis that law firms implementing knowledge management necessarily moved through those four stages in order. 69

P26 Law librarians should also note the human dynamics explored in several of the articles. Choo and others found that the information culture in the large Canadian law firm they studied had more influence over the use of information than the firm's information strategies and systems. 70 Brivot and Gendron focused on networks of mutual surveillance among lawyers in a firm with a centralized, precedent-based knowledge management system, in which attorneys scrutinized one another's work product to evaluate quality, and dark pools of practice materials developed among those who did not wish to share their work product. 71 Law librarians who are a part of or work with their firms' knowledge management departments can draw on these behavioral insights to help them more effectively promote knowledge management contribution and knowledge sharing, and to access stores of knowledge that may not be part of a firm's official repositories.

[*185] P27 Law firm librarians should be particularly interested in the work of Forstenlechner, Lettice, Bourne, and Webb on attorneys' perceptions of the value of knowledge management. In a survey of lawyers from the top-ten global law firms, researchers found that interviewees believed that knowledge management provided the following benefits: greater efficiency, higher quality, improved risk management, long-term benefits, positive influence on firm culture, improved awareness, and better and faster training. 72 Forstenlechner and a similar group of

64 Beaumont, *supra* note 53, at 228.

65 *Id.* at 230.

66 Brivot, *supra* note 41, at 495.

67 Attfield et al., *supra* note 39, at 635-43.

68 *See, e.g.*, Gottschalk & Karlsen, *supra* note 27, at 437-39.

69 *Id.* at 432.

70 Choo et al., *supra* note 4, at 508.

71 Brivot & Gendron, *supra* note 49, at 149, 152.

72 Ingo Forstenlechner et al., *Turning Knowledge into Value* MEASUREMENT & METRICS 146, 149 (2007).

in Professional Service Firms, 8 PERFORMANCE

researchers also found that certain knowledge management predictors had a positive impact on fee income of the case study law firm (one of the three largest firms in the world). 73 The research-based support offered by these articles may be useful to law firm librarians who advocate for (or are obliged to justify) the creation, expansion, or continuation of knowledge management activities in their firms.

Academic Law Librarians

P28 The scholarship on law firm knowledge management will help academic law librarians not only enhance their understanding of private practice and the activities of their law firm counterparts but also find ways to improve the services they deliver within their law schools. The ***Principles and Standards for Legal Research Competency***, approved in July 2013 by the Executive Board of the American Association of Law Libraries, includes a specific reference to "[r]ecogniz[ing] the benefits of requesting assistance from knowledgeable individuals, or an institution's knowledge management system" as a competency to be developed by a successful researcher. 74 As explained above, many of the annotated articles offer detailed depictions of how knowledge management is conducted in law firms. As the legal educators primarily responsible for instructing law students on how to effectively and efficiently locate the information and knowledge needed in the practice of law, law school librarians should explain to students the importance of finding useful, reliable sources of practice know-how within law firms. Law librarians should also make students aware of attorney behaviors associated with attempts to impose systems for the management of that knowledge, such as the mutual surveillance, "showing," "hiding," and shadow knowledge economies described by Brivot and Gendron. 75

P29 Law school librarians might also wish to explore whether these law firm knowledge management articles yield any guidance for academic information professionals who use knowledge management systems or techniques to provide services to their users. For example, the current awareness service for lawyers studied by Attfield and others. 76 might be adapted by academic law librarians to provide a similar service for law professors at their institutions. Academic law librarians [*186] should also consider whether any lessons for legal research instruction can be learned in the mentor-mentee competency development model evaluated by Lustri and her colleagues. 77

Information Technology and Knowledge Management

General

Apistola, Martin, and Arno R. Lodder. "Law Firms and IT--Towards Optimal Knowledge Management." *Journal of Information, Law & Technology*, 2005, nos. 2 & 3. http://www2.warwick.ac.uk/fac/soc/law/elj/jilt/2005_2-3/apistola-lodder.

Based on then-existing literature and on the results of surveys of Dutch law firms conducted by the authors, this article proposes a framework for knowledge management in law firms that combines taxonomies of three elements of law firm knowledge management: knowledge, knowledge processes, and information technology. The taxonomy of lawyer knowledge includes administrative data, declarative knowledge (knowledge of the law), procedural knowledge (knowhow), and analytical knowledge (how declarative knowledge applies to a particular set of facts). The taxonomy of knowledge processes includes the development of knowledge, the sharing of knowledge, and the evaluation of knowledge. The taxonomy of information technology includes word

73 Forstenlechner et al., *supra* note 37, at 66.

74 AM. ASS'N OF LAW LIBRARIES, PRINCIPLES AND STANDARDS FOR LEGAL RESEARCH COMPETENCY (approved July 11, 2013), *available at* <http://www.aallnet.org/Documents/Leadership-Governance/Policies/policy-legalresearchcompetency.pdf>.

75 Brivot & Gendron, *supra* note 49, at 150, 152.

76 Attfield et al., *supra* note 39.

77 Lustri et al., *supra* note 43.

processors, databases, Internet applications (such as discussion boards and search engines), intranets, e-mail, groupware, and knowledge-based systems (such as expert systems, neural networks, intelligent agents, and case-based reasoning systems). The authors' proposed framework is offered as a starting point for evaluating how well various information technology applications support law firm knowledge processes.

Du Plessis, T. "Information and Knowledge Management at South African Law Firms." *Potchefstroom Electronic Law Journal* 14, no. 4 (2011): 233-58.

This article discusses the results of a survey of information and knowledge management practices at South African law firms. The author also analyzes the results of a survey of South African law firms on the use of information and communication technologies for knowledge management. Survey responses indicated that South African law firms used intranets, document management systems, and electronic communication technologies but had not embraced more sophisticated technologies such as automated document assembly applications and online dispute resolution platforms, nor had they implemented semantic technologies or cloud computing.

Du Plessis, T., and A. S. A. du Toit. "Knowledge Management and Legal Practice." *International Journal of Information Management* 26 (2006): 360-71.

This article evaluates how the evolving legal information environment affects the process of legal research and how knowledge management can support or improve legal research. The authors also examine the electronic legal research process and consider the skills that lawyers proficient in print research will need to use electronic resources effectively. This article is useful for its analysis of lawyers' needs to access various types of information, including primary and secondary sources of legal information, information about clients and their matters, forms and precedents used repeatedly in work for clients, and information about [*187] the firm's operations and administration and about its business environment. The article also describes the results of a survey of South African lawyers regarding technology and knowledge management. A high percentage of respondents were willing to use knowledge management to acquire and share information, work remotely, and participate in developing new knowledge. But there was also significant uncertainty about whether knowledge management systems were in use at their organizations as well as some unfamiliarity with extranets. In addition, the survey results indicated that although they were not generally asked to assist in day-to-day legal research, librarians performed important knowledge management functions and "should increasingly take on the challenge of developing or improving on current systems designed for typical KM activities that are aimed at law firm competitiveness, especially with regards to packaging individuals' knowledge into information products" (p.370).

Gottschalk, Petter. "Knowledge Management in the Professions: Lessons Learned from Norwegian Law Firms." *Journal of Knowledge Management* 3, no. 3 (1999): 203-11.

The author conducted a field study of the largest firm in Norway and a survey of Norwegian firms to learn the use of knowledge management in law firms. Based on the results, he formulated three research hypotheses: (1) a positive relationship exists between firm knowledge and knowledge management, (2) a positive relationship exists between firm culture and knowledge management, and (3) a positive relationship exists between information technology use and knowledge management. Professor Gottschalk is the most prolific author of scholarly research articles regarding knowledge management in the law firm context. This article represents the beginning of a series of studies by him on law firm knowledge management and sets the stage for a subsequent article in the same year regarding the third research hypothesis described above on information technology and law firm knowledge management.

Gottschalk, Petter. "Knowledge Management Systems: A Comparison of Law Firms and Consulting Firms." *Informing Science* 3, no. 3 (2000): 117-24.

This article analyzes the results of research on Norwegian law firms' use of information technology in interorganizational knowledge management. Interorganizational knowledge management involves information

sharing among members of cooperative associations that include multiple **law firms**, ranging from formal national and international networks to informal cooperative relationships. The author found that the extent of **law firm cooperation** and of knowledge cooperation each had a significant effect on the use of information technology in connection with interorganizational knowledge **management**, although the level of trust among members of the networks did not. This article also compares the interorganizational knowledge **management** used by **law firms** with that used by consulting firms. Notwithstanding a perception that consulting firms were far more advanced than **law firms** in their use of information technology in support of knowledge transfer, survey results showed that consulting firms' use was only slightly higher than that of **law firms**.

Gottschalk, Petter. "Use of IT for Knowledge **Management** in **Law Firms**." *Journal of Information, Law and Technology*, 1999, no. 3. http://www2.warwick.ac.uk/fac/soc/law/elj/jilt/1999_3/gottschalk.

This article considers predictors of the use of information technology to support knowledge **management** in **law firms**, based on a study of the largest **law firm** [*188] in Norway and a survey of Norwegian firms. The author's research found that the extent to which firms use information technology generally has a significant impact on their use of information technology for knowledge **management**. **Law firm** culture and firm knowledge were identified as potential predictors of information technology support for knowledge **management** in Norwegian firms. As with much of Gottschalk's work, the **law firms** studied are all located in Norway. They do not include any of the large multi-office (or multinational) firms of the sort that would be found in major cities in the United States or Canada, London, or other large legal markets.

"Stages of Growth" of **Law Firm** Knowledge **Management**

Gottschalk, Petter, and Jan Terje Karlsen. "Knowledge **Management** in **Law Firm** Business." *Journal of Small Business and Enterprise Development* 16, no. 3 (2009): 432-42.

Gottschalk, along with another professor at the Norwegian School of **Management**, returns to the stages-of-growth model for examining information technology usage in support of knowledge **management** at **law firms**. The article begins with a discussion of the **law firm** and its ongoing transition from a professional to a corporate business model, lawyers as knowledge workers, and knowledge organizations. The authors refine the stages-of-growth model and provide illustrative examples of the information technology employed in each stage. Stage 1, referred to as "end-user tools" or "lawyer-to-technology," uses productivity applications, such as word processing, legal databases, spreadsheets, and scheduling, which are available to knowledge workers (p.437). Stage 2, described as "who-knows-what" or "lawyer-to-lawyer," involves using technology to map and make available firm knowledge like the areas of expertise of its attorneys (pp.437-38). Stage 3, characterized as "lawyer-to-information" or "what-they-know," captures information--such as agreements and other work product, memos, letters, reports, policies, e-mails, voicemails, and other materials generated in the firm's operation--from attorneys and others in the firm in databases and other repositories and uses search engines and data mining to access and combine needed information (pp.437, 438). Stage 4, referred to as "lawyer-to-application" or "how they think," applies advanced tools like artificial intelligence, neural networks, and expert systems in order to solve legal knowledge problems (pp.437, 438-39). Although most of the firms surveyed (all of which are in Norway) are at the third stage of growth, the research did not confirm the stages-of-growth model.

Gottschalk, Petter, and Vijay K. Khandelwal. "Determinants of Knowledge **Management** Technology Projects in Australian **Law Firms**." *Journal of Knowledge Management* 7, no. 4 (2003): 92-105.

Gottschalk and Khandelwal explore results of a survey on the use of information technology in knowledge **management** among Australian **law firms**. The authors describe a four-category or four-stage growth model for the adoption of knowledge **management** information technology by **law firms**. The first stage, "tools for end users," involves information technology tools that are made available to knowledge workers, such as word processing, e-mail, and spreadsheets (p.93). The second stage, "information about who knows what," is concerned with information about knowledge sources available to the firm, such as intranets with details about the experience and areas of expertise of attorneys within the [*189] firm, and the creation of "a knowledge

network" (pp.93-94). The third stage, "information from knowledge workers," involves the construction of databases of information compiled from knowledge workers and used for searching and data mining and making knowledge accessible via intranets (pp.94-95). The fourth stage, "information systems solving knowledge problems," concerns the application of advanced technologies such as expert systems and artificial intelligence on knowledge problems (pp.95-96). Of the firms surveyed, most were focused on end-user information technology tools, some were working on storing firm knowledge, and a few were working on storing information about who knows what within the firm or on developing systems to solve knowledge problems. Both the number of lawyers and number of information technology staff members in a firm were major determinants of the stages of knowledge management technology present in the firm.

Gottschalk, Petter, and Vijay K. Khandelwal. "Stages of Growth for Knowledge Management Technology in Law Firms." *Journal of Computer Information Systems* 44, no. 4 (2004): 111-24.

Gottschalk and Khandelwal again collaborate on research regarding information technology and knowledge management in law firms, analyzing the results of Norwegian law firms based upon the stages-of-growth model. Research results did not entirely validate the model and suggested that refinement and further research would be needed. It was not clear from the results that firms necessarily progressed through the stages in order. The article does, however, provide detailed explication of the stages in the model and the knowledge management and information technology aspects of each.

Clients as Drivers of Technology Adoption for Knowledge Management

Gottschalk, Petter. "Law Firm Clients as Drivers of Law Firm Change." *Journal of Information, Law & Technology*, 2002, no. 1. http://www2.warwick.ac.uk/fac/soc/law/elj/jilt/2002_1/gottschalk.

This article concludes, based on a survey of law firm clients in Norway, that client demands were not driving information technology use by law firms in 2002. At that time, law firms were primarily using only tools such as e-mail, word processing, spreadsheets, and presentation software and making limited use of then-emerging technologies like extranets and expert systems. The research did not suggest that the law firms' clients were drivers of change regarding law firms' adoption of knowledge management technology. The author's research did, however, show increases in client satisfaction when firms had the capacity to electronically code the client information they received and used information technology to transmit information to the client, provide clients with access to information, and provide information to clients regarding cases and administrative matters that could be coded by the client.

Information Technology and Interorganizational Knowledge Management

Gottschalk, Petter. "Benefits from Information and Communication Technology Facilitating Inter-Organisational Knowledge Networks: The Case of Eurojuris Law Firms in Norway." *Journal of Information, Law & Technology*, 2001, no. 2. http://www2.warwick.ac.uk/fac/soc/law/elj/jilt/2001_2/gottschalk.

This article analyzes the results of research with respect to Norwegian law firms' participation in Eurojuris, a network of European law firms that has invested in [*190] information technology for knowledge management. Eurojuris includes offices in 650 locations in nineteen countries, covering a total of 3000 lawyers. In Norway, there are eleven law firms with ninety lawyers in the Eurojuris network. As the author explains, law firms participate in international alliances as a way to generate cross-border business for themselves. The research results indicated that participating lawyers perceived benefits in "three out of five value activities [from their participation in interorganizational knowledge management]: problem-solving, choice, and control and evaluation" (§ 5). Problem solving involves finding and analyzing relevant law and documents, drafting documents, and locating experts. Choice entails selecting an appropriate solution to a problem from alternatives. Control and evaluation involves measuring and assessing the effectiveness of the solution that is implemented. These results support the proposition that information and communication technologies used in interorganizational networks provide benefits in generating potential answers to problems, choosing among potential solutions, and evaluating the success of the solution chosen. Benefits from

information and communication technology were greater at the level of "advanced knowledge" (knowledge enabling effective competition) than at the levels of "core knowledge" (basic knowledge needed to operate in an industry) or "innovative knowledge" (knowledge that enables an organization to lead or transform its industry) (§ 2). The research also suggested that members of the network were not using the network to cooperate on cases or on administrative support.

Gottschalk, Petter, and Vijay K. Khandelwal. "Inter-Organizational Knowledge Management: A Comparison of Law Firms in Norway and Australia." *Journal of Computer Information Systems* 42, no. 5 (2002): 50-58.

This article analyzes information technology use by law firm networks in Norway and Australia. The research indicated that while both the level of cooperation among firms in a network and the level of sharing of administrative, declarative, procedural, and analytical knowledge within a network predicted higher levels of information technology usage in such networks in Norway, only the latter did so in Australia. The level of interorganizational trust proved not to be a significant predictor. In both countries, word-processing systems, e-mail, and legal databases were the primary technologies used. Australian firms appeared to use information technology more than Norwegian ones, particularly e-mail, presentations, other law firms' web pages on the Internet, library systems, intranets, document systems, and other law firms' web pages on extranets.

The Human Side of Knowledge Management

Knowledge Sharing

Attfield, Simon, Ann Blandford, and Stephann Makri. "Social and Interactional Practices for Disseminating Current Awareness Information in an Organisational Setting." *Information Processing and Management* 46 (2010): 632-45.

This article discusses the results of a study of electronic current awareness services in a large London law firm, involving attorneys and the firm's knowledge management staff. The authors found that the staff acted as "intelligent filters" attuned to the information needs of specific practice teams that helped time-starved fee earners cope with information overload (p.643). The authors suggest [*191] that current awareness services address several design recommendations. The first recommendation is rapid evaluation of information against an individual's interests by reading information items first, supplementing items with additional relevant information, adding information to specific newsletters, sending specific items to individuals, and storing items in different collections depending on their intended purposes. The second recommendation is to organize information to support different uses, including "known purpose" collections that are limited in scope and duration based on task deadlines and more expansive "future reference" collections supported with browsing and searching tools (p.644). The third recommendation is to employ back-propagation of details about information needs and preferences from users to better understand their requirements, electronically as well as by means of social interaction with users.

Brivot, Marion. "Controls of Knowledge Production, Sharing and Use in Bureaucratized Professional Service Firms." *Organization Studies* 32 (2011): 489-508.

This article uses the results of a case study of a business law firm to evaluate whether the use of centralized knowledge management systems in large professional service firms led to a power shift within the organization. The author focused on the Paris office of a large firm that belongs to an international network of lawyers, accountants, and consultants. The Paris office, which employs 250 lawyers, had implemented a significant knowledge management function that included two full-time knowledge management staff members and a searchable database of legal documents and other work product from prior engagements, with some of the documents endorsed by an internal standards committee as "best practice" examples for reuse in response to recurrent client requests (p.495). The author found that despite increased bureaucracy involved in the creation, sharing, and use of knowledge within the firm, attorneys in the firm gained power as a result of the centralized knowledge management system rather than losing control to administrators. In addition, lawyers are now able to access knowledge in the firm even without social capital (such as personal contacts with individuals who have relevant knowledge), which can help foster diversity within the firm. The article includes

an extensive discussion of the effects of the knowledge management system on attorney behaviors, such as displays of knowledge within the system intended to advertise expertise within the firm, and withholding knowledge in certain areas of expertise from the system to restrict access to that knowledge to a select group of practitioners in the firm.

Hunter, Laurie, Phil Beaumont, and Mathew Lee. "Knowledge Management Practice in Scottish Law Firms." Human Resource Management Journal 12, no. 2 (2002): 4-21.

This article uses the results of research on Scottish law firms to look at human resource issues related to law firm knowledge management. The article addresses knowledge management within the framework of the development of human capital, tacit knowledge, and human resource management, based on case studies of five law firms ranging in size from more than fifty lawyers to fewer than ten. The authors found that in the area of knowledge management, law firms remain focused on developing human capital, with two of the firms studied having developed knowledge management teams and appointed knowledge managers. All five firms used tools such as databases and document templates to increase [*192] productivity, and each aimed to facilitate the development of social capital, both internally with technology such as intranets and externally with technology such as client-facing extranets. The firms showed less interest in the social and cultural processes that develop tacit knowledge, such as communicating with attorneys in other practice areas and mentoring. The authors argue that human resource managers can contribute to a firm's knowledge management strategy by helping lawyers develop policies and performance appraisal standards that are aligned with the effective development and sharing of knowledge within the firm.

Lustri, Denise, Irene Miura, and Sergio Takahashi. "Knowledge Management Model: Practical Application for Competency Development." The Learning Organization 14, no. 2 (2007): 186-202.

This article describes the results of case study research on a knowledge management model used by a Brazilian law firm to help junior attorneys develop law practice competencies. Three lawyers identified as possessing the desired competencies and three trainee lawyers with the potential to develop those competencies participated in the program. Other experienced lawyers attended meetings with program participants. The competency model that served as the basis of the program consisted of a "nucleus" and four "spheres" (pp. 194-95). The nucleus involved two series of workshops focused on sharing the vision of the knowledge and competencies to be cultivated. The first sphere consisted of an introductory module on "customer service and relationship[s], service quality standards, presentation techniques, relationship with the media, dissemination of the service areas composing the firm, dissemination of the products/services offered by each area and the characteristics of their target clients" (p.195). An advanced first-sphere module covered "market analysis, organisational analysis, business management, finance, strategic planning, consultancy techniques and skills" (p. 195). The second sphere involved biweekly meetings focusing on the transfer of tacit knowledge via individual conversations; creation of a manual of client service standards; and mentees' observation of mentors at meetings, negotiations, presentations, court appearances, and other activities. The third sphere (not completed at the time of the article) was planned to involve knowledge dissemination by both the three mentors and, after two years, the initial three lawyers who were being trained in the competencies program. The fourth sphere (also not complete at the time of the article) was planned to consist of practical application of the competencies developed, such as client visits, presentations within the firm, and lectures and interviews. The authors found that the model developed the competencies in question more effectively than the conventional training methods used by the firm during the preceding four years.

Olatokun, Wole M., and Isioma N. Elueze. "Analysing Lawyers' Attitude Towards Knowledge Sharing." South African Journal of Information Management 14, no. 1 (2012).
<http://www.sajim.co.za/index.php/SAJIM/article/view/507>.

This article explores the results of a study of factors that affect the attitudes and behaviors of lawyers with respect to knowledge sharing based on a survey of lawyers in a major city in Nigeria. The authors found that the expected reward from knowledge sharing was not a significant motivator of knowledge-sharing behavior among lawyers. Expected associations among lawyers involved in knowledge sharing and the lawyers'

attitudes about their own contributions were predictors of knowledge-sharing behavior. Although positive attitudes toward knowledge sharing led to positive intentions to engage in it, these positive intentions did not [*193] translate into knowledge-sharing behavior. Use of information technology did contribute to knowledge sharing, although the level of information technology was generally limited to e-mail and mobile telephony.

Perceived Value of Knowledge Management

Forstenlechner, Ingo, Fiona Lettice, Mike Bourne, and Carol Webb. "Turning Knowledge into Value in Professional Service Firms." *Performance Measurement and Metrics* 8, no. 3 (2007): 146-56.

This article discusses the results of research into the perceptions of the value of knowledge management by lawyers and staff at the top ten global law firms. The authors found that lawyers at those firms strongly supported the proposition that knowledge management adds value to the business of a law firm. The benefits of knowledge management reported by survey respondents included improvements in attorney efficiency; improvements in the quality of work product; better risk management, resulting from the use of more consistently updated and refined know-how; differentiation from competitors and increased productivity; a more collaborative, consistent, and unified firm culture; improved current awareness; and better training for junior lawyers.

The Importance of an "Information Culture"

Choo, Chun Wei, Colin Furness, Scott Paquette, Herman van den Berg, Brian Detlor, Pierrette Bergeron, and Lorna Heaton. "Working With Information: Information Management and Culture in a Professional Services Organization." *Journal of Information Science* 32, no. 6 (2006): 491-510.

Authored by seven scholars working in several disciplines at three Canadian universities, this article analyzes the results of a detailed survey of employees at one of Canada's largest law firms, a diversified, multi-office organization offering legal services in a broad range of practice areas. Respondents included lawyers and support and administrative personnel. The research included an analysis of survey responses and interviews with the firm's senior management, including its chief knowledge officer and others, about the firm's knowledge management strategy. The authors' analysis of survey results suggested that this law firm's information culture--as "reflected in the organization's values, norms, and practices with regard to the management and use of information"--plays a greater role in information use outcomes than its high level of information management activities (p.493). The information values held by those in the law firm that played the largest role in information use were those relating to the sharing, proactiveness, transparency, and informality of information. Copies of the survey questions, addressing a broad range of information-related behaviors, were included in the article, offering insight into how researchers conceptualize knowledge management issues in the law firm context.

Attorney Behavior and Incentives

Brivot, Marion, and Yves Gendron. "Beyond Panopticism: On the Ramifications of Surveillance in a Contemporary Professional Setting." *Accounting, Organizations and Society* 36 (2011): 135-55.

The authors use data from a case study of a French law firm to evaluate the phenomenon of surveillance in a contemporary organization and assess the limits of [*194] the panoptical metaphor in analyzing present-day surveillance. The metaphor of the panopticon, "prevalent in the managerial control literature, is predicated on a hierarchical view of control in which localized and specific targets of surveillance never know whether or not they are actively being watched--thereby leading them to assume they are constantly watched" (p. 136). The authors found that after installation of the firm's knowledge management system, which focused on building a collection of firm attorneys' legal opinions and other work product, lateral networks of surveillance developed instead of central surveillance by firm leaders. Although some traits of panoptic surveillance were present, fellow lawyers, rather than firm management, generally were the ones who scrutinized the validity and quality of the documents submitted to the knowledge management system. After the system was implemented, attorneys generally complied with the requirement that their documents be included. Lawyers also engaged in

"showing off"--playing "games of visibility involving the purposeful self-disclosure of one's work"--and "hiding"--resisting the knowledge management system by developing unofficial knowledge markets outside of it (p. 152). This article is a fascinating study of how lawyers respond to the professional and social incentives involved in a centralized knowledge management system and the layers of complexity that human behavior adds to law firm knowledge management.

Other Areas of Focus

Effect on Fee Income

Forstenlechner, Ingo, Fiona Lettice, and Mike Bourne. "Knowledge Pays: Evidence from a Law Firm." *Journal of Knowledge Management* 13, no. 1 (2009): 56-68.

This article analyzes the results of empirical research on the financial benefits of knowledge management based on an in-depth case study of one of the three largest law firms in the world, in an attempt to discern whether knowledge management provides a competitive advantage. The firm had a well-developed knowledge management function, with knowledge management staffing far above the industry average, and general investment in knowledge management also above the industry average. The results supported the conclusion that some knowledge management factors can partly predict fee income:

- . the value perception of knowledge management services based on quality of personal service from the knowledge management team;
- . the exchange of personal know-how among peers;
- . the quality of counsel and legal opinions;
- . the ease of use of know-how systems;
- . the use of news and current affairs;
- . lawyer commitment; and
- . the staffing of the knowledge management function.

The authors note that their research was limited to a single firm and that they analyzed the results using the existing "KM Balanced Scorecard" (a method of performance measurement in an organization being studied) developed for this firm; thus the results may not be completely applicable to other organizations (p.56). The authors' conclusions were based on "internal surveys on KM services, performance measures, usage data for KM systems and tools and organisational financial data" (p.56).

[*195] Implementation

Beaumont, Jon. "Knowledge Management in a Regional Law Firm: A Worthwhile Investment or Time Wasted?" *Business Information Review* 27, no. 4 (2010): 227-32.

This article details the implementation of knowledge management at a regional full-service law firm in the United Kingdom. The knowledge management initiative began in 2007. Prior to that, the firm's Information Department employed two information professionals and a part-time, retired attorney who primarily delivered knowledge internally, without a significant strategic approach. The firm hired one professional support lawyer and had possible plans to hire another, although this did not occur until after the knowledge management program was implemented. In addition to its existing Information Department, the firm, with advice from a consultant, introduced a new role, called a knowledge fee earner, in each of its fifteen practice teams (p.228). Knowledge management activities were included in performance appraisals, and some level of contribution to knowledge management became a requirement for promotion within the firm. The fifteen new knowledge fee earners developed a set of eight talking points used to promote the knowledge management initiative within the firm. In addition to staffing and performance appraisal changes, the knowledge management initiative was supported with the firm's existing document management systems and other technology. After eighteen months, the knowledge management program achieved the following results: development of precedent

banks, creation of a standardized cover sheet that can be attached to any document with a single click, implementation of a firm intranet, development of blogs and wikis as platforms for internal knowledge sharing, seamless integration of links to knowledge resources from external providers, development of standardized pitch materials, development of how-to guides on various information topics, creation of "transaction toolkits" that include relevant documents and guidance from an experienced lawyer, and compilation of historical fee and billing data (pp.230-31).

Fombad, Madeleine C, Hans J. A. Boon, and Theo J. D. Bothma. "A Survey of Knowledge Management in Law Firms in Botswana." *African Journal of Library, Archives & Information Science* 19, no. 2 (2009): 141-54.

This article describes the results of research on knowledge management in law firms in Botswana. Most law firms in that country are very small by U.S. standards: more than two-thirds consist of one- or two-lawyer practices. The authors found that the state of knowledge management by lawyers in Botswana was limited; the most common knowledge management practices involved the use of precedent, legal research, weekly learning reports, records management, and hiring and training young lawyers. Only one-fifth of the lawyers surveyed maintained know-how systems and information banks or work product repositories. The research also addressed factors that respondents believed contribute to effective knowledge management and those that they believed inhibit it. Most lawyers did not believe that participation in knowledge sharing was essential for promotion. Interestingly, a majority of respondents did not believe that knowledge was viewed as a source of power among lawyers, although the interviewees indicated that "lawyers in Botswana are often not willing to share their expertise, because knowledge is regarded as power and lawyers believe that monopoly of particular information will lead to personal indispensability, job security, influence, and professional respect within the firm" (p. 150). Most respondents felt that their [*196] firms lacked the technological infrastructure for effective knowledge management; other perceived obstacles included a small firm size and limited financial resources. The authors recommended that lawyers in Botswana should "consider talking to others in the legal fraternity about knowledge management, attend meetings and workshops on knowledge management, invest time and money in creating ~~bulletin boards~~, sample skill directories, form alliances with international professional associations and get connected to [a] physical or electronic forum that engages in collaborative thinking" (p.151).

Fombad, M. C, J. A. Boon, and T. J. D. Bothma. "Strategies for Knowledge Management in Law Firms in Botswana." *South African Journal of Information Management* 11, no. 2 (2009). <http://www.sajim.co.za/index.php/SAJIM/article/view/405>.

Using the results of the research described in the preceding annotation, the authors present a detailed set of recommendations for Botswana law firms to implement and use knowledge management effectively. The recommendations include the following:

- . Picking initiatives within a firm's "current technology, business processes, funding constraints and cultural readiness" (§ 7);
- . Being prepared to engage in long-term knowledge management projects and learn from mistakes;
- . Investing in appropriate technologies, taking into account "people, structure, processes, leadership and techniques before selecting a technological solution" (§ 7);
- . Using the Law Society (the governing body of Botswana law firms) as the "principal institution for facilitating knowledge management in law firms" (§ 7) by setting up conferences and workshops for lawyers and working with legal academics to facilitate knowledge management in firms;
- . In large firms, having knowledge managers keep management informed about initiatives and considering knowledge management as a basic skill to be developed by all lawyers;
- . Devoting at least ten percent of lawyers' time in talking to others in the legal community about and attending seminars on knowledge management, using sample skill directories, forming alliances with international professional organizations, and participating in online or in-person discussion forums;

- . Providing and attending professional development sessions on relevant knowledge;
- . Rewarding lawyers who devote time to knowledge management, crediting attorney time spent writing documents that are included in knowledge databases, providing personal recognition for lawyer contributions to knowledge management, and exploring ways of billing for value and not hourly;
- . Developing and managing knowledge about clients and their industries; and
- . Implementing user-friendly interfaces for electronic knowledge management systems that do not require lawyers to undergo significant training.

[*197] International Aspects

Beaverstock, Jonathan V. "'Managing Across Borders': Knowledge Management and Expatriation in Professional Service Legal Firms." *Journal of Economic Geography* 4, no. 2 (2004): 157-79.

In this article, the author examines the results of case studies of ten London-based international law firms in the context of cross-border knowledge management and the expatriation of knowledge. British law firms send lawyers to foreign offices to supply them with English common law knowledge resources, and, at the same time, use local lawyers to provide legal services with respect to the laws of their countries. The research indicated that in East Asian offices, the expatriation followed a "multinational" model, with transmission of English law and management of offices by the expatriates (p. 173). In Europe and North America, expatriation followed a "transnational" model, with knowledge developed and shared in multiple directions along networks of relationships; expatriates and locals practiced alongside one another and served in management roles (pp. 173-74).

Conclusion

P30 These articles paint a picture of knowledge management as a discipline with enormous potential for making law firms more efficient and effective in providing legal services, although that potential has in some respects not yet been fulfilled. There are, nonetheless, powerful lessons in the existing research for librarians in law firms and in law schools. Those in private practice who work in or are interested in knowledge management are likely well aware that it is the subject of extensive commentary on social media 78 and in industry publications. 79 The scholarship summarized in this article can serve as an empirical foundation for thoughtful and informed decision making about the implementation, development, maintenance, and modification of knowledge management and provide valuable long-range perspectives that frame and supplement the often more immediate advice and guidance of knowledge management practitioners.

P31 Academic law librarians can also learn from the law firm knowledge management literature. In their roles as legal research instructors, law school librarians can make students aware of how legal and practice knowledge may be accessible via an electronic knowledge management system in their practice setting. Students should also be alerted to the ways in which practice knowledge may be shared through both formal and informal networks within firms, and consider ways to ensure they have access to critical knowledge resources when they enter practice.

See, e.g., 3 GEEKS AND A LAW BLOG, <http://www.geeklawblog.com/>; ABOVE & BEYOND KM, <http://aboveandbeyondkm.com/>; DENNISKENNEDY.COM, <http://denniskennedy.com/blog/>; THE LEGALKMERS DAILY, <http://paper.li/KMHobbie/legal-kmers>; ILTA KM, <http://km.iltanet.org/>; LAWYERKM, <http://lawyerkm.com/>.

79 See, e.g., *White Papers and Surveys* (2014), INT'L L. TECH. ASS'N, <http://www.iltanet.org/MainMenuCategory/Publications/WhitePapersandSurveys>. For a bibliography of legal and general knowledge management resources for practitioners, see DEBORAH PANELLA, RESOURCES FOR LAW FIRM KM PROFESSIONALS, <http://www.iltanet.org/MainMenuCategory/Members/PeerGroups/KnowledgeManagement/KM-Resources.aspx> (last visited Mar. 4, 2014).

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Frederick J Esposito Jr

July 2024/August 2024

Reporter

Vol. 50; No. 4; Pg. 111

Section: BUSINESS: TRANSFORMING **LAW FIRM** LEGAL FINANCE THROUGH ARTIFICIAL INTELLIGENCE: A DEEP DIVE INTO LEGAL DESIGN THINKING

Length: 1208 words

Author:

Frederick

Highlight

Summary

[] AI integration in **law firm** finance can drive innovation, sustainability and growth.

[] Legal design thinking will guide the effective adoption of AI, to optimize financial processes and enhance performance.

Text

The convergence of artificial intelligence (AI) and the legal profession has brought forth a new era of advancement and effectiveness, especially in the realm of **law firm** financial **management**. AI technologies present unparalleled opportunities to streamline financial procedures, facilitate data-driven decision making and enhance operational efficiency. Nevertheless, the seamless integration of AI in **law firm** finance relies on a people-centric methodology known as legal design thinking. This piece delves into the practical implementation of AI in **law firm** financial **management** through the lens of legal design thinking, emphasizing the crucial role of human-centered design principles in shaping the future of financial practices within the legal field.

Legal design thinking signifies a shift in problem-solving approach within the legal domain, blending design thinking principles with the intricate challenges of legal practice. It places a strong emphasis on empathy, creativity and collaboration to devise innovative solutions tailored to the specific requirements of legal professionals and clients. When applied to incorporating AI in **law firm** finance, legal design thinking acts as a foundational framework ensuring that AI endeavors are user-focused, efficient and sustainable.

Frederick Frederick J. Esposito, Jr, MBA, CLM, Chief Operating Officer of the regional **law firm** Rivkin Radler LLP, has more than 30 years of **law** and accounting **firm** experience and has been a Certified Legal Manager...

The Significance of Legal Design Thinking in AI Deployment

Legal design thinking plays a fundamental role in steering the successful integration of AI in law firm financial management. By prioritizing user needs, encouraging creativity and fostering collaboration, legal design thinking acts as a precursor to any AI initiative, laying the groundwork for a smooth and impactful assimilation of AI technologies.

The following key aspects underscore the importance of legal design thinking in AI implementation in law firm finance.

Empathy and User-Centric Solutions

Legal design thinking urges legal professionals to empathize with end users, which include finance teams, attorneys and clients, to gain a profound understanding of their workflows, pain points and preferences. By placing users at the core of AI initiatives, legal design thinking ensures that AI solutions are customized to enhance user experience, efficiency and productivity.

Creativity and Innovation

Legal design thinking nurtures a culture of creativity and innovation within law firms, prompting stakeholders to think outside the box and explore unconventional approaches to financial challenges.

This creative outlook is crucial for leveraging the full potential of AI technologies in reshaping financial processes and driving strategic outcomes.

Collaboration and Interdisciplinary Approach

Legal design thinking advocates for collaboration among multidisciplinary teams, including legal professionals, data scientists, designers and technology experts. By leveraging diverse perspectives and expertise, AI initiatives benefit from an integrated approach that considers legal, technological and human factors in optimizing law firm finance.

Practical Applications of AI in Law Firm Financial Management

The implementation of AI in law firm financial management offers a plethora of transformative applications that can revolutionize financial operations, bolster decision making and enhance overall efficiency. The following are key practical applications of AI in law firm financial management, showcasing how AI technologies can drive innovation and optimization.

Automated Billing and Invoicing

AI-powered billing systems can automate invoicing processes, analyze billing data and generate precise invoices in real time. This automation streamlines billing operations, reduces errors and accelerates cash flow management for law firms.

Predictive Analytics for Financial Forecasting

AI algorithms can analyze historical financial data, market trends, and client behavior to predict future revenue, expenses, and profitability accurately. By harnessing predictive analytics, law firms can make data-driven decisions, identify growth opportunities, and develop robust financial strategies.

Expense Management and Cost Optimization

AI algorithms analyze expense data, pinpoint cost-saving opportunities, and optimize budget allocations for various legal matters. This intelligent expense management empowers law firms to control costs, allocate resources efficiently and enhance profitability.

Risk Assessment and Compliance

Frederick J Esposito Jr

AI algorithms conduct comprehensive risk assessments, scrutinize legal documents for compliance and identify potential legal risks in financial operations. By proactively addressing compliance issues and mitigating risks, law firms can enhance regulatory compliance, minimize legal liabilities and safeguard their reputation.

Decision Support and Scenario Analysis

AI systems provide decision support tools and conduct scenario analysis to evaluate different financial strategies, assess risks and optimize resource allocation. This enables law firms to make informed decisions, mitigate uncertainties and achieve financial sustainability.

Case Study: Implementing AI in Law Firm Budget Management

To exemplify the practical application of AI in law firm financial management from a legal design thinking perspective, consider the following case study.

XYZ Law Firm, a prestigious law firm, embarked on a strategic initiative to enhance budget management through AI integration. By applying legal design thinking principles, the firm collaborated with finance professionals, data analysts and AI experts to co-create a tailor-made AI solution for budget optimization.

The AI-powered budget management system streamlined expense tracking, identified cost-saving opportunities and furnished real-time budget insights for decision making. Accordingly, XYZ Law Firm attained greater financial transparency, improved budget control and maximized operational efficiency.

Challenges and Considerations in AI Implementation

While the incorporation of AI in law firm financial management presents vast potential, it also poses challenges and considerations that must be addressed for successful implementation. Some key challenges include data privacy and security concerns, ethical implications of AI decision making, workforce reskilling and change management. Additionally, legal professionals must prioritize transparency, accountability and fairness in AI algorithms to ensure regulatory compliance and ethical standards.

Where Do We Go from Here?

The integration of AI in law firm financial management represents a paradigm shift that has the capability to revolutionize financial operations, steer strategic decision making and elevate performance. Legal design thinking serves as a cornerstone in shaping the future of AI integration in law firm finance, guiding legal professionals in understanding user needs, fostering creativity and promoting collaboration.

By embracing legal design thinking principles, law firms can unlock the full potential of AI technologies to optimize financial processes, mitigate risks and enhance overall performance. As the legal profession continues to evolve, the amalgamation of AI and legal design thinking is poised to revolutionize law firm finance, paving the way for innovation, sustainability and strategic growth in the digital age.

BUSINESS: The Strategic Role of Cash Flow Statements in Law Firm Management

September / October, 2024

Reporter

50 Law Practice 1

Length: 1299 words

Author: Frederick J Esposito Jr

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Highlight

Summary

Cash flow statements help **law firms** track cash inflows and outflows, assess liquidity, and identify potential financial challenges.

By analyzing cash flow data, **law firms** can make informed decisions about investments, expansions, and other financial matters.

Text

In the complex and dynamic realm of the legal profession, supporting financial stability and ensuring sustainable growth are paramount objectives for **law firms**.

Effective fiscal **management** is a cornerstone of success, and one crucial tool in achieving this is the cash flow statement. Cash flow statements track the movement of cash in and out of the firm and offer valuable insights into liquidity, solvency and overall financial health.

In this column we will explore the significance of cash flow statements in managing **law firms'** finances, delve into the tangible benefits they offer and give practical examples to illustrate their application in optimizing financial performance. Additionally, this column will offer insightful suggestions on how **law firms** can effectively use cash flow statements to bolster their fiscal **management** best practices.

Understanding Cash Flow Statements

Cash flow statements, an integral part of a firm's financial reporting framework, present a detailed summary of cash inflows and outflows over a specified period.

BUSINESS: The Strategic Role of Cash Flow Statements in Law Firm Management

By categorizing cash flows into operating activities, investing activities or financing activities, these statements offer a comprehensive view of a firm's cash position. Law firms can use cash flow statements to monitor the sources and uses of cash, assess liquidity and make informed decisions to enhance financial performance.

Benefits of Cash Flow Statements for Law Firms

Forecasting and Budgeting

One of the primary advantages of cash flow statements for law firms is their ability to ease accurate forecasting and budgeting. By analyzing past cash flow data, firms can project future cash inflows and outflows, enabling them to expect cash shortfalls or surpluses.

This initiative taking approach empowers firms to develop realistic budgets, set financial goals and make strategic decisions aligned with their financial goals.

Monitoring Financial Health

Cash flow statements serve as a critical tool for checking a law firm's financial health and identifying potential financial challenges. By regularly analyzing cash flow statements, firms can assess liquidity, find trends and detect early warning signs of financial distress.

Decision Making Support

Cash flow statements play a crucial role in supporting strategic decision making within law firms. Whether evaluating potential investments, expanding operations or managing debt, firms can use cash flow information to assess the financial implications of their decisions.

Cash flow statement analysis allows firms to make informed choices that align with their long term financial goals and enhance overall financial performance.

Finding Cash Flow Drivers

Cash flow statements enable law firms to find key drivers influencing cash flow within their operations. By pinpointing sources of cash inflows and outflows, firms can focus on perfecting cash generation and utilization.

Understanding these cash flow drivers allows firms to implement targeted strategies to enhance cash flow efficiency and maximize financial performance.

Enhancing Stakeholder Communication

Cash flow statements serve as a powerful communication tool for law firms to engage with stakeholders, including partners, investors and creditors. By presenting transparent and accurate cash flow information, firms can build trust, demonstrate economic responsibility and foster strong relationships.

Clear and concise cash flow statements highlight a firm's financial performance and stability, instilling confidence in stakeholders and enhancing the firm's reputation.

To illustrate the many benefits, let us consider a fictional law firm, Smith, Jones, & Associates, to show how a cash flow statement may look.

Smith, Jones, & Associates' Cash Flow Statement for the Year Ended December 31, 20XX

Operating Activities

Cash received from clients: \$500,000

Cash paid for operating expenses (salaries, rent, utilities, etc.): (\$300,000)

Cash paid for taxes: (\$50,000)

Net cash flow from operating activities: \$150,000 Investing Activities

Purchase of new office equipment: (\$20,000)

BUSINESS: The Strategic Role of Cash Flow Statements in Law Firm Management

Sale of old office equipment: \$5,000

Net cash flow from investing activities: (\$15,000)

Financing Activities

Loan received: \$50,000

Loan repayment: (\$10,000)

Dividends paid to partners: (\$25,000)

Net cash flow from financing activities: \$15,000

Beginning cash balance: \$100,000

Ending cash balance: \$250,000

Observations

Smith, Johnson, & Associates brought in \$500,000 in cash from clients, after paying operating expenses and taxes, resulting in a net cash inflow of \$150,000 from operating activities.

The firm made investments in new office equipment and realized some cash from the sale of old equipment, leading to a net cash outflow of \$15,000 in investing activities.

Additionally, the firm received a loan, made repayments and paid dividends to partners, resulting in a net cash inflow of \$15,000 from financing activities.

Overall, the firm experienced an increase in cash of \$150,000 during the year, with an ending cash balance of \$250,000.

This cash flow statement provides a clear picture of how cash moved in and out of the law firm during the year, aiding in financial planning and decision making.

Suggestions for Applying Cash Flow Statements in Law Firm Management

Establish a Regular Monitoring Schedule

Law firms should schedule regular reviews of cash flow statements to track cash flow trends, find variances and proactively address any financial challenges.

Implementing a structured monitoring process allows firms to stay informed about their financial performance and make prompt adjustments to optimize cash flow.

Conduct Comparative Analysis

Firms can enhance their financial analysis by conducting comparative reviews of cash flow statements over multiple periods.

Comparing cash flow data from different quarters or years enables firms to find trends, evaluate performance and gain valuable insights into how financial decisions impact cash flow.

Integrate Cash Flow Planning into Strategic Decision Making

Law firms should integrate cash flow planning into their strategic decision making process.

Considering cash flow implications when evaluating investment opportunities, expansion plans or operational changes, allows firms to make informed decisions that align with their financial goals and promote long term financial sustainability.

Utilize Cash Flow Projections for Scenario Planning

COURSE 2 MATERIALS

Pa. Const. Art. V, § 13

Pa.C.S. documents are current through 2024 Regular Session Act 151; P.S. documents are current through 2024 Regular Session Act 151

Pennsylvania Constitution, Annotated by LexisNexis® > Constitution of the
Commonwealth of Pennsylvania > Article V. The Judiciary

§ 13. Election of justices, judges and justices of the peace; vacancies.

(a) Justices, judges and justices of the peace shall be elected at the municipal election next preceding the commencement of their respective terms of office by the electors of the Commonwealth or the respective districts in which they are to serve.

(b) A vacancy in the office of justice, judge or justice of the peace shall be filled by appointment by the Governor. The appointment shall be with the advice and consent of two-thirds of the members elected to the Senate, except in the case of justices of the peace which shall be by a majority. The person so appointed shall serve for a term ending on the first Monday of January following the next municipal election more than ten months after the vacancy occurs or for the remainder of the unexpired term whichever is less, except in the case of persons selected as additional judges to the Superior Court, where the General Assembly may stagger and fix the length of the initial terms of such additional judges by reference to any of the first, second and third municipal elections more than ten months after the additional judges are selected. The manner by which any additional judges are selected shall be provided by this section for the filling of vacancies in judicial offices.

(c) The provisions of section 13(b) shall not apply either in the case of a vacancy to be filled by retention election as provided in section 15(b), or in the case of a vacancy created by failure of a justice or judge to file a declaration for retention election as provided in section 15(b). In the case of a vacancy occurring at the expiration of an appointive term under section 13(b), the vacancy shall be filled by election as provided in section 13(a).

(d) **(Rejected by electorate, 1969).** — At the primary election in 1969, the electors of the Commonwealth may elect to have the justices and judges of the Supreme, Superior, Commonwealth and all other statewide courts appointed by the Governor from a list of persons qualified for the offices submitted to him by the Judicial Qualifications Commission. If a majority vote of those voting on the question is in favor of this method of appointment, then whenever any vacancy occurs thereafter for any reason in such court, the Governor shall fill the vacancy by appointment in the manner prescribed in this subsection. Such appointment shall not require the consent of the Senate.

(e) Each justice or judge appointed by the Governor under section 13(d) shall hold office for an initial term ending the first Monday of January following the next municipal election more than 24 months following the appointment.

N.J. Const., Art. VI, Sec. VI, Para. 1

*** This section is current through the November 8, 2022 election ***

LexisNexis® New Jersey Annotated Constitution > New Jersey State
Constitution 1947 > ARTICLE VI. Judicial > Section VI

Paragraph 1. Appointment of justices of Supreme Court and judges of other courts

The Governor shall nominate and appoint, with the advice and consent of the Senate, the Chief Justice and associate justices of the Supreme Court, the Judges of the Superior Court, and the judges of the inferior courts with jurisdiction extending to more than one municipality; except that upon the abolition of the juvenile and domestic relations courts or family court and county district courts as provided by law, the judges of those former courts shall become the Judges of the Superior Court without nomination by the Governor or confirmation by the Senate. No nomination to such an office shall be sent to the Senate for confirmation until after 7 days' public notice by the Governor.

History

Amended Nov. 7, 1978; Nov. 8, 1983, effective Dec. 8, 1983.

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N.J. Const., Art. VI, Sec. VI, Para. 2

*** This section is current through the November 8, 2022 election ***

LexisNexis® New Jersey Annotated Constitution > New Jersey State
Constitution 1947 > ARTICLE VI. Judicial > Section VI

Paragraph 2. Qualifications of justices and judges

The justices of the Supreme Court and the judges of the Superior Court shall each prior to his appointment have been admitted to the practice of law in this State for at least 10 years.

History

Amended Nov. 7, 1978, effective Dec. 7, 1978.

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N.J. Const., Art. VI, Sec. VI, Para. 3

*** This section is current through the November 8, 2022 election ***

LexisNexis® New Jersey Annotated Constitution > New Jersey State
Constitution 1947 > ARTICLE VI. Judicial > Section VI

Paragraph 3. Terms of justices and judges; retirement; pensions

The Justices of the Supreme Court and the Judges of the Superior Court shall hold their offices for initial terms of 7 years and upon reappointment shall hold their offices during good behavior; provided however, that, upon the abolition of the juvenile and domestic relations courts or family court and county district courts as provided by law, the judges in office in those former courts who have acquired tenure and the Judges of the Superior Court who have acquired tenure as a judge in those former courts prior to appointment to the Superior Court, shall have tenure as Judges of the Superior Court. Judges of the juvenile and domestic relations courts or family court and county district courts who have not acquired tenure as a judge of those former courts shall hold their offices for the period of their respective terms which remain unexpired and shall acquire tenure upon reappointment to the Superior Court. Such justices and judges shall be retired upon attaining the age of 70 years. Provisions for the pensioning of the Justices of the Supreme Court and the Judges of the Superior Court shall be made by law.

History

Amended Nov. 8, 1983, effective Dec. 8, 1983.

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N.J. Const., Art. VI, Sec. VI, Para. 4

*** This section is current through the November 8, 2022 election ***

LexisNexis® New Jersey Annotated Constitution > New Jersey State
Constitution 1947 > ARTICLE VI. Judicial > Section VI

Paragraph 4. Impeachment of justices and judges; removal

The Justices of the Supreme Court and the Judges of the Superior Court shall be subject to impeachment, and any judicial officer impeached shall not exercise his office until acquitted. The Judges of the Superior Court shall also be subject to removal from office by the Supreme Court for such causes and in such manner as shall be provided by law.

History

Amended Nov. 7, 1978, effective Dec. 7, 1978.

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N.J. Const., Art. VI, Sec. VI, Para. 5

*** This section is current through the November 8, 2022 election ***

LexisNexis® New Jersey Annotated Constitution > New Jersey State
Constitution 1947 > ARTICLE VI. Judicial > Section VI

Paragraph 5. Incapacity of justice or judge; retirement; pension

Whenever the Supreme Court shall certify to the Governor that it appears that any Justice of the Supreme Court or Judge of the Superior Court is so incapacitated as substantially to prevent him from performing his judicial duties, the Governor shall appoint a commission of three persons to inquire into the circumstances; and, on their recommendation, the Governor may retire the justice or judge from office, on pension as may be provided by law.

History

Amended Nov. 7, 1978, effective Dec. 7, 1978.

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N.J. Const., Art. VI, Sec. VI, Para. 6

*** This section is current through the November 8, 2022 election ***

LexisNexis® New Jersey Annotated Constitution > New Jersey State
Constitution 1947 > ARTICLE VI. Judicial > Section VI

Paragraph 6. Salaries of justices and judges

The Justices of the Supreme Court and the Judges of the Superior Court shall receive for their services such salaries as may be provided by law, which shall not be diminished during the term of their appointment, except for deductions from such salaries for contributions, established by law from time to time, for pensions as provided for under paragraphs 3 and 5 of Section VI of this Article, health benefits, and other, similar benefits. They shall not, while in office, engage in the practice of law or other gainful pursuit.

History

Amended Nov. 6, 2012, effective Dec. 6, 2012.

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N.J. Const., Art. VI, Sec. VI, Para. 7

*** This section is current through the November 8, 2022 election ***

LexisNexis® New Jersey Annotated Constitution > New Jersey State
Constitution 1947 > ARTICLE VI. Judicial > Section VI

Paragraph 7. Ineligibility of justices and judges for other offices or positions

The Justices of the Supreme Court and the Judges of the Superior Court shall hold no other office or position, of profit, under this State or the United States. Any such justice or judge who shall become a candidate for an elective public office shall thereby forfeit his judicial office.

History

[Article VI, Section VI, paragraph 7](#) amended effective December 7, 1978.

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DELAWARE JUDGES' CODE OF JUDICIAL CONDUCT

2008

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- Rule ۳.۱۴ Reimbursement of Expenses and Waivers of Fees or Charges.
- Rule ۳.۱۵ Reporting Requirements.
- Canon ۴ A judge should refrain from political activity inappropriate to the judge's judicial office.
- Rule ۴.۱ Political and Campaign Activities of Judges and Judicial Candidates.

PREAMBLE

This Code shall constitute the “Canons of Judicial Ethics” referenced in the Delaware Constitution, Article IV, Section 37.

This Code is designed to provide guidance to judges and nominees for judicial office. The Code will also establish standards of conduct for application in proceedings pursuant to Article IV, Section 37 of the Delaware Constitution, which provides, in pertinent part:

“A judicial officer may be censured or removed by virtue of this section for wilful misconduct in office, wilful and persistent failure to perform his or her duties, the commission after appointment of an offense involving moral turpitude, or other persistent misconduct in violation of the Canons of Judicial Ethics as adopted by the Delaware Supreme Court from time to time.”

It is not intended that disciplinary action would be appropriate for every violation of the Code’s provisions. Whether disciplinary action is appropriate, and the degree of discipline to be imposed, should be determined through a reasonable application of the text and should depend on such factors as the seriousness of the violation, the intent of the judge, whether there is a pattern of improper activity, and the effect of the improper activity on others or on the judicial system.

Any person subject to this Code may request an advisory opinion on proper judicial conduct with respect to this Code. A judge who has requested and relied upon such an opinion shall be entitled to introduce that opinion in any proceeding in the Court on the Judiciary as evidence that conduct conforming to the opinion is prima facie permissible. See Delaware Judicial Ethics Advisory Committee Rules 4(a) and 6(c) and Court on the Judiciary Rule 13(c).

Many of the proscriptions in the Code are necessarily cast in general terms, and it is not suggested that disciplinary action is appropriate where reasonable judges might be uncertain as to whether or not the conduct is proscribed. Furthermore, the Code is not designed or intended as a basis for civil liability or criminal prosecution. Finally, the purpose of the Code would be subverted if the Code were invoked by lawyers for mere tactical advantage in a proceeding.

The Canons are rules of reason. They should be applied in a manner consistent with constitutional requirements, statutes, other court rules and decisional law and in the context of all relevant circumstances. The Code is to be construed so as not to impinge on the essential independence of judges in making judicial decisions.

This Code has been reformatted and its provisions renumbered to conform to the format and numbering of the American Bar Association 2007 Model Code of Judicial Conduct. Its text is based on Delaware’s 1974 adaptation of the ABA’s 1972 Model Code of Judicial Conduct, revised in 1993, following the promulgation of the ABA’s 1990 Model Code of Judicial Conduct. The current text is revised only slightly from the Delaware Code of Judicial Conduct adopted in 1993.

TERMINOLOGY

“Compensation” means payment to a judge by another for services rendered but does not include moneys received by a judge from his investments or for services to a family business permitted under Rule 2.11(A) and (B).

“Contribution” means both financial and in-kind contributions, such as goods, professional or volunteer services, advertising, and other types of assistance, which, if obtained by the recipient otherwise, would require a financial expenditure.

“Domestic partner” means a person with whom another person maintains a household and an intimate relationship, other than a person to whom he or she is legally married.

“Economic interest” means ownership of a legal or equitable interest however small, or a relationship as director, advisor, or other active participant in the affairs of a party, except that:

- (i) ownership in a mutual or common investment fund that holds securities is not an “economic interest” in such securities unless the judge participates in the management of the fund;

(ii) an office in an educational, religious, charitable, fraternal, or civic organization is not an "economic interest" in securities held by the organization;

(iii) the proprietary interest of a policyholder in a mutual insurance company, or a depositor in a mutual savings association, or a similar proprietary interest, is an "economic interest" in the organization only if the outcome of the proceeding could substantially affect the value of the interest;

(iv) ownership of government securities is an "economic interest" in the issuer only if the outcome of the proceeding could substantially affect the value of the securities.

"Fiduciary" includes relationships such as executor, administrator, trustee, or guardian.

"Impartial," "impartiality," and "impartially" mean absence of bias or prejudice in favor of, or against, particular parties or classes of parties, as well as maintenance of an open mind in considering issues that may come before a judge.

"Impending matter" is a matter that is imminent or expected to occur in the near future.

"Impropriety" includes conduct that violates the law, court rules, or provisions of this Code, and conduct that undermines a judge's independence, integrity, or impartiality.

"Independence" means a judge's freedom from influence or controls other than those established by law.

"Integrity" means probity, fairness, honesty, uprightness, and soundness of character.

"Knowingly," "knowledge," "known," and "knows" mean actual knowledge of the fact in question. A person's knowledge may be inferred from circumstances.

"Law" encompasses court rules as well as statutes, constitutional provisions, and decisional law.

"Member of the judge's family" means persons related to the judge or the judge's spouse or domestic partner within the third degree of relationship calculated according to the civil law system, and any other relatives with whom the judge or the judge's spouse or domestic partner maintains a close familial relationship, and the spouse or domestic partner of any of the foregoing.

"Member of a judge's family residing in the judge's household" means any relative of a judge by blood or marriage, or a person treated by a judge as a member of the judge's family, who resides in the judge's household.

"Pending matter" is a matter that has commenced. A matter continues to be pending through any appellate process until final disposition.

"Political organization" is a political party or other group sponsored by or affiliated with a political party or candidate, the principal purpose of which is to further the election or appointment of candidates for political office.

"Third degree of relationship calculated according to the civil law system" includes the following persons: great-grandparent, grandparent, parent, aunt, uncle, brother, sister, child, grandchild, great-grandchild, nephew, and niece.

APPLICATION

A. All judges, including justices of the peace, full-time masters and court commissioners, should comply with this Code.

B. A retired judge subject to recall who by law is not permitted to practice law, must comply with this Code during any period of recall, except for Rule 1.10 acting as a fiduciary.

DELAWARE JUDGES' CODE OF JUDICIAL CONDUCT

2008 CANON 1

A judge should uphold the integrity, independence and impartiality of the judiciary.

RULE 1.1 Compliance with the Law.

A judge should respect and comply with the law, including this Code of Judicial Conduct.

Comment:

Deference to the judgments and rulings of courts depends upon public confidence in the integrity and independence of judges. The integrity and independence of judges depends in turn upon their acting without fear or favor. Although judges should be independent, they should comply with the law, as well as the provisions of this Code. Public confidence in the impartiality of the judiciary is maintained by the adherence of each judge to this responsibility. Conversely, violation of this Code diminishes public confidence in the judiciary and thereby does injury to the system of government under law.

The Canons are rules of reason. They should be applied in a manner consistent with constitutional requirements, statutes, other court rules and decisional law and in the context of all relevant circumstances. The Code is to be construed so as not to impinge on the essential independence of judges in making judicial decisions.

The Code is designed to provide guidance to judges and nominees for judicial office. The Code may also provide standards of conduct for application in proceedings pursuant to Article IV, Section 21 of the Delaware Constitution, although it is not intended that disciplinary action would be appropriate for every violation of its provisions. Whether disciplinary action is appropriate, and the degree of discipline to be imposed, should be determined through a reasonable application of the text and should depend on such factors as the seriousness of the violation, the intent of the judge, whether there is a pattern of improper activity, and the effect of the improper activity on others or on the judicial system.

RULE 1.2 Promoting Confidence in the Judiciary.

(A) A judge should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary and should avoid impropriety and the appearance of impropriety in all activities.

Comment:

Public confidence in the judiciary is eroded by irresponsible or improper conduct by judges. A judge must avoid all impropriety and appearance of impropriety. A judge must expect to be the subject of constant public scrutiny. A judge must therefore accept restrictions that might be viewed as burdensome by the ordinary citizen, and should do so freely and willingly.

The prohibition against behaving with impropriety or the appearance of impropriety applies to both the professional and personal conduct of a judge. Because it is not practicable to list all improper acts, the proscription is necessarily cast in general terms that extend to conduct by judges that is harmful, although not specifically mentioned in the Code.

Actual improprieties under this standard include violations of law, court rules or other specific provisions of this Code. The test for appearance of impropriety is whether the conduct would create in reasonable minds, with knowledge of all the relevant circumstances that a reasonable inquiry would disclose, a perception that the judge's ability to carry out judicial responsibilities with integrity, impartiality and competence is impaired. A judge does not violate this Code merely because a personal or judicial decision of the judge may be erroneous.

A judge may initiate and participate in community outreach activities for the purpose of promoting public understanding of and confidence in the administration of justice. In conducting such activities, the judge should act in a manner consistent with this Code.

(B) An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining and enforcing high standards of conduct, and should personally observe those standards, so that the integrity, independence and impartiality of the judiciary may be preserved. The provisions of this Code should be construed and applied to further that objective.

Comment:

Many of the proscriptions in the Code are necessarily cast in general terms, and it is not suggested that disciplinary action is appropriate where reasonable judges might be uncertain as to whether or not the conduct is proscribed. Furthermore, the Code is not designed or intended as a basis for civil liability or criminal prosecution. Finally, the purpose of the Code would be subverted if the Code were invoked by lawyers for mere tactical advantage in a proceeding.

RULE 1.2 Avoiding Abuse of the Prestige of Judicial Office.

(A) A judge should not abuse the prestige of the judicial office to advance the personal or economic interests of the judge or others, and should discourage others from doing so.

(B) A judge should not convey and should discourage others from conveying the impression that they are in a special position to influence the judge.

Comment:

A judge should avoid lending the prestige of judicial office for the advancement of the private interests of the judge or others. For example, a judge should not use the judge's judicial position to gain advantage in litigation involving a friend or member of the judge's family.

CANON 2

A judge should perform the duties of judicial office impartially, competently and diligently.

RULE 2.1 Giving Precedence to the Duties of Judicial Office.

The judicial duties of a judge take precedence over all other activities. Judicial duties include all the duties of the office prescribed by law.

RULE 2.2 Impartiality and Fairness.

A judge should be faithful to the law and maintain professional competence in it.

RULE 2.3 Bias, Prejudice and Impropriety.

(A) A judge should perform the duties of judicial office, including administrative duties, without bias or prejudice.

(B) A judge should avoid impropriety and the appearance of impropriety in all activities.

Comment:

A judge who manifests bias or prejudice in a proceeding impairs the fairness of the proceeding and brings the judiciary into disrepute.

Examples of manifestations of bias or prejudice include but are not limited to epithets, slurs, demeaning nicknames, negative stereotyping, attempted humor based upon stereotypes, threatening, intimidating, or hostile acts, suggestions of connections between race, ethnicity, or nationality and crime, and irrelevant references to personal characteristics. Even facial expressions and body language can convey to parties and lawyers in the proceeding, jurors, the media, and others an appearance of bias or prejudice. A judge should avoid conduct that may reasonably be perceived as prejudiced or biased.

Although a judge should be sensitive to possible abuse of the prestige of the office, a judge may, based on the judge's personal knowledge, serve as a reference or provide a letter of recommendation and may use judicial stationery to do so.

RULE 2.4 External Influences on Judicial Conduct.

(A) A judge should be unswayed by partisan interests, public clamor, or fear of criticism.

(B) A judge should not allow family, social, or other relationships to influence judicial conduct or judgment.

(C) A judge should not convey or permit others to convey the impression that they are in a special position to influence the judge.

RULE 2.0 Competence, Diligence, and Cooperation.

(A) A judge should perform the duties of the office impartially and diligently.

Comment:

Prompt disposition of the court's business requires a judge to devote adequate time to the judge's duties, to be punctual in attending court and expeditious in determining matters under submission, and to insist that court officials, litigants and their lawyers cooperate with the judge to that end.

(B) A judge should diligently discharge the judge's administrative responsibilities, maintain professional competence in judicial administration, and facilitate the performance of the administrative responsibilities of other judges and court officials.

Comment:

The duty to act in a manner that promotes public confidence in the integrity and impartiality of the judiciary applies to all the judge's activities including the discharge of the judge's adjudicative and administrative responsibilities.

(C) A judge should dispose promptly of the business of the court.

Comment:

In disposing of matters promptly, efficiently and fairly, a judge must demonstrate due regard for the rights of the parties to be heard and to have issues resolved without unnecessary cost or delay. A judge should monitor and supervise cases so as to reduce or eliminate dilatory practices, avoidable delays and unnecessary costs. The duty to hear all proceedings fairly and with patience is not inconsistent with the duty to dispose promptly of the business of the court. Courts can be efficient and business-like while being patient and deliberate.

RULE 2.1 Ensuring the Right to Be Heard.

(A) A judge should accord to every person who is legally interested in a proceeding, or to the person's lawyer, full right to be heard according to law.

(B) A judge may encourage parties to a proceeding and their lawyers to settle their matters in dispute but should not act in a manner that coerces any party into settlement.

Comment:

A judge should encourage and seek to facilitate settlement, but parties should not be coerced into surrendering the right to have their controversy resolved by the courts.

RULE 2.2 Responsibility to Decide.

(A) A judge should hear and decide matters assigned, unless disqualified. (B) A judge should not use disqualification to avoid cases that present difficult, controversial or unpopular issues.

RULE 2.3 Decorum, Demeanor, and Communication with Jurors.

(A) A judge should require order and decorum in proceedings before the court. (B) A judge should be patient, dignified, respectful and courteous to litigants, jurors, witnesses, lawyers, and others with whom the judge deals in an official capacity, and should require similar conduct of the judge's staff, court officials, and others subject to the judge's direction and control, including lawyers to the extent consistent with their role in the adversary process.

Comment:

The duty to be respectful of others includes the responsibility to avoid comment or behavior that can reasonably be interpreted as manifesting prejudice or bias towards another on the basis of personal characteristics like race, sex, religion, national origin, disability, age, sexual orientation, or socioeconomic status.

In court proceedings, judges or former judges participating as litigants or counsel should not be called by their current or former titles or treated with greater familiarity or deference than other participants.

RULE 2.9 Ex Parte Communications.

(A) A judge, except as authorized by law, should neither initiate nor consider ex parte or other communications concerning a pending or impending proceeding.

Comment:

The proscription against communications concerning a proceeding includes communications from lawyers, law teachers, and other persons who are not participants in the proceeding, except to the limited extent permitted. It does not preclude considering and ruling upon emergency applications where circumstances require. It does not preclude a judge from consulting with other judges, or with court personnel whose function is to aid the judge in carrying out adjudicative responsibilities. It is not intended to preclude communications between a judge and lawyers, or parties if unrepresented by counsel, concerning matters which are purely procedural, such as those which pertain to scheduling, and which in no way bear on the merits of the proceeding. However, such communications should, as soon as practicable, be fully disclosed by the judge to all lawyers, or parties if unrepresented by counsel, involved in the proceeding. A judge should make reasonable efforts to ensure that this provision is not violated through law clerks or other staff personnel.

Except in the course of the judge's official duties, a judge should not initiate a communication of information to a sentencing judge or a probation or corrections officer but may provide to such persons information in response to a formal request.

(B) A judge, however, may obtain the advice of a disinterested expert on the law applicable to a proceeding before the judge if the judge gives notice to the parties of the person consulted and the substance of the advice, and affords the parties reasonable opportunity to respond.

Comment:

An appropriate and often desirable procedure for a court to obtain the advice of a disinterested expert on legal issues is to invite the expert to file a brief *amicus curiae*.

(C) A judge may, with consent of the parties, confer separately with the parties and their counsel in an effort to mediate or settle pending matters.

RULE 2.10 Judicial Statements on Pending and Impending Cases.

(A) A judge should abstain from public comment on the merits of a pending or impending proceeding in any court, and should require similar abstention on the part of personnel subject to the judge's direction and control.

Comment:

The admonition against public comment about the merits of a pending or impending action continues until completion of the appellate process. If the public comment involves a case from the judge's own court, particular care should be taken that the comment does not denigrate public confidence in the integrity and impartiality of the judiciary in violation of Rule 1.1.

'Court personnel' does not include the lawyers in a proceeding before a judge. The conduct of lawyers is governed by the Rules of Professional Responsibility.

(B) This proscription does not extend to public statements made in the course of the judge's official duties, to the explanation of court procedures, or to a scholarly presentation made for purposes of legal education.

Comment:

This provision does not restrict comments about proceedings in which the judge is a litigant in a personal capacity, but in mandamus proceedings when the judge is a litigant in an official capacity, the judge should not comment beyond the record.

(C) A judge should prohibit broadcasting, televising, recording, or taking photographs in the courtroom and areas immediately adjacent thereto during sessions of court or recesses between sessions, except as authorized by a court rule or administrative directive which has been either promulgated or approved by the Delaware Supreme Court.

Comment:

Temperate conduct of judicial proceedings is essential to the fair administration of justice. The recording and reproduction of a proceeding should not distort or dramatize the proceeding.

RULE 2.11 Disqualification.

(A) A judge should disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances where:

- (1) The judge has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding;
- (2) The judge or the judge's spouse or domestic partner, or a person within the third degree of relationship, calculated according to the civil law system, to either of them, or the spouse or domestic partner of such a person:
 - (a) is a party to the proceeding, or an officer, director, or trustee of a party;
 - (b) is acting as a lawyer in the proceeding;
 - (c) is known by the judge to have an interest that could be substantially affected by the outcome of the proceeding;
 - (d) is to the judge's knowledge likely to be a material witness in the proceedings.
- (3) The judge knows that, individually or as a fiduciary, the judge or the judge's spouse or domestic partner or minor child residing in the judge's household has an economic interest in the subject matter in controversy or in a party to the proceeding, or any other interest that could be substantially affected by the outcome of the proceeding;

Comment:

This Rule, for example, would disqualify the judge if a parent, grandparent, uncle or aunt, brother or sister, or niece or nephew of the judge or the judge's spouse or domestic partner, or the spouse or domestic partner of any of the foregoing were a party or lawyer in the proceeding, but would not disqualify the judge if a cousin were a party or lawyer in the proceeding.

The fact that a lawyer in a proceeding is affiliated with a law firm with which a lawyer-relative of the judge is affiliated does not of itself disqualify the judge. Under appropriate circumstances, the fact that the judge's impartiality might reasonably be questioned under Rule 2.11(A), or that the lawyer-relative is known by the judge to have an interest in the law firm that could be substantially affected by the outcome of the proceeding under Rule 2.11(A)(2)(C), may require the judge's disqualification.

(1) The judge

- (a) served as a lawyer in the matter in controversy, or a lawyer with whom the judge previously practiced law served during such association as a lawyer concerning the matter, or the judge or such lawyer has been a material witness concerning it, or the judge was associated in the practice of law within the preceding year with a law firm or lawyer acting as counsel in the proceeding;
- (b) served in governmental employment and in such capacity participated as counsel, advisor, or material witness concerning the proceeding or has expressed an opinion concerning the merits of the particular case in controversy.

(B) A judge should keep informed about the judge's personal and fiduciary economic interests,

and make a

reasonable effort to keep informed about the personal economic interests of the judge's spouse or domestic partner and minor children residing in the judge's household.

(C) A judge disqualified by the

terms of Rule 2.11, except a disqualification by the terms of Rule

2.11(A)(1) or Rule 2.11(A)(1), may, instead of withdrawing from the proceeding, disclose on the

record the basis of the judge's disqualification. If the parties and their lawyers, after such disclosure and an opportunity to confer outside of the presence of the judge, all agree in writing or on the record that the

judge should not be disqualified, and the judge is then willing to participate, the judge may

participate in

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the proceeding. The agreement shall be incorporated in the record of the proceeding.

Although Rule 3.6 relates only to membership in organizations that invidiously discriminate on the basis of race, sex, gender, religion, national origin, ethnicity or sexual orientation, a judge's membership in an organization that engages in any invidiously discriminatory membership practices prohibited by applicable law violates Rules 3.3 and 3.4 and gives the appearance of impropriety. In addition, it would be a violation of Rules 3.3 and 3.4 for a judge to arrange a meeting at a club that the judge knows practices invidious discrimination on the basis of race, sex, gender, religion, national origin, ethnicity or sexual orientation in its membership or other policies, or for the judge to use such a club regularly. Moreover, public manifestation by a judge of the judge's knowing approval of invidious discrimination on any basis gives the appearance of impropriety under Canon 3 and diminishes public confidence in the integrity and impartiality of the judiciary, in violation of Rule 3.4.

When a judge determines that an organization to which the judge belongs engages in invidious discrimination that would preclude membership under Rule 3.6(A) or under Rules 3.3 and 3.4, the judge is permitted, in lieu of resigning, to make immediate and continuous efforts to have the organization discontinue its invidiously discriminatory practices. If the organization fails to discontinue its invidiously discriminatory practices as promptly as possible (and in all events within two years of the judge's first learning of the practices), the judge should resign immediately from the organization.

(B) A judge should not use the benefits or facilities of an organization if the judge knows or should know that the organization practices invidious discrimination on one or more bases identified in paragraph (A). A judge's attendance at an event in a facility of an organization that the judge is not permitted to join is not a violation of the Rule when the judge's attendance is an isolated event that could not reasonably be perceived as an endorsement of the organization's practices.

RULE 3.7 Participation in Educational, Religious, Charitable, Fraternal, or Civic Organizations and Activities.

A judge may participate in civic and charitable activities that do not reflect adversely upon the judge's independence, integrity, impartiality or interfere with the performance of judicial duties. A judge may serve as an officer, director, trustee, or non-legal advisor of an educational, religious, charitable, fraternal, or civic organization not conducted for the economic or political advantage of its members, subject to the following limitations:

(A) A judge should not serve if it is likely that the organization will be engaged in proceedings that would ordinarily come before the judge or will be regularly engaged in adversary proceedings in any court.

Comment:

The changing nature of some organizations and of their relationship to the law makes it necessary for a judge regularly to re-examine the activities of each organization with which the judge is affiliated to determine if it is proper for the judge to continue the judge's relationship with it. For example, in many jurisdictions charitable hospitals are now more frequently in court than in the past. Similarly, the boards of some legal aid organizations now make policy decisions that may have political significance or imply commitment to causes that may come before the courts for adjudication.

(B) A judge should not solicit funds for any educational, religious, charitable, fraternal, or civic organization, or use or permit the use of the prestige of the judicial office for that purpose, but the judge may be listed as an officer, director, or trustee of such an organization. A judge should not personally participate in membership solicitation if the solicitation might reasonably be perceived as coercive or is essentially a fund-raising mechanism.

(C) A judge should not give investment advice to such an organization, but may serve on

Comment:

its board

A judge's participation in an organization devoted to quasi-judicial activities is governed by Rule 3.6. A judge may attend fund-raising activities of the organization although the judge may not be a speaker, a guest of honor, or featured on the program of such an event. Use of an organization's letterhead for fund-raising or membership solicitation does not violate these Rules, provided the letterhead lists only the judge's name and position in the organization, and, if comparable designations are listed for other persons, the judge's judicial designation.

RULE 1.12 Compensation for Extrajudicial Activities.

A judge may receive compensation and reimbursement of expenses for the law-related and extrajudicial activities permitted by this Code or other law, if the source of such payments does not give the appearance of influencing the judge in the judge's judicial duties or otherwise give the appearance of impropriety, subject to the following restrictions:

(A) Compensation should not exceed a reasonable amount.

(B) A judge should not solicit or accept a fee, reimbursement of expenses, or a gift for solemnizing a marriage, except that a judge may accept a non-monetary gift, if the gift is fairly commensurate with the occasion and the judge's relationship with the persons involved.

RULE 1.13 Acceptance and Reporting of Gifts, Loans, Bequests, Benefits, or Other Things of Value.

(A) Neither a judge nor a member of the judge's family residing in the judge's household should solicit or accept a gift, bequest, favor, or loan from anyone except for:

(1) a gift incident to a public testimonial to the judge, books, tapes and other resource materials

supplied by publishers on a complimentary basis for official use, or an invitation to the judge and a family member or guest to attend a bar-related function or activity devoted to the improvement of the law, the legal system, or the administration of justice;

(2) a gift, award or benefit incident to the business, profession or other separate activity of a

spouse or domestic partner or other family member of a judge residing in the judge's household, including gifts, awards and benefits for the use of both the spouse or domestic partner or other family member, and the judge (as spouse or domestic partner or family member), provided the gift, award or benefit could not reasonably be perceived as intended to influence the judge in the

performance of judicial duties;

(3) ordinary social hospitality;

(4) a gift from a relative or friend, for a special occasion, such as a wedding, anniversary or birthday, if the gift is fairly commensurate with the occasion and the relationship;

(5) a gift, bequest, favor or loan from a relative or close personal friend whose entity served by the judge; or

provided the donor is not a party or other person who has come or is likely to come before the judge in the course of the judge's official duties, and the gift, bequest, favor or loan is not intended to influence the judge's performance of his or her official duties.

(B) A judge is not required by this Code to make financial disclosures except as provided by the Supreme Court, terms generally

RULE 1.14 Reimbursement of Expenses and Waivers of Fees or Charges.
(A) A scholarship or fellowship awarded on the same terms and based on the same criteria applied to other applicants; or

(1) any other gift, bequest, favor or loan, only if:

Comment:

Reimbursement or direct payment of travel expenses may be a gift and, if so, its acceptance is governed by Rule 7.13. A judge or employee may receive as a gift travel expense reimbursement including the cost of transportation, lodging, and meals, for the judge and a guest incident to the judge's attendance at a bar-related function or at an activity devoted to the improvement of the law, the legal system, or the administration of justice.

RULE 7.16 Reporting Requirements.

(A) A judge should regularly file reports of compensation received for law-related and extra-judicial activities, as required by the Supreme Court.

(B) A judge should make financial disclosures as required by the Supreme Court.

CANON 8

A judge should refrain from political activity inappropriate to the judge's judicial office.

RULE 8.1 Political and Campaign Activities of Judges and Judicial Candidates.

(A) A judge should not:

(1) act as a leader or hold any office in a political organization;

(2) make speeches for a political organization or candidate or publicly endorse or oppose a candidate for public office;

(3) directly or indirectly solicit funds for or pay an assessment or make a contribution to a political organization or candidate, attend political gatherings, or purchase tickets for political party dinners, or other functions.

(B) A judge should resign the judicial office when the judge becomes a candidate either in a party primary or in a general election for a nonjudicial office.

(C) A judge should not engage in any other political activity except on behalf of measures to improve the law, the legal system or the administration of justice.

Comment:

Political contributions by the judge's spouse or domestic partner must result from the independent choice of the spouse or domestic partner and checks by which such contributions are made shall not include the name of the judge.

A person becomes a candidate as soon as he or she makes a public announcement of candidacy, declares or files as a candidate with the election authority, or authorizes solicitation or acceptance of contributions or support.

Del. Const. Art. IV, § 3

This document is current through 85 Del. Laws, c. 42.

Delaware Constitution Annotated
Article IV Judiciary

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Constitution of the State of Delaware

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§ 3. Appointment of judges; terms of office; vacancies; political representation; confirmation of appointment.

(a) The Chief Justice and Justices of the Supreme Court, the Chancellor and Vice-Chancellors of the Court of Chancery, the President Judge and Judges of the Superior Court, the Chief Judge and Judges of the Family Court, the Chief Judge and Judges of the Court of Common Pleas, and the Chief Magistrate of the Justice of the Peace Court shall be appointed by the Governor, by and with the consent of a majority of all the members elected to the Senate, for a term of 12 years each, and the persons so appointed shall enter upon the discharge of the duties of their respective offices upon taking the oath of office prescribed by this Constitution. The Governor shall submit an appointment within a period from 30 days before to 90 days after the occurrence of a vacancy howsoever caused. If a vacancy shall occur, by expiration of term or otherwise, at a time when the Senate shall not be in session, the Governor shall within a period from 30 days before to 90 days after the happening of any such vacancy convene the Senate for the purpose of confirming an appointment to fill the vacancy and the transaction of such other executive business as may come before it. Such vacancy shall be filled as aforesaid for the full term. Notwithstanding a vacancy, whether occurring when the Senate is or is not in session, an incumbent whose term has expired may hold over in office until the incumbent, or a new appointee, is confirmed and takes the oath of office for the next term, but in no event shall an incumbent whose term has expired hold over in office for more than 90 days after the expiration of the term. In all instances, the term of a new or reappointed Chief Justice or Justice of the Supreme Court, Chancellor or Vice-Chancellor of the Court of Chancery, President Judge or Judge of the Superior Court, Chief Judge or Judge of the Family Court, Chief Judge or Judge of the Court of Common Pleas, or Chief Magistrate of the Justice of the Peace Court shall begin after the occurrence of the vacancy and on the date the oath of office is taken, thus qualifying the individual to serve, but the appointment shall be forfeited if such oath is not taken within 30 days of confirmation.

(b) Appointments to the office of the State Judiciary shall at all times be subject to all of the following limitations:

(1) Three of the 5 Justices of the Supreme Court in office at the same time, shall be of 1 major political party, and 2 of the Justices shall be of the other major political party.

(2) At any time when the total number of Judges of the Superior Court shall be an even number, not more than half of the members of all such offices shall be of the same political party; and at any time when the number of such offices shall be an odd number, then not more than a bare majority of the members of all such offices shall be of the same major political party, the remaining members of such offices shall be of the other major political party.

(3) At any time when the total number of the offices of the Justices of the Supreme Court, the Judges of the Superior Court, the Chancellor, and all the Vice-Chancellors shall be an even number, not more than half of the members of all such offices shall be of the same major political party; and at any time when the total number of such offices shall be an odd number, then not more than a bare majority of the members of all such offices shall be of the same major political party; the remaining members of the Courts above enumerated shall be of the other major political party.

Del. Const. Art. IV, § 3

(4) At any time when the total number of Judges of the Family Court shall be an even number, not more than half of the Judges shall be of the same political party; and at any time when the total number of Judges shall be an odd number, then not more than a majority of 1 Judge shall be of the same political party.

(5) At any time when the total number of Judges of the Court of Common Pleas shall be an even number, not more than half of the Judges shall be of the same political party; and at any time when the total number of Judges shall be an odd number, then not more than a majority of 1 Judge shall be of the same political party.

(6) Before sending the name of any person to the Senate for confirmation as the appointment of the Governor to a vacancy in any Judicial Office as aforesaid, the Governor shall, not less than 10 days before sending the name of such person to the Senate for confirmation, address a public letter to the President of the Senate stating the intention to submit to the Senate for confirmation as an appointment to such vacancy the name of the person the Governor intends to appoint.

History

47 Del. Laws, c. 177; 48 Del. Laws, c. 109; 51 Del. Laws, c. 97; 53 Del. Laws, c. 302; 60 Del. Laws, c. 540; 61 Del. Laws, c. 533; 63 Del. Laws, c. 377; 64 Del. Laws, c. 179; [71 Del. Laws, c. 379, § 32](#); [72 Del. Laws, c. 136, § 32](#); [74 Del. Laws, c. 299, §§ 3, 17](#); [75 Del. Laws, c. 53, § 1](#); [75 Del. Laws, c. 137, § 3](#); [75 Del. Laws, c. 138, § 1](#); [76 Del. Laws, c. 11, § 1](#); [76 Del. Laws, c. 416, §§ 2, 3](#); [77 Del. Laws, c. 433, § 1](#); [80 Del. Laws, c. 345, § 1](#); [81 Del. Laws, c. 10, § 1](#); 84 Del. Laws, c. 281, § 77; [85 Del. Laws, c. 5, § 77](#).

Delaware Constitution Annotated
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End of Document

Organizations dedicated to the preservation of religious, spiritual, charitable, civic or cultural values, that do not stigmatize any excluded persons as inferior and therefore unworthy of membership are not considered to discriminate invidiously.

Canon 3. A Judge Should Perform the Duties of Judicial Office Impartially and Diligently

The judicial duties of a judge take precedence over all other activities. Judicial duties include all the duties of the office prescribed by law. In the performance of these duties, the following standards apply:

A. Adjudicative Responsibilities.

(1) A judge should be faithful to the law and maintain professional competence in it. A judge should be unwayed by partisan interest, public clamor, or fear of criticism.

(2) A judge should maintain order and decorum in judicial proceedings.

(3) A judge should be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others with whom the judge deals in an official capacity, and should not permit lawyers, court officials, and others subject to the judge's direction and control to display impatience or discourtesy or to detract from the dignity of the court.

Commentary: The duty to hear all proceedings fairly and with patience is not inconsistent with the duty to dispose promptly of the business of the court. Courts can be efficient and business-like while being patient and deliberate.

(4) A judge should be impartial and should not discriminate because of race, color, religion, age, sex, sexual orientation, national origin, language, marital status, socioeconomic status, or disability.

(5) A judge shall require lawyers in proceedings before the judge to refrain from manifesting, by words or conduct, bias or prejudice based upon race, color, religion, age, sex, sexual orientation, national origin, language, marital status, socioeconomic status or disability against parties, witnesses, counsel, or others. This section does not preclude legitimate advocacy when race, color, religion, age, sex, sexual orientation, national origin, language, marital status, socioeconomic status or disability, or other similar factors are issues in the proceeding.

(6) A judge should accord to every person who is legally interested in a proceeding, or that person's lawyer, full right to be heard according to law, and, except as authorized by law, neither initiate nor consider ex parte or other communications concerning a pending or impending proceeding. A judge, however, may obtain the advice of a disinterested expert on the law applicable to or the subject matter of a proceeding if the judge gives notice to the parties of the person to be consulted and the nature of the advice, and affords the parties reasonable opportunity to participate and to respond.

Commentary: The proscription against communications concerning a proceeding includes communications from lawyers, law teachers, and other persons who are participants in the proceeding, except to the limited extent permitted. It does not preclude a judge from consulting with other judges, or with court personnel whose function is to aid the judge in carrying out adjudicative responsibilities.

An appropriate and often desirable procedure for a court to obtain the advice of a disinterested expert on legal issues is to invite the expert to file a brief *amicus curiae*.

(7) A judge should dispose promptly of the business of the court.

Commentary: Prompt disposition of the court's business requires a judge to devote adequate time to duties, to be punctual in attending court and expeditious in determining matters under submission, and to insist that court officials, litigants and lawyers cooperate to that end. In disposing of matters promptly, a judge must demonstrate due regard for the rights of the parties to be heard and to have issues resolved without unnecessary cost or delay.

(8) A judge should abstain from public comment about a pending or impending proceeding in any court and should require similar abstention on the part of court personnel subject to the judge's direction and control. This subsection does not prohibit judges from making public statements in the course of their official duties or from explaining for public information the procedures of the court.

Commentary: "Court personnel" does not include the lawyers in a proceeding before a judge. The conduct of lawyers is governed by RPC 3.6 of the Rules of Professional Conduct.

(9) A judge should permit broadcasting, televising, recording, or taking photographs in the courtroom and areas immediately adjacent thereto during sessions of court or recesses between sessions only in accordance with the guidelines promulgated by the Supreme Court and subject to the restrictions contained therein.

Commentary: Temperate conduct of judicial proceedings is essential to the fair administration of justice. The broadcasting, televising or photographing of a proceeding may tend to distort or dramatize the proceeding.

(10) A judge shall not commend or criticize jurors for their verdict, other than in a court order or opinion in a proceeding, but may express appreciation to jurors for their service to the judicial system and the community.

B. Administrative Responsibilities.

(1) A judge should diligently discharge the administrative responsibilities of the office without bias or prejudice, maintain professional competence in judicial administration, and facilitate the performance of the administrative responsibilities of other judges and court officials.

(2) A judge should require staff, court officials, and others subject to the judge's direction and control to observe the standards of fidelity and diligence that apply to the judge and to refrain from manifesting bias or prejudice in the performance of their official duties.

(3) A judge has the following disciplinary responsibilities:

(a) A judge who receives information indicating a substantial likelihood that another judge has committed a violation of this Code should take appropriate action. A judge having knowledge that another judge has committed a violation of this Code that raises a substantial question as to the other judge's fitness for office shall inform the appropriate authority.

(b) A judge who receives information indicating a substantial likelihood that a lawyer has committed a violation of the Rules of Professional Conduct should take appropriate action. A judge having knowledge that a lawyer has committed a violation of the Rules of Professional

Conduct that raises a substantial question as to the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects shall inform the appropriate authority.

(c) Acts of a judge in the discharge of disciplinary responsibilities required or permitted by Sections 3B(3)(a) and 3B(3)(b) are part of a judge's judicial duties and shall be absolutely privileged, and no civil action predicated thereon may be instituted against the judge.

(4) A judge should not make unnecessary appointments, should exercise the power of appointment only on the basis of merit, avoiding nepotism and favoritism, and should not approve compensation of appointees beyond the fair value of services rendered.

Commentary: Appointees of the judge include officials such as commissioners, receivers, guardians and personnel such as clerks and secretaries. Consent by the parties to an appointment or to the fixing of compensation does not relieve the judge of the obligation prescribed by this subsection.

C. Disqualification. (see R. 1:12-1)

(1) A judge should disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances where:

(a) the judge has a personal bias or prejudice concerning a party or a party's lawyer or has personal knowledge of disputed evidentiary facts concerning the proceeding;

(b) the judge served as lawyer in the matter in controversy, or a lawyer with whom the judge previously practiced law served during such association as a lawyer concerning the matter, or the judge or such lawyer has been a witness concerning it;

Commentary: A lawyer in a governmental agency does not necessarily have an association with other lawyers employed by that agency within the meaning of this subsection; a judge formerly employed by a governmental agency, however, should disqualify himself or herself in a proceeding if the judge's impartiality might reasonably be questioned because of such association.

(c) the judge knows that he or she, individually or as a fiduciary, or the judge's spouse, parent or child or any other member of the judge's family residing in the judge's household, has a financial interest in the subject matter in controversy or in a party to the proceeding or any other interest that could be affected by the outcome of the proceeding;

(d) the judge or the judge's spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person:

(i) is a party to the proceeding, or an officer, director, or trustee of a party;

(ii) is acting as, or is in the employ of or associated in the practice of law with, a lawyer in the proceeding;

Commentary: The fact that a lawyer in a proceeding is affiliated with a law firm with which a lawyer-relative of the judge is affiliated of itself disqualifies the judge.

(iii) is known by the judge to have an interest that could be affected by the outcome of the proceeding;

(iv) is to the judge's knowledge likely to be a witness in the proceeding.

(2) A judge should keep informed about his or her personal and fiduciary financial interests and make a reasonable effort to keep informed about the personal financial interests of his or her spouse and children residing in his or her household.

(3) For the purposes of this section:

(a) the degree of relationship is calculated according to the common law;

Commentary: According to the common law, the third degree of relationship test would, for example, disqualify the judge if the judge's or the judge's spouse's parent, grandparent, uncle or aunt, brother or sister, cousin, nephew or his wife, or niece or her husband were a party or lawyer in the proceeding.

(b) "fiduciary" includes such relationships as executor, administrator, trustee, and guardian;

(c) "financial interest" means ownership of a legal or equitable interest, however small, or a relationship as director, advisor, or other participant in the affairs of a party, except that:

(i) ownership in a mutual or common investment fund that holds securities is not a "financial interest" in such securities;

(ii) an office in an educational, religious, charitable, fraternal, or civic organization is not a "financial interest" in securities held by the organization;

(iii) the proprietary interest of a policyholder in a mutual insurance company, of a depositor in a mutual savings association, or a similar proprietary interest, is a "financial interest" in the organization only if the outcome of the proceeding could substantially affect the value of the interest;

(iv) ownership of government securities is a "financial interest" in the issuer only if the outcome of the proceeding could substantially affect the value of the securities.

D. Remittal of Disqualification. A judge disqualified by the terms of this Canon may not avoid disqualification by disclosing on the record the disqualifying interest and securing the consent of the parties.

Commentary: This provision is designed to avoid the chance that a party or lawyer will feel coerced into consent.

Canon 4. A Judge May Engage in Activities to Improve the Law, the Legal System, and the Administration of Justice

A judge, subject to the proper performance of judicial duties, may engage in the following quasi-judicial activities if in doing so the judge does not cast doubt on the judge's capacity to decide impartially any issue that may come before the court and provided the judge is not compensated therefor:

A. A judge may speak, write, lecture, and participate in other activities concerning the law, the legal system, and the administration of justice.

B. A judge may teach concerning the law, the legal system, and the administration of justice.

C. A judge may appear at a public hearing before an executive or legislative body or official on matters concerning the law, the legal system, and the administration of justice upon notice to and approval by the Supreme Court, and may otherwise consult with an executive or legislative body or official, but only on matters concerning the administration of justice with which the judge is charged with responsibility by the Rules of Court.

D. A judge may serve as a member, officer or director of a nongovernmental organization devoted to the improvement of the law, the legal system, or the administration of justice. A judge may not, however, assist such an organization in raising funds nor may a judge participate in their management and investment. A judge may make recommendations to public and private fund-granting agencies on projects and programs concerning the law, legal system, and the administration of justice.

Commentary: As a judicial officer and person specially learned in the law, a judge is in a unique position to contribute to the improvement of the law, the legal system, and the administration of justice, including revision of substantive and procedural law and improvement of criminal and juvenile justice. To the extent that time permits, a judge is encouraged to do so through a bar association, judicial conference, other organization dedicated to the improvement of the law or through an appropriate judicial official charged with administrative responsibility by the Rules of Court.

A full-time judge should not serve as an officer, trustee, or committee member of a local or state bar association, except that full-time judges may serve on committees of the New Jersey State Bar Association, subject to such conditions as determined by the Supreme Court. Extra-judicial activities are governed by Canon 5.

Canon 5. A Judge Shall so Conduct the Judge's Extra-Judicial Activities as to Minimize the Risk of Conflict With Judicial Obligations

A. Extra-Judicial Activities in General. A judge shall conduct all of the judge's extra-judicial activities so that they do not:

- (1) cast reasonable doubt on the judge's capacity to act impartially as a judge;
- (2) demean the judicial office; or
- (3) interfere with the proper performance of judicial duties.

Commentary: Complete separation of a judge from extra-judicial activities is neither possible nor wise; a judge should not become isolated from the community in which the judge lives.

Expressions of bias or prejudice by a judge, even outside the judge's judicial activities, may cast reasonable doubt on the judge's capacity to act impartially as a judge. Expressions that may do so include jokes or other remarks demeaning individuals on the basis of their race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status. See Section 2C and accompanying Commentary.

B. Avocational Activities.

(1) A judge may write, lecture, and speak on non-legal subjects, and engage in the arts, sports, and other social and recreational activities, if such avocational activities do not detract from the dignity of the judicial office or interfere with the performance of judicial duties and provided the judge is not compensated therefor.

(2) A judge may teach on non-legal subjects provided the judge is not compensated therefor.

Commentary: Complete separation of a judge from extra-judicial activities is neither possible nor wise; a judge should not become isolated from society.

C. Civic and Charitable Activities. A judge may participate in civic and charitable activities that do not reflect adversely upon the judge's impartiality or interfere with the performance of judicial duties. A judge may serve as an officer, director, trustee, or non-legal advisor of an educational, religious, charitable, fraternal, or civic organization not conducted for the economic or political advantage of its members, subject to the following limitations:

(1) A judge should not serve if it is likely that the organization will be engaged in proceedings that would ordinarily come before the judge or will be regularly engaged in adversary proceedings in any court.

Commentary: The changing nature of some organizations and of their relationship to the law makes it necessary for a judge regularly to reexamine the activities of each organization with which he or she is affiliated to determine if it is proper to continue a relationship with it. For example, charitable hospitals are frequently in court. Similarly, the boards of legal aid organizations make policy decisions that may have political significance or imply commitment to causes that may come before the courts for adjudication.

(2) A judge shall not solicit funds for any educational, religious, charitable, fraternal, or civic organization, or use or permit the use of the prestige of the judicial office for that purpose, nor may a judge be listed as an officer, director, or trustee of such an organization in any letters or other documents used in such solicitations. A judge shall not be a speaker or the guest of honor at an organization's fundraising events, but may attend such events and contribute to such organizations.

(3) A judge shall not give investment advice to such an organization, nor may a judge serve on its board of directors or trustees if it has the responsibility for approving investment decisions.

Commentary: A judge's participation in an organization devoted to quasi-judicial activities is governed by Canon 4.

D. Financial Activities.

(1) A judge should refrain from financial and business dealings that tend to reflect adversely on the judge's impartiality, interfere with the proper performance of judicial duties, exploit the judicial position, or involve the judge in transactions with lawyers or persons likely to come before the court on which the judge serves.

(2) A judge may hold investments, including real estate, but shall not serve as an officer, director, manager, advisor, or employee of any business.

(3) A judge should manage his or her investments and other financial interests to minimize the number of cases in which the judge is disqualified. As soon as a judge can do so without serious

financial detriment, the judge should divest himself or herself of investments and other financial interests that the judge could reasonably anticipate might require frequent disqualification.

(4) Neither a judge nor a member of the judge's family residing in the same household should accept a gift, bequest, favor, or loan from anyone except as follows:

(a) a judge may accept a gift of nominal value incident to a public testimonial; books supplied by publishers on a complimentary basis for official use; or an invitation to the judge and the judge's spouse to attend a bar-related function or activity devoted to the improvement of the law, the legal system, or the administration of justice;

(b) a judge or a member of the judge's family residing in the same household may accept ordinary social hospitality; a gift, bequest, favor, or loan from a lending institution in its regular course of business on the same terms generally available to persons who are not judges; or a scholarship or fellowship awarded on the same terms applied to other applicants;

(c) a judge or a member of the judge's family residing in the same household may accept any other gift, bequest, favor, or loan only if the donor is not a party or other person whose interests have come or are likely to come before the judge.

(5) For the purposes of this section, "member of the judge's family residing in the same household" means any relative of a judge by blood or marriage, or a person treated by a judge as a member of the family, who resides in the same household as the judge.

(6) A judge is not required by this Code to disclose income, debts, or investments, except as provided in this Canon and in Canon 3.

Commentary: Canon 3 requires a judge to disqualify himself or herself in any proceeding in which the judge has a financial interest, however small; Canon 5 requires a judge to refrain from engaging in business and from financial activities that might interfere with the impartial performance of judicial duties. A judge has the rights of any ordinary citizen, including the right to privacy of financial affairs, except to the extent that limitations thereon are required to safeguard the proper performance of judicial duties. Owning and receiving income from investments do not as such affect the performance of a judge's duties.

(7) Information acquired by a judge in a judicial capacity shall not be used or disclosed by the judge in financial dealings or for any other purpose not related to judicial duties.

E. Fiduciary Activities. A judge shall not serve as the executor, administrator, trustee, guardian, or other fiduciary, except for the estate, trust, or person of a member of the judge's family, and then only if such service will not interfere with the proper performance of judicial duties. "Member of the judge's family" includes only a spouse, child, grandchild, parent, grandparent, or other relative or person with whom the judge maintains a close familial relationship. As a familyfiduciary a judge is subject to the following restrictions:

(1) The judge should not serve if it is likely that as a fiduciary the judge will be engaged in proceedings that would ordinarily come before the judge's court, or if the estate, trust, or ward becomes involved in adversary proceedings in the court on which the judge serves or one under its appellate jurisdiction.

(2) While acting as a fiduciary for a member of the judge's family a judge is subject to the same restrictions on financial activities that apply to the judge in a personal capacity.

Applicability - Compliance With the Code of Judicial Conduct

All judges shall comply with this Code except as provided below.

A. Part-Time Judge. A part-time judge is a judge who serves on a continuing or periodic basis but is permitted by law to devote time to some other profession or occupation and whose compensation for that reason is less than that of a full-time judge. A part-time judge:

- (1) is not required to comply with Canon 5D(2), E, F, and G;
- (2) should not practice law except as permitted by the Rules of Court;
- (3) may receive compensation for activities encompassed by Canons 4B and 5B(2).

B. Retired Judge. All retired judges recalled to judicial service shall comply with the provisions of this Code governing full-time judges.

Note: The foregoing Code of Judicial Conduct of the American Bar Association, as amended by the New Jersey Supreme Court, adopted April 3, 1974, to be effective immediately; caption "Applicability" added and new paragraph A.(3) adopted to be effective September 8, 1980; new subparagraph 3A(7)(b) adopted October 8, 1980, to be effective immediately; subparagraph 3A(7)(b) amended June 9, 1981 to be effective immediately; new subparagraph 3A(4) adopted October 26, 1987, to be effective January 1, 1988 (with remaining subparagraphs of 3A renumbered accordingly); paragraphs 4(B) and 4(C) and commentary to Canon 4 amended October 26, 1987, to be effective January 1, 1988; paragraphs A(3) and B of Applicability section amended October 26, 1987, to be effective January 1, 1988; entire code and commentary amended October 26, 1987 so as to be degenderize, effective January 1, 1988; subparagraph 5A(2) amended February 1, 1988 to be effective immediately; commentary to Canon 4 amended February 1, 1988, to be effective immediately; subparagraph 3A(4) amended July 18, 1990, to be effective September 4, 1990; paragraph A(1) of Applicability section amended December 20, 1990 to be effective immediately; paragraphs 2B, 3A(3), 3A(4), 3A(8), 3A(8)(b), 3B(1), 3B(2), 3B(3), 3B(4), 3C(1)(a), 3C(1)(c), 3C(2), 5B(2), 5B(3), 5C(2), 5C(4), 5D, 5E, 5F, 5G, 6, 7, and Applicability paragraph and headings to paragraphs 5, 6, 7 amended and new paragraphs 2C, 3A(5), 3A(10), 3B(3)(a), 3B(3)(b), 3B(3)(c), 5A (with remaining subparagraphs of 3 and 5 renumbered accordingly), adopted July 13, 1994 to be effective September 1, 1994.

Rule 4.1. Political and Campaign Activities of Judges and Judicial Candidates in General.

(A) Except as permitted by Rules 4.2, 4.3, and 4.4, a judge or a judicial candidate shall not:

(1) act as a leader in, or hold an office in, a political organization;

(2) make speeches on behalf of a political organization or a candidate for any public office;

(3) publicly endorse or publicly oppose a candidate for any public office;

(4) solicit funds for, pay an assessment to, or make a contribution to a political organization or a candidate for public office;

(5) attend or purchase tickets for dinners or other events sponsored by a political organization or a candidate for public office;

(6) use or permit the use of campaign contributions for the private benefit of the judge or others;

(7) personally solicit or accept campaign contributions other than through a campaign committee authorized by Rule 4.4;

(8) use court staff, facilities, or other court resources in a campaign for judicial office;

(9) knowingly or with reckless disregard for the truth make any false or misleading statement;

(10) make any statement that would reasonably be expected to affect the outcome or impair the fairness of a matter pending in any court;

(11) engage in any political activity on behalf of a political organization or candidate for public office except on behalf of measures to improve the law, the legal system, or the administration of justice; or

(12) in connection with cases, controversies or issues that are likely to come before the court,

make pledges, promises, or commitments that are inconsistent with the impartial performance of the adjudicative duties of judicial office.

(B) A judge or judicial candidate shall take reasonable measures to ensure that other persons do not undertake, on behalf of the judge or judicial candidate, any activities prohibited under paragraph (A).

Comment:

General Considerations (1) Even when subject to public election, a judge plays a role

different from that of a legislator or

executive branch official. Rather than making decisions based upon the expressed views

preferences of the electorate, a judge makes decisions based upon the law and the facts

of every

case. Therefore, in furtherance of this interest, judges and judicial candidates must, to

the extent

reasonably possible, be free and appear to be free from political influence and political

pressure.

This Canon imposes narrowly tailored restrictions upon the political and campaign

activities of all judges and judicial candidates, taking into account the various methods of selecting

judges.

(v) The role of a judge is different from that of a legislator or executive branch official, even when the judge is subject to public election. Campaigns for judicial office must be conducted differently from campaigns for other offices. The narrowly drafted restrictions upon political and campaign activities of judicial candidates provided in Canon 4 allow candidates to conduct campaigns that provide voters with sufficient information to permit them to distinguish between candidates and make informed electoral choices.

(A) Rule 4.1(A)(12) makes applicable to both judges and judicial candidates the prohibition that applies to judges in Rule 4.10(B), relating to pledges, promises, or commitments that are inconsistent with the impartial performance of the adjudicative duties of judicial office.

(9) The making of a pledge, promise, or commitment is not dependent upon, or limited to, the use of any specific words or phrases; instead, the totality of the statement must be examined to determine whether the candidate for judicial office has specifically undertaken to reach a particular result. Pledges, promises, or commitments must be contrasted with statements or announcements of personal views on legal, political, or other issues, which are not prohibited. When making such statements, a judge should acknowledge the overarching judicial obligation to apply and uphold the law, without regard to his or her personal views.

(10) A judicial candidate may make campaign promises related to judicial organization, administration, and court management, such as a promise to dispose of a backlog of cases, start court sessions on time, or avoid favoritism in appointments and hiring. A candidate may also pledge

(2) When a person becomes a judicial candidate, this Canon becomes applicable to his or her conduct. These Rules do not prohibit candidates from campaigning on their own behalf, from endorsing or opposing candidates for the same judicial office for which they are a candidate, or from endorsing candidates for another elective judicial office appearing on the same ballot. See Rules 1.2(B)(2) and 1.2(B)(3). Candidates do not publicly endorse another candidate for public office by having their name on the same ticket.

Participation in Political Activities

(3) Public confidence in the independence and impartiality of the judiciary is eroded if judges or judicial candidates are perceived to be subject to political influence. Although judges and candidates may register to vote as members of a political party, they are prohibited by paragraph (A)(1) from assuming leadership roles in political organizations.

(4) Paragraphs (A)(2) and (A)(3) prohibit judges from making speeches on behalf of political organizations or publicly endorsing or opposing candidates for public office, respectively, to prevent them from abusing the prestige of judicial office to advance the interests of others. See Rule 1.3.

(5) Although members of the families of judges and judicial candidates are free to engage in their own political activity, including becoming a candidate for public office, there is no “family exception” to the prohibition in Rule 1.1(A)(3) against a judge or candidate publicly endorsing candidates for public office. A judge or judicial candidate must not become involved in, or associated with, a family member’s political activity or campaign for public office. To avoid public misunderstanding, judges and judicial candidates should take, and should urge members of their families to take, reasonable steps to avoid any implication that they endorse any family member’s candidacy or other political activity.

(6) Judges and judicial candidates retain the right to participate in the political process as voters in both primary and general elections.

to take action outside the courtroom, such as working toward an improved jury selection system, or advocating for more funds to improve the physical plant and amenities of the courthouse.

(11) Judicial candidates may receive questionnaires or requests for interviews from the media and from issue advocacy or other community organizations that seek to learn their views on disputed or controversial legal or political issues. Paragraph (A)(12) does not specifically address judicial responses to such inquiries. Depending upon the wording and format of such questionnaires, candidates' responses might be viewed as pledges, promises, or commitments to perform the adjudicative duties of office other than in an impartial way. To avoid violating paragraph (A)(12), therefore, candidates who respond to media and other inquiries should also give assurances that they will keep an open mind and will carry out their adjudicative duties faithfully and impartially if elected. Candidates who do not respond may state their reasons for not responding, such as the danger that answering might be perceived by a reasonable person as undermining a successful candidate's independence or impartiality, or that it might lead to frequent disqualification. See Rule 2.11.

Source

The provisions of this Rule 2.11 amended October 31, 2018, effective immediately, 44 Pa.B. 7168. Immediately preceding text appears at serial pages (370692) and (373683) to (373685).

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COURSE 3 MATERIALS

Artificial Intelligence

*Guidance for Use of AI
and Generative AI in Courts*

August 7, 2024

from the AI Rapid Response Team at the National Center for State Courts



COSCA
Conference of State Court Administrators



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Introduction and Background

The Artificial Intelligence Rapid Response Team (AI RRT) is a project of the Conference of Chief Justices (CCJ) and the Conference of State Court Administrators (COSCA), and supported by the National Center for State Courts (NCSC).

The AI RRT was established to help courts plan for the impact that Generative Artificial Intelligence (GenAI) may have on the courts. GenAI is rapidly evolving and has the potential to change the practice of law and how courts operate. As with many new technologies, it is imperative that the courts become informed consumers of GenAI. The AI RRT has spent the past eight months examining this issue. As part of its work, the AI RRT has published seven (7) interim guidance documents for the courts and created a **resource center** that includes a landscape of court orders, rules, guidance and other initiatives of the state court community and the federal courts regarding AI or GenAI. The AI RRT conducted a survey and follow-up survey of state activities and published the results on **NCSC's AI website** (ncsc.org/ai). The information provided in this document is intended to help get courts started on their GenAI journey. State Court leaders are encouraged, if they have not already done so, to establish an internal work group to examine the impact of AI and GenAI on their courts and establish a plan moving forward.

Artificial Intelligence (AI) is an umbrella term and GenAI is a type of AI technology that is one of the most recognized by the public today. The term AI is used to refer to something as simple as spell check, predictive typing or asking Siri or Alexa the temperature, or as complex as computer based legal research, projections, facial recognition, or generating documents, videos, or audio.

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Definitions

Artificial Intelligence (AI)

“A machine-based system that can, for a given set of human-defined objectives, make predictions, recommendations or decisions influencing real or virtual environments.”¹

AI Models

► Open AI Models

Open AI is a type of model that is publicly accessible which anyone can modify. Open AI models are designed to be more flexible and adaptable, capable of learning and evolving over time. They are trained using publicly available data from across the internet, such as text articles, images, and videos. Open AI models have the source code openly shared so that people are encouraged to voluntarily improve its design and function. However, Open AI models can pose a severe data security risk. Data input into an Open AI model can be accessible by anyone seeking that data. Confidential, personal, and/or sensitive data should never be input into an Open AI model. As such, careful consideration and responsible usage are necessary to mitigate potential risks.

► Closed AI Model

Closed AI is a type of model that is not publicly accessible although it may be trained using publicly available data. Closed AI models typically prioritize data security and confidentiality, maintaining strict control over internal data access and usage to safeguard sensitive information. This distinction ensures a higher level of data privacy, particularly concerning personally identifiable or confidential data.

Chatbot

A computer program that simulates a conversation to assist an end user with a task.

Generative Artificial Intelligence (GenAI)

Artificial intelligence that is capable of generating new content (such as images or text) in response to a submitted prompt (such as a query) by learning from a large reference database of examples.²

Hallucination

A misleading, inaccurate, or fictitious result produced in response to a GenAI prompt.

¹ National Artificial Intelligence Act of 2020

² “Generative AI.” Merriam-Webster.com Dictionary, Merriam-Webster, <https://www.merriam-webster.com/dictionary/generative%20AI>. Accessed 16 Apr. 2024.

Definitions

Large Language Model (LLM)

Deep learning algorithms using natural language processing that can recognize, summarize, translate, predict, and generate content using very large datasets.

Machine Learning

A branch of computer science and AI that uses data and algorithms to enable AI to imitate the way that humans learn, gradually improving its accuracy.

Natural Language Processing (NLP)

A branch of computer science and AI that uses machine learning to enable computers to understand and communicate using human language.

Prompt

The user input that directs AI content generation.

Training

Refers to the process of teaching an AI model to properly interpret data and learn from it to perform a task with accuracy. This involves feeding the model massive amounts of data, examining the results, and tweaking the model output to increase accuracy and efficiency. The AI training process typically has three key stages: 1) Training: an AI model is given a set of training data and asked to make decisions based on that information; 2) Validation: in this phase, assumptions are validated to determine how well the AI will perform using a new set of data; and 3) Testing: the AI model is given an unstructured dataset.

Guidance for Using AI in Courts

Public Trust and Confidence

Public trust and confidence in the courts is integral to the credibility of the judicial branch. Courts and judicial officers are responsible to ensure that the use of GenAI and other AI tools does not erode the public's trust and confidence in courts due to errors or biases.

Court Rules: Courts should review their rules to determine whether they are sufficient to address expectations of lawyers and litigants concerning the responsible use of GenAI in court filings and proceedings or whether changes may be appropriate to clarify those expectations.

Ethical Guidelines: Education on the applicability of current ethical guidelines is vital to ensure that GenAI is used ethically by lawyers, litigants, and the courts. Courts should review their rules and comments to the rules to determine if they should be updated to clarify their applicability to new technological tools.

Education: Courts must ensure that judicial officer and court staff are educated on the benefits and risks of AI. Courts will need to be aware of how GenAI is used to create content that looks real, sometimes referred to as deepfakes, which will increasingly impact discovery and evidentiary issues in legal proceedings.

Understanding GenAI – What Courts Should Know

AI has the potential to streamline tasks within the courts, increasing efficiency and allowing staff to work on higher level tasks. AI also has the potential to be used to help create resources for self-represented litigants, expanding access to justice. But like any technology, AI is not infallible or without risks.

Limitations

With the proliferation of new GenAI tools being developed for the courts, lawyers, and self-represented litigants and the ease of their use, courts need be aware of the capabilities and potential limitations of GenAI tools such as ChatGPT, Gemini, and CoPilot (popular GenAI tools at the publication of this document).

GenAI is not a traditional search engine and most GenAI platforms are not designed to provide legal authority. The purpose of GenAI is to create content. Lawyers and self-represented litigants are already using GenAI in drafting legal documents and performing legal research, and courts must understand the capabilities of the tools they are using. This includes the benefits of time saving legal research, drafting assistance, and organizing large volumes of information. There are also significant concerns about lack of accuracy, bias, GenAI-enhanced evidence, and deepfakes. As discussed below, judicial officers should be aware of certain indicators that a document filed with a court was generated with GenAI.

Accuracy

EarlyGenAI tools have been known to create hallucinations, which means generating inaccurate or fictitious content, such as case citations to cases that do not exist. Multiple courts have now issued sanctions for lawyers submitting filings with fictitious citations generated by GenAI tools.

Attorneys and self-represented litigants are using these tools to create legal documents. Westlaw and Lexis now provide the capability of using GenAI for legal research. However, a recent Stanford paper revealed inaccuracies in the output generated by these legal research tools, despite the fact that they use closed training systems.³ Courts should be aware of these issues with accuracy when reviewing legal documents.

The following are indications that GenAI may have been used to create a document:

- References to cases that do not sound familiar, cannot be found through traditional legal research, or have unfamiliar citation formats.
- At first read, AI text may sound impressive and well written, but there are often structural issues. AI content tends to be overly formulaic and lacks natural transitions between topics. Once you strike out all the words that are meaningless filler, there may not be a lot of substance left. AI is also not mindful of grammar rules or basic punctuation although that is improving.
- AI is designed to recognize patterns and replicate them as accurately as possible so look for repetitive patterns in the writing. Perhaps the most obvious sign of AI-generated content is the use of repeated words, phrases, or the same sentence structure used regularly in different paragraphs within the same document.
- Often AI generated content is written in the general sense, glossing over facts and figures and may be lacking details, unnatural phrasing, lack of natural transitions between topics, or errors that a human is less likely to make. It often uses alliteration to articulate an appealing word arrangement.
- The absence of relevant very recent on-point case citations may indicate the use of AI generated content. OpenAI models are trained on massive data sets that are not continually updated so if recent relevant cases are not cited, it may be due to the AI being trained on an earlier dataset.
- Humans use idioms and slang frequently. AI often uses these phrases and words incorrectly. If you spot an idiom that feels a bit off and seems forced into the text it is likely a sign it was created with GenAI.

³ *Hallucination-Free? Assessing the Reliability of Leading AI Legal Research Tools*, preprint study, https://dho.stanford.edu/wp-content/uploads/Legal_RAG_Hallucinations.pdf

Bias

Courts need to be aware of potential bias in the content produced by GenAI. It is important to understand the datasets used in training the model because if they are not diverse or contain incorrect data, the results could be biased or inaccurate. Examples include the initial version of Google's Gemini chatbot that created images of people who did not match the historical ethnic backgrounds, such as creating images of people of color wearing Nazi uniforms⁴ and AirCanada's chatbot that gave wrong information about the policy on bereavement travel.⁵

Confidentiality

Any information entered into an open GenAI platform, including through a basic prompt, could become visible to the company operating the platform and other users. Court personnel should be educated to not enter confidential, sensitive or privileged information in a chatbot or GenAI system that uses an open training model. Open systems use the information entered to train the database and will retain the information in the system unless the terms of use for the system explicitly specify that it does not retain the information. If using a chatbot, disable the chat history if possible. Judicial officers and law clerks must avoid inputting confidential or non-public information, including draft decisions and opinions, when using tools that use open models.

Ethics

Judges and court staff need to learn to use GenAI ethically and responsibly and be aware of applicable ethical obligations under the judicial canons and rules of professional responsibility. **See** Ethics section below.

Security

Courts should continue to follow best practices related to cybersecurity in connection with GenAI. When using GenAI that is authorized by the court, court personnel should use court issued equipment and email software so that appropriate security protocols are in place.

⁴ <https://tech.co/news/list-ai-failures-mistakes-errors>

⁵ Id.

Deepfakes and Other Evidentiary Issues

Judges are increasingly grappling with evidentiary issues, particularly authentication, related to digitally enhanced evidence as well as the emergence of deepfakes (convincing false pictures, videos, audio, and other digital information) generated by AI. AI advances make it easier and cheaper to create enhanced digital evidence and deepfakes.

Digitally Enhanced Evidence

Digitally enhanced evidence is audio, video, or image evidence that have been enhanced by AI software. The purpose is generally to improve the quality of the audio, videos, or images. This differs from past uses, such as zooming in on an image, speeding up or slowing down a video, or separating a voice from background noise, in that AI may fill in pixels or other data in an image with what the software “thinks” should be in the image, thus altering it from the original.

This technology was recently at the center of a criminal trial in Washington state where digitally enhanced video was not admitted into evidence. The court based its decision on the testimony of an expert witness who testified that “the AI tool(s) utilized ... added approximately sixteen times the number of pixels, compared to the number of pixels in the original images to enhance each video frame, utilizing an algorithm and enhancement method unknown to and unreviewed by any forensic video expert.” The court found that the expert “demonstrated that the AI method created false image detail and that process is not acceptable to the forensic video community because it has the effect of changing the meaning of portions of the video.”

Courts should consider whether the rules of evidence are sufficient to address issues presented by the emergence of digitally enhanced evidence. In the meantime, in individual cases in which evidentiary questions related to the actual or possible use of GenAI are presented, judges may need to consider requiring expert testimony to determine the authenticity and reliability of audio, videos, and images that are challenged.

What are Deepfakes?

“Deepfake” refers to fabricated or altered but realistic audio, videos, or images made using AI software, for example, by embedding another person’s likeness into an image or video. Deepfakes have become very sophisticated in recent years, and it may not be easy for an average person to identify the audio, video, or image as fake.

Deepfakes and the Courts

The issue of deepfakes can arise in any court proceeding in which a party presents evidence in the form of an image, video, or audio. Fabricated evidence could be submitted as authentic evidence or authentic evidence could be challenged as fabricated evidence. When a party alleges that digital evidence has been fabricated, expert testimony may be needed to authenticate the challenged evidence. This could result in a battle between the experts that could increase litigation costs for all parties and consequently could widen the access to justice gap.⁶

Deepfakes present a special concern because of the considerable impact that visual evidence has on fact finders. According to studies referenced in a recent law journal article, as compared to jurors who hear just oral testimony, “jurors who hear oral testimony along with video testimony are 650% more likely to retain the information.”⁷ Once jurors have seen video evidence, it is very hard for the impact to be undone, even with admonishments from the court. Another study, published in 2021 by the Center for Humans and Machines at the Max Planck Institute for Human Development and the University of Amsterdam School of Economics, demonstrates the difficulty of identifying deepfakes. The study found that the participants could not reliably detect deepfakes, that people are biased towards identifying deepfakes as authentic (not vice versa), and that people overestimate their own abilities to detect deepfakes even after being instructed on how to detect deepfakes.⁸ Moreover, as the general population becomes more aware of the existence of deepfakes and the difficulty of detecting them, it is possible that jurors will become increasingly skeptical of all digital evidence that is challenged.⁹

Current Evidentiary Rules

The existing Federal Rules of Evidence and the various state rules of evidence require that any evidence submitted must be real and that the party submitting the evidence has the obligation to authenticate it. Judicial officers have an obligation to determine whether the probative value of the evidence submitted outweighs the possible unfair prejudice, confusion of the issues, or misleading of the jury that would result from its admission.

⁶ Delfino, Rebecca, Pay-to-play: Access to Justice in the Era of AI and Deepfakes (February 10, 2024). Loyola Law School, Los Angeles Legal Studies Research Paper No. 2024-08.

⁷ Rebecca A. Delfino, Deepfakes on Trial: A Call To Expand the Trial Judge’s Gatekeeping Role To Protect Legal Proceedings from Technological Fakery, 74 HASTINGS L.J. 293 (2023).

⁸ Köbis NC, Doležalová B, Soraperra I. Fooled twice: People cannot detect deepfakes but think they can. iScience. 2021 Oct 29;24(11):103364. doi: 10.1016/j.isci.2021.103364. PMID: 34820608; PMCID: PMC8602050.

⁹ Rebecca A. Delfino, Deepfakes on Trial: A Call To Expand the Trial Judge’s Gatekeeping Role To Protect Legal Proceedings from Technological Fakery, 74 HASTINGS L.J. 293 (2023).

Are the Current Rules Sufficient?

Prior to the advent of deepfakes, the rules of evidence have been sufficient to adapt to technology changes. Courts may eventually conclude that laws and rules of evidence addressing deepfakes lag behind the technology. At present, tools to detect deepfakes are not as sophisticated as the tools to create deepfakes. To mitigate the disruptive effect of deepfakes on litigation and jurors, judicial officers should identify AI-related evidentiary issues and rule on those prior to trial and outside the presence of the jury, if possible.

The legal community is having ongoing discussions about the need for changes to the rules of evidence. It will be important for the courts to address the potential for harm to the legal process that deepfakes pose, and to evaluate whether more stringent rules should be adopted for the admission of audio, video, and image evidence. In addition, for case types with high rates of self-representation, relying on the parties to challenge the authenticity of evidence, which the current adversarial process requires, may be unrealistic. If deepfakes proliferate, courts may need to reconsider who is responsible for determining whether evidence is authentic, especially if reliable technology tools become available that would enable courts to identify deepfakes.

Ethics

Competence in Technology is an Ethical Requirement

Judicial officers and lawyers have a basic duty to become competent in technology relevant to their profession.

Model Code of Judicial Conduct (MCJC) 2.5 imposes a duty of competence on judicial officers in performing judicial and administrative duties, which could include an obligation to keep current with technology and to know the benefits and risks associated with all types of technology relevant to service as a judicial officer. Model Rules of Professional Conduct (MRPC) 1.1 states that lawyers must provide competent representation to their clients which includes technical competence.

Judicial officers and lawyers should:

- Have a basic understanding of AI, including GenAI, and its capabilities. This includes knowledge of the terms of use and how data will be used by the AI tool, as well as general familiarity with machine learning algorithms, natural language processing, and other AI techniques relevant to legal tasks.
- Analyze the risks associated with using AI for research and drafting, such as bias or hallucinations.
- Determine which areas of practice or processes can be improved with AI.
- Determine where AI may not be appropriate for use in the legal profession or the judicial system.
- Learn how to optimize prompts to get better results when using GenAI models.
- Identify which issues may require new policies or rules for AI use in the court system.

Ethical Standards for Consideration

Judicial officers should be aware of the potential ethical issues arising from AI usage and keep the following rules in mind when using or considering AI.

Ex Parte Communication (MCJC 2.9)

The Rule prohibiting ex parte communication also prohibits considering “other communications made to the judge outside the presence of the parties or their lawyers” (MCJC 2.9[A]). Under certain circumstances, material generated by GenAI could arguably be viewed as outside information that is improperly introduced into the judicial decision-making process. Relying on such information could also result in a violation of the Rule’s provision barring independent investigation (MCJC 2.9[C]). External influences on judicial conduct (MCJC 2.4) could also be an issue when a judge relies on an AI program that sets forth an opinion on legal policy.

Confidentiality

Judicial officers have a duty of confidentiality, and they must be cognizant of whether they — or their clerks or staff — are entering confidential or sensitive information, such as information included in a draft opinion, into an open AI system, and how that information is being retained and used by the AI technology. In an open system, it is possible that the AI tool will use the shared information to train the model, potentially breaching confidentiality. This is also true for lawyers per MRPC 1.6.

Impartiality and Fairness (MCJC 2.2) and ***Bias, Prejudice, and Harassment*** (MCJC 2.3)

The Rule requiring judicial officers to perform their duties fairly and impartially could be violated if a judicial officer is influenced by an AI tool that produces results infected by bias or prejudice.

Judicial officers need to be aware of the potential bias or prejudice inherent in certain AI technologies and that using it could violate the Rule against acting with bias or prejudice if the AI tool has biased data in its algorithm or training data.

Hiring and Administrative Appointments (MCJC 2.13)

Judicial officers should be aware of the risks of bias or discrimination if AI tools are used to help screen prospective clerks or other staff or to otherwise assist in the hiring process. If the algorithmic recruiting program is biased, it could produce results or recommendations based on discriminatory information, which could violate the rule requiring judges to make appointments impartially and on the basis of merit, as well as Title VII.

Duty to Supervise (MCJC 2.12)

Judicial officers have a duty to supervise staff and to make sure they are aware of the obligation to use AI technologies appropriately.

Candor towards the Tribunal (MRPC 3.3)

Attorneys have an obligation of candor to the tribunal.

Understanding AI’s capabilities and risks, especially regarding bias and confidentiality, is a necessity for technological competence. Court professionals must stay up to date on developments in AI and the potential ethical implications of using it.

Developing an Internal AI Use Policy

Court leaders should establish policy that enables their organization to experiment and benefit from AI technologies while at the same time minimizes risk.

Establish an AI Governance Working Group

Establish a working group to oversee the acceptable use, development, and management of AI technologies and policies, consistent with the court's mission and values. The group should consist of representatives from all relevant stakeholders, including court leadership, business process, legal, and technology.

Assess the Court's Needs

Assess current processes, identify the court's goals and needs and determine whether AI technology furthers them. When drafting an AI use policy, be sure to think broadly about a wide range of use cases. Identify the use cases that could benefit from AI tools, such as automating repetitive functions, data analysis, summarizing, drafting, and other tasks.

Assess the Risks

Assess the risks associated with implementing an AI tool, in areas such as hallucinations, data security, bias, copyright infringement, and staff concerns about job replacement. When drafting an AI use policy, think broadly about potential and perceived risks and address ways to mitigate them. Ensure that any new technology complies with existing technology or security policies and technology infrastructure standards.

Considerations in Developing a Policy

When developing an AI use policy, consider including:

- the policy's purpose and scope: to whom it applies, to what technologies it applies, how it can be used, such as requiring the use of secure and encrypted networks when accessing or transmitting data through AI tools, and requirements about the use of court data for training AI tools;
- acceptable uses of AI that are responsible and ethical and comply with all applicable laws, regulations, and policies (See [Kentucky's](#) and [Utah's](#) policies);
- prohibited uses of AI that would jeopardize the court's network or potentially disclose confidential information;
- staff should not access, collect, use, or disclose personal or sensitive information beyond what is necessary for authorized business purposes;
- what data protection laws, regulations, or policies apply to the use of personally identifiable information and the data privacy and security measures that should be implemented or that employees should follow to protect the court's data;
- how to ensure that AI-generated content is not biased and does not reflect discrimination based upon race, ethnicity, gender, age, or other protected classes;
- when to update and patch AI tools to protect against vulnerabilities and security risks, if not already covered in another security policy;
- mechanisms to monitor whether the policy is being followed, and plans for what to do if the policy is violated (security and HR).

Implement, Review, and Update the Policy

After adoption, communicate the policy to staff, educating them on how to responsibly and ethically use AI tools. Schedule regular reviews of the policy and update it as necessary.

AI Platform Use and Procurement Considerations

As courts experiment with and use various AI tools, it is important that leaders understand how information and data may be utilized by the AI technology.

Understand the Technology and Contract Terms and Develop Procurement Requirements

Before implementing or purchasing any AI technology, understand what generative AI and other AI technologies are, how the technology will be used, and the vendor's terms of use, and then develop applicable procurement requirements.

Data Governance Plus Applies

AI tools are similar to other technologies in that it is critical to understand the sensitivity of data that will be entered, who will have access to it, and what will happen with it. The same considerations apply for any new data generated by the AI.

New Terms but Basic Contracting Principles Still Apply

As with any technology it is important to carefully review and understand all contractual terms and conditions. Be sure to also review terms and conditions buried in click-through agreements.

Key considerations also include whether any prompts or generated content will be available to other users of the product, the technology provider, or any third parties; how such data is stored; and if any such data will be utilized to train and fine-tune the model.

What is acceptable or not will depend on the sensitivity of the data for the specific task as well as how the AI technology was developed (for example AI built for specific legal use).

Take a Team-Based Approach

Given the novelty, complexity, and rapid pace of innovation, it is recommended to take a team-based approach that includes representatives from IT, Legal Counsel, The Bench, Business Operations, and those with diverse ethical perspectives. to evaluate AI technologies from all perspectives and understand how they will be used. It should be clear who in the organization has authority to agree to any terms and conditions.

Also Be on the Lookout For

Terms of Embedded/Required Services

Some Generative AI technologies, such as Google Gemini, require that users have a Gmail account to access the technology, requiring evaluation of additional terms and conditions. Those terms may not be consistent with the court's security policies.

AI-Related Changes to Terms and Conditions

As existing technologies commonly utilized by courts (e.g., Zoom or Adobe) incorporate generative AI into their products, they may modify terms and conditions. These terms and conditions should be continually reevaluated, and any long-term costs of a free trial or preview should be understood.

Marketing Hype or Embedded AI

The label "AI-enabled" may be used loosely in marketing to sell a product or conversely AI may be buried in a product and not disclosed. Rigorous evaluation is required to discern genuine AI capabilities.

AI and How to Get Started

Courts that want to start using AI tools can limit the risks involved by considering the following approach.

Decide Whether to Use Open or Closed AI Models

Readily available GenAI tools like ChatGPT, Gemini, and Co-Pilot use open training models, often utilizing the entire internet's content for its training. Benefits of open models include that they are free, accessible, and easy to use. Downsides of such models include potential bias in the training data and that the information included in prompts may be used to train the models so users risk sharing confidential or nonpublic information and data if it is included in a prompt. Closed AI models are those created using specified datasets, so they are typically more secure and do not share prompts or results beyond the intended system. Courts should determine their comfort level in using AI tools that use open versus closed training models, considering intended use of the tool, type of information and data that may be shared, and available financial and personnel resources to develop, manage, and support a closed AI tool.

Ensure Permission and Understand the Terms of Use

Before using any generative AI technology, ensure that the organization and policy makers are comfortable with the tasks it will be used for and can accept any terms and conditions that are attached to the use of the technology (e.g. data being sent back to the model). If one does not already exist, consider creating an internal policy that provides guidelines for the use of AI technology.

Select a Few Simple “Low Risk” Tasks

Select tasks to be performed with the assistance of GenAI tools that exclusively utilize public data or nonconfidential information and are easily verified for accuracy. Internal facing examples include drafting internal communications and policies, drafting performance evaluations and improvement plans (not including identifying information), drafting training plans for different positions, and conducting basic research. Outward facing examples include summarizing published Supreme Court opinions, drafting press releases about upcoming public events, or drafting committee meeting agendas and minutes. Get comfortable with using the different GenAI tools by starting with internal facing tasks and documents before using AI tools on external facing items.

Use a “Human-in-the-Loop” Approach

GenAI technologies and the use of them in courts are new, and therefore AI-generated output should not be relied upon until it has been reviewed by a human subject matter expert an approach called “Human-in-the-Loop”. Presume the output will contain errors and likely bias. Carefully review AI-generated documents and output for accuracy, bias, and completeness. Once more comfortable with the technology (and depending on the task), and its reliability in terms of desired results, accuracy and bias, reevaluate to determine whether the documents and output can be periodically spot-checked by a human to ensure accuracy, instead of checking every document.

Note that the approach may vary with a closed model AI tool. from a reputable vendor having a model that was developed/trained for a specific purpose versus free or low-cost public tools.

Train Staff and Judges on AI Systems

To effectively utilize generative AI technologies, provide training and education to staff and judges on those technologies approved for court use. This helps them understand how to navigate the AI tool, interpret and successfully generate outputs, and effectively review and validate the AI-generated documents or results.

Prepare for Advanced Tasks

As court personnel become more comfortable with utilizing GenAI for basic tasks, consider how it can be used for more advanced tasks, such as data extraction and entry, external facing chatbots for customer service using court self-help and website content, or automated drafting of orders. Conduct pilot projects to test the feasibility and effectiveness of the technology in each specific context. This allows for a controlled testing environment where the technology’s impact, benefits, and risks can be assessed.

Engage in Knowledge Sharing

Share what is learned with other courts that are also experimenting with GenAI. This allows for the exchange of experiences, best practices, and lessons learned, enabling courts to make informed decisions and avoid potential pitfalls.

Possible Uses of AI in the Courts

Potentially Useful Tasks

- AI tools are capable of summarizing large amounts of text. As with any summary, care needs to be taken to ensure the summary is accurate.
- AI tools can organize a large amount of information as directed.
- AI tools can find specific information in a large volume of data.
- AI tools can do an acceptable job of creating a first draft of something – a contract, a speech or remarks on a specified topic, job interview questions, position descriptions, performance evaluations, or policy provisions. However, it is essential to review, check, and refine the output and not treat it as a final product. Be aware that different prompts, even with only slightly different wording, will produce different results, so try several prompts to get closer to your desired result.
- AI tools can be used in writing presentations, e.g., to provide suggestions for topics to cover.
- Administrative tasks like composing emails and memoranda can be performed by AI.
- Generating images for presentations. Images often contain hallucinations or inaccuracies so make sure to closely review to make sure there aren't oddities included. Multiple prompts may be needed to get the desired outcome.

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NAVIGATING AI IN THE JUDICIARY : NEW GUIDELINES FOR JUDGES AND CHAMBERS

Hon. Herbert B. Dixon, Jr., Hon. Allison H. Goddard, Prof. Maura R. Grossman, Hon. Xavier Rodriguez, Hon. Scott U. Schlegel, and Hon. Samuel A. Thumma

Five judges and a lawyer/computer science professor walked into a bar . . . well, not exactly. But they did collaborate as members of the Working Group on AI and the Courts as part of the ABA's Task Force on Law and Artificial Intelligence to develop the following guidelines for responsible use of AI by judicial officers. The guidelines reflect the consensus view of these Working Group members only, and not the views of the ABA, its Law and AI Task Force, The Sedona Conference, or any other organizations with which the authors may be affiliated.

The authors include:

- Dr. Maura R. Grossman, a Research Professor in the Cheriton School of Computer Science at the University of Waterloo and an Adjunct Professor at Osgoode Hall Law School of York University, who serves as a special master in both U.S. state and federal court;
- Hon. Herbert B. Dixon, Jr., Senior Judge of the Superior Court of the District of Columbia;
- Hon. Allison H. Goddard, U.S. Magistrate Judge of the U.S. District Court for the Southern District of California;
- Hon. Xavier Rodriguez, U.S. District Judge of the U.S. District Court for the Western District of Texas;

- Hon. Scott U. Schlegel, Judge of the Louisiana Fifth Circuit Court of Appeal; and
- Hon. Samuel A. Thumma, Judge of the Arizona Court of Appeal, Division One.

We hope you will find these guidelines useful in your work as judges. They provide a framework for how you can use AI and Generative AI responsibly as judicial officers.

Guidelines for U.S. Judicial Officers Regarding the Responsible Use of Artificial Intelligence

These Guidelines are intended to provide general, non-technical advice about the use of artificial intelligence (AI) and generative artificial intelligence (GenAI) by judicial officers and those with whom they work in state and federal courts in the United States. As used here, AI describes computer systems that perform tasks normally requiring human intelligence, often using machine-learning techniques for classification or prediction. GenAI is a subset of AI that, in response to a prompt (*i.e.*, query), generates new content, which can include text, images, sound, or video. While the primary impetus and focus of these Guidelines is GenAI, many of the use cases that are described below may involve either AI or GenAI, or both. These Guidelines are neither intended to be exhaustive nor the final word on this subject.

I. FUNDAMENTAL PRINCIPLES

An independent, competent, impartial, and ethical judiciary is indispensable to justice in our society. This foundational principle recognizes that judicial authority is vested solely in judicial officers, not in AI systems. While technological advances offer new tools to assist the judiciary, judicial officers must remain faithful to their core obligations of maintaining professional competence, upholding the rule of law, promoting justice, and adhering to applicable Canons of Judicial Conduct.

In this rapidly evolving landscape, judicial officers and those with whom they work must ensure that any use of AI strengthens rather than compromises the independence, integrity, and impartiality of the judiciary. Judicial officers must maintain impartiality and an open mind to ensure public confidence in the justice system. The use of AI or GenAI tools must enhance, not diminish, this essential obligation.

Although AI and GenAI can serve as valuable aids in performing certain judicial functions, judges remain solely responsible for their decisions and must maintain proficiency in understanding and appropriately using these tools. This includes recognizing that when judicial officers obtain information, analysis, or advice from AI or GenAI tools, they risk relying on extrajudicial information and influences that the parties have not had an opportunity to address or rebut.

The promise of GenAI to increase productivity and advance the administration of justice must be balanced against these core principles. An overreliance on AI or GenAI undermines the essential human judgment that lies at the heart of judicial decision-making. As technology continues to advance, judicial officers must remain vigilant in ensuring that AI serves as a tool to enhance, not replace, their fundamental judicial responsibilities. Judicial officers and those with whom they work should be aware that GenAI tools do not generate responses like traditional search engines. GenAI tools generate content using complex algorithms, based on the prompt they receive and the data on which the GenAI tool was trained. The response may not be the most correct or accurate answer. Further, GenAI tools do not engage in the traditional reasoning process used by judicial officers. And, GenAI does not exercise judgment or discretion, which are two core components of judicial decision-making. Users of GenAI tools should be cognizant of such limitations.

Users must exercise vigilance to avoid becoming “anchored” to the AI’s response, sometimes called “automation bias,” where humans trust AI responses as correct without validating their results. Similarly, users of AI need to account for confirmation bias, where a human accepts the AI results because they appear to be consistent with the beliefs and opinions the user already has. Users also need to be aware that, under local rules, they

may be obligated to disclose the use of AI or GenAI tools, consistent with their obligation to avoid ex parte communication.

Ultimately, judicial officers are responsible for any orders, opinions, or other materials which are produced in their name. Accordingly, any such work product must always be verified for accuracy when AI or GenAI is used.

II. JUDICIAL OFFICERS SHOULD REMAIN AWARE OF THE CAPABILITIES AND LIMITATIONS OF AI AND GENAI

GenAI tools may use prompts and information provided to them to further train their model, and their developers may sell or otherwise disclose information to third parties. Accordingly, confidential or personally identifiable information (PII), health data, or other privileged or confidential information should not be used in any prompts or queries unless the user is reasonably confident that the GenAI tool being employed ensures that information will be treated in a privileged or confidential manner. For all GenAI tools, users should pay attention to the tools' settings, considering whether there may be good reason to retain, or to disable or delete, the prompt history after each session.

Particularly when used as an aid to determine pretrial release decisions, consequences following a criminal conviction, and other significant events, how the AI or GenAI tool has been trained and tested for validity, reliability, and potential bias is critically important. Users of AI or GenAI tools for these foregoing purposes should exercise great caution.

Other limitations or concerns include:

- The quality of a GenAI response will often depend on the quality of the prompt provided. Even responses to the same prompt can vary on different occasions.
- GenAI tools may be trained on information gathered from the Internet generally, or

proprietary databases, and are not always trained on non-copyrighted or authoritative legal sources.

- The terms of service for any GenAI tool used should always be reviewed for confidentiality, privacy, and security considerations.

GenAI tools may provide incorrect or misleading information (commonly referred to as “hallucinations”). Accordingly, the accuracy of any responses must always be verified by a human.

III. POTENTIAL JUDICIAL USES FOR AI OR GENAI

Subject to the considerations set forth above:

- AI and GenAI tools may be used to conduct legal research, provided that the tool was trained on a comprehensive collection of reputable legal authorities and the user bears in mind that GenAI tools can make errors;
- GenAI tools may be used to assist in drafting routine administrative orders; GenAI tools
- may be used to search and summarize depositions, exhibits, briefs, motions, and pleadings; GenAI tools may be used to
- create timelines of relevant events;
- AI and GenAI tools may be used for editing, proofreading, or checking spelling and grammar in draft opinions;
- GenAI tools may be used to assist in determining whether filings submitted by the parties have misstated the law or omitted relevant legal authority;

- GenAI tools may be used to generate standard court notices and communications;
- AI and GenAI tools may be used for court scheduling and calendar management;
- AI and GenAI tools may be used for time and workload studies;
- GenAI tools may be used to create unofficial/preliminary, real-time transcriptions;
- GenAI tools may be used for unofficial/preliminary translation of foreign-language documents;
- AI tools may be used to analyze court operational data, routine administrative workflows, and to identify efficiency improvements;
- AI tools may be used for document organization and management;
- AI and Gen AI tools may be used to enhance court accessibility services, including assisting self-represented litigants.

IMPLEMENTATION

These Guidelines should be reviewed and updated regularly to reflect technological advances, emerging best practices in AI and GenAI usage within the judiciary, and improvements in AI and GenAI validity and reliability. As of February 2025, no known GenAI tools have fully resolved the hallucination problem, *i.e.*, the tendency to generate plausible-sounding but false or inaccurate information. While some tools perform better than others, human verification of all AI and GenAI outputs remains essential for all judicial use cases.

Guidelines for Judicial Officers: Responsible Use of Artificial Intelligence

By Judge Herbert B. Dixon Jr.



I am a beneficiary of great work

puter science professor. As a group project, we were searching for examples of written guidance for judges regarding the use of artificial intelligence (AI). After collecting a few promising samples, Judge Scott Schlegel mused: What if we draft a model AI usage policy for judges and clerks? Professor Maura Grossman immediately responded that she liked that idea a lot! Thereafter, Judges Allison Goddard, Xavier Rodriguez, Samuel Thumma, and I joined the bandwagon, enthusiastically indicating our interest in the project.¹ After several months of back and forth, and a few compromises along the way, we completed our project and approached potential publishers. And, now, the rest is history. The Sedona Conference is the first

to announce the publication of the culmination of our group's work, a framework for responsible use of AI titled "Navigating AI in the Judiciary: New Guidelines for Judges and Their Chambers."

It is humbling to think that this project started as a "what if" idea to develop an AI usage policy for judges and clerks. Readers should understand that these guidelines are not the completion of a mission. They represent a starting point: a framework for the responsible use of AI. In summary, these guidelines represent our group's consensus when we released them for publication.

Notwithstanding the consensus nature of the guidelines, I, a technology writer who strives to avoid excessive technicalities, wholeheartedly endorse the opening paragraph of the guidelines that they "are intended to provide general, non-technical

advice about the use of AI and generative artificial intelligence (GenAI) by judicial officers." Hopefully, the opening paragraph is a signal, even to the so-called technophobe, that the guidelines were written for all judicial users of this transformative technology.

One of the issues our group debated as we put the finishing touches on the guidelines was whether we struck a proper balance in our discussion of AI's benefits versus the judges' need for caution when using AI. While judicial use of AI can increase productivity, the guidelines emphasize the importance of understanding that an essential element of judicial decision-making is human judgment, for which judges must remain vigilant that "AI serves as a tool to enhance, not replace, their fundamental judicial responsibilities." The guidelines

particularly note that “when judicial officers obtain information, analysis, or advice from AI or GenAI tools, they risk relying on extrajudicial information and influences that the parties have not had an opportunity to address or rebut.” Accordingly, to promote public confidence in the justice system, judges “must ensure that any use of AI strengthens rather than compromises the independence, integrity, and impartiality of the judiciary,” although I have previously emphasized the need for judicial officers to exercise due diligence before accepting any output created with the aid of artificial intelligence, the guidelines forcefully state that an “independent, competent, impartial, and ethical judiciary is indispensable to justice in our society” and that this “foundational principle recognizes that judicial authority is vested solely in judicial officers, not in AI systems.” Accordingly, “judicial officers must remain faithful to their core obligations of maintaining professional competence, upholding the rule of law, promoting justice, and adhering to applicable law. The guidelines note that the “canon of judicial conduct” of all AI outputs remains essential because, when our group released the guidelines for publication, no known AI tools had fully resolved the problem of misleading or fabricated AI responses, which AI creators euphemistically call hallucinations. So, my public response to our internal debate is: No! We did not overemphasize the need for caution when judges use AI. The guidelines strike a proper balance in discussing AI’s benefits versus a judge’s need to ensure the guidelines are available online.² However, for ease of reference, the full text of the guidelines is reprinted below.

Guidelines for U.S. Judicial Officers Regarding the Responsible Use of Artificial Intelligence

These Guidelines are intended to provide general, non-technical advice about the use of AI and GenAI by judicial

officers and those with whom they work in state and federal courts in the United States. As used here, AI describes computer systems that perform tasks normally requiring human intelligence, often using machine-learning techniques for classification or prediction. GenAI is a subset of AI that, in response to a prompt (i.e., query), generates new content, which can include text, images, sound, or video. While the primary impetus and focus of these Guidelines is GenAI, many of the use cases that are described below may involve either AI or GenAI, or both. These Guidelines are neither intended to be exhaustive nor the final word on this subject.

Fundamental Principles An independent, competent, impartial, and ethical judiciary is indispensable to justice in our society. This foundational principle recognizes that judicial authority is vested solely in judicial officers, not in AI systems. While technological advances offer new tools to assist the judiciary, judicial officers must remain faithful to their core obligations of maintaining professional competence, upholding the rule of law, promoting justice, and adhering to applicable law. In this rapidly evolving landscape, judicial officers and those with whom they work must ensure that any use of AI strengthens rather than compromises the independence, integrity, and impartiality of the judiciary. Judicial officers must maintain impartiality and an open mind to ensure public confidence in the justice system. The use of AI or GenAI tools must enhance, not diminish, the judiciary’s role. Although AI and GenAI can serve as valuable aids in performing certain judicial functions, judges remain solely responsible for their decisions and must maintain proficiency in understanding and appropriately using these tools. This includes recognizing that when judicial officers obtain information, analysis, or advice from AI or GenAI tools, they risk relying on extrajudicial information and influences that the parties have not had an opportunity to address or rebut.

The promise of GenAI to increase productivity and advance the administration of justice must be balanced against these core principles. An overreliance on AI or GenAI undermines the essential human judgment that lies at the heart of judicial decision-making. As technology continues to advance, judicial officers must remain vigilant in ensuring that AI serves as a tool to enhance, not replace, their fundamental judicial responsibilities. Judicial officers and those with whom they work should be aware that GenAI tools do not generate responses like traditional search engines. GenAI tools generate content using complex algorithms, based on the prompt they receive and the data on which the GenAI tool was trained. The response may not be the most correct or accurate answer. Further, GenAI tools do not engage in the traditional reasoning process used by judicial officers. And, GenAI does not exercise judgment or discretion, which are two core components of judicial decision-making. Users of GenAI tools should be cognizant of such limitations. Users must exercise vigilance to avoid becoming “anchored” to the AI’s response, sometimes called “automation bias,” where humans trust AI responses as correct without validating their results. Similarly, users of AI need to account for confirmation bias, where a human accepts the AI results because they appear to be consistent with



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ABA Journal Board of Editors, a former chair of both the National Conference of State Trial Judges and the ABA Standing Committee on the American Judicial System, and a former member of the Techshow Planning Board. You can reach him at Jhbdixon@gmail.com. Follow Judge Dixon on X @Jhbdixon.

the beliefs and opinions the user already has. Users also need to be aware that, under local rules, they may be obligated to disclose the use of AI or GenAI tools, consistent with their obligation to avoid ex parte communication.

Ultimately, judicial officers are responsible for any orders, opinions, or other materials that are produced in their name. Accordingly, any such work product must always be verified for accuracy when AI or GenAI is used.

Judicial Officers Should Remain Cognizant of the Capabilities and Limitations of AI and GenAI

GenAI tools may use prompts and information provided to them to further train their model, and their developers may sell or otherwise disclose information to third parties. Accordingly, confidential or personally identifiable information (PII), health data, or other privileged or confidential information should not be used in any prompts or queries unless the user is reasonably confident that the GenAI tool being employed ensures that information will be treated in a privileged or confidential manner. For all GenAI tools, users should pay attention to the tools' settings, considering whether there may be good reason to retain, disable, or delete the prompt history after each session. Particularly when used as an aid to determine pretrial release decisions, consequences following a criminal conviction, and other significant events, how the AI or GenAI tool has been trained and tested for validity, reliability, and potential bias is critically important. Users of AI or GenAI tools for these foregoing purposes should exercise great caution. Other limitations or concerns include:

- The quality of a GenAI response will often depend on the quality of the prompt provided. Even responses to the same prompt can vary on different occasions.
- GenAI tools may be trained on information gathered from the internet generally, or proprietary databases, and are not always trained on

non-copyrighted or authoritative legal sources.

- The terms of service for any GenAI tool used should always be reviewed for confidentiality, privacy, and security considerations.

GenAI tools may provide incorrect or misleading information (commonly referred to as "hallucinations"). Accordingly, the accuracy of any responses must always be verified. These Guidelines should be reviewed and updated regularly to reflect technological developments.

Potential Judicial Uses for AI or GenAI

Subject to the considerations set forth above, AI and GenAI usage within the judiciary and improvements in AI and GenAI validity and reliability. As of February 2025, no known GenAI tools have fully resolved the hallucination problem, i.e., the tendency to generate plausible-sounding but false or inaccurate information. While some tools perform better than

authorities and the user bears in mind that GenAI tools can make errors;

- GenAI tools may be used to assist in drafting routine administrative orders;
- GenAI tools may be used to search and summarize depositions, exhibits, briefs, motions, and pleadings;
- GenAI tools may be used to create timelines of relevant events;
- AI and GenAI tools may be used for editing, proofreading, or checking spelling and grammar in draft opinions;
- GenAI tools may be used to assist in determining whether filings submitted by the parties have misstated the law or omitted relevant legal authority;
- GenAI tools may be used to generate standard court notices and communications;
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- GenAI tools may be used to create unofficial/preliminary, real-time transcriptions;
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- AI tools may be used to analyze court

operational data and routine administrative workflows, and to identify efficiency improvements;

- AI tools may be used for document organization and management;
- AI and GenAI tools may be used to enhance court accessibility services, including assisting self-represented litigants.

Implementation

others, human verification of all AI and GenAI outputs remains essential for all judicial use cases. ■

Endnotes

1. I have taken journalistic liberties paraphrasing the words used by my colleagues on this project and request their forgiveness.
2. H. Dixon et al., *Navigating AI in the Judiciary: New Guidelines for Judges and Their Chambers*, 26 Sedona Conf. J. 1 (forthcoming 2025), also located at <https://bit.ly/3DtCZIW>.

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA**

NICK MARINELLI,

Plaintiff

v.

**ASPEN PROPERTIES GROUP, LLC, et
al,**

Defendants.

CIVIL ACTION NO. 3:24-CV-574

(MEHALCHICK, J.)

CIVIL PRACTICE ORDER

AND NOW, this 19th day of August, 2024, for the purpose of establishing practices and procedures to govern the above-captioned civil actions, IT IS HEREBY ORDERED that:

- 1. The practices and procedures in the above-captioned civil action shall be in accordance with the Federal Rules of Civil Procedure and the Local Rules of Court, except as modified by this order and other orders of this court.**
- 2. Counsel and pro se parties are responsible for reading this order thoroughly upon receipt and for reviewing it regularly as the case proceeds. A pro se party shall have all the duties that would normally be placed upon their counsel by the Federal Rules, Local Rules, this order, and other orders of this court, unless otherwise noted.**
- 3. All written communication with the court shall be filed to CM/ECF. Correspondence should not be mailed, emailed, or faxed to chambers. Counsel shall not copy the court on correspondence between counsel unless specifically invited to do so by the court.**
- 4. Courtesy copies of motions, briefs, exhibits, and other filings are discouraged unless the submission is voluminous. Counsel should contact chambers at (570) 207-5740 if unsure whether a courtesy copy is appropriate. This rule shall not apply to pro se litigants, who shall file all documents in hard copy with the Clerk of Court.**
- 5. Inquiries concerning scheduling matters, courtroom logistics, and other matters should be directed to chambers at (570) 207-5740.**

Discovery Procedures

- 6. Counsel shall proceed with active discovery during the court's consideration of a motion to dismiss unless otherwise ordered. Any request to suspend discovery pending disposition of a motion to dismiss shall be brought to the court by formal motion.**
- 7. Confidentiality agreements shall be submitted by stipulation. Any such stipulation shall provide a separate signature line for the court's approval.**
- 8. If a discovery dispute arises and is not resolved after counsel attempt in good faith to do so, counsel shall file a letter to the docket requesting a telephonic discover conference and outlining the nature of the dispute. Counsel shall not file a formal discovery motion unless directed d to do so following the telephonic conference.**
- 9. In nonjury cases, counsel shall meet within four weeks after the close of discovery and discuss settlement. After that meeting, counsel shall notify this court if they would like the assistance of a United States Magistrate Judge in conducting a formal settlement conference.**

Motions Generally

- 10. Unless otherwise directed, all requests for court action other than discovery disputes shall be presented to the court by formal motion complying with the local Rules, particularly Local Rule 5.1(g) (proposed orders), Local Rule 7.2 (certificates of concurrence or nonconcurrence), and Local Rule 7.5 (supporting briefs).**
- 11. If moving counsel cannot reach counsel for the other parties at the time a motion is filed, the Local Rule 7.1 certificate shall so certify. Moving counsel shall have a continuing duty to file a certificate of concurrence or nonconcurrence within a reasonable time after all other counsel have been reached and have either granted or withheld concurrence. Concurrence in a motion to extend time shall not obviate the need for the movant to set forth in the motion the reasons for the requested extension.**
- 12. The court will summarily deny any motion for which the supporting brief fails to adequately describe the factually background for the motion, fails to cite legal authority supporting the requested relief, or otherwise offers only conclusory assertions or rationale.**
- 13. Briefs or memoranda filed in support of a motion shall be filed as a separate docketing event, and not as an attachment to the motion.**

14. In accordance with Local Rule 7.8, all briefs shall each be limited to the greater of fifteen (15) pages or 5,000 words unless otherwise authorized by the undersigned. This requirement will be strictly enforced, and the court may, in its discretion, strike any brief that exceeds this limitation without prior authorization. Any motion for permission to exceed the page or word limitation must be filed at least two business days before the brief is due.

15. Requests for oral argument will be considered on a case-by-case basis. Counsel desiring oral argument shall include a formal request for argument in their motion and supporting brief. Counsel shall not file a separate motion requesting oral argument.

16. Counsel shall include a table of contents with page references in every brief regardless of whether the brief exceeds fifteen (15) pages.

17. The requirement of Local Rule 7.8(a) that a party attach to their brief a copy of each unpublished opinion cited therein shall apply in this case only to the extent the cited opinion is unavailable on either Westlaw or Lexis.

Dispositive Motion Practice

18. Dispositive motions shall be filed together with supporting briefs by the deadline established in the court's case management order, as modified by any subsequent scheduling order(s).

19. In multiple-defendant cases, any defendant contemplating a dispositive motion shall confer with other defense counsel and agree to file joint motion and briefs whenever possible. This requirement shall also apply to plaintiffs in multiple-plaintiff cases. Those parties needing to brief separate issues may do so by filing separate briefs.

20. In accordance with Local Rule 5.1(h), each dispositive motion, supporting brief, and statement of facts required to be filed under Local Rule 56.1 shall be filed as a separate docket entry.

21. Counsel shall file an index of exhibits as an attachment to the statement of material facts required to be filed under Local Rule 56.1. counsel shall thereafter file each individual exhibit in support of or opposition to summary judgment as a separate attachment to their statement of material facts. Omnibus attachments combining multiple exhibits will be stricken, and counsel will be directed to resubmit their filing in conformity with this instruction.

22. The court prefers that parties submit full deposition transcripts, rather than excerpts or partial transcripts, with the statement of material facts required to be filed under Local Rule 56.1.

Use of Generative Artificial Intelligence

23. Increased use of Artificial Intelligence (“AI”), particularly Generative AI (including, but not limited to, OpenAI’s ChatGPT or Google’s Bard), in the practice of law raises a number of practical concerns for the Court, including the risk that the generative AI tool might generate legally or factually incorrect information, or that it might create unsupported or nonexistent legal citations. As such, any party, whether appearing pro se or through counsel, who utilizes any generative AI tool in the preparation of any document to be filed in any matter pending before Judge Mehalchick, must include with the document a Certificate of Use of Generative AI in which the party must disclose and certify:

- a. The specific AI tool that was used;**
- b. The portions of the filing prepared by the AI program; and**
- c. That a person has checked the accuracy of any portion of the document generated by AI, including all citations and legal authority.**

24. Failure to comply with this Order may result in sanctions. Further, all parties and counsel are directed to review the conclusions on pages 15 and 16 of the [Joint Formal Opinion of the Pennsylvania Bar Association and Philadelphia Bar Association regarding the use of Artificial Intelligence](#) and be mindful of their ethical and professional obligations before this Court.

Pretrial Proceedings

25. The schedule for pretrial proceedings will be established during a pretrial scheduling conference to be held after counsel notify the court that no dispositive motions will be filed, or, if dispositive motions are filed, after the motions have been resolved.

26. Motion in limine shall be filed together with supporting briefs by the deadline to be determined during the pretrial scheduling conference. Any motion to exclude expert testimony that will require a Daubert hearing shall be filed within thirty (30) days from receipt of the challenged expert’s report, unless otherwise ordered.

27. A final pretrial conference will be held on a date and time to be determined during the pretrial scheduling conference. The following procedures shall apply to the pretrial conference:

a. In accordance with Local Rule 16.2(b), lead counsel who will try the case as well as litigants or other representatives who have settlement authority must be present at the pretrial conference. Any request concerning attendance at the conference shall be made by motion no later than three days before the conference.

b. At the pretrial conference, counsel for plaintiff(s) shall be required to set forth the elements of the claim(s) raised, and counsel for defendant(s) shall be required to identify any legal defense(s) that may be raised. During trial, the court will limit counsel to the legal theories and defenses identified at the pretrial conference, unless good cause is shown for allowing additional legal theories or defenses and the court is provided sufficient time to consider and evaluate them before the start of trial.

28. The following procedures shall govern the parties' preparation for the pretrial conference:

a. Each party shall file a pretrial memorandum no later than one week before the pretrial conference. Failure to timely file a pretrial memorandum will result in an appropriate sanction under Federal Rule 16(f).

b. The parties shall utilize the pretrial memorandum form attached the Local Rules and designated "Appendix B." The pretrial memorandum form is available on the court's website at https://www.pamd.uscourts.gov/sites/pamd/files/forms/Pretrial_mem.pdf.

c. Each pretrial memorandum shall include a table of contents with page references. Expert reports, if any, and exhibit lists shall be submitted as separate attachments to the parties' pretrial memoranda. In addition:

i. In jury cases, proposed voir dire, proposed points for charge, and proposed special interrogatories and verdict forms shall be submitted as separate attachments to the parties' pretrial memoranda.

ii. In jury cases, the parties shall also attach to their pretrial memoranda a joint voir dire statement, a brief statement describing the case which will be read by the court to the prospective jurors during voir dire. In most cases, this statement should not exceed one paragraph.

iii. In nonjury cases, proposed findings of fact and conclusions of law shall be submitted as separate attachments to the parties' pretrial memoranda. The court may order the parties to supplement proposed

findings with citations to the transcript and admitted exhibits after the nonjury trial.

d. If the parties intend to use depositions at trial in place of live testimony, the parties shall review the depositions before the pretrial conference. If there are objections which cannot be resolved among counsel, the objections and a copy of the relevant transcript shall be submitted no later than one week before the pretrial conference. If counsel fail to meet this deadline, the court may, in its discretion, deem the objections withdrawn.

e. Three weeks before the deadline for pretrial memoranda, counsel for the parties shall hold the attorneys' conference required by Local Rule 16.3. this conference shall be in person unless the court, upon motion, approve a different arrangement. Failure of plaintiff(S) to initiate the holding of the conference or of defendant(s) to respond to such initiative in an appropriate manner may result in the imposition of sanctions, including possible dismissal of the action.

f. In accordance with Local Rule 16.3(b), the parties shall pre-mark all exhibits during the meeting of counsel preceding the pretrial conference. The parties shall list their exhibits on the Clerk's exhibit list form available at <https://www.pamd.uscourts.gov/sites/pamd/files/forms/exh-list.pdf>. Each list shall be submitted as a separate attachment to the parties' pretrial memoranda.

g. Counsel or pro se parties who intend to utilize courtroom technology during trial my contact the court's Deputy Clerk to arrange a date and time to familiarize themselves with and test the available technology. The court expects counsel and pro se parties to have working familiarity with courtroom technology to avoid unnecessary delays during trial.

Trial Procedures

29. Jury selection and trial, or a bench trial in nonjury matters, will be scheduled for a date to be determined during the pretrial scheduling conference.

30. Before trial begins, counsel must submit three complete exhibit lists and three complete sets of exhibits for the court's use, in addition to the original which will be offered into evidence. Parties offering more than ten (10) documentary or photographic exhibits must provide the court with three copies of the exhibits in three-ring binders.

31. Any stipulations reached by the parties shall be reduced to writing and filed to the docket before trial stipulations will be read into the record by counsel or by the court at an appropriate time during trial.

32. If any deposition to be used at trial is videotaped, a transcript of the deposition must be provided to the court before trial.

33. Counsel are strongly encouraged to utilize JERS (Jury Evidence Recording System) for presentation of admitted exhibits to the jury during deliberations. To utilize JERS, counsel must submit a properly formatted USB flash drive with the complete set of exhibits to the court's Deputy Clerk no less than five days before the start of trial. Instructions for formatting JERS submission are available on the court's website at <http://www.pamd.uscourts.gov/jers>.

34. Whenever any civil action schedule for jury trial is settled or otherwise disposed of before trial begins, jurors' costs, including mileage and per diem, shall be assessed equally against the parties unless the Clerk's Office at the courthouse where trial is scheduled is notified of the settlement in sufficient time to permit the Clerk to advise the jurors that their attendance is not required. Notice to the court before 2:00 p.m. on the last business day preceding the day on which trial is to start shall be sufficient for such purpose. Any party may apply to the court for a different assessment of such costs or relieve therefrom.

ADR, Settlement, and Voluntary Dismissal

35. Several forms of alternative dispute resolution are available to the parties through the court. The dispute may be referred to mediation through the court-annexed mediation program under Local Rule 16.8. more information on that program and a list of certified mediators is available on the court's website at <https://www.pamd.uscourts.gov/alternative-dispte-resolution>. The parties may request the assistance of a United States Magistrate Judge or other judicial officer or neutral evaluator for purposes of conducting a settlement conference through the court's settlement officer program under Local Rule 16.9. The parties may agree to participate in a summary jury trial. And in some jury-trial cases, the court itself is also available to conduct a settlement conference. Should the parties jointly agree to employ any of these forms of alternative dispute resolution, they shall s notify the court by filing a letter to the docket by no later than the date of the pretrial conference.

36. The parties shall comply with Federal Rule 41(a) in dismissing any civil action pursuant to a settlement agreement or other amicable resolution. Rule 41 contemplates three methods of dismissal:

a. Before an answer or summary judgment motion has filed, an action can be dismissed by a notice of dismissal signed by plaintiff(s) alone under Federal Rule 41(a)(1)(A)(i). No signature line for judicial approval is required; a signed notice of dismissal closes the case and ends the court's jurisdiction without further court action.

b. After an answer or motion for summary judgment has been filed, the parties can dismiss a case by filing a stipulation of dismissal, under Federal Rule 41(a)(1)(A)(ii), signed by all parties to have appeared. No signature line for judicial approval is required; a stipulation of dismissal signed by all parties to have appeared closes the case and ends the court's jurisdiction without further court action.

c. For any dismissal that is conditional or otherwise requires court approval, including, for example, a request that the court retain jurisdiction for a specific period of time for enforcement of the settlement, plaintiff(s) shall submit a motion to dismiss setting forth the required terms for dismissal, accompanied by a proposed order, under Federal Rule 41(a)(2).

Conflict with Local Rules

37. To the extent any provisions of this order conflicts with any Local Rule or any standing order of this court, the conflicting provision of this order shall control and the Local Rule or standing order shall be suspended.

BY THE COURT:

s/Karoline Mehalchick

KAROLINE MEHALCHICK

United States District Judge

The “Deepfake Defense”: An Evidentiary Conundrum

By Judge Herbert B. Dixon Jr.



A long, long time ago, in the su

article entitled “Deepfakes: More Frightening than Photoshop on Steroids.”¹ In that article, I described a deepfake as a video created or altered with the aid of artificial intelligence (AI) in which a person appears to do or say things that did not happen. Because deepfakes are designed to gaslight the observer, I mused that any truism associated with the ancient statement “seeing is believing” might disappear from our ethos because of the influence of deepfakes.

My most significant observation in that article was that judges and litigators were not thinking enough about how to address deepfake evidentiary issues when they show up in a few years. Well, a few years have passed, and although thought leaders have expressed opinions on how to

address deepfakes in the courtroom, there is still no universally accepted solution.

Consider, for example, the hypothetical offered in that earlier article of a judge being presented with the following situation at a pretrial conference: (1) a party offers an exhibit of a cell phone video disclosed during discovery that supports the proponent’s position of an agreement reached by the two parties, (2) the proponent will testify affirmatively concerning the authenticity and accuracy of the video, and (3) the opposing party will testify that he never said the words portrayed in the video. The fact that the pretrial conference provided advance notice of the evidentiary issue to the judge is fortunate, but that does not solve the problem. Indeed, in many circumstances, similar evidentiary disputes can raise their ugly heads for the first time during trial, which may require judges to call on their

knowledge of the rules of evidence to solve the problem quickly.

In what has become known as the “deepfake defense,” attorneys for some of the individuals charged with storming the Capitol on January 6, 2021, argued that the jury could not trust the videos because there was no assurance they were not fake or had not been altered. As of the submission of this article for publication, that defense has not been successful in any of the January 6 cases.

The problem caused by deepfakes is not far-fetched. Take, for example, a recent real-world event that made national news. In January 2024, an audio recording went viral with the voice of a high school principal making racist and antisemitic comments about students and faculty at the school.² Public outrage in response to the recording was immediate. The principal denied making the remarks. He received overwhelming condemnation and threats of violence. The local police stationed officers outside of the principal’s home to provide security. There was no shortage of individuals in the community expressing their opinions either that they were not surprised by the recording of the principal’s voice or that they believed the recording was fake. The principal was placed on administrative leave pending investigation.

Three months later, law enforcement sought and obtained an arrest warrant for the school’s athletic director, whose employment contract with the school was pending termination by the principal. In addition, the police issued a subpoena to Google and ultimately traced the recording back to an email account and recovery telephone number associated with the athletic director and an IP address associated with one of his relatives. Also, the police consulted with two forensic analysts. One said the recording had traces of

AI-generated content with human editing after the fact. The other analyst said the recording was manipulated, and multiple recordings were spliced together.

The high school principal was fortunate that law enforcement obtained the expert services of forensic analysts. Imagine a similar scenario occurring in a courtroom where the proponent claims he recorded or was present when the statements were made, and his opponent denies making the statements. In most instances, neither the proponent nor the opponent will have an expert witness to testify that the evidence is real or fake. If a judge receives sworn testimony from the proponent that the evidence is a true and accurate representation of what the person said and sworn testimony from the opponent that the evidence is fake, the likely result is that the evidence will be admitted, after which the decision whether the evidence is real or fake will be left to the fact finder (judge or jury) based on the credibility of the witnesses.

Government and Industry Efforts to Identify Deepfakes

Last year, President Biden issued a comprehensive Executive Order on the Safe, Secure, and Trustworthy Development and Use of Artificial Intelligence.³ The White House issued a fact sheet accompanying the executive order explaining that the Department of Commerce would develop guidance for content authentication and watermarking to clearly label AI-generated content. The fact sheet further explained that federal agencies will use the tools to (1) make it easier to detect deepfake content and (2) set an example for the private sector and governments around the world and make it easy for Americans to know that the communications they receive from their government are authentic. The fact sheet further reported that the president had convened at the White House seven leading AI companies—Amazon, Anthropic, Google, Inflection, Meta, Microsoft, and OpenAI—to announce that his administration had secured voluntary

commitments from those companies to help move toward safe, secure, and transparent development of AI technology.⁴ Although the big tech companies that met with President Biden committed to developing technology to clearly watermark AI-generated content, there is a long way to go before watermarking features will be generally available and trusted. Some AI generators place visible labels on images made by their products. However, the labels can easily be removed. Google has a new watermarking tool that digitally embeds invisible watermarks into AI-generated images. Still, academic researchers have shown ways to compromise Google's system and others using similar approaches to watermark AI images.⁵

In the interim, we should expect that other companies and individuals will continue to develop and distribute AI applications that do not watermark or otherwise distinguish their AI-generated products. In other words, for now, the public cannot count on the equivalent of a flashing red light to warn people that they are viewing AI-created or modified content.

Proposed Evidence Rules Regarding Alleged Deepfakes

Experts and commentators have proposed at least three amendments to the Federal Rules of Evidence to guide judges in handling issues related to alleged deepfake evidence. Three of the proposed evidence rules are below. Although I leave the evaluation of each proposal to the reader, I strongly urge a review of each author's complete written explanation in support of their proposed rule.

LaMonaga's Proposed Rule

John P. LaMonaga wrote a law review article, "A Break from Reality: Modernizing Authentication Standards for Digital Video Evidence in the Era of Deepfakes," in which he proposed a new Federal Rule of Evidence (Fed. R. Evid.) 901(b)(11).⁶ He urges a higher standard to prove authenticity than merely a witness with knowledge testifying that the exhibit fairly and accurately portrays the events or scene at issue.

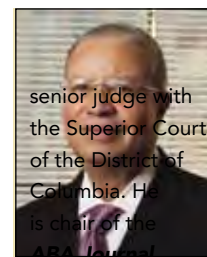
His proposed new Fed. R. Evid. 901(b)(11) is as follows:

Before a court admits photographic evidence under this rule, a party may request a hearing requiring the proponent to corroborate the source of information by additional sources.

To support this stringent standard of authenticity regarding an alleged deepfake, LaMonaga contends that the traditional means of authentication (a person with knowledge attesting that the evidence is what it is claimed to be) will no longer work with deepfakes because a witness cannot reliably testify that the video accurately represents reality. Because witnesses will no longer be able to meet the standard of a knowledgeable witness by attesting that a video is a fair and accurate portrayal, LaMonaga argues that courts will need to look elsewhere to make a sufficient finding that photographic evidence is what its proponent claims it is.

Delfino's Proposed Rule

Professor Rebecca Delfino wrote a law review article titled "Deepfakes on Trial: A Call to Expand the Trial Judge's Gatekeeping Role to Protect Legal Proceedings from Technological Fakery" in which she



Judge Herbert B. Dixon Jr. is a

senior judge with the Superior Court of the District of Columbia. He is chair of the ABA Journal

Board of Editors, a former chair of both the National Conference of State Trial Judges and the ABA Standing Committee on the American Judicial System, and a former member of the ABA TECHSHOW Planning Board. You can reach him at Jhbdixon@gmail.com. Follow Judge Dixon on X (formerly known as Twitter) @Jhbdixon.

proposes that because of the danger of deepfakes, the judge (not the jury) should decide authenticity.⁷ She concludes that jurors cannot be trusted to fairly analyze whether a video is a deepfake because deepfakes appear to be genuine and that a new Federal Rule of Evidence should be created to expand the court's gatekeeping function by assigning the responsibility of deciding authenticity issues solely to the judge. Delfino's proposed new Fed. R. Evid. 901(c) is as follows:

Notwithstanding subdivision (a), to satisfy the requirement of authenticating or identifying an item of audiovisual evidence, the proponent must produce evidence that the item is what the proponent claims it is in accordance with subdivision (b). The court must decide any question about whether the evidence is admissible.

According to Delfino, if, after a hearing to determine the authenticity of the evidence, the court finds that the item is more likely than not authentic, the court should admit the evidence. The court would instruct the jury that it must accept as authentic the evidence the court has determined to be genuine. The court would also instruct the jury not to doubt the authenticity simply because of the existence of deepfakes. According to Delfino, this new rule would take the jury out of deciding authenticity and avoid the problems invited by juror distrust and doubt. Delfino says the court would address the threat of counsel exploiting juror doubts over the authenticity of evidence using the deepfake defense by ordering counsel not to make such arguments.

Grimm and Grossman's Proposed Rule

At the April 2024 meeting of the Advisory Committee on Evidence Rules, Judge Paul Grimm (Ret.) and Dr. Maura Grossman made a presentation about the evidentiary problems caused by deepfakes and proposed a new Fed. R. Evid. 901(c).⁸

The proposed rule provides:

Potentially Fabricated or Altered Electronic Evidence. If a party challenging the authenticity of computer-generated or other electronic evidence demonstrates to the court that it is more likely than not either fabricated, or altered in whole or in part, the evidence is admissible only if the proponent demonstrates that its probative value outweighs its prejudicial effect on the party challenging the evidence.

Grimm and Grossman contend that their proposed new Fed. R. Evid. 901(c) puts the initial burden on the party challenging the authenticity of computer-generated or electronic evidence as AI-generated fakery to make a showing to the court that it is more likely than not either fabricated or altered in whole or part. It requires the challenging party to produce evidence to support the claim that the proffered exhibit is fabricated or altered. According to Grimm and Grossman, if the challenging party makes the required showing, then the burden shifts to the proponent of the challenged evidence to show that its probative value outweighs its prejudicial effect on the party challenging the evidence.

The Advisory Committee took no action to adopt the Grimm-Grossman proposed new Fed. R. Evid. 901(c) at the April 2024 meeting. Some committee members expressed the opinion that the current rules are adequate to address the issue. Other members suggested that more judicial experience with the issue is needed as there have been few instances of judges being asked to exclude AI-generated evidence. The committee expects Grimm and Grossman to rework their proposal for future committee consideration based on the discussions at the meeting.

Final Thoughts

As technology advances, deepfakes will improve and become more difficult to detect. Presently, the general population

is not able to identify a deepfake created with current technology. AI technology has reached the stage where the technology needed to detect a deepfake must be more sophisticated than the technology that created the deepfake. So, in the absence of a uniform approach in the courtroom for the admission or exclusion of audio or video evidence where there are credible arguments on both sides that the evidence is fake or authentic, the default position, unfortunately, may be to let the jury decide.

Endnotes

1. Herbert B. Dixon Jr., *Deepfakes: More Frightening than Photoshop on Steroids*, 58 Judges' J., no. 3, Summer 2019, <https://bit.ly/3GnpNgg>.
2. Paul Schwartzman & Pranshu Verma, *Baltimore Principal's Racist Rant Was an AI Fake. His Colleague Was Arrested*, Wash. Post (Apr. 26, 2024), <https://bit.ly/4aV5h4h>; Thomas Lake, *A School Principal Faced Threats After Being Accused of Offensive Language on a Recording. Now Police Say It Was a Deepfake*, CNN (Apr. 26, 2024), <https://bit.ly/4bkySnz>.
3. White House, *Executive Order on the Safe, Secure, and Trustworthy Development and Use of Artificial Intelligence*, Briefing Room (Oct. 30, 2023), <https://bit.ly/4dm7LtZ>.
4. Press Release, White House, *Fact Sheet: President Biden Issues Executive Order on Safe, Secure, and Trustworthy Artificial Intelligence* (Oct. 30, 2023), <https://bit.ly/3svukKj>.
5. Gerrit De Vynck, *The AI Deepfake Apocalypse Is Here. These Are the Ideas for Fighting It.*, Wash. Post (Apr. 5, 2024), <https://bit.ly/49VJtUJ>.
6. John P. LaMonaga, *A Break from Reality: Modernizing Authentication Standards for Digital Video Evidence in the Era of Deepfakes*, 69 Am. U. L. Rev. 1945, 1984 (2020), <https://bit.ly/3Qt0nmW>.
7. Rebecca A. Delfino, *Deepfakes on Trial: A Call to Expand the Trial Judge's Gatekeeping Role to Protect Legal Proceedings from Technological Fakery*, 74 Hastings L.J. 293 (2023), <https://bit.ly/4bls3Ty>.
8. Advisory Comm. on Evidence Rules, Agenda, Proposed New Rule 901(c) to Address "Deepfakes," at 18 (Apr. 19, 2024), <https://bit.ly/3JFAL2g>.

IN THE SUPREME COURT OF THE STATE OF DELAWARE

IN RE:	§
INTERIM POLICY ON THE USE OF	§
GENERATIVE AI BY JUDICIAL	§
OFFICERS AND COURT PERSONNEL	§

ORDER

This 21st day of October 2024, it appears to the Court that:

WHEREAS, in 2013, the Court established the Delaware Commission on Law and Technology (“DCLT”) to provide Delaware lawyers with guidance and education when using technology in the practice of law;

WHEREAS, in 2023, the Court expanded the mission of the DCLT to assess developing technology and to identify critical needs and gaps;

WHEREAS, the DCLT has recommended adoption of the attached interim policy for the use of Generative Artificial Intelligence (“GenAI”) by judicial officers and court personnel;

WHEREAS, the Interim Policy is intended to ensure the safe and appropriate use of GenAI by judicial officers and court personnel, but not be used as a substitute for judicial, legal, or professional expertise.

NOW, THEREFORE, IT IS ORDERED that:

1. Judicial officers and court personnel using GenAI in their official duties shall comply with the Interim Policy on the Use of Gen AI Policy by Judicial Officers and Court Personnel (“the Interim Policy”), attached

as Exhibit A.

2. The Interim Policy shall be added as Appendix O-1 to the
Judicial Branch Operating Procedures, available at
<https://courts.delaware.gov/aoc/operating-procedures/index.aspx>.
3. The DCLT shall monitor the Interim Policy and report to the Court
when further changes are needed.
4. The Interim Policy shall go into effect on October 21, 2024.

BY THE COURT:

/s/CollinsJ.Seitz, Jr.
Chief Justice

EXHIBIT A

Interim Policy on the Use of GenAI by Judicial Officers and Court Personnel

Purpose:

This Interim Policy on the Use of GenAI by Judicial Officers and Court Personnel (this “Interim Policy”), reviewed and approved by the Delaware Commission on Law and Technology, is offered for consideration by the Chief Justice of the Delaware Supreme Court as the Administrative Head of all Delaware Courts. This Interim Policy is intended to ensure the safe and appropriate use of GenAI by Authorized Users. Generative AI tools are intended to provide assistance and are not a substitute for judicial, legal or other professional expertise.

Scope:

This Interim Policy applies to the use of GenAI by Authorized Users in the course and scope of their official duties and on State Technology Resources.

Definitions:

“Approved GenAI” means GenAI tools that have been approved by the Administrative Office for use by Authorized Users in the performance of their duties and using State Technology Resources.

“Artificial Intelligence” or “AI” means technology that enables computers and machines to reason, learn, and act in a way that would typically require human intelligence.

“Authorized Users” means all judicial branch judicial officers, employees, law clerks, interns, externs, and volunteers.

“Generative AI” or “GenAI” means Artificial Intelligence trained on an existing set of data (which can include text, images, audio or video) with the intent to “generate” new data objects when prompted by a user. Generative AI creates new data objects contextually in response to user prompts based only on the data it has already been trained on.

“Non-Public Information” means information to which an Authorized User has access to as a result of their official position and not otherwise publicly available through action of the Authorized User.

“Non-Approved GenAI” means GenAI that is not Approved GenAI.

“State Technology Resources” include any and all computer systems, software, network systems, telecommunications equipment and systems, email and messaging systems, data storage, hardware, peripherals and other electronic systems and devices owned, leased, and/or provided by the State of Delaware.

Policy:

- 1. Authorized User Remains Responsible Any use of GenAI output is ultimately the responsibility of the Authorized User. Authorized Users are responsible to ensure the accuracy of all work product and must use caution when relying on the output of GenAI.

- ϣ. Informed Use . Authorized Users should not use Approved GenAI without a working knowledge and understanding of the tools . Authorized Users should be trained in the technical capabilities and limitations of Approved GenAI prior to use .
- ϣ. Decision Making . Authorized Users may not delegate their decision-making function to Approved GenAI .
- ξ. Compliance with Laws and Judicial Branch Policies . Use of GenAI must comply with all applicable laws and judicial branch policies .
- ο. Non-Approved GenAI . Authorized Users may not input any Non-Public Information into Non-Approved GenAI . Non-Approved GenAI may not be used on State Technology Resources .

Navigating Education Law in the U.S. : Protecting Rights and Ensuring Access for All Students

This Continuing Legal Education (CLE) program provides an in-depth exploration of the fundamental aspects of education law in the United States, with a particular emphasis on the legal protections afforded to students from vulnerable populations. The session will examine recent regulatory changes and executive actions shaping education law, focusing on their impact on key laws such as the Individuals with Disabilities Education Act (IDEA), as well as the rights of English Language Learners (ELLs), immigrant populations, and marginalized communities. Attendees will gain a thorough understanding of how these developments, along with other critical education laws, are influencing the educational experiences and protections for all students. Key topics covered will include:

- IDEA (Individuals with Disabilities Education Act) and its mandate for Free Appropriate Public Education (FAPE) for students with disabilities, analyzing key cases such as *Board of Education v. Rowley* and *Irving Independent Sch. Dist. v. Tatro*, and how the new administration may influence future implementation and funding of special education services.
 - Section 504 of the Rehabilitation Act, which prohibits discrimination based on disability in federally funded educational programs, including new administrative efforts to enhance enforcement and protections.
 - The ADA (Americans with Disabilities Act) and its continuing relevance to the education sector, alongside ongoing efforts by the current administration to strengthen civil rights protections for students with disabilities.
 - Title IX of the Education Amendments of 1972, exploring the new administration's approach to combating sex-based discrimination in schools, with a special focus on gender equity, sexual harassment, and transgender rights in education.
 - Title VI of the Civil Rights Act of 1964, which prohibits race, color, and national origin discrimination in federally funded education programs, with an eye on how the new administration's policies address systemic inequities.
 - New emerging issues in education law under the current political climate, including the rights of English Language Learners (ELLs) and immigrant students, especially in the context of shifting immigration policies.
 - State funding concerns, including the pressing issue of preschool pushout and the disproportionate impact on vulnerable communities.
- This session is ideal for attorneys, educators, and advocates working in education law, civil rights, and student advocacy.

Education law in the United States is governed by a range of federal and state laws

1. Individuals with Disabilities Education Act, 20 U.S.C. § 1400 et seq. ("IDEA") & its implementing regulations, 34 C.F.R. Part 300 – Governs special education and mandates that children with disabilities receive a Free Appropriate Public Education (FAPE) in the least restrictive environment. IDEA requires Individualized Education Programs (IEPs) for eligible students. IDEA:

Case law: Pennsylvania Ass'n for Retarded Child v. Com. of Pa., 343 F. Supp. 279 (E.D. Pa. 1972) (see also Pennsylvania Ass'n. Retard. Child v. Commonwealth of Pa., 343 F. Supp. 1207 (E.D. Pa. 1971)) concluding that claims based on the denial of education to children with disabilities were "colorable" under the Due Process and Equal Protection Clauses of the Fourteenth Amendment.

Case Law: Board of Education v. Rowley, 458 U.S. 176 (1982); Polk v. Cent. Susquehanna Intermediate Unit, 16, 803 F.2d 171 (3d Cir. 1988) (an IEP must be reasonably calculated to yield meaningful educational benefit to the student.)

Case Law – Board of Education v. Rowley, 458 U.S. 176 (1982) – The case established that schools must provide a "free appropriate public education" (FAPE) to students with disabilities under IDEA, but it does not require the best possible education only one that is "reasonably calculated to enable the child to receive education benefits."

Case Law – Endrew F. v. Douglas County School District RE-1, 580 U.S. (2017) – The Court held that public schools must provide an education program that is "reasonably calculated to enable the child to receive education benefits" under the Individuals with Disabilities Education Act (IDEA). The Court recognized that the education standard for children with disabilities is not merely "more than de minimis" (i.e., minimal or trivial progress) but requires program that is sufficiently ambitious to allow the children to make meaningful progress based on their individual needs.

2. Americans with Disabilities Act of 1990, 42 U.S.C. § 12181, 1988 – The ADA works alongside other disability laws that prohibits discrimination against individuals with disabilities. Section 504 of the Rehabilitation Act of 1973 – Prohibits discrimination based on disability in any program receiving federal funds. Section 504 applies to both K-12 and higher education and includes provisions for accommodations and equal access to education.

Case Law – Lower Merion School District v. Doe, 878 A.2d 920 (Pa. Commw. 2005) In Lower Merion, the court decided that the Rehabilitation Act entitled a disabled student attending private school to related services at the public school so long as the student was enrolled dually in the public school district and the related services were needed to provide the disabled student with a FAPE.

Case Law: Ridley School District v. M.R., 680 F.2d 260 (3d Cir. 2012) (A FAPE consists of educational instruction specially designed to meet the unique needs of the handicapped child, supported by such services as are necessary to permit the child to benefit from the instruction. Although a state is not required to maximize the potential of every handicapped child, it must supply an education that provides significant learning and meaningful benefit to the child. The provision of merely more than a trivial educational benefit is insufficient.)

Case Law: Ridgewood Board of Education v. N.E., 172 F.2d 238 (3d Cir. 1999) The Ridgewood Court also explained the elements of a Section 504 violation as proof that: (1) the claimant is "disabled" as defined by the Act; (2) the claimant is "otherwise qualified" to participate in school activities; (3) the school or the board of education receives federal financial assistance; and (4) the claimant was excluded from participation in, denied the benefits of, or subject to discrimination at, the school.

3. Family Educational Rights and Privacy Act (FERPA)– Protects the privacy of student education records, giving parents and eligible students the right to access and amend records and controlling how schools share student information.

Case Law – Rios vs. Read, 480 F. Supp. 14 (E.D.N.Y. 1978) – The Court held that denying a child educational opportunities in early schooling isn't justified by the claim that a quicker English program is superior to one with more Spanish instruction. While teaching Hispanic children English is a valid goal, it cannot compromise their right to a meaningful education before they achieve English proficiency.

Case Law – Bauer v. Kincaid, 709 F. Supp. 575 (W.D. Mo. 1991) – The Court held that a public university student newspaper may obtain and publish criminal investigation and incident reports prepared by a campus security department because such documents are not "education records" under FERPA.

Case Law: Gonzaga Univ. v. Doe, 536 U.S. 273, 122 S. Ct. 2268, 153 L. Ed. 2d 309 (2002)– The FERPA prohibits federal funding of educational institutions that release education records to unauthorized people. The court ruled that this does not grant personal rights to enforce under the civil rights provisions of § 1983.

4. Title IX of the Education Amendments of 1972– Prohibits sex discrimination in any education program or activity receiving federal financial assistance, covering areas like athletics, sexual harassment, admissions, and other educational

Case Law – Gesber v. Lago Vista Independent School Dist., 523 U.S. 274 (1998) – The Court held that two minimal criteria must be met in order for an aggrieved party recover sexual harassment damages under the Amendments. First, the party must show that a school district official, with the ability to institute corrective measures, knew of the forbidden conduct. Second, a showing must be made that despite having knowledge of the forbidden conduct, the educational establishment deliberately failed to respond in a proper manner.

Case Law – Davis v. Monroe County Bd. Of Ed., 526 U.S. 629 (1999) – The Court held that a private Title IX damages action may lie against a school board in cases of student-on-student harassment, but only where the funding recipient is deliberately indifferent to sexual harassment, of which the recipient has actual knowledge, and that harassment is so severe, pervasive, and objectively offensive that it can be said to deprive the victims of access to the education opportunities or benefits provided by the school.

- Title VI of the Civil Rights Act of 1964 is a critical component of education law, prohibiting discrimination based on race, color, or national origin in any program or activity receiving federal financial assistance.

Case Law – Regents of Unvi. Of California v. Bakke, 438 U.S. 265 (1978) – The Court held that affirmative action programs that take race into account can continue to play a role in the college admissions process, since creating a diverse classroom environment is a compelling state interest under the Fourteenth Amendment. State universities go too far, however, when they set a certain quota for the number of minority students who enroll.

Case Law – United States v. Fordice, 505 U.S. 717 (1992) – The Court concluded that the lower courts incorrectly ruled that Mississippi complied with the Equal Protection Clause. If the State continues policies stemming from its prior dual system that cause segregation such as influencing student enrollment or fostering segregation elsewhere—these policies violate the Clause, even if the State has abolished separate educational requirements and implemented racially neutral policies without discriminatory intent.

Reports used:

<https://crsreports.congress.gov/product/pdf/R/R48068>

<https://www.eslteacheredu.org/2017/02/potential-effects-of-new-u-s-immigration-policy-on-education/>

Introductory Question for Panelist

1. Personal Journey: Can you share your journey in educational law and what inspired you to focus on your specific area of practice?

Questions for IDEA Speaker

1. What does IDEA stand for?
2. How does the IDEA protect students with disabilities?
 1. How does FAPE play a role in the IDEA?
3. What steps should parents take to request an IEP for their child?
 1. Follow-up: what options are available if the parent's are dissatisfied with the school's response or services provided? (Comp Ed and DP Hearings)

Questions for ADA/504 plan Speaker

1. What is a 504 Plan?
 - a. Requires proof of qualifying medical condition or disability
2. What role does the ADA play in ensuring students with disabilities have equal access to education, and how does it differ from IDEA in that regard?
 - a. Follow-up: What is the first step a parent should take if they believe their child is eligible for a 504 Plan and what role does the school district play in the process? (highlight the difference between IEP and 504 plan)
3. What are some agreed upon modifications or accommodations (preferred seating)?
4. How can schools balance providing reasonable accommodations under the ADA without fundamentally altering the nature of their educational programs?

Anyone can answer from the Panel: What are general education students?

Questions for VI (6) Speaker

1. How does Title VI protect students from discrimination based on race, color, or national origin in schools, and what specific actions should schools take to ensure compliance?
 - a. Follow-up: What does it mean for a school to have a discriminatory effect under Title VI?

Questions for IX (9) Speaker

1. How have Title IX regulations impacted educational institutions, particularly in the context of sexual harassment or discrimination?

Questions for all Panelist

1. Impact of COVID-19: How has the pandemic affected educational equity, and what lessons can we learn moving forward?

۲. Discipline Students

Question for audience: Do you believe that students with disabilities should be subject to the same disciplinary practices as general education students?

a. Timeline of events

- i. Infraction occur– District determines student has an IEP /Thought to be or general ed student
 ۱. If general ed proceed with discipline
 ۲. If IEP or TTB manifestation determination must occur or Big ۲
 - a. If big ۲ may proceed regardless of if conduct was MD of student's disability (SBA, weapons, drugs)
 - b. If MD yes cannot proceed with discipline, if no proceed as general education student

b. Discipline:

- i. IDEA: How does the (IDEA) protect students with disabilities in disciplinary proceedings?
 ۱. What is the "manifestation determination" review, and how does it affect disciplinary actions for students with disabilities?
 ۲. What is AEDY?
- ii. ADA: ۵۰۴ student not legally required to conduct manifestation determination as MD falls under the IDEA
 ۱. How does the Americans with Disabilities Act (ADA) influence the discipline of students with disabilities in schools?
 ۲. In what ways do Section ۵۰۴ plans under the ADA provide protections to students with disabilities when it comes to disciplinary actions
- iii. What about the "thought-To-Be" concepts?
 ۱. General education students must be treated as special education students in the discipline process even if no IEP
 ۲. When is a student considered thought to be?
 - a. Expressed concerns of student need of special education
 - b. Requested an evaluation
 - c. Pattern of behavior
 ۳. How does this protect the student from being disciplined?

What does inclusive practices look like for students with Disabilities

or special education needs? For special education students, inclusive practices focus on ensuring that students with disabilities have equal access to the general education curriculum and the same opportunities for learning and social interaction as their peers.

۳. Inclusivity

۱. Challenges: What are some of the biggest challenges you've encountered in advocating for inclusive educational practices?
۲. Addressing Barriers: What systemic barriers exist that prevent schools from becoming fully inclusive, and how can they be addressed?

- i. Follow-up: How should schools manage grouping in a way that promotes inclusivity and does not inadvertently segregate students?
 - ii. How can schools ensure that their disciplinary practices are inclusive and equitable, preventing disproportionate impact on certain groups?
 - iii. The Intersectionality of Race, Gender, and Income: How can we address the Disproportionality of African American Males Placed in Special Education?
- ε. Future Trends:
 - a. How do you foresee the role of educational law evolving in the next few years?
 - i. Policy Changes Regarding Transgender Students: The DOE has announced the termination of programs and policies that do not affirm biological sex, affecting various initiatives supporting transgender students, including those for homeless students and mental health assistance. Employees are also instructed to remove pronouns from email signatures and refrain from forming gender ideology-related employee resource groups.
 - ii. Potential Dismantling of the Department of Education: There is ongoing discussion about the possibility of dismantling the DOE. While the department was established through legislation passed by Congress, and only Congress has the authority to abolish the agency, the current administration has expressed interest in restructuring or eliminating the department. Such a move would require significant legislative action and is subject to legal and political challenges.
 - iii. ELL /Immigrant Rights under new administration– Immigration Policy Changes and Expansion of Expedited Removals: The administration has significantly expanded the use of expedited removals, allowing Immigration and Customs Enforcement (ICE) to swiftly deport certain immigrants without judicial review. This process, previously employed at the southern border for recent arrivals, is now extending nationwide to those who have been in the country for less than two years. Critics warn this could lead to racial profiling and equal protection issues.
 - iv. Cuts to K–12 Education Funding: The new administration has proposed reductions in federal support for K–12 education programs. This could lead to challenges for states in funding local school districts, particularly for underserved populations and special education programs. Many states that rely on federal education dollars could face tough decisions about how to maintain services with less funding.
 - v. The resurgence of zero tolerance policies and police in schools

COURSE 4 MATERIALS

NAVIGATING EDUCATION LAW IN THE U.S.: PROTECTING RIGHTS & ENSURING ACCESS FOR ALL STUDENTS

PANELISTS: NATASHA FELDER, MARGIEWAKELIN, ASHLIGILES-PERKINS,
DANA KING

MODERATOR: LAKEISHAFIELDS

FRIDAY, FEBRUARY 28TH, 2025

Hosted by: Philadelphia Bar Association
CLE 2.0 credits

DISABILITY RIGHTS OVERVIEW

SPECIAL EDUCATION

Students with disabilities have robust rights under federal and state law

- [Individuals with Disabilities Education Act](#) (“IDEA”)
- [Section 504 of the Rehabilitation Act](#) (“Section 504”)
- [Americans with Disabilities Act](#) (“ADA”)
- [Chapter 14](#), [Chapter 15](#), and [Chapter 711](#) of the PA School Code

Special Education (IDEA)

• Evaluations

- All children **suspected** of having a disability must be evaluated for an IEP (“Individualized Education Program”)
 - Child Find standard
- Evaluation completed within **60 days** of consent from the parent
- From the date of the requests, districts have just 10 days to respond **in writing** - either with a PTE to initiate the evaluation or a NOREP/PWN explaining why they believe an evaluation is not necessary
 - Parent can challenge if they disagree
 - Parents can also challenge when an initial evaluation (IE) or a reevaluation report (RR) are not adequate
 - Request an IEE
- **Eligibility:**
 - 1) does a student have a disability; AND
 - 2) does the disability require special education?

Special Education cont.

- **IEPs** must be annually revised and provide FAPE
 - **Free Appropriate Public Education:** provide services to ensure that a student gets meaningful benefit from school; educational needs are met with supports in order to make progress
 - Address *all* areas of need
- Stronger **Disciplinary Protections**
 - Must first determine if behavior is a **manifestation** of disability, before taking disciplinary action that would constitute a **change in placement**
 - This includes “thought-to-be” eligible students prior to having an IEP
- **Compensatory Education:** services for students with IEPs who experienced educational deprivations that resulted in skills loss
 - Services, Hours, Reimbursement, Mileage, etc., to make up for the losses
 - Child Find violations
 - Required if a student did not make progress, regressed, or did not receive IEP services

CREATING THE IEP



First, the student is found eligible.



IEP team (including the parent) meets within 30 calendar days to develop the IEP, then IEP implemented within 10 days.



The IEP team must meet at least annually.



The IEP must be measurable, individualized, and report at least quarterly on a student's progress.

RIGHTS OF CHILD UNDER SECTION 504 (REHABILITATION ACT OF 1973)

- “Disability” is broadly defined
(*think diagnosis or need*)
- The ADA protects children
from all forms of
“discrimination” based on
disability
- Right to an evaluation
- Right to accommodations in
school
- 504 Plan should be informed
by parent, doctor, evidence-
based accommodations



KEY GOALS UNDER DISABILITY LAWS

- **All students can learn!**
 - Learning and progress make look different from student to student based on needs
- **All schools must be inclusive!**
 - Schools must be inclusive places for students to learn
- **Systemic barriers in education threaten these policies from being achieved for all students**
 - Underfunded schools, disproportionately schools serving Black and Brown students
 - Continued impact of racism in education (e.g. - inequitable academic opportunities, disproportionate exclusion for similar behaviors)

SCHOOL DISCIPLINE AND PERSISTENT DISPARITIES

SCHOOL DISCIPLINE

- Schools have broad authority to impose discipline.
 - Prohibited behavior must be set forth in **published** Student Code of Conduct. *22 Pa. Code § 12.6(a)*.
 - Rules must be reasonable, not arbitrary and capricious, and not unconstitutionally vague.
 - Rules govern conduct during school hours, also including time spent coming to/leaving school, including school-sponsored activities.
- There is a right to due process before a school takes significant disciplinary action.
 - Rights to **proper** notice, conferences or hearing, information sharing re: witnesses or charges, statements and potential consequences.
 - For students with disabilities: if discipline will result in a change in educational placement, team **must** determine whether the behavior was a manifestation of the child's disability - if so, they **cannot** discipline in the same way
 - Children cannot be removed from school for behavior that manifests because of their disabilities

SCHOOL DISCIPLINE

Discipline type	Days	Due Process Rights	Educ
In-school suspension	Less than 10	Informed of reason; parent notice; your story	Yes
In-school suspension	10 + consec	Written notice with reasons; Informal hearing: meet w/ school, explain, present witnesses	Yes
Out of school suspension	Up to 10 consecutive	Written Notice; Informal hearing (3+ days suspension = Requirement; Less than = Op tiona l)	Make up assignmen ts

SCHOOL DISCIPLINE

Discipline Type	Days	Due Process Rights	E ducation
Transfer to a lter na ti v e/ discipline school	Open; 45 days for students with disabilities	Criteria for “disruptive youth”; Written notice with reasons; Informal hearing: meet w/ school, explain, present witnesses, records	Inferior and highly unmonitored
Expulsion	More than 10 (can be fixed period, open, pe rma nent)	Written notice with reasons; Formal hearing: officer of the board, witnesses, records. Can appeal to court (30 days)	Parent arrange, or notify school in writing need educ services

MANIFESTATION DETERMINATIONS

WHAT IS IT? WHEN IS IT

TRIGGERED?

1. Students who have IEPs or students with “qualifying disabilities” who don’t have an IEP but may need accommodations in school under a “504 Plan” **cannot be disciplined on the basis of their disability.**
2. Special rules apply if a school wants to suspend a student with an IEP for more than:
 1. 10 **total** days for a pattern of behaviors, or
 2. 15 **total** days in a school year, or
 3. 10 cumulative days (an expulsion)

(read: any changes in the student’s placement)

For children with intellectual disabilities, exclusionary discipline is NEVER permissible, unless:

- There is a court order, parental consent, or agreement from Pennsylvania Dept. of Education

THEN WHAT?

If it was a manifestation, the child cannot be expelled or suspended for more than 10 days in a row or 15 school days in the school year. In addition, the IEP team must also conduct a Functional Behavioral Assessment or revise a child’s Positive Behavior Support Plan.

If the team decides it was not a manifestation, and there is no disagreement on record, the discipline proceeds as proposed/implemented.

If the team decides it was not a manifestation but the parent disagrees with the team’s decision, the parent has the right to request a special education hearing. If a student with disabilities is suspended or expelled (for whatever length of time), the school district or charter school must still arrange for the student to receive a free, appropriate public education in accordance with the child’s IEP during the entire time the student is out of school.

EXPULSIONS

- Any out of school suspension **over 10 days** in a row is an expulsion, no matter what the school calls it
- Student has **right** to attend school **until the formal expulsion hearing** unless school determines that student is threat to school safety*
 - Permanent expulsion is a potential consequence in PA
- **Hearings** (22 Pa. Code § 12.8.)
 - School must send time and place **at least three days before by certified mail**
 - The expulsion hearing is to be held within 15 school days of notification of charges unless both parties mutually agree to extend
 - Hearing is private unless student or parent requests public hearing
 - Student has a right to bring their own counsel
 - Student has right to receive the names of witnesses and statements of witnesses against them
 - Student has right to request witnesses appear in person and answer questions
 - Student has right to testify and present witnesses on their own behalf
 - Written or audio record shall be kept of the hearing and student is entitled to a copy

More info: [Expulsions fact sheet](#)

DISCIPLINE DISPARATIES ACROSS PA

DID YOU KNOW?:

~~The student who is~~ most at risk of OSS and/or arrest is a Black male student with a disability.

- For example, the rate of arrest is **six times** that of all other student groups combined.

Black students have the greatest likelihood of receiving out-of-school suspensions, as well as the greatest likelihood of being arrested out of any racial/ethnic group.

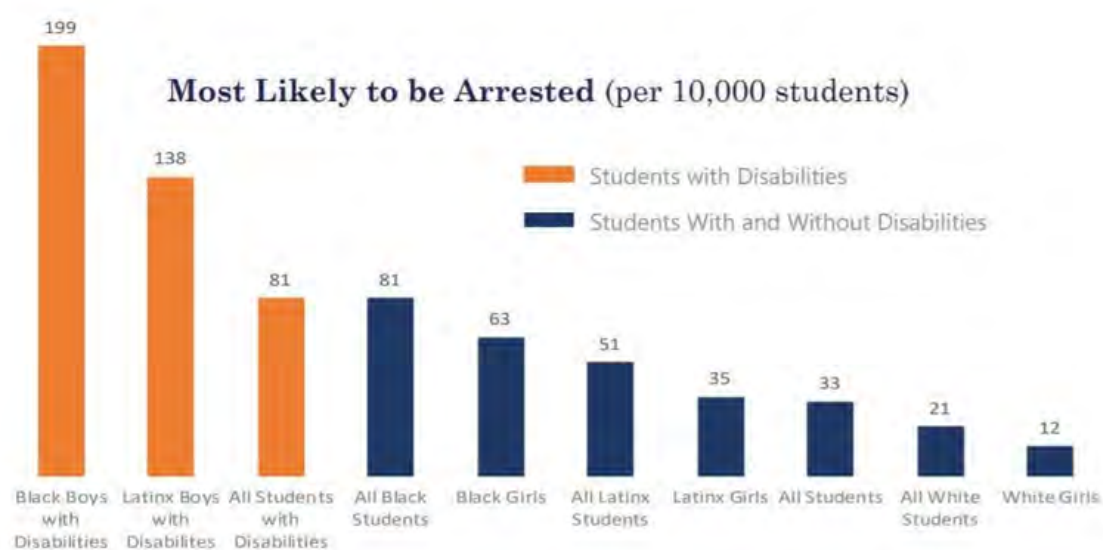
In 2015-16, Pennsylvania had the third highest student arrest rate in the country, a 24% increase over the previous two years.

- Students with disabilities, who make up 16.9% of PA public school students, receive OSS at **twice the rate** of other students, and they are **arrested at 2.5 times** the rate of all students combined (disabled and non-disabled combined).
- Black girls are **five times** more likely to be arrested in schools than white girls.

Pennsylvania ranks second in the nation in the arrest rates for Latino students and Black students alike.

Source, [ACLU-PA 2019 Report](#)

DISPARATIES CONTINUE (AND WORSEN) IN PA



Source, [ACLU-PA 2019 Report](#)

WHO IS MOST AT RISK?

- Racialized and marginalized students who have always been targeted
 - *American Psychologist* study (2021): **26%** of Black students received at least one suspension for a minor infraction over the course of the three years, compared with just 2% of white students
 - *Scientific American* article (2023): 50% of the 250 kids expelled from preschool *each day* are Black boys
- US Dept. of Education's Civil Rights Data Collection
 - Black students are 15% of student enrollment and they represent **double** the number of all in-school suspensions and expulsions
 - Black girls **six times** more likely than white peers to be referred to law enforcement - higher racial gap than Black boys
 - Check out our "[Supportive Spaces](#)" report for more on Black Girls
 - Black students with disabilities account for **nearly 36 percent** of students with disabilities suspended from school, despite representing about 19 percent of all K-12 students with disabilities

There is no evidence that Black and Brown children break school rules at rates higher than their white peers, but they are **more likely to be punished and punished more harshly** for the identical behavior, beginning as early as pre-school.



"We have so much to learn from Black girls who attend public schools in our communities. They are the experts on the real-time conditions in schools."

EDUCATION
LAW CENTER

RIGHTS FOR STUDENTS IN PROTECTED CLASSES

FEDERAL, STATE & LOCAL ANTI-DISCRIMINATION LAWS

US Constitution, Equal Protection	PA Constitution	Municipal Non-Discrimination Policies
Title IX (sex) Title VI (race) IDEA (disability)	PHRA & Regulation; 22 Pa Code 12.11	School District Policies

TITLE VI PROTECTIONS

Title VI of the Civil Rights Act of 1964 protects people from discrimination based on **race, color, national origin** in education programs or activities that receive federal financial assistance.

Applies to public schools (including charters/cyber charters), local and state educational agencies, and other institutions that receive federal financial assistance_____



WHEN IS TITLE VI IMPLICATED?

- Harassment based on race, national origin, shared ethnic or ancestral characteristics
- Disparate treatment
- School segregation
- Racial or language disparities in programs, courses, technology, materials, facilities etc.
- Discriminatory discipline
- Hostile environments
- Retaliation

Updated [Guidance](#), DearColleagueLetter, May7, 2024

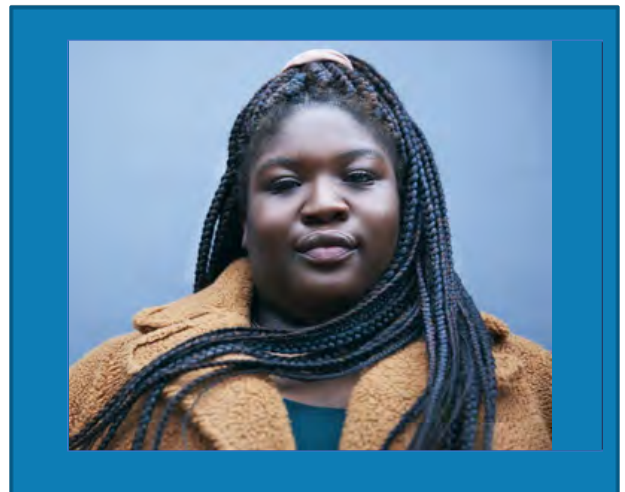
EXAMPLES OF DISCRIMINATORY GROOMING CODES

Hair Discrimination

- Hair styles that are “innovative” or “flamboyant”
- Hairstyles that are not “well-groomed” or “neat”
- Hair that is “colored or highlighted in any flamboyant colors”
- No “curly high high-tops” / “high top curly fades”
- Prohibitions on “excessive parts” and cultural hair jewelry and more.

Discriminatory Dress Codes

- “Earrings are permitted for females only”
- Requiring “female” students to wear skirts and not pants



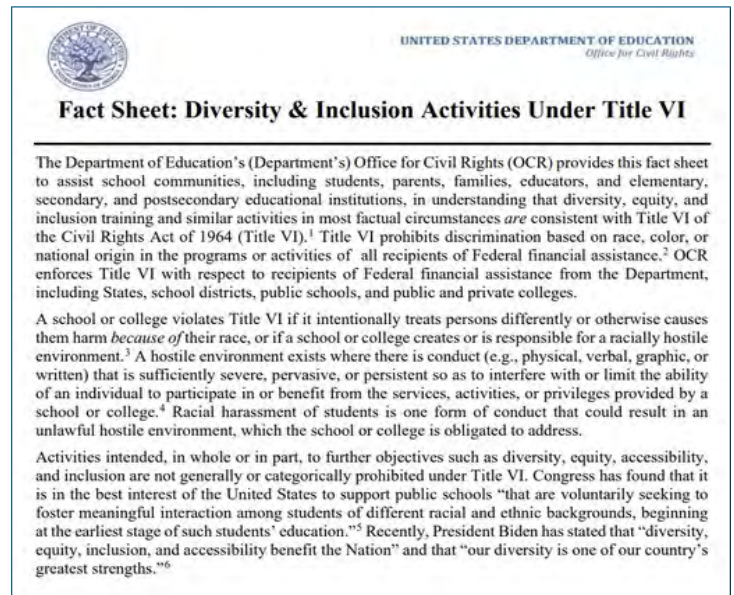
These discriminatory rules send the unmistakable message that (certain) students* are unwelcome and unwanted at school. As/If these policies and messages are considered to be pervasive, severe, or persistent, then the door may be open to hostile environment claims. In Philadelphia, there is adherence to a C.R.O.W.N. Act.

DIVERSITY & INCLUSION DOES NOT VIOLATE TITLE VI

Diversity, Equity and Inclusion trainings and activities are generally consistent with Title VI

Title VI does not, for example, categorically prohibit activities including :

- instruction or training on the impact of systemic racism;
- cultural competency or other nondiscrimination trainings;
- investigations of, and issuance of reports concerning the causes of, racial disparities within a school;
- use of specific words in school policies or activities, such as equity, discrimination, inclusion, diversity, systemic racism, or similar terms.



TITLE VI: AS SEEN IN CASE LAW

Courts have determined that a school's **inadequate response** to peer-to-peer racial harassment can amount to race discrimination in violation of Title VI.

Federal appellate courts have similarly recognized liability under Title VI for a school's inadequate response to racial harassment between students. One important analytical factor under *Davis* is whether harassment is so "severe, pervasive, and objectively offensive" that it deprives students of equal educational opportunities.

While Title VI does not mention or expressly prohibit discrimination on the basis of religion; courts have enforced OCR rulings where racial or national origin discrimination overlaps with religion.

"OCR can investigate complaints that students were subjected to ethnic or ancestral slurs; harassed for how they look, dress, or speak in ways linked to ethnicity or ancestry (e.g. skin color, religious attire, language spoken); or stereotyped based on perceived shared ancestral or ethnic characteristics. Hindu, Jewish, Muslim, and Sikh students are examples of individuals who may be discriminated against based on shared ancestry or ethnic characteristics."

Source: [Dept. of Educ.](#)

TITLE IX OFFERS STRONG PROTECTIONS

Title IX of the Education Amendments of 1972 protects people from discrimination based on sex in education programs or activities that receive federal financial assistance.

Applies to all public and private elementary and secondary schools, school districts, colleges, and universities schools (including charters) and Approved Private School (APS) placements through an IEP process, local and state educational agencies, and other institutions that receive federal financial assistance from ED

- Sexual harassment
- Failure to provide equal athletic opportunity
- Sex based discrimination in courses, programs
- Treatment of pregnant or parenting students
- Treatment of LGBTQ+ students
- Discriminatory discipline
- Hostile environment

[NEW Regulations: FACT SHEET: U.S. Department of Education's 2024 Title IX Final Rule Overview](#)

WHEN DOES TEASING OR BULLYING, RISE TO HARASSMENT?

In Pennsylvania, a child meets the legal definition of being bullied if all the following five boxes can be checked:

- ☐ Another student or group of students did something or said something highly offensive;
- ☐ The other student did what they did on purpose (“intentional act”);
- ☐ The other student’s action(s) took place in school (including virtual school), on school property, at a bus stop, or at a school event;
- ☐ The other student’s actions are severe, something that many students do to the victim or happens often to students in the school, and/or something that the other student did repeatedly; AND
- ☐ The other student’s conduct is so significant that it makes a big difference in the victim’s education, creates a threatening environment for the victim, or keeps the school from running normally.

24 Pa. Stat. Ann.
§ 13-1303.1-A

EXAMPLES OF A HOSTILE ENVIRONMENT

Conduct that is severe, pervasive, OR persistent;

AND

Interferes with or limits students' ability to participate in & benefit from school.

For example:

- Unaddressed peer harassment/bullying, including persistent dead-naming or pronoun misuse of a student
- Prohibiting pride flags, BLM banners, and other affirming symbols that single out certain student groups
- Discriminatory policies that treat students differently, or
- Facially-neutral policies that are not applied equally to all students

NAME & PRONOUNS

- Courts have recognized the right of individuals to be called by their preferred pronouns. Schools are **not** permitted to selectively deny student requests on the basis of gender identity.
 - For example, a cisgender student named James, asks to be called Jim and this is granted by staff, and the morning attendance roll is updated.
 - A transgender student requests to be called Charlotte instead of Charles, but the request is not honored and every morning the teacher calls out Charles when doing roll call.
- **Intentionally & persistently** misgendering constitutes sex-based harassment & creates a hostile environment.

PA HUMAN RELATIONS ACT: STATE ANTI-DISCRIMINATION LAW

The PHRA prohibits discrimination in public K-12 schools (public accommodations) on the basis of:

- Race - includes hair texture and protective hairstyles e.g. braids, twists, and locs
- Color
- Sex - includes sexual orientation, gender identity, and expression (SOGIE)
- Religion
- Ancestry
- National origin
- Handicap or disability
 - record of a handicap or disability
 - relationship or association with an individual with a handicap or disability
 - use of a guide or support animal
 - and/or handling or training of support or guide animals.



The PHRC is our investigative state agency enforcing the PHRA.

[1955 Act 222: PHRA Text](#)

LOCAL ENFORCEMENT AGENCY: SCHOOL BOARD DIRECTORS

Boards must follow state and federal laws, including laws that protect students and staff from discrimination on the basis of race, national origin, disability, sex, gender identity, and sexual orientation.

Policies must be based on current federal & state law -not personal preference or ideology.

Policies cannot be
vague

Board actions may
not be arbitrary
and capricious
(unreasonable)

FUTURE TRENDS IN EDUCATION LAW

- Policy Changes Regarding Transgender Students
- Potential Dismantling of the Department of Education
- ELL/Immigrant Rights
- Cuts to K-12 Education Funding
- Theresurgenceofzerotolerance policies and police in schools

REASSURING THINGS YOU SHOULD KNOW

In the United States, a president does not have the authority to:

- Create, amend, repeal or otherwise directly change laws.
 - **Only** Congress has the power to introduce and pass legislation.
- Override state law.
 - Specifically, education is state responsibility (to fund, to set standards, to exercise oversight, implement policies, and each state has their own Constitution.
 - Here, The Pennsylvania Constitution guarantees the right to a free public education for every child.
 - Article III, Section 14, mandates that “the General Assembly shall provide for the maintenance and support of a thorough and efficient system of public education.”
- Enforce laws without the authority of Congress.
 - Example: The President cannot create laws or regulations to specifically regulate curriculum diversity in schools; this would require Congressional approval.
- Dictate local school district policies
 - Local control of education means that decisions about specific DEI initiatives, curricula, and staffing belong to school boards and state education agencies. The President can encourage change through federal guidelines or incentives but cannot mandate local districts to law but.

Presidents do have the ability to issue executive orders *directing federal agencies* how to implement or modify policies, within framework of existing laws. They can also direct federal agencies to revise or create new regulations (which provide interpretation of a law, but does not change the law itself). Presidents may **propose** federal budgets. Presidents have veto power (and so does Congress).



QUESTIONS?

COURSE 5 MATERIALS

Presidential Documents

Executive Order 14173 of January 21, 2025

Ending Illegal Discrimination and Restoring Merit-Based Opportunity

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered:

Section 1. Purpose. Longstanding Federal civil-rights laws protect individual Americans from discrimination based on race, color, religion, sex, or national origin. These civil-rights protections serve as a bedrock supporting equality of opportunity for all Americans. As President, I have a solemn duty to ensure that these laws are enforced for the benefit of all Americans. Yet today, roughly 60 years after the passage of the Civil Rights Act of 1964, critical and influential institutions of American society, including the Federal Government, major corporations, financial institutions, the medical industry, large commercial airlines, law enforcement agencies, and institutions of higher education have adopted and actively use dangerous, demeaning, and immoral race- and sex-based preferences under the guise of so-called “diversity, equity, and inclusion” (DEI) or “diversity, equity, inclusion, and accessibility” (DEIA) that can violate the civil-rights laws of this Nation. Illegal DEI and DEIA policies not only violate the text and spirit of our longstanding Federal civil-rights laws, they also undermine our national unity, as they deny, discredit, and undermine the traditional American values of hard work, excellence, and individual achievement in favor of an unlawful, corrosive, and pernicious identity-based spoils system. Hard-working Americans who deserve a shot at the American Dream should not be stigmatized, demeaned, or shut out of opportunities because of their race or sex.

These illegal DEI and DEIA policies also threaten the safety of American men, women, and children across the Nation by diminishing the importance of individual merit, aptitude, hard work, and determination when selecting people for jobs and services in key sectors of American society, including all levels of government, and the medical, aviation, and law-enforcement communities. Yet in case after tragic case, the American people have witnessed first-hand the disastrous consequences of illegal, pernicious discrimination that has prioritized how people were born instead of what they were capable of doing. The Federal Government is charged with enforcing our civil-rights laws.

The purpose of this order is to ensure that it does so by ending illegal preferences and discrimination. **Sec. 2. Policy.** It is the policy of the United States to protect the civil rights of all Americans and to promote individual initiative, excellence, and hard work. I therefore order all executive departments and agencies (agencies) to terminate all discriminatory and illegal preferences, mandates, policies, programs, activities, guidance, regulations, enforcement actions, consent orders, and requirements. I further order all agencies to enforce our longstanding civil-rights laws and to combat illegal private-sector DEI preferences, mandates, policies, programs, and activities.

Sec. 3. Terminating Illegal Discrimination in the Federal Government. (a)

The following executive actions are hereby revoked:

- (i) Executive Order 12898 of February 11, 1994 (Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations);
 - (ii) Executive Order 13583 of August 18, 2011 (Establishing a Coordinated Government-wide Initiative to Promote Diversity and Inclusion in the Federal Workforce);
 - (iii) Executive Order 13672 of July 21, 2014 (Further Amendments to Executive Order 11478, Equal Employment Opportunity in the Federal Government, and Executive Order 11246, Equal Employment Opportunity); and
 - (iv) The Presidential Memorandum of October 5, 2016 (Promoting Diversity and Inclusion in the National Security Workforce).
- (b) The Federal contracting process shall be streamlined to enhance speed and efficiency, reduce costs, and require Federal contractors and subcontractors to comply with our civil-rights laws. Accordingly:
- (i) Executive Order 11246 of September 24, 1965 (Equal Employment Opportunity), is hereby revoked. For 90 days from the date of this order, Federal contractors may continue to comply with the regulatory scheme in effect on January 20, 2025.
 - (ii) The Office of Federal Contract Compliance Programs within the Department of Labor shall immediately cease:
 - (A) Promoting “diversity”;
 - (B) Holding Federal contractors and subcontractors responsible for taking “affirmative action”; and
 - (C) Allowing or encouraging Federal contractors and subcontractors to engage in workforce balancing based on race, color, sex, sexual preference, religion, or national origin.
 - (iii) In accordance with Executive Order 13279 of December 12, 2002 (Equal Protection of the Laws for Faith-Based and Community Organizations), the employment, procurement, and contracting practices of Federal contractors and subcontractors shall not consider race, color, sex, sexual preference, religion, or national origin in ways that violate the Nation’s civil rights laws.
 - (iv) The head of each agency shall include in every contract or grant award:
 - (A) A term requiring the contractual counterparty or grant recipient to agree that its compliance in all respects with all applicable Federal anti-discrimination laws is material to the government’s payment decisions for purposes of section 3729(b)(4) of title 31, United States Code; and
 - (B) A term requiring such counterparty or recipient to certify that it does not operate any programs promoting DEI that violate any applicable Federal anti-discrimination laws.
- (c) The Director of the Office of Management and Budget (OMB), with the assistance of the Attorney General as requested, shall:
- (i) Review and revise, as appropriate, all Government-wide processes, directives, and guidance;
 - (ii) Excise references to DEI and DEIA principles, under whatever name they may appear, from Federal acquisition, contracting, grants, and financial assistance procedures to streamline those procedures, improve speed and efficiency, lower costs, and comply with civil-rights laws; and
 - (iii) Terminate all “diversity,” “equity,” “equitable decision-making,” “equitable deployment of financial and technical assistance,” “advancing equity,” and like mandates, requirements, programs, or activities, as appropriate.

Sec. 4. Encouraging the Private Sector to End Illegal DEI Discrimination and Preferences. (a) The heads of all agencies, with the assistance of the

Attorney General, shall take all appropriate action with respect to the operations of their agencies to advance in the private sector the policy of individual initiative, excellence, and hard work identified in section 2 of this order.

(b) To further inform and advise me so that my Administration may formulate appropriate and effective civil-rights policy, the Attorney General, within 120 days of this order, in consultation with the heads of relevant agencies and in coordination with the Director of OMB, shall submit a report to the Assistant to the President for Domestic Policy containing recommendations for enforcing Federal civil-rights laws and taking other appropriate measures to encourage the private sector to end illegal discrimination and preferences, including DEI. The report shall contain a proposed strategic enforcement plan identifying:

- (i) Key sectors of concern within each agency's jurisdiction;
- (ii) The most egregious and discriminatory DEI practitioners in each sector of concern;
- (iii) A plan of specific steps or measures to deter DEI programs or principles (whether specifically denominated "DEI" or otherwise) that constitute illegal discrimination or preferences. As a part of this plan, each agency shall identify up to nine potential civil compliance investigations of publicly traded corporations, large non-profit corporations or associations, foundations with assets of 500 million dollars or more, State and local bar and medical associations, and institutions of higher education with endowments over 1 billion dollars;
- (iv) Other strategies to encourage the private sector to end illegal DEI discrimination and preferences and comply with all Federal civil-rights laws;
- (v) Litigation that would be potentially appropriate for Federal lawsuits, intervention, or statements of interest; and
- (vi) Potential regulatory action and sub-regulatory guidance.

Sec. 5. Other Actions. Within 120 days of this order, the Attorney General and the Secretary of Education shall jointly issue guidance to all State and local educational agencies that receive Federal funds, as well as all institutions of higher education that receive Federal grants or participate in the Federal student loan assistance program under Title IV of the Higher Education Act, 20 U.S.C. 1070 *et seq.*, regarding the measures and practices required to comply with *Students for Fair Admissions, Inc. v. President and Fellows of Harvard College*, 600 U.S. 181 (2023). **Sec. 6. Severability.** If any provision of this order, or the application of any provision to any person or circumstance, is held to be invalid, the remainder of this order and the application of its provisions to any other persons or circumstances shall not be affected thereby.

Sec. 7. Scope. (a) This order does not apply to lawful Federal or private-sector employment and contracting preferences for veterans of the U.S. armed forces or persons protected by the Randolph-Sheppard Act, 20 U.S.C. 107 *et seq.*

(b) This order does not prevent State or local governments, Federal contractors, or Federally-funded State and local educational agencies or institutions of higher education from engaging in First Amendment-protected speech.

(c) This order does not prohibit persons teaching at a Federally funded institution of higher education as part of a larger course of academic instruction from advocating for, endorsing, or promoting the unlawful employment or contracting practices prohibited by this order.

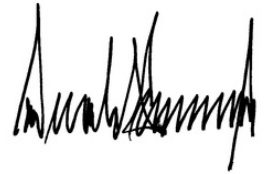
Sec. 8. General Provisions. (a) Nothing in this order shall be construed to impair or otherwise affect:

- (i) the authority granted by law to an executive department, agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to and does not create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.



THE WHITE HOUSE,
January 21, 2025.

[FR Doc. 2025-02097
Filed 1-30-25; 8:45 am]
Billing code 3395-F4-P

Office of the Attorney General
Washington, D. C. 20530

February 5, 2025

MEMORANDUM FOR ALL DEPARTMENT EMPLOYEES

FROM: THE ATTORNEY GENERAL 

SUBJECT: SANCTUARY JURISDICTION DIRECTIVES¹

Unlawful border crossings and illegal migration into the United States have reached record levels, resulting in a substantial and unacceptable threat to our national security and public safety. To protect the American people from the effects of unlawful mass migration, President Trump has prioritized securing our Nation's borders and enforcing federal immigration laws. In furtherance of that objective, the Department of Justice will ensure that, consistent with law, "sanctuary jurisdictions" do not receive access to Federal funds from the Department. Consistent with applicable statutes, regulations, court orders, and terms, the Department of Justice shall pause the distribution of all funds until a review has been completed, terminate any agreements that are in violation of law or are the source of waste, fraud, or abuse, and initiate clawback or recoupment procedures, where appropriate.² In carrying out this directive, each component shall comply with any notice and procedural requirements in the award, agreement, or other instrument.

I. End Funding to State and Local Jurisdictions That Unlawfully Interfere with Federal Law Enforcement Operations

Sanctuary jurisdictions should not receive access to federal grants administered by the Department of Justice. The Department will exercise its own authority to impose any conditions of funding that do not violate applicable constitutional or statutory limitations. *See New York v. Dep't of Justice*, 951 F.3d 84, 111 (2d Cir. 2020) ("Because 8 U.S.C. § 1373 is a law applicable to all plaintiffs in this action, the Attorney General was authorized to impose the challenged Certification Condition and did not violate either the APA or separation of powers by doing so.").

Federal law provides that state and local jurisdictions "may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, [federal immigration officers] information regarding the citizenship or immigration status, lawful or unlawful, of any

¹ This guidance is not intended to, does not, and may not be relied upon to create, any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

² This memorandum rescinds, effective today, any inconsistent previous memoranda, policies, or guidance documents of the Department of Justice.

individual.” 8 U.S.C. § 1373(a). So-called “sanctuary jurisdictions” include state or local jurisdictions that refuse to comply with 8 U.S.C. § 1373, refuse to certify compliance with § 1373, or willfully fail to comply with other applicable federal immigration laws. Consistent with statutory authority and past practice, the Department will require any jurisdiction that applies for certain Department grants to be compliant with 8 U.S.C. § 1373(a). Within 30 days, the Associate Attorney General, in coordination with components that provide Department grants, will report to the Attorney General the grants to which this requirement applies.

Additionally, to the extent consistent with applicable statutes, regulations, and terms, the Department may seek to tailor future grants to promote a lawful system of immigration, and to reduce efforts by state or local jurisdictions to undermine a lawful system of immigration. The Department will also seek to take any appropriate enforcement action where state or local practices violate federal laws, regulations, or grant conditions.

II. Identify and Evaluate All Funding Agreements with Non-Governmental Organizations That Provide Support to Illegal Aliens

All Department components that provide federal funding to non-governmental organizations shall immediately identify all contracts, grants, or other agreements with organizations that support or provide services to removable or illegal aliens. For any such agreement, each component shall, to the extent consistent with applicable statutes, regulations, court orders, and terms:

- (1) Pause any further distribution of funds for 60 days after complying with any notice and procedural requirements.
- (2) Identify non-governmental organization(s) receiving funding from the Department and describe the support or services provided. The component shall direct each organization to report whether the disbursed funds: (a) were provided in accordance with applicable laws; (b) resulted in the provision of any funds or services to removable or illegal aliens; (c) resulted in or were the subject of waste, fraud, or abuse; and (d) promoted or facilitated violations of our immigration laws. The component shall further direct each organization to certify that it will not use any remaining funds to promote or facilitate the violation of Federal immigration law.
- (3) Compile information set forth at (2) above and submit it to the Associate Attorney General within 45 days of this memorandum.

Upon completion of this process, the Associate Attorney General, in consultation with the Deputy Attorney General, shall determine which (if any) agreements to terminate and whether to resume funding of any remaining agreements, consistent with applicable statutes, regulations, and terms.

Effective immediately, consistent with applicable law, the Department of Justice shall not enter into any new contract, grant, or other agreement to provide Federal funding to non-

governmental organizations that support or provide services, either directly or indirectly (*e.g.*, through sub-contracting or other arrangements), to removable or illegal aliens.

III. Pursue Enforcement Actions Against Jurisdictions That Facilitate Violations of Federal Immigration Laws or Impede Lawful Federal Immigration Operations

Actions that impede federal efforts to enforce immigration law threaten public safety and national security. State and local jurisdictions must comply with applicable immigration-related federal laws. State and local actors may not impede, obstruct, or otherwise fail to comply with lawful immigration-related directives pursuant to the President's Article II authority to ensure national security, the Immigration and Nationality Act, or other authorities.

All litigating components of the Department of Justice and each U.S. Attorney's Office shall investigate incidents involving any such misconduct and shall, where supported by the evidence, prosecute violations of federal laws such as 18 U.S.C. § 371 and 8 U.S.C. §§ 1324 and 1373. All declination decisions with respect to any effort to obstruct or fail to comply with a lawful immigration-related directive from the Executive Branch shall be promptly reported pursuant to Justice Manual § 1-13.130.

The Civil Division shall, in coordination with the Sanctuary Cities Enforcement Working Group, identify state and local laws, policies, and practices that facilitate violations of federal immigration laws or impede lawful federal immigration operations. Where appropriate, the Civil Division shall take legal action to challenge such laws, policies, or practices. Attorneys tasked to the Sanctuary Cities Enforcement Working Group shall regularly report to the Associate Attorney General and the Deputy Attorney General their progress regarding the review of state and local laws, policies, and practices, and shall promptly report any decisions not to pursue enforcement actions against state and local jurisdictions found to be facilitating violations of federal immigration laws or impeding lawful federal immigration operations.

Office of the Attorney General
Washington, D. C. 20530

February 5, 2025

MEMORANDUM FOR ALL DEPARTMENT EMPLOYEES

FROM: THE ATTORNEY GENERAL 

SUBJECT: ENDING ILLEGAL DEI AND DEIA DISCRIMINATION
AND PREFERENCES

The Department of Justice is committed to enforcing all federal civil rights laws and ensuring equal protection under the law. As the United States Supreme Court recently stated, “[e]liminating racial discrimination means eliminating all of it.” *Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 600 U.S. 181, 206 (2023). On January 21, 2025, President Trump issued Executive Order 14173, *Ending Illegal Discrimination and Restoring Merit-Based Opportunity*, 90 Fed. Reg. 8633 (Jan. 21, 2025), making clear that policies relating to “diversity, equity, and inclusion” (“DEI”) and “diversity, equity, inclusion, and accessibility” (“DEIA”) “violate the text and spirit of our longstanding Federal civil-rights laws” and “undermine our national unity.” *Id.* at 8633.

To fulfill the Nation’s promise of equality for all Americans, the Department of Justice’s Civil Rights Division will investigate, eliminate, and penalize illegal DEI and DEIA preferences, mandates, policies, programs, and activities in the private sector and in educational institutions that receive federal funds.¹

I. Ending Illegal DEI And DEIA Discrimination and Preferences

By March 1, 2025, consistent with Executive Order 14173, the Civil Rights Division and the Office of Legal Policy shall jointly submit a report to the Associate Attorney General containing recommendations for enforcing federal civil-rights laws and taking other appropriate measures to encourage the private sector to end illegal discrimination and preferences, including policies relating to DEI and DEIA. The report should address:

- Key sectors of concern within the Department’s jurisdiction;

¹ This memorandum is intended to encompass programs, initiatives, or policies that discriminate, exclude, or divide individuals based on race or sex. It does not prohibit educational, cultural, or historical observances—such as Black History Month, International Holocaust Remembrance Day, or similar events—that celebrate diversity, recognize historical contributions, and promote awareness without engaging in exclusion or discrimination.

- The most egregious and discriminatory DEI and DEIA practitioners in each sector of concern;
- A plan including specific steps or measures to deter the use of DEI and DEIA programs or principles that constitute illegal discrimination or preferences, including proposals for criminal investigations and for up to nine potential civil compliance investigations of entities that meet the criteria outlined in section 4(b)(iii) of Executive Order 14173;
- Additional potential litigation activities (including interventions in pending cases, statement of interest submissions, and amicus brief submissions), regulatory actions, and sub-regulatory guidance; and
- Other strategies to end illegal DEI and DEIA discrimination and preferences and to comply with all federal civil-rights laws.

II. Guidance to Institutions Receiving Federal Funds

Educational agencies, colleges, and universities that receive federal funds may not “treat some students worse than others in part because of race.” *Students for Fair Admissions*, 600 U.S. at 304 (Gorsuch, J., concurring). Consistent with the January 21, 2025, Executive Order, the Department of Justice will work with the Department of Education to issue directions, and the Civil Rights Division will pursue actions, regarding the measures and practices required to comply with *Students for Fair Admissions*.



U.S. Department of Justice

Office of the Deputy Attorney General

The Deputy Attorney General

Washington, D.C. 20530

May 19, 2025

MEMORANDUM FOR OFFICE OF THE ASSOCIATE ATTORNEY GENERAL
CIVIL DIVISION
CIVIL RIGHTS DIVISION
CRIMINAL DIVISION
EXECUTIVE OFFICE FOR UNITED STATES ATTORNEYS
ALL UNITED STATES ATTORNEYS

FROM: THE DEPUTY ATTORNEY GENERAL *For Blanch*

SUBJECT: Civil Rights Fraud Initiative

Under Attorney General Bondi's leadership, "[t]he Department of Justice is committed to enforcing federal civil rights laws and ensuring equal protection under the law." Attorney General Memorandum, *Ending Illegal DEI and DEIA Discrimination and Preferences* (Feb. 5, 2025). One of the most effective ways to accomplish this objective is through vigorous enforcement of the False Claims Act, 31 U.S.C. § 3729 et seq., against those who defraud the United States by taking its money while knowingly violating civil rights laws.

The False Claims Act is the Justice Department's primary weapon against government fraud, waste, and abuse. Liability results in treble damages and significant penalties. It is implicated when a federal contractor or recipient of federal funds knowingly violates civil rights laws—including but not limited to Title IV, Title VI, and Title IX, of the Civil Rights Act of 1964—and falsely certifies compliance with such laws. Accordingly, a university that accepts federal funds could violate the False Claims Act when it encourages antisemitism, refuses to protect Jewish students, allows men to intrude into women's bathrooms, or requires women to compete against men in athletic competitions. Colleges and universities cannot accept federal funds while discriminating against their students.

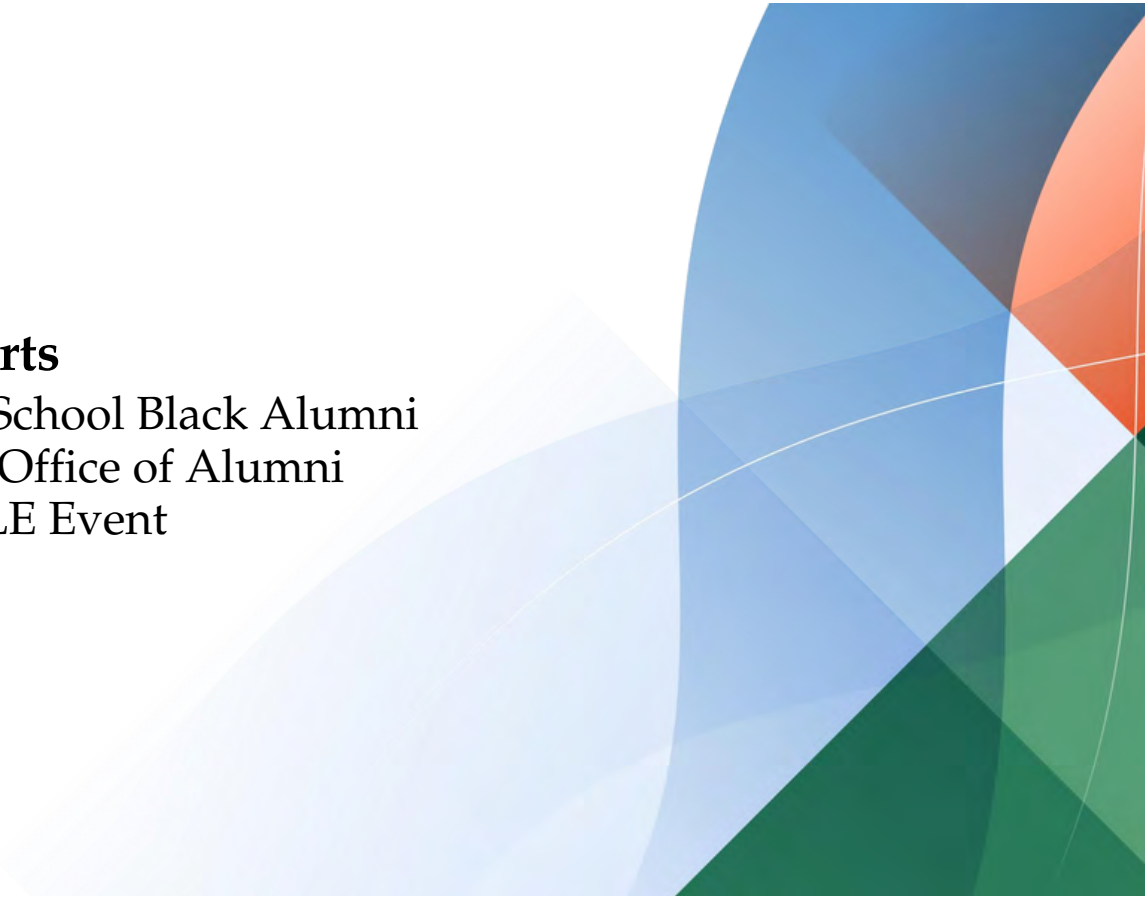
The False Claims Act is also implicated whenever federal-funding recipients or contractors certify compliance with civil rights laws while knowingly engaging in racist preferences, mandates, policies, programs, and activities, including through diversity, equity, and inclusion (DEI) programs that assign benefits or burdens on race, ethnicity, or national origin. While racial discrimination has always been illegal, the prohibition on such policies became clear after the Supreme Court stated that "[e]liminating racial discrimination means eliminating all of it." *Students for Fair Admissions, Inc. v. President & Fellows of Harv. Coll.*, 600 U.S. 181, 205 (2023).

President Trump reinforced that principle in Executive Order 14173, *Ending Illegal Discrimination and Restoring Merit-Based Opportunity*, 90 Fed. Reg. 8633 (Jan. 21, 2025), explaining that racist policies “violate the text and spirit of our long-standing Federal civil-rights laws.” Nevertheless, many corporations and schools continue to adhere to racist policies and preferences—albeit camouflaged with cosmetic changes that disguise their discriminatory nature.

The federal government should not subsidize unlawful discrimination. To that end, I am standing up the Civil Rights Fraud Initiative. This Initiative will utilize the False Claims Act to investigate and, as appropriate, pursue claims against any recipient of federal funds that knowingly violates federal civil rights laws. This Initiative will be co-led by the Civil Division’s Fraud Section, which enforces the False Claims Act, and the Civil Rights Division, which enforces civil rights laws. Each division will identify a team of attorneys to aggressively pursue this work together. Each of the 93 United States Attorney’s Offices will identify an Assistant United States Attorney to advance these efforts.

To ensure a comprehensive approach, the Civil Fraud Section and the Civil Rights Division will engage in regular coordination meetings and share relevant information about potential violations. The Civil Fraud Section and the Civil Rights Division will also engage with the Criminal Division, as well as with other federal agencies that enforce civil rights requirements for federal funding recipients, including the Department of Education, the Department of Health and Human Services, the Department of Housing and Urban Development, and the Department of Labor. The Civil Fraud Section and the Civil Rights Division will also establish partnerships with state attorneys general and local law enforcement to share information and coordinate enforcement actions.

The Department recognizes that it alone cannot identify every instance of civil rights fraud. Congress likewise has recognized as much and, as a result, has authorized private parties to protect the public interest by filing lawsuits and litigating claims under the False Claims Act—and, if successful, sharing in any monetary recovery. *See* 31 U.S.C. § 3730. The Department strongly encourages these lawsuits. The Department also encourages anyone with knowledge of discrimination by federal-funding recipients to report that information to the appropriate federal authorities so that the Department may consider the information and take any appropriate action. Please visit <https://www.justice.gov/civil/report-fraud> for more information.



NCSC

AI & the Courts

Delaware Law School Black Alumni
Network & the Office of Alumni
Engagement CLE Event
August 5, 2025

Our mission

We drive innovation and progress in courts and justice systems.

NCSC

Today's Presenters

- Hon. Herbert Dixon, Senior Judge, Superior Court of the District of Columbia
- Hon. Karoline Mehalchick, District Judge, Middle District of Pennsylvania
- Diane Robinson, PhD, Principal Court Research Associate, National Center for State Courts
- Isaac Sommers, Esq., Associate, Ropes & Gray
- Dan Wyman, Esq., Lead Sales Engineer, Relativity
- Moderator: Christlynn Dornevil, Esq.

The logo for the National Center for State Courts (NCSC) is located in the bottom right corner. It consists of the letters "NCSC" in a bold, black, serif font. The background of the slide features a large, abstract graphic on the right side, composed of overlapping geometric shapes in shades of blue, green, and orange.

Historical Evolution of Technology in the Courts

Early Legal Technologies

- Typewriters
- Fax Machines

Advancements in Computer Systems

- Electronic case management
- Electronic filing
- Electronic document storage

Advancements in Data

- Big data
- Open data
- Data dashboards

Advancements in Court Hearings

- Remote court appearances
- Electronic notifications

AI in Court Management

- How cases are filed, docketed, and scheduled

AI in Justice Delivery

- Promise to revolutionize justice delivery by enhancing decision-making and case analysis

NCSC

What do we mean by AI?

Artificial Intelligence (AI)

- Field of computer science
- Goal: develop intelligent systems that can learn, "reason," and make decisions

Generative AI (GenAI)

- Can generate new content, including text, images, audios, video
- Good for: content creation

Large Language Models (LLMs)

- Process and generate language
- - Use deep learning techniques to analyze vast amounts of data
- Good for: summarization, answering questions, text generation, translation*

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AI Hallucination

Case	Court / Jurisdiction	Date ▼	Party Using AI	AI Tool	Nature of Hallucination	Outcome / Sanction
<u>Smith v. Athena Construction Group, Inc.</u>	United States District Court for the District of Columbia (USA)	26 July 2025	Lawyer	Grammarly; ProWritingAid	Fabricated citation(s), false quotes	Show cause order issued for potential sanctions and bar referral
In Re CorMedix	D.C. New Jersey (USA)	23 July 2025	Judge	Implied	Misstated precedents, false quotes	Opinion withdrawn by judge
<u>Johnson v. Dunn</u>	N.D. Alabama (USA)	23 July 2025	Lawyer	ChatGPT	Fabricated citations	Public reprimand, disqualification from the case, and referral to the Bar

Source: <https://www.damiencharlotin.com/hallucinations/>

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Why do hallucinations keep appearing in pleadings?

- People don't understand how AI works
- Probabilistic exercise
- Overeager intern or first year associate
- Attorney (or judge!) still responsible for all work

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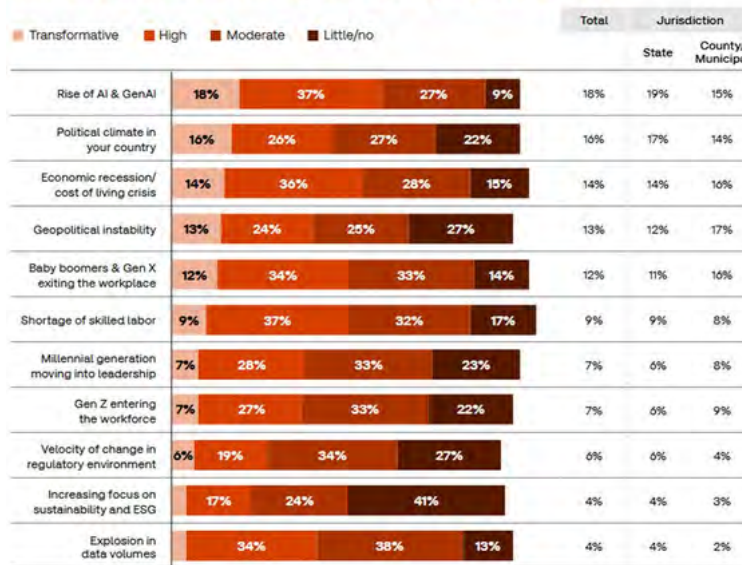
Start with the problem, not the tech

- AI is a tool
- Define the problem: what do you want to improve?
- Identify the constraints
- Explore the solutions

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Courts expecting AI to impact operations

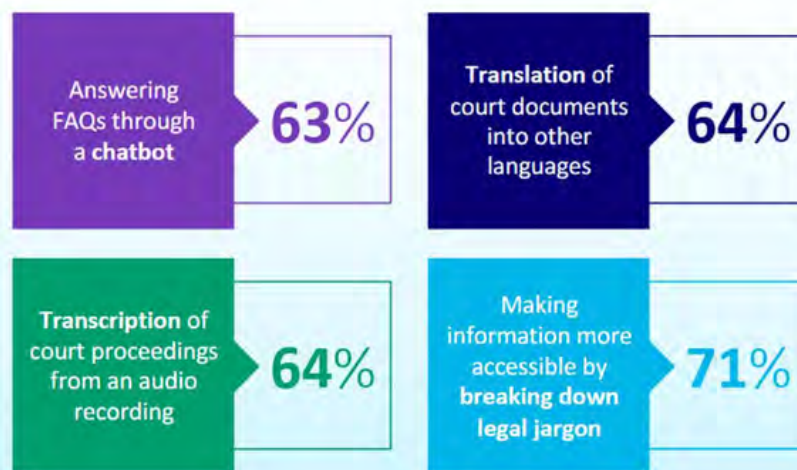
Rise of AI & GenAI is the highest-ranking impactful trend



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Public support for use of AI

Q: "Some court systems are considering the use of AI to increase their efficiency...please indicate if you think the (state) court system should use AI...to accomplish the following goals."



Source:
<https://www.ncsc.org/sites/default/files/media/document/State-of-the-State-Courts-2024.pdf>

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The Future of AI & the Courts

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This is exciting (& a little scary)

- **Changes happening very quickly**
Be careful about GenAI materials written before 2023
- **Lots of promises**
Many claim expertise, but be careful
- **Not all AI is GenAI, not all AI is new**
Courts have been using optical character recognition (OCR) and robotic process automation (RPA) for years

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Areas of Promise

- Access to Justice
- Streamlined Operations
- Freeing court staff to do the more important work
- Increased trust and confidence in the judiciary

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Areas of Concern

- Unauthorized Practice of Law
- Digital Divide
- AI Evidence
- Overreliance on AI
- Could failure to use AI constitute inefficiency?

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Ethics still apply

- [ABA Formal Opinion 512](#)
- Competence, including understanding “the benefits and risks associated” with technologies used
- Confidentiality
attorney is attempting to accomplish the client’s goal
Communications, including the means by which the

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Ethical Implications for Attorneys

GenAI use by lawyers and those working with lawyers implicates various ethical rules:

- ER 1.1 (competence)
- ER 1.2 (client consultation)
- ER 1.5 (reasonable fees for the work performed)
- ER 1.6 (confidentiality)
- ER 3.3 (candor to the tribunal)
- ER 4.1 (truthfulness on statements to others)
- ER 5.3 (supervising nonlawyers)

Joseph R. Tiano, Legal Decoder, Inc., Legal Ethics in the Age of Bid Data & Artificial Intelligence

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Ethical Implications for Judges

GenAI use by judicial officers and those working with judicial officers implicates various issues under the Model Code of Judicial Conduct:

- Rule 1.2 (Promoting Confidence in the Judiciary);
- Rule 2.2 (Impartiality and Fairness);
- Rule 2.3 (Bias, Prejudice, and Harassment);
- Rule 2.4 (External Influences on Judicial Conduct);
- Rule 2.5 (Competence, Diligence & Cooperation);
- Rule 2.9 (Ex Parte Communications);
- Rule 2.12 (Supervisor Duties);
- Rule 3.5 (Use of Nonpublic Information & Disclosure).

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Questions?

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