Court Review

Balancing the Scales:
Judicious Use of Generative AI

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Imagine this: It's 8 PM, and you're still in chambers, staring at an ever-growing pile of briefs, each one more convoluted than the last. Your clerks have left, the courtroom lights are off, and you're trying to distill hundreds of pages of legal arguments into a coherent opinion. What if I told you that you could have a diligent assistant, one who never gets tired, to help summarize those briefs, organize your thoughts, or even fine-tune your draft orders—all with a few well-chosen words?

Enter Generative AI (GenAI). GenAI is a type of artificial intelligence that creates content—like writing, images, or even code—based on instructions you give it using everyday language. Think of it like having a savvy assistant that can help you draft documents, summarize information, or brainstorm ideas. One of the best-known examples is ChatGPT, but there are others like Google's Gemini and Anthropic's Claude (and many more embedded in tools you probably already use, like Westlaw and Microsoft Word).[1] These tools analyze vast amounts of data to generate responses that feel natural and can be useful, even though a machine is behind it.[2]

GenAI can be a game-changer for judges. Yes, it can write. But these tools shine in many other ways, too: they can help you organize your thoughts, create checklists, or even draft style guides for your chambers. You can ask a GenAI tool to summarize a party's brief to get a quick sense of the arguments, or brainstorm ways to clarify your writing for a wider audience, like pro se litigants.

True, these tools aren't perfect—they can make things up or provide incorrect information.[3] But don't let GenAI's limitations scare you. Used smartly, these tools can be safe, slash the time you spend on daily projects in chambers, and elevate your work in exciting ways.

WHAT DO I NEED TO WORRY ABOUT?

Judges must tread carefully. First up: data security. Generative AI relies on cloud servers to process your conversations, which means any data you input travels beyond your direct control.[4] Many of these tools---even those with extensive security measures—are designed to "learn" from user inputs, potentially storing or analyzing your data to improve their responses.

Before using any tool, verify how it handles your data and, ideally, look for ways to turn off data sharing. Some paid versions of tools, like ChatGPT's premium options, allow you to do this, but checking is crucial. And while we're at it, anonymizing sensitive information before inputting it into these tools adds a layer of protection—think placeholder names or generic details rather than case specifics.[5]

Verification is another core issue.[6] Generative AI doesn't just make mistakes; it sometimes invents information that sounds credible but isn't. This phenomenon, known as "hallucination," can have serious consequences in legal work if we don't catch it. For AI-generated content like case law summaries, statutes, or even factual explanations, double-checking matters. GenAI can help structure arguments, organize information, or suggest ideas, but when it comes to facts, we must make sure they're right. Treat GenAI's output as a draft, a first pass, or an idea generator—not a finished product. The tool's suggestions might sound confident, but confidence is not the same as accuracy.

Then there's the risk of over-reliance.[7] Generative AI shines when used as an assistant. It can refine phrasing, organize thoughts, or offer alternative wording to improve clarity. But for deep analysis, legal interpretation, or critical decision-making, GenAI should stay in the passenger seat. Judges' expertise, experience, and judgment are irreplaceable in assessing complex legal issues. We need to draw the line between using GenAI for support and expecting it to handle tasks that demand a human touch. GenAiAI should enhance our work, not replace our expertise. In short, let these tools help where they can—editing, clarifying, brainstorming—but trust yourself when it counts.

Identifying GenAI use in legal submissions is another challenge on the horizon. GenAI's polish makes it increasingly difficult to distinguish machine-generated text from the real thing. Earlier versions might have given themselves away with repetitive language or odd phrasing, but the latest models mimic human

Footnotes

1. For a deep-dive on the many GenAI tools available right now and the basics of how they work, *see* Joe Regalia, *From Briefs to Bytes: How Generative Ai Is Transforming Legal Writing and Practice*, 59 TULSA L. REV. 193, 201 (2024).

2. *See* Partha Pratim Ray, *ChatGPT: A Comprehensive Review on Background, Applications, Key Challenges, Bias, Ethics, Limitations and Future Scope*, 3 INTERNET OF THINGS & CYBER-PHYSICAL SYS. 121, 133, (2023).

3. These are real concerns, but challenges like fabricated information are declining as these tools advance and they are limited by the use of next practices we will look at later in this article. *See* Zhiyuan Zhao ET AL., *Beyond Hallucinations: Enhancing LVLMs through Hallucination-Aware Direct Preference Optimization*, ARXIV (Nov.

2023), https://doi.org/10.48550/arXiv.2311.16839 (discussing advances in accuracy in GenAI tools using new technical methods).

4. The ABA recently issues guidance about the major ethical risks posed by GenAI tools. *See ABA Issues First Ethics Guidance on a Lawyer's Use of AI Tools*, AM. BAR ASS'N (July 29, 2024), https://www.americanbar.org/news/abanews/aba-news-archives/2024/07/aba-issues-first-ethics-guidance-ai-tools/.

5. This has been a recommendation echoed by several ethics regulators, including most recently the New Mexico bar. *See* State Bar of N.M. Ethics Advisory Comm., Formal Op. 2024-004 (2024).

6. *See ABA Issues First Ethics Guidance on a Lawyer's Use of AI Tools, supra* note 4.

7. *Id.*

writing nearly seamlessly. Consider setting clear expectations for attorneys and parties alike: they are responsible for the accuracy and credibility of their submissions. A growing number of states— and the ABA—have now released guidance for lawyers using GenAI. Let's make sure they follow that guidance.

Handled well, GenAI can be a powerful ally. But that requires staying vigilant and understanding its limits. Judges can harness this new technology's benefits without sacrificing the control, rigor, and standards that judicial work demands. Let's now turn to how.

GETTING STARTED: TOOLS AND PROMPTING

The magic of GenAI doesn't just unfold with a simple question and a dash of hope. Here's the truth: the quality of your GenAI collaboration depends enormously on how well you instruct it. Even seasoned AI developers don't always understand why the art of engineering your instructions—called prompting—matters so much. But it does. And for judges, mastering this art can elevate GenAI from a sometimes useful, often generic assistant into a robust chambers resource.[8]

First things first: if you're hoping for a one-size-fits-all prompt that will solve every legal challenge, I hate to disappoint. The world isn't that simple, and neither is AI. Sure, you'll find some common starting points that often get decent results, but the key to real value is customization. The good news? With a bit of upfront work, you'll have a prompt toolbox you can reuse and perfect over time.

So let's dig in and cover some strategies to become a true master of AI prompting in your chambers work.

Use Clear, Organized Instructions

Specificity wins. If you give GenAI vague or sprawling prompts, it may just flail around, missing your point entirely. To get more precise responses, your instructions should break down tasks clearly. This means using headings, separating out different parts of your prompt, and guiding the AI one step at a time. Think of it like giving directions to someone who's never been to your courthouse before. Make it easy for them to follow, and don't try to cover everything in one breath.

For example, instead of asking for something like, "Draft an opinion," start with, "Create an outline of an opinion focusing on key issues in this contract case." And if you're refining a section, give GenAI delimiters—clear markers, like ***—to separate your instructions from the text it's supposed to work on. It'll make your requests easier for the AI to parse, and the results will reflect that clarity.

Assign Roles to the AI

Think about the many hats you wear in chambers: researcher, decision-maker, communicator. GenAI can do a better job if it knows which role it's supposed to take on. When crafting a prompt, specify that role. You'll be surprised at how much more on-target the results are.

For instance, if you want a concise legal summary, start with, "As a legal research assistant, summarize the following case…" If

you're testing out arguments, try, "As a federal judge, analyze these points from a neutral perspective." The role you assign frames how the AI responds, whether it's more fact-focused, persuasive, or even empathetic.

You can even experiment with combining roles. Want a balance of precision and accessibility? Ask GenAI to "explain this issue in layman's terms, as a judge clarifying to a pro se litigant."

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Guide Reasoning with Step-by-Step Prompts

When a task requires more complex thinking—say, untangling a nuanced point of law or weighing evidence—trigger the AI's reasoning mode. Chain-of-thought prompting, as it's called, can lead to richer and more accurate responses. Encourage GenAI to slow down and work through the steps. Phrases like, "Let's think through this one step at a time" or "Explain your reasoning as you go" can make a world of difference.

Take this example: if you're comparing arguments on a novel legal issue, you could write, "First, outline the main arguments. Next, evaluate the strengths and weaknesses of each. Finally, suggest which argument is more compelling and why."

This kind of prompting not only helps the AI deliver a more thoughtful response but also lets you see its analytical path— giving you a better sense of any potential pitfalls or missed considerations.

Set Specific Parameters

Think of parameters as your way of telling GenAI exactly how deep to go—or where to draw the line. If you want a comprehensive explanation, specify how detailed it should be: "Explain this case law with five specific examples." If brevity is the goal, make that clear: "Summarize this argument in three sentences."

You can also set boundaries for what GenAI should ignore. Let's say you're drafting a legal order and want to preserve quoted language: "Keep all text in quotes unchanged." Or, if you need a response that's easy to paste into a spreadsheet, tell the AI to format it accordingly. Giving these constraints will focus the AI's efforts and minimize unnecessary information.

Use Examples for Better Results

Nothing beats a concrete example. In the AI world, this is known as few-shot learning. If you want GenAI to draft in a particular style, give it samples. Want improved phrasing in your rulings? Show the AI what you consider clear versus unclear language. It's like training a clerk: the more illustrative examples you provide, the sharper their output becomes.

Say you're refining a checklist for your chambers: "Here's how

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8. For a more in-depth guide on best practices for working with GenAI, *see* Regalia, *supra* note 1.

summary of the main arguments and specific legal principles involved. Starting with these inputs can lead to richer alternative perspectives.

"Here is the main analysis I've developed [input summary]. Using this, suggest potential counterarguments, focusing on any weaknesses or opposing interpretations."

Summarizing Briefs and Filings

Use GenAI tools to get a quick sense of the main arguments, a detailed factual background, and more. Summarizing complex briefs is easier when you guide GenAI on what aspects are most relevant to you.

Example: "Summarize this brief [input text], focusing specifically on the primary arguments related to contract enforceability and any contested facts between parties. Identify the central cases each side relies on."

Refining Judicial Writing Style for Key Sections

GenAI can help improve the style in critical sections of your opinions. Offering context about your goals, such as clarity or conciseness, ensures the AI's suggestions align with your objectives.

Example: "Given this introduction to a judicial opinion [input text], suggest ways to make the writing more concise and impactful. Provide three versions."

Drafting Administrative or Standing Orders

GenAI can help draft routine documents like standing orders by tailoring them based on your current practices and preferences.

"Using this draft standing order [input draft or points], help refine the language to make steps clearer and more actionable. Focus on improving any sections that parties might find ambiguous."

Drafting Emails

GenAI can draft emails for various goals, from providing feedback to clerks to communicating with other chambers. By including details on the purpose and recipient, you can ensure a more effective response.

"Draft an email to my clerk [input recipient info] giving feedback on their recent draft opinion [input key points or focus areas]. I'd like to provide clear and constructive suggestions for improvement without being overly critical."

Getting a Bird's Eye View of the Authority

GenAI can efficiently list the authorities most cited by parties in multiple briefs, helping you identify recurring cases or statutes. Feed AI multiple briefs and guide it to sort and summarize.

"Using these three briefs submitted by the parties [input text], list the most frequently cited cases and statutes, along with a brief summary of how each authority is being used in the arguments."

Creating Other Resources—Like User-Friendly Guides for Pro Se Litigants

GenAI can help draft many other resources that might be helpful to litigants or your chambers. Perhaps some common missteps befall pro se litigants in your court—and a quick, readable guide would help them steer clear in the future.

Example: "Using these notes [input draft text], draft a guide for pro se litigants filing a motion in my court."

Outlining Case Management Plans for Complex Cases

For complex or multi-step cases, GenAI can draft customized case management plans that include procedural timelines, deadlines, and key steps. Judges can input specific details, like discovery requirements or anticipated procedural steps, to generate a plan that keeps cases on track without constant oversight.

"Here's a complex civil case with extensive discovery needs [insert information]. Draft a case management plan that includes timelines for each stage, including discovery, pre-trial motions, and trial preparation."

Automating Routine Orders and Creating Templates

GenAI can help create templates for routine orders, enabling you to save time on repetitive drafting tasks. These templates can include placeholders for specifics, allowing you to quickly adapt a standard order to individual cases. This saves time while ensuring consistency in language and format across cases.

"Create a template for a standard procedural order with placeholders for case-specific information, ensuring clarity and conciseness."

CONCLUSION

Generative AI can be a real asset in chambers, but it's not a shortcut for judgment. Used right, AI can save you time, boost clarity, and even help make your work more accessible. But judges should keep it in its lane—an assistant, not a decision-maker.

As the technology advances, the opportunity to wield AI responsibly is in your hands. With vigilance, clear boundaries, and the right balance of skepticism and curiosity, judges can use AI to elevate the judicial process—without ever losing the rigor and precision that define it.

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