

Taming the AI Beast: UPDATE Court Rules Amended to Control Use of Generative AI in Filings



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The legal profession has increasingly witnessed the rise of artificial intelligence (AI) technologies, particularly generative AI, which has shown immense potential in various areas of legal practice. From legal research to drafting, generative AI is a promising tool. However, its use in litigation requires careful consideration and oversight.

Earlier this year, we published a blog post explaining how [judges were beginning to institute standing orders](#) to put safeguards on the use of generative AI in their individual courtrooms. We followed that up recently with another blog post about an [announcement from the Eastern District of Texas](#) that it was amending its local rules to address the surge of generative AI use in court filings. As we predicted, this trend has continued and so this updated blog post reports on the unfolding nature of this development.

With this trend rising to new levels, the [United States Court of Appeals for the Fifth Circuit has now announced a proposed requirement](#) that would mandate a certification related to the use of generative AI in court filings. This proposed rule would require a certification that “no generative artificial intelligence program was used in drafting the document presented for filing, or to the extent such a program was used, all generated text, including all citations and legal analysis, has been reviewed for accuracy and approved by a human.” Although the new proposed rule is not expressly linked to any event in particular, it is worth pointing out that this proposed rule comes on the heels of a [Fifth Circuit opinion](#) calling attention to the practice of “citing nonexistent cases.” It does not take much imagination to determine where those nonexistent cases likely came from, and if this was a one-time problem presumably the Fifth Circuit would not be proposing a change to its rules.

This recent announcement from the Fifth Circuit is the highest court to announce such changes, but the Fifth Circuit is not alone. One judge on the [United States Court of International Trade](#) has weighed in. Additionally, standing orders regulating the use of generative AI in court filings have now been issued by individual judges in [Texas](#), [Illinois](#), [Pennsylvania](#) (and a now second in [Pennsylvania](#)), [Hawaii](#), and [Oklahoma](#). These are examples of standing orders from individual judges. Now, however, with amendments to rules that govern conduct across courtrooms in the [Eastern District of Texas](#) and the [Fifth Circuit](#), we are seeing a massive increase in the patchwork of various rules and orders that govern generative AI use in litigation.

Other individual judges will be following suit, and additional districts and circuits will inevitably amend their local rules following the examples set elsewhere. Changes to rules of civil procedure oftentimes take months and years to roll out, so don't look for those immediately, but they are likely coming. Even beyond rules and standing orders by specific judges, by explicitly drawing in Rule 11, such existing rules and

standing orders present a cautionary tale for all litigators about the need to verify and cross-verify the output of generative AI.

While the explosive use and rapid adoption of generative AI has come upon the profession quickly, we are only beginning to see controls put in place by judges, courts, and governing bodies.