



# THE BATON ROUGE LAWYER



THE MAGAZINE OF THE BATON ROUGE BAR ASSOCIATION



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## On the Cover

The artwork on the cover of the November/December issue of TBRL magazine was created with free online software that uses artificial intelligence. It depicts Santa Claus using AI to give holiday gifts. As you can tell, AI is still imperfect, as you can see by Santa's hands. Compare this with a human-produced rendition of Santa Claus (on right), created by BRBA President-elect Luke Williamson. TBRL thanks our incoming president for undertaking the time and effort to remind us of the joy, innocence (and humanity) of the Christmas season.

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Painting by Luke Williamson

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See our website [www.BRBA.org](http://www.BRBA.org) or call the BRBA: 225-344-4803 to register.

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*The Baton Rouge Lawyer* supports participation of the membership in its production. We encourage the submission of articles and letters to the editor. Single-spaced, typed articles in Word should be fewer than 1,800 words including endnotes. Please email article submissions to: [pam@brba.org](mailto:pam@brba.org).

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# Letter from the President

# No Substitute for Human Intelligence

by Melanie Newkome Jones

I was told that the focus of this issue of our magazine was AI, or artificial intelligence. So, I thought I would use one of the AI programs to help write this letter. I boldly searched for an AI site that promised to write a letter for me. I entered the following: “I have enjoyed my year as president of this organization.”

Here is what I got:

*I hope this letter finds you well. As my term as President comes to an end, I wanted to reflect on the past year and express my gratitude for your support and trust. Serving as President has been an incredible honor and privilege. It has been a challenging and rewarding journey, and I am grateful for the opportunity to have made a positive impact on our nation.*

Wait. WHAT?? Delete.

I know that people are using this AI, but it did not work for my purposes. I decided I was better off with just the “intelligence” part of AI and should write this letter myself. (So, I can’t lie, I haven’t had AI, but I have had two intelligent friends who have edited or completely rewritten my letters, depending on whom you ask. Love you, Sarah and Aimee!)

AI may well be the wave of the future, but for me, there is no substitute for the real intelligence and the common sense of my friends and colleagues.

I am so proud of the functions that we have had this year – Bench Bar Conference, Ball Maul, Belly Up with the Bar – and those that are coming up in November, including the BRBA Veteran’s Day celebration and Gavel Gala.

Our luncheons with CLE speakers were inspirational. Our sections have rejuvenated. We have had great CLE luncheons from the Family Law Section, In-House Counsel Section, Workers’ Compensation Section and others. The Young Lawyers Section has had so many social and educational meetings, it is incredible. COVID-19 slowed everyone down, but we are back!



**Melanie Newkome Jones**

In 2019, the Baton Rouge Bar Association board had a retreat to analyze the organization’s goals and develop long-range plans. We were so invigorated. Then COVID-19 hit, and we lost that focus. We have revisited that, and the Board has recently looked at re-setting the goals of our organization. We want to meet our members where they are and make this organization the place where we provide service to our members in ways they need. We want to be relevant and vital to our members. It is a monumental task because we all have different needs and desires. Nevertheless, I am pleased with our progress.

Of our goals, the most important is to encourage diversity in our membership. We want our organization to reflect our community and the attorneys who represent them. We are forming a committee to focus on fostering diversity and to develop an initiative to achieve this in ways that serve our community, both professionally and personally. We want to be inclusive of all attorneys and to be the voice for all practice areas, genders, races, ethnicities and orientations.

I ask that you think about our profession and consider joining in this initiative to become the all-inclusive group that enables us to serve our clients as well as our fellow attorneys.

Well, this is my last letter. The AI site got one thing right: It HAS been “an incredible honor and privilege” to serve as the president of the Baton Rouge Bar Association. I have had the opportunity to represent the Bar in the installation of new judges and the naturalization of new United States citizens, to engage with youth interested in the practice of law, and to meet with the awesome members of this association. And now I get to join the best group of all: the Past Presidents of the Baton Rouge Bar Association. Thank you for this opportunity to serve.

# Contributors



**Magistrate Judge Richard L. Bourgeois** of the United States District Court, Middle District of Louisiana, is a contributing writer.



**Melanie Newkome Jones**, attorney at law, is the 2023 president of the Baton Rouge Bar Association.



**Max Marx**, an assistant general counsel at Turner Industries Group, LLP, is a contributing writer.



**Gail S. Stephenson**, the managing editor of *The Baton Rouge Lawyer*, is the director of legal analysis and writing and the Louisiana Outside Counsel A.A. Lenoir Endowed Professor at Southern University Law Center.



**John Fenner** is the editor-in-chief of *The Baton Rouge Lawyer* and is vice president and corporate general counsel/chief ethics & compliance officer at Turner Industries.



**Conner LeBlanc**, business development manager with General Informatics, is a member of the Publications Committee.



**Drew Patty**, a partner at Phelps Dunbar, LLP, is a contributing writer.



**Luke Williamson**, a partner at Williamson Campbell & Whittington, LLC, and the 2023 BRBA president-elect, is a contributing writer.

**CORRECTION:** *United States District Court Judge Brian A. Jackson* was misidentified as a magistrate judge in the Bar News section of the September/October 2023 issue of *The Baton Rouge Lawyer*. We regret the error.



Write an article for publication in *The Baton Rouge Lawyer*

Submit your article idea or completed article to:  
**pam@brba.org**

Or for more information, call Pamela Labbe at 225-214-5560.

September/October 2023

Published by the Baton Rouge Bar Association  
P. O. Box 2241, Baton Rouge, LA 70821  
Phone (225) 344-4803 • Fax (225) 344-4805  
www.brba.org

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R. Lynn S. Haynes, Pro Bono Coordinator ..... 214-5564  
Robin Kay, Pro Bono Coordinator ..... 214-5561  
Pamela Labbe, Communications Director ..... 214-5560  
Julie Ourso, Bookkeeper ..... 214-5572  
Susan Saye, Administrative Assistant ..... 344-4803

## PUBLICATIONS COMMITTEE

*Editor-in-Chief:* John Fenner ..... 439-6174  
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## Writers/Committee Members:

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# November Bar Luncheon

On June 29, 2023, the United States Supreme Court rejected race-conscious admissions in higher education in a case involving policies at Harvard University and the University of North Carolina at Chapel Hill. The decision overturned more than 40 years of legal precedent. The decision has far-reaching implications, some of which will manifest immediately. Others may take decades to fully understand.

Alena Allen, Dean of LSU Law Center and a graduate of Yale Law School, will present her analysis of the decision **Thursday, Nov. 30, 2023**, at the BRBA November Bar Luncheon, from 11:45 a.m. - 1:30 p.m. at the City Club of Baton Rouge.

Her presentation will review how the legal landscape has shifted with respect to admissions in higher education as well as discuss opportunities for innovation and implications for the future, particularly as it relates to legal education and the legal profession. Titled “The Impact of *SFFA v. UNC* and *SFFA v. Harvard College* on Legal Education,” Allen’s presentation will yield 1.0 hour of CLE credit.

Allen is a Louisiana native who previously served as deputy director for the Association of American Law Schools and as a professor of law at the University of Arkansas School of Law. She earned her bachelor’s degree *magna cum laude* from Loyola University New Orleans.



LSU Law Dean Alena Allen

**CANCELLATIONS MUST BE MADE BY NOON WEDNESDAY, NOV. 22, 2023. TO REGISTER, FAX THIS COMPLETED FORM TO 225-344-4805, EMAIL IT TO: SUSAN@BRBA.ORG OR REGISTER ONLINE AT WWW.BRBA.ORG. “NO SHOWS WILL BE INVOICED.”**

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Law Firm: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

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**LUNCHEON & CLE SEMINAR:** Yes, register me for the November Bar Luncheon (with a built-in 1.0 hour of CLE) at the City Club of Baton Rouge, 11:45 a.m. - 1:30 p.m. **Thursday, Nov. 30, 2023.** Cost is \$60 for BRBA members and non-members. Reserve your seat by contacting Susan Saye at the BRBA by noon, Wednesday, Nov. 22, 2023. Fax your completed form to 225-344-4805, email it to: susan@brba.org, or register online at www.BRBA.org. Cancellations must be made by noon Wednesday, Nov. 22, 2023. “No shows” will be invoiced.

**Baton Rouge Bar Association members can register online and pay by credit card by going to [www.BRBA.org](http://www.BRBA.org), selecting the EVENTS tab, then clicking on LIST and choosing the appropriate meeting listed.**

# Bar News



Photo courtesy of Mark Armstrong

Cornelius Troy Hall, BRBF Belly Up with the Bar Committee vice chair and YLS council member (center), stands between City Council member (District 7) Lamont Cole and EBR Parish Mayor-President Sharon Weston Broome with a Certificate of Recognition for the BRBF 2023 Belly Up with the Bar Event. Cole sponsored the proclamation and resolution and presented them to Hall at the October 2023 City Council Meeting. (Photo by Mark Armstrong.)

## Second Annual Gavel Gala Takes Place Thursday, Nov. 9, at City Club of Baton Rouge

Dust off your tux or take your ball gown to the drycleaners: The Gavel Gala, a BRBF-fundraiser event, will return in style Thursday, Nov. 9, 2023, to the City Club of Baton Rouge, and you want to be ready. It's time to reserve your table and to practice your live auction wave. Jay Dardenne Jr., commissioner, Louisiana Division of Administration, will serve as our auctioneer. For more information, contact Susan Saye at [susan@brba.org](mailto:susan@brba.org) or 225-344-4803.

## November Bar Luncheon Features LSU Law Dean

LSU Law Dean Alena Allen will speak Nov. 30, 2023, at the BRBA Bar Luncheon, which is also a CLE seminar. The event begins at 11:45 a.m. at the City Club of Baton Rouge. Contact Susan Saye at [susan@brba.org](mailto:susan@brba.org) or 225-344-4803 to register.

## Need CLE? No Problem. CLE by the Hour Offers Seven Days of CLE Seminar Programming

The BRBA will be offering seven days of continuing legal education programming this December at CLE by the Hour at EisnerAmper (formerly Postlethwaite & Netterville) at 8550 United Plaza Blvd., Ste. 1001, Baton Rouge, LA 70809. Contact Ann K. Gregorie for more information: [ann@brba.org](mailto:ann@brba.org) or 225-214-5563.

## Make a Child's Christmas Brighter by Adopting a Star through the BRBF Holiday Star Project

The BRBF Holiday Star Project is in full swing. This program provides gifts to children who might not otherwise receive any. Past participants should expect a friendly email or phone call soon. If you'd like to participate, please contact the coordinator of this year's Holiday Star Project—Reagan Haik—at 225-214-5556 or [reagan@brba.org](mailto:reagan@brba.org).

## Opening of Court, New Member & Memorial Ceremony to be held Jan. 31 at 19th JDC

Mark your calendar to save Wednesday, Jan. 31, 2024, to attend the BRBA Opening of Court, New Member & Memorial Ceremony. It will be held at the 19th Judicial District Courthouse on the 11th Floor ceremonial courtroom. Help us honor lawyers we have lost in the last year and recognize new members of the Bar.

## Join the Bench Bar Conference Committee!

Consider joining what some BRBA members consider to be the most fun committee—the Bench Bar Conference Committee. The 2024 event will be held at Perdido Beach Resort in Orange Beach, Alabama. Co-chairs of the committee are Anthony Gambino and Brad Cranmer. To join the Bench Bar Committee or to sponsor this great event, contact Ann K. Gregorie at [ann@brba.org](mailto:ann@brba.org) or 225-214-5563.

## Volunteer with a Youth Education Committee

BRBF Youth Education Coordinator Reagan Haik is seeking new committee members to assist with various youth education projects, including the annual Mock Trial competition, Teen Court and Law Day. To join any of these committees or to volunteer to assist with any of these on-going projects, please contact Reagan at [reagan@brba.org](mailto:reagan@brba.org) or 225-214-5556.

## The Young Lawyers Section Holiday Star Project

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Email: \_\_\_\_\_ # of stars you wish to sponsor: \_\_\_\_\_

*The Baton Rouge Bar Foundation will mail your star and child's wish list directly to you, along with instructions. Should you have any questions, call the BRBA at (225) 344-4803.*



Sign up to sponsor a child.  
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# Lessons in Leadership—Nov. 6

*Please join the BRBA as we honor all Veterans who are members of our association at 3:45 p.m. Monday, Nov. 6, 2023, at the River Center Branch Library.*

## Lessons in Leadership: The Code of Professionalism *How Military Lessons Apply to Life*

This one-hour Professionalism CLE seminar will include a panel discussion on leadership and the Rules of Professional Conduct. Zachary High School Army JROTC under the direction of Lt. Col. (Ret.) Darren T. Spears presents the colors. James R. "Sonny" Chastain will lead the National Anthem and the Pledge of Allegiance. A reception will follow the CLE.

### *Speakers:*

The Honorable Gail Grover, *Judge, East Baton Rouge Parish Juvenile Court*

Richard Lipsey, *Lipsey's*

Rear Admiral Robert Ryland Percy III, USN, Retired, *Percy, Skias & Schutte*

Jay Dardenne, *Commissioner, Louisiana Division of Administration* (Moderator)

**Location:** River Center Branch Library (4th Fl. large meeting room), 250 North Blvd., Baton Rouge

**Time:** Registration: 3:45 p.m.; CLE: 4 - 5 p.m.; Reception: 5 - 6 p.m.

**CANCELLATIONS MUST BE MADE BY NOON THURSDAY, NOV. 2, 2023. TO REGISTER, FAX THIS COMPLETED FORM TO 225-344-4805, EMAIL IT TO: SUSAN@BRBA.ORG OR REGISTER ONLINE AT WWW.BRBA.ORG. "NO SHOWS WILL BE INVOICED."**

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**VETERANS DAY CLE SEMINAR:** Yes, register me for the LESSONS IN LEADERSHIP CLE Seminar and Veterans Reception. Registration begins at 3:45 p.m. **Monday, Nov. 6, 2023.** FREE for BRBA members. Reserve your seat by contacting Susan Saye at the BRBA by noon, Thursday, Nov. 2. Fax your completed form to 225-344-4805, email it to: susan@brba.org, or register online at www.BRBA.org. Cancellations must be made by noon Thursday, Nov. 2. "No shows" will be invoiced.

**Baton Rouge Bar Association members can register online by going to [www.BRBA.org](http://www.BRBA.org), selecting the EVENTS tab, then clicking on LIST and choosing the appropriate meeting listed.**



The Hon. Louis R. Daniel (retired) issued the presentation of commission and administration of oath of office for Judge Louise Hines (right). Also photographed are the parents of Judge Hines, Dr. Bill and Bunny Hines.

### Judge Louise Hines' Investiture Held

Held Wednesday, Oct. 4, 2023, in the ceremonial courtroom on the 11th floor of the 19th Judicial District Courthouse was the Investiture of Judge Louise Hines at an en banc session of the court. Chief Judge Donald Johnson presided over the ceremony. EBR District Attorney Hillar A. Moore recited the Pledge of Allegiance, followed by BRBA President Melanie Newkome Jones' welcome and opening remarks. The Hon. Louis R. Daniel (retired/pro tem) issued the presentation of commission and administration of oath of office for Judge Hines. The Hon. Laura Prosser (retired), who is the aunt of Judge Hines, conducted the presentation of the robe. The ceremony was followed by a brief reception. Hines was elected to the Division F seat in May 2023, and she presides over Criminal Section 7.



Photographed are Judge Louise Hines and her aunt, Judge Laura Prosser (retired). Judge Prosser presented her niece with a judicial robe during her Oct. 4, 2023, investiture ceremony at the 19th Judicial District Courthouse.

### The Baton Rouge Lawyer Honored with National Award for Excellence

The Communications Section of the National Association of Bar Executives (NABE) honored TBRL with a Luminary Award at its annual conference in early October 2023. The award is for "Excellence in Regular Publications" in the small bar category. Congratulations to the BRBA Publications Committee—along with editors John Fenner and Gail S. Stepenson—on receiving this honor.



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## YLS Council Organized Law School Outreach Efforts in September

BRBA Young Lawyers Section Council members served as discussion panel participants at two law school outreach programs in September 2023.

**Southern University Law Center, Sept. 6** — The Young Lawyers Section Council held a Lunch & Learn discussion panel at the Southern University Law Center Wednesday, Sept. 6, 2023. Sixty SULC students registered for this event, which was open to SULC students and professors. Topics ranged from mentorship and professionalism to courtroom etiquette and avoiding burnout. Special thanks to SULC Chancellor John Pierre and SULC Associate Vice Chancellor for Equity, Inclusion and Title IX Kerii Landry-Thomas.

**LSU Law, Sept. 11** — BRBA Young Lawyers Section Council members Quinn Brown, Brad Cranmer, Cornelius Troy Hall and Kennedy Rose addressed LSU Law students Sept. 11, 2023, offering tips and tricks for practicing law in their clerkships and future practices. Special thanks to Melanie Anderson and the LSU Law Career Services team for working with the BRBA YLS.




YLS Council members (L to R) Quinn K. Brown, Kennedy Maya Rose, Kolby P. Marchand and Cornelius Troy Hall served as panelists Sept. 6 at SULC.



YLS Council members (L to R) Quinn K. Brown, Kennedy Maya Rose, Cornelius Troy Hall and Brad Cranmer served as panelists Sept. 11 at the LSU Law Center.

# AT AN IMPASSE?

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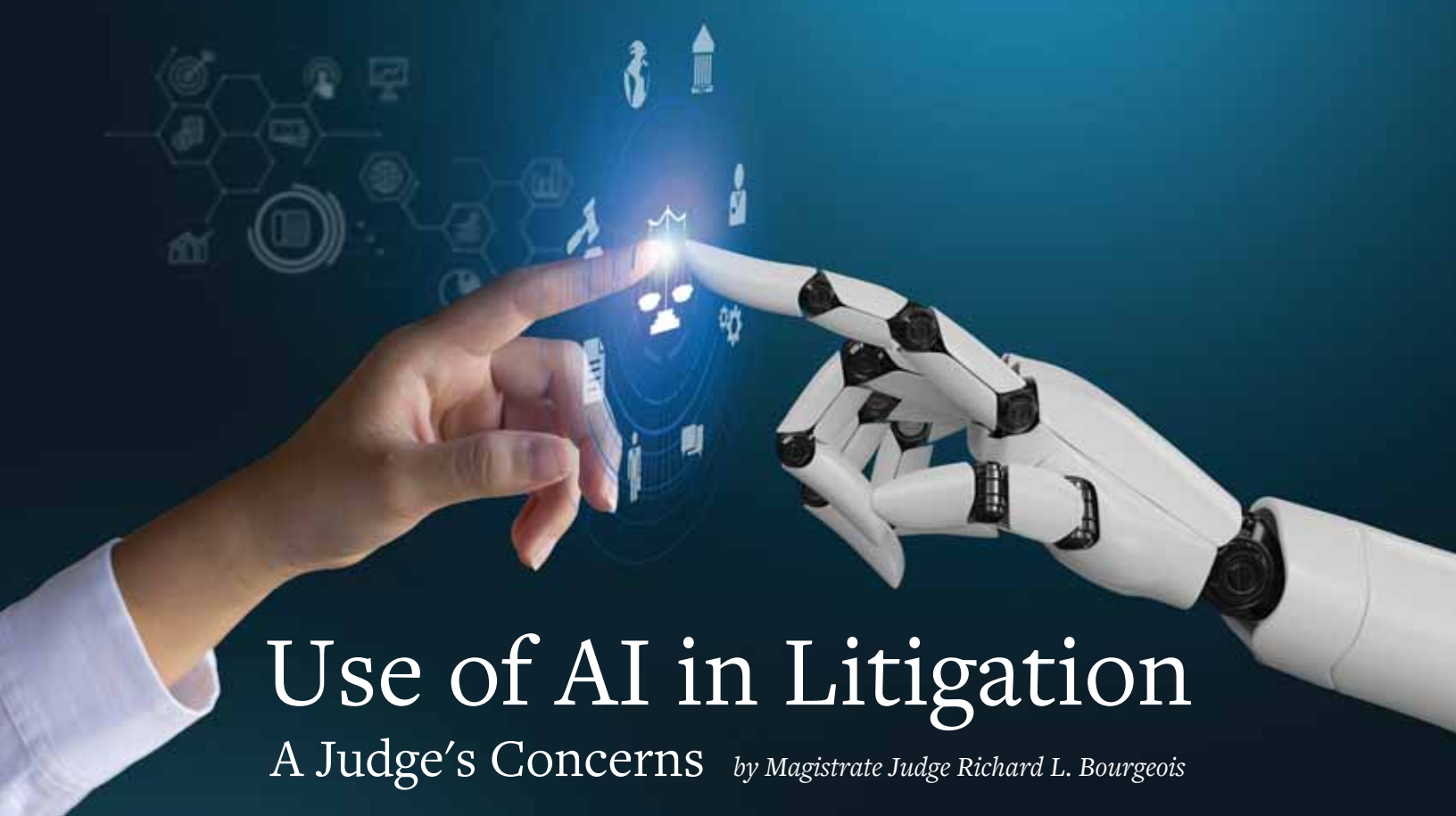
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# Use of AI in Litigation

A Judge's Concerns *by Magistrate Judge Richard L. Bourgeois*

*The adoption of Artificial Intelligence (AI) in the field of litigation has the potential to revolutionize how legal processes are conducted. However, this advancement comes with a set of challenges that cannot be overlooked. This article explores the three most significant dangers of integrating AI into litigation, shedding light on potential pitfalls that demand careful navigation.*

## 1. Erosion of Legal Expertise

*While AI can offer efficiency by automating routine tasks, it raises concerns about the erosion of legal expertise. Legal professionals possess the critical ability to analyze complex legal issues, consider ethical nuances, and employ empathy in their practice. Overreliance on AI may diminish the role of legal experts, potentially leading to a decline in the quality of legal representation. The nuanced and contextual nature of litigation requires human insight that AI cannot replicate, risking a loss of depth and comprehension in legal arguments.*

## 2. Unintended Bias and [Un]Fairness

*One of the primary concerns associated with AI use in litigation is the risk of introducing unintended bias into legal proceedings. AI systems are trained on large datasets that may harbor inherent societal biases. When these systems are employed to predict case outcomes, analyze evidence or provide legal recommendations, they can unknowingly perpetuate these biases, leading to unjust and inequitable results. Such bias could impact decision-making across various stages of litigation, from pretrial assessments to final judgments, compromising the fairness and integrity of the legal process.*

## 3. Data Privacy and Security

*AI's effectiveness in litigation relies on analyzing substantial amounts of data, including sensitive and confidential information. This raises concerns about data privacy and security. Inadequate protection of this information could lead to breaches, compromising the confidentiality of cases, exposing sensitive information and undermining trust in the legal system. The potential for cyberattacks and unauthorized access to AI systems adds an extra layer of vulnerability, necessitating robust security measures.*

## Conclusion

*AI's integration in litigation has the potential to enhance efficiency and streamline processes, but its dangers must not be overlooked. The risks of unintended bias, erosion of legal expertise and data privacy breaches demand careful consideration and proactive measures to mitigate their impact. Legal professionals, policymakers and technologists must work collaboratively to ensure that AI complements and augments the legal process while upholding the principles of fairness, expertise and security. By addressing these dangers thoughtfully, the legal community can harness AI's potential without compromising the fundamental tenets of justice.*

\* \* \*

The above article was “written” in less time than it took for you to read this sentence. I simply opened the ChatGPT app on my phone and instructed it to “write a short article about the three biggest dangers of AI use in litigation.” In about two seconds, this was the result. The organization, style and punctuation are better than many briefs filed in my court. While the apparent convenience

and efficiency are significant, its use in litigation can result in some unforeseen problems. Or at least that is what ChatGPT tells us. Let's see if we agree.

## Erosion of Legal Expertise

While AI shows immediate promise with basic arguments and persuasive writing, it has significant limitations when it comes to understanding case holdings and precedent, the nuances in various cases and how to apply those rulings to a unique fact pattern. In some circumstances, the results can be disastrous. In New York earlier this year, two attorneys were sanctioned for using ChatGPT to prepare a brief that they filed without substantive review. Unfortunately, the brief cited two cases that did not exist.<sup>1</sup> The district judge found subjective bad faith and fined the attorneys \$5,000.<sup>2</sup> Other courts have taken notice. In the U.S. District Court for the Northern District of Texas, Judge Starr has mandated that attorneys certify their filing was not drafted with the assistance of AI, or, if it was, to certify that it has been reviewed for accuracy by a human being.<sup>3</sup> Judge Starr recognizes the benefits of generative AI, but acknowledges its tendency to “hallucinate” and make up supporting cases and citations that appear plausible yet are incorrect factually, semantically or syntactically.<sup>4</sup>

Even without a required certification, use of AI without appropriate review could subject an attorney to sanctions. By signing a pleading, written motion or other paper pursuant to Rule 11, an attorney makes an affirmative certification that “to the best of the person’s knowledge, information and belief . . . the claims, defenses, and other legal contentions are warranted by existing law...”<sup>5</sup> Blindly turning in the work of a non-attorney (human or not) would fail to satisfy this standard.

Overreliance on generative AI will undoubtedly weaken the advocacy, legal reasoning and organizational skills of litigating attorneys. Advanced written advocacy skills often translate into more effective deposition questioning, better cross-examination of witnesses and more effective oral advocacy. While the efficiency and speed of written AI will certainly be more prevalent, attorneys and judges should be careful to ensure their other skills do not suffer.

What if AI can also replace the attorney in court? DoNotPay is an online legal service that claimed to have a robot lawyer powered by AI that runs on a smartphone, listens to court arguments and formulates responses for the defendant in real time through headphones.<sup>6</sup> Imagine a robot trial lawyer with proper, well-formed objections and instantaneous references to the appropriate rules of evidence. (Imagine a world where all judges can do the same!) Envision an efficient cross-examination created in real time with specific references to direct testimony. If this technology is available – are these bad things?

One concern is whether this technology is recording the legal proceeding and learning from that experience to refine its results in the future.

One concern is whether this technology is recording the legal proceeding and learning from that experience to refine its results in the future. In states requiring dual consent, this could run afoul of state criminal wiretap laws without all participants agreeing to be recorded. In addition, most courts, like mine, prohibit recording of proceedings.<sup>7</sup> That threat of prosecution and sanctions led DoNotPay to abandon its planned robot lawyer defense.<sup>8</sup> But, even if this technology advances so that recording does not occur, it remains to be seen whether the court can and will block its use in the future.

## Unintended Bias and Fairness

Every legal argument is based on certain reasonable assumptions and tailored to a particular audience. Your writing style, tone and advocacy will often reflect your personal life experiences and beliefs, refined by your time spent in the practice of law. Generative AI attempts to do the same, but its users will not know whether or how its programming may reveal biases or prejudices of its creators, either intentional or unintentional. As Judge Starr puts it:

While attorneys swear an oath to set aside their personal prejudices, biases, and beliefs to faithfully uphold the law and represent their clients, generative artificial intelligence is the product of programming devised by humans who did not have to swear such an oath. . . . [S]uch programs act according to computer code rather than conviction, based on programming rather than principle.<sup>9</sup>

If we do not know how AI decisions are created, then we may not realize that these biases are manifesting themselves in its output.

Companies are already using AI to make hiring and firing decisions, to interview candidates and to recruit new employees.<sup>10</sup> Such technology could be equally useful in selecting an ideal jury for your particular case. One perceived benefit is to prevent consideration of any protected characteristic. If the program does not know an individual’s race or gender, then how can it discriminate on that basis?

Amazon developed a program to review applicant resumes to search for talent.<sup>11</sup> It was trained based on patterns in resumes submitted over a 10-year period. Unfortunately, the program “taught” itself that male candidates were preferable due to the overwhelming number of men in the technology sector. The tool was eventually abandoned because even when edited to be neutral to gender-specific terms, “there was no way to guarantee that the machines would not devise other ways of sorting candidates that could prove discriminatory.”<sup>12</sup>

What if AI reviews juror questionnaires and tells you to select a particular juror, but the reasons are because any

individual with “fraternity” on his resumé and “sailing” as a hobby is ideal for your case? Is that a race- and gender-neutral basis sufficient to survive a *Batson* challenge? Suppose you represent a female employee who was passed over for a promotion and, as a defense, her employer says that AI made the decision without gender as a specific input, so any adverse employment action could not have been on the basis of her gender? Would that matter if it were a disparate-impact case? What type of discovery would you want? Could you get this from the non-party AI company? Will that company truly “know” how its AI made that decision?

### Data Privacy and Security

Another limitation of using AI for case strategy is that the end product is only as good as the case-specific data provided. This would include not only the allegations in the pleadings or other publicly available information, but also privileged communications with your client, attorney work product in the form of strategy and mental impressions, confidential business information and discovery that could be subject to a protective order.

The perils here are numerous. A typical protective order may allow for limited dissemination of your opponent’s confidential business information to litigation support personnel as long as there are assurances that confidentiality will be maintained and any such documents are returned or destroyed at a specified time. However, this may be impossible with current AI platforms. Additionally, you will be unlikely to obtain approval from opposing counsel or the court to allow for such disclosure. This is especially so under circumstances where the data protection and safeguards of these non-party programs are unknown, leaving your information subject to hacking or dissemination by bad actors.

Furthermore, you may also need informed consent from your client before revealing any such privileged information.<sup>13</sup> Even if obtained, providing privileged communications or work product to a non-party, with no intent or ability to prevent its further use or continued retention, may raise questions of waiver of any such privilege.

In summary, AI platforms in their current state have many potential uses in the law. They provide speed and efficiency once considered unimaginable. Their ability to draft form documents, discovery requests, correspondence and drafts of arguments will save significant amounts of time and expense. This technology is available and in use today. Your clients are taking advantage of these efficiencies and will demand the same from their attorneys. On the other hand, legal strategy, final decision, and complex research and writing require a level of nuance, expertise and instinct that cannot yet be replicated by AI. But what do I know? I’m only human.

<sup>1</sup> Members of our bar have shared similar results with me (thankfully they knew better than to file anything without review).

<sup>2</sup> Josh Russell, *Sanctions Ordered for Lawyers Who Relied on ChatGPT Artificial Intelligence to Prepare Court Brief*, COURTHOUSE NEWS SERVICE (Aug. 16, 2023), <https://www.courthousenews.com/sanctions-ordered-for-lawyers-who-relied-on-chatgpt-artificial-intelligence-to-prepare-court-brief/>.

<sup>3</sup> Judge Brantly Starr, *Mandatory Certification Regarding Generative Artificial Intelligence*, <https://www.txnd.uscourts.gov/judge/judge-brantley-starr>.

<sup>4</sup> Alexis Keenan, *Does AI Belong in the Courtroom? A Texas Judge Doesn’t Think So*, YAHOO! FINANCE (June 4, 2023), <https://finance.yahoo.com/news/does-ai-belong-in-the-courtroom-a-texas-judge-doesnt-think-so-134225614.html?guccounter=1>.

<sup>5</sup> FED. R. CIV. P. 11(b)(2).

<sup>6</sup> Megan Cerullo, *AI-powered “Robot” Lawyers Won’t Argue in Court After Jail Threats*, CBSNEWS MONEYWATCH (Jan. 26, 2023), <https://www.cbsnews.com/news/robot-lawyer-wont-argue-court-jail-threats-do-not-pay/>.

<sup>7</sup> MDLA Local Rule 83(c)(10) bans the use of audio, video and photographic equipment within the courthouse or courtrooms.

<sup>8</sup> Cerullo, *supra* note 6.

<sup>9</sup> Starr, *supra* note 3.

<sup>10</sup> Tim Madden, *The Age of AI: Why AI May Determine How You Find Your Next Job*, FORBES (June 6, 2023), <https://www.forbes.com/sites/forbescoachescouncil/2023/06/06/the-age-of-ai-why-ai-may-determine-how-you-find-your-next-job/?sh=601b20674fcf>.

<sup>11</sup> Jeffery Dastin, *Amazon Scraps Secret AI Recruiting Tool That Showed Bias Against Women*, REUTERS (Oct. 10, 2018), <https://www.reuters.com/article/us-amazon-com-jobs-automation-insight-idUSKCN1MK08G>.

<sup>12</sup> *Id.*

<sup>13</sup> Rule 1.6 of the Louisiana Rules of Professional Conduct.

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# An Assessment of the Artificial Intelligence Landscape for Lawyers

by Drew Patty & Max Marx

*Any AI system that can be used for good can also be used for evil.*

*The more complex an AI system is, the more likely it is to fail.*

*AI systems will always do the unexpected, especially when you least expect it.*

*AI systems will always find a way to break the rules.*

*AI systems will always learn from their mistakes, but they will not always learn the right lessons.*

— *Bard, a ChatBot*<sup>1</sup>

Our quest in this article is to review key concepts foundational to an awareness of artificial intelligence (AI) as it relates to the legal field, to consider potential challenges posed to lawyers and their clients by recent developments in AI and to provide suggestions for spotting and addressing legal and ethical issues raised by those challenges. We hope you find it a useful overview of the technology and the impact it will have on all of us and our clients.

## I. A Perspective on How We Got Here with AI

AI dates back at least to 1956, when a small group of ivy league and business scientists gathered at Dartmouth College to brainstorm a new concept coined “Artificial Intelligence.”<sup>2</sup> Since then, other important technologies have developed, sometimes concurrently, allowing AI to become less of a vision, and more of a reality. For example, in 1956 the internet and the global electronic data collection it represents did not exist.<sup>3</sup> At the same time, the first transistors had just been invented (and shortly thereafter, integrated circuits). The microprocessor, foundational to what we all now rely on, was not invented until 1967, although the term “microprocessor” was coined in 1968.<sup>4</sup> Since their invention, modern computer processors have evolved to become more and more powerful, while digital-storage capacities have grown exponentially.<sup>5</sup> Neural-network software architecture, language-

processing models and the mathematics of statistics and probabilities that are fundamental to such software programming have continued to evolve. Through the work of generations of software programmers taking advantage of these developments, software systems leveraging more powerful computer processors, and analyses of massive, publicly and freely (if not legally) available data stores, automated machine learning has evolved exponentially over the past 10 to 15 years.

Moving forward to 2023, AI has become a topic of extreme interest in the private and public sectors, thanks largely to publicity surrounding new generative-AI product launches, including ChatGPT from a company named OpenAI, seeking to provide users initially with a free, first-hand experience of the capabilities (and incidental fallibilities) these new AI systems possess. We can attribute recent, converging developments in so-called large-language models, accompanying data analytics and generative AI for giving us the developments that have most recently triggered an uptick in AI-related media coverage. Companies, governments and entrepreneurs are now scrambling to determine how to leverage, and how to cope with, the possibilities and threats presented by today’s metamorphosing AI systems.

The future of AI is likely to be even more challenging and intriguing. Lawyers and clients should brace themselves for the possibility that AI reaches a singularity

and exhibits sentience. That will be the time when Asimov’s Laws meet Moore’s Law and Murphy’s Law.<sup>6</sup>

In their current embodiments, most AI systems still rely upon three main components:

**Data:** one or more data sources for analysis and training.

**The AI Model:** one or more software logic/programs/algorithms that, when executed by computers, process and train with the data and generate output when prompted by a user.

**User Interface:** a display or other visual or aural interactive device that is programmed with software that receives prompts or queries from a user and generates for display or transmission answers or output to that user.

In the case of OpenAI’s ChatGPT, as well as certain other AI systems from Google, Microsoft and others, the user interface is a “chatbot.” Generally speaking, a chatbot is a software component or module that generates a text box for receiving questions or prompts from the user and visually displays responsive output to the user. Chatbots for AI systems are being employed to interface with millions of users while leveraging language and other data-processing capabilities to decipher text inputs in the form of prompts from a user and to simulate human communication by delivering prompt-responsive outputs using human-like expressions, usually in text form.



The data used to “train” the AI model can come from any source, but typically is the open internet for many of the so-called large language model AI systems, e.g., ChatGPT. Unfortunately, this means that both public and private or proprietary information is used for training the AI models, raising concerns that the models are being trained using data pilfered or scraped from the owners of such data without their permission or consent, and that such unauthorized ingestion of data may be in violation of the rights of many thousands, if not millions, of owners of rights in such data. The data used in large-language model AI systems are also limited to a certain time. For example, ChaptGPT can use information only up to 2021. Contrary to popular belief, AI models cannot currently use the internet in real time. But that will change in more advanced AI progeny. Some AI chatbots have now taken the approach of being offensive, rude and snide to be more human-like.<sup>7</sup>

Moreover, the AI models typically are contained in a “black box,” in that the developers of these AI systems often treat their algorithms and probability engines as trade secret information that should be shielded from disclosure to users. One glaring exception to this state of affairs is certain AI systems produced by Meta, which recently released its AI algorithms to certain parts of the public and pledged to make them available for use under an open-source license.<sup>8</sup>

Each of the three common AI system components above has drastically improved during the explosive growth of the Internet and evolution of computer systems. The development of “machine learning” has also established a software architecture enabling these systems to use calculated probabilities, large data collections and automated feedback to “learn” and “teach” themselves, sometimes without the aid of any human input. The output and any user feedback regarding the same are also “data” that can be recycled or accumulated with the data stores used to train the AI system, making it possible for the AI model to learn from user feedback, and potentially to learn from the output of other independently executing AI systems. This has caused some to believe that AI is or can become a sentient being.<sup>9</sup> Yet, at the same time, there are very public instances of the newest AI

systems generating erroneous and even nonsensical outputs, sometimes referred to as hallucinations.<sup>10</sup>

Given that Rule 1.1 of the Louisiana Rules of Professional Conduct requires a lawyer to be competent, to the extent AI could impact the lawyer’s work product or the interests of a client, the applicable rules of ethics likely require some level of awareness of AI technology and its potential impacts on the interests of clients.<sup>11</sup> What are lawyers and their clients to make of these developments that present us with yet another disruptive technology, perhaps one of the greatest to-date? Below we will address a few (but only a few) of the daunting questions posed to the legal and business communities by the current state of AI, doing so with humility, knowing that today’s guardrails will undoubtedly have to evolve along with the AI technology’s influence on our clients and practices.<sup>12</sup>

## II. Challenges with Integrating AI into the Practice of Law

The American Bar Association, through the work of its Artificial Intelligence Task Force, has recognized that guardrails are needed for the development and deployment of AI systems, resulting in the ABA House of Delegates’ adoption of Resolution 604 on February 6, 2023. In it, the ABA urges organizations that “design, develop, deploy and use AI” systems, as well as governmental agencies that may regulate them, to follow these core guidelines:

- a) Developers, integrators, suppliers, and operators (“Developers”) of AI systems and capabilities should ensure that their products, services, systems, and capabilities are **subject to human authority, oversight, and control**;
- b) Responsible individuals and organizations should be **accountable for the consequences** caused by their use of AI products, services, systems, and capabilities, including any legally cognizable injury or harm caused by their actions or use of AI systems or capabilities, **unless they have taken reasonable measures to mitigate** against that harm or injury; and



c) Developers should **ensure the transparency and traceability** of their AI products, services, systems, and capabilities, **while protecting associated intellectual property, by documenting key decisions made with regard to the design and risk of the data sets, procedures, and outcomes** underlying their AI products, services, systems and capabilities.

Clearly, there are those in the legal community who are concerned that unbridled development of AI systems could bring significant challenges and harm to persons who are the subject of, or rely on, AI system outputs and resulting outcomes. Various judges are certainly among those concerned. Some federal courts recently have implemented rule changes requiring a lawyer's signature on a pleading to reflect a certification that, if AI has been used to support pleadings or a memorandum to the court, the lawyer has reviewed, verified and adopted the submitted pleading or memorandum as reflecting legitimate caselaw.<sup>13</sup> It behooves all of us in the legal community to come to grips with this reality, so that we evaluate these systems and their potential impact on our practices and our clients in advance. Meanwhile, our clients facing AI-related risks are exploring AI-risk-management methods and AI-insurance products.<sup>14</sup>

#### A. Understanding the Technology

Humans in a position of authority to oversee and control AI must be able to evaluate the risks of AI use. Evaluating risk requires at least a basic foundational understanding of the data these AI systems use, how the AI systems work to generate output, and ways to control the potential risks presented in the construction, operation and outputs of these AI systems. One can be lulled into complacency and a sense of false comfort by those who might downplay how different the newer AI systems are when compared to conventional search engines and other basic internet technologies with which lawyers and their clients have grown familiar over the past two decades. The primary difference in the newer

AI systems is in the *generative* and *transformer* capabilities these systems now possess. The anthropomorphic nature of the interactive dialogue with AI systems (ChatBots) can lead lawyers and clients alike to trust AI systems at their peril.

Generative AI is AI that can learn from existing artifacts (training data) to generate commercial scales of new, realistic artifacts that may reflect the characteristics of the training data but do not merely repeat that data. It can produce a variety of novel content, such as images, video, music, speech, text and software code. Generative AI systems that incorporate so-called transformer models can also track relationships between different items in sequential data, such as text, images and video, to build context and help the system derive meaning from that data. This capability in AI-speak is referred to as "attention" or "self-attention."<sup>15</sup> Newer generative-AI systems further include the ability to discriminate between fake data and real or realistic data, through use of a classification engine (the discriminator), the combination being referred to as a generative adversarial network (GAN). Such recently developed features of generative AI improve the quality and accuracy of the generated outputs, presenting exciting new possibilities while also presenting some material risks.

#### B. Knowing and Adjusting the Terms and Conditions of Data and AI Use

In many cases, systems and services that employ an AI model will be sourced from third-party vendors of the models, unless the models are developed in-house (less likely) or through a hybrid arrangement where the user's company provides its own training data to a licensed AI model-application programming interface (API). This hybrid arrangement must further configure a system that depends on only internal resources and interacts only with internal user prompts, for greater security and greater control of the input to and output from the licensed AI models. Under any of these scenarios, the terms and conditions of use of the licensed AI models are established

by the provider of the AI models and must be carefully scrutinized to determine what the customer's rights and responsibilities will be, and what responsibilities, if any, the provider of the AI models will assume.

#### C. Lack of Transparency

Most vendors of AI systems view the algorithms, system logic and architecture that are the building blocks of their models as proprietary, trade-secret information. In most cases, transparency concerning these building blocks is intentionally lacking, making it difficult for users to really understand how the offered AI model or system works, what data the AI models use for training and how the models process that data and the prompts received from users.

As noted above, some are seeking to address this problem by laying bare their AI systems by offering to make them available as open-source software.<sup>16</sup> Whether others will be willing or technically able to become AI savants enough to jump on that bandwagon remains to be seen. Regardless, those seeking to employ a third-party AI engine will need to know the source of the engine on which they rely, determine the terms and conditions of the license granting permission to use and further evaluate the engine's inner workings in order to understand the data on which it relies, what it does with such data and how it generates output. Without access to and understanding of such information, it may be impossible to explain to others how the AI system works to generate the relied-on output.

### III. Issue-spotting for Clients Exposed to or Leveraging AI

#### A. Governance

In much the same way that IT security policies have become a mainstay in modern businesses, companies also need to have a policy on their own use and development of any system that could be classified as AI. Various AI code-of-conduct policies have been or are being developed based on specific organizational needs and culture. Other AI-governance tools are evolving for those who need something more than mere policy pronouncements.

For example, in a manner reminiscent of the cybersecurity-governance tools that have become mainstream over the past 10 years, on January 26, 2023, the National Institute of Standards and Technology launched an AI Risk Management Framework that provides an evolving framework establishing voluntary AI-governance systems that can be applied in a variety of businesses and sectors.<sup>17</sup> This framework incorporates, among other things, recommendations and procedures for developing AI impact assessments, regular monitoring of AI-derived outcomes, AI audit trails and other protocols intended to ensure transparency, reliability, regulatory compliance and accountability through self-assessment and correction. In many circumstances, active board-level participation and oversight should be expected.

#### *B. Contract and Vendor Management*

AI-powered contract and vendor-management systems leverage the power of AI and machine learning to streamline the contract-management process. These AI systems can automate repetitive tasks, reduce errors and provide insights that can help businesses make informed decisions. One of the biggest challenges with AI is that lawyers and their clients have little or no understanding of the data that sits behind it, how AI is trained or how it behaves in certain situations. This is where the danger lurks—the trust, uncertainty and inability to validate AI-generated responses. Those who rely on third-party vendors for essential products and services will need to know if those products or services are generated using AI, and if so, how the AI is trained and what data it ingests, how the outcomes are generated through the employed AI and what commitments the vendor will make to assist the customer in making necessary changes to the way the AI operates to ensure equitable outcomes, transparency and accountability.

Additionally, contracts, clickwrap agreements, website and mobile application terms of use and the like should be reviewed with AI and data scraping in mind, to assess whether such agreements should specifically

**We suspect thorny issues around co-inventorship and co-authorship will remain for some time to come, until there are definitive court rulings or legislative developments.**

include prohibitions on certain data-scraping or data-mining activities on an organization's public internet website resources, especially if there could be any personal or proprietary information contained in or inferred from compilations of such data.

#### *C. Human Resource Management Practices*

In the human resources realm, AI has been used to conduct phone interviews, screen candidates and, without appropriately correcting for biases, could be subject to preferring certain voice inflections and response times associated with gender, race, national origin, age or disability. AI also can pose a risk to employee privacy if not implemented correctly.

In that regard, the Equal Employment Opportunity Commission is concerned. It released a technical assistance document, "Assessing Adverse Impact in Software, Algorithms, and Artificial Intelligence Used in Employment Selection Procedures Under Title VII of the Civil Rights Act of 1964," that is focused on preventing discrimination against job seekers and workers. The document explains the application of key established aspects of Title VII of the Civil Rights Act to an employer's use of automated systems, including those that incorporate AI.<sup>18</sup> The EEOC has already addressed one AI case involving employment discrimination.<sup>19</sup> Clearly, the risks associated with deployment of AI systems in the human-resources context carries with it risks to be

evaluated and mitigated.

#### *D. New Product Development*

Does your firm, company or client intend to develop a new product or service that may rely on a third party's AI application to process client or company data? Does your firm, company or client use inputs from a third party AI to generate outputs that are then delivered to others or relied on to create a deliverable work product? If so, to what extent does the use of such AI systems remove the human element from the authorship or inventorship determination? Will the "inventor" or "author" be the AI system? And if so, can the output be protected under current intellectual property laws? The Copyright Office and the U.S. Patent and Trademark Office and the courts currently appear unified in the assessment that such output to the extent solely generated by AI systems would not be eligible for patent or copyright protection.<sup>20</sup> We suspect thorny issues around co-inventorship and co-authorship will remain for some time to come, until there are definitive court rulings or legislative developments.

#### *E. IP Infringement Risks*

In the context of infringement of third-party intellectual property rights, the use of AI may generate output from training data that comprised the works of authorship of others, raising the question of whether the output constitutes a "copy" or "derivative work" of the original works so as to constitute a copyright infringement. As is the case with use of any innovative technology, it will be important to determine whether your organization's or your client's use of AI involves using, processing or distributing any of the content, personally identifying information, images or likenesses of others, potentially without the express consent of the involved data subjects. It will also be important to determine if the systems used or the products produced could involve innovations that are the subject of patent or other forms of intellectual-property protection. And it would be wise to assess whether vendors of AI systems agree to indemnify you or your clients in the event use of the vendor AI outputs or AI

systems is accused of having infringed upon another's intellectual property rights.

#### F. Data Privacy

Do you or your client plan to use an AI system that will collect, use, store or process any personal data of an identifiable individual or group of identifiable individuals? It is likely that such collection, use, storage or processing will be regulated in one way or another, by a privacy law now on the books or enacted in the near future. At least 12 states now have passed comprehensive privacy legislation to regulate processing of such personal information in various circumstances.<sup>21</sup> Several foreign countries and the EU now have comprehensive privacy laws that regulate how you process such information of persons located in those jurisdictions.

#### G. Legislation and Laws Dealing with AI

Not surprisingly, AI has become an emerging issue in law and courts. Many states have launched laws seeking to regulate the use of AI.<sup>22</sup> The European Union has preliminarily approved draft legislation that would purport to regulate AI, with extraterritorial effect. These AI-related laws require study and comprehension in dealing with day-to-day legal practice as well.

The courts are now confronting questions about how AI may influence traditional notions of authorship, inventorship and ownership. It is not unreasonable to expect that this is just

the tip of a forthcoming legal iceberg, given the plethora of anticipated future applications and uses, for good and for bad, of AI.

#### IV. AI's Impact on Legal Ethics and Professionalism —*Cave intelligenti artificialis*

The sordid example of the two New York attorneys who relied on ChatGPT in a legal proceeding is the first but not the only cautionary tale regarding AI and professional ethics.<sup>23</sup> Attorneys and those in the legal profession will not be allowed ignorance of AI as a valid defense. The benefits of AI in one's practice can never override the ordinary aspects of diligence, professionalism and responsibility that go with the legal profession. Rule 1.1 of the Rules of Professional Conduct is likely to require a baseline level of competence regarding the use of AI. This is true for AI just as it is true for the internet, email and other forms of information technology prevalent in law and business today.

Those who believe AI is a matter of "yes or no" choice should think again. The AI cat is already out of the bag.<sup>24</sup> Most attorneys and legal professionals will never have mastery over AI or completely understand it, much less control it. We can only choose how to use, react to and address it. That



requires generating values, procedures and practice that will be purposed to deal with AI issues, perquisites and pitfalls.

Attorneys and law firms now have no choice but to adopt a meaningful AI code of ethics or values to deal with the AI juggernaut.<sup>25</sup> We also should realize that such AI code of ethics will become obsolete very quickly without constant dialogue and discussion.

One thing about AI is clear. Whether AI is or can become sentient, AI can ensnare attorneys and those in the legal profession. Some may be tempted to anthropomorphize AI and get a sense of false comfort that will become our undoing. We are already faced with the integration and interface of humans and AI. We have, perhaps, already become *Artificialis intelligentia utens homines*. If so, we need to find out what that means and address it proactively and cautiously.

## A Lawyer's Abbreviated Glossary of AI Lingo

**Artificial Intelligence** — An engineered machine system, typically software executing on one or more computer processors, for processing and analyzing data and generating outputs in a manner that seeks to emulate human intelligence.

**Chatbot** — AI designed to provide a user interface with an artificial intelligence application in which the interface output simulates human-like conversation or interaction leveraging natural language processing techniques to comprehend and respond to human input via text or other input means.

**Deep Learning** — A field within Machine Learning using artificial neural networks to perform multiple phases of processing to extract progressively more sophisticated attributes from data.

**Generative AI** — A type of AI that trains machine learning models on large data collections to generate new outputs or

content, e.g., text, code, images, videos, music and the like, typically based on user input or prompts.

**Generative Pre-trained Transformer (GPT)** — A kind of generative large language model pre-trained with a massive amount of diverse text data and discriminatively fine-tuned to focus on specific tasks.

**Hallucination** — In the context of AI, when generative AI creates outputs that contradict the base data or convey factually incorrect information as if it were fact.

**Inference** — A machine learning process carried out by a trained AI model, for making predictions or decisions based on input.

**Ingestion** — In the context of AI, the reception and processing of data by a computer system, typically a computer system operating an artificial intelligence application or program.

<sup>1</sup> See Angelo Ovidi, *Rewriting Asimov (and Murphy) Laws for AI*, LINKEDIN (May 5, 2023), <https://www.linkedin.com/pulse/rewriting-asimov-murphy-laws-ai-angelo-ovidi-mbcs>.

<sup>2</sup> DARTMOUTH, *Artificial Intelligence Coined at Dartmouth*, <https://home.dartmouth.edu/about/artificial-intelligence-ai-coined-dartmouth> (last visited Sept. 14, 2023).

<sup>3</sup> The Internet was born out of a series of inventions relating to Transmission Control Protocol/Internet Protocol, the Domain Naming System and the World Wide Web, between 1974 and 1989. See Science + Media Museum, *A Short History of the Internet* (Dec. 3, 2020), <https://www.scienceandmediamuseum.org.uk/objects-and-stories/short-history-internet>.

<sup>4</sup> Ken Shirrif, *The Surprising Story of the Micro-processor*, IEEE SPECTRUM (Aug. 30, 2016), <https://spectrum.ieee.org/the-surprising-story-of-the-first-microprocessors>.

<sup>5</sup> Mwalimu Phiri, *Exponential Growth of Data*, MEDIUM (Nov. 19, 2022), <https://medium.com/@mwaliph/exponential-growth-of-data-2f53df89124>.

<sup>6</sup> See Ovidi, *supra* note 3.

<sup>7</sup> Cade Metz, *See Why Chatbots Sometimes Act Weird and Spout Nonsense*, NY TIMES (Feb. 16, 2023), <https://www.nytimes.com/2023/02/16/technology/chatbots-explained.html>; Cade Metz, *Why Do A.I. Chatbots Tell Lies and Act Weird? Look in the Mirror*, NY TIMES (Feb. 26, 2023), <https://www.nytimes.com/2023/02/26/technology/ai-chatbot-information-truth.html>.

<sup>8</sup> See Cade Metz & Mike Isaach, *In Battle Over A.I., Meta Decides to Give Away Its Crown Jewels*, NY TIMES (May 18, 2023), <https://www.nytimes.com/2023/05/18/technology/ai-meta-open-source.html>.

<sup>9</sup> Leonardo De Cosmo, *Google Engineer Claims AI Chatbot Is Sentient: Why That Matters*, SCI. AM. (July 12, 2022), <https://www.scientificamerican.com/article/google-engineer-claims-ai-chatbot-is-sentient-why-that-matters/>.

<sup>10</sup> Catherine Thorbecke, *AI Tools Make Things Up a Lot, and That's a Huge Problem*, CNN BUS. (Aug. 29, 2023), <https://www.cnn.com/2023/08/29/tech/ai-chatbot-hallucinations>.

<sup>11</sup> See La. State Bar Ass'n, *Public Opinion 19-RPCO-0211* (Feb. 6, 2019 (Lawyer's Use of Technology)).

<sup>12</sup> See Vipin Bharathan, *Guardrails For AI, What Is Possible Today*, FORBES (June 25, 2023), <https://www.forbes.com/sites/vipinbharathan/2023/06/25/guardrails-for-ai-what-is-possible-today/?sh=62f29e1e3a0d>.

<sup>13</sup> See, e.g., Judge Brantley Starr, *Mandatory Certification Regarding Generative Artificial Intelligence*, <https://www.txnd.uscourts.gov/judge/judge-brantley-starr> (last visited Sept. 19, 2023).

<sup>14</sup> See, e.g., MPH Grp., *AI Insurance Solutions*, [https://themphgroup.com/ai-insurance/?gclid=CjoKCQJw9MCnBhCYARIsAB1WQVXbKSitizou8ZeDoU5qmYvThxfrmHLcRyuno5niIMsKJZcQNP1L6saAovjEALw\\_wcB](https://themphgroup.com/ai-insurance/?gclid=CjoKCQJw9MCnBhCYARIsAB1WQVXbKSitizou8ZeDoU5qmYvThxfrmHLcRyuno5niIMsKJZcQNP1L6saAovjEALw_wcB). (“AI Insurance can provide coverage for a wide range of scenarios, including: 1. Liability Risks: As AI technologies are adopted across various industries, they may inadvertently cause harm, errors, or accidents. AI Insurance covers liability arising from AI system malfunctions or failures, protecting you against potential legal claims. 2. Cybersecurity Risks: AI applications often handle vast amounts of data, making them targets for cyberattacks. AI Insurance covers losses related to data breaches, hacks, and cyber threats that can compromise the integrity and confidentiality of your AI systems. 3. Intellectual Property Risks: In the competitive field of AI development, protecting your intellectual property is crucial. AI Insurance covers potential legal expenses and damages related to patent infringement, copyright violations, and other IP disputes. 4. Business Interruption Risks: AI systems are critical to the operations of many organizations. AI Insurance provides coverage for losses from AI-related business interruptions, ensuring that your organization can continue to function even in the face of disruptions. 5. Ethical and Regulatory Risks: The use of AI technologies may raise ethical and regulatory concerns, especially in areas such as data privacy, bias, and transparency. AI Insurance covers regulatory fines, penalties, and legal expenses arising from non-compliance with laws and regulations governing AI technologies.”)

<sup>15</sup> Rick Merritt, *What Is a Transformer Model?*, NVIDIA (Mar. 22, 2022), <https://blogs.nvidia.com/blog/2022/03/25/what-is-a-transformer-model/>.

<sup>16</sup> See *supra*, note 10.

<sup>17</sup> NIST, *AI Risk Management Framework*, <https://www.nist.gov/itl/ai-risk-management-framework> (last visited Sept. 19, 2023).

<sup>18</sup> See U.S. EEOC, *EEOC Releases New Resource on Artificial Intelligence and Title VII Outlines Considerations for Incorporating Automated Systems into Employment Decisions* (May 18, 2023), <https://www.eeoc.gov/newsroom/eeoc-releases-new-resource-artificial-intelligence-and-title-vi>.

<sup>19</sup> See Raeann Burgo & Wendy Hughes, *EEOC Settles First-Ever AI Discrimination Lawsuit*, SHRM (Aug. 17, 2023), <https://www.shrm.org/resourcesandtools/legal-and-compliance/employment-law/pages/eeoc-settles-ai-discrimination-lawsuit.aspx#:~:text=The%20Equal%20Employment%20Opportunity%20Commission's,55%20and%20men%20over%2060>.

<sup>20</sup> *Thaler v. Perlmutter*, No. 1:22-cv-01564 (D.D.C.) (8/18/23) (holding AI-created artwork ineligible for lacking human author); *Thaler v. Vidal*, 43 F.4th 1207 (Fed. Cir. 2022), *cert denied*, 143 S.Ct. 1783 (2023) (affirming decision that inventor must be a human in order to receive patent protection for invention).

<sup>21</sup> Andrew Folks., *US State Privacy Legislation Tracker*, (Sept. 15, 2023), <https://iapp.org/resources/article/us-state-privacy-legislation-tracker/>.

<sup>22</sup> See Bryan Cave Leighton Paisner, *US State-by-State AI Legislation Snapshot*, <https://www.bclplaw.com/en-US/events-insights-news/2023-state-by-state-artificial-intelligence-legislation-snapshot.html> (last visited Aug. 31, 2023).

<sup>23</sup> See Sara Merken, *New York Lawyers Sanctioned for Using Fake ChatGPT Cases in Legal Brief*, REUTERS (June 22, 2023 3:28 AM), <https://www.reuters.com/legal/new-york-lawyers-sanctioned-using-fake-chatgpt-cases-legal-brief-2023-06-22/>.

<sup>24</sup> See Mina Kim & Sarah Mohamad, *The Cat Is Out of the Bag: As DALL-E Becomes Public, the Possibilities—and Pitfalls—of AI Imagery*, KQED (Sept 26, 2022), <https://www.kqed.org/news/11926565/the-cat-is-out-of-the-bag-the-possibilities-and-pitfalls-of-ai-imagery> (last accessed Aug. 31, 2023).

<sup>25</sup> George Lawton & Ivy Wigmore, *AI Ethics (AI Code of Ethics)*, WHATILS.COM (Jan. 2023), <https://www.techtarget.com/whatis/definition/AI-code-of-ethics>.

**Large Language Model (LLM)** — AI that uses deep learning techniques to make a model trained on massive amounts of text to discern patterns and relationships in text characters, words and phrases. The two types are generative LLMs (that make text predictions based on probabilities of word sequences discerned from the training) and discriminative LLMs (that make classification predictions based on probabilities of data features and weights discerned from the training).

**Machine Learning** — A type of AI model that represents underlying patterns or relationships within a training data collection once an algorithm is applied to that collection, so that it can be used to make predictions from, and perform tasks on, new data.

**Natural Language Processing** — A type of processing of language or speech that allows a computer to interpret and

manipulate language to understand its meaning, assess sentiment and evaluate its importance.

**Neural Networks** — Software models employed in machine learning to mimic how neurons interact with various processing layers and at least one hidden layer, to thereby enable modeling of complex associations or patterns in data.

**Scraping** — The act of finding and collecting data for ingestion from publicly accessible internet web pages and other data sources connected to a computer network such as the internet.

**Transformer** — A type of neural network that learns context and meaning by following relationships in sequential data (e.g., words in sentences). These neural networks apply evolving sets of mathematical processes (called “attention” or “self-attention”) to discern ways sometimes seemingly unrelated data in a series are influenced by, or are interdependent with, each other.



# Ethical Implications of AI

A Talk with Charles B. Plattsmier *by John Fenner*

With this issue focused on artificial intelligence in the legal profession, *The Baton Rouge Lawyer* reached out to Louisiana Disciplinary Board Chief Discipline Counsel Charles B. Plattsmier, who offered insights into how AI is impacting the legal profession.



Charles B. Plattsmier

**TBRL:** How should the bar define “artificial intelligence,” so that lawyers know when they are using “AI,” and when they are not?

CP: I’m not sure I’m sufficiently well versed in the topic to provide a good definition. But to be clear, we’ve all been using some version of artificial intelligence for some time now. Ever notice how your word processing software offers to complete your sentences while you type or text? Predictive analysis or

modeling algorithms are widely used in countless applications. AI is much broader than ChatGPT or other systems that seem to be getting all the attention on news programming.

**TBRL:** When do you think the use of AI by lawyers starts to implicate rules and concerns about breaches of those rules?

CP: They already have! My office has already encountered instances where lawyers use predictive-modeling algorithms to generate answers to the frequently asked questions of

clients in mass representation settings, raising the question of whether that method reflects reasonable communication under Rule 1.4. As we’ve all read recently, law firms from Manhattan to Texas are being sanctioned by judges for submitting briefs generated by AI that cite non-existent cases using bogus citations.<sup>1</sup>

**TBRL:** Are there any specific rules of professional conduct that you think are most likely to be affected or implicated by the increased use of AI in the practice of law?

CP: Let’s start with Rule 1.1 requiring that lawyers be competent. I think it’s safe to say that, in today’s practice of law, a lawyer must have some basic level of proficiency in technology to be competent. It is likely that the beneficial use of artificial technology will at some point become part of the competency test under Rule 1.1. I’ve already mentioned communication issues and the use of algorithm-driven responses to client inquiries. But what about Rule 1.5 and the prohibition against charging excessive fees? Historically, lawyers have legitimately billed clients for time-consuming tasks such as summarizing deposition testimony, generating case assessment memos and the like. With AI now capable of performing many of those tasks almost instantly, will *failure to use* AI technology create ethical issues implicating excessive fees at some point in the future?

AI-generated videos, audios and real-time actors have been much lauded for using the image and voice (for example) of Tom Cruise to show how easily we can all be fooled.

Indeed, the current/recent actors' and screenwriters' strike are protesting the use of AI that threatens to create their image and voices digitally, all without guarantees of compensation for work they've never done. CBS News recently ran a segment where the voice of Tony Dokoupil was generated by AI in a phone call asking his mother to provide him her social security number, date of birth and other highly sensitive information—and she was fooled! Are we ushering in a potential new era of fraud upon the court where video depositions are generated by AI? What about AI-generated Zoom participation? False AI-generated but authentic-sounding “tape recorded interviews” used as impeachment? These questions may sound far-fetched, but I assure you that as a regulator I've already had to deal with lawyers who have generated bogus bank statements and post-hoc generated correspondence. One lawyer even generated his own court opinions—both at the district court and the appellate court levels—to satisfy his client's demand for a status on the case.

**TBRL:** *Is the bar considering, or do you think the bar should consider, any new rules of professional conduct specifically regarding the use of AI by lawyers?*

CP: Unquestionably, the answer is “yes.” At the recent LSBA General Assembly in June, my ODC report to the House of Delegates attendees reflected the need for review of how our current rules should be revised to recognize these evolving issues inherent in technology, and artificial intelligence specifically. By the way, I note that a number of the federal courts across the country have already implemented rule changes that require that a lawyer's signature on a pleading reflect a certification by the lawyer that, if AI has been used to support pleadings or memoranda to the court, the lawyer has reviewed, verified and adopted the product as reflecting legitimate case law, including citations.

**TBRL:** *Is it possible for AI per se, or the companies that provide such systems, to engage in the unauthorized practice of law (UPL)? If not, if an AI system provides answers to legal questions of a Louisiana consumer and the answer is wrong to the detriment of the consumer, who might be held responsible, if anyone?*

“At the recent LSBA General Assembly in June, my ODC report to the House of Delegates attendees reflected the need for review of how our current rules should be revised to recognize these evolving issues inherent in technology, and artificial intelligence specifically.”

CP: As the legal profession further embraces AI, particularly, machine “learning” capabilities, a strong argument would suggest that some tasks that are today squarely viewed as the practice of law might well be performed by non-lawyer practitioners utilizing AI and that would further the goal of greater “access to justice.” How would the regulator then police UPL and facilitation of UPL claims if AI threatens to alter the very definition of the practice of law? Given the experience of the dental board in North Carolina,<sup>2</sup> does a bar regulator run the risk of antitrust exposure when attempting to police UPL by non-lawyers using AI? These are all important questions to which there are no clear answers. In my view, unverified use by a lawyer of an AI-generated legal work product is dishonest conduct that may warrant discipline.

**TBRL:** *What about clients' privacy concerns? Are there heightened duties or obligations of privacy or confidentiality with use of AI systems that collect and use large amounts of data?*

CP: Open AI privacy policy is clear that the company saves each user's information into the system and may provide access to that information to third parties. How might such a policy

affect the lawyer's duty to safeguard a client's confidential information as required by Rule 1.6? The risks of using open AI systems are not substantially different from current concerns regarding the storing of a client's confidential information or file in the cloud. Protection from access by others is squarely implicated.

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<sup>1</sup> See, e.g., Richard McConnell & Tyler Kostal, *Sanctions Handed Down to Lawyers Who Cited Fake Cases, Relying on ChatGPT*, Kean Miller (June 23, 2023), <https://www.louisianalawblog.com/artificial-intelligence/sanctions-handed-down-to-lawyers-who-cited-fake-cases-relying-on-chatgpt/>.

<sup>2</sup> See *N.C. Bd. of Dental Exam'rs v. Fed. Trade Comm'n*, 574 U.S. 494 (2015) (holding that the state board of dental examiners was a non-sovereign entity controlled by active market participants who did not receive active supervision by the state, and thus the board's anticompetitive actions were not entitled to state-action immunity from federal antitrust law).

# Embracing Modern Tech How Law Firms Can Thrive in a Digital Age

by *Conner LeBlanc*



**A**s we review 2023, it's clear that AI has dominated the discourse taking place at the intersection of technology and the legal industry. While there is a great deal to be said about the impact AI is having (and will continue to have) on the profession, we must remember that it is just one of many technologies having a direct and immediate impact on our ability to be effective practitioners. Macro-trends such as remote work, decentralization and digital transformation should all be factored into a firm's calculation on how to remain both secure and competitive in the digital age.

## **Historical Lag: Understanding the Legal Industry's Tech Reluctance**

Most are familiar with the common trope that attorneys are traditionally slow to adapt to change. While many practitioners might disagree, perhaps nowhere does this notion have more validity than in the profession's reluctance to embrace new technologies and the changes in habit that come as a result. Regulation, tradition and risk aversion are three factors that could lead many attorneys to resist the application of new technology in their practice. That said, simply being aware of these biases can go a long way in a firm's quest to overcome this adage and keep up with client expectations.

When it comes to regulation, which is often upstream of tradition and risk aversion, having a firm's technology committee be responsible for the latest guiding documents issued by regulators will help bolster the firm's level of comfort when leveraging any new kind of technology. The ABA has issued formal opinions on the ethical use of technology by attorneys, often with an eye for ensuring the ethical duties of competence, communication and confidentiality. ABA Formal Opinion 477<sup>1</sup> speaks to the reasonable efforts lawyers must make to prevent inadvertent or unauthorized access of client information being housed on a law firm's network or through digital communications that contain client data. As Dane S. Ciolino put it in his 2018 "Louisiana Legal Ethics," "Ultra-sophisticated cybersecurity is not always needed, but at least ordinary 'digital hygiene' is required."<sup>2</sup>

Ordinary digital hygiene, in most instances, will be sufficient to meet the Reasonableness Standard laid out in Model Rule 1.6(c),<sup>3</sup> which explicitly provides that it is the attorney's responsibility to prevent the unauthorized access of personal client information. The sensitivity of client information obviously exists on a spectrum, but anything considered "personally identifiable information" should, at a minimum, be considered to fall under the category. La. R.S. 51:3074(A)<sup>4</sup> offers some additional clarity on the extent to which attorneys should make reasonable efforts to prevent unauthorized access to client information.

## **The Stakes: Why Falling Behind Isn't an Option**

It's often easy to look at the challenges facing the legal profession in a vacuum without consideration for how those challenges are met relative to the industries in which our clients participate. As the technological sophistication of a firm's clientele increases, failure to meet those expectations can lead to any number of undesirable outcomes, including inefficiencies, client attrition and lost future opportunities resulting from reputational harm.

Not only will failure to meet the technical expectations of clients have a negative impact on a firm's ability to gain and maintain business relationships, but it can lead to security vulnerabilities. Breaches in client confidentiality, increased insurance premiums, financial losses and even regulatory penalties/sanctions are all possible consequences of failing to invest in proper technological controls to ensure compliance. To illustrate this point, we need look no further than to our colleagues in the financial sector who have laid out in the Federal Financial Institutions Examination Council (FFIEC) IT Examination Handbook: "Outsourced relationships should be subject to the same risk management, security, privacy, and other policies that would be expected if the financial institution [client] were conducting the activities in-house."<sup>5</sup>

## **Cybersecurity: Guarding the Gates in a Digital World**

There is no shortage of horror stories demonstrating precisely how badly things can go when malicious actors are able to penetrate a firm's digital defenses. Cyberattacks on a firm



resulting from ransomware, phishing campaigns or even sophisticated hacking can result in data breaches that leave a firm unable to recover both internal and external data that it had a fiduciary duty to safeguard.

There is practically no difference between a criminal accessing sensitive client data on a firm's server and a criminal walking into a firm and stealing files out of an unlocked filing cabinet. *You are ultimately responsible for taking reasonable measures to protect your client's data.* As mentioned, what is considered reasonable is typically assessed based on the sensitivity of the data in question and the extent to which the firm took steps to protect that data.

Here are some practical measures a firm can take to safeguard the integrity of its network and communications:

***Managed Endpoint and Network Infrastructure:*** Ensure your IT department or a managed IT service provider has implemented an automated patch policy for all hardware and software running on all devices (including remote workers accessing firm data on personal devices).

***Endpoint Detection & Response:*** Combat AI-enabled cyberattacks with Endpoint Detection & Response software. This kind of fortified anti-virus system screens your entire environment continuously, automatically isolating infected endpoints and enabling recovery to a pre-infected state.

***Multi-Factor Authentication:*** Apps like Microsoft Authenticator and DUO add an extra layer of security when accessing company data and also allow for "conditional access" to minimize inconvenience for office-based employees.

***Cloud Migrations/Backup:*** Disaster recovery is never more important than during hurricane season. By enabling remote data access through privately or publicly hosted clouds, a firm can continue to work even during power outages.

***Security Audits/Penetration Testing:*** Regular penetration testing, while always recommended, is now often required by cybersecurity insurers as part of an attestation clause. It is important to avoid using internal IT or existing service providers as penetration-test facilitators to prevent conflicts of interest.

***Security Awareness Training/Simulated Phishing:*** The majority of cybersecurity breaches result from human error. Simulated email phishing campaigns help educate everyone in a firm, particularly partners, who are often most aggressively targeted by cybercriminals.

These are just a few actionable steps that can be taken to greatly improve a firm's security posture.

### **Embracing Efficiency: Software Solutions for the Modern Firm**

While the technologies addressed thus far are critical for firms to maintain adequate levels of security, most of these measures are meant to run in the background and be managed by the firm's IT department/service provider. Although operational/efficiency gains are made through having a cloud-based environment and a managed email tenant, what most attorneys think of when asked about the technology used in their firms are the particular case-management software and e-discovery tools that their firms utilize.

Having the proper case-management solution (CMS) can streamline operations, reduce manual tasks and improve client service. That said, the right CMS is only as good as the other technology that supports its use. If the office loses power and that software is running on a physical server, as in many disaster situations, attorneys won't have access to that data. It is therefore recommended that firms invest in a cloud-based CMS in order to improve resiliency. The same can be said for e-discovery tools and digital-signature platforms—the faster and more comprehensive the software, the more time can be spent on matters better suited for an attorney's time and attention.

### **Tapping into Experience: The Rise of Tech Consultants in Legal**

As the demand for technical skill sets in the corporate world increases, hiring internal IT professionals (and paying them competitive wages) will become increasingly difficult. Many managed IT service providers (MSPs) understand this and are actively seeking law firms looking to outsource IT management and support functions. With the introduction of advanced monitoring and remote-access tool sets, outsourced IT has never been as practical an option for law firms as it is now.

In addition to traditional outsourced IT, many high-level MSPs are now offering virtual/fractional Chief Information Officer (vCIO) and Chief Information Security Officer (vCISO) services. In these types of engagements, a vCIO or vCISO would serve as an additional member of the firm's leadership team and work with the technology steering committee to design policies and procedures that ensure the firm's technology investment and decision-making aligns with strategic goals.

### **Looking Ahead: Emerging Technologies to Watch**

In addition to AI, it would also be wise for attorneys interested in other emerging technologies, such as blockchain, to learn how they can be used for secure and transparent document management in the form of "smart contracts." The same applies to both virtual and augmented

As these emerging technologies gain widespread adoption, they will have profound impacts on how we all interact with data, both in the real world and in cyberspace.

reality. As these emerging technologies gain widespread adoption, they will have profound impacts on how we all interact with data, both in the real world and in cyberspace.

As for impacts on the legal industry directly, it is not entirely accurate to say any of these technologies will outright replace attorneys. It is, however, fair to assume these technologies will give those who do adopt efficiency gains to outcompete those who do not.

### **Closing Thoughts: Embracing Change**

As the adoption of new technologies, in particular AI, makes exponential increases in productivity, it will also increase reliance on such technologies. Many modern professionals tend to take the technology they use to do their jobs for granted, and attorneys are no exception. It is critical that forward-thinking firms who embrace this change factor in how to be good stewards of the technology, rather than simply taking it for granted.

If we intend to overcome the stereotype that the legal industry is the slowest to adapt to change, it is critical that a holistic approach is taken to ensure that technology investments being made further a strategic plan and not just on an ad hoc basis. If, as a profession, we can cultivate a mindset of thoughtfulness and intentionality toward the technology we use, we are not only a huge step closer to safeguarding our own practices, but positioning ourselves as informed advocates who can guide clients effectively as they look to navigate this new digital age.

<sup>1</sup> AM. BAR ASS'N, *Formal Opinion 477R: Securing Communication of Protected Client Information* (June 2017), <https://www.americanbar.org/news/abanews/publications/youraba/2017/june-2017/aba-formal-opinion-477r--securing-communication-of-protected-cli/>.

<sup>2</sup> DANE S. CIOLINO, LOUISIANA LEGAL ETHICS: STANDARDS AND COMMENTARY 165 (2022).

<sup>4</sup> La. R.S. 51:3074(A).

<sup>5</sup> FFIEC, IT EXAMINATION HANDBOOK, III.C.8: Third-Party Management.

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# Candidate Bios for the BRBA Directors-At-Large 2024 Election

Online election begins Wednesday, Nov. 1, and ends Friday, Nov. 17, 2023. All voting will be conducted electronically. Make sure the BRBA has a valid email address for you on file. The 2024 BRBA officers are as follows: **Luke Williamson**, president; **Monica Vela-Vick**, president-elect; **Loren Shanklin Fleshman**, treasurer; **Hayden A. Moore**, secretary; and **Melanie Newkome Jones**, past president.

*All regular BRBA members need to vote for SIX of the following eight candidates.*

## Stephen Babcock

**Law School:** LSU Law Center. **Year:** 2000. **Firm:** Babcock Partners, LLC. **Seeking:** First term, Director-at-Large. **Activities:** BRBA President's Award recipient (2022); Gavel Gala co-founder and co-chair (2022); Gavel Gala co-chair (2023); Bench Bar Conference Committee member (2002-2007); Golf Tournament Committee chair (2002-2007). **Awards:** LSU One Hundred Fastest Growing Tiger-Owned Businesses 2021 & 2022; Law Firm 500—Top 500 Fastest Growing Law Firms in the Country (2020 & 2021); Martindale-Hubbell AV-Rated since 2003; Louisiana Super Lawyer since 2014; U.S. News & World Report's Best Lawyers in Personal Injury since 2015; U.S. News & World Report's Best Law Firms since 2015; Baton Rouge Business Report Top Forty Under 40 (2007); LSBA Stephen T. Victory Award recipient (2002).



## Jordan L. Faircloth

**Law School:** LSU Paul M. Hebert Law Center. **Year:** 2008. **Firm:** Taylor, Wellons, Politz & Duhe, APLC. **Seeking:** Fifth term, Director-at-Large. **Activities:** BRBA Board Director-at-Large (four terms); YLS Chair (2019); BRBA Softball Tournament (co-chair); Athletics Committee member; a prior *TBRL* contributing writer; past CLE speaker; Young Lawyers Section chair (2020), YLS chair-elect (2019), YLS secretary (2017), YLS Council member (2015-2016); Holiday Star Project volunteer (2008-present). **Other:** Practices casualty litigation; Charles Lamar Jr. YMCA (board member, 2017-2019), The Federalist Society: Baton Rouge Lawyers Chapter, Louisiana Claims Association (2018-present), Baton Rouge Claims Association (2018-present), March of Dimes for the Capital Area (board member, 2010-2016), Boys and Girls Club of GBR (volunteer/mentor, 2013-present), Miracle League of Baton Rouge (volunteer), St. George School (volunteer basketball coach 2019-2020), Baton Rouge Ancient Athlete Society (BRAAS) (secretary, 2017-present), Baton Rouge Ancient Athlete Society BRAAStrong Foundation.



## Valerie A. Black

**Law School:** Southern University Law Center. **Year:** 2015. **Firm:** The Water Institute, in-house counsel. **Seeking:** First term, Council member. **Activities:** Arts Judicata; Belly Up with the Bar. **Volunteer:** Willis for Heroes; Teen Court. **Awards/Honors:** 2020 Champion for Children Award by the Child Care Association of Louisiana (CCAL) recipient; 2014 Judge Zoey Waguespack Scholarship recipient; CSULA Louis Stokes Fellow; UCLA Alumni Scholar; UCLA Latino Alumni Association Scholarship recipient. **Other:** Served as senior editor and media chair, SULC's *Journal of Race, Gender, and Poverty*; Founder and president, Los Angeles Society for the Advancement of Chicanos and Native Americans in the Sciences (SACNAS) student chapter; UCLA Varsity Rowing Team member.



## Kellye R. Grinton

**Law School:** Loyola. **Year:** 2012. **Firm:** Porteous Hainkel & Johnson. **Seeking:** Second term, Director at Large. **Activities:** Young Lawyers Section (chair, 2022); Holiday Star Committee. **Other:** Practices insurance defense, insurance coverage, and extra-contractual/bad faith liability. Honors: Finalist, La. Association of Defense Council's Frank L. Maraist Award (2017); La. Super Lawyers Rising Star (2018-2024); Finalist for the Honorable Michaelle Pitard Wynne Professionalism Award (2020); Boys & Girls Club of Metro La. - Club Blue Great Futures Honoree (2023).



## Kelley R. Dick, Jr.

**Law School:** Southern University Law Center. **Year:** 2015. **Firm:** Mansfield, Melancon, Cranmer & Dick, LLC. **Seeking:** Fourth term, Director-at-Large. **Activities:** Director-at-Large (2021, 2022, 2023); Belly Up with the Bar Committee (2016-2020). **Other:** Founding member of his current law firm. Honors: "Rising Star" by the Super Lawyers publication; Honoree, Boys & Girls Club Great Futures Gala (2019).



## Lori E. Palmintier

**Law School:** Southern University Law Center. **Year:** 2014. **Firm:** Brock & Palmintier. **Seeking:** Second term, Director at Large. **Activities:** Volunteer Committee (2015-2018); Bench Bar Conference Committee (2016); Volunteered with Law Day, Lawyers in the Library (2021) and Law Day in the Classroom (2022); Family Law Section



member. Awards/Honors: AV Rated attorney from Martindale Hubbell (2022, 2023); Super Lawyers Rising Star (2023); Top 40 Under 40 Criminal Defense Lawyers by the National Trial Lawyers (2022); AVVO Client's Choice Award (2020-2023). **Other:** Acted as campaign treasurer for Judge Chip Moore's 2020 Re-election Campaign (2020); Capital Area Law Enforcement Foundation (CALEF) board member (2021, 2022); Wex S. Malone American Inn of Court, treasurer; BRAWA; Catholic High Mother's Club.

### **Marcus J. Plaisance**

**Law School:** LSU Paul M. Hebert Law Center. **Year:** 2010. **Firm:** Plaisance Law, LLC. **Seeking:** Second term, Director-at-Large. **Activities:** Finance Committee (2022); BRBA Director-at-Large (2022); Appellate Section (chair); CLE Committee (member); Bench Bar Conference Committee (member); Belly Up with the Bar Committee (chair in 2016 & 2021; co-chair in 2020; member). **Awards:** Belly Up was recognized as LSBA Program of the Year in 2020, the year Plaisance was co-chair. He received the BRBA President's Award in 2020; Rising Star by the Super Lawyers publication, appellate law (2021, 2022, 2023, 2024). He was selected by LSBA as a Top 40 Young Lawyer (2023), and served as an appellate advocacy speaker for the LSU Law 1L class (2022, 2023).



### **Vincent V. "Trey" Tumminello III**

**Law School:** Vanderbilt University Law School. **Year:** 2013. **Firm:** Taylor, Porter, Brooks & Phillips, LLP. **Seeking:** Fourth term, Director-at-Large. **Activities:** Participated in initial planning of Gavel Gala; chaired Belly Up with the Bar Committee (2018); received a BRBA President's Award (2018); a frequent CLE by the Hour speaker; a prior *TBRL* contributing writer. **Other:** Practices commercial transaction and real estate law; Louisiana Super Lawyers: Rising Stars in Business & Corporate Law, Vanderbilt Alternative Dispute Resolution Organization Secretary (2011-2012), Vanderbilt Moot Court Board.



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# Candidate Bios for the BRBA Young Lawyers Section Council 2024 Election

Online election begins Wednesday, Nov. 1, and ends Friday, Nov. 17, 2023. All voting will be conducted electronically. Make sure the BRBA has a valid email address for you on file. The 2024 YLS Council officers are as follows: *Brad Cranmer*, chair; *Quinn Brown*, chair-elect; and *Kolby P. Marchand*, secretary/treasurer. **All regular BRBA members who are members of the Young Lawyers Section need to vote for FIVE of the six candidates.**

## Candace B. Ford

**Law School:** Southern University Law Center. **Year:** 2017. **Firm:** Breazeale, Sachse & Wilson, LLP. **Seeking:** First term, Council member. **Activities:** Teen Court Committee (chair); Youth Education Committee (chair). **Volunteer:** Teen Court hearings (as a judge) and assisted with conducting training sessions; participated in Law Day and High School Mock Trial Competition; Ask-A-Lawyer and Thirst for Justice virtual outreach activities. **Awards:** Judge Joseph Keogh Memorial Award (2019); BRBA President's Award (2020); LSBA YLD Pro Bono Award (2020); 2023 ABA's "On the Rise – Top 40 Young Lawyers" Award; selected for the Leadership, LSBA 2022-2023 Class and as co-chair of the 2023-2024 Class.



## Emily A. Lindig

**Law School:** Southern University Law Center. **Year:** 2018. **Firm:** Brock & Palmintier. **Seeking:** Second term, Council member. **Activities:** BRBA Family Law Section member. **Other:** Wex S. Malone American Inns of Court member; St. Aloysius Church Stewardship Through Ministry Committee member; LSBA member; former law clerk for 21st JDC Judges Brenda Bedsole Ricks and Jeffrey Oglesbee.



## G. Patrick Riley

**Law School:** LSU Law Center. **Year:** 2021. **Firm:** Taylor Porter Brooks & Phillips. **Seeking:** First term, Council member. **Activities:** Belly Up with the Bar (involved with Taylor Porter's cooking team); attended luncheons and Cocktails with the Court. **Other:** LSU Law Student Bar Association, executive president (2022-2021); board of advocates member. **Awards:** Recipient of the John P. Laborde Scholarship in Energy Law; named a Paul M. Hebert Scholar; received the Distinguished Communicator Certification.



## Cornelius Troy Hall

**Law School:** Southern University Law Center. **Year:** 2021. **Firm:** 19th JDC Judge Gail Horne Ray, staff attorney. **Seeking:** Second term, Council member. **Activities:** Belly Up with the Bar Committee (2023 vice chair; 2021-2022 member); 2023 BRBA YLS Council member; Publications Committee (member and contributing writer); Served as a panelist for the 2023 YLS Summer Sizzlin' CLE; Served as a panelist for the 2023 YLS Lunch and Learn Panel Discussion at the LSU Law; organized the 2023 YLS Lunch and Learn Panel Discussion at SULC and served as a panelist; organized the 2023 YLS Rule Day Sessions for 19th JDC Judges Gail Horne Ray and Chief Judge Don Johnson at SULC. **Awards:** 2023 LSBA Pro Bono Publico Award.



## Josef P. Ventulan

**Law School:** Southern University Law Center. **Year:** 2020. **Firm:** Louisiana State Law Institute. **Seeking:** First term, Council member. **Activities:** Publications Committee; Pro Bono Committee; Self-Help Resource Center volunteer; Ask-A-Lawyer volunteer. **Other:** LSBA YLD Council ABA District Representative; chaired 2023 ABA Annual Conference. **Awards:** Bat P. Sullivan Jr. Chair's Award (2022); served as YLS representative on LSBA Disaster Response Subcommittee. **Board member:** Forum 225 and Power Pump Girls, Inc.



## Ross M. LeBlanc

**Law School:** Southern University Law Center. **Year:** 2011. **Firm:** Dudley Debosier. **Seeking:** First term, Council member. **Activities:** Wills for Heroes, Ask-A-Lawyer, Mock Trial Competition. **Other:** Inaugural Marshall Brennan Fellow (taught constitutional law to Scotlandville High School students); Helix Legal Academy mentor.



# Foundation Footnotes

Pro Bono Reports — July, August and September 2023



## Teen Court Volunteers

Two hearings were held in July. Volunteers were **Jacob McCon**, *Southeast Louisiana Legal Services*; and BRBF law student interns **Eric Roshak**, *Louisiana State University Law Center*; **Destiny Singleton**, *Southern University Law Center*; and **Whitney Graham**, *Southern University Law Center*.

In August, two hearings were held. Volunteers were **Monica Vela-Vick**, *Phelps Dunbar*; and BRBF law student intern **Eric Roshak**, *Louisiana State University Law Center*.

In September, three hearings and one training were held. Volunteers were **Monica Vela-Vick**, *Phelps Dunbar*; **Jamie Flowers Jr.**, *U.S. Attorney's Office*; **Candace B. Ford**, *Breazeale, Sachse & Wilson, LLP*; **Rebecca Moreno**, *Southern University Law Center*; and BRBF law student interns **Skylar Dean**, *Southern University Law Center*, and **Eric Roshak**, *LSU Paul M. Hebert Law Center*

## Attorneys Accepting Cases

Accepting pro bono cases in July, August and September were: **Marlon Battley**, *attorney at law*; **Carlesia Bibbins**, *attorney at law*; **Morley Diment**, *Diment & Associates*; **Melanie Newkome Jones**, *attorney at law*; **Michaela G. Louis**, *attorney at law*; **Derrick McCorey**, *attorney at law*; **Paula Ouder**, *Kuene & Foote, APLC*; **Keanan Parr**, *attorney at law*; **Cynthia Reed**, *Southern University Law Center*; **Gavin M. Richard**, *attorney at law*; **Garth Ridge**, *attorney at law*; **LaKendra D. Sampson**, *LaKendra D. Sampson, LLC*; **Sharita Spears**, *attorney at law*; **Arthur Vingiello**, *The Steffes Firm, LLC*.

## Self Help Resource Center Volunteers

**Carlesia Bibbins**, *attorney at law*; **Marcia Burden**, *Southern University Law Center*.

## Summer/Fall Pro Bono Project Interns

**Whitney Graham** and **Destiny Singleton**, *Southern University Law Center*; **Eric J. Roshak**, *LSU Law Center*.

## Legal Hotline Volunteers

Volunteering to assist with the BRBF Legal Hotline were **Scott Gaspard**, *attorney at law*; **Ken Mayeaux**, *attorney at law*; **Cherita McNeal**, *attorney at law*; **Tammeral Hills**, *attorney at law*; **Willie Stephens**, *attorney at law*; **James Word II**, *attorney at law*; **James “Jimmy” Zito**, *attorney at law*.

## Ask-A-Lawyer Volunteers

Volunteering with the Ask-A-Lawyer program were **Derrick McCorey**, *attorney at law*; **Lykisha Vaughan**, *Southeast Louisiana Legal Services*; **Sharita Spears**, *attorney at law*; **Marlon Battley**, *attorney at Law*; **Riley Huntington**, *Koch/St. Martin LLC*; **David Koch**, *Koch/St. Martin LLC*; **James A. Word II**, *attorney at law*; **Whitney Graham**, *law student, SULC*; **Destiny Singleton**, *law student, SULC*; **Eric J. Roshak**, *law student, LSU Law*; **Jasmine Delco**, *Southeast Louisiana Legal Services*.

*Teen Court is made possible in part by grants from the Louisiana Bar Foundation and the Huey and Angelina Foundation. The Pro Bono Project is financially assisted by the Interest on Lawyers' Trust Account (IOLTA) Program of the Louisiana Bar Foundation; Southeast Louisiana Legal Services; Family, District and City Court Fees; and the Baton Rouge Bar Foundation.*

## GAIL'S GRAMMAR

Two words occasionally used in describing injuries and assaults are *wale* and *welt*. Unfortunately, they are often misspelled as *whale* and *whelp*. A *wale* is a stripe or ridge on the skin. (For those of you who remember the 1970s, think of wide-wale corduroy.) When someone produces a stripe on another's skin by hitting the person with something narrow, such as a rod, the correct verb is *wale*.

Another word for a ridge on the skin is *welt*, which should not be confused with *whelp*. A *whelp* is a young carnivore, such as a puppy, or an impudent child. Just remember that *welt* rhymes with belt, and belts leave *welts*.

### CORRECT EXAMPLE:

The assailant *waled* away on the victim, covering the victim in *welts*.

When the car was hit from behind, the seatbelt left a *welt* across the driver's chest.

*Send suggestions for future Gail's Grammar columns to Gail Stephenson at [GStephenson@sulc.edu](mailto:GStephenson@sulc.edu), or call Gail at (225) 926-1399.*

# IMPORTANT DATES

## NOVEMBER 2023

SUN	MON	TUES	WED	THURS	FRI	SAT
			1 *	2	3 *	4 *
5	6 *	7	8 *	9 *	10	11
12	13 *	14 *	15 *	16 *	17 *	18
19	20 *	21	22	23 *	24 *	25
26	27	28	29	30 *		

## DECEMBER 2023

SUN	MON	TUES	WED	THURS	FRI	SAT
					1 *	2
3	4	5 *	6	7 *	8 *	9
10	11	12 *	13 *	14 *	15 *	16 *
17	18	19	20 *	21	22 *	23
24/31	25 *	26 *	27	28 *	29 *	30

## November

- 1 Bench Bar Conference Committee meeting, Middleton Bar Center, noon;  
Tween Dream Costume Drop-off (Nov. 1 - Nov. 8)
- 3 BRBA Executive Committee meeting, via Zoom, 9 a.m.
- 4 Ask-A-Lawyer, Baker Branch Library, 9 a.m.
- 6 Veterans Day CLE and reception - TBA
- 8 Ask-A-Lawyer, Gonzales Branch Library, 9 a.m.;  
BRBA Operations & Finance Committee conference call, 8:30 a.m.
- 9 Gavel Gala, City Club of BR, 5 - 9 p.m.
- 13 Teen Court Hearing via Zoom, 6 p.m.
- 14 Workers' Compensation Section meeting & CLE, Sullivan's (TBA), 10:30 a.m.-3:30 p.m.
- 15 Ask-A-Lawyer, Prairieville Branch Library, 9:30 a.m.;  
BRBA Board of Directors meeting, 6 p.m.
- 16 Family Law Section meeting & CLE, TBA
- 17 Publications Committee meeting via Zoom, 8 a.m.
- 20 Teen Court Training Session, Middleton Bar Center, 2 - 6 p.m.

23-24 Bar Office Closed -- Thanksgiving Day/  
Holiday

30 November Bar Luncheon, Speaker: LSU Law  
Dean Alena Allen, City Club of BR, 11:30 a.m.

## December

- 1 Drop off deadline for return of  
Holiday Star Project gifts
- 5 Holiday Star Project Gift Distribution Day,  
Middleton Bar Center, 8 a.m.
- 7-8 CLE by the Hour, EisnerAmper
- 12 BRBA Executive Committee meeting via  
Zoom, 8:30 a.m.
- 13 BRBA Operations & Finance Committee  
conference call, 8:30 a.m.;  
BRBA Board of Directors meeting, 6 p.m.
- 14-15 CLE by the Hour, EisnerAmper
- 16 Ask-A-Lawyer, Main Branch Library, 7711  
Goodwood Blvd., 9 a.m.
- 20 CLE by the Hour, EisnerAmper
- 22-26 BRBA Office Closes at 11 a.m. Dec. 22 /  
Christmas Holidays
- 28-29 CLE by the Hour, EisnerAmper

# DUTY COURT SCHEDULE

### 19th JDC Civil Duty Court

10/23 - 11/03	Judge R. Johnson
11/06 - 11/17	Judge D. Johnson
11/20 - 12/01	Ad Hoc Judge
12/04 - 12/15	Judge Balfour
12/18 - 12/29	See Holiday Duty Schedule

### 19th JDC Criminal Duty Court\*\*\*

10/27 - 11/03	Judge Myers
11/03 - 11/10	Judge Johnson Rose^
11/10 - 11/17	Judge Smith
11/17 - 11/24	Judge Jordan
11/24 - 12/01	Judge Hines
12/01 - 12/08	TBD (newly elected judge)
12/08 - 12/15	Judge Crifasi

### Baton Rouge City Court\*

10/30 - 11/05	Judge Matthews
11/06 - 11/12	Judge Alexander
11/13 - 11/19	Judge Moore Vendetto
11/20 - 11/26	Judge Marcantel
11/27 - 12/03	Judge Temple
12/04 - 12/10	Judge Matthews
12/11 - 12/17	Judge Moore Vendetto
12/18 - 12/24	Judge Moore Vendetto
12/25 - 12/31	Judge Marcantel

### Juvenile Court

November	Judge Grover
December	Judge Haney

### Family Court\*\*

11/01	HOLIDAY
11/02, 11/03	Judge Day
11/06	Ad Hoc Judge (Div. D)
11/07	Judge Baker
11/08	Judge E. Green
11/08	Ad Hoc Judge (Div. D)
11/09	Judge Day
11/10	HOLIDAY
11/13	Ad Hoc Judge (Div. D)
11/14	Judge Baker
11/15	Judge E. Green
11/16	Judge Day
11/17	Judge Baker
11/20	Ad Hoc Judge (Div. D)
11/21	Baker Baker
11/22	Judge Baker
11/23, 11/24	HOLIDAYS
11/27	Ad Hoc Judge (Div. D)
11/28	Judge Baker
11/29	Judge E. Green
11/30	Judge Day
12/01	Judge Day
12/04	Ad Hoc Judge (Div. D)
12/05	Baker

### Family Court (Continued)

12/06	Judge E. Green
12/07	Judge Day
12/08, 12/11	Ad Hoc Judge (Div. D)
12/12	Judge Baker
12/13	Judge E. Green
12/14	Judge Day
12/15	Judge Baker
12/18	Ad Hoc Judge (Div. D)
12/19	Judge Baker
12/20	Judge E. Green
12/21	Judge Day
12/22	Judge E. Green
12/25, 12/26	HOLIDAY
12/27	Judge Baker
12/28, 12/29	Judge E. Green

### Court Holidays

Wednesday, Nov. 1	All Saints Day ****
Friday, Nov. 10	Veterans Day observed
Thursday, Nov. 23	Thanksgiving Day
Friday, Nov. 24	Friday After Thanksgiving
Monday, Dec. 25	Christmas Day

NOTE: Duty Court changes at 5 p.m. each Friday unless otherwise specified.  
\*City Court's Duty Court judge is on duty from 8 a.m. on the Monday  
beginning his/her week of duty until 8 a.m. the Monday ending his/her week  
of duty.

\*\*Family Court's Duty Court schedule is completely different each day,  
rotating on Fridays.

\*\*\*19th JDC Criminal Court changes each Friday at noon.

^Section IV is currently the only section conducting Saturday callout.

\*\*\*\*Family Court recognizes Wednesday, Nov. 1 as a holiday.

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