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**IN THE SUPREME COURT
STATE OF ARIZONA**

In the Matter of

PETITION TO ADOPT RULE 135
RULES OF THE SUPREME COURT

Supreme Court No. R-26-_____

**Petition to Adopt Rule 135,
Rules of the Supreme Court**

Pursuant to Rule 28, Rules of the Supreme Court, the Honorable Andrew M. Jacobs respectfully petitions this Court to adopt Rule 135, Rules of the Supreme Court, governing the use of generative artificial intelligence in Arizona judicial officers' work product, for the reasons set forth in this Petition and as proposed in the contemporaneously submitted Appendix A.¹

Introduction

Generative artificial intelligence (“AI”) poses great challenges to law as we have known it. On the positive side, it holds the promise of empowering litigants

¹ The Petitioner gratefully thanks Charles Miller, a law clerk of the Arizona Court of Appeals, for his excellent research assistance.

who lack resources. On the negative, it creates the prospect of litigants using tools that lack proper guardrails, and which are prone to generating briefs with references to nonexistent precedent. More disturbingly, briefs containing hallucinated precedent or unacknowledged errors do not announce themselves, but often come to the court in camouflage, wrapped in the appearance of normal briefing. Courts are only now beginning to sort out how to deal with the boom in AI-generated work product. Do they screen incoming briefs for errors, or leave the adversarial process to sort out errors and react only if it does? Do they sanction hallucinated work product? If so, how severely? Do they sanction work product rife with inaccuracies that smack of AI? These are all substantial issues in the administration of justice, which were essentially unknown and unforeseeable only a few years ago.

But there is a companion problem – related to litigant use of AI, yet wholly separate – that the judiciary has the power to solve. That problem is the sudden rise in the judicial use of AI to generate judicial work product. Arizonans are entitled to judicial decisions that are created and authored by human beings, as a matter of respecting their dignity, and also as a matter of fair process. Making sure Arizonans know humans are creating and authoring all of the judicial work our courts issue is vital to preserving the public’s eroding trust in courts and the law. Beyond considerations of dignity and of respect for the courts, there are strong practical reasons to pause the race to embrace AI as inevitable change without first protecting

core judicial work from its reach. Judicial actors can fall (and have fallen) prey to its propensity to hallucinate. And hallucination aside, the judiciary has not studied the use of AI sufficiently to allow courts at all levels to use it experimentally. Without rigorous study *before* the use of generative AI, Arizonans and their most delicate and painful problems – family disputes, commercial disputes, landlord-tenant disputes, you name it – will become the grist for an unwholesome experiment in which traditional adjudicators (without telling the public they are doing it) will ride shotgun with a tool of questionable utility and reliability, giving it direct input into the resolution of those precious, human issues.

The Arizona Supreme Court has already, wisely and with foresight, established a body to study and gatekeep uses of AI in law – the Arizona Steering Committee on Artificial Intelligence and the Courts. That body has wisely not approved the use of generative AI in core judicial decisionmaking. But such uses are, anecdotally, getting underway. Our high court should hit a pause button and bar the use of generative AI in core judicial decisionmaking by rule for three years, so the public knows humans are deciding their cases and writing the decisions in those cases. That pause would allow the Arizona Steering Committee on Artificial Intelligence and the Courts to determine what is responsible to do with generative AI in and around core adjudication, without experimentation in the field while it analyzes that question. That means no generation of first drafts, or drafts at all, by

AI – those practices abdicate our core responsibilities as judges. That means not finding categories of “routine” or otherwise implicitly less-significant matters in which AI should be given more sway – that fails to accord basic dignity to those Arizonans relegated to that form of decision-making. That means not writing a decision and telling ourselves, or the public later, that judges who had generative AI create their draft “checked everything” before they issued it. Such a process surrenders the core judicial role, which is inherently creative and calls for judgment and independence, to a nonhuman process that is none of those things.

Taking the wise step of pausing the use of generative AI in core judicial work would preserve public respect for courts and law, safeguard fundamental fairness, and give Arizona time to process what it should do about the flood of AI in law, rather than developing guidelines through an uncontrolled experiment lacking an overall design or plan, using real people and their problems as unconsenting guinea pigs. The Arizona Supreme Court has set up a structure for the proper study and receipt of AI into the court’s ecosystem. This Petition urges it by rule to lean into using that structure in an assertively cautious manner, to preserve respect for the litigating public, to preserve respect for our courts, and to conserve for our courts the credibility needed to address the rising tide of improper uses of AI by litigants and their counsel.

I. There Are Strong Dignitary Reasons to Ban the Use of Generative AI in Core Judicial Work Product.

Implicit in due process is individualized consideration of one's case and claims by a neutral judge. Arizona's court rules illustrate the point that a judge can only rarely delegate their responsibilities to another person. As one example, Arizona Rule of Civil Procedure 53 allows the appointment of a special master only where the parties consent, or where a judge cannot effectively perform certain tasks, or some exceptional circumstance supports the appointment. Ariz. R. Civ. P. 53(a)(1). Even then, the judge has to review what the master did, and the parties first get to object before the judge to whatever the master did. Ariz. R. Civ. P. 53(f). Arizona Rule of Family Law Procedure 72 only allows the appointment of a family law master with the consent of the parties, and is thus narrower than Civil Rule 53. Ariz. R. Fam. Law P. 72(a). The point is that the judge cannot delegate their power to decide – even the delegation of subordinate tasks to a master is done in sunlight, with the parties' assent or knowledge, and with the parties getting a chance to influence whether the judge finally accepts or adopts that master's work.

AI presents a profound challenge to the dignity afforded by a judge's consideration of a person and their claims because – unlike the use of a master – the judge using AI doesn't seek the parties' consent to its use and its use is neither open nor transparent. Despite that, a judge using generative AI to draft default orders, summary judgment rulings, or other decisions offloads to an unacknowledged

algorithm some quantum of their creative process of judging that person and their claims. The lack of transparency disrespects the promise of individualized consideration. See Hadar Y. Jabotinsky & Michal Lavi, *AI in the Courtroom: The Boundaries of RoboLawyers and RoboJudges*, 35 FORDHAM INTELL. PROP. MEDIA & ENT. L.J. 286, 325 (2025) (“Without transparency it is difficult for stakeholders . . . to successfully oversee and ensure fairness and accountability of algorithms. . . . This is true regarding all AI tools that assist decision making . . . and even more so regarding algorithms involved in judicial decisioning.”).

It is no response to justify such uses of generative AI by comparing it to a law clerk, however much we would like to have more law clerks to help the judiciary serve Arizona’s public. Generative AI is not like a law clerk because it is not human, and because it is novel technology. The Court of Appeals has received briefs in the last year, believed to have been generated by AI, that apparently contain hallucinated case citations, that are either nonexistent or mashups of two different cases that do exist. Law clerks don’t do that. And generative AI is not subject to the canons of professionalism and further professional regulation, as are law clerks, nor is it law trained, as are law clerks. The fact that generative AI can, with prompts, generate work product that superficially resembles human-generated work product, does not vest it with any of the indicia of humanity that weave together the collaborative work of a judge and a law clerk, staff attorney, or other judicial branch employee. The

public can reasonably expect judges to receive drafting assistance from other humans – from novel algorithms that can hallucinate, not so much.

Respect for the dignity of Arizonans requires more. The Arizona Supreme Court should prevent the use of generative AI in core judicial work, for now – to draft in whole or in part orders, decisions, or anything to be issued by the court – even in early or rough forms. Abdicating our role as judges to an algorithm, even in part, is not respectful of those we serve. An informed public would not accept it.

II. The Arizona Supreme Court Should Enact a Rule Banning the Use of Generative AI Pending Study of its Use to Maintain Public Trust and Confidence in the Judiciary.

The Arizona Judicial Branch’s strategic agenda wisely makes a major priority maintaining public trust and confidence. *See* “... and Justice for All,” Arizona Judicial Branch Strategic Agenda, <https://www.azcourts.gov/Portals/0/0/Strategic%20Agenda/ASCStrategicAgenda-AndJusticeForAll-2024-10-Digital.pdf>. For that reason too, the Arizona Supreme Court should hit a statewide pause button on the use of generative AI in core judicial work product, until the tool is better vetted and understood, to avoid further erosion in public trust in courts and the rule of law.

Americans have serious trust issues concerning AI. Forty-two percent of respondents to an NBC News poll “thought AI would make their and their families’ futures ‘somewhat worse’ or ‘much worse.’” Alexandra Marquez & Angela Yang,

Poll: As Americans form views on AI, they're divided on its role in school and everyday life, NBC NEWS (June 18, 2025), <https://www.nbcnews.com/politics/nbc-news-polls/poll-americans-form-views-ai-divided-role-school-everyday-life-rcna212782>. Fifty percent of Americans are “more concerned than excited” about the rise of AI in daily life. *Concern and Excitement About AI*, PEW RESEARCH CENTER (Oct. 15, 2025), <https://www.pewresearch.org/global/2025/10/15/concern-and-excitement-about-ai/>. As another study by the Pew Research Center showed, 61% of Americans “say they would like more control over how AI is used in their lives.” Colleen McClain, et al., *How the U.S. Public and AI Experts View Artificial Intelligence*, PEW RESEARCH CENTER (Apr. 3, 2025), <https://www.pewresearch.org/science/2025/09/17/ai-in-americans-lives-awareness-experiences-and-attitudes/>.

Distrust of AI by our customers is a great reason to slow-walk its adoption – our work is only legitimate to the extent the public views it as such. *See* Hon. Brian MacKenzie (Ret.), *Part Four: AI in the Courts: Judicial Decision-Making: Transparency, Accountability, and the Judicial Role*, JUSTICE SPEAKERS INSTITUTE (Oct. 21, 2025), <https://justicespeakersinstitute.com/ai-in-judicial-decision-making-transparency-ethics/> (“Judicial legitimacy depends not only on fair outcomes, but also on the public’s confidence that a judge’s decisions are reasoned, ethical, and explainable.”). Using AI to decide lawsuits without notice to Arizonans – which

according to anecdotal reports is apparently occurring today – would unfortunately play into the public’s sense of helplessness at AI’s use at its expense. To safeguard the public’s trust in our courts and the rule of law, rules on what sensible uses there are of generative AI to assist judicial officers in their work (if any) need to come from the Arizona Supreme Court before generative AI is used – not after an unmanaged, ad hoc period of experimentation.

III. Strictly Controlling the Use of Generative AI By the Judiciary Is Necessary to Courts’ Legitimacy in Regulating Counsel’s and Parties’ Misuse of It.

It is hardly news that generative AI is challenging courts, as lawyer and litigant use of it rises. In one frequently-cited sanction order, the federal court for the District of Arizona sanctioned counsel for a brief “replete with citation-related deficiencies, including those consistent with artificial intelligence generated hallucinations.” *Mary v. Commissioner of Social Security Administration*, No. CV-25-00689-PHX-KML (ASB) (Aug. 14, 2025), Dkt. No. 18. A panel of the Arizona Court of Appeals recently addressed briefing seemingly replete with artificial intelligence-driven characteristics, sanctioning counsel for incorrect and false citations and referring counsel to the State Bar of Arizona. *In re Marriage of Pineda v. Campos*, No. 1 CA-CV 24-0912 FC, 2025 WL 2254070, at **4-5 ¶¶ 22-27 (Ariz. App., Aug. 7, 2025). The Court of Appeals continues to see a non-trivial number of briefs with these characteristics. Given that there were none a few years ago, it is

more than plausible the number – which is presently unacceptable and corrodes justice – will rise. The sparse data available corroborate that sense. The American Bar Association’s 2025 Legal Industry Report (covering the 2024 calendar year) found 31% of lawyer respondents reported “personally us[ing] generative AI at work,” a 4% increase from 2023. *The Legal Industry Report 2025*, ABA (May 6, 2025), https://www.americanbar.org/groups/law_practice/resources/law-technology-today/2025/the-legal-industry-report-2025/ Another study claimed to find that 55% of law firm attorneys use generative AI in their practices. Midhat Tilawat, *AI in Law Statistics 2026: 55% of Lawyers Already Use AI and Adoption Is Accelerating*, ALLABOUTAI (Oct. 23, 2025), <https://www.allaboutai.com/resources/ai-statistics/ai-in-law/#what-percentage-of-lawyers-use-ai-tools-in-their-legal-practice>.

Precisely because a rising tide of AI-generated junk in camouflage is washing up on the judicial beach, like ever-growing islands of plastic floating in the Pacific Ocean, courts have to be ready to sanction and regulate AI to preserve fairness, efficiency, and truth in our courts. Sanctions will likely often be warranted, because the use of generative AI that makes errors and hallucinates is an access to justice issue. Litigants are already greatly challenged by the cost of litigation in the 2020s. Now add to it the cost of rigorously examining opposing briefs for the fabrications, fake cites, and half-truths of AI-generated work, and then seeking remedies for it.

The courts will have to be ready to police this issue. Recognizing this reality, the Arizona Court of Appeals for Division One has established an committee of judges to examine certain AI issues in the court.

Being ready to respond to generative AI from the bench doesn't just entail having a set of cases in a database to show you what other judges have done. Far from it. Being ready means preserving the institutional credibility of Arizona's state judiciary so when it polices the boundaries of unreasonable uses of generative AI – and sanctions the misuse and abusive use of generative AI – the judiciary has all of the credibility it can bring to bear to preserve what decisional law is and has been. If the judiciary is using generative AI surreptitiously, and in an unregulated fashion, our courts will be in a less credible position to punish improper and misleading uses of generative AI. We cannot kick the chalk-line on the batter's box ourselves if we are to call these balls and strikes.

Worse, there is the danger that if enough judges are using generative AI before safe, statewide practices are enacted by the Arizona Supreme Court, there will be a notable, reported instance of a court issuing an order with serious errors using generative AI, as recently occurred in the United States District Courts for the District of New Jersey and the Southern District of Mississippi. Justin Henry, *Judges Admit to Using AI After Made-Up Rulings Called Out*, BLOOMBERG LAW (Oct. 23, 2025), <https://news.bloomberglaw.com/business-and-practice/judges-called-out->

for-nonfactual-rulings-admit-to-use-of-ai. The New Jersey order, which used the AI called ChatGPT, “result[ed] in a June 30 order that contained case quotations that didn’t exist.” *Id.* The Mississippi order, which used the AI called Perplexity, “result[ed] in a July 20 temporary restraining order that referred to parties, allegations, and quotes unconnected to the case.” *Id.* These aren’t mistakes in any conventional sense – they are the interjection of untruth and nonsense into adjudication by the use of non-human tools that make things up. Why the world is in a hurry to embrace such risky tools is a mystery that will have to abide (courts were able to write orders five years ago without ChatGPT or Perplexity), but the answer should not compel Arizona judges to adopt this rising judicial-cultural trend of running with scissors.

A reported episode of hallucinated judicial work product would be deeply damaging to our courts’ credibility in a general sense, as this Petition discussed in Section II. But it would more specifically injure the credibility of Arizona’s courts in policing the use of generative AI, which is an important point. It would engender a sense of do-as-I-say, not-as-I-do when our courts punish misuses of generative AI – which our courts are already doing, and will have to do much more as we establish a baseline of how to address AI abuses. As surely as a truculent high schooler will resent homework more when it is generated and graded by AI, so will people who appear before Arizona’s courts be more likely to overuse and misuse generative AI

if our courts are known to have done so. Arizona's judiciary needs to claim the high ground by pausing the use of generative AI, studying its use and misuse elsewhere, and promulgating standards for when (if at all) it can be used by judges.

This Petition does not suggest that it is impossible for there to be reasonable uses of generative AI in secondary judicial work product (that is, not in generating drafts, but in interrogating a draft already generated with reliable databases like Westlaw, Lexis, and the court's own website). But even there, it bears noting that a 2023 test of ChatGPT's legal chops by SCOTUSblog found it correctly answered only 21 of 50 questions put to it. Tufan Neupane, *How AI-driven hallucinatory filings are impacting Arizona courts*, AZ BIG MEDIA (Nov. 5, 2025), <https://azbigmedia.com/business/heres-how-ai-driven-hallucinatory-filings-are-impacting-arizona-courts/>. See also Eric A. Posner and Shivam Saran, *The Role of AI in Judicial Decision-Making*, COLUMBIA LAW SCHOOL BLUE SKY BLOG (Feb. 19, 2025), <https://clsbluesky.law.columbia.edu/2025/02/19/the-role-of-ai-in-judicial-decision-making/> (suggesting formalism and limits inherent in AI's assistance with adjudication). None of this is to condemn what can potentially help the judiciary serve the public. But all of it is to raise a caution flag and to suggest a pause in using generative AI in anything that is written for the public, or which is to decide matters in a case, and to suggest the wisest course is to hang back and conduct proper studies of the utilities and disutilities of generative AI.

IV. The Arizona Supreme Court Should Adopt Proposed Rule 135 and Thus Impose a Moratorium on the Use of Generative AI in Core Judicial Work in Arizona’s Courts through December 2029, to Allow the Study and Proper Reception of This Transformative Tool.

The Arizona Supreme Court wisely and with foresight established a body that addresses uses of AI in our courts. It is the Arizona Steering Committee on Artificial Intelligence and the Courts. *See* Ariz. Code Jud. Admin. § 1-509. It has proceeded, after study, wisely and with caution in approving the use of specific named AI tools in performing tasks that are not core judicial work. Thus, CoPilot, Claude, ChatGPT, Gemini, Perplexity, and Adobe AI are approved for uses like drafting correspondence, generating newsletter content, creating presentations, analyzing sets of data or written materials, or generating images. *See* Arizona Supreme Court Center for Forensics and Artificial Intelligence, Artificial Intelligence Information for Courts, available at <https://www.azcourts.gov/forensicsciencecenter/AI>. Nothing in Section 1-509 of the Code of Judicial Administration, or in the guidance of the Arizona Steering Committee on Artificial Intelligence and the Courts has approved uses of AI in core judicial work product, such as drafting opinions, orders, or rulings in the first instance.

Precisely because the Arizona Supreme Court has established a body to oversee our state’s progress in this area, and given the surge in uses of generative AI, the time is ripe to impose a moratorium on its use in core judicial work product, so the Arizona Steering Committee on Artificial Intelligence and the Courts may study

in any manner it deems appropriate whether and to what extent generative AI should be used by judges. Until that study is conducted, and further rules imposed, the Arizona Supreme Court should pause its use before a host of undesirable possibilities take root and yield fruit that will disserve our collective mission as a judiciary.

Conclusion

For these reasons, I respectfully Petition the Court to adopt the proposed new Rule of the Arizona Supreme Court 135, attached hereto in the Appendix.

RESPECTFULLY SUBMITTED this 12th day of January, 2026.

By /s/ Andrew M. Jacobs
Hon. Andrew M. Jacobs
Arizona Court of Appeals, Division One