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IN THE SUPREME COURT
STATE OF ARIZONA

In the Matter of	Arizona Supreme Court No. R-26-0020
PROPOSED RULE 135, RULES OF THE SUPREME COURT	COMMENT IN SUPPORT OF PETITION TO ADOPT RULE 135, RULES OF THE SUPREME COURT

COMMENT SUPPORTING PETITION TO ADOPT RULE 135, RULES OF THE SUPREME COURT

Pursuant to Rule 28, Rules of the Supreme Court of Arizona, the Honorable Erik Thorson, presiding judge of the Arizona Tax Court, comments in support of the adoption of proposed Rule 135 in this Court's rules, which would govern the use of generative artificial intelligence in judicial work.

When judges engage in "core judicial work," defined in the Petition's proposed rule as "drafting any document that adjudicates," including "drafting [ruling] language that will be read from the bench," our powers of judgment are at their zenith. Due process requires that the exercise of judgment inherent in these core

judicial functions be non-delegable—even to other non-judge humans at times. *See Gish v. Greyson*, 253 Ariz. 437, 447 (App. 2022) (court can neither delegate judicial decision to an expert "nor abdicate its responsibility to exercise independent judgment").

Lessons from Other Professions Show the Risks Inherent in Using AI in Our Core Work as Judges and the Precautions that Should Be Taken

Were it otherwise, those powers of judgment might decay from disuse or from undue deference to the analysis and conclusions of non-human intelligence. These are not unfounded fears. Endoscopists (the doctors whose judgment we trust to locate colon abnormalities that can be or can lead to cancer) who had AI assist them in colonoscopies for just a period of months then became twenty percent worse at exercising their own judgment.[1] The medical journal publishing the study termed this a "deskilling" risk for the doctors.[2] We should hesitate to allow the use of any tool to draft core judicial work that can result in de-skilled judges.

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[1] *See* FORTUNE, "Doctors who used AI assistance in procedures became 20% worse at spotting abnormalities on their own, study finds, raising concern about overreliance," August 26, 2025, *available at* https://fortune.com/2025/08/26/ai-overreliance-doctor-procedure-study/.

[2] *Lancet Gastroenterol Hepatol* 2025; 10: 896–903, "Endoscopist deskilling risk after exposure to artificial intelligence in colonoscopy: a multicentre, observational study," *available at* https://www.thelancet.com/journals/langas/article/PIIS2468-1253(25)00133-5/abstract.

Particularly an interloper tool that, when used in core judicial work, can only disrupt our long-functioning system of justice and its output for the public. It is of no help or efficiency to use AI to draft core judicial work but then "check" the output. Lawyers who have done similar have still been in violation of Fed. R. Civ. P. Rule 11,[3] and judges who do so find a decrease—not an increase—in efficiency. The AI Policy Consortium for Law & Courts has cited that latter phenomenon in a recent whitepaper, noting that qualitative interviews of judges evinced that "less informed use of GenAI can actually decrease efficiency, as when a judge has to spend time reviewing a document summary to see if there are any hallucinations."[4] Respectfully, each time a document summary is created by AI and will be used in judicial work, a judge should spend time reviewing each part thoroughly for hallucinations, whether they are the most informed user of AI or the least.

We should continue to consider the experiences of other professions as they adapt to the proliferation of AI in everyday and professional life. A suggested

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[3] *See, e.g.*, *Montes v. Suns Legacy Partners LLC*, CV-25-01295-PHX-GMS, 2026 WL 879001, at *18 (D. Ariz. Mar. 31, 2026) (cited for persuasive value only pursuant to Ariz. R. Supreme Ct. 111(d)) (Plaintiff's counsel who used LexisNexis Document Analysis tool to check pleading "did not make 'a reasonable and competent inquiry'" into the existence of a fictitious citation.).

[4] Amy B. Cyphert, et al., "Judicial Use of Generative AI: Lessons Learned," AI Policy Consortium for Law & Courts (March 2026), at 5, *available at* https://nationalcenterforstatecourts.app.box.com/s/t8o6iry6cozgreufyfjm92jvnqg8pgsc.

informed consent for therapists essentially mirrors the Petition's proposed Rule 135(a)'s considered distinction between "core judicial work" and "adjudication-adjacent work." The informed consent provides:

> *How we [I] use AI tools*
> AI tools are used strictly for administrative and supplementary support tasks under the direct supervision of your therapist. These tools do not provide therapy, make independent clinical decisions, or interact with you directly.
> *The specific purposes for which we [I] may use AI now and in the future include:*
> - Assisting your therapist in drafting and organizing session notes;
> - Managing appointment scheduling and/or sending reminders;
> - Processing billing and insurance claims;
> - Analyzing data to identify therapy trends and track progress, which is always reviewed by your therapist;
> - Analyzing business information and generating reports or trends to help me manage my business; or
> - Helping to identify and organize external resources or referrals for your use.[5]

No such specific informed consent or disclosure has been proposed by those who oppose the Petition, but a judge who feeds briefs into an AI tool and asks for a suggested draft ruling, even with a particular bent, is no different than a therapist who does the same with session notes and asks for a draft diagnosis and treatment plan. We should not entrust our mental health to the latter and should sincerely

[5] "How to Inform Clients About Using AI Notes in Your Practice," SimplePractice.com, *available at* https://www.simplepractice.com/resource/inform-clients-using-ai-notes/.

hesitate to entrust the public's court business to the former, given the questions that can then arise about who is making the independent judicial decisions—the judge or the AI tool?

Using AI in Core Judicial Work Disserves the Public—and Ourselves

To return to the previous cautions from the mental health care world, there is no strict limit on the number of times patients can change their mental health care provider should they disagree with the way AI is used in their care. Most areas of the law in Arizona, however, have few and limited opportunities for change of judge. And this commenter is so far unaware of judges who disclose in each minute entry in which they used it, how they used generative AI. Even if use of AI in core judicial work is appropriately disclosed in advance to counsel and parties, notices of change of judge may have been previously exercised for other reasons, or the public may not understand the risks until an AI-informed adverse decision issues. Again, due process requires that judicial decisions fully remain so. *See Gish*, 253 Ariz. at 447 (App. 2022) (judicial decisions must be made after affording due process—meaning by the judge and after notice and an opportunity to be heard).

Should a most conscientious and informed AI-user judge make the required disclosures and have the informed consent of the public to use AI in core judicial work, the judge would do well to think what is lost in a chambers when the drafting of language that adjudicates no longer truly falls to the judge. Late last year, graphic

novelist Jeffrey Brown posted a sketchbook comic on social media entitled "Climb Every Mountain: An argument against the use of AI in creative endeavors."[6] In brief, and in paraphrase, it applies strikingly if one replaces the idea of hiking a summit with that of writing a ruling:

'If you write a ruling, you are rewarded with the knowledge you gained along the way/your process may be easier or more difficult, depending on workload, staff or clerk assistance, other cases on your docket, and past experiences you've had/ . . . you can start with a draft from a staff attorney or an example ruling you or a colleague previously wrote or you can start from scratch/you can also skip the process and have AI draft the ruling with your decisional lean/ . . . of course if you do that, you haven't worked for it. You haven't struggled./You missed the chance to stumble upon something unexpected in your research or your writing. You didn't consult with a staff attorney or a law clerk or a colleague along the way (after all, AI must have consulted lots of sources in doing its draft)/In the end, you didn't learn anything/ . . ./And you don't fully understand the ruling.'

Taking the shortcut of 'summiting' a mountain via AI drone that takes a picture-perfect summit photograph actually seems far less grave than shortcutting the public, and ourselves, out of our role as judges. But in each, something is lost.

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[6] *Available at* https://www.facebook.com/groups/1404116417142065/posts/1917875772432791/.

The Petition strikes an appropriate balance by allowing the use of AI in adjudication-adjacent work while keeping the judicial decisionmaker primary in core judicial work. The moratorium proposed by the Petition should be adopted to allow for a period of study of the uses of AI in core judicial work—to determine if any actually serve the public and our system of justice and if they can be adapted for safe and effective judicial use.

DATED this 29th day of April, 2026.

_/s/ Erik Thorson
Presiding Judge,
Arizona Tax Court