STATE OF WISCONSIN   IN THE SUPREME COURT

IN THE PETITION TO CREATE SCR CHAPTER 76 (USE OF ARTIFICIAL
INTELLIGENCE TOOLS)

MEMORANDUM

I. Introduction and Summary

This petition seeks creation of SCR Chapter 76 to provide clear guidance on the use of artificial intelligence (AI) technology, particularly generative AI, by lawyers, judges, court staff, and self-represented litigants in Wisconsin courts. The proposed rule clarifies that existing ethical and professional responsibility rules apply fully to the use of AI technology and establishes standards consistent with guidance from the American Bar Association and other jurisdictions that have addressed this emerging issue.

As of February 2026, Wisconsin has no statewide rule, policy, or formal guidance addressing the use of AI in legal practice or court proceedings, despite widespread adoption of such technology and growing national attention to the risks it poses. Multiple jurisdictions, including Illinois, have adopted policies or rules governing AI use, and the ABA issued comprehensive guidance in Formal Opinion 512 in July 2024. At least one Wisconsin county, Kenosha County, where petitioner resides, has adopted a local circuit court rule requiring disclosure of AI use, demonstrating both the need for guidance and the feasibility of a disclosure requirement.

The proposed rule is narrow, practical, and consistent with Wisconsin's existing ethical framework. It:

- Authorizes responsible AI use by lawyers, judges, and self-represented litigants without discouraging beneficial applications;
- Reaffirms that existing professional responsibility rules apply fully to AI technology;
- Requires independent verification of AI-generated content to prevent fabricated citations and false statements;
- Requires disclosure of AI use in court filings to promote transparency and accountability;
- Protects confidential and sensitive information from unauthorized disclosure;
- Emphasizes personal accountability for all work product, regardless of the tools used; and
- Provides a simple, standardized disclosure form that can be easily adapted by all users.

II. Background: The Emergence of Generative AI in Legal Practice

Generative artificial intelligence tools, such as ChatGPT, Claude, Gemini, Perplexity AI, and specialized legal AI platforms, have become widely available and are increasingly used by lawyers, courts, and self-represented litigants for legal research, document drafting, data analysis, and other tasks. These tools offer significant benefits, including enhanced efficiency, broader access to legal resources, and the ability to process large volumes of information quickly. However, generative AI also presents serious risks:

- Fabricated Citations and Authorities: AI tools are known to generate plausible-sounding but entirely fictitious case names, citations, statutes, and legal analysis. Numerous courts, including federal district courts and state appellate courts, have sanctioned lawyers for submitting AI-generated briefs containing fabricated authorities.
- Confidentiality Breaches: Many AI platforms retain and may use information entered by users for training purposes, creating risks of unauthorized disclosure of client confidences, attorney work product, personal identifying information, and other sensitive data.
- Bias and Discrimination: AI systems may perpetuate or amplify biases present in their training data, potentially leading to unjust outcomes or unequal treatment of litigants.
- Erosion of Professional Competence: Uncritical reliance on AI-generated content without independent verification undermines lawyers' professional judgment and violates the duty of competent representation.
- Access to Justice and Pro Se Litigants: Self-represented litigants increasingly use AI tools to understand procedures and draft pleadings. Properly used, these tools may improve access to justice by helping pro se litigants present more coherent filings. Improperly used, they can lead to inaccurate or fabricated allegations, citations, or procedural requests that burden opposing parties and courts.

These risks have prompted bar associations, courts, and ethics committees across the country to issue guidance or adopt rules governing AI use in legal practice.

III. Experience of Other Jurisdictions

A. ABA Formal Opinion 512 (July 2024)

The American Bar Association Standing Committee on Ethics and Professional Responsibility issued Formal Opinion 512, "The Use of Generative Artificial Intelligence Tools in the Practice of Law," on July 29, 2024. This comprehensive opinion addresses the application of the ABA Model Rules of Professional Conduct to lawyers using generative AI and provides the most authoritative national guidance on the subject.

Key principles from ABA Formal Opinion 512 include:

- Competence (Model Rule 1.1): Lawyers must understand the capabilities and limitations of AI tools they use. Lawyers' uncritical reliance on content created by a GAI tool can result in inaccurate legal advice to clients or misleading representations to courts and third parties. Lawyers must independently verify AI-generated output and cannot rely on it without appropriate review.
- Confidentiality (Model Rule 1.6): Lawyers must take reasonable steps to protect client information when using AI tools, including understanding how those tools store, process, and potentially share data entered into them.
- Candor Toward the Tribunal (Model Rule 3.3): Lawyers are prohibited from knowingly presenting false statements of fact or law to a tribunal and must correct material false statements, even when AI tools were used.
- Supervisory Responsibilities (Model Rules 5.1 and 5.3): Lawyers with supervisory roles must ensure that AI use by subordinate lawyers and nonlawyer staff complies with professional conduct rules. AI tools should be treated as nonlawyer assistance requiring appropriate oversight.
- Reasonable Fees (Model Rule 1.5): When AI use reduces time or effort required for a task, lawyers must bill clients fairly and reasonably, reflecting the actual labor and value delivered.

Formal Opinion 512 does not require lawyers to disclose AI use to tribunals or opposing parties, reasoning that such disclosure is not necessary to ensure compliance with existing ethical obligations. However, the opinion does not prohibit jurisdictions from adopting disclosure requirements as a matter of procedural rule or local practice.

B. Illinois Supreme Court Policy (December 2024, Effective January 1, 2025)

The Illinois Supreme Court announced an official policy on artificial intelligence in the courts on December 17, 2024, effective January 1, 2025. This policy is the most comprehensive state court AI policy to date.

The Illinois policy provides:

- The use of AI by litigants, attorneys, judges, judicial clerks, research attorneys, and court staff providing similar support may be expected, should not be discouraged, and is authorized provided it complies with legal and ethical standards.
- Disclosure of AI use should not be required in a pleading.
- The Rules of Professional Conduct and the Code of Judicial Conduct apply fully to the use of AI technologies.
- Attorneys, judges, and self-represented litigants are accountable for their final work product. All users must thoroughly review AI-generated content before submitting it in any court proceeding to ensure accuracy and compliance with legal and ethical obligations.

- The Illinois Courts will be vigilant against AI technologies that jeopardize due process, equal protection, or access to justice. Unsubstantiated or deliberately misleading AI-generated content that perpetuates bias, prejudices litigants, or obscures truth-finding and decision-making will not be tolerated.
- The Illinois policy was developed by an AI Task Force and was designed not to "have a chilling effect on the beneficial use of AI" while ensuring accountability and compliance with professional standards.

Illinois chose not to require disclosure, reasoning that such requirements could be burdensome and might discourage beneficial uses of AI. The proposed Wisconsin rule takes a different approach, as explained below.

C. Kenosha County Circuit Court Rule CR 02-12 (Local Rule)

Kenosha County Circuit Court has adopted Local Rule CR 02-12, which requires disclosure of AI use in court filings. This rule provides a proven, workable model for disclosure requirements and demonstrates that such requirements can be implemented without creating undue burden.

Kenosha County Rule CR 02-12 requires:

- A statement that AI was used in the document's preparation;
- The specific artificial tool(s) or system(s) used;
- A brief description of how the AI was used;
- Any relevant limitations or potential biases of the AI system, if any; and
- Certification that the filer has reviewed and verified the accuracy and appropriateness of any AI-generated content.
- It does not apply to common legal research tools or databases unless they incorporate generative AI capabilities.

Petitioner has personal experience using this rule in practice. The disclosure requirement is straightforward, takes minimal time to complete, and has proven valuable in promoting conscious verification of AI-generated content before filing. The rule does not discourage responsible AI use but does serve as an important accountability mechanism.

D. Other State and Federal Court Policies

At least ten state court systems have adopted AI policies or guidance as of early 2026, including Arizona, California, Connecticut, New York, Ohio, Vermont, and Virginia. While approaches vary, common themes include:

- Emphasis on independent verification and personal accountability for work product;

- Application of existing professional conduct rules rather than creation of new prohibitions;
- Protection of confidential and sensitive information; and
- Varying approaches to disclosure, with some jurisdictions requiring certification or disclosure and others explicitly rejecting mandatory disclosure.
- Federal district courts in the Northern District of Illinois, Southern District of New York, and elsewhere have issued standing orders reminding practitioners that Federal Rules of Civil Procedure 11(b) and 26(g) apply fully to AI-assisted filings and discovery.

IV. Why Wisconsin Needs a Statewide Rule with Disclosure Requirement

A. Provide Clear, Uniform Guidance Across All Wisconsin Courts

Lawyers, judges, and self-represented litigants in Wisconsin currently have inconsistent guidance on whether and how they may use AI tools in court proceedings. Kenosha County has a disclosure rule, but other counties do not. This creates uncertainty and the risk of inadvertent rule violations when practitioners practice in multiple counties.

A statewide rule provides clear, authoritative, uniform guidance that AI use is permitted and expected when done competently and responsibly, subject to existing ethical standards and a straightforward disclosure requirement. This clarity will promote both innovation and accountability while ensuring consistency across Wisconsin's court system.

B. Prevent Submission of Fabricated Authorities

Courts nationwide have sanctioned lawyers for submitting AI-generated briefs containing fabricated case citations and non-existent legal authorities. These incidents undermine the integrity of court proceedings and waste judicial resources. The proposed rule's requirement of independent verification directly addresses this risk by making clear that lawyers, judges, and self-represented litigants remain personally responsible for ensuring the accuracy of all legal citations and authorities, regardless of how they were generated.

The disclosure requirement reinforces the verification requirement by forcing filers to consciously acknowledge AI use and their responsibility to verify content before submitting it. Recent Kenosha County example. In February 2026, a Kenosha County circuit judge sanctioned District Attorney Xavier Solis after striking a state brief that used undisclosed generative AI and contained "hallucinated" and false case citations. The case involved two defendants facing a combined 74 criminal counts, including 38 felonies, and the judge ultimately dismissed all

charges without prejudice after finding that the state had not established probable cause at earlier proceedings. Although the dismissal rested on evidentiary grounds rather than the AI error alone, the incident has drawn statewide and national scrutiny as a concrete example of how undisclosed, unverified AI use can undermine confidence in court filings and require judicial intervention.

C. Promote Transparency and Accountability

Disclosure of AI use serves multiple important functions:

- Conscious Verification: The act of preparing a disclosure statement forces the filer to pause and reflect on what AI tools were used and whether content has been properly verified. This procedural step serves as a cognitive checkpoint that reduces the risk of inadvertent submission of unverified content.
- Judicial Awareness: Disclosure alerts courts that AI was used, allowing judges and court staff to exercise appropriate scrutiny of citations, quotations, and legal analysis. This is particularly valuable in cases involving self-represented litigants, where opposing counsel may not be available to identify errors.
- Opposing Party Awareness: Disclosure signals to opposing parties that extra scrutiny of citations and factual assertions may be warranted, promoting adversarial testing of AI-assisted arguments.
- Educational Function for Pro Se Litigants: For self-represented litigants, the disclosure requirement serves an educational function by making explicit that AI can generate errors and that the filer remains responsible for verifying content. Many pro se litigants may not understand the limitations of AI tools without such explicit guidance.
- Public Trust: Transparency about AI use promotes public confidence in the judicial system by demonstrating that courts are aware of and responsive to emerging technology issues.

D. Build on Proven Local Experience

Kenosha County's experience with CR 02-12 demonstrates that disclosure requirements are workable, not overly burdensome, and beneficial in practice. Petitioner has used the Kenosha County disclosure rule and found it straightforward and valuable. The proposed statewide rule adopts the core elements of the Kenosha rule while providing a model disclosure form that ensures consistency and ease of compliance.

E. Protect Confidential and Sensitive Information

Many AI platforms retain user inputs and use them for training or other purposes, creating risks of unauthorized disclosure of client confidences, personal identifying information, protected

health information, and other sensitive data. Lawyers, judges, and self-represented litigants may not be aware of these risks when using publicly available AI tools.

The proposed rule requires users of AI technology to take reasonable precautions to protect confidential and sensitive information and to understand how AI tools handle data entered into them. This protects both client confidentiality and judicial integrity.

F. Harmonize Wisconsin Practice with National Standards While Adding Wisconsin-Appropriate Safeguards

The proposed rule harmonizes Wisconsin practice with ABA Formal Opinion 512 and the Illinois Supreme Court policy in emphasizing personal accountability, independent verification, and application of existing ethical duties. At the same time, it adds a disclosure requirement appropriate to Wisconsin's needs and consistent with the approach already adopted in Kenosha County.

Wisconsin is not required to follow the Illinois approach of rejecting disclosure requirements. Each jurisdiction may adopt the procedural safeguards it deems appropriate. Given the serious risks posed by AI-generated fabricated authorities and the educational and transparency benefits of disclosure, Wisconsin is well-justified in adopting a disclosure requirement as a matter of prudent procedural regulation.

G. Support Access to Justice While Ensuring Accountability

The proposed rule explicitly applies to self-represented litigants, recognizing that pro se litigants increasingly use AI tools and may benefit from clear guidance. The rule does not prohibit pro se AI use or create undue barriers. Instead, it provides plain-language information about AI limitations and verification responsibilities, promoting more effective and accurate pro se filings. The suggested disclosure form uses accessible language suitable for self-represented litigants while maintaining appropriate legal standards. The Director of State Courts is encouraged to develop plain-language educational materials for pro se litigants, further promoting access to justice.

V. Analysis of Proposed Rule

A. Scope (Section (a))

This section defines the rule's applicability to lawyers, judges, court staff, and self-represented litigants. It defines "generative artificial intelligence tool" in functional terms and explicitly carves out routine non-generative tools such as word processors, spell-checkers, citation formatters, and traditional research databases.

The carve-out is essential to avoid creating confusion or unnecessary disclosure burdens. Virtually all legal work uses some form of technology assistance, but the rule targets generative tools that create new content and pose particular risks of fabrication and error.

The inclusion of self-represented litigants recognizes the reality that pro se litigants increasingly use AI tools and should have clear guidance about their responsibilities.

B. Application of Existing Duties (Section (b))

This section reaffirms that all existing Supreme Court Rules governing professional conduct apply fully to AI use. It identifies the most directly applicable rules competence, confidentiality, and candor toward the tribunal without purporting to be exhaustive. This approach avoids creating new, technology-specific obligations and instead applies familiar ethical principles to new technology, consistent with ABA Formal Opinion 512.

C. Verification and Disclosure (Section (c))

This section establishes two core requirements: independent verification and disclosure.

Verification (subsection (c)(1)): Lawyers must independently review and verify all AI-generated content before submission, with particular attention to factual assertions, legal citations, and legal analysis. This requirement addresses the single greatest risk posed by generative AI: fabricated authorities and false statements. The subsection treats AI tools as nonlawyer assistance subject to SCR 20:5.3, consistent with ABA Formal Opinion 512.

Disclosure (subsections (c)(2) and (c)(3)): Lawyers and self-represented litigants must disclose AI use when substantive content was generated by AI tools. The disclosure must identify the tool used and briefly describe how it was used. This requirement is modeled on Kenosha County Rule CR 02-12.

The disclosure requirement is narrow and practical:

- It applies only when substantive content (not routine spell-checking or citation formatting) was AI-generated;

- It requires identification of the specific tool and a brief description of use, not a detailed technical explanation;
- It can be included in the filing itself or submitted as a separate certification; and
- A model form is provided in subsection (g) to ensure ease of compliance and consistency.

The disclosure requirement applies to self-represented litigants using "shall" language, making clear that pro se litigants have the same disclosure obligation as lawyers. This promotes consistency and accountability.

D. Judicial and Staff Use (Section (d))

This section makes clear that judges, court commissioners, and court staff remain personally responsible for orders, opinions, and other court documents even when AI tools assist in drafting. It requires independent review for accuracy and consistency with law and the record.

This provision is essential to maintaining judicial integrity and public trust. Judges exercise constitutional authority and must ensure that their decisions reflect their own independent judgment, not unverified AI output.

E. No Presumption from Use (Section (e))

This section ensures that the rule does not stigmatize responsible AI use. It makes clear that AI use, standing alone, is not misconduct and does not create a presumption of impropriety. Misconduct arises from failure to meet professional obligations such as submitting unverified fabricated authorities—not from the mere fact that AI was used.

This provision is essential to avoid chilling beneficial AI applications and to ensure that the rule promotes accountability without discouraging innovation.

F. Education and Public Information (Section (f))

This section encourages the Office of Lawyer Regulation and the Judicial Education Office to provide ongoing education on AI tools and ethics. It also encourages the Director of State Courts to develop plain-language materials for self-represented litigants.

This provision recognizes that effective implementation of the rule requires education and outreach, particularly for pro se litigants who may lack familiarity with professional ethics concepts.

G. Form of Disclosure (Section (g))

This section provides a model disclosure and certification form that satisfies the disclosure requirement in subsection (c). The form is based on petitioner's own AI disclosure used in Kenosha County and adapted for statewide use.

The form language:

- Is accessible to self-represented litigants while maintaining appropriate legal standards;
- Identifies the tools used and the purposes for which AI was used;
- Acknowledges AI limitations, including the risk of errors, outdated law, and biases;
- Includes a certification that the filer has independently reviewed and verified all content; and
- Makes clear that the filer accepts full responsibility for the document.

The form can be adapted by practitioners and courts as needed but provides a consistent baseline for compliance.

VI. Effect on Procedural and Substantive Rights

A. Procedural Rights

The proposed rule enhances procedural rights by:

- Ensuring accuracy and reliability of legal arguments and citations submitted to courts;
- Protecting against fabricated authorities that waste court resources and mislead tribunals;
- Maintaining due process and equal protection by prohibiting AI use that prejudices litigants or obscures truth-finding;
- Promoting transparency through disclosure requirements that allow courts and opposing parties to appropriately scrutinize AI-assisted filings; and
- Providing clear standards for lawyers, judges, and self-represented litigants regarding AI use.

The rule creates minimal procedural burden. The disclosure requirement can be satisfied with a brief paragraph or standardized form, similar to other routine certifications already required in practice (such as service certifications and signature blocks).

B. Substantive Rights

The proposed rule does not abridge, enlarge, or modify the substantive rights of any litigant. It is a procedural and ethical rule governing how lawyers, judges, and self-represented litigants use technology in practice. It does not affect the elements of claims, defenses, remedies, or other substantive legal rights. See Wis. Stat. § 751.12(1).

VII. Fiscal and Administrative Impact

The proposed rule has minimal fiscal and administrative impact. It does not require new court personnel, technology infrastructure, or expenditures. It does not impose significant new filing requirements or procedural steps beyond a brief disclosure statement.

The rule may reduce burdens on courts by:

- Preventing submission of fabricated authorities that waste judicial time;
- Reducing motion practice related to AI-related misconduct;
- Providing clear standards that avoid the need for case-by-case determinations of ethical obligations; and
- Promoting more accurate and reliable filings by all parties.

Any burden associated with preparing disclosure statements is minimal and is offset by the verification and accountability benefits the disclosure requirement provides.

VIII. Related Pending Petitions

Petitioner is not aware of any related pending rule petitions as of February 15, 2026. A search of pending petitions at https://www.wicourts.gov/scrules/pending.htm revealed no petitions addressing artificial intelligence or technology use in legal practice.

IX. Consultation

This petition is submitted by an individual pro se litigant and user of AI technology for legal research and brief preparation. Petitioner has practical experience with the Kenosha County AI disclosure rule and has found it workable and beneficial. Petitioner has not formally consulted with committees, agencies, or other individuals prior to filing, but welcomes input from the State Bar of Wisconsin, the Office of Lawyer Regulation, the Judicial Conference, and other interested stakeholders during the comment period.

X. Request for Public Hearing

Petitioner respectfully requests that the Court hold a public hearing on this petition.

The responsible use of generative artificial intelligence tools in Wisconsin courts is an issue of statewide importance that affects attorneys, judges, court staff, and self-represented litigants. A public hearing would allow the Court to receive input from a broad range of stakeholders, including the Office of Lawyer Regulation, the State Bar of Wisconsin, the Board of Bar Examiners, legal aid and access-to-justice organizations, county circuit courts (including those that have already adopted local AI rules), technologists, and members of the public.

Because generative AI tools are already being used in connection with court filings and judicial work, and because misuse of these tools can directly affect the accuracy of court submissions, the protection of confidential information, and public confidence in the integrity of the judicial system, a public hearing would substantially assist the Court in evaluating the proposed disclosure, verification, and education requirements and in considering any refinements or alternatives.

Petitioner therefore asks the Court to schedule this petition for a public hearing under its usual rule-making procedures and to invite written and oral comments from interested persons and organizations.

XI. Effective Date

Petitioner proposes an effective date of July 1, 2026, consistent with Wis. Stat. § 751.12(1). This provides sufficient time for practitioners and courts to become aware of the rule and adjust practices as necessary.

XII. Retroactive Effect

The proposed rule should not have retroactive effect on pending matters. It clarifies existing ethical obligations and adds a new disclosure requirement, but should apply prospectively to avoid unfair surprise or disruption of pending cases.

XIII. Conclusion

Artificial intelligence technology is rapidly transforming legal practice. Wisconsin lawyers, judges, courts, and self-represented litigants are already using these tools and will continue to do so. The question is not whether AI will be used, but whether it will be used responsibly, competently, and in a manner consistent with professional and ethical standards.

The proposed rule provides clear guidance that promotes responsible innovation while protecting the integrity of the legal system, public trust in the judiciary, and the rights of litigants. It is consistent with guidance from the American Bar Association and policies adopted by other jurisdictions, while incorporating a disclosure requirement modeled on Kenosha County's proven local rule. The disclosure requirement promotes transparency, accountability, and conscious verification of AI-assisted content without creating undue burden or discouraging beneficial uses of AI technology.

Petitioner respectfully requests that the Wisconsin Supreme Court adopt the proposed rule to provide needed clarity and guidance on this important and rapidly evolving issue.

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Respectfully submitted,

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