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Cross-Examining the Algorithm

By Ann Czyzewski Farr and Shannon Proctor

# Guardrails for AI-Assisted Expert Opinion

> **"The challenge for lawyers is no longer *whether* AI will be used, but *how* courts will regulate its use and the ethical concerns that may arise."**

Artificial Intelligence (AI) is no longer a theoretical issue for the legal industry. It is widely available, increasingly embedded in professional workflows, and appearing in court filings. The challenge for lawyers is no longer *whether* AI will be used, but *how* courts will regulate its use and the ethical concerns that may arise. That includes how courts will regulate AI, and the ethical concerns stemming from experts' usage of AI.

## EXPERTS USING AI MUST SATISFY FEDERAL RULE OF EVIDENCE 702 AND STATE EQUIVALENTS

Expert opinions must satisfy the reliability and methodology requirements of Federal Rule of Evidence 702, or the applicable state equivalent. That obligation does not change simply because an expert relies on an AI program in developing or presenting the expert's opinions. Heightened attention to evidentiary obligations should be given when an expert uses AI. If an expert cannot explain or replicate AI-assisted methodology, the testimony is not reliable. For example, in *Matter of Weber as Trustee of Michael S. Weber Trust*, 220 N.Y.S. 3d 620, 633 (N.Y. Sur. 2024), the court excluded a damages expert's opinion because he used Microsoft Copilot, a generative AI assistant and multimodal large language model, to cross-check his calculations regarding the estate accounting, but could not recall the inputs or prompts used to assist him with his calculations. The expert also could not explain what sources the AI program relied upon or how it arrived at any given output. *Id.* Troubled by the expert's inability to describe his methodology, the court ran its own calculations on three separate computers, all of which generated slightly different outcomes. *Id.* Despite the expert's claim that using Microsoft Copilot is a generally accepted methodology in his field, he provided no supporting evidence. *Id.* at 634. The court held that, without "any evidence as to the reliability of Microsoft Copilot in general, let alone as it relates to how it was applied here," it could not "blindly accept as accurate,





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calculations which are performed by artificial intelligence." *Id.*

Similar issues arose in *In re Celsius Network LLC*, 655 B.R. 301, 308 (Bankr. S.D.N.Y. 2023). A *pro se* creditor submitted a 172-page report from a valuation expert. When the report was challenged by the Debtors and the Official Committee of Unsecured Creditors, the expert readily admitted that the report "was written by artificial intelligence at the [expert's] instruction." *Id.* The court deemed the AI-generated report fundamentally unreliable for several key reasons:

- The court found that the report lacked authorship and oversight by the expert because it was entirely written and generated by Microsoft Copilot in seventy-two hours. The expert admitted that a human-authored comprehensive report of that scale would have taken over 1,000 hours to complete. *Id.*; *see also* Fed. R. Evid. 702(a) (expert's testimony must assist the trier of fact).
- Because the expert provided no standards for generating the report, the AI program produced material errors (describing the wrong information to be evaluated) and internal inconsistencies (duplicative paragraphs). *In re Celsius Network*, 655 B.R. at 308; *see also* Fed. R. Evid. 702(b) (expert's opinion must be grounded in an adequate amount of factual information, research, or evidence specific to the case).
- The expert could not adequately explain or account for the methodology used by the AI program, meaning the report was based on insufficient facts or data and was not the product of reliable, peer-reviewed principles. *In re Celsius Network*, 655 B.R. at 308-09; *see also* Fed. R. Evid. 702(c) (expert's underlying theories and methodologies must be scientifically or technically valid and reliable).
- The expert failed to review any underlying source materials, and the AI-generated report almost entirely lacked citations to actual data while including fabricated factual context. Consequently, the document presented unverified opinions built upon hallucinated information rather than documented evidence. *In re Celsius Network*, 655 B.R. at 308; *see also* Fed. R. Evid. 702(d) (expert must reliably apply valid methods to the specific facts without overstating conclusions).

As a result of these errors, the court excluded the expert's testimony because it did not satisfy the rigorous standard set forth in Federal Rule of Evidence 702. In excluding the expert, the court emphasized that an expert report must reflect the expert's professional knowledge, experience, and rigorous methods.

## COURTS DRAW HARD LINE AGAINST UNVERIFIED AI SUBMISSIONS DESPITE RULE 702 MANDATES

Despite court decisions and clear Rule 702 mandates for expert AI use, courts are drawing a hard line against unverified submissions. In *Kohls v. Ellison*, No. 24-CV-3754 (LMP/DLM), 2025 WL 66514 (D. Minn. Jan. 10, 2025), an AI expert submitted a declaration that he drafted with assistance from GPT-4o a multilingual, multimodal generative pretrained transformer model created by OpenAI. The declaration included clear signs of AI hallucinations, including citation to two academic articles that did not exist and another with incorrect authors. Neither the expert nor the attorney reviewed the declaration for errors before filing. Although both promptly acknowledged and addressed the mistakes, the court excluded the expert's testimony outright and denied leave to amend. The court cautioned against using AI to replace independent judgment and reminded attorneys of their duty under the Federal Rules of Civil Procedure to investigate and verify their experts' use of AI.

Similar problems surfaced in *NetChoice v. Murrill*, No. 3:25-CV-231, 2025 WL 3634956 (M.D. La. Aug. 15, 2025). In *NetChoice*, an expert's report rebutting scientific evidence linking social media use to adolescent psychological harm contained seventeen fabricated citations, twelve fabricated quotations, and multiple completely hallucinated academic articles. Defs.' Mem. in Supp. of Mot. to Exclude Dr. Anthony Bean, *NetChoice*, 2025 WL 3634956. After the Louisiana Attorney General moved to exclude the report based on these defects, NetChoice withdrew the expert, rendering the issue moot. Even so, the case underscores how quickly AI-generated errors can undermine an expert's credibility and the litigation strategy built around it.

An expert witness's use of AI presents significant discovery risks for attorneys. In *Conservation Law Foundation, Inc. v. Shell Oil Co.*, a climate science historian admitted to using generative AI to filter and conduct analyses on the defendants' document production. Defs.' Mot. to Compel, *Conservation L. Found.*, No.

3:21-cv-00933-VDO (D. Conn. Dec. 23, 2025), Dkt. No. 941. The magistrate judge granted the defendants' motion to compel disclosure of the exact prompts used, ruling that search parameters form part of an expert's discoverable methodology under Federal Rule of Evidence 702. Order, *Conservation L. Found*., No. 3:21-cv-00933-VDO (D. Conn. May 18, 2026), Dkt. No. 970. Because AI outputs vary based on prompt iteration, opposing counsel is entitled to review the prompts used by a testifying expert to evaluate whether the filtering process was reliable and reproducible. The plaintiff objected to the order on June 1, 2026, and the matter remains pending as of the date of this publication.

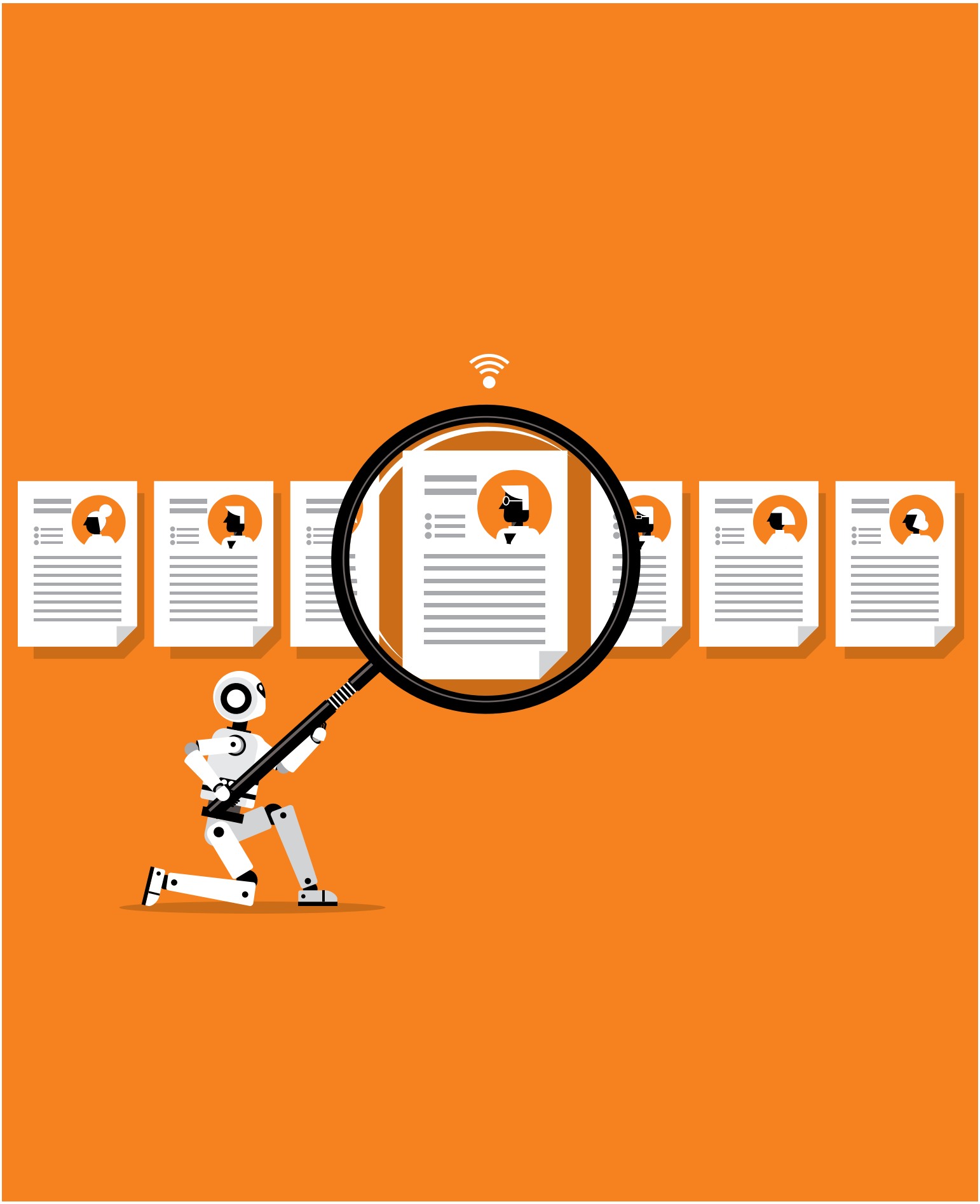
Further, attorneys who offer experts whose opinions contain AI-generated errors can lose credibility and potentially commit ethical violations. Attorneys must be cautious not to violate their ethical duties, including the obligations to provide competent representation and to engage in candor with the court. *See* Model Rules of Pro. Conduct r. 1.1 (A.B.A. 1983) [https://perma.cc/T4G5-GJ3U]; Model Rules of Pro. Conduct r. 3.3 (A.B.A. 1983) [https://perma.cc/58C6-QVTK]. State bars continue to issue ethical guidance on AI, emphasizing the need for attorneys to keep abreast of the risks and benefits associated with each individual AI program used and not to use AI as "a substitute for judicial, legal, or other professional expertise." Order re Interim Policy on the Use of Generative A.I., No. 2025-000043 (S.C. Sup. Ct. Mar. 25, 2025) [https://perma.cc/9ERS-345Y]; *see also* Or. State Bar Legal Ethics Comm., Formal Op. 2025-205 (2025) [https://perma.cc/947B-LHUL]; Mo. Advisory Comm., Informal Op. 2024-11 (2024) [https://perma.cc/49VL-TF75] (advising attorneys "not [to] rely solely on content created by a generative AI platform or service").

## STATE BAR ASSOCIATIONS ISSUE WARNINGS OVER GENERATIVE AI HALLUCINATIONS AND INACCURATE INFORMATION

Several state bars have specifically warned about generative AI and its propensity to hallucinate and/or generate inaccurate information. *See* D.C. Bar Comm. On Legal Ethics, Op. 388 (2024) [https://perma.cc/MA6Q-DD65] (warning against uncritical reliance on generative AI due to the inherent risk that its underlying datasets may be incomplete, obsolete, or biased); N.J. Sup. Ct. Comm. on A.I. Legal Practice: Preliminary Guidelines on the Use of Artificial Intelligence by New Jersey Lawyers (2024) [https://perma.cc/8SG3-NWW6] ("Because AI can generate false information, a lawyer has an ethical duty to check and verify all information generated by AI to ensure that it is accurate."). Of primary concern for attorneys whose experts rely on AI-generated information in forming their opinions is that "[t]he datasets utilized by generative AI large language models can include billions of parameters making it virtually impossible to determine how a program came to a specific result." Fla. Bar Comm. On Pro. Ethics, Op. 24-1 (2024) [https://perma.cc/U9NU-2WQR]. Although experts remain responsible for validating their opinions, attorneys must identify any AI programs utilized by the expert and confirm that their usage strictly complies with applicable rules.

Attorneys who do not comply with their ethical obligations may be subject to various types of discipline, including being sanctioned under Federal Rule of Civil Procedure 11. Rule 11 requires attorneys to certify that any paper, which includes their expert's report, is grounded in legal and evidentiary support. When an attorney submits an expert's report, the attorney is certifying the report's accuracy. If that report contains hallucinated articles, the attorney risks Rule 11 sanctions. In *Ledoux v. Outliers, Inc.*, No. 3:24-CV-05808-TMC, 2026 WL 291023, at *2 (W.D. Wash. Feb. 4, 2026), the court issued a show cause order to plaintiff's attorney when two experts offered by the attorney had several articles that did not exist or were attributed to the wrong author. Plaintiff explained that, while the article citations were incorrect, all the articles were real, picked individually by the two experts to use in their respective reports. *See* Decl. of Jocelyn C. Stewart, *Ledoux*, No. 3:24-CV-05808-TMC (W.D. Wash. Mar. 4, 2026), Dkt. No. 245. The error arose when the attorney entered the chosen articles into a generative AI program to generate a formatted citation table for the articles. *Id.* Instead of generating

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that table, the AI program generated a table that included incorrect authors, journals, publication years, and page numbers. *Id.*

The court sanctioned plaintiff's attorney $3,000 for "dozens of inaccurate factual and legal citations across at least five different filings." *Ledoux*, No. 3:24-CV-05808-TMC, 2026 WL 2137370, at *1 (W.D. Wash. July 24, 2026). While the court ultimately excluded the two experts on other grounds, the court later excluded a different expert for plaintiff because their report contained AI-generated "hallucinated" citations to academic articles. *Ledoux*, No. 3:24-CV-05808-TMC, 2026 WL 2408808, at *6-7 (W.D. Wash. Aug. 18, 2026). Ledoux provides a cautionary tale to all attorneys: even the simplest requests to AI, such as creating a citation list of all articles reviewed by an expert, must be verified.

## COURTS CLARIFY THAT NOT ALL EXPERT USES OF AI WILL BE DEEMED INADMISSIBLE

Courts have acknowledged that not all expert use of AI will be deemed inadmissible by a court. In *Ferlito v. Harbor Freight Tools USA, Inc.*, No. CV 20-5615 (GRB) (SIL), 2025 WL 1181699 (E.D.N.Y. Apr. 23, 2025), the expert utilized ChatGPT only to **confirm** his findings after drafting his report. *Id.* at *4. Unlike the cases discussed above, the expert in *Ferlito* did not use any AI program to generate his report, did not include hallucinated, false authorities from AI in his report, or use AI in such a way that would raise concerns about the admissibility of his opinion. *Id.* Therefore, the court admitted the expert despite his use of AI.

Finally, even when an expert's use of AI meets the attorney's ethical obligations of competency and candor to the court, attorneys must consider their ethical obligation to protect confidential client information. Whether an AI program employs an "open" or "closed" model will determine if its outputs can become part of a large language model, with open access to others who use it. Many state bars warn against the use of "open" AI programs due to confidentiality risks and require attorneys to obtain a client's informed consent before using such programs. *See, e.g.*, Or. State Bar Legal Ethics Comm., Formal Op. 2025-205 (2025) [https://perma.cc/947B-LHUL]; Alaska Bar Ass'n Ethics Comm., Op. 2025-1 (2025) [https://perma.cc/9AEA-D7Z3]; D.C. Bar Comm. on Legal Ethics, Op. 388 (2024) [https://perma.cc/MA6Q-DD65]. If the client does not provide informed consent for the use of an AI program, attorneys and their clients should collaborate to identify alternative mechanisms and safeguards to maintain confidentiality.

## LEGAL AI IS HERE TO STAY, BUT UNCHECKED MISUSE WON'T BE TOLERATED

Collectively, these decisions and ethical opinions make one point clear: while AI is not banned in legal proceedings, attorneys should proceed with caution, as misuse of AI may not be excused. Attorneys must be aware of any limitations set by specific states, courts, or judges on AI usage, including usage by experts in forming their opinions. At the outset, attorneys must inquire into whether their experts intend to use any AI programs and address any general limitations set by the court and/or specific limitations agreed to by the parties. When AI use is permitted and employed by an expert, attorneys must inquire into the AI programs utilized, the acceptability of such AI programs in the expert's field, and the expert's detailed plan for applying it. Prior to use, attorneys must advise their expert to extensively document the prompts, inputs, and sources used for the AI program, particularly to ensure that any AI-assisted methodology is transparent, replicable, and reliable. To meet admissibility requirements under Federal Rule of Evidence 702 and parallel state standards, both experts and attorneys must understand the AI program thoroughly enough to explain how their prompts generated the results. An attorney must verify any AI-generated material. And finally, an attorney must know when disclosure of AI use is required and properly follow any disclosure requirements.

**... even when an expert's use of AI meets the attorney's ethical obligations of competency and candor to the court, attorneys must consider their ethical obligation to protect confidential client information.**

Each of these requirements is essential not only to protect admissibility of an expert's opinion, but also to ensure that technology enhances—rather than replaces—professional judgment.