EDITOR'S FOREWORD: NO WA*I*TING: LITIG*AI*TION IS HERE!

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In November 2022 ChatGPT was let loose, changing everything, including the legal world. The past year has seen articles about:

- judges using AI to draft rulings (see *Colombian judge uses ChatGPT to make decision in legal first* (Feb. 3, 2023) Daily Mail; *Judge admits he used ChatGPT to write a Court of Appeal ruling as he calls the AI tool 'jolly useful'* (Sept. 14, 2023) Daily Mail; *AI object! Judges will be able to use ChatGPT in legal rulings in England and Wales—despite the technology being prone to making up bogus cases* (Dec. 12, 2023) Daily Mail);

- AI passing the Bar Exam (see Arredondo, *GPT-4 Passes the Bar Exam: What That Means for Artificial Intelligence Tools in the Legal Profession* (April 19, 2023) Stanford Law School Blog);

- lawyers being sanctioned for relying on AI-generated filings (*Mata v. Avianca Inc.*, No. 22-CV-1461-(PKC), 2023 WL 4114965 (S.D.N.Y. June 22, 2023); Neumesiter, *Lawyers blame ChatGPT for tricking them into citing bogus case law* (June 8, 2023) AP; Merken, Another NY lawyer faces discipline after AI chatbot invented case citation (Jan. 30, 2024) Reuters);

- a criminal defendant seeking a new trial based on ineffective assistance of counsel, alleging his lawyer incompetently used AI to craft his closing argument (Gerstein, *Pras Michel of Fugees seeks new trial, contends former attorney used AI for closing argument* (Oct. 16, 2023) Politico); and

- courts nationwide (e.g., Texas, Ohio, Pennsylvania, Hawaii, Florida) imposing or considering new rules to ban or regulate the use of AI in litigation. For example, the Fifth Circuit Court of Appeals has proposed a rule that counsel must certify that no generative AI was used in drafting a document to be filed, or if it was used, that "all generated text, including all citations and legal analysis, has been reviewed for accuracy and approved by a human." (See Raymond & Merken, *Two US appeals courts form committees to examine AI use* (Jan. 14, 2024) Reuters [referencing AI-related committees in the Third and Ninth Circuits].)

AI has been called the biggest transformation in the practice of law since the move from books to online research. Burton's Legal Thesaurus now has entries for "AI Bias," "Generative AI," and "AI Hallucination." (See Karp, *'AI Bias,' 'Hallucination' Among Top New Legal Terms Of 2023* (Dec. 11, 2023) Law360.) State Bar Associations around the country have formed task forces that are working on rules and guidelines. (E.g., New York State Bar Association Task Force on Artificial Intelligence, https://nysba.org/committees/task-force-on-artificial-intelligence/; Florida Bar News (Oct. 13, 2023) *Proposed Advisory Opinion on Lawyers' and Law Firms' Use of Generative Artificial Intelligence*) The California State Bar's Standing Committee on Professional Responsibility and Conduct issued *Practice Guidance for the use of Generative Artificial Intelligence in the Practice of Law,* which the State Bar Board of Trustees approved in November 2023. (See Jiang, *California State Bar Releases Guidance On Use Of GENAI In Practice Of Law,* https://calawyers.org/privacy-law/california-state-bar-releases-guidance-on-use-of-genai-in-practice-of-law/.) This guidance reminds lawyers that using AI raises concerns involving the duty of confidentiality, the duties of competence and diligence, and issues regarding client billing.

If the AI extravaganza has not yet affected your practice, rest assured that it will—and soon.

To make the point, consider Chief Justice Roberts' 2023 Year-End Report (reproduced immediately after this foreword), which traces the history of legal technology leading up to the latest frontier: AI. Picking up the point and running with it, we present *What Will AI Mean for Litigation*, by Justice Grimes and Justice Streeter (Editorial Board members of this publication) and Michael Colantuono—a practitioner at the forefront of using AI at his law firm. Next, Los Angeles County Superior Court Judge Abraham Meltzer presents *Why Black Box Evidence Should Not Be Allowed in Criminal Cases.* Further emphasizing the risks of AI in litigation, Reza Torkzadeh and Allen Wilkinson present some

drawbacks and warnings. And in a related technology vein, Tim Kowal explores the future in *A Day Without A Court Reporter.* This piece explores why there is a shortage of court reporters in California, what other states have done, and what paths forward exist to address the problem.

Apart from AI, this issue of California Litigation also continues our "working" themed series of articles on participants in the court system other than lawyers and judges. To wit, in this installment Editorial Board member Dan Lawton interviews a process server.

Turning to developments in substantive law, Professor Bill Slomanson tackles issues in the litigation of child sex abuse cases, and Brandon Teachout addresses the red hot issue of *Chevron* deference. Even if those two major topics don't affect your practice, our next article is important to every California lawyer. Mark Tuft outlines the new Rat Rule (or Snitch Rule) in *Reporting Another Lawyer's Professional Misconduct: Implications for California Lawyers.* This new mandatory rule is a big change in the Golden State, which until recently was something of an outlier in not having such a reporting duty.

In closing, our Federal Courts Committee has once again provided another fascinating interview with a federal judge, this time Eastern District Judge Nunley.

This issue is not likely to be all you'll ever read about AI in *California Litigation.* More exciting developments are around the corner—whether you welcome them or not! If there's a topic you'd like to see covered—or if you have any feedback on this issue—please send me an email. Or, better yet, submit an article!

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