Law Offices of Carolyn Elefant
LOCE
change-making energy law firm

7315 Wisconsin Avenue, #400 West, Bethesda MD 20814 | 202-297-6100
Carolyn@carolynelefant.com | LawOfficesofCarolynElefant.com | licensed in MD, DC, NY

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BY EMAIL
Clerk of the Court
U.S. Court of Appeals
for the Fifth Circuit
600 South Maestri Place
New Orleans, Louisina 70130
Changes@ca5.uscourts.gov

Re: Proposed Change to L.R. 32.3 and Form 6

To the Clerk of the Court,

My name is Carolyn Elefant. As a member of the Fifth Circuit bar, I oppose the proposed rule change to require disclosure of generative AI and certification of review and human approval of AI-generated citations and analysis. Singling out only generative AI products for verification creates a double standard and impractical burdens for attorneys, while disclosure requirements threaten the sacred attorney work product privilege. To the extent that the prevalence of false citations remains a concern, the appropriate remedy is to require all litigants to verify the accuracy cases and arguments included in their submissions, whether generated by AI, plucked from a recycled, cut-and-past brief or unearthed from the pages of a hardbacked federal court reporter on a law library shelf. Discussion follows:

1. **Inaccurate and misleading citations have always been a problem.**

Long before last year's public launch of ChatGPT, false and inaccurate citations routinely appeared in court briefs. Of prisoner briefs, a fifty-year old Supreme Court case described:

> Some of the not too subtle subterfuges used by a small minority of writ-writers would tax the credulity of any lawyer. One writ-writer simply made up his own legal citations when he ran short of actual ones. In one action against the California Adult Authority involving the application of administrative law, one writ-writer used the following citations: *Aesop* v. *Fables*, *First Baptist Church* v. *Sally Stanford*,

> *Doda* v. *One Forty-four Inch Chest*, and *Dogood v. The Planet Earth*. The references to the volumes and page numbers of the nonexistent publications were equally fantastic, such as 901 *Penal Review*, page 17,240. To accompany each case, he composed an eloquent decision which, if good law, would make selected acts of the Adult Authority unconstitutional. In time the 'decisions' freely circulated among other writ-writers, and several gullible ones began citing them also."

Cruz v. Beto, 405 U.S. 319, 328 n.7 (1972). But inaccurate citations are not limited to prisoners and lay litigants.

While false citations are an issue that must be addressed, singling out AI systems would create an unproductive double standard. All lawyers have an ethical duty to verify citations and claims, regardless of whether AI is used. The rule would also impose an impractical burden by expecting lawyers to somehow discern when a research tool relies on generative AI, which is often proprietary or opaque. Most importantly, the draft rule seems to undermine attorney work product privilege which exists precisely to protect confidential research and analysis on behalf of clients.

would compromise the sacred attorney-work product privilege and impose a continued obligation on attorneys to investigate whether a research tool employs AI as it is not always apparent.

burden on attorneys to determine whether the research tools used incorporate generative AI as it is not always appa

This proposal not only disproportionately singles out a single facet of technological assistance, despite the prevalence of inaccuracies in manual legal research, but it also imposes an onerous burden on legal practitioners who may not be privy to the intricate workings of their research tools. Moreover, it threatens to encroach upon the sacred principle of work-product privilege, which serves as the cornerstone of our legal research methodologies.

Many common research aids already leverage machine learning without disclosing it, and lawyers cannot always know or verify the technical details of the software they employ. More importantly, imposing such disclosure risks chilling attorneys' beneficial use of essential research tools that are protected under work product privilege—an unjustified breach of confidentiality.