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THE ARTIFICIAL INTELLIGENCE CASELAW REPORT

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NOVEMBER 2026

PUBLISHED BY GICLI

GICLI.ORG/AICASELAWREPORT

NOVEMBER 2026

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PRIVILEGE & WORK PRODUCT

Nevada federal court holds that an expert's ChatGPT legal case summaries are discoverable, but his prompts, AI-generated deposition outline, and draft-report materials are protected.

Villanueva v. Las Vegas Metro. Police Dep't, No. 2:24-cv-00125-ART-DJA, ECF No. 112 (D. Nev. Sept. 29, 2026)

D. NEV. • SEPTEMBER 29, 2026

Plaintiff's expert testified that he used ChatGPT to research and draft his report, and the magistrate judge ordered production of the entire 40-page history log. The district court granted in part and overruled in part plaintiff's objection to that order.

ChatGPT-generated summaries of excessive-force cases were "facts or data" the expert "considered" under Rule 26(a)(2)(B)(ii) and had to be produced, particularly because the log is the only place defendants could look for "hallucinated case citations" or legal standards the expert may have relied upon in reaching his opinion. The expert's prompts, however, were not facts or data, and would reveal his "mental impressions" and theories; his AI-generated deposition outline would reveal his "focus, priorities, or areas of concern"; and ChatGPT output he copied into his report is protected as a draft report under Rule 26(b)(4)(B).

Because "ChatGPT is not a person," use of the program did not waive any protection, and concerns about the expert's reliance on it could be addressed through impeachment at trial.

COURT FILINGS, HALLUCINATIONS & SANCTIONS

Fifth Circuit vacates a preliminary injunction and orders reassignment after the district court's orders contained AI-hallucinated facts and a nonexistent case.

Jackson Fed'n of Teachers v. Fitch, No. 25-60496, Doc. 111-1 (5th Cir. Oct. 22, 2026)

5TH CIR. • OCTOBER 22, 2026

The district court's temporary restraining order against Mississippi's anti-DEI statute, H.B. 1193, named plaintiffs and defendants who were never parties, relied on declarations from individuals who "may not even exist," and misquoted the statute.

After these errors surfaced, the district court replaced the order with a "corrected" version backdated to the original date, called the errors "clerical," and later attributed them to a law clerk's use of AI. At oral argument, the court discovered that even the corrected order cited "Cousins v. School Bd. of City of Norfolk," a Fourth Circuit case that "does not even exist."

Calling the proceedings "a botch job," the Fifth Circuit vacated the injunction and ordered reassignment, reasoning that the judge would have "substantial difficulty" setting aside his views after using "AI-hallucinated 'facts'" and that public esteem for the judiciary would suffer if the case were returned to him.

Florida appellate court denies a writ petition and issues a show-cause order over counsel's "AI slop" and AI-driven "issue churning," which "ha[d] nothing to do with hallucinated law or false legal citations."

Lisandrillo v. Palozzi, ___ So. 3d ___, No. 4D2026-2262 (Fla. 4th DCA Sept. 16, 2026)

FLA. 4TH DCA • SEPTEMBER 16, 2026

In a dissolution case, counsel filed a 61-page emergency petition, a 33-page disqualification motion, and other lengthy filings the court described as "AI slop" containing "gibberish" and "convoluted, false, and frivolous arguments."

The court emphasized that the problem had "nothing to do with hallucinated law" — the cited cases were real — but that the reasoning showed the arguments "were assembled by an AI tool rather than developed through a trained advocate's independent judgment." It identified "issue churning," in which AI-assisted documents "aggressively raise scattershot arguments," and suspected AI had generated "bogus arguments" from errors in a rough-draft transcript.

Whether the filings were AI-generated "makes no difference," the court held, because "[a]n attorney is obligated to stand behind any submission to a court." The court also flagged billing concerns, noting that "[i]t takes almost no skill and little time to generate AI slop," and ordered counsel to show cause — "without the use of AI" — why sanctions, including a Florida Bar referral, should not be imposed.

ATTORNEYS' FEES

In a dispute over attorneys' fees, the Tenth Circuit rejects the argument that opposing counsel's hours should have been lower because they used AI tools.

Flux Drive Inc. v. Rong, Nos. 25-1308, 26-1013 & 26-1292, Doc. 82-1 (10th Cir. Oct. 30, 2026)

10TH CIR. • OCTOBER 30, 2026

Plaintiffs challenged the reasonableness of an award of attorneys' fees and argued, among other things, that defense counsel's use of AI resulted in excessive billing.

The Tenth Circuit rejected the argument, noting that while AI and other online research tools may make attorneys more efficient, ethical rules still require counsel to verify the cases cited and to ensure that all arguments are grounded in legal authority. The court observed that AI tools "in some circumstances, might … reduce the hours necessary to litigate a case," but held that plaintiffs had not shown that defense counsel's "use of AI rendered the hours that they actually expended unreasonable."

AI USE AS EVIDENCE

Virginia Court of Appeals relies on a defendant's Snapchat chatbot messages as evidence of premeditation in affirming a murder conviction.

Robertson v. Commonwealth, No. 1674-25-3 (Va. Ct. App. Sept. 22, 2026) (unpublished)

VA. CT. APP. • SEPTEMBER 22, 2026

Hours before a fatal shooting, the defendant messaged Snapchat's AI chatbot that he was "about to fight," called it "just business," and asked, "What if I shot them if they step on my property with hostile intent[?]" The chatbot said it could not condone violence and that deadly force to protect property is generally not legal, and asked the defendant if there was anything he wanted to talk about, to which he replied, "No, I'm just waiting."

Affirming the first-degree murder conviction, the court held that this exchange supported a finding that the defendant "considered the use of deadly force … well before [the victim] arrived at the scene, not just in the midst of the affray," undermining his claim that he acted impulsively.

SUBSTANTIVE AI LITIGATION

COPYRIGHT & TRAINING DATA

Third Circuit holds that copying Westlaw headnotes to train an AI legal-research tool is not fair use.

Thomson Reuters Enter. Ctr. GmbH v. ROSS Intelligence Inc., No. 25-2153, Doc. 214 (3d Cir. Sept. 30, 2026)

3D CIR. • SEPTEMBER 30, 2026

Defendant ROSS used about 25,000 Westlaw headnotes, through training memos prepared by a contractor, to train an AI legal-research platform meant to compete with Westlaw. The Third Circuit held that the 2,243 headnotes at issue were original and that ROSS's use was not fair.

ROSS's use was commercial and "minimally transformative, at best," because both platforms serve the same purpose of helping users find responsive legal material; copying was not necessary because the underlying opinions were freely available, and "[u]nlike necessity, ease is not a justification for copying." On market harm, the court recognized that "the market for licensing headnotes as text to train AI is rapidly developing" and that ROSS usurped Thomson Reuters's opportunity to license its headnotes for that purpose.

The court distinguished generative AI training cases such as *Bartz v. Anthropic PBC*, 787 F. Supp. 3d 1007, 1014 (N.D. Cal. 2025), and *In re OpenAI, Inc. Copyright Infringement Litig.*, No. 1:25-md-3143 (S.D.N.Y. Sept. 1, 2026), noting that ROSS's platform "cannot generate original expression."

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