

# LITIGATION



*presents*

## **2024 Litigation and Appellate Summit**

Lunch Program: Effective & Ethical Use of Generative AI in Litigation

Thursday, April 25, 2024  
12:30pm - 2:00pm

Speakers: Hon. Karen Stevenson, Tonya Long, Eddie Kim, and Dr. Megan Ma

### **Conference Reference Materials**

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# LITIGATION



## **Effective & Ethical Use of Generative AI in Litigation**

Panelists: Hon. Karen L. Stevenson, Tonya Long, Eddie Kim, Dr. Megan Ma

# INTRODUCTIONS

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**Honorable Karen L. Stevenson**

*Chief U.S. Magistrate Judge - Central District of California*

**Tonya Long**

*Assistant General Counsel - Intuit*

**Eddie Kim**

*Strategic Data Analytics Advisor - Everlaw*

**Dr. Megan Ma**

*Associate Director - Stanford Center for Legal Informatics (CodeX)*

# AGENDA

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1. Current Gen AI Landscape in Legal
2. Effective Use of Gen AI for Litigation Work
3. CA State Bar Guidance on Gen AI
4. Gen AI in Federal Litigation
5. Exploring Other Ethical Issues with Gen AI
6. Future of Legal with Gen AI

# Current Gen AI Landscape in Legal

- Generative AI, specifically Large Language Models (LLMs), **should be** well-suited for the legal sector due to their ability to process and generate text in natural language.
- Technical challenges include accuracy in output, processing proprietary legal data, and lack of control of the models themselves.
- Initial solutions include, but not limited to, prompt engineering, guardrails, and reference-ability.
- Potential structural impediments to widespread integration and adoption may involve architectural retrofitting (revenue economics VS automation) and vendor dependence (providers and models).

## Core Competencies with LLMs

- Natural language **fluency** is essential to our workflows.
- **Creativity** may be valuable in the right doses, especially when you want to think outside the box.
- Legal domain has higher stakes and higher precision requirements, hence relying on embedded **knowledge** may not be ideal.
- Promising results in logical **reasoning**, particularly abductive and deductive tasks.



Fluency



Creativity



Knowledge



Reasoning

# Effective Use of Gen AI for Litigation Work

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Better to use legal-specialized software or platforms built on top of state-of-the-art models, rather than using LLMs directly.

- Summarization of large documents, including identification of key topics, entity extraction, and sentiment analysis.
- Discovery: relevance and categorization of documents.
- Case, trial or deposition preparation: chronologies, statement of facts, arguments and counter-arguments.
- Generate first draft of legal documents.
- Legal research.

## CA State Bar Guidance on Gen AI

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- Some Gen AI models may train on provided data. Don't share confidential information.
- Understand how the technology works and its limitations, without taking it at face value.
- Gen AI outputs may be inaccurate. Critically review, validate and correct.
- Set internal policies around responsible usage of Gen AI and enforce them.
- Terms of client engagement should disclose usage of Gen AI.
- Bias may exist in Gen AI models. Be aware of risks they may create.



# California Rules of Professional Responsibility

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Further highlights on California Rules of Professional Responsibility with regards to Generative AI usage.

Rule 1.1 - Competence

Rule 1.6 - Confidential Information of a Client

Rule 3.1 - Meritorious Claims and Contentions

Rule 3.3 - Candor Toward the Tribunal

# Rules re: Use of Generative AI in Federal Courts

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- Individual Judges' Standing Orders for Civil Cases
  - Counsel required to comply with District's Guidelines for Professional Conduct (N.D. Cal. (J. Kang))
- Local Rules & General Orders Requiring Disclosure
  - Counsel must submit declaration advising of "Reliance on Unverified Source" and verifying that counsel or pro se party "confirmed that such material is not fictitious" (D. Haw. Order 2005, Gen. Order 23-1)
  - Attorneys and pro se litigants must verify that language generated by generative AI was checked for accuracy (U.S. Bankr. N.D. Tex.)

## Rules re: Use of Generative AI in Federal Courts (cont'd)

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- Mandatory Certification Required
  - All attorneys and pro se litigants must, with notice of appearance, file a certificate attesting that “no portion of any filing will be drafted by generative artificial intelligence . . . Or that any language drafted by generative artificial intelligence will be checked for accuracy, using print reporters or traditional legal databases, or by a human being.”  
(TX Order 5724, N.D. Tex. 2023)
- Ban on Drafting by Use of Generative AI
  - “No portion of any pleading, written motion, or other paper may be drafted by any form of generative artificial intelligence.”  
(MO Order 3403, E.D. Mo. 2024)

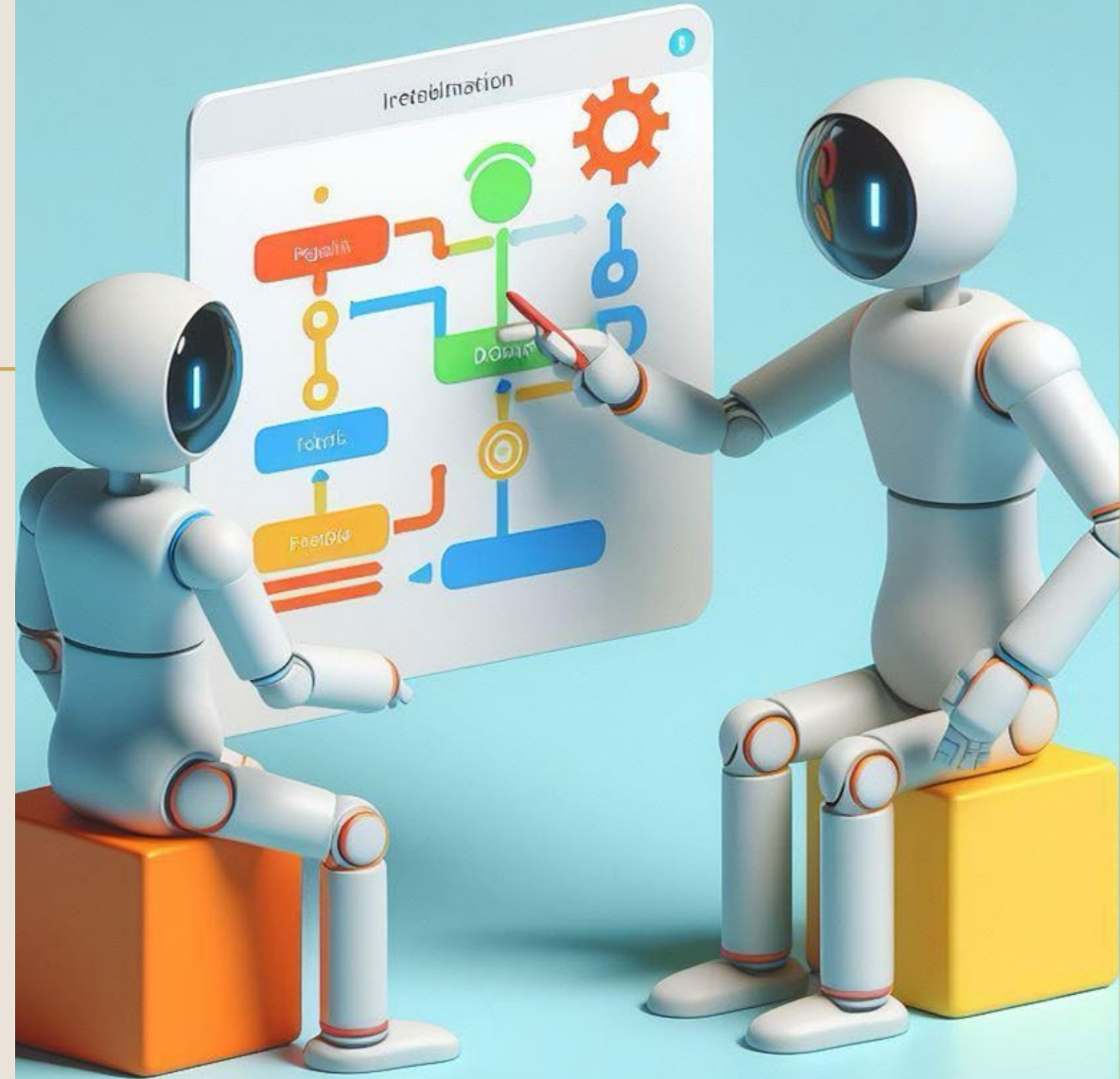
# Exploring Other Ethical Issues with Gen AI

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- Terms and Conditions of models regarding privacy and security around privileged or confidential information
- Degrees of reliability and expectations
- Lack of transparency or explainable AI (XAI)
- Potential types of misuse or unintentional consequences
- Lack of a liability mechanism/framework for harm associated with chatbot hallucinations (e.g. [Air Canada](#), [Chevrolet](#), [NYC Chatbot](#))
- Limitations of existing legal infrastructure
- Technical interventions to govern LLMs

## Future of Legal with Gen AI

- [Supervisory AI agents for professional legal conduct](#)
- Multi-agent Frameworks to unlock further automation
- Beyond Large Language Models





**How will you leverage  
Generative AI?**

**Start now.**