

Client Alert

Special Matters and Government Investigations

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U.S. Fifth Circuit Decides Against Its Proposed Rule Amendment on AI Use in Legal Filings

On [November 22, 2023](#), the United States Court of Appeals for the Fifth Circuit proposed an amendment to 5th Cir. Rule 32.3 and Form 6, which would have introduced a requirement for attorneys to certify the extent to which they used generative artificial intelligence (Gen AI) in drafting legal documents submitted to the court. The additional language proposed for R. 32.2 would require the following:

“Additionally, counsel and unrepresented filers must further certify that no generative artificial intelligence program was used in drafting the document presented for filing, or to the extent such a program was used, all generated text, including all citations and legal analysis, has been reviewed for accuracy and approved by a human.”

This proposal appears to be intended to ensure the accuracy and reliability of Gen AI-assisted legal filings by mandating that all Gen AI-generated content be reviewed and approved by a human. The period for comments on the proposed amendment was open until January 4, 2024.

Earlier this week [on June 12, 2024](#), the Fifth Circuit made an announcement regarding this proposed rule. After reviewing the comments and considering the implications of Gen AI use in the legal practice, the court decided not to adopt the proposed amendment, with the following statement:

“The court, having considered the proposed rule, the accompanying comments, and the use of artificial intelligence in the legal practice, has decided not to adopt a special rule regarding the use of artificial intelligence in drafting briefs at this time. Parties and counsel are reminded of their duties regarding their filings before the court under Federal Rule of Appellate Procedure 6(b)(1)(B). Parties and counsel are responsible for ensuring that their filings with the court, including briefs,



shall be carefully checked for truthfulness and accuracy as the rules already require. 'I used AI' will not be an excuse for an otherwise sanctionable offense."

The court's decision underscores that any document, including those drafted with Gen AI assistance, must comply with the Federal Rules of Appellate Procedure, specifically [Rule 6\(b\)\(1\)\(B\)](#), which in turn references [Rule 3\(c\)](#), and provides suggestions on appropriate forms for notices of appeal. The court reiterated that reliance on Gen AI cannot be used as an excuse for filing inaccuracies or misrepresentations.

The Fifth Circuit's decision highlights the court's commitment to having human counsel ultimately accountable for the content in submissions to the court, regardless of technological advancements. Lawyers must ensure all documents, whether drafted traditionally or with Gen AI, adhere to existing legal ethical standards.

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