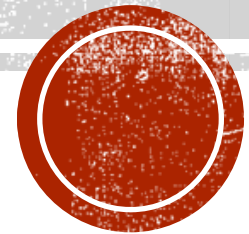
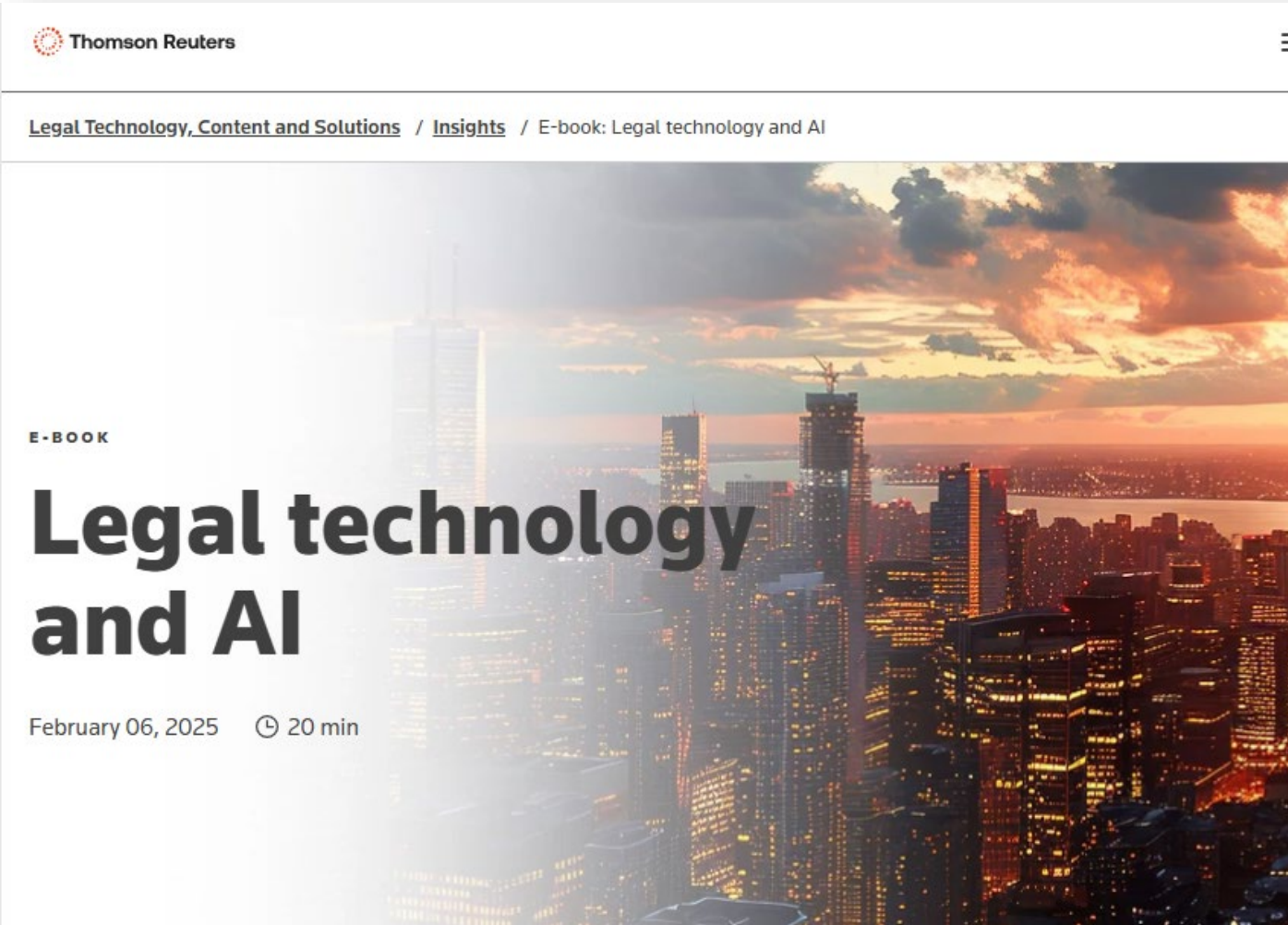


AI IN FEDERAL DEFENSE: ETHICAL CONSIDERATIONS



Felix Valenzuela
felix@valenzuela-law.com

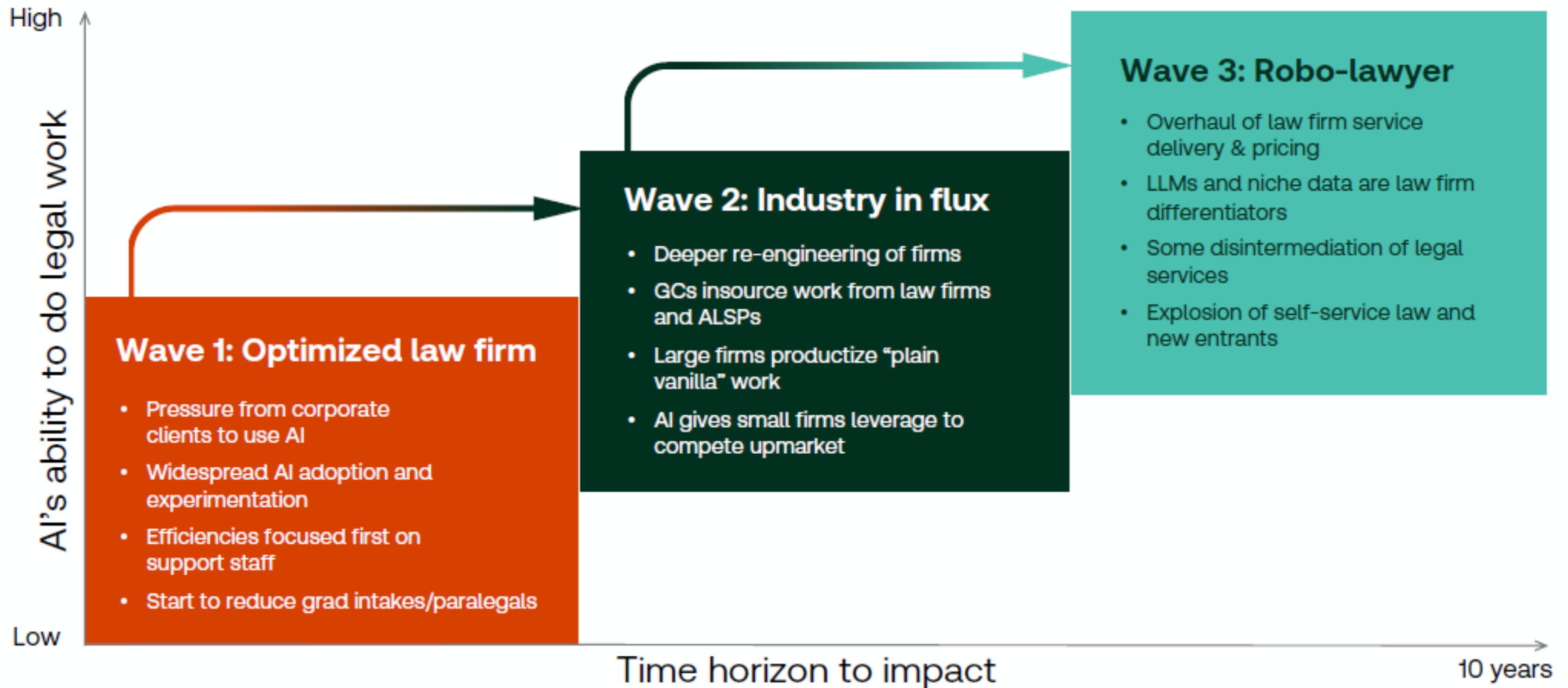
EXPLOSIVE GROWTH OF GENAI



**“We’re
witnessing an
era-defining shift
from the
theoretical to the
actual, and we’re
only in its
opening rounds.”**



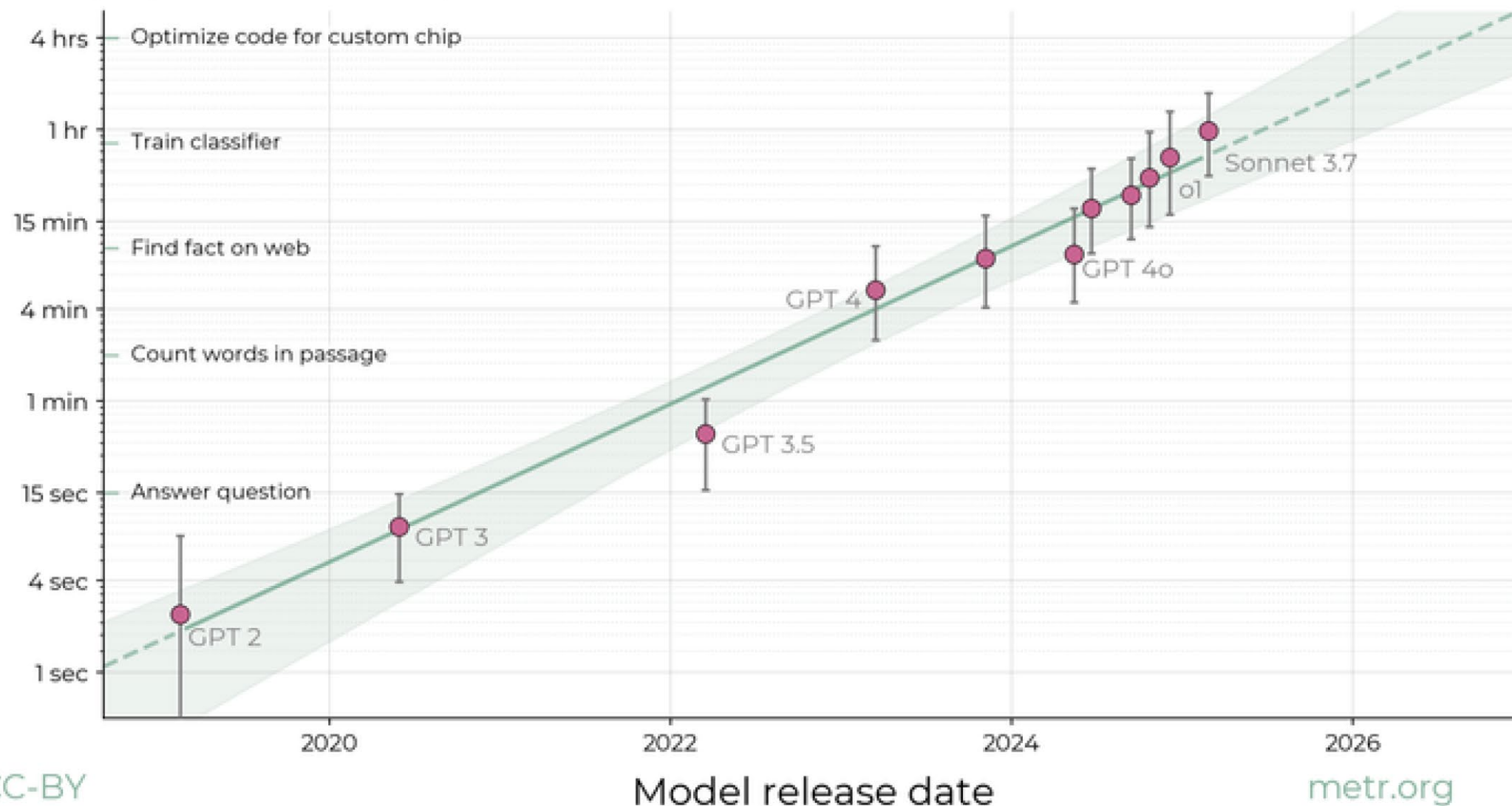
Potential for waves of transformation around AI



The length of tasks AIs can do is doubling every 7 months



Task length (at 50% success rate)



METR, "Measuring AI Ability to Complete Long Tasks (Mar. 22, 2025)"



RECENT DATA

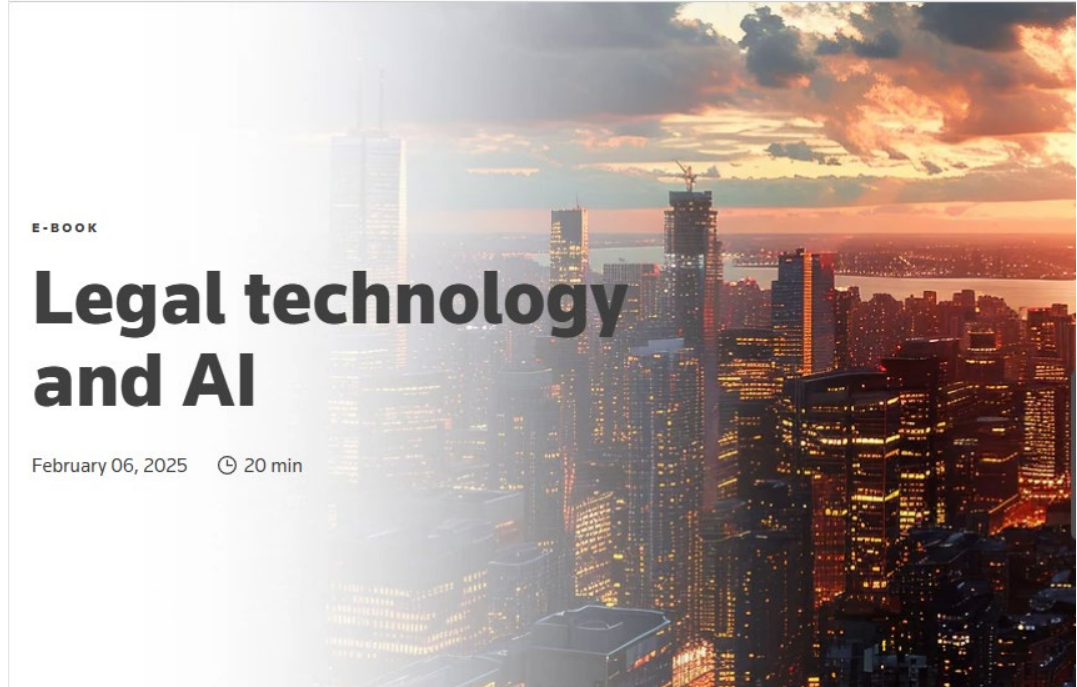
Thomson Reuters

[Legal Technology, Content and Solutions](#) / [Insights](#) / E-book: Legal technology and AI

E-BOOK

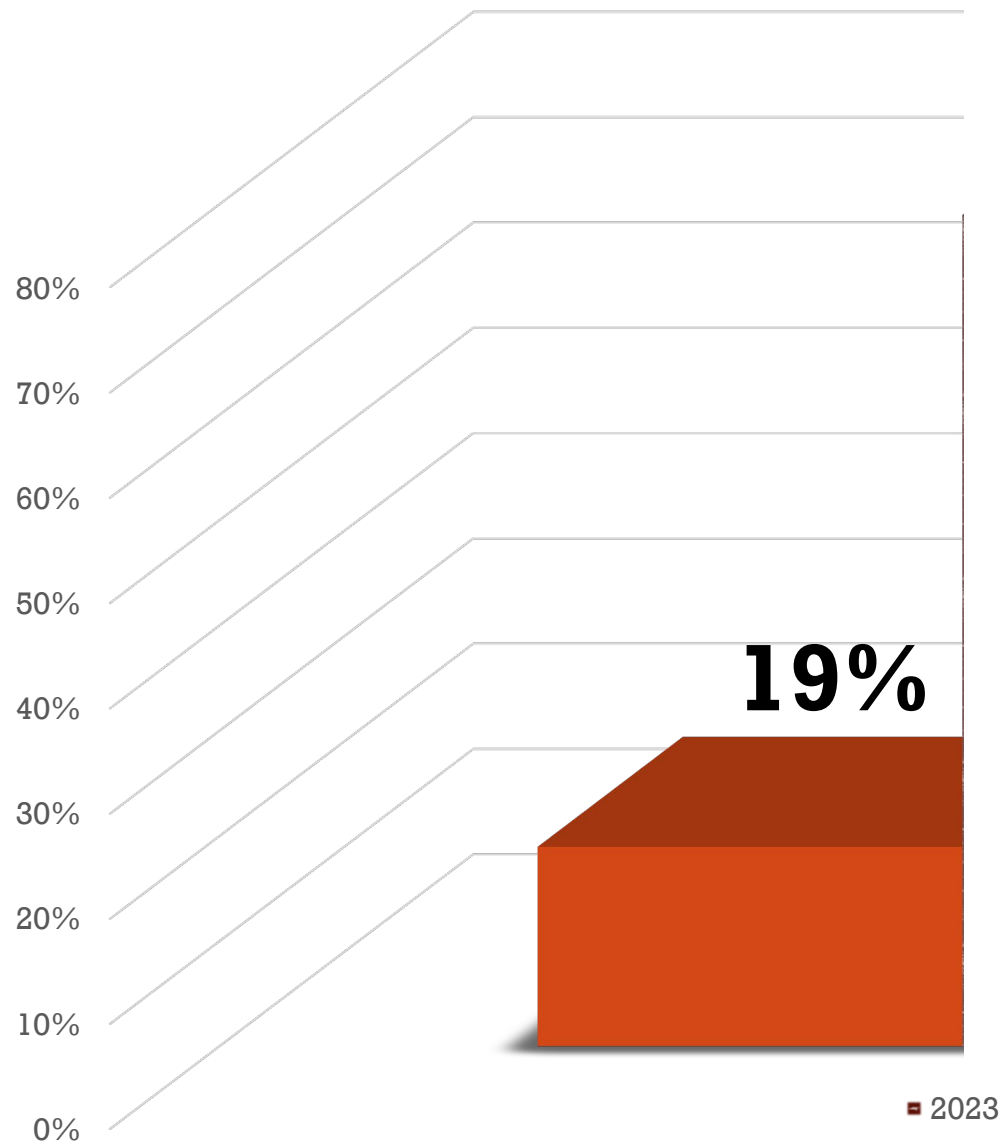
Legal technology and AI

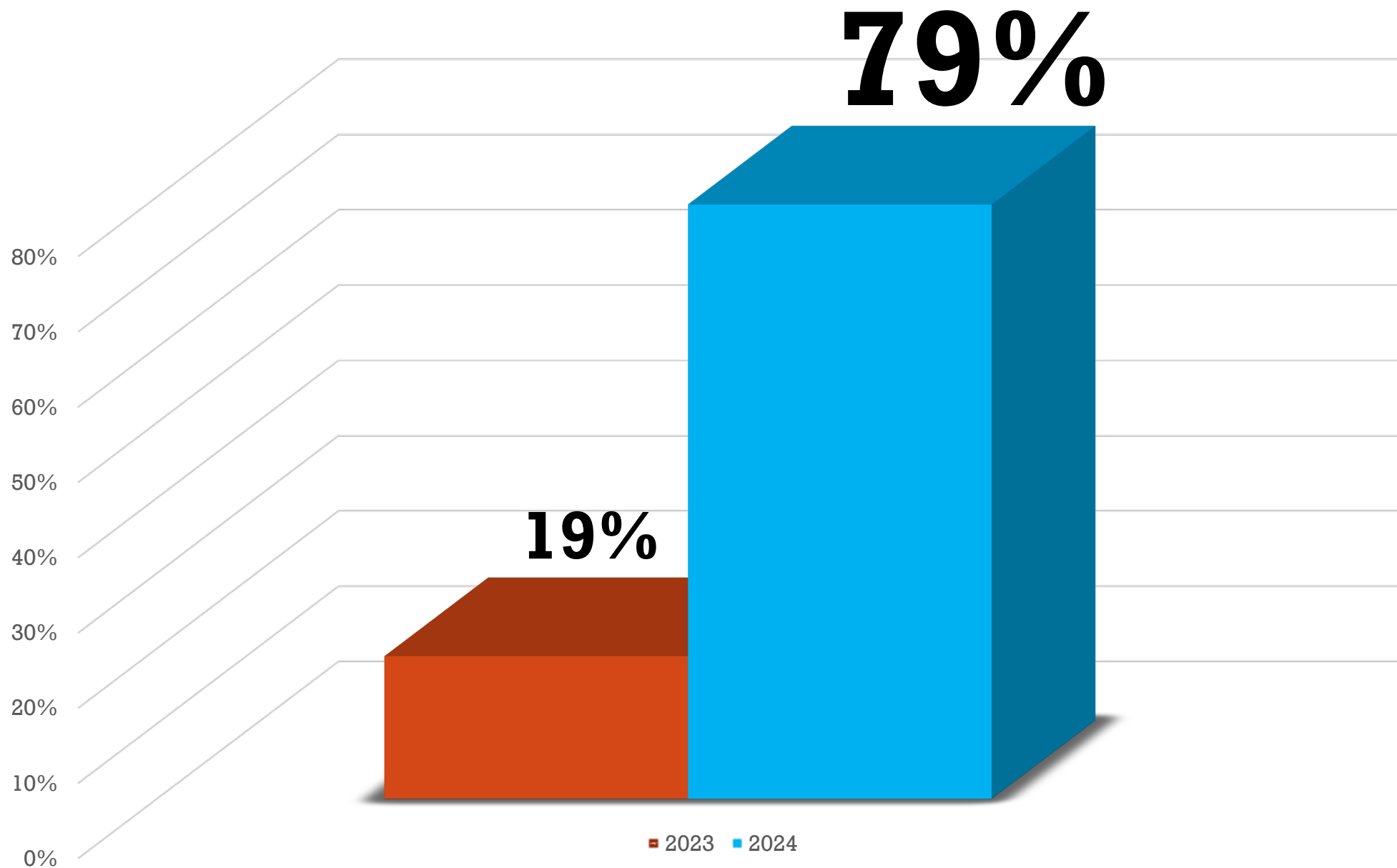
February 06, 2025 ⌚ 20 min

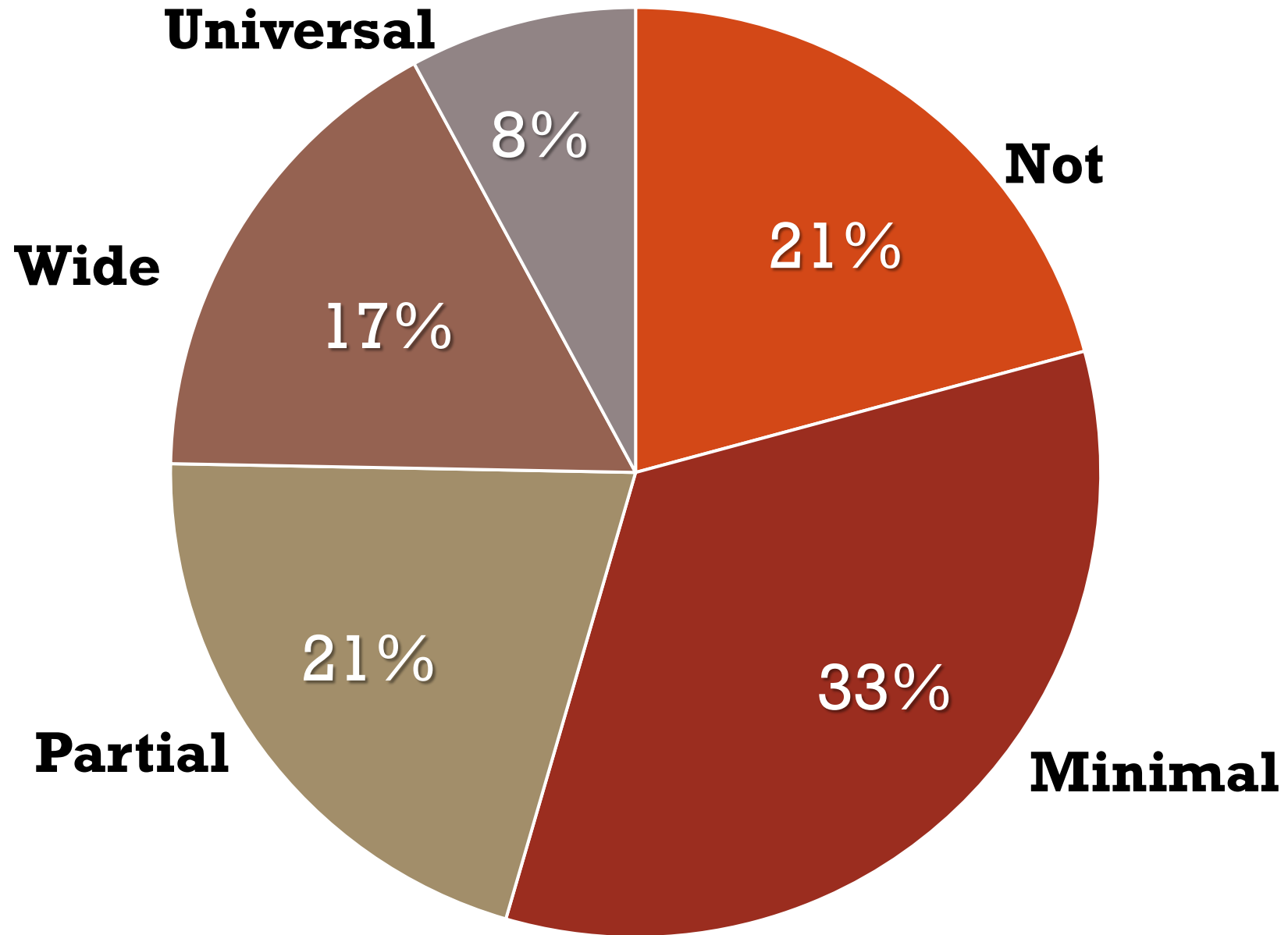


It's a race to be second. It makes strategic sense for smaller law firms to keep an eye on their deeper-pocketed rivals to see how they adopt AI and what results they're posting. The problem, however, comes when a **fast follower waits too long** to start its own adoption. That's why lawyers should be familiarizing themselves with the practical usage of AI now. The more fluent they are with AI-fueled technology, the easier their firm's widescale adoption of the technology becomes — because the **learning curve will get steeper every month.**

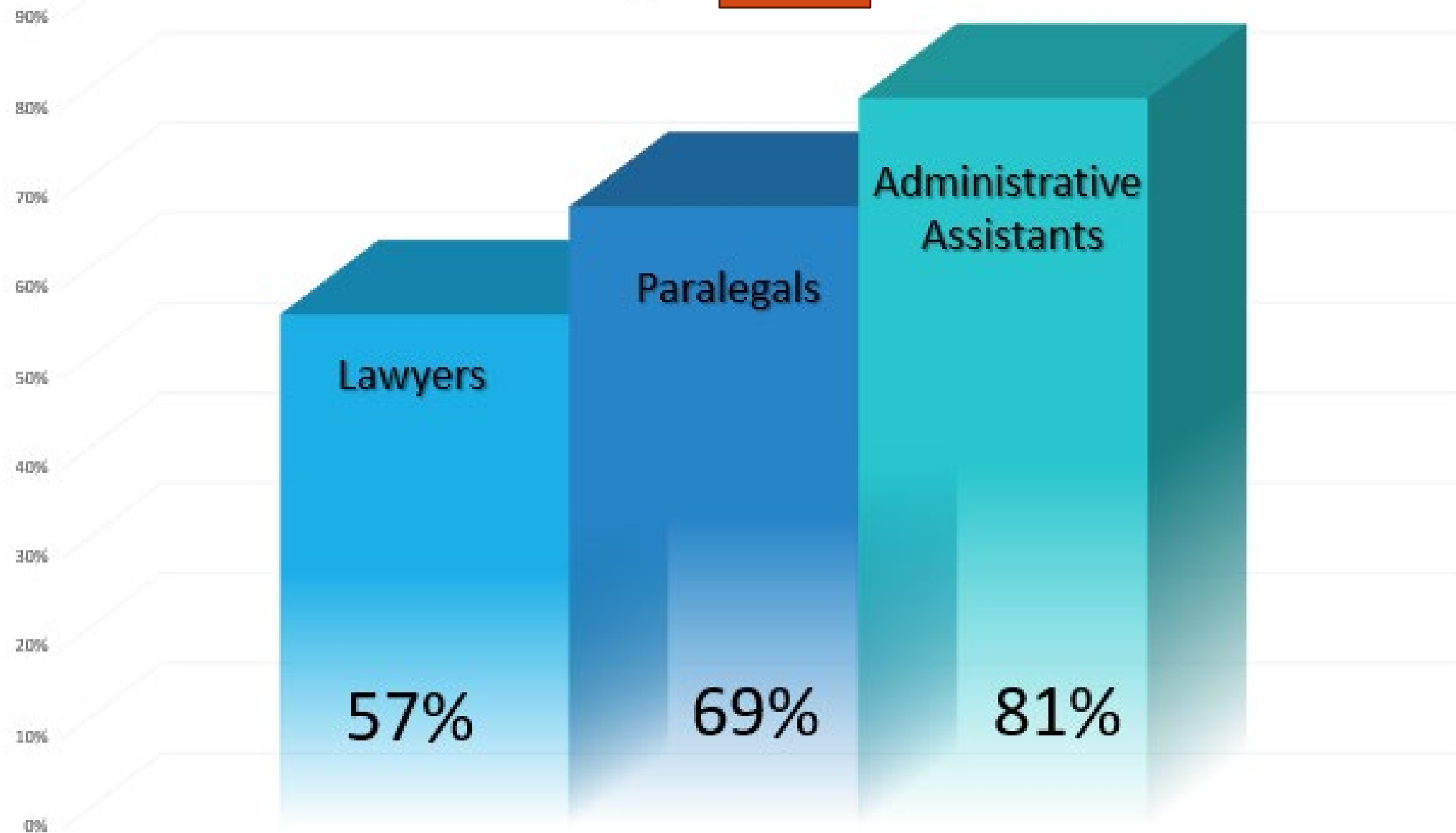




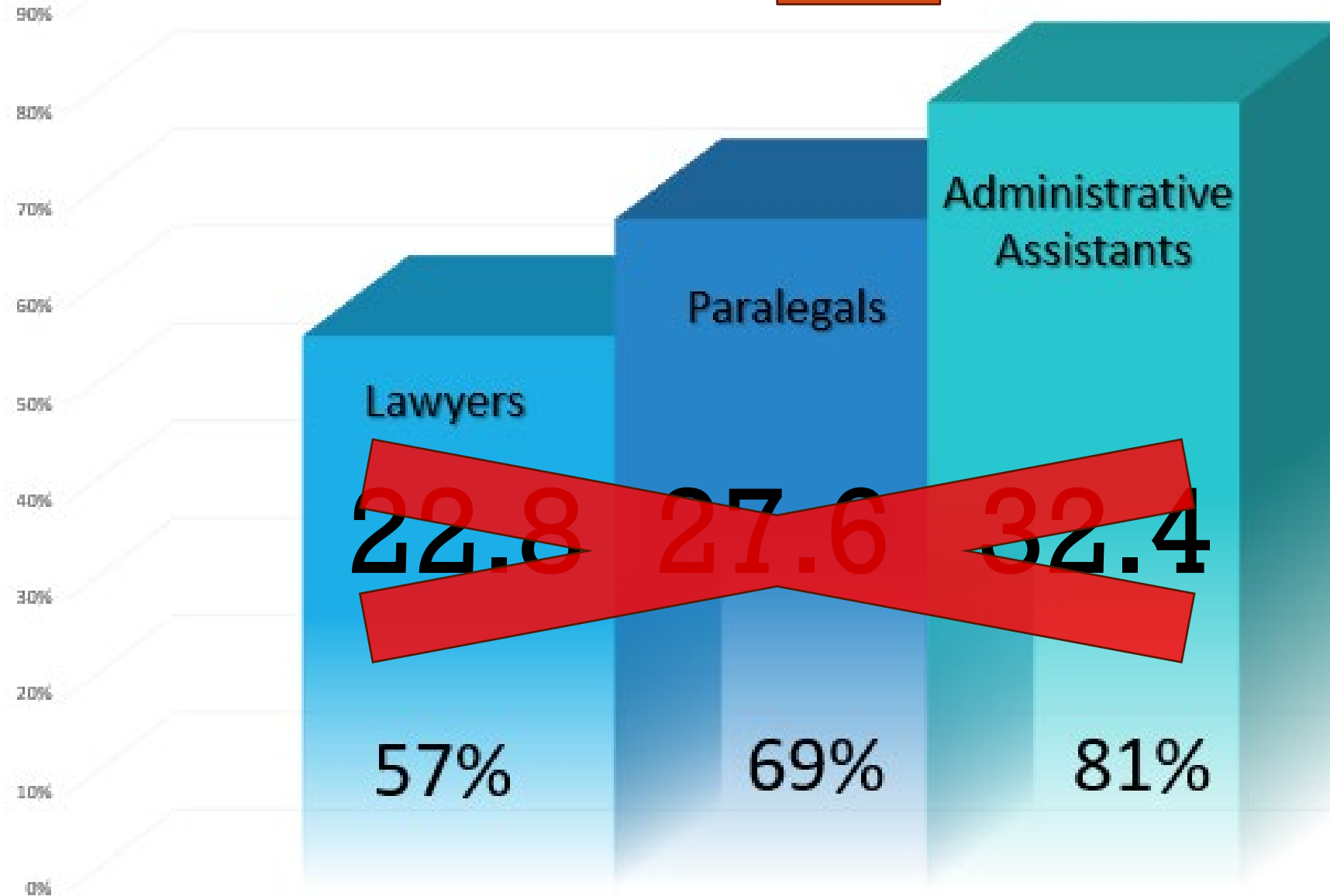




Industry Average: 74%



Industry Average: 74%





AI ENHANCING (NOT REPLACING) YOUR PRACTICE

- **Exercising Professional Judgment:** Lawyers must exercise their professional judgment in conjunction with AI-generated content, and recognize that AI is a tool that *assists but does not replace* legal expertise and analysis.



PENNSYLVANIA BAR ASSOCIATION COMMITTEE
ON LEGAL ETHICS AND PROFESSIONAL RESPONSIBILITY
and
PHILADELPHIA BAR ASSOCIATION PROFESSIONAL GUIDANCE COMMITTEE
JOINT FORMAL OPINION 2024-200

ETHICAL ISSUES REGARDING THE USE OF ARTIFICIAL INTELLIGENCE



AI ENHANCING (NOT REPLACING) YOUR PRACTICE

- Time & Cost Savings: Faster drafting, more accurate research, improved client satisfaction.
- **Mastering Prompt Engineering:** Key to leveraging AI benefits while maintaining ethical standards.
- AI is a co-counsel, not a substitute for human judgment.



AI AND LEGAL ETHICS: THE RULES

AMERICAN BAR ASSOCIATION

STANDING COMMITTEE ON ETHICS AND PROFESSIONAL RESPONSIBILITY

Formal Opinion 512

July 29, 2024

Generative Artificial Intelligence Tools

To ensure clients are protected, lawyers using generative artificial intelligence tools must fully consider their applicable ethical obligations, including their duties to provide competent legal representation, to protect client information, to communicate with clients, to supervise their employees and agents, to advance only meritorious claims and contentions, to ensure candor toward the tribunal, and to charge reasonable fees.



AI AND LEGAL ETHICS: THE RULES

- Competence (ABA Model Rule 1.1): Lawyers must understand GenAI's capabilities and risks—or consult an AI expert.



AI AND LEGAL ETHICS: THE RULES



**PENNSYLVANIA BAR ASSOCIATION COMMITTEE
ON LEGAL ETHICS AND PROFESSIONAL RESPONSIBILITY**

and

**PHILADELPHIA BAR ASSOCIATION PROFESSIONAL GUIDANCE COMMITTEE
JOINT FORMAL OPINION 2024-200**

ETHICAL ISSUES REGARDING THE USE OF ARTIFICIAL INTELLIGENCE

**“Lawyers must
be competent in
the use of AI
technologies.”**



AI AND LEGAL ETHICS: THE RULES

- Competence (ABA Model Rule 1.1): Lawyers must understand GenAI's capabilities and risks—or consult an AI expert.
- Communication (ABA Model Rule 1.4): Disclose and consult clients on AI usage if it's relevant; secure informed consent for sensitive uses.



AI AND LEGAL ETHICS: THE RULES

“It is further understood and agreed that Attorney may utilize artificial intelligence (“AI”) tools and technologies in representing Client. Such AI technologies may include, but are not limited to, analyzing documents, performing legal research, preparing or drafting documents, and summarizing evidence or other information related to Client’s case. Attorney shall supervise and review all work generated by AI to ensure compliance with professional standards, ethical obligations, and the protection of Client’s confidentiality. Client hereby acknowledges and consents to Attorney’s use of AI in connection with Attorney’s representation of Client as set forth herein.”



AI AND LEGAL ETHICS: THE RULES

- Competence (ABA Model Rule 1.1): Lawyers must understand GenAI's capabilities and risks—or consult an AI expert.
- Communication (ABA Model Rule 1.4): Disclose and consult clients on AI usage if it's relevant; secure informed consent for sensitive uses.
- Confidentiality (ABA Model Rule 1.6): Don't feed privileged info to public AI without safeguards.





AMERICAN **BAR** ASSOCIATION

Rule 1.6: Confidentiality of Information

Share:



Client-Lawyer Relationship

(c) A lawyer shall make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client.





NEWS

Thousands of Internal AI Training Datasets, Tools Exposed to Anyone on the Internet

JOSEPH COX · OCT 9, 2024 AT 10:35 AM

"In addition to the ML models themselves, the exposed data can include training datasets, hyperparameters, and sometimes even raw data used to build models," a security researcher said.

What can I help with?

Message ChatGPT



 Create image

 Brainstorm

 Make a plan

 Summarize text

More



Settings



General

Notification

Personalization

Speech

Data controls

Builder profile

Connected accounts

Security

Subscription

Off >

Manage

Export

Delete

Model improvement

Improve the model for everyone



Allow your content to be used to train our models, which makes ChatGPT better for you and everyone who uses it. We take steps to protect your privacy. [Learn more](#)

Voice mode

Include your audio recordings



Include your video recordings



Include your audio and video recordings from Voice Mode to train our models. Transcripts and other files are covered by "Improve the model for everyone." [Learn more](#)

Done



AI AND LEGAL ETHICS: THE RULES

- Competence (ABA Model Rule 1.1): Lawyers must understand GenAI's capabilities and risks—or consult an AI expert.
- Communication (ABA Model Rule 1.4): Disclose and consult clients on AI usage if it's relevant; secure informed consent for sensitive uses.
- Confidentiality (ABA Model Rule 1.6): Don't feed privileged info to public AI without safeguards.
- Fees (ABA Model Rule 1.5): No “double-billing” for AI's timesaving advantage; lawyers can charge for time refining prompts and reviewing.



AI AND LEGAL ETHICS: THE RULES

Prompt Engineering and Refinement

Quality Control and Output Review

Confidentiality and Data Security Management

Customized Document Preparation

Communication and Client Education



AI AND LEGAL ETHICS: THE RULES

- Competence (ABA Model Rule 1.1): Lawyers must understand GenAI's capabilities and risks—or consult an AI expert.
- Communication (ABA Model Rule 1.4): Disclose and consult clients on AI usage if it's relevant; secure informed consent for sensitive uses.
- Confidentiality (ABA Model Rule 1.6): Don't feed privileged info to public AI without safeguards.
- Fees (ABA Model Rule 1.5): No “double-billing” for AI's timesaving advantage; lawyers can charge for time refining prompts and reviewing.
- Candor to Tribunal (ABA Model Rule 3.3): Verification is *mandatory*—no reliance on “hallucinations” or fake citations.



AI AND LEGAL ETHICS IN THE COURTS

7		
8	UNITED STATES DISTRICT COURT	
9	FOR THE EASTERN DISTRICT OF CALIFORNIA	
10		
11	UNITED STATES,	Case No. 2:24-cr-0280-DJC
12	Plaintiff,	
13	v.	ORDER
14	DARAGH FINBAR HAYES,	(ECF Nos. 32, 37, 41, 50, 51)
15	Defendant.	
16		
17	On December 16, 2024, the Court issued an Order to Show Cause Why	
18	Sanctions or Other Appropriate Disciplinary Action Should Not Issue Against Assistant	
19	Federal Defender Andrew Francisco, counsel for Defendant Daragh Finbar Hayes. (ECF	
20	No. 50.) On December 18, 2024, Mr. Francisco timely filed his response to the Order to	
21	Show Cause. (ECF No. 51.) After careful consideration and review, the Court issues the	
22	following order sanctioning Mr. Francisco.	
23	BACKGROUND	



AI AND LEGAL ETHICS IN THE COURTS

Case 2:24-cr-00280-DJC Document 62 Filed 01/17/25 Page 4 of 28

1 (D.D.C. 1991)." The following exchange occurred at the December 9, 2024 hearing:²

2 **THE COURT:** Good afternoon. The Court has carefully
3 reviewed the briefing that's been submitted. We're here for Defendant's
4 motion to unseal, which is at ECF Number 32.

5 I have specific issues and questions I want to address. The first
6 issue that I want to address is that in the Government's opposition, the
7 Government points out that a case that the Defense cited at least twice in
8 its motion to unseal at page 6 and 10, *United States v. Harris*, 761 F.
9 Supp. 409, 414 (District of D.C. 1991), that that case does not exist.
10 The Defense response to this in Footnote 3 of its reply was "Defense
11 counsel acknowledges the Government's observation that *United States v.*
12 *Harris* does not discuss the legislative history of 18 United States Code,
Section 3509(d), and clarifies that *United States v. Broussard*, 767 F.
Supp. 1536 at 1542 (District of Oregon 1991), is the district court case
from which this material is quoted. This inadvertent citation error does not
affect the substance of the Defense's position that the legislative history
supports a far narrower interpretation of Section 3509(d) than the
Government asserts."



15 **IV. CONCLUSION**

16 Therefore, the Court concludes that \$1,500 in monetary sanctions issued against
17 Mr. Francisco personally are proportionate to his conduct, while also serving as an
18 effective deterrent to Mr. Francisco and other members of the bar, and ensuring no
19 possible impact or prejudice on Mr. Francisco's client, Defendant Hayes.

20 For the reasons stated above, the Court orders the following sanctions for
21 violation of Local Rule 180(e) and pursuant to its inherent authority:

- 22 1. Assistant Federal Defender Andrew Francisco, defense counsel, is personally
23 sanctioned in the amount of \$1,500. Within 21 days of the date of this Order,
24 Mr. Francisco shall pay these sanctions to the Clerk of Court. The case
25 number and a copy of this Order should be included with payment.
- 26 2. The Court orders the Clerk of Court to serve a copy of this order on the District
27 of Columbia Bar, of which Mr. Francisco is a member (DC Bar No. 1619332),
28 and the State Bar of California.
- 1 3. The Court orders the Clerk of Court to serve a copy of this order on all the
2 district judges and magistrate judges in this district.
3

4 Dated: January 17, 2025

5 
6 CHI SOO KIM
UNITED STATES MAGISTRATE JUDGE



AI AND LEGAL ETHICS IN THE COURTS

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

**STANDING ORDER REGARDING USE OF GENERATIVE ARTIFICIAL
INTELLIGENCE ("AI") IN CASES ASSIGNED TO JUDGE PRATTER**

Judge Pratter requires that counsel (or a party representing himself or herself) disclose any use of generative Artificial Intelligence ("AI") in the preparation of any complaint, answer, motion, brief, or other paper filed with the Court, including in correspondence with the Court. If counsel (or a party representing himself or herself) has used generative AI, he or she **must**, in a clear and plain factual statement, disclose that generative AI has been used in any way in the preparation of the filing or correspondence ***and*** certify that each and every citation to the law or the record in the filing has been verified as authentic and accurate.

Dated: May 3, 2024

BY THE COURT:

s/ Gene E.K. Pratter
GENE E.K. PRATTER
UNITED STATES DISTRICT JUDGE



AI AND LEGAL ETHICS: THE RULES

- Competence (ABA Model Rule 1.1): Lawyers must understand GenAI's capabilities and risks—or consult an AI expert.
- Communication (ABA Model Rule 1.4): Disclose and consult clients on AI usage if it's relevant; secure informed consent for sensitive uses.
- Confidentiality (ABA Model Rule 1.6): Don't feed privileged info to public AI without safeguards.
- Fees (ABA Model Rule 1.5): No “double-billing” for AI's timesaving advantage; lawyers can charge for time refining prompts and reviewing.
- Candor to Tribunal (ABA Model Rule 3.3): Verification is *mandatory*—no reliance on “hallucinations” or fake citations.



AI AND LEGAL ETHICS: THE RULES

- Meritorious Claims and Contentions (PA Model Rule 3.1): Lawyer is responsible for baseless arguments.



AI AND LEGAL ETHICS IN THE COURTS

11 Unfortunately, "*United States v. Harris*, 761 F. Supp. 409, 414 (D.D.C. 1991)" is
12 not a real case. The citation has all the markings of a hallucinated case created by
13 generative artificial intelligence (AI) tools such as ChatGPT and Google Bard that have
14 been widely discussed by courts grappling with fictitious legal citations and reported by
15 national news outlets. See *Mata*, 678 F. Supp. 3d 443 (leading case sanctioning counsel
16 for fictitious case citations generated by ChatGPT); Benjamin Weiser, *Here's What*
17 *Happens When Your Lawyer Uses ChatGPT*, N.Y. TIMES (May 27, 2023),
18 <https://www.nytimes.com/2023/05/27/nyregion/avianca-airline-lawsuit-chatgpt.html>; Erin
19 Mulvaney, *Judge Sanctions Lawyers Who Filed Fake ChatGPT Legal Research*, WALL
20 ST. J. (June 22, 2023), [https://www.wsj.com/articles/judge-sanctions-lawyers-who-filed-](https://www.wsj.com/articles/judge-sanctions-lawyers-who-filed-fake-chatgpt-legal-research-9ebad8f9)
21 [fake-chatgpt-legal-research-9ebad8f9](https://www.wsj.com/articles/judge-sanctions-lawyers-who-filed-fake-chatgpt-legal-research-9ebad8f9); Pranshu Verma and Will Oremus, *These lawyers*
22 *used ChatGPT to save time. They got fired and fined.*, WASH. POST (Nov. 16, 2023),
23 <https://www.washingtonpost.com/technology/2023/11/16/chatgpt-lawyer-fired-ai/>. Similar
24 to other fictitious case citations created by generative AI tools, the fictitious "*United*



*Mata v. Avianca,
Inc.*, 678 F. Supp.
3d 443 (SDNY
2023)

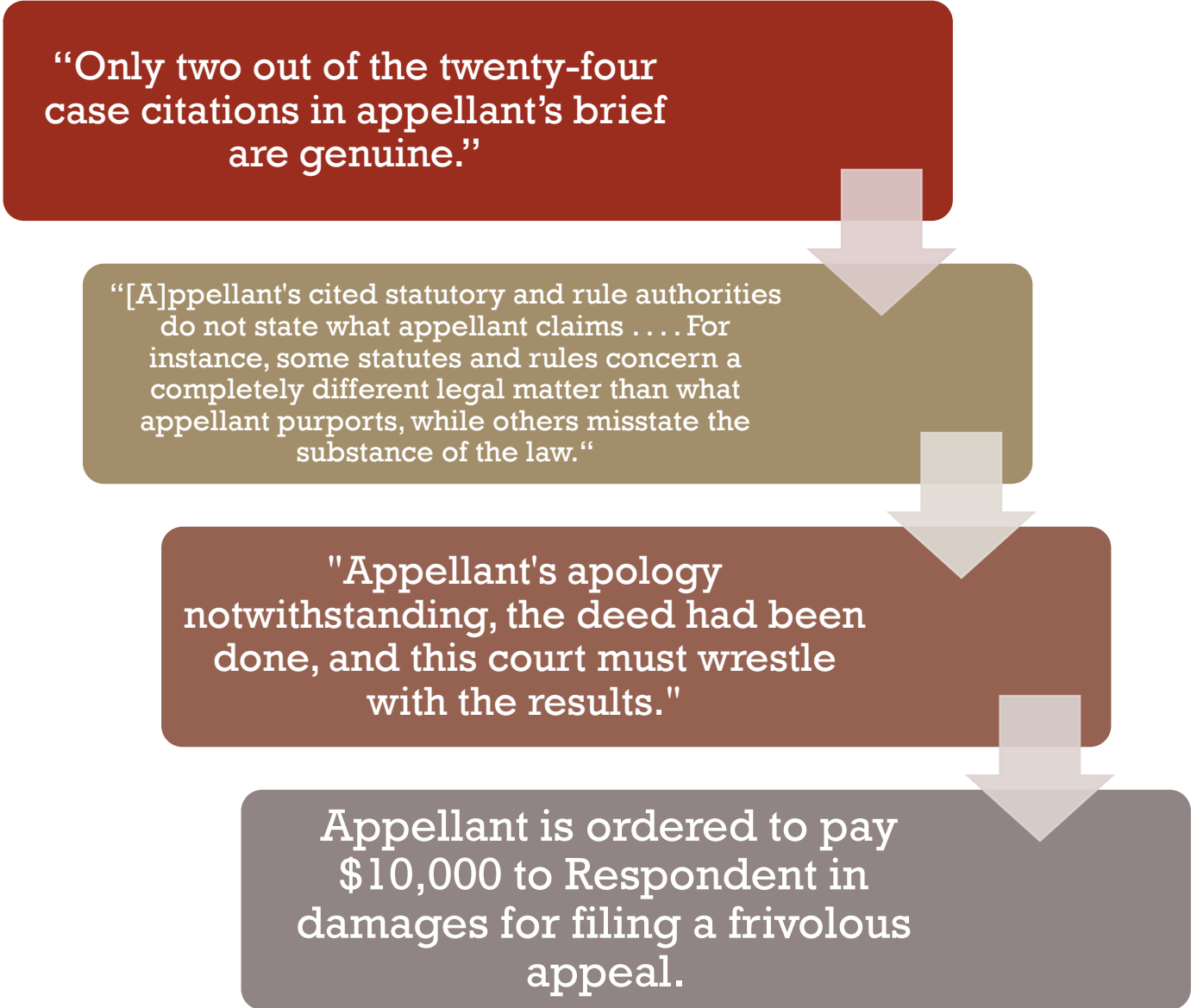
CONCLUSION

The Court Orders the following sanctions pursuant to [Rule 11](#), or, alternatively, its inherent authority:

- a. Within 14 days of this Order, Respondents shall send via first-class mail a letter individually addressed to plaintiff Roberto Mata that identifies and attaches this Opinion and Order, a transcript of the hearing of June 8, 2023 and a copy of the April 25 Affirmation, including its exhibits.
- b. Within 14 days of this Order, Respondents shall send via first-class mail a letter individually addressed to each judge falsely identified as the author of the fake "Varghese", "Shaboon", "Petersen", "Martinez", "Durden" and "Miller" opinions. The letter shall identify and attach this Opinion and Order, a transcript of the hearing of June 8, 2023 and a copy of the April 25 Affirmation, including the fake "opinion" attributed to the recipient judge.
- c. Within 14 days of this Opinion and Order, respondents shall file with this Court copies of the letters sent in compliance with (a) and (b).
- d. A penalty of \$5,000 is jointly and severally imposed on Respondents and shall be paid into the Registry of this Court within 14 days of this Opinion and Order.



“Only two out of the twenty-four case citations in appellant’s brief are genuine.”



“[A]ppellant's cited statutory and rule authorities do not state what appellant claims For instance, some statutes and rules concern a completely different legal matter than what appellant purports, while others misstate the substance of the law.”

"Appellant's apology notwithstanding, the deed had been done, and this court must wrestle with the results."

Appellant is ordered to pay \$10,000 to Respondent in damages for filing a frivolous appeal.

*Kruse v.
Karlen Et Al.,
ED111172
(Missouri Ct.
of App. ED
Feb. 13,
2024)*



AI AND LEGAL ETHICS: THE RULES

- Meritorious Claims and Contentions (PA Model Rule 3.1): Lawyer is responsible for baseless arguments.
- Supervision (PA Model Rule 5.1): Just as you would supervise a paralegal, junior associate, outside consultants, etc.



*Wadsworth &
Wadsworth v.
Walmart Inc. & Jetson
Electric Bikes, LLC,*
2:23-CV-118-KHR (D.
Wy. Feb. 24, 2025)

AI models are trained on data, and they learn to make predictions by finding patterns in the data. However, the accuracy of these predictions often depends on the quality and completeness of the training data. If the training data is incomplete, biased, or otherwise flawed, the AI model may learn incorrect patterns, leading to inaccurate predictions or hallucinations.

Motions in Limine that cited nine cases, but eight did not exist.

- Promptly withdrawing the Motions in Limine;
- Being honest and forthcoming about the use of AI;
- Paying opposing counsels' fees for defending the Motions in Limine; and
- Implementing policies, safeguards, and training to prevent another occurrence in the future (and providing proof of such measures).

the Court recommends attorneys should—at the very least—follow these steps to remediate the situation prior to the issuance of any sanction.



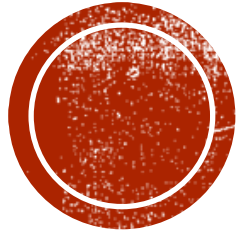
*Wadsworth &
Wadsworth v.
Walmart Inc. & Jetson
Electric Bikes, LLC,
2:23-CV-118-KHR (D.
Wy. Feb. 24, 2025)*

As the drafter, Mr. Ayala will receive the highest sanction. First, the Court will revoke his pro hac vice status. the Court will order Mr. Ayala to pay a three-thousand-dollar (\$3,000) fine.

Because Mr. Morgan was not the drafter, he will be sanctioned less severely. The Court will not revoke his pro hac vice admission. However, the Court will impose a sanction of a one-thousand-dollar (\$1,000) fine. As noted above, he failed to adhere to his obligations under Rule 11.

The Court will also impose a sanction of a one-thousand-dollar (\$1,000) fine on Ms. Goody. She serves as local counsel





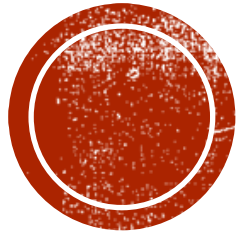
Professor Hancock, who subsequently admitted that his declaration inadvertently included citations to two non-existent academic articles, and incorrectly cited the authors of a third article. ECF No. 37 at 3–4. These errors apparently originated from Professor Hancock’s use of GPT-4o—a generative AI tool—in drafting his declaration. ECF No. 39 ¶¶ 11, 21. GPT-4o provided Professor Hancock with fake citations to academic articles, which Professor Hancock failed to verify before including them in his declaration. *Id.* ¶¶ 12–14.

To be clear, the Court does not fault Professor Hancock for using AI for research purposes. AI, in many ways, has the potential to revolutionize legal practice for the better

Kohls & Franson v. Ellison & Larson, 24-cv-3754
(D. Minn. Jan, 10, 2025)

The irony.

Federal Rule of Civil Procedure 11 imposes a “personal, nondelegable responsibility” to “validate the truth and legal reasonableness of the papers filed” in an action.



The Court suggests that an “inquiry reasonable under the circumstances,” Fed. R. Civ. P. 11(b), may now require attorneys to ask their witnesses whether they have used AI in drafting their declarations and what they have done to verify any AI-generated content.

The Court thus adds its voice to a growing chorus of courts around the country declaring the same message: verify AI-generated content in legal submissions!

Kohls & Franson v. Ellison & Larson, 24-cv-3754
(D. Minn. Jan, 10, 2025)

AI AND LEGAL ETHICS: THE RULES

- Meritorious Claims and Contentions (PA Model Rule 3.1): Lawyer is responsible for baseless arguments.
- Supervision (PA Model Rule 5.1): Just as you would supervise a paralegal, junior associate, outside consultants, etc.
- Unauthorized Practice of Law (PA Model Rule 5.5): Programmers are not lawyers, so make sure AI is not providing legal advice.



AI AND LEGAL ETHICS: THE RULES

- Meritorious Claims and Contentions (PA Model Rule 3.1): Lawyer is responsible for baseless arguments.
- Supervision (PA Model Rule 5.1): Just as you would supervise a paralegal, junior associate, outside consultants, etc.
- Unauthorized Practice of Law (PA Model Rule 5.5): Programmers are not lawyers, so make sure AI is not providing legal advice.
- Conflicts of Interest (PA Model Rule 1.7): Do not input any confidential information of a client into AI that lacks adequate confidentiality and security protections.



PROTECTING YOURSELF AND YOUR CLIENTS

- Mitigation: Use enterprise or law-firm-specific AI that does not feed data into public models.
- Ensure your professional liability carrier is aware; some carriers have addendums covering AI usage.



MITIGATING ETHICAL RISKS

- Verify





MITIGATING ETHICAL RISKS

- **Verify**
- **Transparency**
- **Isolate/Protect Data**



AMERICAN BAR ASSOCIATION

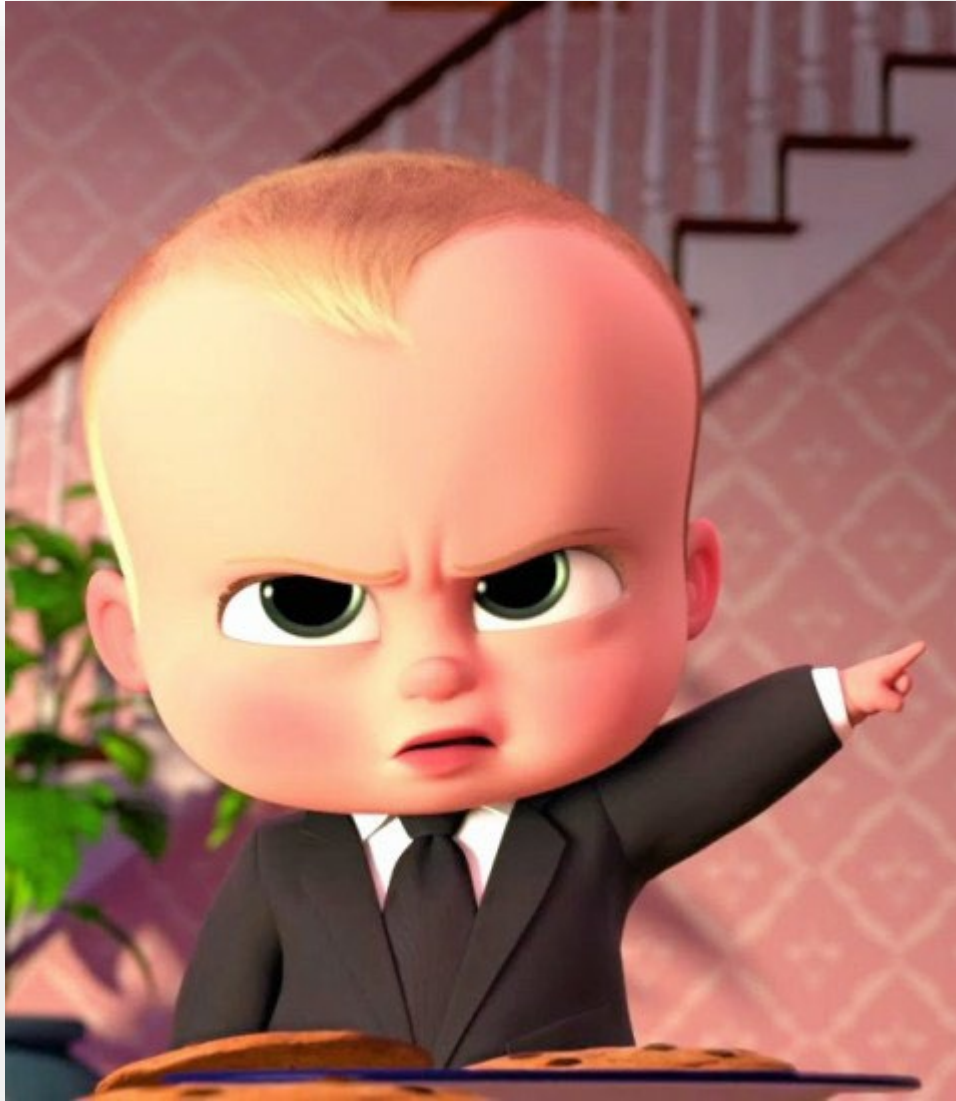
STANDING COMMITTEE ON ETHICS AND PROFESSIONAL RESPONSIBILITY

Formal Opinion 512

July 29, 2024

The appropriate amount of independent verification or review required to satisfy Rule 1.1 will necessarily depend on the GAI tool and the specific task that it performs as part of the lawyer's representation of a client. For example, if a lawyer relies on a GAI tool to review and summarize numerous, lengthy contracts, the lawyer would not necessarily have to manually review the entire set of documents to verify the results if the lawyer had previously tested the accuracy of the tool on a smaller subset of documents by manually reviewing those documents, comparing then to the summaries produced by the tool, and finding the summaries accurate. Moreover, a lawyer's use of a GAI tool designed specifically for the practice of law or to perform a discrete legal task, such as generating ideas, may require less independent verification or review, particularly where a lawyer's prior experience with the GAI tool provides a reasonable basis for relying on its results.





KEY TAKEAWAYS

AI is a Tool,
Not a Substitute

Balance Benefits
with Ethics



"It is really inexcusable for any lawyer to fail, as a matter of routine, to Shepardize all cited cases (a process that has been made much simpler today than it was in the past, given the facility for doing so under Westlaw or LEXIS)."

RECOMMENDS that Mr. Ramirez be sanctioned \$15,000 for his violations in this case—\$5,000 for each of the three briefs

REFERS the matter of Mr. Ramirez's misconduct in this case to the Chief Judge pursuant to Local Rule of Disciplinary Enforcement 2(a)

ORDERED to provide a copy of this order to the chief executive officer of his client

*Mid Central Operating
Engineers Health and Welfare
Fund v. Hoosiervac LLC.,
2:24-cv-00326-JPH-MJD
(S.D. Ind. Feb. 21, 2025)*



Rule 11 requires counsel to study the law before representing its contents to a federal court. **An empty head but a pure heart is no defense.** The Rule requires counsel to read and consider before litigating. Counsel who puts the burden of study and illumination on the defendants or the court must expect to pay attorneys' fees under the Rule.

Nevertheless, much like a chain saw or other useful by potentially dangerous tools, one must understand the tools they are using and use those tools with caution. It should go without saying that any use of artificial intelligence must be consistent with counsel's ethical and professional obligations. In other words, the use of **artificial intelligence** must be accompanied by the application of **actual intelligence** in its execution.

*Mid Central Operating
Engineers Health and Welfare
Fund v. Hoosiervac LLC.,
2:24-cv-00326-JPH-MJD
(S.D. Ind. Feb. 21, 2025)*



UNITED STATES COURT OF APPEALS FIFTH JUDICIAL CIRCUIT

COURT DECISION ON PROPOSED RULE

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.”

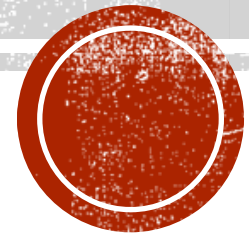


MITIGATING ETHICAL RISKS

- **Verify**
- **Transparency**
- **Isolate/Protect Data**



AI IN FEDERAL DEFENSE: ETHICAL CONSIDERATIONS



Felix Valenzuela
felix@valenzuela-law.com