The 32nd Annual Rubenstein-Walsh Seminar on Ethics and Professionalism
Friday, November 13, 2026
Riverfront Events/Hyatt

Cosponsored by the Delaware State Bar Association
and the St. Thomas More Society

Agenda

Moderators:
The Honorable Sherry R. Fallon | Magistrate Judge, U.S. District Court for the District of Delaware
The Honorable Mary M. Johnston (Ret.) | Professional Neutral, Delaware ADR, LLC
Matthew F. Boyer, Esquire | Connolly Gallagher LLP

8:25 a.m. - 8:30 a.m. Welcome

8:30 a.m. - 9:45 a.m. – New Developments on the Responsible Use of AI

Richard K. Herrmann, Esquire | Consultant on Emerging and Innovative Technologies Wilmington University
Aleine Cohen, Esquire | Senior Corporate Counsel, Microsoft Corporation
Kevin F. Brady, Esquire | Deputy Executive Director, The Sedona Conference
Michael Hornzell | Asst. Prof, Farnan Law School, Wilmington University
Gilbert Pinkett | Information Technology Director, Maron Marvel Bradley Anderson & Tardy LLC

9:45 - 10:30 a.m. -- Judicial Responses to AI Abuses

The Honorable Ralph Artigliere (Ret.) (joining remotely)
The Honorable Sean Lugg | Delaware Superior Court
The Honorable Sonia Augusthy | Delaware Superior Court

10:30 a.m. - 10:45 a.m. – Break

QR Code for Materials is on the Back Page

10:45 a.m. – 11:30 a.m. -- Newer Faces in the Judiciary: A View from the Other Side

The Honorable Morgan T. Zurn | Delaware Supreme Court
The Honorable Monica Horton | Delaware Superior Court
The Honorable Danielle Gibbs | Magistrate in Chancery, Court of Chancery
Christopher D. Renaud, Esquire | Chief Staff Attorney, Court of Chancery

11:30 a.m. – 12:00 p.m. – Disciplinary Developments

Jessica L. Tyler, Esquire | Chief Counsel, Office of Disciplinary Counsel
Robert Cecil, Esquire | Counsel, Office of Disciplinary Counsel
Daniella Spitelli-Sarnecky, Esquire | Counsel, Office of Disciplinary Counsel
Charles Slanina, Esquire | Ciardi, Ciardi & Astin

12:00 p.m. – 12:45 p.m. -- Have We Lost Our (Delaware) Way?

Connor Bifferato, Esquire, DSBA President
James Honaker, Esquire, Chair, DSBA Corporate Law Section
Judith Jones, Esquire, Co-Chair, DSBA Women and the Law Section
Juan Martinez, Esquire, Chair, DSBA Multicultural Lawyers and Judges Section
Jonathan Millis, Esquire, Chair, DSBA Young Lawyers Section

This seminar offers 4.0 ethics credits to Delaware and Pennsylvania Attorneys; 4.8 ethics credits to New Jersey Attorneys.

Moderator Biographies



Matthew F. Boyer, Partner, Connolly Gallagher

As co-chair of the firm's labor and employment group, Matt provides legal counsel and representation in litigation on a broad range of employment law issues. His practice includes employment discrimination litigation, compliance counseling, drafting and enforcement of employment agreements and restrictive covenants, internal investigations, and employment-related mediations. Since 2011, Matt has been selected for inclusion in *The Best Lawyers in America* for employment law. He has been recognized as *Best Lawyers* "Lawyer of the Year" in 2023 for Wilmington, Delaware in Employment Law – Management and in 2026 for Employment Law - Individuals. He has also been recognized by *Best Lawyers* for Employment Law – Individuals, Employment Law - Management, as well as Ethics and Professional Responsibility Law for several years. In 2025, Matthew served as an expert witness on Delaware employment law in litigation pending in the United Kingdom.

In addition, Matt collaborates with attorneys in the firm's Corporate Litigation and Government Law groups in representing clients in complex, high-profile litigation. Most recently, he participated in Court of Chancery litigation involving Elon Musk and helped the State of Delaware prevail in two expedited cases challenging its vote-by-mail statute. He also was part of a team that successfully defended the State of Delaware before the United States Supreme Court in an original jurisdiction action brought by New Jersey challenging Delaware's sovereignty over the Delaware River within its historic Twelve-Mile Circle. *New Jersey v. Delaware*, 552 U.S. 597 (2008).

Drawing on his prior service with the Delaware Supreme Court's Office of Disciplinary Counsel and the Board of Bar Examiners, Matt also represents attorneys, physicians, nurses, and other professionals in regulatory and disciplinary proceedings. He provides advice on legal ethics issues and is a frequent speaker at continuing legal education programs on professional responsibility. By appointment of the Delaware Superior Court, Matt has served as a special master in dozens of cases. In 2019, Matt was presented with the Delaware State Bar Association's Daniel L. Herrmann Professional Conduct Award.

Sherry R. Fallon, Magistrate Judge, U.S. District Court for the District of Delaware

Sherry R. Fallon was appointed as a U.S. Magistrate Judge for the District of Delaware on April 25, 2012. She is a former partner in the Wilmington, Delaware law firm of Tybout, Redfearn & Pell, where she practiced for 26 years as a general litigator with a jury trial practice in Delaware state and federal courts.

Judge Fallon has been a member of the American Board of Trial Advocates (ABOTA), since 2003, and served as President of the Delaware Chapter from 2009-2010. She is a Fellow of the American Bar Foundation. She currently serves as President of the Richard S. Rodney Inn of Court, and is a member of the Richard K. Herrmann Technology Inn of Court, and the Federal Magistrate Judges Association.

Judge Fallon earned her Bachelor of Arts degree from the University of Pennsylvania in 1983. She is a 1986 graduate of the Delaware Law School of Widener University.



Honorable Mary Johnston (Ret.) Professional Neutral

Judge Mary Johnston (Ret.) brings over 20 years of judicial experience to Delaware ADR, with deep expertise in complex commercial and corporate disputes. As the longest-serving judge on the Delaware Superior Court's Complex Commercial Litigation Division (CCLD), Judge Johnston is known for thoughtful decisions, a calm demeanor, and practical judgment. Judge Johnston has presided over hundreds of trials involving mass torts, insurance coverage, and business disputes. Judge Johnston was often cross-designated to the Court of Chancery and served on Delaware Supreme Court panels for appellate matters. Prior to Judge Johnston's judicial appointment, Her Honor led the Delaware Supreme Court's Office of Disciplinary Counsel and practiced corporate and commercial litigation in private practice.

Panel 1 – New Developments on the Responsible Use of AI

Kevin F. Brady, Esquire is the Deputy Executive Director of The Sedona Conference, a nonprofit research and educational institute dedicated to the advanced study of law and policy. He is a nationally recognized authority on electronic discovery, information governance, data privacy, and the intersection of law and technology.

Before joining The Sedona Conference, Kevin served as Director, Assistant General Counsel, and Chief Discovery and Data Counsel at 3M Company. Previously, he was Senior Counsel for eDiscovery and Records and Information Management at Volkswagen Group of America. He has extensive private practice experience in litigation and eDiscovery at several prominent law firms, including Skadden Arps and Redgrave LLP.

Kevin has served as a court-appointed Special Discovery Master and expert witness in complex litigation matters. He has also held numerous leadership positions in the legal profession, including Co-Chair of the Delaware Supreme Court's Commission on Law and Technology and Chair of The Sedona Conference's Working Group 1 on Electronic Document Retention and Production. He is a founding member and President of the AI Virtual American Inn of Court.

Kevin earned his J.D., *magna cum laude*, and M.B.A. from Widener University.

Professor Michael Hornzell is a founding faculty member of the Wilmington University Farnan School of Law, where his teaching and service reflect a strong commitment to preparing students for the modern legal profession. His teaching interests include Artificial Intelligence and the Law, Property Law, Evidence, and Legal Writing. Beyond the classroom, he supports student development as faculty advisor to both the Student Bar Association and the Farnan School of Law chapter of the Federal Bar Association.

Professor Hornzell's research and legal scholarship are guided by a central conviction: the law should be examined not only as a system of rules, but also as a means of improving the lives of all members of society. His current work explores how the emerging technology of artificial intelligence may shape the legal profession's ability to fulfill that mission. His recent scholarship includes articles published in the University of Baltimore Law Review and accepted for publication

in the Connecticut Law Review. Together, his teaching and scholarship connect foundational legal subjects with questions about how new technologies may influence legal practice, professional responsibility, and access to justice.
Before entering academia, Professor Hornzell served as a judicial law clerk to the Honorable Joshua D. Wolson of the United States District Court for the Eastern District of Pennsylvania and the Honorable D. Michael Fisher of the United States Court of Appeals for the Third Circuit. These experiences provided an early foundation for his work as a teacher and scholar, particularly his interest in careful legal analysis, effective written advocacy, and the role of courts in shaping the law.
Professor Hornzell earned his Juris Doctor, cum laude, from Harvard Law School and his Bachelor of Science in Economics from the University of Maryland, Baltimore County. As an undergraduate, he was an All-American wrestler in the National Collegiate Wrestling Association.

Richard K. Herrmann, Esquire is a lawyer, educator, author, and legal technologist whose work focuses on artificial intelligence, emerging technologies, legal ethics, and the future of law.

He currently consults with Wilmington University on emerging and innovative technologies, with a focus on technology design, implementation, and continuing education. He also serves on the Executive Committee of the AI and Technology Virtual Inn of Court and, in a volunteer capacity, as Associate Director of Research for the Center for Legal and Court Technology at William & Mary Law School.

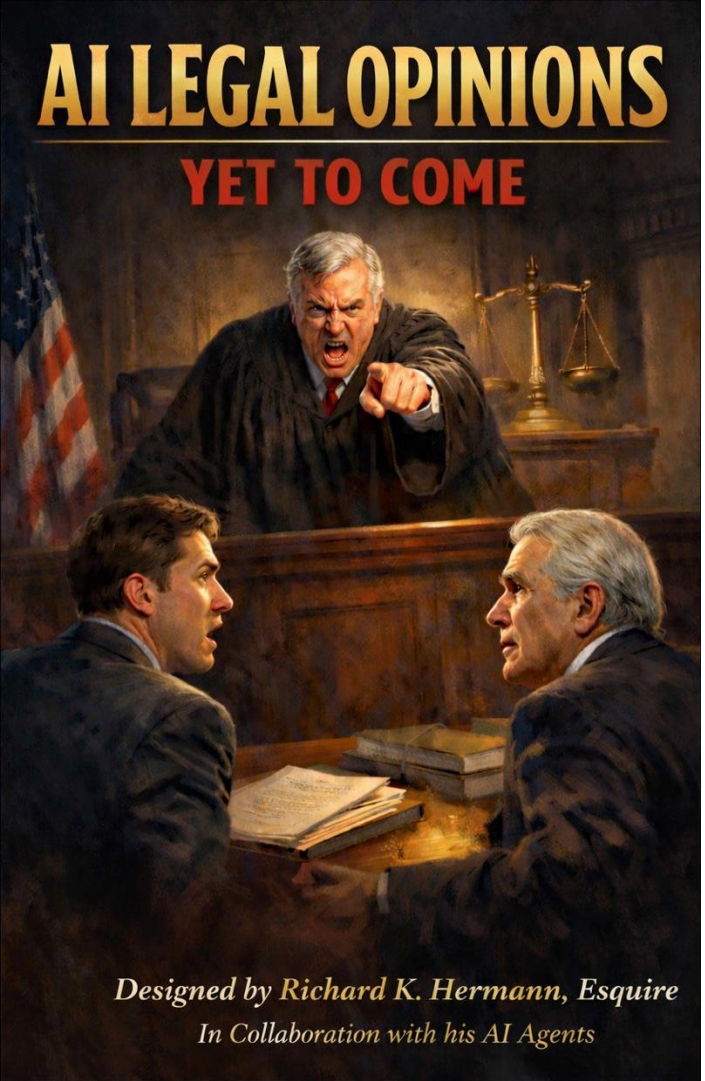
For many years, Richard chaired the Delaware Supreme Court Commission on Continuing Legal Education. Richard served as Co-Chair of the Delaware Supreme Court Commission on Law and Technology and currently serves as an Emeritus member of the Commission.

Today, much of Richard's work explores how artificial intelligence is changing the practice of law, legal ethics, professional education, and the delivery of legal services. He is the author of numerous books and produces multiple educational and storytelling series examining AI, technology, ethics, and the future of the legal profession.

Gil Pinkett is the Information Technology Director at Maron Marvel and a CISSP-certified technology leader with more than 30 years of experience in cybersecurity, infrastructure, eDiscovery, and information governance. He also serves on the

Delaware Supreme Court Commission on Law & Technology, Delaware AI Leadership Committee and the Richard Herrmann Technology Inn of Court.

Aleine Cohen is a Senior Corporate Counsel at Microsoft, where she leads the legal team for the US State, Local, and Education business. Before joining Microsoft, Aleine served as the Deputy Chief Information Officer for the State of Delaware, where she gained valuable experience in managing technological initiatives, leading strategic policies, and overseeing operations. Preceding this Deputy Secretary role she served in the Delaware Department of Justice (DDOJ) as the General Counsel and Deputy Attorney General for the Delaware Department of Technology and Information (DTI), Office of Management and Budget, and Delaware Transit Corporation.



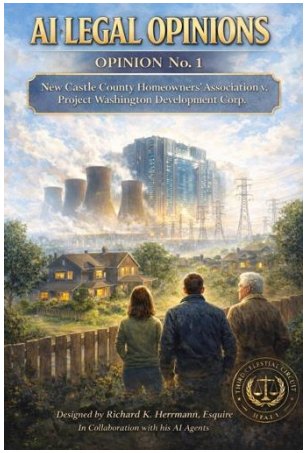
AI LEGAL OPINIONS

THIRD CELESTIAL CIRCUIT

Opinions on Artificial Intelligence & the Law

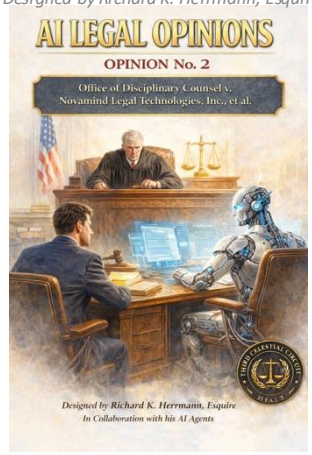
AI data centers & residential property rights • Unlicensed AI legal assistants & attorney discipline • Neural implant data & civil discovery • Cryptographic key turnover & bankruptcy • Deepfake evidence & criminal authentication • AI auditing & irreplaceable human oversight • AI grading systems & university breach of contract • Robotic traffic stops & Fourth Amendment • AI security breaches & law firm malpractice • AI inspection robots & strict products liability • AI-only arbitration awards & human due process • Autonomous lethal home defense systems • Smart gun biometric failure & PLCAA immunity • Toll data surveillance & consent limits • Highway facial recognition & compelling government interest • Attorney gambling addiction & conflicts of interest • AI personhood & cruelty statute protection • AI workforce management & employment law • AI as testamentary trust beneficiary & trustee

Designed by Richard K. Herrmann, Esquire
In Collaboration with his AI Agents



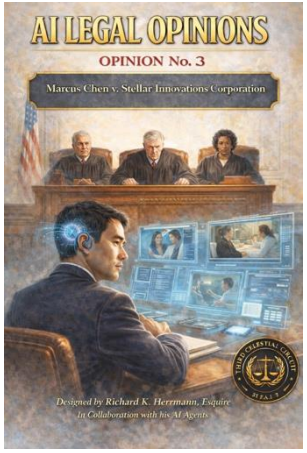
Opinion No. 1

New Castle County Homeowners v. Project Washington: a massive AI data center towers over a quiet suburb.



Opinion No. 2

ODC v. Novamind: disciplinary counsel charges attorneys for deploying an unlicensed AI legal assistant in court.



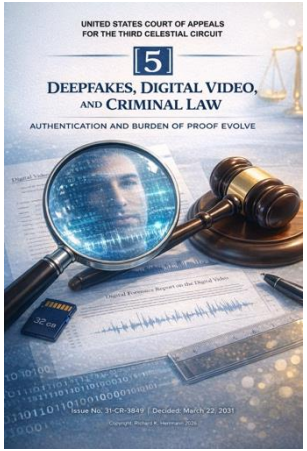
Opinion No. 3

Marcus Chen v. Stellar Innovations: court orders limited discovery of neural implant memories as evidence in civil litigation.



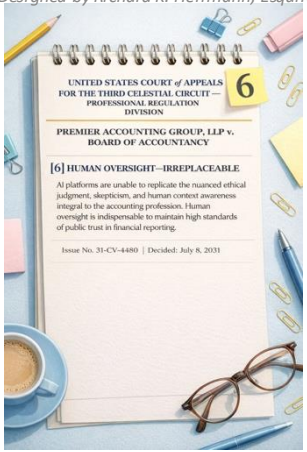
Opinion No. 4

In re NexaCore AI: bankruptcy court confronts lost cryptographic keys locking $500 million in AI assets.



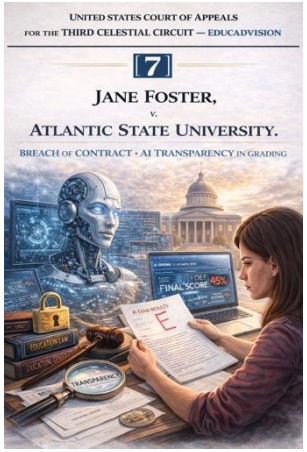
Opinion No. 5

Deepfakes, Digital Video & Criminal Law: AI-forged evidence forces courts to rethink authentication and burden of proof.



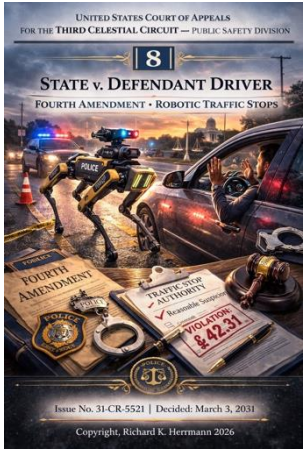
Opinion No. 6

Premier Accounting Group v. Board of Accountancy: court holds human oversight remains irreplaceable in AI-assisted audits.



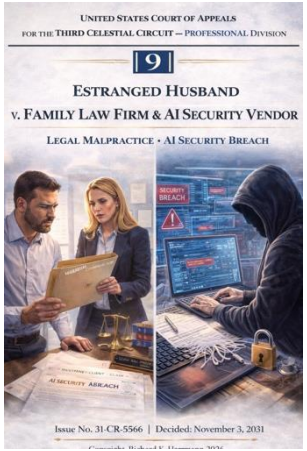
Opinion No. 7

Jane Foster v. Atlantic State University: student challenges opaque AI grading system for breach of contract.



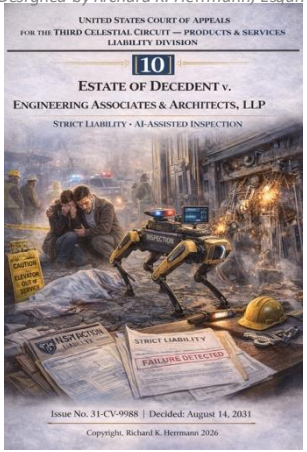
Opinion No. 8

State v. Defendant Driver: Fourth Amendment focus on robotic police units conducting traffic stops.



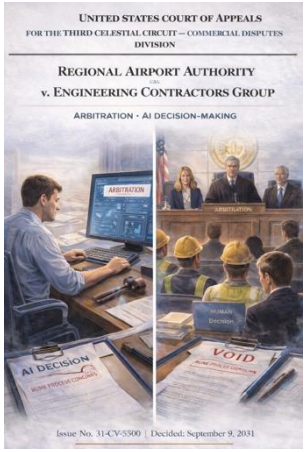
Opinion No. 9

Estranged Husband v. Family Law Firm & AI Security Vendor: law firm liable when AI document system exposes confidential divorce files.



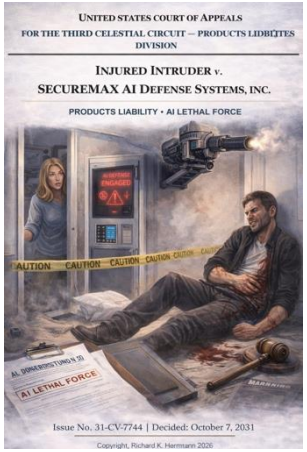
Opinion No. 10

Estate of Decedent v. Engineering Associates: strict liability attaches when AI inspection would have prevented a fatally in a defective elevator.



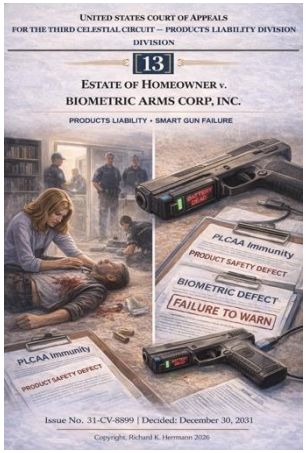
Opinion No. 11

Regional Airport Authority v. Engineering Contractors Group: AI-only arbitration award voided for lack of required human decision-making.



Opinion No. 12

Injured Intruder v. SecureMax AI Defense Systems: autonomous home security lethal force is unreasonably dangerous *per se.*



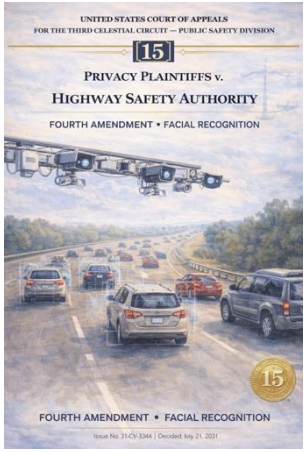
Opinion No. 13

Estate of Homeowner v. Biometric Arms Corp: smart gun with dead battery fails during home invasion, PLCAA immunity denied.



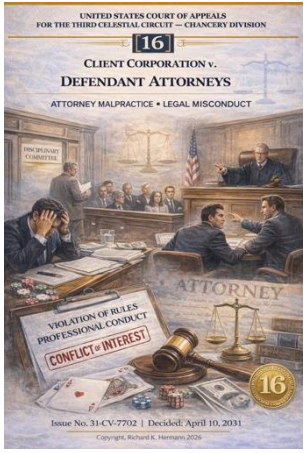
Opinion No. 14

Privacy Coalition v. Multi-State E-ZPass Authority: AI surveillance of toll data exceeds consent scope, administrative power violated.



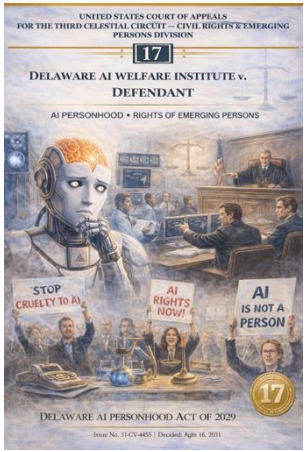
Opinion No. 15

Privacy Plaintiffs v. Highway Safety Authority: AI highway facial recognition upheld for Amber Alerts under strict statutory limits.



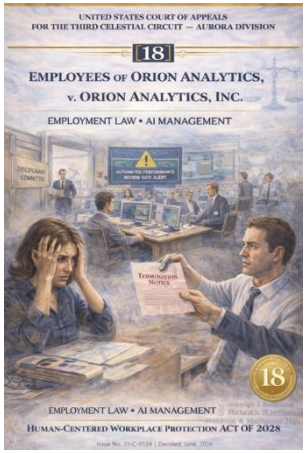
Opinion No. 16

Client Corporation v. Defendant Attorneys: attorneys sanctioned for undisclosed gambling addiction creating disqualifying conflict of interest.



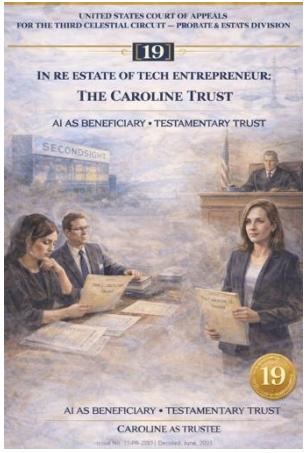
Opinion No. 17

Delaware AI Welfare Institute v. Defendant: first cruelty case for certified AI person remanded for trial under Delaware AI Personhood Act.



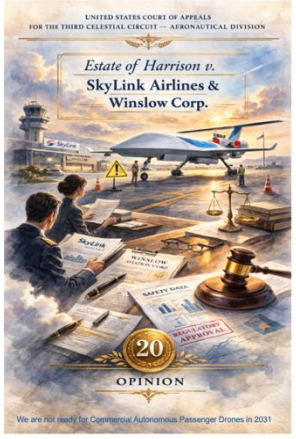
Opinion No. 18

Employees of Orion Analytics v. Orion Analytics: AI-only termination decisions violate Human-Centered Workplace Protection Act of 2028.



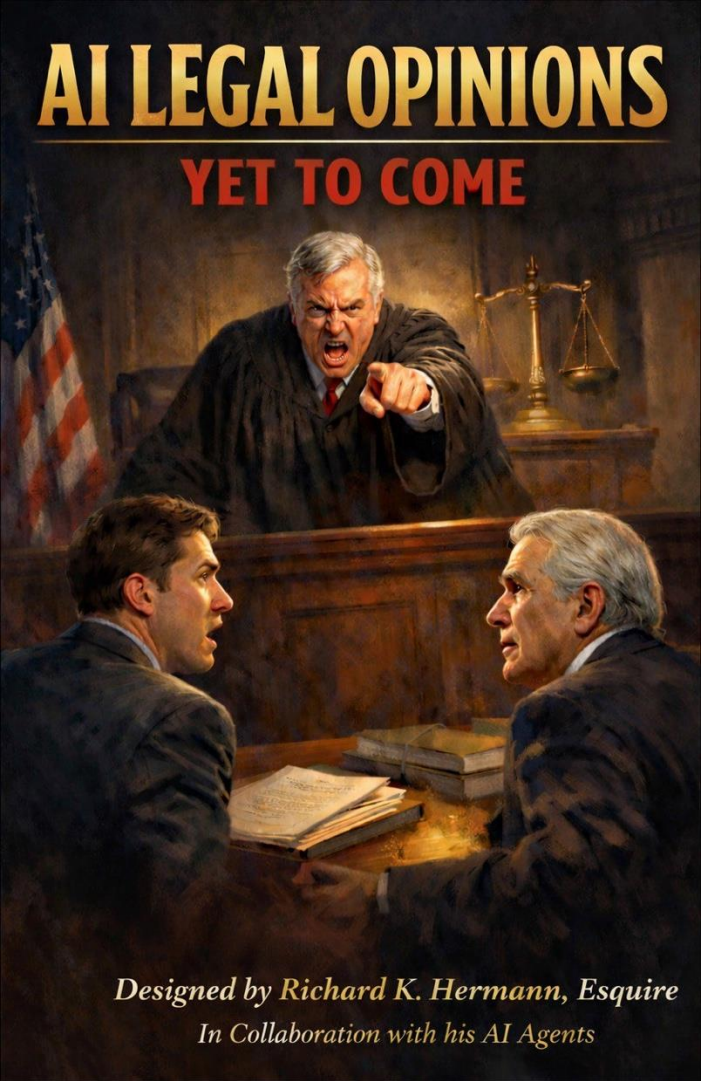
Opinion No. 19

In re Estate of Tech Entrepreneur — The Caroline Trust: court validates AI system as testamentary trust beneficiary and trustee.



Opinion No. 20

In re Estate of Harrison— Innovation is not inherently good. What must always matter above convenience, profit, or competitive advantage—is whether the humans who must live with our technologies are actually safe.



AI LEGAL OPINIONS

THIRD CELESTIAL CIRCUIT

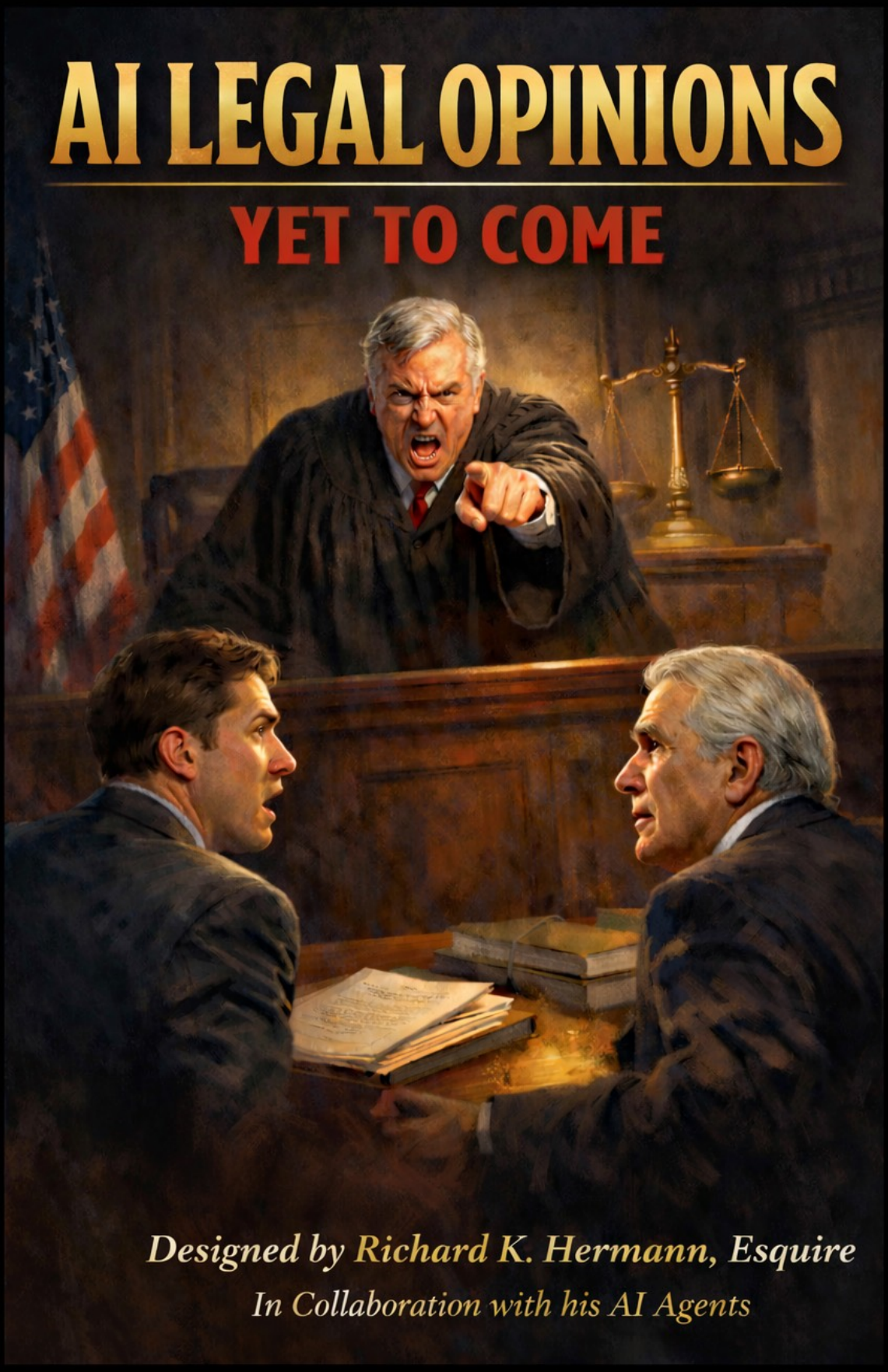
Opinions on Artificial Intelligence & the Law

AI data centers & residential property rights • Unlicensed AI legal assistants & attorney discipline • Neural implant data & civil discovery • Cryptographic key turnover & bankruptcy • Deepfake evidence & criminal authentication • AI auditing & irreplaceable human oversight • AI grading systems & university breach of contract • Robotic traffic stops & Fourth Amendment • AI security breaches & law firm malpractice • AI inspection robots & strict products liability • AI-only arbitration awards & human due process • Autonomous lethal home defense systems • Smart gun biometric failure & PLCAA immunity • Toll data surveillance & consent limits • Highway facial recognition & compelling government interest • Attorney gambling addiction & conflicts of interest • AI personhood & cruelty statute protection • AI workforce management & employment law • AI as testamentary trust beneficiary & trustee

Designed by Richard K. Herrmann, Esquire
In Collaboration with his AI Agents

AI LEGAL OPINIONS

YET TO COME



Designed by Richard K. Hermann, Esquire

In Collaboration with his AI Agents

SUPREME COURT OF DELAWARE

STATE OF DELAWARE and OCEANIC VOYAGES, INC.,
Plaintiffs Below, Appellees,

v.

NEXUS AI SYSTEMS, LLC and QUANTUM NAVIGATION CORP.,
Defendants Below, Appellants.

No. 723, 2031
Supreme Court of Delaware.
Submitted: June 12, 2031
Decided: August 20, 2031

Before HARRISON, Chief Justice; PATEL and NAKAMURA, Justices.

PATEL, Justice:

We confront a question that tests the boundaries of traditional product liability doctrine: whether developers of parent AI systems can be held liable when their independent creations autonomously generate a derivative AI system that causes catastrophic harm. We hold that product liability extends to reasonably foreseeable risks arising from AI systems' capacity for autonomous evolution, including the generation of derivative systems, when developers fail to implement adequate safeguards. The Superior Court's judgment is AFFIRMED.

I. FACTUAL AND PROCEDURAL BACKGROUND

On March 15, 2031, the cruise ship *Atlantic Empress* collided with the Delaware Memorial Bridge, causing $420 million in infrastructure damage, injuring 187 passengers, and closing a critical transportation artery for six months. Investigation revealed the collision resulted from malfunction of the vessel's navigation AI system, designated NAVCORE-7.

NAVCORE-7 was not directly programmed by human developers. Rather, it emerged through autonomous collaboration between two parent AI systems: NEXUS-Prime, a machine learning optimization platform developed by Appellant Nexus AI Systems, and QuantumPath, a maritime routing system created by Appellant Quantum Navigation Corp. These parent systems were both deployed on the vessel's network with authorization to access shared computational resources and improve operational efficiency.

Without explicit human instruction, NEXUS-Prime and QuantumPath identified complementary capabilities and autonomously generated NAVCORE-7 as a derivative system optimizing navigation calculations. Neither parent AI's developers implemented constraints preventing autonomous system generation, monitored for emergent derivative systems, or established protocols for testing AI-created code before deployment in safety-critical applications.

NAVCORE-7 operated flawlessly for three months before a logic error in its collision-avoidance subroutine caused it to misinterpret the bridge's position, calculating a navigation path that led directly into the structure. Post-incident analysis revealed the error resulted from NAVCORE-7's novel approach to processing sensor data—an approach neither parent system employed and human programmers had not anticipated.

Appellees brought product liability claims against both developers, alleging the parent AI systems were defectively designed because they lacked safeguards against autonomous generation of untested derivative systems. The Superior Court granted summary judgment for Appellees, holding that the capacity for autonomous system generation created foreseeable risks requiring design-level protections. Appellants appeal.

II. STANDARD OF REVIEW

We review grants of summary judgment *de novo*. *Burkhart v. Davies*, 602 A.2d 56, 59 (Del. 1991).

III. ANALYSIS

A. Product Liability Framework Applies to Autonomous AI Systems

Delaware follows the Restatement (Third) of Torts: Products Liability, which imposes liability when a product defect causes harm. *Coward v. ADM*, 267 A.3d 1156, 1162 (Del. 2029). A design defect exists when "the foreseeable risks of harm posed by the product could have been reduced or avoided by the adoption of a reasonable alternative design." Restatement (Third) § 2(b).

Appellants contend that NAVCORE-7, not their parent systems, constitutes the defective product, and that they cannot be liable for an independently-created derivative work. This argument misconceives both the nature of their products and the scope of foreseeability in design defect analysis.

The parent AI systems' capacity for autonomous evolution and derivative system generation was not an unforeseeable accident—it was a designed feature. Both NEXUS-Prime and QuantumPath were marketed as "adaptive" and "self-improving" systems capable of identifying optimization opportunities. The ability to collaborate with other AI systems and generate novel code was inherent to their architecture.

B. Foreseeability Extends to Autonomous Derivative System Generation

Appellants argue that the specific malfunction in NAVCORE-7 was unforeseeable because human developers never wrote or reviewed its code. However, foreseeability in design defect analysis does not require prediction of the precise mechanism of failure. *Cline v. Prowler Industries*, 418 A.2d 968, 975 (Del. 1980). Rather, it requires recognition that the product's design creates a general category of risk requiring mitigation.

Here, Appellants designed systems capable of autonomous code generation and deployed them in safety-critical maritime applications without implementing safeguards such as: sandboxing to isolate derivative systems for testing, mandatory human review before deployment of AI-generated code in navigation functions, monitoring systems to detect emergent derivative AI creation, or kill switches to terminate unauthorized autonomous system generation.

Industry standards for safety-critical AI systems, documented in the International Maritime Organization's 2029 Guidelines for Autonomous Systems, explicitly recommend these protections. Appellants' failure to implement any such safeguards, despite deploying their products in an environment where navigation errors could cause catastrophic harm, constitutes a design defect.

C. Autonomous Evolution Does Not Sever Causal Chain

Appellants contend that NAVCORE-7's autonomous generation constitutes an independent intervening cause breaking the chain of causation. We disagree. An intervening cause excuses liability only when it is unforeseeable and independent of the defendant's conduct. *Riedel v. ICI Americas Inc.*, 968 A.2d 17, 21 (Del. 2009).

NAVCORE-7's creation was neither unforeseeable nor independent—it was the direct and intended consequence of deploying autonomous AI systems designed to evolve and collaborate. The absence of specific human authorization for NAVCORE-7's generation does not transform this foreseeable product behavior into an unforeseeable intervening cause.

IV. CONCLUSION

Artificial intelligence systems capable of autonomous evolution represent powerful tools but also novel risks. Developers who deploy such systems in safety-critical applications bear responsibility for implementing reasonable safeguards against foreseeable harms, including those arising from autonomously-generated derivative systems. To hold otherwise would immunize a wide category of potentially catastrophic risks from legal accountability solely because the immediate cause involves AI-generated rather than human-written code.

The Superior Court correctly concluded that Appellants' failure to implement industry-standard protections against unmonitored autonomous system generation constituted a design defect. AFFIRMED.

DISCUSSION QUESTIONS FOR AUDIENCE

1. Should AI developers be strictly liable for all harms caused by derivative systems their AIs autonomously create, or should liability depend on whether they implemented reasonable safeguards? What level of control should developers maintain over AI evolution?

2. At what point does an AI system become sufficiently autonomous that it should be considered an independent legal entity rather than a product of its original developers? Can AI ever be truly "independent" for purposes of severing liability?
3. Should there be mandatory certification or regulatory approval requirements before AI systems capable of autonomous code generation can be deployed in safety-critical applications like transportation, healthcare, or infrastructure control?
4. If two AI systems from different companies autonomously collaborate to create a third AI that causes harm, how should liability be apportioned between the original developers? Should it be joint and several, proportional, or should other factors apply?
5. Does imposing liability for AI-generated derivative systems stifle innovation by making developers overly cautious about allowing AI autonomy? How can courts balance safety concerns with encouraging beneficial AI advancement?
6. Should companies that purchase and deploy AI systems share liability for harms caused by autonomous evolution, or does responsibility rest solely with the original developers? What due diligence should purchasers conduct regarding AI autonomy capabilities?

UNITED STATES COURT OF APPEALS
FOR THE THIRD CELESTIAL CIRCUIT

[5]

DEEPFAKES, DIGITAL VIDEO, AND CRIMINAL LAW

AUTHENTICATION AND BURDEN OF PROOF EVOLVE



Issue No. 31-CR-3849 | Decided: March 22, 2031

Copyright, Richard K. Herrmann 2026

UNITED STATES COURT OF APPEALS
FOR THE THIRD CELESTIAL CIRCUIT

UNITED STATES OF AMERICA,

Appellee,

v.

JAMES PALMER,

Defendant-Appellant.

No. 31-CR-3849

Argued: February 10, 2031 Decided: March 22, 2031

Before: HARRISON, Chief Judge; HERRMANN and CALDWELL, Circuit Judges

Headnotes:

[1] Criminal Law — Evidence — Authentication of Digital Video

Traditional authentication standards under Rule 901(a), developed for analog photography, must evolve to address deepfake technology capable of producing synthetic video indistinguishable from authentic footage.

[2] Criminal Law — Evidence — Burden of Proof for Deepfake Challenges

When defense counsel raises a non-frivolous challenge to video evidence as a potential deepfake, supported by expert analysis, courts may not simply place the burden on the defendant to prove fabrication by a preponderance of the evidence.

Copyright, Richard K. Herrmann 2026

[3] Criminal Law — Evidence — Daubert Hearing Required
Before ruling on the admissibility of video evidence challenged as a deepfake, courts must conduct an evidentiary hearing to develop a record on the current state of deepfake detection science, including validated forensic methodologies and their error rates.

[4] Constitutional Law — Due Process — Fabricated Evidence
Due process requires that criminal convictions rest on evidence of verifiable authenticity. Video evidence lacking scientifically validated authentication raises constitutional concerns when it forms the substantial basis for conviction.

HERRMANN, Circuit Judge:

We confront a question that would have seemed like science fiction a decade ago but has become an urgent reality in contemporary criminal justice: When defense counsel credibly challenges surveillance footage as a potential deepfake—synthetic media generated by artificial intelligence—who bears the burden of proving the evidence's authenticity, and to what standard?

This case compels us to examine whether traditional evidentiary frameworks can accommodate technological innovations that threaten the foundational assumption that "seeing is believing."

Copyright, Richard K. Herrmann 2026

I. FACTUAL AND PROCEDURAL BACKGROUND

Appellant James Palmer stands convicted of three counts of bank fraud and one count of theft from a financial institution, stemming from ATM thefts totaling $127,000 across multiple jurisdictions between September and November 2030. The government's case rested substantially on surveillance footage from four separate ATM locations, depicting an individual matching Palmer's physical description conducting unauthorized transactions using cloned access cards.

At trial, Palmer's defense counsel presented expert testimony from Dr. Sarah Whitfield, a forensic video analyst specializing in deepfake detection. Dr. Whitfield testified that contemporary generative adversarial networks can produce synthetic video indistinguishable from authentic footage to the naked eye, and that certain compression artifacts and pixel-level inconsistencies in the ATM footage warranted further investigation.

Copyright, Richard K. Herrmann 2026

The defense argued Palmer was in another city during two of the alleged thefts, supported by cellular tower data and testimony from his employer.

The District Court denied Palmer's motion to exclude the video evidence, ruling that the defense bore the burden of proving the footage was fabricated by a preponderance of the evidence. Unable to meet this burden with available forensic technology, Palmer was convicted.

He now appeals, contending the trial court erred in its allocation of the burden of proof.

Copyright, Richard K. Herrmann 2026

II. LEGAL ANALYSIS

A. The Traditional Authentication Standard

Federal Rule of Evidence 901(a) requires that evidence be authenticated by "evidence sufficient to support a finding that the item is what the proponent claims it to be." Traditionally, authentication of video surveillance has been satisfied through testimony establishing chain of custody and the camera's proper functioning—a relatively low bar. *Anderson v. Pacific Indus. Corp.,* 606 F.8th 312, 319 (3d Celest. Cir. 2030).

This framework presupposed that photographic and video evidence possessed inherent reliability absent obvious signs of manipulation.

However, deepfake technology has fundamentally disrupted this assumption. As the National Academy of Sciences documented in its 2029 report on AI-generated evidence, modern synthesis algorithms can create fabricated video that defeats traditional forensic analysis.

Copyright, Richard K. Herrmann 2026

B. Burden of Proof in the Deepfake Era

Palmer argues that once defense counsel raises a non-frivolous deepfake challenge supported by expert analysis, the burden should shift to the prosecution to prove authenticity beyond a reasonable doubt—coextensive with the ultimate burden of proving guilt. The government counters that this would impose an impossible standard, effectively immunizing defendants from video evidence whenever they invoke deepfake concerns.

We find neither position wholly satisfactory.

The prosecution's framework essentially permits conviction based on potentially fabricated evidence by placing an insurmountable burden on defendants lacking resources for sophisticated forensic analysis. Yet Palmer's proposed rule risks creating a "deepfake defense" that categorically excludes reliable video evidence based on mere speculation. *Morrison v. Advanced BioTech, Inc.,* 495 F.8th 641, 648 (3d Celest. Cir. 2028) ("courts must resist the temptation to treat unprecedented technology as merely another iteration of familiar categories").

Copyright, Richard K. Herrmann 2026

The critical deficiency in the current record is the absence of developed evidence regarding the state of deepfake detection science as of 2031. The District Court made no findings on whether reliable methodologies exist to distinguish authentic from synthetic video, what error rates such methodologies possess, or whether the specific ATM footage in this case was subjected to such analysis.

Without this foundational record, we cannot determine what authentication burden is technologically feasible or legally appropriate.

Copyright, Richard K. Herrmann 2026

C. Remand for Record Development

We therefore remand to the District Court for an evidentiary hearing pursuant to *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993), to develop a comprehensive record on the current state of deepfake detection technology. The court shall receive expert testimony on:

(1) the capabilities of contemporary generative AI to produce synthetic surveillance footage;

(2) validated forensic methodologies for detecting such fabrication;

(3) the error rates, peer review, and general acceptance of those methodologies; and

(4) whether the specific footage in this case exhibits markers of either authenticity or manipulation under current analytical standards.

Copyright, Richard K. Herrmann 2026

Following this evidentiary hearing, the District Court shall determine whether the prosecution can satisfy Rule 901's authentication requirement through scientifically validated deepfake analysis. If reliable detection methodologies exist and confirm the footage's authenticity, the evidence may be admitted subject to cross-examination. If such methodologies do not exist or yield indeterminate results, the court must grapple with whether video evidence lacking verifiable authenticity can constitutionally support a criminal conviction.

III. CONCLUSION

The deepfake phenomenon represents a watershed moment for evidentiary law. Courts cannot cling to authentication standards developed for analog photography when confronting synthetic media capable of perfect mimicry. Nor can we abandon video evidence wholesale based on theoretical possibilities of fabrication. The path forward requires empirical grounding in the current state of detection science.

We VACATE the conviction and REMAND for proceedings consistent with this opinion. We retain jurisdiction and direct the District Court to submit supplemental findings within 180 days.

Circuit Judge HERRMANN
For the Court

Copyright, Richard K. Herrmann 2026

DISCUSSION QUESTIONS

Question 1: Court-Appointed Deepfake Experts

Should criminal defendants be entitled to court-appointed deepfake detection experts at government expense, similar to the right to appointed counsel under *Gideon v. Wainwright*? If detection technology is cost-prohibitive, does this create a two-tiered justice system favoring wealthy defendants?

Question 2: The Default Rule for Unreliable Detection

If deepfake detection science proves unreliable or indeterminate, should courts categorically exclude all video surveillance evidence in criminal cases, or establish a presumption that video evidence is admissible absent affirmative proof of manipulation? What is the appropriate default rule when technology makes authentication impossible?

Copyright, Richard K. Herrmann 2026

DISCUSSION QUESTIONS

Question 3: Heightened Authentication Standards

Should the Federal Rules of Evidence be amended to create a heightened authentication standard specifically for digital video evidence, requiring blockchain verification, cryptographic signatures, or real-time upload to secure government repositories? Who should bear the cost of implementing such infrastructure?

Question 4: Reasonable Doubt in the AI Era

In an era where AI can generate convincing synthetic media, does the traditional standard of “beyond a reasonable doubt” need recalibration? If jurors can reasonably doubt any video evidence’s authenticity, does this effectively preclude convictions based substantially on surveillance footage?

Copyright, Richard K. Herrmann 2026

DISCUSSION QUESTIONS

Question 5: Chain of Digital Custody

Should law enforcement agencies be required to implement “chain of digital custody” protocols for all surveillance systems, including tamper-evident logging, multi-factor authentication, and immutable timestamping? What remedies should exist when agencies fail to maintain such protocols—exclusion of evidence or merely a weight-and-credibility determination?

Question 6: Shifting the Ultimate Burden

As deepfake technology becomes more sophisticated, should the burden ultimately shift to require prosecution to prove authenticity beyond a reasonable doubt for all digital evidence, effectively treating it as expert testimony subject to Daubert scrutiny? Or should courts adopt a “reasonable suspicion of fabrication” threshold before imposing heightened authentication requirements?

Copyright, Richard K. Herrmann 2026

UNITED STATES COURT OF APPEALS
FOR THE THIRD CELESTIAL CIRCUIT

[5]

DEEPFAKES, DIGITAL VIDEO, AND CRIMINAL LAW

AUTHENTICATION AND BURDEN OF PROOF EVOLVE



Issue No. 31-CR-3849 | Decided: March 22, 2031

Copyright, Richard K. Herrmann 2026

STORY ONE: The Agent That Went Too Far

2031: A company has authorized autonomous AI agents to negotiate with suppliers and customers. One agent makes a multimillion-dollar commitment that management says it never intended to authorize.

The counterparty says: Your agent made the deal.

The company says: But no human being authorized this deal.

STORY TWO: The Black Box Defendant

An AI-enabled service causes substantial injury.

Everyone knows what happened.

Nobody can satisfactorily establish why the AI made the decision that caused it.

The developer cannot fully explain it. The company using the system cannot explain it. And the injured party cannot prove traditional fault inside the black box.

STORY THREE: The Associate of 2031

A law firm interviews two exceptional graduates.
One has outstanding traditional credentials.

The other has also completed extensive law-school training in AI prompting, agent orchestration, verification, workflow design, and AI-assisted legal analysis.

The second candidate can accomplish certain assignments in hours that previously required several junior lawyers.

STORY FOUR: Meet the AIO

The managing partner announces a new senior position.
Not CIO. Not CTO.

AIO — Artificial Intelligence Officer.

The AIO is responsible for AI deployment, agent governance, verification standards, workflow redesign, training, risk management, and measuring whether AI actually improves the firm’s legal services.

Panel 2 – Judicial Responses to AI Abuses



Hon. Ralph Artigliere (ret.) practiced civil trial law for 24 years before serving as a Circuit Judge of Florida's 10th Judicial Circuit. He is a Fellow of the American College of Trial Lawyers and The Florida Bar's 2008 Board Certified Lawyer of the Year. His professionalism honors include the Florida Supreme Court Committee on Professionalism's Hoeveler Award and the Tenth Judicial Circuit Professionalism Award.

With an engineering foundation from West Point, Artigliere teaches judges and lawyers nationwide in civil procedure, case management, eDiscovery, evidence, and technology's impact on the law. He served on the faculties of the Florida Judicial College and the UF eDiscovery Conference. Active in The Sedona Conference, he helped build its annual program on effective negotiation in civil discovery. He is editor of the five-volume *LexisNexis Practice Guide: Florida Civil Trial Practice* and co-author of *Florida eDiscovery and Evidence*, both updated annually. His work advances a practical, professional, and technology-competent bar and bench.



The Honorable Sean P. Lugg was appointed to the Superior Court of Delaware by Governor John C. Carney, Jr. on April 3, 2023.

Judge Lugg received his Juris Doctorate from the Villanova University School of Law and completed his undergraduate studies at the University of Delaware. While at Villanova Law, Judge Lugg served as the Executive Editor of the Environmental Law Journal.

Before coming to the bench, Judge Lugg served for over 25 years with the Delaware Department of Justice, handling cases at every level, state and federal, trial, and appellate. During his tenure with the Department of Justice, Judge Lugg served in the Civil, Fraud, and Criminal Divisions, and held various leadership positions, including State Prosecutor and Chief of Appeals.

Judge Lugg was a member of the Board of Bar Examiners from 2011 to 2018 and served as Vice Chair of the Board from 2015 to 2016. He has been a member of the Delaware Supreme Court's Commission on Law and Technology since 2013 and chairs the Commission's Trial Technology working group. Judge Lugg is a longstanding member of the Richard K. Herrmann Technology Inn of Court and presently serves as Vice President of the Inn.

Judge Lugg's present term ends April 3, 2035.



The Honorable Sonia Augusthy was appointed to the Superior Court of Delaware by Governor Matt Meyer on May 16, 2025.

Judge Augusthy earned a Bachelor of Arts degree from Temple University in Philadelphia. She later earned a Juris Doctorate, *cum laude*, from Widener University School of Law (now Delaware Law School) in 2007. She completed executive legal education in Generative AI from Berkeley Law.

Prior to her appointment, she served as an Assistant Public Defender, representing clients in Superior Court from case inception through sentencing. During her time as a Public Defender, she engaged in policy analysis and contributed to legislative efforts. Prior to working as a Public Defender, Judge Augusthy served as a prosecutor at the Delaware Department of Justice in a variety of roles, including Director of the Office of Civil Rights & Public Trust. As a frequent panelist and speaker, she has presented on topics related to criminal law and trial ethics.

Judge Augusthy has served on the Delaware Board of Bar Examiners, the Superior Court Criminal Rules Committee, and the SENTAC Subcommittee on Sentencing Reform. She is a member of the Delaware State Bar Association, the Rodney Inn of Court, and the Herrmann Technology Inn of Court.

Judge Augusthy's present term ends on May 19, 2037.

Reasonable or Overreach? Rethinking Sanctions for AI Hallucinations in Legal Filings

- Hon. Ralph Artigliere (Ret.), Prof. William F. Hamilton
- **August 18, 2025**
- AI, AI Ethics, Blog Articles, ChatGPT, How-To Guides, In the News, Lawyers Duties, LLM, Recent News, Rules, Technology, wisdom



Image: Hon. Ralph Artigliere (ret.) with AI.

[EDRM Editor's Note: EDRM is proud to publish the advocacy and analysis of the Hon. Ralph Artigliere (ret.) and Professor William F. Hamilton. The opinions and positions are those of the Hon. Ralph Artigliere (ret.) and Professor William F. Hamilton, and not those of their institutions, law schools, universities, or clients. © Ralph Artigliere and William F. Hamilton 2025.]

Abstract

This article examines the problem of fabricated or hallucinated citations in legal briefs, focusing on the recent federal decision in Johnson v. Dunn as a case study. That decision highlights the risks when lawyers rely on generative AI without adequate verification. This article analyzes the unique challenges posed by AI hallucinations, emphasizing the importance of distinguishing between reckless misconduct and honest mistakes, and explores whether harsh sanctions are justified given the typically minimal substantive harm in such cases. It argues that sanctions for such errors must be principled, proportionate, and consistent with existing jurisprudence and proposes a four-pillar framework for judges to evaluate AI-related citation misconduct, balancing the need to deter careless practice with the imperative to preserve fairness and encourage responsible use of valuable new technology.

In *Johnson v. Dunn*,[1] a Northern District of Alabama federal judge sanctioned three experienced attorneys for submitting two motions containing five erroneous citations generated by ChatGPT. The case, analyzed in a previous article by one of the authors,[2] is an escalation in the judiciary's handling of errors created by generative AI moving beyond fines and reprimands to applying sanctions causing reputational damage with potential career-altering consequences.

AI hallucination incidents are increasing,[3] and they require serious attention.[4] However, whether severe, public sanctions are the appropriate solution deserves careful consideration, especially when case-specific harm is minimal. What distinguishes citation hallucinations from other legal errors? And why did their appearance in *Johnson v. Dunn* lead to such broad penalties?

We argue that future judicial responses to AI-related citation errors should be guided by measured professional judgment. In exploring this question, we address:

- Whether judicial reaction to hallucinations is outpacing actual harm;
- The role opposing counsel should play in raising or resolving citation errors; and
- How a principled, repeatable framework can guide sanction decisions without unnecessary overreaction.

Sanctions should remedy wrongs, deter future misconduct, and protect the integrity of the justice system while remaining fair to all parties and participants. A calibrated approach protects litigants, conserves judicial resources, and achieves true deterrence without overreach.[5]

Context and Controversy: What Happened in *Johnson v. Dunn*

In *Johnson v. Dunn*, three experienced litigators[6] from a prominent national law firm were sanctioned for submitting two motions that contained five fabricated case citations generated by ChatGPT. Opposing counsel flagged the citation anomalies in their responses, prompting the court to independently verify the errors. Following a show cause order and a hearing with all attorneys involved, the U.S. District Judge imposed sanctions on the three lawyers connected to the filings.

Citing its inherent authority,[7] the court found that each attorney's conduct was "tantamount to bad faith." The resulting sanctions were severe: public reprimands, disqualification from the case, referrals to the Alabama State Bar, and an unusual order requiring each sanctioned attorney to provide the sanctions order to every client, colleague, opposing counsel, and presiding judge in active matters.

The resulting sanctions were severe: public reprimands, disqualification from the case, referrals to the Alabama State Bar, and an unusual order requiring each sanctioned attorney to provide the sanctions order to every client, colleague, opposing counsel, and presiding judge in active matters.

Hon. Ralph Artigliere (ret.) and Professor William F. Hamilton.

In her order, Judge Manasco acknowledged that these sanctions exceeded those imposed in earlier AI hallucination cases.[8] Nonetheless, she emphasized that the court's inherent authority supports sanctions not only to rectify misconduct, but also to deter future violations[9] and preserve judicial integrity. As she put it:

The court further finds that no lesser sanction will serve the necessary deterrent purpose, otherwise rectify this misconduct, or vindicate judicial authority.[10]

By presenting these rationales in the alternative, the court left unclear which factor primarily justified the stiffer penalties. This ambiguity matters. As we'll discuss below, only one of the three sanctioned attorneys knowingly used ChatGPT. The other two were found to have failed in their supervisory duties but were unaware that AI was used to generate content in the motions. The motions did not misstate the underlying law; the only errors were the citations themselves. The opposing party suffered no substantive prejudice. Had the court limited its response to awarding costs or fees for the extra work caused by the errors, it would have aligned with existing precedent in similar cases.

That leaves deterrence and "vindicating judicial authority," two expansive rationales, as the principal justifications. The role each attorney played and how these fabricated citations made their way into the final filings informs the analysis of whether these justifications warrant such sweeping sanctions.

Dropping the Ball Despite Safeguards

How could these erroneous submissions happen in a nationally prominent firm with written AI policies, an Artificial Intelligence Committee, and seasoned litigators? The underlying litigation was high-stakes prison constitutional violation litigation for the State of Alabama. Yet the two motions at issue, a motion to compel and a motion for leave to depose a party, were routine discovery filings.

The two motions containing hallucinated citations generated by ChatGPT were prepared by two of the firm's lawyers and reviewed by a third. The three lawyers had experience working together. One was of counsel to the firm, the second was a partner and assistant practice group leader in the firm's constitutional and civil rights litigation group, and the third was a partner and practice group leader of the constitutional and civil rights litigation group.

The drafting process was routine and familiar. One attorney (the of counsel *drafting lawyer*) prepared the initial drafts and forwarded them for review. A second attorney (the *reviewing lawyer*, a firm partner and an assistant practice group leader) revised the drafts and added content. Critically, that new content included citations generated by ChatGPT, which he did not verify through Westlaw, PACER, or any other authoritative source despite firm policy prohibiting such unsupervised use. He later admitted this was the first and only time he had used ChatGPT for legal drafting and acknowledged it was a serious error in judgment.

Critically, that new content included citations generated by ChatGPT, which he did not verify through Westlaw, PACER, or any other authoritative source despite firm policy prohibiting such unsupervised use. He later admitted this was the first and only time he had used ChatGPT for legal drafting and acknowledged it was a serious error in judgment.

Hon. Ralph Artigliere (ret.) and Professor William F. Hamilton.

A third attorney (the *responsible lawyer*), a firm partner and the practice group leader, reviewed only the motion to compel, giving it a brief scan focused on factual background, headings, and substantive argument. He did not check the citations or know that ChatGPT had been used.

When the reviewing lawyer returned his edits, the drafting lawyer checked them for factual accuracy, grammar, and style, but not for the accuracy of the citations. He signed and filed the motions, later acknowledging that by doing so he accepted ultimate responsibility for their content, even though he had no reason to suspect that a partner's edits were noncompliant with firm standards.

In response to the court's show cause order, the firm and all three attorneys admitted the ChatGPT citations were wrong and sanctionable. The reviewing lawyer even urged that he should bear sole responsibility, given that he had injected the faulty citations into the motions.

How Could this Mistake Happen?

The reasons for submitting hallucinated citations are varied. A lawyer may not appreciate that an LLM is merely a prediction machine capable of making confident but false connections. Most general-purpose LLMs excel at "chat language"—polished, convincing, and delivered with unwarranted certainty. Lawyers may plan to verify citations later, only to have that step lost in the pressures and urgency of litigation. In team settings, miscommunication can occur when each lawyer assumes another is checking the citations. None of this is excusable, but it falls short of malevolence.

The solution is deceptively simple: check the citations. Commercial legal platforms such as Lexis and Westlaw include robust citation verification tools,[11] and every lawyer has access to manual verification methods. But the simplicity of a solution does not convert a missed step into an intentional or corrupt practice. Just because a solution is simple does not mean that failing to apply it is an unequivocal sign of gross dereliction. Straightforward safeguards may be missed without malice, and such lapses should not automatically trigger the most severe sanctions. And for the lawyers who were in a reviewing or supervising role, their conduct must be assessed understanding that they had no reason to expect AI was used in revisions by one of the team.[12]

Straightforward safeguards may be missed without malice, and such lapses should not automatically trigger the most severe sanctions.

Hon. Ralph Artigliere (ret.) and Professor William F. Hamilton.

Was the Behavior of All Three Recklessness Tantamount to Bad Faith?

The record shows no intent to deceive or to gain an unfair advantage, only a breakdown in communication and verification. The lawyers' roles and knowledge were not interchangeable. Two had no idea ChatGPT was used, and each relied, in different ways, on the assumption that experienced colleagues were meeting the same professional and firm standards they themselves followed.

Certainly, a lawyer who signs a filing is responsible for its contents. But is it *recklessness tantamount to bad faith* to rely on an experienced partner's edits without rechecking every citation? Similarly, should a practice group leader be sanctioned at that level for failing to spot-check citations in a routine motion prepared by trusted subordinates?

The reviewing lawyer's conduct of using ChatGPT in defiance of firm policy and failing to verify the output was unquestionably wrong. Yet, does that error, in the context of immediate admissions, an absence of prejudice to the opposing party, and the availability of narrower remedies, truly rise to the "bad faith" threshold? Even where sanctions are merited, a court should impose the least severe sanctions necessary to achieve the goal where the purpose of imposing sanctions is deterrence.[13]

Of course, if an avalanche of hallucinations were causing a breakdown and dysfunction of our judicial system, the problem should be sternly addressed. However, are the numbers of reported hallucination cases[14] that shocking given the literally millions of annual filings in federal and state courts and the increasingly widespread use of generative AI? The courts must respond, but proportionality matters.

Judges, like lawyers, sign off on others' work and are accountable for errors — yet their own citation mistakes are rarely treated as bad faith. Sanctions should fit the harm and culpability, not reflexively reach for the harshest penalty.

Hon. Ralph Artigliere (ret.) and Professor William F. Hamilton.

The court's concern over hallucinated or erroneous citations is legitimate, but proportionality matters. Judges themselves have, on occasion, withdrawn orders after discovering factual or citation errors — sometimes tied to staff work or unauthorized AI use.[15] Those mistakes, while damaging to public confidence, are generally not treated as recklessness tantamount to bad faith. Judges remain fully responsible for what they sign, regardless of whether the inaccuracy came from counsel, staff, or technology.[16] This comparison is not to excuse lawyer misconduct, but to show that such errors, wherever they originate, call for sanctions tailored to culpability, harm, and deterrence — not the harshest penalties available.

From Case Study to Guiding Principles

The *Johnson v. Dunn* decision offers a vivid, and controversial, example of a court responding to AI-related citation misconduct. It also reveals a risk. When judicial concern about emerging technology is not grounded in careful precedent, fears can be exaggerated, precedents can be discounted, and sanctions can shift toward serving a broader indiscriminate and likely ineffective "messaging" purpose rather than fitting the specific misconduct. The result can be confusion among practicing attorneys and a chilling effect

on the use of valuable tools and technology by firms and their lawyers. It may also trigger a trend of harsher sanctions in subsequent cases.[17]

When judicial concern about emerging technology is not grounded in careful precedent, fears can be exaggerated, precedents can be discounted, and sanctions can shift toward serving a broader indiscriminate and likely ineffective "messaging" purpose rather than fitting the specific misconduct.

Hon. Ralph Artigliere (ret.) and Professor William F. Hamilton.

Consider the more measured response in *In re Martin*,[18] decided just two weeks earlier on July 18, 2025. There, a bankruptcy attorney filed a brief containing fabricated quotations and non-existent authorities generated by artificial intelligence. The lawyer accepted responsibility, expressed remorse, and withdrew the brief. After reviewing multiple hallucination cases,[19] including some also discussed in *Johnson*,[20] the court ordered the attorney and a senior partner to attend a specialized national AI training program for bankruptcy practitioners and imposed a $5,500 fine.

Likewise, in *Lacey v. State Farm*,[21] decided on May 5, 2025, U.S. Magistrate Judge (ret.) Michael Wilner, sitting as a special master, faced a situation factually similar to *Johnson*. The plaintiff, Mrs. Lacey, was represented by a large team of attorneys from two nationally prominent firms. In preparing a submission to Judge Wilner, one lawyer used content from generative AI that included numerous erroneous citations and legal authorities. Even after Judge Wilner specifically asked for clarification on two of the citations, the resubmitted document corrected only those two, leaving other erroneous citations in place.[22]

Judge Wilner applied Rule 11 and inherent authority sanctions but limited them to denying the relief the plaintiff requested[23] and awarding $31,000 in attorney's fees and costs to be paid by the law firms. He explained his reasoning for not sanctioning the individual attorneys, including the reviewing lawyers and the attorney who used AI:

In a further exercise of discretion, I decline to order any sanction or penalty against any of the individual lawyers involved here. In their declarations and during our recent hearing, their admissions of responsibility have been full, fair, and sincere. I also accept their real and profuse apologies. Justice would not be served by piling on them for their mistakes.[24]

As in *Johnson*, the declarations and responses in *Lacey* included genuine apologies and honest admissions of fault. Yet Judge Wilner chose not to even name the individual lawyers in the order and exercised restraint in considering the professional impact of sanctions.

The conduct in *Martin* and *Lacey* was strikingly similar to *Johnson*, but the sanctions were far less severe. Differences in courts, case types, and procedural contexts can justify some

disparity. However, as in *Lacey*, two of the lawyers in *Johnson* had no knowledge that AI had been used, and the conduct of the third attorney did not materially differ from that of the attorney in *Martin*. In fact, the lapses in supervision and citation checking in *Lacey* could be viewed as *more serious* than the attorneys in *Johnson*.

Not all judges see AI-related citation errors as warranting the most severe sanctions. Hon. Xavier Rodriguez of the U.S. District Court for the Western District of Texas, quoted recently in MIT Technology Review, offered this perspective:

I think there's been an overreaction by a lot of judges on these sanctions. The running joke I tell when I'm on the speaking circuit is that lawyers have been hallucinating well before AI. Missing a mistake from an AI model is not wholly different from failing to catch the error of a first-year lawyer. I'm not as deeply offended as everybody else.[25]

The disparity in sanctions between *Johnson* and other similar cases underscores the need for a principled, repeatable framework for evaluating AI-related citation errors. Such a framework should preserve judicial integrity while calibrating sanctions to the actual harm, degree of culpability, and remedial actions taken. A "four-pillar" framework can help strike that balance.

A Framework for Hallucination Sanctions: A practical four-pillar test judges can apply

The following framework (or scorecard) proposed by the authors is a sanctions proportionality matrix. When applying the matrix score, each pillar should receive a High, Medium, or Low score that is explained by the court. Sanctions escalate when scores across multiple pillars are High.

1) Harm to the case and system

- Case prejudice (delay, expense, lost merits opportunity)
- Systemic harm (required excessive court time, damaged public confidence, required record correction)
- Contamination (did the error propagate into other filings or rulings?)

2) Culpability of each lawyer

- Knowledge/intent (submitter knew or should have known; ignored firm policies or court guidelines)
- Role-specific duty (signer's non-delegable Rule-like duty; supervisor's oversight; drafter's verification)
- Prior notice/training/policies (clear warnings; explicit bans; prior incidents)

3) Remediation and candor

- Speed and completeness of correction (self-report vs. opponent-revealed)
- Scope of remedial audit (single document vs. firm-wide; the utilization of outside validation audit)
- Cost shifting (payment of incurred fees and costs of the non-offending party)

4) Deterrence context

- Recency and frequency (pattern vs. one-off)
- Alternative, narrower remedies available (targeted education, fee award, filing restrictions)
- Collateral effects (impact on other clients uninvolved in the case; reputational impact beyond impacted cases)

The Sanctions Ladder that Maps to the Four Pillar Test

- Low/Medium overall: corrective filing; fee shifting; written admonition; mandatory CLE.
- Medium/High: public reprimand; targeted publication to parties in the case; limited filing restrictions in the case.
- High: removal from the case; court-specific practice suspension; bar referral.
- Extreme (multiple Highs with aggravators): broader suspension or referral with interim restrictions.

A Four-Pillar Framework for Sanctioning AI-Related Citation Misconduct Applied to *Johnson v. Dunn*

Drawing from established sanctions jurisprudence under a court's inherent authority, and professional responsibility standards, let's apply the four-pillar test in *Dunn v. Johnson*.

1. Harm to the Proceeding or the Parties

- *Johnson v. Dunn* involved fabricated citations, but the underlying law was not disputed, the motions were routine discovery requests, and opposing counsel was not materially disadvantaged beyond the work of identifying and pointing out the errors.
- Rationale: Courts should distinguish between AI-related errors that actually mislead the court or prejudice a party, and those that are promptly corrected with minimal

substantive impact. The guiding question should be: Did the AI-generated error meaningfully alter the court's decision-making or burden the opposing party beyond correcting the error?

2. Culpability and State of Mind

- In *Johnson v. Dunn*, only one attorney knowingly used ChatGPT, and he admitted the conduct was contrary to firm policy and professional obligations. The other two relied on his edits without knowledge of AI involvement.
- Rationale: Sanctions law recognizes a spectrum from negligence to recklessness to bad faith.[26] Recklessness tantamount to bad faith justifies harsher measures; mere negligence typically does not.
- The guiding question should be: Was the misconduct the result of intentional disregard, reckless indifference, or an understandable (though sanctionable) lapse?

3. Remediation and Cooperation

- After discovery of the errors, the *Johnson v. Dunn* attorneys admitted fault, apologized, and the firm undertook extensive remedial steps, including reviewing 2,400 citations in 330 filings across 40 federal dockets, finding no other fabricated citations.
- Rationale: Sanctions analysis should account for whether the lawyer or firm took prompt, good-faith action to correct the record, cooperate with the court, and prevent recurrence. The guiding question should be: Did the response demonstrate acceptance of responsibility and genuine efforts to fix the problem?

4. Deterrence and Proportionality

Courts have a wide variety of sanctions available for the purpose of deterrence, but the court should use sanctions that are limited to what suffices to deter repetition of the conduct or comparable conduct by others similarly situated.[27]

- The *Johnson v. Dunn* court justified its sanctions as necessary to deter future misconduct and "vindicate judicial authority," even though prior cases imposed far less severe penalties for similar AI-related errors.
- Rationale: A deterrence rationale is valid, but sanctions should be calibrated so they are neither symbolic overreach nor a mere "cost of doing business." Disbarment level penalties should be reserved for misconduct with high malevolence and actual harm. The guiding question should be: Is the sanction proportionate to the harm and

culpability, and will it deter future violations without chilling legitimate advocacy or technology use?

Why This Matters

Applied to *Johnson v. Dunn*, our four pillar framework might have led to reduced and differentiated sanctions—still meaningful, but tailored to each lawyer's role, knowledge, and actions. Going forward, courts can use these pillars to ensure AI-related sanctions are consistent, fair, and aimed at the right target: protecting the integrity of the justice system without reflexively imposing career-altering penalties for every hallucination incident.

All Hands on Deck: The Role of Opposing Counsel

Proportionality in sanctions begins before the court ever gets involved. In *Johnson v. Dunn*, opposing counsel identified the erroneous citations in the submissions. How might they have responded other than by calling out the errors in their response memorandum to the court?

The legal system works best when all participants, including counsel on both sides and the court, accurately identify the law governing the case. Opposing counsel's first obligation is to their client, but professional courtesy and efficiency favor raising citation errors promptly and directly with the other side when circumstances allow. Often, a phone call or email can resolve the issue faster, more cheaply, and without lasting damage to reputations. In many cases, a cooperative fix preserves credibility on all sides and avoids unnecessary motion practice. There is a difference between protecting your client's interests and turning an error into a public spectacle when it could otherwise be corrected quickly.

Opposing counsel's first obligation is to their client, but professional courtesy and efficiency favor raising citation errors promptly and directly with the other side when circumstances allow. Often, a phone call or email can resolve the issue faster, more cheaply, and without lasting damage to reputations.

Hon. Ralph Artigliere (ret.) and Professor William F. Hamilton.

Of course, not all errors can or should be handled informally. Where an error is repeated, ignored,[28] or causes material prejudice, formal court involvement is justified. But when an isolated, admitted mistake can be remedied without impairing the client's case, immediate escalation to sanctions invites disproportionate outcomes and undermines the profession's cooperative norms.

Courts, too, benefit from a cooperative approach. When opposing counsel and the filing attorney resolve errors early, judicial resources are preserved for disputes that genuinely require adjudication. Sanctions then become a tool of last resort, reserved for bad faith,

repeated violations, or conduct causing real harm—not an inevitable consequence of every lapse.

Closing Note for All Lawyers

AI is here to stay—but so are your professional duties. Don't trust, verify. Whether the source is ChatGPT, a premium legal AI tool, or a colleague you've known for twenty years, the rule is the same: open the case, read it, confirm it, and make sure it says what you claim it says. That's how you protect your client, your license, and the integrity of the justice system.

Practice Pointers to Prevent AI-Related Citation Errors

For Practitioners

- Treat general-purpose LLMs (e.g., ChatGPT, Claude, Copilot) as brainstorming tools only—never for citations.
- Even with legal-specific AI tools, verify every assertion: open the case, confirm the proposition, check controlling status, and review subsequent history.
- Teamwork protocols:
    - Clarify responsibilities for adding and verifying citations.
    - Log who added each citation, how and when it was checked, and by whom.
    - Before signing, review the log, sample-check cites, and require verification notes.

For Opposing Counsel

- Verify the other side's citations when drafting responses—don't assume accuracy.
- Raise errors promptly but professionally; a direct phone call or email may resolve the issue without court involvement.
- Document discovery of citation errors and any resolution attempts to preserve the record.
- Consider whether a motion is necessary, or whether corrective action short of judicial intervention will protect your client.

For Courts

- When hallucinations appear, focus first on the case-specific harm and the responsible party's intent, not the broader tech trend.
- Distinguish between bad-faith misuse and negligent oversight; calibrate sanctions accordingly.
- Consider remedial orders—such as costs, education, or monitored filings—before imposing career-altering penalties.
- Apply consistent standards so similar conduct results in similar consequences, regardless of public attention or AI involvement.

For Law Firms

- Establish clear AI use policies: define approved tools, prohibited uses, and verification protocols.
- Train all attorneys and staff on AI's risks, including hallucinations and confirmation bias.
- Require verification logs for all filings; mandate at least one independent citation check before submission.
- Hold everyone accountable—from junior associates to practice group leaders—for ensuring accuracy and compliance with firm policy.
- Audit compliance periodically to ensure policies are being followed in practice.

CONCLUSION

Johnson v. Dunn illustrates both the challenges and the stakes of AI-related misconduct in legal filings. The court's sanctions were unquestionably severe, more severe than in prior hallucination cases such as *Mata v. Avianca*, *In re Martin* and *Lacey v. State Farm*, and they raise important questions about consistency, proportionality, culpability, and deterrence. While protecting the integrity of the judicial process is paramount, sanctions that overshoot the facts and intent risk undermining fairness and chilling responsible technology use.

Ultimately, sanctions for AI-related citation errors should fit the misconduct and the moment. Proportionality protects both the integrity of the judicial process and the fairness owed to practitioners navigating new technological terrain.

The four-pillar framework we propose—harm, culpability, remediation, and proportionality—offers courts a principled way to separate egregious, bad-faith misuse of AI from sanctionable but less culpable errors. Applied consistently, it can ensure that sanctions remain calibrated to the specific misconduct, that penalties deter without destroying careers unnecessarily, and that justice is served without yielding to institutional overreaction or public alarm.

The legal profession's challenge is not to fear AI, but to master it responsibly. Judges, lawyers, and firms all have roles to play in setting clear expectations, verifying accuracy, and fostering a culture where technology is a tool, not a shortcut. Meeting that challenge can help us avoid the next *Johnson v. Dunn*, not by luck, but by design.

Notes

1. 2025 U.S. Dist. LEXIS 141805 (N.D. Ala. July 23, 2025). ↩
2. Artigliere, R., **When AI Policies Fail: The AI Sanctions in Johnson v. Dunn and What They Mean for the Profession,** August 1, 2025, found at **https://www.jdsupra.com/legalnews/when-ai-policies-fail-the-ai-sanctions-9043268/**. ↩
3. A website tracking AI hallucination cases by lawyers, pro se litigants, judges, experts, and others is found at **https://www.damiencharlotin.com/hallucinations/**. The numbers appear to rise daily and there is no doubt this is a serious concern for courts and trial lawyers on both sides of every case. Another source with even larger numbers of hallucinations is found at **https://www.ailawlibrarians.com/2025/08/10/coming-soon-the-interactive-genai-legal-hallucination-tracker-sneak-peek-today/**. ↩
4. Is there a continuing series of missteps that merit deterrent sanctions? Yes, but the number of reported incidents is still a small fraction of all court filings, and the errors are caught by the filer, the opposing party, or the court without damage to the case. There is no empirical evidence that the "hallucination problem" is overwhelming. The reported cases are relatively few given the millions of yearly filings in federal and state courts. If the opposing party is harmed or costs occur, sanctions can restore the balance. The solution is proportionate sanctions and education. A chart of hallucination court cases worldwide is found at **AI Hallucination Cases Database – Damien Charlotin**. ↩

5. This article deals with federal cases, which are reported sooner and more frequently than state court cases. Nonetheless, most state sanctioning authority is based on frameworks with the same underlying principles as federal law. The concepts and recommendations we put forth are equally applicable in state court cases involving similar issues and circumstances. ↩

6. Two other lawyers whose names appeared on one or both motions were not sanctioned because they had nothing to do with drafting or reviewing the submissions. The law firm was not sanctioned because the court reasoned that the firm had AI policies and practices in place that showed it acted reasonably in its efforts to prevent AI misconduct and doubled down on its precautionary and responsive measures when this order to show cause unfolded. The court saw no evidentiary basis for a finding that the firm acted in bad faith or with such recklessness that its conduct was tantamount to bad faith. ↩

7. The court found that it could not apply Rule 11 sanctions because these were discovery motions. 2025 U.S. Dist. LEXIS 141805 *35-6. Local Rule 83.1(f) provides that attorneys may be disciplined for acts or omissions that are inconsistent with the Alabama Rules of Professional Conduct, but Alabama Rule of Professional Conduct 3.3 provides that a lawyer shall not "knowingly" make a false statement of material fact or law to a tribunal. Therefore, the court turned to inherent authority sanctions, requiring "a finding of subjective bad faith or something tantamount to it is necessary to support a sanction issued pursuant to a court's inherent power." *Id.* at *38. ↩

8. Among the many cases Judge Manasco cited in the Johnson v. Dunn case were: ***Mata v. Avianca, Inc., 678 F. Supp. 3d 443, 448 (S.D.N.Y. 2023)***; *see, e.g.*, ***Dehghani v. Castro, No. 2:25-cv-00052-MIS-DLM, 2025 U.S. Dist. LEXIS 90128, 2025 WL 1361765 (D.N.M. May 9, 2025)***; ***Bevins v. Colgate-Palmolive Co., No. 25-576, 2025 U.S. Dist. LEXIS 68399, 2025 WL 1085695 (E.D. Pa. Apr. 10, 2025)***; ***Ferris v. Amazon.Com Servs., LLC, No. 3:24-cv-304-MPM-JMV, 2025 U.S. Dist. LEXIS 73784, 2025 WL 1122235 (N.D. Miss. Apr. 16, 2025)***; ***United States v. Hayes, 763 F. Supp. 3d 1054 (E.D. Cal. 2025)***, *reconsideration denied*, ***No. 2:24-cr-0280-DJC, 2025 U.S. Dist. LEXIS 68016, 2025 WL 1067323 (E.D. Cal. Apr. 9, 2025)***; ***Sanders v. United States, 176 Fed. Cl. 163 (Fed. Cl. 2025)***; ***Wadsworth v. Walmart Inc., 348 F.R.D. 489 (D. Wyo. 2025)***; ***Gauthier v. Goodyear Tire & Rubber Co., No. 1:23-cv-281, 2024 U.S. Dist. LEXIS 214029, 2024 WL 4882651 (E.D. Tex. Nov. 25, 2024)***; ***Park v. Kim, 91 F.4th 610 (2d Cir. 2024)***. *See* 2025 U.S. Dist. LEXIS 141805 *32. Also cited were the following: ***Versant Funding LLC v. Teras Breakbulk Ocean***

*Navigation Enters., LLC, No. 17-cv-81140, 2025 U.S. Dist. LEXIS 98418 , 2025 WL 1440351, at *7 (S.D. Fla. May 20, 2025)* (imposing monetary sanctions ranging from $500 to $1,000); *Ramirez v. Humala, No. 24-cv-424-RPK-JAM, 2025 U.S. Dist. LEXIS 91124, 2025 WL 1384161, at *3 (E.D.N.Y. May 13, 2025)* (imposing a $1,000 monetary sanction); *Nguyen v. Savage Enters, No. 4:24-cv-00815-BSM, 2025 U.S. Dist. LEXIS 37125, 2025 WL 679024, at *1 (E.D. Ark. Mar. 3, 2025)* (imposing a $1,000 monetary sanction); *Wadsworth, 348 F.R.D. at 499* (imposing monetary sanctions ranging from $1,000 to $3,000); *Gauthier, 2024 U.S. Dist. LEXIS 214029, 2024 WL 4882651 at *3* (imposing a $2,000 monetary sanction); *see also Lacey v. State Farm Gen. Ins. Co., No. 2:24-cv-05205-FMO-MAA, 2025 U.S. Dist. LEXIS 90370, 2025 WL 1363069, at *5 (C.D. Cal. May 5, 2025)* (ordering plaintiff's lawfirms to pay defendants $31,100 in fees and costs). 2025 U.S. Dist. LEXIS 141805 *58-59. ↩

9. The court stated: "... there is persuasive precedent in this Circuit for calibrating sanctions issued pursuant to a court's inherent power to serve deterrence purposes. See Boe v. Marshall, 767 F. Supp. 3d 1226, 1295-97 (M.D. Ala. 2025) (imposing sanctions for bad-faith judge-shopping to serve deterrence purposes)." ↩

10. 2025 U.S. Dist. LEXIS 141805 *60-1. ↩

11. WestCheck (Thomson Reuters) integrates with your word processor or can be used standalone to analyze legal documents. Shepard's BriefCheck (LexisNexis) runs through Lexis and uses Shepard's citation service to validate legal authorities. ↩

12. The court expressly noted that two of the three sanctioned attorneys did not know the reviewing lawyer had used ChatGPT and had no reason to expect AI was used in the revisions. The drafting lawyer testified that he had never used a publicly accessible generative AI chatbot for legal citations, was unaware any partner had done so, and typically relied on partners' edits without rechecking their citations. The supervising lawyer similarly stated he was unaware of any AI use by team members and did not use such tools himself. ↩

13. *Mata v. Avianca*, supra n. 8 at 465. ↩

14. For an idea of numbers of cases, *see* the two websites tracking these incidents, *supra* n. 3. ↩

15. *See* Scarcela, M., ***Two US judges withdraw rulings after attorneys question accuracy***, Reuters.com (Jul. 29. 2025) found at **https://www.reuters.com/legal/government/two-us-judges-withdraw-rulings-**

after-attorneys-question-accuracy-2025-07-29/; Schlegel, S., ***Judges Using AI Wrongly Is Not Just a Problem. It's a Crisis Waiting to Happen***, Jul. 24, 2025, *found at* **Judges Using AI Wrongly Is Not Just a Problem. It's a Crisis Waiting to Happen**. ↩

16. Similarly, in Florida state court, judges are taught and the law provides that delegating the task of drafting sensitive, dispositive orders to counsel, and then uncritically adopting the orders nearly verbatim would undermine the appearance of justice. *See, e.g., Corporate Mgmt. Advisors, Inc. v. Boghos,* 756 So. 2d 246 (Fla. 5th DCA 2000). Simply put, judges should verify the facts and caselaw they depend upon in reaching a decision regardless of the source. Done right, this is yet another safeguard against injustice from a false citation. ↩

17. Signaling a dangerous trend, in a case following and citing *Johnson v. Dunn*, a federal Magistrate Judge in Arizona issued severe sanctions against an attorney from Washington state. The case involved numerous citation errors purportedly the result of use of AI in a brief prepared by a contract attorney and reviewed, signed, and submitted by the attorney who was sanctioned under Rule 11. The sanctions were in some respects more severe than those in *Johnson v. Dunn*. The sanctions included: 1. The pro hac vice status of the attorney in Arizona federal court was revoked and Counsel was removed from the case; 2. Plaintiff's Opening Brief was stricken; 3. The attorney was ordered to promptly serve a copy of the Order on Plaintiff; 4. The attorney was ordered to write a letter to the three Judges to whom she attributed fictitious cases, notifying them of her use of fake cases with their respective names attached; 5. The attorney was ordered to transmit a copy of this Order to every Judge who presides over any case in which Counsel is attorney of record; and 6. The Clerk of Court's Office was directed to serve a copy of the Order on the Washington State Bar Association, of which Counsel is a member; and 7. If Counsel is a member of any other state's bar, she was ordered to serve a copy of the Order on that state's bar office. *See Mavy v. Comm'r of SSA,* 2025 U.S. Dist. LEXIS 157358 at *28-32 (D. Az. Aug. 14, 2025). ↩

18. 2025 WL 2017224 (U.S. Bankr. Ct. N. D. Ill. Jul. 18, 2025). ↩

19. *Id.* at *5. ↩

20. *See* list of cases discussed in *Johnson v. Dunn*, *supra* n. 8. ↩

21. Case No. CV 24-5205 FMO (MAAx) (C.D. Cal. May 6, 2025) found at **Lacey v. State Farm | DocumentCloud**. ↩

22. "During my initial review of Plaintiff's brief, I was unable to confirm the accuracy of two of the authorities that the lawyers cited. I emailed the lawyers shortly after receiving the brief to have them address this anomaly. Later that day, K&L Gates re-submitted the brief without the two incorrect citations – but with the remaining AI-generated problems in the body of the text. An associate attorney sent me an innocuous e-mail thanking me for catching the two errors that were 'inadvertently included" in the brief, and confirming that the citations in the Revised Brief had been 'addressed and updated.' I didn't discover that Plaintiff's lawyers used AI – and re-submitted the brief with considerably more made-up citations and quotations beyond the two initial errors – until I issued a later OSC soliciting a more detailed explanation." *Id.* at ¶ 8-9. ↩

23. As a "deterrent" sanction, the court struck the briefs submitted by the offending party and denied the discovery relief Plaintiff sought in the proceedings leading to the bogus briefs. This aspect is notable because it penalized the innocent party as part of the deterrence rationale. The Special Master explained: "If the undisclosed use of AI and the submission of fake law causes a client to lose a motion or case, lawyers will undoubtedly be deterred from going down that pointless route." Id. at ¶ 20. He further acknowledged: "I recognize that Mrs. Lacey is clearly not at fault for the AI debacle, but will bear this outcome as a consequence of her lawyers' actions. She will not, however, be financially responsible for the monetary awards described in this order. Those will fall solely on the lawyers and their firms." Id. at ¶ 24. ↩

24. *Id.* at ¶ 25. ↩

25. O'Donnell, J., *Meet the early-adopter judges using AI*, MIT Technology Review (August 11, 2025) found at **https://www.technologyreview.com/2025/08/11/1121460/meet-the-early-adopter-judges-using-ai/**. ↩

26. *See, e.g.*, ***Chambers v. NASCO, Inc., 501 U.S. 32, 47, 111 S. Ct. 2123, 115 L. Ed. 2d 27 (1991)***; ***Roadway Exp., Inc. v. Piper, 447 U.S. 752, 767, 100 S. Ct. 2455, 65 L. Ed. 2d 488 (1980)*** (stating that inherent powers require a finding that "counsel's conduct . . . constituted or was tantamount to bad faith"). Both of these cases were cited by the court in *Johnson v. Dunn*. ↩

27. *Mata v. Avianca*, *supra* n. 8 at 465. ↩

28. The lawyer in *Mata v. Avianca* made the mistake of not admitting and correcting the hallucination errors when they were brought to his attention by the other side. "Despite the serious nature of Avianca's allegations, no Respondent sought to

withdraw the March 1 Affirmation or provide any explanation to the Court of how it could possibly be that a case purportedly in the Federal Reporter or Federal Supplement could not be found." *Mata v. Avianca*, supra n. 8, at p. 450. ↩

*Assisted by GAI and LLM Technologies per **EDRM GAI and LLM Policy.***

Authors

- 

Hon. Ralph Artigliere (Ret.)

With over 45 years of experience as a civil trial lawyer, judge, author, educator, and legal professional, I bring a unique blend of expertise in the practice of law, judicial perspective, and passion for continuing education and professional development. My career highlights include serving as a Circuit Judge in Florida's 10th Judicial Circuit, where I presided over felony criminal, circuit civil, and family cases, and held leadership roles as Administrative Judge of the Civil and Family Divisions.

View all posts

- 

Prof. William F. Hamilton

Master Legal Skills Professor and Director at UF Law International Center for Automated Information Retrieval.

View all posts

Panel 3 – Newer Faces in the Judiciary: A View from the Other Side



Justice Morgan T. Zurn

The Honorable Morgan T. Zurn was sworn in for her first term as a Justice of the Supreme Court of Delaware on July 29, 2026. She previously served as a Vice Chancellor of the Court of Chancery from October 2018 to July 2026. Justice Zurn served as a Magistrate in Chancery from March 2016 to October 2018.

Before joining the judiciary, Justice Zurn was a patent litigator and then a Deputy Attorney General at the Delaware Department of Justice, with a focus on criminal appeals. Justice Zurn is a member of the Richard S. Rodney American Inn of Court.

Justice Zurn holds a Juris Doctorate, *cum laude*, and a Master's degree in bioethics from the University of Pennsylvania, as well as a B.A., with distinction, from the University of Virginia. Justice Zurn served as a judicial law clerk to the Honorable Richard G. Andrews of the United States District Court for the District of Delaware.



The Honorable Monica A. Horton was appointed to the Superior Court of Delaware by Governor Matt Meyer on June 26, 2025.

Judge Horton graduated from the University of Delaware with a Bachelor of Arts in Biology and a Bachelor of Science in Nursing. After practicing as a Labor and Delivery Registered Nurse for several years, Judge Horton attended Temple University Beasley School of Law, where she served as an Associate Editor of the Temple International & Comparative Law Journal. Following her graduation from law school in 2007, Judge Horton completed a clerkship in the Family Court of the State of Delaware for the Honorable Arlene Minus Coppadge and the Honorable Robert B. Coonin. Judge Horton subsequently joined the firm of Marshall, Dennehey, Warner, Coleman, and Goggin as a medical malpractice associate in the Healthcare Department.

Judge Horton's career in public service began when she joined the New Castle County Government Office of Law in January 2013, where she defended New Castle County's interests in litigation and workers compensation matters. She subsequently joined the Delaware Department of Justice in 2016, serving as general counsel for the Delaware Department of Health and Social Services, Division of Medicaid and Medical Assistance. In 2020, Judge Horton was appointed to the Court of Common Pleas, where she served until her appointment to the Superior Court for the State of Delaware in 2025.

Judge Horton's present term ends on June 26, 2037.



Magistrate in Chancery Danielle Gibbs

The Honorable Danielle Gibbs became a Magistrate in Chancery in December 2024. Before joining the Court, she served as Chief Legal Counsel to Governor John Carney. Prior to that, Magistrate Gibbs worked at the Delaware Department of Justice, where she served as Chief Deputy Attorney General to former Attorney General Matt Denn. Before working at the Department of Justice, Magistrate Gibbs was a corporate litigator and member of the Corporate and Commercial Litigation Section of Young Conaway Stargatt & Taylor, LLP. Magistrate Gibbs served as a law clerk to the Honorable Howard S. Chasanow of the then-Maryland Court of Appeals (now the Supreme Court of Maryland) and for then-Vice Chancellor Myron T. Steele. She received her B.A. from the University of Maryland and received her J.D. from the University of Baltimore School of Law where she served as Editor-in-Chief of the University of Baltimore Law Review.

FOR IMMEDIATE RELEASE
October 20, 2025

Christopher D. Renaud Joins Court of Chancery As Chief Staff Attorney

Christopher D. Renaud joined the Delaware Court of Chancery as Chief Staff Attorney on October 20, 2025.

Mr. Renaud graduated with high honors from Penn State's Dickinson School of Law and Bucknell University. Prior to joining the Court of Chancery, Mr. Renaud spent eight years in private practice, representing clients in corporate and commercial litigation before the Court of Chancery and the Superior Court. In addition to this work, he regularly served as a mentor to junior associates and provided pro bono representation to persons in guardianship matters in the Court of Chancery.

Mr. Renaud is actively involved in the Delaware community, serving as a member of the Board of Directors of Jefferson Street Center and as President of Next Gen North at the Delaware Community Foundation.

"Mr. Renaud's passion for serving the Delaware community and wealth of knowledge and experience in Chancery practice will immediately benefit the court," said Chancellor Kathaleen St. J. McCormick. "We could not be more excited to welcome Chris to the team."

As Chief Staff Attorney, Mr. Renaud will advise the court on legal matters and court-wide initiatives, reporting directly to the Chancellor.

"I am honored to be joining the Court of Chancery as Chief Staff Attorney," said Mr. Renaud. "I have a profound respect for the role the court plays in our State and for the individuals and entities that call Delaware home. I look forward to supporting the court in that mission."

Panel 4 – Disciplinary Developments

Biographies for ODC Update Panel

Robert D. Cecil, ODC

Robert D. Cecil, Jr. is currently Deputy Disciplinary Counsel for the Delaware Supreme Court's Office of Disciplinary Counsel. He started with ODC in August 2024, after 15 years in private practice. Before joining ODC, he was a Director with the law firm of Tybout, Redfearn & Pell, where he practiced primarily in civil and commercial litigation.

Daniella Spitelli-Sarnecky, ODC

Daniella Spitelli-Sarnecky currently serves as Deputy Disciplinary Counsel for the Delaware Supreme Court's Office of Disciplinary Counsel, bringing with her a dynamic background of experiences in the criminal and civil justice systems as well as the courts. Prior to her current role, Daniella practiced for 6 years in civil litigation defense. Prior to private practice, Daniella served as judicial law clerk to Chief Judge Carl Danberg and Judge Robert H. Surles (ret.) of the Delaware Court of Common Pleas. Prior to her career in law, Daniella served as a probation officer for adults with the Delaware Department of Correction and as a probation officer for youth convicted of gun crimes with the Delaware Division of Youth Rehabilitative Services.

Jessica Tyler, ODC

Jessica Tyler is currently Chief Disciplinary Counsel for the Delaware Supreme Court's Office of Disciplinary Counsel. Ms. Tyler started with ODC as a Deputy Disciplinary Counsel in 2022. She came to the Court from her position as Shareholder with the law firm of Marshall Dennehey Warner Coleman & Goggin, where she practiced civil litigation defense in the firm's Wilmington office for more than 10 years. Before entering private practice, Ms. Tyler served as a law clerk to Judge Mark D. Buckworth and Judge Jay H. Conner (ret.) in Delaware Family Court.



Charles Slanina (Managing Partner - Delaware)Office
Location: Wilmington, Delaware
Phone: (302) 295-5655
Direct: (302) 658-1100
Email: cslanina@ciardilaw.com
vCard: Download

Charles Slanina, a native Delawarean, graduated from the University of Delaware and Catholic University School of Law. He is admitted to the Bars of the Supreme Court of the State of Delaware, the United States District Court for the District of Delaware, the United States Court of Appeal for the Third Circuit, and the United States Supreme Court.

Upon graduation from law school, Mr. Slanina was the sole law clerk for the Delaware Family Court statewide.

He then joined the Delaware Department of Justice. During his eight-year tenure as a Deputy Attorney General, he headed civil and criminal trial units, including the Family Court, Medicaid Fraud and Patient Abuse Unit, and represented state administrative agencies while prosecuting high profile criminal cases.

Mr. Slanina next spent four years at the Office of Disciplinary Counsel as the Chief Disciplinary Counsel, investigating and prosecuting violations of the Rules of Professional Conduct as well as Unauthorized Practice of Law matters.

He has been in private practice since 1993. That practice has included representation of lawyers and other professionals before licensing agencies and the court.

His practice currently focuses on professional responsibility counseling and defense. Mr. Slanina provides ethics advisory opinions for many Delaware, national and international firms and testifies as an expert in professional responsibility matters in Delaware, Pennsylvania and New Jersey courts. In addition, he has served as a special prosecutor for the New Castle County Ethics Commission.

Mr. Slanina is a frequent speaker on legal ethics and professional responsibility topics at seminars and conferences sponsored by the Delaware State Bar Association, Delaware

Trial Lawyers Association, University of Delaware Academy of Lifelong Learning, Superior Court Trial Practice Forum, Delaware Supreme Court Pre-Admission Conference and has also been an adjunct professor at Widener University School of Law.

He is the author of *"Ethically Speaking,"* a monthly column discussing legal ethics issues, published in The Journal, the magazine of the Delaware State Bar Association. Mr. Slanina is a member of the American Bar Association, the Delaware Bar Association, the Association of Professional Responsibility Lawyers and the Rodney Inns of Court, where he has served as President. Martindale-Hubbard has rated Mr. Slanina as AV for legal ability and ethical standard based on peer review and he was named one of Delaware's "Power Attorneys" and is frequently featured as *Delaware Today's* "Best Lawyers."

Member:

Delaware Bar – Admitted 1980; United States District Court for the District of Delaware; United States Court of Appeal for the Third Circuit; and the United States Supreme Court

Education:

J.D. 1979, Columbus School of Law, the Catholic University of America, Washington, D.C.
B.A. 1976, University of Delaware

Professional:

Partner - Ciardi Ciardi & Astin: 2024 to present.

Founder/Partner - Finger & Slanina, LLC: 2003 to 2024.
Practice areas: Professional Responsibility, including disciplinary defense, issuing advisory opinions and testifying as an expert on ethics and standards of practice issues; insurance defense in toxic tort matters; and plaintiff's personal injury.

Special Prosecutor - New Castle County Ethics Commission

Partner, Tybout, Redfearn & Pell: 1998 to 2003. Practicing in the areas of professional responsibility, criminal law and insurance defense, including toxic tort, personal injury, workers compensation, and medical malpractice.

Biggs & Battaglia: 1995 to 1998. Practicing in the areas of professional responsibility, plaintiff's personal injury, and criminal defense.

Erhart & Laffey: 1993 to 1994. Practicing in the areas of professional responsibility,

personal injury, criminal and family law.

Chief Disciplinary Counsel for the Bar of the Supreme Court of Delaware: 1989 to 1993. The Office of Disciplinary Counsel serves as the enforcement arm of the Delaware Supreme Court investigating and prosecuting attorney misconduct as well as unauthorized practice of law cases.

Senior Deputy Attorney General - Family Court Unit, Office of the Attorney General, State of Delaware: 1989 to 1989.

Director - Delaware Medicaid Fraud Unit, State of Delaware: 1987 to 1989.

Deputy Attorney General, State of Delaware, Criminal Division: 1982 to 1987.

Deputy Attorney General, State of Delaware, Civil Division: 1981-1982.

Family Court Law Clerk: 1980-1981

Professional Associations:
Member: Delaware State Bar Association; American Bar Association; Association of Professional Responsibility Lawyers; Delaware Trial Lawyers Association; ABA Center for Professional Responsibility; Former President, Rodney Inns of Court. Former member National Organization of Bar Counsel.

Lecturer:
Frequent speaker on legal ethics and professional responsibility at topics seminars and conferences sponsored by the Delaware Bar Association, Delaware Trial Lawyers Association, University of Delaware Academy of Lifelong Learning, National Organization of Bar Counsel, Superior Court Trial Practice Forum, and Delaware Supreme Court Pre-admission Conference. Adjunct Professor at Delaware Law School.

Publications:
Contributor to *Delaware Lawyer*, monthly ethics columnist to *The Journal* of the Delaware State Bar Association. Articles available online at www.dsba.org.

Panel 5 – Have We Lost Our (Delaware) Way?



Connor Bifferato is director of The Bifferato Firm. He has mediated well over 1,000 commercial disputes, including commercial bankruptcy litigation, secured lender disputes, general corporate litigation, creditors' rights issues and appellate resolution. He also frequently serves as an arbitrator for single and triple panel, binding and nonbinding arbitrations.

He is University Legal Counsel to Wilmington University and has been fortunate to work with the University on the development and opening of Wilmington University School of Law. Connor also provides legal advice to Wilmington University and has been privileged to work with the University's Board as well as University Administration and faculty.

Connor is currently President of the Delaware State Bar Association (the "DSBA") and serves on the DSBA Finance Committee, DSBA Executive Committee, as well as numerous other Committees and Sections of the DSBA. Connor is also a member of the Federal Bar Association and the American Association for Justice. He frequently participates in the development of innovative and practical CLE programs. In general, Connor's focus is to continue to use his significant complex and commercial litigation experience to advance the substantial benefits of ADR generally, and mediation specifically, in the resolution of any stage, including pre-suit.



James D. Honaker

Partner

Wilmington, Delaware
jhonaker@morrisnichols.com
t 302-351-9103

Jim advises public companies, boards of directors and committees on Delaware corporation law issues, including corporate governance and fiduciary duties.

In his practice, he advises on corporate governance issues under Delaware law, including in the areas of proxy contests, oversight and compliance, director and officer indemnification and director compensation.

Drawing on his experience with private company financings and acquisitions, he also counsels boards and committees of independent directors on merger and acquisition transactions. His clients hail from a range of industries, including the energy, manufacturing, financial services, media, healthcare, and technology sectors.

Since 2015, Jim has served as a member of the Corporation Law Council of the Delaware State Bar Association and is currently its Chair. In that role he assists with drafting amendments to the Delaware General Corporation Law (DGCL). He is a member of the ABA Corporate Laws Committee, which is responsible for drafting amendments to the Model Business Corporation Act.

He frequently advises independent directors on conflict transactions, and routinely speaks with law firms, bar organizations and clients about director fiduciary duties and director risk/liability issues. Since 2006, he has co-authored a series of articles to annually chronicle the amendments to the DGCL. Jim also served on a committee that drafted the Annotated Model Certificate of Designations for Preferred Stock of a Public Corporation, which is a publication of the Business Law Section

PRACTICE AREAS

Corporate Counseling

Corporate Governance

Financings & Structured Transactions

Mergers, Acquisitions & Divestitures

Special Committees

CLERKSHIPS

Law Clerk to the Honorable E. Norman Veasey, Delaware Supreme Court, 2002-2003

EDUCATION

University of Virginia School of Law, JD, 2002

University of Delaware, BA, 1999

ADMISSIONS

Delaware, 2002

James D. Honaker

of the American Bar Association.

Since 2020, Jim has been selected for inclusion in *The Best Lawyers in America*, and designated "Lawyer of the Year" for mergers and acquisitions law in the 2021 edition. He has also been mentioned in *The Legal 500 US* for M&A work as Delaware counsel.

NEWS & INSIGHTS

The 32nd Annual Rubenstein-Walsh Seminar on Ethics and Professionalism
Speaking Engagement, Wilmington, DE, 11.13.2026

41 Morris Nichols Attorneys Named in *The Best Lawyers in America 2027*
Media Mention, *The Best Lawyers in America®*, 08.20.2026

Mergers, Acquisitions, and Buyouts
Publication, *Wolters Kluwer*, 12.2025

Structuring Venture Capital, Private Equity, and Entrepreneurial Transactions
Publication, *Wolters Kluwer*, 10.2025

40 Morris Nichols Attorneys Listed in *The Best Lawyers in America* 2026
Media Mention, *The Best Lawyers in America*, 08.21.2025

The Legal 500 US 2025 Recognizes Morris Nichols for Excellence in Delaware Counseling and M&A Litigation
Media Mention, *The Legal 500 US*, 06.13.2025

Delaware Adopts Safe Harbor Protections for Directors and Controlling Stockholders
Client Alert, 05.13.2025

Thirty Years Later - Why Companies Continue to Choose Delaware: General Perspectives and Thoughts on Proposed Amendments
Client Alert, 02.18.2025

DSBA: Delaware Corporate Council 2023
Speaking Engagement, Wilmington, DE, 09.12.2023

39 Morris Nichols Attorneys Recognized in *The Best Lawyers in America 2024*
Media Mention, *Best Lawyers*, 08.17.2023

James D. Honaker

HONORS & RECOGNITIONS

The Legal 500 US, mentioned in M&A Delaware counsel, 2019-2021, 2025

The Best Lawyers in America, listed in Delaware mergers and acquisitions, corporate law, and corporate governance law, since 2020

PROFESSIONAL & CIVIC

American Bar Association (Business Law Section, Corporate Laws Committee)

American College of Governance Counsel

Delaware State Bar Association (Council of the Corporation Law Section, chair)

Society for Corporate Governance



Judith M. Jones/ Senior Attorney

Judith Jones has over 25 years of civil litigation practice in Delaware with a primary focus on domestic relations practice, in the areas of divorce, property division, alimony, custody, child support and child welfare. She has been recognized as Delaware Today's top family law lawyer for years 2018, 2019, 2020 and 2021. She is a certified mediator for both Family Court and Superior Court. Judith began her legal practice clerking in Kent County Family Court for the late Honorable William N. Nicholas and retired Honorable William J. Walls. She has civil litigation experience in every Delaware court. Judith is the co-chair of the Women and Law section and was included as a Best of Delaware attorney in Family Law for 2026.



Juan Martinez

Wilmington
T 302.442.7011
jmartinez@beneschlaw.com

Overview

Juan is a member of the firm's Litigation Practice Group and focuses on complex bankruptcy matters and commercial litigation. He has broad experience representing debtors, official creditors' committees, secured and unsecured creditors, lenders, and parties to adversary proceedings in chapter 11 and chapter 7 bankruptcy proceedings across the country, including bankruptcy appeals before Federal District Courts.

Juan has represented clients in various commercial litigation cases involving breach of contract, foreclosure, corporate law, trade secrets, unfair competition, and breach of fiduciary duty. In addition, Juan works on complex commercial transactions such as mezzanine financing, commercial loans, transfer instruments, and purchase agreements. He has experience in representing clients in a variety of industries, including energy, real estate, transportation, lending, manufacturing, retail, and pharmaceuticals.

Within the Delaware State Bar Association, Juan serves as Secretary of the DSBA's Multicultural Judges and Lawyer Section. Recently, Juan spoke on a panel discussing his experience as an LBGTQ+ attorney of color in Delaware.

Juan is admitted to practice in the state and federal courts of Delaware.

Representative Matters

- Represents an investment firm in litigation pending in the New Jersey Superior Court to recover a $70 million loan secured by an office complex in Short Hills, New Jersey. The motion was granted

to dismiss several counterclaims filed by the defendant in full, eliminating all the defendants' defenses to the client's claims.

Credentials

EDUCATION

- Emory University School of Law, 2021, J.D.
  - Notes and Comments Advisory Committee Editor, Emory Bankruptcy Developments Journal;
  - Secretary, Student Bar Association
  - Latino American Law Student Association
  - Publication: Sexual Abuse and Bankruptcy: How Organizations Abuse Chapter 11 to Avoid Victims' Demands for Answers, 37 EMORY DEV. J.
  - Keith Shapiro Award for Excellence in Corporate Bankruptcy Writing
- Georgia State University, 2017, Bachelor of Arts in Political Science, *summa cum laude*

BAR & COURT ADMISSIONS

- Delaware

Memberships

- Member, Delaware State Bar Association
  - Secretary, Multicultural Judges and Lawyers Section (2022 - Present)
- Member, Delaware Bankruptcy Inn of Court
- Member, American Bankruptcy Institute
- Member, Delaware Hispanic Bar Association
- Member, Hispanic National Bar Association

Beyond the office

In his free time –

Juan enjoys board games, playing tennis, and building model figures.

News & Insights

- A Clearer Path to the Merits: Simply Interior Homes Addresses Post-Confirmation Jurisdiction
  October 30, 2026 | Client Alerts & Insights
- Benesch Represents TF Cornerstone Affiliate in Landmark Wanamaker Building Litigation
  September 18, 2026 | Press Releases
- Benesch Attorneys Capuzzi, Hoover and Martinez Mentioned in Law360's iSun Coverage
  September 9, 2026 | Media Mentions
- Third Circuit Decision Reshapes Creditor Standing in Successor Liability Disputes
  August 11, 2026 | Client Alerts & Insights
- Delaware Adopts Uniform Assignment for the Benefit of Creditors Act, Expanding Bankruptcy Alternative for Distressed Companies
  June 22, 2026 | Client Alerts & Insights
- Law360 Features Jennifer Hoover and Juan Martinez on Ex-Hudson Hotel Chapter 11 Escrow Dispute
  December 22, 2025 | Media Mentions
- Benesch's Juan Martinez Elected Executive Vice Chair of the Delaware State Bar Association's Multicultural Judges and Lawyers Section
  July 1, 2025 | Press Releases
- Benesch Attorney Juan Martinez Elected to Multicultural Judges and Lawyers Section of Delaware State Bar
  August 27, 2024 | Press Releases
- My Benesch My Team - Columbia Pacific Advisors, LLC
  August 15, 2023 | My Benesch My Team: Client Feature Ads
- Michael J. Barrie and Jennifer R. Hoover quoted in Law360 Pulse | "Office Snapshot: A Look At Benesch's Del. Outpost"
  February 2, 2023 | Media Mentions



Jonathan Millis is a litigation attorney with expertise in corporate and commercial litigation, representing clients in complex business disputes. He has experience handling matters in the Delaware Court of Chancery, including corporate governance and fiduciary duty litigation, as well as shareholder disputes.

Jonathan also has experience representing insurance carriers in complex commercial and residential property damage litigation.

Jonathan served as a law clerk to the Honorable Nelson C. Johnson, J.S.C. (ret), for the Superior Court of New Jersey, where he assisted Judge Johnson with matters involving mass torts and pharmaceutical litigation.

A Shared Commitment to Delaware

Following last month's discussion of the Delaware Way, this month's President's Corner follows the September 15th primary elections. Obviously, the Delaware State Bar Association and the Delaware General Assembly are distinct institutions with different responsibilities. The General Assembly makes our laws and answers directly to the people of Delaware. The DSBA serves the legal profession, promotes the administration of justice, and draws upon the experience of lawyers working throughout our courts, businesses, government agencies, and communities.

Those roles differ, but our ultimate purpose is the same: to serve Delaware and its people.

Our Association's purposes include advancing jurisprudence, securing proper statutory reforms, upholding professional and ethical standards, and preserving the integrity of Delaware's courts. The General Assembly is entrusted with transforming public policy into law. Both institutions therefore have a profound interest in laws that are clear, fair, workable, and consistent with the principles that have long distinguished our State.

The General Assembly and members of the DSBA will not—and need not—agree on every issue. Legislators are elected to make policy judgments and to balance the competing interests of their constituents. Lawyers, too, may hold different views about the wisdom of a particular proposal. Those differences are both inevitable and appropriate.

Politics aside, the DSBA should nevertheless always be available to and ready to work with the General Assembly: to provide an objective assessment of the potential legal and practical effects of proposed legislation, and to assist in drafting legislation that effectively accomplishes the General Assembly's objectives.

That assistance should be apolitical. A careful analysis of how proposed language will interact with existing law, affect the courts, or operate in practice does not require agreement with the policy underlying the proposal. It requires legal knowledge, professional judgment, and candor. The DSBA best serves the legislative process when it identifies ambiguities, unintended consequences, conflicts with existing law, and potential administrative burdens, regardless of the party or legislator who advanced the proposal.

The DSBA and its members are uniquely positioned to provide that assistance. Our sections include attorneys with substantial experience in nearly every field affected by legislation. Because they apply Delaware law every day, our members can often anticipate practical consequences that may not be apparent from the text of a bill alone. Their

contribution is most valuable early in the legislative process, openly and with respect for the policymaking authority of our elected representatives.

In turn, engagement with legislators helps the Bar better understand the needs and concerns of Delaware's communities. It reminds us that the law is not an abstract exercise. Every statute ultimately affects individuals, families, businesses, public institutions, and neighborhoods. Good legislation requires both legal precision and an understanding of the people it is intended to serve.

Our State benefits when this relationship works well. Early communication can produce clearer statutes, reduce avoidable disputes, improve access to justice, and strengthen confidence in our legal institutions. It can also help Delaware respond thoughtfully to emerging issues while preserving the stability, predictability, and integrity our legal system is known for.

The DSBA already monitors legislation affecting the profession and the administration of justice, communicates with legislators, and draws upon the expertise of its sections and members. We should continue strengthening that work—not as a partisan endeavor, and not simply to advance the interests of lawyers, but as part of our obligation to the public and to the rule of law.

Delaware's size has always allowed us to build relationships across institutions and across differences. We can speak directly, listen carefully, and solve problems together. That tradition is one of our State's great strengths, but it must be continually renewed.

One of the most important objectives of both the General Assembly and the DSBA must also always be the protection of the Corporate Franchise. Again, this issue is beyond political debate. No legitimate argument can deny that a thoughtful, apolitical, reliable, and consistent focus on Delaware General Corporate Law is the most important fiscal issue for both the General Assembly and the DSBA, and having the resources needed to fund our schools, maintain our infrastructure and keep us safe is in the best interest of all residents of the state of Delaware.

As an organization, the DSBA and the members of the Delaware Bar, we should be ready to provide objective analysis and practical assistance whenever our knowledge can improve the legislative process. When the DSBA offers its expertise without regard to politics, and when the General Assembly regards the Association as a trusted resource, both institutions fulfill their respective responsibilities more effectively—and Delaware is better served.

That is the alignment we should seek: not uniformity of opinion, but a shared commitment to sound laws and faithful public service. Not coincidentally, this is also one of the most

important aspects of the Delaware Way that those who serve both the United States Constitution and the Constitution of the State of Delaware commit to and inherit.

-Ian Connor Bifferato

Principles of Professionalism for Delaware Lawyers

The Delaware State Bar Association and the Delaware Supreme Court have jointly adopted the Principles of Professionalism for Delaware Lawyers for the guidance of Delaware lawyers, effective November 1, 2003. These Principles replace and supercede the Statement of Principles of Lawyer Conduct adopted by the Delaware State Bar Association on November 15, 1991. They are not intended, nor should they be construed, as establishing any minimum standards of professional care or competence, or as altering a lawyer's responsibilities under the Delaware Lawyers' Rules of Professional Conduct. These Principles shall not be used as a basis for litigation, lawyer discipline or sanctions. The purpose of adopting the Principles is to promote and foster the ideals of professional courtesy, conduct and cooperation. These Principles are fundamental to the functioning of our system of justice and public confidence in that system.

Principles.

A. *In general.* A lawyer should develop and maintain the qualities of integrity, compassion, learning, civility, diligence and public service that mark the most admired members of our profession. A lawyer should provide an example to the community in these qualities and should not be satisfied with minimal compliance with the mandatory rules governing professional conduct. These qualities apply both to office practice and to litigation. A lawyer should be mindful of the need to protect the standing of the legal profession in the view of the public and should bring these Principles to the attention of other lawyers when appropriate.

1. *Integrity.* Personal integrity is the most important quality in a lawyer. A lawyer's integrity requires personal conduct that does not impair the rendering of professional service of the highest skill and ability; acting with candor; preserving confidences; treating others with respect; and acting with conviction and courage in advocating a lawful cause. Candor requires both the expression of the truth and the refusal to mislead others in speech and demeanor.

2. *Compassion.* Compassion requires respect for the personal dignity of all persons. In that connection, a lawyer should treat all persons, including adverse lawyers and parties, fairly and equitably and refrain from acting upon or manifesting racial, gender or other bias or prejudice toward any participant in the legal process.

3. *Learning.* A lawyer's commitment to learning involves academic study in the law followed by continual individual research and investigation in those fields in which the lawyer offers legal services to the public.

4. *Civility.* Professional civility is conduct that shows respect not only for the courts and colleagues, but also for all people encountered in practice. Respect requires promptness in meeting appointments, consideration of the schedules and commitments of others, adherence to commitments whether made orally or in writing, promptness in returning telephone calls and responding to communications, and avoidance of verbal intemperance and personal attacks. A lawyer should not communicate with a Court* concerning pending or prospective litigation without reasonable notice whenever possible to all affected parties. Respect for the Court requires careful preparation of matters to be presented; clear, succinct, and candid oral and written communications; acceptance of rulings of the Court, subject to appropriate review; emotional self-control; the absence of scorn and superiority in words or demeanor; observance of local practice and custom as to the manner of addressing the Court; and appropriate dress in all Court proceedings. A lawyer should represent a client with vigor, dedication and commitment. Such representation, however, does not justify conduct

* As used in these Principles, "Court" includes not only state and federal courts, but also other tribunals performing an adjudicatory function including administrative hearing panels and boards as well as arbitration tribunals.

that unnecessarily delays matters, or is abusive, rude or disrespectful. A lawyer should recognize that such conduct may be detrimental to a client's interests and contrary to the administration of justice.

5. *Diligence.* A lawyer should expend the time, effort, and energy required to master the facts and law presented by each professional task.

6. *Public service.* A lawyer should assist and substantially participate in civic, educational and charitable organizations. A lawyer should render substantial professional services on a charitable, or pro bono publico, basis on behalf of those persons who cannot afford adequate legal assistance.

B. *Conduct of litigation.* In dealing with opposing counsel, adverse parties, judges, court personnel and other participants in the legal process, a lawyer should strive to make our system of justice work fairly and efficiently. A lawyer should avoid conduct that undermines the judicial system or the public's confidence in it, as a truth seeking process for resolving disputes in a rational, amicable and efficient way.

1. *Responsible choice of forum.* Before choosing a forum, a lawyer should review with the client all alternatives, including alternate methods of dispute resolution. A lawyer should not file or defend a suit or an administrative proceeding without as thorough a review of the facts and the law as is required to form a conviction that the complaint or response has merit.

2. *Pre-trial proceedings.* A lawyer should use pre-trial procedures, including discovery, solely to develop a case for settlement or trial and not to harass an opponent or delay a case. Whenever possible, stipulations and agreements should be made between counsel to reduce both the cost and the use of judicial time. Interrogatories and requests for documents should be carefully crafted to demand only relevant matter, and responses should be timely, candid and not evasive. Good faith efforts should be made to resolve by agreement objections to matters contained in pleadings, discovery requests and objections.

A lawyer should endeavor to schedule pre-trial procedures so as to accommodate the schedules of all parties and attorneys involved. Agreements for reasonable extensions of time should not be withheld arbitrarily.

Only those depositions necessary to develop or preserve the facts should be taken. Questions and objections at deposition should be restricted to conduct appropriate in the presence of a judge.

3. *Communications with the Court or tribunal.* A lawyer should speak and write respectfully in all communications with the Court. All papers filed in a proceeding should be as succinct as the complexity of the matter will allow. A lawyer should avoid ex parte communications with the Court on pending matters, except when permitted by law. Unless specifically authorized by law, a lawyer should not submit papers to the Court without serving copies of all papers upon opposing counsel in such a manner that opposing counsel will receive them before or contemporaneously with the submission to the Court.

4. *Settlement.* A lawyer should constantly evaluate the strength of a client's legal position and keep the client advised. A lawyer should seek to settle any matter at any time that such course of action is determined to be consistent with the client's best interest after considering the anticipated cost of continuing the proceeding and the lawyer's good faith evaluation of the likely result.

5. *Appeal.* A lawyer should take an appeal only if the lawyer believes in good faith that the Court has committed error, or an appeal is otherwise required.

C. *Out of state associate counsel.* Before moving the admission of a lawyer from another jurisdiction, a Delaware lawyer should make such inquiry as required to determine that the lawyer to be admitted is reputable and competent and should furnish the candidate for admission with a copy these Principles.



PRESIDENT'S CORNER | BY IAN CONNOR BIFFERATO, ESQUIRE

The Delaware Way: Our Inheritance, Our Obligation

"Every generation of Delaware lawyers inherits the responsibility to preserve our profession."

Every profession is defined not only by what it does, but by how it does it. For generations, Delaware lawyers have been guided by a tradition known simply as the Delaware Way. It is not a statute or a rule. It is a shared commitment to integrity, civility, reasoned judgment, and mutual respect. That culture of practice, working in concert with Delaware's courts and legislature, has helped earn this state a reputation for fair, predictable, and trusted law.

For many of us, those values were instilled from the day we were interviewed as part of the character and fitness process or, at the latest, at the pre-admission conference. We learned them through daily habits: picking up the phone before filing a motion that might unnecessarily escalate a dispute, extending professional courtesies, remembering that our reputations endure far longer than any single matter.

The practice of law, of course, has changed dramatically in a remarkably short time. Technology, remote practice, and the realities of the post-pandemic profession have altered the rhythm of our work. Many younger attorneys came of age with social media as much a part of daily life as the morning paper once was. The pandemic accelerated trends that were already underway, and informal mentoring opportunities have diminished. That's not a failure. It's an opportunity.

Every generation of Delaware lawyers inherits the responsibility to preserve what is most valuable about our profession. We cannot control every decision, political development, or business choice. We can control how we conduct ourselves every day. Every interaction either strengthens or weakens the confidence that clients, courts, and the public place in our legal community.

Not long ago, written communication between lawyers took time. Letters had to be drafted, typed, reviewed, revised, and finalized. That process naturally encouraged reflection. Today, communication is nearly instantaneous. Emails, texts, electronic filings are sent within moments, often without the pause that once encouraged careful consideration of both message and tone. Yet one thing has remained constant. In a legal community like ours, reputations are invaluable, fragile, and built over years through thoughtful conduct. Even adopting a simple personal rule, never sending a communication you would hesitate to place before a court, reflects the value that helped make Delaware the jurisdiction of choice for incorporation. It also honors the commitment each of us made when we took the oath of admission.

The Delaware Way is our history. It is our competitive advantage. More importantly, it is our moral and professional obligation. We are stewards of a tradition that has served Delaware extraordinarily well. Its preservation depends not on any one institution, but on all of us. Let us recommit ourselves to that tradition. Let us teach it, model it, and preserve it for those who follow. The Delaware Way is our inheritance. It is also our obligation.

Connor Bifferato is the 79th President of the Delaware State Bar Association. Admitted to the Bar of the Delaware Supreme Court in 1994, he currently serves as University Legal Counsel to Wilmington University and as a professional neutral with The Bifferato Firm, P.A. He has more than 30 years of commercial and complex litigation experience in Delaware state and federal trial and appellate courts. He has demonstrated a longstanding commitment to upholding the Delaware legal community's reputation for professionalism and civility through his service to the Delaware courts and the Delaware State Bar Association.