**COMMERCIAL LAW LEAGUE OF AMERICA**

**EASTERN DISTRICT CONFERENCE**

**NOVEMBER 9, 2023**

**PROGRAM: ARTIFICIAL INTELLIGENCE USAGE AND ETHICS**

**Presenters:**

**Hon. Elizabeth S. Stong, U.S. Bankruptcy Judge Eastern District of New York**

**Sue L. Chin, Esq., Borges & Associates, LLC**

**Conor Carman, Student Intern to Judge Elizabeth S. Stong**

Artificial Intelligence is here to stay and can be a valuable tool in your law firm practice. AI can assist in the creation of legal documents from contracts through memoranda of law, which may provide attorneys with a false sense of ease having a virtual assistant. Dangers abound however; and attorneys must be warned of the dangers that lurk therein.

While there is nothing wrong with using artificial intelligence for assistance, the U.S. District Court decision in *Mata v. Avianca* decision has laid the groundwork for attorneys to understand the risks inherent with the use of Artificial Intelligence to create legal documents as well as one’s ethical responsibilities as an attorney.

The top ten AI software in 2023 are:

#1: Viso Suite Platform Software

#2: ChatGPT Software

#3: Jupyter Notebooks

#4: Google Cloud AI Platform

#5: Azure Machine Learning Studio

#6: Infosys Nia

#7: Salesforce Einstein Software

#8: Chorus.ai

#9: Observe.AI

#10: TensorFlow Software

1. **Summary of the *Mata v Avianca* decision**
	1. **Attachment –** copy of ***Mata v. Avianca decision***
2. **Reliance on AI production of case law which may not exist**
	1. **Discussion**  - how the unchecked use of ChatGPT caused counsel to cite non-existent caselaw
3. **Discussion of Rule 11b(2)**
	1. “By presenting to the court a pleading, written motion, or other paper—whether by signing, filing, submitting, or later advocating it—an attorney or unrepresented party certifies that to the best of the person’s knowledge, information, and belief, formed after an inquiry reasonable under the circumstances: . . . the claims, defenses, and other legal contentions are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law . . . .”
	2. **Attachment –** copy of FRCP 11
4. **Discussion of Rule 11(c)**
	1. “On its own, the court may order an attorney, law firm, or party to show cause why conduct specifically described in the order has not violated Rule 11(b). [Rule 11(c)3]
	2. “If, after notice and a reasonable opportunity to respond, the court determines that Rule 11(b) has been violated, the court may impose an appropriate sanction on any attorney, law firm, or party that violated the rule or is responsible for the violation. Absent exceptional circumstances, a law firm must be held jointly responsible for a violation committed by its partner, associate, or employee.” [Rule 11(c)(1)]
	3. **Attachment –** see above
5. **Rule 3.3(a)(1) of the New York Rules of Professional Conduct, 22 N.Y.C.R.R. 1200.0**
	1. “A lawyer shall not knowingly make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer . . . .”
	2. Discussion of how the actions of the *Mata*  attorneys violated this rule, exacerbated by their continued insistence that the citations were proper
	3. **Attachment -**  22 N.Y.C.R.R. 1200.0 Rule 3
6. **Discussion of Rule 1.1 of the ABA Model Rules of Professional Conduct (Competence)**
	1. A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.
7. **Discussion of Rule 5 of the ABA Model Rules of Professional Conduct (Law Firms and Attorneys)**

(a) A partner in a law firm, and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm, shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that all lawyers in the firm conform to the Rules of Professional Conduct.

(b) A lawyer having direct supervisory authority over another lawyer shall make reasonable efforts to ensure that the other lawyer conforms to the Rules of Professional Conduct.

(c) A lawyer shall be responsible for another lawyer's violation of the Rules of Professional Conduct if:

(1) the lawyer orders or, with knowledge of the specific conduct, ratifies the conduct involved; or

(2) the lawyer is a partner or has comparable managerial authority in the law firm in which the other lawyer practices, or has direct supervisory authority over the other lawyer, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

## d) **Attachment** – 22 N.Y.C.R.R. 1200.0 Rule 5 Law Firms and Associations – virtually identical to Rule 5 of the ABA Model Rules

1. **Court and Judge’s policies/protocols - recent Court Mandates regarding the use of Artificial Intelligence and a Discussion of possible future court orders or rules**

(a) US Bankruptcy Court:  Northern District of Texas - Judge Stacy G. C. Jernigan - **Attached**

(b) US District Court:  Northern District of Texas - Judge Brantley Starr - **Attached**

(c) US District Court: Northern District of Illinois - Magistrate Judge Gabriel Fuentes and

Magistrate Judge Jeffrey Cole - **Attached**

(d) US District Court:  Eastern District of Pennsylvania - Judge Michael Baylson - **Attached**

(e) US Court of International Trade (New York) - Judge Stephen Alexander Vaden – **Attached**

(f) Form Certificate Regarding Judge Specific Requirements – **Attached**

1. **Law School policies and protocols addressing the use of AI**
2. **The Impact of AI on DEI goals and objectives**