



Administrative Office of the Courts

P.O. Box 4820, Portland, Maine 04112-4820

Tel: (207) 822-0792 FAX: (207) 822-0781 TTY: (207) 822-0701

Julia Finn, Esq.
Legislative Analyst

Tel: (207) 822-0767
julia.finn@courts.maine.gov

Judicial Branch testimony in opposition to LD 505, An Act to Update Processes and Fees in the Probate Court System:

Senator Carney, Representative Kuhn, members of the Joint Standing Committee on Judiciary, my name is Julie Finn and I represent the Judicial Branch. I would like to provide some brief testimony regarding this bill.

The Judicial Branch takes no position regarding most of the amendments contained in LD 505. However, we are opposed to section 3 of the bill, titled "Use of artificial intelligence technology in documents filed with the court." This section contains two subsections: (1) Verification of court filing; and (2) Sanctions for noncompliance.

First, we assume the proposed amendment to 18-C M.R.S. § 1-112 is intended to address so-called "hallucinations" that have occurred with the use of generative artificial intelligence (GenAI) tools such as ChatGPT in generating pleadings. The proposed statute does not define the term, however, and in fact artificial intelligence (AI) is used in almost all common software such as Word, Westlaw, Lexis, and the like. It is essentially impossible to generate a legal document without using artificial intelligence. Many people may not even realize they are using an AI tool. Thus, the reach of the statute is overbroad and would require a certification on virtually every document.

Second, subsection 1 requires an attorney or party to submit an affidavit verifying the accuracy of the court filing if AI is used in its drafting. The conduct of attorneys, including the verification of court filings, is already covered in both the Maine Rules of Civil Procedure and the Maine Rules of Professional Conduct. It is the Maine Supreme Judicial Court ("SJC") that drafts these rules and oversees the legal profession pursuant to the Maine Constitution and as reflected in Title 4, Chapter 17. Both the Maine Board of Bar Examiners and the Maine Board of Bar Overseers fall under the purview of the SJC.

Rule 11 of the Maine Rules of Probate Procedure already incorporates Rule 11 of the Rules of Civil Procedure, which obliges both attorneys and self-represented parties to sign every pleading, motion and other document filed with the Court. Rule 11 specifically provides that the signature "constitutes a representation by the signer that the signer has read the pleading, motion

or other written request for relief; that to the best of the signer's knowledge, information, and belief there is good ground to support it; and that it is not filed for delay. If a pleading, motion, or other written request for relief is not signed, it shall not be accepted for filing." M.R. Civ.P. 11(a)(5). The recent advances and proliferation of AI do not alter the obligations of attorneys and self-represented parties under this rule.

Moreover, Rule 11 authorizes the probate court to impose sanctions for its violation:

If a pleading, motion, or other written request for relief is signed with the intent to defeat the purpose of this rule, the court, upon motion or upon its own initiative, may impose upon the person who signed it, upon a party, or upon both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion, or other written request for relief, including a reasonable attorney's fee.

M.R.Civ.P. 11(a)(6).

Attorneys are also governed by the Maine Rules of Professional Conduct. Rule 3.3, titled "Candor Toward the Tribunal," states that "A lawyer shall not knowingly: make a false statement of fact or law to a tribunal... [or] misquote to a tribunal the language of a book, statute, ordinance, rule or decision..." M.R. Prof. Conduct 3.3(a)(1) and (2).

While we understand the concern over the filing of false or misleading documents, we think the proposed 18-C M.R.S. § 1-112 is problematic and is both overbroad and unnecessary. The use of AI in the legal field is a rapidly evolving area, and the latest consensus among courts across the country is that such statutes, or indeed court rules, are unnecessary. There is a wealth of material on this topic on the website of the National Center for State Courts, <https://www.ncsc.org/consulting-and-research/areas-of-expertise/technology/tri-ncsc-ai-policy-consortium>.

Thank you for your time.