



ERICSA 63RD ANNUAL TRAINING CONFERENCE & EXPOSITION

MAY 3-7, 2026

Milwaukee

WISCONSIN

Modern Evidence as
Viewed from the Bench
and Bar:
A Discussion of New
Technology, New
Evidence and New
Challenges



Presenters



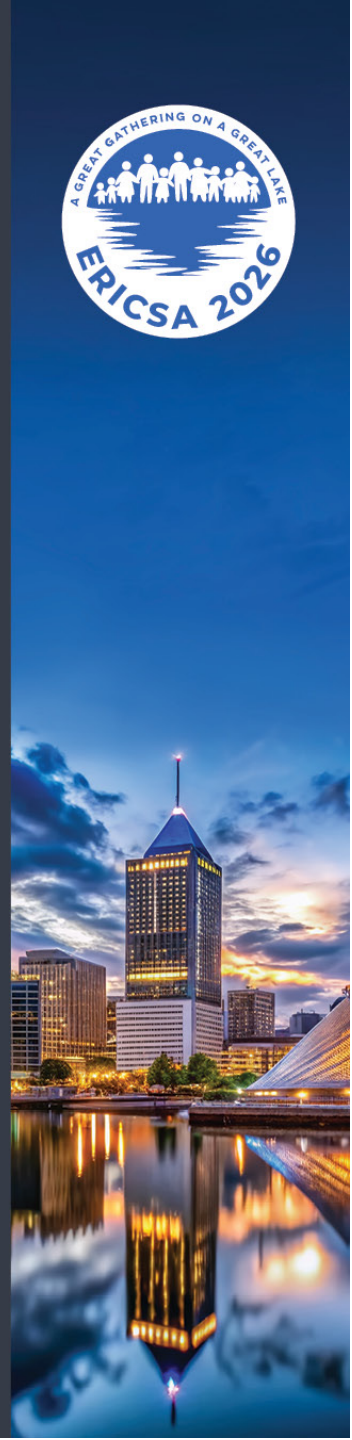
Tommy Howard
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Support Magistrate
New York State Unified
Court System



Christina Mahoney
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Technology is always advancing and creating new challenges in court. Artificial Intelligence gives the ability to "create" convincing evidence which may impact the court process. Even before the advent of generative artificial intelligence, photoshop and similar programs may have impacted the ability to consider photographs as evidence. This new technology has exacerbated the problems inherent in digital photography as opposed to the old film camera and has further raised concerns regarding photos downloaded from social media platforms. Many business records are no longer maintained in the old-fashioned paper books and medical records can now be accessed through medical portals. How has the electronic age impacted evidence and what changes, if any, have been made to address authentication and submit this evidence into the record?

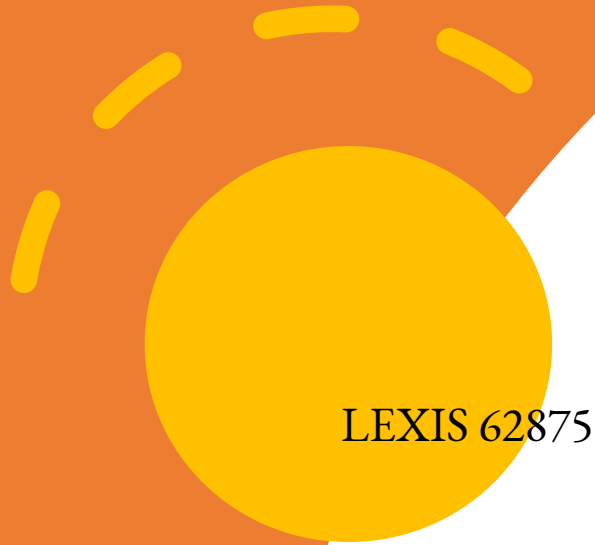


In the criminal justice system the
people are represented by separate
yet equally important groups, artificial
intelligence and the dumb humans.
These are their stories



LAW & ORDER





LEXIS 62875

Issue: The Use of AI for Preparation of Court Pleadings

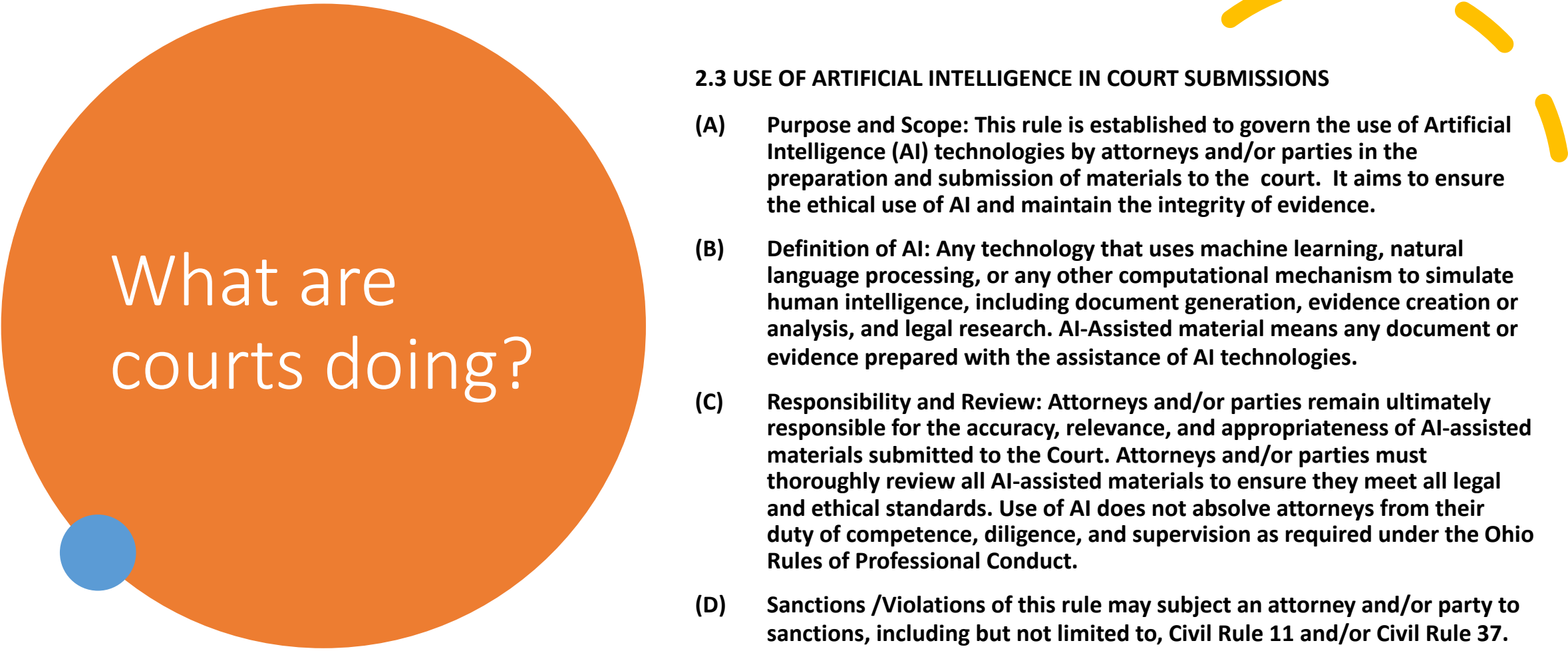
By Counsel



People v. Zachariah C. Crabill
Supreme Court of Colorado
2023 Colo.Discipl.LEXIS 64
11/22/23

- *Client hired Crabill to prepare a motion to set aside judgment. Crabill had never done such work. He prepared the motion using ChatGPT. Crabill used cases that did not exist. He didn't bother to check the validity.*
- *At a hearing on the motion, he finally discovered that the cases did not exist, but he didn't disclose to the court. When called out by the judge, he blamed an intern.*
- *Crabill filed an affidavit six days later explaining that he'd used ChatGPT.*
- *Attorney was suspended for 366 days, with all but 90 days stayed.*





What are courts doing?

2.3 USE OF ARTIFICIAL INTELLIGENCE IN COURT SUBMISSIONS

- (A) **Purpose and Scope:** This rule is established to govern the use of Artificial Intelligence (AI) technologies by attorneys and/or parties in the preparation and submission of materials to the court. It aims to ensure the ethical use of AI and maintain the integrity of evidence.
- (B) **Definition of AI:** Any technology that uses machine learning, natural language processing, or any other computational mechanism to simulate human intelligence, including document generation, evidence creation or analysis, and legal research. AI-Assisted material means any document or evidence prepared with the assistance of AI technologies.
- (C) **Responsibility and Review:** Attorneys and/or parties remain ultimately responsible for the accuracy, relevance, and appropriateness of AI-assisted materials submitted to the Court. Attorneys and/or parties must thoroughly review all AI-assisted materials to ensure they meet all legal and ethical standards. Use of AI does not absolve attorneys from their duty of competence, diligence, and supervision as required under the Ohio Rules of Professional Conduct.
- (D) **Sanctions /Violations** of this rule may subject an attorney and/or party to sanctions, including but not limited to, Civil Rule 11 and/or Civil Rule 37.

Source: Warren County, Ohio Juvenile Court Local Rules of Court

RULE 87. Use of Artificial Intelligence in Court Interpretation and Translation.

(A) Translation

(1) A court shall not utilize artificial intelligence in translating any substantive legal writings. As used in this rule, “substantive legal writings” include legal forms, court orders, probation conditions, and any other similar writings that may impact the outcome of a case or constitutional or civil rights of a litigant.

(2) A court may use artificial intelligence in translating non-substantive, non-legal writings, provided the court clearly discloses to public users the use of artificial intelligence and as such may contain errors. As used in this rule, “non-substantive, non-legal writings” include materials relating to general court information such as websites, webpages, chatbots, court signage, court hours, department or office locations, and other writings that are not legal in nature and do not implicate a litigant’s constitutional or civil rights.

(3) When possible, a court should review translated pages or items for accuracy and completeness. The review may be performed by a qualified human translator or a proficient native speaker of the language.

(B) Interpretation

A court shall not utilize artificial intelligence for interpretation in any substantive legal proceeding, case, or court function, whether this includes oral interpretation or translated closed captioning.

Source: Rules of Superintendence for the Courts of Ohio



Use by Pro Se Litigants

Lu v. Cap. One,
N.A.
U.S. District Court
for the Northern
District of Ohio,
Eastern Division
2025 U.S. Dist.
LEXIS 178638
3/25/26

- *In April of 2025, Lu filed a pro se complaint in a Municipal Court against Capital One, N.A, and HP Inc. alleging he had purchased a defective computer from HP using a Capitol One credit card.*
- *Capital One removed the case to federal court.*
- *Lu filed a brief with multiple fake cases in response to a Motion to Dismiss.*
- *Defendants alerted the Court to the fakes. Lu responded with more fake cases.*
- *Ultimately, the Motion was granted.*

Resources

- **Ohio Supreme Court Artificial Intelligence Resource Library**

<https://www.supremecourt.ohio.gov/courts/services-to-courts/artificial-intelligence-resource-library/>

- **AI Court Order Tracker**

<https://ropesgray.com/en/sites/artificial-intelligence-court-order-tracker>

- **Absurd AI-Powered Lawsuits Are Causing Chaos in Courts, Attorneys Say, “Clogging the System” and Driving Up Costs**

<http://futurism.com/artificial-intelligence/ai-lawsuits-chaos-courts-lawyers>

- **The Rise of the AI-Powered Plaintiff**

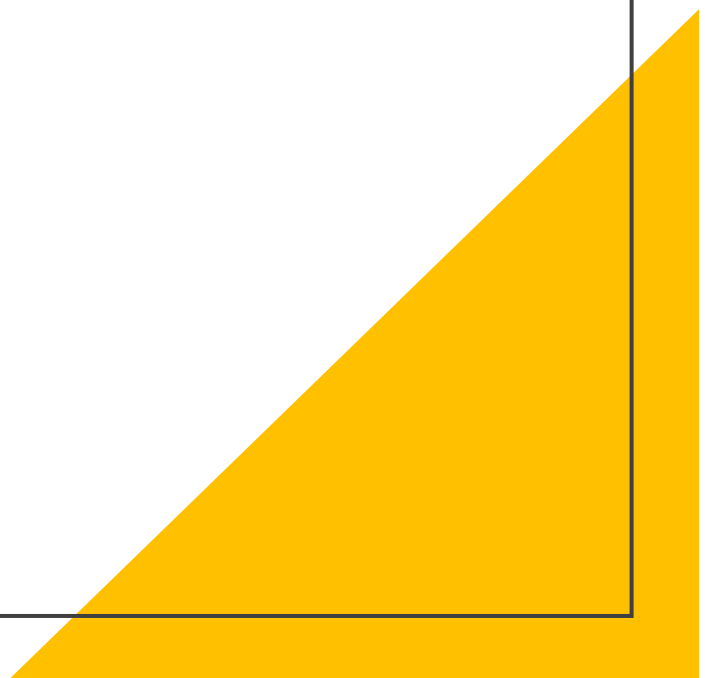
<https://www.forbes.com/sites/michaelashley/2026/04/01/the-rise-of-the-ai-powered-plaintiff/>

When AI Becomes Your Problem

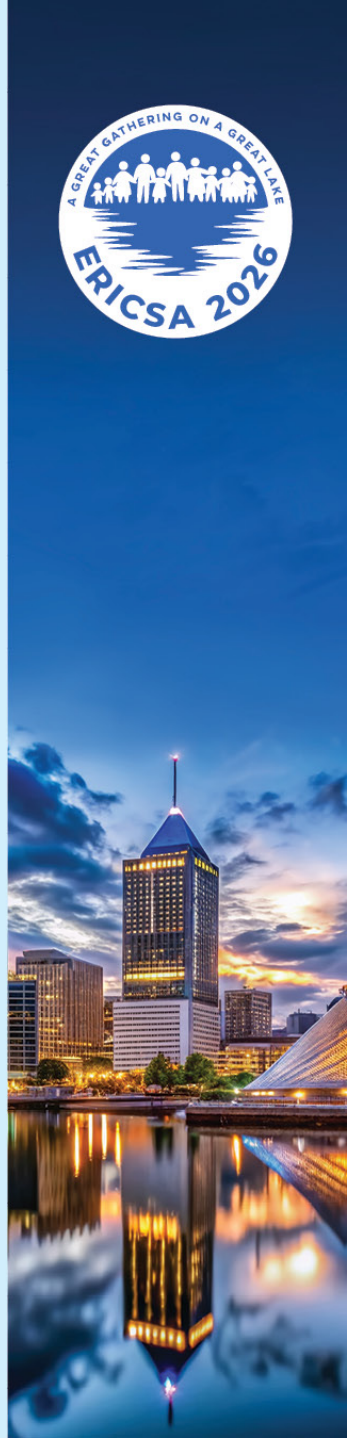
Christina Mahoney

Deputy Attorney General

Illinois Attorney General's Office



Recognizing the Red Flags



A Real-World Scenario

Newly admitted attorney

Brief relied on inaccurate authority

Citations could not be verified; quotes used did not exist within cited cases

Review (then concern) shifted from argument to accuracy



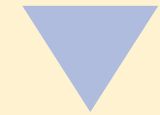
Responding in Practice



Required
verification
of all cited
authority

Internal
discussion
regarding
next steps

Offered
opportunity
to withdraw
filing

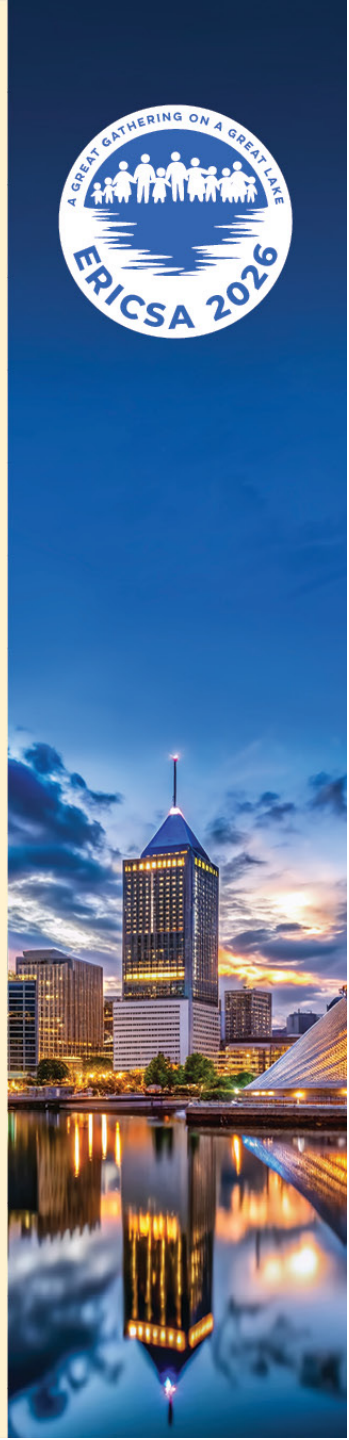


Extensive
time spent
identifying
inaccuracies

Created side-
by-side
comparison
of claims vs.
law

Filing
amended
instead of
withdrawing

Amended
filing
repeated the
same issues



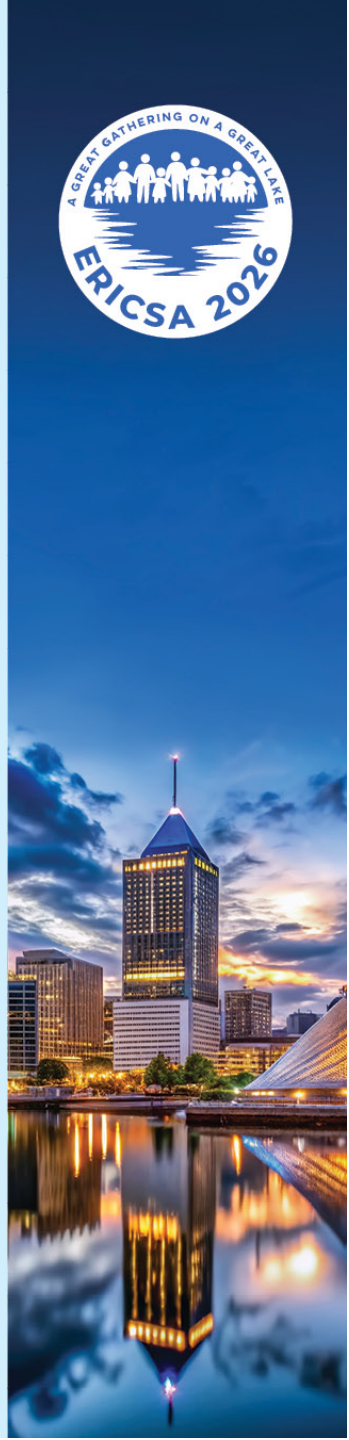
When It Doesn't Resolve

No meaningful correction to the filing

Inaccuracies repeated in amended submission

Court presented with unreliable authority

Issue extends beyond motion practice or argument on the brief



Professional Responsibility



Duty of candor to the tribunal



Duty of competence



Responsibility for all filed content



Applies regardless to how the filing is generated

- July 2024 - ABA Formal Opinion 512
 - *Rule 1.1 – Competence*
 - *Rule 1.6 – Confidentiality*
 - *Rule 3.3 – Candor to the Tribunal*
- January 2025 – Illinois Supreme Court issues a general AI policy (aligns with 512 – no formal adoption)



Evaluating Reporting Obligations

- Conducted detailed review of case law and ethics rules
- Considered obligations as a government agency
- Assessed whether a duty to report was triggered
- Internal consultation, including Inspector General
- Initial views differed
- Further review led to conclusion that reporting was required

Referral to Disciplinary Authority



Matter referred for review



Attorney obtained counsel



Response submitted



Process ongoing

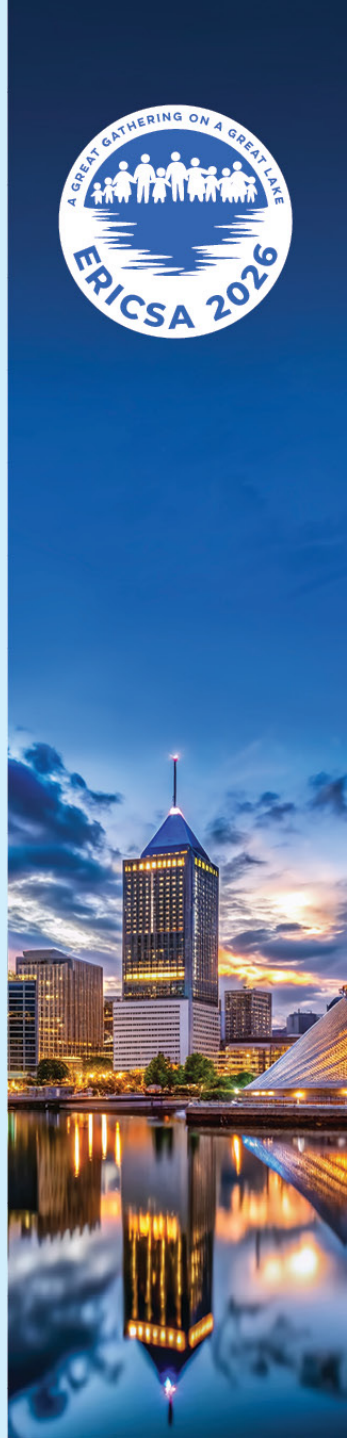
Key Takeaway

AI is a valuable tool when used appropriately and responsibly

It does not replace core legal skills

Accuracy of authority is non-negotiable

Responsibility rests with the attorney





Modern Evidence Issues: Medical Records

Jacinta Testa Ciccone, Esq.
Support Magistrate
6th Judicial District, New York State



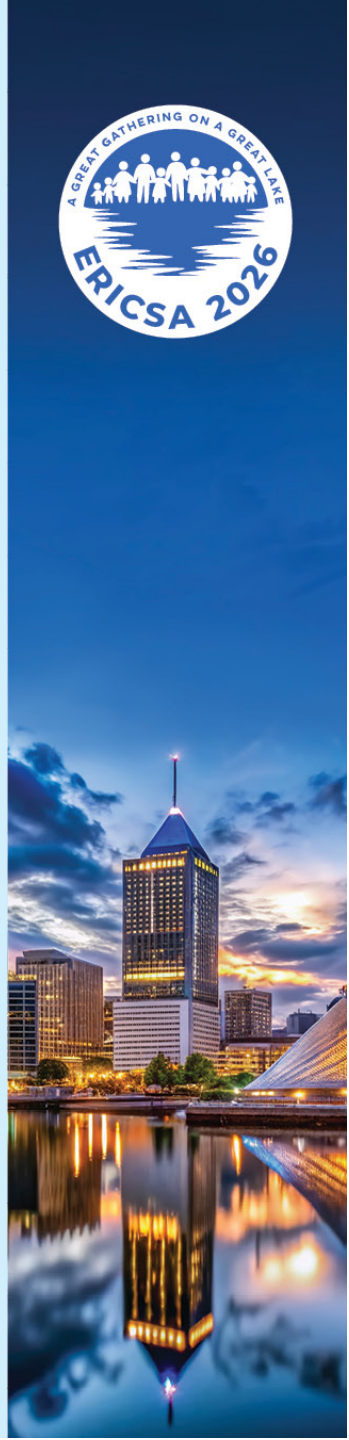
When is medical information important in a support matter?

- Petition for Modification of Support
 - Payor is seeking a decrease in support obligation because they are unable to work because of an illness or injury
- Petition for Violation and/or Enforcement of Support
 - Payer argues that their failure to pay was not willful or should be excused because they are unable to work due to illness or injury



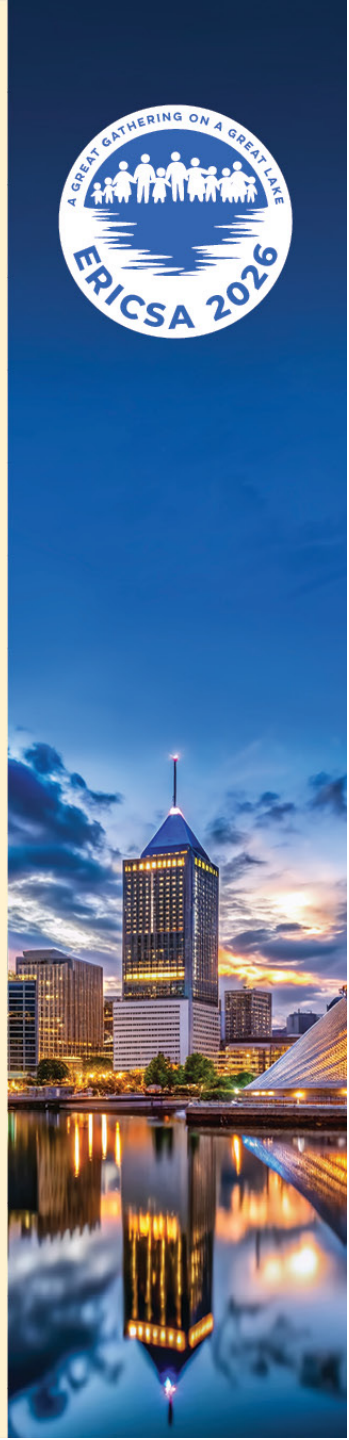
Access to medical records has changed

- Patient access to medical records has changed dramatically in the last ten years
- Medical providers now (generally) use online portals with app access for patients to manage their medical care
- Most patient portals provide direct access to information, including visit summaries and test results
- There are several Electronic Health Record (EHR) providers
 - The three largest and most common are EPIC (Mychart), Meditech and Cerner



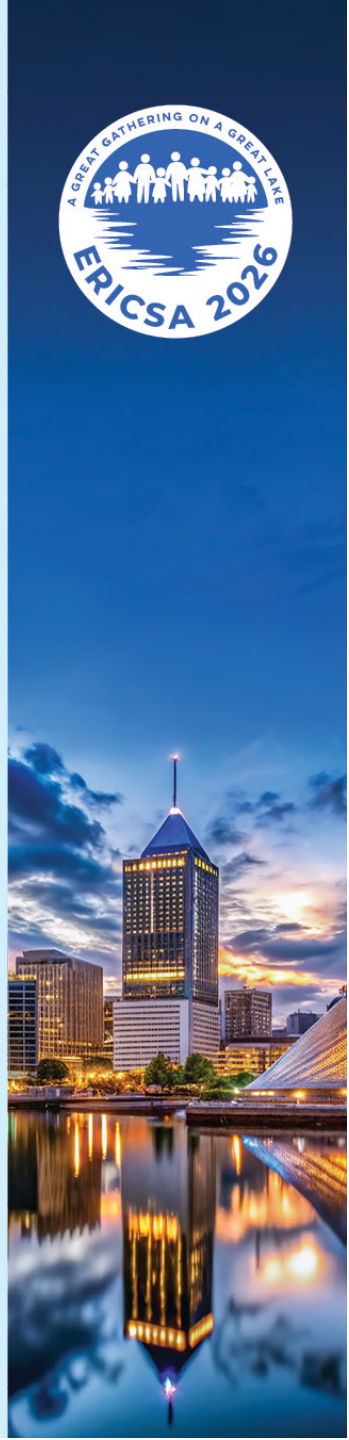
What does this mean for support proceedings?

- Pros:
 - The parties have direct access to medical documents to give to attorneys or caseworkers for review
 - The parties have better access to their own medical information, allowing them to provide more detailed and specific testimony
- Cons:
 - Medical documents retrieved from online portals or apps is usually not a certified record.
 - Downloaded documents could be altered or edited by the patient using a PDF editor or other technology



Practice Tips:

- Judicial officials:
 - Make efforts to address the use of party-obtained medical records at the first appearance. If parties do not object to uncertified records being submitted, remember you will need to still properly evaluate the records for reliability and relevancy.
 - Consider distributing forms for pro se litigants to request a judicial subpoena duces tecum for certified medical records



Practice Tips

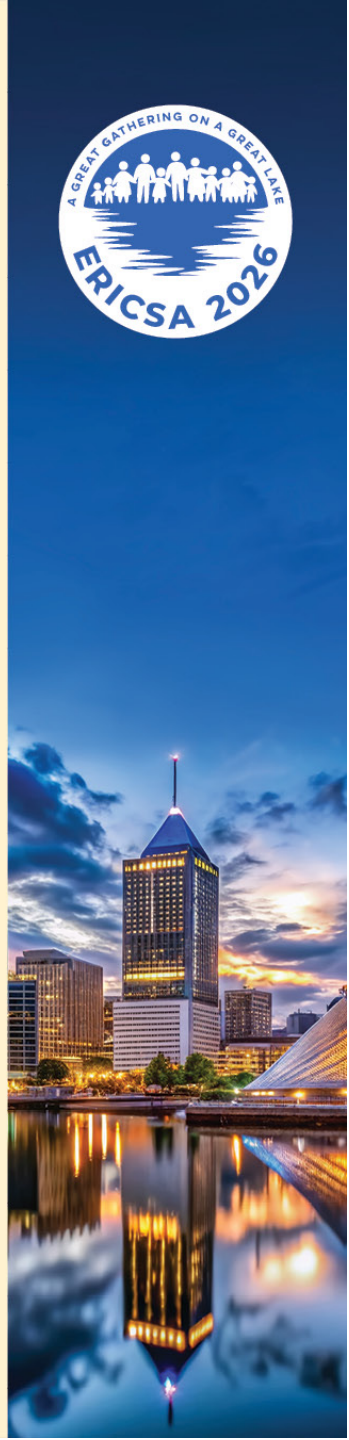
- **Attorneys:**

- The access to medical records should allow your client to provide you with data to help evaluate the case and prepare. Have your client get you as much information as possible.
- Communicate with the opposing party or their attorney about the admissibility of the medical records obtained.
- Work with your client to obtain certified records by judicial subpoena if necessary. The judicial subpoena allows the records to be directly sent to the Court, eliminating any challenges to the certification or documents contained therein.



Practice Tips

- **Caseworkers and other frontline workers:**
 - Request medical information from the parent as soon as you are reviewing the matter.
 - Consider assisting the parent in accessing the online medical records



Thank You!

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