

The Hon. Pamela Frasher Gates  
Chair, Artificial Intelligence Committee  
Judicial Branch in Maricopa County  
125 W. Washington Avenue  
Phoenix, AZ 85003  
602-506-6391

## IN THE SUPREME COURT OF THE STATE OF ARIZONA

In the matter of:

NEW ACJA 1-509: USE OF  
GENERATIVE ARTIFICIAL  
INTELLIGENCE TECHNOLOGY  
AND LARGE LANGUAGE MODELS

Comment of the Judicial Branch in  
Maricopa County

The Judicial Branch in Maricopa County by and through its duly formed Artificial Intelligence Committee (hereafter “AIC”) offers the following comments on “New ACJA 1-509: Use of Generative Artificial Intelligence Technology and Large Language Models” (posted for comment 08/14/2024). Generally, the AIC supports the adoption of the proposed code section with some clarifications.

### **1. Section A: Definitions.**

The AIC recommends that, to the extent possible, the terminology and definitions in Section A mirror the terminology and definitions used in Rule 123 of the Rules of the Supreme Court. Rule 123 uses terms defined in existing public

records case law. Use of terminology and/or definitions that do not conform to existing public records case law may create confusion for the public and the court.

Specifically, AIC recommends that the Supreme Court consider modifying the following definitions:

**a. Court Proprietary Content.**

The proposed code section defines “Court Proprietary Content” to mean “internal court content not meant for public release including but not limited to draft opinions, draft orders, and internal court manuals, as well as notes, drafts, work product, and memoranda prepared by judges, attorneys, and law clerks employed by the court or court personnel at a judge’s direction as provided by Supreme Court Rule 123(d)(4) and (e)(9).”

The AIC recommends using either “Attorney and Judicial Work Product” or “Court Work Product” in place of “Court Proprietary Content.” Rule 123(d)(4) refers to “judicial work product and drafts” and Rule 123(e)(9) refers to “attorney and judicial work product.” Using the defined term “Court Proprietary Content” could be perceived to encompass proprietary and licensed material that is not attorney and judicial work product. *See, e.g.*, Rule 123(e)(11) (defining “Proprietary and Licensed Material” to include “computer programs or other records that are subject to proprietary rights or licensing agreements.”)

**b. Generative AI.**

The proposed code section includes a non-exclusive list of examples of Generative AI: ChatGPT, Microsoft [Bing] CoPilot, and Perplexity. These AI tools are most used for writing, researching, and generating content. The AIC recommends adding other well-known examples such as Claude.ai, GROK (data analytics and predictive modeling), and Gemini (marketing strategy). In addition, AIC recommends adding examples of other types of generative AI tools, including DALL-E (text-to-image) and VALL-E (text-to-voice).

**c. Non-public.**

The definition of “non-public” in the proposed code section does not conform to public records law definitions. In lieu of “non-public,” the AIC suggests a better term to use would be “closed” or “confidential.”

The Arizona Supreme Court has articulated three definitions of “public records”: “(1) a record ‘made by a public officer in pursuance of a duty, the immediate purpose of which is to disseminate information to the public’; (2) a record ‘required by law to be kept, or necessary to be kept in the discharge of a duty imposed by law or directed by law to serve as a memorial and evidence of something written, said or done’; or (3) any ‘written record of transactions of a public officer in his office, which is a convenient and appropriate method of discharging his duties, and is kept by him as such, whether required by ... law or not.’” *Lunney v. State*, 244

Ariz. 170, 174, ¶ 8, 418 P.3d 943, 947 (App. 2017) (citations omitted). Public records can be “open,” “closed,” and “confidential.” A public record that is “closed” or “confidential” may not be subject to public disclosure, but that does not make it a “non-public” record.

**d. Sequestered AI System and Non-Sequestered AI System.**

The proposed code section refers to “sequestered” and “non-sequestered” AI systems. The definitions section differentiates between these two AI systems by whether a vendor does or does not “protect the confidentiality of user input or prompt data.” The AIC suggests a better term for this definition might be “privacy-preserving AI system.” The term “sequestered AI system” could not be found in the literature, but the use of the word “sequestered” suggests this would be an isolated system that is kept separate from other networks and systems to prevent unauthorized access and potential security breaches (*i.e.*, disconnected from public internet). This seems to be a more restrictive definition than what was intended given the later sections describing the uses of “sequestered” and “non-sequestered” AI systems.

Regardless of the defined term that is used, the AIC suggests that the definition could be improved by adding further details to what it means to “protect user inputs and prompt data.”

***e.* Sensitive Content.**

The proposed code section defines “sensitive content” as “social security numbers, driver license numbers, bank account numbers, credit card numbers, any other financial account or personally identifying numbers, and any other content deemed sensitive by court rule or statute.” The definition explains that “sensitive content is non-public.” The defined term “sensitive content” is not use anywhere in the code section. The AIC recommends moving these examples of confidential information into the definition of “non-public” (or the propose alternative terms of “confidential” or “closed”).

**2. Section E: Considerations.**

Section E lists the factors that court leadership should consider when determining whether to permit the use of a Generative AI tool. The AIC recommends including “accuracy, completeness, and potentially erroneous, incomplete, hallucinated, biased, or otherwise problematic output” (from Section F.4) as an enumerated consideration in Section E. This would make more explicit the requirement that judicial leadership must consider these factors when considering whether to permit the use of a particular Generative AI tool.

**3. Section F: Use of AI Tools.**

Subsection F(1) reads as follows: “Use of Work Email Accounts. Court personnel are permitted to use a judicial branch work email account to use

Generative AI tools or create AI-generated material for work-related purposes.” The AIC recommends changing the language from “to use Generative AI tools” to “to register for Generative AI tools.”

Subsection F(2) reads as follows: “Use on Court-Owned and Personal Devices. Only approved Generative AI tools are permitted to be installed or used on court-owned devices, and on personal devices that are used to access court non-public content.” The AIC recommends changing “non-public” content to “closed” or “confidential” content.

#### **4. Section G: Non-Public Content.**

Section G is titled “Non-Public Content.” The AIC does not believe the title adequately describes what the section addresses and recommends changing the section title to “Protocols for Use of AI Systems.” As noted above, in lieu of “court proprietary content” AIC recommends using either “attorney and judicial work product” or “court work product.”

Section G(1)(a) has a non-exclusive list of “non-public content.” AIC recommends including in this list “Adult Criminal Records,” which includes records maintained as the work product of pretrial services staff, probation officers and other staff for use by the court. Rule 123(d)(2)(A).

Section G(1)(b) reads as follows: “Public content must not be put into any non-sequestered AI system if the content has the potential to enable the discovery of

non-public content.” This section is abstract and AIC suggests it could be made clearer with a non-exclusive list of examples. For example, submitting publicly available information that—when aggregated—becomes confidential; submitting briefs and asking Generative AI to prepare a draft ruling, which would be work product.

RESPECTFULLY SUBMITTED this 18<sup>th</sup> day of September, 2024.

/s/ Pamela Frasher Gates  
Honorable Pamela Frasher Gates  
Chair, Artificial Intelligence Committee  
Superior Court of Arizona in and for  
Maricopa County

Electronic copy filed with  
Clerk of the Arizona Supreme Court  
this 18<sup>th</sup> day of September, 2024