From:	Jonathon Moseley
Sent:	Wednesday, October 29, 2025 12:45 PM
To:	RulesCommittee Secretary
Subject:	PROPOSED RULE: Expand FRCP Rule 11 to exclude Artificial Intelligence

TO:
Carolyn A. Dubay, Secretary
Committee on Rules of Practice and Procedure
Administrative Office of the United States Courts
One Columbus Circle, NE, Room 7-300
Washington, D.C. 20544

Re: Proposed Alteration to Rule 11 of Federal Rules of Civil Procedure regarding spreading "fad" of Artificial Intelligence.

I am no luddite. In high school, my sister alleged that the school mainframe computer was my girlfriend because I spent all my time there. Nevertheless, tools must be properly used. Over-excitement and fads frequently lead to mis-use of technology and tools. Sometimes the right tool for a job is a pencil. Sometimes it s a super-computer.

FRCP RULE 11 requires that (1) an attorney's signature on a court pleading or verbal motion in court constitutes the certification of the attorney and (2) the certification requires that the attorney has researched both the legal claim asserted legally and factually and its application to the circumstance, along with some other details.

"ARTIFICIAL INTELLIGENCE" -- though poorly defined and often meaning different things to different people -- has taken on the quality of a full-blown social fever of over-excitement.

I ask the Standing Committee to consider that it is not possible for an attorney to comply with Rule 11 using artificial intelligence to do legal research or draft arguments.

Unless by "AI" we mean dictionary checks to look for mis-spelled words or maybe alerts (left to the drafter's decision) of possible grammatical mistakes.

Perhaps red flags of questioned or bad legal precedents could be an AI application consistent with an attorney's obligation under Rule 11. Legal research tools do this, but even a more advanced / automated version could be a proper use consistent with Rule 11.

But an attorney cannot digest a situation and file a motion or respond to a motion without applying the trained, skilled, and licensed abilities of the attorney.

Current allegedly "AI" systems will now not only draft a motion or response to a motion but decide by scanning a pleading what arguments to make in an AI generated pleading in reply.

That skill-based task cannot be delegated to a computer program.

Similarly, legal research cannot be delegated to a computer program, _unless_ in the form of offering suggestions for an actual attorney to read.

Frankly, the search functions of some legal research tools are poor (inefficient) and improvements in presenting candidate precedents for an attorney's review would be appropriate and beneficial.

But ultimately, a licensed attorney must ultimately review precedents to understand them, verify them, and decide how to use them. (It is not unusual for a precedent to cover 5 topics, 90% of the precedent is on unrelated issues, but 1 paragraph at the end is the only precedent that can be found but is a powerful precedent.)

When I served on the George Mason School of Law Law Review, one of our assignments regularly was to do "spade work" to verify every citation included in a law review article or law note.

In law school at George Mason, we were warned not to use the "squib" headings in the reporters, but to be careful to actually read the precedent.

THEREFORE, I would like to propose that:

FRCP Rule 11 be expanded to require the certification that the signing / moving attorney (or perhaps a licensed associate or subordinate attorney) has actually reviewed the precedents or other citations relied upon in the pleading, and has crafted the arguments and/or claims based on the attorney's review and understanding of the case and his client's interests.

Although many judges over-use Rule 11, and they should be reminded that simply "being wrong" is not a violation of Rule 11. Losing a motion is not grounds for Rule 11. Furthermore, arguable cases (not clear if Rule 11 is violated or not) should never constitute a Rule 11 violation.

Nevertheless, Rule 11 really needs to apply also with criminal cases and appellate cases.

But it should be clarified that Rule 11 is much more narrow than what many judges have drifted into.

To violate Rule 11 one must both (1) be objectively wrong, (2) be unreasonably wrong, (3) be wrong in more than just a *de minimis* way, (4) ***but also that the attorney did not bother to check***.   Simply being wrong is not enough for Rule 11 to apply.

Jonathon A. Moseley