

GUIDELINES ON THE USE OF GENERATIVE ARTIFICIAL INTELLIGENCE IN MEDIATION

These guidelines were prepared by the Mediation Committee of the International Bar Association, reflecting our commitment to exploring the role of generative artificial intelligence (**AI**) in mediation practice. The growing use of AI presents an unprecedented opportunity to facilitate mediation by improving efficiency, reducing costs, and broadening access to justice, provided that AI is integrated into mediations with appropriate safeguards.

Part One of these guidelines provides a non-exhaustive list of suggestions for how AI can enhance mediations including uses for mediators, parties, and party representatives (jointly referred to as **Mediation Participants**) and mediation institutions (Mediation Participants and mediation institutions are jointly referred to as **Users of AI**). These suggestions are subject to the safeguards in Part Two.

Part Two of these guidelines identifies risks that may result from the use of AI and makes proposals for managing those risks.

Part Three provides a sample statement that Mediation Participants can use to communicate that AI tools have been or will be used in a mediation.

Scope of AI Definition

In these guidelines, “AI” refers to systems that create content based on user-provided data. This includes generating text, images, or other media; recognizing patterns; and providing insights or recommendations. For example, large language models can generate relevant responses to prompts they receive from users.

These guidelines do **not** cover non-generative AI that operates based on fixed rules or algorithms rather than creating new content. Non-generative AI includes search engines and chatbots that use pre-existing data to provide responses.

Revisions

This instrument is intended to be a living document, subject to revision as the field of mediation and applications using AI evolve.

PART ONE

POTENTIAL APPLICATIONS OF ARTIFICIAL INTELLIGENCE

This part of the guidelines provides a non-exhaustive list of ways that AI can facilitate and enhance mediations. These applications are subject to the safeguards set out in Part Two.

1. General Uses

1.1 Facilitating Administrative Tasks

AI can streamline administrative tasks supporting mediations. This includes help scheduling meetings, organizing information, and drafting correspondence and documents.

1.2 Synthesizing Information

AI can rapidly summarize documents and written correspondence, extract relevant information, and present the results in a clear and concise manner.

1.3 Analyzing Information

AI can assist with analyzing information by identifying patterns, spotting inconsistencies, and highlighting important details. It can answer user questions about information in correspondence and documents.

1.4 Performing Research

AI can conduct research related to mediations and rapidly retrieve responsive information. It can, for example, assist with legal analysis and gathering data such as market trends, industry standards, and financial information.

1.5 Improving Communication

AI can improve communication by generating clear and well-structured texts. It can analyze communication styles and preferences of Mediation Participants, enabling customized responses that can enhance understanding and build trust.

1.6 Providing Language Support

AI can translate documents and correspondence as well as provide real-time interpretation and language support in mediation sessions.

1.7 Supporting Practice Development

AI can evaluate information about past mediations and provide feedback to improve professional skills and case administration. It can create realistic scenarios for training purposes, allowing Mediation Participants to enhance their strategies and skills in a controlled environment.

2. Uses by Mediators

Building on the general applications discussed in Section 1, this section identifies specific applications for mediators:

2.1 Case Assessments

AI can assist mediators in screening disputes and analyzing their suitability for mediation.

2.2 Customizing Mediation Procedures

AI can assist mediators in tailoring mediations to the specific needs and preferences of parties and suggest adjustments as the proceedings progress.

2.3 Enhancing Understanding of Disputes

AI can generate concise summaries of key case details, create detailed timelines of events, and trace participants' involvement in disputes, offering an overview of their roles and relevance to the dispute.

2.4 Enhancing Analysis of Disputes

AI can enhance dispute analysis by evaluating party positions and assisting in the identification of the core issues in dispute. It can analyze the history of disputes, assess power dynamics between the parties, and identify legal or procedural barriers that may influence the mediation process and outcomes.

2.5 Preparing for Mediation Sessions

AI can help mediators prepare for mediation sessions by generating targeted questions, identifying potential challenges, and suggesting approaches for addressing challenges and sensitive topics.

2.6 Managing Mediation Sessions

Where Mediation Participants agree to transcribe sessions, AI can summarize discussions, highlight unresolved issues, and suggest process adjustments in real time. These adjustments can respond to such changes as shifts in the tone of the dialogue, the emergence of new priorities, or the introduction of previously unaddressed issues.

2.7 Generating Options for Dispute Resolution

AI can help the mediator generate options for settling disputes and identify common ground that might not be immediately apparent. The mediator can use AI to help predict whether proposed solutions would meet the needs of the parties and gauge the potential for resolution under different scenarios.

2.8 Promoting Balanced Treatment of Parties

AI can assist the mediator in monitoring the mediation process, identifying imbalances or issues that may inhibit equal treatment, and ensuring that the information and guidance provided to parties is balanced and complete.

3. Use by Parties and Party Representatives

Building on the general applications discussed in Section 1, this section identifies specific applications for parties and party representatives:

3.1 Performing Litigation Risk Analysis

AI can assist in determining the appropriateness of mediation by evaluating the strength of claims, assessing the likelihood of settlement, and comparing the costs and timeframes of mediation with other dispute resolution methods.

3.2 Aiding Mediator Selection

AI can support the selection of mediators by identifying potential conflicts of interest and matching mediator profiles to the parties' preferences and needs.

3.3 Preparing Position and Interest Papers

AI can assist in drafting position and interest papers for mediators that summarize each party's position and interests early in the mediation process. It can help determine the most relevant information to include, how to present it effectively, and which additional documents, if any, should accompany the statements.

3.4 Preparing for Mediation Sessions

AI can help draft opening statements and suggest strategies to achieve desired outcomes. It can identify common ground that might not be immediately apparent and generate creative options for settling disputes.

3.5 Providing Support during Mediation Sessions

AI can provide insights and recommendations during sessions and help evaluate proposals. It can assist in gauging the potential for resolution under different scenarios and forecasting the long-term results of different outcomes.

3.6 Assisting with the Drafting of Settlement Agreements

AI can assist in drafting settlement agreements by generating initial drafts based on the terms agreed upon during mediation. It can suggest standardized clauses, help ensure that all necessary legal elements are included, and help customize the language to reflect the specific needs and intentions of the parties. AI can also assist parties to quickly analyze and revise drafts, making the agreement finalization process more efficient and accurate.

4. Uses by Mediation Institutions

Building on the general applications discussed in Section 1, this section identifies specific applications for mediation institutions:

4.1 Administering Cases

AI can enhance institutional administration of mediations by assisting with such tasks as tracking cases, managing mediation logistics, generating case summaries and mediator profiles, and helping provide accurate and timely responses to inquiries from potential and current users of mediation services.

4.2 Managing Case Finances

AI can help institutions establish and revise administrative and mediator fee schedules. It can also assist in determining payments in specific cases, including advances on costs as well as fees where the amount in dispute is unstated or cannot be determined.

4.3 Interpreting Dispute Resolution Clauses

AI can help analyze unclear or conflicting dispute resolution clauses within applicable legal frameworks to assist institutions in making decisions about interpretation.

4.4 Aiding Mediator Selection

AI can assist institutions in compiling and maintaining a panel of mediators by analyzing factors such as qualifications, experience, and areas of expertise. Additionally, institutions can use AI to help propose or appoint mediators in specific cases accounting for potential conflicts of interest and party preferences.

4.5 Assisting with Declarations about Mediations

AI can assist in drafting and assessing compliance with legal requirements for institutional disclosures about mediations. This includes attestations for the implementation or enforcement of mediated settlement agreements under domestic laws and Article 4 of the United Nations Convention on International Settlement Agreements Resulting from Mediation (Singapore Convention).

4.6 Drafting and Revising Mediation Rules

AI can help draft and revise mediation rules based on trends and institutional experience administering cases. It can also assist in assessing the implications of modifications to mediation rules proposed by parties in individual cases, which can help ensure that the changes do not undermine the mediation process or the institution's ability to administer mediations effectively.

4.7 Improving Services

AI can assist in optimizing operations by identifying areas for improvement in case administration. AI can also assist in ensuring consistency in practices and institutional decisions over time.

4.8 Supporting Advocacy and Outreach

AI can generate ideas for presentations, trainings, publications, marketing, and raising awareness about mediation.

PART TWO

SAFEGUARDS FOR THE USE OF ARTIFICIAL INTELLIGENCE

This part of the guidelines identifies safeguards for using AI tools in mediations. The safeguards are intended to be complementary and do not override any legal obligations, ethical duties, professional conduct rules, or other binding regulations applicable to mediations or those participating in mediations.

1. PARTY AUTONOMY

Mediation is a consensual process in which the parties usually participate voluntarily.

Parties in mediation have full control over decision-making about their dispute.

- 1.1.** AI tools can provide insights and recommendations, but their outputs may include errors, biases, cultural insensitivities, and inaccuracies. Users of AI should assess the outputs generated and make independent decisions about their reliability and appropriateness rather than rely on the outputs as a final authority.
- 1.2.** Any legal advice provided by AI should be subject to review by legal professionals.

2. PRIVACY AND CONFIDENTIALITY

The mediation process and the information exchanged within it are considered confidential.

- 2.1.** Users of AI should take reasonable steps to ensure that the use of AI tools in mediation complies with applicable rules or legal obligations regarding privacy and the treatment of personal data and/or data protection.
- 2.2.** Users of AI should take reasonable steps to ensure that confidential information related to the mediation is not compromised by AI tools. Confidential information that is entered into proprietary and open-source large language models may be vulnerable to data breaches and unintended disclosure. The risk of unauthorized disclosure can be mitigated by anonymizing and limiting the information entered to what is necessary to achieve the desired outputs.
- 2.3.** Users of AI should review the privacy rules and terms of any AI tools before using them in support of the mediation process.

3. NEUTRALITY, IMPARTIALITY, AND INDEPENDENCE

Mediators must be neutral, impartial, and independent.

- 3.1.** Users of AI should take reasonable steps to ensure that the use of AI does not compromise the neutrality, impartiality, and independence of mediators. This risk can be mitigated by phrasing prompts in clear and neutral terms, varying the language of prompts, and comparing outputs from different AI models.

4. BALANCED PROCESS

The mediation process must be balanced, ensuring that all parties have equal opportunities to participate and express their views.

- 4.1.** Mediators and Mediation Institutions should inform parties of their right to raise concerns if they believe that AI tools are compromising the integrity of a mediation.
- 4.2.** Any Mediation Participant may request information about the AI tools that another Mediation Participant plans to use or is using. The recipient of the request should identify the tools and explain what they are designed to do to all Mediation Participants. If concerns arise about a tool's use, the Mediation Participants should work together to resolve the issue. If the issue cannot be resolved, the use of the tool should be discontinued by the Mediation Participants.

PART THREE

SAMPLE AI USAGE STATEMENT

In some circumstances it may be required or helpful to disclose the use of AI tools to Mediation Participants. This statement may be used to inform other Mediation Participants about the AI tools used in the mediation process and potential risks. It is not intended to override any mandatory laws or regulations that impose disclosure requirements.

“I intend to use (*or “am using”*) generative artificial intelligence (AI) tools to support this mediation. Below is a list of the tools with links to their terms and conditions:

[List of tools including a link to each tool’s terms and conditions]

In using these tools, I seek to comply with all applicable data protection laws [*consider inserting explicit references here*].

I also make reasonable efforts to ensure that all information related to this mediation that is input into the AI tools remains confidential. This includes entering data into proprietary and publicly accessible platforms including open-source large language models.

I am aware that AI-generated content may include errors, biases, and inaccuracies. I assess the outputs and make my own independent decisions about their use rather than rely on AI-generated content as a final authority.”