

# *THE* Legal Ethics & Malpractice Reporter

*A monthly commentary on current ethical issues in law practice  
for members of the Kansas and Missouri Bars*

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LLC

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# About This Publication

**T**HE *Legal Ethics & Malpractice Reporter (LEMR)*, for short) is a free, monthly publication covering current developments in ethics and malpractice law—generally from the perspective of the Kansas and Missouri *Rules of Professional Conduct*. Founded in 2020, this publication was envisioned by KU Law professor Dr. Mike Hoeflich, who serves as its editor in chief. In partnership with Professor Hoeflich, JHC’s legal ethics and malpractice group is pleased to publish this monthly online periodical to help attorneys better understand the evolving landscape of legal ethics, professional responsibility, and malpractice.

In addition to the digital format you’re presently reading, we publish *LEMR* as mobile-friendly blog articles [on our website](#). We also share a digest newsletter to our *LEMR* email subscribers whenever a new issue is published. (You may [subscribe here](#) if you aren’t already a subscriber.)

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## FEATURE ARTICLE

## Judges, Judicial Ethics, and AI

**D**URING the past few years, the lamentable habit of generative AI platforms to provide false citations has resulted in their incorporation in documents submitted to the courts and caused controversy, angry judges, humiliated lawyers, and serious questions about the ethical obligations of lawyers using AI. Unfortunately, as the submission of flawed documents to courts continues, judges may include these citations in opinions not knowing they are false. Are there ethical implications for judges who do this?

Increasingly, we are finding cases in which a judge has been entrapped by a false citation presented in a brief or other document before the court. In *Shahid v. Esaam*, a Georgia case, the wife objected to the judgment based on improper service and the husband's brief included two fake cases that the trial court relied upon in accepting the husband's argument. While the appellate court declined to make factual findings about how this occurred, it certainly suggested the husband's attorney was at fault:

We are troubled by the citation of bogus cases in the trial court's order. As the reviewing court, we make no findings of fact as to how this impropriety occurred, observing only that the order purports to have been prepared by Husband's attorney, Diana Lynch. We further note that Lynch had cited the two fictitious cases that made it into the trial court's order in Husband's response to the petition to reopen, and she cited additional fake cases both in that Response and in the Appellee's Brief filed in this Court.

As noted above, the irregularities in these filings suggest that they were drafted using generative AI. In his 2023 Year-End Report on the Federal Judiciary, Chief Justice John Roberts warned that "any use of AI requires caution and humility."<sup>5</sup> Roberts specifically noted that commonly used AI applications can be prone to "hallucinations," which caused lawyers using those programs to submit briefs with cites to non-existent cases

*Shahid v. Esaam*, 376 Ga. App. 145, 146–47, 918 S.E.2d 198 (2025).

Should the Court of Appeals of Georgia also have said something about the



judge's responsibility in reviewing and approving the order? When a judge approves a document submitted to the court that contains hallucinations does responsibility for the error shift or expand? Or does it remain squarely on the drafter?

A related issue for judges is when they decide to use generative AI in their own research rather than upon documents submitted by lawyers to the court. AI platforms do not treat judges differently from how they treat lawyers and are just as prone to produce a hallucinated case in response to a judge's or judicial clerk's research as they are when lawyers use them.

Before looking at the ethical issues surrounding judicial use of AI with its concomitant problems, it is important to understand the dangers that hallucinations pose both for litigants and for the legal system as a whole.

Fundamentally, our common law system depends upon precedent, the citation of prior cases relevant to the case at hand for certainty and predictability in judicial decision making. Precedent provides the guard rails that guide judges in their analysis and decision making. In fact, the system of precedent is a form of what people now refer to as crowd-sourcing, but is composed of learned and conscientious judges and represents, in some cases, generations of such analysis and decision-making. Indeed, the whole of precedent, in effect, represents the combined wisdom of the law. If a judge is misled by a hallucinated case, this can taint the entire law about not only the particular case but future cases as well. If enough future cases cite hallucinated precedent then the common law ultimately fails and becomes the product not only of an artificial intelligence--but one which may be quite different from what human judges would have said and decided without the taint.

The inclusion of hallucinated cases in judicial decisions also can mean that those decisions or orders produce results that, in fact, do not represent the state of the law, but, rather, the product of a flawed computer algorithm. When one contemplates this becoming common, one has to react with horror. Justice will not be served in such an event and people will lose faith in the legal system as a result.

What are the ethical consequences for a judge who is misled by an AI generated hallucination and uses a false case or cases in the decision-making process? The Model Code of Judicial Conduct can provide a guide. Canon 1 of the Model Code reads:

A judge shall uphold and promote the independence, integrity, and

impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety.

Rule 1.2 states:

A judge shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety.

Canon 2 of the Model Code reads:

A judge shall perform the duties of judicial office impartially, competently, and diligently

Comment 5 reads:

Actual improprieties include violations of law, court rules or provisions of this Code. The test for appearance of impropriety is whether the conduct would create in reasonable minds a perception that the judge violated this Code or engaged in other conduct that reflects adversely on the judge's honesty, impartiality, temperament, or fitness to serve as a judge.

The focus on competency and fitness—as well as temperament—in these provisions suggest strongly that a judge who includes an hallucinated case in the decision-making process, whether it was submitted by a lawyer or *sua sponte* in the judge's own research, will face questions as to how this happened. If the answer is that the judge did not check the citations he used, then he may well face discipline.

Although it is not clear that a specific rule on judicial technical competence is necessary,<sup>1</sup> one state has added such a rule to its judicial code. On September 25, 2025, Arizona adopted new Comment 1 to Rule 2.5, which is modeled on Rule of Professional Conduct 1.1, Comment 8. The new Arizona language states:

Competence in the performance of judicial duties requires the legal knowledge, skill, thoroughness, and preparation reasonably

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<sup>1</sup> Michigan and West Virginia authorities have taken the position that technical competence is part of general judicial competence (Michigan Ethics Op. JL-155, Oct. 27, 2023) and West Virginia (Ethics Op. 2023-22, Oct. 13, 2023).

necessary to perform a judge's responsibilities of judicial office, including the use of, and knowledge of the benefits and risks associated with, technology relevant to service as a judicial officer.

This addition will become effective September 1, 2026.

One partial answer to this problem is for every judge to institute a system of monitoring and verifying all citations used in the decision-making process. For judges who have clerks, this seems a reasonable process to require. But many judges in state systems may not have clerks, or their clerks may be already overburdened with other tasks. Introducing systemic and comprehensive monitoring of all authorities cited by lawyers will require increasing court financial and personnel support, which may simply be beyond the ability of court systems to do.

As more judges discover the presence of AI generated hallucinations in documents submitted to them or produced by them or their clerks, the judiciary at every level must begin to formulate solutions to this very serious problem to the integrity of the law and legal system and the job security of judges.



## NEW OPPORTUNITIES

# Increasing the Availability of Legal Services in Rural Kansas

For the past several years the Kansas Bar, the Kansas Supreme Court, and the Kansas Legislature have all expressed great concern about the provision of legal services in underserved rural areas in Kansas. In December 2024, the Kansas Supreme Court issued its report on “Kansas Rural Justice Initiative.” And in the 2025 session of the Kansas Legislature, SB 214 and HB 2174 were introduced to improve rural access to justice and encourage law students and law schools to focus more on rural practice.

The Kansas Rural Justice Initiative’s first recommendation was that:

The Kansas Supreme Court should collaborate with the Kansas Legislature, the University of Kansas School of Law, and Washburn University School of Law to establish a rural-attorney training program. That program should create tuition-reimbursement incentives to encourage prospective attorneys to attend law school in Kansas and ultimately practice in rural Kansas.

Both KU and Washburn have taken this initiative very seriously.

At KU, the dean asked me to revive a course on practice management that I taught a decade ago at KU—but to focus it on small firm and rural practice. I agreed (what better way to begin my retirement?). Ethical rules and concepts will be a major part of the course, and it will also include AI training.

Below is a draft of the syllabus for the course that I will offer in Spring 2026. I hope that some readers will find it interesting and provide comments or suggestions. I also hope readers practicing in rural Kansas and lawyers who run small law firms in the state might be willing to speak to my students.

- Mike Hoeflich

**Syllabus:**

1. Choosing Your Practice Parameters
  - a. Location
  - b. Practice Fields
  - c. Specialization?
2. First Steps: Finances
  - a. Creating a business plan
  - b. Home Office, Rent or Buy?
  - c. Finances
3. Designing your Office
  - a. Work Space
  - b. Security
  - c. Equipment
4. Staffing
  - a. Temp. or Permanent
  - b. Secretaries
  - c. Paralegals
  - d. Clerks
  - e. HR Issues: Salaries & Benefits[and, see, 5(d)]
5. Establishing Financial and Bank Accounts
  - a. Operating Account
  - b. Trust Account
  - c. Credit Cards, etc.
  - d. Insurance [see 10]

- e. Accounting & Payroll

6. Technology I

- a. Computers
- b. Printers/Scanners
- c. Phones
- d. Provider Options
- e. Cloud Options
- f. Cyber Security

7. Technology II: AI

- a. Choosing a Platform
- b. RAGS
- c. Generative AI
- d. AI in Document Management
- e. Front-facing AI

8. Billing

- a. Hourly
- b. Transactional
- c. Contingent
- d. Hybrid
- e. Advanced Retainers
- f. Non-Refundable Retainers
- g. Billing Documentation

9. Firm Documents

- a. Practice Manual



- b. Engagement Letter
- c. Termination Letter
- d. Conflicts Prevention

10. Insurance

- a. Malpractice Insurance
- b. Liability & Premises Insurance

11. Acquiring Clients

- a. Advertising: Letterhead & Business Cards
- b. Advertising: Web-Based
- c. Community Involvement
- d. Professional Associations
- e. Handling Prospective Clients

12. Pro Bono & Assigned Cases

13. Assessing Your Practice

- a. Financial Benchmarks
- b. Personal Benchmarks

14. Continuing Legal Education

15. Handling Disciplinary Complaints & Malpractice Claims

16. Expanding Your Practice

**Exercises:**

- 1. Financial Plan
- 2. Office Design
- 3. Staffing Plan

**Document Drafting:**

1. Retainer Letter
2. Termination Letter
3. Billing Statement

**AI Prompt Lab:**

1. Ethical Use of AI
2. Writing Prompts I
3. Writing Prompts II

## ETHICS & MALPRACTICE RESEARCH TIP

### New Articles from the Current Index to Legal Periodicals

1. David King, *How to Retain Being a Human Lawyer While Using Generative AI*, 61 Cal. W. L. Rev. 331 (2025).
2. James A. Sherer, et al., *A Model Approach to Attorney AI Practice—Function or Folly in an Age of AI?*, 61 Cal. W. L. Rev. 353 (2025).

The articles on AI in law practice just keep coming. Here are two more of interest.



## A BLAST FROM THE PAST

### Plain and Serious Hints of Advice

Let all your actions be regulated by the rules of justice for the time to come; and reckon nothing really gained, but what you gain honestly. Be advised ever to take the safer path in doubtful cases; do that which appears to be the most honorable, just, and charitable; and run not always to the utmost extent of lawfulness, for that always walks so near to the river's brink as he can, is in extreme danger of falling in.

— Richard Steele, *The Religious Tradesman; or Plain and Serious Hints of Advice* 116 (1823).



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