

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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About This Publication

THE *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.

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FEATURE ARTICLE

Judicial AI Problems

FOR the past several years, the legal profession has become increasingly aware of the problems and ethical dangers involved in the use of artificial intelligence in law practice, especially generative AI. Particularly troublesome has been that AI platforms frequently return answers to prompts that are either false (hallucinations) or incorrect. Reports of close to 500 such incidents have been published, and judges have begun to sanction lawyers who do not prevent these errors before documents are filed with their courts.

In the past year, a related problem has sprung up. It is not only lawyers who are using generative AI. It is also judges. And that is a great problem, perhaps greater than its misuse by some lawyers.

When a lawyer submits a flawed document because of AI, it is not authoritative. Indeed, our adversary system is designed to minimize bad law from getting into the “stream of precedent” that will possibly shape the law afterwards in negative ways. When a lawyer prepares a brief, he does so knowing that it will be read by opposing counsel and by the judge and, in many cases, judicial clerks. But, when a judge writes an opinion, many of these safeguards are lacking. Further, a judicial decision will have far more serious consequences for the litigants and for the stream of the law itself. If counsel discovers the incorrect citations, then they must take further action, which will cost the litigant additional money. If it is not discovered immediately, it may be used as precedent in other cases, possibly seriously distorting the law and the legal system as a whole.

Because of the very great danger posed by judicial use of AI and the insertion of hallucinations or incorrect citations into the law, various states and private organizations have begun to issue guidelines for judicial use of AI. On October 10, 2025, the New York State Unified Court system announced that it was issuing an official policy for judges—the *New York State Unified Court System Interim Policy on the Use of Artificial Intelligence*.

After an introduction discussing the nature of AI, the policy outlines the dangers:

1. Inaccurate or Fabricated Information

As noted above, the output produced by generative AI tools will sometimes contain hallucinations. Accordingly, the content generated by an AI program should not be used without careful editing. It is the responsibility of every user to thoroughly review such content and to independently confirm that it contains no fabricated or fictitious material.

In view of their limitations, generative AI tools should not be relied upon to provide accurate information or to draft communications about sensitive topics. Moreover, general-purpose AI programs (whether operating on a public model or on a private model) are not suitable for legal writing and legal research, as they may produce incorrect or fabricated citations and analysis. Even when using the AI-enhanced features that have been incorporated into established legal research platforms, any content generated by AI should be independently verified for accuracy.

2. Bias and Other Inappropriate Output

The vast datasets on which generative AI systems are trained include material that reflects cultural, economic, and social biases and expressions of prejudice against protected classes of people. As a result, the content generated may promote stereotypes, reinforce prejudices, exhibit unfair biases, or contain otherwise undesirable, offensive, or harmful material. Accordingly, it is the responsibility of every user to thoroughly review any AI-generated content, to ensure that it does not reflect any unfair bias, stereotypes, or prejudice or contain any other inappropriate material, and to make any necessary revisions.

3. Vulnerability of Confidential Information

Many publicly available generative AI platforms (ChatGPT, for example) operate on an open training model, which means, among other things, that the input receive from user prompts is collected and used as further training material for their LLMs. Since the LLM can reproduce that material for anyone using an AI program connected to it, that input is potentially accessible by the public at large. Accordingly, once a UCS user inputs information into such a platform as part of a prompt or in an uploaded document, that information is no longer under UCS control, and may become publicly available.

In contrast to AI platforms that operate on these public models, which can be accessed by anyone and may store data for use in future training, some AI

platforms operate on a private model. Platforms using private models are hosted or managed by an organization, and their use is typically restricted to members of that organization or individuals who have been granted access. They may be tailored to the organization's specific needs, and they include additional security, compliance, and privacy measures.

Furthermore, users should be careful to avoid uploading copyrighted content into a generative AI program.

A number of the points made in this section of the document are extremely important. First, it is critical that judges—and lawyers understand the difference between “private” and “public” platforms. Second, the document draws attention to the fact that, because of the way current AI platforms acquire information, they are subject to the biases in the data from which they learn and compose. Third, the document draws attention to the dangers of uploading intellectual property and the corresponding legal consequences of doing so.

The actual policy is short and clear:

1. UCS users may use only those generative AI products that have been approved by the UCS Division of Technology and Court Research (DoTCR), which are identified in the attached Appendix.
2. All judges and nonjudicial UCS employees with computer access shall be required to complete an initial training course, as well as continuing training, in the use of AI technology. No generative AI product may be used on any UCS-owned device or for any UCS-related work until the user has completed the initial training course.
3. No user may input into any generative AI program that does not operate on a private model —by writing a prompt, uploading a document or file, or otherwise — any information that is confidential, private, or privileged, or includes personally identifiable information or protected health information, or is otherwise inappropriate for public release. A private model is a model that is under UCS control and does not share data with any public LLM.
4. No user may upload into any generative AI program that does not operate on a private model any document that has been filed or submitted for filing in any court, even if the document is classified

as public.

5. Any user who uses a generative AI program to produce a document or any other content must thoroughly review the content produced by the program and make necessary revisions to ensure that it is accurate and appropriate, and does not reflect any unfair bias, stereotypes, or prejudice.

6. No user may install on a UCS-owned device any software that is required for the use of a generative AI program, or use a UCS-owned device to access any such program that requires payment, a subscription, or agreement to terms of use, unless access to that program has been provided to the user by the UCS.

7. AI tools may not be used on a UCS-owned device for personal purposes unrelated to UCS work.

8. The approval of a generative AI product by the DoTCR signifies that the product is safe to use from a technological standpoint, but does not necessarily mean that, for a particular task, the use of that product is suitable or appropriate. Such approval by the DoTCR does not preclude any judge or UCS supervisor from prohibiting the use of such a product for a particular task by a person under their supervision.

The policy applies to all UCS judges, justices, and nonjudicial employees, and operates essentially everywhere a UCS-owned device is being used or UCS-related work is being performed on any device.

New York's Interim Policy is sensible, and every state supreme court should take a serious look at it and formulate its own policy on this critical subject. Given the very real dangers in unregulated judicial use of AI in researching and drafting opinions, it seems necessary that every state adopt some set of rules that will minimize the dangers.

NEW AUTHORITY

Noland v. Land of the Free

On September 12, 2025, a California court issued an opinion in what should have been a rather ordinary case. What took it out of the ordinary category was the fact that the plaintiff’s attorney submitted a brief riddled with hallucinated cases for which the attorney was sanctioned by \$10,000 payable to the court.

In addition to rejecting the plaintiff’s substantive claims on appeal, the opinion explains why reliance on fabricated legal authority rendered the appeal frivolous, violative of court rules, and worthy of a monetary sanction:

To state the obvious, it is a fundamental duty of attorneys to *read* the legal authorities they cite in appellate briefs or any other court filings to determine that the authorities stand for the propositions for which they are cited. Plainly, counsel did not read the cases he cited before filing his appellate briefs: Had he read them, he would have discovered, as we did, that the cases did not contain the language he purported to quote, did not support the propositions for which they were cited, or did not exist. (See *Benjamin v. Costco Wholesale Corporation*, supra, 779 F.Supp.3d at p. 343 [“an attorney who submits fake cases clearly has not read those nonexistent cases, which is a violation of [the federal equivalent of § 128.7]”]; *Willis v. U.S. Bank National Association as Trustee, Igloo Series Trust* (N.D. Tex., May 15, 2025, No. 3:25-cv-516-BN) 2025 WL 1408897, at *2 [same].) Counsel thus fundamentally abdicated his responsibility to the court and to his client. (See *Kleveland v. Siegel & Wolensky, LLP*(2013) 215 Cal.App.4th 534, 559 [“‘It is critical to both the bench and the bar that we be able to rely on the honesty of counsel. The term “officer of the court,” with all the assumptions of honor and integrity that append to it, must not be allowed to lose its significance’ ”].)

Counsel acknowledges that his reliance on generative AI to prepare appellate briefs was “inexcusable,” but he urges that he should not be sanctioned because he was not aware that AI can fabricate legal authority and did not intend to deceive the court. Although we take counsel at his word—and although there is nothing inherently wrong with an attorney appropriately using AI in a law practice—before

filing any court document, an attorney must “carefully check every case citation, fact, and argument to make sure that they are correct and proper. Attorneys cannot delegate that role to AI, computers, robots, or any other form of technology. Just as a competent attorney would very carefully check the veracity and accuracy of all case citations in any pleading, motion, response, reply, or other paper prepared by a law clerk, intern, or other attorney before it is filed, the same holds true when attorneys utilize AI or any other form of technology.” (See *Versant*, supra, 2025 WL 1440351, at *4.)

Noland v. Land of the Free, L.P., 114 Cal. App. 5th 426, 445-446, 336 Cal. Rptr. 3d 897, 913 (2025).

It is particularly interesting that the court declined to award sanctions payable to defendant, offering reasoning that has caught the attention of many in the Bar concerned about increasing lawyer obligations when using AI:

We decline to order sanctions payable to opposing counsel. While we have no doubt that such sanctions would be appropriate in some cases, in the present case respondents did not alert the court to the fabricated citations and appear to have become aware of the issue only when the court issued its order to show cause.

Id. at 448. This quite short, unexplained paragraph has created fear that attorneys may now be held responsible for not only discovering their own AI generated errors, but also those of their opponents. That would expand attorney obligations by an enormous amount. Of course, whether the California court intended such an expansion and whether other courts will follow suit remains to be determined.

ETHICS & MALPRACTICE RESEARCH TIP

New Articles from the Current Index to Legal Periodicals

1. Jonathan H. Choi & Daniel Schwarcz, “AI Assistance in Legal Analysis: An Empirical Study,” 73 J. Legal Educ. 384 (2025).

The more we explore the actual use of AI in the various aspects of the legal profession, the more we can make better decisions on regulating such use.

2. Benjamin R. Syroka, “You Just Can’t Beat the Machine: A Lawyer’s Duty to Adapt in the Age of Artificial Intelligence,” 56 U. Tol. L. Rev. 315 (2025).

This is one more interesting attempt to understand how the profession is adapting to AI.

3. Margaret Tarkington, “Lawyers and the Abuse of Government Power,” 58 U. Mich. J.L. Reform 423 (2025).

Professor Margaret Tarkington argues, “The legal profession needs to amend the rules of professional conduct to protect our constitutional system of government from those most likely to effectively undermine it: lawyers.”

A BLAST FROM THE PAST

The Law School Papers of Benjamin F. Butler

...Equally certain is it, that in proportion to the wisdom and equity of the laws, and to the faithfulness and promptitude with which they are administered, will be, in any given community, the virtue and prosperity of its members, and its prospects of advancement of strength and honour. On the other hand, all experience has shown, that little good can be derived from our most perfect system of jurisprudence, if its administration be committed to corrupt or incompetent hands.

— Benjamin F. Butler, *The Law School Papers of Benjamin F. Butler* 168 (Ronald L. Brown ed. 1987) (1838).



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