

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

AI & Sanctions

ONE of the most puzzling effects of the introduction of generative AI into current law practice is the number of lawyers who continue to use AI without proper safeguards against so-called hallucinations and submit documents to courts that provide the court with fictitious citations. At the time of writing this article, there are well over 1,000 reported instances of such submissions, and the number continues to grow.

The submission of such a document to a court may implicate both disciplinary rules and court-ordered sanctions. For sanctions, federal judges often focus on Federal Rule of Civil Procedure 11:

(a) Signature. Every pleading, written motion, and other paper must be signed by at least one attorney of record in the attorney's name—or by a party personally if the party is unrepresented. The paper must state the signer's address, e-mail address, and telephone number. Unless a rule or statute specifically states otherwise, a pleading need not be verified or accompanied by an affidavit. The court must strike an unsigned paper unless the omission is promptly corrected after being called to the attorney's or party's attention.

(b) Representations to the Court. By presenting to the court a pleading, written motion, or other paper—whether by signing, filing, submitting, or later advocating it—an attorney or unrepresented party certifies that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances:

(1) it is not being presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation;

(2) the claims, defenses, and other legal contentions are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law;

(3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable

opportunity for further investigation or discovery; and

(4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on belief or a lack of information.

The Kansas analog to FRCP 11 is K.S.A. 60-211:

(a) *Signature.* Every pleading, written motion and other paper must be signed by at least one attorney of record in the attorney's name, or by a party personally if the party is unrepresented. The paper must state the signer's address, e-mail address, telephone number and fax number. Unless a rule or statute specifically states otherwise, a pleading need not be verified or accompanied by an affidavit or a declaration pursuant to K.S.A. 53-601, and amendments thereto. The court must strike an unsigned paper unless the omission is promptly corrected after being called to the attorney's or party's attention.

(b) *Representations to the court.* By presenting to the court a pleading, written motion or other paper, whether by signing, filing, submitting or later advocating it, an attorney or unrepresented party certifies that to the best of the person's knowledge, information and belief formed after an inquiry reasonable under the circumstances:

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(3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and

(4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on belief or a lack of information.

Judges presented with filings containing hallucinations often cite to the requirement that legal claims and defenses be warranted under existing law or supported by a nonfrivolous legal argument.

Several of the *Kansas Rules of Professional Conduct* are also implicated by submission of documents containing false citations.

Rule 1.1 requires the provision of competent representation, including “the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.” At Comment 8, it is specified:

To maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, including the benefits and risks associated with relevant technology, engage in continuing study and education, and comply with all continuing legal education requirements to which the lawyer is subject.

(emphasis added). Comment 1, which notes that “[a] lawyer’s workload should be controlled so that each matter can be handled adequately,” may be referenced when noting that a time crunch is not an acceptable excuse for failing to confirm a citation is correct and stands for the point cited.

Echoing FRCP 11 and K.S.A. 60-211, KRPC 3.1 prohibits attorneys from pressing legal arguments that are frivolous or that lack a good faith basis:

A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis for doing so that is not frivolous, which includes a good faith argument for an extension, modification or reversal of existing law. A lawyer for the defendant in a criminal proceeding, or the respondent in a proceeding that could result in incarceration, may nevertheless so defend the proceeding as to require that every element of the case be established.

This rule, like the others, may be implicated when an argument is based on a fictitious citation. So may KRPC 3.3(a)(1), which expressly prohibits the making of a false statement of law (and the failure to correct a false statement previously made).

In addition, KRPC 5.3 states:

With respect to a nonlawyer employed or retained by or associated with a lawyer:

- (a) a partner and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the person's conduct is compatible with the professional obligations of the lawyer;
- (b) a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer; and
- (c) a lawyer shall be responsible for conduct of such a person that would be a violation of the rules of professional conduct if engaged in by a lawyer if:
 - (1) the lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved; or
 - (2) the lawyer is a partner or has comparable managerial authority in the law firm in which the person is employed, or has direct supervisory authority over the person, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

More than one authority has noted that Rule 5.3's language covers responsibilities regarding nonlawyer "assistance," rather than "assistants"—such that non-human legal assistance is within the scope of the rule.

The point of reprinting these many rules that might be implicated in the submission of a hallucinatory document is precisely to emphasize the broad problems that such a submission may well bring on the lawyer submitting such a document, both direct and indirect.

Court-Imposed Sanctions

In the past several years, more and more judges confronted with documents containing hallucinated citations have chosen to impose sanctions on the lawyers who prepared and submitted them.

The first decision to gain widespread publicity was *Mata v. Avianca*, 678 F.Supp. 3d 443 (S.D.N.Y. 2023). In that case, a lawyer unknowingly submitted a

brief to the court containing several fictitious cases. The judge was, to put it mildly, furious, and ultimately imposed a \$5,000 fine upon the lawyer who submitted the false citations. The Avianca case set the model for judicial reactions to submission of hallucinated cases, although the monetary sanctions imposed seem to be growing as judges get increasingly frustrated that lawyers continue to submit these problematic documents.

In *Jacquelyn Jackie Lacey v. State Farm General Insurance Company*, a Special Master in the Central District for the District of California felt it appropriate to impose a quite severe sanctions on a law firm that submitted documents with AI-generated hallucinations, stating:

1. The attorneys representing Plaintiff in this civil action submitted briefs to the Special Master that contained bogus AI-generated research. After additional proceedings and considerable thought, I conclude that an award combining litigation sanctions against Plaintiff and financial payments from the lawyers and law firms is appropriate to address this misconduct.
2. I also conclude that additional financial or disciplinary sanctions against the individual attorneys are not warranted. This was a collective debacle, and is properly resolved without further jeopardy.

Case No. CV 24-5205 FMO, 2025 WL 1363069, *1 (C.D. Cal. May 5, 2025). There seems every reason to believe that more and more courts will sanction lawyers who submit briefs and other documents with higher and higher monetary sanctions.

This year, in *Doiban v. Oregon Liquor and Cannabis Commission*, 347 Or.App. 742 (Mar. 18, 2026), another case of hallucinated citations, the Court of Appeals of Oregon explained its reason for imposing a \$10,000 fine when nine of 27 legal citations in a ten-page brief were incorrect due to the use of and reliance upon AI tools:

We further explained that it was “an exceptionally grave situation for at least three reasons.” *Id.* at 304. Those reason are that (1) “it is a breach of the attorney’s professional duties,” (2) “it strains our limited judicial resources,” and (3) “by building and submitting arguments based on nonexistent cases and principles of law, and by failing to take the time to develop competency in the cases and principles of law that do in fact exist, the attorney is engaging in conduct that

jeopardizes the rule of law.”

Here, we have a clear case not only of monetary sanctions, but a reputational hit. How many lawyers wish to see their representation of a client referred to as a debacle?

In 2025, a Judge Anna Manasco of the U.S. District Court for the Northern District of Alabama was confronted by a trio of lawyers who submitted hallucinated cases. Judge Manasco wrote:

Fabricating legal authority is serious misconduct that demands a serious sanction. In the court’s view, it demands substantially greater accountability than the reprimands and modest fines that have become common as courts confront this form of AI misuse. As a practical matter, time is telling us – quickly and loudly – that those sanctions are insufficient deterrents. In principle, they do not account for the danger that fake citations pose for the fair administration of justice and the integrity of the judicial system. And in any event, they have little effect when the lawyer’s client (here, an Alabama government agency) learns of the attorney’s misconduct and continues to retain him.

An appropriate and reasonable sanction must (1) have sufficient deterrent force to make this misuse of AI unprofitable for lawyers and litigants, (2) correspond to the extreme dereliction of professional responsibility that sham citations reflect (whether generated by artificial or human intelligence), and (3) effectively communicate that made up authorities have no place in a court of law.

Johnson v. Dunn, 792 F. Supp. 3d 1241, 1246 (N.D. Ala. 2025).

Disciplinary Referrals

Courts throughout the U.S. are not only imposing sanctions; they are also referring the lawyers involved for discipline.

In 2024, the Second Circuit Court of Appeals decided an appeal in the case of *Park v. Kim*. The lawyer submitted a brief with two citations, one of which was fictitious and produced by a generative AI. The Court stated:

At the very least, the duties imposed by Rule 11 require that attorneys read, and thereby confirm the existence and validity of, the legal

authorities on which they rely. Indeed, we can think of no other way to ensure that the arguments made based on those authorities are “warranted by existing law,” Fed. R. Civ. P. 11(b)(2), or otherwise “legally tenable.” *Cooter & Gell*, 496 U.S. at 393. As a District Judge of this Circuit recently held when presented with non-existent precedent generated by ChatGPT: “A fake opinion is not ‘existing law’ and citation to a fake opinion does not provide a non-frivolous ground for extending, modifying system.” *Mata v. Avianca, Inc.*, No. 22CV01461(PKC), 2023 WL 4114965, at *12 (S.D.N.Y. June 22, 2023).

Attorney Lee states that “it is important to recognize that ChatGPT represents a significant technological advancement,” and argues that “[i]t would be prudent for the court to advise legal professionals to exercise caution when utilizing this new technology.” Indeed, several courts have recently proposed or enacted local rules or orders specifically addressing the use of artificial intelligence tools before the court. But such a rule is not necessary to a licensed attorney, who is a member of the bar of this Court that that she must ensure that her submissions to this Court are accurate.

Attorney Lee’s submission of a brief relying on non-existent authority reveals that she failed to determine that the argument she made was “legally tenable.” *Cooter & Gell*, 496 U.S. at 393, 110 S.Ct. 2447. The brief presents a false statement of law to this Court, and it appears that Attorney Lee made no inquiry, much less the reasonable inquiry required by Rule 11 and long-standing precedent, into the validity of the arguments she presented.

Park v. Kim, 91 F.4th 610, 615 (2d Cir. 2024). The Court then concluded its opinion by referring Ms. Lee to the Court’s Grievance Panel for “further investigation.”

And at Home

A recent case in Kansas has further extended the potential liability of lawyers for sanction—even if they did not prepare the brief flawed by hallucinated citations. In *Lexos Media IP, LLC v. Overstock.com, Inc.*, Case No. 2:22-cv-2324-JAR, a motion submitted by the plaintiff contained: (1) nonexistent quotations; (2) nonexistent and incorrect citations; and (3) misrepresentations about cited authority. In an opinion delivered December 15, 2025, Judge Julie Robinson noted:

As the Tenth Circuit has recently explained, careless use of generative AI “can waste both judicial resources and the opposing party’s time and money, and it can damage the credibility of the legal system.” Indeed, here, the prejudice to Defendant cannot be overstated. Plaintiff’s conduct required Defendant to spend much of its reply brief addressing this issue, and to respond to this motion to correct. Importantly, the *Daubert* motion is intertwined with the merits of a summary-judgment issue. Thus, Defendant also addressed this issue in its reply brief on summary judgment. Plaintiff’s errors have also wasted judicial resources; resources that the Court should be spending on the merits of the case. The need to correct at all was well within the control of Plaintiff’s counsel. “[T]he pitfalls of utilizing AI are now well-known in this profession.” Plaintiff’s counsel should have been aware of the risk involved in submitting a brief that relied on generative AI without validating the case citations both to determine that they exist, and to confirm that the cases stand for the propositions for which they are cited. Yet, counsel took this risk anyway.

2025 WL 3628377 (D. Kan. Dec. 15, 2025). In a subsequent opinion, Judge Robinson explained that only one attorney (not local to the district) used AI and inserted the inaccurate information derived from that tool into the motion—without any other attorney on the case knowing that he did so. However, Judge Robinson concluded that all attorneys whose names appeared on the document—including local counsel—shared responsibility for the errors in the submission:

[A]ll of the attorneys who signed the briefs had a nondelegable duty to conduct a reasonable inquiry into the legal authority relied on in the briefs before signing their names. By signing their names to Docs. 193 and 194, they “certified that each filing had been reviewed and verified by human judgment,” yet they were not.

Lexos Media IP, LLC v. Overstock.com, Inc., 2026 WL 265581, at *10 (D. Kan. Feb. 2, 2026). Judge Robinson then revoked the pro hac vice admission of the attorney who created the offending document; publicly admonished each attorney who signed the document; imposed fines of \$1,000 to \$5,000 per attorney who signed the document; and ordered the attorneys make internal changes to firm policies to prevent future similar occurrences.

In Sum

What becomes clear from the many cases addressing the issue is that lawyers using AI for research and document production must never accept the results without verification. Failure to do so will almost certainly result in sanctions, damage to the client, disciplinary investigation, and reputational loss. As such cases continue to be heard, judges' patience evaporates, and penalties may well become more severe than they already are.

ETHICS & MALPRACTICE RESEARCH TIP

New Articles on Legal Malpractice & Ethics

1. Douglas B. Ammar, et al., *The Lawyer as Active Participant in Public Life*, 76 *Mercer L. Rev.* 1103 (2025).

Lawyers have taken part in the public life of the United States at every level since the birth of the nation. This article comments on that.

2. Kyle Rozema, *Hiding Lawyer Misconduct: Evidence from Florida*, 22 *J. Empirical Legal Stud.* 318 (2025).
3. Albert Yoon, *In the Eye of the Beholder: How Lawyers Perceive Legal Ethical Problems*, 22 *J. Empirical Legal Stud.* 345 (2025).

These two articles examine empirical evidence about ethics in practice. The more we can base ethical rules on actual practice, the better.

A BLAST FROM THE PAST

Blast from the Not so Distant Past

Remember, your AI intern, though incredibly fast and knowledgeable, is not flawless. It is crucial to keep a critical eye on and treat the AI as a tool that works for you. By defining its persona, engaging in a collaborative editing process, and continually providing guidance, you can take advantage of AI as as a form of collaborative co-intelligence.

Ethan Mollick, *Co-Intelligence: Living and Working with AI 60* (Portfolio 2024).

Anyone using or planning to use AI in law practice—as well as anywhere else—needs to understand the basics of AI use. Ethan Mollick’s book is a great way to learn those basics. The world of AI technology is moving so fast, and most two-year-old books are already outdated. Professor Mollick’s book will be useful for years, if not decades.



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