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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Joseph Hollander & Craft LLC

Contents

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.

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

Defending & Preventing AI Hallucination

In last month's *Legal Ethics & Malpractice Reporter*, we outlined the increasing number of cases involving the submission of hallucinated case law by lawyers and law firms and the increasing imposition of sanctions by courts under Federal Rule of Civil Procedure 11 and related state rules. Here, we examine the defenses that have been raised by attorneys and firms that have submitted fake citations and how courts have reacted to them.

I Didn't Know What I was Doing

The defense of ignorance has proven to be a bad choice. Courts have cited many rules when addressing the issue of hallucinated law—most frequently FRCP 11 and Rules of Professional Conduct 1.1, 3.1-3.4, and 5.1-5.4. None of these rules mentions intent. Accordingly, pleading lack of intent to be technically incompetent or lack if intent to misinform the court is not likely to be effective. It might also anger the court.

For example, in *Mattox v. Product Innovations Research LLC,* when a lawyer insisted he did not know ChatGPT would alter the citations in a brief he asked the platform to make more persuasive, the court acknowledged the attorney's actions were "not born of deceit." 807 F.Supp.3d 1341, 1349 (E.D.OK 2025). Still, they "displayed a reckless disregard for the obligation to ensure that what is filed in federal court is true, verified, and worthy of the public trust," warranting sanctions "both to redress the specific harm and to deter recurrence." *Id*.

The deliberate submission of false authority to the court is, of course, particularly offensive. But courts will not excuse the inadvertent submission of false or inaccurate authority when the current legal landscape is full of warnings regarding the risks of AI-generated material.

It Wasn't Me

To date, lawyers have not avoided sanctions by noting that someone else actually prepared the document they signed.

Citing FRCP 11, courts generally find that any lawyer who signs a document

is responsible for what it contains. This rule has been relied upon in sanctioning local counsel who submit filings prepared by co-counsel for whom they have sponsored pro hac vice admission to practice. See, e.g., *Mattox*, 807 F.Supp.3d at 1351-1352; *Wadsworth v. Walmart Inc.*, 348 F.R.D. 489, 498-99 (D. Wyo. 2025); *Lifetime Well LLC v. IBSpot.com Inc.*, No. CV 25-5135, 2026 WL 195644, at *9 (E.D. Pa. Jan. 26, 2026).

Even lawyers who did not sign the offending documents may be subject to discipline. KRPC 5.1 requires lawyers with managerial and supervisory authority to "make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that all lawyers in the firm conform to the rules of professional conduct" and makes those lawyers responsible for the professional misconduct of their subordinates under specified circumstances. Accordingly, if any attorney in a firm is found to have violated KRPC 3.3's obligations of candor, then his manager or supervisor may be on the hook as well. See *N.Z. v. Fenix Int'l Ltd.*, No. 8:24-CV-01655-FWS-SSC, 2025 WL 3626155, at *4 (C.D. Cal. Dec. 12, 2025).

I'm Sorry

The white shoe law firm of Sullivan & Cromwell recently made headlines for the "apology letter" submitted in I*n re Prince Global Holdings Limited, et al.*, No. 26-10769 (Bankr. SDNY). Kelsey Vlamis, "AI hallucinated — and now an elite law firm is profusely apologizing to a federal judge," Business Insider (Apr. 21, 2026), available at https://www.businessinsider.com/sullivan-and-cromwell-apologizes-ai-hallucinations-court-filing-2026-4; Karen Freifeld & Mike Scarcella, "Sullivan & Crowell law firm apologizes for 'AI' hallucinations in court filing," Reuters (Apr. 21, 2026), available at https://www.reuters.com/legal/litigation/sullivan-cromwell-law-firm-apologizes-ai-hallucinations-court-filing-2026-04-21/. Acknowledging that a prior submissions included AI-generated citations that were fabricated (including wrong reporters and incorrect pin cites) and misquoted holdings, the letter stated "deep[] regret" that the error-filled filing occurred—noting "[t]he Firm's policies on the use of AI were not followed in connection with the preparation of the" document.

In some cases, contrition may help mitigate the sanction and diminish reputational damage, but it is not a defense.

Conclusion

To date, we have seen nothing operate as a full defense when a filed document contains erroneous authority attributable to AI hallucinations. There being no "cure," courts insist on prevention.

NEW AUTHORITY

ABA Formal Opinion 522

On April 8, 2026, the American Bar Association Standing Committee on Ethics and Professional Responsibility issued Formal Opinion 522, regarding a lawyer's obligation to disclose information about grounds for judge's disqualification.

Of course, judges are required to consider disqualification under Rule 2.11 of the Judicial Code of Conduct, which states that

> A judge shall disqualify himself or herself in any proceeding in which the judge's impartiality might reasonably be questioned . . . .

But there are times when a judge may not know that there are grounds for such a disqualification. And Opinion 522 concludes that Rule of Professional Conduct 8.4(d) requires the lawyer, as an officer of the court, to disclose that information to the tribunal.

When would a judge not know the judge's impartiality might reasonably be questioned in connection with a proceeding? Opinion 522 offers four examples.

Illustration 1: Prior Employment Connection

> A prosecutor is assigned to represent the state in post-conviction proceedings. The assigned judge previously served as a supervisor in the prosecutor's office. The prosecutor learns from the file that, while working in the prosecutor's office, the judge supervised the trial prosecutor in the case. The defendant's lawyer is evidently unaware of the judge's supervisory responsibility for an earlier stage of the case, and the judge may not recall it.

Illustration 2: Campaign Contribution

> A lawyer representing a party in a civil case learns from the client that the client was a major financial supporter of the presiding judge's recent judicial election campaign. The client acknowledges having made a significant contribution to a political action committee earmarked for the judge's campaign, but there is no public record of the contribution, and it is uncertain whether the judge knows of it.

Illustration 3: Spouse' s Law Firm Involvement

> A lawyer learns that co-counsel for another party in a consolidated civil action has engaged the judge's spouse's law firm for related consulting work on discovery strategy. The lawyer knows of this fact because an associate from the spouse's firm copied the lawyer on an email exchange related to scheduling depositions.

Illustration 4: Counsel's Business Relationship with Judge' s Family Member

> A lawyer for a party in a civil action recently became a minority shareholder in a local business. The lawyer knows that the judge's adult child is an executive and major investor in the business.

According to Opinion 522, when a lawyer has "actual knowledge" of some similar reason for judicial recusal, Model Rule of Professional Conduct 8.4(d) requires that the lawyer consider disclosing those facts if (a) the information is reasonably likely to require recusal and (b) the disclosure can be made without violating the lawyer's confidentiality obligations under Model Rule 1.6 or Model Rule 1.9.

The Opinion's reasoning and its interpretation of the scope of Rule 8.4(d) may surprise some lawyers. The Opinion's broad basis for the ruling that this obligation arises from a lawyer's role as an "officer of the court" may raise some objections as well. Because of the possible novelty of the Opinion's reasoning and because of its potential broad impact on litigation, every lawyer should read it in detail.

ETHICS & MALPRACTICE RESEARCH TIP

New Article on Legal Malpractice & Ethics

Michael D. Murray, *Algorithmic Ethics in an Era of Agentic AI Advocacy: An Analysis of AI's Impact on the Model Rules of Professional Conduct and the Model Code of Judicial Conduct*, 16 ST. MARY'S J. ON LEGAL MALPRACTICE & ETHICS 279 (2026), online at https://commons.stmarytx.edu/lmej/vol16/iss2/4

In this article, Murray dives into issues related to the ethical use of AI in law practice and judicial conduct, rule by rule.

A BLAST FROM THE PAST

De re publica

Yet to possess virtue, like some art, without exercising it, is insufficient. Art indeed, when not effective, is still comprehended in science. The efficacy of all virtue consists in its use. Its greatest end is the government of states, and the perfection not in words but in deeds, of those very things which are taught in the halls. For nothing is propounded by philosophers, concerning what is esteemed to be just and proper, that is not confirmed and assured by those who have legislated for states. For from whence springs piety, or from whom religion? Whence the law, either of nations, or that which is called civil? Whence justice, faith, equity? Whence modesty, continence, the dread of turpitude, the love of praise and esteem? Whence fortitude in trouble and dangers? From those who having laid a foundation for these things in early education, have strengthened some of them by the influence of manners, and sanctioned others by the influence of laws. Of Xenocrates, one of the noblest of philosophers, it is said, that when he was asked what his disciples learnt of him, he replied "to do that of their own choice, which the laws enjoined them to do," therefore the citizen who obliges every one by the authority and fear of the law to do that, which philosophers by reasoning, with difficulty persuade a few to do, is to be preferred to those learned men who only dispute about these things. For which of their orations, however exquisite, can be compared in value to a well constituted state, to public right and to morals. Truly as great and powerful cities, as Ennius says, are as I think, to be preferred to villages and castles; so those who stand pre-eminent in those cities, in authority and counsel, are to be esteemed far before those in wisdom, who are altogether ignorant of the conduct of public affairs. And since we are chiefly urged by a desire to increase the possessions of the human race, and seek by our counsels and labors, to surround the life of man with gratification and security, and are incited by the instincts of nature to these enjoyments; let us hold the course which was always that of the best men: nor attend to those signals which speculative philosophers make from their retirement, to allure back those who are already far advanced.

Marcus Tullius Cicero, *De re publica*, tr. G.W. Featherstonehaugh (1829).

josephhollander.com

KANSAS CITY
926 Cherry St
Kansas City, MO 64106
(816) 673-3900

LAWRENCE
5200 Bob Billings Pkwy
Lawrence, KS 66049
(785) 856-0143

OVERLAND PARK
10104 W 105th St
Overland Park, KS 66212
(913) 948-9490

TOPEKA
1508 SW Topeka Blvd
Topeka, KS 66612
(785) 234-3272

WICHITA
500 N Market St
Wichita, KS 67214
(316) 262-9393