

Ethics in Lawyer Litigation of AI Suits

June 16, 2026

Michael Hoeflich

A CLE Seminar
presented by

Joseph Hollander & Craft
Lawyers and Counselors LLC

Today's Presenter



Dr. Michael Hoeflich

*John H. & John M. Kane
Distinguished Professor of Law*

The University of Kansas
School of Law

Introduction

Artificial intelligence is both a revolutionary and transformative technology when applied to law practice. Lawyers across the world are rushing to become “AI lawyers,” i.e. lawyers who can exploit this technology to produce better work for their clients and increased profits for themselves.

But AI is not without technical problems, including hallucinations, false citations. It also has significant other problems for lawyers such as “sycophancy.” The tendency to tell the user that what the user has done is brilliant and the inherent difficulty of the old idea of “garbage in, garbage out,” i.e. the cold truth that bad input prompts will produce bad outputs.

Certifications

Federal Rule 11(b):

2. Certifications to the Court (Rule 11b)

By presenting a document to the court, the signer certifies that to the best of their knowledge, information, and belief, formed after a reasonable inquiry: [\[1\]](#)

- **No improper purpose:** It is not being used to harass, cause unnecessary delay, or needlessly increase the cost of litigation.
- **Valid law:** The claims, defenses, and legal contentions are warranted by existing law or by a nonfrivolous argument to change the law.
- **Evidentiary support:** The factual contentions have evidentiary support or will likely have evidentiary support after a reasonable opportunity for further investigation.
- **Denials:** The denials of factual contentions are warranted on the evidence or are reasonably based on a lack of information or belief. [\[1, 2, 3, 4, 5\]](#)

Most Common Violations

A number of ethics rules are also cited. The most often used are:

- Rule 1.1 (Competence)
- Rule 3.3(a) (False Statement to Tribunal)
- Rule 5.1 (Supervision of Lawyers)
- Rule 5.3 (Supervision of Nonlawyers)

KRPC 1.1 (Competence):

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

Comment 8:

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.

KRPC 3.3 (False Statement to Tribunal):

(a) A lawyer shall not knowingly:

- (1) make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer;
- (2) fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel; or
- (3) offer evidence that the lawyer knows to be false. If a lawyer, the lawyer's client, or a witness called by the lawyer has offered material evidence and the lawyer comes to know of its falsity, the lawyer shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal. A lawyer may refuse to offer evidence, other than the testimony of a defendant in a criminal matter, that the lawyer reasonably believes is false.

RULE 5.1 (Supervision of Lawyers)

(a) A partner in a law firm 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 all lawyers in the firm conform to the rules of professional conduct.

(b) A lawyer having direct supervisory authority over another lawyer shall make reasonable efforts to ensure that the **other** lawyer conforms to the rules of professional conduct.

(c) A lawyer shall be responsible for another lawyer's violation of the rules of professional conduct if:

(1) the lawyer orders or, with 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 other lawyer practices, or has direct supervisory authority over the other lawyer, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

KRPC 5.3 (Supervision of Nonlawyers)

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.

Ineffective Defenses

Ignorance:

The defense of ignorance seems to be a bad choice. Aside from the damage this does to reputation, it is also certainly going to be ineffective. You cannot plead that –

- you did not intend to be technically incompetent, or
- you did not intend to misinform the court, or
- you could sign court documents without at least reading them.

Ineffective Defenses

Negligence:

- AI hallucinations are known risks: three years have passed since the sentinel Avianca decision and many bar opinions followed;
- Courts (and disciplinary authorities) expect lawyers to supervise the AI outputs, junior lawyers, and nonlawyers

Ineffective Defenses

Apologies:

Generally, apologies for violations of procedural and ethical rules do not serve as a good defense. In some cases, contrition may well help mitigate the sanction, but it is not a defense. Perhaps, it can help with reputational damage.

Case Example #1

Sullivan & Cromwell submitted a motion to the bankruptcy court with multiple hallucinated citations. (Prince Global Holdings Limited et al, Southern District New York, No. 26-10769). The wrote to the court -

- “I take responsibility for the failure to do so.”
- “We sincerely regret the errors in the Motion and the burden they have imposed on the Court and the parties, and I apologize on behalf of our entire team.”

Case Example #1 Cont.

- And explained how the firm's safeguards failed –

“Firm’s policies governing AI use are both clear and rigorous. Access to AI tools is conditioned on completion of mandatory training. Before any Firm lawyer is granted access to generative AI tools, the lawyer must complete two required training modules, completion of which is tracked and verified. The training repeatedly emphasizes the risk of AI ‘hallucinations,’ including the fabrication of case citations, misinterpretation of authorities, and inaccurate quotations. It instructs lawyers to ‘trust nothing and verify everything’ and makes clear that failure to independently verify AI-generated output constitutes a violation of Firm policy. The training also reviews the significant consequences of AI-related errors in various cases. These requirements are reinforced in the Firm’s Office Manual for Lawyers, which provides that lawyers ‘must independently check all answers, case citations, and other information or work product received from an AI Program for both substantive and non-substantive accuracy.’ The policy further states that no communication may be sent to a court, regulator, client, or other external party without the exercise of appropriate professional judgment and oversight. **Notwithstanding these safeguards, the Firm’s protocols were not followed here.**”

Case Example #2

Closer to home, multiple lawyers, both out-of-state and in-state submitted hallucinated citations to the Federal District Court in Kansas in a case presided over by Senior Judge Julie Robinson. Judge Robinson sanctioned the lawyers finding:

“First, and primarily, Plaintiff’s response to the motion to exclude Dr. Russ (Doc. 194) contains a litany of problems: (1) nonexistent quotations; (2) nonexistent and incorrect citations; and (3) misrepresentations about cited authority. Overstock submitted a reply brief disclosing the defective citations, quotations, and statements of authority... .”

Case Example #2 Cont.

The attorney that did the bulk of the work raised the following defenses –

- it was an unintentional “oversight”;
- the firm imposed “stricter internal review procedures to ensure that all future filings are fully sourced, accurate, and independently verified”; and
- “overlapping personal situations weighed heavily on [his] time, attention and emotional state during the time of original filing”.

Court Decisions

Every judge who must deal with the problem of hallucinations in lawyer submitted documents is aware that such documents and their increasing appearances in court proceedings threatens the credibility of the entire legal system.

One measure of the increasingly negative attitude of judges to this problem are the increasing monetary sanctions imposed on lawyers for submitting hallucinated documents. Fines started out relatively small but grew rapidly. Today fines are in the tens of thousands of dollars. And it may well get worse.

Sanctions

The Sullivan letter, the Overstock case before Judge Robinson, and all the other 1,000+ cases involving AI hallucinations raises a serious issue for lawyers and the Bar.

One thing to note is the scale of monetary penalties imposed upon lawyers. There appears to be a pattern of courts awarding higher penalties to senior lawyers than to juniors. If this pattern continues this means that senior lawyers, particularly supervising lawyers as identified in Rule 5.1 may bear increased liability.

Conclusion

There are almost always silver linings even in the darkest cloud. In this case, the silver lining may well be that there is increasing need for lawyers with knowledge of legal ethics, AI technologies, and litigation to serve as defense lawyers for other lawyers who have fallen into the AI hallucination trap.