Ethical Issues in Patent Litigation: AI Usage, Litigation Funding, and Pretexting

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Speakers

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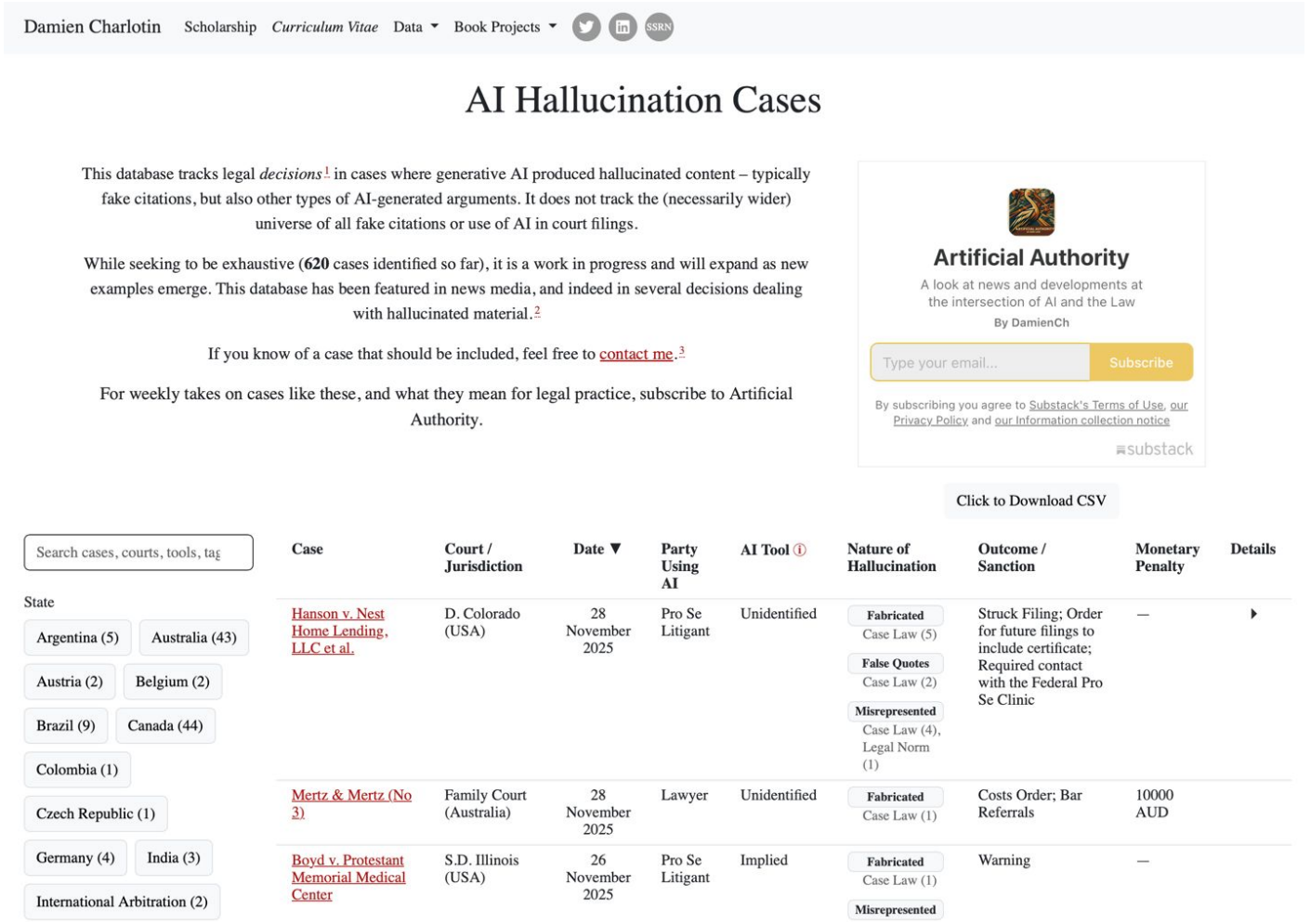
Possible Uses of AI Tools in Law Practice (Risk Continuum)

- Preliminary or background research
- Drafting initial documents
- Legal analysis
- Providing legal advice
- Preparation of court filings
- Drafting opening statement or closing argument

Damien Charlotin, AI Hallucination Cases

- 620 Cases Worldwide
- 416 in the United States



Damien Charlotin Scholarship *Curriculum Vitae* Data Book Projects

AI Hallucination Cases

This database tracks legal *decisions*[1] in cases where generative AI produced hallucinated content – typically fake citations, but also other types of AI-generated arguments. It does not track the (necessarily wider) universe of all fake citations or use of AI in court filings.

While seeking to be exhaustive (**620** cases identified so far), it is a work in progress and will expand as new examples emerge. This database has been featured in news media, and indeed in several decisions dealing with hallucinated material.[2]

If you know of a case that should be included, feel free to contact me.[3]

For weekly takes on cases like these, and what they mean for legal practice, subscribe to Artificial Authority.

Artificial Authority

A look at news and developments at the intersection of AI and the Law

By DamienCh

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Search cases, courts, tools, tag

State

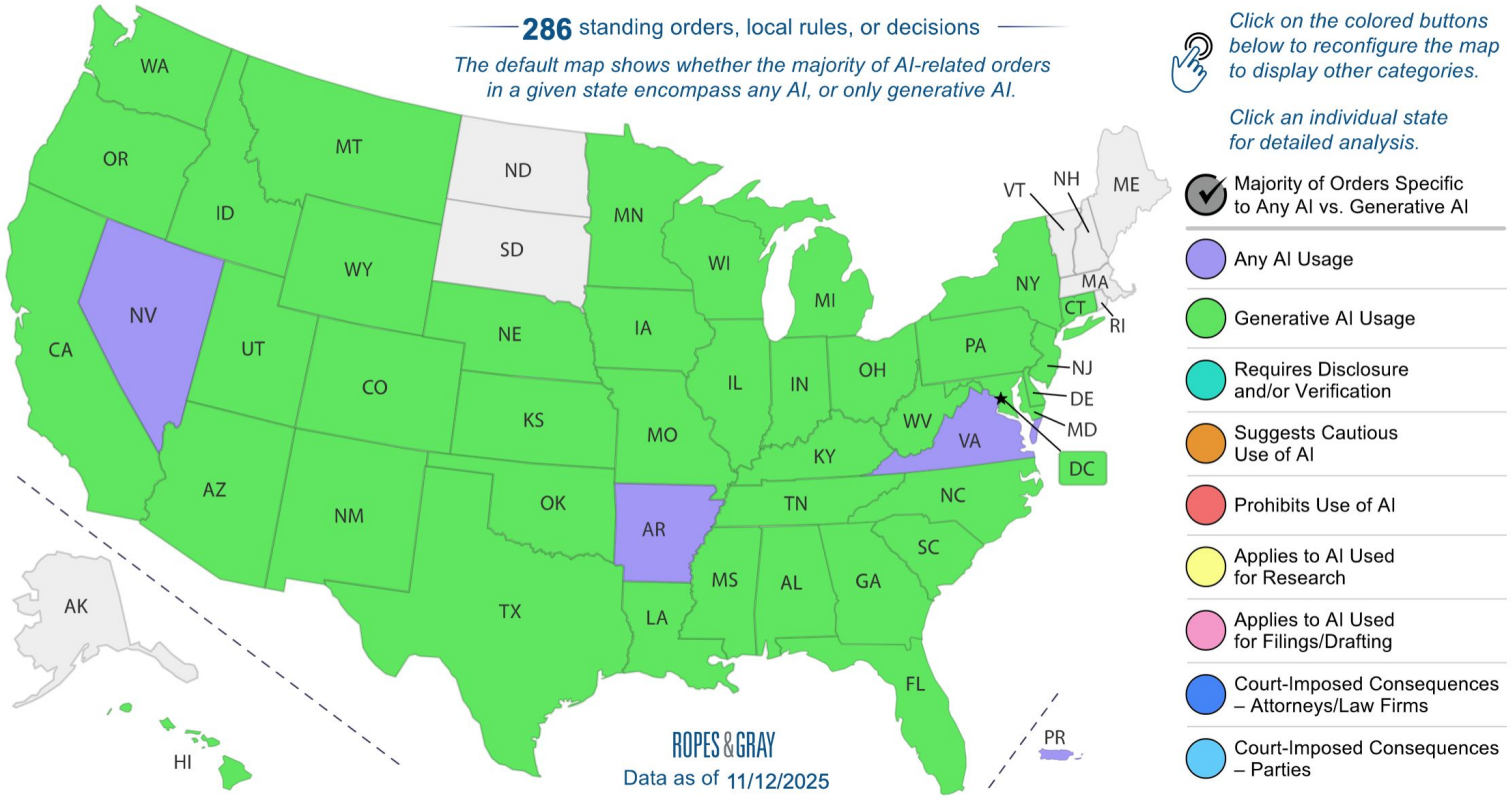
Argentina (5) Australia (43) Austria (2) Belgium (2) Brazil (9) Canada (44) Colombia (1) Czech Republic (1) Germany (4) India (3) International Arbitration (2)

Case	Court / Jurisdiction	Date ▼	Party Using AI	AI Tool	Nature of Hallucination	Outcome / Sanction	Monetary Penalty	Details
Hanson v. Nest Home Lending, LLC et al.	D. Colorado (USA)	28 November 2025	Pro Se Litigant	Unidentified	Fabricated Case Law (5); False Quotes Case Law (2); Misrepresented Case Law (4), Legal Norm (1)	Struck Filing; Order for future filings to include certificate; Required contact with the Federal Pro Se Clinic	—	
Mertz & Mertz (No 3)	Family Court (Australia)	28 November 2025	Lawyer	Unidentified	Fabricated Case Law (1)	Costs Order; Bar Referrals	10000 AUD	
Boyd v. Protestant Memorial Medical Center	S.D. Illinois (USA)	26 November 2025	Pro Se Litigant	Implied	Fabricated Case Law (1); Misrepresented	Warning	—	

https://www.damiencharlotin.com/hallucinations/

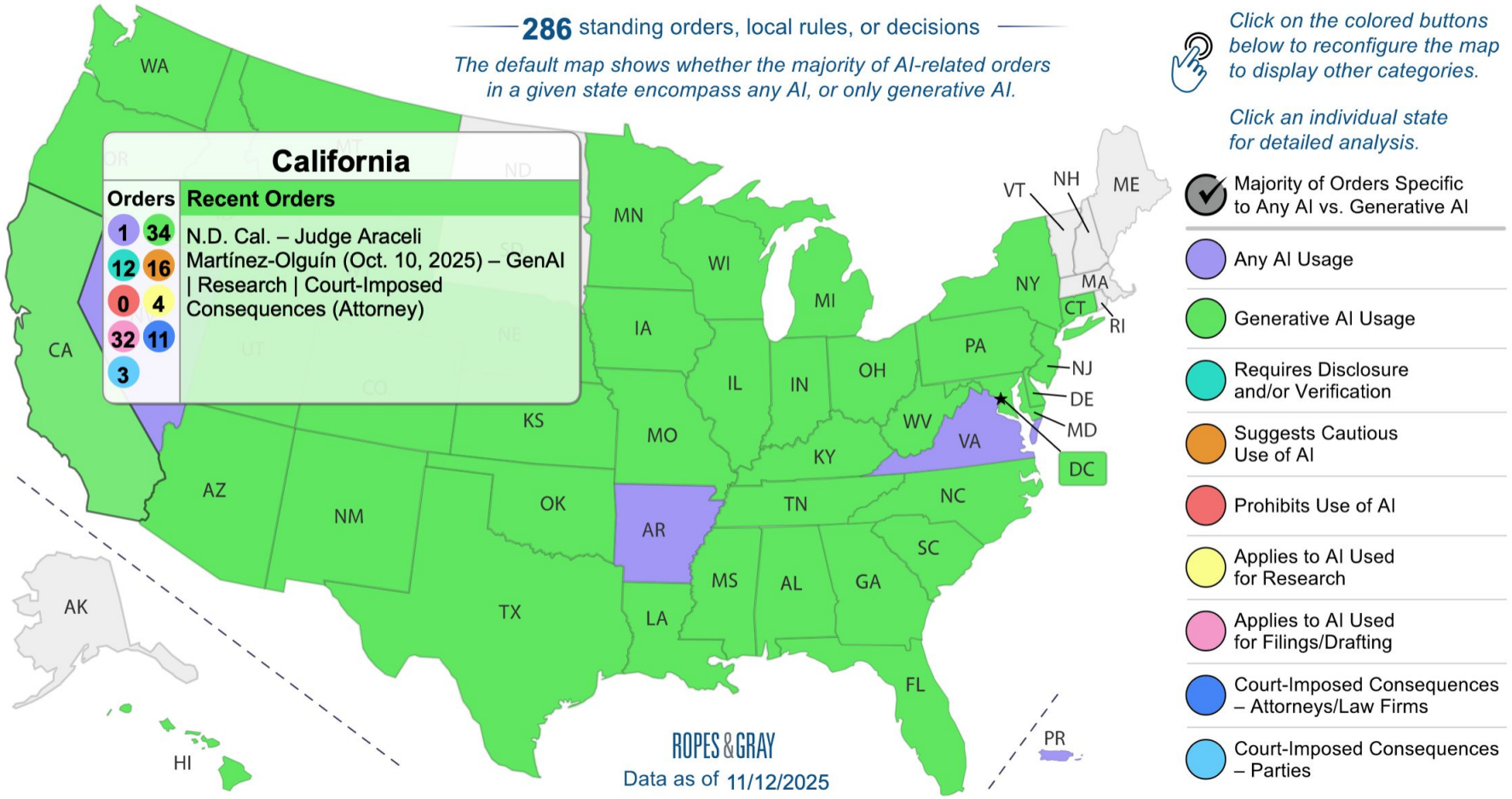
Ropes & Gray: Standing Orders, Local Rules, and Decisions on the Use of AI

Standing Orders and Local Rules on the Use of AI



https://www.ropesgray.com/en/sites/artificial-intelligence-court-order-tracker

Ropes & Gray: Standing Orders, Local Rules, and Decisions on the Use of AI



https://www.ropesgray.com/en/sites/artificial-intelligence-court-order-tracker

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Possible Issues Presented by Use of AI Tools in Law Practice

- Confidentiality
- Accuracy
- IP Infringement
- Disclosure & Consent

Risk of Bad Outcomes

- Losing the substantive issue
- Discipline
- Disqualification
- Fees
- Publicity

CRPC Rule 1.1 Competence

1. A lawyer shall not intentionally, recklessly, with gross negligence, or repeatedly fail to perform legal services with competence.

2. For purposes of this rule, "competence" in any legal service shall mean to apply the (i) learning and skill, and (ii) mental, emotional, and physical ability reasonably* necessary for the performance of such service.

Comments

[1] The duties set forth in this rule include the duty to keep abreast of the changes in the law and its practice, including the benefits and risks associated with relevant technology.

ABA Rule 1.6: Confidentiality of Information

- (a) Informed consent for disclosure required, or authorization for disclosure is implied
- (c) Reasonable efforts required to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client

Confidentiality of Information

- Ethics opinions require that even when anonymizing information, lawyers must not share sufficient information that can be traced back to identify the client or the matter. See, e.g., WI EF-17-02, LA Cty Ethics Op. 529.
- Information becomes part of the database of information used by others.
- Internal systems may avoid this problem, but are expensive
- Generative AI systems are hackable, and the security of the system implicates RPC 1.6(c)

CRPC Rule 2.1: Advisor

In representing a client, a lawyer shall exercise independent professional judgment and render candid advice.

[2] This rule does not preclude a lawyer who renders advice from referring to considerations other than the law, such as moral, economic, social and political factors that may be relevant to the client's situation.

Hypo: ChatGPT-Assisted Brief

- Attorney prepares a brief using standard resources: documents produced in the case, case law researched on Westlaw, statutory and regulatory references available on government websites, etc.
- Before sending the brief to the client for review, Attorney provides a copy of the brief to ChatGPT for review. Attorney reviews ChatGPT's feedback and revises one section to address a point raised.
- The client approves the brief, and Attorney files the brief with the court.
- *Did Attorney owe duty to **client** to disclose use of ChatGPT?*

CRPC 1.4: Communication with Clients

(a) A lawyer shall: …

(2) reasonably consult with the client about the means by which the client's objectives are to be accomplished; …

(3) keep the client reasonably informed about significant developments relating to the representation; …

Communication Requirement

- Duty to communicate likely tied to level of risk involved, and possible consequence for client, among other factors
- Distinction in obligation depending on how attorney uses generative AI?
  - Research v. drafting v. verifying v. generating feedback

Hypo: ChatGPT-Assisted Brief

- Attorney prepares a brief using standard resources: documents produced in the case, case law researched on Westlaw, statutory and regulatory references available on government websites, etc.
- Before sending the brief to the client for review, Attorney provides a copy of the brief to ChatGPT for review. Attorney reviews ChatGPT's feedback and revises one section to address a point raised.
- The client approves the brief, and Attorney files the brief with the court.
- *Did Attorney owe duty to **the court** to disclose use of ChatGPT?*

Check Court Rules and Standing Orders

- Certain courts have imposed attestation requirements that no portion of any filing was drafted by generative AI, or that any portion that was so drafted was checked for accuracy by a human using traditional databases.
- E.g., Judge Matthew J. Kacsmaryk, USDC N.D. Texas

Judge Matthew J. Kacsmaryk (N.D. Tex.)

"While attorneys swear an oath to set aside their personal prejudices, biases, and beliefs to faithfully uphold the law and represent their clients, generative artificial intelligence is the product of programming devised by humans who did not have to swear such an oath. As such, these systems hold no allegiance to any client, the rule of law, or the laws and Constitution of the United States (or, as addressed above, the truth). Unbound by any sense of duty, honor, or justice, such programs act according to computer code rather than conviction, based on programming rather than principle."

https://www.txnd.uscourts.gov/judge/judge-matthew-kacsmaryk)

Judge Michael M. Baylson (E.D. Pa.)

"If any attorney for a party, or a pro se party, has used Artificial Intelligence ("AI") in the preparation of any complaint, answer, motion, brief, or other paper, filed with the Court, and assigned to Judge Michael M. Baylson, **MUST**, in a clear and plain factual statement, disclose that AI has been used in any way in the preparation of the filing, and **CERTIFY**, that each and every citation to the law or the record in the paper, has been verified as accurate."

https://www.paed.uscourts.gov/sites/paed/files/documents/procedures/Standing%20Order%20Re%20Artificial%20Intelligence%206.6.pdf

Magistrate Judge Peter H. Kang (N.D. Cal.)

- "The Court recognizes that generative AI, AI tools, and the applications using such technology are evolving areas… Therefore, these provisions are to be reasonably construed as these AI tools develop further. . ."
  - "Any brief, pleading, or other document submitted to the Court the text of which was created or drafted with any use of an AI tool shall be identified as such in its title or pleading caption, in a table preceding the body text of such brief or pleading, or by a separate Notice filed contemporaneously with the brief, pleading, or document."
  - Specific identification of AI-generated evidence
  - Requires maintaining records of all queries

https://cand.uscourts.gov/sites/default/files/standing-orders/PHK-Civil-Standing-Order_2025.7.16.pdf

CRPC Rule 3.3: Candor Toward the Tribunal

A lawyer shall not:

1. knowingly* 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;

What could possibly go wrong?
Mata v. Avianca

- Attorney filed brief generated by ChatGPT prepared by another lawyer in the firm
- Brief contained inaccuracies including cites to nonexistent case law
- Attorney compounded that error by not admitting use, making misrepresentations to court, and not withdrawing brief
- Attorney attached copies of "decisions" fabricated by ChatGPT

Mata v. Avianca, Inc., 678 F. Supp. 3d 443, 448-49, 453, 457-59 (S.D.N.Y. 2023)

What could possibly go wrong? *Mata* cont.

- Attorney asked ChatGPT if the cases cited were "real"; ChatGPT said yes
- In decision, judge analyzed three of the "cases" cited and opined as to why each should have raised suspicion:
  - "Gibberish" legal analysis
  - Internally inconsistent procedural history
  - Abrupt ending without a conclusion
  - Sentence fragments
  - Case citing itself as precedent

Mata v. Avianca, Inc., 678 F. Supp. 3d 443, 453-56, 458 (S.D.N.Y. 2023)

What could possibly go wrong?
Ex parte Lee

- Application for release on bail pending trial, denied
- Appeal filed
- Argument section of appeal brief cited five cases; three published
- None of the three exist in SW Reporter
- "Citations" turn out to be pincites to other, irrelevant cases
- Two of those are from Missouri

Ex Parte Lee, 673 S.W.3d 755, 756-57 (Tex. App. July 19, 2023).

What could possibly go wrong? *Lee* cont.

- "[I]t appears that at least the 'Argument' portion of the brief may have been prepared by … (AI). * * * Because we have no information regarding why the briefing is illogical…we resist the temptation to issue a show cause order as [*Mata*] did…or report the attorney to the State Bar of Texas for a potential investigation for a violation of the State Bar Rules."

Ex Parte Lee, 673 S.W.3d 755, n.2 (Tex. App. July 19, 2023).

What could possibly go wrong? *Johnson v. Dunn*

- Johnson was in jail
- Dunn, the Commission of the Alabama Dept. of Corrections, wanted to depose him.
- Parties disputed when this should occur.
- Dunn's attorneys filed a motion with fabricated citations.
- Court issues show-cause order.

Johnson v. Dunn, 792 F. Supp. 3d 1241, 1246-48 (N.D. Ala. 2025)

What could possibly go wrong? *Johnson* cont.

- "The court must determine an appropriate sanction. 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."

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

What could possibly go wrong? *Johnson* cont.

- "the court **PUBLICLY REPRIMANDS** Mr. Reeves, Mr. Cranford, and Mr. Lunsford for making false statements to the court; **ORDERS** publication of this order to effectuate that reprimand; **DISQUALIFIES** them from further participation in this case; and **REFERS** this matter to the Alabama State Bar and other applicable licensing authorities"

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

What could possibly go wrong? *Kohls v. Ellison*

- Minn. Stat. Ann. § 609.771: "A person who disseminates a deep fake or enters into a contract or other agreement to disseminate a deep fake is guilty of a crime and may be sentenced [under certain conditions]"
- Plaintiffs challenge the law as violating the First Amendment
- Minnesota Attorney General Ellison submits an expert declaration from Jeff Hancock, Professor of Communication at Stanford University and Director of the Stanford Social Media Lab

What could possibly go wrong? *Kohls* cont.

- Professor Hancock "admitted that his declaration inadvertently included citations to two non-existent academic articles, and incorrectly cited the authors of a third article. . . . These errors apparently originated from Professor Hancock's use of GPT-4o—a generative AI tool—in drafting his declaration."
- Ellison sought leave to file an amended declaration.

No. 24-cv-3754, 2025 WL 66514 at *1 (D. Minn. Jan. 10, 2025)

What could possibly go wrong? *Kohls* cont.

- Court denies Ellison's request and excludes Hancock's testimony
- "The irony. Professor Hancock, a credentialed expert on the dangers of AI and misinformation, has fallen victim to the siren call of relying too heavily on AI—in a case that revolves around the dangers of AI, no less."
- "Professor Hancock's citation to fake, AI-generated sources in his declaration—even with his helpful, thorough, and plausible explanation . . . —shatters his credibility with this Court."

No. 24-cv-3754, 2025 WL 66514 at *1, *3, *4 (D. Minn. Jan. 10, 2025)

What could possibly go wrong? *Noland v. Land of the Free*

- "[N]early all of the legal quotations in plaintiff's opening brief, and many of the quotations in plaintiff's reply brief, are fabricated."
- "[M]any of the cases plaintiff cites do not discuss the topics for which they are cited, and a few of the cases do not exist at all."
- Attorney "wrote initial drafts of the briefs, 'enhanced' the briefs with ChatGPT, and then ran the 'enhanced' briefs through other AI platforms to check for errors."
- Counsel did not read the briefs before filing.

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Noland v. Land of the Free, 114 Cal. App. 5th 426, 430, 441 (2025)

What could possibly go wrong? *Noland* cont.

- "[M]any courts have confronted briefs populated with fraudulent legal citations resulting from attorneys' reliance on generative AI."
- "We agree with the cases cited above that relying on fabricated legal authority is sanctionable."
- "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."

What could possibly go wrong? *Noland* cont.

- "[A]lthough 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.'"
- The attorney "is directed to pay $10,000 in sanctions, payable to the clerk of this court, no later than 30 days after the remittitur is filed."
- "[T]he clerk of the court is ordered to forward a copy of this opinion to the State Bar upon return of the remittitur. . . ."

Noland v. Land of the Free, 114 Cal. App. 5th 426, 446–49 (2025)

What could possibly go wrong? *Buchanan v. Vuori*

- Buchanan's attorney filed a motion for preliminary approval of a class action settlement relying on fabricated quotations and cases
- "Of particular concern to courts today is the rise in non-existent cases and quotations hallucinated by artificial intelligence tools."
- Rule 11 sanctions:
  - Motions are struck without leave to refile;
  - $250;
  - Referral to Standing Committee on Professional Conduct;
  - Attorney is not adequate class counsel

Buchanan v. Vuori, Inc., No. 23-cv-01121-NC, ECF No. 96 at 1, 3, 8 (N.D. Cal. Nov. 20, 2025)

Are queries protected? *Tremblay v. OpenAI*

- Plaintiffs allege that OpenAI is liable for copyright infringement
- Plaintiffs attached to their Complaint an Exhibit that has prompts used to ask ChatGPT to summarize in detail various parts of Plaintiffs' books, as well as the outputs produced by ChatGPT
- Magistrate Judge grants OpenAI's RFP of prompts and outputs that do not support Plaintiffs' claims
- District court sets order aside because prompts are opinion work product

Tremblay v OpenAI, 23-cv-03223-AMO, 2024 WL 3748003 at *1, *3 (N.D. Cal. Aug. 8, 2024)

Are queries protected? *Concord v. Anthropic*

- Plaintiffs allege that Anthropic is liable for copyright infringement relying on certain prompts and outputs
- Anthropic moves for discovery of prompts and outputs that were not relied upon, arguing that Plaintiffs waived privilege by alleging "ease of use" and "massive use"
- Court denies request because, "at this early stage, it remains unclear what evidence Publishers will rely on to prove the 'ease of use' or 'massive use' allegations."

Concord v. Anthropic, 2025 WL 1482734, at *2–3 (N.D. Cal. May 23, 2025)

Hypo: Law Firm Chatbot

- Law firm wants to get in front of the AI revolution by creating its own in-house chatbot that lawyers and staff may use to generate drafts of standard documents including written discovery, motions to compel, employment contracts, nondisclosure agreements, and settlement agreements.

Question: Which of the following is most correct?

A) Law firm can train chatbot on firm's entire document management database.

B) Law firm can make chatbot available for clients of the firm.

C) Law firm should do extensive quality control review of chatbot before use.

D) Law firm's use of chatbot may constitute the unauthorized practice of law.

Answers

- Unauthorized practice of law concerns (Rule 5.5)
- Client confidentiality?
- Competence considerations
- Client disclosure?
- Duty to supervise

CRPC Rule 5.3: Responsibilities Regarding Nonlawyer Assistance

(b) a lawyer having direct supervisory authority over the nonlawyer, whether or not an employee of the same law firm,* shall make reasonable* efforts to ensure that the person's* conduct is compatible with the professional obligations of the lawyer;

Hypo: AI Vendors

- In-house attorney at a SaaS company wants to outsource Data Processing Agreement (DPA) review to a third party. Although the company prefers to negotiate on its template DPA, customers frequently (90%) require the company to negotiate their template.
- The attorney has found a third party that offers DPA review services, using an algorithm to review DPAs according to a GDPR model DPA and identify "problematic" provisions. Once identified, the third party uses contract reviewers to negotiate the "problematic" provisions.
- *Can in-house attorney ethically use the third-party review service?*

Answer

- Unauthorized practice of law concerns (Rule 5.5)
- Client confidentiality?
- Competence considerations
- Client disclosure?
- Duty to supervise

CRPC Rule 5.5: Unauthorized Practice of Law; Multijurisdictional Practice of Law

(a) A lawyer admitted to practice law in California shall not:

1. practice law in a jurisdiction where to do so would be in violation of regulations of the profession in that jurisdiction; or
2. knowingly* assist a person* in the unauthorized practice of law in that jurisdiction.

CRPC Rule 5.1: Responsibilities of Managerial and Supervisory Lawyers

(a) A lawyer who individually or together with other lawyers possesses 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* comply with these rules and the State Bar Act.

(b) A lawyer having direct supervisory authority over another lawyer, whether or not a member or employee of the same law firm,* shall make reasonable* efforts to ensure that the other lawyer complies with these rules and the State Bar Act.

Hypo: AI in Pro Bono Legal Services

- A legal services clinic helps pro se debtors complete state-provided, check-box forms to assert certain defenses in collection actions.
- The clinic is overwhelmed and wants to adopt an AI solution that would interact with the debtors online, fill out the forms, and prepare them for filing.
- The debtor would not be charged for this service. The debtor would never interact with a legal services provider.
- *Would it be ethical for the service to use such AI tools?*

Factors in Determining Ethical Use of AI Tools

- Is this the unauthorized practice of law? (Rule 5.5)
- Does the tool provide accurate assistance? (Rule 5.3)
- Are the clients informed?
- Can the clients meaningfully consent to use this tool?

US Patent Office Guidance

- [T]here is no prohibition against using these computer tools in drafting documents for submission to the USPTO. Nor is there a general obligation to disclose to the USPTO the use of such tools.
- [T]hose involved in patent proceedings have a duty to disclose all information—including on the use of AI tools by inventors, parties, and practitioners—that is material to patentability.
- [T]he signature requirement and corresponding certifications ensure that documents drafted with the assistance of AI systems have been reviewed by a person and that person believes everything in the document is true and not submitted for an improper purpose.

https://www.federalregister.gov/documents/2024/04/11/2024-07629/guidance-on-use-of-artificial-intelligence-based-tools-in-practice-before-the-united-states-patent

US Patent Office Guidance

- [T]hose using AI systems in practicing before the USPTO, such as drafting applications, should be cognizant of the risks and take steps to ensure confidential information is not divulged.
- When using AI tools, practitioners must ensure they are not violating the duties owed to clients as highlighted in Section III(A). For example, practitioners must have the requisite legal, scientific, and technical knowledge to reasonably represent their client.
- Accordingly, any paper submitted to the USPTO must be reviewed by the party or parties presenting the paper. Those parties are responsible for the contents therein. Simply relying on the accuracy of an AI tool is not a reasonable inquiry.

https://www.federalregister.gov/documents/2024/04/11/2024-07629/guidance-on-use-of-artificial-intelligence-based-tools-in-practice-before-the-united-states-patent

Law Firm Generative AI Policy

Possible provisions:

- Whether to allow use of generative AI for any purpose
- By whom (Attorneys? Staff?)
- Identify tasks only humans can perform
- Limitations on use (e.g., ok for preliminary research, not for drafting)
- Protections for client confidential information (no inadvertent or purposeful disclosure)

Policy Cont.

- Notification process within the firm for any misuse
- Rules re: client disclosure
- Compliance requirements
- Training: prompt engineering, training to ensure competent use
- Policy modifications over time and as technology develops

Use of AI in Chambers

- June 30, 2025 Order – Using ChatGPT, a law school intern included in an order a case quotation that did not exist
  - Letter from Judge Neals regarding the incident summarizing that "a law school intern, used CHATGPT to perform legal research in connection with the *CorMedix* decision. In doing so, the intern acted without authorization, without disclosure, and contrary to not only chambers policy but also the relevant law school policy."

https://news.bloomberglaw.com/business-and-practice/judges-called-out-for-nonfactual-rulings-admit-to-use-of-ai?source=newsletter&item=headline&region=featured-story&login=blaw
https://www.grassley.senate.gov/imo/media/doc/wingate_to_grassley_re_judiciary_use_of_ai.pdf

Use of AI in Chambers

- July 20, 2025 TRO – Using the AI tool Perplexity, a law clerk created a temporary restraining order which referred to parties, allegations, and quotes unconnected to the case
  - Letter from Judge Wingate regarding the incident summarizing that "a law clerk utilized a generative artificial intelligence ('GenAI') tool known as Perplexity strictly as a foundational drafting assistant to synthesize publicly available information on the docket."

https://news.bloomberglaw.com/business-and-practice/judges-called-out-for-nonfactual-rulings-admit-to-use-of-ai?source=newsletter&item=headline&region=featured-story&login=blaw
https://www.grassley.senate.gov/imo/media/doc/wingate_to_grassley_re_judiciary_use_of_ai.pdf

Judges Using AI to Enhance Their Analysis
Ross v. United States

- Ross left her dog in her car parked in the shade of a tree, with the windows lowered a few inches, for over an hour.
- She was convicted of animal cruelty by lower court because, in part, it's "common sense" that leaving the dog like that is dangerous.
- Majority reverses because "common sense" isn't clear
- Concurrence and dissent discuss use of AI.

Ross v. United States, 331 A.3d 220, 222, 229–38 (D.C. Ct. App. Feb. 20, 2025)

Judges using AI
Ross cont.

- Judge Deahl dissenting:
  - "I have asked ChatGPT, "'Is it harmful to leave a dog in a car, with the windows down a few inches, for an hour and twenty minutes when it's 98 degrees outside?' Its response, with my emphasis added, follows: *Yes, leaving a dog in a car under these conditions is very harmful*. . . .
- "If I were to reframe ChatGPT's answers in terms of the relevant legal standards, its first answer reads to me as something like, 'Yes, beyond a reasonable doubt, leaving a dog in a car for an hour and twenty minutes in 98-degree temperature is very likely to cause it harm. . . .'"

Ross v. United States, 331 A.3d 220, 236–37 (D.C. Ct. App. Feb. 20, 2025)

Judges using AI
Ross cont.

- Judge Howard concurring: Judges should be careful using LLMs
  - "[W]e must always keep in mind the limits of different AI tools in how and when we use them, particularly with regard to security, privacy, reliability, and bias, to ensure ethical use."
  - "[A]n AI system can be susceptible to bias at multiple points in its execution."
  - A judge using AI risks revealing the judge's involvement on the panel before information is public
  - Potential for leaks

Ross v. United States, 331 A.3d 220, 230–31 (D.C. Ct. App. Feb. 20, 2025)

Judges using AI to enhance their analysis
Snell v. United Specialty Ins. Co.

- Snell installed a ground-level trampoline
- A girl was injured jumping on the trampoline and sued Snell
- Snell's insurance carrier, United Specialty, refused to defend him
- The insurance contract covered "landscaping"
- District court: the "common, everyday meaning of the word" does not include trampoline installation
- Majority does not reach the issue

Snell v. United Specialty Ins. Co., 102 F.4th 1208, 1211–13, 1225 (11th Cir. 2024)

Judges using AI to enhance their analysis *Snell* cont.

- Judge Newsom, concurring
  - "Those, like me, who believe that 'ordinary meaning' is *the* foundational rule for the evaluation of legal texts should consider—*consider*—whether and how AI-powered large language models like OpenAI's ChatGPT, Google's Gemini, and Anthropic's Claude might—*might*—inform the interpretive analysis."
  - "[I]n what might have been a mistake—more on that later—we went ahead and asked it the ultimate question: 'Is installing an in-ground trampoline "landscaping"'? ChatGPT responded as follows: Yes, installing an in-ground trampoline can be considered a part of landscaping. . . ."

Snell v. United Specialty Ins. Co., 102 F.4th 1208, 1221, 1224 (11th Cir. 2024) (Newsom, J., concurring)

Judges using AI to enhance their analysis *Snell* cont.

- Judge Newsom, concurring
  - "Might LLMs be useful in the interpretation of legal texts? Having initially thought the idea positively ludicrous, I think I'm now a pretty firm 'maybe.'"
  - Pros
    - "1. *LLMs train on ordinary-language inputs.*"
    - "2. *LLMs can 'understand' context.*"
    - "3. *LLMs are accessible.*"
    - "4. *LLM research is relatively transparent.*"
    - "5. *LLMs hold advantages over other empirical interpretive methods.*"

Snell v. United Specialty Ins. Co., 102 F.4th 1208, 1225–30 (11th Cir. 2024) (Newsom, J., concurring)

Judges using AI to enhance their analysis *Snell* cont.

- Judge Newsom, concurring
  - "Might LLMs be useful in the interpretation of legal texts? Having initially thought the idea positively ludicrous, I think I'm now a pretty firm 'maybe.'"
  - Cons
    - "1. *LLMs can 'hallucinate.'*"
    - "2. *LLMs don't capture offline speech, and thus might not fully account for underrepresented populations' usages.*"
    - " 3. *Lawyers, judges, and would-be litigants might try to manipulate LLMs.*"
    - "4. *Reliance on LLMs will lead us into dystopia.*"

Snell v. United Specialty Ins. Co., 102 F.4th 1208, 1225, 1230–32 (11th Cir. 2024) (Newsom, J., concurring)

California Rules of Court: Rule 10.430(d)

Each court's generative AI use policy must:

(1) Prohibit the entry of confidential, personal identifying, or other nonpublic information into a public generative AI system.

(2) Prohibit the use of generative AI to unlawfully discriminate against or disparately impact individuals or communities based on age, ancestry, color, ethnicity, gender, gender expression, gender identity, genetic information, marital status, medical condition, military or veteran status, national origin, physical or mental disability, political affiliation, race, religion, sex, sexual orientation, socioeconomic status, and any other classification protected by federal or state law.

California Rules of Court: Rule 10.430(d)

(3) Require court staff and judicial officers … to take reasonable steps to verify that the material is accurate, and to take reasonable steps to correct any erroneous or hallucinated output in any material used.
(4) Require court staff and judicial officers … to take reasonable steps to remove any biased, offensive, or harmful content in any material used.
(5) Require disclosure of the use of or reliance on generative AI if the final version of a written, visual, or audio work provided to the public consists entirely of generative AI outputs. Disclosure must be made through a clear and understandable label, watermark, or statement that describes how generative AI was used and identifies the system used.
(6) Require compliance with all applicable laws, court policies, and ethical and professional conduct rules, codes, and policies when using generative AI.

Litigation Funding: Litigation Transparency Act of 2025

- Imposes duty to: "(1) disclose in writing to the court and all other named parties to the civil action the identity of any person (other than counsel of record) that has a right to receive any payment or thing of value that is contingent on the outcome of the civil action or a group of actions of which the civil action is a part; and
- (2) produce to the court and to each other named party to the civil action, for inspection and copying, any agreement creating a contingent right referred to in paragraph (1), including any ancillary agreement or document, except as otherwise stipulated or ordered by the court."

Recent Activity on the Transparency Act

Date	All Actions
11/19/2025	Committee Consideration and Mark-up Session Held
11/18/2025	Committee Consideration and Mark-up Session Held
02/07/2025	Referred to the House Committee on the Judiciary. Action By: House of Representatives
02/07/2025	Introduced in House Action By: House of Representatives

The Problem

- "I just know they're infringing my patent. But I need to:
  - get a look at their machine (or)
  - get a sample of their product (or)
  - ask one of their salespeople just a few questions

to be sure."

- "And they don't want to talk to me – their competitor – or you (my lawyer) about any of that!"

The Solution

- Send in the investigators!
- Create a potential customer
  - As an LLC
  - With a website
  - And "employees" who want to evaluate the product
- Get the goods
  - Visit a showroom, chat with salespeople
  - Drop by a booth at a trade show and pick up a sample
  - Schedule an evaluation meeting

What's Stopping You?

- **Rule 4.1 Truthfulness in Statements to Others**

In the course of representing a client a lawyer shall not knowingly:*

(a) make a false statement of material fact or law to a third person;* ....

What's Stopping You?

- **Rule 4.2 Communication with a Represented Person***

(a) In representing a client, a lawyer shall not communicate directly or indirectly about the subject of the representation with a person* the lawyer knows* to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer.

(b) In the case of a represented corporation, partnership, association, or other private or governmental organization, this rule prohibits communications with:

(1) A current officer, director, partner,*or managing agent of the organization; or

(2) A current employee, member, agent, or other constituent of the organization, if the subject of the communication is any act or omission of such person* in connection with the matter which may be binding upon or imputed to the organization for purposes of civil or criminal liability.

What's Stopping You?

- **Rule 5.3 Responsibilities Regarding Nonlawyer Assistants**

(c) a lawyer shall be responsible for conduct of such a person* that would be a violation of these rules or the State Bar Act if engaged in by a lawyer if:

(1) the lawyer orders or, with knowledge of the relevant facts and of the specific conduct, ratifies the conduct involved; or

(2) the lawyer, individually or together with other lawyers, possesses managerial authority in the law firm* in which the person* is employed, or has direct supervisory authority over the person,* whether or not an employee of the same law firm,* and knows* of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable* remedial action.

What's Stopping You?

- **Rule 8.4 Misconduct**

It is professional misconduct for a lawyer to:

* * *

(c) engage in conduct involving dishonesty, fraud,* deceit, or reckless or intentional misrepresentation;

Comment

[5] Paragraph (c) does not apply where a lawyer advises clients or others about, or supervises, lawful covert activity in the investigation of violations of civil or criminal law or constitutional rights, provided the lawyer's conduct is otherwise in compliance with these rules and the State Bar Act.

And the Cases Say: No Problem!

Impossible Foods v. Motif, 675 F. Supp.3d 448, 451, 454 (D. Del. 2023) (Bryson, J.)

- Plaintiff's counsel hired investigators who created a phony LLC, posed as employees of a potential B2B customer, and sought information and samples from defendant at trade shows and in follow-up discussions.
- "The weight of authority indicates that misrepresentations made solely as to identity or purpose do not rise to a violation of Rule 4.1 [barring false statements of fact] when the investigator is posing as a customer in the ordinary course of business."
    - Some authorities limit this to investigations of violations of civil rights or IP laws

And the Cases Say: No Problem!

Impossible Foods v. Motif, 675 F. Supp.3d 448, 456, 462 (D. Del. 2023) (Bryson, J.)

- Also relevant that investigators obtained only "information and material that ordinarily would be available to legitimate customers" vs "highly sensitive information … not otherwise … revealed to any outsider."
- No violation of Rule 4.2 (communication with represented party): the defendant's employees were low-level and investigators sought primarily samples, not testimonial admissions.

And the Cases Say: Problem!

Dareltech v Xiaomi, 2019 WL 10966202 at *1-2, *4-5 (S.D.N.Y. April 11, 2019).

- Plaintiff's counsel and his PI used mobile phones to record (without disclosure) conversations with defendant's employee and contractors at a trade show, and later cited "admissions" obtained from those conversations.
- Violations of Rule 4.2 (communication with represented party); Rule 4.3 (communication with unrepresented party without adequately clearing up confusion); Rule 8.4 (misrepresentation).
- Evidence suppressed but DQ denied.

And the Cases Say: Problem!

Site 2020 v. Superior Traffic, 2023 WL 4242715, at *2-4 (D. Mont. June 29, 2023) & 2023 WL 4060099, at *4, *15 (D. Mont. March 27, 2023)

- Plaintiff used a controlled subsidiary to set up a meeting at which Plaintiff's and subsidiary's personnel, some using assumed names, received (and recorded on a secretly installed camera) a product demonstration from defendant, samples of defendant's product, and engaged in a long conversation with defendant's senior executive about how it worked.
- No lawyers involved, so no discussion of ethical rules.
- But terminating sanctions issued based on inherent power and based on plaintiff's bad faith, deceptive, and prejudicial conduct.

The End