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With AI, hallucination crackdown just one thing for lawyers to worry about

Kris Olson (https://masslawyersweekly.com/author/kris/) // October 13, 2025 // **8 Minute Read**

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Judges are rapidly losing patience with attorneys who fail to catch fake case citations and other "hallucinations" that artificial intelligence tools are inserting into their court filings, the Office of Bar Counsel warned in a recent article posted to the Board of Bar Overseers' website (https://www.massbbo.org/Files?fileName=Two%20Years%20of%20Fake%20Cases%20and%20the%20Courts%20are%20Ratcheting%20u

Assistant Bar Counsel Heather L. LaVigne wrote in part to highlight that penalties for citing AI hallucinations may be ratcheting up. She pointed to the sanctions issued in July by U.S. District Court Judge Anna M. Manasco in Alabama in ***Johnson v. Dunn*** (https://masslawyersweekly.com/files/2025/10/johnson-v-dunn-sanctions.pdf), after three attorneys for the defendant, the former commissioner of the Alabama Department of Corrections, confirmed that fabricated citations to legal authorities that had been generated by ChatGPT had made their way into two motions they had filed.

Manasco wrote that fabricating legal authority "demands substantially greater accountability than the reprimands and modest fines that have become common as courts confront this form of AI misuse."

She continued: "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."

Manasco disqualified the three lawyers from further participation in the case and publicly reprimanded them. She ordered that they provide a copy of her order to their clients, opposing counsel and presiding judge in every pending state or federal case in which they were counsel of record. To further the deterrent effect, Manasco also directed her clerk to submit her order for publication in the Federal Supplement.

However, Manasco spared the lawyers' firm, crediting the fact that it had commissioned an independent investigation after the plaintiff in the *Johnson* case brought the issue to light and then announced a firm-wide training and began to update its AI policies to incorporate the "lessons learned" from the incident.

In her BBO article, LaVigne pointed out that citing hallucinated cases is a "human problem" — and not a particularly new one. Lawyers have always had the obligation to check citations for accuracy and review their subordinates' work product.

"This is actually good news, because when we have human problems, we have human solutions," LaVigne wrote.

Lawyers who represent fellow members of the bar in malpractice and disciplinary cases say they believe that the word has pretty much gotten around by now about the sanctions that attorneys are courting by being cavalier about checking the work of AI chatbots, though it may take some time for the bar at large at gain a full understanding of how AI tools work and the types of errors to which they are prone.

But they also stressed that hallucinations are just one trap that attorneys can fall into with AI, even with tools that have been specifically designed to conduct legal research and developed to account for considerations unique to the practice of law.

Improving but still imperfect

A fundamental pitfall with "generic" AI programs like ChatGPT, Claude, Google Gemini or Microsoft Copilot that attorneys seem to have fallen prey to is that, if need be, the programs will pull "cases" (in some instan ACCEPT xistent ones) and make up analysis that does not withstand scrutiny

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“because their primary function is to make the user happy, not accuracy,” said Boston attorney Edward S. Cheng.

While the “i” in AI may stand for “intelligence,” what the chatbots are doing is not “thinking” in the human sense and are particularly ill-suited to legal work, according to Cheng.

“What it looks for, essentially, are patterns,” Cheng said. “It will see ‘the sun,’ and then it will see next to the word ‘sun’ ‘sunlight,’ and it’ll see the word ‘warm.’ The program has no conceptual idea of what warmth is or sunlight is, but it knows that statistically speaking, a proper sentence that we understand, if you see the word ‘sun,’ will include ‘warmth’ or ‘light’ in it somewhere, and by doing that it eventually creates sentences that make sense to us.”

That is different from reading cases, understanding what they mean, making analogies, drawing inferences, and realizing implications, Cheng added.

“This is a fundamental reason why [generative AI] has real problems doing the legal work that the lawyers are trying to get it to do, because it wasn’t designed to do it, and it just doesn’t sync the way people think,” Cheng said.

In response to the shortcomings of publicly available chatbots, legal publishers such as LexisNexis and Thomson Reuters have developed tools that purport to eliminate or avoid hallucinations by using such methods as “retrieval-augmented generation,” in which a user’s prompt is refined through a search of an external knowledge base, which then serves as the basis for the large language model’s response.

However, a study by Stanford researchers (**https://dho.stanford.edu/wp-content/uploads/Legal_RAG_Hallucinations.pdf**) published earlier this year in the Journal of Empirical Legal Studies found that such legal research tools still hallucinate between 17 and 33 percent of the time.

The challenge of devising a foolproof legal research tool has many wrinkles, according to the study’s authors.

For one, the tools still fail to find the most relevant sources available to address the user’s query, they say.

> ***Data privacy and maintaining client confidence is going to end up being the far more difficult and thorny ethical issue with respect to AI than hallucinated case cites.***
>
> ***— Michael J. Rossi, Boston***

“Part of the challenge is that retrieval itself often requires legal reasoning,” they write.

The AI tools are also prone to citing inapplicable authority — documents from the wrong jurisdiction, wrong statute, wrong court, or precedent that has been overruled, according to the study.

The tools did reduce “sycophancy,” in terms of identifying when a user’s query was based on a false premise, the study’s authors say.

But the systems still tended to make “elementary errors of reasoning and fact,” like describing statements of the defendant as the court’s holding in a case.

The study’s authors argue that what lawyers need is specific information about empirical risks and benefits of legal AI, which no legal AI company had provided as of the date of the study’s publication.

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“Thus, given the high rate of hallucinations that we uncover in this article, lawyers are faced with a very difficult choice: either verify by hand each and every proposition and citation produced by these tools (thereby undercutting the efficiency gains that AI is promised to provide), or risk using these tools without full information about their specific risks and benefits (thereby neglecting their core duties of competency and supervision),” they write.

The ways in which AI can help lawyers deliver efficient, high-end legal services to their clients in a cost-effective manner cannot be ignored, Boston attorney Joseph D. Lipchitz said.

“They’re useful tools, but in order for attorneys to understand how to best use them, they have to understand the technology, the limitations of that technology, and the parameters of that,” Lipchitz said.

Boston attorney Richard M. Zielinski said his firm has a committee that has been carefully vetting various AI tools for a while but has yet to give its full “good housekeeping seal of approval” to any of them, though it is making limited use of one such tool.

In terms of best practices, Lipchitz suggests setting clear expectations regarding which AI tools attorneys are permitted to use and which they are not and to hold people accountable to those expectations.

Lipchitz also recommended firms set up an AI working group made up of partners and staff members with technical expertise that will be responsible for reviewing and vetting the technology and explaining it to the broader practice group.

He added that before anyone in the firm is allowed to use an AI tool, they should undergo training both on the technical aspects of the tool and its limitations, and the ethics involved.

“That needs to take place before anybody can touch an AI tool, so everybody knows exactly what that tool can do, and the problems that can be created if it’s not used properly,” he said.

The next frontier

Boston attorney Alan D. Rose said his office recently experienced its first instance of receiving a brief with hallucinated case citations from a pro se opposing party. It occurred to him that the courts are not particularly well-equipped to handle misuse of AI by pro se parties.

An attorney who commits such an error might be subject to fees and costs under G.L.c. 231, §6F.

“Does a court have inherent power to sanction a pro se party that is using AI-generated cases?” Rose wondered. “I think that it probably does. But there’s going to be, for certain, a lot of litigation involving AI-generated cases.”

Where I see the greater risk is with clients, because clients are taking that communication that they would send to us as lawyers and putting it in these open models, so their issue is out there.

— Colin J. Zick, Boston

But among lawyers, Michael J. Rossi suspects that the wave of hallucinated case citations will soon begin to recede.

“I think at some point people will be embarrassed enough that that will be minimized,” the Boston lawyer said. “It’s such an easy fix. What we’re asking people to do, which is simply review your work or read a c ACCEPT ally not onerous.”

Moving forward, Rossi said his bigger concern is the issue of sharing privileged information with unknown third parties.

“Data privacy and maintaining client confidence is going to end up being the far more difficult and thorny ethical issue with respect to AI than hallucinated case cites,” he predicted.

Colin J. Zick of Boston, who sits on the New Hampshire Bar Committee on AI and the Practice of Law, said he worries less about attorneys feeding privileged client information into the large publicly available tools like ChatGPT and more that the clients will do it themselves.

“Where I see the greater risk is with clients, because clients are taking that communication that they would send to us as lawyers and putting it in these open models, so their issue is out there. Or they’re taking the advice they get from us and putting it in to analyze it, and then coming back to us with questions,” he said. “That’s, I think, right now, the weak link in the process.”

Clients need to be educated and counseled that they should not need to use AI in either analyzing their options or communicating with their attorneys, particularly when lawyers have access to tools that are both more sophisticated and produce better results while operating in a more secure “closed” environment, Zick said.

Zielinski said that, at a minimum, lawyers should not put any confidential information into searches unless they are certain that it is not going to be misused, which means reading the tool’s terms of use and privacy policy.

There is also a safer path an attorney who is skeptical of the tool’s terms and conditions could take, Zielinski added.

“Any query that you make has to be anonymized — no client names, no client confidential information, just pure legal questions. ‘What are the elements of a negligence case?’ That type of thing,” he said.

Billing disruption

Now that certain tasks that might have previously taken hours or days can be accomplished in just minutes with the help of AI, Zick said attorneys are being forced to grapple with what that does to an economic model built on billing on an hourly basis.

“I don’t think we’ve all figured that out yet,” he said.

Zielinski likens it to a mass tort lawyer he once represented in a bar disciplinary case.

The lawyer would spend an hour in court representing eight clients, but rather than dividing the billing for that hour among the eight clients, he fell into the practice of billing each for one hour of court time. The attorney ended up getting disciplined and was ordered to make restitution to the clients he had overcharged.

“I can see the same temptation among lots of lawyers here, saying it would have taken me eight hours to find that magic case, but AI did it in one hour,” Zielinski said.

That attorney might think, “I won’t charge the client the full eight hours. I’ll give them a discount; I’ll just charge them for four hours,” he said.

That would be a clear violation of the Rules of Professional Conduct, Zielinski said.

“But lawyers will do it, and sadly, they will get caught with their hand in the cookie jar,” he said.

Various state ethics commissions and bar organizations have taken slightly different views on whether an attorney’s intended use of AI must be disclosed in an engagement letter, Rossi said.

But attorneys are also passing on the cost of the subscription to the AI legal research tools they are using to their clients.

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“The bottom line is, the fee has to be reasonable,” he said. “Just because we can be more efficient doesn’t mean we can charge what we used to be able to charge when we didn’t have the ability to be as efficient.”

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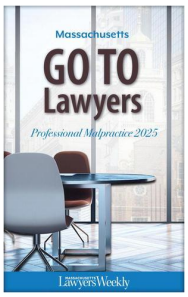

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