

TWO YEARS OF FAKE CASES AND THE COURTS ARE RATCHETING UP THE SANCTIONS

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In June 2023, the U.S. District Court for the Southern District of New York imposed the first-ever sanctions against attorneys for their improper use of generative AI in court pleadings in the *Mata v. Avianca, Inc.* case.¹ As most people in the legal community are now aware, the attorneys in that case submitted pleadings to the court that contained citations to nonexistent cases. The court found that the fake cases had been generated, or “hallucinated,” by a generative AI program that the attorneys had used to draft their pleadings, and it imposed monetary sanctions against the attorneys. For more information on this case, and AI in general, see Afton Pavletic, *The Wild West of Artificial Intelligence* (Jan. 2024).

In the two years since *Mata*, the American Bar Association (ABA),² state ethics authorities,³ and courts have issued guidance, opinions, and orders regarding the use of AI in the practice of law. In addition to the individual publications, legal information sites such as LawSites⁴ and Justia⁵ have made many of these resources easily accessible on their websites. Further, many bar associations, legal publications,⁶ and continuing legal education providers⁷ have provided guidance, training, and information on using AI ethically in various types of law practices.

¹ See *Mata v. Avianca, Inc.*, 678 F.Supp.3d 443 (S.D.N.Y. 2023) (opinion and order on sanctions).

² ABA Formal Opinion 512 - Generative Artificial Intelligence Tools (2024), available at [The ABA's Website](https://www.americanbar.org/aba-publications/official-statements/2024-01-01-formal-opinion-512-generative-artificial-intelligence-tools/).

³ See, e.g., [Florida Proposed Advisory Opinion 24-1](#); [California, Practical Guidance for the Use of Generative AI in the Practice of Law \(2023\)](#); [2024 NC Formal Ethics Op. 1](#).

⁴ See, e.g., Robert Ambrogio, [A Compendium of Legal Ethics Opinions on Gen AI \(As Compiled by - You Guessed It - Gen AI\)](#) (2025).

⁵ See, e.g., Justia, [AI and Attorney Ethics Rules: 50-State Survey](#). This resource contains links to opinions, articles, and informal guidance from various jurisdictions.

⁶ See, e.g., Andrea Martin & April Garbuz, [The Ethical Imperative to Embrace AI in Commercial Litigation](#), Boston Bar Journal (May 22, 2025); Dyane O’Leary, [GenAI is Not a Legal Tool. Or is it?](#), Boston Bar Journal (May 17, 2024).

⁷ For example, MCLE New England has many CLE programs available relating to AI (both on demand and as part of its future programming) that are easily accessible using a link from their home page called, “[Artificial Intelligence Resources](#).” Many of these programs are designed to teach attorneys how AI can be properly used in practice while avoiding the risks.

Despite the increasing availability of information relating to AI's ability to generate fabricated content, many more lawyers have been sanctioned by courts and disciplined by disciplinary authorities for the very same conduct.⁸ In fact, virtually all of the sanctions and discipline relating to the misuse of AI have resulted from the submission of fabricated legal authorities.⁹

This article discusses the AI-related sanctions and disciplinary orders relating to hallucinated content issued recently in Massachusetts, as well as a notable case from a federal court in Alabama. It also provides recommendations to lawyers regarding the implementation of AI policies and training in their organizations and references to resources to assist lawyers in using AI ethically. The hope, of course, is that we can put to bed the problem of hallucinated cases and avoid other AI-related problems.

Two Massachusetts Cases

In February 2024, the Massachusetts Superior Court (Hon. Brian Davis) was the first in the state to sanction an attorney for submitting pleadings containing AI-generated fictitious case citations. *See Smith v. Farwell, et al.*, No. 2282-CV-01197, 2024 WL 4002576 (Norfolk Sup. Ct. Feb. 15, 2024) (Davis, J., Findings, Rulings and Order Imposing Sanctions). The court explained that it was the “unhappy recipient of several legal memoranda . . . that cite and rely, in part, upon wholly-fictitious case law.” *Id.* at *1. The court credited the lawyer's explanation that he did not know his associate used AI to draft the pleadings, that he was not familiar with AI, and that he failed to check the citations for accuracy when reviewing the associate's work.

The court found that the lawyer's submission of fake citations violated Mass. R. Civ. P. 7 and 11, and potentially violated several ethical rules: Mass R. Prof. C. 1.1, 1.3, and 5.1. The court imposed a \$2,000 fine. The court then forewarned future attorneys by stating that this sanction was “mild given the seriousness of the violations that occurred.” *Smith*, 2024 WL 4002576, at *7.

When the matter came before the Board of Bar Overseers, the lawyer admitted that his motions contained numerous inaccurate citations, nonexistent quotations, misrepresentations of the propositions of cases, and four nonexistent cases. As he had previously explained to the Superior Court, the lawyer was unaware that his staff had used an AI program to perform the legal research he relied upon in the motion, and he failed to check citations for accuracy. The lawyer received a public reprimand for violations of [Mass. R. Prof. C. 1.1](#) (competence); [1.3](#) (diligence); [5.1](#) and [5.3](#)

⁸ A legal blogger has compiled a list of hundreds of legal decisions discussing instances in which AI-fabricated legal authority was presented to a court by someone involved in the litigation, 83 of which were presented by lawyers. *See* Damien Charlotin, [AI Hallucination Cases](#), last accessed in August 2025. This author suspects that this list is under-inclusive due to the frequency with which these cases appear.

⁹ In *Coronavirus Rep. Corp. v. Apple Inc.*, No. 24-CV-08860-EMC, 2025 WL 2162947 (N.D. Cal. July 30, 2025) (Order on Defendant's Motion for Sanctions and Plaintiffs' Motions), plaintiffs' counsel used ChatGPT to generate an exhibit that appeared to be a twenty-page petition seeking the resignation of Apple Inc.'s CEO, and attached it to three motions including a motion to permit amicus briefing in the matter. Counsel also included fake case citations in their motion. For this and other misconduct, the court awarded litigation fees and costs to the defendant in an amount to be determined later.

(supervision); and [8.4\(d\)](#) (conduct prejudicial to the administration of justice). *Matter of Marullo*, 41 Mass. Att’y Disc. R. ____ (2025).

On June 25, 2025, the Massachusetts Superior Court (Hon. Keren Goldenberg) imposed sanctions against another attorney who claimed she was unfamiliar with the risks of generative AI when she used it to prepare motions and proposed jury instructions. *See Dastou v. Holmes*, No. 2381-CV-02212, 2025 WL 1907624 (Middlesex Sup. Ct. June 25, 2025) (Goldenberg J., Findings, Rulings, and Order Imposing Sanctions). The court found that the lawyer’s filings contained citations to nonexistent cases, a quotation attributed to a real case that was not contained in the real case, misstatements as to the holding of real cases, and a proposed jury instruction that introduced what sounded like a legitimate legal concept, but was actually fictitious. The court issued sanctions enjoining the lawyer from billing her client for her work on the motions containing the fabricated citations and the litigation resulting from her misuse of AI. The court also ordered her to take a continuing legal education course.

In issuing the sanctions order in *Dastou*, the court aptly explained:

Lawyers have a duty to provide competent representation of their clients and demonstrate candor towards the tribunal. Mass. R. Prof. Conduct [1.1](#) & [3.3](#). This extends to submitting filings that accurately state the law and present arguments that supports their clients’ interests. By submitting motions and briefs that contain hallucinations and misstatements of the law, the lawyer violates their professional obligations.

Id. 2025 WL 1907624, at *1.

Massachusetts practitioners would be well-served to read the sanction orders in these matters. They provide a comprehensive discussion of the consequences of failing to properly review AI-generated content, which include violations of rules of civil procedure and professional conduct, the unnecessary consumption of the courts’ time and resources, and failures to properly protect clients’ interests.

A Federal Case Suggests That Sanctions Are Increasing

In July 2025, a federal court in Alabama opined that the sanctions commonly issued when lawyers have cited to fake, AI-generated legal authorities have been too lenient to deter this misconduct. *See Johnson v. Dunn*, - - F.Supp.3d - -, 2025 WL 2086116, at *1, *20 (N.D. Ala. July 23, 2025). In that case, attorneys representing the Commissioner of the Alabama Department of Corrections filed two motions containing five “problematic” citations. Several attorneys had worked on the motions, but none of them had checked the problematic citations. The court ably described the harm caused by the submission of fabricated legal authority to a court when it stated:

Even in cases like this one, where lawyers who cite AI hallucinations accept responsibility and apologize profusely, much damage is done. The opposing party expends resources identifying and exposing the fabrication; the court

spends time reviewing materials, holding hearings, deliberating about sanctions, and explaining its ruling; the substance of the case is delayed; and public confidence about the trustworthiness of legal proceedings may be diminished.

Id. at *11.

In considering the appropriate sanctions, the court added,

Fabricating legal authority is serious misconduct that demands a serious sanction. . . . [I]t 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.

Id. at *1.

While the court sanctioned the individual attorneys who worked on the motions, the court did not sanction the firm. This was, in part, because the firm had been proactive in attempting to prevent the misuse of AI and had responded to the incident swiftly. Specifically, the court noted that the firm “proactively addressed the challenges of AI as early as June 2023[.]” *Id.* at *15. It did so by warning its employees of the risks that AI can generate fictitious content, implementing an internal AI policy requiring, among other things, that all citations be reviewed for accuracy, and establishing an AI committee to work on a more comprehensive AI policy. The court also found that after the incident came to the firm’s attention, the firm warned its employees again, announced a firm-wide training, and was in the process of updating its AI policies with “lessons learned” from the incident.

With respect to the individual attorneys, the court issued a public reprimand, disqualified them from further appearances in the matter, and referred them to disciplinary authorities.

Citing to Hallucinated Cases is a Human Problem

Certainly, AI poses a lot of complicated issues in today’s world, but the sanctions and disciplinary orders issued since 2023 show that lawyers who present hallucinated cases to courts are cutting corners with respect to fundamental lawyering duties. For example, checking citations for accuracy is not a new obligation. Neither is reviewing a subordinate’s work product. Generative AI simply presents a greater chance that a lawyer will present fabricated legal authority (and arguments) to a tribunal when cutting corners on these fundamental lawyering duties. This is actually good news, because when we have human problems, we have human solutions. One part of this solution is for legal employers to establish policies and provide training relating to the use of AI in their work.

Policies and Training

While the details of an internal AI policy are beyond the scope of this article, drafters of AI policies should consider the following, based on lessons learned over the past two years:

*AI policies should include education and warnings about the risks of AI including, but not limited to, its ability to create fictitious content.*¹⁰

Many of the AI-misuse cases to date show that some lawyers are still unaware of the nature and extent of the risks of generative AI. This excuse, however, is insufficient to avoid sanctions and discipline. As [Comment \[8\]](#) to Mass. R. Prof. C. 1.1 (competence) makes clear, lawyers are required to “keep abreast of changes in the law and its practice, including the benefits and risks associated with relevant technology, and engage in continuing study and education.”¹¹ Lawyers choosing to use AI in their practice must engage in the appropriate study and education to provide competent representation.

On this point, lawyers should heed Judge Davis’s warning in *Smith*, that “a defense based on ignorance will be less credible, and likely less successful, as the dangers associated with the use of Generative AI systems become more widely known.” 2024 WL 4002576, at *7.

AI policies should include guidance regarding the need to verify citations and other AI-outputs to ensure their accuracy.

The sanctions and disciplinary cases arising out of the submission of fabricated legal authority evidence that lawyers have filed documents without first cite-checking and reviewing those documents for accuracy. Lawyers, however, cannot abdicate this responsibility when using AI or delegate it to the technology. Lawyers must review the outputs from AI tools to ensure their accuracy in order to comply with their ethical obligations of competence and diligence.

Judge Goldenberg said it clearly in *Dastou, supra*: “Lawyers who assume the risk of using generative AI must establish a thorough review process to ensure accuracy, ethical compliance, and protection of client interests.” 2025 WL 1907624, at *2.

AI policies should include guidance relating to communication about AI within work groups.

Many of the cases to date have demonstrated that colleagues who are working together on court filings are not communicating about their use of AI, resulting in some lawyers’ being unaware that AI was used. Such lack of awareness, however, is not a defense; lawyers are responsible for the work product that they sign and submit to a court or other tribunal. *See, e.g., Mass. R. Civ. P. 7 and 11* (“the signature of any attorney to a pleading constitutes a certificate that the attorney has read the pleading; that to the best of the attorney’s knowledge information, and belief there is a

¹⁰ Another important risk is the potential for disclosure of confidential information. *See generally* Mass. R. Prof. C. 1.6 (confidentiality of information), 1.9(c) (duties to former clients) and 1.18(b) (duties to prospective clients).

¹¹ For further discussion of a lawyer’s duty of technology competence see this author’s prior articles, [From Technophobe to Technolawyer](#) (March 2018) and [It’s 2024, Are You Technology Competent?](#) (March 2024).

good ground to support it”); [Fed. R. Civ. P. 11](#) (any lawyer who signs, files, submits, or later advocates for any pleading, motion or other papers is responsible for its content). From an ethical perspective, [Mass. R. Prof. C. 5.1](#) and [5.3](#), require that lawyers provide proper supervision to subordinate lawyers and nonlawyers. Further, [Mass R. Prof. C. 5.2](#) makes clear that subordinate lawyers remain responsible for their own misconduct in most circumstances. Work teams must, therefore, communicate about their use of AI in order for each lawyer to comply with their professional obligations. Indeed, in *Smith*, Judge Davis made clear that lawyers “are obligated . . . to know whether AI technology is being used in the preparation of court papers that they plan to file in their cases[.]” 2024 WL 4002576, at *7.

AI policies should include guidance on how employees and the organization might respond to any AI-related incidents.

Beginning with *Mata, supra*, many of these cases have involved lawyers who claim ignorance, bury their heads in the sand, and even make false statements to courts relating to their use of AI. These types of responses require more of the court’s time, create more harm to clients, and further erode public confidence in the legal system. They are also likely to result in greater court sanctions and more severe bar discipline.

A plan for responding to AI-related mishaps will allow for quicker response times and remedial efforts, which could mitigate the harm. From a disciplinary perspective, a response plan could help lawyers to avoid compounding their misconduct with more misconduct, by providing a path forward when they realize they made a mistake. *See generally* Mass. R. Prof. C. 3.3 (candor to the tribunal).

The Office of Bar Counsel’s [ethics helpline](#) is also available to assist lawyers with questions about how to respond to such a mishap. This service is of course also available to assist lawyers in avoiding such mishaps in the first place, by providing callers with an opportunity to discuss in advance their planned use of AI in their practices and the potential ethical pitfalls they may encounter.¹²

AI policies should include a continuing training component and provide for periodic updating.

As with most technology, AI will not remain static and best practices will evolve. There are many resources available for lawyers and their assistants to keep up with that evolution. In addition to the various resources referenced in this article, Massachusetts lawyers have a panoply of webinars, articles and in-person programs to choose from through bar associations; MCLE| New England, Lawyers Concerned for Lawyers, and the ABA. While resources targeted to paralegals and legal assistants are harder to find, many of the resources available to lawyers will be useful and accessible to paralegals and legal assistants, who should be encouraged to participate.

¹² To reach the ethics helpline, call (617) 728-8750 on Mondays, Wednesdays, and Fridays between the hours of 2:00pm and 4:00pm.

Conclusion

Artificial intelligence is here to stay, and many legal practitioners appreciate how the proper use of AI tools can make their jobs easier, more efficient, and less stressful. Improper reliance on these tools, however, can have a detrimental effect on the courts, clients, and the perception of the legal profession. Lawyers must make sure that they understand the AI tools they are using and cannot blindly accept the content they generate. Lawyers must pair their use of AI with their existing legal training and lawyering skills. Remember, you were hired because of your education, experience, and legal skills, none of which can be replaced by artificial intelligence.

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