



Negligence Law Section

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“The Good, the Bad, and the Ugly: Artificial Intelligence in Litigation”

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Artificial intelligence is rapidly changing the practice of litigation. Generative AI (GAI) can summarize thousands of pages of discovery, analyze deposition transcripts, draft motions, identify inconsistencies in testimony, create chronologies, suggest lines of cross-examination, and perform legal research in a fraction of the time traditionally required.

But AI presents an unusual bargain for litigators: extraordinary efficiency coupled with extraordinary potential for error. The technology can produce polished, persuasive legal analysis while simultaneously inventing the authorities supporting it.

The result is a developing body of sanctions decisions that should command every litigator’s attention.

The Good: A Powerful Litigation Assistant

Used appropriately, AI can dramatically improve litigation efficiency.

Consider document-intensive litigation. A lawyer may ask an AI system to compare deposition

testimony against interrogatory answers, identify inconsistent dates, summarize medical records, organize events chronologically, or locate references to particular individuals across thousands of documents. AI can also assist in generating first drafts of discovery requests, deposition outlines, motions, and correspondence.

Importantly, the American Bar Association has not suggested that lawyers should avoid AI. ABA Formal Opinion 512 recognizes that lawyers use AI-based technologies to improve the efficiency and quality of legal services. The opinion instead emphasizes that existing ethical obligations—including competence, confidentiality, communication with clients about GAI use, supervision, candor to tribunals, and reasonable fees—continue to govern lawyers who employ generative AI.

For experienced litigators, AI's greatest value may lie not in replacing legal judgment but in augmenting it. AI can function as a tireless second set of eyes: "Identify factual assertions in this summary judgment motion that are unsupported by the cited deposition testimony." Or: "Compare these three witnesses' accounts and identify material inconsistencies."

Used that way, AI can make lawyers better and faster.

The Bad: AI Can Be Persuasively Wrong

The fundamental problem with generative AI is that a convincing answer is not necessarily a correct answer.

Large language models generate responses by predicting the most likely next words, not by retrieving verified facts. Consequently, an AI system can produce a case name, citation, quotation, and detailed description of a court's reasoning that appear completely authentic—even though the case does not exist.

The phenomenon is commonly called an AI "hallucination."

ABA Formal Opinion 512 specifically warns against uncritical reliance on generative AI.

Lawyers must understand the capabilities and limitations of the technology and independently apply an appropriate degree of verification to its output.

That obligation becomes especially important when AI is used for legal research.

Traditional legal research teaches lawyers to evaluate whether an actual case supports a proposition. AI introduces a threshold question that historically would have seemed absurd:

Does the case exist at all?

The Ugly: Fake Cases Produce Real Sanctions

The leading cautionary tale remains *Mata v. Avianca, Inc.*, 678 F. Supp. 3d 443 (S.D.N.Y. 2023), a personal injury suit against the airline arising from an international flight.

Plaintiff's counsel submitted a filing containing authorities generated by ChatGPT. Six cases simply did not exist. The problem became considerably worse when the court questioned the citations: counsel submitted purported copies of the nonexistent opinions themselves generated by ChatGPT.

The court (which separately dismissed the action as time-barred) imposed a \$5,000 penalty on the attorneys and their firm and required additional remedial measures, including mandatory letters to the judges falsely named as authors of the fabricated opinions. The significance of *Mata* extends beyond its monetary sanction. The court made clear that technological novelty does not relieve attorneys of their responsibility for material presented to a tribunal.

Mata was not an isolated event.

In *Garner v. Kadince*, 2025 UT App 80, the Utah Court of Appeals confronted a petition for interlocutory appeal containing nonexistent authorities. At least one cited decision was an AI-hallucinated case that existed nowhere other than in ChatGPT. At a show-cause hearing, petitioner's counsel acknowledged that the petition contained fabricated legal authority, but

explained the petition had been prepared by an unlicensed law clerk using ChatGPT without counsel's knowledge, and that the use of AI had never been addressed at their firm, formally or informally. Although counsel accepted responsibility, the court nonetheless sanctioned petitioner's counsel— ordering payment of opposing counsel's fees for time spent responding to the petition and attending the subsequent hearing, a refund of the fees petitioner had paid for the petition, and a \$1,000 donation to "and Justice for All."

Federal courts have encountered the same conduct.

In *Johnson v. Dunn*, 792 F. Supp. 3d 1241 (N.D. Ala. 2025), an attorney at Butler Snow representing defendant Dunn, used ChatGPT to obtain five citations that were added to two court filings without independent verification. The hallucinated citations were initially brought to light by the plaintiff. In recounting the matter, the court noted that Dunn's lawyers admitted the citations were hallucinated by ChatGPT— and stated, "In simpler terms, the citations were completely made up." As sanctions, the court publicly reprimanded three Butler Snow attorneys, disqualified them from further participation in the case, and referred the matter to the Alabama State Bar and other applicable licensing authorities.

The consequences are not confined to trial courts or to lawyers acting for clients.

In *Amarsingh v. Frontier Airlines, Inc.*, No. 24-1391 (10th Cir. Feb. 9, 2026), the Tenth Circuit imposed a \$1,000 monetary sanction under Federal Rule of Appellate Procedure 38 against the *pro se* plaintiff, a Maryland-licensed attorney, to compensate the opposing party for expenses caused by problematic authorities— citations to nonexistent cases and attribution of propositions or quotations to two real cases that did not stand for the propositions or contain the quotations. The court cited a growing collection of decisions imposing monetary sanctions for hallucinated authorities. The court also directed the clerk's office to transmit a copy of the order and judgment detailing plaintiff's misconduct in the case to the appropriate attorney-disciplinary authority of the State of Maryland.

The emerging message is unmistakable: courts increasingly regard verification of authorities not

as an optional technological precaution, but as an ordinary component of a lawyer's professional responsibility.

The Problem Is Bigger Than Fake Citations

Hallucinated cases attract headlines, but AI presents broader litigation risks.

Confidentiality is one. Uploading privileged communications, medical records, trade secrets, deposition transcripts, or litigation strategy into an AI platform without understanding how information is stored or used can raise serious ethical concerns. ABA Formal Opinion 512 specifically identifies protection of client information as one of the professional obligations implicated by generative AI.

Evidence presents another challenge. Generative AI can create extraordinarily convincing photographs, audio recordings, video, and documents. Courts will increasingly confront disputes concerning whether digital evidence is authentic, altered, or entirely synthetic.

There is also a subtler danger: manufactured credibility.

AI can transform a mediocre legal argument into polished prose. A beautifully written 25-page brief may therefore create the appearance of exhaustive research even though no lawyer has verified its underlying authorities or reasoning.

That possibility makes human judgment more—not less—important.

The Rule Litigators Should Follow

A useful way to conceptualize generative AI is as an extraordinarily fast junior associate who never sleeps, writes beautifully, has access to enormous amounts of information—and occasionally makes things up without telling you.

A responsible lawyer would never sign and file a junior associate's brief without reviewing the authorities. The rule should be no different simply because the "associate" is artificial

intelligence.

Use AI to organize. Use it to summarize. Use it to brainstorm. Use it to identify weaknesses in an argument. Use it to challenge assumptions and accelerate routine work.

But when AI produces a legal proposition, quotation, or citation that will appear in a court filing, verify it independently against the original source.

The central lesson emerging from *Mata*, *Garner*, *Johnson*, *Amarsingh* and similar cases is remarkably traditional. Technology may change how legal work is produced, but it does not change who is responsible for that work.

The lawyer remains responsible.

That is simultaneously the good, the bad—and the ugly—of artificial intelligence in litigation.

Citations

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