

From the War-Room to the Benches: Navigating AI in the New Legal Frontier



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Hypothetical One

Plaintiffs file various pleadings before the Court, which finds that Plaintiffs' pleadings contain multiple citations that are incorrect, do not contain the quotes or content cited to, and reference cases that cannot be located.

The Court asks Plaintiffs to show cause as to why sanctions should not be levied against them. Plaintiffs assert that they committed various errors due to human oversight under significant time constraints, their citation errors were immaterial and inadvertent, and that no cases were fabricated, but instead, were misspelled, miscited, or misremembered during the drafting process. Additionally, Plaintiffs argue that there is no evidence of artificial intelligence use as there are no "systematic fabrications" of errors.



POLLING QUESTION ONE

What is the most appropriate resolution of this Show Cause hearing?

- A. The Court should close the matter without sanctions because there is no proof that Plaintiff's counsel used artificial intelligence.
- B. Plaintiffs' counsel should appeal any court-imposed sanctions because they stuck to their guns, and there is no proof that they used AI.
- C. Whether generative artificial intelligence was used or not is immaterial; what matters is that the Plaintiffs provided the Court with a litany of inaccurate information in support of their claims, and thus sanctions are appropriate.
- D. The Court should decline to issue sanctions because there is no rule against using generative AI.



FRCP 11: Representations to the Court; Sanctions

(b) REPRESENTATIONS TO THE COURT. By presenting to the court a pleading, written motion, or other paper—whether by signing, filing, submitting, or later advocating it—an attorney or unrepresented party certifies that to the best of the person’s knowledge, information, and belief, formed after an inquiry reasonable under the circumstances:

(3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery;

(c) SANCTIONS.

(1) *In General.* If, after notice and a reasonable opportunity to respond, the court determines that Rule 11(b) has been violated, the court may impose an appropriate sanction on any attorney, law firm, or party that violated the rule or is responsible for the violation.



III. S. Ct. R. 137: Signing of Pleadings, Motions and Other Documents - Sanctions

(a) Signature requirement/certification.

...The signature of an attorney or party constitutes a certificate by him that he has read the pleading, motion or other document; that to the best of his knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good-faith argument for the extension, modification, or reversal of existing law...

If a pleading, motion, or other document is signed in violation of this rule, the court, upon motion or upon its own initiative, may impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of reasonable expenses incurred because of the filing of the pleading, motion or other document, including a reasonable attorney fee.



III. S. Ct. R. 375: Failure to Comply with Rules; Frivolous Appeals – Sanctions

(b) Appeal or Other Action Not Taken in Good Faith; Frivolous Appeals or Other Actions. If, after consideration of an appeal or other action pursued in a reviewing court, it is determined that the appeal or other action itself is frivolous...an appropriate sanction may be imposed upon any party or the attorney or attorneys of the party or parties. An appeal or other action will be deemed frivolous where it is not reasonably well grounded in fact and not warranted by existing law or a good-faith argument for the extension, modification, or reversal of existing law...

Appropriate sanctions for violation of this section may include an order to pay to the other party or parties damages, the reasonable costs of the appeal or other action, and any other expenses necessarily incurred by the filing of the appeal or other action, including reasonable attorney fees.



Model Rule 1.1: Competence

Client-Lawyer Relationship

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



Model Rule 3.3: Candor Toward the Tribunal

Advocate

(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;



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Legal Knowledge and Skill [1]:

In determining whether a lawyer employs the requisite knowledge and skill in a particular matter, relevant factors include the relative complexity and specialized nature of the matter, the lawyer's general experience, the lawyer's training and experience in the field in question, the preparation and study the lawyer is able to give the matter and whether it is feasible to refer the matter to, or associate or consult with, a lawyer of established competence in the field in question. In many instances, the required proficiency is that of a general practitioner. Expertise in a particular field of law may be required in some circumstances.



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(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



IRPC 5.3: Responsibilities Regarding Nonlawyer Assistance

- (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.



Hypothetical Two

Little, Engine & Could Law Firm recently lost its workhorse junior associate, who handled new-client call screenings for the past two years. Learning that 79 percent of legal professionals are now leveraging GenAi technology, the managing partner decided to revamp the firm's website to include a ChatBot which analyzes online contacts by potential clients.

Potential client John Clueless used the firm's website to ask for the relevant statute of limitations for his accident. Without any disclaimer or supervision, the firm's large language model advised John that his statute of limitations is two years. Seeing that he had more time, John decided to wait before hiring an attorney.



POLLING QUESTION TWO

What went wrong?

- A. The potential client never signed an attorney-client agreement, so nothing to see here.
- B. The firm did nothing wrong because the potential client did not input that his case involved a city transit bus.
- C. The disclaimer on the firm's FAQ page should protect them from any legal malpractice claim.
- D. The firm likely didn't comprehend the capabilities embedded into its website.



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 - (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.



Hypothetical Three

A small firm deploys an AI-assisted intake form that asks new clients about their legal issue and then automatically drafts engagement letters and basic pleadings using client-entered data. A client is confused about the engagement's scope and mistakenly believes the form submission alone created an attorney-client relationship.



POLLING QUESTION THREE

How should the attorney ethically structure this process?

- A. Permit the AI to auto-generate legal documents and send them without review—efficiency is paramount.
- B. Require all AI-automated client documents to be reviewed and approved by an attorney before sending.
- C. Allow the process if there is a pop-up disclaimer about attorney supervision.
- D. Only serve existing clients, never leads from the public.



IRPC 1.4: Communication

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- (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 the status of the matter;
- (4) promptly comply with reasonable requests for information; and
- (5) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law.



IRPC 5.3: Responsibilities Regarding Nonlawyer Assistance

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Hypothetical Four

During discovery in complex litigation, a law firm uses an AI-powered document review platform to identify privileged communications and responsive documents. Later, opposing counsel receives a batch of discovery that inadvertently contains several privileged emails. The AI's privilege filter missed them.



POLLING QUESTION FOUR

Which best reflects the lawyer's ethical duty?

- A. The lawyer's duty of competence requires ongoing human supervision of the AI tool to avoid privilege waiver.
- B. The privilege was waived by relying on AI, so nothing further can be done.
- C. Since the AI is highly accurate, errors are an unavoidable risk and therefore excusable.
- D. The lawyer can delegate responsibility entirely to the AI vendor under a technology competence assumption.



IRPC 1.6: Confidentiality of Information

(a) A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation, or the disclosure is permitted by paragraph (b) or required by paragraph (c).

(b) A lawyer may reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary:

(6) to comply with other law or a court order;

(e) A lawyer shall make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client.



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Hypothetical Five

An attorney is preparing a discrimination case and learns the opposing party's hiring decisions were heavily influenced by an AI-based résumé-screening tool. The attorney considers challenging the algorithm as biased. However, the court seems skeptical of "black box" AI arguments and wants concise, credible expert support.



POLLING QUESTION FIVE

What is the lawyer's primary ethical obligation here?

- A. Decline to raise the AI discrimination issue, since it could be too speculative.
- B. Adequately investigate and, if supported, present the AI bias issue with appropriate expert testimony.
- C. Assume courts will not accept AI-bias arguments and focus only on traditional discovery.
- D. File the claim as-is, trusting the court to raise concerns about algorithmic bias.



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IRPC 3.1: Meritorious Claims and Contentions

A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous, which includes a good-faith argument for an extension, modification or reversal of existing law. A lawyer for the defendant in a criminal proceeding, or the respondent in a proceeding that could result in incarceration, may nevertheless so defend the proceeding as to require that every element of the case be established.



820 ILCS 42/5: Artificial Intelligence Video Interview Act

An employer that asks applicants to record video interviews and uses an artificial intelligence analysis of the applicant-submitted videos shall do all of the following when considering applicants for positions based in Illinois before asking applicants to submit video interviews:

- (1) Notify each applicant before the interview that artificial intelligence may be used to analyze the applicant's video interview and consider the applicant's fitness for the position.
- (2) Provide each applicant with information before the interview explaining how the artificial intelligence works and what general types of characteristics it uses to evaluate applicants.
- (3) Obtain, before the interview, consent from the applicant to be evaluated by the artificial intelligence program as described in the information provided.

An employer may not use artificial intelligence to evaluate applicants who have not consented to the use of artificial intelligence analysis.



Hypothetical Six

A firm adopts an AI-powered contract-drafting platform which includes a “fee estimator.” The tool gives potential clients quotes based on case type and details. One such quote projects that only one lawyer-hour will be needed to complete the project. Given this projection, the client retains the firm. However, the actual billing varies significantly from the estimate. The firm debates whether to bill the client the “saved” hours or pass along the reduced cost.



POLLING QUESTION SIX

What is the most ethical billing practice?

- A. Bill the client for the work as if it took five hours—lawyer efficiency shouldn't reduce revenue.
- B. Bill only the actual time spent and explain the use of AI if asked.
- C. Charge a flat fee reflecting value delivered rather than time saved.
- D. Bill as usual while noting the AI tool in the invoice to justify time entries.



IRPC 1.5: Fees

(a) A lawyer shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses. The factors to be considered in determining the reasonableness of a fee include the following:

(1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;

(2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;

(3) the fee customarily charged in the locality for similar legal services;

(4) the amount involved and the results obtained;

(5) the time limitations imposed by the client or by the circumstances;

(6) the nature and length of the professional relationship with the client;

(7) the experience, reputation, and ability of the lawyer or lawyers performing the services;

and

(8) whether the fee is fixed, contingent, or some type of retainer.



IRPC 1.5: Fees

(b) The scope of the representation and the basis or rate of the fee and expenses for which the client will be responsible shall be communicated to the client, preferably in writing, before or within a reasonable time after commencing the representation, except when the lawyer will charge a regularly represented client on the same basis or rate. Any changes in the basis or rate of the fee or expenses shall also be communicated to the client.



IRPC 1.4: Communication

(a) A lawyer shall:

- (1) promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in Rule 1.0(e), is required by these Rules;
- (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 the status of the matter;
- (4) promptly comply with reasonable requests for information; and
- (5) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law.



IRPC 7.1: Communications Concerning a Lawyer's Services

A lawyer shall not make a false or misleading communication about the lawyer or the lawyer's services. A communication is false or misleading if it contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading.



Hypothetical Seven

A solo attorney uses an AI tool to generate regular blog posts for their firm's website, describing recent case wins and legal updates. The attorney glances over posts before publishing, but doesn't always verify each fact, client outcome, or claim. Some posts inadvertently exaggerate case results and attribute "wins" to the firm that actually predate the attorney's involvement.



POLLING QUESTION SEVEN

What is the most ethically sound strategy?

- A. Publish AI-generated content without edits because it streamlines marketing.
- B. Carefully review and fact-check all AI-generated content before posting.
- C. Rely on a disclaimer stating the content may contain inaccuracies.
- D. Delegate responsibility to the AI vendor since the tool was advertised as “law firm compliant.”



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IRPC 8.4 – Misconduct

It is professional misconduct for a lawyer to:

- (a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another.
- (b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects.
- (c) engage in conduct involving dishonesty, fraud, deceit, or misrepresentation.
- (d) engage in conduct that is prejudicial to the administration of justice.



Hypothetical Eight

A solo attorney uses an AI legal research tool that asks for client file uploads to provide “tailored” research memos. The tool is web-based, operated by a third-party, and does not clearly state whether uploaded content will be stored or used to train the AI.



POLLING QUESTION EIGHT

What is the lawyer's primary duty before uploading client documents?

- A. Proceed immediately—client benefit outweighs risk.
- B. Investigate the tool's privacy, storage, and data use policies and obtain client-informed consent if needed.
- C. Only use tools that guarantee no retention of client material.
- D. Rely on AI vendor assurances that the tool is "secure."



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(b) A lawyer may reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary:

(6) to comply with other law or a court order;

(e) A lawyer shall make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client.



Hypothetical Nine

A paralegal in a small firm, eager to help, uses a free AI summarization service to speed up brief drafting. The attorney only finds out after noticing stylistic changes in a filing. The firm has no written AI policy or approval process.



POLLING QUESTION NINE

What is the best ethical protocol for the firm?

- A. Allow staff to experiment with new AI tools without oversight to encourage innovation.
- B. Require firm-wide written AI usage policies, mandatory review of tools, and training for all attorneys and nonlawyers.
- C. Ban all AI use to avoid risk altogether.
- D. Only review AI use if a problem or data breach arises.



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Hypothetical Ten

A law firm represents BigCo in the \$200 million acquisition of SmallCo. BigCo insists that law firm use a well-established AI due diligence tool. BigCo says that using the AI due diligence tool will result in faster and better due diligence, and reduce lawyers' fees. BigCo provides law firm with information showing that the AI due diligence tool is accurate and reliable. After BigCo has engaged the law firm and when due diligence is about to begin, the lead lawyer tells BigCo that in his judgment it would be a violation of the rules of professional responsibility to use AI. The BigCo general counsel is furious and directs the lead lawyer to use the AI due diligence tool.



POLLING QUESTION TEN

What best states the lawyers' primary obligation?

- A. The lawyer must use AI because a lawyer shall not charge an unreasonable fee (Rule 1.5).
- B. The lawyer per Rule 1.4 was only required to consult with the client and communicate the lawyer's decision that AI would not be used.
- C. If the use of AI would violate the lawyer's obligations under the Rules, the lawyer cannot follow the client's direction to use AI.
- D. If any of the underlying information is confidential, the lawyer cannot use AI for due diligence



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(1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;

(2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;

(3) the fee customarily charged in the locality for similar legal services;

(4) the amount involved and the results obtained;

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IRPC 1.5: Fees

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Hypothetical Eleven

Attorney Sam “Bam-Bam” Winner is a well-respected criminal defense attorney. At his favorite watering hole, he regularly brags that he started practicing law before the advent of computers and has very little use for them and new-fangled technology. He believes AI is a scam, and he can sniff out its use like a bloodhound.

Attorney Winner attended the bond hearing for his new client. Jay was a 19-year-old African American high school senior with superior grades and impeccable manners. Despite their professional careers and income, Jay’s parents believe that staying in the community they grew up in is important, despite how rough it has become. At the hearing, the judge asked for the risk assessment. It was not good. The judge set a high bond.



POLLING QUESTION ELEVEN

What went wrong?

- A. The lawyer did nothing wrong. He represented his client competently, but the risk assessment just wasn't in his client's favor. This hypothetical has nothing to do with AI.
- B. The lawyer has a competency issue because he did not realize that bond risk assessments utilize artificial intelligence algorithms, assumptions, and data.



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Hypothetical Twelve

Manufacturer engages Lawyer to go to federal court tomorrow to file a lawsuit and motion for an *ex parte* temporary restraining order and preliminary injunction ordering Supplier to continue supplying rare earth elements needed for various products. Supplier contends that it is no longer bound to perform under the parties' contract as obtaining rare earth elements has become commercially impracticable because of international trade negotiations and disruptions. Manufacturer directs Lawyer to retain Expert to provide a declaration regarding the economic and reputational damages that Manufacturer will suffer if Supplier is not ordered to continue to perform under the contract. Less than two hours after Lawyer speaks to Expert, Lawyer is astounded to receive a ten-page declaration with numerous citations to academic research and news articles regarding the market for rare earth elements.



POLLING QUESTION TWELVE

What best states the lawyers' primary obligation?

- A. Lawyer has no obligation to verify information in an Expert's declaration.
- B. Lawyer under Rule 5.3 has a duty to supervise the nonlawyer Expert.
- C. Lawyer under FRCP 11 has a non-delegable responsibility to validate the truth and legal reasonableness of all papers filed in federal civil litigation, which extends to Expert's declaration.
- D. Lawyer under Rule 2.1 must respect the independent professional judgment of Expert.



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(3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery;

(c) SANCTIONS.

(1) *In General.* If, after notice and a reasonable opportunity to respond, the court determines that Rule 11(b) has been violated, the court may impose an appropriate sanction on any attorney, law firm, or party that violated the rule or is responsible for the violation.



Kohls v. Ellison, et al, 24-cv-3754, ECF. 46 (D. Minn. Jan, 10, 2025)

Professor Hancock admits that he used GPT-4o to assist him in drafting his declaration but, in reviewing the declaration, failed to discern that GPT-4o generated fake citations to academic articles.

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 offers a detailed explanation of his drafting process to explain precisely how and why these AI-hallucinated citations in his declaration came to be. And he assures the Court that he stands by the substantive propositions in his declaration, even those that are supported by fake citations. But, at the end of the day, even if the errors were an innocent mistake, and even if the propositions are substantively accurate, the fact remains that Professor Hancock submitted a declaration made under penalty of perjury with fake citations.



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The Court takes Attorney General Ellison at his word and appreciates his candor in rectifying the issue. But Attorney General Ellison's attorneys are reminded that Federal Rule of Civil Procedure 11 imposes a "personal, nondelegable responsibility" to "validate the truth and legal reasonableness of the papers filed" in an action. *Pavelic & LeFlore v. Marvel Ent. Grp.*, 493 U.S. 120, 126–27 (1989). The Court suggests that an "inquiry reasonable under the circumstances," Fed. R. Civ. P. 11(b), may now require attorneys to ask their witnesses whether they have used AI in drafting their declarations and what they have done to verify any AI-generated content.



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