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Counsel to Counsel

Strategic Insights for the Health Care General Counsel

May 3-4, 2026

Washington, DC



Litigating Ethically: What Judges Wish General Counsel and Their Lawyers Knew



Litigating Ethically: What Judges Wish General Counsel and Their Lawyers Knew



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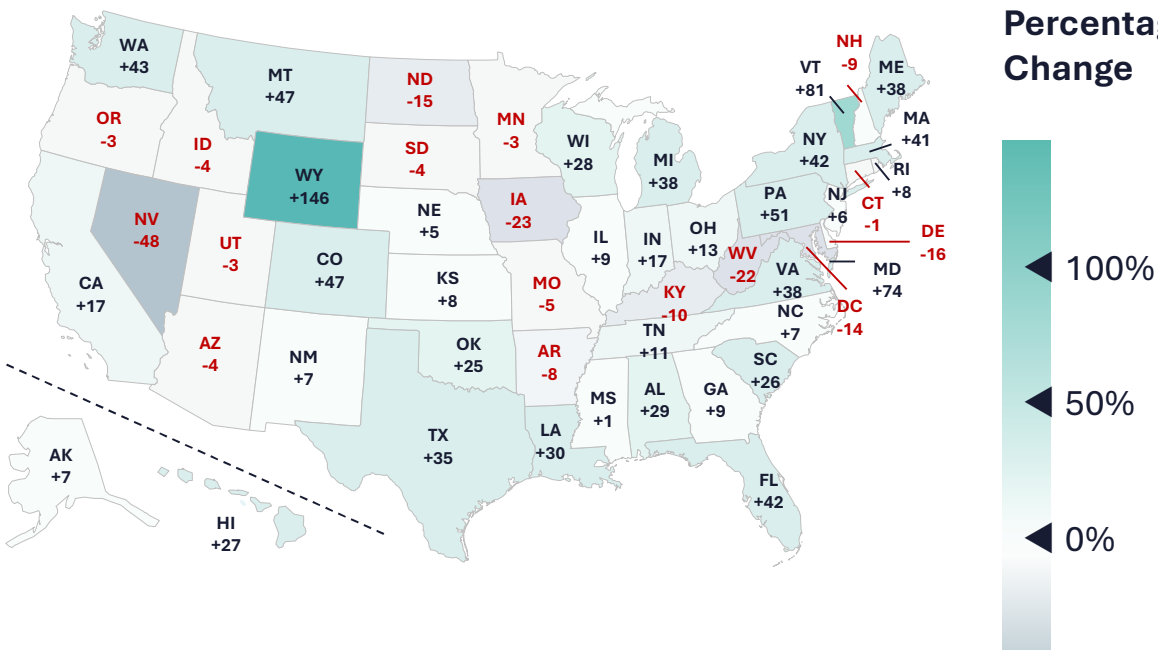
Is it Legal? Is it Right?

The core mission of the global corporation is the fusion of high performance with high integrity and sound risk management. The practical ideal of the modern general counsel is a lawyer-statesperson who is an outstanding technical expert, a wise counselor and an effective leader, and who has a major role assisting the corporation achieve the fundamental goal of global capitalism: the fusion of high performance with high integrity and sound risk management. For the lawyer-statesperson, the first question is: “Is it legal?” But the ultimate question is: “Is it right?”

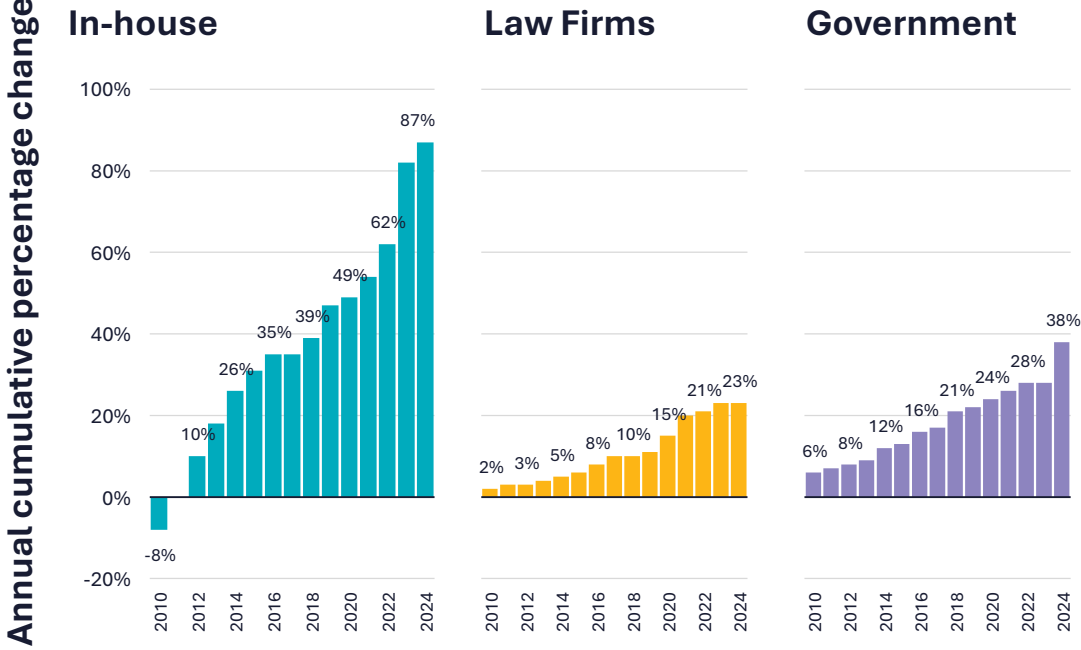
Ben Heineman, The Inside Counsel Revolution, April 2016

Clear Skies for In-house Counsel

In-house Counsel per 100,000 Population
Percentage Change between 2019 and 2024



Percentage Change in US Lawyer Population
by Type Since 2008



**WEATHER
IN MOTION**

**NATION'S
CAPITAL**

NOW
Partly Cloudy 64°

TODAY
Partly Cloudy 72°

TONIGHT
Showers Late 56°

FRI
Sunny 68°

SAT
Partly Cloudy 66°

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Healthcare Litigation In Practice: An Ethical Approach

Sacred Heart is a large for-profit health system being sued in the Western District of Washington under the False Claims Act in a non-intervened, *qui tam* brought by a *pro se* Relator who was in a Nursing/Compliance role in Seattle.

DOJ issued one Civil Investigative Demand that sought mostly irrelevant policy documents.

The Complaint was improperly served, but alleges a multi-state kickback scheme involving physician compensation arrangements along with a retaliation claim. Although not mentioned in the Complaint, the Relator's deceased spouse was the CFO at a Sacred Heart location in Washington.

The Complaint cites only one specific paid claim arising in another state, but alleges a broad corporate practice affecting multiple facilities. The specific cited claim is, in fact, not tainted by the alleged kickback, but there are other claims tainted by the kickback that are not identified in the Complaint.

The singles value of the FCA damages is \$1 million in tainted claims, the employee earned \$75,000 per year prior to her termination, which she alleges was caused by her voicing concern over the conduct at issue. Last year the health system reported net revenue of \$500 million. The Relator improperly served Sacred Heart.

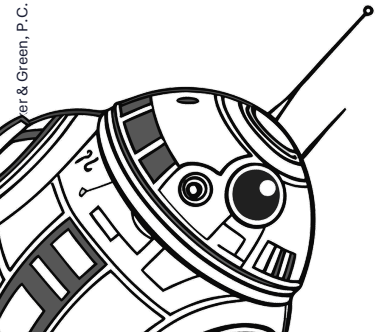
Relator is now represented by seasoned counsel who has filed an amended complaint correcting all pleading and service deficiencies. Relator's counsel has requested cell phone text messages, email and instant messages from 50 custodians, including the prior General Counsel and Relator's deceased spouse. The ensuing 750 Gigabytes will cost \$200,000 to collect and process.

In course of conducting an internal investigation, it becomes clear that the alleged kickbacks were conceived of and championed by Relator's deceased spouse, whose emails establish was also engaged in an extramarital affair with the former General Counsel.

Relator is now willing to settle for \$500,000, plus two years salary (\$150,000) in advance of her deposition. A deposition of the Relator will confirm that Relator and her husband were significantly involved in designing and executing the alleged kickback scheme which had financial upside, in the form of performance bonuses, for the deceased spouse. Relator's counsel has stated that settlement is motivated over concern of her deceased spouse's extramarital affair becoming public, which will cause embarrassment for both herself and their children.

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The Robots are Coming



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Response of the Federal Judiciary to Artificial Intelligence

In early 2025, an advisory Artificial Intelligence Task Force was established to enable the federal courts to effectively and responsibly confront AI. While presenting opportunities and potential benefits, the growing use of AI comes with concerns about maintaining high ethical standards, preserving the integrity of judicial opinions, and safeguarding sensitive data.

This group of judges, court executives, IT and chambers staff from all court types was charged with recommending new or updated policies to the Judicial Conference. In the meantime, the task force was developed interim guidance for the courts that establishes temporary guideposts while more permanent guidance and policy are developed.

Filings by pro se litigants, which amounted to 50 percent of new cases, grew 9 percent to 20,878.

ABA Opinion 512 – Generative Artificial Intelligence Tools

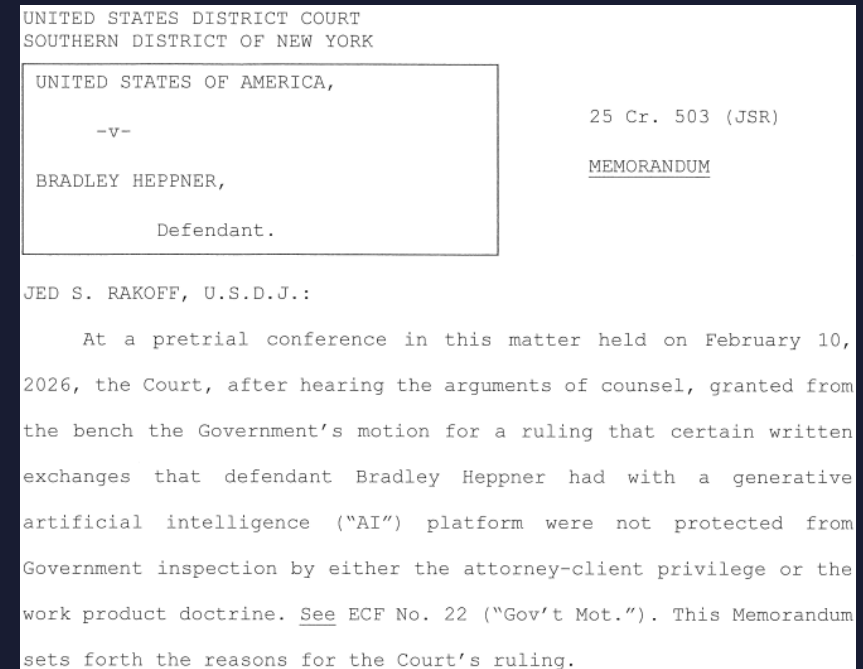
To ensure clients are protected, lawyers using generative artificial intelligence tools must fully consider their applicable ethical obligations, including their duties to provide competent legal representation, to protect client information, to communicate with clients, to supervise their employees and agents, to advance only meritorious claims and contentions, to ensure candor toward the tribunal, and to charge reasonable fees

Discusses

- Competence - Rule 1.1
- Confidentiality - Rule 1.6
- Communications - Rule 1.4
- Meritorious Claims and Contentions – Rule 3.1
- Candor to the Tribunal - Rule 3.3
- Supervision - Rules 5.1 & 5.3
- Fees - Rules 1.5

U.S. v. Heppner, SDNY, March 2026

- After receiving a Grand Jury subpoena, without any suggestion for counsel that he do so, Heppner used Claude to prepare reports that outlined his defense
- Court ruled communications not privileged
 1. Not communications with counsel
 2. Not confidential, Claude collects data on to train model
 3. Did not communicate with Claude for the purpose of obtaining legal advice
 - o Closer call
 - Had counsel directed use, perhaps, a different result
 - Claude disclaimed providing legal advice
 - Non-Privileged Communications are not alchemically changed into privileged ones upon being shared with counsel 
- Left open possibility that other communications, if directed by Attorney, could qualify for Attorney Work Product Protection

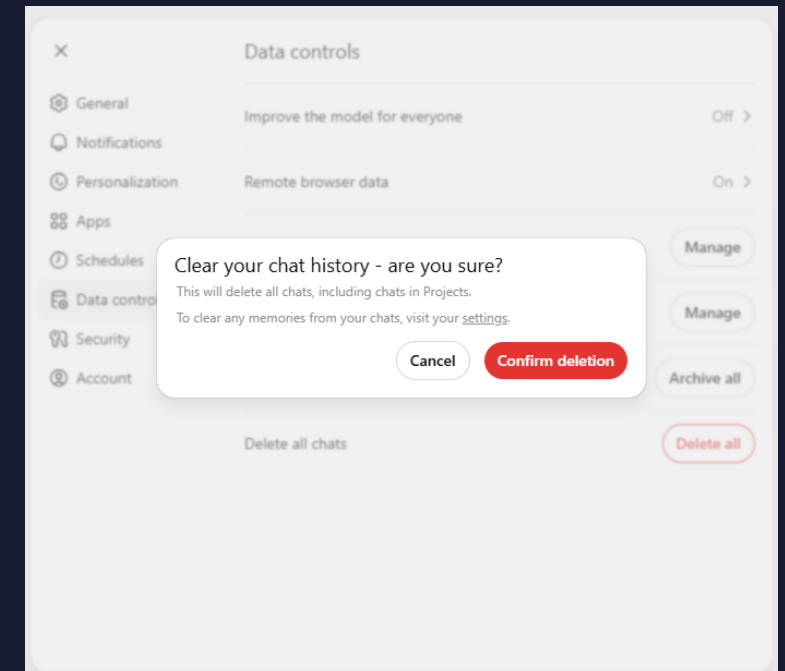
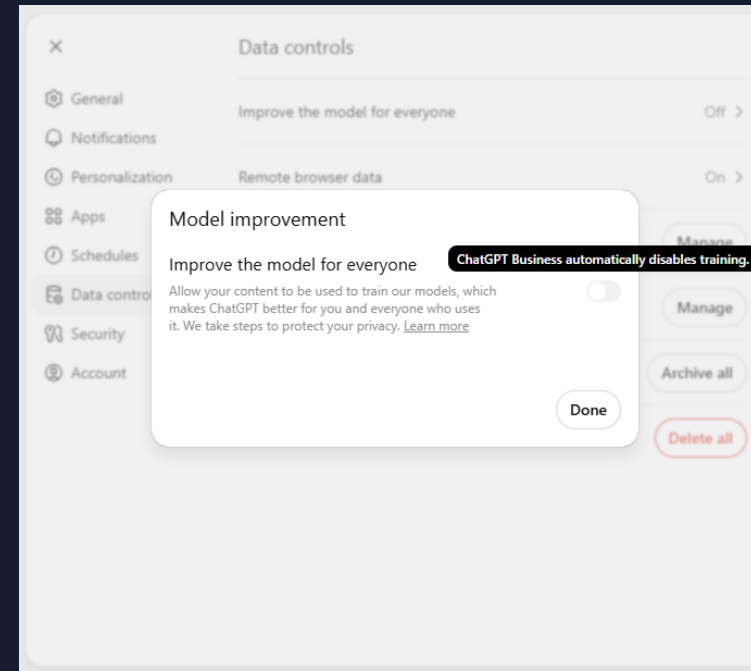


Confidentiality

ChatGPT

We may use Content to provide, maintain, develop, and improve our Services, **comply with applicable law**, enforce our terms and policies, and keep our Services safe. If you're using ChatGPT through Apple's integrations, see this Help Center article(opens in a new window) for how we handle your Content.

Opt out. If you do not want us to use your Content to train our models, you can opt out by following the instructions in this article. Please note that in some cases this may limit the ability of our Services to better address your specific use case.



Practical Takeaways



- Establish and follow document and metadata retention protocols
- Review bring your device to work policies
- Pack an Emergency “Go Bag” and make sure the “supplies” haven’t expired
 - Internal SMEs
 - Outside experts by specialty
 - Litigation Holds

LEGAL REVIEW CHECKLIST						
	COMPANY REPRESENTATIVE	OUTSIDE RESOURCE	REVIEWED IN THE LAST YEAR	GOOD	OK	NEEDS ATTENTION
PROCEDURES AND PROTOCOLS						
Employee Handbook/Manual				☐	☐	☐
Investigations/Litigation Response Policy				☐	☐	☐
Legal Holds				☐	☐	☐
IT/Data Retention/Deletion				☐	☐	☐
Compliance Program				☐	☐	☐
LEGAL RESOURCES						
Compliance				☐	☐	☐
Government Investigations				☐	☐	☐
HR/Employment/ERISA				☐	☐	☐
Information Technology				☐	☐	☐
Physical/Site Security				☐	☐	☐
Finance/Accounting				☐	☐	☐
Regulatory				☐	☐	☐
HIPAA				☐	☐	☐
Investor Relations/SEC				☐	☐	☐
AUDITING/INVESTIGATIONS/FORENSIC COLLECTIONS & REVIEW						
Billing/Claims Review				☐	☐	☐
Medical Necessity				☐	☐	☐
Email Collection				☐	☐	☐
Instant Messaging Collection				☐	☐	☐
Cell Phone/Laptop Imaging				☐	☐	☐
Cloud Services Collection				☐	☐	☐
Data Processing & Hosting for Review				☐	☐	☐
Contracts				☐	☐	☐
CRISIS MANAGEMENT						
Urgent Internal Investigations				☐	☐	☐
Public Relations				☐	☐	☐
Environmental				☐	☐	☐
Data Breach				☐	☐	☐

Candor to the Tribunal – Rule 3.3

(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;

Candor to the Tribunal

Standing Orders, Local Rules, and Decisions on the Use of AI: State and Federal District Courts

569 Standing orders, local rules, or decisions

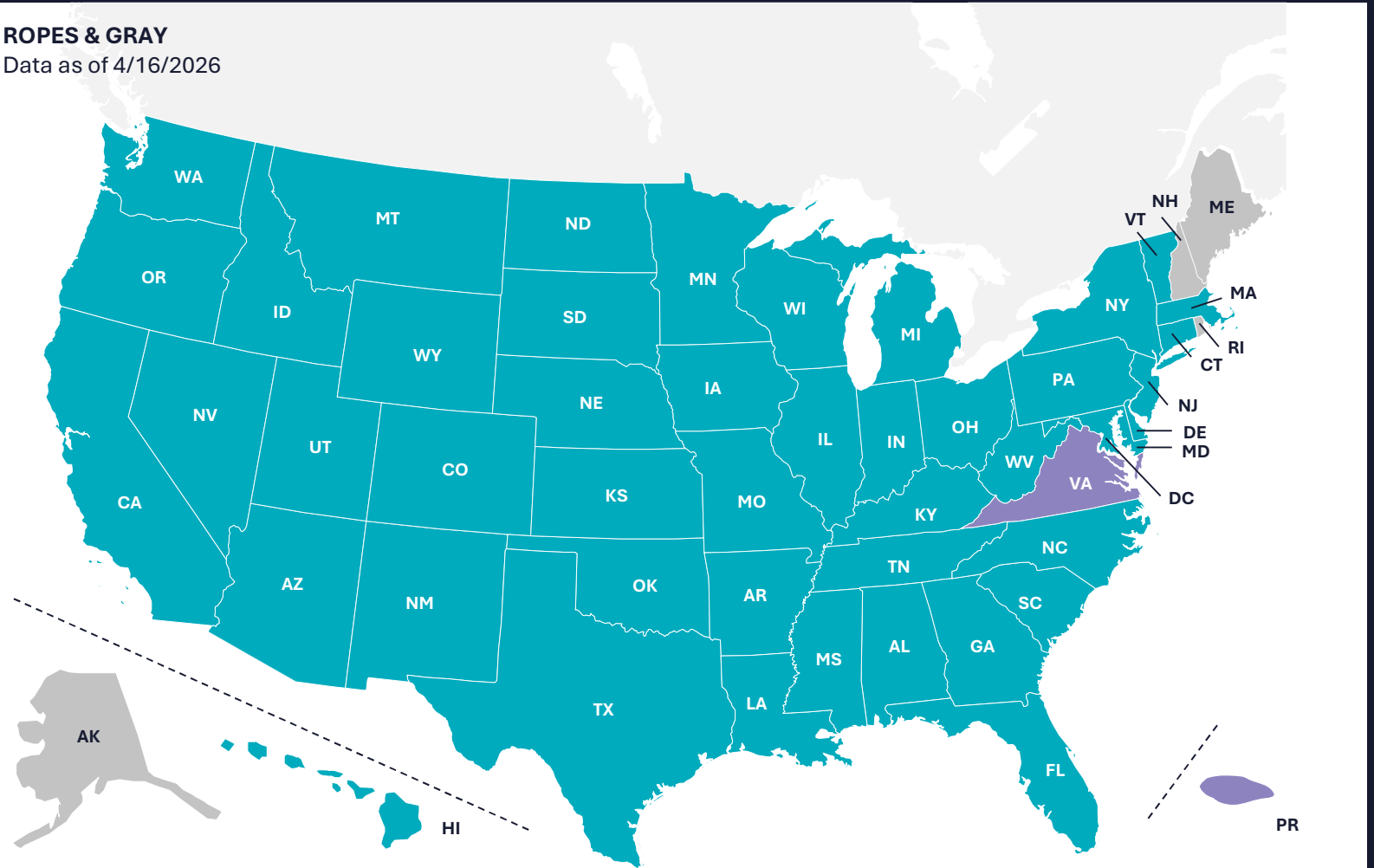


The default map shows whether the majority of AI-related orders in a given state encompass any AI, or only generative AI.

Click on the colored buttons below to reconfigure the map to display other categories. Click an individual state for detailed analysis.

- ☒ Majority of Orders Specific to Any AI vs. Generative AI
- ☐ Any AI Usage
- ☐ Generative AI Usage
- ☐ Requires Disclosure and/or Verification
- ☐ Suggests Cautious Use of AI
- ☐ Prohibits Use of AI
- ☐ Applies to AI Used for Research
- ☐ Applies to AI Used for Filings/Drafting
- ☐ Court-Imposed Consequences – Attorneys/Law Firms
- ☐ Court-Imposed Consequences – Parties

ROPES & GRAY
Data as of 4/16/2026



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

Western District of North Carolina's Position on Use of Artificial Intelligence

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
DOCKET NO.: 3:24-me- 104

FILED
CHARLOTTE, NC

JUN 18 2024

IN RE:)
)
USE OF ARTIFICIAL INTELLIGENCE)
)
_____)

US District Court
Western District of NC

Briefs and memoranda prepared using artificial intelligence (AI) platforms (e.g. ChatGPT) have increased the Court's concern regarding the reliability and accuracy of filings. In particular, the Court is concerned regarding whether factual and legal citations or references in court filings have been properly vetted by counsel or the pro se parties filing the documents. There have been several reports around the country regarding courts receiving briefs containing fictitious case cites and unsupported arguments that have been generated by AI sources. This order is intended to mitigate these concerns with the following requirements.

All attorneys and pro se filers must file a certification with any brief or memorandum submitted to the Court that states the following;

1. No artificial intelligence was employed in doing the research for the preparation of this document, with the exception of such artificial intelligence embedded in the standard on-line legal research sources Westlaw, Lexis, FastCase, and Bloomberg;
2. Every statement and every citation to an authority contained in this document has been checked by an attorney in this case and/or a paralegal working at his/her direction (or the party making the filing if acting pro se) as to the accuracy of the proposition for which it is offered, and the citation to authority provided.

The AI Judicial Blotter

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

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 (903 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 have any questions about the database, a FAQ is available [here](#).
And if you know of a case that should be included, feel free to [contact me](#).³

Based on this database, I have developped an [automated reference checker](#) that also detects hallucinations: PelAIkan. Check the Reports  in the database for examples, and [reach out to me](#) for a demo !

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



Artificial Authority

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Last updated: 21 April 2026

Search cases, courts, tools,											
State											
Argentina (8)											
Australia (73)											
Austria (2)											
Belgium (4)											
Brazil (10)											
Canada (144)											
Chile (1)											
Colombia (3)											
Czech Republic (1)											
France (10)											
Germany (7)											
Hong Kong (2)											
India (8)											
International Arbitration (2)											
Ireland (6)											
Israel (50)											
Case											
Court / Jurisdiction											
Date ▼											
Party Using AI											
AI Tool ⓘ											
Nature of Hallucination											
Outcome / Sanction											
Monetary Penalty											
Details											
Report(s)											
Bunce v. Visual Technology Innovations (2)											
E.D. Pennsylvania (USA)											
20 April 2026											
Lawyer											
Unidentified											
Fabricated Case Law (1)											
Misrepresented Case Law (1)											
Monetary Sanction, Additional CLE											
5000 USD											
											
Motion for sanctions											
Source: Volokh											
In re Prince Global Holdings Limited, et al.											
S.D. New York (Bankruptcy) (USA)											
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Jamie Lee Saunders v. Albertsons/Safeway, LLC											
D. Colorado (USA)											
16 April 2026											
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Motion for costs											
Source: Jesse Schaefer											
Stance Strong and Kinisha Strong v.											
CA Illinois (1d) (USA)											
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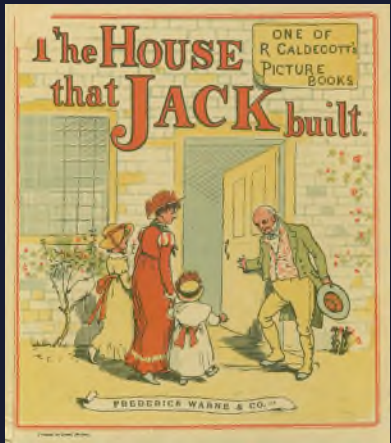
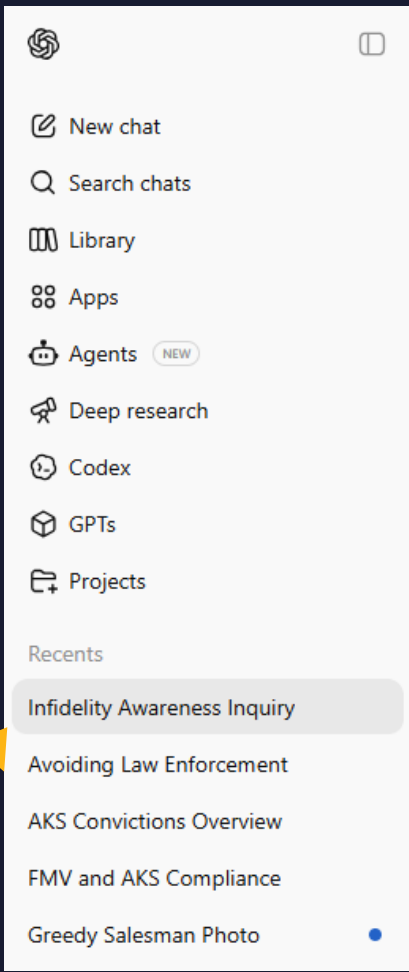
Supervision – Rules 5.1 & 5.3

- Rule 5.1(a) – A partner in a law firm, 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 all lawyers in the firm conform to the Rules of Professional Conduct.
- Rule 5.1(b) - A lawyer having direct supervisory authority over another lawyer shall make reasonable efforts to ensure that the other lawyer conforms to the Rules of Professional Conduct.

Thoughts on Best Uses for AI in Litigation



This is the Qui Tam Case that Jack Built



Thank You for Coming

Whenever I observe a brief

That's long on flair, but
short on proof

And counsel treating facts

MADE WITH SUNO

