

# AI hallucinations: Imaginary caselaw, real consequences

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Since the debut in late 2022 of OpenAI's generative artificial intelligence (Gen-AI) chatbot called "ChatGPT," a new trend in the legal profession has emerged—obtaining research assistance from a myriad of Gen-AI models. Some models, such as Counsel AI Corporation's "Harvey," are specifically tailored to the legal profession. An example of a research inquiry that might be propounded to such a model would be: "Find me New York Commercial Division caselaw where the court declined to assist a judgment creditor because doing so would reward the evasion of court orders."

Even as Gen-AI's sophistication progresses, a major concern endures: AI hallucinations. These troubling errors have not only been the source of embarrassment for attorneys nationwide but have also given rise to sanctions and even ethical complaints. In this column, we discuss two recent Commercial Division decisions addressing the implications of AI hallucinations and an offending attorney's likely exposure to sanctions. We also discuss a proposed

Commercial Division rule change that addresses Gen-AI research issues.

## **Ethical obligations and sanctions**

Although the use of AI in legal practice remains a relatively new, albeit a rapidly accelerating, development, the same cannot be said for the time-honored rules governing attorneys' ethical obligations and sanctions. There are several well-established rules that practitioners must heed when using AI.

First and foremost, pursuant to Section 130-1.1 of the Rules of the chief administrator of the courts, a court may impose sanctions for "frivolous conduct," which is defined to include an assertion made by counsel that "is completely without merit in law and cannot be supported by a reasonable argument for an extension, modification or reversal of existing law."

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The Preamble to the Rules instructs judges to weigh certain factors in deciding the appropriateness of disciplinary action, such as the “seriousness of the transgression,” “whether there is a pattern of improper activity,” and the “effect of the improper activity on others or on the judicial system.” Judges, then, have considerable discretion in deciding what disciplinary action is appropriate when presented with filings containing AI hallucinations. In addition, Rule 3.3(a)(1) of New York’s Rules of Professional Conduct requires that a lawyer must not knowingly make or fail to correct “a false statement of fact or law to a tribunal.” Attorneys further are required to provide “competent representation,” *Hall v. Academy Charter School*, No. 2:24-CV-08630-JMW, 2025 WL 2256653 (E.D.N.Y. Aug. 7, 2025), which should be top-of-mind for any attorney enlisting the help of Gen-AI.

## Recent Commercial Division decisions

Two recent Commercial Division cases addressed the fallout from an attorney presenting filings containing AI-generated hallucinations. In *Ader v. Ader*, 2025 N.Y. Slip Op. 51563(U) (N.Y. Co. Oct. 1, 2025), Justice Joel Cohen of the New York County Commercial Division began his decision by observing:

This case adds yet another unfortunate chapter to the story of artificial intelligence misuses in the legal profession. Here, defendants’ counsel not only included an AI-hallucinated citation and quotations in the summary judgment brief that led to the filing of this motion for sanctions, but also included multiple new AI-hallucinated citations and quotations in defendants’ brief opposing this motion. In other words, counsel relied upon unvetted AI--in his telling, via inadequately supervised colleagues--to defend his use of unvetted AI. (emphasis in original).

That case involved the plaintiff’s claim to enforce a guarantee of a \$13 million dollar loan. Following the granting of summary judgment to the plaintiff, the plaintiff moved for sanctions against the defendants and their counsel for citing “hallucinated” citations and quotations in their opposition motion to summary judgment. Significantly, the court observed that, in addition to erroneous cites in the defendants’ opposition to summary judgment, defendants’

opposition to the motion for sanctions included “four citations that do not exist, seven quotations that do not exist in the cited cases, and three that do not support the propositions for which they are offered.”

Earlier, in *Jennie Enterprise v. Shvo*, Index No. 653221/2024 (N.Y. Co. Dec. 24, 2024), Justice Andrea Masley of the New York County Commercial Division imposed sanctions on plaintiffs’ counsel in the form of legal fees incurred by the defense in opposition to a motion in which plaintiffs’ counsel used AI without checking it before submitting the motion to the court. The court determined the brief cited quotations that “did not appear in the cases cited” and “cited a case for a legal principle for which the case [did] not stand.” As the court observed: “The court relies on attorneys to do their jobs: advocate for their clients using law and facts—real law and real facts.”

## Forms of AI hallucinations

Though the arguments drafted by an AI platform might appear convincing, they often rely on imaginary caselaw. Consider the following hallucinated argument appearing in the defendants’ motion opposing summary judgment in the *Ader* case discussed above:

Similarly, in *White Plains Plaza Realty, LLC v. Town Sports Int’l, LLC*, 69 Misc. 3d 1201(A), \*3 (Sup. Ct. Westchester Co. 2020), the court refused to facilitate a contractual outcome that would “contravene established judicial directives,” recognizing the strong public policy against circumventing court orders. Brief for defendants at 11 (NYSECF No. 71).

Upon a surface reading, the *White Plains* citation would raise no red flags, but as noted in the court’s decision imposing sanctions on defendants’ counsel, the case simply “did not exist at all.”

The phrase “AI hallucinations” usually brings to mind AI’s creation of an entirely fictional case or quotation—an egregious and documented error, as just discussed—but there exist a host of different hallucinations that, if left unchecked, can lead to embarrassment and sanctions. In the *Jennie* case discussed above, the court imposed

sanctions on plaintiffs' former attorney after he submitted an opposition brief plagued by numerous errors—quotations that “did not appear in the cases cited,” at least one real quotation cited to the wrong case (where the correct case was not cited at all), and a citation to a case for “a legal principle for which the case [did] not stand.”

Ader and Jennie demonstrate that not all hallucinations are alike. But crucially, whether the offending quotations or citations are purely fake, misattributed, or some Frankenstein-ed combination of real and fake, sanctions can and likely will be imposed on attorneys who fail to catch them before filing documents with the court.

## Failure to cite-check

Even if AI hallucinations manage to state accurate propositions of law, court filings containing such hallucinations may nonetheless be grounds for sanctions. In both Ader and Jennie, the offending attorneys attempted to argue that the AI hallucinations amounted to harmless error because the legal principles were correct as per other available caselaw. In Ader, Cohen stated at oral argument on the offending motion: “Using AI is not—there is nothing wrong with it. What’s been made clear in the cases, particularly when you use that and get cites through it, is that it is absolutely critical to make sure they are correct.... It’s devastating for me to not be able to rely on citations being genuine.” Transcript Sept. 24, 2025 at 10 (NYSECF No. 169).

Declining to set a precedent that AI hallucinations are inoffensive if they happen to state accurate law, the court in Jennie emphasized the longstanding expectation that attorneys proofread their work. The court found that it is an attorney’s failure to properly scrutinize AI-generated work that amounts to frivolous and sanctionable conduct under 22 NYCRR §130-1.1. Cohen in Ader highlighted that declining to impose sanctions just because the legal propositions were technically accurate would “create [] the risk that a fake citation may make its way into a judicial decision, forcing courts to expend their limited time and resources to avoid such a result.” Both cases make clear that the sanctionable offense is the failure to proofread,

and the already resource-strained courts will not tolerate the burdens and risks associated with hallucinations that may or may not be accurate.

## Sanctions

Ader and Jennie preview the specific sanctions attorneys will likely face if the court discovers AI hallucinations in their filings. In Jennie, the sanctioned attorney was ordered to pay reasonable attorney’s fees incurred by the moving defendants for (i) their reply brief to the attorney’s offending motion and (ii) their communications regarding the improper use of AI.

Cohen in Ader similarly ordered the sanctioned attorney to pay attorney’s fees, costs, and out-of-pocket expenses to the plaintiff incurred in connection with the sanctions motion and in addressing the instances of AI hallucinations in the offending motion. But Cohen went further in Ader; pursuant to the reporting mandate under 22 NYCRR §100.3(D)(2) and to deter similar conduct, the court ordered that the decision be submitted to the Grievance Committee for the Appellate Division, First Department, and the New Jersey Office of Attorney Ethics, as well as to a judge presiding over a case in which the defendants’ counsel was separately litigating.

## Proposed Commercial Division rule

On June 11, 2025, the New York State Unified Court System’s Office of Court Administration circulated for public comment proposed Commercial Division Rule 6(e), a proposed new addition to 22 NYCRR Section 202.70. That proposed rule provides, in relevant part: “Accordingly, any person who files [AI-generated information in briefs, letters or memoranda of law] with the court is certifying the accuracy and reliability of such material and any statements made therein.” The rule acknowledges the rise of generative AI in the legal profession, stating that attorneys and clients may conclude that its use serves the client’s “best interest.”

## Conclusion

Generative AI technology is a highly useful tool, rather than a passing trend, which will continue to be used and developed for the legal profession. As the caselaw discussed and proposed Rule 6(e) demonstrates, attorneys can engage with Gen-AI tools, but they must carefully review their filings, including all AI-generated case citations and quotes, for hallucinations or else face potential sanctions. The early Commercial Division cases suggest a zero-tolerance policy for attorneys that fail in this critical responsibility.