

Necessity is the Mother of Invention; Burgeoning Law Directed at AI Use in Legal Practice *Would Plato Be Proud?*

By Hon. David Rosen (Ret.)



Throughout his career, Hon. David A. Rosen has demonstrated an unwavering commitment to upholding justice and promoting effective dispute resolution methods. His deep-rooted understanding of the law, combined with his approachable demeanor and empathetic nature, make him an invaluable asset to those navigating the complex realm of alternative dispute resolution. He has extensive trial experience from both sides of the bench. As an attorney, Judge Rosen specialized in civil litigation. He briefed and argued over twenty cases of various types before the California Courts of Appeal, two cases before the Ninth Circuit Court of Appeals, and four cases before the California Supreme Court. His expertise spans personal injury claims, professional liability, products liability, business disputes, environmental/toxic tort actions, insurance disputes, real estate matters, and employment lawsuits.

There are now over 400 reported decisions across the United States discussing sanctions against lawyers for misuse of artificial intelligence. (TrialEdge, 11/21/25). Over a third of the published decisions deal with inaccurate or completely false quotes from citable cases which actually exist. About 60% of these reported decisions deal with lawyers' citations to completely fabricated cases in their briefing. Generally, these sanctions cases are based upon misuse of generative AI to draft briefs, although there has also been some reported misuse of traditional AI in legal research as well.

Generative AI has been shown to sometimes engage in *sycophancy*, and is capable of, even predisposed to, *scheming*; that is, ignoring or reinterpreting prompts provided by the AI user so as to create a more pleasing product for the user. AI also sometimes engages in *hallucination*, the term for AI's more than occasional penchant for simply creating things out of whole cloth in order to please the user. Meinke, et al., *Frontier Models are Capable of In-context Scheming*, Apollo Research, 12/17/24.

The California State Bar Board of Trustees adopted its *Practical Guidance for the Use of Generative Artificial Intelligence in the Practice of Law* on November 16, 2023, but these are, as the title states, guidelines, not rules or even best practices. The American Bar Association *Task Force on Law and Artificial Intelligence* issued its *Year Two Report on the Impact of AI on the Practice of Law* on December 15, 2025. This report collects scholarly articles, qualified practitioner experiences, and suggestions for best practices with respect to AI and the law, but does not cite cases, statutes, or rules.

These cases and reports, and the publicity resulting from them, along with the exposure to monetary sanctions, reputational damage, and extreme public embarrassment, should be enough to deter the reasonably careful practitioner from failing to carefully cite-check any information provided by AI, generative or traditional, before filing a brief relying upon such research. Moreover, there are no fewer than nine long-existing ethical rules and laws, which, when applied to the use of AI by a practitioner, proscribe improper use. CA Bus. & Prof. Code, sec's. 6068, 6147-6148; CA

Rules of Professional Conduct, Rules 1.1, 1.2, 1.2.1, 1.3, 1.4, 1.5, 1.6, 1.8.2, 3.1, 3.3, 5.1, 5.2, 5.3, 8.4, 8.4.1. These rules of professional conduct require, variously, competence in practice, candor with the court, and complete confidentiality for and honesty to clients, among other applicable standards. Finally, California Rules of Court, rule 10.430, effective September 1, 2025, seeks to more expressly regulate the use of generative AI in and before California courts.

Yet, the facts in many of the cases considering sanctions for AI misuse are remarkable. See, e.g., *Flycatcher Corp. Ltd., et al. v. Affable Avenue, etc., et al.* (2026-SDNY) 2026 WL 306683; *Noland v. Land of the Free, L.P.* (2025-2d Dist.) 114 Cal. App. 5th 426; and *Schlichter v. Kennedy* (2025-4th Dist.) 116 Cal. App. 5th 24. In these cases, the lawyer at issue filed briefs with the court inaccurately citing and quoting from cases, or citing cases which did not exist except in the imagination of AI. Also in these cases, Counsel doubled down on their actions by responding to orders to show cause re: sanctions for the improper briefing by saying that they didn't know AI could hallucinate, or they didn't do the research or the briefing that they signed, or some combination of both.

Most recently, the California Supreme Court, in a unanimous decision, ordered the 3rd District Court of Appeal to vacate its summary denial of a sanctions request by a criminal defendant against the Nevada County District Attorney for the latter's filing of a brief containing fabricated citations evidently generated by an AI platform. *Kjoller v. S.C. (People)* S293723 (1/14/2026). *Kjoller* is the first AI sanctions case to reach the California Supreme Court. (Daily Journal, 1/16/2026).

In addition, less than careful use of generative AI as a substitute for legal research and writing has called into question the application of sacrosanct concepts including attorney-client privilege and the work product doctrine. Some courts have remarked that an attorney's communications or prompts to generative AI platforms such as ChatGPT and Claude are neither privileged nor protected

work product, nor even confidential on any level. See, e.g., *United States v. Heppner* (SDNY-2/17/26) 2026 WL 436479.

Lawmakers around the country have stepped up efforts to further define and sanction misuse of AI, especially by lawyers. As 2026 began, state Senator Tom Umberg (D-Santa Ana), a practicing trial lawyer, introduced SB 574, legislation designed, he said to Law 360, to promote integrity in the use of AI and maintain human accountability for misuse of AI in legal processes. The bill specifically targets over-reliance upon and misuse of AI by arbitrators in private dispute resolution. ADR Services, Inc. issued its AI Guidelines and Policies for Neutrals, in line with CRC, rule 10.430, as well as much of SB 574, on February 20, 2026.