

CAN HIMMEL STEM THE TSUNAMI OF AI SLOP?

By Frank Young

Alongside its considerable benefits, the integration of generative AI into legal practice has introduced new risks for the legal profession in the form of slop (low-quality AI content that's often fabricated or incorrect). Alarms about legal AI slop began blaring in June 2023 after *Mata v. Avianca*, when AI-induced sludge first contaminated court filings.

While attorneys are not required to become AI experts, they must have a reasonable understanding of the capabilities and limitations of the AI technology they use in practice. Fundamentally, attorneys must thoroughly examine a document before signing it in accordance with Rule 11 of the Federal Rules of Civil Procedure and analogous state court rules. At a minimum, Rule 11 required attorneys to verify the existence and validity of the legal authorities on which they rely.

The *Mata* court clearly expressed concern over what should have been an isolated incident. The court's warning was clear: Submitting fake legal opinions harms all parties involved, wastes time and resources, undermines trust in the judiciary, and risks future contempt of court. However, as the fourth anniversary of *Mata* approaches, more than 700 cases have addressed AI slop oozing into court filings in the United States.

Sanctions Escalate

Across the country, courts have used sanctions to try deterring the trend of using AI as a shortcut to practicing law. Dismissal, monetary sanctions, attorney fees awards, referrals for disciplinary

action, attendance at CLE training, and the exclusion of evidence have been used to discourage blind reliance on AI-generated content. And a growing number of courts have awarded attorney fees to opposing counsel for time spent responding to filings polluted with AI-generated hallucinated cases and fabricated quotations.

In one such case, *ByoPlanet v. Gilstrap*, the Southern District of Florida found that fees and costs of more than \$85,000 were reasonable based on counsel's repeated transgressions in filing AI-tainted motions in a consolidated federal case (involving four separate actions). The attorney fees sanction punctuated other sanctions: dismissal of the four federal cases without prejudice and without leave to amend; ordering that if plaintiff refiled their cases, they would be assigned to the present court; instructing

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counsel to attach a copy of the sanction order with any cases filed in that district for the next two years; and referring counsel to the Florida Bar for appropriate discipline.

Other courts are following a similar path. For example, in *Puerto Rico Soccer League NFP, Corp. v. Federación Puertorriqueña de Fútbol*—a federal case in Puerto Rico involving the international governing association of soccer, FIFA—the court ordered plaintiffs to pay more than \$24,000 in attorney fees as a sanction. In *Jakes v. Youngblood*, the court in the Western District of Pennsylvania considered a petition for attorney fees exceeding \$75,000 but ultimately imposed a \$5,000 sanction.

While other courts consider imposing hefty attorney fee awards, AI-filled filings continue to flood the courts. Some courts opine that current sanctions are insufficient as filings with hallucinations continue to fill the dockers.

Duty to Check Opponent's Filings?

The first AI-themed issue of the CBA *Record* earlier this year highlighted *Noland v. Land of the Free*, in which an attorney was penalized \$10,000 after filing a brief that included 23 case quotations, 21 of which were fabricated. The opinion was noteworthy because the court declined to award sanctions against opposing counsel for failing to alert the court to the fabricated citations and becoming aware of them only after the order to show cause. The decision suggests that attorneys may have a duty to spot and report opposing counsel's AI-generated fabrications in case filings. In this scenario, when an attorney (the *reviewing attorney*) discovers that opposing counsel (the *filing attorney*) submits a filing filled with fabricated case citations, serious ethical and procedural questions also arise for the reviewing attorney. Similarly, in *Elizondo v. City of Laredo*, the court in the Southern District of Texas urged attorneys to be more diligent in identifying citation errors, as the risk of these errors going unnoticed is high.

The courts in *Noland* and *Elizondo* raise the question whether a reviewing attorney must report opposing counsel's hallucinations to disciplinary bodies. Several conclude that ethical rules come into play that compel action when a reviewing attorney identifies fabricated citations in an opposing filing, to aid the courts in policing the influx of "bad" AI into the judicial process. ABA Model Rule of Professional Conduct 3.3 provides guidance on the conduct of the attorney's filing; the rule may also implicate the reviewing attorney if they fail to correct a known falsehood presented to the court. Further, Model Rule 8.3(a) directs attorneys to report conduct that raises a substantial question about another attorney's honesty, trustworthiness, or fitness. Courts and ethics bodies increasingly treat failure to verify AI-generated content as reckless misconduct. Thus, the reviewing attorney should assess whether the filing attorney's misconduct was knowing or reckless.

Himmel's Long Arm

In assessing a reviewing attorney's duty to report, the landmark Illinois professional responsibility case *In re Himmel*, 125 Ill. 2d

531 (1988), provides some instruction. In that case, the Illinois Supreme Court held that an attorney who becomes aware of another attorney's misconduct must report it to the state's disciplinary commission. The duty to report applies to misconduct involving dishonesty, fraud, deceit, or misrepresentation. Importantly, the Illinois Supreme Court framed the issue as whether there was knowledge of the misconduct. The subsequent Illinois State Bar advisory opinion 90-28 explained that the duty to report is not mandatory unless an attorney "has actual knowledge of a violation."

Thus, actual knowledge is required to trigger the *Himmel* duty. If the filing attorney fails to review the filing and unknowingly submits fabricated citations, the question becomes whether this constitutes a substantial violation. However, if the reviewing attorney reasonably believes the filing attorney acted recklessly or with willful blindness, the reviewing attorney will be ethically bound to report the violation. Ultimately, Illinois Rules of Professional Conduct 8.3(a) and 8.4(c) provide that an attorney who knows another attorney has "engage[d] in conduct involving dishonesty, fraud, deceit, or misrepresentation" shall inform the appropriate professional authority.

The Illinois Supreme Court released its AI policy in January 2025, outlining the judiciary's approach to integrating AI responsibly and ethically. It emphasizes transparency, accountability, and the protection of due process, ensuring that AI tools do not replace judicial decision-making or compromise fairness. The policy also encourages ongoing evaluation and education to adapt to technological advancements while safeguarding public trust in the legal system. In October 2025, the ARDC followed up by issuing guidance requiring Illinois attorneys to thoroughly review all AI-generated output before use, noting that Gen AI tools could produce fictitious case citations and fabricated legal authority.

Illinois courts have not yet considered cases involving AI hallucinations within the *Himmel* framework. Following *Mata*, 26 cases involving sanctions flowed through Illinois courts (14 federal and 12 state, as of the date this article was written). Of the 11 Illinois appellate court cases, four involved a single attorney in appeals from termination-of-parental-rights cases. In those four cases, the attorney cited nonexistent cases or misrepresented case law in violation of Illinois Supreme Court Rule 375. The appellate courts imposed sanctions in the first three cases, including monetary penalties and referrals to the state disciplinary commission. The court declined to impose sanctions in the fourth case although similar misconduct occurred, because the disciplinary commission was reviewing the attorney's misconduct and the attorney was surrendering his law license (there was no indication that the ARDC had taken any action as of the date this article was written).

Cook County AI Fallout

The Cook County Circuit Court issued a consequential sanctions ruling in late 2025, awarding attorney fees against an attorney and a law firm for filing a brief fraught with AI-generated

hallucinations. In *Jordan v. Chicago Housing Authority*, No. 22 L 95 (Cook Cnty. Cir. Ct. Dec. 5, 2025), the court's attention was drawn to a fictitious case in a post-trial motion. The fallout was immense: One attorney lost her job, another attorney and the law firm received substantial monetary sanctions.

During a subsequent hearing, the drafting attorney admitted to using ChatGPT for drafting parts of the motion, acknowledging the tool's potential to generate false information. Despite her confession, she claimed ignorance of ChatGPT's ability to generate fictitious legal citations and insisted that her work would be reviewed by her colleagues before submission. Further complicating matters, this attorney had failed to disclose a recent sanction imposed by another court for similar misconduct involving AI-generated, fabricated case law. Ironically, the attorney had authored articles cautioning against blindly accepting AI-generated content without thorough verification. The lead attorney on the case, who signed off on the post-trial motion, distanced himself from responsibility, asserting that he could not be expected to verify over 58 cases. He emphasized that the firm had a strict policy against using AI without explicit approval and characterized the drafting attorney's actions as both unexpected and unacceptable. He also claimed to have trusted the expertise of another attorney who assisted with the filing.

In its findings, the court cited 14 instances of misrepresented legal propositions and highlighted that these errors were not mere nuances but blatant fabrications. The court expressed deep concerns about the implications of such conduct for the legal profession's integrity, criticizing the failure to assume responsibility for errors and the submission of misleading statements after attorneys had sufficient time to reflect on their submissions. In the ruling, the court underscored the enduring obligations of legal officers and asserted that incorporating AI into legal processes must not compromise ethical standards.

Ultimately, the court determined that a penalty of \$59,500 was warranted, given the seriousness of the sanctionable conduct and the stakes involved in the post-trial motion. The judgment serves as a yet another cautionary tale about the responsibilities surrounding the use of technology in legal practice and the importance of maintaining professionalism and accuracy in all filings.

Bottom Line for Illinois Practitioners

Under the *Himmel* framework, in which an attorney has a duty to report an opponent's conduct, common sense should govern

in the AI-hallucination context. In practice, before reporting, the reviewing attorney should verify all citations; document any misconduct, including the filing and any communications; and consider notifying the court, especially if there are false citations that materially affect the proceedings.

If the misconduct meets the threshold under the applicable rule of professional conduct, the matter should be reported to the state disciplinary committee. If the filing attorney claims ignorance, the reviewing attorney may still report the matter as a potential violation, allowing the disciplinary committee to investigate further.

As the case law suggests, ignorance is no longer a defense for filing court documents with AI-generated fabrications. Moreover, the widespread awareness of AI hallucinations following *Mata* demonstrates that courts and ethics bodies are increasingly unwilling to accept ignorance as an excuse. Finally, the reviewing attorney will waive the opportunity to recover attorney fees for failing to call attention to the filing attorney's AI misuse.

Illinois law provides a means to hold attorneys accountable for the misuse of AI in legal filings. Attorneys are ethically bound to understand AI limitations, verify all authority cited in plead-

ings, and report opposing counsel's misconduct when they have actual knowledge, as required by *Himmel* and clarified by the state bar opinion.

Appellate courts have imposed sanctions, including monetary penalties and disciplinary referrals for Rule 375 violations. The Illinois Supreme Court's 2025 AI policy further reinforces transparency and the ethical integration of AI within the judiciary. Recent ARDC guidance makes clear that attorneys remain personally and professionally accountable for every AI-assisted work product and must independently verify all AI-generated content before submission. Attorneys must take responsibility to ensure that fabricated citations do not pose a threat to judicial integrity and the very foundations of a fair legal system. ■



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