

Business & Practice

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# Attorneys Must Certify AI Policy Compliance, Judge Orders (1)

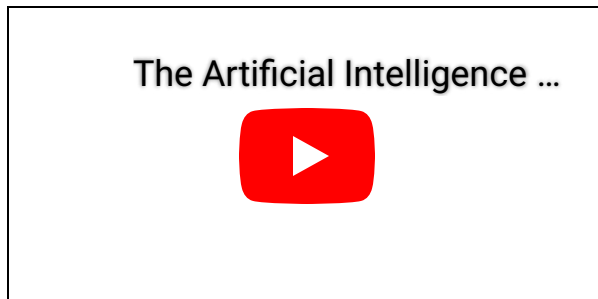
By Peter Hayes and Justin Wise

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- **COURT:** N.D. Texas
- **JUDGE:** [Brantley D. Starr](#)

A federal trial court judge has issued a standing order requiring attorneys to certify that generative AI drafted no portion of a filing, or that a human being checked the accuracy any language that AI did craft.

“These platforms in their current states are prone to hallucinations and bias,” Judge Brantley D. Starr of the US District Court for the Northern District of Texas said Tuesday. “On hallucinations, they make stuff up—even quotes and citations.”



## Video: The AI Dilemma: Can Laws Keep Up With It?

Brantley’s order for attorneys appearing before his court shows how the legal profession is looking for ways to regulate the technology that promises to upend the way lawyers do their jobs.

In New York, a pair of lawyers are facing possible sanctions after a Manhattan federal judge discovered that a brief they submitted included citations and made-up quotes from six nonexistent cases.

Steven Schwartz, who has been a licensed attorney in the state since 1992, admitted the generative AI tool ChatGPT invented the case as he performed research on the case. He was “unaware of the possibility that its content could be false,” Schwartz said in an affidavit submitted May 25.

District Judge Kevin Castel has scheduled a hearing for June 8 to decide whether Schwartz and his colleague, Peter LoDuca, should be sanctioned. Schwartz could also face a referral to New York disciplinary authorities.

ChatGPT is a chatbot model from research non-profit Open AI that can quickly compile information and perform tasks from writing computer programs to a business pitch. A core feature is its ability to carry human-like conversations with users.

It is among a host of generative AI tools that could enhance productivity across a number of white-collar professions but whose underlying technology also carries large-scale risks.

### 'Strike Any Filing'

The Texas order comes as law firms and attorneys begin to explore ways to use the technology in their day-to-day work, said Michele DeStefano, a professor at University of Miami School of Law. "Over the next few years, we're going to figure out the right and wrong ways to use it," she said.

Starr in his order noted that, "While attorneys swear an oath to set aside their personal prejudices, biases, and beliefs to faithfully uphold the law and represent their clients, generative artificial intelligence is the product of programming devised by humans who did not have to swear such an oath."

"Any party believing a platform has the requisite accuracy and reliability for legal briefing may move for leave and explain why," he said.

The court will "strike any filing from an attorney who fails to file a certificate on the docket attesting that the attorney has read the Court's judge-specific requirements and understands that he or she will be held responsible under Rule 11 for the contents of any filing that he or she signs and submits to the Court, regardless of whether generative artificial intelligence drafted any portion of that filing," Starr wrote.

He has not elaborated on what prompted the standing order. Professional conduct rules already include provisions on lawyer competence and accuracy.

"Lawyer's under the professional rules need to do their work and substantiate claims," DeStefano said. "You don't need a judge to tell you that."

Still, generative AI tools promise to help litigators and corporate lawyers become more persuasive writers and communicators, even as their influence presents important questions about how it is regulated, she said.

A research report released by Goldman Sachs in March predicted that 44% of legal tasks could be automated through the use of AI tools, which could have a major impact on the operations of law firms. Hedge funds on Wall Street, many of whom are clients of Big Law firms, have also said generative AI is speeding up mundane tasks typically handled by junior employees.

In February, Allen & Overy touted itself as the first law firm to integrate Harvey, an AI platform specializing in machine learning and data analytics, into its global practice. About 3,500 lawyers asked Harvey 40,000 questions relating to their day-to-day work during a trial period, the firm said in a statement.

**(Adds law professor comment starting in ninth paragraph.)**

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