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Attorneys Face Potential Sanctions for Alleged Misuse of AI

Virginia Rocket Docket Blog

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A federal judge in the Western District of Virginia has ordered a plaintiff's attorneys to show cause why they should not be sanctioned for the alleged misuse of artificial intelligence (AI).

The plaintiff's attorneys filed a brief objecting to U.S. Magistrate Judge Joel C. Hoppe's order granting a protective order in the whistleblower case of *Iovino v. Michael Stapleton Associates, Ltd.*, 5:21-cv-64. In their brief, the attorneys cited "seemingly fictitious cases and quotations," according to the show cause order entered by U.S. District Judge Thomas T. Cullen. Judge Cullen ordered the attorneys to show cause by August 14 why "they should not be sanctioned and/or referred to their respective state bars for professional misconduct[.]"

Judge Cullen provided more background about the alleged misconduct in a related memorandum opinion overruling the plaintiff's objections. Judge Cullen stated that the plaintiff's "objections rely, in part, on citations to sources and quotations that appear not to exist." The defendant, "highlighted those mysterious citations in its brief opposing Iovino's objections," but "Iovino did not file a reply, leaving unrebutted the allegations of fabricated citations[.]"

In its opposition brief, the defendant stated that it did "not presume that this use of erroneous case law was intentional"; rather, it argued that the "mysterious citations" could be the result of "ChatGPT run amok." For example, the defendant argued that the plaintiff's attorneys quoted language purportedly from *Graves v. Lioi*, 930 F.3d 307, 318 (4th Cir. 2019) that did not appear anywhere in the Fourth Circuit's opinion. The attorneys also cited two cases that appeared not to exist. The plaintiff's attorneys did not respond to these allegations. "This silence is deafening[,]" Judge Cullen wrote in his opinion.

Judge Cullen wrote that misuse of AI could give rise to allegations of "bad faith" or engaging "in deliberate misconduct in an attempt to deceive the court[.]" But even if misuse of AI is unintentional, "[i]f counsel relies on artificial intelligence or other technology to draft a filing, the attorney is still responsible for ensuring the filing is accurate and does not contain fabricated caselaw or quotations."

Judge Cullen wrote that the show cause order was necessary "to uphold the integrity of these proceeding and understand where the purportedly false references originated[.]"

Takeaways

Notably, Judge Cullen did not state that mere *use* of AI software (such as ChatGPT) is sanctionable. Rather, attorneys who choose to use AI must take care to ensure that all quotations and citations generated by the software are real and accurate. Failure to check the software's work could result in discipline, not only from the federal court but from the state bar.

Furthermore, attorneys would be well-advised to take the time to verify the accuracy of citations submitted by opposing counsel.

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