

Is generative AI a threat to the integrity of the justice system? (Shahid v. Essam)

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7 July 2025

The explosion of the use of generative artificial intelligence may be a serious threat to the integrity of the administration of justice and the legal profession. Although it is clear that generative AI “hallucinates” case law, self-represented litigants and lawyers continue to use AI platforms in building their legal arguments and presenting fake cases before the court. So far, opposing lawyers and judges have usually not been fooled by the use of fake cases and have proactively prevented fake cases from influencing a decision.

However, in *Shahid v. Esaam* (Court of Appeals of Georgia, First Division, 30 June 2025), the rubicon may have been crossed. Without greater vigilance and punishment for lawyers who use fake cases, the threat to the legitimacy of court decisions rendered by courts in the future might not just be a fantasy confined to a science fiction story.

In this case, a wife sought to set aside a decree of divorce following a trial on the grounds that service by publication of her husband's complaint had been improper. In general, service by publication is a process that permits a document to be served on an opposing party through publication in an advertisement in a newspaper of general circulation.

According to the wife, her husband filed a complaint for divorce in April 2022, and served the complaint by publication. In July 2022, a trial court entered a final judgment in favour of the husband. The wife argued that following separation from her husband, she moved to Texas and that the husband failed to use reasonable diligence to determine her whereabouts before obtaining service by publication.

In refusing the wife's motion to reopen the case so that it could be defended, the trial judge relied on two fictitious cases which were presented to the court by the husband's lawyer. Those cases were cited in the order.

The wife appealed, contending that the order denying her motion to reopen the case was “void on its face”.

On the appeal, the husband's lawyer continued to rely on fake cases.

The lawyer cited several fake cases in response to the wife's appeal and supported legal propositions with cases that had nothing to do with those propositions. In total, 11 of the 15 cases used by the husband's lawyer on appeal were fictitious.

In addition, the husband's lawyer sought “Attorney's Fees on Appeal” relying on a case that the Georgia Court of Appeals was unable to find either by case name, citation or its purported holding.

The court explained that rather than being entitled to attorney's fees on appeal under the rule cited by the husband, Georgia courts had clearly held that the rule relied upon did not authorize the imposition of attorney fees and expenses of litigation for proceedings before an appellate court.

The Georgia Court of Appeals was extremely troubled by the use of fake cases before both the trial judge and the appellate court, and accordingly ordered costs against the husband's lawyer in the amount of \$2,500. This was the maximum costs award the court was entitled to make.

More importantly, the court explained the severity of the potential impacts on the justice system by the use of fake cases:

Indeed, many harms flow for the submission of fake opinions. The opposing party wastes time and money in exposing the deception. The Court's time is taken from other important endeavours. The client may be deprived of arguments based on authentic judicial precedents. There is potential harm to the reputation of judges and courts whose names are falsely invoked as authors of the bogus opinions and to the reputation of a party attributed with fictional conduct. It promotes cynicism about the legal profession and the American judicial system. And a future litigant may be tempted to defy a judicial ruling by disingenuously claiming doubt about its authenticity.

With respect to the wife's appeal, the court stated that it was unable to meaningfully review the trial judge's decision. While the husband contended that the factual findings of the trial judge were not reviewable because the wife had failed to cause a transcript of the court's hearing to be included in her appeal record, the court held that in the circumstances, the wife had rebutted the presumption of regularity in the trial judgment as a result of the use of two fake cases in denying her petition to reopen the case. This defect was apparent on the face of the trial judgment. Therefore, the appellate court ordered that the trial judgment be vacated and the matter be remanded for further proceedings, including a new hearing on the wife's motion to reopen, consistent with the opinion of the Georgia Court of Appeals.

The key takeaway from this decision is that courts and the legal profession must come to a quick resolution on how to deal with the use of fake cases by litigants and lawyers. Although personal cost sanctions against a lawyer are appropriate, they are, in my view, an ineffective deterrent, particularly when the sanctions are only a few thousand dollars. Furthermore, although lawyers who have used fake cases have been subject to much media comment which will likely cause them to suffer embarrassment and reputational harm, this too, in my view, is an inadequate deterrent for the use of fake cases. The use of fake cases to influence a decision violates the fundamental ethical principle that a lawyer is obligated not to mislead a court. The use of fake cases violates rules of professional conduct and warrants greater sanction in order to protect the integrity of the justice system, the profession and the public. Arguably, the time has come for lawyers to not be slapped on the wrist for using fake cases and for law societies use their authority to commence disciplinary proceedings against lawyers who use fake cases before the courts.

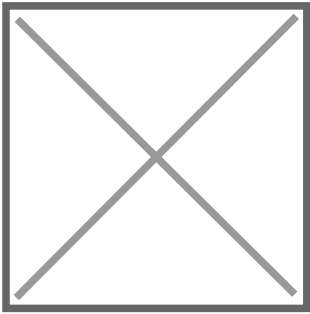
According to the decision of the Georgia Court of Appeals, based on a study by researchers at Stanford University which measured more than 200,000 legal questions on Open AI's ChatGPT 3.5, Google's PaLM 2 and Meta's Llama 2, these large-language models hallucinated at least seventy-five percent of the time when answering questions about a court's ruling. A PDF version is available to download [here](#).

[This blog has not been generated using AI.]

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