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AI and the ChatG-Plaintiff

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Introductions and Overview

- Experience of “Litigation by ChatGPT”
- Perspective from King County Superior Court
- Washington State and Federal Cases Involving AI Hallucinations
- National Cases and Recent Appeals Court Decisions
- WSBA Advisory Opinion 2025-05 (AI-Enabled Tools in Law Practice)

- Presentation will discuss cases involving AI misuse by pro se litigants and counsel

AI and Access to the Legal System

"While AI presents great overall promise, the experience so far in litigation has revealed instances of inaccurate factual and legal representations to courts. How to respond both in individual cases and at the broader level of court rules and policies is a challenge fully upon the judiciary, federal and state. Where all of this lands for *pro se* litigants—parties who represent themselves and who do so almost always without any legal training—is an important component of the ongoing dialogue and one implicated by our reaction to the quotation errors in Jones's brief."

– Judge Michael Y. Scudder

Jones v. Kankakee Cnty. Sheriff's Dep't, 164 F.4th 967, 970-71 (7th Cir. Jan. 21, 2026)

A Curious Pattern Emerges

- Lawsuit filed in January 2025 by pro se plaintiff asserting claims against a hospital client
- Pattern developed over course of litigation

Obtained Dismissal – First AI Hallucination

- Obtained dismissal in May 2025 on multiple grounds, one of which was insufficiency of service of process.

- Plaintiff referenced in moving for reconsideration:

> Washington courts routinely allow service to be corrected under CR 4(h), particularly for pro se litigants and in cases filed within the statute of limitations. Plaintiff acted in good faith to serve the complaint and promptly responded to concerns once raised.
>
> See Mar*tin v. Triol*, 121 Wn.2d 135 (1993); *Goethem v. City of Seattle*, 2006 WL 573646; *Weber v. Associated Surgeons*, P.S., 2000 WL 426419.

- No Washington case with party named *Goethem*. No case at referenced Westlaw citation.
- *Weber v. Associated Surgeons, P.S.* is reported 2009 case (166 Wn.2d 161) concerning whether a corporation's registered agent or agent's office assistant need to work for defendant's corporation for service to be effective.

Seeking Reconsideration – Second AI Hallucination

- Plaintiff filed a reply in support of her motion for reconsideration in which she claimed:
  - "In *Meadowbrook v. First Sav. Bank*, 92 Wn. App. 857, 965 P.2d 111 (1998), the court emphasized that default or dismissal should be avoided when a party's failure is due to excusable neglect or other justifiable circumstances."
- Could not identify a case with this name. Citation is to *Henrickson v. State*, 92 Wn. App. 856 (1998), concerning due process rights for civilly committed sex offender.

Second Pro Se Suit – Third AI Hallucination

- Following dismissal of first suit, plaintiff filed a second pro se suit against our client.
- We obtained a hearing date for a motion to dismiss/motion for summary judgment, waited to file our motion, and plaintiff moved for an order of default in the interim.

> Filing a Notice of Appearance does **not** satisfy the requirement to respond under CR 12(a). To avoid default, a defendant must file an Answer or a CR 12(b) motion. See *Herzog v. Foster*, 61 Wn. App. 658, 811 P.2d 945 (1991).

- No case by this name at either of the reporter citations referenced.
- There is a case named *Herzog v. Foster & Marshall, Inc.*, 56 Wn. App. 437 (1989), but it did not discuss answers, notices of appearance, or CR 12.

Request to Court to Produce Cited Authority

- We requested the court order the plaintiff to provide a copy of the *Herzog v. Foster* case cited.
- Under Washington law, "[a] trial court must hold pro se parties to the same standards to which it holds attorneys." *Edwards v. Le Duc*, 157 Wn. App. 455, 460 (2010).
  - Courts are not obligated to "grant special favors" to pro se plaintiffs. *In re Marriage of Olson*, 69 Wn. App. 621, 626 (1993).

Request to Court to Produce Cited Authority

Even if RPCs not applicable to pro se plaintiff, CR 11(a) is applicable to both parties and attorneys.

- CR 11(a): "The signature ***of a party*** or of an attorney constitutes a certificate by the party or attorney that the party or attorney ***has read the pleading, motion, or legal memorandum***, and that to the best of the party's or attorney's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances: (1) it is well grounded in fact; ***(2) it is warranted by existing law*** or a good faith argument for the extension, modification, or reversal of existing law or the establishment of new law; (3) it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation; and (4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief."
- "… If a pleading, motion, or legal memorandum is signed in violation of this rule, ***the court***, upon motion or upon its own initiative, ***may impose upon the person who signed it***, a represented party, or both, ***an appropriate sanction***, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion, or legal memorandum, including a reasonable attorney fee."

Court Orders Plaintiff to Produce Cited Authority

- The Court denied plaintiff's motion for order of default and expanded on the discussion of plaintiff's improper legal citations in our proposed order:
  - "The court has independently searched for the case cited by [plaintiff] and has been unable to locate it using Westlaw and has also gone to the hard copy of Washington Appellate Reports and seen that 61 Wn. App. 658 falls in the middle of Marriage of Coyne, 61 Wn. App. 653, 811 P.2d 244 and there is no Herzog case in volume 61."
- Plaintiff's "citations to cases that seemingly do not exist are contrary to [CR 11(a)(2)] standard and unnecessarily waste the time of counsel and the court."
- Ordered plaintiff to produce a copy of the *Herzog* case within 10 days of the order. "If she fails to do so and is found to have cited fictitious cases in the future, she will be subject to sanctions pursuant to Civil Rule 11."

Reply brief – Fourth AI Hallucination

- The same day the Court issued this order, plaintiff filed a reply in support of a protective order motion she filed.
- Cited *Biggs v. Vail*, 119 Wn.2d 129, 136 (1992) and quoted the Washington Supreme Court as holding: "The purpose of CR 11 is to deter baseless filings and curb abuses of the judicial system—not to intimidate pro se litigants or silence valid concerns."
  - *Biggs* is a published Washington case, but it concerns application of the frivolous lawsuit statute (RCW 4.84.185), and the quoted language does not appear.
  - No Washington case in Westlaw where a court used either the language "intimidate pro se litigants" or "silence valid concerns."
- Plaintiff quoted two other cases where the quoted language did not appear in opinion.
- We requested the court strike the reply and impose sanctions to deter future improper conduct.

Plaintiff Attempts to Explain Herself

- Plaintiff subsequently filed a “Notice of Clarification Regarding Citations and Quoted Language.”

I. Citations in Reply in Support of Motion for Protective Order

In Plaintiff’s July 2025 Reply in Support of Motion for Protective Order, the following Washington appellate decisions were cited:

- In re *Marriage of Wherley*, 34 Wn. App. 344 (1983)
- *Biggs v. Vail*, 119 Wn.2d 129 (1992)
- *State v. McEnry*, 124 Wn. App. 918 (2004)

Each citation references a valid, published Washington opinion and was included in good faith to support relevant legal principles. Upon further review, Plaintiff acknowledges that some quoted language did not precisely mirror the original text. Plaintiff respectfully withdraws the quotation marks from those statements and clarifies that they were intended as paraphrased summaries of the legal holdings.

Plaintiff Attempts to Explain Herself

II. Citation to Herzog v. Foster

In a separate filing, Plaintiff cited *Herzog v. Foster*, 61 Wn. App. 658 (1991), in support of Plaintiff's Motion for Default. After diligent review, Plaintiff has been unable to verify that this citation corresponds to a published Washington Court of Appeals opinion. Plaintiff therefore respectfully withdraws the citation and acknowledges that the Motion for Default has since been denied. This clarification is submitted to preserve the integrity of the record and ensure full transparency regarding the withdrawn citation.

- "Plaintiff affirms that all future filings will include independently verified legal authorities, and that any direct quotations will be clearly and accurately designated."

Court Declined to Impose Sanctions

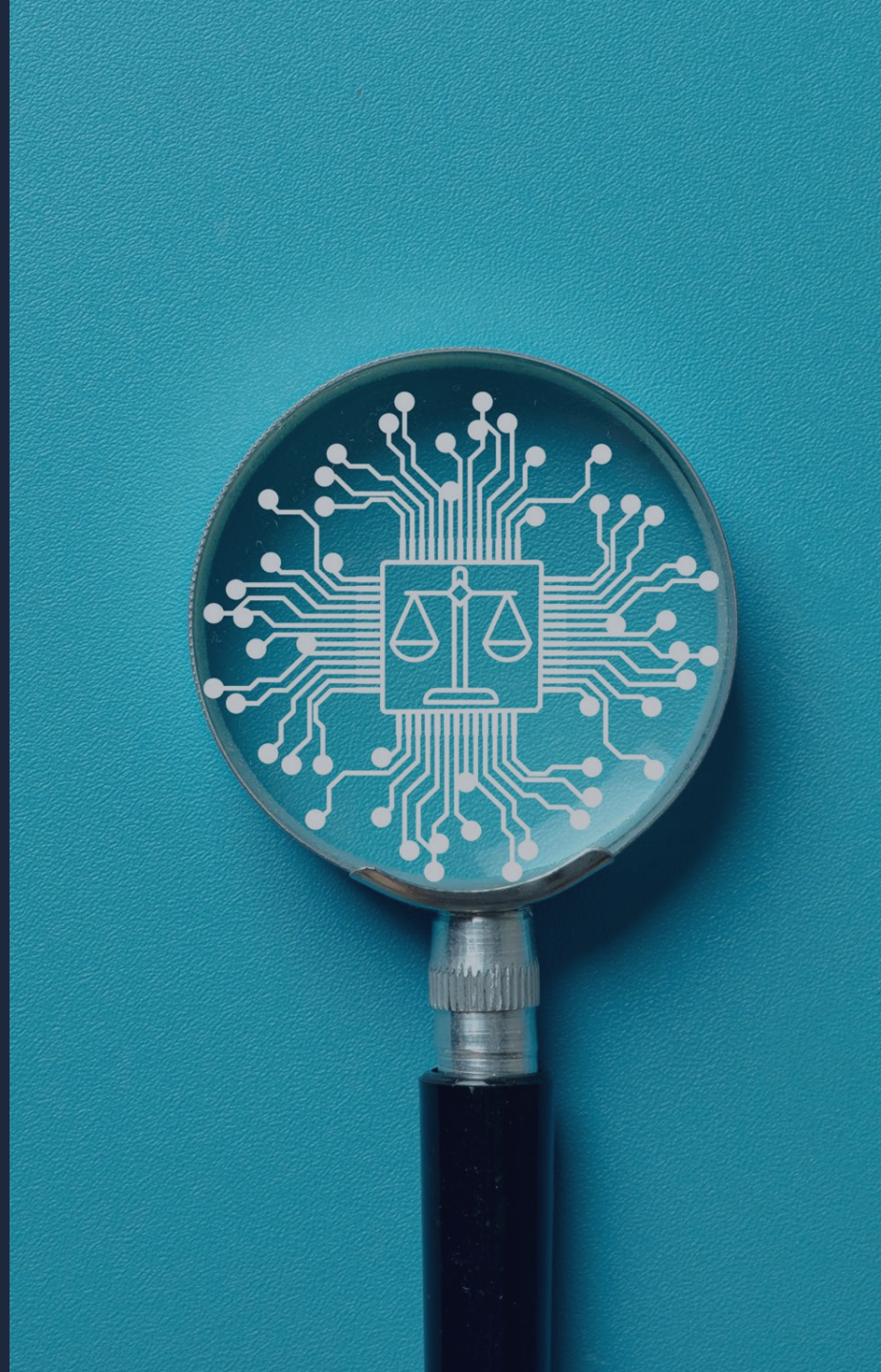
- The Court denied plaintiff's protective order motion but declined to impose sanctions.
  - "[T]he court again cautions [plaintiff] that she is required to check any legal citations to ensure that cases she cites exist, that they stand for the propositions she claims, and that any quoted material is actually taken from the cases, or she may be subject to sanctions."
- No additional issues with fictitious citations, but prolific filings continued.

Pattern Continues at Court of Appeals

- Response has been to continue filings but largely stripped of case law and authority.
  - Plaintiff has filed a motion to remand, motion to supplement the record, motion to modify the Commissioner's ruling, cross-motion for sanctions, and motion for leave to file supplemental declaration at Court of Appeals, as well as motion to vacate judgment at superior court.
- Motion to modify was filed just 71 minutes after the Commissioner denied motion to supplement the record.
  - "[T]he timing of [plaintiff's] filing suggests she that she gave little consideration to the Motion to Modify."
  - "A represented party would face sanctions in these circumstances and the Court should treat [plaintiff] no differently."

Why Can’t AI Accurately Cite Case Law?

- OpenAI just raised $110 billion in February 2026—largest fund-raising round in history—and is valued at $730 billion.
- Why can’t ChatGPT accurately cite Washington case law regarding service of process requirements?
  - LLMs work through statistical pattern recognition, predicting the next word or sequence based on observed patterns, not knowledge retrieval.
  - When you ask ChatGPT to cite case law, it’s not searching a database of cases. It is generating text that statistically resembles legal writing and citations it encountered during training.



A “Troubling Trend” Under Consideration

- King County Superior Court Presiding Judge Averil Rothrock:
  - “[O]ur entire bench is aware of the trend that use of generative AI in legal work has resulted in presentation to judges of increasingly incorrect and misleading legal briefing.”
  - King County Superior Court judges are “regulating this area and imposing sanctions” primarily based on CR 11.
  - Superior Court Judges Association has had conversations about “proposing a statewide rule more specific to the topic, but no draft has been put forward.”

A “Troubling Trend” Under Consideration

- King County Superior Court Presiding Judge Averil Rothrock (cont.):
  - King County Superior Court “also has had discussions about enacting a local rule more specific to the topic.” But no rule was included in February 2026 set of proposed LCR changes.
  - “[W]hether a rule additional to CR 11 is necessary or would be helpful to correct this troubling trend remains under general consideration.”
  - Judge Rothrock would welcome feedback from this group if they had thoughts on how to address the issue.

A “Troubling Trend” Under Consideration

- *Stewart v. Gomez Nw. Inc.*, Case No. 24-2-11874-8 SEA (King Cnty. Super. Ct. Aug. 14, 2025)
  - National law firm found to have submitted summary judgment reply brief containing two fictitious case citations.
  - Partner claimed to do “experimental” research regarding corporate liability issues in Copilot, Grok, and Google.
  - Emailed research to associate, who cut-and-pasted it into brief.
  - Nobody cite-checked the brief before it was submitted or verified the cases before oral argument.

A “Troubling Trend” Under Consideration

- *Stewart v. Gomez Nw. Inc.*, Case No. 24-2-11874-8 SEA (King Cnty. Super. Ct. Aug. 14, 2025)
  - Judge Ryan: “[I]t does not appear that general purpose GAI is ready for prime time when it comes to accurate and reliable legal research to be used in writing legal briefs.”
  - “We are not even at the trust but verify stage when it comes to general purpose GAI.”
  - “[T]he Court had counsel pull the Washington Supreme Court Reports off the Court’s bookshelves to locate the questionable cases in the bound volumes, but counsel could not locate these cases … because they did not exist.”

A “Troubling Trend” Under Consideration

- *Stewart v. Gomez Nw. Inc.*, Case No. 24-2-11874-8 SEA (King Cnty. Super. Ct. Aug. 14, 2025)
  - Judge Ryan imposed sanctions pursuant to CR 11, rejecting counsel’s argument that “[b]ecause the propositions attributed to the fake cases were correct, this somehow justifies their inclusion of fake cases in the Reply brief.”
  - Also rejected arguments that counsel did not intend to deceive the Court or opposing counsel, or that imposing sanctions would potentially chill experimentation with new AI technology.
  - “The words ‘I’m sorry,’ or their equivalent, without caveat or explanation, appear nowhere in any of the declarations filed by counsel.”

A “Troubling Trend” Under Consideration

- *Stewart v. Gomez Nw. Inc.*, Case No. 24-2-11874-8 SEA (King Cnty. Super. Ct. Aug. 14, 2025)
  - Judge Ryan also concluded that sanctions were appropriate pursuant to Court’s inherent authority to manage proceedings.
  - “[F]iling a brief with bogus AI-generated cases and then failing to adequately cite-check that brief to assure its accuracy and truthfulness amounts to bad faith litigation conduct; or, at the very least, is tantamount to bad faith.”

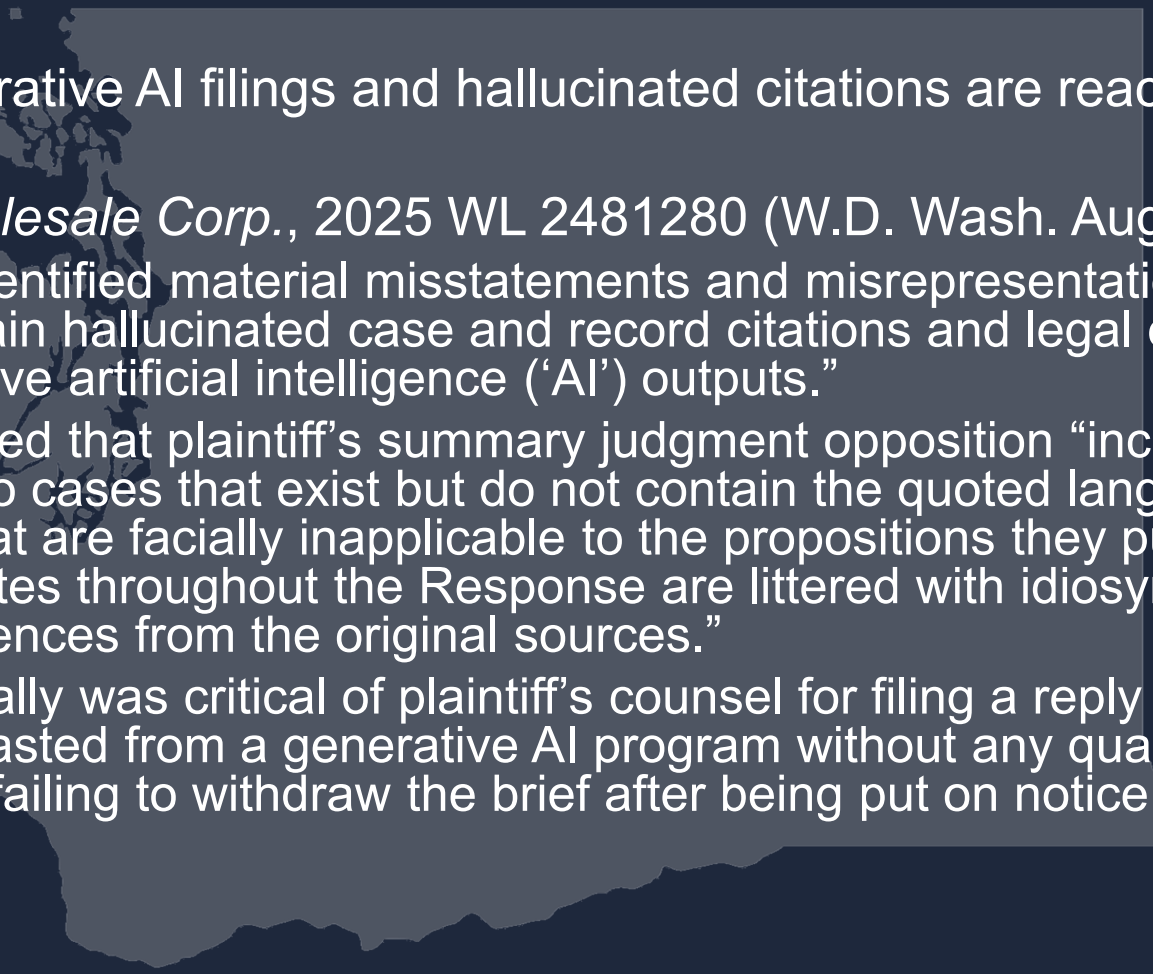
A “Troubling Trend” Under Consideration

- *Stewart v. Gomez Nw. Inc.*, Case No. 24-2-11874-8 SEA (King Cnty. Super. Ct. Aug. 14, 2025)
  - Judge Ryan noted that “[s]everal” RPCs also were implicated.
  - RPC 1.1: Lawyer is required to keep abreast of changes in the law, “including the benefits and risks associated with relevant technology.”
  - RPC 3.1: Counsel cannot assert an issue unless there is a “basis in law” for doing so.
  - RPC 3.3(a)(1): Counsel must correct a false statement of material fact and withdraw the brief at issue.

A “Troubling Trend” Under Consideration

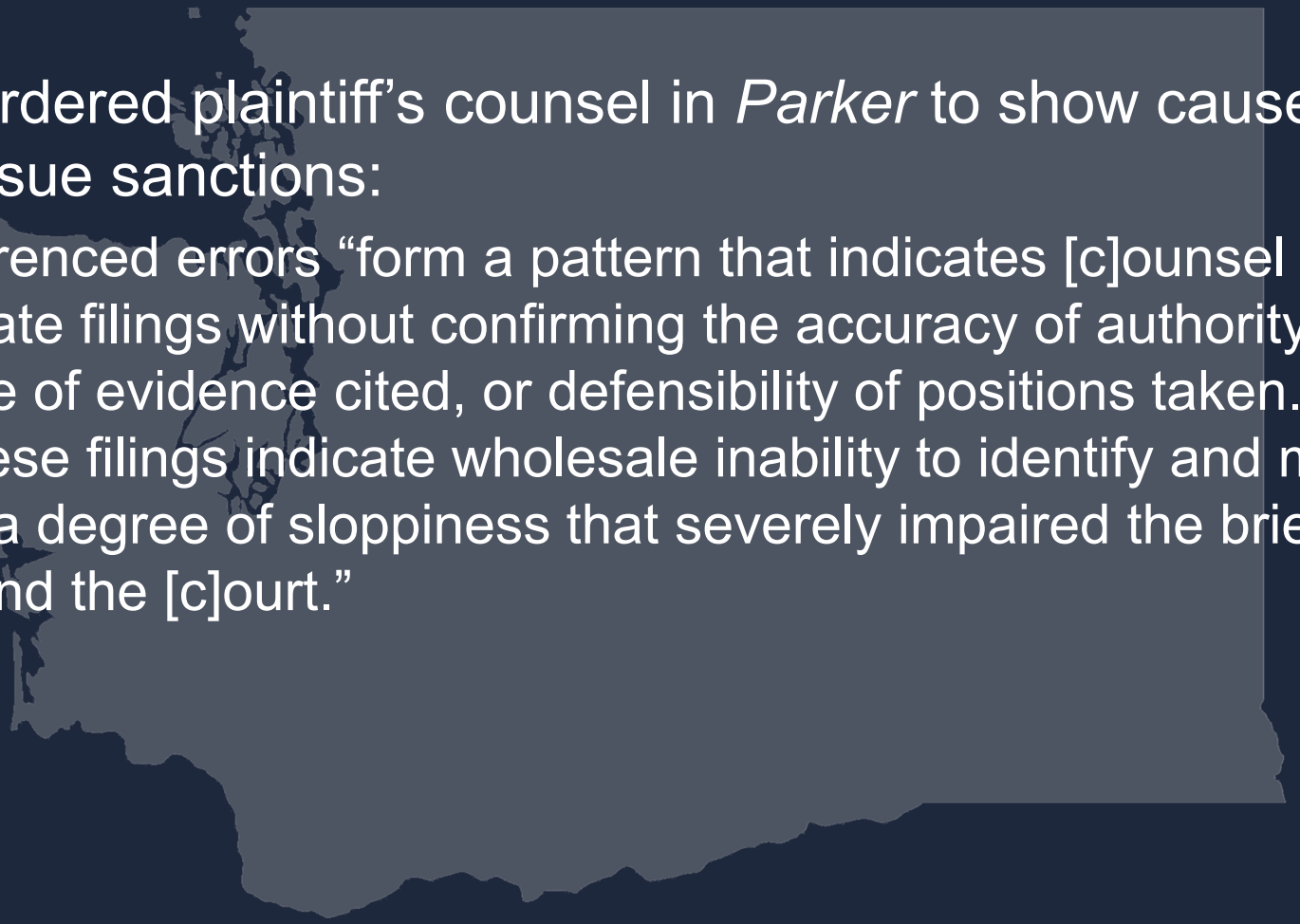
- *Stewart v. Gomez Nw. Inc.*, Case No. 24-2-11874-8 SEA (King Cnty. Super. Ct. Aug. 14, 2025)
  - The partner was ordered to pay a $2,000 sanction while the associate was formally reprimanded.
  - Both were ordered to complete three hours of CLE ethics training, including at least one hour on use of AI in legal field.
  - Required to self-report to the Washington State Bar Association’s Office of Disciplinary Counsel.

Washington Cases – AI Hallucinations



- Cases involving generative AI filings and hallucinated citations are reaching Washington federal courts.
- *Parker v. Costco Wholesale Corp.*, 2025 WL 2481280 (W.D. Wash. Aug. 28, 2025)
  - "The [c]ourt has identified material misstatements and misrepresentations in [plaintiff's] filings, which contain hallucinated case and record citations and legal errors consistent with unverified generative artificial intelligence ('AI') outputs."
  - The court referenced that plaintiff's summary judgment opposition "includes at least four case quotes attributed to cases that exist but do not contain the quoted language," "relies on at least two cases that are facially inapplicable to the propositions they purportedly support," and "case law quotes throughout the Response are littered with idiosyncratic typographical and wording differences from the original sources."
  - The court additionally was critical of plaintiff's counsel for filing a reply brief that "appears to have been copy-pasted from a generative AI program without any quality control by [c]ounsel" and for failing to withdraw the brief after being put on notice by opposing counsel.

Washington Cases – AI Hallucinations



- The court ordered plaintiff's counsel in *Parker* to show cause as to why it shouldn't issue sanctions:
  - The referenced errors "form a pattern that indicates [c]ounsel may have used AI to generate filings without confirming the accuracy of authority relied upon, existence of evidence cited, or defensibility of positions taken. If AI was not used, these filings indicate wholesale inability to identify and marshal applicable law and a degree of sloppiness that severely impaired the briefs' utility to Ms. Parker and the [c]ourt."

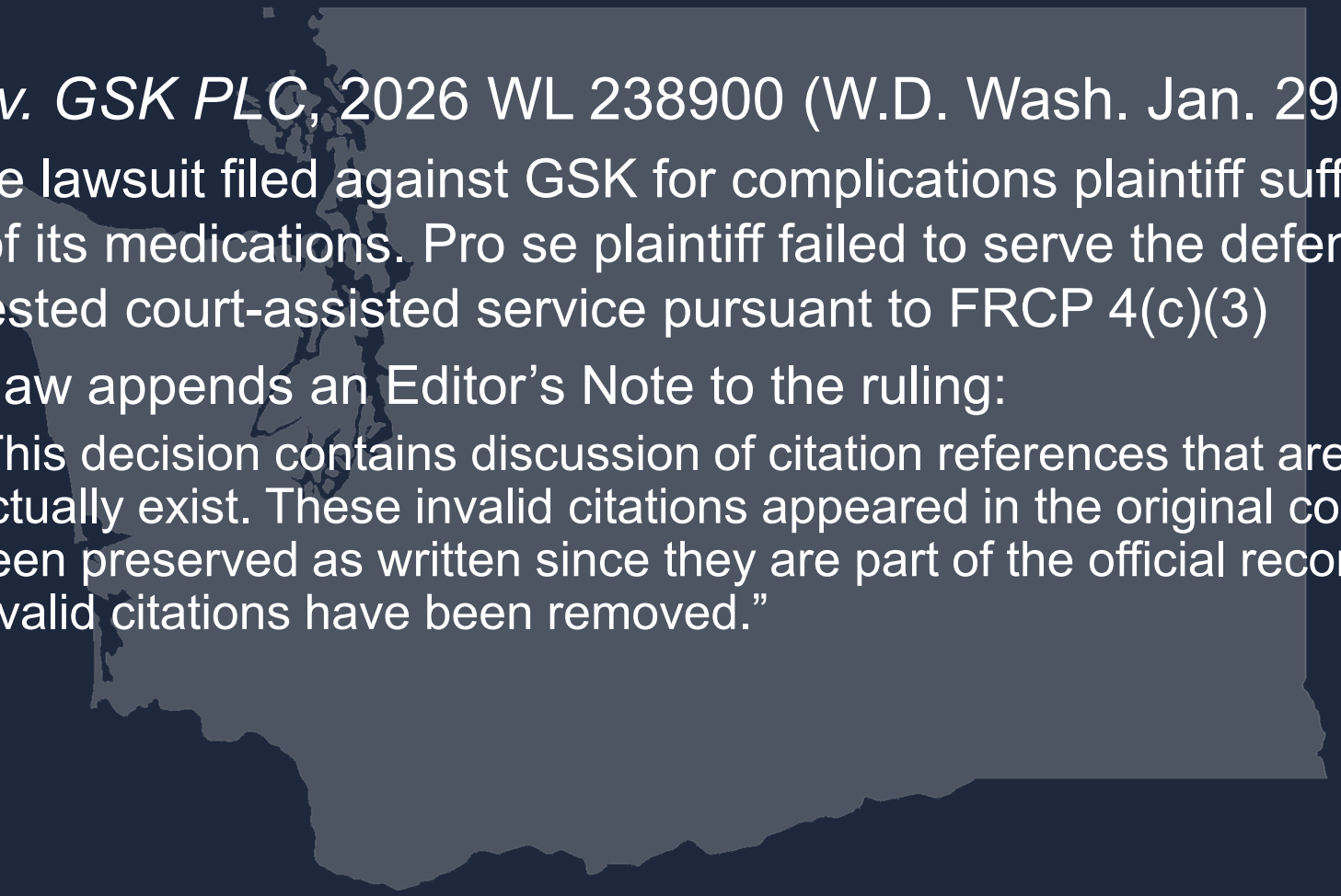
Washington Cases – AI Hallucinations

- "Despite [counsel's] remorse," on **November 7, 2025**, the court imposed sanctions including a public reprimand, payment of $3,000 in sanctions, and payment of defendant's attorneys' fees for the repeated errors and citations to inaccurate law.
  - "The Court finds [c]ounsel's failure to verify the legal and factual support for his MSJ Response, especially in view of the obviousness of the errors, his insinuation that he only failed to verify 'some' citations, and his implicit admission that he knew the brief relied on inapposite sources of law 'outrageously improper, unprofessional and unethical' and tantamount to bad faith."
  - Appropriate sanction is a "difficult question given the recent tidal wave of similar misconduct hitting the federal courts."
  - "[A]ttorneys have not been sufficiently deterred by financial sanctions imposed to date. Or perhaps the allure of obtaining speedy work product through AI still makes it worth the gamble."

Washington Cases – AI Hallucinations

- *Parker v. Costco Wholesale Corp.*, 2025 WL 2481280 (W.D. Wash. Aug. 28, 2025) (cont.):
  - "Sanctions correspond to attorney misconduct, and the misconduct at issue here is not made lesser by serendipitous technological advance."
  - "Even if those developments occur [advancements in AI], there is no basis under the current federal civil and ethics rules to find attorneys using AI blindly should face lesser consequences if their unverified representations come close to the mark. The federal and ethics rules compel a far higher standard."
  - Summary judgment response was "mission-critical" for plaintiff and counsel "discarded a critical opportunity to advocate for his client."
  - Chief Judge David Estudillo referred matter to WSBA in January 2026.

Washington Cases – AI Hallucinations



- *Greene v. GSK PLC*, 2026 WL 238900 (W.D. Wash. Jan. 29, 2026)
  - Pro se lawsuit filed against GSK for complications plaintiff suffered from taking one of its medications. Pro se plaintiff failed to serve the defendant and requested court-assisted service pursuant to FRCP 4(c)(3)
  - Westlaw appends an Editor's Note to the ruling:
    - "This decision contains discussion of citation references that are incorrect or do not actually exist. These invalid citations appeared in the original court opinion and have been preserved as written since they are part of the official record. Any links to these invalid citations have been removed."

Requesting Approval to Use AI Tools

- In *Nelson v. Washington Board of Industrial Appeals*, 2025 WL 1772085 (W.D. Wash. June 26, 2025), the pro se plaintiff moved for an order "affirming his use of an artificial intelligence ('AI') software program to litigate his case."
- Plaintiff acknowledged "he will remain 'responsible for everything he files'" in accordance with Rule 11 and will sign all final documents submitted.
- "The Court is not aware of any formal prohibition in this District on Plaintiff's use of an AI program to assist him in researching the law, organizing evidence, and drafting documents that will eventually be filed with the Court."

Requesting Approval to Use AI Tools

- The Court noted plaintiff's acknowledgment of his responsibility to comply with Rule 11 requirements in submitting court filings.
- "Plaintiff is also admonished not to rely on the AI program's legal analysis as AI programs are known to 'hallucinate' by identifying citations that do not exist. In fact, Plaintiff has already submitted at least one brief containing a citation that does not exist."
- Judge Estudillo concluded: "In short, the court at present finds no basis to prohibit Plaintiff from using any computer program that may assist him in filing documents with the Court."

Duty to Inform Opposing Counsel and Court?

- *Noland v. Land of the Free, L.P.*, 114 Cal. App. 5th 426, (Cal. Ct. App. Sept. 12, 2025).
- Sanctioned plaintiff's counsel, whose opening appeal brief contained 23 case quotations, 21 of which were fictitious, plus "many more fabricated quotations" in reply brief.
  - Ordered counsel to pay $10,000 to court and serve copy of opinion on client. Directed court clerk to serve opinion on state bar.
- Most notably, the court declined to order sanctions payable to defense counsel in light of frivolous appeal.
  - "While we have no doubt that such sanctions would be appropriate in some cases, in the present case respondents did not alert the court to the fabricated citations and appear to have become aware of the issue only when the court issued its order to show cause."

Escalating Sanctions for Counsel

- Most extreme sanctions to date issued by Alabama federal judge against three Butler Snow attorneys.
  - *Johnson v. Dunn*, 792 F. Supp. 3d 1241 (N.D. Ala. July 23, 2025).
  - "Fabricating legal authority is serious misconduct that demands a serious sanction. In the court's view, it demands substantially greater accountability than the reprimands and modest fines that have become common as courts confront this form of AI misuse."
  - Considered nationwide cases where courts had issued fines from $1,000 to $5,000 and concluded they were insufficient.
  - "If fines and public embarrassment were effective deterrents, there would not be so many cases to cite."

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Escalating Sanctions for Counsel

- The district court publicly reprimanded the three attorneys and ordered they:
  - Provide a copy of the order to their “clients, opposing counsel, and presiding judge in every pending state or federal case in which they are counsel of record” within 10 days.
  - Also provide a copy to “every attorney in their law firm.”
- Butler Snow escaped sanctions as court believed it responded appropriately to “nightmare scenario.”
  - The firm reviewed all filings in Alabama federal court for attorneys at issue for previous two years.
  - Engaged Morgan Lewis to conduct an independent review.
  - Team of 28 Morgan Lewis attorneys reviewed 330 filings and 2,400 legal citations by attorneys.

The Seventh Circuit Weighs In

Jones v. Kankakee Cnty. Sheriff's Dep't, 164 F.4th 967, 970-71 (7th Cir. Jan. 21, 2026)

- Judge Scudder discussed AI and pro se plaintiffs at length in *Jones*, where plaintiff cited quotations that did not exist in two cases in reply brief.
- Declined to impose sanctions because the court did not believe the misstatements were knowing and intentional and plaintiff did not have training or resources to check accuracy of citations.
- "AI presents great promise for enhancing access to justice for those without the resources to retain counsel or to represent themselves effectively."
- At the same time, "[a]ccuracy and honesty matter."
- "[A]ll litigants—represented and unrepresented—must read their filings and take reasonable care to avoid misrepresentations, factual and legal."

The Seventh Circuit Weighs In

- "Indeed, our reaction to what we saw in Jones's brief may have been quite different if the non-existent quotations came in a brief submitted by a lawyer[.]"
- "*Pro se* litigants shoulder responsibility too and, while our understanding of honest mistakes and common presentational foot faults will remain, in no way will we allow a court filing to include misrepresentations on legal or factual points that an unrepresented party reasonably knows or should know exist."
- "For today, then, suffice it to say nothing about the many efficiencies and promises offered by AI eliminates the peril that may well accompany a serious abdication of the care the law demands even of unrepresented parties."

Fifth Circuit Imposes Sanctions

- *Fletcher v. Experian Info. Solutions Inc.*, 168 F.4th 231 (5th Cir. Feb. 18, 2026)
  - The Court issued show-cause order to plaintiff's counsel after identifying 16 instances of fabricated quotations and five "additional serious misrepresentations of law or fact" in reply brief.
  - Fifth Circuit appointed AI subcommittee in Spring 2024 that considered proposed rule requiring counsel and pro se litigants to certify
    - (1) No generative AI program was used to prepare any submitted document.
    - (2) If an AI program was used, "a human checked the AI-generated text for accuracy."
  - The Court declined to adopt the proposed rule, believing existing rules were sufficient.

Fifth Circuit Imposes Sanctions

- *Fletcher v. Experian Info. Solutions Inc.*, 168 F.4th 231 (5th Cir. Feb. 18, 2026)
  - "Regrettably, despite numerous news stories, CLE presentations, scholarly articles, and judicial entreaties, AI-hallucinated case citations have increasingly become an even greater problem in our courts, and the problem shows no sign of abating."
  - "It is a problem that is getting worse—not better. If it were ever an excuse to plead ignorance of the risks of using generating AI to draft a brief without verifying its output, it is certainly no longer so."
  - Counsel "misled, evaded, and violated her duties" in responding to the Court, which imposed a $2,500 sanction.

“We Deeply Regret That This Has Occurred”

- In headline-making case, Sullivan & Cromwell apologized to federal bankruptcy judge on April 18, 2026 after filing brief with AI hallucinations.

A.I. ‘Hallucinations’ Created Errors in Court Filing, Top Law Firm Says

Sullivan & Cromwell apologized for submitting a court document that had fake citations created by artificial intelligence.

- “Notwithstanding these safeguards, the Firm’s protocols were not followed here. The Firm is also evaluating whether further enhancements to its internal training and review processes are warranted.”

WSBA Guidance – Advisory Opinion 2025-05

- WSBA issued 17-page advisory opinion on November 20, 2025
  - "Artificial Intelligence-Enabled Tools in Law Practice"
    - WSBA Advisory Op. 2025-05 (2025).
- Similar to ABA Formal Opinion 512

- Recognizes that AI implicates at least seven RPCs
  - 1.1 (Competence)
  - 1.3 (Diligence)
  - 1.4 (Communication)
  - 1.6 (Confidentiality)
  - 3.3 (Candor to Tribunal)
  - 5.1 & 5.3 (Supervision)
  - 1.5 (Billing)

WSBA Guidance – Advisory Opinion 2025-05

- RPC 1.1: Duty of competence requires knowledge of AI tools—and their limitations.
- "[I]t does require a baseline understanding of, and reasonable proficiency in, the technology at hand."
- The "Amanda" example—accepting legal research findings of AI tool without verifying the accuracy or relevance of cited cases.
- RPC 1.3: "A lawyer shall act with reasonable diligence and promptness in representing a client."
  - Duty of diligence is "closely tethered" to competence.

WSBA Guidance – Advisory Opinion 2025-05

- RPC 1.6(c): "A lawyer shall make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client."
- But "[s]ome AI-enabled consumer products don't include contractual assurances of confidentiality thereby posing an unreasonable risk to confidential client information."
- The "Frank" example—entering confidential client information into ChatGPT.
- AI tool may store and use information to train its model, making information potentially available to future users.
- Potential inadvertent disclosure of privileged information, making communications discoverable.

WSBA Guidance – Advisory Opinion 2025-05

- RPC 3.3 prohibits a lawyer from making "a false statement of fact or law to a tribunal or fail to correct a false statement of material fact previously made … by the lawyer."
- The "Adam" example—AI tool "generates several persuasive arguments with case citations" that attorney fails to check before filing.
  - Must immediately correct false information instead of defending its validity.
- RPC 1.5: Billing for use of AI tools must be reasonable
  - Lawyers cannot bill for "time saved" by using an AI tool.
  - The "Maria" example—billing 10 hours for work that only took 2 hours.

WSBA Guidance – Advisory Opinion 2025-25

- Followed up with Kevin Plachy of the WSBA
  - Committee on Professional Excellence is reviewing RPCs and adding commentary regarding AI usage.
  - “Work in progress” at this stage.
  - Potentially new commentary/proposed rules in late summer or early fall.
  - “The problem has definitely caught the attention of the Washington Supreme Court.”

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Tremaine LLP