In a landmark, first in a New York state appellate court opinion, the Third Department recently held that use of fake AI-generated cases in a legal filing—here, appellate briefs and letters to the court—constitutes sanctionable conduct under 22 N.Y.C.R.R. § 130-1.1. The Court explained that although generative AI has potential benefits for litigants and the bar, attorneys must double-check the generated work and case citations to ensure they actually exist and stand for the propositions referenced. Failure to do so can result in sanction, as the Third Department held was appropriate in this case. Let's take a look at that opinion and what else has been happening in New York's appellate courts over the past week.

COURT OF APPEALS

SEX OFFENDER REGISTRATION ACT, DUE PROCESS OF LAW

People v Collier, **2026 NY Slip Op 00074 (Ct App Jan. 8, 2026)**

Issue: **Does a five-year delay in holding a Sex Offender Registration Act hearing and classifying an offender following their release from prison violate the offender's constitutional right to due process of law?**

Facts: Defendant pled guilty to a sexual misconduct offense that triggered mandatory registration under SORA. At the time of his plea and sentencing, however, the trial court failed to inform him of the registration requirement. Following Defendant's release from prison at the end of his term, six years passed before the Board of Examiners of Sex Offenders learned of Defendant's conviction for the first time and began SORA's mandatory registration proceedings. During this unregistered period, Defendant worked as a "Youth Specialist/Cook" at a residential facility for children aged 12–16 and had no criminal contact except for a 2013 traffic violation.

Defendant moved to dismiss the SORA proceeding, arguing that the six-year delay in registration violated his due process rights, and requested classification as an "unclassified offender" without community notification requirements. Following the belated SORA hearing, the trial court denied Defendant's motion to dismiss and classified him as a level one sex offender. Defendant was assigned a 20-year registration period, *nunc pro tunc* from his date of release, meaning the first six years of that period had already elapsed.

The Appellate Division, First Department affirmed, adopting a "modified version of the speedy trial test laid out in *People v Taranovich* (37 NY2d 442, 445-447 [1975]), weighing the length of the delay, the reason for the delay, whether the defendant was on notice of the SORA registration requirement, and whether the defendant was prejudiced by the delay" to determine whether the defendant's due process rights were violated. Under this test, the Appellate Division held, Defendant was not prejudiced, but benefited from the six-year delay because he was able to show through his post-release conduct that he should have been classified as a level one offender, rather than as the presumptive level two classification that the Board had requested.

Holding: The Court of Appeals affirmed, holding that delayed initiation of SORA proceedings does not violate substantive due process unless the defendant can demonstrate actual prejudice from the delay. The Court, however, rejected the Appellate Division's modified speedy trial test in reaching that conclusion. Rather, the Court explained, a defendant's liberty interest in a SORA proceeding differs significantly from the liberty interest in a criminal proceeding, "where an innocent person may be inaccurately branded a criminal and subjected not only to unjust stigma but the complete curtailment of liberty through a prison sentence." Thus, the Court held, to establish a due process violation based on delayed initiation of the SORA classification process, "a defendant must make a showing that the delay prejudiced his ability to present his or her case to the SORA court."

Here, the Court held, Defendant did not make that showing because he "materially benefitted from the delay." As the Appellate Division had concluded, the six-year delay allowed Defendant to show that he was less of a risk to the community and to avoid the presumptive level two classification. This reduction changed his registration requirement from lifetime to 20 years, and because of the nunc pro tunc order, his effective registration period became 14 years with more limited public information dissemination. With those benefits in hand, the Court rejected Defendant's argument that the SORA classification violated his due process rights.

THIRD DEPARTMENT

USE OF AI IN LITIGATION

Deutsche Bank Natl. Trust Co. v LeTennier, 2026 NY Slip Op 00040 (3d Dept Jan. 8, 2026)

Issue: May an attorney ethically use AI-hallucinated cases in a legal brief without checking their authenticity? To ask the question is to answer it.

Facts: What began as a routine mortgage foreclosure action transformed into something much more. Following entry of summary judgment in the bank's favor, and the Appellate Division, Third Department affirming that order, Defendant made multiple pro se motions to vacate the summary judgment order and subsequent entry of a judgment of foreclosure. Defendant made so many frivolous motions, in fact, that the trial court declared him a vexatious litigant and awarded the bank costs. Defendant then appealed the orders denying the motions, declaring him a vexatious litigant and awarding costs.

On appeal, Defendant's counsel filed an opening brief that cited six cases that did not exist, which the bank identified as possibly being AI-generated. The Third Department independently investigated all of Defendant's filings in the appeal revealed that across Defendant's five filings, no less than 23 fabricated cases were cited, including repeatedly *after* the bank first raised the issue about Defendant's opening brief. Although Defendant's counsel conceded that he used AI to prepare the briefs and other filings, he claimed that the fake cases were mistakes or miscitations.

Holding: The Appellate Division, Third Department, in a first for a New York state appellate court, held that filing a brief that includes fabricated legal authorities "is completely without merit in law and therefore constitutes frivolous conduct" under 22 N.Y.C.R.R. § 130-1.1. The court explained that fabricated cases cannot constitute "existing law" so as to provide a nonfrivolous ground for extending, modifying, or reversing existing law, and thus including them in a brief is grounds for sanctions.

Although the court recognized that "generative artificial intelligence . . . represents a new paradigm for the legal profession, one which is not inherently improper, but rather has the potential to offer benefits to attorneys and the public—particularly in promoting access to justice, saving costs for clients and assisting courts with efficient and accurate administration of justice," "attorneys and litigants must be aware of the dangers that GenAI presents to the legal profession. At the forefront of that peril are AI 'hallucinations,' which occur when an AI database generates incorrect or misleading sources of information due to a variety of factors, including insufficient training data, incorrect assumptions made by the model, or biases in the data used to train the model. Hallucinated cases may look like a real case because they include familiar-looking reporter information, but their citations lead to cases with different names, in different courts and on different topics—or even to no case at all. Even where GenAI provides accurate case citations, it nonetheless may misrepresent the holdings of the cited cases -- often in favor of the user supplying the query."

The court, therefore, cautioned the bar that use of AI-generated cases in briefs must be double-checked to ensure that they are in fact existing cases and actually stand for the propositions that are referenced. Failure to do so is sanctionable conduct. And, here, the court held, Defendant's counsel unquestionably engaged in sanctionable conduct. To determine the appropriate sanction the Court examined, "the number of fake cases or propositions, whether there were fake quotes, if the submitter continued to use or create more fabricated authorities across other filings in the same proceeding after being on notice of the misconduct, there was an admission of the error, there was remorse and the extent of the impact that the fabricated legal authorities had on the proceedings."

Applying those factors here, the court explained, "recognizing this as the first appellate-level case in New York addressing sanctions for the misuse of GenAI, we find the imposition of a monetary sanction on defense counsel Joshua A. Douglass in the amount of $5,000 to be appropriate under the circumstances, with the further goal of deterring future frivolous conduct by defendant and the bar at large. To be clear, attorneys and litigants are not prohibited from using GenAI to assist with the preparation of court submissions. The issue arises when attorneys and staff are not sufficiently trained on the dangers of such technology, and instead erroneously rely on it without human oversight. As with the work from a paralegal, intern or another attorney, the use of GenAI in no way abrogates an attorney's or litigant's obligation to fact check and cite check every document filed with a court. To do otherwise may be sanctionable, depending on the facts and particular circumstances of each case."

CasePrepPlus | January 23, 2026

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