THE ASBCA COMES DOWN HARD ON ARTIFICIAL INTELLIGENCE IN A BRIEF

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This blog recently discussed the danger of using Artificial Intelligence ("AI") improperly to write briefs and pleadings at the Government Accountability Office ("GAO"). See "The Danger of Using Artificial Intelligence Improperly,"| Oct 13, 2025, which demonstrated how the GAO was sanctioning attorneys who misused AI. Now comes the Armed Services Board of Contract Appeals ("Board") which criticized a brief that "hallucinated" fictitious cases and imposed sanctions on a party without properly reviewing that AI product. *Huffman Const., LLC,* ASBCA Nos. 65291 & 62873, Oct. 23, 2025.

The Army Corps of Engineers ("Army") Contracting Officer had terminated Huffman's construction contract for default, and Huffman appealed to the Board. After a seven day hearing on the appeals, Huffman filed its post-hearing brief, and the Army moved to strike the brief, stating that it had relied on AI and contained 29 false or misleading citations to the hearing transcript, 12 false or misleading citation to the Rule 4 (Appeal) file and 7 false or misleading citations to case law. The Army's motion indicated that:

> Among these include citations to fictitious case law, hearing testimony from witnesses who never testified at the hearing, documents not found in the Rule 4 file, pages of the hearing transcript that do not exist, testimony found in hearing transcripts that do not support the factual contention for which they were cited, and citations to cases that do not support the proposition for which they were cited.

Huffman's counsel's response to the motion to strike admitted to using AI in its brief and did not dispute any of the errors identified by the Corps. Huffman's counsel asserted that they understood the potential for AI errors, and had the brief reviewed by "two experienced attorneys" and a trusted and qualified paralegal with over 20 years of experience.

The Boad reviewed all citations in Huffman's brief and found that over 70 percent of them were inaccurate. These included the following and other problems not set forth in the decision:

- 2 factual contentions unsupported by the Rule 4 citation
- 4 fictitious cases and incorrect citations
- 5 examples of cases that did not support the proposition for which they were cited
- 2 incorrect citations to the hearing transcripts
- 3 examples of citations to non-existent pages in the hearing transcripts.

The Board noted it would treat the Corps' motion to strike as a motion for sanctions because the Board's rules do not address motions to strike. Instead, the Board was guided by the Federal Rules of Civil Procedure, which includes Rule 11 that imposes responsibility on anyone who signs a pleading, motion or other paper that "the claims, defenses and other legal contentions are warranted by existing law…that the factual contentions have evidential support, and that the denials of factual contentions are warranted on the evidence." Fed. R. Civ. P. Rule 11(b)((2)-(4). This rule imposes a standard of reasonableness and places an affirmative duty on each attorney to conduct a reasonable inquiry into the viability of a pleading before it is signed.

The Board concluded that it was "inconceivable to the Board that a proper review by two experienced attorneys and a paralegal should result in over 70 percent of the citations being inaccurate." Despite Huffman's attorneys' statement that the errors were unintentional and regrettable, the failure of the attorneys' actions made striking the entire brief in its entirely the only reasonable action that the Board could take. Partially striking portions of the brief was "nonsensical given the number of errors contained therein."

Takeaway. Would any attorney, indeed any person, want his or her work product to be criticized in the pointed manner in this case by a court or board? If you use AI, make sure every case and every citation is reviewed by a human lawyer or paralegal who understands the issues and can check every case and proposition for accuracy. There simply is no excuse for the type of brief described in this case.

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