

Avoiding Plagiarism in Legal Documents

By Judith D. Fischer

A law student commits plagiarism if he or she submits a class paper that incorporates someone else's words or unique ideas without attribution. That can lead to serious penalties, including expulsion from school.



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Plagiarism in an academic setting is wrong partly because the student will be graded on work that is not his or her own and because the student will not acquire needed skills and knowledge without actually doing the course work.

In the practice of law, the considerations are different. It is common for

lawyers to consult and copy material from form books, which are written for that purpose. It is also common for law offices to maintain files of previously written documents from which lawyers freely borrow. But not all copying is acceptable.

What copying can a lawyer appropriately do? Cases from several jurisdictions provide guidance about what is and is not acceptable. Courts have accepted and even encouraged the use of form books in preparing instruments. A Kentucky court acknowledged that "legal instruments are widely plagiarized," finding the practice acceptable because the lawyer who adapts wording becomes the "drafter" by accepting responsibility for the new document.¹ Another court even sent a model form to a lawyer whose writing was unnecessarily prolix.²

Still, a lawyer who uses a form must tailor it to her specific case. One lawyer whose copied complaint did not fit her case was publicly admonished.³ The court dismissed the complaint, stressing that "[l]awyers are not automatons. They are trained professionals who are expected to exercise independent judgment." The court found the lawyer's work below professional standards and referred the case to disciplinary authorities.

While the use of forms can be acceptable, especially in preparing instruments, copying analytic writing raises questions of plagiarism. One lawyer, Lane, learned that when he submitted a brief based mainly on language from a treatise.⁴ When he requested attorney's fees for writing the brief, the magistrate became suspicious that parts of it were copied. Asked what his source was, Lane attempted to conceal it. The magistrate then located the source, found that most of brief was drawn from it, and referred the matter for disciplinary proceedings.

The Iowa Supreme Court found Lane's behavior unethical, bluntly calling it plagiarism. The court emphasized that Lane's conduct reflected poorly on the integrity of the bar and public trust in the profession, stating, "We will not excuse the seriousness of passing off another's work as one's own." The court suspended Lane from practice for six months and ordered him to pay the costs of the disciplinary action.

Lane's copying was wrong for two reasons. First, unlike form books, treatises are not written to be freely copied,

and copyright considerations apply. It was dishonest for Lane to submit the author's analysis as his own. Second, Lane's copied analysis failed to address the specifics of the pending case. Without analysis tailored to the case, the brief was useless to the court. Lane compounded his wrongdoing by asking for fees for work he did not do.

A similar problem arose recently before the District of Columbia Court of Appeals.⁵ A lawyer, Ayeni, requested fees for writing a brief, but was held to have committed plagiarism because the brief was nearly identical to a brief another lawyer had filed. Implicit in the court's analysis is the understanding that, like the authors of treatises, lawyers do not expect to have their writing copied without permission. Based on his plagiarism and on other transgressions, Ayeni was disbarred.

Similarly, a New York lawyer was ordered to show cause why he should not be sanctioned for submitting a brief derived mainly from another lawyer's brief in a different case.⁶ The court pointed out that the copied material was factually inaccurate and not applicable to the issues in the case. And two other courts have rebuked lawyers for filing analyses containing unattributed material copied from published sources.⁷

These cases show that, while it may be appropriate for a lawyer to use a form to prepare an instrument, the form

must be adapted for the pending case. And when a lawyer submits analysis copied from another source without permission, a court may find that he or she has committed plagiarism. Moreover, the lawyer has an obligation to both the client and the court to present an analysis of the specific facts and issues in the case. It is unprofessional to do otherwise. ■

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ENDNOTES

1. Fed. Intermediate Credit Bank of Louisville v. Ky. Bar Ass'n, 540 S.W.2d 14 (Ky. 1976).
2. Politico v. Promus Hotels, Inc., 184 F.R.D. 232 (E.D.N.Y. 1999)
3. Clement v. Pub. Serv. Elec. & Gas Co., 198 F.R.D. 634 (D.N.J. 2001).
4. Iowa Supreme Court Bd. of Prof'l Ethics and Conduct v. Lane, 642 N.W.2d 296 (Iowa 2002).
5. In re Ayeni, 822 A.2d 420 (D.C. App. 2003).
6. USA Clio Biz, Inc., v. N.Y. State Dep't of Labor, No. 97 CV 250, 1998 WL 57176 (E.D.N.Y. Jan. 3, 1998)
7. Kingvision Pay Per View, Ltd. v. Wilson, 83 F. Supp. 2d 914 (W.D. Tenn. 2000); Frith v. Indiana, 325 N.E.2d 186 (Ind. 1975)