Portfolio Media. Inc. | 111 West 19th Street, 5th floor | New York, NY 10011 | www.law360.com
Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

Attorneys At Work: A Flexible Notion Of Plagiarism

(October 7, 2011, 12:23 PM EDT)
Lawyers are first taught legal writing in law school — in the context of academia, which takes a very strict view of copying and plagiarism. As lawyers, however, the purpose of our legal writing is not to demonstrate our individual skills; it is to communicate on behalf of our clients and advance their goals. The authors clarify the basic principles of copyright infringement and plagiarism as they apply to the work of lawyers.

Lawyers do a lot of copying. Why charge a client to create a document from scratch when you can draw concepts, structure and wording from a form agreement in a book, a brief prepared by a colleague or even a well-reasoned judicial opinion? But there are limits, and every once in a while, a lawyer is accused of copyright infringement or, perhaps worse, plagiarism.

Consider the recently resolved case of Iowa attorney Peter Cannon.[1] Cannon filed two briefs in support of a motion to disqualify opposing counsel in a bankruptcy proceeding. The bankruptcy court denied the motion and expressed its suspicion that Cannon's briefs were largely copied from unacknowledged sources because they were of "unusually high quality."

Cannon admitted that his initial brief had exceeded the bounds of "fair use" because he did not identify his only source, an article written by two bankruptcy attorneys from the law firm Morgan Lewis & Bockius LLP and published on that firm's website. Of the 19 pages of legal analysis in Cannon's initial brief, 17 pages were copied nearly verbatim from the article. Cannon's only significant modification of the article was to delete citations to adverse authority.

The bankruptcy court harshly sanctioned Cannon for his plagiarism, requiring disgorgement of fees, imposing remedial professional responsibility training and compelling Cannon to turn himself in to the Iowa authorities for professional discipline. The Iowa disciplinary board recommended a six-month suspension of Cannon's law license. The Iowa Supreme Court was not quite so harsh: It condemned Cannon's plagiarism of the article, but it held that Cannon had not charged an unreasonable fee (because his fee was earned on other aspects of the case), and it reduced the sanction to a public reprimand.

Cannon's case is an extreme one, both in the extent of his copying and in the harshness of the judicial response to it. In our view, Cannon's actions were inappropriate and constituted not only plagiarism, but copyright infringement, fraud on his client, and dishonesty to the court. But even so, the two courts and the disciplinary board that reviewed his work did not agree that all of Cannon's copying was illegitimate. For example, the Iowa Supreme Court declined to discipline Cannon for his copying of a page-long string cite in his second brief, an action that the bankruptcy court considered to be a clear-cut example of plagiarism. The lessons to be learned from Cannon's case are subtle ones, because the concepts of copyright infringement and plagiarism are not well understood or uniformly applied, even by lawyers and judges.

The goal of this article is to clarify the basic principles of copyright infringement and plagiarism as they apply to the work of lawyers. Lawyers are first taught legal writing in the context of academia, which takes a very strict view of copying and plagiarism. The purpose of legal writing for practicing lawyers, however, is not to demonstrate individual skills; it is to communicate on behalf of clients and advance their goals. We advocate here a flexible notion of plagiarism adapted to the needs of the institutions in which lawyers work, where efficiency and clarity, not personal expression, are the primary values.

Copyright Infringement versus Plagiarism

Both copyright infringement and plagiarism are forms of copying. Because of this similarity, the distinction between the concepts is often blurred, leaving both concepts poorly understood. Courts sometimes refer to the alleged copyright infringer as a plagiarist or refer to the alleged infringement as plagiarism.[2] Sometimes courts simply conflate the two, recasting an accusation of plagiarism as "tantamount" to a copyright infringement claim.[3]

As a starting point, the essential difference is this: Copyright infringement is copying without authorization; plagiarism is copying without attribution. Although the essential principles are distinct, the two wrongs can occur together. For example, if a website reposted an entire newspaper article without permission, that likely would be an act of copyright infringement. But it would not be plagiarism if the website retained the original writer's byline and the name of the paper. However, if the original byline were dropped and the website owner put his own name on the article, the reposting without proper attribution would constitute both plagiarism and copyright infringement.

A second important distinction is a legal one. Copyright infringement is illegal, defined by and prohibited under the Copyright Act. Most often copyright infringement is asserted as a civil tort, but when committed for purposes of financial gain, it is a crime. On the other hand, plagiarism itself is not illegal because attribution is nearly irrelevant under U.S. copyright law.[4] In the absence of copyright infringement, the victim of plagiarism per se is generally without a legal remedy.

Copyright Infringement of Legal Work

Copyright protects, to use the terms of the Copyright Act, works of authorship fixed in a tangible medium of expression.[5] Put simply, copyright protects almost anything that has been written down, drawn or recorded, so long as it has some minimal spark of creativity.[6] Most legal writing and drafting would qualify, so long as it is truly "original" in the sense that it originated with the author who claims it.[7]

The author of a copyrighted work has the exclusive right to make and distribute copies, to prepare derivative works and to publicly perform or display the work, and to authorize others to do any of these things. Copyright protection is automatic; it attaches to the work when it is fixed in a tangible medium, regardless of whether the copyright is formally registered or expressly claimed.[8]

But the scope of copyright protection is sharply limited so that copyright does not stifle the expression and creativity of other people. For lawyers, one of the most important of these limitations is that copyright protects expression, but not facts or ideas.[9] Thus, highly factual works, such as newspaper reporting, are entitled only to thin copyright protection, which extends only to the exact wording of the writer. A second writer could take the reported facts and recast them into his own story without violating the copyright of the first. The same principle applies to ideas: You can use the ideas expressed in any work without violating the author's copyright. Indeed, under the "merger doctrine," if the idea and the words used to express it are so intertwined that there are only a few ways to express the idea, even the expression itself is not entitled to copyright protection.[10]

A second crucial limitation on the scope of copyright protection is the doctrine of fair use. Fair use allows limited copying of protected works for certain purposes, including criticism, commentary, news reporting, teaching, scholarship and research.[11] Whether a particular use is fair is determined on a case-by-case consideration of four statutory factors. Fair use cannot be reduced to a rigid set of rules because the purpose is to balance the author's rights against the public interest in understanding and criticizing the work itself, as well as to use the author's work to create new work.

These limits on the scope of copyright protection are especially pertinent to the work of lawyers. Legal writing and drafting is predominately concerned with facts and ideas. Often one lawyer's use of another's work would constitute fair use. Most legal documents would satisfy the minimum requirements to qualify for at least thin protection, but the most useful and important aspects of much legal writing will lie beyond the scope of copyright. Writing by lawyers with more expressive content — such as journal articles, treatises or law firm marketing materials — would be entitled to more substantial copyright protection. Not surprisingly, there are very few cases addressing the infringement of copyright in basic legal work. Nevertheless, there are a few general principles

applicable to certain types of legal documents.

Judicial Opinions

Judicial opinions, like statutes and other laws, are in the public domain and are not subject to copyright protection. The Copyright Act expressly provides that the work of federal employees is in the public domain.[12] Most states and local governments follow suit and do not assert copyright in public documents.

The rationale is that the law is the result of the democratic process and belongs to the public; judicial opinions are considered interpretations or statements of the law and fall into the public domain.[13] Although the work of the judge lies beyond copyright protection,[14] the editorial enhancements added by legal publishers, such as the head notes and abstracts added by Westlaw or LEXIS, are protected by copyright and cannot be freely copied. The issue with borrowing from judicial opinions is not copyright infringement, it is plagiarism, as we explain below.

Contracts and Other Legal Forms

Most contracts and legal forms qualify for, at best, thin copyright protection because they are dominated by facts and ideas and are thus only minimally expressive.[15] Template agreements, such as those published in forms books, expressly or implicitly invite use by lawyers. Copying and adapting such a form in one's practice would not be copyright infringement because that use would be authorized by the author or copyright owner. However, copying or distributing the form itself would likely violate the copyright because it exceeds the scope of authorization and usurps the market for the original form.

It is conceivable, although rare in practice, that a contract might be sufficiently creative to warrant more substantial copyright protection. For example, AFLAC Inc. developed insurance policies drafted in a narrative style. When significant portions of those narrative contracts were copied by a competitor, AFLAC obtained a preliminary injunction against the competitor's use of the infringing policies.[16]

Lawyers should always use caution when copying legal documents, but the primary concern should be to ensure that the copied provisions are adapted to suit the needs of the client. But, generally speaking, the copying of boilerplate provisions from contracts prepared by others poses little if any risk of copyright infringement.

Pleadings and Briefs

The same principles apply to pleadings and briefs, most of which would qualify for at least thin copyright protection. Thus, a word-for-word copy of a significant portion of a pleading might expose the copyist to a claim of copyright infringement. However, we have found no record of such a case, successful or otherwise. The law firm of Milberg Weiss Bershad Hynes & Lerach LLP is reported to have registered its copyright in certain of its class action complaints and has issued cease-and-desist letters to other firms that copied Milberg's complaints.[17] Milberg's copyright enforcement effort was apparently an attempt to prevent others from using what it regarded as its own innovative approach to class action securities cases. But that purpose is not one that the Copyright Act was designed to protect.

A legal brief would likely qualify for more substantial copyright protection, comparable to that accorded a piece of nonfiction writing. The incorporated facts and ideas, of course, would not be protected, but the structure and rhetoric of a brief would constitute protectable expression. Although we are aware of no case involving the assertion of copyright in a brief, one scholar suggests that lawyers' copyrights are routinely infringed by judges in writing opinions.[18] Many lawyers would be pleased to overlook such an infringement, because it suggest the court's agreement with the lawyer's position. The Copyright Act allows fee shifting to the prevailing party if the copyright is timely registered, but few lawyers would take this step with a brief. Besides, the effort and expense of pressing such a suit would almost certainly exceed the uncertain recovery from an isolated act of infringement of a brief.

Treatises and Articles

Legal treatises and journal articles are like any other nonfiction writing from a copyright perspective. The underlying facts and ideas are not protected, but the structure and precise wording are. Cannon's wholesale copying would have infringed the copyright in the Morgan Lewis article, but the copyright in treatises and journal articles is probably not generally implicated in the routine writing of lawyers because they are not likely to copy substantial portions from such sources. (Making and distributing copies of such works, for example as a handout at a seminar, is a different matter.) The more pressing issue with respect to treatises and articles is whether the lawyer's use of these sources is with attribution, an issue to which we now turn.

A Theory of Plagiarism

We offer here not just a definition of plagiarism but also a theory of plagiarism that helps to account why the concept means different things in different contexts.

Most people first encounter the concept of plagiarism in an academic setting, where they are taught that plagiarism consists of using the words or ideas of another without attribution. For example, the Modern Language Association defines plagiarism thus:

"Using another person's ideas or expressions in your writing without acknowledging the source constitutes plagiarism. ... [T]o plagiarize is to give the impression that you wrote or thought something that you in fact borrowed from someone, and to do so is a violation of professional ethics.

"Forms of plagiarism include the failure to give appropriate acknowledgment when repeating another's wording or particularly apt phrase, paraphrasing another's argument, and presenting another's line of thinking."[19]

The scope of plagiarism is significantly broader than that of copyright infringement: Ideas lie beyond copyright, but plagiarism reaches both expression and the ideas expressed. In the academic setting, students are taught that plagiarism is a serious threat to the integrity of the entire scholarly enterprise and that it will be punished severely, potentially by expulsion for students or termination for faculty.

In practice, the harshest sanctions are rarely imposed, but the strict rule makes sense in the academic world, where evaluation and advancement of the individual scholar is critical. When grades, tenure and funding are awarded on the basis of the quality of the writing and ideas of the scholar, the writing and ideas must be exclusively the scholar's own. The function of academic writing and publication — the evaluation of the individual writer's creativity and insight — requires a strict plagiarism regime.

But the strict plagiarism rules of the academic world do not work so well in other realms of expression, as a few examples demonstrate. A counselor at a summer camp tells a ghost story around the campfire; although she did not herself invent the story, and she does not give credit to the author, we would not regard that as plagiarism. The president delivers a speech, written by a staff of speech writers. An actress publishes her autobiography, which has been ghostwritten by a professional writer. An associate attorney writes a brief, but a partner signs it. We do not regard any of these acts as plagiarism.

There is no single universally applicable definition of plagiarism, but there are three informative principles that can be drawn from these examples. The first principle is that copying without attribution is more likely to be excused if the original author consents. The president's speechwriters authorize him to use their work; likewise the ghostwriter and the associate attorney. But consent is only one factor, and authorization does not always excuse plagiarism: If a graduate student submitted a scholarly article for publication under his own name when the article was actually written by his professor, that would constitute plagiarism regardless of the professor's willing participation in the scheme.

The second principle is that the unattributed use of the words or thoughts of other people often is acceptable if the copyist does not claim authorship in doing so. The ghost story illustrates this: The counselor did not claim to have originated the story, and the campers did not think she had. Using the words of others without attribution, but without an express or implied claim of authorship,

usually is not regarded as plagiarism.

The third principle is that whether an act of copying without attribution is characterized as plagiarism depends on the needs of the institution in which it occurs. In the academic world, where the individual scholar's creativity, insight and literary ability is the basis for advancement and reward, full disclosure is required. But what matters in the summer camp is the counselor's ability to entertain the campers, not her originality. What matters in the president's speech is not primarily his personal creativity but whether he endorses and takes responsibility for what he says. When the personal insight and originality of the writer is not at stake, unacknowledged copying is usually tolerated.

These principles guide our understanding of plagiarism, but they do not dictate a universally applicable definition of plagiarism, which is highly context-dependent. Ultimately, plagiarism is defined by the specific ethical rules governing communication within a particular institution.[20] The academic world has an elaborate set of conventions that set the rules for copying the words and ideas of others and that define plagiarism. But in most institutions, these rules remain informal and largely unstated, and the law is no exception.

Plagiarism and Legal Ethics

The practice of law is governed by a codified, and extensively interpreted, set of rules of professional ethics. But, remarkably, none of these rules define or specifically address plagiarism.

Reported decisions addressing plagiarism by lawyers are few and generally arise in two contexts. First, academic plagiarism by lawyers, committed while the lawyer is enrolled in an educational program, is grounds for professional discipline or the initial denial of a law license as a result of a character and fitness evaluation. The only reported plagiarism case in Wisconsin concerned pre-law school academic plagiarism, which prevented a graduating law student from gaining his license.[21] The second context is plagiarism in documents prepared for clients, which is addressed in a very few decisions concerning plagiarism in briefs. In extreme cases like Cannon's, in which an entire brief is copied without attribution, the attorney may face court sanction and professional discipline.

The reported decisions on attorney discipline for plagiarism treat it as a form of deceit. Accordingly, they invoke the rules dealing with attorney dishonesty, particularly Model Rule 8.4(c), prohibiting "conduct involving dishonesty, fraud, deceit or misrepresentation"; Rule 7.1, prohibiting false statements about the lawyer's services; Rule 3.3, requiring candor toward a tribunal; and Rule 1.5(a), prohibiting the collection of an unreasonable fee.

But these rules are invoked only after the court or disciplinary authority has made the determination that the attorney has committed plagiarism, and therefore the attorney's acts are by definition deceitful. These rules, and the decisions applying them to plagiarism, do not answer the fundamental question: what constitutes plagiarism in the context of the practice of law?

Some cases apparently assume that plagiarism rules close to those applicable in the academic world are also applicable to the practice of law. For example, in an unpublished decision, the Third Circuit stated that
"[I]t is certainly misleading and quite possibly plagiarism to quote at length a judicial opinion (or, for that matter, any source) without clear attribution."[22]

The Sixth Circuit has likewise stated: "We made it very clear to [the offending party] during oral argument this behavior is completely unacceptable and reiterate it here as an admonishment to all attorneys tempted to 'cut and paste' helpful analysis into their briefs.

"While our legal system stands upon the building blocks of precedent, necessitating some amount of quotation or paraphrasing, citation to authority is absolutely required when language is borrowed."[23]

In both the Lavanture and Bowen cases quoted above, the objectionable copying was extensive. In Bowen, about 20 pages was copied nearly verbatim from a district court decision that was not cited anywhere in the brief. In Lavanture, the copying also was misleading; parts of five pages were copied from a Sixth Circuit opinion, and the brief's author made at least one misleading revision to the original.

Although most of the cases involving plagiarized briefs concern extensive copying, sometimes amounting to the entire brief, more isolated copying has also received judicial criticism. In Schultz v. Wilson, a district court criticized an attorney for copying a page of text from a district court decision.[24] Apparently the warning went unheeded: Counsel was later more sharply rebuked for more extensive copying.[25]

Lessons Learned

What lessons can lawyers draw from these cases? It would be easy to urge the conscientious attorney to adopt strict plagiarism rules, comparable to those applicable in law school, and to never use another's words or ideas without attribution. But in the authors' view, such a strict rule is impractical and unnecessary. The infrequency of judicial and disciplinary decisions condemning plagiarism suggests that strict rules against unacknowledged copying are neither uniformly observed nor aggressively enforced. Indeed, one state supreme court expressly approved the practice, at least in the context of "legal instruments":

"Legal instruments are widely plagiarized, of course. We see no impropriety of one lawyer's adopting another's work, thus becoming the 'drafter' in the sense that he accepts responsibility for it."[26]

In the context of legal instruments and agreements, rules against plagiarism are nearly universally disregarded, and the words and ideas of others are used with impunity. We think this is usually proper. Copying of legal instruments and agreements does not constitute plagiarism because the attorneys who prepare the document are not generally claiming "authorship" in the standard sense. The signers of such instruments do so to indicate that they endorse, stand behind or agree to the content of the document. There can be no plagiarism without an express or implicit claim of authorship.

Copying in this context is undoubtedly beneficial to the clients, not only because it is cheaper than drafting a document from scratch, but also because the use of highly conventional and often repeated language makes the interpretation of such documents more reliable. The "authorship" of a legal instrument is more like the collective authorship of a folk tale, in which numerous authors make modest contributions to an evolving work, and no one person is entitled to claim it as his or her own.

The wholesale adoption of a complex document prepared by another lawyer is more problematic. It would not likely constitute plagiarism (so long as the copying lawyer does not deceptively pass off the work as his or her own), but it could constitute copyright infringement. In most cases the risk is probably low because the "original" document may itself be an amalgam of previous documents, and thus not truly original. The better practice, however, is to use form books or one's own work product as the starting point for the drafting of instruments and agreements.

In briefs, copying without attribution is more controversial because the attorney's signature on the brief suggests a claim of authorship. But even in brief writing, the strict plagiarism rules of the academic world are misplaced, for several reasons. First, the attorney's signature on a brief suggests authorship, but not necessarily on the same terms as in other forms of writing. For example, a brief will typically incorporate significant but unacknowledged material written by the colleagues of the attorney who signs the brief. By rule, the signature on a brief represents the attorney's endorsement of the brief, but not a traditional notion of authorship.[27]

Second, good brief writers draw from the ideas of others, and not all such sources need to be, or can be, acknowledged. Obviously, in a sense, all brief writing draws from the ideas of others in the form of precedent, much of which will be acknowledged. But we see no problem in reviewing successful briefs by other attorneys on related subjects or successful briefs to a particular judge. We see no problem in drawing from these successful models structure, rhetorical devices, apt analogies and perhaps even well-turned phrases. Under the strict plagiarism regime of the academic world this would be plagiarism. In the world of fiction writing, it would be copyright infringement. But in the world of the lawyer, this is just careful preparation and effective advocacy.

Third, and perhaps most important, the court's purpose in reviewing a brief is not primarily to evaluate the personal creativity and skill of the lawyer, but to learn the law, apply it to the facts and decide the controversy. Most unacknowledged copying does not degrade the integrity of the court,

given its purpose.

Surely, the wholesale copying of the sort Cannon engaged in should be avoided, not only because it was deceptive, but because it is not effective advocacy. But routine matters involving established law, such as the standard of review or well-established points of substantive law, have been succinctly and accurately stated in multiple opinions. A client should not have to pay an attorney to recraft such a routine piece of prose to avoid verbatim copying. Moreover, under the plagiarism regime of the academic world, close paraphrasing would not avoid plagiarism anyway.

In sum, in the ordinary work of the lawyer, plagiarism should be defined to consist only of the word-for-word copying of a substantial, nonroutine portion of a document of which the lawyer expressly claims authorship.

Conclusion

The concepts of plagiarism and copyright infringement cannot be applied to the work of lawyers without acknowledging the purposes for which lawyers write. Lawyers are neither novelists nor academic scholars; their writing for clients is not primarily expressive but purely instrumental. Lawyers' work surely benefits from creativity and insight. But lawyers do not write to demonstrate their personal qualities, they write to get things done for their clients.

The needs of the institutions in which lawyers work, unlike those of the academic world, rarely require the evaluation of the writers' personal creativity and skill. What matters in most legal work is whether lawyers stand by the content of the documents they produce. The rules of plagiarism applicable to the legal profession should reflect this reality. Using the words and ideas of others, even without attribution, should not violate the rules of professional conduct so long as it not deceptive and serves the needs of clients.

--By James D. Peterson (pictured) and Jennifer L. Gregor, Godfrey & Kahn SC

James Peterson a member of Godfrey & Kahn's intellectual property and litigation practice groups in the firm's Madison, Wisc., office. He is the leader of the firm's intellectual property litigation working group. Jennifer Gregor is an associate in the firm's intellectual property and litigation practice groups, in the firm's Madison office.

The opinions expressed are those of the authors and do not necessarily reflect the views of the firm, its clients, or Portfolio Media, publisher of Law360. This article is for general information purposes and is not intended to be and should not be taken as legal advice.

[1] In re Burghoff, 374 B.R. 681 (N.D. Iowa 2007); Iowa Supreme Court Atty. Disciplinary Bd. v. Cannon, 789 N.W.2d 756 (Iowa 2010).

[2] See, e.g., Johnson v. Gordon, 409 F.3d 12, 14 (1st Cir. 2005) (explaining that "[a]n allegation of plagiarism lies at the heart of this matter"); Repp v. Webber, 132 F.3d 882, 889 (2d Cir. 1997) (characterized a copyright infringement claim as "alleging music plagiarism").

[3] See, e.g., United States ex rel. Berge v. Board of Trustees, 104 F.3d 1453, 1464 (4th Cir. 1997) (explaining that "Berge's charge of plagiarism and lack of attribution can only amount to, indeed, are tantamount to, a claim of copyright infringement").

[4] European law recognizes the author's attribution as an enforceable "moral right." But the Visual Artists Rights Act of 1990 (VARA), 17 U.S.C. § 106A, is the only recognition of the authorial moral rights in the Copyright Act. VARA protects the integrity of certain types of visual art by preventing unauthorized modification and it grants to the creators of such works the right to be identified as the creator.

[5] 17 U.S.C. § 101.

[6] Feist Publ'ns Inc. v. Rural Tel. Serv. Co., 499 U.S. 340 (1991).

[7] 1 Melville B. Nimmer & David Nimmer, Nimmer on Copyright § 2.18[E] (Rev. 3d ed. 2010)

("There appear to be no valid grounds why legal forms such as contracts, insurance policies, pleadings and other legal documents should not be protected under the law of copyright.")

[8] Copyright registration, although not a prerequisite to copyright protection, is required before the author can sue for copyright infringement. Timely registration also provides additional remedies against infringers, and thus registration of copyright should be considered by any author who may wish to enforce her copyright.

[9] 17 U.S.C. § 102(b).

[10] See, e.g., Herbert Rosenthal Jewelry Corp. v. Kalpakian, 446 F.2d 738, 742 (9th Cir. 1971).

[11] 17 U.S.C. § 107.

[12] 17 U.S.C. § 105; John G. Danielson Inc. v. Winchester-Conant Props., 322 F.3d 26 (1st Cir. 2003); Veeck v. S. Bldg. Code Cong. Int'l Inc., 293 F.3d 791 (5th Cir. 2002).

[13] For an explanation of the rationale for the rule, see Building Officials & Code Adm. v. Code Tech. Inc., 628 F.2d 730, 734 (1st Cir. 1980).

[14] Callaghan v. Myers, 128 U.S. 617, 649 (1888); Banks Law Publ'g v. Lawyers' Coop. Publ'g Co., 169 F. 386, 387 (2d Cir. 1909).

[15] See, e.g., Donald v. Uarco Bus. Forms, 478 F.2d 764 (8th Cir. 1973) (holding that agreement provision was not entitled to copyright protection and could be copied by competitor).

[16] American Family Life Ins. Co. v. Assurant Inc., 77 U.S.P.Q.2d (BNA) 1901 (N.D. Ga. Jan. 11, 2006).

[17] See Lisa P. Wang, The Copyrightability of Legal Complaints, 45 B.C. L. Rev. 705 (2004); Davida H. Isaacs, The Highest Form of Flattery? Application of the Fair Use Defense against Copyright Claims for Unauthorized Appropriation of Litigation Documents, 71 Mo. L. Rev. 391, 392 (2006).

[18] Jaime S. Dursht, Judicial Plagiarism: It May Be Fair Use But Is It Ethical?, 18 Cardozo L. Rev. 1253 (1996).

[19] Joseph Gibaldi, MLA Style Manual and Guide to Scholarly Publishing § 6.1 (2d ed. 1998).

[20] Academic scholar and lawyer Stanley Fish contends that plagiarism is not a moral wrong equivalent to stealing. Rather, according to Fish, rules defining plagiarism are a complex set of learned social conventions, comparable to the arcane rules of golf in both complexity and moral force. Stanley Fish, Plagiarism Is Not a Big Moral Deal, N.Y. Times, Aug. 9, 2010, http://opinionator.blogs.nytimes.com/2010/08/09/plagiarism-is-not-a-big-moral-deal/?scp=1&sq=stanley%20fish%20plagiarism&st=cse; The Ontology of Plagiarism: Part Two, N.Y. Times, Aug. 16, 2010, http://opinionator.blogs.nytimes.com/2010/08/16/the-ontology-of-plagiarism-part-two/?scp=3&sq=stanley%20fish%20plagiarism&st=cse.

[21] See Radtke v. Board of Bar Exam'rs, 230 Wis. 2d 254, 601 N.W.2d 642 (1999); see also In re Petition of Zbiegien, 433 N.W.2d 871 (Minn. 1988).

[22] United States v. Lavanture, 74 Fed. App'x 221, 224 n.2 (3d Cir. 2003).

[23] United States v. Bowen, 194 Fed. App'x 393, 402 n.3 (6th Cir. 2006).

[24] Schultz v. Wilson, No. 04-1823, 2007 WL 4276696, at *6 n.13 (M.D. Pa. Dec. 4, 2007).

[25] Venesevich v. Leonard, No. 07-2188, 2008 WL 5340162, at *2 n.2 (M.D. Pa. Dec. 19, 2008).

[26] Federal Intermediate Credit Bank v. Kentucky Bar Ass'n, 540 S.W.2d 14, 16 (Ky. 1976).

[27] Ghostwriting for pro se litigants raises different potential ethical issues because courts often

apply more liberal or lenient standards to litigation documents prepared by individuals involved in litigation without counsel. See ABA Formal Ethics Opinion 07-446; Timothy J. Pierce, Legal ghostwriting: What lawyers should know about drafting documents without disclosure, WisBar InsideTrackTM (Jan. 5, 2010), http://www.wisbar.org/AM/Template.cfm?Section=InsideTrack&Template=/CustomSource/InsideTrack/contentDisplay.cfm&ContentID=99375 (stating it is "unlikely that a lawyer relying on ABA Formal Op. 07-446 would face professional discipline for ghostwriting.").