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## THE DARK SIDE OF UNATTRIBUTED COPYING AND THE ETHICAL IMPLICATIONS OF PLAGIARISM IN THE LEGAL PROFESSION\*

### INTRODUCTION

Plagiarism is an intriguing subject. Though support for this statement is not likely needed—it is undoubtedly common knowledge—a simple example puts this widely accepted opinion into context. In February 1987, prior to entering the Democratic Party's campaign for the presidential nomination, a prominent United States Senator made the following statement in a speech before a gathering of the California Democratic Party: "Few of us have the greatness to bend history itself. But each of us can act to affect a small portion of events, and in the totality of these acts will be written the history of this generation."<sup>1</sup> Even without the context the full speech would likely provide, this statement is evocative and inspiring. What listening voter would not be impacted by the speaker's words? But compare it to a portion of a speech given in June 1967 before an audience at Fordham University: "Few will have the greatness to bend history itself. But each of us can work to change a small portion of events, and in the total of all those acts will be written the history of this generation."<sup>2</sup>

By comparison, and without the benefit of acknowledgment, an inspired listener who later discovers the similarities between these two statements is likely to feel duped by the plagiarizing speaker.<sup>3</sup> Though plagiarism in politics is often viewed as par for the course,<sup>4</sup> the unattributed borrowing of original language from Robert F.

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1. Lee May, *Biden Admits Plagiarism in Writing Law School Brief*, L.A. TIMES, Sept. 18, 1987, at 28 (internal quotations omitted); E.J. Dionne, Jr., *Biden Joins Campaign for the Presidency*, N.Y. TIMES, June 10, 1987, at A18.

2. May, *supra* note 1.

3. Deborah R. Gerhardt, *Plagiarism in Cyberspace: Learning the Rules of Recycling Content with a View Towards Nurturing Academic Trust in an Electronic World*, 12 RICH. J.L. & TECH. 2–3, ¶ 2–3, (2006), <http://jolt.richmond.edu/v12i3/article10.pdf> (describing a hypothetical case of lost respect and damaged reputation caused by plagiarism in a public speech by a law school dean following its discovery by the audience).

4. See Jeanne L. Schroeder, *Copy Cats: Plagiarism and Precedent* 72 (Benjamin N. Cardozo Sch. of Law, Jacob Burns Inst. for Advanced Legal Studies, Working Paper No. 185, 2007), available at <http://ssrn.com/abstract=970365> ("[W]e generally do not consider it improper for a politician to make use of unidentified sources.").

Kennedy by Joseph Biden, along with other acts of plagiarism, likely played a role in the failure of Biden's presidential hopes.<sup>5</sup>

Interestingly, Joseph Biden had a history of using other people's words without proper attribution.<sup>6</sup> Though Biden's plagiarism troubles have been recounted many times,<sup>7</sup> it is interesting to note that his difficulties with proper attribution began as early as his first year of law school at Syracuse University.<sup>8</sup> Having copied five pages of a law review article, without attribution, in a fifteen page paper for a legal methods course,<sup>9</sup> Biden's actions were discovered and punished with a failing grade in the course.<sup>10</sup> As most well know, however, this did not destroy Biden's career prospects. Biden would go on to graduate from law school and earn admission to practice law in the State of Delaware.<sup>11</sup> Moreover, Biden served a distinguished and lengthy career in the United States Senate.<sup>12</sup> And though plagiarism may have played a role in his unsuccessful campaign for his party's presidential nomination in 1988, prior acts of plagiarism did not prevent Biden from becoming the 47th Vice President of the United States.<sup>13</sup>

In part, Biden's redemption, in spite of prior plagiarism blunders, may be attributed to the fact that plagiarism or the lack of proper attribution in politics is frequently viewed as a minor indiscretion.<sup>14</sup> For many, plagiarism by a practicing attorney is viewed similarly, if viewed as an indiscretion at all.<sup>15</sup> What may surprise many, however, is that in both politics and the legal profession, there are instances

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5. Gerhardt, *supra* note 3, at 15, ¶ 30; May, *supra* note 1.

6. See May, *supra* note 1.

7. See, e.g., RICHARD A. POSNER, *THE LITTLE BOOK OF PLAGIARISM* 36-37 (2007); Schroeder, *supra* note 4, at 72-74; Rachel M. Zahorsky, *Alito Invokes Mick Jagger To Poke Fun at Biden Plagiarism*, A.B.A. J. (Dec. 5, 2008, 1:35 PM CST), [http://www.abajournal.com/news/article/alito\\_invokes\\_mick\\_jagger\\_to\\_poke\\_fun\\_at\\_biden\\_plagiarism/](http://www.abajournal.com/news/article/alito_invokes_mick_jagger_to_poke_fun_at_biden_plagiarism/).

For readers interested in other more recent, high-profile plagiarism scandals, including those implicating three Harvard Law School professors, see generally Arthur Austin, *Parsing the Plagiarism Scandals in History and Law*, 5 PIERCE L. REV. 367 (2007).

8. May, *supra* note 1.

9. E.J. Dionne, Jr., *Biden Admits Plagiarism in School but Says It Was Not 'Malevolent'*, N.Y. TIMES, Sept. 18, 1987, at A1.

10. May, *supra* note 1.

11. Biden, Joseph Robinette, Jr., BIOGRAPHICAL DIRECTORY OF THE U.S. CONG., <http://bioguide.congress.gov/scripts/biodisplay.pl?index=B000444> (last visited Feb. 19, 2012).

12. *Id.*

13. Vice President Joe Biden, THE WHITE HOUSE, <http://www.whitehouse.gov/administration/vice-president-biden> (last visited Feb. 19, 2012).

14. See *supra* note 4 and accompanying text.

15. See *infra* note 33 and accompanying text.

where plagiarism is viewed as a significant ethical issue. Biden experienced this reality in law school and in politics, and based on various court opinions and disciplinary proceedings, some practicing attorneys are experiencing the consequences of failing to properly attribute the sources they reproduce in their written work product as well.<sup>16</sup> This Recent Development seeks to examine where the plagiarism line is drawn in legal practice and what, if anything, may be done to warn attorneys of this potential ethical pitfall.

Plagiarism is defined by *Black's Law Dictionary* as "[t]he deliberate and knowing presentation of another person's original ideas or creative expressions as one's own."<sup>17</sup> Plagiarism, however, "is a slippery subject because, while almost everyone agrees on *what* it is, few agree on *where* it is to be found."<sup>18</sup> This is particularly true in the legal profession, where plagiarism is often viewed as unethical but is widely accepted in many contexts.<sup>19</sup> The reality is that many forms of unattributed copying by attorneys are necessary and respectable and are thus not deserving of the plagiarism label.<sup>20</sup> Yet, lines may be crossed and unethical copying may occur.<sup>21</sup> Defining this line in legal practice, however, is often difficult.<sup>22</sup>

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16. See *supra* notes 1–13 and accompanying text; *infra* Parts I–II.A.

17. BLACK'S LAW DICTIONARY 1267 (9th ed. 2009). Despite this rather straightforward definition, there is much debate regarding the meaning and applicability of plagiarism. See, e.g., POSNER, *supra* note 7, at 11 (2007) ("'[P]lagiarism' turns out to be difficult to define."); Robert D. Bills, *Plagiarism in Law School: Close Resemblance of the Worst Kind?*, 31 SANTA CLARA L. REV. 103, 105 (1990) (noting "the difficulty created by the lack of a universally accepted definition for plagiarism"); Gerhard, *supra* note 3, at 9, ¶ 19 ("There is no standard definition of plagiarism. . . . [A] standard definition is not possible because context drives different expectations, and therefore, different rules in different situations."); Debbie Papay-Carder, Comment, *Plagiarism in Legal Scholarship*, 15 U. TOL. L. REV. 233, 234–38 (1983) (describing the difficulties associated with developing a common understanding of plagiarism).

18. Schroeder, *supra* note 4, at 1 (quoting MARILYN RANDALL, PRAGMATIC PLAGIARISM: AUTHORSHIP, PROFIT, AND POWER vii (2001)).

19. See Marilyn V. Yarbrough, *Do As I Say, Not As I Do: Mixed Messages for Law Students*, 100 DICK. L. REV. 677, 678 (1996).

20. See Schroeder, *supra* note 4, at 15. See generally Philip Crennan, *Plagiarism and Legal Practice*, 67 LAW INST. J. 128 (1993) (describing the impracticalities associated with applying academic plagiarism standards to legal practice).

21. See *infra* Parts I–II.

22. See, e.g., Sara Burnett, *McInnis Plagiarism Dispute Falls Shy of Ethics Violation*, DENVER POST, May 24, 2011, at A1 (reporting that the Colorado Office of Attorney Regulation Counsel investigated a plagiarism matter involving attorney, former congressman, and Colorado gubernatorial candidate Scott McInnis, and concluded that there was "no 'clear and convincing evidence' " that he violated any disciplinary rules); Martha Neil, *Hogan Lovells Partner To Repay \$300K Earned in Part for Plagiarized Work in Prior Post*, A.B.A. J. (July 16, 2010, 2:31 PM CST), <http://www.abajournal.com/news>

Within this context, this Recent Development examines *Iowa Supreme Court Attorney Disciplinary Board v. Cannon*,<sup>23</sup> an Iowa Supreme Court decision that presents two relevant questions for analyzing attorney plagiarism. First, when does unattributed “copying” by an attorney constitute plagiarism in violation of professional ethics rules? Second, if a violation does exist, how should an attorney who commits plagiarism be punished?<sup>24</sup>

At issue in *Cannon* was an attorney’s unattributed verbatim copying in two briefs submitted to a bankruptcy court from a copyrighted online publication prepared by two unaffiliated attorneys.<sup>25</sup> The attorney’s extensive unattributed copying in *Cannon* and his subsequent admissions provided a definitive answer to the two questions presented above: The attorney’s acts constituted plagiarism and were an ethical violation deserving of public reprimand, not suspension.<sup>26</sup> Unfortunately, for many less egregious forms of unattributed copying, there is no hard and fast rule that provides guidance in every situation or clarifies the various shades of gray that exist within this context.<sup>27</sup>

Many cautious attorneys, including recent law school graduates,<sup>28</sup> may be troubled by the uncertainty that this issue creates. Unlike

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/article/hogan\_lovell\_partner\_to\_repay\_300k\_earned\_in\_part\_for\_plagiarized\_work\_in\_/ (describing severe financial repercussions for Scott McInnis’s use of plagiarized material in speeches and articles on water policy); Debra Cassens Weiss, *Suit Claims Patent Denied Because of Plagiarism by Ropes & Gray Partner*, A.B.A. J. (Mar. 25, 2010, 7:51 AM CST), [http://www.abajournal.com/news/article/suit\\_claims\\_patent\\_denied\\_because\\_of\\_plagiarism\\_by\\_ropes\\_gray\\_partner/](http://www.abajournal.com/news/article/suit_claims_patent_denied_because_of_plagiarism_by_ropes_gray_partner/) (describing \$82.5 million lawsuit filed by Ropes & Gray client for loss of patent due to attorney’s plagiarism in patent application); Debra Cassens Weiss, *Vermont Lawyer Criticized for Lifting Language from Utility Filing*, A.B.A. J. (July 14, 2010, 9:53 AM CST), [http://www.abajournal.com/news/article/vermont\\_lawyer\\_criticized\\_for\\_lifting\\_language\\_from\\_utility\\_filing/](http://www.abajournal.com/news/article/vermont_lawyer_criticized_for_lifting_language_from_utility_filing/) (describing government attorney’s copying of private utility companies’ motion for summary judgment as plagiarism).

23. 789 N.W.2d 756 (Iowa 2010).

24. See discussion *infra* Parts I–II.

25. *Cannon*, 789 N.W.2d at 757–58.

26. See *id.* at 760.

27. See, e.g., Carol M. Bast & Linda B. Samuels, *Plagiarism and Legal Scholarship in the Age of Information Sharing: The Need for Intellectual Honesty*, 57 CATH. U. L. REV. 777, 806 (2008) (discussing the ethical uncertainty associated with unattributed copying of “transactional and litigation documents”).

28. See, e.g., Gerhardt, *supra* note 3, at 8, ¶ 16 (describing the mixed signals sent to law students regarding the existence of plagiarism in the academic setting and its lack of recognition in practice). Interestingly, law students who plagiarize are often subject to significant consequences for their actions, including the denial of bar admission. See, e.g., *In re White*, 656 S.E.2d 527, 527–28 (Ga. 2008) (upholding former law student’s denial of “certification of fitness to practice law” for plagiarism in second year law school course assignment); cf. *In re Hamm*, 123 P.3d 652, 661 (Ariz. 2005) (stating that the petitioner bar applicant plagiarized a portion of a Supreme Court of the United States opinion in a

many other ethical issues—the use of contingent fees,<sup>29</sup> client confidentiality,<sup>30</sup> and conflicts of interest<sup>31</sup>—there is little guidance regarding the forms of unattributed copying that constitute unethical behavior.<sup>32</sup> What guidance does exist may be boiled down to anecdotal comments about how plagiarism does not apply within practice or generalized reflections about the publication status of the document being written or copied.<sup>33</sup> This Recent Development argues that these attitudes lack the necessary caution needed to guide attorneys in protecting their reputations and clients' interests from potential plagiarism claims by opposing parties, courts, and disciplinary review bodies.<sup>34</sup> To provide attorneys guidance regarding

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petition to review the denial of his application for admission to the Arizona State Bar). *See generally* Roger Billings, *Plagiarism in Academia and Beyond: What Is the Role of the Courts?*, 38 U.S.F. L. REV. 391, 399–401 (2004) (describing various instances in which law students have plagiarized and the effect this had on their bar admission). However, plagiarism may not be the most severe character issue a bar applicant faces. *See* Deborah L. Rhode, *Moral Character as Professional Credential*, 94 YALE L.J. 491, 533 (1985); *see also* Bast & Samuels, *supra* note 27, at 806 (noting that while accusations of plagiarism in law school may invite scrutiny, bar applicants are rarely denied admission because of these infractions); Bills, *supra* note 17, at 118–19 (noting that according to the law schools polled, “[e]xpulsion and denial of certification of moral fitness to practice law were the least favored” disciplinary sanctions for students who committed plagiarism).

29. *See* MODEL RULES OF PROF'L CONDUCT R. 1.5 (c)–(d) (2010).

30. *See id.* R. 1.6.

31. *See, e.g., id.* R. 1.7, 1.8.

32. *See, e.g.,* Jonathan Band & Matt Schruers, Dastar, *Attribution, and Plagiarism*, 33 AIPLA Q.J. 1, 14 (2005) (“The codes of professional responsibility that set the ethical standards for practicing lawyers are silent on the subject of plagiarism.”).

33. This advice closely tracks my own experience during a first-year law school orientation breakout session regarding plagiarism. For close to an hour, the small group I was a part of witnessed a faculty member and practicing attorney give a complicated, and somewhat unclear, justification for the distinction between plagiarism standards in the academic setting and the complete lack thereof in legal practice. Based on my experience, I understand why so many law school students are unsure about plagiarism standards and remain uncertain even after entering practice. Accordingly, scholars have argued that these distinctions must be clarified. *See generally* Bills, *supra* note 17, at 131 (“Law schools demand that their students forget the art of ‘cut and paste’ practiced in some law offices, and insist instead that all work be totally original. The plagiary approved by working lawyers with too little time to consider their obligations as mentors is condemned but seldom explained by law school faculties. Students struggling to learn the nuances of legal analysis, and ‘writing like lawyers,’ may become frustrated and confused by the dichotomy.”); Kevin J. Worthen, *Discipline: An Academic Dean's Perspective on Dealing with Plagiarism*, 2004 BYU EDUC. & L.J. 441, 443–44 (2004) (arguing for academic deans to address the most common misperception regarding student plagiarism, which is the belief that plagiarism is a purely academic offense with no equivalent in legal practice); Yarbrough, *supra* note 19, at 683–84 (arguing for legal professionals and educators to clarify plagiarism standards in legal writing for the benefit of law students).

34. *Cf.* David E. Sorkin, *Practicing Plagiarism*, 81 ILL. B.J. 487, 487 (1993) (“[O]ur ethical responsibilities (not to mention the interests of our clients) make it essential that we recognize plagiarism, understand it, and learn how to avoid it.”).

plagiarism, a Comment delineating the general contours of acceptable copying without attribution should be added to Rule 8.4 of the *Model Rules of Professional Conduct*. This Recent Development suggests language for a Comment that specifically addresses the relationship between plagiarism and misconduct by attorneys who “engage in conduct involving dishonesty, fraud, deceit or misrepresentation.”<sup>35</sup>

Part I of this Recent Development explores the essential facts presented in *Cannon*. Part II then examines *Cannon* within the context of existing case law and scholarly literature addressing attorney plagiarism. Moreover, Part II focuses on identifying themes regarding the forms of unattributed copying that are accepted in practice and those that are not, along with various exceptions that exist within this context. Finally, Part III argues that the legal profession should formally address what it considers acceptable copying and what constitutes plagiarism. A specific recommendation is suggested, which requires the addition of a Comment to Rule 8.4 of the *Model Rules of Professional Conduct*.

I. IOWA SUPREME COURT ATTORNEY DISCIPLINARY BOARD V.  
CANNON

On November 3, 2006, Peter Cannon, an attorney licensed to practice law in the State of Iowa, submitted an eighteen-page pre-hearing brief in a bankruptcy proceeding on behalf of his client.<sup>36</sup> Two weeks later and after a hearing on the matter, Cannon submitted a nine-page post-hearing brief to the bankruptcy court.<sup>37</sup> After reviewing both documents, the court requested certification of authorship for both briefs given the “extraordinary amount of research” the documents contained.<sup>38</sup> Though Cannon admitted having “‘relied heavily’ on an article written by others,” he maintained that he had personally prepared the briefs.<sup>39</sup>

The article used by Cannon to prepare both briefs was written by two practicing attorneys,<sup>40</sup> which the bankruptcy court located on the website of the authoring attorneys’ firm, Morgan Lewis.<sup>41</sup> The firm

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35. MODEL RULES OF PROF’L CONDUCT R. 8.4(c) (2010).

36. *Shodeen v. Petit (In re Burghoff)*, 374 B.R. 681, 683 (Bankr. N.D. Iowa 2007).

37. *Id.*

38. *Id.*

39. *Id.*

40. *Id.*

41. *Id.*; see also William H. Schrag & Mark C. Haut, *Why Professionals Must Be Interested in “Disinterestedness” Under the Bankruptcy Code*, MORGAN LEWIS (May

provides an extensive selection of approximately 6,500 publications on its website: “To help keep our clients informed, Morgan Lewis attorneys regularly write articles, books, LawFlashes, White Papers, and other publications, and frequently present speeches and webcasts to bar, professional, and industry groups.”<sup>42</sup> The specific article used by Cannon was a thirty-four-page piece entitled *Why Professionals Must Be Interested in “Disinterestedness” Under the Bankruptcy Code*, which prominently displayed a 2005 copyright notice on the first page of the document.<sup>43</sup>

In comparing Cannon’s two briefs to the copied article, the bankruptcy court determined that the pre-hearing brief contained seventeen pages of verbatim copying from the first twenty pages of the article.<sup>44</sup> Cannon merely inserted an introduction, a one-page argument section, and a conclusion.<sup>45</sup> Further changes by Cannon included typeface modifications resulting from copying and pasting the material into a new document and the modification and deletion of material, including case citations, which did not support his client’s position.<sup>46</sup> Regarding the post-hearing brief, Cannon also relied heavily on the article, reproducing numerous string citations, including the citation order and parentheticals, as supporting precedent.<sup>47</sup> Though Cannon wrote much of the post-hearing brief, he did not include any additional legal research beyond that copied from the article.<sup>48</sup> Moreover, Cannon failed to disclose or cite the article in either the pre- or post-hearing briefs.<sup>49</sup>

In a sanction hearing before the bankruptcy court on June 21, 2007, Cannon admitted to finding the article online.<sup>50</sup> Cannon acknowledged that, given the limited modifications he made to the pre-hearing brief, he had “stepped over the line.”<sup>51</sup> However, he maintained “that the act of copying citations was not plagiarism” and, therefore, believed that the submission of the post-hearing brief was

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2005), [http://www.morganlewis.com/pubs/disinterestedness\\_v2.pdf](http://www.morganlewis.com/pubs/disinterestedness_v2.pdf) (article copied by Mr. Peter Cannon).

42. See *Publications*, MORGAN LEWIS, <http://www.morganlewis.com/index.cfm/nodeID/4f1d3905-3550-4cce-bdd7-7119fa092979/fuseaction/publication.searchForm> (last visited Feb. 22, 2012).

43. Schrag & Haut, *supra* note 41.

44. *Shodeen*, 374 B.R. at 683.

45. *Id.*

46. *Id.* at 683–84.

47. *Id.* at 684.

48. *Id.*

49. *Id.* at 683.

50. *Id.* at 684.

51. *Id.*



not unethical.<sup>52</sup> In mitigation, Cannon stated that he had billed his client \$5,737.50 for the preparation of the briefs but subsequently waived fees and costs totaling \$11,500 because of his actions.<sup>53</sup>

Concluding that “Cannon’s acts of plagiarism burden the Court, undercut his client’s cause, and generate criticism of the legal profession,” the bankruptcy court sanctioned Cannon by requiring him to complete a professional responsibility course and to repay the fee for preparation of the briefs.<sup>54</sup> What the bankruptcy court found more troubling, however, was that Cannon’s actions revealed a “lack of integrity” that injured the legal profession more generally.<sup>55</sup> Cannon’s actions warranted this conclusion, in part, because he maintained that his failure to sufficiently modify the article’s content in the pre-hearing brief was the problem, failing to recognize his unethical behavior was rooted in the presentation of another’s work as his own.<sup>56</sup>

Cannon’s actions before the bankruptcy court resulted in a formal disciplinary proceeding before the Grievance Commission of the Iowa Supreme Court.<sup>57</sup> Though the procedural history of the Commission’s review is relatively complex,<sup>58</sup> the Commission’s final recommendation was that Cannon should receive a six-month suspension for plagiarizing the briefs he submitted to the bankruptcy

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52. *Id.*

53. *Id.* The \$5,737.50 fee for preparing the briefs represented 25.5 hours of work by Cannon. *See* Iowa Supreme Court Att’y Disciplinary Bd. v. Cannon, 789 N.W.2d 756, 757, 760 (Iowa 2010).

54. *Shodeen*, 374 B.R. at 686–87. The bankruptcy court noted that it did not have the authority “to suspend or disbar an attorney in an informal disciplinary proceeding.” *Id.* at 686 (citation omitted).

55. *Id.* at 686.

56. *See id.* at 685 (citing Iowa Supreme Court Bd. of Prof’l Ethics & Conduct v. Lane, 642 N.W.2d 296, 300 (Iowa 2002)). The bankruptcy court also held that Cannon’s billing of \$5,737.50 for 25.5 hours of work on the plagiarized briefs represented misconduct in the form of charging an unreasonable fee. *Id.* at 685–86.

57. *Cannon*, 789 N.W.2d at 757.

58. *See id.* at 757–59. The Iowa Supreme Court Attorney Disciplinary Board initiated an investigation of Cannon’s actions before the bankruptcy court and originally agreed to a public reprimand. *Id.* at 758. However, the Iowa Supreme Court did not initially accept this sanction given the insufficient record that was provided. *Id.* As a result, the Board initiated formal proceedings against Cannon before the Commission. *Id.* Following a hearing on the matter, the Commission recommended suspension of Cannon’s license to practice law. *Id.* at 759. *See generally* *Discipline Procedures*, IOWA JUDICIAL BRANCH, [http://www.iowacourtsonline.org/Professional\\_Regulation/Attorney\\_Discipline/Discipline\\_Procedures/](http://www.iowacourtsonline.org/Professional_Regulation/Attorney_Discipline/Discipline_Procedures/) (last visited Feb. 22, 2012) (describing the Iowa Supreme Court’s procedures for reviewing unethical conduct by attorneys, including the responsibilities of the Board and Commission).

court.<sup>59</sup> After seeking leniency before the Iowa Supreme Court, Cannon's suspension was ultimately converted to a public reprimand.<sup>60</sup>

Prior to the Iowa Supreme Court's review, the Commission concluded that Cannon had violated *Iowa Rules of Professional Conduct* 32:8.4(c), 32:3.3(a)(1), and 32:7.1(a).<sup>61</sup> In effect, Cannon had (1) engaged in "conduct involving dishonesty, fraud, deceit, or misrepresentation";<sup>62</sup> (2) made "a false statement of fact or law to a tribunal";<sup>63</sup> and (3) made a "false or misleading communication about the lawyer or the lawyer's services."<sup>64</sup> In his defense, Cannon claimed that his original intention had not been to plagiarize; however, because of significant time pressures, he ultimately copied large portions of the article verbatim.<sup>65</sup>

The Iowa Supreme Court reviewed Cannon's actions in light of an analogous attorney plagiarism case, *Iowa Supreme Court Board of Professional Ethics & Conduct v. Lane*.<sup>66</sup> In *Lane*, the Iowa Supreme Court held that "plagiarism amounts to a misrepresentation to the court," in violation of *Iowa Rules of Professional Conduct* 32:8.4(c).<sup>67</sup> Consequently, Cannon's "massive, nearly verbatim copying of a *published* writing without attribution in the [pre-hearing] brief . . . does amount to a misrepresentation that violates our ethical rules."<sup>68</sup>

The *Cannon* court, however, made several important qualifications in deviating from the six-month suspension applied in

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59. See *Cannon*, 789 N.W.2d at 758–59. In contrast to the bankruptcy court, the *Cannon* court found that the unreasonable fee violation had not been established. See *id.* at 758–60.

60. *Id.* at 757.

61. *Id.* at 758.

62. Compare IOWA RULES OF PROF'L CONDUCT R. 32:8.4(c) (2010), with MODEL RULES OF PROF'L CONDUCT R. 8.4(c) (2010) ("It is professional misconduct for a lawyer to . . . engage in conduct involving dishonesty, fraud, deceit, or misrepresentation."). For the purpose of this Recent Development, the three provisions of the *Iowa Rules of Professional Conduct* listed here are considered equivalent to those contained in the *Model Rules of Professional Conduct*.

63. Compare IOWA RULES OF PROF'L CONDUCT R. 32:3.3(a)(1) (2010), with MODEL RULES OF PROF'L CONDUCT R. 3.3(a)(1) (2010) ("A lawyer shall not knowingly . . . make a false statement of fact or law to a tribunal . . .").

64. Compare IOWA RULES OF PROF'L CONDUCT R. 32:7.1(a) (2010), with MODEL RULES OF PROF'L CONDUCT R. 7.1 (2010) ("A lawyer shall not make a false or misleading communication about the lawyer or the lawyer's services.").

65. *Cannon*, 789 N.W.2d at 758.

66. 642 N.W.2d 296 (Iowa 2002); *Cannon*, 789 N.W.2d at 759 (referencing *Lane*).

67. *Cannon*, 789 N.W.2d at 759 (citing *Lane*, 642 N.W.2d at 300).

68. *Id.* (emphasis added).

*Lane*.<sup>69</sup> First, unlike the attorney in *Lane*, Cannon did not attempt to further conceal his actions once confronted by the bankruptcy court.<sup>70</sup> Second, and more generally, the citations and parentheticals copied by Cannon in the post-hearing brief did not present a significant ethical concern for the Iowa Supreme Court, given that parentheticals frequently lack “any unique intellectual work product.”<sup>71</sup> Finally, the *Cannon* court noted that it was not “empower[ed]” by the ethics rules “to play a ‘gotcha’ game with lawyers who merely fail to use adequate citation methods”; nevertheless, the *Cannon* court recognized that the attorney’s actions went beyond this form of error.<sup>72</sup> In sum, the *Cannon* court made clear that certain forms of attorney plagiarism are subject to disciplinary action but recognized that the application of the ethics rules within this context do have a limit. The challenge facing the legal community more generally is determining where the limits discussed in *Cannon* actually exist,<sup>73</sup> a subject which is considered more fully in the following sections.

## II. DEFINING PLAGIARISM IN PRACTICE

The decision in *Cannon* represents only part of the story regarding the Iowa Supreme Court’s approach to attorney plagiarism.

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69. *Id.* at 760. Interestingly, the *Cannon* court noted Cannon’s “history of prior ethical problems” as an aggravating factor. *Id.*

70. *Id.* at 759–60.

71. *Id.* at 759. More generally, in the context of academic legal writing, footnotes are often the subject of contempt, including some views that “footnoting is so out of control that it disrupts and subverts legitimate scholarship.” Arthur D. Austin, *Footnotes as Product Differentiation*, 40 VAND. L. REV. 1131, 1152 (1987). A counterargument is that footnotes are a powerful tool for generating creative legal arguments in academic writing. *See id.* at 1153. Whether this reasoning also applies to citations and parentheticals used in documents prepared for litigation is beyond the scope of this Recent Development. However, it is interesting to note that at least one law school disagrees with the string citation and parenthetical conclusion of the *Cannon* court. Specifically, George Washington University Law School instructs its students that copying a string citation—even if the source of the string citation is cited itself—is plagiarism. GEORGE WASHINGTON UNIV. LAW SCH. COMM. ON ACADEMIC INTEGRITY, CITING RESPONSIBLY: A GUIDE TO AVOIDING PLAGIARISM 2011–2012, at 10 (2003), available at [http://www.law.gwu.edu/Students/Documents/Forms%20downloads/2011\\_Citing\\_Responsibly.pdf](http://www.law.gwu.edu/Students/Documents/Forms%20downloads/2011_Citing_Responsibly.pdf). The issue appears to be one of honesty; in other words, a writer may use a string citation as a research tool, but the source material should be verified before it is referenced by student authors. *See id.*

72. *Cannon*, 789 N.W.2d at 759. In using the phrase “‘gotcha’ game,” the *Cannon* court was presumably indicating its desire to avoid a broad definition of plagiarism given “that the term ‘plagiarism’ is something of a scarlet letter that imposes a brand on a wide variety of behaviors.” *Id.*

73. *See supra* note 18 and accompanying text.

Though plagiarism actions are rare,<sup>74</sup> the Iowa Supreme Court has been relatively active, providing two published opinions within the last ten years defining the ethical implications of attorney plagiarism.<sup>75</sup> The court's decision in *Lane*, the earlier of the two plagiarism cases, applied a more severe punishment: suspension.<sup>76</sup> The decision in *Lane*, therefore, provides valuable insight into why Cannon's actions were held to be unethical but only warranted a public reprimand, not suspension.

As in *Cannon*, the attorney in *Lane* plagiarized large portions of material in a post-trial brief submitted to a federal court.<sup>77</sup> In total, Lane's brief contained eighteen pages of text and footnotes that were taken from a legal treatise.<sup>78</sup> The Iowa Supreme Court concluded that Lane "cherry-picked" portions of the treatise, including footnotes.<sup>79</sup> The *Lane* court further determined that the "brief d[id] not reveal any independent labor or thought in the legal argument."<sup>80</sup> Unlike Cannon, Lane's license was suspended for six months.<sup>81</sup> The distinction results from the Iowa Supreme Court's belief that Lane intended to misrepresent and deceive the court,<sup>82</sup> whereas a similar degree of culpability did not exist in *Cannon*.<sup>83</sup> Specifically, when Lane was ordered by the trial judge to identify the source of the brief material, he stated that he "borrowed liberally from other sources" but was never forthcoming with any specific disclosure regarding the source.<sup>84</sup> To make matters worse, Lane requested attorney fees for eighty hours he claimed to have spent preparing the brief.<sup>85</sup>

Iowa is the only jurisdiction to formally consider attorney plagiarism to the extent found in the *Cannon* and *Lane* decisions. The

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74. Bast & Samuels, *supra* note 27, at 804.

75. See *Cannon*, 789 N.W.2d 756; Iowa Supreme Court Bd. of Prof'l Ethics & Conduct v. Lane, 642 N.W.2d 296 (Iowa 2002).

76. Iowa Supreme Court Board of Professional Ethics & Conduct v. Lane, 642 N.W.2d 296, 302 (Iowa 2002)

77. *Id.* at 297–98.

78. *Id.* at 300.

79. *Id.* By "cherry-pick[ing]" material, or exerting some editorial discretion in what material was copied, it may be argued that the conduct in *Lane* is a less egregious form of plagiarism than that found in *Cannon*. This may be true; however, the sheer volume of copying in both cases appears to outweigh any distinction that may exist between the methods by which the two attorneys went about their copying.

80. *Id.*

81. *Id.* at 302.

82. See *id.* at 300.

83. See Iowa Supreme Court Att'y Disciplinary Bd. v. Cannon, 789 N.W.2d 756, 760 (Iowa 2010).

84. See *Lane*, 642 N.W.2d at 298–300.

85. *Id.* at 298.

examples from other jurisdictions that do exist vary significantly and are frequently found in strongly worded footnotes or appellate reviews of formal disciplinary decisions regarding non-practice activities.<sup>86</sup> Moreover, many disciplinary proceedings involving attorney plagiarism cannot be separated from other charges of unethical behavior, including over-billing, which also occurred in *Lane*.<sup>87</sup> What the limited judicial references to plagiarism do reveal, however, is a clear discomfort with certain forms of attorney copying, yet there is no clear understanding of what should be done about plagiarism within the profession more generally. Nevertheless, like *Cannon* and *Lane*, the examples explored below probe the limits of accepted professional norms within the legal community, which generally regards plagiarism as unethical but frequently allows it as an “acknowledged and accepted practice.”<sup>88</sup>

#### A. *Categorizing Attorney Plagiarism*

The limited judicial guidance on attorney plagiarism that does exist may be broken down into four basic categories of unattributed copying: (1) secondary source material in court filings; (2) judicial opinions in court filings; (3) another attorney’s brief in court filings; and (4) third-party material within a non-practice, or non-litigation, context. The acts of plagiarism described in *Cannon* and *Lane* fall within the first category; however, they are not the only examples. In another instance before the United States District Court for the Western District of Tennessee, an attorney’s response filing contained seven of nineteen paragraphs, along with numerous footnotes, that had been copied in whole or in part from a copyrighted legal treatise.<sup>89</sup> In a footnote, the federal district court hearing the matter stated that the attorney’s actions potentially violated state ethics rules and noted the irony of the copying given that the underlying case was based on a claim of intellectual property theft.<sup>90</sup> In this matter, as well as many other decisions that

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86. See *infra* Part II.A.

87. See *Lane*, 642 N.W.2d at 300–01.

88. See Yarbrough, *supra* note 19, at 678.

89. *Kingvision Pay Per View, Ltd. v. Wilson*, 83 F. Supp. 2d 914, 916 n.4 (W.D. Tenn. 2000).

90. *Id.* An equally troubling example of attorney plagiarism occurred in the pre-sentencing stage of the Rick Pitino extortion case. *United States v. Sypher*, No. 3:09-CR-00085, 2011 WL 579156, at \*3 n.4 (W.D. Ky. Feb. 9, 2011). The Pitino case involved the conviction of a woman who attempted to extort millions of dollars, a home, and automobiles in exchange for not disclosing a sexual relationship with Rick Pitino, the high-profile head basketball coach of the University of Louisville. See *Sentence in Pitino*

tangentially address plagiarism, it is unclear whether the offending attorneys were subject to disciplinary review. For instance, in *Frith v. State*,<sup>91</sup> an attorney plagiarized at least ten pages from the *American Law Reports*, constituting fourteen pages of a filed brief.<sup>92</sup> The Indiana Supreme Court categorized the *Frith* attorney's actions as "an imposition" and poor argumentation, but it stopped short of considering the ethical failure this act represented and failed to impose any kind of meaningful penalty.<sup>93</sup> Both of these cases condemn plagiarism, the equivalent of that which occurred in *Cannon* and *Lane*, but they provide no clear statement that disciplinary action would or should be pursued.

In the second category—instances where attorneys copy large portions of court opinions into court filings without citation—judicial condemnation of attorney plagiarism is equally strong but is equally limited in effect. In one unpublished case from the United States Court of Appeals for the Sixth Circuit, an attorney copied approximately twenty pages "almost verbatim from a published district court decision" into a brief.<sup>94</sup> In his defense, the attorney explained that "he did not cite the case because it d[id] not constitute binding precedent in this circuit, and he copied from it verbatim because he would lose the essence of the argument if he changed even

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*Extortion Case*, N.Y. TIMES, Feb. 19, 2011, at D6. In asserting ineffective assistance of counsel as a grounds for a new trial, the defendant's attorney "cobbled much of his statement of the law governing ineffective assistance of counsel claims by cutting and pasting, without citation, from the Wikipedia web site." *Sypher*, 2011 WL 579156, at \*3 n.4 (citations omitted). The court concluded by reminding the defendant's attorney "that such cutting and pasting, without attribution, is plagiarism." *Id.* (noting also the attorney's responsibilities under Rule 8.4 of the *Kentucky Rules of Professional Conduct*, which is nearly identical to Rule 8.4 of the *Model Rules of Professional Conduct*); see also Debra Cassens Weiss, *Judge Warns Defense Lawyers in Pitino Extortion Case: Don't Crib Law Discussion from Wikipedia*, A.B.A. J. (Apr. 7, 2011, 7:02 AM CST), [http://www.abajournal.com/news/article/judge\\_warns\\_defense\\_lawyers\\_in\\_pitino\\_extortion\\_case\\_dont\\_crib\\_law\\_discussi/](http://www.abajournal.com/news/article/judge_warns_defense_lawyers_in_pitino_extortion_case_dont_crib_law_discussi/) (describing how the Wikipedia entry copied by defense counsel in this case was based on a brief written by the defense attorney's private investigator).

91. 325 N.E.2d 186 (Ind. 1975).

92. *Id.* at 188.

93. See *id.* at 188–89. Though falling within the second category of plagiarism cases described in this Recent Development, the Court of Appeals of Indiana applied the reasoning outlined in *Frith* to an attorney's unattributed copying of a federal district court memorandum and order in a brief filed with the appellate court. *Keeney v. State*, 873 N.E.2d 187, 189 (Ind. Ct. App. 2007). In *Keeney*, the Court of Appeals of Indiana described the brief's argument section as a "near-verbatim replication" of the federal district court document. *Id.* at 189 & n.1. The *Keeney* court restricted its comments to an "admonishment" but noted its authority to (1) require the attorney not to collect a fee for the representation, (2) entirely strike the brief, and/or (3) refer the matter for investigation to the state's disciplinary body for possible ethics violations. *Id.* at 190.

94. *United States v. Bowen*, 194 F. App'x 393, 402 n.3 (6th Cir. 2006).

one word.”<sup>95</sup> The Sixth Circuit panel responded to this cavalier defense with a footnote, classifying the attorney’s conduct as “unacceptable” and duly warning all other “attorneys tempted to ‘cut and paste’ helpful analysis into their briefs.”<sup>96</sup> Ultimately, however, the court did not take any action against the attorney. Similarly, one federal district court in Puerto Rico described this form of plagiarism as “reprehensible,” “intolerable,” and a disservice to the attorney’s client and the court.<sup>97</sup> Even so, the only actionable response by the court was an equally negligible warning to the attorney that future lapses in judgment will not be treated so “gingerly.”<sup>98</sup> Another federal district court in Pennsylvania went so far as to note that an attorney’s unattributed plagiarism of numerous opinions in a brief constituted “professional misconduct” amounting to “misrepresentation” in violation of ethics rule 8.4(c).<sup>99</sup> Worse yet, the violating attorney had been involved in a previous case in which the same federal district court had admonished a similar form of copying,<sup>100</sup> yet it is unclear whether further disciplinary action was taken in either instance.

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95. *Id.*; see also Jason Wilson, *Attorneys, Plagiarism & Professional Development*, RETHINC.K (Feb. 14, 2010), <http://www.jasnwilsn.com/2010/02/14/attorneys-plagiarism-professional-development/> (noting that in many cases attorney plagiarism may be caused by a sense of entitlement).

96. *Bowen*, 194 F. App’x at 402 n.3; see also *United States v. Jackson*, 64 F.3d 1213, 1219 n.2 (8th Cir. 1995) (noting “disapproval” of an attorney’s significant copying of a court opinion without citation); *Vasquez v. City of Jersey City*, No. 03-CV-5369, 2006 U.S. Dist. LEXIS 72135, at \*27 n.4 (D.N.J. Mar. 31, 2006) (expressing “displeasure” with government attorney’s unattributed verbatim copying of portions of a prior opinion by the same district court).

97. *Pagan Velez v. Laboy Alvarado*, 145 F. Supp. 2d 146, 160–61 (D.P.R. 2001); see also *United States v. Lavanture*, 74 F. App’x 221, 223 n.2 (3d Cir. 2003) (“[The argument] section of Lavanture’s brief is five pages, and more than half of the text appears to have been cut and pasted from [a Sixth Circuit opinion], with almost no alteration or attribution. In so doing, Lavanture’s counsel ill-represents his client’s interests and for several reasons we note our strong disfavor of the practice. . . . [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.”).

98. *Pagan Velez*, 145 F. Supp. 2d at 161.

99. *Venesevich v. Leonard*, No. 1:07-CV-2118, 2008 WL 5340162, at \*2 n.2 (M.D. Pa. Dec. 19, 2008). The attorney in *Venesevich* subsequently requested that the district court vacate the footnote admonishing his unattributed copying, arguing that “he [wa]s not responsible [for] this misconduct because he retained an unidentified attorney to draft the brief.” *Venesevich v. Leonard*, No. 1:07-CV-2118, 2009 WL 36437, at \*1 (M.D. Pa. Jan. 6, 2009). Referencing Rule 11 of the *Federal Rules of Civil Procedure*, the district court denied the attorney’s request to vacate the footnote. *Id.*

100. *Venesevich*, 2008 WL 5340162, at \*2 n.2. The case prior to *Venesevich* involved the same attorney who copied over one page from an unpublished Eastern District of Pennsylvania memorandum without attribution. See *Schultz v. Wilson*, No. 1:04-CV-1823, 2007 WL 4276696, at \*6 n.13 (M.D. Pa. Dec. 4, 2007) (admonishing the attorney for unattributed copying in his brief).

Relative to *Cannon* and *Lane*, these forms of plagiarism may not be as severe (or lengthy), but it remains troubling that various courts condemn the practice, while almost nothing is known about how disciplinary bodies address this form of unethical behavior.

The third category—instances where an attorney plagiarizes another attorney's brief in court filings—is factually unique in application. In one case from a federal district court in Maine, for example, an attorney plagiarized an opposing party's brief in significant part within his own brief for summary judgment.<sup>101</sup> Discarding the plagiarizing attorney's brief as ineffective, the federal district court stated that "[p]lagiarism is unacceptable in any grammar school, college, or law school, and *even* in politics. It is wholly intolerable in the practice of law."<sup>102</sup> In an equally troubling case before the District of Columbia Court of Appeals, a defense attorney filed a "virtually identical" brief to that which had been submitted for the client's co-defendant.<sup>103</sup> In an ever-changing story that included the attorney claiming to have never seen the co-defendant's brief and the classic "an-intern-wrote-it" defense, the attorney was ultimately disbarred for a variety of ethical violations, including billing nineteen hours for the plagiarized brief.<sup>104</sup>

Though technically plagiarism, these cases are unique compared to the examples found in *Cannon* and *Lane* and therefore may have no generalizable value. Stated differently, it is hard to imagine how the attorneys in these examples actually believed that they would get away with their copying or even marginally believed that they were producing something of value for their clients.<sup>105</sup>

The fourth category—plagiarism within a non-practice, or non-litigation, context—is a widely condemned and consistently punished

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101. *DeWilde v. Guy Gannett Publ'g Co.*, 797 F. Supp. 55, 56 n.1 (D. Me. 1992).

102. *Id.*

103. *In re Ayeni*, 822 A.2d 420, 421 (D.C. 2003).

104. *See id.* at 421–22; *see also* *USA Clio Biz, Inc. v. N.Y. State Dep't of Labor*, No. 97 CV 250, 1998 WL 57176, at \*2–3 (E.D.N.Y. Jan. 3, 1998) (indicating that sanctions may be appropriate under Rule 11(b) of the *Federal Rules of Civil Procedure* in the case of an attorney who copied twelve paragraphs of another attorney's brief into his own brief in such a way as to be "factually inaccurate" and "unresponsive" to the case before the court); *Columbus Bar Ass'n v. Farmer*, 855 N.E.2d 462, 464–68 (Ohio 2006) (*per curiam*) (describing a case of attorney plagiarism in a criminal appeal where an attorney influenced a client to leave former counsel, based, in part, on claims of a poorly written brief submitted by the former attorney, which the new attorney subsequently copied nearly verbatim and resubmitted on behalf of the client).

105. *See, e.g., DeWilde*, 797 F. Supp. at 56 n.1 (dismissing the value of the plagiarized filing entirely because "it d[id] not represent any additional contribution on the part of Plaintiff's counsel to the Court's understanding of the law").



form of attorney plagiarism.<sup>106</sup> The first example, from the Illinois Supreme Court, involves an attorney who plagiarized two published works in a thesis paper submitted for a master's degree in law.<sup>107</sup> In total, the attorney plagiarized approximately forty-six pages of a ninety-three-page thesis paper from two published works.<sup>108</sup> Finding that the attorney's actions involved deceit, disrespect for the property rights of others, and "at least a technical infringement of the publishers' federally protected copyrights," the Illinois Supreme Court censured the attorney for his conduct.<sup>109</sup> In a second example, an attorney was publicly censured by a New York appellate court for plagiarizing two briefs prepared by other attorneys and submitted as writing samples for promotion as a publicly appointed criminal defense attorney.<sup>110</sup> In censuring the attorney, the appellate court stated that what is "[a]t stake here is the integrity of a public-supported advocacy program whose reputation has been besmirched by one of its highest-profile representatives."<sup>111</sup> In a final example, an attorney was publicly censured by both the Illinois Supreme Court and the District of Columbia Court of Appeals for copying "verbatim or substantially verbatim" from a published article twenty-three pages of a fifty-six-page legal treatise chapter that he was writing.<sup>112</sup> It is within this category that the sanction applied in *Cannon*—public reprimand, or censure—finds its most consistent application,<sup>113</sup>

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106. See, e.g., Wilson, *supra* note 95 (noting that "everybody knows you don't plagiarize," at least not in books or law journal articles).

107. *In re Lamberis*, 443 N.E.2d 549, 550 (Ill. 1982).

108. *Id.*

109. See *id.* at 550–53.

110. *In re Steinberg*, 620 N.Y.S.2d 345, 346 (App. Div. 1994).

111. *Id.*

112. *In re Hinden*, 654 A.2d 864, 865–66 (D.C. 1995) (*per curiam*).

113. Public censure was also applied in the case of a Michigan district court judge who failed to acknowledge the extensive use of published sources in an article the judge prepared for the *Thomas M. Cooley Law Review*. See *In re Brennan*, 447 N.W.2d 712, 713–14 (Mich. 1989). The Michigan Supreme Court adopted the findings of the Judicial Tenure Commission of the State of Michigan, which concluded that the judge's "act of plagiarism" was "prejudicial to the administration of justice" and was in "violation of the Rules of Professional Conduct" for attorneys and the *Code of Judicial Conduct* for judges. *Id.* at 714.

Public censure, however, is not the only possible result within this category. In another recent example, an attorney's application for readmission to the bar, after a two year suspension for a felony forgery conviction, was denied following the discovery of plagiarism in a weekly newsletter published by the attorney. See N.H. Supreme Court Prof'l Conduct Comm., *In the Matter of Leigh D. Bosse*, LD 2006-0009, at 1–4 (2011), available at <http://nhattysreg.org/assets/1302871716.pdf>. Though the attorney's act of plagiarism was only a part of the New Hampshire Supreme Court Professional Conduct Committee's basis for its denial of reinstatement, it was a form of misconduct that was not

revealing how strongly the Iowa Supreme Court believed in the unethical nature of Cannon's conduct despite its occurrence in a practice or litigation context.

*B. Tensions Emerge When Defining Plagiarism in Practice*

Though sensational in its scope,<sup>114</sup> Cannon's act of plagiarism is fascinating because it occurred within a legal brief and not an academic assignment, job promotion writing sample, or legal treatise chapter, and yet Cannon remained subject to disciplinary sanctions. As one commentator noted, everyone knows that you do not plagiarize in a book or article,<sup>115</sup> but everything beyond that presents a gray area.<sup>116</sup> Stated differently, when attorneys write for purposes outside of their immediate practice duties (e.g., for legal journals or continuing education programs), the risk of unattributed copying being classified as plagiarism and subjected to sanction becomes more probable.<sup>117</sup> However, the case law described above, particularly *Cannon*, may test the boundaries of what legal professionals—at least some judges and disciplinary review bodies—now consider acceptable.<sup>118</sup>

The reality is that legal practice is full of ethically acceptable forms of unattributed copying that fit neatly within many definitions of plagiarism,<sup>119</sup> but which do not warrant such a severe designation.<sup>120</sup> As one law professor put it, “[i]n practice, borrowing not only is tolerated, but also often encouraged for the sake of

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taken lightly by the Committee. *See id.*; *see also* Maddie Hanna, *Lawyer's License Held Up for Plagiarism*, CONCORD MONITOR (N.H.), Apr. 23, 2011, <http://www.concordmonitor.com/article/252963/lawyers-license-held-up-for-plagiarism> (noting that attorney's plagiarism included instances of verbatim copying of news articles, including typographical errors in the copied source).

114. *Cf.* Bast & Samuels, *supra* note 27, at 805 (concluding that in attorney plagiarism cases resulting in discipline, “the outrageousness of the attorney’s behavior justified the discipline, but less flagrant ‘customary’ copying might be overlooked”).

115. *See* Wilson, *supra* note 95.

116. *See* Bast & Samuels, *supra* note 27, at 806.

117. *See* Schroeder, *supra* note 4, at 71; *see also* N.C. State Bar, 2008 Formal Ethics Op. 14 (2009) [hereinafter *Ethics Op.*], *available at* <http://www.ncbar.com/ethics/printopinion.asp?id=803> (describing a firm’s use of a “canned” newsletter prepared by a commercial publisher without attribution as an ethical violation).

118. *Cf.* Billings, *supra* note 28, at 395 (“Perhaps the greatest wordsmiths of all, lawyers and judges, are the biggest plagiarizers.”); Schroeder, *supra* note 4, at 58 (describing a traditional and accepted view of attorney copying in many contexts as “plagiariz[ing] for a living”).

119. *See, e.g.,* Schroeder, *supra* note 4, at 66–69 (noting the many “collaborative” writing practices of the legal profession).

120. *See id.* at 1, 15–16, 20.

consistency and efficiency.”<sup>121</sup> An example of an undeniably ethical form of unattributed copying is the use of form books and form resources provided by state bar associations and other organizations.<sup>122</sup> Nor are there any likely issues with an attorney reusing her own prior work product or documents previously produced by members of her own firm.<sup>123</sup> Likewise, the use of boilerplate language in contracts is another example of commonly accepted copying without attribution in legal practice.<sup>124</sup> In fact, failing to use boilerplate language or form contracts in many transactional settings would unnecessarily forego efficiencies purposefully created by this form of copying, including cost-effective drafting, decreased preparation and review time, development of commonly accepted understandings within practice communities, and case law interpretations of contract language.<sup>125</sup>

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121. K.K. DuVivier, *Nothing New Under the Sun—Plagiarism in Practice*, COLO. LAW., May 2003, at 53, 53; see also *Fed. Intermediate Credit Bank of Louisville v. Ky. Bar Ass’n*, 540 S.W.2d 14, 16 n.2 (Ky. 1976) (per curiam) (“Legal instruments are widely plagiarized, of course. We see no impropriety in one lawyer’s adopting another’s work, thus becoming the ‘drafter’ in the sense that he accepts responsibility for it.”); Band & Schruers, *supra* note 32, at 14 (“The functional nature of legal documents also dictates that this borrowing is generally unattributed.”); Lillian Corbin & Justin Carter, *Is Plagiarism Indicative of Prospective Legal Practice?*, 17 LEGAL EDUC. REV. 53, 61 (2007) (arguing that attribution is not required in legal practice because the written works created by attorneys are “services,” not “products”); Yarbrough, *supra* note 19, at 678–79 (“[Attorneys] have no procedure for citing to the original authors of forms, and indeed, have never made it a practice to cite our colleagues when we lift paragraphs from their briefs, opinion letters, and memoranda.”); Schroeder, *supra* note 4, at 59–60, 65 (noting the importance of verbatim copying in the transactional context); Duncan Webb, *Plagiarism: A Threat to Lawyers’ Integrity*, INT’L BAR ASS’N, <http://www.ibanet.org/Article/Detail.aspx?ArticleUid=bc2ef7cd-3207-43d6-9e87-16c3bc2be595> (last visited Feb. 22, 2012) (noting the historical tradition of copying formalized “writs” in establishing causes of action at common law).

122. See DuVivier, *supra* note 121, at 53; Judith D. Fischer, *Avoiding Plagiarism in Legal Documents*, BENCH & B., May 2006, at 68, 68; Terry LeClercq, *Failure To Teach: Due Process and Law School Plagiarism*, 49 J. LEGAL EDUC. 236, 250 (1999).

123. See, e.g., Elizabeth Scott Moïse, *Rocket Docket: The Joys and Perils of Online Court Documents*, S.C. LAW., May 2011, at 46, 47 (describing the reuse of briefs by one’s own firm as a research “starting point” that “saves money and expedites the process”); Papay-Carder, *supra* note 17, at 245–46 (noting a broader acceptance of “plagiarism” in legal practice, including the practice of “keep[ing] files of briefs, interrogatories and other legal documents for future duplication and use within the office”).

124. Schroeder, *supra* note 4, at 58–65; see also Bast & Samuels, *supra* note 27, at 804 (“Practicing attorneys customarily borrow from the writing of others, especially for transactional documents; in fact, it is fairly rare for an attorney to produce wholly original writing.”).

125. See Claire A. Hill, *Why Contracts Are Written in “Legalese,”* 77 CHI.-KENT L. REV. 59, 70–71 (2001); see also Schroeder, *supra* note 4, at 60 (describing cost savings from using form contracts and the inherent value that is generated by widespread copying of form contracts).

In some contexts, however, copying of another attorney's contract language may present ethical issues and a potential exception to the commonly held belief that contracts are fair game for copying. Recounting a personal story about an attorney whose specialized real estate documents for large condominium developments had been plagiarized by a competitor, United States Circuit Judge Stanley F. Birch, Jr. described this form of copying as "professional misconduct."<sup>126</sup> Judge Birch noted that specialized practice areas represent "years of experience and countless hours of drafting and revision" and therefore warrant some degree of protection from unauthorized copying.<sup>127</sup>

Condemnation of specialized document copying reveals a subtle distinction, often ignored in practice, between acceptable copying and that which may be unethical or unprofessional, regardless of whether attribution is provided. Specifically, the condominium documents example has been confirmed in other settings. As one commentator stated, "it is considered inappropriate to borrow without permission from another law firm's documents that are not pleadings filed in a court file (such as wills, contracts, and leases)."<sup>128</sup> In other words, the legal profession may find it acceptable to copy from court documents because they are a part of the public record.<sup>129</sup> This viewpoint is

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126. Stanley F. Birch, Jr., *Copyright Protection for Attorney Work Product: Practical and Ethical Considerations*, 10 J. INTELL. PROP. L. 255, 255–56, 262 (2003). Judge Birch also noted the possibility of the competitor's plagiarism constituting actionable copyright infringement. *Id.* at 256.

127. *See id.* at 257.

128. LeClercq, *supra* note 122, at 250 n.41 (quoting *Legal Practice*, SECOND DRAFT (Legal Writing Inst., Austin, Tex.), April 1993, at 8). *Contra* Douglas R. Richmond, *Professional Responsibilities of Law Firm Associates*, 45 BRANDEIS L.J. 199, 245–46 ("It is unacceptable to copy briefs or pleadings prepared by unaffiliated lawyers in other cases, by lawyers representing a co-defendant or co-plaintiff in the same case, or by an opposing lawyer in a current case.").

An interesting example of where it may be inappropriate to copy non-litigation documents, with or without attribution, is in highly specialized practice areas that attorneys develop and license for use by other attorneys. For example, a Florida attorney has developed a unique specialization based on creating Title II firearm trusts, a practice area expertise that he now licenses to other attorneys for their own use. Margaret Littman, *Florida Lawyer Fashions Gun Trust (and Niche Practice)*, A.B.A. J. (Feb. 1, 2011, 3:20 AM CST), [http://www.abajournal.com/magazine/article/in\\_goldman\\_guns\\_trust/](http://www.abajournal.com/magazine/article/in_goldman_guns_trust/). This unique legal franchise allows participating attorneys to gain from the creator's expertise in creating firearm trusts for clients who wish to legally purchase highly regulated and expensive firearms, such as machine guns and short-barreled rifles, without complying with fingerprinting and other personal identification requirements. *Id.* Assuming that legal documents are in fact required for creating Title II firearm trusts, it is at least arguable that the attorney franchisor and franchisees would not want their work product copied at no cost by non-participating third-party competitors.

129. *See* DuVivier, *supra* note 121, at 53; LeClercq, *supra* note 122, at 250 n.41.

confirmed within a *North Carolina Formal Ethics Opinion* that specifically condones the verbatim copying of eight pages of another attorney's appellate brief, along with a host of other potentially questionable non-attribution practices.<sup>130</sup>

Unfortunately, this apparent exception to the general rule also includes its own unique exceptions. The most apparent example of this exception-to-the-exception is the argument that large class action litigation documents are exempt from unattributed copying.<sup>131</sup> Many firms that practice in this field are driven to assert copyright claims in their complaints in an attempt to protect their business interests, which arguably indicates that plagiarism within this context is less about attribution and more about competition for clients and "free-riding."<sup>132</sup> In the case of class action lawsuits, if one attorney or firm

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130. Ethics Op., *supra* note 117. The North Carolina State Bar did note, however, that "[a]lthough consent and attribution are not required, if a lawyer uses, verbatim, excerpts from another's brief and the lawyer knows the identity of the author of the excerpt, it is the better, more professional practice, for the lawyer to include a citation to the source." *Id.* Interestingly, this assessment contradicts the opinion of George Kuhlman, Ethics Counsel with the American Bar Association, who speculated that a firm employee who repeatedly witnessed an attorney plagiarize other attorneys' work product had likely witnessed a violation of Rule 8.4 of the *Model Rules of Professional Conduct*. Debra Cassens Weiss, *Law Firm Worker Tells Advice Columnist of Plagiarizing Lawyer*, A.B.A. J. (Aug. 12, 2009, 7:43 AM CST), [http://www.abajournal.com/news/article/law\\_firm\\_worker\\_tells\\_advice\\_columnist\\_of\\_plagiarizing\\_lawyer/](http://www.abajournal.com/news/article/law_firm_worker_tells_advice_columnist_of_plagiarizing_lawyer/). Interestingly, the general public may find this kind of conduct unsavory as well. See Lily Garcia, *How To Deal Live*, WASH. POST (Aug. 11, 2009, 11:00 AM), <http://www.washingtonpost.com/wp-dyn/content/discussion/2009/07/28/DI2009072802262.html>.

131. See Band & Schruers, *supra* note 32, at 14 n.68.

132. See *id.* The debate regarding the ability to successfully copyright legal work product is hotly contested. Compare Lisa P. Wang, Comment, *The Copyrightability of Legal Complaints*, 45 B.C. L. REV. 705, 739–40 (2004) (arguing that attorneys can successfully copyright legal work product), with 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, 444–46 (2006) (arguing that copyrighting legal work product is unlikely to be successful). At least one federal circuit judge believes in the possibility of successfully copyrighting legal work product. See Birch, Jr., *supra* note 126, at 259–61 (providing tips on how to develop the necessary record to defend a copyright claim associated with legal work product). Additionally, some firms have adopted the practice of copyrighting certain forms of legal work product, like specialized complaints. See, e.g., Isaacs, *supra*, at 392 (describing the use of copyrights to protect class action complaints prepared by the law firm of Milberg Weiss); Bruce H. Kobayashi & Larry E. Ribstein, *Class Action Lawyers as Lawmakers*, 46 ARIZ. L. REV. 733, 737–38 (2004) (describing the language used by Milberg Weiss to assert copyright protection in complaints prepared by the firm). Moreover, as electronic filing systems and searchable databases, like Public Access to Court Electronic Records ("PACER") or LexisNexis Courtlink, continue to develop and become more sophisticated—increasing the opportunities for the collection of third-party attorney filings and detection of their subsequent unattributed copying—it is possible that the practice of copyrighting legal work product may accelerate in response. See Paul Tharp, *Attorneys Could Copyright*

invests substantial resources in preparing a highly effective complaint,<sup>133</sup> which is subsequently copied verbatim by other attorneys or firms,<sup>134</sup> and the originating attorney or firm is not appointed lead counsel, then significant legal fees would be lost to the “copycat lawyer” or firm.<sup>135</sup> This result may occur because class action complaints are frequently prepared “on spec,” given that courts are ultimately responsible for appointing lead counsel.<sup>136</sup> Lead counsel appointment enables the appointed attorney or firm to control fee allocation and workload in the case.<sup>137</sup> Therefore, the push against “plagiarism” or unauthorized copying may frequently be tied to a desire to protect and exclude others from certain areas of practice.<sup>138</sup> This motivation, however, elicits powerful counterarguments based on legal and policy traditions regarding the need to reduce the cost of legal services, widen accessibility, and promote justice within the legal system more generally.<sup>139</sup>

The complexities of this issue do not end here, however. In *Cannon*, for example, the attorney copied large portions of a

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*Their Documents, But Should They?*, N.C. LAW. WKLY., Dec. 20, 2010, at 3, 3. Ironically, the advice provided for avoiding potential copyright infringement in this context is equally valuable for avoiding plagiarism charges: “Copyrighting Firm X’s complaint does not preclude all others from practicing the art of drafting complaints—importantly, another firm . . . is still free to draft a complaint for the same case so long as its complaint is sufficiently original.” Wang, *supra*, at 732–33.

133. See Kobayashi & Ribstein, *supra* note 132, at 744–45 (describing the unique qualities and importance of class action complaints in this practice area and the significant degree of resources often required to produce these documents).

134. See, e.g., *id.* at 772 (providing an example of a class action case in which the firm of Milberg Weiss filed a class action complaint, which was largely copied “[w]ithin days” by other parties); Molly McDonough, *Hey! They Copied My Complaint!*, A.B.A. J. E-REPORT, Dec. 6, 2002 (noting Milberg Weiss’s claim that “it ha[d] lost the lucrative lead-plaintiff status when another firm copied a complaint as its own”) (on file with the North Carolina Law Review).

135. See Kobayashi & Ribstein, *supra* note 132, at 735–36.

136. *Id.* at 736. A complaint is drafted “on spec” when “the lawyer drafts the complaint prior to entering into a contract with a client, and therefore without any assurance even that a client will pay for the work.” *Id.* at 752.

137. See *id.* at 735–36, 752–53.

138. Cf. *id.* at 744–45 (describing the “free-rider” effect in a class action context); Webb, *supra* note 121 (“There is also the suggestion that the main function of the movement against plagiarism [more generally] is to protect and exclude.”).

139. See Isaacs, *supra* note 132, at 396; Tharp, *supra* note 132, at 3; see also Ethics Op., *supra* note 117 (“[T]he utilization of the work of others in [briefs] furthers the interests of the client by reducing the amount of time required to prepare a brief and thus reducing the charge to the client.”); Kobayashi & Ribstein, *supra* note 132, at 737 (describing this counterargument within the context of copyrighting complaints); Webb, *supra* note 121 (describing the cost savings for clients resulting from copying).

“published” article into his brief,<sup>140</sup> which is noticeably different from copying another attorney’s court filings. Interestingly, if the scope of the unattributed copying is less extensive than that found in *Cannon*, then many commentators have noted the general acceptability of this practice.<sup>141</sup> Potentially acceptable practices include, but are not limited to, the unattributed copying of unpublished court opinions,<sup>142</sup> the use of dicta without citation,<sup>143</sup> the incorporation of other non-precedential source material,<sup>144</sup> and the use of unattributed secondary sources within briefs.<sup>145</sup> The problem, however, becomes one of degree. Is the unattributed inclusion of one paragraph okay? How about five total paragraphs carefully dispersed throughout a nine-page brief? Or what about more than eight full pages of unattributed copying explicitly approved by the North Carolina State Bar Council but less than the seventeen pages condemned in *Cannon*?

The reality is that within the legal profession there is no firm understanding of what constitutes plagiarism.<sup>146</sup> Though significant forms of unattributed copying are acceptable,<sup>147</sup> many others arguably are not.<sup>148</sup> Making matters more difficult, many of the justifications given for exceptions to the general acceptability of various forms of unattributed copying are incoherent or arbitrary at best.<sup>149</sup> Even in areas where unattributed copying is widely condemned—plagiarism

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140. The article copied by Cannon was “published” on a firm website; however, this may stretch the common understanding of what it means to “publish.” Furthermore, an argument may be made that the article was in fact a memorandum of law based on its style and appearance. See Schrag & Haut, *supra* note 41. Consequently, if this “article” represents a “published” work, this may represent a new frontier of unacceptable copying. Cf. Yarbrough, *supra* note 19, at 679 (noting that attorneys regularly copy, without attribution, from “briefs, opinion letters, and memoranda”).

141. See *supra* notes 114, 119–25 and accompanying text. But see Laurie Stearns, *Copy Wrong: Plagiarism, Process, Property, and the Law*, 80 CALIF. L. REV. 513, 526 (1992) (“The process of copying a small amount of material from an unattributed source is no less plagiarism than is the copying of a large amount. In practical terms, of course, the plagiarism in a long work of just one sentence is unlikely to be noticed or, if noticed, unlikely to be criticized. Technically, though, the taking of even a single resonant phrase would be plagiarism.”).

142. See LeClercq, *supra* note 122, at 250 n.40.

143. Webb, *supra* note 121.

144. See DuVivier, *supra* note 121, at 53.

145. *Id.* at 54 (“Authors of some secondary pieces may lose a bit of fame [because of the lack of attribution], but generally the focus of a brief is not on the brilliance of its author. Instead, the objective is for the court to achieve a fair result for the litigants based on the best legal reasoning available.”).

146. See Bast & Samuels, *supra* note 27, at 805–06.

147. See *supra* notes 119–25 and accompanying text.

148. See *supra* Parts I, II.A.

149. See *supra* notes 131–39 and accompanying text.

within a non-practice, or non-litigation, context—unethical conduct likely occurs.<sup>150</sup> One variation of plagiarism in particular should cause great concern: the use of associates by firm partners to write (or co-write) law review articles or continuing legal education materials without proper attribution.<sup>151</sup> Though this practice is defended with a variety of justifications, including “work for hire,”<sup>152</sup> it is arguably unethical nonetheless.<sup>153</sup>

Even when an attorney admits to plagiarizing within this context, there is some uncertainty about what should be done formally to address the issue. The Maryland State Bar Association Committee on Ethics, for example, was formally questioned about whether an attorney who admitted to plagiarizing in a bar association journal article should be reported for attorney misconduct, only to respond with a half-hearted “maybe.”<sup>154</sup> Acknowledging that plagiarism may violate ethics rule 8.4(c),<sup>155</sup> the Committee stated that those attorneys with knowledge of the act would have to determine whether the conduct “raises a substantial question as to that lawyer’s honesty,

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150. Cf. Wilson, *supra* note 95 (noting concern regarding potential plagiarism in “professional development practice (PDP), which includes writing for CLEs, speeches, firm publications, newspaper articles, [and] blog posts”).

151. See Lisa G. Lerman, *Misattribution in Legal Scholarship: Plagiarism, Ghostwriting, and Authorship*, 42 S. TEX. L. REV. 467, 470 (2001); Richmond, *supra* note 128, at 246; see also Bills, *supra* note 17, at 131–32 (describing a law student’s firm work experience, which included writing an article for his employer that was published without even acknowledging the student’s contribution).

152. See Lerman, *supra* note 151, at 470. Interestingly, many law professors provide the same justification for the use of material written by research assistants. *Id.* at 471; see also Bast & Samuels, *supra* note 27, at 797 (“[C]opying from student writing in legal and other academic scholarship is a gray area in plagiarism. When reported, some academic institutions take strong measures, whereas others administer little more than a slap on the wrist.”); Bills, *supra* note 17, at 132 n.112 (noting the story of a law professor who submitted a student-written memorandum to a tenure committee to compensate for his own “thin” publication record and describing the professor’s future promotion to an associate dean position); Bill L. Williamson, *(Ab)Using Students: The Ethics of Faculty Use of a Student’s Work Product*, 26 ARIZ. ST. L.J. 1029, 1048 (1994) (“The misappropriation of student research is one of the dirty little secrets of American academic life.”).

153. Cf. Martin A. Cole, *I Wrote This Article Myself*, BENCH & B. MINN., July 1993, at 11, 11 (describing the admonishment of two firm associates by the Minnesota Lawyers Professional Responsibility Board for the verbatim copying of published materials in continuing legal education resources, which were passed on with approval and claims of joint authorship by firm partners).

154. *Ethics Docket 98-16: Standard of Duty To Report Attorney Misconduct to Grievance Commission*, 1 Nat’l. Rptr. Legal Ethics (Univ. Pub. Am.) MD: OPINIONS 31 (2000) [hereinafter *Ethics Opinion 98-16*].

155. *Id.*; see also MD. LAW. RULES OF PROF’L CONDUCT R. 8.4(c) (2010) (“It is professional misconduct for a lawyer to . . . engage in conduct involving dishonesty, fraud, deceit or misrepresentation.”).



trustworthiness, or fitness as a lawyer in other respects.”<sup>156</sup> After all, the Committee stated, “not every violation of the Rules triggers the reporting obligation.”<sup>157</sup>

In the end, the line between wrongful plagiarism and acceptable copying without attribution within the legal profession is unclear.<sup>158</sup> Though *Cannon* provides some insight into how courts may treat large-scale plagiarism by an attorney, it is highly probable that less sensational conduct will simply be ignored.<sup>159</sup> For many cautious attorneys and recent entrants into the profession, this level of uncertainty may be unsettling.<sup>160</sup> Unfortunately, the legal community has failed to provide meaningful guidance regarding what is and is not acceptable within this context.<sup>161</sup> As two commentators put it, “[t]he codes of professional responsibility that set the ethical standards for practicing lawyers are silent on the subject of plagiarism.”<sup>162</sup> As the discussion here demonstrates, however, it is undeniable that certain conduct is viewed as acceptable, while other conduct is not. Therefore, it is essential for the legal profession to clearly define, or at least acknowledge, the ethical obligations of attorneys in regards to plagiarism.<sup>163</sup>

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156. Ethics Opinion 98-16, *supra* note 154 (quoting MD. LAW. RULES OF PROF'L CONDUCT R. 8.4(c)).

157. *Id.*

158. See Bast & Samuels, *supra* note 27, at 805–06; Schroeder, *supra* note 4, at 1.

159. See Bast & Samuels, *supra* note 27, at 805.

160. See LeClercq, *supra* note 122, at 250 (noting the surprise many new associates experience when transitioning from the plagiarism standards of law school to practice, particularly given that relatively few law schools actually attempt to highlight for their students the difference between the two contexts). It has also been noted that “[a]lthough the risk [of being labeled a plagiarist] is slight, the consequences are serious.” Bast & Samuels, *supra* note 27, at 810; *supra* Part II.A (describing the various punishments that have resulted from instances of attorney plagiarism).

161. Cf. Bast & Samuels, *supra* note 27, at 809 (arguing that attorneys must collectively determine “what is and what is not acceptable and reach a consensus on what standards should apply” regarding what constitutes plagiarism).

162. Band & Schruers, *supra* note 32, at 14; see also James D. Peterson & Jennifer L. Gregor, *Copycat: Plagiarism, Copyright Infringement, & Lawyers*, 84 WIS. LAW., June 2011, at 51, 51 (“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.”).

163. See *supra* note 161 and accompanying text.

### III. PROVIDING GUIDANCE THROUGH THE *MODEL RULES OF PROFESSIONAL CONDUCT*

The legal community has a responsibility to itself to distinguish acceptable from unacceptable unattributed copying.<sup>164</sup> Currently, there is little formal guidance on this issue,<sup>165</sup> which leaves a hodgepodge of judicial opinions, opinion footnotes, and anecdotal viewpoints as the only direction on the subject.<sup>166</sup> This lack of guidance is troubling for a variety of reasons, not all of which may easily be set out within the constraints of this Recent Development.

First, this lack of guidance is problematic because the legal profession expects new entrants—law school students who have spent at least three years writing in accordance with very different rules—to immediately grasp and apply the informal, and not universally accepted, plagiarism rules of practice.<sup>167</sup> As noted in this Recent Development, this dichotomy cannot be easily dismissed without formally recognizing it as an issue and attempting to provide some degree of guidance to new attorneys.<sup>168</sup> For example, in law firms, junior attorneys are often given assignments by senior attorneys to prepare firm publications, continuing legal education materials, law review articles, and other writing assignments that are not directly related to the immediate service of clients.<sup>169</sup> Whether this delegation of duties, with or without attribution, is appropriate is a debate beyond the scope of this Recent Development.<sup>170</sup> There is an obligation, however, to communicate to junior attorneys who complete these tasks what attribution practices apply in this context.<sup>171</sup> If a junior attorney is given the responsibility of preparing a continuing legal education resource, it is highly unlikely that it can be composed of verbatim copying of unattributed source material without risking detection and, at the very least, professional

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164. See Bast & Samuels, *supra* note 27, at 809–10; Yarbrough, *supra* note 19, at 683.

165. See *supra* note 162 and accompanying text.

166. See *supra* Part II.

167. See LeClercq, *supra* note 122, at 250; Yarbrough, *supra* note 19, at 678.

168. See *supra* note 33 and accompanying text.

169. See Lerman, *supra* note 151, at 469–70; Richmond, *supra* note 128, at 246; see also Cole, *supra* note 153, at 11 (describing the admonishment of associates for plagiarism in continuing legal education assignments that were adopted by firm partners); Wilson, *supra* note 95 (recounting discovery of plagiarism in a firm publication prepared by associates and adopted by a firm partner).

170. Cf. Corbin & Carter, *supra* note 121, at 61 (discussing the ethical implications of allowing senior attorneys to adopt the legal work product of junior attorneys).

171. See *supra* note 33 and accompanying text.

embarrassment.<sup>172</sup> The same principles should also apply to the preparation of firm publications, such as client newsletters and other analogous written resources.<sup>173</sup> Senior attorneys that fail to instruct their junior attorneys of this standard or, worse yet, promote the notion that plagiarism standards do not apply in practice,<sup>174</sup> are failing to protect their own reputations if they claim authorship of plagiarized continuing legal education documents or firm publications prepared by junior attorneys.<sup>175</sup>

Second, verbatim copying, with or without attribution, may easily result in poor quality work product, which is a disservice to clients and courts.<sup>176</sup> Attribution alone will not resolve this issue, but it would ensure that the underlying problems associated with this form of verbatim copying are more easily identified and addressed.<sup>177</sup>

The underlying problems associated with verbatim copying and the possibility of poor quality work product, however, are relatively complex in application. When preparing a brief, for example, an attorney has a duty to his client and the court to ensure that the legal analysis is applicable to the facts and issues of the case.<sup>178</sup> More

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172. See Cole, *supra* note 153, at 11; Richmond, *supra* note 128, at 246.

173. Ethics Op., *supra* note 117 (prohibiting the use of “canned” client newsletters “without disclosing the true authorship of the material”); see also Crennan, *supra* note 20, at 130 (describing plagiarism in client newsletters as a misrepresentation “about the authors/practitioners, the work they have undertaken and their professional capacity in the relevant area of practice”).

174. See *supra* note 33 and accompanying text.

175. Cf. Cole, *supra* note 153, at 11 (describing two examples of plagiarism in continuing legal education assignments that were prepared by associates and adopted and passed on by firm partners); Wilson, *supra* note 95 (describing a conversation with a partner at “a well-known firm” about the unattributed copying of the blogger’s source material).

176. See *supra* Part II.A.

177. Cf. POSNER, *supra* note 7, at 17–19 (“Concealment is at the heart of plagiarism.”).

178. Fischer, *supra* note 122, at 69; see also Judith D. Fischer, *The Role of Ethics in Legal Writing: The Forensic Embroiderer, the Minimalist Wizard, and Other Stories*, 9 SCRIBES J. LEGAL WRITING 77, 104 (2003–2004) (noting that the large quantity of copying in *Lane* indicated an automated form of copying devoid of “exercising professional judgment” regarding the specific facts and issues of the case). Large scale verbatim copying in a brief or pleading does raise potential concern as to whether the copying attorney has fulfilled his legal and ethical obligations under Rule 11 of the *Federal Rules of Civil Procedure* and Rules 1.1, 1.3, and 3.1 of the *Model Rules of Professional Conduct*. See Peter A. Joy & Kevin C. McMunigal, *The Problems of Plagiarism as an Ethics Offense*, CRIM. JUST., Summer 2011, at 56, 58–59; see also FED. R. CIV. P. 11(b)(2) (“By presenting to the court a pleading, written motion, or other paper . . . an attorney . . . certifies that to the best of the person’s knowledge, information, and belief, formed after an inquiry reasonable under the circumstances . . . the claims, defenses, and other legal contentions are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law . . .”); MODEL RULES OF PROF’L

specifically, there is a substantial risk that verbatim copying in a brief may include material that is substantively incorrect for the case in which the copying attorney applies the source material.<sup>179</sup> As one commentator has noted, the material cited in the source document and copied by another attorney may be inapplicable, “misquoted, mischaracterized, or even overturned.”<sup>180</sup> It is possible that a copying attorney reviewed the sources cited in the original document, but this would seem unlikely in situations where large-scale verbatim copying is attributable to procrastination.<sup>181</sup>

These concerns do not mean that it is always inappropriate to use briefs prepared by other attorneys as a writing tool. An attorney may find it beneficial to reference briefs filed by other attorneys for a number of reasons, including use as a sample of effective writing, a guide for proper court document format, and as a research tool for relevant case law.<sup>182</sup> Potential ethical issues exist, however, when extensive verbatim copying occurs.<sup>183</sup>

The way to avoid both plagiarism accusations and poor quality work product issues in this context is rooted in a lesson derived from *Cannon*:

Instead of cutting and pasting whole sections from other authors' work, just read what they have written, review and analyze the cited authority, and write your document in your own words. Make sure that the cases stand for the proposition for which the briefs cited them. Shepardize all authority cited and see if other cases are more recent or more persuasive. Give

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CONDUCT R. 1.1 (2011) (“A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.”); MODEL RULES OF PROF'L CONDUCT R. 1.3 (2011) (“A lawyer shall act with reasonable diligence and promptness in representing a client.”); MODEL RULES OF PROF'L CONDUCT R. 3.1 (2011) (“A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous . . .”). Professors Joy and McMunigal, however, are critical of recognizing plagiarism as an ethics offense. See Joy & McMunigal, *supra*, at 56. In contrast, they argue that the act of copying should not be the primary focus; rather, emphasis should be placed “on (1) the legal and factual merits of the positions advanced in the filing; and (2) the competence and diligence of the lawyer who signed the filing.” *Id.* at 57.

179. Moise, *supra* note 123, at 46.

180. *Id.*

181. See Iowa Supreme Court Att'y Disciplinary Bd. v. Cannon, 789 N.W.2d 756, 758 (Iowa 2010).

182. See Brian Craig, *Legal Briefs: Helpful but Also Hazardous*, PERSP.: TEACHING LEGAL RES. & WRITING, Spring 2005, at 132, 133–34 (noting the benefits and risks associated with relying on other attorneys' briefs).

183. See *id.* at 135.

credit to treatises or make your own arguments to support the same proposition argued in another work.<sup>184</sup>

This advice is equally relevant when using other legal resources as a writing or research tool.<sup>185</sup>

Nevertheless, it may still be argued that there is a place for verbatim copying in preparing a brief. Specifically, it is likely appropriate to borrow “structure, rhetorical devices, apt analogies, and perhaps even well-turned phrases” in preparing a brief.<sup>186</sup> It may even be appropriate in many cases to copy verbatim “routine matters involving established law, such as the standard of review or well-established points of substantive law.”<sup>187</sup> The concerns associated with verbatim copying may be less pressing in these examples, however, given that it is more likely that a copying attorney has exercised some degree of professional judgment in using the copied material.<sup>188</sup> Nevertheless, a cautious attorney may prevent any possible ethical issues associated with unattributed copying by simply attributing the copied material with quotation marks, a citation, a footnote, or brief introductory wording that signals the writer’s belief that the copied material is commonly accepted and often applied.<sup>189</sup>

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184. Moïse, *supra* note 123, at 48.

185. See Richmond, *supra* note 128, at 246 (stating that, ethics aside, “as a matter of style and persuasive writing, it is better to paraphrase influential secondary sources and selectively cite them than it is to copy them without attribution”); cf. Fischer, *supra* note 178, at 102–03 (noting that copying form resources is acceptable, but “it is recognized good practice for an attorney who uses a form not to copy it uncritically but to exercise professional judgment and fit it to the particular need”).

186. Peterson & Gregor, *supra* note 162, at 53.

187. *Id.*

188. See Fischer, *supra* note 178, at 102–03.

189. See generally Ethics Op., *supra* note 117 (noting the more professional practice of attributing the source of copied material in a legal brief); Jaime S. Dursht, *Judicial Plagiarism: It May Be Fair Use but Is It Ethical?*, 18 CARDOZO L. REV. 1253, 1264–65 (1996) (stating that “[g]uarding against plagiarism . . . is technically a very simple matter” if footnotes and quotation marks are used). Though some may argue that it is not unethical to avoid citation to borrowed dicta in court opinions or marginally relevant or non-binding case law, it would seem undeniable that a court would benefit from at least being informed of the source of the copied wording or legal analysis regardless of the degree of reliance on the copied case law in the attorney’s brief. See *United States v. Bowen*, 194 F. App’x 393, 402 n.3 (6th Cir. 2006); *United States v. Lavanture*, 74 F. App’x 221, 223 n.2 (3d Cir. 2003); *United States v. Jackson*, 64 F.3d 1213, 1219 n.2 (8th Cir. 1995); *Vasquez v. City of Jersey City*, No. 03-CV-5369, 2006 U.S. Dist. LEXIS 72135, at \*27 n.4 (D.N.J. Mar. 31, 2006); *Pagan Velez v. Laboy Alvarado*, 145 F. Supp. 2d 146, 160–61 (D.P.R. 2001). But see LeClercq, *supra* note 122, at 250 (“[A]ttorneys frequently use paragraphs and arguments from others’ briefs and memoranda and even from judges’ opinions. Sometimes they change the affirmative to negative, or add a protest paragraph at the beginning and simply attach the copied original to another filing.”); Sorkin, *supra* note 34, at 488 (describing a situation in which an attorney may not want to cite to

Third, the lack of plagiarism guidance is also problematic because plagiarism may be a gateway or accessory offense to more serious ethical issues, including overbilling and dishonest communications,<sup>190</sup> or potential civil liability for copyright infringement.<sup>191</sup> Some may view this as a logical stretch given the traditionally marginalized view of plagiarism in practice, but if an attorney purposefully engages in plagiarism to deceive the reader, court, client, or other end user, then this may have predictive value regarding the attorney's other professional conduct.<sup>192</sup> At least anecdotally, this argument has some validity in the context of attorney plagiarism. In *Lane*, for example, after the court suspected plagiarism, the attorney attempted to deceive the court by concealing the source of the copied material.<sup>193</sup> Likewise, it is arguable that an attorney who engages in repetitive verbatim copying of unaffiliated attorney work product in order to avoid providing meaningful professional services to her clients has become ethically detached

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marginally supportive case law when it "might tend to call the reader's attention to the relative paucity of authority that supports your argument"). Given that legal writing depends heavily on citation to supporting resources, it seems counterintuitive that wording or analysis from a court decision would be useful enough to borrow, but not worthy enough to cite. Cf. Bills, *supra* note 17, at 126–27 ("Lawyers, finding the bare assertion of a legal theory without authority to be less than useless, reduce the principle to its elemental form, 'cite everything!'"); Elizabeth Ullmer Mendel, *Adopting Arguments Verbatim: "Plagiarism" in Judicial Opinions*, FOR THE DEF., Sept. 2003, at 56, 56 ("[T]he [legal] writer wants precedent to support his or her legal arguments.").

190. See, e.g., Iowa Supreme Court Att'y Disciplinary Bd. v. Cannon, 789 N.W.2d 756, 759–60 (Iowa 2010); Iowa Supreme Court Bd. of Prof'l Ethics & Conduct v. Lane, 642 N.W.2d 296, 298–99 (Iowa 2002); Columbus Bar Ass'n v. Farmer, 855 N.E.2d 462, 464–68 (Ohio 2006) (per curiam).

191. See Birch, Jr., *supra* note 126, at 256, 262; Moïse, *supra* note 123, at 47–48; Wilson, *supra* note 95; see also McDonough, *supra* note 134 (describing Milberg Weiss's interest in pursuing litigation to protect its copyright interests in class action complaints).

192. Cf. Lerman, *supra* note 151, at 478–79 (noting this concept in the context of professor appropriation of student work). Professor Lerman, in part, made the connection between professor misappropriation of student work and deceit through the following relevant quote of philosopher Sissela Bok:

Deceit by lawyers presents special dangers to trust. It exerts power and brings about results by stealth that could not have been achieved openly. . . . Deceit is tempting, moreover, since it comes so easily at first. One word is spoken instead of another, a document backdated so as to deflect inquiry, a false claim made in the process of negotiation, some figures altered in a tax document . . . . This ease makes lies not only tempting but also peculiarly corrupting, especially as more and more concealment and deception may seem needed to keep up a false front.

Sissela Bok, *Can Lawyers Be Trusted?*, 138 U. PA. L. REV. 913, 923 (1990), quoted in Lerman, *supra* note 151, at 478 n.33.

193. See *Lane*, 642 N.W.2d at 298.

from the profession.<sup>194</sup> By analogy, even before entry into the profession, bar examiners have an interest in instances of academic violations by law students, including cheating and plagiarism, because these behaviors may indicate a propensity for dishonesty as a future attorney.<sup>195</sup>

Fourth, as plagiarism detection software becomes more prevalent, the ability to identify plagiarism and the likelihood of it being asserted will become increasingly common.<sup>196</sup> There are already documented cases in which courts are subject to criticism by non-prevailing parties for verbatim adoption of a prevailing party's statements of fact and law.<sup>197</sup> For example, these claims have been based on accusations that the court failed to fully consider the parties' dispute, thus violating the non-prevailing parties' right to due process of law.<sup>198</sup>

If judges are subject to criticism, it is not too hard to imagine a scenario in which this detection-and-complaint tactic is applied to the

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194. See Garcia, *supra* note 130 (describing the story of a paralegal who witnessed an attorney run a side business out of the firm's office and "[t]o make up for lost time and to keep up appearances, he frequently plagiarize[d] work by other attorneys in different law firms around the country by submitting it as his own").

195. See Corbin & Carter, *supra* note 121, at 56. *But cf.* Bills, *supra* note 17, at 121 (noting results of survey to law schools, which included the observation that "[n]ot one of the deans found any correlation between academic plagiarism and the almost universal recycling of documents in legal practice").

196. See Bast & Samuels, *supra* note 27, at 813–14 (describing the possible revenge of a "disgruntled client" searching for plagiarized work product to discredit attorney); see also POSNER, *supra* note 7, at 81–86 (describing use of Turnitin.com to detect student plagiarism); Sharon Blackburn & Stephen Good, *Cyberplagiarism and the Law Librarian: Identifying and Confronting Plagiarism from the World Wide Web*, AM. ASS'N LAW LIBR. SPECTRUM, July 2004, at 6, 7, 34 (describing various plagiarism detection programs, including Turnitin, MyDropBox, and CopyCatch).

197. See Band & Schruers, *supra* note 32, at 14–15; Bast & Samuels, *supra* note 27, at 801–03; Mendel, *supra* note 189, at 56; Debra Cassens Weiss, *Tobacco Lawyer Hits Judge for Copying U.S. Arguments—Including Typos*, A.B.A. J. (Oct. 14, 2008, 8:16 AM CST), [http://www.abajournal.com/news/article/tobacco\\_lawyer\\_hits\\_judge\\_for\\_copying\\_us\\_arguments\\_including\\_typos/](http://www.abajournal.com/news/article/tobacco_lawyer_hits_judge_for_copying_us_arguments_including_typos/) (describing use of plagiarism detection software by complaining attorney); see also Gerald Lebovits, Alifya V. Curtin & Lisa Solomon, *Ethical Judicial Opinion Writing*, 21 GEO. J. LEGAL ETHICS 237, 265 (2008) ("[T]o preserve the appearance of neutrality, judges should compose opinions using their own language and reasoning so that the litigants can see that the court considered the arguments and had its own thoughts."); cf. Martha Neil, *Study Shows When Justices Use Parties' Words in Their Own Opinions*, A.B.A. J. (Sept. 12, 2008, 4:14 PM CST), [http://www.abajournal.com/news/article/study\\_shows\\_when\\_justices\\_use\\_parties\\_words\\_in\\_their\\_own\\_opinions](http://www.abajournal.com/news/article/study_shows_when_justices_use_parties_words_in_their_own_opinions) (describing a study of Supreme Court of the United States opinions for use of language in filed briefs through the use of plagiarism software).

198. See Bast & Samuels, *supra* note 27, at 801–03.

work product of attorneys as well.<sup>199</sup> For example, though legal briefs were once difficult to obtain, detection may increase as more court systems require the electronic filing of court documents.<sup>200</sup> Therefore, with increased accessibility to electronic documents, including briefs and other online material, it will be easier to detect plagiarism in legal documents through the use of electronic detection software.<sup>201</sup>

A. *Addressing Plagiarism Through the Addition of Rule 8.4(c) Commentary*

Like *Cannon*, many of the cases and commentators who consider plagiarism an ethical issue label it as misconduct or “conduct involving dishonesty, fraud, deceit, or misrepresentation” under Rule 8.4(c) of the *Model Rules of Professional Conduct*.<sup>202</sup> However, the rules provide no guidance regarding plagiarism, much less a definition of the profession’s understanding of where it is to be found.<sup>203</sup> Therefore, a Comment should be added to Rule 8.4 that distinguishes acceptable from unacceptable copying without attribution. The following is a recommended Comment that may provide meaningful guidance for legal professionals:

**Plagiarism by practicing attorneys is possible and may often constitute unethical behavior. Legal practice has a rich tradition of borrowing ideas, language, and arguments from various sources in providing competent and cost-effective legal services. Borrowing, however, should generally represent only a starting point in the creation of legal documents. When language is largely attributable to another source, proper attribution should be provided unless a clear exception exists. Attribution, for example, is not required in situations where the borrowing of language provides no unearned benefit and represents no legitimate loss to *any* party, including the source author or**

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199. See *id.* at 813; see also John Bisnar, *Virginia Personal Injury Lawyer Ben Glass Is Plagiarized by Montana Attorney*, ACCIDENT & INJ. NEWS (June 5, 2009), <http://www.californiainjuryblog.com/2009/06/virginia-personal-injury-lawyer-plagiarism-093847.html#more> (criticizing a Montana attorney publicly for plagiarizing personal injury resources written by others on the copying attorney’s own website).

200. See Craig, *supra* note 182, at 132.

201. See Bast & Samuels, *supra* note 27, at 813 (“[A]dvances in technology make it easier and far less time consuming to detect plagiarism.”); Gerhard, *supra* note 3, at 2, ¶ 1 (“Now that we are empowered by the Internet, plagiarism is easier to commit and more tempting than ever before. Thanks to this same technology, plagiarism is also easier to catch.”).

202. See *supra* Parts I–II.

203. See Band & Schruers, *supra* note 32, at 14; Peterson & Gregor, *supra* note 162, at 51–52.



**client. Furthermore, attribution is not required when the reader is under no reasonable misapprehension or has no valid interest in knowing the source of borrowed language.**<sup>204</sup>

Including this proposed Comment will guide attorneys in their use of copied source material, but more importantly it may help ensure that consumers of legal documents, including courts and clients, are not misled in the process. Ultimately, whether or not commentary in the *Model Rules of Professional Conduct* is beneficial to practicing attorneys is a question this Recent Development leaves to others to decide. However, for the next generation of attorneys, it is not too much to hope that a Comment addressing plagiarism in the *Model Rules* would serve as a tool for instruction in a professional responsibility or legal writing course.<sup>205</sup> In doing so, this Comment could be viewed as a way to help foster meaningful conversations and spread awareness about the subtle but important differences between plagiarism standards in practice and in academic settings.<sup>206</sup>

Moreover, by focusing on the existence of unearned benefit or loss to *any* party, this proposed Comment also helps to ensure that copying attorneys or copied authors are not unjustly rewarded or

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204. Comment adapted from general ideas outlined in various sources. See POSNER, *supra* note 7, at 106 (defining plagiarism as “a species of intellectual fraud,” which “consists of unauthorized copying that the copier claims (whether explicitly or implicitly, and whether deliberately or carelessly) is original with him and the claim causes the copier’s audience to behave otherwise than it would if it knew the truth”); RONALD B. STANDLER, GHOSTWRITING AND PLAGIARISM BY ATTORNEYS AND JUDGES IN THE USA 37 (2011), available at [www.rbs2.com/ghost.pdf](http://www.rbs2.com/ghost.pdf) (recommending that the *Federal Rules of Civil Procedure* and *Model Rules of Professional Conduct* be amended to prohibit plagiarism in legal briefs); Bast & Samuels, *supra* note 27, at 809–10 (arguing for a plagiarism standard for the legal community and providing various recommendations); Craig, *supra* note 182, at 135 (urging firms to develop policies regarding the use of third-party briefs); Dursht, *supra* note 189, at 1296–97 (arguing for an amendment to the *Model Code of Judicial Conduct*, including appropriate commentary, that recognizes plagiarism by a judge as an ethics violation); DuVivier, *supra* note 121, at 54 (arguing for a pragmatic approach that balances competing interests, including consideration of cost to clients, interests of courts, and purposes of the document); Lerman, *supra* note 151, at 472 (“Our professional codes prohibit all dishonesty and misrepresentation but include no specific requirement of accuracy in attribution of words and ideas in written work.”); Moise, *supra* note 123, at 48 (recommending that borrowed source material be viewed as a starting point in the legal writing process); Webb, *supra* note 121 (focusing on the existence of “harms” associated with copying for readers and copied authors); Wilson, *supra* note 95 (advocating for firms to develop “plagiarism policies”).

205. Cf. LeClercq, *supra* note 122, at 253 (“Interestingly, although many law schools offer or require a semester of Professional Responsibility, none of the current PR texts mentions plagiarism and how to avoid it.”).

206. See *supra* note 33 and accompanying text.

unfairly unaccredited in the process.<sup>207</sup> In large part, this may be accomplished by giving consideration to the reader and the effect unattributed copying has on her behavior.<sup>208</sup> More specifically, this proposed Comment helps ensure courts are not unjustly misled by a lack of attribution and that clients are not deceived by attorneys who attract clients through copied work product but who possess no reasonable competence in a given practice area.<sup>209</sup>

Many readers may be left with the impression that this recommended Comment is too generalized to be of any use in practice. After all, what are the “clear exceptions” that this Comment refers to as not requiring attribution? Or what constitutes a “legitimate loss” that may be suffered by unattributed copying in a legal document? These questions are legitimate to ask, yet it is unlikely that one person or even a small group of observers can, or should, define what constitutes plagiarism for an entire profession.

Fortunately, as discussed in this Recent Development, many of the general contours of what constitutes unethical copying in legal practice, with or without attribution, have already been addressed by others and are available for consideration.<sup>210</sup> One clear exception that may be drawn from these sources is that the use of form resources or boilerplate language in contracts—which are purposefully made available for verbatim copying without attribution—is not unethical.<sup>211</sup> Another likely exception is the verbatim, or near verbatim, copying of well-established points of law, like standards of review, in legal briefs.<sup>212</sup> In these circumstances, it is highly probable

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207. Cf. Band & Schruers, *supra* note 32, at 13 (noting that in the academic setting, “[b]ecause reputational credit is the currency, attribution is essential for the scholar to realize the value of his or her research”); Billings, *supra* note 28, at 396 (“Plagiarizers commit a moral infraction by passing off others’ intellectual production as their own, thereby inflating their own abilities, distorting their credentials, and hiding their inadequacies.”).

208. See POSNER, *supra* note 7, at 106.

209. See, e.g., Kobayashi & Ribstein, *supra* note 132, at 746 (noting the belief that Milberg Weiss class action complaints were copied and advertised to clients “in order to ‘defraud potential class members into thinking this is their work product and that they have the legal expertise to handle these kinds of cases’ ”); see also Bast & Samuels, *supra* note 27, at 810 (“[E]ven with transactional documents and pleadings, an argument can be made that the clients have the right to know the source of the attorney’s work.”); DuVivier, *supra* note 121, at 54 (“[C]ourts have sanctioned attorneys when one of the objectives of submitting another’s work was deception or financial gain.”).

210. See *supra* Parts I–II.

211. See *supra* notes 122, 124–25 and accompanying text.

212. Peterson & Gregor, *supra* note 162, at 53.

that the originating author has no interest in being identified.<sup>213</sup> Moreover, it is equally unlikely that the reader, either a court or a client, is at risk of any harm from not being aware of the original author in these examples.<sup>214</sup> Nevertheless, lines do exist, and they must be subject to critical examination and discussion,<sup>215</sup> particularly when the solution is as simple as disclosing or attributing the original source in some limited form.<sup>216</sup>

### CONCLUSION

Put simply, it is possible for an attorney to commit plagiarism and to be punished for it as an ethical violation. In *Cannon*, an attorney was found liable for plagiarism and was sanctioned as a result. Even so, drawing the line between acceptable and unacceptable copying without attribution can be challenging in practice. The reality is that legal practice has a long tradition of ethically acceptable forms of copying without attribution. It is equally true, however, that many forms of copying without attribution are not appropriate or tolerable. These instances occur when the reader or author of the source material is misled or not rightfully credited.<sup>217</sup> The proposed Comment suggested in this Recent Development is designed to provide the legal profession with some formal guidance regarding the accepted norms of the legal community. It is by no means perfect or complete, but it should be viewed as a starting point for a much-needed conversation about an important and emerging issue within legal practice.

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213. Cf. Webb, *supra* note 121 (“In legal practice the harm to authors whose work is appropriated is also of doubtful significance. Authors of legal documents do not generally have a particular interest in being identified as the author of a work.”).

214. Cf. *id.* (“The other main party who might be considered harmed by copying is the reader/consumer of the work in question. This might particularly be the case where the reputation of the author is important.”).

215. See *supra* Parts I–II.

216. See *supra* note 189 and accompanying text.

217. See *supra* notes 207–209; see also POSNER, *supra* note 7, at 49 (defining plagiarism as “fraudulent copying,” focusing on the reliance and expectations of the reader).

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