

## I WROTE THIS ARTICLE MYSELF

By

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Should a lawyer who plagiarizes the work of another be subject to professional discipline? What is a lawyer's duty to the public to maintain personal honesty and integrity? The answers to these questions are related.

Recently, the Director's Office issued an admonition to an attorney who, in preparing materials for an educational seminar, plagiarized substantial portions of the work of an attorney from another firm without attribution. Fifteen months earlier, an attorney was issued an admonition by a panel of the Lawyers Professional Responsibility Board on almost identical facts. While two non-public lawyer discipline cases hardly constitute a major trend, it may be an opportune moment to review these matters and a lawyer's professional responsibility obligation for personal honesty.

### MINNESOTA ADMONITIONS

Both of the Minnesota admonitions involved associates at law firms. Each attorney was assigned the task of preparing materials for an educational seminar. In each instance, the particular assigned topic area was not one in which the attorney had much, if any, experience. Both associates were under considerable time pressures. In each instance, the associate copied almost verbatim approximately 20 single-spaced pages of materials from published Continuing Legal Education (CLE) seminar materials prepared by other Minnesota lawyers who were not at the associate's firm, and handed in the finished product as their own work to the partner who assigned the project.

Unfortunately, the partners involved did not review the materials with enough care to detect the plagiarism before adding their own names to the materials. In both instances, the plagiarism was not detected until the materials were re-used at a seminar or CLE presentation at which other lawyers were present. The attorneys whose own work had been improperly appropriated without credit soon learned of the plagiarism. Quite rightly, neither "victim" was amused.

In the first case, the Director's Office filed charges seeking public discipline for conduct involving dishonesty in violation of Rule 8.4(c), Minnesota Rules of Professional Conduct, which does not require that the misconduct be committed in the representation of a client. Before doing so, the available case law was surveyed. The precedent in Minnesota was *In re Zbiegien*,<sup>[Ftn1](#)</sup> which was a bar admission case rather than a lawyer discipline proceeding. In *Zbiegien*, the Minnesota Supreme Court rejected the Board of Law Examiners' recommendation that Mr. Zbiegien not be admitted to practice due to having been found to have substantially plagiarized other sources in a research paper while in law school. Although the Court recognized plagiarism as "an onerous act,"<sup>[Ftn2](#)</sup> which involves "an element of deceit,"<sup>[Ftn3](#)</sup> the Court held that Zbiegien's single incident of plagiarism did not bar him from becoming a lawyer. The late Justice Kelley wrote a dissent in which Justice Coyne joined. Justice Kelley argued, "It is only by a denial of [Zbiegien's] petition that this court can send a clear message to those already admitted to practice and to those aspirants yet in the law schools the seriousness with which this court considers the character qualification."<sup>[Ftn4](#)</sup>

If a single act of plagiarism does not prevent someone from becoming a lawyer, even when a part of the general character and fitness evaluation conducted by the Board of Law Examiners, then it may well be that a lawyer cannot lose his or her license (*i.e.*, be suspended) for an isolated incident of plagiarism either. In the first discipline matter, the Director's Office still felt that a public reprimand was appropriate. After a hearing, however, a Lawyers Board panel instead believed that a private admonition was sufficient discipline. In the more recent matter, taking her cue from the Board's earlier decision, the Director issued an admonition directly.

## INTEGRITY AT ISSUE

In at least a few reported instances, other states have shared Justice Kelley's harsher view of plagiarism because it reflects on an attorney's basic honesty. The Illinois court, in *In re Lamberis*,<sup>Ftn5</sup> publicly censured (reprimanded) an attorney who was found to have plagiarized the work of others in his LL.M. degree thesis. The Illinois court stated,

The essence of plagiarism is deceit. In this case, the deceit is aggravated by the level on which it occurred. Academic forums have a long and well-known tradition of evaluating each individual on his own performance. The respondent attempted to exploit this tradition to his own benefit; the purpose of his deceitful conduct was to obtain a valuable consideration, an advanced law degree, that would have undoubtedly improved his prospects for employment, reputation and advancement in the legal profession.<sup>Ftn6</sup>

The court went on to state that such personal dishonesty could not go undisciplined because a lawyer's honesty is fundamental to the legal profession.<sup>Ftn7</sup>

The ABA *Standards for Imposing Lawyer Sanctions* (1986) state that a lawyer owes a duty to the public to maintain personal integrity. The ABA specifically cited to the *Lamberis* decision and plagiarism as an example of conduct for which a public reprimand is appropriate.<sup>Ftn8</sup> The commentary identifies such conduct as being directly related to an attorney's professional role.

The District of Columbia Court of Appeals publicly censured a lawyer who submitted false information to a law school on an application for employment as a professor.<sup>Ftn9</sup> The court specifically cited plagiarism as a similar type of conduct involving dishonesty and done for the purpose of maintaining or enhancing the lawyer's reputation and employment opportunities.

## BALANCE AND INTEGRITY

Since both reported Minnesota incidents involved associates at law firms, it may be tempting to attribute the misconduct to unrealistic pressures placed on young lawyers to produce high quality work on projects over and above their requirements for billable hours. Many lawyers work under difficult conditions, time restrictions and heavy caseloads. Should such facts excuse or mitigate personal conduct which involves deceit or dishonesty? Is that fair to lawyers who put in many hours personally preparing CLE materials or articles? While it is also easy to question the supervision exercised in these matters, shouldn't lawyers, especially within the same firm, have a right to expect personal integrity from other lawyers?

There is always a balancing in fashioning the correct sanction in any lawyer discipline case. The interests of the public, other members of the bar, and the courts must be weighed, as must the "human"

elements unique to each individual respondent. In Minnesota, this balancing thus far has resulted in private discipline in two plagiarism cases, but both respondents were remorseful and had otherwise spotless reputations. The Lawyers Board panel which issued the first admonition stated clearly that it was seriously concerned about the offense of plagiarism. The Director's Office believes that plagiarism adversely reflects on an attorney's basic honesty, and should always result in discipline. Public discipline still may be appropriate on some future set of facts, such as where the benefit available to the attorney is greater.

I can truthfully state that I wrote this article myself. It is a matter of professional responsibility that all lawyers always be able to say the same.

## NOTES

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<sup>1</sup> In re: Zbiegien 433 N.W.2d 871 (Minn. 1988).

<sup>2</sup> Id at 877.

<sup>3</sup> Id at 875.

<sup>4</sup> Id at 877-78

<sup>5</sup> In re Lamberis, 93 Ill.2d 222,443 N.E.2d 549 (1982).

<sup>6</sup> 443 N.E.2d 549, at 552 (1982).

<sup>7</sup> Id at 552.

<sup>8</sup> Standard 5.13. American Bar Association, Standards for Imposing Lawyer Sanctions (1986).

<sup>9</sup> In re Hadzi-Antich, 497 A.2d 1062 (D.C. App. 1985).