

A BRIEF GUIDE TO PROPER  
ATTRIBUTION OF IDEAS AND  
EXPRESSION

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AVOIDING PLAGIARISM

UNIVERSITY OF SOUTH CAROLINA  
SCHOOL OF LAW

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## SCHOOL OF LAW

### INTRODUCTION

We measure the value of what we read, and of what we write, by the quality of the ideas contained in the writing and by whether the expression of those ideas is clear and effective. In learning to write well, therefore, we must engage actively in the process of developing our own interpretations and ideas regarding a subject. We must work also to develop a sufficient command of a subject so as to be able to articulate clear discussions and to reduce our ideas to written form. The process of writing a paper is one in which we study and evaluate the ideas of others, building upon their work with our own. Not uncommonly, we will also include in our own work, by quotation, another person's earlier, particularly useful form of expressing an idea. The most significant educational value of our written exercises, as well as much of the potential value of our papers to their readers, is lost, however, if we do little more than collect and republish the ideas and expressions of others.

Because our works are judged on these qualities, we must be careful, when we author a paper, to indicate clearly throughout the paper which ideas are those of another person and whether the words used to express an idea are those of another person. We accomplish that clarity through the careful attribution of ideas to their sources and through the careful use of quotation marks (or block indentations for lengthy quotations). The failure to include proper attribution as to both the source of the ideas themselves and their form of expression can mislead the reader and result in claims that we have misappropriated, or plagiarized, the work of others, even in the absence of a specific intent to do so. These are serious charges that can adversely affect a writer's reputation and interrupt or end a law student's legal career.

Plagiarism is not limited to the lifting of large portions of text from another's work. As noted in Princeton University's booklet, "*Academic Integrity at Princeton*":

Any verbatim use of the text of a source, no matter how large or small the quotation, must be clearly acknowledged. Direct quotations must be placed in quotation marks or, if longer than three lines, clearly indented beyond the regular margin. The quotation must be accompanied, either within the text or in a footnote, by a precise indication of the source, identifying the author, title, and page numbers. Even if you use only a short phrase, or even one key word, you must use quotation marks in order to set off the borrowed language from your own, and cite the source.

Office of the Dean of the College, Princeton University, *Academic Integrity at Princeton*, <http://www.princeton.edu/pr/pub/integrity/pages/citing.html>.

In addition, plagiarism is not limited to the lifting of material from copyrighted sources or from sources published only in traditional formats. Without proper attribution, an author's use of words or ideas from an Internet source is plagiarism. Plagiarism based on an electronic source – even if the source has no identifiable individual author – is just as serious as plagiarism based on a more traditional source. In either case, the author is passing off the work of others as the author's own.

The examples in this booklet are intended to provide illustrations of your responsibilities with regard to both the attribution of ideas and the indication of the source of a particular expression of an idea. As a student at the University of South Carolina School of Law, you will be held to have knowledge of the principles illustrated in these examples and will be expected to follow them in all written work, including even early drafts of papers, that you submit while you are a student here. Failure to do so may result in a failing grade or constitute a violation of the Rule of Academic Responsibility, or both. ***If you continue to have any questions about proper attribution, you should ask your instructor for guidance.***

# PLAGIARISM: EXAMPLES OF PROPER AND IMPROPER ATTRIBUTION

Assume that, in an assignment to write a paper on non-competition agreements among lawyers, six hypothetical law students were given the following excerpt from a law review article and access to the sources cited in that article. Portions of each of the students' papers, showing how they handled the expression and attribution of a particular idea in their own papers, follow the excerpt.

## EXCERPT

From Robert M. Wilcox, *Enforcing Lawyer Non-Competition Agreements While Maintaining the Profession: The Role of Conflict of Interest Principles*, 84 MINN. L. REV. 915, 926 (2000).

The ethical propriety of covenants not to compete, therefore, was viewed in these early advisory opinions as dependent upon the relative bargaining power of the lawyers and issues of fairness among lawyers, rather than upon any articulated potential for harm to the clients. The ABA Committee assumed in 1962 that a restriction entered into by lawyers of equal bargaining power would be analyzed under the same standard of reasonability applied to a restriction in any other profession or occupation.<sup>31</sup>

By 1968, however, when Informal Opinion 1072<sup>32</sup> expressly overruled Informal Opinion 521, the analytical focus had changed within the ABA. With the issuance of Informal Opinion 1072, the ABA focused for the first time on potential harm to a client and embraced the position that restrictions upon competition among former partners were inappropri-

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<sup>31</sup> Professor Kalish discusses the case law prior to 1960 that supported this assumption. See Kalish, *supra* note 8, at 427-29. For a comparable current view of non-competition agreements in the medical profession, see *infra* note 133.

<sup>32</sup> ABA Comm. on Professional Ethics, Informal Op. 1072 (1968).

ate because of their adverse impact upon a client’s ability to retain a lawyer of choice. “The attorney must remain free to practice when and where he will and to be available to prospective clients who might desire to engage his services.”<sup>33</sup>

Professor Hillman describes the shift in rationale by the ABA Committee over those eight years as significant. “Formal Opinion 300 implies that grabbing is unethical, while Informal Opinion 1072 emphasizes the client’s freedom of choice.”<sup>34</sup> It is the later emphasis upon harm to the client that most courts have since articulated as the explicit policy basis for rejecting non-competition agreements among lawyers. The case law, at first, however, did not reflect as clear an appreciation for the distinction between the rationales of the earlier and later ABA opinions.

## SAMPLE STUDENT PAPERS

### STUDENT PAPER #1: PLAGIARISM

With the issuance of Informal Opinion 1072, the ABA focused for the first time on potential harm to a client and embraced the position that restrictions upon competition among former partners were inappropriate because of their adverse impact upon a client’s ability to retain a lawyer of choice.

*Comment: This is plagiarism in its most blatant form. Material is taken directly from the law review article without any attribution of the idea and without any indication, through quotation marks or block indentation, that the words used to express the idea are those of another person.*

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<sup>33</sup> *Id.*

<sup>34</sup> HILLMAN, *supra* note 1, at § 2.3.3. Professor Hillman defines “grabbing” as the taking of clients from a firm. *See id.* § 1.1 n.13.

## STUDENT PAPER #2: PLAGIARISM

In Informal Opinion 1072, the ABA focused on harm to a client and embraced the position that competition restrictions among former partners were not appropriate because of their adverse impact upon the ability of a client to retain a lawyer of choice.<sup>1</sup>

<sup>1</sup>Robert M. Wilcox, *Enforcing Lawyer Non-Competition Agreements While Maintaining the Profession: The Role of Conflict of Interest Principles*, 84 MINN. L. REV. 915, 926 (2000).

*Comment: Here the student has provided attribution to the idea, but has not properly indicated that the expression of the idea is virtually verbatim to the original. Changing an occasional word does not avoid the need to use quotation marks to inform the reader that a substantial portion of the work is the expression of the original author. This is plagiarism.*

## STUDENT PAPER #3: PLAGIARISM

In Informal Opinion 1072, the ABA focused on harm to a client and embraced the position that competition restrictions among former partners were not appropriate because of their adverse impact upon the ability of a client to retain a lawyer of choice.<sup>1</sup>

<sup>1</sup>ABA Comm. on Professional Ethics, Informal Op. 1072 (1968).

*Comment: Here the student has cited back to the original source. However, it is clear from the language used that the student has relied, not just on the original source, but on the expression of the idea as set forth in the law review article. The excerpt, therefore, fails to reflect properly that the expression of the idea is taken largely verbatim from the law review article and it fails to include any attribution to that work. This is plagiarism.*

## STUDENT PAPER #4: NOT PLAGIARISM

In Informal Opinion 1072, “the ABA focused ... on ... harm to a client and embraced the position that [competition] restrictions ... among former partners” were not appropriate “because of their adverse impact upon the ability of a client to retain a lawyer of choice.”<sup>1</sup>

<sup>1</sup>Robert M. Wilcox, *Enforcing Lawyer Non-Competition Agreements While Maintaining the Profession: The Role of Conflict of Interest Principles*, 84 MINN. L. REV. 915, 926 (2000).

***Comment: This example does NOT constitute plagiarism. Here the student has both attributed the idea and indicated with quotation marks that much of the language used is identical to the original. This usage properly reflects the level of attribution expected in a paper.***

## STUDENT PAPER #5: NOT PLAGIARISM

In issuing Informal Opinion 1072,<sup>1</sup> the ABA changed the focus of its analysis, considering for the first time the harm to a client. Potential client harm then became the justification for subsequent decisions that declined to enforce lawyer non-competition agreements.<sup>2</sup>

<sup>1</sup>ABA Comm. on Professional Ethics, Informal Op. 1072 (1968).

<sup>2</sup>Robert M. Wilcox, *Enforcing Lawyer Non-Competition Agreements While Maintaining the Profession: The Role of Conflict of Interest Principles*, 84 MINN. L. REV. 915, 926 (2000).

***Comment: This example does NOT constitute plagiarism. The student has cited to the original source and has sufficiently paraphrased the expression of the idea used in the law review article so as to avoid the need for use of quotation marks. The student also has attributed the idea contained in the second sentence to the law review article; had the student not done so, the second sentence would have constituted plagiarism.***

**STUDENT PAPER #6: NOT PLAGIARISM, PROVIDED THAT THE AUTHOR ACTUALLY CONSULTED THE ORIGINAL ABA OPINION AND NOT JUST THE LAW REVIEW ARTICLE.**

In Informal Opinion 1072,<sup>1</sup> the ABA abandoned its earlier position and looked instead at the detrimental impact that restrictive covenants may have on potential clients. “The attorney must remain free to practice when and where he will and to be available to prospective clients who might desire to engage his services.”<sup>2</sup>

<sup>1</sup> ABA Comm. on Professional Ethics, Informal Op. 1072 (1968).

<sup>2</sup> *Id.*

*Comment: This example does NOT constitute plagiarism, provided that the author actually consulted the original ABA opinion. Instead of quoting the law review article, the student here has gone back to the original source, drawing upon the ABA opinion directly for the idea that it represented a shift in position, then quoting the original opinion and citing that opinion in the footnote. Because the author has not quoted or paraphrased the language of the law review article and has cited the quoted original source, this is likely to be treated as an appropriate attribution if the writer actually consulted the original opinion and did not rely merely on the discussion of that opinion in the law review article. A more complete citation, however, would include a reference also to the law review article as another source of the author’s observation that the ABA opinion reflected a significant shift in policy. The reference to the law review article would also assist the reader to learn more about the topic.*



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