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***Iowa Supreme Court Attorney Disciplinary Board v. Peter Cannon (2010)***

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This case arose when an alert judge noticed something suspicious about attorney Peter Cannon's legal briefs. The rest of the story is told by the Iowa Supreme Court:

"[A lower court judge in a bankruptcy proceeding], having found Cannon's briefs to be of unusually high quality, issued an order directing Cannon to certify that he was the author of the two briefs in question. Cannon filed a response indicating that both briefs were his sole responsibility and that they "relied heavily" upon an article entitled *Why Professionals Must be Interested in "Disinterestedness" Under the Bankruptcy Code* by William H. Schrag and Mark C. Haut. Cannon further admitted that his initial brief "exceeded permissible fair use without attestation" of the source. He reported he had informed his client about his mistake as well as the bar association.

The bankruptcy court initiated sanction proceedings against Cannon. The bankruptcy court concluded that seventeen of the nineteen pages of legal analysis in the initial brief were verbatim excerpts from the article, with only variations for format and deletion of matters detrimental to Cannon's position . . .

In light of its conclusion that Cannon committed plagiarism and charged an unreasonable fee, the bankruptcy court ordered Cannon to (1) complete a law-school-equivalent course in professional responsibility, (2) disgorge the fee charged to his client for the briefs' preparation, (3) formally notify the authors of the plagiarized article and provide the court with a copy of the correspondence, and (4) provide copies of the sanction order to Chief Judge Pratt and the [disciplinary] board."

#### **WHAT ADDITIONAL PENALTY WAS PROPOSED?**

"Attorney Cannon and the [attorney] disciplinary board settled on a "Public Reprimand" [a public record that can severely impact a career] . . ."

#### **WHY DID THE IOWA SUPREME COURT APPROVE THE "PUBLIC REPRIMAND" PENALTY?**

The Iowa Supreme Court decided to approve the public reprimand:

"In *Iowa Supreme Court Board of Professional Ethics & Conduct v. Lane*, 642 N.W.2d 296 (Iowa 2002), we addressed the question of whether plagiarism constituted an ethical violation.

In *Lane*, the attorney submitted a post-trial brief in federal court that was largely plagiarized from a treatise. Just as in this case, a federal judge asked Lane to certify the author or authors of the brief. Unlike this case, however, Lane did not immediately acknowledge the plagiarism and failed to respond to the court for several months. When Lane did respond, he buried the plagiarized treatise in a four-page, single-spaced list of sources.

In *Lane*, we determined that plagiarism amounts to a misrepresentation to the court. . . We note that other courts considering the issue have reached the same conclusion. See, e.g., *In re Ayeni*, 822 A.2d 420, 421 (D.C. 2003) (finding attorney committed an ethical violation by copying codefendant's brief); *In re Zbiegien*, 433 N.W.2d 871, 875 (Minn. 1988) (finding plagiarism in a seminar paper constituted misconduct); *Columbus Bar Ass'n v. Farmer*, 855 N.E.2d 462, 467-68 (Ohio 2006) (finding ethical violation for copying prior attorney's brief) . . .

We recognize that the term "plagiarism" is something of a scarlet letter that imposes a brand on a wide variety of behaviors. We do not believe our ethical rules were designed to empower the court to play a "gotcha" game with lawyers who merely fail to use adequate citation methods. This case, however, does not involve a mere instance of less than perfect citation, but rather wholesale copying of seventeen pages of material. Such massive, nearly verbatim copying of a published writing without attribution in the main brief, in our view, does amount to a misrepresentation that violates our ethical rules. We note that before this court, Cannon has candidly admitted that his activity represented dishonesty and not negligence or incompetence.

In *Lane*, we suspended the attorney's license for six months . . . It is clear, however, that *Lane* represents a more egregious case than this proceeding. In *Lane*, the attorney not only committed plagiarism, but attempted to conceal that misconduct from the court. Further, in *Lane*, we found that the attorney charged an excessive fee. Neither an effort of concealment nor an excessive fee is present in this case. Yet, Cannon copied extensive portions of the Schrag and Haut article and omitted unfavorable passages of it. This is misrepresentation, plain and simple . . .

Under all the facts and circumstances, we conclude that a public reprimand is the appropriate sanction in this matter . . ."

[end of court opinion]

## **WHAT MIGHT A "PUBLIC REPRIMAND" ENTAIL?**

A public reprimand is less serious than suspension or permanent disbarment, but it can still end careers. At least one state (Florida) engages in *public shaming* when the reprimand is administered. An article in the March 8, 2008 [Florida Bar Journal](#) describes the process:

"Believing they carry more weight and lasting impact when conducted publicly before the board, the Special Commission on Lawyer Regulation, as well as input from nonlawyers on the Citizens Forum, unanimously recommended personal appearances before the board for public reprimands for disciplined lawyers instead of other options, such as having the reprimand administered by a local judge or the referee in the case or by publication of the reprimand . . . In early 2007, the board approved that recommendation . . . [A]ll reprimands are [now] administered in front of the board, unless waived by a two-thirds vote."

Each [public] reprimand is ended with this cautionary advice:

“This public reprimand is now part of your permanent Florida Bar disciplinary records. You are further advised that while the public reprimand does not affect your privilege of practicing law, future misconduct will. The lawyers of Florida expect your future conduct be in compliance with your oath, and you should demand the same of yourself.”

**Please answer these four questions** [NOTE: students using the Blackboard system should refer to questions there].

[a] Why should judges care if attorneys submit plagiarized legal briefs or motions? Please explain your answer.

[b] Attorney Peter Cannon was punished by the court *and* by the attorney disciplinary board. Do you think these punishments (taken as a whole) were too lenient, too severe, or about right? Please explain your answer.

[c] The Iowa Supreme Court referred to another case involving attorney plagiarism (*Iowa Supreme Court Board of Professional Ethics & Conduct v. Lane*). In that case, the punishment for attorney Lane (suspension of his license to practice) was *more severe* than the punishment imposed on Cannon. What distinction did the court make between these two cases? Do you agree with the court’s reasoning?

[d] The State of Florida requires “*personal* appearances before the [disciplinary] board for *public* reprimands for disciplined lawyers” [italics added]. Do you think this kind of public shaming is too harsh?