

MEMORANDUM

TO: All Students in Legal Skills

FROM: California Western School of Law  
Legal Skills III Professors

RE: ETHICS GUIDELINES FOR LEGAL WRITING CLASSES

(Adapted from the Code of Conduct of the University of Chicago-Kent Research and Writing Program, with permission of Mary Rose Strubbe, Director of the Chicago-Kent Research and Writing Program, September 2001.)

1.0 Introduction

During orientation, all of you received a copy of the California Western School of Law Student Handbook, which contains the law school's Honor Code.

One of the most important skills of a lawyer is the ability to identify and resolve ethical questions. Ethical issues are not always easy to decide. Most ethics violations arise out of situations where students or lawyers have simply failed to recognize ethical issues, rather than situations where students or lawyers have intentionally engaged in wrongful conduct. We understand, moreover, that it is not always easy to apply the general provisions of the Code to specific situations. In addition, there are a number of questions that arise in the context of legal writing classes that are not specifically addressed in the Code.

For this reason, we are supplementing the general provisions of the Honor Code with comments and illustrations about some of the situations that may develop in your legal writing classes. Obviously, we cannot anticipate every circumstance, but we hope this memorandum may be of help in resolving some of the questions you may have. If you are not certain whether particular conduct is or is not permissible, please ask your legal writing professor.

2.0 CWSL Honor Code

Article II of the Honor Code defines "STANDARDS OF CONDUCT" as follows:

CWSL students are truthful, responsible, and professional toward each other and all other members of the law school community. They do not take unfair advantage of each other, nor do they engage in dishonesty, fraud, deceit, theft, misrepresentation, or harassment. They also do not violate the published Policies of the Law School. Students have an obligation to report known violations of this Code and assist in its enforcement.

3.0 Plagiarism

**Commentary for legal writing students:** This is section of the Honor Code applies to various issues that arise in legal writing courses. Most specifically, it applies to charges of plagiarism. The majority of Honor

Code violations involve plagiarism. Particularly in academic settings, plagiarism is a form of theft - the theft of another's ideas. Plagiarism is also an attempt to gain an unfair advantage over other students by misrepresenting written work as one's own, rather than that of another. Further, plagiarism defeats the pedagogical goals of the legal writing program. In order to become an excellent writer, it is imperative that you do and receive critique on your own work. Unless you and your professor focus on your work, you will not improve your own ability to research, analyze, and organize.

At the same time, however, plagiarism is an uncomfortable concept for lawyers. In memoranda and briefs, statements of law must be based on authority. Further, in drafting commercial documents and instruments, it is often most efficient to look first at a legal form and then modify it for use by the client. The following definition, based on Louis Sirico's A Primer on Plagiarism, acknowledges these competing concerns. Your legal writing professor will use this definition in determining what constitutes plagiarism:

There are three ways in which students may engage in plagiarism:

3.0(1) Quoting the words of another without attribution.

When using a quotation, cite the source, and use ellipses, brackets, and quotation marks scrupulously to indicate which words are your own and which are the words of another. Changing one or two words within a sentence does not eliminate the need to use quotation marks. If one or two words are inserted or omitted, use quotation marks, even if you have cited the source, and indicate the addition or omission with brackets or ellipses. Even very brief quotations should be placed in quotation marks when they are legally significant (e.g., the key words of a statute).

3.0(2) Paraphrasing the words of another without attribution.

When rewriting the words of another, cite to the source. This requirement is particularly important when you are relying on the work of scholars in law review articles or treatises. When paraphrasing language from a case, proper attribution will emphasize the weight and importance of the idea. The only exception to this rule may occur in a legal drafting class where a student is using a legal form that is intended to be copied without attribution. In such a case, the use of the form will not constitute plagiarism, although drafting instructors generally will ask students to identify what forms have been used for the purpose of determining whether a student has used an appropriate form and effectively adapted it for use in the assignment.

3.0(3) Using the ideas of another without attribution.

When using the ideas of a source, provide an acknowledgment of the contribution made by that source to your own work. Likewise, adopting the same structure or analytical framework as a prior source will require attribution. However, when the structure or substance of another's work may be considered a

part of general legal knowledge, then it is debatable whether attribution is required. A good practice is to trace an idea to its original source and credit that source, while explaining how the idea has evolved since the original author expressed it. The general rule is always to err on the side of giving credit.

#### **4.0 Collaboration**

This section also relates to unauthorized collaboration. Depending on the class or assignment, it may be appropriate to exchange ideas or "collaborate." Indeed, students in some courses, including legal writing courses, may be assigned to work together on certain projects. In Legal Writing courses, for example, it is often very helpful to collaborate on legal research exercises, so that students can share insights on how to use various materials. Students also need to learn effective techniques for collaborating and communicating about the law. With respect to memoranda and briefs, however, students learn the most by producing their own work, thinking about the professor's evaluation of that work, and then rewriting the paper. What is essentially a critique of someone else's work will not help a student develop the writing skills needed by a lawyer.

##### **4.0 Students in legal writing classes are permitted to:**

- 4.0(1) discuss any aspect of an assignment with the professor or that professor's teaching assistant at any time;
- 4.0(2) discuss research strategies, legal concepts, problems, and potential arguments related to any assignment with other students in their legal writing section or in a section working on the same problem.
- 4.0(3) discuss research strategies with law school library staff at any time;
- 4.0(4) with respect to assignments that are being rewritten, discuss legal concepts, problems, potential arguments, research strategies, and the comments of the professor at any time after the first drafts are submitted; and,
- 4.0(5) practice oral arguments after written assignments are submitted with other current students, where an oral argument is an assigned part of the course;

##### **4.5 Students in legal writing classes are not permitted to:**

- 4.5(1) discuss any aspect of a graded individual writing assignment with anyone other than the professor, teaching assistant, law school library staff, or other students in the section; with the exception of non-lawyers/law students. A written assignment may be shown to friends, so long as the friend is a not a lawyer or a law student.
- 4.5(2) discuss any aspect of a graded writing assignment with any other member of the faculty, other than your specific legal writing professor. While all CWSL want to help you and may even

offer to help, obviously consulting with someone who is an expert in legal writing or some substantive area of law gives that student a tremendous advantage over others. Thus, consulting with a professor, lawyer, law student is viewed as an attempt to gain an unfair advantage over others and is a violation of the Honor Code.

- 4.5(3) collaborate with other students on the writing process of a graded assignment; this prohibition includes outlining assignments together or simultaneously transcribing the orally expressed ideas of another for the purpose of including the expression of the ideas in one's own paper; or,
- 4.5(4) ask to see or gain access to another student's written work or show or give another student access to their written work on any graded assignment. Where an assignment involves both a first draft and a rewrite, students may not exchange their work product until the rewrite is handed in. In Legal Skills III, where all assignments are geared to a final product, students may not share graded assignments until after the final draft of the appellate brief has been submitted. While there may be a tendency to compare instructor comments, doing so is a violation of the Honor Code, as one can benefit from reading another's final product. In most instances, professors will make available for in class discussion or on reserve outstanding student papers to see (but not copy).
- 4.5(5) Also note that, where a professor provides a written approach (checklist) that outline should not be shared with students in another professor's section, nor should the outline be copied verbatim; rather, it should only be used for organizing purposes.

Please note that all of these provisions relate to discussion outside the actual class sessions for your legal writing sections. From time to time, professors may ask students to work collaboratively on in-class writing exercises. However, even when examples of student work are made available for class discussion, it is a violation of the Honor Code to record another student's work or ideas.

- 4.5(6) With respect to the concern about use of unauthorized material, first year legal writing courses do not provide training covering on-line legal research until after the first draft of the second memorandum assignment. You should not do on-line research searches until after this assignment. You may, however, retrieve cases and statutes at any time using "Lexsee," "Lexstat," or "Find" if you already have a citation and merely want to look up the case. You may also update authorities at any time using Shepard's on-line. (This provision does not apply to students in Legal Skills II or III.)

## 5.0 Misappropriating Materials

The Honor Code also prohibits knowingly or recklessly hiding or stealing library material, or withdrawing such books or material from the library without properly charging them out, or defacing such books or material.

**Commentary for legal writing students:** This rule is generally self-explanatory. There is nothing that is as unfair to other students as hiding, stealing, defacing, or destroying library materials. Students who engage in this type of conduct are deliberately interfering with the work and the careers of others. Violations of this rule are usually dealt with very harshly. Law schools serve as gate keepers to the profession. The law student who steals from a classmate may become the lawyer who steals from a client.

Legal writing students should also understand that the term "library materials" includes both print and on-line materials. Because California Western School of Law is an educational institution, it receives licenses from certain vendors of on-line data bases, such as LEXIS and WestLaw. These licenses permit California Western School of Law students access to the data bases as a part of the educational process. Students are not permitted to access these data bases for other than educational purposes. Students who work or volunteer part time outside of the law school may not use their student passwords to these services during the course of their outside activities. To do so is to misappropriate the vendors' property and jeopardize the law school's educational license.

#### 6.0 Violating Course Rules

- 6.1 The Honor Code also prohibits violating any rule imposed by the instructor or exam proctor.

**Commentary for legal writing students:** From time to time, legal writing professors may impose additional rules. For example, professors generally encourage students to use every means of research available, just as lawyers do in practice. On some occasions, however, additional limits may be appropriate. One such circumstance might involve writing a brief appealing from a recent decision. If an appeal is in fact pending, a professor will likely ask students not to look at the briefs that have been filed with the court in that case. To do so would constitute a violation of the Code of Conduct.

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#### 7.0 Attempting to Obtain Unfair Advantage Over Other Students

The Honor Code also prohibits students from seeking to gain an unfair advantage over another student.

**Commentary for legal writing students:** Obviously, any of the conduct described in the preceding provisions will also violate this "catchall" provision. There are, however, a number of respects in which certain other conduct in a legal writing course might be deemed to violate this specific provision.

- 7.1 First, the legal writing syllabus is very specific as to when assignments are due. Law is a profession governed by strict

deadlines. In practice, failure to comply with the deadline for an election under a lease or to perform a condition precedent under a contract can have very serious effects on a client's legal rights. Likewise, all matters pending before courts or other tribunals are governed by rigid deadlines established by the applicable code or rules of procedure.

Accordingly, if a paper is handed in after the time specified, it will be penalized. Attempting to circumvent these penalties by misrepresenting the time a paper has been handed in will be considered an attempt to obtain an unfair advantage.

Extensions on due dates will be granted only for the reasons courts generally grant extensions, such as a death in the family, serious illness, or other circumstances that make a timely submission impossible. Events of which students have advance knowledge, e.g., weddings, holidays (although we have made every effort to avoid conflicts between deadlines and religious holidays), and vacations, will not be cause for granting extensions. As lawyers, you will need to balance many responsibilities in your professional and personal lives. As with a court deadline, extensions must be requested in advance of the time the paper is due. Any extension request that misrepresents the reason for the request is an attempt to gain an unfair advantage over another student.

- 7.2 Second, attempting to evade page limitations on papers through the use of fonts and margins other than those given to you by your legal writing professor is also an attempt to gain an unfair advantage. Courts set strict limits on the number of pages allowed for briefs, and likewise specify the margins and fonts to be used. Courts will not accept nonconforming briefs.
- 7.3 Third, most professors will grade some or all of the papers anonymously, although the question of anonymous grading is within the discretion of the professor. If your professor has asked that papers be submitted anonymously, any attempt at either direct or indirect identification constitutes an attempt to gain an unfair advantage. Because all Legal Skills courses require anonymous numbers, any attempt to identify oneself on a paper (name, note) will constitute an Honor Code violation. Especially during the grading process, when professors are grading papers, it is imperative that students make no efforts to contact the professor about his or her paper or grade. When reviewing drafts of papers with professors, it is important that your anonymous number not appear on the document to be reviewed.
- 7.4 Fourth, some of your assignments during the year will involve briefs to courts. Persuasive style is a very important part of brief writing and is a factor in the grade assigned by most legal writing professors. Obviously, it is easier to draft a persuasive sounding brief for a court if the lawyer ignores cases that do not support the client's position. However, in the American legal system, the decisions of courts are an important source of law. In order to protect the integrity of judicial decisions, lawyers have a duty of candor toward the court. They must cite decisions of higher courts within the jurisdiction that

are contrary to the arguments they are making. Likewise, lawyers have an ethical duty not to mischaracterize or misstate the law. To ignore these ethical rules in the interest of producing a more persuasive brief that will receive a higher grade may constitute an attempt to gain an unfair advantage over another student. It is also poor lawyering.

- 7.5 Fifth, in some upper level writing courses, such as seminars and certain sections of Advanced Research, students may choose their own topics for assignments. In completing these assignments, students should submit original work for each course. It is a violation of the Honor Code to submit the same paper for credit in multiple courses.
- 7.6 Sixth, in your upper division legal writing course, known as Legal Skills III, you will participate in a Moot Court Competition, where you argue a motion or a brief before student judges. Because these arguments are scheduled over the course of a day, it would be construed as attempting to obtain an "unfair advantage" for a student to reveal to another student the nature of the questions asked in the earlier rounds that day. So, both the person revealing the question and the person receiving the question will be seen as attempting to obtain an unfair advantage.
- 7.7 Finally, recognize that faculty take evaluating student work very seriously, and make every attempt to do so fairly and objectively. Their assessments of grades are based on careful consideration of the relative strengths and weaknesses of all the papers, taken as a group. Attempting to argue with, harass, or intimidate a professor into changing a grade may be viewed as an attempt to gain an unfair advantage over another student. However, if you have a question about why you received a particular grade, please do not hesitate to make an appointment with your professor to discuss ways in which you might improve your work in the future.

This section also prohibits "harassment" of professors, student instructors, student sophisters, and other students.

**Commentary for Legal Writing Students:** Maintaining civility and collegiality are important traits for effective advocates. Legal writing professors make every effort to meet with students to review drafts and offer helpful comments. However, professors cannot pre-grade a paper or provide edits on drafts. It is unreasonable to consider a professor's comment that a paper is "okay" as an indication that the paper or a particular section will receive a high grade in the class. No professor can make that determination until after reading and evaluating all papers. Conferences and checklists can only provide guidance to the writer. Sorry, but professors cannot write papers for students.

The same holds true for student instructors and student sophisters. Showing disrespect for professors (or student instructors or sophisters) as a result of a poor grade is inappropriate behavior and a violation of the Honor Code. As lawyers, we do not always agree with a judge's ruling, but we respect his or her authority to make the decision. Likewise, we may adamantly disagree with points raised by an adversary,

perhaps even the adversary's conduct in raising those points. However, we direct our concern to the court, not to the adversary.

We hope the above memorandum clarifies some of the questions you may have about how the Honor Code will apply in your legal writing section. If you have any other questions, please ask your Legal Writing professor. We are all here to help you and want your classes to be enjoyable. By making sure every one is on equal footing and acting responsibly, we know you will have a richer learning experience.



## CERTIFICATION AND DECLARATION OF UNDERSTANDING

I, \_\_\_\_\_, have received the eight page document entitled *Ethics Guidelines for Legal Writing Classes*. I understand that as a student in a California Western School of Law Legal Writing course, I am subject to the *Ethics Guidelines for Legal Writing Classes*, as well as CWSL's Honor Code. I understand:

- \* that the Ethics Guidelines define plagiarism and describe the proper techniques for paraphrasing and quoting others' words, ideas, and format;
- \* that despite a lack of intent to plagiarize, I will be guilty of plagiarism if I do not correctly attribute another's authorship of any material I include in my work;
- \* that the Ethics Guidelines for Legal Writing Classes contain the rules and policies on collaboration, including the provision that I may not gain access to another student's written work or permit other students to gain access to my written work;
- \* that only limited collaboration is allowed in this course, as described in the Ethics Guidelines for Legal Writing Classes;
- \* that sanctions may be imposed for the violation of any of the rules or policies contained in the Honor Code or *Ethics Guidelines for Legal Writing Classes* and that these sanctions may include receiving a failing grade for the course, suspension from law school, a notation of an ethics violation on my transcript and letter to my state bar, or dismissal from the law school.

Finally, I understand that I am responsible for knowing what is in the *Ethics Guidelines for Legal Writing Classes* and the Honor Code, and that if I am unsure of the meaning of any of the provisions, or if I receive instructions that seem to contradict its provisions, it is my responsibility to seek clarification from my Legal Writing Professor.

Dated: \_\_\_\_\_

Name: \_\_\_\_\_

Signature: \_\_\_\_\_

# *Classroom Etiquette & Other Rules of Decorum*

So that the class sessions do not deteriorate into a bad episode of the “Jerry Springer Show,” everyone needs to abide by the following rules for class.

1. Please do not arrive late to class, as this creates a disturbance. Unless excused prior, a late counts as a half-absence. And the classroom door will be locked after five minutes into class.
2. Please do not talk or pass notes or otherwise create distractions. Chronic talkers will be warned once, then dismissed from the class. This is the most common complaint students have about classroom order. While talkers may not realize it, many people are distracted, including the instructor and it is rude.
3. Please do not wear strong scents to class. Many people suffer from allergies, asthma, or chemical sensitivities and strong fragrances can cause serious reactions.
4. Please be respectful to everyone in the classroom during class discussions and debates. Name calling, chair throwing, and physical attacks are not permitted.
5. Please be prepared for class. If not prepared, please let your professor know before class begins. He does not want you to miss class, and will give you two passes a trimester. However, when called upon, and not prepared, the instructor will record the lack of preparation and it will reflect upon the course grade for attendance and participation.
6. Please attend class. Every class is critical and very compact. If for some reason, class attendance or preparation falters significantly, your professor reserves the right to give a pop quiz exam, which is normally quite easy, for those present and prepared. This is very unlikely.
7. Please see the Assoc. Dean about a transfer if you don't like your professor because you find this class too much fun, entertaining and easy to understand.
8. Please, when candy is served, take one piece until everyone has had one. There will be students starving in the back rows.
9. Please, if you get cold, feel free to put on a sweater or ask for the thermostat to be turned down.
10. Please also feel free to bring hot or cold (nonalcoholic) drinks to class. Soft foods are permitted (cake, donuts, etc). But please no noisy foods (chips) or smelly foods (garlic pizza). And please, if you bring in food, clean up afterwards.
11. Please feel free to audio or video record classes, should you find that necessary.
12. Please, if you are using a laptop, try to sit so that your cords do not present a safety hazard. If you are using a laptop, do not use your laptop during class to play games, access information unrelated to class.
13. Please do not study for other classes, read newspapers, or otherwise not participate in the class.
14. Please feel free to leave class for bathroom emergencies.
15. Please do not bring cell phones or pagers into class. Wireless devices must be turned off before coming into class. If you have an emergency (medically-related), please let your professor know in advance.

16. Please participate in class. Much of the class focuses on discussion, collaborative learning (groups), and games, so you will need to participate.
17. Please relax and not be intimidated in this class. Each class is a lab and a time for you to build your understanding of the study of law.
18. Please always feel free to see your professor during his office hours. You can see your professor about anything, whether it is related to the course or something else. This includes matters regarding jobs, legal news, sports, or gossip.
19. Please, if you miss class, or miss a handout, stop by your professor's office and extra copies will be available. Generally, you will have all handouts provided in the beginning of the course.
20. Please offer feedback to your professor about things you like or don't like. The first row in the class acts as a focus group for your professor. So feel free to tell someone in the front row your comments. The focus group meets with the professor from time-to-time.
21. Please feel free to call your professor by his title (Professor) or by his first name. In a few weeks, you may be calling him all kinds of names and he would certainly appreciate not being called by a vulgarity in class.
22. Please, most of all, enjoy this class and put as much as you can into it, because you will see in the years to come that learning the law is what you do as a lawyer. The skills you develop now will help you achieve your goals.

Please, if you have any questions, concerns, or disagreements with the above rules of etiquette, please register them now. Otherwise, we all agree to abide by these. All of these rules serve to make this a fun learning environment, free of distractions. To the extent we can all abide by them, the better the class.