

MEMORANDUM

TO: Lawyering Skills I students
FROM: Professor David E. Sorkin
DATE: October 30, 2007
RE: Central Illinois U./Fred Ziffel

Our firm serves as outside counsel to Central Illinois University. Oliver Wendell Douglas, the dean of CIU's law school, has requested our advice on a matter involving a former professor, Fred Ziffel. Dean Douglas's e-mail message, attached, describes the matter. Please write a memorandum addressing the likelihood that Ziffel may have a viable copyright claim against the university.

Marshall Law

From: Douglas, Oliver <odouglas@cilu.edu>
Sent: Thursday, October 25, 2007 11:53 AM
To: Marshall Law Associates
Subject: Ziffel copyright claim

Fred Ziffel was a member of CIU's full-time law faculty from 1998 through 2007. In April 2007 Ziffel tendered his resignation, effective at the end of the 2006-2007 academic year. He had been scheduled to teach two classes this fall, Copyright Law and Labor-Management Relations. When he resigned I circulated a memo to the faculty asking whether anyone else would be willing to take on Ziffel's fall classes. I had no volunteers for the labor law class, and we ended up hiring an adjunct professor to teach it. Sam Drucker, our patent law professor, offered to cover the copyright class. (I believe that at the time he said he did not expect it to be at all difficult -- he remarked that "copyright and trademark law is what patent lawyers do on weekends," or something to that effect.)

In early August, Drucker asked if it was too late to find someone else to teach copyright -- he said that he had taken on more projects than he had planned and just didn't think he'd have enough time to do the course justice. I told him that we were counting on him for the course, but he was welcome to use recordings of last year's class if they were still available from the university's AV services department. We have recorded most law school classes for the past several years, mainly so that we can make the recordings available to students with disabilities and those who miss classes due to illness. Last year we switched from videotape to DVDs; we had routinely erased and reused the tapes after each semester, but with the changeover we apparently have begun keeping the old recordings. After obtaining a set of DVDs of Ziffel teaching the class last spring, Drucker agreed to teach the class. Drucker tells me that he has presented live lectures in a few of the class sessions so far this semester, and in most sessions he plays the DVD of last spring's class and then spends several minutes leading a class discussion of the topic and responding to students' questions. Ziffel seems to have gotten wind of this somehow, and a couple of days ago he called me to demand that we stop displaying his recorded lectures, or else pay him for the right to continue using them. I told Ziffel that I considered the recordings to be the university's intellectual property. He said that he would follow up with a written demand within the next two weeks.

I'm concerned that there may be some merit to Ziffel's claim, and wanted to find out whether our position on this matter is solid. Would you please look into this and advise? Thank you.

OWD