

**PRESENTED AT**

2016 Legal Writing: Precision and Persuasion

May 13, 2016

Dallas, Texas

**Name That Penalty (Part I)**

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# Name that Penalty

You might be surprised at the kinds of things lawyer put in writing—especially in writing directed to a court. We’ve assembled our favorites, and the most-extreme examples, into a quiz. We invite you to ponder the actions of these lawyers who misquoted, exceeded the page limit, attacked the judge, failed to cite, omitted binding law, blathered on for pages, and just plain wrote poorly in this multiple-choice quiz.

1. A lawyer went back to law school to get an LLM, but he plagiarized two published articles in his LLM thesis.<sup>1</sup> The Illinois State Bar—

Ordered him to pay a fine.

Publicly censured him.

Ordered him to take a college course on plagiarism.

Ordered him to move to New York.

2. A judge said the lawyer’s case analysis, included in a trial brief submitted in support of a motion for summary judgment, was extremely sloppy, intentionally misleading, and “dead wrong.”<sup>2</sup> The trial judge—

Ordered the lawyer to bring a supervisor to court to address the court’s concerns.

Struck the brief.

Ordered the author to pay a fine.

Ordered the lawyer to write 500 times, “I will not intentionally mislead the judge.”

3. Counsel filed a request to exceed the court’s length limits (15 pages or 4200 words) and simultaneously submitted the “fat brief,” which was 19 pages and 5505 words long. Counsel stated that the original draft was 30 pages long, and the brief was “extensively reviewed by members of our Appellate Section, with the intent to reduce the length.” The court stated, “We gather these efforts were not entirely successful.”<sup>3</sup> The court—

Referred the author to the state bar.

Ordered the author to pay the other party’s attorney’s fees.

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<sup>1</sup> *In re Lamberis*, 443 N.E.2d 549, 549 (Ill. 1982).

<sup>2</sup> *Hernandez v. N.Y. City Law Dept. Corp. Counsel*, No. 94 Civ. 9042, 1997 WL 27047, at \*14 n.11 (S.D.N.Y. 1997).

<sup>3</sup> *U.S. v. Molina-Tarazon*, 285 F.3d 807, 807 (9th Cir. 2002).

Ordered the author to go back to his office and think about what he'd done.

Struck the brief, ordering it rewritten and resubmitted.

4. In separate cases filed in the same court, a lawyer submitted a 160-page complaint and a 392-page complaint ("frivolous," "poorly pleaded," and substituting "cut and paste" for draftsmanship).<sup>4</sup> The court—

Ordered the author to write an article about the problems in the document.

Ordered the author not to assign an assistant to write the article.

Ordered the author to pay a fine.

All of the above.

5. A lawyer requested permission to submit a brief in excess of the court's limits. Denied. He then submitted a brief in excess of the 50-page limit. Rejected. He then submitted a brief that "technically" conformed to the page limit, but he had accomplished it by shrinking the typeface and squeezing the margins.<sup>5</sup> The court—

Relented and granted after-the-fact permission to exceed the page limit.

Dismissed the case.

Ordered the author to pay a fine.

Displayed the brief on the court's website.

6. In a brief, a lawyer copied 18 pages worth of unattributed text from a treatise on employment law, renumbered the footnotes to run consecutively, submitted a list of more than 200 "sources consulted," and applied for \$16,000 in attorney's fees for writing the brief.<sup>6</sup> The state bar—

Ordered the lawyer to pay the treatise authors a royalty.

Cut off one corner of the lawyer's bar card.

Suspended the author from practice.

All of the above.

7. A lawyer submitted objections to discovery that were "boilerplate, obstructionist, frivolous, overbroad" and contrary to law. The court said that "Rambo-style discovery

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<sup>4</sup> *Leuallen v. Borough of Paulsboro*, 180 F. Supp. 2d 615, 616 (D.N.J. 2002); *Mendez v. Draham*, 182 F. Supp. 2d 430, 431 (D.N.J. 2002).

<sup>5</sup> *White Budd Van Ness P'ship v. Major-Gladys Dr. Jt. Venture*, 811 S.W.2d 541, 541 (Tex. 1991).

<sup>6</sup> *Iowa Sup. Ct. Bd. Of Prof. Ethics & Conduct v. Lane*, 642 N.W.2d 296, 298-99 (Iowa 2002).

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First appeared as part of the conference materials for the  
2016 Legal Writing: Precision and Persuasion session

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