By Hon. Rebecca B. Connelly

Shakespeare's Lines Offer Lessons for Lawyers

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William Shakespeare's prose offers more than entertainment. His famous lines are also helpful as practice advice. This article highlights a handful of famous quips as tools to improve our professionalism.

"The first thing we do, let's kill all the lawyers."

This line[1] is often met with laughs and applause, reminding us of just how unpopular our profession is. Although in its context in the play the statement reflects the important role that our profession holds in civil society, for most of us, the line connotes the opposite. In *Henry VI, Part 2*, Dick the Butcher proposes that one way to ensure his partner Jack Cade can usurp the throne (from Henry VI) is to create chaos and anarchy in place of law and order, hence his declaration that the first thing they do is kill all the lawyers! While we all share a good laugh over Shakespeare's word play, we also share a sense of shame from the joke. After all, when our profession is necessary to uphold civil society's ability to govern ourselves yet receives the loudest laughs from the charge that society must be saved from our profession, it is only natural to feel uncomfortable.

We must admit that this line from Shakespeare is one of his most popular and is intentionally used as a criticism of lawyers, instead of in recognition of the benefit of lawyers. Maybe this admission could be a good thing; perhaps this line can become an inspiration to us to demonstrate how our profession benefits our civil society. At the outset, Shakespeare's lines help us to remember (and apply) some basic tenets that can improve our practices, improve our reputations, and improve our craft.

"An honest tale speeds best, being plainly told"[2] — or put another way, speak plainly. When drafting any correspondence (especially a letter or an email) to a nonlawyer, describe the letter's purpose in commonly understood terms. Avoid the use of technical statutory terminology except to the extent required by applicable law. Lawyers must correspond with nonlawyers for an initial demand, or during pre-discovery investigation, or as part of collection actions or litigation. Lawyers should be aware of the consequences that could result from unclear communications.[3] Most state rules of professional conduct, such as ABA Model Rule 4.3, warn us to be clear when communicating with nonlawyers by instructing that "[w]hen the lawyer knows or reasonably should know that the unrepresented person misunderstands the lawyer's role in the matter, the lawyer shall make reasonable efforts to correct the misunderstanding."[4]

Play fair. Give suitable notice to everyone (not just your friends). Opt to provide as much notice as you reasonably can rather than the least notice you can get away with. After all, ineffective notice may be deemed lack of notice.[5]

Always assume that mail delays, power outages and ordinary business distractions will occur. When providing notice of pleadings by mail, send copies of the pleadings with one single page per side of the printed sheet instead of reducing the font size by including four pages per side of each sheet of paper.[6] For example, as described in *Strubel v. Capital One Bank (USA) NA*,[7] font size may be material. Indeed, many agency regulations (set forth in the Code of Federal Regulations) discuss disclosure regulations by specific font and point size.[8] If we ever find that there is a need to regulate federal disclosures by font size, our profession should follow suit and use legible and appropriate font and point sizes for our case disclosures and notices.

1 William Shakespeare, *Henry VI, Part 2*, act 4, sc. 2, l, 73.
2 William Shakespeare, *King Richard III*, act 4, sc. 4, l, 373.
3 Lawyers should likewise be clear and unambiguous in conversations with unrepresented parties. *See In re Malofiy*, 653 F. App'x 148, 151 (3d Cir. 2016) (upholding lawyer's temporary disbarment after counsel for plaintiff allowed unrepresented defendant to misunderstand that counsel was disinterested in lawsuit by failing to explain that defendant and plaintiff had adversarial relationship in lawsuit, not advising defendant to get lawyer and obtaining affidavit from defendant by using misleading language).
4 *See* Model Code of Prof'l Conduct r. 4.3 (Am. Bar Ass'n) (Dealing with Unrepresented Person).
5 Simply notifying a creditor of the confirmation hearing without clear notice that the hearing will include a valuation of the creditor's collateral was insufficient and warranted vacating the confirmation order. *Piedmont Bank v. Linkous*, 990 F.2d 160 (4th Cir. 1993). In a different example, knowingly sending notice to an incorrect address (having already learned that the address was incorrect) may warrant vacating a default judgment. *N.Y. Life Ins. Co. v. Brown*, 84 F.3d 137 (5th Cir. 1996) (holding that district court's attempt to serve defaulted claimant with copy of summary judgment motion at address that was not his last known address did not provide proper notice and due process, thus rendering judgment void).
6 Just as small font can be illegible, inconspicuous buried information may be ineffective. *See Berman v. Freedom Fin. Network LLC*, 30 F.4th 849 (9th Cir. 2022) (holding that websites did not provide reasonably conspicuous notice of hyperlinked terms and conditions, including mandatory arbitration provision by displaying underlined hyperlinked terms and conditions in two lines of text in tiny gray font).
7 179 F. Supp. 3d 320 (S.D.N.Y. 2016).
8 *See, e.g.*, 37 C.F.R. § 1.58(c) (font "must be chosen from a block- (nonscript-) type font or lettering style having capital letters [that] should be at least 0.422 cm. (0.166 inch) high (*e.g.*, preferably Arial, Times Roman, or Courier with a font size of 12), but may be no smaller than 0.21 cm. (0.08 inch) high (*e.g.*, a font size of 6)").

"Brevity is the soul of wit."

When the ever-loquacious Polonius in *Hamlet* ironically says, "Brevity is the soul of wit,"[9] he appears oblivious to the joke. His statement is made after his rambling preamble:

> My liege, and madam, to expostulate
> What majesty should be, what duty is,
> Why day is day, night night, and time is time,
> Were nothing but to waste night, day, and time,
> Therefore, since brevity is the soul of wit
> And tediousness the limbs and outward flourishes,
> I will be brief.[10]

At which time, Polonius tells Gertrude that her son Hamlet "is mad."[11] It is no wonder that Gertrude responds, "More matter, with less art."[12] This exchange reminds us to skip the superfluous. As Gertrude was annoyed by the long dialogue without specific substance, likewise, judges who endure long-winded speeches devoid of substance become annoyed.

Keep it simple. Tiresome interminable oral arguments rarely persuade a judge. Overly wordy "briefs" will not buoy the case nor convince the arbiter. A memorandum of law need not be a hornbook or an encyclopedia. Too much information may prevent the advocate from providing specific support for the legal question. If it is not on point, there is no need to say it. Legal issues are ones that can be condensed to one or at most two sentences. If the legal issue to be decided cannot fit into two sentences, it is not judiciable.

Sometimes more is not better. Perhaps that is why rules of procedure limit the page length for certain motions and for certain briefs.[13] If the discovery request is overly lengthy or broad, it might be found to be excessively burdensome.[14] It is no wonder that the rules of professional conduct disallow frivolous or overly burdensome litigation and discovery tactics.[15]

"What's in a name?"

In *Romeo and Juliet*, Juliet laments the nemesis family name of her beloved Romeo. She surmises, "What's in a name? That which we call a rose, by another name, would smell as sweet."[16]

Her words are meant to remind us that the name itself has no meaning, yet her observation (her reference to "a rose by any other name") is so familiar that it offers an easy way to remember a critical lesson for practice: The correct name matters — and that message cannot be overemphasized.

Name the correct person. Failure to identify the correct name can lead to devastating results. As the Eleventh Circuit instructed in *1944 Beach Boulevard LLC v. Live Oak Banking Co. (In re NRP Lease Holdings LLC)*,[17] incorrectly naming the debtor on a financing statement (even by simply abbreviating part of the debtor's name) will be ineffective to perfect the security interest in the debtor's assets. In another example from *Edwards v. Omni International Services Inc.*,[18] the plaintiff originally named the incorrect party to her lawsuit, so she nonsuited the action and refiled it against the correct party. When she filed the action against the correct party, the statute of limitations had passed. The lawsuit was dismissed, and the plaintiff's failure to get the name right was fatal to the client's action.[19]

Not only should the correct name be noted, but the correctly named person must be noticed or served. Failure to identify the correct defendant is fatal, but failing to serve the correct defendant might have even more detrimental consequences.[20]

"The fool doth think he is wise, but the wise man knows himself to be a fool."

When the fool (or what we would call the jester) Touchstone says in *As You Like It* that "the fool doth think he is wise, but the wise man knows himself to be a fool,"[21] he expresses one of the more famous observations about humanity, and yes, this includes lawyers. Lawyers who lack awareness of their mistakes or lawyers who delve into areas where they are not competent risk losing more than simply their case. For example, in *Lindo v. Figeroux (In re Lindo)*,[22] judgment was entered against lawyers in the amount of $134,224.37 for their negligent representation of their client in a bankruptcy case. No wonder state rules of professional conduct provide an affirmative duty of competence in taking on representation.[23]

"All the world's a stage, and all the men and women merely players."

The cynical Jacques in *As You Like It* identifies the "seven ages of man," first noting that "all the world's a stage, and all the men and women merely players."[24] After this line, he then describes the (at times miserable) stages of life that "all the men and women" experience. As he does so well, the Bard[25] frequently compares life to a play and at the same time uses a play to opine on life. In so doing, his words remind us that we "play" roles throughout life, including performing our responsibility to our clients and our profession. As tempting as it is to replace our judgment for that of our clients, the

9 William Shakespeare, *Hamlet*, act 2, sc. 2, l, 90. In this context, "wit" refers to wisdom or reason.
10 *Id.* at l.86-92.
11 *Id.* at l.92.
12 *Id.* at l.95.
13 *See, e.g.*, Fed. R. Bankr. P. 4001(b)(1)(B) (requiring concise statement of relief requested "not to exceed five pages"); Fed. R. Bankr. P. 8015 (limiting page length for briefs and reply briefs).
14 *See* Fed. R. Civ. P. 26(b)(1) (considering, among other items, "whether the burden or expense of the proposed discovery outweighs its likely benefit"). When the verbose becomes extreme, the lawyer may be sanctioned for excessive discovery that unduly burdened another party. *Witt v. GC Servs. Ltd. P'ship*, 307 F.R.D. 554, 570 (D. Colo. 2014) ("While a party is entitled to discover relevant information under Rule 26(b)(1), counsel is not entitled to unnecessarily or repeatedly plow over old ground.").
15 *See* Model Code of Prof'l Conduct r. 4.4 (Am. Bar Ass'n).
16 William Shakespeare, *Romeo and Juliet*, act 2, sc. 2, l.43-44.
17 50 F.4th 979 (11th Cir. 2022).
18 872 S.E.2d 428 (2022).
19 Getting the name right applies in bankruptcy cases, too. *See Doherty v. Unknown (In re Doherty)*, Adv. P. No. 21-03005, 2022 WL 619509 (Bankr. E.D. Va. March 2, 2022) ("Among other things, in the Complaint, the Debtor must identify the potential defendants with particularity, and he must identify the debts at issue.").
20 *See Johnson v. U.S. Postal Serv.*, 861 F.2d 1475, 1476 (10th Cir. 1988) (affirming district court's decision that because plaintiff had not served or named correct party defendant, and was unable under federal rules to amend his complaint to name proper party, action should be dismissed for lack of subject-matter jurisdiction).
21 William Shakespeare, *As You Like It*, act 5, sc. 1, l.31-32.
22 No. 13 CIV. 6918 (ER), 2015 WL 9255561, at *5 (S.D.N.Y. Dec. 18, 2015) ("An attorney is negligent if he 'failed to exercise the ordinary reasonable skill and knowledge commonly possessed by a member of the legal profession.'" (quoting *Rubens v. Mason*, 387 F.3d 183, 189 (2d Cir. 2004)); *see also Dignity Health v. Seare (In re Seare)*, 493 B.R. 158 (Bankr. D. Nev. 2013).
23 *See, e.g.*, Va. R. Prof'l Conduct 1.1 ("Competence - A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.").
24 William Shakespeare, *As You Like It*, act 2, sc. 7, l.140-41.
25 Shakespeare was also called the "Bard of Avon" (sometimes shortened to "the Bard").

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legislature or the governing court, we are "merely players" performing our duties in the context of our job.

Obtain client consent. Failing to obtain the endorsement, consent or authorization from the appropriate client representative may have ramifications on the lawyer (apart from weakening his/her advocacy).[26]

Plead consistent with applicable law. Rule 9011 of the Federal Rules of Bankruptcy Procedure is not merely a suggestion. It governs the requirements for signing documents submitted to the bankruptcy court, as well as the implications and consequences thereof. Specifically, under Rule 9011(b), the court may impose sanctions on a party when the party submits a signed document that (1) is submitted for an improper purpose; (2) contains claims, defenses or legal contentions that are not warranted by existing law or makes frivolous arguments for the extension of existing law; (3) contains allegations lacking evidentiary support; or (4) contains unreasonable denials of factual information.[27]

Conclusion

Practice pointers come from many sources, and Shakespeare is one such source. Words from the Bard are an artful means to remember tips to improve our craft. Some of Shakespeare's famous lines offer insights into more effective pleading, argument and advocacy. abi

26 *See, e.g., In re Reubling*, Case No. 15-71627, 2016 WL 6877796 (Bankr. C.D. Ill. Nov. 21, 2016) (lawyer sanctioned for filing, without client's signature, bankruptcy petition and amended bankruptcy schedules, as well as first and second amended plan).

27 Fed. R. Bankr. P. 9011(b).