

Court Etiquette

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A Shakespearean Guide

If the analogy is not too incongruous, courtroom procedure generally appears as a tea-party conducted with boxing gloves: combative, but governed by rules which are not necessarily deducible through reason. A young lawyer cannot simply presume that he or she will act correctly in court; and since, moreover, rules are seldom apparent when they are being followed, it is not unusual that the first a practitioner will hear of one is when he or she has just broken it.

Mindful of a large number of breaches, both personal and on the part of others, and in an effort to make these first appearances more straightforward, the following suggestions have been made. Most are matters of basic conduct, although a few are perhaps more accurately described as matters of style (and so ultimately personal to each advocate).

"Taste your legs, sir, put them to motion"

When to stand and when to be seated, at the opening of the court and for any adjournment, is invariably a simple matter of following the directions of the court Tipstaff.

Practitioners are required to stand when they make their appearance once their matter is called on, or called in a

general call-over, and whenever they are making their submissions. If, during your submission opposing counsel (or even counsel in another matter) seeks to interject, be seated while they put their submissions to the judge. Amongst other reasons, it appears indecorous not to do so.

The only exceptions to these rules apply in the practice court, where an individual judge may dispense with the need to have practitioners stand while making submissions. It seems wisest to assume, until told otherwise, however, that the dispensation has not been made, as it is purely discretionary.

"Those move easiest who have learned to dance"

There are several points to moving about the court. First, upon entering and immediately prior to leaving the court, bow to the judge. Batting the eyelids won't quite do, while a fully fledged Elizabethan flourish would be somewhat unnecessary. Also, instruct any witnesses appearing in your case to abide to the courtesies.

Second, if you need to speak to the associate, do make sure to crouch down so as to avoid blocking the Judge's view of the court.

Third, never walk between the bar table and the bench, unless it is to go to your seat as an instructor and try to avoid walking between the Judge or the jury and a witness in the witness box. If you can't avoid the latter, at least crouch so as to not obscure the court's view of the witness. Also, try to avoid walking in front of the accused in the dock.

Fourth and most importantly, whenever the Tipstaff is swearing a witness or interpreter, or the associate the jury, be still and silent. The giving and taking of oaths is of fundamental importance to the court. The Tipstaff or associate will stop, and the entire court will stop, and wait for you to be still, before continuing. There are clearly better ways of impressing yourself upon the court.

"The barge she sat in, like a burnished throne"

Titles can be a source of confusion for the budding practitioner, and many seem unaware that there are different titles and references for varying jurisdictions.

In the Supreme Court members of the bench are called "Justices" and "Your Honour", their full title being "The Honourable Mr Justice X". The judges of the County Court are called, aptly enough, "Judges", their full title being "His or Her Honour Judge X". Magistrates are different again from Judges and Justices and when being addressed are referred to as "Your Worship".





When appearing in a particular jurisdiction, do ensure you use the right title. Although it might flatter, for example, to call a judge a "Justice", it will more readily signify inattentiveness or carelessness, while to refer to a Justice as "Your Worship" will not only reveal to the Court where you have been spending most of your time, but also give the lie to your claims to a booming High Court practice. If in making your submissions you still find yourself stuck, however, the omnibus "Sir", though not strictly speaking permitted, will rarely offend. "Your Majesty" on the other hand (it has happened), is right out.

When receiving orders or directions, the phrase "As your Honour pleases" is the most useful one, courteously signifying understanding together with, depending on the intonation, anything from pleasure to contempt. "Ta" or "Thanks" (this too has happened) just doesn't work.

"Out, hyperbolic fiend!"

The manner in which submissions can be put raises issues relating more to style than any rules as such. However, given the cheerfulness and frequency with which mistakes can be made in the name of style, the issue bears reference.

First, listen to any questions put by the Judge. Although it can be vexing to be interrupted in your argument, especially if the Judge's question is, to your mind, irrelevant, it is ultimately more vexing to the court - which has had to listen to many more arguments than your own on a given day - to be ignored when it raises a question about a submission that is being put. If you do consider the question immaterial, or premature, tell the court tactfully, that you will address it further in your submission or that why it appears immaterial will become apparent if you were to continue. Do not simply ignore it. It invariably comes across as arrogant, evasive or confused.

Second, try to avoid arguing with the judge. If one submission has been rejected but it is still possible to secure your aim through another, pursue that other at the risk of putting the tribunal offside. If you do persevere, however, be tactful at the same time as being either forceful or persuasive: despite their training judges are, after all, people who at the end of the day may become piqued, annoyed or mollified. It is amazing the number of advocates who impede their case through poor interpersonal skills.

Third, be brief. If you run out of things to say, sit down. Padding or stalling is obvious to all except perhaps the particular advocate.

"Sometimes a thousand twangling instruments will hum, about mine ears"

Courts are not necessarily averse to technology: indeed great strides, it would seem, are being made in this direction, but the salient feature of the welcoming of technology no doubt is that it is not intrusive. Turn off those mobile phones.

"Nothing comes amiss, so money comes withal"

Only one thing need be said about civil court fees. Pay them. The *County Court (Court Fees)(Amendment) Order 1994* requiring payment of fees has been in force for some while now. Some judges will refuse to sit until fees are paid, some refuse to make orders, and others will only sit or make orders on the gravest undertaking of counsel that fees will be paid forthwith.

"Crabbed age and youth cannot live together"

The order in which matters in the Practice Court will be heard is dependent on a number of things, including

whether the parties seek some time to negotiate, the length of the matter to be heard, and the seniority of the advocate. Of the last two, generally the briefest matters are heard first, but where matters are estimated to be of roughly equal time, the more senior of the practitioners has priority.

Unfortunately there are few "rules" to assist the operation of this principle: identifying who is more senior is largely a matter of word of mouth or personal knowledge or of an older practitioner simply assuming his or her place at the bar table and commencing his or her case. In general, simply be courteous and remain aware of the principle. If you bullishly assert your right to be heard over another more senior advocate you run the risk of offending the other practitioners in the room.

"Clothes, or fortune gives the grace"

Finally, a word on clothes. Men generally consider their choices run to which of two ties they wish to wear with their grey suit. For women the choice is somewhat broader, and unfortunately the choice can sometimes lead to solecism. The court, while not a morgue, is neither a lounge, and sleeveless vests or cardigans are not entirely apt. Though no-one is likely to lose a case because of their dress, it is best to avoid anything that might detract attention from your argument.

Here endeth the lesson. No doubt other matters will arise to confound the young practitioner. However, it is good to know of the more common errors - and how to avoid them - than to experience them first-hand.

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