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Playing Nice: The Dos and Don'ts of Courtroom Etiquette

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lunch. The attorneys I spoke with generally agreed that ordering alcohol might be acceptable at an interview dinner, but usually only if the attorneys you are with order it first. Even then, use your best judgment. “Take the same approach you’d take with clients,” says Jeff Odom, a hiring-committee member at Lane Powell. “If you’re out with clients, and everyone’s having a beer, it’s probably OK to have a beer.”

Be honest and know your materials. Do not lie or exaggerate the truth: both can make for some very awkward interview moments. David Tingstad, managing partner of the Edmonds firm Beresford Booth, shared with me that one job applicant actually used a false name in application materials. If you put something on your résumé, be sure that you can actually back this up with a story or explanation. Also, do not forget to re-read your materials. Be prepared to talk about everything, including that writing sample you may have written over a year ago.

Follow good post-interview etiquette. Do not overthink your thank-you notes — but do send them. The attorneys I spoke

with had different opinions on thank-you notes. Some preferred hand-written, some preferred e-mail, and some didn’t really care whether they received one. However, sending thank-you notes is good practice and good etiquette. If you do send a thank-you note, do not be too formulaic, cautions Ginsberg. Your note should “reflect something that occurred during the interview.” Also, make sure your thank-you note doesn’t count against you. A friend of mine laughed about a thank-you note he received that was covered in glitter: “I ended up with glitter all over me. I looked like I was going to a rave.” This probably was not the impression the candidate intended to make.

Do not “check back” too soon. If the interviewer has given you a timeline for a decision, do not call before this time elapses. Do not call multiple times. Hiring attorneys also do not appreciate a call that “sounds like it is orchestrated to let me know they have an offer,” says Hoff. Many of the attorneys I talked to thought a check-in call came across as pushy.

However, other attorneys liked it, if timed appropriately. Tingstad said that

if his firm had not called a candidate within the stated timeframe, he “would be disappointed if the candidate didn’t call.” Odom had a similar opinion, noting that “we appreciate when they express continued, sincere interest in the job.” The best way to navigate these conflicting opinions is to ask at your interview how and when you should follow up.

Stand out. Interviewing can be a scary and discouraging process, but it does not have to be. There is a tremendous amount you can do to set yourself apart from other candidates: by submitting meticulous application materials, diligently researching the organization, and simply pursuing those hobbies and interests that make you unique. “We are looking for a whole person,” remarks Smith. Go into the interview well-prepared with knowledge and questions, and be ready to have a conversation. “Be relaxed and confident but not cocky,” advises Roe. Most importantly, be yourself. ♦

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Off the Record

Playing Nice: The Dos and Don’ts of Courtroom Etiquette

by Maureen A. Howard

No matter how brilliant the lawyer, impressive her credentials, thorough her case preparation, or razor-sharp her analytic skills, she risks damaging her case — and her reputation — if she fails to comply with basic courtroom etiquette. There are certain dos and don’ts of courtroom behavior that are understood by seasoned trial lawyers and expected from judges. There are also common courtesies expected by jurors of lawyers who are viewed as professional and credible. A lawyer will undoubtedly learn these behavioral norms in the trenches over time, but she is well advised to have a courtroom etiquette checklist in her trial notebook as a quick reference guide. The aim is to avoid those small *faux pas* that can embarrass and fluster an advocate, as well as larger lapses in professional judgment that can damage a

client’s case or a lawyer’s reputation. The list below is not exhaustive by any means, but serves as a handy primer on the basics of courtroom etiquette.

Be timely. Always appear on time for court. Tardiness is disrespectful to the judge, court staff, opposing counsel, and jurors. If you find yourself unavoidably delayed, telephone to alert the court and apologize when you arrive. Confirm in advance the telephone numbers for the judge’s clerk as well as other court administrators who might be able to get a message to the judge. Be timely in all other interactions with the court, including striking motions from the court calendar as soon as matters have been resolved. This courtesy can save a judge hours of preparation time and will be much appreciated.

Introduce yourself. Even if you have appeared before a particular judge in

the past — even recently, and on the same case — always begin by introducing yourself for the record. State your name, identify the firm or agency you work for and the client you represent, and provide a brief statement of why you are before the court.

Stand when speaking. If you are speaking in court, you should be up on your feet — unless you are physically limited or the judge tells you it is not necessary, as is generally the case in juvenile court. Standing before making an objection has the added benefit of alerting the judge, opposing counsel, and the witness that an objection is forthcoming without interrupting the opposing lawyer’s question. Speaking from a seated position at counsel table can convey a lack of respect for the court, a lack of interest in your case, or a lackadaisical approach to your practice as a whole.



Do not interrupt the judge, opposing counsel, or witnesses. Although many of us went to law school because we were good arguers, often winning debates because we could talk faster, louder, and more passionately than our friends or relatives, courtroom exchanges are decidedly different. There is a very formal rhythm and protocol in court. Although there will be time to interpose a counterargument or objection to what someone else is saying, that time is almost never during that person's statement or question. No matter how much you want to correct a misstatement or a misunderstanding of facts or law, exercise restraint and wait until the other person has finished speaking. Otherwise, you will appear rude and unprofessional. An exception is when you believe opposing counsel or a witness is about to say something inadmissible in front of the jury. When this happens, you will need to interrupt. In this case, begin with an apology for the interruption, explain that you believe it necessary (although do not explain why in front of the jury), and ask to explain to the judge at sidebar.

Do not speak directly to opposing counsel. The rules of courtroom conversation do not allow lawyers to speak directly to one another on the record; rather, lawyers are expected to communicate through the court. So, when asking or answering a question of opposing counsel, the lawyers speak to the judge. For example: "Your Honor, I've been informed counsel has received additional documents responsive to our outstanding discovery requests. I'd like to confirm if this is the case and set up a time for production." It may seem overly formal and artificial, but it is accepted practice and a lawyer who fails to abide by it appears unskilled and unprofessional.

Ask permission to approach. Most state court judges allow lawyers latitude to move freely about "the well" — the area between the bench, counsel table, and the jury box. If you want to hand something to the judge, a member of the lower bench (clerk, bailiff, and court reporter), a witness, or the jurors, however, always request permission from the judge first. Be mindful that most people have a strong sense of personal space. You do not want to invade the jurors' comfort zone by standing too close to them, or offend them by hovering over a witness, which they may interpret as unnecessarily aggressive.

Do not misstate or exaggerate facts. In my experience, intentional mis-

representation to the court is rare. More common is an unplanned, gentle skewing of facts, usually in response to ad hoc questions from the bench, that produces an unintended misrepresentation. When coaching lawyers in motions practice, I find attorneys unaware they are subtly tweaking facts so that they end up making a misrepresentation to the court. When confronted, they seem genuinely surprised and chagrined. Nonetheless, in the real world, the harm to their credibility and their case would be the same as if the misrepresentation was calculated. I also observed this behavior when I was on the bench. Once, a young prosecutor reported, "We are unable to reach the police officer because he worked the night shift and he is asleep." As it turned out, the prosecutor only suspected this to be the case: it was not true, making his statement false. He should have said, "We are unable to reach the officer. I think he served on the night shift and may be asleep. May I have a brief recess to confirm?" Be aware that "subconscious" manipulation of facts can happen, and strive to be scrupulously accurate when answering questions from the bench.

Do not thank the judge for a favorable ruling. Thanking a judge can make it appear as though you are trying to telegraph to the jury that you "won" a round with opposing counsel and that the judge is on your side. Some judges will shut down such behavior with a curt response such as, "Counsel, don't thank me. It is my job to rule on objections. Move on."

Do not argue with the judge after an unfavorable ruling. If the judge rules quickly on opposing counsel's objection without first giving you an opportunity to respond, it is perfectly acceptable to ask, "Your Honor, may I be heard?" If the answer is no, however, you must move on without debate. If the ruling excluded testimony you planned to present, you will need to make an offer of proof outside the presence of the jury. If for some reason the judge disallows this, do not argue — file a written offer of proof.

Do not threaten to appeal the judge's ruling. If you believe the ruling is legally insupportable, then file an appeal. The threat to do so is nothing short of picking a fight with the judge. As trial scholar James McElhaney advises, "If you disagree with the ruling, make your record, not an enemy."

Do not criticize the judge with nonverbal displays of irritation. Tri-

als are stressful. Sometimes an advocate's adrenaline is pumping and a judge's statement or ruling seems outlandishly unfair. Nevertheless, it is not appropriate to grimace, sneer, roll your eyes, throw a notepad or book on counsel table, or otherwise non-verbally communicate disdain. It is disrespectful to the court system that the judge represents. Instead, ask to revisit the judge's ruling, if appropriate, outside the presence of the jury, or file a written objection with the court.

Treat the lower bench respectfully at all times. It is not only unacceptably rude but professionally self-destructive to treat court personnel poorly. The clerk, bailiff, and court reporter are the eyes and ears of the judge when she is in chambers. Their interaction with you will most certainly be reported, affecting in turn how the judge and others in the courthouse perceive you.

Remember that nothing is more valuable to a trial lawyer than her credibility, and nothing travels faster through the courthouse than a bad reputation. Following these basic rules of courtroom etiquette can go a long way to protect your credibility with judges, attorneys, and court personnel. ♦

"Off the Record" is a regular column on various aspects of trial practice by Professor Maureen Howard, director of trial advocacy at the University of Washington School of Law. She can be contacted at mahoward@u.washington.edu. Visit her webpage at www.law.washington.edu/Directory/Profile.aspx?ID=110.

Washington Young Lawyers Division Holiday Party

**December 9, 2010
6:00 to 8:00 p.m.**

The WYLD will host its annual holiday party at Fado Irish Pub, located at 801 First Ave. in Seattle.

There will be free appetizers provided and happy hour prices throughout the event.

Find the event on Facebook at <http://timy.in/WYLD-Facebook-event>.