

Etiquette*

Etiquette *n* **1.** the customs or rules governing behaviour regarded as correct in social life. **2.** a conventional code of practice followed in certain professions or groups.¹ **3.** The customary code of polite behaviour in a society.²

Court etiquette The code of honour and customary rules of behaviour within the legal profession. To a large extent this is unwritten, customary, and assimilated by entrants to the profession and inculcated by the example of their seniors as much as by precept.³

The starting point...

Your first obligation is to the Court.⁴ You must be honest at all times and not do anything to mislead or deceive the Court.⁵ Nor must you do anything that undermines the processes of the Court or the dignity of the judiciary.⁶ You have a duty to promote and maintain proper standards of professionalism, and uphold the rule of law and the administration of justice.⁷

These duties extend beyond the Courtroom door. Read and understand the Conduct and Client Care Rules for Lawyers.⁸ There are also numerous other useful and readily digestible resources available which set out what is expected of you.⁹

Watch and learn. Senior practitioners play an important role in propagating the applicable standards. That means that what junior lawyers observe ought to be in line with the highest standards of professional conduct.

* This paper was prepared with the assistance of Ashley Shore, Judges' Clerk.
1 *Collins English Dictionary & Thesaurus* (4th ed, HarperCollins Publishers, Glasgow, 2006) at 403.
2 Catherine Soanes and Angus Stevenson (eds) *Concise Oxford English Dictionary* (11th ed. Oxford University Press, New York) at 491.
3 David M. Walker *The Oxford Companion to Law* (Oxford University Press, New York, 1980) at 434.
4 Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008, cl 13.
5 Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules, cl 13.1
6 Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules, cl 13.2.
7 Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules, cl 2.
8 Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules.
9 New Zealand Law Society "Appearing in courts and tribunals" <http://my.lawsociety.org.nz/in-practice/information-for-new-lawYERS/new-zealand-law-society-guide-for-new-lawYERS>.
New Zealand Law Society "Etiquette Guidelines for Counsel in Court" (May 2009) <http://my.lawsociety.org.nz/in-practice/practising-law/resources/etiquette-guidelines-for-counsel-in-court.pdf>.

Inside Court

Be *punctual* – arrive on time, including after adjournments. Tardiness is invariably noted by the Judge and is an imposition on opposing counsel, the parties, witnesses and the Court.

Senior practitioners are given precedence in terms of seating. QCs sit at the front right hand seat. Avoid that spot.

Stand up when the Judge enters the Court and wait until the Judge is seated before you sit down.

If the Judge bows, bow back. Bow as you enter the Court, and as you leave if the Court is still sitting.

When your case is called, stand up and state your name, identify which party you appear for and then sit down while opposing counsel speaks.

Do not advance an application until all counsel have been announced.

Stand up whenever you are addressing the Judge, or the Judge is addressing you. Only one counsel should be standing at any one time. Sit down when opposing counsel is talking.

Do not interrupt the Judge. Only interrupt opposing counsel if it is necessary to do so, for example if they are asking a question which you take objection to.

Use the microphone – *speak clearly and in a measured way*. Do not wander around, either physically or verbally. Do not approach the Judge or the witness without first seeking leave. Ask permission from the Judge if you wish to take time to speak to your client or opposing counsel.

Watch the Judge's pen/typing. Your persuasive submissions may be lost if the Judge is unable to keep up with them.

The Court is a *place of solemnity*. It is not the forum for idle gossip, raucous laughter or inane jokes. Do not talk unless it is in relation to the case. Being overly familiar with opposing counsel and/or the Judge can undermine the way in which the Court process is viewed.

*Be courteous and respectful*¹⁰ but not obsequious. Avoid getting into a heated exchange with the Judge, opposing counsel or the witness. It is likely to be counterproductive. Avoid the temptation to signify your derision of the other party's submissions by eye-rolling, snorting or laughing. Heckling and sledging is inappropriate in the Courtroom environment.

Always treat the opposing party with respect, even if you are finding their approach challenging. Be aware of the difficulties that many self-represented litigants face

¹⁰ See Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules, cl 13.2.1.

when they appear in Court, and do what you reasonably can to ease the process for them.

When you are asked a question by the Judge it is important to *listen to what is being said* and to try to *answer the question directly*. If you do not understand the question, do not be afraid to ask for clarification. If you do not know the answer, say so and offer to come back to it later.

Dialogue with opposing counsel is through the Bench, not across the Courtroom.

Engage in *reasoned, dispassionate argument*. You must be properly prepared – in terms of both the facts and the law. Do not expect the Judge to do your work for you. The Judge should be confident about your submissions – do not fluff the evidence or the case law. Thoroughly read the judgments you are relying on. Do not assume that headnotes are correct. Remember, you have a duty to put all relevant and significant law that you are aware of before the Court, whether it supports your client's case or not.¹¹

The Courtroom is not a stage. Do not use it as a venue to explore your theatrical aspirations.

Do not talk while a ruling or oral judgment is being delivered. Once the ruling or judgment is completed, you should stand and say 'as Your Honour pleases' regardless of whether you agree with the outcome.

Take the time to *develop an understanding of the procedural requirements* relating to the Court you are appearing in. Different Courts have different rules and procedures. Practice Notes are a useful source of information and most Courts have online resources. Check them in advance. It is not necessary to advise the Judge that you have never appeared in his/her Court before, or to profess ignorance of the Court's processes. Such a declaration is unlikely to bolster your client's confidence.

Know your Judge. It has been said that "research on past judgments and learning from those colleagues with differing experiences of appearing before your assigned judge is an investment of time well worth the possibility of writing it off as non-billable hours."¹²

Do not leave the Court if you are the last remaining counsel. You must wait for another solicitor to come into Court. You may then ask for permission to leave.

¹¹ Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules, cl 13.11.
¹² Dr Chris Gallavin "Play to your audience" (6 June 2014) New Zealand Law Society <http://www.lawsociety.org.nz/lawtalk/lawtalk-archives/issue-843/play-to-your-audience>.

Get the names right:

As the former Chief Justice of New South Wales has observed:¹³

It would never cross the mind of a barrister to address me in court, or generally outside court, by my first name. That is a privilege reserved for 18-year-olds in telephone call centres.

Accordingly...

- The Judge is “Your Honour”, “Sir” or “Ma’am” (pronounced “marm”)
- Opposing counsel is your “learned friend”, not Jim or Josephine
- The Registrar is “Mr or Madam Registrar”
- The Court-taker is “Mr or Madam Court-taker”
- The interpreter is “Mr or Madam Interpreter”
- The witness should be formally referred to, unless special circumstances dictate otherwise.

Courtroom fashion:

In the High Court, Court of Appeal and Supreme Court; a black or navy blue suit, with a white shirt or blouse, tie for men, black or navy shoes, and a gown (unless the hearing is in chambers and the Judge has dispensed with the need for gowns). In the District Court and Family Court; slightly less formal garb is acceptable. A gown is worn for jury trials. In the Employment Court and Environment Court gowns are worn.

If in doubt, err on the side of caution. The Courtroom is not the place to experiment with the latest runway look.

Refreshments and entertainment?

Your diet must be restricted to water – no takeaway coffee, sipper bottles or energy drinks. No food or chewing gum.

Avoid the use of electronic devices. If you are using one for research purposes, or for reasons connected with the case, advise the Court.

¹³ Spigelmann JJ, “Tolerance, Inclusion and Cohesion” (2006) 27 Aust Bar Rev 133, cited in Thomas F. Gaffney “Borrowed manners: Court etiquette and the modern lawyer” (2012) 86 ALJ 842 at 849.

Outside the Courtroom

If you meet a member of the judiciary outside of Court it is usual to address them as “Judge”. Do not seek to discuss your case with them.

Be punctual when attending a telephone conference and make sure that the Registrar has the contact number required to reach you. Be prepared and be clear. It is often helpful to identify yourself throughout the course of the conference, to enable the Judge to distinguish between the people who are talking.

Comply with timetabling orders. Do not assume that the Judge will share your sense of priorities or that an extension will be granted. Take care with the documents you file, and ensure they are *accurate and adequately supported*.

Avoid “smart tactics”, such as bombarding your opposing counsel with numerous last-minute applications. Judges are aware of such tactics and they often rebound.¹⁴ You are likely to be dealing with opposing counsel over a number of years. Take a long term approach to building your professional relationships.

Remember that your obligation to be courteous, responsive and professional extends to all phases of the litigation process, including telephone conversations with opposing counsel and correspondence. A useful yardstick in drafting correspondence is to consider *how a Judge is likely to view it at a later date*.

If your case settles, promptly advise the Court.

Always be polite to Registry staff. Do not overburden them with demands or unnecessary last-minute requests. They exercise a pivotal, often demanding, role and ought to be treated with respect at all times.

Why bother?

Court etiquette is of central importance to the administration of justice. It signifies the solemnity of judicial proceedings before an independent adjudicator¹⁵ enhancing community confidence. The rules ensure the efficient, dignified, professional, polite and orderly conduct of Courtroom proceedings.

On a more self-interested note, a failure to comply with the required standards of conduct may lead to disciplinary action, as recent high profile cases have graphically illustrated.¹⁶ You may be held in contempt. More generally, your reputation is one of your most important attributes as a lawyer. The respect of Judges, and other lawyers, is pivotal; once lost it is extremely hard to regain.

¹⁴ P. W. Young, “Court Etiquette” (2002) 76 ALJ 303 at 304–305.

¹⁵ Gaffney, above n 13, at 850.

¹⁶ See *Auckland Standards Committee No 1 v Murray* [2014] NZLCDT 88, *Auckland Standards Committee No 1 v Murray* [2015] NZLCDT 6.

Remember that:

... The unswerving performance of professional obligations of legal practitioners, and the need for the courts and the profession to trust the integrity of a practitioner is extremely important because, in many cases, in the nature of advice given, submissions made or evidence disclosed, there will be little if any effective supervision of the conduct of a practitioner as many of those duties are performed under privilege. The need for such trust to be extended with confidence to a practitioner, by fellow practitioners, courts and the public, is so great that it forms an essential part, not only of the practice of the law, but of the administration of justice. If conduct is discovered, or defects are exposed, which reveal that such trust cannot, or cannot confidently, be extended to the person concerned, then by that very fact the person can no longer be regarded as a fit and proper person to discharge the serious responsibilities of practice.¹⁷

¹⁷ *Legal Practitioners Complaints Committee v Pepe* [2009] WASC 39 (Supreme Court of Western Australia, 25 February 2009) at [48] cited in *Auckland Standards Committee No 1 v Murray* [2015] above n 16, at [17].