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All Rise:



Suiting Up when Showing Up for the Practice of Law in the COVID-19 Virtual Legal Environment

The age-old advice of “No matter how you feel, get up, dress up, and show up!”

may be worth remembering as more legal professionals participate in virtual environments due to the COVID-19 mandated court closures. What happens when “a member of the legal team shows up in a virtual courtroom?” This question sounds

like it could be the start of yet another lawyer joke. Instead, it is meant to conjure up images of a legal professional, dressed in gray or blue pants/dress suit, shirt, tie, wearing practical and/or low-heeled shoes, and carrying briefcase and laptop in tow. In other words, not only *showing up*, but *dressing up* for court (emphasis added). This standard attire for the legal professional, while not a precise uniform item like the

pristine white lab coat of the medical professional is similar in concept to the items of clothing associated with members of the professorial rank, such as glasses, loafers, and corduroy jacket complete with padding on the elbows. “Suiting Up” for the legal professional is donning a legal cloak of armor; the expected, respected, and arguably required clothing items worn when protecting and defending the rights of clients who entrust attorneys with their lives and/or livelihoods, personal, financial, and other matters so the attorneys may engage in legal battle on the clients’ behalf.

The Psychology of Clothing: the Experts Weigh In

The courtroom environment is one that commands respect, and so it follows that certain attire is expected of those who temporarily occupy its space. To better appreciate the impact clothing has not only on the wearer of the clothing, but also on those who observe them, we need only turn to our “fashion experts.” While there is no one common universal language that all people speak, clothing seems to be a language capable of communicating to everyone. Well-renowned Italian fashion designer Miuccia Bianchi Prada realized the universality of clothing and explains,

What you wear is how you present yourself to the world, especially today, when human contacts are so quick. Fashion is instant language.”²

The grand dame of British fashion and inventor of the miniskirt Barbara Mary Quant understood the visual impression clothing makes about the person wearing the clothing when she noted, “Fashion is a tool to compete in life outside the home. People like you better, without knowing why, because people always react well to a person they like the looks of.”³



Brenda Swauger, who has worked with fashion icons such as COACH, Paul Stuart, and Louis Vuitton, is often consulted to “advise both attorneys and their clients on how to dress for any situation.”⁴ While we may dismiss these fashionistas as biased or non-neutral experts with perhaps an exaggerated belief in the effects of clothing, non-fashion experts also concur. For example, Noble Prize-winning author Isaac Bashevis Singer acknowledged the transformative nature of clothing when he noted, “What a strange power there is in clothing.”⁵ In the play *Hamlet*, William Shakespeare wrote “apparel oft proclaims the man.”⁶ Philosopher Ernest Shurtleff Holmes’ claim that “Life is a mirror and will reflect back to the thinker what he thinks into it,”⁷ may be expanded to include: “Clothing is a mirror that reflects back to the wearer the image the wearer projects to others.”

Academic scholars have also weighed in. Enclothed Cognition is a term coined by Hajo Adam and Adam D. Galinsky, two cognitive psychologists at Northwestern University. Galinsky asserts “It has long been known that clothing affects how other people perceive us, as well as how we think about ourselves.”⁸ In their study, they “examin[ed] the psychological and performance-related effects that wearing specific articles of clothing have on the person wearing them.”⁹ “Enclothed cognition involves the symbolic meaning of the clothes and the physical experience of wearing the clothes.”¹⁰ For example, doctors (who wear coats) are generally thought to be highly intelligent, precise, and scientific

thinkers. Artistic painters are generally thought to be creative, free-spirited types. “[Thus,] when a person ascribes a symbolic stereotype to an article of clothing while wearing that article of clothing, then the characteristic, strength, and/or ability symbolized by the clothing itself actually seems to have measurable effects on psychological states and performance.”¹¹ Enclothed Cognition then is “the link between what we wear and how we feel.”¹² Such claims seem to be borne out by the bestselling book *Dress for Success* by John T. Molloy and the popular TLC television show *What Not to Wear*,¹³ which illustrate the power of clothes and perceptions about the person wearing the clothing.¹⁴

Anabel Maldonado’s article, “Clothes as Therapy: When & How Does Enclothed Cognition Work?” contradicts some claims of Adam and Galinsky. She explains, “I didn’t spend £1,250 on a Saint Laurent bag to prove to my friends that I’m raking it in. I spent that saved-up cash on the bag because of how it makes *me* feel (emphasis added). Every time I look down at it, it reminds of me who I want to be.”¹⁵ Maldonado posits that the luxury handbag inspires her to stay

motivated to achieve her goals. She believes, “These inspirational pieces provide a tangible touchstone for qualities we are lacking, but want more of.”¹⁶ In her pilot study, she found “clear correlations between mood, personality and aesthetic preference” in regard to clothing.¹⁷ “Freelancers who work from home know that wearing pajamas or sweats all day doesn’t foster a focused mindset....it helps to put on some ‘real clothes’ to get into productive mode.”¹⁸ The findings reported by Adam and Galinsky as well as Maldonado conclude that clothes do have a certain power/sway over the person who wears them, which may lead to intentional/unintentional perceptions about the person by those who observe them.

Robes of Justice, Court Customs and Traditions

Clothing is often associated with customs and traditions. Images of kings and queens in regal purple attire come to mind. The color purple is also associated with law and seems to have originated from the close association of legal counselors to the royals.¹⁹ Despite, “the changes in its history, the



U.S. Supreme Court has retained” many institutional traditions “that it is in many respects the same institution that first met in 1790, prompting one legal historian to call it, ‘the first Court still sitting.’”²⁰ Court customs and traditions are expected staples in the practice of law. For example, recognition of a justice’s seniority status on the U.S. Supreme Court, is visible in terms of where the justices sit vis-a-vie each other. “The Chief Justice (CJ) occupies the center chair; the senior Associate Justice sits to the right of the CJ; the second senior Associate Justice to the left of the CJ, alternating right and left according to seniority.”²¹ The designation of seating, rooted in tradition and respect for those who are at the senior level, also assists in removing any potential belief and visual perception of the justices of the court as divided by their judicial philosophies. This seating arrangement prevents like-minded justices from clustering together on the bench and forming what would appear to be a team of sorts. The Judicial Handshake is yet another display of unity by the court, which takes place as the justices file in and take their seats on the bench and before they begin their private deliberations in chambers.²²

Customs and tradition are also woven into the apparel of our courts in the United States. Most striking is the clothing, the long black robes worn by the nine Justices of the U.S. Supreme Court and judges in the federal and state courts in the United States, as they enter the courtroom and take the bench to preside over cases. The black robes of justice worn by the members of the U.S. Supreme Court dates back to the 1800s.²³ Notable exceptions were Chief Justice John Jay, “wearing robes with a red facing”²⁴ and Chief Justice William Rehnquist, adorning “his robe with four gold stripes on each sleeve.”²⁵ It is not just members of the judiciary who wear customary attire in court, but also attorneys. In the 1890s, when Senator George Wharton Pepper of Pennsylvania showed up to court in what was regarded as “street clothes,” Justice Horace Gray remarked, “Who is that beast who dares to come in here with a grey coat?”²⁶



The attorney was allowed in court only after borrowing a “morning coat.”²⁷ Today, suits are the customary attire for attorneys appearing before the court.²⁸

The Legal Cloak of Armor, Expected Attire for Legal Professionals

Following rules and showing respect to the court earns the respect of the court. Legal professionals understand what may be conveyed by their attire, especially to judges and juries. The first sentence of Christina Binkley’s article, “Opening Statements: What to Wear to Court,” illustrates this point. Binkley begins, “There’s a place where first impressions are even more crucial than at a job interview or at dinner with our future in-laws: the courtroom.”²⁹ Carmela Miraglia, a Massachusetts divorce lawyer states, “When the court sends out a Notice letting a party know the date and requirements of a scheduled hearing, across the middle of the documents in bold letters and surrounded by ***asterisks*** is the phrase: ‘*proper dress required.*’”³⁰ In “Dressing For (Legal) Success: Fashion Strategy for the Courtroom and Office” author Gabrielle Banks shares fashion tips for what to wear in the courtroom and how best to wear it. She includes stories about court personnel rendering a “Guilty/Not Guilty” fashion verdict about the attire of attorneys and judges, with critiques such as “great color combinations with brightly patterned ties; stylish



and classic suits; and impeccable shoes.”³¹ Noting the link between clothing and success, Julie Grant, a Court TV reporter and former Assistant District Attorney of Allegheny County, Pittsburgh informs us that “Sloppy attire encourages sloppy performance.”³² She adds, “I feel most confident and perform at my absolute best when I am dressed professionally.”³³ These statements about proper attire align with those expressed by the fashion and academic experts.

Dressing Up for Law, No Matter Where, No Matter When

During in-person court sessions, judges and anyone present in court observe the outward appearance of attorneys. Judges sometimes comment “about unbuttoned suit jackets, run-down heels or scuffed shoes.”³⁴ In the United States, a court’s authority to regulate an attorney’s dress is partially based on

statutory rules of conduct and ethics.³⁵ For example, “The Dress Code” policies adopted by The New York City Law Department provide for “business casual” attire for their “attorneys and for professional staff who interact with clients and other visitors to [their] offices.”³⁶ However, the policy cautions that “Traditional business attire should be worn in all circumstances where it is customary to dress in that manner.” This includes “appearances in court, meetings with clients or government agencies where traditional business attire is likely to be worn, depositions and meetings with third parties or adversaries.”³⁷ The policy further notes, “Lawyers must keep a set of traditional business attire in the office in case something comes up that requires attendance in such dress.”³⁸ To make certain the policy is clear and there is never an instance of attorneys not being able to perform their duties due to inappropriate dress, the policy also contains the following provision: “No lawyer or paraprofessional should be unavailable because he or she is not dressed appropriately, or appear dressed inappropriately because the lawyer did not have correct clothing available.”³⁹

An article that is a potential assigned reading for legal studies-students that can be used in classroom discussions or as a discussion board post exercise is “Ad-dress-ing Counsel Roanoke City Circuit Judge Describes Sartorial Standard.” In a letter to legal professionals, Judge Clifford R. Weckstein of Virginia shares his research (and good humor) on the topic of a dress code for attorneys to help promote “good advocacy, dignity, and decorum in the courtroom.”⁴⁰ Judge Weckstein believes “attorneys, their employees, law clerks, runners, law students and court employees appearing in court or in a judge’s office or chambers [should] dress in a manner befitting the dignity of the court.”⁴¹ He cleverly begins his missive about proper attire with a few lines from the movie *My Cousin Vinny*.⁴²

Court: Mr. Gambini, didn't I tell you that the next time you appear in my court that you dress appropriately?

Counsel: You were serious about that?



Expectations for attorneys' courtroom attire as depicted on television/in movies and detailed in state/local court rules, and court websites convey what is acceptable attire when appearing in court. Virtual court hearings, mediations, and client meetings are now taking place. Attorneys and legal educators have adapted to changes in how we meet clients and students by utilizing Blackboard Collaborative, Zoom, Cisco WebEx, Microsoft Teams, Google Meet/Hangouts, and Skype.⁴³ Do such changes in our ways

of meeting and communicating— within the virtual environment— bring with them a corresponding change in expectations of what is appropriate attire for the practice of law? The somber black robes worn by judges and suits worn by attorneys lend credibility, show respect, and inspire confidence in those in the legal profession. Judges, attorneys, and juries of our peers conclude that these same qualities are needed whether the legal professional appears in court in-person or in a virtual manner.

Several judges have shared their experiences about the informal clothing phenomena during virtual court sessions. Similar to how Judge Weckstein informs legal professionals about dress codes, Judge Dennis Bailey of the 17th Judicial Circuit of Florida penned a letter when “lawyers were getting a little too lax” in their online court appearances.⁴⁴ For example, a male lawyer appearing shirtless and a female attorney appearing to still be in bed under the covers. He remarks “putting on a beach cover-up won’t cover up you’re poolside in a bathing suit. So, please, let’s treat court hearings as court hearings, whether Zooming or not.”⁴⁵ To read the letter in its entirety see, “Virtual View From the Bench-During The COVID-19 Pandemic, A Letter from the Honorable Dennis Bailey.”⁴⁶





An article in the *National Law Review* regarding virtual hearings during the pandemic actually reminds clients to dress appropriately for virtual court: “Hearings are still formal judicial hearings...Just be cognizant of the fact that the judge can see you throughout the proceeding.”⁴⁷

In general, the media and members of the public, including our legal studies students, may attend and observe in-person court hearings. In fact, many legal educators assign court observation reports to students. The opportunity to do so remains true even in the virtual legal environment. Broward Circuit Chief Judge Jack Tuter explains, “There are people watching from all over the country.” He warns us that “Judges don’t always catch everything—that doesn’t mean the public won’t.”⁴⁸ During a virtual hearing before Judge Tuter, a member of the public “tuned in to watch his court’s first broadcast online” and thereafter, filed a complaint with the court regarding the inappropriate

attire and behavior of attorneys on video/camera.⁴⁹ Judges are not the only individuals who have rendered opinions about appropriate attire in the virtual environment.

Kansas City attorney Charles W. Gotschall provides procedural and practical reasons why proper attire is important in a virtual setting. He posits that since there “are likely local rules in every circuit requiring attorneys to be properly attired, [j]ust because you’re sitting in your living room or home office doesn’t mean those rules shouldn’t be followed.”⁵⁰ He cautions legal professionals to literally “not get caught with your pants down,” and asks us to imagine “sitting in your home office or dining room office, and your court hearing starts. What do you do when [the bailiff exclaims:] ‘All rise’ and you’re wearing shorts?”⁵¹ To avoid such problems Broward Public Defender Howard Finkelstein instituted a standard “virtual Public Defender seal used as a backdrop” when

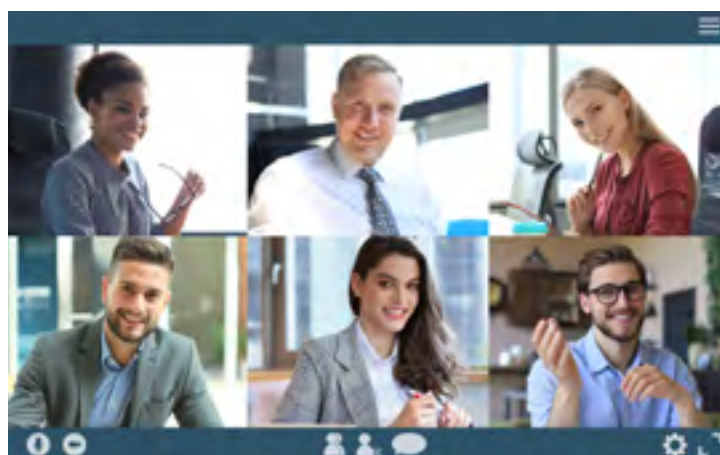
attorneys are online and also trained attorneys and the legal staff “on dressing appropriately to avoid any possible embarrassment.”⁵² Taking proactive measures may guard against potential problems for attorneys, law firms, and legal agencies.

Paralegals Modeling Attorneys in Regard to Ethics, Work, and Dress



Legal educators acknowledge the value of peer mentoring that often occurs between students, such as between senior legal studies-students and novice or more junior legal studies- students. When teaching both the associate and bachelor level students, I often engage the legal studies students in discussions about employers’ expectations in regard to research, drafting, writing, and communication skills. The topic of clothing, more specifically proper work attire is also part of our discussions. I ask my students if they believe it matters how attorneys and legal personnel dress. Most of the senior students invariably say yes and explain the need for professionalism in the legal environment and the importance of a good impression both in court and for clients. For the most part, many of the novice/junior students

tend to shift the discussion and ask, “What does it matter what a person wears as long as you are able to perform your work well.” Such responses provide opportunities for the legal educator to share their own work experiences. For example, I explain that as a newly licensed attorney, I used several of my first paychecks to invest in gray and blue suits, white and blue collared work shirts, and black/blue comfortable low-heeled shoes. I understood that the law firm and the courts required this, and I also knew that our clients expected their attorneys and legal personnel to be dressed this way not only for court, but also when clients came to the firm to meet with us. This same sentiment is expressed in the article “What To Wear To The Courtroom | Court Dress Code The Importance Of Dressing Well When Meeting A Judge Or Lawyer.”⁵³ In this article, the author states, “You are being judged.... Everywhere we go our looks matter....It’s science. We want people to see us for who we are as a person; see beyond our appearance, and not judge us by our cover...We should! The fact is, human beings respond very strongly to visual stimuli.”⁵⁴ Essentially, professionalism is communicated by the quality of our work and our appearance.



Next, I ask the students to think about why they choose to purchase new clothes and dress up for parties, special occasions, dates, and graduations. They provide many of the same reasons, to look and

feel good; be confident; get noticed; inspire others that would apply to why legal personnel do the same in regard to their work attire. “Dressing Up” in professional attire for legal professionals inspires trust and communicates confidence and respect for oneself and for judges, attorneys, clients, legal and court personnel with whom we work. I also ask my students to comment on how comfortable it is when wearing new clothing purchases or items like tie, jacket, or high heels. Humorous stories of mishaps are shared as students discuss how uncomfortable it is at times when wearing a new outfit or how sore their feet were from a new pair of shoes not yet worn in. I encourage students to come up with solutions for such situations so this does not occur when they begin work in a legal environment. Legal studies students already working in the legal profession or in an internship site often share their experiences when wearing suits. They suggest Suiting Up for class, at least once, to better prepare legal studies students for Suiting Up for law when working in the legal profession.



A partner of a law firm at which I was an associate attorney once said to me, “If candidates for a job position do not care enough about themselves to make sure their resumes are free of errors/typos, I do not believe they will care enough about the work they produce for our firm and on behalf of our clients.” Attorneys and paralegals as professionals must not only show up capable and ready for work, but also dress up or rather suit up in the required work attire to inspire confidence, earn trust, show and gain respect, all of which are qualities necessary for and integral to the legal profession.

BIOGRAPHY

Marissa J. Moran is an attorney admitted to practice before the U.S. Supreme Court, New York State, New Jersey, the United States Southern and Eastern Districts of New York, and New Jersey District Courts. She received her B.A. in Economics, cum laude, from Fordham University and her law degree from Brooklyn Law School. Prof. Moran interned at the U.S. Attorney’s Office, Southern District of New York/SDNY and upon graduation, clerked in the SDNY for Bankruptcy Chief Judge Burton R. Lifland and worked as an associate at the firms Kaye, Scholer, Fierman, Hays, & Handler and Emmet, Marvin & Martin located in NY City. She is a professor in the Department of Law & Paralegal Studies, New York City College of Technology, CUNY, where she currently teaches Legal Technology, Forensic Science & the Legal Process, and Legal Document Preparation. She has taught business law courses as an adjunct clinical professor at NYU-Stern School of Business. Her area of scholarship and her published articles relate to the blended areas of technology & law and forensic science & law. She served as the campus grievance counselor from 2010-2016 working on a record number of

cases about faculty contractual issues related to employment. She serves as ABA, International Legal Education Committee Year-In-Review editor and as a judge for the ABA Law Student Division National Appellate Advocacy Competition; the Cardozo Law School International Moot Court Honor Society, Oxford Competition; and as a national/local judge for the “We the People” constitutional law and mock trial competitions.

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