

CHAPTER 21

COURTROOM DO'S AND DON'TS

The Honorable Ramón A. Pagán

Washington County Circuit Court

The Honorable Ulanda L. Watkins

Clackamas County Circuit Court

COURTROOM ETIQUETTE AND DO'S AND DONT'S WRITTEN BY JUDGE

MAURER AND JUSTICE NELSON

AND ADOPTED BY HONORABLE ULANDA L. WATKINS

It is important for lawyers to know that how they behave in a courtroom has a direct impact on the outcome of their case, as well as their reputation, client development and overall career.

While there are many unknowns when it comes to trying your case, using good courtroom etiquette and technique will benefit both you and your clients.

When appearing in court, lawyers who abide by the following rules will optimize their cases:

PROFESSIONALISM

A. Make sure that you familiarize yourself with the specific requirements of the judge before whom you will appear. If the judge has a webpage with information about his or her preferences, make sure you study it. Learn the judge's rules and follow them (even if other lawyers do not)

B. Be on time for all court appearances. This advice extends to your client and your witnesses.

C. Be courteous. Introduce yourself to the court staff and treat them with the utmost respect. This includes but is not limited to: Courtroom clerk, Judicial Assistant and Corrections deputies. These people are like members of our family.

D. Advise the court in advance if you have resolved your case and will not need the hearing. With this being said – it is important to accurately estimate how much time your case will take and adhere to it except in extraordinary and/or unforeseen circumstances.

- E. Confer and follow through on your commitments.
- F. Remain formal in all interactions. Always refer to the judge as “Your Honor.”
- G. Both you and client will rise when the judge and jury enter and leave the courtroom.
- H. Always stand when speaking to the judge, making an objection, argument or questioning a witness. Never interrupt and make all your arguments to the judge and NOT to opposing counsel. Make sure all of your arguments are made before the judge gives their ruling. (Do not make comments “for the record” after the judge has made their ruling).
- I. Ask permission to approach a witness, move around the courtroom or publish exhibits to the jury.
- J. Strike from your written and oral arguments all disparaging remarks.
- K. Jurors do not like to wait for long periods of time in the jury room and do not want their time wasted. Neither does the court.
- L. Be aware that the microphones feed into the judge’s chambers.
- M. Remember – you are never offstage if you are within sight or hearing distance of any juror.

PREPAREDNESS

- A. Turn off your smartphone and do not send text messages and/or email messages while court is in session, especially if you are addressing the court.
- B. When using technology, test it in the courtroom before the proceeding begins. If you are using a video, PowerPoint, or other “high tech” device, make sure the equipment works and you know how to operate it. Cue the equipment to begin at the correct place.

C. Be prepared and meet deadlines. Use a trial notebook. Make sure all your exhibits are marked and ready to go and give a copy to the judge. Confer with opposing counsel and stipulate to as many exhibits as possible.

D. If you know a matter for the court is going to take more than a few minutes, let the judge know in advance so it can coincide with a jury break.

E. Do not expect the judge to “just know” – it is your job to educate the judge.

F. Know the rules – civil procedure, evidence and local. Never guess – have the appropriate citation/case law to back up critical ruling and always know the basis for your objection. Do not use speaking objections.

G. Have your witnesses ready to go. Go over their testimony beforehand.

H. Work Backward: pull out the jury Verdict and Jury Instructions early in the case. Fit your evidence and arguments into the Verdict and the Instructions.

I. Judges do not like surprises. Keep your judge apprised of the order of witnesses, which exhibits you intend to offer and legal issues that are critical to your case.

PRESENTATION

A. Speak slowly, loudly, clearly. Courtrooms have terrible acoustics.

B. Stand up and sit up. Be mindful of your facial expressions.

C. State your name for the record every time.

D. Tell the judge what you want before you give background of your case.

E. Learn the stages of a trial: 1. Jury selection. Do not use it to condition the jury.

1. Know what jurors you want.

2. Opening statement: Roadmap – not argument.

3. Witness presentation: Get to the point. Do not interrupt your witness. Use cross sparingly unless you are very skilled. No “why” questions. (DV case: you are defending and want to establish that the witness is exaggerating injury. No “well, if your injuries are so bad, why didn’t you call the police?”)

4. Closing argument: succinct, using Jury Instructions and Verdict form.

- F. No expression of your personal opinion.
- G. Do not show exhibits to the jury before they have been received.
- H. Watch the jurors!!
- I. Direct all concerns or remarks to the bench and never to opposing counsel. Do not show anything but professionalism to opposing counsel and witnesses in front of the judge and jury. Remember rudeness is not valued or rewarded before a judge or jury.
- J. Do not engage in ex-parte discussion with the judge. Talking about topics not involving the case is acceptable.
- K. If you use a microphone, make sure it is off when court is not in session and/or leave it with the courtroom staff. You do not want to have a “hot mike” incident that can affect the outcome of your court proceeding.
- L. Be genuine and polite at all times while being yourself. It will not work to be someone you are not.