COURT DECORUM

1. DRESS

1.1 **Acquaint yourself with the guidelines promulgated insofar as dress is concerned for appearances in the High Court**.

In principle, all practitioners are required to robe which includes the wearing of a bib as well as a dark jacket and pants or skirt. The shirt or blouse must be a pristine white.

As far as shoes are concerned, they must be either black or brown and women must ensure that they do not wear open sandals or shoes without a strap or a back around the heel.

Pants or skirts must be either black or a dark grey.

Where, however, you are required to move an application before a Judge outside normal Court hours and you are not appearing in a Court room, it is not necessary for you to formally robe or even wear a suit. However, your dress should still be smart.

1.2 **When about to enter a Court ensure that you are properly robed. Do not put on your robe in Court**.

1.3 **Do not robe when you are required to give evidence or are a litigant or, for any other reason happen to be in a Court room where you are not formally appearing** (i.e. where you happen to have briefed Counsel or where, as a matter of curiosity, you want to follow the proceedings or if you have a watching brief).

A robe indicates that you are appearing on behalf of someone else in that court.

2. INTRODUCTIONS

2.1 **A practitioner should introduce himself or herself to the presiding Judge on the first occasion that the practitioner makes an appearance before the Judge concerned**.

This introduction must be made regardless of whether or not the practitioner knows the Judge personally.

2.2 **Where the practitioner has appeared before an Acting Judge who has since been elevated to having a permanent appointment, it is correct to reintroduce oneself to that Judge**.

2.3 **When you are appearing before a Judge for the first time, and need to introduce yourself, invite your opponent to accompany you when you make your introduction.**

As is implied above, you should make the introduction before the Court sits. However, where one is required to appear in Court at short notice and the opportunity has not presented itself to introduce yourself to the presiding Judge then, when the matter is called, stand up and announce your surname (please note surname only) to the Judge and apologise for not having made the introduction earlier. Do not refer to yourself by any title such as “Mr” or “Miss” or whatever – simply provide the Judge with your surname and apologise for not having made the introduction in Chambers earlier.

3. ADDRESS / TITLES

3.1 **Judges in Provincial Divisions are called "My Lord" and "My Lady". In the Supreme Court of Appeal and the Constitutional Court the title "Justice XXX" is used**.

Hence, when addressing the present Chief Justice you would do so by saying "Justice Langa" (Note: in these Courts one does not make reference to Mr or Mrs or Miss when referring to specific Judges). However, in Courts where more than one Judge presides it is proper to simply refer to the Judges, collectively, as "The Court".

3.2 **In Chambers one refers to the Judge as "Judge**".

3.3 **Never see a Judge directly – always ask his or her Registrar to take you through to that Judge's Chambers**.

If the Registrar is not available then you must ask another Judge's Registrar to announce your presence.

3.4 **When you are in the presence of a Judge whom you know personally it is not necessarily improper, within the confines of the Judge's Chambers, to refer to the Judge by the Judge's first name**.

However, if you are in the company of your opponent, do not use the Judge's first name if your opponent is not on first name terms with the Judge – in that instance, revert to the formal mode of address namely, "Judge".

3.5 **Do not proceed, ever, into a Judge's Chambers unless you have been told by the Registrar or have been asked by the Judge to enter**.

3.6 **Do not seat yourself unless invited to do so**.

These are not your Chambers. Should you at some stage be asked by a Judge to act as an assessor, remember that the Judge's Chambers are for the Judge alone. Find somewhere else to sit and have your tea.

3.7 **Where the bench is comprised of both women and men then you address yourself to the most senior Judge first.**

Should you be appearing in a Court where there is more than one Judge (such as in an appeal) you may address the Court as "My Lords" or "My Ladies". If a woman if the senior judge, begin by addressing her first, e.g. "My Lady, My Lords, I appear for ...". Where the senior Judge (i.e. the Judge who sits in the middle) is a man then you would address the Court in the following manner "My Lord and My Ladies".

3.8 **Should you be required to address a formal report to the Court address both sexes**.

You will note that the precedents for such documents invariably start with the following form of address:

> *"To the Honourable Judge President*
> *And to the other Honourable Judges of this Division:*
>
> *My Lords,*
> *..."*

This form of address is outdated because nowadays we have many women Judges. Therefore, when drafting a report you would address it as follows:

> *"To the Honourable Judge President*
> *And to the other Honourable Judges of this Division :*
>
> *My Lords and Ladies*
> *..."*

4. ENTERING AND LEAVING COURT

4.1 **On entering a Court, if the Court is sitting, it is proper to bow to the presiding Judge.**

4.2 **If you are seated in Court when the Judge enters, one rises, waits for the Judge to take his/her seat and then bows.**

4.3 **In the High Court, one does not ask to be excused.**

However, wait for the next matter to be called before you rise from your seat and leave.

4.4 **When leaving Court bow just before you open the door.**

4.5 **If you are leaving Court and the Court is in session at the time, make sure that you do not walk between the Judge and the legal representative who happens to be addressing the Judge at the time**.

In fact, do not walk behind a legal practitioner who is on his/her feet but wait for that practitioner's matter to be disposed of and leave the Court when the opportunity arises.

4.6 **Never leave a Court with but one practitioner present**.

If your matter happens to be the second last matter on the roll (and the last matter is unopposed) it will mean that upon you leaving the Court there will be only one practitioner still present. Therefore, remain seated until the last matter has been disposed of (*incidentally, although these guidelines do not pertain to the etiquette in the Magistrate's Court, one should not "ask to be excused" in a Magistrate's Court if one is appearing in the last matter on that Court's roll for the day – be it a criminal matter or a civil matter*).

5. WHEN IN COURT

5.1 When to give your name on your matter being called.

In the past, it was never necessary to give one's name when a matter was called because, having made the introductions, the Judge knew who you were.

However, in Durban, the recording machine operators were sometimes not sure as to the identity of Counsel or of the attorney who was appearing. For this reason, practitioners were requested that when their particular matter was called that they provide their name so that the machine operator would be able to note this.

In Pietemaritzburg, it is not required that you give your name when your matter is called, however, you should make a point of ensuring (before the Court begins) that the machine operator does in fact know who you are.

Insofar as trials are concerned, in Durban, one would still provide one's name in the Court where the trial roll is called. However, once the trial has been allocated to a Court then you should not need to give your name when you place yourself on record after the Judge has entered the trial Court room.

5.2 **When in Court, remain behind the legal representatives' table.** If for any reason you need to move from your seat (such as to take an instruction from your client or to hand a document to a witness whilst the usher is not in Court) then ask the Court for leave to do so.

5.3 **When referring to a judgment do not quote the citation unless asked by the Judge for the full citation**.

It is sufficient that you give the names of the parties and the Court.

5.4 **If you are appearing in Motion Court and, for whatever reason, your matter which, although on the unopposed roll, is likely to take more than a minute to deal with, ask that the matter stand down until the end of the unopposed roll.**

For instance, there might be some short argument with regard to a question of cost of an adjournment or there might have to be some evidence led with regard to quantum, in which event, stand the matter down.

5.5 **When appearing in Court to note a judgment, do not place yourself on record when the matter is called**.

All that is necessary is to stand up and say “As the Court pleases” after the judgment is handed down.

5.6 **When referring to another Judge of the same Division, <u>do not</u> refer to that Judge as “Your Brother” or “Your Sister”**.

That form of address is to be reserved for Judges only and it is for them, and them alone, to refer to each other as brother and sister.

5.7 **When seeking an Order by Consent, try wherever possible, to hand up a written Draft Order Prayed** (even if it is simply to the effect that the matter is adjourned *sine die*).

Where the Order sought is longer than a few words, <u>always</u> hand up a Draft Order Prayed (do not put yourself in a position of “giving the Judge dictation”).

5.8 **Do not lecture a Judge on the law**.

Invariably, Judges know more law than you do.

5.9 **Do not use the words "Thank You" in Court**.

The Judge is not there to gratify you. If you are required to express your gratitude, use the formal words "I am indebted to this Court".

5.10 **If you are a junior practitioner, do not sit in the front row of the Court room**.

Instead, sit in the second row or, if need be, stand.

5.11 **When referring to your opponent do so by referring to him or her as "My learned friend**".

5.12 **If you make a mistake, take responsibility for it and apologise**.

We all make mistakes. Judges usually indulge practitioners who forthrightly admit that they have been in error. It is, however, most annoying when a person tries to put the responsibility on someone else and, this, on occasion, has even led to disciplinary steps being taken against the practitioner concerned (where the explanation/excuse/recrimination proffered by the practitioner has been rejected).

5.13 **Do not ask the Court for "leave" to call a witness.**

One sees practitioners make this mistake every day, in motion court, in dealing with unopposed divorces. A Judge cannot stop you from calling a witness. Having dealt with any issues relating to service, proceed directly, and simply announce "I call the plaintiff".

5.14 **When dealing with a divorce, acquaint yourself with the presumption contained in S4(2) of the Divorce Act, 1979 and lead your witness accordingly**.

There are three presumptions which indicate that the marriage has broken down irretrievably – two of which we encounter on an almost daily basis.

Where the parties have not lived together as husband and wife for a continuous period of at least one year immediately prior to the date of the institution of divorce, it is not necessary to lead any further evidence relating to the breakdown of the marriage. It is therefore unnecessary to make reference to the misconduct of the other party once the witness has testified to this fact because the presumption will automatically operate.

By the same token, where the defendant has committed adultery and the plaintiff finds it irreconcilable with the continued marriage relationship, the marriage relationship is presumed to have irretrievably broken down and it is not necessary to lead any other evidence with regard thereto.

5.15 **Where the parties in a divorce have concluded a settlement agreement, and it is your intention to seek relief either in accordance with that which is claimed in the particulars of claim or in accordance with an amended order prayed, prove the settlement agreement, but do not lead the witness with regard to its contents.**

There is nothing more irritating than a legal practitioner leading a witness about that which is contained in a settlement agreement when the settlement agreement, itself, is already before the Judge. Simply ask the witness if that is the settlement agreement and if it is his or her

signature which appears on the last page and that of the defendant which appears on the last page.

Once this has been done, the agreement can be handed up as an exhibit and you can then hand up a draft amended order prayed. Your assurance, to the Judge, (don't forget that you are giving an assurance as an officer of the court) to the effect that the amended order prayed is consistent with the terms of the settlement agreement suffices.

5.16 **Where a defendant has agreed to pay maintenance in a particular amount, it is not necessary to lead evidence with regard to the defendant's ability to pay such maintenance.**

In accordance with the provisions of S.7(1) and 7(2) of the Divorce Act, a Court may grant an order for maintenance [against a person who is obliged to maintain another] in circumstances where :

(a) there is a written agreement between the parties; or

(b) in the absence of there being a written agreement, where the Court finds that there is both a need for maintenance and an ability to pay that maintenance.

Hence, once the defendant in a divorce has agreed to pay maintenance, it is not necessary to lead any further evidence with regard to the need, the amount or the defendant's ability to pay.

Conversely, where there is no written settlement agreement, then it is necessary to lead evidence as to the need for such maintenance and the defendant's ability to pay that maintenance.

5.17 **Judges have *"concerns"* or *"difficulties"* but <u>not</u> *"points"*.**

Do not refer to them as *"points"*. Judges do not take points! So, do not say, *"I take M'Lord's point"*. Rather say, *"I appreciate the difficulty [or the concern] raised"*.

5.18 **When you are experiencing a long wait in Court, conduct yourself with dignity and, if you choose to read something, be selective about what you read.**

Sometimes, yours will be the last matter to be called in Motion Court or you might be involved in a trial where the evidence being led does not impact, in any way, upon your own client's interests [for example, a trial within a trial relating to the admissibility of a confession of a co-accused].

In those instances, do not slump in your chair or put your head down on the table in front of you.

It is perfectly acceptable to read documents pertaining to your own matter.

If you choose to read something else, be selective about what you read. Do not read a newspaper or a magazine or even lecture notes. Instead, take a law report with you or, alternatively, a legal text book.

5.19 **Where a colleague who is acting for another party in your matter has, in his/her cross-examination of a witness, competently dealt with the issues insofar as they pertain to your own client, do not feel obliged to also cross-examine the witness.**

If a witness' evidence has been disposed of, it has been disposed of. Don't feel that you have to *"be seen to earn your fee"* by rehashing a cross-examination. It is most annoying to everyone in the Court room

and is a waste of time. Sometimes you will even undo the good work done by your colleague.

5.20 **Do not cross-examine a witness who has given evidence which has no bearing upon your own case.**

Many inexperienced practitioners feel that they are under an obligation to challenge the evidence of every witness. Sometimes the evidence led by the particular witness concerned is completely *"neutral"*.

For instance, in a criminal matter, you might be appearing for an accused who has raised an alibi defence to the murder charge. In such circumstances, it would be unlikely that the evidence of the post mortem will have any bearing, at all, on your client's defence. Therefore, what point would there be in cross-examining the pathologist?

By the same token, if you are appearing in a criminal matter where there are two accused and there is a trial within a trial being conducted in respect of an admission or confession or pointing out by the other accused – that issue has no bearing, at all, upon your own case. It is almost inconceivable that there would be any need to cross-examine any of the witnesses in the co-accused's trial within a trial. The Judge will, as a matter of courtesy, turn to you to ask if you have any questions of those witnesses. When that happens, indicate that you don't.

5.21 **Do not feel that you have to present a full argument when the circumstances indicate that an argument on the issue is no longer necessary. This is particularly so when a colleague has already advanced the same arguments as you were going to advance or where the Court has indicated that its concerns accord with what you were going to submit anyway.**

In the same way it is unnecessary to cross-examine a witness who has already been discredited or cross-examine a witness whose evidence does not pertain to your client's case, there is no point in rehashing that which has already been done before – particularly where the Judge has already indicated that he/she will be finding in your client's favour.

Where a Judge has already given that strong indication to your opponent, do not stand up and say something to the effect that you *"endorse the views"* of the Judge concerned. The Judge is very likely to turn upon you at that point and tell you that no formal finding has been made. Instead, say something along the lines of *"during the course of the exchange (do not state "argument") with my learned friend the question of xxx was raised. In my submission, there is a further difficulty which was not canvassed and it is this '[try and summarise what you want to say in about two sentences only]'.* Then sit down.

6. DEALING WITH OTHERS

6.1 **Always introduce yourself to your opponent**.

6.2 **Never make your client's case your own or, put differently, do not lose your objectivity and emotionally align yourself with your client's case** – even if you believe that your client is in the right. Certainly don't judge your colleague for acting for the other party because, next time, you might be acting for "the bad guy".

6.3 **Do not embarrass a colleague**.

In the event that you have a point which you believe will take your opponent by surprise when you announce it in Court, advise your opponent of this before you go into Court. Similarly, if you are going to rely on a particular authority and your opponent might not be aware of it, draw it to your opponent's attention beforehand. By the same token, if your opponent is being misled by his or her client, don't lie in wait for your colleague to be embarrassed in Court by his/her client's misconduct.

6.4 **When you are in the presence of a number of colleagues, be as inclusive as possible and ensure that the conversation, insofar as you can determine it, is conducted in a language which everybody understands**.

7. RULES AND AUTHORITIES

7.1 **Make sure that, before you go into Court, you have read up the relevant Rule and have acquainted yourself with any applicable provisions of any Statute or leading case or Practice Directive.**

In presenting your case you should be in a position to refer the Court to any appropriate authority should the Court require it.

7.2 **There is very often an overlap between good etiquette and legal ethics. Make sure that you have acquainted yourself with all the rulings and ethical rules of your own professional body**.

7.3 **When you are required to move an application without notice, make sure that all facts (including facts unfavourable to your client) are disclosed to the Court**.

Also, draw the Judge's attention to any issues of law which might be ambiguous or which might not necessarily be in your client's favour.

WHAT HAS BEEN SET OUT ABOVE IS NOT AN EXHAUSTIVE LIST OF THE DO'S AND DON'TS OF APPEARING IN THE HIGH COURT. THERE ARE FOUR PRINCIPLES WHICH, IF APPLIED TO ANY GIVEN SITUATION, WILL USUALLY SUGGEST THE CORRECT ANSWER AND THEY ARE THE FOLLOWING:

(a) A lawyer's first and overriding duty is not to the client, but to the Court.

(b) The lawyer must act, at all times, with integrity.

(c) The lawyer is there to advance the best interests of his/her client without fear or favour to the best of his ability – whilst conducting himself/herself honourably and honestly.

(d) One has a duty of courtesy towards Judges, opponents and witnesses alike.