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Fashion Sense

Personal appearance in Texas courts.

BY **CHRISTOPHER OGOLLA**

“Some of our court staff have multiple chemical sensitivity illness. Please do not wear any scented aftershave or hair spray to court. Please note that scented chemicals remain in clothing unless cleaned. If you normally use scented chemicals, please refrain from doing so and please wear cleaned unscented clothes to court. If you are wearing scented chemicals today, do not enter court room number _____. Please go directly to the filing window.”

This notice in an immigration court in Houston raises some interesting questions about appropriate attire in the courtroom. What you wear in court can have negative consequences on your case. If you are representing yourself, learn the local court rules before you go to any court. If you have an attorney, be sure to discuss proper clothing with him or her.

CAN A COURT REQUIRE A SPECTATOR, LITIGANT, OR WITNESS TO DRESS IN A CERTAIN WAY?

Yes. Courts have an inherent power to prescribe rules of procedure or practice that are necessary for the smooth administration of justice. Although some of the rules reflect individual preferences of a particular judge, most are meant to maintain professional dignity in the courtroom. Both federal and state courts require that all persons appearing in court should show respect and decorum and that everyone be in proper attire.

WHAT HAPPENS IF I DON'T DRESS APPROPRIATELY?

Failure to observe the local rules may result in sanctions, both for you

and your attorney.

A judge in Lake County, Illinois, ordered a defendant to be jailed briefly after the judge held her in contempt for wearing an offensive T-shirt. In Michigan, a defendant was turned away from the courtroom for wearing black jeans; he missed his traffic court appearance and was fined. A defendant in Bakersfield, California, missed her court date after being refused entry for wearing flip-flops.

In Texas courts, however, instances of personal appearance-based sanctions are rare. In *Nguyen v. State*, 977 S.W.2d 450 (Tex. App. 1998), the defendant was convicted of murder and engaging in organized crime activity after shooting someone outside a restaurant. He appealed, asserting several points including that the court erred in denying his request to order courtroom spectators to remove large buttons with a photograph of the deceased victim. The court rejected his appeal, noting that there was no evidence of external juror influence from the buttons.

WHAT IS PROHIBITED AND NOT PROHIBITED IN TEXAS COURTS?

Guidelines vary for litigants, witnesses, and spectators. For example, under the local rules of practice for the district courts in Collin County, “[a]ll litigants and spectators shall wear appropriate attire and conduct themselves in a dignified and courteous manner.” Other courts are more specific. According to Rule 4.07 of the 2014 amended local rules for the civil courts of Dallas County, attorneys and litigants are required to read or familiarize themselves with the local rules of deco-



rum, which prohibit “casual cotton pants; denim pants, jeans, or jean jackets, shirts or skirts; any tight, short, sleeveless or revealing clothing; shorts, skorts, capris, and crop pants; sweat suits and other athletic like attire such as leggings, spandex and drawstring pants, t-shirts, golf shirts, and casual tops/shirts and pullovers, and athletic footwear, flip flops, thong sandals and other types of casual sandals, topsiders and moccasins.”

WHAT IF I DON'T HAVE A SUIT?

Dress shirts and pants are appropriate for men; coats, jackets, and ties are preferable. Dark dresses are acceptable for women. Definitely avoid any perfumes. In certain courts, one can wear regional apparel. For example, a judge of the Lakeway Municipal Court reversed a decade-old ban on wearing cowboy boots in the courtroom after an outcry from several lawyers.

DO ATTORNEYS HAVE A DUTY TO ENSURE THAT THEIR CLIENTS ARE WELL DRESSED?

Yes, probably. In Ellis County, attorneys are responsible for informing their clients of the court’s dress code. Local

Rule 11 of the 18th and 249th District courts in Johnson and Somervell counties notes that “counsel shall be responsible to advise clients and witnesses of these rules to avoid embarrassment and delay.” Whether an attorney can be held liable for a client’s “inappropriate attire” is a debatable point, because ultimately what someone wears is his or her decision.

IF A JUDGE PROHIBITS ME FROM WEARING CERTAIN CLOTHES OR SYMBOLS IN COURT, ARE MY CONSTITUTIONAL RIGHTS VIOLATED?

Generally, a litigant, witness, or spectator should be allowed to wear suitable clothing of his or her choice in the courtroom. However, the First Amendment protection must be balanced with what impact the religious articles may have on court proceedings, and judges have been known to prohibit the wearing of religious symbols in court. Fort Hood shooter Maj. Nidal Hasan appeared with a beard in the courtroom (a violation of military regulations), claiming that his Muslim faith required it. The original judge presiding over his trial ordered him to shave, but that decision led to appeals that ultimately allowed Hasan to keep his beard for the remainder of the trial. In 1996, Patricia Lykos, then judge of the 295th Civil Court in Harris County, was alleged to have ordered an expert witness to remove his yarmulke or be barred from testifying.

There may be instances where denying access to courts because of appearance may infringe on rights such as due process (particularly for a litigant or a witness).

The U.S. Supreme Court teaches in *Mathews v. Eldridge*, 424 U.S. 319 (1976) that some form of hearing is required before a person is finally deprived of a property interest. The court stressed that “the fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner.” It follows, therefore, that if one is prevented from participating in a court hearing because of attire, arguably, a due process issue may arise.

On the other hand, contending that holding an individual in contempt be-

cause of what he or she is wearing in court violates that individual’s constitutional rights is a much more difficult argument to make. Why? First, the decision to hold one in contempt mostly occurs because of the individual’s appearance or attire in court, and often after he or she has been given a warning or an opportunity to dress more appropriately. The individual cannot, therefore, claim lack of notice and hearing. Second, courts have an inherent power to prescribe such rules of procedure or practice as may be necessary

for the proper administration of justice. Nevertheless, the U.S. Supreme Court has constrained, to some extent, the power of the courts to determine the personal appearance of litigants, witnesses, and spectators. **TBJ**



CHRISTOPHER OGOLLA
is an associate professor at Savannah Law School. He can be reached at cogolla@savannahlawschool.org.

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