

# Ad-dress-ing Counsel

## Roanoke City Circuit Judge Describes Sartorial Standard

*Editor's Note: When Roanoke City Circuit Judge Clifford R. Weckstein responded to a query from a fellow judge about dress codes for attorneys, he wrote more on the subject than he ever imagined he could. Through the General Practice Section, Judge Weckstein shares his research with the bar at large.*

*He made minor edits to update the original. He encourages readers to peruse the endnotes. And a disclaimer appears after the text, so the letter can be taken with the proper spirit — advancement of good advocacy, dignity, and decorum in the courtroom.*

March 8, 2006

The Honorable Jacqueline F. Ward Talevi, Judge  
Twenty-third Judicial District of Virginia  
Roanoke City Courthouse  
315 Church Avenue SW, Second Floor  
Roanoke, VA 24016

*The 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?*<sup>1</sup>

Dear Judge Talevi:

“Recent events lead me to inquire,” you e-mailed me, “does this circuit have a written dress code for attorneys? [The answer is “no.”] If not, is there an informal unspoken dress code for attorneys? [The answer is “yes,” though, as you will see, I would not choose the words “informal” or “unspoken.”] If not, do any other circuits have a written dress code for attorneys?”

Our subsequent discussions led me to conclude that you would probably like more than “yes” and “no” answers to the questions you posed — though I hasten to admit that I had no idea that I could write so much on this subject. I have consulted the other judges of the Twenty-third Circuit. They have confirmed that we are all on the same wavelength:

- While the judges of our circuit have not adopted a written dress code for attorneys, we do, indeed, have clear expectations about how lawyers will be dressed when they are in the courtrooms, judges’ chambers and “judicial corridors” of each of the courthouses.
- We expect lawyers to be attired *professionally* when they are in a courtroom, judge’s office, or judicial corridor, without regard to whether they are planning to see a judge, or whether they were “not planning to come to the courthouse today.”
- Our expectations are based upon well-established standards of professional attire that apply not only to “a lawyer appearing

in a court of record in Virginia,”<sup>2</sup> but to lawyers appearing in state and federal courts throughout the United States. (And you can be sure that these standards, and our expectations, are not “unspoken” when, for example, a lawyer shows up in a circuit judge’s office wearing a polo shirt.)

As far as I know, no Virginia circuit has adopted a written dress code for lawyers. Code § 8.01-4 permits any Virginia district or circuit court to adopt rules “necessary to promote proper order and decorum and the efficient and safe use of courthouse facilities and clerks’ offices . . .,” which could include adoption of rules for the attire of lawyers, litigants, jurors, and witnesses.<sup>3</sup> A number of Virginia jurisdictions (including Fairfax, Arlington, Alexandria, Virginia Beach, and Rappahannock County) have posted on their websites instructions or guidelines about proper courthouse attire for parties, witnesses, spectators, and jurors. As discussed below, the Virginia Board of Bar Examiners has a “mandatory dress code,” and attorney attire is addressed in the *Virginia Bar Association Creed*.

What does it mean to be dressed “professionally”? To begin with, it means business attire<sup>4</sup> — not “business casual”<sup>5</sup> — but something closer to “business formal.”<sup>6</sup>

For a man, this means a suit or sport coat (one that he actually is wearing),<sup>7</sup> a tie (actually tied around his neck),<sup>8</sup> and remaining attire of comparable level of business formality.

For a woman, the expectation is comparable — for example, a suit (skirt or pants and a jacket, either with a top/shirt/blouse or buttoned jacket), or an appropriately businesslike dress, with or without a jacket. I know that I have seen women attorneys in the courtroom wearing a formal-looking blouse or tunic with a skirt or pants, and have thought that they looked entirely appropriate — completely professional.<sup>9</sup>

An attorney’s clothing must be neither too short, nor too tight, nor too sheer. “All attorneys and all officers of the court must be dressed in a dignified manner at all times in court. No attire or dress so flamboyant, disheveled or revealing as to create a distraction to the orderly conduct of court proceedings will be permitted.”<sup>10</sup> Lawyers appearing in court should, in the wonderfully archaic language of a Texas federal district court’s rule, “[r]efrain from assuming an undignified posture.”<sup>11</sup> That

is, “[t]hey should always be attired in a proper and dignified manner, and should abstain from any apparel or ornament calculated to attract attention to themselves.”<sup>12</sup>

Fashion excesses of the ’60s and ’70s—like miniskirts and leisure suits—led to confrontations between lawyers and judges.<sup>13</sup> In an oft-cited 1969 New York case, a 27-year-old female attorney appeared for trial wearing a miniskirt. “Prior to the commencement of any proceedings on behalf of the client, [the judge] made an order prohibiting petitioner from appearing as an attorney in his court until petitioner’s mode of dress was ‘suitable, conventional and appropriate.’”<sup>14</sup> The appellate court acknowledged that trial judges have the power to regulate attorneys’ attire in judicial proceedings,<sup>15</sup> but found “that the record fails to show that [the attorney’s] appearance in any way created distraction or in any manner disrupted the ordinary proceedings of the court. There is no suggestion that [her] dress was so immodest or revealing as to shock one’s sense of propriety.”<sup>16</sup> That, coupled with the fact that the judge’s order gave “no indication as to what mode or type of dress would meet the requirement of ‘suitable, conventional and appropriate,’” caused the appellate court to conclude that the judge’s “discretion in this matter was improvidently exercised,” notwithstanding his “sincerity in his desire to conduct his court with propriety.”<sup>17</sup>

“Professional” connotes something more than coat and tie or suit and blouse. It has nothing to do with personal style, or with being in or out of style. Professional clothing conveys respect for the forum, for the cause or client who the lawyer represents, and for the rule of law; professional attire is appropriately decorous and dignified—that is, what the lawyer is wearing must not detract from the decorum or dignity of the courtroom, hearing room, or judge’s office.<sup>18</sup>

“As a professional,” the *Virginia Bar Association Creed*, says, “I should always: ... Speak or write courteously and respectfully in all communications with a court or tribunal and show my respect by my attire and demeanor.”<sup>19</sup>

“Respect for the Court requires ... appropriate dress in all Court proceedings.”<sup>20</sup> A lawyer must not be dressed in a way that “diminishes the dignity or decorum of the courtroom.”<sup>21</sup>

Anyone who contemplates sitting for the Virginia Bar Examination receives a letter from the Virginia Board of Bar Examiners—an arm of the Supreme Court—communicating the fact that there is a statewide standard for lawyers who appear in Virginia courts:

Dress for all applicants MUST conform to the standards suitable for a lawyer appearing in a court of record in Virginia, i.e., a suit or jacket and tie for males, and a suitable dress or suit (pantsuits are acceptable) for females. Violation of the mandatory dress code may result in your dismissal from the exam site and the disqualification of your exam.

#### MANDATORY DRESS CODE

#### NOTICE TO ALL APPLICANTS

The Board is aware that many law firms and other professional offices have “dress down” policies of varying

descriptions. *There is no “dress down” or “casual dress” policy at the Virginia Bar Exam.* Applicants who come to the Virginia Bar Exam are expected to dress in proper attire. For men, proper attire is coat and tie. For women, proper attire is traditional business attire. Recognizing the high calibre of professionalism that has traditionally characterized the bar, the Board is confident that no further discussion of this topic will be necessary.<sup>22</sup>

In other words: Yes, we have expectations for lawyers who come to court in the Roanoke Valley. We expect the same thing that is expected throughout Virginia, and what is expected in Virginia is what is expected the nation wide.

In 2005, the (Tucson) *Arizona Daily Star* profiled Robert Hooker, “a former Superior Court judge, longtime criminal defense lawyer and a famously well-dressed guy,” who left a lucrative private law practice to become Tucson’s public defender.<sup>23</sup>

“Robert Hooker was hired to lead the Public Defender’s Office, not dress it up,” the reporter wrote, “but the sartorially elegant Hooker believes in the power of appearances... as a symbol of the professionalism he wants the office to project. ...His fashion reputation preceded him, prompting a question at his first staff meeting: ‘Will there be a dress code?’”

“Hooker said, ‘There already is a dress code. It’s called professional. It’s an issue of respect.’”<sup>24</sup>

I send best personal regards and wishes.

Very sincerely yours,  
Clifford R. Weckstein

*Disclaimer: The views expressed in this article are intended to be commentary concerning the legal system and the administration of justice, and to explain court procedures for public information, as authorized by Canon 4B and Canon 3B(9) of the Virginia Canons of Judicial Conduct. They are not, needless to say, the official view of the Judicial Conference of Virginia nor a “judicial opinion” of any court. ☺*

#### Endnotes:

- 1 *My Cousin Vinny*, Twentieth Century-Fox Film Corporation (1992).
- 2 Virginia Board of Bar Examiners.
- 3 See, Thomas M. Trenker, J.D., *Power of Court to Impose Standards of Personal Appearance or Attire*, 73 ALR 3d 353 (1976, updated December 2003); *Friedman v. District Court*, 611 P.2d 77 (Alaska 1980) (“a court may impose minimum standards of dress for the attorneys who appear before it... Attorneys occupy a different

- position in relation to the courts than do ordinary citizens. Attorneys are officers of the court. The privilege of practicing law is subject to certain conditions, among which is that an attorney must observe reasonable rules of courtroom behavior and decorum. Courts have long controlled the manner in which attorneys may appear before them. Very few reported cases bear upon the question of proper dress. The paucity of litigation on this point probably indicates the cooperation of most attorneys and the restraint of most courts in the matter of appropriate dress.” *Id.* at 78.); *c.f.* *Commonwealth v. Jones & Robbins, Inc.*, 186 Va. 30, 33, 41 S.E.2d 720 (1947) (“[I]nasmuch as an attorney is an officer of the court in the administration of justice, the court has inherent power to supervise his conduct....”)
- 4 “Business attire shall be appropriate dress for counsel while in the courtroom.” North Carolina General Rules for the Superior and District Courts, Rule 12; “All attorneys appearing before the court or in chambers shall be attired in a manner that is consistent with the current generally prevailing and accepted business attire for professional men and women in the local community.” Wash. Clark Super. Ct. Rule 0.4 (2005).
- 5 “[A]ll attorneys shall wear business, not business casual, attire while appearing before the Court.” Local Rules, USBC Dist. Mont., Rule 5072-1 (Courtroom Decorum); “Lawyers must dress for court. No ripped jeans, but no top hat, tails, and spats, either. A well-dressed lawyer is formal but not inflated. Clothes do not make the lawyer. But they get the lawyer into court.” Gerald Levovitz, *Dress for Success: Be Formal But Not Inflated*, New York State Bar Assn. J., July–August 2001, at 8. (In truth, Mr. Levovitz’s column is about legal writing, not legal dressing.) A retired school principal, recently writing in *The Columbus (Ohio) Dispatch*, saliently observed that “[l]awyers and doctors show their professionalism by the way they dress. Judges do not permit lawyers in the courtroom if they are not dressed appropriately.” <http://www.dispatch.com/editorials-story.php?story=dispatch/2006/01/17/20060117-A8-07.html> January 17, 2006
- 6 “Attire. Counsel will dress at the level of formality appropriate for appearing in a federal court.” Local Rule (Civil) 39.5(c), USDC Dist. Alaska; “Male counsel will wear a conservative coat and tie with appropriate shirt, slacks, and shoes. Female counsel will wear appropriate conservative business clothing. Clothing for counsel should be such as they would wear to an important business meeting.” SLR 3.0111, Umatilla and Morrow Counties, Oregon Circuit Courts (Decorum in Proceedings; Proper Apparel).
- 7 See *Friedman*, 611 P.2d at 78 (“While a court cannot adopt a dress code which is unduly rigid or which attempts to dictate matters of taste and esthetic preference, the requirement of merely wearing a coat and tie is a reasonable one.” Attorney Friedman unsuccessfully argued “that the imposition of a dress code violates his rights to personal liberty and privacy under the Alaska Constitution,” relying in part on a case in which the Alaska Supreme Court “held that the hair length of a public school student could not be prescribed by school officials.” Without success, he “assert[ed] that an attorney’s style of dress, so long as it is not disruptive of judicial proceedings, is beyond the power of the courts to control.”)
- 8 String ties, bolo ties or hanging gold medallions don’t count. See *Sandstrom v. State*, 309 So.2d 17, 23 (Fla. App. 1975). Neither does a bandana. See *Purpura v. Purpura*, 847 P.2d 314 (N.M. App. 1993), *cert. denied*, 847 P.2d 313 (N.M.1993); *State v. Cherryhomes*, 840 P.2d 1261 (N.M. App. 1992), *cert. denied*, 841 P.2d 549 (N.M. 1992). (Both cases involved attorney Cherryhomes. A court rule required lawyers to wear a coat and tie. In the earlier case, the lawyer was held in contempt for wearing a bandana around his neck instead of a conventional necktie. The conviction was affirmed. In the later case, “[w]hile the trial judge was speaking, appellant proceeded to loosen his tie and unbutton his top collar button. During the proceeding, appellant was wearing a conventional tie, knotted and closed around his neck, as well as a multi-colored bandanna above that tie and around his neck. The trial judge told appellant that the court proceedings were not yet concluded and to ‘please put his tie on.’ Appellant responded that he had two ties on and that he had loosened only the conventional tie from around his neck. After further discussion between the trial judge and appellant regarding the tie, the trial judge held appellant in contempt for failure to abide by the proper decorum of the court.” *Purpura*, 847 P. 2d at 315. “A review of the record indicates that appellant wore his conventional tie in a customary manner throughout most of the proceedings, however, appellant subsequently undid his collar and loosened his tie during court proceedings. The trial judge directed appellant to fix his tie because the hearing was not yet over. Appellant refused to adhere to the court’s direct order and the trial judge found appellant in direct criminal contempt. . . . We hold that the evidence was sufficient to sustain a finding of criminal contempt beyond a reasonable doubt.” *Id.*, at 318
- 9 “Courtroom Appearance. — All attorneys shall dress appropriately when appearing in court. Male attorneys shall wear coats and ties; Female attorneys shall wear business attire, a dress or a business suit consisting of either pants or a skirt.” Uniform Rules for the United States District Courts for the State of Louisiana, Local Rule 83.2.15W; “Attorneys, as officers of the court, must help to maintain the dignity of the court. Male attorneys and clerks of court must wear coats and ties in the courtroom. Female attorneys and clerks of court must wear a comparable level of attire.” Rule 6.1(b) of the Uniform Rules For Louisiana [State] District Courts. See Kathleen J. Wu, *Look the Part: What to Wear from Head to Toe*, originally published in *The Texas Lawyer*, September 22, 2003, found online at [www.andrewskurth.com/pressroom.html?\\_realtag=pressroom-publications&item\\_id=LookthePartWhattoWearfromHeadtoToe&\\_realtale=article](http://www.andrewskurth.com/pressroom.html?_realtag=pressroom-publications&item_id=LookthePartWhattoWearfromHeadtoToe&_realtale=article).
- 10 N.M. L.D.R. Dist 1 LR1-204 (2005).
- 11 U.S.D.C. W.D. TX R. AT-5 (2005) (“The purpose of this rule is to emphasize, not to supplant, certain portions of those ethical principles applicable to the lawyer’s conduct in the courtroom.”)
- 12 *Id.* To the extent that this is relevant: A consultant to professional speakers counsels, “Use the trial lawyer’s rule: ‘Dress so appropriately for the circumstance and your role in it, that no one especially notices your clothing. They focus on you and your message.’” Alan Parisse, *SpeakerNet News*, 7/28/2000, <http://www.speakernetnews.com/post/businesscasual.html>. See also, Kathleen J. Wu, *Fake It Till You Make It—It’s Important to Dress for Success, Even During the Age of “Business Casual,”* originally published in *The Texas Lawyer*, June 5, 2000, found online at <http://www.andrewskurth.com/pressroom-publications-FakeItTillYouMakeItImportanttoDress.html>.
- 13 See *Peck v. Stone*, 32 A.D.2d 506, 304 N.Y.S.2d 881 (1969) (miniskirt); *Sandstrom v. State*, 309 So. 2d 17, 21 (Fla. Dist. Ct. App. 1975), *cert. dismissed*, 336 So. 2d 572 (Fla. 1976) (Attorney Sandstrom “wore a white suit, a sport shirt open at the neck, and a necklace with a round gold pendant the size of a silver dollar

with the hair on his chest showing through the open shirt.” Considering that the year was 1974, and that the state was Florida, can anyone who was an adult in that year doubt that the “white suit” was a leisure suit?)

- 14 *Peck v. Stone*. According to the dissenting judge, the “27-year-old female attorney, was admitted to practice in December, 1967. In the spring of 1968 she appeared before a City Court Judge and a Justice of the Supreme Court, each of whom admonished her for wearing a miniskirt as inappropriate for courtroom appearance. On July 17, 1968 she appeared before respondent, another City Court Judge, who also questioned her propriety in wearing a miniskirt in his court. She admitted to him that she had not complied with the request of the Justice of the Supreme Court to lower the hemline to above the knee. On October 3 she again appeared before respondent wearing the same type of miniskirt in defiance of this Judge’s request and displaying complete disrespect for the other Judges’ admonitions. At that time respondent said that her dress ‘is not suitable for courtroom appearance, which detracts from the dignity of the court and impairs authority.’ He also directed her not to appear before him as an attorney in court ‘until her dress is suitable, conventional and appropriate in keeping with her position as an officer of the court.’” *Id.*, 32 A.D.2d at 509; compare *Sandstrom*, 309 So. 2d 17.
- 15 *Id.* at 509.
- 16 *Id.* at 508.
- 17 *Id.* at 507.
- 18 “The wearing of a coat and necktie in open court has been a long honored tradition. It has always been considered a contribution to the seriousness and solemnity of the occasion and the proceedings. It is a sign of respect.” *Friedman*, 611 P.2d. at 78 (quoting *Sandstrom*, 309 So.2d at 23); “Your personal appearance and conduct in the courtroom is visible evidence of your respect for the rule of law and the administration of justice.... All attorneys shall wear appropriate attire. Men shall wear coats and ties. Women shall wear professional attire, i.e.: conservative dresses, suits and pantsuits. Appropriate attire for attorneys does not include jeans, warm-ups, jogging suits, sweats, shorts or other casual or athletic clothing, including athletic shoes.” Okl. R. 7 Dist. Ct. R. 40; “The dignity of the Court is to be respected and maintained at all times. Attire for counsel and spectators should be restrained and appropriate to the dignity of a Court of Appeals of the United States.” United States Court of Appeals for the Federal Circuit, Appendices, Courtroom Decorum; “The conduct, demeanor and dress of attorneys when present during any court proceeding shall reflect respect for the dignity and authority of the court, and the proceedings shall be maintained as an objective search for the applicable facts and the correct principles of law.” Rule 801, Uniform Rules for District Courts of the State of Wyoming (courtroom decorum); “Attorneys, their employees, law clerks, runners, law students and court employees appearing in court or in a judge’s office or chambers shall dress in a manner befitting the dignity of the court.” N.M. L.D.R. Dist 2 LR2-109. A site for laypersons advises: “If you are attending a criminal Court in Virginia you should dress in good quality clothing, what you would wear to a job interview in an office, or what you would wear to a wedding or church. This is important to show respect for the Court. Whether you like to show respect or not, you will not get prosecutors and Judges to exercise discretion in your favor if you dress with disrespect.” <http://www.lawyers.ca/international/Default.asp?AD=3>.

- 19 Available online at <http://www.vba.org/aboutus.htm#creed>; “Counsel, witnesses under their control, and parties should exercise good taste and common sense in matters concerning dress, personal appearance, and behavior when appearing in court or when interacting with court personnel.”
- 20 *Principles of Professionalism for Delaware Lawyers*, A(4) ([http://courts.delaware.gov/Rules/? prinproflawyers.pdf](http://courts.delaware.gov/Rules/?prinproflawyers.pdf).) The Delaware Supreme Court has incorporated these principles of professionalism into its Rules of Court. The Pennsylvania Supreme Court also has adopted a *Code of Civility* as a part of its Rules of Court. That Code provides, *inter alia*, that “[a] lawyer should not engage in any conduct that diminishes the dignity or decorum of the courtroom,” and “[a] lawyer should advise clients and witnesses of the proper dress and conduct expected of them when appearing in court and should, to the best of his or her ability, prevent clients and witnesses from creating disorder and disruption in the courtroom.” Adoption of Code of Civility, No. 258, Supreme Court Rules Doc. No. 1, 30 Pa.B. 6541 (<http://www.pabulletin.com/secure/data/vol30/30-52/2203.html>.) The assumption, implicit in the injunction that a lawyer should advise clients and witnesses about proper dress, is that the lawyer understands and follows the rules for proper courtroom attire.
- 21 See, e.g., Code of Civility, U.S. District Court, Eastern District of Pennsylvania, II, “The Lawyer’s Duties to the Court,” subparts 3 and 4 (<http://www.paed.uscourts.gov/documents/procedures/shapoli.pdf>); Topeka Bar Association Standards of Professional Courtesy (Proceedings shall be conducted with an appropriate air of formal decorum in court, including: ... Wearing appropriate dress. Judges should wear a robe when conducting evidentiary hearings, oral arguments, and dockets at which parties or witnesses are in attendance. Attorneys should dress in business attire — *Committee comment*: Appropriate business attire for men requires wearing a jacket and tie. Proper dress for women must be appropriate attire for court. Attorneys should not appear in court wearing sports, leisure or casual wear. Stirrup pants, culottes, men’s shirts with banded collars, casual sandals or shoes will not be considered proper court attire.” This document is available online at [http://www.shawneecourt.org/misc/tba\\_standards.htm](http://www.shawneecourt.org/misc/tba_standards.htm).
- 22 Virginia Board of Bar Examiners. (Capitalization and other emphasis in original; in the original, the “notice” and the last sentence of the preceding paragraph are boldfaced).
- 23 Tom Beal, *Flashy Lawyers Leave Private Practice For Public Defender Jobs*, (Tucson) ARIZONA DAILY STAR, April 24, 2005 (<http://www.azstarnet.com/dailystar/dailystar/71934.php>).
- 24 *Id.* Robert Hooker died in 2008. Alexis Huicochea and Kim Smith, “Police: Street racer kills public defender,” ARIZONA DAILY STAR, April 2, 2008 (<http://www.azstarnet.com/sn/byauthor/232506>); Eric Swedlund and Kim Smith, “Bill of Rights was always Hooker’s client, too,” ARIZONA DAILY STAR