

APPROPRIATE ATTIRE AND CONDUCT FOR AN ATTORNEY IN THE COURT ROOM

I. INTRODUCTION

Rules of etiquette and decorum facilitate the smooth and orderly functioning of a complex society. Most rules of etiquette are designed to insure respect for authority and to maintain dignity within a profession. Some rules, however, serve only to reinforce tradition and to promote the majority's taste and preferences. When rules of etiquette serve only to reinforce the majority's taste, an individual's freedom of expression is curtailed. That individual cannot express his own unique life style which may differ from traditional views or the majority's preferences. A balance, therefore, must be met between allowing a business to maintain its professional dignity and allowing an individual to express his or her own lifestyle.¹

The struggle between maintaining dignity in a profession and permitting freedom in an individual's lifestyle is most pronounced in the rules of decorum related to an attorney's dress and conduct in a courtroom. The rules date back to the regulation of a barrister's dress in English courts. The English court's authority to regulate a barrister's dress was traditionally based on the court's power and control over the attorney.² Although today, in the United States, a court's authority to regulate an attorney's dress is partially based on statutory rules of conduct and ethics, the court's authority is still largely based on this traditional English view.

II. ETHICAL RULES RELATED TO COURTROOM ATTIRE

Most courtroom dress requirements today are unwritten. The Model Code of Professional Responsibility³ and the Model Rules of Professional Conduct⁴ do not specifically mention the dress requirements for attorneys. The ethical rules, however, do refer to maintaining court-

1. *Cf.*, *Sandstorm v. State*, 309 So. 2d 17 (Fla. App. 1975) (Judges have power to control an attorney's decorum but should refrain from imposing personal preferences upon the attorney).

2. *See People ex rel. Karlin v. Culkin*, 248 N.Y. 465, 162 N.E. 487 (1928).

3. MODEL CODE OF PROFESSIONAL RESPONSIBILITY (1979) [hereinafter MODEL CODE].

4. MODEL RULES OF PROFESSIONAL CONDUCT (1981) [hereinafter MODEL RULES].

room dignity and decorum.⁵

The ethical rules state that a trial must be conducted according to dignified and orderly procedures to protect the rights of all parties.⁶ Because an attorney is an officer of the court, he should support the court's authority and dignity by following the court's rules of decorum.⁷ He should also comply with a particular court's local customs of courtesy or practice.⁸ In addition, an attorney has a duty to maintain a respectful attitude towards the court and to be courteous in his relations with the judge.⁹ He should not knowingly disobey a valid obligation to the court's rules,¹⁰ disregard a standing rule of the court,¹¹ or engage in disruptive conduct.¹²

Most courts have established rules of decorum and local customs related to an attorney's dress and conduct. Most of these rules are valid obligations which promote respect, and an attorney should not knowingly disobey them. When an attorney wears bizarre clothes which are out of place in a courtroom, he disrupts the court's proceedings and may be disciplined by the court for his actions.¹³ Some courts, however, have strict dress requirements which are rigidly applied. The rules can be so rigid that an attorney's freedom to express his individual lifestyle through the clothes he wears is greatly hindered. Instead of regulating an attorney's dress, the rules border on regulating an attorney's appearance.¹⁴

III. RULES OF DECORUM RELATED TO COURTROOM ATTIRE

A. *Background*

Traditionally, the English courts regulated a barrister's dress in such minute detail that even the growth of the attorney's beard or the cut of his clothes was subject to scrutiny.¹⁵ Today, the degree of formality

5. Law. Man. on Prof. Conduct (ABA/BNA) 61:1341 (1986).

6. MODEL CODE OF PROFESSIONAL RESPONSIBILITY EC 7-36 (1981).

7. STANDARDS FOR CRIMINAL JUSTICE § 4-7.1(a) (2d ed. 1980).

8. MODEL CODE, *supra* note 3, DR 7-106(C)(5).

9. MODEL CODE, *supra* note 3, ED 7-36 (1981).

10. MODEL RULES, *supra* note 4, Rule 3.4(c) (1983).

11. MODEL RULES, *supra* note 3, DR 7-106(a) (1981).

12. MODEL CODE, *supra* note 4, Rule 3.5 (1983).

13. See Law. Man. on Prof. Conduct (ABA/BNA) 61:1341 (1986).

14. Dobbs, *Contempt of Court: A Survey*, 56 CORNELL L. REV. 183 (1971) (stating that dress codes may infringe unnecessarily on personal rights especially when one considers how easy it is to shift from dress to appearance).

15. *Karlin*, 248 N.Y. at 473, 162 N.E. at 490.

required varies from court to court.¹⁶ The United States Supreme Court requires attorneys appearing before the Court to wear conservative business dress.¹⁷ Most courts follow the Supreme Court's requirement. For men, conservative business attire usually means a coat and necktie.¹⁸ For women, no standard or tradition exists. Styles for women are constantly changing; thus, establishing precise limitations on dress virtually is impossible.¹⁹ If a woman's dress, however, is so provocative or distracting that the dress distracts the judge or jury, a more demure outfit is required. In establishing dress requirements for a female attorney, courts generally rely on a woman's good taste, common sense, and discretion.²⁰

B. Rules Related to the Administration of Justice

Although courts require attorneys to wear conservative business attire in order to promote the proper administration of justice and to maintain dignity in courtroom proceedings, this conservative business attire standard is vague. Courts, therefore, are free to impose a broad range of dress specifications.

In *Sandstorm v. State*,²¹ the Florida Court of Appeals stated several reasons for placing limits on an attorney's dress. Membership in the bar is a privilege burdened with conditions.²² One burden placed on a lawyer is the power of a judge to impose dress requirements on the attorney and to regulate the lawyer's professional conduct.²³ The judge, however, does not have the power to subject an attorney to the judge's unbridled idiosyncrasies.²⁴ He must refrain from imposing his personal preferences upon the lawyers.²⁵ The court's dress requirement, therefore, must be reasonably related to the proper administration of justice.²⁶

In this case, Sandstorm, an attorney, appeared in court before Judge Tyson without a necktie. Judge Tyson informed Sandstorm that

16. Law. Man. on Prof. Conduct (ABA/BNA) 61:1341 (1986).

17. See *Friedman v. District Court*, 611 P.2d 77 (Alaska 1980).

18. Law. Man. on Prof. Conduct (ABA/BNA) 61:1341 (1986).

19. *In re DeCarlo*, 114 N.J. Super. 42, 357 A.2d 273 (1976).

20. Law. Man. on Prof. Conduct (ABA/BNA) 61:1341 (1986).

21. 309 So. 2d 17 (Fla. App. 1975).

22. *Sandstorm*, 309 So. 2d at 21.

23. *Id.*

24. *Id.* at 22.

25. *Id.*

26. *Id.*

he must wear a tie in the courtroom. Sandstorm stated that he would wear what he wanted to wear.²⁷ The next time Sandstorm appeared before Judge Tyson he wore a western-style or string tie. Judge Tyson granted a brief continuance in the pending case so that Sandstorm could change his tie. The judge warned Sandstorm that he would be held in contempt unless he returned to court wearing a fabric tie. When the trial reconvened, Sandstorm was cited for contempt.²⁸

In upholding the trial court's decision, the Florida Court of Appeals stated that failure to wear a tie is not contemptuous behavior or behavior which obstructs justice.²⁹ Willful disobedience of a court order to wear a tie, however, is contemptuous behavior and is a direct affront to the court's authority.³⁰ Sandstorm not only disobeyed a court order, he also obstinately rebutted the court's direction to wear a fabric tie.³¹ The Court of Appeals held that Sandstorm's refusal to comply with the court's order demonstrated a total lack of cooperation with the court; therefore, the trial court appropriately cited him with contempt.³²

When Sandstorm appealed this decision to the Florida Supreme Court, the Court held that it lacked jurisdiction to review the case.³³ Three dissenters, believing that the court did have jurisdiction to hear the case, rendered an opinion based on the merits. The dissenters stated that one's clothes reflect his personality and lifestyle and that the Florida Constitution protects an individual's personal liberty and his right to chose his or her own lifestyle without undue governmental interference.³⁴

This freedom of choice, however, may be limited if a substantial justification exists.³⁵ One justification for requiring attorneys to dress in a particular way is to preserve the dignity of the judicial proceedings.³⁶ When an attorney's behavior or dress detracts from the serious search for truth and justice to such an extent that the "operation of the judicial process is in imminent peril," then the attorney can be cited with

27. *Id.* at 19.

28. *Id.*

29. *Id.*

30. *Id.* at 19-20.

31. *See id.* at 22.

32. *Sandstorm*, 309 So. 2d at 23.

33. *Sandstorm v. State*, 336 So. 2d 572 (Fla. 1976).

34. *Id.* at 576.

35. *Sandstorm*, 336 So. 2d at 576.

36. *Id.* at 577.

contempt.³⁷ The dissent believed that Sandstorm's tie did not threaten the judicial process; therefore, Sandstorm should not have been held in contempt.³⁸

Courts in other jurisdictions also have addressed the issue of whether a dress code unnecessarily interferes with the attorney's personal liberty. In deciding this issue, the Alaska Supreme Court, in *Friedman v. District Court*,³⁹ used the test established in *Sandstorm*, i.e., court orders pertaining to decorum in the courtroom must be reasonably related to the proper administration of justice.⁴⁰ The trial court in *Friedman* required attorneys to wear conservative business attire which included an appropriate coat and tie. Friedman was an attorney who failed to wear a coat and tie to court after being told of the court's dress requirements. The trial court cited Friedman with contempt.⁴¹ Friedman appealed, claiming that this dress requirement violated his personal liberty which was guaranteed by the Alaska State Constitution.⁴²

On appeal, the Alaska Supreme Court stated that a judge can regulate an attorney's dress but cannot adopt a dress code which is unduly rigid or dictates matters of taste or preferences.⁴³ The Alaska Supreme Court discussed *Sandstorm* and stated that Sandstorm should not have been held in contempt for not wearing a particular tie.⁴⁴ A judge who requires an attorney to wear a certain kind of tie is attempting to adopt an unduly rigid dress requirement which dictates matters of taste and aesthetic preferences and bears no reasonable relationship to the proper administration of justice.⁴⁵ In contrast, Friedman appeared in court without a coat or tie.⁴⁶ Unlike a dress code requiring a particular tie be worn, a requirement that an attorney wear any type of tie is a simple request. A coat and tie requirement bears a reasonable relationship to the proper administration of justice because they contribute to the seriousness and solemnity of the proceedings and signify

37. *Id.*

38. *Id.* at 577-78.

39. 611 P.2d 77 (Alaska 1980).

40. *Friedman*, 611 P. 2d at 78.

41. *Id.* at 77.

42. *Id.* at 78.

43. *Id.*

44. *Id.*

45. *Id.*

46. *Id.*

respect.⁴⁷ The Alaska Superior Court held that Friedman could be required to wear a coat and tie to court.⁴⁸ He still could not be held in contempt, however, unless he knew or should have known about this requirement.⁴⁹ The case was remanded for the trial court to establish proof of a court order requiring a coat and tie and proof that Friedman knew about it.⁵⁰

Based upon *Friedman* one could conclude that proper notice of dress requirements is an important factor in determining whether a court may hold an attorney in contempt for improper dress. Notification prevents a judge from imposing highly personal standards.⁵¹ If the court order is reasonably calculated to promote the orderly administration of justice, and if the attorney has notice of the order but intentionally disregards it, then his actions are a direct affront to a court's authority and a threat to judicial dignity. The trial court then can hold the attorney in contempt because of his dress.

Although courts in Alaska and Florida use the reasonably related to the proper administration of justice test, courts in other states use different tests to determine if a dress requirement is unduly rigid. New Hampshire courts, for example, have held that the test for attire is whether the attorney's clothes are "unsuitable, unconventional or inappropriate or that they [tend] to interfere with the orderly administration of justice."⁵² *Kersevich v. Jeffrey* involved two male defendants who violated the trial court's requirement that all male defendants wear a jacket, tie, and slacks.⁵³ One defendant wore a sports shirt and blue jeans; the other defendant wore slacks, a sports shirt, and tennis shoes.⁵⁴ The New Hampshire Supreme Court stated that care must be exercised not to impose rigid standards not directly related to judicial administration.⁵⁵ Neither defendant was unconventionally or inappropriately dressed, and neither their clothes nor their conduct interfered with the orderly administration of justice.⁵⁶ Thus, the court held that neither defendant could be held in contempt for violating the dress

47. *Id.*

48. *Id.* at 79.

49. *Id.*

50. *Id.*

51. See Dobbs, *supra* note 12, at 202.

52. *Kersevich v. Jeffrey*, 114 N.H. 790, 330 A.2d 446 (1974).

53. *Id.* at _____, 330 A.2d 447.

54. *Id.*

55. *Id.* at _____, 330 A.2d 448.

56. *Id.*

requirement.⁵⁷

Although this case involved a dress requirement for male defendants instead of attorneys, the court's opinion gives the impression that this makes little difference. Thus, one could conclude that an attorney in New Hampshire will not be cited with contempt unless his dress is "unsuitable, unconventional or inappropriate or that it tends to interfere with the orderly administration of justice."

In California, the test for attire is "whether it interferes with courtroom decorum by disrupting justice, i.e., whether it tends to cause disorder or interfere with or impede the functioning of the court."⁵⁸ This test is illustrated by *Jensen v. Superior Court*. In this case, an attorney wore a turban in the courtroom.⁵⁹ Although the trial judge permitted attorneys to wear turbans for religious, cosmetic, or other legitimate purposes, Jensen refused to state his reasons for wearing the turban. After court cited him with contempt,⁶⁰ Jensen appealed this decision to the California Court of Appeals.⁶¹

The California Court of Appeals held that Jensen could not be cited with contempt for two reasons. First, he could not be cited for wearing the turban since a court cannot impose disclosure of an attorney's religious beliefs or physical handicaps as a condition precedent to appearing before the court.⁶² Requiring such disclosure would violate an attorney's freedom of religion and his right of privacy.⁶³ Second, Jensen should not be held in contempt unless the trial court could establish that his turban interfered with courtroom decorum by disrupting justice or interfered with the functioning of the court.⁶⁴ Instead of announcing a specific dress code, the court expressed confidence in a trial judge's good sense of community standards and his perception of changing times to strike a balance between an attorney's attire which is appropriate but slightly unconventional and attire which distracts and disrupts from the judicial process.⁶⁵

57. *Id.*

58. *Jensen v. Superior Court*, 154 Cal. App. 3d 533, 201 Cal. Rptr. 275 (1984).

59. *Id.* at _____, 201 Cal. Rptr. at 276.

60. *Id.*

61. *Id.*

62. *Id.* at _____, 201 Cal. Rptr. at 279.

63. *Id.*

64. *Id.* at _____, 201 Cal. Rptr. at 280.

65. *Id.* at _____, 201 Cal. Rptr. at 280-81.

C. Rules Related to Fair Trials

Although most courts require an attorney to wear conservative business attire in order to promote the proper administration of justice and preserve courtroom dignity, some courts require an attorney to wear a particular mode of attire to preserve fairness to the parties and to the judge. *La Rocca v. Lane*⁶⁶ dealt with preserving fairness to the parties. In *La Rocca*, a Roman Catholic priest serving as a defense attorney in a criminal jury trial appeared before the jury wearing his clerical garb.⁶⁷ The trial court instructed him to change, but the priest refused claiming that such a requirement violated his constitutional right to freedom of religion.⁶⁸ The trial court would not allow the priest to continue as defense counsel until he removed his clerical collar.⁶⁹

The New York Court of Appeals acknowledged that the priest had a constitutional right to freedom of religion but stated that this right is not unlimited.⁷⁰ His right to the free exercise of religion must be balanced against the state's paramount right to insure a fair trial for the defendant and the State.⁷¹ Thus, the priest is subject to the regulations of the trial court in matters of attire "when that regulation is reasonably related to the preservation of order and decorum in the courtroom, the protection of the rights of the parties and witnesses, and generally to the furtherance of the administration of justice."⁷²

In applying this test the Court of Appeals reasoned that clergymen are shown great respect and trust.⁷³ Jurors might view statements made by a clergyman as more truthful than statements made by the opposing attorney and view the clergyman's representation of his client as a personal commitment to the rightness of his client's case.⁷⁴ On the other hand, some jurors might have religious prejudices against the attorney, and this prejudice might spill over from the attorney to the client.⁷⁵ Thus, the trial court order directing the attorney to remove his clerical garb acted to preserve the rights of the defendant and the State

66. 37 N.Y.2d 575, 338 N.E.2d 606, 376 N.Y.S.2d 93 (1975), *cert. denied*, 424 U.S. 968 (1976).

67. *La Rocca*, 37 N.Y. 2d at _____, 338 N.E. 2d at 608, 376 N.Y.S. at 95.

68. *Id.* at _____, 338 N.E. at 609, 376 N.Y.S. at 96.

69. *Id.*

70. *Id.* at _____, 338 N.E. 2d at 612, 376 N.Y.S. 2d at 95.

71. *Id.* at _____, 338 N.E. 2d at 612-13, 376 N.Y.S. 2d at 95-96.

72. *Id.* at _____, 338 N.E. 2d at 612, 376 N.Y.S. 2d at 100.

73. *Id.* at _____, 338 N.E. 2d at 613, 376 N.Y.S. 2d at 101.

74. *Id.*

75. *Id.* at _____, 338 N.E. 2d at 613, 376 N.Y.S. 2d at 102.

to a fair trial.⁷⁶

Although *La Rocca* dealt with preserving fairness to the parties, *Florida Bar v. Burns*⁷⁷ dealt with preserving fairness to the judge. Burns, an attorney with 27 years of legal experience, was aware of the press's interest in a trial in which he was involved.⁷⁸ He had tried unsuccessfully to get the court to grant a continuance of the much publicized trial.⁷⁹ On the day before appearing in court, Burns went to the V.A. Hospital, dressed in normal clothes, and able to walk in and out of the hospital without visible distress. On the day of the trial, Burns appeared in court dressed in his bed clothes, lying on a stretcher.⁸⁰ The Florida Bar initiated disciplinary proceedings because it considered Burns' actions as an adverse reflection on his fitness to practice law.⁸¹

The Florida Supreme Court held that Burns could reasonably assume that the press would publicize his actions and that the publicity would pose a problem for the judge.⁸² The attorney's actions would force the trial judge to either grant a continuance or force Burns to proceed with the trial despite his illness.⁸³ His conduct, therefore, was prejudicial to the administration of justice and reflected adversely on his fitness to practice law.⁸⁴ As a result, the Florida Supreme Court, suspended Burns from practice for 30 days and gave him a public reprimand.⁸⁵

D. Rules Related to Female Attorneys' Attire

The previous cases have dealt with a male attorney's dress in court; however, courts have addressed requirements for female attorneys. In *Peck v. Stone*,⁸⁶ a female attorney was advised to appear in court in "suitable, conventional, and appropriate attire."⁸⁷ The attorney appeared in court dressed in a mini skirt, which was five inches above her knee. The lower court cited her with contempt, and the attorney

76. *Id.*

77. 392 So. 2d 1325 (Fla. 1981).

78. *Burns*, 392 So. 2d at 1325.

79. *Id.*

80. *Id.*

81. *Id.* at 1326.

82. *Id.* at 1325.

83. *Id.* at 1326.

84. *Id.*

85. *Id.*

86. *Peck v. Stone*, 32 A.D. 2d 506, 304 N.Y.S. 2d 881 (1969).

87. *Id.* at 506, 304 N.Y.S. 2d at 883.

appealed the decision.⁸⁸

On appeal, the New York Supreme Court observed that the record did not show that the attorney's appearance was distracting, disruptive, or so immodest that it shocked one's sense of propriety.⁸⁹ Furthermore, the attorney conducted herself respectfully⁹⁰ and never displayed an attitude contrary to her ethical responsibilities as an officer of the court.⁹¹

In this case, the Supreme Court held that the test to be applied to an attorney's dress is not what the court personally thinks but whether there is a reasonable basis for the court's decision.⁹² The court's decision must bear "a reasonable relationship to contemporary conditions."⁹³ "Any order or regulation imposed upon an attorney . . . must be based upon factual conditions which leave no doubt that a continuance of the proscribed conduct will result in a disrespect for order and an impairment in the administration of justice."⁹⁴ The attorney's dress in this case was not distracting, and the attorney was not disrespectful.⁹⁵ Thus, her actions did not impair the administration of justice, and she could not be cited with contempt.⁹⁶

The Supreme Court also noted that the court order in this case gave the attorney no indication as to what type of dress would be "suitable, conventional and appropriate."⁹⁷ Although a judge is not required to set specific standards in each case, all court orders must be defined in such a way that they are clearly understandable and such that compliance is not thwarted because of inexactness or a misunderstanding.⁹⁸

The test applied in *Peck* is slightly different from the previously discussed tests which applied to male attorneys. In *Peck*, the court was allowed to consider "contemporary conditions." In the 1960's when *Peck* was decided miniskirts were considered the accepted style in business, sports, and even worship services.⁹⁹ A case from the 1970's dem-

88. *Id.*

89. *Id.*

90. *Id.*

91. *Id.*

92. *Id.* at 507, 304 N.Y.S. 2d at 884.

93. *Id.*

94. *Id.*

95. *Id.* at 507, 304 N.Y.S. 2d at 883.

96. *Id.* at 508, 304 N.Y.S. 2d at 885.

97. *Id.* at 508, 304 N.Y.S. 2d at 884.

98. *Id.* at 508, 304 N.Y.S. 2d at 884-85.

99. *Id.* at 507, 304 N.Y.S. 2d at 884.

onstrates the effect a change in styles has on a court decision. *In re De Carlo*¹⁰⁰ questioned whether a female attorney could wear a sweater in court.¹⁰¹ A New Jersey trial court required female attorneys to wear customary courtroom attire. De Carlo, a female attorney, appeared in court in gray wool slacks, a matching gray sweater, and a green open-collared blouse.¹⁰² The trial court told De Carlo that he did not expect female attorneys to refrain from wearing open-collared blouses nor did he object to women wearing slacks. He would even permit women to wear brightly colored dresses in court. He did object, however, to women wearing sweaters in court.¹⁰³ After making these statements, the court cited De Carlo with contempt. De Carlo appealed this decision.¹⁰⁴

On appeal the New Jersey Superior Court stated that De Carlo's appearance was not immodest and she was not disrespectful to the court.¹⁰⁵ She never acted "contrary to her ethical responsibility as an officer of the court," and her conduct was not distracting of the solemnity of the judicial process.¹⁰⁶ Moreover, the trial court's order which required De Carlo to wear "appropriate courtroom attire was too vague to be the basis of a contempt proceeding."¹⁰⁷ Tradition dictates that conventional courtroom attire for males is a coat and tie, but no traditional standard of dress exists for female attorneys.¹⁰⁸ Because styles for women are constantly changing, it is difficult to promulgate rules and limits on a female attorney's dress.¹⁰⁹ Based upon *Peck* and *De Carlo*, courts often give women more leeway in deciding what to wear in court. As long as the attorney's dress is a contemporary style of clothing and is not disruptive, distracting or depreciative of the solemnity of the judicial proceedings, then she should not be cited with contempt.

Although courts are more lenient with female attorneys, the attorney still can not be disrespectful to the court. One case which illustrates

100. 114 N.J. Super. 42, 357 A.2d 273 (1976).

101. *In re De Carlo*, 114 N.J. Super. at _____, 357 A.2d at 273-74.

102. *Id.*

103. *Id.* at _____, 357 A.2d at 274.

104. *Id.*

105. *Id.* at _____, 357 A.2d at 275.

106. *Id.* at _____, 357 A.2d at 275.

107. *Id.*

108. *Id.*

109. *Id.*

this point is *People v. Rainey*,¹¹⁰ in which a female attorney, Chandler, appeared in court wearing a hat. When the court asked Chandler to refrain from wearing her hat,¹¹¹ she refused to do so and stated in front of the jury that the court's requirement was unfair to her client and highly prejudicial.¹¹² The next day Chandler again appeared before the court wearing a hat. The trial court cited her with contempt, and Chandler appealed.¹¹³

On appeal, the California Court of Appeals emphasized that each attorney has a duty to be respectful to the court.¹¹⁴ When an attorney fails to comply with a simple request of the judge, it is incumbent upon her to demonstrate that she was acting respectfully and in defense of a clear and important right.¹¹⁵ In this case, the judge's request that Chandler appear hatless was reasonable and simple, and she had no excuse to ignore it.¹¹⁶ Her hat served no other purpose than to attract attention, and it amounted to exhibitionism.¹¹⁷ Her conduct was disrespectful, and her claims that the judge's remarks about her hat were prejudicial to her client had no merit.¹¹⁸

IV. CONCLUSION

An attorney's decision to wear a certain style of clothing reflects his or her own lifestyle.¹¹⁹ Several courts have held that the lawyer's freedom to choose his or her own lifestyle is protected by various state constitutions.¹²⁰ Thus, a court order pertaining to an attorney's dress cannot unnecessarily interfere with the attorney's personal liberty and freedom of choice. In determining whether a court order is unduly rigid the courts apply different tests. In Alaska and Florida, the test is whether the dress requirement is reasonably related to the proper administration of justice.¹²¹ In New Hampshire, the test is whether the attorney's dress is "unsuitable, unconventional or inappropriate or that

110. 224 Cal. App. 2d 93, 36 Cal. Rptr. 291 (1964).

111. *Rainey*, 224 Cal. App. 2d at 95, 36 Cal. Rptr. at 292.

112. *Id.* at 96, 36 Cal. Rptr. at 293.

113. *Id.*

114. *Id.* at 97, 36 Cal. Rptr. at 294.

115. *Id.*

116. *Id.*

117. *Id.*

118. *Id.*

119. See *supra* note 34 and accompanying text.

120. See *supra* notes 34 and 39-50 and accompanying text.

121. See *supra* notes 26 and 40 and accompanying text.

it tends to interfere with the orderly administration of justice.”¹²² In California, the test is whether the attorney’s dress interferes with the courtroom decorum by disrupting justice.¹²³ Even if the court order passes one of these tests, the attorney still cannot be held in contempt unless he had proper notice of the dress requirement.¹²⁴ If the attorney does have proper notice and intentionally disregards a valid dress requirement, he can be cited with contempt. In addition the attorney’s attire cannot jeopardize the state’s paramount duty to insure a fair trial.¹²⁵ The attorney’s clothes, therefore cannot be prejudicial to the parties or to the judge.¹²⁶

Female attorneys are treated slightly different from their male colleagues. Female attorneys must dress in a contemporary style that is not disruptive, distracting or disrespectful of the solemnity of the judicial process.¹²⁷ The attorney must be respectful to the court at all times and can act only in defense of a clear and important right.¹²⁸

All of these tests seem to imply one general conclusion. If an attorney’s dress is slightly out of the ordinary, he or she will not be cited with contempt as long as he or she is respectful and courteous to the judge and his or her dress is not prejudicial to the parties or to the judge.

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122. See *supra* note 52 and accompanying text.

123. See *supra* note 58 and accompanying text.

124. See *supra* note 49 and accompanying text.

125. See *supra* notes 73-74 and accompanying text.

126. See *supra* notes 67-89 and accompanying text.

127. See *supra* notes 90-115 and accompanying text.

128. See *supra* notes 116-124 and accompanying text.