Helen Driscoll, Queensland Young Lawyers (HD): I think we might get started. I've got a couple more people coming in. Anyone else can then obviously just jump in as they come through.

For those I haven't had the chance to meet yet, my name is Helen, I'm the Vice President of Queensland Young Lawyers for 2021. We are very excited to start the first of our QYL CPD series and even more thrilled to partner with Level Twenty Seven Chambers for the initiative. The aim of the series is to provide practical, helpful and relevant CPD days to early career and early PA lawyers. And there's really no better way to start that series than with a topic like today, 'Courtroom Etiquette - Working with the Bar and Persuading the Bench'. So we're going to have a short period for questions at the end. If you're online, please submit your question via Zoom. Otherwise, I'll hand over to Kristi Riedel and Sophie Gibson from Level Twenty Seven who will be presenting to us today.

Kristi Riedel (KR):
Thanks so much. Hello, my name is Kristi and this is Sophie Gibson. We are both barristers at Level Twenty Seven Chambers. We are really excited to be presenting this seminar to you today, thank you very much for coming along. I'd like to acknowledge the Jagera and Turrbal people on whose land we meet today. I pay my respects to their elders past and present, and also to all Aboriginal and Torres Strait Islander people here today.

So as I said, we're very excited to be putting together this presentation and we're hoping that it will be useful and helpful to you. We'd love to foster a bit of a discussion as we go through today. As Helen said, we've mapped out some time at the end to take some questions, but if something occurs to you during the presentation feel free to jump in, whether you're in the room with us or online, you can just type into that chat function. We'd be very happy to try and answer your question and foster a bit of a dialogue there.

I want to say up front, and I speak on behalf of both myself and Sophie, that if you're ever working with us and we're going to court and you've got a question about something you're unsure, please ask us. We do not bite, we are very happy to answer questions. There's no such thing as a silly question. And there's nothing worse than you sitting there in court thinking "Oh, should I've done that? Oh my God, what have you done?" You should just ask the question. Often, it'll just be a simple answer and that resolves all the anxiety and we're all on the same page and it's not the case of mistaken understanding of who's doing what or whatever the case might be. So we're always happy to answer questions.

For the purpose of the content that we're going to cover today, we've broken it down into three sections. We've got a section on before court, during court, and then a short after court section. We've included a couple of scenarios as we go through to facilitate some voting. And Sophie and I also decided to add some drama to the presentation today. So we've enlisted the amazing skills of Tamara McCombe to create an animation. We've actually got two, it's incredible. We thought that because a picture or cartoon says 1000 words, we would create a couple of scenarios of showing you what to do and what not to do in court and they are very realistic so we thought we'd start with one of those.

Sophie Gibson (SG):
[Slide 3] You'll have to bear with me while I click through the slides.

[Cartoon video]

Bailiff: All rise, the Supreme Court of Queensland is now in session. Please be seated.

Advocate: Um, ah, um, excuse me, I'm here.

Judge: What matter are you here for?

Advocate: [phone rings…advocate answers] Hi mum, I'm in Court at the moment, I have to go.

[To the judge] Um, ah, Smith and Brown.

Judge: That matter is last on the list. I see, however, that you're at the Bar table now. I'll take appearances then.

Advocate: My name is Fred.

Judge: Fred…is that your surname? Are you a legal practitioner?

Advocate: Fred Smith. Yes, I'm a lawyer at Able Lawyers.

Judge: Thanks Mr Smith. Who are you appearing for today?

Advocate: Um, ah, um let me just check my file…it's here somewhere… [phone rings… advocate answers] "Yes Mum, I'm still in Court.

[To the judge] I'm appearing for Brown the applicant, no the defendant, no the plaintiff.

Judge: I see. The plaintiff. Are you expecting an appearance on behalf of the defendant?

Advocate: How should I know?

Judge: Right. What's this matter about Mr Smith?

Advocate: Uh, I know this. It's about, um, this little old lady who made a will and promised to give all of her assets to the gardener when she died and her children are really upset because they are not receiving an inheritance and then the solicitor got involved, not me or my firm, a different firm and they did not prepare the will properly.

[Bomb sound effect]

SG:
So I'm going have a bit of a chat to you first off about the best way to prepare for a hearing before court to ensure that you comply with good court etiquette. Effectively presenting your client's case is not just about knowing the facts and the applicable law. To be an effective advocate, you really need to spend some time thinking about how your case will actually be

presented in court. Proper court etiquette is a really important part of good advocacy. If you fail to comply with it you run the risk of not only irritating the judge but detracting from how your client's case is presented.

It's important to note that proper court etiquette is not something that you will know instinctively. While a large part of it is common sense, it's a formal setting and you would conduct yourself appropriately, there are some rules, both written and unwritten that govern the way that an advocate should behave while in a courtroom setting. By way of an example of an unwritten rule, when I first came to the Bar, despite having watched many applications, I did not realise that you don't announce your appearance at the call over. So my very first Supreme Court application, my matter was called, I went up, I announced my full appearance, including who I was instructed by. The judge gave me this really strange look and informed me that they take appearances when the matter is actually called on for hearing. Kristi is going to have a bit of a chat about that later but that's an example of something that you won't find written anywhere. It's just sort of an unwritten convention. It's these types of things that really help if you take the time to ask people and try and figure out before you actually arrive in court.

Preparation is really important. It's the simplest way to ensure that you comply with proper court etiquette and thereby maximise your clients prospects of success. Most of your preparation takes place before you set foot in the courtroom.

[Slie 4] The first thing that I do when I'm preparing for a hearing is to check whether the court has published any practice directions, which are applicable to my hearing. Practice directions effectively give you an inside run as to what the court will be expecting from you at the hearing.

[Clicks link through to internet] For the State Courts, you can find practice directions published on the Queensland Courts website. They're all set out for you here. The Federal Court also publishes Practice Notes which contain the same information. Practice directions for each of the courts in the state jurisdiction are set out here. We're going to look at the Supreme Court Practice Direction for applications as a bit of an example. We just have to wait for the internet to load…

Practice Direction no.6 of 2004. You'll see that the Practice Direction sets out what the Court expects of you in terms of outlines of argument, documents to be read and appearance slips. It's quite prescriptive, it sets out quite a lot of information in detail. At paragraph two, it talks about what your written outline of argument should include. It should provide a concise summary of your argument in point form and identify relevant authorities and legislative provisions. It sets out the length should not exceed more than four pages and stipulates that you should attach a chronology where appropriate. Paragraph three provides that outlines should be exchanged as early as practicable prior to the hearing and should be handed to the judge at the start of the hearing.

The Practice Direction goes on to deal with lists of material. It provides that you need to have two copies to hand up to the judge and says that documents should be referred to by reference to their court file index number. It's really important when you're preparing a matter,

whether you're doing the advocacy yourself or whether you brief counsel, to ensure that you're aware of what exactly the Court is going to expect at the hearing.

It's important to note that the practice directions are different for different jurisdictions. So you can't just read the Supreme Court applications protocol and assume it applies across the board. For example, if you look at the District Court applications protocol, it's different. The requirements for the outline are still the same, that's set out at paragraph two. But in the District Court you're required to email your outline argument to the judge's associate at 4pm the day before the hearing. So the requirements are different if you're in the District Court and it's something you need to be aware of so that you have the judge on side right from the start, you don't want to be chased by the associate.

Some recommended reading for other practice directions, particularly in the Supreme Court, I would suggest that you familiarise yourself with Practice Direction no. 4 of 2020. It's about case flow management. It provides at 3.1 that it applies to all civil proceedings. At 2.3, it sets out there's an expectation that all proceedings will be ready for trial, or otherwise resolved within 190 days of filing a defense. As you would all appreciate, the nature of litigation means that many, many matters aren't ready for hearing within 190 days. A lot of matters end up on the case flow management list. So you need to be aware of the requirements in this practice direction. So there's case flow management hearings every Friday, and parties are expected to attend and the Court will set directions to move the matter on. It goes on and sets out what happens if a party doesn't comply with those directions at 6.4. It talks about the fact that if a party isn't going to comply with those directions you're expected to negotiate with the other side and put forward some proposed amended directions for the courts consideration. So this is a really important one to get across just because so many matters get up on the case by management list, and it's important that you make your client aware of these type of requirements as well.

The other one that I'll just quickly draw your attention to is Practice Direction no. 18 of 2018. It's about the efficient conduct of civil litigation. There are lots of requirements in here about the efficient management of documents, particularly courts recognise that the nature of modern-day litigation is that you end up with oodles and oodles of documents so it's all about negotiating with the other side to agree document protocols and ensuring that the case proceeds as smoothly as possible. Again, it's really important that you're across all of these requirements so that you can advise your clients appropriately.

[Slide 5] The next thing I do after I've reviewed the practice direction is check whether there are any protocols in force. Protocols are published by the courts on an ad hoc basis and a protocol may vary the effective practice direction. Protocols for the Supreme Courts or the state courts are published on the daily law lists. This is particularly relevant during COVID as you'll all appreciate. If you look at the daily law list, there are protocols that have been published here in relation to applications to court. [Clicks link through to internet] If you click through and take a look at paragraph one, it discusses that the apps list manager will email the parties at 1pm the day prior to the hearing, and they'll ask you a number of questions, including whether the matter will be proceeding, the names of the representatives, the estimated length of time. It provides at paragraph two that practitioners are required to attend court in person unless you've received leave and goes on to talk about how you would apply for leave to appear by video.

It's important to note that those protocols are updated from time to time. So if you've looked at the Protocol once, I would still check to make sure that it's still in force because courts will expect that you've reviewed the Protocol. I know that the original COVID protocol required that call overs be conducted via phone instead of in person. I had an application late last year where I called in to the call over in accordance with the Protocol but my opponent hadn't read it. So he turned up in court, and the judge was really unhappy with him. She really chipped in for it, he was quite a senior practitioner and she said in circumstances where they're literally linked to you on the list, we have an expectation that you read them and comply with them. So that's a really important tip as well.

[Slide 6] If it becomes necessary to communicate with the court prior to your hearing, I have three golden rules, particularly if it's about a matter of substance. 1) never correspond with the judge or his or her associate unilaterally, 2) always send proposed correspondence to the other side and get their consent before sending it, 3) and always copy in the other side when it's sent.

It's not always necessary to send a proposed email to the other side, particularly if the matter is administrative rather than substantive. But you should still copy the other side in. An example of a matter which is administrative might be if you're emailing the court, if you were counsel, and you emailed the court to find out whether you were expected to robe, that would be an administrative matter. You don't have to draft an email and send it to the other side and confirm that they are content for you to send it.

Another example might be consent orders. It would of course be necessary to confirm that the other side was content with the form of the order, and you would copy them in when you sent it to the associate. But it wouldn't be necessary to send them an email saying "are you happy for me to send an email in this form to the associate?" It's sort of double handling.

The Federal Court publishes useful guidelines, if you're ever unsure about the appropriate course to take in terms of communicating with the Court. They're provided here [clicks link to internet]. The guideline sets out helpful examples of what constitutes on uncontroversial communications. They're here at 3.4. They're the sort of things I mentioned earlier, providing consent orders, providing chambers with agreed dates that you know the other side is also able to attend. It goes on to set out what inappropriate communications would be at 4. So attempting to contact a judge directly about a matter for which the judge is responsible outside of the hearing, at D. unilateral communications other than in relation to ex parte hearings.

If you're ever in doubt, this is a useful resource to consult. I would always err on the side of caution when it comes to unilaterally communicating with the court. It's not just about proper etiquette, it's an ethical issue as well. If you're ever unsure, I would correspond with the other side and double check that they're happy with the communication before you send it.

[Slide 7] The afternoon before the hearing, you would always check the daily law list just to confirm what courtroom you're in, at what time it's listed, what judge is hearing the matter. I always print the daily law list, particularly if I'm appearing in an application. It just means that

while you're at the call over and the judge is making directions about the order of the matters to be heard, you can make annotations really simply and clearly on the list.

I also pack my "court kit". It's essentially just a big pencil case, but I include bulldog clips and staplers and highlighters and Post-It notes and spare pens. I found that having things like bulldog clips and staples is really important. I had an appearance before a Supreme Court judge where I had to seek leave and file an affidavit last minute. My solicitor had been in a huge rush before she left the office and had grabbed it off the printer and hadn't had time to staple it so she handed me a loose pile of papers and I was able to bulldog clip it. Although then the judge wasn't particularly happy with me, she told me that the "Supreme Court is not Office Works." I should have secured it properly before the hearing. It helps to be over prepared rather than underprepared.

I would also bring a copy of the relevant rules, whether it's the UCPR or the Federal Court Rules. I've had to refer to them multiple times during a hearing. It's also a comfort thing to know that you have them there and you can look them up if you need to.

Also, print all your material, if you can, the day before. When you have authorities you need to provide a copy for the judge, a copy for the file, a copy for your opponents. You'll also want to copy for yourself to refer to. So just to avoid on the morning of the hearing, trying to print four or five copies of a 200 page decision, just make sure you print everything the day before so that you're not rushed.

Finally, before I go to court, I always asked my colleagues about the judge that I'm appearing before and check whether they have any idiosyncrasies. Some of them have bizarre preferences about things like only printing single sided even if it's a 300 page decision. It's best to just be aware of that before you turn up to court because it's all about keeping them on side so that you can present your client's case most effectively. Even the font you use in your submissions. I know there's one Supreme Court judge who has a particular fondness for Equity Text B, I don't know why. But anything you can do to get on side and to make a good impression. Why not? It doesn't take much to change the font of your submission. So yeah, I would advise just having a chat to colleagues and sort of sounding out who you'll be appearing before.

[Slide 8] Then on the day of the hearing, arrive at work early so that you're not rushed or flustered. Review speaking notes. I would advise that if you're doing your own advocacy, you prepare notes. There are different schools of thought about how to do it. Some people write out entire scripts word for word about what they're going to say. Other people write bullet points. It's just a matter of figuring out what works best for you and how you are more most persuasive and most comfortable. But the morning of the hearing, read over those notes, double check that you've printed all of the material. If you're a barrister, and you're unsure whether you're required to robe, the Queensland Bar Association publishes the court dress guideline, which is a useful guide.

I always arrive at court ridiculously early because I'm paranoid that I'm going be late. I get there at least 20 minutes before so that I'm not rushed and I feel calm before I head in.

If you've followed all of these steps, when you get to court, you should be well placed to present your case effectively and in accordance with what the court is expecting from you.

Before I hand over to Kristi, we thought we would put two scenarios to you relating to communicating with the court and ask what your views are on whether what has occurred is appropriate. They are yes or no questions. We're not being particularly fancy. If you're in the room with us, we'll just ask you to raise your hand if you have a view. If you're online, I'm told that there's a 'raise hand' button down at the toolbar or you can type into the chat box and we will receive your answers.

[Slide 9] Scenario one is in relation to an adjournment application. Mary's informed that her client's barrister is now unable to attend a hearing for summary judgment which has been set down for two days time. She decides that she needs to request an alternative date for the application. She emails the judge's associate to inform her that the hearing date needs to be adjourned to an alternative day. She copies in Jamal, the lawyer acting for the applicant. Was this appropriate? Do you want to raise your hand if you think it was?

No one thinks that's appropriate, which is good because the answer is no. [Slide 10] Mary hadn't checked with Jamal whether the request for adjournment would be opposed. Therefore her communication was not uncontroversial.

[Slide 11] She should have contacted Jamal, explained the situation and sought consent to adjourn the summary judgment application to a different date. If Jamal's client would not consent to an adjournment she should have explained that her client would be forced to file an application seeking an adjournment. She should have then prepared a draft email to the judge's associate explaining the situation, identifying that her client would soon be filing an application for adjournment. She should have sent that email to Jamal prior to sending it, obtained his consent, and then sent it and copied him in.

[Slide 12] The next scenario is about consent orders. The applicant was ordered to file expert evidence by a certain date. Wei, the lawyer acting for the applicant, informs Rami, the lawyer acting for the respondent, that the applicant's expert evidence is likely to be late. Rami emails the judge's associate, he copies in Wei and he informs the court that the expert evidence will not be filed in time and that the respondent is disappointed with the delay as it's going to push out the court ordered timetable.

Is this appropriate? Raise your hand if you think "No, it wasn't." The majority of people in the room think it was appropriate?

Oh, they also sent multiple emails to each other copying in the judge's associate discussing an updated timetable.

[Slide 13] The answer is no. One party should never express views on the conduct of the other party to the court. And parties should not copy chambers into correspondence that doesn't require the involvement of the court or that is unnecessarily burdensome on the court. So they shouldn't have kept copying in the associate when they were discussing a proposed timetable.

[Slide 14] What should have happened was that Rami should have respectfully told Wei that the respondent was disappointed at the failure to file the evidence on time and explained what prejudice his client may suffer. They should have discussed an alternative timetable and incorporated backward a timetable and to have agreed consent orders. Then Wei should have emailed the judge's associate, copying in Rami, briefly informing the court that the evidence would not be filed on time and attaching the consent orders for the judge's consideration.

You'll note that in this scenario, he didn't have to send the draft email to the other side because they had reached substantive agreement.

All right, now that we've covered how to conduct yourself, in accordance with court etiquette, before you get to court, Kristi is going to address you on how you ought to behave once you get there.

KR:
Thank you very much Sophie. I'll leave you in charge of the PowerPoint, if that's okay.

[Slide 15] I'm a little bit tardy compared to Sophie, because I say you should get to court 15 minutes before the hearing, but I'm sorry. If you could get there earlier, that's always a good thing.

One thing that is worthwhile saying, and I think it comes through in Sophie's presentation as well, is that preparation is key to your appearance in court. I think they talk about the three P's: preparation, preparation, preparation. Being disorganised and unprepared does yourself a disservice and also the court. And it's impolite. It all starts from the moment you walk into that courtroom, how you present yourself, it shapes and informs the way that you and potentially your client's case, is perceived. So think about being prepared. How are you presenting yourself? Do you look like a consummate professional? We as barristers are told not to wear anything to larry or distracting for the Bench. So I would suggest no fluro pink tops, or five carat diamond earrings. If you're in doubt, it's probably best just to keep it conservative, and wearing a jacket is recommended. looking the part is always a useful way to make yourself feel the part and feel comfortable in the environment that you're appearing in.

When it comes to actually going to court, make it a habit to get there early, whether that's 20 minutes or 15 minutes early, just be early. If you need to speak to your opponent about your matter a bit earlier then that is advisable.

If you can, it's a good idea to try and identify your opponent and have a chat with them. If you're there for a call over, it's probably pretty prudent just to check in and make sure you're on the same page, that you're in the same matter, that you're seeking the same things, or that you know what each other are seeking, and how long it's going to take. It's a good way of just making sure you haven't missed anything.

Once you enter the courtroom, don't forget, I'm sure all of you already know this, once you enter, don't forget to bow your head if the judge is already seated at the bench and take a seat in the courtroom quickly and quietly. Unless it's really necessary, don't talk to the people

around you. If the judge isn't yet in the courtroom, make sure you stand when they enter in, bow and you stop talking.

[Slide 16] Of course, make sure your phone is switched off or turned to silent. I can think of a number of times when my instructor has said "Oh, my phone's turned off", we're sitting at the Bar Table and it starts ringing or vibrating. It's a little bit awkward. So just keep checking and making sure that it is off, or switched to silent.

Another thing that probably you are all familiar with, but it's worth just mentioning. One is not permitted to record or broadcast what's happening in court unless you've got the court's leave. I remember a few years ago, when I was in the Federal Court at a call over there, it was just when those air pod things had come into fashion, the ones without the wire. I remember seeing a practitioner up at the Bar Table wearing the ear pods while talking to the court. I'm presuming you know, taking some instructions and letting the client hear what's going on isn't allowed. So don't do that. It's not a good idea.

Now focusing upon the circumstances of the call over. As Sophie suggested, it's a great idea to take the law list with you. You can mark it up, you can know how long other matters are going to take and where in the list the court wants to hear your matter. Because, as you will know, the court might not actually hear the matters in the order that they're listed, they might call on seniority or the length of the matter, or whatever the case might be.

[Slide 17] It's also a really useful thing to do…it comes back to being prepared. Prepare a really brief explanation of what your case is about, think like an elevator pitch type scenario. Just a few sentences in case the judge asks when you're at the call over "Oh Miss Riedel, what's the case about?" I recently observed when I was up at the Supreme Court for a matter, in the context of the call over, there was counsel up at the Bar Table and she was being asked some really specific questions by the judge, you know specifically about the legislation, how she can achieve what she wants to do, the orders being sought, whether they're the right orders, so really specific type questions. Fortunately, counsel was very well prepared. She could engage with the judge very concisely and efficiently and get straight to the point and answer the judge's questions about those specific types of questions. And it made a really good impression. And I can imagine that if the barrister or solicitor had not been so prepared and organised, that it would have been a very different situation. So being prepared really goes a long way in terms of your persuasiveness as an advocate.

When you're talking to the court, and you're asked how long the matter is likely to go, be as accurate as you can. It's a great idea to have that chat with your opponent, about how long you think the matter is going to take. If you think it's going to take two hours, say it's going to take two hours, don't tell the court that a two hour mat is going to take 15 minutes, not make anyone unhappy, because as I said the court might organise the list according to the duration that each of the matters is going to take.

Obviously, don't be overly familiar with the judge. So no "top of the morning to you" or "how was your weekend?" All those types of things. It is a formal place. Don't eat or drink in court. As I'm sure you all know, don't forget to refer to the judge as "Your Honour", or depending on the forum that you are in "Commissioner", "Member", "Registrar". It's worth just noting how to address the other people who are in the courtroom because sometimes it can be a bit

confusing. Obviously, if you're talking to an associate, it's "Mr. Associate" or "Madam Associate". The bailiff is "Mr. Bailiff" or "Madam Bailiff". And your opponent, if they're a barrister it is "my learned friend", and if they're a solicitor it's "my friend".

[Slide 18] A golden rule is don't talk over the judge and make sure you listen to the questions you're being asked and answer those questions. The importance of this was highlighted in a recent decision. I've put the citation on the slide, *Dispute Resolution Associates Pty Ltd v Selth*, a Federal Court decision, one up here in Queensland actually. The matter involved an application for an extension of time and leave to appeal. The Court noted that Mr. Minus, a barrister, he was putting his client's case very firmly. He continued to make submissions after the judge had already considered the issue and ruled on the issue. Ultimately, the application was not successful but the Court made a mention of that specific conduct, and that it was inappropriate in the judgment. Certainly, one would not want to be having those types of comments made about you in the judgment. So bear in mind, you know, once the judge starts talking, you stop talking.

Don't leave the Bar Table unoccupied. When you're at that call over and you're waiting, the judge has dealt with your matter, and you're waiting for the next matter to be called on, just moved back from the Bar Table but don't leave until someone else comes up and stands in your place. If you've got to rush off or leave, you can always seek to be excused by the court.

[Slide 19] Now, I'd like to just turn to a scenario where we've got a substantive application. I guess some, it's probably all things that you already know, but where to go in the courtroom is always, can be confusing. It can change depending on seniority of the people involved but we've created this slide which is a useful tool just to remind yourself where to go when you get in the courtroom. It's also useful if you're talking with witnesses and you want to show them the layout of the courtroom and where they might have to go, if they're giving evidence from the witness box. A useful thing to keep in mind.

When you go up to the Bar Table, and you're getting set up for your application, don't put your bag on the Bar Table, put it on the seat or on the floor.

[Slide 20] And remember to fill out the appearance slip, whether you're appearing on your own or if you've instructed counsel. We love it if you have filled out the appearance slip. They're obviously available in the courtroom but if you're super prepared you can actually print them out online, I've got the link there. It's just on the forms part of the Queensland Courts website, and you can print it out and fill it all in. Having that done just takes another thing off the list of things to keep in your mind for when you get up to court.

[Slide 21] As Sophie said, take a copy of the rules, always take a copy of the rules. The time that you don't bring them is the time that you will need them. I know that these types of things are now available electronically and you can look it up on your phone but there is something about being able to turn over the actual pages when you're sitting in the bar table, it looks a bit less impolite than scrolling on your phone furiously so make sure you always take a copy of those rules.

Again, it's not rocket science, but stand when the judge speaks to you and stand when you're speaking to the judge. Coming back to that suggestion about being organised and prepared,

make sure you've got the requisite materials sorted out. Know what you're going to hand up, have it all ready to go so that you're not fumbling through your material because that sort of just ruins any sort of persuasiveness that you've sort of managed to get going from the moment that you start making your submissions. You know, there's nothing more distracting than rifling through a whole bunch of papers trying to cobble together the affidavits in your outline of submissions, and whatnot. So have it all together in a neat tidy pile that you can just sort of hand up. It's also, you know, less stressful for you because you know that it's all there and that you've got all the things that you want to hand up to the Bench.

As Sophie mentioned, with regards to lists of material to be read, have a look if you're in the Supreme or District Courts. Have a look on the electronic court file, and it's got the various documents that have been filed, they've got numbers, so include those numbers on your list of material to be read because it helps the court find them in the file. And it's not a bad idea to print that out and take it with you as well. I can't think of many times when I've been able to help the court by saying it number six or whatever.

And Sophie's also spoken to you about compliance with those various practice directions. So make sure you've had a read of those, you've got the right number of copies and you've got the materials that they require.

If you're in a situation where a witness is being sworn in, just bear in mind that that's a really solemn thing to be occurring so don't talk and really focus on the witness being sworn in and make that all that's happening in the courtroom when that happens, because it is a really serious thing.

Obviously, it goes without saying, and we will have ethical obligations in relation to this but don't mislead the court and make sure you correct any errors that might be made.

[Slide 22] Now, I can hear you all asking what about COVID-19. As you all appreciate COVID has had a huge impact on not only our day to day lives. You know, we just had that lock down the other week, but also how the legal profession operates, from mediations via Zoom to Teams witness conferences, most of us have had to learn to adapt and utilise new technologies in order to keep our practices alive. We've been very fortunate here in Queensland to have, in my opinion, a judicial system, which has gone above and beyond embracing those new technologies and enabling us to continue to do our job.

To that end, the court has implemented many different technologies, including, I think it's called Chorus Call and Pexip. There are instructions on how to use those two platforms. I think they use them for call overs. It's like a telephone program. There are instructions on how to use both of those on the court website.

If you need to appear via phone or video link, make sure you've obtained leave from the court to do so.

If you are appearing over the phone, make sure you've got a good connection. There's nothing more annoying or unpersuasive than someone who keeps phasing in and out and has the crackly kind of phone line. Limit background noise. I can think of a matter last year that I was involved in which had a self-represented litigant who proceeded to call into the court

from a construction site. It was really hard to hear them. So just bear that in mind. And if you're not talking, and you can put yourself on mute, do so. Make sure you speak slowly and clearly and don't interrupt the judge.

[Slide 23] Now, if you're appearing by video link, I'm sure you've all seen this slide, it's one of my favourites. If you haven't seen the slide, you should Google it, "cat filter teams" I think will find it for you. But basically, it's from an American courtroom where they were appearing by a video link and one of the advocates had put a filter on himself so he appeared in the whole hearing as a cat. He didn't know how to change it. I love it, but there are a few serious takeaways from this. Make sure you do a trial run and check that things are working and that you know how to use it. As we saw this morning, we're very fortunate that we had someone here in the form of Tamara to assist us with technological issues. So make sure you've had that run through it's very useful. Don't use filters and remember that you were still in court. It is a solemn occasion.

[Slide 24] In that regard, remember to dress appropriately. You're still in court, it's still a solemn occasion. I've just extracted a couple of comments that were made by the Broward Circuit Judge Dennis Bailey in the US. These were published by the Western Bar Association and His Honour said "It's remarkable how many attorneys appear inappropriately on camera. One male lawyer appeared shirtless, and one female attorney appeared still in bed, still under the covers." And His Honour went on to say "...putting a beach cover up won't cover you up if you're poolside in a bathing suit." I know it seems a bit strange but the courts want us to treat it as a the solemn occasion that it is, so dressing appropriately is key.

[Slide 25] I've got a little extract here from a recent decision of *Kalil v Eppinga* [2020] NSW DC 407. It was a defamation claim and the judgment dealt with whether a personal costs order ought to be made against the solicitors acting for the defendant. There were a couple of fantastic extracts from the judgment that I'll just quickly read to you and if you're keen the relevant parts are paragraphs 219-226 of the judgment. The court was talking about one of the solicitors acting for the defendants and the court said:

"*Furthermore, at times when Mr Newell* [this was the solicitor] *was addressing the Court in person (I made the obvious concession when the parties appeared via AVL) he did not stand, where given his experience, he knew that this was appropriate Court etiquette. Apart from it being a discourtesy to the Court, it made it difficult to know if he was addressing me, obtaining instructions or speaking to Mr Goldsmith* [his client]*, adding to the delay.*"

It goes on to get better. "*On one occasion Mr Newell* [the solicitor] *was eating a muffin whilst in Mr Muriniti's office and appearing in Court via the AVL.*"

And further, the Court mentioned that "*…there were many instances in which it appeared to me that Mr Newell was incompetent in defending this application and in conducting the defamation action more generally, by reason of either a lack of understanding and experience, or a lack of preparation, or both.*"

These are comments that you do not want written about you in a judgement. So don't eat in court. It goes on to further bolster what I was saying before, the court, if we're appearing via video link, wants it to be treated as a solemn affair. So those protocols that we have in court such as standing apply.

[Slide 26] Some other comments were made in another recent decision of *SafeWork NSW v McConnell Dowell Constructions (Aust) Pty Ltd* [2020] NSWDC 330. It was in the New South Wales District Court. There the Court was considering whether or not witnesses should be given leave to give evidence via a video link. This is obviously an issue that's been quite prevalent as of last year. The relevant paragraphs are paragraphs 6-13 of the judgment. The Court, it's not as funny as the last one, but the Court talked about how there were some concerns raised by one of the parties about witnesses giving evidence from not a courtroom, whether that be in their home, or whether that be in a solicitor's office, because giving evidence as a witness is a really solemn thing to do. They want to make sure that the integrity of that evidence is maintained. There was some discussion there about how that can be best done. The Court ultimately decided that the witnesses would appear from one of the solicitor's offices, and they would have technological support on standby so an IT person could come in and assist if there were any issues. The Court thought that with appropriate safeguards in place, that was the best way forward to make sure that that evidence would be given with integrity and wouldn't be compromised.

If you do have witnesses appearing via video link, and you do need to put documents to them, have a think about how that can be done. That's not necessarily something that is only going to be relevant in COVID. I can think of an application I did a couple of years ago where one of the witnesses was in the United States so we needed to compile a whole bundle of documents with the help of our opponents and have those couriered to her so that she could refer to them during her evidence and be cross examined on them. So have a think about how that might be best addressed.

Obviously, Sophie's already taken you through all those various publications and protocols to make sure you're up to speed before you go into court.

[Slide 27] Now, I just quickly wanted to talk to you about after court. I don't have a great deal to say but again, it's common sense, if the judge has asked you to do something, whether that be draft up the orders and circulate them to the associate, make sure you do it without delay. Similarly, if the court has made orders or directions, make sure that they are complied with.

And I guess it's a golden rule, not just of being a lawyer, but perhaps in life, don't denigrate the court or your opponents. I can think of an instance when I went up to court and I didn't know my opponent, we were waiting outside before the call over and the barrister was speaking to a chamber colleague of mine about my case and making some disparaging comments about my client. Then I pop up "Hi, we're in the same matter." It was really awkward. Just keep that in mind, you never know who might be within earshot. I think being polite and courteous gets you much further than saying things that are denigrating.

If there's a delay in terms of delivery of a court judgment, just bear in mind that there is a protocol, the courts attempt to have judgments delivered within three months. If there's a concern about delay there are facilities via QLS or the Bar Association to get in contact with the President and you fill out various forms and they can then go get in contact with the court about that. Just something to keep in the back of your mind if it's necessary.

[Slide 28] I've got a couple of scenarios just around that. The first one concerns making errors in court. It is all about Seamus. He's representing his clients in the context of an application to strike out parts of the plaintiff's statement of claim. Seamus has been preparing the matter furiously and he's come across a decision which is just fantastic. It supports his case 100%. Then he finds out it's actually been overturned on appeal, which is unfortunate for Seamus. But it's such a good decision, he just decides "look, I'm going roll with it". I'm going to take the judge to it, and he does. He never makes any mention of the fact that it was actually overturned. He was also, you know, in a flurry to finalise his preparations, and he misread the content of one of the affidavits of his clients. He's prepared his whole argument based upon this mistaken understanding. He makes all these representations to the court in the course of his submissions. He sits down and it all dawns on him that he's made this huge error and he's misled the court. But he realises no one has picked up on it. No one said anything is getting away scot free. He just decides to say nothing and the hearing progresses uninterrupted.

Now, raise your hand if you think that the approach taken by Seamus was a good one.

[Slide 29] No, I'm relieved. No, don't do this. This is not a good approach to take. As you're all aware, legal practitioners have overriding obligations and duties not to deceive or mislead the court. We've got references in the Solicitors Conduct Rules and the Barristers Conduct Rules there.

It's incumbent upon us to notify the court if there are any binding authorities, legislation, Court of Appeal decisions that actually go against your client's case that are directly important points. There is that obligation there as well to draw those things to the court's attention. What Seamus should have done is he should have informed the court that this amazing decision that he found had actually been overturned on appeal. As soon as he realised the factual error that he had made, he should have told the court about that and rectified it.

[Slide 30] The final scenario I want to talk to you about is one involving Gabriella. Gabriella was appearing in court on an application. It was an urgent injunctive relief application. She's been you know, working all night, she's stressed out, she's done an amazing job of getting it all together. She gets into court and unfortunately the judge who is hearing this application is just having a bad day. The judge is not receptive to her arguments, and the judge won't let her present her case. In Gabriella's opinion, the judge seems to favour her opponent and is committing all of their objections to her client's evidence. In fact, the judge is having such a bad day that the judge decides to adjourn early without hearing Gabriella's complete argument. Gabriella is just furious. She can't believe this is happening. At first, during the application, Gabriella starts speaking over the judge interrupting in an attempt to get her argument across. Then, as the judge is speaking louder, trying to get over the top of Gabriella, Gabriella starts shouting, and she throws down her pen in a huff and exclaims "why won't you listen to me Your Honour?" When the judge adjourns the matter Gabriella is so mad that she refuses to stand and simply sits at the Bar Table as the judge leaves the court.

Again, do you think Gabriella did the right thing?

[Slide 31] Excellent. No one online thinks that. Of course, no, this is not the way to conduct yourself in court. People have bad days, judges are no different. We simply just need to take it

all in our stride. We have that duty, as you will know, to the court and to the administration of justice, it's paramount. We also have duties to act in the best interests of our clients.

Perhaps you're saying it wrong, perhaps you're at cross purposes. Try rephrasing your argument. Remember, as I said, you have this duty to assist the court. So think about how you can make the judge's job easier. Be well prepared, knowing the rules and protocols and try to sort out any administrative matters with your appointment so that you don't burden the judge by them. They're all really good things to do. And it's just important to remember, you're not the mouthpiece of your client. It's not your case, it's the client's case. We can only do our jobs properly if we're being polite and patient. If the judge is having a bad day, just take it all in your stride and be the consummate professional that you are.

SG:
That just about wraps up the presentation. Now that you've heard all the tips and tricks, we do have another video which demonstrates what would be considered a gold standard in terms of appearing in application. Hopefully we won't have any issues this time.

[Slide 32 – plays video]

Bailiff: All rise, the Supreme Court of Queensland is now in session. Please be seated.

Judge: Call the first matter on the list.

Bailiff: Smith and Brown.

Advocate: For the applicant Your Honour.

Judge: Are you expecting an appearance from the respondent?

Advocate: No your Honour, the parties have agreed upon some draft orders and the respondent has requested that I mention their appearance.

Judge: Very well. May I take appearances?

Advocate: May it please the Court, my name is Smith, initial F. I am a solicitor employed by Able Lawyers and I appear on behalf of the applicant.

Judge: Thanks Mr Smith. You mentioned that this matter was to be dealt with by consent?

Advocate: Yes your Honour. The parties have agreed upon some draft orders. I have a copy of the proposed draft order to hand up to your Honour. I also have an email from the respondent's solicitors and a copy of the proposed draft order which they have signed to indicate their consent.

Judge: Thank you. Can you tell me what this matter is about?

Advocate: Yes Your Honour. This matter involves a professional negligence claim made by the applicant against the respondent. The proposed draft order which I have handed up to Your

Honour is a timetable for the progression of the matter and sets out when the parties will attend to disclosure, obtain expert evidence and participate in a mediation.

Judge: And I can see that this is being done by consent. Thank you Mr Smith. I'll make those orders as per the draft and they will be available for collection tomorrow.

Advocate: Thank you Your Honour. May I please be excused from the Bar Table?

Judge: Yes, thank you.

SG: So that's the presentation. Does anyone have any questions, either in the room or online?

Audience:
If you're appearing in court or have got an application and you don't know the answer what would you tell the judge?

KR:
You'd asked to take instruction and ask for a short adjournment so that you could seek instructions about that. Obviously, if it's a legal issue, if it's something that is obviously something you need to take instruction then it's easier. But if it's the legal issue then I think the best thing you can do is ask for the short adjournment to explore the issue.

Audience:
I'm thinking in the context of you know, a graduate for example, being on the call and being asked questions that they really don't know. Seeking instructions is probably the best response then.

SG:
Yeah, that's right. You should be wary if you are a grad or someone who's not very experienced, sometimes judges don't like it if you're sent up and you don't know what you're doing. In terms of the matter, not because you're junior, but if you're unable to answer questions sometimes I think they don't really appreciate it. So try and get across the matter as much as you can and make sure that you've got the partner or someone with carriage of the matter on speed dial so that you can you can confer with them if you need to.

KR:
I think as a grad you might need to seek leave to appear. You probably just need to be polite and just make sure the courts are OK, I think they are usually as far as I'm aware. Just seek leave.

Audience:
If you're called as the judge is giving judgment do you stand?

KR:
I normally wait until the judge tells me to sit down.

SG:
Yeah, normally, they would tell you.

KR:
Yeah, I think I think if you're not sure you want to look polite, right? I would stand and then the judge would say sit down Miss Riedel. I think I would err on the side of caution.

I think that goes with a lot of things. If you've got a witness in the witness box and they want some water, then usually you'll say "Your Honour, may the witness have some water?" Then the judge will ask the associate to pour the water. I guess it's the judge's courtroom. You want to make sure you are displaying the right amount of being polite and making it very clear that you understand that is the case. It's up to the judge to run things as they see fit. Do you agree?

SG:
Yeah, I agree with that. Yeah, if you're unsure, ask before you do something.

KR:
Any other questions?

Audience:
This is more a personal question, what was both your paths to going to the Bar?

SG:
I was a judge's associate of High Court with Justice Keane. Then I went to Norton Rose Fulbright and was in their commercial litigation team. I was an Associate before I came to the Bar.

KR:
I was just a solicitor, I was a Senior Associate at HWL before I made the move. My background is in insurance law.

Audience:
You mentioned before self-represented litigants. I've come across a few in my time. I wonder, in your opinion, what would be the best approach to, I guess, guiding a self-represented litigant from a solicitor's perspective in terms of these guidelines and these procedures. Would you direct them to the material or would you leave it, to say the associate, to do that, if they were not cc'ing you in correspondence?

SG:
I've actually had this happen to me last week. A self-represented litigant who was previously a doctor, so he was quite an intelligent person, but his habit is to just email the judge directly, not copying us in. What happens usually is that the associate will email us because they know, my solicitors and I, because they know that we are on the file, and forward the email on. Sometimes the judge via their associate will admonish the self-represented litigant for doing that, but usually they don't. There's really not a lot you can do about it. My solicitor wanted to write back and respond to him. But I advised them not to do that because then you're doing what we discussed before copying recorded correspondence between the parties. You should always try and avoid doing that.

I don't know about directing them to the protocol.

KR:
I've seen correspondence sent out from the firm to a self-represented litigant. Perhaps, if it is on the supervised case list or something, they'll send a copy of the practice direction or a link to it or whatever. Because I think that you want to…your job is to help the court. If you can help the self-represented litigant…obviously, you have to act in the best interest of your client but if you can help the self-represented litigant to present a more efficient case and not waste the court's time, then I think that's probably a good thing to do.

Audience:
I know the mask mandate is over but was there any etiquette or protocols around masks in court?

KR:
I was actually in court during the lockdown. We did need to wear a mask when you went into court and into the courtroom but it's up to the judge. The judge in that instance told us that we could remove our masks and that's what we did once we were up at the Bar Table.

Any other questions?

HD:
We'll wrap it up then. Thank you so much.