

Officer of the Court

By Melvin F. Wright, Jr.

If a client walks into your office with a Complaint and Notice of Hearing and the first thing you say is, “Too bad for you, the lawyer on the other side is the most unprofessional lawyer in the county, and the judge assigned is an idiot who will not follow the law.” Is that acceptable conduct for an Officer of the Court?

If a client who has been in an automobile accident comes into your office and the first thing you say is, “Now before you tell me about the accident, you need to understand that in N.C. we have a rule of contributory negligence that will not allow you to recover anything if you are even 1% at fault. Now tell me why the defendant is 100% at fault.” Is that acceptable conduct for an Officer of the Court?

Assume in a personal injury case, a plaintiff’s attorney has a very questionable case of liability and no real damages. The defense attorney and the insurance company have not been willing to offer any money to settle the case. The plaintiff’s attorney and his client decide on Friday that they will not try the case the next week. The defense attorney prepares all weekend and travels 100 miles to court expecting to be the first case for trial, only to have the plaintiff’s attorney announce at calendar call that he/she will be taking a voluntary dismissal. Is that acceptable conduct for an Officer of the Court?

Where do you look to find your job description as an Officer of the Court? There is nothing in the U.S. Constitution, the Oath of an Attorney, or any statutes that establish lawyers as Officers of the Court. We hear it stated in open court and we see it in cases, but is there a definition somewhere that would enable you to say, “There – because I am an attorney, I am an Officer of the Court”? So why do we refer to ourselves as Officers of the Court? Why do we, and others within the legal system, use this phrase over and over again to refer to the role of an attorney?

If we look at history we may gain some insight. Being referred to as an Officer of the Court is a tradition that takes us back to the early English legal system, where attorneys were considered officers of the court and were subject to the court’s discipline, just as if they were members of the clerical staff. Attorneys did not argue cases; rather, they performed ministerial tasks. English barristers pleaded and defended cases and were admitted to practice by self-regulating professional organizations, never being referred to as officers of the court.¹ Therefore, this specific phrase, like the practice of law and the role of attorneys, has evolved over time into an expected standard of conduct.

The Preamble to the Revised Rules of Professional Conduct refers to “A Lawyer’s Responsibilities” and states, “A lawyer is a representative of clients, an officer of the legal system, and a public citizen having special responsibility for the quality of justice.” RRPC 0.1(1). That comes close, but it still does not define the often used term, an Officer of the Court.

¹ “The Constitutionality of Compulsory Attorney Service: The Void Left By Mallard.” 68 N.C.L.Rev. 575 (1990).

There are cases in North Carolina that refer to attorneys as Officers of the Court, see Smith v. Bryant, 264 NC 208, 211 (1965); Roediger v. Sapos, 217, NC 95, 6 SE2d 801 (1940); Waddell v. Aycock, 195 NC 268, 142SE 10 (1928); and Baker v. Varser, 240 NC 260, 82 SE2d 90 (1954). These cases discuss some of our obligations as Officers of the Court, but they still do not clearly define the term.

If we cannot find a concrete definition of an Officer of the Court, maybe we can apply a modification of Justice Potter Stewart's test, "I know one when I see one."² When you see the following conduct in yourself or others, would you be proud to refer to the attorney as an Officer of the Court?

- An attorney who objects to and avoids the admission of facts in pleadings and discovery that should not be in controversy, in order to obfuscate the litigation.
- An attorney who refuses to produce or comply during discovery and acts as if his/her job is to conceal rather than reveal the truth.
- An attorney who will not visit indigent clients in jail and prepares cases based on a client's ability to pay.
- An attorney who fabricates and/or generates conflicts and feigns illness in order to avoid certain judges or court appearances.
- An attorney who makes representations to the Court that the case he/she is relying on is "on all fours" and has not been overruled, when he/she has not looked to be sure if it is still the law.
- An attorney who uses jury selection and the opening statement for argument purposes and to "push the envelop" to the edge by planting seeds of doubt in the opponent's case without the facts or witnesses to substantiate his/her statements.
- An attorney who acts on the premise that a judge cannot "unring the bell" and will ask questions on cross examination that he/she knows should not be allowed by the Court, whether or not there is an objection from the other side.
- An attorney who will not return phone calls to judges, other attorneys, or clients.
- An attorney who will not dress properly and will not stand when addressing the Court.
- An attorney who allows a demented or confused client to sign a will, which causes the family and heirs to endure protracted litigation and unnecessary heartache.
- A Judge who is never on time, repeatedly takes personal phone calls during court, belittles lawyers and witnesses, and will not follow sentencing or jury instructions.

We can all agree that the previous examples are unprofessional and would not be expected of an Officer of the Court. Where then do we look to find an example and/or definition of an Officer of the Court? WE NEED ONLY TO LOOK AT EACH OTHER. Each day when we walk into a courtroom or the clerk's office or our offices, we are defining an Officer of the Court by the way we act. We should always show respect for the legal system and all those who are a part of it. Civility, honesty, and integrity are core values of any true Officer of the Court. If we do not show respect for each other, how can we expect our clients and the public to respect our profession?

² Jacobellis v. Ohio, 878 US 184 (1964).

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It is not always easy to walk the high road of professionalism. We all stumble occasionally. But ours is a profession that has always been willing to help and assist those in our society who have made mistakes. We are the zealous advocates who insure that the Constitutional rights of criminals and the interests of the underprivileged are protected. As Officers of the Court let us continue to represent those in need and to always seek justice. And when we encounter lawyers and judges who may be struggling or having problems, as Officers of the Court, lets be willing to extend the hand of friendship and help them back up on the high road. Who knows, you may need the help of an Officer of the Court someday.

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