

I'LL SEE YOU IN COURT!

By Melvin F. Wright, Jr.

When you hear the expression, “I’LL SEE YOU IN COURT,” it usually means that all prior discussions and attempts to resolve differences have failed and there is nothing left but to let a judge or a jury of twelve strangers decide the matter. Thank goodness we have the option of Court in this country. But this phrase can also be an attempt to bully or scare or intimidate – which is not a good thing. Maybe it is just me, but it seems that there has been an increase in boorish behavior in the United States.

For example, what was your reaction when Rep. Joe Wilson, a US Congressman and lawyer from South Carolina, yelled at President Barack Obama in September 2009 during a joint session of Congress, “You lie!”? Whatever your political affiliation, I hope you were shocked and upset. At the time, you were probably not aware that Rep. Wilson was a lawyer, but now that you know, does it upset you even more?

Have you worried about what lawyers and judges are doing about rudeness, lack of civility, and unprofessional conduct? Have you been willing to step up, when necessary, to try to make a difference? Former Chief Justice Burley Mitchell often reminds us that as a self-regulating profession, we have responsibilities as lawyers regarding our conduct and our professionalism. Paragraph (13) of the Preamble of the North Carolina Rules of Professional Conduct states:

[13] Although a matter is hotly contested by the parties, a lawyer should treat opposing counsel with courtesy and respect. The legal dispute of the client must never become the lawyer’s personal dispute with opposing counsel. A lawyer, moreover, should provide *zealous but honorable* representation without resorting to unfair or offensive tactics. The legal system provides a civilized mechanism for resolving disputes, but only if the lawyers themselves *behave with dignity*. A lawyer’s word to another lawyer should be the lawyer’s bond. As professional colleagues, lawyers should encourage and counsel new lawyers by providing advice and mentoring; foster *civility* among members of the bar by acceding to reasonable requests that do not prejudice the interests of the client; and counsel and assist peers who fail to fulfill their professional duties because of substance abuse, depression, or other personal difficulties. (emphasis added)

When we act honorably, with dignity and in a civil manner, we do not yell at another lawyer and particularly not the President of the United States. To his credit later that evening Rep. Wilson issued an apology for his “lack of civility.”

However, it is not just the conduct of lawyers that is of concern, it is a societal issue. Movies, TV shows, radio talk shows, political debates and athletic events are all full of conduct that Tom Lunsford, the Executive Director of our State Bar and *Andy Griffith Show* aficionado,

can assure us that Opie never saw in idyllic Mayberry. Your response would probably be that times have changed. Have they ever!

Recently, I attended an ACC basketball game and was shocked and embarrassed by an incident that occurred during halftime. It involved a fan who, during the first half, had tried to convince all within hearing distance that he knew more than either coach and took every opportunity to loudly berate the officials and opposing players. However, during halftime, Woody Durham, a revered radio announcer for the home team was honored with a plaque from a school official and induction into the Order of the Long Leaf Pine, which was presented by Governor Bev Perdue. When Gov. Perdue was introduced, the fan and others started booing. I felt it was so inappropriate that I turned and said, "Please Stop!" When he asked, "What did you say?" I again said, "Please Stop! That is inappropriate!" He then said, "I am a Republican; I served in the Army; and I do not give a (expletive)." A friend who was with me then said that this was not about the Governor but about honoring Woody Durham. At that point, the fan's wife joined in to try to get him to be quiet. He reluctantly stopped but not before adding, "I can say what I want to."

He was right about that. The First Amendment protects Freedom of Speech, but lawyers and judges are also expected to abide by Rules of Professional Conduct, Professionalism Codes, Rules of Court, Standards of Judicial Conduct and Court Opinions. In short, as members of the legal profession, we are expected to follow a higher standard.

When we hear about lawyers and judges criticizing each other in open court and then read about it in the newspaper, it is upsetting. We are expected to counsel and represent others who are unable to resolve differences. Why are lawyers castigating and making disparaging remarks about their opponent in front of a judge or jury? We are supposed to know better. What do you think about inappropriate conduct by members of the legal profession outside of the workplace? Passion is an important part of what we do, but should passion trump civility and good manners?

Judges have the power of contempt and the inherent authority to discipline lawyers who do not act in accordance with the rules they are obligated to follow. Rule 12, Courtroom Decorum of the General Rules of Practice for North Carolina Superior and District Courts states: "Counsel are at all times to conduct themselves with dignity and propriety...All personalities between counsel should be avoided. The personal history or peculiarities of counsel on the opposing side should not be alluded to...Abusive language or offensive personal references are prohibited...Counsel should yield gracefully to rulings of the court and avoid detrimental remarks both in court and out." Instead of engaging in public conduct that shocks the conscience and becomes the subject of embarrassing headlines, try to disagree without being disagreeable, as suggested by Bernard Meltzer. The nature of what we do often requires that we take a position contrary to that of the advocate on the opposite side; that is how our system works. Stephen L. Carter reminds us, "Our duty to be civil toward others does not depend on whether we like them or not. Civility requires that we listen to others with knowledge of the possibility that they are right and we are wrong."

The State Bar recently hosted a gathering of criminal defense attorneys and district attorneys to discuss common goals and issues. During the discussion, a well-respected criminal defense attorney from Raleigh stated that there are certain lawyers on both sides of the aisle who are so extreme in their thinking that any form of compromise short of their stated position is unacceptable. I think it is safe to say that these individuals are often the lawyers who garner the headlines because of their attitudes, actions, and outrageous conduct. If, in the future, you are inclined to use the phrase, "I'll see you in court," I hope it is after a respectful discussion and negotiation. Most would prefer hearing, "I am sorry we could not resolve this matter among ourselves. But thank goodness we have judges and juries who can help us with this matter." Then with a parting handshake say, "My client and I look forward to working with you on reaching a fair resolution for all involved."

When we make mistakes from time to time (and we all do), the legal community should rally around and provide the help needed. The good news is that our profession has established programs to assist those who are acting unprofessionally, who are depressed, or who are suffering from addiction. However, lawyers and judges sometimes have problems asking for assistance; they need you to step in and offer to help. If they are resistant to help, at least you have tried and planted the seed. Maybe, after thinking about it for a few days, they will call you or seek help from the various Bar resources.

If you know a lawyer or judge that may benefit from a confidential peer intervention, because of professionalism issues, please call the N.C. Chief Justice's Commission on Professionalism (CJCP) at (919) 890-1455. We will be glad to discuss the problem and offer more information about the Professionalism Support Initiative (PSI) and other programs.

PSI (a program of the CJCP): With support from the State Bar's Client Assistance Program, the Judicial Standards Commission, and local bar associations, the PSI serves as a positive peer influence venue to improve professionalism among lawyers and judges. The CJCP has a PSI training video with manual and provides these materials to local bar associations and other groups throughout the Bar.

Website: <http://www.nccourts.org/Courts/CRS/Councils/Professionalism/PSI.asp>