

## Professionalism Committee

David W. Long, Chair

### Obligations of an "Officer of the Court"

By Daniel S. Johnson

"An attorney at law is a sworn officer of the court with an obligation to the public, as well as to his clients, for the office of attorney at law is indispensable to the administration of justice." *Baker v. Varser*, 240 N.C. 260, 82 S.E. 2d 90 (1954); *Underwood v. Williams*, 69 N.C. App 171, 316 S.E. 2d 342 (1984)

Rule 0.1 [1] of the Revised Rules of Professional Conduct (2003) declares that: "A lawyer, as a member of the legal profession, is a representative of clients, an officer of the legal system, and a public citizen having special responsibility for the quality of justice."

While no longer a source of enforceable ethics rules, it is submitted that a number of the superceded Canons of Ethics and Rules of Professional Conduct still offer guidance, albeit in somewhat outdated language, to today's lawyers. These Canons may be found in the official North Carolina Supreme Court Reports at 221 N.C. 592 (1942).

These Canons from the last century can provide guidance to us in "professionalism" and guidance toward being "Officers of the Court." Among the Canons with continuing relevance to us today is Canon 22.

#### 22. CANDOR AND FAIRNESS

*The conduct of the lawyer before the Court and with other lawyers should be characterized by candor and fairness.*

*It is not candid or fair for the lawyer knowingly to misquote the contents of a paper, the testimony of a witness, the language or the arguments of opposing counsel, or the language of a decision or a textbook; or with knowledge of its invalidity, to cite as authority a decision that has been overruled, or a statute that has been repealed; or in argument to assert as a fact that which has not been proved, or in those jurisdictions where a side has the opening and closing*

*arguments to mislead his opponent by concealing or withholding positions in his opening argument upon which his side then intends to rely.*

*It is unprofessional and dishonorable to deal other than candidly with the facts in taking the statements of witnesses, in drawing affidavits and other documents, and in the presentation of causes.*

*A lawyer should not offer evidence which he knows the Court should reject, in order to get the same before the jury by argument for its admissibility, nor should he address to the Judge arguments upon any point not properly calling for determination by him. Neither should he introduce into an argument, addressed to the court, remarks or statements intended to influence the jury or bystanders.*

*These and all kindred practices are unprofessional and unworthy of an officer of the law charged, as is the lawyer, with the duty of aiding in the administration of justice.*

This Canon stands as a reminder for us today that the lawyer can, and must, fully represent his or her client's interest while being candid and fair with both the opposing party and the Court.

This Canon's text instructs us that we must resist the temptation to "slip something by" the opposing counsel or the Court. Not only is it right to be candid and fair, but as a practical matter, a lack of candor or integrity, once revealed to the Court or your fellow members of the Bar, can brand and handicap your legal career. An attorney who is known to lack candor will be unlikely to get favorable settlements from his or her fellow lawyers. An attorney who gains a reputation for lack of

candor will also be unlikely to be given the "benefit of the doubt" in a close case by the Judge.

It is not a sign of weakness for an attorney to act with fairness. It is possible to be passionate, forceful, and zealous and still be fair. Indeed, an attorney who wins while "playing fairly" should have a greater feeling of satisfaction than an attorney who may (temporarily) prevail otherwise.