E. Smythe Gambrell Professionalism Award Application

Name of Organization: The University of North Carolina at Chapel Hill School of Law

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Application prepared by: John Charles Boger

Title: Dean and Wade Edwards Distinguished Professor of Law

Project/Program Title: Raymond B. Witt Professional Roundtable and its sister program, the Charlotte Professional Roundtable

Website Address for Project/Program (if applicable): N/A

Starting Date: 1993

All entries must address the following items:

1. Project Description: Please provide a full description of your project, including future plans. (Please specify the nature and use of any materials submitted as exhibits accompanying this application.)

In 1939, Raymond B. Witt graduated from the University of North Carolina School of Law, returning to his native Chattanooga, Tennessee, where he built a long and distinguished career in tax and estate law. Toward the end of his professional life, Mr. Witt and his generous family decided to establish,in Chapel Hill, the Raymond B. Witt Endowmentto create an annual professional roundtable, designed to bring together law students, faculty, and members of the practicing bar for an evening of discussions around a 'true to life' ethical problem. The cost of the dinner is free to all participants.

The inaugural Witt Professionalism Roundtable, held in 1993,attracted approximately 60 participants. It has since grown to become a signature event at Carolina Law, annually drawing more than200 students, faculty, lawyers and judges to Chapel Hill every February. The Witt Roundtable has enjoyed such great mid-winter success that UNC alumni proposed, in 2006, that the Schoolshould host a similar fall gathering in Charlotte, North Carolina, the banking center of the southeast and the State's largest city.The Charlotte Professionalism Roundtable was first held in October 2007, thanks in part, to a grant from the North Carolina Chief Justice's Commission on Professionalism.

The genius of all the roundtables is their creation of credible ethical problems,drawn closely from professional life,problems that actively engage the attention of managing partners, federal judges, and law faculty alike. Past years' roundtables haveexamined, for example,corporate conflicts of interest that arise when in-house legal counsel learn about conduct by corporate officers that may be injurious to the corporation itself,and the dilemma that might be faced by a well-meaning lawyer who suddenly realizes that he owessimultaneous but irreconcilable duties to his private real estate client and to the public redevelopment board on which he is serving. The most recent exercise focused on the ethics of advertising by a law firm on social network media; it presented questions undreamed of when print and broadcastwere the only forms of lawyer-client advertising. (The full text of several past problems is included with this application). The problems have all been written by UNC Law faculty members with ample practice experience who teach professional responsibility and/or relevant subjects.

All roundtable participants receive the evening's relatively short, multi-partproblem and pertinent professional rules ahead of time. Each table of 8 to 12 is carefully designed to ensure a mix of students, faculty, lawyers, judges, and/or public officials. After introductions, a faculty member openseach table's discussion in a Socratic fashion by restating the problem and posing an initial question. A lawyer or judgetypically offers an initial response, soon findingthat others will raise questions about their answer or disagreeabout its premises. If the problems work well, genuine, deeply felt differences may surface on how to treat a perceived problem. Some lawyers at the table may have faced similar issues in practice – although many will later confess that theydidn't fully appreciate the depth or complexity of the matters until their Witt Dinner discussion.Often someone will insist that additional information must be provided before any complete answer can be framed, yet lawyers regularly caution students that, in practice,they will often find themselves obliged to act without benefit of full information.

All participants have been informed at the outset that someone from their tables (usually the junior-most student) will likely be invited to the podium at the end of the evening to share the table's best thoughts. As a result, most tables soon bond as a group and begin to engage in collective problem-solving. State Supreme Court justices, city mayors, junior associates, and second-year law students all typically work in earnest toward the common end of finding responsible, ethically appropriate answers.For many students, speaking up at a table filled with judges, lawyers, and faculty members as they struggle together to frame the best response,becomes their first taste of non-classroom, collegial legal problem-solving.

After about 45 minutes of discussion, representatives from perhaps half of the tables are called, one by one, to the podium to address the problem, each for 3-4 minutes apiece. For alumni and friends, listening to bright young students extemporaneously summarizingthe fruits of their tables' diffuse discussions is often a welcome highlight of the evening, even as for many students, it can be the very first time they've spoken in the presence of so many judges and senior members of the practicing bar. The evening typically concludes with remarks from the faculty member or members who have conceived the problem and who offer to the audience their own well-informed and researched viewsabout each of the issues.

2. Success of Project:

    a. What were the specific goals/objectives?

The principal purposes of the Witt and Charlotte Professionalism Roundtables have been: (1) to expose students to real-world ethical problems that they may face in a matter of one, two, or three years; (2) to let them see clearly that real lawyers approach ethical matters with great seriousness; (3) to provide a comfortable setting in which the practicing bar can reflect on serious ethical and professional issues; and (4) to create -- between students,soon to be entering the profession, and leaders of the bench and bar– ties that have been forged not in casual conversation, but instead, in joint efforts to resolve ethical problems While UNC offers classroom courses in professional responsibility, Witt Roundtables make the real-world significance of these professional issues unmistakably vivid, though in a non-threatening setting, where the problems are real but the stakes are low. (As a secondary byproduct of the event, law students interact directly with members of the bench and bar in ways that lead, for some, to future employment).

    b. How was the impact measured/evaluated?

Evidence of success can be measured in principal ways: (1) the growth in attendanceat the annualroundtables, up from 60 participants in 1993 to 150-200 participants at each of the fall and mid-winter events in 2011 (for a total of 300-to-400 attendees in all); (2) the addition of a second, large roundtable in Charlotte; and, (3) the elevated profile of the friends and alumni who return year after year-- leaders of the North Carolina bench and bar, including North Carolina Supreme Court justices, judges from the North Carolina Court of Appeals, federal district judges, members of the trial bench, as well as members of the North Carolina General Assembly, law firm partners, leaders of governmental and non-profit agencies, and scores of practicing attorneys. Many report that it is one of their favorite events of the year.

The School has learned that the Witt Professionalism Roundtables now serve as models for similar evenings instituted by other law schools across the state and region.

c. Do you feel the goals were met and why?

Carolina Law believes it has met its goal to provide professional ethical training for its law students, in the spirit of Raymond B. Witt, whose generous donation established the Witt Professional Roundtable. The attendance at the event has grown each year, and students and others compliment the School on how valuable the discussions are in their professional growth.

d. What evidence can you present to demonstrate the effectiveness of the project? (include any relevant documentation such as newspaper articles and letters of recommendation)

See enclosures.

3. Professionalism: How does this project help enhance professionalism among lawyers?

This program's principal objective is to advance,among Carolina Law students, an understanding of the role that professional values play for all who act in the legal field. The program also reminds the practicing bar and bench of their commitment to these values, even as it adds to their insight about the difficult ethical issues chosen for theannual discussions.Finally, the variety of views that often emerge on these contested issues reinforces the realization that professional issues are often complex, arise frequently, and are worthy of lawyers' careful attention.

To Do Kit: Outline the steps for replication of the project by others. Include suggestions or recommendations you would offer to others who might undertake a project similar to this one?

In Carolina Law's judgment, there are four important steps in implementing a successful event. The first is to identify a friend or other champion willing to provide annual financial support. The fact that the dinner is costless to the participants makes a difference in two ways: it creates both a not-so-subtle inducement to participation and a more subtle obligation to take the evening's work seriously. Yet there are many ways such support can emerge, Carolina Law has found, over time. In addition to core support provided by the Witt Endowment, the roundtables have become popular with larger law firms that now seek to co-sponsor the event because of the good will it creates and its perceived

reputation in the legal community. Their financial participation has allowed the School to expand the size and reach of the program.

The second step in implementing the program is to identify solid staff leadership and management. If every participant can receive a full, timely set of materials in advance, if all tables exhibit a carefulbalance among participants, if every pre-dinner question is answered well, the bench and bar participants, who are key to its success, will look forward to these evenings. Sufficient commitment of human resources is essential, and Carolina Law has been fortunate to have talented staffers who have taken leadership to ensure that these dinners have been upbeat and well run.

Of greatest substantive importance, a successful roundtable necessarily depends upon a faculty member (or someone with expertise in professional responsibility) who will spend the time to draft a well-conceived problem. Familiarity with relevant rules of professional conduct and/or the pertinent substantive law is a must, but the most important touch is the realism and relevance of the problems to the modern practice of law. Practitioners can quickly detect, and have little interest in dwelling on, 'merely' theoretical problems that don't appear relevant to their daily work. They will gladly give several hours, on the contrary, to a problem that seems grounded in the reality of their professional lives.

The final element is to recruit a mix of participants sufficiently distinguished – judges, governmental officials, bar leaders, and well-loved faculty members –with whom others will actively desire the opportunity to attend and exchange views, especially in a non-adversarial setting. The students add immeasurably to the mix and are essential to the model, of course, but they are the least difficult to recruit, especially once the elements above are all in place.

It is our view law schools throughout the nation have all ingredients necessary to adopt and/or modify the Witt Professionalism Roundtable model. Their roundtables could readily servelaw schools' institutional interests while promoting intergenerational commitment to professional values among bench and bar. We are grateful to Raymond Witt and his family for conceiving of this idea. The School and its alumni and friends arevery pleased by its continuing success and believe that it deserves wider attention and replication. Receipt of this year's distinguished E. Smythe Gambrell Award from the American Bar Association would make the wider distribution of this great idea possible.

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February 18, 2011

John C. Boger, Dean
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Dear Jack:

Thank you for including me again in the Witt Professionalism dinner. Since the first dinner I attended when I found myself at your table, I have thoroughly enjoyed each experience and the opportunity to see so many old friends. As always, the evening was both fun and engaging. I look forward to participating with you in the future.

Very truly yours,

William H. Gammon

WHG/ash

UNC School of Law
Witt Professionalism
Roundtable

February 19, 2009
The Carolina Inn
Chapel Hill, North Carolina

2009 Problem for
Discussion

The UNC School of Law Witt Professionalism Roundtable is graciously sponsored by:
The Raymond B. Witt Professionalism Endowment

2009 Witt Professionalism Roundtable Problem

You are in-house counsel to a North Carolina corporation engaged in wholesale food distribution. A local newspaper has run an article reporting the existence of illegal price fixing in the wholesale food industry in the state. In an excess of caution, the CEO of your company wants to find out if her company might be involved in such activity. She fears that individual employees in the company may have engaged in illegal acts without her knowledge or consent – activities for which the company might be held responsible. You are asked to conduct an investigation to determine whether anyone is guilty of such acts.

The first person you interview is the company's Vice-President for Sales, Joseph Tar. Tar is one of several company employees who is a long time colleague of yours and a personal friend. You go to his office to interview him. After beginning pleasantries and the exchange of information about your respective families, you begin to get to the matter at hand:

Lawyer: Joe, the company has asked me to investigate the possibility of people within our company engaging in illegal price fixing. Do you have any evidence of that?

Joe: Can I talk to you in confidence – as my lawyer?

Lawyer: Actually, Joe, I'm the lawyer for the company, not you. But I will certainly keep your confidence. Besides, our conversation is covered by the attorney-client privilege.

Joe: If I ask you to represent me personally, would you do it?

Lawyer: No problem. I can represent you both.

Joe: Okay, I'll level with you. I have been under pressure to turn a profit for the company. The best way to do that is to make sure the prices for our products remain high. My kids are about to go off to college. There are people in other companies who feel the same way, so we have agreed to maintain prices at a high level. I know it's a violation of the law, but these are tough times.

Joe goes on to provide details of the transactions. You report your findings to the CEO, who claims shock at the revelations. However, she elects to do nothing about the situation and to simply wait to see if the investigation reaches the company. You plead with her to at least report your findings to the Board of Directors, but she declines. She does indicate that she will discuss the issue with Joe and tell him to stop the price fixing activity.

1. May you report the price fixing to the Board of Directors? Should you? If they do nothing, may you report the price fixing to the appropriate state authorities?
2. Assuming that the company does nothing to report the results of your investigations to the appropriate authorities, should you resign your position as in-house counsel? [Your children are about the start college as well.] Must you resign? If you resign, can you make any public statement about your resignation? If so, what would you say?

3. Did you commit any ethical violations in your conversation with Joe?
4. Assume that a government probe of your company is undertaken and that Joe is indicted for his role in the price fixing. Can you now represent Joe?

North Carolina Rules of Professional Conduct

Rule 1.2 Scope Of Representation and Allocation of Authority between Client and Lawyer

* * *

d) A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent, but a lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good faith effort to determine the validity, scope, meaning or application of the law.

Rule 1.6 Confidentiality of Information

(a) A lawyer shall not reveal information acquired during the professional relationship with a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation or the disclosure is permitted by paragraph (b).

(b) A lawyer may reveal information protected from disclosure by paragraph (a) to the extent the lawyer reasonably believes necessary:

(1) to comply with the Rules of Professional Conduct, the law or court order;

(2) to prevent the commission of a crime by the client;

(3) to prevent reasonably certain death or bodily harm;

(4) to prevent, mitigate, or rectify the consequences of a client's criminal or fraudulent act in the commission of which the lawyer's services were used; * * *

Rule 1.7 Conflict of Interest: Current Clients

(a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:

(1) the representation of one client will be directly adverse to another client; or

(2) the representation of one or more clients may be materially limited by the lawyer's responsibilities to another client, a former client, or a third person, or by a personal interest of the lawyer.

(b) Notwithstanding the existence of a concurrent conflict of interest under paragraph (a), a lawyer may represent a client if:

(1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;

(2) the representation is not prohibited by law;

(3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal; and

(4) each affected client gives informed consent, confirmed in writing.

Rule 1.13 Organization As Client

(a) A lawyer employed or retained by an organization represents the organization acting through its duly authorized constituents.

(b) If a lawyer for an organization knows that an officer, employee. or other person associated with the organization is engaged in action, intends to act or refuses to act in a matter related to the representation that is a violation of a legal obligation to the organization, or a violation of law which reasonably might be imputed to the organization, and is likely to result in substantial injury to the organization, then the lawyer shall proceed as is reasonably necessary in the best interest of the organization. Unless the lawyer reasonably believes that it is not necessary in the best interest of the organization to do so, the lawyer shall refer the matter to higher authority in the organization, including, if warranted by the circumstances, to the highest authority that can act on behalf of the organization as determined by applicable law.

(c) If, despite the lawyer's efforts in accordance with paragraph (b), the highest authority that can act on behalf of the organization insists upon action, or a refusal to act, that is clearly a violation of law and is likely to result in substantial injury to the organization, the lawyer may reveal such information outside the organization to the extent permitted by Rule 1.6 and may resign in accordance with Rule 1.16.

(d) Paragraph (c) shall not apply with respect to information relating to a lawyer's representation of an organization to investigate an alleged violation of law, or to defend the organization or an officer, employee, or other constituent associated with the organization against a claim arising out of an alleged violation of law. * * *

Rule 1.16 Declining or Terminating Representation

(a) Except as stated in paragraph (c), a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if:

(1) the representation will result in violation of law or the Rules of Professional Conduct; * * *

(b) Except as stated in paragraph (c), a lawyer may withdraw from representing a client

if:

(1) withdrawal can be accomplished without material adverse effect on the interests of the client; or

(2) the client knowingly and freely assents to the termination of the representation; or

(3) the client persists in a course of action involving the lawyer's services that the lawyer reasonably believes is criminal or fraudulent; or

4) the client insists upon taking action that the lawyer considers repugnant, imprudent, or contrary to the advice and judgment of the lawyer, or with which the lawyer has a fundamental disagreement; or

(5) the client has used the lawyer's services to perpetrate a crime or fraud; or

* * *

(9) other good cause for withdrawal exists.

Rule 4.3 Dealing with Unrepresented Person

In dealing on behalf of a client with a person who is not represented by counsel, a lawyer shall not:

(a) give legal advice to the person, other than the advice to secure counsel, if the lawyer knows or reasonably should know that the interests of such person are or have a reasonable possibility of being in conflict with the interests of the client; and

(b) state or imply that the lawyer is disinterested. When the lawyer knows or reasonably should know that the unrepresented person misunderstands the lawyer's role in the matter, the lawyer shall make reasonable efforts to correct the misunderstanding.

2010 Witt Professionalism Roundtable Problems

1. Rachel, a recent law school graduate, was hired by the prestigious law firm, Boger & Gasaway (the Boger firm). Unfortunately, as is all too common these days, the firm's business declined to such an extent that it asked all new hires to defer their employment for six months. The firm agreed, however, that it would pay $5000 a month to any new associate who deferred employment – provided the associate would do public interest law work in the interim. Rachel elected to take the firm's offer and secured a position at the local Legal Aid office. The firm considered Rachel to be an employee on loan during the six months she would work for Legal Aid. The Legal Aid office was aware of the fact that Rachel was on loan from the Boger firm. After passing the bar, Rachel worked on a number of matters for various individuals.

In addition to dealing with individual problems of persons needing legal assistance, the Legal Aid office also represented the plaintiffs in a class action brought against the local Housing Authority. The class action charged that the Authority provided substandard housing in violation of state law and local ordinances. Rachel was not assigned to that case. However, she was interested in it and followed the progress of the litigation by reading the pleadings, motions and various other papers that had been or were to be filed by the lawyers working on the case. Through her reading of the pleadings, she became aware that the Boger firm represented the Housing Authority. She sat in on one strategy session in which the lawyers discussed the deposition schedule to be followed during the course of discovery. Included in that discussion was an analysis of the facts the lawyers thought were significant in preparing the case for trial.

Rachel joined the Boger firm at the end of her six months with Legal Aid. She revealed to people at the firm that she knew that the Boger firm represented the Housing Authority, but told them nothing about what she had learned by sitting in on the strategy session. The firm's managing partner told her that there was no problem so long as she did not participate in the firm's representation of the Authority. Rachel was assigned to the firm's white collar criminal defense group.At no point did she discuss the Housing Authority case with any of the lawyers involved in it nor did she receive any further information about the case.

Legal Aid has now filed a motion in the Housing Authority case to disqualify the Boger firm on the grounds that one of its associates, Rachel, has a conflict of interest to which its clients had not consented.

Has the Legal Aid office, the Boger firm or Rachel violated any North Carolina Rules of Professional Conduct?

How should the court rule on the motion to disqualify the Boger firm?

Could the people involved have handled the situation better? If so, how so?

2. Another prestigious firm, Gibson & Mosteller, made the same offer to its deferred associates. A Gibson & Mosteller hire, Ronald, decided to work for a public interest law firm concerned with

protecting consumers against predatory lending practices. Like Rachel, Ronald was considered a law firm employee on loan to the consumer protection firm. The public interest firm has filed a class action against a pay-day lender, Easy Money, charging that the lender's practices were fraudulent and violated federal and state law. Ronald took an active role in this case, and did extensive legal and factual research. At the end of his six months, he joined the Gibson & Mosteller firm as a full-time employee. He was placed in one of the firm's general litigation groups. As part of that group, he was asked to work on a case in which a group of individuals had brought a class action against another pay-day lender, Lots of Cash, a Gibson & Mosteller client. He again did extensive legal and factual research. Although there is no connection between Easy Money and Lots of Cash, the plaintiffs in the two cases cooperate extensively, sharing factual and legal research. Ronald had no direct contact with the plaintiffs in the Lots of Cash case while at the public interest firm, but the results of their research was discussed at the firm. The issues in the cases are virtually identical – the plaintiffs in both cases claim that the same lending practices are illegal and the defendants claim they are not. Lots of Cash's legal position in their case is exactly the opposite of the plaintiffs in the Easy Money case. The plaintiffs in the Lots of Cash case move to disqualify Gibson & Mosteller based upon Ronald alleged conflict of interest.

Has Ronald or any of the entities described above violated the North Carolina Rules of Professsional Conduct?

How should the court rule on the motion to disqualify Gibson & Mosteller?

Could the people involved have handled the situation better? If so, how so?

2010 Witt Professionalism Roundtable
Applicable Rules and Selected Comments

Rule 1.7 Conflict of Interest: Current Clients

(a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:

(1) the representation of one client will be directly adverse to another client; or

(2) the representation of one or more clients may be materially limited by the lawyer's responsibilities to another client, a former client, or a third person, or by a personal interest of the lawyer.

(b) Notwithstanding the existence of a concurrent conflict of interest under paragraph (a), a lawyer may represent a client if:

(1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;

(2) the representation is not prohibited by law;

(3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal; and

(4) each affected client gives informed consent, confirmed in writing.

Comment

General Principles

[1] Loyalty and independent judgment are essential elements in the lawyer's relationship to a client. Concurrent conflicts of interest can arise from the lawyer's responsibilities to another client, a former client or a third person or from the lawyer's own interests. For specific Rules regarding certain concurrent conflicts of interest, see Rule 1.8. For former client conflicts of interest, see Rule 1.9. For conflicts of interest involving prospective clients, see Rule 1.18. For definitions of "informed consent" and "confirmed in writing," see Rule 1.0(f) and (c).

[2] Resolution of a conflict of interest problem under this Rule requires the lawyer to: 1) clearly identify the client or clients; 2) determine whether a conflict of interest exists; 3) decide whether the representation may be undertaken despite the existence of a conflict, i.e., whether the conflict is consentable; and 4) if so, consult with the clients affected under paragraph (a) and obtain their informed consent, confirmed in writing. The clients affected under paragraph (a) include both of the clients referred to in paragraph (a)(1) and the one or more clients whose representation might be

materially limited under paragraph (a)(2).

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[6] Loyalty to a current client prohibits undertaking representation directly adverse to that client without that client's informed consent. Thus, absent consent, a lawyer may not act as an advocate in one matter against a person the lawyer represents in some other matter, even when the matters are wholly unrelated. The client as to whom the representation is directly adverse is likely to feel betrayed, and the resulting damage to the client-lawyer relationship is likely to impair the lawyer's ability to represent the client effectively. In addition, the client on whose behalf the adverse representation is undertaken reasonably may fear that the lawyer will pursue that client's case less effectively out of deference to the other client, i.e., that the representation may be materially limited by the lawyer's interest in retaining the current client. Similarly, a directly adverse conflict may arise when a lawyer is required to cross-examine a client who appears as a witness in a lawsuit involving another client, as when the testimony will be damaging to the client who is represented in the lawsuit. On the other hand, simultaneous representation in unrelated matters of clients whose interests are only economically adverse, such as representation of competing economic enterprises in unrelated litigation, does not ordinarily constitute a conflict of interest and thus may not require consent of the respective clients.

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[24] Ordinarily a lawyer may take inconsistent legal positions in different tribunals at different times on behalf of different clients. The mere fact that advocating a legal position on behalf of one client might create precedent adverse to the interests of a client represented by the lawyer in an unrelated matter does not create a conflict of interest. A conflict of interest exists, however, if there is a significant risk that a lawyer's action on behalf of one client will materially limit the lawyer's effectiveness in representing another client in a different case; for example, when a decision favoring one client will create a precedent likely to seriously weaken the position taken on behalf of the other client. Factors relevant in determining whether the clients need to be advised of the risk include: where the cases are pending, whether the issue is substantive or procedural, the temporal relationship between the matters, the significance of the issue to the immediate and long-term interests of the clients involved and the clients' reasonable expectations in retaining the lawyer. If there is significant risk of material limitation, then absent informed consent of the affected clients, the lawyer must refuse one of the representations or withdraw from one or both matters.

Rule 1.9 Duties to Former Clients

(a) A lawyer who has formerly represented a client in a matter shall not thereafter represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client unless the former client gives informed consent, confirmed in writing.

(b) A lawyer shall not knowingly represent a person in the same or a substantially related matter in which a firm with which the lawyer formerly was associated had previously represented a client

(1) whose interests are materially adverse to that person; and

(2) about whom the lawyer had acquired information protected by Rules 1.6 and 1.9(c) that is material to the matter;

unless the former client gives informed consent, confirmed in writing.

(c) A lawyer who has formerly represented a client in a matter or whose present or former firm has formerly represented a client in a matter shall not thereafter:

(1) use information relating to the representation to the disadvantage of the former client except as these Rules would permit or require with respect to a client, or when the information has become generally known; or

(2) reveal information relating to the representation except as these Rules would permit or require with respect to a client.

Comment

[1] After termination of a client-lawyer relationship, a lawyer has certain continuing duties with respect to confidentiality and conflicts of interest and thus may not represent another client except in conformity with this Rule. Under this Rule, for example, a lawyer could not properly seek to rescind on behalf of a new client a contract drafted on behalf of the former client. So also a lawyer who has prosecuted an accused person could not properly represent the accused in a subsequent civil action against the government concerning the same transaction. Nor could a lawyer who has represented multiple clients in a matter represent one or more of the clients in the same or a substantially related matter after a dispute arose among the clients in that matter, unless all affected clients give informed consent or the continued representation of the client(s) is not materially adverse to the interests of the former clients. *See* Comment [9]. Current and former government lawyers must comply with this Rule to the extent required by Rule 1.11.

[2] The scope of a "matter" for purposes of this Rule depends on the facts of a particular situation or transaction. The lawyer's involvement in a matter can also be a question of degree. When a lawyer has been directly involved in a specific transaction, subsequent representation of other clients with materially adverse interests in that transaction clearly is prohibited. The underlying question is whether the lawyer was so involved in the matter that the subsequent representation can be justly regarded as a changing of sides in the matter in question.

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[5] Paragraph (b) operates to disqualify the lawyer only when the lawyer involved has actual knowledge of information protected by Rules 1.6 and 1.9(c). Thus, if a lawyer while with one firm acquired no knowledge or information relating to a particular client of the firm, and that lawyer later joined another firm, neither the lawyer individually nor the second firm is disqualified from representing another client in the same or a related matter even though the interests of the two clients conflict. *See* Rule 1.10(b) for the restrictions on a firm once a lawyer has terminated association with the firm.

[6] Application of paragraph (b) depends on a situation's particular facts, aided by inferences, deductions or working presumptions that reasonably may be made about the way in which lawyers work together. A lawyer may have general access to files of all clients of a law firm and may regularly participate in discussions of their affairs; it should be inferred that such a lawyer in fact is privy to all information about all the firm's clients. In contrast, another lawyer may have access to the files of only a limited number of clients and participate in discussions of the affairs of no other clients; in the absence of information to the contrary, it should be inferred that such a lawyer in fact is privy to information about the clients actually served but not those of other clients. In such an inquiry, the burden of proof should rest upon the firm whose disqualification is sought.

[7] Independent of the question of disqualification of a firm, a lawyer changing professional association has a continuing duty to preserve confidentiality of information about a client formerly represented. *See* Rules 1.6 and 1.9(c).

Rule 1.10 Imputation of Conflicts of Interest: General Rule

(a) While lawyers are associated in a firm, none of them shall knowingly represent a client when any one of them practicing alone would be prohibited from doing so by Rules 1.7 or 1.9, unless the prohibition is based on a personal interest of the prohibited lawyer, including a prohibition under Rule 6.6, and the prohibition does not present a significant risk of materially limiting the representation of the client by the remaining lawyers in the firm.

(b) When a lawyer has terminated an association with a firm, the firm is not prohibited from thereafter representing a person with interests materially adverse to those of a client represented by the formerly associated lawyer and not currently represented by the firm, unless:
(1) the matter is the same or substantially related to that in which the formerly associated lawyer represented the client; and

(2) any lawyer remaining in the firm has information protected by Rules 1.6 and 1.9(c) that is material to the matter.

(c) When a lawyer becomes associated with a firm, no lawyer associated in the firm shall knowingly represent a person in a matter in which that lawyer is disqualified under Rule 1.9 unless:
(1) the personally disqualified lawyer is timely screened from any participation in the matter; and

(2) written notice is promptly given to any affected former client to enable it to ascertain compliance with the provisions of this Rule.

(d) A disqualification prescribed by this rule may be waived by the affected client under the conditions stated in Rule 1.7.

(e) The disqualification of lawyers associated in a firm with former or current government lawyers is governed by Rule 1.11.

Comment

Definition of "Firm"

[1] For purposes of the Rules of Professional Conduct, the term "firm" denotes lawyers in a law partnership, professional corporation, sole proprietorship or other association authorized to practice law; or lawyers employed in a legal services organization or the legal department of a corporation or other organization. See Rule 1.0(d). Whether two or more lawyers constitute a firm within this definition can depend on the specific facts. See Rule 1.0, Comments [2] - [4].

Principles of Imputed Disqualification

[2] The rule of imputed disqualification stated in paragraph (a) gives effect to the principle of loyalty to the client as it applies to lawyers who practice in a law firm. Such situations can be considered from the premise that a firm of lawyers is essentially one lawyer for purposes of the rules governing loyalty to the client, or from the premise that each lawyer is vicariously bound by the obligation of loyalty owed by each lawyer with whom the lawyer is associated. Paragraph (a) operates only among the lawyers currently associated in a firm. When a lawyer moves from one firm to another, the situation is governed by Rules 1.9(b) and 1.10(b).

[3] The rule in paragraph (a) does not prohibit representation where neither questions of client loyalty nor protection of confidential information are presented. Where one lawyer in a firm could not effectively represent a given client because of strong political beliefs, for example, but that lawyer will do no work on the case and the personal beliefs of the lawyer will not materially limit the representation by others in the firm, the firm should not be disqualified. On the other hand, if an opposing party in a case were owned by a lawyer in the law firm, and others in the firm would be materially limited in pursuing the matter because of loyalty to that lawyer, the personal disqualification of the lawyer would be imputed to all others in the firm.

[4] The rule in paragraph (a) also does not prohibit representation by others in the law firm where the person prohibited from involvement in a matter is a nonlawyer, such as a paralegal or legal secretary. Nor does paragraph (a) prohibit representation if the lawyer is prohibited from acting because of events before the person became a lawyer, for example, work that the person did while a law student. Such persons, however, ordinarily must be screened from any personal participation in the matter to avoid communication to others in the firm of confidential information that both the nonlawyers and the firm have a legal duty to protect. See Rules 1.0(l) and 5.3.

[5] Rule 1.10(b) operates to permit a law firm, under certain circumstances, to represent a person with interests directly adverse to those of a client represented by a lawyer who formerly was

associated with the firm. The Rule applies regardless of when the formerly associated lawyer represented the client. However, the law firm may not represent a person with interests adverse to those of a present client of the firm, which would violate Rule 1.7. Moreover, the firm may not represent the person where the matter is the same or substantially related to that in which the formerly associated lawyer represented the client and any other lawyer currently in the firm has material information protected by Rules 1.6 and 1.9(c).

[6] Where the conditions of paragraph (c) are met, imputation is removed, and consent to the new representation is not required. Lawyers should be aware, however, that courts may impose more stringent obligations in ruling upon motions to disqualify a lawyer from pending litigation.

[7] Requirements for screening procedures are stated in Rule 1.0(l). Paragraph (c)(2) does not prohibit the screened lawyer from receiving a salary or partnership share established by prior independent agreement, nor does it specifically prohibit the receipt of a part of the fee from the screened matter. However, Rule 8.4(c) prohibits the screened lawyer from participating in the fee if such participation was impliedly or explicitly offered as an inducement to the lawyer to become associated with the firm.

[8] Notice, including a description of the screened lawyer's prior representation and of the screening procedures employed, generally should be given as soon as practicable after the need for screening becomes apparent.

Rule 6.5 Limited Legal Services Programs

(a) A lawyer who, under the auspices of a program sponsored by a nonprofit organization or court, provides short-term limited legal services to a client without expectation by either the lawyer or the client that the lawyer will provide continuing representation in the matter:

(1) is subject to Rules 1.7 and 1.9(a) only if the lawyer knows that the representation of the client involves a conflict of interest; and

(2) is subject to Rule 1.10 only if the lawyer knows that another lawyer associated with the lawyer in a law firm is disqualified by Rule 1.7 or 1.9(a) with respect to the matter.

(b) Except as provided in paragraph (a)(2), Rule 1.10 is inapplicable to a representation governed by this Rule.

Comment

[1] Legal services organizations, courts and various nonprofit organizations have established programs through which lawyers provide short-term limited legal services - such as advice or the completion of legal forms - that will assist persons to address their legal problems without further representation by a lawyer. In these programs, such as legal-advice hotlines, advice-only clinics or pro se counseling programs, a client-lawyer relationship is established, but there is no expectation that the lawyer's representation of the client will continue beyond the limited consultation. Such programs are normally operated under circumstances in which

it is not feasible for a lawyer to systematically screen for conflicts of interest as is generally required before undertaking a representation. *See, e.g.* , Rules 1.7, 1.9 and 1.10.

1.0: Terminology

l) "Screened" denotes the isolation of a lawyer from any participation in a professional matter through the timely imposition of procedures within a firm that are reasonably adequate under the circumstances to protect information that the isolated lawyer is obligated to protect under these Rules or other law.

UNC School of Law

Witt Professionalism Roundtable

February 8, 2011

The George Watts Hill Alumni Center

2011 WITT PROFESSIONALISM ROUNDTABLE PROBLEMS

1. The law firm of Boger, Mosteller& Myers, does plaintiff's personal injury, medical malpractice and employment law. The firm advertises extensively on television as well as maintaining a website with detailed information about the firm and its lawyers, www.bigrecovery.com. The following statement is contained in bold letters on the first page of the firm's site:

> If you need a lawyer to represent you in connection with your recent accident, look no further. Our senior partner, Bob Boger was prominently listed in the "Super Lawyer" publication and on their website[1] for his work as a plaintiff's personal injury lawyer. Other publications have included all of the partners in the firm as among the best in the State in representing injured persons against insurance companies.
>
> Our firm has obtained jury verdicts and settlements in excess of $2,000,000 on many occasions. In the past year, our lawyers achieved jury awards of $4,000,000, $2,000,000 and $1,500,000. Settlements with insurance companies have averaged over $500,000 over the past five years. There is no guarantee of any recovery in your case. Each case presents a different set of facts.However, we will provide you with the same aggressive and comprehensive legal services to protect your rights and interests and maximize your chances of recovery that we have always given our clients.

Is the statement improper under the Rules of Conduct of the North Carolina Bar Association?

[1]Super Lawyers is an independent lawyer rating service with published, objective standards. The service gets no financial return for promoting a lawyer. The State Bar has found that lawyer's advertisements referring to the lawyer's listing in Super Lawyers does not violate the Rules of Professional Conduct. 2007 FEO 14.

2.One of the Boger firm's television advertisements pictures two actors who are obviously portraying insurance defense counsel. A disclaimer appears on the screen throughout the advertisement stating: "Dramatization by actors. No specific results implied. Theportrayal is intended only to illustrate that Boger, Mosteller & Myers' expertise in handling claims is very likely recognized by the insurance industry. See our website, www.bigrecovery.com."

Following is the conversation contained in the advertisement:

Senior lawyer: How do you suggest we handle this claim?

Junior lawyer: It's a large claim, a serious auto accident. We could try to deny it or delay to see if they'll crack.

Senior lawyer: Who are the lawyers representing the victim?

Junior lawyer: Boger, Mosteller & Myers.

Senior Lawyer (Loud Metallic sound effect (like a gong); logo of Boger, Mosteller & Myers appears): The Boger firm? Let's settle this one.

Voice over by actor: North Carolina insurance companies know the name of Boger, Mosteller & Myers. If you've been injured in an auto accident or harmed by your physician's conduct . . . tell them you mean business.

Does the advertisement comply with the Rules of Professional Conduct?

3. Eighty people were killed in the crash of a commuter jet near a North Carolina airport. Most of the deceased lived in North Carolina. Shortly after the crash, lawyers at Boger, Mosteller & Myers searched Facebook for the names of individuals who, based upon press accounts of the crash, appeared to be relatives of persons killed in the crash. Each person with a Facebook page was sent a message from the individual page of Bob Boger, the firm's senior partner. The message requested that the individual "friend" Boger. In addition, a message was sent to the individual directing him or her to Boger's pre-existing Facebook page for "information concerning your recent loss." Boger's page contained the following:

> I am an attorney at Boger, Mosteller, & Myers. All of the lawyers and staff at our firm extend their deepest sympathies on your tragic loss. We know that you are suffering greatly as a result of the negligence of XYZ airlines. Please know that you have our deepest sympathies. Please visit either our firm Facebook page, The Law Offices of Boger, Mosteller & Myers, or our website,www.bigrecovery.comto see how we can help you.

Both the firm's Facebook page and the website contained the statements set out in Question 1. Assuming that the website itself does not violate any Rule of Professional Conduct, is the law firm's conduct with regard to Facebook unethical?

Rules of Professional Conduct of the North Carolina State Bar

Rule 7.1 Communications Concerning a Lawyer's Services

(a) A lawyer shall not make a false or misleading communication about the lawyer or the lawyer's services. A communication is false or misleading if it:

(1) contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading;

(2) is likely to create an unjustified expectation about results the lawyer can achieve, or states or implies that the lawyer can achieve results by means that violate the Rules of Professional Conduct or other law; or

(3) compares the lawyer's services with other lawyers' services, unless the comparison can be factually substantiated.

(b) A communication by a lawyer that contains a dramatization depicting a fictional situation is misleading unless it complies with paragraph (a) above and contains a conspicuous written or oral statement, at the beginning and the end of the communication, explaining that the communication contains a dramatization and does not depict actual events or real persons.

Comment

[1] This Rule governs all communications about a lawyer's services, including advertising permitted by Rule 7.2. Whatever means are used to make known a lawyer's services, statements about them must be truthful.

[2] Truthful statements that are misleading are also prohibited by this Rule. A truthful statement is misleading if it omits a fact necessary to make the lawyer's communication considered as a whole not materially misleading. A truthful statement is also misleading if there is a substantial likelihood that it will lead a reasonable person to formulate a specific conclusion about the lawyer or the lawyer's services for which there is no reasonable factual foundation.

[3] An advertisement that truthfully reports a lawyer's achievements on behalf of clients or former clients may be misleading if presented so as to lead a reasonable person to form an unjustified expectation that the same results could be obtained for other clients in similar matters without reference to the specific factual and legal circumstances of each client's case. Similarly, an unsubstantiated comparison of the lawyer's services or fees with the services or fees of other lawyers may be misleading if presented with such specificity as would lead a reasonable person to conclude that the comparison can be substantiated. The inclusion of an appropriate disclaimer or qualifying language may preclude a finding that a statement is likely

to create unjustified expectations or otherwise mislead a prospective client.
* * * * *

Rule 7.2 Advertising

(a) Subject to the requirements of Rules 7.1 and 7.3, a lawyer may advertise services through written, recorded or electronic communication, including public media.

(b) A lawyer shall not give anything of value to a person for recommending the lawyer's services except that a lawyer may

(1) pay the reasonable costs of advertisements or communications permitted by this Rule;

(2) pay the usual charges of a not-for-profit lawyer referral service that complies with Rule 7.2(d), or a prepaid or group legal services plan that complies with Rule 7.3(d); and

(3) pay for a law practice in accordance with Rule 1.17.

(c) Any communication made pursuant to this rule, other than that of a lawyer referral service as described in paragraph (d), shall include the name and office address of at least one lawyer or law firm responsible for its content.

Comment

[1] To assist the public in obtaining legal services, lawyers are permitted to make known their services not only through reputation but also through organized information campaigns in the form of advertising. Advertising involves an active quest for clients, contrary to the tradition that a lawyer should not seek clientele. However, the public's need to know about legal services can be fulfilled in part through advertising. This need is particularly acute in the case of persons of moderate means who have not made extensive use of legal services. The interest in expanding public information about legal services ought to prevail over considerations of tradition. Nevertheless, advertising by lawyers may entail the risk of practices that are misleading or overreaching.

[2] This Rule permits public dissemination of information concerning a lawyer's name or firm name, address and telephone number; the kinds of services the lawyer will undertake; the basis on which the lawyer's fees are determined, including prices for specific services and payment and credit arrangements; a lawyer's foreign language ability; names of references and, with their consent, names of clients regularly represented; and other information that might invite the attention of those seeking legal assistance.

[3] Questions of effectiveness and taste in advertising are matters of speculation and subjective judgment. Television is now one of the most powerful media for getting

information to the public, particularly persons of low and moderate income; prohibiting television advertising, therefore, would impede the flow of information about legal services to many sectors of the public. Limiting the information that may be advertised has a similar effect and assumes that the bar can accurately forecast the kind of information that the public would regard as relevant. But see Rule 7.1(b) for the disclaimer required in any advertisement that contains a dramatization. Electronic media, such as the Internet, can be an important source of information about legal services, and lawful communication by electronic mail is permitted by this Rule. But see Rule 7.3(a) for the prohibition against the solicitation of a prospective client through a real-time electronic exchange that is not initiated by the prospective client.

[4] Neither this Rule nor Rule 7.3 prohibits communications authorized by law, such as notice to members of a class in class action litigation.

Rule 7.3 Direct Contact with Potential Clients

(a) A lawyer shall not by in-person, live telephone or real-time electronic contact solicit professional employment from a potential client when a significant motive for the lawyer's doing so is the lawyer's pecuniary gain, unless the person contacted:

(1) is a lawyer; or

(2) has a family, close personal, or prior professional relationship with the lawyer.

(b) A lawyer shall not solicit professional employment from a potential client by written, recorded or electronic communication or by in-person, telephone or real-time electronic contact even when not otherwise prohibited by paragraph (a), if:

(1) the potential client has made known to the lawyer a desire not to be solicited by the lawyer; or

(2) the solicitation involves coercion, duress, harassment, compulsion, intimidation, or threats.

(c) Targeted Communications. Unless the recipient of the communication is a person specified in paragraphs (a)(1) or (a)(2), every written, recorded, or electronic communication from a lawyer soliciting professional employment from a potential client known to be in need of legal services in a particular matter shall include the statement, in capital letters, "THIS IS AN ADVERTISEMENT FOR LEGAL SERVICES" (the advertising notice) subject to the following requirements:

(1)Written Communications. Written communications shall be mailed in an envelope. The advertising notice shall be printed on the front of the envelope, in font that is as large as any other printing on the envelope. The front of the envelope shall contain no printing other than the name of the lawyer or law firm and return address, the name and address of the recipient, and the advertising notice. The advertising notice shall also be printed at the

beginning of the body of the letter in font as large or larger than the lawyer’s or law firm’s name in the letterhead or masthead.

(2) Electronic Communications. The advertising notice shall appear in the "in reference" block of the address section of the communication. No other statement shall appear in this block. The advertising notice shall also appear,at the beginning and ending of the electronic communication, in a font as large or larger than the lawyer’s or law firm’s name in any masthead on the communication.

(3) Recorded Communications. The advertising notice shall be clearly articulated at the beginning and ending of the recorded communication.

* * * * *

Comment

[1] There is a potential for abuse inherent in direct in-person, live telephone or real-time electronic contact by a lawyer with a prospective client known to need legal services. These forms of contact between a lawyer and a prospective client subject the layperson to the private importuning of the trained advocate in a direct interpersonal encounter. The prospective client, who may already feel overwhelmed by the circumstances giving rise to the need for legal services, may find it difficult fully to evaluate all available alternatives with reasoned judgment and appropriate self-interest in the face of the lawyer's presence and insistence upon being retained immediately. The situation is fraught with the possibility of undue influence, intimidation, and over-reaching.

[2] This potential for abuse inherent in direct in-person, live telephone or real-time electronic solicitation of potential clients justifies its prohibition, particularly since lawyer advertising and written and recorded communication permitted under Rule 7.2 offer alternative means of conveying necessary information to those who may be in need of legal services. Advertising and written and recorded communications which may be mailed or autodialed make it possible for a potential client to be informed about the need for legal services, and about the qualifications of available lawyers and law firms, without subjecting the potential client to direct in-person, telephone or real-time electronic persuasion that may overwhelm the client's judgment.

[3] The use of general advertising and written, recorded or electronic communications to transmit information from lawyer to potential client, rather than direct in-person, live telephone or real-time electronic contact, will help to assure that the information flows cleanly as well as freely. The contents of advertisements and communications permitted under Rule 7.2 can be permanently recorded so that they cannot be disputed and may be shared with others who know the lawyer. This potential for informal review is itself likely to help guard against statements and claims that might constitute false and misleading communications, in violation of Rule 7.1. The contents of direct in-person, live telephone or real-time electronic conversations between a lawyer and a potential client can be disputed and may not be subject to third-party scrutiny. Consequently, they are much more likely to approach (and occasionally cross) the dividing line between accurate representations and those that are false and misleading.

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UNC School of Law
Witt Professionalism Roundtable

Tuesday, February 8, 2011
The George Watts Hill Alumni Center
Chapel Hill, North Carolina

Welcome
John Charles Boger '74
Dean and Wade Edwards Distinguished Professor of Law

Remarks on Professionalism
Ann Reed '71
UNC Law Alumni Association,president

Dinner

Hearts of Romaine Salad with goat cheese, shaved onions, sun-dried tomatoes and sherry vinaigrette

Roasted pork loin with caramelized onions and sweet sesame barbeque sauce; root vegetable ragout and smashed sweet potatoes

Apple cranberry cake

Discussion

Analysis of the 2011 Witt Professionalism Problem for Discussion
Kenneth S. Broun
Henry Brandis Professor of Law and Former Dean

Comments from the N.C. Chief Justice's Commission on Professionalism
Melvin F. Wright, Jr., BS '67
Executive Director

Remarks from the Witt Family
G. Evans Witt, BA '73

Closing Remarks
Dean Boger

The Roundtable is graciously funded by the Raymond B. Witt Professionalism Endowment

UNC SCHOOL OF LAW

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UNC SCHOOL OF LAW

An Alumni Profile: Raymond B. Witt '39
Living an Ethical Life and Teaching by Example

Raymond Witt's years at UNC School of Law served as the foundation for his long, distinguished career as a tax and estate lawyer in Chattanooga, Tenn. But when it came to many ethical and professionalism issues, he needed answers that weren't in a book. Like others, Witt learned as he went, relying mainly on his conscience.

"Experience sharpened my concern in this area," says Witt, who is fond of repeating a UNC professor's expression that "all cats are gray."

"If you're going to be a lawyer, you're going to be in the unique position of doing something for another human being that is important and that he can't do for himself. It all goes back to doing the right thing. We're suppose to know the legal processes, but young people ought to address the basic issues of ethics when they're young."

Since 1993, Witt has contributed an annual gift to the law school to underwrite a dinner and roundtable discussion that brings together students, faculty members, lawyers and judges. The Witt Professionalism Dinner is an opportunity for students to discuss an ethical issue at the dinner table alongside seasoned attorneys and judges. Witt, 83, says he proposed the idea to Dean Judith Wegner "who ran with it."

"I'm a believer in face-to-face analysis of problems, of talking it out," says Witt. "Critical analysis may not lead to answers, but the emphasis is on the process. I hope that the dinner increases the depth of the students' awareness."

Witt, who began practicing during the Depression, said he had a growing concern over major changes in the practice of law through the years.

"These days too many lawyers are obsessed about how much money they make," Witt says. He recalled a younger colleague warning him away from an estate case for a friend because "I wasn't going to make any money out of this."

"The concern should be in doing a good job for the client. The money aspect has assumed a big significance that is disturbing. Obsession with money destroys the joy in work," says Witt, who reminds lawyers that they are always officers of the court.

Witt was determined to get an interesting job ever since the time he was around 12 and a friend of his dad's in the tire business asked him to operate a record player during a sales promotion. "I had to change that record over and over all afternoon," remembers Witt. He found it boring, and he hated being bored. Witt later concluded that he wanted to be a journalist or a lawyer, although "there were no wealthy lawyers back then."

Witt knew he had a talent in communicating and expressing himself. At Central High School in Chattanooga, he was active in drama, lettered in football and was voted the class valedictorian.

"Back then, the focus wasn't just on grades. They voted on you," he remembers.

Witt enrolled in the University of Chattanooga, where he was president of the junior class and editor of the school newspaper. To earn money, he delivered the Chattanooga News six mornings a week to 200 customers.

Witt decided on UNC's School of Law in part because he had relatives in the state, and also because of the indelible impression he had of President Frank Porter Graham. Witt met Graham one evening while Graham was still a professor and Witt was 13.

"He treated me like an adult. He had the ability to make people feel important, no matter who they were," Witt recalled.

Witt entered law school in 1936. To get to the campus he had to take the train first to Atlanta, then Greensboro and then Durham, where he caught a bus to Chapel Hill. His class was the first to have, not one, but two female students.

Witt found law school challenging.

"I would read a paragraph of a court decision, and go, 'What in the hell did that say?' Then I'd read it over again," Witt recalls. Gradually it sounded less foreign.

"Some students made their time in law school drudgery. I didn't. I enjoyed my time there," he says. He loved Chapel Hill so much that he didn't return for years.

"That sounds funny, but I didn't want to destroy my memory of Chapel Hill," he says.

Witt returned to his hometown after school but because of the times couldn't get a job. One of the better firms in Chattanooga allowed him space in the library to work and paid him $25 a month.

Then came World War II, and Witt served on the battleship USS New Mexico. He took part in the invasion of Saipan and Okinawa.

After the war, Witt married Florence Bagley and later joined the law firm that became Witt, Gaither and Whitaker. A principal client was Carter Lupton, a major Coca-Cola bottler. Witt learned early on that being a good lawyer required one be a good listener and honest.

"You have to have whatever it is that allows a client to open up and tell you things he's never told anyone else," Witt says.

Throughout his career Witt was active in his Methodist Church, and in charity and community work such as serving on the school board and heading the Campaign Fund for the Greater Chattanooga United Way.

Witt has three children and all three, Elder, Mary Alice and Evans, graduated from UNC-CH. In 1983 Witt retired from full-time work, but he still goes to his office twice a week. Since retiring, Witt has continued to speak and arrange forums on the significance of ethics not only at Carolina but also in Chattanooga.

"The relationship that exists between a lawyer and his client is not basically commercial. We're not brick masons," he says, turning again to the human element of the practice of law. "You truly are representing your client."