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# The North Carolina State Bar

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## THE NORTH CAROLINA STATE BAR

EDWARD L. CANNON, *Acting Editor*

### July Council Meeting

The July Meeting of the Council of the North Carolina State Bar was held in the Justice Building, July 11, 1941. The following were present: W. B. Rodman, Jr., Vice-President, Washington; Edward L. Cannon, Secretary-Treasurer, Raleigh; and the following *Councillors*: Junius D. Grimes, First District, Washington; Z. V. Norman, Second District, Plymouth; B. H. Perry, Third District, Henderson; D. H. Bland, Fourth District, Goldsboro; Albion Dunn, Fifth District, Greenville; Jos. B. Cheshire, Jr., Seventh District, Raleigh; Dickson McLean, Ninth District, Lumberton; R. P. Reade, Tenth District, Durham; G. H. Hastings, Eleventh District, Winston-Salem; M. G. Boyette, Thirteenth District, Carthage; J. Laurence Jones, Fourteenth District, Charlotte; Hayden Clement, Fifteenth District, Salisbury; B. F. Williams, Sixteenth District, Lenoir; A. Turner Grant, Seventeenth District, Mocksville; F. D. Hamrick, Eighteenth District, Rutherfordton; Kester Walton, Nineteenth District, Asheville; and P. W. Glidewell, Sr., Twenty-first District, Reidsville.

Mr. W. B. Rodman, Jr., Vice-President presided in the absence of President McLendon. Mr. Z. V. Norman of Plymouth, elected Councillor from the Second District to succeed Kemp D. Battle, was introduced and he took his seat on the Council.

Mr. Thad Eure, Secretary of State, appeared before the Council in connection with requests of that body that the practice of distribution by his office of such forms as certificates of dissolution, incorporations, amendments, etc., be discontinued. After hearing Mr. Eure and after some discussion the Council voted to withdraw its request previously made.

Mr. Hayden Clement, Chairman of the Legislative Committee, reported that his Committee had under consideration certain changes to the rules which would be presented at the October Meeting.

The Council adopted a resolution providing that Attorneys who had been drafted into the armed forces be exempted from the payment of dues during the time their services were required by the Government.

Mr. Harry D. Reed, General Counsel of the Farm Credit Administration, Columbia, South Carolina, appeared at the invitation of the Council to discuss the contract entered into on certificates of title which

the Land Bank requires attorneys to execute in connection with the examination of titles. Mr. Minor, President of the Production Credit Corporation, Columbia, South Carolina, accompanied Mr. Reed. After a lengthy discussion, a resolution was passed by the Council asking that the President of the Federal Land Bank forward a written communication from the Board of Directors, setting forth the interpretation of the contract as explained by Mr. Reed to the Council. The Council passed a further resolution indicating that in its opinion the Production Credit Corporation was not at this time violating the law in regard to record searches in cases in which it used its own employees.

The Ethics Committee reported that it would present at the October Meeting a draft of an additional canon of ethics to be entitled "Canon E," said Canon dealing with the propriety of attorneys appearing in cases in which bonds are given by any corporation, company, or individual with which the attorney might be associated in any way.

A report was received by the Council in connection with the case against A. S. Batson of Wilmington charged with acts of barratry. The Council adopted the recommendation of the Grievance Committee, authorizing the Secretary to make further investigation in connection with this case.

Upon recommendation of the Grievance Committee, the Council approved the proceeding against E. E. Collins, Attorney of Monroe, North Carolina, the Trial Committee being Messrs. Grant, Jones and Clement. In the charges filed against other attorneys, some cases were continued for further study and other charges were dismissed and in others no action taken at the present time.

The Council ordered that the case of S. R. Lane, Attorney at Rich Square be re-referred to the Grievance Committee.

The Council heard a further report from the Secretary in connection with the B. S. Hurley case now pending on appeal in the Superior Court of Montgomery County.

The Council approved the recommendation of the Board of Law Examiners providing that the Law School at the North Carolina College for Negroes in Durham be placed upon the approved list for another year.

Since the last meeting of the Council it was reported that R. P. Reade, representing the Tenth District, has been elected to succeed himself and Judge Albion Dunn of the Fifth District has been elected to succeed himself.

The Secretary's report to the Executive Committee indicated that work on indexing of all complaints received since the organization of the State Bar would probably be completed by the next meeting.

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### October Council Meeting

The regular quarterly meeting of the Council of the North Carolina State Bar was held, Justice Building, Raleigh, Thursday, October 23, 1941. The following members were present: W. B. Rodman, Jr., Vice-President, Washington; Edward L. Cannon, Secretary-Treasurer, Raleigh; and the following Councillors: Junius D. Grimes, First District, Washington; Z. V. Norman, Second District, Plymouth; B. H. Perry, Third District, Henderson; D. H. Bland, Fourth District, Goldsboro; Albion Dunn, Fifth District, Greenville; Jos. B. Cheshire, Jr., Seventh District, Raleigh; Louis J. Poisson, Eighth District, Wilmington; R. P. Reade, Tenth District, Durham; G. H. Hastings, Eleventh District, Winston-Salem; M. G. Boyette, Thirteenth District, Carthage; J. Laurence Jones, Fourteenth District, Charlotte; B. F. Williams, Sixteenth District, Lenoir; Eugene Trivette, Seventeenth District, North Wilkesboro; F. D. Hamrick, Sr., Eighteenth District, Rutherfordton; Kester Walton, Nineteenth District, Asheville; and P. W. Glidewell, Sr., Twenty-first District, Reidsville.

Vice-President Rodman presided in the absence of the President, Major McLendon.

Mr. Eugene Trivette of North Wilkesboro was presented as the newly elected Councillor from the 17th District succeeding Mr. A. Turner Grant of Mocksville. Mr. Trivette took his seat on the Council.

The Council heard and after due consideration denied the application of E. H. Smith of Southport for restoration of license.

The Council ordered J. W. Hollingsworth of Newton suspended from the practice of law for a period of one year.

The Council ordered the disbarment of Edison E. Collins of Monroe, N. C.

The Council continued the case of C. W. Beaman of Snow Hill, N. C., until the April 1942 meeting.

The Council continued prayer for judgment in the case of L. A. Wilson of Rosehill until the January meeting.

Report was heard on the B. S. Hurley case tried on appeal by respondent in the Superior Court. The respondent had appealed from an order of disbarment entered by the Council. The Jury found all issues in three of the charges favorable to the State Bar and judgment of disbarment was entered by the Court.

The Council passed a resolution directed to the Board of Law Examiners requesting them to consider the advisability of holding an examination between now and the regular August examination; such resolution appears to be of particular interest to those applicants who

are qualified to take the examination but may be called into the Armed Forces before August, 1942.

The Council approved the recommendations of the Board of Law Examiners in connection with changes in the rules of the Board allowing certain optional subjects to be studied by applicants and questions thereon submitted by the Board on the Bar examination.\*

The Council approved the recommendation of the Ethics Committee and adopted an additional Canon to be known as Canon "E".

#### CANON "E"

"It shall be deemed unethical and unprofessional for any attorney to represent any defendant in any criminal action where such attorney or member of his family has personally signed an appearance bond with or without compensation, or wherein he has acted as agent or officer for, or is financially interested in, any person, firm, or corporation in executing such bond."

Adoption of the recommendations of the Legislative Committee as to changes in the rules of the Council was held over until the January meeting.

Upon report of the Grievance Committee the Council ordered trial of R. B. Templeton, Attorney of Raleigh, N. C.; the Trial Committee in this case to be appointed. Other cases reported by the Grievance Committee were either continued or no action taken.

Edward L. Cannon was re-elected Secretary-Treasurer.

Action was deferred until the January meeting on certain recommendations contained in the report of the Secretary.

The Council adjourned at 6:20 P.M.

EDWARD L. CANNON.

\*The recommendations as adopted provide that the applicant "must either (a) have studied, as a minimum, requirement, all of the required subjects and any five of the optional subjects listed . . . , or (b) he must have graduated from an approved law school." It is further provided that "The examinations to be given in August, 1942, and thereafter will deal with the following required and optional subjects; *Required*: Agency, Business Associations (including corporations, partnerships, joint stock companies and business trusts), Civil Procedure, Constitutional Law, Contracts, Criminal Law and Procedure, Equity, Evidence, Legal Ethics, Negotiable Instruments, Personal Property, Real Property, Security Transactions (including mortgages, security deeds of trust, trust receipts pledges, conditional sales, guaranty and suretyship), Torts and Wills and Administration. *Optional*: Administrative Law, Conflict of Laws, Debtors' Estates (including bankruptcy, receiverships, assignments for the benefit of creditors, compositions and state reorganization and insolvency statutes), Domestic Relations, Federal Jurisdiction and Procedure, Future Interests, Insurance, Labor Law, Municipal Corporations, Public Utilities, Quasi-Contracts, Sales, Taxation, Trade Regulation and Trusts. Applicants will be expected to answer all of the questions relating to the required subjects and those relating to any five of the optional subjects."

### **Eighth Annual Meeting**

The eighth annual meeting of the North Carolina State Bar was held at the Sir Walter Hotel, on October 24, 1941, Vice-President W. B. Rodman, Jr., presiding in the absence of President L. P. McLendon.

Following the Invocation by Rev. E. D. Weathers of the Hayes-Barton Methodist Church of Raleigh, Mr. J. W. Bunn, President of the Wake County Bar Association, extended a welcome to the Assembly; to which Mr. J. F. Milliken, former Councillor from the Thirteenth District Bar, presented the response on behalf of the State Bar.

Mr. Rodman thereupon introduced Hon. J. Will Pless, Jr., Superior Court Judge of the Eighteenth Judicial District, whose splendid address on "The Problem of Civil Procedure Reform in North Carolina" captured the immediate attention, and his suggestions, the whole-hearted support, of the assembly.

Pointing to the growth of administrative agencies and tribunals throughout the nation, Judge Pless concluded that more than seventy per cent of the fields of law open to the lawyer of 1915 are closed today. He explained this phenomenal transition of justiciable controversies, from the courts to administrative bodies, as being the inevitable result of a slow and technical judicial procedure. And he suggested that antiquated rules of evidence now enforced in American Courts have been the most significant factor in winning popular disrespect for our present court system and in prompting legislatures to place new and expanding fields of law under the supervision of administrative bodies or arbiters. From this, he concluded that old technical rules of evidence should be abolished and "just one rule of evidence" established to the effect that the exclusion and admission of all evidence, in both criminal and civil cases, be left to the discretion of the presiding judge.

In furtherance of Judge Pless' suggestions, motion was promptly made and carried that a committee be appointed to devise a resolution that the Supreme Court "liberalize and modernize the judicial rules of evidence, to the end that all relevant evidence, not excluded by statute or privilege, be admitted upon the trial." A committee was duly appointed and Mr. Charles W. Tillett of Charlotte, directly after the noon recess, presented a resolution to this effect, and with the purpose of "abolishing technical rules not necessary for the administration of justice, and simplifying the admission of evidence to the greatest possible extent, with large discretion vested in the trial judge in determining its admissibility."

Mr. W. B. Campbell of Wilmington succeeded Judge Pless with a capable and exhaustive paper on "The North Carolina Department of

Justice," wherein he analyzed the history of the development of Departments of Justice throughout the United States; compared the structure of these departments in various states; analyzed the statute establishing the Department of Justice in North Carolina; indicated, by a résumé of the Department's work, how it had carried forward the purposes for which it was organized; and lamented the legislative rejection of many of the proposals recommended by the Division of Legislative Drafting and Recodification of Statutes of the Department of Justice and designed to promote speedier and more adequate administration of justice throughout the State (*e.g.*, transfer of the State Highway Patrol to the Department of Justice). A perusal of Mr. Campbell's study of the North Carolina Department of Justice will be well worth the time of any member of the North Carolina Bar; for this institution has begun a great work and may soon become a very significant force in the administration of justice in North Carolina.

In introducing the next Speaker, Prof. M. T. Van Hecke of the University Law School, Mr. Rodman expressed the general regret of the State that Prof. Van Hecke has seen fit to resign from his position as Dean of the University Law School in order to promote his other valuable efforts as professor, author, and now as member of the new Federal Board of Legal Examiners. Mr. Rodman's recognition of Mr. Van Hecke's outstanding contributions to the prestige and efficiency of the University Law School won the hearty applause of the Assembly.

Prof. Van Hecke, speaking on "Lawyers and the United States Civil Service," outlined the opportunities and problems created by President Roosevelt's executive order last spring, placing the attorney positions in the Federal Government under the civil service system. This program is being administered by an eleven-man Board of Legal Examiners, which, under the chairmanship of the Solicitor General, is made up of representatives of the principal government attorneys, the practicing lawyers and the law schools.

At the close of Prof. Van Hecke's address, the President recognized Governor Broughton, whose few apt words, commending the North Carolina Bar on its readiness "to answer any call," expressing gratitude for the prospect (disclosed by Prof. Van Hecke) of opportunities for lawyers to attain positions on the Federal Government's "secure" payroll, and briefly criticizing the practice of certain Federal agencies of giving legal work "to the lowest bidder," left the Assembly in pleasant spirits when it immediately thereafter recessed for lunch.

The afternoon session was opened with the reading by Mr. Tillett of the recommendation for revision of the North Carolina rules of evidence. And a committee was promptly appointed to present the recommendation to the North Carolina Supreme Court.

Mr. Rodman then presented Hon. Marshall T. Spears of Durham, former Superior Court Judge of the 10th Judicial District, who gave a splendid "Critical Discussion of the North Carolina Superior Court System." Judge Spears' criticism was based upon experiences familiar to all North Carolina lawyers: the difficulty under our rotation system of finding a judge when immediate *ex parte* decision is necessary; the tendency of a short-term judge to leave "clearing-the-docket" to his successor; the practice of attorneys to seek continuance until a favorable judge appears in the district; the estrangement of bench and bar when brief association makes acquaintance and understanding impossible; and the crowded condition of one district docket when its neighbor district is litigation-free. Judge Spears' conclusions were that all judges should be appointed rather than elected; that pre-trial conferences should be promoted; that the rotation system should be abolished; that eleven additional judicial districts should be created; and that the constitution should be amended to abolish the requirement that solicitorial districts conform with judicial districts.

Following Judge Spears' discussion of the Superior Court System, Hon. James G. Merrimon of the Asheville Bar presented a valuable "Critical Discussion of the Courts Civil and Criminal Inferior to the Superior Courts." Basing his criticisms upon his extensive experience before the courts of Western North Carolina, Judge Merrimon pointed out the confusion inherent in a statutory system which permits each county to adopt any one or more of twelve different types of inferior courts, ranging in jurisdiction from a Police Court with limited criminal jurisdiction, to the County Court with original jurisdiction as extensive as that of the Superior Court. And, while paying well-deserved tribute to the success of the recently abolished Buncombe County Court, success due to the capacity of Judge J. P. Kitchin, who died some six weeks before the order abolishing the court took effect, Judge Merrimon concluded that there should be but two courts inferior to the Superior Court, and that these should be uniform throughout the State. And, dispensing with discussion of the Justice of the Peace Courts in North Carolina in a perfunctory definition—"Nuisance" Courts—Judge Merrimon expressed the hope of more than one lawyer in this State that decision of the case now pending before the Supreme Court will soon deprive the Justice of Peace Courts of their criminal jurisdiction.

Judges Spears and Merrimon have performed a valuable service in collecting the persistent and ever recurring criticisms levelled against North Carolina's trial courts, and their addresses reported in the formal proceedings of the State Bar deserve the attention of all North Carolina Lawyers.

Mr. Willis Smith, President of the North Carolina Bar Association,

was next introduced, and, in extending greetings from that organization, indicated that the Bar Association is doing valuable work in its study of pre-trial hearings and other important judicial problems.

There being no further discussion of the problems of the State Bar, elections were next in order. Mr. W. B. Rodman, Jr., of Washington, was unanimously elected President; Judge Marshall T. Spears, of Durham, was elected first Vice-President; and Mr. Frank S. Spruill, Jr., of Rocky Mount, was elected second Vice-President. All elections were by acclamation.

The meeting then adjourned.

V. LAMAR GUDGER, JR.