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The North Carolina State Bar

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THE NORTH CAROLINA STATE BAR

KEMP D. BATTLE, *Editor*

The quarterly meeting of the Council of the North Carolina State Bar was held in Raleigh on October 15, 1936, President Julius C. Smith presiding. There were present Vice-president Charles G. Rose, Secretary-Treasurer Henry M. London and Councillors J. D. Grimes, K. D. Battle, B. H. Perry, D. H. Bland, Albion Dunn, F. E. Wallace, J. B. Cheshire, L. J. Poisson, Dickson McLean, R. P. Reade, G. H. Hastings, D. A. Walser, B. M. Covington, J. L. Jones, W. C. Feimster and J. E. Shipman. Councillor Bland took his seat in succession to Col. Ed. S. Abel of the Fourth District and Councillor Walser in succession to Mr. Charles A. Hines of the Twelfth District. Mr. Bland was assigned to the Grievance Committee and Mr. Walser to the committee on Legal Ethics and Law Reform.

The report of the Secretary-Treasurer was made by Mr. London and accepted.

The report of the Executive Committee was made by Mr. McLean.

President Smith reported upon the program for the general meeting of the State Bar scheduled for October 16th and explained the new setup of the American Bar Association adopted at its recent meeting in Boston. Under the new plan of organization North Carolina will be entitled to two members of the House of Delegates, one to be elected by the North Carolina State Bar, the other to be elected by those members of the profession in this state who are also members of the American Bar Association. President Smith was thereupon elected as the delegate from the North Carolina State Bar. The election of the other delegate from this state will occur upon the expiration of the present term of office of Mr. Willis Smith, who automatically became a member of the House of Delegates until the expiration of his term by reason of his membership upon the Executive Council of the American Bar Association.

Mr. Battle reported the plan agreed upon by the committee appointed to collaborate with a similar committee from the North Carolina Bar Association on coöperation with THE NORTH CAROLINA LAW REVIEW. The plan was approved by the Council. For the details of this arrangement, see p. 42.

NOTE: For an explanation of the arrangement between THE LAW REVIEW and The North Carolina State Bar for the publication in THE LAW REVIEW of this department see p. 42.

Mr. Joseph B. Cheshire made a report for the Grievance Committee. It is the custom to treat this report as confidential except in cases in which the Council decides to proceed with disciplinary measures. Therefore instances in which complaints against members of the profession are dismissed or no action taken are not published.

In the matter of Luther F. Congleton, attorney, of Hertford, N. C., a trial was ordered upon the charges filed and Messrs. Albion Dunn, Dickson McLean and B. H. Perry were appointed as members of the trial committee. Judge Dunn is to act as chairman and Mr. A. A. F. Seawell, Jr. is to represent the State Bar as prosecutor.

In the matter of Jos. M. Prevette, attorney, of Jefferson, N. C., a trial was ordered upon the charges filed and Messrs. J. Laurence Jones, Hayden Clement and Walter C. Feimster were appointed as members of the trial committee. Mr. J. L. Jones is to act as chairman and Mr. A. A. F. Seawell, Jr. is to represent the State Bar as prosecutor.

In the matter of H. S. Kirkpatrick, attorney, of Raeford, N. C. in which a trial committee was appointed at a previous meeting of the Council, additional charges filed with the Grievance Committee were referred to the trial committee for hearing.

The Committee on Legislation and Law Reform submitted its report, as directed in a previous meeting of the Council, on proposed amendments to the Act incorporating the State Bar with the view of eliminating, so far as possible, defects in that act as pointed out in the opinion of the North Carolina Supreme Court in its much discussed decision in *re Parker*, 209 N. C. 693, 184 S. E. 532 (1936), Comment (1936) 14 N. C. L. REV. 374. The committee recommended that at the coming session of the legislature a bill should be introduced to amend the Act of the legislature passed in 1933 which incorporated the Bar, P. L. 1933, ch. 210, in the following respects:

(1) That Section 3 of the State Bar Act be amended as follows: That the sentence "Neither a councillor nor any officer of the council or of the North Carolina State Bar shall be deemed as such to be a public officer as that phrase is used in the Constitution and laws of the State of North Carolina" be stricken out.

(2) That Section 9 be amended by striking out of said section all of the sentence beginning in line 6 after the word "State" and reading as follows: "Provided, that from any order suspending an attorney from the practice of law and from any order disbaring an attorney, an appeal shall lie, as of right in the manner hereinafter provided, to the Superior Court Judge regularly holding courts of the county wherein the attorney involved resides."

(3) That Section 11 be amended by striking out all of said section after the word "conduct" in line 15 and inserting in lieu thereof the following: "5. Detention without a bona fide claim thereto of property

received or money collected in any fiduciary capacity. 6. The violation of any of the canons of ethics which have been adopted and promulgated by the Council of the North Carolina State Bar; may invoke the processes of the courts in any case in which they deem it desirable to do so; and shall formulate rules of procedure governing the trial of any such person which shall conform as near as may be to the procedure now provided by law for hearings before referees in compulsory references. Such rules shall provide for notice of the nature of the charges and an opportunity to be heard; for a complete record of the proceedings for purposes of appeal as of right to the Superior Court of the county wherein the attorney involved resides on the record made before the Council or the Committee as the case may be. Upon such appeal to the Superior Court, the accused attorney shall have the right to a trial by jury of the issues of fact arising on the pleadings, but such trial shall be only upon the written evidence taken before the Trial Committee or Council. From the decision of the Superior Court, the Council and the accused attorney shall each have the right of appeal to the Supreme Court of North Carolina. Trial shall be held in the county in which the accused member resides; provided, however, that the Committee conducting the hearing shall have power to remove the same to any county in which the offense, or any part thereof, was committed, if in the opinion of such Committee the ends of justice or convenience of witnesses require such removal. The procedure herein provided shall also apply in all cases of discipline or disbarments arising under that portion of Section 11 not hereby amended."

(4) That a new section known as Section 18-a be added reading as follows:

"Nothing contained in this Act shall be construed as disabling or abridging the inherent powers of the Court to deal with its attorneys."

In view of the importance to the profession of the proposed amendments, the report of the committee is printed in full. Mr. Hayden Clement, of Salisbury, N. C., its chairman, will be glad to receive from members of the profession any suggestions as to any changes in or additions to the proposed bill.

Mr. H. M. London was reelected as Secretary-Treasurer for the ensuing year and the meeting then adjourned.

The third annual meeting of the North Carolina State Bar was held in the ballroom of the Sir Walter Hotel, Raleigh, on Friday, October 16. The meeting was well attended by attorneys from all over the state and was considered as successful in every way. It was particularly gratifying that the Law Schools of the University of North Carolina, Duke University and Wake Forest College sent large delegations of students and members of their respective faculties. The address of welcome was delivered by Attorney General A. A. F. Seawell and was responded to by Councillor Don A. Walser.

The report of the Secretary-Treasurer showed the Association to be in healthy condition, both as to membership and as to finances. The Secretary read a list of twenty-two members of the profession who had died during the preceding year and the meeting rose in silent tribute to their memory. The Secretary's report showed that since the previous meeting disciplinary action had been taken by the Council as follows:

- Disbarred 3 (in two of which appeals to the Supreme Court are pending)
- Suspended 1
- Trials ordered..... 9 (Of these, seven are now pending. In one the respondent was disbarred by action of the Superior Court, and in one the proceedings were dismissed under the decision of the Supreme Court in the Parker case.)

Six other cases in which trials had been ordered but not held were dropped for the same reason. Reinstatement was denied in one case where the petitioner had been disbarred by the Court.

The principal address was made by Mr. Frederick H. Stinchfield, of Minneapolis, President of the American Bar Association, who presented in a very interesting and persuasive manner the importance to the legal profession of the activities of the American Bar Association and its many hard working committees. Mr. Stinchfield endeavored to make it a matter of conscience with the members of the legal profession that, as they were reaping the benefits of the activities of the American Bar Association, they should give to the Association the assistance of their membership and, if possible, of their attendance at meetings and service on committees.

Greetings on behalf of the North Carolina Bar Association were extended by its President, Mr. B. S. Womble of Winston-Salem.

Chairman Charles G. Rose evoked much interest by his report for the committee on the proposed Constitutional Amendment for increasing the membership of the Supreme Court.

The second address of the day was a most interesting and helpful paper by Judge J. Will Pless, Jr., of Marion, on the subject "A Judge Looks at the Court."

The principal address of the afternoon session was by Col. O. R. McGuire, General Counsel to the U. S. Comptroller General, on the subject "He shall take care that the laws shall be faithfully exe-

cuted." Col. McGuire's address, which will, of course, be printed in the *Proceedings* of the North Carolina State Bar, will merit the careful reading of all members of the profession. It is a scholarly discussion of the centripetal forces of government which have been rapidly gaining momentum for the last three generations.

Gordon Grey, Esq., of the Winston-Salem bar, made an excellent comment on the work of the Board of Law Examiners. His address elicited the greatest interest on the part of his audience and was followed by a statement as to the work of the Board of Law Examiners by its chairman, Judge L. R. Varser, of Lumberton. Dean M. T. Van Hecke of the Law School of the University of North Carolina and Dean H. C. Horack of the Law School of Duke University also spoke. This discussion did much to clarify the atmosphere in reference to the examinations as they are now conducted. Dean Van Hecke and Dean Horack were emphatically of the opinion that graduates of approved law schools should be subject to the same tests on applying for license as all others. The statement by Dean Van Hecke that the examinations as they are now conducted under the auspices of the North Carolina State Bar had definitely improved the quality of work being done by law students at Chapel Hill was heard with much interest.

The members in attendance at the meeting appeared to think that the work of the North Carolina State Bar was being satisfactorily conducted, for they reelected President Julius C. Smith and Vice-president Charles G. Rose by acclamation.

It was gratifying to note that seventeen of our twenty-three Superior Court Judges were present at an informal judicial conference luncheon, which will doubtless become an annual affair.

Statement of Receipts and Disbursements of the North Carolina State Bar for the Period October 1, 1935, to October 1, 1936

RECEIPTS

October 1, 1935, Active balance in Wachovia Bank and Trust Co., Raleigh.....	\$1,606.24	
Dues @ \$3.00 for 1933 from 16 members.....	48.00	
Dues @ \$3.00 for 1934 from 77 members.....	231.00	
Dues @ \$3.00 for 1935 from 320 members.....	960.00	
Dues @ \$3.00 for 1936 from 1585 members.....	4,755.00	
Dues @ \$3.00 for 1937 from 2 members.....	6.00	
Interest paid by bank on time certificates.....	95.18	
Transfer from Savings to Active Account (leaving \$3,500 in 2% Time Certificates).....	1,500.00	
		\$9,201.42

DISBURSEMENTS

Postage, printing and supplies.....	\$ 779.52	
Expenses annual meeting at Raleigh.....	51.97	
Reporting annual meeting.....	37.00	
Reporting four Council meetings.....	55.25	
Expenses Councillors.....	1,510.87	
Expenses trial committees.....	44.60	
Stenographic reporting disbarment cases.....	140.60	
Attorneys in disbarment cases—fees and expenses.....	1,362.85	
Witnesses in disbarment cases.....	29.25	
Serving papers in disbarment cases.....	16.50	
Miscellaneous expenses—typing, etc.....	31.50	
Expenses Chairman Grievance Committee.....	30.00	
Salary Secretary-Treasurer.....	1,200.00	
Clerical help for Secretary-Treasurer.....	300.00	
Salary investigator for Grievance Committee.....	1,500.00	
Expenses of Investigator.....	486.92	
Supreme Court—costs in J. D. Parker case.....	138.05	
G. R. Poole, auditing books for Treasurer.....	50.00	
Rubber stamps and telegrams.....	21.44	
Premium on Treasurer's Bond.....	12.50	
Edwards and Broughton Co., printing and mailing 1935 Proceedings.....	788.41	
Bank Service Charges.....	27.11	
Total Disbursements.....		\$8,614.34
October 1, 1936, Balance in Wachovia Bank and Trust Com- pany—Active Account.....		\$ 587.08
Two per cent Time Certificates—Savings Account.....		1,500.00
In First Citizens 2% Time Certificate Savings Account.....		2,000.00
Total balance, October 1, 1936.....		\$4,087.08

HENRY M. LONDON, *Secretary-Treasurer.*

Examined and found correct as stated above, as per audit October 30, 1936 by
George R. Poole, C. P. A.

DICKSON McLEAN,
J. D. GRIMES,
B. M. COVINGTON,
For Executive Committee.