



UNC
SCHOOL OF LAW

NORTH CAROLINA LAW REVIEW

Volume 28 | Number 1

Article 11

12-1-1949

North Carolina State Bar, The

North Carolina Law Review

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Recommended Citation

North Carolina Law Review, *North Carolina State Bar, The*, 28 N.C. L. REV. 150 (1949).

Available at: <http://scholarship.law.unc.edu/nclr/vol28/iss1/11>

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THE NORTH CAROLINA STATE BAR

Meeting of the Council of the North Carolina State Bar July 15, 1949

The Council of the North Carolina State Bar held its regular quarterly meeting on Friday, July 15, 1949, 408 Justice Building, Raleigh, with the following officers and members present :

Officers:

Thomas P. Pruitt, President, Hickory
J. B. James, First Vice-President, Greenville
Edward L. Cannon, Secretary-Treasurer, Raleigh

Councillors:

Junius D. Grimes, First District, Washington
Z. V. Norman, Second District, Plymouth
Albion Dunn, Fifth District, Greenville
John D. Warlick, Sixth District, Jacksonville
I. M. Bailey, Seventh District, Raleigh
L. J. Poisson, Eighth District, Wilmington
Dickson McLean, Ninth District, Lumberton
R. P. Reade, Tenth District, Durham
G. H. Hastings, Eleventh District, Winston-Salem
J. F. Spruill, Twelfth District, Lexington
W. L. Mann, Thirteenth District, Albemarle
J. Laurence Jones, Fourteenth District, Charlotte
H. M. Robins, Fifteenth District, Asheboro
B. F. Williams, Sixteenth District, Lenoir
Kyle Hayes, Seventeenth District, North Wilkesboro
Kester Walton, Nineteenth District, Asheville
P. W. Glidewell, Sr., Twenty-first District, Reidsville

The meeting was called to order by the President. The President called for the minutes of the last meeting which were read by the Secretary and approved as read.

The President called for the report of the Executive Committee which was made by Mr. Jones in the absence of the Chairman, Judge Bland. The Committee reported that it had checked the receipts and disbursements for the quarter ending June 30 and found the same to be correct. The Committee recommended that the Secretary be authorized to draw the sum of \$200.00 for extra expenses incurred by him. The Committee presented the audit of Willaims & Urquhart for the year ending December 31, 1948. The Committee recommended the adoption of the recommendation of the Secretary relative to expenditure of funds for addressograph material. Motion was made that the report of the Committee be adopted. Motion was carried.

The President called for the report of the Grievance Committee which was made by Mr. Reade, Chairman. The Committee recommended disposition of three cases considered.

Motion was made that the report of the Committee be adopted. Motion was unanimously carried.

The President called for the report of the Committee on Ethics which was made by Judge Hastings, Chairman. The Committee made the following recommendations:

Inquiry of attorney as to application of Canon D to Mayor's Court of Statesville. The Committee was of the opinion that if jurisdiction of the court does not exceed that of Justice of the Peace, then the exception noted in Canon D would apply. The Committee recommended that the Secretary make inquiry on this point if any further question arose in the case. Recommendation of the Committee was unanimously adopted.

Inquiry of attorney as to the ethics of seeking appointment to the office of city or county attorney. The Committee recommended that it was their opinion that it would be improper for a member of the Bar to seek the office of city or county attorney. There was discussion of the recommendation of the Committee and motion was made to adopt the recommendation. The following substitute motion was offered: "That the application to a public body for a public office is not a violation of the Canons of Ethics but that the application for the office of city or county attorney is a violation of the Canons of Ethics." It was moved that such motion was out of order. A point of order was made that the matter before the Council was the recommendation of the Committee and thereupon the question on the Committee report was called. The substitute motion was withdrawn. Motion was adopted accepting, ratifying and approving the recommendation of the Committee.

Motion was made that the Council go on record as expressing its opinion that the office of city or county attorney is a public office. A substitute motion was made as follows: "That the Council hold as a policy that the application to any public board for any public office shall not be construed as a violation of the Canons of Ethics." Upon discussion, it was suggested that the mover consent to amending his substitute by striking out the words "to any public board." The mover accepted the amendment to his substitute and upon vote the substitute motion as amended was carried.

Inquiry of attorney as to propriety of permitting name to be published in "Who's Who." The Committee recommended that it was their opinion that there was no violation of ethics in allowing such publication. Recommendation of the Committee was unanimously adopted.

In the matter of attorney and the use of certain material on letter-heads, the Committee reported there was no recommendation in view of the satisfactory adjustment of the matters previously discussed by the Committee.

The President called for the report of the Legislative Committee. The Chairman, Mr. Poisson, advised that there was no further report of his Committee at this time.

The President called for the report of the Committee on Unauthorized Practice which was made by Mr. Grimes, Chairman.

In the matter of advertising of the American Mutual Liability Insurance Company, of Boston, Massachusetts, the Committee was of the opinion that the language of the advertising material set forth, in substance, agreement to provide counsel in litigation, is a violation of the statute. The Committee recommended that the Secretary continue his efforts for satisfactory adjustment of the matter with this company.

On behalf of the Committee and additional members of the Council designated as Special Committee to Confer with a Committee of the Bankers Association, the Chairman made the following report:

REPORT OF THE SPECIAL COMMITTEE TO CONFER WITH THE NORTH
CAROLINA BANKERS ASSOCIATION FILED AT THE JULY, 1949,
MEETING OF THE COUNCIL

At the April meeting of the Council, a resolution was passed creating a special committee composed of the members of the Unauthorized Practice Committee and in addition, Mr. Thomas P. Pruitt and Mr. A. W. Sapp and they were instructed to hold conference with representatives of the Trust Unit of the North Carolina Bankers Association.

Pursuant to this resolution, the meeting was held on Thursday, July 14, 1949, at 8 P.M. at the Sir Walter Hotel. At this meeting there were present as representatives of the Council Thomas P. Pruitt, A. W. Sapp, J. B. James, P. W. Glidewell, Kyle Hayes, Junius D. Grimes and E. L. Cannon, Secretary. Messrs. J. Laurence Jones, of Charlotte, and W. L. Mann, of Albemarle, members of the Council but not members of the Committee, were invited to take part in the meeting and did so. The North Carolina Bankers Association was represented by Mr. LeRoy Martin, Chairman of the Trust Unit of that Association especially designated for the purpose of this meeting, Mr. R. H. McPheeters, of Greensboro, general Chairman of the Trust Section and trust officer for the Security National Bank, Mr. David Gallagher, of Greensboro, trust officer for the Security National Bank, Mr. Wood, of Winston-Salem, trust officer for the Wachovia Bank and Trust Company, and Mr. E. B. Crow, of Wilson, trust officer for the Branch Bank and Trust Company of Wilson.

Mr. Pruitt, as spokesman for the Council, presented the views of the Council as to the practice of the trust companies in soliciting business which in the view of the Council constituted the unauthorized practice of law. The statutes passed in 1945 and 1947 pertaining to the unauthorized practice of law were read and discussed. Special attention was called to the provision of the 1945 law relative to the preparation and filing of inventories, accounts, reports of guardians and executors and administrators and the custom of trust companies in advising persons as to the proper provision to insert in their wills, the Committee from the Council taking the position that such action necessarily involved the practice of law.

Mr. Martin was spokesman for the Bankers Association. He admitted that it was the custom of trust companies to file inventories, accounts and reports and similar papers for their customers and stated that he was not familiar with the provisions of the law stating that such actions constituted the practice of law. He and other members of the Bankers Committee were very emphatic in their denials that they transgressed the law relative to advising customers about the provisions of their wills. The discussion then became general and good feeling was manifested on both sides. Mr. Martin stated that the advertisements for his trust company were prepared by a concern in New York and were supposed to be checked over by an official of the bank before publication but sometimes some of the contents were overlooked and the advertisements published. He stated on behalf of himself and other members of the Committee that they would send their advertising agents copies of the laws of 1945 and 1947 above referred to and instruct them in the preparation of their advertisements to be careful not to violate the provisions of these statutes. Mr. Martin stated that he would recommend to the Trust Unit of the Bankers Association that their advertisements of their trust departments be submitted to their counsel before publication. It was further recommended that the committee of the Council and committee of the Bankers Association be set up for the purpose of meeting jointly from time to time for the purpose of considering complaints and difficulties which might arise in connection with activities of trust departments. This statement by Mr. Martin was acquiesced in by the other members of his Committee.

Your Committee feels that a great deal was accomplished toward establishing a friendly understanding with the Bankers Association and that the results will be beneficial both to the Bankers Association and to the State Bar. We recommend that this Committee be continued for further negotiations with the Bankers Committee.

Respectfully submitted,

(Sgd.) J. D. GRIMES, *Chairman.*

Following general discussion, the report was adopted and motion to continue the Committee was also adopted.

The President called for the report of the Membership Committee which was made by Mr. Williams. The Committee reported action as follows:

1. D. C. Jenkins—Action deferred for further study.
2. Francis S. Taylor—Deferred for filing in proper form.
3. L. C. Wright—Deferred for filing in proper form.
4. John B. Higby—Deferred for filing in proper form.

Upon motion the report of the Committee was adopted.

Statement was made to the Council relative to one Garrett, of Danville, Virginia, who was licensed to practice in this State a number of years ago and motion was made that the said Garrett be exempted from payment of all dues to the North Carolina State Bar except for the year 1949 provided affidavit was duly filed. Motion was adopted.

The President called for the report of the Committee on Solicitation of Litigation. Mr. Jones, Chairman, verbally reported to the Council that recent opinions of the Supreme Court led to the conclusion that cases formerly transported outside of State boundaries would return to the proper jurisdiction in the light of the recent opinions, particularly *ex parte* Collette and Kirkpatrick vs. Texas Pacific. In the light of these opinions, the Chairman was of the opinion that there was no reason for the Special Committee to be continued further and recommended that the same be discontinued. Upon motion the report was adopted.

Mr. Norman advised the President that there was no report for the Committee on Post War Work.

The President called for the report of the Special Committee to Confer with the Industrial Commission. The Committee reported that it had correspondence from attorney relative to certain actions of the Industrial Commission in connection with allowance of fees to him in case handled in the Superior Court. The Committee recommended that after consideration, it was of the opinion that it had no jurisdiction over the matter. The opinion of the Committee was unanimously adopted. The Committee further reported that it had not had an opportunity to meet with the new members of the Industrial Commission but felt that some effort should be made to confer with them relative to the schedule previously recommended by the Council and in order for this to be accomplished, the Committee recommended that it be continued for further conference. Upon motion, the recommendation of the Committee was adopted.

The Council adjourned until 2:30 P.M.

The President called the attention of the Council to certain newspaper stories relative to statement of T. C. Johnson, Commissioner of Paroles, and reported to the Council in detail the conference held with Commissioner Johnson, the President and Mr. James and also reported the discussion held between the officers of the State Bar relative to matters and things discussed at the conference and the possibilities of the Council issuing some statement to the press or having the Commissioner of Paroles issue some statement to the press. The President further reported that after conferences referred to above, drafts of statements were prepared and that the following statement had been signed by Commissioner Johnson and that while the President nor any of the officers of the State Bar has agreed that statement would be approved by the Council; nevertheless, Commissioner Johnson was advised that the same would be reported to the Council with the suggestion that it was the opinion of the officers that the same was a proper statement for the Council to issue to the press and that further, said statement as approved would be issued by the Council without comment of any kind. The President read the following statement:

"The Council of the North Carolina State Bar at its meeting July 15 considered the contents of the address of Paroles Commissioner T. C. Johnson before the Wake County Bar Association on July 6.

"Representatives from the Council of the State Bar called upon the Commissioner relative to his statement, and the Commissioner stated he had insufficient evidence to submit at this time justifying any disciplinary action against any member of the Bar."

Motion was made and seconded to adopt the recommendation and statement and the Secretary was instructed to give the same to the press without comment. Motion was adopted.

The President announced that Mr. I. E. Carlyle, a member of the Board of Law Examiners, had tendered his resignation and that nominations were in order for the election of a member of the Board of Law Examiners to succeed Mr. Carlyle, resigned. Jeff D. Johnson, Jr., of Clinton, North Carolina, was nominated. Nomination was duly seconded and motion was made that the nominations be closed. Motion was adopted and the Secretary was instructed to cast the vote of the Council for Jeff D. Johnson, Jr., of Clinton, for a three-year term on the Board of Law Exaimners. The Secretary cast the vote of the Council for Mr. Johnson.

The President announced that the Council was entitled to elect four members of the Judicial Council under the Act passed by the 1949 General Assembly and stated that nominations were in order for four places

on the Judicial Council. There was discussion of the work of the Commission for Improving the Administration of Justice and places to be filled upon the Judicial Council. Fred B. Helms, of Charlotte, was nominated and the nomination was duly seconded. Eugene Trivette, of North Wilkesboro, was nominated and the nomination was duly seconded. Frank S. Spruill, of Rocky Mount, was nominated and the nomination was duly seconded. J. B. James, of Greenville, was nominated and the nomination was duly seconded. Motion was made that the nominations be closed and that the Secretary be instructed to cast the ballot of the Council for Messrs. Helms, Trivette, Spruill and James to fill the four seats on the Judicial Council for the terms set forth in the statute. Motion was duly adopted. The Secretary cast the vote of the Council for Messrs. Helms, Trivette, Spruill and James.

The Secretary called the attention of the Council to certain problems facing the Board of Law Examiners regarding applicants. The Secretary further called the attention of the Council to the recent opinion of Mr. Moody of the Attorney General's office relative to appearances by laymen or corporations before the U. C. C. or other such quasi-judicial boards. Distribution of this opinion was left to the discretion of the Secretary after discussion by the Council.

The President called the attention of the Council to the Sixteenth Annual Meeting to be held on October 28 and requested suggestions from members of the Council regarding the Annual Meeting.

Upon motion for adjournment, the Council did so at 3:50 P.M.

Financial Report of the North Carolina State Bar and the Board of Law Examiners for Year Ending December 31, 1948

NORTH CAROLINA STATE BAR

Raleigh, North Carolina

EXHIBIT "A"

Comparative Balance Sheet—December 31, 1948 and 1947

ASSETS

CASH:	December 1948	31, 1947	Increase Decrease
First Citizens Bank & Trust Company:			
Subject to Checking—			
Exhibit "B"	\$ 167.12	\$ 553.04	\$385.92
Certificates of Deposit	3,000.00	3,000.00	
INVESTMENTS:			
First Federal Savings & Loan	2,000.00	2,000.00	
FURNITURE AND FIXTURES:			
After Reserve for Depreciation of			
\$767.19 at December 31, 1948, and			
\$637.84 at December 31, 1947 ..	526.32	140.66	385.65
TOTAL	\$5,693.43	\$5,693.70	\$.27

LIABILITIES

ACCOUNTS PAYABLE	\$ 337.55	\$	\$337.55
DUES COLLECTED IN ADVANCE	105.00	80.00	25.00
SURPLUS—Exhibit "C"	5,250.88	5,613.70	362.82
TOTAL	<u>\$5,693.43</u>	<u>\$5,693.70</u>	<u>\$.27</u>

NORTH CAROLINA STATE BAR

Raleigh, North Carolina

EXHIBIT "B"

Condensed Statement of Cash Receipts and Disbursements for the
Year Ended December 31, 1948

CASH BALANCE—December 31, 1947\$ 553.04

RECEIPTS:

Revenue—Exhibit "D"\$15,540.10
 Less: Dues for 1948 Collected in 1947 .. 80.00

Revenue Collected for 1948 15,460.10
 Add: Dues for 1949 Collected in 1948 .. 105.00

TOTAL RECEIPTS 15,565.10

TOTAL 16,118.14

DISBURSEMENTS:

Expenses—Exhibit "D" 15,902.92
 Less: Depreciation\$129.35
 Expenses Not Paid
 in 1948 337.55 466.90

15,436.02
 Add: Cash Invested in Equipment 515.00

TOTAL CASH DISBURSEMENTS 15,951.02

CASH BALANCE—December 31, 1948—Exhibit "A"\$ 167.12

NORTH CAROLINA STATE BAR

Raleigh, North Carolina

EXHIBIT "C"

Statement of Surplus for the Year Ended December 31, 1948

BALANCE—December 31, 1947\$5,613.70

Less: Excess of Expenditures Over Revenue—
 Exhibit "D" 362.82

BALANCE—December 31, 1948—Exhibit "A"\$5,250.88

NORTH CAROLINA STATE BAR

Raleigh, North Carolina

EXHIBIT "D"

Statement of Revenues and Expenses for the Year Ended December
31, 1948

REVENUES:

Dues Collected	\$12,832.50
Law Reviews	1,698.00
Collection on Loan to Board of Law Examiners	480.00
From North Carolina Bar Association	253.40
Recovery of Bad Checks	77.00
Interest	60.00
Telephone Rebates	48.70
Dividends	40.00
Refund on Printing and Supplies	30.50
Overpayment of Dues	20.00

TOTAL RECEIPTS\$15,540.10

EXPENSES:

Salaries:

Secretary	5,400.00
Secretarial	2,100.00
Extra Clerical	1,473.28
Council Expense	1,894.63
Law Reviews	1,693.00
Investigations—Bar Meetings	1,092.10
Telephone and Telegraph	530.70
Committee Expense	499.92
Postage	299.75
Supplies and Equipment	197.75
Reporting	144.40
Printing	141.85
Depreciation	129.35
Audit	125.00
Bad Checks	92.00
Refunds	34.00
Miscellaneous	30.00
Bond Premium	12.50
Bank Charges	7.69
Insurance	5.00

TOTAL EXPENSES 15,902.92

EXCESS OF EXPENSES OVER REVENUE\$ 362.82

THE BOARD OF LAW EXAMINERS

Raleigh, North Carolina

EXHIBIT "E"

Balance Sheet—December 31, 1948

ASSETS

CASH:

First Citizens Bank & Trust Company—Exhibit "F"	\$868.33
FURNITURE AND FIXTURES	88.27

TOTAL	<u>\$956.60</u>
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LIABILITIES

SURPLUS	<u>\$956.60</u>
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THE BOARD OF LAW EXAMINERS

Raleigh, North Carolina

EXHIBIT "F"

Statement of Cash Receipts and Disbursements for the Year Ended
December 31, 1948

CASH BALANCE—December 31, 1947	\$ 99.84
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RECEIPTS:

Bar Examination Fees:

168 @ \$ 23.50	\$3,948.00
4 @ 24.50	98.00
3 @ 25.00	75.00
2 @ 22.00	44.00
1 @ 26.50	26.50
1 @ 25.50	25.50
1 @ 24.00	24.00

Comity Application and Examination Fees:

6 @ \$100.00	600.00
2 @ 74.50	149.00

Registration Fees:

292 @ \$ 1.00	292.00
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Miscellaneous Receipts	14.36
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TOTAL RECEIPTS	<u>5,296.36</u>
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TOTAL CASH AVAILABLE	<u>5,396.20</u>
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DISBURSEMENTS:

Bar Examination and Board Meeting	
Expense	1,737.14
Refunds	384.00
Postage	141.69
Office Supplies	239.74
Clerical Salaries	340.00
Payment on Loan from North	
Carolina State Bar	480.00
Printing	866.82
Janitor Service	20.00
National Conference of Bar Examiners ...	225.00
Filing Fees	78.50
Bond Premium	12.50
Bank Charges	1.48
Postal Note Loss	1.00
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TOTAL DISBURSEMENTS	4,527.87
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CASH BALANCE—December 31, 1948	<u>\$ 868.33</u>