



1995

## Proceedings Of The Ninety-Fifth Annual Meeting Of The North Dakota State Bar Association

North Dakota State Bar Association

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PROCEEDINGS OF THE NINETY-FIFTH ANNUAL MEETING OF  
THE NORTH DAKOTA STATE BAR ASSOCIATION

OFFICERS

HOWARD SWANSON ..... President  
DONALD L. PETERSON ..... President-Elect  
GORDON W. SCHNELL ..... Immediate Past President  
CARL FLAGSTAD, JR. .... Secretary-Treasurer  
SANDRA TABOR ..... Executive Director

PROCEEDINGS  
June 15, 1995 (Thursday)

PRESIDENT HOWARD D. SWANSON: Good afternoon. It is my pleasure to call the 1995 Annual Bar Association to order. We will begin our meeting with the Presentation of Colors by the Fargo Air Force National Guard and singing the National Anthem is Mr. Lyndon Boyd. Please stand.

(Presentation of Colors and National Anthem.)

PRESIDENT SWANSON: Thank you. A couple of quick house-cleaning items for your information. We are a little bit late. We are running on somewhat of a tight schedule. In that case I have asked my friend and colleague, Phil Johnson, to serve as parliamentarian. Phil was running around looking for Roberts Rules. I am sure he has located those if need be. Thank you, Phil. In the event that we need election proctors, I am taking executive privilege and I am appointing Rick Johnson, Maureen Holman, the Honorable Ralph Erickson and Leslie Oliver as election proctors. At this time I would like to call upon Lori Beck to make comments from the Cass County Bar.

MS. LORI J. BECK: We just welcome you all to Fargo. We are glad to have so many people this year. I think the State Bar Convention is really a fun time of the year to have a little camaraderie with people we don't see all year long and some new faces, and so thanks for coming and just enjoy Fargo and enjoy each other. Thank you.

(Applause.)

PRESIDENT SWANSON: I would like to express to Lori and those who served with her for their fine and excellent work in putting together this program and all of the events, and in particular I also want to acknowledge Kim Brust, Pat Ellingson, Sarah Andrews Herman, Jon Irby, Mary Maring, Roger Minch, Jerry Schimmelpfennig, Maureen Holman, Nick Vogel, Mike Williams and Naomi Paasch for all the work that they

did. It is a large job. Thank you. You did it well and I am also pleased to tell you that you get to do it again next year. For those of you who may not know, the convention will be back in Fargo next year due to some scheduling conflicts.

**PRESIDENT-ELECT DONALD L. PETERSON:**

Leading this Association takes time, patience and organization. There are countless meetings, appearances, special events, all of which take time away from your family and work. This year we were fortunate to have someone who took the extra step, or in this instance, the extra mile. Howard took the time to drive to thirteen vision meetings across the state. From these meetings we obtained a wealth of information which we used to chart the course of the Association's future. I personally got to know Howard a lot better. I think the world of him. I think the Association was lucky to have him. I am thankful for his firm's willingness to let him serve us. Please help me thank Howard Swanson.

(Applause.)

**PRESIDENT SWANSON:** Thank you, Don. Thank you all. A year ago when I rose at the podium I didn't have a particular agenda. I didn't have great ambition. Rather I felt it was time that the Association do some introspection and evaluation of where it was, where it came from, where it was going. I didn't want to undertake new programs. I heard George Bush say no more taxes. I equated that to no more programs, at least for now. Rather I wanted to get to know my colleagues. I wanted to get to know the Bar Association. I wanted to find out what did you need, what did you want, what you didn't need and what you certainly did not want. To that end we scheduled thirteen meetings. I had a great travel partner. Sandi was diligent, patient and probably most of all she laughed at my humor. We traveled from Williston to Oakes, Grafton to Hettinger. We did not have a failure. We had thirteen meetings. I was greeted by a splendid group of professionals. You treated me with hospitality. The membership shared its ideas with me, your suggestions and your criticisms. That will, indeed, provide great insight for the Bar Association well into the Year 2000.

The Board of Governors has now received a report that Sandi prepared and I reviewed and somewhat assisted in the preparation. That report is available to you, and those that did participate in the vision meetings will be receiving that from the Bar Association in the near future. It is my hope at that time the Board of Governors will review that report, will review its policies, its programs and activities with a particular eye to enhance its services its materials to you, the Members, to increase your efficiency. Those areas of particular focus should include member services, technology and research, quality legal materials and continue

the tradition that this Bar has on high quality CLE productions. In connection with that, I would urge this Association to continue its relationship in building a strong coalition with the local Bars. The Association has a number of committees. They are, in fact, the life blood of the Association. Any of the accomplishments that the Board of Governors has or the Association has is due directly to the activities of the committees. There are dedicated and capable members to serve on the committees. They have a selfless contribution to the profession. The Board of Governors needs to strive, to continue that excellence in committees. I have suggested to the Board of Governors that it evaluate its committee structure, determine if the committees are necessary, relevant and viable. That may require restructuring or elimination or alteration of existing committees. I am also encouraging the Board of Governors to consider a policy of rotating chairs and members to retain interest and viability in the Association's activities.

I have been extremely blessed to have served in this position in this last year in my travels across the United States dealing with other Bar leaders. I have found that the quality of the practice of law, the quality of the judiciary and the quality of the administration of justice in this state is among the leaders.

The Bar Association and its activities and services compare to the best. This is true despite the fact that North Dakota is one of the very smallest Bars in the nation. It is with amazement when I met with the California Bar President and he asked how many members we had and I shared with him 1800 and he informed me that his staff exceeded that number.

Due to the professional commitments that the judges and lawyers of this state have provided, they continue to do and to follow a principle of what is right. They serve the public well and we share the respect of each other.

Later this afternoon you will have an issue before you which I believe follows the principle of doing what is right, and that is the final leg of the creation and implementation of the Client Protection Fund. I had the privilege of serving under President Pearson on the Long Range Planning Committee, and one of the areas that I felt particularly interested in and concerned about was client protection. It was not long after that when the fund simply ran out of money. We have now revitalized it and refunded it. I was extremely proud to report to the ABA and to the Western States Bar that North Dakota has now reimplemented a very strong and appropriate program to serve the public. I am asking that you approve that resolution and do what is right.

I thank you for the privilege you have provided me. I thank in particular the Board of Governors, many of whom are here. They put up with me as a leader running their meetings. They put up with my humor. They put up with a lot of things without a great deal of recognition. I will be forever grateful to them.

The Association staff, it has changed over the years, but again, they exhibit their loyalty. They are hard working. They are an excellent staff. I thank them. They are not able to be here. They are attending to other functions.

I wish to thank Sandi Tabor, Executive Director. Without her it would have been very, very difficult. She kept me on the straight and narrow. She provided me guidance and insight and we debated and discussed issues. Didn't always agree, but the debate was important.

I want to recognize my partners at the law firm of Letnes, Marshall, Fiedler & Clapp for providing me the opportunity to serve in this capacity. I do know what a billable hour is and I will be in the office Monday.

My family, they also gave me a wonderful opportunity. You may meet some of them this afternoon or this evening. All I can tell you is look out for my daughter.

Lastly, to you, the Membership, you put your faith and trust in me. I appreciated that. I hope I have served you without disappointment. I pledged to you my best in 1994. I attempted to provide you with my best. Thank you very much. The pleasure was all mine.

(Applause.)

The one nice thing about being President you get a lot of interesting roles, and one that I look forward to is introducing to you the Chief Justice of the North Dakota Supreme Court, Gerald VandeWalle.

Before he approaches the stand I do want you to know that in many of the conferences I had with Bar leaders they were neither invited nor encouraged to open a dialogue with the judiciary. That was extremely foreign to me. Chief Justice VandeWalle has always had an open door and an open phone to me. The members of his corps likewise. The members of the District Court have also shown that availability.

With that it is my sincere privilege and honor to introduce to you Chief Justice Gerald VandeWalle.

(Applause.)

**CHIEF JUSTICE GERALD W. VANDEWALLE:** Thank you. Thank you, Howard. It is my pleasure to—if you can't hear me, let me know.

It is my pleasure to be here for the 1995 State Convention of the Bar Association. This is really a pretty auspicious day. It is the day in

1215 when they signed the Magna Carta. And in case any of you get emotional with individual rights and freedoms, I remind you it is also the day your second installment of your estimated income tax is due.

Before I begin, there is one rumor I understand circulating the Bar, a rather vicious rumor that I would like to set aside. It is not true that judges are the only persons in whom ignorance of the law is an excuse. We also excuse lawyers.

I have done a printed message for you. Those of you that want to read it will read it. This is going to be really informal. We do have some time limits. If there are some questions at the end I certainly would be willing to take them.

There are a couple of things I would like to highlight in the written message. And one of them is to pick up on what Howard talked about. Howard and Sandi did a tremendous job in the legislature this year. Sandi was present a great deal of the time. Howard, when he could be. It very quickly became apparent that Sandi was—gained a reputation of a very knowledgeable, reliable person, not only on Bar issues but on other legal matters as well. That relationship as she has built with the legislature is going to pay dividends for years to come. And I told her I hope I wasn't the kiss of death when I complimented her on it in the message, but I wanted you to know that she did a great job.

Other members of this organization also did a great job for us. Wayne Stenehjem and Rick Clayburg, Jack Traynor, Bill Kretschmar and Dave Nething really did stand up for the judiciary when we needed it and I am appreciative to them for that. Unfortunately I am told that lawyers and judges still took a great bashing in this session of the legislature. And I suggest to you that judges and lawyers alike, it means we are not adequately telling our story and that the public as well as the profession is not well served by the in-fighting and lack of civility with which we greet those on the other side of a legal issue or those appearing before us as judges.

Our legislative package was really very small. It was taken up mostly with housekeeping measures. There are a couple things I want to draw to your attention. No. 1 is the filing fee increase. That was not our bill. It was not the Bar Association's bill. Jack Traynor, however, did introduce that bill in an attempt—it is an amendment to the judicial appropriation bill to bolster the judiciary budget.

The other thing that I want you to be aware of because I think a lot of people aren't is that the House Bill 1050 which is a healthcare bill and that contains a provision that appropriates money to the Supreme Court to undertake an alternate dispute resolution options for parties in disputes. We have agreed to do that. It arose out of the medical malprac-

tice situation. We have not done enough in North Dakota on alternative dispute resolution and we need to be working on it. I don't particularly like the idea that it would be solely driven by the medical malpractice situation. So it is going to be a broader study than that. I am going to be recommending to my colleagues and asking the Board of Governors of the State Bar Association to appoint a Joint Commission to undertake that study. They worked well on other areas. I think it will work well in this area. But be aware of it and be aware of what is coming up in the bill—in that bill.

With regard to the trial courts, very quickly there is an increase in cases, filings, about 4 percent over 1993. This is coming at a time when we are reducing the number of judges. I am concerned about the case carryover. That is also increasing, and we need to keep an eye on it to make sure that the—there is not a backlog. We are doing some things in trial court administration. We have revamped the Council of Presiding Judges. I now sit as Chair of the Council of Presiding Judges. The rule gives the Council policy-making authority for the trial courts. We are going to be hiring a trial court administrator on our staff that will be experienced. We hope to have that person in place soon. I am looking forward to the trial courts—the Council of Presiding Judges developing a vision for the trial courts, a state-wide vision for the trial courts in North Dakota, not a district-by-district vision, but a statewide vision. And I am excited about what is taking place in that regard.

With regard to the appellate court, our filings were down a little for 1994. The last few months, however, show an increase. And as you might guess, as the increases hit the trial courts it takes a few months and it is now going to be hitting our court.

One of the things that is interesting, and I talked about it later on in the address, Penny did—Penny Miller did some statistics for us, and 23 percent of the files open in the Supreme Court last year were pro se. That is almost one-fourth of our caseload of being opened by pro ses. Many of those—some of those people, not many but some of those people were represented at the trial court but on the appeal level they are not represented. That comes hand in hand with a proposed reduction at the federal level in legal aid. And the delivery of legal services in North Dakota is something we really need to keep working on.

Appellate rules. And as I said in the speech, many of you have expressed unhappiness, and that is a euphemism, with regard to the rigid enforcement of some of the appellate rules. The size of type I think we finally have got squared away. Technology is ahead of the rule. With regard to the double spacing of footnotes, just—it is a few—a growing

tendency of a few to single space footnotes in an attempt to cram more into the brief than there should be.

The other thing that is of concern, of great concern, is the use of the appendix in an attempt to file evidentiary material at the appellate level that was not considered by the trial court. And that was the reason for the emergency rule that says in the appendix please note the page of the record in which this particular document appears. It is simply an attempt to hold to the record what is, in fact, the record and not something new.

The Commission on Gender Fairness in the courts is moving ahead. You got the questionnaire. I had talked with the staff and with Justice Levine and Sarah Herman about the questionnaire, and rest assured, the questionnaire you got, and many you filled out, and I appreciate that, was longer than the one that you actually received. So they did cut it down. But I think they are very, very pleased with the return. I am not sure what the statistics are. I know Justice Levine told me that she was very pleased with it, and I thank you for returning that questionnaire.

Some future concerns, and I have discussed those a little bit, one of them as many of you now know, but one of the concerns that happened was the transfer of the fees and costs and forfeitures from the counties to the state. That was not part of our proposal. That was part of the executive budget. The counties are upset. To say the least the counties are upset. They lost several million dollars. The Clerks of Court still remain as elected county officials. They are totally dependent on the County Commissioners for their staff. I have asked the judges to be sensitive to this and I would ask you to be sensitive to it. I think that in some instances you are going to see a squeeze on the Clerk of Court office, the amount of money available for staff and supplies in an attempt to recoup some of the money they lost on the transfer of fees. And I ask you to be patient with those people. They are caught between judiciary on the one hand and the County Commissioners and the county situation on the other. And I would ask that you be sensitive to that.

I have told you about the pro se filings in the court. I think that by and large it is something we need to keep an eye on. I have talked about enforcement of the appellate rules. Now let me tell you I am going to recommend to my colleagues that not in matters of substance, but in matters of procedure, we ease up a little bit on the pro ses for a couple of reasons.

First, Penny and her staff spend a lot of time trying to get them to put the right color cover on the brief and do this and that, and they are becoming more agitated all the time by it.



Secondly, I really toyed with the idea maybe we should not let pro ses argue in the court or just file written statements. After what happened in Oklahoma City I think I have taken a different look and we need to encourage those people to work within the system, not try to exclude them from the system. As much of an irritant as sometimes it can be, we need to keep it working within the system. So I hope you won't say, well, this pro se was on the other side and you let him single space his footnotes, why can't I? It is one of the things—we are not going to let them do anything they want to, but I am going to suggest to my colleagues that we get rid of a statement that we treat pro ses the same way as we do attorneys. In fact, we never did and we might as well be honest about it.

Those are some of the remarks I had, some of the highlights. I hope you will take a look at the speech, at least scan it, my written remarks.

If there are some questions, do I have a few minutes? If there are any questions, I'll take them. If not we will appreciate the extra time. Anyone? Great. Thank you.

(Applause.)

PRESIDENT SWANSON: Thank you, Justice VandeWalle. I can't help but make an observation that when given the opportunity to inquire of the Chief Justice you let that go by. Without exception every time I have appeared before the Court they have always had questions of me. Maybe next time I will try the response are there any questions of the Court.

During this past year our Association unfortunately lost some of its members to a higher law. Those that are gone are gone far too soon. They were gifted. They were talented. They will be missed but they will be remembered. I would ask that in honor of all of our departed colleagues that we stand for a moment of silence.

(Stand in silence.)

Thank you.

At this time I am going to request that the Financial Report be provided to you. Our Secretary-Treasurer who is leaving office, Kip Flagstad, is not able to be with us today so in his stead I call upon the Immediate Past President, Gordon Schnell, to provide you with the Financial Report. Gordon.

PAST PRESIDENT GORDON W. SCHNELL: Thank you, Howard.

Before I start my report let me point out that a copy of Sandi Tabor's Gavel article concerning the 1995 budget and also copies of the 1994 audit and the 1995 budget are located behind the tab in your book, the General Assembly tab in your binder.

The Board of Governors was pleased with the findings of the 1994 audit in which we received a clean opinion from the auditors on all statements. I am happy to report that we have continued to gain lost ground. The 1994 management letter contained only one note with no recommended action involving the small size of the office staff.

The Board hopes to continue to refine our progress in the area of fiscal responsibility by implementing further measures to reduce expenses while maintaining our present quality of service during the next year.

The 1994 audit reflected year-end assets of \$197,334, which included \$82,430 in restricted cash assets, \$17,347 in equipment, and inventory of \$21,368. The restricted cash represents money held by the Association for the sections and the CLE Commission. Other restricted monies carried over to 1995 included \$14,142 in grant monies for the Volunteer Lawyers Program. This carryover is being used to fund a portion of the pro bono budget for this year.

Our overall fund balance at December 31, 1994 was \$156,875, of which \$70,412 is unrestricted and \$86,463 represents restricted funds.

The unrestricted fund balance, which is the Association's general fund, gained \$66,519 in 1994 due in large part to the continued refinement of our fiscal management policy. During the year the Association generated \$512,450 in unrestricted revenues and \$81,393 in restricted fund revenues for a total of \$593,843. License fees represented \$309,776 of this unrestricted revenue, or 52 percent of the total revenues which derive from license fees.

Our total expenditures of \$515,000 included administrative expenses of \$236,000, disciplinary expenses of \$42,000. And included in the administrative expenses were CLE seminar costs and office overhead. Disciplinary expenses included payment of \$36,000 to the Disciplinary Board and costs associated with the inquiry committees.

With that brief overview of the 1994 audit I would like to now turn our attention to the 1995 budget. Our overall projected revenue for 1995 are \$545,380. License fees represent 57 percent of this figure. Other sources of revenue include CLE seminars, the Annual Meeting and the Volunteer Lawyers Program. Our total projected expenses for 1995 are \$544,605. In addition to salaries and employment taxes, other expenses included in the projection are expenditures associated with the operation of the CLE seminars, the Annual Meeting and the Volunteer Lawyers Program. Our goal is to insure that these three programs are self-funding.

The Board is pleased with our operations to date this year but we are continuing to review areas in which cost controls can be implemented. Hopefully we will be able to continue to provide good news in the years

to come. That's the end of Kip's report, and I would just say with respect to it, I think that the financial condition of the Association is doing fine. Thank you.

(Applause.)

PRESIDENT SWANSON: Thank you, Gordon.

At this time I would call on Jack Marcil to give a report on the Bar Foundation.

While he is making his way up here to cover my back side, Jack told me I am to plug for you the silent auction tonight. So here is the plug. There is a silent auction tonight during the reception. Please attend and please bring your checkbook.

MR. JACK G. MARCIL: Howard, you are a good guy. I have always said that.

Thank you, Mr. President.

I did the Foundation News. Actually Sandi did it and I'll take credit for it but we sent that out. Sandi actually does this and she is giving me the opportunity to get up and talk a little bit about the Foundation. You know, it is fun being in the Foundation because we do some good things. You know, we give money away and we have fun and we like this kind of a job. I really do enjoy it. For any of you that, you know, have a loved one that passes on or you have a sweetheart or you want to give a gift, you know, we have available, which a lot of groups do, an ability that we have to have you give a gift to the Bar Foundation and we will send a note to the people that have received that. So it is really a nice thing that we have. And I know Sandi sent some of them out but if you have someone that passes on or you just want to give a gift in memory of someone, we would like you to utilize that.

I do want to talk a little bit about the silent auction tonight. I wish I could tell you that I painted something and that you would want to buy what I have painted but I am not very artistic, but we did get some local artists to donate some things for the silent auction. And we have some firms, and I want to thank these firms publicly for giving us some money so we are going to have some hors d'oeuvres there and we are going to provide complimentary wine and soft drinks but if you do anything other than that you are going to have to buy it on your own. But I do want to recognize Anderson & Bailly; Conmy Law Firm; Dorsey & Whitney; Grinnell, Klinger; Maring Law Office; Nilles Law Office; Serkland Law Office; the Vogel Office; and Wold & Johnson for contributing some money to help us do this thing tonight. It is going to be fun and we want you all to come. JoAnn Johnson is going to and has taken charge of this. I really owe a lot to JoAnn. She is just a take charge gal, and, Phil, you are very lucky to have her. I called her and

asked her to help me out on this and she just took charge of this. I think it is going to be a great evening.

I want to tell you a fun thing we did last fall at the Dean's home. We gave \$700 away to the four top students in the first year class. We gave a thousand dollars to the Law Review for their symposium and \$1,000 to John Goff to do an article for the Law Review about the recent changes in the juvenile justice system. I think that will be a good topic.

In terms of the IOLTA Committee, what we have—what they have been doing and what we have been doing is we have had a real problem with service charges across the state, and through Sandi's efforts, really I am going to give her the credit for this, she has really done a lot of work in getting—we have 391 IOLTA accounts in 89 financial institutions, and as of June 7th of this year we generated \$53,262 in interest. Now that is a little better than last year because, as you are aware, the interest rates have gone up, and to date we have been able to get 56 banks to waive their service charges on 185 of these accounts. And that means big money to us because recently we got Norwest to do that and that increased it about \$5,000. You know, IOLTA awarded \$76,000 in grants in 1995 for—to LAND and to help people that need services.

So if you are going to buy something, if you are going to give some money, this is the organization to give it to because we do good things and we enjoy it. Thank you very much.

(Applause.)

**PRESIDENT SWANSON:** Thank you, Jack. At this time I call on Dan Crothers to give us a report on disciplinary matters.

**MR. DANIEL J. CROTHERS:** Thank you, Mr. President, fellow members. Penny Miller was originally scheduled to deliver this presentation on the update of the disciplinary system, and due to conflicting scheduling she could not be here. And when she called me I mentioned that I really wasn't interested and she reminded me of the rule that is there is statutory law, case law and clerk's law and there is no appeal from clerk's law and I best show up. So here I am.

The update on the disciplinary system this year really focuses on the modifications to the North Dakota Rules of Lawyer Discipline. Those rules were implemented by the Court January 1st, 1995. In terms of the files being handled in front of the Disciplinary Board, about half of them are being considered under the new rules and about half of them were pending at the time the new rules were adopted and they are pending under the old rules. So the conclusion from those involved in the disciplinary proceedings and procedures, their conclusions are that it is really too early to tell exactly how the new rules are doing. With that

said, most of the things that have been seen so far suggest that the modifications have been positive.

I would like to simply mention several areas that have been modified in these new rules and then accept any questions that you might have and I'll be sure to pass them along to Penny.

The first major change that we note was that the private reprimand was done away with. It was relabeled an admonition. This was done in order to be consistent with the rules—the standards, excuse me, for imposing lawyer sanctions.

In addition to changing the name, the ability of the Disciplinary Board to impose a private reprimand was removed. The thought being at the committee level that proposes these to the court, if something is before the Disciplinary Board you are then at a stage where proceedings are public or should be more public and, accordingly, the ability of the Board to give a private reprimand was removed, in this case an admonition. The Disciplinary Board through Disciplinary Counsel has petitioned the Supreme Court and in turn that has been referred to the Joint Commission—to the Joint Committee now on Attorney Standards for reconsideration of the removal of this authority by the Disciplinary Board. At the meeting on Tuesday that action was tabled. That request was tabled. And it will be taken up at some future time when there is additional information as to just how things are working in that regard.

The second noteworthy change in the rules is that there are now time lines and deadlines for proceeding with disciplinary complaints, both before Inquiry Committees and before the Disciplinary Board. This was done, of course, to be sure that a complaint is promptly considered so that the complainant feels that they are getting prompt attention and, of course, that the respondent lawyer is not sitting in limbo with these questions hanging out. So the deadlines have been imposed throughout the system, and those are turning out to be positive for everybody involved.

Third major change I want to mention is that at the Inquiry Committee level it used to be a complainant filed a Complaint. They then heard basically nothing until they were given an opportunity to appear before the Inquiry Committee. The new rule requires that the lawyer's response to the Complaint be provided to the complainant. It was felt that this is the only way that the complainant really can be prepared to go before the Inquiry Committee and address the ethical issues that needed to be addressed.

Along with that there has been some discussion whether anything else has become public domain, so to speak, such that it needs to be released. In particular those involved in the disciplinary proceedings

typically ask for copies of the Inquiry Committee Investigative Report. It has been the policy of the Inquiry Committee, it has been a policy of the Disciplinary Counsel's office and the Disciplinary Board also has adopted a policy that the Investigative Reports are work product and they are not discoverable and they are not available for inspection to any of the parties in the system. That will remain that way, I suspect, until it is changed by the Supreme Court if the issue goes up.

Another matter I would like to mention that was changed under the new rules is the conflict of interest of a Disciplinary Board member has been clarified. Now, a Disciplinary Board member must disqualify himself or herself from participating in a case if a district judge or any judge would have to recuse him or herself from a case. That same is not true with respect to the Inquiry Committee. The rule is silent with respect to conflicts of interest at the Inquiry Committee level and this has been the subject of some comment. I believe the Joint Committee on Attorney Standards will be looking at that issue. But my suggestion is anybody involved in an Inquiry Committee procedure where they think an investigator has a conflict of interest, they should bring that matter to the chairperson of the Committee. And my experience also has been that if there is somebody concerned with the ability of the investigator to do an impartial job, that investigator be replaced.

Final thing I wanted to mention that was changed in the rules is the method for selecting nominees for the Disciplinary Board has been changed. It used to be a rather confusing process where the presiding judge of the local district selected a group and that group selected three nominees and those names went to the Supreme Court. And now it is the State Bar Association that selects the names and forwards those to the Court for appointment.

Those are a few of the changes in a nutshell. The new rules do appear in the new Michie and West rule books. If there are any particular questions I will be happy to take them now. If there are no other questions but they come up at a later date, feel free to contact the Inquiry Committee Chair or the Disciplinary Counsel's office. Thank you.

(Applause.)

**PRESIDENT-ELECT PETERSON:** Thanks, Dan. Before we ask Linda Catalano to give us an update of funding of Legal Services, we would like to take this time to honor those members who have dedicated many hours of service to the Volunteer Lawyer Program. Howard is going to—you come up when your name is called. Howard is going to give you your just rewards, I guess. And these are really outstanding if you really want to think about it. The sacrifice these people have made I think is really—it really is deserving of our appreciation.

Karen McBride for service of 200 hours.

(Applause.)

Wayne Carlson, 108 hours.

(Applause.)

No disrespect, but I am just going to start calling names here and then clap a clapful at a time.

Harold Bergquist, 96 hours.

(Applause.)

Lawrence King, 72 hours.

(Applause.)

Michael McMahan, 67 hours.

(Applause.)

Clem Rohrich, 58 hours.

(Applause.)

Lori Beck, 55 hours.

(Applause.)

Thomas Merrick, 55 hours.

(Applause.)

And Mel Webster, 52 hours.

(Applause.)

We would also like to recognize several other attorneys who volunteered more than 50 hours of their time but for various reasons could not be here today:

Mike McIntee, 85 hours.

Parrell Grossman, 57 hours.

And Paul Temanson, 55 hours.

Legal Services Corporation is under siege by Congress during this legislation session. The suggested cuts to the Federal program could have devastating ramifications to legal services programs here in North Dakota. Here to provide an update on the funding of LSC is Linda Catalano.

LINDA A. CATALANO: I thought this costume was appropriate for the topic I have to address. I hope you will excuse the way I am dressed but it is a lot more comfortable and I won't fall down and make a fool of myself.

I am here on a very serious topic and I will keep it short because there is really not a lot to say.

Congress is in the process of devising a budget and coming up with appropriations. And during this process it has become virtually inevitably clear that the Legal Services Corporation, which is the primary fund provider of civil legal services to the poor in this country, is going to suffer a one-third cut in 1996. That's virtually inevitable, not totally

inevitable. The only possibility is that we may have a shot nationwide of reducing that from maybe a third to 25 percent or 20 percent or something like that. Something we can survive.

The process of reauthorization is also going under way and there are many changes that are being proposed, too many to mention to you to take your time with today. The reauthorization process which is going to be restricting a lot of what Legal Services programs can do is actually a very positive note because at the beginning of this congressional session there was no talk of a reauthorization process. There was talk of total defunding. And across the country Bar Associations such as ours, supreme courts, not too many though, ours was one of the leaders, I understand the Judicial Conference have all passed resolutions and forwarded them or are in the process of forwarding them to Congress to explain and to argue and to plead for the continued meaningful federal funding of civil legal services to the poor.

We have to realize that in North Dakota—we just had a number of people recognized for absolutely incredible amount of pro bono hours. Last year 348 cases were handled by the Volunteer Lawyer project. Most of them contested custody or cases of that ilk. Very difficult cases.

Seven hundred and sixty one clients were given advice or brief service by volunteer corporate and government attorneys, and 39 attorneys took cases under contract at much less than half their going rate for legal services. That is over 1100 volunteer cases that were made possible—or virtually volunteer cases that were made possible by federal dollars from the federal government. No LAND staff people doing this work. These are private attorneys. Without the federal dollars to fund the—for Deb Knuth's position and the cost of the volunteer attorneys, this wouldn't have taken place. The IOLTA funds are there and they are very important, but 65 percent of legal services funding in this state comes from the Legal Services Corporation. Legal aid offices, between North Dakota Legal Services and Legal Assistance of North Dakota, closed over 500 cases with eight staff attorneys throughout the state last year, and that is a significant number. When you add all of the volunteer lawyers, the contract lawyers, North Dakota Legal Services and LAND staff, that was almost 1600 cases that were closed last year. And that number is down from previous years because the legal aid programs are taking cases that are more difficult. Not the family law cases but many public benefit cases, many public housing cases, and they are taking them to hearings, they are taking them to District Court and we are having more appeals to the supreme court as well.

We have to realize in the state of North Dakota we have 89,000 people, 14 percent of our population, at 100 percent of poverty; and



151,000 people, 24 percent of our population, at 125 percent of poverty. In 1981, civil legal services programs in North Dakota were cut 25 percent in their federal funding. And what is being proposed in 1996 is 34 percent. In 1991 we lost a third of our staff. We are hoping through technology and some streamlining and the help of the private Bar that we won't have to lose a third of our staff this time around. But it is going to be a very, very tough struggle. And if we lose a third of our staff with only eight staff attorneys state-wide you can imagine what the impact will be.

In addition, when you go back, and I hate doing this, when you go back and do the math and the cost of living in real dollars the legal services money coming into the state right now statewide is in real dollars 34 percent less than it was in 1991, and we are looking at a 33 percent cut on top of that.

Bottom line is that all of us come from very different backgrounds. We have different practices. Some of us practice. Some of us try to manage lawyers all over the state which is not a lot of fun. I am getting gray hairs. Some of us are lawyer trained but have jobs in the private sector, but we all, I think, have one thing in common and that is we all care about our profession. We all care about access to justice. I have heard Bar Presidents, I have heard Chief Justice VandeWalle talk about the importance of pro bono work, civil legal services and pro se. And if any time in the Bar that we need to have a cause and we should feel very strongly about a cause it's right now. And as I said earlier, I am deeply appreciative of the Board of Governors' resolution supporting continued funding, deeply appreciative of the supreme court's resolution, and I understand the Judicial Conference has passed a motion which will be translated into a resolution. That is a tremendous show of support. But we are a diverse Bar, and I have heard on more than one occasion that what the judiciary does, attorneys don't agree with, and what the Board of Governors do, all of the attorneys don't agree with. And what I think a rural state like North Dakota needs to convey to Congress is a little bit of money makes a big difference in this state.

A little bit more money can help a lot more people in a lot more effective way and a little cut can devastate a lot of people. And if each of you would take time to write a letter or a postcard to our congressional delegation, and they can use that, Senator Dorgan and Congressman Pomeroy have both told us any information that we can get up to them they will take and work into their positions on the floor. That will be helpful.

So I am calling here for you today to do what you can as individuals to support continued funding. The resolutions carry a tremendous

amount of weight, but each of you as individuals just taking the time to write a letter or sign a petition that might magically appear tomorrow morning at the beginning of business would be I think really, really impressive, and it would show that North Dakota is an individualist state, it is a self-sufficient state, it cares about its people and people are willing to take stands as individuals and that is how important things are, and that's the way things get changed in this country. There is a lot of lobbying and a big lot of lobbying groups, but when it all comes down to the bottom line, it is individuals who elect the representatives who make the change in Congress. Thank you very much.

(Applause.)

**PRESIDENT SWANSON:** In 1993 the Board of Governors asked the Group Insurance Committee to evaluate the possibility of revitalizing the Client Protection Fund. That Committee did its work, presented a report a year ago in Minot. I am calling now upon Gary Lawrence to present a sequel to his Minot report. Gary.

**MR. GARY W. LAWRENCE:** I have been asked to make a few brief remarks about the Client Protection Fund but the brevity of the remarks should in no way reflect the lack of importance of the resolution before this Committee—or this Association.

Last year this Association at the General Assembly passed the Client Security Protection Fund Resolution and agreed to an assessment of its Membership. This year we are coming before you asking for a permanent dues increase of \$20, an increase of—no, I believe it remained the same as the assessment was last year. It is important, as Howard stated, to carry through with the second part of this plan that is now before the General Assembly. The money will be used to—well, it will be used to buy a bond which is anticipated to be purchased perhaps next year. It will be a blanket bond covering the Association Members, and we feel that it is important that this matter be funded and continue to be funded on an annual basis.

The other thing that I would like to stress is the duty of the Association to pass the resolution to protect individuals within the State of North Dakota who have been defrauded by the unscrupulous acts of attorneys, and I think it is the duty of this Association to do so. And so we would urge strongly that this resolution be passed. Are there any questions? Thank you very much.

(Applause.)

**PRESIDENT SWANSON:** Thank you, Gary. Now we are approaching the fun part of this meeting, at least for certain people. But before we get to that, I do want to again thank those people who have given reports today. I believe all of them have been helpful to our

understanding of the situation. I encourage you to discuss it with those people and to give them whatever assistance they might need.

In a few moments Sandi is going to engage the reading of the resolutions. We will hold that in suspense for a while, and at this time I would like to bring to the floor the matter of election for new officers for the Association.

At this time I would open the floor for nominations of the office of President-Elect.

MR. MARCIL: I have a nomination.

PRESIDENT SWANSON: I recognize Jack Marcil.

MR. MARCIL: I am back again. You get to see me again. Both of the times I have appeared before this group are very pleasurable and this again is a very pleasurable moment for me.

Mr. President, Members of the State Bar Association, guests and friends, I come before you today to place in nomination a person who I believe will be an outstanding President of this Association. She will also be an outstanding President-Elect. She has got to do that first. Her name is Becky Thiem, and she is a partner with the law firm of Zuger, Kirmis & Smith in Bismarck.

For me to get up here and tell you all the things about Becky would take a long time. I want to highlight—I want to highlight just a few things about this person.

She is a 1980 graduate of UND. She is a member of the Order of the Coif. She spent a year in Fargo and I think that is probably when I first met her, working for Judge Myron Bright. Since 1981 Becky has been active in the practice of law in Bismarck.

In researching Becky I didn't realize all of the things that she has done at this young age. She—just to mention, just to highlight, State Bar Board, Inns of Court, Joint Commission of Attorney Standards. She is a Past Secretary-Treasurer of this Association. She was—she has been involved in CLE, Bar Foundation, Past President of the Burleigh County Bar Association. I could go on and on. But one of the things that I found out about Becky she is not only active in law. She has been active in local community affairs in Bismarck-Mandan. She is a Past Board Member of the Bismarck-Mandan Area Chamber of Commerce, Bismarck-Mandan Development Association. She is a member of the Bismarck Job Development Authority.

Her lists of accomplishments are frankly overwhelming. I have known Becky for a long time, but I really got to know Becky when she was the Secretary-Treasurer of this Organization when I was the President. And I found out some things about her. She is blessed with good judgment, sound logic. She is a very intelligent person. And I have seen

in Becky a real concern for people. She is of the highest integrity and character and she is just a wonderful leader. She is going to just be a great leader for us. Her qualifications will make her an outstanding President-Elect. I think it is fitting and proper that Becky Thiem be the first woman President of this Association. I can't think of a better person for this position. And I think it is about time. And I want to say this, that it is a great personal pleasure for me to place her name in nomination for President-Elect of the North Dakota Bar Association. Thank you very much.

(Applause.)

PRESIDENT SWANSON: Is there a second to that nomination?

MR. JAMES S. HILL: Mr. President.

PRESIDENT SWANSON: Mr. Hill.

MR. HILL: It will be okay. Don't worry. Mr. President, Members of the Association, it is with a great deal of pride that I stand today to place into nomination the name of Becky Thiem. I am a little nervous because although those of you that know me think that I fly into these things with trepidation it is not true. All of the years that I have worked with the Bar Association I have shared probably the innermost thoughts of the trials and tribulations of this Association, and all of you know what transpired in the last five years with one person, and I would go down there and I would scream and I would holler and I would yell and I would come back here and be very calm, but somebody had to listen to what happened as things went on.

Without question, Becky Thiem is an outstanding lawyer. She is deserving of the support of this Association. I have known Becky for the thirteen years that we have practiced together, and it has been an extreme pleasure, and I think all of you should be jealous because all of you should have a partner like Becky Thiem. Every one of you would enjoy practice immensely more if you were in that situation.

She has been a tireless and enthusiastic worker for the State Bar Association. As Jack Marcil has indicated, she has been on the edge or in the middle or somewhere along side of all of the major accomplishments of this Association in the last ten years. Her range of commitment is unequal. Her leadership is unquestioned.

There is a long list of accomplishments, as Jack has indicated, but all of that is not really very important as you stand here and consider what she means to the Association. What is important is that she is an extraordinarily talented individual.

She is a loyal and a true friend. I am fortunate to have her as a partner and I can tell you that this Association is going to be extremely

fortunate to have her as the President-Elect of the State Bar Association of North Dakota. Mr. President, I second the nomination.

(Applause.)

PRESIDENT SWANSON: Are there any other nominations for the office of President-Elect of the State Bar Association of North Dakota? Are there any other nominations? Here is where you are supposed to get nervous, Becky. For a third time, are there any other nominations?

MR. KERMIT E. BYE: Mr. President, I would move that the rules be suspended and that the Secretary be instructed to cast a ballot for Becky Thiem as the new President-Elect of the State Bar Association.

PRESIDENT SWANSON: Motion having been made by Kermit Bye, is there a second?

MR. MARCIL: Second.

PRESIDENT SWANSON: Seconded by Jack Marcil. All those in favor of the motion signify by saying "Aye." "Aye." Opposed? Motion carried.

(Applause.)

PRESIDENT SWANSON: It is my personal privilege, Madam President-Elect, congratulations.

MS. REBECCA S. THIEM: Thank you.

PRESIDENT SWANSON: The chair is now open for nominations for the position of Secretary-Treasurer. I recognize Mr. Kermit Bye.

MR. BYE: Mr. President, Members of the Bar and Judiciary, I am here today to place into nomination the name of a law partner of mine who is truly interested in serving this Association. He is of a younger generation. I think that is really a healthy sign, and if he is fortunate to be elected here today he will serve you well.

Before I get into the short nomination speech for Steve Johnson, I recall either Don or Howard indicating that they attended meetings and we heard about the large staff the California Association has, and it is true, they do have a large staff. It is twice as large as the staff of the American Bar Association as an example, and just in one county in Los Angeles, for example, there are 40,000 lawyers that belong to LA County Bar. So when we look at our 1800 we think in terms of a rather small number, but the point that I want to drive home, if I can, I have traveled around a bit visiting Bar Associations and attending meetings in my time, and North Dakota does not have to, absolutely does not have to take second seat to any Bar Association, or as far as the lawyers goes as a group to any lawyers anyplace in the country. We are on the leading edge of most of the great programs that come along a lot later in these larger Bars. And I think this is really a tribute to the lawyers. It is a particular tribute to the lawyers that come to these meetings at 3 o'clock

on a Thursday afternoon on a day when it is 95 degrees out. And, of course, it is a tribute to the leadership and the staff of the Bar Association. So as you travel across this country and interface with other lawyers from across the country, you can be proud that you come from a real class organization and group, and it is a tribute to all of you.

Now, with reference to the office of Secretary-Treasurer—congratulations, Becky. I remember some summers ago now, Becky, that you were a law clerk in our law firm, and she comes from a good, strong Lutheran background. In fact, her father is a retired Lutheran minister here in Fargo. And the gentleman that I am about to place in nomination, Steve Johnson, is going to balance this Board up a bit. He comes from over on the other side of town, not necessarily other side of town but from another religious persuasion, and he is a graduate of Shanley High School, and he was a wrestler when he was at Shanley High School. He went on to Moorhead State University. He was trained there in Accounting. He then went on to the University of North Dakota Law School. And Steve really excels in everything. The honors that were available, Steve generally was among those that received them. Law Review, Order of the Coif. I still think it has really not been definitely settled as to who was No. 1 in the class between Steve and one other person whose name shall not be identified here, but he is a true intellect.

Steve has really a rare combination of talents that I think make for not only a good lawyer but also be an excellent representative of the Bar in a position such as Secretary-Treasurer.

I am pleased that he is willing to serve. As I have been knocking around in the Bar business for thirty plus years now, what I have seen is I think a little bit of a lessening of the interests in organized Bar work by younger members of the profession. That is not to say they are bad people. They are all excellent lawyers, but there has been, I think, a diminution of interest perhaps in Bar work. Much of it all volunteer obviously, much of it drudgery, going to meetings, et cetera. It does take a lot of commitment from time and family. And I am really pleased to say that Steve Johnson will give that dedication to this position if you shall elect him.

I was—when Steve talked to me about this I perhaps am as much responsible for encouraging him to get involved as anyone, although he does have the—I am sure he has the support of all the lawyers in our law firm. I received one little warning when I was asked to nominate him, and that came from Sandi, and she said limit the speech to five minutes, which I am going to try to do, Sandi. I then asked Steve to give me some information. I asked Steve to give me some information about himself, and he went to one of the directories that our law firm appears

in and I notice here we have five lawyers mentioned from our law firm on this directory and I just put a little square in the box that talks about Steve, and this is by far the smallest of all the biographical sketches on this page, and I really think that is a tribute to Steve. He is a modest person. He has a rare combination of judgment and intellect and beyond that he is really a totally decent person. In the position of Secretary-Treasurer, it is kind of a starter position beyond any question in Bar leadership work, you need to know something about facts and figures. Steve has—in addition to being a top notch lawyer, he also has the distinction of being a Certified Public Accountant. So here we have a good Shanley High School graduate, Certified Public Accountant and a first class lawyer.

It really gives me a great deal of pleasure to place in nomination the name of my law partner, Steve Johnson. Because he has only been—because he has only been in the Association a mere seven or eight years now, I am going to ask Steve to stand up so everybody can get a chance to see him. Will you please stand up, Steve?

(Applause.)

Thank you.

PRESIDENT SWANSON: Is there a second to the nomination? I recognize Ron McLean.

MR. RONALD H. MCLEAN: Sometimes I wonder about my friend, Steve. A couple of years ago he told me he was going to be in the Prairie Rose Games and he told me that he was so, oh, full of confidence that it was going to be at Shanley High School gym, that they had this weight division of 140 and under, and it was only he and some guy at least ten years older than he was, and he just felt certain that this thing was going to go his way. He remembered all his wrestling from his high school days and he would do just terrific. So a couple days later I asked him what happened. Well, he said, "I went out there to shake hands before the match started and it turned out the fellow was the Mayville State University wrestling coach with a physique like you see at a physical therapist office on a chart." Steve said he was tied up, untied, put in a pretzel, kicked around, pinned a couple of times, and finally after six minutes they awarded Steve second place. Well, you know, Steve is my friend, and us modern males are supposed to say things like "How did you feel about this?" Steve says, "I felt terrific. I got second place." Well, like I say, I wonder about Steve.

And then Steve a few years ago finds this hulk of some decaying pieces of wood that look like it was once a boat, a wooden boat, and he finds it in that famous lake resort city of Brandon, North Dakota, in an alley where it looks like local Cub Scouts have been using it as material

for their whittling or either kindling for their fires. But Steve puts this thing together. Night and day he works on this boat. He gets Brazilian teak from Israel. I never figured that one out. And he puts it together and I then ask him in the summer, "Well, how is that boat going?" Steve says the damndest thing. "I take it around Little Middle Cormorant once, hit a rock, sunk with the engine and the DNR were there threatening me with a lawsuit for polluting the lake if I didn't get the engine out within twenty-four hours." So I asked my good friend that modern man question, "How did you feel, Steve, about your boat sinking in Middle Cormorant?" Steve says, "I felt terrific. This will give me a chance to completely rebuild it." Like I say, I wonder about Steve.

Well, the truth is I don't wonder much about Steve's abilities to be Secretary-Treasurer for this organization. I have practiced with Steve and practiced against Steve, and I can tell you that practicing against Steve is like facing that Mayville State coach with a couple of Brazilian teak 2 by 4's coming at you. He is a terrific lawyer and a terrific person. As Kermit said, he is a graduate of Moorhead State and graduate of UND where he excelled academically. He is a CPA. He has a wife, Jackie, and three daughters.

He also already has held powerful positions in this state as City Councilman of Riley's Acres, a group of homes who in the minds of the people in the neighborhood think they are a town. But I don't think they got sued but they were threatened a number of times when Steve was in control.

Steve will make an excellent Secretary-Treasurer. In all seriousness he is man of the highest character, of the best judgment and one of the most diligent, intelligent people I know. It is with great enthusiasm I nominate my friend, Steve Johnson, for the position of Secretary-Treasurer.

(Applause.)

PRESIDENT SWANSON: Are there any other nominations for the position of Secretary-Treasurer? Any other nominations? A third call. Any additional nominations? Seeing and hearing none, is there a motion to be made? Randy Lee.

MR. RANDY H. LEE: I move we suspend the rules and the Secretary be directed to cast a unanimous ballot for Steve Johnson for Secretary-Treasurer.

MR. JAMES HILL: Second.

PRESIDENT SWANSON: Second to the motion by Jim Hill.

All those in favor of the motion signify by saying "Aye." "Aye." Opposed? Motion carried. Congratulations.



(Applause.)

I would now ask our Executive Director, Sandi Tabor, to read the resolutions. For your information they are also included in your registration packet.

**MS. SANDRA TABOR:** Good afternoon. First resolution has to do with funding of the Client Protection Fund involving a dues increase of \$20. And it reads as follows:

**WHEREAS,** the Association membership passed a resolution in 1994 establishing a client protection fund and providing for initial funding through a special assessment, and

**WHEREAS,** the State Bar Association of North Dakota believes that facilitating a client's ability to receive restitution is part of its public service obligation and falls within the mandate of activities appropriate for an integrated Bar Association, and

**WHEREAS,** the successful operation of the Client Protection Fund requires adequate funding at levels which will ensure fund solvency, and

**WHEREAS,** the maintenance of adequate funding levels of the Client Protection Fund requires the dedication of annual review which the SBAND will need to raise from its membership.

**NOW THEREFORE, BE IT RESOLVED,** that the dues of all attorneys licensed to practice law in the State of North Dakota be increased by \$20.00 effective January 1, 1996, and collected in conjunction with the 1996 annual license and in each annual license thereafter.

**BE IT FURTHER RESOLVED,** that the \$20.00 collected pursuant to this resolution be dedicated to finance the Client Protection Fund.

The second resolution was submitted by Bismarck Attorney Fred Saefke, and it reads as follows:

**WHEREAS,** there was a time when the practice of law was a profession, honorable and dignified, as a personal agency relationship between attorney and client; and

**WHEREAS,** that personal relationship is being degraded by the use of a name or names of non-resident, retired or deceased attorneys with no present relationship with clients, the continued existence of which is misleading and a fraud upon the public,

**NOW THEREFORE, BE IT RESOLVED,** that the State Bar Association of North Dakota at its Annual Business Meeting, duly assembled, this 15th day of July of 1995, petition the North Dakota Supreme Court to establish by rule, that only the name or names of active members, residing in the State of North Dakota, licensed to practice law therein, be used, in any manner, to denote to the public, their status as attorneys at law, or lawyers.

The third resolution is a thank you mostly to the local committee and for all their work. It reads as follows:

WHEREAS, members of the East Central Judicial District and others have put considerable time and efforts into planning and organizing the 1995 Annual Meeting of the State Bar Association of North Dakota; and

WHEREAS, those persons deserve special thanks for their efforts,

NOW THEREFORE, BE IT RESOLVED, that the State Bar Association of North Dakota extends a special thank you to those persons involved in the planning and organization of this Annual Meeting, particularly:

To: Chair Lori Beck, and committee members Kim Brust, Pat Ellingson, Sarah Andrews Herman, John Irby, Mary Maring, Roger Minch, Jerry Schimmelpfennig, for the planning and overall coordination of a multitude of details;

To: Maureen Holman for chairing the Golf Tournament;

To: Nick Vogel for chairing the Tennis Tournament;

To: Mike Williams for chairing the Family Fun Run/Walk;

To: Naomi Paasch for chairing the Bridge Tournament;

To: JoAnn Johnson for arranging and to the following law firms for sponsoring the North Dakota Bar Foundation silent auction: Anderson & Bailly; Conmy, Bossart, Feste, Hubbard & Corwin; Dorsey & Whitney; Grinnell, Klinger, Swenson & Guy; Maring Law Office; Nilles, Hansen & Davies, Serkland, Lundberg, Erickson, Marcil & McLean; Vogel, Brantner, Kelly, Knutson, Weir & Bye; Wold Johnson.

To: The Fargo-Moorhead Legal Secretaries Association for their generous assistance during registration; and

To: The Rose Creek Golf Course, Courts Plus Fitness Center, Yonkers Farm, and the Holiday Inn for their hospitality and assistance in arranging all these events.

The next resolution thanks our exhibitors and reads as follows:

WHEREAS, the businesses and organizations that graciously sponsored portions of the 1995 Annual Meeting and participated as exhibitors are:

Anne Carlsen Center for Children;

American Arbitration Association;

Attorneys Liability Protection Society;

Attorneys' Title Guaranty Fund, Inc.;

Benefit Specialists;

Blue Cross Blue Shield North Dakota;

Eide Helmeke & Company;

Emineth & Associates Court Reporters;

First Trust North Dakota;

The Michie Company;  
Norman Mark Court Reporters;  
OMF/Steffens Office Equipment;  
Ramsey National Bank & Trust;  
Steffes Auctioneers, Inc.;  
The Title Company;  
Vaaler Insurance;  
United Printing, Inc.;  
West Publishing.

WHEREAS, without their participating and financial support the 1995 Annual Meeting of the State Bar Association of North Dakota would not have been the success that it was.

BE IT FURTHER RESOLVED, that the above be thanked for their gracious support. The last resolution is a thank you to Deb and Howard Swanson who put in a lot of time and energy into this past year, and I personally wanted to take a point of personal privilege to thank Howard for what was a very pleasurable year in most instances, and I wanted him to know that I—I liked traveling around with him. I really did. So thank you, Howard.

The resolution reads as follows:

WHEREAS, President Howard Swanson and Deb Swanson have served the State Bar Association of North Dakota during the past year at a great personal sacrifice to themselves and their family; and

WHEREAS, the State Bar Association of North Dakota has been greatly improved and enriched due to their efforts.

NOW THEREFORE, BE IT RESOLVED that the State Bar Association of North Dakota commend President Howard Swanson and Deb Swanson for their dedicated efforts.

Those are the resolutions.

PRESIDENT SWANSON: Thank you, Sandi. I would now ask that the Association take action on Resolution No. 1 regarding the \$20.00 dues increase, funding the Client Protection Fund. Is there a motion to adopt the resolution?

MR. GARY LAWRENCE: I make a motion.

PRESIDENT SWANSON: Moved by Gary Lawrence. Is there a second?

MR. JAMES HILL: Second.

PRESIDENT SWANSON: That's Mr. Jim Hill. The Assembly has heard and received a report from the Group Insurance Committee on this resolution. Is there any discussion? Is there any discussion on the resolution? Last time. Is there any discussion on the resolution?

Hearing none, the matter is before you. All those in favor of adoption of the resolution signify by saying "Aye." "Aye." Opposed? Resolution adopted.

We will now act on Resolution No. 2. Is there anyone that would move the adoption of Resolution No. 2? Is there anyone that would move the adoption of Resolution No. 2?

MR. DAVID PETERSON: I move the adoption.

PRESIDENT SWANSON: Motion has been made for the adoption by Dave Peterson. Is there a second to the motion? Is there a second to the motion?

MR. J. PHILIP JOHNSON: I'll second the motion to the resolution before the body.

PRESIDENT SWANSON: Motion has been seconded by Phil Johnson. Floor is open for discussion. Is there any discussion on the resolution?

MR. DAVID PETERSON: Howard, I am just going to stand here. This is not my resolution, but all of you know Fred Saefke. Fred has been a practitioner in this state for many, many years. This resolution is something that a lot of people have discussed around the state since I was President ten years ago. And as I read it at least it simply is calling for a petition to be filed with the Court and at that time an appropriate appearance and hearing would be made by all parties that have various views on it, and we are, after all, all lawyers and I think that is the kind of hearing determination we ought to have on these kinds of matters. And for that reason I moved it because Fred isn't here and I would hope we would pass and allow at least the hearing to go forward for all those who have views on them to appear before the Court and make their views known.

PRESIDENT SWANSON: Thank you, Mr. Peterson. Is there any further discussion? Mr. Johnson?

MR. J. PHILIP JOHNSON: I would just like to note for the record I seconded the motion simply to have it before the body and I am not personally supporting this motion. I think it is way too far reaching and to the best of my knowledge the Association has dealt with this same issue at least twice and voted it down in each case. Mr. Leo Wilking.

MR. LEO F.J. WILKING: Yes, Mr. President. My name is Leo Wilking, and I am a member of the firm of Nilles, Hansen & Davies here in Fargo. Frankly I take some offense at the language of the resolution which suggests that my firm which has been in this state for seventy, eighty years is somehow misleading or defrauding the public by practicing when there are no Nilleses in North Dakota at the current time.

If this resolution were adopted and approved by the Supreme Court and put in force on a national basis it would mean that such firms as

White & Case and Sullivan & Cromwell in New York who have been around 150, 200 years would have to change their names. I think there is much to be said for the public being able to develop a relationship with a firm and for tradition and for history and for people being around and for names being continued. I don't think we have a problem with fraud and misleading names in law firms in North Dakota. I think the resolution is totally inappropriate and unnecessary and I urge its objection.

**PRESIDENT SWANSON:** Chair recognizes Mr. Jack McDonald.

**MR. JACK McDONALD, JR.:** I am Jack McDonald from Bismarck. I guess I would oppose it from the language standpoint. I don't think it is appropriate. I wouldn't like to sit here as a Bar Association and say right now we feel that the law profession is not honorable and dignified. The resolution said there was a time when the practice of law was a profession, honorable and dignified, which I guess it now means it is no longer that. I guess that is not the image I would like to see. Now we are saying the personal agency relationship is being degraded. Now we are saying that these relationships are being degraded. You want to pass a resolution that says that? I don't think so. There may have been some merits in this idea. I don't personally think so, but I certainly don't like the wording of this resolution so I would like to see this resolution defeated.

**PRESIDENT SWANSON:** Further discussion?

**MR. HARRIS P. KENNER:** I am Harris Kenner from Minot. And I agree with regard to the language of this, but I also agree with Mr. Peterson because I think that there would be nothing wrong with having a hearing. And it is probably unfair to some of the people entering our profession if names of deceased people gone on and on for twenty years and so—and there could be time limits placed and there would be something reasonable coming out of it, I am sure. But to expedite this matter I would move that Resolution No. 2 be amended by deleting all the wording down to where it begins "Be It Resolved."

**PRESIDENT SWANSON:** Motion has been made to amend the resolution. Is there a second?

**MR. DAVID PETERSON:** Second.

**PRESIDENT SWANSON:** Seconded by Dave Peterson. Discussion on the amendment? The amendment would delete the first two paragraphs of the Resolution, as I understand.

**MR. HARRIS KENNER:** "Now Therefore," too, "Be It Resolved." We can pass it that way, can't we?

**PRESIDENT SWANSON:** Yes. Discussion on the amendment? Seeing none, I will call for the vote on the amendment. All those in

favor of the amendment signify by saying "Aye." "Aye." Opposed? "No."

PRESIDENT SWANSON: Chair will rule the motion to amend carries. Motion is now before—resolution, excuse me, is before you as amended. Further discussion? Is there any further discussion on the resolution as amended? Yes.

MS. CAROL K. LARSON: I am Carol Larson from the law firm of Pringle & Herigstad in Minot. I would ask that the assembly not pass this resolution because the resolution does more than ask for a hearing. The resolution as it states as it is amended is to petition the Supreme Court to establish by rule that this is our position on this, and I don't think that this is our position. I would ask that this be rejected.

PRESIDENT SWANSON: Further discussion? Any further discussion on the resolution as amended? Third call. If not, I am going to call for the vote. All those in favor of adopting the resolution as amended signify by saying "Aye." "Aye." Opposed? "No."

Chair rules the resolution is defeated. I would propose and entertain a motion that the Assembly consider the adoption of Resolution Nos. 3, 4 and 5 collectively.

MR. KERMIT BYE: So moved.

PRESIDENT SWANSON: Motion by Kermit Bye. Is there a second?

MR. J. PHILIP JOHNSON: Second.

PRESIDENT SWANSON: Phil Johnson.

All those in favor of the resolutions being adopted signify by saying "Aye." "Aye." Opposed? Carried.

At this time I am pleased to tell you that we have run one heck of an efficient meeting. According to my watch and according to my script we are more than an hour ahead of time. I do have a couple of quick announcements. There is an evaluation form that was distributed in your packet concerning the Annual Meeting. Please take the time, give the effort to fill it out, give us some feedback on the format, the content of this annual meeting.

If you are unable to complete the evaluation form for whatever reason, please give any member of the Board of Governors your comments. There is a reception tonight at 6:30 in the Great Hall prior to the banquet. I look forward to seeing you there. I want to give an outstanding thank you to our parliamentarian Phil Johnson.

(Applause.)

Your service was outstanding and exceptional. I also want to recognize our election proctors. Without them it would have been difficult. At this time there is no further business on the agenda, and it

gives me you don't know how much pleasure and satisfaction at this time to ask Don Peterson to rise and join me as I hand over the gavel to your new President, Don Peterson.

(Applause.)

PRESIDENT-ELECT DONALD PETERSON: Thank you. Before all the rats desert the sinking ship I am going to just say that, again, I am looking forward to a very good coming year, and it is really my pleasure to serve you.

With that I am going to declare this meeting adjourned.

(Whereupon, the proceedings concluded at 4:45 p.m.)

#### CERTIFICATE

STATE OF MINNESOTA )

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COUNTY OF CLAY )

I, LaVonne J. Houts, 312 Black Building, Fargo, North Dakota, of Norman E. Mark-Court Reporter Service, certify that I am the Reporter who was present and reported the foregoing meeting. This record is a true and correct transcript of my shorthand (Stenograph) notes made at the time and place herein indicated.

Dated this 28th day of June, 1995.

LaVonne J. Houts- R.P.R., C.M.  
312 Black Building  
Fargo, North Dakota