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# Proceedings of Seventy-Fifth Annual Meeting of North Dakota State Bar Association

North Dakota State Bar Association

# PROCEEDINGS

of

# SEVENTY-FIFTH ANNUAL MEETING

of

# NORTH DAKOTA STATE BAR ASSOCIATION

(The general assembly of the Seventy-Fifth Annual Meeting of the State Bar Association of North Dakota was called to order at 9:21 A. M., Thursday, June 19, 1975, by President Ward M. Kirby at the Governor & Senator Rooms of the Ramada Inn, Jamestown, North Dakota as follows:)

PRESIDENT KIRBY:

We'll call the Fifty-Fourth Annual General Assembly of the Integrated Bar of the State of North Dakota to order. This is the Seventy-Fifth Annual Meeting of the State Bar Association, apparently keeping track of the numbers of meetings that were held prior to integration.

Past President Ray McIntee will lead the Pledge of Allegiance, and then, if you will remain standing for the Invocation, please.

(Pledge of Allegiance by the assembly and Invocation by Rev. William T. King of Jamestown.)

PRESIDENT KIRKBY:

We have with us the very-experienced Mayor of Jamestown, who at this time will bring us words of greeting from the City of Jamestown, Mayor George E. Burchill.

MAYOR GEORGE E. BURCHILL:

Thank you, Mr. Kirby.

It's indeed an honor and a privilege for me as the Mayor of the City of Jamestown, and on behalf of the members of the City Council and all of the people of Jamestown, to extend to you our sincere and hearty greetings. We are all aware of the goodness of your profession and the contribution that you make to your communities, your State and your Nation.

We sincerely hope that your meetings here in Jamestown will be very productive and enjoyable.

I'd like to tell you just a few things about our City. We feel that we're on the move. We have attracted some small industries, which, I think, have been good for us, and it has added to the economy. It has a tendency to hold our young people in our community, and this is what we like, and this is our objective in North Dakota—is to keep as many of the young people as possible.

There is one institution, however, that I would like to call your attention to, and I would like to have you visit this institution to see the progress that it is making, and that's the Crippled Children's School. This institution is headed up by a very amazing person who has gained recognition not only in our State and nationally, but internationally. So, if you have the time and if you haven't visited the Crippled Children's School, I wish that you would do so.

There are many things that I would like to tell you about. We were fortunate, of course, in having the Pipestem Dam completed this year, which kept our feet dry. We find that people are attracted to our City because of our recreational areas, and this is good—good for our community and good for the State as a whole, and particularly in this section.

Now if there's anything that we can do to make your stay more pleasant, don't hesitate to call upon us. We're pleased that you have chosen Jamestown as your host city, and we hope that sometime in the future you will see fit to come back and visit us again.

Mr. Kirby and your members of your organization, I wish to thank you for the courtesy extended to the office of the Mayor of the City of Jamestown. Thank you for coming.

PRESIDENT-ELECT ERICKSON:

Thank you very much, Mayor Burchill. We are very happy to be here in Jamestown and we want you to know that, and we thank you for your warm welcome.

Since we last met in Fargo as a general session, many things have been done by your Bar Association, and that includes the Executive Committee, and we would want you to know that your Bar Association—at least those of us on the Executive Committee, feel that your functions have been well handled, and they have been well handled because you have been very fortunate to have the capable leadership of Ward Kirby, and we say that most sincerely. Those of us that have worked on the Executive Committee very, very much enjoyed his leadership, his

direction and his expediency in handling matters, and you are most fortunate to have had him as your President for the past year. And as a better evidence of the work that has been done by your Bar Association, and to more fully expediate the matters to come before the general sessions, the committee reports have been put together in the brochure which you have received as a part of your envelopes, and we ask that you review them. You'll have an opportunity to ask questions about them or of the individual committees and, therefore, we would ask that you look at them. And at this time it's with real pleasure that I introduce back to you again your President, Ward Kirby.

PRESIDENT KIRBY:

Thank you, Armond. You are very, very generous.

The President's Report is in most cases designed to give insight on what happened during the term during which the President served; however, in this instance, you will also have the benefit of the reports of the many committees, as Armond mentioned, and which were bound into a pamphlet so that each of you would have them to take with you, and they were a part of the packet that was handed to you at the time that you registered. Since these reports are fully covered there, I'm not going to dwell to any length on those, but will concern myself mostly with what is presently in process as far as the Executive Committee and the total Bar Association are concerned.

In this respect, we're reminded of the English lady, who, having lived in England during World War II and during the newsprint shortage at the time when you were receiving or we were receiving, at least, four-page newspapers in England, came to the City of New York on a Saturday afternoon and then the following Sunday morning out on the street went to a newsstand to buy a newspaper, and there the news dealer offered her an edition of the Sunday **New York Times**, which, as you know, is well over 100 pages and weighs several pounds, and as she was lifting this paper, she said to the newsman, "Do you mean that all of this happened since yesterday?" Well, to me, that describes, in part, what's happened to this Bar Association since last June. I say to myself "Did all of this happen since June when I assumed the presidency of this Association? While we don't want to repeat matters which appear in these committee reports, I do suggest that you take them with you and that you consider the reports more leisurely when you have the time, particularly those reports which deal with matters in which you have the greatest interest.

The next few minutes we'll devote to evaluating the overall efforts of the Bar Association and to the problems that lie ahead if the Bar Association is to serve the public and its members to the degree that all of us hope is possible.

During the period immediately preceding my term of office, the Chief Justice of the Supreme Court of the United States found it expedient in a lecture delivered at Fordham University Law School to announce, and I quote:

"From one-third to one-half of the lawyers who appear in the serious cases are not really qualified to render fully adequate representation. The trial of a 'serious' case, whether for damages or for infringement of civil rights, or for a criminal felony, calls for the special skills and experience that insurance companies, for example, seek out to defend damage claims."

The Chief Justice went on to state that thousands of trial transcripts that he had reveiwed as an Appellate Court Judge indicated that the majority of lawyers never learned the simple but difficult art of asking questions in conformity with the Rules of Evidence and that few lawyers have learned the art of cross-examination. The Chief Justice went on to call this "inadequate advocacy."

Perhaps what the Chief Justice said needed to be said, but the manner in which it was delivered and the publicity which it received in the light of Watergate and other current events was damnation itself to the legal profession. Not only did the Chief Justice seek this forum to make his announcements, but such announcements were then echoed and apparently embellished by other representatives of the judiciary and by some members of the legal profession. The deficiencies of the legal profession have been and are now being magnified by others far beyond what the necessities require. What we believe we need do, and indeed what the profession is endeavoring to do, is to provide legal services to all members of the very wide spectrum of those desiring legal services at a cost which they or an ever-more-benevolent government can afford to pay.

One critic of the remarks of the Chief Justice, who I'm sure did not have present company in mind, in a letter which was published in an issue of **Newsweek** magazine dated January 7, 1974, stated as follows, and I quote:

"Chief Justice Warren E. Burger should have noted that there are not as many unqualified trial practitioners as there might well be, since our nationwide political patronage system has cleverly managed to eliminate many of them by their appointment to the bench."

Whether this critic of the Chief Justice's remarks was a lawyer or not, I am unable to say. However, his remarks concerning use of the political patronage system in the selection of a judiciary has some merit, and you probably recall the furor over the recent appointment to the Circuit Court of Appeals from Connecticut.

This brings us to a point we wish to make with reference to one phase concerning improvement of the system of administering justice in this State, as well as in the Nation. There apparently are three basic ingredients which are essential to the selection and retention of capable judges. The method of selecting at the initial stages those who are best qualified to serve as judges. That's the first. The second: There should be a method of disciplining and removing judges who are unqualified or unfit. And, thirdly, there should be adequate compensation to those who assume the awesome and onerous duties of service in the judiciary. I am sure that the foregoing enumeration is not original with me, but since I have no way of knowing who first determined these requirements, I cannot give credit to the originator of these ideas. We have yet in this State to arrive at a method which is provided by constitution and statute which will ensure to the maximum extent possible the initial selection of those lawyers who are best qualified to serve as judges, and I add that we are making progress in that direction and probably we will have more success in promoting a program which will include nonlawyers in the committees or groups that make the initial screening or do the initial screening of those which are to be selected for the judiciary.

Since we lack an ability to control all aspects of the selection and retention process where judges are con-

cerned, the North Dakota State Bar Association has endeavored to assist in whatever ways possible in the selection, retention and removal process. We are sincere in our hope that the Bar Association will continue to be active in this direction. However, we do not feel that the Bar Association or lawyers in general shall be fearful of including nonlawyers in the selection, disciplining or removal processes; and, in fact, other states are doing this at the present time. Minnesota, in particular. We would, in fact, encourage use of nonlawyers to such a degree that a majority of persons who serve on any group or committee engaged in any phase of these procedures would be nonlawyers. We would insist that a fourth to one-half of the group be made up of lawyers, so as to give the nonlawyers serving in such committees or groups the benefit of their knowledge concerning the background and ability of the lawyer or judge involved and the legal principles involved in the selection and retention of those persons who will serve as judges in matters which may affect the very life of the members of the general public.

I think, also, that the Chief Justice of our own Supreme Court and the Judicial Council are to be commended for their efforts in matters such as those we have just mentioned, and for having adopted the Code of Judicial Responsibility during this past year, which, with the legislation which was adopted thereafter, I think provides an effective method of discipline and removal and retirement of judges.

In another respect, the State Bar Association is attempting to answer the challenge laid down by Chief Justice Burger, and that is in the matter of educating lawyers who practice. We have long utilized and encouraged a system of continuing legal education, recognizing that some lawyers have not attempted to keep abreast of the advancements of the arts of practicing before the courts or in the general assimilation of new matter which is introduced into the law by courts, our state legislatures, and by the Congress of the United States in ever-increasing amounts and to a point which is frightening. In fact, were it not for the rapid increases of legal technicalities and expanding body of law which grow out of all three of the sources just mentioned, many a citizen who is now without legal services would be in a position to fill in his own forms and solve his own minor legal problems.

As you will hear later in this session, our State Bar Association committees are active in many of these educational fields. The Committee on Continuing Legal Education is providing an ever-expanding forum for the continuing education of new lawyers, as well as older practitioners. During this session we will be presented with a proposed court rule for continuing mandatory education of members of the Bar. This is a necessity, in our opinion, in view of the complexities of the modern practice of law. Whether or not this proposed court rule is adopted in its present form—that is, in the form in which it appeared in **The Gavel**, ultimately and soon this Bar Association must adopt some method of restricting lawyers who are currently licensed but who refuse to keep abreast of the phases of the law in which they hold themselves out to be capable practitioners. And we're not pioneers in this field of compulsory legal education as a condition of continued license to practice. I call to your attention the fact that the State of Minnesota, on April 3, this year, adopted such a requirement for the continued licensing of its attorneys, and that on April 9th, 1975, the Supreme Court of the State of Iowa entered a similar order. While these steps may seem to many of you to be drastic, they are preferable to the state in which the medical profession now finds itself by reason of its laxity and consequently high costs of medical malpractice insurance. Stated more plainly, if we are to avoid a similar disaster in the legal profession, we must take steps now to be certain that we are not leaving ourselves open to excessive malpractice charges and the resultant malpractice insurance costs which the medical profession is now experiencing.

During the past year accusations and counter-accusations have been made by members of the medical and legal professions. I understand in Florida it got to the point where each profession was taking full-page ads in the daily newpapers to castigate the other profession. These we believe are not totally justified on either side, but there is some merit in the claims made against the other by both professions. During May we issued a press release stating that lawyers were not responsible for the increase in medical costs or in costs of medical malpractice insurance, as claimed by the medical profession. At the same time, members of our own profession here in North Dakota were recommending and urging that we make stronger statements in this regard, but which we felt would only add fuel to the fire and would serve no useful purpose. There is some basis, in our judgment, for the claim that exorbitant judgments have been awarded in malpractice cases against doctors. Possibly this is due in part to the fact that the general public, and juries in particular, but not excluding judges, are aware that doctors have been insured and, therefore, would not have to respond to any judgment by dipping to any great extent into their own pockets.

At least twelve states have enacted medical malpractice legislation as of June 9th, 1975. That was the most recent report on a poll. And an additional 24 states are considering such legislation. Only 13 states out of those responding to inquiries concerning such legislation have indicated that they are not considering legislation in this field and, of course, North Dakota is one of the states which has enacted some legislation with reference to that matter. In general, we think that the medical profession is getting some legislation which it now considers to be undesirable and that it imposes binding arbitration and also calls for controls over hospitalization charges and for reducing what is termed the present "maldistribution" of medical care.

We most certainly do not concur in the view of some members of the medical profession that, regardless of the standards of practice of some of the members of their profession, that the public should be made to suffer. Individuals who are medically injured should be entitled to reasonable and adequate compensation for the injuries done them by incompetent practitioners. To this I would only add that the legal profession is subject to similar criticism and a like liability.

As President of the North Dakota Bar Association and as a member of the American Bar Association, we have received numerous mailings encouraging participation of the legal profession in various plans which would provide legal services to all who would require them. This effort was engendered in part by a congressional committee—the Tunney Committee—which held hearings throughout the United States, one of which we attended and which, in general, appeared to be directed as much to criticism of the legal profession as to providing legal services to those who would not otherwise be able to afford them. We further gather from the remarks made at

such hearings, as well as from our reading on the subject, that in general the politicians involved would take credit for providing the legal services wherever required, primarily at the expense of lawyers who apparently were expected to, in large part, donate their services.

Very little is said about government expenditures in support of such "free"—and I put that in quotes—legal services. Heretofore, the legal profession has on an extremely large scale rendered, free of charge, legal services to indigent criminal defendants, as well as to other segments of society where the need arose. In some instances Government is now compensating the attorneys who take on court-appointed duties in representing indigent defendants, but even in this there is a reluctance to pay fees which represent adequate compensation to the attorney whose time is involved, particularly where experience is required. There is, to my way of thinking, something insidious in this movement when we find to an ever-increasing degree an intervention by government in the furnishing of legal services, particularly through counsel who are employed by government, not only to defend the indigent charged with crime or to represent the poor, but whose services are being made available to those who can afford to employ privately hired legal counsel.

With reference to the area of "no-fault" insurance, on which our State committee labored diligently and long, we personally do not feel that the adoption of no-fault legislation in the area of automobile insurance has been, or will be, detrimental to the legal profession of this State. We do wish to stress that adoption of such legislation on a nationwide basis would be detrimental to the population of this State, and that the effect of such legislation, even on a state level, has been to deny every citizen rights to the use of judicial process which he previously possessed. For this reason, if for no other, we object to and abhor the direction taken by the State Legislature of the State of North Dakota in this field, since we feel that this form of relief from so-called "excessive auto insurance premiums" will lead to other deprivations of rights of citizens, not the least of which is now evident in the proposed course of limiting the amount that a damaged patient can recover from his doctor, no matter how serious were the consequences of the negligent act of that doctor.

Let's also take a brief look at the so-called "boom" in the caseloads in the courts, both State and Federal. While heretofore we might have said that the caseloads imposed upon the various courts in this State were not particularly burdensome, we are rapidly approaching that point, if we have not already passed it, where additional judges will be required in order to handle the caseloads imposed in civil and criminal cases. This, in our opinion, is due to several things, some of which are under the control of the judiciary and some are due to legislation.

First, some of our county courts of increased jurisdiction and district courts are inundated with so-called criminal cases growing out of juvenile, drug and related crimes, which require hearing after hearing and delay after delay, due to the rules and penalties applicable to such crimes, and which could probably be best handled in either juvenile courts separate from county courts of increased jurisdiction or district courts, or on an administrative or medical basis. Second, the appellate courts, and particularly the Supreme Court of the United States, have enlarged the area of criminal law, and in the area of civil relief, the number of cases which are triable in the courts without apparent reference to their importance in the scheme of things or the desirability of clogging our judicial system. Such case numbers have now risen to the point where in some instances the system now fails to operate efficiently. Criminal cases which are deserving of prompt trial and disposition await trial until the defendants involved, who are free on bail, have committed the third and fourth crime subsequent to their original arrest and before trial on the first charge.

Legislators and the Congress have imposed duties upon the courts which are not judicial, or which do not require the intervention of the judiciary, except where constitutional abuses have occurred. We refer particularly to the vastly expanded area of civil rights cases, including the determination of length of hair in schools, a case which I had, uses of public property, and the like, which were formerly left to local governmental bodies in the nature of school boards, boards of county commissioners, zoning boards, city commissions and the like. There has always been, and should be, a right to appeal from the decisions of these boards and bodies where a significant public interest requires and constitutional rights have been violated. However, it now appears that court supervision is not only to be invoked, but is to be required, in the place of every decision of every board or quasi judicial body. That's the trend. All discretionary powers of administrative bodies or quasi judicial boards have apparently been repealed. This can only result in deprivation of legal rights, including the rights of persons charged with crimes whose cases cannot be brought on for trial in reasonable time due to the so-called overcrowding and overburdening of our court system. As an example, we see no reason why the courts of this State should be charged with the responsibility of conducting election recounts absent the charging of some crime or legal mishandling of the procedures which are provided by law. During the fall of 1974, several of our district courts were involved for several weeks in the matter of an election recount and in the meantime were required to shut down their courts for all other purposes.

Meanwhile, as noted by columnist Buckley in one of his recent columns, the kids are suing all over the place, and it is no longer possible for the superintendent of the schools to set the permissible limit of a schoolboy's hair. It has become an invasion of the student's privacy to require a schoolboy to cover his nakedness; and a teacher of physical education who appeared in the nude in a photograph in **Playgirl** magazine was upheld in such conduct when challenged as to his right to continue in the teaching profession in a public school by the local school board. The latter decision was a favorable opinion by the State Office of Administrative Procedures in the State of California, allegedly based on court decision. With court interference in such an amazing array of trivial matters, there is little wonder that the caseload in the courts has become burdensome.

Our committees involved in the matter of lawyer-connected grievances have been active and efforts are being made to expedite grievances which are reported and which involve practitioners in the legal profession in this State. We hasten to add that the vast majority of the complaints filed are not founded on matters which are a basis for discipline of lawyers, but are based upon misunderstandings and lack of communication. Unwarranted delays

on the part of lawyers in some instances could be the basis for disciplinary action. We are urging action and studies, and the implementation of studies is forthcoming, which will speed up the matter of handling grievences against lawyers. As the Chairman of the Grievance Commission, the Chairman of the Bar Association Committee on Disciplinary Procedures and the Chief Justice of our Supreme Court will tell you later in this program, measures are being taken to provide a more-speedy and effective grievance procedure here.

Now, in closing, from time to time during the year we have attempted to give credit to members of the Association for their generous contributions of time and effort on our behalf. Without doubt we have overlooked many. In an effort to heal these oversights, we say to all of you now how much we have appreciated your help and your suggestions. There is no way the Association can adequately repay you for your unselfish efforts, but we extend you our thanks.

Very shortly the Association will have succeeded to the term over which President-Elect Armond Erickson will preside. We want to express our particular appreciation to Armond for his help to us during this past year. We know that the Association, under his leadership, will be in good hands.

We also want to mention specifically our Executive Director, Bob Schuller, and the members of the Executive Committee who served with us during the past year. With the constant assistance of Bob Schuller, the Executive Committee operated smoothly and efficiently. We owe Bob and all of the members of that Committee special recognition and, also our thanks.

And I thank you very much.

PRESIDENT-ELECT ERICKSON:

Thank you, President Ward, for that fine message of important report and a look at the practical problems that we have had and will face in the future.

I'd request at this time a motion to suspend the Rules insofar as they may apply to the reading of the minutes of the last Annual Meeting. They were published in Volume 51, No. 2 of the Winter 1974 issue of the **North Dakota Law Review** and, therefore, have been available to all of you for several months.

Do I hear such motion?

HON. WILLIAM M. BEEDE:

I so move.

PRESIDENT KIRBY:

And seconded by Harold Anderson, that we suspend the Rules and dispense with the reading of the last Annual Meeting munutes. Is there any discussion? All in favor will say "aye." Opposed: Carried.

There's one other means of expediting our business session. You've received in your packets the printed pamphlet of the committee reports that were available at the time that we had to go to press and print these, but I'd also like a motion which will suspend the Rules and permit the reception and filing of all the committee and section reports which do not require floor action. There will be a number of them that do, and I can't enumerate them for you, and there are some that were not published in this booklet of committee reports, but will be made available to you through the Executive Director's office.

Do I hear such a motion?

MR. RAYMOND RUND:

So moved.

PRESIDENT KIRBY:

Seconded by Pat Conmy. Is any discussion necessary on that motion? If not, all in favor say "aye." Opposed? That's carried.

Bob Dahl kindly consented to brush up on his Robert's Rules of Order and whatever rules apply to a parliamentarian's duties, and he has consented to serve in that capacity this year and, therefore, Bob has been appointed as Parliamentarian.

Now with reference to resolutions and new business, I'm sure that you're aware that past practice has been, and I'm not sure whether our Bylaws call for it or not, but that resolutions and other matters of new business to be offered will be offered on the first day and that they will then be laid over and acted upon at the second business session, which usually takes place on Friday afternoon and will take place on Friday afternoon this year.

We would like to follow that same procedure, and I think, to make sure that we're not in disagreement with any written rules and regulations, I'd ask for a resolution or a motion providing that same rule again this year.

Do we have a motion on that?

MR. ROBERT DAHL:

So move.

PRESIDENT KIRBY:

Second by Joe McIntee. Discussion? Are you ready for the question? All those in favor say "aye." Opposed? That motion is also carried.

Now we have a number of resolutions which will be studied by the Resolutions Committee. Byron Edwards has been designated as Chairman, and with him and serving on that Committee will be Harold Anderson of Bismarck and Marshall Bergerud of Killdeer.

Byron Edwards are you ready to present resolutions and possibly read those which weren't publicized in **The Gavel**, if you have any additional ones?

MR. BYRON L. EDWARDS:

I don't have any at this time to present.

PRESIDENT KIRBY:

I'll call now to determine whether there are any further resolutions that are to be offered, so that they can be turned over to the Resolutions Committee and will be acted upon or considered tomorrow afternoon during the business session.

There are additional copies of all of the resolutions that were printed in **The gavel**, so that if you don't have your copies with you, you can secure copies from Mr. Schuller.

During the balance of the morning session it will be in order to receive matters which are to be acted upon at the business session tomorrow. If you have any of such matters to present, we'll give you an opportunity to do so before we close.

I call again now for those who are ready to make known their wishes on matters that are to be presented for action tomorrow and on which votes will be taken, that they present them at this time, if you're ready. Tim, are you ready now?

MR. TIMOTHY Q. DAVIES:

You should have received with your registration material—and if you haven't, there are copies both here and at the front desk—copies of the **Federal Rules of Evidence** and a copy of variances which the Procedure Committee has opposed—or has proposed—and will ask the group to vote on tomorrow. The **Rules of Evidence** as proposed by the Committee is just too large to publish and distribute; so what we have is the **Federal Rules** and to changes that we're proposing, and by putting them together you can see what the end product is. This will be brought up sometime during the business session tomorrow. There are also two proposed Rule 4's floating around. One is contained in the booklet which was sent out by the Supreme Court and will be heard, I believe, on July 7th. This is the long-arm rule proposed by the Procedure Committee and submitted last year to the Supreme Court. At the request of the Executive Committee, the Procedure Committee drafted another Rule 4, which, for lack of anything better, I call the "rubber-arm rule." We feel we have a long-arm rule. How long the new proposal is, nobody seems to know, but the group is going to be asked to choose between these two proposed rules and also to vote on the Proposed Rules of Evidence for North Dakota and some minor housekeeping changes to the Federal—or to the Civil and Criminal Rules, which are also part of the handout.

PRESIDENT KIRBY:

Any other resolutions or proposals of business to come before the meeting—business session tomorrow?

MR. RONALD SCHWARTZ:

I'd like to propose the following resolution:

"WHEREAS, the State Bar Association of North Dakota adopted a resolution limiting the use in firm names of the names of deceased or disassociated firm members, and

"WHEREAS, such resolution was adopted at the Annual Meeting of the State Bar Association in June of 1974, and

"WHEREAS, such resolution did not specify the manner in which it was to be implemented, and

"WHEREAS, such resolution provided that the Bar Association amend its canons of ethics to prohibit firms from using names of persons deceased or who have disassociated themselves from the practice of law within one year after the death or disassociation, and

"WHEREAS, present North Dakota law provides that the Supreme Court of this State make all necessary rules relating to admissions of persons to practice law, the disbarment, disciplining and reinstatement of attorneys and the restraint of persons unlawfully engaged in the practice of law, and

"WHEREAS, the Supreme Court Rules of Disciplinary Procedure provide that any 'violation of a canon of professional ethics as adopted by the American Bar Association and affirmed by the State Bar Association of North Dakota may also constitute cause for discpline,' and

"WHEREAS, the existing American Bar Association Code of Professional Responsibility as affirmed by the State Bar Association of North Dakota does not prohibit the use of names of deceased firm members where custom permits the use of the same, but does preclude the use of the same, but does preclude the use of names of disassociated members under certain conditions, and

"WHEREAS, custom and usage in North Dakota has been and is the allowing of use of the name of a deceased firm member;

"NOW, THEREFORE, BE IT RESOLVED that the resolution adopted in 1974 by the State Bar Association of North Dakota at its annual meeting regarding the use of names of deceased or disassociated firm members be reconsidered and rescinded."

I would, therefore, move this resolution.

PRESIDENT KIRBY:

The resolution just read will be referred to the Resolutions Committee for a report tomorrow.

Are there any other resolutions? If not, at this time we'll proceed without our regular agenda.

During the year we had an opportunity to correspond with the President of the Student Bar Association and we felt that it would be wise and probably of benefit, both to the law students and to the Bar of this State, to have a report and discussion in some manner with the Student Bar Association at the Law School.

At this time I'd call on Roger L. Sullivan, who is President of the Student Bar Association, for his remarks.

MR. ROGER SULLIVAN:

Good Morning.

Ladies and gentlement of the State Bar Association of North Dakota. Distinguished guests.

On behalf of the Student Bar Association, I would like to thank Mr. Kirby and the Executive Committee for allowing me time to have this brief chat with you this morning. For those of you who are not familiar with the Student Bar Association or the Junior Bar Association, as it is sometimes called, it is the law students' counterpart of the State Bar Association of North Dakota. The Student Bar is composed of all persons currently enrolled in the Law School, with membership being automatic upon enrollment in the School.

This coming academic year will mark the first year in which the Student Bar Association has elected to require dues of its members. It seems as though there's a direct correlation between charging membership dues and declining membership; but we're forced to do it this year.

I should mention that we were one of the last schools in either the Eighth or the Tenth Circuits to go to requiring dues. We so far managed to conduct all of our business through the generous bequests of the Financial Committee and the University. From this allocation of moneys the Student Bar Association funds and conducts various activities within the Law School, including but not limited to the Student Bar Speakers Committee, which is operated in coordination and conjunction with the University Speakers Committee, bringing in various local individuals and national figures to address the School. We publish an in-house news document entitled **The Radamanthus**, which we hope to expand and distribute to the alumni of the University. We conduct freshman orientation exercises and various administrative tasks within the School. In addition to these traditional activities which the Student Bar sponsors and conducts, we periodically conduct symposiums on socio-legal interests on current issues. These symposiums are conducted in a similar format to the CLE courses, only less vigorous and more on an informal lecture basis. The last symposium was conducted last fall on the subject of natural resources and coal development. It was a very interesting symposium and beneficial, not only to the law students and the local Bar, but to the University community as a whole.

Let me dispel any apprehensions that some of you may have. I'm not standing here as President of the Student Bar to come and solicit money from you. I'm here to ask for something more valuable, and that's your cooperation.

When I was elected President of the Student Bar, there was a great fear arose over jobs and future employment opportunities in North Dakota. If I can have your cooperation in the implementation and establishment of a new program which we have undertaken, called the Job Referral Service, I think it will be beneficial not only to the law students seeking employment, but the practicing bar as a whole. Beginning this fall, as I mentioned, the Student Bar will administer a job referral service, and it is a referral service — not a placement service. The service is designed to solicit, collect and coordinate employment opportunities for practicing attorneys within the State, although we're not limiting ourselves only to the practicing attorneys. Hopefully we can solicit other legal-oriented fields.

As you're probably aware, the student body in the Law school is approaching 300 students, and I don't feel it's reasonable to assume that North Dakota can absorb 300 more practicing attorneys within the next three years, even allowing for people who migrate out of North Dakota. Alternate employment areas have got to be sought out and found, in addition to developing the current employment areas, and that is the purpose of this new job referral service.

It is our goal to alert the attorneys in North Dakota to the wealth of resources that are available for research tasks, clerkships and other legal-oriented work. Of course some of you may say "Well, the law students aren't capable of doing this." But, on the other hand, you have to say "Well, if these students are graduating from the Law School, then after two or three years of Law School, they must be competent to do something other than sit there and study Shelley and Keats and rule against perpetuities." So it's my opinion that we, the students, are capable and would gladly undertake certain of these tasks.

Now it is not the intention of the Job Referral Service to take dollars out of you, the practicing attorneys' pockets. What we are attempting to do is alert the attorneys to the fact that for a nominal three and four dollars an hour, these students will do in-office research, research through the mail on legal problems, thereby freeing the practicing attorneys to pursue more beneficial and more profitable endeavors. The attorneys in North Dakota are a good, hardworking bunch of barristers, and I don't think that any of you can say with complete honesty that you're not overworked. The court calendars seem to be full. Somebody's doing a hell of a lot of work. Utilizing this Student Bar service could not only increase the return on your investment of time, but would also benefit the North Dakota State Bar Association as a whole through providing them a better, well-rounded, educated law student graduate, one who has ventured into the real world and has participated in the actual administration of a law office and the inner workings of an office. Where is there a better place to refine a law student's education than in the time-tested apprenticeship atmosphere of the firm office itself? Why wait and do this until the first year of employment, thereby wasting both the employer's time and the student's time duplicating things that he could have already learned while he was in school? It seems to me that it would be more beneficial, not only to the employer, but to the student and to the ultimate person, the client as a whole. We don't expect any miracles, but we are not saying that this is going to create a job for everyone; but I honestly feel, whether students are utilized directly in the office work situation mentioned or their services are provided through the mail, which is a very real possibility, with the greater number of students and employers involved, the greater the benefits, not only to the State, but to the clients, as I mentioned.

This whole proposal, again, can only work if we receive the cooperation of you, the State Bar Association. So next fall, when the mailings come out, please cooperate with us, and let's give it a try. It's worked in other states, and I think that North Dakota, being usually one step ahead of everyone else, can make it work just a little bit better.

Gentlemen, I thank you, and have a good convention.

PRESIDENT KIRBY:

Thank you, Roger. I'm sure that the Bar of the State will be cooperative in your efforts.

At this time we'll call on Bill Zuger, who has been very active and aggressive in pushing the activities of the Law Office Management and Procedures Committee for a report.

MR. WILLIAM P. ZUGER:

Let me say first of all, that I do not intend to cover the material that's in our committee report. We've published a committee report in the Annual President's Report and invite all of you to read it, and it sets out in more detail what our Committee's been doing, and we've tried to outline such things as our receipts and disbursements, and so on and so forth, and, in addition, we're always happy to answer any questions of anybody in the Bar who has any questions about what we are doing in more detail.

I've been asked to talk to you today as Chairman of the Standing Committee on Law Office Management to review the impact of the Legal Assistant movement upon North Dakota and to also report on some of the work of our Committee in other areas.

Much is heard today that lawyers ought to follow doctors in the specialization and into the use of specialized nonprofessional assistants. In other parts of the country, dramatic steps have been taken by the Bar in both of these areas. Many feel that North Dakota has not kept up in these developments. Many, on the other hand, fear that such developments will bring with them to North Dakota organic changes in the practice which would be undesirable from the vantage point of the current practitioner as we see it in North Dakota. Our Committee is charged by the Bar with the study of the use of legal assistants as it relates to the economic realities of practicing law. We've taken no position on their use, but we do want the Bar to be aware of the developments in their use.

On April 4 and 5 of this year, on behalf of the North Dakota Bar Association, I attended a conference on the legal assistant movement in San Francisco. This conference was sponsored by the American Bar Association Special Committee on Legal Assistants, which is chaired by Ken Pringle of Minot, and the purpose of the conference was simply to generally review what has been happening with the use of legal assistants throughout the country. It was attended by representatives of law schools who are active in legal assistants. It was attended by some of the major firms in the United States that have been pioneering the efforts for as long as 20 or 25 years, and it was attended by legal assistants themselves, and there was quite a diversity of viewpoint.

It was a pretty good general overview of what has been happening in the legal assistant movement, and I'd simply like to share some of the highlights which impressed me about it.

One of the things that most impressed me about what I saw out there is that there's absolutely no consensus in the Bar Association about the use of legal assistants. I've hardly ever seen such a wide diversity of opinion on the subject. It runs all the way from people that totally abhor their use to people that believe that 10 or 11 assistants to one attorney is the only way to go. For instance, I found that many attorneys regard the proper use of legal assistants as being the situation where an attorney hires a girl at four to five hundred dollars a month to do routine matters — filling in probate forms, routine correspondence, assembly of special damages for litigation — and that sort of thing; and this sort of practice generally includes a charge to the client for the services of the legal assistant, generally in the ten to twenty-dollar range. This is what I always regarded as a secretary. But the advantage of it is that clients are now coming to accept the concept of a legal assistant and in this way some of the overhead of running a law office does not have to be included in the hourly charge. At the other extreme, some of the federal agencies are now paying incredible salaries — up to twenty-nine thousand dollars under the GS scale — to legal assistants, and it now is a position which is recognized as a separate position, separate from that of a legal secretary, by the Government. In some cases they even go so far as to represent the poor and the elderly on virtually every type of common legal matter, such as landlord-tenant and that sort of thing, without any supervision whatever from an attorney.

Now this is what I always considered to be an attorney's job. So, in summary, you know, it appears that virtually every use is being made.

Now, on the other hand, despite the lack of uniformity and the lack of consensus, there has been a very significant advancement in the movement. In the last several years, for instance, formal education has gotten off the ground with legal assistants. There are now some 55 to 60 post-secondary programs for legal assistants specifically. For instance, I brought back with me a brochure from the Pasadena City College, which is for their legal assistant program. It's a two-year course, and in many ways it reads just like a law school curriculum. For instance, Wills, Trusts and Probate Administration is one three-cerdit course. Property, Bankruptcy and Creditors Rights is another three-credit course. Tort Law and Claim Investigation is another three-credit course. And so on and so forth. And there are a lot of these programs being started up.

Now with that has come ABA accreditation measures. Ken Pringle's committee has now drafted up some guidelines for accreditation of these programs, and several accreditations are in the works now. The actual accreditation is done by the House of Delegates, but there are now set guidelines for the accreditation of these programs. The ABA now requires that there be 60 semester hours or 90 quarter-hours to be an accredited program. This works out to two years; and a significant portion of that has to be in specilized legal areas.

And the final thing that we see in the legal movement now is that many states are beginning to certify and to regulate legal assistants. As I noted, some of the federal agencies and some of the larger law firms, too, are beginning to have legal assistants do things that sound very much like what an attorney used to do and the sort of thing an attorney used to be doing under the ethical considerations and the Code of Ethics. The problem with having a legal assistant with them, of course, is that they are not bound by the Code of Ethics and, in effect, the only control is vicarious liability. The State of New York has now adopted a proposed code of conduct for legal assistants and the canons, as you read through them, address themselves to the problem of distinguishing between what a lawyer should do and what a legal assistant should do. It's a very vague sort of thing and not even this code

of ethics has quite managed to get a handle on what the distinction really is. But the point is that now some states, like New York, are beginning to regulate and certify legal assistants, and with that there should be some more delineation as to exactly what these people should and ought to do.

In short, I was amazed at the dichotomy, at the amount of progress that the legal assistant movement has made, and at the same time there's absolutely no agreement as to where it's going or what should be done with it.

Now in North Dakota I think it's apparent that the use is not as advanced as it is in some other areas, and I think, because the nature of the practices are smaller and more generalized, perhaps, the use never will be as extensive as it is, say, in a place like New York. Nonetheless, there is still considerable diversity of opinion in North Dakota as to the proper use of these people. This Committee has not taken and will not take a position of any kind regarding proper use of legal assistants. However, we do feel the Bar individually can benefit from sharing the national experience gained from the various uses of legal assistants, and we do feel that the Bar can adapt the experiences, picking and choosing and changing as necessary the systems that have been used in other places. We believe that North Dakota lawyers can achieve substantial economic benefits from the careful use of legal assistants.

There are two areas in which I think legal assistants can be used by North Dakota attorneys. First of all, the nondiscretionary work — The routine matters, repetitive forms, routine correspondence, assembly of special damages — things like that where a person can go out without a great deal of discretionary problems and put together something. The other area is, I think, nonlegal discretionary work. The thing that comes to mind in my own experience is I don't understand any more about medicine than my secretary does; so she goes out and does the medical research for me, brings the books in, and perhaps it's not the best possible job, but it's at least as good as I could have done, and there are, of course, other areas that come to mind in your individual practices where I think they can be used, also.

There's a definite economic advantage to using these people. We're all aware of the use that the medical profession has made of specialized assistants. Now when you go into the clinic you have a blood test taken. The doctor never sees you, and yet he makes a profit off the administration of that blood test. Or the same thing with a urine test or x-rays, and so on and so forth. Each one of those things has a profit margin built in, and that can be reflected in not having to raise the hourly fees so much, and I think that that is of some benefit with a client. The client may end up paying the same amount, but I think it's more palatable to him. The same thing is happening, of course, with architects. I recently read through an architectural contract where they made a separate charge for a secretary. They made a separate charge for draftsmen and for every position in the office there was a separate charge. Each one of these, of course, reflected a little bit of a profit margin. Now what we intend to do is: We held a seminar last winter in which we had Dr. Kline Strong and Bob Wilkins come and talk on their conception of how these systems ought to work. We intend to continue to sponsor seminars, and we like to bring in people with different points of view. Like I have mentioned, there's an incredible diversity of opinion and there's a lot of difference in the way people utilize legal assistants. Next year we tentatively propose to bring in a sole practitioner from the State of Washington who is completely in general practice, and he has utilized systems in a different way from that which Dr. Strong outlined in Bismarck at our seminar last winter.

Now, while I have the floor, I'd like to simply review what our Committee plans to do for 1975-76 year. Like I mentioned, we intend to run another midwinter seminar, and we hope to get a comparable quality program to that which we had this last year. Secondly, we have for the past two years run a general management seminar up at the UND Law School for graduating seniors. We intend to run that again. We've got what I consider to be some good feedback on it, and this last session was even attended by some practicing lawyers. We've sent a group of lawyers up there simply to talk to the students about some of the general problems of organizing a law office — how you bill, how you go about even purchasing equipment — whatever. Then there are two final areas which have come under our Committee and which we are attempting to work in. One is negotiating with the Workmen's Compensation Department for hourly fee increases for representing claimants there. In the last year we've managed to get an increase from $25 to $30 an hour, and we're reasonably hopeful that next year we'll be able to get another increase from $30 to $35. I believe that those fees, which used to be way out of line, are now coming into line, and I think they're approaching a reasonable level. In addition, there is one other regulatory agency in Bismarck which is also by statute to pay fees for representing claimants, and that's the Employment Security Division. In the past that Division has not paid attorneys' fees on the same basis as has the Workmen's Compensation, and in some cases those fees have been simply denied altogether. We have this past year begun a dialogue with this Department to try to bring about a regularization of the payment of fees. We would hope in the next year that we can bring about an agreement with that Department that will result in a comparable fee schedule to that which is now being paid by Workmen's Compensation; I would hope somewhere in the area of thirty to thirty-five dollars. I think that's a little on the low side, but I think it's a vast improvement over what we've seen in the past, and I think it's definitely an improvement over what we've seen in some of the court-appointed counsel fees.

Now in closing, I would like to emphasize that this is your Committee. It exists to benefit the Bar. We've tried to do a good job of helping lawyers streamline their offices and to make better incomes. We believe that a more efficient office benefits both the lawyer and the client. But there are only eleven members on this Committee, so we do not have a monopoly on ideas. Therefore, we would earnestly solicit any suggestions from the Bar. If you feel there are ways that we could utilize the funding available to us to make office management in the economics of North Dakota a little easier, please contact either me or any of the other Committee members. And I wish to thank you for taking the time to listen to me. Thank you.

PRESIDENT KIRBY:

Thank you, Bill.

Phil Johnson will make a report for the CLE Committee.

MR. J. PHILIP JOHNSON:

Thank you, Mr. President.

Eseentially what I'm going to attempt to do here is to explain a little background with respect to the proposal that was printed in **The Gavel**. I believe you all have received copies of **The Gavel** and the proposed rule regarding continuing legal education.

The President in his report also discussed briefly the need and the basis for this proposal. The question was initially submitted to the Continuing Legal Education Committee by the Executive Committee, and there was a review of the matter over the past year. A subcommittee consisting of Ed Vinje, Gerry Jukkala and Doug Christensen drafted a proposed rule. It was determined that the preferable vehicle for trying to establish any mandatory program would be a court rule by which the program would be administered within legal and judicial framework, rather than administrative framework or some other means, statutory or otherwise.

The Committee report — Continuing Legal Education Committee report in the printed committee reports contains some background on this and some of the other activities of the Committee; so you might also refer to that.

Also, Paul has passed out copies of a chart of comparisons of proposed plans for a mandatory continuing legal education. This chart gives the essential elements or various programs that have been proposed or are in effec' now in three — the three states that are most advanced in this area, which is Minnesota, Wisconsin and Iowa, and the chart contains the essential elements of the plans, and the proposed rule as drafted by the CLE Committee follows to a substantial degree this framework.

I might say that the proposed rule has gone through the subcommittee process and been approved by the CLE Committee and has also been reviewed with the Executive Committee. The essential elements of this program really are the establishment by court rule of a continuing legal education commission — six member — under the proposal. Three of the members would be members of the Bar Board; three would be appointed by the Executive Committee, and the Chairman would be appointed by the Executive Committee, and the Chairman would be appointed by the Supreme Court. The commission would function somewhat analoagous to the Grievance Commission as presently established by the Supreme Court. The basic requirement would be that each lawyer practicing in the State, at the end of a three-year period, would have to file a report under oath indicating that he has participated in 45 hours of approved course work during that period. There's no particular magic about the time — the number of hours — except that that seems to be a figure that has achieved some general acceptance among other programs.

You notice all of the programs in Minnesota, Wisconsin and Iowa all operate on the basis of this essentially 15 hours a year. The three-year framework has some advantages in that a person, rather than having to file a report every year, he could accumulate hours in one year — say 20 hours — or accumulate a lot of hours in the last year, if he found it necessary and had he not done anything up to that point. So that there's greater flexibility in this three-year term. The essential discipline that could be invoked if an attorney did not comply would be a suspension of his right to practice, of course, and I think that the Committee is still very much interested in comments and suggestions of other members of the Bar. We have received various comments and sought to obtain various views and tried to review the available material. But I think we're certainly still able to make adjustments in this and, of course, once this is submitted to the Supreme Court, why there is a hearing process associated with that and the court certainly would take into account particular objections and concerns that individuals may have.

There is a little bit of perhaps Big Brotherism associated with this — requirements of education — and I'm not very hot about that; but I think that the problem is that the profession is being judged by its best and by its worst, and we have to maintain minimum standards that assure the general public is receiving a minimum quality of professional service, and as far as a public relations aspect of this is concerned, you can talk all you want about public relations, but I think some action of the Bar which establishes set standards and sets up means of enforcement and tightens up the standards does more good in terms of our image and our impression as far as the general public is concerned than any number or variety of activities which we may engage in. And I note that at the time — it's just interesting to me that at the time this was adopted in Minnesota, the **Minneapolis Tribune** wrote an editorial praising the Bar Association, and I can't remember any other time in history where the **Minneapolis Tribune** has written an editorial praising the Bar Association. But that is not reason in itself, but I think this is a program that has achieved a lot of general support among various bars, and South Dakota is considering it now, Kansas, New Mexico, California is well advanced, and I think it's a question, in part, as to whether or not we will — the law — the profession is going to do something or whether we will have standards imposed upon us from outside by legislative or administrative act.

The other members of the Committee — Paul Kloster is here and Doug Christensen — and let's see — I think Bruce Bohlman is around. If you have any questions concerning the program, why we would be happy to review it with you, and the resolution will be formally presented and, as I say there, essentially we're not asking approval for each specific aspect of this program, but approval to submit it to the Court for appropriate action.

MR. PAUL KLOSTER:

A question was just raised for a brief comment on the manner in which the seminars would be set up. Would they all be in-state and what would be likely permitted and how it will be funded.

MR. J. PHILIP JOHNSON:

Well, I think we don't anticipate that this commission would be necessarily involved in the organization of continuing legal education program. I think that our present set up — we are working to improve our present setup as far as Bar-sponsored programs are concerned, and I think we have made progress in that area, and we hope to expand that. In addition, of course, I think there are a number of other areas that are bound to be approved programs, like the national organizations — the ABA-ALI Committee, the Practicing Law Institute program, the

accredited law school-sponsored programs, and I think certain self-study programs should certainly be given consideration, also, as far as those by cassette tapes and other things. So the Committee does not look upon this as being a really tight program, but we are interested in establishing some format for placing the pressure on those that have not participated in the past to have some participation.

PRESIDENT KIRBY:

I might say that since this was published in **The Gavel**, we have had some correspondence from people who were concerned about how it will operate with reference to older practitioners, for example, or corporate counsel. The Attorney General expressed the opinion that he didn't feel that State-employed counsel should be exempt from the provisions of the continuing legal education mandatory requirements and the like. So, if you have questions, this would be a good time to get to Phil here, who, presumably, has all of the answers. Mr. Hunke.

MR. MAURICE HUNKE:

Phil, I notice that in the exemptions you did exempt nearly everyone but me. Can you comment on the basis of the exemptions that you propose?

MR. J. PHILIP JOHNSON:

Well, I think — that's one area that should be reviewed by the Committee because I'm not satisfied that we have established or been able to define them, and perhaps there should be a basis for applications for individuals to request applications for exemption — some discretionary authority on the part of the commission. But, really, the judges, they have their own programs, of course. We don't have much authority over them. I notice the President had a comment about — something about all the judges are all the political appointees being appointed to the Court. I didn't see the humor to that. But the other — we also have had some response from lawyers who are involved with corporate activities and indicate they have no particular program about meeting these requirements either. So that I don't know that perhaps we can narrow this and make it discretionary.

MR. WILLIAM P. ZUGER:

Is there some provision for getting credit for out-of-state programs?

MR. J. PHILIP JOHNSON:

Well, the approved programs are not specifically established under the rule. The commission would, presumably, determine what the approved programs were. But our thinking has been that these — like the ABA-sponsored and the PLI-sponsored programs should certainly — there shouldn't be any real question about those and programs sponsored by accredited law schools. There shouldn't be any problems. Some of these outfits — well, we get the mailings all the time. Some of them seem to have a little thin basis as far as education is concerned, other than travel.

MR. WILLIAM P. ZUGER:

The basic one, I guess, is Minnesota.

MR. J. PHILIP JOHNSON:

Oh, yes. I think that Bar-sponsored programs are contemplated to be included, because we cannot put on — with a bar of six or seven hundred, we cannot maintain a staff like some of the other states. So that I think we've made progress, but they're going to have to be in part — a lot of it would have to be out-of-state programs. But I think we have more than enough programs now in the State with the existing schedule we have.

MR. ARMOND ERICKSON:

Phil, I'm just wondering when we take a look at the size of our Bar, being approximately 700 — Minnesota 7,000, Wisconsin 7,700, Iowa 4,000 — and yet we ask 45 hours over a three-year period, and now I refer back to you as CLE. It seems to me it's just a constructive question whether or not the CLE program in North Dakota would be able to provide sufficient hours of options to these people to make up the 45 hours. It may be food for thought that are we going to require them to go to Minnesota to get their education? And if we talk about 15 hours per year, you surely would have to have some options available to them. In other words, you would have to provide more than 15 hours. Do you see that that's feasibile in your CLE program without too much of a strain on your anticipated budget?

MR. J. PHILIP JOHNSON:

Well, I think — that's somewhat of a judgment as to — there may be basis for saying that we should establish an initial level that is lower than 45 hours. I don't have a hard opinion on that. But 45 hours, when you consider classwork — really, we're just talking about hours — actual hours of participation in course work, and it is not that substantial. I think perhaps the bulk of lawyers now are doing that.

Doug, you had some other thoughts.

MR. DOUGLAS CHRISTENSEN:

Just that we have made a provision in the rule itself. To answer your question on it, there's a provision in the rule itself that the CLE Committee must present 30 hours a year within the State—double the time—and right now, if you attend your midwinter board and your summer meeting, you more than cover it with the programs that are presented already. You have enough education available at just those two bar meetings each year to more than meet the minimum requirement under the rule; plus we have videotape facilities now to make them available in the different divisional districts—say in Dickinson or Minot or Crosby, if you wanted it.

MR. RAYMOND RUND:

Mr. Chairman. Will this be actual instruction?—that is, 15 hours of instruction? It isn't sitting in a room like this and talking about something else. You can have a Bar Association meeting or business and we're talking now of instruction—15 hours of instruction a year.

It isn't time out on the golf course.

MR. J. PHILIP JOHNSON:

Now obviously this is a self-policing situation and somebody's going to certify to something unless—the commission is not going to be in a position to go around poking into a look behind its certification, unless there's some objection or complaint.

MR. RUND:

That's fine. It should be understood that it should be instruction and not other things.

MR. J. PHILIP JOHNSON:

Yes. I think the question of defining—the commission would have to define further exactly what are acceptable in advance—acceptable programs, so that people wouldn't be operating in the dark, and that would be one of their functions.

MR. WILLIAM S. MURRAY:

Judge Johnson, I'm one of the people that wrote in. I'm Bill Murray from Bismarck, and I'm wholly employed by a corporation. I would like to make the point that I was real negative about exempting such persons on the theory that those people who, above all, are segregated and set apart from the profession of law and who intend to lose contact with it should be the very ones that need this the most, rather than try to squeeze into a loophole there. I mentioned to you a technicality in there about the nature of the corporations, and so on. So I can understand maybe this is what the Attorney General also meant—the same thing. We don't want any half-qualified lawyers or sublawyers employed by us who came under this.

PRESIDENT KIRBY:

Thank you very much, Phil. We appreciate your presentation.

I might say to Bill over here that whatever letters we've received have all been forwarded to the CLE Committee for their review and such use as they wish to make of it, and Raymond, when he was referring to matters other than educational materials, I'm sure was referring to golf. Maybe he plays. I don't know.

MR. RAYMOND RUND:

I'm not against golf, you understand. You want that understood.

PRESIDENT KIRBY:

Ladies and gentlemen, we'll be in recess as far as the business session is concerned until tomorrow afternoon at two o'clock.

(The General Assembly recessed at 11:18 A. M., Thursday, June 19, 1975.)

**GENERAL ASSEMBLY**
**2:45 o'clock P.M.**
**Friday, June 20, 1975**

PRESIDENT KIRBY:

Ladies and gentlemen, we'll call the meeting to order.

With the registration packets there were distributed to you two sheets which constitute a report of our financial condition as of the end of May—the amoundts that we owe, and the like. We have also in the Executive Committee reviewed a proposed budget, and I call on Armond G. Erickson, our President-Elect, to present that budget report at this time.

PRESIDENT-ELECT ERICKSON:

The total budget set forth for the year or anticipated for the year 1976 is $95,590.00. It was this year $96,140.00, and you will note that that probably shows a net reduction, but that's a little bit deceptive to you, probably. You should understand that in actual administration of the Bar—that is, in the association office—there will be an increase of about five or six thousand dollars, which is purchasing additional equipment for the office, which we need, and, also, salaries and related items, such as Social Security, which is a necessary part of that. The budget was approved by the Executive Committee on April 12th, and just to take a quick look at it, we may miss the postage, because of the recent announcement that postage again is going up. If you take a look and try to compare to the prior years, you will note that we have consolidated a couple of committees. For instance, we have consolidated Public Information and Information and Service. They're kind of one and the same and, therefore, you'll notice that the one that's there is increased, but you'll not note the other one at all.

If you have questions, we'll try to answer them for you. As far as this year is concerned, we have a few days left in the year. It does appear as though we are going to be five or six thousand dollars within the budgeted amount. As a member of the Executive Committee, I have gone over this several times with Mr. Schuller and the Executive Committee, and we are satisfied that there are sufficient resources or will be sufficient resources available to take care of the budget. And to get the discussion, if any, on it, I would move the adoption of the proposed budget.

PRESIDENT KIRBY:

Is there a second to that motion? Seconded by Harold Anderson.

Now is there discussion on the motion, which is to adopt the budget? I might add to what Armond has said that we are audited regularly and the audit report was also reviewed by the Executive Committee, and we are financially sound and operating within our means.

The question has been called. All in favor say "aye." Opposed? It's carried unanimously.

At this time we'll have a report which is scheduled to be given by Dick Forest of the Information & Service Committee for us.

MR. RICHARD J. FOREST:

Thank you, Mr. President.

I had the opportunity to spend a couple days in Minneapolis here on May 1 and May 2, which was Law Day, of course, and I think it was significant enough that Bob Schuller asked if I would take a couple of minutes and tell you people about it.

I would call your attention to the Information & Service Committee report in the annual committee reports, the publication which was also in your packet and which very briefly, does mention this law-education related conference in Minneapolis. This was a seven-state conference attended by representatives of Iowa, Minnesota, South Dakota, Nebraska, Wisconsin and, of course, North Dakota. Approximately 225 people attended that. Out of the 225, I would just guess that there must have been about 75 attorneys, and the balance were educators from the various school systems. There were seven attorneys from the North Dakota Bar Association there representing both the Bar Association and the respective communities that they were from. The areas represented in North Dakota were Minot, Grand Forks, Bismarck, Dickinson and Fargo, each represented by education people from the local school systems and the attorneys. The purpose of this particular conference—one which, I might add, the North Dakota Bar Association contributed one thousand dollars to—was centered on the ABA programs on youth education, and these programs encourage and support efforts between the local and state bar associations and the various school systems on the development of law-related educational programs, and basically, I suppose, they try to provide the understanding of the law, the legal system, the legal process, et cetera.

We started out the conference with a film "To Reason Why," and I mention that only for one thing, and that is that the ABA in Chicago has over 800 films and filmstrips which are available to any state and local bar association for any type presentation. They're colored slides, regular movie films, any number of types of things in almost every category that you can imagine. They have developed some new ones just recently on women's rights, drug abuse—this type of thing. But they have over 800 films available, and I would think that if any of us in our respective communities want to have some type of a program in which a film would be in order or be shown, you certainly call on the ABA in Chicago, or this one film title of "To Reason Why" they showed us in this Law-Related Education Conference.

The attendees were basically teams from the cities that we talked about and there were five or six people on a team. We all went then to various workshops in which the personnel from the ABA presented the various programs that they have developed over the past few years. There was one program called "The Role of Lawyers in Law-Related Education"—how the lawyer can work with the school system and develop educational programs, developing community support, utilizing community resources—any numbers of things that they have available, and I might ad I thought they were absolutely outstanding.

I just want to call your attention to two programs that I thought were of interest in our neighboring states. One program is called "Inquire." The State of Wisconsin has it. It's sponsored by the Wisconsin Bar Foundation, and it's specifically for high school students.

The conference we attended simply had programs for kindergarten, elementary, secondary and through high school. This project that Wisconsin has in for high school students only, and they deal in such topics as consumer law, tenant problems, again drug abuse, some of the newer ones in reference to juvenile justice, marriage and family, family relations—this type of a thing—and this is conducted in over 200 high schools in the state of Wisconsin and they are involved in 64 counties in that State, and I think they've really covered the State with this type of a program and it really brings home, I think, to these students the law and how it relates to them.

I think by far the most outstanding project—and I use the word "outstanding"—coming from the ABA, because they say it is the most outstanding of all the 50 states—is our neighboring State of Minnesota. They have a booklet entitled "The Student Lawyer." And I don't know how many of you have seen that. I would say it's about 200 pages. Again, it's for high school students. It's broken up into all of the categories that you would find in a normal business law book or a criminal law book—any of these types of things. It's taught on a give-and-take type of a session, with attorneys as guest speakers and instructors setting up the program. It's absolutely a fantastic booklet. The Young Lawyer Section of the Minnesota Bar Association developed it a number of years ago—"a number"—I guess I should say about four or five years ago. It took them two or three years to comprise the booklet, and I'm sure they have to update it, of course, every year. But it is something that, I think, is outstanding in reference to law-related programs for the young people in our State, and I mention these two, and I guess I would certainly urge the cooperation of the North Dakota Bar Association in trying to develop a program something like Minnesota or something like Wisconsin in which these attorneys participate very heavily in the community involvement, in the school systems, in setting up a program in which it brings the fact that everyone has to be responsible to the law. That fact holds true to all of the respective students. I know that I'm going to continue in this part, Mr. Lynn Davidson of the Department of Public Instruction in Bismarck is going to be the spearhead or the leader for the school systems, and I would hope that we could have the encouragement of the State Bar Association in the next few years to try to develop a program like this. It's going to take a long time, but I think it's overdue, and I think that this would not only help our public relations image, but it would certainly help the development of our young people. Thank you.

PRESIDENT KIRBY:

Thank you, Dick. I think this report is being reviewed by the Executive Committee, and we don't know at this moment how soon his proposals will be implemented.

During the past year we have had considerable effort devoted to improvement of our disciplinary system, particularly the formulation of new rules and procedures for the handling of grievences which are presented against lawyers in this State and, as I indicated earlier, there has also been adopted a Code of Professional Responsibility—or a Code of Judicial Responsibility for the judges, and there is also now legislation on the books to implement and to assist in the disciplining, retirement, removal, if you like, of judges.

To explain what has been done and to give you a report on that, I'll call, first, on Chief Justice Erickstad, who will give the first part of the presentation, and then he will be followed by the Chairman of the Grievance Commission, Lowell Lundberg. Chief Justice Erickstad.

CHIEF JUSTICE RALPH J. ERICKSTAD:

Thank you, Mr. Kirby. Mr. Kautzmann. Ladies and gentlemen of the North Dakota Bar Association.

I am going to exercise a privilege that I may not have. I don't think I'll stay too closely to the prescribed assignment.

What I'd like to say before getting into the subject is that I'd like to express my appreciation to the State Bar Association, and particularly its Director, its Executive Committee, its Legislative Committee, particularly Mr. Conmy, who attended so many of the meetings of the Legislature and Committee meetings, and I'd like to thank especially the lawyer legislators who devoted so much time in support of the judiciary during the last legislative session. We especially also appreciate the efforts of the Young Lawyers Section of the State Bar Association directed toward securing a legislative study and ultimate funding of a new Supreme Court and Judicial Administration Building. Many of the plans we have for improving the judiciary could not have been considered without your aid. So I thank you very much.

Now I've been asked to speak to you on the importance of courtesy, but because that might infer that I think that lawyers are generally discourteous, which they are not, I shall leave that subject by merely suggesting that lawyers should extend the same courtesy to the municipal judges of the smallest cities as they extend to the judges of our court. A commitment to appear at a hearing at a specific place, date and time should always be honored. Perhaps some day we might talk more specifically, and I would hope that it would involve a panel, on the appropriate conduct of lawyers during a court trial; but I don't think you care to hear that today and I'm not prepared to discuss it today.

Now, then, that is what I've been assigned to speak to you on, and now I'd like to take the rest of my time to give you just a little report on the state of the judiciary in North Dakota as I see it, and in that connection I'll probably tell you a little bit about the recent past, about the present, and what we hope for in the future.

First of all, I think you all know that at the end of August in 1974 our Supreme Court became completely current. In other words, we had no backlog of cases. Someone asked me the other day "What do you mean when you say that?" and I would explain it this way: That means that we have heard oral arguments on every case that's ready for oral argument and we have rendered written opinions which have been decided by a majority of our Court on all of those cases that we have heard. I don't know how you can be more current than that. And that was the situation we were in at the end of August in 1974. Our Court made a decision at the end of 1974 to postpone oral arguments on the December cases to January, and we then were able to devote all our December time to completing opinions that were previously heard by the Court. So when the two new members of our Court joined us in January of 1975, we were again current when you consider, however, that we had postponed one month's work. So that all of the judges started out on an equal basis in January of 1975.

In visiting with Judge Morris, whom you all know, who served our Court for 30 years and has now been retired 12 years, he recalls of no other instance when the Supreme Court of our State was completely current. So we're proud of that fact, and we owe a lot to a lot of people for having been able to reach that stage. We owe the Legislature for having given us the financial support of employ the personnel in the Clerk's office, to employ law clerks to assist the judges in writing and research of opinions. We owe a great deal, as I've said before, to you, the members of the Bar Association, for the great support you have given us in securing these advantages and these additional tools, and we owe great credit to the district judges who have been willing to come in and serve when one of the judges of our Court has been disqualified.

Now, then, secondly, I would like to say though, before I pass that subject, that this is not going to be the situation perhaps forever. We're making an attempt again to become completely current, and we hope to be able to announce in a month or two, or maybe sooner, that we are again completely current. So those of you who have cases that you've argued in our Court, you're not going to have to wait too long to hear the results. But we know that if our State suffers—or probably that isn't the proper term—develops as a result of the coal or oil industry, that that will necessarily bring people into our State, and whenever you have an increase in the population, you normally have an increase in litigation, and it may result in increased caseloads in areas in which we're not suffering that problem at the present time. If that happens, we will perhaps have to consider some new approaches, and I think that's why I'd like to announce today that I'd like to have you thinking ahead to the day when we mgight need an intermediate appellate court. I'd like to have you think ahead so that it doesn't come upon you as a shock when someday we find it necessary to ask you for that kind of support. Right now we don't need that court. I'll talk to you a little later about some things I think are much more pressing.

Secondly, we have revised the Rules of Civil Procedure and the Rules of Appellate Procedure, and for the first time in the history of our State we have Court Rules of Ciminal Procedure. You know that we're also considering amending the Civil Rules again and we'll also be considering a table in connection with the appellate rules. We hope that those of you who have special interests in these rules and who studied them will be present at the time of

the hearing. We will hope to not only consider the changes in the Rules, but that will have been able to agree upon them by the end of this summer. So we would hope that by the time we convene court in September, that the proposed rules changes will have not only been considered, but adopted in some form or another.

Thirdly, in the history of our State, our Supreme Court has made an attempt — I'd like to express that word — those words — that we've made an attempt to supervise the Court system. We've attempted to implement our supervisory power under Section 86 of the State Constitution, and this we did by appointing presiding judges through the promulgation of Administrative Order No. 1. Through the use of presiding judges, we hope to do a better job of administering the district courts of our State, consisting presently of 19 judges. I might say that in recent months we've had quite a development in this respect. We've found that the presiding judge idea has been helpful. It certainly hasn't been a complete solution to our problems. We have had one presiding judge resign, and we have filled that position. As you know, Judge Maxwell has resigned his position as a presiding judge — not as a district judge — and we've appointed in his place Judge Bakken. We have attempted to respond to requests of the presiding judges for assignments into their districts of other judges from our districts in the areas — districts in which the caseload is the greatest. That, apparently, presently is the Fourth Judicial District and the First Judicial District. I can personally say that, although we have the power to assign judges, it is not always practicable and it is very difficult to do. I have personally been on the telephone with judges in an attempt to do that and spent the better part of a day in securing assignments into the Fourth Judicial District not long ago and was able to secure the assistance of three district judges for the May terms in Burleigh County.

In our attempt to assign a judge into the First Judicial District, we ran into difficulty and, as you know, one of our judges resigned — or I should say retired on physical disability or made application for it — and just the other day here at the Judicial Council we honored that request and we have retired Judge Warner on disability effective July 1 of this year. We will hope that the Governor will be able to take prompt action and appoint a sucessor so that that district will have a full-time district judge functioning in that part of the State.

Now, through funds which the Legislature has appropriated, we hope to improve the administration of justice in the other tiers of our court system by judicial training and seminars. As you know, we have approximately 205 — I don't know if you realize that, but we have approximately 205 municipal judges, 17 of whom are law-trained. Only 17. 38 county justices, 32 of whom are law-trained. 38 county judges without increased jurisdiction, one of whom is law-trained. And 15 county judges with increased jurisdiction, who are all law-trained. In the 1975-1977 budget for the judiciary, there is included approximately $60,000 for judicial training. Incidentally, three judicial training seminars were held in this present biennium to educate the courts of limited criminal jurisdiction: one at the University of North Dakota in the summer of 1973, one at Bismarck in the spring of 1974, and one at two different locations — Mayville State College and the Ramada Inn at Dickinson — in the fall of 1974. Because of the importance that I believe the seminars should be given, I personally attended every hour of those sessions, and I found that those who attended those sessions were appreciative, and I think that they felt they were well worth their time. However, many of those who should have attended did not attend, and for that reason we asked the Legislature to make judicial training compulsory. Now I'm talking about judicial training. You people were talking the other day — yesterday, I believe it was — about legal training being made compulsory. We asked the Legislature to make judicial training compulsory. When we first suggested this, we suggested that it be compulsory only yearly on the lower court level, not affecting the District and Supreme Court level. Some of the county judges of increased jurisdiction who attended that Judicial Council meeting felt that we were treating them less than equal and, therefore, it was moved by one of our district judges that we include all judges in the compulsory training, and that motion prevailed, and that's the way the bill went into the Legislature. However, while the bill was in the Legislature and without any effort on our part, the Senate Judiciary Committee deleted the Supreme Court and District Court from annual compulsory judicial training, apparently because they felt that these judges were receiving training annually through the Five-State Judicial Conference and through the opportunities that the District and Supreme Court Judges have to attend the National College of Judiciary at the University of Nevada and other places. And so the bill passed with only the other courts being compelled to attend annually a judicial training session. That's in effect now and will be — should be in effect, I should say, on July 1.

Now for some time I've been very concerned about the fact that many of our municipal courts are functioning with outdated city ordinances. Many of our smaller cities have failed to keep their city ordinances up to date. I started my legal career as a municipal judge in Devils Lake, and I know that our ordinances weren't in the best shape then, and unless they've been improved upon since then, they probably are not up to date. However, I'd like to give credit to the City of Devils Lake and the County of Ramsey for the tremendous improvement they've made in the physical facilities which they have provided for the Municipal Court and the county courts and for the lower court generally.

Now with funds from the Combined Law Enforcement Council and matching funds from the League of Cities, a project has now been undertaken to prepare model city ordinances as they relate to criminal law aspects of city government. This project also contemplates meetings in 16 different parts of the State to aid in securing the passage of new ordinances once they have been devised. Now I supported this from the very beginning with the hope that not only would we develop some proposed ordinances, but that the city fathers throughout the State of North Dakota — and I should say city fathers, and mothers nowadays — throughout the State of North Dakota would be encouraged to adopt these ordinances because, unless they're adopted, of course, they're meaningless.

For the first time in the history of our State, our people will have someone to whom they may take their complaints against judges, because the people approved an amendment to the judicial article of our State Constitution last November. Our Judicial Council supported a bill in this Legislature patterned after the procedure followed in California, which established a judicial qualifications commission with authority to recommend retirement, removal or censureship of all judges. I'm happy to say that the Legislature passed that bill, and you know from yesterday afternoon's report by Representative Atkinson that they did pass that bill, which is Senate

Bill 2275, and they passed it with only minor amendments and appropriated $20,000 to administer it. We asked for $50,000, and so, of course, we're a little disappointed in the amount of money that was appropriated.

As a result of that fact, I have asked the President of our State Bar Association and the Chairman of the State Bar Board to consider the possibility of participating in providing us with a joint staff which could be used not only for the judicial qualifications commission but also for the purpose of assisting the disciplinary commission, which, of course, you know, is funded through funds of the State Bar Board. I will look forward to seeing what action your Executive Committee takes on that request, and I hope it will be favorable. Now this commission will be guided by our new Code of Judicial Conduct which became effective in our State on January 1, 1975.

Sixth. Many other developments are taking place within the judiciary. The North Dakota Criminal Justice Commission, consisting of 50 members, the chairman of which is Robert Hubbard, a professor at Minot State College, is studying our State in light of the five reports of the National Advisory Commission on Criminal Justice Standards and Goals. If you haven't seen those reports, you really should. Especially I would like to refer you to the reports on corrections and on courts. They're thick volumes, but they're interesting reading, and if you would take them along with you on your vacation and glance at them, if you are able to find a vacation this summer, I think you might find that there's a lot in them worth reading and considering.

A 19-member management information system committee, chaired by Justice Pederson, is studying our court system to find better ways of reporting what we are doing and better ways of doing what we are reporting. A special committee of our Judicial Council, chaired by Judge Glaser, is preparing a manual for the use of our courts of limited criminal jurisdiction, which should be finished soon.

Seventh. The members of our Bar Board have for years conscientiously handled a thankless and sometimes disagreeable task — that of examining applicants for admission to the Bar of our State. It has been disagreeable when applicants have failed their examinations and the Board members have had to withhold their recommendation for admission to practice law before our Court. Supporters of those who have failed the Bar examination have secured introduction of bills in the Legislature which, if approved, would have permitted graduates of our Law School to practice upon proof of graduation without further examination. Such diploma privilege legislation has thus far failed, but discontent is still evident over our system. At the National Conference of Chief Justices last year, I learned that 39 states are now using the multi-state objective bar examination in varying degrees and in varying ways. Since the multi-state examination covers only five subjects, it should not, for that reason alone, be relied upon exclusively. Some states combine the multi-state objective tests with the essay tests and give a lesser weight to the multi-state test, and some approve the applicants who pass the multi-state test without checking the essay answers. Perhaps we could improve our testing by drawing upon the experiences of the states who have used the multi-state test.

I believe that our Board is continuously searching for ways of improving our system and for their conscientious and valuable service, I wish to thank them. I know that this is an area where a lot of thinking is being done and perhaps a lot more thinking will have to be done before there will be a satisfactory solution. Testing has never been popular, and it probably never will be. I see a few professors from the Law School and the Dean smile at that remark.

Eighth. Our Grievance Commission and our grievance committees, which investigate complaints against our lawyers, not only maintain the high standards of the legal profession by prosecuting those who fail to measure up to the code of professional responsibility, but they weed out the unfounded complaints that otherwise could destroy a lawyer's reputation. Now just recently we were represented at a regional disciplinary conference sponsored by the American Bar Association in San Francisco by Mr. Lowell Lundberg, the Chairman of the Grievance Commission, whom you will hear from later, Lou Dunn, the Secretary of our Commission, Bob Schuller, the Executive Director of your Association, and by Justice Pederson of our Court. I think that our delegates — the four of them — were very pleased with the meeting and that they will have many good ideas for improving our system as a result of their attendance at that conference. I've personally examined the written material discussed there, and I am impressed with it. It is my hope that our Grievance Commission will recommend to our Court that we adopt new rules of disciplinary procedure patterned after the suggested guidelines for rules of disciplinary enforcement adopted by the standing committee on Professional Discipline of the American Bar Association.

Incidentally, I believe that we could prevail upon Mr. Michael Frank, the Executive Director of the State Bar Association of Michigan, who is an authority on the proposed guidelines, to come to our State to speak to us on the guidelines and on Michigan's experience with lay people on their commission, if the members of the Bar or of the Grievance Commission were interested.

Ninth. We are just beginning to attack the problems of administering the entire judicial system. In the future we hope to receive advice on how we may better administer our courts from various sources, including the American Bar Association Committee on Standards Relating to Court Organization, the National College of the State Judiciary at the University of Nevada, the American Judicature Society, the Appellate Judges Conference at New York University and the Five-State Judicial Conference. The last session of our Legislature, through House Concurrent Resolution 3056, approved a new judicial article patterned after the judicial article of the Constitution prepared by the Second Constitutional Convention. This resolution will be considered by our people as an amendment to our present Constitution at the primary election on September 7th, 1976. If a majority of our people approve it, our Supreme Court will be given the authority to redistribute the workload of our district courts by redistricting the judicial districts. At the present time, redistricting is in the hands of the legislature and redistricting is an emotional subject, especially when it is in the hands of the Legislature. I know, because I served in the Legislature. That is only one thing that would be changed with the new judicial article. That one change would, however, give us an opportunity to make an honest and conscientious attempt at redistributing the workload of the district courts of our State. I would hope that your would read carefully Concurrent Resolution 3056 and that, if you believe in it, that you would organize support throughout your areas and throughout the State for the adoption of 3056. If you do not believe in it and if you object to it, I hope you will also then become active in

opposing it. But thereafter, I hope you will come to the next session of the Legislature with your ideas for improving upon the philosophy expounded in it, so that we may ultimately proceed to do the work that the people expect us to do.

I think that a resolution sometime by this Association would be significant. I expect that this is too soon, and I know, according to the rules I heard laid down the first day of this meeting, that that would be impossible to consider such a resolution at this Convention. But if it is to be of any assistance to the passage of this legislation or to the defeat of it — whatever you should decide — I would think that some action should be taken by this group at its next convention.

Because of the necessity of maintaining an independent judiciary, a legislative and executive and judicial compensation commission is also a matter of great importance. Although proposed amendments to Senate Concurrent Resolution 4014, providing for such a commission, were submitted to the House Committee on State and Federal Government during the last legislative session, the resolution was indefinitely postponed. Thirteen states in the United States have such a commission, which makes recommendations relative to salaries that the elected officials of these branches of government should receive. Salary as determined in this way should become less of a political matter and should be more based upon the importance of the position than on other possible improper or irrelevant considerations. It is somewhat demeaning for anyone to appear before a committee for the increase of his or her own salary, and the judiciary is no exception. But if it were thought that any member of the judiciary favored any member of the Legislature because of the attitude or opposed any member of the Legislature because of the attitude displayed during the Legislature, it would be a travesty upon our judicial system and, therefore, I would like to suggest that there are ways of avoiding that particular problem of leaving any impression that the judiciary is in any way beholden to any legislator or to any group within the Legislature, and that would be by establishing a commission which, hopefully, would be of unbiased, unprejudiced people selected from the State at large who would consider this issue from a nonpolitical basis.

I have copies of House Concurrent Resolution 3056, which passed, and copies of Senate Concurrent Resolution 4014 and proposed amendments, which failed, and I will leave them with your secretary for whatever deem appropriate.

I could talk much longer, but I know I've taken more time than I should have, about our judiciary and the effects and efforts we are exerting to improve it. But our time has expired. I would like to just conclude with this comment: For nine years now I've been giving the talk at the evening which is the occassion for installing the Boys State officials at the Boys State on the University campus at Fargo, and it's a challenging experience each year. Seven years ago it was especially challenging. After I gave my talk—I don't remember how this was handled—but I suggested I would like to have a response privately or otherwise from anyone who wished to visit with me on what I had said. I did not realize what I was asking for. I did not anticipate the response and the degree in which I received it. But I will say this: The counselors that attend Boys State are selected from leaders of our youth who attend our colleges throughout the United States—not only colleges within our State, but throughout the United States—and they're exposed to philosophies and ideas beyond the background that I had growing up at Starkweather, North Dakota, back in 1923 and '22, and I was informed by one of these counselors that what I said was all wrong; that what our generation believed was all wrong, and that there was going to be a revolution in this Country, and that this would take place within ten years. We are now only three years away from that time, and that there was nothing—nothing—absolutely nothing that my generation or that I could do about it to prevent it. Now I didn't agree with him then and I don't agree with him now. I resepect him for being honest enough to express his views and be willing to warn us. But I believe that there is something that our generation, and I think as a result of this noon luncheon we should say "generations" because we know that we don't represent just one generation—any one—we represent a number of generations. But I believe that our generations can do something, and I believe we must do something. I know that I am privileged to live in the finest country in the World under the best system of government, but I am not so blind as to not realize that it has its imperfections and that I may be a part of them I think we owe it not only to ourselves and not only to our children, but to our children's children, to make every possbile effort we can to improve our system and make it work so that our children and their children and their children may live under freedom as we experienced it.

Thank you very much.

PRESIDENT KIRBY:

Lowell, if you'll come forward. I might say, while Lowell is coming up, that the Executive Committee has condisered some of the matters which the Chief Justice referred to in his report, and they will also be considering tomorrow the matter of financial assistance, which he has asked us to consider.

I now present Lowell Lundberg, who is Chairman of the Grievance Commission, has served on it several years, and as Chairman, I don't remember how long, but he can tell you.

MR. LOWELL W. LUNDBERG:

Thank you, Ward.

Colleagues all:

First, let me say that the Grievance Commission of the Supreme Court and the Grievance Committees of the State Bar Association work as a team together in accomplishing the resolutions of disciplinary matters, and for some insight into the functioning of those committees, I would commend you to the annual committee reports booklet that was included in the material that you received on registration. You'll find in there a report from each of the grievance committees containing interesting statistics in terms of the number of cases investigated and handled, and the like. More particularly, I think it should be pointed out and emphasized here that the one thing that makes this system work in this State, and it does work in this State, is the wonderful cooperation and the hard work that we get from the volunteer members of these two committees. The way it works is that the Commission

consists of six members, one member from each judicial district around the State. We're appointed for three-year terms by the Supreme Court. I'm in the third year of my term now, in my sixth year then, if you will. The Grievance Commission acts as an arm of the Supreme Court in considering these disciplinary matters. The complaint, when it is received, is referred to one of the two grievance committees and referred specifically to the chairman of the committee, who, in turn, assignes it to his member or to one of his committee members for investigation and report back to the committee. The hearing, if there is one, is held at the committee level, and I might mention just in passing that the Grievance Committee East had a very interesting session not too long ago involving about 15 participating witnesses, complete with counsel on both side, and spent the better part of a day working at it.

You can be assured that the grievance process is alive and well in North Dakota and it is functioning in terms of the framework of the rules that were promulgated in 1965. However, on a national basis, Watergate and its implications have had serious effects on disciplinary procedures. It's caused the American Bar Association to give far more attention to them—to these matters—than it had in prior years. The result is that there has been established within the framework of the American Bar Association a Center for Disciplinary Affairs. They're carrying on actively throughout the United States efforts to obtain from all of the several states information as to how they are handling their disciplinary procedures. They have come up with and have made available to us, as Judge Erickstad mentioned, some suggested guidelines for rules of disciplinary enforcement, and the fact is that even in advance of this there have been established and there has been working in this State a joint committee, consisting of members of the Greivance Committee and members of the disciplinary enforcement Committee of the State Bar Association, and I can advise Judge Erickstad here at this meeting publicly, as I have advised him privately, that we would expect to have available for presentation to the Supreme Court in mid-July recommendations for some changes to the rules of disciplinary procedure in the State. These recommendations will include, among other things, provisions which are not now included. For example, our present rules are inadequate in that they make no provision for any forthwith suspension of an attorney who is convicted of a crime. They are inadequate in another respect, and that is in respect of the disability of the attorney arising from illness or, for example, from alcoholism or drug addiction.

I might mention in that connection that our sister State of Minnesota has achieved some really significant and wonderful results in this area. They have arranged and have evolved a system of probation where an attorney who is—for example, first, with alcoholism, is afforded an opportunity to continue to practice, but on a kind of probationary status, where it's necessary for him to report directly to a volunteer member of the Bar who is assigned to monitor his performance, and the function of that volunteer member is to be sure that the guy is staying dry, paying attention to business and getting his work done.

We also feel that the rules suffer somewhat in terms of being enabled to achieve the promptness of action that is obviously desireable. The function of the disciplinary system is really closely allied with the public relations effort that should be of interest and of significance to every member of the Bar, and one of the problems that we have with the volunteer system that we're using is that we can't dictate to these volunteer workers with much force and effect any deadlines for them to accomplish their work.

I think that it's obvious that this Bar Association and the Supreme Court must look toward the time when there must be a professional administration of disciplinary matters so that they can be investigated and disposed of promptly.

Finally, and one other area that's coming, and I guess we could allude to the comments of our luncheon speaker today in terms of the proposition that we tend to think of these things in terms of the mind set that we have. We're coming to the time when there are going to be lay people sitting on this Grievance Commission, and I'm as sure of that as I am that I'm standing here and addressing you right now. I don't believe that this next recommendation for changes in the rules is going to contain anything with reference to that point, but I can assure you, on the basis of what I've learned through contact with disciplinary people in other states, that it is not only coming, and it isn't all bad either; as a matter of fact, those states that have implemented it speak very highly of the desirability of having lay people on the final board of review.

I have arranged with Bob Schuller, because of the shortness of time that has been available here at this meeting and because we're moving toward the election of officers and the close of the business session, I am going to work with Bob and we're going to seek to make this available to you in more-detailed form through the newsletter over the course of the next several issues, and beyond that then, I thank you very much for this privilege to address you.

PRESIDENT KIRBY:

Thank you, Lowell.

I'll appoint to act as tellers Al Wolf, Jack Rilling and John Richardson.

We'll ask Byron Edwards to come up and we'll start through the items of business that require motions and seconds, as well as votes.

MR. EDWARDS:

Mr. President and members:

The Resolutions Committee, in acting on the resolutions that are presented, merely acts from the standpoint of presentation of the resolutions and as to the form of the resolution and the text thereof, as to whether or not it complies with our Constitution and Bylaws. The Committee itself, in approving a resolution, is not approving the resolution with reference to the subject matter thereof and is not expressing an opinion in that regard. These resolutions—the first eight—have been published and sent out to you in the SBAND news. There also were copies here for you to pick up.

Proposed Resolution No. 1 is the resolution with reference to the matter of the license fee for full-time governmental employees, and the Committee approves the resolution as to form.

PRESIDENT KIRBY:
Does someone with to move its adoption?

MR. GARY ANNEAR:
I would move, Mr. President.

PRESIDENT KIRBY:
Motion by Gary Annear. It there a second? Seconded by Jerry Riley.
Now are we ready for discussion? Is there discussion on this motion? And the resolution is very short, so I'll read this one.
"BE IT RESOLVED that any person who has an unrevoked certificate of admission to the Bar of this State, who is a fulltime governmental employee, shall have an annual license issued upon the payment of a fee of twenty-five dollars."
This was proposed by the North Dakota Federal Bar Association. Discussion.

MR. RAY McINTEE:
Why? Why twenty-five dollars?

PRESIDENT KIRBY:
I'm not in a position to answer the question. We'll have to ask someone of the proposing group. Gary, would you like to?

MR. GARY ANNEAR:
Thank you, Mr. President. To begin with, we have attempted through the Federal Bar Association—I think there's, oh, about 20 members throughout the State of North Dakota who are practicing attorneys that are members. We feel that for several reasons. Number one, of course, we are not competing with the State Bar Association or the membership of the State Bar in private practice. We're prohibited from the entrance into the private sector. We feel, also, that the State Bar Association is set up more toward the private sector with its program and, also, through its seminars, and it is set up basically for the private individuals who are servicing the public in the State. We feel, also, even though the State Bar Association would license the attorneys in the Federal sector, that we are not subject to disciplinary action; in other words, if we would commit some wrong, we would be disciplined by the Federal Bar—or Federal Government, rather than the State Bar Association. We feel that, of course, we are prohibited from the private practice, and it is not a condition of employment that we are members of the State Bar Association, but in the end result, we do like to retain our liaison and fellowship with the members of the local Bar, and that's why this proposed resolution was adopted and passed by the Federal Bar Association in the State of North Dakota.
I think, all in all, in counting, I believe that presently there are about twenty Federal employees that would be affected by this, of which I think eighteen are presently members of the State Bar Association.

PRESIDENT-ELECT ERICKSON:
This matter came up to our Executive Committee on behalf of these opponents. We talked about it briefly and we thought it would be best that it come before this group as a whole. Since that time I have visited with proponents and I have in my file a letter from them, and the letter clearly indicated that such Federal attorneys that were by their work prohibited—and I find this word missing in the resolution—and without that word I think that it's asking for a preference without any basis whatsoever. On that basis, as it is worded, I am opposed to the resolution, and if they would wish to consider adding an amendment to it to state that, I know by past experience that many of them are not prohibited from private practice, and if that's what we're going to do, them we're going to open a Pandora's box for every corporate attorney and others for a similar preference, and as it's worded, I cannot support it.

MR. KENT HIGGINS:
As I undertand, the resolution as drawn exempts any governmental employee. Of course, it's not limited to the Federal Government. Insofar as it affects State employees or county employees, it's my understanding in many of those cases that the licensing fees are frequently paid by those governmental bodies; so I certainly would oppose the resolution as presently drafted.

MR. DWIGHT F. KALASH:
Dwight Kalash. In conjunction with what Mr. Higgins said. I'm an employee of the State; also, a quasi Federal employee, but as the resolution is stated as you've read it to us, it doesn't provide the same opportunity for a lower fee for those of us who work for the State but are still prohibited by virtue of our job from engaging in private practice of law. For that reason, I'd be opposed to the motion, also.

MR. JOHN ADAMS:
I'm John Adams and I've been a governmental employee for 22 years. I think this uses the thing that always raises my ire about the Federal Government; they think they're the only government around. I don't object to—it's none of my business if the Federals want to be out of this program, but as it's now worded, my thinking has always been that "government" includes the state, the county, the city, et cetera, and I think it's ambiguous, and on that basis I would like to object.

HONORABLE BENNY GRAFF:

My name is Benny Graff, and I think I'm a government employee, too. I don't know — I think that was the general consensus, I think, that we talked about in our group a bit, and I think I'd be covered. I don't know why I'm not a government employee.

MR. ROBERT DAHL:

I'd like to speak for a few minutes from a philosophical standpoint and not be opposed or in favor of this resolution.

Gentlemen, the North Dakota Bar, for the size of the Bar, is one of the best and greatest bars in the United States. I know this because I attended many ABA meetings, and the reason that we are one of the best bars in the United States is that we're integrated, and an integrated bar means that we all support the Bar. We all get indirect benefits from the fact that we have a great Bar, and there's no reason that any particular person, whether he's a corporate employee, government employee, or anybody else, should not contribute his equal share to our Bar Association.

PRESIDENT KIRBY:

The question has been called. I don't want to foreclose debate, but we have a great many items on the agenda, and I feel that it has been fairly presented.

We'll call for all those in favor to say "aye." All those opposed?

The Chair will rule that the motion failed.

MR. BYRON EDWARDS:

The second resolution considered is the resolution proposing the court rule for continuing legal education. This is quite a long resolution. You've all likewise had an opportunity to read this resolution. The Committee approves the resolution as to presentation and form.

PRESIDENT KIRBY:

J. Philip Johnson will present the resolution and the motion.

MR. J. PHILIP JOHNSON:

Mr. Chairman. We had a report yesterday and some discussion with regard to this proposal. The CLE Committee has reviewed the proposal again and we submit the following resolution. I would submit the following resolution for adoption:

"BE IT RESOLVED that the proposed rule regarding mandatory continuing professional education as submitted by the Continuing Legal Education Committee be approved for submission to the Supreme Court, subject to final review by the Committee in light of the discussion and comments received."

Move the adoption of the resolution.

PRESIDENT KIRBY:

There's been a motion. Is there a second? Second by John Zuger.

We're ready for discussion. Pat Conmy.

MR. PATRICK A. CONMY:

Mr. President. Does that resolution which Phil Johnson just presented mean that they can do anything they want with the resolution after we've approved it?

PRESIDENT KIRBY:

Well, I thought—he recognizes that there have been some serious comments and criticisms of the exemption provisions, particularly, I'm sure, and for that reason they want to rework that part of it and, as I understand it, the way the motion was worded, that is their intention. Further discussion?

So what you're approving here is the general proposal of compulsory continuing legal education and not necessarily in the exact form in which it was presented in **The Gavel.**

The question is, really, do you approve the concept, and, as I said yesterday, I think we're going to have to have it. Mr. Higgins?

MR. KENT HIGGINS:

I would move to amend Section VIII and to strike from the exemption the words following the reference to the judges in the first paragraph. In other words, the exemptions for full-time governmental lawyers and, also, full-time corporation lawyers. And I assume I should reserve my reasoning for that until we have a second.

PRESIDENT KIRBY:

Do we have a second?

MR. JOHN ADAMS:

I'll second that motion.

PRESIDENT KIRBY:

We have a second. I wish to point out to Mr. Higgins that there are two paragraphs in that Section VIII, and you're referring only to the first of those paragraphs; correct?

MR. HIGGINS:
Correct.

PRESIDENT KIRBY:
So that we would eliminate the language "and those lawyers licensed to practice within the State of North Dakota who are employed full time by any governmental agency or employed full time as an attorney for a North Dakota corporation within this State." You would eliminate all of that language.

MR. HIGGINS:
Right.

PRESIDENT KIRBY:
All right. We're ready for disuussion on the motion—to amend. Mr. Higgins.

MR. KENT HIGGINS:
I think there may well be a valid reason for exempting judges from the provisions of this particular proposal. It may well be that the nature of their work is such that they are automatically kept abreast of many of the advances in the law; but I don't think that rationale can be applied to lawyers in governmental agencies or corporate lawyers whose practice, of course, is often restricted to a much narrower field. I'm particularly troubled by the reference to attorneys who are full-time employees of North Dakota corporations. I think others have pointed out that that would seem to not apply to lawyers who work, for example, for Delaware corporations, which strikes me as a bit chauvinistic on our part, and it also occurs to me it might conceivably be construed to exempt lawyers who work for professional corporations—at least where they do so as salaried employees. So although I'm not necessarily a proponent of the exemption of the judges, I think that that has the justification that does not extend to the category of either governmental or corporation attorneys. After all, these attorneys are people who may well return to the private practice, and if they do so without the benefits of continuing legal education, which, supposedly, is going to be beneficial to the rest of us, there may be just the sort of result that we intend to avoid by this proposal.

PRESIDENT KIRBY:
Further discussion? I point out to you that this resolution also calls for the presentation of an application to the Supreme Court to adopt a rule, and what the Court will do with this application — it may draft some amendments on this, also. Further discussion?

MR. JOHN A. ZUGER:
I speak in support of the resolution. I'm a member of the CLE Committee. As you have pointed out, we are asking the Association members at this time to really approve the concept and the requirement of continuing legal education by the Bar as a mandatory thing. That's what we're asking for. This matter will have to come on before the Supreme Court and there will be additional hearings. Now the purpose of the amendment suggested by the Committee that Mr. Johnson mentioned was simply that we could put into the final draft submitted to the Supreme Court, on which everybody again will have a chance to be heard, the input that we have received. So far as I know, there are two main things. One is the number of hours. Some complaint has been made that 45 hours are too long, comparing our membership of our Bar with those of Wisconsin and Minnesota—

PRESIDENT KIRBY:
I don't want to interrupt you, John, but the discussion now is on the motion to amend, which relates only to the elimination of some language relating to the exemptions from the requirements, and I want to restrict you to that.

MR. JOHN A. ZUGER:
Okay. The basic point I make is that in support of this resolution, whether with or without the amendment, is simply that, and we're going to put into it the input.

Now on the amendment, there's been discussion as to whether or not it should not be tailored down to any time an attorney who works for the government or works for a full-time—for a corporation, many also practice privately, and I think we're all aware that there are a number of government attorneys who are practicing privately, as well as those who are so-called "house counsel," and we run into them all the time. They are practicing privately, handling private matters and taking private fees. It is our opinion as a Committee that if that is true, they should come under the mandatory provision.

MR. GARY ANNEAR:
I can only speak, again, for the Federal attorneys; but, again getting back to what I raised on the first resolution: Number one, of course, we are prohibited from private practice. Number two, the fact that the seminars or the programs that are approved by the State Bar Association are not helpful to our employment as Federal employees. Now they may be helpful twenty or thirty years hence, but we're concerned with what's going on right now or in the immediate future, and as a result I can see nothing wrong with the resolution or the exemptions as they stand right now. I can't speak for the State employees because I don't know what their provisions are, but I also note that there is nothing with reference to a bankruptcy judge, for instance, nothing as to a hearing examiner. That evidently was inadvertently left out of the resolution.

MR. MAURICE HUNKE:
Maurice Hunke, Dickinson. Many of the governmental attorneys returned to private practice, particularly the young lawyers, and most of us remember Dean Thormodsgard, who talked frequently of a gap in our legal education, and I think that would be present for those people. Consequently, I move the question on the motion to amend.

MR. KLOSTER:
Second.

PRESIDENT KIRBY:
I will entertain further discussion, if there is any, on the amendment, only.

MR. EDMUND VINJE:
Ed Vinje, Jamestown, I would speak in opposition to the amendment, only, because Mr. Johnson's resolution states that this is to be submitted after further review by the Committee, and it is not an adoption of this particular proposed rule, and Mr. Higgins' amendment amends the rule as such, and the Committee will receive all the necessary suggestions and will consider all of those things, including the suggestion of Mr. Higgins. But I don't think that we should belabor the annual meeting by trying to pick and choose what amendments we're going to take at this point in time of this resolution.

MR. ROBERT DAHL:
I would have to rise to a point of order as your Parliamentarian. The motion has been made here--yes. He moved the question, and you can't have any more discussion.

PRESIDENT KIRBY:
He says that cuts off the debate. We are now voting on the amendment proposed by Mr. Higgins. All in favor say "aye."

MR. HIGGINS:
Excuse me. You are voting on the motion to move the previous question, which requires a two-thirds vote.

PRESIDENT KIRBY:
I'm sorry. You're probably correct. He's correct.

MR. ROBERT DAHL:
He is.

PRESIDENT KIRBY:
We're now voting on the motion to move the previous question. All in favor say "aye." Opposed? The motion carried. We will now vote on the amendment itself. All in favor say "aye." Opposed? That, also is carried.
We're now back to the main motion. Is there any further discussion?

MR. SAFEKE:
For you record, Frederick E. Saefke, Jr., and for the discussion, "Poor Fred." or by any other name.
I'm in support of the general concept of the continuing legal education because I can appreciate what little we all know; but as far as input is concerned, Mr. Zuger mentioned briefly on this 45-hour situation, I think some concern should be given to the points that are going to be designated or available at a complete seminar or whether you get one point for each hour you attend on a particular subject, and I think the 45 hours is going to entail too much time away from work in any one year for any practicing lawyer—

MR J. PHILIP JOHNSON:
Three years.

MR. SAEFKE:
Well, three years. Fifteen hours, even. You can go to a seminar—all right. That's fine. I overspoke myself for a moment. But it won't happen again. So be careful. The 15 hours example: You go to a seminar and you attend it from 9:00 a. m. to 12:00 Noon and 1:00 to 5:00. You've put in seven hours in one day. In two days you get 14 hours in. If you put in good, solid, steady hours, which means for those two days you're going to have to travel somewhere. It's going to take three or four days to even accomplish a 14-hour situation in one year — 15 hours. You want suggestions. I think the 15 hours is too long, and I think the Committee should consider reducing it.
The next point: I think the definition should be in the proposed rule for "active practice." You say "active practice." What does it mean? I think the Committee should consider a definition for "active practice." It could mean a governmental employee who goes to work in the morning. He's active in working for his employer as a client, if you will, if he's in the legal end of that particular type of business. I think that should be defined.
I was in support of the other motion. You have discussed that. I'm concerned with the immediate suspension aspect of the proposed rule. Whereas you require a hearing for reinstatement, there is no hearing on the suspension. I think the Committee should consider the ramifications of that particular in this rule.
This other thing: As far as this commission is going to approve the various types of seminars within the State

of North Dakota, I think, because of the limited number of hours they're going to have available in the State, that they should also consider in what types of programs they will approve if a lawyer attends a seminar outside of the State of North Dakota for credit in this particular program. The one, two, three, four—I think that's about all of them. And I didn't overspeak myself. Thank you.

PRESIDENT KIRBY:
Thanks, Fred. I realize there may be a lot of suggestions as to what should be contained in this rule and what should be changed, but you do have access to the Committee itself, because they're not going to submit this immediately, and I suggest that if you've got suggestions for change, that you submit them in writing so that there'll be a record of them and the committee, only after it's reviewed those, I'm sure, will make the proposal to the Supreme Court, which will also hold hearings on it.

MR. SAEFKE:
I understand the motion was requesting an input from this meeting.

PRESIDENT KIRBY:
We're doing that, too. But I'm telling you that I think that the written form will be desirable.

MR. DWIGHT KALASH:
Mr. President, Dwight Kalash. If I may speak to one point raised by Mr. Saefke as to travel time involved. Your Committee has under consideration a plan to develop a video cassette system so that the education may be brought to the practitioner to a certain extent, rather than requiring the practitioner to come to the education. That should cut down to a large extent on the travel time involved in getting your 15 hours a year.

MR. TIMOTHY Q. DAVIES:
I move the previous question.

PRESIDENT KIRBY:
We now have a motion for the previous question. Is there a second? Seconded by Mr. Dahl. On that motion, all in favor say "aye." Opposed? It's carried.
On the main motion to approve the concept of continuing legal education on a mandatory basis, all in favor say "aye." Opposed? Unanimously carried.

MR. BYRON EDWARDS:
The next items considered are amendments to the Bylaws of the State Association. These, likewise, are contained in the information that you have. I had them numbered as No. 3 on page 7, the Proposed Amendment No. 1. Also on page 7 we had No. 4, which was a Proposed Amendment No. 2, and then referring over to page 14, column 2, there were two additional amendments. Resolution No. 5 was Proposed Amendment No. 3, and Resolution No. 6 was Proposed Amendment No. 4. The Committee has approved these in form, and it would be my recommendation from a matter of time that, since the text is covered therein, that the proposed amendments on resolution form be considered as a whole in amending the Constitution and Bylaws of the Association.

PRESIDENT KIRBY:
Is there objection to considering the bylaw amendments that are presented in **The Gavel** as one item of business? Hearing none, I'll ask whether there's a motion to adopt the proposed amendments to the SBAND Bylaws.

MR. GEORGE P. DYNES:
So move.

PRESIDENT KIRBY:
Motion by Mr. Dynes. Second by Fred Saefke. Any discussion? If not, are you ready for the question? All in favor, say "aye." Opposed? That's carried.

MR. BYRON EDWARDS:
Resolution No. 7 is contained on page 8 of the material that you have. This is the resolution with reference to the proposed amendment to the North Dakota Rules of Civil Procedure; more specifically, Rule 4, and the Committee approves the form of the resolution.

PRESIDENT KIRBY:
In this case, I'm going to ask Tim Davies come up and make what motions are required.

MR. TIMOTHY Q. DAVIES:
There is already one proposed amendment of Rule 4 that's before the Supreme Court for hearing on July 7th. The second rule was drafted by the Procedure Committee at the request of the Executive Committee, and they asked for the broadest possible form of Rule 4.
Now I can tell you in a nutshell what the difference between the two of these are, and they're basically philosophical differences between Judge Burdick and the Committee. He has got some minor language changes in the Rule which was in **The Gavel** with which the Committee agreed, but the basic—the two basic differences in the

Rule are, number one, a person would be subject to jurisdiction under the Rule which is in **The Gavel** for all the bases enumerated in the Rule which is before the Supreme Court and, in addition, this one: "(H) Enjoying any other status or capacity within this state, including cohabitation, or engaging in any other activity having such contact with this state that the exercise of personal jurisdiction over him does not offend against traditional notions of justice or fair play or the due process of law."

The other change is the Inconvenient Forum rule, which the Committee deleted and which is in the newest proposed Rule. This reads as follows:

"If the court finds that in the interest of substantial justice the action should be heard in another forum, the court may stay or dismiss the action in whole or in part on any condition that may be just."

Now I don't really think that any action is required because the Rule is before the Supreme Court. They can adopt it in any form that they want to. We can sit here and debate all afternoon on how broad it should be and whether or not Inconvenient Forum should be included; but I think it's all going to be hashed out again on July 7th. So I have no motion to make.

PRESIDENT KIRBY:

With that explanation, what are your wishes?

MR. RAY McINTEE:

For a number of years I served on the Executive Committee as President of the Bar, and this was one of the rules or one of the items that we had attempted for a number of years to get passed. Apparently the Executive Committee has done a real great deal of work on it. I'm not sure that it is fair to Judge Burdick to —I maybe got the wrong emphasis there of Tim when he was making his presentation—but I know that he has given a great deal of work on this, and I think this is one of the best rules—I don't know what you want to call it—a new rule—that I have seen, and I would urge that this membership support the Rule that we have here before us — not the one that's now before the Supreme Court.

PRESIDENT KIRBY:

I'll point out to the gentleman that we have no motion at the present time, and I'm going to cut off debate, unless we have a motion.

MR. RAY McINTEE:

I'd so move that the rule change as proposed by the Executive Committee be adopted.

PRESIDENT KIRBY:

And be submitted to the Supreme Court?

MR. RAY McINTEE:

And be submitted to the Supreme Court.

PRESIDTNT KIRBY:

All right. We have a motion. Do we have a second? I didn't get the second. Seconded by Doug Christensen.

MR. TIM DAVIES:

I didn't intend any aspersion or slur on Judge Burdick. Both of these rules are primarily his work product. And with the exception of some housekeeping changes, which in **The Gavel** rule the Committee feels are good, the only changes which have been made are the two that I mentioned, and those—the rest of the rule is Judge Burdick's—both rules.

PRESIDENT KIRBY:

Further discussion? Now are you ready for the question?

The motion is to adopt the form of proposed change to Rule 4 as set forth in the publication of **The Gavel** and the submission of the same to the Supreme Court of North Dakota. All those in favor say "aye." Opposed? I'll rule the "ayes" have it.

MR. BYRON EDWARDS:

Resolution No. 8 is found on page 12 of **The Gavel** material. This is the resolution relating to the Code of Professional Responsibility as adopted by the American Bar Association House of Delegates. The Committee has considered this resolution and finds it to be in order.

PRESIDENT KIRBY:

Is there anyone present from the Ethics Committee who is going to make a presentation on this proposal? If not, I'll explain to you what background information I have on it, and then I'll read the proposed resolution and will ask whether or not there's going to be a motion.

First, at Houston, at the midyear meeting of the American Bar Association during the year 1974, several proposed amendments to the Code of Professional Responsibility were proposed and were then in study for a period of one full year. At the midyear meeting held in Chicago this year, the identical changes which are printed in **The Gavel**—and I may be incorrect if there are some typographical errors, because I haven't checked them that closely—but the amendments that are set forth in **The Gavel** were adopted by the American Bar Association in

Chicago in February. The North Dakota Ethics Committee, which is chairmaned by Bob Burke of Grafton, has now proposed that the North Dakota Code of Professional Responsibility be amended to include these same matters, and the motion reads as follows—and I'll have to have somebody move it, but I'll read it for you:

"BE IT RESOLVED that the State Bar Association of North Dakota affirms those amendments to the Code of Professional Responsibility as adopted by the American Bar Association House of Delegates. These amendments apply to disciplinary rules 2-101, 2-103, and 2-104; definitions (7), (8), and (9); and ethical consideration 2-33. The amendments are attached hereto and made a part of this resolution."

Does someone move the adoption of that resolution?

MR. ALBERT A. WOLF:
I move it.

PRESIDENT KIRBY:
I've got a motion by Al Wolf. Seconded by John Hjellum. Discussion on the motion.

MR. KENT HIGGINS:
I note that this particular resolution deals very largely with the area of legal aid and I assume it also touches, at least in part, on the question of prepaid legal services, although I may be in error on that.

PRESIDENT KIRBY:
I think you're correct.

MR. KENT HIGGINS:
All right. That being the case, I would move, since I certainly know that the Legal Aid and Defense of Indigents Committee has never had an opportunity to examine this resolution, that it be referred to them and then be considered at our next annual meeting, and I would be willing to amend that, if there's any general support to include referral letters to the—I believe there's a special committee concerned with the prepaid legal services. I think that sort of scrutiny might be in order before we adopt this as part of our Code of Ethics.

PRESIDENT KIRBY:
Is there a second to that motion? Who was the second, please? Fred Saefke. Discussion?

MR. ROBERT DAHL:
Mr. President. The question that Mr. Higgins has raised is exactly the reason that there were two series of debates at the midwinter meeting of the House of Delegates of the ABA. The original amendments that were proposed were much more restrictive than these and, as a matter of fact, these amendments have already been approved by the National Association—National Legal Aid—I forget—Legal Aid and Defenders Association, or whatever it is—and all of the different organizations who are sponsoring and fostering agencies for legal services. I think I could personally tell you that this is very acceptable to those types of people. Particularly, I know California was involved in this thing in their legal services thing. There are other places where they're getting prepaid services set up. There are union situations, and these were amended to provide for those considerations. I would feel that you are only deferring this for one year if your motion were to be adopted.

MR. KENT HIGGINS:
There may be a good deal to that, and maybe this rule has been scrutinized at length and found perfectly acceptable by people much more learned than I on the matter. But I think the point has to be made that we have established a system of specialized committees in this Association. It seems to me it is futile to do so if we don't propose to utilize them. Since this particular rule falls within the particular province of the Legal Aid and Defense of Indigents Committee, I think it would serve some purpose to have them consider it before we adopt it as an association as a whole.

PRESIDENT KIRBY:
I point out to the gentleman that it already has been referred to the State Bar Association Ethics Committee and has been reviewed by them, and this is with their recommendation.

Any other discussion?

The question has been called and the motion which is before us for determination would defer action by this body on the proposed resolution and would refer the matter to the committees which Mr. Higgins specified. All those in favor of the—do you want to explain it further?

MR. KENT HIGGINS:
Mr. Chairman, my motion had only to do with the Legal Aid and Defense of Indigents Committee.

PRESIDENT KIRBY:
All right. It would be the only committee that it would be referred to; but action would be deferred for one year or until the next meeting of this Association.

All those in favor of the motion as proposed by Mr. Higgins say "aye." Opposed? The motion fails.

We're back to the principal motion, which is to affirm these amendments to the Code of Professional Responsibility. Is there any further discussion on that?

The question has been called. All in favor of the resolution proposed by the Ethics Committee say "aye." Opposed? That is carried.

MR. BYRON EDWARDS:

Resolution No. 9 is the resolution which was introduced on the floor yesterday. Ron Schwartz read the resolution to you. This is relating to the matter of use in firm names of the names of deceased and disassociated firm members.

The Committee has reviewed the resolution as to form and approves same as to form.

PRESIDENT KIRBY:

The motion and resolution were read in full yesterday. Does somebody move its adoption?.

MR. JON KERIAN:

I'll move.

PRESIDENT KIRBY:

Moved by Jon Kerian. Is there a second? Seconded by Bob Dahl. Any discussion on the motion?

MR. KENT HIGGINS:

Could we have it read again?

PRESIDENT KIRBY:

Yes, you certainly may. Would you read it again?

MR. BYRON EDWARDS:

This is a separate resolution that was introduced yesterday. This is not contained in The Gavel.

"WHEREAS, the State Bar Association of North Dakota adopted a resolution limiting the use in firm names of the names of deceased or disassociated firm members, and

"WHEREAS, such resolution was adopted at the Annual Meeting of the State Bar Association in June of 1974, and

"WHEREAS, such resolution did not specify the manner in which it was to be implemented, and

"WHEREAS, such resolution provided that the Bar Association amend its canons of ethics to prohibit firms from using names of persons deceased or who have disassociated themselves from the practice of law within one year after the death or disassociation, and

"WHEREAS, present North Dakota law provides that the Supreme Court of this State make all necessary rules relating to admissions of persons to practice law, the disbarment, disciplining and reinstatement of attorneys and the restraint of persons unlawfully engaged in the practice of law, and

"WHEREAS, the Supreme Court Rules of Disciplinary Procedure provide that any 'violation of a canon of professional ethics as adopted by the American Bar Association and affirmed by the State Bar Association of North Dakota may also constitute cause for discipline', and

"WHEREAS, the existing American Bar Association Code of Professional Responsibility as affirmed by the State Bar Association of North Dakota does not prohibit the use of names of deceased firm members where custom permits the use of the same, but does preclude the use of the same, but does preclude the use of names of disassociated members under certain conditions, and

"WHEREAS, custom and usage in North Dakota has been and is the allowing of use of the name of a deceased firm member;

"NOW, THEREFORE, BE IT RESOLVED that the resolution adopted in 1974 by the State Bar Association of North Dakota at its annual meeting regarding the use of names of deceased or disassociated frim members be reconsidered and rescinded."

PRESIDENT KIRBY:

We're ready for discussion. Fred Saefke.

MR. FREDERICK E. SAEFKE, JR:

Mr. President, Gentlemen and Ladies.

Since I was one of the proponents of the resolution a year ago, and there has been nothing done about it, as is indicated by this resolution now, and I say "nothing done about it" only to the extent that no one has filed a complaint against anyone who has been using such a name of a person who is deceased or disassociated. Now the resolution a year ago amended our Code of Professional Ethics. That's all we had to do. If someone then had a complaint about such a practice in the State of North Dakota, all he had to do was write a letter to the Clerk of the Supreme Court and file a complaint and it would have taken the normal processes. There would have been a check on whether this person had been dead for more than a year or disassociated for more than a year, and it probably wouldn't go into effect until a year from last year, which is this year, anyway. So it would have taken care of itself. But now, as a reason for having this type of a rule, I think it is indicated in what has been said here today and in the reading of the resolution that we are intending to bind ourselves by what is being done in Texas or California and New York when the American Bar Association meets. Now what may or may not be good for the American Bar Association may or may not be good for North Dakota.

We heard a moment ago a statement by one of our old-time members and one of our leaders that we are great in North Dakota because we have an integrated Bar and we have a great Bar Association. That means that we are all gentlemen and ladies and able to live with each other and respect each other's integrity and honesty and rely upon each other's word. But we say so over the telephone. We don't have to go into court and get an order signed every time we want something done, nor do we have to have a signature to rely on, as you will find if you practice

in any other states or lawyers with some of these other states. It seems to me, without pointing the finger at anyone and maybe not being too diplomatic, that when we continue in this practice that we are cheating on one another. I don't know of any other way you can express it any better or any worse. There seems to me to be no reason why someone should be practicing under a false name — artificial — be it what it may. We are engaged in a personal relationship of attorney and client. Now if an attorney cannot maintain himself in his own office on his own two feet in his relationship with his client, then he shouldn't be entitled to have the name "Washington, Hamilton, Lincoln & Nixon" on his front door.

Now what brings this thing more to the fore is that I read in **The Bismarck Tribune** just — I think it was last week — a report from the Secretary of State listing some of the new corporations in the State, and one of them happened to be a group of lawyers forming a professional corporation. I happened to know that the first name of that professional corporation is a gentleman who passed away several years ago, and they are now incorporating using his name, together with the other partners who are now making a professional corporation out of that practice of law, and I say to you this: That if we are going to continue by using disassociated names, men who have moved out of State and their names are being used, or deceased or otherwise — it doesn't make any difference — then I think we should amend the resolution not only to rescind the previous one, but to allow us to use corporate names and sales names, like "Speedy Trials" or "Justice For All" or "24-Hour Service," and then disregard the temperament and the integrity of the individuals concerned with this professional-type service.

So I would — I'm going to oppose and vote against the motion.

PRESIDENT KIRBY:
Any further discussion?

MR. FREDERICK E. SAEKE, JR.:
The other one a year ago is still good, and somebody hasn't complained about it. File it and let it take its proper course.

PRESIDENT KIRBY:
Any further discussion? George Dynes.

MR. GEORGE T. DYNES:
Mr. President, I take Fred's side on this thing. I wasn't at the meeting last year and I was kind of surprised that it passed last year; but I think it is an enlightened way to go, and I don't see why we have to wait for the ABA to tell us how to label our law firms in North Dakota.

Looking around, I think — I don't know whether a majority of people tend to pull off the names of dead and disassociated people or not, but I know many firms have, and I think it is a good rule, and I think it should be adhered to.

There is an example, I think, that I should mention to bring this thing really home. We have a personal situation in Dickinson which, I think, goes beyond what many of you may be thinking about. It might have been the one Fred was just talking about. But we have a young man in our firm by the name of Ron Reichert. He's been with us for two years. We're a professional corporation. His names is in the corporation name and he's going to be there for awhile, I think, and there is another firm in Dickinson that has the name "Reichert" on the front end of their five-man firm, and that Mr. Reichert has been dead, think, for four years now. The "Reichert" name is a revered legal name in Dickinson. There were two brothers that practiced with some distinction for quite a few years. At one time they were both together, but now they're both dead and they have been dead for several years. And this can be confusing. But you don't recognize sometimes how little some people know about what goes on in law practices and who is moving in with who, and so forth. But just — I'll give you an example of what Ron mentioned to me. Last year he was running for State's Attorney and got beat by one of the partners in the other Reichert firm, and he got beat bad. I make no apology for that. But he came back to the office one day and he said "You know, I was out shaking hands" — he, incidentally, is a Canadian. He isn't a Dickinson native. But he has the same name. And he was shaking hands and this one guy said "Gee, I sure like you, but I can't vote for you. I'm going to have to vote for your partner." And he said this seriously. At least Ron understood it to be a serious statement. He didn't understand that partners don't run against each other. Much less did he understand that the other Mr. Reichert was dead.

There probably aren't too many situations just like that, but basically I think that is a form of misrepresentation when you use the name of a person who is no longer in the firm, and I think that that resolution was a good one last year and I think it ought to be supported and implemented.

Now, from reading **The Gavel**, I gather that there sould have been perhaps included in that motion which would request the Supreme Court to receive last year's motion and to amend the Rules of Disciplinary Procedure accordingly; and, therefore, at this time I would move a substitute motion to carry forward the action of last year and to petition the Supreme Court to have appropriate hearings and to determine whether or not it is appropriate for them to include the substance of this resolution in our rules of Disciplinary Procedure in North Dakota.

PRESIDENT KIRBY:
Is there a second to the substitute motion?

MR. J. O. THORSON:
I second.

PRESIDENT KIRBY:
All right. We're ready for discussion on the substitute. Mr. Johnson.

MR. J. PHILIP JOHNSON:

Mr. Chairman, I think there's some procedural problems associated with this, and I have a little familiarity with the manner in which this was received originally in the Supreme Court. The Code of Professional Responsibility as it has been adopted by the State Bar Association has not formally been adopted by the Supreme Court of North Dakota. The Rules of Disciplinary Procedure do refer to the Canons of Professional — ABA Canons of Ethics as affirmed by the State Bar Association of North Dakota, and that's been adopted to include the Code of Professional Responsibility as presently adopted and approved by this Association. I think, if this matter is going to be submitted to the Court, why it would perhaps be preferable that the Court formally adopt the Code of Professional Responsibility as well, with whatever amendments might be approved at this time. But part of the problem in which the Court determined not to act was because the Court had never formally adopted the Code of Professional Responsibility and felt that it was appropriate for the Bar Association to determine exactly what action it wished to take previous to the time that the Court took any action.

PRESIDENT KIRBY:

Further discussion?

MR. MAURICE HUNKE:

Maurice Hunke from Dickinson.

I was at last year's meeting, too, and I was concerned about the resolution then. I'm not going to tell you how I voted because I think it was a secret ballot last year. But after another year of thought, I'm even more deeply concerned. I think we're a small-enough state where we don't have to get into this type of thing. I think our ethical considerations now would resolve the problems that Mr. Saefke and Mr. Dynes point out. If there is any deception in the use of a firm name, then it would be a violation of our ethical considerations, as I understand it. I don't think we really needed last year's resolution, and I do think we need to rescind it. I think, for example, just in my area of the State, and as long as we've gone into names of individuals, I think of Byrne & Cook at Bowman. Mid Byrne established that practice back in 1905 or something like that. He still lives in Bowman and, as a matter of fact, even though he's been retired for 10 years, he's now going back into active practice. I don't think Maurice Cook could have ripped his name off at all during that ten years, and I don't think he would want to nail it back up. I don't think that we should interfere in each other's choice of a firm name so long as there is no deception. I practice solo, so it doesn't affect me at all, and I'm not disassociated from any solo practice and I don't think I meet the other qualifications. I just think we should rescind it and let our present procedure take care of any deception or misleading practices, including "Speedy Trial."

MR. DOUGLAS CHRISTENSEN:

My name is Doug Christensen. I have a couple of questions, first of all, before I comment on comments that have been made.

First of all, the resolution, as I understand it, last year was an ethical consideration for our Bar Association. Is this correct or incorrect? In other words, was this to guide our Bar Association in the year 1975 and thereafter?

PRESIDENT KIRBY:

I would have to let the wording of the resolution stand on its own, because I don't have it committed to memory, for one thing, and—

MR. CHRISTENSEN:

Well, the reason I raised the question, I am led to believe by Mr. Johnson's comments that if someone had submitted a complaint, that there would have been no jurisdiction upon which to act because of the status of the resolution. Is that correct or incorrect?

MR. J. PHILIP JOHNSON:

Well, essentially the Supreme Court's interpretation was that the canons—if there was to be any change in the Code of Professional Responsibility, why there would have to be some formal hearing procedure, but it was not clear as to exactly how the Code would be amended or the position of the Bar Association with respect to amendment of the Code and whether the entire Code should be adopted or the rules as they stood really didn't—there wasn't any specific action that the Court could take to define the situation any further.

MR. DOUGLAS CHRISTENSEN:

Well, being somewhat new in the practice of law—I've only practiced for three years—I do have some general thoughts on the matter. But it would be my understanding that if someone were to have complained, nothing could have been done, or perhaps if someone were to complain, if the resolution is not rescinded, the complaint would lie to the appropriate grievance commission to that portion of the State in which you live. Would this be correct?

MR. J. PHILIP JOHNSON:

Well, all of the complaints—the method of dealing with complaints against attorneys is through the Grievance Commission; yes.

MR. DOUGLAS CHRISTENSEN:

All right. Then this resolution would have been something that the grievance commissions—the various grievance commissions that we have—could have then looked at the complaint in light of the resolution and see

whether or not this was the conduct that the State Bar Association wanted its members governed by, I would assume.

So along these lines, I'd like to add two points: One, the resolution was in existence for one year. Now the mere fact that nobody filed a complaint should not be a reason to rescind the resolution. We have an obligation as attorneys, especially in this day and age, to regulate ourselves within our own private practice, within the localities in which we exist, and as such some of those people whose firms have been mentioned today were aware of this resolution. It would seem to me that in light of this resolution and the status of the Bar after last year's meeting, that these individuals perhaps had a duty to perhaps change their firm name or else to investigate it further. So the fact that nobody has complained doesn't mean that we shouldn't regulate ourselves.

And the second thing is: As a young attorney it is hard to fight the memory of a deceased stellar lawyer in a community in which you are practicing, and it makes it harder for young attorneys to compete with the deceased image. I think what Mr. Saefke said when he said "If you are good and stand on your own two feet, you don't have to ride on the coattails of someone else" — along these lines, I would support the opposition to the rescinding of this resolution.

PRESIDENT KIRBY:

We are on the substitute motion made by Mr. Dynes, actually.

Are you ready to vote on that? The substitute motion would require that last year's resolution be submitted to the Supreme Court for hearing and action and that the Rules of Disciplinary Procedure be amended — proposing that they be amended. The question has been called. All in favor say "aye." Opposed? The Chair is in doubt. We'll ask for a division by standing. Tellers, will you please divide yourselves and stand at the front of the room here? Then I'll ask all those in favor of the substitute motion to rise and be counted.

MR. ROBERT DAHL:

Explain the substitute motion.

PRESIDENT KIRBY:

The substitute motion would require that last year's resolution be submitted to the Supreme Court, with the request that the Rules of Disciplinary Procedure be amended to adopt that as a part of the disciplinary procedure.

All right. Be seated. All those opposed, please rise.

The substitute motion—is carried, and that disposes of the main motion.

MR. BYRON EDWARDS:

We have two additional resolutions.

I would like to report on both of these to you. The first one is No. 10. This was submitted by the Committee on Memorials, chairmaned by Floyd Sperry, and this resolution is with reference to deceased members of our Association during the last year—E. T. Conmy of Fargo, D. Phelps of Grafton, Steven Haukness, formerly of Maddock, and Russell Schmidt of Minot. This is the usual form of memorial, and in this connection separate memorials for each of the deceased lawyers have been prepared and filed with the Secretary of the Association. And with that report, the Committee submits the resolution, urging the adoption of the memorials as submitted.

Also, the Committee on Resolutions approved the form of the resolution and, also, in this case urges its adoption.

The Committee also has Resolution No. 11, which is:

"WHEREAS, the Stutsman County Bar Association has hosted the Seventy-Fifth Annual Meeting of the State Bar Association of North Dakota, and

"WHEREAS, the hospitality, preparation, accommodations and social functions of this Annual Meeting are of such a superb nature,

"NOW, THEREFORE, BE IT RESOLVED that the State Bar Association of North Dakota extends its sincere and deep appreciation to the Stutsman County Bar Association for making this great Annual Meeting such a success." And the Committee moves the approval of Resolution No. 11.

PRESIDENT KIRBY:

Since we have a motion to approve Resolution No. 11, which is the one congratulating and thanking the Stutsman County Bar Association, and so on, is there a second? Seconded by Telmar Rolfstad. Question. All in favor say "aye." Opposed? Unanimously carried.

Now the report and resolutions on memorials: There's one—or it mentions each of the gentlemen named by the Resolutions Chairman—E. T. Conmy, D. Phelps, and it contains the usual language extending sympathy to the families, and the like. Do you want that one read— If not, I'd entertain a motion to adopt it. Okay. I've got John Hjellum and I've got Rolfstad again seconding. Discussion? The question has been called. All in favor say "aye." Opposed? That's unanimously carried.

Thank you, Bryon.

Tim Davies will have a further resolution to offer.

MR. TIM DAVIES:

You've all got copies or had access to copies of the Federal Rules of Evidence and the changes which the Procedure Committee has proposed, and about all I'll say is that we have been working on these since 1972 and the draft which we are recommending to the Association conforms fairly closely to the Federal Rules, and the reason

that you don't each have one is because they're that big, and I would move that the Association—or resolve that the Association approves the submission to the Supreme Court of the proposed Rules of Evidence and, also, the Amendments to the Rules of Civil and Criminal Procedure, which are attached to the handout which each of you has.

PRESIDENT KIRBY:

We have a motion. Is there a second? Seconded by Dick Baer.

Now discussion on the motion?

MR. KENT HIGGINS:

A point of information: Was this material available prior to this Annual Convention? I, for example, have not yet seen a copy of the proposed changes in Criminal Rules.

MR. TIM DAVIES:

The only proposed changes are strictly housekeeping changes, making reference—well, for instance, let's just take one:

"In all trials the testimony of witnesses shall be taken orally in open court, unless otherwise provided by law, by these rules, the North Dakota Rules of Evidence or other rules adopted. . ."

That's the only change in any of the criminal rules—are to add "the North Dakota Rules of Evidence" as a citation in the rule.

The same with the Civil Rules.

PRESIDENT KIRBY:

Thank you. I point out, Mr. Higgins, also, that the motion here is to submit these to the—with an application to the Supreme Court, which will hold hearings on them. Now proceed, if you will.

MR. HIGGINS:

Well, that is well and good, but I do know this much about the new proposed Code of Evidence: It produces profound changes in the law on evidence as we know it, and it seems for us to take action at this time, with very little opportunity to have examined the material, without a resolution before us clearly alerting us that this was going to be a matter to be passed upon by this entire Bar Association, strikes me as buying a pig in a poke, and I'm strongly opposed to the resolution. I'm perfectly willing to consider and listen to the material, if we have time to consider it at some length.

PRESIDENT KIRBY:

Mr. Higgins, I would also point out that, in fairness to Mr. Davies, that this was brought up and proposed yesterday; so that it is a legitimate item of business to be discussed. Secondly, I also point out to you that the Bylaw amendments which you just adopted will require that material that is to be considered at the annual meetings henceforth will have to be filed with the Secretary in advance so that it can be circulated, and we attempted to do that through **The Gavel** this year, but, unfortunately, we didn't have all of the material, you see.

MR. HIGGINS:

Which raises a point of parlimentary inquiry, and that is does that Resolution we just adopted apply to this meeting, as well?

PRESIDENT KIRBY:

No, I don't believe it does. In other words, if we'd have considered this ten minutes ago, that we'd have been under the old rule, and now we're under the new one. Is that what you're saying?

MR. HIGGINS:

I guess that's what I'm saying. But, gentlemen, I would argue at least the spirit, if not the letter of the rule, should apply.

PRESIDENT KIRBY:

Well, we were quite concerned about the fact that there was no requirement in our Bylaws heretofore for that. Further discussion? If not, are you ready for the question?

All those in favor say "aye." Opposed? The "ayes" have it, and it will be submitted in due time to the Supreme Court.

Now as far as the election of officers is concerned—and that is the last major item that I know of that we have on the agenda—we'll use a secret ballot. Tellers have already been appointed. We'll use a secret ballot only in cases where there are two or more candidates nominated. As far as nominating speeches are concerned, we'll ask that there be one nominating speech, limited to three minutes, and a maximum of three seconding speeches, which will not be longer than two minutes each.

Now we'll be electing, first, a Secretary-Treasurer, and then we will be electing a President-Elect.

The President is not elected under our current Bylaws. The President-Elect last year is automatically elevated to the office of President at the next succeeding annual meeting.

Now we'll call, first, for nominations for Secretary-Treasurer. Yes, sir.

MR. JOHN GORDON:

John Gordon from Williston.

I'd like to place in nomination for Secretary-Treasurer Bill Zuger from Bismarck. Bill has recently been elected Chairman of the Young Lawyers Section and, in accordance with past practice, in that position has been double duty of serving as Secretary-Treasurer of the Association. Bill has been active in the Association in numerous committees. I think you've heard his report from the Law Office Management Committee. He is an aggresive young man, and I endorse him for that position. Thank you.

PRESIDENT KIRBY:

Seconding speeches for Bill Zuger.

MS. GEORGIA POPE:

I would like to second the nomination for Mr. Zuger. I think he's proven himself a very hard-working and conscientious person in this organization in the past, and I think he'd bring all those qualities to this office, if he is elected, and I would urge you to vote in that respect.

PRESIDENT KIRBY:

Thank you. Any further seconding speeches for Bill Zuger? If not, are there any other nominations? Any further nominations for Secretary-Treasurer? We have Bill Zuger from Bismarck nominated. If not, I'll entertain the usual motions.

MR. JOHN HJELLUM:

I'll move that the nominations be closed and a unanimous ballot be cast for Bill Zuger.

PRESIDENT KIRBY:

Motion by John Hjellum; seconded by Harold Anderson. All in favor say "aye." Opposed? It's carried.

Mr. Secretary, will you cast such unanimous ballot? You do? (Secretary-Treasurer Dwight Kautzmann nodded.)

He acknowledges that duty has been performed and, therefore, I declare that Bill Zuger has been duly elected as Secretary-Treasurer.

We'll now call for nominations for President-Elect.

MR. JOHN HJELLUM:

Mr. President. It's my pleasure to nominate Clinton R. Ottmar from Jamestown for President-Elect. Clint's 47 years of age, born in Wishek, graduated from the University of North Dakota, and has been practicing since 1955. All of those years he's been practicing in Jamestown, which, of course, speaks very well for him. He's the senior member of the firm of Ottmar, Nething & Pope, and he's the Past President of the Stutsman County Bar, having served two terms as such President. He's the Past President of the Fourth Judicial Bar, and he's a member of the ABA. He's a former Stutsman County State's Attorney, and during that period of time he was the Director and Secretary of the State's Attorneys Association. He's served on various committees of the State Bar Association, and I'm not going to outline those, but there are several of them, including the Executive Committee. He's a man in the prime of life and capable of doing his best job at this time. I don't know in which group he falls with reference to the talk we had at noon, but I can tell you this: That he's a motivated man and he does his job, and I'm very proud to nominate him.

I'll like to say one more thing about Clint, and that is he's a big man for a big job.

PRESIDENT KIRBY:

Do we have seconding speeches for Clint?

MR. SCHLOSSER:

Jim Schlosser of Bismarck. I'm a former member of the Stutsman County Bar, now a member of the Burleigh County Bar, and I welcome the opportunity of seconding the nomination of Clint for President-Elect of the Association.

PRESIDENT KIRBY:

Thank you. Further seconding speeches?

MR. BYRON EDWARDS:

Mr. President—Byron Edwards from Grand Forks. I had a lot to say about Clint, but in view of the time and the limitations set by the Chair, the only thing I can say is that there is a lot of Clint. I've been acquainted with Clint since his days in law school and was pleased to have him associated with our firm during two and-a-half years that he attended law school. I've been acquainted with him, of course, during his legal career following this, and it is my pleasure to second his nomination.

PRESIDENT KIRBY:

Thank you.

MR. REUBEN J. BLOEDAU:

Mr. President and lawyers: I, also, want to second the nomination of Clint Ottmar as President-Elect. I could say so many nice things about him, but I am afraid, if I took up so much of your time, I'd lose him some votes. I'd simply urge that you elect Clint Ottmar as President-Elect.

PRESIDENT KIRBY:

Any further nominations for the office of President-Elect?

MR. DOUGLAS CHRISTENSEN:

My name is Douglas Christensen. I'm from from Grand Forks, North Dakota, and I'd like at this time to place the name of Richard Baer of Bismarck, North Dakota, in nomination for President-Elect of the North Dakota State Bar Association.

Mr. Baer was born and raised in Langdon, North Dakota. He then attended the University of North Dakota, received his B.A. degree in 1966, and his Juris Doctor degree from the University of North Dakota Law School in 1969. Since that time he has been a member of the Burleigh County Bar. When he first arrived in Bismarck, he was the Assistant State's Attorney for Burleigh County, from 1969 to 1971. Having completed that portion of his career, he moved into private practice, and since 1971 has been associated as an equal partner, I guess, in the firm of Christensen & Baer. Although I don't know if he's a junior partner or not, I don't think he'd prefer to be known as a junior partner. Throughout his legal career he has been active in the Bar Association activities. During my tenure in Law School, Mr Baer was two years ahead of me, and I found he was a very active mover and shaper of things at the Law School level. Upon his completion of his law school career, he then moved into the State Bar Association activities and organized the Young Lawyers Section, of which he later became President. Having been the President of the Young Lawyers Section, he then served a term as Secretary-Treasurer of the State Bar Association. Since that time he has been active in various committees in the State Bar Association, and it is my understanding that as to the job that he can do for the State Bar Association, if elected President—it is my understanding that in 1976 or the next Annual Meeting will be held in Bismarck, North Dakota. As such, he would be in a position to coordinate the activities between the Executive Committee and the Burleigh County Bar to assure that they have an equally-successful Bar meeting as we had in the past in Jamestown, Fargo, Dickinson, et cetera. In addition, in 1977 we will be having the Legislative Session, which, of course, always meets in Bismarck, and Mr. Baer would then be our President. He would be in a position at that time to take an active voice and speak on behalf of the State Bar Association. He would represent the State Bar Association in those matters in the Legislature in which we would like to express our views.

Thank you.

PRESIDENT KIRBY:

Seconding speeches for Richard Baer?

MR. KENT HIGGINS:

Mr. Chairman. When Dick asked me if I would be willing to speak briefly on his behalf to second his nomination, I said that, since I knew Dick pretty well, I would have to be honest if I did that, and in which case Dick said "Why don't you be very brief?" So why don't I simply say that it gives me great pleasure to second the nomination of Richard Baer for the position of President-Elect.

PRESIDENT KIRBY:

Thank you very much.

Other seconding speeches for Richard "Dick" Baer?

I'll call for further nominations at this point for President-Elect.

Hearing none, may we have a motion that nominations be declared closed? We'll take Raymond Rund. And who was the second? J. Philip Johnson.

You've heard the motion. All in favor say "aye." Opposed? That's carried.

The tellers will now circulate among you the ballots.

(Ballots were distributed.)

PRESIDENT KIRBY:

If I may have your attention, gentlemen.

On the petitions to the Supreme Court to adopt and promulgate the Code of Evidence and amendments to the Rules of Civil and Criminal Procedure, we still require one signature of a lawyer from the Second District and two signatures of lawyers from the Third District. Those signing from the Second were Dahl, Benson, Hartl—and I can't even read the last one, but—I think it's Argue. And in the Third District, the signatures that we have are Kretschmer, Kettleson and Chesrown. So we need two from the Third and one from the Second District, and Judge Johnson will have the copy; so if you will see him, please, to give your signature.

Any other business to come before the Association?

If not, we will await the report of the tellers.

Gentlemen, I report that Clinton Ottmar has been elected as your President-Elect. Congratulations!

And there being no further business to come before this session, I'll entertain a motion to adjourn. Motion by Harold Anderson; seconded by Dewey Kautsmann. All in favor say "aye." Opposed? Carried unanimously.

(Concluded at 5:13 p. m., Friday, June 20, 1975.)

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