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Memorials

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BENCH AND BAR

Memorials

The following tributes to the memory of those members of the Bar of North Dakota who have passed away have been prepared by the Committee on Memorials of the North Dakota State Bar Association. The Committee is under the chairmanship of the Honorable J. H. Newton, Esq., Clerk of the Supreme Court of North Dakota, and consists of Messrs. A. W. Aylmer, A. W. Cupler, T. I. Dahl, J. A. Hyland, Thomas G. Johnson, Joseph G. Forbes, and L. R. Nostdal.

D. BRUCE McDONALD

D. Bruce McDonald, died at Devils Lake on December 25, 1953

Mr. McDonald was born at Grand Forks, North Dakota, the son of Don and Addie Leet McDonald, on June 2, 1891. He received his education in the Grand Forks Schools and both his pre-legal and legal education at the University of North Dakota, from which he graduated on June 18, 1913. He was admitted to the North Dakota Bar on June 30, 1913. Mr. McDonald was cashier of the Hansboro State Bank and practiced law at that point from 1915 until December, 1918. Beginning in March, 1919, he was cashier of the Maxbass State Bank and engaged in the practice of law at Maxbass. He also served as Postmaster at Maxbass for ten years. He moved to Devils Lake in 1935 and held the offices of Public Administrator and Police Magistrate. At the time of his death he was Juvenile Commissioner, United States Commissioner and County Judge of Ramsey County.

Mr. McDonald was prominent in State fraternal circles, holding membership in the Elks, Masons and Odd Fellows. He served as Grand Master of the Odd Fellows of North Dakota in 1936; also on the Board of the Odd Fellows Home and was Vice President of the Board at the time of his death. He was Past Worshipful Master of the Masonic Lodge, and also Grand Patron of the Eastern Star and a member of Kem Temple. He also served as President of the Salvation Advisory Board at Devils Lake.

On November 30, 1916, Mr. McDonald was married to Stella Brown of Winnipeg, Manitoba. There was one son who died in infancy. Mrs. McDonald and one brother, Dr. A. L. McDonald, of Duluth, Minnesota, are the only survivors.

THEODORE SWENDSEID

Death, as the result of a heart attack, came to Theodore Swendseid, Marmarth, North Dakota, on January 11, 1954.

Mr. Swendseid, son of A. R. and Katrina Swendseid, was born at Petersburg, North Dakota on June 8, 1886. He received his high school, liberal arts and law education at the University of North Dakota, graduating from the Law Department in June, 1912, and was admitted to the Bar of North Dakota on June 10th of that year. After graduation he moved to Montana where he filed on a homestead and also practiced law for a time at Harlem. He returned to North Dakota and located at Marmarth and was many times elected state's attorney and at the time of his death was serving his twenty-first year in that office.

Mr. Swendseid was married to the former Laura Smith of Larimore, North Dakota. He is survived by her and two sons, Roger, of Los Angeles and Russell, of Downey, California. There also survives one sister, Irene Swenseid, North Hollywood, California, and three brothers; Ralph E., Stanley, a member of the North Dakota Bar, Clarence, Grand Forks, and Harold, North Hollywood, California.

Mr. Swendseid was active in community and war work in his vicinity and a respected citizen of Slope County and of high standing in the legal profession in his District and the State.

Funeral services were held at the Congregational Church at Marmarth with burial at that place.

RALPH C. MORTON

Ralph C. Morton, Bismarck attorney, died February 12, 1954.

Mr. Morton was born June 24, 1883 at St. Paul, Minnesota, the son of DeWitt C. Morton and Nina S. Morton. His preliminary education was received in the public schools of St. Paul, supplemented by attendance at a St. Paul business college. He later enrolled in the St. Paul College of Law and graduated therefrom in 1909 and was admitted to the Minnesota Bar that year and to the Bar of the State of North Dakota on June 5, 1909. In 1910 he entered the practice of law at Lansford, North Dakota and continued practice there until 1920 when he removed to Carrington. In 1929 he was appointed Assistant Attorney General by the then Attorney General James Morris and continued in that capacity until 1933. Upon his appointment he moved his residence to Bismarck and has since

made his home at Bismarck. From 1934 to 1936 he was a member of the legal staff of the Federal Land Bank at St. Paul.

In 1913 he was married to Laura Rabischung. Besides Mrs. Morton, Mr. Morton is survived by three sons, John, George E. and James Morton, all of Bismarck, and two daughters, Mrs. Hugh (Marian) Moore, Pomona, California, and Mrs. Dana (Joan) Catlin, Whittier, California. One son, Ralph Clinton, Jr., preceded him in death.

For the past several years Mr. Morton had not been active in the legal profession, but had nevertheless kept up his membership in the North Dakota Bar Association. In recent years Mr. Morton's time was devoted to the management of extensive real estate holdings in Bismarck. Mr. Morton was an ardent sportsman and hunter and active in the Bismarck gun club.

Funeral services and burial were at Bismarck on February 16, 1954.

F. E. McCURDY

Fred E. McCurdy, resident and practicing attorney at Bismarck, died in a Bismarck hospital on February 22, 1954, following an illness of several months.

Mr. McCurdy was born at Musquodobit, Nova Scotia on July 9, 1879, the son of George J. and Joanna McCurdy, and came with his parents to Tyner, Pembina County, Dakota Territory, in 1881. He received his early education in the grade schools at Tyner, later enrolling at the University of North Dakota where he graduated with a degree of Bachelor of Arts. He later studied at the College of Law, University of North Dakota, and received his LL.B. in 1907. He was admitted to the Bar of the State of North Dakota on June 8, 1907.

Following his graduation and subsequent admission to the Bar he established a law practice at Richardton, North Dakota, remaining there until moving to Bismarck in the year 1910 where he practiced his chosen profession until his death. Mr. McCurdy served several terms as City Attorney for the city of Bismarck and as States Attorney for Burleigh County.

On June 9, 1909, Mr. McCurdy married Elsa Finley in Gilby, North Dakota. Besides Mrs. McCurdy he is survived by one daughter, Mrs. Ruth Farr, Whittier, California, and one son, Dr. Robert G. McCurdy, Atlantic Highlands, New Jersey, and one brother, A. C. McCurdy, Backoo, North Dakota.

He was a member of the Masonic Lodge; a member of the Bismarck Lions Club, of which he served as president in 1947; a member of the Burleigh County Bar Association, serving as its President in 1952; and a member of the Presbyterian Church at Bismarck, serving as an Elder of that Church.

In his practice Mr. McCurdy was a tireless worker and always alert to protect the interests of his clients and was at all times faithful to his duties as an attorney and counselor at law and to the ethics of his profession.

MARIE K. E. STIENING

Marie K. E. Stiening died at Fargo, North Dakota as the result of a heart attack on March 9, 1954.

Miss Stiening was born February 27, 1898 at Foster Pond, Illinois. In 1910 the Stiening family moved to a farm near Anamoose, North Dakota, and ten years later moved to Felton, Minnesota. Miss Stiening attended the schools at Felton and was graduated from the Ada, Minnesota, high school. She enrolled in the North Dakota College of Law and graduated in 1918, passed the bar examination the same year, and upon reaching legal age was admitted to the North Dakota Bar on March 18, 1919. She immediately thereafter entered the practice of law in Fargo. Miss Stiening's activities were largely devoted to the business of insurance, serving as Secretary-Treasurer of the Russell-McNair Insurance Agency, and as Secretary of the Dakota Mutual Hospital Service Association. She did, however, maintain her standing as a member of the North Dakota Bar Association during all this time.

Miss Stiening was a member of the Lutheran Church, Past President of the Fargo American Legion Auxiliary, the Quota Club, and Business and Professional Womens Club, as well as having served on the Board of the YWCA and taking an active part in many civic movements.

Miss Stiening is survived by one brother, Henry C. Stiening, an attorney of Moorhead, Minnesota, and two sisters, Miss M. Elizabeth Stiening, a member of the staff of Concordia College, and Mrs. A. L. (Jenni) Haugen, Renton, Washington.

CLARENCE F. MERRELL

Clarence F. Merrell, former Fargo attorney, died at Indianapolis, Indiana, on February 10, 1954. Mr. Merrell was admitted to the North Dakota Bar on December 9, 1912, and practiced at Fargo for

about two years, being an associate of the firm of Watson, Young & Lawrence. News of his death was received by Chief Justice Morris with whom he served on a military tribunal for the trial of war criminals at Nuernburg, Germany.

OPINION OF THE ATTORNEY GENERAL

Mrs. Berta E. Baker
State Auditor
Bismarck, North Dakota

Dear Mrs. Baker:

Our attention is called to Chapter 39-17 of the 1953 Supplement to the 1943 Revised Code and particularly how payment should be made from the Unsatisfied Judgment Fund.

The auditing board has, in the past, been acting upon each case submitted for payment and considerable difficulty has been encountered in regard to pleadings filed in each law suit.

Provision for payment is made in Section 39-1705. You will notice that if the court is (1) satisfied of the truth of the matters shown by the judgment creditors as required by subsection 3; (2) if the applicant has taken all reasonable steps to enforce the collection of said judgment; (3) that there is good reason for believing that the judgment debtor has no property liable to be sold or applied in satisfaction of the judgment or of the balance owing thereof; (4) is not insured under a policy of automobile insurance by the terms of which the insurer is liable to pay, in whole or in part, the amount of the judgment; *the court shall make an order directed to the state treasurer requiring him, subject to the provisions of subsection 7 hereof to pay from said fund the amount of the judgment or the balance owing thereof, and the state treasurer shall comply with such order.*

We think that this language is clear and when properly analyzed, you will notice that the court makes the determination whether or not all necessary steps have been taken under the act, whether the pleadings, records and files in the case are in order as better shown by the numbered sections appearing above, will order the state treasurer to pay the amount of such judgment.

Nothing is said about the auditing board, nor is there any provision anywhere in the act giving the auditing board the authority

to review the decision of the court or the files, pleadings and records in the case. It is, therefore, our opinion that the auditing board should cease to review applications made to the Unsatisfied Judgment Fund, that it should return to the office of the attorney general all pleadings, papers, records and files that it may now have on hand, the same to be filed in the file of the case now on file in the office of the attorney general and that the state treasurer shall in the future comply with Section 39-1705 by acting upon the order of the court as therein directed.

Yours very truly

E. T. CHRISTIANSON,
Attorney General.

