



1947

**Meeting of the Executive Committee of the State Bar Association,
State of North Dakota, at the Prince Hotel in Bismark, North
Dakota, on May 3rd and 4th, 1947**

North Dakota State Bar Association

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MEETING OF THE EXECUTIVE COMMITTEE OF THE
STATE BAR ASSOCIATION, STATE OF NORTH DAKOTA,
AT THE PRINCE HOTEL IN BISMARCK, NORTH DAKOTA,
ON MAY 3rd and 4th, 1947.

Members present: H. A. Mackoff, President, Mack V. Traynor, Roy A. Ployhar, Olaf H. Thormodsgard, Vernon D. Forbes, Eugene A. Burdick, Wesley H. Esterly, Roland A. Heringer and Clifford Jansonius.

The meeting opened with a report by the president on the financial affairs of the association. It was the opinion of the committee that the president employ a qualified accountant to make an audit of the association's books up to the time in which funds are received from the 1947 law setting aside a portion of the filing fees for Bar Association purposes. This was felt advisable in that the State Examiner of the State of North Dakota will conduct all future examinations.

The Hon. Vernon Johnson of Wahpeton, North Dakota, speaker of the House during the 1947 session of the legislature and the Hon. Manfred Ohnstad of West Fargo, a member of the House of Representatives during the 1947 session, both being members of the Legislative Advisory Committee, appeared and a general discussion was had concerning a proposed legislative educational program.

It was moved by Mr. Burdick and seconded by Mr. Ployhar, that the President appoint a committee of from three to five members to prepare a legislative manual, including rules and regulations and explanatory matter relative to legislation, and investigate the advisability of conducting classes of instruction for newly elected legislators, particularly and any other members of the legislature who might wish to attend. Motion carried.

It was moved by Mr. Forbes, seconded by Mr. Burdick, that the revenue from the increased filing fees be deposited in the general fund of the State Bar Association. Motion carried.

At 12:30 the meeting adjourned for lunch.

AFTERNOON SESSION

A discussion was had concerning H. R. 1639, now pending in Congress, which is a bill to amend the employer's liability act so as to limit venue in actions brought in the United States District Courts or State Courts of the district or State or district in which the accident occurred, or in which the employee suffering injury or death resided. It was moved by Mr. Jansonius, seconded by Mr. Heringer, that the bill be carried in the next issue of Bar Briefs, with the view of calling the bill to the attention of members of the bar and suggesting that they express their views on the bill by writing their Congressmen and Senators.*

Mr. John Zuger, Bismarck, North Dakota, a member of the annual meeting committee, appeared and a discussion was had concerning the annual meeting. It was agreed by the committee that the annual meeting be held the week of the 25th of August.

It was moved by Mr. Burdick and seconded by Mr. Forbes, that the President be authorized to get in touch with Professor Henry

* See infra, page 8.

Rottschaefer of the University of Minnesota and invite and employ him to attend and present a tax course at the annual meeting at an expense of approximately Eight Hundred (\$800.00) Dollars, and if he is not available, then to secure some other eminent authority. Motion carried.

It was suggested that Professor Rottschaefer be invited to act as banquet speaker.

It was the opinion of the committee that the President of the American Bar Association should be invited to speak at the convention.

It was moved by Dean Thormodsgard, seconded by Mr. Heringer, that the bill of \$15.00 for flowers from the Bar Association sent to the Judge Brownson funeral be paid. Motion carried.

It was moved by Mr. Burdick, seconded by Mr. Ployhar, that the expenses incurred in making out the emergency laws be paid. Motion carried.

Considerable discussion was had concerning the new fee schedule which the Executive Committee was authorized to prepare at the last annual meeting. The fee schedule was unanimously adopted item by item.* The conference then adjourned for dinner.

EVENING SESSION

It was moved by Dean Thormodsgard and seconded by Mr. Traynor, that the President's expense bill be paid. Motion carried.

A letter from Mr. Earl Walter was read and a discussion had relative to the same concerning nominations to the State Bar Board. No action was taken as it was felt that sufficient latitude was given in the Constitution and By-Laws of the Association.

Correspondence was read from the State Welfare Board concerning fees for probating in welfare cases. It was moved by Mr. Ployhar and seconded by Mr. Burdick that the fees to be charged for probating cases in which the Welfare Board was interested be the same as those charged for other estates. Motion carried.

Mr. Harold Bangert of Fargo, a member of the annual meeting committee, appeared before the conference and presented his views on the matter.

Considerable discussion was had concerning an educational program.

In view of the fact that the meetings of the District Bar Association are some times impractical because of geographical conditions, it was moved by Mr. Traynor and seconded by Mr. Burdick, that Clifford Jansonius study the district set-up and provide for regional organizations of the Bar Association in lieu of district associations where that arrangement is deemed more practical. Motion carried.

At 11:00 P. M., the meeting adjourned until 9:30 A. M. Sunday morning, May 4th, 1947.

MORNING SESSION

It was moved by Mr. Burdick and seconded by Mr. Ployhar that the fee schedule as agreed to by the executive committee be adopted and

* See *infra*, page 9.

that 3000 copies be printed for distribution among members of the bar as the official fee schedule for 1947.* Motion carried.

Discussion was had relative to setting up legal aid societies. It was the opinion of the Executive Committee that it would not be practical in North Dakota at this time.

The President presented a questionnaire which he had received relative to qualifications for admission to the Federal Bar. It was the opinion of the committee that any one admitted to practice in the highest Court of the State and the Federal Court of that State should be admitted to all Federal Courts.

A discussion was had concerning the payment of members of the editorial board. It was agreed by the committee that the editorial board should in some way be compensated for their work in connection with the quarterly, notwithstanding their kind offer to serve gratuitously. It was felt, however, that the matter should be studied by the President and a report made to the committee at their next meeting.

A letter of application for the position of Executive Secretary of the State Bar by Mr. I. M. Oseth, a member of the North Dakota Bar, who has recently retired from military service, was read. Considerable discussion was had concerning this position. It was agreed by the committee that applications for this position would be received on either a full or a part time basis, and that applicants should state their qualifications and the salary expected. It was agreed that if it was to be handled on a full time basis, an office should be maintained at Bismarck, and if on a part time basis, that would not be required. It was felt that an applicant should have editorial and public relation experience.

Dean Thormodsgard reported that a new man is to be appointed at the University who has had considerable editorial experience and who will teach part time, devoting the balance of his time in training students to do legal writing. The Dean felt that this would contribute greatly to Bar Briefs in the future.

Meeting adjourned at 12:00 o'clock noon.

CLIFFORD JANSONIUS
Acting Secretary.

CONGRESS OF THE UNITED STATES
House of Representatives
Washington, D. C.
13 March 1947*

Mr. Clifford E. Jansonius,
Executive Committee,
State Bar Association,
Bismarck, North Dakota.

Dear Sir:

As you know, under existing law, railroads engaged in interstate or foreign commerce are liable in damages to their employees who suffer injury or death, resulting from negligence of the Railroad, while acting within the scope of their employment (45 U.S.C. 51 *et seq.*). Actions to recover damages may be brought in the United States district court for

*This letter, from Congressman John Jennings, Jr., of the second district, Tennessee, is reprinted here for the background it furnishes to H. R. 1639.

* See *infra*, page 9.

the district of the carrier's residence, or in which the cause of action arose or in which the carrier is doing business. State courts have concurrent jurisdiction with federal courts and an action commenced in a State court may not be removed to a federal court.

The effect of the Acts Venue Provision, as Mr. Justice Jackson stated in *Miles vs. Illinois Central Company*, 315 U. S. 698 (1941) is to permit a plaintiff to "go shopping for a judge or jury believed to be more favorable than he would find in his home forum." A further evil has stemmed from the venue provision in that a few lawyers, located principally in certain of our larger states, have been employed to represent a number of the injured employees of railroads though the residence of the injured employee was in a distant state and his cause of action likewise arose in this distant state. I am reliably advised that on August 15, 1945, of 214 cases under the Federal Employer's Liability Act pending in Chicago, 168 were from outside Cook County, the normal territorial jurisdiction of the Chicago courts. Only 81 were from the State of Illinois. Of the remainder, 47 were from Indiana, 37 from Michigan, 16 from Ohio, 8 from Texas, 7 from California, and 18 from various other states. This illustrates a localized situation. However, the evil is nation-wide in extent and information which has been made available to me, at my request, indicates the existence of a widespread traffic in lawsuits under this Act. For instance, during the period July 1, 1941-June 30, 1946, 7 railroads operating in the State of Pennsylvania had 325 suits and 641 claims transported to foreign jurisdictions, chiefly to Cleveland, Ohio, New York City and Chicago. Seven railroads operating similarly during this same period, in the State of Ohio, had 129 suits and 186 claims transported to foreign jurisdictions, chiefly Chicago, Illinois and Minneapolis, Minnesota. The evil is not limited to the larger states as is reflected by the fact that 5 railroads, operating during the aforesaid period in the State of Oklahoma, had 79 suits and 5 claims transported to foreign jurisdictions, chiefly Minneapolis, Minnesota and St. Louis, Missouri. I am further advised a certain firm of attorneys in Oakland, California, during the period aforesaid, instituted 643 suits and handled 6 claims arising outside of California, or the jurisdiction wherein the accident occurred or the injured party resided at the time of the accident.

This traffic in claims arising under the Federal Employers' Liability Act has arisen in part from the activity of certain unethical attorneys, who send runners throughout the United States soliciting claims, and in part from the activity of the so-called "Legal Aid Departments" of certain railroad employee labor unions, or Brotherhoods. I am advised that these legal aid departments have selected certain lawyers and law firms in various cities, designating them "Regional Counsel". Upon an employee of a railroad being injured, an investigator for the Brotherhood calls upon the injured man, advising him what his claim should be worth and informs him of the legal services the Brotherhood has made available to him. This is sufficient in many instances to forestall a settlement, and to secure the case for the Regional Counsel. In recognition of the volume of business thus obtained, the contingent fee percentage in the Brotherhood contract is somewhat lower than the market. An arrangement by the Regional Counsel and the Brotherhood whereby a percentage of all fees was paid over by counsel into the latter's treasury has been admitted in several case records.

The foregoing illustrates but in a small measure the existing evil. Undoubtedly, you have seen in your own state, cases which properly should have been handled by local attorneys and tried in local courts, spirited away to some attorney for trial in a foreign state. This practice deprives the local Bar of litigation which properly should be theirs, and causes the entire legal profession to be held in disrepute.

During the First World War a general order was issued by the Director General of Railroads, requiring suits against carriers under federal control to be filed where the plaintiff resided, or where the cause of action arose. This effectively curbed the evils aforementioned during the period the order was in effect. (General Order No. 18, Sustained, *Alabama & Vicksburg R. Company v. Journey*, 257 U. S. 111 (1921)). However, nothing of this kind was promulgated during the recent war. To stop the traffic in law suits arising under the Federal Employers' Liability Act, various bar associations have intervened in pending cases in an effort to debar a

particular attorney from participation therein, and various defending railroads have sought to enjoin particular attorneys from unethical conduct in the solicitation of cases arising under this Act. Though these efforts are commendable, yet, in my opinion, the evil should be stopped at its root, and this, by an amendment to the venue section of the Federal Employers' Liability Act.

I have introduced in the present Congress a bill to amend this Act, so as to limit venue in actions brought in United States District Courts, or in State Courts. Enclosed herewith for your information, is a copy of the aforementioned bill. I have done this in consequence of my desire to see the evils curbed and the endorsement of the principles enunciated in this Bill by the American Bar Association, and many State and local Bar Associations, including the Tennessee State Bar Association, of which I am a member.

It is my sincere belief that a passage of this bill will serve the ends of justice and eliminate an evil which has grown into the proportions of a racket. This is to request the bar association, of which you are President, to consider this proposed amendment, if it has not previously done so, and to pass such resolutions thereon as it deems fit and proper.

I will appreciate you advising your Congressman and Senators of the action taken by your Bar.

Very truly yours,
JOHN JENNINGS, JR.

80th Congress, 1st Session
H. R. 1639

IN THE HOUSE OF REPRESENTATIVES

February 3, 1947

Mr. Jennings introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To amend the Employers' Liability Act so as to limit venue in actions brought in United States district courts or in State courts under such Act.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the second paragraph of section 6 of the Act entitled "An Act relating to the liability of common carriers by railroads to their employees in certain cases," approved April 22, 1908, as amended (U. S. C., 1940 edition, title 45, sec. 56), is amended to read as follows:

"Under this Act an action may be brought only in a district court of the United States or in a State court of competent jurisdiction, in the district or county (parish), respectively, in which the accident occurred, or in which the employee suffering injury or death resided at the time when the accident occurred: *Provided,* That if the defendant cannot be served with process issuing out of any of the courts aforementioned, then and only then, the action may be brought in a district court of the United States, or in a State court of competent jurisdiction, at any place where the defendant shall be doing business at the time of the institution of said action. No case arising under this chapter, brought in any State court of competent jurisdiction, as herein provided, shall be removed to any court of the United States."

FEE SCHEDULE

U. S. Circuit Court of Appeals:	
Appearance and brief, at least	\$ 150.00
Per diem in court, at least	125.00
U. S. District Court:	
Appearance and pleading, at least	100.00
Per diem in court, at least	75.00
In Bankruptcy Matters:	
Where no assets above exemption and no contest, at least.....	100.00
Where contest, or where there are assets, in addition to above a per diem of at least	50.00
State Courts:	
<i>Supreme Court:</i>	
Appearance and brief, at least	150.00
Per diem, at least	100.00
<i>District Court:</i>	
Appearance and pleading, at least	50.00
Appearance in court, per diem at least	50.00
In actions to quiet title,* a minimum fee of	100.00
Plus a fee for each additional chain of title	35.00
*(The value of the property, the importance of the questions presented, and the results attained should be taken into consideration as a basis for increas- ing the fee.)	
Discharge of Real Estate mortgage by order	25.00
Plus costs and \$10.00 for each additional mortgage in the same order.	
Estates in County Court: (Probate, Guardianship and Heirship)	
Minimum fee	100.00
3% of inventory value plus 3% of additional moneys received. Each report and sale of land, at least \$25.00 additional. Special Guardianship proceedings, \$10.00 additional.	
Appearance before Boards having quasi judicial powers:	
Per diem	50.00
Corporations:	
Charitable organizations	25.00
Preparing papers for organization of business corporations under laws of North Dakota with authorized capital of \$50,000.00 or less; counsel and advice as to advisability of corporate organization; the form such organization should take; preparing articles of incorporation; by laws; minutes of first meeting of stockholders and directors; notice of incor- poration, etc., at least	150.00
(In addition thereto, one/fifth of one percent of the excess over the \$50,000.)	
Incorporating and setting up of utilities, public or otherwise, and super- vising the organization and obtaining easements and looking after all legal services up to the time of the completed construction and disbursement of funds, the minimum fee for such services shall be one percent (1%) of the amount expended in the construction of the utility. In event of any extensions of such utility a like fee shall apply for the amount involved for the construc- tion of the extension.	
Miscellaneous:	
Drawing will or codicil in its simplest form, at least.....	15.00
Drawing deed, mortgage and notes, lease, articles of agreement, or contract for deed, at least	5.00
Legal advice without consultation of authorities at the office....	3.00
Time necessarily devoted to briefing, or other advice at the office, on questions of law or fact, at least \$5.00 per hour.	
Time out of the office, but not in Court or before boards, per diem, at least	50.00
Examining Abstract of Title and opinion at least 25 cents per entry, and not less than	10.00
Schedule of Collection Charges:	
<i>Commercial Collections:</i>	
Minimum fee, \$10.00 or 25% of amount of the claim, whichever is the greater.	
To the foregoing percentages should be added the proper fee for legal services in the courts, if suit be brought. Claims collected by repeated duns, demands or notices, or in installments, should be made a matter of contract at no less than the above rates. On all business forwarded by one attorney to another, one-third of the fee to forwarder and two- thirds to receiver. No division of fees should be made without the knowledge of the client who pays them. On collections other than commercial ordinarily a higher rate of commission should be charged.	