

THE ORGANIZED BAR IN NORTH CAROLINA*

EDWIN C. BRYSON**

North Carolina has approximately twenty-five hundred lawyers. It has two state-wide bar associations—the North Carolina Bar Association, a voluntary association, and the North Carolina State Bar, an integrated association. In addition there are twenty-one District Bar Associations and a number of county and city organizations. There appears to be only one active Junior Bar Association in the state at this time.

This report is not intended as a complete survey. Its purpose is to review the organization of these various associations and to report briefly on their activities.

I

THE NORTH CAROLINA BAR ASSOCIATION

A. ORGANIZATION

On January 21, 1899, sixty-two lawyers of the state issued a call "To the Members of the Bar of North Carolina" to meet in the city of Raleigh on February 10, for the purpose of organizing a "Bar Association for North Carolina."¹ At that time there were approximately eight hundred lawyers in the state. The meeting, attended by 155 lawyers, was convened in the Supreme Court room. The minutes of this meeting recite that seventeen members of the "former Bar Association of North Carolina" met separately and resolved, "That in view of the reorganization of the North Carolina State Bar Association the old Bar Association is dissolved. . . ." The secretary and treasurer were directed

*This article is a report prepared for the Survey of the Legal Profession.

The Survey is securing much of its material by asking competent persons to write reports in connection with various parts and aspects of the whole study.

Reports are released for publication in legal periodicals, law reviews, magazines and other media as soon as they have been approved by the Survey Council's Committee on Publications.

Thus the information contained in Survey reports is given promptly to the Bar and to the public. Such publication also affords opportunities for criticisms, corrections, and suggestions.

When this Survey has been completed, the Council plans to issue a final comprehensive report containing its findings, conclusions, and recommendations.

** Associate Professor of Law and Counsel for the University, Duke University, Durham, N. C.

¹ *N. C. Bar Association Reports* 133. The historical data concerning the organization of the N. C. Bar Association was taken from this volume.

to turn over all books, records, and all moneys to the newly organized Association. Mr. J. B. Batchelor acted as chairman of the meeting. A constitution and by-laws which had been drafted by Mr. J. Crawford Biggs of the University were accepted after approval by the committee to which they were referred. A committee on permanent organization was appointed to recommend a president, one vice-president from each judicial district, of which there were twelve at that time, and a secretary and treasurer. Mr. Platt D. Walker of Charlotte, later a justice of the Supreme Court of North Carolina, whom the committee recommended, was elected the first president of the North Carolina Bar Association. On March 6, 1899, the General Assembly granted a charter to the North Carolina Bar Association.² The purpose of the Association as declared in the charter and constitution was "to cultivate the science of jurisprudence, to promote reform in law, to facilitate the administration of justice, to elevate the standards of integrity, honor and courtesy in the legal profession, to encourage a thorough and liberal legal education, and to cherish a spirit of brotherhood among the members thereof."³

The first meeting of the North Carolina Bar Association was held at Morehead City in July, 1899, with 114 members present including eight honorary members.

There were many well-known lawyers associated with the organization and early life of the Association. Of the 157 charter members, fifteen later became presidents of the Association. Four became members of the Supreme Court of North Carolina.

B. MEMBERSHIP

The original constitution provided for two classes of members—active and honorary.⁴ Active membership was restricted to persons of the white race who were members of the bar of this state in good standing. Honorary members were the judges of the supreme, superior, and criminal courts of the state and judges of the federal courts in the state, so long as they remained in office.

In the present constitution, adopted in 1947,⁵ the provisions relating to membership are somewhat different. There are two classes of membership—active and sustaining. There is no provision for honorary members. While membership is still restricted to the white race, any such person licensed to practice in this or any other state in the Union, residing or practicing in this state or licensed to practice in this state and residing outside of the state, and any judge of a court of record of

² *N. C. Private Laws* 1899, c. 335.

³ Constitution, N. C. Bar Association, Article II.

⁴ *Ibid.*, Article III.

⁵ 49 *N. C. Bar Association Reports* 88.

this state or the United States residing in this state or any professor in any regularly organized law school in this state is entitled to active membership. Application still must bear the endorsement of two members of the Association or the committee representative in the judicial district where the applicant lives. When approved by the Membership Committee, the application is then presented at the annual meeting, and a four-fifths vote elects any applicant. Admission fees are \$2.50, and dues for active members are \$3.50 per year.

Sustaining membership is available to any person eligible for active membership. Such membership lasts only one year and gives no rights or privileges beyond those of active members. Dues of sustaining members are fixed by the Executive Committee in an amount not to exceed \$25 per year. However, amounts in excess thereof are accepted.

The Association had 157 charter members. By 1900, which was the second year of the Association, the membership had increased to 311 active members.⁶ By 1930 the total membership had increased to 1,151,⁷ reported to be the largest membership of any similar association in the United States in relation to the number of attorneys in the state. In 1932 the Association had 1,249 members,⁸ the greatest number, apparently, it has ever had. By 1935 the number had dropped to 943,⁹ and in 1936, to 859.¹⁰ This sharp decrease in membership may have been due to two factors: the depression and the integration of the State Bar, in which membership was made compulsory for all practicing attorneys. During 1940 out of a census of 2,443 lawyers in the state only 713 were members of the Association.¹¹ By 1941, the membership had dropped to 710,¹² and in 1943 there were only 701 active members,¹³ the lowest number since the early years of the Association. At the present time there are approximately 1,200 members, which is welcome evidence that the Association has, to a certain extent, recaptured the interest of the members of the bar.

C. OFFICERS AND COMMITTEES

Officers of the North Carolina Bar Association are the president, three vice-presidents, and the secretary-treasurer.¹⁴ The secretary-treasurer is also secretary of the North Carolina State Bar and of the Board of Bar Examiners.

The standing committees¹⁵ are Executive Committee, Membership Committee, Committee on Public Relations, Committee on Legislation and Law Reform, Committee on Post-Legal Education, Committee on

⁶ 2 *Ibid.* 79.

⁸ 34 *Ibid.* 22.

¹⁰ 38 *Ibid.* 23.

¹² 43 *Ibid.* 15.

¹⁴ Constitution, N. C. Bar Association, Article IV.

¹⁵ *Ibid.*, Article V.

⁷ 32 *Ibid.* 24.

⁹ 37 *Ibid.* 32.

¹¹ 42 *Ibid.* 8.

¹³ 45 *Ibid.* 8.

Past Presidents, Committee on Appointment of Judges, and Committee on Administrative Law. Special committees are appointed from time to time to work on special projects. At the present time the special committees are Insurance, Crime and Psychiatry, Legal Aid, Taxation, and Citizenship.

D. MEETINGS

The Association meets annually at such time and place as the Executive Committee may select.¹⁶ Such meetings usually begin with an evening session on Thursday and close with a morning session on Saturday. Those present at such meetings constitute a quorum. Provision is made for special meetings, but few such meetings appear to have been held. Until recent years the annual meeting was usually held in a resort section, alternating from the mountains in the extreme west to the seashore in the extreme east. The fact that the state of North Carolina stretches a distance of some four hundred miles from the mountains to the seashore may be one of the reasons why so few members of the Association ever attended meetings. Recent meetings have been held at a more centrally located place. The 1935 meeting was held during a boat cruise from Norfolk, Virginia, to Nova Scotia. The 1937 and 1938 meetings were held during similar cruises to Bermuda.

The programs at the annual meetings follow the same general pattern. An address is made by the president, who is required under the constitution¹⁷ to "deliver an address on some subject to be selected by himself in which he shall make suggestions as to the work of the Association as he shall deem proper." The constitution also provides that an address shall be made "by some lawyer (or other person) of prominence, not a resident of the state, to be invited by the president." Usually two or three such persons are invited to address the meeting. Committee reports and discussions thereof and election of officers fill out the program. While precise figures are not available showing attendance at each of the annual meetings since the organization of the Association, indications are that on the average approximately fifteen to twenty per cent of the members attend.

E. HEADQUARTERS AND STAFF

The North Carolina Bar Association has no permanent headquarters. The office is presently located in the Justice Building in Raleigh, North Carolina, and is in the charge of the secretary-treasurer, who employs from time to time such assistance as is needed.

F. PUBLICATIONS

The North Carolina Bar Association Reports are the only publica-

¹⁶ *Ibid.*, Article VII.

¹⁷ *Ibid.*, Article XI.

tion of the Association. They contain nothing more than a report of the proceedings of the annual meetings. A copy is furnished each member.

The publication of a law journal was attempted in 1900, but this plan failed because of the small number of subscribers. A similar project undertaken in 1904 again failed. At the 1915 meeting of the Association a special committee was appointed to study the matter. At the 1916 meeting this committee recommended the publication of a law journal by one of the law schools in the state. Later, it reported¹⁸ that it had conferred with representatives of both the University of North Carolina Law School¹⁹ and Trinity College Law School concerning the matter but was unable to get a commitment from either school.

The present by-laws²⁰ of the Association provide for a Special Committee on Publications. However, the only duty prescribed for it is to determine which of the papers read at the annual meeting shall be published in the Reports.

G. FINANCES

Because of the limitation of its activity, the size of its staff, and the fact that office space is rent free, the Association has been able to operate within its income and to maintain a small balance. Revenue comes almost entirely from admission to membership and dues. The reports for the years 1944 through 1948, which are the last published reports of the Association, indicate that average annual receipts for these years were \$3,229.58, and average annual expenditures were \$2,446.38.

H. ACTIVITIES

Throughout the years the various activities of the Association have found expression in the work of its officers and committees rather than any organized effort on the part of its membership. Particularly active in the work of the Association have been the Committee on Legislation and Law Reform; the Committee on Justices of the Peace, which has labored for twenty-five years without success to secure the passage of legislation which would remedy defects in the present system; the Committee on Courts and Court Procedure; the Committee on Uniform Laws, which has played an important part in securing the adoption of approximately eighteen uniform acts by the state of North Carolina; the Committee on Legal Aid; the Committee on Public Relations; and the Committee on Rule-Making Power.

Generally, the activity of the Association in securing the passage of

¹⁸ 18 *N. C. Bar Association Reports* 248.

¹⁹ Vol. 1, No. 1 of the *N. C. Law Review* was published in June, 1922. For a history and index of the earlier law journals, see 1 *N. C. L. REV.* 246, 317 (1923).

²⁰ By-laws, N. C. Bar Association, Section V.

legislation has not been marked with success. Studies by J. H. Chadbourn²¹ and Bryan Bolich²² indicate that during the period from 1899 through 1935 thirty-two measures were sponsored by the Association and only eleven were enacted into law. Since 1935 the Association has co-sponsored several measures with the North Carolina State Bar.

Unquestionably, the Association's most important piece of work was in securing the passage of legislation in 1933 creating the North Carolina State Bar.

Prior to 1899 an applicant for a license to practice law in North Carolina was not required to devote any fixed time to the study of law. In 1899 the Supreme Court, which had exclusive power in the matter of licensing attorneys, adopted a rule requiring each applicant for a license "to have read law for at least twelve months." Even with this requirement, North Carolina ranked near the bottom of the list of the states in the Union in this respect.

At the second annual meeting of the North Carolina Bar Association held in June, 1900, the Committee on Legal Education and Admission to the Bar recommended in its report²³ that the period prescribed for preparation of applicants for license to practice law be extended to two years and that the reading of some work in legal ethics be prescribed by the court. This resolution was passed and presented to the Supreme Court, which adopted both suggestions in 1901.

At the 1903 meeting of the Association a resolution was offered that the Committee on Legislation and Law Reform be directed to consider the advisability of obtaining legislation giving the Association the right to examine all applicants for a license to practice law. At the 1905 meeting this committee recommended that the Association obtain the power of license and disbarment.²⁴

While the reports of subsequent meetings of the Association disclose that the problem was discussed on various occasions, almost a quarter of a century elapsed from the meeting in 1903 until 1921 when Mr. T. W. Davis of Wilmington, North Carolina, then president of the Association, commended the plan to the Association.²⁵ In 1925 a resolution was introduced and referred to the Committee on Legislation and Law Reform that the Association go on record as favoring the enactment of a law giving the bar the right to license, discipline, and disbar attorneys in the state.

At the 1926 meeting of the North Carolina Bar Association a committee on incorporating the bar was appointed.²⁶ This committee was continued from year to year, and at the 1932 meeting a bill was pre-

²¹ 8 N. C. L. REV. 101 (1929).

²² 38 N. C. Bar Association Reports 82 (1938).

²³ 2 *Ibid.* 49.

²⁴ 23 *Ibid.* 16.

²⁵ 7 *Ibid.* 83.

²⁶ 28 *Ibid.* 169.

sented to the Association by the committee for consideration.²⁷ Considerable time was consumed in discussion of various sections of the bill. While the Association in many previous meetings had gone on record as favoring in principle the idea of a self-governing bar, advocates of the bill encountered considerable opposition. It was suggested that many attorneys were not members of the North Carolina Bar Association and since the proposed bill was compulsory insofar as membership was concerned it would be advisable to pursue an educational program so that the members of the bar could be advised as to the provisions of the proposed bill and as to the merits of integration. It was also suggested that the creation of a new bar association would be the death sentence of the existing association. The vote on adoption of the report of the committee, which included the proposed act to incorporate the bar, was forty-six in favor and thirty opposed.²⁸ It is interesting to note that this meeting of the Association was attended by only 175 of the approximately twelve hundred active members and of those in attendance only seventy-six were present to consider and vote on a matter of such vital importance to the legal profession in North Carolina.

The members of the Association contributed generously of their time and services during both World War I and World War II. During World War I members of the Association served on exemption boards and legal advisory boards in every county in the state. Assistance was also given in various campaigns such as Liberty Bond and Red Cross.

During World War II the role of the Association was much greater. Members served on various local and appeal boards, and at least one attorney was connected, in an official way, as government appeal agent, with nearly every one of the 155 local boards in North Carolina. The advisory boards for registrants were composed largely of attorneys. To the Committee on Legal Aid was given the task of perfecting a state-wide organization of attorneys to handle the legal problems of servicemen and their families. This committee rendered yeomen service. Through its efforts and with the cooperation of the Office of the United States Director of Selective Service, an organization of 182 volunteers was formed representing at least one member of the bar in every county in the state. Each member was furnished a copy of the Soldiers and Sailors Civil Relief Act and a list of the other attorneys in the state serving in the same capacity. Through the work of this committee offices were set up at various military and naval bases in the state, and legal aid was provided to servicemen and their families by attorneys in the immediate area. In recognition of this service certificates of appreciation from both the Army and Navy Departments were presented to the Association at the 1944 meeting.²⁹

²⁷ 34 *N. C. Bar Association Reports* 199.

²⁸ 34 *Ibid.* 198.

²⁹ 44 *Ibid.* 83.

In the field of unauthorized practice the North Carolina Bar Association has been active. Prior to December, 1931, such practice was extensive, especially in certain communities. Apparently no attorney wanted to assume the responsibility of prosecuting the offenders, and no concerted action could be obtained. Another difficulty arose from the very general terms of the statute prohibiting such practice, which simply provided, "No person shall practice law without a license." In 1931 the Wake County Bar Association sponsored a bill, comprehensive in scope, specifying in detail the acts which may or may not be done by persons other than members of the bar and providing penalties for violations. This bill was passed at the 1931 session of the General Assembly.³⁰

Another outstanding event in the field of unauthorized practice during the year 1931 was the decision in the case of *State ex rel. A. A. F. Seawell, Attorney General v. The Carolina Motor Club*. The Junior Bar Association of Buncombe County was responsible for the institution of this case, which received nation-wide attention. The complaint charged the defendant with maintaining a law department and through it giving advice to members and engaging in the collection of claims, such acts constituting the practice of law by the defendant. The allegations were upheld by the trial court, and an order was entered restraining the defendant from continuing such conduct. The judgment was affirmed on appeal by the Supreme Court.³¹

Following the incorporation of the North Carolina State Bar in 1933, it became apparent that the facilities of that organization should also be utilized to combat unauthorized practice, and at the 1938 meeting of the North Carolina Bar Association a resolution was adopted requesting the Council of the State Bar to do so. An amendment³² to the State Bar Act was passed by the 1939 General Assembly authorizing the State Bar to investigate and bring civil proceedings to stop unauthorized practice. In order that the two organizations could more effectively handle the problem, the committee of the North Carolina Bar Association was increased to provide a member from each judicial district in the state. Although the primary responsibility of dealing with the problem was placed upon the State Bar, this committee was continued because of the belief that it served to maintain an interest in the problem and could render valuable assistance. The last report of that committee

³⁰ *N. C. Public Laws* 1931, c. 157; now N. C. GEN. STAT. §§84-4 to 8 (1950). See Note, 9 N. C. L. REV. 291 (1931).

³¹ 209 N. C. 624, 184 S. E. 540 (1931).

³² *N. C. Public Laws* 1939, c. 281; now N. C. GEN. STAT. §84-37 (1950). See *A Survey of Statutory Changes in North Carolina in 1939*, 17 N. C. L. REV. 327, 342 (1939). The State Bar was authorized to seek injunction against solicitation, in a 1947 act, now N. C. GEN. STAT. §84-38 (1950). See comment in 25 N. C. L. REV. 379 (1947).

was made at the June, 1947, meeting.³³ At the present time there is no such committee of the North Carolina Bar Association.

In the spring of 1946, a series of four refresher courses for veterans returning to the bar in North Carolina was sponsored by the North Carolina Bar Association through its Committee on Refresher Courses. These courses, approved by the North Carolina State Bar, were organized and conducted by the Institute of Government at Chapel Hill, North Carolina, without cost or expense to the veterans themselves. The sessions were attended by 153 veterans, taught by 25 attorneys, law professors and judges, and dealt with the subjects of taxation, civil procedure, and labor law, among others.^{33a}

In an endeavor to meet the demands of the practicing lawyers in the state, the North Carolina Bar Association, in collaboration with the law schools of the University of North Carolina, Duke University, and Wake Forest College began a series of legal institutes in 1944 on topics of current professional interest. The lecturers have included outstanding jurists of the state and federal courts, practicing attorneys with wide experience in their designated fields, and professors from the staffs of the law schools heretofore mentioned. A small registration fee is charged to cover the administrative expenses of the institutes.

During the present Bar Association year of 1951-1952 the Committee on Post-Legal Education has been most active. At the mid-year, fourteen regional legal institutes had been held at various places in the state with an estimated fifty lawyers in attendance at each. This program is being continued. In addition, there will be a limited number of state-wide institutes at a central location.

II

THE NORTH CAROLINA STATE BAR

A. INCORPORATION

The North Carolina State Bar was created by an act of the 1933 General Assembly entitled: "An Act to Provide for the Organization as an Agency of the State of North Carolina of the North Carolina State Bar, and for its Regulation, Powers, and Government, Including the Admission of Lawyers to Practice and Their Discipline and Disbarment."³⁴

The challenge to the profession by the passage of this act was voiced by the Honorable Kemp D. Battle, president of the North Carolina Bar Association in 1933. He declared,³⁵ "The passage of the Act means only that the public is restive under present conditions and is willing to

³³ 49 *N. C. Bar Association Reports* 102.

^{33a} 48 *Ibid.* 32-40.

³⁴ *N. C. Public Laws* 1933, c. 210; now N. C. GEN. STAT. §§84-15 to 34 (1950).

³⁵ 34 *N. C. Bar Association Reports* 16.

try the experiment of permitting the lawyers to put their house in order and to regulate their professional destinies in harmony with the general welfare."

The first meeting of the North Carolina State Bar was held at Duke University, Durham, North Carolina, on June 28, 1934.

B. MEMBERSHIP

The membership of the State Bar consists of three classes: active, honorary, and inactive. Active members are defined as all persons who have obtained a license to practice law in the state and have paid the membership dues, unless they have been classified as inactive. Inactive members are persons found by the Council³⁶ not to be engaged in the practice of law and not occupying a public or private position in which they may be called upon to give advice or counsel. Honorary members are the chief justices and associate justices of the Supreme Court of North Carolina, the judges of the Superior Courts of North Carolina, all former judges of these courts resident in North Carolina and not engaged in the practice of law, and judges of the District Courts of the United States and of the Court of Appeals resident in North Carolina. Membership dues, originally set at three dollars per year, were increased to five dollars in 1939.

The amendment³⁷ increasing dues also made the payment of dues compulsory by adding such payment to the qualifications required of attorneys before they may practice in the courts of the state of North Carolina, and it authorized the Superior Court to "take such action as is necessary and proper" against those attorneys who are reported to "be in arrears in the payment of membership fees for one or more calendar years." The secretary-treasurer of the State Bar is supposed to furnish the names of delinquent members to the clerk of the Superior Court of the county of the residence of such delinquent, whose duty it is to furnish the same to the presiding judge at the next term of the Superior Court after the first day of October of each year.

Today the State Bar has approximately three thousand members.

C. OFFICERS AND COMMITTEES

The officers of the North Carolina State Bar are the president, the first vice-president, the second vice-president, and the secretary-treasurer. The president and vice-presidents are elected by the membership at the annual meeting, and the secretary-treasurer is elected by the Council. The duties of the officers are prescribed by the Council.

The first two presidents of the State Bar served two terms each. In succeeding years a new president has been elected each year following a pattern of progression from vice-presidency to presidency.

³⁶ *Infra* p. 000.

³⁷ *N. C. Public Laws* 1939, c. 21, §§2, 3; now *N. C. GEN. STAT.* §84-34 (1950).

The secretary-treasurer of the State Bar holds the same office in the North Carolina Bar Association and also serves as secretary of the Board of Law Examiners.

The Council at its first meeting created four committees and prescribed their duties as follows:

(1) *Executive Committee*: To have general supervision over the work of the Council, to prepare programs for annual meetings, and to deal generally with such matters as may be reported by other committees.

(2) *Committee on Legal Ethics and Professional Conduct*: To study canons of ethics and professional conduct, to make recommendations to the Council from time to time as it may deem proper, to study and determine questions which may arise as to the meaning and application of the canons of ethics and rules of professional conduct, and to advise members of the State Bar upon request in respect thereto.

(3) *Committee on Legislation and Law Reform*: To examine and propose changes in the law and judicial procedure.

(4) *Grievance Committee*: To investigate all complaints against members of the State Bar and to take such action thereon as appears to it necessary and proper.

It is within the province of the Council to create such additional committees as it may deem wise and to refer to such committees such subjects as are proper under the rules creating the committee. Under this authority committees have been created from time to time to work on special projects, some of which committees are Unauthorized Practice, Legal Institutes, Law Libraries, Pre-Trial Practice, Trial by Jury, Trial Practice, Law of Evidence, Appellate Practice, Administrative Agencies and Tribunals, Rule-Making Power, Post-War Work, and Membership.

D. MEETINGS

In the act creating the State Bar provision is made for an annual meeting to be held at such time and place as the Council may determine. Under a resolution adopted by the Council such meeting is held in the city of Raleigh on the fourth Friday in October. The meeting lasts only one day and is usually attended not only by members but by law students of Duke University, Wake Forest College, and the University of North Carolina, all of which are located within twenty-five miles of Raleigh. On the average approximately twenty to twenty-five per cent of the members attend the annual meeting.

The program is planned by the Executive Committee, which throughout the years has arranged to bring to the meetings outstanding judges and lawyers of the nation and state to discuss topics of interest to the membership.

E. THE COUNCIL

The chief governing body of the State Bar is the Council, which consists of one councillor from each of the twenty-one judicial districts of the state, elected by the District Bar. The first councillors were elected for staggered terms. Successors to the councillors first elected were elected for three-year terms.

The Council, subject to the power of the General Assembly to legislate thereon by general laws, is vested, as an agency of the state, with control of discipline, disbarment, and restoration of license of attorneys practicing law in North Carolina.⁸⁸ The act incorporating the State Bar also gives the Council authority to administer it and to adopt rules of professional ethics and conduct.

The Council meets in January, April, July, and October. The councillors are paid a per diem of ten dollars for the time spent in attending meetings, plus an expense allowance. Turnover in the membership of the Council has been slow, approximately two each year. Six of the original members of the Council are still serving.

Attendance at the quarterly meeting of the Council has been excellent, and the very efficient manner in which the State Bar has fulfilled the duties imposed upon it by statute is in no small measure due to the interest and enthusiasm with which the members of the Council have approached their work.

F. BOARD OF LAW EXAMINERS

The act incorporating the State Bar established a Board of Law Examiners, consisting of seven members to be elected by the Council.⁸⁹ Originally the Chief Justice of the North Carolina Supreme Court was chairman—*ex officio*. Perhaps in deference to the other responsibilities of the Chief Justice, particularly before the court was increased from five to seven members, the law was changed to relieve him of that burden.

At the time of incorporation of the State Bar the examination for license was given by the Supreme Court of North Carolina under rules adopted by the Court. There were no general educational requirements for admission to the bar. A course of study was prescribed, and an applicant for a license was required to file a certificate from the dean of a law school or a member of the bar of the Supreme Court that applicant had studied law under his instruction or to his knowledge or satisfaction for two years and upon examination had been found competent or proficient in said course. The Board of Law Examiners immediately set out to raise standards; but, to avoid injustice, the program was a gradual one. Rules were adopted and approved by the Council

⁸⁸ N. C. GEN. STAT. §84-23 (1950).

⁸⁹ N. C. GEN. STAT. §84-24 (1950).

which provided that beginning with the August, 1938, examination applicants must have received a four-year high school education or its equivalent, in addition to the prescribed legal education. One hundred applicants took the August, 1938, examination, and sixty-two per cent passed. It is interesting to note that thirty-four of the applicants had been certified by attorneys and, of these, six passed and twenty-eight failed; sixty-six had been certified by approved law schools, and, of these, fifty-six passed and ten failed. Ninety-four applicants took the August, 1939, examination, with fifty-six passing and thirty-eight failing.

Beginning with the August, 1940, examination, applicants were required to have completed an amount of academic work equal to one half of the work necessary at a standard college for a Bachelor's degree. Out of 103 applicants eighty-four passed and nineteen failed this examination. Results of the 1941 examination indicate seventy-eight examinees passed and twenty-two failed. Beginning with the August, 1942, examination each applicant was required to have studied law for three years and to prove this by a certificate from the dean of an approved law school or the affidavit of a member of the State Bar engaged in active practice who had been licensed to practice in North Carolina for a period of five years or by a combination of such certificates. In 1942 thirty-six applicants were examined, and all passed. The figures and percentages for the last five years are as follows:

<i>Year</i>	<i>Examined</i>	<i>Passed</i>	<i>% Passed</i>
1947	89	78	88
1948	168	153	91
1949	179	140	79
1950	227	173	76
1951	274	185	67

Prior to 1936 the examinations were given in January and August of each year in the city of Raleigh. Beginning with 1936 rules were put into effect which provided for one examination to be given each year in August. In recent years an additional examination has been given in March to accommodate returning veterans and applicants who were about to be inducted into military service. The examination extends over a three-day period. The questions are prepared by the members of the board, and the results are usually made available within a week.

The Board of Law Examiners operates on a budget of approximately five thousand dollars per year. Revenues arise entirely from receipts from applicants for the examination, comity applicants and registration fees. Any profit is turned over to the Supreme Court of North Carolina for the use of its library. Each member of the board

receives the sum of fifty dollars for his services in connection with each examination plus his actual expenses of travel and subsistence during the period of examinations.

G. PUBLICATIONS

The North Carolina State Bar has no official publication. An annual report of its proceedings was published through the year 1943 but was discontinued at that time. However, since 1936 a section of *The North Carolina Law Review*, published by the law school of the University of North Carolina, has been devoted to the State Bar under the caption of "The North Carolina State Bar." This section contains reports of the annual meetings, of meetings of the Council, and the reports of the secretary-treasurer.

H. FINANCES

Reports of the secretary-treasurer since 1945 indicate the State Bar operates on an approximate "break even" basis. Revenues, principally from dues for the years 1948, 1949, and 1950 averaged \$14,933.53, and expenditures for the same years averaged \$15,112.25. The principal items of expense are the salaries of the secretary, the secretarial and extra clerical assistants. The fact that the State Bar has a balance of approximately five thousand dollars is due to the profit accumulated during the early years when expenses were at a minimum.

I. ACTIVITIES

Perhaps the number-one task which confronted the State Bar upon organization lay in the field of discipline. Due to inadequate laws and lack of effective machinery a backlog of complaints against attorneys had accumulated to such an extent that some 122 were filed with the Grievance Committee during the first year of its existence. It should be pointed out that in several instances a single attorney was responsible for a large number of charges. One attorney was named in thirty-five complaints and another in sixteen. The original plan called for investigations to be made by individual attorneys. This procedure proved unsatisfactory, and in 1935 a full-time investigator was employed, who handled the matter of investigations until his resignation in 1937. With the employment of a full-time secretary by the Council in October, 1938, the job of making investigations was assigned to that office.

The procedure for handling complaints is as follows: A complaint against any lawyer may be filed with the Grievance Committee or with any officer of the North Carolina State Bar or with any member of the Council, by any person. The complaints are usually in affidavit form supported by documentary evidence, but the committee may receive and act on complaints in other forms. When a complaint is filed, it is re-

ferred to the chairman of the Grievance Committee. If it appears meritorious, notice of it is sent to the accused person, with the advice that he answer it. After an investigation, if the committee should consider the charges sufficiently grave, it reports to the Council. Only the Council can authorize a proceeding for discipline or disbarment. Should the Council decide that a proceeding for discipline or disbarment is proper, it appoints a Trial Committee composed of three councillors, no one of whom shall be a member of the Grievance Committee, and at the same time it appoints an attorney to prosecute the case.

A written complaint based on the charges made must be filed and served, with a notice of the time and place of hearing, at least thirty days before the hearing, which must be held in the county where the defendant resides. The procedure at the trial is the same as in the trial of a civil action in the Superior Court. The defendant has the right to be represented by counsel and to compel the attendance of witnesses. The Trial Committee reports the proceedings with the evidence and its findings to the Council, which passes thereon with the members of the Trial Committee not voting. The defendant is entitled to an appearance before the Council at the time the report is considered. From an adverse decision by the Council an appeal on the record may be taken to the Superior Court and thence to the Supreme Court. Punishments prescribed by the State Bar included private reprimand, suspension from practice for a period not exceeding twelve months, and disbarment.

By the time of the 1935 meeting of the State Bar the work of the Grievance Committee in the investigation and hearing of complaints was beginning to bring results. At that meeting it was reported that up to that point there had been six disbarments, fifteen recommendations for disbarment, one suspension, two private reprimands, and two denials for reinstatement. During the period from July, 1935, to October, 1935, approximately fifty complaints were filed with the Grievance Committee, and during the succeeding year, 1936, only thirty-four complaints came to its attention. Twenty-one of the complaints which had been filed were dismissed under the authority of the case of *In re Parker*⁴⁰ in which the Supreme Court held that an attorney could not be disbarred for misconduct while acting in the capacity of an executor. The State Bar Act was amended in 1937⁴¹ to provide two additional grounds for disbarment. One allowed disbarment for "detention without a bona fide claim thereto of property received or money collected in any fiduciary capacity." This amendment was to insure against a repetition of the holding in the case of *In re Parker, supra*. The other amendment

⁴⁰ 209 N. C. 693, 184 S. E. 532 (1936), Note, 14 N. C. L. REV. 374 (1936).

⁴¹ N. C. Public Laws 1937, c. 51, §3; now N. C. GEN. STAT. §84-28(5) (6) (1950).

permitted disbarment in case of "violation of any of the canons of ethics as promulgated by the Council of the North Carolina State Bar."

The number of complaints during the years following 1937 rapidly diminished and was far less than the number which were filed during the first three years after the incorporation of the State Bar. In 1941 the Grievance Committee reported that for the first time it had no new prosecutions to recommend.

From 1934 through the year 1941 judgment of disbarment was entered in approximately twenty-three cases, and reprimands were issued or temporary suspension of license decreed in approximately seventeen other cases.

From 1942 through 1951 five disbarment proceedings appear to have been ordered by the Grievance Committee and judgment of disbarment entered in two cases. Reprimands were issued in two cases.

These figures alone reflect a real accomplishment on the part of the State Bar in raising the standards of ethics and professional conduct on the part of its members.

The State Bar Act was amended in 1939⁴² to enable the State Bar to investigate and bring actions to enjoin unauthorized practice of law. The amendment did not "repeal or curtail any remedy now provided for in case of unauthorized or unqualified practice of law." Thus, both the courts on their own initiative and the State Bar can take appropriate steps to discipline lawyers guilty of unauthorized practice. The Committee on Unauthorized Practice created pursuant to this bill has been very active in investigating and handling charges. Members of the bar have been alert to the work of this committee and have been very diligent in reporting alleged violations.

Each year a number of questions are submitted to the Ethics Committee as to whether certain projected activities would infringe the canons of ethics. Through the work of this committee attorneys are deterred from practices which might subject them to disciplinary action.

The North Carolina State Bar, in conjunction with the North Carolina Bar Association, has sponsored many measures looking toward improvement in the administration of justice. Perhaps the most significant was the movement which led to the creation of the Commission for the Improvement of the Administration of Justice and its successor, the Judicial Council. This movement was given its impetus in 1946 when Mr. Fred B. Helms, of Charlotte, North Carolina, then president of the North Carolina State Bar, sent a questionnaire to the members of the State Bar seeking their comments on certain proposals looking toward an improvement in the court system and in the administration of justice. Some fifteen hundred replies to the questionnaire were re-

⁴² See note 32 *supra*.

ceived, which contained, in addition to comments on the proposals, a great many suggestions. A special meeting of the Council of the State Bar was held on March 4, 1947, to consider the matter further. This meeting was attended by the president and members of the Executive and Legislative Committees of the North Carolina Bar Association. A resolution was adopted recommending that a committee be appointed by the Council of the State Bar and the president of the North Carolina Bar Association to prepare a resolution to be submitted to the General Assembly providing for the creation of a commission to study the problems of improvement in the administration of the law. A joint committee was set up, and after several conferences a bill was prepared for submission to the General Assembly providing for the appointment of a commission to study and make recommendations to the 1949 General Assembly for improvement in the administration of justice in North Carolina. Such a commission was established by the 1947 General Assembly⁴³ "for the purpose of making a thorough study of problems in connection with the administration of justice in the state of North Carolina, with a view to making recommendations in the form of proposed legislation for consideration by the 1949 session of the General Assembly." This commission consisted of twenty-three members and included representatives of the bar, the courts, the court clerks, the law schools, the attorney general, the legislature, the solicitors, and the lay public. Thus was established a basis for a comprehensive study of ways and means for the improvement of the administration of justice in North Carolina.

This commission rendered an excellent service. In its final report,⁴⁴ it submitted fifteen drafts of proposed legislation and five drafts of proposed constitutional amendments, a number of which proposals were enacted into law. Its work was of such significance that the 1949 session of the General Assembly saw fit to continue the program by passing legislation creating a Judicial Council.⁴⁵

The function of the Judicial Council is to make recommendations to the courts as well as to the legislature and to be concerned with the "organization, operation, and methods of conducting the business of the courts," in addition to needed changes in the law.

The record of the Judicial Council in the 1951 General Assembly is impressive. A total of twenty-eight legislative measures were proposed, and eighteen were enacted into law. Honorable W. A. Devin, Chief

⁴³ N. C. 1947 General Assembly, Resolution 23. See *A Survey of Statutory Changes in North Carolina in 1947*, 25 N. C. L. REV. 376 (1947).

⁴⁴ See POPULAR GOVERNMENT, Vol. 15, p. 1 (1949).

⁴⁵ 1949 Session Laws of North Carolina, Chapter 1052, p. 1209; now N. C. GEN. STAT. §§7-448 to 456 (Supp. 1951). See *A Survey of Statutory Changes in North Carolina in 1949*, 27 N. C. L. REV. 405 (1949).

Justice of the Supreme Court of North Carolina and chairman of the Council, stated in the 1950 report⁴⁶ of the Council to the Governor: "While much, very much, remains to be done, the important fact is that a movement in the direction of a more efficient court system has begun. That movement must be continued."

III

DISTRICT BAR ASSOCIATIONS

In each of the twenty-one judicial districts in the state there is a District Bar. The associations are not voluntary organizations but were organized under the requirements of the State Bar Act.⁴⁷ The District Bar is the subdivision of the North Carolina State Bar for each judicial district. The principal function of the District Bar is to elect a councillor to represent that district. A District Bar is permitted to adopt such rules and regulations as it sees fit so long as the same are not inconsistent with the act creating the State Bar.

On the whole these organizations appear to be loosely organized and largely inactive. Most of them meet only once each year to perform the necessary functions involved in being an agency of the North Carolina State Bar.

LOCAL BAR ASSOCIATIONS

A. COUNTY AND CITY ASSOCIATIONS

An evaluation of bar association activity at local levels is difficult to make. Many counties have less than ten or twelve resident lawyers, and in such counties no attempt has been made to organize an association. In the counties where there is a sufficient number of resident lawyers some form of county bar association has been set up. Most of these organizations meet only before each term of civil court to arrange a calendar for trial of civil cases, and at this time such business as needs the attention of the association is disposed of.

In a number of counties, although the membership is small, active, energetic associations exist. Members pay dues, regular meetings are held, and constructive programs are carried out. The Pitt County Bar Association, the Lenoir County Bar Association, and the Robeson County Bar Association may be cited as examples.

In the more populous areas bar association activity varies. The Greensboro Bar Association, the Mecklenburg County Bar Association, the Wake County Bar Association, and the New Hanover County Bar Association all appear to be strong, active organizations. The Greensboro Bar Association, with a membership of 120, is particularly active.

⁴⁶ At p. 22; see *A Survey of Statutory Changes in North Carolina in 1951*, 29 N. C. L. REV. 351, 359 (1951).

⁴⁷ N. C. GEN. STAT. §84-18 (1950).

Meetings of this Association are held monthly, except during the three summer months. Its program is carried out through committees dealing with the relationship between members of the bar, the court, and the public. Legal studies are conducted through sections in the various fields of the law. It has published a highly useful handbook for the use of its members, which contains the Association's constitution, by-laws, calendar rules, the Municipal Court Act, a schedule of recommended fees, and a schedule of court fees in effect at the time of publication. As a result of its activities during the year 1949, the Greensboro Bar Association received an honorable mention award from the American Bar Association in the "Awards of Merit" for bar activity in associations serving populations under 100,000.

The Mecklenburg County Bar Association with a membership of approximately 150 lawyers is also very active. Regular meetings are held, highlighted by an annual dinner meeting in January of each year when judges and other distinguished guests attend. It conducts an educational program consisting of three or four seminar meetings each year, at which topics of interest to the Association are discussed. Committees, such as a Calendar Committee which arranges the calendar for the trial of civil cases, a Committee on Fees, and others are in session regularly.

Associations in other larger areas are in various stages of dormancy.

B. JUNIOR BAR ASSOCIATIONS

The Junior Bar Association movement in North Carolina reached its peak during the middle thirties. At that time there were at least six active Junior Associations in the state. At the 1935 meeting of the North Carolina Bar Association a round table discussion was conducted on Junior Bar activities, and as a result of this discussion the Executive Committee of the Association appointed a Special Committee on Junior Bars to survey the activity of such associations in the state and to report thereon. At the 1936 meeting a report was filed by this committee in which it concluded that "it would be harmful rather than beneficial to artificially stimulate the organization of additional Junior Associations," that "younger members of the Bar take a more active part in the activities of the two State Bar Associations," and that "an increasing share in their activities be given to the younger men."

With the advent of World War II and so many of the younger attorneys going into service, the Junior Associations gradually died out, and little or no effort has been made to reorganize them. Apparently the only active Junior Association in the state today is the Winston-Salem Junior Bar Association. This Association is composed of attorneys under forty years of age. It meets every second week for lunch

at which time a program of interest to the members is presented.

A number of the younger lawyers in the state, as members of the American Bar Association, are also members of the Junior Bar section of that Association.

V

CONCLUSION

With the incorporation of the North Carolina State Bar in 1933, imposing compulsory membership for every lawyer in the state engaged in the practice of law, the question immediately arose as to whether there was any need for two bar associations on a state-wide basis and whether the lawyers could and would support both. Some argued that the North Carolina State Bar should supplant the voluntary organization and assume all of the obligations of the bar both to its members and to the public. Others argued that the State Bar was purely a state administrative agency which belonged to the public and not to the lawyers themselves and which had no power to deal with problems not covered in the act creating it, so that there was still need for a voluntary bar association to supplement and implement the work of the State Bar.

The members of the North Carolina State Bar can point with pride to the work of that organization and the manner in which it has raised the standards of the legal profession in North Carolina. It has clearly demonstrated that the bar is willing and able to protect itself and the public against erring members of the profession. However, the past eighteen years have shown that there is much work to be done by the profession which falls outside the scope of that organization. Consequently there now seems to be general agreement that there is a need and a place for a state-wide voluntary bar association. There is also need for improvement in the present organization. The average member of the North Carolina Bar Association now has but two assured points of contact with the Association: he pays his dues, and he receives a copy of the reports of the annual meetings. He does not participate in any program of the Association. There is no publication to keep the membership informed, and attendance at the meetings is very poor. Therefore, the business of the Association reaches only a small part of the membership and is carried on by the faithful few who do attend meetings and serve on committees.

While much has been accomplished, if the Association is to achieve maximum results, the education of all its members to its purposes and objectives is essential. This can best be done by carrying the business of the Association to the membership at local levels. This thought was expressed a half century ago by the Committee on Local Bar Organiza-

tions in its report⁴⁸ to the 1901 meeting of the Association in which it is stated :

"The permanence and efficiency of our State Association depend upon the active support and earnest sympathy of the lawyers of the State. However faithful we may be and however wisely we may labor, the work of this body will fall far short of its high purpose, unless behind it supporting it and responding to it, is the Bar of the State. Our greatest weakness today is that so many of our lawyers are not members of the Association.

"North Carolina is a large State, our lawyers are scattered over a broad territory and the time, labor and expense required present to many almost insuperable difficulties to attending these annual gatherings. Our best efforts may well be put forth to enlist their interest, to bring them together and to unite them with us.

"How may this be done? The surest means your Committee thinks, is the Local Bar Association."

⁴⁸ 3 *N. C. Bar Association Reports* 60.