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THE DENVER BAR ASSOCIATION

R E C O R D

P U B L I S H E D M O N T H L Y

VOL. I

DENVER, JUNE, 1924

No. 7

NOTICE OF NEXT MEETING

Time—

Monday, June 2, 1924, at 12:15.

Place—

The Dining Room of Chamber of Commerce, Champa Street, between 17th and 18th. Lunch 75 cents.

Program—

The Legislative Committee will present for discussion, "Much Needed Legislation." You are invited to present at this meeting such helpful suggestions as you may desire. This meeting will be very interesting as the committee has carefully worked out its program. Members of Committee—Harry C. Riddle, chairman; Robert G. Strong, Ira C. Rothgerber, W. R. Eaton, Mason Lewis.

Guests—

Bring anyone you think would be interested. Enclosed is a card for your use. If you have changed your address note it on card, otherwise it is not necessary to sign.

people in relatively moderate circumstances are in the majority in every community, it naturally follows that whether these injuries are the result of accidents within the industrial plant or the result of accidents to vehicles of public carriers, the majority of those injured will be to people in relatively moderate circumstances. If our judicial system fails to afford to these people so injured an opportunity to prepare and present in court their claims for compensation for such injuries equal to the opportunity afforded to the defendant to prepare and present his or its defense, then our judicial system is deficient; and to the extent of its deficiency in this regard it will fail to secure the respect of the average citizens.

In the course of the industrial development above referred to, has come the big corporation with its permanent claim department and legal staff organized to protect and defend such corporations from personal injury suits. These well organized claim departments have at their command the services of the company doctors, who by training and experience become "expert witnesses" for the defense, also the services of the engineering, draughting and other technical experts of the plant or common carrier are available to the claim department. Experienced "investigators" who know how to gather evidence and can distinguish what is hearsay and what is evidence are employed by these claim departments to get the evidence. In short, every aid which a corps of trained and technical assistants can furnish is at the call of the defendant, and these assistants become so accustomed to court procedure that they become trained in giving evidence and selecting witnesses. In addition, usually, the principal eyewitnesses to the accident are the employees of the defendant, which fact makes it almost impossible for the injured person to secure from them any information relating to the real cause of the accident.

Will anyone seriously contend that the injured person, unassisted by a similar claim organization, has an equal opportunity with the defendant to prepare and present his claim to the courts?

Naturally, the organized claim department of the industrial corporation, or the common carrier, has resulted in the formation in large in-

dustrial centers, by lawyers not controlled by these industrial corporations, or common carriers, of claim departments equipped to give to the injured services corresponding to those which the claim department renders to the corporate defendant. It was against this type of organized plaintiffs' claim departments that the resolution of our association of May 19th was directed.

Of course, we all recognize that no plaintiffs' claim department can be equipped with trained investigators and technical and mechanical assistants which can begin to compare in ability and efficiency with the personnel of the average railroad claim department unless it has a large volume of such business. To get a sufficient business to warrant the organization of such a claim department, it seems necessary to employ some form of solicitation, and, technically, it is at the solicitation of such business that the resolution is aimed.

What the man who is injured wants is some agency which can handle his case and give him as competent service in the preparation and presentation of his claim as the corporation claim department will give the corporate defendant. If our bar association is going to put the soliciting plaintiffs' claim organization out of business, what is it going to give the injured person in its place?

If we are to create and preserve respect for law, we must see that some one or some organization is equipped to properly prepare and present the injured plaintiff's case.

Appeals to codes of ethics established when every lawyer was an independent practitioner and when lawyers would have scorned to be retained exclusively by one corporation as its salaried employe, do not meet the situation. It is the salaried lawyers who have sold their entire services to one corporation and have built up these organized corporation claim departments who have given rise to the class of organizations against which the bar resolution was directed.

Let us admit that many of the practices indulged in by these soliciting firms are reprehensible, but, at the same time, do not let us close our eyes to the practices on the other side. What about the railway "claim investigators" so-called, who secure settlements for less than is reasonable compensation to the injured by

such methods as advising the injured that they had better settle cheaply because the railroad can afford to litigate the case for years because it has its lawyers, members of the bar association, employed on yearly salaries, and, therefore, will have to pay them whether they are in court or not. Understand, I am not excusing the unethical practices of the plaintiffs' lawyers. What I am concerned about is this: What is the bar association going to do to see that the injured person has a properly equipped agency to undertake the prosecution of his claim? You have struck at "the poor man's lawyer." Now, if you want him to respect your judicial system, you have got to furnish him with an agency at least as well equipped to serve him as the one you are seeking to destroy.

What have you who were in such a haste to push this resolution through that you would not wait until a more representative meeting assembled to discuss it, to offer in place of the agency you would destroy?

ALBERT L. VOGL.

NEW MEMBERS

The following were taken into membership and in order to acquaint the older members with the new ones coming in, the new members will please attend the meeting of June 2nd for the purpose of being introduced.

Harry C. Green, Frank L. Jones, and Frank Seydel.

VALUABLE ALREADY

Wanted: The April number of The Denver Bar Association Record, to complete our files. Who will mail one to the Secretary, 718 Symes Bldg.?

ANNUAL MEMORIAL MEETING

Impressive and touching was the annual memorial meeting held in Division 1 of the District Court on Monday, May 26th. All of the District Judges were present, as well as all of the Judges of the Supreme Court of Colorado, with the exception of Judge Allen, who was unable to attend on account of sickness. The room was decorated with palms, donated to our association by the city. About 300 lawyers, judges and

families of deceased members were in attendance. Harry Raymond, Clerk of the District Court, rendered valuable aid to the committee and it was due to his efforts that the room was so comfortably arranged. The meeting was opened by Presiding Judge Julian H. Moore. Hugh McLean, President of The Denver Bar Association, then introduced Ralph Hartzell, chairman of the Memorial Committee.

When busy lawyers stop from their practices a few hours to do honor to the memory of their deceased brothers of the bar, they not only benefit themselves but the entire profession. One could not have attended the meeting without having left it feeling better. After all, to receive the commendation of our fellow lawyer is the most worth-while thing we have.

REMOVALS

Jean Stauffer announces the removal of her law office to suite 534 Symes Bldg. Telephone Main 6831.

CAN YOU DO BETTER?

At a recent state bar examination one of the applicants, in answer to the query as to the meaning of "ss" found in the caption of pleadings, etc., stated, "an abbreviation for steamship."

GRIEVANCE COMMITTEE REPORT

By Ernest L. Rhoads, Chairman

The officers of the Association have thought best to devote this meeting to a discussion of the activities of the Grievance Committee. In casting about for the proper manner of presentation it seemed best that the matter be discussed somewhat in the form of a report with some observations gained by experience and with recommendations for action by the association.

As spokesman for this committee, I address you in a spirit of humility, for who am I, that I should judge my brother's conduct; many present, by reason of age, experience and ability, are better qualified to speak upon the question of legal ethics and the conduct of the lawyer. I know my remarks will be taken in the spirit in which they are made. Lawyers who attend meetings of this association and take an interest in its

work, in fact the large percentage of the bar, do not need to be preached to, however they do need to be told how the other half lives and conducts itself professionally.

It must be conceded that in this day of government by investigation, when men in high position, guilty and innocent, are being ruined by true or false reports and rumors, every man who stands out and attempts to do anything of importance is subject to severe criticism and suspicion. "Mud slinging" has become the great national indoor sport. To be sure the lawyer is momentarily "benched" while the banker and governor are being jailed, but always the lawyer will come to his own as the ideal target for the squib of the paragrapher and the vitriolic pen of the editorial writer. King Tut listened to one of the earliest jokes with the lawyer at the butt end of it and the same joke has occupied a place almost as popular as the witless remarks that have always been made about mothers-in-law.

Even though we might wish to go our way and practice our profession in a manner that would bear all the scrutiny which the most carping could screw down upon us, the public as it reads this inscription in the graveyard, "here lies a lawyer and an honest man," still insists that the grave contains eternal twin beds and that the habit of lying persists in the lawyer after he passes to eternity.

It is therefore imperative that we turn the searchlight on ourselves and be sure that there are no moth holes in our mantle of honorable tradition. We must stand in the light so that the near-sighted of the public can see just what we are doing and why we are doing it. In turn it is our affair to search out what is being done by those who use our profession as a cloak, and gum shoe up the alleys and back streets of the law, gleaning what they may from the hopeless refuse of petty litigation.

In considering the subject of the conduct of the lawyer, it has been impressed upon us that we should emphasize once more the peculiar position in which he stands. In his confidential capacity he is almost a confessor and in this quasi ecclesiastical role he does more to shape public sentiment and govern public morals than any other agency except the church. However, in the church all men appear at their best, while

in the business activities of the world they snarl and slink and stalk; they bare their fangs and unsheath their claws. It is in the whirl of the business of the day that decisions are made which set the standard of human conduct and in most of these decisions the guiding hand of the lawyer is seen. Shall this step be taken; shall this policy be adopted; always the lawyer has an important say. He leads in forming political platforms; he originates laws and dominates the legislatures that pass or defeat them.

All of this is highly important work. But—far more important is the position he assumes as defender of the poor, the ignorant and the distressed, in their feeble effort to obtain justice.

Complaints to grievance committees come not from the rich and the powerful, but from the poor and the weak. The well to do, intelligent man generally has enough money and good sense to employ men of standing and ability. The poor and ignorant man has neither money nor judgment and he often finds himself a prey to the shiftless, half baked, unscrupulous lawyer. Having been poorly and perhaps dishonestly represented he is without even enough influence to obtain a hearing.

This is the thing which needs our attention. It is from the lower class of humanity that most of our complaints come. We recognize, in the feeble recital of abuses, an honest, somewhat bewildered attempt to tell in a half apologetic way that so and so (a lawyer) had done something which he thought a lawyer incapable of even conceiving. We have seen pathetic instances of shattered faith. In spite of all jokes to the contrary, the lawyer is generally looked upon with respect, even though such respect is not always deserved. It is in seeing to it that lawyers are uniformly honest and conscientious in their dealings with the uninformed, and worthy of the public faith, that this committee and this association should be especially concerned.

You may say that my attitude and outlook are pessimistic. Let me say that when you see what we have seen, the lawyer selling property to which he had no title, to his client of little or no business ability, and then lamely defending that he thought he had title, and then cunningly arranging the legal technicalities so as to partially clear him-

self. When you see, as we have seen, a lawyer collecting money from a washwoman for the defense of her boy, threatened with being charged with crime, after he knew or we have every reason to believe he knew, that the charge was never to be filed; when you see a lawyer lose valuable papers because he had no better filing system than the top of his desk and refusing to even break through the crust of dirt to look for them until the committee insisted; when you see a lawyer offering a detective agency a fee to keep a witness from testifying and when confronted with the charge deliberately lying to the committee; when you see a lawyer collecting money and either refusing or forgetting to account for it until driven to it; when you see a lawyer take a retainer in a felony case, from an unfortunate, perhaps wrongfully charged with a serious crime, and then consulting with his client as to the facts and evidence for the first time while the jury was being called, as a result of which the client is perhaps wrongfully convicted and is now in the penitentiary for a long term; I say, when you see these things and are informed that every day wrongs are being committed by the so-called shysters who feed themselves fat on the credulity of the ignorant and enjoy the protection of our calling, you should stir yourselves to action.

Naturally, the question is, what are we going to do about it? These mongers of legal terms and phrases cannot be uprooted like dandelions; they cannot be sprinkled with insecticide; they cannot be whipped at the cart's tail. Just the same we should not allow them to be sprinkled with the attar of roses that should by rights belong to the worthy members of the profession. Better men than I have failed to solve the question, but that does not vindicate a static attitude upon the part of this association. There are some things that will aid in bettering conditions and we are tarred with the same stick as the unprofessional unless we make an earnest effort to put these things into execution.

To say that we must go back to the training of our youth in questions of morality is to deal in generalities. It does seem reasonable, however, to suggest that the curricula of our law schools should include courses to emphasize the things we are talking about, and these courses should be given the added weight of a selection

of instructors, chosen from the able and successful in the profession. Further, some account should be taken of the instructor's past record for hundred per cent honesty, under temptation, and his inspiration to teach the subject of legal ethics. Our calling is as important as any call to preach. Should not the law graduate be as well advised as to his moral requirements as he is in the art of tripping his adversary on some legal technicality?

Under our present plan, the young man must get passing grades in certain subjects; he is then given a perfunctory examination by the Bar examiners; he is then granted a license and sworn in as an attorney. It is not the oath that keeps the lawyer straight, and no formula, administered by a clerk, is going to make the unprofessional behave; the beardless stripling is then turned loose on the public and if he was loose to start with, he often remains loose. That is, until encouraged by his ability to get by, he pulls a Dell Hanlon and plays the good nature of his colleagues too far. So far as the court which licenses him knows, he can go as far as he likes until he goes too far and commits some brazen act which is called to the attention of the Grievance Committee, if by chance his community is fortunate enough to have an active committee. If this committee happens to be too busy the matter will run along until age has removed the rankness of its fusel oil or until the complainant moves away or dies.

Let me say that the present committee has made an honest effort to let no complaint be passed lightly. Private reprimands have been given, but we feel will soon be forgotten. We consider our right to make public reprimands a dangerous, unfair weapon, which strikes in the back with no chance for defense; we know that to disbar we must have evidence to convict of a crime. At least half dozen legal parasites have been detected in moral wrongs and yet we know that we have insufficient evidence to disbar.

The point I want to make is that lawyers should be better organized. If trades unions can see to it that the mechanic drops his trowel when the whistle blows, lawyers should see that lawyers conform to the rules of the legal game—and a serious, responsible game it is. Organize not for their own benefit in charging of

fees, but in the better government and regulation of their members and for the good of the public—the other fellow.

The Denver Bar Association and the Colorado Association can do something as now constituted, but could not better results be obtained from an every member organization along the line so ably presented to us at our last meeting? With such an organization, traditions could be established which would demand fair and upright dealing and which would drive the unscrupulous out of the practice.

Let us not get lost in the license fee feature. I am sure that the amount of the annual fee is of little or no importance. Enough should be provided to care for the proper administration of the affairs of the association, but the big thing is to create an every member responsibility. So that I recommend serious consideration of the proposal which will be presented to the state association at its next meeting.

Lest it be said that we have done much talking with no action, may I now present a situation which requires our attention at this very time.

It has come to the attention of this committee that a well organized industry of a peculiar nature has been built up by a number of firms of attorneys outside of this state, and that particularly there are a number of large organizations of attorneys at Minneapolis who devote their time exclusively to the solicitation and handling of personal injury cases.

Your committee is convinced from various court reports and from proceedings in different cases, as well as from affidavits and other evidence submitted to it, that there are a number of these firms that employ laymen as solicitors or runners in different parts of the country, and that it is the duty of said runners or solicitors to keep track of railroad accidents and public disasters in their our state or territory and after the occurrence of any such accident, to immediately seek to obtain for such foreign attorneys a signed contract of employment, of course upon a contingent fee basis, usually one-third to one-half of the amount recovered by compromise or suit. Upon the happening of a serious accident, such as the Burlington wreck at Cole

Creek, Wyoming, these Minneapolis firms send out their investigators, gather evidence and then send out their laymen solicitors to get contracts of employment. This committee is concerned with the custom which has obtained with these foreign attorneys for some time now of placing agents in the State of Colorado for the solicitation where the purpose is to bring suit outside of the State of Colorado. The passing of that statute has resulted in a number of suits being brought by those attorneys within the State of Colorado.

Such business is obtained by methods which cannot be condoned by your committee. Not only is the business obtained for attorneys who are not licensed to practice in this state, but the solicitation is made by laymen who have no knowledge or regard for the ethics of the profession. The facts in this connection are fairly notorious, and if these foreign attorneys were members of the Colorado Bar they would certainly be subjected to its discipline, for their practices, we judge, would not be tolerated in Colorado.

Under the present circumstances the bringing of suits in Colorado by these attorneys is generally made possible by their employing some local counsel to file papers for them and to appear for them in court in the incidental phases of the suits, but such members of our bar thus employed have no control over the litigation, and generally have little or no contact with the client. It seems to this committee that local counsel in thus associating with such foreign attorneys are enabling such attorneys to practice law in this state, when otherwise they could not do so, are thereby making possible the unlawful practice of such attorneys of law in this state contrary to our statutes and in contempt of our courts as defined by statute, and by accepting the fruits of such improper solicitation become equally guilty of unethical practices. Therefore your committee feels that one of its most important duties is to prevent the further operations of such foreign attorneys who employ these tactics within this state.

Your committee has not yet proceeded against any local attorney so associating himself with such foreign attorneys, for the reason that it has felt that in many of the cases in the

past the local attorney has not realized the exact situation until after he has committed himself and accepted a retainer. In several cases that have been brought to the attention of this committee the member of the Colorado Bar has refused to represent these firms.

Your committee feels that its first duty in connection with the members of the Colorado Bar is to give general notice of this situation so that attorneys should not in the future accept employment from such foreign firms without knowing what they are doing. Thereafter the Grievance Committee of this Association or of the State Association can with more propriety take active and severe measures against members of our bar if after such notice and warning they accept or continue any employment from or co-operation with such foreign attorneys.

Before we leave this subject, may I quote from the canon of ethics which the Supreme Court recommends as a standard of professional conduct?

"But solicitation of business by circulars or advertisements or by personal communications or interviews not warranted by personal relations is unprofessional. It is equally unprofessional to procure business by indirection through touters of any kind whether allied real estate firms or trust companies advertising to secure the drawing of deeds or wills or offering retainers in exchange for executorships or trusteeships to be influenced by the lawyer."

The committee recognizes that within our state this rule has been violated by individuals, insurance companies and trust companies. We have received the business card of an attorney which was presented at the door of a home in Denver following a railroad wreck in which the father of the family had lost his life. We have the card of an insurance company being circulated in Denver, headed, "Professional Public Service," whereon the public is invited to consult the company as to many things, among others making of a will and probate court matters. Do you remember the artistically arranged window on Seventeenth Street, where for months not long since the wills of Abraham, Isaac and Andrew Jackson were displayed with the perfectly apparent invitation to let us sell you a will, we have ar-

rangements to turn it out while you wait, on paper tinted to your liking and besides in the doing of it we make a profit. A most brazen, unwarranted and unprofessional bit of solicitation of law business.

We recognize the place of the legitimate properly conducted trust company, but we feel that we cannot sanction any form of legal advertising, no matter how cleverly done.

Before these matters are discussed by the association, may I summarize in conclusion:

The condition of the bar is far from perfect. Only by co-operation can improvement result. The busy lawyer who cares only for his own success will not solve the problem. An organization composed of only a small percentage of the lawyers is not going to function at full speed. Better organization along some line must come if results are to follow.

My final word is an appeal to the better element to interest itself in the work of its organization, in the development of traditions demanding professional purity to the end that our honored profession will keep the high place it deserves and will demand and receive the full measure of public confidence and esteem.

OUR USE OF ENGLISH

(Contributed)

I see in the Record that a contributor has been making some suggestions as to the correct use of the English language. Among a number of perfectly good corrections, he falls afoul of "per" and "loan." Lest someone may feel ashamed because he has used the words in the way to which objection is made, I suggest that "per" is a word recognized and Anglicized. See Webster's International Dictionary, Worcester's or others.

"Loan" as a synonym of "lend" was used in England in the Seventeenth Century and is in recognized use in this country. It is said that its use is now being revived in England.

While on the subject of language, let me suggest that lawyers correct their pronunciation of the word "amicus" in the expression of "amicus curiae." The "i" is long, and takes the accent. It is ordinarily mispronounced with the accent on the first syllable and short "i".