

THE MINIMUM FEE SCHEDULE OF THE
FILLMORE COUNTY BAR ASSOCIATION
(1860)

Foreword

By

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A. Bar associations as
“professional protective organizations”

Bar associations have served the profession—and the public—in many ways. They adopted canons of legal and judicial ethics, pushed for higher admission standards, proposed law reforms to the legislature, sponsored educational seminars for practitioners, and so on. They also have served as bulwarks against competition—from within the profession and without. This was an important function of bar associations for much of the late nineteenth century and most of the twentieth.

On November 13, 1860, the Fillmore County Bar Association was formed by about ten lawyers who met in the courthouse in the town of Preston, the county seat. After electing Reuben Wells president, the new organization adopted a “minimum fee schedule,” to which its members “assented to” and “agreed to abide thereby.”

This schedule enabled the public to know the approximate cost of certain legal services, and it informed new lawyers of prevailing rates in the community. But its most important functions were to prevent cutthroat competition within the profession and to set a floor for fees that would enable lawyers to make a living. It was adopted only three years after the Panic of 1857.

It is not known how the minimum fee schedule was enforced. Of the 23 lawyers practicing in Fillmore County in 1860, less than half attended the initial organizational meeting on November 13th and endorsed the schedule. Social and professional pressures were probably the most important tools. The bar viewed itself as “compar[ing] favorably as to ability with other counties in the State.” Appeals to this county-wide sense of pride may also have brought fee breakers back in line.

In the next century, state and county bar associations saw several areas of practice threatened by competition from other professions and enterprises. In reaction, they formed committees on the unauthorized practice of law to ferret out individuals or organizations that provided legal advice or services to customers but lacked law licenses. Bank trust departments which carried on probate work and accountants who gave tax advice were targeted. In 1932, the Minnesota State Bar Association’s Committee on Unauthorized Practice of Law even confronted the League of Minnesota Municipalities about its practice of charging members for drafting ordinances and similar measures. The Committee concluded that while the League provided valuable assistance, “the practice is a violation of law and must be discontinued.”¹ As the decades passed, the importance of this committee diminished until, toward the end of the century, it was abolished, thereby suffering the same fate as its counterpart, the minimum fee schedule, which was outlawed by the U. S. Supreme Court in *Goldfarb v. Virginia State Bar*, 421 U. S. 773 (1975).

The history of how bar associations in Minnesota acted as “professional protective organizations” to create bulwarks against internal and exterior competition has not been written—and probably never will be.²

¹ “Report of Committee on Unauthorized Practice of Law,” in *Proceedings of the Minnesota State Bar Association, 1932* 153-4 (University of Minnesota Law School, 1932).

² The phrase “professional protective organization” is taken from Jerold S. Auerbach, *Unequal Justice: Lawyers and Social Change in Modern America* 65 (Oxford Univ. Press, 1976).

B. Reuben Wells

Reuben Wells was the first president of the Fillmore County Bar Association. He probably inspired its formation and its adoption of the minimum fee schedule.

Why Wells, at the age of 55, moved with his family from New York, where he was an established businessman and politically active, to Minnesota Territory in 1857, is not known. In middle age, he read law and at the unlikely age of 54 was admitted to the New York bar in 1856. He must have concluded that he could never build much of a practice in that tradition-bound state, particularly during a financial panic, and so he headed to Minnesota, perhaps falling for the puffery of its boosters,³ or catching the adventuresome spirit of fellow New Englanders who migrated there in the 1850s.⁴ Whatever pulled him to Minnesota also unleashed a determination to make Fillmore County, his new home, prosper.

Arriving in 1857, Wells staked out a homestead in York township. The next year he was elected a county commissioner; two years later, he was elected to the state senate; and in 1862, he was elected county attorney. In 1863, he moved to Preston, and was elected its first mayor. He held other public offices in the 1870s. With each office came hours, probably hundreds each year, of official meetings and planning sessions, talks with constituents, conferences with other government officials, correspondence and reading about pressing local issues, and much else. Wells thrived.

A history of Fillmore County, published in 1882, included Wells' self-portrait:

REUBEN WELLS, one of the old settlers and prominent political men of this county, was born in Washington county, New York, on the 17th of November, 1802.

³ See generally my article "Lawyers and 'Booster Literature' in the Early Territorial Period" (MLHP, 2008).

⁴ E.g., Steward H. Holbrook, *The Yankee Exodus: An Account of Migration From New England* 166-86 (Univ. of Wash. Press, 1968) (published first in 1950).

That Minnesota had adopted a system of code pleading may also have attracted Wells, who was educated under the Field Code in New York. In Minnesota he would not have had to be retrained to use common law forms of pleading.

When he was seven years old the family moved to Luzerne, Warren county, where Reuben received his education. He was afterward engaged in mercantile and lumbering pursuits, at the same time studying law, and in 1856, was admitted to the bar at Glen's Falls in the same county. He was married in 1828, to Miss Catherine Leaven, who bore him two children, one of whom is living. Mr. Wells was a member of the New York State Legislature for two terms, and always took an active part in political and educational affairs. In 1857, he came to Fillmore county and took land in York township upon which he lived until 1863, when he came to Preston. On the organization of the town of York he was chosen Chairman of the first board of Supervisors, was also Chairman of the first board of County Commissioners. He was elected County Attorney in 1862, and filled the office two years; was a member of the State Senate in 1859 and 1860. When the village of Preston was organized he was its first Mayor and retained the office three terms, has also held other offices of trust and has been Court Commissioner for the past twelve years. Mrs. Wells died on the 8th of January, 1877. On the 27th of November, 1879, Mr. Wells married Mrs. Mary A. McKenny, who died on the 16th of February, 1882. Since coming to this place Mr. Wells has been engaged in the practice of his profession.⁵

At this time Wells was eighty years old and had lived in the county a quarter century. Interestingly, he concludes this sketch with the claim that he still was engaged in the "practice of his profession" (an alliterative phrase that appears in countless profiles of lawyers in dozens of county histories published in this period). It is unlikely that Wells ever handled much trial work. With a strong business background, his practice concerned real estate transactions, probate and similar commercial matters. Wells' business card, published in the *Preston Times* in 1892, the last year of his life, confirms his

⁵ *History of Fillmore County, Minnesota* 408-9 (Minnesota Historical Company of Minneapolis, 1882)

activities in the economic life of the community. It described his law firm's specialties—insurance and real estate:⁶

H. R. WELLS	J. W. HOPP
WELLS & HOPP,	
Attorneys and Counsellors at	
Law. Insurance and General Real Estate	
Agents. Will buy and sell Lands, examine	
titles, pay taxes, etc.	
PRESTON,	MINNESOTA.

⁶ *Preston Times*, April 28, 1892, at 1. It is obvious that the newspaper's typesetter had not mastered his craft.

Wells' partner, John W. Hopp, was profiled two decades later in a county history:

John W. Hopp. A prominent lawyer, and present county attorney of Fillmore county, has been a resident of Preston since he received the rudiments of his education in the district school at Preston, and later attended the Minnesota State University, graduating in the class of 1891. After finishing his university course he associated himself with Henry R. Wells in the practice of law, but this firm was dissolved in 1910 and Mr. Hopp now continues in the profession entirely on his own responsibility. He has held many offices in the town and county, serving as village attorney for two terms and as county attorney from January 1, 1897, to January 1, 1903, as well as from January 1, 1909, to the present time. He is affiliated with the Preston Lodge, No. 36, A. F. & A. M.; Preston Chapter, No. 32, R. A. M., and Malta Commandery, No. 25, K. T., as well as with Osman Temple, A. A. O. N. M. S. of St. Paul. He also a member of the M. W. A. Mr. Hopp married Alice E. Daniels, of Winona, Minn., and they are the parents of Harold D., born August 12, 1898, and Margaret K, born February 24, 1911. The parents of John W. Hopp were Michael and Eva (Letz) Hopp. The father came to the United States from Germany in 1856 and located a time in St. Joseph, Mo., before taking up his permanent residence in Preston. He died June 22, 1900, and his wife passed away May 14, 1904.

Franklyn Curtiss-Wedge ed., *History of Fillmore County* 543-4 (H. C. Cooper, Jr., Co., 1912).

On July 6, 1892, a few months shy of his 90th year, Reuben Wells died. The *Preston Times* carried his obituary the next day:

A GOOD MAN GONE.

A Long and Useful Career
Closed By Death.

Hon. Reuben Wells Passes
Peacefully Away at 1.15
Wednesday Morning
July 6th, 1892.

The night was calm and beautiful; the silvery light of the moon shed its soft radiance over the sleeping earth, a fitting time for the gentle spirit of our venerable Brother to be wafted home to its Maker, or in the words of Milton,

“A gentle wafting to immortal life.”

An active and useful life is brought to a close. We shall miss his happy smile, his kindly greetings, his pleasant manners. For more than a quarter of a century he has been a familiar figure on our streets and in our gatherings. He was par excellence a **MAN** with all that that word implies.

Mr. Wells was born in Jackson, Washington county, N. Y, Nov. 17, 1802, and was therefore his ninetieth year at the time of his death. He joined the Masonic lodge in 1825, was elected Master the following year and sat in the Grand lodge of New York during the Morgan excitement. He held numerous positions of trust in his native state, among others that of school superintendent. He was a member of the legislature in 1848-1854, voted

twice for William H. Seward for U. S. Senator, besides he introduced and succeeded in having several important bills passed through both houses.

In 1857 he came to Fillmore county and immediately preempted a quarter section of land in York township on which he resided for some time. In April 1858 he was elected chairman of the first board of county commissioners in Fillmore county. In 59-60 he served this county as state senator, and in 1862 he was elected county attorney. In 1871 he was elected the first Mayor of Preston and served three terms; he also served nine terms as village justice. For a number of years past he has been Court Commissioner, a position he resigned a few months since on account of failing health. At the time of his death he was Chaplain of the Masonic Lodge of this place, held the office of Scribe in the Chapter and was Grand Chaplain of the Grand Chapter of Minnesota. He was also a prominent and respected member of the Odd Fellows lodge. Such is a brief review of a life which has been more than usually long and active. Father Wells was strictly honorable and upright in all his dealing, a consistent Christian, a devout member of the M. E. Church to which he had belonged for more than seventy years. His death though long expected is sincerely mourned by the entire community and though years may come and years may go his memory will ever be held in pleasant remembrance.

“Beyond that level road of time, beyond
That Bourn which none may evermore repass,
That sixth day even when the man must rest
From all his labor howsoe’er performed.
Well be it if the work is faithful done;
Well be it if the finished life shall fit
With such divine exactness as to show
Itself the handiwork of one who wrought
With wisdom, strength and beauty to the end.
For such compose that Temple of the Soul.

That spiritual building where the light of God
In endless, unimagined splendor shines
Through every living stone. So mote it be.”

The funeral services, will be held under the auspices of
the Masonic and Odd Fellows lodges from the family
residence, next Friday, afternoon at two o'clock.⁷

The prayer that, as years passed, the life of Wells would be
remembered was not answered. He is mentioned only twice in a
history of the county published just twenty years after his death. Like
other energetic leaders of small communities in Minnesota in the
nineteenth and twentieth centuries, he is forgotten.

C. Sources

The following account of the formation of the Fillmore County Bar
Association and its adoption of a minimum fee schedule appeared first
on pages 305-6 of *History of Fillmore County, Minnesota*, published
by Minnesota Historical Company of Minneapolis in 1882, and
reprinted by the Fillmore County Historical Society in 1982. The
biographical sketch of Reuben Wells appeared on pages 408-9. They
are complete though reformatted. I thank Minneapolis attorney
LaVerne Pritchard for bringing this account to my attention.

The following may be read in conjunction with another article posted
separately on the MLHP, “Fillmore County Bench and Bar,” which
was a chapter in the first volume of *History of Fillmore County*,
compiled by Franklyn Curtiss-Wedge, and published by the H. C.
Cooper, Jr., Co., of Chicago, in 1912. □

⁷ *Preston Times*, July 7, 1892, at 5.

Fillmore County Bar Association.

At an early day there were few conventionalities or forms to be observed in handling cases in court, and the pleadings were usually of a motley variety, a mixture of logic, of traditional law nomenclature, usually with considerable common sense interlarded with more or less frontier slang; The justices court in particular was often the scene of drolleries and comical incidents of the most mirth provoking character. The line as to who should or should not practice in these courts, was not well defined. But about the year 1860, a Bar Association was formed, at the Court House, with Reuben Wells as President. The scale of prices which were adopted is here reproduced, with the names of the county bar at that time. It will be seen that some of these men now occupy leading positions.

*Fee Bill Adopted by the Fillmore County Bar,
being Minimum Charges:*

- For proceedings for plaintiff before notice
of trial, including judgment by default..... \$10 00**

- When application to the Court is necessary,
or attachment is issued.....15.00**

- For proceedings for defendant before notice
of trial.....7.00**

- For either party after notice of trial and
before trial.....10.00**

- Trial fee of separate issue of law or fact for
plaintiff,.....\$15.00. For defendant.....12.00**

- Trial fee of issue of law and fact when tried
at the same time for either party.....15.00**

For proceedings for either party when the action has been removed to the supreme court before argument.....20.00

For argument.....30 00

For making application for, or opposing continuance of cause.....5.00

On amounts less than \$250—25 per cent. to be deducted from the above rates, and over \$1,000—25 per cent. to be added.

For trials of appeals and arguments of certiorari's from justice's courts.....10.00

For foreclosing mortgages on real estate by proceedings in court on default:

For any sum not over \$250.....25.00

For any sum over \$250, and not over \$500.....35.00

For any sum over \$500, and not over \$1,000.....40.00

For any sum over \$1,000.....50.00

When defense is made \$10.00 is to be added.

For foreclosing mortgages on real estate by advertisement:

For any sum not over \$200.....10.00

For any sum over \$200 and not over \$500.....15.00

For any sum over \$500.....20.00

For collections without suit:

For any sum not over \$50.....10 per cent.

For any sum over \$50 and not over \$100.....5 “ “

For any sum over \$100 and not over \$500.....2 1/2 “

And on any sum over \$500, 1 per cent, to be added to the above rates.

For consultation without suit.....\$1.00

The above fees are exclusive of disbursements.

We hereby assent to the foregoing fee bill, and agree to abide thereby. Dated, November 13th, 1860.

**SIMON SMITH,
REUBEN WELLS,
H. P. BRISTOL,
JONES, WILLARD & JONES,
RIPLEY, WELLS & CAVANAUGH,
H. A. BILLINGS,
HENRY C. BUTLER,
N. P. COLBURN,
J. S. SAWYER,
J. F. MARSH,
DRYDEN SMITH.**

The following named lawyers represent and constitute the bar of Fillmore county, and will compare favorably as to ability with other counties in the State: J. D. Farmer, Burdett Thayer, Asa B. Burleson, Dryden Smith, Norman True, George E. Hibner, Spring Valley; Peter McCracken, Cherry Grove; E. C. Boyd, Wykoff; John R. Jones, N. Kingsley, Chatfield; O. Wheaton, Mabel; C. N. Enos, O. S. Berg, Rushford; B. A. Man, E. N. Donaldson, H. G. Day, Lanesboro; Reuben Wells, H. S. Bassett, N. P. Colburn, H. R. Wells, Enos Thompson, A. P. Gates, Preston.

This list is taken from the court calendar, and it is possible that there may be one or two recently admitted whose names were not on the list. ■

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