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On March 12, 1973 the Supreme Court of Wyoming adopted a new Disciplinary Code for the Wyoming State Bar. In this article Mr. Williams examines the events leading to the adoption of the new code, and discusses the operation and effect of some of its provisions.

THE NEW DISCIPLINARY CODE OF THE WYOMING STATE BAR

*Houston G. Williams**

By order of March 12, 1973, the Supreme Court of Wyoming adopted a new Disciplinary Code for the Wyoming State Bar. This code supersedes all previous statutes and Supreme Court rules relating to disbarment or other discipline of attorneys at law. In the same order the Supreme Court repealed Rule 22, which formerly covered procedures for the processing of complaints against attorneys.

Before the adoption of the Disciplinary Code, complaints against attorneys for violation of the ethical standards of the profession were processed by the Bar Commissioner of the District in which the attorney was located, and recommendations were made by the District Bar Commissioner to the State Board of Law Examiners. The State Board of Law Examiners then reviewed the matter, and, if the Board deemed it sufficiently serious, trial before a three-judge panel of district judges was held, and the three district judges determined the merits of the matter and assessed the penalties, if any. The action of the three district judges was then reviewed by the Supreme Court and was either affirmed, modified or remanded, depending upon the Supreme Court's determination.

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The bench and bar had agreed for some time that the old system was not answering the need for expeditious processing and disposition of complaints against attorneys. As a result, the Wyoming State Bar appointed a committee to study new procedures and to draft new rules. This committee was chairmanned by Wade Brorby of Gillette and ably assisted by Edward E. Murane, who is a member of the American Bar Association Disciplinary Committee for the region which includes Wyoming.

At the September 1972 meeting of the Wyoming State Bar in Cheyenne, Mr. Brorby's committee made its report to the general membership of the State Bar and submitted a set of proposed rules constituting a disciplinary code. The Wyoming State Bar unanimously approved the committee draft and recommended that the Supreme Court of Wyoming adopt the disciplinary code. At the same meeting the committee chairman recommended that the annual dues of Wyoming State Bar members be raised \$15.00, and that such funds be earmarked for use by the Grievance Committee which was to be appointed under the code.

The Supreme Court of Wyoming then undertook a study of the draft submitted to it by the Wyoming State Bar committee, and in cooperation with the State Bar committee made certain revisions in the draft, which then were approved by the State Bar committee. The Disciplinary Code was adopted by the Wyoming Supreme Court on March 12, 1973, to become effective April 1, 1973. As provided by Rule XX, it also directed that any disciplinary investigation pending on that date should be transmitted to the Grievance Committee.

West Publishing Company, in its advance sheet of April 6, 1973, published the order of the Supreme Court and the entire text of the new Disciplinary Code. At the request of Chief Justice Glenn Parker of the Wyoming Supreme Court, the Wyoming State Bar mailed a copy of the new Disciplinary Code to all members of the Wyoming State Bar on March 17, 1973.

On March 10, 1973, in anticipation of the code being accepted by the Wyoming Supreme Court, the seven Bar Com-

missioners of the Wyoming State Bar and its President, President-Elect, Vice President and Secretary-Treasurer met at Casper to consider Rule IV, which covers the appointment of the Grievance Committee. This rule states that the Supreme Court of Wyoming shall appoint such committee upon the recommendation of the State Bar. At the March 10, 1973 meeting, the Bar Commissioners and officers of the Wyoming State Bar determined upon its recommendations to the Grievance Committee and submitted them to the Chief Justice of the Wyoming Supreme Court. The Supreme Court, by order of March 20, 1973, appointed the following five members of the Wyoming State Bar to the Grievance Committee for the designated terms:

Edward E. Murane, Chairman
Casper, Wyominguntil April 1, 1975

Frederick G. Loomis, Vice Chairman
Cheyenne, Wyominguntil April 1, 1975

Fred E. Burdett
Evanston, Wyominguntil April 1, 1976

Robert E. Holstedt
Sheridan, Wyominguntil April 1, 1974

James A. Zaring
Basin, Wyominguntil April 1, 1976.

The President of the Wyoming State Bar then advised the District Bar Commissioners that they should refer all pending matters to the Grievance Committee.

In order to finance the activities of the Grievance Committee and in accordance with the State Bar committee's recommendations, it was necessary to raise the annual dues paid by attorneys to the State Bar. The State Bar committee recommended an increase of \$15.00 per member per year. Since this matter is governed by statute in Wyoming, the State Bar sponsored House Bill 285 in the 1973 Wyoming Legislature. It was introduced by Representative Mulvaney and all of the other lawyer members of the Judiciary Committee in the House of Representatives. This bill amended Section 33-55 and Section 5-22(D), Wyoming Statutes (1957),

to allow an increase to \$50.00 per year. The statute provides that the Supreme Court may set the annual bar dues upon the recommendation of the District Bar Commissioners, which is the governing board of the Wyoming State Bar. At its meeting in Casper on March 10, 1973, the Board of Bar Commissioners recommended to the Wyoming Supreme Court that the Bar dues be increased by \$15.00 to \$50.00 per year. It also recommended that the preexisting custom of payment of one-half of such dues be allowed by members of the State Bar who had been members five years or less. The Supreme Court, by order of March 20, 1973, amended Rule 5, Amended Rules for the Organization and Government of the Bar Association of the Attorneys at Law of the State of Wyoming, to increase the annual Bar dues to \$50.00, with the additional \$15.00 to be placed in a special fund for use only by the Grievance Committee under the new Disciplinary Code. This order was published in the *Wyoming Reporter* and became effective ninety days after publication in the *Pacific Reporter, Second Series*, advance sheets. Rule 5 provides that Bar dues are payable on or before the second week in October of each year, and the new schedule of Bar dues is effective under the Supreme Court order commencing October 1973.

It will be noted that under Rule II of the new Disciplinary code "[a]cts or omissions by an attorney, individually or in concert with any other person or persons, which violate the Code of Professional Responsibility" adopted by the Supreme Court, with any other rules or standards adopted by said Court, shall constitute misconduct and shall be grounds for discipline.

At the September 1971 meeting of the Wyoming State Bar in Cody, Wyoming, the State Bar committee presented its recommendations with reference to the Code of Professional Responsibility, and the general membership approved the same, subject to certain amendments. The State Bar thereupon requested and recommended that the Wyoming Supreme Court amend Rule 20 of the Wyoming Bar Association Rules to provide for ethical standards based upon the Code of Professional Responsibility with certain changes. The Court, on September 18, 1972, entered its order adopting as ethical

standards relating to the practice of law in Wyoming the Code of Professional Responsibility adopted by the House of Delegates of the American Bar Association on August 12, 1969, and amended February 24, 1970, with certain exceptions, amendments and additions having to do with Canons 2, 3, 5, 6, 7 and 8. The Court ordered publication in the *Pacific Reporter* advance sheets of the amendment to Rule 20. The Code of Professional Responsibility of the American Bar Association may be found in Volume V of *Martindale-Hubbell Law Directory* and in the 1972 supplement to *American Jurisprudence 2d, Desk Book*, page 103-153. Copies of this Code in pamphlet form may be obtained from the American Bar Association office, 1155 East 60th, Chicago, Illinois 60637. The exceptions, amendments and additions adopted by the Wyoming State Bar and the Supreme Court of Wyoming are as follows:

CANON 2

Ethical Considerations: Eliminate EC 2-28.

Disciplinary Rules: Eliminate DR 2-102(D).

The following definitions shall apply with respect to EC 2-22 and DR 2-107 (A) and (B):

- (a) *Firm:* Those lawyers associated together in a partnership or in a professional corporation and generally sharing percentage-wise or on some internally agreed basis the gross fees produced by that organization.
- (b) *Associated:* A lawyer who appears on the letterhead with another lawyer in a status of lesser significance than that of a partner or an equal shareholder of a professional corporation and who is employed either on salary or on a fee basis for work done.
- (c) *Officing:* DR 2-107(A) and (B) and EC 2-22 recognize a situation where more than one lawyer would share a particular place of business and may also share in the use of secretaries, bookkeeping, and other general facilities but would not have their names on the same letterhead and would not share fees

unless associated together for a particular case or item of legal business.

CANON 3

Disciplinary Rules: DR 3-101(A) is amended to read as follows:

A lawyer shall not aid a non-lawyer in the practice of law.

The following is added as DR 3-104:

A lawyer may accept employment from any organization such as an association, club or trade organization to render legal services in any matter in which the organization as an entity is interested. This employment should not include the rendering of legal services to a member of such an organization in respect to his individual affairs.

CANON 5

Disciplinary Rules: The following additional exception is added as DR 5-101 (B) (5):

When a lawyer is a witness for his client, except as to merely formal matters such as the attestation or custody of an instrument and the like, he should leave the trial of the case to other counsel. Except when essential to the ends of justice, a lawyer should avoid testifying in court in behalf of his client.

CANON 6

Ethical Considerations: The words 'to the best of his ability' shall be added at the end of the first sentence of EC 6-1.

The words 'or other means' are eliminated in EC 6-6.

A footnote is added to DR 6-102, as follows:

DR 6-102 is a limiting factor to prohibit a lawyer from initially attempting to avoid adverse results of his actions in representing his client before the fact. A lawyer should be permitted to exert a vigorous defense if sued for malpractice in the same manner as any other profession, i.e., archi-

pects, engineers, M.D.'s, or other disciplines; and if there is any question concerning such defense, it is clarified that DR 6-102 does not pertain to elimination of a defense in a litigated matter, nor to presenting a lawyer's views with respect to any matter before the Bar Commissioners or the State Board of Law Examiners, or the Supreme Court of the State of Wyoming, or any other disciplinary body set up by the Wyoming State Bar.

CANON 7

Disciplinary Rules: DR 7-110(b) (2) is eliminated.

CANON 8

Ethical Considerations: The last sentence of EC 8-3 is deleted.

The procedures for processing of a complaint against a member of the Wyoming State Bar are outlined in detail in the new Disciplinary Code for the Wyoming State Bar, and it will be observed that the Grievance Committee is given broad powers and duties to enforce the Code. At the same time all of the requisite safeguards for the protection of the individual attorney and the complainant are detailed in the Code.

Several features of the Code will be of particular interest to practicing attorneys, one of which is contained in Rule XX requiring records of the handling, maintenance and disposition of all funds, securities, and other properties of a client at any time in the possession of any attorney to be preserved for a period of five years after final distribution thereof, or any portion thereof. Another interesting feature is contained in Rule IV which grants immunity to members of the committee and those persons investigating for the committee from suit for any conduct in the course of their official duties. Parenthetically it should be noted that the Grievance Committee is authorized to employ investigators to make investigations of those complaints. This will relieve the District Bar Commissioners of the onerous burden of conducting investigations on their own time, as the Code

eliminates the duty of investigation formerly placed upon the Bar Commissioners. This rule also provides that complaints submitted are absolutely privileged, and no lawsuit predicated thereon may be instituted. Rule X of the Code delineates the procedures involving attorneys convicted of serious crimes which are therein specifically defined. Rule XI covers in detail proceedings to be taken where an attorney is declared to be incompetent or is alleged to be incapacitated. Rule XIII provides for reciprocal discipline where an attorney admitted to practice in this state has been disciplined in another jurisdiction, and Rules XIV and XV cover the handling of a disbarred or suspended attorney's pending business.

As might be expected, the Code provides in Rule XVIII that all proceedings involved in allegations of misconduct by an attorney shall be kept confidential until and unless a recommendation for the imposition of discipline is filed with the court by the Grievance Committee or the respondent-attorney requests that the matter be public.

Rule V provides, among other things, that the Wyoming Rules of Civil Procedure shall govern all formal hearings before the Grievance Committee and requires that a complete record be made of all such proceedings. This rule also requires that when the committee, after formal disciplinary proceeding, recommends to the Supreme Court that an attorney be disciplined the attorney involved will be given an opportunity to file such briefs or have such argument as the court may determine, and the court will thereafter enter its judgment.

Many of the provisions of the Code cover areas of discipline which heretofore have not been delineated either procedurally or substantively in Wyoming, and the Wyoming State Bar and the Supreme Court of Wyoming have now provided an effective vehicle for bar discipline. With the cooperation of the members of the Wyoming State Bar and all other interested parties, it is to be hoped that proper bar discipline will now become a reality.