

1979

Committee Reports - Wyoming State Bar

Wyoming State Bar

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University of Wyoming

College of Law

LAND AND WATER LAW REVIEW

VOLUME XIV

1979

NUMBER 1

COMMITTEE REPORTS

WYOMING STATE BAR STATEMENT OF REVENUES AND EXPENSES FOR THE ELEVEN MONTHS ENDING JULY 31, 1978

	UNRESTRICTED FUNDS	RESTRICTED FUNDS
REVENUES:		
Annual fees	\$ 97,488	\$ —
Interest	6,142	1,295
Miscellaneous	1,736	—
	<u>105,393</u>	<u>1,295</u>
EXPENSES:		
General and Administrative ..	69,971	—
EXCESS OF REVENUES OVER EXPENSES	35,422	1,295
FUND BALANCE JULY 31, 1978	<u>122,851</u>	<u>20,667</u>

ASSETS

Time and certificates of deposit	\$125,109
Restricted cash	<u>20,667</u>
	\$145,776

LIABILITIES AND FUND BALANCE

Checks outstanding	1,905
Taxes payable	353

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FUND BALANCE

Unrestricted	\$122,851
Restricted	<u>20,667</u>
	<u>143,518</u>
	<u>\$145,776</u>

CLIENT'S SECURITY FUND

Reported as of August 8, 1978

Hilltop National Bank—Casper	
C.D. #92987	\$6,306.60
American National Bank—Powell	
C.D. #482	1,729.15
Guaranty Federal Savings & Loan—Casper	
C.D. #1300500	1,649.64
Guaranty Federal Savings & Loan—Casper	
C.D. #1300680	4,094.20
Guaranty Federal Savings & Loan—Casper	
C.D. #1200500	<u>6,887.56</u>
TOTAL	\$20,667.15

CLIENT SECURITY FUND RECONCILIATION

Balance 9/9/77	\$19,453.19
Add: Interest Credited to Account	1,213.96
Balance 8/8/78	\$20,667.15

PRESIDENT'S REPORT 1977-1978

The Wyoming State Bar enjoyed a most productive year. The Officers, Commissioners, and Members of the Bar gave freely of their time working on the many Bar projects. This is a list of some of their accomplishments.

The Mandatory Continuing Legal Education program became operative this year. 273 attorneys (in State) have satisfied their CLE requirement for 1978. Programs within Wyoming certified for credit were

presented by the Law School, University of Wyoming and the Wyoming Trial Lawyers Association. The program at the September 1978, Wyoming State Bar annual meeting certified for 10 hours credit will satisfy requirements for the first year.

The Judicial Poll was completed by Ken Griffen of the Political Science Department of the University of Wyoming. As a result of a resolution of the Commissioners of the Bar, results of the poll, as it pertained to a particular judge, were released to that Judge for his use and information. The Poll, as it pertains to Judges running for election, will be released to the media prior to election day.

A public relations program was begun with the acquisition of several public information television tapes. These tapes are presently being shown on the Casper and Cheyenne television stations.

The Wyoming State Bar participated in the cost of printing and publication of the,

- (a) Rules of Evidence
- (b) Rules of Appellate Procedure
- (c) Pattern Criminal Jury Instructions

Copies of these publications have been distributed to members of the Wyoming State Bar.

We've begun considering acquisition of a permanent home for the offices of the Wyoming State Bar. Several properties have been shown to us. It is hoped that the search will continue. A permanent State Bar Office would be an asset both economically and because of the additional benefits and services that could be provided to members of the bar.

Officers and Commissioners of the State Bar adopted a resolution opposing a Bill in Congress that would reduce and limit jurisdiction in the Federal Courts. We worked closely with Senator Malcolm Wallop, a member of the Committee considering this Bill. The State Bar's position promotes the public interest and Senator Wallop has supported our position. We extend our sincere appreciation to Senator Wallop.

The Bar will receive two grants from the Federal Government through DPASS, which are for the delivery of legal services to the indigent in the amount of \$35,000, and for delivery of legal services to the elderly in the amount of \$50,000. In addition to the service we will perform, it will also enable us to make a beginning on establishing a lawyer referral service, since we will be connected to the Wyoming Information and Referral Service WATTS line.

Dr. Robert Points, who is the head of the Involvement Learning Center and the Wyoming Law Related Education Program at the University of Wyoming, has assembled a very good Wyoming program. The

State Bar is working with Dr. Points in this area. The American Bar Association recently honored Dr. Points as a result of his having produced one of the top law related education programs. He has loaned the Bar a film on this subject which will be available for showing at the annual meeting.

Our accomplishments of the past year would not have been possible without the good work of our Executive Director-Secretary. My sincere thanks to Al Taylor.

Respectfully submitted,

G. JOSEPH CARDINE
President

REPORT OF THE ETHICS COMMITTEE

The Ethics Committee did not meet this past year. This committee had for the previous two years met, reviewed proposed changes in the Code of Professional Responsibility, and had recommended to the Wyoming State Bar Association adoption of amendments to the Code of Professional Responsibility. Primarily, the changes were those suggested by the American Bar Association in the years 1972 and following.

At the 1976 and 1977 Wyoming State Bar Association meetings, the Ethics Committee requested that the Bar Association recommend to the Supreme Court of Wyoming adoption of the amendments proposed in 1976 and 1977. Resolutions were adopted by the Bar Association recommending the adoption of such amendments by the Supreme Court.

On May 10, 1978, the Supreme Court of Wyoming adopted certain of the amendments recommended by the Bar Association to become effective sixty days after its order is published in the Pacific Reporter Advance Sheets.

One of the major changes is in the area of advertising by lawyers in the State of Wyoming. All members of the Bar Association are urged to read these changes and to otherwise familiarize themselves with the Code of Professional Responsibility as amended to date.

During this last year, the Committee was requested on several occasions to give advisory opinions with respect to proposed actions or activities to be undertaken by members of the Bar Association. The Committee declined to give such advisory opinions since this appeared to be beyond the scope and authority of the Committee as it was originally conceived. The American Bar Association does render certain advisory opinions and these are published on a periodic basis. The Ethics Committee believes that these published advisory opinions should be available to

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Wyoming lawyers at a designated place such as either the Supreme Court Library or the offices of the Wyoming State Bar Association or the University of Wyoming Law School Library. The availability of these published opinions would be of great assistance to the members of this Bar Association.

DATED this 7th day of February, 1978.

Respectfully Submitted,

CARL L. LATHROP

Chairman

NECROLOGY COMMITTEE REPORT

The Necrology Committee reports that four members of the Wyoming State Bar Association have died during the past year:

HOMER MANN

Homer Mann was born July 1, 1900, and was admitted to the Wyoming Bar Association in 1926. Mann practiced law in Powell, Wyoming, for over fifty years prior to his retirement in 1977. Before entering the practice of law, Homer Mann taught political science at the University.

At one time or another during his fifty years of practice in Powell, he served as the City, School District, and College District Attorney. At various other times during his career, he occupied the dual post of Town Treasurer and Town-City Clerk. While he was attorney for School District No. 1, the School constructed the original High School Building. He was the attorney for the College District from its establishment through the initial bonding and building program until the expansion of the Northwest Community College District county-wide.

Mr. Mann did the legal work for the organization of the Willwood Irrigation District and helped in the organization and incorporation of the Garland Light and Power Company.

He was a veteran of World War I and past Commander of the Powell American Legion Post, and also was a charter member of the Powell Rotary Club and the Powell Elks Club.

A long-time cattleman with a ranch on the Lower South Fork, he was one of the early breeders in the Powell area of Aberdeen Angus cattle.

Homer Mann is survived by his widow, two sons and one daughter.

J. EDWARD AMSCHEL

J. Edward Amschel was born in 1918, and admitted to the Wyoming Bar in 1949. At the time of his death, Mr. Amschel was a member of both the Wyoming and California Bar Associations.

After graduating from the University of Wyoming Law School, Mr. Amschel served as the City Attorney for Jackson and the Prosecuting Attorney for Teton County, as well as being the Assistant Solicitor and General Counsel for the National Park Service and the United States Fish and Wildlife Service.

Mr. Amschel moved to Hemet, California, in 1958, where he practiced law until 1975, at which time he established the Amschel Law Corporation with two of his sons.

Mr. Amschel was a member of the Masonic Order, the Kalif Shrine and the Elks Lodge. He is survived by his widow and three sons, all of Hemet, California.

JUDSON T. WATSON

Judson T. Watson was born in 1898, admitted to the Wyoming Bar in 1926 and had practiced in Lusk, Wyoming, for over fifty years, receiving his fifty-year plaque from the Wyoming State Bar in Cody during the 1976 State Bar Convention.

Mr. Watson was graduated from Jeriah College and then joined the United States Army, where he was stationed at Laramie, Wyoming. Mr. Watson then attended the University of Wyoming and after discharge from the Army returned to the family home in Keeline, Wyoming, and practiced law on the family homestead north of Keeline.

In 1930, Mr. Watson left the farm, moving to Lusk, Wyoming, and practiced there until his death.

Mr. Watson is survived by his widow, two sisters and his son.

L. A. "JACK" CROFTS

A prominent attorney and former District Court Judge, L. A. "Jack" Crofts, who practiced law for forty years in Lander, Wyoming, died at the age of seventy-four in San Diego, California.

Crofts, born in 1902 and admitted to the Bar in 1930, moved to Wyoming after practicing law in Washington, D.C. At different times in

his career, Mr. Crofts served as the District Court Judge for the Seventh Judicial District; City Attorney, Police Judge, United States Magistrate, County Attorney, and Attorney for the Lander High School Board.

He also served on the Welfare Board and Liberty Board, was one of the early members of the One Shot Antelope Club, a charter member of the Lander Rotary Club, and the Lander Elks Club.

Mr. Crofts is survived by his widow, daughter and son.

Respectfully submitted,

DAN B. RIGGS
Chairman

REPORT OF THE STATE BOARD OF CONTINUING LEGAL EDUCATION

By Order dated December 6, 1977, the Supreme Court of the State of Wyoming adopted and approved rules providing for continuing legal education of members of the Wyoming State Bar. In accordance with those rules, and by Order dated February 1, 1978, the Supreme Court appointed the following individuals to serve on the State Board of Continuing Legal Education:

Richard E. Day, Casper
Tom C. Toner, Sheridan
Calvin E. Ragsdale, Green River
Walter C. Urbigkit, Jr., Cheyenne
E. George Rudolph, Laramie
Nancy Hinkley, Basin
Robert A. Peck, Riverton
Charles Rodgers, Torrington
Robert Ostlund, Gillette

Since their appointment, the Members of the Board have met on three different occasions to formulate policies, appoint committees, and to adopt regulations and forms to be utilized by the Board in the administration of the rules, as adopted by the Supreme Court. The committees appointed were assigned the task of preparing a draft of regulations and forms to be used by the Board and to examine and approve accreditation for CLE courses sponsored by various organizations or attended by the Members of the State Bar prior to the formal adoption of regulations and forms by the Board.

The Board has now adopted regulations and forms governing the administration of the rules of the Supreme Court for the Continuing Legal Education of Members of the Wyoming State Bar and those regulations and forms have been distributed to all members attending

the 1978 Wyoming State Bar Convention and further, regulations and forms will be furnished to all other members as soon as practical after the adjournment of the Convention.

After the first organizational meeting of the Board, the Members of the Wyoming State Bar were advised by letter dated February 24, 1978 of certain interim regulations which had been adopted by the Board. Members were advised that credit would be allowed for attendance at any CLE program sponsored by the following groups or organizations:

1. The Wyoming State Bar or a duly authorized committee or section thereof.
2. The State Bar Association of any other state or an authorized section or committee thereof.
3. The American Bar Association or any authorized section thereof.
4. A law school on the approved list of the American Bar Association.
5. The Wyoming Trial Lawyers Association.
6. The American Trial Lawyers Association.
7. The Joint Committee for Continuing Legal Education of the American Bar Association and the American Law Institute.
8. The Practicing Law Institute.
9. The Rocky Mountain Mineral Law Foundation.
10. The Defense Research Institute, Inc.

Further, that notice advised that the submission of the hours by the Members of the Wyoming Bar should be accompanied with the Member's check in the amount of \$5.00 to cover costs which were anticipated to be incurred by the Board and the State Bar in the administration of the rules. The February 24 notice also stated that ten hours of CLE must be obtained before March 1, 1979. Both the rules adopted by the Supreme Court and the regulations of the State Board of Continuing Legal Education provide that after January 1 and before March 1 of each year, each attorney must make a written report to the Board concerning that attorney's completion of accredited continuing legal education during the preceding calendar year. Therefore, in order to comply with the Wyoming Supreme Court Rules and the Boards Regulations, each attorney should make every effort to obtain the required hours of accreditation prior to December 31, of each year.

As of the time of the Convention, a majority of the members of the State Bar have completed the requirements for Continuing Legal Education for calendar year 1978. The Executive Secretary of the Wyoming State Bar has furnished that information to the Board.

Respectfully submitted,

RICHARD E. DAY
Chairman

REPORT OF COMMITTEE ON PREPAID LEGAL INSURANCE

The committee has not made much progress during the past year. Information has been gathered on plans currently in use in other states. However, while these have been reviewed, nothing has been put into what could be termed a package suitable for submission to the State Bar.

We have been in contact with Wyoming State Employees Association and the Wyoming Education Association. The Education Association has placed a Cheyenne law firm on retainer to answer job related questions for teachers over the entire state. It is their desire to work this plan for a year to ascertain the benefits or detriments thereof. The Wyoming Public Employees Association has informed us that, at this date, they are in somewhat of a disarray concerning matters of this nature since the recent change in the dues check-off provisions.

It is the recommendation of the Committee that it be continued for an additional year. If no ascertainable results, or a reasonable facsimile thereof, or the prospects are not obtained within that time, the Committee will recommend that it be disbanded.

Respectfully submitted,

GEORGE A. CLARKE
Chairman

REPORT OF COMMITTEE ON ARBITRATION OF FEE DISPUTES

At its January 14, 1978, meeting of Officers and Commissioners of the Wyoming State Bar requested that the Grievance Committee formulate rules for a Committee on Resolution of Fee Disputes. National polls show the problem is the biggest single area of contention between lawyers and the public. Many of the complaints filed with the Grievance Committee are in reality nothing more than a fee dispute, however, the Code of Professional Responsibility is not designed to deal with the prob-

lem. Thus, no satisfactory resolution can be obtained in that forum. Other states have experienced the growth of arbitration panels, sometimes dominated by non-lawyers; however, due to the fact that it is voluntary, many arbitration programs have been ineffective due to the unwillingness of many lawyers to participate therein.

The Committee's objective in drafting the proposed rules was not to seek a determination of right or wrong in the matter of a fee dispute, but rather to decide what should be done to preserve the image of the bar as a profession instead of a trade.

The premise that the practice of law is not a commodity to be bartered in the market, and the individual lawyer values his professional integrity more than his fee, served as the underlying purpose in adopting a procedure seeking to avoid any implication of impropriety or embarrassment where a difference of opinion arises in the payment of a fee. Reputable attorneys have occasionally given in to preposterous demands by clients simply to avoid involvement with the disciplinary machinery.

The object of the rules are to allow the client with the legitimate complaint to receive the assistance of the organized bar without having to search for another attorney, thus resulting in the payment of a second fee to another lawyer to recover the amount of the overcharge. The lawyer against whom the complaint is filed would have ample protection against frivolous complaints and an opportunity to defend himself on the merits.

The rules provide for the appointment of a twenty-seven member committee on a geographical basis, by county, with Laramie, Natrona, Sheridan and Sweetwater County each having one additional member appointed to the Committee because of population. Also, selection of committee members would take into consideration the various types of practice in which lawyers are engaged. From the members of the committee as a whole, an Executive Council would be appointed consisting of five members comprising a chairman and four other members selected from geographical areas. The responsibility of the Executive Council would be to oversee the work of the committee.

When a complaint is filed with the Executive Director of the Bar Association, it is first referred to the Chairman of the Grievance Committee for a determination that no ethical violation is involved. If none exists the Executive Director then requests the complainant to execute a binding consent to arbitration and pay a twenty-five dollar administration fee. If the complainant fails to execute the consent and pay the fee, the matter is closed.

After receipt of the complaint and filing fee it is then forwarded to the chairman of the Committee for assignment to one member for investigation. This person is referred to as the "assigned member".

The assigned member then reviews the complaint, obtains additional information and makes a preliminary investigation after which he notifies the complainant and the attorney involved that the Committee has assumed jurisdiction but will delay any further steps for a period of thirty days. This time lapse allows a cooling period during which the parties are urged to settle the matter. If the matter is not settled within the thirty day period, then the attorney is asked to consent to binding arbitration. In the event the attorney fails or refuses to consent to binding arbitration, the arbitration panel will proceed to conduct an *ex-parte* hearing, and the assigned member is directed to represent the complainant to either institute suit for refund of a portion of the fee determined to be excessive or to resist any suit for collection of the fee to the extent that was determined excessive.

After the attorney either consents or refuses to consent to arbitration the matter is assigned to a hearing panel selected by the Chairman composed of three members from the Committee. Each party to the arbitration is allowed to challenge two members of the panel. The matter is then set for hearing within thirty days from assignment before the three member panel who shall proceed to act under the provisions of the Uniform Arbitration Act. Each of the parties to the arbitration are entitled to be heard, present evidence, and cross-examine witnesses at the hearing as well as having the right to be represented by an attorney. Either party may request that the hearing be reported, provided the party requesting the transcript makes arrangements for the payment of the court reporter.

Within fifteen days of the hearing, the panel shall enter its award in writing stating the amount and terms of payment if applicable. The original and four copies of the award are forwarded to the Executive Director who shall serve a signed copy of each party to the arbitration.

In cases where both parties have signed a consent to arbitration, any award may be enforced by a court of competent jurisdiction. Where the attorney has not so signed a consent and the fee has already been paid, the assigned member shall then institute suit on behalf of the client for refund of the portion of the fee found to be excessive. In addition, the assigned member shall represent the complainant in defense of any suit brought by the attorney seeking to collect any portion of the fees determined to be excessive. The assigned member shall also institute a suit to vacate any lien asserted by the attorney on the basis of the fee determined to be excessive. Renumeration of the assigned member for his services shall be paid by the Bar Association but costs shall be deducted from any recovery. If the award is in favor of the attorney who has submitted his consent to arbitration, payment of that amount will constitute complete satisfaction of all claims against him and application may be made to the Court having jurisdiction for a determination of means deemed to adequately secure payment.

With the exception of the award itself all records, documents, and files shall be deemed confidential, and the Executive Director shall maintain a permanent record of all matters processed by the Committee. If it is determined that the complaint is not meritorious and is dismissed, the Executive Director shall destroy all records and documents pertaining to the complaint, and in the event an award is made in favor of the complainant, all records and documents shall be destroyed six years after the date of the award if no other complaints are filed against the respondent attorney during the six year period.

The Committee in promulgating these rules did not include lay personnel as participants in the arbitration process in spite of a trend to do so in other jurisdictions. Instead it opted towards a more conservative view by allowing the bar to attempt to improve its image without outside intervention. Whether or not this approach will work, only time and experience can tell.

It may seem, at first blush, that these rules impose an onerous burden upon the practitioner; however, it is submitted that in most instances the whole area of fee problems can be avoided. Most arbitrations would be unnecessary if attorneys would:

1. Discuss their fees at the outset with their clients.
2. Keep their clients informed throughout the proceedings by sending copies of documents, returning telephone calls and making status reports.
3. Discuss the bill with the client after the case is resolved.

Essentially fee disputes result from a lack of communication between the attorney and client because of the practitioner's preoccupation with the client's problem to the extent that the client is inadvertently excluded from the intervening legal process.

Respectfully submitted,

JAMES A. ZARING
FRED E. BURDETT
THOMAS E. LUBNAU
PAUL B. GODFREY
DONALD E. CHAPIN

REPORT OF PROBATE REVISION COMMITTEE

There is no formal report from this Committee due to the fact that three of the five members appointed to said Committee are also members of the Governor's Probate Statute Study Committee. That Committee

has diligently functioned since its inception on April 26, 1977, and is continuing with the task of preparing a proposed revision of Wyoming's Probate Code.

The other two members of this Committee have been kept informed of the proceedings of the Governor's Committee.

Respectfully submitted,

HOWELL C. McDANIEL, JR.
Chairman

REPORT OF THE YOUNG LAWYERS COMMITTEE

The Young Lawyers Committee of the Wyoming State Bar has been quite active in the past year. Numerous meetings have been held and certain projects undertaken. The committee members were: Arthur T. Hanscum, Allen C. Johnson and James E. Fitzgerald, chairman.

The Young Lawyers Committee is producing a handbook on courtroom etiquette. Each state and federal judge in Wyoming was asked to offer comments to be included in the publication. The response was substantial. The handbook will be printed and disseminated to each member of the Wyoming State Bar.

One member of the committee, Allen C. Johnson, attended the meeting of the Young Lawyers Committee of the American Bar Association, during the mid-winter meeting. Johnson reported on the meeting and filed his report with the Executive Secretary of the Wyoming State Bar. In the past, members of the Young Lawyers Committee of the Wyoming State Bar have not attended such meetings. The Young Lawyers Committee has recommended to the Wyoming State Bar that it continue the practice of sending representatives to such meetings, in hopes that better relations will develop with the American Bar Association. Additionally, such a practice may afford the members of the Wyoming State Bar an opportunity to develop leadership roles within the American Bar Association.

Respectfully submitted,

JAMES E. FITZGERALD
Chairman