

1984

## Committee Reports

Wyoming State Bank

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**University of Wyoming  
College of Law**

# **LAND AND WATER LAW REVIEW**

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**VOLUME XIX**

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**NUMBER 1**

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## **COMMITTEE REPORTS**

### **REPORT OF ADVISORY COMMITTEE TO COOPERATE WITH THE AMERICAN BAR ASSOCIATION**

Committee members this year have been:

Mark Bishop, Cheyenne  
R. Patrick Dixon, Casper  
R. Stanley Lowe, Casper  
Richard Williams, Casper

No meaningful activities have been assigned to the Advisory Committee to Cooperate with the American Bar Association. Consequently, your committee reports it has been inactive during the past year.

Respectfully submitted,  
R. STANLEY LOWE  
Chairman

### **REPORT OF CLIENT SECURITY FUND COMMITTEE**

The Client Security Fund Committee considered and approved the claims of four individuals in the preceding year. There are currently pending two additional claims which will be considered in Sheridan, Wyoming during the annual meeting of the Wyoming State Bar Association for 1983. The honoring of the four claims mentioned above will result in payment to the claimants of the sum of \$1,540. As you are aware, the rules of the Client Security Fund Committee allow a claim of no more than \$5,000 per claimant.

Current members of the committee are:

Ms. Suellen Davidson  
Urbigkit & Whitehead  
P.O. Box 247  
Cheyenne, WY 82003

Mr. Richard A. Hennig  
Aron & Hennig  
P.O. Box 1185  
Laramie, WY 82070

Mr. Timothy O. Beppler  
Vehar, Lehman, Beppler  
and Jacobson  
P.O. Box 890  
Evanston, WY 82930

Mr. Thomas C. Toner  
Redle, Yonkee & Arney  
319 West Dow Street  
Sheridan, WY 82801

Mr. Mark L. Hughes  
Hughes & Dumbrell  
P.O. Box 456  
Sundance, WY 82729

Robert M. Shively, Chairman  
Murane & Bostwick  
350 West A Street - Suite 201  
Casper, WY 82601

Mr. William Vines  
Jones, Jones, Vines  
and Hunkins  
P.O. Drawer 189  
Wheatland, WY 82201

Mr. Lawrence B. Cozzens  
405 Transwestern Plaza II  
490 North 31st Street  
Billings, MT 59101

Mr. Richard D. Gist  
Attorney at Law  
150 North Third Street  
Lander, WY 82520

Elections for the replacement of members whose terms have expired will be held at the upcoming meeting.

Currently, Client Security Fund assets are embodied into certificates of deposit with Provident Federal Savings & Loan (current balance: \$15,062.11) and Guaranty Federal Savings and Loan (current balance: \$33,651.84).

Per the request of the Executive Director of the Wyoming State Bar, interest income on those certificates of deposit is to be removed and placed in the Wyoming State Bar's General Fund.

Respectfully submitted,  
ROBERT M. SHIVELY  
Chairman

### **REPORT OF COMMISSIONERS ON UNIFORM STATE LAWS**

I believe most of you know the Wyoming Commissioners on Uniform State Laws are appointed by the Governor and not by the Wyoming State Bar but the Wyoming Commissioners have always made a particular effort to maintain liaison and a good working relationship with the State Bar. The present Commissioners are David Carmichael, Richard J. Macy, and myself, and Ralph E. Thomas is an Associate Commissioner.

From my point of view the most significant event occurring in 1983 was the adoption by the 1983 Wyoming Legislature of the Amendments to Articles 8 and 9 of the UCC. These Amendments have been signed into law by Governor Herschler. I call to your attention one change in the duration of filing of a financing statement. Under the prior law, a filed financing

statement which stated a maturity date of the obligation secured was effective until such maturity date and thereafter for a period of sixty days. If a maturity date was not so stated, then the filed financing statement was effective for a period of five years from the date of filing. Under the current law the filed financing statement is effective for the five year period from the date of filing unless a continuation statement is filed prior to that lapse. You may want to review Section 34-21-952(b) as amended and revise your tickler system accordingly.

The Uniform Conservation Easement Act was passed by the Senate but was not reported out of the House Agricultural Committee. The Uniform Unclaimed Property Act was introduced in the Senate but was not reported out by the Committee. I personally was disappointed in both of these failures as I feel the Acts would be beneficial to the State of Wyoming.

The 1983 Annual Meeting of the National Conference of Commissioners on Uniform State Laws adopted and approved for enactment by the several states four uniform acts and approved an amendment to the Uniform Land Transactions Act.

#### *Uniform Transfers to Minors Act*

This Act is a complete revision and restatement of the Uniform Gift to Minors Act, which is one of the Conference's most successful products and which has been adopted in some version in every American jurisdiction. The new Act allows the transfer to a custodian for the benefit of a minor of any kind of property, real or personal, and tangible or intangible. In addition, the Act permits such transfers not only by lifetime outright gifts, but also from trusts, estates and guardianships, whether or not specifically authorized in the governing instrument, and from third parties indebted to a minor who does not have a conservator, such as parties against whom a minor has a tort claim or judgment, and depository institutions holding deposits or insurance companies issuing policies payable in death to a minor. Because of the substantial expansion in coverage, the title of the Act has been changed to Uniform Transfers to Minors Act. It is believed this Act will be popular in all of the American jurisdictions and it is recommended that it be adopted by the State of Wyoming.

#### *Uniform Marital Property Act*

This is a property act. It determines the ownership between spouses of property acquired during marriage ("marital property"), property brought into the marriage or inherited during marriage ("individual property"), and the appreciation and earnings of individual property, which is marital property in most instances. It defines the rights of the spouses to manage and control the marital and individual property and the rights of creditors of either spouse as to such property. It does not purport to change the law of dissolution of marriage by death or divorce as to the property but indirectly it will have a substantial effect on the property.

Although the Conference refused to so denominate the Act, it is a community property act and borrows heavily from the law of the eight states that do have community property regimes.

Where an adopting state recognizes tenancy by the entirety, the Act includes an optional provision that such a relationship between the spouses and their creditors would not be affected. It also includes provisions permitting the spouses to enter into written agreements varying the ownership rights provided in the Act. There has been already a substantial amount of favorable publicity for the Act.

Support has come from such diverse individuals and groups as William F. Buckley, Jr., Phyllis Schlafly, National Organization of Women, League of Women Voters of Wisconsin, the Older Women's League, AGRI-Women, the 1963 President's Commission on the Status of Women, the 1976 National Commission on the International Women's Year, and the 1980 White House Conference on Families. The adoption of this Act should not be taken lightly by a state as it will have a substantial change on property rights not only between spouses and their creditors but also as to children and other potential devisees.

#### *Uniform Premarital Agreements Act*

This Act provides a premarital agreement becomes effective upon marriage and is enforceable without consideration when that agreement is in writing, signed by both of the parties. A premarital agreement may not adversely affect the right of a child for support and it includes provisions barring enforcement of such agreement if not voluntarily or knowingly entered into by one of the parties. In a sense, it is a companion act to the Uniform Marital Property Act.

#### *Uniform Succession Without Administration*

This Act is drawn from some of the provisions of the Uniform Probate Code but has been prepared as a free standing act that may be adopted by a state that does not have the UPC.

The general concept of this Act is to permit heirs or residuary legatees to take possession, control and title to a decedent's estate by assuming a personal obligation to pay taxes, debts, claims and distributions due to others entitled to share in the decedent's property. The concept is drawn from the civil law and is a variation of the method which is followed largely on the Continent in Europe, in Louisiana, and in Quebec. Texas has a somewhat similar statute.

#### *Amendment to Uniform Land Transactions Act*

An Amendment to the Uniform Land Transactions Act was adopted to overturn a rule, applicable in one or two states, to the effect a subsequent purchaser or lien creditor takes free of the rights of an option holder even if the option is recorded or even if the subsequent purchaser or lien creditor knows of the option holder's interest. Wyoming has not adopted the Uniform Land Transactions Act.

You may be interested to know the Commission is currently working on a Defense of Insanity Act, which should be ready for consideration and passage next year. If any of you have a view concerning the insanity defense, particularly as to the question of burden of proof, the Wyoming Commissioners would appreciate your comments and suggestions.

The Commission also has under consideration an amendment to Article 3 of the UCC thought to be desirable because of the rapidly developing field of transferring funds by electronic means. The present draft of these amendments is referred to as the Uniform New Payments Code and is indeed massive and complex.

Respectfully submitted,  
CHARLES G. KEPLER

### **REPORT OF COMMITTEE ON RESOLUTION OF FEE DISPUTES**

The rule for the resolution of fee disputes became effective approximately two years ago. During the first year of existence there was little activity to report on, there being at the time of the report only two pending cases. However, during the past year, nine cases were referred to the Committee. Two cases have been heard by the Arbitration Panel and the remainder are either pending or have been closed due to settlement, or as a result of a lack of jurisdiction by the Committee in accordance with the provisions of the rules.

The number of cases referred to the Committee are not significant in number, but are significant in the fact that a forum has been provided to resolve fee disputes. One of the Arbitration Panel members stated that ". . . the process is good and should be continued." He noted that the process is indirectly an expensive one because of the attorney time involved, but found that was offset by the fact that the problem could be resolved and that it would not be asking too much of the attorneys to serve and this was one means for us to pay our "debt" to the Bar.

There have been minor problems in the interpretation of the rules and implementation of the rules, but, from the experience of those that have been active in the investigation of the disputes and panel members, it would be premature to start changing the rules. At this point it appears any problems with the rules may be resolved by interpretation by the Executive Council.

Respectfully submitted,  
TIMOTHY J. BOMMER,  
Chairman

**REPORT OF COMMITTEE  
ON WYOMING COURTS**

Committee Members: Robert L. Duncan, Cheyenne  
Honorable Arthur T. Hanscum, Laramie  
R. Stanley Lowe, Casper  
Honorable Margie Meacham, Rawlins  
Frank D. Peasley, Douglas  
Honorable Robert R. Rose, Jr., Cheyenne  
Robert M. Seipt, Riverton

During the 47th Session of the Wyoming Legislature held this year, several pieces of legislation were considered and acted upon which impact upon the courts and the judiciary of our state. The Committee on Wyoming Courts was relatively less active this session since most of the improvements needed in the county courts were achieved in prior legislative sessions.

One item, however, which generated an affirmative reaction on the part of the Committee was a bill which would have replaced the current merit retention system covering our judiciary with an elective scheme designed to politicize a part of the judicial selection processes in our state. That bill, HJR 12, introduced by House Speaker Donley of Natrona County, would have subjected our judges to contested elections when their terms of office end. Under this change anyone who would choose to do so could file for a judicial office when the term of the judge holding that office was due to expire. This would mean that judges who wished to serve another term would have had to engage in several unseemly activities such as campaigning and raising funds from lawyers who practice before them and other persons who deal with the courts in order to wage a campaign for reelection.

A few other states, including Idaho, Utah and Montana, have similar devices in their judicial selection laws, and reports show the experience in those states has been generally unsatisfactory. Such provisions in the laws of those states have resulted in the following:

1. Judges have had to take time off from their judicial duties to wage campaigns;
2. Several good lawyers have decided not to make themselves available for judicial appointments because of their unwillingness to engage in the politics of campaigning;
3. Judges have been obliged to raise funds personally or through campaign committees to wage their campaigns, and the outward appearances of this essential activity cast doubts on their impartiality particularly when their campaign chairmen and fundraisers are trying cases in their courts; and
4. The system of justice and its image have been cheapened by this injection of politics into the judiciary.

Fortunately HJR 12 was defeated in Committee of the Whole with several representatives speaking against it. Only Speaker Donley and one other House member spoke in support of the bill.

No one has given us a satisfactory answer yet to the question why this legislation was introduced. The general consensus in the state is the current system is working satisfactorily.

We were disappointed to witness a defeat of two pieces of legislation which had the support of the Wyoming State Bar. One of them, HB 123, would have included county judges within the present retirement provisions covering justices of the Supreme Court and judges of the district courts. The other, SF 74, as amended by committee action would have raised the salaries of county court judges to \$45,000, but that bill died in the House Committee of the Whole.

Other legislation which was enacted that is of interest to the Bar and within the perimeters of the work of this committee was reported to the Chief Justice by Robert L. Duncan, Court Coordinator, as follows:

1. HB 103 — HEA 98 — Restitution to Victims.

Amends W.S. 7-13-308 relating to restitution to victims of crime. Would require the court to consider restitution as a condition for suspending imposition of a sentence, suspending sentence or ordering probation.

2. HB 24 — HEA 24 — Family Violence Protection Act.

Amends the act to provide that the jurisdiction of the act will be in the county courts in those counties that have established the county court system. There are eight (8) counties which have the county court system, leaving fifteen (15) counties which will require the district courts in those counties to handle proceedings under the act.

3. SF 81 — SEA 78 — Juries

Would expand base jury list to sources of names in addition to voter lists. Provides for protection of juror's employment. No employer shall discharge, threaten to discharge, intimidate or coerce any employee by reason of the employee's jury service. Employer may be enjoined and is liable for exemplary damage up to \$1,000, attorney's fees and costs. Removes age limitation of 73. Base list for drawing jury in justice of the peace and county courts is still handled through clerks of district court. The act becomes effective July 1, 1984. The fees will be increased from \$12 for a full day to \$30 for a half or a full day. In addition, the court may grant the juror an additional \$20 or a total of \$50 per day if the trial exceeds five days.

4. SF 215 — SEA 38 — Small Claims Court — Representation.

Would authorize "a corporation, partnership, association or other organization," in addition to a person, to litigate actions on



their own or through authorized employees, with or without an attorney. If an attorney appears, the opposing party is entitled to a continuance for the purpose of obtaining an attorney of its own. The filing fee was left at \$4. [Rule 1(d), Rules for Fees and Costs for J.P. Court and Municipal Courts that was adopted in 1974 increased the statutory filing fee of \$4 to \$5. There may be a need to readopt the rule to increase the fee from \$4 to \$5. In county courts, the filing fee for all civil matters is set at \$10. W.S. 5-5-137. The Supreme Court may have to consider adopting a separate rule for county courts as was done with J.P. courts.]

5. HB 14 — HEA — Exemptions from executions.

Amends W.S. 1-20-105 as follows:

- a. Wearing apparel exemption raised from \$400 to \$1,000.
- b. Furniture, bedding and other household goods raised from \$1,000 to \$2,000. Double or \$4,000, if two or more persons occupy same residence.
- c. Tools, motor vehicles, team, implements, stock in trade, increased from \$1,000 to \$2,000.
- d. Homestead exemption increased from \$6,000 to \$10,000 "for every resident." The old law provided that "every Wyoming Householder who is head of a family and resident of the state who has reached the age of 60 whether the head of a family or otherwise," was entitled to a \$6,000 Homestead exemption.

6. HB 60 — HEA 15 — Powers of County Courts.

Provides that a county court may preserve and enforce order in its immediate presence and in the proceedings before it according to the Wyoming Rules of Criminal Procedure for County Courts and punish for contempt as provided therein. [The Supreme Court contemplates amending the new Wyoming Rules of Criminal Procedure for County Courts to provide that county courts shall have the same contempt powers as district courts under Wyoming rules of civil procedure and criminal procedure.]

7. HB 189 — HEA — Adjunct Court Commissioner Powers.

Amends W.S. 5-5-167(c) to expand power of adjunct commissioner as follows:

- a. Performance of marriage ceremonies.
- b. By order of a county court judge for individual cases or by a general order for small claims, an adjunct commissioner may:
  - (i) hear matters involving small claims;
  - (ii) conduct trials on misdemeanors—\$500 or six (6) months in jail, provided defendant waives trial by the county court judge in writing;
  - (iii) issue search warrants and arrest warrants.

8. SF 47 — SEA 20 — Retirement of Judges. Would provide for the disability retirement of judges. [Justices and district judges.]

Similarly, Mr. Duncan reported to the Chief Justice the following bills were defeated:

1. HB 281 — Small Claims Jurisdiction. Would have authorized justice of the peace courts to serve or obtain service of summons on a defendant in another county in the state in small claims cases.
2. SF 4 — Jury Trials. Would have removed right to jury trial in cases involving "petty offenses". Petty offenses would have been defined as those offenses wherein the penalty provided for no more than thirty (30) days in jail or \$500 fine, or both.
3. HJR 7 — Salaries of Supreme and District Court Judges. Would have proposed to the voters an amendment to the Wyoming constitution to increase or decrease the salaries of all judges of the Supreme and District Courts whenever any judge of the Supreme or District Court receives an increase or decrease. [The proposed resolution was defeated in the House Committee on a vote of 9 to 1 after a hearing during which the committee was advised that the present constitutional provision which triggers the pay raise for all judges has been workable and there is no problem with it.]

Two bills were vetoed by Governor Herschler among which was HB87A — HEA 112 — Juvenile Court Act. This bill, enacted by both Houses of the Legislature but vetoed by the Governor, amended Title 14 — Juvenile Court Act to place primary responsibility for juveniles, defined as being thirteen (13) years or under, in the juvenile court division of the district court. These offenses would have included all violations of municipal ordinances and offenses now within the jurisdiction of the justice of the peace courts and county courts. The court proceedings on felonies involving juveniles would have been reversed: The filing of a petition in juvenile court would have been mandatory, and the district court would have had to conduct the transfer hearing.

As was pointed out earlier in this report, there are eight counties which have the county court system. This leaves fifteen counties to adopt the system under the voluntary provisions of the law. The legislature is beginning to enact legislation creating laws specifically administered by county courts in those counties that have them but imposing the burdens of these laws on the district courts where no county courts exist.

Currently there are no counties in which the establishment of county courts is actively under consideration. This suggests the members of the bar in those counties which have no county courts should become more active in order to gain the advantages of such courts for their counties at an early date.

In conclusion the Committee on Wyoming Courts proposes the following resolution:

**RESOLVED** that the advantages of the county court system should be shared by every citizen in this state despite the size or geographical location of the county in which he resides; and to this end the Wyoming State Bar reaffirms its earlier endorsements of the county court system and urges those counties which have not yet adopted the system to gain the benefits of state financing associated with it to consider doing so at an early date.

Respectfully submitted,  
**R. STANLEY LOWE**  
Chairman

### **REPORT OF THE CONTINUING LEGAL EDUCATION COMMITTEE**

During the '82-'83 fiscal year of the Wyoming State Bar, the Continuing Legal Education Committee presented a seminar concerning administrative procedures - Law and Practice - in October of 1983 at the Wyoming Law School in Laramie, Wyoming.

The committee also underwrote the costs of a seminar concerning malpractice and legal aspects of medicine, which was held in Casper in May of 1983, and a tax seminar, prepared by the Tax Committee of the Wyoming State Bar, which was held in March of 1983 in Jackson, Wyoming.

During 1982, the committee arranged for the publication of the Wyoming Civil Pattern Jury Instructions and has made the instructions available for sale at \$20.00 per copy.

The Committee has also made arrangements for the seminar to be presented at the annual meeting of the Wyoming State Bar which will be held in September in Sheridan, Wyoming.

As chairman of the Committee, I am in the process of having the financial records of the Committee examined and as soon as examination has been completed, I will deliver a check representing the balance of the funds under the control of the Committee to the Executive Director of the Wyoming State Bar.

Respectfully submitted,  
**DAVID A. SCOTT**  
Chairman

### **REPORT OF THE ETHICS COMMITTEE**

During 1982-83, the Ethics Committee of the Wyoming State Bar received numerous requests for advance ethical opinions. The Committee

has not rendered advance opinions for two reasons. First, the Committee has not felt it had the expertise nor the research facilities to render them. Second, the Wyoming State Bar has not delegated the responsibility nor authority to render such opinions for the reason that the Wyoming Supreme Court has the inherent power to supervise the conduct of attorneys who are its officers (see Preamble, Disciplinary Code for the Wyoming State Bar). The Wyoming Supreme Court has not delegated such responsibility nor authority to the Wyoming State Bar. Therefore, as the Committee receives requests for advance opinions, the Committee has forwarded such requests to the Executive Secretary of the Wyoming State Bar. The Committee has not felt compelled to request of the Wyoming State Bar to recommend to the Wyoming Supreme Court to allow this authority to be developed.

The Committee has followed the American Bar Association's debate with respect to amendments to the "Code of Professional Responsibility and Code of Judicial Conduct."

DATED this 12th day of August, 1983.

Respectfully submitted,  
HORACE M. MacMILLAN, II  
Chairman, Ethics Committee

### REPORT OF THE GRIEVANCE COMMITTEE

As of October 1, 1982, there were nineteen grievances pending before the Grievance Committee. In the period of time from October 1, 1982, to the present, eighty additional grievances were filed. At present, there are twenty-five grievances still pending before the Grievance Committee. The summary set forth below contains the following information about these grievances:

<u>Docket Numbers</u>	<u>Disposition</u>	<u>Allegations of Misconduct</u>
6-82	Public Reprimand	Lawyer entered into unauthorized settlement of client's claim.
33-82	Dismissed	Lawyer engaged in abusive conduct during administrative proceedings for a suspension of teacher.
44-82	Dismissed	Justice of the Peace improperly used his office to gain leverage in argument with citizen.
50-82	Public Reprimand	Lawyer neglected legal matter.
51-82	Dismissed	Failure to promptly settle divorce case.

<u>Docket Numbers</u>	<u>Disposition</u>	<u>Allegations of Misconduct</u>
56-82	Private Reprimand	Failure to comply with discovery orders prompted dismissal of client's claim.
59-82	Private Reprimand	Failure to timely perfect appeal before Wyoming Supreme Court.
61-82	Private Reprimand	Failure to diligently pursue divorce case.
62-82	Dismissed	Improper representation in child custody dispute.
63-82	Dismissed	Improper representation in divorce case.
65-82	Dismissed	Improper release to public of proposed decision of administrative body in teacher termination case.
66-82	Dismissed	Conflict of interest; lawyer improperly created business relationship with client.
67-82	Dismissed	Ineffective assistance of counsel in criminal case.
68-82	Pending	Failure to file civil case within limitations.
69-82	Dismissed	Improper preparation of divorce decree.
70-82	Dismissed	Inadequate representation at trial of action for damages for a defective mobile home.
71-82	Dismissed	Failure to inform client of status of civil case.
72-82	Dismissed	Failure to inform client of status of civil case.
73-82	Dismissed	Lawyer engaged in improper conduct in divorce case.
74-82	Dismissed	Inadequate representation in divorce case.
75-82	Dismissed	Inadequate representation in parental rights termination case.
76-82	Dismissed	Inadequate representation in divorce case.
77-82	Dismissed	Lawyer for public agency improperly advised the agency to terminate a janitorial contract.
78-82	Dismissed	Lawyer improperly revealed two public details of client's case following trial.
79-82	Dismissed	Lawyer charged excessive fee in collections case.

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<u>Docket Numbers</u>	<u>Disposition</u>	<u>Allegations of Misconduct</u>
80-82	Dismissed	Lawyer failed to promptly obtain injunctions to prevent spousal abuse in divorce case.
81-82	Dismissed	Failure of prosecuting authorities to vigorously pursue criminal violation.
82-82	Public Reprimand	Neglect of legal matter.
83-82	Dismissed	Lawyer failed to safeguard client property left in his possession.
84-82	Dismissed	Lawyer improperly prepared deeds; excessive fees.
85-82	Dismissed	Lawyer assisted client in stealing items of marital property in divorce case.
86-82	Referred to Fee Arbitration Committee	Fee dispute between lawyer and client.
87-82	Dismissed	Neglect of legal matter.
88-82	Dismissed	Improper bias or prejudice exhibited by Justice of the Peace.
89-82	Dismissed	Lawyers improperly handled guardianship.
90-82	Dismissed	Lawyer improperly disposed of funds in client trust account.
91-82	Pending	Lawyer failed to file answer resulting in default judgment entered against client.
92-82	Referred to Fee Arbitration Committee	Lawyer retained excessive fee from structured settlement in personal injury action.
93-82	Dismissed	Lawyer improperly prepared divorce decree.
94-82	Dismissed	Failure to communicate with client.
95-82	Dismissed	Ineffective assistance of counsel in criminal case.
96-82	Private Reprimand	Neglect of legal matter.
97-82	Pending	Failure to perfect appeal in Wyoming Supreme Court.
98-82	Dismissed	Lawyer entered into unauthorized settlement in child custody dispute.
1-83	Dismissed	Lawyer improperly used resources of public office in representing private client.

<u>Docket Numbers</u>	<u>Disposition</u>	<u>Allegations of Misconduct</u>
2-83	Dismissed	Inadequate representation at trial and improper conduct of district judge.
3-83	Dismissed	Ineffective assistance of counsel in criminal case.
4-83	Pending	Neglect of legal matter.
5-83	Informal Admonition	Lawyer improperly represented debtor and creditor in bankruptcy case.
6-83	Dismissed	Incompetent representation of client in "Lemon Law" case.
7-83	Dismissed	Lawyer improperly represented both corporation and shareholder in corporation.
8-83	Informal Admonition	Failure to pay expert witness fee.
9-83	Dismissed	Lawyer improperly represented clients with conflicting interests.
10-83	Dismissed	Inadequate representation in divorce case.
11-83	Dismissed	Lawyer improperly communicated directly with an adverse party.
12-83	Dismissed	Lawyer improperly interfered in contractual relationship between client and movie producer.
13-83	Dismissed	Inadequate representation in divorce case.
14-83	Dismissed	Lawyer improperly directed law enforcement officials to destroy records of death of prisoner in custody.
15-83	Dismissed	Neglect of legal matter.
16-83	Pending	Neglect in promptly closing estate.
18-83	Dismissed	Lawyer improperly solicited medical malpractice case.
19-83	Dismissed	Neglect of workmen's compensation matter.
20-83	Dismissed	Lawyer made harrassing telephone calls.
21-83	Dismissed	County Attorney refused to communicate with ACLU lawyers.
22-83	Dismissed	Neglect in closing estate.
23-83	Dismissed	Lawyer used abusive tactics in collections case.

<u>Docket Numbers</u>	<u>Disposition</u>	<u>Allegations of Misconduct</u>
24-83	Dismissed	Failure to pay expert witness fee.
25-83	Dismissed	Neglect to promptly handle divorce case.
26-83	Dismissed	Lawyer improperly converted to his own use client funds paid to settle divorce dispute.
27-83	Pending	Failure to communicate with client.
28-83	Dismissed	Failure to promptly close estate.
29-83	Dismissed	Lawyer improperly instituted eviction proceedings.
30-83	Pending	Lawyer neglected to handle adoption.
31-83	Pending	Lawyer misrepresented seriousness of juvenile matter in order to collect larger fee from parents.
32-83	Dismissed	Lawyer failed to present claim against city within limitations.
33-83	Pending	Neglect of legal matter.
34-83	Dismissed	Lawyer improperly filed suit to collect witness fees and travel expenses.
35-83	Dismissed	Lawyer improperly withheld fees from child support payments received.
36-83	Dismissed	Lawyers improperly represented both school board and principal of high school.
37-83	Dismissed	Lawyer improperly refused to represent clients in personal injury case.
38-83	Dismissed	Lawyer failed to have his client show up for medical exam.
39-83	Pending	Lawyer engaged in abusive conduct toward prosecutor in DWUI trial.
40-83	Pending	Lawyer's neglect caused estate to incur estate tax penalties.
41-83	Pending	Ineffective assistance of counsel in criminal case.



<u>Docket Numbers</u>	<u>Disposition</u>	<u>Allegations of Misconduct</u>
42-83	Pending	Lawyer improperly handled auction of items from estate.
43-83	Pending	Lawyer neglected to handle parole matter after receiving retainer.
44-83	Pending	Ineffective assistance of counsel in criminal case.
45-83	Pending	Lawyer improperly caused criminal client to undergo forced physical and mental examinations after client tried to fire lawyer.
46-83	Pending	Lawyers conspired to preclude complainant from establishing paternity in parental rights proceeding.
47-83	Pending	Lawyer improperly had guardian other than natural father appointed for juvenile facing criminal charges.
48-83	Pending	Neglect of proceeding to increase child support payments.
49-83	Pending	Lawyer improperly represented parties with conflicting interests.
50-83	Pending	Lawyer improperly advised client to pursue questionable cause of action.
51-83	Pending	Lawyer neglected legal matter entrusted to him.
52-83	Pending	Lawyer improperly refused to return unearned portion of retainer in criminal matter after client failed to appear for pretrial hearings.
53-83	Pending	Lawyer failed to promptly distribute proceeds from personal injury settlement.
54-83	Pending	Lawyer neglected legal matter entrusted to him.
55-83	Pending	Lawyer improperly used information from sealed public record during trial.
56-83	Pending	Lawyer failed to promptly remit to client funds collected in bankruptcy matter.

Respectfully submitted,  
 RICHARD I. LEEDY  
 Chairman

### **REPORT OF THE LEGAL AID SERVICES COMMITTEE**

The committee met formally in Casper in May and the meeting was attended by all but one member of the committee and was also attended by Dan White, State Bar Executive Secretary and David Marion, Director of the Wind River Legal Services Program.

The purpose of the meeting was to review Legal Services within the state, establish goals and objectives for guidance by the State Bar in rendering legal aid services to the economically deprived, and for action by the Wyoming Bar Commissioners and the Supreme Court to further these goals and objectives.

Following, in summary form, is the result of meeting.

#### **A. Goals:**

1. Reestablish service provided primarily through the three funded Legal Services programs to pre-1981 levels. This will require new funding of \$130,000 to compensate for a 25% cut in funding in 1981 and another \$50,000 to cover the inflation factor for the years 1981 and 1982. The National Legal Services Corporation has mandated that each of the funded programs allocate 10% of their resources to involving the private bar in delivery of legal services to the poor. This has further reduced the operating capital of the staffed programs by approximately \$50,000, which will have to be replaced.
2. Establish a reasonable level of on-site service to areas now served primarily by phone and by litigation representations in counties having an established Legal Services office.

#### **B. Objectives:**

1. Increase resources on a continuing basis by \$230,000.
  - a. In the near term obtain a contribution from the Wyoming State Bar Association of interest earned on its funds, approximately \$20,000.
  - b. Obtain a resolution of the Wyoming State Bar to raise bar dues \$10 to \$20 and donate the increased revenues to Legal Aid Service, \$13,000 to \$26,000.
  - c. In the near term obtain a Wyoming State Bar resolution that each lawyer in the state owes a professional duty in accordance with the Code of Professional Responsibility and Canons of Judicial Ethics to contribute professional services, funds, or both to this cause and a reasonable level of effort in this regard is donation of 15 hours annually pro-

- fessional services or \$300 cash. If the participation of the Natrona County Bar Association can be replicated throughout the state, 15% would donate cash and another 35% would contribute time.
- d. In the longer term, obtain a surcharge on Court filing fees to be donated to the present staffed Legal Services programs.
  - e. In the longer term make application to the National Legal Services Corporation for a technical assistance grant to study the feasibility of establishing a Wyoming Bar "Interest on Private Lawyer Trust Accounts" (I.O.L.T.A.) program (presently in operation in 2 states and under study in 37 others).
  - f. Determine the necessity for additional funds and study desirability of requesting the state legislature for an appropriation to make up the short-fall in funding.

The above goals and objectives were presented on rather short notice to the Bar Commissioners at their regular meeting in Sheridan on June 24, 1983. That meeting considered only the recommendation that the State Bar contribute the interest from its funds on deposit ratably among the staffed legal services programs. The Officers and Commissioners rejected the recommendation on the basis that these were social programs and historically the Bar declined to donate money to social programs.

We have had several meetings informally by phone since June. The Committee feels that the matter should be placed before the full body of the Wyoming State Bar Association at its regular meeting in September for approval, partial approval or rejection of the proposed program.

I would like a few minutes on the agenda to present this report myself or through one of the other committee members to the full bar membership.

Respectfully submitted,  
CURTIS L. HARDEN  
Chairman

### **REPORT OF THE LEGAL EDUCATION COMMITTEE**

The following constitutes the report of the Legal Education Committee to the 1983 Meeting of the Wyoming State Bar.

The members of the Committee during the past year were:

Mr. Thomas E. Campbell, Cheyenne, Wyoming;  
Mr. Charles M. Aron, Laramie, Wyoming;  
Ms. Loretta B. Kepler, Cody, Wyoming;

Mr. Craig Newman, Casper, Wyoming;  
Ms. Rebecca Noecker, Rawlins, Wyoming;  
Mr. Charles S. Chapin, Casper, Wyoming;  
The undersigned, who has been Chairman of the Committee;  
All of the Officers of the Wyoming State Bar and all of the Bar  
Commissioners of the Wyoming State Bar.

The Committee met on February 25, 1983, at the University of Wyoming Law School. Present from the Committee were Mr. Thomas Campbell, Mr. Charles Aron, Ms. Loretta Kepler, Ms. Rebecca Noecker, Mr. Charles S. Chapin, and the undersigned Chairman of the Committee; also present were the Wyoming Bar Commissioners Mr. Vincent Ross, Mr. Kennard Nelson, Mr. Dennis Kirven, Mr. David A. Scott, and Mr. J. Patrick Hand.

Dean Peter Maxfield of the Wyoming Law School reported on the Law School Enrichment Fund, which is an activity sponsored by this Committee. He reported that the Committee had raised \$6,924 during the past year for this Law School Enrichment Fund. He reported on the major uses of the fund, stating that the largest use was to provide travel expenses for participation in skills competition for students. It will be used, for instance, to assist in the expenses of three students who traveled to Oregon during this past spring to attend the regional ATLA trial competition and in addition to assist in the expenses of a team of students who will travel to Vancouver, British Columbia for participation in client counseling. It was noted that the University of Wyoming Law School has in the two prior years won the national client counseling competition. The travel expenses which are also assisted from this budget includes students traveling to professional meetings such as the Summer American Bar Association Meeting and the Regional Student American Bar Association Meeting. Another use of the Law School Enrichment Fund is in the area of providing speakers and last year at the Trelease banquet, Dan Tarlock, who spoke, had a portion of his expenses paid from these funds as well as expenses for former Dean and Mrs. Trelease. Other uses of the funds include faculty travel to professional meetings.

It is pointed out to the members of the Wyoming State Bar that through the auspices of this Committee, this year there had been raised as of August 2, 1983, the sum of \$5,291.

The Committee further acted to support the application of the University of Wyoming Law School for membership in the Order of the Coif. It was the position of the Committee that there were advantages to such membership, particularly to the graduating students when competing for legal positions.

Another area in which the Committee took action was to support the Dean's application to the University Administration to have the English-legal appointment made one-half time on a regular basis. The Committee adopted a resolution by which it was recommended to the President of the State Bar and the State Bar Commissioners that the State Bar consider the proposal by the Dean of the Law School to provide support and enhance-

ment of the Law School's legal writing program, which support would include providing a portion of the funding of the new one-half time professor's position. This resolution was submitted to the President of the Bar and the Board of Law Commissioners, who rejected the Committee's recommendation for such part time funding.

The Committee met, as it does each year, with the faculty of the Law School to discuss the curriculum and other subjects of interest to the Bar and the faculty. Particularly of interest at the meeting this year with the faculty and staff was the subject of the admission criteria to the Wyoming Law School. The present criteria was reviewed by Associate Dean Lauer and included a thorough discussion of the current LSAT format and content and the scoring procedure utilized by the Law School's Admission Committee. The Committee also discussed the admission philosophy of the quota system for resident students. The Committee concluded that the present system of admissions was as equitable as possible, and that the giving of priority to resident students was acceptable and should be continued in the present quota system.

The Committee also meets each year, and did again this year meet, with the representative group of students at the Law School where they consider criticisms and questions dealing with the administration and course content as raised by the students. These recommendations and suggestions, this year, dealt with placement procedures for graduating seniors, with a concern of inadequate preparation for litigation, and with complaints regarding one of the Law School professors and particularly his competence as an instructor. The Committee then passed a motion by which they resolved to have the Chairman pursue with Dean Maxfield the students' concerns. These recommendations and suggestions were then transmitted to the Dean by the Chairman of the Committee.

The Committee further discussed the evaluations of professors at the Law School and requested the Chairman to further pursue the University of Wyoming Law Schools's requirements regarding faculty evaluations.

In conclusion, I again report to you, Mr. President, and through you to all of the members of the Wyoming State Bar, that I believe this Committee provides a worthwhile service to the University of Wyoming Law School, to the students and Faculty of the Law School, and to the members of the State Bar, as a means of communication between the Bar, faculty, and students. I believe that it can continue to serve such a purpose and that a similar committee should continue to be appointed each year in the future.

Respectfully submitted,  
JOSEPH F. MAIER  
Chairman

**REPORT OF THE LEGISLATIVE  
& LAW REFORM COMMITTEE**

The Legislative and Law Reform Committee met in Casper, Wyoming on January 8, 1983. The Committee decided to meet in Casper on the hope that a central location would generate more interest in the work of this Committee. The attendance was disappointing.

In spite of the disappointing attendance, the Committee considered a full slate of Bills which had been prefiled with the 1983 General Session of the Wyoming Legislature. Committee member Charles Kepler, also a Uniform Law Commissioner, reported on the most recent meeting of the Uniform Law Commissioners and suggested that the Wyoming Bar, through this Committee, endorse legislation in the following areas:

1. Uniform Conservation Easement Act,
2. Revisions to Article 8 and Article 9 of the Uniform Commercial Code, and
3. Uniform Unclaimed Properties Act.

The members of the Bar attending this meeting gave their endorsement to the amendments to Articles 8 and 9 of the Uniform Commercial code, which were subsequently adopted by the Wyoming Legislature. The Bar at this meeting also gave its support to the Uniform Unclaimed Properties Act, but did not endorse the Uniform Conservation Easement Act.

Discussion was led by Mr. Stanley Lowe, Chairman of the Committee on Wyoming courts, on bills providing for an increase of County Court Judges' salaries, and including the County Court Judges within the Judicial Retirement System. The membership at this meeting endorsed both bills.

There was considerable discussion regarding proposed legislation to establishing a licensing scheme for paralegals. This item has been of annual discussion during the term of my chairmanship. The membership once again stated its position at the Casper meeting of opposing legislation to establishing a licensing board for paralegals. It was the consensus of this meeting that the responsibilities for paralegals must and should remain upon the law firm engaging the paralegal and that any further regulation may appropriately be had by rule of the Wyoming Supreme Court.

Committee person Roberta Coates had extensively reviewed the pre-filed legislation dealing with the juvenile code and other aspects of family law. Mrs. Coates presented numerous bills for the consideration of the Committee, the majority of which were endorsed. In this regard, significant discussion was held concerning legislation that all juvenile actions must be tried in District Court. This jurisdictional item passed by vote of the membership in attendance.

Finally Mrs. Coates, who had given considerable review to other legislation affecting lawyers but probably not with a wide enough swath to expect our endorsement, shared with those in attendance the titles of

approximately 35 bills. The efforts of Mrs. Coates were appreciated and acknowledged and it was believed that this informational aspect of the Casper meeting was a valuable service to those interested in the 1983 General Session.

This Committee has attempted to monitor the progress of those bills of interest to the Bar throughout the course of the Legislature. The realities of monitoring the Legislature require that if the Bar desires to engage in a legitimate legislative overview, this will require expanding the job description of the Executive Director. I believe I can state that it is the opinion of the Committee members that the Bar would be well served to engage its Executive Director as a familiar face to legislators in the Capitol during the General and Budget Sessions. This is not to suggest that the Bar actively engage as a lobbying organization, but rather that an informational service to the membership be developed through the efforts of the Executive Director in over seeing the activities of the Wyoming Legislature.

It was again my pleasure to associate with those on this Committee. I thank you for the opportunity.

Respectfully submitted,  
PAUL J. HICKEY  
Chairman

### **REPORT OF STATE BOARD OF LAW EXAMINERS OF WYOMING**

The State Board of Law Examiners consisting of James L. Applegate, Cheyenne, Ernest J. Goppert, Jr., Cody, Michael J. Sullivan, Casper, Thomas C. Toner, Sheridan, and William H. Vines, Wheatland, administered the bar exam on 22 and 23 February 1983 in Laramie, Wyoming to 27 applicants. Sixteen of those taking the exam passed or 60%. These people were subsequently recommended for admission to the bar.

On 26 and 27 July, 1983 also at Laramie, the Board examined 73 applicants of whom 60 or 82% passed and were subsequently recommended for admission.

This past year we have had a growing number of applications for admission without examination based upon our reciprocity rules. In considering such applications, the Board has tried to make a strict and literal application of the rules and statutes. In special proceedings in three instances, the Supreme Court has waived some portion of the residency time requirement.

Respectfully submitted,  
JAMES L. APPLGATE  
President

### REPORT OF THE UNAUTHORIZED PRACTICE OF LAW COMMITTEE

The committee members have had six or eight problems presented to them during the last year. We have dealt with them as a committee by telephone communication, by letter, and by one formal meeting held in Douglas of March of 1983. We also plan to hold a meeting at the State Bar Meeting. We have referred some investigations to other Bar associations and asked their cooperation. We find that most of the complaints seem to be handled adequately by advising the person of the complaint by letter, explaining the committee's position and asking that the person cease and desist from the improper activity.

The committee should probably undertake the development of Rules of Procedure that would be useful in more serious cases if they arose, but we seem to be at rather an awkward age where we do not feel the need for elaborate rules when an informal approach seems to be working reasonably well.

Respectfully submitted,  
RICHARD S. DUMBRILL  
Chairman

### REPORT OF THE SPECIAL COMMITTEE ON TAXATION LAW

This letter is to report upon the activities of the above-referenced committee for the fiscal year of the Wyoming State Bar which expires on 30 September 1983. During the year, I have functioned as Chairman, and the other members of the committee have included Kent Ewing and Richard P. Boley of Cheyenne, Lee E. Karavitis of Casper, and Charles P. Resor of Jackson.

The President established this committee by appointment pursuant to Section 2 of the By-Laws of the Wyoming State Bar, and this fiscal year represents the first year of existence of the Special Committee on Taxation Law.

The committee, with the able assistance of the C.L.E. Committee, was able to sponsor a seminar, "Tax Basics for the General Practitioner," in Jackson, Wyoming, on 24 and 25 March 1983. The committee members each prepared written materials and gave a presentation on various aspects of taxation of marriage, cohabitation and divorce, and three nationally known tax practitioners, William T. Hutton, Stanley D. Neeleman and John C. Siegesmund, presented information and materials concerning taxation of business formations, liquidations and sales. The seminar was attended by sixty-five members of the Wyoming State Bar, and resulted in net revenue to the Bar of \$1,802.28. In addition, our committee has sponsored the publication of articles on various areas of taxation law in each issue of *The Wyoming Lawyer* this year. These articles include



"Inheritance Tax Repealed" by Richard P. Boley, "Taxation of Collapsible Corporations" by Lee E. Karavitis, "Wyoming Sales Tax Effect in Business Practice" by myself, and a soon to be published article, "Avoiding Gift Taxation Through Qualified Disclaimers," concerning the tax and other pitfalls of the disclaimer statute contained in the Wyoming Probate Code, authored by John E. Masters of Cheyenne at the request of the committee.

In January 1983, at the request of the Honorable Alan B. Johnson, the committee was asked to participate with a special committee of the Laramie County Bar Association in the preparation of guidelines for domestic relations practice in the First Judicial District. To date, I have contributed information concerning tax implications of various practices to this committee in order to enable practitioners and the judiciary to consider taxes in determining what constitutes an equitable division of assets and liabilities upon dissolution of a marriage.

Our committee was contacted by the National Association of State Bar Tax Sections in July 1983. Our committee has provided information to the National Association with regard to the functioning of our committee and its current structure.

On more than one occasion, I have been called upon as Chairman of the Special Committee on Taxation Law to discuss certain legislative matters regarding taxation. I have adopted the policy that the committee shall not take a position on existing or proposed legislation, but that each member of the committee is free to voice his own opinion in a private capacity. I have obtained the California and Florida Bar Association tax section guidelines in this regard, and I find such written guidelines to be consistent with the position informally adopted by our committee.

The tenure of this committee expires 30 September 1983 unless renewed by the incoming President of the Wyoming State Bar.

Respectfully submitted,  
THOMAS N. LONG  
Chairman

## **REPORT OF THE SPECIAL COMMITTEE ON WATER LAW**

The Special Committee on Water Law was appointed by the President, Mr. William R. Jones, on October 25, 1982. There were several issues that the committee chairman and the President thought should be addressed. Among these significant issues were:

1. Amendment of Wyoming statutes relating to export of water.
2. Clarification of the jurisdiction of the Board of Control to hear appeals from the State Engineer.
3. Examination of the procedural aspects of water litigation, including the possibility of a streamlined approach to Board of Control hearings in contested cases.

The committee is pleased to report that it has undertaken substantial work in these areas.

The committee's first actions involved an examination of Wyoming's laws governing the export of water. The committee assisted in the preparation of H.B. 241 which amended Wyoming's export law, W.S. 41-3-115. After considerable effort by a number of committee members and Representative Al Wiederspahn, the bill was enacted into law. It represents one of the first attempts in the nation to address, by legislation, the constitutional issues raised by the recent decisions in *Sporhase v. Nebraska* and *City of El Paso v. Reynolds*.

Secondly, a subcommittee was appointed to examine the current procedures of water litigation in the state, and to suggest and evaluate alternatives. This subcommittee is chaired by Jack Palma, and includes committee members Doug Hickey and Hugh McFadden. The committee has held a number of meetings and its members have prepared detailed memoranda of law addressing the issues of utilization by the Board of Control of hearing officers and the problems with the statutes that govern administrative review of orders of the State Engineer. The subcommittee intends to use these memoranda as the basis for discussions leading to possible changes in Wyoming Statutes.

One of the other areas of possible statutory change that the committee will become involved in is a consideration of the issues that have arisen from the Wyoming Supreme Court's decision in *Green River Development Co. v. FMC Corp., et al.*, 660 P.2d 339 (Wyo. 1983). The decision will require the committee to examine the laws governing the State Engineer's powers to: (a) amend land descriptions in permits; (b) change the point of diversion of a surface water right; and (c) change the point of storage of a reservoir.

We believe the committee has proven to be very worthwhile and that it should continue as a committee of the Wyoming Bar Association.

Respectfully submitted,  
LAWRENCE J. WOLFE  
Chairman

### REPORT ON THE MEETING OF THE HOUSE OF DELEGATES

The House of Delegates of the American Bar Association met during the annual meeting of that association in Atlanta on Tuesday and Wednesday, August 2 and 3, 1983. The Wyoming delegation consisted of Jerry W. Housel, Cody, State Delegate, and R. Stanely Lowe, Casper, Assembly Delegate.

Two complex and potentially controversial matters were scheduled to be taken up during the annual meeting. One was the preamble, scope and comments of the proposed new rules of professional conduct, the rules

themselves having been worked out previously during the mid-year meeting of the House of Delegates in New Orleans on February 7, 8, and 9, 1983. The other item was the so-called "Beckwith Amendment" which would add members of the House of Delegates who represent the ABA sections and divisions to the nominating committee now comprised of the state delegates.

There are fifty-two state delegates elected by the ABA members residing in their respective jurisdictions, one representing each state and one representing the District of Columbia and another Puerto Rico. This nominating committee literally chooses the officers of the American Bar Association when it nominates and submits to the House of Delegates for election persons to be named president-elect designate, treasurer, secretary, chairman of the House of Delegates and members of the board of governors of the American Bar Association. Assembly Delegates are the only officers of the American Bar Association not chosen under this method. They are elected by the members of the ABA who attend the annual meetings.

The co-called "Kutak Commission" had solicited comments from state and local bars throughout the country and had revised the language of the commentary associated with the bold face printed rules of professional conduct in advance of the annual meeting. That the Kutak Commission was able to modify all the commentary to comport with the changes made by the House at the mid-year meeting in the bold face printed rules and also work into the commentary several of the changes urged by state and local bars was nothing short of remarkable in light of the short time that existed between the mid-year meeting and the annual meeting. Nevertheless, the Commission under the hand of its capable reporter, Professor Geoffrey Hazard of Yale University, managed to get all of this done.

Consequently, the debates which remained to be held on some unsettled points went very smoothly, and remarkable as it may seem, the work of reviewing and acting upon proposed modifications of the preamble, scope and comments culminated a little over two hours after the opening session of the House on Tuesday, August 2, 1983.

Similarly, the other potentially explosive issue, the Beckwith Amendment, was resolved in a sensible manner to avoid what might have been a very bitter fight both in the Assembly which met on Monday, August 1, and in the House session held thereafter. What promised to be a divisive struggle was averted by a compromise reached before the opening sessions of the Assembly and House. The compromise called for the designation of a commission to study the structure and organization of the House. The ad hoc commission was to be comprised of representatives of all points of view on this subject dealing with the political control of the American Bar Association, and it was to be instructed to report at the next mid-year meeting in February, 1984. The commission has since been appointed, and I believe it has already undertaken to perform its assigned task.

In reality, however, the resolution of those two controversial items did not mean no controversial subjects were to be on the agenda of this session.

Several hotly debated issues arose in the course of the meeting of the House, and most were resolved with only one or two items being deferred and referred to the February, 1984, mid-year meeting.

As a matter of fact, another highly debated issue was settled in the Assembly when the proponents of making bankruptcy judges Article III judges, an issue settled in the House at the last mid-year meeting, resurrected the question once again, this time in the meeting of the general membership of the ABA in the Assembly. The arguments for keeping bankruptcy judges as Article I judges as opposed to changing them to Article III judges were all argued over again in the Assembly meeting. At the end when the vote was taken the results were the same: The policy of the ABA to keep those judges as Article I judges was endorsed once again.

In the opening session of the House Resolution 10A was considered which would have the American Bar Association modify its position on a subject acted upon twice previously by the House, once affirmatively and once negatively. This resolution supported a proposed amendment of the Civil Rights Act to redefine "public accommodations" to include private clubs or "other establishments" deriving a substantial portion of their income from business sources. This was very controversial and resulted in a substantial amount of debate. It passed in a close vote, and thereby the issue was once again resolved in the same manner it was decided originally something like two years ago but contrary to the position taken by the House on the same issue last year.

Resolution 10B brought up the age old controversy regarding homosexuals. It would have supported legislation prohibiting discrimination on the basis of sexual orientation. The resolution failed adoption by a substantial vote against it. The press recently reported the vote was close. This is not true.

Resolution 10C was drawn to place the ABA in opposition to federal legislation allowing the Federal Trade Commission to regulate lawyers, and it supported a modification of H.R. 2970 to preserve state regulation of attorneys. This motion passed by a substantial vote.

A related report, No. 303, would have deferred action on this subject of federal regulation of lawyers to permit a settling of the question of Federal Trade Commission authority over bar associations. This report, however, was withdrawn by its sponsor, the Anti-Trust Section.

One of the items deferred and referred to the mid-year meeting was item 10D to provide for clinical programs for students and to allow them to be paid upon participating in those programs. The subject was referred to the Section on Legal Education with instructions to report in February at the mid-year meeting.

Some amendments were made to the American Bar Association Constitution regarding the role of past presidents as members of the House of Delegates. Up to 1975, all past presidents and past chairmen of the House

of Delegates had lifetime tenured seats in the House of Delegates. In 1975 the rule was changed to limit all of them to tenures of five years. The new amendment now gives the presidents voting rights in the House for ten years and voice but no vote in the House thereafter. At the insistence of former House chairman Stan Brown of New Hampshire, past chairmen of the House of Delegates were not included in this change.

Other less controversial legislative matters acted upon in the sessions of the House of Delegates were as follows:

- a. Approved an increase of availability of child care resources;
- b. Supported S.220, the Extradition Act of 1983;
- c. Supported the Reagan Administration's policy dealing with deep sea mining;
- d. Recommended renewal of the Export Administration Act, which is due to expire in September, 1983, with modifications;
- e. Approved guidelines for reviewing qualifications of candidates for state judicial office;
- f. Concurred in proposed amendments to the Freedom of Information Act to tighten up on national security and intelligence documents but deferred and referred to the sponsors that part dealing with documents pertaining to investigatory records;
- g. Recommended the introduction of competitive considerations in all government bidding;
- h. A resolution opposing legislation which would grant tax credit for private school attendance failed adoption;
- i. Recommended that any grant of emergency powers to the President in an immigration crisis protect rights of judicial review and travel;
- j. Resolved that enforcement of immigration laws is essentially a federal responsibility, and state and local police should be admonished to let immigration authorities handle any cases they encounter;
- k. Adopted a policy opposing capital punishment of children under age eighteen;
- l. Adopted guidelines for treatment of crime victims and witnesses;
- m. Deferred and referred to mid-year meeting in 1984 a question of modifying Canon 2 of the Code of Judicial Conduct to supplement that Canon with language prohibiting judges from belonging to clubs which practice invidious discrimination;
- n. Recommended amendments to the Social Security Act to exempt from taxation pension payments of senior judges; and
- o. Touro College School of Law was granted ABA approval.

Several reports dealing with various other subjects were considered and acted upon by the House as well as the items I have just finished briefly summarizing. These items I have mentioned, however, constituted some of the more significant business items transacted by the House.

Probably the most dramatic moment at the end of the House meeting came when Robert Meserve, successor to Robert Kutak as chairman of the Committee on Model Rules of Professional Conduct, rose to move the discharge of that committee in light of the completion of its work. This action culminated many years of effort and work on the part of several prominent leaders of the Bar, and due recognition was given to those efforts by several speakers.

Now that the Model Rules have been adopted, the big task lies ahead as the highest courts of each of the states begin to review the new rules and determine whether or not to adopt them in their present form or in a modified version. Whatever the ultimate national result, there is little doubt that the members of this committee made an enormous contribution to our profession that will remain a constant source of pride and gratitude for all members of the organized bar. It is particularly satisfying to know that this hard working committee for most of its existence was headed by Bob Kutak, a prominent member of the bar in our neighboring state of Nebraska.

Respectfully submitted,  
R. STANLEY LOWE  
Assembly Delegate

### **REPORT OF THE GOVERNOR'S PROBATE STATUTE COMMITTEE**

This Committee was created by appointments made by Governor Herschler on April 16, 1977. The first meeting was held on May 17, 1977. Through the month of August of this year, the Committee has met more than 60 times. The lawyer members of this Committee are:

Rex O. Arney, Sheridan  
Ross D. Copenhaver, Powell  
Howell C. McDaniel, Jr. (Chairman), Casper  
Roy D. Stoddard, Jr., Cheyenne  
Bruce N. Willoughby, Casper  
Robert J. Wyatt (Trust Office, Bank of Commerce),  
Sheridan

The non-lawyer members of the Committee are:

Richard M. Baker (President, Wyoming Student Loan Corporation), Cheyenne  
Mrs. Ida May Carmin (Retired Clerk of District Court), Douglas  
Dr. Russell I. Hammond (Retired Professor, University of Wyoming), Laramie  
Leonard S. Mayer (Inheritance Tax Administrator), Cheyenne  
Eugene Engrav (C.P.A.), Cheyenne

The Committee is currently studying the provisions of the Statutes relating to Guardianships and Trusts. Also consideration is being given to the provisions of Section 2-1-205, recently enacted without the knowledge or consultation with the Committee. This section attempts to cover a summary procedure for distribution of interests in real estate.

A study is also being made of Sections 2-7-404, 2-7-405 and 2-7-802, relating to the appraisal of decedent's estates. The aim is to streamline and simplify the present requirements.

Although there is no requirement to do so, the Committee would appreciate being consulted as to any changes in the Probate Code proposed by members of the Bar prior to the submission of the same to the Legislature.

Respectfully submitted,  
 HOWELL C. McDANIEL, JR.  
 Chairman

### REPORT TO THE WYOMING STATE BAR ASSOCIATION WYOMING JUDICIAL SUPERVISORY COMMISSION

Mr. President, members of the Bar and Guests:

I am chairman of the Wyoming Judicial Supervisory Commission, and in this capacity I am submitting this report to the Wyoming State Bar Association.

The Wyoming Judicial Supervisory Commission is established by the Wyoming Constitution. It consists of seven (7) members—two (2) of whom are district judges and are appointed by the Wyoming Judicial Conference, these members are the Honorable Robert M. Forrister and the Honorable Leonard McEwan; two (2) members are attorneys who are appointed by the Wyoming State Bar Association, these members are G. L. Spence of Jackson, Wyoming and myself; the remaining three (3) members are laymen and they are appointed by the Governor, these members are Cynthia Boyhan of Dubois, Wyoming, William S. Curry of Casper, and Kenyon Griffin of Laramie.

The Governor has made outstanding appointments and these three individuals are making a significant contribution to the work of this Commission. The Bar of Wyoming need never fear participation by non-lawyers.

Under the Constitution the Judicial Supervisory Commission has the power to recommend to the Supreme Court of Wyoming the retirement of a Supreme Court Justice, District Judge or County Court Judge for disability; the censure or removal of a judge for action that constitutes willful misconduct in office, willful and persistent failure to perform his duties, habitual intemperance, or conduct prejudicial to the administration of justice that bring the judicial office into disrepute.

The Wyoming Judicial Supervisory Commission has interpreted this constitutional provision to mean that if it has the power to recommend removal, it also has the inherent power to recommend lesser action to the Wyoming Supreme Court.

The Commission has recommended rule changes to the Supreme Court. Two of these rule changes are significant. Under the old rules the Commission could not investigate a matter without first receiving a verified complaint. The Commission has requested the Supreme Court to change this rule to provide that an inquiry may be initiated upon any reasonable basis. The other significant change provides that the identity of the complainant need not be disclosed to the judge pending the completion of the preliminary evaluation.

The Commission has found that in the past complaints were often dismissed simply because they were not verified. The Commission has also found that some complaints were not made because the complainant was afraid of retaliation. These are the reasons for requesting the rule changes.

The Supreme Court has tentatively approved these rule changes.

It is the firm policy of the Wyoming Judicial Supervisory Commission that it will carefully listen to and consider all complaints. The members of this Commission feel very strongly that a forum for complaints about the judiciary is an essential part of the justice system.

It is very difficult to generalize concerning complaints which have been received, and for that reason, I will not attempt to delve into the nature of the complaints received.

This is not to say that no complaints have been received. Rule 7 of the applicable rules provides that all papers filed with and proceedings before the Commission are confidential, and this rule correctly precludes me from talking about any specific situations. I can report to you that the Commission is averaging about one complaint per month. Since May of this year, the Commission has been meeting monthly. I anticipate that the Commission will probably meet quarterly from this time forward.

Our practice is to immediately acknowledge the receipt of a complaint by letter and to then inform the complainant when he may expect a reply. The Commission will thereupon make a preliminary evaluation of the complaint. The Commission now has the funds to hire an investigator if it is deemed necessary. After the preliminary evaluation has been made and the Commission has deliberated, the complainant is then notified in writing as to what disposition was or will be made concerning the complaint. Generally speaking there are three (3) possibilities: (1) the complaint may be dismissed as being without merit; (2) informal action may be taken by the Commission; or (3) formal action may be commenced against the judge, which may take the form of a written directive or proceedings could be instituted seeking removal.



I would advise you that this Commission does not sit as an appellate court and is not meant to correct judicial errors, rather its function is to look into allegations of misconduct or conduct prejudicial to the administration of justice that brings the judicial office into disrepute. With our governmental system of checks and balances, it is essential that counsel, litigants, witnesses, court personnel and members of the general public know that this Judicial Supervisory Commission is in existence and will listen to and carefully consider complaints concerning the judiciary, and will not hesitate to take appropriate action.

The judiciary has been very cooperative with this Commission and its work. I would publicly like to commend the members of the Supreme Court of Wyoming. They have been most supportive.

The members of the Wyoming Judicial Supervisory Commission are hard working and are dedicated to their constitutional duties. While you may not hear much about the work of this Commission, you may rest assured that it is indeed alive, working hard and making progress. Our goals are quite simple, we will listen carefully to every complaint; we will evaluate every complaint; if the complaint is without merit, we will tell the complainant; if the complaint is well founded and has merit this Commission will take prompt and appropriate action.

In the past this Commission has been accused of being a sham because it did not consider complaints unless they were technically correct and because it discouraged complaints by virtue of the old rule which required that a complaint immediately be transmitted to the judge involved. I can assure you that if this was ever true in the past it is no longer true.

This concludes the annual report of the Wyoming Judicial Supervisory Commission.

Respectfully submitted,  
WADE BRORBY  
Chairman

### **REPORT OF THE NECROLOGY COMMITTEE**

Five members of the Wyoming State Bar died during the past year. The Wyoming State Bar is saddened by the loss of the following named persons.

#### **JOHN S. BUGAS**

Mr. Bugas was born in Rock Springs, and attended the University of Wyoming School of Law. He was admitted to the Wyoming Bar on October 9, 1934. After his admission, Mr. Bugas began to work for the Cheyenne law firm of A. D. Walton and Ewing T. Kerr.

After a successful career in the FBI, in 1944 Mr. Bugas joined the Ford Company. At Ford he served as Director of Industrial Relations, and then

in 1946 he was named a vice-president. In 1960 he became Ford's vice-president of international operations. He retired from the Ford Company in 1968.

Mr. Bugas will be remembered as a generous contributor to the University of Wyoming Alumni Development Fund. Mr. Bugas died on December 2, 1982.

#### MICHAEL L. COOPER

Mr. Cooper, who was born on December 2, 1945, in Ray, Arizona graduated from the University of Arizona Law School in 1977. In law school he was a member of the Order of the Coif. He was also a member of the Arizona Law Review.

In 1977 Mr. Cooper became a law clerk for U.S. District Judge Edward Devitt in St. Paul, Minnesota.

In 1978 he joined the law firm of Lewis and Roca in Phoenix, Arizona.

Mr. Cooper later moved to Lander and with Brad Boone, started a law firm of Boone and Cooper. Mr. Cooper was admitted to the Wyoming State Bar on January 11, 1982.

In addition to being a member of the Wyoming State Bar Association, Mr. Cooper was also a member of the American Bar Association, the Wyoming Trial Lawyers Association and the Association of Trial Lawyers of America. Mr. Cooper died on January 11, 1983.

#### EVERETT L. McCRARY

Mr. McCrary was born in Hamilton, Missouri, but his family moved to Casper when he was 11 years old. He was a 1930 graduate of Natrona County High School. Following high school, he attended Creighton University where he received his LL.B. Degree in 1935. He was admitted to the Wyoming State Bar on September 16, 1935.

He practiced law in Gillette for two years before returning to Casper in 1937 and had practiced law in Casper since that time.

Mr. McCrary had served as City Attorney in Casper and had also served as Municipal Court Judge. He was a past president of the Natrona County Bar Association. Mr. McCrary died on April 1, 1983.

#### WILLIAM N. BRIMMER

Mr. Brimmer was born in Rawlins, Wyoming, on July 23, 1917. Mr. Brimmer was a graduate of the University of Wyoming, where he obtained both his B.A. and law degrees. He was admitted to the Wyoming State Bar on July 1, 1941. Mr. Brimmer practiced law in Rawlins and also served as County and Prosecuting Attorney.

Mr. Brimmer moved to Fort Collins, Colorado in the 1950's where he headed Fort Collins Consolidated Royalties. He lived in Fort Collins for a number of years before moving to Phoenix, Arizona, where he died on June 27, 1983.

Mr. Brimmer had served with the Army during World War II and was decorated with a Bronze Star. In 1948 he was the recipient of the City of Rawlins Distinguished Service Award.

#### GEORGE S. H. SHARRATT, JR.

Captain George S. H. Sharratt, Jr., JAGC USN (ret.), was born on September 16, 1914, in Kansas City, Missouri. Captain Sharratt had lived in Wheatland since 1976.

Captain Sharratt was admitted to the Wyoming State Bar on August 10, 1977; however, he had been a lawyer since 1936. Captain Sharratt began his Navy career at the beginning of World War II.

After his retirement from active duty, Captain Sharratt moved to Wheatland where he was of counsel to the law firm of Urbigkit & Whitehead. Captain Sharratt then moved into a partnership with his son, Bryan.

In addition to being a member of the Wyoming State Bar, he was also a member of the California, American, and Federal Bar Associations. Mr. Sharratt died on July 12, 1983 at the Veterans Administration Hospital in Cheyenne.

#### JUDGE JOHN C. PICKETT

Judge Pickett was born in Revenna, Nebraska, on December 3, 1896. He grew up in Scottsbluff, and received his law degree from the University of Nebraska. It was his athletic ability and desire to play semi-professional baseball while practicing law that brought him to Cheyenne in June of 1922 to play for the Cheyenne Indian Baseball team. The team won the Denver Post Tournament in 1923.

While he was in law school, Judge Pickett had an offer to play with the Chicago White Sox which he turned down.

Judge Pickett was admitted to the Wyoming State Bar on November 28, 1922. He was elected Laramie County Attorney in 1929. In 1935, he became an Assistant United States Attorney under U.S. Attorney Carl Sackett. Pickett became U.S. Attorney for the District of Wyoming in 1949. Later that year he was sworn in as a judge of the United States Court of Appeals for the Tenth Circuit, in Denver.

Judge Pickett died on September 1, 1983.

Respectfully submitted,  
MARY ELIZABETH SENKEWICZ  
Executive Director

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WYOMING STATE BAR PROCEEDINGS

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**REPORT OF THE TREASURER**

**Wyoming State Bar  
Expenses — By Budget Classification  
General and Administrative**

	<u>Budget Year Ended Sept. 30, 1983</u>	<u>Actual 11 Months Ended Aug. 31, 1983</u>	<u>Over (under) Budget</u>
<b>EXPENSES:</b>			
Salaries, payroll cost, insurance & bonding .	\$ 62,700	\$ 57,844	\$ (4,856)
Travel and related expenses (other than ABA) . . . . .	24,500	17,454	(7,046)
Management & financial Office space, equipment and supplies . . . . .	2,000	2,050	50
Telephone . . . . .	12,301	14,105	1,804
Postage & express . . . .	4,000	4,197	197
Regular publications . . .	5,000	6,458	1,458
Dues, fees subscriptions, publications purchas- ed, gifts, donations, awards and support . .	16,100	17,939	1,839
Grievance committee . .	2,500	1,731	(769)
Other WSB committees	10,000	12,221	2,221
Fee arbitration . . . . .	2,000	734	(1,266)
Meetings . . . . .	2,000	244	(1,756)
Convention expense . . .	5,500	833	(4,667)
Miscellaneous . . . . .	—	12,436	12,436
	8,849	10,192	1,343
	<u>\$ 157,450</u>	<u>\$ 158,438</u>	<u>\$ 988</u>

**Statement of Revenues and Expenses  
and Changes in Fund Balance  
For the Eleven Months Ended August 31, 1983**

	<u>Budget Year Ended Sept. 30, 1983</u>	<u>Unrestricted Funds</u>	<u>Restricted Funds</u>
<b>REVENUES:</b>			
Annual fees . . . . .	\$ 127,750	\$ 141,141	—
Interest . . . . .	19,500	17,706	\$ 4,423
Miscellaneous . . . . .	9,000	6,231	—
Board of Law Examiners . . . . .	1,200	—	—
Continuing Legal Education . . . . .	—	13,882	—
Convention excess receipts . . . . .	—	12,944	—
	<u>\$ 157,450</u>	<u>\$ 191,904</u>	<u>\$ 4,423</u>

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**EXPENSES:**

General and administrative .....	157,450	158,438	—
<b>EXCESS OF REVENUES OVER EXPENSES ...</b>	<u><u>\$ —</u></u>	33,466	4,423
<b>FUND BALANCE, October 1, 1982 .....</b>		<u>197,974</u>	<u>45,561</u>
<b>FUND BALANCE, August 31, 1983 .....</b>		<u><u>\$ 231,440</u></u>	<u><u>\$ 49,984</u></u>

**Balance Sheet  
August 31, 1983**

**Assets**

Cash—Convention .....	\$ 12,939
Cash—CLE .....	13,928
Cash—Savings .....	145
Cash—Liquid Capital Fund .....	195,542
Restricted Cash - Certificates of Deposit (Note C) .....	49,984
Computer .....	11,055
	<u><u>\$ 283,593</u></u>

**Liabilities and Fund Balance**

Checks outstanding in excess of bank balance - ANB .....	\$ 986
Amounts withheld from employees and payroll taxes .....	<u>1,183</u>
	2,169

**FUND BALANCES:**

Unrestricted .....	231,440
Restricted .....	<u>49,984</u>
	<u>281,424</u>
	<u><u>\$ 283,593</u></u>