

1985

Committee Reports

Wyoming State Bar

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University of Wyoming

College of Law

LAND AND WATER LAW REVIEW

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COMMITTEE REPORTS

REPORT ON THE ACTIVITIES OF THE AMERICAN BAR ASSOCIATION

The association meets twice a year, once in the annual summer meeting and again in the midwinter meeting. The mid-year meeting will be in Detroit on February 13-20, 1985. The next annual meeting will be especially interesting in Washington D.C., July 4-11, 1985 and in London on July 14-20, 1985.

Mid-year meetings are devoted primarily to business and annual meetings are attractive for families and attorneys seeking Continuing Legal Education credit. The programs, seminars and lectures of the sections and committees are among the best available and they feature national and international leaders in the law. An attorney needing special research in any field can ordinarily find it on one of the annual meeting programs. The 1985 annual meeting will be a splendid opportunity to see Washington, D.C., the federal government and supreme court as well as the birthplace of the common law in England.

Midwinter Meeting 1984

The midwinter ABA meeting was held in Las Vegas on February 10-14, 1984. There was lively debate in the House on a resolution to support removal of the federal prohibition against treatment of patients with marijuana under supervision of a physician and adequate controls. This was approved by the House. The House also approved adoption of the principle that in the United Nations a nation having a population of over 200 million is automatically entitled to representation on equal basis with various regional blocks. Other matters which have been debated at mid-year meetings include standards for criminal justice, family law, individual rights and responsibilities, taxation, uniform premarital agreement act, uniform transfers to minors act, the equal rights amendment, the dispute resolution act, the generation skipping tax, hand gun control, immigration reform, products liability, prepaid legal services, sentencing reform and the exclusionary rule.

Annual Meeting 1984

The annual meeting was held in Chicago in August, 1984 with headquarters at the Chicago Hyatt Regency. Sections, committees and other judicial divisions and conferences were headquartered in other hotels in the vicinity. Excellent programs in every phase of the law and judiciary were held during the meeting period.

The assembly of the Association met at the Hyatt Monday, August 6 to conduct the business of the assembly and hear the attorney general of the United States among other speakers. Representatives from over 50 nations were present with ABA officers and other dignitaries. The attorney general revealed that letters allegedly written by the Ku Klux Klan to over 20 nations urging they not participate in the Olympics at Los Angeles because of personal danger were actually sent by the KGB. At the dedication of the new ABA headquarters on Northwestern University campus, United States Supreme Court Justice Warren Burger cautioned about excessive and unprofessional advertising by lawyers, the plethora of litigation about relatively unimportant problems and again urged better training for incoming members of the profession. Speakers at the luncheon included George Will, a brilliant young columnist who gave a sparkling speech, and the deputy attorney general of the United States.

A significant achievement at the meeting was adoption of amendments to the constitution and bylaws of the Association. These allow for representation of sections on the ABA nominating committee and increased representation on the Board of Governors. Sections with thousands of members carry on tremendous research and issue excellent publications in their respective fields of law. They have long sought representation on the nominating committee and more members on the board of governors. Under the new provisions there will be nine new members of the nominating committee including seven from sections, one from young lawyers, one from judiciary and five additional section members on the Board. Membership of the House of Delegates is increased to allow additional representation for larger state and local bars.

The changes adopted are a peaceful compromise of what threatened to be a serious and divisive conflict within the Association. It illustrates the ability of lawyers with strong differences to work out acceptable solution of important differences.

Other matters acted on by the House of Delegates during the session included:

Three resolutions concerning treaties to end nuclear weapons testing, nonproliferation of nuclear weapons and prohibiting nuclear weapons in Latin America were deferred to the midwinter meeting.

A committee on lawyers' responsibility for client protection was created to replace previously existing committees on clients' security funds and unauthorized practice of the law. The new com-

mittee more broadly considers public interest beyond the individual interest of the client.

Resolutions offered by the sections of corporation, banking and business law, antitrust law, and taxation were approved involving complicated problems both statutory and judicial in those fields.

The Uniform Marital Property Act was recommended for adoption by states desiring to enact substantive law for marital property along the lines suggested by the act.

A resolution authorizing pro bono work by government attorneys and repeal of the statute prohibiting such work was approved.

Legislative consideration for Japanese Americans relocated under the war relocation program was approved.

A commentary to the rules of judicial conduct urging nonmembership of judges in clubs or associations invidiously discriminating against women or minorities was approved.

Standards of practice for lawyer mediators in family disputes and mental health standards in criminal justice proceedings were approved.

A resolution urging repeal of the generation skipping tax and providing cooperation by the association in a workable solution of this problem was approved.

Equal treatment was urged for full time law school faculty primarily in professional skills as distinguished from clinical or theoretical instruction.

The ABA is the largest professional voluntary association in the world. If more Wyoming members join we could be number one in ABA state membership percentage. Newly admitted members out of law school have one year's free membership upon application. The ABA Journal alone is well worth the membership fee for other lawyers.

This is a fine institution representing our profession and a guardian of our basic legal principles. Provisions of the United States constitution for succession to the presidency were drafted by an ABA sponsored committee. All appointments to the federal judiciary are referred to an ABA committee for recommendation. Nearly every important measure before Congress or the state legislatures involving the law, legal profession and judiciary is debated, acted upon and testified to before legislative committees by Association members. Any law office interested in computer services can obtain information concerning the computer network adopted by ABA. The new ABA offices at Northwestern University in Chicago provide an efficient and attractive workshop for the Association, bar associations and individual lawyers throughout the United States. Special publications available through ABA sections and committees are invaluable for the practicing lawyer.

Each member of the Wyoming State Bar who does not belong to the American Bar Association should join. This can be accomplished by a simple letter to the following address:

American Bar Association
750 N. Lake Shore Drive
Chicago, Illinois 60611

or I will promptly get anyone a membership application.

Respectfully submitted,
JERRY W. HOUSEL

REPORT OF ADVISORY COMMITTEE TO COOPERATE WITH THE AMERICAN BAR ASSOCIATION

The Advisory Committee to Cooperate with the American Bar Association exists under appointment of the President of the Wyoming State Bar. The Committee is available to accept assignments of projects which call for cooperation between the Wyoming State Bar and the American Bar Association. Currently no such projects have been assigned to this Committee, and accordingly there are no activities upon which this Committee can report.

It is recommended that unless there are some meaningful projects to which this Committee should address itself the Committee and its functions should be dissolved. It is apparent that the proposed work of this Committee could be handled by an ad hoc committee when and if a project arises necessitating the involvement of a group representing this Bar.

Respectfully submitted,
R. STANLEY LOWE
Chairman

Committee Members:
Mark A. Bishop, Cheyenne
Rebecca W. Thomson, Sheridan
Joel M. Vincent, Riverton

REPORT OF CLIENT'S SECURITY FUND COMMITTEE

Current members of the Client's Security Fund Committee are:

Ms. Suellen Davidson
Urbigikit & 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 & Jacobson
 P. O. Box 890
 Evanston, WY 82930

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

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

Mr. Richard D. Gist
 150 North Third St.
 Lander, WY 82520

Mr. Thomas C. Toner
 Redle, Yonkee & Arney
 319 West Dow Street
 P. O. Box 6288
 Sheridan, WY 82801

Mr. Robert M. Shively
 Murane & Bostwick
 350 West "A", Suite 201
 Casper, WY 82601

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

The replacement of members whose terms have expired is the prerogative of the President of the Wyoming State Bar.

Currently, there is a balance in the Client's Security Fund Insured Money Market Checking Account of \$6,205.00. In addition, the Client's Security Fund has \$41,431.00 deposited in two separate Certificates of Deposit.

The Client's Security Fund Committee currently has no matters before it and all claims before this Committee in the preceding year were paid with the establishment of the Client's Security Fund Checking Account.

Respectfully submitted,
 ROBERT M. SHIVELY
 Chairman

REPORT OF COMMISSIONERS ON UNIFORM STATE LAWS

The 1984 Annual Meeting of the National Conference of Commissioners on Uniform State laws was held at Keystone, Colorado, July 27 - August 3, 1984. David H. Carmichael, Charles G. Kepler, Richard J. Macy, and Ralph E. Thomas represented the State of Wyoming at the meeting.

The conference adopted and approved for enactment one model and two uniform acts.

Model Defense of Insanity Act

Of all the legislation discussed, the Model Defense of Insanity Act generated the most debate. The primary dispute centered on the burden of proof of criminal responsibility. As the Act was finally adopted, the

burden of proof was placed on the prosecution to prove beyond a reasonable doubt the defendant is mentally competent at the time of the commission of the crime. Because of this position, the Wyoming delegation voted against the Act.

The Act is in model form which contemplates there is no need for uniformity among the states adopting. There are features of the model act worthy of consideration. For example Article IX sets forth the disposition of persons not found responsible because of mental illness or defect.

Uniform Statutory Will Act

The Uniform Statutory Will Act is another effort of the National Conference of Commissioners on Uniform State laws to simplify and modernize laws dealing with probate matters. This Act provides for a dispositive plan to accommodate both small and large estates. The dispositive provisions are what is believed to be the plan most testators would adopt. Under the Act the testator adopts the statute through incorporation by reference in his will. This permits the use of a truly simple will. The testator may also adopt only portions of the Act or vary the terms of the Act, such as the total amount to be left a surviving spouse.

The basic plan is to leave to the surviving spouse the testator's residence, tangible personal property and the greater of \$300,000.00 or 50% of the balance of the probate estate. The balance is placed in a trust, the income payable to spouse for life. Upon death of the spouse, the trust passes to the testator's issue. If there is no surviving spouse, then all of the probate estate passes to the surviving issue. If there are no surviving issue, then the probate estate passes to the surviving spouse, if any. There are also detailed provisions where there is neither spouse nor surviving issue.

Where there is one or more children under a specified age (23 is suggested in the Act), all that part of the probate estate passing to the issue is held in a trust where the trustee has the power to sprinkle the income among the several children.

The Act is not limited to estates of any particular size and includes estate planning concepts for estates subject estate taxes.

Uniform Fraudulent Transfer Act

The Uniform Fraudulent Conveyance Act was promulgated by the National Conference of Commissioners on Uniform State laws in 1918 and has been adopted in 25 jurisdictions, including Wyoming. The 1918 Act was adopted by the Bankruptcy Act of 1938 in sections dealing with fraudulent transfers and obligations.

The Bankruptcy Reform Act of 1978 has made numerous changes in the bankruptcy provisions dealing with fraudulent transfers and obligations resulting in discrepancies between the bankruptcy provisions and the 1918 Act. Article 9 of the UCC has substantially modified the law

regulating transfers of personal property, particularly perfecting security interests. These changes and others make it desirable to revise and update the 1918 Act.

The new Act has a change in title from "Fraudulent Conveyances" to "Fraudulent Transfers" to make it clear it applies to real property as well as personal property.

Uniform Acts To Propose For Adoption

The Wyoming Commissioners will propose to the 1985 Legislature the adoption of the Uniform Conservation Easement Act, Uniform Transfers to Minors Act, Uniform Durable Power of Attorney Act, and Uniform Unclaimed Properties Act.

Respectfully submitted,
CHARLES G. KEPLER

REPORT OF COMMITTEE ON RESOLUTION OF FEE DISPUTES

Within the last year six applications for arbitration of fee disputes were filed with the Committee. It has been noted by the Chairman that the Committee does not have jurisdiction on many of the fee disputes filed. The rules provide succinctly that if there is an express or implied agreement with regard to attorney fees, then there is no jurisdiction by the Fee Arbitration Committee. To finally arrive at that determination, however, it is necessary for the "Assigned Member" to make that determination and then to report it to the Committee and then the Committee concur. It is recommended that the rules be changed, allowing either the Executive Director of the Wyoming State Bar or the Chairman of the Committee or both to make that determination, based upon the information provided to them or any additional information that they may require in doing so. Only one fee arbitration hearing was held this year.

The undersigned has resigned his Chairmanship of this Committee as a result of an appointment to another position, there being insufficient time to do both. However, I want to express my thanks to the individuals, particularly the assigned members and those involved in the hearings, for the time that they have expended. There are some rough edges to work out with regard to the rules, but given time I believe that this Committee will provide invaluable service to the public and the Wyoming State Bar.

Respectfully submitted,
TIMOTHY J. BOMMER
Chairman

REPORT OF THE COMMITTEE ON WYOMING COURTS

The big news from the 1984 budgetary session of the Wyoming Legislature related principally to the budget for the state's court system. Due to the depressed economic times the mood of the Legislature was to exercise fiscal conservatism this year, and this carried over into the deliberations on the budget of the judicial branch of government.

The good news is found in the list of counties for which appropriations were made to fund county courts. That list now includes over half of the counties of the state. The twelve counties for which appropriations were granted by the Legislature are as follows: Albany, Campbell, Carbon, Converse, Fremont, Goshen, Laramie, Lincoln, Natrona, Sheridan, Sweetwater and Uinta Counties.

Despite the fine efforts made by Senator Rex Arney, Senator Dave Nicholas, Representative Tom Jones and Representative Pat Meenan a salary increase for county court judges endorsed by the Wyoming State Bar at its legislative meeting earlier this year failed to win passage. Similarly, legislation which would have extended retirement benefits to county court judges the same as those given supreme court justices and district court judges failed enactment.

In the appropriation bill for the judicial branch of government the legislature appended a section designated as Section 200. This was designed to be a subtle intrusion into the affairs of the judicial branch of government and was obviously designed to place the legislative branch of government in a supervisory position over the judicial branch in usurpation of the authority granted the supreme court by the Constitution. This provision is read:

On or before January 1, 1985 and January 1, 1986, the Supreme Court shall submit to the legislature a written report on the financial and judicial activities of each court under the fiscal control of the Supreme Court. The report shall contain a detailed listing of expenditures for personal services, supportive services, restrictive costs or services, grants and aid payments, capital expenditures, nonoperating expenditures, contractual services and equipment. The report shall also contain a statement describing the state of the judicial branch of government.

Fortunately, this section was vetoed by Governor Ed Herschler in a line veto thereby eliminating this provision from the budget and relieving the supreme court from going hat-in-hand to the legislative branch of government to file its detailed list of expenditures and a statement describing "the state of the judicial branch of government."

The position of the Wyoming State Bar in years past has been to support the concept of extending the county court system throughout the state. The purpose of this is multi-faceted. As a reminder let us review once again the objectives sought by a statewide system.

First is the desirability of having a uniform judicial system in the state to afford the same kinds of services for litigants in both criminal and civil cases. The existence of a dual system suggests one is better than the other and that citizens in some of the counties are getting less desirable judicial service than citizens in the others. Since the public's perception of courts and the administration of justice are important elements in a citizen's attitude about courts and his respect for law generally it is imperative that such distinctions be erased and that all citizens have the same kind of service for their judicial needs.

Second is the obvious problem presented when the state is balkanized judicially speaking so that the courts of some counties handle cases differently than the courts operating in other counties. This leads to confusion and a general inability of people to comprehend the manner in which their court business is handled and the reasons that exist for the distinctions that are made between the courts. This confusion again weakens citizen support for the judicial system as a whole. This is particularly true when it concerns that part of the system which has its greatest impact upon the most people, namely, the courts of limited jurisdiction.

Third is the confusion and disparate burdens placed upon all the courts in a state's judicial system when some courts of limited jurisdiction have jurisdiction over certain matters that are not common to all courts of limited jurisdiction. This disparateness is particularly underscored in district court districts that have counties with county courts and justice of the peace courts.

Finally there is the obvious problem involved in getting judicial help for busy county judges. The way things presently exist most counties that have county courts have heavy dockets that require the full time attention of the sitting judges. It is difficult for them to get away to go into other counties to assist with their cases. What is needed are some judges in counties with less heavy dockets that are available to respond to calls for help from counties with the heavier dockets to fill in at vacation time and be available when judges are disqualified. This can only be accomplished by extending the system statewide either by encouraging all the remaining counties to adopt resolutions implementing the county court act in their respective counties or by supplemental legislation that mandates a statewide system.

In line with previous reports to this Committee, and to comport with the actions taken every year for the past several years by the members of the Wyoming State Bar at the annual meetings, it is recommended that the following resolution be adopted dealing with this subject of completing the work of expanding the county court system:

RESOLVED, the Wyoming State Bar reaffirms its earlier endorsements of the county court system and its expansion statewide and urges that the system be implemented in the remaining eleven counties of the state either through actions of the boards

of county commissioners in those counties in conformity with existing law or by legislation expanding the system statewide.

Respectfully submitted,
R. STANLEY LOWE
Chairman

Committee Members:

Ross D. Copenhaver, Powell
Richard S. Dumbrill, Newcastle
Robert L. Duncan, Cheyenne
Ralph E. Thomas, Esq.
Honorable Alan B. Johnson, Cheyenne
Honorable Robert R. Rose, Jr., Cheyenne
Honorable Bradford L. Schroeder, Green River

REPORT OF THE CONTINUING LEGAL EDUCATION COMMITTEE

During the 1983-84 fiscal year of the Wyoming State Bar, the Continuing Legal Education Committee presented a seminar concerning damages in November of 1983 at the University of Wyoming College of Law in Laramie, Wyoming. In addition, the Committee also underwrote the cost of the seminar concerning bankruptcy.

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 Jackson, Wyoming.

During the summer of 1984, Dave Scott and Dean Rudolph asked that they be relieved of their Committee duties. Both of these gentlemen have served the Committee and the Bar for a number of years and certainly deserve our thanks for a job well done.

Upon being appointed Chairman of the Committee, I asked that Bill Downes and Gary Shockey be appointed to the Committee as well. We, together with the former members of the Committee, met with the Executive Director to attempt to schedule the Continuing Legal Education program for the Thursday of the Bar Convention. In doing so, we sought to recognize the need for our Bar in this day and age to offer concurrent sessions on different topics. The Committee will attempt to gauge the Bar's reception to this idea during the Convention. The Committee also decided that it should be more aggressive in seeing that Continuing Legal Education programs are presented throughout the state. As a consequence, the Committee has committed itself to see that four programs will be offered during the fiscal 1984-1985 year in Torrington, Gillette, Rock Springs and Thermopolis. While the Committee recognizes that such programs may not add to the Bar's continued economic prosperity, it did feel that it would be in the best interest of the members of the Bar.

Respectfully submitted,
J. N. MURDOCK
Chairman

REPORT OF GOVERNOR'S PROBATE STATUTE STUDY COMMITTEE

The Committee was created by appointments made by Governor Herschler on April 6, 1977. The first meeting was held in May of 1977. Since that time the Committee has met some 70 times.

The lawyer members of the Committee are:

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

Committee member, Senator Rex Arney, is presently working with the Legislative Service Office regarding the filing of the revision of Title 3, Guardians and Conservators (Senate File No. 64).

Work and study is presently being done on sections 2-7-404, 2-7-405 and 2-7-802 relating to the appraisal of decedents' estates; section 2-1-201 (disposition of personal property by affidavit) and section 2-1-205 to require an appraisal of the real property in the summary procedure for distribution; Uniform Disposition of Community Property Rights at Death Act; and other sections seemingly to require technical amendments.

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 OF THE GRIEVANCE COMMITTEE

Since the last annual report through September 30, 1984, the following grievances were filed (included is a summary of the nature of the grievances).

<u>Docket Number</u>	<u>Disposition</u>	<u>Allegations of Misconduct</u>
57-83	Dismissed	Contact with opposing party who was represented by lawyer.
58-83	Dismissed	Neglect
59-83	Withdrawn	Neglect
60-83	Dismissed	Malpractice in drafting deed.
61-83	Dismissed	Contact with opposing party who was represented by lawyer.
62-83	Withdrawn	Billed when no services performed.
63-83	Withdrawn	Threat of criminal charges to gain advantage civil matter.
64-83	Dismissed	Insertion of unethical clause into settlement agreement.
65-83	Dismissed	Breach of settlement agreement.
66-83	Admonishment	Contact with city officials regarding pending case without notifying city attorney.
67-83	Dismissed	Improper influencing of arbitrator.
68-83	Dismissed	Inadequate representation at trial.
69-83	Pending	Mistake in drafting of title contract.
70-83	Dismissed	Delay in execution of judgment.
71-83	Pending	Unprofessional and outrageous conduct.
72-83	Dismissed	Breach of retainer agreement.
73-83	Dismissed	Ineffective assistance of counsel; failure to return documents.
74-83	Dismissed	Breach of contract.
75-83	Dismissed	Neglect in closing estate.
76-83	Pending	Conflict of interest.
77-83	Dismissed	Inadequate representation in modification of divorce decree case.
78-83	Dismissed	Lawyer discussed client's non-payment of fees with client's banker.
79-83	Withdrawn	Inadequate and improper representation in a divorce case; conflict of interest.

<u>Docket Number</u>	<u>Disposition</u>	<u>Allegations of Misconduct</u>
80-83	Dismissed	Contact with opposing party who was represented by a lawyer.
81-83	Pending	Inadequate representation in paternity action.
82-83	Withdrawn	Improper representation in property lease case.
83-83	Dismissed	Ineffective assistance of counsel in criminal case; conflict of interest.
01-84	Dismissed	Ineffective assistance of counsel in criminal case.
02-84	Pending	Neglect in closing an estate.
03-84	Dismissed	Neglect in filing bankruptcy.
04-84	Dismissed	Ineffective assistance of counsel in criminal case; conspiracy among lawyers, police and town officials to harass and deprive an individual of rights.
05-84	Dismissed	Inadequate representation in paternity action.
06-84	Dismissed	Breach of promise to forgive obligation to pay fee.
07-84	Dismissed	Ineffective assistance of counsel in criminal case.
08-84	Dismissed	Lawyer acted rudely in doctor's office.
09-84	Dismissed	Neglect in probating estate.
10-84	Pending	Violation of fiduciary relationship.
11-84	Pending	Ineffective assistance of counsel in criminal case.
12-84	Pending	Inadequate representation in construction case.
13-84	Dismissed	Inadequate representation in a divorce case.
14-84	Pending	Neglect in a divorce matter.
15-84	Dismissed	Ineffective assistance of counsel in criminal case.
16-84	Dismissed	Dispute over which lawyer owes expert deposition expenses.
17-84	Dismissed	Lawyer accepted fee when there was no case.
18-84	Pending	Law clerk error caused client to miss court appearance and prejudice his rights.

<u>Docket Number</u>	<u>Disposition</u>	<u>Allegations of Misconduct</u>
19-84	Dismissed	Neglect in divorce case.
20-84	Dismissed	Neglect in civil case; lawyer will not return file to client until fee is paid.
21-84	Dismissed	Misrepresentation by lawyer that he could practice in Colorado so as to collect a fee.
22-84	Pending	Inadequate representation in custody case.
23-84	Pending	Neglect in breach of contract claim.
24-84	Pending	Improper conduct by opposing counsel.
25-84	Pending	Neglect in representation for an administrative hearing.
26-84	Dismissed	Ineffective assistance of counsel in criminal case.
27-84	Dismissed	Lawyer obtained new will from individual lacking testamentary capacity.
28-84	Dismissed	Lawyer abused judicial system in making doctor appear for testimony and then settling case just prior to trial.
29-84	Withdrawn	Neglect of support matters.
30-84	Withdrawn	Conflict of interest; inadequate representation and breach of confidentiality as guardian ad litem.
31-84	Dismissed	Bad faith allegations by opposing counsel in bankruptcy case.
32-84	Dismissed	Inadequate representation in civil matters.
33-84	Pending	Inadequate representation in civil matters.
34-84	Dismissed	Excessive fee arrangement.
35-84	Dismissed	Failure to control client.
36-84	Pending	Ineffective assistance of counsel in criminal case.
37-84	Pending	Neglect in visitation rights case; inadequate representation in real property case.
38-84	Withdrawn	Neglect in divorce case.
39-84	Dismissed	Attorney sent pleadings to opposing party's employer.
40-84	Dismissed	Ineffective assistance of counsel in criminal case.

<u>Docket Number</u>	<u>Disposition</u>	<u>Allegations of Misconduct</u>
41-84	Pending	Neglect in civil case.
42-84	Pending	Delay in bankruptcy matter.
43-84	Pending	Fraud perpetrated on the court.
44-84	Dismissed	Fee accepted and not returned when conflict of interest arose.
45-85	Pending	Lawyer refuses to turn over client's property until fee is paid.
46-84	Pending	Conflict of interest.
47-84	Pending	Neglect in civil action resulted in default.
48-84	Pending	Excessive fees.
49-84	Pending	Excessive fees.
50-84	Pending	Inadequate representation in wage claim case.
51-84	Pending	Ineffective assistance of counsel in criminal case; excessive fees.
52-84	Pending	Neglect in divorce case.
53-84	Pending	Neglect in civil case; excessive fees.
54-84	Pending	Improper remarks by attorney in appellate brief.
55-84	Pending	Improper diversion of mail in bankruptcy case.
56-84	Pending	Conflict of interest.
57-84	Pending	Inadequate representation in civil case, conflict of interest.
58-84	Pending	Delay in civil case.
(There is no 59-84).		
60-84	Pending	Excessive fees.
61-84	Pending	Excessive fees.
62-84	Pending	Neglect in divorce case.
63-84	Pending	Delay in notifying client of conflict of interest.

The following discipline was administered by the Wyoming Supreme Court since the last report:

Mr. Alfred E. Kaufman was publicly reprimanded and suspended from the Wyoming State Bar for one year on March 27, 1984.

Mr. Charles E. Spratt was publicly reprimanded and disbarred from the Wyoming State Bar on February 21, 1984.

Respectfully submitted,
 RICHARD I. LEEDY
 Chairman

REPORT OF 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 D. GRABILL

Mr. Grabill was born on February 26, 1923 in Johnville, Maryland. He was admitted to the Wyoming State Bar on May 16, 1974 and was a sole practitioner in Cheyenne. Mr. Grabill died on September 9, 1984.

EDWIN V. MAGAGNA

Mr. Magagna was a graduate of Creighton University and Creighton University School of Law. He was admitted to the Wyoming State Bar on November 17, 1931.

Mr. Magagna began his law practice in Rock Springs, Wyoming. Among his clients were the Union Pacific Railroad, Stouffer Chemical Company, and Northern Utilities. He also served as the Rock Springs City Attorney. Mr. Magagna was President of the Wyoming State Bar in 1955-56. He had also been Secretary of the Rock Springs Grazing Association. In 1971, he moved to Casper to devote his energies to Northern Utilities. He assisted in arranging the merger of Northern Utilities with the Kansas-Nebraska Gas Company and in 1974 was named Executive Vice President.

Mr. Magagna died on September 19, 1984.

OSCAR E. SWAN

Mr. Swan was admitted to the Wyoming State Bar on February 3, 1953. He was a graduate of Princeton University and was admitted to the Bars of both Oklahoma and Wyoming. At the time of his death, Mr. Swan had been serving as State Land Commissioner under Governor Herschler since 1978. Prior to becoming State Land Commissioner, Mr. Swan had 24 years of oil industry experience, working for Stanolind, Amoco and Midwest Oil Companies in Wyoming and Colorado.

Mr. Swan died on February 10, 1984.

DELBERT P. WARNER

Mr. Warner was admitted to the Wyoming State Bar on August 18, 1953. He was residing in Mississippi at the time of his death. Mr. Warner died in December, 1983.

RAYMOND P. WHITAKER

Mr. Whitaker was a graduate of the University of Virginia and the University of Wyoming College of Law. He was admitted to the Wyoming State Bar on November 30, 1948. He had practiced law in Natrona Coun-

ty, serving as a justice of the peace and as a county attorney. He later served as State Democratic Chairman.

Mr. Whitaker moved to Arizona in the mid-1970's residing in Scottsdale. He was formally retired from the Wyoming State Bar on March 9, 1983. He died on October 28, 1983 after being hospitalized for a stroke.

REPORT OF SPECIAL COMMITTEE ON TAXATION LAW

The Special Committee on Taxation Law of the Wyoming State Bar continued its second year of existence by appointment of the President, Harry L. Harris, pursuant to Section 2 of the By-Laws of the Wyoming State Bar.

In its first year, the Committee assisted in sponsoring a seminar, "Tax Basics for the General Practitioner", in Jackson, Wyoming, and sponsored the publication of three articles on tax issues relevant to members of the Bar in *The Wyoming Lawyer*. Contact was also begun with the National Association of State Bar Tax Sections. Since that time, the Committee has continued its services to the Bar by sponsoring the submission of two additional articles on taxation law for future publication in *The Wyoming Lawyer*, one dealing with Wyoming's unique disclaimer statute and the other dealing with the implications of Revenue Procedure 64-19 upon marital bequests. The Committee has continued to render assistance to the Special Domestic Relations Committee of the Laramie County Bar Association. The Committee reviewed proposed tax legislation under consideration by the 1984 Wyoming Legislature; the Committee deferred taking any position on the legislation until it could be done in conjunction with the regular meeting of the Legislative and Law Reform Committee. The Committee has continued to consider guidelines concerning comment on existing or proposed tax legislation.

During its existence this year, the Committee was ably assisted by its members, John Masters, Charles P. Resor, Kent Ewing, Lee E. Karavitis and the undersigned.

The existence of the Committee will terminate on September 30, 1984 unless renewed.

Respectfully submitted,
THOMAS N. LONG
Chairman

REPORT OF THE SPECIAL COMMITTEE ON WATER LAW

The Special Committee on Water Law was appointed in October, 1982. Over the past two years the Committee has been involved in reviewing water legislation, discussing possible changes to the adjudication procedures of the State Engineer and the Board of Control, and most recently is sponsoring a seminar on water law on behalf of the Bar Association.

In the legislative arena, the Committee has reviewed proposed amendments to the State Engineer's statutes, to address administrative problems that have arisen as a result of the Wyoming Supreme Court's decision in *Green River Development Co. v. FMC Corporation, et al.*, 650 P.2d 339 (Wyo. 1983). This legislation is currently being considered by a joint interim committee of the Legislature.

A sub-committee chaired by Jack Palma was appointed in 1983 to examine the current procedures of water litigation in the state and to suggest and evaluate alternatives. 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 sub-committee will utilize these memoranda to suggest possible changes in Wyoming statutes.

Finally, the Committee is sponsoring a water law seminar for general practitioners that will be held at the College of Law in Laramie on October 19-20. The seminar is designed to provide the general practitioner a working knowledge of water law as it relates to property transactions. This seminar will utilize actual examples of water rights to discuss how a water right is perfected, how the water is regulated by state officials, and then follow the water rights through a sale and transfer of ownership, an abandonment and a change of use proceeding. It is hoped that this seminar will prove valuable to the practicing members of the Bar Association.

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

Respectfull submitted,
LAWRENCE J. WOLFE
Chairman

Committee Members:

David W. Edwards
Jack R. Gage
Prof. George Gould
Charles E. Grave
Gina Guy
W. Douglas Hickey

William R. Jones
Hugh B. McFadden
Jack D. Palma
David Palmerlee
Ann Talmadge
Donald P. White

REPORT OF STATE BOARD OF LAW EXAMINERS OF WYOMING

The State Board of Law Examiners consisting of James L. Applegate, Cheyenne; Thomas C. Toner, Sheridan; Ernest J. Goppert, Jr., Cody; Michael J. Sullivan, Casper; and William H. Vines, Wheatland, administered the Bar Examination on 28 and 29 February 1984 in Laramie, Wyoming to twenty-five applicants. Twenty or eighty percent of those taking this exam passed. These people were subsequently recommended to the Wyoming Supreme Court for admission to the Bar.

On 24 and 25 July 1984, also at Laramie, the Board examined sixty-four applicants, of whom forty-nine or 76.6% passed and were subsequently recommended to the Supreme Court for admission.

This past year we have had a significant number of applications for admission without examination based on our reciprocity rules. In considering such applications, the Board has made every effort to make a strict application of the rules and statutes.

Respectfully submitted,
JAMES L. APPLGATE
President

REPORT OF THE UNAUTHORIZED PRACTICE OF LAW COMMITTEE

In the last year several unauthorized practice cases have come to the attention of the committee which the committee believes are clearly unauthorized practice and sufficiently serious to require court action. These cases could not be solved by the usual method of contacting the offending person and requesting that they desist as the people actively refused to desist in their unauthorized practice. In looking into the necessary procedures for the initiation of proceedings against unauthorized practitioners the committee found that it does not appear to have the standing or authority to sue or be sued nor are there any procedures for the initiation of such actions. In contacting numerous other states and receiving copies of their rules and statutes governing unauthorized practice and its prosecution, the committee has determined that there is a need in the State of Wyoming for the adoption of rules establishing the committee on the unauthorized practice of law and empowering it to investigate and prosecute cases of unauthorized practice.

Based on the review of the rules and statutes of other states, the committee has developed the following proposed rules. Rules 1 through 6 are based on a Model Rules for Advisory Opinions on the Unauthorized Practice of Law published by the ABA. While the committee does not propose to authorize the giving of advisory opinions it is felt that the organizational structure of the proposed committee in the Model Rules is a good

one. Rules 7 through 9 are based upon the Florida rules which is the state with the most recent experience in unauthorized practice matters.

The committee has decided to recommend formation of a committee directly under the oversight of the Supreme Court rather than through the Bar so as to remove any possibility of anti-trust problems as well as to preclude the perception in the public that the interest of the Bar in regulating unauthorized practice is solely to protect its own economic interests. Additionally, these rules have granted to the new committee the power to investigate and obtain subpoenas for that purpose and the authority to initiate actions in the Supreme Court for injunctive relief or criminal contempt proceedings. The committee itself is not empowered to issue cease and desist orders as it is in some other states. It was felt that the situation in Wyoming had not reached the point of court congestion, etc., where it was impossible to get the immediate cooperation of a District Court or the Supreme Court in obtaining injunctive relief.

Proposed Rules Regarding the Unauthorized Practice of Law

RULE 1. THE COMMITTEE: APPOINTMENT, COMPOSITION, REMOVAL, FUNDING

(A) THE COURT SHALL APPOINT A COMMITTEE ON THE UNAUTHORIZED PRACTICE OF LAW TO ACT IN ACCORDANCE WITH THESE RULES. THE COMMITTEE SHALL CONSIST OF NINE MEMBERS, SIX OF WHOM SHALL BE LAWYERS, AND THREE OF WHOM SHALL BE PUBLIC MEMBERS WHO NEITHER ARE ADMITTED TO THE BAR NOR PRACTICE LAW IN ANY STATE. THE COURT SHALL ALSO APPOINT THREE ALTERNATE MEMBERS, ONE OF WHOM SHALL NOT BE A LAWYER, TO SERVE IN THE EVENT MEMBERS OF THE COMMITTEE ARE DISQUALIFIED IN PARTICULAR PROCEEDINGS. IN THE EVENT OF SUCH TEMPORARY REPLACEMENT, A LAWYER SHALL REPLACE A LAWYER AND A NON-LAWYER SHALL REPLACE A NONLAWYER MEMBER. THEREAFTER THE COURT, BY ORDER, SHALL REQUEST THE SUBMISSION OF NOMINATIONS TO FILL VACANCIES IN EACH CATEGORY OF MEMBERSHIP AS THEY OCCUR. ANY BAR ASSOCIATION OR ANY RESIDENT OF THE STATE MAY SUBMIT IN WRITING THE NAMES OF NOMINEES.

(B) WHEN THE COMMITTEE IS FIRST SELECTED, ONE-THIRD OF THE MEMBERS SHALL BE APPOINTED FOR A TERM OF THREE YEARS, ONE-THIRD FOR A TERM OF TWO YEARS, AND ONE-THIRD FOR A TERM OF ONE YEAR. ALL SUBSEQUENT APPOINTMENTS TO THE COMMITTEE SHALL BE FOR A TERM OF THREE YEARS. NO MEMBER SHALL BE APPOINTED TO MORE THAN TWO

CONSECUTIVE FULL TERMS. THE MEMBERS OF THE COMMITTEE SHALL NOT BE SUBJECT TO REMOVAL BY THE COURT DURING THEIR TERMS OF OFFICE, EXCEPT FOR CAUSE. CAUSE SHALL INCLUDE UNEXCUSED FAILURES TO ATTEND SCHEDULED MEETINGS, THE NUMBER OF WHICH SHALL BE SET FORTH BY THE COMMITTEE IN AN ATTENDANCE POLICY.

(C) THE COURT SHALL PROVIDE FUNDING FOR AND EXERCISE PERIODIC REVIEW OVER THE COMMITTEE'S BUDGET.

Comment

The purpose of regulation of unauthorized practice of law being the protection of the public rather than the protection of the business interests of lawyers, we feel it appropriate that the committee contain lay members in order to insure contact between the committee and the general public and to prevent the appearance of self-interest which might be perceived should the membership be limited to lawyers. The committee is appointed and funded directly by the Court rather than through the Wyoming State Bar because the function of "requiring all persons practicing law in the state to be members" of the Bar is placed in the Supreme Court by statute. § 5-2-118 W.S. 1977. It would be possible should the Court desire it to have this committee be a branch of the Bar rather than an arm of the Court. Rule 6 of Bar Association Organization and Government provides that the Board of Commissioners of the Bar shall act as the administrative agent of the Supreme Court. This authority could be used to oversee unauthorized practice of law activities, but might increase the potential for anti-trust problems.

A committee of nine (9) members with alternates is recommended in order that a variety of personal backgrounds and geographical distribution of members may be achieved. The staggered terms are recommended in order to provide for continuity while limiting membership to two terms increases the number of participating individuals and provides for a regular influx of new ideas and outlooks.

RULE 2. OFFICERS

THE COMMITTEE SHALL ELECT A CHAIRPERSON AND A VICE- CHAIRPERSON FROM AMONG ITS MEMBERS ANNUALLY, SUBJECT TO REGULATIONS AND TERMS TO BE ESTABLISHED BY THE COMMITTEE NOT INCONSISTENT WITH THESE RULES.

Comment

A regular turn-over of officers is desirable for the same reasons as a regular turn-over of members as set forth in the comment above.

RULE 3. COMMITTEE FUNCTIONS

THE COMMITTEE SHALL RECEIVE COMPLAINTS ALLEGING THE UNAUTHORIZED PRACTICE OF LAW AND SHALL INVESTIGATE THOSE COMPLAINTS AND INITIATE LITIGATION BEFORE THIS COURT FOR INJUNCTIVE RELIEF AND/OR CRIMINAL CONTEMPT PROCEEDINGS. THE COMMITTEE MAY RETAIN THE SERVICES OF INVESTIGATORS AND PRIVATE ATTORNEYS TO CARRY OUT THESE FUNCTIONS.

Comment

It is not felt necessary at this time to empower the committee to issue advisory opinions. The present problems involve the lack of apparent authority or procedures to initiate actions in cases of apparent unauthorized practice. It is anticipated that private investigators and attorneys be hired by the committee to investigate and prosecute actions as it is felt that the direct handling of these activities by the committee members could result in an unfair burden of pro bono services on the part of a very few committee members. It is anticipated that the committee's activities will be limited to investigation and a determination of whether and how to prosecute actions. Only two types of actions are anticipated, injunctive relief and criminal contempt proceedings.

RULE 4. MEETINGS, NOTICE OF MEETINGS AND OFFICIAL ACTIONS

THE COMMITTEE SHALL MEET NOT LESS THAN ONCE A YEAR. THE COMMITTEE MAY PROVIDE, BY RESOLUTION, THE TIME AND PLACE FOR THE HOLDING OF SUCH OTHER REGULAR MEETINGS WITHOUT OTHER NOTICE THAN SUCH RESOLUTION. IN ADDITION, SPECIAL MEETINGS OF THE COMMITTEE MAY BE CALLED BY OR AT THE REQUEST OF THE CHAIRPERSON, THE VICE-CHAIRPERSON, OR ANY TWO MEMBERS. THE PERSON OR PERSONS AUTHORIZED TO CALL SPECIAL MEETINGS MAY FIX ANY PLACE FOR HOLDING ANY SPECIAL MEETING OF THE COMMITTEE.

NOTICE OF ANY SPECIAL MEETING SHALL BE GIVEN AT LEAST SEVEN DAYS PREVIOUS THERETO BY WRITTEN NOTICE DELIVERED PERSONALLY OR MAILED TO EACH MEMBER'S BUSINESS ADDRESS. ANY MEMBER MAY WAIVE NOTICE OF ANY MEETING.

A QUORUM SHALL BE CONSTITUTED OF A MAJORITY OF THE COMMITTEE AND MUST INCLUDE AT LEAST ONE NON-LAWYER MEMBER. THE COMMITTEE SHALL ACT ONLY WITH THE CONCURRENCE OF A MAJORITY OF THE MEMBERS PRESENT EITHER IN PERSON OR BY

TELEPHONE. ALL MEETINGS SHALL BE CONFIDENTIAL UNLESS THE COMMITTEE DETERMINES THAT ALL OR A PORTION OF THE MEETING SHALL BE OPEN TO THE PUBLIC.

Comment

Because consideration of recommended litigation is required under Rule 7 below to be approved by the entire committee provision must be made for meetings. This rule is substantially derived from Rule 4 of the Model Rules for Advisory Opinions on the unauthorized practice of law with several changes. The notice requirements of that rule were deemed overly complicated and cumbersome and the provision in the third paragraph allowing members to be present by telephone was felt necessary because of the distances involved in this state and the difficulties in obtaining the physical presence of members at meetings especially on short notice.

RULE 5. CONFLICT OF INTEREST

COMMITTEE MEMBERS SHALL NOT PARTICIPATE IN ANY MATTER IN WHICH THEY HAVE EITHER A MATERIAL PECUNIARY INTEREST THAT WOULD BE AFFECTED BY COMMITTEE RECOMMENDATION, OR ANY OTHER CONFLICT OF INTEREST THAT MIGHT PREVENT THEM FROM PARTICIPATING. HOWEVER, NO ACTION OF THE COMMITTEE WILL BE INVALID WHERE FULL DISCLOSURE HAS BEEN MADE AND THE COMMITTEE HAS NOT DECIDED THAT THE MEMBER'S PARTICIPATION WAS IMPROPER.

Comment

It is necessary to prohibit conflicts of interest which prevent the committee from carrying out its duties to the public and to the profession. This rule is intended to prohibit the participation of committee members with direct conflicts and direct pecuniary interests but not to prohibit the general pecuniary interest that all lawyers and even members of the public have in regulating the unauthorized practice of law. For that reason the pecuniary interest giving rise to a conflict of interest must be material.

RULE 6. IMMUNITY

THE MEMBERS OF THE COMMITTEE AS WELL AS STAFF PERSONS ASSISTING THOSE MEMBERS SHALL HAVE ABSOLUTE IMMUNITY FROM CIVIL LIABILITY FOR ALL ACTS IN THE COURSE OF THEIR OFFICIAL DUTIES.

Comment

The functions of the committee are quasi-judicial and prosecutorial in nature. For that reason they should be clothed in the absolute immunity given prosecuting attorneys. *Blake v. Rupe*, 651 P.2d 1096 (Wyo. 1982).

RULE 7. INVESTIGATION

THE COMMITTEE MAY CONDUCT INVESTIGATIONS OF UNAUTHORIZED PRACTICE OF LAW THROUGH SUBCOMMITTEES OF NOT LESS THAN THREE (3) MEMBERS, AT LEAST ONE OF WHOM SHALL BE A NON-LAWYER MEMBER. SUCH SUBCOMMITTEES AFTER HAVING COMPLETED AN INVESTIGATION SHALL MAKE A REPORT TO THE ENTIRE COMMITTEE OF THE RESULTS OF THE INVESTIGATION AND A RECOMMENDATION FOR FURTHER ACTION. IN EMERGENCY CASES REQUIRING IMMEDIATE ACTION A SUBCOMMITTEE MAY SEEK TEMPORARY INJUNCTIVE RELIEF IN THE APPROPRIATE DISTRICT COURT FOR A PERIOD SUFFICIENT TO ALLOW THE ENTIRE COMMITTEE TO MEET AND INITIATE LITIGATION. THE DECISION TO INITIATE LITIGATION IN THIS COURT IN THE FORM OF CIVIL INJUNCTION PROCEEDINGS OR CRIMINAL CONTEMPT PROCEEDINGS SHALL BE MADE BY THE ENTIRE COMMITTEE AT A REGULAR OR SPECIAL MEETING AS PROVIDED IN RULE 4 ABOVE.

ALL UNAUTHORIZED PRACTICE OF LAW INVESTIGATION MATTERS INCLUDING FILES, CORRESPONDENCE, PRELIMINARY INVESTIGATION REPORTS, INTER-OFFICE MEMORANDA AND RECORDS OF INVESTIGATIONS ARE UNDER THE SUPERVISION OF THE SUPREME COURT AND ARE SUBJECT TO SUCH PUBLIC INSPECTION AS THE COURT SHALL DIRECT.

Comment

The rule anticipates the conduct of investigations through subcommittees. With the large areas involved in the State of Wyoming it is believed that investigation by a centralized subcommittee would not only be cumbersome but also an excessive burden on the members making up that subcommittee. The final recommendation of litigation is reserved for the entire committee. The confidentiality of investigation matters is left to the direction of the Supreme Court on a case-by-case basis.

RULE 8. SUBPOENAS

UPON RECEIVING A WRITTEN APPLICATION OF THE CHAIRMAN OF THE COMMITTEE ALLEGING FACTS INDICATING THAT A PERSON OR ENTITY IS OR MAY BE UNLAWFULLY PRACTICING LAW AND THAT THE ISSUANCE OF A SUBPOENA IS NECESSARY FOR THE INVESTIGATION OF SUCH UNAUTHORIZED PRACTICE, THE CLERK OF THE DISTRICT COURT IN WHICH THAT PERSON OR ENTITY IS LOCATED, OR THE CLERK OF THE SUPREME COURT OF WYOMING, SHALL ISSUE SUB-

POENAES IN THE NAME RESPECTIVELY OF THE DISTRICT JUDGE OR THE CHIEF JUSTICE FOR THE ATTENDANCE OF ANY PERSON AND PRODUCTION OF BOOKS AND RECORDS BEFORE THE INVESTIGATING COMMITTEE OR SUBCOMMITTEE AT THE TIME AND PLACE DESIGNATED BY THE INVESTIGATING COMMITTEE AND SUBCOMMITTEE.

FAILURE TO COMPLY WITH ANY SUBPOENA SHALL CONSTITUTE A CONTEMPT OF COURT AND MAY BE PUNISHED BY THE SUPREME COURT OR BY THE DISTRICT COURT ISSUING THE SUBPOENA OR THE DISTRICT COURT FOR THE DISTRICT WHERE THE CONTEMNER MAY BE FOUND. THE ISSUING COURTS SHALL HAVE POWER TO ENTER SUCH PROTECTIVE ORDERS AS MAY BE NECESSARY FOR THE ENFORCEMENT OF THE SUBPOENA.

Comment

One of the main problems in the presently existing unauthorized practice of law system is the lack of any enforcement and investigating powers by the committee. It is felt that the subpoena power is necessary in order to obtain the books and records of persons under investigation. The proposed rule preserves the oversight of the issuing court to prevent the abuse of the subpoena power by the committee.

RULE 9. LITIGATION

(A) CIVIL INJUNCTION PROCEEDING

1. COMPLAINTS SHALL BE BY WRITTEN PETITION FILED IN THIS COURT IN THE NAME OF THE COMMITTEE ON THE UNAUTHORIZED PRACTICE OF LAW.

2. EACH SUCH PETITION SHALL BE PROCESSED IN THIS COURT IN ACCORDANCE WITH THE FOLLOWING PROCEDURE:

a. THE PETITION SHALL NOT BE FRAMED IN TECHNICAL LANGUAGE, BUT SHALL WITH REASONABLE CLARITY SET FORTH THE ALLEGED FACTS CONSTITUTING THE UNAUTHORIZED PRACTICE OF LAW. A PRAYER FOR RELIEF MAY BE INCLUDED IN THE PETITION, BUT SHALL NOT BE REQUIRED.

b. THIS COURT, UPON CONSIDERATION OF ANY PETITION SO FILED, MAY ISSUE ITS ORDER TO SHOW CAUSE DIRECTED TO THE RESPONDENT COMMANDING SAID RESPONDENT TO SHOW CAUSE IF ANY THERE BE, WHY THE RESPONDENT SHOULD NOT BE ENJOINED FROM THE ALLEGED UNAUTHO-

RIZED PRACTICE OF LAW, AND FURTHER REQUIRING THE RESPONDENT TO FILE WITH THE COURT WITHIN TWENTY (20) DAYS AFTER SERVICE OF THE PETITION AND SHOW CAUSE ORDER ON HIM, A WRITTEN ANSWER ADMITTING OR DENYING THE MATTER SET FORTH IN THE PETITION. THE LEGAL SUFFICIENCY OF THE PETITION MAY, AT THE OPTION OF THE RESPONDENT, BE RAISED BY MOTION TO DISMISS FILED PRIOR TO OR AT THE TIME OF THE FILING OF THE ANSWER. THE FILING OF A MOTION TO DISMISS PRIOR TO THE FILING OF AN ANSWER SHALL POSTPONE THE TIME FOR THE FILING OF AN ANSWER UNTIL TEN (10) DAYS AFTER DISPOSITION OF SAID MOTION. THE ORDER AND PETITION SHALL BE SERVED UPON THE RESPONDENT IN THE MANNER PROVIDED FOR SERVICE OF PROCESS UNDER RULE 4 W.R.C.P. SERVICE OF ALL OTHER PLEADINGS SHALL BE GOVERNED BY THE PROVISIONS OF RULE 5 W.R.C.P.

c. ANY PARTY MAY REQUEST ORAL ARGUMENT UPON ANY QUESTION OF LAW RAISED BY THE INITIAL PLEADINGS. THE COURT MAY, IN ITS DISCRETION, SET THE MATTER FOR ORAL ARGUMENT UPON THE NEXT CONVENIENT MOTION DAY, OR AT SUCH TIME AS IT DEEMS APPROPRIATE.

d. IF NO RESPONSE OR DEFENSE IS FILED WITHIN THE TIME PERMITTED, THE ALLEGATIONS OF THE PETITION SHALL BE TAKEN AS TRUE FOR PURPOSES OF THAT ACTION. THE COURT WILL THEN, UPON ITS MOTION OR UPON MOTION OF ANY PARTY, DECIDE THE CASE UPON ITS MERITS, GRANTING SUCH RELIEF AND ISSUING SUCH ORDER AS MIGHT BE APPROPRIATE OR IT MAY REFER THE PETITION FOR FURTHER PROCEEDINGS ACCORDING TO THIS ARTICLE.

e. IF A RESPONSE OR DEFENSE FILED BY A RESPONDENT RAISES NO ISSUE OR ISSUES OF MATERIAL FACT, ANY PARTY, UPON MOTION, MAY REQUEST A JUDGMENT ON THE PLEADINGS AND THE COURT MAY RULE THEREON AS A MATTER OF LAW.

f. THE COURT, UPON ITS MOTION OR UPON MOTION OF ANY PARTY, SHALL REFER QUESTIONS OF FACT TO A REFEREE FOR DETERMINATION. THE REFEREE SHALL BE AN ACTIVE OR RETIRED

DISTRICT JUDGE OR RETIRED SUPREME COURT JUSTICE OF THE STATE OF WYOMING.

3. PROCEEDINGS BEFORE THE REFEREE SHALL BE IN ACCORDANCE WITH THE FOLLOWING:

a. THE PROCEEDING BEFORE THE REFEREE SHALL BE HELD IN THE COUNTY WHERE THE RESPONDENT RESIDES OR WHERE THE ALLEGED OFFENSE WAS COMMITTED, WHICHEVER SHALL BE DESIGNATED BY THE COURT.

b. WITNESS SUBPOENAS SHALL RUN IN THE NAME OF THIS COURT AND SHALL BE ISSUED BY THE REFEREE UPON REQUEST OF A PARTY. FAILURE OR REFUSAL TO COMPLY WITH ANY SUBPOENA SHALL BE A CONTEMPT OF THIS COURT AND MAY BE PUNISHED BY THIS COURT OR BY ANY DISTRICT COURT WHERE THE ACTION IS PENDING OR WHERE THE CONTEMNER MAY BE FOUND, AS IF SAID REFUSAL WERE A CONTEMPT OF THAT COURT.

c. THE WYOMING RULES OF CIVIL PROCEDURE, INCLUDING THOSE PROCEDURES PERTAINING TO DISCOVERY, NOT INCONSISTENT WITH THIS ARTICLE, SHALL APPLY IN PROCEEDINGS BEFORE THE REFEREE. THE POWERS AND JURISDICTION GENERALLY REPOSED IN "THE COURT" UNDER SAID RULES MAY IN THIS ACTION BE EXERCISED BY THE REFEREE. THE COMMITTEE MAY IN EVERY CASE AMEND ITS PETITION ONE TIME AS OF RIGHT WITHIN SIXTY (60) DAYS AFTER THE FILING OF THE ORDER OF REFERENCE TO A REFEREE.

4. THE REFEREE SHALL REPORT IN WRITING TO THE COURT HIS FINDINGS OF FACT, CONCLUSIONS OF LAW AND RECOMMENDATION FOR FINAL DISPOSITION OF THE CAUSE. THE ORIGINAL RECORD SHALL BE FILED WITH HIS REPORT. A COPY OF THE REFEREE'S REPORT SHALL BE SERVED UPON ALL PARTIES BY THE REFEREE AT THE TIME THE SAME IS FILED IN THIS COURT.

5. OBJECTIONS TO THE REPORT OF THE REFEREE MAY BE FILED IN THIS COURT BY ANY PARTY AGGRIEVED, WITHIN THIRTY (30) DAYS AFTER THE FILING OF SAID REPORT. IF THE OBJECTOR DESIRES, HE MAY FILE A BRIEF IN SUPPORT OF HIS OBJECTIONS AT THE TIME HIS OBJECTIONS ARE FILED. ANY OTHER PARTY MAY FILE A RESPONSIVE BRIEF WITHIN TWENTY (20) DAYS AFTER SERVICE OF OBJECTOR'S BRIEF. THE OBJECTOR MAY FILE A REPLY BRIEF WITHIN TEN

(10) DAYS OF SERVICE OF THE OPPOSING PARTY'S RESPONSIVE BRIEF. ORAL ARGUMENT WILL BE ALLOWED AT THE COURT'S DISCRETION.

6. UPON THE EXPIRATION OF THE TIME TO FILE OBJECTIONS TO THE REFEREE'S REPORT, THE COURT SHALL REVIEW THE REPORT OF THE REFEREE, TOGETHER WITH ANY BRIEFS OR OBJECTIONS FILED IN SUPPORT OF OR OPPOSITION TO SUCH REPORT. AFTER REVIEW, THE COURT SHALL DETERMINE AS A MATTER OF LAW WHETHER THE RESPONDENT HAS ENGAGED IN THE UNAUTHORIZED PRACTICE OF LAW AND WHETHER HIS ACTIVITIES SHOULD BE ENJOINED BY APPROPRIATE ORDER.

7. NOTHING SET FORTH IN THIS RULE SHALL BE CONSTRUED TO PROHIBIT OR LIMIT THE RIGHT OF THE COURT UPON PROPER APPLICATION, TO ISSUE A PRELIMINARY OR TEMPORARY INJUNCTION, OR AT ANY STAGE OF THE PROCEEDINGS, TO ENTER ANY SUCH ORDER AS TO THE COURT MAY SEEM PROPER WHEN PUBLIC HARM OR THE POSSIBILITY THEREOF IS MADE APPARENT TO THE COURT, IN ORDER THAT SUCH HARM MAY BE SUMMARILY PREVENTED OR SPEEDILY ENJOINED. ADDITIONALLY THE DISTRICT COURTS OF THIS STATE ARE EMPOWERED TO ISSUE PRELIMINARY OR TEMPORARY INJUNCTIONS AT THE REQUEST OF THE COMMITTEE ON UNAUTHORIZED PRACTICE OF LAW OR ITS SUBCOMMITTEES TO ENJOIN AND PROHIBIT ACTIVITIES BELIEVED TO BE THE UNAUTHORIZED PRACTICE OF LAW OCCURRING WITHIN THEIR DISTRICTS FOR A SUFFICIENT TIME TO ALLOW THE COMMITTEE TO INITIATE PROCEEDINGS IN THIS COURT.

B. CRIMINAL CONTEMPT PROCEEDINGS

1. CRIMINAL CONTEMPT PROCEEDINGS FOR UNAUTHORIZED PRACTICE OF LAW SHALL BE PROSECUTED IN THE FOLLOWING MANNER:

a. UPON RECEIVING A SWORN PETITION OF THE CHAIRMAN OF THE COMMITTEE ON UNAUTHORIZED PRACTICE OF LAW, ALLEGING FACTS INDICATING THAT A PERSON, FIRM OR CORPORATION IS OR MAY BE UNLAWFULLY PRACTICING LAW, AND CONTAINING A PRAYER FOR A CONTEMPT CITATION, THE COURT MAY ISSUE AN ORDER DIRECTED TO THE RESPONDENT, STATING THE ESSENTIAL ALLEGATIONS CHARGED AND REQUIRING RESPONDENT TO APPEAR BEFORE A REFEREE

APPOINTED BY THE COURT TO SHOW CAUSE WHY RESPONDENT SHOULD NOT BE HELD IN CONTEMPT OF THIS COURT FOR UNAUTHORIZED PRACTICE OF LAW. THE REFEREE SHALL BE AN ACTIVE OR RETIRED DISTRICT JUDGE OR RETIRED SUPREME COURT JUSTICE OF THE STATE OF WYOMING. THE ORDER SHALL SPECIFY THE TIME AND PLACE OF THE HEARING, AND A REASONABLE TIME SHALL BE ALLOWED FOR PREPARATION OF THE DEFENSE AFTER SERVICE OF THE ORDER ON THE RESPONDENT.

b. ANY RESPONDENT, WHO IS DETERMINED TO BE INSOLVENT BY THE REFEREE, SHALL BE ENTITLED TO THE APPOINTMENT OF COUNSEL. IN PROCEEDINGS FOR THE DETERMINATION OF INSOLVENCY, THERE SHALL BE A PRESUMPTION OF SOLVENCY, AND THE RESPONDENT SHALL HAVE THE BURDEN OF REBUTTING THE PRESUMPTION BY COMPETENT PROOF.

c. VENUE FOR THE HEARING BEFORE THE REFEREE SHALL BE IN THE COUNTY WHERE THE RESPONDENT RESIDES OR WHERE THE ALLEGED OFFENSE WAS COMMITTED, WHICHEVER SHALL BE DESIGNATED BY THE COURT.

d. THE RESPONDENT, PERSONALLY OR BY COUNSEL, MAY MOVE TO DISMISS THE ORDER TO SHOW CAUSE, MOVE FOR A BILL OF PARTICULARS OR ANSWER SUCH ORDER BY WAY OF EXPLANATION OR DEFENSE. ALL MOTIONS AND THE ANSWER SHALL BE IN WRITING. A RESPONDENT'S OMISSION TO FILE MOTIONS OR AN ANSWER SHALL NOT BE DEEMED AS AN ADMISSION OF GUILT OF THE CONTEMPT CHARGED.

e. THE COURT OR REFEREE MAY ISSUE AN ORDER OF ARREST OF THE RESPONDENT IF THE COURT OR REFEREE HAS REASON TO BELIEVE THE RESPONDENT WILL NOT APPEAR IN RESPONSE TO THE ORDER TO SHOW CAUSE. THE RESPONDENT SHALL BE ADMITTED TO BAIL IN THE MANNER PROVIDED BY LAW IN CRIMINAL CASES.

f. THE RESPONDENT SHALL BE ARRAIGNED AT THE TIME OF THE HEARING BEFORE THE REFEREE, OR PRIOR THERETO UPON HIS REQUEST. A HEARING TO DETERMINE THE GUILT OR INNOCENCE OF THE RESPONDENT SHALL FOLLOW A PLEA OF NOT GUILTY. THE RESPONDENT IS ENTITLED TO BE REPRESENTED BY COUNSEL, HAVE COMPULSORY

PROCESS FOR THE ATTENDANCE OF WITNESSES, AND CONFRONT WITNESSES AGAINST HIM. THE RESPONDENT MAY TESTIFY IN HIS OWN DEFENSE. NO RESPONDENT MAY BE COMPELLED TO TESTIFY. A PRESUMPTION OF INNOCENCE SHALL BE ACCORDED THE RESPONDENT, AND THE COMMITTEE ON UNAUTHORIZED PRACTICE OF LAW, WHICH SHALL ACT AS PROSECUTING AUTHORITY, MUST PROVIDE GUILT OF THE RESPONDENT BEYOND A REASONABLE DOUBT.

g. THE REFEREE SHALL HEAR ALL ISSUES OF LAW AND FACT AND ALL EVIDENCE AND TESTIMONY PRESENTED SHALL BE TRANSCRIBED.

h. AT THE CONCLUSION OF THE HEARING, THE REFEREE SHALL SIGN AND ENTER OF RECORD A JUDGMENT OF GUILTY OR NOT GUILTY. THERE SHOULD BE INCLUDED IN A JUDGMENT OF GUILTY A RECITAL OF THE FACTS CONSTITUTING THE CONTEMPT OF WHICH THE RESPONDENT HAS BEEN FOUND AND ADJUDICATED GUILTY.

i. PRIOR TO THE PRONOUNCEMENT OF A RECOMMENDED SENTENCE UPON A JUDGMENT OF GUILTY, THE REFEREE SHALL INFORM THE RESPONDENT OF THE ACCUSATION AND JUDGMENT AGAINST HIM AND AFFORD HIM THE OPPORTUNITY TO PRESENT EVIDENCE OF MITIGATING CIRCUMSTANCES. THE RECOMMENDED SENTENCE SHALL BE PRONOUNCED IN OPEN COURT AND IN THE PRESENCE OF THE RESPONDENT.

j. THE JUDGMENT AND RECOMMENDED SENTENCE, UPON A FINDING OF "GUILTY", TOGETHER WITH THE ENTIRE RECORD OF PROCEEDINGS SHALL THEN BE FORWARDED TO THIS COURT FOR APPROVAL, MODIFICATION OR REJECTION BASED UPON THE LAW. THE RESPONDENT MAY FILE OBJECTIONS, TOGETHER WITH A SUPPORTING BRIEF, TO THE REFEREE'S JUDGMENT AND RECOMMENDED SENTENCE WITHIN THIRTY (30) DAYS OF THE DATE OF FILING WITH THE COURT OF THE REFEREE'S JUDGMENT, RECOMMENDED SENTENCE, AND THE RECORD OF PROCEEDINGS. THE COMMITTEE ON UNAUTHORIZED PRACTICE OF LAW MAY FILE A RESPONSIVE BRIEF WITHIN TEN DAYS AFTER SERVICE OF RESPONDENT'S BRIEF. THE RESPONDENT MAY FILE A REPLY BRIEF WITHIN FIVE DAYS AFTER SERVICE OF RESPONSIVE BRIEF.

2. NOTHING SET FORTH HEREIN SHALL BE CONSTRUED TO PROHIBIT OR LIMIT THE RIGHT OF THE COURT TO ISSUE A PERMANENT INJUNCTION IN LIEU OF OR IN ADDITION TO ANY PUNISHMENT IMPOSED FOR AN INDIRECT CRIMINAL CONTEMPT.

Comment

This rule is based upon the Florida Bar Rules, Article XVI, Rule III. It established procedures for both injunctive relief and criminal contempt. These procedures are believed to be essentially parallel to the procedures which have been used in the past by this court and others in original proceedings. *State v. Hardy*, 156 P.2d 309 (Wyo. 1945). Additionally, the constitutional protections of criminal defendants are preserved for criminal contempt cases. An additional change on the Florida rules is the inclusion in the pool of potential referees of retired judges and justices. The Supreme Court has in the past made good use of this pool of talent and experience and it is contemplated that this may be an appropriate source of referees available to give immediate attention to unauthorized practice cases which may arise. It is to be noted that no penalty for criminal contempt is set forth in these rules. Rule 41 W.R.Cr.P. provides that in all cases of punishment greater than six months imprisonment a defendant is entitled to jury trial. It is felt that limits of punishment for contempt in unauthorized practice cases might be best addressed by the legislature.

Respectfully submitted,
ERIC M. ALDEN
Chairman

Committee Members:

William F. Downes
Gerald R. Mason
Bernard Q. Phelan
Carol Jane Scott
James H. Sperry

**REPORT OF THE TREASURER
WYOMING STATE BAR**

**EXPENSES BY BUDGET CLASSIFICATION
FOR THE ELEVEN MONTHS ENDED AUGUST 31, 1984**

	<u>YEAR TO DATE</u>		<u>YTD BUDGET</u>		<u>OVER (UNDER)</u>
SELLING & G & A EXPENSE					
Wages	\$ 50,953.35	22.57	\$ 56,672.00	33.06	\$ (5,718.65)
Payroll Taxes ..	3,286.22	1.46	.00	.00	3,286.22
Travel	19,542.65	8.65	22,000.00	12.83	(2,457.35)
Financial	925.00	.41	2,288.00	1.33	(1,363.00)
Office Expense ..	17,414.50	7.71	13,376.00	7.80	4,038.50
Postage	5,854.16	2.59	4,763.00	2.78	1,091.16
Telephone	4,362.85	1.93	4,587.00	2.68	(224.15)
Regular publications ..	16,789.10	7.44	15,785.00	9.21	1,004.10
Dues for bar related organizations ..	435.00	.19	2,288.00	1.33	(1,853.00)
Grievance comm.	7,803.83	3.46	17,864.00	10.42	(10,060.17)
Fee arbitration committees ...	2,207.60	.98	1,837.00	1.07	370.60
Other WSB committees ..	618.47	.27	1,837.00	1.07	(1,218.53)
Meetings	756.84	.34	4,587.00	2.68	(3,830.16)
Convention Exp.	16,365.55	7.25	.00	.00	16,365.55
CLE-Special ..	10,962.44	4.85	11,165.00	6.51	(202.56)
Cash Reserve ..	21,188.78	9.38	7,150.00	4.17	14,038.78
TOTAL SELLING & G & A	<u>\$179,466.34</u>	<u>79.48</u>	<u>\$166,199.00</u>	<u>96.96</u>	<u>\$ 13,267.34</u>

**BALANCE SHEET
AUGUST 31, 1984**

ASSETS

CURRENT ASSETS

Cash - CLE	\$ 1,100.
Cash - Convention	6,176.
Cash - Checking	16,526.

1985	WYOMING STATE BAR PROCEEDINGS	351
Cash - Cd's	51,598.	
Cash - United Savings	100,000.	
Cash - Liquid Capital Fund	82,858.	
Restricted Cash - (Note C)	47,820.	
Computer	11,055.	
	<u>\$317,133.</u>	

LIABILITIES AND FUND BALANCE

CURRENT LIABILITIES

Payroll taxes payable	\$ 1,021.
Fund Balances	288,292.
Unrestricted	47,820.
Restricted	316,112.
	<u>317,133.</u>

STATEMENT OF REVENUES AND EXPENSES AND CHANGES IN FUND BALANCES

FOR THE ELEVEN MONTHS ENDED AUGUST 31, 1984

	BUDGET	UNRESTRICTED FUNDS	RESTRICTED FUNDS
REVENUES			
Annual fees	\$ 131,787	\$ 144,443	\$ —
Interest	16,093	25,168	3,732
Miscellaneous	8,250	16,065	—
Board of Law Examiners	1,100	—	—
Continuing Legal Education	11,153	6,174	—
Client Security Fund			1,105
Supervisory Fees	3,025	4,632	
Convention excess receipts	—	24,487	—
	<u>171,408</u>	<u>220,969</u>	<u>4,837</u>
EXPENSES			
General and administrative	<u>166,199</u>	<u>179,466</u>	<u>—</u>
EXCESS OF REVENUE OVER EXPENSES			
	<u>\$ 5,209</u>	41,503	4,837

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FUND BALANCE

October 1, 1983

226,790

49,984

FUND BALANCE

August 31, 1984

\$ 268,293

\$ 54,821