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Report of Special Committee on Disciplinary Procedures

Wyoming State Bar

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UNAUTHORIZED PRACTICE OF LAW COMMITTEE
UNAUTHORIZED PRACTICE OF LAW COMMITTEE reports as follows:

Only one complaint was received by the committee during the past year. This complaint was received from the Park County Bar Association concerning the drafting of a sales contract by Robert Moore of Cowgill Agency, Inc., of Cody, Wyoming. Investigation revealed that Mr. Moore had drafted a sales contract between Howard Lee Irwin and Alma H. Irwin as Sellers, and Mary E. Bailey as Buyer. The contract was between third parties, and Cowgill Agency, Inc. was not a part of the contract. Further investigation and correspondence with Mr. Moore's attorney revealed that Mr. Moore had not charged for the contract, but had drafted it as a service in attempting to arrange a loan. The loan was not completed and the contract did not take effect. The Committee received an apology from Mr. Moore's attorney with assurance that the activity would not be repeated, the committee took no further action.

The Committee has received a couple of inquiries concerning the policy of the Wyoming State Bar concerning the drafting by banks and realtors of deeds, mortgages and contracts for the sale of real property. This remains a problem in many areas, and we recommend that the committee make another attempt in the ensuing year to work out a satisfactory agreement with the Realtors Association. The Realtors Association has not adopted the principles adopted by the Wyoming State Board at its annual meeting in September of 1962. Perhaps we may still be able to reach an understanding in this field.

Very truly yours,
Chester Ingle
Carl L. Lathrop
H. B. Harden
Stanley K. Hathaway, Chairman

WYOMING STATE BAR ASSOCIATION
REPORT OF SPECIAL COMMITTEE ON DISCIPLINARY PROCEDURES

September 1, 1964

Your committee reports as follows:
General Considerations

The source of provisions prescribing procedures for discipline of wayward members of this Association, should the occasion arise, is at present legislative and judicial. As might be expected, there is some lack of correlation between pertinent provisions of the statutes, Rule 22 of the Supreme Court, and Rules 13 and 15 of the rules governing the State Bar. To some extent this has resulted in the lack of a well defined, adequate, satisfactory and expeditious procedure for the initial reception, investigation and disposition

of formal or informal accusations of misconduct on the part of members. The same criticism may be leveled at the procedure for invoking powers of the judiciary, when the ends of justice so require. It is the view of your committee that effort should be made to correct and implement the provisions. Just how far that effort should go in order satisfactorily to meet present and near future demands is a question of some doubt.

It has been suggested to your committee that perhaps the time has arrived for inviting the Supreme Court fully and exclusively to exercise its statutory and inherent powers over the subject matter, and with the aid and assistance of the Bar to wrap the matter into one neat and improved package. On the other hand the trial judges and others believe that present provisions are not workable, although it is recognized that there is now special need for improvement in handling the initial matters above mentioned. Faced with the practicalities of both schools of thought, your committee submits for consideration of the members these recommendations.

Recommendations

That the following be suggested to the Supreme Court as desired changes and additions to its rules regulating the matter assigned to your committee:

1. All accusations of misconduct on the part of a member shall be made in writing, directed to the Chairman or Secretary of the Board of Law Examiners and be accompanied by available evidence substantiating the charges. In the event the Chairman, to whom all such accusations shall be referred, cannot make disposition thereof, satisfactory to all affected parties, he shall refer such accusation to a member of the Board of Commissioners of the State Bar residing outside the county in which the accused resides or maintains an office expeditiously to undertake an investigation of the accusation. Upon completion of the investigation, such investigator shall make a report similar to the report presently described in Rule 13 governing the State Bar and include with his findings, conclusions and recommendations. The original shall be transmitted to the Chairman with copies to the other members of the Board. The members shall thereupon advise the Chairman what action by the Board is, in the opinion of each, necessitated thereby. If the majority of the Board expresses an affirmative opinion thereon, the accused shall be notified by registered or certified mail of the charges presented by such accusation and afford to the accused an opportunity within thirty days from date of mailing to present to the Board, in writing, such explanation of the charge as in his opinion shall be necessary. If no such response is forthcoming, or if such response is deemed inadequate by a majority of the Board, the Chairman shall promptly refer the matter to the Attorney General for the filing of a formal complaint in the District Court. If the majority concludes that the showing made by the accused is sufficient to absolve or exonerate him or that the accusation is without merit, the Chairman shall so notify the accuser and accused and the matter shall be dropped. However, if the majority of the Board is unable to agree on either of the above procedures, determination of the matter shall be held in abeyance until the next

meeting of the Board. If deemed advisable by the Board, it may afford the parties an opportunity to appear and be heard. Until a formal complaint is filed in the District Court all of the foregoing procedures shall be conducted in a private and confidential manner.

Note: Your committee believes that the inability of the Board under § 33-57, W.S. 1957, and Rule 22, regularly to proceed without a formal meeting of the Board—which of necessity is infrequent—is responsible in a large measure for dissatisfaction with present procedures and the gist of the foregoing or something similar is desirable as an immediate remedial measure. Should the informal action of the Board result in the filing of a formal complaint any requirement of due process would be met by the provisions for public trial.

2. That Rule 22 be amended to permit the Attorney General, at the direction of the Board, to prepare, sign, file and cause to be served all formal complaints filed in the courts and any notice thereof.

Note: Present provisions of Rule 22 requiring the Chairman and Secretary of the Board to perform these tasks are cumbersome, unnecessary, and cause confusion and delay.

3. That Rule 22 be amended to require the accused to respond by answer, provided that the accused may incorporate in such answer a claim that the court is without jurisdiction or that the charges made do not constitute misconduct warranting discipline.

Note: Presently the rule provides for a demurrer, and because of the difficulty in assembling the three-judge court it is thought that the foregoing will avoid delay and unnecessary inconvenience and expense.

4. That Rule 22 be amended to supplement § 33-54, W.S. 1957, relating to causes for discipline of members by adding the following or other suitable language:

“The enumeration of causes for disciplinary proceedings contained in § 33-54, W.S. 1957, shall not be deemed to be all-inclusive. The commission by a member of any act contrary to honesty, justice or good morals, whether the act is committed in the course of his relations as an attorney or otherwise, and whether or not the act is a felony or misdemeanor, constitutes a cause for discipline. If the act constitutes a felony or misdemeanor, conviction there in a criminal proceeding is not a condition precedent to discipline.”

Note: It can scarcely be doubted that the inherent power of the court in disciplinary matters supplies serious omissions in the statute enacted during and unchanged since territorial days. However, difficulty and confusion have been encountered by the lack of some general guidance in the matter. Also a rule to meet such a need has legislative sanction. See Ch. 97, S.L. of Wyoming, 1939. It occurs to your committee that the foregoing,

taken in most part from the draft of the Model Rules of Court for Disciplinary Proceedings adopted by the American Bar Association, would serve such purpose and at the same time would not subject members to higher standards of conduct than are presently demanded and expected of the profession.

Respectfully submitted:

/s/ Norman B. Gray, Chairman

/s/ Charles M. Crowell, Member

/s/ Eph U. Johnson, Member

REPORT OF THE COMMITTEE FOR LIAISON WITH THE INTERNAL REVENUE SERVICE

The Committee for Liaison with the Internal Revenue Service reports to the President and members of the Wyoming State Bar as follows:

During the year only one problem was raised by a member of Wyoming State Bar for discussion with the Internal Revenue Service. This involved a situation in which an agent had contacted an attorney's client directly after a Power of Attorney had been filed. This general problem had been discussed previously with the Internal Revenue Service, but this particular instance was called to the attention of the Acting District Director. No particulars were furnished him with respect to who the agent was or who the taxpayer was, but he did discuss the matter again at an agents' conference shortly after this was reported.

Several informal discussions were held with various representatives of the office of the District Director of the Internal Revenue Service and with the District Director. Mr. Schuster reports that so far as his office is concerned there do not appear to be any particular problems that need to be called to the attention of the Bar. He said that he was quite pleased with the relationship that existed between members of the Bar and the representatives of his office, and that the Internal Revenue Service will do all that it can to maintain this.

Mr. Schuster again advised that it is helpful if attorneys participate in the discussions about any tax controversy at as early a stage as possible. Frequently this aids in reaching an early understanding, and in any event, if the matter goes up through Internal Revenue Service Appellant Division at least the taxpayer's attorney does not have to be advised as to what has gone on before. In connection with this, it should be noted that many times we lawyers prefer not to spend our time at the early stages of these matters, but although the Internal Revenue Service does not so regard them, these are adversary proceedings, and the client is entitled to have his advocate there. We all recognize the high level of competency of our accountants in Wyoming, but the fact remains these men are not trained to be advocates, and probably we lawyers should be doing this work.