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MINUTES OF THE ANNUAL MEETING OF THE WYOMING STATE BAR

AUGUST 31, SEPTEMBER 1, 2, 1988

CHEYENNE, WYOMING

The 73rd Annual Meeting of the Wyoming State Bar Association and the 47th Annual Meeting of the Integrated Bar of the State of Wyoming were called to order by David H. Carmichael at 8:00 A.M. on September 2, 1988, at the Little America hotel in Cheyenne.

Mr. Carmichael asked for a motion from the floor to dispense with the reading of last year's minutes. Mr. Charles Crowell moved and Mr. Leonard Lang seconded that the minutes as published in the *Land and Water Law Review* be approved. The motion passed.

REPORT OF THE PRESIDENT

The Wyoming State Bar in the last three or four years has made dramatic strides in improving the programs it provides for lawyers. New programs have been initiated; old programs have been studied and revitalized. The Board of Commissioners is dedicated and hard-working in its attempt to provide the Bar with strong programs.

I would like to point out to you several of the programs that the Bar has been involved with in the last year. First is ALPS (Attorney's Liability Protection Society), the multi-state lawyer-owned lawyer professional liability insurance company. After long and arduous work by many members of the various state bars involved in this endeavor, ALPS is off the ground and is writing policies. ALPS provides our attorneys with an opportunity to obtain malpractice insurance at a reasonable and accurate premium.

In the last year the Wyoming Supreme Court, after study by a committee, some of whom were members of the Bar, adopted a contingent fee rule and mandatory contingent fee contract form. When the court changed the prior contingent fee rule, it was in conflict with our own fee arbitration rule. An Ad Hoc Committee was appointed and has rewritten the rules governing the Committee on Resolution of Fee Disputes. Those rules will be forwarded to the Wyoming Supreme Court for adoption. The new rules are good; they provide protection for both the lawyer and the client.

The Medical Society/State Bar Liaison Committee has been quite active in the past year and has hammered out a draft of a document entitled "Principles of Cooperation." Once the draft is finalized, those principles will be sent to both of those associations for adoption.

We also have activated the Substance Abuse Committee and hope to get it off the ground in the next year. There are real and serious problems in the profession created by substance abuse. I appointed Greg Dyekman to be chairman of that committee, and he has been very busy getting in contact with other professionals and mapping out a cooperative agreement between professions.

There have been some changes regarding the Grievance Committee in the last year. Early on during my term as president, I received a call from the Attorney General, who indicated that he could no longer formally prosecute cases before the Committee. Attorney General Meyer has been exceedingly fair and cooperative in trying to work out this problem, and he gave us substantial time to work out a solution. The leadership of the bar met with the leadership of the Grievance Committee and the Attorney General's office to look at the process. It became apparent that there were some problems with the process which were not problems which could be fixed with a band-aid. Some interim rules were adopted by the court to address some immediate concerns. We looked at several alternatives regarding the committee, noting that there were two main considerations: it is absolutely essential that lawyers be regulated by the judicial branch of government; and the monetary issue. We looked at different alternatives, including the use of volunteer attorneys and county attorneys. Each of those alternatives had its own toes of clay. We came to the conclusion that we needed to hire bar counsel. We advertised for the position and interviewed several candidates. We came to the conclusion that the current Executive Director was best qualified for the position of bar counsel because of her knowledge of legal ethics and the workings of the Grievance Committee. In the long run, her duties will not be exclusively for the Grievance Committee, but she will in general be the lawyer for the Bar. At first, however, the entire grievance process needs to be restructured and discussions had with the court regarding progress in that area.

Last Tuesday, the leaders of the Bar met with members of the Wyoming Supreme Court. The purpose of this meeting was to discuss a rough draft of proposed amendments to the Wyoming State Bar Association Rules and By-laws. The purpose of the amendment is to streamline the process regarding the duties the bar has to perform, including the admissions function, presently dictated by statute to the Board of Law Examiners; the continuing legal education function, mandated to the Wyoming State Board of Continuing Legal Education by Supreme Court Rule, and the disciplinary function mandated to the Grievance Committee by Supreme Court Rule. All three areas are now independently established, and under the proposed amendments would be brought under the overall aegis of the Wyoming State Bar. Of course, the bar would not exercise discretion in these areas since that discretion must remain with the Wyoming Supreme Court. However, the bar thinks these amendments are necessary to get the needed protection to keep the regulation of the practice of law within the judicial branch of government.

Because of the additions to staff, and the increase in programs over the years, and the fact that there has not been a dues increase in ten years,

the Board of Commissioners is also asking the Court for authority to raise bar dues to \$225.

The Wyoming State Bar Foundation is being revitalized. At its recent Annual Meeting, the Foundation adopted new bylaws and elected Bill Bon as president. As soon as IOLTA is operative, the Foundation will be viable. Also, individual attorneys can join the Foundation by paying an annual fee of \$20. The funds from IOLTA and fees will be used to fund voluntary programs through the Foundation, such as pro bono programs, support of the law school, and public information projects.

One of the most important things the bar has done in recent years is to hire a public information officer. Our present Director of Communications has a good relationship with the media and has improved our publication, *The Wyoming Lawyer*. Also, he will be overseeing tonight the production of public service announcements utilizing Senator Simpson, Governor Sullivan, and Sam Donaldson regarding the importance of voting which will be aired throughout Wyoming. He also oversaw the publication of the series of pamphlets on various areas of the law.

I personally believe that this is one of the most important areas currently facing the bar. We as a profession do not get kind words from our citizens. However, I personally believe in the integrity of the profession, and anyone who helps get the word out is good for us and good for society.

It has been my extraordinary pleasure and privilege to serve as your president over the past year.

ADDRESS OF THE CHIEF JUSTICE

I have some statistics that present a picture of the state of the judiciary. We continuously make studies and comparisons of numbers in deciding where we're going and what we're doing on the court.

The county courts processed in the last year, through January of 1988, 112,666 cases of all kinds. The previous year, they had processed 111,976. That's a 3% increase. The district courts, through January of 1988, handled 10,339 cases of all kinds. And in the previous year, it was 11,926. That's a 12% decrease. That decrease probably should have been expected. It should have been expected because of our economy, but it hadn't happened in prior years. The supreme court, through August of 1988, received for filing 244 cases. In the prior year, it was 214. That was a 13% increase. I'm guessing there's a lag time between what happens in the trial court and what happens to us. We can't ever be sure, but I would project that our case load may level off.

Presently we have 93 cases under advisement. That's an improvement. When we reported to the joint appropriations committee of the legislature last year, 117 cases were under advisement. Of the 93 cases now under advisement, majority opinions are circulating among the members of the court in 58 of them. Thirty-five cases are in the process of being written at the present time. Our docket has 41 cases at issue, ready for argument.

Twenty-five of those cases are set for argument, beginning September 8 and into October. That means we have just 16 cases on the docket ready to be argued, at issue, that are not presently set for argument but will be set in November. The effect of all of that is that we are current. And if you compare us to other states, we're in great condition. I know there are many states that are two, three, or more years behind, and we don't approach that.

Two things are responsible for our currency. First, the legislature treated us very well. We had word processing equipment that was ten years old. It was continually breaking down. Its memory was limited to what was on the screen, and no more than that. It was extremely slow and inefficient. We have replaced all of that equipment. The legislature appropriated the funds for us to replace it. That's been very helpful.

Law clerks coming out of law school are now trained in the use of computer and word processing equipment, and research, write, and gather case material and information using that equipment. And we can use it very efficiently to keep track of our cases, the number of concurrences and dissents, whether the case is ready for publication, and what is happening. So that's been very, very helpful to us.

The other thing that's been extremely helpful to us is the expedited, or no-argument, docket. Every case that comes in is screened to determine whether or not it should go on the no-argument docket. The cases were screened by Bob Duncan for about a year. Allen Johnson, our staff attorney, has now taken over the expedited docket. In that screening process, Allen recommends to the court those cases that he thinks should be on the expedited docket. Our general rule is that the cases must be one-issue cases that are well briefed, in which the law is presented in a clear manner and in which there is established law in that area — not a novel question. Each of the justices then looks at that recommendation and reviews the briefs. And if one judge on the court decides there should be oral argument, it goes on the argument docket. We have processed, in 17 months, 85 cases on the no-argument docket, and that's between 25% and 30% of our total case load. Of the 85 cases we have placed on the no-argument docket, 55 have been published. Almost all of the rest of the expedited cases have been completed, and a written opinion is presently circulating. Expedited cases can come out of the court in as little as 30 days because they are that kind of case. But every case is different, and I think you know that. There are cases that simply cannot come out of the court in 30 days just because of the size, the number of issues, and complications, and because, frankly, sometimes there is disagreement among my brothers on the court.

Recently there was an objection to a couple of our cases being on the docket too long. I took occasion to look at those. One of them has since been published. But in looking at one of those cases about which there was an objection, I found argument was heard in our court in January of 1988. It was assigned for the writing of an opinion. The opinion was circulated in April. There was a dissent; there were a special concurrence

and a partial dissent. And after all the judges had responded, the opinion was revised and rewritten. It was then recirculated. One of the dissents was revised. Then the case was published. Now that was seven months. That's pretty good for that case. It couldn't have been published sooner than that. And when you consider that one of our neighboring states is more than two years behind, I have to think we're doing very well.

Now I would like to just mention a couple of things to you that are projects that would benefit all of us. It is the desire of the court to open up the process, to sweep away the mystery of the court's functioning, to better inform the public of what we do and how we do it. We will begin by holding a session of court at the College of Law in Laramie October 19 and another session at Casper College in Casper, Wyoming, November 3.

The second program that I will discuss and present for consideration of the bar is alternative-dispute resolution. The program is in its infancy. It exists in a few states. It began in states that had dockets that were overloaded with cases, and the courts were so far behind that they began looking for ways to bring their dockets current. We've talked about the public perception of lawyers, our public image. Perhaps this is something that would clearly demonstrate our real concern for the justice delivery system. I was back East at the Chief Justices' Conference. Those states that have this program in place have found a very interesting thing has happened. Not only did it reduce their dockets, but there were benefits they didn't know would occur. Number one, litigation was less expensive if it was handled in that process. And there were other benefits. There was greater satisfaction among the public. For example, suppose there is a lawsuit involving a foreclosure of a lien and the amount in controversy is \$25,000. The party needing legal services to foreclose employs a lawyer. The other side has a lawyer, and the case is going to be tried. The lawyer representing the party foreclosing could say to his client: I can give you a first-class lawsuit. A first-class lawsuit would involve extensive discovery and depositions. It would involve interrogatories and motions to produce and requests to admit. After discovery is completed, there would be a pretrial. And when we finish that, we can go to trial. That will probably take three days. I think we can win. A first-class lawsuit would probably cost \$10,000-12,000. On the other hand, we could have a second-class lawsuit, one in which, after a minimal discovery to put our case together, we could meet with the other party and with a mediator on a purely voluntary basis. We would present the issues to the mediator and hopefully resolve the dispute by mutual agreement without the necessity of a trial. That's currently being done in other states. That kind of lawsuit might cost \$3,000 or \$4,000. When asked which kind of lawsuit the parties would like to have, they've said, please give me a second-class lawsuit.

It has been found that when the parties are involved in the decision-making process, they are more satisfied. They may not be completely happy, but the judge isn't sitting there telling them that this is what they must do. They're not being ordered to do something; it's something

they've agreed to do. Because of that, they're likely to perform and abide by the agreement. If it's a divorce case and a party agrees to make certain payments or do certain things, that party is more likely to do those things. Finally, a great benefit is that there is immense satisfaction among the people who have been involved in that process.

I suggest that we might try alternative-dispute resolution on a purely voluntary basis. And when I say voluntary, nobody would have to do it. A judge might say, counsel it looks like this is a case in which we ought to consider mediation or alternative-dispute resolution. The parties would have to agree before the process could begin. The project would be totally without funding, and that would mean support from the bar in a pro bono donation of lawyers' time. I plan to write to lawyers asking them to participate. I plan to talk to the judges about it. I would very much like to see us try it. Maybe it won't work; maybe it's not for us. But it's worth a try. If it works, the bar association and the lawyers would take pride in the program. We would be performing a very great service for the people we really serve — the general public. If the program is successful, I would anticipate funding, in the future, for its support.

The third proposal concerns the need for an immediate appellate decision in a specific case. Suppose that case involved a foreclosure and potential sale of land; that the rights of parties could become changed during the appeal process, or for any other reason; and that an immediate decision is necessary. Section 5-2-110, W.S. 1977, requires that every case that comes to the supreme court must be decided with a written opinion issued by the court. I think that if counsel wanted an immediate decision, perhaps we should consider asking the legislature to amend the statute to permit the court to issue a decision without a written opinion upon stipulation of the parties. Thus, if the parties presented us with a stipulation waiving the written opinion, we might announce the decision from the bench. They would have the decision immediately. In some Canadian appellate courts, 80% of the decisions are issued from the bench without opinion. I understand that when the argument is concluded, the judges confer on the bench, indicate their decision, and, if they agree, announce, "affirmed" or "reversed," and the case is over. That would be a purely voluntary procedure agreed upon by the lawyers. It wouldn't hurt anyone and merits consideration.

And that, Mr. President, is my report. Thank you very much for inviting me to be here.

ADDRESS OF THE DEAN OF THE LAW SCHOOL

Dean Richard J. Morgan thanked the president for the opportunity to appear before the bar. He also thanked the bar and its members for all the support that they have given to the University of Wyoming College of Law over the past year.

Dean Morgan indicated that over the last fourteen months he has tried to keep members of the bar apprised as to the status of the law school

through newsletters and reports. He hopes to continue to serve the bar as well as to educate students.

Dean Morgan noted that the law school had sponsored several continuing legal education programs at the law school prior to football and basketball games. He indicated they are planning CLE seminars for the basketball season, and if anyone had particular topics he wished addressed to let Dean Morgan know. Dean Morgan also offered that if you would like continuing legal education presented in your community, to get in touch with him and he would arrange for someone from the law school to give continuing legal education.

Dean Morgan reported that faculty retention at the law school has been good and that they have not lost anyone notwithstanding the level of the salaries except for Professor Sid Moller. Professor Moller, a graduate of the University of Wyoming College of Law, has resigned to take a position at the University of Mississippi College of Law. Professor Moller left because he wanted to be closer to where he grew up.

Dean Morgan reported that one significant accomplishment has been the establishment of the Hopper Research Fund. This fund supplies support during the summer to faculty for creative activities through an income grant. It has been privately established.

Dean Morgan reported that the applicant pool for entrance to the law school was up 10% from last year and up 35% from two years ago. In the present freshman class, one-third of the students are women, and one-third are nonresidents. The median GPA is 3.2, and the median LSAT score is 34, which is in the 65-70 percentile.

The University of Wyoming College of Law is the least expensive law school in the United States.

With regard to bar exam results, he did not have specific figures for the most recent bar examination. In general, he had discovered there was a 66% pass rate which was down from previous years. If there was a decline among University of Wyoming College of Law students, he would be interested in finding out why.

Dean Morgan reported that it would appear that all of our graduates are getting jobs. Eighty percent of the May 1988 class has been placed. The class of 1987 was surveyed. Eighty-five percent responded, and 98% of those individuals are employed in law-related positions.

Dean Morgan reported that there will be many speakers and events at the law school over the next year, including the Wyoming Supreme Court holding court at the law school, and Judge Hanscum holding a trial there. Also, the law school is exploring the planning of interdisciplinary conferences including one on drugs and one on the management of Yellowstone.

Dean Morgan reported that the law school is in desperate need of a library addition. They are out of shelf space. The legislature authorized

the law school to raise money to plan for the library addition. Dean Morgan has approached three foundations and is optimistic that the law school will receive the approximately \$140,000 needed to plan for the addition. Actual construction will cost approximately \$1.5 million. He thinks that it will be necessary to raise some of that money through private contributions.

In closing, Dean Morgan once again thanked the members of the bar for their support of the law school.

GENERAL

Mr. Carmichael then recognized Ms. Kathy Karpan, Secretary of State for Wyoming. Secretary Karpan indicated that she was looking at the revised Model Business Corporations Act. Wyoming had adopted a corporations bill in 1961, which was based on a 1950 bill, which was based on a 1933 statute. She has heard around the state that some businesses think there are hostile aspects to our business corporations law. She believes that any needlessly hostile aspects of the business corporations law should be deleted, and she asked the support of the bar regarding a modern business corporations act.

Secretary Karpan indicated that in 1984 the ABA's Committee on Corporations Laws adopted a new model act which 35 states have adopted. Secretary Karpan has put together a panel to study the 1984 ABA bill. She indicated she is not interested in patchwork revisions of our present code, but wants to provide Wyoming with an updated law which reflects modern business. If Wyoming has an updated, modern law, that coupled with low taxes should help attract businesses to the State of Wyoming. Further, Secretary Karpan would like the question to be studied whether Wyoming should consider corporate anti-takeover legislation. It is possible that the existence of a promanagement statute would also positively affect business.

Secretary Karpan reiterated that she would like the support of the bar in getting the legislature to adopt a modern business corporations law.

Mr. Carmichael then recognized R. Stanley Lowe, the State Delegate to the American Bar Association. Mr. Lowe indicated that Jerry Housel will be nominated for the Board of Governors of the ABA from this district. Mr. Lowe indicated this was a great coup for Wyoming since it would provide us with an additional representative on the ABA's governing bodies.

Mr. Lowe reported that at the mid-year meeting of the ABA in February in Toronto, several topics were discussed, including the question of higher taxes on imported oil and centralizing the corps of administrative law judges. Mr. Lowe also noted that there was a battle to retain diversity jurisdiction currently being waged in the Congress.

The Election Committee reported that the election for the Judicial Nominating Commission had been won by Ms. Ann M. Rochelle and Mr. William R. Jones. The Committee further reported that there was no contest for the following offices and these individuals should be deemed elected: Richard M. Davis, Jr., President-Elect; Richard E. Day, Vice-President; and Eric M. Alden, Secretary-Treasurer. John M. Daly will automatically succeed to the office of President. It was duly moved and seconded that the report of the Election Committee be adopted. The motion carried.

It was then moved, seconded, and passed that the following resolution be adopted:

BE IT RESOLVED that the members of the Wyoming State Bar are deeply grateful to Mr. David H. Carmichael for his dedication to his job as President and thank him for the remarkable job he has done, and wish him Godspeed and good health.

It was further moved, seconded, and passed that the members of the Wyoming State Bar thank Mr. John Hanes and his Convention Committee for the fine job done for the Annual Meeting in Cheyenne.

There being no further business before the Bar, the meeting was adjourned at approximately 10:30 A.M.

Respectfully submitted,
MARY ELIZABETH SENKEWICZ
Executive Director