

1994

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Wyoming State Bar

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Recommended Citation

Wyoming State Bar (1994) "Report of the Chief Justice of the Wyoming Supreme Court to the Wyoming State Bar," *Land & Water Law Review*: Vol. 29 : Iss. 1 , pp. 355 - 380.

Available at: https://scholarship.law.uwyo.edu/land_water/vol29/iss1/13

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**REPORT OF THE CHIEF JUSTICE
OF THE WYOMING SUPREME COURT
TO THE WYOMING STATE BAR**

Wyoming Supreme Court Chief Justice Richard J. Macy

Mr. President, Officers, Honored Guests, Members of the Wyoming State Bar:

Having completed my first year as chief justice, I have gained an even greater understanding and appreciation of our state judicial system. I am now fully aware of the amount of time required for me to accomplish the administrative duties of my office as chief justice as well as my responsibilities as a judicial officer on the Court. The members of our integrated bar have greatly assisted me during the past year with much of my administrative duties as chief justice. The Supreme Court justices met with the State Bar Commissioners last May for an update on issues of mutual concern. The discussion touched on the grievance process, civil and criminal rules, and the judicial survey.

The Wyoming trial courts have been able to keep up with their respective caseloads despite the increasing demand for judicial services. The Supreme Court is also current with its appellate caseload. One way to measure whether an appellate court is keeping up with its caseload is to calculate a "clearance rate." A clearance rate is the number of appeals filed in a given year divided by the number of dispositions made by the court during the same year. In 1992, 301 appellate cases were filed in the Supreme Court, and the Court made 331 dispositions, resulting in a clearance rate of 102%. A rate of 100% or higher indicates that more cases were disposed of than were filed. Wyoming has a three-year clearance rate average of 101.5% and is one of seventeen states having a rating of 100% or better.

The Wyoming courts continue to address and adapt to the changing public needs. For example, the trial courts and the Supreme Court are in compliance with the Americans with Disabilities Act as it applies to the judicial branch. The courts have made provisions to accommodate the physically disabled persons who are visually impaired or who have some hearing loss. Interpreters are provided for those persons who may have speech or language difficulties, and the telephone company has developed a language line interpreter service which provides an interpreter for 131 different languages.

In criminal cases, the basic minimum constitutional guarantees of a speedy trial and due process are being met. The Supreme Court has in-

structed all courts of limited jurisdiction to take a person arrested and in custody before a judicial officer for the initial appearance within forty-eight hours after the arrest has been made. In most of our trial courts, the presiding judge or a court commissioner is required to conduct the initial appearance hearing on Sundays and holidays. This accommodation by the courts complies with the United States Supreme Court's mandate and satisfies the minimum constitutional guarantee of a speedy trial.

In the area of mediation and arbitration, the adoption of amended W.R.C.P. 40(b), assignment of cases for alternative dispute resolution by the court, has proven to be beneficial to the public and to the courts. The Supreme Court maintains a registry of the names of qualified mediators, most of whom are attorneys. The mediators are called upon to mediate disputes which have been filed in the courts and assigned for mediation by the district judges. The information we have received reveals that a majority of those cases assigned to mediation are settled by the parties. The parties to the mediations benefit by receiving more speedy resolutions of the disputes at less expense. The courts benefit by having their case-loads reduced and by having the need for trials or hearings of the matters eliminated.

In an effort to eliminate gender, racial, and ethnic biases in the courts, the Supreme Court keeps informed on those issues by virtue of the justices and trial judges attending national conferences and seminars on the subject. In addition, those justices and judges who attended the national conference on gender bias gave a panel presentation at the Wyoming Judicial Council meeting held on September 7, 1993.

In conclusion, our courts are deeply concerned that the State Public Defender may be unable to represent indigent defendants in all criminal cases. The courts are obligated, under the provisions of the Sixth Amendment to the United States Constitution, to provide counsel for indigent persons. If the State Public Defender is not able to provide the representation, the courts have no other source available to them. This is a serious problem not only for the courts but for everyone in the justice system and the other branches of government. We are in a critical period of time when we need to work together and with our Legislature on this problem and other problems existing in the justice system. It is my understanding that the Bar has appointed a committee to review the operation of the State Defender program and the apparent funding problems. If the members of the Supreme Court or any of our administrative staff can be of assistance to the committee, please let us know.

Thank you for providing me this opportunity.

ANNUAL REPORT OF THE WYOMING STATE BAR BOARD OF OFFICERS AND COMMISSIONERS

Eric M. Alden, President

Tony Lewis, Executive Director

The Board of Commissioners met seven times in FY 1992-93:

- * In Laramie at the University of Wyoming on November 6-7;
- * Casper at the U.S. District Courthouse on January 22-23;
- * Buffalo at the Hojo Crossroads on April 2-3;
- * Cheyenne at the State Bar office on May 28-29;
- * Afton at the Town Hall on July 30-31;
- * By teleconference on August 23; and
- * In Jackson at the Bar's Annual Meeting.

In January, the Board closely reviewed the work of the Board of Professional Responsibility with Chairman J. E. Vlastos. Mr. Vlastos outlined a four-point plan to improve the efficiency of the Board including 1) the retention of an assistant bar counsel for the foreseeable future; 2) changes in rules to allow the assistant counsel to try cases; 3) authorization from the Supreme Court to allow BPR members to act as special prosecutors; and 4) the establishment of broader prosecutorial discretion for the bar counsel. New rules effecting the changes were recommended and adopted by the Court in the Spring of 1993. The Commissioners subsequently determined the need for a full-time assistant bar counsel to process the Board's caseload. A full-time assistant was hired on August 23.

The Board administered the Bar's biennial judicial evaluation poll in the fall of 1992 and its member survey in the summer of 1993. Both projects involved extensive effort by the Survey Committee and the Bar staff. The Board approved the release of results for both polls to the press and through the WYOMING LAWYER newsletter.

The Board of Continuing Legal Education revised several of its procedural rules, and it approached the Commissioners to recommend approval of those rules to the Wyoming Supreme Court in May. The new rules allow for the collection of the annual \$5 MCLE fee at the same time Bar dues are collected, and they delete the requirement for an annual report by attorneys to the CLE Board. The new system of reporting con-

forms with the way attorneys actually report credit: through periodic application. The Court approved the revisions in June.

In other CLE activity, the Commissioners sponsored educational programs in several of the State's communities, including Gillette, Sheridan, Worland, Riverton, Rock Springs, Laramie, Cheyenne and Jackson. Topics outside the convention program included "Professional Responsibility in Pretrial Litigation", "The Americans with Disabilities Act", and "Nuts and Bolts on Administrative Case Practice and Procedure in Wyoming".

In January the Board of Commissioners approved a partnership with the Wyoming Attorney General's office to respond to consumer complaints about living trust and will kit providers. Unauthorized Practice of Law Committee Chairman Charles Chapin subsequently directed extensive efforts to inform the public about living wills, and the Committee helped reclaim the costs of the kits for unsatisfied consumers. Mr. Chapin's Committee was also successful in seeking civil injunctions and investigating other types of civil complaints.

The Commissioners authorized the Bar's participation in a number of public information programs over the past year. In most cases, the Foundation paid costs related to the project, while the bar donated staff time. Some of the more high profile events were the State Mock Trial Competition, Wyoming History Day, the Law-Related Teaching Institute at UW, the Judicial Fellowships for Journalists program, the Law-Related Education Advisory Council and others. These programs work to promote a better understanding of the legal system on a fundamental level by involving Wyoming teachers, journalists and other educational sources.

In working with the various Boards and Committees of the Bar and the Supreme Court, the Commissioners worked throughout the past year to strengthen the core, regulatory functions of the bar. In addition to its supervisory functions, the Board also worked with "hands-on" projects such as the implementation of a new computerized database system in the bar office for tracking dues, CLE, admissions applicants, etc. A subcommittee of the Board also supervised the installation of a new accounting program to better track the costs of its various programs.

With its remaining resources, the Board worked to help promote a better understanding of the legal system, through its sponsorship of educational programs and publications for teachers, journalists and consumers.

Over the course of the next year, the Board anticipates more efficient disposition of grievances due to new rules and the addition of a full-time assistant bar counsel. With the grievance process, the Board hopes to

keep the committees for fee disputes and the client security fund operating at their present level of efficiency, to act as important tools in the resolution of complaints.

As always, the continued progress of the Board's work depends on the hard work of the committees and the help, cooperation and encouragement of the State's judges. Commissioners look forward to a year with five new members who will bring new ideas and fresh perspectives to the challenges of maintaining an efficient and well-focused bar for the benefit of the public and the profession.

BOARD OF PROFESSIONAL RESPONSIBILITY

James L. Edwards, Chairman

Calendar Year 1992 (last year for which full statistics are available)

I. Cases Carried Forward from Prior Years: 114

II. Cases Opened in 1992: 79

III. Cases Dismissed in 1992:

Cases opened in 1986:	1
Cases opened in 1987:	0
Cases opened in 1988:	0
Cases opened in 1989:	4
Cases opened in 1990:	8
Cases opened in 1991:	37
Cases opened in 1992:	<u>29</u>
TOTAL	79

Note: Cases are dismissed generally because the facts did not prove the allegations, no unethical conduct occurred or the evidence was highly conflicting to a degree which would not approach the required burden of proof. In certain instances dismissals occur because of lack of jurisdiction.

IV. Discipline Imposed in 1992:

Disbarment	3
Suspension	1
Public Censure	1

Private Reprimand	4
Informal Admonition	6
Probation	2
Interim Suspension	0
Felony Suspension	1
Disability/Inactive Suspension	0

Year to Date 1993 (through August 30, 1993)

I. Cases Carried Forward From 12/31/92:	95
II. Cases Opened:	66
III. Cases Dismissed:	
Cases opened in 1988:	0
Cases opened in 1989:	0
Cases opened in 1990:	1
Cases opened in 1991:	6
Cases opened in 1992:	25
Cases opened in 1993:	<u>23</u>
TOTAL:	55

Note: Motions to Dismiss docketed on agenda but not yet heard by the Board at next monthly teleconference (conflicts with Labor Day and Bar Convention):

1990 cases - 2; 1991 cases - 2; 1992 cases - 2; 1993 cases- 9.

Note: Cases are dismissed generally because the facts did not prove the allegations, no unethical conduct occurred or the evidence was highly conflicting to a degree which would not approach the required burden of proof. In certain instances dismissals occur because of lack of jurisdiction.

IV. Board Hearings Held:	8
V. Discipline Imposed:	
Disbarment	0
Suspension	3
Public Censure	1

Private Reprimand	2
Informal Admonition	3
Probation	1
Interim Suspension	1
Felony Suspension	0
Disability/Inactive Suspension	0

VI. Alternative Dispositions and Inquiries:

In addition to matters which state ethical violations and merit a file opening, Bar Counsel and Assistant Bar Counsel have handled anywhere from five to fifteen no number "cases" per month since January 1, 1993. These consist of mailed and hand-delivered letters, walk-ins and phone calls. These do not include "how to file a grievance" calls, which the administrative assistants handle. The correspondence items are variously addressed to the Bar, to the Law Examiners, to the Grievance Committee, to the Board of Professional Responsibility, to other governmental agencies or offices and the like. Some are addressed to the various courts but shipped to us. The topics cover the gamut from undescribed items to legal problems to professionalism to fee disputes to criminal matters to constitutional issues. Sometimes phone calls to the attorney and then to the client resolve them. Some items, after review, result in a letter to the writer returning the documents, indicating we cannot detect ethical allegations and advising why we can't assist the person. Traffic in these types of items was heavy in the first half of 1993; it ran 12 to 15 items per month. Through the summer months of 1993, it has dropped back to approximately 5 items per month. For the fiscal year, our traffic count of such items has been approximately 100 to 110 items so alternatively handled.

Cases Opened Since Last Annual Report

(Case Nos. 50-92 to 79-92; 1-93 through 66-93)

- I. Number Pending: 44*
- Number Dismissed: 51

*Of the pending cases, 9 are pending Motions to Dismiss on the agenda for the next Board teleconference, 1 is at the Supreme Court after Board hearing and report, and 1 was just tried before the Board. Another case, 79-90, also was just tried before the Board.

II. Type of Cases Giving Rise to Complaints

Abstract & Title Opinions	0
Adoption	0
Bankruptcy	5
Collections	4
Corporations	1
Criminal	10
Contract	2
Domestic Relations	31
Estate Planning	0
Guardianships	1
Governmental	0
Labor Law	2
Litigation	22
Minerals	0
Oil & Gas	0
Personal Injury	4
Probate	6
Partnership	1
Real Estate	5
Trust	0
Workers Compensation	2
Wills	0
Tax	0
Other	5

III. Type of Initial Complaint

Deceit or Misrepresentation	34
Incompetent Representation	26
Lack of Diligence	42

Conflict of Interest	21
Fees	9
Refusing to Follow Client's Wishes	17
Lack of Communication	30
Harassment	16
Acting Without Client Consent	12
Adversely Reflecting on Fitness to Practice	14
Ex Parte Contact	6
Counselling Illegal Conduct	6
Ineffective Assistance of Counsel	10
Breach of Confidentiality	10
Refusal to Deliver Accounting or Files	7
Tampering with Evidence	1
Collusion	6
Frivolous Claim	3
Refusal to Pay Deposition or Expert Fee	0
Other	21

Comments:

The current active caseload is approximately 70 to 75 files. At any given time, the static caseload is approximately 70 to 75 files. This fluctuates upward by 10 to 15 files from time to time. The Board's present emphasis is to bring the trial case docket current as well as reduce the overall open/ investigative case docket as much as possible.

STATE BOARD OF LAW EXAMINERS OF WYOMING

Calvin E. Ragsdale, President

The 1993 Board of Law Examiners consists of Chairman Calvin E. Ragsdale, Green River; Vice-Chairman Rhonda S. Woodard, Cheyenne; William K. Bormuth, Cody; Judith A.W. Studer, Casper; and Donald P. White, Riverton.

The Board administered the Bar Examination twice in 1993: on February 23-24 and July 27-28 at the University of Wyoming. The examination consists of the Multistate Bar Examination, the Wyoming Essay

Examination and the Multistate Professional Responsibility Examination, which is administered separately in March, August or November. Additionally, the Board conducts background investigations to determine character and fitness.

The table below reflects combined passage rates for the February and July examinations for the MBE and Essay examinations, compared with rates in prior years:

	1990	1991	1992	1993
Total Tested	66	69	58	52
Total Passed	45	69	58	52
Total Failed	21	31	28	33
Passage Rate	68%	69%	67%	57%*

*(6 candidates pending additional scores or results of character and fitness investigations)

In addition to those examined, the Board evaluated candidates for admission on motion according to the Rules and Procedures Governing Admission to Practice Law in Wyoming. The results of those petitions are listed below:

	1990	1991	1992	1993
Total Applications	66	69	58	52
Total Recommendations	45	69	58	52
Rate of Recommendations	21	31	28	33
Passage Rate	68%	69%	67%	57%

*Figures for applications not approved include withdrawals of petitions, applications pending further investigation for character and fitness and petitions denied by the Supreme Court.

In other business, the Board implemented new rules and procedures for admission, which were approved by the Supreme Court in October 1992 and effective on January 1, 1993. As part of its new procedures, the Board anticipates a new requirement for an expedited background investigation for all examinees. The investigation will be performed routinely by

the National Conference of Bar Examiners beginning sometime in February, 1994.

BOARD OF CONTINUING LEGAL EDUCATION

Peter C. Maxfield, Chairman

The Wyoming State Board of Continuing Legal Education met two times during the past year and since August 13, 1992: December 4, 1992, and May 28, 1993. the work of this hard-working Board consisted generally of: deciding several requests for rule changes, waivers, and numerous credit appeals by Bar members, performing responsibilities regarding attorneys delinquent in CLE requirements and attorneys on suspension for non-compliance with CLE rules, resolving status of attorneys who had previously been granted indefinite exempt status, and recommending to the Board of Bar Commissioners several changes in the State Bar Bylaws, the Supreme Court Rules for Continuing Legal Education of members of the Wyoming State Bar, and the Regulations of the Wyoming State Board of Continuing Legal Education. One of the recommendations is under consideration by the State Bar's By-Laws Committee. The other recommendations for change have been adopted by the Board of Bar Commissioners and forwarded on to the Wyoming Supreme Court for its consideration.

Initial CLE reports were mailed to all active Bar members on February 22, 1993. On April 27, 1993, delinquency notices were mailed to 49 attorneys. Second notice sent via certified mail on May 19, 1993 to 18 attorneys. On June 15, 1993, the Supreme Court sent notices to the five attorneys who did not respond to the first or second notice.

The Board reports that two attorneys were recommended this year for suspension for delinquency in CLE requirements.

Members of the 1992 Board include Pete Maxfield, Chair, Stuart Day, Vice-Chair; Richard Barrett; Margaret Bunning; David Evans; Forrest E. "Skip" Gillum; Sue Kearns; Darlene Reiter; and Roger Schreiner. The Board appreciated the very thorough and efficient assistance of Tony Lewis and Lesley Osen, Executive Secretary and CLE Assistant of the State Bar, respectively.

ATTORNEYS ASSISTANCE COMMITTEE

Gregory C. Dyekman, Co-Chairman

The Attorneys Assistance Committee is pleased to report that it has begun to receive referrals from members of the Bar and other sources,

and has been actively involved in the assistance of impaired attorneys throughout the state. In keeping with the philosophical position adopted by the Committee, efforts have been tailored to the needs and circumstances of each case but have centered around obtaining, monitoring and following up treatment programs for impaired attorneys and judges. The Committee has met by telephone on several occasions to discuss various referrals and to outline additional needs for the Committee's future.

Matters currently being considered by the Committee include educational opportunities concerning substance abuse and treatment, acquiring information concerning availability of treatment programs for indigent patients, accumulation of information concerning treatment programs and follow-up programs geared specifically toward impaired professionals, increasing visibility with the Bar, and encouraging early diversion of impaired attorneys and judges before disciplinary actions are contemplated.

Your Co-Chairmen would like to express their sincere appreciation to the members of the Committee for their time and efforts, which have become more significant this year. The Committee is still in its functional infancy, but substantial headway has been made. A structure is now in place to permit prompt response to referrals from any source.

CLIENTS' SECURITY FUND COMMITTEE

Robert G. Berger, Chairman

The Clients' Security Fund Committee of the Wyoming State Bar met three times by teleconference in FY 1992-93. Four claims were considered.

Following an investigation by Committee members and a recommendation of payment to the Board of Commissioners, \$1,700.00 was awarded to a Cheyenne claimant in regard to suspended Cheyenne Attorney Ron Rogers. A second award of \$1,000.00 was made to a second claimant regarding the same attorney.

Two claims are pending in the Committee, both awaiting formal action by the courts.

The Balance of the Clients' Security Fund stands at \$66,572.00 at the end of FY 1992-93.

Members of this year's Committee included Robert G. Berger, Chairman, Cary R. Alburn III, Steven R. Cranfill, Gary M. Greenhalgh, Mary Bell Guthrie, James P. Schermetzler, Ann T. Schnelzer and Joel M. Vincent. Former Chairman Charles S. Chapin resigned from the

Committee in March to accept an appointment to the Board of Professional Responsibility.

CRIMINAL PATTERN JURY INSTRUCTIONS COMMITTEE

Jon R. Forwood, Chairman

The Criminal Rules Committee has made a tremendous amount of progress since the bar meeting in Cheyenne on September 10, 1992. Due to the "Interstate 80" composition of the Committee, we have met regularly in Laramie, with special meetings in Rock Springs and Rawlins to accommodate Mr. Reese and Mr. Campbell. I am pleased to report the following progress.

1. Overview of all instructions and current format, with proposed changes to include a comprehensive index, definitional section and usage suggestions.

2. Complete revision of Parts 6 through 10, pertaining to the elements of each statutory offense, including new instructions for the drug offenses, driving while under the influence, stalking, vehicular homicide, criminally negligent homicide, kidnapping, felonious restraint, false imprisonment, interference with custody, revision in the format for sexual assault instructions and several others.

3. Revision in the manner in which all specific intent crimes are instructed by including the requisite intent as part of the elements of the offense.

4. Revision of all general instructions found presently in Parts 1 through 5 of the patterns.

It is our opinion that we are approximately 80% through with our assigned task, with several unresolved areas under assignment to Committee members for research and presentation at the next meeting. I sincerely believe the Committee will be able to present a complete set of revised instructions to the Bar for review by next spring.

I would like to take this opportunity to commend the work of everyone on the Committee for their diligence and hard work. It is also appropriate to mention quite favorable the assistance provided by Rick Erb and Gina Gredecki at the law school, as they have been in charge of providing the Committee members with research, corrected instructions and ready assistance upon request. We could not have proceeded as quickly as we have without their assistance.

I will gladly provide all of my materials, research and work product to whomever you select to take my place and I wish to them the best in their endeavor.

CRIMINAL RULES ADVISORY COMMITTEE

Terrence L. O'Brien, Chairman

The Criminal Rules Advisory Committee met several times during the year to consider amendments to the criminal rules. Most of the topics addressed were in response to concerns the Committee had received about the comprehensive revisions to the criminal rules which were adopted by the Supreme Court on December 23, 1991. The Committee recommended revisions to Rules 1, 3, 3.1, 5, 15, 17, 18, 21.1, 23, 26, 26.2, 32, 39, 41, 44, 45, 46, 46.1 and 54. The recommendations were sent to the Supreme Court. Notice of the proposal was published in the WYOMING LAWYER and copies of the proposed changes were disseminated to judges, prosecutors, and public defenders. The Supreme Court adopted the Committee recommendations which were published in the Pacific Reporter Advance Sheet in the August 20, 1993 issue. The amendments will be effective October 19, 1993.

FEE DISPUTES COMMITTEE

William H. Twichell, Chairman

Over the last fiscal year, 27 complaints were filed with the Committee on Resolution of Fee Disputes, seven more than last year.

The most common complaint was that work contracted with advance payment was not performed. The typical amount in dispute for complaints filed in 1992-93 was between \$1,000 and \$1,500.

Most complaints (17) were determined within an average of 60 days. Of the remainder, 1 dispute filed 1992 (December) is still pending, and 5 of the 1993 filings are still pending.

The resolution of complaints breaks down as follows:

Total disputes filed in FY 1992-93	27
Disputes resolved in favor of attorney.	7
Disputes resolved in favor of client*	10
Dismissed/lack of jurisdiction	4

*Resolutions favoring clients include awards for reduction of fees, a determination that no fee is owed or voluntary settlement by the attorney for a lesser fee.

LEGAL EDUCATION COMMITTEE

Lawrence J. Wolfe, Chairman

The Legal Education Committee met in September 1992 at the Bar's Annual Meeting. In attendance were Dean Art Gaudio, John Burman, Paul Schierer, Lynne Boomgaarden and Lawrence Wolfe. The Committee discussed various ways to try and build bridges between the practicing bar and the law students at the University of Wyoming College of Law. One of the alternatives discussed is developing a formalized mentoring program where practicing lawyers would agree to take students into their law offices for specified periods of time to expose them to the day-to-day operations of the practice.

Unfortunately, because the Chairman's energies were diverted in other directions, the Committee has not met during the year. The Chairman and Ms. Boomgaarden, along with other members of the Bar, met with the Dean and other faculty members at the reception for the accreditation of the law school in November 1992. The Committee will meet again at the Bar meeting and see if it can develop plans for the 1993-94 school year.

LEGISLATIVE COMMITTEE

Richard Wolf, Chairman

The Legislative committee this year closely analyzed approximately 30 bills, ranging from worker's compensation measures to filing fees and criminal procedures.

The Committee's work resulted in the following action in regard to the corresponding bills:

SJR 5—Coemployee Immunity, a measure to limit the liability of coemployees of workers who are injured or killed on the job. Motion to oppose. Bar's Executive committee did not accept Committee recommendation. Bill was not lobbied.

SF 98—Workers Compensation/Legal Fees, a bill setting \$50 per hour limit on state-reimbursed legal fees and allowing non-lawyers to serve as counsel in Worker's Compensation Hearings; Motion to oppose the portion of the bill allowing non-lawyer representation. Bar organized

labor Committee testimony and position paper authored by Bar President was circulated on the floor of the Senate. The non-lawyer counsel provision was subsequently deleted in the Senate, and the bill later died in conference committee after passing both the House and the Senate.

SF 143—Worker's Compensation, a bill authored by Sen. Charles Scott, R-Casper as a cost-saving proposition for the Division. The bill envisioned a medical review panel of 8 physicians and 3 health care providers that would replace the Office of Administrative Hearings in deciding contested worker's compensation cases. The avenue of appeal from the commission would have been to the Department of Employment, the same agency that would appoint the panel. The Bar opposed the plan on the basis that it created an unfair forum. The role of the commission was later reduced to that of an advisory/evaluation panel. The bill was later indefinitely postponed in the Senate.

HB 197—Service of Process/Fees, a bill setting a new fee scale for service of \$20 in advance for the first three attempts at service, \$5 for each successive attempt, and repealing the old scale defined in W.S. 18-3-608(a)(ii) through (viii), (xii) and (xiii). Recommended position was to favor the change and monitor to determine if lobbying may be necessary. measure signed into law; effective July 1, 1993.

HB 243—Criminal Procedure/Detention, a bill to conform W.S. 7-2-102 and 7-2-103 to the new Court Rules for Criminal procedure regarding arrests, warrants and the issuance of citations. The Committee recommended a position in favor of the bill, and instructed the Bar office to monitor for necessary action. The bill was signed into law; effective immediately.

HB 373a—Sales and Use Tax Amendments. The Committee recommended a position against the repeal of existing sales tax exemptions on services, including legal fees. Two amendments were proposed to repeal those exemptions, one in the House and one in the Senate. In both instances, the Bar office was authorized to coordinate lobbying efforts with a coalition of service providers and professional groups. The Bar circulated a limited number of position papers on behalf of the coalition and planned a response by the coalition in the event the amendments were successfully attached. The House version, sponsored by Rep. Don Sullivan D-Cheyenne, and the Senate Legislative committee 031593 version, sponsored by Sen. Mark Harris. D-Green River were defeated. Attorneys who spoke against the measure included Sens. James Applegate, D-Cheyenne and April Brimmer Kunz, R-Cheyenne.

The lobbying strategy for this year was to monitor bills and become involved if it appeared the bills progressed against the recommendations proposed by the Committee. The strategy recognized that having attorneys favor a bill, for instance, could have an uncertain effect on the outcome. The argument that attorneys opposed the repeal of sales tax exemptions was also used, though unsuccessfully, by some legislators as an argument in favor of the bill.

The lobbying strategy was also governed by the Bar's long-standing policy as an integrated bar of "lobbying neither for nor against issues upon which there is a substantial disagreement with the bar."

The sales tax issue was regarded by Bar officers as the single most important bill effecting the legal profession. In 1992, the Bar helped form a coalition that includes such diverse service providers as architects, engineers, newspapers, cosmetologists, veterinarians and approximately 20 other professional associations and interstate corporations. The Bar's Executive Director serves on the Coalition's executive committee.

The Bar has fought the repeal of exemptions on the grounds that sponsors have not defined collection methods nor considered their overall impact on the cost of legal services. Similar tax initiatives had to be repealed in Florida and New Hampshire in recent years due to the difficulties of accounting and collection and the threat of larger service industries moving their operations. In those and other states, it was found that the overall public and private cost of collection and implementation outweighed the revenue generated by the tax.

Members of the Senate Revenue Committee have indicated the Joint Interim Revenue Committee will study the option of a sales tax on professional and other services sometime this year. The Legislative committee will be asked to coordinate testimony for the Bar on the issue.

Worker's compensation bills were lobbied to a lesser extent, due to the division of opinion between attorneys who serve injured workers and employers.

Some of the other miscellaneous bills reviewed by the Committee included the following:

SF 32, the stalking bill sponsored by the Senate Judiciary Committee. Some Legislative committee members believed the definition of stalking may be too subjective, nevertheless no position was advocated.

SF 93, a bill sponsored by the Senate Labor Committee to equate the definitions of physical impairment and disability, in order to

decrease worker's compensation fund liability. The Committee believed the bill to be of a divisive nature. It was later vetoed by the Governor, and the veto was sustained.

SF 126, a uniform partnership act sponsored by Sens. James Applegate and Cynthia Lummis and Rep. Harry Tipton. The Committee voted that no position be taken on the bill. The measure was signed into law effective January 1, 1994.

HB 13, a bill sponsored by Rep. Les Bowron, R-Casper, to initiate Mandatory Nonbinding Mediation for certain types of civil action. The bill died in the Senate Judiciary Committee.

HBs 328 and 329, bills sponsored by Rep. Doug Chamberlain, R-LaGrange which sought to preclude attorneys from serving as a Justice of the Peace or County Attorney while holding any other elected or appointed public office. They died in the House Corporations, Elections and Political Sub-divisions Committee.

A number of domestic relations bills were also passed into law during the past session, among them *SF 33*—Child protection/noncustodial parent; *SF 77*—Income withholding for support obligations; *SF 78*—Presumptive child support; *SF 107*— Child support/unemployed obligor; *SF 120*—Child support amendments; *SF 134*—Paternity; *HB 206*—Battered woman syndrome; and *HB 219*—Domestic violence amendments. *HB 50*, creating a Public Guardianship Act also passed.

In all, the House considered 423 bills, and 209 were filed into the Senate. Nearly 238 bills are expected to be signed into law this year. The new session laws are due to be published by June, 1993. Copies of individual chapters may be obtained through the State's Legislative Service Office.

Members of this year's Legislative Committee included Co-chairmen Paul Kapp and Richard Wolf, along with Mark Hughes, John Maier, John Rossetti and George Santini.

NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS

Wyoming Commissioners Ralph E. Thomas and Charles G. Kepler attended the 102nd Annual Meeting of the National Conference of Commissioners on Uniform State laws, which was held in Charleston, South Carolina, on July 30 through August 6, 1993.

The Charleston meeting promulgated three uniform acts recommending them for adoption by the several states.

Uniform Correction or Clarification of Defamation Act

Since the United States Supreme Court recognized the First Amendment limitations on the common law tort of defamation, courts have struggled to find the proper balance between the constitutionally protected guarantees of free expression and the need to protect citizens from reputational harm. Defamation

actions were always complex and expensive and the overlay of first amendment issues have made them more so. On the other hand, unlike personal injuries, harm to reputation can often be cured by other than money damages. The correction or clarification of a published defamation may restore the person's reputation more quickly and more thoroughly than a victorious conclusion to a lawsuit. The salutary affect of a correction or clarification is enhanced if it

is published reasonably soon after the defamation, but because of the complexity of defamation litigation, any ultimate vindication in the courts comes long after the initial injury.

To address these concerns, many states have adopted retraction statutes. These statutes often require as a condition to litigation that the plaintiff request the publisher to retract the alleged defamation. These statutes have been largely ineffective because they most often apply to a narrow range of cases and they do not create sufficient incentives on both parties, the plaintiff and the defendant, to come to an agreement regarding retraction. Even the term retraction carries with it an implication of admission of wrongdoing where in many instances the reputational harm arises from an implied meaning not intended by the publisher or a publication based on reasonable believable evidence which subsequently turns out to be false.

The Uniform Correction and Clarification of Defamation Act seeks to remedy these flaws in current law by providing strong incentives for the parties in a defamation suit to correct or clarify the alleged defamation as an alternative to costly litigation. Moreover, the Act will provide a uniform set of requirements that will assure the national media a consistent and meaningful opportunity to correct or clarify. The Act also applies to all defendants.

The options created by this Act provide an opportunity for the plaintiff who believes he or she is defamed to secure quick and complete vindication of his or her reputation. The Act provides publishers with a quick and cost-effective means of curing their mistakes and avoiding

costly litigation. In this way, both reputational interests and rights of free expression are advanced.

The Act would be an amplification to the Wyoming Libel and Slander provisions of W.S. §§1-29-101 et seq.

Uniform Health-Care Decisions Act

The right of an individual to consent to or reject health-care treatment, to control what is done to the individual's body, is firmly grounded in the common law. In *Schloendorff v. Society of New York Hospital*, 105 NE 92, 93 (NY 1914), Judge Cardozo of the New York Court of Appeals wrote: "Every human being of adult years and sound mind has a right to determine what shall be done with his own body; and a surgeon who performs an operation without his patient's consent commits an assault, for which he is liable in damages." In *Cruzan v. Director, Missouri Department of Health*, 110 S Ct 2841 (1990), the right of an individual to be protected from invasion of the physical body for medical treatment without consent was stated to be a "liberty" interest protected by the Fourteenth Amendment to the United States Constitution.

This Act acknowledges the right of a competent individual to decide all aspects of his or her own health care in all circumstances, including the right to decline health care or to direct that health care be discontinued, even if death ensues. This Act ensures that the decisions of an individual made when competent will continue to be honored even if the individual later loses capacity. The Act is comprehensive and addresses health-care decision making both for individuals who have made their wishes known and for those who have not done so. The Act authorizes health-care decision to be made by an agent who is designated to decide when the individual cannot or does not wish to; by a family member, close friend, or designated surrogate when the individual is unable to act and no guardian or agent has been appointed or when an agent, if appointed, is not available; or by a court having jurisdiction as decision maker of last resort.

The Act provides that an agent or surrogate authorized to make health-care decisions for an individual must make those decisions in accordance with the health-care instructions and other wishes of the individual if known. Otherwise, the agent or surrogate must take those decisions in accordance with the best interest of the individual as determined by the agent or surrogate in light of the individual's personal values known to the agent or surrogate. The Act thereby seeks to ensure to the extent possible that decisions about an individual's health care will be informed by the individual's own desires concerning the issues to be resolved.

An individual's instructions may extend to any and all health-care decisions that might arise and, unless limited by the principal, an agent has authority to make all health-care decisions. The Act recognizes and validates the individual's authority to define the scope of a health-care instruction or agency as broadly or as narrowly as the individual desires.

Wyoming has the Durable Power of Attorney for Health Care W.S. §§3-5-201 et seq and the Living Will W.S. §§25-22-101 et seq legislation, which are similar to the Uniform Act.

Uniform Statute and Rule Construction Act.

The Uniform Statutory Construction Act was promulgated in 1965 and its name was changed to the Model Statutory Construction Act in 1975. Although only three states (Colorado, Iowa and Wisconsin) adopted substantially all of that Act, many of its provisions were adopted by over 43 states.

In 1988 the Executive Committee of the Uniform Law Conference referred to the Scope and Program Committee a proposal by Commissioner William Nast to revise the Model Statutory Construction Act. As a result of the favorable recommendation of the Scope and Program Committee, the Executive committee on August 1, 1989 authorized a Drafting committee to prepare a new or revised Statutory Construction Act. The Drafting committee was appointed in the fall of 1989 but did not hold its first meeting until the summer of 1990. The first reading of a new Uniform Statutory Construction Act was held at the 1992 Conference in Naples, Florida, and a number of comments were made, most of them critical of the draft of then Section 10 (now Section 19), but no votes were taken. The present draft is a substantial revision of the entire draft.

The Model Statutory Construction Act, the statutory construction acts of all the states and recent Interpretation of Statutes Act enacted in New Zealand were reviewed before the drafting of this Act commenced. This Act incorporates statutory construction provisions adopted in various states and reflects recent case law and modern jurisprudence while ignoring court rulings that are novel or bizarre.

This Act seeks to provide assistance to bill drafters in preparing legislation and rules, government officials and lawyers in applying statutes and rules, and courts and administrative agencies in construing them. It will significantly reduce the need for the boiler plate language being used in bill and rule drafting and clarify certain words often used in statutes and rules.

This Act will aid in the drafting of legislation that is to be proposed to several states and it will assist the National Conference of Commission-

ers on Uniform State Laws in assuring a uniform implementation of the more than 130 active Uniform Acts that is has promulgated. While Uniform Acts include a uniform construction" section, these sections often give little guidance as to construction.

This Act informs the courts of the legislature's expectations as to how its product should be construed. Inasmuch as the courts' aim in construing statutes is to find a statute's true intent from the legislature's language, this Act assists the courts in performing that function. It is, therefore, not a legislative infringement of the judiciary's special function of construing statutes; it is merely an aid to the courts in performing that function. The existence and use of statutory construction acts for over a century without successful challenge further demonstrate that these acts do not violate the fundamental constitutional principle of separation of powers.

This Act does not provide an exhaustive list of statutory construction principles or aids to construction, but includes those most commonly used. The purpose of this Act is to direct the construer to the process needed to correctly ascertain the legislative intent and to provide a broad range of aids to construction, and the suggested priorities and weights to be assigned each. See Comment to Section 19.

Although this Act has ben drafted for adoption by a state legislature, a local government may desire to adopt it if it has the authority to do so. In some states enabling legislation may be required.

The provisions of this Act would, if incorporated by reference in contracts, simplify and shorten contractual language.

Wyoming has rules of Construction set forth in W.S. §8-1-103. The Uniform Act is far more comprehensive than the Wyoming legislation.

Uniform Partnership Act (1992)

Amendments

In addition, the Conference adopted amendments to Sections 801 and 803 and eliminated Section 802 of the Uniform Partnership Act (1992).

Wyoming should consider amending W.S. §17-21-801, 17-21-802, and 17-21-803 to conform to the amendments to the Uniform Act.

UNAUTHORIZED PRACTICE OF LAW COMMITTEE

Donald E. Chapin, Chairman

In furtherance of the objectives of the Wyoming State Bar, and for the protection of the citizens of Wyoming, the Unauthorized Practice of Law Committee has worked on these fronts:

1. Sought and obtained injunctive relief against an out of state lawyer, residing in Wyoming, from representing clients before Wyoming courts.

2. Investigated, pursued, and terminated the activities of a document provider and preparer in the bankruptcy court.

3. The Wyoming Association of realtors had requested approval for use of a computer software program for preparation of real estate contracts and related documents. Don W. Riske and non-lawyer members Fred Stratton and Brenda Cronberg Wilson have actively served on this sub-committee. It is our hope that our new officers will consider this and other areas of mutual interest on a broader scope with the Wyoming Association of realtors.

4. With the assistance of Ron Pretty and Gay V. Woodhouse, U.S. Assistant Attorney, the committee has reviewed the intrusion of non-lawyer "constitutional counsel" representation of clients in Wyoming. The move was initiated and in vogue in Florida, but we believe it has been successfully squelched in Wyoming.

5. The activity that has most absorbed the committee is the investigation and analysis of the sale of will and trust kits in the state. We have found that this is a proliferating intrusion throughout Wyoming. In May, Secretary of State Kathy Karpan issued a press release warning the citizens of the danger of purchasing estate planning kits, or otherwise allowing non-lawyers to assist them in their planning. Mark T. Moran, Assistant Attorney General, and Susan L. Feinman of the Legal Services Developer, as well as Kathy Karpan, have been particularly active in this area. Their respective offices have received a large number of telephone calls as a result of the publicity. These inquiries are on-going, and cause us to believe the warning has been heeded by the citizens. The news media in Wyoming has been helpful in disseminating this information. The Committee is also investigating the participation by members of the Wyoming Bar in preparing and selling the kits, in contravention of the rules of professional conduct. The Committee met with the Bar Officers and Commissioners and urge a state-wide program involving pro bono

assistance of our members in consulting with people who have obtained estate planning kits to review their applicability.

6. The Committee has investigated and, through a sub-committee headed by Fred Dollison of Sheridan, is pressing a non-lawyer preparer of pro se divorce documents to either consent to the entry of an injunction, or alternatively commencing the action to seek the relief.

All members of the committee have enthusiastically participated in its work, and we believe the momentum generated over the past year will continue with the assistance of the Officers and Commissioners of the Bar and its members, generally.

WYOMING LAW-RELATED EDUCATION ADVISORY COUNCIL

The Wyoming Law-Related Education Advisory Council is a 17 member advisory council, which represents 13 major statewide organizations, as well as principals, students, current and retired teachers, women, minorities and businesses. The Council was formed under the auspices of the National Training and Dissemination Project (NTDP), a consortium of national LRE groups, in October of 1991.

The basic purpose of the Wyoming LRE program is to enable as many Wyoming students as possible to develop the knowledge and skills necessary to foster both better citizenship and career decision-making, through the study of the law, the legal process, the legal system, and law-related careers.

Funded by grants from NTDP and the Wyoming State Bar Foundation, as well as donations from Wyoming businesses and individual lawyers, the Council has been responsible for the following projects:

A. The UW Summer Teacher Legal Studies Institute. Held on the UW campus in Laramie for one week each summer, the institute provides training for Wyoming teachers (K-12) in both LRE content and teaching strategies. Stipends, to help cover tuition and living expenses, are provided.

B. LRE Workshops (K-12). Wyoming's LRE Council works in conjunction with the Wyoming Council for the Social Studies to provide LRE workshops for elementary, middle school and high school teachers throughout the year. Small stipends are provided.

C. Wyoming State Mock Trial Competition. The Council developed a mock trial booklet, in conjunction with the Cheyenne law firm of Gusea, Pattno and White, which is sent to every high

school in the state. The competition has both novice and varsity divisions and is held in early April at the UW College of Law. The winning varsity team receives \$1,000 to be used to defray the cost of representing Wyoming at the National Mock Trial Competition in early May.

D. Law in Wyoming. The Council has developed a notebook which covers Wyoming laws in an easy-to-read and understandable way. This notebook will be sent to every Wyoming secondary school. The Council is in the process of developing lesson plans, exercises, and test bank questions to accompany the notebook for teacher's use.

E. Partnership Program. The Council is in the process of developing this program which will match Wyoming attorneys and teachers (K-12) to develop a LRE Speaker's Bureau for Wyoming schools.

For more information about the Wyoming Law-Related Education Advisory Council, contact Don Morris, State LRE Coordinator, 632-8013, or Linda Gosbee, Wyoming State Bar, 632-9061.

Wyoming State Bar Three Year Budget Report

	1991-92 BUDGET	1991-92 ACTUAL	1992-93 BUDGET	1992-93 ACTUAL	1993-94 PROPOSED
REVENUE					
General Fund	340,100	335,968	343,412	364,554	371,216
Communications	20,000	18,009	16,000	19,476	17,625
Annual Meeting	52,107	76,829	52,107	88,088	58,000
Bd. Prof. Resp	0	2,619	0	3,637	2,500
CLE Program	5,000	3,488	5,000	8,244	8,243
Bar Committees	0	0	0	0	0
Rest. Income	15,500	12,307	19,300	9,158	29,700
TOTAL REVENUE	\$432,707	\$449,220	\$435,819	\$493,157	\$487,284
EXPENSES					
General Fund	272,720	254,619	274,760	274,875	205,092
Communications	58,883	57,806	59,725	54,950	56,050
Annual Meeting	50,000	63,639	50,000	634,430	50,460
Bd. Prof. Resp.	25,650	11,300	43,650	19,317	22,350
CLE Program	3,500	74	3,500	3,626	7,130
Bar Committees	6,575	5,429	8,575	4,038	8,125
Rest. Expenses*	14,000	19,286	37,300	17,155	15,500
TOTAL EXPENSES	\$431,328	\$412,153	\$477,510	\$437,391	\$464,647
NET INCOME	1,379	37,067	(41,691)	55,767	

Fund Balance/Assets and Liabilities at October 1, 1991 223,724

Fund Balance/Assets and Liabilities at October 1, 1992 255,884

**Fund Balances/Assets and Liabilities at October 1, 1993 311,651

* Restricted expense includes MCLE expenses in 1991-92 which were not offset by corresponding revenue, since collection of the calendar-year \$5 MCLE fee was delayed by 9 months so that it could be assessed on the same invoice as the annual dues.

** Fund balances relate to auditor's annual statements regarding total fund balances, page 3 on the audited financial statement for FY 1991-92. The figures include all assets less liabilities. Unrestricted cash at September 30, 1993 amounted to \$230,559. Restricted cash amounted to an additional \$65,747, representing the balance of the Client's Security Fund.