

1997

## Proceedings of the Wyoming State Bar

Wyoming State Bar

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**PROCEEDINGS OF THE ANNUAL MEETING OF THE**

**WYOMING STATE BAR**

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**REPORT OF THE PRESIDENT***Gerald R. Mason*

It has been a great privilege and a high point in my legal career to serve the Wyoming State Bar as its President for this past year. I think that a great many important things have been accomplished, by the cooperative efforts of a vast number of Wyoming lawyers that serve as Officers, Commissioners and volunteer members of numerous committees and boards, and of the excellent staff, headed by Tony Lewis in the Cheyenne office. At the beginning of my term I perceived that there existed a significant problem with the image of the Wyoming lawyer, both from within the profession and without. I adopted as our theme for the year, "Proud to be a Wyoming Lawyer," and sought to present that theme at every opportunity; from the President's Column in the Wyoming Lawyer, to meeting with non-lawyer groups, to traveling across the state and visiting with sixteen of the County Bar Associations around the state. I stressed the need for us to have a good image of ourselves within the profession, and I urged our Bar members to present themselves to their communities as the honest, hard-working professionals and good citizens that they are. All that effort was culminated with the Convention in Jackson, emphasizing the theme and bringing to the Convention several speakers that helped to underscore the message. The image problem still exists but this effort was not a failure. Wyoming lawyers have stopped to examine themselves and their role in the profession, and have rejected the detractor's criticism. Across the state, lawyers have begun to refute and turn back the public criticism and correct the erroneous public conceptions of the Wyoming lawyer at the ground roots level. This is a task that will continue throughout the months and years to come. Ultimately, I expect significant success in our effort to save the professional image of the lawyer in Wyoming.

The Board of Commissioners met six times this past year and made a number of significant decisions. The Board adopted rules creating standing committees for the Law Office Practice Committee and a Mentoring Committee. The purpose of both of these committees is to assist lawyers to maintain a high level of competent and ethical practices within the state. When implemented and fully functioning, they should provide a significant resource to all Wyoming lawyers, but most especially to the beginning or the small practitioner that can profit from assistance with management techniques, docket controls, etc. The Mentoring approach is one that has been found successful in other states as an alternative to discipline and a

means to avoid serious ethical problems. It should work equally as well in Wyoming.

The Board adopted a new rule restricting and defining advertising. It was the Board's desire to make the rule as restrictive as possible, consistent with attorneys' first amendment rights to advertise. It obviously is our desire that lawyers present themselves as trustworthy professionals, but the import of the rule is simply to require that all advertising be truthful, straightforward, and not in any sense deceptive.

The Board adopted an amendment to the Disciplinary Code that allows interim suspensions under certain circumstances. That will be helpful to the profession in circumstances where a lawyer's defalcations become a matter of public knowledge and public scandal, and during the time which it takes for the disciplinary process to work.

Since its inception, the Fee Dispute Committee has been one of the busiest and has proved very useful both to the Bar and the public. This year the Board streamlined the rules to make that committee function more efficiently.

The Unauthorized Practice of Law Committee, under the leadership of Fred Dollison, was particularly active. The Board approved rule changes for that committee, including the adoption of a much needed definition for the practice of law.

The Board devoted considerable effort to improving the profession's image and relationship with our Wyoming legislative bodies. Up to this point, most of the process has been the gathering of information, with a view to developing policy that will alleviate the problems identified.

The Board adopted a new policy specifying the means and time frame under which Keller objections can be made.

The Board of Professional Responsibility under the leadership of Chairman Tim Beppler, and with the assistance of Bar Counsel, Randy Arp and Cindy Kane have done an absolutely excellent job this past year in dealing with ethical complaints. Despite the fact that the number of complaints that must be dealt with have increased every year as our Bar grows, the BPR has reduced the back-log of cases to where the case load is essentially current for the first time in several years. The Board of Commissioners is working on various rule changes to make the process as efficient as possible and to deal with problems other states have encountered.

With the able assistance of the Young Lawyers Section, a disaster manual for the State of Wyoming has been completed and adopted.

Should a major public disaster strike the State of Wyoming, we now have the framework to deal with the enormous amount and variety of legal problems that can be emergent in such situations.

The Bar continues to operate on a fiscally sound basis and the general conservative approach of the Board, assisted by the careful scrutiny and hard work of the staff, has resulted in another year in which the Bar has operated "in the black." There has been no dues increase since 1989. Our dues are presently lower than any of our surrounding states offering similar services. At the time the last increase was adopted, it was expected that it would generate a surplus, which it did, and that the surplus then would be drawn down through a number of years operating in the red before a dues increase was necessary. Because of a significant increase in non-dues revenue, we have not yet reached the point where we need to start drawing down on our surplus. That day may come in a year or two years, but we still should be able to postpone a dues increase for several additional years as we use that surplus judiciously.

With the help of Professor Ted Lauer, at the University of Wyoming Law School, the Revised Criminal Pattern Jury Instructions were completed and disseminated.

We were able to send a number of representatives to various meetings held around the country, including the Western States Bar, the ABA Leadership Conference, the National Center of State Courts, and the ABA Senior Sections Conference. In every case, the representatives that attended, returned and reported back to the Board, and were a continual source of the Board's ability to be forward looking in its administration and not reactionary. The travel funds that the Bar expends every year for those purposes is money very well spent. An additional benefit this year, is that Tim Kirven was elected Vice-President of the Western States Bar Association, and is the first Wyoming representative in that organization as an officer since Tom Smith some fourteen years ago.

The Board conducted the bi-annual Judicial Evaluation Poll, and those results will be released in accordance with Board policy about two weeks prior to the November elections.

Being cognizant of the fact that the term lease on our Bar building was winding down, and that we needed to be investigating the possibilities of a proper facility for our staff without being under the gun, I appointed an ad-hoc committee chaired by Vice-President, Paul Hickey. Most of the members were from the Cheyenne area, but we did have one member from Laramie so that we could investigate the properties that were available there as well. The guideline which the Board gave was that the

monthly cost of any purchase or lease needed to be within the amount of payments required by our present lease. The committee worked very hard. They investigated re-leasing the present facility, leasing other premises, purchasing land and building a new facility, and purchasing existing facilities. In April, the Board considered all of the options presented and determined that the best option was to purchase the present building. An offer was made and accepted and the purchase of the present facility will close in November of this year. The Board, at the September meeting, authorized payment of the \$180,000 purchase price out of surplus funds and the borrowing of up to \$50,000 for remodeling and renovation of the interior of the building to better utilize available space. The result of those actions is that the Bar staff will be housed in a significantly more attractive and efficient facility. The expenditure of Bar funds will be substantially less than the present lease payments. And the Bar will have converted an expense item into a capital acquisition item, which is likely, in its present location, to increase in value.

That does not exhaust the list of things which the Board and staff have accomplished this past year, but it certainly outlines some of the most important ones. The state of the Bar is excellent. I can say, without in any sense derogating our predecessors, that its state has been significantly improved by the efforts of the Commissioners and staff this past year. I am proud to have been the leader of the Bar through such a year as this, and I am immensely proud to be a Wyoming lawyer.

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

*Chief Justice William A. Taylor*

MR. PRESIDENT, OFFICERS, HONORED GUESTS, AND MEMBERS OF THE WYOMING STATE BAR:

I appear before you for the first time as Chief Justice of the Wyoming Supreme Court. At the outset, I want to acknowledge the leadership and devotion to duty over the past two years of Justice Mike Golden. He has been an innovative leader, an ambassador of good will, and a stalwart representative of both the bench and the bar. I hope to turn this job over to Justice Lehman at the conclusion of my term in as good an order as it was passed on to me.

As you might expect, five different personalities, in daily contact, do have differences of opinion on some questions of law. I am sure you will be pleased to know that we who serve you on the Wyoming Supreme Court maintain a harmonious and cooperative working relationship among ourselves. We have been able to disagree without personal animosity.

Since January 1, 1996, 267 regular appeals and 10 confidential appeals have been docketed in the Wyoming Supreme Court. This number is up by 17 during this same time one year ago. Of the 267 docketed appeals, 99 cases have been criminal and 168 have been civil.

There are currently forty-three unmatured criminal appeals with thirty-one remaining unmatured due to extensions of time to file briefs. The Public Defender, laboring under budgetary and staffing problems, has petitioned the Supreme Court for numerous extensions. The problem has been further exacerbated by the retirement of Gerry Gallivan which resulted in a hiatus of appellate assistance from the defender aid program at the law school. Gerry's contribution to his clients, to the law school, to the bar, and to the bench will be sorely missed. In Gerry's place, the law school has employed the services of Michael Dinnerstein, a bright young professor from New York who tells me he has found the best of all worlds in his new position. He is presently working on ten appeals with his defender aid students and we anticipate an end to extension requests as Michael gets geared up and Sylvia Hackl hires two new appellate counsel in the office of the public defender.

During this past year, the Supreme Court has met with members of the Judicial Supervisory Commission, the Board of Law Examiners, the

Unauthorized Practice of Law Committee, the Board of Professional Responsibility, and, at various times, with the Officers of the Wyoming State Bar.

The Judicial Supervisory Commission has, in cooperation with a committee appointed by Chief Justice Golden, secured the passage of a resolution to amend Wyoming Constitution article 5, section 6 which, if passed, would strengthen the Code of Judicial Conduct and provide for its enforcement. The adoption of this amendment will strengthen the Judicial Supervisory Commission's authority to discipline or remove judges for misconduct and other disciplinary provisions. We urge the members of the bar to support the passage of this amendment this November.

The Board of Law Examiners has labored far beyond what should be expected of members of the bar who give of their time and talent without compensation and mostly without recognition. To relieve some of the pressure, the Supreme Court has approved adding three new members to the Board of Law Examiners who will be responsible for investigating character and fitness of applicants to the Wyoming State Bar. The addition of these members will free the remainder of the Board of Law Examiners to prepare, administer and correct the bar examination and perhaps give them some additional time to devote to their own law practices. It was with reluctance that the Supreme Court accepted the decision of Rhonda Woodard not to serve another term on the Board of Law Examiners. In Rhonda's stead, we have appointed Michele McKellar from Cheyenne. Judy Studer has agreed to serve one more term on the Board of Law Examiners provided the new members are approved and the funds forthcoming to finance the additional members. We truly appreciate the work and sacrifice of the other members of the Board of Law Examiners: John MacPherson, Rawlins; Frank Peasley, Douglas; and Galen West, Rock Springs.

The Board of Professional Responsibility has performed sometimes distasteful but necessary functions professionally and with dispatch. The number of complaints has continued to mount, although very small in percentage compared to the total membership of the Wyoming State Bar. This vital board expends an inordinate percentage of the budget of the Wyoming State Bar in performing their duties. The Wyoming State Bar Commissioners and the Officers of the Wyoming State Bar are presently conferring as to how the Board of Professional Responsibility can best perform their function, maintain the confidentiality of their office and still be accountable to the government of the Wyoming State Bar. I am confident these problems will be resolved without curtailing the essential activities of the Board of Professional Responsibility in upholding the

integrity of the Wyoming State Bar and the faith of the public in the legal profession.

The Unauthorized Practice of Law Committee and the Wyoming State Bar Commissioners have presented the Supreme Court with well written and extensive amendments to the Rules of Professional Conduct for Attorneys at Law. It should be incumbent upon each of you to read and become familiar with the rules of unauthorized practice which is becoming more prevalent and the new rules on lawyer advertizing which will affect many of you in your practice.

Someone once said that a camel is a horse designed by a committee. When Justice Larry Lehman was appointed to the Supreme Court, he inquired about committee assignments. To address Justice Lehman's concerns, the Supreme Court formed two new committees: the County Court Management Advisory Committee and the Judicial Branch Advisory Committee. The membership of these committees consists of representatives of the Supreme Court, District Courts, County Courts, District Court Clerks, County Court Clerks, Allen Johnson as Court Administrator, the Supreme Court's Budget and Fiscal Officer, and the computer specialist of the Supreme Court. It is still too early to tell what the horse is going to look like; but, so far, the meetings have been productive.

Wyoming will host the Five-State Judicial Conference scheduled for July 9-12, 1997 in Cody. Where would we be without the cooperation of the Park County Bar? Our special thanks to Judge Patrick, Judge Housel, George Simonton, George Lemich and Charlie Kepler in assisting us in this endeavor. We hope to show our neighbors that no one can host a meeting like Wyoming. No one in this audience should rest easy as you may be the next person we call upon for help in entertaining our neighbors from Idaho, Montana, South Dakota and North Dakota.

In July of this year, we were all saddened by the retirement of Judge Art Hanscum. Judge Hanscum served the Second Judicial District with distinction since March, 1982. Ill health prompted his decision—true to his high ethical standard, Judge Hanscum refused to serve unless he could fully fulfill his duties to the bench and the bar.

The Judicial Nominating Commission met in Cheyenne on August 29, 1996, and interviewed a number of fine candidates to become District Judge in the Second Judicial District. The names of Robert Castor, Jeff Donnell and Randall Arp were submitted to the Governor for his final decision. My first meeting with the Judicial Nominating Commission revealed a group of people consisting of lawyers and lay people truly

dedicated to their task. We all know that a lawyer has no difficulty in proposing the most penetrating questions to the unnerved candidates, but to me, the most penetrating and perceptive inquiries were propounded by the lay members of the Judicial Nominating Commission. This system works, and despite rumors and innuendos, the sanctity of this process remains intact.

Once again, we seek the support and assistance of the Wyoming State Bar as we request the legislature to review judicial salaries. As of January 1, 1996, Wyoming has fallen to forty-fourth among the fifty states in judicial compensation. The average salary of justices of the highest court among the 50 states is \$99,038.00; the average salary of courts of general jurisdiction is \$88,284.00. We do not yet have the figures available for the average of courts corresponding with our county courts, but we do know the average has risen in correlation with other courts. Since our last raise in salary, inflation has eaten 18.3%.

At the same time, the judicial retirement program is outdated and does not compare with retirement programs in other states, including options for the retiring judge and benefits for a surviving spouse. The majority of Wyoming judges are willing to contribute to a retirement program which is fair and equitable.

The total budget adopted by the legislature for the 1997-98 biennium was \$3,327,786,323.00—the budget of the entire judicial branch was \$22,382,698.00, less than 1% of the total budget. In 1995, county courts collected \$6,212,938.00 in fines and forfeitures. The county courts' case load exceeded 21,000 filings in civil, small claims, family violence, and felony arraignments and 99,059 misdemeanor filings. District courts processed over 14,000 civil, probate and criminal cases. The Supreme Court had 345 filings and 387 dispositions in 1995.

The bench and the bar have an active salary committee appointed by Chief Justice Golden. It is our hope to introduce a bill during this legislative session seeking an increase in compensation. We solicit your help.

Thank you, Mr. President and Mr. President-Elect, for this opportunity to report to you on the state of the judiciary.

I consider myself to be the luckiest man in the world to be serving as your Chief Justice. I look forward with anticipation to the next two years. I am proud to be a Wyoming lawyer!

**REPORT OF THE DEAN  
OF THE UNIVERSITY OF WYOMING  
COLLEGE OF LAW**

*John M. Burman*

The last twelve months at the College of Law have been months of change. First, as Dean Gaudio reported to you last year, Professors Peter Maxfield and Gerry Gallivan retired after long and distinguished careers at the college. While the departures of Professors Maxfield and Gallivan left a void, national searches secured excellent replacements for both.

Maureen Ryan has joined the faculty as an Assistant Professor. A graduate of the University of Utah College of Law, Maureen comes to us from the University of Missouri- Kansas City School of Law, where she was a Visiting Assistant Professor of Law. She also previously taught at the University of Utah, and practiced law in Phoenix, Arizona. Professor Ryan is teaching Property I and Agricultural Law. Next semester, she will teach Property II and Trusts and Estates.

Michael Dinnerstein is with us as a Visiting Professor. He is a 1986 graduate of Harvard Law School, and spent the last several years as Associate Appellate Counsel for the Criminal Appeals Bureau of the Legal Aid Society of New York. Professor Dinnerstein is supervising the Defender Aid Program and teaching Torts I. Next semester, he will teach Criminal Procedure, as well as supervise Defender Aid.

Professor Ann Stevens is on sabbatical leave this year. She is attending the University of Washington to obtain an LL.M. in taxation. Upon her return, Professor Stevens will assume responsibility for teaching some of the tax courses at the college.

The other change at the college is that I am speaking to you today as the Interim Dean. Art Gaudio resigned as dean effective July 1, 1996, to accept a two-year appointment as the Deputy Consultant for Legal Education to the American Bar Association. In that capacity, Art will be involved in developing and implementing accreditation standards for law schools around the country. He also took a two-year leave of absence from the faculty. We look forward to his return as Professor Gaudio at the end of his service to the ABA.

The University has established a search committee to locate a permanent dean. The committee has representation from the faculty, staff, student body, University administration, and the Wyoming bar. Upon recommendation of the Executive Committee of the Wyoming State Bar,

Perry Dray was named to the committee to represent the bar. The committee, chaired by Professor Dee Pridgen, is in the midst of a national search. If all goes according to plan, three finalists will be invited to Laramie late this Fall, and a dean could be named soon thereafter.

Despite the faculty and administrative changes, legal education at the college is in full swing. We greeted an entering class of 81 students for orientation last month. They were selected from over 500 applicants. Also, several talented lawyers have joined us as adjunct professors to help provide high quality instruction to our students.

Our students continue to excel. Third year students Bas Coeburgh and Joe Richer won the national space law competition last Spring in Washington, D.C. They will be travelling to Beijing, China, next month to compete in the international competition against Finland, the European champion.

You all should be receiving the Alumni Newsletter within the next couple of days. It contains a description of the various activities taking place at the college this Fall. There is a full schedule of CLE seminars, homecoming events, the Trelease Dinner, at which we will be honoring Judge Hanscum, and the Order of the Coif banquet, at which we will be honoring Justice Richard Thomas and the top students from last year's graduating class. I invite and encourage you to attend as many activities as possible.

Finally, let me close with a personal observation. Serving as the Interim Dean has not only been a privilege and an honor, it has allowed me to interact with alumni and bar members throughout the State and the region. That experience has confirmed my belief that the College of Law occupies a unique position in Wyoming's legal community. The support and affection for the college that I have felt from its alumni and friends are truly wonderful. And without that support, the college would not be the superb institution it is today. Thank you all.

## **BOARD OF CONTINUING LEGAL EDUCATION**

*Richard J. Barrett, Chairman*

The Wyoming State Board of Continuing Legal Education met on July 9, 1996. During the applicable period the Board reviewed requests for rule changes and waivers and decided numerous Continuing Legal Education appeals by Bar Members.

Continuing Legal Education statements were sent on February 23, 1996, to active attorneys. The State Bar office received an average of 375 application for Continuing Legal Education credit, of which 355 were approved and 20 were denied per month. There were 7 appeals for credit denied by the Board of Continuing Legal Education.

As of May 1996, a number of Wyoming State Bar Members were delinquent for 1 year of Continuing Legal Education requirement. As of the same date 39 Wyoming State Bar members were delinquent for 2 years of Continuing Legal Education requirement. As of the same date 3 Wyoming State Bar members were delinquent for 3 or more years of Continuing Legal Education. Three attorneys were suspended for Continuing Legal Education delinquency on June 20, 1996.

The Wyoming State Bar office received an average of 30 Sponsor Accreditation Applications per month, of which an average of 28 were approved and 2 were denied.

Members of the Board of Continuing Legal Education are: Richard J. Barrett, Chairman, William L. Hiser, Deborah Kellam, Stephen H. Kline, Catherine MacPherson, Julie Tiedeken, Brad DeKrey, Forrest E. "Skip" Gillum and Roger Schreiner.

## THE STATE BOARD OF LAW EXAMINERS OF WYOMING

The Wyoming Board of Law Examiners administered the state bar examination twice in 1996: on February 27-28 and on July 30-31, both times at the University of Wyoming College of Law. Thirty applicants sat for one or both parts of the two-day test in February and sixty applicants in July. As a result, fifty-eight new attorneys were recommend to the Supreme Court to be admitted by examination.

In addition, fifty-five motion applications made by out-of-state attorneys were reviewed in February and fifteen were reviewed in July. As a result, sixty attorneys were recommended to the Supreme Court to be admitted on motion.

The Board also reviewed forty-three first-year law student preregistration applications along with reports from the National Conference of Bar Examiners on those applicants' character and fitness. This new procedure was implemented to review potential character and fitness issues in a student's first year of law school, prior to the significant investment of time and money required to complete his or her legal training.

In 1996, the Supreme Court, on the recommendation of the Board, amended a number of rules relative to applicants with disabilities. The Court also amended rules instituting reciprocity for out-of-state practitioners and made other minor revisions. Presently, the Court and the Board are also studying the creation of a separate subcommittee to review character and fitness.

The 1995-96 Board of Law Examiners consisted of Chairman Rhonda S. Woodard, Vice-Chairman Judith A.W. Studer, Frank Peasley, John A. MacPherson and L. Galen West. Michele K. McKeller from Cheyenne was appointed to the board on October 8, 1996 to replace Ms. Woodard, who has served on the Board since 1988. Ms. Studer was appointed to succeed Ms. Woodard as chairman.

**BOARD OF PROFESSIONAL RESPONSIBILITY***Timothy O. Beppler, Chairman*

September 18, 1996

The following statistical caseload report reflects the disposition of complaints received by the Wyoming State Bar on a calendar year basis, with 1995 as the last full year for which statistics are available. Attorney members of the 1995 Board of Professional Responsibility, appointed by the Wyoming Supreme Court, included Michael H. McCarty, chairman through March 1996; Timothy O. Beppler, present chairman; Rebecca A. Lewis, vice-chairman; Charles S. Chapin, second vice-chairman; David E. Erickson, and Michael K. Davis. Non-lawyer members in 1995 included Herb Carter, James S. Rice and Dawn Bellis. Bar staff charged with reviewing, investigating and prosecuting complaints included Randal R. Arp, chief bar counsel; Kathleen A. "Cindy" Kane, assistant bar counsel; Thomas J. Rardin, contract investigator; and Sandra Innis, legal secretary and program assistant.

*Calendar Year 1995 (last year for which full statistics are available)*

I. Cases Carried Forward from Prior Years: . . . . .	56
II. Cases Opened in 1995: . . . . .	39
III. Cases Dismissed in 1995:	
a. Dismissals by Standard Bar Counsel Motion and Board Review/Determination	
Cases opened in 1989:	2
Cases opened in 1990:	1
Cases opened in 1991:	0
Cases opened in 1992:	1
Cases opened in 1993:	4
Cases opened in 1994:	14
Cases opened in 1995:	<u>9</u>
Total . . . . .	31
b. Dismissals by Rule V(c) Procedure (Adopted May 10, 1993)	
Cases opened in 1995: . . . . .	<u>3</u>
Total . . . . .	3

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	c. Total Calendar Year 1995 Dismissals <sup>1</sup>	
	(Standard Plus Rule V(c)): . . . . .	34
IV.	Discipline Imposed in 1995: <sup>2</sup>	
	Disbarment	2
	Suspension	3
	Public Censure	2
	Private Reprimand	0
	Informal Admonition	0
	Probation (part of overall sanction)	3
	Interim Suspension	1
	Felony Suspension	1
	Disability/Inactive	1
	Year to Date 1996 (through September 18, 1996)	
I.	Cases Carried Forward From 12/31/95: . . . . .	54
II.	Cases Opened: <sup>3</sup> (as of 9/18/96) . . . . .	36
III.	Cases Dismissed:	
	a. Dismissals by Standard Bar Counsel Motion and Board Review/Determination	
	Cases opened in 1990:	1
	Cases opened in 1991:	0
	Cases opened in 1992:	0
	Cases opened in 1993:	1
	Cases opened in 1994:	3
	Cases opened in 1995:	9
	Cases opened in 1996:	9
	Total: . . . . .	23

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1. 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.

2. These dispositions involved 10 attorneys relating to 13 files. Other conditions are often imposed, such as payment of the Board of Professional Responsibility's costs and expenses, taking and successfully completing the MPRE and/or the bar examination and completing a certain number of hours of CLE ethics courses.

3. We have approximately 3 to 7 items for which files may be opened as of September 18, 1996.

b. Dismissals by Bar Counsel - Rule V(c) Procedure<sup>4</sup>

Cases opened in 1992:	1
Cases opened in 1993:	0
Cases opened in 1994:	0
Cases opened in 1995:	2
Cases opened in 1996:	2
Total: . . . . .	5

c. Total 1996 Year to Date (as of 9/18/96)<sup>5</sup> . . . . . 28

IV. Board Hearings Held: 3 (involving 7 files)

V. Discipline Imposed:

Disbarment	2
Suspension	0
Public Censure	3
Private Reprimand	0
Informal Admonition	1
Probation (part of overall sanction)	2
Interim Suspension	0
Felony Suspension	0
Disability/Inactive Suspension	0
Reciprocal Discipline	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 handle "no number cases." 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

4. Rule V(c) procedure is used sparingly because the Complainants almost invariably appeal the dismissal and bear none of the costs of the appeal process. This creates a situation whereby cases are effectively litigated twice causing additional delay and expense. For this reason more often the regular motion to dismiss is utilized.

5. 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.

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 cannot assist the person.

We have attempted to log those items for which we have spent a *significant* amount of time, as alternative disposition "cases." Such logged items for 1996 year-to-date (9/17/96) total 15 items. Other handled items are reflected in General Correspondence File listings which year-to-date totals 191 items. This does not include screened matters which were evaluated to be fee disputes and therefore referred to that bar committee. This does not include, of course, all matters we handle daily and attorney requests for resource assistance.

#### I. CASES OPENED SINCE LAST ANNUAL REPORT

(Case Nos. 32-95 to 39-95; 1-96 through 36-96)

Number Pending: <sup>6</sup> . . . . .	25
Number Dismissed: . . . . .	14
Tried and/or Discipline Imposed (or Disability Inactive Status): . . . . .	5

#### II. TYPE OF CASES GIVING RISE TO COMPLAINTS

Abstract & Title Opinions:	0
Adoption	0
Bankruptcy	0
Collections	3
Corporations	2
Criminal	13
Contract	0

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6. This number does not include one file opened and then suspended since the attorney was already on disability inactive status; that number is listed with cases tried or discipline imposed since it is a suspended file and not presently pending.

Domestic Relations	13
Estate Planning	0
Guardianships	0
Governmental	0
Labor Law	1
Litigation	4
Minerals	0
Oil & Gas	0
Personal Injury	0
Probate	1
Partnership	0
Real Estate	2
Trust	0
Workers Compensation	1
Wills	0
Tax	0
Other	4

### III. TYPE OF INITIAL COMPLAINT

Deceit or Misrepresentation	10
Incompetent Representation	7
Lack of Diligence	20
Conflict of Interest	4
Fees	5
Refusing to Follow Client's Wishes	1
Lack of Communication	15
Harassment	3
Acting Without Client Consent	1
Adversely Reflecting on Fitness to Practice	6
Ex Parte Contact	2
Counseling Illegal Conduct	0
Ineffective Assistance of Counsel	2
Breach of Confidentiality	1
Refusal to Deliver Accounting or Files	2
Tampering with Evidence	0

1997	PROCEEDINGS OF THE WYOMING STATE BAR	277
	Collusion	0
	Frivolous Claim	0
	Refusal to Pay Deposition or Expert Fee	0
	Other	11

#### COMMENTS

1996 year-to-date thus far has mirrored 1995 with a somewhat reduced filing amount, but the complaints tend to accrue in a non-uniform manner. As of September 17, 1996, there exists some 55 files. Of that number, five went to trial on August 13 and 14, 1996, and are presently awaiting adoption of Findings of Fact and Conclusions of Law by the Board and one is a pending Motion to Dismiss which was scheduled for the September 16, 1996, teleconference but tabled to afford the Complainant one further response. In addition, in open and received correspondence there are approximately 3 to 7 matters which Bar Counsel anticipates will evolve into open file numbers. Thus, of the 55 opened file numbers, 6 consist of files already tried or pending as a Motion to Dismiss. This leaves 49 files which may increase to 52 to 56 files because of correspondence awaiting opening as investigative files.

The continued reduction is attributable to continued front-end screening and analysis afforded by two disciplinary attorneys. Some disputes continued to be resolved by telephone, via alternative disposition or referral to other entities such as the Committee for the Resolution of Fee Disputes.

The full-time Assistant Bar Counsel continues to be a very effective tool in resolving cases and keeping the total pending caseload at the reduced level reflected over the past three years. The trend continues, with current staffing and activity levels, of a "static load" of files at any given point in time of 50 to 60 open investigative files. The Board's emphasis continues to be to bring the trial case docket current as well as to reduce the overall open/investigative docket as much as possible.

The Assistant Bar Counsel left the position as of September 6, 1996, for another professional position and the position as of the date of this report is vacant.

**REPORT ON 1996 ANNUAL MEETING  
OF THE AMERICAN BAR ASSOCIATION**

*Richard M. Davis, Jr.*

The 118th Annual Meeting of the American Bar Association was held August 1-6, 1996, in Orlando, Florida.

The House elected Jerome J. Shestack of Philadelphia, Pennsylvania, as the Association's President-Elect and Alfred P. Carlton, Jr. of Raleigh, North Carolina, as the Chair of the House of Delegates. In a contested election for woman-at-large members of the Board of Governors, the House elected Adriane J. Dudley of Charlotte Amalie, Virgin Islands, for a three year term and Robyn C. Mitchell of Jacksonville, Florida, for a two year term.

The President's gavel was passed to N. Lee Cooper of Birmingham, Alabama, who addressed the House of Delegates on August 6, 1996. In his address he spoke of the need to support the independence of judges and criticized politicians who unfairly blame federal trial judges for crime problems. He also spoke of our need for unlimited support for the funding of the Legal Services Corporation.

In her parting message, on August 6, 1996, President Roberta Cooper Ramo of Albuquerque, New Mexico, called upon all of the members of the Association to be activist in countering attacks upon lawyers and our judicial system. She also implored the profession to examine how lawyers and law firms can practice in a more family-friendly way.

The ABA medal was presented to Judge John Minor Wisdom of the United States Court of Appeals for the Fifth Circuit, in honor of his role in civil rights and integration litigation.

Samuel S. Smith of Miami, Florida, was nominated and elected to the Committee on Scope and Correlation of Work.

A brief summary of the items on which action was taken in the House of Delegates at the meeting follows. The resolution number considered by the House is noted in brackets after each summary. Unless otherwise noted, action was taken by voice vote:

## ABA STRUCTURE AND GOVERNANCE

1. The House considered a revised resolution recommending that the Council of the Section of Legal Education and Admissions to the Bar amend its bylaws to include representatives from six other entities of the Association. The proponents of the resolution argued that this resolution is necessary in order to ensure the influence of the practicing bar in the supervision of legal education and that it furthers the spirit of the consent decree entered into between the Association and the Justice Department. The opponents argued that the resolution would threaten the Section's role as an accreditor by the Department of Education, because it destroys the required independence of the accrediting body from the organization with which it is associated. The opponents also argued that the resolution unfairly and unconstitutionally interferes with the internal operation of this Section, and poses a threat to other sections of the Association. In the House of Delegates' first electronic voting, the resolution was DEFEATED by a vote of 327 to 124 with 2 abstentions.[10D]

2. The House APPROVED an amendment to the Constitution to provide that if the Director of the Administrative Office of the United States Courts cannot attend a meeting of the House of Delegates that at the Director's option, the Assistant Director for Congressional, External and Public Affairs be allowed to take the Director's place.[11-1]

3. The House APPROVED an amendment to the Constitution to provide that territorial bar associations be permitted to certify an alternate delegate if the certified delegate cannot attend a meeting of the House of Delegates.[11-2]

4. The House APPROVED an amendment to the Constitution to add the Federal Circuit Bar Association as an affiliated organization represented in the House of Delegates.[11-3]

5. The House APPROVED an amendment to the Constitution to provide that an elected member of the Board may not be elected to a second consecutive full term.[11-4]

6. The House APPROVED an amendment to the Constitution to provide a 40 day notice of the meeting of the Nominating Committee to Association members and to members of the Nominating Committee.[11-5]

7. The House APPROVED an amendment to the Constitution to: a) clarify that the nominee for the Board of Governors chosen by the Nominating Committee after the death, disability or declination of a nominee (i) must meet the eligibility requirements of Section 7.3, but (ii) need not

be a person who has filed a nominating petition pursuant to subsection (c); and (b) clarify that the title of Section 9.3 refers to petitions that will be considered by the House of Delegates.[11-6]

8. The House APPROVED an amendment to the Constitution to provide three-year staggered terms for the at-large members on the Nominating Committee.[11-7]

9. The House APPROVED an amendment to the Constitution to provide that a candidate must specify which position he or she is seeking and that no person may file a petition for more than one position.[11-8]

10. An amendment to the Constitution to add one Section representative on the Board of Governors was WITHDRAWN by the proponents.[11-9]

11. An amendment to the Constitution to add four Section representatives on the Nominating Committee was WITHDRAWN by the proponents.[11-10]

12. The House APPROVED an amendment to the Bylaws to reconstitute the Standing Committee on Association Communications as the Standing Committee on Publishing Oversight.[11-11]

13. The House APPROVED an amendment to the Bylaws to create the Standing Committee on Strategic Communications.[11-12]

14. The House APPROVED a resolution creating the Health Law Section.[105]

15. The House APPROVED a resolution changing the name of the Judicial Administration Division to the Judicial Division.[115]

16. The House APPROVED an amended resolution establishing a procedure to archive policies which are 10 years old or older and which are outdated, duplicative, inconsistent or no longer relevant, retaining such policies for historical purposes, but not to be considered as current policy for the Association or expressed as such by a vote of 270 to 8 with one abstention.[400]

#### BANKRUPTCY LAW

The House APPROVED a revised resolution approving the amendments to the Bankruptcy Code and urging that the proposed amendments be approved and adopted by the National Bankruptcy Review Commission and Congress as the basis for administration and resolution of partnership cases under the Bankruptcy Code.[118]

### CHILDREN'S RIGHTS

The House APPROVED a resolution urging the United States to work with the United Nations and the International Labor Organization to promote the abolition of economic exploitation of persons under eighteen years of age.[111]

### CRIMINAL LAW

1. The House APPROVED a resolution urging that certain principles be adhered to when a congressional committee seeks information from a federal prosecutorial agency.[104A]

2. The House APPROVED a resolution supporting the belief that the maintenance of existing healthy bonds between children and their incarcerated parents is consistent with the emotional well-being of the child, may increase the likelihood or speed of the incarcerated parent's rehabilitation and help reduce recidivism. The resolution further supports initiatives that preserve and promote family accessibility to the detention facility; the development of parenting skills; extended contact visitation between incarcerated parents and their children; and the emotional well-being of the child.[104B]

3. The House APPROVED a resolution supporting model legislation on compassionate release and alternative sentencing for non-violent offenders with HIV, AIDS, or other late-stage terminal illness in order to promote the adoption of a regularized process to provide clarity and uniformity in the application of this policy.[109]

4. A resolution urging the Association take no position on the advisability of the death penalty, but urging jurisdictions that use the death penalty to implement policies and procedures, consistent with long-standing Association policies, to (1) ensure that death penalty cases are administered fairly, impartially, and in accordance with due process, and (2) minimize the risk that innocent persons may be executed, and calling upon such jurisdictions to observe a moratorium on the imposition and enforcement of the death penalty until such policies are implemented was WITHDRAWN by the proponents.[110]

### DISABILITY LAW

A resolution urging the state of Hawaii to review its quarantine regulations regarding guide dogs for the visually impaired to ensure that

disabled Americans may freely travel to and from, and conduct business in the state, was WITHDRAWN by the proponents.[10M]

### DOMESTIC VIOLENCE

1. The House APPROVED a resolution supporting efforts to implement and to fully fund the “full faith and credit” mandate of the Violence Against Women Act of 1994 (VAWA).[100]

2. The House APPROVED an amended resolution encouraging courts to use all authority and resources available to them in matters involving child abuse and domestic violence, including imposition of fines, restitution and court orders, to ensure that the needs of child victims of such abuse and violence are met for counseling, treatment, advocacy and other assistance.[113]

3. The House APPROVED an amended resolution condemning acts of domestic violence by lawyers or judges; condemning the manifestation by lawyers or judges, in the course of their professional activities by word or conduct, of approval of the use of such violence against intimate partners, spouses, or other family members; urging judges involved in the administration of courts and lawyers engaged in the management or operation of a law practice or other place of business to adopt workplace protocols, guidelines, and policies to assist employees who are victims of domestic violence in finding help and safety, as well as protocols, guidelines, and policies to protect the safety of employees who may come in contact with batterers during the course of business; and encouraging affirmative steps such as continuing education, studies, and conferences to educate judges and lawyers about the nature and effects of domestic violence, particularly as to the effect such conduct has on judges’ or lawyers’ abilities to carry out the administration of justice.[120]

### ELDER LAW

The House APPROVED a resolution supporting efforts to improve the response of state courts to elder abuse and to adopt “*Recommended Guidelines for State Courts Handling Cases Involving Elder Abuse*,” dated 1996; and urging implementation by the courts at the state, territorial, and local level.[102]

### FEDERAL JURISDICTION

A resolution reaffirming opposition to efforts which either a) abolish federal jurisdiction based on diversity of citizenship or b) curtail the scope of diversity jurisdiction by precluding a resident plaintiff from invoking such jurisdiction, and opposing any increase in the minimum amount in controversy for diversity cases from \$50,000 to \$75,000 as premature unless and until diversity filings begin to exceed the pre-1989 levels and opposing legislative proposals to index the diversity jurisdictional amount for inflation or to eliminate consideration of certain types of claimed damages when determining whether a plaintiff has satisfied the amount-in-controversy requirement was WITHDRAWN by the proponents.[116]

### INTERNATIONAL LAW

The House APPROVED a resolution urging the United States government to implement a multilateral agreement on investment designed to liberalize existing national investment restrictions; providing the highest standards of investment protection, including the provision of prompt, adequate, and effective compensation for expropriation; creating effective dispute settlement mechanisms; and encouraging the broadest possible participation by all states in any such accord.[117]

### JUDICIAL ADMINISTRATION

1. The House APPROVED a resolution opposing constitutional or statutory limits on the number of terms that a person may serve in the same judicial position.[10B]

2. The House considered a resolution urging courts to adopt a universal citation system using sequential decision numbers for each year and internal paragraph numbers within the decision. The resolution further provided that numbers should be assigned by the issuing court and included in the decision at the time it is made publicly available by the court and further urged that parallel citations to commonly used print sources be strongly encouraged. The proponents argued that the new citation system is necessary to allow citation of cases from on-line services where there was not yet a print source citation, or where the lawyer may only have access to the case on-line. The opponents argued that the switch to paragraph citation without requiring parallel print source citations unfairly burdens those without access to on-line services. A motion to postpone

indefinitely to allow consideration by all of the chief justices of the courts to adequately study the issue was considered. The proponents argued that adequate notice and opportunity for input was afforded, and that the resolution allows the individual states to decide whether to implement the proposed citation system. The motion to postpone was defeated by a vote of 272 to 107 with 2 abstentions. The resolution was APPROVED by a vote of 336 to 59 with 4 abstentions.[107]

3. The House APPROVED a resolution supporting amendment of the Bankruptcy Amendments and Federal Judgeship Act of 1984 to authorize the U.S. Courts of Appeals to use a streamlined procedure for bankruptcy judge reappointments.[108]

4. The House APPROVED a resolution supporting and assisting in the organization and implementation of waiting rooms for children in every state and local courthouse in which the need for such rooms exists.[112]

#### LEGAL EDUCATION AND ADMISSION TO THE BAR

1. The House considered a resolution [121A] adopting the recodification of the *American Bar Association Standards for the Approval of Law Schools*, including the Interpretations. The recodification of the Standards and Interpretations were proposed by the Section of Legal Education and Admissions to the Bar with input from the deans and faculty members of Association approved law schools, the Association of American Law Schools, the Law School Admission Council, the Conference of Chief Justices, the National Association for Law Placement, the State Boards of Bar Examiners, and through public hearings. Fifteen amendments to the standards were proposed both in the form of direct amendments to the standards and interpretation and as separate resolutions.

A revised amendment to Standard 205(a) regarding the role of the dean of a law school, accepted by the proponents of the Standards, was APPROVED.[121A(1)]

A revised amendment to Interpretation 205-1 and Standard 205(d) regarding the role of the faculty in the selection of the dean of a law school, accepted by the proponents of the Standards, were APPROVED.[121A(2)]

An amendment to Standard 206 was WITHDRAWN by the proponents of the amendment.[121A(3)]

An amendment to Interpretation 201-1 regarding law school finances was considered by the House. The proponent urged that the amending language better accomplished the objectives regarding finance under the

consent order. The opponents of the amendment argued that it would amend language already approved by all parties and the court to the consent order. The amendment was DEFEATED.[121A(4)]

An amendment to Interpretation 209-1 regarding law school finances was WITHDRAWN by the proponents of the amendment. [121A(5)]

An amendment to Interpretation 101 regarding the accreditation process was WITHDRAWN by the proponents of the amendment.[121A(6)]

An amendment to Standard 106 regarding the definitions of “standards” and “interpretations,” accepted by the proponents of the Standards, was APPROVED.[121A(7)]

An amendment to Standard 801 regarding the revision, amendment or repeal of interpretations, accepted by the proponents of the Standards, was APPROVED.[121A(8)]

An amendment to Standard 803 regarding the amendment of standards, interpretations, rules and policies, accepted by the proponents of the Standards, was APPROVED.[121A(9)]

A resolution amending Interpretation 402-1 relative to student/faculty ratio was WITHDRAWN by the proponents of the amendment.[10E]

A revised resolution amending Standard 405 by requiring schools to provide terms of employment and working conditions sufficient to attract well-qualified teachers, accepted by the proponents of the Standards, was APPROVED.[10F]

A resolution amending Standard 405 to require law schools to provide legal writing directors positions similar to other full-time faculty members; and to amend the accompanying Interpretations by addition of Interpretation 405-9, which would allow legal writing directors the right to participate in school governance, was WITHDRAWN by the proponents of the amendment.[10G]

A resolution amending Standard 305(e) to require not fewer than 747 hours in meeting “class hour” and “in residence” requirements was WITHDRAWN by the proponents of the amendment.[10H]

The House considered a revised resolution amending Standard 302(d) to require schools to offer students live client experiences, such as clinics and externships. The proponents argued of the need to embrace lawyering skills, and that the requirements under the proposal, were minimalist and could be accomplished without undue difficulty to the schools not yet in compliance. The opponents argued that “should” instead of “shall” would be more inclusive of methods to teach lawyering

skills. The amendment was APPROVED by a vote of 184 to 141 with 1 abstention.[10I]

A resolution amending Standard 302(a)(3) to require education programs that assure basic competence in legal analysis, reasoning, and research; and in oral and written communication was WITHDRAWN by the proponents of the amendment.[10J]

With the foregoing amendments, the recodified Standards and Interpretations were APPROVED.

2. The House APPROVED a resolution urging bar associations to assist law schools in accomplishing the goals of Standard 301, Objectives and Standard 302, Curriculum; and to observe and monitor implementation of the new Codification. The resolution further urged bar associations to assist law schools within their jurisdictions with the development of curricula designed to accomplish the ABA Standards for Approval of Law Schools 301, Objectives, and Standard 302, Curriculum.[10K]

3. The House APPROVED a resolution granting final approval and reapproval to several legal assistant education programs, withdrawing the approval of three legal assistant education programs, and extending the term of approval to several legal assistant education programs.[103A]

4. The House APPROVED a resolution amending Guidelines G-202, G-203, G-204 and G-303 of the Guidelines for the Approval of Legal Assistant Education Programs.[103B]

5. The House APPROVED a resolution granting full approval to the Regent University School of Law.[121B]

6. The House APPROVED a resolution adopting the amendment of Rule 34(d) of the Rules of Procedure for Approval of Law Schools.[301A]

7. The House APPROVED a resolution granting full approval to the Seattle University School of Law.[301B]

8. The House APPROVED a resolution granting provisional approval to the Thomas Jefferson School of Law.[301C]

#### LEGAL PROFESSION

1. The House APPROVED a resolution adopting amendments to the Model Rules for Lawyer Disciplinary Enforcement to: 1) incorporate referrals to programs providing alternatives to discipline for minor misconduct; and 2) clarify the provision for discipline by consent.[10]

2. The House APPROVED a resolution urging state, territorial and local bar associations to study bias in their communities against gays and lesbians within the legal profession and the justice system and make appropriate recommendations to eliminate such bias.[10A]

3. A resolution recommending that each jurisdiction enact a disciplinary rule generally barring lawyers from undertaking a municipal finance engagement with a public agency within two years after making a contribution to, or soliciting a contribution for, an official of that agency, was WITHDRAWN by the proponents.[10C]

4. The House APPROVED a resolution amending the Comments to Section 9 of the Model Rule for Minimum Continuing Legal Education and Sections 2(b), 6(a) and (b), 7(a) through (i).[106]

#### MILITARY LAW

1. A resolution recommending amendment of Article 36, Uniform Code of Military Justice (UCMJ)(10 USC §836) to conform court-martial rulemaking procedures to those existing for other Federal courts was WITHDRAWN by the proponents.[101A]

2. The House APPROVED a revised resolution urging military capital prisoners be provided with the same opportunity for the assistance of counsel in seeking federal post-conviction relief as is now provided by federal law for persons sentenced to death in U.S. civilian courts.[101B]

#### SPECIALIZATION

The House APPROVED a resolution reaccrediting designated specialty certification programs for lawyers.[114]

#### UNIFORM LAWS

The House APPROVED a resolution approving the Uniform Unclaimed Property Act (promulgated by the National Conference of Commissioners on Uniform State Laws) as an appropriate Act for those States desiring to adopt the specific substantive law suggested therein.[119]

**WYOMING STATE BAR****Final FY 1995-96 Budget And Three-Year Comparison Report**

	1993-94 Actual	1994-95 Actual	1995-96 Projected	1996-97 Budget
<b>REVENUE</b>				
General Fund	\$388,395	\$400,904	\$443,507	\$438,625
Communications	28,179	22,307	25,555	26,200
Annual Meeting	52,370	69,005	65,394	58,000
Bd. Prof. Resp.	4,202	3,423	10,000	5,000
Bar Committees	0	4,569	0	0
Restricted Inc.	24,539	5,708	32,250	35,000
<b>Total Revenue</b>	<b>\$497,685</b>	<b>\$505,916</b>	<b>\$576,706</b>	<b>\$562,825</b>
<b>EXPENSES</b>				
General Fund	\$319,891	\$328,901	\$378,390	\$367,031
Communications	54,392	63,589	66,440	70,850
Annual Meeting	47,228	65,225	50,572	50,400
Bd. Prof. Resp.	16,589	19,314	14,950	17,950
Bar Committees	22,425	8,751	17,162	24,665
Restricted Exp.	12,774	12,500	6,495	21,875
<b>Total Expenses</b>	<b>\$473,299</b>	<b>\$501,280</b>	<b>\$534,009</b>	<b>\$552,771</b>