

1998

Proceedings of the Wyoming State Bar

Wyoming State Bar

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NEWLY-ELECTED COMMISSIONERS

Richard H. Honaker, Third District

Kari Jo Gray, Eighth District

REPORT OF THE CHIEF JUSTICE OF THE WYOMING SUPREME COURT

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

It seems impossible that a year has passed since I last addressed the Wyoming State Bar on the state of the judiciary. President Hoke MacMillan and I embarked upon this past year with great expectations — Hoke as President of the Wyoming State Bar and I as Chief Justice. Little did we know that we would have to call upon our friends in the Wyoming and American Medical Associations to assist us in achieving our goals. In that vein, I want to take this opportunity to thank the dozens of members of this organization who sent flowers, cards and telephone calls during my illness — thank you from the bottom of my newly reconstituted heart.

Since I last spoke to you, the judiciary and the Wyoming State Bar has been saddened by the death of four of our outstanding alumni. Justice Rose, Justice Cardine, Judge Hamm and Judge Joffe, all of whom served the citizens of this state, the Wyoming State Bar, and the judiciary with honor and integrity. At a date to be announced, as ordained by custom, a memorial service will be conducted at the Supreme Court in honor of Justice Rose and Justice Cardine.

So far in 1997, 265 cases have been docketed in the Wyoming Supreme Court. Of the docketed appeals, 86 cases have been criminal and 124 have been civil. Currently, there are 37 unmatured criminal appeals pending. In 21 of the 37 unmatured criminal appeals, extensions have been requested and granted. The Public Defender's office continues to be understaffed and, due to budgetary restraints, is unable to engage the services of experienced counsel to handle the ever increasing workload. The Defender Aid Program at the Law School fell behind following the retirement of Jerry Gallivan and is just now, under the direction of Steve Singer, getting back up to speed. Steve arrives in Wyoming by way of Washington, D.C., where he has worked as a public defender for the past nine years. His wide experience includes both trial and appellate work with the D.C. Public Defender's Office.

During the year, the Supreme Court has consulted from time to time with members of the Commission on Judicial Conduct and Ethics, the Board of Law Examiners, the Unauthorized Practice of Law Committee and with the Officers of the Wyoming State Bar concerning matters of mutual concern.

At the general election held in November of 1996, an amendment to Article 5, Section 6 of the Wyoming Constitution was adopted by a vote of the people and was proclaimed in effect on November 18, 1996, which created a Commission on Judicial Conduct and Ethics, formerly the Judicial Supervisory Commission. The membership on the newly created Commission was increased to twelve persons and divided into investigatory and adjudicatory panels and provided for their organization and implementation. The Commission members have all been appointed and the Commission is operational under the guidance of Margaret Kelley, Chairperson.

The Board of Law Examiners have submitted proposed amendments to the Rules Governing Admission to the Practice of Law in Wyoming. The amendments were just submitted to the Supreme Court this week and will be the subject of discussion by the Supreme Court. Among other changes, the rules will provide for the appointment of not less than three nor more than five members of the Wyoming State Bar to assist the Board of Law Examiners in conducting investigations for character and fitness.

The results of the bar examination conducted in July have just arrived in the office of the Clerk of the Wyoming Supreme Court. The total number of successful candidates for admission cannot be fully determined until the results of the Colorado bar examination have been compiled. Some candidates take both the Wyoming and Colorado bar examinations and the results cannot be ascertained for those who have taken the Colorado bar examination until the Multi-State results have been received from Colorado. Of those who took the Wyoming essay examination and also the multi-state examination in Wyoming, 52 passed. The bar admission ceremony at the Supreme Court will be announced when all results have been received.

Since we last met, Governor Geringer selected Jeff Donnell to become the new district judge in the Second Judicial District to join Judge Stebner. Judge Donnell wasted no time in getting to work and the Second Judicial District continues to be served by judges of the highest professional ability and ethical standards. During the next few months, it is anticipated that several vacancies will occur on all courts within the state and the Judicial Nominating Commission — Michael Rosenthal, Marilyn Kite, Mark Harris, Nettie Dodge, Celeste Mori and Kristy Thompson — will once again swing into action. I anticipate they will follow the protocol of the past and will not reveal the names of applicants nor of the three finalists submitted to the Governor.

We at the Supreme Court continue in our quest to have every district court as well as every county court on-line with our computer network. Those judges that are on the network have WestLaw and Premise available for research as well as the Wyoming Rules of Civil and Criminal Procedure; Rules Governing Small Claims;

Wyoming Rules of Evidence and Appellate Procedure; Rules and Procedures Governing Admission to the Practice of Law in Wyoming and Rules of Professional Conduct; the Disciplinary Code and Rules Governing the Commission on Judicial Conduct and Ethics and the Wyoming Code of Judicial Conduct.

Early this month, a delegation of several county clerks of court and Allen Johnson attended a demonstration of computer software designed for court management. The meeting was at the National Center for State Courts in Williamsburg, Virginia. Those who attended were excited about the possibility of obtaining a similar system for all clerks' offices in the state. A follow-up meeting was held at the Clerk of Court's meeting in Casper earlier this week and a demonstration has been arranged in Cheyenne on September 30th through October 2nd. On September 30th and the morning of October 1st, Justice Systems, Inc. will demonstrate their case management system at the Supreme Court and on the afternoon of October 1st and all day October 2nd, the system will be demonstrated at the district court in Cheyenne. We expect a large turnout of district court clerks. Should you desire any further information, you should contact Allen Johnson, Court Administrator, at (307) 777-7480.

Brad Saxton has almost completed an extensive survey and study of Wyoming juries. During the past year, he has received responses to his study from jurors, judges and trial attorneys. When he has completed the compilation of the material he has obtained in his study, he will present the results to the Supreme Court and to the Wyoming State Bar with a recommendation for possible reform.

The Judicial Council met on Monday and Tuesday of this week in Cheyenne. It was the unanimous decision of the membership to once again request a salary increase during the upcoming legislative session. Wyoming has fallen to 46th among the 50 states in salaries for supreme court justices and district court judges. County courts have fallen to well below the national average for courts of similar jurisdiction. The last salary increase was approved by the legislature in 1991 and became effective in 1993. Since the effective date of that increase, inflation has eroded almost 23% of our bottom line salary. In terms of the total Wyoming state budget, the judicial budget for all courts in 1997-1998 was \$22,818,303 or 2% of the general fund budget and .8% of all funds included in the 1997-98 biennium.

The Judicial Council voted to request a \$12,000.00 across-the-board salary increase for each category of judge in the Wyoming judicial system. We have visited with the Joint Judiciary Committee and have asked that they sponsor such a bill. Once again, we solicit the help of the Wyoming State Bar in our efforts.

Thank you, Mr. President and President-Elect for this opportunity to report to the Wyoming State Bar on the state of the judiciary. Congratulations Hoke on your achievements in behalf of the Wyoming State Bar during this past year and good luck, Paul, as you embark upon your term as President of this great organization.

Following the Report of the Chief Justice, University of Wyoming Interim Dean

John M. Burman provided his report on the state of the law school.

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

John M. Burman

It's a pleasure to be here once again to report on the University of Wyoming College of Law. Much has happened since I spoke to you in Jackson last September.

In May, sixty-nine law students received their Juris Doctor degrees from the University. Most hope to stay in Wyoming and took the July bar examination. The results of the Wyoming Bar are incomplete, but preliminary reports are good.

This August, the eighty-two members of the Class of 2000 arrived on campus. They were selected from nearly 450 applicants.

In addition to their regular studies, students at the College are actively involved in a series of student competitions. Last Spring, students participated in the Brown, Drew, Massey and Sullivan Moot Court Competition. The first and second place teams from that competition will compete this November in the Regional Moot Court Competition, which is being hosted by the University of Wyoming. Students also took part in the Client Counseling Competition. The winning team in UW's intraschool competition competed in and placed second in the regional competition, continuing the College's tradition of strong performances at regional and national competitions. Finally, two students from Wyoming competed in the National Environmental Moot Competition in White Plains, New York. Susan Shell, a 1997 graduate, was named the outstanding oralist in each of the first two rounds of the national competition.

This Fall, the College has a full slate of student competitions. The Rothgerber Trial Competition gets underway in a few weeks. The intraschool competition, which is underwritten by the law firm of Rothgerber, Appel, Powers and Johnson, is very popular. The first and second place teams in the competition will move on to a regional competition.

In October, the intraschool Environmental Moot Court competition will take place. This year, the competition is being underwritten by the law firm of Holland and Hart. As usual, the winning team will compete in the national competition in White Plains, New York.

November brings the Regional Moot Court Competition to the University. Fourteen teams from seven law schools will vie for a spot in the national competition. The Fitzgerald Law Firm in Laramie and Cheyenne has graciously agreed to sponsor the regional competition.

The student competitions necessarily involve many lawyers and judges, who serve as judges for the competitions. With the Regional Moot Court Competition at the College, we will be asking for more help than usual from the bench and bar. Our thanks to the many lawyers and judges who have helped in the past, and thank you, in

advance, for helping this Fall.

Law Week at the College begins October 1st with the Wyoming Supreme Court hearing argument at the College. It is a special experience for our students to be able to see the Court in action. The annual Trelease Dinner will be held on October 4th, with the Honorable Alan Johnson as the featured speaker.

We are enjoying the presence of Alexander (Sasha) Shibanov at the College as the first Ewing T. Kerr/Rotary Fellow. The fellowship is sponsored and funded by the University of Wyoming, Rotary Clubs throughout the state, and various Wyoming bar associations, including the State Bar. It allows a recent graduate of the Saratov State Academy of Law in Saratov, Russia, to spend an academic year in Wyoming. Sasha Shibanov is a post-graduate student at the Academy, with a special interest in jury trials. He will spend the Fall semester at the College, and the Spring Semester working for Judges Downes, Brimmer, and Brorby. We think it is the only program of its kind in the country.

As usual, the last year saw a number of changes at the College. In May, we were saddened by the death of former Dean E. George Rudolph. George came to UW in 1947, and taught until 1994. At George's request, a memorial service was held at the College, with tributes delivered by Charles Kepler, Michael Sullivan, the Honorable Michael Golden, and the Honorable G. Joseph Cardine. We were, of course, shocked and saddened when Justice Cardine, who also taught at the College, passed away just a few months later.

Ricky Blackstone retired in May, ending twenty-six years of service to the College. Professor Blackstone has graciously agreed to help us out by teaching one course each semester.

In June, we welcomed Steve Singer as an Assistant Professor and Faculty Director of the Defender Aid Program. Steve received his undergraduate education at the University of Illinois, and his law degree from Harvard. He comes to us with a wealth of trial and appellate experience with the Public Defender Service in Washington, D.C.

Bob Kamenshine is with us this year as the first E. George Rudolph Distinguished Visitor. Bob has had a long and distinguished career in academia and as an appellate attorney with the United States Department of Justice. After receiving his J.D. from Columbia, Bob earned an LL.M at Harvard. He taught at Vanderbilt for nearly twenty years before moving to the Justice Department as an appellate attorney ten years ago. He has also visited at Duke University and the College of William and Mary. We are able to have Bob with us because of the generosity of the Paul Stock Foundation, which established the E. George Rudolph Distinguished Visitorship with a donation of \$500,000.

Professor Dee Pridgen is in Tokyo, Japan, this year as a Fulbright Fellow. She will be conducting research on Japanese consumer law.

We welcome back Professor Ann Stevens, who was on sabbatical leave last year.

She spent the year earning an LLM in taxation from the University of Washington. Professor Stevens has now taken over the tax portion of our curriculum.

I want to take a moment to thank the Adjunct Professors at the College, without whom we could not offer a complete curriculum. Paul Schierer, of the firm of Pence and Macmillian, is with us again teaching trial practice. Frank Nelson, with Corthell and King, is teaching Real Estate Financing, again. Diana Stithem and Bob Southard are teaching Legal Writing. Thank you to them.

Debra Donahue and Elaine Welle were each promoted to Associate Professor in recognition of their fine teaching and scholarship. Congratulations to them.

Finally, I am still serving as Interim Dean, a position which I expect to hold until next summer.

The College of Law Alumni Association has had an active year. Last Fall, it established a scholarship fund and set a goal of \$20,000.00. So far, our alumni have responded with over \$16,000.00 in contributions. I encourage those of you who have not yet given to help us meet the goal.¹

The Alumni Association has also established a Distinguished Law Alumni Award. The most recent College Newsletter contained a nomination form. The first Distinguished alum will be selected by the Alumni Association Board at its Spring meeting. I encourage you to nominate deserving individuals.

The Alumni Association is hosting a tailgate party before the San Jose State game this Saturday, and reunions for selected classes will be held that evening.

The first College of Law Honors Banquet will be held October 25th. Membership in the Order of the Coif, the national law honorary, will be awarded to the top students from the Class of 1997, and Jerry Housel (JD '36) will receive an honorary membership in the order in recognition of his service to the bar and the College. We will also be honoring scholarship donors and the recipients of those scholarships.

The College continues to offer Continuing Legal Education courses at the College. For the first time, we will be offering a course statewide (in Laramie and at nine other sites) through the video network. Professor Brad Saxton will be presenting the results of his jury verdict research on November 15th. We hope to offer additional courses statewide in the future.

Development (fund-raising) is of ever-increasing importance at the College. There is much good news to report.

Three of our four intraschool student competitions are now underwritten by law

1. By the end of the Bar Convention the goal had been reached. Three individuals donated \$1000.00 each, and several smaller donations were also received. Congratulations to the Alumni Association, and thank you to everyone who helped endow the Law Alumni Scholarship.

firms. Brown, Drew, Massey and Sullivan underwrites the Moot Court Competition. Holland and Hart is underwriting the Environmental Moot Court Competition. Rothgerber, Appel, Powers and Johnson underwrites the trial competition. The only competition still in need of a sponsor is the client counselling competition. And the Fitzgerald Law Firm is sponsoring the Regional Moot Court Competition which is being held at the College this Fall. Our thanks to the generous support of those firms.

Five Wyoming law firms now fund scholarships at the College: Brown, Drew, Massy and Sullivan (Casper), Dray, Thompson and Dykeman (Cheyenne), Jones, Jones, Vines and Hunkins (Wheatland), Meyer and Williams (Jackson), and Murane and Bostwick (Casper and Cheyenne). A number of other firms are considering funding scholarships, and if you haven't been asked yet, don't worry, I'll get to you.

The Larry Yonkee Memorial Scholarship was endowed last year with over \$13,000.00 in contributions. Our thanks to the many individuals and firms who supported that effort.

Winston Howard (JD '30) has given yet again to the College. Winstone designated his most recent gift to establish a law school endowment fund. Thank you Winston.

The need for support is greater than ever, and the response from the Bar and our alumni has been gratifying.

Let me close on a personal note. Serving as Interim Dean has been the greatest privilege of my life. The support and affection which the College enjoys is remarkable.

Thank you. It's been a wonderful experience.

Deferring his President's Report, Mr. MacMillan recognized the State Bar Delegate to the American Bar Association, Richard M. Davis, Jr., who, after acknowledging fellow Wyoming ABA Delegates Hon. Margie A. Meacham and Hon. H. Hunter Patrick, stated the ABA was very concerned about the growing number of federal judicial vacancies due to lack of confirmation proceedings in the U.S. Senate. He noted the dates of the ABA Annual and Mid-Year Meetings and stated the ABA was presently working to develop criteria for lobbying legislation that he hoped would preclude the organization from taking stances on controversial issues which did not pertain directly to the administration of justice.

Following Mr. Davis' report, Mr. MacMillan provided his report on activities of the Wyoming State Bar.

REPORT OF THE PRESIDENT

H.M. "Hoke" MacMillan

In the Fall of 1996, the State Bar purchased its present office facility in Cheyenne for \$180,000. It took out a loan for \$80,000 and paid the balance in cash. As a supplement to this project the Bar also invested in an interior remodel costing \$49,000. To complete this project, the Board of Commissioners recently allocated an additional \$48,000 to renovate the exterior of the building, which will include new sidewalks, curb and gutter and exterior landscaping. The overall capital construction project used reserve funds built up over the past seven years. There will be about \$100,000 left in reserve funds at the completion of this project, and the Bar has budgeted money from funds it would have used to pay rent to replace the reserves used in the purchase.

Rule changes implemented by the Supreme Court at the recommendation of Bar Commissioners in 1996-97 included new rules for attorney advertising, an overhaul of the Bar's procedures for resolution of fee disputes and a rule implementing a yearly and mandatory CLE credit for ethics.

This past winter, the Court implemented a rule prohibiting the employment of disbarred attorneys by practicing attorneys. This rule was subsequently challenged and upheld by the Court. It is a way to ensure disbarred or suspended attorneys do not continue to practice in contravention of the Court's orders.

In response to legislation to suspend professional licenses for non-payment of child support, the Bar and the Court revised portions of the Bar By-laws to immediately suspend the licenses of attorneys who are delinquent for three or more payments. This law and the corresponding rules took effect this summer.

In response to the number of calls for rule changes this past year, the Commissioners established a protocol for rulemaking, which allows for notice to the membership of rule changes under consideration. Members who read bar publications likely notice a number of such announcements in recent issues of the Wyoming Lawyer and Bar Brief newsletter.

Rules presently under consideration for revision include a proposal by the State Board of Law Examiners to establish a standing subcommittee to review character and fitness issues related in the course of making application to practice law in Wyoming. There is a proposal, recently advertised and approved by Commissioners, to allow for self-study CLE, on the condition that the program is structured and includes the types of outlines and study materials offered by other accredited programs. Other proposals under consideration include a possible rewrite of Rule 6.1 of the Rules of Professional Conduct to encourage a higher level of pro-bono service, possible revisions to the Court's recommended form for contingency fees and a rewrite of Bar Rule 11 to more clearly define the practice of law and implement a fee for pro hac vice appearance in Wyoming Courts.

This last effort is the result of work throughout the past year to more closely regulate the unauthorized practice of law. It has become apparent, now that the UPL Committee is very actively prosecuting complaints, that the present rules and definitions may need revision to more effectively address the problems raised by non-licensed legal providers. A number of complaints throughout the past year have included judicial complaints regarding unauthorized appearances by out-of-state attorneys. For this reason and the potential for eventually prosecuting misconduct by a non-admitted attorney, the bar is discussing implementing a fee for case-by-case admission.

In addition to litigation advanced by the UPL Committee in the past year, the State Bar was also involved in the defense of a federal lawsuit against the State Board of Law Examiners. The suit was brought by a disabled applicant alleging violation of the Americans with Disabilities Act and racial discrimination. The Examiners argued they had provided all accommodations prescribed by the applicant's physician and were further not aware of the applicant's race throughout the process of providing arrangements. The Examiners stated that following extended review and preparation of accommodations, the applicant did not show up to take the test and did not advise the Board that she did not intend to take the test. The U.S. District court issued a summary judgment this past summer favoring the Board on all counts. The defense of this suit was paid for by the State Bar's insurance carrier.

In other activity, the State Bar worked to implement a computer homepage, which will shortly be accessible through the Supreme Court's website. The Committee will continue to keep up with advances in the use of e-mail and electronic research for use as an important tool in the legal profession.

The State Bar hired a new assistant bar counsel in January to help keep the Board of Professional Responsibility current in the processing of its workload. Monica Sharum was formerly with the State Public Defender's Office in Casper and she has performed very well for the Board.

With the sharp decrease in federal funding for charitable legal services for lower income citizens, Wyoming, along with every other State Bar, is looking for ways to make up the difference. Throughout the past year, the Board of Commissioners has had discussions with the State's only remaining Legal Services Corporation Office to try to gauge the extent of unmet legal services in Wyoming and respond within the viable resources of the Bar. One way in which the Bar has responded to this crisis is to hire a director for the State's Interest on Lawyers' Trust Accounts program, Jim Tiemann. Mr. Tiemann has been successful in raising the level of IOLTA participation and income with the result that more money will be available this year for grants to charitable legal services than ever before. Other options the Bar is considering include the assistance with statewide coordination with pro bono referrals and the encouragement of legal professionals to aspire to higher levels of pro bono service.

In its continuing effort to work with local bars to improve the image of attorneys and the administration of justice, the State Bar helped coordinate a num-

ber of community programs in the past year. Some of these were the State Mock Trial Competition, coordination and assistance in drafting rules for the State's Teen Court Program, circulation of information and programs for the annual May 1 Law Day celebration.

In this vein, the State Bar has also conducted a statewide survey of funding for county law libraries. The survey takes into account which types of legal resources are available to county practitioners and to the public. In the future, the State Bar plans to complete its review and convey it to the Supreme Court with possible recommendations on implementing some type of uniform system of funding for a minimum collection of legal resources in each state county.

To facilitate these and other joint projects, the Bar held its second annual Bar Leader Forum for county bar leaders and district court commissioners at this year's annual convention. These and other such meetings will try to coordinate and maximize the limited resources of the legal profession to meet public demands and continue to improve the conditions for practicing law in Wyoming.

In its efforts to continue to respond to the needs of different groups of attorneys in the Bar, the Commissioners also approved the bylaws and creation of a Governmental Lawyers Section this year. Attorneys in government service account for about one-fifth of the practicing bar, and it is hoped that this section will assist the Bar in structuring educational programs and other activities which are directed to serving this important faction of the Bar's membership.

At the conclusion of the President's Report, Secretary-Treasurer Paul J. Drew provided a brief report of the State Bar's income and expenses, noting that the anticipated revenue for the fiscal year just ending was expected to be

\$20,000 over expenses. Mr. Drew submitted the following comparative report on the Bar's past and projected income and expenses.

**WYOMING STATE BAR: FINAL FY 1996-97 BUDGET & THREE-YEAR
COMPARISON REPORT**

	1994-95	1995-96	1996-97	1997-98
	ACTUAL	ACTUAL	PROJECTED	PROPOSED
REVENUE				
General Fund	\$400,904	\$437,756	\$456,080	\$469,600
Communications	\$22,307	\$25,772	\$25,346	\$26,300
Annual Meeting	\$69,005	\$66,214	\$58,000	\$58,000
Board of Prof. Resp.	\$3,423	\$9,481	\$16,610	\$8,000

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Bar Committees	\$4,569	\$0	\$0	\$0
Restricted Income	\$5,708	\$15,237	\$17,619	\$17,600
TOTAL REVENUE	\$505,916	\$554,460	\$573,655	\$579,500
EXPENSES				
General Fund	\$328,901	\$388,464	\$376,633	\$408,588
Communications	\$63,589	\$66,383	\$65,607	\$70,100
Annual Meeting	\$68,225	\$51,331	\$50,400	\$50,400
Board of Prof. Resp.	\$19,314	\$15,068	\$8,400	\$9,700
Bar Committees	\$8,751	\$21,125	\$18,968	\$18,070
Restricted Expenses	\$12,500	\$14,103	\$31,135	\$11,500
TOTAL EXPENSES	\$501,280	\$556,474	\$551,143	\$568,358

Following the regular business reports, members present considered the following resolution presented by the Sixth Judicial District:

RESOLUTION supporting legislation to require Justices of the Peace to be licensed to practice law in the State of Wyoming.

WHEREAS, membership of the State Bar believes that it is necessary that the Justices of the Peace in the State of Wyoming have a broad knowledge of legal principals in order to assure the ability to perform their responsibilities in a manner that is consistent with proper administration of justice;

NOW THEREFORE be it resolved that the membership of the Wyoming State Bar supports the passage of legislation to require Justices of the Peace in the State of Wyoming to be licensed to practice law in the State of Wyoming, and further that effort be put forth by the Wyoming State Bar to insure the proper drafting of such legislation and to educate the populace and the legislature of the need for this legislation, and to work for the passage of such legislation.

The resolution was adopted by the majority of members present, and Officers directed that the resolution be provided to the Bar's Legislative Committee for further action.

President-Elect Paul J. Hickey reported to the membership that the State Board of Commissioners anticipated work in the next year to amend existing Rule 6.1 of the Supreme Court's Rules of Professional Conduct for Attorneys-at-Law to encourage the performance of 50 hours annually of pro bono service to lower income citizens. Mr. Hickey described funding cuts to agencies serving the State's lower-income population, and stated the Bar would work in the next year to help provide adequate services and

access to the courts for these citizens.

Vice-President Timothy J. Kirven informed the membership about work to draft a better definition of the practice of law that is ongoing. He described problems with consumer protection and the unauthorized practice of law, including appearances in Wyoming courts by attorneys not properly admitted. In regard to the latter issue, Mr. Kirven told the membership the Board of Bar Commissioners would consider recommending fees for pro hac vice admission in the next year as a way to ensure funding to investigate ethical complaints lodged against out-of-state attorneys admitted on a case-by-case basis in Wyoming.

As a final order of business, Mr. MacMillan presided over the presentation of annual awards, including the award for outstanding pro bono and community service respectively to Gillette Attorney Peggy Taylor and recipients Suzanne H. Lewis of Laramie and Daniel E. White of Cheyenne.

No further business came before the general assembly, and the meeting was adjourned.

CRIMINAL PATTERN JURY INSTRUCTION COMMITTEE REPORT

Jon Forwood, Chairman

The Committee issued the revised edition of the Criminal Pattern Jury Instructions in the summer of 1996. Since that time, we have met at the law school to discuss comments received by Committee members from attorneys and judges throughout the state as to the new instructions. Thus far, the comments have been relatively sparse. We resolved to continue to monitor the comments, to monitor supreme court slip opinions, and to meet as required to answer or resolve any conflicts or problems as may be reported. We also discussed informally with Professor Saxton, the interim findings of his jury project and look forward to a final report to see if there are certain areas or particular instructions we can rework that will be of greater assistance to criminal juries.

As far as I am aware, all Committee members wish to continue in their present position. It is our view that this is a continuing Committee that should address problems as they arise and not wait for another twenty years for the next revision.

BOARD OF CONTINUING LEGAL EDUCATION

Stephen H. Kline, Chairman

The Wyoming State Board of Continuing Legal Education has met three times since September 1996. During this period, The Board reviewed numerous appeals

by Bar members who had been denied CLE credit for various programs which they attended as well as requests for extensions and waivers. Significantly, the Board also recommended two rule changes to the Commissioners and supreme court.

Appeals of denial of credit by Bar members continue to follow certain patterns. By far, the most prevalent appeal comes from individuals who have attended specialized conferences such as mediation, employment, or utility seminars which have been put on by business groups and whose focus is primarily the education of non-lawyers. While parts of these programs are often taught by lawyers and lawyers attending these seminars may well receive much educational value, they do not meet the requirement of the Bar rules. Rules require that programs for which credit is sought must be primarily put on by lawyers and primarily intended to educate lawyers. The Board encourages anyone who questions whether a seminar qualifies for CLE credit to seek a ruling prior to attending the program, especially if the credit is sought for attendance of expensive multi-day conferences whose focus is intended to reach multiple groups.

The Board has been active in attempting to update the rules regarding CLE. The Board proposed two new rules to the Commissioners and the supreme court. The first rule would require that one hour of the CLE requirement each year be directed to a course in legal ethics. The second rule would allow a portion of the hours each year to be obtained through self-study through an electronic medium.

CLE statements were sent on March 18, 1997 to active attorneys. The State Bar office received an average of 375 applicants for CLE credit, of which 360 were approved and 15 denied per month. The Board denied seven appeals for credit.

As of May 1997, a number of Wyoming State Bar Members were delinquent for one year of CLE requirement. As of the same date, 52 Wyoming Bar members were delinquent for two years of CLE requirement. The Board did not suspend any attorneys for CLE delinquency this year.

The Wyoming State Bar office received an average of 30 Sponsor Accreditation Applications per month, of which 19 were approved and one denied.

Members of the Board of Continuing Legal Education are: Stephen H. Kline, Chairman, Mark Macy, Bonita Brinkerhoff, Deborah Kellam, William Hiser, Julie Tiedeken, Catherine MacPherson, Brad DeKrey, and Forrest "Skip" Gillum.

BOARD OF PROFESSIONAL RESPONSIBILITY

Charles S. Chapin, Chairman

September 12, 1997

- I. Cases carried forward from prior years: 54
- II. Cases opened in 1996: 44

III. Cases dismissed in 1996:

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:	1
Cases opened in 1993:	1
Cases opened in 1994:	4
Cases opened in 1995:	11
Cases opened in 1996:	12
Total	30

b. Dismissals by Rule V(c) Procedure (Adopted May 10, 1993)

Cases opened in 1995:	1
Cases opened in 1996:	7
Total	8

c. Total Calendar Year 1995 Dismissals (Standard Plus Rule V(c)):
38

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. Also, note that two cases not on the active docket (99-88, 9-90) regarding two attorneys on disability inactive status were closed because of the attorneys' deaths.

IV. Discipline Imposed in 1996:

Disbarment	3	
Suspension	0	
Public Censure	3	
Private Reprimand	0	
Informal Admonition	1	
Probation	2	(part of overall sanction)
Interim Suspension	0	
Felony Suspension	0	
Disability/Inactive	0	

Note: These dispositions involved 11 files relating to 7 attorneys.

Note: 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.

Year to Date 1997 (through Sept. 12, 1997)

I. Cases carried forward from 12/31/96: 49

II. Cases opened: 57 (as of 9/12/97)

Note: We have approximately two items for which files may be opened as of Sept. 12, 1997.

III. Cases dismissed:

a. Dismissals by Standard Bar Counsel Motion and Board Review/Determination

Cases opened in 1990:	0
Cases opened in 1991:	0
Cases opened in 1992:	0
Cases opened in 1993:	4
Cases opened in 1994:	2
Cases opened in 1995:	6
Cases opened in 1996:	12
Cases opened in 1997:	17

Total	41
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b. Dismissal by Bar Counsel – Rule V(c) Procedure

Cases opened in 1992:	0
Cases opened in 1993:	0
Cases opened in 1994:	0
Cases opened in 1995:	0
Cases opened in 1996:	1
Cases opened in 1997:	5

Total	6
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Note: The 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.

c. Dismissals by Board (1990 case): 1

d. Total 1997 Year to date: 48 (as of 9/12/97)

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: 3 (involving 3 files)

V. Discipline Imposed:

Disbarment	0
Suspension	0
Public Censure	1
Private Reprimand	3
Informal Admonition	1
Probation	1 (part of overall sanction)
Interim Suspension	0
Felony Suspension	0
Disability/Inactive Suspension	0

V. 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 the like. Some are addressed to the various courts but shipped to us.

The topics cover the gamut including undescribed items, legal problems, professionalism, fee disputes, criminal matters and 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.

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 1997 year-to-date (9/12/97) total 9 items. Other handled items are reflected in General Correspondence File listings which year-to-date totals 134 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.

CASES OPENED SINCE LAST ANNUAL REPORT
(Case Nos. 37-96 to 44-96; 1-97 to 57-97)

I.	Number Pending*:	35
	Number Dismissed:	27
	Tried and/or Discipline Imposed	
	(or Disability/Inactive Status)*:	4

***One pending case had a formal hearing on non-cooperation for which no formal decision has yet been issued. Notwithstanding any Board determination of misconduct and sanction which may ensue, the underlying allegations will remain for resolution as an open case file.**

II. Type of Cases Giving Rise to Complaints

Abstract and Title Opinions	0
Adoption	0
Bankruptcy	0
Collections	3
Corporations	0
Criminal	10
Contract	0
Domestic Relations	19
Estate Planning	1
Guardianships	0
Governmental	0
Labor Law	12
Minerals	0
Oil & Gas	0
Personal Injury	1
Probate	2
Partnership	0
Real Estate	8
Trust	0
Workers' Compensation	3
Wills	0
Tax	0
Other	5

III. Type of Initial Complaint

Deceit or Misrepresentation	13
Incompetent Representation	19
Lack of Diligence	26
Conflict of Interest	10
Fees	5
Refusing to Follow Client's Wishes	7
Lack of Communication	28
Harassment	5
Acting Without Client Consent	4

Adversely Reflecting on Fitness to Practice	14
Ex Parte Contact	0
Counseling Illegal Conduct	0
Ineffective Assistance of Counsel	0
Breach of Confidentiality	5
Refusal to Deliver Accounting or Files	4
Tampering with Evidence	1
Collusion	0
Frivolous Claim	2
Refusal to Pay Deposition or Expert Fee	0
Other	24

Comments:

1997 year-to-date has seen an increase in grievance filings. With three-and-a-half months left in the calendar year, some 57 investigation files have been opened (compared to 44 total files in 1996, 39 total files in 1995, 47 total files in 1994, and 101 total files in 1993). Complaints tend to accrue in a non-uniform manner so it is unclear what the year-end total will be. On the other hand, general correspondence and alternative dispositions are down roughly by one-third. As of Sept. 12, 1997, there are five pending motions to dismiss and a formal trial scheduled for the following week. In addition, there is one matter already tried awaiting final Board order.

The current total open case file docket totals 53 files. Of those 53 files, only eight are over two years old. Some of those files are on the trial docket and some of them are stayed because of things like bankruptcy appeals of underlying factual situations in legal matters. The continued static load of approximately 50 files is attributable to continuing front-end screening and analysis afforded by two disciplinary attorneys. Some disputes continue to be resolved by telephone, via alternative disposition or referral to other entities such as the Committee for the Resolution of Fee Disputes.

The Assistant Bar Counsel position was vacant from Sept. 5, 1996 until Jan. 13, 1997. Utilization of a full-time Assistant Bar Counsel continues to be a very effective tool in resolving cases and keeping the total pending caseload at the reduced overall level reflected over the past four years. The Board's focus and 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.

Fortunately, calendar year 1997 thus far has seen a reduction in more serious disciplinary allegations and matters. The year 1997 has included the adoption of new Rules of Professional Conduct concerning attorney advertising (Rules 7.1 through 7.4) together with a new misconduct rule regarding licensed attorneys knowingly utilizing the services of disbarred or suspended attorneys (Rul 8.4(g)).

The Board of Professional Responsibility through Bar Counsel has made a concerted effort to collect some of the outstanding costs in concluded disciplinary matters. A sum of over \$16,000 of outstanding grievance costs and expenses was

collected and returned to the Bar's books of account. Some outstanding costs remain poor prospects for collection. In one instance, an individual filed for bankruptcy discharge of such costs.

CLIENT SECURITY FUND COMMITTEE

Bruce Hellbaum, Chairman

Unfortunately, this was a fairly busy year for the Client Security Fund Committee. The Committee heard and decided eight cases. Although there was a heavy caseload, it does not appear that there is a wide spread problem among members of the Bar and their clients, since all eight cases decided by the Committee were the result of one attorney. The claims were handled by appointing a member of the Committee to investigate the claim, talk to appropriate persons with knowledge, and make an initial recommendation to the other Committee members. Once the initial recommendation was made, the Committee would meet to go over the recommendation, allowing for Committee members to question the initial recommendation or to support it. After all questions and comments were heard, a motion would be made regarding award and a vote was taken.

In addition to hearing and deciding claims, the Committee also considered other issues. The Committee has instituted procedures to ensure that the attorney involved in any claim filed with the Committee is properly notified through certified mail and that proof of service becomes part of the package sent out to the Chairman and other Committee members. This is to ensure that there are no procedural problems in hearing cases and rendering decisions.

Secondly, the Committee had discussions about Rule I.B.2. and Rule III.C. Specifically, if awards by the Committee had to be approved in full or denied, or whether the Committee could make a determination as to the value of services rendered and approve an appropriate award. Committee members Kennard Nelson and James Schermetzler were to look at the Rules and recommend changes, if they thought it was necessary to clarify the powers and duties of the Committee. At this point, that is still under review and those Committee members are working on a recommendation regarding the wording of Rules I.B.2. and III.C.

The current members of the Wyoming Bar should be commended for the fact that all of the claims filed with the Committee were the result of one attorney, now disbarred. It appears that the members of the Wyoming Bar maintain good, positive and trusting relationships with their clients. Had it not been for the activities of one member, the Committee would have had a quiet year.

COMPUTER AND TECHNICAL COMMITTEE

Scott Skavdahl, Chairman

Over the last six months, the Computer and Technical Committee has met approximately four times to discuss the creation of a web page for the Wyoming State Bar. In addition, subcommittees have met several times to discuss their tasks. After reviewing various options, the Committee determined that a web page should be formed through the Wyoming Supreme Court's Internet site. The web site should be up and running at the time of State Bar's annual convention. At this point the site contains information concerning the Wyoming State Bar, its committees and various information on how to contact the State Bar. The next task for the Committee will be to determine what additional materials should be made available on the web site.

I have found Mr. Lewis and the other members of the Computer and Technical Committee to be invaluable in working together as a team in establishing a web site for the Bar. All members of the Committee have contributed their unique knowledge and views in assisting the Committee.

I would note that Mr. Timothy Kearley's term on the Committee expired in September 1997. I have found Mr. Kearley's knowledge and input to be invaluable along with the other Committee members. Mr. Kearley is the College of Law librarian and has extensive knowledge regarding the Internet and other electronic media. I also note that my term expires this year. I would be willing to continue on the Committee if the Commissioners feel that my input is helpful.

As far as the future goals of the Computer and Technical Committee, I see it as eventually addressing the issue of electronic filing as is now being tested by some federal district courts.

UNAUTHORIZED PRACTICE OF LAW COMMITTEE

Fred Dollison, Chairman

The Committee, continuing along a path trod in 1995, has remained in close contact with the Board of Commissioners in joint efforts to develop a workable definition of the practice of law. The main thrust in this area involves a wholesale re-write of Rule 11 of the Wyoming State Bar Rules.

Another piece of business involves litigation against two corporate kit providers whom the Committee feels are engaged in the practice of law in the promotion and sale of corporate shells to lay consumers. The Committee retained Kate Fox of Davis and Cannon to investigate and to proceed with litigation, if necessary, to enjoin these activities. Those actions are underway at this time.

The Committee has also turned over to the disciplinary arms of various state bars certain attorneys from those states who have entered appearances in Wyoming courts without first being admitted for that purpose. To date, it is uncertain what results will arise from this action. It was the Committee's decision to make such referrals because the foreign attorneys are not, usually, physically in Wyoming and, thus, are immune from the ordinary processes available to the Committee.

Additionally, the Committee continues to pursue various and sundry in-state providers of legal services. Most such cases are resolved shortly after contact is made. Occasionally, an injunction action is necessary.

LAWYER MENTORING COMMITTEE

Richard P. Boley, Chairman

Letter to John Burman:

I enjoyed very much speaking with you . . . about the possibility of the Lawyer Mentoring Committee participating in the transition that takes place in the development of law students into lawyers. . . . The purpose of this letter is to outline a possible structure for such additional participation.

This letter is a product of all Committee members: Drake Hill, Wendy Sweeney, H. Steven Brown and myself. I know you understand that the Committee and the State Bar, through this offer, are not attempting to intrude into an educational experience at the law school, of which we are very proud. Rather, we simply wish to explore the possibility of expanding the involvement in the law school of participating attorneys; an involvement which has already long been invited by many professors over the years. After all, for most Wyoming lawyers, such involvement would be a homecoming.

The primary element which is important to the work of a mentor is the values component. We believe that the practicing profession does very little to provide guidance as to what it should mean to be a good lawyer. Of course values training begins at birth and continues until we die. By the time students reach law school, they have formed a great many attitudes. We cannot affect their training at home. But when they enter law school, the opportunity still exists to help develop values which will affect how they view their work and chosen profession. As such, we propose that whatever form the mentoring idea takes, that we not lose the opportunity to conduct a discussion on honesty, courtesy, reliability, commitment, and sometimes, even acting as a moral guide to our clients. Lawyers can be quite influential because in their dealing with clients, opposing parties, and in other contexts, they can reinforce or diminish moral standards. In attempting to reach law students, the objective is to have a positive influence before other forces (such as billing pressure and the pressure to serve their clients' ends) begin to take hold and swallow the more idealized view of how lawyers should conduct themselves.

Of course, the work would only begin in law school. It is the responsibility of the organized bar to reinforce the profession's values once lawyers enter into practice. The organized bar must make sure that a culture of integrity, courtesy, devotion, and trustworthiness pervades the bar.

The overall goal of participation by the community of Wyoming lawyers would be to help inculcate "good lawyer" values while bringing practical experience to issues of professional responsibility, professional liability, client relations, trial practice, and transactions. The basic theme of such participation would be to go beyond the rules of professional conduct by stressing through problem solving exercises and other teaching methods the career long importance of the qualities discussed above.

One method of involvement in practicum courses could call for the involvement of the Lawyer Mentoring Committee, directly through the careful selection of Wyoming attorneys, in the formation of practice exercises so that the broad themes mentioned above are woven into the problems presented to students. However, with or without participation of the Committee in problem development, the Committee would offer its services in any way you and individual professors would like. We believe the Committee can be of assistance to students and professors in discovering and learning to deal with the professional responsibility, professional liability and client relations issues which are presented by practice problems in a manner that should be expected of an experienced attorney practicing in Wyoming. We also should not lose sight of the fact that many in Wyoming's judiciary might well relish the opportunity of positively impacting those who ultimately will appear before them. One of the biggest complaints most judges have about lawyers is the lack of civility within and outside of the courtroom.

To augment this approach, another idea might be to adopt a "Bridge Course" approach. A "Bridge Course," as I understand it, takes the form of an orientation session for freshmen law students. Although more of a lecture based format, it would provide a place to begin the discussion of values. The Committee has heard that students have reacted enthusiastically to values based discussion and such a course has provided a building block for later discussions of professional values and ethics in other jurisdictions.

I realize that this is an extremely broad brush presentation of the services which the Lawyer Mentoring Committee might be able to offer the law school. I know that you understand from our conversation that we consider our offer to be only one of assistance to the school and professors. As I mentioned earlier, the practicum courses at the law school, as with all other courses, are the responsibility of the professor charged with each class. As we appreciate the level of that responsibility and while we do not wish to interfere with that responsibility in any way, we are hopeful that some of the professors will be willing to avail themselves of our offer, if only on a trial basis.

The State Bar, through the Lawyer Mentoring Committee, hopes to assist developing in new lawyers an understanding that practicing law is not the same thing as playing professional football. We hope to help young lawyers understand

that Vince Lombardi's adage "winning isn't everything, it's the only thing" should not be the credo of those making a career in law.

LEGISLATIVE COMMITTEE

Brent R. Kunz, Chairman

Throughout the 1997 Fifty-Fourth legislative session, and a Special Session, the Committee carefully monitored pending legislative issues which would affect the Bar. Efforts to increase the salaries of the judiciary were not successful. Unfortunately, many legislators do not hold either the Judiciary or the Bar in high esteem. The theme, "Proud to be a Wyoming Lawyer" is very appropriate for our legislative friends. We need to be involved with the Legislature and the public to build trust and confidence in the Judiciary and the Bar. The Budget Session for the Legislature is slated for February 1998. We are monitoring interim study issues.

YOUNG LAWYERS DIVISION

Randall B. Reed, Chairman

Our Division has three standing committees: Nominating/Membership, Continuing Legal Education, and Program. The work of our Division in the last year has mainly consisted of increasing our membership, improving the Bridging the Gap program presented annually at the State Bar Convention, and completing our Judicial Handbook. We have experienced some difficulty in increasing our membership which we feel is due mostly to the inability to significantly involve the members in the functions of the Division. It is difficult to hold regular membership meetings due to the expense and time associated with personally attending the meetings. We have members who are enthusiastic about becoming more involved with our Division, but we have not been overly successful in taking advantage of the willingness of our members to contribute.

The Bridging the Gap program is now in its fifth year. The majority of the time of our Division is spent on organizing and attempting to improve this program. The feedback we have received from the members of the "Senior" Bar, others who have attended the Bridging the Gap seminars and especially the attendees, has been overwhelmingly positive. This year we have recruited many new presenters, many of which have submitted new material to use in their presentation. I know the current members of the Executive Council are committed to the continued success and improvement of this program and we welcome any input you may have.

The Division also has a Judicial Handbook project in the works. The Young Lawyers Judicial Handbook, when completed, will contain information from each State Judicial District Court about matters that a young lawyer (or any other practitioner) may not find readily available elsewhere or in one comprehensive source. It

will include such matters as whether the Court will accept facsimile filings, the manner in which the Court reviews and attempts to move his or her docket, the manner in which the Court handles pretrial conferences, requests for setting, Motions in Limine, and certain other idiosyncrasies particular to each judge. Our Division received a \$500 grant from the ABA for this project.

The ABA also has a Young Lawyer's Division which is similarly governed by an Executive Council. The ABA-YLD Executive Council consists of 51 members representing 34 districts throughout the country. Wyoming shares a district with Colorado. The district representative's overall function is to act as a liaison between the ABA-YLD and the local affiliates. The district representative serves a term of two years and historically, Wyoming and Colorado have elected a representative on a rotating basis. This past August, I was elected to that post.

While the district representative plays a role in many policy-making, programming, and social activities, one very significant responsibility pertinent to Wyoming is the coordination with the Federal Emergency Management Agency (FEMA) to provide legal assistance to victims of natural disasters. When the President declares a "major disaster" in any part of the country, federal assistance is made available to supplement the efforts and resources of state and local government and voluntary relief organizations. This federal assistance is coordinated by FEMA and includes the furnishing of free legal services to low income victims. Under an MOA with FEMA, the YLD is responsible for ensuring that a network is in place in the event that FEMA requests delivery of legal services. Each district representative is required to participate in special training sessions to assist in the performance of this function. The YLD in Wyoming has developed a written plan to implement the statutory requirements of the Act.

On behalf of the YLD of the Wyoming State Bar, I would like to offer our assistance in promoting the public service programs that address issues of Wyoming's youth, particularly the Teen Court and juvenile justice initiatives. Those are programs in which other YLDs around the country have been involved and which I believe our Division could be of considerable assistance.

**PROCEEDINGS OF THE
WYOMING STATE BAR CONVENTION
1997**

BOARD OF COMMISSIONERS

WYOMING STATE BAR OFFICERS

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Paul J. Hickey, President-Elect

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James P. Schermetzler, Sixth District

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John B. Patrick, Eighth District

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Paul J. Hickey, President

Timothy J. Kirven, President-Elect