

1999

Report of the Chief Justice of the Wyoming Supreme Court

Wyoming State Bar

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PROCEEDINGS OF THE 1998 WYOMING STATE BAR CONVENTION

WYOMING STATE BAR OFFICERS

Paul J. Hickey, President

Timothy J. Kirven, President-Elect

Paul J. Drew, Vice-President

Mark W. Harris, Secretary-Treasurer

WYOMING STATE BAR COMMISSIONERS

Robert W. Tiedeken, First District

Catherine MacPherson, Second District

Richard H. Honaker, Third District

Robert W. Connor, Jr., Fourth District

Randy L. Royal, Fifth District

James P. Schermetzler, Sixth District

Ann M. Rochelle, Seventh District

Kari Jo Gray, Eighth District

Timothy C. Day, Ninth District

OFFICERS ELECTED AT THE 1998 ANNUAL MEETING

Timothy J. Kirven, President

Paul J. Drew, President-Elect

Catherine MacPherson, Vice-President

Mark W. Harris, Secretary-Treasurer

Richard M. Davis, Jr., State Bar Delegate to ABA

NEWLY ELECTED COMMISSIONERS

Warren A. Lauer, Second District

Thomas E. Lubnau II, Sixth District

The 1998 Annual Meeting of the Wyoming State Bar was convened by President Paul J. Hickey at 10:00 a.m. on September 18, 1998, in Cheyenne. The following reports were delivered to those in attendance by Wyoming Supreme Court Chief Justice Larry L. Lehman, University of Wyoming College of Law Dean Jerry L. Parkinson and Wyoming State Bar President Paul J. Hickey.

REPORT OF THE CHIEF JUSTICE OF THE WYOMING SUPREME COURT

Chief Justice Larry L. Lehman

I first want to express my appreciation on behalf of the Wyoming courts for the opportunity to report not only on the past activities of the court, but to share our vision for the future.

I also want to acknowledge, before I begin, the justices with whom I serve. Since July of this year, I have been afforded the opportunity to assume the role as chief justice. My role is supported by their collective wisdom and silent leadership. I want each and every one of them to know of my appreciation, admiration, and affection, and to acknowledge publicly that no chief justice can lead alone.

I also want to convey to you as members of the bar our commitment to not only continue, but to enhance our relationship. I say this because, just as every chief justice who has served before me, I quickly learned that our most important ally, our true partner in the search for an effective system of justice for our citizens, is each and every one of you as members of the Wyoming Bar.

I know you are all aware that our good friend Justice Taylor is soon to celebrate a birthday of great statutory significance. He has graced this Court with astute reflection, collegiality, common sense, and his unique brand of humor. We will miss him, just as I'm sure you will. Justice Taylor, as the first executive director of the Wyoming State Bar, brought with him a consummate understanding of your function and worth. He has shared that understanding with us. And, while impressed with your service to our profession before, his instruction has vastly increased my appreciation of the work that you do.

In the same breath, we welcome Bill Hill as a new member of the Wyoming Supreme Court. We look forward to working with Bill, and I can assure you of his commitment to continue Al's legacy.

Without waiting for the statutory mandate, Judge Spangler has also opted to leave the judiciary after serving the bench for over 18 years. The Governor's announcement of his replacement is imminent. I want to acknowledge both Justice Taylor's and Judge Spangler's contributions over the years, and wish them both only the very best.

I know you are all aware that the legislature approved an increase in judicial salaries this past session. In addition, the legislature adopted a new judicial retirement plan. The successful adoption of those two measures is due in large part to the support and efforts of the members of the Wyoming Bar. Those of us now in service thank you, and we hope that these benefits will engender a renewed interest among you to serve as members of the judiciary.

Last year, due to your efforts and those of Justice Taylor, I witnessed the seeds of a new relationship with our legislature. That beginning will not be lost by inattention. Just as adversaries can—without yielding a client's interest—maintain respect for each other and work together to facilitate the process, so can independent branches of government forge relationships to benefit the citizens we all serve. In that spirit, over the next several years the court will institutionalize an ongoing dialogue with the Governor and the Management Council.

I am pleased to report that the Wyoming courts have better access among each other and the Supreme Court than ever before. Complete electronic communications exist among all county and J.P. courts, and 14 of 17 district courts. That was one of Justice Taylor's priorities during his term as chief, and it is our goal to complete all connections before he leaves in November.

Due in large part to the initiative of Judge Stebner, we have secured a grant from the State Justice Institute for the preparation of a bench book to be used in capitol cases. That project is moving forward, and we anticipate the result will be a uniform approach by our courts to these most demanding cases.

I am not going to inundate you with numbers of filings, other than to say that Supreme Court appeals have increased. I am delighted to report, however, that our clearance rate for cases has increased at an even higher rate. I have recently returned from the National Center for State Courts, where I received a commitment to assist us in developing even more mean-

ingful performance standards for the future.

Overall, filings in the district courts have remained fairly consistent. Nonetheless, an increase in criminal and juvenile filings have resulted in more demands upon our judicial resources. Finally, while the filings of family violence actions in county courts have doubled since 1990, county courts' clearance rates also continue to increase as we increase our efficiency.

That is a summary of where we have been. I now want to talk about where we are going. As we wind down this decade and make plans for the next century, we find ourselves facing countless challenges and opportunities.

A word many times associated with challenge or opportunity is *change*. And often that word may invoke an initial response of uncertainty; fear; and, in a system steeped in tradition, outright resistance. But our constitutional duty to provide efficient and equal judicial services can no longer be measured by the same standards of earlier eras.

It is our hope that resistance to change will fade in the light of thoughtful suggestions which will enhance our judicial functions. We must take charge of our own future and exercise vigilance in monitoring the judicial system as a service to our citizens. We need to continually assess our effectiveness.

In recognition of the need to change how we operate within the Supreme Court, Holly Hansen has been appointed as the Wyoming State Court Administrator. Many administrative duties, for so many years assumed by the Chief Justice, will now be addressed by those trained and equipped to deal with administrative matters. We hope this change will bring a continuity and consistency of administrative service without unnecessary interruption generated by a periodic change of chief justices.

Hand in hand with the rest of those in the computerized workplace, one of our biggest tasks is resolving the dilemma created by the zeros in the year 2000 and its impact on the case management system in the county and justice courts. We have worked for over a year to identify our needs and to evaluate our alternatives. After exploring numerous options, we are now negotiating with vendors. Although in a race with the clock, we hope to have applied ink to a contract within the next couple of weeks.

For the first time in my memory, the judiciary has taken the lead in establishing a Judicial Planning Commission. Legislation passed last year, under the title of the Judicial Reorganization Act, charged the commission

with examining the structure of our courts in an effort to determine if we are providing our service in the most beneficial manner to our citizens. I am proud and excited that the judiciary has taken the lead in this effort.

Does it mean change? I don't know. But what I do know is that there will be no change just for the sake of change. Perhaps we will discover we can do no better. No matter the result, I am confident that our constitutional charge of providing judicial services to our citizens in an equal and efficient manner will remain the top priority during the planning process.

In conjunction with the Judicial Reorganization Act, the Supreme Court has contracted with the National Center for State Courts for a weighted caseload study. The purpose of the study is to give us an objective, scientific, and statistically valid model for determining the average amount of judicial resources consumed by certain case types and to assess the judicial resources needed in Wyoming to service the caseload. This study will provide us with essential information allowing an objective analysis of our system that is now unavailable. In turn, we will be able to use this information to support future requests for judicial resources.

Several years ago, the Supreme Court established a Judicial Branch Advisory Council. Its purpose was to improve communication throughout the courts and help us to address the many policy issues we face on nearly a daily basis. That committee has enjoyed a breather, but we plan to interrupt that hiatus in the upcoming months with what we feel will be an important addition. We want to add members of the bar to that council so that when policy recommendations are made to the Supreme Court, your input will be an element of the proposal, rather than a response after action has been taken.

I am sure you are aware of the study of our jury system, also initiated by the Supreme Court. We cannot forget the valuable service juries provide to all of us on a daily basis. They serve without a voice, without a power base, and without an option. Yet we introduce them into an unfamiliar system, armed with nothing but instructions based upon distinctions in law developed over hundreds of years, and we expect sound decisions.

Again, the uncertainty of change is inherent in the effort to improve. I am confident, however, that the courts and the Wyoming Bar will face this challenge with the courage and determination to reject unwarranted resistance. The concept is not to cause damage to the jury system, but to make it more meaningful for those required to serve, and perhaps to provide jurors with better opportunities to make reasoned and informed decisions based upon a true understanding of the evidence and the application of the law.

In summary, we are poised to address our responsibility to provide every citizen with a forum in which every dispute is resolved with a thoughtful and considered resolution. In addition, we recognize our role in the administrative process to provide our courts with the organization and the tools they need to accomplish those duties. Finally, we accept our responsibility to provide a system that will assist all of you in your dedicated efforts on behalf of the people of Wyoming.

Thank you for this opportunity, and I look forward to working with all of you in the years ahead.

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

It is my great pleasure to be here with you this morning to report on the state of the University of Wyoming College of Law.

I would like to begin with a quote many of you may have read recently in your local newspapers: "If every state were to have only one law school, Wyoming's would serve as an ideal model. The UW law school is very small, very inexpensive and very solid." I'm proud of that quote. It comes from the 1998 version of the Princeton Review's annual survey of American law schools. Each year the Review surveys over 20,000 students in law schools around the country. It is the only survey I know of that directly solicits the opinions of students themselves about the quality of their educational experience. Based upon comments the Review received this past year, it ranked the UW law school fourth among 170 American law schools surveyed in "quality of life." From what I've seen in the short two months I've been on the job as dean, I think the conclusion of the Princeton Review is right on the mark.

The "quality of life" in a law school, of course, derives primarily from the quality of the *people* associated with the school. I want to talk briefly about some of those people:

The Students

We continue to maintain a student body of high caliber. In an era of substantially declining law school applications, many law schools no longer can make that claim. UW can because of its size. While the number of our applications also has fallen off rather dramatically in the last several years, particularly among nonresidents, our small size has allowed us to remain selective in admissions. Our current first-year class has an average LSAT score of 152 (still significantly above the national average) and an under-

graduate grade point average of 3.25. These figures represent a slight dip from last year, but certainly are no cause for alarm. I do believe, however, that we need to become more aggressive in our student recruitment efforts. We have a lot to offer, and we need to market ourselves better.

The current first-year class, at 86 students, is one of the largest we have enrolled in recent years. That was not by design; we still target 75-80 in a class, but this past year more students accepted our offers of admission, which is not such a bad sign.

Among our students this fall is "Sasha II," Alexander Solokov, the second of the College's Ewing T. Kerr/Rotary Fellows. Like his predecessor, Sasha is a young lawyer from Saratov, Russia, who is able to spend several months in Wyoming through the generous sponsorship of the University of Wyoming, Rotary Clubs throughout the state, and various Wyoming bar associations, including the State Bar. Sasha is currently taking classes at the law school, and beginning in December, he will move to Casper to work for two months with Judge Downes. Special thanks to Judge Downes, Dave Nicholas, and John Burman for their efforts in making this initiative possible.

The Faculty

The College of Law has an exceptional faculty which is engaged in first-rate teaching, scholarship, and service at local, state, national, and international levels. Let me share just a few highlights from the past year.

Centennial Distinguished Professor Dee Pridgen returned to the law school in August following a year as a Fulbright Scholar at Tokyo University in Japan. A highly regarded scholar in her field, Professor Pridgen taught classes and conducted research in the areas of consumer law and antitrust law.

Professor Elaine Welle was one of only six faculty members at the entire University to receive the prestigious John P. Ellbogen Award for Meritorious Classroom Teaching.

Professor Welle was joined by two of her law school colleagues, Winston S. Howard Distinguished Professor Harvey Gelb and Associate Dean Debra Madsen, in receiving Excellence in Advising awards from the University's Center for Academic Advising.

Professor Gelb currently is participating in the development of an innovative series of ethics seminars the College of Law will be presenting this fall in conjunction with the Wyoming Council for the Humanities. The

seminars, which will use great works of literature to focus on legal and moral ethics, will be presented in Casper (October 16), Laramie (October 31), Jackson (November 13), and Sheridan (November 20). Each seminar will be worth six CLE ethics credits.

Professors Ted Lauer and Brad Saxton are currently serving at the request of the Chief Justice on the Wyoming Supreme Court's newly appointed Commission on Jury System Improvement, a project which has the potential to fundamentally improve the functioning of the jury system in Wyoming. Professor Saxton has worked over the past few years with many of Wyoming's district and county court judges, and much of the Commission's work has its genesis in Professor Saxton's pioneering efforts. I am also pleased to report that Professor Saxton, who is serving as Chair of the Commission, received tenure from the University during the past academic year.

Professors Deb Donahue and Mark Squillace each have authored two new books that were either recently published or will be published in the coming months.

Professor and former Dean Art Gaudio has returned to the College of Law following two years of service as Deputy Consultant to the American Bar Association Section on Legal Education in Indianapolis. Professor Gaudio is teaching a full load of classes, and we look forward to tapping into his expertise as we head into a new round of ABA reaccreditation.

Professor (and also former Dean) John Burman currently is on leave for the fall semester as a Fulbright Teaching Fellow at Petrozavodsk State University in Petrozavodsk, Russia. He is teaching Administrative Law and working with the University's Civil Practice Clinic. Needless to say, the presence of two Fulbright scholars on the faculty is a significant feather in the cap of a law school of our size.

Many schools tout their low student-faculty ratios. While UW stacks up with the best of those schools, I am pretty confident that when Professor Burman returns from Russia in January, we will lead the nation in student-dean ratio. And that doesn't even take into account my new neighbor and friend Pete Maxfield, who remains a part of our law school community as an emeritus professor. While some new deans might face that prospect with trepidation, I feel extraordinarily fortunate to be able to call on Art, John, and Pete for counsel.

We welcome two new faculty members to the College of Law this year: Jim Dwyer comes to us from his most recent position as a professor at the Chicago-Kent College of Law. Professor Dwyer received his J.D. degree

from Yale and also has a Ph.D. in Philosophy from Stanford University. He practiced law in Washington, D.C., served as Law Guardian in New York State Family Court, and taught in the philosophy department at Stanford. Professor Dwyer is already an accomplished scholar, with several publications under his belt, including a recently published book on religious schools and children's rights. Professor Dwyer is teaching Family Law, Jurisprudence, Legal Writing, and Federal Courts.

Diane Courselle is a visiting professor for the current academic year. She is the new faculty supervisor for the College's Defender Aid Clinic, and also is teaching Legal Writing and Criminal Adjudication. Professor Courselle is an honors graduate of the Loyola University School of Law in New Orleans, and for the past five years has worked for the Office of the Appellate Defender in New York City.

You may have noted from the names I've mentioned that we have a high representation of women on the faculty. In fact, of the fourteen full-time teachers on the faculty, six are women. I have not conducted a study of the other U.S. law schools, but I would be surprised if UW does not have one of the very highest percentages of women faculty members. I am proud of that fact.

Finally, I note with regret that we lost an outstanding faculty member during the last year. Eric Muller is an exceptional teacher and scholar who was stolen away from us by the University of North Carolina at Chapel Hill. Salary played a significant role in Eric's decision, and one of my priorities as dean is to do my best to raise faculty salaries at UW to a respectable level.

The Staff

I won't mention the staff members by name, but no report on the state of the law school would be complete without a word of praise for the hard-working staff. It is the leanest staff imaginable (too lean, in my opinion), and they accomplish an extraordinary amount through their dedicated efforts.

The Alumni and Friends

Our loyal alumni and friends are also critically important in maintaining the high "quality of life" at the law school. You help us in so many ways: as adjunct professors (the names are almost too numerous to mention, but I will anyway—Diana Stithem, Paul Schierer, our two co-chairs of this convention—Greg Dyekman and Andrea Richard, Bob Southard, Frank Nelson, Justice Richard Thomas, Amy Jenkins, Art Hanscum, Lynne

Boomgaarden, Hugh McFadden, Reed Zars, and Barbara Lauer); as speakers in individual classes; as participants in student competitions; as student mentors; as financial contributors; and as partners in our legal education efforts in a myriad of other ways.

Let me make a few comments about fundraising. I have been astonished in the last two months to learn about such things as a \$500 per person *annual* travel budget for faculty and staff development, or paltry research assistance funds, or faculty members sitting in broken chairs in their offices, or the 8-cents-per-mile travel rate we pay our students in the clinics to drive their own vehicles to Lusk or Rawlins to meet their clients.

We all know that state funding and student tuition dollars can go only so far in funding the operations of the law school. Private giving, then, is what allows us not only to do the basic things every law school does, but also to enhance significantly the educational opportunities for our students. You have been extraordinarily supportive in the past, and I will continue to reach out to you for help in the future. A quick rundown of development highlights for the last year:

We have two new scholarships: (1) the Mary Frances Blackstone Scholarship endowed by long-time law professor Ricky Blackstone—to assist single mothers who are attending law school; and (2) the Joe Hand Memorial Scholarship, established by friends and classmates of the late Joe Hand—Thomas Day, David Gienapp, Raymond Hunkins, John MacPherson, Peter McNiff, Michael Mullikin and Stephen Simonton.

Our competitions continue with generous funding: the National Moot Court Competition, sponsored by Brown, Drew, Massey & Sullivan; the Trial Competition, sponsored by Rothgerber, Appel, Powers & Johnson; the Pace Environmental Law Competition, sponsored by Holland & Hart; the Law Student Closing Argument Competition, sponsored by the Fitzgerald Foundation for Children and Jim and Sharon Fitzgerald; and the Client Counseling Competition, for which we are still seeking a sponsor.

We remain the beneficiaries of two major gifts contributed in recent years: (1) The E. George Rudolph Distinguished Chair in Law, endowed by a gift from the Paul Stock Foundation, under the direction of Charles Kessler. Professor Bob Kamenshine served as the first Rudolph Chair during the past academic year and was a great success. (2) The Jerry Housel/Carl Arnold Chair in Law, endowed by a gift from Jerry Housel. We are still working on completing the funding for that endowment.

Special recognition also should go to Winston and Peg Howard, Sally Hopper, Carl Williams, and Ruth Rudolph, all of whom have been major

continuing supporters of the law school.

Last year's Annual Fund goal was \$29,000, and we met that goal with contributions of \$29,747. This year's goal is \$35,000.

Total giving to the law school last year was \$214,597, a 146 percent increase from the year before.

We are particularly pleased with the alumni response to our new Law Alumni Association scholarship. We have had 174 donors to the scholarship, and the endowment currently stands at \$24,425.

We are also pleased to announce that the College of Law has entered into an agreement with the American Law Network to provide a series of televised CLE programs at the law school. These programs, which will begin in November, are high-quality programs produced in conjunction with ALI-ABA and the Practising Law Institute. There will be programs on a wide variety of topics, and we hope they will be of service to the members of the bar in this area. We are also investigating the possibility of using the university's satellite and downlink capabilities to extend our CLE efforts to other parts of the state in the future.

The College of Law will have its seven-year reaccreditation visit from the ABA next fall, so we are beginning an intensive self-study process in preparation for that visit. We will be calling on you during the next year for your input.

Several important law school events are coming up in the next few weeks, so mark your calendars: (1) The five-year class reunions will be held tomorrow at the Holiday Inn here in Cheyenne. (2) Two of our law school graduates—former Governor Mike Sullivan of Casper and former Judge Leslie Lawson of Denver—will be honored as Distinguished Alumni at UW's Homecoming. We will have a reception at the law school for Governor Sullivan and Judge Lawson on Friday, October 9th. (3) The second annual College of Law Honors Banquet will be held on the UW campus on Saturday, October 24th. Jerry Housel and Justice Al Taylor will be recognized as honorary Coif members, and Jerry Housel and Archie McClintock will be recognized as Distinguished Alumni. (4) Our annual Law Week, which will have numerous interesting lectures and other events, will be held the last week of October.

In conclusion, I believe the Princeton Review is correct in its assessment that the University of Wyoming College of Law is "very solid." And the future looks very bright. With the assistance of a revitalized Law School Liaison Committee, under the leadership of bar members Lynn Boak, Tracy

Copenhaver, Greg Dyekman, and Jane Villemez, the law school looks forward to working in partnership with the Wyoming Bar to become even better.

Finally, on a personal note, I want to thank the members of the Wyoming Bar for making my wife, Deb, and me feel so welcome since we arrived in Wyoming two months ago. We thoroughly enjoyed the opportunity to join the Bar Commissioners and Officers at their meeting in Saratoga in August, and we have had a wonderful time attending the events of this week's convention. Deb and I are deeply appreciative of your warm welcome. We look forward to seeing you in your hometowns.

REPORT OF THE PRESIDENT

Paul J. Hickey

It is my pleasure to report to you on the affairs of this association during the past year.

Building Project

In the past year we have completed the second and last stage of the renovation of our building at 500 Randall Avenue here in Cheyenne. The landscaping and exterior repair has completed our goal of renovating and remodeling this building into professional office space.

In addition, our conference room facility has been furnished this past year. It is functional for a variety of purposes, including Bar section meetings, CLE presentations for groups up to forty persons, and available for any of you to use for meetings or depositions by simply calling our offices and reserving this room.

Staff and Board Administration

During the past year the Commissions have addressed several issues intended to improve the administration of Board and staff activity. In this regard, the following initiatives were implemented:

- An extensive review of all insurance needs of the association was undertaken. As a result of this review professional liability insurance was purchased for Bar counsel and liability limits were increased on other policies.
- Annual staff evaluation forms have been developed and an annual review process has been instituted for all professional and nonprofessional staff of the Bar Association.

- Bar Commissioners have been assigned specific committee and section responsibilities and report on the activities of these committees and sections at assigned Commissioner meetings in order to better connect the Commissioners to the numerous committee and section activities. Additionally, Commissioner notebooks have been developed in this past year in order to assist our Board in meeting its responsibilities.
- The association held its first statewide video conference this past May 1. The video conference was based out of Casper and was simultaneously broadcast through compressed video technology to eleven additional sites located throughout Wyoming. The use of this technology was an important step for this association in finding ways to reduce travel and time commitments on the part of volunteer Commissioners and other committee members while at the same time allowing for meaningful discussion of the issues of this association by virtue of the visual link provided in video conferencing.

Committee/Section Work

Sections and Committees have had a full and active year, led by dedicated chairmen who have worked to bring a number of projects to fruition. They are engaged in some of the following highlighted projects:

1. Lawyer Mentoring Committee, chaired by Dick Boley

The Mentoring Committee has undertaken work with young lawyers to offer experience and perspectives on issues involved in the practice of law. The Committee is actively seeking experienced attorneys to participate as mentors.

2. Unauthorized Practice of Law Committee, chaired by Fred Dollison

The Committee successfully brought suit against corporate kit providers during the past year that have illegally engaged in the practice of law in this state. The UPL Committee has been represented by Kate Fox who has done excellent work in representing this committee of the Bar.

3. Legal Services Committee, chaired by Cindy Harnett

This committee has been instrumental in providing support to the Wind River Legal Services Corporation as it has taken on the statewide responsibilities for delivery of legal services to qualified indigent citizens. The committee has been instrumental in implementing a lawyer referral network

with the Wind River clinic. Seventy lawyers have offered to help see that the legal needs of unrepresented citizens of this State are met. Finally, the committee remains active and will have additional pro bono initiatives and proposals for the consideration of the Bar over the upcoming months.

4. Government Lawyers Section, chaired by Carol Statkus and Gay Woodhouse

In the first year this section has grown to be the largest section within the Bar Association. The Section held an excellent CLE held last Winter in Laramie. Representatives of the Department of Justice and of the District Attorney's office for Los Angeles County discussed substantive issues affecting government attorneys. We were asked by the ABA to present our story in forming the Government Lawyers Section at an ABA conference so that other state associations would have the benefit of our experience in organizing this section.

5. Legislative and Law Reform Committee, chaired by Brent Kunz

This year, the Committee actively supported pay increases for the State's Judiciary. This legislative proposal, as you know, was passed. The committee actively supported legislation calling for a commission on judicial reorganization. This initiative also passed.

6. Library Committee, led by Paul Drew, Tim Day, Kermit Brown and Catherine MacPherson

The Library committee has remained an active committee of the association for the past several years. The goal of this committee has been to coordinate law libraries throughout each of the judicial districts that provide a minimum core of resources to all attorneys throughout the State. The efforts of this group have culminated, through the hard work of the committee and our Executive Director, Tony Lewis, with an offering provided by the West Group, which is available to both the judicial and the practicing Bar. The West Pro offer, which is marketed at the lowest price in the nation of \$96 per month, provides attorneys with online research capability for opinions of the Wyoming Supreme Court, Wyoming Statutes, etc.

Other Activities of the Past Year

Teen Court Initiative

In the past year and in conjunction with Law Day, a statewide forum discussing Teen Court was held throughout the State of Wyoming. In addition to the opportunity to explore technological opportunities through video conferencing for this association, the forum also provided a substantive dis-

cussion of advantages and challenges of implementing a Teen Court. Judges and lawyers throughout the State were joined with educators, law enforcement representatives and City and County officials, and legislators in addressing Teen Court. Ninth Judicial Commissioner Tim Day is to be commended for his commitment to this project as well as members of the Bar staff, Jim Tiemann, Linda Tangeman, and Lesley Osen.

Peremptory Challenge

In the last year, the State's rules on peremptory challenge came to the forefront. The State Bar commissioned a research project to better inform the State's Civil and Criminal Permanent Rules Advisory Committees on peremptory conventions around the country. The Bar conducted a member survey of the issue to report its findings to the Committees and the Court. Finally, the Board of Bar Commissioners passed a resolution calling for reinstatement of suspended rules following its consideration of this information. The issue has yet to be resolved, but the Bar co-sponsored a forum on peremptory challenges at this annual meeting, and we hope for a resolution soon.

Litigation Against The Bar

Bar members may recall a year ago that litigation was brought against the Board of Law Examiners by an individual claiming that the Board of Examiners had failed to reasonably accommodate the disabilities of the plaintiff in offering her an opportunity to take the Wyoming Bar exam. The case was dismissed by the Federal District Court for the District of Wyoming and remains pending in the Tenth Circuit Court of Appeals.

Suit was brought in Federal District Court during the past year against Assistant Bar Counsel presumably because she correctly advised that the allegations made by the plaintiff against an attorney did not constitute a grievance. This suit was defended by ALPS Insurance Company and has also been dismissed by the Federal Court. It is also pending in the Tenth Circuit Court of Appeals.

An individual dissatisfied with the result of fee arbitration conducted by members of the Fee Arbitration Committee filed suit against the Committee in the Ninth Judicial District. The bar was subsequently dismissed as a party by Judge Rogers. The Bar Association was ably represented by Bill Schwartz of Jackson in that litigation.

Rules Adopted and/or Effective in the Past Year

- Rules for Admission were revised to create a Character and Fit-

ness Committee and provide for applicable procedure.

- Repeal of Supreme Court Rule 5 governing admission. It was obsolete with the adoption of more liberal rules in 1991.
- CLE/Ethics Credit rules were changed to conform to the adoption of a requirement for Ethics CLE.
- Pro Bono/Rule 6.1/Rules of Professional Conduct to recommend increased levels of Pro Bono commitment.

Rules Proposed/Pending

- A rule conforming to legislation mandating suspension of professional licenses for non-payment of child support is presently under review by the Supreme Court.
- A CLE self-study rule to allow 5 hours of credit yearly for approved self-study courses is also under consideration.
- Changes have been proposed to Rules IV & V of the Disciplinary Code to allow bar counsel discretion in determining prima facie grievance and more clearly define process for dismissal of frivolous complaints.

In conclusion, the Officers and Commissioners have been active this past year in meeting their responsibilities to oversee the activities of this association. It has been my honor to act as your President. I have greatly enjoyed this opportunity and will continue to enjoy the many friendships which have resulted from this association.

The Wyoming State Bar Delegate to the American Bar Association, Richard M. Davis, Jr., was invited to present a report of meetings attended over the past fiscal year. A report of ABA highlights is included in the committee reports that follow.

During Mr. Davis' report, a motion was made to acknowledge the State's appreciation to Carbon County Court Judge Margie M. Meacham for all of her past work as American Bar Association Delegate-at-Large for the ABA Board of Governors. The motion passed.

State Bar Treasurer Mark Harris reported that the Bar's income was expected to exceed expenses in the fiscal year ending October 1, 1998, by \$15,000 to \$20,000. He reported that overall income was expected to be close to \$600,000, and overall expenses would be approximately \$580,000.

He said the Bar would likely be able to maintain similar margins in the next three to five years, and that cash reserves used in the past two years to purchase and renovate the State Bar office would be replaced with this excess income to build up an emergency operating reserve.

Announcing the results of the 1998 Bar Election, the organization's Executive Director Tony Lewis certified the election of Paul J. Drew as President-Elect, Catherine MacPherson as Vice-President, Mark W. Harris as Secretary-Treasurer and Richard M. Davis, Jr. as State Bar delegate to the American Bar Association. These elections were uncontested.

Mr. Lewis stated that results of the election of a member to the Wyoming Judicial Nominating Commission would involve more careful counting due to the closeness of the race, and that each nominee would be contacted for the name of a delegate to serve on a canvassing committee to determine the final outcome in the next three to four weeks.

Following the conclusion of oral reports, Bar members took under advisement a resolution filed by Wheatland Attorney and Past Bar President Eric M. Alden. The resolution called for reinstatement of rules allowing peremptory challenges of district court judges in civil and criminal cases suspended in 1997 by the Wyoming Supreme Court. Noting the Board of Commissioners similar resolution presented to the Court in June 1998, a vote was made to table the resolution.

A second resolution offered from the floor by Laramie Attorney Glen Duncan was ruled out of order by the President, citing Bar rules stating that resolutions for consideration at the Annual Meeting must be submitted 30 days in advance of the event.

Incoming President Timothy J. Kirven was called on to provide a description of rule changes under consideration by the Board of Commissioners involving the definition of the practice of law and the institution of a fee for pro hac vice appearances in Wyoming Courts.

The meeting concluded with the presentation of awards for outgoing Bar and committee officers, with a special acknowledgment to Gillette Attorney James P. Schermetzler for his years of service on the Wyoming Board of Bar Commissioners, Sheridan Attorney Fred Dollison for his service as chairman of the Unauthorized Practice of Law Committee and Cheyenne Attorney Brent Kunz for his service as Chairman of the Bar's Legislative Committee. Those present recognized the following attorneys for 50-year membership in the Wyoming State Bar: Hon. Clarence A. Brimmer, William J. Kirven, Robert H. McPhillamey, W.F. Swanton, Lyle J. Wirt, Edward S. Halsey, Charles G. Kepler, John S. Mackey, Lynn Rees,

William T. Schwartz, and Curtis L. Harden. The following members were recognized for 60-year membership in the Bar: James O. Wilson, William S. Edmonds and William D. Redle.

Laramie Attorney Dona Playton was recognized as the recipient of the 1998 State Bar Pro Bono Award; Casper Attorney Donn J. McCall was recognized as the recipient of the Bar's Annual Award for Community Service; and Cheyenne Attorney John Frentheway was acknowledged with the President's Award for his pro bono work as a guardian ad litem for troubled youth in Cheyenne.

As the final order of business, Mr. Hickey was acknowledged for his dedication and work as President of the Wyoming State Bar in 1997-98.

1998 ANNUAL MEETING OF THE AMERICAN BAR ASSOCIATION AND
ACTIONS OF THE HOUSE OF DELEGATES

Richard M. Davis, Jr.

Report on the ABA Annual Meeting

The 120th Annual Meeting of the American Bar Association (ABA) was held July 29 through August 4, 1998, in Toronto, Ontario, Canada. A number of committees, sections and divisions of the ABA held meetings and presented educational programs. Also, the Nominating Committee met and the House of Delegates (House) held a day and a half session.

Some of the highlights of the meeting were:

- The Opening Assembly was held on August 1, and remarks were delivered by Dr. Maya Angelou.
- The ABA Medal was presented to Morris Harrell at the House of Delegates meeting.
- The Nominating Committee sponsored a "Meet the Candidates" forum on August 2, at which time members heard from Martha W. Barnett, candidate for President-Elect seeking nomination at the 1999 Midyear Meeting.

The House of Delegates

The House met on August 3-4. Alfred P. Carlton, Jr. of Raleigh, North Carolina, presided as Chair of the House. One of the highlights of the House meeting included a presentation of "ABA in the News," which exhibited another very successful year of promoting our messages in the media.

Early in the House's agenda, Janet Reno, Attorney General of the United States, addressed the House. She spoke of the opportunity to make a difference in the area of violent crime in the United States. Attorney General Reno reported that the instances of violent crime have decreased, and she stated that now the issues in this area are how to sustain the reduction and how to rid ourselves of violent crimes. Gun-related violence is high in America compared to other countries, and Attorney General Reno hopes lawyers will come together to advocate for the poor and work to reduce the violent crime rate. She stated that "we do not need to be the most violent nation in the world."

Attorney General Reno continued by pointing out the areas where attorneys have worked making a difference in the violent crime statistics. She said that lawyers have done more than any other profession to work against domestic violence but noted that more needs to be done. We need to implement full faith and credit in all state courts, and we need to obtain and assure fair and accurate statistics.

Another area where lawyers have led the way to reduce violent crimes is their work against substance abuse. Drug courts are working. Sentencing offenders to treatment programs instead of jail time has helped, but we still need to develop better treatment and prevention programs and comprehensive community programs.

Officer and other Miscellaneous Reports

President Jerome J. Shestack opened his report by stating that he was always proud to be a lawyer, and even more so after his year as President of the ABA. He thanked his family, firm, and the Pennsylvania Bar Associations for their support this year. President Shestack complimented Executive Director Robert Stein on his service to the ABA, which is evidenced by the Association's growth.

President Shestack emphasized that lawyers should always take the high road and act in a moral way. He stated that we need to be committed to the goals of justice, professionalism, civility, and pro bono services, and that "we will validate our profession by sticking to professionalism."

During this meeting, President Shestack passed the gavel to President-Elect Philip S. Anderson. President Shestack expressed praise and respect for Phil Anderson, and detailed his high level of involvement in the American Law Institute and the ABA.

President-Elect Anderson spoke and thanked the Shestacks for their service to the ABA. His comments then turned to what we, as an associa-

tion, will pass on to our members in the next millennium. He said that we must act in a responsible manner. The ABA is moving into the next century fiscally sound. This is important to maintain our independence. He continued by stating that we must preserve our rights and freedoms from the encroachment of the government, so we can better serve the public. We must preserve public service by the bar. We must work for a system of justice that is applied equally to all citizens. Service to the profession and the public are keystones to our association.

Chair Alfred P. Carlton, Jr. informed the Delegates in his remarks that the Council of the Section of Legal Education and Admissions to the Bar has been the nationally recognized accrediting agency. With recent changes in the Higher Education Act, the Department of Education has revised its regulations, some of which impose the requirements that an accrediting agency must be "separate and independent" from its affiliated trade association.

Chair Carlton advised the House that John McKay, President of the Legal Services Corporation, was unable to address the House because Congress was likely to vote on the appropriations bill. Later during the session of the House, the Chair announced that a favorable appropriations bill was passed and asked the Delegates to applaud the work of John McKay.

Robert A. Stein, Executive Director of the ABA, reported that membership has grown and a good strategic plan is near completion. There will be a dues increase in the future, but the ABA is working to keep the increases moderate.

William G. Paul was elected the President-Elect for a term beginning at the conclusion of this meeting. He thanked the Delegates for letting him serve the finest organization in the world and gave thanks for the many good people and good things in the ABA. He stated that the following two issues needed to be addressed: 1) our profession must be representative of our society, and 2) we must be the connecting link between the public and the rule of law.

Judge William S. Sessions, Chair of the Special Committee on Judicial Independence, addressed the House, speaking about the charges and objectives of the Special Committee. The committee worked on aspects of the "Pay to Play" recommendation which the House debated. One of the most important accomplishments of the committee was to develop a plan to respond to criticism of the judiciary that is unfair and untrue.

Blake Tartt, Chair of the Standing Committee on the Federal Judiciary, spoke briefly to supplement the committee's written report. He stated that

this time last year there were ninety-nine judicial vacancies. At the time the report was made there were seventy-five vacancies, and as of July 31, this number was reduced to sixty-nine. Mr. Tartt complimented the members of the ABA as being one of the catalysts in moving the confirmations along.

Board of Governors and Other Section Recommendations

Administrative Law

A recommendation which would amend the Administrative Procedure Act to provide that all hearings conducted under section 556 of the Act be conducted in accordance with the Federal Rules of Civil Procedure, except as inconsistent with the agency rules or as modified by the administrative law judge was withdrawn by the Judicial Division's National Conference of Administrative Law Judges.

Alternative Dispute Resolution

The House approved the recommendation that adopts the black letter of the Model Rules for Mediation of Client-Lawyer Disputes which recommends that jurisdictions establish a mediation program by providing a model for such programs. This recommendation is in line with the McKay Report, which was adopted by the House in 1992.

Campaign Contributions

The Section of State and Local Government law withdrew the recommendation that expresses formally that existing ethical rules, particularly Model Rules of Professional Conduct 7.2(c), proscribe conduct described as "pay-to-play" and directs the Standing Committee on Ethics and Professional Responsibility to consider adoption of a formal opinion or comment to specifically address this issue.

The House approved, as amended, the recommendation which urges that certain actions be taken to address any conduct by lawyers making or soliciting campaign contributions to public officials for the purpose of being considered or retained for government or legal engagements.

Criminal Justice

The House approved the recommendation that urges the President and Congress to expeditiously nominate and confirm persons to fill the current vacancies on the United States Sentencing Commission.

The Criminal Justice Section withdrew its recommendation which urges adoption of the following amendments to the Independent Counsel

provisions of the Ethics in Government Act: to cover only the President, Vice President and Attorney General; to permit the Attorney General to consider “state of mind” in determining when preliminary or subsequent investigations are warranted and to eliminate the reporting requirement.

The House approved the recommendation which recommends all jurisdictions insure that defendants are represented by counsel at their initial judicial appearance where bail is set and that adequate resources be apportioned for effective implementation.

Election Law

The House approved the recommendation that supports the principle that “soft money” contributions should be prohibited in federal election campaigns.

Robert L. Weinberg spoke in support of the recommendation, explaining that soft money comes from union treasuries, corporate treasuries, and individuals that circumvent the \$1,000 limit. He referenced the Lincoln Bedroom stays in the Clinton Administration as such an abuse.

The House approved the recommendation that acknowledges the changes in campaign finance over the period of the past twenty years and supports principles that will promote and create a campaign finance system that allows for greater civic and candidate participation and greater accountability and disclosure to the public at large.

Employment

The House approved the recommendation that urges employers to address workplace violence by adopting policies and practices to help better prevent and manage on-site violence and threats.

Estate Administration

The House approved the Uniform Guardianship and Protective Proceedings Act (1998) as an appropriate Act for those states desiring to adopt the specific substantive law suggested therein.

Ethics and Professionalism

The House approved, as revised, the recommendation that adopts the Guidelines for Litigation Conduct dated August 1998, which are purely aspirational goals to promote professionalism of lawyers and judges and should not serve as a basis for litigation, liability, discipline, or sanctions.

The House approved the recommendation that amends the Comment portion of ABA Model Rule of Professional Conduct 8.4 to state that biased or prejudiced conduct by a lawyer in the representation of a client may prejudice the administration of justice and in such circumstances constitute a violation of the black letter of that Rule.

The House approved, as revised, the recommendation that supports the view that electronic mail communication between lawyers and their clients should be accorded the same expectation of privacy and confidentiality as that communicated through traditional means.

The House approved, as revised and amended, the recommendation that encourages all governmental entities to recognize that it is in the government's interest for its lawyers to participate in professional development and justice system improvement activities sponsored by bar associations and urges those entities to take steps to facilitate such government lawyer participation in bar associations.

Gun Violence

The House approved, as revised, the recommendation that supports a comprehensive approach to address gun violence by young persons at schools. A representative from the Department of Justice spoke in favor of the recommendation pointing out that gun violence in schools was increasing.

Health Care

The House approved the recommendation that supports the right of consumers to a fair and efficient process for resolving differences with managed health care plans, including timely written notice of decisions to deny, reduce, or terminate services, rigorous internal plan review, and independent external review.

Insurance

The House approved, as revised, the recommendation that supports determining at the state and territorial level, rather than the federal level, automobile tort insurance choice matters such as those contained in S. 625 and H.R. 2021 of the Auto Choice Reform Act of 1997, and opposes several concepts and principles contained therein.

Judicial Administration

The House approved, as revised, the recommendation that urges states to review the compensation of full-time state, and territorial, administrative

law judges to consider whether such individuals receive compensation commensurate with their functions.

The House approved the adoption of the black letter of Standard 20 on Juror Privacy to the ABA Standards Relating to Juror Use and Management, which urges courts to create an atmosphere of respect for jurors that addresses their expectations of privacy to the greatest extent possible given the need of the justice system to select an impartial jury and provide a fair trial.

Legal Education and the Bar

The recommendation which adopts an interpretation of Standard 507 of the ABA Standards for Approval of Law Schools which will permit accreditation of joint law school degree programs between American law schools and eligible students of qualified foreign law schools, thereby allowing graduates to be candidates for admission to practice in the United States was not placed on the calendar. The Committee on Rules and Calendar determined that there had not been full compliance with Standard 803 of the ABA Standards for the Approval of Law Schools regarding this proposed interpretation to Standard 507.

Legal Services

The House approved, as revised, the recommendation that (1) recognizes the importance of recent technological advances in electronic communication and the potential that they offer for the bar to provide more effective legal services at reduced cost, and (2) urges all governmental entities to use such technologies in an integrated coherent fashion.

The House approved the recommendation that urges jurisdictions to adopt standards for indigent defense systems, using widely available models to prepare such standards.

Specialization

The House approved the continued accreditation for the lawyer specialty certification programs as reorganized as follows: 1) the merger of the accredited Business Bankruptcy lawyer certification program; 2) the transfer of the accredited Creditors' Rights lawyer certification program to the American Bankruptcy Board of Certification; and 3) the change in name of the American Bankruptcy Board of Certification to the American Board of Certification.

Prior to the adjournment of the House meeting, Chair Carlton passed the House's gavel to Robert J. Grey, Jr. of Virginia. Mr. Grey thanked Chair Carlton for an outstanding two years as Chair of the House, and stated that

he is looking forward to serving the House over the next two years.

BOARD OF CONTINUING LEGAL EDUCATION

Stephen H. Kline, Chairman

During the twelve months ending September 1998, the Board met and reviewed numerous appeals by Bar Members who had been denied Continuing Legal Education credit for various programs which they attended, as well as requests for extensions and waivers. Members of the Board of Continuing Legal Education are: Stephen H. Kline, Chairman, Deborah Kellam, Catherine MacPherson, Mark Macy, David Piaia, Julie Tiedeken, Bonita Brinkerhoff, Ronald Franscel, Forrest "Skip" Gillum.

Continuing Legal Education statements were sent on February 9, 1998 to active attorneys. The State Bar office received an average of 380 applicants for Continuing Legal Education credit, of which 370 were approved and ten were denied per month. There were six appeals for credit denied by the Board of Continuing Legal Education.

As of February 1998, a number of Wyoming State Bar Members were delinquent for one year of Continuing Legal Education requirement. As of the same date seventy-one Wyoming State Bar Members were delinquent for two years of Continuing Legal Education requirement. There were three attorneys suspended for Continuing Legal Education delinquency this year.

The Wyoming State Bar office received an average of twenty-five Sponsor Accreditation Applications per month, of which an average of twenty-four were approved and one was denied.

As in the past, by far the most prevalent type of appeal was one 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. Parts of these programs are sometimes taught by lawyers, and lawyers attending these seminars may well receive education value from the seminars, but the seminars do not meet the requirement of the Bar rules which require that programs for which credit is sought must be primarily put on by lawyers and primarily intended to educate lawyers.

Over the last two years, we have been active in attempting to update the rules. Last year the Committee proposed two new rules to the Commissioners and the Supreme Court. The first rule, which was implemented this year, requires that one hour of the Continuing Legal Education requirement each year be directed to a course on legal ethics. A second proposed rule

which would allow a portion of CLE hours each year to be obtained through self-study through an electronic medium has been submitted to the Supreme Court.

This past year the Committee undertook to study two additional potential changes to the rules. The first relates to the issue of whether the rule that requires CLE programs to be primarily for lawyers and primarily presented by lawyers should be loosened somewhat. Many of the seminars mentioned above, for which we do not give credit, are available for credit in states such as Colorado and Utah where many of our members also are licensed. This leads to many complaints from those with multiple licenses as to why certain programs count for CLE credit in the other states, but not in Wyoming. The second issue which we have undertaken to study is whether we should propose a rule which would allow for CLE credit for pro bono activities. Vermont has a similar rule, and we have been asked by Legal Services and the Pro Bono Committee to look into this issue. We are presently in the process of doing that.

REPORT OF THE WYOMING BOARD OF LAW EXAMINERS

Judith A.W. Studer, Chairman

The Board of Law Examiners met on numerous occasions to review applicants for admission both by examination and on motion. The Bar examination was administered twice in 1998, on each of the last two Wednesdays and Thursdays in February and July.

The February 1998 examination was administered to a total of twenty-three applicants. A total of seventeen applicants passed the examination, resulting in a pass rate of seventy-four percent.

The July 1998 examination was administered to fifty-nine applicants. Thirty-nine applicants passed, resulting in a passage rate of sixty-six percent.

In addition to examinees, five persons sought admission on motion in 1998, and five persons were so admitted.

In rules recommendations and other Board activity, a Character and Fitness Subcommittee was established subsequent to approval by the Wyoming Supreme Court. The committee's purpose is to review background investigations, direct any necessary or additional inquiry and make recommendations on overall character and fitness to the Board prior to the Board's recommendation of an applicant for admission to the Supreme Court.

The Board also recommended a rule establishing a mandatory three-year waiting period for applicants who fail four or more administrations of the examination over any period of time.

Members of the Board of Law Examiners include chairman Judith A. W. Studer, Casper; Vice-Chairman John A. MacPherson, Rawlins; Frank D. Peasley, Douglas; Michele A. McKellar, Cheyenne; and L.Galen West, Rock Springs. Members of the newly-created Character and Fitness subcommittee include Chairman Timothy J. Bommer, Jackson; Rex E. Johnson, Wheatland; and Susan E. Lehman, Cheyenne.

BOARD OF PROFESSIONAL RESPONSIBILITY REPORT

Charles S. Chapin, Chairman

Calendar Year 1997 (Last year for which full statistics available)

- | | | |
|------|---|-----------|
| I. | Cases carried forward from prior years: | 49 |
| II. | Cases opened in 1997: | 79 |
| III. | Cases dismissed in 1997: | |
| | 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: | 3 |
| | Cases opened in 1995: | 7 |
| | Cases opened in 1996: | 16 |
| | <u>Cases opened in 1997:</u> | <u>24</u> |
| | Total: | 54 |
| | b. Dismissals by Rule V(c) procedure (adopted May 10, 1993) | |
| | Cases opened in 1996: | 1 |
| | <u>Cases opened in 1997:</u> | <u>7</u> |
| | Total: | 8 |
| | c. Dismissals by Board | |
| | Cases opened in 1990: | 1 |
| | <u>Cases opened in 1996:</u> | <u>1</u> |
| | Total: | 2 |
| | d. Total 1997 dismissals (standard plus Rule V(c)): 64 | |

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 the lack of jurisdiction.

IV. Discipline imposed in 1997:

Disbarment	0
Suspension	0
Public censure	1
Private reprimand	4
Informal admonition	1
Probation (part of overall sanction)	2
Interim suspension	0
Felony suspension	0
Disability/inactive	0

Note: These dispositions involved six files relating to six attorneys. 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 1998 (through September 30, 1998)

I. Cases carried forward from December 31, 1997: 59

Note: One file resulting in a sanction remains open by reason of other issues. Therefore, 59 files were carried forward rather than 58 files.

II. Cases opened (as of September 30, 1998): 45

III. Cases dismissed:

a. Dismissals by standard Bar Counsel motion and board review/determination:

Cases opened in 1992:	0
Cases opened in 1993:	0
Cases opened in 1994:	0
Cases opened in 1995:	0
Cases opened in 1996:	3
Cases opened in 1997:	22
<u>Cases opened in 1998:</u>	<u>4</u>
Total:	29

b. Dismissals by Bar Counsel—Rule V(c) procedure:

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

<u>Cases opened in 1998:</u>	<u>3</u>
Total:	6

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 used.

c. Dismissals by board:	0
d. Total 1998, as of September 30:	35

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: 4 (involving 4 files)

V. Discipline imposed:

Disbarment	1
Suspension	0
Public Censure	2
Private Reprimand	1
Informal Admonition	4
Probation (part of overall sanction)	3
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 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. Sometimes, after review, they 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 1998, as of September 30, total thirteen items. Other handled items are reflected in General Correspondence File listings which, year-to-date, totals 135 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. 58-97 to 79-97; 1-98 to 45-98):

I.	Number pending (not including trial hearing on 3 older files)	43
	Number dismissed:	19
	Tried and/or discipline imposed (or Disability Inactive Status)	5
II.	Type of cases giving rise to complaints	
	Abstract & Title Opinions	0
	Adoption	1
	Bankruptcy	2
	Collections	2
	Corporations	1
	Contract	0
	Criminal	9
	Domestic Relations	25
	Estate Planning	1
	Guardianships	0
	Governmental	0
	Labor Law	0
	Litigation	11
	Minerals	0
	Oil & Gas	0
	Personal Injury	0
	Probate	5
	Partnership	0
	Real Estate	2
	Trust	1

Workers' Compensation	1
Wills	0
Tax	0
Other	10
III. Type of initial complaint	
Deceit or Misrepresentation	12
Incompetent Representation	17
Lack of Diligence	25
Conflict of Interest	9
Fees	6
Refusing to Follow Client's Wishes	11
Lack of Communication	33
Harassment	4
Acting Without Client Consent	5
Adversely Reflecting on Fitness to Practice	27
<i>Ex Parte</i> Contact	1
Counseling Illegal Conduct	3
Ineffective Assistance of Counsel	5
Breach of Confidentiality	6
Refusal to Deliver Accounting or Files	4
Tampering with Evidence	0
Collusion	0
Frivolous Claim	3
Refusal to Pay Deposition or Expert Fee	0
Other	25

Comments

1998, year-to-date, has seen approximately the same level of grievance filings as 1997. With three months left in the calendar year, some forty-five investigation files have been opened (compared to seventy-nine total files for 1997, forty-four total files in 1996, thirty-nine total files in 1995, forty-seven files in 1994, and 101 files in 1993).

Complaints tend to accrue in a non-uniform manner, so it is unclear what the year-end total will be. General Correspondence and alternative dispositions are roughly the same as in the prior year. As of September 30, 1998, there are five pending motions to dismiss, one pending stipulation for private reprimand and one proposed formal findings of fact, conclusions of law and recommendation for public discipline concerning three files scheduled for Board consideration in early October.

The current total open case file docket totals sixty-one files. Of those, nine are those pending matters just noted (five motions to dismiss, three

cases already tried in July, awaiting Board adoption of a proposed report and recommendation and one pending motion for private discipline). Only three of the remaining fifty-two files are over two years old, and two of those three files are stayed because of bankruptcy appeals of underlying factual situations in legal matters. The continued static load of approximately fifty 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.

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 1998 thus far has seen only a slight increase in more serious disciplinary allegations and matters.

The Board of Professional Responsibility and the Officers and Commissioners of the Wyoming State Bar have, following notice and comment period, tendered proposed changes to Rule IV and V of the Disciplinary Code to the Wyoming Supreme Court, regarding powers and duties of bar counsel. They are designed to clarify the existing requirement for prima facie ethical allegations and also to clarify bar counsel duties and powers of investigation and prosecution.

Rule of Professional Conduct 6.1 was amended, effective July 7, 1998. This rule encourages attorneys to provide fifty hours of pro bono legal services per year or alternatively contribute \$500 per year to programs providing low-income legal assistance.

BAR SURVEY COMMITTEE REPORT

John H. Rivera, Chairman

The Bar Survey Committee is charged with reviewing the Bar Membership Survey form and the Judicial Advisory Poll form prior to those instruments being sent to members of the State Bar. The Judicial Advisory Poll, which is sent to Bar members every two years, was reviewed in 1998.

The Committee coordinated with Wyoming State Bar staff to contract with Ken Griffin at the University of Wyoming, who has in the past served as consultant in developing the Judicial Advisory Poll. After consideration of proposed changes, the Committee agreed that minor changes to the instrument should be made. After revision in accordance with Committee

recommendations, the 1998 Judicial Advisory Poll was sent to Bar members.

BENCH-BAR RELATIONS COMMITTEE REPORT

Margo Harlan Sabec, Chair

The Bench-Bar Relations Committee met several times this year to discuss the suspension of Rule 40.1 (peremptory disqualification of district judges). The Committee observed that dysfunctional relationships among attorneys, and between judges and individual attorneys or firms, have led to the real or perceived abuse of the peremptory challenge rule. It is the Committee's belief that these dysfunctional relationships arise in part out of the ever-increasing professional and social distance between judges and attorneys, and the increasingly contentious practice of law in the State. Acting upon that premise, the Committee has resolved to proceed with three new programs aimed at preventing these dysfunctional relationships, and at intervention in and resolution of disputes between members of the Bench and the Bar.

Program No. 1

The Committee will work with County Bar Associations and federal, district, and county court judges to reduce the professional and social distances between judges and attorneys. We will ask the County Bar Associations to schedule regular occasions where judges and attorneys can meet informally and socially, and to schedule quarterly meetings at which district and county court judges will present concerns they may have. We will endeavor to have a federal court judge participate in at least one of these "view from the bench" programs each year. The judges will be asked to commit to regular attendance at these meetings and to make themselves available to hear concerns and complaints of individuals and groups of attorneys.

Program No. 2

The Committee will work with the Young Lawyers' Section and the Continuing Legal Education Committee to provide educational programs and speakers on the topics of professionalism and ethics in the practice of law, and how to identify, avoid, and resolve dysfunctional relationships with other attorneys and judges.

Program No. 3

The Committee will provide informal intervention and dispute resolution for members of the Bench and Bar. This service will be informal and

will not result in any report, referral to other Bar committees, or formal action. The Bench-Bar Relations Committee may be contacted by an attorney or judge who has complaints, concerns, or problems with another lawyer or judge. The Committee may also be contacted by the Bar Counsel with a complaint that doesn't rise to the level of formal action by the Commission on Judicial Ethics and Conduct or the Board of Professional Responsibility. When contacted, the Committee will convene to informally discuss the nature of the problem and to select an intervention or resolution procedure, which might include a meeting between the parties and Committee members or other lawyers or judges. In any event, the Committee will proceed only with the voluntary agreement and participation of the parties involved. It is hoped that providing an informal and neutral forum to discuss concerns and complaints will lead to the resolution of problems before relationships become dysfunctional.

REPORT OF THE CIVIL PATTERN JURY INSTRUCTION COMMITTEE

John W. Davis, Chairman

In 1998, the Committee agreed that the number of necessary changes to the instructions require a general revision, such as was done in 1988 and 1993. It will proceed with that general revision, understanding that it will be a big effort, requiring several meetings over perhaps a year. The primary place of the meetings will be Casper, with the possibility of other towns, such as Jackson. Members discussed having the meetings on a Friday and/or Saturday.

The Committee has further agreed to include University of Wyoming Law Professor Brad Saxton in its proceedings, as a liaison with the Supreme Court's newly established Jury Reform Committee. The Committee agreed upon a procedure for its work—our Committee will first draft the changes we feel are appropriate to the pattern instructions. Then, we'll submit these to the Jury Reform Committee for its review and possible modification for simplicity and clarity. Then, our Committee will review the work of the other committee to assure ourselves that the final product comports with Wyoming law.

Members of the Committee include John W. Davis, Chairman; James E. Fitzgerald; Raymond Hunkins; Robert N. Williams; E. James Burke; Michele Lorenzen; Richard Honaker; John I. Henley; Sphenenson D. Emery.

CLIENT SECURITY FUND COMMITTEE ANNUAL REPORT

Bruce A. Hellbaum, Chairman

The Client Security Fund Committee had no claims filed during the

previous year. A congratulations should go out to all attorneys practicing in the State of Wyoming.

Although no specific claims were heard or decided, the Committee did undertake to evaluate the propriety of obtaining insurance coverage to help pay valid claims. Quotes were obtained for insurance coverage of varying limits. After review by the Committee of the quotes obtained, as well as a history of claims made and awards determined, the Committee ultimately decided that insurance coverage would not be cost effective due to the premium cost and the high deductible. However, the Committee did recommend to the Commissioners that the per claim limit which can be awarded be raised from \$5,000 to \$10,000, and that interest accruing from the Client Security Fund actually accrue to that fund instead of the Bar's General Fund. This recommendation was approved by the Commissioners, which will in time make the necessary adjustment in accounting and recommend the appropriate rule revision on claim limits to the Supreme Court.

EDITORIAL COMMITTEE REPORT

Becky N. Klemt, Chair

The Wyoming Bar Journal Editorial Committee is newly formed and consists of Denise Burke, Becky Klemt, Bruce Moats, Tim Newcomb, Carol Warnick, and Linda Tangeman. Since January, the Committee has met monthly by telephone to discuss a variety of issues including publication guidelines and editorial policies for the *Wyoming Lawyer*. In addition, the committee has drafted a survey to determine what kinds of articles would be of benefit to readers of the *Wyoming Lawyer*.

The Committee is dedicated to making the *Wyoming Lawyer* more informative, interesting, and useful to practitioners. Lawyers are invited to submit inquiries concerning articles they would either like to write or to see written.

LEGAL AID SERVICES COMMITTEE REPORT

Cyndy Harnett, Chair

Watch for continued projects aimed at assisting volunteer attorneys to be active pro bono attorneys as the Legal Aid Services committee continues its work.

Highlights from this year's work include revision of Wyoming Rule of Professional Conduct 6.1 pro bono public service with the aspirational goal of fifty hours of pro bono representation or a \$500 donation to any existing non-profit organization which provides direct legal assistance to persons of

limited means. Such organizations include the Wyoming State Bar Foundation, the Wyoming Legal Services Corporation offices, the University of Wyoming College of Law Legal Clinic, or some similar organization. A flyer asking for volunteer attorneys or a donation was included in the bar dues notice. Based on that request, attorneys around the state volunteered to handle Wyoming Legal Services cases and donated much needed funds. The Wyoming Legal Services program had seventy-five volunteer attorneys, many of whom responded through the flyer. This new pro bono referral network sent out fifty-eight cases primarily in the domestic violence, divorce, and bankruptcy areas. The Committee receives reports and makes suggestions on the referral network.

The Committee, through a hard-working subcommittee, conceptualized and delivered the Nuts and Bolts of Pro Bono Legal Services with a panel of experienced attorneys. The Committee plans to make pro bono law topics an annual part of the Bar convention CLE selections.

REPORT OF THE UNAUTHORIZED PRACTICE OF LAW COMMITTEE

Fred R. Dollison, Chair

The Committee continued to meet periodically over the past twelve months to review and act upon various complaints from members of the Bar, the district courts, and patrons. The Committee also continued to prosecute the two injunction actions against the Cheyenne-based corporate kit/service providers.

Complaints from the district courts generally concerned attorneys from outside Wyoming filing pleadings or entering appearances in Wyoming. In 1996-97, the Committee had responded to these sorts of complaints by referring the matters to the state bars of the states in which the offending attorneys were located. Such disciplinary complaints were universally rejected by the respective state bars. In 1997-98, the Committee went back to its previous response by contacting the attorneys directly. The usual response from the attorneys was an apology and a promise not to so offend in the future.

The Committee has, in the past, mentioned the problem of extra-jurisdictional offenders to the Board of Bar Commissioners. The hope was that the Board could work with its counterparts in other jurisdictions to establish rules of conduct to deal with this problem. The Committee still holds out hope that a workable solution can be found.

Complaints from other sources dealt with the usual gamut of offenses and were generally handled by personal contact with the offending parties.

Through the efforts of Kate Fox of Cheyenne, acting as attorney for the Committee, injunctions were obtained in both suits involving the corporate kit/service providers. In both cases the District Court, First Judicial District, had no trouble finding that the actions of the providers constituted the practice of law and was unauthorized. It is unknown, at this time, if either one of the providers will appeal.

REPORT OF THE COMMITTEE FOR THE RESOLUTION OF FEE DISPUTES

C. Edward Webster II, Chairman

During the Bar's last fiscal year, from September 30, 1997 to October 1, 1998, forty petitions for resolution of fee disputes were filed at the office of the Wyoming State Bar.

The chart below reflects the eventual disposition of cases and the total pending:

Cases ruled beyond the jurisdiction of the Committee	5
Cases resulting in orders of informal settlement	7
Cases decided generally in favor of the attorney	4
Cases decided generally in favor of the client	6
Cases pending/filed in fiscal year 1997-98	0
Cases pending/filed in 1998	15
Cases closed for lack of response by petitioner	3
Total Cases in fiscal year 1997-98:	40

The average length of disposition for cases that resulted in an arbitration hearing in 1997-98 was just over ninety-one days. The number of cases filed in the past year were up slightly from prior years. The chart below is a comparison of cases filed in each fiscal year, September 30 to October 1:

	<u>1997-98</u>	<u>1996-97</u>	<u>1995-96</u>	<u>1994-95</u>
Total Petitions Filed:	40	35	27	34

This year's increase may be attributable to increased referrals from the Board of Professional Responsibility, which has become the central intake for all attorney complaints, although the processing of petitions and informal settlements is conducted by the Executive Director and his administrative assistant.