

IN THE SUPREME COURT, STATE OF WYOMING

OCTOBER TERM, A.D. 1998

In the Matter of Amending)
Disciplinary Code for the)
Wyoming State Bar Rules IV & V)
and)
Regulations of the Wyoming State)
Board of Continuing Legal Education)
Sections IV and V)

IN THE SUPREME COURT
STATE OF WYOMING
FILED

DEC 14 1998

Judy Pacheco
JUDY PACHECO, CLERK

ORDER AMENDING DISCIPLINARY CODE FOR THE WYOMING STATE BAR RULES
IV AND V AND REGULATIONS OF THE WYOMING STATE BOARD OF CONTINUING
LEGAL EDUCATION SECTIONS IV AND V

The Officers and Commissioners of the Wyoming State Bar and the Board of Professional Responsibility, having recommended to the Court the adoption of amendments to the Disciplinary Code for the Wyoming State Bar Rules IV and V and the Regulations of the Wyoming State Board of Continuing Legal Education Sections IV and V, the Court having reviewed the proposed changes and finding that the proposed changes should be adopted; it is therefore,

ORDERED that, the Disciplinary Code for the Wyoming State Bar Rules IV and V and the Regulations of the Wyoming State Board of Continuing Legal Education Sections IV and V as amended, attached hereto, shall be, and they hereby are, adopted by the Court; and it is

FURTHER ORDERED that the newly amended rules be published in the Wyoming Reporter and the advance sheets of the Pacific Reporter and shall become effective sixty (60) days after publication in the advance sheets of the Pacific Reporter. It shall thereupon be spread at length on the journal of this Court.

DATED this 11 day of December, 1998.

BY THE COURT:

Larry L. Lehman
Chief Justice

DISCIPLINARY CODE FOR THE WYOMING STATE BAR

RULE IV. APPOINTMENT, FUNCTIONS AND POWERS OF BOARD AND BAR COUNSEL

(a) The court shall appoint, upon the advice of the president of the Wyoming State Bar, a board to be known as the "Wyoming State Board of Professional Responsibility" (hereinafter referred to as the "board"), which shall consist of seven (7) members, five (5) of whom shall be members of the Wyoming State Bar and two (2) of whom shall be nonlawyers, one (1) of whom shall be designated by the court as chairman, a second as vice-chairman to act in the absence or disability of the chairman, and a third as second vice-chairman to act in the absence or disability of the chairman and vice-chairman.

(b) When the board is first selected, three (3) of its members shall be appointed for a term of three (3) years (two (2) lawyers and one (1) nonlawyer), and two (2) for a term of two (2) years (one (1) lawyer and one (1) nonlawyer), and two (2) for a term of one (1) year (two (2) lawyers), and thereafter all regular terms shall be three (3) years. Lawyers must succeed lawyers and nonlawyers must succeed nonlawyers on the board. No member shall serve for more than six (6) consecutive years; a member may be reappointed after a lapse of one (1) year. The board shall act only with a concurrence of a majority of a quorum. Three (3) members, no less than two (2) members of which shall be lawyers, shall constitute a quorum. However, should there be a less than unanimous decision by any such three (3) member quorum, then the case or matter at issue shall automatically be rescheduled for a hearing before a new panel with no less than a four (4) member quorum and any requirements as to notification, judicial review and recommendation under these rules shall in such instance take effect only upon disposition by such quorum of not less than four (4) members.

(c) The board shall be a unitary entity whose function shall be the investigation of allegations of misconduct (hereinafter referred to as a grievance) on the part of an attorney subject to the jurisdiction of this code; determination of the truthfulness of such allegations; making recommendations regarding discipline to the Wyoming Supreme Court; and taking all other actions authorized by this code. While it must provide for and administer both prosecutorial and adjudicative functions, these functions shall be separated within the board insofar as practicable in order to avoid unfairness. The investigative and prosecutorial functions shall be directed by bar counsel, who shall be a lawyer and a member of the Wyoming State Bar, and performed, insofar as practicable, by bar counsel, other employees of the Wyoming State Bar, any assistant bar counsel employed by the Wyoming State Bar and any special bar counsel appointed by the Wyoming State Bar. Special bar counsel shall serve without remuneration other than reimbursement of expenses and may be any current or former member of the board of professional responsibility or predecessor grievance committee. Any present or former member of the board of professional responsibility or predecessor grievance committee shall recuse himself or herself from adjudicative hearing of any manner in which he or she served as special bar counsel. The adjudicative functions shall be performed by the board.

(d) Should a complainant appeal to the board the dismissal of his or her complaint by bar counsel pursuant to Rule v(c), the quorum requirements of (b), above, do not apply. For such an appeal not less than three (3) members shall constitute a quorum, with the chairman or vice chairman presiding. The decision of the majority is binding, and the matter is then deemed concluded with no further appeal.

(e) The Board shall have the following powers and duties:

(1) To consider and cause to be investigated conduct or allegations of conduct of any attorney within the jurisdiction of this court stating a *prima facie* violation of the Rules of Professional Conduct and may initiate any such investigation on its own motion or may undertake the same upon complaint;

(2) To enlist the services of bar counsel or assistant bar counsel hired by the Wyoming State Bar and any special bar counsel appointed by the Wyoming State Bar;

(3) To enlist the assistance of the judges of the courts and of all members of the Wyoming State Bar to accomplish its objectives (it being the duty of all members of the Wyoming State Bar upon request to assist the board in all reasonable ways);

(4) To review recommendations of bar counsel for disposition of disciplinary matters and petitions for transfer to and from disability inactive status;

(5) To approve, modify or disapprove the recommendations of bar counsel, dismiss grievances or to cause further investigation to be performed;

(6) To conclude grievance matters by private reprimand or informal admonition;

(7) To administer and direct formal disciplinary proceedings;

(8) To conduct prehearing conferences regarding formal charges of misconduct, petitions for reinstatement or readmission, and petitions for transfer to and from disability inactive status;

(9) To consider and decide prehearing motions;

(10) To recommend to this court public censure, suspension or disbarment;

(11) To place offending attorneys upon a probationary status for a period not to exceed two (2) years, upon conditions to be established by the board in writing;

(12) To require a respondent to make restitution to persons financially injured by the respondent's conduct and to require reimbursement to the client's security fund (see Rules of the Supreme Court regarding the client's security fund);

(13) To exercise all powers and duties as established by law;

(14) To maintain records of all matters processed by the board and the disposition thereof.

(A) When a grievance is dismissed as being without merit, or when an admonishment is ordered by the board, records relating to the matter shall be retained for a period of two (2) years.

(B) Records relating to a private reprimand shall be retained for a period of six (6) years.

(C) Records relating to disbarment, suspension, public reprimands and probation shall be kept permanently;

(15) To assure compliance with an order of suspension, disbarment or probation;

(16) To inform the public about the existence and operation of the system and the disposition of each matter in which public discipline has been imposed, a lawyer has been transferred to or from disability inactive status, or a lawyer has been reinstated or readmitted;

(17) To delegate, in its discretion, to the chairman or the vice chairman the power to act for the board on administrative and procedural matters.

(f) Bar counsel shall have the following powers and duties:

(1) To review all information coming to the attention of the board or bar counsel to determine whether a *prima facie* violation of the Rules of Professional Conduct is alleged;

(2) To investigate all information coming to the attention of the board which, if true, would be grounds for discipline or transfer to disability inactive status and investigate all facts pertaining to petitions for reinstatement or readmission;

(3) To recommend dismissal, probation, informal admonition, private reprimand, a stay, the filing of formal charges or the petitioning for transfer to disability inactive status with respect to each matter brought to the attention of the board;

(4) To prosecute before the board and the court discipline, reinstatement and readmission proceedings, and proceedings for transfer to or from disability inactive status;

(5) To employ and supervise (subject to the approval of the Wyoming State Bar) staff needed for the performance of investigative and prosecutorial functions and, when circumstances necessitate their use, appoint and supervise assistant bar counsel and special bar counsel for all functions of bar counsel as designated in the powers and duties and these rules except the discretionary authority conferred solely upon bar counsel in Rule V(c) herein below. Special bar counsel and any assistant bar counsel shall have immunity as set forth in Rule XII(a) for bar counsel while acting within the scope of their duties as assistant bar counsel or special bar counsel.

(6) To notify promptly the complainant and respondent of the disposition of each matter;

(7) To notify each jurisdiction in which a lawyer is admitted which is known to bar counsel of a transfer to or from disability inactive status, reinstatement, readmission or any public discipline imposed in this state;

(8) To seek reciprocal discipline when informed of any public discipline imposed in any other jurisdiction;

(9) To forward a certified copy of the judgment of conviction to the disciplinary agency in each jurisdiction in which a lawyer is admitted when the lawyer is convicted of a "serious crime" (as hereinafter defined) in this state;

(10) To undertake, pursuant to directions from the board, whatever investigations are assigned to bar counsel;

(11) To report to the board in writing no less than quarterly regarding all pending matters before the board.

DISCIPLINARY CODE FOR THE WYOMING STATE BAR

RULE V. INITIAL PROCEDURE

(a) The board or bar counsel shall initiate or cause to be initiated all investigations. All attorneys receiving complaints shall cause the same to be forwarded to the board. It shall be the duty of each court of record to report in writing to the board any action or inaction on the part of any attorney appearing before it or in its jurisdiction which, in the opinion of the court, constitutes probable cause for discipline.

(b) Upon receiving a complaint or information stating a *prima facie* violation of the Rules of Professional Conduct in the sole discretion of bar counsel and subject to the provisions of paragraph (c), below, bar counsel may conduct an investigation into the allegations of the complaint which may include obtaining a statement from the respondent attorney.

(c) If the investigation discloses insufficient facts to establish a *prima facie* case, in the sole discretion of bar counsel or upon receipt and review of the statement from the responding attorney should bar counsel in his sole discretion conclude there is neither an ethical violation nor clear and convincing evidence of an ethical violation, bar counsel may dismiss the complaint and advise the complainant of such dismissal. Bar counsel shall also inform the complainant that he or she has thirty (30) days after receipt of such notice of dismissal to appeal the same to the board. In the event of an appeal, the board shall review the written complaint and file of bar counsel. If the board determines that the dismissal is proper, bar counsel shall notify the complainant and such other persons as the board may deem appropriate of such determination. If the board determines to set aside the dismissal, the board shall instruct bar counsel to proceed as provided in these rules and to notify the complainant and such other persons as the board may deem appropriate of the decision of the board and of the reinstatement of the complaint.

(d) Upon completion of an investigation, bar counsel shall:

(1) If determined the complaint is not meritorious, move to dismiss the complaint. If the complaint is dismissed by the board, bar counsel shall notify the complainant and such other persons as bar counsel may deem appropriate; or

(2) If determined the complaint is meritorious, cause formal charges in a complaint for formal disciplinary proceedings to be drafted, supported by affidavit or other statement under oath, which shall be reviewed by the chairman of the board or another member of the board designated by the chairman if the chairman has a conflict in a particular matter for determination of probable cause to proceed with the filing of formal charges. If the chairman or designee finds probable cause to file formal charges exists, bar counsel shall file the complaint for formal disciplinary proceedings with the board as provided in Rule IV(e)(7) and (f)(4); or

(3) Subject to board approval stipulate with the respondent to the imposition of private discipline or recommended public discipline before formal charges in a complaint for formal disciplinary proceedings are filed.

(e) The complainant shall be advised of bar counsel's or the board's action within ten (10) days after the same has been completed and of the right to appeal such action as provided in Rule VII.

**REGULATION OF THE WYOMING STATE BOARD
OF CONTINUING LEGAL EDUCATION**

SECTION IV. STANDARDS FOR ACTIVITY ACCREDITATION

A. A Continuing Legal Education activity consisting of lecture (classroom) style instruction qualifies for accreditation, and the attorney participants, both attendees and faculty, are entitled to Continuing Legal Education credit, if the Board determines that:

1. It constitutes an organized program of learning (including workshop or symposium) which contributes directly to the professional competency of an attorney; and
2. It pertains to legal subjects or other subject matters which integrally relate to the practice of law; and
3. Its purpose is the education of attorneys, even though it may also be directed to the education of others such as legal assistants, accountants, claims personnel, bankers, investigators, expert witnesses and the like; and
4. It is conducted or taught by attorneys, although it may also be conducted or taught in part by individuals who has special education, training and experience by reason or which said individuals should be considered experts concerning the subject matter of the program; and
5. The activity should be accompanied by a paper, manual or written outline which is substantively pertains to the subject matter of the program.

B. Examples. The program's purpose must be the education of attorneys on legal topics. Thus:

1. A joint continuing education program sponsored, for instance, by accountants to which attorneys are invited and at which attorneys lecture on topics of interest to both accountants and attorneys would likely be accredited by the Board, subject, of course, to the Board's review of the specific course outline or program brochure.
2. A meeting of doctors at which one or more attorneys lecture on topics of interest to doctors, such as malpractice, court procedures, giving expert testimony or the like, would not provide Continuing Legal Education credit to attorney lecturers

because the program was not intended for the Continuing Legal Education of attorneys. Attorneys are expected to participate in such programs as a contribution to the community and to their profession. Other similar programs which would not ordinarily qualify for Continuing Legal Education credit would include teaching bar review course or presenting to records managers on "Law Enforcement Records Liability".

3. Attending a course taught, for instance, by engineers, for engineers, on topics which may be of vital interest to a product liability attorney would not provide Continuing Legal Education credit to the attorney because the program was not intended for the Continuing Legal Education of attorneys. Regardless of how important the technical knowledge may be to the attorney's practice, the Board considers such training and knowledge to be adjunct to the that attorney's specialized practice which he has chosen. Other similar programs which would not ordinarily qualify for Continuing Legal Education credit would be attending courses at a real estate school; attending a non-attorney workshop on juvenile delinquency or attending a non-attorney course on federal procurement.

C. Writing, following by publication, in which the attorney is named author, of an article in a legal periodical which is a member of the National Conference of Law Reviews, qualifies for Continuing Legal Education credit to a maximum of fifteen (15) hours per attorney for any single article. An article published in a legal periodical which is not a member of the National Conference of Law Reviews may, at the discretion of the Board, qualify for Continuing Legal Education credit. Authors of law review articles applying for Continuing Legal Education credit must submit a copy of the article, as published, with the attorney's written report.

D. Voluntary contributions, without compensation other than reimbursement of expenses, to legal newsletters, pamphlets, magazines, newspapers or circulars, consisting of case or statutory summaries or surveys, law updates, synopses and the like may, at the discretion of the Board, be granted one half ($\frac{1}{2}$) the number of hours expended by the attorney in preparation of such contributions, not to exceed seven and one-half ($7\frac{1}{2}$) hours in any one calendar year. Authors of newspaper or newsletter articles applying for Continuing Legal Education credit must submit a copy of the article, as published, with the attorney's written report.

E. The voluntary presentation of papers, without pay or other compensation other than payment of expenses, to legal societies or associations may, at the discretion of the Board, qualify for Continuing Legal Education credit. Authors of such papers applying for Continuing Legal Education credit must submit a copy of the paper as presented, with the attorney's written report.

F. No activity will be accredited which involves a "for profit" activity such as authoring a book or treatise for a fee or commission or teach a course for which payment

of other than expenses received.

G. Identical activities will be accredited unless they are held at least one year apart. Additionally, credit may not be allowed for welcoming or valedictory remarks exceeding one-quarter of an hour. Credit will be allowed for luncheon speeches show to meet the foregoing standards.

SECTION V. ACCREDITATION OF SPONSORS, PROGRAMS AND ACTIVITIES

A. Accreditation of Sponsors. An organization or person not listed in Rules for Continuing Legal Education of Members of the Wyoming State Bar 4b. or not previously accredited by the Board, which desires accreditation as a sponsor of courses, programs, or other legal education activities satisfying the requirements hereunder and under the Rules of the Supreme Court for the Continuing Legal Education of members of the Wyoming State Bar, shall apply for accreditation to the Board stating its legal education history for preceding two years, including approximate dates, subjects offered, total hours of instruction presented, and the names and qualification of speakers.

By January 31 of each year, commencing January 31, 1979, all accredited sponsors shall report to the Board in writing the legal education programs conducted during the preceding calendar year on a form approved by the Board.

The Board may at any time re-evaluate an accredited sponsor. If after such re-evaluation, the Board finds there is basis for consideration of revocation of the accreditation of an accredited sponsor, the Board shall give notice by ordinary mail to that sponsor of a hearing on such possible revocation at least 30 days prior to said hearing. The accreditation of sponsors shall be by action of quorum of the Board.

B. Prior Accreditation of Activities. An organization or person other than an accredited sponsor, which desires prior accreditation of a course, program or other legal education activity, or an attorney who desires to establish accreditation of such activity prior to days in advance of the commencement of the activity on a form provided by the Board. The Board shall approve or deny such application in writing within a reasonable time following receipt of such application. The application shall state the dates, subjects offered, total hours of instruction, names and qualifications of speakers and other pertinent information.

C. Post Accreditation of Activities. An attorney seeking credit for attendance at or participating in an education activity which was not conducted by an accredited sponsor and which was not otherwise accredited, shall submit to the Board the written report required by Section III.D. and shall include a brief resume of the activity, its dates, subjects, instructors and their qualifications, a copy of the program outline, program brochure and other documentation upon which the Board can make a determination as to the qualifications of the program, and the number of credit hours to which the applicant is

entitled. Within a reasonable time after receipt of the written report and accompanying materials, the Board shall advise the attorney in writing by ordinary mail that the activity is not accredited or if the number of hours of credit is less than requested.

D. Self Study Credit. Self Study credit may be given for programs where audio visual recorded or reproduced material is used, provided the following:

1. Bar approval is received prior to viewing or listening;
2. The video or audio tapes or reproductions are from an accredited provider, or the video tapes are from an approved program;
3. The video or audio recordings or reproductions are accompanied by a paper, manual, or written outline which substantively pertains to the subject matter of the recording or reproductions.
4. The applicant signs an affidavit verifying that he or she actually viewed or listened to the portions of the material for which he or she is seeking credit.
5. The applicant has not applied for credit for viewing or listening to the same material previously.

No more than five (5) hours of credit may be given during one year for self-study activities, and no hours may be carried over to any subsequent years.