Board of Judicial Policy and Administration

Supreme Court Building, Room 237
Cheyenne, Wyoming
August 13, 2018
8:00 A.M. – 10:30 A.M.
Video Conference

MINUTES

BJPA Members Present: Chief Justice Mike Davis (Chair), Justice Kate Fox, Justice Lynne Boomgaarden, Judge John Fenn,* Judge Catherine Rogers, Judge Tom Rumpke,* Judge Bob Castor,* Judge Curt Haws,* Judge Wes Roberts*

Others Present: Judge Marv Tyler, Judge Brian Christensen, Patty Bennett, Clerk of the Supreme Court, Julie Goyen, Chief Information Officer, Ronda Munger, Deputy State Court Administrator, Tricia Gasner, Business Applications Manager, Angie Dorsch, Executive Director of Equal Justice Wyoming, Cierra Hipszky, Business Manager and Lily Sharpe, State Court Administrator

**Appeared remotely via phone or video conference*

Agenda Items	
Welcome	Chief Justice Davis welcomed Board members and others present.
Judicial Vacancies	The Judicial Nominating Commission has been working very hard. Chief Justice Davis noted that in August, the Commission announced nominees for the Supreme Court and for district and circuit judges in the Fifth Judicial District. The Commission will meet again l after the vacancy is announced for a fourth district judge in the First Judicial District.
EJW Update	**1.** Update – Angie Dorsch Angie Dorsch presented the annual report for Equal Justice Wyoming. (Appendix 1) Justice Boomgaarden, Access to Justice Chair, added that Angie and other members of the Access to Justice Delivery Working Group met in June to develop an RFP for a needs assessment. Chief Justice Davis commended Angie's success in creating a sustainable and effective program and thanked the members of the Wyoming Bar for their support.

Legislative Update	1. Update – Lily Sharpe and Ronda Munger A. Joint Judiciary Interim Committee Meeting – Laramie September 20- 21, 2018 The Joint Judiciary Interim Committee will hold its second meeting in Laramie on September 20-21, 2018. The Committee will consider statutory clarifications as to responsibility for court security cameras. The Committee will also review needed statutory updates identified during the configuration of the jury and case management systems, including updates relating to abstracts of court records. Currently, several statutes require courts to provide records to other agencies. The statutes, however, are inconsistent and outdated. The abstract bill would clarify the information the courts must provide and allow electronic transmission of court abstracts to other justice system partners.
Judicial Conference Reports <u>District Conference</u> <u>President:</u> Judge Tyler <u>Circuit Conference</u> <u>President:</u> Judge Christensen	1. Circuit Court Conference – Judge Christensen 2. District Court Conference – Judge Tyler The District Judges will receive an update at their meeting in September from Marc Pelka and the Council of State Governments Justice Center on the *Justice Reinvestment Initiative*. Judge Christensen inquired whether the circuit and district court judges could meet together during the update.
Judicial Branch Technology <u>Courtroom Automation Committee</u> Members: Chief Justice Davis, Chair Judge Fenn Judge Edelman Judge Campbell Judge Christensen Judge Castano Judge Haws <u>Courtroom Technology Committee</u> Members: Chief Justice Davis, Chair Justice Burke Judge Tyler, Judge Sharpe Judge Prokos Judge Christensen	**Courtroom Automation Committee Updates** 1. FullCourt Enterprise (circuit and district) – Elisa Butler The District Court Automation Committee recently experienced some changes. Judge Skar, who will retire from the bench soon, has been replaced on the committee with Judge Edelman. The next court automation meeting will be on August 14th. We will begin piloting FullCourt Enterprise in the circuit courts on October 1st. The first pilot court will be Natrona County, and we have begun working with the clerks and judges. Training for Natrona County will take place on August 24th through August 27th. The clerks will then be given about a month period to do user acceptance testing within the system before go-live. The FullCourt Enterprise rollout plan has been modified to account for a delay in receiving a child welfare piece from Justice Systems, Inc. Unlike WyUser, FullCourt Enterprise does not have a robust juvenile module that allows for tracking of parties, relationships and placements in juvenile cases. We understood this when we originally contracted with JSI for FullCourt Enterprise, and at that time we included a contract provision that would require JSI to develop a child welfare piece that would layer on top of the juvenile module to allow better tracking of information in juvenile

cases. Unfortunately, JSI has informed us that it is substantially behind in developing this piece. Based on feedback from JSI, we anticipate that we will receive this piece in January of 2019. Unfortunately, we cannot roll out the system to the district courts without that piece. We will also need time to fully test the child welfare piece and request any additional customizations that are needed before we roll out the system to the district courts. As a result, we currently anticipate that the we will be able to start piloting in the district courts no earlier than the fall of 2019.

The FullCourt Enterprise rollout team currently consists of four people from the Court Technology Office:

Heather Kenworthy – Project Manager;
Di Wilsey-Geer – Business Analyst;
Bethany Slagle – Business Analyst; and
Tyler Christopherson – Systems Administrator

We have concluded that we simply do not have enough people to rollout FullCourt Enterprise in a timely manner. As a result, we are hoping to add four new people to the FullCourt Enterprise rollout team to allow a more timely and efficient rollout of the system throughout the state.

In June, the BJPA was provided an update of the public access system. At that meeting, it was reported that the Joint Judiciary Committee had taken up public access to court records as an interim topic. In May, the JJC met, and indicated that it was less than happy with how public access has been proceeding. As a result, the public access subcommittee, made up of clerks, judges, and attorneys convened to reevaluate how public access to court records should move forward. The subcommittee came up with possible alternative recommendations which will be presented to a Joint Judiciary Committee public access working group on August 28th.

2. Jury Management – Tricia Gasner

The Court Automation Committee will review the jury questionnaire at its meeting this week. Substantial configuration is required to create the interactive questionnaire, so the questionnaire needs to be uniform throughout the state. The Court Technology Office AgileJury team continues to meet with clerks every two weeks to demonstrate the AgileJury and eJuror applications. Laramie and Platte County Circuit and District courts are currently using the system and creating questionnaire pools (Q pools) for their new terms. The next courts to receive the system are circuit and district courts in Teton, Park, Hot Springs counties and Albany County District Court. Their functional training is scheduled for December 11-13, 2018 in Powell, Wyoming. The jury pools are now updated to include change of address information and to remove deceased individuals. The updates utilize data from Driver Services, Voter Registration, Vital Statistics and the National Change of Address.

Courtroom Technology Committee Updates – Julie Goyen

During our next meeting, Justice Fox will replace Justice Burke on the Courtroom Technology Committee. We expect to enter into a Courtroom Technology MOU with Weston County in the next couple of weeks.

The old courtroom technology website has been moved into the Azure cloud as a SharePoint site. An email was sent out a few weeks ago with login instructions. There is a project summary with dates of major project milestones.

The next meeting is August 28, 2018 and the Committee will be discussing alternate project rollout scenarios as the Judicial Systems Automation Account has brought in less than expected revenues.

In September, Judge Rogers' courtroom will have an audio installation completed. We continue to work with the Laramie County Commissioners with the Committee's blessing. The County will give the State funds for the 3 circuit courtrooms and a new large courtroom. The Laramie County District Judges are paying for Judge Rogers' upgrade and the State will take on the two remaining courtrooms.

Emergency Requests have slowed down since this time last year. There is a new request in Albany County Circuit Court. The equipment is approximately 13 years old and has had performance issues for the last year and a half. Judge Castor is meeting next week with the Albany Commissioners to discuss the electrical work that needs to be completed by the county. Once the work is conducted, the audio upgrade will be installed.

Project Stratus Phase III Branch Hardware Replacement – Julie Goyen

Last week the hardware refresh took place in the circuit courts of Evanston, Kemmerer, and Afton. Both district and circuit courts were upgraded in Jackson and Pinedale. The CTO has begun to tentatively schedule the rollout in late September for Riverton and Lander. Additionally, the last BJPA minutes were sent out and contained the new hardware/software standards. The standards contain an exception request process. Thus far we have received two requests with a third expected. The IT Steering Committee will review those later this month. We are over halfway done with the rollout. The remainder of the biennium funding was used to purchase the final equipment needed for hardware refresh. Internet circuits in Cheyenne and Casper did not get upgraded during Phase I. We are close to getting those installed.

Payment Card Industry (PCI) Compliance – Julie Goyen

The Branch is required by the Payment Card Industry Standards to comply with numerous security standards, including security awareness training to all Branch staff. After investigating security training vendors, a cybersecurity training company called "Ataata" was selected. Training is done in short 2-3 minute videos with a quick follow-

	up question to be completed by the employee. (Other vendors had training sessions that were anywhere from 15-30 minutes.) Additionally, the Ataata software allows us to train on phishing emails and bogus emails that, if clicked, educate the user on the warning signs in the email. The kick-off meeting is Wednesday of this week.
Court Security Commission Judicial Members: Justice Kautz Judge Tyler Judge Roberts	**1.** Update – Ronda Munger The Court Security Commission met on June 26, 2018, and discussed the $400,000 appropriation provided by the 2018 Legislature to the Supreme Court for court security improvements. The Commission recommended the funds be distributed to the 7 counties that received courthouse security assessments in 2016; that the funds be distributed by a grant process and a formula that prorates the assessed needs of the county with the amount of funds available; and that any funds not used by the seven counties be made available to other counties through a second grant process. The first grant applications are due September 11, 2018.
Permanent Rules Advisory Committee (PRAC) <u>Appellate Division</u> Judicial Members: Justice Davis Judge Fenn <u>Civil Division</u> Judicial Members: Justice Fox, Chair Judge Castano Judge Kricken Judge Rumpke <u>Criminal Division</u> Judicial Members: Judge Edelman, Chair Judge Arp <u>Evidence Division</u> Judicial Members: Judge Rumpke, Chair Judge Nau Judge Radda <u>Juvenile Division</u> Judicial Members: Judge Wilking, Chair Justice Kautz Judge Campbell Judge Fenn	**1.** Appellate Rules Update – Chief Justice Davis The Appellate Division will meet on August 30, 2018, to review comments from the Bar on the proposed modification of Appellate Rule 7.05. The change would lower the maximum number of pages from seventy (70) to forty-five (45) for principal briefs and from twenty (20) to fifteen (15) pages for reply briefs. The change would also allow the option of a maximum word count for both principal briefs and reply briefs. **2.** Civil Rules Update – Justice Fox **A.** Rules of Civil Procedure, Rule 40.1. Transfer of Trial and Change of Judge The Civil Division received substantial feedback from the Bar on the District Court Conference resolution requesting suspension of Rule 40.1(b). (Appendix 2) A review of actual usage of the rule reflects that the number of cases assigned out of the district is fairly insignificant. Judge Tyler advised that the Conference has not discussed the Bar response yet. The consensus of the Board was to request the Civil Division to discuss the issue in light of the feedback. **B.** Uniform Rules for District Courts, Rule 403; Rules of Civil Procedure, Rule 10 and 62; Rules of Criminal Procedure, Rule 49; and Rules of Procedure for Juvenile Courts, Rule 1 The proposed amendments below requiring court documents to be filed on letter sized paper have been sent to the chairs of the respective Rules Divisions. Judge Tyler submitted the attached modifications on behalf of the District Court Conference. (Appendix 3) Judge Castor moved, seconded by Judge Rogers, to support issuance of the draft orders below with the modifications suggested by the District Court Conference. The motion passed unanimously on a voice vote. i. Draft Order Amending Rules 10 and 62 of the Wyoming Rules of Civil Procedure ii. Draft Order Amending Rule 49 of the Wyoming Rules of

	Criminal Procedure iii. Draft Order Amending Rule 1 of the Rules of Procedure for Juvenile Courts 3. Criminal Rules Update – Patty Bennett Patty Bennett advised the proposed video conferencing rule changes allowing appearance by a defendant, judge, attorney, or combination, with the consent of the defendant will be considered by the Supreme Court in the near future. 4. Rules of Evidence Update – Judge Rumpke The Division is considering some minor changes relating to hearsay exceptions. 5. Juvenile Rules Update – Patty Bennett No update.
Judicial Salaries Committee Members: Justice Fox, Chair Justice Davis Judge Fenn Judge Rogers, Judge Bartlett Judge Christensen	**1.** Update – Justice Fox The subcommittee believes it is important to educate the Legislature on the importance of maintaining competitive salaries. The attached memo provides background material to assist judges in preparing for conversations with legislators. Judge Castor moved, seconded by Judge Rumpke, to distribute the memo to the members of the Judiciary. The motion passed unanimously on a voice vote. (Appendix 4)
Pretrial Release Issues	**1.** Legislative Interim Work – Judges Christensen, Haws, and Roberts and Patty Bennett Judge Haws reported the subcommittee is continuing to study options for improving the information available, as well as a list of factors to use, to assist in making sound bail decisions.
Sweetwater County Supervising Judge	In accordance with the BJPA Policy Statement (Appendix 5), Judge Castor moved, seconded by Justice Fox, to approve the recommendation from Judge Jones and Judge Prokos that Judge Prokos be appointed as the Supervising Judge for the Sweetwater County Circuit Court until July 18, 2019. The motion passed unanimously on a voice vote.
Circuit Court Audits	Buffalo Audit Letter July 13, 2018 (Appendix 6)

Actions taken by the Board:

1. Request the Civil Division to review the Bar's comments relating to peremptory challenges of judges.

2. Voted to support the proposed amendments requiring court documents to be filed on letter sized paper, with the modifications suggested by the District Court Conference.

3. Voted to distribute the background memo on judicial salaries to all members of the Judiciary.

Action items:

None

Schedule of Future Events	BJPA Meeting – December 10, 2018 Judicial Council Meeting (Laramie) – September 18-19, 2018 Joint Judiciary Interim Committee (Laramie) – September 20-21, 2018

Appendix 1: EJW Annual Reports

Appendix 2: Comments from the Bar on Rule 40.1(b)

Appendix 3: Draft Orders amending Uniform Rules for District Courts, Rule 403; Rules of Civil Procedure, Rule 10 and 62; Rules of Criminal Procedure, Rule 49; and Rules of Procedure for Juvenile Courts, Rule 1

Appendix 4: Judicial Salaries Memo

Appendix 5: BJPA Policy Statement

Appendix 6: Audit Letter

Attachments are highlighted

Approved on September 24, 2018

Equal Justice Wyoming

Annual Report to the Wyoming Supreme Court
July 2018

"Injustice anywhere is a threat to justice everywhere."
- Dr. Martin Luther King, Jr.

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Liz Hutchinson, Staff Attorney/Pro Bono Coordinator
Aaron Varner, IT Project Manager
Jessica Wales, Administrative Assistant

Message from the Executive Director

We have made great progress over the past year, and on behalf of the Board of Commissioners and Staff of Equal Justice Wyoming ("Equal Justice"), I am pleased to report on our program's developments over the 2018 fiscal year (FY) ending June 30, 2018.

Volunteers continue to be at the center of our efforts to expand services. Attorneys volunteered their time over the past year in a wide variety of ways, but their volunteer efforts share one thing in common – they made a difference for someone in need who otherwise couldn't afford an attorney.

Notably, the Volunteer Reference Attorney (VRA) Program has quickly grown over the past year. In total, the program

assisted 684 people in 2018; a 203% increase over FY 2017. We look forward to the continued expansion of the program.

We also received additional funding from new sources to launch two new programs: 1) a free Access & Visitation Mediation Program to help parties resolve custody and visitation disputes, and to assist in the development of parenting plans, and 2) a new project to expand legal services to victims of crime.

3,538 people received legal services and self-help assistance in FY 2018

In FY 2018, 3,538 persons received assistance from Equal Justice and the programs we fund. Although we have expanded legal assistance, information, and advice through our programs, we still have a long way to go. The limited resources that are available meet only a fraction of the need. We must ensure a continued commitment to providing access justice for all, even in tight economic times. The fairness of our justice system depends on that commitment.

Because of our limited resources, we rely heavily on volunteers. We would like to extend a sincere thank you to all of the dedicated volunteers and staff of legal aid programs and to all of our pro bono attorneys who volunteered for Equal Justice in the past year. It takes everyone working together to make justice for all a possibility.

- *Angie Dorsch*

Wyoming Among Top States for Attorneys Providing Pro Bono

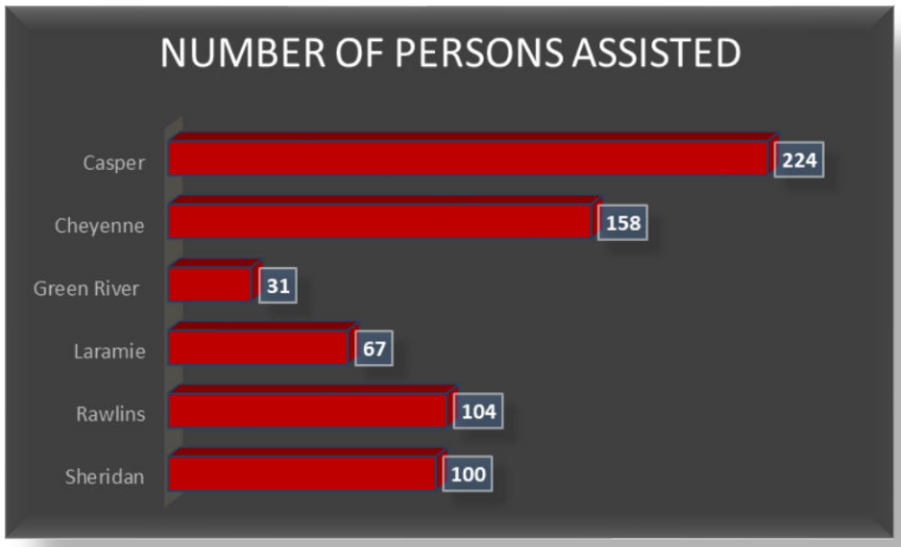
In 2017, Wyoming was one of 24 states that participated in a national pro bono survey conducted by the American Bar Association. The survey was distributed to all licensed Wyoming attorneys. The ABA pro bono report was released in April 2018, and Wyoming was among the top states in terms of the percentage of attorneys undertaking pro bono and the number of pro bono hours provided.

Of the 24 participating states, Wyoming ranked third highest in the number of hours of pro bono work attorneys reported. Over 70% of attorneys reported having completed some pro bono in the previous year, and those attorneys averaged 65.4 pro bono hours. Wyoming was a leader in providing pro bono services to individuals - 94.3% of the attorneys who provided pro bono in the previous year provided services to individual clients. Among the states, Wyoming also ranked third in terms of public service activities. Seventy-six percent of Wyoming attorneys reported having done some type of public service activity in the previous year.

These figures demonstrate the tremendous amount of pro bono work that Wyoming attorneys are providing. However, the number one factor that attorneys reported as discouraging them from pro bono work was a lack of time. This is understandable; attorneys are under incredible time pressure. In recent years, Equal Justice has launched programs that offer alternative pro bono opportunities so that busy attorneys can still provide pro bono services.

Pro Bono Programs and Initiatives

Volunteer Reference Attorney Program



In March 2016, Equal Justice launched the Volunteer Reference Attorney (VRA) pilot program in Cheyenne, placing pro bono attorneys in the Laramie County Courthouse to assist self-represented litigants. The attorneys provide legal information, explain court procedures, and assist litigants completing pro se forms. The program has been a huge success, and Equal Justice has worked, in cooperation with local bar associations, to greatly expand the program to other counties. In FY 2017, the program had sites in Casper, Cheyenne, Laramie, Rawlins, and Sheridan. In October 2017, Equal Justice launched the sixth VRA program site in Green River. A reference attorney is available in the courthouses of each of the six counties on the first and third Thursday of each month from 2:00 to 4:00 p.m., except in Green River where an attorney is only available on the first Thursday of each month. The VRA program assisted 684 individuals in FY 2018, more than doubling the number of persons assisted last year.

684 individuals assisted by
69 Volunteer Reference Attorneys
271 volunteer hours recorded
203% increase in persons served

Wyoming Free Legal Answers

The Wyoming Free Legal Answers (WFLA) portal, found at wyoming.freelegalanswers.org, was launched in August 2016, in partnership with the American Bar Association, to offer free legal advice online. The online platform screens applicants for income eligibility and allows eligible individuals to submit civil legal questions via a secure portal. Attorneys licensed to practice law in Wyoming are able to register as volunteers on the site. The volunteer attorneys then log in and can answer legal questions that have been submitted by low-income individuals. Equal Justice provides the day-to-day administrative functions for the site, including ensuring that only Wyoming licensed attorneys in good standing are given access to answer questions on the site and ensure that only civil questions are asked. Equal Justice also sends weekly updates to the volunteer lawyers, including supplemental resources for both lawyers and clients.

178 legal questions answered by 15 volunteer attorneys on wyoming.freelegalanswers.org

"Thank you so much for the fast response. This has helped me make some sense of what was an overwhelming process. I forgot to thank you when I got this [response] yesterday and had to let you know how much this means to us. This site is a blessing for those that need it." – Client who received legal advice on Wyoming Free Legal Answers

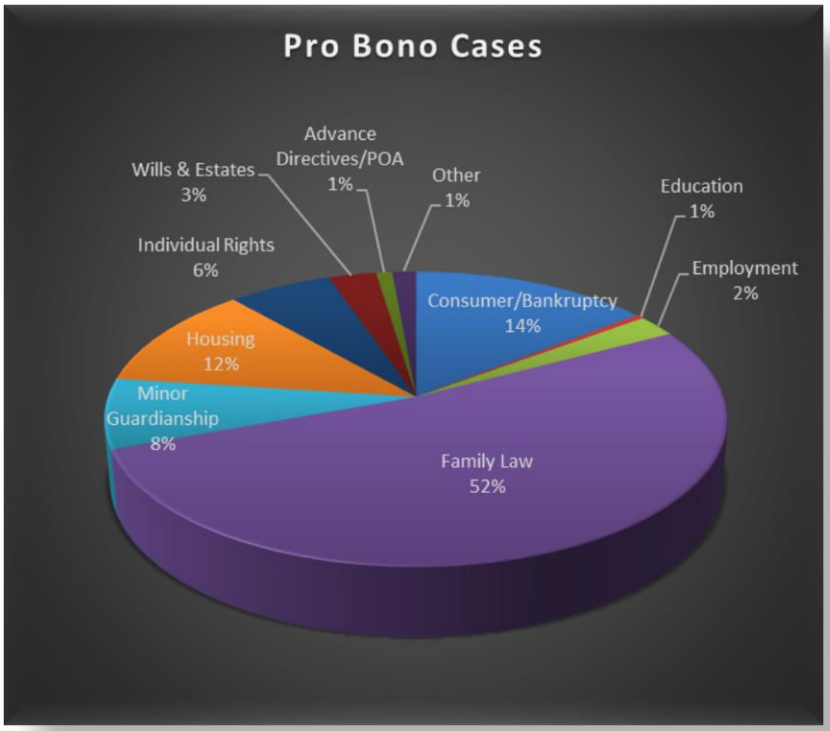
The portal is an important resource that reaches Wyomingites in rural and underserved areas of the state as well as those with limited access to transportation and child care. It is also an innovative tool that allows flexibility for busy attorneys to contribute pro bono services anytime, anywhere they have an internet connection. In FY 2018, pro bono attorneys answered 178 questions submitted on the portal, a 16.4% increase over last year.

Volunteer Lawyers Program

Equal Justice manages the statewide Volunteer Lawyers Program (VLP) in partnership with the Wyoming State Bar. Over the past year, we continued our work to increase pro bono legal services. We strive to provide resources and support to encourage and enable attorneys to undertake pro bono legal services for low-income clients. The type of assistance available through the VLP ranges from advice and brief services to full-representation of clients.

In September 2017, Equal Justice launched a new monthly legal advice clinic in collaboration with the University of Wyoming College of Law's Equal Justice Club and the Downtown Clinic, a healthcare clinic in Laramie. The clinic expands pro bono services and provides a great benefit to the community as well as a valuable learning opportunity for the students who volunteer.

"I attended yesterday's consultation with volunteer attorneys. Please know that I appreciate this service and found my attorney to be respectful, knowledgeable, considerate, and perfectly professional. Your service does it well and is celebrated by me. What an asset to the Laramie community." – Client who received legal assistance at a Laramie advice clinic



212 matters handled by pro bono attorneys

Monthly legal advice clinics are held in Cheyenne and Laramie with periodic clinics held in other locations throughout the state in collaboration with local bar associations.

Equal Justice receives many applications for pro bono representation. Not all applications accepted by Equal Justice can be placed with an attorney. The requests for assistance far outpace the number of available pro bono attorneys. However, 212 legal matters were handled by a volunteer attorney over the past year.

Volunteer Attorney Receives Pro Bono Award from Wyoming State Bar

Lee Dickinson received the Wyoming State Bar's Pro Bono Award in September 2017. Lee has accepted many cases from Equal Justice and goes above and beyond for his pro bono clients. Each time Lee closes a pro bono case with our office, he asks what he can help with next. He has helped with cases ranging from debt collection defense and enforcing a judgment to helping a client receive his rent security deposit when it was wrongfully withheld and helping another client escape a lease when the home was unsafe for the client and her children. We are grateful to work with such an outstanding volunteer attorney.

Training and Support for Pro Bono and Legal Aid Attorneys

Equal Justice provides support to pro bono and legal aid attorneys in several ways. Equal Justice holds free CLEs to provide training on the areas of law that are the most common among our target population. We also offer some trainings specifically for legal aid attorneys. The webinars we host are archived and available on our Pro Bono Portal for our volunteer attorneys and legal aid attorneys to access at any time.

The Pro Bono Portal is a valuable tool. There are a variety of resources on the Portal, such as sample pleadings and toolkits. These resources allow attorneys to take pro bono cases in areas of law they do not regularly handle.

Equal Justice also has a pool of volunteer mentor attorneys who are willing to mentor less experienced attorneys taking a pro bono case. In addition to these resources, Equal Justice provides professional liability insurance to cover our volunteers for any case or activity they undertake through our program. These resources and support make it easier for attorneys to provide pro bono legal services.

New Mediation Programs

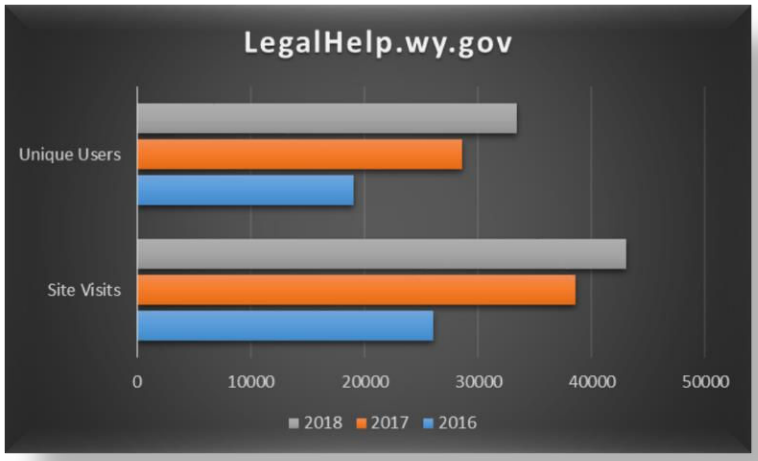
In 2018, Equal Justice launched two new mediation programs. The Access & Visitation Mediation Program provides free mediations in cases that involve custody or visitation issues and helps parents create parenting plans. The second program, the Volunteer Mediation Program, is in partnership with the Ewing T. Kerr American Inn of Court. Members of the Inn have signed up to provide volunteer mediation services in Laramie County family law cases. Through these programs, six individuals received mediation services to help them resolve their family law cases. We are currently piloting these programs in Cheyenne. We hope to expand these services in the future.

Self-Help Resources and Legal Information

Legal Help Website

Equal Justice launched our legal information website, www.legalhelp.wy.gov, in November 2012. Since then, we have continually expanded the site and updated the content to provide information, resources, videos, online classrooms, and pro se forms that address the most common civil legal issues faced by low-income individuals.

Traffic on the website continues to steadily increase. In FY 2018, there were 42,996 visits to the site, compared to about 26,000 in 2016 and 38,549 in 2017. This was an 11.5% increase in traffic to the site from 2017 and a 65% increase from 2016. The site was visited by 33,394 unique users in 2018, compared to about 19,000 unique users in 2016 and 28,558 in 2017.



42,996 site visits and 33,394 unique users

The website is an important tool that allows the public to understand their legal rights and access legal information in plain language and is a frequently used resource.

LiveChat

Although there are a growing number of self-help services and Volunteer Reference Attorney locations where people can get help finding appropriate legal resources in person, many in Wyoming do not have access to in-person assistance. In order to help people find the information they need remotely, Equal Justice's website has a LiveChat feature that can help people navigate our expansive website to find the legal resources they need. The LiveChat is somewhat like a remote self-help center in that it doesn't offer legal advice, but instead helps people navigate to appropriate information and resources. In FY 2018, 187 visitors to the website received assistance from a trained LiveChat operator. The majority of the LiveChat volunteers are law students. We also utilize an AmeriCorps VISTA (Volunteers In Service To America) member to help provide training on the LiveChat software and manage the volunteers' schedules.

187 visitors to www.legalhelp.wy.gov received assistance from a trained LiveChat operator

Outreach

The Equal Justice Staff engages in outreach to help people know their rights and to increase public awareness of available legal resources and programs. Staff held outreach events at various organizations, such as CLIMB Wyoming, Dads Making a Difference, Homeless Veterans Stand Down, and presentations at public libraries. Staff also conducted outreach to social service providers and community partners.

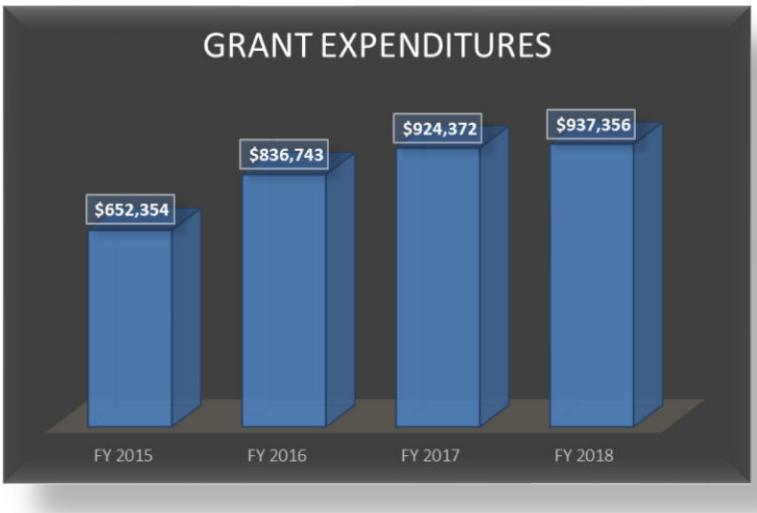
In September 2017, Equal Justice began conducting regular outreach at the VA Hospital in Cheyenne. Our AmeriCorps VISTA member and staff set up a resource table at the VA hospital twice per month to provide legal information and resources to veterans. We assisted 75 persons through our VA outreach. Our VISTA member also provided resources and information to the VA Staff so they can make appropriate referrals to available legal resources when necessary.

75 persons assisted through VA outreach

In addition to our outreach at the VA, we have also partnered with the Vet Center to assist veterans. Equal Justice held a joint outreach event with the UW Civil Legal Services Clinic and the Vet Center to provide information and legal assistance to veterans regarding discharge upgrades.

We strive to increase awareness of the legal resources available to low-income individuals. We will continue our outreach efforts to expand the reach of our programs.

Supporting Statewide Civil Legal Services through Grants



Equal Justice's mission to provide a statewide delivery system for civil legal aid is largely carried out through our grants to legal service organizations. We are the largest single source of funding for civil legal services in Wyoming. In FY 2018, we provided $937,356 in grants.

$937,356 provided in grants
2,196 clients received services

Equal Justice received VOCA (Victims of Crime Act) funds from the Division of Victim Services to provide civil legal services to victims of crime. These new funds

were awarded as a pilot project in 2018, and we granted the funds to the Wyoming Coalition Against Domestic Violence and Sexual Assault and the Laramie County Community Partnership Medical-Legal Partnership. The grantees utilized $58,368 in VOCA funds to increase legal assistance for victims.

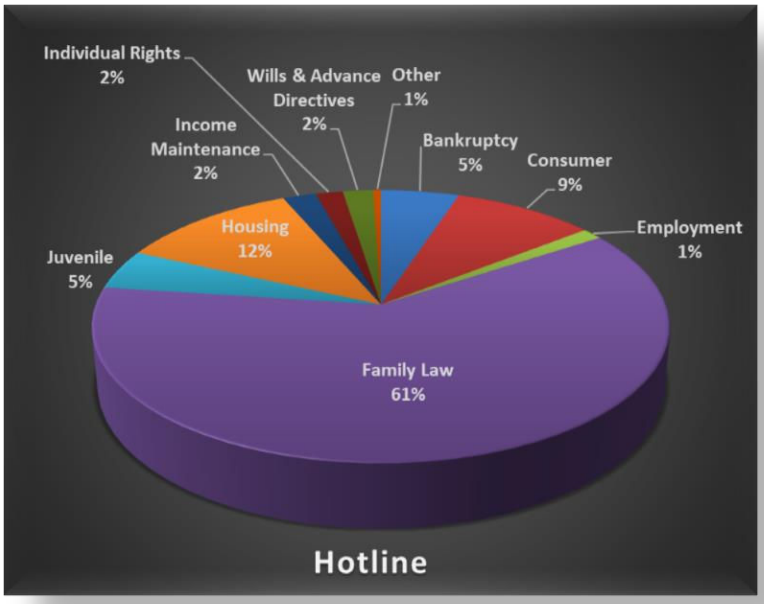
In total, 2,196 eligible clients received legal services through the grant programs we fund.

Legal Aid of Wyoming

Legal Aid of Wyoming is a statewide legal service provider. Equal Justice awarded three grants to Legal Aid of Wyoming that have expanded legal services to underserved areas of the state.

Statewide Legal Advice and Intake Hotline Grant

Equal Justice has partnered with Legal Aid of Wyoming to ensure individuals across the state have access to the advice of a lawyer through a hotline, which has been in operation since November 2012. Legal Aid of Wyoming operates the hotline Monday through Friday from 9:00 a.m. to 4:00 p.m. The hotline is a lifeline for many people in rural areas that have limited ability to go to a legal aid office in person. The hotline number is widely distributed by court clerks and librarians to people who are looking for legal advice and assistance.



1,575 callers received legal help over the hotline

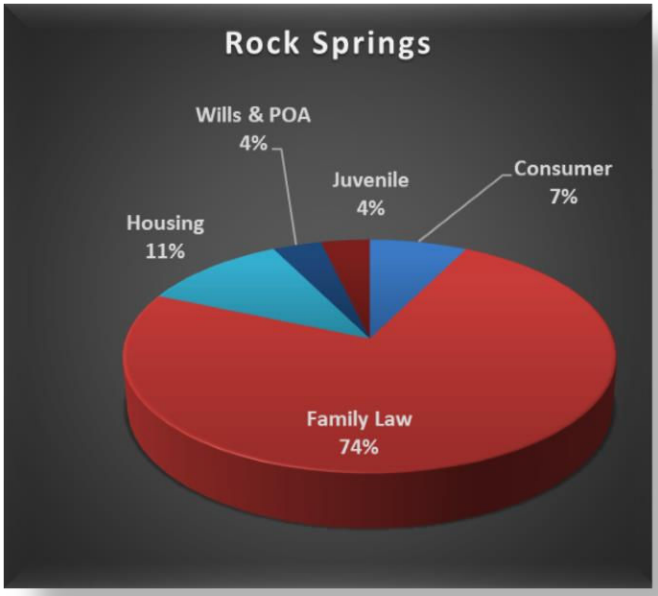
The hotline is an effective and efficient way to provide advice and answers to legal questions across the entire state, including rural and underserved areas. In addition to providing legal advice, the hotline is also a central point to apply for legal services. Clients are screened for eligibility before any advice or services are provided, and an application is then taken. The hotline assists people from every county in Wyoming.

The number of callers served by the hotline significantly decreased in 2018. Although we do not know the reason for the decrease, it is likely that as we have expanded other programs, such as the Volunteer

Reference Attorney Program and the Wyoming Free Legal Answers website, persons looking for legal advice and assistance are utilizing these other avenues for legal help.

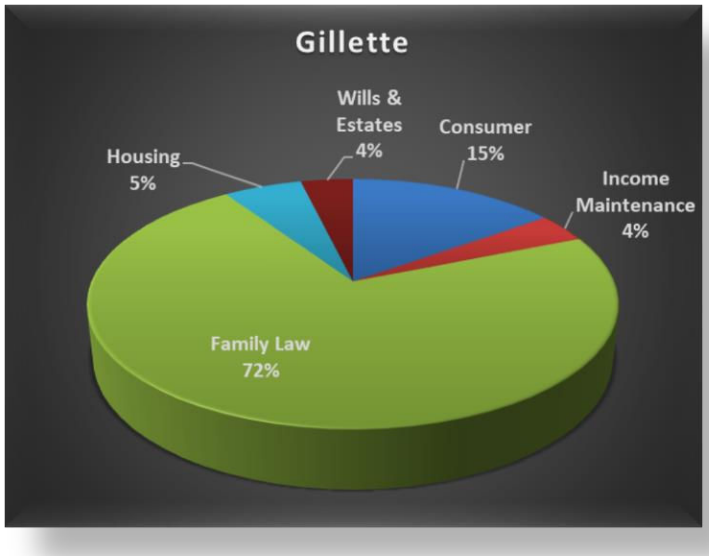
Rock Springs (Southwest Wyoming) Grant

In June 2013, Equal Justice partnered with Legal Aid of Wyoming, awarding a grant specifically to expand services to the southwest corner of Wyoming by opening a legal aid office in that area of the state for the first time. Since the launch of the program, Equal Justice has continued to provide the necessary funds to maintain a full-time attorney in Rock Springs to serve Sweetwater, Lincoln, and Uinta Counties. The grant from Equal Justice has made it possible to expand services to this underserved area of the state. In 2018, the Rock Springs attorney handled 44 legal matters.



44 legal matters handled in 2018

Gillette (Northeast Wyoming) Grant

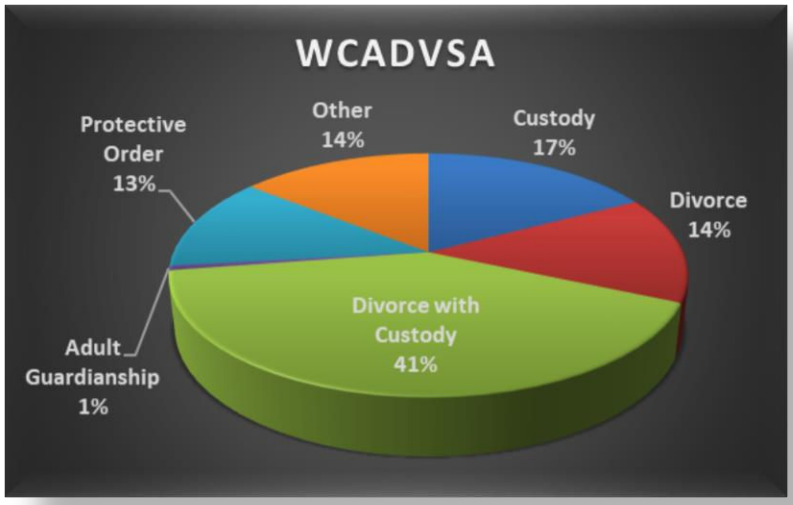


53 legal matters handled in 2018

The northeast corner of Wyoming had never had a legal aid office until September 2013, when a grant from Equal Justice provided the funding for a full-time legal aid attorney in Gillette for the first time. Equal Justice has continued to provide the funding to maintain a legal aid office in Gillette. The attorney provides services to a large service area covering five counties. The attorney provides legal services in Campbell, Crook, Johnson, Sheridan, and Weston Counties. The Gillette attorney handled 53 cases in 2018.

Wyoming Coalition Against Domestic Violence and Sexual Assault

The Wyoming Coalition Against Domestic Violence and Sexual Assault ("the Coaltion") is a statewide legal aid provider serving victims of abuse. The services the Coalition provides are vital to protect victims from further harm. The services they offer go beyond getting protective orders. The Coalition provides holistic services to help victims with all issues related to the abuse, including cases such as divorce or custody, which help protect victims and their children from further abuse.

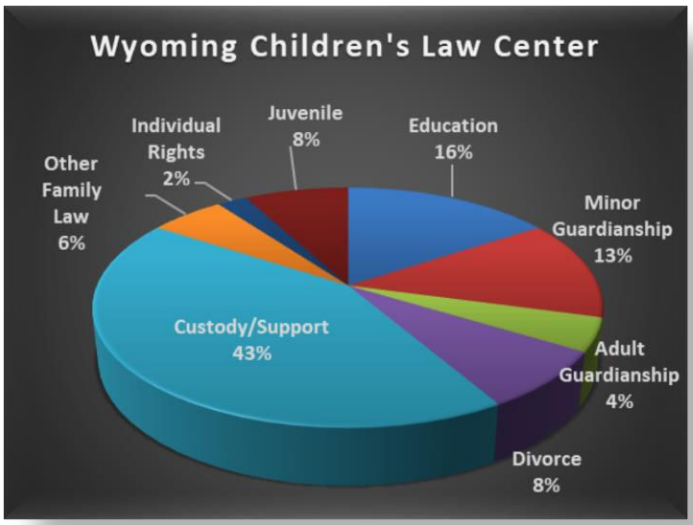


201 cases handled in 2018

Equal Justice has provided substantial funding to support the work of the Coalition since 2012. The funds have expanded the availability of legal services and support a satellite office in Cody that was opened in 2016. Through a new award of VOCA (Victims of Crime Act) funds from Equal Justice, the Coalition also opened a new office in Lander in 2018. Equal Justice funds three full-time attorneys and a portion of a fourth attorney. The Coalition handled 201 cases in 2018.

Wyoming Children's Law Center

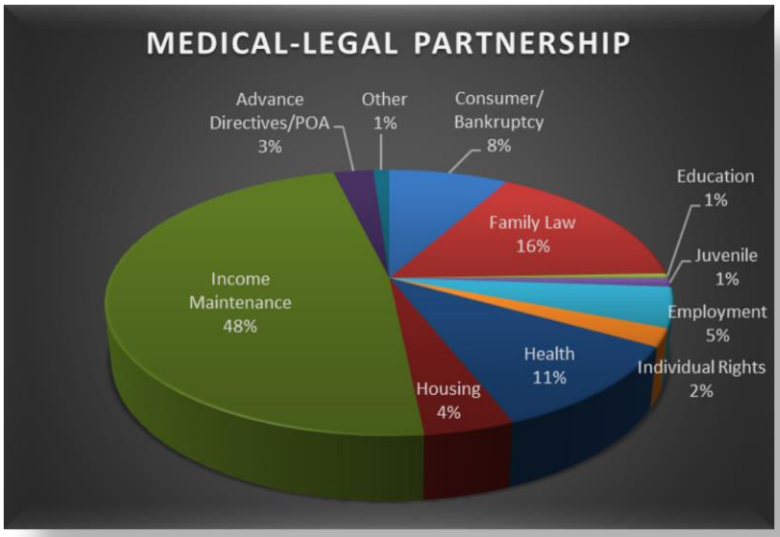
The Wyoming Children's Law Center (WCLC) provides legal services in cases involving children and families in a variety of areas of law. For example, the WCLC provides advocacy to ensure children receive special education services to which they are entitled, represents children with special needs, and handles family law cases. The WCLC fills a great unmet need. The grant from Equal Justice supports a full-time attorney handling a wide variety of civil legal cases involving children. The WCLC handled 89 cases in FY 2018.



89 cases handled in 2018

Laramie County Community Partnership

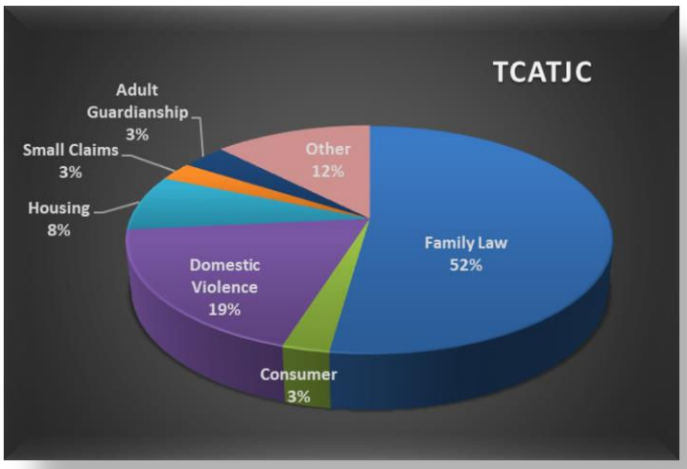
The Laramie County Community Partnership ("LCCP") received a grant from Equal Justice to launch Wyoming's first Medical-Legal Partnership ("MLP"). MLPs are quickly expanding across the country to address health-harming legal issues. The MLP addresses a wide range of legal issues ranging from legal help to have a landlord address mold that is causing asthma attacks to helping clients receive benefits under their health insurance or public benefits to which they are entitled in order to obtain and pay for medical care and necessary medications. The MLP places a lawyer into a medical team to identify and address patients' legal needs to improve their health. The MLP entered into a partnership with HealthWorks medical clinic in Cheyenne, but also receives referrals from other health care providers. The MLP fully launched in September 2016 when they began taking cases. In FY 2018, the MLP provided services to address 184 legal matters.



184 cases handled in 2018

Teton County Access to Justice Center

The Teton County Access to Justice Center ("TCATJC") was launched in 2012 with funding from Equal Justice. The TCATJC is housed in space donated by Teton County and shares the space with the county law library. The TCATJC provides legal information and self-help services to Teton, Sublette, and Lincoln Counties. Eligible applicants may also apply for legal representation through a panel of private contract attorneys who provide legal services at no charge to the client. The services are paid at a reduced rate from the Equal Justice grant funds.



50 cases handled in 2018

Our grantees provide valuable services that help low-income clients who otherwise would be unable to get legal help from an attorney. We thank the dedicated staff of the programs we fund for their work and commitment to access to justice.

Summary

Equal Justice continually strives to leverage our limited resources to provide legal services to as many low-income individuals as possible. Over the past year, we have been successful in utilizing volunteers and additional funding to help expand services. But we are still meeting only a fraction of the legal needs of the low-income in our state. Too many people are forced to appear in court without an attorney because they simply cannot afford a lawyer. Although we hope to make it easier for self-represented individuals to navigate the civil justice system, we will also look for additional ways to expand services for more individuals.

We were successful in obtaining new sources of funding outside of the state special revenue funds we receive. After a six-month pilot project funded by federal VOCA funds, Equal Justice has been awarded an additional $400,000 to expand civil legal services to victims of crime in FY 2019. We have granted those funds to the Wyoming Coalition Against Domestic Violence and Sexual Assault and the Laramie County Community Partnership's Medical-Legal Partnership to continue to expand their assistance to victims. These are vitally important services and we hope to continue to expand these services in future years.

In the coming years, we will continue to look for innovative ways to bridge the divide in access to legal services. Creative solutions will be necessary to overcome the barriers to access to justice, but we are committed to finding solutions.

Financial Summary

The revenue generated from filing fees that provide the funding for Equal Justice has declined significantly over the past two years. In the coming years, Equal Justice will continue to closely monitor any changes in the special revenue that funds our programs. We currently have reserve funds available to meet our obligations and remain within our spending authority.

Additional Revenue

In 2015, Equal Justice also began receiving additional funding from the increase in pro hac vice fees paid by out of state attorneys. The Wyoming State Bar increased the fees by $200 with 100% of the increased fee going to Equal Justice Wyoming to help support civil legal services. The fees generate approximately $30,000 per year and are earmarked to be used for grants. We sincerely appreciate the State Bar's support for access to justice.

We expanded our grant program through additional VOCA funds in 2018 and as we continue to add new resources, programs, and initiatives, we will also continue to explore additional funding to support our work.

Summary of Expenditures

Salaries and Benefits	$381,684
Office Expense and Travel	$32,757
Telecommunications	$2,442
Grants*	
Legal Aid of Wyoming	$269,572
Wyoming Coalition Against Domestic Violence & Sexual Assault	$427,948
Wyoming Children's Law Center	$69,500
Teton County Access to Justice Center	$86,224
Laramie County Community Partnership	$84,111
Special Services	$14,932
Total*	**$1,369,170**

*Includes the June 2018 grant expenditures which were paid in July 2018.

Vision - Equal access to justice for the people of Wyoming.

Mission - Serving the legal needs of low-income persons of Wyoming through community engagement, education, information, and expansion of legal services throughout the state.

Equal Justice Wyoming
2300 Capitol Ave. 1st Floor, Cheyenne, Wyoming 82002
www.equaljustice.wy.gov

CALL FOR COMMENTS
Peremptory Disqualification of Judges

First Notice:	June 12, 2018
Second Notice:	July 5, 2018
Deadline:	July 12, 2018
Distribution List:	All Active, New Active and Emeritus members (3,003)
Number of Commenters:	55

Mackenzie Williams
Cheyenne, WY

I very much favor rescinding WRCP 40.1(b)(1) allowing lawyers to peremptorily disqualify judges. I think we have adequate law when it comes to removing judges for cause. Allowing peremptory removals is contrary to a system in which we appoint qualified judges and trust that they will be impartial in all cases. I think judges in Wyoming are very conscientious about their duty and would generally remove themselves if they felt impartiality was a challenge. And, as stated, we have a body of law to allow litigants to disqualify judges in appropriate circumstances. Allowing peremptory disqualifications is contrary to our goal of efficiently resolving disputes.

RT Cox
Gillette, WY

I believe that peremptory disqualification has an important role in the fair administration of justice. This belief places me, predictably, at odds with the judges. I would never make it a standard practice to always disqualify a judge from every case (except one Circuit judge, now retired, whose practices regarding scheduling were unreasonable). There are cases where a client or cause of action needs to be assigned to a judge out of district. There are cases, in my perception, where the assigned judge has such a jaundiced perception of plaintiffs and their proof that I do not feel that justice is balanced when hearing a particular case in front of a particular judge. I do not feel that it is an abuse of the rules, or of administration of justice, to remove an assigned judge. If I remove a judge, I will not know who will be assigned. All of this said, I have tremendous respect for the District Judges in this state. We are fortunate that the selection process almost always results in appointment of thoughtful, learned and fair judges. But the process is not perfect and on occasion I need to swear off a judge in the interests of my client.

Scott Ortiz
Casper, WY

Sharon: It is a change that is long overdue. All lawyers have their ups and downs with different Judges, but unless a true conflict exists we as a bar should not be able to swear off any judge of our choosing no matter how trivial our reason.

I do have one caveat. I worry about the situation where a Judge may have sanctioned a lawyer multiple times or something else fairly extreme which creates a perception of dislike toward the lawyer. Is there really an avenue to disqualify the judge if rule 40.1 gets removed?

Sue Davidson
Cheyenne, WY

I agree that the situation described in Mr. Tyler's communication should be investigated. I disagree that the Rule should be suspended. Judges, clients and attorneys alike have biases and prejudices of which they may be unaware. If there is a perception that a party or their attorney will not be treated in a fair manner, the judge should be disqualified. As unthinkable as it may seem, sometimes that may mean that a judge will be peremptorily disqualified from all cases in which a particular client or attorney appears. Certainly an attorney does not want to miss the deadline by failing to timely file a peremptory disqualification motion. If that means that the motion is filed even before the assignment is known, the protection that the purpose of the rule intended has been met.

Jennifer Hanft
Laramie, WY

I strongly oppose the suspension, revocation or revision of WRCP 40.1(b), but have no problem with the Permanent Rules Advisory Committee studying possible abuses. I just don???t think the Supreme Court should take action until after a study/survey has been completed and the Bar informed of the Committee???s findings.

Dan Riggs
Sheridan, WY

I have not observed an abuse of WRCP 40.1 (b). I observed it used about three years ago and before that it would have been at least five years before that when I saw it involved. When it has been used, we saw a unique situation where a litigant had some prior contact with a judge, maybe socially, or the opposing litigant had some kind of prior contact and there was just some uneasiness there. So the rule was used in that sort of situation. However, I

definitely have not seen wholesale use or abuse of the rule. I would not recommend any change in the rule.

> Sharon,
>
> I simply have not had the experience of repeated or summary preemptory challenges to a judge. I suppose that it happens, but honestly I have not seen it. The last time I saw such a disqualification was about 2 or 3 years ago where an out of state litigant was concerned that the opposing party might have some relationship with a judge, and so out of concern, that party peremptorily took a judge off of the matter. I thought that the rule worked well as there we had a litigant who was concerned and the rule was used so that the litigant would not have an uncomfortable feeling throughout the litigation. So the rule worked as it should have in that case.

Betsey Greenwood
Pinedale, WY

There is a reason lawyers challenge certain judges every time. It is because they are not objective, reasoned judicial officers. They take things personally and are vindictive. The peremptory challenge is the only protection certain lawyers have in that context.

Please protect our rights to challenge them. While some attorneys may abuse the challenge; many of us need it.

> Sharon:
>
> I have previously written to you regarding my comments on the proposed resolution, but I would like to add that it occurs to me that perhaps the "investigation of the abuses" should occur before the suspension of a rule which albeit may be abused by one or two attorneys, protects the litigants and counsel from "abuses" by Judges who may need to have their records reviewed as to why they are consistently being recused? The investigation should occur prior to the suspension of the rule.
>
> Thank you,
> Betsey

Philip Abromats
Greybull, WY

Just when I thought the practice of law in Wyoming couldn't possibly get any worse, this idea comes down the pike.

I oppose any change to further restrict or eliminate peremptory disqualification of judges in the strongest of terms. Indeed, I think they should be extended to circuit court and restored, at least for defense counsel, in criminal cases.

I have had cases in which the judge obviously "had it in" for my client, based on prior cases with the same client. In one family-law case, I have credible, sworn testimony that one judge had actually taken in-kind bribes from the opposing client. There would have been no point even going to court on the client's behalf in the subsequent case without the PD rule. As it was, I am convinced he hand picked and briefed the successor judge, who turned out to be twice the judge from hell that he was. This is because there are NO RULES on how successor judges are selected or what the disqualified judges can tell them about the case, party, or counsel.

Further, I was not born in Wyoming, did not attend UW Law, and do not know how to play political games. Hence, I am in the "out" group of Wyoming lawyers, and, knowing this state, always will be. Without the PD rule, I have lost virtually every motion I have litigated, regardless of the merits, unless the judge would otherwise have to make a damn fool of himself and felt he had to rule in my favor. Indeed, even as a former Third Circuit law clerk with large-firm experience, I have been reduced to an extremely un-lucrative traffic-ticket practice because of the bias of judges against me personally in anything more significant. If I am to have any hope of making a dime as a lawyer in Wyoming, I need this rule. Indeed, I feel as if I have been constructively disbarred already. Getting rid of the PD rule would only twist the dagger even further.

The judges in this state have a tendency to do whatever they want anyway, and then think up a legal reason to justify their biased (and occasionally corrupt) decisions. (This is called casuistry, BTW.) They are also very careful to couch their rulings in a way that makes them subject to only abuse-of-discretion review in the Wyoming Supreme Court, making them almost impossible to overturn (assuming I and my clients could even afford to take each such ruling up on appeal).

Wyoming is truly a rotten state for a transplanted attorney to practice law, unless he has been recruited into the state by a highly respected firm and can piggyback on its goodwill. Coming out here has reduced me to poverty and almost destitution. I blame the clubby bench and bar. We need more safeguards against cronyism, not fewer.

Philip Abromats (6-4035)

P.S. This has been tried before, I understand. It did not last long. It put the practicing bar into an uproar, and the PD rule was quickly reinstated, if I have my facts right.

John Thomas
Evanston, WY

Thank you for the email regarding the possible suspension, revocation, or revision of WRCP 40.1(b). I would like to submit my comments from the perspective of an attorney who specializes in the practice of family law, including custody matters.

While I am presently not using the peremptory disqualification rule with any particular judge, I have done so in the past when I represented fathers in custody cases. After I was unable to obtain a custody award in a custody case for a father and lost a modification case for a father, I began using the peremptory challenge provision regarding a particular judge. In both cases I believed my clients had extremely good cases to be awarded primary custody. In one of these cases the GAL had also recommended in my client's favor. In the other case I believe that there had not been a showing of a material change in circumstances affecting the welfare of the children. Finally, I was the GAL in a contested original custody case in which I recommended primary custody to the father. In awarding custody to the mother from the bench, the judge made the statement to the effect, "If you look at nature and see a calf elk, the calf elk is following the cow elk, not the bull elk." I felt it was close to malpractice not to use the peremptory disqualification option.

I understand the concerns of using the peremptory challenge option, but in cases where the limited grounds to not rise to such a level to enable the use of disqualification for cause, it is a necessary option. I have only used a disqualification for cause one time in which the judge in an original custody case, of which I was not a part, met privately with the parties in chambers without the presence of counsel. In the modification proceeding that followed, opposing counsel would not stipulate to another judge and made it necessary for me to file a motion. Of course the judge quickly granted the motion as he had done under similar circumstances in another case of which opposing counsel was aware.

One of the differences in family law cases from criminal, juvenile, or other civil cases, is that a jury is not allowed. Practitioners in other areas of law have that option, family law attorneys do not.

I have prepared these comments rather quickly, but I hope they are representative of the views of other family law practitioners, and that the rule will not be suspended immediately. The rule should remain in place until further study and discussion by the bar and the bench.

Jacqueline Brown
Casper, WY

I just learned last week that a couple of attorneys in the Seventh District were using the preemptory challenge on every case so as not to have a particular Judge. I was

shocked. Reading your e-mail I am even more shocked to find that this is happening in more than my district.

I don't believe the Rules should be used like this. We are very fortunate in our State to have great judges who work hard and truly try their best to make fair decisions.

I am absolutely in support of this proposal. If this is occurring as stated, it needs to stop. I would hope that the rule committee would modify the rule provide a preemptory challenge in certain specific cases as the circumstances of that case create the need for such a challenge. I disagree with a rule that would attorneys to swear off a judge in a district on every case.

John Masters
Cheyenne, WY

I recognize that some attorneys and judges have personality conflicts and, unfortunately, these transcend the ability of both to properly perform their services to the public. This arises because all are human and, therefore, carry with them the fallibility inherent in our human nature.

However, it is also true that some judges do not possess the competency to perform their assigned tasks. This seems to me to be particularly true with circuit judges. Having expanded the jurisdiction of circuit courts, we now encounter circuit judges trying important (to the litigants) civil cases that are beyond the skill of the judge assigned. Yet the amounts involved do not justify the expense of an appeal of the decision once rendered, no matter how poorly the judge performed. For the vast majority of the citizens most of their actions will fall below the circuit court's jurisdictional limit. Therefore, at the outset of a case, attorneys must ensure the client obtains a competent jurist and such is not always the case in a court where the most the experience of the judge is derived primarily from criminal or landlord-tenant matters.

Thus, while perhaps overused by some, in many cases Rule 40.1(b) is the only effective way to bring a matter before a judge with the skill to handle the matter.

I recommend the rule be preserved. Perhaps the legislative and judicial supervisory bodies should undertake a review of why the rule seems to be abused and then to intervene to reconcile or correct the situation.

Kim Cannon
Sheridan, WY

My mentor as a young lawyer was Henry Burgess who did not believe in ever taking action to disqualify a judge. When a client would ask him whether a particular judge was any good, he would smile and simply say, "They are all good…. if you win." I matured as a lawyer believing

that good lawyers don't dis qualify judges. If you do not win, it is the lawyer's fault, not the judge's. You can't change the facts by changing the judge. It is incumbent on every attorney to work to establish and maintain a respectful, responsive and honest and credible relationship with every judge he or she appears before. It is that simple. There is no substitute for that.

Disqualification motions seldom, if ever, achieve an advantage. In nearly 44 years of practice in every state district court in Wyoming, I have only filed one such motion. My client, the wife in a $40 million divorce case, had been advised by none other than Gerry Spence to move to disqualify the judge in the county seat where the case was filed. The client asked me to file the motion. The judge responded by removing himself from an unrelated case entering an order which stated; "If Mr. Cannon doesn't think I am good enough for him in x vs. x, then I guess I am not good enough for him in y vs. y," He assigned the case to a judge on the opposite side of the state over 400 miles away. Net result: a totally innocent and unsuspecting client in an unrelated case was affected by my filing of that motion. Although it is a rare case where the judge's reaction is set forth in an order, I suspect that as objective, educated and experienced as judges may be, they are also humans with long memories.

Several years later I had occasion to sit on a panel with that same judge discussing the subject of peremptory disqualification motions at the annual bar meeting. I took the position—that I still hold—that the rule allowing such motions should be retained because no judge should sit on a case in which one of the litigants felt he wasn't going to get a fair shake before the case even started. Every good judge wants his or her decision to be understood and respected by all parties to the case. Good judges go to great lengths to carefully analyze the facts and the legal issues, in part, to convince all litigants they have been heard and treated fairly. That is necessary for our system of justice to achieve the respect it deserves. How is it possible to achieve that if one party genuinely feels that the judge is biased at the outset? Particularly in Wyoming's smaller towns where the judge may have practiced law for 20 years before becoming the judge, that feeling of bias may be genuine and, in some rare cases, warranted.

Maybe the solution is to blend the rules for motions to disqualify peremptorily and for cause. My suggestion is this:

every motion to disqualify must be supported by an affidavit filed by the client setting forth the client's basis for believing the judge is biased or otherwise unable to be impartial. The attorney would also have to file an affidavit attesting to the fact that the client's affidavit is made in good faith. If those two filed affidavits comply with the rule, the disqualification is automatic. If there is an issue as to whether the affidavits comply with the rule, that will be decided by another judge other than the judge sought to be disqualified.

Making clients and their lawyers responsible for their actions should significantly cut down on abuse.

Getting completely rid of a rule which is intended to insure not just fairness, but the perception of fairness, will not increase the public's respect for our system of justice.

Bruce Elworthy
Sheridan, WY

I began my practice nearly 40 years ago in California. California has a Rule (CCP 170.6) that permits preemptory disqualification of Judges and it has little history of abuse except in cases where the Judge in question has a demonstrated history of "home towning" attorneys or where there exists animosity between the Judge and the attorney that often predates the Judge's appointment to the Bench. However, in many California Counties there is a significant chance that the Judge and the attorney never knew one another when the Judge was in practice.

In Wyoming on the other hand there is a significant likelihood that a Judge may have been involved with the attorney seeking disqualification in one or more matters when he or she was an attorney. For example, in Sheridan County we are currently fortunate to have a fair and impartial Judge. That was not always the case. In addition, I can think of local attorneys who may have Judicial aspirations that would receive preemptory disqualifications from this Firm and other Firms were they to be appointed to the Bench.

Since Wyoming, as I understand it, permits a Judge who is challenged for cause to decide his or her own disqualification motion where there is no "Presiding Judge" (e.g. a County with only one District Court Judge) and since it also permits opposing counsel to respond to such a motion, it appears that this system is inherently unfair. Such a procedure raises the appearance of impropriety on the Judge's part while also permitting opposing counsel to "butter up" to the Judge.

I believe that the current system should be retained but with the caveat that unsupported and nearly automatic disqualification motions should be investigated. In some cases the Judge may be the problem and in others the attorney and that is what the investigation should attempt to ascertain. There is an old saying that goes "They were all out of step but Jim" and in instances of repeated challenges someone is in the wrong.

Cheryl Wadas
Cheyenne, WY

I would respectfully request that you not do away with this provision. I think they're all sorts of situations where impartiality is question by a client and it makes sense in the interest of justice that clients feel complete and total fairness from the bench.

John Walker
Cheyenne, WY

Hello, Sharon. In 34 years I have only moved to disqualify a judge one time. In my opinion the motion was necessary and avoided what would likely have been a massive train wreck. I believe that a complete revocation of the rule is a huge mistake. In the alternative, perhaps the rule could be amended so that an individual attorney may disqualify a judge no more than two times in any given year?

Dan Hesse
Auburn, WY

Thank you for your email of June 12, 2018 regarding the potential suspension, revocation or revision of WRCP 40.1(b). Please let whoever needs to know that I am opposed to such changes.

The Resolution of the District Court Judge's Conference attached to your email and dated April 26, 2018 essentially says that:

- Wyoming is in the minority of states to allow the peremptory challenge of judges
- The history of the rule is "long and tortured".
- A super-minority of judges in attendance at the conference complained about the use of WRCP 40.1(b)
- The use of the rule comprises "wholesale abuse" and the judges seek to have the rule changed.

1. The fact that Wyoming is in the minority of states to allow for the peremptory challenge of judges does not mean it is bad. As I recall, Wyoming was in the minority when women's suffrage was at issue too.
2. A minority of judges is complaining that some lawyers are using the rule to bounce them automatically. The inflammatory language in the Resolution describing such use as "wholesale abuse" seems to belie an unwillingness for this minority to take an honest look in the mirror.
3. It is highly *unlikely* that the attorneys using the rule in such a manner woke up one day, and decided to peremptorily challenge their local judges just for the pure hell of it. On the other hand, given the fact that judges are members of the human race, and the realities of statistical distribution, it is highly *likely* that some Wyoming judges are a) bad at what they do, and/or b) vindictive. Believe it or not, there have been Wyoming judges who fell into such categories, and were serially abusive to lawyers and litigants.
4. In the case where a judge has been grieved by a lawyer, despite the secretive nature of such proceedings, ill feelings will naturally remain with the judge, and will no doubt inure to the detriment of that lawyer and his or her clients if one is forced to practice before that judge for the rest of their life. Wyoming attorneys

have the obligation to zealously represent their clients, but don't have the luxury of strolling over to another court to avoid an abusive judge.

5. Judges disposed to do so are in a unique position to make life suck for lawyers and their clients more or less with impunity. The only preventative is their peremptory recusal.
6. It seems fair to have this minority of judges accommodate the vastly larger number of attorneys and litigants who must appear before them. Failure to do so will only perpetuate the already dismal view the public has of the judicial system.
7. If you receive a dearth of comments supporting my view, I think it would be a mistake to consider my observations as the exception to the rule, and those of an outlier. If my informal poll of practicing attorneys is any indicator, those who must toil before judges for a living are *afraid to even express their opinions on this matter* for fear of judicial backlash.

Serious introspection and change is always more difficult than striking out at the perceived source of one's irritation. Usually however, it is the right thing to do. I urge the committee to leave this rule alone.

Kevin Taheri
Casper, WY

I oppose getting rid of the challenges for this reason. If a Judge is violating the rules of judicial conduct we as lawyers have an obligation to turn them in. Yet the fact that we may have cases in front of them in the future may cause us to avoid doing that, if we can't peremptory a Judge we turned in. Lawyers will fear the complaint will effect future clients. You can try to keep it all confidential but the content will expose the lawyer that complains.

So removing the ability to peremptory Judges would have a serious chilling effect on reporting that's detrimental to the the administration of Justice. I know it causes inconvenience but it's worth it as the chilling effect on reporting misconduct could be extremely detrimental to Justice.

We don't have a major issue in Natrona County but it's not unforeseeable one day in the future. If Judges are getting excessive peremptory challenges perhaps we should we not blame the lawyers automatically. Perhaps we should ask, why is that happening with this Judge?

We don't complain about peremptory challenges with jurors.

For those reasons I oppose eliminating the peremptory for Judges. In fact I think it should be expanded to include all cases.

I as as prosecutor for most of my career have never used the peremptory rule on Judges. Only jurors. But I still it still think it allows lawyers the freedom to bring legitimate problems to light, without fear of the effect it may have on their future and current clients.

Thank you for considering my comment.

Jim Phillips
Evanston, WY

I am at the twilight of my legal practice. I have never filed a peremptory challenge against a judge in nearly 45 years of practice. I have the highest respect for Judge Tyler as a jurist and as a scholar of the law. When he provides his opinions I consider them carefully because I know they are well thought out and well expressed. The idea of "judge shopping" has always been repugnant to me. Those who feel a judge is out to get them often have bad practice habits in front of the judge and there is nothing personal in a judge ruling against their clients because of their shoddy work as an attorney.

In our judicial district I am aware of more than a few lawyers swearing off Judge Bluemel from all of their cases. I have had several lawyers tell me that Judge Bluemel will not set hearings in a timely manner, will not allow arguments as he should, and is often times biased in his treatment not only of lawyers but their clients. I had hoped Judge Bluemel might schedule a meeting with lawyers in the district to go over his expectations in a case but he has not. His relationship with the bar as a whole seems to be getting worse.

The reality is that if an attorney requests a Judge remove himself from a case because of bias it will rarely happen. Unless one of the parties is a former client or a relative it is doubtful a judge will ever recuse himself. In small counties like Lincoln and Uinta the same Judge will hear nearly all the cases. There is potential for judicial abuse absent the opportunity for a peremptory challenge. There is no perfect solution here. However, it is my hope that the peremptory challenge will be not be repealed.

Jim Fitzgerald
Cheyenne, WY

Please consider these comments about Wyo. R. Civ. P. 40.1(b)(1)(A).

In forty-three years of law practice, I have peremptorily disqualified one District Judge. One other time, I informally discussed a potential bias with a District Judge who immediately agreed to assign the case to another. I am sensitive to the matter of some lawyers invoking the rule so frequently that it may be regarded as an abuse. There are some times, however, that call for use of the rule. Eliminating it would “throw the baby out with the bathwater.”

Our legal system serves the public. The public appreciates the rule. Clients sometimes ask piercing questions about the legal system, and sometimes they want to know who the Judge will be and how s/he is selected. When I have discussed the rule with clients, they universally have been gratified that it exists, seldom asking that I invoke it, as noted above. Our legal

system should serve the public even when that service may be costly, or aggravating, or take time that, to us in the profession, might be better-spent on other matters.

But I urge you to keep the rule in place and turn over abuses or perceived abuses to the Bench and Bar Committee in the first place, and perhaps the Board of Professional Responsibility thereafter, and to use those systems instead of abrogating or limiting the rule.

Jim Fitzgerald
Cheyenne, WY

I write to oppose the proposal to reduce the page limit of appellate briefs. Wise counsel of course adhere to the notion that "if I had more time, I'd write a shorter letter." That wisdom applies to writing briefs as well. We appreciate the effect of brevity.

Nevertheless, there are cases that need the full measure of pages allowed under the current rules. For example, in *Wardell vs. McMillan,* 844 P.2d 1052 (1992), the issues required the full explication afforded by the current rule. We appealed a judgment on a jury verdict in favor of two doctors who – we had alleged – fell below the standard of care and caused the nearly complete, permanent paralysis of a seven-year-old boy. We appealed. We raised six important issues and prevailed on four. We could not have given Neil Wardell his due in forty-five pages.

Even then, with two defendants-appellees, each of them was entitled to as many pages for their principal briefs as was Neil Wardell. For us to set out the issues that lead to a reversal and remand for a new trial, and to get guidance for the District Judge in the new trial, we needed to raise each of the six issues.

We rarely appeal, so most of our cases are on the appellee side. When we do appeal, we usually limit the number of issues. However, some appeals, like Neal Wardell's, call for more and we ask that you not reduce the presumptive limit to 45 pages.

Haultain Corbett
Sheridan, WY

I see no reason for revision to or elimination of Wyoming Rule of Civil Procedure 40.1(b) regarding the peremptory disqualification of judges by a party without cause.

In some cases, counsel may believe, rightly or wrongly, that a particular judge has animus towards a party, its counsel or a cause of action. In other cases, counsel may simply believe that the judge is not qualified or experienced enough to hear the type of case being presented. In either case, it appears to me that justice is being served by the rule

Bearing in mind that such a challenge may be asserted only once in a case and against only one judge, any potential abuse of the rule would certainly be limited. Our experience is that the system has worked well for as long as it has been in force and we have not seen any abuse of the rule in our practice. I see no reason to change the rule now, and I believe most of the attorneys in this firm feel the same.

Mike Matthews
Cheyenne, WY

Thank you for the opportunity to comment. I would like to offer the following comment:

It seems to me the problem is not with the rule but how the rule is used by a few attorneys. This kind of use could be targeted or limited by only allowing a particular attorney to use peremptory disqualification of a particular judge a limited amount of times in a given year. So, for example a number like two, or three times, is the limit to preempt any one judge for any one attorney in a calendar year.

To prevent this rule from being gamed, by a particular attorney, by having their co-counsel preempt in their stead, the preset number of time could apply to any case the attorney is co-counsel as well, against any particular judge. So in short an attorney could only preempt a particular judge 2 or 3 times in a calendar year including cases in which the attorney is co-counsel. The number times could by decided upon by the committee.

Again, thank you for opportunity to submit these comments.

H. Kenneth Johnston II
Douglas, WY

Sharon, I would suggest that the committee look at the individuals that are disqualifying the judge and the judge to see why this is happening frequently rather than change the process. Why is it happening and the basis for the disqualification.

David Gosar
Jackson, WY

I disagree with suspending the preemptory disqualification rule. Although i haven't sworn off a judge in many, many years, it is an important safeguard. The problems it may sometimes cause is offset by its benefits - - the perception that everyone has the opportunity for a fair shake.

Carol Serelson
Cheyenne, WY

This resolution asks that Rule 40.1 (b) be summarily suspended while the Rules Committee investigates the abuses. I strongly oppose this suspension during this investigation period. Although there may be needed changes, WRCP 41(b) includes both peremptory challenges, cause challenges, motion by judge, and probate cause challenges. Suspension as indicated would disallow all disqualifications. I also request that the Rules Committee change the "Disqualification for Cause" in Rule 40.1 such that if the presiding judge does not agree to re-assign the case, then there be a committee made up of judges and attorneys that makes the decision, or at least the presiding judge does not make the determination if s/he should be disqualified. I think the Committee approach is better because it would be aware of repeat filings, abuses of the rule and could have rules where an attorney could be warned if there is an abuse of the process and then consequences if that continues. A committee could also grant a general disqualification of a judge as to a specified attorney's cases for a period of time or permanently, should that be found appropriate. Also, the re-assignment of the Judge should be done by that committee or someone other than the presiding judge. Thank you for your consideration.

> I appreciate the opportunity to comment. I am not one who does many requests for disqualification. I can't remember the last time I did so, however, it seems to me there are situations where it is appropriate, along with those where it is abused. Thank you, Sharon

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Cheryl Wadas
Cheyenne, WY

I fully support this rule remaining in effect.

Wyoming is a very small state and the fact remains that while all efforts are made to be professional there are relationships, contacts, relationships with third parties that interfere with the perception of fairness to a client just as there is a perception that some attorneys are treated differently (better) by the bench.

I believe I have used this rule less than 3 times in the life of my 27 year practice.

Robin Cooley
Cheyenne, WY

Sharon, thank you for sending the Resolution of the Wyoming District Court Judges' Conference regarding peremptory disqualification of judges in civil matters. I read it with some interest as I was not aware that this issue was reoccurring as it had in 2012. I have no issue with temporarily suspending the Rule, during which time the Advisory Committee can

consider options to revise the Rule, but I would ask the Committee to consider options including attorney sanctions for such abuses, as opposed to the wholesale repeal of the Rule.

In reviewing the continued validity of this Rule, I would ask the Committee to remember that in rural communities around Wyoming the availability of peremptory disqualification is valuable from a number of perspectives. I believe the credibility of the judicial system suffers if these types of options are not available, especially in small communities where everyone knows their neighbor - and knows their neighbor's business. This type of Rule protects against the appearance of impropriety which benefits both the judiciary as well as the litigants. For these reasons, I believe it is far more preferable to leave the Rule as an option although clarifying language is appropriate, and to sanction the individual attorney for the abuses mentioned in the Resolution.

Thank you for the opportunity to comment.

Jeff Gonda
Sheridan, WY

Thanks for the reminder on this. I would vote NOT to suspend or change WRCP 40.1 (b).

We in our law firm have invoked the rule very rarely. In my 40 years of practice, I think I have only used it a time or two. And, I am pretty sure that is true for the rest of my partners.

There are times when it is appropriate for an attorney to use the rule. I am wondering about the possibility of asking the judge(s) who think the rule is being abused, to submit the names of the abusers to the Bar, after which Bar counsel, or some other Bar designee would visit with the "abuser(s)."

The vast majority of our members do not abuse the rule. They and their clients should not be punished because of a few who do.

Jeffrey VanFleet
Cheyenne, WY

Nationally, Judges have been criticized for not disqualifying themselves in key cases which gathered adverse attention. This clouds the publics belief in an independent judiciary. Without an opportunity to make a peremptory disqualification of Judges, we eliminate one more safety net to ensure the Judge hearing the case is impartial. As the ABA stated in *The Judicial Disqualification Process,* instead of eliminating public tools, such as peremptory disqualification, we should instead "reduce the role that target judges play in evaluating their own qualifications." As the legal world has expanded, politics have become growing intrusive, and the internet has increased our availability and liability, it is more important now than ever that

we maintain the public perception of an impartial judiciary. Please keep the Peremptory Disqualification of Judges in Civil Matters.

Dallas Laird
Casper, WY

The use of preemptory challenges are necessary. This allows attorneys to remove a judge without having to publicly air their particular grievances.

Tom Lubnau
Gillette, WY

The Preemptory Challenge Rule is one of the few tools attorneys and clients have to guard against perceived judicial arrogance. Certain judges are so officious that they will cost clients an additional $10,000 per case causing attorneys to comply with their procedural rules. I am in favor of docket control and efficient administration of justice, and I am sensitive to the concerns of the courts, but attorneys have to have a way to protect their clients from overly zealous judges. I understand there are petty disputes between judges and lawyers which may appear, and good judges get penalized, because they end up hearing more cases because no one wants to appear in front of a biased, officious or rude judge, but I perceive the matter to be one of customer service by the judge, and access to justice for my client.

If a case costs $10,000 more to my client, because of a judge's procedural machinations, why shouldn't my client be able to disqualify the offending judge. And, why shouldn't that judge be forced into some introspection about why the judge is consistently being sworn off cases.

Perhaps being forced to look in the mirror more often is a skill from which we would all benefit.

Grant Lawson
Casper, WY

Do you know if it was ever suggested that a good faith basis must be provided when an attorney uses this rule? And whether it was ever discussed whether a definition could be crafted to define "good faith basis"?

Was it ever suggested that there should be a committee that could decide whether the proposed use of the rule is valid or otherwise a good faith basis exists?

I personally don't want to see a blanket discontinuation of the rule, but we have to propose alternatives because the fire is growing to end it right? But I've also never used it…

Robert Southard
Laramie, WY

I think the rule is ridiculous and should be eliminated. You should only be able to move for the disqualification of a judge for cause.

Mark Voss
Cheyenne, WY

I oppose the elimination of Rule 40.1 peremptory challenge of judges in civil cases. The desire to eliminate this rule, as it was in 2012 for the peremptory challenge in criminal cases, is being promoted solely for the convenience and perhaps the egos, of sitting judges. Its elimination will do nothing to promote fairness or due process, and, in fact, will have exactly the opposite effect.

For the most part, I tend to ignore the actions taken by the State Supreme Court in regard to its regulation of the courts and the bar. I have long since decided that poor decisions in that area are unworthy of comment and will not, in any case, be affected by any such comment. They should simply be considered to be nothing more than the white noise of practicing law in the State of Wyoming. This issue, however, strikes, too close to significant due process concern to ignore. Pointless though it may be, I therefore wish to register my objection.

It is already appalling enough that the Supreme Court has removed the ability to exercise a peremptory challenge against a judge in criminal cases. That decision was, and remains a shocking abuse of Supreme Court discretion which has harmed due process rights of defendants in Wyoming criminal cases in a significant manner. Unfortunately, it is consistent with Wyoming courts overall lack of concern with the rights to due process and unbiased consideration of the rights of criminal defendants in Wyoming.

For example, during the many years I practiced criminal defense in the State of Wyoming, there was a relatively short list of District Court judges on the bench in this State whom it would have been an act of blatant malpractice *not* to recuse from any criminal case.

These were judges who had consistently and constantly over the years demonstrated a complete lack of concern for the rights of criminal defendants and demonstrated both an excessively punitive mind set and unrelieved bias toward the prosecution. Of course, no matter how egregious their behavior, these judges were never sanctioned, nor were their decisions reversed by the State Supreme Court. It was widely known among practitioners that, for example, the idea of taking criminal defendant to a bench trial in front of one of these individuals would've been nothing more than a "slow motion guilty plea."

It would be a very poor defense counsel, who would deliberately take the case in front of a judge who he knew would harm his clients based not on the facts of the case, but the judge's predilections and biases.

In 1998, when the Supreme Court first suspended the peremptory challenge for criminal cases, I spoke out against it in the panel at the annual bar convention. Due to the consistent and I would suggest almost uniform, opposition to the rules removal by the members of the bar, it was restored, until 2012, it was removed again.

The idea that there is any "abuse" of this rule or the prior rule in regard to criminal cases *is absurd*. It is nothing more than a self-interested fantasy created by judges who are required to engage in additional effort when attorneys recuse them from cases. If the courts find it difficult to deal with motions to recuse, perhaps they should find a better system with which to respond to it. Instead of having to rely on some sort of primitive phone tree among the judges to find a place to send cases, the Supreme Court might better occupy its time with creating a system to address any difficulties created by such motions.

May I also suggest that the judges in question, who find themselves repeatedly removed from cases, heed the words of Mathew 7.5 and first “cast out the beam” from their own eye.

I would finally add, as I did those many years ago, that having heard from many judges over the years they wish a "return to civility" in the courtroom, they might consider that the removal of the peremptory challenge rule would not act to do so. In the event that the judges who are being recused, can no longer be removed based on peremptory challenge, competent counsel, will, on occasion, attempt to remove them using allegations under the rule allowing disqualification for cause.

Wyoming is a small bar. Often the faults and flaws of our fellow practitioners are known to the other members of the bar. This includes those who sit currently on the bench. It is true that motions to recuse for cause are routinely not granted, but, given competent or motivated counsel, removing a peremptory challenge will certainly increase them. The conundrum the use of disqualification for cause creates for practitioners is, knowing that they will not receive a fair or just hearing in regard to them, they are aware that the motion itself will simply increase the already existing bias they are alleging and thereby harm their client.

In regard to motions to recuse for cause, judicial misconduct and/or bias mayor recommend reading the following article and taking a look at the analysis performed for it.

https://thehatchinstitute.org/all-stories/judgingthejudges

It is apparent that judicial bias, whether it is overt or not, is not a matter which is regularly dealt with appropriately by the various agencies allegedly in charge of addressing such matters such as the judicial conduct board or the State Supreme Court. This is consistent across all states, as my experience and the article and its analysis indicate. Foundationally, there is an easy explanation for why this is the case. Asking judges to review the misconduct of other

judges like asking a barber if you need a haircut. You are guaranteed not to get an objective response.

The peremptory challenge allows practitioners to accommodate themselves and their clients to the existence of judicial bias without having to engage in potentially insulting motions to recuse for cause which may further harm their client. Removal of this ability, as it was in regard to criminal cases, will not assist in bending the arc of history toward Justice.

Hank Bailey
Cheyenne, WY

Thank you for the opportunity to comment on this possible Rule change. In my 40 years of practice I think I have used this to peremptorily disqualify judges on no more than half dozen cases. And in each of those cases I believe the Rule was invoked for appropriate reasons and for the best interests of my clients. Unfortunately, not all judges are equal, not all have the same level of experience and expertise in certain types of cases. For example, because of his or her background, a newly appointed judge may have vast experience in the criminal law, but very little with complex civil matters, such as civil rights cases, medical malpractice, and estate disputes. In multi-judges districts I believe allowing some 'control' over the judges who preside over certain cases has been an important part of providing litigants with their fair day in court on issues/disputes that are significant and substantial in their lives. If the use of peremptory challenges is being abused certainly that needs to be discussed and perhaps some caution given to the bar, but I hope the opportunity to utilize this 'tool' for the benefit of our clients is not eliminated.

Again, thanks for the opportunity of sharing my 'two cents.'

Joe Moore
Jackson, WY

Perfect. I never understood why there was such a rule.

It was amazing to me that such abuses did not amount to some level of wrongful conduct by the lawyers who acted that way.

I thought that the Rule was based on the "small town" problem of everyone knowing everyone else and personal disputes or subtle animus.

If that is the case I would rather see an approach where the personality issues would have to rise to the FOR CAUSE level AND some reasonable objective standard that is not 99% deferential to the assigned Judge.

Anyway, the resolution is fine.

John Schumacher
Riverton, WY

I would have no problem with eliminating preemptory challenges. I have dealt with recusal of judges on both sides, either requesting recusal or opposing recusal. Every time and with varying judges, the decisions have been handled on the merits with appropriate results which does not mean I was successful in each case.

If a judge is consistently treating a specific attorney, and consequently their clients, with prejudice or bias, the record can be established through a 40.1(b)(2) filing or reporting the matter under the Wyoming Code of Judicial Conduct.

If a judge is taking actions which warrant a regular preemptory challenge by an individual attorney, there are bigger issues to be addressed with respect to the judge which are swept under the rug by preemptory challenges because no record is established. In addition, if the attorney always exercises the preemptory challenge, it seems there may be a questions whether the attorney is violating W.R.C.P. Rule 11 or Rules of Professional Conduct, Rule 8.3(b).

Maribeth Galvan
Laramie, WY

I am opposed to suspension or revocation of WRPC 40.1(b) allowing for the peremptory disqualification of judges in civil cases, or for any revision which substantially hampers a disqualification. I am unaware of any abuses of the rule, but accept that it can be misused. However, there are occasions when disqualification of a judge is appropriate, where moving for a disqualification for cause may add layers of proceedings and concomitant expense, or where disqualification for cause may not be technically appropriate. A disqualification for cause is available only on limited grounds. A disqualification for cause necessitates allegations which may compromise an attorney's relationship with a judge unnecessarily, and has the potential of compromising the integrity of the court and the legal system. Whether we wish to acknowledge it or not, there are occasions where the assigned judge is simply not appropriate to hear a particular case. Attorneys admitted to the Wyoming State Bar and in good standing are presumed to make fit decisions in the best interests of their clients, the Court and the legal system, including decisions to request disqualification of a judge for reasons which may not meet the elements of a disqualification for cause. Allowing that process promotes public confidence in the Courts. I see no reason why we should not be trusted to make decisions for peremptory disqualifications. I believe that the interest in preserving the integrity of the Courts should outweigh individual judges' dissatisfaction with the process or concerns about reassignment.

Sean Durrant
Buffalo, WY

Here are my thoughts on WRCP 40.1(b) allowing for peremptory disqualification of judges.

I believe the Rule still has utility. It is used with discretion by 99% of attorneys. And abused by 1%. If a judge is continually being removed by challenge, then perhaps the judiciary committee needs to look into that judge and why . . . If an attorney is peremptorily removing a judge 100% of the time, then perhaps the Bar should investigate the attorney, and why . . .

Perhaps a way to cut down on the possibility of abuse of the Rule by attorneys is to simply amend the Rule to limit the number of times per year (say 3 times per year) that an attorney or law firm may remove a judge under the Rule.

To adopt a "for cause" removal would require a hearing, clog the system, and is not the answer. To do away with the Rule completely is not the answer.

Thanks for the opportunity to comment.

Ken Marken
Casper, WY

Regrettably, there are way too many judges who shouldn't be judges, too many who are egotists, and too many who feel the need to carry grudges against local counsel or want to favor their old firms.

But it is real flesh & blood clients who suffer the consequences for something they had nothing to do with and which has nothing to do with their cases.

Leave the rule alone!!!

Lynn Boak
Cheyenne, WY

I have never exercised a peremptory disqualification of a judge, but I think it is something that should be available in unusual circumstances. Judges are human, and so are lawyers, and there are bound to be occasional personal or professional antipathies between judges and lawyers. The judge may think he or she can be impartial, but I don't think it's possible. The judge may not even be consciously aware of prejudice against a lawyer. With judges having such unfettered discretion in so many matters, there has to be some procedure in place to protect the clients.
It seems to me that if we are zealously representing a client and we know that a judge doesn't like us, whether resulting from some professional experience in our pasts or even something

outside the legal sphere, we must be able to disqualify the judge. It is something that should be allowed, but certainly not as a matter of course. There should be reasons given (perhaps under seal) and it should not be easy to do, but it should remain possible.

Gay Woodhouse
Cheyenne, WY

I strenuously encourage you not to summarily suspend W.R.C.P. 40.1(b) and certainly not to abolish it. I reviewed the recommendation from the District Court Judges to abolish the rule based upon abuses which are occurring. It is of great concern to me that there are some attorneys who are filing the peremptory challenges when they file a complaint before a judge is assigned. I agree that such conduct is abusive. That particular conduct seems that it should be within the purview and expertise of the Bench-Bar Relations Committee. I do recall an instance a number of years ago when the Bench Bar Relations Committee was used in such a manner to work out a resolution to a similar problem. Perhaps it should be considered as a basis for disciplinary action as well.

However, I ask you not to abolish this rule. It is an important part of our ability to practice law before a neutral tribunal. While I have used it only once in my 40 year career, it was imperative that I had that opportunity in that situation. The issue with the Judge was one that was personal to the client and it did not rise to the level of being "for cause." However, to have continued that case with the Judge assigned would have adversely impacted the client's belief that he/she would be treated fairly during the course of the litigation. It seems that it is useful for Judges too, not to preside over a case in which one of the litigants has no faith in the Judge's ability to be fair and just.

It concerns me that one of the reasons for abolishing the rule is that only a minority of states have such a rule. Wyoming is a wonderful state in which the rule of law prevails as do civility and professionalism. Let's not hop on the bandwagon with other states and forget that we are a unique and wonderful state for so many reasons, not the least of which is that we are dedicated to preserving the rule of law and the sanctity of the judicial system.

Dan Blythe
Cheyenne, WY

I believe that this is a very important rule. Although I used the rule once in 40 years, I believe that the rule is necessary. If the rule is being abused by the very few, you may wish to limit the peremptory use by an attorney to 3 or 4 times a year.

Tim Tarver
Sheridan, WY

The rule allowing preemptory disqualification of judges is important to the fair administration of justice. It provides a mechanism to minimize the conflict between judges and lawyers. Those of us who practiced before the rule was adopted may remember why it was adopted and the beneficial effect it has had. There may be many circumstances when it is inappropriate for a judge to decide a case which do not rise to the level that will cause the Wyoming Supreme Court to reverse a decision or take other action. One such circumstance would be a personality conflict between a judge and a lawyer which results in notorious unfairness. That did happen in Gillette while Judge Liamos was on the bench, and before the rule was adopted. Judge Liamos had a conflict of personalities with Wade Brorby. All of the lawyers in northeast Wyoming knew that Judge Liamos ruled against Wade Brorby in every disputed matter. If we had a case in which Wade was on the other side we knew we would win, we just didn't know how bad it would be for Wade's client. There was never a sufficient record of Judge Liamos' animus toward Wade that would justify reversing a decision, but everyone knew about it.

The resolution talks about the cost of disqualifying judges, but that is not the real issue. The real issue is that the judges take offense at being disqualified. While it is easy to understand their feelings, it is also true that the disqualification rule likely saves their jobs. If a lawyer disqualifies a judge, even if he does it repeatedly, he will probably not take any other action toward that judge. But if his only avenue for relief is to have the judge voted out of office, he will resort to that. That is what happened to Judge Liamos. He did not leave office voluntarily. Wade was well liked in Gillette and his supporters were well aware of his plight with Judge Liamos. Judge Liamos was not in a position to contest or otherwise address the criticism that people had about him. Judges are never in a position to address the allegations of their critics. It is not hard to imagine that if Wade had had some other way to avoid that conflict, the confrontation at the ballot box would never have occurred.

That is not the only kind of conflict that can arise between attorneys and judges or litigants and judges. A litigant who has some suspicion or dislike for a Judge who has been assigned to his case has no reason to circulate rumors about the judge if he has another way to avoid the conflict, but if he is trapped in front of a judge that he either dislikes or distrusts, he will find an outlet for feelings. That will not be beneficial for the judge.

With all due respect to those who are proposing the change, the existing rule benefits both the lawyers and the Judges. It would not be prudent to eliminate or further restrict the rule. At the end of the day, the credibility of the judicial system rests on the belief of the people that it is a fair system and that their cases are decided by people who are not hostile to them or their attorney. The rule which allows them to disqualify a judge who they believe is not impartial, enhances their confidence in the judicial system as a whole.

I urge the Committee to not further restrict or eliminate the rule which allows preemptory disqualification of a judge.

Joe Hageman
Laramie, WY

After review of the Resolution of the District Court Judges, it is apparent that summarily suspending the Peremptory Disqualification Rule as it exists for Civil cases would certainly not be beneficial to those of us who use the rule properly. I have used Rule 40(b) only a very small handful of times in my 38 years of practice and I can never recall using it without actually letting the Judge know my reasoning after filing the Motion.

Disqualifying a Judge for cause is difficult and the Burden of Proof is almost impossible to carry. Proper use of the Rule does save substantial cost to the litigants because the matter is simply assigned without the necessity of filing Affidavits or holding hearings. The resolution does not seem to take into consideration those savings to the litigants when the rule is is properly used. In multi-judge districts, the filing of the Motion for Peremptory Disqualification before the case has been assigned would appear to be little more than notice to assign to a different judge in advance. That seems to promote the administration of justice and benefit the effective management of dockets just by its timing.

To me, the value of having the ability to use the Rule in appropriate circumstances for the benefit of the client outweighs the inconvenience to the judges in Civil cases. The Court should exist for the litigants, not for the judiciary itself. If the language is confusing, that can be fixed but the fact that some attorneys may be using it to remove a particular judge from all of their cases doesn't seem like adequate cause to take this away from those of us who do not abuse to Rule.

George Powers
Cheyenne, WY

The existing rule is a good rule and provides a valuable safeguard for our clients. We all live in small towns, where people may have a personal history with a judge and may feel that they cannot get justice at the hands of a particular judge. While I do not endorse anyone, who has a blind practice of always swearing off a judge from any and all cases, the rule serves a valuable purpose and should not be suspended or voided. The public deserves to have this safety valve to assure themselves that, when they go to court, they do not need to be concerned that some prior history with the court or judge will interfere with their right to be heard by a tribunal that they know is impartial.

If an attorney is in fact abusing the practice, then I suppose that he or she may be subject to discipline (Rules of Professional Conduct 3.3, 3.5, 8.2 and 8.4). If there is a general pattern of always using the rule to disqualify a judge, then that could arguably rise to the level of "conduct that is prejudicial to the administration of justice." RPC 8.5(d). In short, I think that the Bar and the Courts have adequate tools to address this issue without putting an

unreasonable and unnecessary limitation on the use of a rule, which serves the important purpose of insuring that the people coming before the Court have faith in the impartiality of the tribunal. Use the tools you have in your tool box, before you take an important tool away from the public we all are sworn to serve.

Steve Freudenthal
Cheyenne, WY

In 42 years of practicing law, I have used this provision once. I suggest that the peremptory challenge needs to be preserved, but a mechanism put in place to review apparent abuses by an attorney. For example: If an attorney makes more than two peremptory challenges in a calendar year (a single judge or any judges?), the attorney is required to submit a confidential, written explanation/justification to bar counsel. [Need to provide safeguards against breaching attorney/client privilege.] Bar counsel then evaluates and: (1) does nothing, (2) counsels with the attorney that the peremptory challenges are abusive/unjustified or (3) refers to the judicial supervisory committee for consideration.

The existence of the rule safeguards against abuse of absolute power. Abuse of the rule (whether from personal animus or judge shopping) needs to be prevented.

Bill Hiser
Laramie, WY

Please accept this as my comments on the status of the current Preemptory Challenge Rule. I am strongly in favor of retaining the rule as it serves a very useful purpose for the Bench and the Bar in our sparsely populated state. In thirty years of general practice, I have only had the need to use the rule on two or three occasions. Each situation involved a client that was acquainted or familiar with the judge and/or the judge's spouse from nonjudicial community interactions and felt it important to shield the issues in the case from that judge based on this personal familiarity. While, in my opinion, the judge would have likely recused themselves from presiding, the clients felt a sense of relief knowing that they could control this circumstance. In Wyoming's small communities, judges are well known and have frequent interaction within the community. This frequent contact with and personal knowledge of the judge is what necessitates a rule that allows a litigant to be afforded an opportunity to appear before a judge that (at least in the litigant's mind) is unbiased and untainted by community involvement or personal knowledge. I am strongly in favor of keeping the rule in some form to eliminate the potential for an appearance of impropriety because of a "small town judge" and the damage such a perception has on the reputation of the judicial system as a whole.

In 2010, when I was serving as President of the Wyoming State Bar, we were presented with an issue where it appeared the rule was being abused. We put together a mediation between the judge and the lawyers involved and were able to bring about a resolution to the ongoing problem. As a consequence of this problem, the Board of Judicial Policy and Administration

requested input from the Bar regarding the use of the Peremptory Challenge Rules in the State of Wyoming. We put together a task force to review and report on the Peremptory Challenge issues. I am attaching copies of our Task Force work product; a copy of my letter to the Board of Judicial Policy and Administration; and, a copy of the Supreme Court's response. I believe that all of the work that was done and the report of the Task Force is still applicable today. I believe with some adjustments to the rule, it can work as intended without being subject to abuse. I feel strongly, after having put many hours into the review and application of this rule, that it is a necessary part of the rules to address unique challenges to the administration of justice in a rural, small community state and to keep the appearance of fairness when Judges are known in and to the community. I would still support the changes recommended by the Task Force. I understand that the Judges were/are resistant to the requirement of mediation when several challenges are presented by the same combination of attorney and judge; however in my opinion, the mandatory mediation works as a deterrent on both sides of the problem and would bring about communication in a situation where communication is clearly lacking. Refusing to participate in discussion of the problem is divisive and only leads additional misunderstanding and frustration. I believe addressing the problems in a direct approach on a case by case basis will allow solutions to be crafted to advance the efficient operation of the justice system. On the other hand, eliminating the rule (or putting up with the abuses) will allow hard feelings and disagreements to spread unabated, damaging the integrity and reputation of the whole judicial system (Judges and lawyers alike).

I will be happy to devote additional time and effort to explore solutions to the impact the rule has on the Court's budget and would gladly serve on any committee or task force to continue the search for and craft a workable solution.

Thank you for your time and consideration!!!!

Nate Rectanus
Jackson, WY

I am submitting this as a comment in opposition to the potential suspension, revocation, or revision of WRCP 40.1(b).

I have never invoked Rule 40.1(b) personally, nor do I hope that I ever feel the need to. However, I believe the rule is in place because it could very well be the last tool available to some Wyoming attorneys who are not being treated fairly by a particular judge. It is also concerning that the very judges subject to the rule are the individuals proposing to end it. While the use of this rule by some attorneys may negatively affect the administration of justice by causing unnecessary travel costs and the orderly management of court dockets, such concerns pale in comparison to potential bias in the District Courts. I respectfully oppose the potential suspension, revocation, or revision of WRCP 40.1(b). Thank you.

Loretta Howieson
Evanston, WY

To begin with brevity, I believe the most succinct indication of the importance of this rule is to inform you that I have chosen to seek re-election due to a belief that I cannot effectively have a private practice in Uinta County due to my observations, interaction and rulings from my district court judge. As a part of the executive branch I struggle with issues with the court on a regular basis but more concerning for me is the profound belief that my private clients have been hindered and harmed by the court's bias against me as counsel.

Regardless of this belief and regardless of whether or not it is well founded, there is more fundamental issues with why private counsel in civil matters should retain the ability to peremptorily challenge the assigned judge. As you all well know Wyoming is a big State with a small population. Most of the jurisdictions at issue do not have a multitude of judges. Rather, there is a predictable, constant and presumptive assigned judge to all cases filed in that county/district. This can be particularly problematic when you have a court that has very vocally communicated its "standard" for matters that are completely discretionary – such as a change of custody. I personally had a custody case that was filed in February 2014 – prior to my election as county attorney or the appointment of my sitting district court judge. Due a multitude of issues, primarily led by the opposing party, matters were continued past Judge Sanderson's retirement, past interim judges and to the current court. Such issues included matters that resulted in a guardian ad litem having such a personal attack by the opposing party that he felt compelled to recuse himself from the proceeding – clearly resulting in yet another continuance since the attack was lodged the days immediately prior to trial. After conducting an informal bifurcated proceeding, the court entertained a motion from opposing counsel that there had not been a demonstration of substantial and material change of circumstance to warrant a review of custody. This was interesting for our jurisdiction as both appointed guardian ad litems had recommended a change of custody and the parties' teen age children wished to reside with my client. At that time this was essentially the second custody matter that the court had heard. In ruling that there was no substantial and material change of circumstance the court took care to advice the parties and counsel to insure that they were aware, and that the local bar should be notified, that the court's standard for what would constitute a substantial and material change of circumstance was very high and that it would consider such a change of custody in very limited circumstances.

While my client was clearly upset by the ruling, especially since such position was in drastic contrast to that of Judge Sanderson, I was obligated to advise him that an appeal was fruitless as the standard for such matters is an abuse of discretion. Thus, because of the variable nature of the courts' interpretation as to matters such as custody and the multitude of judges across the State, a vocal court who admonishes a standard to, by my interpretation, discourage litigation (even with a multitude of independent opinion that it is in the children's best interest) demands that an attorney should be able to peremptorily disqualify the court to conform with the rules of professional conduct.

I am confident that there are various examples of such discretionary matters in each court.

There is also the efficient use of time. Depending upon which jurisdiction you appear in front of it is not only possible but likely that another judge may more expeditiously address litigation then the presiding court. Specifically, the presiding judge in my district not only admonishes me in the filing of criminal and juvenile actions, publicly and in open court, but he further chastising the filings in chambers and open court in civil proceedings. Although the docket here has not significantly changed in the past 10 years, this presiding judge will not provide court dates for civil matters for extensive periods of time citing his convoluted docket from criminal and juvenile matters here and in Lincoln County.

I do not believe it is ethical or reasonable to carte blanche disqualify any presiding judge and, even if I retained the ability to do so, I would not disqualify my presiding judge from 95% of my cases. The court has, however, made vocal statements as to his thoughts and beliefs as to the need to enforce certain aspects of Wyoming law and, for those cases, I would exercise discretion with disqualification if I had the ability to do so.

While I realize that it is time consuming and difficult at times to arrange complicated schedules, I would respectfully assert that if there is a situation wherein an attorney essentially refuses to appear in front of any judge then mediation and resolution to improve and restore that relationship should be the avenue of correction – not a wholesale removal of a rule that is so essential when the alternative is a jurisdiction wherein an entire group of litigants, or an area of law, is foreclosed access to justice because of the judge appointed in that area.

Melinda McCorkle
Cheyenne, WY

The attorneys at Kline, McCorkle & Pilger, LLP, are opposed to changing the existing rule on peremptory challenges. There are circumstances in which a challenge may need to be exercised. In such circumstances, the client should be allowed to exercise that right.

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July 12, 2018

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The Honorable Justice Kate M. Fox
The Honorable Judge Curt Haws
The Honorable Judge Catherine Rogers
The Honorable Judge Thomas Rumpke

Re: Wyoming Rules of Civil Procedure, Rule 40.1(b)

Dear Ladies and Gentlemen of the Rules Advisory Committee and the Courts of Wyoming:

The undersigned, Rob Shively and Phil Nicholas, have been asked by the Board of Directors of the Wyoming Trial Lawyers Association to comment on the Resolution of the Wyoming District Court Judges' Conference (the "Judicial Conference") Regarding Peremptory Disqualification of Judges in Civil Matters and any proposed change to the rule on peremptory challenges.

First, we want to thank you for your service to the State of Wyoming as Jurists and as lay members to the Rules Committee. We know that this takes a great deal of your professional and personal time. The use of peremptory challenges is not an easy issue. The WTLA understands that there must be a

balance of judicial resources against needs of counsel and the citizens of Wyoming affected by these rules. The WTLA Board is aware that the Judicial Conference's concerns are serious and should be addressed.

It is the unanimous belief of the most senior active members of the WTLA that the elimination of the Peremptory Challenge Rule is unfair to Wyoming citizens. Wyoming is like no other state in the Union. The often-used phrase that Wyoming is a small town with long streets is absolutely accurate. For citizens and legal practitioners, this wonderful characteristic creates issues for which the current rule provides real security and comfort. The WTLA advocates for the rights of every individual citizen to obtain a fair trial. The perception of fairness gives citizens, juries and litigants confidence in our judicial system. We submit that Wyoming residents want this protection.

In many cases the Judge will raise the recusal issue at an early date. Otherwise, the use of a peremptory challenge may be the only ethical way to address recusal. If there are abuses occurring then rules should be directed at the abuse, without eliminating this important individual protection. Too, if there are real issues between a legal practitioner and a sitting judge there must be an avenue for redress. A lawyer should not have to leave the community to practice law. Most important, litigants should not suffer from poor bench-bar relationships. We all have a duty to ensure the judicial process works for everyone.

For background, Rob has invoked the rule on two occasions over a 39 year career. Phil has never invoked the rule over that same time. When the senior members of the WTLA Board were polled, their collective use of the rule was less than a dozen. For most counsel, the rule is rarely invoked. When it is invoked a real potential for injury is perceived by counsel or the client. Under those circumstances confidence in the entire judicial system is promoted by use of the peremptory challenge.

The Wyoming Legislature has always been supportive of the District Courts. Over the recent years at least five new district court judge positions have been created by the Wyoming Legislature. This support has taken place even in the face of judicial surveys showing that several judicial districts are under capacity. The WTLA has supported every request made by the Supreme Court and the Judicial Conference for new positions. It is strongly submitted that the Legislature's support for new judges is in part to ensure that citizens have access to unbiased and fair judges for resolution of their controversies.

It is disheartening for the WTLA to learn that the Judicial Conference supports the elimination of this important protection for Wyoming residents finding themselves in litigation. During the contentious effort to unify the Court System in Wyoming members of the bar and Wyoming Legislature opposed elimination of the constitutional independence of the District Courts for the protection of litigants. It opposed a unified court system rejected by the framers of our Constitution. Our Constitutional Convention recognized that Wyoming's small size and friendships would not lend itself to a one-size-fits all, top-down judiciary. We want strong individual judges. But that comes at a price.

During the debate over Court Reorganization the Supreme Court declared it had little authority to address complaints directed at District Court Judges. It alluded to what it believed were legitimate disputes raised by the legal bar. Our protected system of independence leaves very little opportunity for a practitioner to find relief from a perceived bias. There will be times when a strong individual judge is not the fairest judge for a citizen. The Wyoming Legislature has blessed the judiciary with enough district court judges to address these infrequent needs of its citizens.

To address this issue, it was promised that the Judicial Conference would implement an internal procedure to receive and address complaints by members of the bar. The WTLA wonders how effective the procedure has been and believes that the Supreme Court should require the Judicial Conference to effectively honor its obligation to provide appropriate intervention and relief before attacking the safeguards provided to protect Wyoming citizens.

The Peremptory Challenge Rule has come under attack many times. Each time the Rule has survived under the scrutiny of comments and debate from both the Bench and the Bar. Together we have always come to a solution that protects individual litigants. We have always strengthened the perception of absolute judicial fairness. The WTLA submits this approach demands solutions that addresses bench-bar relationships while insisting that litigants are able to select the attorneys of their choosing all the while knowing they will have a fair trial.

Just as some of our Members have written individually, and we restate some of those positions here, the Executive Committee of the WTLA would like to see factual data that supports the broad charges in the Resolution. To the extent the Rules Advisory Committee makes any review of Rule 40.1(b), it would be instructive to obtain and share some basic information.

- By year, how many civil cases are filed in our state district courts.
- By year, how many Rule 40.1(b) motions have been filed.
- Without reference to name or bar number but by some anonymous designation, how many of those motions are filed by particular lawyers. It would be good to know how many lawyers are filing the motions and---as to particular (anonymous) lawyers---how many motions they file.
- Without reference to name or bar number but by some anonymous designation, how many of the motions are filed against particular judges. That data should then also be compared with the data for the designation of the particular lawyer. Gross statistics are not very helpful to a reasoned analysis. The Advisory Committee may want to know how many motions have been filed against a particular judge but it would also be germane to know whether that gross number clusters around a limited number of lawyers---and then to have some understanding as to the potential reasons that the motions may be filed by the lawyers.

The WTLA does not condone abuse of the Rule. Rather, it advocates for an approach that can address problems alleged in the Judicial Conference Resolution related to the invocation of Rule 40.1(b) while continuing to promote fairness for all Wyoming citizens. The WTLA and its most seasoned members want the Committee, Board and the Courts to understand that these issues and the need for the Rule are real, and they cannot be addressed by the elimination of the Rule.

On behalf of the members of the WTLA, we offer alternative approaches:

1. The Supreme Court should insist that the Judicial Conference establish a review committee to permit attorneys to lodge grievances relating to persistent bias. The Bench-Bar Committee should have a role to investigate, address and resolve bench-bar bias;

2. If it is determined that the attorney is engaged in abuse of the Rule, the matter should be referred to the Wyoming State Bar counsel for investigation under normal rules.

The WTLA sincerely believes we are all here to serve the public. Most importantly, we serve real citizens with unique problems. Our goal is to protect the delivery of fair justice to each and every citizen. We do not support, and hope you will not support, the elimination of a rule that has served most of us very well for many years. If there are abuses, let us work together to address them.

Thank you for your attention, time and thoughtful consideration. We attach for your consideration anecdotal comments from several experienced WTLA members worthy of your consideration explaining real life issues solved by tempered use of the rule and their support of the continued existence of the Rule.

Sincerely,

Rob Shively

Phil Nicholas

ANECDOTAL COMMENTS FROM WTLA MEMBERS

I practice in multiple jurisdictions. None is like Wyoming. Nowhere else do the judges and juries know the witnesses, attorneys, and litigants before trial begins. This is a unique rule, for a unique state. Wyoming litigants deserve this protection.

We all know that Wyoming is a relatively small, close-knit state, and lawyers have had clients say things like, "I don't personally know the Judge, but the Judge [goes to my family's church, knows a friend, co-worker, family member, etc., met me casually in x, y, or z setting]. I just don't want to put myself or the Judge in the position of deciding my case." In larger jurisdictions there is more anonymity and less chance that a client will be somehow connected to or know the Judge or the Judge's family. It is important to these clients that another Judge be assigned.

Peremptory disqualification is important when a client has indirect connections to the Judge in the community. While not rising to the level needed to request recusal or have the appearance of impropriety, there are many times that a client is not comfortable with a Judge due to community connections.

Judges are human. Judges enjoy some lawyers who appear before them, have neutral feelings towards most lawyers, and dislike a minority of the lawyers who practice in their courts. Despite their best efforts, some judges convey that distaste. If a lawyer has had a bad experience with a judge, for whatever reason, the rule gives that lawyer's other clients the opportunity to keep the lawyer on as counsel but draw a different Judge who might have more neutral feelings towards the lawyer. It would preserve the appearance of justice and impartiality in the event of an adverse outcome. If the rule did not exist, it would be the lawyer's ethical duty to disclose the unpleasant interactions he or she had with that Judge, and the client might be forced to hire "second choice" counsel at greater cost and inconvenience. In short, the rule realistically accounts for the humanity in judges and practicing attorneys, and allows conflict avoidance and the appearance of impartiality without formal conflict.

There is no real oversight on local practices, timeliness of decisions, docket management, demeanor, clarity, decisiveness, objectivity, and the myriad other hallmarks of good judging. If the Committee is tempted to accuse lawyers of "abusing" the rule by disqualifying a particular Judge every time, the Committee should give equal consideration to the possibility that the Judge being disqualified "every time" is not doing a good job. Judges are to be respected, for certain, but not to the point where they are perceived as beyond reproach. The rule, simply put, is a way to protect clients from Judges who possibly should not be on the Bench, or at least should receive some training or oversight. Obviously, the clients (customers) come first. These cases are deeply important and often life-altering. It is not necessarily a bad thing to let the Bar express a lack of confidence in a Judge by invoking the peremptory disqualification rule.

The Rule is wise. It is tempting to argue that lawyers are "abusing" the Rule, but there is a countervailing argument that the Rule is beyond abuse. Lawyers represent clients who have important interests at stake. Lawyers are obligated to advance their clients' interests. Lawyers who invoke this rule must do so for only this reason. The Committee should not strip away these protections historically afforded to Wyoming litigants.

ROBERT P. SCHUSTER, P.C.
ATTORNEY AT LAW

July 11, 2018

Via Federal Express

The Honorable Kate M. Fox
Wyoming Supreme Court
2301 Capitol Avenue
Cheyenne, Wyoming 82002

Re: Resolution of the Wyoming District Court Judges' Conference

Dear Justice Fox:

I am writing to you in your capacity as Chairperson of the Permanent Rules Advisory Committee. I received a copy of the Resolution of the Wyoming District Court Judges' Conference dated April 26, 2018. The Executive Director of the Wyoming State Bar has requested comments regarding the Resolution---and it is for that purpose that I write to you.

During the course of my career, I believe I have only used Rule 40.1(b)---or otherwise filed a motion for peremptory disqualification---on two occasions. While I have used it infrequently, I believe it to be an important rule for clients, for lawyers, for judges, and for our judicial system. That belief is influenced---in part---because the former procedure for requiring a recitation of causes for recusal was unseemly and insensitive, probably resulted in an exaggeration of those causes, was discourteous to the judges, and made our judicial system seem less dignified.

There are many reasons that a particular judge should not hear a particular case. Sometimes it may have to do with a perceived relationship between the judge and the clients (whether on either side). Sometimes it may have to do with a perceived relationship between the judge and counsel (whether on either side). Judges are---in fact---human and Rule 40.1(b) acknowledges that humanity.

The Resolution is surprising both for its broad charges as well as its lack of factual data. Nowhere in the Resolution is any data presented regarding the frequency of filing Rule 40.1(b) motions or any other data that would support the assertions made in the Resolution. To the extent the Advisory Committee makes any review of the Rule, it would be helpful to obtain some basic information.

- By year, how many civil cases are filed in our state district courts.
- By year, how many Rule 40.1(b) motions have been filed.
- Without reference to name or bar number but by some anonymous designation, how many of those motions are filed by particular lawyers. It would be good to know how many lawyers are filing the motions and---as to particular (anonymous) lawyers---how many motions they file.
- Without reference to name or bar number but by some anonymous designation, how many of the motions are filed as against particular judges. That data should then also be compared with the data for the designation of the particular lawyer. Gross statistics are not very helpful to a reasoned analysis. The Advisory Committee may want to know how

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many motions have been filed against a particular judge but it would also be germane to know whether that gross number clusters around a limited number of lawyers---and then to have some understanding as to the potential reasons that the motions may be filed by the lawyers.

The Resolution claims that there are "wholesale abuses" yet there is no data to support that assertion. It states that five judges in four judicial districts "had attorneys who regularly disqualified that judge from ***all*** cases assigned to that particular judge." As an initial matter---without further information---that practice might be perfectly understandable. To the extent an attorney and a judge have a flawed relationship that might affect the outcome of a case, it would be naïve to think that the relationship can temporarily be healed during the course of the proceedings. Under those circumstances, there could be good reason for an attorney to have a uniform practice. The point is that those circumstances are not known and are not presented in any fashion by the Resolution.

Fortunately, we have structural procedures that allow us---as a Bar---to make inquiry regarding issues raised by the Resolution. There is nothing that is *per se* improper for an attorney to swear a particular judge off every one of his or her cases. It is certainly irregular but---on its face---it is not condemnable which is the very reason for the adoption of Rule 40.1(b) in the first instance. There would be two sides to that inquiry---but it is an inquiry that is entirely unaddressed by the Resolution.

- There may be reason for Bar Counsel to make inquiry of the lawyer to determine the rationale for the repeated motions to determine whether or not there would be any impropriety in filing the motion---which, frankly, I would think would be exceedingly rare.
- There may be reason for the Judicial Supervisory Commission to make inquiry of a judge who is being routinely sworn off to determine whether there are matters that should be addressed about the judge's performance.

The Resolution quoted from a 2013 Supreme Court order that concerned criminal and juvenile cases. The 2013 order discussed unnecessary travel costs and the orderly management of District Court dockets. There is no indication that any study has been undertaken to determine whether or not the use of Rule 40.1(b) is causing unnecessary travel costs, or other expenses, or otherwise affecting the orderly management of District Court dockets. If the assertion is made, then the study should be undertaken. In some instances, travel costs may be greatly reduced if the judge who has been sworn off sits in a remote part of the district and the case is assigned to a more centrally located judge. But the larger point is that the issues surrounding Rule 40.1(b) are issues that are central to fairness in our judicial system---to clients, attorneys, and judges alike. That judicial system should not be distorted out of concern for unnecessary travel costs.

The Resolution states that "it is common for attorneys in some Districts to swear off a judge before the attorney even knows if the case is assigned to that judge." Several matters deserve mention.

- The Rule provides a five-day limit within which to file the motion. If an attorney is sending a complaint for filing to a city in which he or she does not reside, the assignment will be made by the regular process in the Clerk's office after that office has received the complaint that has either been mailed or Federal Expressed. If the attorney, then, discovers that the case has been assigned to a judge with whom he or she has conflict, then there is a very limited period of time within which that attorney can mail, Federal Express, or drive the motion to the Clerk's office. There can be good reason, therefore, to send the motion with the complaint.

- The Resolution provides no facts or data regarding this assertion, simply saying "it is common for attorneys in some Districts." (emphasis added). How often does this happen, with how many attorneys, and with how many judges?
- I am not sure why the issue is even raised by the Resolution. So what? Particularly because Rule 40.1(b) motions are non-accusatory and---by design---are pleadings that do not require any negative statements regarding the judge, the motions are benign. What harm is there if the file contains a Rule 40.1(b) motion that was mooted by the fact that the case ended up not being assigned to the judge mentioned in the motion?

Rule 40.1(b) was wisely added to the Wyoming Rules of Civil Procedure. The former practice of requiring an enumeration of causes was unseemly. The Rule provides substantial benefit for clients, lawyers, and judges---and enhances the integrity of our judicial system. It should be maintained. But if it is to be examined, it should be examined with actual, complete facts and data.

Thank you.

Sincerely,

Robert P. Schuster
Robert P. Schuster, P.C.

RPS:vk

LAW OFFICE

BRADLEY L. BOOKE

BY EMAIL: swilkinson@wyomingbar.org

July 6, 2018

Permanent Rules Advisory Committee, Civil Division
Wyoming State Bar
c/o Sharon Wilkinson
Executive Director
Box 109
Cheyenne, Wyoming 82003

Re: COMMENT ON APRIL 26, 2018 RESOLUTION ("THE RESOLUTION") OF WYOMING DISTRICT COURT JUDGES' CONFERENCE CONCERNING PEREMPTORY DISQAULIFICATION [SIC] OF JUDGES IN CIVIL MATTERS

Rule 1 of the Wyoming Rules of Civil Procedure provides that the rules "should be construed, administered, and employed by the court and the parties to secure the just, speedy, and inexpensive determination of every action and proceeding." This rule---meaningfully designated as *Rule #1*---states the overarching purpose of each and all of the Rules of Civil Procedure. It states the foundational principle with which all Rules of Civil Procedure, including Rule 40.1, must be harmonized.

Rule #1 provides that the rules are to be "employed" by the "parties." "[E]mployed" means "made use of." "Parties" are the litigants whose lives are in the judge's hands, not the lawyers who represent them. "Just" means "morally right and fair."

Rule 1, then, empowers litigants to use the rules to achieve what is fair. Fairness is, by definition, subjective. Unfairness can arise from attitudes about persons. Unfairness can arise from attitudes about subject matters. Unfairness can arise from sources that cannot readily be articulated. Regardless, none would dispute that fairness is the cornerstone of sound judicial function. Judicial unfairness is unacceptable.

Judges are human. Some humans recognize and acknowledge their biases. Some do not. Some do sometimes. That unknown is why Rule #1 gives the "parties" the right to "employ" the rules to achieve what is "just" and does not reserve that right to the exclusive use of judges. Accordingly, if, *for any reason,* a litigant believes that the judge assigned to her, his, or its case cannot be fair, Rule 1 empowers a litigant to peremptorily disqualify the judge. In that respect, The Resolution undermines a fundamental purpose of Rule #1.

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If a citizen-litigant believes that a judge is unfair, confidence in and respect for the judicial system is diminished. Absent public confidence, the judicial system cannot and does not effectively serve its constitutional function. Accordingly, maintaining public confidence in the judicial system requires that citizen-litigants be entitled to disqualify judges who are perceived to be unfair.

Contrary to what appears to be the principal premise for The Resolution, disqualification is not a matter between bench and bar. Rather, it is a matter between the bench and the citizens it serves, the citizens with whom it has a social contract, the citizens who authorize and empower the courts to exist. In this respect, The Resolution overbroadly "throws out the baby with the bathwater" because, by taking the peremptory challenge away from lawyers, it necessarily takes the peremptory challenge away from citizen-litigants who are represented by lawyers, as well as those who are not.

Judges were lawyers before they were judges. The lawyers most likely to become judges are litigators and not transactional lawyers. Litigation is adversarial. Much as we tout civility, it is naïve to suggest that our adversary system does not at times engender hostility by, between, and among lawyers, whether acknowledged or not. It is likewise naïve to pretend that hostility between lawyers is forever filed and forgotten when lawyers become judges.

A lawyer cannot responsibly risk that residual and unspoken hostility may impact a client's legal position. On its finest day, there are too many unknowns and uncontrollables in the adversary system to add the unpredictability of a judge's history with counsel who appear before the court. This is particularly true in a state as small as Wyoming, where lawyers commonly engage with the same adversaries time and again and so few become judges. It is an imperfect world---judges do not take the bench absent professional careers full of memories, good and bad. That imperfection should not be aggravated by taking away peremptory challenges.

Judicial economy is a secondary premise for The Resolution. While economy is almost always an easy sell and should be a consideration in all things, Rule #1 is not about "judicial economy." Rather, the "inexpensive determination of every action and proceeding" to which Rule #1 refers is the out-of-pocket cost to litigants.

The Resolution provides no data or detail to give substance to the economic concern. The State of Wyoming certainly has resources already in its employ to gather data needed to ascertain the actual cost to the public of peremptory challenges of judges in civil cases. All data is useful and it may or may not lend support to this premise of The Resolution. The data should be gathered.

Whatever the data may say, if, in the end, cost to the litigant must be balanced against cost to the public of case reassignments, then greater weight should be given the

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interest of the litigant. Fairness has immeasurable value. Fairness has value beyond a single case. Fairness trumps judicial economy in all cases.

The Resolution describes the issue in the language of pre-judgment: "long and tortured history" of "wholesale abuses" of the peremptory disqualification of judges. That description is grossly at odds with this practitioner's use of Rule 40.1(b) and personal experience with its use by opposing counsel. This practitioner's observation is that most lawyers are too smart and sufficiently understand the length of their careers to engage in wholesale abuse of the judicial system.

As with the public cost of case reassignment, resources certainly exist to get empirical data about the frequency and patterns of peremptory challenges to ascertain whether statistics bear out the description in The Resolution. The data should be gathered.

In the meanwhile, an important mechanism for insuring fairness and confidence in the judicial system should not be suspended---because the need for fairness and confidence in the judicial system cannot be suspended. If the problem is systemic, and if peremptory disqualification is more than a matter of distaste or inconvenience to those of the 78% in attendance at the Judicial Conference who voted in favor of The Resolution (another unknown), there are undoubtedly far less onerous means of preventing and curing abuse than by setting aside Rule #1. Alternatives should be solicited within our bar and beyond. We are not the first to enter this debate.

Very truly yours,

Bradley L. Booke

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June 13, 2018

Ms. Sharon Wilkinson
Executive Director
Wyoming State bar
Box 109
Cheyenne, Wyoming 82003

Re: Proposed suspension of W.R.C.P. 40.1

Dear Sharon:

I received your email this morning and reviewed it with considerable interest. It reminded me of the first thing I was involved with when former Chief Justice Al Taylor appointed me to the Civil Rules Committee. Hearings were held for two days in Laramie with numerous judges testifying and complaining about the existence of Rule 40.1 for the same reasons articulated in the resolution. The outcome of that proceeding was a lively debate among the members of the Committee and the presentation of a recommendation to the Supreme Court that represented and lot of discussion and compromise. Having earlier suspended the Rule for the duration of the consideration process, the Court then reinstated the Rule in it's entirety with absolutely no explanation.

The language in the Resolution that Wyoming is in the minority of States that employ a peremptory disqualification rule is absolutely correct. I did not see any analysis of why that might be, but I suspect that it is because Wyoming has such a small Bar and most attorneys are acquainted with each other, for better or for worse. A long standing dispute between a lawyer and one who ascends to the bench is a recipe for professional disaster for the lawyer and possibly his clients. Without the Rule, the lawyer is faced with repeatedly challenging the judge for cause resulting in the airing of grievances that ultimately could be detrimental to the administration of justice. Heaven forbid that the Judge is not then disqualified. More importantly, this entire consideration does not even mention the most important aspect of our justice system, the litigants. Particularly in civil cases, litigants might also have a great familiarity with a judge. This might be good or bad depending upon whose ox is perceived to be gored. Should a judge who is perceived to be friendly with a particular litigant but actually is not be allowed to remain on a case where the other litigant is absolutely convinced there is a conflict? Should a lawyer

who believes that a jurist has been dishonest in the past, be required to make a motion for cause to remove that judge and thus prove this very private issue between the two in a public forum? I cannot imagine this to be something that encourages confidence in the integrity of the judiciary. Should a litigant who becomes aware that a judge has used opposing counsel in the past for legal work (while on the bench), fear that this relationship might impact the outcome of his case? These would be some unintended consequences of suspension of the Rule. Because our Bar is so small and because our Judiciary is so small, these things are possible and, probably unfairly, bring confidence in the judiciary into question. If our judiciary is undermined, however unfairly, by the appearance of bias or prejudice, our system is no longer effective.

I find it troubling that the resolution speaks primarily to travel costs and docket management as the reasons why this Rule needs reconsideration. To be sure, those factors come into play, but any reference to litigants is glaringly absent. Are not litigants the entire reason for the system in the first place? Additionally, while I am sure that some of the issues exist, all of that is based upon anecdotal evidence. Is anyone willing to explain why the judges think the universal peremptory removal is taking place? The underlying reason might very well change some thinking.

The very definition of "peremptory challenge" is "the right to challenge, without assigning cause, or being required to assign cause, for removal". This is not in place for docket management, for attorney revenge upon a judge for a negative ruling, for perception of a judge as being biased, but for no reason at all. This is why I have always puzzled at the use of the term "abuses" in discussions of this Rule. By definition it cannot be abused. Some may point to the concept that many prosecutors are aware of, which is that there can be challenges to peremptory challenges of jurors. In fact this is true only because the challenges that have been determined to be an abuse have occurred in cases that involve civil rights. A good example is the challenge of each and every black juror in a case where the Defendant is a black man. I am unaware of any case that has ever raised this issue about defense challenges. This is, however, not a criminal consideration. It is a civil one and the reasons for challenge might be very appropriate but also very personal and private. To require a lawyer to bring that out in the open in attempting to challenge a judge for cause seems quite likely to never happen or, if so, rarely. I guess that is good for docket management.

All of the above having been said, there are some possible changes to the Rule which might preserve the reason it exists, yet address the needs of the judges as expressed in the resolution. Finding a way to explore these possibilities may prove elusive. I mentioned at the beginning of this missive, two days worth of hearings about the Rule. In that entire time not one lawyer appeared to address the Committee as to the reasons for preserving the Rule. Virtually all testimony came from judges who felt aggrieved by the use of the Rule. If the committee were to consider use of anecdotal testimony from lawyers as it seems to be from judges, more of the issue might be revealed. At least it might be a beginning.

I am aware, as are most of the lawyers and judges, of instances in the past where a group of attorneys were routinely swearing off a judge. Instead of doing away with the Rule, the warring (?) parties were brought together by a group of prominent lawyers and judges and the dispute was resolved. Removal of the Rule altogether shifts the power in these matters entirely to the Courts. Given the potential issues, that seems entirely unreasonable to me.

Another possibility that has been discussed would be a limitation on the number of peremptory challenges an attorney could use on a single judge in an established period of time. Thus, the lawyer has some freedom to protect his clients yet must choose his spots wisely. Likewise, the judge knows that there will be limits upon the impact to his docket.

There was a time in my career when I served on what was then the Judicial Supervisory Commission. It operated under arcane and different rules than the Commission on Ethic and Conduct does now, but one thing stays the same: Judges are commonly terrified by the process and attorneys are as well. Attorneys are loathe to grieve a judge for fear of being unsuccessful which could be a long road after for the attorney. Judges are terrified that their career will be ruined and that, if they are adjudicated for a single wrong, they might lose their retirement, their license and many other things. This is not necessarily a bad thing for all concerned as it may keep everyone in line but I think that attorneys are probably much more fearful of the process than judges. This fear might, or might not be, justified. This is where the peremptory challenge operates to assure litigants of their fair day in court.

In all of this it is important to realize that, in matters such as peremptory challenges, the perception of a fair system has become the reality of that system. Hopefully, it is the principal that will govern the deliberations here. Based upon the Resolution, I find myself reminded of Occam's Razor, a principle of philosophy that states that the more assumptions one is required to make the less likely the proposition being put forth is a valid one.

Our State has this Rule for a reason. It's demise or modification must be undertaken only after careful and deliberate consideration. The only true consideration here is whether or not that people (litigants) perceive the system as fair with it or just as fair without it. Any doubt, whatsoever, should be resolved in favor of retaining the Rule.

Thank you for the opportunity to address this ongoing controversy.

Sincerely,

John P. Worrall
Washakie County Attorney

From: Mark Gifford [mark@giffordbrinkerhoff.com]
Sent: Monday, August 02, 2010 3:41 PM
To: Bill Hiser
Cc: Judge Donnell; Honaker Law; Tony Wendtland; Brad Bonner; Bill Simpson; Mark Gifford
Subject: Peremptory Challenge Task Force

Bill:

Here is the work product of the Peremptory Challenge Task Force. I have added a sentence at the end incorporating your suggestion with respect to mandatory mediation. If any of the other Task Force members have any thoughts or suggestions with respect to that provision, I would ask them to weigh in. Otherwise, I think you can consider this the Task Force's final report.

Background. Concerns have been raised about certain instances of the abuse/improper use of Rule 40.1(b)(1), W.R.Civ.P, peremptory disqualification of judge, and its criminal rule counterpart, Rule 21.1(a), W.R.Crim.P. The Peremptory Challenge Task Force researched peremptory disqualification of judges in other states. A majority of states do not allow peremptory disqualification of judges. Of those that do (Alaska, Arizona, California, Idaho, Illinois, Montana, New Mexico, North Dakota, Utah, Washington, Wisconsin and Wyoming) the requirements for exercise of the rule vary, but nearly all have provisions to the effect that the rule is not to be used to hinder the administration of justice. The rule changes recommended by the Task Force represent a synthesis of the approaches taken in California and Arizona.

Recommendation. Rule 40.1(b)(1), W.R.Civ.P., currently provides:

A district judge may be peremptorily disqualified from acting in a case by the filing of a motion requesting that the judge be so disqualified. The motion designating the judge to be disqualified shall be filed by the plaintiff within five days after the complaint is filed; provided, that in multi-judge districts, the plaintiff must file the motion to disqualify the judge within five days after the name of the assigned judge has been provided by a representative of the court to counsel for plaintiff by personal advice at the courthouse, telephone call, or a mailed notice. The motion shall be filed by a defendant at or before the time the first responsive pleading is filed by the defendant or within 30 days after service of the complaint on the defendant, whichever first occurs, unless the assigned judge has not been designated within that time period, in which event the defendant must file the motion within five days after the name of the assigned judge has been provided by a representative of the court to counsel for the defendant by personal advice at the courthouse, telephone call, or a mailed notice. One made a party to an action subsequent to the filing of the first responsive pleading by a defendant cannot peremptorily disqualify a judge. In any matter, a party may exercise the peremptory disqualification only one time and against only one judge.

The Task Force recommends that the civil rule be amended to add the following:

All motions requesting disqualification of a judge as herein provided shall be accompanied by an affidavit signed by counsel which shall include a statement that counsel and/or counsel's client believes that the client cannot have a fair and impartial trial or hearing before the judge, along with an avowal that the request is made in good faith and not (1) for the purpose of delay; (2) to interfere with the reasonable case management practices of a judge; (3) to remove a judge for reasons of race, gender or religious affiliation; (4) for the purpose of using the rule against a particular judge in a blanket fashion by a lawyer or a law firm; or (5) to obtain a more convenient geographical location.

Rule 21.1(a), W.R.Crim.P., currently provides as follows:

A judge may be peremptorily disqualified from acting in a case in which a felony is charged by the filing of a motion so requesting. A party may exercise the peremptory disqualification only one time and against only

one judge. The motion shall be filed by the state at the time the indictment or information is filed in the district court, designating the judge to be disqualified. The motion shall be filed by the defendant in open court at arraignment, designating the judge to be disqualified, except that a defendant who is not represented by an attorney at arraignment may file the motion within 10 days after the arraignment. After a judge has been peremptorily disqualified upon the motion of a party, the opposing party may file a motion for peremptory disqualification within five days of being notified of the identity of the judge to whom the case has been assigned. Upon the filing of a motion for peremptory disqualification the disqualified judge shall take no further action except to conduct the arraignment and to assign the case to another judge.

The Task Force recommends that the criminal rule be amended to add the following:

All motions requesting disqualification of a judge as herein provided shall be accompanied by an affidavit signed by counsel which shall include a statement that counsel and/or counsel's client believes that the client cannot have a fair and impartial trial or hearing before the judge, along with an avowal that the request is made in good faith and not (1) for the purpose of delay; (2) to interfere with the reasonable case management practices of a judge; (3) to remove a judge for reasons of race, gender or religious affiliation; (4) for the purpose of using the rule against a particular judge in a blanket fashion by a prosecuting agency, defender group or law firm; (5) to obtain a more convenient geographical location; or (6) to obtain advantage or avoid disadvantage in connection with a plea bargain or sentencing.

If an attorney or an attorney's law firm or agency moves for the peremptory disqualification of the same judge more than two times in the same twelve month period, the attorney and the attorney's law firm or agency and the judge must participate in a mediation session with the Bench-Bar Relations Committee.

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wyoming STATE BAR
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August 25, 2010

Board of Judicial Policy and Administration
Attn. Ms. Ronda Munger
2301 Capitol Ave.
Cheyenne, WY 82002

Re: Peremptory Challenge Rules

Dear Members of the Board of Judicial Policy and Administration:

Thank you for your request for input from the Bar regarding the use of the Peremptory Challenge Rules[1] in the State of Wyoming. I am sure that you are well aware of the history of this rule and its use (and possible misuse) over the years. Recent issues regarding the use of this Rule in Park County have been resolved by the attorneys and the Judge involved with the assistance of the Bench-Bar Relations Committee. However, questions concerning the future use and potential for misuse of this rule remain, and this letter is intended to share with you the recommendations of the Bar and specifically the Task Force appointed to investigate and consider amendments to these Rules.

First of all, it is almost universally acknowledged by the practicing Bar that Peremptory Challenge Rules afford litigants the ability to preserve not only the actual propriety of the judicial system but also is significant in projecting the appearance of propriety of the judicial system. The Bar is overwhelmingly in favor of retaining these rules. The question then turned to whether there was a way to reduce the potential for misuse or abuse of the rules. I have enclosed herewith the Peremptory Challenge Rule Task Force's final work product and recommendations. The Task Force members are Mark Gifford, Tony Wendtland, Bill Simpson, Richard Honaker, Brad Bonner, Judge Donnell and myself. In summary, the Task Force recommendations are two-fold; first, a requirement that an attorney exercising the rule produce with the motion exercising the challenge an affidavit that the motion is not filed for an 'improper purpose'; and, secondly a provision that requires an attorney who repeatedly exercises the rule and the judge involved to have discussions designed to remediate the conflict before the use of the rule has a significant impact on the judge's docket.[2]

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[1] Rule 40.1(b)(1) W.R.C.P. and Rule 21.1(a) W.R.Cr.P.

[2] In fairness it should be noted that Judge Donnell does not agree that mandatory mediation is appropriate or desirable.

The Officers and Commissioners of the Wyoming State Bar have reviewed and approved the report of the Task Force and offered the following additional concerns. With respect to the required affidavits, it is suggested that requirement 3) of the affidavits under each rule state "to remove a judge *solely* for reasons of race, gender or religious affiliation." This addition was suggested to make sure that attorneys can represent their clients in accordance with the Rules of Professional Responsibility and not be put in jeopardy by a client's insistence on the use of this rule. Further, with respect to the "mandatory mediation" requirement, the Officers and Commissioners suggest that it may be appropriate to increase the number of disqualifications to 4 or 5 in a 12-month period before mediation is required. This would allow for appropriate use of the rule without requiring mediation until it is clear that a pattern is developing.

With respect to the recommendation for mandatory mediation for repeated use of the rule, there is no guaranty that any mediation would be successful to resolve issues that may develop between an attorney and a judge; mediation would only assure that the issues would be brought to light and discussed. If there is no issue, so be it. However, this requirement would require some identification of issues before the court's docket (and budget) can be significantly affected by the use of the rule. The Bench-Bar Relations Committee is made up of both practicing attorneys and presiding judges and would afford a balanced group to identify and address issues. If this rule were put in place, the attorney would certainly put significant thought into using this rule on the pinnacle challenge knowing that it would result in mandatory mediation. Likewise, a judge that senses an oncoming problem might choose to contact the attorney to discuss potential resolution of any issues before mediation is required. Certainly there are additional variations that could be explored regarding mediation and the implementation of this rule would require a protocol for such mediation be developed by the Bench-Bar Relations Committee. However, a mediation requirement would require the disputing parties to at least communicate (through the mediator if necessary) regarding the nature and basis of their dispute. A requirement for communication is currently lacking from the Rule which results in the problem reaching epidemic proportions before any communication takes place.

Again, thank you for requesting and considering the input from the Task Force and the Bar. We would be happy to meet with you to discuss this report and we would be happy to undertake any further requests you may have. We hope this report is helpful to you as you consider the impact of this rule not only on the administration of the courts in Wyoming but also on the administration of justice to the people of Wyoming.

Very truly yours,

William L. Hiser

William L. Hiser
President, Wyoming State Bar

cc: Peremptory Challenge Rule Task Force Members
WSB Officers and Commissioners

4124 Laramie Street • P.O. Box 109 • Cheyenne, WY 82003 • (307) 632-9061 • Fax: (307) 632-3737

Supreme Court of Wyoming
Cheyenne, Wyoming 82002

MARILYN S. KITE
CHIEF JUSTICE

2301 CAPITOL AVENUE
CHEYENNE, WY 82002
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March 10, 2011

Mr. Bill Hiser
Past President, Wyoming State Bar
Brown & Hiser
P.O. Box 971
Laramie, WY 82073-0971

RE: Peremptory Challenge Rules

Dear Mr. Hiser:

On behalf of the Wyoming Supreme Court and the Board of Judicial Policy and Administration, I want to thank you and the Peremptory Challenge Rule Task Force Members for your thoughtful and diligent work on the use (and possible misuse) of the peremptory challenge rules in the State of Wyoming. While we appreciate the enormous amount of time and effort the Task Force expended in making its recommendation, the Court, at this time, is not inclined to make any changes in the rules. As you know the district court judges were not comfortable with your recommended approach. We will continue to monitor the situation closely and want to clarify for the practicing bar that the peremptory challenge rules are not intended as a mechanism for individual attorneys to simply substitute or replace the local judge with another in all their cases. We are confident that if attorneys operate with that understanding, we can leave the rule in its current form.

Thank you again for your efforts on our behalf.

Sincerely,

Marilyn S. Kite

MARILYN S. KITE
Chief Justice

cc: Wyoming Supreme Court Justices
Board of Judicial Policy and Administration
Brian Hultman, President Wyoming State Bar
Sleeter Dover, Executive Director Wyoming State Bar

July 12, 2018

TO WHOM IT MAY CONCERN

Re: Comments on proposed change to W.R.C.P. 40.1(b)

I am an attorney in Gillette who has been forced into blanket use of the peremptory disqualification rule. We disagree that "[t]he blanket use of the disqualification rule negatively affects the administration of justice by causing unnecessary travel costs and affecting the orderly management of District Court dockets." Resolution of Wyoming District Court Judges. My cases have been assigned to judges in other districts, but rarely has the out-of-district judge actually traveled to Gillette for a hearing. Instead, we have had telephonic hearings and 'paper hearings' (submissions by affidavit), both of which have been entirely satisfactory. Further, the State has invested millions of dollars in technology for the JVAN system that allows judges, attorneys and witnesses across the state to be heard and seen simultaneously.

The need for peremptory disqualification becomes apparent when an attorney is suddenly always on the wrong side of the case, i.e., the judge's prior rulings and philosophies in like situations do not apply when this particular attorney is in the courtroom. Inexplicable decisions and vindictive behavior toward the attorney do affect the clients, both financially and with an impression that justice was not rendered because of the judge-attorney personality conflict. When the case is already too far along for peremptory disqualification, the client's access to justice can be directly affected when the client needs *pro bono* representation but the only willing attorney is the one who cannot get a fair shake from the assigned judge.

I am not talking about the situation where, for example, the attorney has the impression that a judge prefers mothers over fathers for custody. We all know that judges are imperfect humans with prejudices and preferences like the rest of us, and probably as the result of their experiences in and out of the courtroom. That situation merely requires the attorney to do a better job of putting the case together or to refuse cases already assigned to that judge. Or perhaps not. Perhaps the filing of peremptory disqualifications presents the opportunity for a judge to learn that the local bar perceives a prejudice in favor of certain types of clients, giving the judge cause to reflect on the basis for that perception.

I am also not concerned with an impression that *attorney so-and-so* always 'wins' in front of this judge. I can simply try to mimic that attorney's work or try harder to settle the case or hand it off to co-counsel for trial.

An example of what I **am** talking about is the situation where a judge makes a verbal ruling about procedure during a scheduling conference, but refuses to enter an order memorializing that ruling, refuses to enforce the ruling later in the case, then goes as far as suggesting to the noncompliant party's counsel the argument that the judge wants so that s/he can justify awarding attorney fees to the noncompliant party for defending the noncompliance.

When it becomes apparent that the conflict between an attorney and a judge has become an issue, as it should be when the attorney is regularly filing disqualifications, one might expect that the judge, upon noticing the frequency of disqualification motions, to call the attorney in for an effort to air and resolve the problem. (Judge Terrance O'Brien did that sort of thing when he had a problem with the way an attorney practiced or behaved in his court.) That has not

happened here. Why should the initiative be taken by the judge? It's extremely difficult for an attorney to know if the judge is aware of the problem and open to fixing it. Possibly, the judge does not perceive there to be a problem or has taken personal offense and is satisfied to leave the problem in the attorney's lap at the detriment to clients and the rest of the Bar.

If the peremptory disqualification rule is not available, there will be little that the attorney can do except to file motions to address bias, which is extremely difficult to prove, would require the attention of another district court judge, would delay the case pending resolution of that matter, and would likely bring public attention to the attorney-judge dispute. That would not be a good result for the justice system and could undermine respect for the system as well as the particular judge. I vote to leave the rule as is, acknowledging that in the small communities in our state, judges often have long-standing history with the local attorneys and that pulling off the scab is likely to inflict more damage than leaving the band-aid on.

Justice should not be about the convenience of judges but to protect rights and insure fairness at all points in the proceeding. The peremptory disqualification rule is vital to insuring that fairness exists.

Sincerely,

Kathryn J. Edelman

Kathryn J. Edelman

While I have not experienced the issues Ms. Edelman has and rarely file for disqualification of a judge, I agree that the Preemptory Disqualification Rule is necessary in the administration of equal justice and should not be summarily removed under the guise of inconvenience for judges. I also vote to leave the rule as is and address what appear to be bench/bar issues in a less drastic, more personal way.

DuNece Day

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July 12, 2018

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The Honorable John Fenn
The Honorable Justice Kate M. Fox
The Honorable Judge Curt Haws
The Honorable Judge Catherine Rogers
The Honorable Judge Thomas Rumpke

Re: Wyoming Rules of Civil Procedure, Rule 40.1(b)

Dear Ladies and Gentlemen of the Rules Advisory Committee and the Courts of Wyoming:

The undersigned, Rob Shively and Phil Nicholas, have been asked by the Board of Directors of the Wyoming Trial Lawyers Association to comment on the Resolution of the Wyoming District Court Judges' Conference (the "Judicial Conference") Regarding Peremptory Disqualification of Judges in Civil Matters and any proposed change to the rule on peremptory challenges.

First, we want to thank you for your service to the State of Wyoming as Jurists and as lay members to the Rules Committee. We know that this takes a great deal of your professional and personal time. The use of peremptory challenges is not an easy issue. The WTLA understands that there must be a

balance of judicial resources against needs of counsel and the citizens of Wyoming affected by these rules. The WTLA Board is aware that the Judicial Conference's concerns are serious and should be addressed.

It is the unanimous belief of the most senior active members of the WTLA that the elimination of the Peremptory Challenge Rule is unfair to Wyoming citizens. Wyoming is like no other state in the Union. The often-used phrase that Wyoming is a small town with long streets is absolutely accurate. For citizens and legal practitioners, this wonderful characteristic creates issues for which the current rule provides real security and comfort. The WTLA advocates for the rights of every individual citizen to obtain a fair trial. The perception of fairness gives citizens, juries and litigants confidence in our judicial system. We submit that Wyoming residents want this protection.

In many cases the Judge will raise the recusal issue at an early date. Otherwise, the use of a peremptory challenge may be the only ethical way to address recusal. If there are abuses occurring then rules should be directed at the abuse, without eliminating this important individual protection. Too, if there are real issues between a legal practitioner and a sitting judge there must be an avenue for redress. A lawyer should not have to leave the community to practice law. Most important, litigants should not suffer from poor bench-bar relationships. We all have a duty to ensure the judicial process works for everyone.

For background, Rob has invoked the rule on two occasions over a 39 year career. Phil has never invoked the rule over that same time. When the senior members of the WTLA Board were polled, their collective use of the rule was less than a dozen. For most counsel, the rule is rarely invoked. When it is invoked a real potential for injury is perceived by counsel or the client. Under those circumstances confidence in the entire judicial system is promoted by use of the peremptory challenge.

The Wyoming Legislature has always been supportive of the District Courts. Over the recent years at least five new district court judge positions have been created by the Wyoming Legislature. This support has taken place even in the face of judicial surveys showing that several judicial districts are under capacity. The WTLA has supported every request made by the Supreme Court and the Judicial Conference for new positions. It is strongly submitted that the Legislature's support for new judges is in part to ensure that citizens have access to unbiased and fair judges for resolution of their controversies.

It is disheartening for the WTLA to learn that the Judicial Conference supports the elimination of this important protection for Wyoming residents finding themselves in litigation. During the contentious effort to unify the Court System in Wyoming members of the bar and Wyoming Legislature opposed elimination of the constitutional independence of the District Courts for the protection of litigants. It opposed a unified court system rejected by the framers of our Constitution. Our Constitutional Convention recognized that Wyoming's small size and friendships would not lend itself to a one-size-fits all, top-down judiciary. We want strong individual judges. But that comes at a price.

During the debate over Court Reorganization the Supreme Court declared it had little authority to address complaints directed at District Court Judges. It alluded to what it believed were legitimate disputes raised by the legal bar. Our protected system of independence leaves very little opportunity for a practitioner to find relief from a perceived bias. There will be times when a strong individual judge is not the fairest judge for a citizen. The Wyoming Legislature has blessed the judiciary with enough district court judges to address these infrequent needs of its citizens.

To address this issue, it was promised that the Judicial Conference would implement an internal procedure to receive and address complaints by members of the bar. The WTLA wonders how effective the procedure has been and believes that the Supreme Court should require the Judicial Conference to effectively honor its obligation to provide appropriate intervention and relief before attacking the safeguards provided to protect Wyoming citizens.

The Peremptory Challenge Rule has come under attack many times. Each time the Rule has survived under the scrutiny of comments and debate from both the Bench and the Bar. Together we have always come to a solution that protects individual litigants. We have always strengthened the perception of absolute judicial fairness. The WTLA submits this approach demands solutions that addresses bench-bar relationships while insisting that litigants are able to select the attorneys of their choosing all the while knowing they will have a fair trial.

Just as some of our Members have written individually, and we restate some of those positions here, the Executive Committee of the WTLA would like to see factual data that supports the broad charges in the Resolution. To the extent the Rules Advisory Committee makes any review of Rule 40.1(b), it would be instructive to obtain and share some basic information.

- By year, how many civil cases are filed in our state district courts.
- By year, how many Rule 40.1(b) motions have been filed.
- Without reference to name or bar number but by some anonymous designation, how many of those motions are filed by particular lawyers. It would be good to know how many lawyers are filing the motions and---as to particular (anonymous) lawyers---how many motions they file.
- Without reference to name or bar number but by some anonymous designation, how many of the motions are filed against particular judges. That data should then also be compared with the data for the designation of the particular lawyer. Gross statistics are not very helpful to a reasoned analysis. The Advisory Committee may want to know how many motions have been filed against a particular judge but it would also be germane to know whether that gross number clusters around a limited number of lawyers---and then to have some understanding as to the potential reasons that the motions may be filed by the lawyers.

The WTLA does not condone abuse of the Rule. Rather, it advocates for an approach that can address problems alleged in the Judicial Conference Resolution related to the invocation of Rule 40.1(b) while continuing to promote fairness for all Wyoming citizens. The WTLA and its most seasoned members want the Committee, Board and the Courts to understand that these issues and the need for the Rule are real, and they cannot be addressed by the elimination of the Rule.

On behalf of the members of the WTLA, we offer alternative approaches:

1. The Supreme Court should insist that the Judicial Conference establish a review committee to permit attorneys to lodge grievances relating to persistent bias. The Bench-Bar Committee should have a role to investigate, address and resolve bench-bar bias;

2. If it is determined that the attorney is engaged in abuse of the Rule, the matter should be referred to the Wyoming State Bar counsel for investigation under normal rules.

The WTLA sincerely believes we are all here to serve the public. Most importantly, we serve real citizens with unique problems. Our goal is to protect the delivery of fair justice to each and every citizen. We do not support, and hope you will not support, the elimination of a rule that has served most of us very well for many years. If there are abuses, let us work together to address them.

Thank you for your attention, time and thoughtful consideration. We attach for your consideration anecdotal comments from several experienced WTLA members worthy of your consideration explaining real life issues solved by tempered use of the rule and their support of the continued existence of the Rule.

Sincerely,

Rob Shively

Phil Nicholas

ANECDOTAL COMMENTS FROM WTLA MEMBERS

I practice in multiple jurisdictions. None is like Wyoming. Nowhere else do the judges and juries know the witnesses, attorneys, and litigants before trial begins. This is a unique rule, for a unique state. Wyoming litigants deserve this protection.

We all know that Wyoming is a relatively small, close-knit state, and lawyers have had clients say things like, "I don't personally know the Judge, but the Judge [goes to my family's church, knows a friend, co-worker, family member, etc., met me casually in x, y, or z setting]. I just don't want to put myself or the Judge in the position of deciding my case." In larger jurisdictions there is more anonymity and less chance that a client will be somehow connected to or know the Judge or the Judge's family. It is important to these clients that another Judge be assigned.

Peremptory disqualification is important when a client has indirect connections to the Judge in the community. While not rising to the level needed to request recusal or have the appearance of impropriety, there are many times that a client is not comfortable with a Judge due to community connections.

Judges are human. Judges enjoy some lawyers who appear before them, have neutral feelings towards most lawyers, and dislike a minority of the lawyers who practice in their courts. Despite their best efforts, some judges convey that distaste. If a lawyer has had a bad experience with a judge, for whatever reason, the rule gives that lawyer's other clients the opportunity to keep the lawyer on as counsel but draw a different Judge who might have more neutral feelings towards the lawyer. It would preserve the appearance of justice and impartiality in the event of an adverse outcome. If the rule did not exist, it would be the lawyer's ethical duty to disclose the unpleasant interactions he or she had with that Judge, and the client might be forced to hire "second choice" counsel at greater cost and inconvenience. In short, the rule realistically accounts for the humanity in judges and practicing attorneys, and allows conflict avoidance and the appearance of impartiality without formal conflict.

There is no real oversight on local practices, timeliness of decisions, docket management, demeanor, clarity, decisiveness, objectivity, and the myriad other hallmarks of good judging. If the Committee is tempted to accuse lawyers of "abusing" the rule by disqualifying a particular Judge every time, the Committee should give equal consideration to the possibility that the Judge being disqualified "every time" is not doing a good job. Judges are to be respected, for certain, but not to the point where they are perceived as beyond reproach. The rule, simply put, is a way to protect clients from Judges who possibly should not be on the Bench, or at least should receive some training or oversight. Obviously, the clients (customers) come first. These cases are deeply important and often life-altering. It is not necessarily a bad thing to let the Bar express a lack of confidence in a Judge by invoking the peremptory disqualification rule.

The Rule is wise. It is tempting to argue that lawyers are "abusing" the Rule, but there is a countervailing argument that the Rule is beyond abuse. Lawyers represent clients who have important interests at stake. Lawyers are obligated to advance their clients' interests. Lawyers who invoke this rule must do so for only this reason. The Committee should not strip away these protections historically afforded to Wyoming litigants.

OFFICERS:

JANE FRANCE
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VIA ELECTRONIC MAIL:
swilkinson@wyomingbar.org
ORIGINAL TO FOLLOW VIA US MAIL

July 12, 2018

Sharon Wilkinson
Executive Director
Wyoming State Bar
P.O. Box 109
Cheyenne, WY 82003

Dear Sharon,

I am writing to you on behalf of the Defense Lawyers Association of Wyoming, Inc. ("DLAW") to provide comments on the Wyoming District Court Judges' Conference's Resolution to summarily suspend Wyoming Rule of Civil Procedure 40.1(b).

DLAW is strongly opposed to the suspension of Rule 40.1(b). When used appropriately, the Rule provides a valuable and effective tool to deal with the concerns of clients, and, even more importantly, to enhance the public's trust in the impartiality and fairness of the judicial system. DLAW members who have contributed to the content of this letter have rarely, if ever, filed a motion for peremptory challenge under Rule 40.1(b), and are largely unaware of widespread abuses of the Rule.

The Rule serves an important purpose. Litigants need to believe their case is being heard by a fair and unbiased judge. Rule 40.1 provides that safeguard for clients. In our members' experience, the need for the Rule arises when a client has had prior experience with a judge (i.e. in their divorce or their child's drug charge), and believes, perhaps inaccurately, that the judge is biased against them. In all likelihood, the judge in question is, in fact, impartial. However, even if he or she is, the public perception of the judicial system is damaged if the litigants do not believe it. This problem is exacerbated in smaller communities, of which Wyoming has many. Filing motions to strike for cause in these situations does not solve the problem, as the motions are typically, and perhaps correctly, denied. Motions for cause are expensive and time-consuming, they irritate the court, and their denial confirms the client's belief in the unfair, biased nature of the system. Second, drafting and filing the motion would increase the cost of litigation, would be time consuming, and may well be unsuccessful.

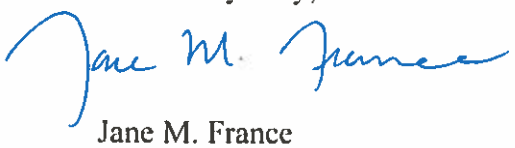
If the Rule is being abused by a few members of the bar, there are already tools in place to adequately address the issue without arbitrarily abolishing a useful tool. The Bench-Bar Relations Committee and/or the Commission on Judicial Conduct and Ethics can investigate the problem. If there is an abuse of the Rule, it can be addressed like any other violation of Rules of Professional Conduct. Rules 3.1, 3.3, 3.5(d), 8.2 and 8.4(d) would all appear to be applicable in certain situations of abuse.

Further, a suspension of the Rule until the Permanent Rules Advisory Committee has investigated and evaluated the Rule works as a repeal. Any modification made to the rule should be adopted through the standard processes used to revise the Rules of Civil Procedure. DLAW does not believe that this issue rises to the level of an emergency that requires action outside of the normal rulemaking process.

Rule 40.1 serves the important purpose of insuring that the people coming before Wyoming courts have faith in the impartiality of the tribunal. The Rule should not be suspended.

Thank you for your consideration.

Yours very truly,



Jane M. France
DLAW President

ROBERT P. SCHUSTER, P.C.
ATTORNEY AT LAW

July 11, 2018

Via Federal Express

The Honorable Kate M. Fox
Wyoming Supreme Court
2301 Capitol Avenue
Cheyenne, Wyoming 82002

Re: Resolution of the Wyoming District Court Judges' Conference

Dear Justice Fox:

I am writing to you in your capacity as Chairperson of the Permanent Rules Advisory Committee. I received a copy of the Resolution of the Wyoming District Court Judges' Conference dated April 26, 2018. The Executive Director of the Wyoming State Bar has requested comments regarding the Resolution---and it is for that purpose that I write to you.

During the course of my career, I believe I have only used Rule 40.1(b)---or otherwise filed a motion for peremptory disqualification---on two occasions. While I have used it infrequently, I believe it to be an important rule for clients, for lawyers, for judges, and for our judicial system. That belief is influenced---in part---because the former procedure for requiring a recitation of causes for recusal was unseemly and insensitive, probably resulted in an exaggeration of those causes, was discourteous to the judges, and made our judicial system seem less dignified.

There are many reasons that a particular judge should not hear a particular case. Sometimes it may have to do with a perceived relationship between the judge and the clients (whether on either side). Sometimes it may have to do with a perceived relationship between the judge and counsel (whether on either side). Judges are---in fact---human and Rule 40.1(b) acknowledges that humanity.

The Resolution is surprising both for its broad charges as well as its lack of factual data. Nowhere in the Resolution is any data presented regarding the frequency of filing Rule 40.1(b) motions or any other data that would support the assertions made in the Resolution. To the extent the Advisory Committee makes any review of the Rule, it would be helpful to obtain some basic information.

- By year, how many civil cases are filed in our state district courts.
- By year, how many Rule 40.1(b) motions have been filed.
- Without reference to name or bar number but by some anonymous designation, how many of those motions are filed by particular lawyers. It would be good to know how many lawyers are filing the motions and---as to particular (anonymous) lawyers---how many motions they file.
- Without reference to name or bar number but by some anonymous designation, how many of the motions are filed as against particular judges. That data should then also be compared with the data for the designation of the particular lawyer. Gross statistics are not very helpful to a reasoned analysis. The Advisory Committee may want to know how

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many motions have been filed against a particular judge but it would also be germane to know whether that gross number clusters around a limited number of lawyers---and then to have some understanding as to the potential reasons that the motions may be filed by the lawyers.

The Resolution claims that there are "wholesale abuses" yet there is no data to support that assertion. It states that five judges in four judicial districts "had attorneys who regularly disqualified that judge from ***all*** cases assigned to that particular judge." As an initial matter---without further information---that practice might be perfectly understandable. To the extent an attorney and a judge have a flawed relationship that might affect the outcome of a case, it would be naïve to think that the relationship can temporarily be healed during the course of the proceedings. Under those circumstances, there could be good reason for an attorney to have a uniform practice. The point is that those circumstances are not known and are not presented in any fashion by the Resolution.

Fortunately, we have structural procedures that allow us---as a Bar---to make inquiry regarding issues raised by the Resolution. There is nothing that is *per se* improper for an attorney to swear a particular judge off every one of his or her cases. It is certainly irregular but---on its face---it is not condemnable which is the very reason for the adoption of Rule 40.1(b) in the first instance. There would be two sides to that inquiry---but it is an inquiry that is entirely unaddressed by the Resolution.

- There may be reason for Bar Counsel to make inquiry of the lawyer to determine the rationale for the repeated motions to determine whether or not there would be any impropriety in filing the motion---which, frankly, I would think would be exceedingly rare.
- There may be reason for the Judicial Supervisory Commission to make inquiry of a judge who is being routinely sworn off to determine whether there are matters that should be addressed about the judge's performance.

The Resolution quoted from a 2013 Supreme Court order that concerned criminal and juvenile cases. The 2013 order discussed unnecessary travel costs and the orderly management of District Court dockets. There is no indication that any study has been undertaken to determine whether or not the use of Rule 40.1(b) is causing unnecessary travel costs, or other expenses, or otherwise affecting the orderly management of District Court dockets. If the assertion is made, then the study should be undertaken. In some instances, travel costs may be greatly reduced if the judge who has been sworn off sits in a remote part of the district and the case is assigned to a more centrally located judge. But the larger point is that the issues surrounding Rule 40.1(b) are issues that are central to fairness in our judicial system---to clients, attorneys, and judges alike. That judicial system should not be distorted out of concern for unnecessary travel costs.

The Resolution states that "it is common for attorneys in some Districts to swear off a judge before the attorney even knows if the case is assigned to that judge." Several matters deserve mention.

- The Rule provides a five-day limit within which to file the motion. If an attorney is sending a complaint for filing to a city in which he or she does not reside, the assignment will be made by the regular process in the Clerk's office after that office has received the complaint that has either been mailed or Federal Expressed. If the attorney, then, discovers that the case has been assigned to a judge with whom he or she has conflict, then there is a very limited period of time within which that attorney can mail, Federal Express, or drive the motion to the Clerk's office. There can be good reason, therefore, to send the motion with the complaint.

- The Resolution provides no facts or data regarding this assertion, simply saying "it is common for attorneys in some Districts." (emphasis added). How often does this happen, with how many attorneys, and with how many judges?
- I am not sure why the issue is even raised by the Resolution. So what? Particularly because Rule 40.1(b) motions are non-accusatory and---by design---are pleadings that do not require any negative statements regarding the judge, the motions are benign. What harm is there if the file contains a Rule 40.1(b) motion that was mooted by the fact that the case ended up not being assigned to the judge mentioned in the motion?

Rule 40.1(b) was wisely added to the Wyoming Rules of Civil Procedure. The former practice of requiring an enumeration of causes was unseemly. The Rule provides substantial benefit for clients, lawyers, and judges---and enhances the integrity of our judicial system. It should be maintained. But if it is to be examined, it should be examined with actual, complete facts and data.

Thank you.

Sincerely,

Robert P. Schuster
Robert P. Schuster, P.C.

RPS:vk

Hehr, Debbie

From: Justice Fox
Sent: Sunday, July 15, 2018 11:21 AM
To: Hehr, Debbie
Subject: FW: Proposed Rule Change W.R.C.P. 40.1(b)

More

From: Bennett, Patricia
Sent: Monday, June 25, 2018 8:50 AM
To: Justice Fox <kmf@courts.state.wy.us>
Subject: FW: Proposed Rule Change W.R.C.P. 40.1(b)

Patricia L. Bennett
Clerk of the Supreme Court
Wyoming Supreme Court
2301 Capitol Avenue
Cheyenne, WY 82002
(307) 777-7316

From: Gay Woodhouse [mailto:Gay@wrnlawfirm.com]
Sent: Monday, June 25, 2018 8:29 AM
To: Bennett, Patricia <pbennett@courts.state.wy.us>
Subject: FW: Proposed Rule Change W.R.C.P. 40.1(b)

Dear Justice Fox and members of the Permanent Civil Rules Committee:

I strenuously encourage you not to summarily suspend W.R.C.P. 40.1(b) and certainly not to abolish it. I reviewed the recommendation from the District Court Judges to abolish the rule based upon abuses which are occurring. It is of great concern to me that there are some attorneys who are filing the peremptory challenges when they file a complaint before a judge is assigned. I agree that such conduct is abusive. That particular conduct seems that it should be within the purview and expertise of the Bench-Bar Relations Committee. I do recall an instance a number of years ago when the Bench Bar Relations Committee was used in such a manner to work out a resolution to a similar problem. Perhaps it should be considered as a basis for disciplinary action as well.

However, I ask you not to abolish this rule. It is an important part of our ability to practice law before a neutral tribunal. While I have used it only once in my 40 year career, it was imperative that I had that opportunity in that situation. The issue with the Judge was one that was personal to the client and it did not rise to the level of being "for cause." However, to have continued that case with the Judge assigned would have adversely impacted the client's belief that he/she would be treated fairly during the course of the litigation. It seems that it is useful for Judges too, not to preside over a case in which one of the litigants has no faith in the Judge's ability to be fair and just.

It concerns me that one of the reasons for abolishing the rule is that only a minority of states have such a rule. Wyoming is a wonderful state in which the rule of law prevails as do civility and professionalism. Let's not hop on the bandwagon with other states and forget that we are a unique and wonderful state for so many reasons, not the least of which is that we are dedicated to preserving the rule of law and the sanctity of the judicial system.

IN THE SUPREME COURT, STATE OF WYOMING

April Term, A.D. 2018

In the Matter of Amendments to	***)***
Rules 10 and 62 of the Wyoming	***)***
Rules of Civil Procedure	***)***

ORDER AMENDING RULES 10 AND 62 OF THE WYOMING RULES OF CIVIL PROCEDURE

The Permanent Rules Advisory Committee, Civil Division, has recommended that this Court amend Rules 10 and 62 of the Wyoming Rules of Civil Procedure. This Court finds the proposed amendments should be adopted. It is, therefore,

ORDERED that the amendments to Rule 10 and 62 of the Wyoming Rules of Civil Procedure, attached hereto, be and hereby are adopted by the Court to be effective January 1, 2019; and it is further

ORDERED that this order and the attached amendments shall be published in the advance sheets of the Pacific Reporter; the attached amendments shall be published in the Wyoming Court Rules Volume; and that this order and the attached amendments shall be published online at the Wyoming Judicial Branch's website, http://www.courts.state.wy.us. The amendments shall also be recorded in the journal of this Court.

DATED this 10th day of July, 2018.

BY THE COURT:

E. JAMES BURKE
Chief Justice

Wyoming Rules of Civil Procedure

*****

Rule 10. Form of pleadings.

(a) *Caption; Names of Parties*. Every pleading must have a caption with the court's name, a title, a file number, and a Rule 7(a) designation. The title of the complaint must name all the parties; the title of other pleadings, after naming the first party on each side, may refer generally to other parties.

(b) *Paragraphs; Separate Statements*. A party must state its claims or defenses in numbered paragraphs, each limited as far as practicable to a single set of circumstances. A later pleading may refer by number to a paragraph in an earlier pleading. If doing so would promote clarity, each claim founded on a separate transaction or occurrence—and each defense other than a denial—must be stated in a separate count or defense.

(c) *Adoption by Reference; Exhibits*. A statement in a pleading may be adopted by reference elsewhere in the same pleading or in any other pleading or motion. A copy of a written instrument that is an exhibit to a pleading is a part of the pleading for all purposes.

(d) All filed documents shall be on 8½ by 11 inch white paper, single-sided.

*****

Rule 62. Stay of proceedings to enforce a judgment.

(a) *Automatic Stay; Exceptions for Injunctions, and Receiverships*. Except as stated in this rule or otherwise provided by statute or court order, no execution may issue on a judgment, nor may proceedings be taken to enforce it, until 14 days have passed after its entry. But unless the court orders otherwise, an interlocutory or final judgment in an action for an injunction or a receivership is not stayed after being entered, even if an appeal is taken.

*****

IN THE SUPREME COURT, STATE OF WYOMING

April Term, A.D. 2018

In the Matter of Amendments to Rule 49 of the Wyoming Rules of Criminal Procedure)

ORDER AMENDING RULE 49 OF THE WYOMING RULES OF CRIMINAL PROCEDURE

This matter before the Court on its own motion, following the Court's decision to amend Rule 10 of the Wyoming Rules of Civil Procedure. This Court finds that Rule 49 of the Wyoming Rules of Criminal Procedure should be amended to be consistent with W.R.C.P. 10(d). It is, therefore,

ORDERED that the amendments to Rule 49 of the Wyoming Rules of Criminal Procedure, attached hereto, be and hereby are adopted by the Court to be effective January 1, 2019; and it is further

ORDERED that this order and the attached amendments shall be published in the advance sheets of the Pacific Reporter; the attached amendments shall be published in the Wyoming Court Rules Volume; and that this order and the attached amendments shall be published online at the Wyoming Judicial Branch's website, http://www.courts.state.wy.us. The amendments shall also be recorded in the journal of this Court.

DATED this 10th day of July, 2018.

BY THE COURT:

E. JAMES BURKE
Chief Justice

Wyoming Rules of Criminal Procedure

*****

Rule 49. Service and filing of papers.

(a) *Service; When Required*. Written motions other than those which are heard ex parte, written notices and similar papers shall be served upon each of the parties.

(b) *Service; How Made*. Whenever under these rules or by an order of the court service is required or permitted to be made upon a party represented by an attorney, the service shall be made upon the attorney unless service upon the party personally is ordered by the court. Service upon the attorney or upon a party shall be made in the manner provided by the Wyoming Rules of Civil Procedure.

(c) *Notice of Orders*. Immediately upon the entry of an order made on a written motion subsequent to arraignment, the clerk shall mail to each party a notice thereof and shall make a note on the docket of the mailing. Lack of notice of the entry by the clerk does not affect the time to appeal or relieve or authorize the court to relieve a party for failure to appeal within the time allowed, except as permitted by the Wyoming Rules of Appellate Procedure.

(d) *Filing*. Papers required to be served shall be filed with the court. Papers shall be filed in the manner provided in civil actions.

(e) All filed documents shall be on 8½ by 11 inch white paper, single-sided.

*****

IN THE SUPREME COURT, STATE OF WYOMING

April Term, A.D. 2018

In the Matter of Amendments to	***)***
Rule 1 of the Rules of	***)***
Procedure for Juvenile Courts	***)***

ORDER AMENDING RULE 1 OF THE RULES OF PROCEDURE FOR JUVENILE COURTS

This matter before the Court on its own motion, following this Court's decision to amend Rule 10 of the Wyoming Rules of Civil Procedure. This Court finds that Rule 1 of the Wyoming Rules of Procedure for Juvenile Courts should be amended to be consistent with W.R.C.P. 10(d). It is, therefore,

ORDERED that the amendments to Rule 1 of the Rules of Procedure for Juvenile Courts, attached hereto, be and hereby are adopted by the Court to be effective January 1, 2019; and it is further

ORDERED that this order and the attached amendments shall be published in the advance sheets of the Pacific Reporter; the attached amendments shall be published in the Wyoming Court Rules Volume; and that this order and the attached amendments shall be published online at the Wyoming Judicial Branch's website, http://www.courts.state.wy.us. The amendments shall also be recorded in the journal of this Court.

DATED this 10th day of July, 2018.

BY THE COURT:

E. JAMES BURKE
Chief Justice

Rules of Procedure for Juvenile Courts

*****

Rule 1. Title and Scope.

(a) Title. These rules will be known and cited as 'The Rules of Procedure for Juvenile Courts.'

(b) Scope. These rules govern practice and procedure in the trial courts in all juvenile court actions.

(c) Definitions. For purposes of these Rules, the term 'State' refers to the county and prosecuting attorney, and/or district attorney. The term 'Respondent' refers to any individual required to respond to allegations in a petition filed by the State.

(d) Rules. The Wyoming Rules of Evidence shall apply to juvenile proceedings pursuant to W.R.E. 1101(b)(3).

(e) All filed documents shall be on 8½ by 11 inch white paper, single-sided.

*****

DRAFT

THE SUPREME COURT OF WYOMING

MEMORANDUM

DATE: *August 9, 2018*

TO: Board of Judicial Policy and Administration

FROM: Chief Justice Davis

RE: Judicial Salaries

Wyoming judicial salaries once again risk lagging behind judicial pay in neighboring states and comparable jobs within Wyoming state government. While recognizing that a judicial position is a public service, fair compensation remains important in order to continue to attract qualified applicants. Instead of waiting until judicial pay is so embarrassing that the need for a raise cries out and a big increase is required, we propose a smaller increase in the near future to achieve judicial pay equity, with built-in increases in the future so that pay equity is maintained.

The Board of Judicial Policy and Administration (BJPA) has studied current judicial salaries as compared to salaries for other Wyoming-leadership positions and the judicial salaries of surrounding states. It is apparent that a judicial salary increase is required to ensure that judicial officers are comparatively compensated to executive branch employees, to ensure that experienced and qualified attorneys will seek to fill judicial vacancies, and to account for cost of living increases. The last salary increase for judges was in July 2012 for Supreme Court justices and District Court judges and in July 2017 for Circuit Court judges (that 2017 increase for Circuit Court judges was largely for the purpose of compensating them for the lesser increase they received in 2012). Supreme Court justices are now paid $165,000, district court judges $150,000, and Circuit Court judges $125,000.

The legislature has recognized the need to maintain state employee salaries at a competitive level in recent years, and granted them raises and/or bonuses. Specifically, in 2013, eligible employees received a one-time 1% Retention Incentive Increase, with the

maximum payment not to exceed $1,200. In 2014, eligible employees received pay increases ranging from 1.25% to a maximum of 4.75%, with an average increase of 2.38%. Finally, in 2015, eligible employees received pay increases ranging from 1.102% to a maximum of 5.352%, with an average increase of 2.934%. Assuming justices and judges would have been eligible for these raises and that each would have received the average increase in 2014 and 2015, judicial raises would have been as follows:

	2013	2014	2015
Circuit Court	$1,190.00	$121,832.20	$125,406.76
Circuit Court*	$1,200.00	$127,975.00	$131,729.79
District Court	$1,200.00	$153,570.00	$158,075.74
Supreme Court	$1,200.00	$168,927.00	$173,883.32

*Assuming Circuit Court judges had received the requested $125,000 increase in 2012.

Supreme Court justice salaries in neighboring states range from highs in Utah ($182,950[1]), Colorado ($182,671 for associate justices and $186,656 for the chief justice), and Nebraska ($176,299[2]), to lows in Montana ($144,061) and South Dakota ($136,893). Wyoming Supreme Court justice pay ranks 31st in the nation in a July 1, 2018 survey by the National Center for State Courts. Neighboring states' lower court judges are paid as follows:

Colorado District Court - $168,202

Nebraska District Court - $163,076[3]

Utah District Court - $166,300[4]

Montana District Court - $132,558

South Dakota District Court - $127,862

In states with court structures comparable to our Circuit Court system, the pay for those judges is:

Colorado County Court - $160,966

Nebraska County Court - $158,669[5]

[1] Beginning July 1, 2019
[2] Beginning January 1, 2019
[3] Beginning January 1, 2019
[4] Beginning July 1, 2019
[5] Beginning January 1, 2019

It is also instructive to look at the salaries for leadership positions comparable to District Court judges' positions in Wyoming communities, such as hospital CEOs and school district superintendents.

1st Judicial District

CEO of Cheyenne Regional Medical Center - $456,181 (2015-2016)

Superintendent of Laramie County School District #1 - $180,000

2nd Judicial District

CEO of Ivinson Memorial Hospital - $250,000 (2006)

Superintendent of Albany County School District #1 - $179,000

3rd Judicial District

CEO of Memorial Hospital of Sweetwater County - $350,000 (2015)

Superintendent of Sweetwater County School District #1 - $167,250

4th Judicial District

CEO of Sheridan Memorial Hospital - $244,391(not verified, hospital refused to give information)

Superintendent of Sheridan County School District #2 - $198,000 (2015-2016)

5th Judicial District

CEO of Cody Regional Health - $260,928 (not verified)

Superintendent of Park County School District #6 - $165,000

6th Judicial District

CEO of Campbell County Health - $510,000 (including bonus)

Superintendent of Campbell County School District #1 - $185,000

7th Judicial District

CEO of Wyoming Medical Center - $580,000 (2015)

Superintendent of Natrona County School District #1 - $190,875

8th Judicial District

CEO of Memorial Hospital of Converse County - $300,000 (2011)

Superintendent of Converse County School District #2 - $120,000

9th Judicial District

CEO of St. John's Medical Center - $425,000 (2015-2016)

Superintendent of Fremont County School District #25 - $157,218

In addition, many executive branch employees are paid substantially more than any state judge. As of May 2017, the following salaries exceed those paid to Supreme Court justices:

Administration & Information, EXMT08 - $165,000

Wyoming Community College Commission, EXMT03 - $168,600

Governor's Office (& Office of Homeland Security), EXMT08 - $174,999

Attorney General, EXMT08 - $174,999

Wyoming Retirement, EXMT03 - $189,000

Wyoming Retirement, EXMT03 - $189,000

Department of Health, EXMT02 - $200,004

Department of Health, EXMT08 - $202,951

Wyoming Retirement, EXMT06 - $231,999

Wyoming Retirement, EXMT08 - $231,999

State Treasurer's Office, EXMT03 - $249,999

Department of Health, EXMT02 - $250,003

There are currently 54 executive branch employees who make more than a Circuit Court judge and 24 who make as much or more than a District Court judge.

While there is not a direct comparison between duties and responsibilities of school, hospital, executive and judicial officers, the above salaries can provide some benchmark. Judges do not supervise large numbers of employees or manage budgets as large as some of the listed positions, but it is a judge's responsibility to review, when requested, decisions made by all executive branch officers and to order compliance with the law as established by the constitution and statutes. Additionally, justices and judges must have knowledge of the law, problem-solving abilities, and accountability—three of the Hay Group job ranking elements. If the Average and Median Statewide Pay Rates by Classification table from April 2018 is used as a guide, it would stand to reason that the position of a Wyoming Supreme Court justice, the highest paid position in the judicial branch, should be classified

as Executive Management 8 position (EXMT08), providing an average monthly salary of $15,360.44, which equates to an average annual salary of $184,325.28.

Not only is the Wyoming judiciary being paid less than justices and judges in some neighboring states and other leadership positions in Wyoming, but the judiciary is also losing ground with respect to the private marketplace for attorneys. According to a 2017 Wyoming State Bar survey, 20% of Wyoming attorneys made more than $150,000, with 8% earning more than $250,000. Although data is not collected concerning the income of judicial applicants, we know that most newly appointed judges come from higher income brackets, as these attorneys are among the more experienced and proficient of the bar, and as a result, incur a substantial decrease in pay to join the judiciary.

Judicial salaries will determine, in part, the caliber of applicants we can expect for judicial openings. Over the course of the next 10 years, 17 of the 28 District Court judges and Supreme Court justices will face mandatory retirement. Additionally, although there is no mandatory retirement age for Circuit Court judges, if we assume a retirement age of 70, 14 of the 24 Circuit Court judges will retire as well. If a salary increase is not granted, we can anticipate that the quality and number of applicants for these vacancies will decrease. We have already seen a decline in the number of applicants for judicial vacancies. Since 2010, we have seen applicant numbers range from a high of 23 to a low of 6 for judicial vacancies, compared to early in the 1990's when it was not uncommon to receive over 30 applicants for District Court positions.

The need for a salary increase across the judiciary is abundantly clear, as evidenced by higher salaries for comparable positions in our own state, higher judicial salaries in many neighboring states, and the need to ensure the ability to continue to attract qualified and proficient members of the Wyoming bar to fill judicial vacancies. Without a regular system of maintaining pay equity, Wyoming's courts will be susceptible to unqualified applicants, and a potential loss of confidence in our judicial system.

We have not yet determined whether this is the year to make a big push for pay raises, but, at the very least, all judges ought to be talking to their local legislators to educate them on this issue. For now, our working "ask" is a salary of $180,000 for Supreme Court justices; $165,000 for District Court judges; and $150,000 for Circuit Court judges. We do not have a precise proposal for maintaining pay equity on a regular basis at this time.

Board of Judicial Policy and Administration
Policy Statement for Supervision of Circuit Court Clerical Staff in Counties Without a Resident Judge and Circuit Courts With Multiple Judges In A Single Location

A. GENERAL POLICY STATEMENT FOR SUPERVISION OF CIRCUIT COURT CLERICAL STAFF IN COUNTIES WITHOUT A RESIDENT CIRCUIT COURT JUDGE

One of the circuit court judges within the judicial district shall have ultimate responsibility for supervising the court staff in the counties without a resident circuit court judge. The circuit court judges within the district shall submit their recommendation to the Board for the position of supervising judge. The Board shall have the final authority to appoint the supervising judge. In the event the circuit judges within the district do not make a recommendation, the Board shall appoint a supervising judge.

B. GENERAL POLICY STATEMENT FOR SUPERVISION OF CIRCUIT COURT CLERICAL STAFF IN COURTS WITH MULTIPLE JUDGES IN A SINGLE COURT LOCATION

When more than one judge presides in a single court location, one of the circuit court judges shall have ultimate responsibility for supervising the staff. The circuit court judges within the single court location shall submit their recommendation to the Board for the position of supervising judge. The Board shall have the final authority to appoint the supervising judge. In the event the circuit court judges do not make a recommendation, the Board shall appoint a supervising judge.

C. SPECIFIC ACTIONS:

1. On or before November 30th of each year, the circuit court judges within the affected courts and judicial districts shall submit their written recommendation to the Board of Judicial Policy and Administration. Recommendations need not be submitted if the recommended supervising judge remains the same.

2. The Board shall consider any changes or new recommendations at its December Board meeting of each year and make the appointments by December 31st of each year.

Dated this 28th day of June, 2007.

Board of Judicial Policy and Administration

By: /S/
Chief Justice Barton R. Voigt