

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

1. **Name:** State full name (include any former names used).

Nancy Dell Freudenthal

Formerly Nancy Dell (or D.) Roan. Nancy Dell (or D.) Wood. Nancy Roan Wood.

2. **Position:** State the position for which you have been nominated.

United States Court Judge for the District of Wyoming

3. **Address:** List current office address. If city and state of residence differs from your place of employment, please list the city and state where you currently reside.

Davis & Cannon, LLP
422 West 26th Street, P.O. Box 43
Cheyenne, WY 82003.

4. **Birthplace:** State year and place of birth.

1954; Cody, Wyoming.

5. **Education:** List in reverse chronological order each college, law school, or any other institution of higher education attended and indicate for each the dates of attendance, whether a degree was received, and the date each degree was received.

1977-1980, University of Wyoming College of Law; J.D., 1980.

1972-1976, University of Wyoming; B.A., 1976.

1977. University of Wyoming; no graduate degree.

6. **Employment Record:** List in reverse chronological order all governmental agencies, business or professional corporations, companies, firms, or other enterprises, partnerships, institutions or organizations, non-profit or otherwise, with which you have been affiliated as an officer, director, partner, proprietor, or employee since graduation from college, whether or not you received payment for your services. Include the name and address of the employer and job title or description.

Paid positions:

1995 – Present:

Davis & Cannon, LLP
422 West 26th Street, P.O. Box 43
Cheyenne, WY 82003.
Partner (1998-present)
Associate (1995-1997)

1989 – 1995:

Wyoming Board of Equalization
Herschler Building
Cheyenne, WY 82002
Chairman of the Board (1989-1995)
Board Member (1989)

1994:

Governor's Natural Gas Task Force
Wyoming Board of Equalization
Herschler Building
Cheyenne, WY 82002
Member

1989 – 1991:

Wyoming Tax Commission
Herschler Building
Cheyenne, WY 82002
Chairman of the Commission (1989-1995)
Commission Member (1989)

1980 – 1989:

Office of the Wyoming Governor
State Capitol
Cheyenne, WY 82002
Attorney for Intergovernmental Affairs

1985 – 1986:

University of Wyoming, College of Law
1000 E. University Ave., Dept. 3035
Laramie, WY 82071
Adjunct Professor

1983:

State of Wyoming Department of Environmental Quality
Land Quality Division
Herschler Building

Cheyenne, WY 82002
Interim acting Administrator

1978 – 1980:
State of Wyoming
State Planning Coordinator's Office
Herschler Building
Cheyenne, WY 82002
Legal intern

Unpaid positions:

2005 – current:
K&N, LLC
P.O. Box 43
Cheyenne, WY 82003
Member

2007 – current:
Leadership to Keep Children Alcohol Free Foundation
2933 Lower Bellbrook Rd.
Spring Valley, OH 45370-9001
Officer

2003 – current:
Leadership to Keep Children Alcohol Free
2933 Lower Bellbrook Rd.
Spring Valley, OH 45370-9001
Officer

2006 – current:
Richard H. Castle and Nancy Dell Freudenthal TTEES U/A
DTD 11/16/00 for the Richard Castle Living Trust.
1502 Alger Ave
Cody, WY 82414
Co-trustee

2000 – 2006:
Richard H. Castle, Shirley A. Castle and Nancy Dell Freudenthal TTEES U/A
DTD 11/16/00 for the Richard and Shirley Castle Living Trust
1502 Alger Ave.
Cody, WY 82414
Co-trustee

1992 – current:
Zonta Club of Cheyenne, Wyoming
P.O. Box 2135

Cheyenne, WY 82003
Former director

1994-1998:
Wyoming Council for the Humanities
1315 E. Lewis St.
Laramie, WY 82072-3459
Former officer

1990-1996:
Rhodes Scholarship Wyoming Selection Committee
University of Wyoming
1000 E. University Ave.
Laramie, WY 82071
Member

1994-2003:
St. Christopher's Church Vestry
2602 Deming Ave.
Cheyenne, WY 82001
Former officer (dates are approximate)

7. **Military Service and Draft Status:** Identify any service in the U.S. Military, including dates of service, branch of service, rank or rate, serial number (if different from social security number) and type of discharge received, and whether you have registered for selective service.

I have not served in the military. I have not registered for selective service.

8. **Honors and Awards:** List any scholarships, fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards, and any other special recognition for outstanding service or achievement.

Martindale AV® Preeminent™ 5.0 out of 5
The Order of the Coif, Wyoming Chapter
Fellow, American Bar Foundation
Selected to Mountain States Super Lawyers, 2008
Selected to Best Lawyers in America
Exemplary Alumnus, University of Wyoming, College of Arts & Sciences
Phi Kappa Phi
Phi Beta Kappa
Honorary Chair, Family Day in Wyoming, National Center of Addiction and Substance Abuse at Columbia University
Friend of the Young Child Award, Wyoming Early Childhood Association
Starfish Thrower Award, Wyoming Department of Health
2005 Leadership Award, Mothers Against Drunk Driving (MADD)

Honorary lifetime membership, Natrona County Parent-Teacher Association
Family Values Award, Church of Jesus Christ of Latter Day Saints
Making a Difference Award, Uplift Wyoming
Outstanding Service Award, Wyoming Alliance for Health, Physical Education,
Recreation and Dance
Molly Pitcher Award for Services to the Field Artillery, Wyoming National Guard
I received merit scholarships to attend the University of Wyoming

9. **Bar Associations:** List all bar associations or legal or judicial-related committees, selection panels or conferences of which you are or have been a member, and give the titles and dates of any offices which you have held in such groups.

Wyoming State Bar
Laramie County Bar Association
Administrative Law Section of Wyoming State Bar, Past Chairman from approximately
1995 – 2000
Tenth Circuit Advisory Committee – Civil Rules
Wyoming Supreme Court Registry of Mediators
Wyoming Inns of Court
American Judicature Society

10. **Bar and Court Admission:**

- a. List the date(s) you were admitted to the bar of any state and any lapses in membership. Please explain the reason for any lapse in membership.

Wyoming, 1980. There have been no lapses in membership.

- b. List all courts in which you have been admitted to practice, including dates of admission and any lapses in membership. Please explain the reason for any lapse in membership. Give the same information for administrative bodies that require special admission to practice.

Wyoming, 1980
United States District Court for the District of Wyoming, 1980
United States Court of Appeals for the Tenth Circuit, 1982

There have been no lapses in membership.

11. **Memberships:**

- a. List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in response to Questions 9 or 10 to which you belong, or to which you have belonged, since graduation from law school. Provide dates of membership or participation, and indicate any office you held.

Include clubs, working groups, advisory or editorial boards, panels, committees, conferences, or publications.

Wyoming's First Lady's Initiative. Founder. 2004 – current.
Wyoming Carbon Sequestration Working Group. 2008 – current.
National Governor's Spouses Leadership Committee. 2008 – current.
Western States Arts Federation. Advisory board member. 2009 – current.
Wyoming 2-1-1 Leadership Group. 2009 – current.
Wyoming Governors Residence Foundation. Board member. 2003 – current.
Art Museum National Advisory Board, University of Wyoming. Board member.
2003 – current.
Women's Civic League of Cheyenne, honorary member as First Lady of
Wyoming. 2003 – current.
Wyoming Childhood Early Development Council, ex-officio member. 2003-
current.
Historic Governor's Mansion Foundation, board member. 2003 – current.
National Institute on Alcohol Abuse and Alcoholism's Underage Drinking
Initiative Steering Committee. 2004 – 2007.
National Conference of State Legislatures' Advisory Committee on Substance
Abuse. 2006.
Wyoming Family Economic Self Sufficiency Standard Advisory Committee.
2004 – 2006.
Wyoming Inns of Court. 2004 – 2005.
Wyoming Women's Foundation. Advisory Board member. 2003 – 2008.
Wyoming Department of Environmental Quality Compliance Advisory Panel.
1998 – 2002.
Wyoming Capitol Club. 1999.
Commercial Law Affiliates (through Davis & Cannon). 1995 – 2001.
Athena Committee of the Greater Cheyenne Chamber of Commerce. 1996 –
current.
Leadership Wyoming, Class of 2001. 2000 – 2001.
Cheyenne Schools Foundation. 1995 – 2000 (approximate).
Rhodes Scholarship Wyoming Selection Committee. 1990 – 1996 (approximate).
Governor's Natural Gas Task Force, 1993 – 1994.
Advisory Board, University of Wyoming School of Environment and Natural
Resources. 1994.
University of Wyoming Alumni Association – lifetime member
Member, Staff Advisory Council for the National Governors' Association and
Western Governors' Association, 1982 – 1989.
Governor's Task Force on Tort Reform, 1986.
Governor's Representative to the Federal Regional Coal Leasing Teams for both
the Powder River Basin and the Green River/Hamms Fork Coal Leasing
Teams, 1987 – 1989.
Governor's Drug Policy Board, 1987 – 1989.
Governor's Representative to the Western Interstate Energy Board, 1982 – 1989.

- b. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion, or national origin. Indicate whether any of these organizations listed in response to 11a above currently discriminate or formerly discriminated on the basis of race, sex, religion or national origin either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.

None of the organizations listed above currently or formerly discriminated on the basis of race, sex, or religion, or national origin either through formal membership requirements or the practical implementation of membership policies.

12. Published Writings and Public Statements:

- a. List the titles, publishers, and dates of books, articles, reports, letters to the editor, editorial pieces, or other published material you have written or edited, including material published only on the Internet. Supply four (4) copies of all published material to the Committee.

The following publications are provided except where noted:

- *Administrative Law – The Scope of Judicial Review of Administrative Actions, Laramie River Conservation Council v. Industrial Siting Council and Basin Electric Power Cooperative*, 14 Land & Water Law Review 607 (1979).
- *Public Participation Under the Surface Mining Control and Reclamation Act of 1977: A Panoply of Rights*, 15 Land & Water Law Review 503 (1980).
- *White Paper and Proposal on the Homeowners Tax Credit Program*, prepared for Governor Herschler and ultimately distributed. Date unknown.
- *SMCRA in the States: Wyoming's Perspective*, Forum for Applied Research and Public Policy, 26, Vol. 3, No. 1 (1988).
- Documents and publications developed to assist Taxpayers in Contested Cases – distributed and available through the State Board of Equalization.
- Presentation to the County Attorneys at the Wyoming Association of County Officers, 1993.
- *Open Letter to Members of the Wyoming State Bar* (on personal property reporting for taxation), Wyoming Lawyer, December 1993.
- *Nuts and Bolts on Administrative Case Practice and Procedure in Wyoming*, CLE presentation with Terry J. Harris, the Administrative Law Judge, on January 30, 1993.
- *Administrative Law Panel Outline, Discretionary Justice or "Administrative Mischief?"* – a panel CLE presentation at the Wyoming State Bar, September, 1996.
- *Contested Case Practice*, a panel CLE presentation at the Wyoming State Bar, September 17, 1998.

- *Administrative Law Outline*, a CLE presentation of recent administrative law cases, July 26, 1999.
 - *Practical Pointers on Appeal*, a CLE presentation. Date unknown.
 - *Findings of Fact and Conclusions of Law*, a presentation to the Municipal and Circuit Judges of Wyoming, May 21, 2003.
 - *A Summary of Administrative Law Cases*, a CLE panel presentation, 2003.
 - *Coping with Contested Case Practice Before Natural Resource Agencies*, a CLE presentation, March 2005.
 - *Wyoming Administrative Law Journal*, The Quarterly Newsletter of the Administrative Law Section of the Wyoming State Bar, Roger C. Fransen and Nancy D. Freudenthal, Editors, Issue #1 – Issue #37 (missing Issue #32) (December 1995 – March 2005)
 - *Administrative Law: Rulemaking and Contested Case Practice in Wyoming*, 31 Land & Water Law Review 685 (1996).
 - *Ten Hints for Lower Property Tax Assessments*, CLA Advantage, June 1996.
 - *How to Be a Hero*, CLA Advantage, September 1996.
 - *The Wyoming Hazardous Waste Landscape*, CLA Advantage, December 1996.
 - *Don't Get Stung by Use Tax*, CLA Advantage, March 1997.
 - *Six Audit Survival Hints*, CLA Advantage, June 1997.
 - *Do you Owe Contractor Excise Tax?*, CLA Advantage, September 1997.
 - *In Search of a Mediator*, CLA Advantage, March 1998.
 - *Businesses Can Take Steps Now to Prepare for Risk Management Program*, CLA Advantage, September 1998.
 - *Impaired Professionals ... Time to Act*, Wyoming Lawyer, April 2004.
 - *Chapter 7 – Administrative Appeals*. Note: I was contacted to contribute or edit a chapter for larger publication, "The Appellate Practice Handbook." I do not know if this publication was ever published showing me as an author or contributor, but a copy of the last document available to me is included.
- b. Supply four (4) copies of any reports, memoranda or policy statements you prepared or contributed in the preparation of on behalf of any bar association, committee, conference, or organization of which you were or are a member. If you do not have a copy of a report, memorandum or policy statement, give the name and address of the organization that issued it, the date of the document, and a summary of its subject matter.

The following reports were drafted through a collaborative effort and not individually authored. The reports are provided except where noted:

- *Report and Recommendations of the Carbon Sequestration Working Group to the Joint Minerals, Business and Economic Development Committee and the Joint Judicial Committee of the Wyoming State Legislature*, Wyoming Department of Environmental Quality, Herschler Building, 122 West 25th St., Cheyenne, WY 82002. September 2009.

- *The Self-Sufficiency Standard for Wyoming*, Office of the Governor, 200 West 24th Street, Room 124, Cheyenne, WY 82002. Winter 2005.
 - *Economic Development: Does Wyoming Want It? Can Wyoming Have It?*- Report of Class Projects for Leadership Wyoming, Wyoming Business Alliance, 145 S. Durbin St., Suite 101, Casper, WY 82601. 2001.
 - *Report of the Tort Reform Working Group*, Office of the Governor, State Capitol, Cheyenne, WY 82002. 1986. This report outlined a variety of legislative options for tort reform. The report may be available through the Division of Cultural Resources, State Archives and Historical Program, Barrett Building, 2301 Central Ave., Cheyenne, WY 82002.
 - *Report of the Governor's Natural Gas Task Force*, Office of the Governor, State Capitol, Cheyenne, WY 82002. 1993 or 1994. This report outlined this issues and options for valuing processed natural gas. The report may be available through the Division of Cultural Resources, State Archives and Historical Program, Barrett Building, 2301 Central Ave., Cheyenne, WY 82002.
 - *Biennial Budget reports to the Wyoming Legislature for the Governor's Residence*, Governor's Residence, 5001 Central Ave., Cheyenne, WY 82009. 2006, 2008, 2010.
- c. Supply four (4) copies of any testimony, official statements or other communications relating, in whole or in part, to matters of public policy or legal interpretation, that you have issued or provided or that others presented on your behalf to public bodies or public officials.

In my employment in the Office of the Governor and the Wyoming State Board of Equalization, I submitted extensive testimony, official statements and communications relating to matters of public policy or legal interpretation. All written documents were the property of the State of Wyoming. I retained very few copies of any such testimony or statements. After an extensive review of my files, I am producing limited documents. All other documents, to the extent that either the Governor's Office or the Wyoming State Board of Equalization retained them, may be available through the Division of Cultural Resources, State Archives and Historical Program, Barrett Building, 2301 Central Ave., Cheyenne, WY 82002.

- d. Supply four (4) copies, transcripts or recordings of all speeches or talks delivered by you, including commencement speeches, remarks, lectures, panel discussions, conferences, political speeches, and question-and-answer sessions. Include the date and place where they were delivered, and readily available press reports about the speech or talk. If you do not have a copy of the speech or a transcript or recording of your remarks, give the name and address of the group before whom the speech was given, the date of the speech, and a summary of its subject matter. If you did not speak from a prepared text, furnish a copy of any outline or notes from which you spoke.

In my employment in the Office of the Governor and the Wyoming State Board of Equalization, in working in support of my husband's 2002 and 2006 gubernatorial campaigns, and in my position as First Lady of Wyoming, I have given numerous speeches, talks and remarks throughout Wyoming. During my time with the Office of the Governor and on the Equalization Board, I retained very few copies of any testimony or statements. Following a diligent effort to locate and describe these activities, a table was prepared which is enclosed Attachment A.

- e. List all interviews you have given to newspapers, magazines or other publications, or radio or television stations, providing the dates of these interviews and four (4) copies of the clips or transcripts of these interviews where they are available to you.

In my employment in the Office of the Governor and the Wyoming State Board of Equalization, in working in support of my husband's 2002 and 2006 gubernatorial campaigns, and in my position as First Lady of Wyoming, I have been interviewed numerous times. During my time with the Office of the Governor and on the Board, I retained very few copies of any testimony or statements. Following a diligent effort to locate and describe these activities, a table was prepared which is enclosed Attachment B.

13. **Judicial Office:** State (chronologically) any judicial offices you have held, including positions as an administrative law judge, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

1989 – 1995: Wyoming Board of Equalization, Herschler Building, Cheyenne, WY 82002.

In March, 1989, I was appointed to the Board by Wyoming Governor Michael Sullivan, and confirmed by the State Senate.

This tribunal is an administrative law tribunal with jurisdiction over all cases contesting state sales and use taxes and all cases brought by taxpayers contesting the valuation of state-assessed property (pipelines, railroads, public utilities, and minerals). It also has jurisdiction over all appeals from County Boards of Equalization for cases brought by taxpayers contesting local assessments (residential, commercial and industrial properties).

1989 – 1991: Wyoming Tax Commission, Herschler Building, Cheyenne, WY 82002. In April, 1989 I was appointed to the Board by Wyoming Governor Michael Sullivan, and confirmed by the State Senate.

This tribunal was abolished in government reorganization, and its duties were merged into the Wyoming Department of Transportation. Before it was abolished, the Commission had administrative law tribunal duties including contested case hearings protesting Department of Revenue actions dealing with applications by vehicle dealers, applications for license plates, and the operating authority for commercial vehicles. The Commission also heard appeals from hearings held by independent hearing examiners involving decisions on vehicle license suspensions and the revocation of license plates and registration certificates for violating laws on compulsory automobile insurance.

- a. Approximately how many cases have you presided over that have gone to verdict or judgment?

I have presided over 595 cases to hearing.

- i. Of these, approximately what percent were:

jury trials?: 0% bench trials? 100% [total 100%]

civil proceedings? 100% criminal proceedings? 0% [total 100%]

- b. Provide citations for all opinions you have written, including concurrences and dissents.

See attached list of cases. The State Board of Equalization did not record the author for written opinions. I wrote or contributed significantly to nearly all decisions except for the 9 cases in which I was recused. The 9 recusals are identified in the answer to paragraph 14 below.

- c. For each of the 10 most significant cases over which you presided, provide: (1) a capsule summary of the nature the case; (2) the outcome of the case; (3) the name and contact information for counsel who had a significant role in the trial of the case; and (3) the citation of the case (if reported) or the docket number and a copy of the opinion or judgment (if not reported).

1. *In the Matter of the Appeals of Amax Coal Company (Eagle Butte Mine and Belle Ayr Mine)*, Doc. No. A-88-40 and A-88-41 (1989), 1989 WL 234550 (Wyo.St.Bd.Eq.).

Case Description:

The Taxpayer appealed notices of valuation for its 1987 coal production claiming the Department of Revenue erred in refusing to allocate Black Lung Excise Tax (BLET), and in refusing deductions of reclamation costs attributable to processing and post mine mouth transportation activities. The State Board denied the allocation of BLET but remanded the valuation to the Department to calculate the deductions for reclamation costs attributable to processing and post mine mouth transportation. Both the Taxpayer and the Department appealed the case, and the Wyoming Supreme Court affirmed the State Board's ruling in *Amax Coal v. State Bd. of Equalization*, 819 P.2d 825 (Wyo. 1991).

Counsel for Petitioner: Lawrence J. Wolfe
 Holland and Hart
 2515 Warren Ave., Suite 450
 Cheyenne, WY 82003-1347
 (307) 778-4200.

Counsel for Respondent: Milo M. Vukelich
1250 SE Waddell Way
Waukee, IA 50263
(515) 480-0697

2. *In the Matter of the Appeals of Amax Coal Company (Eagle Butte and Belle Ayr Mines)*, Doc. Nos. A-89-84 and A-89-85 (1990), 1990 WL 260297 (Wyo.St.Bd.Eq.).

Case Description:

The Taxpayer protested the taxable value for its 1988 coal production as established by the Department of Revenue, making numerous claims of error concerning the Department's methodology for valuation. The State Board affirmed the Department's valuation in part, remanding the valuation to be recalculated to exclude from the numerator of the direct cost factor any reclamation costs associated with areas and facilities after the mouth of the mine.

Counsel for Petitioner: Lawrence J. Wolfe
Holland and Hart, 2515 Warren Ave., Suite 450
Cheyenne, WY 82003-1347
(307) 778-4200

Counsel for Respondent: Matthew D.C.P. Meuli
509 Palisade Mountain Drive
Windsor, CO 80550
(970) 674-3068

3. *In the Matter of the Appeal of Barcon, Inc.*, Doc. No. A-91-154 (1992), 1992 WL 46661 (Wyo.St.Bd.Eq.).

Case Description:

The case concerned the assessment of use tax on used equipment purchased outside of Wyoming from a company that was not a "vendor" under Wyoming law. There were no facts in dispute and the case was one of statutory interpretation. The State Board concluded that Petitioner was required to pay use tax without regard to whether the property sold was by a person or a vendor, but vacated the penalty assessment. The case was affirmed on appeal to the district court, and then the Wyoming Supreme Court in *Barcon, Inc. v. Wyoming State Bd. of Equalization*, 845 P.2d 373 (Wyo. 1992).

Counsel for Petitioner: Tracy J. Copenhaver
Copenhaver, Kath, Kitchen & Kolpitcke, LLC
224 North Clark Street
Powell, WY 82435-0839
(307) 754-2276

Counsel for Respondent: Vicci M. Colgan
Wyoming State Auditor's Office
Capitol Building, Room 114
Cheyenne, WY 82002
(307) 777-6648

4. *In the Matter of the Appeal of W.A. Moncrief, Jr.*, Doc. No. 89-63 (1992), 1992 WL 118446 (Wyo.St.Bd.Eq.).

Case Description:

The case arose in the context of an audit assessment, and concerned whether interest on severance tax assessments begins to accrue from the date the taxes were originally due, or whether interest begins to accrue thirty days after the Department of Revenue issues its notice of assessment of severance tax underpayment. No facts were in dispute. Based on statutory interpretation, the State Board concluded the tax was delinquent when it should have been paid, and affirmed the Department's interest calculation. The Board's decision was affirmed by the Wyoming Supreme Court in *Moncrief v. Wyoming State Bd. of Equalization*, 856 P.2d 440 (Wyo. 1993).

Counsel for Petitioner: Morris R. Massey, Brown
Drew & Massey, LP
159 N. Wolcott St., Suite 200
Casper, WY 82601
(307) 234-1000

Counsel for Respondent: Vicci M. Colgan
Wyoming State Auditor's Office
Capitol Building, Room 114
Cheyenne, WY 82002
(307) 777-6648

5. *In the Matter of the Appeal of Enron Oil & Gas Company*, Doc. No. 91-143 (1992), 1992 WL 200904 (Wyo.St.Bd.Eq.).

Case Description:

The Taxpayer protested the denial of a refund request pertaining to its oil and gas production as outside a two-year statutory limit. There were no material facts in dispute and the case involved statutory interpretation. Based on the statute and finding no basis for tolling the two-year period, the Board affirmed the Department's denial. The State Board's decision was affirmed in *Enron Oil & Gas Co. v. Freudenthal*, 861 P.2d 1090 (Wyo. 1993).

Counsel for Petitioner: Dante L. Zarlengo

4204 Knox Ct.
Denver, CO 80211
(303) 477-2455

Counsel for Respondent: Vicci M. Colgan
Wyoming State Auditor's Office
Capitol Building, Room 114
Cheyenne, WY 82002
(307) 777-6648

6. *In the Matter of the Appeal of Jan Charles Gray*, Doc. No. 91-156 (1993), 1993 WL 220382 (Wyo.St.Bd.Eq.).

Case Description:

This was an appeal from a decision by the Converse County Board of Equalization (CBOE) affirming the 1991 ad valorem values established by the Assessor. The Taxpayer urged that his purchase transactions at public auction represented arms-length negotiations and met the definition of fair market value. The State Board affirmed the CBOE concluding that evidence of purchase prices paid following auction was not sufficient to meet the Taxpayer's burden of proof. I issued a separate concurring opinion explaining that the Computer Assisted Mass Appraisal System (CAMA) only automates recognized appraisal methods and that appraisal judgments on valuation issues should have been better documented to build long-term confidence and credibility in the ad valorem tax area. This case was affirmed by the Wyoming Supreme Court in *Gray v. Wyoming State Bd. of Equalization*, 896 P.2d 1347 (Wyo. 1995), a precedent-setting case holding that CAMA conforms with the equal and uniform taxation requirements of the constitution and that reliance upon actual sales prices may lead to discrimination and lack of equality and uniformity.

Counsel for Petitioner: Not represented by counsel

Counsel for Respondent: Thomas A. Burley
628 North 6th St.
Douglas, WY 82633
(307) 358-3226

7. *In the Matter of the Appeal of Walt Guion, d/b/a Preferred Energy Properties*, Doc. No. 92-206 (1993), 1993 WL 445355 (Wyo.St.Bd.Eq.).

Case Description:

The Taxpayer appealed a Department of Revenue assessment of additional oil valuation for the 1991 production year, claiming it was not the operator of the subject properties and thus was not responsible for the taxes. The State Board affirmed the Department's assessment. The State Board's decision was affirmed in *Preferred Energy Properties v. Wyoming State Bd. of*

Equalization, 890 P.2d 1110 (Wyo. 1995), which is an important case on the liability for severance taxes as well as the Board's authority to consider deeds in determining liability for taxes under the statute.

Counsel for Petitioner: Neil J. Short
235 S. David St., Suite #C
Casper, WY 82601
(307) 234-2401

Counsel for Respondent: Michael D. Basom
Dray, Thomson & Dyekman, PC
204 E. 22nd St.
Cheyenne, WY 82001-3799
(307) 634-8891

8. *In the Matter of the Appeal of Exxon Company, USA, from a Decision of the Sublette County Board of Equalization, 1992*, Doc. No. 92-185, 1993 WL 69808 (Wyo.St.Bd.Eq.).

Case Description:

Taxpayer appealed from an adverse determination by the Sublette County Board of Equalization upholding the Assessor's denial of applications filed by the Taxpayer for pollution control exemptions from ad valorem taxation for equipment located at the Exxon – LaBarge facility. The case concerned a primary question of the interpretation and application of the pollution control exemption law in the context of criteria applied by a contract appraising firm and the county. The State Board overturned the County Board, concluding the water disposal system, sour water disposal system, and increase sour water filtration capacity should have been 100% exempt as pollution control equipment. The flare system and the well field flare system were remanded for reconsideration by the assessor following receipt of installed-cost information to justify a value for those devices for exemption purposes.

Counsel for Petitioner: Brent R. Kunz
Hathaway & Kunz, PC
2515 Warren Ave., Suite 500
Cheyenne, WY 82003-1208
(307) 634-7723

Counsel for Respondent: John Crow
P.O. Box 817
Pinedale, WY 82941
(307) 367-2430

9. *In the Matter of the Appeals of Amax Coal Company*, Doc. Nos. 92-198 (1994), 1994 WL 76631 (Wyo.St.Bd.Eq.).

Case Description:

The Taxpayer protested the result of an audit and Department of Revenue decision increasing the taxable value for coal production from Taxpayer's Belle Ayr and Eagle Butte mines for production years 1986 and 1987, and also requested offsetting refunds and credits for all years subject to the audit. The State Board reversed the Department's assessment, remanding it for recalculation in several areas. Certain Taxpayer claims for deductions were disallowed, and the Taxpayer's claims for refund or credit were disallowed. The case was appealed and affirmed in *Amax Coal West, Inc. v. Wyoming State Bd. of Equalization*, 896 P.2d 1329 (Wyo. 1995). See also a companion case affirming the State Board in *Thunder Basin Coal Co. v. Wyoming State Bd. of Equalization*, 896 P.2d 1336 (Wyo. 1995).

Counsel for Petitioner: Lawrence J. Wolfe
Holland and Hart
2515 Warren Ave., Suite 450
Cheyenne, WY 82003-1347
(307) 778-4200

Counsel for Respondent: Michael D. Basom
Dray, Thomson & Dyekman, PC
204 E. 22nd St.
Cheyenne, WY 82001-3799
(307) 634-8891

10. *In the Matter of the Appeal of Rock Springs Ford Nissan*, Doc. No. 93-133 (1994), 1994 WL 50846 (Wyo.St.Bd.Eq.).

Case Description:

The case arose from the denial of a refund request for sales tax paid to obtain a repossession title. No sales tax was initially paid on the original sale of the motor vehicle. There were no disputed facts and the issue involved statutory interpretation. The State Board concluded an automobile dealer is liable for unpaid sales tax. The State Board's decision was affirmed in *Rock Springs Ford Nissan v. State Bd. of Equalization*, 890 P.2d 1100 (Wyo. 1995).

Counsel for Petitioner: Lawrence J. Wolfe
Holland and Hart
2515 Warren Ave., Suite 450
Cheyenne, WY 82003-1347
(307) 778-4200

Counsel for Respondents: Gayle R. Stewart (for Sweetwater County)
State Board of Equalization
Herschler Building, 1 West, #1706
122 West 25th Street
Cheyenne, WY 82002
(307) 777-2445

Emily S. Birtell Gardyas (for the Department of Revenue)
1900 W. Euclid Ave.
Indianola, IA 50125
(515) 961-3349

- d. For each of the 10 most significant opinions you have written, provide: (1) citations for those decisions that were published; (2) a copy of those decisions that were not published; and (3) the names and contact information for the attorneys who played a significant role in the case.

(1) citations for decisions that were published:

1. *In the Matter of the Appeals of Amax Coal Company (Eagle Butte Mine and Belle Ayr Mine)*, Doc. No. A-88-40 and A-88-41 (1989), 1989 WL 234550 (Wyo.St.Bd.Eq.).

Counsel for Petitioner: Lawrence J. Wolfe
Holland and Hart
2515 Warren Ave., Suite 450
Cheyenne, WY 82003-1347
(307) 778-4200.

Counsel for Respondent: Milo M. Vukelich
1250 SE Waddell Way
Waukee, IA 50263

2. *In the Matter of the Appeals of Amax Coal Company (Eagle Butte and Belle Ayr Mines)*, Doc. Nos. A-89-84 and A-89-85 (1990), 1990 WL 260297 (Wyo.St.Bd.Eq.).

Counsel for Petitioner: Lawrence J. Wolfe
Holland and Hart, 2515 Warren Ave., Suite 450
Cheyenne, WY 82003-1347
(307) 778-4200

Counsel for Respondent: Matthew D.C.P. Meuli
509 Palisade Mountain Drive
Windsor, CO 80550
(970) 674-3068

3. *In the Matter of the Appeal of Barcon, Inc.*, Doc. No. A-91-154 (1992), 1992 WL 46661 (Wyo.St.Bd.Eq.).

Counsel for Petitioner: Tracy J. Copenhaver
Copenhaver, Kath, Kitchen & Kolpitke, LLC
224 North Clark Street
Powell, WY 82435-0839
(307) 754-2276

Counsel for Respondent: Vicci M. Colgan
Wyoming State Auditor's Office
Capitol Building, Room 114
Cheyenne, WY 82002
(307) 777-6648

4. *In the Matter of the Appeal of W.A. Moncrief, Jr.*, Doc. No. 89-63 (1992), 1992 WL 118446 (Wyo.St.Bd.Eq.).

Counsel for Petitioner: Morris R. Massey, Brown
Drew & Massey, LP
159 N. Wolcott St., Suite 200
Casper, WY 82601
(307) 234-1000

Counsel for Respondent: Vicci M. Colgan
Wyoming State Auditor's Office
Capitol Building, Room 114
Cheyenne, WY 82002
(307) 777-6648

5. *In the Matter of the Appeal of Enron Oil & Gas Company*, Doc. No. 91-143 (1992), 1992 WL 200904 (Wyo.St.Bd.Eq.).

Counsel for Petitioner: Dante L. Zarlengo
4204 Knox Ct.
Denver, CO 80211
(303) 477-2455

Counsel for Respondent: Vicci M. Colgan
Wyoming State Auditor's Office
Capitol Building, Room 114
Cheyenne, WY 82002
(307) 777-6648

6. *In the Matter of the Appeal of Jan Charles Gray*, Doc. No. 91-156 (1993), 1993 WL 220382 (Wyo.St.Bd.Eq.).

Counsel for Petitioner: Not represented by counsel

Counsel for Respondent: Thomas A. Burley
628 North 6th St.
Douglas, WY 82633
(307) 358-3226

7. *In the Matter of the Appeal of Walt Guion, d/b/a Preferred Energy Properties*, Doc. No. 92-206 (1993), 1993 WL 445355 (Wyo.St.Bd.Eq.).

Counsel for Petitioner: Neil J. Short
235 S. David St., Suite #C
Casper, WY 82601
(307) 234-2401

Counsel for Respondent: Michael D. Basom
Dray, Thomson & Dyekman, PC
204 E. 22nd St.
Cheyenne, WY 82001-3799
(307) 634-8891

8. *In the Matter of the Appeal of Exxon Company, USA, from a Decision of the Sublette County Board of Equalization*, 1992, Doc. No. 92-185, 1993 WL 69808 (Wyo.St.Bd.Eq.).

Counsel for Petitioner: Brent R. Kunz
Hathaway & Kunz, PC
2515 Warren Ave., Suite 500
Cheyenne, WY 82003-1208
(307) 634-7723

Counsel for Respondent: John Crow
P.O. Box 817
Pinedale, WY 82941
(307) 367-2430

9. *In the Matter of the Appeals of Amax Coal Company*, Doc. Nos. 92-198 (1994), 1994 WL 76631 (Wyo.St.Bd.Eq.).

Counsel for Petitioner: Lawrence J. Wolfe
Holland and Hart
2515 Warren Ave., Suite 450
Cheyenne, WY 82003-1347
(307) 778-4200

Counsel for Respondent: Michael D. Basom
Dray, Thomson & Dyekman, PC
204 E. 22nd St.
Cheyenne, WY 82001-3799
(307) 634-8891

10. *In the Matter of the Appeal of Rock Springs Ford Nissan*, Doc. No. 93-133 (1994), 1994 WL 50846 (Wyo.St.Bd.Eq.).

Counsel for Petitioner: Lawrence J. Wolfe
Holland and Hart
2515 Warren Ave., Suite 450
Cheyenne, WY 82003-1347
(307) 778-4200

Counsel for Respondents: Gayle R. Stewart (for Sweetwater County)
State Board of Equalization
Herschler Building, 1 West, #1706
122 West 25th Street
Cheyenne, WY 82002
(307) 777-2445

e. Provide a list of all cases in which certiorari was requested or granted.

None.

f. Provide a brief summary of and citations for all of your opinions where your decisions were reversed by a reviewing court or where your judgment was affirmed with significant criticism of your substantive or procedural rulings. If any of the opinions listed were not officially reported, provide copies of the opinions.

1. *Allied-Signal v. Board of Equalization*, 813 P.2d 214 (Wyo. 1991), rev'g, *In the Matter of the Appeal of Allied Corporation from a Denial of Sales Tax Refund*, 1989 WL 234662. The Board ruled that a "sale" occurred when assets of a corporation were exchanged for stock in a newly formed subsidiary corporation. The Wyoming Supreme Court ruled that a sale had occurred, but disagreed that the value of the stock was the same as the value of the assets. Refusing to speculate, the Court determined that the fair market value of the stock was either zero or nominal, thus no tax was due.

2. *Burlington Northern v. Bd. of Equalization*, 820 P.2d 993 (Wyo. 1991), rev'g *In the Matter of the Appeal of Burlington Northern Railroad Company from Sales/Use Tax Assessment Numbers S/U 390A and S/U 390B*, 1989 WL 234671. The State Board ruled that a use tax could be imposed by Wyoming on refurbished wheel assemblies installed on interstate railroads. The Wyoming Supreme Court ruled that the "first use" of the new repair parts took place in Nebraska when they were installed as component parts, and the mere replacement in Wyoming of repaired wheel assemblies on the cars is not a "first use" triggering the application of the test in *Complete Auto Transit, Inc. v. Brady*, 430 U.S. 274 (1977).

3. *Meridian Aggregates Company v. Bd. of Equalization*, 827 P.2d 375 (Wyo. 1992), rev'g

In the Matter of the Appeal of Meridian Aggregates Co., 1991 WL 117361 (Wyo.St.Bd.Eq.). The State Board ruled that denial of a taxpayer's refund request was time-barred. The Wyoming Supreme Court ruled that an amendment to the refund statute afforded the Taxpayer one year after its effective date for filing the claim for refund so long as the refund claim was filed within the original three-year period.

4. *Holly Sugar v. State Bd. of Equalization*, 839 P.2d 959 (Wyo. 1992), rev'g *In the Matter of the Appeal of Holly Sugar Corporation*, 1991 WL 172239. The State Board modified a county valuation to allow for additional functional and economic obsolescence, but denied some obsolescence requested by the Taxpayer. The Wyoming Supreme Court ruled that the State Boards' usage of 1986 functional and economic obsolescence figures to answer a 1990 obsolescence problem was not supported by substantial evidence.

5. *Amoco Production Co. v. Wyoming State Bd. of Equalization*, 882 P.2d 866 (Wyo. 1994), rev'g *In the Matter of the Appeal of Amoco Production Company and Amoco Rocmount Company (Oil and Gas Valuation Methodology, Non Arms-Length Situations)*, 1992 WL 126533. The State Board ruled that the Department of Revenue must adopt a more determinative formula for computation of comparable value based upon reasonable inferences from confidential third-party natural gas processing fees, and that if a more determinative formula was not adopted, valuation shall be under the proportionate profits method. The State Board further concluded that selection by the Department of the more determinative formula would be final, subject to review only through an appeal of Amoco's 1991 production value. The Wyoming Supreme Court ruled the product of the Board's Order was to deprive Amoco of due process. The matter was remanded to the State Board with instructions to remand the case to the Department to determine whether the Taxpayer could be permitted to participate in the development of the more determinative formula and, if it concluded that Amoco could not participate, then to utilize the proportionate profits methodology proposed by the Taxpayer for valuation of its gas.

6. *State v. Wyo. State Bd. of Equalization*, 891 P.2d 68 (Wyo. 1995), rev'g *In the Matter of the Appeal of Molin Concrete Products Company*, 1993 WL 335630. The State Board ruled that a contractor was not liable for use tax on the cost of materials sold to an exempt entity. The Wyoming Supreme Court ruled that either a contractor or a subcontractor selling to a tax-exempt institution and later installing the materials results in a use tax liability.

- g. Provide a description of the number and percentage of your decisions in which you issued an unpublished opinion and the manner in which those unpublished opinions are filed and/or stored.

All decisions are published in Westlaw.

- h. Provide citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, provide copies of the opinions.

As an administrative tribunal, the State Board of Equalization does not rule on federal or state constitutional issues. Those matters must initiate in court. *See In re Worker's Compensation Claim of Williams*, 2009 WY 57, ¶ 17-18, 205 P.3d 1024, 1032-1033 (Wyo. 2009) and cases cited therein.

- i. Provide citations to all cases in which you sat by designation on a federal court of appeals, including a brief summary of any opinions you authored, whether majority, dissenting, or concurring, and any dissenting opinions you joined.

I have not sat by designation on a federal court of appeals.

14. **Recusal:** If you are or have been a judge, identify the basis by which you have assessed the necessity or propriety of recusal (If your court employs an "automatic" recusal system by which you may be recused without your knowledge, please include a general description of that system.) Provide a list of any cases, motions or matters that have come before you in which a litigant or party has requested that you recuse yourself due to an asserted conflict of interest or in which you have recused yourself sua sponte. Identify each such case, and for each provide the following information:

- a. whether your recusal was requested by a motion or other suggestion by a litigant or a party to the proceeding or by any other person or interested party; or if you recused yourself sua sponte;
- b. a brief description of the asserted conflict of interest or other ground for recusal;
- c. the procedure you followed in determining whether or not to recuse yourself;
- d. your reason for recusing or declining to recuse yourself, including any action taken to remove the real, apparent or asserted conflict of interest or to cure any other ground for recusal.

I have recused myself in the following cases:

1993. *In the Matter of the Appeal of TCI Cablevision of Wyoming from a Decision of the Park County Board of Equalization*, Doc. No. 92-264 (1993), 1993 WL 281829.

I recused myself sua sponte. My husband had previously represented the Taxpayer in related matters. I alerted the State Board to the conflict by writing, and notice was provided to all parties by Order. The recusal appears in the records of all orders entered in the case. I recused to avoid the potential for the appearance of impropriety and the potential for the appearance of ex parte contacts.

1993. *In the Matter of the Petition and Appeal by Union Pacific Resources Company (Audit/Sweetwater and Crook)*, Doc. No. 93-59 (1993), 1993 WL 118663.

I recused myself sua sponte. My husband's law firm represented a party in the case. I alerted the State Board to the conflict by writing, and notice was provided to all parties by Order. The recusal appears in the records of all orders entered in the case. I recused to avoid the potential for the appearance of a conflict and of impropriety, and the potential for the appearance of ex parte contacts.

1993. *In the Matter of the Appeals of Amoco Production Company*, Doc. No. 92-290 (1993), 1993 WL 7189.

I recused myself sua sponte. My husband's law firm represented a party in the case. I alerted the State Board to the conflict by writing, and notice was provided to all parties by Order. The recusal appears in the records of all orders entered in the case. I recused to avoid the potential for the appearance of a conflict and of impropriety, and the potential for the appearance of ex parte contacts.

1992. *In the Matter of the Petition for Declaration by Union Pacific Resources Company, (Point of Valuation)*, Doc. No. 92-292 (1992), 1993 WL 118669.

I recused myself sua sponte. My husband's law firm represented a party in the case. I alerted the State Board to the conflict by writing, and notice was provided to all parties by Order. The recusal appears in the records of all orders entered in the case. I recused to avoid the potential for the appearance of a conflict and of impropriety, and the potential for the appearance of ex parte contacts.

1992. *In the Matter of the Appeal of Amoco Production Company from a Decision of the Carbon County Commissioners and In the Matter of the Appeal of Amoco Production Company from a Decision of the Sweetwater County Commissioners*, Doc. No. 92-189 (1992), 1992 WL 339597.

I recused myself sua sponte. My husband's law firm represented a party in the case. I alerted the State Board to the conflict by writing, and notice was provided to all parties by Order. The recusal appears in the records of all orders entered in the case. I recused to avoid the potential for the appearance of a conflict and of impropriety, and the potential for the appearance of ex parte contacts.

1992. *In the Matter of Proceedings to Equalize the Level of Assessment of Cable TV Properties in Big Horn, Hot Springs, Johnson, Park, Sheridan, and Washakie Counties, Wyoming*, Equalization Order 92-1, 1992 WL 200902.

I recused myself sua sponte. My husband had previously represented the Taxpayer in related matters. I alerted the State Board to the conflict by writing, and notice was provided to all parties by Order. The recusal appears in the records of all orders entered in the case. I

recused to avoid the potential for the appearance of impropriety and the potential for the appearance of ex parte contacts.

1992. *In the Matter of the Appeal of TCI Cablevision of Wyoming, Inc.*, Doc. No. 91-168 (1992), 1992 WL 126530.

I recused myself sua sponte. My husband had previously represented the Taxpayer in related matters. I alerted the State Board to the conflict by writing, and notice was provided to all parties by Order. The recusal appears in the records of all orders entered in the case. I recused to avoid the potential for the appearance of impropriety and the potential for the appearance of ex parte contacts.

1990. *In the Matter of the Appeals of 1989 Valuation for 1988 Sand and Gravel, Coal, Uranium, and Bentonite Production*, 1990 WL 260524.

I recused myself on one issue sua sponte. I recused myself on all remaining issues upon motion by Exxon Coal USA, Inc., Cordero Mining Company, North Antelope Mining Company, and Rochelle Mining Company. I had previously been involved with legislative discussions and action on legislation passed in 1990 which was or may have been at issue in the case. I alerted the State Board to the conflict by writing, and notice was provided to all parties by Order. The recusal appears in the records of all orders entered in the case. I recused to avoid the potential for the appearance of a conflict and the potential for appearance of impropriety.

1989. *In the Matter of the Appeals of Rosebud Coal Sales Company*, Doc. Nos. A-88-35, 88-37, 88-42 (1989), 1989 WL 234646.

I recused myself sua sponte. My husband's law firm represented a party in the case. I alerted the State Board to the conflict by writing, and notice was provided to all parties by Order. The recusal appears in the records of all orders entered in the case. I recused to avoid the potential for the appearance of a conflict and of impropriety, and the potential for the appearance of ex parte contacts.

15. Public Office, Political Activities and Affiliations:

- a. List chronologically any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. If appointed, please include the name of the individual who appointed you. Also, state chronologically any unsuccessful candidacies you have had for elective office or unsuccessful nominations for appointed office.

In October, 1980, I was appointed by Governor Ed Herschler as his attorney for intergovernmental affairs. I served in this capacity until January 1987.

In January 1987, I was appointed by Governor Mike Sullivan as his attorney for intergovernmental affairs. I served in this capacity until March 1989.

In March, 1989, I was appointed by Governor Michael Sullivan to the Wyoming Board of Equalization. I served until my term ended in March 1995.

In March, 1989, I was appointed by Governor Michael Sullivan to the Wyoming Tax Commission. I served until the Tax Commission was abolished during government reorganization in July, 1992.

In 1993, as chairman of the Wyoming Board of Equalization, I was appointed by Governor Michael Sullivan to the Governor's Natural Gas Task Force. I served through 1994.

In 1998, I was appointed by Wyoming State Senator Guy Cameron to the Department of Environmental Quality Compliance Advisory Panel. I served until January 2002.

In 2003, I was elected by the University of Wyoming Art Museum National Advisory Board as an Advisory Board Member. I continue to serve on the Board.

In 2004, I was appointed by Dr. Ting-Kai Li, Director, or Mark Goldman, Associate Director, to serve on the National Institute on Alcohol Abuse and Alcoholism's Underage Drinking Initiative Steering Committee. I served until 2007.

In 2004, I was appointed by Governor David Freudenthal to the Wyoming Family Economic Self Sufficiency Standard Advisory Committee. I served until 2006.

In 2006, I was appointed or invited by Allison Colker to serve on the National Conference of State Legislatures' Advisory Committee on Substance Abuse. I served through 2006.

In July 2008, I was elected by the National Governors' Spouses to the National Governor's Spouses Leadership Committee. I continue to serve on this Committee.

In June 2008, I was appointed by John Corra, Director of the Wyoming Department of Environmental Quality to the Wyoming Carbon Sequestration Working Group. I continue to serve as a member of this Working Group.

I have had no unsuccessful candidacies for elective office or unsuccessful nominations for appointed office.

- b. List all memberships and offices held in and services rendered, whether compensated or not, to any political party or election committee. If you have ever held a position or played a role in a political campaign, identify the particulars of

the campaign, including the candidate, dates of the campaign, your title and responsibilities.

I am registered as a Democrat and thus consider myself a member of the Wyoming Democratic Party. I have held no offices in any political party or election committee. I participated in a candidate's seminar at the request of the Wyoming Democratic Party in 2006.

I assisted in the 1982 re-election campaign for Wyoming Governor Ed Herschler. I did research as requested and met with the campaign staff and with the candidate. I had no title and was not paid.

I assisted in the 1986 election and 1990 re-election campaigns for Wyoming Governor Mike Sullivan. I did research as requested and met with the campaign staff and the candidate. I had no title and was not paid.

I supported my husband, Dave Freudenthal, in his two gubernatorial campaigns in 2002 and 2006. I had no title and was not paid. My responsibilities included some fundraising, appearing at numerous functions and events, speaking on occasion for the candidate, and various other duties as the candidate's wife.

16. Legal Career: Answer each part separately.

- a. Describe chronologically your law practice and legal experience after graduation from law school including:

- i. whether you served as clerk to a judge, and if so, the name of the judge, the court and the dates of the period you were a clerk;

I did not serve as clerk to a judge.

- ii. whether you practiced alone, and if so, the addresses and dates;

I have never practiced law alone.

- iii. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been affiliated, and the nature of your affiliation with each.

1995 – current:

Davis & Cannon, LLP

422 West 26th Street, P.O. Box 43

Cheyenne, WY 82003.

Partner (1998-present)

Associate (1995-1997)

1989 – 1995:
Wyoming Board of Equalization
Herschler Building
Cheyenne, WY 82002
Chairman of the Board (1989-1995)
Board Member (1989)

1989 – 1991:
Wyoming Tax Commission
Herschler Building
Cheyenne, WY 82002
Chairman of the Commission

1980 – 1989:
Office of the Wyoming Governor
State Capitol
Cheyenne, WY 82002
Attorney for Intergovernmental Affairs.

1985 – 1986:
University of Wyoming, College of Law
1000 E. University Ave., Dept. 3035
Laramie, WY 82071
Adjunct Professor.

1983:
State of Wyoming Department of Environmental Quality
Land Quality Division
Herschler Building
Cheyenne, WY 82002
Interim acting Administrator.

- iv. whether you served as a mediator or arbitrator in alternative dispute resolution proceedings and, if so, a description of the 10 most significant matters with which you were involved in that capacity.

I have not served as a mediator. I have served as an arbitrator by appointment from the National Arbitration Forum. All disputes appointed to me were simple consumer arbitration matters, specifically the arbitration of claims relating to alleged unpaid and delinquent credit card charges. For all disputes, the Forum's rules require that I retain no records. Given the lack of records, I have no basis to identify any matters responsive to this question.

b. Describe:

- i. the general character of your law practice and indicate by date when its character has changed over the years.

When I was admitted to practice in 1980, I became the Attorney for Intergovernmental Affairs for Governor Ed Herschler and did both staff and legal work for the Governor. I reviewed all rules filed with the Governor for approval under the Wyoming Administrative Procedure Act. I also dealt with special criminal justice and clemency issues. I requested and received assignments involving special projects with the Attorney General's Office. In this capacity I worked on water rights litigation. I also served as the Governor's representative on a number of boards and task forces as noted above. I also dealt with tax issues, including mineral tax issues and the statewide property tax reappraisal.

My practice changed upon appointment to the Wyoming State Board of Equalization (SBOE) and the State Tax Commission. I was elected Chairman one month after my appointment in 1989 and served until the end of my six-year term. During my tenure, my practice also encompassed administrative law as the State Board heard contested cases and appeals, and promulgated administrative rules to interpret and administer valuation and tax laws. Attention was spent on new rules addressing valuation, equalization, exemptions, property tax deferral, agricultural land classification, and assessor education, among others.

My practice changed again in 1995 when I left government and joined the law firm of Davis & Cannon. As an associate, I worked on many matters in support of partners and some matters independently, as assigned. As a partner, I worked on most matters as either chief or sole counsel. My practice focused on administrative and governmental law, State and local taxation, corporate, environmental and natural resources, alternative dispute resolution, and general civil litigation.

My practice changed again in 2003 upon my husband's election to the office of Governor. I withdrew from the litigation and the administrative hearings involving the Department of Revenue's valuation of sour gas production from Exxon's LaBarge facility given the potential for an appearance of impropriety. I restricted any new matters taken so that my practice was no longer primarily focused on disputes involving administrative agencies. The law firm made the decision to not provide contract legal services to the State of Wyoming.

- ii. your typical clients and the areas at each period of your legal career, if any, in which you have specialized.

From 1980 to 1995, my client was the State of Wyoming. My primary areas of work in the Governor's Office were: 1) to represent the Governor on various councils and task forces; 2) to research legal issues as requested by the Governor; 3) to draft speeches; 4) to meet with constituents, research constituent matters and draft responses for the Governor's signature; 5) to research, develop and draft legislative initiatives; 6) to act as the Governor's lobbyist to the Wyoming State legislature; 7) to review and recommend action on rules submitted for the Governor's signature and filing; 8) to undertake assignments with the Wyoming Attorney General; 9) to assist in the drafting and development of Wyoming's surface coal mining program consistent with federal law and regulations; 10) to address criminal justice and clemency issues as requested; 11) to serve as a point of contact with federal agencies, particularly federal land management and resource agencies; 12) to serve as the point of contact on mineral tax, royalty and property tax matters. My primary areas of work on the Tax Commission and the State Board of Equalization was to adjudicate tax and drivers license disputes, to promulgate rules and regulations, to set tax policy, and to coordinate with the Department of Revenue Ad Valorem Tax Division and the various county assessors dealing with the interpretation and administration of valuation and tax laws.

Since 1995, in private practice, I have represented a broad range of clients including businesses, nonprofits, individuals, and local government officials. My practice has consisted of plaintiff and defense work. The focus of my practice has been civil litigation, primarily in the areas of real estate, administrative law, and defense of claims against law enforcement officers.

- c. Describe the percentage of your practice that has been in litigation and whether you appeared in court frequently, occasionally, or not at all. If the frequency of your appearances in court varied, describe such variance, providing dates.

Approximately 70% of my practice has been in litigation. Throughout my career, I have appeared in court and before administrative tribunals frequently, primarily for non-dispositive motions and scheduling matters, and for oral arguments in dispositive motions. The vast majority of evidentiary hearings have been before administrative tribunals.

- i. Indicate the percentage of your practice in:
- | | |
|----------------------------|-----|
| 1. federal courts; | 40% |
| 2. state courts of record; | 30% |
| 3. other courts; | 0% |
| 4. administrative agencies | 30% |

ii. Indicate the percentage of your practice in:

1. civil proceedings; 100%
2. criminal proceedings. 0%

d. State the number of cases in courts of record, including cases before administrative law judges, you tried to verdict, judgment or final decision (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

The total number of cases, including cases before administrative tribunals, which went to a final decision is 37. Of these cases, I was sole counsel in 20, chief counsel in 11, and associate counsel in 6.

i. What percentage of these trials were:

1. jury; 0%
2. non-jury. 100%

e. Describe your practice, if any, before the Supreme Court of the United States. Supply four (4) copies of any briefs, amicus or otherwise, and, if applicable, any oral argument transcripts before the Supreme Court in connection with your practice.

With others, I represented the State of Wyoming as an amicus in *Commonwealth Edison Co. et al v. Montana et al*, 101 S.Ct. 2946, 453 U.S. 609, 69 L.Ed.2d 884, 49 U.S.L.W. 4957, 1981 S. Ct.42725. My only role was to assist with the amicus brief. No oral argument was made by Wyoming.

17. **Litigation:** Describe the ten (10) most significant litigated matters which you personally handled, whether or not you were the attorney of record. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

- a. the date of representation;
- b. the name of the court and the name of the judge or judges before whom the case was litigated; and
- c. the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

1. *BP America Production Co. v. Department of Revenue*, 130 P.3d 438 (Wyo. 2006). Wyoming State Board of Equalization, members Edmund J. Schmidt, Roberta Coates, and Sylvia Hackl. Third Judicial District, Judge Nena R. James. Wyoming Supreme

Court, Justices William U. Hill, Michael Golden, Marilyn S. Kite, Barton R. Voigt and E. James Burke. 1999 – 2006.

I was the chief attorney in this case for an intervening party, the Board of County Commissioners for the County of Sweetwater, Wyoming. This case concerned production from wells operated by Petitioner BP America Production Co. (BP) that were located in Sweetwater County but were being reported for tax purposes by BP to Carbon County. Sweetwater County alerted the Respondent Department of Revenue (Department) of this discrepancy. The Department reallocated BP's production from Carbon to Sweetwater County. BP appealed to the Wyoming State Board of Equalization. Sweetwater County intervened during the State Board proceedings and participated fully in the contested case. The State Board ruled in favor of the Department and Sweetwater County. BP appealed the State Board's decision to district court. Sweetwater County was denied intervention by the district court. The district court affirmed the State Board's decision. The Wyoming Supreme Court affirmed the district court and State Board's decisions, ruling against all Taxpayer's claims of error, refusing to give retroactive application to a 1990 law, and affirming the State Board's use of "well-head" reporting for allocation of production.

Counsel for Petitioner:

Nicole Crighton and John L. Bordes, Jr.
Oreck, Bradley, Crighton, Adams & Chase
2045 Broadway, Suite 100
Boulder, CO 80302
(303) 444-2993

Counsel for Respondent:

Michael Dinnerstein
49 Lorimer Ave.
Providence, RI 02906
(401) 861-2044

Co-counsel for Sweetwater County:

John McKinley
Davis & Cannon, LLP
422 West 26th St.
Cheyenne, WY 82001
(307) 634-3210

2. *Amoco Production Company v. Board of County Com'rs of County of Sweetwater*, 55 P.3d 1246 (Wyo. 2002). Third Judicial District, Judge John Troughton. Wyoming Supreme Court, Justices William U. Hill, Michael Golden, Marilyn S. Kite, Barton R. Voigt and E. James Burke. 1999 – 2006.

I was the chief attorney in this case for Plaintiff, the Board of County Commissioners for the County of Sweetwater, Wyoming. The case was a declaratory judgment and tax

collection case to collect the proportional share of ad valorem tax and interest owed by Amoco associated with revaluation actions taken by the Department of Revenue in 1992 and 1994 as to Amoco's undisputed ownership interest in oil and gas property for production years 1980 through 1985. Amoco raised numerous defenses against the collection action including res judicata, judicial estoppel, due process, and factual errors. Amoco also urged equitable considerations for the abatement of interest. The district court ruled for Sweetwater County on all issues, and this decision was appealed to and affirmed by the Wyoming Supreme Court.

Co-Counsel for Plaintiff:

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Davis & Cannon, LLP
422 West 26th St.
Cheyenne, WY 82001
(307) 634-3210

Counsel for Defendant:

Frederick W. Bradley
King, Krebs & Jergens
45th Floor, Capitol One Building
201 St. Charles Ave.
New Orleans, LA 70170
(504) 582-3800

Algirdas M. Liepas (local counsel)
1401 Airport Parkway, Suite 200
Cheyenne, WY 82001
(307) 635-3335

3. *In the Matter of the Application of Cheyenne Light, Fuel & Power Company*, Doc. Nos. 20003-EP-01-59 & 20003-ES-01-58. Wyoming Public Service Commission, Members Steve Ellenbecker, Steve Furtney, and Kristin H. Lee. 2001.

I was the sole attorney in these cases representing intervenors EchoStar Satellite Corporation (EchoStar) and Meridian Granite Company (Meridian). The case concerned an application by a local electric utility, Cheyenne Light, Fuel and Power, as well as an investigation by the Wyoming Public Service Commission on the issue of an electric cost rate increase of approximately \$35,899,745.00, and on an extended electric cost deferral plan. My clients offered testimony on the catastrophic impact that the initial filing would have had on their businesses and discussed the comparative benefits of a negotiated stipulation. The negotiated stipulation saved EchoStar nearly \$690,000 in electric costs the first year alone, and then over \$700,000 each year thereafter for the next two years. Meridian saved nearly \$100,000 in the first year, and then over \$75,000 for the next two years. The stipulation included a commitment from Cheyenne Light for improved resource planning and disclosure processes, and for the establishment of a Working

Group forum for large industrial and commercial customers. The Wyoming Public Service Commission approved the stipulation.

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4. *State ex rel. Dept. of Revenue v. Buggy Bath Unlimited, Inc.*, 18 P.3d 1182 (Wyo. 2001). State Board of Equalization, members Edmund J. Schmidt, Roberta A. Coates and Ron Arnold. Wyoming Supreme Court, Justices Larry Lehman, Michael Golden, Marilyn Kite, and Dan Spangler, D.J. 1999 – 2001.

I was the sole attorney in this case for Buggy Bath Unlimited, Inc. The case was preceded by an earlier declaratory judgment action I brought as counsel for RyCarDen, Inc., challenging a 1997 Wyoming Department of Revenue rule imposing sales tax on the sales price charged for washing motor vehicles (car-wash rule), *RyCarDen, Inc. v. State*, Civ. No. 76011-A (7th Jud. Dist.) (4 copies are provided of this unpublished decision). The *RyCarDen* case was heard and decided by the Honorable Daniel Spangler (retired). In *RyCarDen*, the district court invalidated the car wash rule as not constituting either the sale of a taxable service or the rental of personal property. This ruling was not appealed by the Department of Revenue and the rule was repealed. Based on the *RyCarDen* case, Buggy Bath filed sales tax refund requests for sales taxes erroneously reported and paid for the periods of January 1996 through October 1998. The Department of Revenue denied the request, which was protested to the State Board of Equalization. Following a contested case hearing, the State Board interpreted W.S. § 39-6-410(c) prior to a 1997 amendment, to require erroneously collected sales tax be refunded to purchasers and, subsequent to the amendment, to require erroneously collected sales tax be refunded to vendors. The Department and Buggy Bath appealed to the district court for review of the decision, and the cases were certified to the Wyoming Supreme Court. The Supreme Court held that W.S. § 39-6-410(c), both pre-and post-1997 amendment, required all erroneously collected sales tax be refunded to the Taxpayer, Buggy Bath.

Counsel for Respondent:
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5. *Petra Energy, Inc. v. Department of Revenue*, 6 P.3d 1267 (Wyo. 2000). Wyoming Board of Equalization, members Roberta A. Coates and Ron Arnold, and the Wyoming Supreme Court, Justices Larry Lehman, Richard Thomas, Richard J. Macy, Michael Golden, and William U. Hill. 1996 – 2001.

I was the sole attorney for Petitioners Petra Energy, Inc. and Asher Associates, Inc. The case concerned the interpretation and application of the Wyoming mineral tax lien laws. Petitioner requested release of liens filed by Respondent, Department of Revenue. The Department refused, and Taxpayers appealed to the State Board of Equalization. The State Board of Equalization concluded that the Department held a valid lien against Taxpayer's property for the unpaid severance taxes and the accrued interest, and waived penalties. Taxpayer appealed to the district court, which certified the case to the Wyoming Supreme Court. The Wyoming Supreme Court, in a case of first impression, concluded that the statutory lien applied to only the interests in the extracted minerals that

gave rise to the severance tax liability, and it did not apply to all interests in the mineral estate or to future production from the same deposits. The Court further found that the Department failed to perfect its lien, as filed, because it failed to attach the exhibits containing legal descriptions of the property. Therefore, the Department's lien did not encumber any real property or mining claim owned by Petra Energy.

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6. *Snyder v. Lovercheck*, 992 P.2d 1079 (Wyo. 1999) and companion case *Snyder v. Lovercheck*, 2001 WY 64, 27 P.3d 695 (Wyo. 2001). Eighth Judicial District, Judge Keith G. Kautz. Wyoming Supreme Court, Justices Larry Lehman, Richard Thomas, Richard J. Macy, Michael Golden, and William A. Taylor (1999), and Justices Larry Lehman, Michael Golden, William U. Hill, and Marilyn Kite, and Dan Spangler, D.J. (2001). 1997 – 2001

I was sole attorney for Defendant Ron Lovercheck. This case concerned a dispute over the purchase and sale of a wheat farm. Plaintiff filed suit alleging that two Lovercheck Defendants breached the contract for sale, that they negligently and fraudulently misrepresented the extent of the problem of rye growing within wheat fields purchased by Plaintiff, and that Plaintiff's real estate agent breached its duty to delete or explain certain provisions in the Contract. The district court granted summary judgment in favor of all Defendants and awarded fees and costs. Plaintiff appealed and the Wyoming Supreme Court upheld the district court decision on summary judgment, agreeing with the Lovercheck Defendants' argument that parties are free to contract for whatever terms they wished, and they chose to allocate the risk of loss to Plaintiff, thus precluding Plaintiffs' claims. The Court remanded the attorney fee issue and vacated a portion of the award on costs. In the second appeal dealing with costs, *Snyder v. Lovercheck*, 2001 WY 64, 27 P.3d 695 (Wyo. 2001), the Supreme Court affirmed the district court's decision and remanded a portion of the cost award addressing interest.

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7. *Exxon Corp. v. Board of County Com'rs, Sublette County*, 987 P.2d 158 (Wyo. 1999) and related case *In the Matter of the Appeal of Sublette County, Wyoming, of Illegal, Improper and Unequal Assessment of Mineral Production Owned and/or Extracted and Sold by Exxon*, Doc. Nos. 97-3 & 97-10 (2000), 2000 WL 966561 (Wyo.St.Bd.Eq.). Wyoming State Board of Equalization, members Roberta Coates and Ron Arnold. First Judicial District, Judge Nicholas Kalokathis. The Wyoming Supreme Court, Justices Larry Lehman, Richard Thomas, Richard J. Macy, Michael Golden, and William A. Taylor. 1996 – 2003.

I was a chief attorney for the Board of County Commissioners of the County of Sublette. The matter was initiated by Sublette County requesting an examination by the State Board of Equalization into alleged improper and unequal assessment practices by the Department of Revenue of Exxon's complex sour gas stream produced and processed at its LaBarge facility. The Department and Exxon then brought a declaratory judgment action in district court, seeking to prohibit the Board examination. The district court agreed with Sublette County's arguments, ruling that the State Board has jurisdiction to examine into allegations of improper or unequal assessment practices and that Sublette County could void an earlier settlement addressing valuation of the gas. The Department and Exxon appealed the decision to the Wyoming Supreme Court. The Wyoming Supreme Court affirmed the district court's ruling that the State Board has jurisdiction to examine into allegations of improper or unequal assessment practices, and reversed the ruling that the County could void the settlement. Following this ruling, Sublette County pursued its Petition for Board Examination. The State Board concluded the settlement agreement valuation scheme was not contrary to law, it produces a fair cash market value, and it was properly interpreted and administered by the Department. The State Board declined to consider Sublette County's allegations that the sale prices, amount of deductions and volumes reported to the Department were incorrect, advising that those

issues must be pursued in the separate appeals that were pending. I worked with my co-counsel pursuing the multiple appeals until 2003, when I withdrew from the case following my husband's election to the office of Governor.

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8. *United States ex rel Heitz v. Campbell County Memorial Hospital*, Case No. 02-CV-1058-B (2005). United States District Court for the District of Wyoming, Judge Clarence A. Brimmer. 2003 – 2005.

I was a chief attorney in this case representing Campbell County Memorial Hospital. The case was brought by Plaintiff as a *qui tam* action under the False Claims Act (FCA), alleging inadequate protection of confidential mental health and substance abuse records stored in Defendant's medical record management software program. The United States declined intervention. Other claims in the case included a retaliatory discharge ("whistleblower") claim under the FCA and a first amendment violation of 42 U.S.C. §1983. The federal district court granted summary judgment for Defendants ruling that all billing error allegations were publicly disclosed without proof of original source, that Plaintiff did not put Defendants on notice of his intent to bring or assist in a FCA claim, and that all communications were within Plaintiff's primary job duties. On the §1983 claims, all official capacity claims were dismissed based on no evidence of a written policy supporting termination under the facts presented. On the individual capacity §1983 claims, the court found the speech at issue was not a matter of public concern and, if it were, the speech was not a substantial or motivating factor behind the termination. The case was appealed to the 10th Circuit Court of Appeals and was ultimately settled.

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9. *Milligan v. Laramie County, et al.*, Doc. No. 06 CV 002B. United States District Court for the District of Wyoming, Judge Clarence A. Brimmer. 2006 – 2007.

I was the sole attorney in this case representing the Laramie County Board of County Commissioners, Laramie County Sheriff Danny Glick, and Laramie County Detention Captain Bill Long in their official capacities. This case was an “inmate-on-inmate” assault which gave rise to 42 U.S.C. §1983 claims by Plaintiff that Defendants failed to take reasonable measures to insure his safety in violation of the Eighth and Fourteenth Amendments to the Constitution of the United States. The court granted summary judgment for Defendants concluding that Plaintiff failed to show that the jail’s practice and procedure regarding staffing and inmate supervision presented an obvious deficiency or inadequacy in maintaining a safe environment. The decision was appealed to the 10th Circuit and was mediated and settled.

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10. *Polston et al v. Alsop et al*, Doc. No. 03-CV-022D. United States District Court for the District of Wyoming, Judge William F. Downes. 2003 – 2004.

I was the sole attorney in this case representing Defendants, Chief of Police Roger Allsop, Deputy Rick Lopez and Deputy Dave Stevens in their official capacities, and the Laramie County Board of County Commissioners. Plaintiff pled 42 U.S.C. §1983 civil rights claims against Defendants claiming that they entered their home, seized various persons, and conducted a search without a warrant or consent. The official capacity claims alleged inadequate official government policy and custom and a failure to train and supervise the deputies. The Court granted summary judgment against Plaintiffs' official capacity claims concluding Plaintiffs failed to identify any action taken by a policymaker or any action taken pursuant to official policy, practice or custom that caused the alleged constitutional violation. The Court also concluded Plaintiffs provided no evidence of inadequate training or supervision.

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18. **Legal Activities:** Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe fully the nature of your participation in these activities. List any client(s) or organization(s) for whom you performed lobbying activities and describe the lobbying activities you performed on behalf of such client(s) or organizations(s). (Note: As to any facts requested in this question, please omit any information protected by the attorney-client privilege.)

Significant litigation which did not progress to trial or that has not fully concluded:

Hartman et al v. Questar Exploration and Production Company et al. I was an associate attorney of record for Defendant Arrowhead Resources (U.S.A.) Ltd. (Arrowhead), defending against Plaintiffs' claims that a 1954 contract creating a net profits interest in the terminated Pinedale Unit continues to burden leases held by Arrowhead and other Defendant oil and gas companies. Arrowhead argued that Plaintiffs cannot show proof of ownership, and sought declarations that the contract promised to pay net profits only on oil and gas operations on leases committed to the Pinedale Unit, which no longer applied to Arrowhead's leases because they contracted out of the Pinedale Unit in 1977. Among other defenses, Arrowhead also argued it did not breach the contract because, as a non-operator, it had no obligation to calculate or to pay the net profits interest, and the Wyoming Royalty Payment Act did not apply to non-operators. Questar and Wexpro settled and were dismissed. All remaining parties went to trial. The district court ruled generally for the Plaintiffs although certain claims were dismissed. All parties appealed the decision to the Wyoming Supreme Court, where it remains under deliberation. I made the oral argument for Arrowhead before the Supreme Court. This case is significant to me because of the number of parties, and the complex gas accounting at issue which involved multiple companies over a 50+ year period owning initially 62 leases in a terminated Unit that ultimately left 23 leases still in effect. It also is significant because of the variety of claims and defenses at issue.

Diet Drug Litigation. Davis & Cannon, LLP was retained as Wyoming counsel by Wyeth (formerly American Home Products) to represent it in the class action multi-district litigation brought by thousands of plaintiffs who claimed to have been injured by the diet drug known as "phen-fen." I worked as an associate in the post-settlement phase, during which we defended Wyeth against the claims of plaintiffs who had "opted out" of the class settlement. I took the depositions of numerous plaintiffs and worked extensively with expert cardiologists. Our assigned cases settled. This litigation was significant to me in three aspects: I had the opportunity to learn a great deal about a fascinating area of cardiology (most of the cases dealt with claims of valvular regurgitation), I was exposed to the logistical challenges of managing a large class action lawsuit, and I had the opportunity to work with and learn from many defense counsel across the country.

Hough v. Terex Corporation et al, Docket No. 22818 (6th Jud. Dist.). I was associate counsel in this case with Anthony Wendtland representing Terex Corporation. The facts behind this case were that a mine employee for the Buckskin Mine near Gillette drove a coal haul truck over the cab of the pickup truck in which Hough was sitting. Hough died from the accident. Terex designed and manufactured the coal haul truck that the mine employee was driving. Hough's widow filed a wrongful death complaint against the mine employee and Terex. The mine was immune from suit under Wyoming's worker compensation laws and constitutional provisions. Co-employees are only liable for willful, wanton or intentional acts. The complaint alleged willful, wanton, and/or intentional acts against the mine employees, and products liability against Terex based in part on allegations that Terex could have or should have offered to sell the haul truck to

the mine with different mirrors or other visibility equipment. The case settled right before trial. This case was significant to me because of some novel intervening cause and comparative fault questions presented by the facts of the case, the law concerning co-employee liability within a worker compensation setting, and the challenge of drafting jury instructions and a jury verdict form capturing these issues.

In the Matter of the Arbitration of Claims and Disputes between CST Environmental Inc., a California Corporation and High Sierra Energy, LP, a Delaware Limited Partnership.

I was chief counsel for High Sierra Energy, LP (HSE) in its defense against a lien and lawsuit filed by CST Environmental, Inc. (CST) for unpaid bills for work done for a MTBE dismantlement project at a chemical plant in Cheyenne, Wyoming. The matter was referred to arbitration where HSE answered and denied the claims for unpaid work, and also filed a large counterclaim against CST alleging breach of contract and damages for failing to exercise proper skill and judgment to dismantle, match mark, package, and store equipment from the STAR furnace area and the compressor building. The case required extensive depositions and expert assistance. It was ultimately settled after the second mediation and very close to the date of the arbitration. This arbitration was significant to me in the following aspects: It offered significant challenges given the number of witnesses and documents relating to a multi-million dollar project which was neither a typical construction nor a typical demolition project. It presented legal questions in the area of construction law which have not been decided in Wyoming. Finally, it offered the opportunity to learn from experts, arbitration panelists and the mediator, given their specialized knowledge and professionalism.

Hatfield v. State et al, Doc. No. 07CV109-D: At the time of settlement, this case involved twenty named defendants, "John Doe" defendants, and eight law firms. I was hired to represent the Board of County Commissioners of the County of Laramie, the Laramie County Detention Center, Sheriff Danny Glick in his official capacity, and Jennifer Hansen, a former mental health counselor at the jail. Plaintiff was an inmate in the jail. A few days after he came into the jail, Laramie County learned that he sprayed cleaning chemicals in his left eye resulting in serious self-injury. Hatfield went to the State Hospital and was discharged back to the jail. Hatfield then claimed he used cleaning chemicals again in his right eye, causing serious injury. Hatfield asserted a 42 U.S.C. §1983 "official capacity" claim against Laramie County and Sheriff Glick, arguing there were no effective policies and procedures to provide mental health treatment, the jail had a custom of making chemicals available at all times with little or no supervision, there was a failure to investigate the two incidents showing deliberate indifference, there were deficiencies in staffing and procedures for mental health care, there was a lack of appropriate supervision and training, and there was a violation by the Sheriff of policies which resulted in a failure to coordinate care and share records. Hatfield also asserted a 42 U.S.C. §1983 claim as well as a medical malpractice claim against Jennifer Hansen. Summary judgment motions were filed by all parties including the Plaintiff, which included separate motions relating to bankruptcy and to the Prison Litigation Reform Act. The case ultimately settled before a decision on any of the pending motions was rendered. This case was significant to me because of the extensive records, the number of defendants, the number of depositions, the number of experts, the number of claims and defenses present in the case, and the interesting aspects of mental

health care within a county jail facility in the context of inmate rights under the Eighth and Fourteenth Amendments to be free from cruel and unusual punishment.

Sublette County v. Exxon: I participated as co-counsel in filing numerous cases with the State Board of Equalization, working with experts, and reviewing written documents from Exxon associated with the valuation of their sour gas production from the LaBarge facility for ad valorem tax purposes. I decided to withdraw from the case prior to the end of discovery and the contested cases and litigation relating to the valuation of the gas stream for ad valorem tax purposes. This case was significant to me given the number of issues and defenses raised at all stages of the proceedings, the amount of documentation associated with the production and valuation issues, and the opportunity to work on a complex gas valuation matter.

Other significant legal activities:

City of Cheyenne: I worked with my law partners Kate Fox and John McKinley in the representation of the City of Cheyenne in the matter of the environmental cleanup of the "Wyott Site". From approximately 1951 to 1966, the City of Cheyenne operated a municipal landfill in the general vicinity of the Wyott site. Following closure, the City leased the land to the Wyott Corporation, which used it to manufacture stainless steel and aluminum products associated with the food service industry. In 1993, the Wyoming Department of Environmental Quality (DEQ) issued a notice of violation, citing rusted, corroded and leaking barrels containing hazardous wastes were stored at the plant. A corrective action plan was established with Minstar (the entity taking Wyott's place) that required investigation and remediation of the contamination. The City was sued by Minstar under the federal Superfund law for cost contribution, based on the claim that the landfill could be contributing to the contamination. The City settled and agreed to pay half the corrective action costs incurred at the site under a "PRP Agreement." I became involved with my partners to help minimize the City's exposure and end the PRP Agreement. This resulted in many years of study by environmental consultants, work with DEQ, review of decades of reports, and legal analysis to understand the best options available to the City. In 2000, DEQ approved a "monitored natural attenuation" remedy for the groundwater contamination which requires regular monitoring and reporting to assure the contamination is naturally reducing over a reasonable time. The cost contribution agreement was then terminated through a mediated settlement.

Wyoming Professional Assistance Program. I have been privileged to represent the Wyoming Professional Assistance Program ("WPAP") since 1998. WPAP is a non-profit corporation providing substance abuse assistance for healthcare professionals, lawyers and judges who have problems with alcoholism or chemical dependency. WPAP is not a treatment facility, but offers intervention, evaluation, referral and monitoring services, as well as guidance for reentry into the workplace, and relapse prevention, detection and reporting. It supports the vast majority of its work through contracts with Wyoming licensing boards, the State Bar, the State Supreme Court, and hospitals. Programs like WPAP's exist around the country and show an 85% to 90% success rate in helping clients achieve a chemically free and professionally productive lifestyle. I have worked

with the Board in many areas including contract negotiation and educational seminars, as well as in providing advice with relapse and reporting issues. This work has been significant to me by affording the opportunity to gain a better understanding of addiction, to help a very worthwhile and important program, and to work both outside and within disciplinary processes to protect the investment Wyoming has in its healthcare and legal professionals.

Lobbying activities:

Goshen Irrigation District: 1997. I worked with Goshen Irrigation District, a public entity organized to provide for the irrigation of, or to improve the existing water supply for lands within their defined district. The District sought to amend W.S. § 31-2-207 to specifically include irrigation districts as political subdivisions for motor vehicle registration exemption and “exempt” license plates. Four copies of the handouts given to the legislature are provided.

Sublette County Commissioners: 1999 & 2001. In general, I worked with my partner, John McKinley, for the Board of County Commissioners of Sublette County, Wyoming. We worked with representatives of the Wyoming Association of County Commissioners and various legislators, to change the law and allow county officers broader access to information, and full participation in cases and appeals concerning the valuation of mine products.

Wyoming Professional Assistance Program (WPAP): 1999 & 2005. In 1999, I worked for the Wyoming Professional Assistance Program, a non-profit corporation organized to assist professionals with substance abuse impairment through intervention, evaluation, referral for treatment and post-treatment monitoring. WPAP, with the Wyoming Board of Medicine, the Wyoming Medical Society, approached various Wyoming legislators requesting a bill to protect the confidentiality of WPAP’s records and to provide WPAP with qualified immunity similar to state licensing agencies. The law was passed. In 2005, in response to additional interest, WPAP worked with the Wyoming State Bar on legislative amendments to expand the program beyond healthcare professionals to lawyers and judges. These amendments were passed. Four copies of the handouts given to the legislature are provided.

M&K Oil Company, Inc (M&K): 2000. I was hired by M&K, a Wyoming oil and gas company, to work with other interested groups and companies, and to join with M&K in speaking with the Wyoming delegation on S. 1950. S. 1950 was a bill that proposed allowing mining companies to have federal eminent domain power as a means to resolve potential conflicts between the owners of coal beds in the Powder River Basin and the owners of the coalbed methane imbedded within the coal. M&K’s perspective on S. 1950 dealt more with conventional oil and gas. Their position was that the BLM had established a new administrative process to resolve leaseholder disputes which should be given a chance to work, that the bill was injurious to private property rights, that the bill could negatively affect optimal recovery of all energy resources, that the bill was specifically directed at a very focused area of the Powder River Basin in which M&K had

substantial assets, and that the proposed procedure in the bill might not result in establishing a fair market value amount for gas resources lost by intrusion of coal mining into an area before the oil and gas could be developed.

Guernsey Stone Company: 2001. I was hired by Guernsey Stone Company, a Wyoming company which mines sand, gravel, and other aggregate products. Guernsey Stone Company sought to oppose a bill that would have expanded a current mine permitting exemption allowing limited mining of aggregate materials, to allow the unpermitted mining of any non-metallic mineral except coal. I helped a representative of Guernsey Stone in arguing that passage of the bill would not be fair to those mine operators who have paid the price of permitting and compliance, and that the current exemption was not satisfactorily monitored by the Department of Environmental Quality to assure compliance and adequate bond levels. Four copies of the handout given to the legislature are provided.

Pershing Point Limited Partnership: 2001. I was hired by Pershing Point Limited Partnership, a company that owns Section 42 low income housing. Pershing Point Limited Partnership asked me to monitor a subsidized housing bill. I attended a legislative committee meeting but did not testify on the bill. The bill was indefinitely postponed in committee because of time considerations.

EchoStar Communications, Inc.: 2001 & 2006. In 2001, I was hired by EchoStar Communications, a company that delivers content and data to individuals and businesses by satellite and fiber optic networks. I was asked to review legislative activities, speak to legislators and testify before the House Revenue Committee on a bill under deliberation that would have changed the definition of "telecommunication" to potentially include television or radio programming, cable or satellite television, and data services through satellite. I monitored the legislative session in 2006 on essentially the same issue. Four copies of a handout given to the legislature are provided.

Wyoming Car Wash Association: 2001. I was hired by the Wyoming Car Wash Association, a group of self-service and automated car wash owners and operators. The Association asked me to monitor legislative interim work and the legislative session, talk to legislators and other lobbyists, and appear in legislative committees on legislative proposals that could affect the taxability of self-service car washes.

TSP Two, Inc: 2003, 2005 & 2006. I was hired by TSP Two, Inc., an architecture firm that also provides construction management services. I reviewed legislative activities, spoke to legislators and testified before legislative committees on bills under deliberation in the Wyoming State Legislature during these sessions which would have established alternative construction delivery systems for public entities. The lobbying work was primarily to assure legislators understood the comprehensive professional services as historically provided by TSP Two, Inc (a CMA delivery system) and to minimize unintended problems with any new legislation that might be enacted authorizing alternative construction delivery systems. Four copies of the handouts given to the legislature in 2004 are provided.

YMCA of Wyoming: 2005 - current. I was hired by the YMCA of Wyoming, an association of nonprofit YMCA entities in Wyoming. I was asked to generally monitor legislative proposals that may affect the YMCA, without attending any legislative meetings or talking to any legislators. In 2005, I attended and testified in legislative committee meetings on bills designed to improve and expand Wyoming's childcare and early childhood education system consistent with the Governor's proposal in this area which was based on a comprehensive report from the Wyoming Children & Families Initiative. In addition, as a volunteer and in a pro bono capacity, I have attended Advocacy Days sponsored by the National YMCA's, along with Wyoming YMCA representatives, and have met with Wyoming's delegation to discuss issues of interest to the Wyoming YMCA and to provide information about Wyoming YMCA activities.

Sand Creek Development Services III, Inc. (Sand Creek): 2009. I was hired by Sand Creek, a corporation created to pursue innovative ranch conservation and development in lieu of conventional subdivision of a ranch. Sand Creek asked me to work with legislators interested in assisting creative "ranch-like" subdivision development, by working on a bill to change the law and allow land in excess of 35 acres lying within a platted subdivision to retain agricultural land classification for ad valorem tax purposes. Four copies of the handout given to the legislature are provided.

Sherd Lake, Inc. & Lake DeSmet Properties, LLC: 2009. I was hired by these related companies that are subdivision developers. These companies asked me to work with legislators on the issue of amending the law to specifically allow lots held for resale by subdivision developers to be valued under a method which recognizes the time period over which the lots will be sold in order to realize current market values for the lots for ad valorem tax purposes.

19. **Teaching**: What courses have you taught? For each course, state the title, the institution at which you taught the course, the years in which you taught the course, and describe briefly the subject matter of the course and the major topics taught. If you have a syllabus of each course, provide four (4) copies to the committee.

I was a member of the Faculty of Law at the University of Wyoming, College of Law in 1977. I taught a seminar on federal environmental law. No syllabus is available. As a graduate student, I taught an Introduction to Philosophy Course in 1977. The course introduced students to critical thinking through a study of elementary logic, scientific method and philosophical problems of ethics, religion, epistemology and metaphysics. No syllabus is available.

20. **Deferred Income/ Future Benefits**: List the sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients or customers. Describe the arrangements you have made to be compensated in the future for any financial or business interest.

I have a 401(k) with Davis & Cannon, LLP. This is 100% vested.

Pursuant to the 2005 Amended and Restated Partnership Agreement of Davis & Cannon, partnership income is distributed to partners from time to time, and the percentage of income which I currently receive is 15%. The Partnership Agreement further provides, at Article VIII, that terminated partners (with certain exceptions not applicable to me) shall receive payments for their share of the income account, net profits and capitol account, according to a formula which determines the departing partner's fractional share of the firm's assets as of the date immediately preceding the date of termination. Finally, I would also be eligible to receive the cash value of the life insurance policy which the firm maintains on me. I would request immediate payment of all income and payments due to me under the partnership agreement so as to bring to an end all financial ties with the firm as soon as possible.

I have retirement funds (contributions and interest) administered by the State of Wyoming. These funds are available for distribution on a monthly basis now, with distributions on a monthly basis required to begin by age 70 ½. No distributions are currently taken.

I expect future benefits from my membership in K&N, LLC, which is the entity that owns the building Davis & Cannon, LLP rents as its Cheyenne office. If nominated and appointed, I plan to sell this interest as soon as possible so as to bring to an end all financial ties with K&N, LLC.

21. **Outside Commitments During Court Service:** Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

I plan to continue as First Lady of Wyoming for the duration of my husband's term as Governor, and I would desire to continue as a member of the Leadership to Keep Children Alcohol Free and as a member of the National Governors' Spouses' Leadership Committee. I also would desire to continue as co-trustee of the Richard H. Castle and Nancy Dell Freudenthal TTEES U/A DTD 11/16/00 for the Richard Castle Living Trust. Richard H. Castle is my step-father. I serve in all these capacities without compensation. I have no plans, commitments or agreements to pursue any other outside employment, with or without compensation, during my service with the court.

22. **Sources of Income:** List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, licensing fees, honoraria, and other items exceeding \$500 or more (if you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here).

See attached Financial Disclosure Report

23. **Statement of Net Worth:** Please complete the attached financial net worth statement in detail (add schedules as called for).

See Net Worth Statement and related worksheet.

24. **Potential Conflicts of Interest:**

- a. Identify the family members or other persons, parties, categories of litigation, and financial arrangements that are likely to present potential conflicts-of-interest when you first assume the position to which you have been nominated. Explain how you would address any such conflict if it were to arise.

Parties, categories of litigation, and financial arrangements that are likely to present potential conflicts of interests during my initial service in the position to which I have been nominated would include family members, relatives, close friends, former clients, former law partners, or matters pending any law firm in which I was formerly associated. In addition, there is a potential conflict of interest if a matter were brought involving the Dick Castle Family Trust identified in response to question #6 above, as I am a co-trustee with my step-father, Dick Castle.

- b. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern.

I will handle all matters involving actual or potential conflicts of interests through the careful and diligent application of the Code of Conduct for United States Judges as well as other relevant Canons and statutory provisions.

25. **Pro Bono Work:** An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

I have tried to meet this obligation by my service on non-profit boards as identified above. I attended as many meetings of these boards as possible. During private practice, I represented 11 financially disadvantaged individuals or nonprofit entities on legal matters without charge for my legal services. Forms of representation included consultation and advice, drafting powers of attorney and living wills, drafting correspondence to resolve disputes, drafting corporate organizational documents for nonprofit organizations, reviewing leases for nonprofits, and representation for settlement purposes in a personal injury lawsuit. This pro bono work did not involve appearing for clients in state or federal courts. I have also expressed a willingness to accept referrals from legal aid services.

26. Selection Process:

- a. Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and the interviews in which you participated). Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, please include that process in your description, as well as whether the commission recommended your nomination. List the dates of all interviews or communications you had with the White House staff or the Justice Department regarding this nomination. Do not include any contacts with Federal Bureau of Investigation personnel concerning your nomination.

There is no selection commission in Wyoming to recommend candidates for nomination to the federal courts.

My husband asked me if I would be interested in serving as federal district court judge. I told him I was. I did not know that he had submitted my name to the White House along with another attorney and a state district court judge until several months after the list was submitted.

In August, 2009 I was contacted by the Department of Justice regarding pre-nomination paperwork. Since then, I have had a number of conversations with the Department of Justice and the White House regarding that paperwork and the nominations process. I interviewed with staff from the White House and Department of Justice on October 5, 2009. My nomination was submitted to the Senate on December 3, 2009.

- b. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any currently pending or specific case, legal issue or question in a manner that could reasonably be interpreted as seeking any express or implied assurances concerning your position on such case, issue, or question? If so, explain fully.

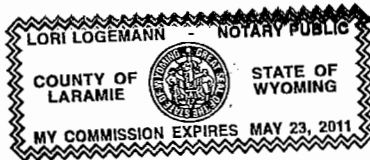
No.

AFFIDAVIT

I, Nancy D. Freudenthal, do swear
that the information provided in this statement is, to the best
of my knowledge, true and accurate.

12/4/09
(DATE)

Nancy D. Freudenthal
(NAME)



Lori Logemann
(NOTARY)