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Extending Standing to Non-Clients Moving to Disqualify Opposing Counsel in Wyoming

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EXTENDING STANDING TO NON-CLIENTS MOVING TO DISQUALIFY OPPOSING COUNSEL IN WYOMING

John M. Burman^{*†} and *Cameron T. Pestinger*[‡]

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* John M. Burman was the Carl M. Williams Professor Emeritus of the University of Wyoming College of Law. He also served as Of Counsel to the Law Firm of Corthell and King in Laramie, Wyoming. John would like to thank Cameron for his research assistance. John would also like to thank Nathan Cowper for his assistance in preparing this Article.

† This Issue of the *Wyoming Law Review* is dedicated in memoriam to Professor Burman, whose contributions to Wyoming's legal profession will always be remembered.

‡ The author submits the following dedication to his late friend and co-author, John:

Legal education and the legal profession are mutually constitutive. Historically, this has meant the production and reproduction of legal hierarchy, which remains ubiquitous. Whereas some legal scholars, for instance, refuse to even cite a student comment or note, John welcomed his students, including myself, as co-authors. In this and countless other ways, he did much more to improve Wyoming's legal culture than teaching its attorneys how to realize their ethical obligations according to a book of rules. By rupturing the dialectic producing legal hierarchy, John created the conditions for a new and just legal pedagogy and practice.

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I. INTRODUCTORY REMARKS

A central purpose of the Wyoming Rules of Professional Conduct (Rules) becomes clear to anybody reading and analyzing the Rules. That purpose is to protect clients by ensuring that they receive independent counsel.¹ As a general matter, and particularly when conflicts of interest are involved, the best way to safeguard independent representation is to ensure that attorneys do not have a conflict of interest, because such a conflict usually means that the attorney cannot provide independent representation.

Attorney disqualification is one tool for remedying conflicts of interest that undermine independent counsel in proceedings before a tribunal. Typically, movants bring the issue of a conflict of interest to a tribunal’s attention through a motion to disqualify.² When considering these motions, tribunals must balance two competing interests. First, a client’s right to choose counsel of their choice. As one court noted, “[l]egal practitioners are not interchangeable commodities.”³ Because personal qualities and professional abilities differ among attorneys, a client’s choice in representation is critical in both the quality of the attorney-client relationship and the skills and professional services rendered to the client.⁴ Second, a client’s choice of counsel can conflict with the legal profession’s interest in maintaining its ethical standards. These standards, which include the prohibition against conflicts of interest that undermine an attorney’s independent judgment, are paramount in protecting clients and preserving trust in the bar.⁵ When appropriate, a client’s right to choose representation must yield to ethical principles.⁶

Tribunals use motions to disqualify to resolve these competing interests. Ideally, a tribunal ruling on such a motion will consider the competing interests

¹ *E.g.*, WYO. RULES OF PROF’L CONDUCT r. 1.7 cmt. [1] (2018) (“Loyalty and independent judgment are essential elements in the lawyer’s relationship to a client.”).

² Though courts may also raise the issue of a conflict of interest *sua sponte*, absent any party’s motion. *See infra* notes 47–52 and accompanying text.

³ *Towne v. Hubbard*, 3 P.3d 154, 160 (Okla. 2000).

⁴ *Id.*

⁵ *E.g.*, *People ex rel. Dep’t of Corps. v. Speedee Oil Change Sys., Inc.*, 980 P.2d 371, 378 (Cal. 1999).

⁶ *Id.*

outlined above. But in Wyoming, tribunals often do not give due regard to the ethical implications of a client's choice in counsel because they apply the *client-only standing rule*.⁷ This principle requires movants to first establish standing before the tribunal will consider whether disqualification under the Rules is appropriate.⁸ As its name suggests, only current or former clients of the attorney in question can establish standing.⁹ Consequently, tribunals only consider the substance of a motion to disqualify that current or former clients submit. Because tribunals will not address conflicts of interest that non-clients raise in a motion to disqualify, diminished representation may persist throughout litigation, despite the presence of an impermissible conflict. Ultimately, a client-only standing favors a client's choice in representation over ensuring legal or judicial ethics, or both.

As a remedy, this Article proposes that Wyoming tribunals extend standing to non-clients moving to disqualify opposing counsel for a conflict of interest. This proposal is consistent with Wyoming jurisprudence.¹⁰ Further, it will allow tribunals to consider the substance of any party's motion, filling the gap that client-only standing currently creates. If followed, this proposal will ensure that tribunals adequately examine the tensions that a motion to disqualify reveals, and will ultimately protect the competing interests of clients, the bar, and tribunals.

Part II of this Article offers an overview of Wyoming's current conflict of interest framework, placing the issue in context.¹¹ Next, Part III examines client-only standing and its pernicious effects.¹² It then provides three rationales, each consistent with Wyoming law, for extending standing to non-client movants seeking disqualification for a conflict of interest.¹³ Last, Part IV considers two possible objections to the proposed remedy.¹⁴

⁷ See, e.g., RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS § 6 cmt. i (AM. LAW INST. 2000) ("The costs associated with disqualification require that standing to seek disqualification ordinarily be limited to present or former clients who would be adversely affected by the continuing representation, whether or not they are parties to the present litigation. Tribunals should not ordinarily permit parties who are not directly affected to invoke the putative interests of an absent client with whom they are not in privity.").

⁸ See *id.*

⁹ See *id.*

¹⁰ See *infra* notes 42–56 and accompanying text.

¹¹ See *infra* notes 15–32 and accompanying text.

¹² See *infra* notes 33–41 and accompanying text.

¹³ See *infra* notes 42–56 and accompanying text.

¹⁴ See *infra* notes 57–73 and accompanying text.

II. WYOMING'S CURRENT CONFLICT OF INTEREST FRAMEWORK

A. *Ethical and Legal Issues Stemming from a Conflict of Interest*

Conflicts of interest present both ethical and legal issues. All attorneys must appropriately identify and respond to conflicts.¹⁵ Failure to do so is unethical and grounds for professional discipline.¹⁶ That failure may also have legal consequences, resulting in a motion to disqualify the attorney from representing a client,¹⁷ a legal malpractice claim,¹⁸ or both. Because a conflict of interest may result in disqualification, it is important to examine the rules governing conflicts of interest.¹⁹

B. *Conflict of Interest Rules*

The Rules articulate at least four kinds of conflicts and provide the substantive basis for disqualifying counsel for a conflict of interest. First, a conflict may result from diverging interests between clients, whether current,²⁰ former,²¹ or prospective.²² Second, the interests of a non-client, such as a third-party payer, may also conflict with those of a client.²³ Third, the attorney's own interests may be inconsistent with a client's, resulting in a conflict.²⁴ Last, a conflict may

¹⁵ WYO. RULES OF PROF'L CONDUCT r. 1.7 cmt. [2] (2018).

¹⁶ WYO. RULES OF DISCIPLINARY PROC. r. 8(a)(1) (2018) ("Any act or omission which violates the provisions of the Wyoming Rules of Professional Conduct [shall constitute grounds for discipline].").

¹⁷ *E.g.*, *Rose v. Rose*, 849 P.2d 1321, 1325 (Wyo. 1993) (stating that trial courts have discretion in granting a motion to disqualify for a conflict of interest).

¹⁸ *Bevan v. Fix*, 42 P.3d 1013, 1029–30 (Wyo. 2002) (explaining that a breach of the confidentiality and conflicts of interest rules gives rise to potential civil liability and a breach of confidentiality or loyalty will be analyzed within the framework of a legal malpractice action).

¹⁹ See *infra* notes 20–25 and accompanying text.

²⁰ WYO. RULES OF PROF'L CONDUCT r. 1.7(a)(1) ("A concurrent conflict of interest exists if . . . the representation of one client will be directly adverse to another client . . .").

²¹ *Id.* r. 1.9(a) ("A lawyer who has formerly represented a client in a matter shall not thereafter represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client unless the former client gives informed consent, confirmed in writing.").

²² *Id.* r. 1.18(c) ("A lawyer . . . shall not represent a client with interests materially adverse to those of a prospective client in the same or a substantially related matter if the lawyer received information from the prospective client that could be significantly harmful to that person in the matter . . .").

²³ *Id.* r. 1.7(a)(2) ("A concurrent conflict of interest exists if there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities . . . to a third person . . .").

²⁴ *Id.* ("A concurrent conflict of interest exists if there is a significant risk that the representation of one or more clients will be materially limited . . . by a personal interest of the lawyer.").

arise by virtue of the attorney-client relationship, a matter which is subject to the substantive law of the jurisdiction.²⁵ While different rules apply depending on the type of conflict involved, all conflicts of interest threaten an attorney's independent judgment.

C. *Standing to Move for Disqualification*

An opposing party may move to disqualify an attorney for failing to remedy a conflict of interest. Before considering the substantive basis of these motions, Wyoming tribunals first address whether the movant has standing to seek disqualification.²⁶ Absent standing, tribunals deny the motion without considering the issue raised. In Wyoming, the moving party has standing if that party has a *tangible interest* in the opposing party's choice of counsel.²⁷ This means that the movant must demonstrate that continued representation of the opposing party by their present attorney will "materially harm a cognizable interest of the objecting party."²⁸

Generally, the tangible interest requirement restricts standing to movants having an attorney-client relationship with the attorney in question, an approach named *client-only standing*. Consider Wyoming's leading case on the issue: *Ahearn v. Ahearn*. In *Ahearn v. Ahearn*, the answering party challenged a motion to disqualify that alleged an impermissible conflict of interest, arguing that the movant lacked standing to raise the issue because the movant lacked an attorney-client relationship with the attorney in question.²⁹ The Wyoming Supreme Court agreed.³⁰ Because the movant had no relationship with the attorney, the movant had no tangible interest in the opposing party's representation, and the court denied the motion.³¹ The court was clear that, even on the assumption that a conflict exists, disqualification is unwarranted where the movant fails to show that the opposing party's representation harms the movant's tangible interests.³² In short, absent an attorney-client relationship between the movant and attorney in question, Wyoming tribunals are unlikely to consider the substance of a motion to disqualify alleging an impermissible conflict of interest.

²⁵ *Id.* scope note, ¶ [17].

²⁶ *E.g.*, *Robinson v. Hamblin*, 914 P.2d 152, 154 (Wyo. 1996).

²⁷ *Id.*

²⁸ CHARLES M. WOLFRAM, *MODERN LEGAL ETHICS* § 7.1.7 (1986).

²⁹ *Ahearn v. Ahearn*, 993 P.2d 942, 950 (Wyo. 1999).

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

III. EXTENDING STANDING TO NON-CLIENT MOVANTS IN WYOMING

While most jurisdictions apply the client-only standing rule to disqualification motions, some have broadened standing to include non-clients.³³ A good reason for doing so is that some conflicts only affect the tangible interests of the aggrieved party. Examples may include conflicts that materially limit the scope of an attorney's representation because of third-party payers,³⁴ fiduciary obligations,³⁵ the duty of confidentiality,³⁶ or personal interests of the attorney.³⁷ If a non-aggrieved party brings a motion to disqualify in these cases, the conflicted representation eludes disqualification because the movant cannot establish that the conflicted representation harms their tangible interests. In these and other cases, the client-only standing rule precludes tribunals from considering the substantive claim that a party's representation presents ethical or legal problems the tribunal should address.

Historically, the decisions granting non-clients standing generally relied upon a rule contained in the antiquated Model Code of Professional Responsibility.³⁸ That rule prescribed a broad duty on the part of advocates to alert the tribunal to any possible violation of the professional rules on conflicts of interest.³⁹ The Rules, which displaced the Model Code of Professional Responsibility, omit this

³³ See, e.g., *In re Appeal of Infotechnology, Inc.*, 582 A.2d 215, 221 (Del. 1990) (“[W]e do not adopt a ‘bright-line’ test denying standing to all non-client litigants to challenge misconduct that taints the fairness of judicial proceedings.”); *Tizes v. Curico*, No. 94 C 7657, 1997 WL 116797 (N.D. Ill. Mar. 12, 1997) (stating that a non-client may have standing to seek disqualification if evidence clearly calls into question the fair or efficient administration of justice); *Black v. Missouri*, 492 F. Supp. 848 (W.D. Mo. 1980) (explaining that, where the interests of the public are greatly implicated, “third parties” should be entitled to raise any apparent conflict of interest that might undermine the validity of proceedings in the case); *Sentry Select Ins. Co. v. Meyer*, No. 2:07-cv-01049-RLH-LRL, 2011 WL 1103333 (D. Nev. Mar. 23, 2011) (stating that opposing counsel has an independent obligation to bring to the court's attention “facts justifying a disqualification of counsel” even if opposing counsel does not represent the aggrieved client).

³⁴ See WYO. RULES OF PROF'L CONDUCT r. 1.8 cmt. [11] (2018) (“Because third-party payers frequently have interests that differ from those of the client . . . lawyers are prohibited from accepting or continuing such representation unless the lawyer determines that there will be no interference with the lawyer's independent professional judgment . . .”).

³⁵ See ABA Comm. on Ethics & Prof'l Responsibility, Formal Op. 95-395 (1995) (describing a situation where any attorney's fiduciary obligations to a non-client as part of a previous joint-defense consortium may materially limit the attorney's representation).

³⁶ See WYO. RULES OF PROF'L CONDUCT r. 1.9(c)(2) (“A lawyer who has formerly represented a client in a matter . . . shall not thereafter . . . reveal confidential information relating to the representation except as the Rules would permit or require with respect to the client.”).

³⁷ See *id.* r. 1.7 cmt. [10] (“The lawyer's own interests should not be permitted to have an adverse effect on representation of a client.”).

³⁸ The Model Code of Professional Responsibility was the predecessor to the Rules.

³⁹ MODEL CODE OF PROF'L RESPONSIBILITY, DR 1-103(A) (AM. BAR ASS'N 1980) (“A lawyer possessing unprivileged knowledge of [misconduct] shall report such knowledge to a tribunal . . .”).

provision,⁴⁰ removing that basis for extending standing to non-clients in any jurisdiction adopting them, such as Wyoming. Though that provision may no longer provide a basis for extending standing in Wyoming, this Part considers other well-established legal principles supporting this result.⁴¹

A. *Parties in Pending Litigation have Standing to Seek Available Relief*

It is well recognized that parties in pending litigation may move for available relief without first establishing standing.⁴² This is because, as one court noted, a party with standing to bring an action has standing to seek available relief during that action.⁴³ It is unnecessary, for example, that a movant demonstrate standing when requesting a preliminary injunction.⁴⁴ The question there is not whether the movant is entitled to *seek* a preliminary injunction. Rather, the proper question is whether the movant has established adequate grounds to *obtain* the injunction.⁴⁵ By analogy, Wyoming tribunals should not consider whether a movant has standing before addressing the issue of a conflict of interest. Because a motion to disqualify is, according to Wyoming's Supreme Court, "simply an injunctive order issued in a case already pending,"⁴⁶ Wyoming tribunals should direct their attention instead to the motion's substance, asking whether adequate grounds for disqualification exist.

B. *Wyoming Tribunals have the Inherent Authority and Obligation to Disqualify Attorneys when Appropriate*

Tribunals may raise the issue of attorney disqualification *sua sponte*, absent any party's request. This power is "incidental to all courts."⁴⁷ It draws on the inherent power of tribunals to regulate attorneys' conduct and the presiding official's inherent power to regulate the course of proceedings.⁴⁸ It also furthers

⁴⁰ While the commentary to Rule 1.7 formerly said that "opposing counsel may properly raise the question [of an impermissible conflict]," that language was omitted when the Rules were revised. Compare WYO. RULES OF PROF'L CONDUCT r. 1.7 cmt. [14] (2005), with WYO. RULES OF PROF'L CONDUCT r. 1.7 cmt. [1]–[35] (2018).

⁴¹ See *infra* notes 42–56 and accompanying text.

⁴² See, e.g., *Bevan v. Fix*, 42 P.3d 1013, 1028 (Wyo. 2002).

⁴³ *Common Cause v. Bd. of Supervisors*, 777 P.2d 610, 613 (Cal. 1989) (stating that a party who has standing to bring an action has standing to seek available provisional relief in that action).

⁴⁴ This is evidenced by the absence of a standing requirement for Wyoming motion practice. See WYO. R. CIV. P. 7(b).

⁴⁵ WYO. STAT. ANN. § 1-28-102 (2018) ("When it appears by the petition that the plaintiff is entitled to relief consisting of restraining the commission or continuance of some act . . . a temporary order may be granted restraining that act.").

⁴⁶ *Bevan*, 42 P.3d at 1028.

⁴⁷ E.g., *Ex parte Burr*, 22 U.S. 529, 531 (1824).

⁴⁸ WYO. UNIF. R. DIST. CT. 801; see also RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS § 6 cmt. i (AM. LAW INST. 2000).

the Rules' objectives by ensuring that a case is well-presented, that confidential information is not misused, and that a client's interest in their attorney's loyalty is protected.⁴⁹

In *Carlson v. Langdon*, the Wyoming Supreme Court commented on a court's inherent authority to disqualify.⁵⁰ Wyoming trial courts, it declared, are "charged with the responsibility of supervising the conduct of attorneys practicing before [them]."⁵¹ This supervisory responsibility includes, the court continued, "a duty to disqualify an attorney when appropriate."⁵²

Non-client standing is consistent with Wyoming tribunals' inherent power to disqualify. A motion raising a conflict of interest is a tool for bringing the issue to the tribunal's attention. In that instance, the moving party is requesting that the tribunal act on both its inherent power and affirmative duty to disqualify. Client-only standing is inconsistent with this idea. It makes little sense to require a moving party to establish that the opposing party's choice of counsel harms their own tangible interests. As outlined above, the tribunal is already obligated to provide that same relief, when appropriate, on its own accord, regardless of any party's request.

Too often, client-only standing obscures the inherent authority of tribunals to disqualify. It directs the tribunal's attention to questions of standing instead of the substantive issue. By redirecting the tribunal's focus, non-client standing ensures that tribunals consider all relevant interests.

C. Attorneys are Obligated to Protect Against a Tribunal's Appearance of Impropriety

Wyoming attorneys owe various duties to tribunals.⁵³ Rule 3.4 imposes one such duty. It states that an attorney shall not "knowingly disobey an obligation under the rules of a tribunal."⁵⁴ In Wyoming, the Wyoming Code of Judicial Conduct governs tribunals.⁵⁵ It requires judges to avoid impropriety and the appearance of impropriety.⁵⁶ One way to create an appearance of impropriety is to present a tribunal with an impermissible conflict of interest. Attorneys are therefore obligated to protect tribunals from representations afflicted with impermissible conflicts.

⁴⁹ RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS § 6 cmt. i.

⁵⁰ See *Carlson v. Langdon*, 751 P.2d 344 (Wyo. 1988).

⁵¹ *Id.* at 350.

⁵² *Id.*

⁵³ E.g., WYO. RULES OF PROF'L CONDUCT r. 3.3 (2018).

⁵⁴ *Id.* r. 3.4(c).

⁵⁵ See WYO. CODE OF JUDICIAL CONDUCT § I application note (2018).

⁵⁶ E.g., *id.* r. 1.2.

Attorneys can invoke a motion to disqualify to further that end. But when non-clients are denied standing, conflicts may threaten a tribunal's appearance of impropriety. Client-only standing, therefore, undermines attorneys' duties toward tribunals. By ensuring that tribunals address the issue, extending standing to non-clients assists attorneys in realizing their ethical duties.

IV. POSSIBLE OBJECTIONS

While it is difficult to anticipate every objection to extending standing to non-client movants, this Part counters two predominant and related objections.⁵⁷ First, non-client standing will defeat the purpose of the conflicts rules. And second, non-client standing opens the door to abusive motions. Client-only standing, in short, furthers the ends of the conflicts rules and is necessary to prevent abuse.

A. "Client-only Standing Furthers the Rules' Purposes"

One reason tribunals hesitate in granting non-clients standing is fear that movants will subvert the conflicts rules' legitimate purposes, using them instead as procedural weapons against opponents.⁵⁸ One commentator has noted, for example, that "disqualification motions have become common tools of the litigation process, being used . . . for purely strategic purposes."⁵⁹ In *Woods v. Wells Fargo Bank of Wyoming*, Wyoming's Supreme Court made it clear that it will not look favorably on motions to disqualify that are not based on the purposes for the conflict of interest rules. It stated:

The purpose of the Rules can be subverted when they are invoked by opposing parties as procedural weapons. The fact that a Rule is a just basis for a lawyer's self-assessment, or for sanctioning a lawyer under the administration of a disciplinary authority, does not imply that an antagonist . . . has standing to seek enforcement of the Rule.⁶⁰

This policy purportedly draws its strength from the conflict rules themselves.⁶¹ Because the rules prohibiting conflicts are intended to protect current and former clients, some argue, only they are the proper parties to raise the issue.⁶²

⁵⁷ See *infra* notes 58–73 and accompanying text.

⁵⁸ E.g., *In re* Appeal of Infotechnology, Inc. 582 A.2d 215, 220 (Del. 1990).

⁵⁹ Ellsworth Van Graefeiland, *Lawyer's Conflict of Interest—A Judge's View (Part II)*, N.Y.L.J., July 20, 1977, at 1.

⁶⁰ *Woods v. Wells Fargo Bank Wyo.*, 2004 WY 61, ¶ 24, 90 P.3d 724, 732 (Wyo. 2004).

⁶¹ *Mills v. Hausmann-McNally, S.C.*, 992 F. Supp 2d 885, 891 (S.D. Ind. 2014).

⁶² *Id.*

Unquestionably, one purpose of the conflicts rules is to preserve a client's expectations of confidentiality and undivided loyalty.⁶³ At times, disqualification serves to protect against breaches of these principles. But, as one court noted, "conflicts of interest, including potential conflicts . . . are a threat not only to the rights and interests of clients and attorneys, but also to the integrity of the court."⁶⁴ Other courts have observed that the conflicts rules also serve to maintain public confidences in the integrity of the bar⁶⁵ and the legal system,⁶⁶ as well as the fairness of the judicial process as a whole.⁶⁷ In some instances, a non-client movant is best situated to ensure that these purposes are achieved by bringing the issue to a tribunal's attention. Because client-only standing frustrates these ends, it too can subvert the legitimate purposes of the conflicts rules. Far from a remedy, client-only standing actually engenders the effect it is intended to prevent.

B. "Non-client Standing Opens the Door to Abuse"

All motions for interlocutory relief, including motions to disqualify, have the potential for abuse. This may happen, for instance, when parties use motions as mere procedural weapons in litigation. But several devices exist for deterring such practices.

In civil cases, Rule 11 of Wyoming's Rules of Civil Procedure requires movants to certify that, to the best of their knowledge, their motion is not presented for any improper purpose and that its contentions are warranted by law and either do or likely have evidentiary support.⁶⁸ Violation of this Rule may result in sanctions.⁶⁹ Also, in both civil and criminal cases, Rule 801 of Wyoming's Uniform Rules for District Courts requires attorneys to demonstrate honesty, fairness, and integrity in all of their dealings.⁷⁰ Under this Rule, any attorney who uses their position to harass others involved in the adjudicative process violates the professional standard of conduct and may be subject to formal reprimand or other sanctions.⁷¹ Lastly,

⁶³ See WYO. RULES OF PROF'L CONDUCT *rr.* 1.7 cmt. [1], 1.9(c) (2019).

⁶⁴ *Ragan Henry Broad. Grp., Inc. v. Hughes*, Civ. A. No. 91-CV-6157, 1992 WL 151308 at *5 (E.D. Pa. June 19, 1992).

⁶⁵ See, e.g., *Laker Airways Ltd. v. Pan Am. World Airways*, 103 F.R.D. 22, 27 (D.D.C. 1984) ("[C]onflicts . . . give rise to many substantive evils and they tend to diminish the Bar's image in the mind of the public.").

⁶⁶ See, e.g., *Brown & Williamson Tobacco Corp. v. Daniel Int'l Corp.*, 563 F.2d 671, 673 (5th Cir. 1977).

⁶⁷ See, e.g., *Coleman v. Smith*, 814 F.2d 1142, 1147 (7th Cir. 1987).

⁶⁸ WYO. R. CIV. P. 11.

⁶⁹ *Id.*

⁷⁰ WYO. UNIF. R. DIST. CTS. *r.* 801(a).

⁷¹ *Id.*

an attorney may be disciplined for asserting a frivolous issue in a proceeding based in neither law nor fact.⁷²

While extending standing to non-clients may open the door to abuse, that risk is no greater than the risk that other interlocutory requests present.⁷³ If the devices outlined above are sufficient in guarding against other abusive motions, are they not sufficient for deterring abusive motions to disqualify?

V. CONCLUDING THOUGHTS

Too often, tribunals fail to address the fundamental issue that motions to disqualify raise.⁷⁴ That issue is whether enhancing the tribunal's stature is justified at the expense of a client's choice in counsel. For example, many courts, including the Wyoming Supreme Court, have held that tribunals should first ask about a movant's standing to disqualify before addressing whether the Rules provide adequate grounds for disqualification.⁷⁵ This policy prevents tribunals from examining motions worthy of their consideration. By extending standing to non-client movants, tribunals will not be bothered with such questions. Instead, they will address the heart of the issue. This Article has offered three reasons for extending standing to non-clients moving to disqualify opposing counsel that are consistent with Wyoming jurisprudence.⁷⁶ If adopted, this policy will further the interests of clients, tribunals, and the profession.

⁷² See WYO. RULES OF PROF'L CONDUCT r. 3.1(a) (2018).

⁷³ Not only does Rule 11 of the Wyoming Rules of Civil Procedure provide sanctions, but Rule 3.1 of the Wyoming Rules of Professional Conduct contains a version of Rule 11, so every lawyer is bound to the Rule 11 standard in every case. *See id.*

⁷⁴ Because, for example, the movant does not have standing. *See supra* notes 26–32 and accompanying text.

⁷⁵ *E.g.*, *Ahearn v. Ahearn*, 993 P.2d 942, 950 (Wyo. 1999).

⁷⁶ *See supra* notes 42–56 and accompanying text.