

# Ethically Speaking



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## The Ethics of Requiring Retirement at Age 70 for Some Judges in Wyoming<sup>1</sup>

As the late Stuart Brown once told me, he would soon have to retire from the Wyoming Supreme Court because he would reach the age of 70, the age of what he called “statutory senility.”<sup>2</sup> That statutory senility he referred to applies to some Wyoming state court judges (Supreme Court justices<sup>3</sup> and District Court judges,<sup>4</sup>) but not to others (Circuit Court and Municipal Court judges).<sup>5</sup> To further compound the situation, after retirement, Wyoming Supreme Court justices and District Court judges may be assigned to hear cases,<sup>6</sup> with the result that a judge who has passed the age of “statutory senility,” may sit indefinitely thereafter (such judges get paid, too. “A retired justice or judge shall receive as a salary during any period of assignment an amount equal to the current compensation of a judge of the court to which he is assigned.”<sup>7</sup>). Meanwhile, other judges, with dockets that are just as demanding (Circuit and Municipal Court judges), never have to retire. Requiring some members of the bench to retire and not others raises interesting ethical issues.

As I thought about mandatory retirement for some judges, two questions oc-

curred to me. First, is there an ethical reason for requiring some judges to step down? Second, is there a medical reason to require retirement of some judges? If the answer to either question is “yes,” then mandatory retirement makes sense, although the age of 70 may not. If there is not, requiring retirement is not warranted. In either event, it does not make sense to force some Wyoming judges to retire and not others. Ethically, all judges should be treated equally.

### The Legal Framework

Perhaps I have been a lawyer for too long, as the first question that occurred to me was is it legal to force state court judges to retire? The answer is “yes.” And that answer was given by the United States Supreme Court in a 1991 opinion, written by Justice O’Connor (when she wrote the opinion, Justice O’Connor was about 60. Before her appointment to the Supreme Court, Justice O’Connor was a member of the Arizona Court of Appeals. In Arizona, judges must retire at age 70.<sup>8</sup> Ironically, Justice O’Connor served on the Supreme Court until she was 75, several years after she would have had to retire

if she had remained an Arizona judge.) In the opinion, the Court rejected a challenge brought by judges in Missouri,<sup>9</sup> a state that requires judges to retire at age 70.<sup>10</sup>

The Court began its consideration of Missouri’s mandatory retirement requirement for judges by classifying judges as a non-suspect class; their Constitutional challenge, therefore, was subject to rational basis<sup>11</sup> review. Under that standard, the Court had no trouble finding that: (1) appointed Missouri state judges constitute appointees “on a policymaking level,” within the meaning of an exclusion to the Federal Age Discrimination in Employment Act,<sup>12</sup> and (2) the Missouri Constitution’s mandatory retirement provision does not violate the Fourteenth Amendment’s equal protection clause.<sup>13</sup> (Missouri’s system of selecting judges is based on merit, and served as a model for Wyoming’s system.)

While the Missouri case would control a challenge to Wyoming’s system if all state judges were treated the same, there does not appear to be even a rational basis for a state to treat judges differently. This seems particularly true when the same persons are, at various times, subjected to dif-

ferent standards. The most recent example is Judge Campbell. While a member of the Circuit Court in Cheyenne, he had life-time tenure, subject to retention elections. When he recently became a District Court judge in the same place, he became subject to the mandatory retirement age of 70. And while it doesn't take much to pass rational basis review, treating judges differently seems likely to run afoul of even that deferential standard. It is, quite simply, difficult to think of a rational basis for treating a judge differently when he or she moves from the Circuit Court to the District Court or Supreme Court bench. So while it would be permissible to force all Wyoming judges to retire at age 70 (or at a different age), or to give all Wyoming judges life-time tenure, subject to retention elections, treating them differently raises significant Constitutional questions.

In upholding Missouri's mandatory retirement plan, the Supreme Court noted that: "The people of Missouri have a legitimate, indeed compelling, interest in maintaining a judiciary fully capable of performing the demanding tasks that judges must perform."<sup>14</sup> Further, the Court said: "It is an unfortunate fact of life that physical and mental capacity sometimes diminish with age."<sup>15</sup> Finally, the Court noted that: "The Missouri mandatory retirement provision, like all legal classifications, is founded on a generalization."<sup>16</sup> Generalizations, however, are not necessarily Constitutionally infirm. "It is far from true that all judges suffer significant deterioration in performance at age 70. It is probably not true that most do. It may not be true at all. But a State "does not violate the Equal Protection Clause merely because the classifications made by its laws are imperfect." *Murgia*, 427 U.S., at 316, 96 S. Ct., at 2568, quoting *Dandridge v. Williams*, 397 U.S. 471, 485, 90 S. Ct. 1153, 1161, 25 L.Ed.2d 491 (1970).<sup>17</sup>

Once appointed, Wyoming Supreme Court justices must stand for retention every eight years,<sup>18</sup> Wyoming District Court judges must stand every six years,<sup>19</sup> and Circuit Court judges are subject to retention every four years.<sup>20</sup> The terms of municipal judges vary. The term of a municipal judge "shall be the same as the terms of other appointed officers of the city or town."<sup>21</sup>

Why are some Wyoming judges forced to retire and not others? And why may retired judges continue to hear cases in-

definitely? Who knows? The different treatment is probably the result of an oversight. Whatever the reason, the statute should be amended, for the benefit of all Wyomingites. There is simply no ethical or medical reason to impose an arbitrary age of 70 for retirement on some judges and not on others.

Under the Wyoming Constitution, judicial power is vested "in a supreme court, district courts, and such subordinate courts as the legislature may, by general law, establish . . ."<sup>22</sup> The Wyoming Legislature has created Circuit Courts<sup>23</sup> and Municipal Courts in cities or towns.<sup>24</sup> Furthermore, while the Wyoming Supreme Court is "vested with management and supervisory powers over the circuit courts . . .,"<sup>25</sup> the Legislature has provided that District Courts "shall be free of administrative and fiscal control by the supreme court."<sup>26</sup> Instead of supervision by the Wyoming Supreme Court, Wyoming's District Courts are to be governed by "a judicial conference comprised of all district judges which shall meet no less than twice per year."<sup>27</sup>

Justices of the Wyoming Supreme Court, District Court judges, and Circuit Court judges are all appointed through the judicial nominating commission system.<sup>28</sup> That system results in three names going to the Governor from the Judicial Nominating Commission.<sup>29</sup> The Governor must then select from those three.<sup>30</sup> That system has largely eliminated politics from Wyoming's judicial selection, a vast improvement over the electoral system previously used in Wyoming, systems in place in most states, and the system in effect at the federal level.<sup>31</sup> (In most of those systems, politics play a major, and largely harmful, role.)

Similarly, just as Wyoming's Circuit Court judges and Municipal Court judges do not face mandatory retirement, federal judges in Wyoming (and elsewhere) do not either. Federal District Court judges, Courts of Appeals judges, and United States Supreme Court justices are appointed for life, and are subject to removal from the bench only by impeachment.<sup>32</sup>

Wyoming currently has one federal district judge who has taken senior status, though he maintains a full load (Judge Brimmer), and two "regular" District Court judges (Judges Johnson and Downes). Both Judge Brimmer and Judge Johnson would

have had to retire if they were, as Judge Johnson used to be, Wyoming State District Court judges. Ironically, Judge Grant, who replaced Judge Johnson on the Wyoming district court bench 23 years ago, recently had to retire because he turned 70. Judge Johnson, who was 70 earlier this year, remains an active federal judge.<sup>33</sup>

## The Ethical Framework

The Wyoming Constitution delegates authority to the Wyoming Supreme Court to "adopt a code of judicial conduct applicable to all judicial officers . . ."<sup>34</sup> In addition, the Constitution also provides for the establishment of a "Commission on Judicial Conduct and Ethics"<sup>35</sup> ("the Commission") which is to "consider complaints of judicial misconduct . . ."<sup>36</sup>

Pursuant to its Constitutional authority, the Wyoming Supreme Court has adopted the Wyoming Code of Judicial Conduct ("the Code"), which applies to all "[F]ull-time' non-federal judges in the state."<sup>37</sup> Among other things, the Constitution says that the Code "shall provide for the mandatory retirement of a judicial officer for any disability that seriously interferes with the performance of the duties of the office and is, or is likely to become, permanent."<sup>38</sup> The Code was substantially revised by Order dated June 23, 2009; and the new Code became effective on July 1, 2009.<sup>39</sup> Furthermore, the Commission is to "[r]emove a judicial officer from office or impose other discipline permitted by the rules for judicial discipline for conduct that constitutes willful misconduct in office, or for a willful and persistent failure to perform the duties of the office."<sup>40</sup>

The Wyoming Supreme Court is also to adopt "[p]rocedures for the operation of the commission, including exercise of the commission's disciplinary powers"<sup>41</sup> As directed, the court has promulgated "Rules Governing the Commission on Judicial Conduct and Ethics."<sup>42</sup> The Commission's rules "apply to all proceedings before the Commission involving the censure, suspension, removal, retirement, imposition of monetary sanctions, or other discipline of a judge."<sup>43</sup>

If the reason for requiring Wyoming Supreme Court justices and District Court judges to retire at age 70 is concern that judges over 70 may not be competent, the issue of competence is, as required by

the Wyoming Constitution, addressed by the Wyoming Code of Judicial Conduct. Canon<sup>44</sup> 2 of the new Code says: "A judge shall perform the duties of judicial office impartially, competently, and diligently." The rules<sup>45</sup> then address the issue of competence directly. "A judge shall perform judicial and administrative duties competently, promptly, efficiently and diligently."<sup>46</sup> The commentary<sup>47</sup> explains the rule: "Competence in the performance of judicial duties requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary to perform a judge's responsibilities of judicial office."<sup>48</sup>

If a judge allegedly commits misconduct, "[t]he Commission or its panels shall receive, investigate, hear, and adjudicate allegations of judicial misconduct . . ."<sup>49</sup> After a hearing before a panel of the Commission, the full Commission "shall make its recommendation for censure, removal or retirement, including imposition of monetary sanctions, and transmit its record and recommendations forthwith to the Wyoming Supreme Court."<sup>50</sup> If the misconduct involves a member of the Wyoming Supreme Court, the Wyoming Constitution provides for "[t]he appointment of a special supreme court composed of five (5) district judges who are not members of the commission, to act in the place of the supreme court in any case involving the discipline or disability of a justice of the supreme court."<sup>51</sup>

"Judicial misconduct" is a defined term under the Rules of the Commission. It means: "any action occurring during the judge's tenure, that constitutes, including, but not limited to, the following:<sup>52</sup>

- (2) willful or persistent failure to perform duties;<sup>53</sup>
- (4) conduct prejudicial to the administration of justice that brings the judicial office into disrepute."<sup>54</sup>

If the concern is that a judge is mentally or physically unable to perform his or her duties, the Commission's rules also deal with that possibility. First, "disability" is defined

as "a mental or physical condition, or mental and physical condition combined, that seriously interferes with a judge's performance of duties and is, or is likely to become, permanent."<sup>55</sup> Second, a judge's disability is a basis for the Commission to take action. If "a majority of the Commission members finds by clear and convincing evidence that a judge suffers from a disability, it shall recommend that the Wyoming Supreme Court retire the judge for disability."<sup>56</sup>

Despite the authority to remove judges who become incompetent, the reality is that the power is seldom, if ever, used, and judges are like most other folks. They don't step aside when they should, and it is difficult, at best, to tell a person that it is time to go. One way to avoid the problem, is to have mandatory retirement. There is nothing ethically wrong with such a policy. Requiring some judges to retire and not others does, however, seem ethically questionable.

### The Medical Framework

Requiring judges to retire at age 70, or at any particular age, is rooted in the idea that litigants are entitled to mentally competent judges. While there is no exact correlation between age and mental competency, there is a general correlation between the two. As the Supreme Court noted in the case involving Missouri's mandatory retirement for judges: "The statute [requiring retirement at age 70] draws a line at a certain age which attempts to uphold the high competency for judicial posts and which fulfills a societal demand for the highest caliber of judges in the system."<sup>57</sup> While the correlation between age and mental competence is not exact, "[i]t is an unfortunate fact of life that physical and mental capacity sometimes diminish with age."<sup>58</sup> While that statement was, and remains, true, persons today generally live longer, and their quality of life remains very high for a longer time too.

Nevertheless, and not surprisingly, increased age leads to increased impairment of cognitive functioning. The age at which the decline generally starts, however, is increasing. Perhaps the most comprehensive study

of aging and retirement is the Health and Retirement Study (HRS), a national survey of older Americans. HRS figures from 1998 show that "[a]mong people ages 75 to 79 . . . , fewer than 5 percent had severe [cognitive] limitation."<sup>59</sup> Then, declines in cognitive functioning are more rapid. "After age 80, however the prevalence rate rises steeply."<sup>60</sup>

Among the organizations that have weighed in on the issue of mandatory retirement (for anyone) is the American Association of Retired Persons (AARP). AARP begins with the proposition that "comprehensive scientific and medical studies have shown there is little statistical support" for mandatory retirement.<sup>61</sup> Because of that evidence, AARP's policy is that "in virtually every circumstance, public safety would be better served by periodically testing the fitness of all public safety employees, regardless of age," instead of mandatory retirement.<sup>62</sup>

### The Historical Framework

Historically, Wyoming Supreme Court justices and District Court judges did not have to retire at age 70. Fred Blume, arguably Wyoming's greatest State Supreme Court Justice served for over 40 years, from 1921 until 1963 (when he was 87). I don't believe anyone has ever argued that Justice Blume was not a competent and, indeed, even a brilliant jurist long after he reached the current mandatory retirement age of 70. Until his last year on the court, Justice Blume enjoyed "excellent" health, when he began to experience difficulty hearing and seeing.<sup>63</sup> After his voluntary retirement, he lived almost another decade. His contributions to the state are such that it would have been a great shame if Justice Blume had been forced to retire at 70, instead of serving 17 more years. Who knows how many other great jurists have been or will be forced to retire while they still enjoy good mental health?

The statute which requires some judges to retire at age 70 was enacted in 1979.<sup>64</sup> As originally passed (and as still in effect), it referred to "[a] judge of the supreme court or district courts . . ."<sup>65</sup> Of course the Circuit Court system was not yet in place. At that

time, justices of the peace were common, though some counties had County Courts. When the Circuit Court system came into being, the statute which created it did not mention mandatory retirement, and the statute requiring members of the Supreme Court and District Courts to retire was not amended. It may be, therefore, that the current disparate treatment of judges is an historical accident, though it is not clear why justices of the peace were not included in the original statute.

### The Prevalence of Mandatory Retirement for Judges

Wyoming is not the only state that requires judges to retire upon reaching a specified age, often 70. Most states (37) have mandatory retirement for judges.<sup>66</sup> The same is true in other countries (in England, for example, “judges . . . face a mandatory retirement age of 70 years.”<sup>67</sup>) Nor is Wyoming the only jurisdiction that routinely watches what one observer (the President of the Florida Bar) has described as “an amazing wealth of legal skills and good judgment honed by years of experience depart . . . .”<sup>68</sup>

The single largest jurisdiction which does not require retirement is the federal bench in the United States. As noted earlier, Article III federal judges, of all types, have life-time tenure. As a result, for example, Associate Justice John Paul Stevens of the United States Supreme Court is now 89, and five of the nine current members are over 70, though only two are over 75.

### Time For A Change?

While it makes sense to ensure that judges are ethically and mentally fit to resolve disputes, the age of 70 may be too young. As the President of the Florida Bar has noted, requiring retirement at age 70 may have made sense in 1972 (Wyoming’s mandatory retirement statute was passed in 1979), when that age was selected in Florida. Now, however, things have changed. “1972 was back when the life expectancy was 67.1 years for men and 74.7 years for women. These days,

Americans are living longer. In 2005 (the latest figures available from the U.S. Department of Health and Human Services), the life expectancy for men is 75.2 and 80.4 for women.”<sup>69</sup> That is an increase of about eight years for men, and five for women. That change leads one observer to this conclusion: “70 is the new 60. We are forcing capable, intelligent, and hard-working members of our judiciary to retire prematurely when they still have much to contribute.”<sup>70</sup>

The same is true in Wyoming. While the purpose of mandatory retirement, to ensure that litigants have a mentally alert and ethically proficient jurist, remains the same, changes in the demographics of modern life suggest that we take another look at the age. Should it remain 70? Or should it be increased to reflect increases in life expectancy? Further, Wyoming’s judges should not be subject to different rules. Circuit Court and Municipal judges have jobs that are every bit as demanding as those of District Court judges and Wyoming Supreme Court justices. It makes no sense to treat them differently.

### A Modest Proposal

Whether to require judges to retire at a certain age is an issue that can be debated endlessly. For every reason in favor of such a



requirement, there is a reason against it, and vice versa. Wyoming, as many jurisdictions, has had that debate, and came down on the side of mandatory retirement. That discussion does not need to be repeated in order to make a couple of changes that would benefit the bench, the bar, and those who use the court system to resolve their differences.

There are two reasons to make changes. First, it makes sense to treat all Wyoming state judges the same; it may, in fact, be unconstitutional not to. Simply put, it is difficult to think of a “rational basis” for requiring some judges to retire, and not others.<sup>71</sup> It certainly makes no ethical sense. Second, just as a dollar is worth less today than it was 30 years ago, a person who is 70 years old

today is less likely to be mentally unfit to be a judge than a person of 70 was 30 years ago. So just as many forms of retirement benefits have a cost of living adjustment, to keep pace with inflation, it may be appropriate to adjust the mandatory retirement age upwards to keep pace with increased longevity.

While it is seldom that a change in law is either simple or would benefit the state (and its residents), at no cost (it actually would save money, as when a judge retires the state has to pay both the salary of the new judge and retirement benefits to the retired one), this is such a case. Changing the law to treat judges equally and to reflect lengthening life expectancy, would be simple and ethically appropriate. The current statute could be changed as follows (deletions are indicated by ~~strike outs~~; additions are indicated by underlining):

**5-1-106. Retirement of judges of the supreme court or district courts; pension; assignment of retired judges.**

(a) A judge of the supreme court, or district courts, circuit courts, or municipal courts shall retire when he or she attains the age of seventy-five (75) ~~(70)~~ years . . . .

The change would not require judges to work until age 75. They could retire earlier, based on their years of service as a judge.<sup>72</sup> Rather, the change would permit all judges to serve until age 75, and the change would treat all judges in Wyoming, other than federal judges, the same. Such a change would make both ethical and medical sense.\*

**ENDNOTES**

1. Questions from my wife caused me to become interested in this issue and provided the inspiration for this column. Thanks to Judges Robert A. Castor and Alan B. Johnson, and Stan Lowe, for providing me with information about the current retirement system. Thanks also to Deborah K. Fleming, PhD

from the Wyoming Institute for Disabilities at the University of Wyoming, and Pamela D. Larsen, PhD, from the School of Nursing at the University of Wyoming, for providing me with information about aging.

2. The Honorable C. Stuart Brown served on the Wyoming Supreme Court from March of 1981 until June of 1988. Thanks to Laura Mickey, Deputy Clerk of the Wyoming Supreme Court, for providing the dates of Justice Brown's service.

3. WYO. STAT. § 5-1-106(a) (LexisNexis 2007).

4. *Id.*

5. Municipal Court judges are to "be appointed by the mayor with the consent of the council, and shall be qualified electors of the state . . . ." *Id.* at § 5-6-103

6. *Id.* at § 5-6-106(f)

7. *Id.*

8. ARIZ. CONST., art 6, § 39.

9. Gregory v. Ashcroft, 501 U.S. 452, 111 S. Ct. 2395 (1991).

10. *Id.* at 472, 111 S. Ct. at 2406.

11. *Id.* at 470-71, 111 S. Ct. at 2406.

12. *Id.* at 467, 111 S. Ct. at 2404.

13. *Id.* at 472, 111 S. Ct. at 2407.

14. *Id.* at 472, 111 S. Ct. at 2407.

15. *Id.*

16. Gregory v. Ashcroft, 591 U. S. at 473, 111 S. Ct. at 2407.

17. *Id.*

18. WYO. CONST., Art 5, § 3(f) (LexisNexis 2007).

19. *Id.*

20. WYO. STAT. § 5-6-109 (LexisNexis 2007).

21. *Id.* at § 5-6-104.

22. WYO. CONST. Art 5, § 1 (LexisNexis 2007).

23. WYO. STAT. § 5-9-101, et seq. (LexisNexis 2008).

24. *Id.* at § 5-6-101.

25. *Id.* at § 5-9-107.

26. *Id.* at § 5-3-102(b).

27. *Id.* This statutory grant of authority appears, at least arguably, to conflict with the Wyoming Constitution, which

provides that the Wyoming Supreme Court "shall have a general superintending control over all inferior courts" WYO. CONST., Art 5, § 2 (LexisNexis 2007).

28. Wyoming Supreme Court justices and District Court judges are specifically mentioned in the Wyoming Constitution. WYO. CONST., Art 5, § 4(b) (LexisNexis 2007). The same provision also includes judges "of such other courts that may be made subject to this provision by law." *Id.* Circuit Court judges are, by statute, selected the same way. WYO. STAT. § 5-9-110 (LexisNexis 2007) ("Judges of the circuit court shall be nonpartisan, shall be nominated and appointed and retained as provided by article 5, section 4, of the Wyoming Constitution,")

29. The Judicial Nominating Commission consists of seven persons. WYO. CONST. Art. 5, § 4(b) & (c) (LexisNexis 2007). The chair shall be the Chief Justice of the Wyoming Supreme Court. *Id.* at 4(c) Three members shall be "resident members" of the Wyoming bar, "engaged in active practice of law and elected by Wyoming bar. *Id.* The final three members shall be "electors" of the state who are appointed by the Governor. *Id.*

30. *Id.* at Art 5, § 4(b).

31. If you are not convinced of the superiority of Wyoming's system of selecting judges, read THE APPEAL, by John Grisham. That sordid (and best-selling) story of manipulating judicial elections to gain a desired result simply could not have happened in Wyoming.

32. Interestingly, when Associate Justice David Souter recently retired at age 69, he was one of the younger members of the Court. Five justices, John Paul Stevens (89), Ruth Bader Ginsburg (76), Antonin Scalia (73), Anthony Kennedy (73), and Stephen Breyer (70), are all older. In Wyoming, federal judges Clarence Brimmer (who has "retired" to senior status, though he still maintains a full docket) is 86, and Alan B.

- Johnson is 70. Both would have had to retire if they were on the Wyoming State District Court bench (where Judge Johnson formerly served).
33. Judge Johnson provided me the above information in a telephone conversation in August of this year.
  34. WYO CONST., Art. 5, § 6(e) (LexisNexis 2007).
  35. *Id.* at Art. 5, §6(a).
  36. *Id.* at Art 5, § 6(d).
  37. WYO. CODE OF JUDICIAL CONDUCT, Application I(A) (2009). Federal judges in Wyoming, and elsewhere, are “governed” by the Code of Conduct for United States Judges (“the U. S. Code”). The U. S. Code was adopted by the Judicial Conference of the United States. The U. S. Code “applies to United States circuit judges, district judges, Court of International Trade judges, Court of Federal Claims judges, bankruptcy judges, and magistrate judges.” Code of Conduct for United States Judges, Introduction. In other words, it appears to apply to all U. S. Judges other than Justices of the United States Supreme Court. The U. S. Code became effective on July 1 of this year (it was first adopted in 1973) *Id.* at fn. 1. The U. S. Code is available on-line.
  38. WYO. CONST. Art 5, § 6(g) (LexisNexis 2007).
  39. The new Code was the topic of the “Ethically Speaking” column which appeared in the August WYOMING LAWYER. See John M. Burman, Wyoming Supreme Court Adopts New Code of Judicial Conduct, Vol. 32, No 4, WYOMING LAWYER (August 2009)
  40. WYO. CONST. Art 5, § 6(f)(iv) (LexisNexis 2007).
  41. *Id.* at Art 5, § 6(e)(iv).
  42. The rules may be found in the “Court Rules” volume of the Wyoming Statutes.
  43. RULES GOVERNING THE COMMISSION ON JUDICIAL CONDUCT AND ETHICS, R. 1 (LexisNexis 2008)
  44. “The Canons state overarching principles of judicial ethics that all judges must observe. Although a judge may be disciplined only for violating a Rule, the Canons provide important guidance in interpreting the Rules.” WYO. CODE OF JUDICIAL CONDUCT, Scope [2] (2009).
  45. “The Rules of the Wyoming Code of Judicial Conduct are rules of reason that should be applied consistent with constitutional requirements, statutes, other court rules, and decisional law, and with due regard for all relevant circumstances. *Id.* at Scope [6].
  46. *Id.* at Rule 2.5(A).
  47. The comments “generally follow and explain each Rule.” *Id.* at Scope [1]. They “neither add to nor subtract from the binding obligations set forth in the Rules.” *Id.* at Scope [3].
  48. *Id.* at R. 2.5, cmt. [1].
  49. RULES GOVERNING THE COMMISSION ON JUDICIAL CONDUCT AND ETHICS, R. 12(a) (LexisNexis 2008).
  50. *Id.* at Rule 24(e).
  51. WYO. CONST. Art 5, § 6(e)(iii) (LexisNexis 2007).
  52. RULES GOVERNING THE COMMISSION ON JUDICIAL CONDUCT AND ETHICS, R. 2(l) (LexisNexis 2008).
  53. *Id.* at Rule 2(l)(2) (emphasis added).
  54. *Id.* at Rule 2(l)(4).
  55. *Id.* at Rule 2(g).
  56. *Id.* at Rule 24(f).
  57. Gregory v. Ashcroft, 501 U.S. at 471, 111 S. Ct. at 2407.
  58. *Id.* at 472, 111 S. Ct at 24407.
  59. Health and Retirement Study, Chapter 1, Copyright © 2009 The Regents of the University of Michigan. Available on-line at <http://hrsonline.isr.umich.edu/index.php?p=dbook> (Last checked August 28, 2009).
  60. *Id.*
  61. AARP: THE POLICY BOOK, Ch. 5, p. 7 (2009-2010).
  62. *Id.*
  63. The Honorable Michael Golden, Journey to the Pole: The Life and Times of Fred H. Blume, XXVIII LAND AND WATER L. REV. 511, 563 (1993).
  64. WYO. SESS. LAW. 1979, Ch. 39.
  65. *Id.* at § 1.
  66. Joanna M. Shepherd, Are Appointed Judges Strategic Too, 58 DUKE L.J. 1589, 1621 (2009) (“Thirty-seven states have mandatory retirement laws that compel judges to retire sometime between age seventy and seventy-five.”)
  67. Donna M. Gitter, Should the United States Designate Specialist Patent Trial Judges? An Empirical Analysis of H.R. 628 in Light of the English Experience and the Work of Professor Moore 10 COLUM. SCI. & TECH. L. REV. 169 185, fn. 84 (2009).
  68. JOHN G. WHITE III, IS 70 THE NEW 60?, 83 FLA. B.J. 8 (May 2009).
  69. *Id.* at 8.
  70. *Id.*
  71. While no rational basis is apparent to me, I have no doubt that Attorney General Salzberg and his staff would be more successful that I in defending the statute.
  72. See e.g. WYO. STAT. § 5-1-106(a) (LexisNexis 2007)

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