

Wyoming State Bar Board of Officers & Commissioners Meeting

April 21, 2017
Hampton Inn
Evanston, Wyoming

In Attendance: John A. Masterson, President; Robert C. Jarosh, President-Elect; Dawnessa A. Snyder, Vice President; Weston T. Graham, Treasurer; Kelly M. Neville, Second Judicial District Commissioner; Teresa S. Thybo, Third Judicial District Commissioner; Nicholas T. Haderlie, Fourth Judicial District Commissioner; James L. Edwards, Sixth Judicial District Commissioner; J. Kenneth Barbe, Seventh Judicial District Commissioner (by phone); Nathaniel S. Hibben, Eighth Judicial District Commissioner (by phone); Erika M. Nash, Ninth Judicial District Commissioner; Devon P. O'Connell, Immediate Past President; Jesse K. Fishman, Young Lawyers Section President (by phone); Sharon Wilkinson, Executive Director; Mark Gifford, Bar Counsel and Brandi Robinson, Lawyer Referral Service Coordinator

Absent: Melinda S. McCorkle, First Judicial District Commissioner and Bobbi D. Overfield, Fifth Judicial District Commissioner

Guests: Joan Evans – Wyoming Government Investment Fund
Angie Dorsch – Equal Justice Wyoming

President John Masterson called the meeting to order at 12:35 p.m.

Approval of Agenda

President Masterson asked if there were any additions to the agenda. Executive Director Wilkinson shared that Commissioner Edwards requested that a discussion about mandatory malpractice insurance be added to the agenda. She also requested that an action item be added to address the matter of the Bar matching the \$7,500 contribution from the U.S. District Court Attorney Admission Fund Committee for pro bono reimbursement. Commissioner Haderlie made a motion to approve the agenda as amended. Commissioner Nash seconded the motion. The motion carried unanimously.

Approval of Meeting Minutes

Commissioner Haderlie made a motion to approve the January 20, 2017, meeting minutes. Commissioner Edwards seconded the motion. The motion carried unanimously.

Executive Committee Meeting Minutes

President Masterson asked if anybody had any questions about the Executive Committee meeting minutes. There were no questions.

Admissions Report

President Masterson reported that the Board of Law Examiners (BLE), on which he serves, graded the February bar exam in Elk Mountain last month. They graded a total of 29 exams. He distributed the pass rates from the past 10 years and noted that the pass rate for the February 2017 exam was 52%. He shared that there has been national news coverage about this year's bar passage rates hitting an all-time low. President Masterson shared the BLE is going to grade the July exams in conjunction with this Board's meeting in August. We will perhaps have a joint dinner with the BLE.

Mandatory CLE

Executive Director Wilkinson reported that five lawyers were suspended for their failure to comply with the CLE Rules. These lawyers will have one year to cure the suspension to avoid the termination of their membership.

Office of Bar Counsel Report

Attorney Discipline

Mark Gifford shared that the Court approved a recommendation for a reciprocal discipline.

Fee Arbitration Program

Mark Gifford shared that the new Fee Arbitration Rules are working well. Mr. Gifford shared that he and the members of the Fee Arbitration Committee have recruited a good pool of lawyer and non-lawyer arbitrators. The first two in-person hearings were held under the new rules and all reports are that the parties are pleased with the new process. Tim Woznick, Shannon Howshar, and Mr. Gifford presented a live webinar training session for the arbitrators on March 30th and it was well received.

Unauthorized Practice of Law (UPL)

Mr. Gifford reported that the Razor City Realty UPL case was issued by the Supreme Court and has caused considerable chatter amongst realtors and lawyers who represent realtors.

Treasurer's Report

Treasurer Graham shared that the budget reflects that we are at 77% of our total projected income and we have spent 44.7% of our budgeted expenses. He noted that we are half-way through our fiscal year. Treasurer Graham shared that while we originally thought the IT expenses were going to be a set monthly amount, recent news from the Supreme Court may change that.

Commissioner Haderlie shared that he needed some guidance from this Board for the Energy & Natural Resources (ENR) Section. President Masterson recommended discussing that in "New Business."

Commissioner Edwards made a motion to accept the Treasurer's Report. Commissioner Haderlie seconded the motion. The motion carried unanimously.

Executive Session

President-Elect Jarosh made a motion to move into Executive Session to discuss a personnel issue. Vice President Snyder seconded the motion. The motion carried unanimously. Executive Session was convened at 1:02 p.m.

Executive Session was adjourned at 2:49 p.m.

Wyoming Government Investment Fund (WGIF)

Joan Evans, First Vice President for George K. Baum & Company and the Marketer for the Wyoming Government Investment Fund (WGIF), dialed into the meeting to discuss the Bar's opportunity to invest in the WGIF. She shared that the fund was created in 1996 and is exclusively for Wyoming public entities to help manage their funds. She explained that pooled money together has a higher potential earning than if you go out shopping on your own. WGIF has over 140 participants—BOCES, universities, school districts, city and county entities, etc. She walked the Board through all of the investment options.

Ms. Evans noted that an investment advisor is always available to answer questions and is accountable to the Board. She shared that 37 of the 48 school districts participate in the fund and find it a very useful tool.

Ms. Evans shared that in order for the Bar to be eligible, this Board would just need to pass a resolution to participate. President Masterson asked if there was a minimum required dollar amount. Ms. Evans clarified that there is no minimum amount to invest in the fund; however, if the Bar were interested in purchasing a CD, there is a minimum of \$100,000.

Ms. Evans shared that her role is to provide information about the fund and help get the Bar signed up. The next step would be the assignment of a fund manager in Pennsylvania, as those are the folks who are actually investing the money. She noted that there are several levels of people and resources to help.

Treasurer Graham inquired as to why WGIF uses US Bank. Ms. Evans shared that US Bank has been the custodian bank since its inception. She mentioned that if the Bar invested, the Board would receive monthly reports; however, she offered to report at any time. Ms. Evans left the call.

Treasurer Graham shared that we do not need any Board action today. He reminded the Board that he had asked Executive Director Wilkinson to bring some options before the Board for consideration and Ms. Evans' presentation today was a result of that. He thanked Executive Director Wilkinson for arranging this. Executive Director Wilkinson reminded the Board that she was also asked to look into WYOSTAR. She discovered that to be eligible for WYOSTAR, the organization has to be funded with taxpayers' money; therefore, the Bar is not eligible. Treasurer Graham shared that he has been trying to liquefy the Bar's assets a bit more and noted that we do not have as much in CDs as we have had in the past. He shared that he liked that WGIF has good variety in liquid assets and there are quarterly reports. Treasurer Graham shared that he would like to discuss the direction the Board wishes to invest its money at this year's Strategic Planning session.

Client Protection Fund Rules

Mark Gifford reminded the Board that it has already seen the proposed Client Protection Fund rules. The proposed rules went out for member comment and included in today's materials are the member comments received. Several improvements resulted from the members' comments. Mr. Gifford requested approval to submit the amended rules to the Supreme Court for adoption. Commissioner Edwards asked if there was a procedure for Bar Counsel or the Bar to attempt to recover from malpractice carriers when a lawyer has committed malpractice. Mr. Gifford explained about claimant's assignment of rights. Commissioner Nash noted that Wyoming is not a mandatory malpractice state. Commissioner Barbe asked if there was something that addresses a requirement to get an assignment of the claim when it is paid out. Mr. Gifford shared that Rule 10 (Restitution and Subrogation) addresses that.

Commissioner Edwards made a motion to submit the rules to the Supreme Court for adoption. Commissioner Nash seconded the motion. The motion carried unanimously.

Western States Bar Conference Report

President-Elect Jarosh shared that he felt the Western States Bar Conference (WSBC) was a very valuable conference. He talked about some of the CLE programs they attended. Commissioner Nash shared that she felt the 2015 conference was better than this year's. She liked discussion about the connectivity of the states. All agreed that Eric Jones, WSBC President, was welcoming and did a great job. Past President O'Connell shared that the discussion about the mandatory malpractice insurance was interesting and worth discussing with the Board.

West Edge Collective Update

Executive Director Wilkinson provided an update regarding the progress being made on the Bar's new website and membership database. She shared that she learned from the Court Administrator in March that the Supreme Court would no longer house the Bar's membership data or website. As a result, she began looking for alternative hosts. Executive Director Wilkinson shared that there have been some ongoing problems with the Bar's website that the Court is struggling to address. As a result, she shared the issue with the Executive Committee and received direction to move the data sooner versus later. She reported that these issues have resulted in a delay in the launch of the Bar's new website although West Edge Collective is right on schedule. She has had numerous discussions with the representatives from West Edge Collective, and all involved are on the same page about waiting to launch the new website once the data has been migrated away from the Court's servers.

Diversity & Inclusion Committee Update

President Masterson directed the Board's attention to the memo provided by Maribeth Galvan, Chair of the Diversity & Inclusion Committee. He asked if there were any questions. Executive Director Wilkinson inquired as to the bimonthly meetings discussed in the memo and asked Brandi Robinson who staffs this committee if she was following up on those to get them scheduled. Ms. Robinson indicated that she was.

Bar Member Survey

Executive Director Wilkinson shared that she worked with the staff to put together a proposed Bar Member Survey. She shared that her goal is to distribute the survey to the membership around the first of May and leave it open for the month of May. Results would be tabulated and shared with the Board of Officers & Commissioners and the staff prior to the June Strategic Planning. She took the proposed survey to the Executive Committee, and that discussion resulted in some revisions. Executive Director Wilkinson shared that what was before the Board today was the final survey being proposed.

There was some discussion about adding some questions to the survey regarding mandatory malpractice insurance. Executive Director Wilkinson shared that those questions were removed from the survey years ago. After discussion, Executive Director Wilkinson was directed to add the mandatory malpractice insurance questions previously asked to the 2017 survey.

Treasurer Graham made a motion to approve the Bar Member Survey. Commissioner Neville seconded the motion. The motion carried unanimously.

Executive Session

Commissioner Edwards made a motion to go into Executive Session. Vice President Snyder seconded the motion. The motion carried unanimously. Executive Session convened at 3:53 p.m.

Executive Session adjourned at 3:57 p.m.

Legal Services Corporation Funding

Angie Dorsch, Executive Director of Equal Justice Wyoming, joined the call to discuss the concern that Legal Services Corporation (LSC) funding could potentially be eliminated. Ms. Dorsch thanked the Board for its support of the effort to prevent this from happening.

Ms. Dorsch reported that Legal Aid of Wyoming is the legal services provider in Wyoming. LSC makes up about 29% of all legal services funding in our state. She shared that if there was a loss in LSC funding, it would be so difficult for our state to replace that funding. Ms. Dorsch reported that Wyoming is in the same position as other states. She and her board will try to maintain and increase funding for legal services. She reported that there are other substantial streams of funding that are not currently being targeted for legal services. There is a group actively working on these issues.

Ms. Dorsch reported that she received many letters from stakeholders to include in a packet to send to Wyoming's Congressional Delegation. She is also part of a group from Wyoming who will be traveling to Washington D.C. next week for ABA Day. The group is scheduled to meet with Wyoming's Congressional Delegation. Ms. Dorsch reported that she does not see this as a political issue—it is an access to justice issue.

Treasurer Graham asked Ms. Dorsch if anybody was putting together a list of the impacts on Wyoming if the funding cuts take place. Ms. Dorsch reported that she has heard that Legal Aid

of Wyoming would have to cut half of its staff. Legal Aid of Wyoming is looking at ways to make cuts before staff cuts.

Young Lawyers Section

Commissioner Edwards made a motion to accept the resignation of Jesse Fishman from her position as President of the Young Lawyers Section. Commissioner Thybo seconded the motion. The motion carried unanimously.

New/Amended Rules

Mark Gifford directed the Board's attention to the amended rules for the Lawyer Referral Service. He discussed how outdated the rules are. Mr. Gifford reported that the Modest Means Program (MMP) was launched in 2015. To date there are 78 lawyers signed up for the program and 95 citizens have been matched with an attorney. Mr. Gifford requested approval to put the amended Lawyer Referral Service rules and the new Modest Means Program rules out to the membership for comment.

Brandi Robinson, Lawyer Referral Service Coordinator and Modest Means Program Coordinator, shared that she wants some backup should an issue arise, and these rules provide that. She is seeing trends around the country with attorney discipline increasing. She reported that with the MMP there have been a few calls where there are some informal, in-house procedures that she would like to have in writing.

President-Elect Jarosh made a motion to put both sets of rules out for member comment. Commissioner Nash seconded the motion. The motion carried unanimously.

Young Lawyers Section Bylaws

Commissioner Haderlie shared that he did not think the Board should take any action on the Young Lawyers Section Bylaws considering nobody from the section was present to advocate for them. He would like to see a committee be formed to develop uniform bylaws for all sections.

ABA Pro Bono Survey Distribution on Behalf of Equal Justice Wyoming

Executive Director Wilkinson shared with the Board that the Executive Committee had denied a request from Equal Justice Wyoming to distribute an American Bar Association-sanctioned pro bono survey to the membership. Despite the decision, the Supreme Court directed Executive Director Wilkinson to distribute the survey on behalf of Equal Justice Wyoming.

Funds from Estate Planning Division

Executive Director Wilkinson directed the Board's attention to a letter she received from a member of the Bar who was involved in the creation of the Estate Planning Section of the Bar years ago. Several members contributed money to get the section off the ground and then there was no known activity. Years later, this member closed the account where this money was deposited and sent it to the Bar. Executive Director Wilkinson asked for direction on what to do with the funds. She shared that there is currently an Estate Planning, Trust & Probate Section, but it is not active. She wondered if allocating these funds to this section could give the members an incentive to use it for a CLE program or something of their choosing.

Commissioner Nash made a motion to deposit/earmark the funds in the Estate Planning, Trust and Probate Section's budget account (5409). Treasurer Graham seconded the motion. The motion carried unanimously.

Solo Practice University

Executive Director Wilkinson shared that she had been approached by a new member of the Bar encouraging the Bar to consider offering Solo Practice University (SPU) as a member benefit. She directed the Board's attention to the information sheet she provided. She walked the Board through some of the offerings and mentioned that she learned that other bar associations shy away from offering SPU as a member benefit simply because of SPU's free, unlimited CLE offerings. She learned that other bar associations are concerned that an offer such as this would greatly impact their own CLE revenue. Executive Director Wilkinson discussed this at length with Marie Ellis, CLE Director, and Ms. Ellis does not have this concern in light of the significant amount of free CLE the Bar is currently offering. Executive Director Wilkinson also reported that the free, unlimited CLE offered by SPU would only be self-study, and there is currently a limit of six hours per calendar on that type of CLE.

Treasurer Graham shared that Executive Director Wilkinson sent the information to him for his review. He spent some time on the website, and he was impressed. He noted that there are a lot of offerings. Treasurer Graham highly recommended the Bar add Solo Practice University as a member benefit. He thinks it would be well worth it. President Masterson asked if there was a free trial period. Executive Director Wilkinson reported that there is not.

Commissioner Haderlie asked what Marie Ellis thought of the quality of the CLE programs. He shared that he is not in favor of the Bar offering it as a member benefit. Like other member benefits, he does not agree with the Bar putting its name on certain services and products. Executive Director Wilkinson reported that both Ms. Ellis and Mark Gifford were impressed with the quality and variety of the CLE offerings.

Treasurer Graham made a motion to adopt Solo Practice University as a new member benefit and enter into an agreement. Commissioner Edwards seconded the motion. Commissioner Haderlie inquired as to whether or not there was a process put in place for the Board to renew these yearly member benefit contracts. Executive Director Wilkinson indicated that the Board has not been involved in that in the past; she simply shares each renewal contract with Bar Counsel for his review. President Masterson shared that he thinks the Board should be involved with that. Commissioner Haderlie wondered about doing a general review each year with the member benefit offerings that use the Bar's logo. Executive Director Wilkinson offered to put a process in place where she will not only share renewal contracts but she will share the revenue reports she receives. She feels this should best be dealt with in each year's August meeting. The motion carried.

Energy & Natural Resources (ENR) Section Budget

Commissioner Haderlie, who is a Past President of the ENR Section and a current member of the section, shared that it was his idea to have the first ENR Section Summit last July in Casper. He reported that the section leaders are planning the second annual ENR Section Summit for

this June and there is a desire to host this annually. This year's Summit includes CLE, dinner, fly fishing and golf.

Commissioner Haderlie reported that the deposits required for this event have resulted in the ENR Section exceeding its budget for this fiscal year. He recommended that the Summit be budgeted for separately next year instead of being included in the section budget.

Treasurer Graham reminded the Board that all of these separate budgets are not separate piles of money. Executive Director Wilkinson shared that she is also aware of this, and while the President of the ENR Section is very concerned about this, she is not. She shared that this Summit is a unique, affordable offering for the membership and there is a registration fee associated with it. If the section exceeds its budget this year, she will recommend that it budget more in the next fiscal year.

President's Report

President Masterson reported that the CLE for Annual Meeting looks good thanks to Billie Addleman, CLE Committee Chair.

President Masterson asked Executive Director Wilkinson if the Bar pays for alcohol for any sections. She reported that the only section for which the Bar pays for alcohol is the Young Lawyers Section—kegs at tailgate party and some of its networking events. President Masterson asked if anybody was concerned about this. Mark Gifford shared that he is quite concerned about the Bar buying alcohol without some limitation, such as the drink tickets that are given for the Welcome Reception at Annual Meeting, and he would favor no longer hosting the hospitality suite during Annual Meeting. After much discussion, President Masterson asked for this topic to be included on the agenda for the June Strategic Planning. Executive Director Wilkinson was also directed to inquire about this issue on her Executive Directors' list serve.

President-Elect's Report

President-Elect Jarosh reported that he attended the Bar Leadership Institute in Chicago in March and felt that it was a great conference.

Vice President's Report

Vice President Snyder reported that she and Mark Gifford presented a CLE on social media that will also be repeated at Annual Meeting.

Mandatory Malpractice Insurance

Commissioner Edwards shared that he attended a session on mandatory malpractice insurance at the Western States Bar Conference (WSBC). He felt it provided a great overview of how other states deal with this issue. He shared that he feels that part of the Bar's mission is to protect the public. Commissioner Edwards reported that following WSBC, he put out an inquiry to his constituents about their feelings about mandatory malpractice insurance. Of the comments he received, all were in favor of requiring malpractice insurance because of the risk to the public. Commissioner Edwards thinks now is the time for the Board to discuss this to see what the Bar's position should be on this topic. He shared that perhaps it should not be mandatory as government attorneys do not need malpractice insurance.

Treasurer Graham shared that Wyoming just relaxed its attorney advertising rules because they were impossible to enforce. He wondered if this was a similar issue. Treasurer Graham suggested talking to ALPS to get a feel for what the plan would look like. Commissioner Haderlie wondered if we should get some feedback from the Court.

President-Elect Jarosh shared that he appreciated Commissioner Edward's comments about the public protection side of things. He wondered if there is research out there that says the public prefers hiring attorneys with malpractice insurance. Brandi Robinson shared that during the calls she takes through the Lawyer Referral Service callers are very surprised to learn that malpractice insurance is not a requirement for all practicing attorneys in Wyoming.

Mark Gifford shared that this Board considered implementing mandatory malpractice insurance in 1994 and the issue was raised again in 1995. He can find no evidence that the issue has been raised since. Executive Director Wilkinson shared that she has been attending Board meetings for 15 years, and she doesn't recall this issue ever being discussed other than simply commenting on the results of the Bar Member Survey.

Executive Director's Report

Matching Funds Request for Pro Bono Reimbursement

Executive Director Wilkinson reminded the Board that during its January meeting, there was a unanimous vote to approach the U.S. District Court Attorney Admission Fund Committee to see if it would match up to \$7,500 of Bar funds for the purpose of pro bono reimbursement for members. She reported that the Committee approved that request and the Bar has already received the money. Executive Director Wilkinson shared that the Bar had transferred \$5,000 from its savings account to the pro bono reimbursement account in March as the balance in the account was low. She requested Board approval to put an additional \$2,500 in that account to match the Committee's contribution.

Commissioner Haderlie made a motion to put an additional \$2,500 of Bar funds into the pro bono reimbursement account. Commissioner Nash seconded the motion. The motion carried unanimously.

Clio Update

Executive Director Wilkinson reminded the Board that it gave her direction to negotiate a contract with Clio and come back and get Executive Committee approval. She reported that she accomplished that and has signed the contract. The Bar is now offering Clio as a member benefit.

Bankruptcy & Creditors Rights Section Bylaws

Executive Director Wilkinson reminded the Board that it had recommended a minor change to the Bankruptcy & Creditors Rights Section Bylaws. She proposed that change to the President of the Section, and the change was approved. The Bylaws are now in effect.

CLE at SEA

Executive Director Wilkinson reported that she and Marie Ellis, CLE Director, are working on an exciting new offering for the membership. They are working with a company called Carrousel Travel to plan a CLE cruise in March 2018. Executive Director Wilkinson walked the Board through all details of the trip to include cost to members, cost to the Bar, CLE offerings, etc. She shared that there would be a “save the date” e-mail going out soon as the cruise website was being finalized.

Committee Liaison Reports

Bench Bar Relations Committee—Treasurer Graham briefly discussed possibly a different approach in order to get this committee active. He wondered if involving the judiciary on the front end instead of the committee would be effective. There was discussion about younger judges being appointed to the committee, so that might make a difference.

Civil Pattern Jury Instructions—President-Elect Jarosh reported that there have been a couple of updates to the instructions that should be available soon.

Clients’ Security Fund—Treasurer Graham referred the Board to Tab 4 in the Board notebook and Mark Gifford’s report about this. He encouraged discussion at some point to determine a way to fund this in the long term. This will be discussed at Strategic Planning.

Criminal Pattern Jury Instructions—Vice President Snyder reported that the committee is meeting monthly to look into the outdated instructions. They had two appellate attorneys get involved in the process.

Legislative Developments Committee—Past President O’Connell reported that this committee monitors legislation carefully. She reminded the Board that the sales tax on legal services bill died its own death. She shared that she wishes that committee would distribute legislative updates to the membership during the session.

Permanent Rules Advisory Committee – Civil Division—no report

President Masterson adjourned the meeting at 5:47 p.m. on Friday, April 21, 2017.

Minutes Submitted by:

Sharon Wilkinson
Executive Director