

Wyoming State Bar Board of Officers & Commissioners Meeting

April 27, 2018
Spring Creek Ranch
Jackson, Wyoming

- In Attendance:** Robert C. Jarosh, President; Weston T. Graham, President-Elect; Erika M. Nash, Vice President; J. Kenneth Barbe, Treasurer; Melinda S. McCorkle, First Judicial District Commissioner (by phone); Kelly M. Neville, Second Judicial District Commissioner; Teresa S. Thybo, Third Judicial District Commissioner; Jeremy K. Kisling, Fourth Judicial District Commissioner (by phone); R. Scott Kath, Fifth Judicial District Commissioner; James L. Edwards, Sixth Judicial District Commissioner; Charles S. Chapin, Seventh Judicial District Commissioner; Nathaniel S. Hibben, Eighth Judicial District Commissioner (by phone); James T. Whiting, Ninth Judicial District Commissioner; Sharon Wilkinson, Executive Director and Mark Gifford, Bar Counsel
- Absent:** John A. Masterson, Immediate Past President and Holli J. Welch, Young Lawyers Section Chair
- Guests:** Sheila Davis, Clinical Nurse Specialist
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President Rob Jarosh called the meeting to order at 1:22 p.m. on Friday, April 27, 2018.

Training on Suicide Indicators

President Jarosh shared that Commissioner McCorkle recommended inviting Sheila Davis, Clinical Nurse Specialist, to present to the Board on suicide indicators. Commissioner McCorkle shared that she learned about the presentation through Protection & Advocacy and felt it was important for Board members to have the training considering the troubling statistics with suicide in the legal profession. Ms. Davis provided a 25-minute presentation and fielded questions from the Board members.

Approval of Agenda

Commissioner Kath made a motion to approve the meeting agenda. Treasurer Barbe seconded the motion. The motion carried unanimously.

Approval of Minutes

Vice President Nash made a motion to approve the January 26, 2018, meeting minutes. Commissioner Thybo seconded the motion. The motion carried unanimously.

Treasurer's Report

Treasurer Barbe reported that we are half-way through the fiscal year and doing quite well. He pointed out some highlights including the fact that we have already hit our projected income for license fees, and we will still continue to admit members throughout the remainder of the fiscal year. He also pointed out that we continue to lose money on the Bar Directory. Treasurer Barbe reminded the Board that the building remodel was not budgeted for; however, it should not have a significant impact on the Bar's income statement as expenditures associated with the remodeling project will likely be capitalized for purposes of financial reporting.

Executive Director Wilkinson brought the Board's attention to a few line items in the Office of Bar Counsel budget that she knows we will exceed the budgeted amount. Special Bar Counsel is one line item due to one particular lawyer in which Mark Gifford has a conflict. The other is for Board of Professional Responsibility hearing expenses due to the fact that there are two weeks of hearing scheduled prior to the end of the fiscal year.

Treasurer Barbe also pointed out the "deferred outflows and inflows" on the balance sheet and reminded the Board that these are due to the deferred pension liability we must report as a contingent liability.

Commissioner Edwards made a motion to accept the Treasurer's report. Vice President Nash seconded the motion. The motion carried unanimously.

Investment Committee Report

President Jarosh reported that we entered into formal contract with RBC Wealth Management to serve as our investment consultant. We have funded the accounts and received our first monthly report.

Admissions

Mark Gifford, Bar Counsel reported that he, other members of the staff, members of the Board of Law Examiners and members of the Character & Fitness Committee recently attended the National Conference of Bar Examiners (NCBE) annual meeting in Philadelphia. He shared that a few years ago when returning from this conference, all agreed that there was much to do to improve Wyoming's admission process and procedures. Now he is happy to report that the system is much improved and Wyoming and both volunteer boards are functioning at a very high level. He shared that the Character & Fitness Committee had its first hearing which resulted in a recommendation to deny admission to an applicant. He feels this is a significant move forward in that the process truly functions to protect the public.

Mr. Gifford shared that he has been invited to be a part of a task force that is rewriting the Multi-State Professional Responsibility Exam (MPRE). He will travel all expenses paid to Madison, Wisconsin, in a few weeks. The NCBE's goal is to revamp the test to make it more computer-friendly.

Executive Director Sharon Wilkinson reported that the Bar will administer the exam to 75 applicants in July, which will be Cathy Duncil's largest administration since Wyoming implemented the Uniform Bar Exam in 2013.

Mark Gifford shared that the Bar was successful in getting some legislation changed during the last session which removes the specific number of members serving on the Board of Law Examiners and also remove the term limits for that Board. The new legislation puts the power in the Court's hands to implement rules governing those issues.

Mandatory Continuing Legal Education (CLE)

Executive Director Wilkinson reported that the Court suspended four lawyers last week for failure to comply with their CLE requirements. Those attorneys will have to come into compliance with the Bar and then petition the Supreme Court for reinstatement. She reported that the Court also terminated five members last week as a result of these members never curing their 2016 CLE suspension and/or petitioning the Court for reinstatement.

Office of Bar Counsel

Attorney Discipline

Mark Gifford reported an increase in lawyer discipline that is really a strain on the Bar's resources. He reported that there are two cases in which he had to recuse himself. As a result, Don Schultz is handling those cases as Special Bar Counsel—he will have two back-to-back hearings in June. Mr. Gifford reported that the Board of Professional Responsibility (BPR) has undergone a significant change in composition—Judge Donnell and Chris Hawks are new to the BPR. He reported that there are currently three matters before the Wyoming Supreme Court, which is the most he has had since he took the Bar Counsel position in 2011.

Mr. Gifford reported that while busy, things are functioning very well. He echoed Executive Director Wilkinson's comments about exceeding the budgeted amount for Special Bar Counsel and explained why this will be necessary. President Jarosh inquired as to whether or not Mr. Gifford foresees a potential down the road that the BPR will be spread so thin, we may need to consider making it a larger group. Mr. Gifford shared that the BPR has considered that but did not want to give up the uniformity of the group and its decisions. This year will give Mr. Gifford an opportunity to revisit this with the BPR and consider potentially 11 or 12 people on the BPR.

Fee Arbitration

Mark Gifford reported that the fee arbitration program is a year and a half into the new and improved process, which involves having in-person (rather than telephone) hearings, and things are working very well. He reported that he just received the first significant decision out of an arbitration panel—19 pages of findings. He shared that the chair of the panel is a lawyer from Jackson who reported that he put in 40 hours on this particular case. Mr. Gifford reported that so far in the panel decisions, the parties have been content to live with the arbitrator's findings. However, last month, the Court

issued a review decision on a case that was tried under the old system. Mr. Gifford reported that the Court affirmed what was done by the Fee Arbitration Committee.

Unauthorized Practice of Law (UPL)

Mark Gifford reported that in the majority of UPL cases, he issues a cease and desist letter and will hear back from the person(s) with an apology and an indication that the behavior will stop. He reported that one man has been filing pleadings in District Court in northern Wyoming. Mr. Gifford sent the standard cease and desist letter, but this man sued Mr. Gifford in federal court alleging violation of his civil rights. Fortunately, Judge Johnson issued a dismissal order last week.

Client Protection Fund

Mark Gifford reported that his office is still attempting to pay \$15,900 owed to one claimant after this Board approved that action in its November meeting. He reported that there are two additional claims totaling \$25,000 that we will pay this year.

Section Discontinuance

Executive Director Wilkinson reminded the Board of her efforts to get all sections active with leadership in place. As a result of the Board's decision at the January meeting, Executive Director Wilkinson put notice out to the Administrative Law Section, Disability & Elder Law Section, Federal Bar Section, Health Law Section and the Taxation Section that the Board was considering discontinuing these sections and inviting members to share any comments. Executive Director Wilkinson directed the Board's attention to the comments that were received. After discussion, Executive Director Wilkinson recommended discontinuing the following sections:

1. Administrative Law
2. Health Law
3. Taxation

She recommended combining the Estate Planning, Trust & Probate Section with the Disability & Elder Law Section, and recommended continuing with the Federal Bar Section as a result of Nick Murdock's letter to the Board and his recruitment of volunteer leaders.

Commissioner Whiting made a motion to accept Executive Director Wilkinson's recommendations. Commissioner Neville seconded the motion.

Mark Gifford recommended making the dissolution of the sections effective October 1, 2018, which is the first day of the fiscal year.

Commissioner Whiting amended his motion to dissolve the sections effective October 1, 2018. President-Elect Graham recommended providing notice to these section members on September 1st. Commissioner Thybo seconded Commissioner Whiting's amended motion.

President Jarosh noted that the first motion is to dissolve the Administrative Law, Health Law and Taxation sections effective the end of the current fiscal year and asked for a vote. The motion carried unanimously.

President Jarosh noted that the second motion is to combine the Estate Planning, Trust & Probate Section with the Disability & Elder Law Section and asked for a vote. The motion carried unanimously.

All were in agreement to continue the Federal Bar Section.

Commissioner Edwards made a motion to dissolve the sections at the end of the fiscal year so we don't have to give any refunds. Commissioner Chapin agreed to give section members notification, but felt that if any ask for a refund, the Bar should issue a refund. Treasurer Barbe seconded the motion. The motion carried.

Strategic Plan Update

Member Benefits & Services Booklet *(Goal 1: Objective 1.1)*

Executive Director Wilkinson reported that she has completed the design of a new Member Benefits & Services booklet that will be distributed to the membership. She reminded the Board that this is a result of the membership needing to be better informed of all member benefits and services provided by the Bar. She reported that after the initial mailing, the booklet will be shared with new members as they are admitted.

Bar Leadership Institute (BLI) *(Goal 1: Objective 1.2)*

Executive Director Wilkinson walked the Board through her efforts to plan the inaugural Bar Leadership Institute. It was to be held in Casper April 13 – 14th; however, only eight people registered. She and President-Elect Graham had a long discussion about the program and eventually determined that cancelling the program was the best option. She reported that she is considering putting together some sort of leadership training to be held during Annual Meeting.

Vice President Nash shared that the Board spent a significant amount of time at Strategic Planning to develop these goals as a collective group, and she thinks it is a shame that the event was cancelled. She wondered if the Bar should consider making a real concerted effort to seek input from the members prior to Strategic Planning. Executive Director Wilkinson reminded Ms. Nash that the Bar conducts the Bar Member Survey each spring prior to Strategic Planning for that very purpose. The staff also prepares a “take aways” report for the Board in order to pull out the common themes from the survey.

Mark Gifford shared that any new initiative requires staffing. He reported that the reasons the sections are functioning so well is that Executive Director Wilkinson is

having monthly conference calls with each section. He feels that we are headed towards a new employee designated to Bar benefits and services.

Building Renovation (*Goal 3: Objective 3.1*)

Executive Director Wilkinson reported that construction is coming along nicely at the Bar building. The majority of the staff is displaced but are being good sports about the cramped quarters, the noise and the inconvenience.

New Membership Database Update

Executive Director Wilkinson reported that West Edge Collective is making progress on the Bar's new membership database, and the launch is scheduled for mid-May. She shared that after launch, there will be some enhanced features on the Bar's website.

Member Comments to Proposed Bylaws Amendments

Mark Gifford reported that the genesis of the proposed amendments came from Executive Director Wilkinson's concerns about new members requesting Emeritus status simply to avoid paying a license fee and not providing any pro bono work in Wyoming. Mr. Gifford walked the Board through the current Emeritus members and noted that we would like to plug that loophole so those members are required to pay a license fee. He also referred the Board to the one member comment that was received. After discussion, Mr. Gifford requested that the Board approve his submitting the proposed amendments to the Bylaws to the Wyoming Supreme Court for adoption.

Commissioner Edwards made a motion to approve the proposed amendments and submit them to the Supreme Court for adoption. Commissioner Whiting seconded the motion. The motion carried unanimously.

Report on Western States Bar Conference

Commissioner Neville reported that the conference was worthwhile. She reported on a few of the programs she enjoyed, including one on the military spouse rule. Executive Director Wilkinson reported that President-Elect Graham was approached at Bar Leadership Institute in Chicago about that rule. As a result, President-Elect Graham joined a call with the Board of Law Examiners (BLE) to pitch the idea. Executive Director Wilkinson shared that the BLE is in favor of a rule that Mark Gifford drafted but wanted feedback from all members of the BLE. She reported that if it is approved by the BLE, it will be sent to the Supreme Court for adoption.

Commissioner Edwards shared his take on some of the programs and felt that his take-away was that Wyoming seems to be ahead of the curve on many issues. President Jarosh agreed, adding that all concerns and challenges discussed in the breakfast break-out sessions were issues we have already tackled or are not dealing with because Wyoming is ahead of the game.

Legislative Update

Mark Gifford again reported on the amendment to the composition and term limits of the Board of Law Examiners. He mentioned a few other changes related to what the Character &

Fitness Committee can inquire into about criminal backgrounds, but noted that it was nothing significant.

President's Report

President Jarosh reported that we still have not received a response from the United States Supreme Court in regard to our invitation to Justice Kennedy to deliver this year's Annual Banquet keynote. He reminded the Board that Ed Hochuli, retired NFL referee and lawyer, is our back-up.

President Jarosh reported that the Bar received a letter from the State Auditor's Office notifying it that the Bar must function as a state agency and transition its accounting system to the State's system. He reported that there have been several meetings with the Court and other representatives from the state to work our way through this issue. He shared that Mark Gifford has been tasked by Chief Justice Burke to put together a response to the State Auditor explaining to the extent that we are a state agency, what that means or does not mean. President Jarosh reported that we will continue to work with the Supreme Court to determine whether any significant changes will come of this.

President-Elect's Report

President-Elect Graham reported that Bar Leadership Institute (BLI) in Chicago is probably the best conference he has ever been to in regard to Bar leadership. He shared that it also provides ample opportunity to spend time with the Executive Director to plan for one's year as president.

Young Lawyers Report

In Holli Welch's absence, Executive Director Wilkinson reported that the ABA YLD Mountain West Regional States Summit seemed to be a great success with over 50 registrants. She also shared that she had just received word that the Young Lawyers Section has been selected as an "Affiliate Star" for this quarter due to the regional summit.

Board/Committee Liaison Reports

- **Bench-Bar Relations Committee** – no report
- **Civil Pattern Jury Instructions Committee** – Commissioner McCorkle reported that there was a meeting on April 14th to go over four jury instructions. There should be a new instruction coming out soon. She reported on the other instructions they reviewed.
- **Criminal Pattern Jury Instructions Committee** – Commissioner Kisling reported that the committee made assignments about who is looking at which instruction. New legislative assignments have also been looked at. There is also an in-person meeting in Cheyenne on July 13th to review.
- **Diversity & Inclusion Committee** – no report
- **Juvenile Pattern Jury Instructions Committee** – Commissioner Whiting reported that he reached out to the chair of the committee and she indicated that she plans to get a meeting scheduled for this summer.

- **Law School Liaison Committee** – no report
- **Legislative Developments Committee** – given earlier
- **Permanent Rules Advisory Committee – Civil Division** – Commissioner Edwards reported that as people get more used to the new rules, they have discovered a few problems. He encouraged anybody who runs into problems to contact him or Justice Fox so they can work through them.

President Rob Jarosh adjourned the meeting at 4:41 p.m.

Minutes Submitted by:

Sharon Wilkinson
Executive Director