

Wyoming State Bar Board of Officers & Commissioners Meeting

April 26, 2019
The Inn at Lander
Lander, Wyoming

In Attendance: Weston T. Graham, President; Nathaniel S. Hibben, President-Elect; Billie LM Addleman, Vice President; J. Kenneth Barbe, Treasurer; Melinda S. McCorkle, First Judicial District Commissioner; Kelly M. Neville, Second Judicial District Commissioner; Teresa S. Thybo, Third Judicial District Commissioner; Jeremy K. Kisling, Fourth Judicial District Commissioner; R. Scott Kath, Fifth Judicial District Commissioner; James L. Edwards, Sixth Judicial District Commissioner; Charles S. Chapin, Seventh Judicial District Commissioner; Shawn G. Wilde, Eighth Judicial District Commissioner; James T. Whiting, Ninth Judicial District Commissioner; Marion F. Marchetti, Young Lawyers Section Chair; Sharon Wilkinson, Executive Director and Mark W. Gifford, Bar Counsel

Absent: Robert C. Jarosh, Immediate Past President

Guests: Rhett Raha, Flood Marketing and Brett Riley, Flood Marketing

President Weston T. Graham called the meeting to order at 12:35 p.m. on Friday, April 26, 2019.

Approval of Agenda

Executive Director Wilkinson shared that the staff had recently discovered the need for some changes to the Pro Hac Vice rule and asked for that discussion to be added to the agenda.

Commissioner Neville made a motion to approve the agenda with the added discussion item. Commissioner McCorkle seconded the motion. The motion carried unanimously.

Approval of the Minutes

Commissioner Kisling made a motion to approve the minutes from the January meeting as well as the March conference call. Commissioner Edwards seconded the motion. The motion carried unanimously.

Executive Committee Meeting Minutes

President Graham directed the Board's attention to the meeting minutes from the Executive Committee's conference calls and offered to answer any questions. There were none.

Treasurer's Report

Treasurer Barbe directed the Board's attention to the Cash/Cash Equivalents on Hand report as well as the Dashboard report. He reported that we have just under \$1.5 million cash on hand

and he is pleased to see our investments doing well. Mark Gifford mentioned how encouraging this is considering how volatile the market has been. Treasurer Barbe referred to the balance sheet and noted that our assets exceed liabilities, which is good.

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

Admissions Report

Mark Gifford reported that the pass rate on the February bar exam was 50%, which is the lowest it has been in Wyoming. Mr. Gifford reported that he continues to see the benefits of the new character and fitness process that was implemented a few years ago. While we are encountering some interesting situations, the Board of Law Examiners and the Character and Fitness Committee are in agreement that things are working very smoothly. Executive Director Wilkinson reported that there are 64 applicants signed up to take the July bar exam; however, those February applicants who failed have until May 1st to apply.

Mark Gifford shared that we are starting to see an increase in special testing accommodation requests. He reported that many of these applicants have received testing accommodations dating back to grade school. He provided a summary of the process the Bar takes in determining whether or not these requests should be granted and was pleased to report that we have a psychologist involved to screen these requests prior to the Board of Law Examiners making its final determination.

Mandatory Continuing Legal Education (CLE)

Executive Director Wilkinson reported that there were four members who were suspended last April for failure to complete their 2017 CLE requirements. These four members never cured their suspension or petitioned the Court for reinstatement, so those four members have been terminated. She also reported that the Court recently suspended five members for failure to comply with their 2018 CLE requirements. Those members will have one year to cure the suspension and petition the Court for reinstatement.

Office of Bar Counsel

Attorney Discipline—Mark Gifford presented the 2018 disciplinary recap and reported that he has received an average number of complaints. He reported that he currently has 54 matters under investigation. He shared that while this number seems high, it is fairly typical.

Fee Arbitration—Mr. Gifford reported that we are now 2 ½ years into the new fee arbitration process. He shared that Cheyenne lawyer Tim Woznick serves as the Chair of that committee and he does a great job. He feels that everything is running smoothly.

Unauthorized Practice of Law (UPL)—Mr. Gifford reported that he is starting to see more traffic in this area. He is currently working on four UPL matters and reported that one involves a retired physician who has been drafting trust agreements. Mr. Gifford has proposed that the respondent reimburse an estate for the cost of clearing a cloud on title to some property that

resulted from these activities. The respondent has until next week to respond to the proposal. If he does not agree, the UPL Committee will have its first hearing under the revised rules.

Client Protection Fund—Mr. Gifford reported that things remain steady and he feels that this board has allocated sufficient funds.

Wyoming Law Review Article

Mr. Gifford reminded the Board that as a result of an issue last year that caused him to do a major research project about the history of the Bar, he decided to extend the research and submit an article about the history of lawyer regulation for publication to the Wyoming Law Review. He was pleased that it was accepted.

Member Comments to Proposed Amendments to Rules of Professional Conduct and Rules of Disciplinary Procedure

Mark Gifford shared that the proposed changes to the Rules of Professional Conduct as well as the Rules of Disciplinary Procedure were out for member comment for two months. He reported that following the close of the reporting period, he and Melinda McCorkle met to review the comments and make changes based on those comments as well as some of Ms. McCorkle's concerns. Those amendments were then shared with the Board of Professional Responsibility (BPR) and the Review and Oversight Committee (ROC). Mr. Gifford discussed some of the most significant changes that resulted from a conference call with both groups. Mr. Gifford asked the Board for approval to advance these proposed amendments to the Wyoming Supreme Court for adoption.

President Graham shared that he was pleased to see the inclusion of a file retention policy and wondered if the Bar could put together a marketing piece about that so members could readily access it. Executive Director Wilkinson said she would be happy to do that.

Commissioner Edwards made a motion to approve the proposed amendments to the Rules of Professional Conduct and submit them to the Wyoming Supreme Court with a recommendation for adoption. Commissioner Chapin seconded the motion. The motion carried unanimously.

Mark Gifford provided an overview of the proposed amendments to the Rules of Disciplinary Procedure. He reminded the Board that a few years ago, the Court rejected a proposed change to make disciplinary matters public on the filing of a formal charge. Mr. Gifford shared that when there is a lawyer who exhibits behavior that demonstrates that he or she should not be practicing law, there is often an assumption that the Bar is doing nothing to protect the public. He hopes that this new transparency rule will be adopted because he would then be able to let the public know that the Bar has acted on the matter and it is working its way through the system.

Mr. Gifford also shared that another significant change to these rules is to reformulate the composition of the BPR. Currently, the rules require a quorum of the entire BPR to hold a hearing. Mr. Gifford explained that his biggest concern is that there are times that he has

presented a stipulated disciplinary proposal to the BPR and it has rejected it. In those cases, the respondent then faces trial with the same body that has already read the stipulation. Mr. Gifford shared that expanding the BPR from seven to nine members would allow the use of three-member review panels to pass on stipulated discipline proposals and a hearing, if necessary, before a separate hearing panel. He feels that these proposed changes would result in more due process for the respondent as well as cost savings. Mr. Gifford reported that he is unaware of any other jurisdiction that follows our current model.

Mr. Gifford reported that these rule revisions went through the same process as the Rules of Professional Conduct—gathering comments, meeting with Melinda McCorkle, BPR and ROC. Several recommended changes were made as a result. Mr. Gifford asked for approval to submit these proposed amendments to the Supreme Court with a recommendation for adoption.

After much discussion, Commissioner McCorkle made a motion to submit all proposed amendments to the Rules of Disciplinary Procedure to the Court with the exception of Rule 3—Access to Information Concerning Proceedings Under these Rules. Commissioner Chapin seconded the motion. Mark Gifford urged the Board not to remove Rule 3 from the motion. He reminded the Board that these proposed amendments have gone out for member comment and passed the muster of both the BPR and the ROC. Executive Director Wilkinson reminded the Board that this matter comes before the Board as a courtesy only, as the BPR and the ROC are the decision makers for rules pertaining to discipline. After much discussion about why this Board would even vote on this matter, Executive Director Wilkinson clarified that procedurally, if the Board wished to have documentation of its rejection of these proposed changes, that would be perfectly appropriate. However, Executive Director Wilkinson clarified that even if the Board rejected some, the proposed rules would still be submitted to the Supreme Court due to the fact that the BPR and the ROC have approved them. Mark Gifford agreed.

The motion carried.

Vice President Addleman made a motion to approve all of the proposed amendments, including Rule 3. Commissioner Kisling seconded the motion. President-Elect Hibben shared his strong support of this motion. The motion carried.

Public Awareness Campaign

Executive Director Wilkinson reminded the Board that a goal in the Strategic Plan is to make the public aware of the positive impact lawyers have on their communities. She introduced Rhett Raha and Brett Riley from Flood Marketing who joined the meeting via Skype. Executive Director Wilkinson mentioned that the purpose of today's presentation was to simply get the Board's feedback on the concept that has been laid out for the public awareness video. She shared that what the Board would see today was stock imagery and only needed to pitch the concept, but the finished product would be actual footage of Wyoming lawyers.

Following the pitch, President Graham shared that he thinks it is important to under-accentuate the lawyer part and really emphasize the service aspect. He would also like to see

more of a Wyoming flavor to it—perhaps volunteering for 4H for instance. Other suggestions were to use “Serving Clients—Serving Communities” as the tag line and to make sure the video features public defenders, prosecutors, legal aid lawyers and private practitioners.

Executive Director Wilkinson thanked the Board for its feedback and will continue to work with Flood Marketing on this project.

Rebranding Proposals

Executive Director Wilkinson directed the Board’s attention to the two proposals in the notebook—one from Ingenuity Marketing Group of St. Paul, Minnesota, and the other from Answers Design Group of Warren, New Jersey. She explained that these referrals came to her as a result of her posting an inquiry to her executive directors’ listserv to see if any other bars had recently been through a rebranding project. Executive Director Wilkinson also reminded the Board that it had previously declined to work with AdBay of Casper or Flood Marketing of Sheridan based on rebranding proposals each had submitted previously. She also reminded the Board that the rebranding was budgeted for in this current fiscal year.

Commissioner Neville shared that she preferred the proposal from Ingenuity Marketing. Mark Gifford shared that by investing money into this, we would be investing in our own brand. If the brand lasts five years, that would be a nominal \$2,000 per year. Executive Director Wilkinson shared that it is her hope that the new logo would last for much more than five years. Mr. Gifford shared that he likes the idea of going with a company that does this for a living and knows what it is doing.

Commissioner Whiting made a motion to approve the agreement with Ingenuity Marketing Group to include the visual brand development, the identity kit and the outdoor office building signage. Commissioner Chapin seconded the motion. Treasurer Barbe asked if anybody was concerned about taking this project out of state. Commissioner Whiting reminded Treasurer Barbe that this Board had already considered two in-state proposals and turned those down. President Graham shared that he is in full support of the rebranding. The motion carried unanimously.

Joint Defense Agreement/Fleck Amicus Brief

Mark Gifford provided some background on the Fleck case out of North Dakota. He reported that this lawsuit as well as others brought against mandatory bars around the country have caused him to review our Keller policy, which was approved in January 2016. Mr. Gifford was gratified to report that he feels our “Keller pure” policy is solid and does not allow the Bar to spend money on political or ideological causes not related to the Bar’s core functions. It goes even a step further and provides our members an opportunity to object to any expenditure.

Mr. Gifford reported that the North Dakota Bar, on the other hand, lobbies heavily. He reported that the legislative bill that got the North Dakota Bar sued was a parent custody bill with which a number of their members were unhappy. Mr. Gifford discussed the details of that lawsuit.

Mr. Gifford reported that he and Executive Director Wilkinson have attended several conference calls with other mandatory bars and ended up entering into a Joint Defense Agreement to allow all parties to discuss more details about a possible amicus brief. The lead on the amicus brief is an impressive lawyer from Michigan. He reported that the brief emphasizes the differences between mandatory bars. Mr. Gifford shared that the Fleck oral argument will be before the Eighth Circuit Court of Appeals in June.

Residency Requirement for Young Lawyer Section (YLS) Chair

Executive Director Wilkinson reminded the Board about a past chair of the Young Lawyers Section who moved to Wisconsin during his term. This resulted in the Bar having to reimburse this member for travel expenses, as the YLS Chair serves as an ex-officio member of this Board. She reported that following this member's term, the Board updated the YLS bylaws to reflect that the chair of the section must be a resident of Wyoming; however, when the Board approved the Uniform Section Bylaws, that was not included.

Treasurer Barbe suggested that rather than change the bylaws, the Board could revise the travel policy. YLS Chair Marchetti suggested only reimbursing travel inside the state of Wyoming.

Commissioner Kisling made a motion to cover the YLS Chair's travel reimbursement within the borders of Wyoming. Commissioner Edwards seconded the motion. Executive Director Wilkinson shared that she will revise the travel policy and bring it to the Executive Committee for approval prior to getting the Board's ratification at the August meeting. The motion carried unanimously.

Western States Bar Conference Report

President Graham directed the Board's attention to the bar profiles that were distributed to conference attendees and shared that he thought it was a good conference. Commissioner Neville shared that there were great discussions about what other young lawyers' sections are doing as well as much discussion about attorney wellness.

Strategic Plan Progress Report

Executive Director Wilkinson reported that there are only two objectives left to be accomplished in the Strategic Plan and discussed her plans to accomplish those goals.

Mark Gifford shared his disappointment that more lawyers are not downloading "Planning Ahead," the succession planning handbook. He reported that the Bar office is currently dealing with an elderly lawyer who is unable to practice law but also unable to assist in the winding down of his practice. Mr. Gifford is working with local attorneys to handle this monumental task and find surrogate attorneys to go through his files. He reported that we have developed a system that is really working well.

President Graham shared that many older lawyers still attend the Annual Meeting and recommended distributing the handbook there when they check in to receive their program materials.

2019 Bar Member Survey

Executive Director Wilkinson reported that she and the staff had reviewed the results of the 2017 Bar Member Survey and made necessary updates and proposed changes to the questions being asked on the 2019 Bar Member Survey. She reminded the Board that the goal of the survey is to see what the members think about current programs/services and learn of any new programs/services the members may want.

After discussion, Commissioner Whiting made a motion to approve the contents of the survey and distribute it to the membership no later than next week. Treasurer Barbe seconded the motion. The motion carried unanimously.

Naming of Pro Bono Award

President Graham shared that after Professor John Burman passed away in February, Steve Easton contacted him and Kelly Neville and recommended that the Bar name one of its pro bono awards after Professor Burman. Commissioner Neville made a motion to approve the recommendation. Commissioner Edwards seconded the motion. The motion carried unanimously.

Commissioner Whiting made a motion to include Patty Thompson, Professor Burman's long-time assistant, to the selection committee for as long as she is willing. When she is no longer willing, another administrative assistant at the UW clinical programs could serve. Commissioner McCorkle seconded the motion. The motion carried.

Pro Hac Vice Rules Amendments

Mark Gifford shared that Judge Bluemel recently revoked a pro hac vice admission of a Utah lawyer, and he is looking into this as a possible disciplinary matter. During his review of the current rules, he recognized some room for improvement and directed the Board's attention to the proposed changes before them. Mr. Gifford shared that he hopes to come to the August Board meeting with revised rules that reflect member comments. Mr. Gifford asked for approval to put these proposed amendments out for member comment.

Commissioner Chapin made a motion to authorize Mark Gifford to distribute the proposed amendments to Rule 8 of the Rules Governing the Wyoming State Bar and the Authorized Practice of Law to the members for comment. Commissioner Whiting seconded the motion.

Commissioner Edwards asked if there was any limit to the number of times an attorney can be admitted pro hac vice in Wyoming and mentioned the Montana rule that allows only three times in a lifetime. Mr. Gifford shared that there was discussion regarding that years ago, but there was no interest in limiting it. He reminded the Board that pro hac vice fees not only generate revenue for the Bar, but Equal Justice Wyoming also benefits from a portion of each fee. The motion carried unanimously.

2020 Annual Meeting/100th Anniversary of UW College of Law

Executive Director Wilkinson was proud to report that the 2020 Annual Meeting will take place in conjunction with the College of Law's 100th Anniversary celebration. The schedule will

differ from the usual schedule; however, it will result in members being able to attend the law school's celebration that will feature Justice Neal Gorsuch on September 17, 2020.

President's Report

President Graham encouraged Board members to show up in Cody with ideas to discuss during Strategic Planning. He reported that he will be speaking at the Women's Law Forum next weekend in Laramie. President Graham thanked those who participated in the community service activity this morning. They helped move some wood chips on a playground.

President-Elect's Report

President-Elect Hibben reported that he and Executive Director Wilkinson attended the Bar Leadership Institute in Chicago in March. He emphasized what a great program that is for any board members considering leadership roles in the future.

Vice President's Report

Vice President Addleman shared that he greatly enjoyed going to the Western States Bar Conference. He echoed Commissioner Neville's thoughts on all of the discussion surrounding attorney wellness.

Executive Director's Report

Executive Director Wilkinson reported that the Bar had been contacted by a judge inquiring about any resources to help a young lawyer who was struggling with substance abuse. She shared that Jack Speight, Director of the Wyoming Lawyer Assistance Program (WyLAP), immediately got in touch with the judge and they were able to do a soft intervention with the lawyer, the judge, a volunteer with Lawyers Helping Lawyers as well as a representative from a nearby treatment facility that same afternoon. She reported that the judge immediately made a financial contribution to the WyLAP Foundation and Mr. Speight and Executive Director Wilkinson were able to have a call the next day to get approval to wire funds to the treatment facility. Executive Director Wilkinson shared her gratitude about everyone's immediate attention to this matter.

Mark Gifford shared that unfortunately, during this afternoon's Board meeting, the lawyer had checked out of treatment. He echoed Executive Director Wilkinson's sense of the significance and effectiveness of the WyLAP program, even when the impaired lawyer does not follow through with treatment.

Young Lawyers Section Report

Marion Marchetti reported that he attended the ABA YLD Mountain West States Regional Summit in Steamboat in March and really enjoyed that. He shared that his leadership council continues to coordinate some efforts to benefit the section.

Commissioner Reports

- *First Judicial District* – no report
- *Second Judicial District* – Commissioner Neville reported that she had a lot of interest in her judicial district regarding the peremptory challenge rules. Ultimately, they were pleased with the outcome.
- *Third Judicial District* – Commissioner Thybo reported that they had the first local bar meeting last night with 10 people in attendance.
- *Fourth Judicial District* – Commissioner Kisling reported that his district has some young lawyers taking leadership roles in getting the county bar more active. He also reported that he was so pleased with his Judicial District's commitment to help with the surrogate lawyer issue that Mark Gifford discussed earlier.
- *Fifth Judicial District* – Commissioner Kath reported that his district has several new judges and they are all doing a fine job. He reported that they had a Christmas bar dinner. Senator Simpson and his wife Ann showed up just days after his eulogy of President Bush. They will do a May Day photo shoot, a long-standing Park County tradition. This year, they will be having a CLE with Professor Phil Roberts.
- *Sixth Judicial District* – no report
- *Seventh Judicial District* – Commissioner Chapin reported that he received an interesting letter regarding a mandatory mediation for divorces. Ann Rochelle sent the letter and there are four women doing the mediations in the district.
- *Eighth Judicial District* – Commissioner Wilde shared that while the Bar is embarking on a project to emphasize what lawyers do in their communities, his constituents have mentioned that they think they have a great relationship with their communities. They shared concern that being more rural, they struggle to entice lawyers to move into those smaller communities. He wondered if that was something we could discuss at Strategic Planning to promote practice in rural Wyoming.
- *Ninth Judicial District* – Commissioner Whiting shared that his constituents are anxiously awaiting to see who the new District Court judge will be. He reported that Judge Tyler lost his court reporter, so that is causing some problems.

Board/Committee Liaison Reports

- *Bench-Bar Relations Committee* – no report
- *Civil Pattern Jury Instructions Committee* – Commissioner Chapin reported that there are changes under consideration to Instructions 1.02 and 1.03—the rules provided before the jury takes the case. There is a debate whether changes need to be made. Judges have requested that those remain in place as is. He discussed other changes being considered.
- *Criminal Pattern Jury Instructions* – Commissioner Thybo reported that the committee meets every month and continues to work on necessary improvements. There has been continued discussion regarding whether the committee should undertake the task of creating instructions for grand jury proceedings.
- *Diversity & Inclusion Committee* – President Graham reported this committee is still considering surveying the membership. They also submitted two proposals for CLEs at Annual Meeting. Unfortunately, both of those programs have been rejected. The

Committee was contacted by Utah law students trying to learn about successful mentoring programs.

- *Juvenile Pattern Jury Instructions Committee* – Commissioner Whiting shared that the Committee has met once and are working towards some changes.
- *Law School Liaison Committee* – President-Elect Hibben reported that the committee has been meeting and is chaired by Devon O’Connell. At the most recent meeting, Executive Director Wilkinson offered to dedicate the August 2020 *Wyoming Lawyer* to the law school’s anniversary celebration. He shared that Dean Alexander is asking for any memorabilia to send to the law school so they can incorporate it in this celebration.
- *Legislative Developments Committee* – no report
- *Permanent Rules Advisory Committee* – no report

President Weston Graham adjourned the meeting at 5:50 p.m. on Friday, April 26, 2019.

Minutes Submitted by:

Sharon Wilkinson
Executive Director