

Wyoming State Bar Board of Officers & Commissioners Meeting

April 17, 2020

Via Zoom

In Attendance: Kelly M. Neville, President; Billie LM Addleman, President-Elect; J. Kenneth Barbe, Vice President; James L. Edwards, Treasurer; Weston T. Graham, Immediate Past President; Stefanie L. Boster, First Judicial District Commissioner; Sarah L. Chavez, 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; Alison O. Gee, 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; Callie A. Capraro, Young Lawyers Section Chair; Sharon Wilkinson, Executive Director; Mark W. Gifford, Bar Counsel and Cathy Duncil, Admissions Director

President Kelly M. Neville convened the meeting at 9:11 a.m. on Friday, April 17, 2020.

Approval of Agenda

Commissioner Scott Kath made a motion to approve the agenda. Treasurer Jim Edwards seconded the motion. The motion carried unanimously.

Approval of Meeting Minutes

Commissioner Teresa Thybo made a motion to approve the January 24, 2020, meeting minutes. Commissioner Jeremy Kisling seconded the motion. The motion carried unanimously.

Executive Committee Meeting Minutes

President Neville asked if any Board members had questions about the Executive Committee's meeting minutes. There were none.

Treasurer's Report

Treasurer Edwards noted that we are half-way through the fiscal year and have already received 79% of our budgeted income. He shared that we have spent 46% of our budgeted expenses, so we are right on track. He reported a hit to the Bar's investments due to the volatility of the market but reminded the Board that these are long-term investments. Treasurer Edwards noted that we will save money on travel expenses in light of so many conference cancellations due to the COVID-19 pandemic.

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

Admissions

Cathy Duncil, Admissions Director, reported that 27 applicants took the February 2020 bar exam and those results were submitted to the Supreme Court yesterday. She expects results to be released from the Court later today. Ms. Duncil reported a 59% pass rate on the exam.

Ms. Duncil shared that April 15th was the deadline to apply for the July 2020 bar exam, and she has 55 applicants, which is a much lower number than we typically have in July. She shared that the Bar is still on track to give the July exam. Ms. Duncil shared that she did have to postpone a character and fitness hearing due to COVID-19.

Mark Gifford, Bar Counsel, shared that a significant amount of time has been devoted to the July bar exam and admissions as a whole these past few weeks. He reported that a white paper had been distributed by a group of law school deans arguing that all states should implement diploma privilege like Wisconsin has. He reported that as word spread, it caused unrest at the University of Wyoming College of Law and a few students were pressuring other students to sign a petition demanding diploma privilege. Mr. Gifford reported that Executive Director Sharon Wilkinson convened an emergency meeting with the Board of Law Examiners (BLE) two weeks ago and that was the beginning of a tremendous amount of work on an emergency admissions rule that was vetted with the BLE, the Character and Fitness Committee and the Supreme Court. He reminded the Board that under the new rule, as long as they pass the character and fitness screening successfully, applicants for the July bar exam can start practicing law on a supervised basis until they can provide a passing score depending on when the test is given. He shared that it does not provide a path to practice for all, but it will help some.

Executive Director Wilkinson reported that she distributed an e-mail to all applicants for the July bar exam indicating that the Bar is not even considering diploma privilege. She also shared that she, Cathy Duncil and Mark Gifford have been invited to participate in a Zoom meeting next week with the third-year students at the law school to discuss admissions issues and answer questions they may have.

Mr. Gifford shared that there are many reasons the staff, the BLE and the Character and Fitness Committee do not favor diploma privilege—among them are the pass rates on the last three exams, which are 50% (February 2019), 79% (July 2019) and 59% (February 2020). Mr. Gifford provided an overview of the diploma privilege rule that Utah is currently considering but noted that it would only apply to those who have graduated from a law school that had a pass rate of 86% or better. He noted that UW graduates would not be eligible to apply under this rule in Utah.

President Neville shared that she spoke with Lindsay Hoyt, Assistant Dean at the law school, and learned that Dean Hoyt is looking forward to the Zoom meeting and hopes it will alleviate the students' concerns.

Mandatory Continuing Legal Education

Executive Director Wilkinson reported that the number of lawyers who were not compliant with their 2019 CLE requirements by the January 15th deadline was extremely high in comparison to previous years. She shared that there were 166 members not compliant on January 16th but only 14 of those members were still not compliant by March 1, 2020. She shared that she recommended suspension for 20 members, and the Court ultimately suspended three of them, as the others either came into compliance or were granted extensions.

Executive Director Wilkinson shared that as a result of learning that some jurisdictions were either extending their CLE deadline or relaxing requirements altogether, she convened a meeting with the Board of Continuing Legal Education (BCLE). Executive Director Wilkinson reported that the BCLE voted unanimously not to change any of Wyoming's requirements. She explained that the Wyoming rules do not require lawyers to appear live and in-person to receive live credit. As a result, notice was sent out to the membership, and Executive Director Wilkinson reported that she received very positive feedback from the members as well as from the Supreme Court.

Attorney Discipline

Mark Gifford reported that the Ethics Hotline calls are holding steady and he has fielded many COVID-19-related calls. He shared that he recently presented a 30-day stipulated suspension to a three-person review panel of the Board of Professional Responsibility, but it was rejected. The panel indicated that it would consider a 90-day stipulation, to which the respondent agreed. That report and recommendation is currently at the Supreme Court. Mr. Gifford reported that he has two public censures that are pending. He shared that there are two upcoming disciplinary hearings scheduled—one in May and a substantial hearing in August. At this point, he is uncertain they will take place, as many things are being pushed back.

Fee Arbitration

Mr. Gifford shared that Shannon Howshar, his assistant, and Tim Woznick, Chair of the Fee Arbitration Committee, continue to run this program very smoothly.

Unauthorized Practice of Law (UPL)

Mr. Gifford reminded the Board that he reported at the January meeting that he tried a UPL case involving Freedom resident Clyde Stock in Green River. He directed the Board's attention to the Court Order that was distributed in the Board meeting notebook. Because Mr. Stock, the respondent, has not made any of the payments required by the Order, Mr. Gifford reported that he is ready to petition the Court to hold Mr. Stock in contempt.

Member Comments to Proposed Changes to Bylaws

Mark Gifford reminded the Board that he and the staff proposed a few minor changes to the Bylaws of the Wyoming State Bar and the Board approved the request to send the amendments out for member comment. He reported that he only received three comments. Mr. Gifford did not think any adjustments were necessary based on the member comments

and asked for approval to submit the proposed Bylaw amendments to the Supreme Court for adoption.

Treasurer Edwards made a motion to approve the request to submit the Bylaws to the Supreme Court for adoption. Commissioner Alison Gee seconded the motion. The motion carried unanimously.

Executive Director Wilkinson reminded the Board that one of the changes requires the Board to adopt a policy to ensure that the activities of the Bar's ABA Delegates will comply with the Bar's Keller policy and offered to work with Mark Gifford to draft this policy for approval at the June meeting. President Neville shared that that was reasonable and asked Executive Director Wilkinson to include this on the June agenda.

Members' Use of Bar Logo Follow-up

Executive Director Wilkinson reminded the Board that a member had encouraged the Bar to implement a policy for members' use of the Bar's logo. During the January meeting, she offered to gather information from other states about their policies and bring recommendations back to this meeting. Executive Director Wilkinson reported that by the time she was planning to gather this information, there was so much COVID-19 traffic on her Executive Directors' listserv, that she did not feel that the time was right for something non-pandemic related, as it would get ignored.

Treasurer Edwards made a motion to table this issue until the June meeting. Commissioner Kath seconded the motion. The motion carried unanimously.

Pattern Jury Instructions/Casemaker Update

Executive Director Wilkinson reported that both the Juvenile Pattern Jury Instructions and the Criminal Pattern Jury Instructions are accessible free of charge through Casemaker. She shared that while the criminal instructions are accessible, they are working out some numbering issues. She reported seeing e-mail traffic back and forth with Casemaker representatives and Christyne Martens, Chair of the Criminal Pattern Jury Instructions Committee. She shared that once those issues are resolved, she will submit the Civil Pattern Jury Instructions to Casemaker for upload and is certain those will be uploaded by the end of the month.

Executive Director Wilkinson also reported that she will work with Casemaker to ensure that the public has access to the jury instructions without having login credentials.

Status of Investment Portfolio

President Neville shared that overall, she and other members of the Investment Committee are thinking positively, and the Bar's investments have fared pretty well considering the volatility of the market. Executive Director Wilkinson read an e-mail that she received from Mike Merback, the Bar's Financial Advisor, with an update from this week.

Flood Marketing Public Awareness Campaign Status

Executive Director Wilkinson reminded the Board that no progress has been made on the public awareness campaign that was in the 2017-2019 Strategic Plan. She walked through the steps she has taken to make some progress and shared that Brian Fabel, her contact at The Only Co. (formerly Flood Marketing), advised her to go in a different direction. Executive Director Wilkinson reported that she and Mr. Fabel have had some recent communication about possibly repurposing the project in light of the COVID-19 pandemic—perhaps creating a video providing tips on how to work remotely, FAQs about Zoom or even a piece about the critical role lawyers play in this crisis. She reported that she pitched the idea to the Executive Committee but all were in agreement that now is not the time to make any decisions about the project.

Strategic Plan Progress Report

Executive Director Wilkinson directed the Board's attention to the progress report she prepared. She walked the Board through each goal and objective of the report.

After discussion, President-Elect Addleman made a motion to remove Objective C from the Strategic Plan. Commissioner Gee seconded the motion. The motion carried unanimously.

In regard to the stand-alone Small/Solo Section of the Bar, Executive Director Wilkinson reminded the Board what the Bylaws require in order to form a new section. Commissioner Gee shared that she did not think that was necessary and recommended waiting to see if we are approached by a member who may be interested in pursuing that.

Past President Weston Graham recommended including the section on the license fee statement for the 2020/2021 license fee cycle and make it free for the first year. Commissioner Gee wondered if it would not be more beneficial to the membership if the focus of the section was practice management (i.e. human resources, technology, etc.). Commissioner Kisling shared that he sees benefit to at least setting up a small/solo listserv. He explained that it will be an effective way to gauge interest for such a section based on the number of members who subscribe. Past President Graham agreed with Commissioner Kisling. Executive Director Wilkinson shared that she would get the listserv set up right away and we can reassess this at the June meeting.

Past President Graham shared that he thinks the rural practice initiative is a hard project to tackle. He shared that some states are trying pilot programs—some with success but not all. He feels like it is going to be difficult for the Board to come up with ideas. He recommended forming a small working group to identify a few concrete ideas to present to the Board. Mark Gifford shared that Shannon Howshar has been doing research to see what other states are doing, as she has a real interest in this topic. President Neville asked the Board members to identify those in their communities who may have a vested interest in this. After a break, Mr. Gifford reported that Shannon Howshar would be willing to staff the small working group. President Neville indicated that she would be interested in being a part of the working group and asked if there were any other Board members who were interested in serving. Past President Graham indicated that he was interested. President-Elect Billie Addleman

recommended inviting Cheyenne lawyer Jason Johnson to participate. He reported that he will contact Mr. Johnson and report back.

The Bar's Role in the COVID-19 Crisis – How Do We Help Our Members?

Executive Director Wilkinson shared that she put this topic on the agenda simply so the Board could brainstorm and determine what the members need from the Bar. She shared that she wondered if there will be lawyers who cannot afford to pay their license fees once October rolls around. She shared that the staff discussed this on a recent Zoom staff meeting and Mark Gifford recommended considering some sort of a license fee relief fund where firms could donate to help those lawyers. Executive Director Wilkinson shared that there currently is no clause in the Bylaws for a situation like this, but she has been asked about it before from members who would not afford to pay their license fees.

President Neville wondered if other states had such provision in their license fees and directed Executive Director Wilkinson to gather this information and bring it back to the June meeting.

President Neville discussed the Small Business Administration's Paycheck Protection Program and offered to write an article for Executive Director Wilkinson to distribute to the membership.

Executive Director Wilkinson shared that there was discussion with the Board of CLE about it possibly receiving an increased number of waiver and extension requests in light of the pandemic.

President's Report

President Neville reported that she was approached by a professor at the UW College of Law about possibly hosting on a one-day program on solo and small firm issues.

She reported that the Western States Bar Conference scheduled in Scottsdale, Arizona, was cancelled. She also shared that the Bar Leadership Institute (BLI)s was changed to virtual content so she was still able to benefit from that.

President Neville shared that she has been in touch with the law school regarding Justice Gorsuch's planned visit this September. She reminded the Board that the plan for invitations to be sent was for all VIP invitations to be mailed in February, invitations to UW alumni would be sent in March and the full Bar membership would receive theirs in April; however, nobody has seen anything. She shared that the law school has reached out to Justice Gorsuch's chambers, but they have not heard anything back.

President Neville reported that the Legislature did not approve the capital construction budget, so that definitely impacts the law school's expansion. She hears this will be a topic of discussion for an upcoming special session. She reminded the Board that this also impacted construction of the Chancery Court.

Lastly, President Neville reported that with Judge Castor retiring, the Judicial Nominating Commission requested a non-voting advisor be appointed for the selection process. She shared that she did appoint a Laramie lawyer to serve in that capacity.

President-Elect's Report

President-Elect Addleman shared that the electronic filing committee did reach a consensus on its recommended vendor. He reported that the committee will continue working with the Legislature on that; his understanding is that e-filing will be funded.

President-Elect Addleman shared that in regard to Chancery Court, it is his understanding that the price of oil plummeted the day the Legislature was making the capital construction decisions and this was definitely a factor in its decision making.

Executive Director's Report

Executive Director Wilkinson reported that she received an e-mail from Diane Minnich, the Executive Director of the Idaho State Bar, regarding this summer's Jackrabbit Bar Conference. She shared that they have not yet made a decision as to whether or not they are cancelling the conference in light of the COVID-19 pandemic; however, they are wondering if anybody would still be interested and willing to travel if the conference were to move forward as planned. Executive Director Wilkinson reminded the Board that it was scheduled to take place June 11-13, 2020, in Sandpoint, Idaho. President Neville expressed interest and willingness to attend.

Executive Director Wilkinson was pleased to report that the staff is working remarkably well from home. She shared that they each come in on an as-needed basis that is coordinated through her.

Young Lawyers Section Report

Callie Capraro, Chair of the Young Lawyers Section, reported that the section council met on March 6th for a strategic planning session. She shared that the quarantine has slowed their progress a little bit and has slowed some of their plans down. However, the section council is committed to contributing a significant amount of CLE offerings to section members, and she reported that the council members are contacting other section leaders to get their input regarding what they think young lawyers need in that particular area of law.

Ms. Capraro also reported that the council discussed implementing a wellness hotline for young lawyers and they are brainstorming who would be effective in manning the hotline. She shared that she is feeling overwhelmed with everything going on and she knows of some other young lawyers who are struggling as well.

Ms. Capraro reported that the council discussed coordinating a statewide service day, which takes place nationally on September 11th. She shared that after discussion, there was hesitation with that date because it was so close to the Bar's Annual Meeting, and it is right in the middle of the week. As a result, this discussion was tabled.

Ms. Capraro shared that Marie Ellis approached her about the Young Lawyers Section sponsoring some type of “health fair” at this year’s Annual Meeting. As a result, she has been in contact with Wyoming Health Fairs and they are supportive of the effort and willing to participate. She reported that the section is struggling to define exactly what the health fair looks like. The council wants to incentivize lawyers to go to the “booth” and take advantage of it. Ms. Capraro encouraged the Board members to share any suggestions.

Ms. Capraro reported that the council has committed to a “young lawyers spotlight” in each issue of the *Wyoming Lawyer* that will focus on what lawyers do outside of work. She encouraged the Board members to let her know if they have suggestions for young lawyers to be featured.

Commissioners’ Reports

- *First Judicial District*— Commissioner Stefanie Boster shared that although her firm had not planned to be able to work from home, it has gone quite well and their clients are finding a lot of efficiencies in video conferencing.
- *Second Judicial District*—no report
- *Third Judicial District*—no report
- *Fourth Judicial District*—no report
- *Fifth Judicial District*—Commissioner Kath reported that his county bar had its last bar meeting on February 15th. He shared that it was a luncheon with Klint Alexander, Dean of the UW College of Law, providing an update on the law school construction project. He reported that he and his law partner, Scott Kolpitcke, also presented an ethics CLE.
- *Sixth Judicial District*— Commissioner Gee shared that she has talked to her constituents about their challenges due to COVID-19. One frustration she learned of is that there is no access to land records with the courts being closed, so lawyers cannot do title research at all. She reported that Ryan McGrath, Campbell County Bar President, has been great about getting court updates out to the lawyers.
- *Seventh Judicial District*—Commissioner Chapin reported that Amy Iberlin, Natrona County Bar President, has been doing a great job of notifying lawyers about court updates.
- *Eighth Judicial District*—Commissioner Wilde reported that following the January meeting, he fielded a few questions about how the new Diversity & Inclusion Section had been created.
- *Ninth Judicial District*—no report

Board/Committee Liaison Reports

- *Civil Pattern Jury Instructions Committee*—Commissioner Chapin reported that the committee met by phone on April 15th. The committee continues to make necessary changes and modification. He shared that Judge Kricken continues to do a marvelous job keeping things moving.
- *Criminal Pattern Jury Instructions Committee*—Commissioner Thybo reported that the committee members are still discussing renumbering. She shared that there has been a request for an in-person meeting in late summer or early fall and Executive Director Wilkinson is trying to gather feedback about dates and locations to get that scheduled.

She shared that the committee's next meeting will be to determine which instructions are next due to legislative action.

- *Permanent Rules Advisory Committee – Civil Division*—Treasurer Edwards reported that there was a discussion about administering the oath on long-distance depositions.

President Kelly M. Neville adjourned the meeting at 12:12 p.m. on Friday, April 17, 2020.

Minutes Submitted by:

Sharon Wilkinson
Executive Director