

Wyoming State Bar Board of Officers & Commissioners Meeting

April 23, 2021

Days Inn

Thermopolis, Wyoming

In Attendance: Billie LM Addleman, President; J. Kenneth Barbe, President-Elect (via phone for a portion of the meeting); R. Scott Kath, Vice President; James L. Edwards, Treasurer; Kelly M. Neville, Immediate Past President; Stefanie L. Boster, First Judicial District Commissioner; Sarah L. Chavez, Second Judicial District Commissioner; Teresa S. Thybo, Third Judicial District Commissioner; Kevin K. Kessner; Fourth Judicial District Commissioner; Jennifer L. Kirk, Fifth Judicial District Commissioner; Alison O. Gee, Sixth Judicial District Commissioner; P. Craig Silva, Seventh Judicial District Commissioner; Shawn G. Wilde, Eighth Judicial District Commissioner; James T. Whiting, Ninth Judicial District Commissioner; Benjamin R. Rose, Young Lawyer Section Chair; Sharon Wilkinson, Executive Director and Mark W. Gifford, Bar Counsel

President Billie LM Addleman called the meeting to order at 12:30 p.m. on Friday, April 23, 2021.

Approval of Agenda

President Addleman shared that there are two changes and one addition to the agenda:

1. Due to President-Elect Ken Barbe's schedule, President Addleman moved the Judicial Advisory Poll Ad Hoc Committee report and the President-Elect's report up on the agenda.
2. Added a discussion about the Diversity, Equity & Inclusion Section Council's proposal for a CLE at the Annual Meeting & Judicial Conference.

Commissioner Alison Gee made a motion to approve the agenda as amended. Commissioner Shawn Wilde seconded the motion. The motion carried unanimously.

Approval of Minutes

Commissioner Kevin Kessner made a motion to approve the January 22, 2021, meeting minutes. Commissioner Gee seconded the motion. The motion carried unanimously.

Executive Committee Meeting Minutes

President Addleman directed the Board's attention to the minutes of the Executive Committee conference calls and asked if anyone had any questions. There were none.

Treasurer's Report

Treasurer Jim Edwards reported that the Bar is doing very well financially. He encouraged the Board to think about ways to put some money to use considering how well the investment account is doing. He reminded the Board that there will be minimal travel expenses expended this fiscal year due to the pandemic. He also reported that the Bar has paid Equal Justice Wyoming Foundation \$25,000 as a result of its matching fundraising goal.

Commissioner Jennifer Kirk made a motion to accept the Treasurer's Report. Commissioner James Whiting seconded the motion. The motion carried unanimously.

Admissions

Mark Gifford reported that the pass rate on the February 2021 exam was 86%. He shared that the deadline to sit for the July 2021 exam was April 16th and there are 73 applicants scheduled to take it. Mr. Gifford reported that there have been two hearings with the Character and Fitness Committee that were conducted via Zoom. Melinda McCorkle, Deputy Bar Counsel, handled these hearings and both applicants were recommended for admission.

Mr. Gifford shared that the National Conference of Bar Examiners (NCBE) is really experiencing delays on character and fitness reviews. As a result, he reported that what typically took 4-6 months to process is now taking 6-9 months.

Mandatory Continuing Legal Education (CLE)

Executive Director Sharon Wilkinson reported that she was obligated to recommend the suspension of four members due to their failure to comply with the CLE requirements. She shared that one member's license has already been reinstated by the Wyoming Supreme Court and a second one has petitioned the Court for reinstatement.

Attorney Discipline

Mark Gifford shared that his office has received 40 complaints so far this year, which is an average pace. He reminded the Board that he saw a drastic decline in complaints filed in 2020 for some reason. He shared that there are two matters currently in the formal charge phase, and one of those will go to a hearing before a three-member panel of the Board of Professional Responsibility in two weeks.

He reported that the Review and Oversight Committee has issued one private reprimand, and the Supreme Court has issued two stipulated orders of disbarment, which he shared is very rare. Mr. Gifford also shared that the Court issued an immediate suspension of an attorney who failed to cooperate with a disciplinary investigation that Melinda McCorkle is handling.

Mr. Gifford shared that due to the pandemic, hearings on stipulated resolutions, which are considered by three-person panels, have been conducted via Zoom. He reported that those involved agree that the Zoom platform is better than conducting those via phone. As a result, Zoom hearings on stipulated resolutions will continue even after the pandemic.

Mark Gifford reported that he has a high-profile disciplinary case involving former prosecutor Becket Hinkley going to hearing next month. He shared that this will be the first public hearing since the Supreme Court adopted a rule allowing disciplinary proceedings to be held publicly. He shared that members of the public will be present at the hearing, including two members of the media.

Mr. Gifford shared that the Supreme Court does not have anything before it related to attorney discipline; however, it will have a stipulated public censure on a prosecutorial misconduct case very soon. He shared that it is rare to see those cases result in any discipline; however, there are currently four that his office is investigating.

Fee Arbitration

Mark Gifford reported on pending fee petitions and shared that the new system has been in place for four years and all involved agree that it is a much improved and efficient process.

Unauthorized Practice of Law (UPL)

Mark Gifford reported that his office was made aware of a person who is operating an office of a Salt Lake City firm out of Casper. This person was listed as a lawyer on the firm's website but that listing has since been removed. Mr. Gifford shared that this person has taken the Bar exam in Wyoming four times and is no longer eligible to take it here. He shared that the person sat for the February 2021 exam in Montana but did not pass.

Client Protection Fund

Mark Gifford reported that things have been fairly quiet in regard to the Client Protection Fund, as there have been no claims filed yet this year. He reminded the Board that the Court recently amended the rules regarding who is the beneficiary of unclaimed funds in lawyers' trust accounts. As a result of that rule change, he reported that the Bar received \$5,000 last week from a deceased lawyer's trust account. He shared that these funds are allocated to the Fund to pay our future claims.

Judicial Advisory Poll Ad Hoc Committee

President-Elect Ken Barbe shared that Justice Boomgaarden is heading up a committee of judges who wanted to review the Judicial Advisory Poll in hopes of improving it and making it more meaningful. He reported that she was very clear that the judges were not looking to discontinue the poll. He shared that this became a topic of discussion amongst the Executive Committee and ultimately, President Addleman appointed President-Elect Barbe to co-chair a committee with Justice Boomgaarden to review the poll. He shared that the committee is made up of judges, lawyers and laymembers—the judges were selected by the judiciary and lawyers and laymembers were selected by President Addleman, President-Elect Barbe and Executive Director Wilkinson.

President-Elect Barbe shared that during the first committee meeting conducted via Zoom, Justice Boomgaarden shared that some of the comments she and other judges receive on the poll are not helpful or constructive at all; in fact, some are quite seething. Her point in sharing that is that the judges overwhelmingly agree that what should be a useful and constructive

tool is not at all. He also shared that the committee learned that the judges also have concerns as to whether the poll is fair considering such a small percentage of the membership participates.

President-Elect Barbe reported that many resources have been shared with the committee including the ABA Guidelines on judicial performance evaluations. The goal is to evaluate the process and determine how to make it better. He shared that Justice Boomgaarden recommended breaking the committee into two smaller working groups—the judiciary working group and the public working group.

Executive Director Wilkinson reported that she had a good discussion with a gentleman from the National Center on State Courts and learned which states are considered the “gold standard” for judicial performance evaluations. She has shared those resources with the group.

Executive Director Wilkinson reminded the Board that the Bar conducts the Judicial Advisory Poll every other year at a cost of approximately \$14,000. She shared that she recently learned of another state that spends over \$100,000 on its poll and is a bit concerned of cost implications depending on what the reworking of the poll looks like. She also shared that while the next poll will not be conducted until summer of 2022, she will get a cost estimate from the University of Wyoming Survey Analysis Center in the next couple of months so that this cost can be factored into next fiscal year’s budget.

After discussion, President-Elect Barbe shared that he will keep the Board apprised of further developments as the committee continues its work.

Strategic Plan Progress Report

Executive Director Wilkinson walked the Board through the progress that has been made on the 2019-2021 Strategic Plan and asked Past President Kelly Neville if she had anything to report following a recent conference call with the small/solo working group. Past President Neville reported that the group gathered some very useful data from the small/solo survey that was conducted in December 2020 and reported that, based on that data, she will be bringing some recommendations to the Board during the June Strategic Planning session. She shared that the group found it very interesting that there was such a significant increase in the number of members reporting that they were solo practitioners on the 2019/2020 license fee cycle compared to the current year. Past President Neville also mentioned that the need for mentoring continues to be expressed by some members. She shared that Professor Alan Romero, who also serves on the working group, has some of his students gathering some additional data.

Equal Justice Wyoming Foundation Matching Fundraising Proposal Update

Executive Director Wilkinson reminded the Board that it challenged the Equal Justice Wyoming Foundation to raise \$25,000 from new fundraising activities, and the Bar would match that amount if the goal was met. She was pleased to report that the Foundation not only met the goal but exceeded it. Executive Director Wilkinson distributed a memo that

Angie Dorsch, Executive Director of Equal Justice Wyoming Foundation, provided indicating that the Foundation more than doubled its donations since 2020 and was able to increase its grant awards in 2021 by 16%.

Commissioner Kirk asked if the Foundation's money is being distributed equitably across the state and wondered specifically whether any funds were being targeted to small, rural areas. Commissioner Wilde asked if the Foundation is continuing its fundraising after reaching its initial goal. Executive Director Wilkinson pointed out that Ms. Dorsch's memo indicated it would be continuing those efforts by participating in WyoGives and GivingTuesday. She also shared that the Foundation has approached her and President Addleman about turning the Bar's annual golf tournament into a fundraiser. She reported that she and President Addleman were in favor of that and planning is already underway.

Settlement of Claim Against West Edge Collective

Mark Gifford reminded the Board that at its January meeting, he reported that he was waiting for West Edge Collective to make a reasonable settlement offer. When none was made, the Executive Committee, which had the Board's proxy, approved filing a complaint. Mr. Gifford reported that the Bar retained Cheyenne attorney Amanda Esch to file the complaint. He shared that the total demand was for \$250,000. Shortly after the complaint was filed, West Edge offered \$175,000 to settle the case, which the Executive Committee accepted. The settlement, which was comprised of \$10,000 from West Edge Collective and \$165,000 from its insurers, has been received.

Diversity, Equity & Inclusion Section Request

Treasurer Edwards made a motion to convene an Executive Session. Commissioner Kirk seconded the motion. The motion carried unanimously. Executive Session was convened at 2:00 p.m.

Commissioner Gee made a motion to adjourn Executive Session. Vice President Scott Kath seconded the motion. Executive Session was adjourned at 2:51 p.m.

Vice President Kath made a motion to deny the request to waive the Diversity, Equity & Inclusion Section membership fees for the next two years. Commissioner Stefanie Boster seconded the motion. The motion carried unanimously.

Treasurer Edwards made a motion to request that the Diversity, Equity & Inclusion Section Council further develop and provide the Executive Committee with a more detailed description and outline of its proposed CLE program for the Annual Meeting & Judicial Conference in order to ensure it is in compliance with the Bar's Keller policy. Commissioner Boster seconded the motion. The motion carried unanimously. Commissioner Gee noted that the Section Council should be made aware that this directive is coming from the Board as a result of the rash of lawsuits seeking to dissolve integrated bars, including the recent suit against the Utah State Bar. She felt strongly that Council members need to be aware that the Bar must be mindful that it is vulnerable to litigation relating to potentially political issues and it must balance the interests of the members.

2021 Quality of Life Survey

Executive Director Wilkinson reminded the Board that every other year, the Bar conducts the Bar Member Survey just before the Board and the staff head into the biannual Strategic Planning session. She shared that in 2001 and again in 2011, the Bar conducted a different survey known as the Quality of Life Survey. With this being another ten-year milestone, she is proposing conducting the Quality of Life Survey again this year.

There was much discussion about why the survey asked participants to indicate their gender. It was ultimately decided to leave the gender question off the survey this year. Executive Director Wilkinson thanked the Board for its feedback and indicated that she would conduct the survey in May and have results to the Board prior to Strategic Planning.

President's Report

President Addleman shared that he was unable to join the last meeting of the Permanent Rules Advisory Committee—Court Records Division; however, that group is still working on getting everything prepared for electronic filing. He reminded the Board that this group has been going through all statutes in order to identify how information is treated—what is available to clerks? Available to attorneys? He reported that that process is complete, and the next step is to begin working with the Legislature in order to make necessary changes to the statutes. He also shared that there are two members of the Legislature who serve on the committee.

President Addleman reported that he spoke on behalf of the Bar at two virtual robing ceremonies this week—Hon. Clark Allan, Circuit Court in Douglas, and Hon. Stuart Healy, District Court in Gillette.

Vice President's Report

Vice President Kath shared that he serves as the Board's liaison on the CLE Committee, which is responsible for planning all CLE programming for the Annual Meeting. He was pleased to report that the Committee finished ahead of schedule and all CLE programs for Annual Meeting have been confirmed. He gave kudos to Marie Ellis, CLE Director, for her planning and efficient process.

Executive Director's Report

Request to Change Annual Meeting Timing

Executive Director Wilkinson shared that she has been approached by a member of the Bar who has requested that the Bar change the timing of its Annual Meeting & Judicial Conference due to a conflict with hunting season. After discussion, the Board agreed that the various hunting seasons span several weeks, whereas the Bar's annual convention only spanned a few days. There was discussion about possibly polling the members eventually to gauge any interest in moving the conference from September. It was agreed that this topic of discussion would be included on the November 2021 meeting agenda.

Section Council Budget Proposals

Executive Director Wilkinson shared that it is this time of year when she notifies all Section Council Chairs and Chairs-Elect that if the section wishes to request a budget for the next fiscal year, those budget proposals need to be submitted to her by May 31st. She reminded the Board that those requests ultimately go before this Board at each August meeting. She shared that she is considering not asking for these requests this year and would simply like to fund the sections as a whole in whatever amount the Board agrees upon. After discussion, the Board was in favor of Executive Director Wilkinson's proposal.

2021/2022 Proposed Budget Preparation

Executive Director Wilkinson shared that she and Cathy Duncil, the Bar's bookkeeper, will begin developing the proposed budget for the 2021/2022 fiscal year next month. She shared that she and the staff have had discussions to determine whether there are any anticipated significant purchases for next year but they did not identify any. Executive Director Wilkinson encouraged the Board to give some thought to this and let her know if there is anything specific she and Ms. Duncil should factor into the proposed budget.

Commissioner Gee asked if the Bar had adequate insurance to potentially cover the cost of counsel in the event that the Bar is sued. Mark Gifford shared that the Bar has several types of insurance and encouraged Executive Director Wilkinson to post an inquiry to her Executive Directors' listserv in order to learn what coverage other mandatory bars have.

College Business Park Slip and Fall Update

Executive Director Wilkinson, who serves as Treasurer of the College Business Park Owners Association, reported that the slip and fall that occurred in December 2017 at the business park where the Bar office is located was recently settled in mediation.

Wyoming State Bar Staffing Update

Executive Director Wilkinson was pleased to report that she hired a new Administrative Assistant/Receptionist. Her name is Ryan Reynolds and she will begin her employment on May 3, 2021. Executive Director Wilkinson shared that she looks forward to the Board meeting Ms. Reynolds at the June Strategic Planning session.

Annual Meeting Registration Fees

Executive Director Wilkinson shared that she is considering offering the Annual Meeting & Judicial Conference free of charge again this year even though in-person registration will be offered. She reminded the Board that offering the virtual conference free of charge last year resulted in almost 1,600 members registering. She shared that members would have three registration options: 1.in-person attendance; 2. virtual attendance; or 3. a combination of the two. Executive Director Wilkinson reminded the Board that government employees are still feeling the repercussions of budget cuts and may not be able to afford to attend Annual Meeting. Mark Gifford

agreed and shared that we are dealing with so many variables post-pandemic. He shared that he is concerned with hosting the traditional conference and only having 200 people show up. He likes the idea of offering it for free, as it could serve as a celebration of our members coming out of quarantine and also remind people of the great benefits of meeting face-to-face.

Commissioner Gee shared that she would at least like to see that the food and beverage expenses are covered by registration fees, as registrants who pay are more likely to have some buy-in. There was also discussion about having the ability to have more accurate meal projections for registrants who pay and indicate they are attending an event.

After much discussion about the pros and cons of offering the Annual Meeting free of charge, all were in agreement that registration rates would be cut in half from previous years.

Young Lawyers Section Chair's Report

Ben Rose, Chair of the Young Lawyer Section, provided an overview of the many activities and CLE programs the section has recently sponsored. He also shared that the Young Lawyer Spotlights in each issue of the *Wyoming Lawyer* are getting much attention and he is thrilled that young lawyers are receiving this kind of recognition.

Mr. Rose reminded the Board that the Section Council has been considering launching a hotline similar to the one Jack Speight runs for the Wyoming Lawyer Assistance Program (WyLAP) that would be specifically geared to young lawyers. He shared that he has had some discussions with Executive Director Wilkinson, Mark Gifford and Jack Speight about this and even participated in a Zoom meeting along with those folks and representatives from the Colorado Lawyer Assistance Program.

Executive Director Wilkinson shared that during these discussions, which have been taking place for the last few months, it became evident that the need for such a “hotline” was not necessarily centered around substance abuse or mental health issues. As a result, she reported that the discussion changed gears to more of a “warmline” idea where members could call someone simply to ask a question relating to their law practice or their overall frustrations with the practice of law—perhaps a Peer Assistance Program. She shared that the Young Lawyer Section Council had already recruited Jackson lawyer Maryt Fredrickson to run the program. Executive Director Wilkinson shared that Ms. Fredrickson has been involved in these discussions and is in favor of the shift in focus. Mark Gifford shared that the Bar would look into some training resources for Ms. Fredrickson, such as training in motivational interviewing, so that she could effectively triage incoming calls. Mr. Gifford shared that her role would be to identify the problem/issue and determine the best resources for the caller (i.e., WyLAP, the Ethics Hotline, Red Cave Law Firm Consulting, etc.). Mr. Gifford shared that this has prompted him and Melinda McCorkle, Deputy Bar Counsel, to launch a practice management hotline where he would tackle the ethics-related calls and Ms. McCorkle would take the lead on the law practice management calls based on their combined years of practice.

Ben Rose shared that this has been a work in progress for a very long time and he thinks it will be a big achievement for the section if we can get this across the finish line. He indicated that the feedback from young lawyers is it would be nice to have a more relatable resource. He shared that this new focus fits the Young Lawyer Section goals and would be an important and useful tools for young lawyers.

Commissioner Gee asked if there would be sufficient insurance to cover such a program. Mark Gifford shared that in addition to the Bar's liability insurance coverage, this program would fall under the umbrella of WyLAP and there is immunity built into those rules.

Ben Rose reported that he recently learned that suicide prevention is a major issue at the University of Wyoming College of Law. As a result, the Section is partnering with the law school on this to raise awareness.

Mr. Rose reported that he serves on the Wyoming Trial Lawyers Association (WTLA) Board of Directors and with his work through the Young Lawyer Section, he is partnering with them to increase membership, as they are not seeing many young lawyers interested in trial advocacy.

Commissioners' Reports

- *First Judicial District*—Commissioner Boster reported that the Laramie County Bar Association had a meeting last night but she did not attend. She also reported that they are now having in-person hearings in both the District and Circuit Court.
- *Second Judicial District*—Commissioner Sarah Chavez reported that they will be having their annual awards ceremony next week. She also reported that her district is having in-person trials.
- *Third Judicial District*—Commissioner Teresa Thybo reported that jury trials are in full swing in her district. She also shared that the Sweetwater County Bar is no longer active.
- *Fourth Judicial District*—Commissioner Kevin Kessner reported that Judge Fenn recently issued a memo indicating that his district is going back to in-person hearings beginning May 3rd.
- *Fifth Judicial District*—Commissioner Kirk reported that they are starting to return to in-person proceedings in her district. She reported that they had their first jury trial in Circuit Court last week and there are some on the docket in District Court as well. She shared that the Park County Bar was fairly active prior to COVID, but she is unaware whether they will meet in person soon. She shared that she is considering coordinating something for Law Day simply to get everybody together.
- *Sixth Judicial District*—Commissioner Gee reported that Judge Healy is the new judge in her district. She shared that her district has not had in-person hearings for a year.
- *Seventh Judicial District*—Commissioner Craig Silva reported that state court has been very busy in his district. He shared that there is not much consistency in his district, as some civil trials are in person, while others are conducted via GoToMeetings. He also mentioned that use of the Elmo in state court is prohibited. He shared that Judge Skavdahl is pushing everything to in-person proceedings. He shared that there has not

been a Natrona County Bar meeting in so long. He indicated that he would determine who the current president is and follow up.

- *Eighth Judicial District*—Commissioner Shawn Wilde reported that Judge Allan was sworn in this week although he has been on the bench since earlier in the year. He reported that his district had its first jury trial last week and they finally gathered for a county bar meeting last month.
- *Ninth Judicial District*—Commissioner James Whiting reported that his district is back to having in-person jury trials. He also shared that his district did not have its annual Christmas party last year.

Board/Committee Liaison Report

- *Civil Pattern Jury Instructions Committee*—Commissioner Kessner reported that the committee had a meeting in March. They are currently working on a few sections of the instructions that need updating. He provided an overview of those sections. He shared that there will be another meeting in June to tackle those.
- *Criminal Pattern Jury Instructions Committee*—Commissioner Thybo inquired as to the possibility of including archived sets of instructions on Casemaker. Executive Director Sharon Wilkinson asked Commissioner Thybo to determine how far back her committee would like to see. Once determined, Executive Director Wilkinson will contact Casemaker to get those uploaded.
- *Juvenile Pattern Jury Instructions Committee*—Commissioner Whiting indicated that the committee had a Zoom meeting to discuss changes coming out of Albany County. He also shared that the Legislature is planning to change the juvenile code so his committee will be tracking that.
- *Law School Liaison Committee*—President Addleman shared that there have been two conference calls simply to touch base with the law school. He shared that he learned during those calls that there is some genuine concern about the impact the pandemic is having on the law students due to the toll of virtual learning. He reported that members of his committee have volunteered to serve on a series of panels to engage in a “town hall” type of program so law students can learn about their practice areas.
- *Legislative Developments Committee*—President Addleman reported that the committee tracked several bills during the most recent legislative session. He shared that the bill that garnered the most attention from the membership was the one to reduce the 12-person jury to six jurors. He shared that after hearing from some members, the committee considered issuing a statement to the Legislature but ultimately decided against it due to the fact that the bill did not gain traction and ultimately died. There was also mention that the Legislature removed the Medical Review Panel effective July 1, 2021.

President Billie LM Addleman adjourned the meeting at 5:17 p.m. on Friday, April 23, 2021.

Minutes Submitted by:

Sharon Wilkinson
Executive Director