

Wyoming State Bar Board of Officers & Commissioners Meeting

April 26, 2024

Saratoga Hot Springs Resort & Spa

Saratoga, Wyoming

In Attendance: Anna M. Reeves Olson, President; Erin E. Weisman, President-Elect; James T. Whiting, Vice President; Kelly M. Neville, Treasurer; Stefanie L. Boster, First Judicial District Commissioner; Dona Playton, Second Judicial District Commissioner; Jason Petri, Third Judicial District Commissioner; Jennifer L. Kirk, Fifth Judicial District Commissioner; Alison O. Gee, Sixth Judicial District Commissioner (via Zoom); P. Craig Silva, Seventh Judicial District Commissioner (via Zoom); Shawn G. Wilde, Eighth Judicial District Commissioner; Clayton M. Melinkovich, Ninth Judicial District Commissioner (via Zoom); John P. Fritz, Chair, Young Lawyer Section; Sharon Wilkinson, Executive Director; Mark W. Gifford, Bar Counsel, and Cathy Duncil, Admissions Director

Absent: Christopher H. Hawks, Immediate Past President, and Kevin K. Kessner, Fourth Judicial District Commissioner

President Anna M. Reeves Olson convened the meeting at 12:35 p.m. on Friday, April 26, 2024.

Approval of Consent Agenda

Vice President James Whiting made a motion to approve the consent agenda. President-Elect Erin Weisman seconded the motion. The motion carried unanimously.

Admissions

Cathy Duncil shared that 22 applicants took the February bar exam and the pass rate was 50%. She distributed a document showing the past pass rates and mentioned that this pass rate was fairly typical for a February exam, as the majority of the applicants are taking the exam for a second time.

Ms. Duncil shared that the Character and Fitness Committee had a hearing with an applicant recently and she anticipates the committee's report and recommendation the first week of May. She reported that there will be an in-person hearing next month for a motion applicant Mark Gifford will be handling. Ms. Duncil shared that 55 applicants have applied to sit for the July bar exam.

Cathy Duncil reported that she is seeing an increase in the number of special testing accommodations requests. Executive Director Sharon Wilkinson recalled learning that this trend was coming a few years ago at a national admissions conference. Commissioner Dona Playton reported that the number of testing accommodations requests at the law school has

also spiked drastically, and they are starting to see some push-back from the other students who are not requesting such accommodations.

Cathy Duncil shared that members of the staff, the Board of Law Examiners and the Character and Fitness Committee will be attending the National Conference of Bar Examiners (NCBE) Annual Bar Admissions Conference next week in Chicago.

Mandatory CLE

Executive Director Wilkinson reported that the Court suspended one lawyer for failure to comply with his continuing legal education (CLE) requirements. She reported that there are two others for which she recommended their suspension, but both responded to the Order to Show Cause and the Court is giving them more time to fulfill their requirements.

Office of Bar Counsel Report

Mark Gifford reported that his office has received 57 disciplinary complaints so far this year and shared that this number puts his office on pace for a larger volume of complaints than in previous years. He shared that his office typically does not reach the present number until July.

Mr. Gifford reported that his office currently has four matters in formal charge, which will proceed to hearings. He shared that this is also a higher number than usual. He reported attempting to work out stipulations in these cases, but those efforts were unsuccessful. There is one private reprimand so far this year and several stipulations pending.

Mark Gifford shared that the Supreme Court issued an opinion this morning in Andrea Richard's case. He provided background of her disciplinary history. He reminded the Board that seven disciplinary complaints were combined into one formal charge back in 2013, which resulted in the Court suspending her for three years in 2014. He shared that in 2017, Ms. Richard hired Steve Klein to represent her in her reinstatement proceedings. Based on her assurances about rehabilitation, Mr. Gifford stipulated to her reinstatement. Mr. Gifford reported that because Mr. Klein was not available for the reinstatement call with the Board of Professional Responsibility, Melinda McCorkle, Klein's law partner at the time, filled in for the 10-minute call.

Mr. Gifford shared that in 2021, his office received two complaints from Ms. Richard's clients indicating a similar pattern of misconduct that got her suspended in 2014. A few months later, his office received complaints from two judges.

Mr. Gifford shared that, understandably, Ms. McCorkle, now Deputy Bar Counsel, did not want to be involved in the new complaints because her former law firm represented Ms. Richard. Accordingly, Ms. McCorkle had no involvement in the investigation of the new complaints. Mr. Gifford shared that he received approval from the Review and Oversight Committee (ROC) to hire Wes Reeves and Anna Olson to act as special bar counsel to handle the Richard matter. Upon hiring Mr. Reeves, he disclosed that in 2010, he had written a letter to previous bar counsel on behalf of Ms. Richard. Mr. Gifford shared that he and Mr. Reeves did the conflict analysis and determined since so much time had passed, there was not a conflict. Mr. Gifford

shared that he notified Ms. Richard that Mr. Reeves and Ms. Olson were going to be handling her case as special bar counsel and provided a detailed analysis of the absence of a conflict on Mr. Reeves' part, but she never responded.

Mr. Gifford shared that Mr. Reeves and Ms. Olson received authority from the ROC to file a formal charge. Ms. Richard then retained counsel who raised what he thought was a conflict. Mr. Gifford reiterated that his position was that the 2014 disciplinary proceeding and the 2017 reinstatement proceeding were not related to the new complaints.

Ms. Richard's counsel asked the ROC to disqualify both Mr. Reeves and the Office of Bar Counsel from the case. The ROC ruled that Mr. Reeves either had a conflict of interest or the appearance of a conflict and disqualified him. The ROC ruled that Mr. Reeves' conflict is not imputed to Bar Counsel. Ms. Richard's counsel then filed a petition for writ of review with the Wyoming Supreme Court, challenging the ROC's determination that Bar Counsel could remain in the case. The ROC retained separate counsel to respond to the petition. The response filed on behalf of the ROC conceded that an appearance of a conflict of interest is not something that is found in the Rules of Professional Conduct. The Court denied the petition.

Mr. Gifford then filed a formal charge with the Board of Professional Responsibility (BPR). Ms. Richard's counsel filed a motion with the BPR to disqualify Bar Counsel. A hearing panel of the BPR denied the motion, holding that neither Mr. Gifford nor Mr. Reeves should be disqualified because the new disciplinary matters were not the same or substantially related to Ms. Richard's prior disciplinary matters. Ms. Richard's counsel then filed a second petition for writ of review which the Court granted, ordering the parties to brief the issue. This morning, the Court issued an order reversing the BPR's decision and disqualifying the Office of Bar Counsel. The Court held that Ms. Richard's 2014 suspension, the 2017 reinstatement, and the current disciplinary proceeding are substantially related because all three proceedings involve factual contexts that are "relevantly interconnected" and reveal Ms. Richard's alleged "pattern of conduct." The Court reasoned that because the proceedings are substantially related, there is an irrebuttable presumption Ms. Richard revealed confidential information to Mr. Reeves and Ms. McCorkle during the previous representations. These conflicts must be imputed to Mr. Gifford and the Office of Bar Counsel because screening measures were not properly implemented pursuant to W.R.P.C. 1.10(a)(2). The Court remanded this proceeding to the ROC with instructions to appoint a new, conflict-free special bar counsel, who will begin the investigation anew based on the four complaints.

Mr. Gifford reported that the fee arbitration program has been very busy this year. He shared that Casper attorney Phil Willoughby is the current chair and he does an excellent job working with Marie Ellis to keep these cases moving through the process.

Proposed Amendments to the Bylaws of the Wyoming State Bar

Mark Gifford reminded the Board that there was discussion of the Fifth Circuit Court of Appeals *Boudreaux* decision, which was critical of some of the Louisiana State Bar's wellness efforts, during the January meeting. He shared that the Fifth Circuit analyzed all kinds of wellness-related communications and projects that the Louisiana State Bar had dabbled in and

went through issue by issue to determine which were germane to the practice of law. As a result of this opinion, Mr. Gifford reminded the Board that he offered to come to this meeting with some proposed amendments to the Bylaws to hopefully address some wellness issues.

Mr. Gifford suggested that if the Board is in agreement with the revisions, we wait until other rule revisions are finalized so that all could be packaged together to go out for member comment. That way, we are not piecemealing those for submission to the Court.

Commissioner Alison Gee made a motion to approve the proposed amendments to the Bylaws of the Wyoming State Bar to go out to the members for comment. Treasurer Kelly Neville seconded the motion. Commissioner Shawn Wilde expressed his concern considering the *Boudreaux* ruling specifically says not to embark on wellness issues. Commissioner Gee shared that she reads the opinion to mean if the wellness issues are a part of the Bar's core functions, it is acceptable. She noted that in the Louisiana case, there was no mention of wellness efforts in its bylaws or policies.

Mark Gifford shared that he thinks the proposed amendments strike a balance between wellness efforts that are germane to the practice of law, e.g., improving the quality of legal services offered to the public because lawyers are mentally and emotionally fit, and those that are not.

President-Elect Weisman wondered if the proposed language should be in subsection 4 instead of subsection 3 considering subsection 3 discusses the services the Bar provides to the public. Mr. Gifford indicated that he thinks it could fit in either subsection and does not feel strongly about it one way or the other.

Commissioner Wilde reiterated his concern that by including wellness efforts in the Bylaws is simply highlighting it. He respectfully disagreed with Commissioner Gee and shared that when he reads the *Boudreaux* ruling, he takes it to mean that even if you list something in your bylaws/policies, a Bar can still not embark upon those activities if they are not germane to the practice of law. He shared that there are other cases percolating in the Tenth Circuit and they are getting narrower and narrower.

Commissioner Jennifer Kirk shared that there is a strong argument to say that mental and physical health of attorneys is paramount to the quality of legal services they are able to provide to the public. She feels that with today's culture, to say lawyers' wellbeing does not have an impact on the level or quality of services is inaccurate.

Commissioner Playton asked for a status update on the Tenth Circuit cases. Commissioner Wilde shared an overview of those cases and reported that *Schell* and *Pomeroy* keep getting sent back and forth.

Mark Gifford provided an overview of the *Schell* case and indicated that the Editorial Committee has really taken that case to heart by scrutinizing every article that is published in the *Wyoming Lawyer*.

President-Elect Weisman appreciated Commissioner Wilde's perspective but thinks the inclusion of wellness in the bylaws is a sensible way to accommodate the *Boudreaux* holding in order to continue with wellness initiatives.

The motion carried.

2023-2025 Strategic Plan Progress Report

Executive Director Wilkinson walked the Board through the progress report and mentioned that the full roll-out of the mentorship program has begun. After meeting the goal of recruiting 50 mentors, she recently invited the young lawyers to sign up as mentees.

Treasurer Neville reported that the Small/Solo/Rural Working Group met last week during the Small/Solo/Rural Law Forum. Judge Kaste joined the group and expressed interest in getting one or more interns in his district without legislative funding. She also reported that the Law Forum took place last week and the reception was well attended. She heard very positive verbal feedback from the attendees.

Treasurer Neville discussed the status of the law school endowment and reminded the Board that the Bar was obligated to form a committee to select students and award funds after consultation with the law school. She reported that being somewhat of a challenge due to the Dean not being engaged as well as the career services position formerly held by Ashli Tomisich being vacant. However, she reported that the group had worked closely with the interim career services person. They have also been in contact with Tim Crawford at the Civil Legal Clinic as well as Professor Romero.

Treasurer Neville shared that 11 applicants expressed interest in the endowment—five employers and six students. The end result will be an attorney in Moorcroft hiring a first-year law student to work full-time for her during the coming summer.

Treasurer Neville shared that the Small/Solo/Rural Working Group feels there is value in trying to get the Rural Practice Initiative before next year's legislature. She reported that Marcia Shanor, Executive Director of the Wyoming Trial Lawyers Association (WTLA), participated in that legislative discussion. She reported that during the Law Forum, she and Professor Romero discussed both the legislative bill and endowment and received positive feedback on both.

University of Wyoming College of Law Update

Commissioner Playton reported that Julie Hill, the new Dean of the law school, will start in her new position on June 28th.

Commissioner Playton reported that nationwide applications for admission to law school are down. The University of Wyoming College of Law is down about 20% in its number of applications, so they may be seating a smaller class.

Commissioner Playton shared that the law school has not had a curriculum update in quite some time. They are still trying to comply with ABA Standard 303 (Equality for All).

Commissioner Kirk asked how the law school will maintain its diversity, equity and inclusion standards for accreditation when the Legislature is cutting those programs. Commissioner Playton shared that Standard 303 is separate because it is tied directly to accreditation.

Executive Director Wilkinson shared that following direction from the Board during the January meeting, she reached out to Julie Hill to begin discussions about her role with the Bar's Law School Liaison Committee, but she never received a response from her.

Commissioner Playton shared that she and Executive Director Wilkinson have discussed possibly inviting Julie Hill and local attorneys and judges to Pinedale for the June meeting and/or Buffalo for the August meeting.

Treasurer Neville shared that she talked to Brett Befus at the University of Wyoming Foundation last week and learned that he is doubtful that Ms. Hill will be able to make the board meetings this summer, but they will be reaching out to the Bar soon.

Access to Justice Commission/Equal Justice Wyoming Update

Executive Director Wilkinson shared that she recently attended an Access to Justice Commission meeting so she wanted to share the minutes from the Commission's November meeting simply because there is so much going on with access to justice efforts, she thought the Board would be interested in learning about those. She also shared the make-up of the Access to Justice 2.0 Committee along with its working groups and the status of all their efforts.

Executive Director Wilkinson reminded the Board that Commissioner Kirk, Commissioner Wilde and Cathy Duncil serve on the Equal Justice Wyoming (EJW) Board. She also reminded the Board that the Wyoming Judicial Council recently transitioned EJW under the Administrative Office of the Courts (AOC).

Commissioner Kirk reported that she and Cathy Duncil served on the working group to draft new bylaws for Equal Justice Wyoming. She reported that after a few drafts were circulated, they submitted their recommendations to the AOC. The AOC sent the proposed bylaws back and asked them to try again based on the feedback provided.

Commissioner Kirk shared that she has only served on the EJW Board for one year, but from her perspective, between the EJW board and the AOC there seems to be some misalignment or concurrence about what it looks like to be in the trenches on a day-to-day basis with low-income litigants, including between more rural areas compared to larger towns with more available resources and access to technology.

Commissioner Wilde shared that it felt like the decision to transition EJW under the AOC happened fairly quickly and the EJW Board turned into an advisory committee to the AOC. He shared that he is struggling to figure out how it is going to be effective.

Commissioner Kirk shared that she fought hard to get language in the final draft of the EJW bylaws that there at least be a recommendation that of the one judge from the District Court and one judge from the Circuit Court, at least one be from a rural district. She reported that she was successful with that effort.

Commissioner Playton shared that she has a long history on the Access to Justice Commission and as long as she has been involved, there has never been a self-represented litigant at the table. She shared that, nationally, only 27% of all civil cases filed have an attorney on both sides; whereas, in 65-80% of all cases, one party is self-represented. She shared her frustration that most discussion is focused on how to make things easier for the courts, which oftentimes makes it harder to access the legal system. She shared another frustration is the lack of data Wyoming tracks and mentioned that it is her understanding that we may be working on new collection models to track data the National Center for State Courts recommends, including the number of self-represented litigants. Commissioner Playton shared that she serves on the Access to Justice 2.0 Family Law working group and it is excellent so far. She feels that making sure we have stakeholders who are representing the needs of people that need to access those courts is being neglected. She feels that we need to provide people the resources to resolve their issues without going through the court processes, so Wyoming can get ahead and continue to make meaningful changes.

Commissioner Jason Petri shared that he deals with people who are trying to complete the self-help forms when trying to represent themselves. While lawyers think certain aspects of those forms are obvious, the public does not.

Treasurer Neville shared that Chief Justice Kate Fox and Elisa Buter, State Court Administrator, are expressing these same sentiments to the Legislature, but some legislators continue to blame lawyers for these issues.

Law School Endowment Fund Update

Executive Director Wilkinson reminded the Board that most of this update was discussed during the Strategic Plan Progress Report; however, she asked Treasurer Neville to provide an update on the conference she will be attending next month in Nevada.

Treasurer Neville shared that she and Professor Alan Romero from the UW College of Law will be speaking on a panel at the National Center for State Court's Legal Deserts Conference in Las Vegas next month. She shared that she is very interested in a session about data mapping, for which Executive Director Wilkinson has already sent in Wyoming's data.

WyLAP Update

Executive Director Wilkinson pointed the Board's attention to the memo that Cody Jerabek, WyLAP Director, has provided with an update on his activities. Mark Gifford shared that Mr. Jerabek has brought new energy into the office and has been working hard to expand his profile amongst the membership. Mr. Gifford shared that he and Ms. McCorkle have referred several members who may wind up in disciplinary hot water to WyLAP and Mr. Jerabek has

been great about hitting those head-on. Mr. Jerabek does not report back on the status of those efforts, nor should he.

President's Report

President Olson shared that she has been thinking about the new mentorship program and how she can reach out to young lawyers to help them. She shared that when she hears of a new lawyer in Casper, she tries to reach out and establish a relationship with them. She encouraged others to do the same.

President Olson shared that she had the honor of speaking at Justice Jarosh's robing ceremony and it was one of the best ceremonies she has ever attended.

President-Elect's Report

President-Elect Weisman reported that she attended the Bar Leadership Institute last month with Executive Director Wilkinson and it was one of the best conferences she has ever attended. She shared that she learned a lot and the conference really highlighted what a great resource the American Bar Association is.

Vice President's Report

Vice President James Whiting apologized for missing meetings lately and shared that he is happy to be here.

Executive Director's Report

Executive Director Wilkinson shared that there have been some personnel changes in the office recently. She shared that Reilley Larimore, Administrative Assistant, resigned in March in order to accept a position that would offer her much more flexibility for her and her large family. Executive Director Wilkinson contacted Express Personnel immediately and Deanna Grimm began as a temporary employee before Ms. Larimore left. She is still employed as a temporary employee.

Executive Director Wilkinson reported that Sally Slater, Assistant to Bar Counsel, turned in her letter of resignation on April 1st. As a former teacher, she does not like to work full-time and really enjoys her summers off. She shared that while recruiting for the position, former Assistant to Bar Counsel, Shannon Howshar, expressed interest in returning to the position, so she starts on Monday.

Executive Director Wilkinson reminded the Board that registration for the Jackrabbit Bar Conference is open and the deadline is May 2nd. She shared that President Olson, President-Elect Weisman, Treasurer Neville, Mark Gifford and herself would be attending. She reminded the Board that according to the Board's Travel Reimbursement Policy, two commissioners could be chosen by lottery to attend the conference. She also reminded the Board that nobody from Wyoming attended the Western States Bar Conference, so travel budgets were under budget. She wondered if the Board wanted to make any exceptions to the policy for the Jackrabbit Bar Conference.

Treasurer Neville made a motion to allow any interested commissioners to attend the Jackrabbit Bar Conference. Commissioner Stefanie Boster seconded the motion. The motion carried unanimously.

Executive Director Wilkinson shared that during the Access to Justice Commission meeting, she learned that Natrona County had launched its Court Navigator Pilot Program. She shared that there are currently six volunteer navigators to assist members of the public with protection orders, domestic relations issues and forcible entry and detainer actions. It is her understanding that these volunteers are coming from the paralegal programs at Casper College as well as from Laramie County Community College. Executive Director Wilkinson mentioned that she will share the link on the Judicial Branch's website with the Board so they can see the extensive resources available through the pilot program. She shared that it is the Judicial Branch's hope that the program will expand statewide eventually.

Executive Director Wilkinson shared that she and Cathy Duncil, Bookkeeper, will begin putting together a draft proposed budget for the 2024/2025 fiscal year next month. She asked the Board if it had any direction for her to factor into the proposed budget. After hearing none, she encouraged the Board to give it some thought and let her know if anybody comes up with anything.

Executive Director Wilkinson reported that she will distribute a "call for nominations" to all Active, in-state members of the Bar on June 1st to recruit nominations for President-Elect, Vice President, Treasurer and the Bar's Delegate to the ABA. She reminded the Board that President-Elect Weisman would step into the President's role on September 13th. She also mentioned that Commissioner Jason Petri, Commissioner Craig Silva and Commissioner Shawn Wilde's terms expire in September. She shared that Commissioners Petri and Silva are eligible to serve a second term; however, Commissioner Wilde has already served two terms and is therefore ineligible to continue. Executive Director Wilkinson also reported that John Fritz, Chair of the Young Lawyer Section, steps down from the Board on September 30th. Cheyenne lawyer Carl Edelman will step into that role on October 1st and will sit as an ex-officio member of this Board.

Executive Director Wilkinson shared that she was honored to serve on the Merit Selection Committee for the vacant federal Magistrate Judge position. She shared that, following the interviews, three applicants were submitted to the U.S. District Court judges and they are awaiting the decision.

Young Lawyer Section Report

John Fritz shared that the mixer for members of the judiciary will take place the Tuesday evening of the Annual Meeting & Judicial Conference. He also shared that the Young Lawyer Section is hosting a panel discussion with a few judges on legal writing and Tyler Garrett has agreed to moderate that. He shared that a few other CLE programs are in the works.

John Fritz commended Jared Correia of Red Cave Law Firm Consulting, as Mr. Correia was instrumental in helping his law firm with some technology-related issues. It was so valuable to

have him steer the firm away from certain things it was considering and he is very knowledgeable.

Vice President Whiting made a motion to allow the Chair of the Young Lawyer Section to attend the Jackrabbit Bar Conference this year. Commissioner Boster seconded the motion. The motion carried unanimously.

Commissioners' Reports

- ***First Judicial District*** – Commissioner Boster reminded the Board that during her report at the January meeting, she reported that the Laramie County Bar Association was inactive. This board encouraged her to take the necessary steps to get the local bar active again. She shared that she now has a steering committee assisting her with these efforts. She was also interested to learn that the judges also want to be involved with the county bar. She shared that it has been interesting to learn that lawyers want more social activities instead of simply free CLE. Commissioner Boster reported that they have a meeting scheduled in May to elect the executive committee and this summer, she is planning some get-togethers at breweries in Cheyenne. She has also learned that nobody wants to pay for their memberships so she is figuring out how to move forward with that. Mark Gifford encouraged her to perhaps consider local law firm sponsorships.
- ***Second Judicial District*** – Commissioner Playton shared that the Albany County Bar has also rallied and hosted a luncheon with all of the judges considering they are all new since Covid. Treasurer Neville shared that there were 35 attorneys in attendance. Commissioner Playton shared that Senators Tara Nethercott and Chris Rothfuss will be providing a legislative update at next month's meeting. Treasurer Neville reported that the Albany County Bar members received notice about attending the Small/Solo/Rural Law Forum welcome reception and a few did.
- ***Third Judicial District*** – Commissioner Petri shared that his district has not had any bar meetings; however, a "You Be the Judge" program was hosted at the junior high recently. He also reported that Tom Deering, Judge Lavery's law clerk, put on an eFiling training in Green River recently. He shared that the overall general discussion of how eFiling works is fairly easy to comprehend, but the hands-on session is something that every attorney needs.
- ***Fifth Judicial District*** – Commissioner Kirk shared that she joined Kristen Schlattman, Judge Overfield and former Judge Harrington at the high school in Basin to host a "We the People" program as part of the government class. They sat on a panel while students presented constitutional law arguments to them. She reported that in a few weeks, the same group of people will host a Law Day event in Big Horn County. They have invited the fifth-grade classes from the surrounding areas and will do a mock trial for the students. She understands that Hot Springs County will do a similar program.
- ***Sixth Judicial District*** – Commissioner Gee shared that the Campbell County Bar President has resigned, but she has not yet seen anybody volunteer to serve in that capacity.
- ***Eighth Judicial District*** – Commissioner Wilde shared that the Converse County Bar had a get-together and toured the new Converse County Justice Center. His local bar

also finalized candidates for two scholarships for graduating seniors interested in going into the legal profession. Prior to this meeting, Commissioner Wilde reported that he reached out to the Goshen County Bar Association and learned that it has been more active than he realized. They have been putting on various presentations in the schools as well as inviting students into the courts to show them around. Commissioner Wilde shared that in Converse County, they also assist with the Wyoming Law Enforcement Academy.

- ***Ninth Judicial District*** – Commissioner Clayton Melinkovich reported that he was able to attend the Fremont County Bar Association meeting a few weeks ago. He felt that it was a good visit and met a few people. The main topic of discussion was eFiling. He also shared that the Sublette County Bar Association will be gathering to discuss a few things soon—mainly what to do with some available funds. Commissioner Melinkovich shared that in his county, the District Court Clerk continues to discuss eFiling concerns that she has.

President Anna Olson adjourned the meeting at 4:01 p.m. on Friday, April 26, 2024.

Minutes Submitted by:

Sharon Wilkinson
Executive Director