

Wyoming State Bar Board of Officers & Commissioners Meeting

August 19 - 20, 2016
Best Western Devil's Tower Inn
Hulett, Wyoming

- In Attendance:** Devon O'Connell, President; John A. Masterson, President-Elect; Robert C. Jarosh, Vice President; Weston T. Graham, Treasurer; Melinda S. McCorkle, First Judicial District Commissioner; Dawnessa A. Snyder, Second Judicial District Commissioner; Teresa S. Thybo, Third Judicial District Commissioner; Nicholas T. Haderlie, Fourth Judicial District Commissioner; Bobbi D. Overfield (via telephone), Fifth Judicial District Commissioner; J. Kenneth Barbe, Seventh Judicial District Commissioner; Nathaniel S. Hibben, Eighth Judicial District Commissioner; Erika M. Nash (via telephone), Ninth Judicial District Commissioner; Sharon Wilkinson, Executive Director; Cathy Duncil, Admissions Director; and Mark Gifford, Bar Counsel
- Absent:** James L. Edwards, Sixth Judicial District Commissioner; Bradley D. Bonner, Immediate Past President; Caitlin F. Young, Young Lawyers Section President
- Guests:** Justin Johnson, Digital Director/West Edge Collective
Linda Finnerty, Director of Client Services/West Edge Collective
Craig Newman, Chair of Review & Oversight Committee
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President O'Connell called the meeting to order at 12:41 p.m. on Friday, August 19, 2016.

Approval of Agenda

Commissioner Barbe made a motion to add the "Dress for Success" discussion to the agenda. Commissioner Snyder seconded the motion. The motion carried unanimously.

Commissioner Snyder made a motion to approve the amended agenda. Commissioner McCorkle seconded the motion. The motion carried unanimously.

Approval of Minutes

Commissioner Snyder made a motion to approve the minutes from the June 17, 2016, Board meeting. Commissioner Thybo seconded the motion. The motion carried unanimously.

Executive Committee Meeting Minutes

President O'Connell directed the Board's attention to the meeting minutes from the Executive Committee's Wednesday morning calls and mentioned that these are now shared with the full board in an effort to keep the board informed about activities, discussion and decisions being made by the Executive Committee.

Treasurer's Report

Treasurer Graham directed the Board to the Budget vs. Actual Statement. He shared that he does not see anything out of the ordinary for this time of year. Treasurer Graham made a motion to accept the Treasurer's report. President-Elect Masterson seconded the motion. The motion carried unanimously.

Admissions

President-Elect Masterson, who also serves as the Chair of the Board of Law Examiners (BLE), shared that prior to grading the July bar exams, the Board of Law Examiners met earlier in the week with Bar staff to discuss some possible amendments to the rules governing admissions. He also noted that there were only 48 exams to grade, which was low for the July exam. Cathy Duncil, Admissions Director, and Sharon Wilkinson, Executive Secretary to the BLE, explained that as a result of the Uniform Bar Exam (UBE), the Bar is seeing far more score transfer applicants and motion applicants than exam applicants. Bar applicants can now take the UBE in 25 jurisdictions and transfer a score, so this has had an impact on the number of exam takers.

Cathy Duncil, Admissions Director, shared that while a date had been selected for this year's new admittee ceremony and reception, the Supreme Court has requested a change in the date due to no federal judges being available for the ceremony. Executive Director Wilkinson shared that she will keep the Board informed as things transpire.

Executive Director Wilkinson shared that for the first time exam takers went through a security screening at the July exam. Cathy Duncil described the process and reported that the security measures taken were a great success and she plans to continue with this clearance at all exams.

Mandatory CLE

Executive Director Wilkinson reported that Chief Justice Burke submitted some proposed amendments to the CLE Rules with a request for her to share them with the Board of CLE for approval. Executive Director Wilkinson and Marie Ellis met via teleconference with the Board of CLE and it approved the proposed amendments. The Court was notified of the Board's decision; however, the Bar has not received an order putting those amendments into effect.

Wyoming State Bar Database Infrastructure Proposal

Executive Director Wilkinson introduced Justin Johnson and Linda Finnerty from West Edge Collective. Justin serves as the Digital Director and Linda serves as the Director of Client Services. Executive Director Wilkinson reminded the Board that it gave her authority earlier in the year to enter into a "discovery phase" with West Edge Collective to do a needs assessment of the Bar's current technology infrastructure. She also reminded the Board that this was a direct result of the Board's commitment to significantly strengthen the Bar's infrastructure, which is Goal 1 of the Bar's current Strategic Plan. Executive Director Wilkinson shared that the staff has spent a considerable amount of time with staff from West Edge Collective during this phase one period. She reported that the entire staff feels that West Edge Collective has a

clear understanding of the problems with the Bar's current membership database and website, and asked for approval to move forward to Phase 2 with West Edge Collective.

Justin Johnson gave a 45-minute presentation outlining his specific findings from Phase 1 along with his recommendations for moving into Phase 2. Following his presentation, Justin answered several questions regarding security of the Bar's data, need for new hardware and cloud-based storage.

Following the discussion, President O'Connell shared that the approval of this proposal will be discussed later during the discussion of the proposed budget for the next fiscal year.

Bar Counsel Performance Evaluation

President O'Connell introduced Craig Newman, Chair of the Review & Oversight Committee. Vice President Jarosh made a motion to convene an Executive Session. President-Elect Masterson seconded the motion. The motion carried unanimously.

Following the Executive Session, Treasurer Graham shared that the Board has approved a \$5,000 increase to Executive Director Wilkinson's salary for the next fiscal year and also approved salary increases in the range of 0 – 5% for the remainder of the staff, to be given at Executive Director Wilkinson's discretion. The Board also gave Mark Gifford authority to increase Shannon Howshar's salary in the range of 0 – 5% at his discretion.

Office of Bar Counsel Report

Mark Gifford directed the Board to his report in the Board notebook. He reported that two recommendations for suspension were submitted to the Court that included a provision for probation. The Court approved both recommendations, which are the first ones the Bar has had under the new Rules of Disciplinary Procedure. Mr. Gifford shared that he is pleased that the Court approved these recommendations and feels it is a positive way to help rehabilitate attorneys instead of only sanctioning them, and in the case of a suspension, prohibiting them from practicing for a period of time.

Fee Disputes

Mr. Gifford reminded the Board that the Wyoming Supreme Court approved the new Rules for Fee Arbitration and those take effect October 1, 2016. He shared that the Bar is in the process of recruiting a pool of arbitrators and lining up appointees for the Fee Arbitration Committee.

Unauthorized Practice of Law (UPL)

Mr. Gifford shared that although the UPL system has been fairly quiet, the two years since we adopted the new rules, his office recently had a complaint against a realtor who used a modified real estate sales contract to sell an LLC. This may be the first significant UPL claim under the new rules.

Clients' Security Fund (CSF)

Mr. Gifford reminded the Board that at the last meeting, he reported the Bar has a new \$34,000 claim against the lawyer who has cost it quite a bit of money in the last year. That claim is likely to be approved; therefore, he anticipates paying an additional \$20,000 in claims this fiscal year (a \$10,000 second installment on a \$100,000 claim that was submitted last year, and a \$10,000 initial installment on the new \$34,000 claim). Commissioner Snyder inquired as to whether or not the Bar could spend down its reserves by allocating \$100,000 from this year's net profit to help fund the Clients' Security Fund. Mr. Gifford advised that such an allocation would not accomplish a spend-down of reserves, as \$100,000 would not be an expense. Commissioner McCorkle inquired as to whether or not it is possible to change the CSF rules to remove the \$10,000 cap on claims per year per claim. Mr. Gifford cautioned against that, as some states see million dollar claims. He would recommend some sort of cap. President O'Connell asked if it would be possible to expense everything we have paid with cash on hand instead of paying claims out of the Bar's CSF account. Mr. Gifford suggested moving \$35,000 - \$50,000 from our general account to the CSF account.

Succession Planning

Mr. Gifford shared that he is spending a significant amount of his time on lawyer succession issues. He explained that as our members age and continue practicing into their senior years, some who have very active practices have passed away. Some of them designated surrogate attorneys but unfortunately not all. Mr. Gifford walked the Board through the process he uses to assist in these instances. Mr. Gifford anticipates this taking more time as the average age of our members continues to climb and they remain in practice longer.

Treasurer Graham recommended the Bar consider doing some target marketing for those members 65 years of age or older to encourage them to take the steps to put a succession plan in place before they pass away.

Proposed Amendments to W.R.C.P. Rule 1.15 (Lawyer Trust Accounts)

Mr. Gifford reminded the Board of the proposal to change the lawyer trust account rules so that banks would be required to notify the Office of Bar Counsel if/when an attorney's trust account is overdrawn. He shared that following two comment periods, he thinks the rule is ready to go to the Supreme Court with a request for adoption.

Commissioner Snyder made a motion to give Mr. Gifford the authority to submit the proposed rule amendments to the Wyoming Supreme Court with a recommendation for adoption. Commission McCorkle seconded the motion. The motion carried unanimously.

Ratification of Executive Committee's Decision for Building Repairs/Improvements

Executive Director Wilkinson asked the Board for ratification of the Executive Committee's decision to approve her expenditure request in the amount of \$14,097 for building repairs/improvements. Commissioner Snyder made a motion to ratify the Executive

Committee's decision. Commissioner Barbe seconded the motion. The motion carried unanimously.

Selections of 2016 – 2017 Meeting Dates

Executive Director Wilkinson directed the Board's attention to the recommended locations for next year's Board meetings. Specific dates were chosen for each meeting. Executive Director Wilkinson will update the meeting schedule and share that with the Board. She will also post each meeting date and location on the Board members' Outlook calendars.

Dress for Success Initiative

Commissioner Barbe shared that he has an associate that works for his firm. The associate is involved with a program to teach law students to dress for success. He has requested that the Bar help market this effort in connection with the Bar convention; if members have extra clothes, they could bring them to be donated. Executive Director Wilkinson shared that she is happy to help spread the word about this program.

Diversity & Inclusion Training

Executive Director Wilkinson reminded the Board that it approved a proposal to create a Diversity & Inclusion Committee earlier this year. She shared that Alisa Rosales, Chair of the committee, has extended an invitation to the Board of Officers & Commissioners to attend a diversity training during this year's Annual Meeting. Executive Director Wilkinson shared the talking point that Ms. Rosales provided as to why the training is important. She noted that the training will take place on Friday, September 16, 2016, from 10 – 11 a.m. at the Marian H. Rochelle Gateway Center.

Proposed Budget

Treasurer Graham gave an extensive report on the proposed budget explaining some reasoning behind some of the dollar amounts.

After considerable discussion and adjustments, Commissioner Hibben made a motion to adjourn the meeting and reconvene Saturday morning. Commissioner Snyder seconded the motion. The motion carried unanimously. The meeting adjourned at 5:50 p.m. on Friday, August 19, 2016.

Saturday, August 20, 2016

President O'Connell reconvened the meeting at 8:00 a.m. on Saturday, August 20, 2016.

Proposed Budget (continued)

Treasurer Graham shared that as a result of the previous day's discussion, Cathy Duncil, Bookkeeper, made the recommended adjustments to the proposed budget. The end result is a projected net loss of \$4,800.

President O'Connell inquired as to whether or not the Board wanted to move forward with West Edge Collective. After discussion, Commissioner Hibben made a motion to terminate the

contract with Cheyenne Technology and approve the proposal from West Edge Collective. Commissioner Haderlie seconded the motion.

Vice President Jarosh recommended going back to West Edge Collective with a counter-proposal to move forward with the company but only at \$11,000/month instead of \$12,000/month. Mark Gifford shared that there has been a significant amount of work that has gone into Phase 1 of the project. He feels this is a huge relationship of trust moving forward and did not support Vice President Jarosh's recommendation. Mr. Gifford felt that if it were a situation where the Bar had received numerous RFPs and were choosing between several qualified vendors, that would be a different story. Treasurer Graham shared that he is voting in favor of the motion to move forward with West Edge Collective because the staff is in favor of it and he is convinced that it is much needed. Commissioner Barbe agreed with Mr. Gifford about not negotiating the dollar amount. He feels like West Edge Collective is fair and up front with the Bar and he does not want to nickel and dime them. He did, however, caution that the Bar needs a clear scope of work. Mr. Gifford shared that he and Executive Director Wilkinson are currently negotiating the statement of work (SOW). He also shared that the second phase contract is a lot more involved, with a 15-page SOW. It has much more detail and deliverables. Mr. Gifford feels like we have had good eyes on this and a careful review of the contract with outside advice from Jackson attorney Chris Hawks. The motion carried unanimously.

Proposed Budget - Wyoming Law Review

President O'Connell reminded the Board that Executive Director Wilkinson proposed allocating \$5,400 for the Wyoming Law Review at the June 2016 meeting, and the Board approved that. Due to the financial concerns at the law school, President O'Connell wondered whether or not the Board wanted to consider an increase to that dollar amount. President-Elect Masterson shared that he is in favor of helping the law school; however, he feels that making a financial donation in another fashion makes more sense.

Mark Gifford shared that this issue has been the subject of ongoing discussion at Board meetings since the 1970s.

After much discussion, Commissioner McCorkle made a motion to cover the entire cost per publication for those members who opt in to a subscription to the Wyoming Law Review through the Bar. President-Elect Masterson seconded the motion. The motion carried.

Proposed Budget - Diversity & Inclusion Committee Budget Request

Executive Director Wilkinson directed the Board's attention to the written request submitted by Alisa Rosales, Chair of the Diversity & Inclusion Committee, along with the executive summary of diversity and inclusion efforts from the Center for Legal Inclusiveness (CLI).

Commissioner McCorkle shared that she does not have any issues with the majority of the request; however, she is opposed to the \$1,800 request for two people to attend the Diversity & Inclusion Summit. After reference to this committee being a "section," President O'Connell clarified that this is not a practice section; this is a committee to which she appointed the members.

Commissioner Haderlie agreed with Commissioner McCorkle and asked for some historical information about this committee. Executive Director Wilkinson reminded the Board that Alisa Rosales submitted a written proposal to this Board earlier in the year to create a Diversity & Inclusion Committee. This Board approved that request and Executive Director Wilkinson immediately put out a call for expressions of interest to the membership to learn who wished to serve on the committee. President O'Connell reviewed all expressions of interest and made her appointments to the committee. The committee then elected Alisa Rosales to serve as its chair.

Commissioner Hibben shared that he was not in favor of the membership in the Center for Legal Inclusiveness. He is concerned that it is an ideological organization and the Bar should not support such an ideological cause. Commissioner Hibben reminded the Board that he heard some dissatisfaction from one of his constituents when the Board created this committee. Mark Gifford shared that states are really split on this topic. Commissioner Overfield inquired as to whether or not the Bar pays for any other committee/section to belong to any organizations. Executive Director Wilkinson shared that the Bar does not.

After much discussion, Commissioner Thybo wondered if this Board is struggling with this issue, what will the membership think of it. She shared that she does not feel like CLI is where this Board wants to allocate Bar funds. Commissioner Haderlie shared his concern that attendance at the Summit would not benefit the Bar.

Commissioner Overfield made a motion to allocate \$2,000 to the Diversity & Inclusion Committee. The motion failed for lack of a second.

Commissioner Hibben made a motion to not fund this committee's full request but allocate \$50 for this committee. Commissioner Thybo seconded the motion.

Executive Director Wilkinson recommended turning this committee into a section. That way, members are choosing whether or not to join the section and perhaps the section dues could be the budget from which they could draw upon. President-Elect Masterson asked what the difference was between a section and a committee; Executive Director Wilkinson explained.

President O'Connell shared that she does feel that diversity and inclusion issues need to be addressed and this committee needs to guide the Bar through those. President-Elect Masterson wondered what would happen if the Board gave the committee \$500 but tasked the committee members with bringing recommendations and suggestions to this board. He felt that would give the committee an opportunity to tell the Board who it is and in what direction it would like to go. The end result would be the Board would either approve that or not.

The motion to allocate \$2,000 to the committee failed.

President-Elect Masterson made a motion to allocate \$500 for the Diversity & Inclusion Committee. As part of that budget, he recommended tasking the committee with bringing a comprehensive report and recommendation on organizations to join, goals and a plan that would be appropriate for the Bar to embark upon. Commissioner Haderlie seconded the motion but wondered if the Board should possibly share with the committee that it is not in support of membership in the Center for Legal Inclusiveness. President-Elect Masterson supplemented his motion to include not joining any organization until the Board has reviewed all of the options and determined which best suits the Bar. Commissioner Haderlie approved the supplemented motion. Commissioner McCorkle agreed with President-Elect Masterson but felt the burden should be on the committee to seek other resources instead of the Bar. The supplemented motion carried.

Proposed Budget - Young Lawyers Section Budget Request

The Young Lawyers Section has requested \$10,000 for the upcoming fiscal year. The staff has recommended \$4,000. Commissioner Haderlie shared his concerns about even allocating \$4,000. He shared his concern that this section has not functioned well this year. He was also concerned that the Bar should not be spending money on some of the things in the budget request. After discussion, Commissioner Haderlie made a motion to fund the YLS at \$1,500. Treasurer Graham seconded the motion. The motion carried.

Proposed Budget – Wyoming State Bar Legal Directory

Treasurer Graham wondered if the Board wanted any discussion about the directory. Commissioner Haderlie shared that a few of his constituents voiced their dissatisfaction with the new format; however, he feels strongly that since the Bar has already taken criticism for this, members will eventually get used to the new format.

Commissioner McCorkle wondered about implementing a system where members can opt out of receiving the printed directory. Executive Director Wilkinson shared that she plans to implement an opt-out system once the Bar has a new mobile friendly website that includes all of the data in the directory. Commissioner Haderlie shared that he is in favor of eliminating the directory altogether. He feels it is outdated the minute it is published and that makes it worthless. President O'Connell shared that she would be in favor of it eventually; however, she feels that we need to phase the printed directory out over time.

Commissioner Haderlie made a motion to implement an opt-out system for the Wyoming State Bar Legal Directory but budget the directory at the projected cost. Commissioner McCorkle seconded the motion. The motion carried unanimously.

Commissioner Hibben shared that health insurance costs are rising considerably and wondered if the projected costs in the proposed budget are sufficient. Cathy Duncil shared the process she went through with Blue Cross/Blue Shield of Wyoming to get these projected costs.

Treasurer Graham shared that he and Vice President Jarosh were discussing the projected expenses for the Web/IT/Database line item. Because the adjustments to the budget resulted

in a net loss, they recommend adjusting that line item from \$165,000 to \$160,000. That would result in a net profit, and Treasurer Graham felt that was a good idea to make a balanced budget.

Vice President Jarosh recommended expensing this total more quickly and possibly seeking a discount from West Edge Collective in the event that we paid one lump sum up front. Treasurer Graham made a motion to decrease the amount allocated to Web/IT/Database to \$160,000 and give staff authority to request a prepaid discount from West Edge Collective. Commissioner Haderlie seconded the motion but shared his concern that this is a significant amount of money to pay up front because if things do not go as planned, the Bar has already paid. Mark Gifford agreed with Commissioner Haderlie and shared that he is in favor of a pay-as-you-go plan. The motion carried. Commissioner Overfield shared that she was not in favor of a prepayment plan either.

President's Report

President O'Connell shared that Annual Meeting registration is going well, and she encouraged all Officers and Commissioners to attend.

President-Elect's Report

President-Elect Masterson reminded the Board that he is open to any ideas about the 2017 Annual Meeting. He encouraged everyone to share those ideas. He also encouraged Board members to think about how the Bar can rejuvenate its practice sections.

Executive Director's Report

SOLACE Program Update

Executive Director Wilkinson shared that she has been in touch with Kara Brighton, SOLACE Program Coordinator, to see how the program is working. Ms. Brighton has received some calls from members referring her to someone who may be in need of assistance from the SOLACE Program; however, when Ms. Brighton has reached out, the person does not request any assistance. As a result, Executive Director Wilkinson has stepped up the marketing efforts for the program and encouraged the Board members to spread the word in their judicial districts.

Annual Meeting Update

Executive Director Wilkinson shared that for the first time the Bar will have a mobile app for this year's Annual Meeting. She explained many of the features of the app and encouraged Board members to download the app and take advantage of its features. She also announced that the Bar will be doing live streaming of a select group of CLEs during Annual Meeting, another first.

Board /Committee Liaison Reports

Bench-Bar Relations Committee

Treasurer Graham shared that he tried to get the Bench-Bar Relations Committee active and involved in the questions on this year's Judicial Advisory Poll; however, the committee chair did not feel it was necessary.

Civil Pattern Jury Instructions Committee

No report

Clients' Security Fund Committee

Treasurer Graham shared that the Bar has a \$59,000 CD at Platte Valley Bank that matures in November 2016. He made a motion to allocate this money to the Clients' Security Fund. Commissioner McCorkle seconded the motion. The motion carried unanimously.

Diversity & Inclusion Committee

No report

Juvenile Pattern Jury Instructions Committee

No report

Law School Liaison Committee

No report

Legislative Developments Committee

No report

President O'Connell adjourned the meeting at 10:32 a.m. on Saturday, August 20, 2016.

Minutes Submitted by:

Sharon Wilkinson
Executive Director