

# Wyoming State Bar Board of Officers & Commissioners Meeting

August 19, 2022

Hampton Inn

Rawlins, Wyoming

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**In Attendance:** J. Kenneth Barbe, President; Christopher H. Hawks, President-Elect; Teresa S. Thybo, Vice President; Kelly M. Neville, Treasurer; Billie LM Addleman, Immediate Past President; Stefanie L. Boster, First Judicial District Commissioner; Sarah L. Chavez Harkins, Second Judicial District Commissioner; Jason Petri, 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 (via phone); James T. Whiting, Ninth Judicial District Commissioner; Sharon Wilkinson, Executive Director; Mark W. Gifford, Bar Counsel; and Cathy Duncil, Admissions Director

**Absent:** Emily S. Madden, Young Lawyer Section Chair

**Guests:** Mike Golden, Chair, Review and Oversight Committee; Darin B. Scheer, Board of Law Examiners; Hon. Cynthia L. Martin, National Conference of Bar Examiners (NCBE) Board of Trustees (via Zoom); and Marilyn Wellington, NCBE Chief Strategy and Operations Officer (via Zoom)

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President J. Kenneth Barbe called the meeting to order at 12:31 p.m. on Friday, August 19, 2022.

## Approval of Agenda

Executive Director Sharon Wilkinson shared that she recently met with a subgroup of the Access to Justice 2.0 Committee and it had a request to include a mandatory question about pro bono work on the license fee statement and the online payment system. She asked that this be added as an action item on the agenda.

Commissioner Craig Silva made a motion to approve the agenda with Executive Director Wilkinson's addition. Commissioner Alison Gee seconded the motion. The motion carried unanimously.

## Approval of Minutes

Commissioner Silva made a motion to approve the June 10, 2022, meeting minutes. President-Elect Chris Hawks seconded the motion. The motion carried unanimously.

## **Executive Committee Meeting Minutes**

President Barbe directed the Board's attention to the minutes from the Executive Committee's meetings and asked if anyone had any questions. There were no questions.

### **Treasurer's Report**

Treasurer Kelly Neville reported that it is ten months into the fiscal year and we are very close to our income projections. She shared that some of the line items that are over budget have been discussed before, such as the Manlove hearing. She shared that there is some good news on the investment income, as we have gained back some of our losses. Executive Director distributed the historical snapshot of the Bar's investment accounts.

President-Elect Hawks made a motion to accept the Treasurer's Report. Commissioner Stefanie Boster seconded the motion. The motion carried unanimously.

### **Admissions Report**

Cathy Duncil, Admissions Director, reminded the Board that during the June meeting she provided an update on an applicant who had been denied admission. This was the applicant whom the Character and Fitness Committee referred for an Independent Medical Evaluation (IME). Following receipt of the IME report, the Committee recommended the applicant be denied admission. Ms. Duncil reported that the Supreme Court has entered an order denying his admission for a second time.

Treasurer Neville asked who bears the cost of the IME. Executive Director Wilkinson reminded the Board that all applicants pay a \$600 application fee to the Supreme Court when they apply for admission. She shared that those funds are kept in a special revenue account at the State Treasurer's office and are used to pay for all admission-related expenses including this applicant's IME.

Ms. Duncil reported that as a result of attendance at the National Conference of Bar Examiners (NCBE) Annual Bar Admissions Conference this past spring, the Bar has removed the mental health substance use question from the application for admission. Mark Gifford shared that the American Bar Association (ABA) passed a resolution on the same topic just last week at its Annual Meeting, so it is nice that Wyoming is ahead of the curve on this.

Cathy Duncil reported that the Board of Law Examiners (BLE) is currently in Elk Mountain grading 56 exams from the July administration. She shared that the Wyoming Supreme Court will welcome those who pass the exam and the character and fitness review at a swearing-in ceremony on October 7<sup>th</sup>. The ceremony will be followed by a reception hosted by the Bar. She shared that the Court has requested that she release exam results no sooner than the end of September.

Cathy Duncil reminded the Board that at the June meeting, she shared some information about the next generation of the bar exam, which is known as NextGen. At that time, Ms. Duncil reported that she learned at the NCBE Annual Bar Admissions Conference that Colorado was not pleased with NextGen and was considering not implementing it. Ms. Duncil shared that

after a visit from the NCBE, they were able to alleviate all of Colorado's concerns and Colorado is now on board with NextGen.

### **Mandatory CLE**

Executive Director Wilkinson shared that she did not have much to report for mandatory CLE.

Commissioner Silva shared that there was some concern about a recent amendment to the CLE Rules pertaining to live attendance versus self-study. Mark Gifford provided clarification that the change was simply to define what "live attendance" was. Commissioner Silva was satisfied with the explanation.

### **Office of Bar Counsel**

Mark Gifford shared that attorney discipline is busy as always. He reminded the Board that Becket Hinckley, a suspended lawyer, did not pay the costs of his disciplinary hearing, which were assessed by the Supreme Court. As a result, Mr. Gifford contacted Mr. Hinckley's lawyer and worked out a payment plan. Mr. Hinckley has signed a promissory note and the Bar expects to receive his first payment next month.

Mark Gifford shared that the oral argument for Leigh Anne Manlove's disciplinary case took place earlier this week, so now the decision is in the Court's hands.

Mark Gifford shared that the Court did an interesting thing in the last few months. He shared that, unlike the Manlove hearing, Gay Woodhouse's disciplinary hearing was held at the Bar office with very few in attendance, which he expects most hearings to be like. He reported that the Board of Professional Responsibility (BPR) recommended a public censure for Woodhouse and the associated costs totaled approximately \$4,000. Mr. Gifford shared that for the first time in his tenure, the Court did not assess the full costs to the respondent; it assessed \$50 in costs. He does not know the reason and wonders what this portends for future cases.

Commissioner Jennifer Kirk shared that several people in her area have asked her about a certain attorney who lost his license years ago. She shared that this attorney has been posting on social media that he is coming back to practice and she asked Mr. Gifford if this was in fact true. Mr. Gifford shared that the situation is complicated.

### **Client Protection Fund**

Mark Gifford directed the Board's attention to the memo he prepared for the Board. Of the \$8,640 in pending claims he referenced, the Client Protection Fund Committee recently denied a \$6,640 claim. He shared that a claim in the amount of \$2,000 remains pending.

### **Strategic Plan Progress Report**

Executive Director Wilkinson apologized for not including her usual progress report in the Board materials. She shared that Cathy Duncil and Brandi Robinson are taking the lead on the vendor services directory and asked Ms. Duncil to provide an update.

Cathy Duncil reported that she and Brandi Robinson have been working with Commissioners Craig Silva, Alison Gee and James Whiting on this project. They are focusing on what type of vendors to solicit. She reported that they have also pulled Jenelle Olivas, the Bar's new Lawyer Referral Service Coordinator, into the discussion, as they will eventually hand the management of the directory over to her. Ms. Duncil reported that they are also working on a mission statement for the project.

### **Law School Endowment Update**

Treasurer Neville shared that she has been working with President Barbe, Commissioners Kevin Kessner and Jennifer Kirk as well as Mark Gifford and Executive Director Wilkinson on the draft of the endowment agreement. She reported that they restructured the agreement to be somewhat broad in nature and factor in longevity. The group wants to leave it to the chosen Bar committee to determine how best to use the money based on the need. She shared that there will be the option of revising the agreement if needed. The endowment is set up to provide exposure to rural practice in Wyoming.

President-Elect Hawks asked if this was just a one-time event. Treasurer Neville clarified that it is a permanent endowment. The Bar will allocate \$50,000 to the endowment and the Legislature will match it. The money must sit for one year before it can be accessed. Executive Director Wilkinson reminded the Board that it decided at the June meeting to pay the full \$50,000 in this current fiscal year. Commissioner Kirk reminded the Board that paying it all at once this year guarantees the match.

Mark Gifford pointed out that this draft again shows the agreement between the University of Wyoming Foundation and Executive Director Wilkinson and he recommends that the named parties are the Foundation and the Wyoming State Bar.

President Barbe asked what our next step was. Treasurer Neville shared that that is up to the Board, but she recommended approving the formal agreement and cutting the check.

Commissioner James Whiting made a motion to approve the endowment agreement. Commissioner Gee seconded the motion. The motion carried unanimously.

Treasurer Neville shared that she recently learned that there is approval from the Dean of the law school to include a practice management-type course on the curriculum and they are looking for an adjunct professor to teach the course. She asked the Board members to consider this and let her know if anybody comes to mind.

### **Annual Member Benefit Review**

Executive Director Wilkinson reminded the Board that each August, she provides an overview of all the Bar's member benefits. She walked through the report.

Commissioner Gee asked Executive Director to only include usage numbers in the future and not the names of lawyers and law firms that take advantage of each member benefit.

President Barbe asked Executive Director Wilkinson if Fastcase is the only member benefit for which the Bar paid. Executive Director Wilkinson clarified that the Bar also pays \$.42 per active member (minus the government lawyers) for Red Cave Law Firm Consulting.

### **2022/2023 Proposed Budget**

Executive Director Wilkinson shared that she and Cathy Duncil begin the budgeting process in May. They have worked closely with staff to determine what, if anything, the staff members need in the upcoming year regarding computer equipment, furniture, software, etc. They also work as a team to determine if the Bar building is in need of any upgrades, repairs, etc. She reported that the staff did not come up with anything of any significance in those regards. She shared that once they plug in some preliminary numbers, they pull Treasurer Neville into the process for her review. Executive Director Wilkinson provided an overview of the proposed budget.

### **Bar Counsel Performance Evaluation Report**

Mike Golden, Chair of the Review & Oversight Committee, joined the meeting.

Commissioner Gee made a motion to convene an Executive Session. Commissioner Kessner seconded the motion. The motion carried unanimously. Executive Session was convened at 1:32 p.m.

Commissioner Gee made a motion to adjourn the Executive Session. Treasurer Neville seconded the motion. The motion carried unanimously.

### **2022/2023 Proposed Budget (continued)**

In regard to the proposed budget, Treasurer Neville clarified that some of the expenses reflected in the budget rotate from year to year like Strategic Planning and the Judicial Performance Assessment. She also reported that Cathy Duncil is going to follow up on the Bar's insurance policies to ensure that it is properly insured considering property values have increased.

President Barbe shared that the only other item to discuss regarding the proposed budget is staff salaries and that will be done in Executive Session.

Commissioner Gee expressed a concern with the budgeted amount allocated to the Law School Liaison Committee, which is \$25. She would like to see that committee work to foster better relations with the law school. She shared that she recently had a discussion with Ashli Tomisich at the law school and has some ideas. Commissioner Gee shared that since next year's Annual Meeting will take place in Laramie, perhaps we could host a mixer.

Commissioner Kirk shared that she serves on the Law School Liaison Committee and it met regularly when Justice Gorsuch was scheduled to come to Laramie. She also recalled discussion amongst the committee members about hosting coffee chats online to give law students an opportunity to meet with members of the committee.

Commissioner Gee shared her concern about the lack of young lawyers in certain parts of the state. She recommended allocating \$1,500 to the Law School Liaison Committee so that it can tackle this subject.

After discussion, Commissioner Gee made a motion to add \$1,500 to the Law School Liaison Committee's budget. Past President Billie Addleman seconded the motion. He also shared that the law school does a phenomenal job of engaging the Law School Advisory Board. Commissioner Stefanie Boster shared that the law school is providing her office externs free of charge. Commissioner Gee shared her frustration that outreach from the law school does not seem to reach beyond Laramie and Cheyenne.

Mark Gifford shared that he and Cathy Duncil have been somewhat frustrated over the last few years, as they have requested that the law school include them in the orientation for first-year law students so they can discuss the admissions process and provide an overview of the Bar exam. Unfortunately, they were left off the agenda one year, so the following year, there was a special time set aside for them to address the students. Mr. Gifford shared that the session was poorly attended.

The motion carried unanimously.

#### **Next Generation of the Bar Exam (NextGen)**

Executive Director Wilkinson welcomed Darin Scheer to the Board meeting. She shared that Mr. Scheer serves on the Board of Law Examiners and also on the National Conference of Bar Examiners (NCBE) Board of Trustees. She also introduced Hon. Cynthia Martin who serves on the Missouri Court of Appeals, is also a member of the NCBE Board of Trustees and served on the NCBE's Testing Task Force. Also joining via Zoom was Marilyn Wellington, the NCBE's Chief Strategy and Operations Officer.

Judge Martin shared that a very substantial study began in January 2018 to determine what changes should be made to the Bar exam. A Testing Task Force was formed and it created a research study over three phases. She shared that the overall objectives were very clear in that NextGen needs to focus more on lawyering skills.

Judge Martin shared that some topics will be dropped from NextGen—family law, trust and estates, conflicts of law and UCC Art. 9. Additions to the exam will be negotiation, counseling, research and writing skills.

Judge Martin reported that NextGen will have some similarities with the current exam. Those are:

1. Exam will be administered in jurisdiction-managed locations
2. Multiple choice questions and short/long response item types
3. Content is drafted by outside subject matter experts; all items are pretested
4. Two administrations per year

She also explained some differences from the current exam:

1. Computer-based delivery; it is not a paper-based test
2. Administered on candidates' own devices
3. Integrated exam—one exam divided into testing segments that replace the three current components of the UBE (MBE, MEE AND MPT)
4. Item sets that test both content and skills in a realistic “day-in-the-life-of-a-lawyer” context
5. Revised content that reflects the skills and knowledge required for a new lawyer as identified in listening sessions and practice analysis

As for the next steps in the development of the exam, Marilyn Wellington shared that they have started pilot testing and will continue through 2022. She shared that field testing will begin in 2023 and by the time the real exam is administered, thousands of people will have taken the exam to help the NCBE determine that it is providing the exam to meet the goal it has outlined.

And most importantly, Judge Martin shared that they are continuing outreach to the legal community not only to share information but to also get input.

Judge Martin encouraged the Board members to visit [Nextgenbarexam.ncbe.org](http://Nextgenbarexam.ncbe.org) for more information.

Judge Martin and Ms. Wellington left the meeting.

Darin Scheer shared that the current Uniform Bar Exam (UBE) tests approximately 45,000 examinees in roughly 35 jurisdictions and it is very important to have a legally defensible exam. He shared that NextGen will ultimately be an eight-year process—thousands of interviews were conducted and it will take five years just to build the new exam.

Mr. Scheer reminded the Board that the decision to adopt NextGen is ultimately up to the Wyoming Supreme Court. He shared that there will be some early adopters of NextGen but for a two- to three-year period, the NCBE will administer both NextGen and the UBE.

Commissioner Silva asked why NextGen is eliminating family law as well as the other topics. Darin Scheer shared that narrowing the content scope is a direct relation to the survey results from practitioners, judges and professors.

President-Elect Hawks, who also serves on the Board of Law Examiners (BLE), shared that he served on a much larger group of the Testing Task Force and participated in a few six-hour sessions where they really drilled down on the subjects. He shared that he served on the BLE prior to the adoption of the UBE, and they used to write the exam questions themselves. Once the UBE was adopted, one of the biggest issues was the examinees making the call of the question and identifying the subject. Darin Scheer shared that it takes three years for one question to evolve and actually appear on an exam.

President Barbe, a former member of the BLE, asked if the grading would be different. Darin Scheer shared that all grading will take place at the state level and none at the national level. He shared that the NCBE will be doing a separate pilot program just on grading.

Commissioner Gee shared her concern that Wyoming has nearly as many out-of-state attorneys as we do resident attorneys. She shared that she has seen the practice of law change since the adoption of the UBE and thinks it is hurting the small communities in Wyoming because so many cases are going out of state. Mr. Scheer shared that he has heard this concern from some others, but he does not think the problem is as prevalent as it seems. He thinks the practice of law is simply becoming less bordered.

### **2022/2023 Proposed Budget (continued)**

President-Elect Hawks made a motion to convene an Executive Session. Commissioner Gee seconded the motion. Executive Session was convened at 4:02 p.m.

Commissioner Kirk made a motion to adjourn the Executive Session. President-Elect Hawks seconded the motion. Executive Session was adjourned at 4:44 p.m.

Treasurer Neville made a motion to approve the salary adjustments and bonuses agreed upon during the Executive Session. Commissioner Boster seconded the motion. The motion carried unanimously.

Treasurer Neville proposed nominating Executive Director Wilkinson for Leadership Wyoming next year. She shared that there is a \$3,500 fee as well as expenses for mileage and lodging. Past President Addleman shared that there are ten meetings per year with about 45 participants statewide.

President Barbe recommended adding \$5,000 to the proposed budget for this.

President-Elect Hawks made a motion to tentatively approve the expense of Leadership Wyoming for Executive Director Wilkinson subject to her review and decision about participating. Commissioner Kirk seconded the motion. The motion carried unanimously.

### **Access to Justice 2.0 Pro Bono Recruitment**

Executive Director Wilkinson shared that she and the staff met with a subcommittee of the Access to Justice 2.0 group. Those they met with were Tyler Garrett, Angie Dorsch and Rennie Phillips. She shared that this subcommittee is trying to determine how to best recruit more lawyers to do pro bono work. The group requested that the Bar add a mandatory question to the online license fee payment system. Executive Director Wilkinson shared that the proposed question is, "How many pro bono hours have you done in Wyoming for the last year?"

Commissioner Gee shared that she has to answer a similar question when she pays her license fees in Montana.



Commissioner Kirk shared her concern that oftentimes it is a lawyer's employer that prevents him/her from doing pro bono work.

Mark Gifford shared that in light of a provision in the Rules of Professional Conduct that "Every lawyer has a professional responsibility to provide legal services to those unable to pay," a question requiring such disclosure may be perceived by Bar members as "headhunting" by Bar Counsel, looking for lawyers to discipline for not complying with this requirement. Mr. Gifford shared that lawyers may be tempted to "over report" pro bono service in order to avoid discipline, making the reliability of results obtained on a mandatory report doubtful.

After discussion, President-Elect Hawks made a motion to deny the request. Commissioner Silva seconded the motion. The motion carried unanimously.

### **Board Meeting Schedule**

Executive Director Wilkinson shared that she and President-Elect Hawks have determined the locations of next year's Board meetings and now the group needs to select dates for each meeting. After discussion, dates were chosen for each meeting. Executive Director Wilkinson indicated that she would get out the revised schedule and post the meetings to the Board member's calendars.

### **President's Report**

President Barbe shared that he has had the privilege of speaking at Judge Bush's and Judge Eames' robing ceremonies and he really enjoys those.

He shared that he has been working with Justice Boomgaarden and Executive Director Wilkinson on the Judicial Performance Assessment. He shared that Executive Director Wilkinson is designing a webpage so the public can find information about the judiciary as well as each judge's individual poll results.

President Barbe thanked the Board for its great support over the year and their outstanding work.

### **President-Elect's Report**

President-Elect Hawks shared that he is looking forward to taking over the reins from President Barbe next month. He shared that he is meeting with staff in the morning to begin discussions about his numerous board/committee appointments.

### **Executive Director's Report**

Executive Director Wilkinson reminded the Board that last year it challenged the Equal Justice Wyoming Foundation (EJWF) Board to a \$25,000 matching grant opportunity. She was pleased to report that EJWF met the match by raising more than \$25,000. As a result, she has sent the Bar's match of \$25,000.

Executive Director Wilkinson echoed President Barbe's comments about the Judicial Performance Assessment and shared that she should receive the final report next week. Board

members expressed their frustration that the system forced them to evaluate every Supreme Court justice whether they chose to or not. Executive Director Wilkinson shared that she is keeping a file of notes for the 2024 assessment, so she will add this to the file.

Executive Director Wilkinson shared that there are 172 in-person registrants for Annual Meeting as well as 195 virtual registrants. She was pleased to report that Justice Kautz invited Jack Speight, WyLAP Director, and Candice Cochran, Executive Director of the Wyoming Professional Assistance Program (WPAP) to speak at the Judicial Conference. They will be presenting “Wellness Assistance for Wyoming Judges.” Executive Director Wilkinson shared that they have exceeded their sponsorship goal of \$30,000 and they will have 15 exhibitors participating in the Annual Meeting.

Executive Director Wilkinson reminded the Board that elections were taking place throughout the end of the month. She provided an overview of the elections.

Executive Director Wilkinson shared that the Bylaws require her to put a notice out to the membership about the Annual Business Meeting and the call for resolutions. She reported that resolutions were due to her August 17<sup>th</sup> and she did not receive any.

### **Commissioners' Reports**

- *First Judicial District*—Commissioner Boster reported that the Inns of Court is meeting at the beginning of September. She shared that the Laramie County Bar Association has been on a hiatus for the summer.
- *Second Judicial District*—No report
- *Third Judicial District*—Commissioner Jason Petri shared that they have not had a county bar meeting since he reported at the June meeting. He shared that the Judicial Nominating Commission met last Thursday to interview candidates for the new District Court judge in his district.
- *Fourth Judicial District*—Commissioner Kevin Kessner shared that the Sheridan and Johnson County Bars are hosting a gathering tonight for the two new judges in his district.
- *Fifth Judicial District*—Commissioner Kirk shared that Chief Justice Fox and Elisa Butler will be in Cody on August 29<sup>th</sup> to discuss the eFiling system and judicial appointments.
- *Sixth Judicial District*—Commissioner Gee reported that her district will be getting a new District Court judge but are waiting for the County Commissioners to find a physical location for that person. She also shared that the Campbell County Attorney will be replaced as a result of the primary election.
- *Seventh Judicial District*—Commissioner Silva shared that he attended Judge Eames' robing ceremony and he will also be speaking on behalf of the Bar at Judge Collier's robing ceremony.
- *Eighth Judicial District*—No report
- *Ninth Judicial District*—Commissioner James Whiting shared that his district will be getting a new judge in Pinedale.

**Board/Committee Liaison Reports**

President Barbe asked if any of the liaison had anything to report. Past President Addleman recommended that President-Elect Hawks appoint Commissioner Gee to serve as the liaison for the Law School Liaison Committee.

President J. Kenneth Barbe adjourned the meeting at 5:44 p.m. on Friday, August 19, 2022.

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Minutes Submitted by:

Sharon Wilkinson  
Executive Director