

**Wyoming State Bar Board of Officers & Commissioners Meeting**  
January 22, 2016  
Eastern Wyoming College – Community Training Center  
Torrington, Wyoming

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**In Attendance:** Devon O’Connell, President; John A. Masterson, President-Elect; Weston T. Graham, Treasurer (by telephone); Dawnessa A. Snyder, Second Judicial District Commissioner; Teresa S. Thybo, Third Judicial District Commissioner; Nicholas T. Haderlie, Fourth Judicial District Commissioner (by telephone); Bobbi D. Overfield, Fifth Judicial District Commissioner; James L. Edwards, Sixth Judicial District Commissioner; J. Kenneth Barbe, Seventh Judicial District Commissioner; Nathaniel S. Hibben, Eighth Judicial District Commissioner; Erika M. Nash, Ninth Judicial District Commissioner (by telephone); Bradley D. Bonner, Immediate Past President; Sharon Wilkinson, Executive Director; Cathy Duncil, Admissions Director; Mark Gifford, Bar Counsel; and Jack Speight, Wyoming Lawyer Assistance Program (WyLAP) Director

**Absent:** Robert C. Jarosh, Vice President; Melinda S. McCorkle, First Judicial District Commissioner; and Caitlin F. Young, Young Lawyers Section President;

**Guests:** Wayne Herr, Partner at McGee, Hearne & Paiz, LLP

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President O’Connell called the meeting to order at 12:41 p.m. on Friday, January 22, 2016.

**Approval of Agenda**

President O’Connell asked for any additions to the agenda. Executive Director Sharon Wilkinson requested two additions:

1. Discussion of proposed changes to the Bylaws of the Wyoming State Bar
2. Location of April Board meeting

Commissioner Barbe made a motion to approve the agenda with the additional items. Commissioner Edwards seconded the motion. The motion carried unanimously.

**Approval of Meeting Minutes**

Commissioner Snyder made a motion to approve the November 6, 2015, meeting minutes. Commissioner Thybo seconded the motion. The motion carried unanimously.

**Annual Audit Report**

Wayne Herr from McGee, Hearne & Paiz, LLP thanked the Board for the opportunity to present the annual audit report. He discussed at length a standard established by the Governmental

Accounting Standards Board (GASB) regarding accrual of contingent liabilities associated with an entity's pension plan, which meant that more schedules were added to the Bar's audit report. He mentioned that cash and investments were up about \$230,000 from last year; however, \$432,000 had to be deducted to meet the GASB net pension liability requirement.

The Wyoming Retirement System (WRS) has over \$1 billion in obligations payable to retirees. The new GASB standard requires all WRS participants pick up a proportionate share of the theoretical liability that could occur if everyone in the plan started drawing their pensions at the same time. The Wyoming State Bar's "obligation" (which is entirely theoretical as the Bar has no legal liability beyond its periodic contributions to the plan) is based on its contributions to the plan versus the total contributions. The Bar's proportionate share for 2014 was less than .03% which corresponds with a \$432,000 contingent liability that must now be reported on the Bar's financial statements. That amount will be recalculated based on actuarial assumptions that will change from year to year going forward.

Mr. Herr shared that including this liability on our statements took \$280,000 out of the Bar's equity. He noted that prior to the GASB requirement, we treated our WRS contributions as an expense and there was no requirement to accrue a contingent liability.

Mr. Herr reminded the Board that his accounting firm does the Bar's audit in accordance with governmental auditing standards, which means they look for compliance with laws and regulations where noncompliance would have a material effect on our financial statements. Mr. Herr was complimentary of Cathy Duncil's work and announced that his firm had decided to remove from this year's audit an internal control deficiency note that appeared in prior years' audits based upon Cathy's lack of formal training as an accountant. In Mr. Herr's judgment, Cathy has served long and well in the bookkeeper position and there is no need for an internal control deficiency to be noted.

John Masterson asked Mr. Herr if there was any need to meet with the Board alone with the staff not present. Mr. Herr did not feel that was necessary as he did not have any internal control concerns.

President-Elect Masterson made a motion to approve the annual audit report. Commissioner Snyder seconded the motion. The motion carried unanimously

### **Treasurer's Report**

Treasurer Weston Graham shared with the board that we have had to move some of our money around recently to stay under the current FDIC limits. Cathy Duncil, Bookkeeper, continues to monitor those accounts to ensure compliance. Treasurer Graham shared with the Board that the Executive Committee approved bonuses for the staff in December. He also mentioned that Cathy Duncil has implemented an "uncleared transactions" policy so that if checks are not cleared within 60 days, she can investigate what happened. He reported that from October to December, the Bar has deposited over \$1 million in license fees. Treasurer Graham directed the Board's attention to the dashboard report in the notebook that shows increased license fee revenue this year in comparison to last year.

Commissioner Snyder made a motion to accept the Treasurer's Report. President-Elect Masterson seconded the motion. The motion carried unanimously.

## **Regulatory Updates**

### **Admissions**

President-Elect Masterson reported that the Board of Law Examiners (BLE) and Character & Fitness Committee (C & F) had the first-ever face-to-face meeting in Casper in December. President-Elect Masterson discussed how these two committees have been handling hearings for applicants who have been denied admission. As a result of the joint meeting, they have come up with some structural changes to improve due process for the applicants in character and fitness screening.

### **Mandatory CLE**

Executive Director Sharon Wilkinson shared that 85 lawyers were assessed the \$300 penalty as a result of not being in compliance by January 15, 2016. These lawyers will have until March 1, 2016, to not only pay the penalty but to also fulfill their CLE requirements by submitting the requisite number of hours.

### **Attorney Discipline**

Mark Gifford, Bar Counsel, brought the Board's attention to the active status report for attorney discipline in the Board notebooks. He mentioned that his office is working on 50 active investigations at this time.

### **2015 Wrap-Up Report for Discipline**

Mr. Gifford reported that he saw a decline in attorney discipline in 2015. He shared that he is spending more and more of his day on the phone with Ethics Hotline calls (2 – 4 hours per day). Past President Bonner asked if the structural changes contributed to the decline in discipline. Mr. Gifford shared that he does not see a connection there. He believes that giving the attorney discipline system a higher profile and offering resources to help lawyers with ethical issues are the most significant factors.

### **Clients' Security Fund (CSF)**

Mr. Gifford gave an update on the claims paid out for CSF. He reminded the Board of the one attorney who has inflicted much damage on clients. Commissioner Snyder asked if the Bar requires these attorneys to sign a note to pay back the money. Mr. Gifford shared that he has only done that once with a disbarred lawyer. This Board approved the Bar suing this attorney at a Board meeting in August 2015. Mr. Gifford provided an update on that case.

Executive Director Wilkinson shared that the CSF rules require the Board of Officers & Commissioners to appoint the chair of the CSF Committee; however, because of the timing of the January Board meeting and the need to go to print with the 2016 Wyoming State Bar Legal Directory, she asked the committee to elect its own chair. She asked the Board to ratify the CSF Committee's selection of Kelly Neville as its chair.

Commissioner Snyder made a motion to ratify the CSF Committee's decision to appoint Kelly Neville as chair of the CSF Committee. Commissioner Thybo seconded the motion. The motion carried unanimously.

#### **Resolution of Fee Disputes**

Mr. Gifford shared that his involvement in the fee dispute program is fairly minimal, and the program is run mainly by his assistant Shannon Howshar with the oversight of Tim Woznick, Committee Chair. Mr. Gifford brought the Board's attention to the proposed rules for fee disputes and walked the Board through the process the committee has taken to reach this point. Mr. Gifford asked the Board of Officers & Commissioners for authority to put these proposed rules out for comment to the membership with hopes of coming back to the April Board meeting requesting final approval to submit the rules to the Wyoming Supreme Court for adoption.

Past President Bonner made a motion to approve the dissemination of the proposed Wyoming Rules for Fee Arbitration to the membership for comment. Commissioner Edwards seconded the motion. The motion carried unanimously.

#### **Unauthorized Practice of Law (UPL)**

Mr. Gifford reminded the Board that the rules governing UPL were overhauled a few years ago so that these complaints are handled similar to disciplinary cases. Now the Office of Bar Counsel receives and investigates the complaints. Most are taken care of with a cease and desist letter. So far Mr. Gifford's office hasn't had the need to put the new rules in effect and have a formal hearing.

#### **Attorney Lien Statute**

Commissioner Barbe shared that he and Mark Gifford spoke to Representative Kermit Brown about sponsoring a bill to modify the attorney lien statute. Representative Brown said he would do what he could; however, it's difficult during a budget session. Representative Brown did get the necessary information to the Legislative Service Office in order to draft a proposed bill. President O'Connell shared that she has checked LSO's website and it has not yet been filed. She thanked Commissioner Barbe and the other members of that committee for their work on this issue.

#### **Health Insurance**

Executive Director Wilkinson reminded the Board that the Wyoming State Bar staff had WINhealth insurance. As a result of WINhealth closing its doors, she and Cathy Duncil have worked to find alternative coverage. Executive Director Wilkinson directed the Board's attention to the document in the Board notebook with information pertaining to the new plan through Blue Cross/Blue Shield. She shared that the Executive Committee approved this plan in December so that coverage could begin January 1, 2016; however, she requested ratification of the decision from the full Board.

Commissioner Snyder made a motion to approve the Blue Cross/Blue Shield health insurance for the Wyoming State Bar staff. Commissioner Hibben seconded the motion. The motion carried unanimously.

#### **Wyoming Professional Assistance Program (WPAP) Update**

Jack Speight, Wyoming Lawyer Assistance Program (WyLAP) Director, directed the Board's attention to the fourth quarter report from WPAP. There are currently five lawyers receiving help from the program. He discussed a plan to reach out to the judges again to encourage them to remember the WyLAP program, as they see impaired lawyers more often than others. Mr. Speight shared that he feels that the program is working and more and more members are aware of it.

Mr. Speight brought the Board's attention to the proposed monitoring agreements. Mark Gifford reminded the Board that there was a lengthy discussion about the agreements during the August 2015 Board meeting. Overall, some Board members had concerns about using the same monitoring agreements for those who were in the program voluntarily and those who were compelled by the disciplinary system. As a result of these concerns, Mr. Gifford shared that he, Jack Speight and Sharon Wilkinson met with Candice Cochran, WPAP Executive Director, and members of her board to brainstorm ideas to make these agreements more lawyer-friendly. Mr. Gifford shared that the agreements before the Board were approved by the WPAP Board earlier this month. One significant change is that for those in the program voluntarily, Bar Counsel would only be notified in the event of a level 4 violation.

President-Elect Masterson asked Mr. Speight what feedback he has received from the people who are being supervised through the program. Mr. Speight clarified that he has received no feedback from any volunteers in the program; however, he was aware of very positive feedback from one member on the disciplinary side. Mr. Speight also reminded the Board that due to confidentiality, he cannot inquire as to how a participant is doing. He does, however, encourage those he speaks with to check back with him and let him know how things are going. Mr. Gifford shared that one attorney, currently under a monitoring agreement, was in the program many years ago, and this attorney has shared with Mr. Gifford that the program is much improved now.

Commissioner Barbe made a motion to approve both monitoring agreements. Past President Bonner seconded the motion. The motion carried unanimously.

#### **Wyoming State Bar Foundation Update**

Commissioner Nash shared that the Secretary of State rejected the dissolution of the Wyoming State Bar Foundation. She mentioned a requirement that members of a foundation must vote in order to dissolve the entity. As a result, Tom Long filed an amendment stating there were no members to vote on the dissolution. Commissioner Nash also shared that the Liberty Day program has transitioned smoothly to the Equal Justice Wyoming Foundation.

## Strategic Plan Update

### **Social Media**

Executive Director Wilkinson shared that the Bar's presence on Facebook, Twitter and LinkedIn continues to increase. She is actively posting news items, reminders, announcements, etc. . .

### **Modest Means Program**

Executive Director Wilkinson reminded the Board that the Bar launched the Modest Means Program to help fill the gap between those who exceed Legal Aid of Wyoming's income eligibility criteria and those who can afford to pay standard attorneys' fees. Since its launch date on November 6, 2015, 60 lawyers are signed up as volunteers to take those clients who meet the income eligibility guidelines. She reminded the Board that these volunteer attorneys agreed to charge no more than \$75 per hour and no more than a \$500 retainer (if necessary). To date, the program has served 11 clients.

### **ALPS Attorney Match**

Executive Director Wilkinson shared that she has worked closely with ALPS to launch the program as part of the rural practice initiative in the Strategic Plan. After e-mails to the membership from her, President Devon O'Connell and Caitlin Young, President of the Young Lawyers Section, 33 members had created profiles. There was discussion about a few problems members had with the system and suggestions were offered for improvement. Executive Director Wilkinson will follow-up with ALPS on these items.

### **Infrastructure Proposals**

Executive Director Wilkinson shared that she and the staff are currently working with various companies in and out of Wyoming to seek formal proposals to improve the membership database and the Bar's website. It is her hope that the staff will review the proposals and bring a recommendation to the April Board meeting for approval.

### **Mobile App**

Executive Director Wilkinson shared that she has seen one demonstration of a mobile app for members. This would be an app of the membership directory. There is consideration of focusing more on a mobile responsive website, which would take the place of a mobile app.

### **Upcoming Board Meetings**

President O'Connell reminded that Board that the June Board meeting was originally scheduled to be in Dubois. She would like to move the meeting to Jackson Lake Lodge due to the fact that the WTLA convention is that same time. The dates would remain the same – June 17 – 18, 2016. Executive Director Wilkinson shared that she liked the idea, as the Bar staff was already planning on exhibiting at the WTLA convention anyway.

President O'Connell announced that the Young Lawyers Section leadership has decided not to host the Young Lawyers Conference at all this year. She reminded the Board that she originally

wanted the April meeting and Young Lawyers Conference to take place in Evanston; however, the young lawyers felt there would be better attendance in Casper. As a result, President O'Connell wondered if the Board wanted to keep the Board meeting in Casper or move it elsewhere. After discussion, the decision was to leave the April Board meeting in Casper.

### **Proposed Keller Policy**

President O'Connell shared that the Executive Committee met with Mark Gifford, Bar Counsel, and Sharon Wilkinson, Executive Director, in Cheyenne on January 7, 2016, to discuss possibly implementing a *Keller* policy to be added to the Bylaws of the Wyoming State Bar. President O'Connell asked Mark Gifford to give the Board some background on *Keller*.

Mr. Gifford directed the Board's attention to the lengthy memo he had prepared for the Board in anticipation of this discussion and then gave an overview of *Keller vs. State Bar of California*, what its ramifications were and what its ramifications were not.

Mr. Gifford shared that the State Bar Association of North Dakota was recently sued by the Goldwater Institute, which advocates for limited government and regulation. He gave a brief overview of the basis for the lawsuit.

Mr. Gifford reported that his research revealed that there are only a handful of state bar associations that do not have a *Keller* policy. He gathered as many policies as he could. There were two states with what he considered strong policies, so he reported that he took the best features of those policies to develop the policy he recommended to the Executive Committee. Past President Bonner inquired as to why a policy would make a difference. Mr. Gifford clarified that with no policy, the Bar members are not informed about how to challenge anything the Bar is doing with which they may disagree. Past President Bonner asked if the implementation of this policy would change the way we do business. Mr. Gifford clarified that it would. Under the policy, the Bar would publish a notice along with the budget in the *Wyoming Lawyer*. Members would be given notice of the method to challenge and request a refund of a portion of their license fees. However, the policy will also formalize what has long been the practice of the Bar – not to be involved in political or ideological activities that are not germane to the core purposes of the Bar.

After much discussion and recommended revisions to the policy, Past President Bonner made a motion to approve the *Keller* policy with the recommended changes. Commissioner Snyder seconded the motion. The motion carried unanimously.

### **Other Proposed Amendments to Bylaws of the Wyoming State Bar**

Executive Director Wilkinson shared that since the Bylaws would need to go out for member comment in order to implement the *Keller* policy, she thought it was a good idea to give the Bylaws a thorough review to see if there was a need for any other changes. She walked the Board through a handful of changes that were mostly "clean-up" revisions.

Commissioner Edwards made a motion to approve the dissemination of the proposed changes to the Bylaws of the Wyoming State Bar to the members for comment. Commissioner Overfield seconded the motion. The motion carried unanimously.

### **Pro Bono Reporting**

Commissioner Haderlie reminded the Board that the Wyoming Center for Legal Aid (now Equal Justice Wyoming) had previously approached this Board about implementing a mandatory pro bono reporting system. The Board did not support that, but Commissioner Haderlie would like the Board to reconsider this idea.

Commissioner Haderlie directed the Board's attention to the materials in the Board notebook that he received from the State Bar of Montana. He shared that he feels the pro bono picture today is much different than it was years ago, but unfortunately, there is no data to measure its impact. He feels that collecting this data would give Equal Justice Wyoming (EJW) the information it needs to address the Legislature. Commissioner Haderlie shared that the State Bar of Montana has successfully combined pro bono reporting with its IOLTA compliance system. Prior to members seeing the IOLTA portion of the system, they are presented with an option to report pro bono hours.

Commissioner Haderlie reminded the Board that Marie Ellis sends out e-mails to the members asking that they certify their CLE compliance. He would like to include the pro bono reporting option to the CLE compliance process. He asked the Board to adopt this requirement.

Commissioner Haderlie shared that he has had discussion with Sharon Wilkinson, Executive Director, and Cathy Duncil, Pro Bono Coordinator. He shared that there were some staff concerns – one is that there would be cost to the bar to implement this system. Another concern is we don't want this to consume staff time and staff resources because this data would not be a direct benefit to the Bar. The other downside is the placement of the system could jeopardize the number of attorneys who certify their CLE compliance.

Executive Director Wilkinson expanded more on her concerns about this proposal.

President O'Connell asked if this was something this Board even wanted to pursue. Commissioner Edwards shared that he felt the effort should come from EJW. Commissioner Nash thought we already collected this data on the survey. Executive Director Wilkinson shared that there are pro bono questions on the Bar Member Survey, which is conducted every other year, and the results are shared with EJW. Commissioner Barbe's concern with the Bar collecting this data is that it is probably not going to be accurate data because it is not mandatory. He suggested that perhaps the Bar could encourage the members to go to EJW's website and report their hours. President O'Connell wondered if we shouldn't encourage EJW to give it a shot and if they do not have success, they could come back to the Bar and ask for assistance.

After much discussion, President O'Connell felt that Board members should discuss this with their constituents and bring this back to the April meeting. President O'Connell would also like to hear directly from EJW.

### **President's Report**

President O'Connell shared that her board/committee appointments are complete. She felt strongly about sticking to those who expressed interest and shared her delight that so many members are willing and interested in serving.

### **President-Elect**

President-Elect Masterson shared that he was approached by the publisher of the *Casper Star-Tribune* to see if the Bar would be interested in having a column in the paper (i.e. "think pieces of legal analyses of issues of the day").

President-Elect Masterson also shared that as the Chair of the Board of Law Examiners, he hears comments about all the out-of-state lawyers coming in to practice in Wyoming but they don't do anything for Wyoming or for the Bar. President-Elect Masterson wondered if anybody had any ideas regarding what we can ask these people to contribute. Commissioner Barbe wondered if we could impose different standards for out of state lawyers versus Wyoming lawyers.

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

#### **WyLAP Foundation Board Update**

Executive Director Wilkinson reminded the Board that the WyLAP Foundation is up and going. The WyLAP Foundation Board, which is under the leadership of Rhonda Woodard, has embarked on some fundraising efforts and has over \$40,000. The Foundation Board has met to determine how to spend this money. Executive Director Wilkinson shared that the Foundation Board would like the money to help lawyers who are struggling with substance abuse and/or mental health issues. As a result, the Foundation Board has established grant policy guidelines so members of the Bar can request necessary funds. Executive Director Wilkinson distributed the approved grant policy guidelines.

#### **New Administrative Assistant/Western States Bar Conference**

Executive Director Wilkinson shared that she hired a new Administrative Assistant, Caitlin Casner. Caitlin started her job on January 4, 2016, and the staff is thrilled to have her on board and feel like she's a perfect fit! Executive Director Wilkinson also shared that registration for the Western States Bar Conference is open and she will be working with Caitlin to handle all arrangements for the Board members.

#### **CLE Wellness Series**

Executive Director Wilkinson reminded the Board that the Bar had recently launched a CLE wellness initiative. There will be at least one CLE program a month. The January program featured suicide prevention training, and the February program focuses on

suicide prevention specifically related to substance abuse. Executive Director Wilkinson shared that she has gotten such a positive response from the membership and they have several member recommendations for speakers and/or topics.

#### **Updated Personnel Manual**

Executive Director Wilkinson shared that the Bar's current personnel manual is from 2007. One of her goals is to review and update the personnel manual and hopefully receive approval from this Board during its April meeting.

#### **License Fees Update**

Executive Director Wilkinson reported that 15 members were recommended for suspension to the Wyoming Supreme Court for failure to pay their annual license fees. She walked the Board through the process of reinstatement.

#### **Young Lawyers Section Report**

In Caitlin Young's absence, Executive Director Wilkinson reported that the Young Lawyers Section leadership had just begun to meet a few weeks ago, so there was not much to report. She once again reiterated the decision not to host a Young Lawyers Conference this year.

#### **Board/Committee Liaison Reports**

##### **Bench-Bar Relations Committee**

Treasurer Graham reported that there has been no activity of this Committee and asked for any ideas of projects/tasks this committee could tackle. Executive Director Wilkinson shared that she would like to involve this committee in a review of the categories and questions asked on the Judicial Advisory Poll.

##### **Civil Pattern Jury Instructions Committee**

Executive Director Wilkinson reported that she has received the final draft of the new Civil Pattern Jury Instructions. Caitlin Casner is currently formatting those instructions. Executive Director Wilkinson expects those to be available in February.

##### **Clients' Security Fund Committee**

Treasurer Graham reminded the Board of Mark Gifford's report about CSF that was provided earlier in the meeting.

##### **Criminal Pattern Jury Instructions Committee**

Commissioner Snyder reported that this committee continues to meet fairly regularly to make any necessary updates.

##### **Diversity & Inclusion Committee**

Commissioner Thybo reported that this committee was just recently formed; therefore, it has not met yet. She has seen correspondence about an upcoming meeting however.

**Juvenile Pattern Jury Instructions Committee**

Executive Director Wilkinson reported that there is one more meeting of this committee to approve the final draft. Once approved, Caitlin Casner will format the instructions and put them into production. Executive Director Wilkinson anticipates these being available in March.

**Law School Liaison Committee**

President O'Connell reported that she requested a face-to-face meeting of this committee next month in Laramie. She will have a follow-up report at the April meeting.

**Legislative Developments Committee**

President O'Connell shared that this committee meets via teleconference every Friday during the legislative session (if needed).

President O'Connell adjourned the meeting at 4:51 p.m. on Friday, January 22, 2016.

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Minutes Submitted by:

Sharon Wilkinson  
Executive Director