

Wyoming State Bar Board of Officers & Commissioners Meeting

January 26, 2018
Holiday Inn
Sheridan, Wyoming

- In Attendance:** Robert C. Jarosh, President; Weston T. Graham, President-Elect; Erika M. Nash, Vice President (by phone); J. Kenneth Barbe, Treasurer; Melinda S. McCorkle, First Judicial District Commissioner; Kelly M. Neville, Second Judicial District Commissioner; Jeremy K. Kisling, Fourth Judicial District Commissioner; R. Scott Kath, Fifth Judicial District Commissioner; James L. Edwards, Sixth Judicial District Commissioner; Nathaniel S. Hibben, Eighth Judicial District Commissioner (by phone); James T. Whiting, Ninth Judicial District Commissioner; Holli J. Welch, Young Lawyers Section Chair; Sharon Wilkinson, Executive Director; Mark Gifford, Bar Counsel and Cathy Duncil, Admissions Director
- Absent:** John A. Masterson, Immediate Past President; Teresa S. Thybo, Third Judicial District Commissioner; Charles S. Chapin, Seventh Judicial District Commissioner
- Guests:** Wayne R. Herr – McGee, Hearne & Paiz, LLP
Mike Merback – RBC Wealth Management
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President Rob Jarosh called the meeting to order at 12:31 p.m. on Friday, January 26, 2018.

Approval of Agenda

President Jarosh announced a change to the agenda. Because both Wayne Herr from McGee, Hearne & Paiz and Mike Merback from RBC Wealth Management traveled to Sheridan for the meeting, President Jarosh wanted to discuss the 2017 audit report and the proposed investment policy statement to include both of them.

Approval of Meeting Minutes

Commissioner Kisling pointed out that the date on the November meeting minutes was incorrect. Commissioner Neville made a motion to approve the amended November meeting minutes. Commissioner Kath seconded the motion. The motion carried unanimously.

Treasurer's Report

Treasurer Barbe shared that there was nothing too noteworthy on the dashboard report. He mentioned that most of the Bar's income comes in at the end of the year. He pointed out that we are at 98% of our projected revenue from license fees. He also pointed out that section revenues are exceeding what was budgeted.

Commissioner Edwards made a motion to accept the Treasurer's Report. Commissioner Kisling seconded the motion. The motion carried unanimously.

2017 Audit Report

President Jarosh welcomed Wayne Herr from McGee, Hearne & Paiz. Mr. Herr distributed the 2017 audit report and discussed the various types of auditing procedures and the analysis his firm does during the audit. He thanked the staff for its hard work in preparation for the audit. Mr. Herr reported that assets have stayed fairly consistent. Liabilities are up about \$50,000 due to the deferred pension liability which went up by about \$37,000. He reminded the Board that the pension liability must be allocated on the financial statements. He also reminded the Board that liability represents the Bar's allocated liability but is not truly an obligation that the Bar would actually have to pay. He reported that the Bar's net position and equity went down about \$72,000 due to the significant amount we had to record for the pension adjustment (approximately \$93,000). He pointed out that communications expenses went up due to the ongoing project to overhaul the Bar's infrastructure of the website/database. Mr. Herr shared that for the most part, the income statement is fairly consistent.

Mr. Herr mentioned that the Department of Audit conducted an audit of the Board of Law Examiners in 2017. During the audit, representatives of the Department discussed whether the Wyoming State Bar should be treated as a component unit of the state. Mr. Herr shared that a "component unit" is equivalent to a subsidiary in the for-profit arena. He shared that this issue has been raised several times over the years, though the State has not taken any affirmative action to treat the Bar as a component unit. If that were to happen, it would simply mean that the Bar's finances would be combined with all other state entities that are included in the Wyoming state financial statements.

Mr. Herr reported that the Bar's internal processes are sufficient to ensure adequate internal control. There were no deficiencies or material weaknesses discovered in the audit.

Mark Gifford asked Mr. Herr about the deferred pension liability and wondered if there had been any pushback due to the fact that organizations are now required to show the liability on their financial statements. Mr. Herr shared that he is not aware of any. He feels that the Government Accounting Standards Board (GASB) simply wanted to scare the daylights out of states whose pension plans were extremely underfunded. Wyoming's retirement plan is approximately 79% funded, which he thinks is very impressive.

President Jarosh asked Mr. Herr if there was anything he would like to discuss with the Officers and Commissioners without the staff present, and Mr. Herr shared that that was not necessary. He did mention that he does visit with Sharon Wilkinson and Mark Gifford to see if there are concerns about Cathy Duncil, Bookkeeper. He also asks Ms. Duncil if she is being asked to do anything she is uncomfortable doing.

Treasurer Barbe gave kudos to Ms. Duncil and Ms. Wilkinson for the work they do to result in a good, clean audit. President Jarosh echoed Treasurer Barbe's remarks and thanked the staff.

President-Elect Graham made a motion to accept the 2017 Audit Report. Commissioner McCorkle seconded the motion. The motion carried unanimously.

Investment Policy Statement

Mark Gifford introduced Mike Merback from RBC Wealth Management. President-Elect Graham shared that there was a draft investment policy statement in the Board notebook for review. President-Elect Graham mentioned that other state bar associations are investing their reserves. He also reminded the Board that over the course of the last year as being Treasurer, we began moving money out of CDs and into a cash position so we could potentially go down this road. He shared that the Executive Committee is recommending a \$500,000 investment.

Mike Merback shared that the first step is to adopt the investment policy that is before the Board today. This will serve as a roadmap not only for this board but for future boards. He works currently with four other non-profits. Mr. Merback reminded the Board that ultimately it answers to the Bar members so we want to have a process in place.

President Jarosh asked Mr. Merback if the Bar were to implement the plan as written, is it the investment committee that would help make actual decisions about which investments are made? Mr. Merback clarified that he would work closely with the investment committee to make a decision. Then those decisions of the investment committee would be reported to the full Board. This investment policy is not set in stone; this Board or future boards could change it at any time.

President Jarosh asked if there are additional fiduciary duties of the investment committee beyond what they currently have as a Board. Mark Gifford shared that there were not. President Jarosh asked if there would be a slow transition of the money into our portfolio or would we take the full \$500,000 at the start. Mr. Merback shared that we would start with the full amount. President-Elect Graham shared that once this money is invested, the plan is to not have to utilize it at all. As a result, he feels that we will want to have cash on hand. He feels this is a good, conservative first step to get strong, positive returns that we could show to the membership.

Wayne Herr asked Mr. Merback to briefly describe the controls that RBC Wealth Management has in place. Mr. Merback shared that there are a significant number of internal controls in place. For instance, there must be written and verbal instructions provided and approvals given prior to any transaction. Mr. Merback encouraged the Board to consider who will have authority to speak on behalf of the investment committee. That will need to be put in place so he is clear on from whom he can take instruction.

Mark Gifford shared that investing this money will impact the Bar's financial statements in two ways: 1) if we earn income, it will be booked as investment income. 2) There is a valuation of the portfolio that will be done by Mr. Merback. He reported that it is possible that we will have positive income, but if the stock portfolio declines in value, it will be reported as a loss on our income statement.

Treasurer Barbe asked Mr. Herr if income on investments is taxable. Mr. Herr shared that it is not. Treasurer Barbe asked if the Board needed to include something in the policy about what the objective or goal is for the income. Mark Gifford shared that as long as there are minutes that document the decisions of the investment committee, there would not need to be a stated purpose in the policy itself. President-Elect Graham agreed with Mr. Gifford about leaving the policy flexible.

Commissioner Edwards made a motion to approve the investment policy statement as written. Commissioner Kath seconded the motion. The motion carried unanimously.

Mark Gifford suggested that because the Executive Committee is a four-member body, the Board should name a fifth member of the Committee. He recommended Executive Director Sharon Wilkinson as the fifth member.

Commissioner Whiting made a motion to appoint the members of the Executive Committee to serve as the Investment Committee to include Executive Director Sharon Wilkinson. Commissioner Neville seconded the motion. The motion carried unanimously.

Mark Gifford asked Mike Merback to step out of the room in order for the Board to discuss who it wished to select as the financial advisor.

After discussion, Commissioner Neville made a motion to engage RBC Wealth Management as the investment consultant. President-Elect Graham seconded the motion. The motion carried unanimously.

Commissioner Edwards made a motion to invest \$500,000 with RBC Wealth Management. Treasurer Barbe seconded the motion. The motion carried unanimously.

President Jarosh asked Mark Gifford to take the lead in negotiating a contract with Mr. Merback and bring it before the Executive Committee for approval. Mr. Merback rejoined the meeting and President Jarosh shared the decisions of the Board with him.

Admissions Report

Cathy Duncil, Admissions Director, reported that she will administer the Bar exam to 21 applicants in February. Executive Director Wilkinson reported that this is the fewest number of applicants the Bar has ever had. Ms. Duncil discussed some of the factors that are contributing to the low number.

Mark Gifford reported that the Bar is one year into the revamped process for character and fitness screenings. He shared that, to his knowledge, up until three years ago, the Character & Fitness Committee had never denied the admission of an applicant. Mr. Gifford shared that there have been three hearings before the Committee. He feels that this process is much improved and it provides such important due process for the applicants and provides a much more critical public protection aspect.

Mr. Gifford reported that the Board of Law Examiners and the Character & Fitness Committee have submitted some rule changes to the Court and are awaiting the Court's decision. He feels that the admissions process has come light years since Ms. Duncil stepped in as Admissions Director and we adopted the Uniform Bar Exam.

Mandatory Continuing Legal Education

Executive Director Wilkinson reported that there were 86 members who were not compliant with their 2017 continuing legal education (CLE) requirements on January 15, 2018. As a result, they were each assessed the required \$300 delinquency fee. She shared that these attorneys have until March 1, 2018, to not only pay the fee but to get into compliance with their CLE. If they are not in compliance on March 15, 2018, they will be assessed an additional \$300 non-compliance fee and recommended for suspension.

Office of Bar Counsel Report

Attorney Discipline

Mark Gifford reported that the Board of Professional Responsibility (BPR) was busier than usual this past year with six hearings—four disciplinary hearings and two reinstatement hearings. Mr. Gifford reported that he has a case before the Court now that was set for argument yesterday. He reported that overall, he is very busy with attorney discipline. President-Elect Graham asked Mr. Gifford if he was seeing any patterns in his discipline cases. Mr. Gifford shared that the majority of his cases are with lawyers who simply are not functioning well and the train has completely come off the track.

Fee Arbitration

Mr. Gifford reported that the Bar is a year and a half into the new process which provides for in-person hearings. He feels this is a vast improvement over the former process.

Unauthorized Practice of Law

Mr. Gifford shared that things have been fairly quiet in regard to the unauthorized practice of law (UPL). He reported that Sweetwater County seems to be the main source of complaints, as there is currently a paralegal advertising legal services there.

Client Protection Fund

Mark Gifford reported that when Tony Vehar died two years ago, he left an active practice. He shared that he is finding that more and more of his time is being spent helping to wind down practices of deceased lawyers. His role is to look first to see if the attorney designated a surrogate. If the lawyer did not designate a surrogate, Mr. Gifford recruits a local attorney to act as the surrogate. He reported that our members have been very good about stepping into this role. Mr. Gifford assists the surrogate attorney by drafting a petition and order for appointment of surrogate. In Mr. Vehar's case, the surrogate attorney called last month to report that there was approximately \$6,200 in Mr. Vehar's trust account that could not be identified as belonging to any

specific clients. Although Rule 1.15 of the Rules of Professional Conduct says unaccounted for trust account funds must be paid to the State as unclaimed property, the State will not accept such funds unless the owner of the property can be identified. In Mr. Vehar's case, Mr. Gifford conferred with the surrogate attorney, the attorney for Mr. Vehar's estate and Judge Bluemel, the judge overseeing the probate, and it was agreed that the sensible course was to pay those funds to the Wyoming State Bar for deposit in the Client Protection Fund. Mr. Gifford anticipates similar situations arising in the future.

Strategic Plan Update

Bar Leadership Institute

Executive Director Wilkinson reminded the Board that one of the goals in the Strategic Plan was to provide some leadership training for section leaders as county bar presidents. She reported that she has been working with President-Elect Graham, Mark Gifford and Cathy Duncil to secure a location and develop a draft agenda. She shared that the Bar Leadership Institute will take place April 13, 2018, at The Lyric in Casper, Wyoming. She plans to provide a full report of the event at the April meeting.

Administration of Justice Issues

Executive Director Wilkinson reminded the Board that there were several administration of justice concerns that were shared by the members through the 2017 Bar Member Survey. As a result, there was a lengthy discussion during Strategic Planning as to what role, if any, the Bar has in addressing these issues. She reminded the Board that Judge Lavery and Judge Bluemel were invited to attend the November meeting to hopefully provide some guidance on these issues. Executive Director Wilkinson shared that she included this topic on the agenda simply to provide some follow-up discussion and learn whether or not the Board feels that any progress was made on this issue.

Mark Gifford shared that where the topic was left at the November meeting was to get the word out to the members about some of the challenges faced by District Court judges. Commissioner McCorkle shared that she left the November meeting feeling like there was nothing the Bar could do about these issues. President-Elect Graham shared that he serves on the Bench-Bar Relations Committee, and it seems like that committee could potentially help with this. President-Elect Graham asked if there was a mechanism to track how long a case has been on the docket. Mr. Gifford shared that the Supreme Court has tried to put that in place for several years but, for various reasons, they scrapped that and started all over. He mentioned that this coincides with e-filing and the expected roll-out is 2020. Mr. Gifford reminded the Board that the District Courts are constitutionally created courts so there is little oversight of them.

President-Elect Graham recommended asking a District Court judge to write an article about the District Court's struggles with funding by the state and the county. Mark Gifford wondered if Judge Donnell or Judge Sullins might be two options.

Bar Building Renovation

Executive Director Wilkinson reported that the Executive Committee recently approved the contract with S & S Builders as well as with Noel Griffith, the architect, and that work is scheduled to begin the week of February 5, 2018.

Mark Gifford shared that he and Executive Director Wilkinson met with the builder and the architect last week and were presented with a final bid of \$197,500. This was \$2,000 more than the proposal approved by the Board in the November meeting of \$195,500. In addition, the builder is recommending that we upgrade our existing light fixtures throughout the builder to a more energy efficient model. This will result in an additional \$13,000 cost, but we hope to recoup half of that expenditure from rebates being offered through Black Hills Energy. In addition, the new fixtures will result in significant savings on future electricity bills.

Section Discontinuance

Executive Director Wilkinson shared that under the new uniform section bylaws, she is obligated to notify the Board in the event that any section membership drops below 25 members. She reminded the Board of her efforts over the last year to get all sections active with functioning leadership. She recommended the discontinuance of five sections due to inactivity: 1) Administrative Law Section, 2) Disability & Elder Law Section, 3) Federal Bar Section 4) Health Law Section, and 5) Taxation Section. Executive Director Wilkinson reminded the Board that it had the power to dissolve any section.

Treasurer Barbe asked what the harm would be if the Board did not dissolve these sections. Executive Director Wilkinson shared that there would be no harm; however, she feels strongly that the Bar members who join those sections should see some sort of benefit for their money.

President-Elect Graham reminded the Board about the upcoming Bar Leadership Institute and pointed out that it may boost some interest. Mark Gifford recommended sending these section members notification that they have not elected leadership and strongly encourage them to have a representative present at BLI. Commissioner Whiting made a motion to approve Mr. Gifford's suggestion.

Commissioner Kisling made a motion to send a notice letting these section members know they are under the requisite number set by the bylaws and consideration is being given to dissolve the section. The notice should also include an invitation for members to provide comments that will be taken into consideration. Commissioner Whiting withdrew his motion and seconded Commissioner Kisling's motion. Treasurer Barbe wondered if we should just wait until the next license fee cycle and remove those sections from the license fee statement. The motion carried unanimously.

Proposed Revisions to the Bylaws

Mark Gifford shared that we changed our Bylaws a few years ago to reflect eligibility requirements for members to request "retired" status; those members must be either 65 years

of age or have at least 25 years of membership. Mr. Gifford is proposing the same requirements for Emeritus status. Executive Director Wilkinson shared that in the last few years, she has noticed that some of the new members of the Bar are immediately taking Emeritus status; however, they are not doing the pro bono work, for which Emeritus status was created. She reminded the Board that Emeritus status lawyers pay no license fee and have a reduced CLE requirement. Mr. Gifford mentioned a few clean-up issues he made in the Bylaws and requested approval to submit the proposed amendments to the membership for comment.

Commissioner Whiting made a motion to put the bylaws out for member comment. Commissioner McCorkle seconded the motion. The motion carried unanimously.

Legislative Update

Mark Gifford reported that the Legislature is currently considering a bill to tax legal services. The Joint Revenue Committee will meet next week in Cheyenne, and President Jarosh will be present to speak on behalf of the Bar.

Mr. Gifford reported that the Legislature is also considering a bill that would put convicts back to work more quickly by limiting licensing board's ability to inquire into criminal history.

Mr. Gifford also shared that the Bar is proposing a change to the statute that imposes term limits on the members of the Board of Law Examiners (BLE). He clarified that the purpose is not necessarily to remove term limits altogether, but to simply remove it from the statute and let the Supreme Court address term limits in the admissions rules. He reported that Senator Perkins is the sponsor of the bill and it has been filed as Senate File 57.

President's Report

President Jarosh reported that plans are underway for the September Annual Meeting & Judicial Conference. He reported that he and the Bar staff have put the full court press on Justice Kennedy to deliver the keynote address at the Annual Banquet. Mike Sullivan, Senator Barrasso and Alan Simpson all have a hand in this, so he is hopeful that the invitation will be accepted. President Jarosh also discussed other speakers he is considering.

President Jarosh shared that Mark Gifford received positive feedback from the membership on his article that was published in the October *Wyoming Lawyer* about his attorney friend who committed suicide. President Jarosh shared that he also received positive feedback on his column that was published in the December *Wyoming Lawyer* regarding the struggles his brother had prior to his death. He reported that Governor Mead requested the Bar's assistance in promoting the Governor's Symposium on Suicide Prevention in May. Executive Director Wilkinson agreed to advertise the Symposium in the February *Wyoming Lawyer*, and the Governor is going to recognize the Bar's efforts at the Symposium. President Jarosh also shared that the Symposium is accredited for seven CLE hours.

President-Elect's Report

President-Elect Graham thanked Executive Director Wilkinson, Cathy Duncil and Mark Gifford for their hard work on the investment policy. He also thanked them for their help on the Bar Leadership Institute. He shared that he is excited about moving forward on those things.

Vice President's Report

Vice President Nash echoed President-Elect Graham's sentiments about the investment policy. She shared that she is excited to see the results of the Bar building renovations and commented how pleased she is to see how much our members use that building. She also shared that it is a step in the right direction to increase security in the building.

Executive Director's Report

2020 Annual Meeting

Executive Director Wilkinson shared that she was approached by a member of the Dean's Advisory Board to discuss the possibility of the Bar hosting its 2020 Annual Meeting & Judicial Conference in Laramie to coincide with the 100th anniversary of the University of Wyoming College of Law. She shared some of the preliminary plans she learned of and asked for feedback from the Board. After much discussion, all were in agreement that Executive Director Wilkinson should move forward with discussions to learn more details before making the commitment.

Administrative Assistant Vacancy

Executive Director Wilkinson reported that she received an overwhelming response to the ad for an Administrative Assistant. Of the hundreds of resumes she received, she and the staff had spent the last week interviewing 14 candidates. Executive Director Wilkinson reported that she has offered the job to the top candidate and she is awaiting the candidate's decision.

Young Lawyers Section Report

Holli Welch, Chair of the Young Lawyers Section, shared that the section's main focus is planning the Mountain West States Young Lawyers Regional Summit to be held in Jackson in April. She shared that there is a rough CLE schedule drafted and they have invited some CLE speakers. She also reported that the section hosted its first "Lunch with a Judge" program in Jackson last week with Judge Day. They had 11 people in attendance.

Board/Committee Liaison Reports

- Bench-Bar Relations Committee – No report
- Civil Pattern Jury Instructions – Commissioner McCorkle reported that the committee is scheduled to have its first meeting on April 13th.
- Criminal Pattern Jury Instructions – President Jarosh notified the Board that there currently is no liaison appointed to this committee and asked for volunteers to serve. Commissioner Kisling volunteered to serve as the liaison.
- Diversity & Inclusion Committee – Executive Director Wilkinson reported that Maribeth Galvan has agreed to continue as chair of the committee.

- Juvenile Pattern Jury instructions Committee – Commissioner Whiting reported that the committee chair plans to schedule a meeting in the spring.
- Law School Liaison Committee – No report
- Legislative Developments Committee – Executive Director Wilkinson reported that the committee has conference calls scheduled every Friday morning during the legislative session. She takes the lead from Robert Tiedeken, who serves as chair, as to whether or not the calls are necessary.
- Permanent Rules Advisory Committee – Civil Division – Commissioner Edwards reported that the committee had a meeting this morning and discussed some clean-up issues.

President Jarosh adjourned the meeting at 4:42 p.m.

Minutes Submitted by:

Sharon Wilkinson
Executive Director