

Wyoming State Bar Board of Officers & Commissioners Meeting

January 22, 2021

Via Zoom

In Attendance: Billie LM Addleman, President; J. Kenneth Barbe, President-Elect (via phone); R. Scott Kath, Vice President; James L. Edwards, Treasurer; Kelly M. Neville, Immediate Past President; Stefanie L. Boster, First Judicial District Commissioner; Sarah L. Chavez, Second Judicial District Commissioner; Teresa S. Thybo, 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; James T. Whiting, Ninth Judicial District Commissioner; Benjamin R. Rose, Young Lawyer Section Chair; Sharon Wilkinson, Executive Director; Mark W. Gifford, Bar Counsel; and Cathy Duncil, Admissions Director

Guests: Wayne Herr, Partner at McGee, Hearne & Paiz, LLP
Mike Merback (by phone), Financial Advisor at RBC Wealth Management

President Billie LM Addleman called the meeting to order at 9:03 a.m. on Friday, January 22, 2021.

Approval of Agenda

Executive Director Sharon Wilkinson requested that two items be added to the agenda:

1. Request to transfer \$5,000 from checking account to the Pro Bono Reimbursement Account
2. Discussion about the future of the Wyoming High School Mock Trial

Vice President Scott Kath made a motion to approve the agenda with Executive Director Wilkinson's additions. Commissioner Alison Gee seconded the motion. The motion carried unanimously.

Approval of Meeting Minutes

Executive Director Wilkinson shared that she discovered a few typos and a misspelling of Commissioner Kessner's name that have been corrected.

Treasurer Jim Edwards made a motion to approve the November 13, 2020, meeting minutes with Executive Director Wilkinson's corrections. Vice President Kath seconded the motion. The motion carried unanimously.

Executive Committee Meeting Minutes

President Addleman directed the Board's attention to the minutes of the Executive Committee conference calls and asked if anyone had any questions. There were none.

Treasurer's Report

Treasurer Edwards reported that we are three months into the fiscal year (Oct. 1 – Sept. 30) and 75% of our projected revenue has been received. He shared that while we are 25% of the way through the year, we have only expended 20% of our budgeted expenses. He shared that the Investment Committee met with Mike Merback, Financial Advisor at RBC Wealth Management, to discuss rebalancing the investment portfolio. After a thorough discussion amongst the Investment Committee, it was decided to stay the course with the investment accounts.

Treasurer Edwards pointed out that credit card fees are typically high this time of year simply due to online license fee payments, but those expenses will even out over the remainder of the year. He also shared that the CLE program expenses and revenues look a little off the mark simply because the staff decided to offer all CLE programs free of charge due to the pandemic. He reported that the Virtual Annual Meeting CLE programs were also offered free of charge and there are fees associated with members downloading those programs.

Vice President Kath made a motion to accept the Treasurer's Report. Commissioner Craig Silva seconded the motion. The motion carried unanimously.

Pro Bono Reimbursement Account

Executive Director Wilkinson shared that the account balance for pro bono reimbursements was approximately \$1,200. While the number of requests for reimbursement has really decreased, she asked the Board to authorize her to transfer \$5,000 from the Bar's regular checking account into the pro bono account. She will then market this to the membership to hopefully increase the number of requests.

Treasurer Edwards made a motion to authorize Executive Director Wilkinson to transfer \$5,000 from the Bar's checking account to the pro bono account. Commissioner Gee seconded the motion. The motion carried unanimously.

Admissions

Cathy Duncil reported that there are 25 applicants registered to sit for the February bar exam, which will be an in-person exam at Little America Hotel in Cheyenne. She shared that Wyoming is one of 15 jurisdictions that will be administering an in-person exam; however, she feels very fortunate to have ample space and the ability to adhere to strict COVID-19 protocols.

Ms. Duncil reported that the Character and Fitness Committee held its first hearing via Zoom. Ultimately, the Committee voted in favor of admitting the applicant. She also reported that there will be another Zoom hearing next month.

Ms. Duncil shared that she and Mark Gifford will be addressing the third-year law students at the University of Wyoming College of Law via Zoom next month, something they do every year in preparation for the April 15th deadline to apply for the July bar exam. She shared that items of discussion include specifics about filing the application, including candor when applying.

Mark Gifford shared that the Character and Fitness Committee typically has three or four hearings per year. He noted that the applicants who get referred for hearing typically either have a criminal history with underlying substance abuse or there is an overall lack of candor in the application process. He shared that in one of the recent hearings, there was a dissent to the recommendation of a majority of the Committee for admission of the applicant. Up until this point, all decisions had been unanimous. Mr. Gifford shared that the members of the Committee write their own report and recommendation and they always generate an impressive, well-thought-out recommendation. He noted that the only time a Zoom hearing is conducted is if the applicant so stipulates.

Treasurer Edwards asked Mr. Gifford if, in the case of the dissent, there is any type of written record as to the reason for the dissent. Mr. Gifford shared that there is a written report with a lengthy explanation that spells out the reasoning; however, it is only seen by the Board of Law Examiners and the Wyoming Supreme Court. Other than that, he reported that the recommendation is a confidential record.

Treasurer Edwards asked Cathy Duncil if any of the February applicants have expressed any arguments or concerns about the in-person exam. Ms. Duncil reported that she participates on a regular Zoom call with all other jurisdictions giving in-person exams and the overall consensus is that applicants are very quiet this time around.

Mandatory Continuing Legal Education

Executive Director Wilkinson reported that there were 127 members who were not compliant with their 2020 CLE requirements on January 15, 2021, and were assessed the \$300 delinquency fee as a result. She reminded the Board that the number of non-compliant lawyers was much higher last year with 179 being assessed the delinquency fee.

Executive Director Wilkinson also shared that this time of year is when she and Marie Ellis, CLE Director, regularly meet with the Board of Continuing Legal Education as it considers many waiver and/or extension requests from members who can demonstrate a hardship or extenuating circumstance under Rule 7 of the CLE Rules. She shared that she has been very surprised by the decrease in these requests, as she expected an increase in requests due to the pandemic. Executive Director Wilkinson shared that to date, the Board of CLE has approved two extension requests and denied one waiver request and three extension requests.

Annual Audit Report

Wayne Herr, Partner at McGee, Hearne & Paiz, LLP in Cheyenne, joined the meeting to report on the annual financial audit. To begin, Mr. Herr provided a brief presentation on the Board's duties and responsibilities for the Bar's finances. Mr. Herr then 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. He directed the Board's attention to the Financial and Compliance Report, including the independent auditor's report, the management representation letter, financial statements and required supplementary information, and internal control report.

As in years past, Mr. Herr reminded the Board that his firm is required by the Government Accounting Standards Board to include the Bar's share of the Wyoming State Retirement unfunded pension liability on the financial statements even though that may never be paid out.

Mr. Herr reported that each year, his staff brainstorms to see what it can introduce in the audit that would be unpredictable to the Bar staff. This year they compared the investment portfolio to the investment policy statement approved by the Board. They checked it to make sure actual investments were in alignment with the policy and were pleased to see that everything was within the acceptable range. He reported that there was nothing in the audit letter that would raise a red flag. He commended Cathy Duncil for continued good performance as the Bar's bookkeeper.

President Addleman asked Mr. Herr if there was anything he needed to discuss with the Board without the presence of staff. Mr. Herr indicated that there was not. He shared that had they had any issues, he definitely would have specific conversations with the Board, but there were no issues.

Vice President Kath made a motion to accept the 2020 audit report. Treasurer Edwards seconded the motion. The motion carried unanimously.

Annual Investment Report

Mike Merback from RBC Wealth Management joined the meeting by phone. He referred the Board's attention to the portfolio summary that he shared and reported that the numbers are as current as Wednesday, January 20th.

Mr. Merback reported that the Bar's one-year return is up 9.86% and most importantly, the annual return since inception (February 2018) is 8.03% per year. He also shared that one month from today will be the third anniversary of the Bar's initial investment of \$500,000.

Mr. Merback provided an overview on where the investments currently are in comparison to what the Board agreed were acceptable ranges in the investment policy statement and reported that all categories of investments fell within acceptable ranges. He also mentioned that there is a real estate sector that is broken out but is not reflected in the investment policy statement. In other words, there is no target allocation for the real estate sector. As a result, Mr. Merback recommended that the Investment Committee consider adding real estate securities to that table in the policy statement—perhaps start with a 3% target but allow for up to 10% as an acceptable range.

Overall, Mr. Merback reported that the Bar's investments are right on target, as returns have been fairly good—averaging just over 8% per year.

Treasurer Edwards asked Mr. Merback what type of real estate investments he was thinking about. Mr. Merback shared that any investment in real estate securities will be modest and that adding real estate simply adds a measure of diversity to the portfolio.

Executive Director Wilkinson shared that the Investment Committee, which is made up of herself and the Executive Committee, met with Mr. Merback last week to discuss the need for rebalancing the portfolio. She asked Mr. Merback to expand on that discussion.

Mike Merback reminded the Board that it decided during 2020 to revisit the need for rebalancing at the end of each calendar year. He shared that January is an optimal time to review the year-end numbers and ensure they are at least close to the target percentage. He shared that the portfolio got somewhat out of alignment in 2020 due to the fact that a \$238,000+ CD matured and those funds were added to the bond portfolio. One month later, another \$75,000 was added to the bond portfolio simply due to the fact that the Bar's goal is to always remain under FDIC limits in each bank account. Mr. Merback clarified that while these funds skewed the allocations somewhat, they were always within the acceptable range according to the investment policy statement.

After more discussion, Commissioner Stefanie Boster made a motion to accept the investment report. Vice President Kath seconded the motion. The motion carried unanimously.

Attorney Discipline

Mark Gifford reported that discipline continues to keep his office busy, but some things are notably different, as the number of complaints received decreased significantly in 2020. He shared that he cannot put his finger on the exact reason, but complaints were down by approximately one-third. He reported that the cases that do continue to keep them busy seem more problematic than usual.

Mr. Gifford shared that his office has recently filed three petitions for immediate suspension. Of those three, two have been granted and one is still pending at the Supreme Court. He provided an overview of the problems that would rise to the occasion of an immediate suspension.

Mr. Gifford reported that his office is working on two stipulated disbarments that will soon be on their way to the Court. He shared how unusual it is for lawyers to stipulate to disbarment.

Mr. Gifford reminded the Board that he has been attempting to hold an in-person hearing for a high-profile disciplinary case, but the pandemic has delayed that indefinitely. He and members of the Board of Professional Responsibility are simply waiting for the coast to clear on COVID so they can assemble a hearing panel and other parties in the same room for a four-day hearing.

Young Lawyer Section Report

Ben Rose, Chair of the Young Lawyer Section, reported that the Young Lawyer Section Council is finally on track with scheduling regular CLE programs throughout the year. He shared that each Council member has chosen another practice section with which to coordinate co-sponsored CLE programs. Mr. Rose shared that he hopes this will set a roadmap for future Councils.

In regard to the previously proposed Young Lawyer Hotline, Mr. Rose shared that the Council is in the process of contacting the Colorado State Bar and other local bar associations to see if any other bar has had a similar hotline. He shared that Jackson lawyer Maryt Fredrickson has expressed interest in serving as the hotline representative so they are evaluating that.

Ben Rose reported that the young lawyers' spotlights in the *Wyoming Lawyer* are going well. He shared that there were a couple of young lawyers from Torrington who were featured in the December issue. Mr. Rose hopes that this will continue long into the future in order to showcase young lawyers across the state.

Ben Rose reported that Emily Madden, Co-Chair of the Young Lawyer Section Council, is working on a virtual trivia event for young lawyers around the St. Patrick's Day holiday. He also shared that Nick Dillinger, at-large member of the Council, has offered to participate in the small/solo/rural working group with Past President Kelly Neville.

Mr. Rose shared that he met an expert in alternative dispute resolution, Susan Exxon, and he is hoping that she is willing and available to do a section-sponsored CLE program for Annual Meeting.

Strategic Plan Progress Report

Executive Director Wilkinson walked the Board through the progress that has been made on the 2019-2021 Strategic Plan and mentioned that since launching Red Cave Law Firm Consulting last month, 11 members have contacted Red Cave; eight of those reached out on the day that the member benefit was launched. In total, Executive Director Wilkinson shared that Red Cave has engaged in 148 e-mails, one telephone call and five consultations with these members. Executive Director Wilkinson also shared that Red Cave contributes weekly law practice management content that she has posted to the Bar's new Law Practice Management Blog available on the Bar's website. President Addleman recommended that we seek some testimonials from these members to help boost usage numbers. Executive Director Wilkinson agreed and shared that she is in close communication with Jared Correia at Red Cave and will inquire about that.

Executive Director Wilkinson also shared that the Supreme Court approved amendments that were made to the Wyoming Lawyer Assistance Program (WyLAP) Rules and those will go into effect February 1, 2021. She shared that the Young Lawyer Hotline was the main reason the amendments were needed.

Executive Director Wilkinson reported that since its launch last month, the representatives from eVideo Counseling are very pleased with the traffic so far. She shared that of the 12 contacts, four of those are pending and one is working through the process of becoming a client seeking help.

Equal Justice Wyoming Foundation Matching Fundraising Proposal

Executive Director Wilkinson shared that since it commenced fundraising efforts in September 2020, the Equal Justice Wyoming Foundation (EJWF) has raised a total of \$37,805. She reminded the Board that it approved a \$25,000 matching proposal at the August 2020 Board meeting. She clarified that only certain contributions totaling \$23,405 were eligible for the match (this does not include contributions that come from the license fee statements). Executive Director Wilkinson shared that EJWF is just shy of reaching its \$25,000 goal; however, they are waiting for some pledges to come in as well as payment from a fundraiser at a brewery in Cheyenne.

Assertion of Claim Against West Edge Collective

Commissioner Gee made a motion to convene an Executive Session. Vice President Kath seconded the motion. The motion carried unanimously. Executive Session was convened at 10:50 a.m.

Commissioner Gee made a motion to adjourn an Executive Session. Vice President Kath seconded the motion. The motion carried unanimously. Executive Session was adjourned at 11:04 a.m.

Commissioner Gee made a motion to adopt the recommendation from Bar Counsel to refer this matter to the Executive Committee for decision making. Commissioner Boster seconded the motion. The motion carried unanimously.

Wyoming High School Mock Trial

Executive Director Wilkinson shared that Cheyenne attorney George Powers and his wife Marguerite Herman have coordinated all aspects of the Wyoming High School Mock Trial for as long as she can remember. She shared that she and Ben Rose received an e-mail from Mr. Powers inviting the Young Lawyer Section to get involved in the mock trial and help coordinate efforts for this year's competition and into the future. He mentioned in his letter that he and his wife cannot coordinate the competition forever.

As a result of this e-mail, Ben Rose brought the topic up for discussion during the last Young Lawyer Section (YLS) Council call. After discussion, all were in agreement that the YLS Council was not the ideal group to coordinate the competition simply because of continuous turn-over with the Council.

Executive Director Wilkinson shared that she wished to discuss this today with the Board simply to get ahead of this so that the Bar could brainstorm the best possible transition so that future coordinators could possibly shadow Mr. Powers and Ms. Herman for the next few

competitions. She also reminded the Board that the Bar sponsors the competition at \$3,500 per year.

President Addleman shared that Past President Rob Jarosh and their firm have always been very involved in the competition and in fact use it as a training tool for their new associates.

After much discussion, Executive Director Wilkinson again reminded the Board that she wished for them to keep this in mind and possibly brainstorm some retired members who may be interested and have the time to help coordinate future competitions.

Rule Amendments

Mark Gifford shared that when Sharon Wilkinson was hired as Executive Director in 2013, one of her goals was to ensure that the Bar was fully compliant with all rules and bylaws that governed the Bar. He shared that she also felt strongly about tasking one person to be in charge of all rule and bylaw amendments, as previously, that had been done through several ad hoc committees. Mr. Gifford reported that he was tasked with that responsibility and has spent a considerable amount of time on that ever since. He reported that one goal of his has been to ensure that the rules/bylaws mirror how the Bar actually operates.

Mr. Gifford reported that once he submits rule/bylaw amendments to the Supreme Court, the Court oftentimes wishes to meet with him. He walked the Board through the major rule amendments that the Court has recently approved.

President's Report

President Addleman reminded the Board that he serves on the Court Records Division of the Permanent Rules Advisory Committee. He shared that this group meets every six weeks to go through all Wyoming statutes by title to determine how specific documents will be classified through the e-filing process. He also shared that he received some good feedback on his December President's column, which was an update on e-filing.

President Addleman shared that the Western States Bar Conference is scheduled for the end of March and early April. He reminded the Board about the Bar's travel policy that allows for members of the Executive Committee to attend as well as two commissioners chosen by lottery. He reminded the Board that before the conference was cancelled last year, Commissioners Boster and Gee were chosen to attend. He shared that as a result of the cancellation, the Executive Committee decided that the offer should be extended to those two commissioners again this year and both have accepted the offer. President Addleman also shared that he made a request to the Executive Committee to extend an offer to Past President Kelly Neville for her to attend since so much was cancelled during her presidency. The Executive Committee agreed considering that she could benefit from leadership training in her capacity on this board, as a member of the Editorial Committee and as the chair of the small/solo/rural working group.

Executive Director Wilkinson reminded the Board that while the conference is being planned as an in-person event, the conference coordinators are simply asking for a head count at this point to ensure that they can meet the attendance requirements.

Executive Director's Report

Executive Director Wilkinson reported that even though she let the Bar's administrative assistant go on the second day of the license fee cycle, she and Brandi Robinson handled the three-month cycle very smoothly. She reminded the Board that the Supreme Court increased the late fee from \$50 to \$75 effective August 1, 2020. She reported that in addition to the license fee, the Bar generated the following:

Late Fees	\$23,175
Equal Justice Wyoming Foundation Contributions	\$14,126
WyLAP Foundation Contributions	\$7,893
Section Fees	\$19,450

Executive Director Wilkinson reported that the Supreme Court suspended seven members' licenses yesterday as a result of their failure to pay their license fees.

Executive Director Wilkinson reported that she went to print with the 2021 Wyoming State Bar Legal Directory earlier in the week and those print copies should be available mid-February. She reminded the Board that it approved a request to opt every member OUT of receiving the printed copy of the directory. Members who wished to receive a print copy had to opt in when they paid their license fees. She also reminded the Board that she put an e-mail out to the entire membership in mid-December giving members one more chance to opt in if they wanted a printed directory. Executive Director Wilkinson was pleased to report that this would definitely be a cost savings to the Bar, as she ordered 3,300 printed directories last year and only ordered 1,450 this year. As a result, she estimates the cost of the directory to come in under budget—approximately \$17,000.

Executive Director Wilkinson reported that due to the ongoing pandemic, the staff, for the most part, is still working remotely. She shared that she, Mark Gifford and Shannon Howshar, Assistant to Bar Counsel, are working in the office every day and others are coming in on an as-needed basis coordinated through her. She also reminded the Board that the office is still closed to the public.

Executive Director Wilkinson shared that they are still on hold with filling the Administrative Assistant/Receptionist vacancy. While she has a handful of applicants she would like to interview, all staff agreed that onboarding a new employee right now would be too difficult. She reported that she will continue to keep the Board apprised of any developments.

Executive Director Wilkinson reported that the Bar office hit a milestone this month with Mark Gifford's ten-year recognition. She shared that Mr. Gifford began as part-time, contract Bar Counsel in January 2011 but transitioned to a full-time employee in October 2013. She thanked Mr. Gifford for his ten years of service!

Commissioners' Reports

- *First Judicial District*—no report
- *Second Judicial District*—no report
- *Third Judicial District*—no report
- *Fourth Judicial District*—Commissioner Kevin Kessner reported that Judge Fenn recently suspended a jury trial and no others are being planned for now.
- *Fifth Judicial District*—Commissioner Jennifer Kirk reported that there was an in-person sentencing in Big Horn County; this was a case that had been postponed for almost a year. She also reported that there are several counties planning to join the lawsuit that Uinta County is filing against the Wyoming State Hospital.
- *Sixth Judicial District*—Commissioner Gee reported that her district has a new District Court judge, the Hon. Stuart S. Healy. She shared that Mitch Damsky is also her district's new County Attorney and that Jeremy Michaels has been appointed to serve as the Municipal Court Judge there. Commissioner Gee shared that she has a friend who was called for jury duty, so it appears that they are moving forward with jury trials.
- *Seventh Judicial District*—Commissioner Silva reported that Judge Skavdahl has really tried to push in-person trials in Casper.
- *Eighth Judicial District*—Commissioner Shawn Wilde reported that the Hon. Clark C. Allan is his district's new Circuit Court judge.
- *Ninth Judicial District*—Commissioner James Whiting reported that there have been a couple of trials set in his district; however, due to either COVID or COVID exposures with counsel or key witnesses, those have been cancelled.

Board/Committee Liaison Reports

- *Civil Pattern Jury Instructions Committee*—Commissioner Kessner reported that he reached out to Judge Kricken, Chair, and he has been invited to attend the March 5th meeting. He reminded the Board that the Committee recently released a revised set of instructions so he anticipates that it will be a brief meeting.
- *Criminal Pattern Jury Instructions Committee*—Commissioner Teresa Thybo reported that after a brief hiatus, the Committee has resumed the meetings every other month. She shared that Committee members have been assigned certain instructions, but they are waiting on the Legislature, as much of what they do depends on legislative actions. Commissioner Thybo also shared that the Legislature is supposed to be correcting the theft statute.
- *Law School Liaison Committee*—President Addleman reported that he, Devon O'Connell, Klint Alexander, and Executive Director Wilkinson will be meeting in the next few weeks to determine if there is anything for the Committee to embark upon.
- *Legislative Developments Committee*—President Addleman reported that in advance of the Legislative session at the end of this month, this committee will be meeting next Tuesday to review any bills that could potentially impact the legal profession.

President Billie LM Addleman adjourned the meeting at 12:22 p.m. on Friday, January 22, 2021.

Minutes Submitted by:

Sharon Wilkinson
Executive Director