

Wyoming State Bar Board of Officers & Commissioners Meeting

January 19, 2024

Holiday Inn East

Casper, Wyoming

In Attendance: Anna M. Reeves Olson, President; Erin E. Weisman, President-Elect (via Zoom); James T. Whiting, Vice President (via Zoom); Kelly M. Neville, Treasurer; Stefanie L. Boster, First Judicial District Commissioner; Dona Playton, 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; Clayton M. Melinkovich, Ninth Judicial District Commissioner; John P. Fritz, Chair, Young Lawyer Section; Sharon Wilkinson, Executive Director; Mark W. Gifford, Bar Counsel, and Cathy Duncil, Admissions Director

Absent: Christopher H. Hawks, Immediate Past President

Guests: Cason Swinn, Financial Advisor, RBC Wealth Management
Robert Dahill, Partner, McGee, Hearne & Paiz, LLC

President Anna M. Reeves Olson called the meeting to order at 12:39 p.m. on Friday, January 19, 2024.

Consent Agenda

Commissioner Alison Gee made a motion to approve the consent agenda. Commissioner Dona Playton seconded the motion. The motion carried unanimously.

Admissions

Cathy Duncil reported that she will administer the February Bar exam on February 28th and 29th at Laramie County Community College in Cheyenne. She shared that there are only 24 applicants signed up for the exam, which is lower than she typically sees for a February exam.

Ms. Duncil reported that in November 2022, the Supreme Court issued a confidential order for conditional admission to a lawyer who was required to stay on a monitoring agreement. This lawyer is required to submit quarterly reports which are reviewed by Deputy Bar Counsel, who then reports the findings to the Character and Fitness Committee. Ms. Duncil was thrilled to report that this lawyer is doing so well—the lawyer has maintained her sobriety and has significantly reduced her debt ratio. She is pleased that this turned out to be a success story.

Mark Gifford reported that this week there was an applicant referred for a hearing before the Character and Fitness Committee. He and Ms. Duncil anticipate this will be a Zoom hearing in March.

Mandatory CLE

Executive Director Sharon Wilkinson reminded the Board that all Active, New Active and Emeritus members of the Bar had to be compliant with their 2023 CLE requirements by January 15, 2024. She reported that there were 198 lawyers who were not compliant and were therefore assessed the \$300 delinquency fee pursuant to Rule 10 of the CLE Rules. She shared that those members have until March 1st to come into compliance and pay the fee. Those that are still not compliant after March 1st will be assessed an additional \$300 noncompliance fee and will be recommended for suspension to the Wyoming Supreme Court.

Office of Bar Counsel Report

Mark Gifford directed the Board's attention to his written report and shared that it recaps all activities in the Office of Bar Counsel in 2023. He shared that the staff has finally turned Becket Hinckley over to collections, as he continually has missed payments on his promissory note and still owes the Bar approximately \$30,000.

Mr. Gifford reported that the Fee Arbitration program has been very busy. Executive Director Wilkinson transitioned that program to Marie Ellis's desk last year and he reported that she is doing a great job with that.

Mark Gifford shared that there are two disciplinary cases currently in formal charge. In one of them, the attorney has unfortunately been badly injured so he does not know if it will ever go to hearing. He reported that Sam Krone and Hampton Young have both been reinstated.

Commissioner Gee thanked Mr. Gifford for providing job descriptions for his position as well as for Deputy Bar Counsel.

Mark Gifford provided an overview of a case that recently came out of the Fifth Circuit called *Boudreaux v. Louisiana State Bar Association*. He also reminded the Board that the *Schell* case is still percolating in the Tenth Circuit. This was a lawsuit that challenged several articles in the Oklahoma bar journal. He shared that he and the staff continue to be vigilant about sticking to projects and activities that are germane to the legal profession, which is spelled out in the Bylaws of the Wyoming State Bar.

Executive Director Wilkinson shared that she and Mr. Gifford meet with all incoming section leadership councils to educate them on the Bar's Keller policy and also educate other groups like the CLE Committee, the Editorial Committee and also the Bar's social media manager on the Bar's strict policy against participating in anything political or ideological unless it directly relates to the Bar's core functions.

Commissioner Playton shared that the 303C Equality for All Committee has been formed at the University of Wyoming College of Law. She shared that in order for a law school to be

accredited by the American Bar Association (ABA), it has to be compliant with this rule. She shared that the UW College of Law was flagged for this in last year's ABA accreditation visit.

Annual Investment Report

Cason Swinn, the Bar's financial advisor from RBC Wealth Management, joined the meeting and provided an overview of his background. He reminded the Board that he and his team are taking over the Bar's investment portfolio from Mike Merback, who will be retiring in May. He also provided an overview of the other six members of his team.

Mr. Swinn shared that it has been a very challenging time with a lot of historical things happening with the market. He provided an overview of the status of the market and shared that the Bar's portfolio did very well in 2023 (up 10%). He reminded the Board that the Bar's Investment Committee establishes the investment portfolio statement, and it is his responsibility to stay within those parameters. He shared that as we go into 2024, there will be some headwinds and some tailwinds. He reported that the upcoming presidential election will present a challenge to the market no matter the outcome, as there is still a lot of volatility. In regard to the economy, he anticipates the Fed will lower interest rates, which will help open up the economy. He discussed the biggest risks to the market are the unknowns, such as Covid.

Cason Swinn shared that he does have some recommendations for the Investment Committee to reallocate some of the asset classes in the investment portfolio statement, and this will take place during a separate meeting.

Commissioner Gee asked how the investment fees are structured. Mr. Swinn reported that the Bar's fees are the lowest of what RBC offers.

Treasurer Kelly Neville shared that the Bar has a fairly conservative allocation and asked Mr. Swinn if that was typical for organizations like the Bar. Mr. Swinn shared that he wishes institutions would be more aggressive but most feel comfortable with a 50-50 split. He shared that the Bar is in line with the other institutions his firm manages.

Commissioner Shawn Wilde has heard much discussion about bitcoin and cryptocurrencies and asked if the Bar had any exposure to those, and if not, should we consider it? Mr. Swinn shared that the Bar does not have any exposure to those. He believes that cryptocurrencies are going to become bigger over time, but they need to figure out how to regulate it. Currently, he feels that there is too much volatility and it is too hard to control. He would not recommend more than a 2% allocation at this time. He reiterated that once it is regulated, he will feel more comfortable investing his clients' money.

Executive Director Wilkinson asked Mr. Swinn when he would like to meet with the Investment Committee to discuss his recommended changes. He shared that February or March would be ideal. She indicated that she would get a Zoom meeting scheduled.

Annual Audit Report

Robert Dahill, partner at McGee, Hearne & Paiz, LLC, joined the meeting and reported that his firm has issued another clean audit opinion for the Bar. He walked the Board through the audit report, which included the financial statements, required supplementary information and the management discussion and analysis. Also, since the Bar participates in the Wyoming Retirement System (WRS), there is specific information that needs to be disclosed regarding WRS.

In looking at the balance sheet, Mr. Dahill shared that the Bar's total assets are very consistent with the prior year. The most significant change was in the Bar's investments, as last year there was a net loss, but this year it was positive. He reported that in terms of assets, things were very consistent.

Mr. Dahill shared that liabilities are up this year, but the driver behind that is the net pension liability due to the Bar's participation in the WRS. He shared that the Bar is required to show its portion of the WRS being underfunded. Because the WRS took a hit in its investments, the Bar's liability went from approximately \$400,000 to \$800,000. He shared that this is really a worst-case scenario situation that only shows what the Bar would have to pay out in the event that the WRS shut down completely, which is highly unlikely.

Executive Director Wilkinson shared that she recently saw an article in the Wyoming Business Report regarding the Legislature's attempt to fully fund the WRS. Mr. Dahill shared that he is unclear how that would be funded. He referred to page 27 of the audit report which indicated that the plan is currently funded at 75%, which is very good. He shared that other states' plans are typically funded at around 25%.

On the revenue side, Robert Dahill shared that we could not have been more consistent with previous years. He shared that there are occasional fluctuations in some of the revenue categories, but Cathy Duncil and Sharon Wilkinson were able to provide reasonable explanations for those.

Mr. Dahill shared that during the audit, they are obviously focusing on the numbers, but they also have to look at the internal controls. He shared that there was nothing that came to their attention that needed the Board's attention.

In a separate document, Mr. Dahill walked the Board through their auditing standards and shared that there were no concerns with management's judgment and no disagreements with management.

Overall, Mr. Dahill shared that the audit went extremely smooth again this year and he thanked Cathy Duncil and Sharon Wilkinson for their preparation and cooperation.

President Olson asked Mr. Dahill if he saw any reason to meet with the Board without the staff present. He indicated there was no need for that.

Mark Gifford asked Mr. Dahill if the requirement to include the net pension liability has had the desired effect of exposing underfunded pensions plans. Robert Dahill shared that it is hard to say, as Wyoming only has one retirement plan and it is very well funded.

Senior Section Update

Executive Director Wilkinson reminded the Board that on the 2023 Bar Member Survey, 53% of those participating in the survey indicated they would join a Senior Section if the Bar had one. She also reminded the Board that all were in agreement that such a section could potentially complement the new mentorship program. There was a “call for volunteers” in both the November talking points and the November eBrief newsletter, but she did not hear from any interested parties. Executive Director Wilkinson asked for some direction from the Board. After discussion, it was decided to table this subject for now.

2023 – 2025 Strategic Plan Progress Report

Executive Director Wilkinson walked the Board through the written progress report. She mentioned that in regard to the new mentorship program with Chronus, things have not gone as smoothly as she had hoped. She shared that many factors have contributed to this—one significant factor being the holidays and the staff’s inability to participate in beta testing. She and other members of the staff shared some of their frustrations with the platform as well as their concerns that members of the Bar could potentially feel overwhelmed with the “assignments” along the way in order foster an effective mentor relationship.

After discussion, it was decided that all members of the Board will participate in beta testing and provide Executive Director Wilkinson with extensive feedback—good and bad—along the way. That will help her and the Chronus team fine tune anything before launch.

Executive Director Wilkinson also asked the Board for some direction regarding mentor criteria. She explained that those who wished to sign up as a mentee could do so with no staff approval process. For mentors, on the other hand, she would like some input on the specified criteria. Would it be a minimum number of years in practice? No disciplinary history? After discussion, Executive Director Wilkinson offered to gather mentor criteria and recruitment strategies from other states.

In regard to Strategic Goal 2 – Rural Practice, Treasurer Neville shared that the Rural Practice Initiative bill did pass the Joint Judicial Committee, but it requires a 2/3 majority vote in the Senate to get introduced in the upcoming legislative session. She shared that the session begins February 12, 2024, so if the bill does not get the requisite vote, it will not go any further this session. All parties involved agreed to run the bill through the Senate, as that is the friendlier body for this initiative.

Treasurer Neville shared that one thing that has been frustrating in these legislative committee meetings is that legislators from the larger counties are supporting the initiative even though their constituents will not benefit from the program; whereas, the small county legislators are not supporting it. She shared that it is a struggle to find community members to come forward who are unable to find an attorney or the legal services they need.

Treasurer Neville shared that she and Mark Gifford have been leading this effort, but trying to track accurate information in each of the counties is very time consuming. She also reported that she and Mr. Gifford are both registered as lobbyists for the upcoming session.

Treasurer Neville shared that it is important for lawyers to speak to their legislators about this initiative and emphasize that it is so much more than giving lawyers extra salary. It is more of an economic development initiative in rural areas. She shared that it should incentivize lawyers to go into the rural communities and start a business to help protect citizens' rights and help them through the system. She shared that some of the legislators thought this was a slippery slope—if you incentivize this for one profession, why shouldn't we do it for other professions? Treasurer Neville encouraged the Board members—whether from rural communities or not—to continue discussions about this with their legislators.

Commissioner Playton shared that she has been looking at how other rural law schools are recruiting, and she learned of initiatives that start at the high school level. Commissioner Jennifer Kirk shared that her former history teacher has invited her to speak about the legal profession in the classroom.

Treasurer Neville shared that the Bar will once again host the Small/Solo/Rural Law Forum in the spring at the law school.

In regard to Strategic Goal 3 – Website Enhancement & Communication Modernization, Executive Director Wilkinson reported that she is making progress with the website “face lift” with Gannett Peak. She and the staff have seen some website mock-ups and a proposed survey to be distributed to the membership. She also shared that Gannett Peak may be using focus groups to gather feedback.

Executive Director Wilkinson shared that having the social media manager has been very positive and she can now see analytics showing what the most popular posts and hashtags are. Social media engagement has also increased.

Increasing Hourly Rates for Workers' Compensation Attorneys

Mark Gifford shared that he and Executive Director Wilkinson had been approached by Marcia Shanor, Executive Director of the Wyoming Trial Lawyers Association (WTLA), to see if the Bar would be willing to support an effort to increase the hourly rate for workers' compensation attorneys. After receiving approval from the Executive Committee to support this effort, Mr. Gifford drafted a letter for President Olson's signature to complement a letter that WTLA was sending in support of raising the hourly rate from \$150 to \$225. He reported that the letter was sent to the Office of Administrative Hearings on January 10, 2024.

Treasurer Neville shared that Ms. Shanor has gotten the WTLA board much more involved in the legislative process this year, and all involved have been very supportive of the rural practice initiative.

Commissioner Stefanie Boster shared that because workers' compensation attorney salaries are not governed by statute, this effort would simply go through the state's rule making process.

President's Report

President Anna Olson thanked Mark Gifford for drafting the worker's compensation letter and shared that she thought it was excellent.

President Olson shared that she was able to work closely with Mark Gifford and Marilyn Kite to co-author a letter to the editor about keeping politics out of the judicial selection process. Executive Director Wilkinson reported that it has been picked up by many media outlets and they have gotten very positive feedback from the legal community so far. Commissioner Playton thanked President Olson and Mr. Gifford for taking the lead on that.

President Olson shared that she has received positive feedback on her President's Column in the December *Wyoming Lawyer*, but when she read the *Boudreaux* decision, she wondered if she needed to be careful about specifically discussing only those things that are germane to the practice of law.

Mark Gifford reminded the Board that the Bar can participate in political/ideological things that are spelled out in our Bylaws. Since wellness issues were really called out in *Boudreaux*, he wondered if we should consider pulling some wellness efforts into our core functions to hopefully protect the Bar from those challenges. He offered to bring some proposed Bylaw amendments to the April meeting for the Board's consideration. Executive Director Wilkinson offered to gather other bylaws from other mandatory bars.

President-Elect's Report

President-Elect Erin Weisman shared that she is looking forward to attending the Bar Leadership Institute with Executive Director Wilkinson in March in Chicago.

She reported that she participated virtually in Judge Smith Bunting's robing ceremony this morning and Past President Weston Graham did a great job speaking on behalf of the Bar.

Executive Director's Report

Executive Director Wilkinson reported that there are still 20 members who have not yet paid their 2023/2024 license fees. She reminded the Board that all Active, New Active and Inactive members had to pay by November 30, 2023, in order to avoid the \$75.00 late fee. Those who were still not compliant on December 15th were recommended for suspension to the Wyoming Supreme Court. All those received an Order to Show Cause from the Court and must either pay or show cause by February 1, 2024.

Executive Director Wilkinson reminded the Board that last May it appointed Robin Sessions Cooley as the newest member of the Legal Aid of Wyoming Board of Directors. She shared that just yesterday she learned that as a result of Ms. Cooley's appointment to the District Court bench in Cheyenne, she has resigned from the Board. Executive Director Wilkinson shared that

she will get out a Call for Expression of Interest to the resident members next week and will then set up a Zoom meeting with the Board so it can make the new appointment.

Executive Director Wilkinson reminded the Board that the Western States Bar Conference will take place April 3-6, 2024, at the Royal Sonesta Kaua'i Resort in Lihue. She shared that she is unaware of any Executive Committee members who are able to attend and reported that any commissioners that wished to be considered should let her know by January 31st, as two could be selected by lottery to attend. She also reminded the Board that according to the travel reimbursement policy, the Bar will only pay the Board members' registration fee when conferences take place in Hawaii, but they would be on their own to pay for travel, lodging and meals.

Young Lawyer Section Report

John Fritz shared that he will be participating on a panel for an estate planning CLE that will take place in February. He shared that the section council is working on a legal writing proposal for a section-sponsored CLE at this year's Annual Meeting.

Commissioners' Reports

- ***First Judicial District*** – Commissioner Boster shared that her district had a murder trial result in a defense verdict recently. She is on the jury list for the next six months but was not chosen for this particular case. She shared that the Inns of Court has been active in Cheyenne, although not as active as last year. She shared that she attended the Christmas party at the municipal court and that was enjoyable. Commissioner Boster shared that unfortunately the Laramie County Bar Association has gone completely dark. She reached out to the leadership and learned that they are too busy to coordinate any future efforts. She shared that she has considered coordinating a meeting but does not want to overstep her role as the district commissioner. Executive Director Wilkinson reminded the commissioners that the Bylaws allow for the commissioners to host meetings in their judicial districts. She suggested Commissioner Boster consider this and perhaps make the focus on getting the Laramie County Bar Association back up and going.
- ***Second Judicial District*** – Commissioner Playton shared that the Albany County Bar Association is not active at all.
- ***Third Judicial District*** – Commissioner Jason Petri shared that he has the same problem with the Sweetwater County Bar Association. He also reported that there was a big trial in Sweetwater County. He shared that when they first started e-filing in his county, it was not very popular; however, now that people are starting to see the benefits of it, more people are signing up for it.
- ***Fourth Judicial District*** – Commissioner Kevin Kessner shared that they have a new Circuit Court judge in Sheridan so he attended the robing ceremony this morning. He reported that the Sheridan County Bar Association hosted a reception for outgoing Judge Shelly Cundiff.
- ***Fifth Judicial District*** – Commissioner Kirk shared that she thinks the Park County Bar Association might have had a Christmas party, but other than that the county bars are

not active. She shared that Park County has had a few interesting murder trials in the last couple of months where the Park County judge was conflicted out.

- ***Sixth Judicial District*** – Commissioner Gee shared that there is a bill in the legislature to add the District Court judge in Campbell County now that the new courtroom is done. She shared that when Chief Justice Fox came around and did CLE in Wyoming communities, that was a great excuse to get everybody together.
- ***Seventh Judicial District*** – Commissioner Craig Silva reported that he has left Williams, Porter, Day & Neville and has taken a job with the Federal Public Defender's office in Casper. He shared that he is currently working on cases in Oklahoma and Colorado and he is enjoying it very much. He shared that when his term as Commissioner expires in September, he believes Emily Madden will run for that seat. He also shared that he is helping bring the Wyoming Supreme Court to Casper for oral arguments.
- ***Eighth Judicial District*** – Commissioner Shawn Wilde shared that things are going well in his district. The Converse County Bar has not gotten together, as they are currently moving into their new justice center this weekend. The new building will house the Circuit Court, the District Court and the County Attorney's Office. Commissioner Wilde shared that his local bar does not pay dues because at some point, a filing fee was assessed that pays for the law library and also funds the county bar. He indicated that as far as county bar leadership, it has historically been the youngest lawyer that moves to town that steps into the county bar president role. In regard to efilings, Commissioner Wilde shared that he was supposed to be a in jury trial next week but did not find out about that until about ten days ago. Fortunately, all parties were able to resolve the issue without a jury trial, but having efilings will really help with situations like this.
- ***Ninth Judicial District*** – Commissioner Clayton Melinkovich reported that efilings has also been a topic of conversation with his constituents. One of his constituents brought to his attention that the terms and conditions associated with efilings has all parties agreeing to all matters under Texas law. He has heard many concerns with File & ServeXpress. One matter that is problematic is that efilings is only tied to an attorney's bar number. There are so many part-time public defenders who also have private practices, so this is causing problems in that regard. He also talked about the rules requiring all orders to be submitted in a modifiable Word document. He is also hearing from folks who are not satisfied with the judicial nomination process. One suggestion is to ask lawyers how they feel about the process in the Judicial Performance Assessment. Executive Director Wilkinson clarified that while members are not asked how they feel about that process in the Judicial Performance Assessment, they are asked how they feel about it in the Bar Member Survey, which is conducted on the opposite years as the Judicial Performance Assessment. She shared that the feedback is not only shared with the Chief Justice but it is also shared with the Governor's office. Commissioner Melinkovich shared that he attended the Teton County holiday party at President-Elect Weisman's invitation. He is looking forward to meeting with constituents in Fremont County in the next month or so.

Board/Committee Liaison Reports

- ***Civil Pattern Jury Instructions Committee*** – Commissioner Kessner shared that the committee has not met since the Annual Meeting, but there is a meeting scheduled for next month.
- ***Continuing Legal Education Committee*** – Commissioner Silva reported that he, Executive Director Wilkinson and Marie Ellis met with Greg Kerwin with the Tenth Circuit Historical Society recently. The Historical Society has several high-profile people available to speak on many different topics. He shared that Leah Schwartz replaced him on the Historical Society and now does a podcast on many different topics. These speakers do not charge a fee, so he is hoping that the CLE Committee will consider some for this year's Annual Meeting.
- ***Criminal Pattern Jury Instructions Committee*** – Commissioner Silva shared that Judge Robinson has taken over from Judge Jones as the chair of this committee.
- ***Law School Liaison Committee*** – Commissioner Gee shared that now that a new dean of the law school has been selected, she thinks we have a much better opportunity to get the committee active again. Executive Director Wilkinson offered to reach out to Julie Hill, the incoming dean, and have some preliminary discussions about this committee. Commissioner Gee encouraged her to see if we could get in the queue to have a strategic conversation and discuss important connections with her.

President Anna Olson adjourned the meeting at 5:16 p.m. on Friday, January 19, 2024.

Minutes Submitted by:

Sharon Wilkinson
Executive Director