

Wyoming State Bar Board of Officers & Commissioners Meeting

January 17, 2025
The Lodge at Jackson Hole
Jackson, Wyoming

In Attendance: James T. Whiting, President; P. Craig Silva, President-Elect; Alison O. Gee, Vice President; Kelly M. Neville, Treasurer; Anna M. Reeves Olson, Immediate Past President; Dona Playton, Second Judicial District Commissioner; Jason Petri, Third Judicial District Commissioner; Jennifer L. Kirk, Fifth Judicial District Commissioner; Kyle A. Ferris, Sixth Judicial District Commissioner (via Zoom); Emily S. Madden, Seventh Judicial District Commissioner; Anne K. Wasserburger, Eighth Judicial District Commissioner (via Zoom); Clayton M. Melinkovich, Ninth Judicial District Commissioner (via Zoom); Carl A. Edelman, Chair, Young Lawyer Section; Sharon Wilkinson, Executive Director; Mark W. Gifford, Bar Counsel and Cathy Duncil, Admissions Director

Absent: Kevin K. Kessner, Fourth Judicial District Commissioner

Guests: Cason Swinn, Financial Advisor, RBC Wealth Management
Robert Dahill, Partner, McGee, Hearne & Paiz, LLC
Anne Sutton, Clerk of Ninth Judicial District Court (Teton County)

President James T. Whiting called the meeting to order at 12:36 p.m. on Friday, January 17, 2025.

Approval of Consent Agenda

Executive Director Sharon Wilkinson shared that, while it was not on the agenda, Anne Sutton, the Clerk of the Ninth Judicial District Court in Teton County would be joining the meeting at 3:00 p.m. to discuss and gather feedback about eFiling.

President-Elect Craig Silva made a motion to approve the Consent Agenda. Vice President Alison Gee seconded the motion. The motion carried unanimously.

Admissions Update

Cathy Duncil reported that there are 20 applicants registered to take the February bar exam. She shared that half of those are retakers.

Mark Gifford reminded the Board that WS 33-5-105 requires applicants for bar admission to have graduated from an ABA accredited law school. He shared that we just admitted a lawyer who graduated from law school in Brazil, which is not ABA accredited. He shared that he and Ms. Duncil met with this applicant last year to see if there was a path for admission without getting the statute changed; however, they determined that there was not. The applicant

petitioned the Wyoming Supreme Court for admission, and the Court denied her petition. Mr. Gifford reported that afterwards, the Court independently changed the Rules and Procedures Governing Admission to the Practice of Law to allow the Court to make such decisions on its own regardless of what the statute requires.

There was discussion regarding spreading the word about this rule change, but Mark Gifford thought it unnecessary.

Annual Investment Report

Cason Swinn from RBC Wealth Management joined the meeting and reported that 2024 was a good year for the Bar's investment portfolio. He shared that within the equity markets, almost every sector was positive—a few stocks contributed to about 55% of the returns. He reminded the Board that the Bar's Investment Policy Statement (IPS) dictates how he invests the money. He shared that last year, the market was positive about 99% of the time, which is typically what happens in election years. He shared that inflation and interest rates are still high even though the Federal Reserve continues to lower rates. This makes for a difficult growth environment and there is no solution in sight. Mr. Swinn reported that due to President Trump's election, they anticipate excitement in the market.

Cason Swinn provided an overview of the Bar's investment portfolio and shared that the Bar's total return after costs in 2024 was approximately 9%. He shared that 2024 was one of the Bar's better years. He shared that we now need to wait to see what the new regime does in order to determine next steps. Obviously, troubles with China and Russia could impact things. Mr. Swinn provided an overview of the Bar's asset classes.

Vice President Gee asked what the target net return was. Cason Swinn clarified that according to the IPS, his direction is to keep up with inflation and maximize return.

Treasurer Kelly Neville asked Mr. Swinn if he wished to change the IPS based on what the Trump administration will do. Mr. Swinn reported that he will bring any recommended changes to the Investment Committee. He shared that he is overall optimistic with President Trump coming in, but we need to see what happens with tariffs.

Commissioner Jennifer Kirk asked if the Bar has a policy that limits what the Bar invests its money in. Executive Director Wilkinson reminded the Board that there was discussion about implementing an Environmental, Social & Governance (ESG) policy when Chris Hawks was President but the Board ultimately decided not to.

Mark Gifford shared that we started investing in 2018 with an initial investment of \$500,000. He shared that over the years we have invested surplus funds. He reported that with contributions of \$1.495 million in the investment portfolio, the Bar has made more than \$300,000 off its total investment.

President-Elect Silva asked if we rebalance the portfolio every year. Mr. Swinn reported that he has all of his portfolios set up to rebalance quarterly unless the client wants something different.

Annual Audit Report

Robert Dahill from McGee, Hearne & Paiz, LLP (MHP) joined the meeting and reported that last month's audit went very well. He shared that Cathy Duncil and Sharon Wilkinson had everything ready for them and were well prepared. He was pleased to report that the financial statements contain no material misstatements, so he is able to provide a clean opinion.

Mr. Dahill reported that things were fairly consistent from 2023 to 2024. In terms of assets, there was an increase due to the Bar's investments. He noted that there was an increase in liabilities due to the invoice from Little America for the 2024 Annual Meeting & Judicial Conference coming after the fiscal year end. He shared that, overall, operating revenues were right in line with prior years but operating expenses did decrease. He shared that there was nothing unusual to report.

Robert Dahill shared that audits consist of two parts: 1. Financial statements in accordance with generally accepted accounting principles, and 2. Internal controls surrounding the financial reporting process. While MHP does not provide an opinion about internal controls, they are required to report if there are any issues/concerns they have come across. He was pleased to report that Cathy Duncil and Sharon Wilkinson have strong internal controls in place and there are no concerns.

Mr. Dahill shared that his team also checks for instances of noncompliance with rules and regulations. He again shared that there was nothing found.

Mr. Dahill reported that his team did not experience any difficulties or disagreements with management and shared that his team always enjoys working with the Bar staff.

President Whiting asked Mr. Dahill if there was anything he wished to discuss with the Board without the staff present. Mr. Dahill indicated that was not necessary.

Mark Gifford shared that since 2015 when the Governmental Accounting Standards Board (GASB) required organizations to book some potential liability for the Wyoming Retirement System (WRS), this adjustment has reduced the Bar's net income every year. We also have to book income when there is an appreciation in the value of the investments; we record unrealized gains. He asked Mr. Dahill what we should be looking at if we want a more realistic dollar amount indicating how the Bar ended its fiscal year. Mr. Dahill clarified that we should look at the statement of cash flows. Without the WRS liability and the unrealized gains on investments, the Bar generated about \$140,000 in net income for the 2023/2024 fiscal year.

Mandatory Continuing Legal Education

Executive Director Wilkinson reported that there were 134 members who were delinquent on their CLE requirements and all were assessed the \$300 delinquency fee on January 16th. She

reminded the Board that these lawyers now have until March 1st to pay the fee and submit the requisite number of CLE hours. Those who remain in default on March 2nd will be assessed an additional \$300 noncompliance fee and will be recommended for suspension by the Wyoming Supreme Court.

Vice President Gee, who also serves on the Board of Continuing Legal Education (BCLE), reported that the BCLE met via Zoom this morning and is considering recommending some rule changes in regard to CLE for pro bono work. Specifically, she shared that they have discussed increasing the maximum number of pro bono hours from five to eight per calendar year and also changing the ratio by which lawyers earn pro bono credit from 2:1 to 1:1. She clarified that they are only in the discussion phase at this point and have not taken any formal action.

Office of Bar Counsel Report

Mark Gifford shared that the Office of Bar Counsel finished 2024 up approximately 20% on the number of complaints they received in 2023. He shared that the Bar is still owed money from a suspended lawyer who signed a promissory note and reminded the Board that we had hired a collections firm out of Denver to handle the matter. Mr. Gifford reported that the firm has really dropped the ball. As a result, Executive Director Wilkinson sent a notice of termination to the firm. He shared that we now have to wait 30 days for the firm to cure the default, which it will not be able to do. He reported that Cathy Duncil has lined up another collection agency to take this on.

Mark Gifford shared that there has been significant turnover on the Board of Professional Responsibility (BPR) and the Review and Oversight Committee (ROC). There are four new members on the BPR and two new members on the ROC. His office recently conducted an orientation session for the new members.

Mr. Gifford reported that there have been some staffing changes within the last few weeks. Kim Robért has been serving as the Clerk to the BPR, but it was not optimal simply because she is a part-time employee. Executive Director Wilkinson transitioned those responsibilities to Marie Ellis and transitioned the Fee Arbitration Program from Ms. Ellis to Shannon Hughes, Assistant to Bar Counsel. He also shared that Executive Director Wilkinson has assigned Ms. Robért to take the lead on the mentoring program.

Mark Gifford reminded the Board that a committee was formed to evaluate the possibility of a separate website for the Office of Bar Council. He reported that the committee has met to discuss this and the staff has met with folks from Gannett Peak to see if we can get the \$30,000 price tag down considerably. He shared that Melinda McCorkle is drafting content for a potential site.

Mark Gifford shared that he is aware that Gayla Austin, a Cheyenne lawyer who was suspended twice in the last few months, emailed the Board of Officers & Commissioners a complaint against him this morning. He shared that it was improper for her to share any complaints with the Board, as those proceedings are confidential. He also shared that whenever he or Melinda

McCorkle are grieved, they immediately turn those complaints over to the Review and Oversight Committee.

Treasurer Neville made a motion to convene an Executive Session. Vice President Gee seconded the motion. The motion carried unanimously. Executive Session was convened at 1:37 p.m.

President-Elect Silva made a motion to adjourn the Executive Session. Commissioner Emily Madden seconded the motion. The motion carried unanimously. Executive Session was adjourned at 1:39 p.m.

President Whiting asked Mr. Gifford if the Review and Oversight Committee was similar to a grand jury. Mark Gifford shared that the Office of Bar Counsel has to request authority to file any formal charge from the ROC. In that request, they have to show probable cause. He shared that the ROC is also responsible for the Office of Bar Counsel budget as well as the performance evaluations for both he and his deputy. They also approach the ROC if they have not yet received a complaint but have verifiable evidence to warrant an investigation. Only the ROC can approve that, but Mr. Gifford shared that those instances are very rare. Also, if his office dismisses a complaint, the complainants can request a review of the decision by the ROC. Mr. Gifford commended the work done by the ROC.

2023-2025 Strategic Plan Progress Report

Executive Director Wilkinson directed the Board's attention to the written progress report in the meeting materials and offered to answer any questions about the progress that has been made on the Strategic Plan.

Treasurer Neville shared that the Law School Endowment Committee met earlier this week. She reported that the endowment is earning approximately \$4,100 per year. This includes some money that was left over from last year due to an accounting snafu with the University of Wyoming Foundation. She reported that the committee decided to allocate two stipends in the amount of \$300 each for the Legal Liftoff Spring Break Program. She shared that \$3,500 will be allocated to one student for a summer stipend. She reported that the Bar is now accepting expressions of interest for the spring stipends.

President-Elect Silva asked if we were making any progress on strengthening relations with the law school. Executive Director Wilkinson shared that she has had a few conversations with Julie Hill, the new Dean of the law school, and she feels they have been very positive. She shared that the Law School Liaison Committee will have its first meeting in quite some time on January 27th and Dean Hill will participate in that. Executive Director Wilkinson mentioned that Vice President Gee serves as the Board Liaison to that committee, and Commissioners Kirk and Melinkovich serve as committee members, so they will also participate.

Vice President Gee shared that when we discuss relations between the Bar and the law school, we need to ensure that the entire state can participate instead of only those members in Cheyenne or Laramie. Commissioner Playton shared that there is a new Director of Career

Services & Professional Development, Kristin Lanouette, at the law school so she may have some ideas.

Treasurer Neville shared that the progress report does not mention anything about the Law School Liaison Committee meeting; nor does it mention that the Albany County Bar Association hosted a meet-and-greet for Dean Hill in Laramie that was very well attended. Executive Director Wilkinson indicated that she would get those activities added to the report.

President Whiting asked for a refresher on how the law school endowment was funded. Treasurer Neville reminded him that the Bar contributed \$50,000 to the endowment, which was matched with some legislative funding. She shared that its principle is \$100,000 and that is what is earning \$4,100 per year. She reported that we are not growing the principle unless we add more money to it. Treasurer Neville reported that the Bar has done so well with interest rates and a CD maturing, that we do not need to reinvest that. She shared that she has directed Executive Director Wilkinson to put \$200,000 in a cash account with RBC Wealth Management. She wondered if the Board would consider adding some money to the principle of the endowment.

Commissioner Melinkovich shared that he would prefer a discussion about this during the next Board of Officers & Commissioners meeting.

Commissioner Playton wondered if there would ever be enough money in the endowment for student loan paybacks. Treasurer Neville clarified that the stipends are only for current students. She also shared that the Bar assessed the current legislature and decided not to pursue the legislative funding for the rural practice initiative this year. She shared that the South Dakota Rural Practice Initiative did allow the money to be used for students loans; however, if we wanted to do something similar, it would have to be outside of the endowment. Commissioner Playton was hoping Wyoming could have something similar to the WWAMI program.

Commissioner Kirk recalled there being discussion about offering micro-loans for lawyers wanting to start a solo practice. It is so hard for a law graduate to be liquid enough or have the capital to start their own business.

Treasurer Neville shared that the Small/Solo Working Group did discuss that, but because the Wyoming Business Council already has that in place and the offering is open to lawyers, we would not gain anything.

Appointment of First Judicial District Commissioner

Executive Director Wilkinson reminded the Board that Stefanie Boster had to resign her position as the Commissioner for the First Judicial District as a result of her job change to Ft. Collins. She put out a call for expressions of interest to complete Commissioner Boster's term and received eight expressions of interest.

After much discussion about the impressive candidates, Commissioner Kirk made a motion to appoint Christopher G. Humphrey to fill the vacancy. Past President Anna Olson seconded the motion. The motion carried unanimously.

Wyoming Judicial Branch Focus Group Discussions

Executive Director Wilkinson reminded the Board that when Justice Boomgaarden provide a judicial branch update at the November meeting, she mentioned that the branch would be conducting focus groups in December, and she requested that the Bar appoint four lawyers to participate that fell outside of the Wyoming Attorney General's Office, the Wyoming Public Defender's Office, District Attorneys' Offices, and the Wyoming Trial Lawyers Association. Executive Director Wilkinson reported that the Executive Committee appointed Vice President Gee, Debra Wendtland, Darin Scheer and Monica Vozakis as the Bar's representatives for the focus group discussions.

Vice President Gee shared that the focus group discussions were very interesting. She shared that the folks who participated in her discussion were very frustrated with the experience Judges are bringing to the bench across the board. There was also discussion about the inadequacy of the Judicial Performance Assessment and concerns with the judicial selection process. Vice President Gee shared that she thinks it is important the Judicial Performance Assessment provide accurate information to Wyoming citizens and lawyers.

Past President Olson shared that when she served on the Judicial Nominating Commission (JNC), there were times when very few lawyers applied for those judicial vacancies; however, the JNC still had to send three names up to the Governor.

Commissioner Melinkovich echoed Vice President Gee's sentiments and shared that the chief complaint he hears from his constituents is the judicial selection process. He shared that if we do not do anything to address this, it could be out of our control. He does not think a constitutional amendment will come out of the Legislature pushing for judges to be elected in Wyoming, but he feels something needs to be done to better this process.

Vice President Gee clarified that while she heard complaints about the judicial selection process, she did not hear any complaints about the JNC.

Executive Director Wilkinson provided some background on the committee that was formed a few years ago to completely revamp what used to be called the Judicial Advisory Poll.

There was much discussion about next steps and who should potentially be involved in such an effort. After discussion, it was decided to put this on the agenda for Strategic Planning.

Judicial Branch Update

Executive Director Wilkinson shared that she learned from Elisa Butler, State Court Administrator, that while the Court's main focus right now is the legislative session, the Court is also working on amending the eFiling Rules to merge the Chancery and District Court eFiling Rules and include the Circuit Courts since they will begin piloting eFiling in Circuit

Court in the first quarter of 2025. She shared that those rules have not made their way to the Court yet, so it may be premature at this point. The only other recent rule changes are those in the Appellate Rules. Most of those changes relate to the fact that the Court now has a digital court record, and the process to transmit that digital record on appeal.

Anne Sutton, Clerk of the Ninth Judicial District Court (Teton County), joined the meeting. She shared that all District Court clerks will be meeting in Cheyenne next week, so she thought it would be helpful to hear from the attorneys in the room about their top five or ten things regarding eFiling that are making the biggest impact on their lives. She indicated that the clerks are aware of the issue with will-only filings.

There was a lengthy discussion where the Board members shared theirs or their constituents' concerns/frustrations about eFiling. Ms. Sutton thanked the Board for the opportunity. She also mentioned that the clerks are considering doing another program on eFiling at the Bar's Annual Meeting in September.

Public Defender's Office and Court Appointed Counsel

Vice President Gee directed the Board's attention to the letter that Judges Phillips, Bartlett and Bush sent to all active members in the Sixth Judicial District stating that the Public Defender's Office has declared itself "unavailable" to represent indigent defendants charged with misdemeanors in the district. The letter is a plea for attorneys to volunteer to handle some of these cases and a reminder that the Court has a constitutional obligation to ensure that these defendants be appointed an attorney at the state's expense.

Vice President Gee voiced big concerns over this, as her district is so short-handed. She mentioned that even though the Bar has record of 80 active lawyers in the Sixth Judicial District, in reality, many of those are semi-retired or retired but maintaining "active" status. She shared that she has had discussions with the attorneys in the Gillette Public Defender's Office and has heard that the inability to recruit lawyers to that area is not a salary issue because the Public Defender's Office has increased pay substantially. She reported that it is her understanding that the issue is how judges are scheduling the docket in a way that makes attorneys double booked so they are unable to timely appear.

Commissioner Playton shared that Legal Aid of Wyoming had a vacancy in Gillette and not one person applied so they had to close that office altogether.

President-Elect Silva shared that the last time this happened, his former law firm of Williams, Porter, Day & Neville picked up several of those cases. Commissioner Playton wondered if there could be any coordination with the prosecutors. Vice President Gee thought perhaps that was worth pursuing.

Commissioner Kyle Ferris shared that there used to be a sense that the attorneys in the Public Defender's Office were running ragged and the judges used to accommodate them more. His impression is it is very different now and oftentimes the court puts things on the calendar even when they know the attorneys would be double or triple booked.

Vice President Gee acknowledged that this is a complex issue, but she hopes the Bar can show some leadership. Executive Director Wilkinson asked if the volunteers had to reside in the Sixth Judicial District. She knows the letter only went to that district, but what if she put out a call for volunteers to the entire membership to broaden the scope a bit. Vice President Gee said she would touch base with Judge Phillips to inquire.

Commissioner Kirk commented on the fact that if attorneys do not volunteer, the judges will simply appoint the cases to random attorneys and she is concerned that that may not always be effective representation.

President Whiting liked the idea of putting a call for volunteers out to the whole membership to recruit volunteers outside of the district.

President's Report

President Whiting shared that he was excited to see so much interest in the First Judicial District Commissioner vacancy. He still has some committee appointments to make so he is considering appointing some of those members who were not chosen.

President Whiting reported that he is concerned about so much opposition to the Judicial Performance Assessment and looks forward to discussing that at Strategic Planning.

President-Elect's Report

President-Elect Silva shared that Executive Director Wilkinson, Marie Ellis, Mark Gifford and Cathy Duncil joined him for a site visit yesterday at the new Wyoming Sports Ranch in Casper and things are looking promising for hosting the Bar's 2026 Annual Meeting & Judicial Conference there.

He shared that the Natrona County Bar Association (NCBA) will be hosting regular meetings and Nick Murdock has generously offered to host those. There is new leadership in place with Jared Holbrook, Kayla Albertson and Bryce Nichols. He reported that the NCBA cancelled its contract with Westlaw, which was \$1,500 per month, and is working with Executive Director Wilkinson to offer Decisis in the local law library for free. They will monitor the usage for six months in order to determine if anybody even uses it.

Executive Director's Report

Executive Director Wilkinson shared that there are still 12 members of the Bar who have not paid their 2024/2025 license fees. She shared that they each received an Order to Show Cause from the Wyoming Supreme Court and today at 5:00 p.m. is the deadline to respond to the Order. Since the office is closed Monday for the holiday, she anticipates seeing the suspension orders on Tuesday.

Executive Director Wilkinson reported that work is underway to populate Decisis with Wyoming's information. She shared that she received a welcome packet that includes the language for announcements, social media posts, print ads and more. She was pleased with

how great the representatives from Decisis are to work with. She shared that she anticipates going live with Decisis in late March or early April.

Executive Director Wilkinson reminded the Board that it directed her to move forward with one of our member's recommendations to create an account with CafePress in order to offer Wyoming State Bar merchandise to our members. She reported that she has done that and is very close to being able to roll that out. She reminded the Board that there was discussion at a previous meeting about putting the proceeds from that towards the rural practice initiative. She shared that she and Cathy Duncil have already had discussions about the budget code to which the proceeds will be assigned so all of that can be tracked.

Executive Director Wilkinson reported that she went to print with the 2025 directory on January 3rd. She shared that she anticipates the printed directories will hit desks around the middle of February for those members who opted in to receive a printed copy.

Executive Director Wilkinson shared that the launch of the newly-refreshed website was a failure, as Gannett Peak recognized some big problems with the site on mobile devices and tablets. They had some more work to do, but she anticipates another roll-out very soon.

Executive Director Wilkinson was sad to report that Danielle Moyte, Administrative Assistant, turned in her letter of resignation. Her last day will be January 31st. She shared that she has already been in touch with Express Personnel and a temporary employee will start training with Ms. Moyte on Tuesday.

Young Lawyer Section Report

Carl Edelman, Chair of the Young Lawyer Section, shared that the section is hosting a virtual webinar for the law students on April 7th. It will be a panel made up of a young lawyer from big law, small law, government practice, etc. to answer questions the law students may have. The section is also proposing a ChatGPT/AI program at this year's Annual Meeting.

Commissioner Reports

- ***Second Judicial District***—Commissioner Playton shared that the Albany County Bar Association is having a meeting with a judge's judicial assistant and the District Court Clerk next month. Treasurer Neville also included that the Bar will host the Small/Solo/Rural Law Forum in Laramie in April.
- ***Third Judicial District***—Commissioner Jason Petri reported that a law firm in Rock Springs has an employee that used to be employed by one of the District Court judges and has filed a wrongful termination case against the judge. He shared that there is another firm in Uinta County that was the subject of a search warrant. The attorney's claim is there was a broad warrant issued for retrieving a client's phone.
- ***Fifth Judicial District***—Commissioner Kirk shared that the courtroom in her hometown underwent some remodeling. She shared that Judge Simpson will be coming to Basin to do an in-person jury trial soon. She also reported that in an attempt to control the dockets, one judge and the judicial assistant have indicated that if lawyers file a motion

to continue, the judge/judicial assistant will call the other courts to verify that the motion is accurate.

- ***Sixth Judicial District***—Commissioner Ferris shared that court security has always been an issue in his district, but now that there is a fourth judge, there is now more focus on it.
- ***Seventh Judicial District***—Commissioner Madden shared that she is getting good feedback from her constituents about the new bar cards.
- ***Eighth Judicial District***—Commissioner Anne Wasserburger shared that Frank Peasley passed away in her district and he will be greatly missed.
- ***Ninth Judicial District***—Commissioner Melinkovich reported that they had a jury trial in Pinedale last week which resulted in a defense verdict.

Board/Committee Liaison Reports

- **CLE Committee**—President-Elect Silva shared that the CLE Committee will have its first meeting next month. He shared that he thinks registration rates for Annual Meeting need to be increased. Executive Director Wilkinson shared that she has already increased those and will get Executive Committee approval on the rates later in the year.

President James Whiting adjourned the meeting at 5:30 p.m. on Friday, January 17, 2025.

Minutes Submitted by:

Sharon Wilkinson
Executive Director