Wyoming State Bar Board of Officers & Commissioners Meeting

June 17, 2016 Jackson Lake Lodge Moran, Wyoming

In Attendance: Devon O'Connell, President; John A. Masterson, President-Elect; Weston T.

Graham, Treasurer; Melinda S. McCorkle, First Judicial District Commissioner; Dawnessa A. Snyder, Second Judicial District

Commissioner; Nicholas T. Haderlie, Fourth Judicial District Commissioner; Bobbi D. Overfield, Fifth Judicial District Commissioner; James L. Edwards, Sixth Judicial District Commissioner; J. Kenneth Barbe, Seventh Judicial

District Commissioner; Erika M. Nash, Ninth Judicial District

Commissioner; Bradley D. Bonner, Immediate Past President; Caitlin F. Young, Young Lawyers Section President (via teleconference for a portion of the meeting); Sharon Wilkinson, Executive Director; Cathy Duncil,

Admissions Director; and Mark Gifford, Bar Counsel

Absent: Robert C. Jarosh, Vice President; Teresa S. Thybo, Third Judicial District

Commissioner; Nathaniel S. Hibben, Eighth Judicial District Commissioner

Guest: Abigail C. Boudewyns, Young Lawyers Section Executive Council Member

(via teleconference)

President Devon O'Connell called the meeting to order at 1:45 p.m. on Friday, June 17, 2016.

Approval of Agenda

President-Elect Masterson made a motion to approve the agenda. Commissioner Overfield seconded the motion. The motion carried unanimously.

Approval of Minutes

Commissioner Snyder made a motion to approve the minutes from the April 8, 2016, Board meeting. Commissioner Overfield seconded the motion. The motion carried unanimously.

Executive Committee Meeting Minutes

Executive Director Wilkinson reminded the Board that she meets with the Executive Committee each week via teleconference, and she takes minutes on those calls. From this point forward, once those minutes are approved, she will share those meeting minutes with the full Board.

Treasurer's Report

Treasurer Graham directed the Board's attention to the "dashboard" report in the notebook. He noted that the Bar is 2/3 through the fiscal year, and he doesn't see anything out of the

ordinary. With Annual Meeting still to go, Treasurer Graham shared that we are likely to exceed our budget projections.

Commissioner Snyder inquired as to whether this Board had ever considered decreasing the amount of the annual license fee considering the Bar is financially stable and some of our members may be experiencing tough times. After discussion, President O'Connell directed Executive Director Wilkinson and Cathy Duncil, Bookkeeper, to prepare a budget that reflects a 5% decrease in the annual license fee. This will be shared with the Board at the August meeting.

Commissioner Nash inquired about the \$648 Law School Liaison Committee expense. Executive Director Wilkinson shared that only \$25 was budgeted for that committee to have conference calls; however, President O'Connell requested an in-person meeting with the members of the committee and representatives from the University of Wyoming College of Law. The expense reflects mileage reimbursement for the committee members' travel to Laramie and back.

President-Elect Masterson inquired as to whether or not the Bar has an investment policy. Treasurer Graham shared that the Bar does not currently have such a policy; however, he would like to see one implemented. He has met with Wayne Herr, the Bar's accountant, on this topic before, and he hopes to schedule a meeting with State Treasurer Mark Gordon.

After discussion, Commissioner Haderlie made a motion to accept the Treasurer's Report. Commissioner Snyder seconded the motion. The motion carried unanimously.

Admissions

President-Elect Masterson, who also serves as the Chair of the Board of Law Examiners (BLE), shared that the BLE graded the February bar exams in Elk Mountain. Prior to the grading, members of the BLE and staff met with Klint Alexander, Dean of the University of Wyoming College of Law. President-Elect Masterson mentioned that he continues to see articles from all over the country about the number of law school admissions applications decreasing drastically. As a result, law schools are trying to decide if they should accept lower quality students.

Mandatory CLE

Executive Director Wilkinson shared that 18 attorneys were recommended for suspension on January 16, 2016, for their failure to comply with the CLE Rules; however, only four attorneys were suspended. She shared that this is a direct result of the new CLE Rules that went into effect July 1, 2015. The new rules require more notification to members regarding their CLE status, and Marie Ellis, CLE Director, goes above and beyond to communicate with members so they stay in compliance. Executive Director Wilkinson shared that last year, 39 attorneys were recommended for suspension, so she is pleased to see that number going down.

Office of Bar Counsel

Attorney Discipline

Mark Gifford, Bar Counsel, shared that this is the first full year operating with the new Rules of Disciplinary Procedure, and he feels the new rules work much better. He shared that the Wyoming Supreme Court currently has before it two motions for suspension with probation; probation is a new aspect of the rules. One is a substance abuse matter and the probation terms would require the attorney to maintain compliance with a Wyoming Professional Assistance Program (WPAP) monitoring agreement. The other stipulated suspension deals with practice management issues. Mr. Gifford has worked closely with this attorney to improve office practices, and a practice monitor attorney has agreed to submit monthly reports to Mr. Gifford during the probationary term. Mr. Gifford is hopeful that the Court will approve both stipulations.

Resolution of Fee Disputes

Mr. Gifford shared that the Wyoming Supreme Court approved the proposed Rules for Fee Arbitration. Those rules will go into effect October 1, 2016, and will be a significant improvement over the current rules.

Unauthorized Practice of Law (UPL)

Mr. Gifford shared that he has resolved the UPL issue in Rock Springs. Those who manage La Linea Legal have agreed to change some signage to make it clear that they are not lawyers. They only provide translation services for those who do not speak English.

Clients' Security Fund

Mr. Gifford shared that the Bar has received another claim request from a client of a deceased lawyer for whom the Bar has already paid more than \$50,000 in claims. This claim has been assigned to the Clients' Security Fund Committee for investigation.

During discussion about Mr. Gifford's workload, Mr. Gifford shared that Montana, which has 50% more lawyers than Wyoming, has an Office of Disciplinary Counsel consisting of two attorneys, two paralegals, an investigator and a legal assistant, with a budget twice the amount of Wyoming's Office of Bar Counsel. Treasurer Graham shared that perhaps it is time to identify when this becomes a succession planning issue. He wondered if the Bar should start grooming another attorney for the Ethics Hotline portion of Mr. Gifford's job, which is taking a significant amount of time each day.

Proposed Amendments to WRPC Rule 1.15 (Lawyer Trust Accounts)

Mr. Gifford shared that the Bar received several constructive comments from members regarding the proposed amendments to the lawyer trust account rule. He has been working closely with folks from Equal Justice Wyoming as well as Bev Groudine at the ABA Commission

on IOLTA who has a wealth of knowledge about this issue. Ms. Groudine reviewed the Bar's proposed rules and recommended some changes.

Because the amended rules will affect Wyoming bankers, Mr. Gifford and Executive Director Wilkinson had lunch with Mike Geesey, Executive Director of the Wyoming Bankers Association, and Stig Hallingbye, Senior Vice President of Security First Bank in Cheyenne, to advise them of the proposal.

Mr. Gifford reported that what he has presented to this Board is a new and improved second draft, which incorporates both Bev Groudine's suggestions as well as several changes resulting from comments received from members. Because the new draft is significantly different than the first draft, Mr. Gifford requested approval to put the new draft out for member comment again.

Commissioner Snyder inquired as to how the Bar is going to get compliance from the banks. Mr. Gifford shared that participating banks will be required to enter into an overdraft notification agreement with the Wyoming State Bar, and he has provided that agreement to the Wyoming Bankers Association for review. He also shared that this Board would approve guidelines for eligibility to be an approved institution. Commissioner Snyder wondered if small banks would opt out of participating because they would not want the extra work. Mr. Gifford shared that the "extra work" simply requires the banks to add the Office of Bar Counsel as an additional addressee for trust account overdraft notices.

Mr. Gifford clarified that he would only receive the overdraft notifications; he would not have full access to the attorneys' trust accounts. He shared an example of an overdraft notification of which he became aware. This attorney was not stealing from his trust account; he just has poor accounting practices. Mr. Gifford is now working with this attorney to straighten out his accounting practices to clean things up.

Mr. Gifford shared that if we had only had this rule in place last year, he could have gotten ahead of the situation he mentioned earlier which has led to over \$50,000 in Clients' Security Fund claims paid. Had he been notified of an overdraft, he could have stopped the attorney from doing so much damage to his clients.

Treasurer Graham asked if the Rules of Professional Conduct included a provision for random audits of trust accounts. Mr. Gifford shared that the ABA consultation team recommended that in its 2012 review of Wyoming's disciplinary system; however, the Bar simply does not have the resources to implement such a procedure.

Commissioner Snyder made a motion to approve the recommendation of distributing the second draft of proposed amendment to the trust account rule to the membership for further comments. Commissioner Nash seconded the motion. Commissioner Haderlie inquired as to what the consequences would be if a bank does not comply. Mr. Gifford shared that those banks would be removed from the approved list of eligible banks. The motion carried unanimously.

Pro Bono Reporting

Commissioner Haderlie reminded the Board that during the January 2016 meeting he pitched a proposal to design a system for lawyers to voluntarily report their pro bono hours to the Wyoming State Bar. He shared that he would like to utilize the CLE compliance certification system as the mechanism to collect this data. Commissioner Haderlie shared that he has had communication with Chief Justice Burke and he would be in support of such a thing.

President O'Connell asked Commissioner Haderlie what the purpose of collecting the data was. He shared that Angie Dorsch, Executive Director of Equal Justice Wyoming, has to go before the Wyoming Legislature to justify the money that she needs. This data would help her point out the number of hours Wyoming lawyers are devoting to pro bono work. He also feels the data would be useful because currently we cannot gauge our progress.

Commissioner Snyder shared a concern that such a system may make attorneys who do not do pro bono work think the Bar is keeping an eye on them. She suggested taking a step in a different direction and approach this in a "United Way" fashion and create a "thermometer" to indicate the hours of pro bono work attorneys are doing.

Executive Director Wilkinson shared that she has several concerns with the proposal. She feels the CLE compliance certification system is very effective and serves as a check and balance for the data entry. Out of 2,700+ active members, over 2,100 of those certified their CLE compliance in 2015. Because Commissioner Haderlie's proposal is to make the pro bono reporting the first thing members see when they go to certify their CLE compliance, she is concerned some will leave the system altogether. This would lessen the effectiveness of the CLE compliance certification system.

Executive Director Wilkinson is also concerned that tying pro bono reporting to the CLE compliance certification system may lead lawyers to believe they are submitting hours for CLE credit instead of only reporting the hours of pro bono work they did.

Executive Director Wilkinson also shared that Equal Justice Wyoming has created a system on its website to collect this data; however, it is not live. It is her understanding that it was created in response to Commissioner Haderlie having these same discussions with them. She feels that it would be more appropriate for Equal Justice Wyoming to collect the data.

Executive Director Wilkinson also shared that the CLE compliance certification system is only live on the Bar's site in the months of November and December; therefore, there would only be a two-month window to collect this data.

Commissioner Barbe shared his frustration that when the Legislature is approached for additional funds for access to justice, it tends to infer that lawyers are responsible for solving the problem by increasing their pro bono efforts. He is disturbed by the "prove what you're bringing to this" concept. The funds are to assist the public, not the lawyers. Commissioner Barbe further shared that in terms of reporting, even if attorneys are keeping track of their pro bono hours, the thought of having to compile it and report it seems to be more work.

Commissioner Haderlie made a motion to adopt a voluntary pro bono reporting mechanism that is done through the CLE compliance certification system. Jim Edwards seconded the motion. The motion failed.

Strategic Plan Update

Executive Director Wilkinson gave a brief overview of the current Strategic Plan. She noted that the staff is making great progress on Goal #1—"...strengthening the Bar's infrastructure backbone of bar operations through investment in necessary information technology." The Bar is halfway through the "phase 1" agreement it has with West Edge Collective. The entire staff has spent considerable time since early May with representatives from West Edge Collective to walk them through our current membership database and admin. system. Executive Director Wilkinson shared that she has a meeting next week with them to discuss next steps and all requirements for either a new system or a much improved system. She hopes to have representatives from West Edge Collective make a presentation at the August Board meeting regarding this project.

In regard to Goal #2—"...development of a Modest Means Program and the promotion of benefits associated with a small town practice through a Rural Practice Initiative"—Executive Director Wilkinson reminded the Board that the Modest Means Program was launched in November 2015. To date, there are 68 volunteer lawyers signed up for the program, and those attorneys have served 36 clients so far. The Bar continues to market the program both to lawyers and to members of the public. She encouraged the Board members to watch the *Wyoming Tribune Eagle* as well as the *Casper Star-Tribune* for ads.

In regard to the Rural Practice Initiative, Executive Director Wilkinson reminded the Board that the Bar launched ALPS Attorney Match at the first of the year to encourage members to create an online profile to help them connect with other attorneys. To date, 79 attorneys have created profiles. Executive Director Wilkinson invited the Board to make suggestions regarding other efforts that could be made to either help those attorneys who are practicing in the rural areas or to recruit new attorneys to the rural areas.

Goal #3 directs the Bar to "... accelerate its commitment to technology-driven outreach, including but not limited to social media platforms, an interactive and professional website, and the exploration of a mobile app option of value to members." Executive Director Wilkinson shared that since October 2015, the Bar has had a presence on Facebook, LinkedIn and Twitter. President O'Connell encouraged Board members to "share" the information that Executive Director Wilkinson has been posting to these sites. Executive Director Wilkinson noted that the other aspects of Goal #3 will be addressed with West Edge Collective.

Goal #4 directed the Bar to look into the feasibility of shifting the IOLTA administration to Equal Justice Wyoming. Executive Director Wilkinson reminded the Board that this goal was accomplished last year.

WyLAP Update

In Jack Speight's absence, Executive Director Wilkinson shared that Jack has approved his first grant application from a Wyoming lawyer seeking financial assistance from the WyLAP Foundation for some sort of treatment he/she is seeking. She reminded the Board that all requests for assistance are kept confidential, and the money is paid directly to the provider and not the attorney.

New Wyoming Professional Assistance Project (WPAP) Fee Structure

Executive Director Wilkinson distributed a memo she prepared spelling out the new fee structure the Bar will have with WPAP beginning October 1, 2016. WPAP will assess 5% of active, in-state members' license fees to the Bar. In addition to the 5% assessment, WPAP will also assess a \$500 annual fee for each attorney on a monitoring agreement. She clarified that the Bar will pay this, not the lawyer. The 5% assessment will be determined on August 1st so that she can budget accordingly for the upcoming fiscal year.

Commissioner Overfield wondered if the Bar could recoup the \$500 from those lawyers on monitoring agreements. Mark Gifford, Bar Counsel, shared that the lawyers are also paying to participate in the program.

Funding for Liberty Day

Commissioner Haderlie, who also serves on the Equal Justice Wyoming Foundation (EJWF) Board, shared that EJWF is trying to put together a budget. In the process, the question came up about the Liberty Day funding. The Foundation Board is looking for a continued commitment from this Board as to what the Bar will continue to pay. Treasurer Graham shared some historical data on what the Bar has contributed to Liberty Day.

After discussion, Commissioner Nash made a motion to allocate \$9,399.00 to cover the cost of next year's Liberty Day program. Past President Bonner seconded the motion. Commissioner Snyder agreed with Commissioner Nash about the importance of the program but wondered if we wanted to fund the full amount. Executive Director Wilkinson cautioned the Board about setting a precedent for future funding. Commissioner Overfield agreed that it is a great program for the Bar to fully sponsor. After much discussion, the motion carried.

Proposed Changes to Young Lawyers Section Bylaws

Caitlin Young, President of the Young Lawyers Section, and Abigail Boudewyns, Executive Council, joined the Board meeting via teleconference. Ms. Boudewyns walked the Board through the more significant changes they are proposing to their bylaws—with the most significant being waiving the \$15 membership fee to join the section and implementing an auto-enroll system for those in their first five years of practice.

Commissioner Haderlie shared that when he was President of the Young Lawyers Section, he felt that the automatic enrollment was problematic because newly admitted lawyers were unaware that they were members of the section. Commissioner Haderlie shared that he began to personally contact new members when they were admitted. Ms. Boudewyns shared that the section leaders are trying to increase their communication with section members.

After much discussion, Commissioner Haderlie made a motion to reject the proposed amendments to the Young Lawyers Section Bylaws. Commissioner Snyder seconded the motion. The motion carried.

Commissioner McCorkle made a motion to waive annual dues for the members of the Young Lawyers Section. President-Elect Masterson seconded the motion. Clarification was provided that the Bar will no longer auto-enroll any member. Members who wish to join must actively do so. The motion carried. These changes will go into effect October 1st.

Commissioner Snyder encouraged Ms. Young and Ms. Boudewyns to reach out to Commissioner Haderlie and Blake Klinkner, who are both past presidents of the Young Lawyers Section, for any advice they may need.

President-Elect Masterson encouraged the Young Lawyers Section leaders to come back and ask for any support that they need from this Board. He shared that although the amendments to the bylaws were defeated, that does not mean this body does not support the section leaders' efforts.

Funding of Wyoming Law Review

Executive Director Wilkinson directed the Board to her proposal for funding the Wyoming Law Review. She reminded the Board that the Bar is currently paying \$5.00 per issue (February and August) for any Active or Honorary member who wishes to subscribe to receive the printed publication. Because the Dean of the law school has requested additional funding twice, Executive Director Wilkinson proposed that the Bar double the dollar amount the Bar pays for each subscribing member to \$10.00 per issue.

President-Elect Masterson made a motion that the Bar appropriate \$5,400 for 2016-2017 fiscal year. Commissioner Snyder seconded the motion. Commissioner Edwards commented that since the Wyoming Law Review is available free of charge to anybody who accesses that website, perhaps Wyoming lawyers who wish to receive the print copy could pay for a subscription themselves. Commissioner McCorkle shared that she felt the members may be upset if we take away a member benefit.

President-Elect Masterson reminded everybody that we also need to keep in mind the relationship the Bar has with the law school. In the big picture, this is a fairly nominal sum.

After much discussion, the motion carried.

Selection of the ABA Young Lawyers Delegate

Executive Director Wilkinson reminded the Board that the American Bar Association (ABA) House of Delegates approved a resolution that allows State Bars to designate a young lawyer to represent the Bar in the House of Delegates. Upon this notification, she put out a call for expressions of interest to the membership and received four—Angie Dorsch, Jenny Hall, Rives White and Sarah Kellogg.

After much discussion about the candidates, Commissioner McCorkle made a motion to appoint Sarah Kellogg. Commissioner Snyder seconded the motion. The motion carried unanimously.

Legal Aid of Wyoming Board Appointments

Executive Director Wilkinson shared that Ray Macchia, Executive Director of Legal Aid of Wyoming, requested three appointments be made to his Board. She shared that upon receiving this request, she discussed it with the Executive Committee to see how it wanted to handle these appointments. Because the Bar had collected expressions of interest for appointments this Board made in the fall of 2015, the Executive Committee directed Executive Director Wilkinson to pull the previous list for discussion. Executive Director Wilkinson shared that once this Board makes the decision on the three appointees, she would also like some alternates just in case any of the chosen candidates are no longer interested in serving.

After discussion, Commissioner Overfield made a motion to appoint Rennie Polidora, Stacy M. Kirven, and Robert J. Walters. Commissioner McCorkle seconded the motion. The motion carried unanimously.

Commissioner Snyder made a motion to appoint Eric J. Oblasser and Alex R. Berger as alternates if needed. Past President Bonner seconded the motion. The motion carried unanimously.

"Speech Code for Lawyers" in ABA Model Rules of Professional Conduct

Commissioner Edwards shared that he received a complaint/concern from one of his constituents regarding a proposed "speech code" to the ABA Model Rules of Professional Conduct. He shared that he does not feel like this is needed. Executive Director Wilkinson let the Board know that she shared the concern with Wyoming's delegates to the ABA—Dale Cottam and Darin Scheer—and directed the Board to Dale Cottam's e-mail in the Board notebook commenting on this.

Planning Ahead Handbook on Website

Mark Gifford, Bar Counsel, gave a quick plug regarding a free resource the Bar now offers. The Bar originally received approval from the Oregon State Bar in 2006 to borrow its "Planning Ahead" guide and make it Wyoming-specific. Mr. Gifford shared that as more and more Wyoming attorneys are passing away while on active status, he has kept busy helping other lawyers through the surrogate process, including sorting client files and eventually disposing of them. Mr. Gifford reviewed the handbook, updated it and it is now available as a free download on the Bar's website.

President's Report

Jackrabbit Bar Conference

President O'Connell shared that she attended the Jackrabbit Bar Conference in Lake Tahoe and felt that it was a good conference. She shared that other members of the

Board who attended agreed that the Bar should consider hosting a Wyoming-specific "Bar Leadership Institute" just like the ABA does.

President-Elect's Report

Practice Sections

President-Elect Masterson wondered about how the Bar could invigorate the practice sections. He asked everybody to think about this and share any ideas.

2017 Annual Meeting

President-Elect Masterson encouraged the Board to share any ideas for speakers and/or CLE for the 2017 Annual Meeting.

Vice President's Report

In Vice President Jarosh's absence, President O'Connell read an e-mail from Vice President Jarosh that served as his report. He shared that he has met with Angie Dorsch, Executive Director of Equal Justice Wyoming (EJW) to learn the difference between EJW and the Equal Justice Wyoming Foundation (EJWF). He shared those differences and mentioned that Ms. Dorsch has agreed to provide an article to be published in the *Wyoming Lawyer*.

Executive Director's Report

CosmoLex

Executive Director Wilkinson shared that she had been approached by CosmoLex, who recently announced an exclusive relationship with Casemaker, to possibly offer CosmoLex as a benefit to Wyoming State Bar members. She clarified that CosmoLex is a cloud-based practice management software provider that not only fully integrates with Casemaker, but also with LawPay. She shared that as a member benefit, members would receive a discount on the product at a very affordable cost, and the Bar would receive revenue as well. Executive Director Wilkinson also mentioned that she had Mark Gifford, Bar Counsel, review the proposed agreement between the Bar and CosmoLex. Mr. Gifford shared that the agreement was very straightforward and "friendly" to the Bar.

Commissioner Nash shared that she was in favor of the proposal; however, she was interested in simply providing it as an option to the members instead of specifically "endorsing" the company. Commissioner Overfield recommended that instead of signing the agreement, the Bar simply invite CosmoLex to exhibit at the Annual Meeting. Treasurer Graham shared that his firm was currently looking into cloud-based practice management systems. He feels passionately that the Bar needs to show value to the membership, so he is always a proponent of these kinds of things. For small and solo firms, this would help their practices.

Commissioner Snyder made a motion to enter into the agreement with CosmoLex. Commissioner Nash seconded the motion. Commissioner Haderlie reiterated the same concerns he expressed in the past that even though the Bar would not be exclusively endorsing a company, it will appear that way. The motion failed.

Change to Employee Handbook

Executive Director Wilkinson shared that she recommended a change to the employee handbook regarding the independent contractor clause. Once the handbook was approved in April 2016, she scheduled a staff meeting to go over the new handbook with the staff. In preparation for the meeting, she reviewed the handbook to make certain the Bar was fully compliant. The originally approved handbook required all independent contractors to sign an "Independent Contractor Agreement." In discussions with Mark Gifford, Bar Counsel, Cathy Duncil, Bookkeeper, and Wayne Herr, the Bar's accountant, all were in agreement that it is not necessary to require all independent contractors to enter into an agreement; therefore, the Executive Committee approved Executive Director Wilkinson's request to change the clause to reflect that signing the agreement was optional.

Past President Bonner made a motion to ratify the decision made by the Executive Committee. Commissioner McCorkle seconded the motion. The motion carried unanimously.

New Bylaws of the Wyoming State Bar

Executive Director Wilkinson shared that the Wyoming Supreme Court approved the amendments this Board made to the Bylaws of the Wyoming State Bar. The new bylaws will go into effect July 1, 2016.

Bench-Bar Relations Committee

Treasurer Graham reminded the Board that he asked the Bench-Bar Relations Committee if it wanted to be involved in reviewing the Judicial Advisory Poll. He reported that the committee members did not feel that there was anything "broken" with the current poll and that a review was not necessary.

Civil Pattern Jury Instructions Committee

Executive Director Wilkinson shared that this committee remains very active. They are regularly meeting to make needed updates to the instructions.

Clients' Security Fund

Treasurer Graham shared that Mark Gifford intends to tackle an overhaul of the Clients' Security Fund rules in the near future.

Criminal Pattern Jury Instructions Committee

No update

Diversity & Inclusion Committee

No update

Juvenile Pattern Jury Instructions Committee

Commissioner Overfield reminded the Board that the new instructions were just published in May.

Law School Liaison Committee

No update

Legislative Developments Committee

No update

President O'Connell adjourned the meeting at 6:30 p.m. on Friday, June 17, 2016.

Minutes Submitted by:

Sharon Wilkinson Executive Director