

# Wyoming State Bar Board of Officers & Commissioners Meeting

June 19, 2020

Saratoga Hot Springs Resort & Spa

Saratoga, Wyoming

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**In Attendance:** Kelly M. Neville, President; Billie LM Addleman, President-Elect; J. Kenneth Barbe, Vice President (via Zoom); James L. Edwards, Treasurer; Weston T. Graham, Immediate Past President (via Zoom); Stefanie L. Boster, First Judicial District Commissioner; Sarah L. Chavez, Second Judicial District Commissioner; Teresa S. Thybo, Third Judicial District Commissioner; Jeremy K. Kisling; Fourth Judicial District Commissioner; R. Scott Kath, Fifth Judicial District Commissioner; Alison O. Gee, Sixth Judicial District Commissioner; Charles S. Chapin, Seventh Judicial District Commissioner; Shawn G. Wilde, Eighth Judicial District Commissioner; James T. Whiting, Ninth Judicial District Commissioner; Sharon Wilkinson, Executive Director and Mark W. Gifford, Bar Counsel

**Absent:** Callie A. Capraro, Young Lawyers Section Chair

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President Kelly Neville called the meeting to order at 12:30 p.m. on Friday, June 19, 2020.

## **Approval of Agenda**

Executive Director Sharon Wilkinson requested that an item be added to the agenda to address a concern the Supreme Court had about potential budget cuts.

Commissioner James Whiting made a motion to add the Court's budget cuts to the agenda. Commissioner Jeremy Kisling seconded the motion. The motion carried unanimously.

## **Approval of Meeting Minutes**

Commissioner Alison Gee made a motion to approve the April 17, 2020, meeting minutes. President-Elect Billie Addleman seconded the motion. The motion carried unanimously.

## **Executive Committee Meeting Minutes**

President Neville asked if any Board members had questions about the Executive Committee's meeting minutes. There were none.

## **Treasurer's Report**

Treasurer Jim Edwards reported that we are eight months through the fiscal year. He shared that revenue generated from license fees is much greater than anticipated. As a result, we are over 100% of our projected revenue. He explained that CLE penalty fees were over \$29,000. He reported that investment income has been up and down due to the fluctuations in the market. He also shared that with so many conference cancellations, travel expenses are way down. Overall, Treasurer Edwards feels that the fiscal status of the Bar is very good.

Commissioner Charlie Chapin made a motion to accept the Treasurer's Report. Commissioner Scott Kath seconded the motion. The motion carried unanimously.

### **Admissions**

Mark Gifford, Bar Counsel, reported that the staff has been very busy with admissions due to the uncertainty surrounding administration of the July bar exam. While other states have considered and even implemented diploma privilege in the event that their exams get cancelled or postponed, Mr. Gifford reported that Wyoming's Board of Law Examiners (BLE) was not supportive of such an effort. Mr. Gifford reported that a significant amount of staff time has gone into ensuring that the exam can be administered with precautionary measures in place. He shared that the staff and the BLE worked very quickly to get an emergency rule approved by the Wyoming Supreme Court that would allow July exam applicants to practice under the supervision of a licensed lawyer until they could take and pass a bar exam.

Mr. Gifford reported that the Character and Fitness Committee has also been quite busy with hearings. President-Elect Addleman asked if the pandemic had caused a delay in character and fitness background checks, and Mr. Gifford reported that it had not; however, what the pandemic did generate was some vocal opposition to the National Conference of Bar Examiners and the Uniform Bar Exam.

### **Mandatory Continuing Legal Education (CLE)**

Executive Director Wilkinson reported that there was not much going on in regard to the regulatory side of CLE. She shared that there is one attorney who is still not compliant with his 2019 CLE requirements but has received a third extension from the Wyoming Supreme Court.

### **Attorney Discipline**

Mark Gifford reported that in a typical year, his office sees approximately 150 attorney complaints; however, the office has only received 44 so far this year. He thinks it could be due to the pandemic but he is not sure.

Mr. Gifford reported that the Supreme Court currently has a report and recommendation for a disbarment and two for public censures. He shared that there is a disciplinary case going to hearing in August that has consumed a significant amount of his time.

Mr. Gifford was pleased to share that Melinda McCorkle, Deputy Bar Counsel, has hit the ground running in her new position and it is great having her on board.

### **Unauthorized Practice of Law (UPL)**

Mark Gifford reminded the Board about the UPL hearing he and the UPL Committee had earlier in the year and discussed the issues surrounding that case. He was pleased to report that the Bar had received the money (fines and hearing costs) the Supreme Court ordered the respondent to pay.

### **Client Protection Fund**

Mark Gifford reminded the Board about a lawyer who victimized a number of his elderly clients a few years ago prior to his death. This lawyer was taking personal injury settlements for clients and telling them that he had to hold the money for them so it would not jeopardize their Medicare. Mr. Gifford shared that the Bar has been paying these victims for several years. He shared that there is one client left who is an elderly woman in her 80s. While the rules only allow \$15,000 per calendar year to be paid, Mr. Gifford requested that the Board approve his request to pay this woman the remaining balance of \$35,000 on her claim this fiscal year.

Commissioner James Whiting made a motion to approve the request to pay this victim the remaining \$35,000. Treasurer Edwards seconded the motion. The motion carried unanimously.

### **Proposed Policy for ABA Delegates**

Mark Gifford reminded the Board that the new Bylaws of the Wyoming State Bar will go into effect July 1, 2020, and that one of the recent amendments required the Board to implement a policy to assure that the activities of the Bar's ABA Delegates are compliant with the Bar's Keller policy—that the Bar will not use resources on political or ideological activities. At the April meeting, the Board directed Mr. Gifford and Executive Director Wilkinson to work together and bring a proposed policy to this meeting.

Mr. Gifford mentioned that he drafted a proposed policy and shared it with the Bar's three ABA Delegates—Hon. Joseph B. Bluemel, State Delegate; Darin B. Scheer, Wyoming State Bar Delegate; and Claire Fuller, Wyoming State Bar Young Lawyer Delegate—and received positive feedback from each. Mr. Gifford shared that he thinks the proposed policy is sound and that it mirrors the Bar's Keller policy.

Commissioner Scott Kath asked Mr. Gifford what the status of litigation was in those states whose mandatory bar status is being challenged. Mr. Gifford reported that so far, the rulings have uniformly favored mandatory bars.

Commissioner Alison Gee made a motion to approve the proposed ABA Delegates' policy. Commissioner Kath seconded the motion.

Commissioner Shawn Wilde expressed concern about having a policy that does not spell out consequences if a delegate does not follow the policy. Executive Director Wilkinson shared that if the Board would like a report from the delegates following their meetings, she could certainly request that.

After discussion, the motion carried.

### **Members' Use of Bar Logo Follow-Up**

Executive Director Wilkinson provided an overview of this discussion from previous meetings and asked what the Board wished to do. She shared that she had inquired how other bars across the country handled such requests and only heard from one bar, which was a voluntary

bar. Commissioner Chapin wondered what the point was of a member referring to Bar membership when every lawyer licensed in Wyoming is a member.

After discussion, no action was taken considering Executive Director Wilkinson had only received one such request for the use of the Bar's logo in her 18 years at the Bar.

#### **Pattern Jury Instructions/Casemaker Update**

Executive Director Wilkinson shared that all three sets—Civil, Criminal and Juvenile—of the Pattern Jury Instructions are now available free of charge on the Casemaker site. Members of the public can also access the jury instructions free of charge on Casemaker without login credentials.

Commissioner Teresa Thybo recommended that Executive Director Wilkinson work with each jury instruction committee to provide a summary of changes to the membership each time new instructions are sent to Casemaker.

#### **Strategic Planning Progress Report**

Executive Director Wilkinson directed the Board's attention to the progress report she prepared. She walked the Board through each goal and objective of the report.

President Neville reported that she is on the working group that is planning an in-person small/solo conference for November 6, 2020, at the University of Wyoming College of Law. She shared that Past President Weston Graham also serves on the working group and recommended setting up some satellite locations around the state. She also reported that due to COVID-19, they are working through some spacing issues with the law school.

President Neville also reported that Past President Graham had posted a great inaugural post to the small/solo listserv and it generated quite a bit of discussion.

President Neville shared that she has also discussed the broader issue of rural practice with the working group and all members are interested in furthering the discussion.

Executive Director Wilkinson shared that in addition to what was included on the progress report for Goal 2 (attorney well-being), she recently learned that Shannon Howshar and Brandi Robinson have recruited two members of the Bar to assist with this goal. Executive Director Wilkinson shared ideas under consideration for accomplishing this goal.

Executive Director Wilkinson reported that she, Jack Speight (WyLAP Director) and Mark Gifford met with Candice Cochran and John Ordiway from the Wyoming Professional Assistance Program (WPAP) earlier in the week simply to catch up and discuss any needed changes in the program. They learned that WPAP is seeing an increase in calls due to the pandemic. As a result, Executive Director Wilkinson reported that she is going to market the life coaching aspect of the program instead of only the impairment, stress and depression aspects.

President Neville encouraged Executive Director Wilkinson to look into some of the apps now available for telehealth, as some offer connections to counselors.

### **License Fee Waiver/Extension: Other States' Policies**

Executive Director Wilkinson reminded the Board that there was a discussion during the April Zoom meeting about some of our members not being able to pay their license fees due to varying situations caused by the pandemic. At the Board's request, Executive Director Wilkinson surveyed other bars around the country to see if they had any policies in place to allow for a waiver and/or extension of the payment of license fees. Executive Director Wilkinson reported that what she learned was that many voluntary bars had such policies but that no mandatory bars did.

### **Annual Meeting Update**

Executive Director Wilkinson shared that in light of all the uncertainty caused by the pandemic, she asked Mr. Gifford to review the contracts the Bar has with the facilities in Laramie. She shared that after discussion with the Executive Committee, she contacted the Hilton Garden Inn to see if it would be willing to extend the contracted timeline for cancellation without paying a penalty. She was pleased to report that instead of a June 15<sup>th</sup> cut-off date, the Hilton Garden Inn was willing to provide an addendum to the contract that extends the cut-off date to July 15<sup>th</sup>.

Executive Director Wilkinson reported that she remains in contact with Chief Justice Davis regarding the judicial conference portion of Annual Meeting and has learned that judges are still planning to meet in person. She also shared that she has been in contact with the law school and has learned that Justice Gorsuch is still planning to attend its Centennial Celebration in person.

Executive Director Wilkinson has considered surveying the membership to gauge their interest and willingness to attend Annual Meeting in person, but she thinks it would be too soon at this point considering most would indicate that they would make a decision based on the current state of the pandemic and public health orders in place in September.

After discussion, the Board agreed to move forward with an in-person event as usual but monitor things closely in order to revisit the situation prior to July 15<sup>th</sup>.

### **New Membership Database**

Executive Director Wilkinson reported that after years of development and turmoil with the previous contractor, the Bar finally launched its new membership database on May 30, 2020. She shared that she wished it had gone more smoothly than it did, however, there were many problems with the data migration partly due to the "tinkering" in the old system. She reported that the launch caused significant problems on the Bar's website, but they are working to prioritize the issues and get them worked out.

### **Public Awareness Campaign/The Only Company Project**

Executive Director Wilkinson reminded the Board about the public awareness campaign it embarked upon a few years ago in order to raise awareness about the positive and meaningful things lawyers do in their communities aside from their legal work. She reminded the Board that the Bar contracted with Flood Marketing out of Sheridan for \$18,200, but the project never really got off the ground. Executive Director Wilkinson reported that Flood Marketing is now called The Only Company and she has been in touch with Brian Fabel, the project owner. She reported that Mr. Fabel has been nothing but patient with the lack of progress on the project and recommended back in April that the Bar perhaps repurpose the project in light of the pandemic. He suggested possibly focusing on how the legal profession is serving the public amid changes associated with COVID-19, legal tips for the new socially distanced society, or perhaps a virtual member meet-up or happy hour via Zoom. Upon receiving the suggestions, Executive Director Wilkinson discussed them with the Executive Committee and Mark Gifford. She reminded the Board that she reported at the April Zoom meeting that all were in agreement that now was not the time to make any decisions about the project.

Executive Director Wilkinson reminded the Board that the Bar has paid \$9,100 to The Only Company and is contracted to pay another \$9,100 at the completion of the project.

President-Elect Addleman suggested cutting our losses with this project. Mark Gifford shared that in light of the fact that the Court reached out to the Bar regarding its potential budget cuts and is requesting that the Bar be vocal and supportive, we could repurpose the project to address that. President-Elect Addleman shared that he is not in favor of singling the Court out for support, as everybody is going to be expected to make some budget cuts. He shared that he is sensitive to favoring the judiciary over our other members who may also be facing cuts and even potential job losses.

Commissioner Gee recommended pivoting to advocating for continuation of our legal system—not necessarily a focus on lawyers but the overall system—in an effort to keep our citizenry involved.

Commissioner Kisling and Commissioner Thybo agreed with President-Elect Addleman about cutting our losses with The Only Company. President Neville directed Executive Director Wilkinson to contact The Only Company to see if it will let the Bar out of the contract without having to pay the additional \$9,100. Executive Director Wilkinson will report back at the August meeting.

### **Investment Portfolio Update**

Executive Director Wilkinson distributed a memo and an investment portfolio review that Mike Merback, RBC Wealth Management Financial Advisor, sent. She directed the Board's attention to a question that Mr. Merback posed in his memo, which was whether he should move forward with reallocating assets into alignment with the investment policy or wait until the Bar has an infusion of cash. Executive Director Wilkinson reminded the Board that it sets the investment policy, so the Board can make changes to that at any time.

Treasurer Edwards shared that we should wait to reallocate due to the uncertainty in the market. Commissioner Gee agreed.

After discussion, all were in favor of waiting to reallocate our assets.

### **Potential Judicial Branch Budget Cuts**

Executive Director Wilkinson reported that she and Mark Gifford received an e-mail the previous day from Justice Fox, which Chief Justice Davis was copied. Essentially, the Court is concerned that it will be expected to make budget cuts in light of the pandemic just like the Executive Branch is. Executive Director Wilkinson shared that Justice Fox indicated in her e-mail that the judiciary is very personnel-heavy and it will not be able to cut much before essential court services or critical projects like e-filing are impacted. Executive Director Wilkinson distributed the fact sheet that Justice Fox shared with the Board members.

Mark Gifford shared that he has discussed this issue with Justice Fox, and she is encouraging the Bar's support in this issue. Mr. Gifford shared that this drives the tension between who our constituents are—our members or the public? He reminded the Board that the Bar is a regulatory arm of the Supreme Court and one of the Bar's core functions is to support an effective and efficient operation of the justice system. He shared that he does not think supporting this effort would run afoul of our Keller policy.

Commissioner Kisling shared that getting information out about constitutional implications of this and expressing that the judiciary is integral is acceptable; however, he does not think the Bar should spend any money in doing so.

Mark Gifford proposed communicating to the Court that the Board wants to be supportive of the Court's request but wishes to be supportive of the larger picture so the Bar can support all members of the Bar who are going to be impacted by this—Attorney General's Office, Public Defender's Office, prosecutors, etc. He hopes this will provide a path to put creative heads together.

Commissioner Gee shared that there is some value in educating our legislators what the impact could represent, as there are going to be many voices. President-Elect Addleman agreed that the Bar needs to have a voice at the table.

Mark Gifford agreed that there is room for active involvement and communication and that we do not want to favor the Court over our other members who are impacted.

President-Elect Addleman encouraged the Board to pay close attention to the next legislative session, as he anticipates some proposed changes that will impact the legal profession.

Commissioner Chapin shared that he does not think the Bar should be the educators on behalf of the Court. He feels that the Bar's function should be to simply disseminate the information to our constituents and encourage them to contact their legislators. He too agreed that in

addition to the information specific to the Courts, information about public defenders, prosecutors, etc. needs to be included.

### **Development of Board Handbook**

Mark Gifford shared that he recently learned that other bars around the country have board handbooks to provide guidance for voluntary board members similar to how the Employee Handbook guides the behaviors and procedures of the staff. He also shared that such a handbook would be a logical place to house the Board's numerous policies (i.e. travel reimbursement policy, membership data distribution policy, Keller policy, etc.). Mr. Gifford also shared that the Washington State Bar Association had a very unfortunate situation involving a sexual harassment claim with a board member and a staff member. He thought perhaps putting some policies in place would protect the Bar in the event a similar situation arose in Wyoming.

Executive Director Wilkinson shared that she gathered some handbooks from other states for review. After discussion, President Neville directed Mr. Gifford and Executive Director Wilkinson to work together to put a proposed Board Handbook before the Board for consideration at its August meeting.

### **2020/2021 Budget Preparation**

Executive Director Wilkinson shared that she and Cathy Duncil, Bookkeeper, began the budgeting process for next year in early May. She reported that she, Mark Gifford and Cathy Duncil met with Treasurer Edwards this morning to present the first draft of the proposed budget. There were no changes to the proposed budget as a result of the meeting. She reminded the Board that the Bylaws require the Executive Committee to present the proposed budget to the full Board by July 31<sup>st</sup> and asked if there was any specific direction the Board wanted to provide regarding what it would like to see this next fiscal year. There being no direction given, Executive Director Wilkinson shared that she will continue work on the budget and looked forward to discussing it more during the August meeting.

Mark Gifford shared that he thinks the Bar is so fortunate to have really effective ABA Delegates who are so conscientious. As a result, Mr. Gifford recommended again reimbursing the two ABA Delegates—Darin Scheer and Claire Fuller—for their travel expenses in light of the new policy approved today. He shared that the combined total for both has been around \$8,000 per year historically.

Commissioner Whiting made a motion to budget for the ABA Delegates' travel reimbursement in the 2020/2021 budget. Commissioner Chapin seconded the motion. The motion carried unanimously.

### **President Elect's Report**

President-Elect Addleman reported that the Executive Committee will be starting the process for Executive Director Wilkinson's evaluation next week and the Executive Committee will then meet with Ms. Wilkinson at the start of the August meeting. He shared that the Executive Committee will be prepared to make a recommendation for any possible adjustments for



compensation at that meeting. He also reported that the Executive Committee has agreed that the Executive Director's evaluation should be the responsibility of the President-Elect going forward.

### **Vice President's Report**

Vice President Ken Barbe reported that he is throwing his hat into the ring for President-Elect.

### **Executive Director's Report**

Executive Director Wilkinson provided an update on the office in regard to working remotely versus working in the office. She was pleased to report that all staff would be back in the office beginning July 1, 2020.

Executive Director Wilkinson reminded the Board that the call for nominations has been distributed to the membership and nominations are due to her July 1, 2020. She then provided an overview of the nominations she has received thus far and reminded the Board that online elections will take place the month of August with results being announced September 1<sup>st</sup>.

Executive Director Wilkinson shared that the Bar will be conducting the Judicial Advisory Poll this summer. Members will receive their invitation to access the poll around August 11, 2020, and she will receive the final report in October in order to release the results to the public before the general election.

Executive Director Wilkinson was pleased to share numerous things the Bar was able to do during the COVID-19 pandemic. Among those were the emergency admission rule and the efforts to administer the July bar exam, numerous broadcast e-mails to the membership at the request of courts all over the state, the Estate Planning Section's Frontline Responders Legal Helpline, and the "COVID-19 & the Legal Profession" blog that Past President Rob Jarosh and President-Elect Addleman were instrumental in developing.

Executive Director Wilkinson reminded the Board that the August meeting is scheduled for August 14<sup>th</sup> in Hulett and reported that Sturgis is scheduled for August 7-16<sup>th</sup>. She asked the Board if it still wished to meet in Hulett at that time. After discussion, all were in agreement to move the August meeting to a different location. President Neville shared that she will work with Executive Director Wilkinson to get the meeting relocated.

### **Commissioners' Reports**

- *First Judicial District* – Commissioner Stefanie Boster reported that she has attended a few Zoom meetings with the Laramie County Bar Association and the Courts. Otherwise, she felt that things were fairly quiet in Cheyenne. She reported that members are appreciative of communication from the Bar during the pandemic.
- *Second Judicial District* – Commissioner Sarah Chavez reported that the Carbon County Bar Association will be electing a new president on Monday.
- *Third Judicial District* – Commissioner Thybo reported that the county bar was supposed to have a golf tournament, but it has been cancelled due to the pandemic.

- *Fourth Judicial District* – no report
- *Fifth Judicial District* – Commissioner Kath reported that due to the pandemic their annual May Day photo shoot was cancelled for the first time in decades.
- *Sixth Judicial District* – no report
- *Seventh Judicial District* – no report
- *Eighth Judicial District* – no report
- *Ninth Judicial District* – no report

**Board/Committee Liaison Report**

- *Civil Pattern Jury Instructions Committee*—Commissioner Chapin reported that the committee has a meeting very soon.
- *Criminal Pattern Jury Instructions Committee*—Commissioner Thybo reported that the committee still meets monthly and is working on instructions affected by new statutes going into effect July 1<sup>st</sup>.
- *Law School Liaison Committee*—President Neville reported that in late 2019 the committee was quite active getting prepared for the law school’s 100<sup>th</sup> anniversary celebration.
- *Legislative Developments Committee*—President Neville reported that the Committee held one call during the special session.

President Kelly M. Neville adjourned the meeting at 4:15 p.m. on Friday, June 19, 2020.

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Minutes Submitted by:

Sharon Wilkinson  
Executive Director