

Wyoming State Bar Board of Officers & Commissioners Meeting

November 6, 2015
Wyoming State Bar
Cheyenne, Wyoming

In Attendance:	Devon O'Connell, President; Robert C. Jarosh, Vice President; Weston T. Graham, Treasurer; Melinda S. McCorkle, First Judicial District Commissioner; Dawnessa A. Snyder, Second Judicial District Commissioner; Teresa S. Thybo, Third 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; Nathaniel S. Hibben, Eighth Judicial District Commissioner; Erika M. Nash, Ninth Judicial District Commissioner; Caitlin F. Young, Young Lawyers Section President; Sharon Wilkinson, Executive Director; Cathy Duncil, Admissions Director; Marie Ellis, CLE Director; Brandi Robinson, Lawyer Referral Service Coordinator/BPR Clerk; Laura Barber, Executive Assistant; Mark Gifford, Bar Counsel; Shannon Howshar, Assistant to Bar Counsel and Jack Speight, Wyoming Lawyer Assistance Program (WyLAP) Director
Absent:	John A. Masterson, President-Elect; Bradley D. Bonner, Immediate Past President
Guests:	Joe M. Teig, Craig Newman and Amanda Hunkins-Newton, Bar Counsel Review & Oversight Committee; Gay V. Woodhouse, Wyoming Professional Assistance Program (WPAP) Board Member; and Timothy L. Woznick, Chair of the Resolution of Fee Dispute Committee

President O'Connell called the meeting to order at 12:30 p.m. on Friday, November 6, 2015.

Approval of Agenda

President O'Connell asked for any additions to the agenda. Executive Director Sharon Wilkinson requested three additions:

1. Bar Employees' Health Insurance
2. Blake Klinkner's American Bar Association Young Lawyers Division Report
3. Diversity & Inclusion Committee Proposal

Treasurer Graham made a motion to approve the agenda with the additional items. Commissioner Overfield seconded the motion. The motion carried unanimously.

Approval of Minutes

Commissioner Overfield made a motion to approve the August 14 – 15, 2015, and the September 11, 2015, meeting minutes. Commissioner Haderlie seconded the motion. The motion carried unanimously.

Treasurer's Report

Treasurer Graham thanked Sharon Wilkinson and Cathy Duncil for their preparation of the extensive memo discussing the financial outcome for the last fiscal year. Treasurer Graham shared that the Bar just cashed out a CD that was earmarked for the Clients' Security Fund. Treasurer Graham referred to the dashboard report distributed earlier in the week and discussed that briefly.

Commissioner Haderlie made a motion to accept the Treasurer's Report. Commissioner Edwards seconded the motion. The motion carried unanimously.

\$200 Holding Account

Treasurer Graham reminded the Board that the Bar received a check for \$200 from Judge Brorby last year with a note indicating that he wished for the Bar to use the money how it was most needed.

Treasurer Graham made a motion to donate the \$200 to the WyLAP Foundation. Commissioner Haderlie seconded the motion. The motion carried unanimously.

Taylor Belt Account

Treasurer Graham brought the Board's attention to the estate money the Bar has received as a result of Taylor Belt's death.

After much discussion, Commissioner McCorkle made a motion to donate those funds to the WyLAP Foundation. Commissioner Haderlie seconded the motion but added that all future distributions should be passed on to the WyLAP Foundation as well. The motion as amended carried unanimously.

Annual Audit

Bookkeeper Cathy Duncil reported that the audit will be held in the office the first week of December. The final audit report will be presented at the January Board meeting.

Wyoming Professional Assistance Program (WPAP) Monitoring Agreements

Executive Director Wilkinson reminded the Board that there was considerable discussion at the August Board meeting regarding the concern about lapses for those voluntarily on a WPAP Monitoring Agreement being reported to Bar Counsel. As a result of that discussion, a significant amount of work has gone into finding alternatives for this. Gay Woodhouse, WPAP Board Member, joined the Board meeting to address the importance of accountability in relation to the reporting issue. She shared one step towards accountability is that those who sign a monitoring agreement have a work-site monitor. Ms. Woodhouse discussed the four levels WPAP uses to determine the severity of a violation. She shared that the goal is to put a

process in place where lawyers can enter the program voluntarily and not fear repercussions from Bar Counsel. There is consideration to having a designee who would be contacted in the event of a violation. The attorney participating in WPAP would choose his/her own designee from a list of approved designees.

Mark Gifford, Bar Counsel, shared that currently there are two lawyers who have signed monitoring agreements. Under the current plan, he would be informed of Level 3 or Level 4 lapses. WPAP currently has a couple dozen monitoring agreements. Mr. Gifford shared that WPAP's interpretation of the enabling statute is that they do have an obligation to report Level 4 lapses to the licensing agency.

Mr. Gifford shared that the proposed plan that Gay Woodhouse mentioned in regard to voluntary participants would only require Bar Counsel to be informed of Level 4 lapses; Level 3 lapses would be reported to the attorney's chosen designee. He shared that the lawyers on the list of designed monitors will work closely with WPAP, and it will be a very collaborative effort to get the lawyer back on track in the event of a lapse.

Commissioner Haderlie shared that he is pleased with the direction of the change in monitoring agreements for volunteers. He thanked all those involved for their efforts. He recommended crafting the monitoring agreements for lawyers and remove all terminology associated with the healthcare profession.

Commissioner McCorkle asked who determines the level of these violations. Mark Gifford clarified that it would be WPAP staff, specifically John Ordiway, Clinician, in consultation with Candice Cochran, Executive Director. There was much discussion about how vague the language was for Level 4 lapses. Gay Woodhouse shared that from her perspective, a Level 4 lapse would be a very serious infraction.

There was much discussion about getting volunteer lawyers plugged into the program through the Lawyers Helping Lawyers portion. There was also discussion about providing training for these volunteers.

Executive Director Wilkinson shared that the public service announcements the Governor did are complete. The television PSA will begin airing soon on KGWN-TV in southeast Wyoming. She is working with radio stations to get the radio PSA on stations around the state.

Executive Director Wilkinson shared WPAP's third-quarter report with the Board.

Regulatory Updates

Admissions

Cathy Duncil, Admissions Director, shared that the Board of Law Examiners (BLE) and the Character & Fitness Committee (C & F) continue to meet monthly. C & F denied admission to two applicants recently. Ms. Duncil explained that when that happens, the applicant has the opportunity to have a hearing before the BLE. She shared that C & F

recently conducted an in-person interview with an applicant. In December, the BLE and C & F will meet in person for the first time. The Court continues to admit 10 attorneys per month, and we are on track to admit approximately 200 attorneys per year.

Continuing Legal Education (CLE)

Marie Ellis, CLE Director, shared that the new CLE Rules went into effect July 1st. As a result, the Bar is giving increased notice about members' CLE status.

Attorney Discipline

Mark Gifford, Bar Counsel, directed the Board to Tab 3 in the Board notebook and the current case status report. He commented that the number of complaints and the number of disciplines he's receiving has decreased significantly. Last year, the Office of Bar Counsel hit an all-time high with 200 complaints received. For 2015, his office has only received 109 grievances, and Mr. Gifford is confident that his office will finish this year with only seven disciplinary orders. Mr. Gifford is encouraged to see these numbers go down and feels very positive about his efforts to help lawyers be better lawyers on the front end instead of handing down sanctions on the back end.

Clients' Security Fund (CSF)

Mark Gifford reminded the Board that the Wyoming Supreme Court suspended a lawyer in August. His office has seen a significant number of CSF claims in relation to this suspended lawyer; to date, these claims total \$158,000. Mr. Gifford discussed the rules associated with CSF, specifically the rule that limits a claim to \$10,000 per person per year. After the August meeting, the Review & Oversight committee requested an increase in the CSF line item in the budget to \$50,000; however, much of that has been spent already.

There was much discussion regarding how to replenish the CSF funds. There was also discussion about some possible changes to the rules governing CSF. President O'Connell reminded the Board that Mark Gifford is planning to overhaul these rules at a later date.

Unauthorized Practice of Law (UPL)

Mark Gifford provided an update on the UPL claims that his office has received this year. He reported that there hasn't been a need to call the UPL Committee together since the system was overhauled in 2014.

Attorney Lien Statute

Commissioner Barbe shared some information about the existing attorney lien statute versus the Attorney Lien Statute Committee's proposed statute. He briefly explained some of the changes the committee made to the proposed statute. Commissioner Barbe shared with the Board that there had been much discussion amongst the committee members about the *Keller* concern. Mark Gifford shared that he did not think the Bar proposing a change to this statute was a *Keller* violation.

Commissioner Haderlie shared that he talked to Representative Tim Stubson about this issue and Representative Stubson indicated that he would support an amended statute. Representative Stubson thinks the Bar should move forward with this in the upcoming legislative session. While Representative Stubson did not volunteer to sponsor the bill, he recommended Senator Leland Christensen or somebody on the Judiciary Committee. He also recommended getting Representative Kermit Brown's support.

Commissioner Edwards made a motion to give the Attorney Lien Statute Committee the approval to move forward with the process for amending the statute through the upcoming legislative process. Commissioner Snyder seconded the motion. The motion carried unanimously.

Commissioner Haderlie made a motion to convene an Executive Session. Commissioner Overfield seconded the motion to enter in Executive Session. The motion carried unanimously.

Resolution of Fee Disputes

Tim Woznick, Chair of the Resolution of Fee Disputes Committee, joined the Board meeting. He shared that he was appointed as Chair of the committee around the first of the year. He quickly recognized some glaring holes in the rules that caused him concern. Shortly after, he met with Mark Gifford and Shannon Howshar to discuss much-needed changes to the rules governing the fee dispute resolution process. Mr. Woznick felt there are some big problems for both the petitioner (most often the client) as well as the attorney.

Mr. Woznick discussed several problems the committee has recognized in the current rules. Some of the problems are technical, but a larger issue is a training issue for the panel members who are assigned to each dispute. He gave an example of a fee dispute in the amount of \$200,000+.

Mr. Woznick shared that Mark Gifford has taken the lead in researching what other processes are out there that have been tested. He directed the Board to the proposed rules that are currently being considered by the full Resolution of Fee Disputes Committee and discussed the most significant proposals. The goal is to gather feedback from the Committee members, make necessary changes and come to the January meeting with a request to put the proposed rules out for comment to the full Bar membership.

President O'Connell wondered if the current Resolution of Fee Disputes Committee was in need of training. Mr. Woznick shared that he would like to see some training offered to the current committee.

Strategic Plan Update

Goal 3 - Executive Director Wilkinson shared that the Bar has made progress on its efforts to communicate more effectively through social media platforms. The Bar now has a Facebook page, a profile on LinkedIn and has most recently began to communicate via Twitter.

Goal 2 – Executive Director Wilkinson announced that the first phase of launching the Modest Means Program (recruiting members) has been a great success. She shared that the program was originally launched at the 2015 Annual Meeting in Jackson with fliers being distributed to the registrants. The recruitment efforts continued with a full-page spread in the October *Wyoming Lawyer* followed by a mailing to the active, in-state membership of the Bar. Modest Means Program Coordinator Brandi Robinson shared that 49 attorneys have volunteered for the program so far. Executive Director Wilkinson shared that she and Brandi had launched the program to the public the day before the meeting. A press release was distributed to all statewide media outlets, and the launch of the program was shared on all the Bar's social media platforms. As a result, the Bar already had four clients interested in the program.

Also in relation to Goal 2 of the Strategic Plan, Executive Director Wilkinson shared that she is working closely with ALPS to launch ALPS Attorney Match, an online system to connect attorneys with other attorneys. She has helped ALPS draft language for e-mails that will come from her, President Devon O'Connell and Caitlin Young, the President of the Young Lawyers Section. All have agreed to a December 1, 2015, launch date to coincide with an article and full-page ad in the December *Wyoming Lawyer*.

Wyoming State Bar Foundation Update

Goal 4 - Commissioner Nash, who also serves on the Wyoming State Bar Foundation (WSBF) Board, reported that Tenille Castle, President of the WSBF Board, Tom Long and members of the Equal Justice Wyoming Foundation (EJWF) Board have been meeting weekly to work on transitioning everything over to EJWF. The WSBF Board recently circulated a resolution to dissolve the WSB Foundation. Beginning December 1, 2015, the EJWF will take over the administration of the IOLTA program. The Liberty Day committee has been working regularly to help transition that program to EJWF as well.

Memorial Contributions

Treasurer Graham shared that in the past, the Bar donated \$25 to the Wyoming State Bar Foundation whenever a member of the Bar passed away. However, this expenditure was eliminated in the current fiscal year. Treasurer Graham inquired whether or not this was something the Board of Officers & Commissioners wished to continue.

After much discussion, Commissioner Overfield made a motion to discontinue these memorial contributions. Commissioner Haderlie seconded the motion. The motion carried.

Travel Policies

Treasurer Graham brought the board's attention to the current travel policy for the Board. He shared that Board members' attendance at out-of-state conferences has been a discussion amongst the Executive Committee. As a result, Treasurer Graham drafted a proposed policy that limits the attendance at out-of-state conferences.

There was significant discussion with some Board members being in favor of limiting the attendance at conferences and others being opposed to any limitations.

With regard to the Western States Bar Conference, Executive Director Wilkinson shared that other jurisdictions either limit the number attending the conference or simply allocate a specific amount for the conference.

Vice President Jarosh shared that he felt it was unfortunate to even have this conversation. This organization can only function with its volunteer members. Board members are serving for the right reasons and going to the out-of-state conferences for the right reasons.

Treasurer Graham shared that he drafted the policy simply to facilitate this discussion.

After further discussion, Commissioner Nash made a motion to accept A through 8 of the draft policy but eliminate the last paragraph. Commissioner Edwards seconded the motion. The motion carried unanimously.

Diversity & Inclusion Committee

Executive Director Wilkinson distributed a proposal prepared by Alisa Rosales, a new member of the Bar, to create a committee devoted to diversity issues. The effort would support persons of color, disabled lawyers and the LGBT community.

Commissioner Snyder shared that we do have a diverse bar and this effort might create an opportunity for those members to participate in the Bar more so than they would have with other opportunities. She felt strongly about supporting the idea to explore it.

After discussion, Commissioner Overfield made a motion to create a Diversity & Inclusion Committee and have President O'Connell make the necessary appointments. Commissioner Snyder seconded the motion. The motion carried unanimously.

Health Insurance

Executive Director Wilkinson announced that the Wyoming State Bar employees were currently covered by WINhealth. Because WINhealth will no longer be in business after the end of the year, Executive Director Wilkinson is working closely with Cathy Duncil to find options for replacement coverage. Once the options are established, she will present them to the Executive Committee for its decision.

Commissioner Overfield made a motion to convene an Executive Session. Commissioner Nash seconded the motion. The motion carried unanimously.

Treasurer Graham made a motion to adjourn from Executive Session. Commissioner Snyder seconded the motion. The motion carried unanimously.

Extra-Limited Scope of Representation

Mark Gifford shared that he had a discussion with Judge Prokos about this issue. In a nutshell, the judge would like to figure a way to allow public defenders to be present in courts on initial appearance days and help people through the process. Mr. Gifford cautioned that this would require some rule changes.

Commissioner Haderlie shared that the Fourth Judicial District recently hosted “pro se day.” He felt it was a great idea but cautioned that there are a lot of issues to consider. Commissioner Haderlie feels this is the legislative function. President O’Connell asked what this Board could or should do about this issue. Mr. Gifford shared that this Board could simply indicate that it is supportive of the concept.

President’s Report

Board/Committee Appointments

President O’Connell reported that she is ahead of schedule making all of her board/committee appointments.

Editorial Committee Retreat

President O’Connell reported that she attended the Editorial Committee’s annual retreat and the committee mapped out all themes for the *Wyoming Lawyer* issues in 2016.

Vice President’s Report

Vice President Jarosh shared that he felt this Board is made up of an impressive group of people – so thoughtful and well intentioned.

ABA Delegate’s Report

President O’Connell directed the Board’s attention to a memo from Dale Cottam that was included in the Board notebook.

Executive Director’s Report

Executive Director Wilkinson brought the Board’s attention to the written wrap-up report she prepared after the 2015 Annual Meeting.

Board/Committee Liaison Reports

Bench-Bar Relations Committee – Weston Graham

Nothing to report.

Civil Pattern Jury Instructions Committee – John Masterson

President-Elect Masterson was absent from the meeting.

Clients’ Security Fund Committee – Weston Graham

Treasurer Graham indicated that Mark Gifford had already given a full report of this committee’s activities.

Criminal Pattern Jury Instructions Committee – Dawnessa Snyder

Commissioner Snyder reported that this committee continues to work on several updates.

Juvenile Pattern Jury Instructions Committee – Bobbi Overfield

Commissioner Overfield reported that this committee is very close to publishing the final draft of the instructions. The goal is to have them available after the first of the year.

Law School Liaison Committee – Melinda McCorkle

Nothing to report.

Legislative & Law Reform Committee – Devon O'Connell

President O'Connell noted that this committee meets only during the legislative session.

President O'Connell adjourned the meeting at 5:15 p.m. on Friday, November 6, 2015.

Minutes Submitted by:

Sharon Wilkinson

Executive Director