

Wyoming State Bar Board of Officers & Commissioners Meeting

November 4, 2016
Wyoming State Bar
Cheyenne, Wyoming

In Attendance: Robert C. Jarosh, President-Elect; Dawnessa A. Snyder, Vice President; Weston T. Graham, Treasurer; Melinda S. McCorkle, First Judicial District Commissioner; Kelly M. Neville, 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 (via phone for a portion of the meeting); Erika M. Nash, Ninth Judicial District Commissioner; Devon P. O'Connell, Immediate Past President; Jesse K. Fishman, Young Lawyers Section President; Sharon Wilkinson, Executive Director; Mark Gifford, Bar Counsel; Cathy Duncil, Admissions Director; Marie Ellis, CLE Director; Brandi Robinson, Lawyer Referral Service Coordinator; Shannon Howshar, Assistant to Bar Counsel; and Caitlin Casner, Administrative Assistant

Absent: John A. Masterson, President

Guests: Angie Dorsch and Liz Hutchinson - Equal Justice Wyoming
Brad Sweat – Crowley Fleck, PLLP
Dale Cottam – Wyoming Delegate to the ABA (by phone)
Blake Klinkner – Young Lawyers Section

In President Masterson's absence, President-Elect Jarosh called the meeting to order at 12:30 p.m. Executive Director Wilkinson requested that an additional item be added to the agenda – the appointment of the Clients' Security Fund Committee Chairperson.

Commissioner Barbe made a motion to approve the agenda as amended. Commissioner Thybo seconded the motion. The motion carried unanimously.

Approval of Meeting Minutes

Commissioner Thybo made a motion to approve the August 2016 meeting minutes. Commissioner Haderlie seconded the motion. The motion carried unanimously.

Commissioner McCorkle made a motion to approve the September 2016 meeting minutes. Commissioner Nash seconded the motion. The motion carried unanimously.

Executive Committee Meeting Minutes

President-Elect Jarosh directed the Board's attention to the minutes from the Wednesday morning Executive Committee calls.

Treasurer's Report

Treasurer Graham directed the Board's attention to a memo that Executive Director Wilkinson and Cathy Duncil prepared detailing the outcome of the 2015/2016 fiscal year. He noted that the net income was approximately \$140,000, similar to what we have experienced over the last couple of years. He mentioned that the Bar came in under budget on the expense side. He shared that the auditors will make some adjustments based on depreciation. Treasurer Graham thanked the staff for minding the budget. He then directed the Board to the Dashboard Report and reported that over the next few months, he will be working with staff to explore options with investments due to the increase in revenue this time of year.

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

Admissions

Cathy Duncil, Admissions Director, shared that she has 21 signed up to take the February bar exam; however, the deadline is November 15th, so she anticipates that number to increase slightly. Ms. Duncil shared that she recently received the *Bar Examiner* magazine. This particular issue provided a five-year overview of the Uniform Bar Exam. Ms. Duncil shared some interesting statistics from the magazine.

Mandatory CLE

Marie Ellis, CLE Director, reminded the Board that November 15th is the date that status reports will be sent via e-mail to the Active membership. She shared that there are numerous no-cost and low-cost CLE programs in December that she and Executive Director Wilkinson will be marketing in order to help those attorneys who still need CLE be compliant by the end of the year.

Wyoming Lawyer Assistance Program (WyLAP)/Wyoming Professional Assistance Program (WPAP)

Jack Speight, WyLAP Director, shared that we have one attorney participating in the program on a voluntary basis. Jack shared that overall the program has helped 22 lawyers; the vast majority of those sought help for anxiety, life coaching and mental health issues. Executive Director Wilkinson directed the Board's attention to the 3rd quarter report provided by WPAP.

Equal Justice Wyoming Update

Angie Dorsch, Executive Director of Equal Justice Wyoming (EJW), introduced Staff Attorney/Pro Bono Coordinator Liz Hutchinson. Ms. Dorsch thanked the Board for funding Liberty Day. She shared that Kristen Schlattman will lead the efforts for the program again this year and that the funds were used to purchase materials and ship Constitutions to all schools across the state. Ms. Dorsch reported that EJW's largest financial institution dropped out of eligibility for the IOLTA Honor Roll. She clarified that banks must be paying at least 1% interest

to qualify for the Honor Roll. She will be working with the EJW Foundation to promote the Honor Roll. She hopes to begin promoting that list in the *Wyoming Lawyer*. Ms. Dorsch is hoping to encourage attorneys to move their accounts to Honor Roll banks and share some communication about that revenue.

Commissioner Nash inquired as to whether or not the EJW Foundation will be doing any fundraising. She also inquired as to whether we should be promoting our ethics obligations about financial contribution in lieu of pro bono work. Ms. Dorsch shared that they are considering doing some fundraising next year.

Ms. Dorsch thanked the Board for the portion of the pro hac vice fees that is contributed monthly to Equal Justice Wyoming. Since that has gone into effect, EJW has received over \$42,000. They have earmarked some of those funds for the UW Law School Clinics. She reported that the family law clinic that Dona Playton is currently running is not sustainable with only an adjunct professor. EJW offered \$30,000 to encourage the law school to make that a tenure-track position. The EJW Foundation also provides funding for those clinics.

Ms. Dorsch reported that there will be two new working groups added to the Access to Justice Commission – a funding working group and a tribal issues working group. A group will be organized to go to the tribes to see how the Access to Justice Commission can help bring more access to justice to the reservation.

Liz Hutchinson thanked all those lawyers on the Board who have taken some pro bono cases. She shared that as soon as a lawyer is admitted to the Wyoming State Bar, she is sending an e-mail to encourage the new admittee to get involved in the pro bono program. She also reported that EJW recently launched Wyoming Free Legal Answers, an online platform. The client is able to pose a question and an attorney volunteers to engage in a back and forth dialogue with the client to get them the resources about their case. It is completely confidential so there are no conflicts of interest. Clients must be less than 200% of Federal Poverty Guidelines. There was discussion about how the Bar could help EJW recruit attorneys to volunteer for Wyoming Free Legal Answers.

Ms. Hutchinson shared that a new program is the volunteer reference attorney program. This was launched at the Laramie County District Courthouse and also in Natrona County and takes place every first and third Thursday from 2 – 4 p.m. During those times there is a volunteer attorney available to help self-represented litigants with the court process. The volunteer does not give advice; he gives only legal information. She shared that typically 5 – 10 clients take advantage of this.

Ms. Dorsch shared that EJW also offers online classrooms with videos that explain how to represent yourself in court. She would like to expand on that and use these videos for more in-depth procedures. One problem they continue to see is clients not reading instructions simply because many have literacy barriers.

Formation of Bankruptcy Section

Brad Sweat, an attorney from Casper, joined the Board meeting to propose the formation of a Bankruptcy Section of the Bar. He shared that following the bankruptcy CLE at this year's Annual Meeting, there was an interest from both attorneys and judges in creating this section.

Commissioner Overfield made a motion to approve the formation of the Bankruptcy Section. Commissioner McCorkle seconded the motion. Commissioner Haderlie pointed out that there were problems in the proposed bylaws, so he is hopeful that the Board will not approve those. Executive Director Wilkinson offered to work with Mr. Sweat and other section representatives to clean up the bylaws and bring those back to the January meeting for Board approval. The motion carried unanimously.

CosmoLex

Executive Director Wilkinson introduced Erica Birstler from CosmoLex. Erica joined the call via Go-to-Meeting to provide a demonstration of CosmoLex, a cloud-based law office management software. After an extensive demo of the software, Board members asked questions regarding cloud security, data migration, contract obligations and more. Executive Director Wilkinson shared that she is sensitive to the Board's concerns about "endorsing" one company instead of another. As a result, she offered to also set up a demo with Clio, another cloud-based law office management software provider. She directed the Board's attention to the written proposal and agreement provided by CosmoLex and explained the difference between the 5% or 10% royalty (exclusive relationship).

Treasurer Graham shared that his firm is currently looking for law practice management software and there are many. He shared that he feels the Bar needs to get away from "endorsing" one particular company and offer multiple companies from which the members could choose. He suggested possibly foregoing the royalty that would be paid to the Bar and inquiring as to whether or not the monthly or annual fee paid by lawyers could be dropped.

Treasurer Graham made a motion to have Mark Gifford review the contract and move forward with the agreement with CosmoLex. Past President O'Connell seconded the motion. Treasurer Graham clarified that his motion would be for a non-exclusive agreement. He shared that the State Bar of Montana recently began offering Clio and MyCase. Again, he does not feel that we should limit ourselves to one product. Treasurer Graham reminded the Board that in addition to being able to offer our members a product/service that could benefit their practice, this company would also have a presence at our Annual Meeting and also provide CLE programs. President-Elect Jarosh agreed with Treasurer Graham about expanding the Bar's member benefits. The motion carried unanimously.

Executive Director Wilkinson asked for some direction regarding whether or not she should request that the agreement be revised to forego the royalty in lieu of decreased costs for the members. All were in agreement that she should.

Office of Bar Counsel Report

Attorney Discipline

Mark Gifford directed the Board's attention to his report in the meeting materials. He once again shared that he feels that suspension with probation remains a very valuable tool for attorneys. The Review & Oversight Committee (ROC) has ordered six private reprimands and one diversion agreement so far this year. There have been 120 complaints received so far this year.

Fee Dispute Resolutions

Mr. Gifford reminded the Board that the new Rules for Fee Arbitration went into effect October 1, 2016. As a result of the new rules, there is a new Fee Arbitration Committee appointed by the Supreme Court; now lawyers and non-lawyers oversee the program. He shared that the new rules offer much more flexibility and training for arbitrators.

Unauthorized Practice of Law (UPL)

Mr. Gifford shared that he only has on UPL matter and he has negotiated a cease and desist.

Clients' Security Fund (CSF)

Mr. Gifford reported that the Bar received a new claim against the lawyer who has cost the Bar a substantial amount of money – almost \$200,000 in claims. The Bar has paid out \$50,000 already but Mr. Gifford reported that the Bar will continue to pay these claims at more than \$10,000 per year. He reported that the Bar has a CD in the amount of approximately \$70,000 maturing this month, and this Board has already allocated those funds to CSF.

West Edge Collective Update

Executive Director Wilkinson reported that work is underway with West Edge Collective. She reminded the Board that the contract was effective October 11, 2016, and she has already had two meetings with West Edge Collective staff to make progress on the Bar's new website and membership database.

Guidelines for Approved Status of Financial Institutions Holding Lawyer Trust Accounts

Mark Gifford reminded the Board that Wyoming recently became the 47th state to have a trust account overdraft rule. According to the rule, the Wyoming State Bar must have agreements on file with every bank that holds a trust account for a Wyoming lawyer. He reported that out of 47 banks that our members have indicated on their license fee statements, the Bar has agreements in place with 42 of them. Mr. Gifford shared that we are making good progress on the remaining five. Mr. Gifford asked the Board to approve the Guidelines for Approval of Financial Institutions to Serve as Depository for Lawyer Trust Accounts.

Commissioner Edwards made a motion to approve the Guidelines for Approval of Financial Institutions to Serve as Depository for Lawyer Trust Accounts. Commissioner Thybo seconded the motion. The motion carried unanimously.

Expense Objection/Opt Out Notice to Membership

Mark Gifford shared that the Bar has traditionally published its budget in the December *Wyoming Lawyer*. With the implementation of the *Keller* policy, the Bar now has to publish a notice in conjunction with that letting our members know they can object and request a refund for any expense related to political or ideological activity the member feels is outside the Bar's core purpose. Mr. Gifford identified two areas that he thinks should be disclosed to the membership: 1) ABA-related expenses and 2) the membership dues to the Center for Legal Inclusiveness.

Mr. Gifford walked the Board through a pro forma calculation to show the dollar amount represented in the event these particular objections are received. He anticipates that we will resolve any objections. Mr. Gifford asked the Board for approval of the notice he proposes to publish in the magazine. The Bylaws of the Wyoming State Bar call out what the substance should be, but this is an additional informational piece.

Commissioner Edwards made a motion to approve the proposed notice. Commissioner Nash seconded the motion. The motion carried unanimously.

Pro Bono Report

Cathy Duncil, Pro Bono Coordinator, shared that the Bar participated in National Pro Bono Week the last week of October. She provided an update for the numerous activities the Bar sponsored that week.

Diversity & Inclusion Efforts

Dale Cottam, Wyoming Delegate to the American Bar Association (ABA), joined the meeting via teleconference. He provided an overview of the ABA. He shared that the ABA is really focusing on diversity and inclusion efforts within its own organizations; in fact there is an ABA Office of Diversity & Inclusion that is charged with coordinating efforts within all of the divisions and entities of the ABA. He shared that there are also various commissions that have specific diversity and inclusion goals – women, minority, LGBT, gender choice, etc. Throughout all of these, there is a common philosophy in the ABA, and it is Goal 3 of its strategic plan. Mr. Cottam shared that the main purpose is to eliminate bias and enhance diversity. All ABA entities were tasked with coming up with their own plan.

Mark Gifford shared with Mr. Cottam that the Board had been provided a copy of a portion of the ABA's Diversity & Inclusion Showcase. Mr. Cottam encouraged this Board to start with the Showcase and look at the plans that are available. He also recommended reaching out to an ABA member in one of the neighboring states who is involved with diversity and inclusion efforts. The goal would be to try to identify what has worked for other states in the initial steps with awareness and communication. Mark Gifford wondered if Mr. Cottam could contact Shane Vannatta, a former Bar President from Montana, to provide this Board with some resources.

ABA Model Rules of Professional Conduct 8.4(g) – Prohibition of Harassment and Discrimination by Lawyer

Dale Cottam also addressed the Board regarding a recent amendment to the ABA Model Rules of Professional Conduct, sometimes referred to as a “speech code for lawyers.” He provided some background regarding the vote on the floor of the ABA House of Delegates and commented that it was all much ado about nothing.

Clients’ Security Fund Committee Chair

Executive Director Wilkinson reminded the Board that it was responsible for appointing a chairperson to the Client’s Security Fund Committee each year. After discussion Treasurer Graham made a motion to appoint Charles L. Barnum as the Chair of the Clients’ Security Fund Committee. Commissioner Overfield seconded the motion. The motion carried unanimously.

Section Leadership Training

Commissioner Haderlie shared that one of the common themes at the Western States Bar Conference in San Diego was how to keep sections active. He reminded the Board that some of the Bar’s sections have been dormant for years. Commissioner Haderlie wants to put some sort of institutional mechanism in place to keep the momentum going. He is interested in establishing a section leadership committee apprised of section leaders and ask these folks to meet quarterly and report back to the Board of Officers & Commissioners so all Board members are knowledgeable about section activity.

Commissioner Haderlie wondered if we should have a one- or two-hour orientation for section leaders. He shared his concern that when lawyers initially get involved in sections, they are unaware of what a tremendous resource the Bar is. This training/orientation could be done in connection with the Wyoming Bar Leadership Institute.

Commissioner Haderlie shared that he and Executive Director Wilkinson have reviewed some section handbooks from other states.

Wyoming Bar Leadership Institute (WBLI)

Executive Director Wilkinson shared where the idea of WBLI came from. After discussion, Commissioner Nash suggested that this topic be discussed at our upcoming Strategic Planning session in June, to include possibly Section Leadership Training.

Jesse Fishman, President of the Young Lawyers Section, shared some thoughts on how to motivate committees more. She likes the idea of having an orientation for the full committees and shared that she thinks that would be effective.

Young Lawyers Section (YLS) Report

Jesse Fishman shared that her Executive Council has many good ideas. Ms. Fishman walked the Board through the activities the YLS has sponsored recently. She also reported that two Executive Council members are currently working with Executive Director Wilkinson to clean up their bylaws.

Ms. Fishman shared that the YLS tried to get the ABA Young Lawyers Division regional conference to Wyoming next year; however, they were too late. They are hoping to bring the conference to Wyoming in 2018.

Ms. Fishman reported that the Executive Council is interested in surveying its members to see what section members want. They are also focusing discussions on how they can sponsor events outside of Cheyenne. Executive Director Wilkinson expressed her concern that five of the seven members of the Executive Council are from Cheyenne. She hopes that next year we will do a better job of getting other young lawyers around the state involved.

Mark Gifford shared that the Wyoming Trial Lawyers Association (WTLA) sponsored a day long “nuts and bolts” presentation for young lawyers that was very impressive. Mr. Gifford encouraged the YLS to consider such a program for all young lawyers around the state. Mr. Gifford encouraged Ms. Fishman to reach out to Marcia Shanor, Executive Director of WTLA, to gain some insight.

Young Lawyers Section Expense Request for Attendance at 2017 YLD Mountain States Regional Summit

Blake Klinkner, member of the YLS Executive Council, joined the Board meeting. Mr. Klinkner shared that he and the other members of the YLS Executive Council have been working to get the YLD Regional Conference to Wyoming next year. New Mexico announced that it was hosting next year, so the Wyoming YLS Board would like to get the conference here in 2018.

Mr. Klinkner provided the history behind the YLD regional conference. The application he distributed shows a good break-down of what next year’s conference will provide.

The YLS Executive Council has requested supplemental funding to provide sponsorship funding for the 2017 YLD Mountain States Regional Summit in the amount of \$1,000. Beyond that, they are requesting \$1,750 for travel to New Mexico – to include mileage, vehicle, meals and lodging for the Board. Mr. Klinkner indicated that everybody on the Executive Council is interested in attending. He reported that there will be a scholarship for law students, so they are pushing for some Wyoming law students to attend.

Commissioner Haderlie asked if attendees must be ABA members. Mr. Klinkner clarified that you do not need to be a member of the ABA to attend the Summit. Commissioner Nash wondered if the Bar would get some recognition for the sponsorship. Mr. Klinkner shared that the Bar would be listed as a sponsor. He shared that last year for a \$500 sponsorship, Wyoming sponsored the keynote speaker.

Mr. Gifford expressed his concern about 10 people traveling on \$1,750 and asked Mr. Klinkner how that was possible. Mr. Klinkner shared that in the past the registration included meals and lodging.

Vice President Snyder made a motion to approve the request in the amount of \$3,000 to include the \$1,000 co-sponsorship and \$2,000 for travel expenses to the 2017 YLD Mountain

States Regional Summit. Commissioner Haderlie seconded the motion. Commissioner Nash asked where the money would come from. Treasurer Graham shared that this was not budgeted for; however, we could certainly allocate the funds. The motion carried unanimously.

President-Elect's Report

President-Elect Jarosh shared that he and President Masterson have talked in some detail about how nice it is on one hand for the Board members to have frank and open discussions by virtue of email discussions. On the other hand, President-Elect Jarosh cautioned that such communications could be viewed in a very different light if the Bar ever got caught up in litigation. President-Elect Jarosh asked all Board members to be cognizant of that. We all know worst case scenarios and we don't want anything bad to happen.

Mark Gifford shared that the standard we should apply is to comport ourselves in the same way we would advise our clients regarding e-mail communications.

Vice President's Report

Vice President Snyder shared that she spoke at the New Admittee Ceremony and thoroughly enjoyed it. She encouraged all to attend Judge Donnell's retirement party.

Executive Director's Report

Executive Director Wilkinson directed the Board's attention to the Annual Meeting Wrap-Up Report she prepares following each Annual Meeting. She shared that this document is helpful as we begin planning future events. She also directed the Board's attention to the results of the Annual Meeting online evaluation.

Executive Director Wilkinson shared that she had been approached by Brenda Bland, the Director of Sustainability & Services for Wyoming Public Media. Ms. Bland had originally reached out to Past President O'Connell regarding partnering with the Bar to bring Nina Totenberg to Wyoming. Ms. Totenberg is NPR's award-winning legal affairs correspondent. Executive Director Wilkinson shared that the cost would be \$30,000+ to bring her to Wyoming. Executive Director Wilkinson discussed the proposed three-way partnership between the Bar, Wyoming Public Media and a donor couple that lives in Jackson. Executive Director Wilkinson noted that this would not take place until July/August of 2018; therefore, we would have time to budget for it in the next fiscal year. She shared that she was simply floating the idea to gauge the Board's interest and is concerned about how much it would benefit members of the Wyoming State Bar for a fairly high price tag.

Commissioner Nash shared her concern about bringing Nina Totenberg to Wyoming. Past President O'Connell shared that when she spoke with Ms. Bland, she learned that Wyoming Public Media is interested in partnering with other organizations and looking for opportunities to bring organizations together with Wyoming Public Radio. Past President O'Connell felt that the Bar would be a natural fit for a legal correspondent. She feels it is worth exploring. Past President O'Connell pointed out that the Bar convention will be in southeast Wyoming three years in a row, so this would be another opportunity in another area

of the state. All were in agreement that Executive Director Wilkinson should pursue more information but make no commitments at this time.

Board/Committee Liaison Reports

Bench-Bar Relations Committee

Treasurer Graham encouraged the Board members to share any ideas they had for this committee to embark upon.

Civil Pattern Jury Instructions Committee

President-Elect Jarosh shared that this committee meets regularly. There are currently 8 – 10 instructions they are working on.

Equal Justice Wyoming

President-Elect Jarosh shared that the EJW board was unable to schedule a retreat this year; however, they are scheduling one for next year. He has a one-year assignment as the Board liaison to EJW, so he is going to continue. He shared that it is a great group and he cannot express enough how comfortable everyone should be having Angie Dorsch at the helm of this organization.

Clients' Security Fund Committee

Treasurer Graham thanked the Board for ratifying the appointment of the CSF Chairperson.

Criminal Pattern Jury Instructions Committee

Vice President Snyder reported that this committee is currently working through the child abuse statutes.

Diversity & Inclusion Committee

Commissioner Thybo shared that she, Executive Director Wilkinson, and Mark Gifford had a good conference call with the Bar's ABA Delegates to discuss these issues. She also had lunch with Dale Cottam, Wyoming Delegate to the ABA, in Green River and he has many ideas of his own.

Juvenile Pattern Jury Instructions Committee

Commissioner Overfield shared that new instructions were published earlier this year, so there is currently no activity with this committee.

Law School Liaison Committee

Commissioner McCorkle shared that this committee has not met since the in-person meeting earlier in the year. She asked Greg Dyekman, Committee Chair, the status of some of the University of Wyoming College of Law clinics and what is going on. She is very interested in seeing if there is anything the committee can do to support the clinics. She recommended meeting with the Dean of the law school to see what he needs in terms of support.

Legislative Developments Committee

Past President O'Connell reported that this committee has been tracking the issue of sales tax on legal services. Treasurer Graham attended the Joint Judiciary Committee meeting in Buffalo. He was pleased to report the bill died very quickly.

Permanent Rules Advisory Committee – Civil Division

Commissioner Edwards shared that after about a decade of work, the new Wyoming Rules of Civil Procedure are about to go to the Supreme Court. After member comment, it will most likely be approved. Commissioner Edwards hopes they will be adopted in February 2017.

President-Elect Jarosh adjourned the meeting at 5:40 p.m.

Minutes Submitted by:

Sharon Wilkinson
Executive Director