

Wyoming State Bar Board of Officers & Commissioners Meeting

November 3, 2017
Wyoming State Bar
Cheyenne, Wyoming

- In Attendance:** Robert C. Jarosh, President; Weston T. Graham, President-Elect; Erika M. Nash, Vice President (by phone); J. Kenneth Barbe, Treasurer; Melinda S. McCorkle, First Judicial District Commissioner; Kelly M. Neville, 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; James L. Edwards, Sixth Judicial District Commissioner; Charles S. Chapin, Seventh Judicial District Commissioner; Nathaniel S. Hibben, Eighth Judicial District Commissioner; James T. Whiting, Ninth Judicial District Commissioner; Holli J. Welch, Young Lawyers Section President; Sharon Wilkinson, Executive Director; Mark Gifford, Bar Counsel; Cathy Duncil, Admissions Director; Marie Ellis, CLE Director; Shannon Howshar, Assistant to Bar Counsel; and Caitlin Casner, Administrative Assistant
- Absent:** John A. Masterson, Immediate Past President
- Guests:** Angie M. Dorsch, Executive Director of Equal Justice Wyoming
Hon. Richard L. Lavery, Third Judicial District Court
Hon. Joseph B. Bluemel, Third Judicial District Court
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President Robert C. Jarosh called the meeting to order at 12:30 p.m. on Friday, November 3, 2017.

Approval of Agenda

President Jarosh asked if there were any additions to the agenda. There being none, Commissioner Chapin made a motion to approve the agenda. Commissioner Kath seconded the motion. The motion carried unanimously.

Approval of Minutes

Commissioner Edwards made a motion to approve both the August 4, 2017, and the September 15, 2017, meeting minutes. Commissioner Neville seconded the motion. The motion carried unanimously.

Executive Committee Meeting Minutes

President Jarosh asked if anybody had questions about any of the Executive Committee meeting minutes. There were no questions.

Treasurer's Report

Treasurer Barbe reported that the financial statements before the Board are reflective of our last fiscal year (2016/2017). He directed the Board's attention to the memo that Executive Director Wilkinson and Cathy Duncil, Bookkeeper, prepared to explain the outcome of our fiscal year. He noted that while we projected a net income of approximately \$6,000, we ended the year with a net income of \$4,500. Treasurer Barbe shared that once our audit is complete, the Bar will actually show a loss for last fiscal year due to depreciation expense. He shared some trends the Bar has experienced in relation to license fees and annual meeting in the last few years.

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

Board of Law Examiners Audit Report

Executive Director Wilkinson shared that the Wyoming Department of Audit was tasked by the Legislature to audit all licensing boards. She and other staff members were interviewed by Department of Audit representatives in order for them to get up to speed on all aspects of the Board of Law Examiners (BLE). Executive Director Wilkinson directed the Board's attention to the written report and shared that the auditors found that all funds were allocated appropriately. She mentioned that she and the BLE have already taken steps to implement some of the audit report recommendations (i.e. a Memorandum of Understanding with the Supreme Court, written policies and procedures, etc.)

Commissioner Neville asked if this audit would take place annually. Executive Director Wilkinson shared that she did not think so considering it came as a result of one licensing board misappropriating funds in some fashion, which prompted the Legislature to demand an audit of all licensing boards. She felt it was a one-time thing.

While on the topic of licensing boards, Mark Gifford, Bar Counsel, shared that the Bar is proposing a change in legislation that would remove the term limits for the Board of Law Examiners. The current volunteer members of the BLE feel strongly that it takes a few years to fully comprehend the grading process for the Uniform Bar Exam and each member of the BLE wishes to serve longer. He reported that the Supreme Court has endorsed this change and the Bar has found legislators to sponsor the proposed statutory amendment.

In addition, Mr. Gifford reported that in an effort to get convicts back to work quickly, the Director of the Wyoming Department of Corrections is proposing legislation that would severely restrict requesting criminal history on applications for licensure. He shared that this would impact the character and fitness process greatly. He and Executive Director Wilkinson are working closely with members of the BLE and the Character & Fitness Committee to address the proposed legislation.

Mandatory Continuing Legal Education

Marie Ellis, CLE Director, reported that CLE status statements will be distributed to the membership on November 15th. Records indicate that over 1,000 members still need to fulfill their requirements for 2017.

Office of Bar Counsel

Attorney Discipline – Mark Gifford provided an update on recent discipline handed down by either the Supreme Court or the Review & Oversight Committee and noted that two matters are currently pending at the Court.

Fee Arbitration – Mr. Gifford shared that the new Rules for Fee Arbitration have been in effect for one year, and this process is much improved and running smoothly.

Unauthorized Practice of Law – Mr. Gifford reported that there are currently two matters under investigation.

Client Protection Fund – Mr. Gifford reminded the Board that a lawyer abandoned his practice in Casper earlier this year. As a result of the high number of complaints, the Supreme Court immediately suspended the lawyer. Mr. Gifford shared that several law firms in Casper stepped up to help the clients that were left behind. He reported that the lawyer fortunately has malpractice insurance and he has reimbursed his clients. Mr. Gifford reported that this attorney was conditionally admitted to the Bar; therefore, the Court terminated his membership as a result of his failure to abide by the conditional admission requirements. He reported that he does not anticipate paying any Client Protection Fund claims on behalf of this lawyer.

Mr. Gifford shared that the Bar continues to pay claims on behalf of a lawyer in Riverton who passed away in 2016. He reminded the Board that the former rules only allowed claims to be paid in the amount of \$10,000 per claim per calendar year; however, the current rules allow a payout of \$15,000 and authorize the Board of Officers & Commissioners to pay more. Mr. Gifford requested that the Board consider a payoff in the amount of \$15,900 for one claimant.

Commissioner Edwards made a motion to authorize the Client Protection Fund Committee to pay off this claimant in the amount of \$15,900. Commissioner Chapin seconded the motion. The motion carried unanimously.

Commissioner Edwards inquired as to whether or not the rules allowed Mr. Gifford to negotiate a deal to offer a specific amount in order to make the claim go away. Mr. Gifford clarified that it is not allowed in the rules.

Mr. Gifford also made a request to transfer \$45,000 from unrestricted funds to the Client Protection Fund account.

Commissioner Neville made a motion to transfer \$45,000 from unrestricted funds into the Client Protection Fund checking account. Commissioner Kisling seconded the motion. The motion carried unanimously.

Mr. Gifford shared that the current Rules of Disciplinary Procedure went into effect July 1, 2015. He reported that as he and the Board of Professional Responsibility (BPR) have tried cases under these rules, they have identified some areas for improvement. Minor proposed amendments were distributed for member comment, but no comments were received. He reported that the Court now has the amended Rules of Disciplinary Procedure and he and the BPR have asked the Court to adopt them.

Investment Plan/Meetings with Financial Advisors

President-Elect Graham directed the Board's attention to the memo that Mark Gifford provided. President-Elect Graham provided an overview of the Bar's current investments. He mentioned that, for the most part, the Board has some authority to do more than it is doing right now—investing in CDs. He reminded the Board that this was a discussion at Strategic Planning and one resulting objective is to develop an investment policy for the Bar. President-Elect Graham shared that the Bar wants to avoid risk due to the fact that a large percentage of its revenue comes from members' license fees. He shared that once this became a goal in the Strategic Plan, he and the staff started meeting with experts who could advise the Bar. The information provided is a framework for the Board to determine how much it feels comfortable investing in investment strategies other than CDs.

President-Elect Graham gave the financial advisors a range of \$500,000 - \$750,000 to get a feel for what our rate of return would be.

Mark Gifford felt that it comes down to two questions—how much is the Board willing to commit to an investment portfolio and for how long? He reminded the Board that we do have some major expenses ahead—building renovation and technological infrastructure upgrade. Mr. Gifford also reminded the Board that, for the first time, the Board approved a deficit budget for the current fiscal year in order to spend down some of the accumulated reserves.

President Jarosh asked if the Board decided to commit to investments, would we use the funds that are currently tied up in CDs? President-Elect Graham shared that we could use those funds when they became available.

Treasurer Barbe felt strongly that we should have a plan in place so we know what we're raising money for. President-Elect Graham agreed with Treasurer Barbe. President-Elect Graham reminded the Board that the Bar has guaranteed revenues each year of over \$1 million through license fees. He shared that the Bar has been running at a profit every year. In the next ten years, President-Elect Graham sees the Bar housed in the current building but wondered about the ten years after that. He thinks at the very least, the Bar should invest \$500,000 for a 10-year time period. He would recommend that those funds be put aside and earmarked or restricted for a new building, or whatever big infrastructure project is next. He sees staff costs increasing slowly.

President-Elect Graham shared that he is not a fan of increasing license fees. He would rather invest some money and perhaps use earnings from investments as a license fee stabilization fund.

Commissioner Chapin made a motion to set aside \$750,000 to invest for up to 10 years. Treasurer Barbe seconded the motion. President Jarosh asked if we could provide those parameters at this time to the financial advisors. Commissioner Edwards made an amendment to the motion to share the parameters with the financial advisors and ask for proposals on transactional fees versus annual fees. The motion carried unanimously.

Equal Justice Wyoming Annual Report

Angie Dorsch, Executive Director of Equal Justice Wyoming (EJW), joined the Board meeting to share some highlights of her organization's annual report. Ms. Dorsch outlined the many programs and services offered by EJW and mentioned that usage by the public has increased. She reported that EJW awarded \$924,000 in grant funds last year. Ms. Dorsch announced that EJW has launched a pilot mediation project in Cheyenne to begin in January. This will entail paying a panel of attorneys to act as mediators. She reported that this will help with mandatory mediations around the state.

At President Jarosh's request, Ms. Dorsch explained the difference between Equal Justice Wyoming and the Equal Justice Wyoming Foundation, which is a 501(c)(3) organization. She thanked the Board for the financial support of Liberty Day. She reported that the Foundation has an RFP out to award grants from the Bank of America (BOA) settlement. This is a one-time award of \$880,000 from BOA.

Ratification of Young Lawyers Section Bylaws

Executive Director Wilkinson shared that prior to drafting the uniform section bylaws, she was recruiting leadership for the Young Lawyer Section (YLS). There was enough interest for each position on the YLS Executive Council to fill each vacancy, and one of the positions was Vice President. She shared that she neglected to notice that the uniform section bylaws that were approved in August removed the Vice President. Executive Director Wilkinson reported that the YLS leadership was adamant that the current Vice President remain in office for the remainder of her term, which expires September 2018. She shared that this issue was brought before the Executive Committee and it approved the request. Executive Director Wilkinson requested ratification of the Executive Committee's decision from the full Board.

Mark Gifford asked if the Board could simply waive the current bylaws so amendments do not have to be made. President Jarosh shared that the primary reason the Executive Committee made the decision to approve the request was due to the fact that Amy Iberlin, Vice President, had stepped up to fill a vacancy.

Commissioner Kath made a motion to waive the Young Lawyers Section Bylaws with respect to the officers so that Amy Iberlin could continue to serve as the Vice Chair for the current year. Commissioner McCorkle seconded the motion. The motion carried unanimously.

Strategic Plan

Executive Director Wilkinson reported that she is making progress on the Strategic Plan. She is in the process of gathering content for a member benefits brochure to increase awareness amongst the membership (Goal 1). She also reported that of the 13 practice sections, 10 have leadership in place and are meeting on a regular basis (Goal 1). She reported that the Administrative Law Section, the Elder Law Section and the Taxation Section have no leadership in place. She reminded the Board that the uniform section bylaws require her to notify the Board if any section dips below 25 members.

New Website/Membership Database Update

Executive Director Wilkinson reported that West Edge Collective is making great progress on the website, and the plan is to launch the new site in early December. They have also started designing the new membership database, which is Phase 2 of the project and will not be completed until next year.

ABA YLD Division Annual Meeting Report

Young Lawyers Section President Holli Welch reported that she, Blake Klinkner and Sarah Kellogg traveled to New York City for the ABA's Annual Meeting—specifically the Young Lawyers Division portion. Ms. Welch shared that there was a significant amount of networking and she gained some great ideas on CLE programs and other programs that she would like to implement in Wyoming. She also shared that they were able to garner much support for Wyoming hosting the Mountain West Regional Summit in Jackson in 2018. Ms. Welch shared that if Wyoming hosts the summit, the other western states will contribute financially to the programming. She shared that the proposal was submitted to the ABA this week. She reported that if the proposal is not approved by the ABA, the YLS leadership will make a request to the Board of Officers & Commissioners to simply host a Wyoming specific conference.

Bar Building Renovation

Executive Director Wilkinson reminded the Board of Goal 3 in the Strategic Plan that dealt with a possible physical space remodel of the Bar building. She reported that a few things have prompted the staff to move forward with the renovations—security concerns, better use of space and additional office space. She shared that she has been in contact with the original architect of the building and pointed the Board's direction to the architectural drawing in the notebook. The drawings reflect the following changes:

1. Increased security for the front office and receptionist—glass would be installed all around the receptionist's desk and locking doors would be installed on either side of the desk so that visitors can only access the front office until and unless they are given access to other areas of the building.
2. Better use of space/additional office—now that the Bar has gone paperless with the A – Z attorney files, there is no longer a use for the rolling filing system. That system would be removed, both file rooms would be located where the filing system currently is, current Office of Bar Counsel offices and Bar Counsel storage room would be shifted down the hall a bit, and an office would be added.

3. Expand conference room—the north wall in the conference room would be removed so that we could utilize the back hallway that is never used. This would provide added space needed for Board meetings and disciplinary hearings.

Executive Director Wilkinson shared that she received preliminary approval from the Executive Committee to at least move forward with a contract with the architect as well as the builder. She directed the Board's attention to the financial proposal in the amount of \$195,500 in the Board notebook. Mark Gifford shared that he was hoping to receive a proposed contract that matched the financial proposal; however, we do not have a contract from the builder yet. He shared that the contracts will be standard AIA and ACG contracts.

Commissioner Hibben inquired as to whether or not the staff was comfortable with the modifications. Executive Director Wilkinson reported that the staff was in agreement about the renovations.

President-Elect Graham shared that the Bar has a building maintenance fund of \$88,000; he wondered if we wanted to use that. Mr. Gifford clarified that the building maintenance fund is just a restricted fund and not real cash.

Mark Gifford requested approval to move forward at this price and give the Executive Committee authority to approve the contracts.

Commissioner Kisling made a motion to move forward with the project and give the Executive Committee the authority to approve the contracts. President-Elect Graham seconded the motion. The motion carried unanimously.

President's Report

President Jarosh shared that he and Executive Director Wilkinson are working to fill the upcoming vacancies on the Supreme Court-appointed boards/committees. He shared that he made all of his recommendations and the Court approved them. He feels that the process is moving along nicely and they are almost done.

President Jarosh reported that Chief Justice Roberts was invited to be the keynote speaker at the 2018 Annual Meeting; however, he declined. President Jarosh shared that Justice Kennedy has been invited.

Presidents-Elect Report

President-Elect Graham reported that the Board had budgeted one year ago to host a Wyoming Bar Leadership Institute (BLI). He shared that he met with Executive Director Wilkinson, Mark Gifford, and Cathy Duncil this morning to discuss this. He reported that they are tentatively planning to host BLI in Casper in April 2018. The goal is to provide some leadership training to the section leaders and the county bar presidents.

President-Elect Graham reported that Executive Director Wilkinson has signed a contract with Jackson Lake Lodge for the 2019 Annual Meeting.

Vice President's Report

Vice President Nash apologized for not being able to attend the meeting in person. She welcomed all of the new Commissioners and shared that she looks forward to meeting them all.

Executive Director's Report

Annual Meeting Wrap-Up—Executive Director Wilkinson directed the Board's attention to the Wrap-Up Report in the notebook. She mentioned that attendance was down at this year's Annual Meeting. One factor that impacted this was the Court's removal of the rule that required all new admittees to attend Pathways to Professional Practice in their first year. She shared that typically between 80 – 90 lawyers would attend that free program and oftentimes register for other programs that week. She reported that the total attendance was 321 and there were 61 members who participated via live stream.

Health Insurance—Executive Director Wilkinson reported that while the Board had approved a projected 5% increase to Blue Cross/Blue Shield premiums for 2018, she recently learned that the increase will actually be 14%. She discussed this with the Executive Committee earlier in the week, and it was agreed to continue on with the current plan. The increase will result in the Bar exceeding its budgeted amount at the end of the fiscal year by approximately \$2,000.

Update on College Business Park Concerns—Executive Director Wilkinson reminded the Board that she and Mark Gifford had reported some problems with the management and leadership of the College Business Park Owners Association where the office is housed during the August meeting. She reminded the Board that it had given Mr. Gifford authority to take appropriate action subject to the Executive Committee's approval. Mr. Gifford reported that he recently did the legal work to amend the covenants and the bylaws of the owner's association. He was happy to report that the former president resigned and Larry Sutherland, a well-respected real estate agent and owner of #1 Properties in Cheyenne, stepped up as temporary president. He shared that things are much improved and functioning much better under new leadership.

Young Lawyers Section Report

Holli Welch reported that the terms of the new YLS leadership switched over at the close of the Annual Meeting. She reported that the main project the leadership has been working on is the Mountain West Regional Summit proposal. Ms. Welch reported that the section did sponsor some CLE programs at the Annual Meeting, and it recently hosted one on marijuana edibles. She reported that the section is planning to do a "Lunch with a Judge" program that will be discussed more at a future meeting. Ms. Welch shared that her big goal is to implement the mentorship program that was previously developed by the Bar but fell through. She reported that the YLS leadership is trying to revise and implement that on a voluntary basis. She reminded the Board that the mentoring program falls within the YLS Strategic Plan as well as the Bar's Strategic Plan.

Board/Committee Liaison Reports

Bench-Bar Relations Committee—nothing to report.

Civil Pattern Jury Instructions Committee—President Jarosh reported that Commissioner McCorkle will be replacing him as the Liaison of this Committee.

Legislative Developments Committee—President Jarosh discussed some of the legislative issues that will impact the Bar. Executive Director Wilkinson shared that there is a bill that would impose sales tax on legal services. She reported that President Jarosh and Devon O'Connell will be attending a Joint Revenue Committee meeting on Tuesday, November 7, 2017. Executive Director Wilkinson shared that she has talking points available about this issue and mentioned that, depending on the outcome of Tuesday's meeting, she may be sharing the talking points with this Board and encouraging them to contact their legislators.

Criminal Pattern Jury Instructions Committee—nothing to report.

Juvenile Pattern Jury Instructions Committee—President Jarosh shared that former Commissioner Bobbi Overfield served as the liaison to this committee. He asked if anyone on this Board has any experience with juvenile work and would be willing to serve. Commissioner Whiting offered to serve as the liaison.

Diversity & Inclusion Committee—Executive Director Wilkinson reported that there are several terms expiring on this committee. She has asked Maribeth Galvan if she is willing to continue serving as committee chair, but she has not yet heard back.

Law School Liaison Committee—nothing to report.

Permanent Rules Advisory Committee - Civil Division—Commissioner Edwards reported that there was a committee meeting this morning. He reminded the Board that the new rules were implemented in March, and all feel that things are running smoothly under the new rules. He reported that there was much discussion about the peremptory challenge rule and those discussions will continue. The main issue is related to the cost of bringing other judges from out-of-town. Also discussed was the fact that there is no mention of timelines for mediations in the rules. Commissioner Edwards shared that rule changes were suggested to allow the District Judges to make that part of their scheduling order.

Bar's Role in Administration of Justice Issues

President Jarosh welcomed Judge Lavery and Judge Bluemel to the meeting and thanked them for being willing to attend. Executive Director Wilkinson reminded the Board that there was significant discussion during Strategic Planning about the members' comments in the Bar Member Survey results relating to the administration of justice (i.e. judges ruling in a timely matter, e-filing in District Courts, judicial selection, etc.) She reminded the Board that Goal 2 of the Strategic Plan is to explore the Bar's appropriate advocacy role in these administration of justice issues. She reported that she had shared the comments pertaining to this issue with

Judge Lavery and Judge Bluemel, both of whom are past Bar presidents, in preparation for this meeting.

Judge Bluemel touched upon issues surrounding who is responsible for what in the courts, such as WiFi. He shared that there is a law on the books requiring counties to provide facilities for District Courts because they are constitutional courts with a locally elected Clerk. The Circuit Courts exist because of an act of the Legislature. The Circuit Court Clerks are employed by the State. He mentioned that because of those differences, things are handled very differently between each county; however, there is currently a bill in the Legislature to help clarify this. For these reasons, he shared that there will likely never be consistency throughout the state, which may be causing some frustration amongst lawyers.

In regard to judicial selection, Judge Lavery shared that the Bar could be very helpful in recruiting quality judges. He shared his concern that county bars are an important body and unfortunately those are dying off. Those are critical to recognizing the potential in some lawyers.

Mark Gifford shared that he thinks there is a qualitative difference between judges who are doing their best to stay on top of things and those judges who have stopped performing. He shared that his personal take is that the Commission on Judicial Conduct and Ethics is not an effective oversight group due in large part to the fact that it requires a verified complaint be filed before an investigation takes place. Mr. Gifford is certain very few lawyers are willing to do that so the problems go unreported. He asked if either of the judges had any suggestions. Judge Bluemel shared that the District Court judges have adopted performance standards, but mentioned that imposing those standards on all judges is difficult.

Executive Director Wilkinson inquired as to whether or not lawyers were aware of these performance standards. She thought that perhaps educating the membership about these standards would be beneficial.

Judge Bluemel shared that he thinks the Bar could make an impact with judicial selection. If lawyers are dissatisfied with the current judges, he would recommend that lawyers approach colleagues they think would be effective on the bench and encourage them to express interest. If they are not interested, find out why and determine if that roadblock can be eliminated.

Both judges shared informal results of a caseload study that indicates more District Court judges are needed around the state.

Commissioner McCorkle wondered why the Bar and the judiciary couldn't work together to approach the Legislature about this problem and make a plea for more District Court judges.

Judge Lavery agreed that while that sounded like an effective plan, it is more complicated than that. He shared that the First Judicial District is a perfect example—the Court, the Board of Judicial Policy & Administration, Legislature and Governor all support and agree to fund an

additional judge in Cheyenne. Then, the county must support the judge by providing adequate space for the new judge and staff, which oftentimes means new construction that a county cannot always afford. Laramie County has agreed to fund and construct the needed space but it takes time. He noted that the whole process can take years because of the Judicial, Executive and County approval, funding and construction required.

After much discussion, it was agreed that educating lawyers about the myriad of challenges faced by members of the judiciary would be beneficial.

Judicial Advisory Poll

Executive Director Wilkinson shared that she was approached by a District Court judge to discuss the possibility of restructuring the poll. She shared that the judge's concern is how the media reports the results of the poll. While each judge is evaluated by a different population, the media turns the results into a competition and reports that "Judge A is a better judge than Judge B." As a result of this, Executive Director Wilkinson contacted the Wyoming Survey & Analysis Center that conducts the poll to discuss this with the experts. She shared that the response she received indicates that the poll is statistically sound and they are unaware of how to restructure the poll.

Executive Director Wilkinson reminded the Board that the main purpose of the poll is to educate the public about the judges' performance before going to the polls to vote on the judges' retention. A secondary purpose would be to hopefully provide useful feedback to judges to help them improve their performance on the bench. She reminded the Board that the Bar has conducted the poll since 1977; however, it is not mandated anywhere that the Bar conduct the poll.

Judge Lavery shared that he is not opposed to the survey and understands its importance to the membership, but he wishes lawyers would provide more constructive comments to help judges improve.

Holli Welch shared that she is in favor of continuing the poll simply because without it, the public would receive no information whatsoever.

Judge Bluemel agreed with Judge Lavery—if he received constructive comments as opposed to destructive comments, it would help him take those into consideration to improve things. He shared that he thinks the poll is important. While he is aware of a few judges who have not been retained, he does not believe the poll was the cause of that action.

It was agreed that there was no need to restructure the poll or discontinue it.

President Jarosh adjourned the meeting at 5:53 p.m.

Minutes Submitted by:

Sharon Wilkinson
Executive Director