

Wyoming State Bar Board of Officers & Commissioners Meeting

November 16, 2018

Wyoming State Bar

Cheyenne, Wyoming

In Attendance: Weston T. Graham, President; Nathaniel S. Hibben, President-Elect; Billie LM Addleman, Vice President; J. Kenneth Barbe, Treasurer; Robert C. Jarosh, Immediate Past President; 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 (by phone); R. Scott Kath, Fifth Judicial District Commissioner; James L. Edwards, Sixth Judicial District Commissioner; Shawn G. Wilde, Eighth Judicial District Commissioner; James T. Whiting, Ninth Judicial District Commissioner (by phone); Sharon Wilkinson, Executive Director; Mark W. Gifford, Bar Counsel; Cathy Duncil, Admissions Director; Brandi Robinson, Lawyer Referral Service Coordinator; Shannon Howshar, Assistant to Bar Counsel and Jennifer Duncan, Administrative Assistant

Absent: Charles S. Chapin, Seventh Judicial District Commissioner and Rebecca S. Wright, Young Lawyers Section Chair

Guests: Senator Affie B. Ellis; Stuart Day, Chair of Equal Justice Wyoming Board; Walter Eggers, Chair of Equal Justice Wyoming Foundation Board; Angie M. Dorsch, Executive Director of Equal Justice Wyoming and Equal Justice Wyoming Foundation; Jonny Law, Flood Marketing and Todd Sexton, Identillect

President Weston Graham called the meeting to order at 12:33 p.m. on Friday, November 16, 2018.

Approval of Agenda

Executive Director Sharon Wilkinson requested that an item be included on the agenda so the full Board could ratify the Executive Committee's decision to eliminate the funding to the Equal Justice Wyoming Foundation for the Liberty Day program. She shared that this is necessary because while there was much discussion and a decision made at the August meeting in Thermopolis, there was no formal action reflected in the minutes. Executive Director Wilkinson also shared that Jonny Law from Flood Marketing was coming at 3:00 p.m. instead of 3:30 p.m. and Todd Titus from AdBay was not able to attend the meeting so she would be making his presentation.

Commissioner Kath made a motion to approve the agenda as amended. Commissioner Edwards seconded the motion. The motion carried unanimously.

Approval of Meeting Minutes

Commissioner Kath requested a change to the September 21, 2018, meeting minutes to reflect that he indeed was in attendance but by phone. Executive Director Wilkinson apologized for the error and indicated she would make the correction.

Commissioner McCorkle made a motion to approve the September meeting minutes as amended. Commissioner Thybo seconded the motion. The motion carried unanimously.

Ratification of Liberty Day Funding Elimination

Executive Director Wilkinson explained that while a motion was made by President Graham at the August meeting to eliminate the funding for Liberty Day, that motion was combined with another and ultimately withdrawn. As a result, there is no record in the August minutes of the Board's decision not to fund Liberty Day. Executive Director Wilkinson brought this to the Executive Committee's attention and it made a unanimous decision to eliminate the funding. She requested that the full Board ratify the decision of the Executive Committee in accordance with the bylaws.

Commissioner Edwards made a motion to ratify the Executive Committee's decision to eliminate the funding for Liberty Day. Commissioner McCorkle seconded the motion. The motion carried unanimously.

Executive Committee Meeting Minutes

President Graham encouraged Board members to ask any questions about the minutes of the Executive Committee.

Treasurer's Report

Treasurer Barbe reported that Executive Director Wilkinson and Cathy Duncil, Bookkeeper, provided a summary of the last fiscal year to cover the highlights.

In regard to the current fiscal year, Treasurer Barbe shared that we are at 35% of our projected revenue for the year, so we are on track. Executive Director Wilkinson mentioned that there are still over 1,500 members who have not yet paid their license fees, which are due November 30, 2018. Treasurer Barbe mentioned that on the expense side, we should be a bit over 8% of our budget this time of year.

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

Admissions

Cathy Duncil, Admissions Director, reported that there are 26 applicants signed up to take the February 2019 bar exam. She reported that the Character & Fitness Committee has two hearings scheduled next month. Mark Gifford reminded the Board that the character and fitness process was overhauled a few years ago, and he and Ms. Duncil are in agreement that it is working very well. The new process gives more due process to the applicants and the

Committee functions as a hearing panel. Mr. Gifford commended the Character & Fitness Committee and reported that it is a very high-functioning committee.

Mandatory CLE

Executive Director Wilkinson reported that in accordance with the CLE Rules, CLE compliance reports were distributed November 15, 2018.

Office of Bar Counsel

Mark Gifford reported that he continues to be extremely busy with attorney discipline and shared that he has an unusually high number of cases in the formal charge stage. There are currently six formal charges pending; however, he is hoping three of those will be resolved soon. He shared that two recommendations for discipline are currently pending at the Supreme Court. He shared that the Board of Professional Responsibility will have a week-long hearing in Casper in January as well as a three-day hearing in Jackson in May.

Mr. Gifford announced that there will be some proposed changes to the Rules of Professional Conduct that will go before this Board at the January 2019 meeting. He shared that there will also be proposed changes to the Rules of Disciplinary Procedure. One of the changes being proposed is an increase in the size of the Board of Professional Responsibility (BPR) in order to allow for smaller hearing panels. He explained that it is difficult to schedule all seven members of the BPR for a multiple-day hearing. He feels that by expanding the size to nine members (six lawyers and three non-lawyers), and providing for three-person hearing panels, this will facilitate scheduling of disciplinary hearings.

In regard to the Unauthorized Practice of Law (UPL), Mr. Gifford reported that he has recently processed three consent decrees and there is a fairly significant case looming in western Wyoming.

Mr. Gifford reported that we continue to pay Client Protection Fund claims relating to a lawyer who stole money from his clients years ago. Those are paid at a rate of \$15,000 per year per claim. Three of those claims will be paid in full this fiscal year. For the benefit of the new Board members, Executive Director Wilkinson reminded the Board that it has the authority to pay claimants in excess of the \$15,000 limit if/when those requests are made.

President Graham shared that he would like to see a long-term funding discussion about the Client Protection Fund in the future.

Electronic Data Policy

Executive Director Wilkinson reminded the Board about the discussion during the August meeting regarding sharing the Bar's data. She referenced the proposed policy that was included in the Board notebook.

After much discussion, Commissioner Whiting made a motion to approve the proposed policy. Commissioner Kath seconded the motion. The motion carried unanimously.

Proposal to Create a Federal Indian and Tribal Law Section

Senator Affie B. Ellis joined the Board meeting to recommend that the Board create a Federal Indian and Tribal Law Section of the Bar. She mentioned that many of the firms in the Rocky Mountain West have a focus on these issues. Her purpose is to engage people who are interested in federal Indian matters and tribal law matters.

Senator Ellis shared that she is personally invested in this cause, and she would remain active and ensure there was adequate section activity and membership.

Mark Gifford shared that he was impressed with the work Senator Ellis put into this. He reported that New Mexico is an integrated bar with a large Indian Law Section. He shared his view that anything the Bar could do to support this would be beneficial for not only Wyoming lawyers but also members of the judiciary.

Commissioner Whiting made a motion to approve Senator Ellis's proposal to form a Federal Indian and Tribal Law Section of the Bar. Treasurer Barbe seconded. Commissioner Wilde asked what would need to be done to set up a new section. Executive Director Wilkinson explained the process according to the Bar's bylaws. The motion carried unanimously.

Equal Justice Wyoming (EJW)/Equal Justice Wyoming Foundation (EJWF) Update

Stuart Day, Chair of the Equal Justice Wyoming Board; Angie Dorsch, Executive Director of both Equal Justice Wyoming and the Equal Justice Wyoming Foundation; and Walter Eggers, Chair of the Equal Justice Wyoming Foundation, joined the meeting to provide information about both entities.

Mr. Day shared that EJW is partially funded by the \$10 civil case filing fees. Those funds are housed in a "special revenue account" and authority to spend those funds must be granted by the Joint Appropriations Committee. Mr. Day shared that he thinks it is important to maintain some reserves in the account given the potential changes in funding from year to year. He reported that EJW is currently reaching out in an effort to identify additional funding sources in order to provide pro bono services across the state.

Mr. Day reported that EJW's funding from civil case filing fees is down from \$1.5 million to approximately \$1.1 million. He shared that if this funding trend continues, EJW will have to assess what that does to the nature of their program. He shared that one factor contributing to the decrease in funding is that there are 40 fewer Wyoming highway patrolmen/patrolwomen and this results in fewer citations being issued. This of course impacts the \$10 filing fees.

Mr. Day reported that as sources of funding change, EJW is trying to recover from that. The EJW Board and Executive Director are keeping an eye on Legal Services Corporation (LSC) funding, the primary source of funding for Legal Aid of Wyoming. He reminded the Board that LSC funding was in jeopardy of being completely unfunded last year and shared that throughout President Trump's term, they will be concerned about that funding, as it would be a significant hit to EJW if LSC funding were to be eliminated or reduced.

Mr. Day provided an overview of how EJW came about and also described the role of LSC and Legal Aid of Wyoming.

Walter Eggers shared information about the Equal Justice Wyoming Foundation (EJWF), a 501(c)(3). He shared that the goal at the beginning was to set up a fundraising entity where people could contribute on a tax-exempt basis and the Foundation would grant money for civil legal aid. Mr. Eggers also discussed the settlement between Bank of America (BOA) and the Justice Department and reported that EJWF was a recipient of \$850,000 to be used for foreclosure prevention and community redevelopment.

Angie Dorsch shared that the majority of funds for both entities goes towards grants. She reported that they are on a two-year biennium. Ms. Dorsch shared in more detail the dollar amount of the grants, the recipients of those grants and provided an overview of the benefit in Wyoming communities as a result of the grants. Stuart Day reported that once grants are awarded, the funds are drawn down over the course of the biennium.

Commissioner Kath asked Mr. Day how many entities' grant requests are denied. Mr. Day reported that the majority of grant requests are very worthy requests, but they have not provided enough information on the front end or shown institutional control. Mr. Eggers shared that the same is true on the Foundation side.

Past President Jarosh commended both entities for their high-functioning boards and their diligence and care when granting funds.

President Graham reminded the Board that former Vice President Erika Nash represented the Board of Officers & Commissioners on the EJW Board. He asked for expressions of interest from the current Board to fill this vacancy. Commissioner Neville expressed interest and will now serve on the EJW Board.

Public Awareness Campaign Proposals

Jonny Law from Flood Marketing out of Sheridan, Wyoming, joined the Board meeting to pitch a proposal to accomplish a Goal 2, Objective 2.3 in the Strategic Plan—to launch a public awareness campaign to spread the word about the good work lawyers do in their communities. An additional portion of the proposal centered around the rebranding project the Board approved at the August meeting.

Following Mr. Law's proposal and his departure from the meeting, there was much discussion about pricing for the rebranding. Executive Director Wilkinson also shared a proposal she received from AdBay out of Casper, Wyoming. She shared that the proposals were similar in scope of work but differed greatly in cost.

After discussion, President-Elect Hibben made a motion to approve the Flood Marketing proposal as stated today with the understanding that Executive Director Wilkinson is authorized to negotiate the Phase 1 rebranding cost. Commissioner Kisling seconded the motion. The motion carried.

Proposed Revisions to the Bylaws of the Wyoming State Bar

Mark Gifford reminded the Board that Commissioner Edwards recommended a change to the bylaws regarding the requirement for Commissioners to hold annual meetings in their judicial districts. Mr. Gifford reported that he made that recommended change and noted that all other changes were minor clean-up issues and more accurately reflect how the Board functions. Mr. Gifford requested approval to put the proposed changes out for member comment.

Commissioner Neville made a motion to approve Mr. Gifford's request to distribute the proposed changes to the bylaws to the membership for comment. Commissioner McCorkle seconded the motion. The motion carried unanimously.

Strategic Plan Update

Executive Director Wilkinson announced that Goal 1, Objective 1.3 (mentor hotline) was completed on November 14, 2018, as she just launched the new Mentor Outreach Program on the Bar's website. She described how the program will work.

In regard to Goal 2, Objective 2.1 (relaunch "Legally Speaking" segments), Executive Director Wilkinson shared that she does not believe this is a good use of Bar resources. She shared that the most recent segments were filmed seven years ago, and she is not sure the lawyers appearing in the segments are currently in their same jobs. She also shared a concern about each segment still being accurate 7-10 years later.

After discussion, Commissioner Edwards made a motion to remove Objective 2.1 from the Strategic Plan. Commissioner Thybo seconded the motion. The motion carried unanimously.

Executive Director Wilkinson reminded the Board about Goal 3, Objective 3.4 in the Strategic Plan (gathering member demographic information). She shared that the Diversity & Inclusion Committee has discussed the need for this data, but she understands the committee would like to do an informal survey of the members in order to gather it. Executive Director Wilkinson reported that she queried other executive directors around the country to see who collected this type of data and learned that very few do. She asked for some direction from the Board and shared that she is unaware what the purpose of gathering this data would be.

After much discussion and an assurance that the Diversity & Inclusion Committee could still request distribution of a survey to the membership gathering demographic information, Commissioner McCorkle made a motion to remove Objective 3.4 from the Strategic Plan. Commissioner Thybo seconded the motion. The motion carried unanimously.

Member Benefit Proposal – Identillect

Executive Director Wilkinson reminded the Board that this member benefit was pitched to the Board at its August meeting. She reminded the Board that Identillect is an e-mail encryption software that would assist lawyers in complying with regulatory requirements concerning the protection of client data. During the August meeting, Executive Director Wilkinson was asked to seek testimonials from other bars that provided Identillect as a member benefit. She

reported that she received rave reviews from folks in Arkansas about the benefit. She also shared that since August, Identillect has signed on with a few other bar associations.

Executive Director Wilkinson introduced Todd Sexton, CEO of Identillect, and he joined the meeting via teleconference.

Following Mr. Sexton's presentation and his departure from the meeting, Commissioner Neville shared that this type of service is industry standard and we would do a disservice to the members if we did not provide this as an option to them.

Commissioner Neville made a motion to approve Identillect as a member benefit without the Bar generating any revenue and passing along the 35% discount to the membership. Commissioner McCorkle seconded the motion. The motion carried unanimously.

Judicial Selection Process

President Graham mentioned the turnover in the judiciary recently. He reminded the Board of the process to select judges. President Graham wondered if this was something the Board wished to explore. He inquired as to whether or not the Board favored the current selection process and wondered if the Bar wanted to change it. Executive Director Wilkinson reminded the Board that the Wyoming Constitution dictated the judicial selection process and any change to it would require a Constitutional Amendment. Vice President Addleman suggested that the Bar educate the public about the process. Executive Director Wilkinson recommended bringing this topic up at the June 2019 Strategic Planning session.

President's Report

President Graham reported that he asked Cathy Duncil, Bookkeeper, to prepare some historical information showing the Bar's investments dating back to 2008. He discussed the report that Cathy prepared so future board members will be informed of historical decisions.

President Graham encouraged the Board members to give some consideration to what the Bar's reserves should be used for.

President Graham shared that the Bar allocates resources to spread the word about the good work lawyers are doing in their communities, but he believes we need to show this as well. He reported that he would like to organize community service projects with the local commissioners before or after a Board meeting or perhaps with a local bar association.

President Graham encouraged the Board members to engage with the Bar on social media and help spread the word about the good work the Bar and lawyers are doing.

President Graham encouraged the Commissioners to think of creative ways to engage with their constituents. He shared that he is going to be traveling the state and making stops along the way to engage with the members. He encourages commissioners to engage and see what their constituents want.

Executive Director's Report

Executive Director Wilkinson reported that while Blue Cross/Blue Shield anticipated a 15% increase in the staff's health insurance premium, the actual increase was only 1%. She reported that the Board did approve the 15% so that is what is reflected in the current year's budget, so there will be some cost savings.

Executive Director Wilkinson shared her Annual Meeting Wrap-Up Report and encouraged any Board member to ask any questions.

Executive Director Wilkinson reported that all nine sections of the Bar have newly-elected leadership and are meeting on a regular basis.

Executive Director Wilkinson reminded the Board that the Western States Bar Conference will be hosted in Hawaii in March 2019. She will share details with the Board so they can determine whether or not they will attend.

Board/Committee Report

Bench-Bar Relations Committee – no report

Civil Pattern Jury Instructions Committee – no report

Criminal Pattern Jury Instructions Committee – no report

Diversity & Inclusions Committee – President Graham reported that he will serve as the Board Liaison.

Juvenile Pattern Jury Instructions Committee – Commissioner Whiting reported that the committee will be getting a new set of instructions out soon.

Law School Liaison Committee – no report

Legislative Developments Committee – no report

Permanent Rules Advisory Committee – Commissioner Edwards reported that the Committee finally arrived at a decision about the peremptory challenge rule. He reported that there will be minor amendments proposed to the Supreme Court that will retain the right to a peremptory challenge for original parties, but parties added to the case later will not have a peremptory challenge.

Member Concern

Executive Director Wilkinson shared that she had been contacted by Sean Durrant, a member in the Fourth Judicial District, about his request for the Bar to take a leadership role on the issue of rising healthcare premiums. She distributed the e-mail she received from Mr. Durrant along with a copy of the letter Mr. Durrant sent to Senator John Barrasso. Executive Director

Wilkinson reminded the Board that the Wyoming Lawyer Health Benefit Plan was established in 2010 without success. Due to the low number of people enrolled in the plan and a few catastrophic illnesses soon after the plan launched, it was ultimately dissolved in 2011. After discussion, all were in agreement that the issue does impact a large percentage of our membership. Executive Director Wilkinson offered to do some research and see what other bars provide for their members.

President Weston Graham adjourned the meeting at 5:46 p.m. on Friday, November 16, 2018.

Minutes Submitted by:

Sharon Wilkinson
Executive Director