

# Wyoming State Bar Board of Officers & Commissioners Meeting

November 15, 2019  
Wyoming State Bar  
Cheyenne, Wyoming

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- In Attendance:** Kelly M. Neville, President; Billie LM Addleman, President-Elect; James L. Edwards, Treasurer; Melinda S. McCorkle, First Judicial District Commissioner; Teresa S. Thybo, Third Judicial District Commissioner; Jeremy K. Kisling (by phone), Fourth Judicial District Commissioner; R. Scott Kath, Fifth Judicial District Commissioner; Alison O. Gee, Sixth Judicial District Commissioner; Charles S. Chapin, Seventh Judicial District Commissioner; Shawn G. Wilde, Eighth Judicial District Commissioner; James T. Whiting, Ninth Judicial District Commissioner; Callie A. Capraro (by phone), Young Lawyers Section Chair; Sharon Wilkinson, Executive Director; Mark W. Gifford, Bar Counsel, Cathy Duncil, Admissions Director; Marie Ellis, CLE Director; Brandi Robinson, Lawyer Referral Service Coordinator and Shannon Howshar, Assistant to Bar Counsel
- Absent:** Weston T. Graham, Immediate Past President; J. Kenneth Barbe, Vice President and Sarah L. Chavez, Second Judicial District Commissioner
- Guests:** Professor Stephen D. Easton, Member of Criminal Pattern Jury Instructions Committee
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President Kelly M. Neville called the meeting to order at 12:30 p.m. on Friday, November 15, 2019.

## Approval of Agenda

Executive Director Sharon Wilkinson asked to add the following items to the agenda:

1. Direction of the Diversity & Inclusion Committee
2. Request to Allocate Funds for Pro Bono Reimbursement Account

Commissioner Chapin made a motion to approve the agenda with Executive Director Wilkinson's additions. Treasurer Edwards seconded the motion. The motion carried unanimously.

## Approval of Minutes

President Neville directed the Board's attention to the meeting minutes from the August meeting in Casper as well as the minutes from the September conference call.

Treasurer Edwards made a motion to approve both sets of minutes. Commissioner Chapin seconded the motion. The motion carried unanimously.

## **Executive Committee Meeting Minutes**

President Neville directed the Board's attention to the minutes from the Executive Committee's meetings. There were no questions.

### **Treasurer's Report**

Treasurer Edwards reminded the Board that the current fiscal year began October 1, 2019, as did the license fee cycle. He reported that license fees are steadily coming in and are due November 30, 2019. Treasurer Edwards also reported that the Bar had a CD mature recently. He reported that the CD was cashed out and deposited into our bond portfolio with RBC Wealth Management, which earns a much higher interest rate.

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

### **Admissions Report**

Cathy Duncil, Admissions Director, reported that she administered the July Bar exam to 59 applicants. Of those, 43 of them passed the exam, which resulted in a 73% pass rate. She distributed historical pass rates to the Board. She shared that following the exam, there was a swearing-in ceremony at the Supreme Court at which President Neville spoke. The Bar hosted a reception afterwards at the Botanic Gardens.

Ms. Duncil reported that there are two scheduled hearings before the Character and Fitness Committee with two more to follow in the New Year. Mark Gifford, Bar Counsel, provided an overview of what his role is in relation to the character and fitness process and mentioned that the Bar is seeing more character and fitness hearings now than they are disciplinary hearings. Both agreed that admissions issues are keeping them very busy.

### **Mandatory CLE**

Marie Ellis, CLE Director, reported that CLE Status Reports were distributed today. She also reported that new CLE rules will go into effect January 1, 2020, which will increase the self-study allowance from six hours per calendar year to eight. Executive Director Wilkinson reminded the Board that lawyers have until January 15, 2020, to report their CLE hours for 2019.

### **Office of Bar Counsel**

Mark Gifford reported that there was a public censure that came out of the Supreme Court yesterday and he is about to send a stipulated suspension to the Court. He reported that since the new rules went into effect, records of a formal charge are now made available to the public. Executive Director Wilkinson clarified that no public notice is distributed; however, if the office receives a request, the records could be shared with the public.

Mr. Gifford reported that there was an Unauthorized Practice of Law (UPL) hearing scheduled in September; however, the complainant was sick and unable to attend. He shared that this hearing has been rescheduled for December.

Mr. Gifford shared that there were ten applicants that applied for the part-time Deputy Bar Counsel position. He reported that the interview team was made up of himself; Mike Golden, Chair of the Review & Oversight Committee (ROC); Jenifer Scoggin (ROC), Amanda Newton (ROC), Executive Director Sharon Wilkinson and Shannon Howshar, Assistant to Bar Counsel. Mr. Gifford reported that Cheyenne lawyer and First Judicial District Commissioner Melinda S. McCorkle accepted the job. Commissioner McCorkle immediately announced that as a result of this opportunity, she will be stepping down as the First Judicial District Commissioner.

President Neville congratulated Commissioner McCorkle and shared that it is great news for the Bar.

### **Revisions to Policy on Reimbursement for Officers & Commissioners**

Mark Gifford reminded the Board that there was much discussion about the Western States Bar Conference during this past summer's Strategic Planning session. He reiterated that a few mandatory bars around the country have been sued recently and some of the allegations stem from "lavish spending." Mr. Gifford shared that the staff continues to have concerns about the money spent when the Western States Bar Conference is hosted in Hawaii.

Mr. Gifford reminded the Board that then-President Weston Graham directed him to draft a policy to address these concerns. Mr. Gifford shared a proposed policy that limits travel to that particular conference only when it is not hosted in Hawaii; the policy also limits the attendance at this conference.

Commissioner Chapin made a motion to approve the policy as written. Commissioner Whiting seconded the motion. Commissioner Gee inquired as to whether there was a direct benefit to the Bar when Board members attended the conference. Treasurer Edwards shared that he thinks there is a benefit to meeting other Bar leaders from other states and networking. He wondered about a policy where the Bar would still pay the registration fee for Board members, but each would be on his/her own to pay travel and lodging.

Commissioner Whiting shared that he appreciates where Mr. Gifford is coming from—even if the Bar pays a portion of the costs, it's just bad optics. Commissioner Chapin shared that he does not think some Bar members are happy about sending Board members to Hawaii, and he agrees with Mr. Gifford about staying away from it altogether. He feels the policy is straightforward and succinct, and he supports it.

Commissioner Kath reported that he attended the Jackrabbit Bar Conference this year in Butte, Montana. He felt it was very beneficial and he learned a lot about what other bars are dealing with.

Treasurer Edwards asked Mr. Gifford how, in the proposed policy, he arrived at two commissioners being selected to attend. Mr. Gifford shared that he thinks it is important to identify those who may be on a leadership track and invite them.

President Neville shared that the Western States Bar Conference and the Jackrabbit Bar Conference are the only educational opportunities for commissioners. Executive Director Wilkinson reminded the Board that the Bar also belongs to the National Conference of Bar Presidents.

Commissioner Wilde thought it was important the Bar have representation at every conference and felt that when the commissioners are selected by the Executive Committee, he would propose that they are selected by a lottery system. Commissioner McCorkle shared that based on her experience at the conference, if there was a decision to have one person in attendance, it would make the most sense to have it be the President-Elect. Regardless of whether that is the decision, she thinks we should limit the number of times Executive Committee members can go.

Mark Gifford asked the Board members who have attended the Western States Bar Conference in the past how the Bar has benefitted from that attendance. Executive Director Wilkinson shared that when staff travels, they each know the expectation that they bring back ideas to implement in Wyoming. She shared several examples of programs, policies and procedures that were a direct result of staff attendance at their respective conferences.

After discussion, the motion failed.

Commissioner Gee made a motion to adopt what Mr. Gifford has put together allowing for only registration costs to be paid by the Bar for the Western States Bar Conference when it is hosted in Hawaii. For the Jackrabbit Bar Conference and the Western States Bar Conference not hosted in Hawaii, the Executive Committee would be eligible to attend as well as two commissioners chosen by lottery. Commissioner Kath seconded the motion.

Commissioner Wilde asked Mr. Gifford if that motion alleviated some of his concerns about the Keller policy. Mr. Gifford indicated that it did somewhat but not altogether.

The motion passed.

### **Wyoming Government Investment Fund (WGIF)**

Mark Gifford reminded the Board that Past President Weston Graham had encouraged the staff to look into the Wyoming Government Investment Fund (WGIF) to see if the Bar might have a better opportunity to earn more on its investments. Mr. Gifford reported that he, Executive Director Wilkinson and Cathy Duncil, Bookkeeper, met with Joan Evans, the Director of WGIF. Unfortunately, he reported that one requirement to invest in the fund is to sign a resolution stating that the Bar is a political subdivision of the state, and it is not. Mr. Gifford worked closely with Tom Long, WGIF's Counsel, to see if there were any workarounds and there are not. Ultimately, the decision was made not to invest any of the Bar's funds with the WGIF. Mr. Gifford reported that we did discuss this with the Executive Committee and it was also in agreement with the decision.

### **Flood Marketing Public Awareness Campaign Update**

Executive Director Wilkinson provided a recap of where the Bar is with the public awareness campaign. She reported that she has put together a task force made up of Rob Jarosh, Billie Addleman, John Masterson, Ken Barbe and Mark Gifford to help her define potential clients and/or other community members who have directly benefited from the work of Wyoming lawyers. She hopes to report back at the January meeting with more progress.

### **Board/Committee Appointments**

President Neville reminded the Board that an incoming president has the responsibility of appointing lawyers and laymembers to many of the Bar's boards and committees. She wished to have a discussion about the Bench-Bar Relations Committee and wondered if this committee needed to be a standing committee.

After discussion, Commissioner Gee made a motion to dissolve the Bench-Bar Relations Committee. Commissioner Whiting seconded the motion. President Neville asked Commissioner McCorkle, who serves as the Liaison to the committee, what her thoughts about the committee were. Commissioner McCorkle shared that the committee had never met the entire time she served as liaison. The motion carried unanimously.

President Neville asked Commissioner Chapin if he was interested in continuing to serve as the liaison to the Civil Pattern Jury Instructions Committee, and he indicated that he would.

President Neville asked Commissioner Thybo if she was interested in continuing to serve as the liaison to the Criminal Pattern Jury Instructions Committee, and she indicated that she would.

President Neville asked Commissioner Whiting if he was interested in continuing to serve as the liaison to the Juvenile Pattern Jury Instructions Committee, and he indicated that he would.

President Neville asked Commissioner Kath if he was interested in continuing to serve as the liaison to the CLE Committee, and he indicated that he would.

President Neville shared that she currently serves on the Equal Justice Wyoming Board but is wondering if one of the commissioners would like to take her place. Commissioner Wilde volunteered to serve.

Commissioner Chapin made a motion to move into Executive Session. Commissioner Whiting seconded the motion. The Board moved into Executive Session at 2:16 p.m.

Commissioner Chapin made a motion to come out of Executive Session at 2:32 p.m. Commissioner Kath seconded the motion. The motion carried unanimously.

### **Pro Bono Reimbursement Fund**

Cathy Duncil shared that there is approximately \$1,500 in the pro bono reimbursement account. She requested approval to transfer \$5,000 from the general account and allocate it for the pro bono reimbursement.

Commissioner Whiting made a motion to transfer \$5,000 from the general operating account to the pro bono reimbursement account. Commissioner Chapin seconded the motion. The motion carried unanimously.

### **President's Report**

President Neville reported that she attended and spoke at the new admittee ceremony in September. She has also been hard at work appointing new members and non-members to the Bar's numerous boards/committees. President Neville shared that she is now on the Access to Justice Commission and participated in her first meeting a few weeks ago. She reported that the Commission is restructuring and will really be downsizing. She shared that at one time, there were close to 30 people on the Commission; the restructure will get the size down to a more manageable number of people.

President Neville reported that she and Executive Director Wilkinson are in discussions about the 2020 Annual Meeting so that we can coordinate with the UW College of Law's 100<sup>th</sup> anniversary celebration.

President Neville also reported that at the Editorial Committee retreat, they did incorporate attorney wellness and a regular feature on practice tips for our small and solo goal of the Strategic Plan.

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

President-Elect Addleman reported that the e-filing committee is continuing to make progress. Since its August meeting, there have been presentations by three vendors and the committee members are currently going through a process where they are test-running products from these vendors. He reported that the hope is that the vendor will be identified shortly after the first of the year. That committee is chaired by Chief Justice Davis and also includes court staff, other judges and other practitioners.

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

Executive Director Wilkinson directed the Board's attention to her Annual Meeting Wrap-Up Report in the meeting materials. She discussed the problems she and the staff experienced at Jackson Lake Lodge, which resulted in the Lodge reducing the final bill by approximately \$13,000.

Executive Director Wilkinson reported that she and the staff have not yet had an opportunity to sit down and brainstorm ideas for the new Strategic Plan, but she hopes to accomplish that soon and bring ideas to the January Board meeting in Rock Springs. She did mention, however, that she received a written proposal from Maryt Frederickson, an attorney in Jackson and the author of the "Be Well" column in each issue of the *Wyoming Lawyer*. She distributed

the proposal. She reported that Ms. Frederickson's proposal centers around wellness and she and the staff will certainly factor these great ideas into their proposal to the Board.

### **Criminal Pattern Jury Instructions**

Teresa Thybo, liaison for the Criminal Pattern Jury Instructions Committee, directed the Board's attention to a letter from Keith Nachbar, Casper lawyer and fellow Committee member. She then introduced Steve Easton, Professor at the University of Wyoming College of Law. Professor Easton mentioned that he is also a member of the Committee.

Professor Easton is recommending that the Bar make all of the jury instructions free and available to the public. He shared that he is also licensed in North Dakota and that state had the same system as Wyoming—occasional supplements followed by roll-out of new instructions. He reported that North Dakota has abandoned that model and moved toward providing them free of charge on the internet. He shared that Alaska is another state where the instructions are available on the internet.

Professor Easton shared that access to justice concerns are one of the main drivers behind his request. He reported that the judges on the Criminal Pattern Jury Instructions Committee have indicated that a regular circumstance is people bringing in jury instructions that are outdated. He also believes that jury instructions end up being 85%-95% of the law that is given to the jury for the majority of issues.

Professor Easton believes it would be valuable to have a source to go to in order to always have the most current set of instructions. He noted that it is also important to include the legislative history behind the instructions so that the current committee can see what the previous law was. He shared that there is a wide variety of delivery mechanisms in other states. His research indicates that it is very rare for a state bar to be responsible for the pattern jury instructions; it is typically the state supreme courts who are responsible for the maintenance and updating of the instructions. He says there is a trend away from charging for the instructions and making them available to anyone with an internet connection.

Professor Easton asked the Board to consider a major undertaking in the short-term, but in the long term, it could be less work. He shared that the committees are relatively inexpensive. The actual investment of time by the committee members varies. There are several judges, government lawyers and private practitioners involved in the process.

Executive Director Wilkinson provided an overview of what the staff does to roll out each set of new jury instructions. Mark Gifford reiterated Executive Director Wilkinson's sentiments about the significant amount of staff time that goes into these and shared that the most sensible way to assemble and deliver the instructions would be at the Supreme Court level.

Executive Director Wilkinson provided an overview of the revenue generated by all three sets of pattern jury instructions, which ranged from \$6,700 - \$26,000 per year depending on when new instructions were rolled out.

Professor Easton shared that North Dakota offers jury instructions on Casemaker. Executive Director Wilkinson reminded the Board that Wyoming is also a Casemaker state and offered to contact Casemaker to see what their arrangement with North Dakota is.

### **Diversity & Inclusion Committee**

Executive Director Wilkinson provided an overview of the creation and progress of the Diversity & Inclusion Committee. She encouraged a discussion amongst the Board members and recommended possibly making the committee a practice section instead.

Mark Gifford shared that this topic comes up quite often, and that is indication that this committee is not progressing in any way. He agrees with making the committee a section.

After discussion, Commissioner Thybo made a motion to convert the Diversity & Inclusion Committee to a practice section. Commissioner Gee seconded the motion. The motion carried unanimously.

President Neville indicated that she would work with Executive Director Wilkinson to communicate this decision to the Committee. It was also agreed to make the section membership free for the first year.

### **Young Lawyers Section Report**

Callie Capraro, Chair of the Young Lawyers Section (YLS), reported that the YLS council had a board meeting yesterday. She reported that one item of discussion was to have four lunchtime CLEs in addition to submitting some CLE proposals for the 2020 Annual Meeting. She reported that Marion Marchetti, Past YLS Chair, is coordinating a CLE on adoption, which will be held the first part of January 2020.

Ms. Capraro reported that they are always striving for engagement, so they hope to have some more networking events. She will work with other council members to plan a holiday happy hour in Cheyenne. She reported that this will tentatively be the second week of December and would be open to all bar members. She shared that she would appreciate Board support of that. They are also going to try to do a food drive or a coat drive in conjunction with that.

For the horizon, Ms. Capraro reported that the YLS council is planning to have a Strategic Planning session later in 2020 to brainstorm some ideas to get membership up and assist in some communities.

### **Commissioner Reports**

- *First Judicial District*—no report
- *Second Judicial District*—no report
- *Third Judicial District*—Commissioner Thybo reported that there will be a robing ceremony next week for their new District Court judge, Suzannah Robinson. She also shared that their local bar has a Christmas party planned.
- *Fourth Judicial District*—Commissioner Kisling shared that the Sheridan bar sponsored a legal clinic at the VA that was very successful.



- *Fifth Judicial District*—Commissioner Kath shared that they had their annual May Day Law Day celebration that included their annual photograph at the steps at the courthouse. He shared that Phil Roberts from the University of Wyoming was the guest speaker. Their bar will have a Christmas party as well.
- *Sixth Judicial District*—Commissioner Gee shared that there will be a Christmas party with the Campbell County Bar. She also shared that new cases are no longer being assigned to private attorneys on the public defender front.
- *Seventh Judicial District*—Commissioner Chapin shared that there has been some talk amongst lawyers to try to address inconsistencies in end-of-life documentation and how those are being used.
- *Eighth Judicial District*—Commissioner Wilde reported that the Converse County Bar has been trying to stay active as a bar. They do a breakfast club get-together where the whole bar comes to the library at the courtroom—30 minutes coffee and donut hour. It's very successful.
- *Ninth Judicial District*—Commissioner Whiting reported that their Christmas party will be December 6<sup>th</sup>.

#### **Board/Committee Liaison Reports**

- *Civil Pattern Jury Instructions Committee*—Commissioner Chapin reported that the Committee is working hard on new instructions.
- *Criminal Pattern Jury Instructions Committee*—Commissioner Thybo shared that there will be a new fleeing and eluding instruction. There was legislation that put new laws in effect, so they continue to work through those.
- *Juvenile Pattern Jury Instructions Committee* – Commissioner Whiting reported that new instructions are forthcoming.
- *Law School Liaison Committee*—President Neville reported that there was a meeting next month about unveiling some of the plans for the new clinic building for which they are raising money. They've already raised over half the money. There was also discussion about the 2020 Annual Meeting and the celebration.
- *Permanent Rules Advisory Committee—Civil Division*—Treasurer Edwards reported that they updated the peremptory challenge rules. There is not e-filing yet, but there is e-service. People seem to experience problems with the mail, so now you can electronically serve.

#### **Legal Aid of Wyoming Board of Directors Vacancy**

Executive Director Wilkinson distributed the four expressions of interest that she received and opened it up for discussion.

Commissioner Thybo made a motion to appoint Emily Soli to serve on the Legal Aid of Wyoming Board of Directors. Commissioner Gee seconded the motion. The motion carried unanimously.

#### **Other**

Mark Gifford reported that Professor Steve Easton is taking a semester off to serve as the Interim President of Dickinson State University in North Dakota. As a result, Dean Klint

Alexander has asked Mr. Gifford to teach the Professional Responsibility class next semester. Mr. Gifford shared that he has received approval from Mike Golden, Chair of the Review & Oversight Committee.

President Kelly M. Neville adjourned the meeting at 5:05 p.m. on Friday, November 15, 2019.

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Minutes Submitted by:

Sharon Wilkinson  
Executive Director