

WASHINGTON STATE BAR ASSOCIATION

DISCIPLINARY ADVISORY ROUND TABLE

March 16, 2022

Meeting Minutes

Members present: Justice Mary Yu (chair), Terra Nevitt, Julie Shankland, Doug Ende, Elizabeth Rene, Virginia Paige Pratter, Randy Petgrave, Kevin Bank, Anne Seidel, Norma Urena, Drew Simshaw, and Darlene Neumann (staff liaison). Absent: Tom McBride.

Also attending: Joanne Abelson (Managing Disciplinary Counsel), Ben Attanasio (Disciplinary Counsel), Rachel Agent (Disciplinary Program and Systems Manager), Thea Jennings, (Assistant General Counsel), and Bobby Henry, (Associate Director for Regulatory Services Department).

The Zoom video conference meeting was called to order at 9:30 a.m. Welcome and introductions followed.

Discussion of Comments to the Proposed Rules of Discipline and Incapacity (RDI)

The chair noted the proposed Rules of Discipline and Incapacity (RDI) resulted from a request by the Washington Supreme Court to the WSBA to draft preliminary disciplinary rules that would replace the existing ELCs. She further noted that relevant to the RDI project was the ongoing discussion about whether the Bar should be formally split between its disciplinary and regulatory functions and the professional association functions, a discussion prompted by several federal cases that could have fundamentally changed the structure of the mandatory bars like WSBA. In December 2020, the final proposed RDI rules were published for comment by the Court, which subsequently reviewed the comments. At its December 2021 meeting, the Court unanimously rejected the proposed RDI. Following its decision, the Court requested that DART review the comments since some had addressed the entire disciplinary process, and to make recommendations, if any, to the disciplinary procedures. The chair expressed the Court's appreciation and gratitude to the individuals and work groups for their hard work and efforts to draft the RDI.

The chair then welcomed members' comments, ideas, or suggestions.

Doug Ende commented that major changes to the disciplinary rules right now would be ill-timed because of an ongoing, massive IT development project to replace the disciplinary case management and document management systems at the Bar. He noted there are still ongoing federal appeals cases, which the U.S. Supreme Court may ultimately choose to decide that could affect current regulatory staffing and structures. A third reason was the Practice of Law Board's creation of a blueprint for a regulatory laboratory to study the delivery of non-traditional legal services, which might also implicate regulatory resources and the regulation of the practice law by the Bar and the Washington Supreme Court.

Anne Seidel commented on the impact the disciplinary process has on lawyers diagnosed with mental health issues. Discussion followed on disability/incapacity information as a factor in evaluating conduct, the way disability cases proceed through the disciplinary system, appointment of disability counsel, stipulations and review of stipulations by the Disciplinary Board. Members suggested a task force to study the issue and some members volunteered to serve on the task force, or volunteer resources to assist the work of the task force. Ms. Seidel recommended the task force involve disability rights advocates from Disability Rights Washington (DRW) and members of Washington Attorneys with Disabilities Association (WADA). Members also suggested that the Court initiate the task force rather than WSBA. The chair expressed some concern about the Court's capacity to provide the expertise and resources for such a task force but agreed to take DART's suggestion back to the Court.

Other Ideas and Comments

The topic of appointed counsel for respondent lawyers who cannot afford counsel was raised again. The chair discussed the funding issue, including the problem of using bar fees for this purpose, and filling the need with volunteers instead. Ms. Seidel noted there are a relatively small number of respondent's counsel who try to help, but the need is much greater than they can absorb. Colorado's use of a panel of pro bono counsel to provide limited assistance was mentioned as possible model. Discussion followed on the idea of having a dedicated neutral Bar staff person, creating a program of trained volunteer lawyers to aid unrepresented respondent lawyers, and the cost savings to the disciplinary system if such a resource were offered.

There was a suggestion that the number of WSBA bar members who are not involved in the discipline system should be increased on DART.

Meeting adjourned at 10:26 a.m.