

Minutes – November 20, 2008
ELC Drafting Task Force

Present: Geoff Gibbs, Chair, Barrie Althoff, Erika Balazs (phone), Randy Beitel, Kim Boyce, Kurt Bulmer, Ron Carpenter, James Danielson (phone), Doug Ende, Seth Fine, Elizabeth Turner, Charlie Wiggins (phone), Scott Busby, Reporter, and Nan Sullins, AOC/Supreme Court Liaison

Excused: Bruce Johnson, Julie Shankland, Patrick Sheldon, Norma Linda Ureña, and Matt Williams

Call to Order and Introductions

After calling the meeting to order at 10:00 a.m., the Chair thanked the Task Force members for their willingness to serve and called for introductions. The members present introduced themselves as follows:

Erica Balazs – served as Adjunct Investigative Counsel (AIC); served on BOG Discipline Task Force.

Jim Danielson – Chief Hearing Officer (CHO) for past five years; served as Hearing Officer for 15-20 years; served on BOG Discipline Task Force.

Charlie Wiggins – served on the Disciplinary Board, including one year as Chair; served as Hearing Officer; served on BOG Discipline Task Force.

Elizabeth Turner – WSBA Assistant General Counsel. Works with Hearing Officers and Conflict Review Officers (CRO).

Kurt Bulmer – former WSBA Disciplinary Counsel; currently Respondents' counsel.

Doug Ende – current WSBA Chief Disciplinary Counsel. Served as Assistant General Counsel and Ethics Counsel; served on BOG Discipline Task Force; serving as advisory member to the Task Force.

Kim Boyce – Hearing Officer since 1998; has represented lawyers as malpractice defendants.

Ron Carpenter – Clerk to the Washington Supreme Court.

Nan Sullins – Staff Attorney to the Supreme Court Rules Committee.

Randy Beitel – Senior WSBA Disciplinary Counsel. Served on Discipline 2000 Task Force and BOG Discipline Task Force.

Seth Fine – Currently Vice Chair of the Disciplinary Board.

Barrie Althoff – former WSBA Chief Disciplinary Counsel; former Executive Director of the Judicial Conduct Commission.

Scott Busby – WSBA Disciplinary Counsel, Reporter for the Task Force.

Geoff Gibbs – WSBA Governor for the 2nd District. Served on the RPC Committee and the BOG Disciplinary Task Force.

Preliminary Matters

The Chair introduced the work of the Task Force, noting that it represents an opportunity to review and make procedural and substantive changes to the ELC after the first six years. The deadline for the Task Force to finish its work is March 2010, but the Chair expressed his goal of finishing the work by the end of 2009.

Randy Beitel gave a history of the development of the ELC:

1973 – The Court adopted the Discipline Rules for Attorneys (DRA), which supplanted the RDA.

1983 – The Court adopted the Rules for Lawyer Discipline (RLD), which supplanted the DRA. The drafting task force looked to the ABA Model Rules for Lawyer Disciplinary Enforcement, but declined to follow them.

Early 1990's – The Court invited the ABA to review Washington's Discipline System and then made some changes in response to ABA recommendations. Most of the changes related to the Disciplinary Board, BOG involvement in discipline, and what matters are public information.

Early 2000's – The Court took a new look at the rules and created the Discipline 2000 Task Force. The Discipline 2000 Task Force developed a proposed set of Rules for Enforcement of Lawyer Conduct (ELC). In addition to making clarifying changes to the language of the RLD, the Task Force made major structural changes, reorganizing the rules to track the progress of a case.

2002 – The Court adopted the ELC.

2008 – The time is ripe to fine tune the ELC in light of the experience of the past six years. Mr. Beitel noted that it is important to give thought to how the sub-committees are structured and to avoid the imbalanced workload of previous Task Forces.

Topics

The Chair opened the floor to discussion of subcommittee structure. Doug Ende gave an overview of forces that have converged to give rise to this Task Force: (1) the Discipline 2000 Task Force's product has been operational for six years, allowing enough time to experience how the ELC work and how they don't; (2) 2006 ABA Recommendations have been reviewed by the BOG Discipline Task Force, and recommendations from the Discipline Task Force include the need to address drafting ELC changes; and (3) input from various outside interests.

The Chair identified three sources of input for this Task Force: (1) inside WSBA, ODC, OGC, RPC Committee, staff, etc.; (2) BOG review and adoption of BOG Discipline Task Force recommendations; and (3) outside interests. He shared his original intention to organize the ELC Drafting Task Force's subcommittees along these lines, but acknowledged that a structural approach had been suggested as well. The Chair invited comment on the issue.

The Task Force members discussed the merits of organizing subcommittees by source of input and according to the structure of the ELC. The group reached the consensus that a structural approach would be best, with the caveat that the ELC are interrelated and attention must be paid to how a change in one area would affect other areas. The group identified four structural areas to be the subject of a subcommittee: (1) Non-hearing disposition (stipulations, resignations, diversion, settlement conferences, etc.); (2) Investigations and Hearings; (3) Appellate Review (Disciplinary Board and Supreme Court); and (4) Title 3 – confidential vs. public discipline information.

The Chair stated that he would work with staff to develop a matrix of the ELC, noting the interrelationships and sources of input in each area. The group agreed that each member would go back to his or her constituency and gather suggestions for the matrix. A subcommittee structure will be built on the structure of the matrix and finalized at the next meeting.

The group also raised the issue of outreach, both within the profession and to the public. The Chair noted plans to make Task Force meeting materials, agendas, and minutes available on the WSBA website. He also shared WSBA President Mark Johnson's concern that the rule changes be drafted by practitioners, but opened the floor to discussion. One view of the Task Force's work encompassed a technical review of the rules by legal practitioners. Another view was of a process open to the public and the profession, taking input from all who care to share it. There was a strong feeling among the group in favor of inviting public comment. While acknowledging that outside interests represent a small fraction of the suggestions so far, the group reached the consensus that publicizing the work of the Task Force and accepting comments and suggestions from all areas would protect the integrity of the system and tap a reservoir of good will among the public. The Chair, hearing no opposition to this view, stated that he would

meet with Gregg Hirakawa, WSBA Deputy Director of External Relations, to work out a plan to do outreach to the profession and the public.

The Chair stated several avenues of outreach to the profession, among them the Bar News, a letter from the Chair to all committee chairs and section heads, and a blast email to the entire bar. Each Task Force member will reach out to his or her constituency as well. Mr. Ende will act as custodian of external constituency issues. Members may submit input either to Reporter Scott Busby or to the Chair directly.

Mr. Ende shared two issues that may impact the work of the Task Force. (1) Review of disciplinary jurisdiction over judges will likely materialize as an RPC amendment, but may impact the Task Force as well. (2) A stipulation to disbarment using Alford language was recently rejected by the Supreme Court. ODC will try to resolve the issue through a motion for reconsideration, but may have to seek an emergency rule change through GR 9. Jim Danielson shared that the LPO's are developing a code of conduct, under which current Hearing Officers will be expected to hold hearings.

Next Meeting

The Chair shared his expectation that the group would spend the first six to eight weeks gathering input for the matrix and ideas for outreach. Support staff will circulate an email with three suggested dates for the next meeting sometime in January/February. Mr. Ende shared the concern that meeting room resources are in great demand at WSBA offices. He suggested that a meeting schedule be set at the next meeting in order to assure room reservations.

Adjournment

The Chair adjourned the meeting at 11:25 a.m.

Minutes Respectfully Submitted by

Scott Busby
Disciplinary Counsel
Task Force Reporter