



WSBA

WASHINGTON STATE BAR ASSOCIATION

DISCIPLINARY ADVISORY ROUND TABLE (DART)

Meeting Minutes September 5, 2013

Members present: The Hon. Charles Wiggins (Chair), Andrew Bohrsen, Clyde Cramer, Doug Ende, Brad Furlong, Jennifer Gill, Nancy Ivarinen (phone), Paula Littlewood, Joe Nappi, Leland Ripley, Julie Shankland, Dayna Underhill (phone), W. Larry Jefferson, and Darlene Neumann (Staff Liaison).

Also in attendance was Tom Andrews, Practice of Law Board.

The meeting was called to order at 10:05 a.m.

Welcome and introductions were made around the table, including over the telephone. The Chair inquired whether there were other items for the agenda, and hearing none, approved the agenda.

I. Minutes

The minutes of July 17, 2013 were approved.

II. Disability Counsel Subcommittee

Subcommittee Chair Julie Shankland reported the subcommittee had met earlier to discuss issues affecting the appointment of disability counsel and possible solutions. Discussion by DART members followed on respondent's counsel fees paid over the last five years in a table provided by the subcommittee. Ms. Shankland explained the figures were somewhat misleading since they included fees and expenses for cases which had carried over several fiscal years and were not submitted until the completion of the cases. She referenced the \$162,000+ paid to date in 2013. It was also impossible to determine the exact amount of hidden costs due to the inability of the WSBA audit system to scan detailed descriptions, and there is no separate account for those costs. Overall, the expense of appointed counsel is increasing significantly and the question is whether the current system is the best way to handle the requirement.

Ms. Shankland listed three issues discussed by the subcommittee for which they now sought input from DART. First, whether they should pursue the idea of the Supreme Court making

disability counsel appointments instead of the Bar Association. Second, where and how to find disability counsel, since it was noted that costs are approaching the level of hiring contractors. Third, whether appointment of disability counsel is considered an ADA accommodation.

Justice Wiggins indicated the Court might not be opposed to making the appointments. Andy Borhnsen discussed using a private firm guided by a senior disability counsel to appoint firm lawyers to take one disability case a year. Appointed counsel would have assistance from sponsors to help deal with respondents, similar to the addiction model. Lee Ripley commented the challenge with respondents who have mental illness is keeping them focused. Another member suggested using panels not unlike the death penalty panel for capital cases, and to provide incentives to participate on the panel. Discussion followed on how costs could be recovered from respondents, with members concluding that given their mental health issues and deteriorating practices as a result, there would probably be little to recover, including from insurance carriers. Regarding the ADA issue, Doug Ende indicated that it involves legal questions that DART is not well equipped to evaluate.

The subcommittee was directed to work on the issue of reimbursement of costs, research other appointment of counsel models, and develop an outline proposal for appointment of disability counsel by the Supreme Court.

III. Subcommittee on Unauthorized Practice of Law by Disbarred Lawyers

Subcommittee Chair Doug Ende reported the subcommittee also met to discuss the unauthorized practice of law (UPL) by disbarred lawyers. The crime of UPL is generally given little attention by law enforcement agencies and prosecutors who are focused on more serious public safety concerns. The Practice of Law Board, the entity which receives UPL complaints, can investigate complaints and issue cease and desist letters, but that's as far as it goes. As a result, a majority of disbarred lawyers face little, if any, consequences for their actions.

Discussion followed on whether UPL by disbarred lawyers posed a significantly large problem to merit use of scarce WSBA resources, and whether DART should coordinate its inquiry with other enforcement agencies. Tom Andrews, POLB member, recalled there were a few cases in recent years, but the biggest problem is public perception, which sees disbarred lawyers continuing to practice and nothing being done by any responsible agency. Members discussed measures such as educating the public on how to verify a lawyer's status, and referral of UPL as a consumer protection issue under the Attorney General's Office. Further discussion followed on the option of issuing contempt orders to disbarred lawyers. Mr. Ende commented that contempt enforcement would require deployment of ODC resources, and noted that there is no procedure in place to address factual disputes over whether UPL has occurred.

The subcommittee was directed to survey other jurisdictions on how factual issues for contempt proceedings are handled, and explore options for gathering data from enforcement agencies on the extent of UPL by disbarred lawyers in Washington. Julie Shankland offered to forward the POLB data to the subcommittee.

IV. Other Issues

WSBA Discipline Budget

There was brief discussion regarding WSBA's discipline budget, efficiency, comparison to other states, and recovering costs from disciplined members. Paul Littlewood pointed out WSBA's discipline budget includes services administered by the Office of General Counsel (OGC) as well as ODC, and noted that since the passage of the licensing fee referendum, the discipline budget has been reduced. In addition, WSBA is constantly reviewing for efficiency. The entity in charge of determining the discipline budget is actually the Board of Governors Budget and Audit Committee. It was suggested that DART might review the ELC provisions relating to assessment of discipline costs, and review the possibility of authorizing fines as a disciplinary sanction. The item was tabled to the next meeting.

Voluntary Permanent Retirement

Doug Ende discussed the idea of voluntary permanent retirement status for aging lawyers who experience low level misconduct late in their careers. Because such incidents are being seen more often, the option of retirement may be a better outcome than expending resources to discipline or rehabilitate these members. Florida and Illinois have already adopted rules for permanent voluntary retirement. Mr. Ende commented this is an emerging issue and other jurisdictions and the ABA are looking at the problem.

The Chair recommended it be put on the agenda for the next meeting. Ms. Littlewood and Mr. Ende will prepare a presentation on how other jurisdictions are addressing the issue.

V. Adjournment

The meeting adjourned at 11:55 a.m.