



WSBA

WASHINGTON STATE BAR ASSOCIATION

DISCIPLINARY ADVISORY ROUND TABLE

Meeting Minutes

July 17, 2013

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

Also in attendance Eryne Richards, ODC law student intern.

The meeting was called to order at 1:34 p.m.

I. Welcome and Introductions

Chair, Justice Charles Wiggins, introduced himself, talked briefly about his background and prior involvement on bar committees and task forces. Likewise, members went around the table and introduced themselves.

II. Overview of Washington's Lawyer Discipline System

Chief Disciplinary Counsel Doug Ende distributed two handouts at the meeting: Overview of the Lawyer Discipline System and 2012 Lawyer Discipline System Annual Report. He described the lawyer discipline process, its operational structure, and the ABA standards for imposing lawyer sanctions. Mr. Ende also discussed the procedural rules for the disciplinary process, known as the Rules for Enforcement of Lawyer Conduct (ELC). He noted the ELCs have recently undergone a systematic review and will be amended effective January 1, 2014. Afterwards, DART members involved in key aspects of the disciplinary process presented in-depth explanations of their functions.

Julie Shankland, counsel to the Disciplinary Board, explained the role of Conflict Review Officers, who review grievances and complaints filed against disciplinary counsel and other discipline-system constituents, and the Review Committees, which can order a matter to hearing, issue admonitions *sua sponte*, and review decisions by ODC when a grievant requests review of a dismissed grievance.

Nancy Ivarinen, Chair of the Disciplinary Board, discussed the intermediate appellate review function of the Disciplinary Board to automatically review all suspension and disbarment recommendations and approve stipulations.

Joe Nappi, Chief Hearing Officer, explained the duties and responsibilities of Hearing Officers and the Chief Hearing Officer as judicial officers in the disciplinary process once a formal complaint has been filed.

Throughout the discussions, the presenters responded to numerous questions from members regarding each part of the disciplinary process.

III. History and Overview of the Disciplinary Advisory Round Table

Executive Director Paula Littlewood discussed the difference between a mandatory and voluntary bar association, noting that Washington is as mandatory bar, meaning that lawyers who wished to practice law in Washington State must join the bar. The responsibility for the regulation and licensing of lawyers has been delegated to the Bar Association by the Washington Supreme Court. She noted that Washington is an “integrated bar” meaning that it also functions as a trade association for its members.

The Disciplinary Advisory Round Table was formed after a review of an ABA recommendation and report in 2006, following a consultation on Washington’s lawyer discipline system at the invitation of the Washington Supreme Court. One of the ABA recommendations proposed that DAR (as it was then known) be an “independent, oversight committee”. A BOG-appointed Discipline Review Committee examined the ABA recommendations and proposed that DAR not be an oversight committee with independent decision-making authority, but rather a forum for key constituents to discuss their perspectives on issues impacting the discipline system. A charter was issued in 2010 for a two-year pilot period, after which DART would be evaluated by the Court and the WSBA Board of Governors (BOG) with the possibility of being formalized by court rule. DART’s initial term expired at the end of 2012. It was concluded that DART had provided value and its work had not yet been completed. Therefore, in January 2013, the BOG, with the approval of the Supreme Court, authorized the continuation of DART for another two years.

It was pointed out that the charter needed to be reviewed and updated. WSBA staff to work on the charter are: Paula Littlewood and Doug Ende.

IV. Update from the Disability Counsel Subcommittee

Doug Ende reviewed the work of the prior Disability Counsel Subcommittee, which looked at procedures for appointment of counsel by the Bar when the respondent lawyer is unrepresented in disability proceedings. Major challenges are: finding volunteers to serve as disability counsel, managing costs, and the growing numbers of disability claims. Julie Shankland described the long process to find volunteers, the costs incurred, the time-consuming nature of disability cases, and dealing with very difficult clients because of mental health issues—all of which can make serving as disability counsel extraordinarily challenging. The number of cases has increased from 1-2/year previously to 5-10/year now. Lee Ripley also shared his experiences serving as disability counsel.

The Chair formed a subcommittee to study the issue and called for volunteers. Those volunteering are Julie Shankland (subcommittee chair), Andrew Borhnsen, Jennifer Gill, Larry Jefferson, Lee Ripley, and Joe Nappi.

V. Practice of Law by Disbarred Lawyers

Julie Shankland provided background on the problem of disbarred lawyers who continue to practice law, which was discussed at the March 2012 DART meeting. Although technically a crime, prosecutors do not actively pursue unauthorized practice of law (UPL) cases, because police and prosecution resources are primarily focused on violence and public safety issues. As a result, there have been a few successful prosecutions, and there are questions and differences of opinion about the best agency to address the issue. The Practice of Law Board, the entity charged with dealing with UPL cases, lacks subpoena power and can only issue cease and desist letters, which is infrequently a meaningful deterrent. Ms. Shankland explained how the Practice of Law Board handles the process of UPL cases from receipt of complaint to referral to prosecutors, noting that the viability of such prosecutions is frequently affected by complainant credibility issues and lack of provable harm.

The Chair created a subcommittee on the issue and called for volunteers. Those volunteering are: Doug Ende (subcommittee chair), Brad Furlong, Nancy Ivarinen, Paula Littlewood, and Clyde Cramer.

The Chair suggested the subcommittees meet via a conference call prior to the next full DART meeting.

VI. Other Issues

In the time remaining, the Chair asked if anyone had other issues DART should consider. Larry Jefferson raised the issue of minority perceptions of the disciplinary process and whether any steps had been taken by the Bar to educate the minority bar associations. Mr. Jefferson offered to write a letter to the minority bars to solicit their input on issues or concerns that can be addressed by DART. The Chair agreed this would be appropriate.

Brad Furlong mentioned the costs of the disciplinary system which accounts for 41% of the budget. He inquired if there was information comparing Washington to other states and whether the system could be made more efficient. A question was raised whether these issues fell within the province of the DART. Since the meeting was drawing to a close, the Chair said he would consider this issue.

VII. Adjournment

The meeting adjourned at 3:30 p.m.

The next meeting will be September 5, 2013.