



WSBA

WASHINGTON STATE BAR ASSOCIATION

DISCIPLINARY ADVISORY ROUND TABLE (DART)

Meeting Minutes

March 6, 2014

The meeting was held at Century Square Conference Center, 1501 Fourth Avenue, Seattle, Washington 98101

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

The meeting began at 2:06 p.m.

Welcome and introductions were made around the table, including over the telephone.

I. Minutes

The minutes of November 20, 2013 were approved.

II. Amended Charter

Members reviewed the amended charter approved by the Supreme Court on March 5, 2014. Following discussion, it was agreed the charter should also reflect the start and end dates of the second term (July 17, 2013 and September 30, 2015, respectively) as well as the date the Board of Governors approved the amended charter.

III. Disability Counsel Subcommittee

Subcommittee Chair Julie Shankland reported on the subcommittee's proposed recommendation for 2-3 independent contractors to act as counsel for all cases that require appointed counsel in disability proceedings, stipulated transfers to disability inactive, and in cases where a lawyer is incapable or representing himself or herself in a disciplinary proceeding, but is capable of assisting appointed counsel. One particularly difficult problem for the subcommittee was determining a fair rate of compensation for contractors. Ms. Shankland noted data from the last five years

offered little guidance given the wide range in billable hours and the different types of cases. The subcommittee averaged the number of hours of all cases, excluding one extreme example, to arrive at a rate of \$8,000/per case, which amounts to 40 hours at \$200/hour. Expenditures over the set limit would be subject to approval by the Disciplinary Board Chair. The subcommittee also recommended the standard compensation rate be re-evaluated annually as more data is collected and assessed.

Discussion followed regarding the cost efficiency of the proposal which may not necessarily result in lower costs, but would provide budget certainty for the Bar. Members discussed the federal CJA model and the Bar's obligation to appoint and pay for counsel, including the holding of *In re Meade* establishing the right to appointed counsel in disciplinary proceedings in Washington state. Implementing some kind of means testing was also raised. Members discussed the possible conflicts for the Disciplinary Board Chair, the Vice Chair or Chief Hearing Officer to review the billings of appointed counsel. Suggested alternatives included using a nonaligned third party or supervising lawyer to review the cost bills and requests for additional expenditures. However, there were some concerns that such actions may lead to potential malpractice claims by the respondent. DART suggested the subcommittee consult with experts or practitioners knowledgeable in cost management measures in appointed counsel situations. Another suggestion was to obtain estimated costs at each stage in the disability proceeding from practitioners that could be used to set objective cost parameters. The subcommittee was asked to take a second look at *In re Meade* and the ELCs related to appointed counsel and determine what the Bar is required to do, including any requirements under the ADA. In addition, the subcommittee was asked to analyze the Bar's obligation to pay for appointed counsel and if means testing could be applied in some cases.

IV. Voluntary Permanent Retirement (VPR) Subcommittee

Subcommittee Chair Doug Ende presented the subcommittee's report and recommendation to begin drafting a voluntary permanent retirement rule for Washington. Data from the last two years suggested around 50% of reprimands and admonitions by Washington lawyers have been committed by those 60+ years and older. The subcommittee acknowledged the lack of statistically reliable empirical data either locally or nationally, but general statistical data confirms the population of aging lawyers is increasing. As lawyers began to age out of practice, some will experience age-related disciplinary problems; these have been observed in Washington's discipline system, and there are recent anecdotal experiences that suggest an alternative to discipline would be useful. The subcommittee recommended that a rule on VPR will assist these lawyers to step away from the practice of law with dignity. Mr. Ende also presented a listserv survey on what other states have done or are doing on the issue. In addition to noting the previously circulated approaches of Florida and Illinois, Mr. Ende discussed a proposed voluntary permanent retirement proposal from Missouri, which is similar in the size of its lawyer population to Washington, although it was ultimately not adopted by the Missouri Supreme Court.

DART discussed the impact of making such a change and the emotional issues associated with it for a lawyer contemplating leaving practice. Many members who

decide to stop practicing and are presented with the alternatives of transferring to inactive status or resigning find these options undesirable or repugnant and would prefer a status of “retired”. In addition, an inactive lawyer can at will choose to become active again, making it an ineffective disciplinary disposition. If adopted, VPR status would be available as a procedural option in the discipline system, not as an alternative status for the general membership. Because the change would affect the work of the Regulatory Services Department, DART members suggested the subcommittee consult and coordinate with WSBA Chief Regulatory Counsel. Discussion followed on whether age could be an eligibility factor. The idea of consulting with the Senior Lawyers section was also considered. Executive Director Paula Littlewood noted the BOG Budget & Audit Committee had previously discussed and decided against creating a general “retired” status. It was noted that use of the word “retired” in a VPR-like rule might be problematic in Washington. Mr. Ende sought authorization from DART for a VPR drafting work group to prepare a preliminary proposal. The DART agreed that the subcommittee should proceed.

V. Other Discussion

The Chair discussed the time frame for the subcommittees to have preliminary reports by the next meeting in May. Discussion followed on the possibility of inviting presenters to address DART in the future on the topics under consideration.

VI. Adjournment

The meeting adjourned at 3:37 p.m.