



WSBA

WASHINGTON STATE BAR ASSOCIATION

DISCIPLINARY ADVISORY ROUND TABLE (DART)

Meeting Minutes November 20, 2013

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

The meeting began was called to order at 1:35 p.m.

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

I. Minutes

The September 5, 2013 minutes were approved.

II. Subcommittee on UPL by Disbarred Lawyers

Subcommittee Chair Doug Ende reported the subcommittee reviewed jurisdictional questions and authority for the unauthorized practice of law (UPL) by disbarred lawyers, including the availability of Bar resources and other alternatives. The subcommittee concluded the problem was not sufficiently large enough to divert limited Bar resources and construct a new system to handle the complaints. The subcommittee reviewed statistics provided by the Practice of Law Board (POLB) over the last five years, which showed 21 complaints or roughly four cases per year. The subcommittee suggested alternative approaches such as public education and raising awareness of the problem with authorities and other agencies to encourage prosecution of the cases.

Discussion followed on how complaints are received and processed in ODC, criminal prosecution by the Attorney General, and whether UPL, as a whole, appears to be a consumer protection issue. Members familiar with the issue noted the idea has long been discussed and it would require a statutory solution. At present, there appears to be no government entity pushing to classify UPL as a consumer protection issue. Members discussed obtaining input from interested groups (e.g., AGO, WAPA) or bringing the issue back to the POLB. Discussion ended with a suggestion that attention from the Supreme Court might prove helpful. The Chair requested information be forwarded to him regarding past efforts to raise the UPL/CPA issue for

possible consideration at the Court's En Banc meeting. (After the meeting, Paula Littlewood, Julie Shankland, and the Chair discussed that it may be premature to provide information given the ongoing discussions at the POLB.)

III. Disability Counsel Subcommittee

Subcommittee Chair Julie Shankland reported the subcommittee developed an idea to create a panel of independent contractors to refer disability cases. The contractors would be paid according to a flat fee based on the level of complexity of a case. It would allow greater cost control and make budgeting more predictable. The subcommittee is currently researching independent contractor models used by assigned counsel departments in King and Thurston Counties.

Discussion followed on cost control measures, structuring a flat rate compensation schedule, establishing case complexity levels, and possible changes to the ELC. There was further discussion on the idea of a disability counsel panel under the Supreme Court similar to the Hearing Officers Panel and Conflict Review Officers, all of whom are appointed by the Supreme Court.

It was moved and seconded to direct the subcommittee to prepare a detailed outline of their proposal for consideration by DART. The motion passed unanimously.

IV. Voluntary Permanent Retirement Status

Doug Ende discussed the 2007 National Organization of Bar Counsel (NOBC) report that recommended each jurisdiction adopt rules for voluntary permanent retirement (VPR) status. In 2013, the NOBC Special Committee on Permanent Retirement drafted a set of principles to create and implement a permanent retirement class that jurisdictions can use as a guide for developing their own policies.

Discussion followed on whether DART should consider taking on the issue. A solution by the ABA could take several years and jurisdictions such as Florida and Illinois have already adopted rules for VPR. Members discussed the circumstances in which a lawyer could take VPR, with the threshold limited to those who have experienced minor misconduct due to age impairment. Lawyers who commit serious misconduct would be ineligible and still face serious disciplinary sanctions such as suspension or disbarment. In addition, lawyers who opt for VPR cannot be re-admitted later on. DART members discussed the public protection effect of VPR and differences in member class between resignation and retirement. It was noted that Florida's rule is not limited to older lawyers and includes disabled lawyers and younger lawyers.

It was moved and seconded to form a subcommittee to explore the idea of voluntary permanent retirement status. The motion passed unanimously. Doug Ende agreed to act as subcommittee chair. Members who volunteered to serve are Lee Ripley, Clyde Cramer, Andy Borhnsen, Julie Shankland, and Larry Jefferson.

V. Charter

Members discussed the need to update the charter beyond the stated two-year pilot for which it was intended. DART is currently in its second two year term. The draft charter includes a summary background and amends language regarding scope and limitations on DART's authority. Additional changes suggested: adding the membership and preparing a red-line draft for the next meeting.

VI. Minority Bar Association Letter

Larry Jefferson commented on an email letter he sent recently to all minority bar associations requesting their comments or concerns regarding the lawyer disciplinary system. Mr. Jefferson will report to DART on any responses he receives.

VII. Adjournment

The meeting adjourned at 2:55 p.m.