



# WSBA

WASHINGTON STATE BAR ASSOCIATION

## **DISCIPLINARY ADVISORY ROUND TABLE (DART)**

### **Meeting Minutes January 13, 2017**

Members present: Hon. Charles Wiggins (Chair), Andrew Bohrsen, Julie Anderson, Douglas Ende, G. Kim Risenmay, Jacky Sabin, Michele Carney, Marc Silverman, Paula Littlewood, James Horne, Leland Ripley, Julie Shankland, Patrick Sheldon, Jerry Ford, and Darlene Neumann (Staff Liaison)

The meeting began at 9:03 a.m.

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

#### **I. Minutes**

The minutes were approved.

#### **II. Update on ABA Model Rule on Payee Notification**

Doug Ende reported the Office of Insurance Commissioner withdrew further consideration of a proposed payee notification rule largely due to insurance industry concerns. The rule would have required insurance companies to provide notice to claimants of insurance settlements that their settlement proceeds are being issued to the claimant's lawyer. The rule has been adopted in 15 jurisdictions and the WSBA Board of Governors also lent its support. DART discussed the rule's effectiveness and whether a significant problem of lawyer theft of client settlement funds exists in Washington. In response to a question about whether there was an approach to regulating lawyers directly that would address the same concerns, it was noted the Rules of Professional Conduct (RPC) 1.15A already addresses the lawyer's fiduciary duty with respect to client funds and return of client property. Mr. Ende will inquire about other possible approaches.

#### **III. Audio/Video Recording in Disciplinary Hearings**

Doug Ende introduced the issue of audio and video recordings of disciplinary hearings by persons who are not members of the professional media. In the past, news media who were interested in covering disciplinary cases would seek formal permission to record or broadcast the hearing. Today, anyone with a smart phone camera can show up at a hearing and record the proceeding without revealing who they are, what are their intentions, and why they are

recording. Mr. Ende raised the question of whether the Rules for Enforcement of Lawyer Conduct (ELC) are adequate in today's world of self-styled citizen journalism. He noted the constitutional issues and discussed Article I of the state Constitution, and other rules such as General Rule (GR) 16 (courtroom photography and recording by news media) and California Rule 5.16 (photography, recording, and broadcasts of state bar proceedings). The ELCs currently do not address photography or recording of disciplinary proceedings by the public. It was noted that most disciplinary hearings are open to the public, but not the Disciplinary Board's deliberations.

DART noted several issues regarding citizen recordings:

- Recordings of bar employees can be highly edited, posted online, and used for harassment purposes;
- If hearings are recorded, witnesses and victims may be reluctant to testify, leading to a chilling effect;
- Hearing officers taken aback by unanticipated recording; and
- Lack of guidance in the ELCs or other rules or policies.

Members discussed updating the ELCs to address recording of disciplinary hearings, providing training or written guidelines to hearing officers, and how to protect witnesses and victims who appear at hearings. The chair asked Mr. Ende and Julie Shankland to further analyze the issues and report back at the next meeting.

#### **IV. Future Meetings**

After reviewing the history of DART and its original direction as a forum for the discussion of disciplinary system issues, members were asked their preferences on holding future meetings. In the past, meetings have been driven more by scheduling than agenda topics, which has resulted in meeting cancellations and rescheduling efforts. Nevertheless, most members preferred having an advance meeting schedule so that they could plan accordingly so long as cancellation notices are given with enough lead time.

#### **V. Update on the Coordinated Regulatory Systems**

Paula Littlewood gave an update on the proposed Coordinated Regulatory Systems being developed by the Bar. The admissions and licensing components of the proposal, in the form of amendments to the Admission and Practice Rules, are currently at the Supreme Court and have been published for public comment. The discipline component is in development. Feedback from stakeholders to date has indicated a need to retain a meaningful role for volunteers in the context of a new, professionalized adjudication system. A presentation on the proposed coordinated discipline system will be shared with hearing officers in the near future.

#### **VI. Adjournment**

The meeting adjourned at 10:32 a.m.