



WSBA

WASHINGTON STATE BAR ASSOCIATION

DISCIPLINARY ADVISORY ROUND TABLE (DART)

Meeting Minutes

May 12, 2017

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

Also in attendance was Jean McElroy, WSBA General Counsel/Chief Regulatory Counsel

The meeting was called to order at 9:05 a.m.

I. Minutes

The minutes were approved.

II. Coordinated Discipline System

Paula Littlewood began the discussion by reminding DART that the proposed Coordinated Regulatory System for licensing and admissions of lawyers, LPOs, and LLLTs – in the form of amendments to the Admissions and Practice Rules – is currently pending before the Washington Supreme Court.

An initiative to create a Coordinated Discipline System for all license types is also underway with the purpose to merge the current discipline systems for lawyers, LPOs and LLLTs into a single portal system. The Coordinated Discipline System would also feature a professionalized adjudicative component to handle disciplinary and regulatory hearings, include member and public volunteers as participants in the system, and implement other system efficiencies.

Doug Ende walked DART through a model of the Coordinated Discipline System, including the role of the Office of Regulatory Adjudicator (ORA) and the use of a volunteer pool to populate Order-to-Hearing and Intermediate Appeals panels jointly with a professional ORA adjudicator. Jean McElroy walked through the adjudicative process for the regulatory side. In the new system, hearings currently handled by the Disciplinary Board, hearing officers, Character and Fitness Board, and MCLE Board, would be adjudicated within the ORA process.

DART discussed the size and configuration of the participating volunteer panels and how review of dismissed appeals might be handled internally. The chair will confer with the Chief Justice and members of the Court to get a sense of the Court's acceptance in principle of the proposed system.

III. Order of Argument in ELC 7.2(a) Interim Suspension Petition

DART discussed an issue that was referred by the Court regarding the order of oral argument in ELC 7.2(a)(2) interim suspension show cause hearings. Kurt Bulmer, a lawyer respondent's counsel, raised the issue in a letter to the Court and requested that respondents with the burden of persuasion be allowed to open and conclude oral argument in interim suspension hearings following a Disciplinary Board disbarment recommendation. Currently the Office of Disciplinary Counsel, as the petitioner, argues first with a brief introduction and makes a substantive rebuttal. Mr. Bulmer's primary concern was the lack of opportunity by a respondent to address arguments made by ODC. Mr. Ende expressed the opinion that ODC had no objection to the respondent arguing first and presenting rebuttal. He noted, however, that most interim suspension hearings have pro se respondents, who would be surprised to find that they are supposed to argue first.

Following discussion on how the change might be implemented, a motion was made to include the order of argument in the show cause order to advise who shall open and close, which would be the respondent having the opening argument, followed by the ODC, and closing by the respondent. This protocol would apply only to ELC 7.2(a)(2) hearings. The motion passed unanimously. DART will forward its recommendation to the Court.

IV. Updated on Audio/Video Recording of Regulatory Hearings

Continuing the discussion from the last meeting, Julie Shankland discussed GR 16, Washington's rule on photography and recording by news media in the courtroom. She also presented a comparison of similar rules in three other states, and discussed the Bone-Club factors considered by Washington courts when closing public hearings. DART discussed balancing the need to maintain order in an adjudicatory proceeding while preserving accessibility and providing guidance to hearing officers to in these situations. Ms. Shankland included draft language for discussion that could be used as a guideline for hearing officers or made into a rule. The chair asked members to come up with additional ideas and send them to the staff liaison for further discussion at the next meeting.

The meeting adjourned at 11:04 a.m.