



WSBA

WASHINGTON STATE BAR ASSOCIATION

DISCIPLINARY ADVISORY ROUND TABLE (DART)

Meeting Minutes

July 7, 2017

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

Also in attendance were Maia Crawford-Bernick and Jenna Mark, ODC law student interns.

The meeting was called to order at 10 a.m.

Welcome and introductions were made around the table.

I. Minutes

It was noted for the record that the recommendation referred to in Item III of the May 12 minutes was made in the form of a letter from the Chair to the Chief Justice, which was distributed to DART members as meeting materials. With that additional information, the minutes were deemed approved.

II. Updates and Information

The chair reported on the order of argument issue discussed at the last meeting. Having received DART's comments in the Chair's letter to the Chief Justice, the Court will provide respondents in ELC 7.2(a)(2) interim suspension hearings with the opportunity to request additional rebuttal time.

The chair announced that member Andy Bohrsen recently resigned due to personal and family reasons that prevent his full participation on DART.

III. Proposed amendments to ELC 3.3, 3.4, 6.6

On June 1, 2017, at the request of the chair of the Supreme Court Rules Committee, DART was asked to comment on proposed amendments to ELC 3.3, 3.4, and 6.6 in light of the possible effects of the amendments on the confidentiality of diversion contracts and declarations. DART

discussed the provisions of ELC 6.6 which restrict the disclosure of a respondent's declaration or affidavit and the problem of obtaining written waivers from respondents in certain situations. It was pointed out that under ELC 3.4 there are a number of different circumstances that permit the disclosure of otherwise confidential discipline information. There were concerns that a broader disclosure of confidential diversion information might deter eligible respondents from entering into the program since confidentiality of the diversion is of significant importance to potential participants. It was noted that some bases for disclosure under ELC 3.4 can be made without notice to the respondent. The discussion generated several ideas and members agreed that further discussion was needed.

Doug Ende moved, seconded by Marc Silverman, to respond to the June 1, 2017 letter from the chair of the Supreme Court Rules Committee with the following: the DART recommends the amendments to ELC 3.4(j) and (n) proceed through the current rulemaking process since the issues raised by the public comments are not implicated in those provisions, that the Court not act on ELC 3.3(d) and 6.6 at this time, and that DART will continue its discussion and possibly draft an alternative proposal for the Supreme Court Rules Committee's consideration.

Lee Ripley offered a friendly amendment, seconded by Patrick Sheldon, to add "proposed amendments to" before ELC 3.3(d) and 6.6. Mr. Ende did not object to the amendment to the motion. The motion passed 10-0-1(abstain). The chair will share DART's comments in a letter to the Court Rules Committee chair. Another DART meeting will be scheduled for September to further address this issue.

IV. Update on Coordinated Regulatory System

Paula Littlewood provided an update on the Court's response to WSBA's report on the status of the coordinated discipline system and noted that the Court's reaction was generally favorable, as indicated in its July 3 letter indicating that a majority of the Court voted to approve the proposed system in concept.

V. Annual report

The chair opened discussion by asking members for thoughts on whether DART should be allowed to sunset or should continue. Paula Littlewood explained the origins of DART and noted its distinct status as an entity of both the Court and the Board of Governors. Other members commented on the value DART provides and the benefit of discussions among key participants and stakeholders in the discipline system. Following discussion on term lengths and the prospective need for LLLT/LPO members, a motion was made and seconded to recommend to the Court and the BOG that the DART should not be allowed to sunset but rather should become an ongoing entity without a specified sunset date. The motion passed 10-0-1(abstain).

Members thanked the staff liaison for assisting the DART this year.

Adjournment

The meeting adjourned at 11:20 a.m.