

DISCIPLINARY ADVISORY ROUND TABLE

MARCH 20, 2024

MEETING MINUTES

Members Present: Chair, Mary Yu, Terra Nevitt, Julie Shankland, Doug Ende, Christopher Sanders, Randy Petgrave, Kevin Bank, Anne Seidel, Miryam Gordon, Brent Williams-Ruth, and Darlene Neumann, staff liaison. **Excused:** Deborah Severson, Drew Simshaw. **Absent:** Norma Ureña. **Interested Parties:** John Strait, Gary Manca, Jeffrey Kestle, Todd Maybrow, and Ken Kagan.

The virtual meeting was called to order at 2:00 p.m. Welcome and introductions followed.

Announcements and Information

- In January 2024, the Court published ELC 2.14(d) by for comment. The comment period expires April 30, 2024.
- Volunteer applications will open May 1 to May 31. Two open positions: one Respondent's Counsel and the active bar member not otherwise uninvolved in the disciplinary process. Current members are eligible for a second term and would need to reapply.

Minutes

The chair asked if there were any changes to the October 30, 2023 minutes. Under Review Disability/Incapacity Regulation section, a change was requested to the last sentence "...no further action was taken at this time." The minutes were approved as amended.

Voluntary Transfer to Disability Inactive

Doug Ende reported that an internal work group, consisting of WSBA regulatory staff from the Office of Disciplinary Counsel, the Office of General Counsel, and the Regulatory Services Department, agreed that there is not a viable solution achievable via rule change. Instead, they recommend members who seek voluntary transfer to disability inactive have the option of taking regular inactive status. This pathway involves very little process and already exists for any reason, so there would be no public designation of disability. One drawback for some members may be the cost: inactive status fee is \$200 and disability inactive is \$0. As a possible solution, the WSBA bylaws could be amended to include a hardship or good-cause exemption for those seeking inactive status due to disability. A hardship exemption already exists for active status. This will involve some drafting and approval by the Board of Governors and the Supreme Court. The question of the \$100 investigation fee charged to the member to transfer back or be reinstated was raised. This will be considered as this project moves forward. Prior to any submission to the Board of Governors, a draft will be presented to DART, which may wish to support the proposal.

OGC Letter to Chief Justice re Review Committee decisions



The chair provided a general background of the issue and asked if changes were needed to the process. She noted ELC 5.7(f) which states that actions of a review committee are final and not subject to further review. The chairperson of the Disciplinary Board cannot review the decisions. Although the Court has plenary authority and oversight of the lawyer discipline system, it does not review decisions issued by the review committee.

Members discussed the inconsistency of review committee decisions and the lack of any mechanism for either side to seek review from the Court. Doug Ende noted the rule authorizing the Disciplinary Board Chairperson to review decisions of the review committee was changed some time ago for reasons of inefficiency considering the magnitude of the work involved and the infrequency of changed outcomes.

Due to the confidential discipline information involved, Julie Shankland did not elaborate on the specific matter other than to say it was a procedural issue involving inconsistencies and potential problems with the rules.

Discussion followed regarding the rule, understanding the problem, and the way the issue was brought to the court's attention without explanation to the parties or information of the specific materials sent to the Court. A number of individuals present discussed the impression that the action created a perception that General Counsel was seeking intervention by the Court. Additional discussion centered on fairness to respondents, confidentiality of the process, and adherence to the rules.

Members discussed whether there should be a second review of review committee decisions by the Disciplinary Board Chairperson. The general consensus of respondent's counsel representatives was that another level of substantive review is not necessary and would slow the disciplinary process more and create additional anxiety for respondents when the review is unlikely to result in a change.

There was discussion of two cases (Stroh and Curran) where the Court reviewed decisions by the Disciplinary Board. Some individuals cautioned against allowing procedurally unusual cases such as Stroh and Curran to drive amendments to the rules.

Discussion followed on ODC's consistency (or inconsistency) regarding enforcement of the 45-day rule to request review. Respondent's counsel commented on the impact to respondents when the rule is not consistently applied, resulting in a disciplinary process that drags on for months. There was discussion regarding inconsistent decision-making among disciplinary counsel, socio-economic disparities affecting who can/cannot afford representation, challenges faced by pro se respondents with mental health issues, and procedural errors by the review committees (infrequent).

Doug Ende commented the 45-day rule is ordinarily enforced but there are reasonable exceptions. Disputes over timing are brought before the review committee. Regarding the perception of inconsistent decision-making by ODC, he noted there is system of supervisory review, and because every case is different there can be varying viewpoints about what is an appropriate outcome.

Discussion followed on improvements to the training of review committee volunteers. Additional ideas included expanding membership on the committees (currently 2 lawyers and 1 nonlawyer), offering stipends, extending terms to build experience, and including diverse volunteers that are representative of the profession. The

importance of maintaining the finality of review committee decisions was also pointed out and that only rare cases should go to the Court. Another suggestion was to gather statistics on the discipline system to make data-informed decisions. The chair suggested that parties come together to develop ideas and information on how to make improvements to the process and that DART can serve as starting point for those suggestions.

The meeting adjourned at 4:01 p.m.