

WASHINGTON STATE BAR ASSOCIATION

DISCIPLINARY ADVISORY ROUND TABLE

April 12, 2023

Meeting Minutes

Members present: Chair Justice Mary Yu, Julie Shankland, Doug Ende, Randy Petgrave, Drew Simshaw, Kevin Bank, Anne Seidel, Norma Ureña, Brent Williams-Ruth, and staff liaison Darlene Neumann. Excused: Virginia Pratter. **Absent:** Terra Nevitt and Christopher Sanders. **Interested Parties:** Sachia Stonefeld Powell, Office of Disciplinary Counsel, Bobby Henry, Regulatory Services Department Associate Director, Lee Ripley, Respondent's Counsel.

The meeting was called to order at 9: 30 a.m. by the chair. Welcome and introductions followed.

The minutes from October 4, 2022, were deemed approved.

Proposed Amendment to ELC 2.14(d)

Anne Seidel introduced a proposed amendment to ELC 2.14(d). The rule bars former BOG members from representing respondents in disciplinary or pending grievance matters for three years after leaving office. Ms. Seidel noted that a BOG member, who is an experienced respondents counsel, will be subject to the rule after his term expires. Ms. Seidel and Doug Ende collaborated on proposed amendment that provides an exception for qualified respondents counsel. They also considered a court order as a possible alternative but then agreed that a rule amendment would be a better approach.

Members discussed the 10-case minimum requirement which Ms. Seidel suggested seemed indicative of substantial experience for respondents counsel in the discipline system. Discussion followed on policies that discourage BOG members from serving simultaneously on other boards. However, Julie Shankland found no bylaw prohibiting a current governor from serving on another board and noted that the BOG appoints members to the Character and Fitness Board.

Members discussed possible reasons for the three-year prohibition, which may have been intended to prevent cronyism. Further discussion followed on shortening the three-year prohibition, reducing the 10-case minimum, ODC's discretion to waive the rule, and a special court order to exempt certain individuals. The chair requested staff prepare a short GR 9 of the proposed rule amendment for review at the next meeting.

Voluntary Transfer to Disability Inactive Status

Doug Ende discussed the issue of voluntary transfer to disability inactive status in the discipline system. He noted that disability inactive status already exists under the ELC. However, the discipline rules were not designed for voluntary transfer to disability inactive which is essentially a change in license status that happens to proceed through the disciplinary system. Bar members typically contact the Regulatory Services Department (RSD) to request a status change, are informed of their options, and then referred to the Office of Disciplinary Counsel (ODC) where they are placed into disciplinary proceedings. Mr. Ende described a lengthy discipline process and use of volunteer resources to finally get a stipulation order in an uncontested matter.

Sachia Stonefeld-Powell, Disciplinary Counsel, and Lee Ripley, Respondents Counsel, commented on the confusion and difficulty for disabled/incapacitated members to go through disciplinary proceedings to transfer voluntarily. Bobby Henry, Associate Director for Regulatory Services, noted that members often request the status change right before licensing season and because it is a lengthy process, many are unable to meet the licensing renewal deadline and many do not wish to pay for inactive status or are unable to.

Discussion followed on the criteria and process to transfer back to active status from disability inactive. Ms. Stonefeld-Powell and Mr. Ripley commented that these members do not transfer back because of the serious, permanent, or terminal nature of their conditions. Discussion followed regarding lowering the bar to request voluntary transfer to disability inactive, more members seeking the transfer, including some who may not have legitimate requests, the financial impact on licensing fees, and removing the transfer requests from the discipline system to regulatory services.

Other Topics/Issues

- **Disability/Incapacity Regulation**
The chair suggested DART should consider the disability regulation rules more broadly. She noted the regulatory issue would probably be a lower priority for the Court's own disability task force.
- **Practice of Law Board Presentation**
The chair commented that the Practice of Law Board (POLB) has approached the court regarding lawyers and nonlawyers providing limited legal services on the internet in Washington state and the lack of regulation. Although the court has not yet taken position on the issue, the chair suggested this is a topic that DART should consider. The chair will request a presentation from the chair of the POLB for the next DART meeting.
- **Renewing America's Lawyer Discipline System (Bloomberg Law, February 2023)**
The chair noted the topic of revising the lawyer discipline system is relevant to the POLB proposal before the court. However, the problem is a lack of data to determine if the disciplinary rules should be revised and difficulty in gathering that data.
- **Disciplinary Selection Panel**
Governor Williams-Ruth commented on the Disciplinary Selection Panel rules for recruitment of open positions, including the lack of transparency and getting qualified diverse applicants.

Future Meeting

The chair suggested a longer meeting to continue discussion of the topics. The staff liaison will contact members regarding possible future meeting dates. Doug Ende will work on a draft rule/process for voluntary transfer to disability inactive issue.

Meeting adjourned at 10:41 a.m.