

**WASHINGTON STATE
BAR ASSOCIATION**

DISCIPLINARY ADVISORY ROUND TABLE (DART)

Meeting Minutes

November 8, 2017

Members present: Hon. Charles Wiggins, Chair, Doug Ende, Kim Risenmay, Marc Silverman, Frank Cornelius, Paula Littlewood, Randolph Petgrave, Lee Ripley, Julie Shankland, Patrick Sheldon, Jerry Ford, and Darlene Neumann (Staff Liaison).

The telephonic meeting began at 9:46 a.m.

I. Draft Proposed Amendments to ELC 3.3, 6.5, and 6.6 Concerning Confidentiality of Diversion Contracts and Affidavits

Doug Ende recounted the Supreme Court's request for comment from DART about proposed amendments to rules relating to diversion confidentiality, the concerns expressed during the public comment period, and DART's prior discussions of two earlier drafts. Mr. Ende noted the revised draft in the materials was agreed upon by himself and Lee Ripley. The changes from the original proposed rules were:

- ELC 3.3(d): Requiring notice to the respondent of a discretionary release under 3.4(e).
- ELC 6.5: Including notice in the diversion contract that the contract and affidavit are subject to release under ELC 3.3.
- ELC 6.6: clarifying that the respondent's affidavit is confidential unless release is authorized under ELC 3.3.

Even with the added notice requirements, respondent's counsel had lingering concerns about the impact of the ELC changes on the willingness of respondents to enter into diversion, particularly since confidentiality of the contract and declaration were key incentives. Members discussed gathering data to ascertain the effect of the ELC changes upon the diversion program. Following discussion, DART voted 10-0-1 in favor of recommending the suggested proposed amendments to ELC 3.3, 6.5, and 6.6 to the court. Chair Wiggins will forward DART's recommendation to the chair of the Supreme Court Rules Committee.

The September 13, 2017 minutes were approved.

The meeting adjourned at 10:03 a.m.