

WASHINGTON STATE BAR ASSOCIATION

DISCIPLINARY ADVISORY ROUND TABLE (DART)

Meeting Minutes September 13, 2017

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

The meeting was called to order at 10:09 a.m.

Welcome and introductions were made around the table.

I. Minutes

The minutes were approved.

II. Draft Revised Charter

Members discussed changes to the charter that would authorize DART as an ongoing entity rather than request another two-year extension (which it had done on three previous occasions), add a LLLT and LPO as additional representatives due to recent changes to Bar membership, and establish term limits for the appointed members.

III. Annual Report

Members agreed the annual report and accompanying BOG memo should be revised to reflect the additional changes to the charter and include a request for a one year extension for the current appointed members through September 30, 2018, that would allow DART to hold meetings, if necessary, until new members are appointed in FY 2018. Doug Ende moved, seconded by Marc Silverman, to adopt the changes to the annual report, the recommendation for charter amendments, and a one year extension for existing members. The motion passed unanimously.

IV. Draft Amendments to ELC Title 6

Doug Ende presented a draft amendment to ELC 6.5 to address concerns from respondent's counsel regarding notice to diversion participants of possible disclosure of the diversion contract and supporting affidavit under previously proposed changes to ELC 3.4.

Lee Ripley presented an alternate proposal with a draft amendment to ELC 6.6. Mr. Ripley's proposal outlined specific exceptions that would permit release of confidential diversion contracts and affidavits; create a procedure for ODC to request release of the confidential material; require notice be served on the respondent lawyer; and allow 14 days for response from the respondent.

The proposals were drafted in response to discussion from the last meeting where DART was asked to comment on suggested amendments to ELC 3.3, 3.4, and 6.6, which were part of a package of ELC amendments submitted to the Court earlier this year. In June, the Court requested DART's input on proposals that would change the rules that currently require a waiver from the respondent lawyer—instead, the amended rules would treat releases of diversion contracts and affidavits the same as releases of other confidential disciplinary information under ELC 3.4.

Members reviewed the release subsections of Rule 3.4 in detail. It was noted that ELC 3.4(e) (Discretionary Release) ordinarily requires notice to the respondent but does permit a release without notice in some instances. It was suggested that another approach could be to always require notice of releases of diversion contracts and affidavits. The chair asked Mr. Ende and Mr. Ripley to continue work on the draft and come back with a proposal for the next meeting.

Adjournment

The meeting adjourned at 11:25 a.m.