

Tracy, Mary

From: OFFICE RECEPTIONIST, CLERK
Sent: Thursday, April 27, 2017 4:22 PM
To: Tracy, Mary
Subject: FW: comment on proposed changes to ELC Rules 3.3 and 6.6

Forwarding.

From: Anne Seidel [mailto:anne@anneseidel.com]
Sent: Thursday, April 27, 2017 4:08 PM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Cc: 'Strait John' <straitj@seattleu.edu>; 'mhb.com, TimF' <TimF@mhb.com>; 'tom@tal-fitzlaw.com' <Tom@tal-fitzlaw.com>; 'Patrick C. Sheldon' <PSheldon@foum.law>; 'Bulmer Kurt' <kbulmer@comcast.net>; 'Purtzer Brett' <brett@hesterlawgroup.com>; 'Elizabeth Turner' <et24165@frontier.com>; 'Kagan Ken' <ken@kenkaganlaw.com>; 'Bender Rita' <rbender@skellengerbender.com>; 'Todd Maybrown' <Todd@ahmlawyers.com>; 'Lee Ripley' <leeripley@wavecable.com>
Subject: comment on proposed changes to ELC Rules 3.3 and 6.6

Dear Honorable Justices of the Washington State Supreme Court:

This comment is submitted on behalf of Rita L. Bender, Kurt M. Bulmer, Thomas M. Fitzpatrick, Timothy K. Ford, Kenneth S. Kagan, Todd Maybrown, Brett A. Purtzer, Leland G Ripley, Anne I. Seidel, Patrick C. Sheldon, John A. Strait and Elizabeth A. Turner. All of us regularly represent lawyers who are the subject of bar grievances. We appreciate the opportunity to provide comments on the proposed changes to the Rules for Enforcement of Lawyer Conduct (ELC), specifically ELC 3.3 and 6.6. In our opinion, these two related changes would significantly alter the current diversion program. We urge the court either to reject these proposals or ask WSBA to consider additional input and modification to the rules.

The diversion program allows lawyers accused of less serious misconduct to resolve their issues by admitting to misconduct and agreeing to take specified action designed to prevent a recurrence. We have represented many lawyers who have gone through the diversion program and have been very impressed with the improvements these attorneys have been able to make through the program. The diversion program is especially useful for lawyers who have mental health problems as it allows them to address the misconduct and get treatment without having their careers destroyed. It is also very beneficial for lawyers who are dealing with challenges in their personal lives or who need law office management assistance.

The diversion rules were intentionally written to prevent any disclosure of the diversion contract or declaration unless the lawyer failed to complete the terms of the diversion. This confidentiality is a huge factor in many lawyers' decision to opt for diversion rather than fighting the charges against them. There are lawyers who enter diversion even though they have a good chance of achieving a dismissal at hearing. We are very concerned that if the confidentiality of the diversion documents is weakened, as will happen if the proposed rule changes are adopted, many lawyers will choose to go to hearing rather than opt for diversion. This would be unfortunate both because lawyers who would benefit from the diversion program would not have the opportunity to do so and also because it will increase the costs to the disciplinary system in having more cases go to hearing.

We understand that the proposed ELC changes were not discussed by the Discipline Advisory Round Table (DART) and were approved by the WSBA Board of Governors on its consent calendar (i.e., without discussion). That appears appropriate for the vast majority of the proposed changes, as they are mostly insignificant corrections. However, the proposed changes to ELC 3.3 and 6.6 are not in that category. To the contrary, they will be extremely significant to lawyers considering diversion. At a minimum, DART should be given the opportunity to consider the proposal, decide whether more disclosure is needed and draft an appropriate rule.

Anne I. Seidel
Law Office of Anne I. Seidel
1817 Queen Anne Ave. N., Suite 311

Seattle, WA 98109

www.anneseidel.com Phone 206.284.2282 Fax 206.284.2491