

USPTO's Office of Enrollment and Discipline Diversion Program

Program Overview

The Office of Enrollment and Discipline (OED) Diversion Program may be available for practitioners under investigation for minor misconduct resulting in little, if any, harm to a client due to the practitioner's physical, mental, or emotional health issues (including substance or alcohol abuse) or law practice management issues (including inadequate client communication). It provides the practitioner an opportunity to enter into a confidential agreement with the OED Director for counseling and/or educational training meant to address the underlying issue. The Diversion Program is an alternative to formal discipline.

Eligibility

The OED Director considers several factors in determining whether a practitioner may be eligible:

- 1) Practitioners must not have been publicly disciplined by the USPTO or another jurisdiction in the past three years, except if the discipline by another jurisdiction was based on the same conduct as the conduct that is the basis for the current investigation.
- 2) The misconduct at issue must not involve:
 - The misappropriation of funds or dishonesty, deceit, fraud, or misrepresentation;
 - Substantial prejudice to a client or other person;
 - A "serious crime," as defined by 37 CFR § 11.1; or
 - A pattern of similar misconduct unless the misconduct at issue is minor and related to a chronic physical or mental health condition or disease.

Other Considerations for Diversion

- Other factors are also considered:
 - Whether participation is likely to benefit the practitioner and accomplish the goals of the program;
 - Whether diversion was previously attempted; and
 - Any other aggravating or mitigating factors.

Participation in the Diversion Program

A diversion agreement may require practitioner participation in some or all of the following:

- Individual counseling;
- Practice monitoring;
- Substance abuse counseling;
- Substance use and mental health screening, assessment, and treatment;
- Educational and employment goals including, but not limited to, law office management skills training or assistance; and
- Continuing Legal Education programs to minimize future formal discipline.

For more information about the Diversion Program contact the OED Staff Attorney handling your matter and/or reference the diversion guidance document at www.uspto.gov/sites/default/files/documents/Diversion_Guidance_Document.pdf.

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