

OED DIVERSION PILOT PROGRAM

I. OVERVIEW AND PURPOSE

The Office of Enrollment and Discipline (OED) has implemented a two-year pilot diversion program (“Diversion Pilot Program”). OED’s Diversion Pilot Program offers practitioners who engaged in minor misconduct the opportunity to avoid formal discipline by implementing specific remedial measures. The Diversion Pilot Program is available to practitioners whose physical, mental, or emotional health issues (*e.g.*, issues tied to substance/alcohol abuse) or law practice management issues (*e.g.*, inadequate client communication or docket management) resulted in minor misconduct and little, if any, harm to a client. In appropriate cases, a practitioner will be offered the opportunity to enter into a diversion agreement with the OED Director, which will require the practitioner to take affirmative steps to rectify the issue which led to the minor misconduct.

A practitioner’s participation in the Diversion Pilot Program is intended to protect the public by providing the practitioner with an opportunity to rectify the underlying cause of the practitioner’s misconduct, thus reducing the chance that the misconduct will recur or escalate. The Diversion Pilot Program will only be available where the practitioner and conduct satisfy all criteria for participation.

II. CRITERIA FOR PARTICIPATION

Not all practitioners and not all types of conduct will qualify for the Diversion Pilot Program. The criteria for participation in the Diversion Pilot Program will initially be based upon the American Bar Association Model Rules for Lawyer Disciplinary Enforcement (the “Model Rules”) and may be altered over the course of the Diversion Pilot Program, as needed.

To participate in the Diversion Pilot Program, a practitioner must not have not been publicly disciplined by the USPTO or another jurisdiction in the past three years, and must be willing and able to participate in the program.

In addition, the misconduct at issue must not (1) involve the misappropriation of funds or dishonesty, deceit, fraud or misrepresentation; (2) result in or likely result in substantial prejudice to a client or other person; (3) constitute a “serious crime,” as defined by 37 C.F.R. § 11.1; or (4) be part of a pattern of similar misconduct or be of the same nature as misconduct for which the practitioner has been disciplined within the past five years.

Once it is determined that the misconduct at issue is eligible, other factors to be considered in determining whether diversion is appropriate in a particular case include: (1) whether the sanction is likely to be no more severe than reprimand or admonition; (2) whether participation is likely to benefit the practitioner and accomplish the goals of the program; (3) any aggravating or mitigating factors; and (4) whether diversion was already attempted.