OED DIVERSION PILOT PROGRAM

I. OVERVIEW AND PURPOSE

Pursuant to the Delegation of Authority to the Director of the Office of Enrollment and Discipline signed September 18, 2017 (see attached), the Office of Enrollment and Discipline (“OED”) implemented a pilot diversion program (“Diversion Pilot Program”). The Diversion Pilot Program is available to practitioners whose physical or mental 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.

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 ENTRY

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 is based upon the American Bar Association Model Rules for Lawyer Disciplinary Enforcement. On August 8, 2021, the OED Director modified the Diversion Pilot Program criteria to expand access to the program.

To participate in the Diversion Pilot Program, a practitioner must not have been publicly disciplined by the USPTO or another jurisdiction in the past three years, except that discipline by another jurisdiction is not disqualifying if that discipline in another jurisdiction was based on the same conduct as the conduct that is the basis for the investigation.

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 unless the misconduct at issue is minor and related to a chronic health condition or disease.

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 may 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.

III. EXTENSION OF THE DIVERSION PILOT PROGRAM

The OED Director has extended the program’s expiration date from November 15, 2022 to November 15, 2023 (see Official Gazette Notice) so that OED may formalize the program (see Federal Register Notice of Proposed Rulemaking).
Delegation of Authority to Director of the Office of Enrollment and Discipline

Pursuant to my authority, as delegated by the USPTO Director, I delegate to the Director of the Office of Enrollment and Discipline the authority of the USPTO Director under 37 C.F.R. § 11.3, to suspend 37 C.F.R. § 11.22(h), for purposes of the Director of the Office of Enrollment and Discipline entering into and making non-public, non-disciplinary diversion agreements upon conclusion of a disciplinary investigation, without issuing a warning, instituting formal charges, or entering into a settlement agreement pursuant to the Diversion Pilot Program.

This authority may be re-delegated by the OED Director when the OED Director is absent or otherwise unavailable.

This delegation is effective immediately and valid until revoked.

9/18/17
Date

Sarah Harris
General Counsel
United States Patent and Trademark Office