

Rule 212

ATTORNEY DIVERSION PROGRAM

- (a) **Description.** The attorney diversion program is an alternative to a traditional disciplinary board proceeding.
- (b) **Eligibility.** A respondent is eligible to participate in the attorney diversion program if participation reasonably can be expected to cure, treat, educate, or alter the respondent's behavior. A respondent is ineligible to participate in the program if the misconduct involved self-dealing, dishonesty, or breach of a fiduciary duty. Unless there are unique circumstances, a respondent is also ineligible to participate in the program if the respondent has been disciplined in any jurisdiction or previously participated in an attorney diversion program.
- (c) **Disciplinary Administrator's Duties.**
 - (1) At the time a complaint is docketed for investigation, the disciplinary administrator must inform a respondent of the following:
 - (A) the respondent may request to participate in the attorney diversion program;
 - (B) a request to be considered for the attorney diversion program is not an admission of misconduct; and
 - (C) to participate in the attorney diversion program the respondent must stipulate that the respondent committed misconduct.
 - (2) If the respondent requests to participate in the program, the disciplinary administrator must submit the respondent's request and the disciplinary administrator's recommendation to the review committee for decision.
- (d) **Consideration by Review Committee.**
 - (1) The review committee may consider participation in the attorney diversion program only if a majority of the review committee finds there is probable cause to believe that the respondent committed misconduct.
 - (2) The review committee, in determining whether to approve the request, must consider whether participation in the program will prevent future misconduct and protect the public by improving the respondent's professional competency and by providing educational, remedial, and rehabilitative programs for the respondent.
- (e) **Agreement.** To participate in the attorney diversion program, a respondent must enter into an attorney diversion agreement with the disciplinary administrator that contains the following:

- (1) a stipulation that the respondent committed misconduct;
 - (2) a factual statement that supports the stipulation in subsection (e)(1); and
 - (3) the conditions for the respondent's participation in the program.
- (f) **Failure to Reach Agreement.** If the disciplinary administrator and the respondent cannot agree under subsection (e) to the facts to include in the factual statement, any provision that was violated, or the conditions of participation in the program, the traditional disciplinary board proceeding will resume. The failure to reach an agreement cannot be considered an aggravating factor in the disciplinary board proceeding.
- (g) **Fees.** A respondent approved to participate in the attorney diversion program must pay an initial fee of \$250. The respondent also must pay a monitoring fee of \$50 per month during the period of diversion. All fees are payable to the disciplinary fee fund. Upon written request of a respondent, the disciplinary administrator may grant a hardship waiver of the fees for good cause.
- (h) **Successful Completion.**
- (1) When a respondent successfully completes the conditions of an attorney diversion agreement under subsection (e), the following provisions apply:
 - (A) the disciplinary administrator must inform the review committee and request that the review committee dismiss the docketed complaint; and
 - (B) the stipulation that the respondent committed misconduct remains confidential, except as provided by subsection (h)(2) and Rule 237.
 - (2) In any future disciplinary board proceeding commenced against the respondent, completion of an attorney diversion agreement will be considered as an aggravating factor of prior discipline. The diversion agreement will be conclusive evidence of the facts contained in the factual statement and each violation specified in the agreement. The respondent may present evidence in mitigation.
- (i) **Failure to Comply or Complete.** If the disciplinary administrator determines that a respondent failed to comply with the conditions of an attorney diversion agreement under subsection (e), the following provisions will apply.
- (1) The disciplinary administrator must serve the respondent with written notice of the failure and afford the respondent a reasonable opportunity to refute the determination.
 - (2) If the respondent fails to refute the determination, the disciplinary administrator must inform the review committee and

request that the committee terminate the respondent's participation in the attorney diversion program.

- (3) If the respondent and the disciplinary administrator cannot agree on whether the respondent failed to comply with the conditions of the agreement, the disciplinary administrator must inform the review committee and the review committee must make a determination of whether to terminate the respondent's participation in the program.
- (4) If the review committee terminates the respondent's participation in the program, the traditional disciplinary board proceeding will resume.
- (5) At the hearing on the formal complaint, the agreement will be conclusive evidence of the facts contained in the factual statement and each violation specified in the agreement. The respondent may present evidence in mitigation.
- (6) Failure to complete the agreement will be considered as an aggravating factor.

[History: New rule adopted effective January 1, 2021.]